

Supreme Court Task Force on the Code of Judicial Conduct

Judge Joel M. Penoyar, Co-Chair
Court of Appeals Division II

Judge Alan R. Hancock, Co-Chair
Island County Superior Court

September 2009

Supreme Court Task Force on the Code of Judicial Conduct

Table of Contents

Final Report.....	Tab 1
I. Introduction	
II. Process of Review	
III. Findings and Recommendations	
IV. Conclusion	
Minority Report on Appearance of Impropriety.....	Tab 2
Majority Report in Support of Removing Appearance of Impropriety	Tab 3
GR 9 Cover Sheet.....	Tab 4
Proposed New Washington State Code of Judicial Conduct	Tab 5
Comparison of American Bar Association Model Code of Judicial Conduct and Recommended Code of Judicial Conduct	Tab 6
Current Washington State Code of Judicial Conduct	Tab 7
Bibliography	Tab 8

TAB 1

SUPREME COURT TASK FORCE ON THE CODE OF JUDICIAL CONDUCT

FINAL REPORT

I INTRODUCTION

The task force was established by the Supreme Court in the first part of 2008 to look at the 2007 ABA Model Code of Judicial Conduct and to recommend whether any or all of its provisions should be adopted in this state.

The judicial members were nominated by their respective court levels. There were two judges from each level of court. The Washington State Bar Association nominated candidates from which three were appointed. The Supreme Court appointed the co-chairs three citizen members and an additional attorney to the task force.

The following persons served on the task force:

Judge Joel M. Penoyar, Co-chair
Court of Appeals, Division II

Judge Alan R. Hancock, Co-chair
Island County Superior Court

Justice Charles W. Johnson, Supreme Court Liaison
Washington State Supreme Court

Justice Richard B. Sanders, Supreme Court Liaison
Washington State Supreme Court

Judge Mary Kay Becker
Washington State Court of Appeals, Division I

Judge John A. Schultheis
Washington State Court of Appeals, Division III

Judge John A. McCarthy
Pierce County Superior Court

Judge Kenneth D. Williams
Clallam County Superior Court

Judge Robert B. McSeveney

Kent Municipal Court

Judge Susan J. Woodard
Yakima Municipal Court

Mr. C. Matthew Andersen
Attorney at Law, Spokane

Ms. Marcine Anderson
Attorney at Law, Seattle

Ms. Elizabeth Fraser Cullen
Attorney at Law, Everett

Mr. Thomas M. Fitzpatrick
Attorney at Law, Tukwila

Mr. John W. Sleeter
Commission on Judicial Conduct, Olympia

Ms. Margery L. Dickinson
League of Women Voters, Richland

Ms. Ruth Schroeder
League of Women Voters, Seattle

II **PROCESS OF REVIEW**

The task force began meeting in the fall of 2008. It held ten full task force meetings. In addition, the four task force work groups held numerous meetings at which they formulated recommendations on the Code of Judicial Conduct provisions to present to the full task force. Several guests were invited to task force meetings to discuss issues such as campaign speech and judicial disqualification resulting from campaign contributions. Various members of the task force participated in each of the three spring judicial conferences at which they presented issues that were currently before the task force for discussion and consideration. Comments from those sessions were shared with the full task force. On some issues comments were received from various interested parties.

The task force meeting minutes, schedule and relevant links and a task force comment email address were placed on the Web site for the courts. The address is: http://www.courts.wa.gov/committee/?fa=committee.home&committee_id=141

III **FINDINGS AND RECOMMENDATIONS**

The first recommendation the task force made is that the 2007 ABA Model Code of Judicial Conduct (CJC) should be the base document for the revised Code of Judicial Conduct. That recommendation is in accord with the recommendation of the Conference of Chief Justices and also follows the pattern of adoption of the CJC in other jurisdictions around the country. Consequently, the formatting of the recommended CJC deviates from the current Code. The Preamble to the new Code lays out a new format of Canon, Rule and Comment.

The three areas which prompted the most discussion were:

The appearance of impropriety standard. The task force could not come to complete agreement on this issue. The majority of the task force voted to remove it from Rule 1.2 and the comments to that rule but it was retained in the language of Canon 1. The rationale for this action was that the standard is too vague and there should not be a finding of misconduct unless there is a finding there is a violation of a specific rule of conduct. The minority view is that it should be retained within the rule. The rationale for this position is that it is in the current Canon 2 and has been since the ethics rules for judges were first adopted, has not been subject to misunderstanding of the meaning and the Conference of Chief Justices supports its inclusion in the Code.

Specific rule prohibiting sexual relations. The task force did not come to agreement on this issue. The majority voted not to have a specific rule, in addition to other rules in the model Code, prohibiting a judge from engaging in sexual relations with a lawyer, party or witness in any matter pending before the judge. That action was based on the belief that the action is prohibited by the other provisions in the Code and the fact that Commission on Judicial Conduct has had no difficulty finding wrongdoing in the absence of a specific rule in the current Code. The minority view is that a new rule should be added to highlight the impropriety of engaging in sexual relations with anyone involved in any matter pending before a judge.

Disqualification Rule 2.11. The task force adopted language covering mandatory disqualification when there is a motion by an adverse party when another party has contributed financial support in excess of ten times the permissible dollar amount under RCW 72.17 within the last six years (Rule 2.11(A)(4)). The rule also provides for discretionary review when a party has contributed an amount of more than two times but less than 10 times under RCW 42.17 within the last six years (Rule 2.11(C)(7)) and sets forth considerations for making this determination.

IV
CONCLUSION

The findings and recommendations of the Code of Judicial Conduct Task Force are submitted for the consideration of the Supreme Court. The members of the task force appreciate the opportunity to engage in this undertaking and to provide the Supreme Court with suggested revisions to our Code of Judicial Conduct.

We appreciate having the opportunity to chair this task force. We want to recognize the hard work and commitment of our task force members in the drafting of revisions to the Code of Judicial Conduct. This is a collaborative effort and would not have been generated without the individual members of this task force.

Respectfully submitted,

A handwritten signature in black ink that reads "Joel Penoyar". The signature is written in a cursive style with a long, sweeping tail on the "r".

Joel M. Penoyar, Co-chair
Court of Appeals

A handwritten signature in black ink that reads "Alan R. Hancock". The signature is written in a cursive style with a large, stylized "R" and "H".

Alan R. Hancock, Co-chair
Island County Superior Court

TAB 2

Minority Report Recommending Retaining “Appearance of Impropriety Standard” Proposed Code of Judicial Conduct Rule 1.2

INTRODUCTION

We respectfully disagree with the majority’s recommendation that the appearance of impropriety standard be removed from the Code. It is our recommendation that Washington adopt the appearance of impropriety standard language in the 2007 Model Code. In this Report we explain our reasoning.

We begin with a comment about a previous attempt to eliminate the appearance of impropriety standard.

"Ever since its principles were first proclaimed in the 1924 Canons of Judicial Ethics, Canon 2 has reminded judges of the source of their authority: public confidence in judges, earned by their conduct both on and off the bench. The new Code reduces Canon 2 to mere advice — taken seriously by virtually all judges, but either flouted or not understood by the few who are the subjects of judicial discipline. By removing [the enforceability of these provisions], the Court has suggested that the Code is being revised for the benefit of errant judges. . . The judiciary of our state deserves a better Code. I fear that the people will demand accountability and accuse the Supreme Court of seeking to avoid it."

The above sentiments were submitted by Task Force Member and Commission on Judicial Conduct Member Ann Sandstrom in her July 24, 1995, letter to Chief Justice Barbara Durham regarding adoption of changes to the Code of Judicial Conduct resulting from review of the 1990 ABA Model Code.

(The comments above referenced Canon 2, which is proposed Canon 1 of the 2007 Model Code revisions being considered at this time.)

MAJORITY TASK FORCE RECOMMENDATION

The Code of Judicial Conduct proposed by the majority of the members of the current Supreme Court Task Force to Review The Code of Judicial Conduct provides:

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 1.2

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*.

COMMENT

[5] The statement in Canon 1 that a judge shall avoid the appearance of impropriety is aspirational. Rule 1.2 sets forth the basis for discipline. Consistent with Scope [2], a judge may be disciplined for acts or conduct violating any part of Rule 1.2, including failing to avoid impropriety, but may not be disciplined for failing to avoid the appearance of impropriety. Improprieties include violations of law, court rules or provisions of this Code. Whether a judge has violated Rule 1.2 by failing to act in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary shall be determined by use of an objective reasonable person test, not by subjective perceptions.

MINORITY REPORT RECOMMENDATION

The Task Force Members who have signed the Minority Report share the opinion and belief that the original language contained in the 2007 ABA Model Code for Rule 1.2 (following) should be adopted in lieu of the majority Task Force Recommendations:

RULE 1.2

Promoting Confidence in the Judiciary

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

COMMENT

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

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

[5] Actual improprieties include violation 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.

[76] The test for violation of the appearance of impropriety standard is whether the conduct would create in reasonable minds a perception that the judge's ability to

carry out judicial responsibilities with integrity, impartiality and competency is impaired. *Caperton v. Massey* 556 U.S **DISCUSSION**

Upholding the public's confidence in the integrity and independence of the judiciary

The appearance of impropriety works well as an objective legal standard and on balance protects the public, and importantly, serves to uphold that public's confidence in the integrity and independence of the judiciary. We fully respect those who desire precision in the demands placed on them, but the variety of real life occurrences that judges face makes that precision impossible. A definitive list of bad or good conduct cannot be devised. We need a catch-all for the conduct we cannot precisely describe which would cause the judiciary to suffer a black eye. The appearance of impropriety works well as an objective legal standard and on balance protects the public, and importantly, serves to uphold that public's confidence in the integrity and independence of the judiciary.

Washington state judges are elected. We have learned from studies such as the Walsh Commission that the electorate has little idea of the qualifications of the candidates and even less of an understanding of the demands of the position. We think it is safe to say that voters want judges who stand above the crowd and bring the gravitas to pronounce sentence or resolution to conflicts. We also know that human nature is such that when a judge is caught in an impropriety, or even the hint of one, the public is atwitter with the worst condemnation in our society, hypocrisy. That scorn reflects not just on the offending judge, it reflects on the justice system as a whole. Such scorn will certainly increase if we eliminate regulation of the whole range of conduct that simply "looks bad." On balance we would rather have a societal governor on the conduct of judges, even if it lacks precision. In addition to these public perception concerns, controlling behavior that appears improper is also fundamental to the Constitutional principles of due process before a fair and impartial judge.

Judges voluntarily place themselves as candidates for election in order to sit in judgment on the rest of us. If they are successfully elected, they promise to comport themselves wisely and fairly — to hold themselves to a higher standard. Even though no one wants to leave the joy of youth behind, it is fair to say to a judge you just have to be willing to abandon the indiscretions of youth. If there was a magic formula to do this successfully there would be no need for rules of conduct. Since judges have voluntarily placed themselves under the microscope of "goodness" it is suggested they cannot avoid scrutiny. That scrutiny is harsher than non-judges receive, but that is an essential component of the job.

It would be easy to begin a do's and don'ts list, but any list will never be complete. There needs to be a way to generally cover the waterfront on bad behavior even if that method does not articulate specific acts of misconduct. Our life is filled with "catch- all" clauses that we can live with, just as we can live with the doctrine of appearance of impropriety.

The appearance of impropriety doctrine is well known to all who practice the law

As noted above, the appearance of impropriety doctrine is a venerable precept. The doctrine is known to anyone who has practiced law. Judges got their start as lawyers and have always been held to a very high standard of conduct. This includes prohibitions that are vague, but well honored. For example, in the Rules of Professional Conduct (RPC) for lawyers there is much reference to conduct which falls into the category of appearing well in any company. RPC 8.4(h) proscribes conduct "that a reasonable person would interpret as manifesting prejudice..." RPC 8.4(i) proscribes any "act that reflects disregard for the law..." RPC 8.4(n) prevents a lawyer from, "Engag[ing] in conduct demonstrating unfitness to practice law." The doctrine has been incorporated in the ABA Model Code for many years, has been adopted by many states and has been commented on favorably by the United States Supreme Court.

The argument the doctrine of appearance of fairness should be rejected on the basis of "vagueness" is to ignore the tradition of the law and the reason why we call the practice of law a profession. We are not persuaded the doctrine is either vague or outdated. It has served us well and functions as a touchstone for someone who is not sure of the proper course.

It is fair to ask a judge to *comport themselves well in any company* (John Walter Wayland). It is also true to say there will be those who charge a judge unfairly. All complaints of violations of the Code of Judicial Conduct are impartially evaluated and investigated by the Commission on Judicial Conduct. The Commission is comprised of competent people who are asked to make a sound collective decision when a judge is accused. We trust to the jury system for the lives of our citizens. It is reasonable to trust the Commission to exercise sound judgment on an accusation of appearance of impropriety. If the judge is sanctioned through the Commission process (which includes *de novo* review by the State Supreme Court), it is the judicial system that has passed judgment and not the unfettered public. It is the system itself that preserves its integrity, as is proper and necessary for a sound justice system.

An Enforceable Standard Promotes Public Trust and Confidence in the Courts

The appearance of impropriety as an enforceable standard can be traced back to the inception of judicial codes in the 1924 Canons of Judicial Ethics, then Canon 4, which urged judges to avoid impropriety and the appearance thereof both on and off the bench. Each committee of the ABA charged with reviewing the code has retained this canon, and each of the states and the District of Columbia have done so as well. The ABA Standing Committee on Ethics and Professional Responsibility, the entity charged with making needed revisions in the ABA model codes of ethics for lawyers and judges, kept the appearance of impropriety canon relatively intact through the transition to the 1972 Code, "because the Committee believed that its function is critical: to caution judges to avoid certain prospective conduct even if the conduct only appears suspect, and to proscribe any act that is harmful even if it is not specifically prohibited in the Code." Lisa Milord's The Development of the ABA Judicial Code, 1992.

As noted in the commentary to the 1990 Code's Canon 2, "Public confidence in the judiciary is eroded by irresponsible or improper conduct by judges. A judge must avoid all impropriety and appearance of impropriety. A judge must expect to be the subject of constant public scrutiny. A judge must therefore accept restrictions on the judge's conduct that might be viewed as burdensome by the ordinary citizen and should do so freely and willingly."

General standards of upright conduct are not unique to the judiciary

It is frequently noted that, because of the enormous responsibility conferred upon judges in our nation's non-majoritarian branch of government, judges are held to a higher standard than other professionals in general and government officials in particular. However, general standards of upright conduct are not unique to the judiciary. General disciplinary rules are an inherent part of various codes of conduct for other kinds of professionals in positions of special public trust, and reflect the responsibility that such professionals owe to the public who rely upon them. Such general rules are essential because it would be impossible to codify every conceivable act that would be deemed to be improper. The entire body of the Code of Judicial Conduct is directed by the premier and compelling ethical precepts governing a judge's behavior articulated in current Canons 1 and 2 (A), the obligation to uphold and promote public confidence in the integrity, independence, and impartiality of the judiciary, and to avoid even the appearance of impropriety. These precepts are reaffirmed in the 2007 Model Code Canon 1, Rule 1.2 which is the language supported by this Minority Report.

Further, the higher standard of conduct implicit within "the appearance of impropriety" performs the salutary function of keeping judges' feet on the ground — with all the power and deference of the position, it is a reminder for judges to consider how their words and actions are reasonably viewed. Removing the language from the Code **will** have the result of making the appearance standard unenforceable, or else why do it? Rules of statutory construction will allow no other result.

The US Supreme Court in *Arnett v. Kennedy*, 416 US 134 (1974) specifically addressed the efficacy of a conduct code that gave fair notice of disciplinable behavior without having to spell out in detail every conceivable factual possibility. In *Arnett*, the Supreme Court upheld "for cause" against a vagueness challenge in relation to the discharge of a federal employee. Quoting from its own earlier decision in *Civil Service Comm'n v. Nat'l Ass'n of Letter Carriers*, 413 US 548 (1973), the Court stated:

There are limitations in the English language with respect to being both specific and manageably brief, and it seems to us that although the prohibitions may not satisfy those intent on finding fault at any cost, they are set out in terms that the ordinary person exercising ordinary common sense can sufficiently understand and comply with, without sacrifice to the public interest.

416 US at 159, quoting from 413 US 578-79. The essential fairness of this broad and general removal standard, and the impracticability of greater specificity, was recognized by Judge Leventhal, writing for a panel of the United States Court of Appeals for the District of Columbia Circuit in *Meehan v. Macy*, 129 US App DC 217, 230..., modified, 138 US App DC 38 aff'd en banc, 138 US App DC 41 (1969):

(I)t is not feasible or necessary for the Government to spell out in detail all that conduct which will result in retaliation. The most conscientious of codes that define prohibited conduct of employees includes 'catch-all' clauses prohibiting employee 'misconduct,' 'immorality,' or 'conduct unbecoming.'

Conduct commissions do not enforce the requirement to avoid the appearance of impropriety in a vacuum

In considering whether Washington State should **depart** from a standard maintained throughout the history of judicial ethics enforcement in this country — the standard reaffirmed in a resolution by the 2007 Conference of Chief Justices, and the standard enforced in almost every other state of the union, we hope the Supreme Court will consider whether the criticisms of the standard are borne out in actual enforcement examples. Conduct commissions do not enforce the requirement to avoid the appearance of impropriety in a vacuum, but are informed by decades of case law, advisory ethics opinions, custom, and usage. In cases where judges have been disciplined for a finding of an appearance violation, the commission in question and reviewing court must find objectively that a reasonable person, “neither excessively indulgent, nor excessively jaundiced,” (*In re Larsen*, 616 A.ed 529, 584 Pa. 1992) would be concerned that the judge’s conduct lacked either integrity or independence. Further, and importantly to emphasize, a judge facing charges from the Commission has an absolute right of review *de novo* before the State Supreme Court.

Precedent — it is the law

Precedent — it **is** the law, and has been the law in the nation since the 1920s, when the ABA adopted the first Model Code, and has been maintained through each review thereafter. It is the law in Washington, and has been since the inception of the Code of Judicial Conduct.

With that precedent, and with the standard basically being the law in the nation, there should be **very** good reasons, in actual examples, for departing from it, and there are not any. Arbitrary enforcement that might justify such a departure has not actually occurred during the long existence of the appearance of impropriety as an enforceable standard.

The Washington State Experience

As a practical matter, in Washington State, the commission members making determinations whether a judge has violated the appearance of impropriety are selected from three categories: public members selected by the governor for a broad range of diversity and life experience, given particularized training in judicial ethics, lawyers selected by the Bar Board of Governors, and judges from three levels of Washington

State courts. The vast majority of the cases these members consider and discuss among themselves — 96% — are dismissed after a confidential, preliminary investigation. The members demonstrate an acute awareness of the Commission's charge not only to enforce integrity through the Code of Judicial Conduct, but also their duty to safeguard judges' independence, so that the disciplinary process is not abused to harass judges for making the hard, often unpopular decisions.

It is worth emphasizing again that case law has firmly established that the enforcement of the appearance of impropriety is *not* a subjective process, but an objective one, using the reasonable person standard. Contrary to the impression given by the change proposed by the majority, the current standard is, and always has been, objective. Conduct commissions do not enforce the requirement to avoid the appearance of impropriety in a vacuum, but informed by decades of case law, advisory ethics opinions, custom, and usage.

Washington cases in which the appearance of impropriety standard was enforced without a further finding of actual violation of a separate code standard include cases in which it would appear to a reasonable person that a judge was biased. Examples include a judge who, while representing his court at a training conference, used profanity and made comments that appeared to be homophobic, racist, and anti-Semitic. Investigation by the Commission did not prove that the judge actually harbored such views in his heart, but his outbursts and comments made it appear to those present, including his colleagues, that he had such biases, and diminished respect for him and his judicial role. In another example, a court commissioner was sanctioned for the appearance of impropriety where he accepted gifts of Mariners tickets from an attorney who regularly appeared before him. The same commissioner and his wife also maintained a close personal social relationship with the executive director of a guardianship agency whose interests were frequently at issue in cases before him. While there was not proof that either individual expected or received special consideration in their cases from the commissioner, his conduct with them created a reasonable perception of partiality and raised questions of whether they stood in a special position to influence his decisions.

In these and each of the other Washington State instances of separate enforcement of the appearance of impropriety standard, the commission was concerned with whether a judge should have known objectively that the conduct in question would diminish confidence in the integrity of independence of the judiciary. In other words, was it reasonable to ask that the judge stop and think about how his/her behavior would look to others who rely on the court's impartiality and integrity? The standard is meaningful and salutary for the judiciary itself, carefully considered and applied, and consistent with the core values of American justice. In our opinion, there is no justification for Washington State to depart from the rest of the country in the maintenance of this basic canon.

We are mindful of judge's concerns that they may be subject to discipline for innocent good faith actions. At the same time, we do not see the likelihood of this happening. For the Commission on Judicial Conduct to suddenly start to unreasonably pursue complaints under this standard, a majority of the diverse commission membership would have to abandon their common sense. In addition, such actions would certainly not go unchecked by the State Supreme Court, to which every judge has an absolute right of

appeal *de novo*.

When the Commission on Judicial Conduct was established in 1980, the State Supreme Court established a Task Force to consider whether it was fair to this state's judges to be subject to discipline with a Code that was not specific and Napoleonic. The recommendation they made, which was implemented in 1982, was to form the Ethics Advisory Committee under GR 10 so that judges would have the benefit of their reasoning and guidance in considering their actions under the Code of Judicial Conduct. There has never been a case in Washington State where a judge was prosecuted by the Commission on Judicial Conduct for conduct that was approved in an Ethics Advisory Committee Opinion (EAO). On the other hand, there have been cases where judges have been disciplined when EAOs should have warned them their actions violated the Code of Judicial Conduct.

CONCLUSION AND RECOMMENDATION

With the appearance of impropriety standard basically being the law in the nation, there should be **very** good reasons, and actual examples, for departing from it, and there are not any. The parade of horrible possibilities has not come to pass, and there is not an actual reason to depart from the standard. On the other hand, the clear result of eliminating the standard would be to arouse dismay and suspicion in the public that judicial integrity is now going to be diminished. And importantly — a range of behaviors that have not been foreseen in specific provisions of the code, but that will cry out for discipline when they occur, will be beyond the reach of the commission to address.

Therefore, it is the recommendation of this Minority Report to retain the 2007 Model ABA Code language for Rule 1.2 and Comments 1, 3, and 5.

It is also recommended that Comment 7 be added under Rule 1.2.

Respectfully submitted by:

Task Force Members

Mr. C. Matthew Andersen
Hon. Mary Kay Becker
Judge Joel Penoyar
Ms. Ruth Schroeder
Mr. John W. Sleeter

TAB 3

Report Supporting the Recommendation of the Task Force Removing the Appearance of Impropriety (AOI) as a Basis for Judicial Discipline

Introduction

John Adams remarked that America was a “nation of laws, not of men.” Implicit in this statement is the notion that applicable laws are transparent and clearly worded so those governed by the law will understand what is strictly prohibited and what the penalties are in case of a violation. All people want to know in advance what conduct will get them into trouble during the course of their daily affairs or in their professional lives. Judges are no different.

The Preamble to the proposed ABA Model Code of Judicial Conduct (CJC) states in relevant part:

The Code is intended, however, to provide guidance and assist judges in maintaining the highest standards of judicial and personal conduct, and to provide a basis for regulating their conduct through disciplinary agencies.

Id. note [3].

The CJC thus has a duality of purpose. It sets ethical and aspirational standards for the conduct of judges and judicial candidates and at the same time its black letter rules establish minimum conduct expected of a judge, the violation of which results in discipline.

Providing that a judge will be subject to discipline simply for the failure to avoid the appearance of impropriety, if included in proposed Rule 1.2, collides with the basic standards of fairness, due process and equal protection that exist in all other areas of law. The term is too vague and subjective. Even after decades of comment and controversy about the term, it has never been adequately defined with any precision. Its application to judicial conduct is always a catch-all that only becomes defined ad hoc and ex post facto. For those reasons, after extensive debate and consideration, the Task Force decided to remove the appearance of impropriety as a basis for judicial discipline by removing its reference in proposed Rule 1.2 and the associated comment.

This report summarizes the process used by the Task Force in reaching its decision, the judicial outreach and comments received about the Task Force proposal, the issue in the development of the ABA’s Model CJC, the considerations of the Task Force proposal for judicial discipline, and the legal framework relating to the appearance of impropriety standard.

Task Force Consideration and Outreach

The Task Force spent an extensive period of time considering whether the appearance of impropriety should be a basis for judicial discipline. The debate was cordial, well informed, and extensive. After the Task Force initially decided to delete it

from Rule 1.2, the Task Force considered the issue again so that all members of the Task Force (some were not present when the matter was first voted upon) could have their views known. The recommendation was not changed.

In addition, the Task Force conducted extensive outreach so that judges at all levels were aware of the issue and given the opportunity to comment. The issue was discussed at the Appellate Judges Conference, the Superior Court Judges Conference, and the District and Municipal Court Judges Conference. In addition, the District and Municipal Court Judges Association placed the issue directly before its members on the listserv. Extensive comments were received, many observing the vagueness of the standard. The DMCJA comments were collated and circulated to the Task Force members. Thus, the Task Force recommendation was made only after the issue was presented to all types of judges in Washington State and their feedback considered.

Background Relative to the Development of the Model CJC

In formulating its recommendations, the Task Force worked from the Model CJC adopted by the American Bar Association in 2007. While the Task Force recommendation deviates from the final ABA Model CJC by deleting the appearance of impropriety from proposed Rule 1.2, it is significant that the actual drafters of the Model CJC recommended, as does the Task Force, that Rule 1.2 not include the appearance of impropriety. The recommendation from the ABA Joint Commission, the same being proposed by the Task Force, was supported by groups with particular ethical expertise. The ABA Standing Committee on Ethics and Professional Responsibility, after obtaining feedback from its Judicial Advisory Committee, wrote the ABA Joint Commission as follows: “the Standing Committee (Ethics) does not believe ... the so-called “appearance of impropriety” should ever be the basis for the imposition of judicial discipline, whether standing alone or when charged in conjunction with a Rule.”

Similarly, the Standing Committee on Professional Discipline rejected making the appearance of impropriety an enforceable disciplinary standard. In its letter to the Joint Commission, the Discipline Committee proposed changing the Scope section to make clear that Canons, where the appearance of impropriety was then located, were not enforceable for discipline purposes. It stated:

The Committee (Discipline) believes that the ABA should, as it did with the Model Rules of Professional Conduct, take the leadership position that only alleged violations of the Rules should be investigated and charged so as to form the basis for the imposition of any discipline.

In addition, the Association of Professional Responsibility Lawyers (APRL) strongly urged that the appearance of impropriety not be the basis for judicial discipline for the numerous reasons stated below.

The only professional ethics groups in support of having the appearance of impropriety as a basis of discipline were judicial prosecutors, through their own organization and the American Judicature Society that has a large segment of its membership tied to judicial conduct commissions.

The Appearance of Impropriety As An Aspirational Standard

The Task Force has not recommended the abandonment of the appearance of impropriety as guidance to judges. The recommended CJC's structure (as outlined in the Scope section) is that general Canons have been retained to provide guidance to judges. However, only the violation of a Rule, not a Canon, results in discipline. In its proposal, the Task Force retained the appearance of impropriety in the Canon. Thus, the proposed CJC retains the appearance of impropriety as guidance and an aspirational standard for judges. It is only its use in regard to the imposition of discipline that has been changed.

Appearance of Impropriety and Judicial Discipline

The need to have the appearance of impropriety as a disciplinary standard should be considered in the context of judicial discipline. Those advocating for its retention attempt to portray the use of the appearance of impropriety in judicial discipline as a violation rarely charged, and that it is a necessary tool because a code cannot be all encompassing and anticipate every type of conduct. Such arguments fail when the reality of judicial discipline is considered.

Judges are public officials. Most judges seek and retain their positions through public elections. Therefore, even a charge of misconduct can be professionally devastating. Yet, the Commission on Judicial Conduct routinely charges not only the underlying substantive violation of the CJC that the conduct implicates, but also that the appearance of impropriety has been violated. Thus, it is a pile on charge, difficult to defend against because of its vagueness, which results in two charges of ethical violation for one set of conduct. Its use as a prosecutorial disciplinary tool is anything but rare.

While it is true that no code can anticipate every type of conduct, the need to have an all purpose catch all provision is greatly diminished with the new CJC being proposed by the Task Force. It is a rules based format, with much more specificity than the existing and predecessor codes. The new CJC is supplemented with extensive commentary, much more than the existing CJC. What is permissible, and what course of conduct is recommended to be avoided, is much clearer. Therefore, the need for a catch all provision is greatly diminished.

More importantly, the proposed CJC has an internal consistency throughout built upon the three basic values the Code is attempting to foster for ethical conduct and public confidence: independence, integrity, and impartiality. Those are found in proposed Rule 1.2. That should be sufficient to protect against the truly rare case of any conduct not specifically addressed in the Code, without the inherent difficulties associated with the appearance of impropriety standard.

The Deficiencies in the Appearance of Impropriety Standard

Those advocating the use of the appearance of impropriety as a disciplinary standard claim it is a well established standard dating back to the first Code of Judicial Conduct that was developed in the 1920s. However, a review of the historical

development of judicial codes does not support such contentions. The first judicial code, known as the Canons, was not mandatory law. It was aspirational in nature. That held true for the first fifty years of judicial ethics codes. It was only in recent times, with the development of judicial conduct commissions, that the CJC became mandatory substantive law the violation of which resulted in judicial discipline.

However, the vagueness of the appearance of impropriety standard has long been a concern of lawyers, judges, and commentators alike. With the advent of the Rules of Professional Conduct, the appearance of impropriety was removed from the lawyer code as a basis of discipline.

As APRL stated in its letter to the ABA Joint Commission drafting the Model CJC:

As long ago as 1969, former United States Supreme Court Justice Arthur Goldberg, echoing the sentiments of former Justice (and Former Attorney General) Tom Clark as well as several law professors characterized Canon 2 [where AOI was located in the then ABA Model Code] as “unbelievably ambiguous,” and stated that “to avoid the appearance of impropriety, it helps both the public and the judge to know the guidelines.

Washington law attempting to circumscribe the inherent vagueness of the appearance of impropriety standard has only muddied the waters further, graphically demonstrating the vagueness and impossibility of it as a disciplinary standard. In *In re Disciplinary Proceeding Against Sanders*, 159 Wn.2d 517, 145 P.3d 1208, 1212 (2006), the Washington Supreme Court equated the appearance of impropriety discipline standard with the standard for disqualification. The Court noted the test for determining whether the judge’s impartiality might reasonably be questioned is an objective test that assumes that “a reasonable person knows and understands all the facts,” quoting *Sherman v. State*, 128 Wn.2d 164, 905 P.2d 355, 378 (1995).

Defining the standard in that way does not resolve the vagueness problem. Professor Ronald Rotunda in his law review article *Judicial Ethics, the Appearance of Impropriety, and the Proposed New ABA Judicial Code*, 34 Hofstra L. Rev. 1337 at 1360 (2006) explains why:

So what is an “appearance”? Apparently it is something that is not itself an impropriety but appears to be so to “a reasonable person with knowledge of the circumstances.” But if this reasonable person *knows what is going on* – the person has “knowledge of the circumstances” – then one would think that he or she would already know whether it really is an impropriety or not.

With the appearance of impropriety being its own basis for the imposition of discipline if violated, it is assumed no impropriety in fact exists. Thus, a judge who looks like he or she did something wrong, but in fact did not, is nonetheless disciplined for the “appearance” in the same manner as if the judge had actually done something wrong. Such subjective interpretation can have devastating effects on the judge’s career, personal finances and the judiciary as a whole.

The result is not increased public confidence in the judiciary, but the loss of public confidence. Professor Rotunda commented on this when he wrote:

We sometimes think, loosely, that ethics is good and that therefore more is better than less. But more is not better than less, if the “more” exacts higher costs, measured in terms of vague rules that impose unnecessary and excessive burdens. Overly-vague ethics rules impose costs on the judicial system and the litigants, which we should consider when determining whether to impose ill-defined and indefinite ethics prohibitions on judges. Unnecessarily imprecise ethics rules allow and tempt critics, with minimum effort, to levy a plausible and serious charge that the judge has violated the ethics rules. Overuse not only invites abuse with frivolous charges that have the patina of legitimacy, but also may eventually demean the seriousness of a charge of being unethical...What is true of equal protection is not true of judicial ethics. Today, any lawyer or member of the media can flippantly accuse a judge of violating the “the appearance of impropriety” in either his or her private or official capacity because the title of Canon 2 of the ABA Model Code of Judicial Conduct boldly tells us that the judge must avoid such appearances.

Id. at 1338-39.

Based upon the concerns voiced by Professor Rotunda, other commentators, and the case law discussed in its letter to the ABA Joint Commission (Attachment A), APRL recommended not having the appearance of impropriety as a disciplinary standard for the following reasons:

1. Vague and overbroad language presents too great a risk of subjective interpretation. It places judges at risk of disciplinary action depending upon the whim of judicial disciplinary authorities.
2. Besides the due process rights of judicial officers, the public at large loses because vague and overbroad standards of judicial conduct inevitably chill courageous and innovative judicial decision making.
3. The AOI requirements collide with the standards of basic fairness and due process that must apply when the code is used to discipline judges.
4. We question whether a standard that has been rejected as a basis for disciplining lawyers should be used to discipline judges. (To have two closely related disciplinary systems, one utilizing the AOI requirement and the other treating it as anathema, makes little sense.)
5. Disciplinary rules expressed in terms of “propriety” risk mercurial existence rising and falling with the temper of the moment.
6. Disciplinary prosecutors and investigators, in order to put additional pressure on judge respondents, often tack on AOI charges in addition to their more specific

claims. This maneuver often causes the judge respondent to settle, because even when they are confident they can defend against the specific charges, they remain fearful of the amorphous AOI count — an “I know when I see it” standard that can easily be construed against them.

7. When AOI claims are actually tried at hearings, the result is usually difficult to predict, since the test for AOI is so vague. The “reasonable person” standard is generally used to impose civil liability, not to take away someone’s livelihood.

As noted above, whether the appearance of impropriety should be a disciplinary standard was sent out on the District and Municipal Court Judges Association list serve. (Attachment B) The overwhelming response was that the “appearance of impropriety” rule was too subjective and vague and gave no clear guidance to judges subject to the rule. Here is one insightful reply:

Impropriety is in the conduct of the judge; the appearance of impropriety is in the eye of the beholder and therefore too subjective to be a useful standard on which to discipline judges. Can any of you imagine a criminal statute prohibiting the appearance of impropriety being upheld against a vagueness challenge? Me neither.

Id. No. 1.

Professor Rotunda was provided with the DMCJA server response and made the following comments:

I’m not surprised that judges would favor a bright line approach. Anyone who wants to obey the law wants to know what the law is. In some cases, we tolerate some necessary ambiguity. For example, we have laws prohibiting reckless driving. The risks (e.g., highway deaths) are great when one drives recklessly. It is difficult to make the term more precise. And, we have a good idea of what it means.

But in other cases, we do not tolerate such ambiguity. For example, consider a statute forbidding reckless walking. The risks are not life-threatening; we can deal with any problems using the common law of assault and battery; and we have no good idea of what “reckless walking” means. “Appearance of Impropriety” is a term that is too vague. After decades, we have no way to define it. If there is conduct we do not like, we can always enact a specific rule against it. That would be better than a catch-all that we only define ex post facto

June 2, 2009 Rotunda email (Attachment C).

Conclusion

The Task Force seriously considered this issue through informed and spirited debate. After having the benefit of extensive comment from judges, reviewing applicable

cases and commentary, and considering the views of the most noteworthy groups familiar with the issue and judicial discipline, the Task Force concluded, as did the drafters of the Model CJC, that having the appearance of impropriety as a standard for judicial discipline was not appropriate. We hope the Washington Supreme Court will concur and adopt the CJC as recommended by the Task Force.

Judge Robert McSeveney
Thomas Fitzpatrick

ATTACHMENT A

June 30, 2004

ABA Commission on the Model Code of Judicial Conduct
c/o Mark Harrison, Esq.
Osborn Maledon, P.A.
2929 North Central Avenue Suite 2100
Phoenix, AZ 85012-2794

Dear Colleagues:

The Association of Professional Responsibility Lawyers (APRL) is an independent national organization of lawyers practicing (and often concentrating) in the fields of professional responsibility, legal ethics, and the law of lawyering generally. Our membership includes law professors, bar counsel, counsel for respondents in disciplinary cases, expert witnesses and consultants, litigators involved on both sides of cases raising legal ethics issues (including without limitation legal malpractice cases), in-house ethics counsel for law firms, and in-house counsel to corporations and other entities, including insurance companies.

Consistent with this diverse membership, APRL frequently speaks out on issues of vital importance to the legal profession, especially as they affect our areas of practice and concentration. With respect to the ABA Commission on the Model Code of Judicial Conduct (the "ABA Commission"), APRL President Ronald E. Mallen of San Francisco appointed a committee to formulate a response to the original request for public comment made by the ABA Commission in November 2003. That committee is chaired by Ronald C. Minkoff of New York, New York and includes Murray Abowitz of Oklahoma, Elizabeth Alston of Mandeville, Louisiana, Dianna M. Anelli of Columbus, Ohio, Warren Lupel of Chicago, Illinois, Peter Ostermiller of Louisville, Kentucky and Suzanne Westerheim of Dallas, Texas. The committee has considered not only prior commentary and case law, but also the ABA Commission's May 2004 Draft (the "Preliminary Draft") of Proposed Canons 1 and 2. The committee's recommendations, embodied in this letter, have been approved by the APRL Board of Directors.

Preliminarily, APRL recognizes that the Model Code of Judicial Conduct (the "Model Code") seeks to embody general principles regarding the all-important role judges play as neutral decision-makers in our judicial system. In doing so, however, the Model Code performs multiple functions. First, and maybe even foremost, it is exhortatory, setting forth the basic standards of honesty, fairness, impartiality and integrity that judges must maintain in order to ensure the judicial system maintains

the trust and confidence of those who come before it, and of the general public. Second, the Model Code sets forth rules that serve as the basis for professional discipline. These two functions do not fit together easily, and that should not be surprising: broad general principles, important to establish and maintain public confidence, often are not sufficiently specific to provide judges with clear notice as to what conduct (or misconduct) may subject them to disciplinary sanction. Many of our members have learned this through hard experience, representing judges in disciplinary matters in several different states. Those experiences inform our recommendations.

Consistent with our membership's expertise, we have attempted to focus on three specific areas which deal directly with the representation of judges in matters involving the Model Code, and which we believe the current Model Code does not adequately address.

Reporting Impairments

First, APRL is concerned that under present Canon 3(D)(1), judges who "receive information indicating a substantial likelihood" that one of their colleagues may have a substance abuse problem or another impairment that raises serious questions as to the colleague's fitness for office are required (a) to report the colleague only if the colleague's impairment causes him or her to violate a specific provision of the Model Code; and (b) to make that report to "the appropriate authority." To the extent that the current rule may be interpreted as limiting the reporting requirement to actual Code violations, and as requiring the report to be made to the impaired colleague's superior or to a disciplinary authority, we are concerned that this may discourage judges from reporting judicial impairments to an established judicial or lawyers assistance program, thus causing harm to the impaired judge as well as to litigants, the Bar and the public at large.

Accordingly, we applaud Proposed Canon 2.19, which is very similar to the proposal regarding judicial assistance programs made by the ABA Commission on Legal Assistance Programs ("CoLAP"), and which (with some wording changes) will satisfactorily address our concerns. Where our proposal differs from Proposed Canon 2.19, we have placed Proposed Canon 2.19's language in brackets with italics:

"A judge having personal knowledge that the performance of a lawyer or another judge may be impaired by drugs or alcohol or other mental, emotional or physical condition, shall take [or initiate] corrective [appropriate] action, which may be satisfied

by [include] a confidential referral to an appropriate lawyer or judicial assistance program.”

Our proposal differs from Proposed Canon 2.19 in three ways. We believe a judge should have personal knowledge of the impairment before a reporting requirement is triggered. In addition, we believe the requirement of taking “appropriate” action is too ambiguous: it suggests that judges, most of whom are untrained in addressing drug and alcohol addiction or potential mental illness, will be subject to discipline if they do not take action which, in hindsight, disciplinary authorities and their hired experts view as “appropriate.” We prefer the word “corrective,” because it suggests that a judge will satisfy his or her reporting obligation by taking any steps to correct the problem. Similarly, we prefer the phrase “may be satisfied by” to “may include.” While we recognize that there may be instances in which a judge is so impaired that a referral to a judicial assistance program (“JAP”) alone may not be sufficient to protect the public, we wish to ensure that a judge who takes the brave step of alerting a JAP about a colleague will not be disciplined because – again in the bright light of hindsight – someone later determines the reporting judge did not act forcefully enough.

Communications with Ethics Counsel

Second, we are concerned that the Model Code does not adequately address the circumstances in which judges may seek independent legal advice regarding their own obligations under the Model Code, including whether and when this advice may be sought on an ex parte basis. APRL members often receive telephone calls from judges seeking advice, and the line between permissible and impermissible advice is not clear. The APRL Board respectfully submits that this issue should be addressed in the Code or its comments, and that judges should be able to seek independent advice privately, except where litigants already have raised the ethical issue in the pending litigation. Thus, we propose the following as a new Canon 3(B)(7)(f) (or, using the formulation from the May 2004 Draft, Proposed Canon 2.09(a)(5)):

(f [based on current lettering]) A judge may seek confidential legal advice as to the judge's own rights and responsibilities under this Code or [name of professional responsibility code for attorneys in the relevant state], unless the matter about which the judge is seeking advice has already been the subject of a motion or other application before the judge in the proceeding, in which case the judge must give notice to the parties of the person consulted and the substance of the advice, and afford the parties reasonable opportunity to respond.

We are well aware that this proposal does not address ex parte communications in the traditional sense. In Canon 17 of the original Canons of Judicial Conduct, ex parte communications were defined as “private interviews, arguments or communications designed to influence [a judge’s] judicial action, where interests not affected thereby are not represented before him.” But the prohibition on ex parte communications in current Canon 3(B) – and, for that matter, in Proposed Canon 2.09 -- goes far beyond this: it includes not just “ex parte communications” between a judge and one of the parties to the litigation, but also “other communications made to the judge outside the presence of the parties concerning a pending or impending matter.” Thus, the current and proposed Canons prohibit a judge from discussing “pending or impending matters” with a third party, unless the third party is a “disinterested expert,” another judge or “court personnel whose function is to aid in the judge in carrying out his judicial responsibilities.” Canon 3(B); Proposed Canon 2.09 (a)(2) and (3)

This creates a problem for judges and lawyers when judges need certain types of legal advice. To illustrate, we use three examples:

- (a) Judge A is the son of a Holocaust survivor, and is asked to serve as the keynote speaker at a charitable dinner by a Holocaust survivor’s organization;
- (b) Judge B is presiding over a lawsuit, in which the plaintiff has moved to recuse her because of her husband’s ownership of substantial stock in the defendant corporation; and
- (c) Judge C works in a relatively small city. From time to time, a local criminal defense lawyer, who has strong political affiliations in Judge C’s own party, appears on matters in his court, but has nothing pending currently. On the last few occasions when the lawyer appeared before Judge C, however, the judge had noticed that the lawyer slurred his words and smelled of alcohol. Since then, other courthouse personnel have told him the same thing about the lawyer. Last night, Judge C saw the lawyer drink several beers at a party. Judge C wants to know whether he is obligated to report the lawyer to a Lawyers Assistance Program, but is concerned about tarnishing the lawyer’s reputation and damaging his own political future.

Judge A obviously may speak to a lawyer about his legal problem without implicating Canon 3(B); there is no “pending or impending matter” involved, and thus no improper communication. But the other two examples raise far more complex problems under the current Code.

Judge B's case sits at the other extreme from Judge A's. By seeking legal advice about a matter raised in a pending motion, Judge B is engaged in a "communication . . . outside the presence of the parties concerning a pending or impending proceeding," and is thus violating Canon 3(B) of the Model Code. Many of our members have reported that when addressing this situation, they treat it as falling under the Canon 3(B)(7)(b) exception for a communication with a "disinterested expert," which would permit them to advise the judge only if the judge discloses the advice to the parties. Telling a judge about the need to disclose usually discourages him or her from going further, but it is not analytically correct under the Code: A lawyer whom the judge wishes to retain is not necessarily a "disinterested expert;" to the contrary, he or she is a retained attorney with a client to protect. And while Judge B may be entitled, under Canon 3(B)(7)(c), to consult with court personnel or other judges in this situation, she may not find this satisfactory; given the high stakes and personal nature of the dispute, she may want her own, more expert counsel to protect her reputation.

The Model Code or its comments should make clear that Judge B may seek independent counsel in this situation. Public policy should support ensuring that Judge B gets the best possible advice in this situation, so as to ensure the integrity of the legal process is maintained. As already noted, under the Model Code – as well as Proposed Canon 2.09(a)(2) -- she would be permitted to consult a "disinterested expert" on virtually any issue, but commentators have questioned the quality of advice she would receive:

"Consultation with a 'disinterested expert' may not be as valuable as it appears. With law teachers, for example, expertise about an issue may be more illusory than real. Frequently, the expert offers the advice in a casual manner lacking the seriousness of the judge who must decide the case. Finally, the advice sought from the alleged 'disinterested' expert may instead be from someone who has a specific partisan interest in the issue of the outcome of the case." See L. Abramson, "The Judicial Ethics of Ex Parte and Other Communications," 37 *Hou. L. Rev.* 1343, 1373-74 (Winter 2000) (hereafter, "Ex Parte Communications").

Obviously, a judge's consultation with knowledgeable, retained ethics counsel involves none of these problems, and would provide Judge B with the advice she needs. Equally obviously, the demands of due process require that Judge B disclose to the parties the advice she receives. See, e.g., *Time Warner Entm't Co. v. Baker*, 647 So. 2d 1070, 1072 (Fla. Dist. Ct. App. 1994) (judge must tell the parties the

identity of the expert and the substance of the communication). Accordingly, we have included that requirement in our proposal.

Judge C's situation is even less clear than Judge B's under the current Code. His communications with ethics counsel, though not an ex parte communication in the traditional sense, will implicate Canon 3(B), because it involves a "communication . . . outside the presence of the parties concerning a pending or impending matter." Ex Parte Communications at 1358-59 (distinguishing between "ex parte communications" and "other communications" clauses, and saying both are covered by Canon 3(B)). While some may argue that Judge C's problem does not involve a "pending or impending matter," that phrase has been interpreted broadly enough to cover this situation, given that Judge C can reasonably foresee that the lawyer will be assigned to his courtroom again in the near future. See *id.* at 1359 (Canon 3(B) implicated if "the judge has information relating to a particular fact situation that is likely to be filed in the foreseeable future, particularly in that jurisdiction"); A. Kaufman, "Judicial Ethics: The Less-Often Asked Questions," 64 Wash. L. Rev. 851, 858-59 (1989) (Canon 3(B) implicated if judge serves as law school moot court judge on issues likely to come before her). With no action pending, Judge C could not invoke the "disinterested expert" exception, and the practicalities of the situation might make him reluctant to invoke the exception allowing him to speak to other judges or court support personnel. Although some jurisdictions provide help lines and other support systems for judges with ethical problems, the current Comments to Canon 3(B)(7) limit permissible communications to "law clerks or other personnel on the judge's staff," suggesting that communications to others, including judicial support offices, are prohibited.

Accordingly, we propose that the Model Code or the Comments address this situation, and allow judges to obtain legal advice from retained outside counsel without disclosure to real or potential parties. Indeed, we believe that such communications should freely be permitted at any point before a party makes a formal motion or otherwise raises the ethical issue with the court. In addition to addressing concerns on reporting obligations, this would permit judges to obtain candid, expert advice on disqualification issues, speaking to the press about particular cases or attorneys, and other matters.

Appearance of Impropriety

Third, our concerns regarding Canon 2's requirement that judges avoid the "appearance of impropriety in all of [their] activities" (the "AOI Requirement") stems from our general perception that vague and overbroad language should be removed from the Model Code of Judicial Conduct because it presents too great a risk of subjective interpretation, placing judges at risk of disciplinary action depending upon the whim of judicial disciplinary authorities. Beyond the troubling

implications for the due process rights of judicial officers, the public at large also loses, because vague and overbroad standards of judicial conduct inevitably chill courageous and innovative judicial decision-making.

In entering this debate, we are mindful that the AOI Requirement is included in the judicial conduct codes of most states. See L. Abramson, "Canon 2 of the Code of Judicial Conduct," 79 Marq. L. Rev. 949, 950 n.3 (Summer 1996) (hereafter, "Canon 2 Article"). The AOI Requirement serves the "institutional" purpose of ensuring "the avoidance of stigma, disrepute, or other element of loss of public esteem and confidence in respect to the court system from the actions of a judge." C. Gray, "Canons 1 and 2," 25 Judicial Conduct Reporter, Vol. 3 at 4 (Fall 2003) (hereafter, "Gray"). Thus, at least one court has noted that the AOI Requirement "is as important to developing public confidence in the judiciary as avoiding impropriety itself." *In re Dean*, 717 A.2d 176 (Conn. 1998). Public commentators have recently been vociferous in their view that the AOI Requirement must remain in the Code, and must be vigorously enforced. "Weakening the Rules for Judges," New York Times, May 22, 2004 (critiquing current ABA Commission draft because it "actually weaken[s] the core provision that requires judges to avoid . . . the appearance of impropriety").

Moreover, the AOI Requirement has repeatedly been used in judicial discipline in order to support sanctioning a wide variety of conduct, from making false and misleading statements in public and private contexts [see, e.g., *In re Ferrara*, 582 N.W.2d 817 (misrepresentations at press conference)], to inappropriate sexual behavior or personal relationships [e.g., *Mississippi Comm'n v. Gilling*, 651 So. 2d 531 (Miss. 1995) (living with person judge knew was a fugitive and assisting with his case)], to improper judicial appointments [*Spector v. Comm. On Judicial Conduct*, 47 N.Y.2d 462, 418 N.Y.S.2d 565 (1979)], to inappropriate political activity [*Spargo v. N.Y. State Comm. On Judicial Conduct*, 244 F.Supp.2d 72, rev'd other grds, 351 F.3d 65 (2d Cir. 2003), cert. denied, 2004 U.S. LEXIS 4047 (U.S. Supreme Court, June 7, 2004)]. See, Gray, *supra*, compiling cases. Judges and judicial prosecutors who have worked with the AOI Requirement for many years, and undoubtedly have become comfortable with it, have already expressed their support for the AOI Requirement to the ABA Commission.

Despite all this, our own analysis of the law, as well as the experience of those of our members who serve as attorneys defending judges and lawyers against disciplinary charges, has led us to conclude that the AOI Requirement collides with the standards of basic fairness and due process that must apply when the Code is used to discipline judges.

We begin with the simple fact that the A.B.A. rejected the inclusion of the prohibition of conduct creating an "appearance of impropriety" as a disciplinary rule

in the Model Rules of Professional Conduct. As stated in Comment [5] to the pre-Ethics 2000 version of Rule 1.9:

“This rubric [the appearance of impropriety proscribed in Canon 9 of the ABA Model Code of Professional Responsibility] has a two-fold problem. First, the appearance of impropriety can be taken to include any new client-lawyer relationship that might make a former client feel anxious. If that meaning were adopted, disqualification would become little more than a question of subjective judgment by the former client. Second, since "impropriety" is undefined, the term "appearance of impropriety" is question-begging. It therefore has to be recognized that the problem of disqualification cannot be properly resolved either by simple analogy to a lawyer practicing alone or by the very general concept of appearance of impropriety.”

Indeed, the AOI Requirement has been roundly criticized in the contexts of attorney discipline and disqualification. In January of this year, in *State v. Davis*, 840 A.2d 279 (N.J. Super. 2004), a New Jersey state appellate court, upholding the trial court's denial of a motion to disqualify an attorney in a criminal case, cited with approval the following words of the New Jersey commission appointed by the state's Supreme Court to review the Rules of Professional Conduct:

“The appearance of impropriety provisions in the RPC's seek to reduce the risk of improper conflicts. Because of their vagueness and ambiguity, those provisions, however, are not appropriate as ethics standards.”

The *Davis* court, agreeing with the commission, held that, at most, the AOI standard was one of many factors to be considered in the overall disqualification analysis. See also *In re Entertainment, Inc.*, 225 B.R. 412 (N.D. Ill. 1998) (the appearance of impropriety is a "vague concept of disqualification" and not applicable in the Northern District of Illinois); *Adoption of Erica*, 426 Mass. 55, 686 N.E.2d 967 (Mass. 1997) (favorably citing the Law of Lawyering that the appearance of impropriety has been described as a "nebulous standard" which has been "rejected by most Courts as a sole basis for disqualification"); *Golias v. King*, 1995 W.L. 517222 (Tex. App. – Beaumont 1995, no writ) ("appearance of impropriety was eliminated from the new Disciplinary Rules of Professional Conduct because of vagueness.");

Halligan v. Blue Cross and Blue Shield of North Dakota, 1994 W.L. 497618 (N.D. 1994) (court rejects, as have other courts, "vague standard of an appearance of impropriety as a basis for requiring withdrawal.")

We question whether a standard that has been rejected as a basis for disciplining lawyers should continue to be used to discipline judges. We are not alone. Last year a United States District Court in New York, in *Spargo v. New York State Commission on Judicial Conduct*, 2003 W.L. 2002762 (N.D.N.Y.), stayed the New York State Judicial Conduct Commission from enforcing certain portions of the Judicial Code pending appeal. Although the Second Circuit eventually reversed its underlying ruling on federal abstention grounds, the District Court's reasoning is very instructive. The District Court held that while the AOI Requirement had been invoked many times in imposing judicial discipline, none of those cases specifically had upheld the constitutional validity of the phrase "appearance of impropriety." As the Court noted, the numerous reported decisions from New York assumed that the AOI Requirement was valid and applied it to a stated set of facts. Perhaps more significantly, the *Spargo* court considered it a "particularly apt comment" that the AOI standard is "very subjective" and is a concept "beset by legal and moral complexity." The court also favorably noted the following language:

"The lack of specificity as to what conduct makes a Judge vulnerable to a charge of appearance of impropriety may bear serious due process implications."

These comments were neither new nor unique. As long ago as 1969, former United States Supreme Court Justice Arthur Goldberg, echoing the sentiments of former Justice (and former Attorney General) Tom Clark as well as several law professors, characterized Canon 2 as "unbelievably ambiguous," and stated that "to avoid the appearance of impropriety, it helps both the public and the judge to know the guidelines." He went on to say: "Our judges are men, not gods, and like all of us, they can benefit greatly from having some ground rules against which to measure their conduct . . . particularly . . . in this area of avoiding even the appearance of impropriety." *Nonjudicial Activities of Supreme Court Justices: Hearings on S 1097 and S 2109 Before the Subcommittee on Separation of Powers of the Senate Comm.*

¹ While judicial disciplinary prosecutors and administrative judges may be comfortable with the AOI Requirement, this hardly supports its continued use. We know of few, if any, defense counsel who make their living defending judges alone; most also defend lawyers. To have two closely related disciplinary systems, one utilizing the AOI Requirement and the other treating it as anathema, makes little sense.

On the Judiciary, 91st Cong., 1st Sess. [1969] at 159, 165, 175, 185. See *Matter of Larsen*, 616 A.2d 529, 580-81 (Pa. 1992) (“Propriety . . . is often in the eye of the beholder. . . . [D]isciplinary rules expressed in terms of ‘propriety’ risk mercurial existence rising and falling with the temper of the moment”).

Moreover, in a scathing dissent in *Spector*, *supra*, former Associate Judge Jacob Fuchsberg of the New York Court of Appeals criticized disciplinary prosecutors’ use of the AOI Requirement to sanction a judge for using the same method of making appointments as that prevailing throughout the State without committing any actual impropriety. Judge Fuchsberg stated:

“[L]ack of specificity as to what conduct makes a judge vulnerable to a charge of appearance of impropriety may bear serious due process implications. Leaving the rules expected to be observed unidentified is bound to burden our Judges with uncertainty as to whether what is acceptable today will be deemed aberrant tomorrow.” *Spector*, 47 N.Y.2d at 473, 418 N.Y.S.2d at 571.

A leading commentator, Professor Leslie Abramson, echoed these words just a few years ago in urging that the AOI Requirement not be “freely applied.” Canon 2 Article at 955. Noting the “uncertainty” the Requirement creates for judges in all aspects of their lives, Professor Abramson expressed concern that “[p]utting men and women who have to judge the rights of others under such stress” would “undermine[] their self-worth.” *Id.* at 955-56.

The experiences of APRL members throughout the country have made clear that these critiques are not just academic. Members report that disciplinary prosecutors and investigators, in order to put additional pressure on judge respondents, often tack on AOI charges in addition to their more specific claims. This maneuver often causes the judge respondents to settle, because even when they are confident they can defend against the specific charges, they remain fearful of the amorphous AOI count, an “I know it when I see it” standard that can easily be construed against them.

Their fears are well founded. When AOI claims are actually tried at hearings, the result is usually difficult to predict, since the test for AOI is so vague. “The test for appearance of impropriety is whether the conduct would create in reasonable minds a perception that the judge’s ability to carry out judicial responsibilities with integrity, impartiality and competence is impaired.” Comment to Canon 2. While some have said this “reasonable person” standard is “one familiar to judges” [Gray at 4], that argument is misleading: the “reasonable person” standard is generally used

to impose civil liability, not to take away someone's livelihood. Moreover, as Judge Easterbrook noted in *Matter of Mason*, 916 F.2d 384, 386 (7th Cir. 1990), the "objective" reasonable person standard "creates problems in implementation. Judges must imagine how a reasonable, well-informed observer of the judicial system would react. Yet the judge does not stand outside the system; as a dispenser rather than a recipient or observer of decisions, the judge understands how professional standards and the desire to preserve one's reputation often enforce the obligation to administer justice impartially, even when an observer might be suspicious."

In light of all of these concerns, we read with interest the ABA Commission's proposed Canon 1, which kept the AOI Requirement in the Canon itself, did not mention it in proposed Canon 1.01, and stated in Comment 2 that "ordinarily" a judge being disciplined under the AOI Requirement will also be disciplined under "some other specific rule under this or another canon." We view this proposal as an important first step in limiting the scope of the AOR Requirement. Nevertheless, it troubles us for two reasons. First, the reference to the AOI Requirement in Comment 2 but not in Canon 1.01 creates a drafting imbalance more likely to sow confusion than clarity. Second, and perhaps more significantly, many states have adopted only the Canons and not the Commentary; in those states, the ABA Commission's proposal will achieve nothing. Canon 2 Article at 953 n.13 (listing states that did not adopt Commentary). Accordingly, at a minimum, the concept that the AOI Requirement may not serve as an independent basis for discipline should be moved to the body of the Code itself, either into the Preamble or into Canon 1.01.

Moreover, while we endorse the ABA Commission's approach, in proposed Canons 2.01 to 2.06, to make the disciplinary aspects of the Code more specific, we respectfully submit that even more exact language can be used to clarify the rules for the public and the judiciary while maintaining the basic principles underlying the AOI Requirement. We recommend the following amendments to some of the proposed Canons (our proposals are in italics):

Canon 2.03: Competence in the Law and Recognition of the Judge's Role in the Legal System: A judge shall not:

(a) engage in conduct that is prejudicial to, interferes with, or obstructs the administration of justice; or

(b) engage in conduct which involves, or appears to involve, repeated or flagrant disregard of established applicable law.

Our proposed Canon 2.03(a) will more directly address cases in which judges aid fugitives or otherwise improperly prevent police officers or others from carrying out their functions against the judge's friends, family members, etc. The current

proposed Canon 2.03 risks sanctioning judges just for being wrong. Our proposed Canon 2.03(b) will more clearly delineate when judges may be sanctioned for making improper legal rulings. The “appears to involve” clause will address cases like *In re Best*, 719 So.2d 432 (Louisiana 1998), where a judge was sanctioned because he took a “straw poll” of the courtroom audience before determining whether a criminal defendant was guilty.

Canon 2.04: Impartiality and Fairness: A Judge shall apply the law without regard to the judge’s personal views and shall decide all cases with impartiality and fairness. A judge shall avoid even the appearance of partiality, unfairness or favoritism.

Canon 2.05: A Judge shall perform judicial duties without bias or prejudice, and without the appearance of bias or prejudice. A Judge shall not, in the performance of judicial duties . . .

Our proposed language would address the AOI Requirement, to the extent it applies to these situations, far more exactly. In our view, the italicized clauses would address cases where no actual impropriety is found, but where the judge’s conduct gives the appearance of bias or favoritism. See, e.g., *In the Matter of Johnstone*, 2 P.3d 1226 (Alaska 2000) (appearance of favoritism in hiring coroner who judge knew to be Chief Judge’s friend); *In re Chaisson*, 549 So. 2d 259 (Louisiana 1989) (making inquiries on behalf of a litigant regarding settlement); *Kennick v. Commission on Judicial Performance*, 787 P.2d 591 (California 1990) (meeting alone in Chambers with attorney for one of the parties).

Finally, there should be a proposed Canon 2.1_ that states as follows:

Canon 2.1_ Professional Misconduct. It is professional misconduct for a judge to:

- (a) commit acts that would constitute a crime;**
- (b) take action, in connection with the judge's official duties, that reflects adversely on the judge's honesty, integrity, impartiality, or trustworthiness, or raises a substantial question of the fitness of the judge to continue serving in a judicial capacity;**
- (c) engage in conduct, whether or not in connection with the judge's official duties, involving dishonesty, fraud, deceit or misrepresentation;**

APRL believes that this language would provide clearer notice to judges as to what conduct constitutes an ethical violation, and would more closely tie together the standards for judicial discipline with those for attorney discipline [see, e.g., Model Rule 8.4], thereby resulting in more doctrinal consistency between the two bodies of disciplinary law.

Of course, many have defended the AOI Requirement because it forces judges to adhere to higher standards than ordinary citizens, and indeed than ordinary members of the Bar. We respond by once again quoting Judge Fuchsberg in his dissent in Spector:

“Understandably, no Judge can respond with less than pride to the flattering proposition that more may be expected of Judges than of mere mortals. It would be regrettable in the extreme, however, if we were driven to prove this by stripping members of our judiciary of the right they share with all people to be judged fairly. And it would be unfortunate to mistake an unwillingness to accede to a denial of this right as a tolerance of judicial misconduct whenever it truly exists.”

We would greatly appreciate the opportunity to discuss these proposals in more detail in at the public hearing to be held in connection with the ABA Convention in Atlanta, Georgia.

We will contact George Kuhlmann in the hope that we can arrange this.

Respectfully submitted, Ronald C. Minkoff, Esq.
Chair, APRL Committee on Model Code of
Judicial Conduct Ronald E. Mallen, Esq.
President, APRL

ABA Commission on the Model Code of Judicial Conduct
June 30, 2004
Page 14 of 14

cc: Members of APRL Board and Committee
Jeanne Gray, Esq.
Luke Bierman, Esq.
George Kuhlman, Esq.
Eileen Gallagher, Esq.
Marvin Karp, Esq.
Dudley Olden, Esq.

ATTACHMENT B
DMCJA LIST SERVE RESPONSE TO THE
“APPEARANCE OF IMPROPRIETY” LANGUAGE CONTAINED IN
THE ABA MODEL CODE

QUESTION PRESENTED MARCH 2, 2009:

I am on the Supreme Court Task Force reviewing the ABA Model Code of Judicial Conduct. We meet again this Friday. I would greatly appreciate some input/comments from the list serve before Friday on the below rule as to whether the underlined language “the appearance of impropriety” is problematic for any of you.

The model code has both aspirational language in it and black letter law. The new ABA code has both in Canon (Canon 1) and in disciplinary Rule 1.2, subjecting a judge to sanctions for “appearances.” Here it is:

Rule 1.2

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.

In other words, do you feel that the language “the appearance of impropriety” which deals with your conduct is too vague, too imprecise, too unfair and invites abuse should you be faced with a serious ethical charge under this phrase? Or, alternatively, do you think the language should stay because it promotes the integrity of all judges for the benefit of the public?

Thanks for your help and input.

Judge McSeveney

RESPONSES IN THE ORDER RECEIVED MINUS NAMES:

1. Impropriety is in the conduct of the judge; the appearance of impropriety is in the eye of the beholder and therefore too subjective to be a useful standard on which to discipline judges. Can any of you imagine a criminal statute prohibiting the appearance of impropriety being upheld against a vagueness challenge? Me, neither.
2. I really believe the language should stay. It is really good language that helps a judge evaluate each situation. I think of it as a gate on the path. You can still go through, but you have to stop and make an effort. Ok. The metaphor is poor. I vote to include the language.

3. I am just responding to you and not "to all". Although I would be hard pressed to define the term "appearance of impropriety" it is something that I am comfortable being able to identify and avoid when a situation presented itself. So I personally don't have a problem with the language.
4. I have so little integrity left I would prefer to keep it. I am thus opposed to using any apparent integrity to get me into trouble as well. On a serious note I think the "appearance" language is a bit vague and would prefer it not be included.
5. I agree with the learned Judge _____. The Judicial Conduct Commission would have to be greatly enlarged to deal with all the complainants who felt that a judge "appeared" partial to the winning side. This one is worth fighting about.
6. While it sounds fine, and it certainly is something that we should all strive to do, I think it opens a subjective can or worms beyond what is necessary. I also think the first part of the sentence, "promotes public confidence" covers the "appearance of impropriety" concern.
7. Judge, The problem is with the application of the Canons by the CJC. First of all replacing the word "should" with "shall" seems to acknowledge what other jurisdictions and the rules of statutory construction already acknowledge — that "should" refers to aspirational conduct. The CJC, however, has normally taken the approach that "should" is no different than "shall" so is the CJC prepared to vacate previous findings it has made in reliance of the aspirational language currently found in the Canons.

Republican Party v. White is one of many cases that have taken the approach that read as a whole strongly suggests that judges enjoy the same 1st amendment rights as any other citizen. The fact that a person engages in protected free speech could be violative of the proposed new rule. The proposed new rule could be deemed a prior restraint under Washington state law. At the National Judicial College, which the CJC recognizes as a legitimate place for ethics training, it is presented that only speech that also results in effecting the administration of justice can be regulated and comport with the First Amendment. For example, if a Judge says he is "always going to give drunk drivers the maximum sentence" and as a result has to recuse himself from hearing DUIs and the court has to pay for a pro tem then this is conduct that can be regulated because the judge has been disqualified from hearing a case. If a judge, however, is unfaithful to their spouse it may be very offensive to the general public but would that conduct disqualify a judge from hearing any cases? Probably not and I know judges that have been unfaithful and people that have been offended and I certainly do not expect them to be in front of the CJC but if the judge uttered an expletive (as I have) amongst friends that were not offended and also uttered expletives then I am before the CJC.

8. The appellate courts are recognizing that judges have 1st amendment rights and the CJC is aware of this but can bully people because of the likely embarrassment and cost to litigate these matters. Take a look at my reprimand — the issues

involved private conduct that was never publicized over 3 years yet I somehow undermined the "public's" confidence in the judiciary. I would suggest a rule that includes the language that indicates the conduct in issue impacts the administration of justice.

If I get a chance, I will take a look at the case law and give you the relevant decisions. If you really want to see how the CJC rules are contrary to the 1st amendment look at Landmark Communications vs. Virginia and the ethics opinion from the state of Texas and compare it with the CJC confidentiality rules about investigations. The CJC's rule 11 is overly broad and a prior restraint — I was charged with violating this rule in respect to former Judge _____ until I pointed out the rule only applied to current (and not former) judges and the CJC (in Rule 2) distinguished between former and current judges.

I think the proposed language is much too loose and provides no objective standard because it is left up to the interpretation of the observer. A reasonable compromise between the judge who engages in improper conduct and tries to excuse it by saying "but I was only joking", and the overly sensitive/easily offended observer might be to provide language to the effect of "...and shall avoid impropriety and intentionally engaging in any act or conduct which may reasonably create the appearance of impropriety." In this way there would at least be the "reasonable man" test which is present in many other areas of the law as well.

9. Perhaps it would make the section less frightening if it read "and shall strive to avoid the appearance of impropriety". This would make it clear that as long as the judge is making a good faith effort, some unanticipated appearance of impropriety (e.g. being in a bridge club with a prosecutor) would not lead to sanctions.
10. Ditto, and many years ago I ended up sentencing the county admin on a theft case. I certainly knew who the guy was, but had never spoken to him personally and since he'd been terminated and I had just been on the job a short time, I heard the matter. Later it came out that a lot of people thought he was a friend etc. even though I had put on the record how I had never spoken to him in my life. (and of course the newspaper never covered that part) Anywho.. some may claim I violated the appearance of impropriety.
11. "Impropriety" defined by Webster as "the quality of being improper, improper action or behavior".
12. The phrase "appearance of impropriety" sounds like an attempt to include language that is similar to that which governs quasi-judicial bodies, such as county councils or city councils, hearing land use matters. In those settings the council's action is governed by the "appearance of fairness" doctrine, i.e., not only must the hearing/decision be fair but appear fair. Examples are that the council members are not supposed to discuss an land use action with the proponent ex parte, but if he/she does, it must be disclosed before voting.

I think rules governing judges' conduct and when a judge must recuse him/herself from a proceeding are sufficiently defined in statute and rules of conduct, and see no need to include the broad language of "appearance of impropriety". Under the proposal, if the judge's action was not improper action or behavior, but may "appear to one party to be improper", would that conduct be subject to sanction? I hope not.

13. While it may do some of what's intended, it is, as you indicate overbroad, overly vague and scary. You won't be able to do a silly skit at your kid's Y camp dad's night because it "might be considered improper" or having a beer with a high school buddy in town for a reunion or . . . ad infinitum do we really want to go so far ? I'd at least express concern about the language.
14. Bob: Thanks for seeking input on this important issue. I have a couple of comments. First, I cringe at being graded by how someone who doesn't like me, doesn't trust me and sees a conspiracy against them everywhere, without the necessity of any proof...i.e. the (subjective) appearance of fairness. The standard just doesn't seem fair...or definable. Second, as a full-time lawyer, part-time judge I have mixed relationships with many of the lawyers appearing before. I may have cases in which they are opposing counsel, or we represent co-defendants in a case. I will certainly have cases as a defense attorney with the Prosecutor's office is on the other side. I may know by face — their kids may have played on different Little League teams than my kids, but in the same league, for example — a person before me on the mitigation or contested calendar. While every lawyer in small community understands their differing places in different legal forums, certainly a cynic, or someone inherently suspicious of members of the legal community, could see appearances of non-fairness. Bad idea. For small community judges. Bad idea for part-time judges. Just a bad idea.
15. I would put a period after the word "judiciary." The dependant clause following the word "judiciary" does nothing to strengthen the terms of the rule. As noted by our other esteemed colleagues, the additional language and particularly the prohibition on appearances injects subjective standards into a mandatory rule. Judge ____ is particularly on point in noting that such language in a criminal rule would not pass the constitutional prohibition on vagueness. If the Code of Judicial Conduct is going to be interpreted as black letter law such that violations justify imposition of sanctions, it must not contain aspirational language that can also be used as a vehicle to impose sanctions.
16. Bob, Having had personal experience with the CJC I feel " If you give them an inch they will take a mile".
17. I would most certainly like to hear the opinions of our two current representatives to CJC and any candidates for those positions as to what they think about this language. Perhaps more important is what the investigators think this language means. In my paranoid opinion, this type of language invites abuse by the government.

18. I am also against any nebulous rule that allows for an "appearance" to be the basis for discipline. However, I should point out that our present rules use this term in two areas; the heading for Canon 2 and in Canon 6 (see below). Also, look at Discipline of Anderson 138 Wn.2d 830 and other cases. In Anderson the court said, "Judicial integrity and a judge's duty to avoid the appearance of impropriety prohibited Judge Anderson from accepting the car loan payments...". This term is also used by our Supreme Court in cases involving Justice Sanders, Judge Ritchie, Judge Hammermaster, Judge Niemi, and I am sure others. There were arguably more concrete facts to result in discipline other than just an appearance alone in those cases, but look at the holding in the Sanders case (published in October 2006) where the court used the term "appearance of partiality" and cited other authority which held, "The question is not whether the judge is impartial in fact. It is simply whether another, not knowing whether or not the judge is actually impartial, might reasonably question his [or her] impartiality, on the basis of all of the circumstances." Scary to say the least.
19. I will go on the record as opposing the "appearance of impropriety" language because it is too subjective. Maybe a good aspiration, but not an appropriate basis for discipline.
20. I wonder whether it will ever be argued that a criminal defendant should be convicted because it "appears" he/she committed a crime, or if a civil litigant will have a case decided against them because of the way the case "appeared" versus the actual facts of the case. I am sure appearances are used from time to time by juries in cases, but not because the system condones it or encourages it. I guess we are just asking for the same dignity we give to litigants in our courts to have actual facts be the basis for discipline, not just appearances. Thanks.
21. I would like to think that the language is innocuous; however, on behalf of those of us who work in small communities and/or those subject to failing memory, I have to say that I have spent most of my time on the bench trying to juggle the responsibility of my job with the ever present specter of conflict. While the concept of "Appearance of Impropriety" includes a larger concern than just conflicts, this is my concern with the language. Sometimes it takes me a while, or research, to remember a case or people involved. Once I have done this, I can assess the situation and remove myself if it is warranted or take other measures to avoid any appearance of impropriety. I would hate to have someone in a larger jurisdiction or with a better memory than mine using this "aspirational" language to castigate me when the only aspiration I have is to do my humble job. Whatever happened to the idea that the bulk of us actually try to operate in good faith?
22. That is a good example of why we don't want the additional language.
23. Is there a way of imposing some form of a statute of limitations regarding investigations/actions taken by the CJC? When they come a knockin' a Judge is put in the posture of a defendant. In virtually every civil and criminal case there is a statute of limitations for the purpose of insuring of fairness. The longer the time between the alleged act and the "prosecution" of it, the more difficult it is to

defend. It just seems, to me, that the complete lack of a statute of limitations is unfair and unreasonable — why should a Judge have less opportunity to adequately defend his or her self than anyone else.

24. In the current climate I believe that the language is ambiguous, and unnecessarily creates exposure to liability, or at least complaints. Our system for regulating conduct at its most perfect is inherently imperfect, and as such this language could lend itself to numerous complaints from citizens, who personally believe something a judge has done "appears improper". It's too vague.
25. I agree with the comments of Judges _____ and _____. I don't think the additional language is necessary, and it adds to the ambiguity regarding what activities may lead to discipline.
26. As always, brother _____ is so on point! Please, let's not keep unnecessary opportunities for bogus charges alive!
27. At the ABA there was a fight over the language about appearance. You can appear to be fair and actually be unfair. Is that what we should promote. Should judges have to please all the people all of the time? Isn't that what an appearance standard requires? We know that can't be done. I think it should be eliminated. If it would pass muster constitutionally then why should we shoot ourselves in the foot (again) and give up our constitutional rights? We should be the protectors of the Constitution not the unprotected.
28. Amen! (In response to #1 above.)
29. *The vagueness doctrine is based on the rationale that persons should not be "chilled in their exercise of constitutional rights" because of their fear of sanctions.* Comm'n on Indep. Colleges & Univs. v New York Temporary State Comm'n on Regulation of Lobbying, 534 F. Supp. 489, 502 (N.D. N.Y. 1982). The proposed language would not, in my estimation, survive a vagueness challenge — and while the CJC exists to correct behavior and not punish behavior the enabling language for the CJC recognizes that a respondent has due process rights which would permit a vagueness challenge.
30. In *Gentile v. State Bar of Nevada*, 501 U.S. 1030, 1048 (1991) an attorney disciplinary statute which prohibited lawyers from making an extrajudicial statement "if the lawyer knows or reasonably should know that it will have a substantial likelihood of materially prejudicing an adjudicative proceeding" was held to be void under vagueness grounds because the rule allowed "general" statements on the nature of the proceedings.

In *U.S. v Wunsch*, 84 F. 3d 1110 (9th Cir. 1996) a disciplinary statute which required attorneys to "abstain from offensive personality" was found facially vague. Vagueness challenges to disciplinary codes have survived such challenges in the courts only when the prohibited conduct was specifically spelled out.

31. I've coached and officiated youth sports for over 20 years and remember once getting red carded in a soccer match as the coach... that was probably an appearance of impropriety that I really didn't deserve. He was a real loser of a ref and had cautioned me once (yellow card) on something that was an obvious wrong call on his part and then later in the match some parent standing behind me said something and he thought it was me and threw me off the field. The parents thought it was hilarious and we won anyway and it really ticked off the players. We even went on to be state champs. The point being, those rules r so broad already they can nail u for things that have little to do with being a judge, in my humble opinion.

32. The term is vague.....some areas of the state simply think differently than others. Citizens in King County think much differently than those in Columbia County. Who is making the call as to what "appears" to be improper?

ATTACHMENT C

Thank you very much for this information.

I am attaching the letter APRL wrote to the ABA Commission on the Appearance of Impropriety. APRL tried to put a little meat on the bones of this vague “appearance of impropriety” standard, but I don’t think it worked. In any event, here is the product of our efforts.

Ron

PS: I’m not surprised that judges would favor a bright line approach. Anyone who wants to obey the law wants to know what the law is. In some cases, we tolerate some necessary ambiguity. For example, we have laws prohibiting reckless driving. The risks (e.g., highway deaths) are great when one drives recklessly. It is difficult to make the term more precise. And, we have a good idea of what it means.

But in other cases, we do not tolerate such ambiguity. For example, consider a statute forbidding reckless walking. The risks are not life-threatening; we can deal with any problems using the common law of assault and battery; and we have no good idea of what “reckless walking” means. “Appearance of Impropriety” is a term that is too vague. After decades, we have no way to define it. If there is conduct we do not like, we can always enact a specific rule against it. That would be better than a catch-all that we only define ex post facto

Ronald D. Rotunda

The Doy & Dee Henley Chair and Distinguished Professor of Jurisprudence
Chapman University School of Law
One University Drive, Rm. 406
Orange, CA 92866-1005
email: rrotunda@chapman.edu
Tel. (714) 628-2698
Fax: (714) 628-2576
Home Page: <http://www1.chapman.edu/~rrotunda/>

You can access my most recent papers on the Social Science Research Network (SSRN)

From: McSeveney, Robert [mailto:RMcSeveney@ci.kent.wa.us]

Sent: Tuesday, June 02, 2009 10:38 AM

To: Rotunda, Ronald

Subject: FW: DMCJA - CJCTF materials for your section on Appearance of Impropriety

Thank you for speaking with me this morning. As I mentioned, our Supreme Court Task Force on the new ABA CJC Code is meeting Friday and one of the discussion items has to do with the “appearance of impropriety” Rule 1.2.

TAB 4

GR 9 COVER SHEET

Suggested Amendments RESCINDING CURRENT CODE OF JUDICIAL CONDUCT and ADOPTING NEW CODE OF JUDICIAL CONDUCT

(Hearing is Not Recommended)

Submitted by the Code of Judicial Conduct Task Force

A. **Name of Proponent:** Code of Judicial Conduct Task Force

B. **Spokespersons:**

- Judge Joel M. Penoyar, Court of Appeals, Task Force Co-chair
- Judge Alan R. Hancock, Island County Superior Court, Task Force Co-chair

C. **Purpose:** This proposal is a wholesale substantive revision of the Code of Judicial Conduct, which govern conduct of judicial officers in Washington. To accomplish the revision, the current Code of Judicial Conduct would be rescinded and the new Code of Judicial Conduct adopted. The Task Force makes this recommendation after its review of the 2007 American Bar Association (ABA) Model Code of Judicial Conduct and the provisions in the current Code of Judicial Conduct over the over the last year.

In addition to the substantive changes in the Code, the new Code has been substantially reformatted. Scope [2] explains the functionality of the new Code organization. That is, that the canons state the overarching principles of judicial ethics that all judicial officers are to observe but a judicial officer may only be punished for the violation of a rule. The comments are more extensive than those in the current Code. They are intended to provide guidance of the meaning and application of the rules but the comment itself is not enforceable. The second purpose for the comments is to identify aspirational goals for judicial officers.

The changes suggested are too numerous to set out. A detailed summary of those changes is posted on the task force Web site at:

http://www.courts.wa.gov/committee/?fa=committee.home&committee_id=141.

Proposed Code provisions which are the same as those in the ABA Model Code are not noted here but are detailed in the summary cited above.

The major substantive changes are:

- The appearance of impropriety standard is removed from Rule 1.2 and the comments to that rule although it is retained in Canon 1.
- Rule 2.11(A)(4) is a new concept in the Code specifically addressing disqualification based on contributions made to a judge's campaign.
- Rule 2.16 specifically requires that a judge cooperate with judicial and lawyer disciplinary agencies and not retaliate against a person who has assisted or cooperated in such an investigation.
- A judicial officer's personal and extrajudicial activities are now combined under Canon 3 and its rules and comments. In the current Code those activities are addressed in Canons 4, 5 and 6.
- Even though Canon 4 and its rules governing political and campaign conduct are reorganized, the rules governing campaign conduct mirror those under the current Code.

D. Hearing: A hearing is not recommended.

E. Expedited Consideration The Code of Judicial Conduct Task Force is recommending that the new Code of Judicial Conduct, if adopted, be in place before the 2010 judicial elections take place.

Supporting Materials

Attached as supporting materials are:

- Section by section comparison of Model Code of Judicial Conduct and version of the Code of Judicial Conduct recommended for adoption in Washington.
- Bibliography of all results consulted by the task force.

Additional supporting information, including Task Force minutes, is available at the AOC Web site at:

http://www.courts.wa.gov/committee/?fa=committee.home&committee_id=141

TAB 5

**Washington State Supreme Court Code of Judicial Conduct
Task Force
Proposed New Washington State Code of Judicial Conduct
September 8, 2009**

TABLE OF CONTENTS

PREAMBLE	3
SCOPE	4
APPLICATION	5
TERMINOLOGY	8
CANON 1	12
<i>A JUDGE SHALL UPHOLD AND PROMOTE THE INDEPENDENCE, INTEGRITY, AND IMPARTIALITY OF THE JUDICIARY, AND SHALL AVOID IMPROPRIETY AND THE APPEARANCE OF IMPROPRIETY.</i>	
RULE 1.1 Compliance with the Law	12
RULE 1.2 Promoting Confidence in the Judiciary	12
RULE 1.3 Avoiding Abuse of the Prestige of Judicial Office	13
CANON 2	14
<i>A JUDGE SHOULD PERFORM THE DUTIES OF JUDICIAL OFFICE IMPARTIALLY, COMPETENTLY, AND DILIGENTLY.</i>	
RULE 2.1 Giving Precedence to the Duties of Judicial Office.....	14
RULE 2.2 Impartiality and Fairness	14
RULE 2.3 Bias, Prejudice and Harassment.....	14
RULE 2.4 External Influences on Judicial Conduct.....	15
RULE 2.5 Competence, Diligence, and Cooperation.....	16
RULE 2.6 Ensuring the Right to Be Heard.....	16
RULE 2.7 Responsibility to Decide	17
RULE 2.8 Decorum, Demeanor, and Communication with Jurors	18
RULE 2.9 Ex Parte Communications.....	18
RULE 2.10 Judicial Statements on Pending and Impending Cases	20
RULE 2.11 Disqualification	21
RULE 2.12 Supervisory Duties	23
RULE 2.13 Administrative Appointments.	24
RULE 2.14 Disability and Impairment.....	25
RULE 2.15 Responding to Judicial and Lawyer Misconduct.....	25
RULE 2.16 Cooperation with Disciplinary Authorities	26

CANON 3	27
<i>A JUDGE SHALL CONDUCT THE JUDGE’S PERSONAL AND EXTRAJUDICIAL ACTIVITIES TO MINIMIZE THE RISK OF CONFLICT WITH THE OBLIGATIONS OF JUDICIAL OFFICE.</i>	
RULE 3.1 Extrajudicial Activities in General	27
RULE 3.2 Appearances before Governmental Bodies and Consultation with Government Officials	28
RULE 3.3 Testifying as Character Witness.....	28
RULE 3.4 Appointments to Governmental Positions.	29
RULE 3.5 Use of Nonpublic Information.	29
RULE 3.6 Affiliation with Discriminatory Organizations.....	29
RULE 3.7 Participation in Educational, Religious, Charitable, Fraternal, or Civic Organizations and Activities	30
RULE 3.8 Appointments to Fiduciary Positions	32
RULE 3.9 Service as Arbitrator or Mediator.....	33
RULE 3.10 Practice of Law.....	33
RULE 3.11 Financial, Business, or Remunerative Activities.....	33
RULE 3.12 Compensation for Extrajudicial Activities.....	34
RULE 3.13 Acceptance and Reporting of Gifts, Loans, Bequests, Benefits, or Other Things of Value	35
RULE 3.14 Reimbursement of Expenses and Waivers of Fees or Charges.....	37
RULE 3.15 Reporting Requirements	38
 CANON 4	 39
<i>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.</i>	
RULE 4.1 Political and Campaign Activities of Judges and Judicial Candidates in General	39
RULE 4.2 Political and Campaign Activities of Judicial Candidates in Public Elections	43
RULE 4.3 Activities of Candidates for Appointive Judicial Office.....	44
RULE 4.4 Campaign Committees.....	44
RULE 4.5 Activities of Judges Who Become Candidates for Nonjudicial Office	45

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 the following items:

- (1) 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.
- (2) The pro rata share of any contribution to a political committee as defined by RCW 42.17.020 that is either contributed to the judge's campaign or spent by the political committee in support of the judge's campaign or against the judge's opponent.
- (3) The pro rata share is calculated by multiplying the total spent by the political committee by a fraction the numerator of which is the total contributed by the adverse party to the political committee and the denominator is the total contributed by all persons to the political committee.
- (4) In calculating the pro rata share, if funds are passed through a series of political committees, the same fractional calculation will be used for each committee.
- (5) The attribution rules of RCW 42.17.650 through .680 shall be used in calculating financial support.
- (6) Any financial support by an officer, director, or owner of an equity interest of 10% or more in any corporation, partnership or other entity shall be attributed to the corporation, partnership or other entity, and any financial support by the corporation, partnership or other entity shall be attributed to any officer, director, or owner of an equity interest of 10% or more.

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.

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

"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.*

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] The statement in Canon 1 that a judge shall avoid the appearance of impropriety is aspirational. Rule 1.2 sets forth the basis for discipline. Consistent with Scope [2], a judge may be disciplined for acts or conduct violating any part of Rule 1.2, including failing to avoid impropriety, but may not be disciplined for failing to avoid the appearance of impropriety. Improprieties include violations of law, court rules or provisions of this Code. Whether a judge has violated Rule 1.2 by failing to act in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary shall be determined by use of an objective reasonable person test, not by subjective perceptions.

- [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] 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) 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 in excess of 10 times the dollar amount of the campaign contribution limit established by RCW 42.17.

- (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.

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] 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 more than two times but less than 10 times the dollar amount of the campaign contribution limit established by RCW 42.17, if the judge concludes the judge's 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.

[8] A judge should not ordinarily disqualify himself or herself based on an amount less than two times the campaign contribution limit, absent additional circumstances supporting disqualification.

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] "Appropriate action" means action intended and reasonably likely to help the judge or lawyer in question address the problem and prevent harm to the justice system. Depending upon the circumstances, appropriate action may include but is not limited to speaking directly to the impaired person, notifying an individual with supervisory responsibility over the impaired person, or making a referral to an assistance program.
- [2] Taking or initiating corrective action by way of referral to an assistance program may satisfy a judge's responsibility under this Rule. Assistance programs have many approaches for offering help to impaired judges and lawyers, such as intervention, counseling, or referral to appropriate health care professionals. Depending upon the gravity of the conduct that has come to the judge's attention, however, the judge may be required to take other action, such as reporting the impaired judge or lawyer to the appropriate authority, agency, or body. See Rule 2.15.

RULE 2.15

Responding to Judicial and Lawyer Misconduct

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

COMMENT

- [1] Taking action to address known misconduct is a judge's obligation. Paragraphs (A) and (B) impose an obligation on the judge to report to the appropriate disciplinary authority the known misconduct of another judge or a lawyer that raises a substantial question regarding the honesty, trustworthiness, or fitness of that judge or lawyer. Ignoring or denying known misconduct among one's judicial colleagues or members of the legal profession undermines a judge's responsibility to participate in efforts to ensure public respect for the justice system. This Rule limits the reporting obligation to those offenses that an independent judiciary must vigorously endeavor to prevent.
- [2] A judge who does not have actual knowledge that another judge or a lawyer may have committed misconduct, but receives information indicating a substantial likelihood of such misconduct, is required to take appropriate action under paragraphs (C) and (D). Appropriate action may include, but is not limited to, communicating directly with the judge who may have violated this Code, communicating with a supervising judge, or reporting the suspected violation to the appropriate authority or other agency or body. Similarly, actions to be taken in response to information indicating that a lawyer has committed a violation of the Rules of Professional Conduct may include but are not limited to communicating directly with the lawyer who may have committed the violation, or reporting the suspected violation to the appropriate authority or other agency or body.

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] A judge may encourage lawyers to provide pro bono legal services.
- [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 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) seek, accept, or use endorsements from a political organization;
 - (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.

TAB 6

Draft as of 8/28/09

Comparison of the ABA Model Code, current Washington State Code of Judicial Conduct, and Final Recommendations of the Code of Judicial Conduct Task Force

ABA Model Code of Judicial Conduct Canons

Preamble	3
Scope	5
Application	8
Terminology	24
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.....	18
Canon 2 A JUDGE SHALL PERFORM THE DUTIES OF JUDICIAL OFFICE IMPARTIALLY, COMPETENTLY, AND DILIGENTLY.	29
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.	59
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.	90

Washington State Code of Judicial Conduct 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.	
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.	

ABA Model Code	Current Washington Code	Final Task Force Recommendation
----------------	-------------------------	---------------------------------

Canon 3(A)(4) Comment second paragraph Deleted in 2007 Model Code

2007 Model Code Application Provisions with No WA Equivalent
Comments to I
II on retired judges
Comment to VI

Canon 1 Comment Deleted in 2007 Model Code

Canon 1(A): Discussed in Preamble in 2007 Model Code

2007 Model Code Rule 2.11 Provisions with No WA Equivalent
Rule 2.7 and Comments
Rule 2.11(A)(4), (5) and (6)(b) and (d) and Comments [1] – [3] and [5]
Rule 2.14 and Comments
Rule 2.16 and Comments

Canon 4(A): Deleted in 2007 Model Code

Canon 5(C)(3) Comment: No Model Code equivalent

Canon 5(C)(6): No Model Code equivalent

Canon 5(C)(6) Comment: No Model Code equivalent

Canon 5(C)(8): No Model Code equivalent

PREAMBLE

ABA Model Code	Current Washington Code	Final Recommendation
<p>[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.</p>	<p>Canon 1(A): Discussed in Preamble in 2007 Model Code</p> <p>Preamble (Paragraph 1)</p> <p>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.</p>	<p>[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.</p>
<p>[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.</p>	<p>(Paragraph 6)</p> <p>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</p>	<p>[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.</p>

ABA Model Code	Current Washington Code	Final Task Force Recommendation
	assist judges in establishing and maintaining high standards of judicial and personal conduct.	
<p>[3] The Model Code of Judicial Conduct establishes standards for the ethical conduct of judges and judicial candidates. It is not intended as an exhaustive guide <i>for the conduct of judges and judicial candidates, who are governed in their judicial and personal conduct by general ethical standards as well as by the Code</i>. 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 <i>disciplinary agencies</i>.</p>	<p>(Paragraph 2) 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.</p>	<p>[3] The <i>Washington State</i> 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 <i>the Commission on Judicial Conduct</i>.</p>

ABA Model Code	Current Washington Code	Final Task Force Recommendation
-----------------------	--------------------------------	--

SCOPE

ABA Model Code	Current Washington Code	Final Recommendation
<p>[1] The Model Code of Judicial Conduct consists of four Canons, numbered Rules under each Canon, and Comments that generally follow and explain each Rule. Scope and Terminology sections provide additional guidance in interpreting and applying the Code. An Application section establishes when the various Rules apply to a judge or judicial candidate.</p>	<p>Preamble (Paragraph 4) 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.</p>	<p>[1] The <i>Washington State</i> 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.</p>
<p>[2] The Canons state overarching principles of judicial ethics that all judges must observe. Although a judge may be disciplined only for violating a Rule, the Canons provide important guidance in interpreting the Rules. Where a Rule contains a permissive term, such as “may” or “should,” the conduct being addressed is committed to the personal and professional discretion of the judge or candidate in question, and no disciplinary action should be taken for action or inaction within the bounds of such discretion.</p>		<p>[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.</p>

ABA Model Code	Current Washington Code	Final Task Force Recommendation
<p>[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.</p>		<p>[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.</p>
<p>[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.</p>		<p>[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.</p>
<p>[5] The Rules of the Model Code of Judicial Conduct are rules of reason that should be applied consistent with constitutional requirements, statutes,</p>	<p>(Paragraph 3) The Canons and Sections are rules of reason. They should be applied consistent</p>	<p>[5] The Rules of the Washington State Code of Judicial Conduct are rules of reason that should be applied consistent with constitutional</p>

ABA Model Code	Current Washington Code	Final Task Force Recommendation
<p>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.</p>	<p>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.</p>	<p>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.</p>
<p>[6] Although the black letter of the Rules is binding and enforceable, it is not contemplated that every transgression will result in the imposition of discipline. Whether discipline should be imposed should be determined through a reasonable and reasoned application of the Rules, and should depend upon factors such as the seriousness of the transgression, the facts and circumstances that existed at the time of the transgression, the extent of any pattern of improper activity, whether there have been previous violations, and the effect of the improper activity upon the judicial system or others.</p>	<p>(Paragraph 5) 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.</p>	<p>[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. <i>It is recognized, for example, that it would be unrealistic to sanction judges for minor traffic or civil infractions.</i> Whether discipline should be imposed should be determined through a reasonable and reasoned application of the Rules. <i>The relevant factors for consideration should include</i> the seriousness of the transgression, the facts and circumstances that existed at the time of the transgression, <i>including the willfulness or knowledge of the impropriety of the action,</i> 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.</p>
<p>[7] The Code is not designed or intended as a basis for civil or criminal liability. Neither is it intended to be the basis</p>		<p>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</p>

ABA Model Code	Current Washington Code	Final Task Force Recommendation
for litigants to seek collateral remedies against each other or to obtain tactical advantages in proceedings before a court.		seek collateral remedies against each other or to obtain tactical advantages in proceedings before a court.

APPLICATION

<p>The Application section establishes when the various Rules apply to a judge or judicial candidate.</p> <p>I. APPLICABILITY OF THIS CODE</p> <p>(A) The provisions of the Code apply to all full-time judges. Parts II through V of this section identify those provisions that apply to four distinct categories of part-time judges. The four categories of judicial service in other than a full-time capacity are necessarily defined in general terms because of the widely varying forms of judicial service. Canon 4 applies to judicial candidates.</p> <p>(B) A judge, within the meaning of this Code, is anyone who is authorized to perform judicial functions, including an officer such as a justice of the peace, magistrate, court commissioner, special master, referee, or member of the administrative law judiciary.¹</p> <p>COMMENT</p> <p>[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</p>	<p>Application (A)</p> <p>Application of the Code of Judicial Conduct</p> <p>(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.</p> <p>(1) A Part-Time Judge (a) is not required to comply:</p> <p>(i) except while serving as a judge, with Section 3(A)(9); and</p> <p>(ii) at any time with Sections 5(C)(2) and (3), 5(D), 5(E), 5(F), 5(G) and 6(C).</p> <p>(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.</p> <p>Comment</p> <p><i>When a person who has been a part-time</i></p>	<p>The Application section establishes when the various Rules apply to a judge, <i>court commissioner, judge pro tempore</i> or judicial candidate.</p> <p>I. APPLICABILITY OF THIS CODE</p> <p>(B) 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.</p> <p>(B) The provisions of the Code apply to all judges except as otherwise noted for part-time judges and judges pro tempore.</p> <p>(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</p>
--	---	--

ABA Model Code	Current Washington Code	Final Task Force Recommendation
<p>apply to all those authorized to perform judicial functions.</p> <p>[2] The determination of which category and, accordingly, which specific Rules apply to an individual judicial officer, depends upon the facts of the particular judicial service.</p> <p>[3] In recent years many jurisdictions have created what are often called “problem solving” courts, in which judges are authorized by court rules to act in nontraditional ways. For example, judges presiding in drug courts and monitoring the progress of participants in those courts’ programs may be authorized and even encouraged to communicate directly with social workers, probation officers, and others outside the context of their usual judicial role as independent decision makers on issues of fact and law. When local rules specifically authorize conduct not otherwise permitted under these Rules, they take precedence over the provisions set forth in the Code. Nevertheless, judges serving on “problem solving” courts shall comply with this Code except to the extent local rules provide and permit otherwise.</p>	<p><i>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.</i></p> <p>(2) A Pro Tempore Judge</p> <p>(a) is not required to comply:</p> <p>(i) except while serving as a judge, with Sections 2(A), 2(B), 3(A)(9), 4(B), 4(C) and 7(A);</p> <p>(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).</p> <p>(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.</p>	<p>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.</p> <p>(D) All judges shall comply with statutory requirements applicable to their position with respect to reporting and disclosure of financial affairs.</p> <p>COMMENT</p> <p>[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.</p> <p>[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.</p> <p>[3] The determination of whether an individual judge is exempt from specific Rules depends upon the facts of the particular judicial service.</p>

ABA Model Code	Current Washington Code	Final Task Force Recommendation
		<p>[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.</p>
<p>II. RETIRED JUDGE SUBJECT TO RECALL A retired judge subject to recall for service, who by law is not permitted to practice law, is not required to comply:</p> <p>(A) with Rule 3.9 (Service as Arbitrator or Mediator), except while serving as a judge; or</p> <p>(B) at any time with Rule 3.8 (Appointments to Fiduciary Positions).</p>		<p>II . PART-TIME JUDGE (A) A part-time judge is not required to comply:</p> <p>(1) with Rule 2.10 (Judicial Statements on Pending and Impending Cases), except while serving as a judge; or</p> <p>(2) at any time with Rules 3.4 (Appointments to Governmental Positions), 3.8 (Appointments to Fiduciary Positions), 3.9 (Service</p>

ABA Model Code	Current Washington Code	Final Task Force Recommendation
<p>COMMENT</p> <p>[1] For the purposes of this section, as long as a retired judge is subject to being recalled for service, the judge is considered to “perform judicial functions.”</p>		<p>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).</p> <p>(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.</p> <p>(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.</p> <p>COMMENT</p> <p>[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.</p> <p>[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</p>

ABA Model Code	Current Washington Code	Final Task Force Recommendation
<p>III. CONTINUING PART-TIME JUDGE A judge who serves repeatedly on a part-time basis by election or under a continuing appointment, including a retired judge subject to recall who is permitted to practice law (“continuing part-time judge”),</p> <p>(A) is not required to comply:</p> <p>(1) with Rules 2.10(A) and 2.10(B) (Judicial Statements on Pending and Impending Cases), except while serving as a judge; or</p> <p>(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), 3.14 (Reimbursement of Expenses and Waivers of Fees or Charges), 3.15 (Reporting Requirements), 4.1 (Political and Campaign Activities of Judges and Judicial Candidates in General), 4.2 (Political and Campaign Activities of Judicial</p>	<p>Application (A)(1)</p> <p>(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.</p> <p>(1) A Part-Time Judge</p> <p>(a) is not required to comply:</p> <p>(i) except while serving as a judge, with Section 3(A)(9); and</p> <p>(ii) at any time with Sections 5(C)(2) and (3), 5(D), 5(E), 5(F), 5(G) and 6(C).</p>	<p>outside employment which would interfere with their ability to sit on cases that routinely come before them.</p> <p>III. JUDGE PRO TEMPORE A judge pro tempore is not required to comply:</p> <p>(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</p> <p>(B) at any time with Rules 3.2 through 3.4, or with Rules 3.6 through 3.12.</p> <p>(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.</p> <p>(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.</p>

ABA Model Code	Current Washington Code	Final Task Force Recommendation
<p>Candidates in Public Elections), 4.3 (Activities of Candidates for Appointive Judicial Office), 4.4 (Campaign Committees), and 4.5 (Activities of Judges Who Become Candidates for Nonjudicial Office); and</p> <p>(B) shall not practice law in the court on which the judge serves or in any court subject to the appellate jurisdiction of the court on which the judge serves, and shall not act as a lawyer in a proceeding in which the judge has served as a judge or in any other proceeding related thereto.</p> <p>COMMENT</p> <p>[1] When a person who has been a continuing part-time judge is no longer a continuing part-time judge, including a retired judge no longer subject to recall, that person may act as a lawyer in a proceeding in which he or she has served as a judge or in any other proceeding related thereto only with the informed consent of all parties, and pursuant to any applicable Model Rules of Professional Conduct. An adopting jurisdiction should substitute a reference to its applicable rule.</p>		
<p>IV. PERIODIC PART-TIME JUDGE</p>	<p>Application (A)(1)</p>	<p>VI. TIME FOR COMPLIANCE</p>

ABA Model Code	Current Washington Code	Final Task Force Recommendation
<p>A periodic part-time judge who serves or expects to serve repeatedly on a part-time basis, but under a separate appointment for each limited period of service or for each matter,</p> <p>(A) is not required to comply:</p> <ul style="list-style-type: none"> (1) with Rule 2.10 (Judicial Statements on Pending and Impending Cases), except while serving as a judge; or (2) at any time with Rules 3.4 (Appointments to Governmental Positions), 3.7 (Participation in Educational, Religious, Charitable, Fraternal, or Civic Organizations and Activities), 3.8 (Appointments to Fiduciary Positions), 3.9 (Service as Arbitrator or Mediator), 3.10 (Practice of Law), 3.11 (Financial, Business, or Remunerative Activities), 3.13 (Acceptance and Reporting of Gifts, Loans, Bequests, Benefits, or Other Things of Value), 3.15 (Reporting Requirements), 4.1 (Political and Campaign Activities of Judges and Judicial Candidates in General), and 4.5 (Activities of Judges Who Become Candidates for Nonjudicial Office); and <p>(B) shall not practice law in the court on</p>	<p>(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.</p> <p>(1) A Part-Time Judge</p> <p>(a) is not required to comply:</p> <ul style="list-style-type: none"> (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). 	<p>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.</p> <p>COMMENT</p> <p>[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.</p>

ABA Model Code	Current Washington Code	Final Task Force Recommendation
<p>which the judge serves or in any court subject to the appellate jurisdiction of the court on which the judge serves, and shall not act as a lawyer in a proceeding in which the judge has served as a judge or in any other proceeding related thereto.</p>		
<p>V. PRO TEMPORE PART-TIME JUDGE A pro tempore part-time judge who serves or expects to serve once or only sporadically on a part-time basis under a separate appointment for each period of service or for each case heard is not required to comply:</p> <p>(A) except while serving as a judge, with Rules 1.2 (Promoting Confidence in the Judiciary), 2.4 (External Influences on Judicial Conduct), 2.10 (Judicial Statements on Pending and Impending Cases), or 3.2 (Appearances before Governmental Bodies and Consultation with Government Officials); or</p> <p>(B) at any time with Rules 3.4 (Appointments to Governmental Positions), 3.6 (Affiliation with Discriminatory Organizations), 3.7 (Participation in Educational, Religious, Charitable, Fraternal, or Civic Organizations and Activities), 3.8 (Appointments to Fiduciary Positions), 3.9 (Service as Arbitrator</p>	<p>Application (A)(2)</p> <p>(2) A Pro Tempore Judge</p> <p>(a) is not required to comply:</p> <p>(i) except while serving as a judge, with Sections 2(A), 2(B), 3(A)(9), 4(B), 4(C) and 7(A);</p> <p>(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).</p> <p>(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.</p>	

ABA Model Code	Current Washington Code	Final Task Force Recommendation
<p>or Mediator), 3.10 (Practice of Law), 3.11 (Financial, Business, or Remunerative Activities), 3.13 (Acceptance and Reporting of Gifts, Loans, Bequests, Benefits, or Other Things of Value), 3.15 (Reporting Requirements), 4.1 (Political and Campaign Activities of Judges and Judicial Candidates in General), and 4.5 (Activities of Judges Who Become Candidates for Nonjudicial Office).</p>		
<p>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.</p> <p>COMMENT</p> <p>[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</p>	<p>Application (B)</p> <p>(B) Time for Compliance. Persons to whom this Code becomes applicable should arrange their affairs as soon as reasonably possible to comply with it.</p>	

ABA Model Code	Current Washington Code	Final Task Force Recommendation
<p>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.</p>		

ABA Model Code	Current Washington Code	Final Task Force Recommendation
----------------	-------------------------	---------------------------------

TERMINOLOGY

ABA Model Code	Current Washington Code	Final Recommendation
<p>The first time any term listed below is used in a Rule in its defined sense, it is followed by an asterisk (*).</p> <p>“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.</p> <p>“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.</p> <p>“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.</p> <p>“De minimis,” in the context of interests pertaining to disqualification of a judge,</p>	<p style="color: purple;">Terminology</p> <p>“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).</p> <p>“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).</p> <p>“Court personnel” does not include the lawyers in a proceeding before a judge. See Sections 3(A)(7)(c) and 3(A)(9).</p> <p>“De minimis” denotes an insignificant interest that could not raise reasonable question as to a judge's impartiality. See Section 3(E).</p> <p>“Economic interest” denotes ownership of</p>	<p>The first time any term listed below is used in a Rule in its defined sense, it is followed by an asterisk (*).</p> <p>“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.</p> <p>“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.</p> <p>“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.</p> <p>“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</p>

ABA Model Code	Current Washington Code	Final Task Force Recommendation
<p>means an insignificant interest that could not raise a reasonable question regarding the judge's impartiality. See Rule 2.11.</p> <p>"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.</p> <p>"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:</p> <ol style="list-style-type: none"> (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 	<p>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:</p> <p>(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;</p> <p>(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;</p> <p>(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</p>	<p>the judge's impartiality. See Rule 2.11.</p> <p>"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.</p> <p>"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:</p> <ol style="list-style-type: none"> (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

ABA Model Code	Current Washington Code	Final Task Force Recommendation
<p>similar proprietary interests; or (4) an interest in the issuer of government securities held by the judge.</p> <p>See Rules 1.3 and 2.11.</p> <p>“Fiduciary” includes relationships such as executor, administrator, trustee, or guardian. See Rules 2.11, 3.2, and 3.8.</p> <p>“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.</p> <p>“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.</p> <p>“Impropriety” includes conduct that violates the law, court rules, or provisions of this Code, and conduct that undermines a judge’s independence, integrity, or impartiality. See Canon 1 and Rule 1.2.</p> <p>“Independence” means a judge’s freedom from influence or controls other</p>	<p>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).</p> <p>“Fiduciary” includes such relationships as executor, administrator, trustee and guardian. See Sections 3(D)(2) and 5(D).</p> <p>“Knowingly,” “knowledge,” “known” or “knows” denotes actual knowledge of the fact in question. See Sections 3(C) and 3(D)(1).</p> <p>“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).</p> <p>“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</p>	<p>government securities held by the judge.</p> <p>See Rules 1.3 and 2.11.</p> <p>“Financial Support” shall mean the total of the following items:</p> <ol style="list-style-type: none"> (1) 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 42.17.0201. (2) The pro rata share of any contribution to a political committee as defined by RCW 42.17.020 that is either contributed to the judge’s campaign or spent by the political committee in support of the judge’s campaign or against the judge’s opponent. (3) The pro rata share is calculated by multiplying the total spent by the political committee under subsection (ii) above by a fraction the numerator of which is the total contributed by the adverse party or lawyer to the political committee and the denominator is the total contributed by all persons to the

¹ We have opted to use the definition from the statute rather than the MCJC, which seems to include the value of volunteer services if those services were paid for. See definition of “contribution.” Our statute instead excludes the value of volunteer services.

ABA Model Code	Current Washington Code	Final Task Force Recommendation
<p>than those established by law. See Canons 1 and 4, and Rules 1.2, 3.1, 3.12, 3.13, and 4.2.</p> <p>“Integrity” means probity, fairness, honesty, uprightness, and soundness of character. See Canon 1 and Rule 1.2.</p> <p>“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.</p> <p>“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.</p> <p>“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.</p> <p>“Member of the candidate’s family”</p>	<p>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).</p> <p>"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).</p> <p>"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).</p> <p>"Pro tempore judges." Pro tempore judges are persons who are appointed to act temporarily as judges. See Application Section (A)(2).</p> <p>"Require." The rules prescribing that a</p>	<p>political committee.</p> <p>(4) In calculating the pro rata share, if funds are passed through a series of political committees, the same fractional calculation will be used for each committee.</p> <p>(5) The attribution rules of RCW 42.17.650 through .680 shall be used in calculating financial support.</p> <p>(6) Any financial support by an officer, director, or owner of an equity interest of 10% or more in any corporation, partnership or other entity shall be attributed to the corporation, partnership or other entity, and any financial support by the corporation, partnership or other entity shall be attributed to any officer, director, or owner of an equity interest of 10% or more.</p> <p>“Fiduciary” includes relationships such as executor, administrator, trustee, or guardian. See Rules 2.11, 3.2, and 3.8.</p> <p>“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</p>

ABA Model Code	Current Washington Code	Final Task Force Recommendation
<p>means a spouse, domestic partner, child, grandchild, parent, grandparent, or other relative or person with whom the candidate maintains a close familial relationship.</p> <p>“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.</p> <p>“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.</p> <p>“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.</p> <p>“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.</p>	<p>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).</p>	<p>discrimination may exist.</p> <p>“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.</p> <p>“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.</p> <p>“Impropriety” includes conduct that violates the law, court rules, or provisions of this Code, and conduct that undermines a judge’s independence, integrity, or impartiality. See Canon 1 and Rule 1.2.</p> <p>“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.</p> <p>“Integrity” means probity, fairness, honesty, uprightness, and soundness of character. See Canon 1 and Rule 1.2.</p> <p>“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</p>

ABA Model Code	Current Washington Code	Final Task Force Recommendation
<p>“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.</p> <p>“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.</p> <p>“Public election” includes primary and general elections, partisan elections, nonpartisan elections, and retention elections. See Rules 4.2 and 4.4.</p> <p>“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.</p>		<p>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.</p> <p>“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.</p> <p>“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.</p> <p>“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.</p> <p>“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.</p> <p>“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</p>

ABA Model Code	Current Washington Code	Final Task Force Recommendation
		<p>the judge's family, who resides in the judge's household. See Rules 2.11 and 3.13.</p> <p>"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.</p> <p>"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.</p> <p>"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.</p> <p>"Personally solicit" means a direct request made by a judge or a judicial candidate for</p>

ABA Model Code	Current Washington Code	Final Task Force Recommendation
		<p>financial support or in-kind services, whether made by letter, telephone, or any other means of communication. See Rule 4.1.</p> <p>“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.</p> <p>“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.</p> <p>“Public election” includes primary and general elections, partisan elections, nonpartisan elections, and retention</p>

ABA Model Code	Current Washington Code	Final Task Force Recommendation
		<p>elections. See Rules 4.2 and 4.4.</p> <p>“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.</p>

ABA Model Code	Current Washington Code	Final Task Force Recommendation
----------------	-------------------------	---------------------------------

CANON 1

RULE 1.1 Compliance with the Law25
RULE 1.2 Promoting Confidence in the Judiciary25
RULE 1.3 Avoiding Abuse of the Prestige of Judicial Office27

ABA Model Code	Current Washington Code	Final Recommendation
<p><i>A JUDGE SHALL UPHOLD AND PROMOTE THE INDEPENDENCE, INTEGRITY, AND IMPARTIALITY OF THE JUDICIARY, AND SHALL AVOID IMPROPRIETY AND THE APPEARANCE OF IMPROPRIETY.</i></p>	<p>Canon 1: Canon 1 in combination with 1990 Model Code Canon 2 in 2007 Model Code. Accordingly, the two Canons have been combined to underscore the instrumental relationship between them, and thereby reinforce the importance of both.</p> <p style="text-align: center;"><i>CANON 1</i></p> <p style="text-align: center;"><i>Judges shall uphold the integrity and independence of the judiciary.</i></p> <p>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.</p> <p style="text-align: center;"><i>Comment</i></p>	<p><i>A JUDGE SHALL UPHOLD AND PROMOTE THE INDEPENDENCE, INTEGRITY, AND IMPARTIALITY OF THE JUDICIARY, AND SHALL AVOID IMPROPRIETY AND THE APPEARANCE OF IMPROPRIETY.</i></p>

ABA Model Code	Current Washington Code	Final Task Force Recommendation
	<p><i>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.</i></p>	
<p>RULE 1.1 <i>Compliance with the Law</i></p> <p>A judge shall comply with the law,* including the Code of Judicial Conduct.</p>	<p>Canon 2(A): Rules 1.1 and 1.2 in 2007 Model Code. Does not have Rule 1.2</p> <p>Comments</p> <p style="text-align: center;">CANON 2</p> <p style="text-align: center;"><i>Judges should avoid impropriety and the appearance of impropriety in all their activities.</i></p> <p>(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</p>	<p>RULE 1.1 <i>Compliance with the Law</i></p> <p>A judge shall comply with the law,* including the Code of Judicial Conduct.</p> <p>COMMENT</p> <p><i>See Scope [6].</i></p>

ABA Model Code	Current Washington Code	Final Task Force Recommendation
	judiciary.	
<p>RULE 1.2 <i>Promoting Confidence in the Judiciary</i></p> <p>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 <i>and the appearance of impropriety.</i></p> <p>COMMENT</p> <p>[1] Public confidence in the judiciary is eroded by improper conduct <i>and conduct that creates the appearance of impropriety.</i> This principle applies to both the professional and personal conduct of a judge.</p> <p>[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.</p> <p>[3] Conduct that compromises or appears to compromise the independence, integrity, and impartiality of a judge undermines public confidence in the judiciary. <i>Because it is not practicable to list all such conduct, the Rule is necessarily cast in general terms.</i></p> <p>[4] Judges should participate in activities that promote ethical conduct among judges</p>	<p>Canon 2(A): Rules 1.1 and 1.2 in 2007 Model Code. Does not have Rule 1.2 Comments</p> <p style="text-align: center;">CANON 2</p> <p style="text-align: center;"><i>Judges should avoid impropriety and the appearance of impropriety in all their activities.</i></p> <p>(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.</p>	<p>RULE 1.2 <i>Promoting Confidence in the Judiciary</i></p> <p>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*.</p> <p>COMMENT</p> <p>[1] Public confidence in the judiciary is eroded by improper conduct. This principle applies to both the professional and personal conduct of a judge.</p> <p>[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.</p> <p>[3] Conduct that compromises the independence, integrity, and impartiality of a judge undermines public confidence in the judiciary.</p> <p>[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.</p>

ABA Model Code	Current Washington Code	Final Task Force Recommendation
<p>and lawyers, support professionalism within the judiciary and the legal profession, and promote access to justice for all.</p> <p>[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.</p> <p>[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.</p>		<p>[5] <i>The statement in Canon 1 that a judge shall avoid the appearance of impropriety is aspirational. Rule 1.2 sets forth the basis for discipline. Consistent with Scope [2], a judge may be disciplined for acts or conduct violating any part of Rule 1.2, including failing to avoid impropriety, but may not be disciplined for failing to avoid the appearance of impropriety.</i> Improproprieties include violations of law, court rules or provisions of this Code. <i>Whether a judge has violated Rule 1.2 by failing to act in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary shall be determined by use of an objective reasonable person test, not by subjective perceptions.</i></p> <p>[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.</p>
<p>RULE 1.3 <i>Avoiding Abuse of the Prestige of Judicial Office</i></p> <p>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.</p> <p>COMMENT</p>	<p>Canon 2(B): Rules 2.4(B) and (C), 1.3 and 3.3 in 2007 Model Code.</p> <p>(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</p>	<p>RULE 1.3 <i>Avoiding Abuse of the Prestige of Judicial Office</i></p> <p>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.</p> <p>COMMENT</p>

ABA Model Code	Current Washington Code	Final Task Force Recommendation
<p>[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.</p> <p>[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.</p> <p>[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.</p> <p>[4] Special considerations arise when judges write or contribute to publications of for-profit entities, whether related or unrelated to the</p>	<p>permit others to convey the impression that they are in a special position to influence them. Judges should not testify voluntarily as character witnesses.</p> <p>Canon 2(B) Comment first paragraph Rule 1.3 Comment [1] in 2007 Model Code. Does not have rest of 1.3 Comments.</p> <p>(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.</p> <p style="text-align: center;">Comment</p> <p><i>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</i></p>	<p>[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.</p> <p>[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.</p> <p>[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.</p> <p>[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</p>

ABA Model Code	Current Washington Code	Final Task Force Recommendation
<p>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.</p>	<p><i>prestige of office in all of their activities.</i></p> <p><i>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.</i></p>	<p>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.</p>

ABA Model Code	Current Washington Code	Final Task Force Recommendation
----------------	-------------------------	---------------------------------

CANON 2

RULE 2.1 Giving Precedence to the Duties of Judicial Office 29

RULE 2.2 Impartiality and Fairness 30

RULE 2.3 Bias, Prejudice and Harassment 31

RULE 2.4 External Influences on Judicial Conduct 33

RULE 2.5 Competence, Diligence, and Cooperation 34

RULE 2.6 Ensuring the Right to Be Heard 36

RULE 2.7 Responsibility to Decide 38

RULE 2.8 Decorum, Demeanor, and Communication with Jurors 38

RULE 2.9 Ex Parte Communications 40

RULE 2.10 Judicial Statements on Pending and Impending Cases 44

RULE 2.11 Disqualification 46

RULE 2.12 Supervisory Duties 51

RULE 2.13 Administrative Appointments 52

RULE 2.14 Disability and Impairment 54

RULE 2.15 Responding to Judicial and Lawyer Misconduct 55

RULE 2.16 Cooperation with Disciplinary Authorities 57

ABA Model Code	Current Washington Code	Final Recommendation
<i>A JUDGE SHALL PERFORM THE DUTIES OF JUDICIAL OFFICE IMPARTIALLY, COMPETENTLY, AND DILIGENTLY.</i>	<p>Canon 3: Canon 2 in 2007 Model Code.</p> <p>CANON 3</p> <p><i>Judges shall perform the duties of their office impartially and diligently.</i></p>	<i>A JUDGE SHOULD PERFORM THE DUTIES OF JUDICIAL OFFICE IMPARTIALLY, COMPETENTLY, AND DILIGENTLY.</i>
RULE 2.1 <i>Giving Precedence to the Duties of</i>	Canon 3 first paragraph: Rule 2.1 in 2007 Model Code.	RULE 2.1 <i>Giving Precedence to the Duties of Judicial</i>

ABA Model Code	Current Washington Code	Final Task Force Recommendation
<p>Judicial Office</p> <p>The duties of judicial office, as prescribed by law,* shall take precedence over all of a judge's personal and extrajudicial activities.</p> <p>COMMENT</p> <p>[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.</p> <p>[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.</p>	<p>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:</p> <p style="text-align: center;">∅</p>	<p>Office</p> <p>The duties of judicial office, as prescribed by law,* shall take precedence over all of a judge's personal and extrajudicial activities.</p> <p>COMMENT</p> <p>[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.</p> <p>[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.</p>
<p>RULE 2.2 <i>Impartiality and Fairness</i></p> <p>A judge shall uphold and apply the law,* and shall perform all duties of judicial office fairly and impartially.*</p> <p>COMMENT</p> <p>[1] To ensure impartiality and fairness to all parties, a judge must be objective and open-minded.</p> <p>[2] Although each judge comes to the</p>	<p>Canon 3(A)(1): Rules 2.2, 2.4(A) and 2.5(A) in 2007 Model Code.</p> <p>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:</p> <p>(A) Adjudicative Responsibilities.</p> <p>(1) Judges should be faithful to the law and maintain professional competence in it,</p>	<p>RULE 2.2 <i>Impartiality and Fairness</i></p> <p>A judge shall uphold and apply the law,* and shall perform all duties of judicial office fairly and impartially.*</p> <p>COMMENT</p> <p>[1] To ensure impartiality and fairness to all parties, a judge must be objective and open-minded.</p> <p>[2] Although each judge comes to the bench with</p>

ABA Model Code	Current Washington Code	Final Task Force Recommendation
<p>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.</p> <p>[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.</p> <p>[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.</p>	<p>and comply with the continuing judicial education requirements of GR 26. Judges should be unswayed by partisan interests, public clamor or fear of criticism.</p> <p style="text-align: center;">✂</p>	<p>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.</p> <p>[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.</p> <p>[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.</p>
<p>RULE 2.3 <i>Bias, Prejudice, and Harassment</i></p> <p>(A) A judge shall perform the duties of judicial office, including administrative duties, without bias or prejudice.</p> <p>(B) A judge shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice, or engage in harassment, <i>including but not limited to bias, prejudice, or harassment based upon race, sex, gender, religion, national origin, ethnicity, disability, age, sexual orientation, marital status, socioeconomic status, or political affiliation</i>, and shall not permit court staff, court officials, or others subject to the judge's direction and control to</p>	<p>Canon 3(A)(5): Rule 2.3(A) in 2007 Model Code. Does not mention administrative duties. Has no other provisions of 2.3.</p> <p>(A) Adjudicative Responsibilities.</p> <p>(5) Judges shall perform judicial duties without bias or prejudice.</p>	<p>RULE 2.3 <i>Bias, Prejudice, and Harassment</i></p> <p>(A) A judge shall perform the duties of judicial office, including administrative duties, without bias or prejudice.</p> <p>(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.</p> <p>(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.</p>

ABA Model Code	Current Washington Code	Final Task Force Recommendation
<p>do so.</p> <p>(C) A judge shall require lawyers in proceedings before the court to refrain from manifesting bias or prejudice, or engaging in harassment, <i>based upon attributes including but not limited to race, sex, gender, religion, national origin, ethnicity, disability, age, sexual orientation, marital status, socioeconomic status, or political affiliation</i>, against parties, witnesses, lawyers, or others.</p> <p>(D) The restrictions of paragraphs (B) and (C) do not preclude judges or lawyers from making legitimate reference to the listed factors, or similar factors, when they are relevant to an issue in a proceeding.</p> <p>COMMENT</p> <p>[1] A judge who manifests bias or prejudice in a proceeding impairs the fairness of the proceeding and brings the judiciary into disrepute.</p> <p>[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.</p>	<p style="text-align: center;">∞</p> <p>Canon 3(A)(5) Comment: Rule 2.3 Comments [1] – [4] in 2007 Model Code.</p> <p>(5) Judges shall perform judicial duties without bias or prejudice.</p> <p style="text-align: center;">Comment</p> <p><i>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.</i></p>	<p>(D) The restrictions of paragraphs (B) and (C) do not preclude judges or lawyers from making <i>reference to factors that are relevant to an issue in a proceeding.</i></p> <p>COMMENT</p> <p>[1] A judge who manifests bias or prejudice in a proceeding impairs the fairness of the proceeding and brings the judiciary into disrepute.</p> <p>[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.</p> <p>[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.</p>

ABA Model Code	Current Washington Code	Final Task Force Recommendation
<p>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.</p> <p>[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.</p> <p>[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.</p>		<p>[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.</p> <p>[5] <i>"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.</i></p>
<p>RULE 2.4 <i>External Influences on Judicial Conduct</i></p> <p>(A) A judge shall not be swayed by public clamor or fear of criticism.</p> <p>(B) A judge shall not permit family, social, political, financial, or other interests or relationships to influence the judge's</p>	<p>Canon 3(A)(1): Rules 2.2, 2.4(A) and 2.5(A) in 2007 Model Code.</p> <p>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</p>	<p>RULE 2.4 <i>External Influences on Judicial Conduct</i></p> <p>(A) A judge shall not be swayed by public clamor, or fear of criticism.</p> <p>(B) A judge shall not permit family, social, political, financial, or other interests or relationships to influence the judge's judicial conduct or</p>

ABA Model Code	Current Washington Code	Final Task Force Recommendation
<p>judicial conduct or judgment.</p> <p>(C) A judge shall not convey or permit others to convey the impression that any person or organization is in a position to influence the judge.</p> <p>COMMENT</p> <p>[1] An independent judiciary requires that judges decide cases according to the law and facts, without regard to whether particular laws or litigants are popular or unpopular with the public, the media, government officials, or the judge's friends or family. Confidence in the judiciary is eroded if judicial decision making is perceived to be subject to inappropriate outside influences.</p>	<p>these duties, the following standards apply:</p> <p>(A) Adjudicative Responsibilities.</p> <p>(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.</p> <p>Canon 2(B): Rules 2.4(B) and (C), 1.3 and 3.3 in 2007 Model Code.</p> <p>(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.</p>	<p>judgment.</p> <p>(C) A judge shall not convey or <i>authorize</i> others to convey the impression that any person or organization is in a position to influence the judge.</p> <p>COMMENT</p> <p>[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.</p>
<p>RULE 2.5 <i>Competence, Diligence, and Cooperation</i></p>	<p>Canon 3(B)(1): Rule 2.5, discussed above, in 2007 Model Code.</p> <p>(B) Judges should not allow family, social, or other relationships to influence their</p>	<p>RULE 2.5 <i>Competence, Diligence, and Cooperation</i></p> <p>(A) A judge shall perform judicial and</p>

ABA Model Code	Current Washington Code	Final Task Force Recommendation
<p>(A) A judge shall perform judicial and administrative duties, competently and diligently.</p> <p>(B) A judge shall cooperate with other judges and court officials in the administration of court business.</p> <p>COMMENT</p> <p>[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.</p> <p>[2] A judge should seek the necessary docket time, court staff, expertise, and resources to discharge all adjudicative and administrative responsibilities.</p> <p>[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.</p> <p>[4] In disposing of matters promptly and efficiently, a judge must demonstrate due regard for the rights of parties to</p>	<p>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.</p> <p>Canon 3(A)(6): Rule 2.5(A), discussed above, in 2007 Model Code.</p> <p>(A) Adjudicative Responsibilities.</p> <p>(6) Judges should dispose promptly of the business of the court.</p> <p>Canon 3(A)(1): Rules 2.2, 2.4(A) and 2.5(A) in 2007 Model Code.</p> <p>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:</p> <p>(A) Adjudicative Responsibilities.</p> <p>(1) Judges should be faithful to the law and</p>	<p>administrative duties, competently and diligently.</p> <p>(B) A judge shall cooperate with other judges and court officials in the administration of court business.</p> <p>COMMENT</p> <p>[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.</p> <p>[2] A judge should seek the necessary docket time, court staff, expertise, and resources to discharge all adjudicative and administrative responsibilities.</p> <p>[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.</p> <p>[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.</p>

ABA Model Code	Current Washington Code	Final Task Force Recommendation
<p>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.</p>	<p>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.</p> <p style="text-align: center;">✎</p> <p>Canon 3(A)(6) Comment: Rule 2.5 Comments [3] and [4] in 2007 Model Code.</p> <p>(A) Adjudicative Responsibilities.</p> <p>(6) Judges should dispose promptly of the business of the court.</p> <p style="text-align: center;">Comment</p> <p><i>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.</i></p>	
<p>RULE 2.6 <i>Ensuring the Right to Be Heard</i></p> <p>(A) A judge shall accord to every person who has a legal interest in a proceeding, or that person's lawyer,</p>	<p>Canon 3(A)(4): Rules 2.6(A) and 2.9 in 2007 Model Code. Uses "should" rather than "shall." Adds "full" before "right to be heard." Prohibits all ex parte communication, except when authorized</p>	<p>RULE 2.6 <i>Ensuring the Right to Be Heard</i></p> <p>(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</p>

ABA Model Code	Current Washington Code	Final Task Force Recommendation
<p>the right to be heard according to law.*</p> <p>(B) A judge may encourage parties to a proceeding and their lawyers to settle matters in dispute but shall not act in a manner that coerces any party into settlement.</p> <p>COMMENT</p> <p>[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.</p> <p>[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</p>	<p>by law, with exception for advice of disinterested party by amicus. Does not have Rule 2.6(B) or the 2.6 Comments and has none of the other provisions of Rule 2.9 or its Comments except as indicated below.</p> <p>(A) Adjudicative Responsibilities.</p> <p>(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.</p> <p style="text-align: center;">✎</p>	<p>according to law.*</p> <p>(B) Consistent with controlling court rules, a judge may encourage parties to a proceeding and their lawyers to settle matters in dispute but <i>should</i> not act in a manner that coerces any party into settlement.</p> <p>COMMENT</p> <p>[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.</p> <p>[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</p>

ABA Model Code	Current Washington Code	Final Task Force Recommendation
<p>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.</p> <p>[3] Judges must be mindful of the effect settlement discussions can have, not only on their objectivity and impartiality, but also on the appearance of their objectivity and impartiality. Despite a judge's best efforts, there may be instances when information obtained during settlement discussions could influence a judge's decision making during trial, and, in such instances, the judge should consider whether disqualification may be appropriate. See Rule 2.11(A)(1).</p>		<p>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.</p> <p>[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 <i>or recusal</i> may be appropriate. See Rule 2.11(A)(1).</p>
<p>RULE 2.7 <i>Responsibility to Decide</i></p> <p>A judge shall hear and decide matters assigned to the judge, except when disqualification is required by Rule 2.11 or other law.*</p> <p>COMMENT</p>	<p>∅</p>	<p>RULE 2.7 <i>Responsibility to Decide</i></p> <p>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.*</p> <p>COMMENT</p> <p>[1] Judges must be available to decide the matters</p>

ABA Model Code	Current Washington Code	Final Task Force Recommendation
<p>[1] Judges must be available to decide the matters that come before the court. Although there are times when disqualification is necessary to protect the rights of litigants and preserve public confidence in the independence, integrity, and impartiality of the judiciary, judges must be available to decide matters that come before the courts. Unwarranted disqualification may bring public disfavor to the court and to the judge personally. The dignity of the court, the judge's respect for fulfillment of judicial duties, and a proper concern for the burdens that may be imposed upon the judge's colleagues require that a judge not use disqualification to avoid cases that present difficult, controversial, or unpopular issues.</p>		<p>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 <i>or recusal</i> to avoid cases that present difficult, controversial, or unpopular issues.</p>
<p>RULE 2.8 <i>Decorum, Demeanor, and Communication with Jurors</i></p> <p>(A) A judge shall require order and decorum in proceedings before the court.</p> <p>(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</p>	<p>Canon 3(A)(2): Rule 2.8(A) in 2007 Model Code.</p> <p>(A) Adjudicative Responsibilities.</p> <p>(2) Judges should maintain order and decorum in proceedings before them.</p> <p>Canon 3(A)(3): Rule 2.8(B) in 2007 Model Code.</p>	<p>RULE 2.8 <i>Decorum, Demeanor, and Communication with Jurors</i></p> <p>(A) A judge shall require order and decorum in proceedings before the court.</p> <p>(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</p>

ABA Model Code	Current Washington Code	Final Task Force Recommendation
<p>similar conduct of lawyers, court staff, court officials, and others subject to the judge's direction and control.</p> <p>(C) A judge shall not commend or criticize jurors for their verdict other than in a court order or opinion in a proceeding.</p> <p>COMMENT</p> <p>[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.</p> <p>[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.</p> <p>[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.</p>	<p>(A) Adjudicative Responsibilities.</p> <p>(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.</p> <p>Canon 3(A)(8): Rule 2.8(C) in 2007 Model Code.</p> <p>(A) Adjudicative Responsibilities.</p> <p>(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.</p> <p style="text-align: center;">∅</p> <p>Canon 3(A)(3) Comment: Rule 2.8 Comment [1] in 2007 Model Code.</p> <p>(A) Adjudicative Responsibilities.</p>	<p>subject to the judge's direction and control.</p> <p>(C) A judge shall not commend or criticize jurors for their verdict other than in a court order or opinion in a proceeding.</p> <p>COMMENT</p> <p>[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.</p> <p>[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.</p> <p>[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.</p>

ABA Model Code	Current Washington Code	Final Task Force Recommendation
	<p>(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.</p> <p style="text-align: center;">Comment</p> <p><i>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.</i></p> <p>Canon 3(A)(8) Comment: Rule 2.8 Comments [2] and [3] in 2007 Model Code. (A) Adjudicative Responsibilities.</p> <p>(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.</p>	
<p>RULE 2.9 <i>Ex Parte Communications</i></p> <p>(A) A judge shall not initiate, permit, or consider ex parte communications, or</p>		<p>RULE 2.9 <i>Ex Parte Communications</i></p> <p>(A) A judge shall not initiate, permit, or consider ex parte communications, or consider other</p>

ABA Model Code	Current Washington Code	Final Task Force Recommendation
<p>consider other communications made to the judge outside the presence of the parties or their lawyers, concerning a pending* or impending matter,* except as follows:</p> <p>(1) When circumstances require it, ex parte communication for scheduling, administrative, or emergency purposes, which does not address substantive matters, is permitted, provided:</p> <p>(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</p> <p>(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.</p> <p>(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 <i>gives advance notice to the parties of the person to be consulted and the subject matter of the advice to be solicited</i>, and affords the parties a reasonable opportunity to object and respond to the notice and to the advice received.</p> <p>(3) A judge may consult with court staff and court officials whose functions are</p>	<p style="text-align: center;">∅</p> <p>Canon 3(A)(4) Comment first paragraph: Rule 2.9 Comment [3] and (A)(3) in 2007 Model Code.</p> <p>(A) Adjudicative Responsibilities.</p> <p style="text-align: center;">Comment</p> <p><i>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.</i></p>	<p>communications made to the judge outside the presence of the parties or their lawyers, concerning a pending* or impending matter,* <i>before that judge's court</i> except as follows:</p> <p>(1) When circumstances require it, ex parte communication for scheduling, administrative, or emergency purposes, which does not address substantive matters, <i>or ex parte communication pursuant to a written policy or rule for a mental health court, drug court, or other therapeutic court</i>, is permitted, provided:</p> <p>(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</p> <p>(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.</p> <p>(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.</p> <p>(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</p>

ABA Model Code	Current Washington Code	Final Task Force Recommendation
<p>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.</p> <p>(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.</p> <p>(5) A judge may initiate, permit, or consider any ex parte communication when expressly authorized by law* to do so.</p> <p>(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.</p> <p>(C) A judge shall not investigate facts in a matter independently, and shall consider only the evidence presented and any facts that may properly be judicially noticed.</p> <p>(D) A judge shall make reasonable efforts, including providing appropriate</p>		<p>responsibility personally to decide the matter.</p> <p>(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.</p> <p>(5) A judge may initiate, permit, or consider any ex parte communication when expressly authorized by law* to do so.</p> <p>(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.</p> <p>(C) A judge shall not investigate facts in a matter <i>pending or impending before that judge</i>, and shall consider only the evidence presented and any facts that may properly be judicially noticed, <i>unless expressly authorized by law</i>.</p> <p>(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.</p> <p>COMMENT</p> <p>[1] To the extent reasonably possible, all parties or their lawyers shall be included in communications with a judge.</p> <p>[2] Whenever the presence of a party or notice to</p>

ABA Model Code	Current Washington Code	Final Task Force Recommendation
<p>supervision, to ensure that this Rule is not violated by court staff, court officials, and others subject to the judge's direction and control.</p> <p>COMMENT</p> <p>[1] To the extent reasonably possible, all parties or their lawyers shall be included in communications with a judge.</p> <p>[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.</p> <p>[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.</p> <p>[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.</p>		<p>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.</p> <p>[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.</p> <p>[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.</p> <p>[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.</p> <p>[6] The prohibition against a judge investigating the facts in a matter extends to information available in all mediums, including electronic.</p> <p>[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).</p>

ABA Model Code	Current Washington Code	Final Task Force Recommendation
<p>[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.</p> <p>[6] The prohibition against a judge investigating the facts in a matter extends to information available in all mediums, including electronic.</p> <p>[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).</p>		
<p>RULE 2.10 <i>Judicial Statements on Pending and Impending Cases</i></p> <p>(A) A judge shall not make any public statement that might reasonably be expected to affect the outcome or impair the fairness of a matter pending* or impending* in any court, or make any nonpublic statement that might substantially interfere with a fair trial or hearing.</p> <p>(B) A judge shall not, in connection with cases, controversies, or issues that are likely to come before the court,</p>	<p>Canon 3(A)(7): Rule 2.10(A), (C), (D) and (E) in 2007 Model Code. Does not have 2.10(B) or Comments.</p> <p>(A) Adjudicative Responsibilities.</p> <p>(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</p>	<p>RULE 2.10 <i>Judicial Statements on Pending and Impending Cases</i></p> <p>(A) A judge shall not make any public statement that <i>would</i> 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 <i>would reasonably be expected to</i> substantially interfere with a fair trial or hearing.</p> <p>(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</p>

ABA Model Code	Current Washington Code	Final Task Force Recommendation
<p>make pledges, promises, or commitments that are inconsistent with the impartial* performance of the adjudicative duties of judicial office.</p> <p>(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).</p> <p>(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.</p> <p>(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.</p> <p>COMMENT</p> <p>[1] This Rule's restrictions on judicial speech are essential to the maintenance of the independence, integrity, and impartiality of the judiciary.</p> <p>[2] This Rule does not prohibit a judge</p>	<p>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.</p> <p style="text-align: center;">∅</p>	<p>impartial* performance of the adjudicative duties of judicial office.</p> <p>(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).</p> <p>(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.</p> <p>(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.</p> <p>COMMENT</p> <p>[1] This Rule's restrictions on judicial speech are essential to the maintenance of the independence, integrity, and impartiality of the judiciary.</p> <p>[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.</p>

ABA Model Code	Current Washington Code	Final Task Force Recommendation
<p>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.</p> <p>[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.</p>		<p>[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.</p> <p><i>[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.</i></p>
<p>RULE 2.11 <i>Disqualification</i></p> <p>(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:</p> <p>(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.</p> <p>(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</p>	<p>Canon 3(D)(1): Rule 2.11(A) in 2007 Model Code.</p> <p>(D) Disqualification.</p> <p>(1) Judges should disqualify themselves in a proceeding in which their impartiality might reasonably be questioned, including but not limited to instances in which:</p> <p>Canon 3(D)(1)(a): Rule 2.11(A)(1) in 2007 Model Code.</p> <p>(D) Disqualification.</p> <p>(1) Judges should disqualify themselves in a</p>	<p>RULE 2.11 <i>Disqualification</i></p> <p>(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:</p> <p>(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.</p> <p>(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:</p>

ABA Model Code	Current Washington Code	Final Task Force Recommendation
<p>partner of such a person is:</p> <p>(a) a party to the proceeding, or an officer, director, general partner, managing member, or trustee of a party;</p> <p>(b) acting as a lawyer in the proceeding;</p> <p>(c) a person who has more than a de minimis* interest that could be substantially affected by the proceeding; or</p> <p>(d) likely to be a material witness in the proceeding.</p> <p>(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.</p> <p><i>(4) The judge knows or learns by means of a timely motion that a party, a party's lawyer, or the law firm of a party's lawyer has within the previous [insert number] year[s] made aggregate* contributions* to the judge's campaign in an amount that [is greater than \$[insert amount]] for an individual</i></p>	<p>proceeding in which their impartiality might reasonably be questioned, including but not limited to instances in which:</p> <p>(a) the judge has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding;</p> <p>Canon 3(D)(1)(b): Rule 2.11(A)(6) (a) and (c) in 2007 Model Code.</p> <p>(D) Disqualification.</p> <p>(1) Judges should disqualify themselves in a proceeding in which their impartiality might reasonably be questioned, including but not limited to instances in which:</p> <p>(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;</p> <p>Canon 3(D)(1)(d): Rule 2.11(A)(2) in 2007 Model Code.</p>	<p>(a) a party to the proceeding, or an officer, director, general partner, managing member, or trustee of a party;</p> <p>(b) acting as a lawyer in the proceeding;</p> <p>(c) a person who has more than a de minimis* interest that could be substantially affected by the proceeding; or</p> <p>(d) likely to be a material witness in the proceeding.</p> <p>(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.</p> <p>(4) 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 in excess of 10 times the dollar amount of the campaign contribution limit established by RCW 42.17.</p> <p>(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.</p>

ABA Model Code	Current Washington Code	Final Task Force Recommendation
<p><i>or \$[insert amount] for an entity [is reasonable and appropriate for an individual or an entity].</i></p> <p>(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 <i>or appears to commit</i> the judge to reach a particular result or rule in a particular way in the proceeding or controversy.</p> <p>(6) The judge:</p> <p>(a) served as a lawyer in the matter in controversy, or was associated with a lawyer who participated substantially as a lawyer in the matter during such association;</p> <p>(b) served in governmental employment, and in such capacity participated personally and substantially as a <i>lawyer or</i> public official concerning the proceeding, or has publicly expressed in such capacity an opinion concerning the merits of the particular matter in controversy;</p> <p>(c) was a material witness concerning the matter; or</p> <p>(d) previously presided as a judge over the matter in another court.</p> <p>(B) A judge shall keep informed about the</p>	<p>(D) Disqualification.</p> <p>(1) Judges should disqualify themselves in a proceeding in which their impartiality might reasonably be questioned, including but not limited to instances in which:</p> <p>(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:</p> <p>Canon 3(D)(1)(c): Rule 2.11(A)(3) and Comment [6] in 2007 Model Code.</p> <p>(D) Disqualification.</p> <p>(1) Judges should disqualify themselves in a proceeding in which their impartiality might reasonably be questioned, including but not limited to instances in which:</p> <p>(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</p>	<p>(6) The judge:</p> <p>(a) served as a lawyer in the matter in controversy, or was associated with a lawyer who participated substantially as a lawyer <i>or a material witness</i> in the matter during such association;</p> <p>(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;</p> <p>(c) was a material witness concerning the matter; or</p> <p>(d) previously presided as a judge over the matter in another court.</p> <p>(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.</p> <p>(C) <i>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</i></p>

ABA Model Code	Current Washington Code	Final Task Force Recommendation
<p>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.</p> <p>(C) A judge subject to disqualification under this Rule, other than for bias or prejudice under paragraph (A)(1), may disclose on the record the basis of the judge's disqualification and may ask the parties and their lawyers to consider, outside the presence of the judge and court personnel, whether to waive disqualification. If, following the disclosure, the parties and lawyers agree, without participation by the judge or court personnel, that the judge should not be disqualified, the judge may participate in the proceeding. The agreement shall be incorporated into the record of the proceeding.</p> <p>COMMENT</p> <p>[1] Under this Rule, a judge is disqualified whenever the judge's impartiality might reasonably be questioned, regardless of whether any of the specific provisions of paragraphs (A)(1) through (6) apply. In many jurisdictions, the term "recusal" is used interchangeably with the term "disqualification."</p>	<p>be substantially affected by the outcome of the proceeding, unless there is a remittal of disqualification;</p> <p>Canon 3(D)(2): Rule 2.11(B) in 2007 Model Code.</p> <p>(D) Disqualification.</p> <p>(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.</p> <p>Canon 3(E): Rule 2.11(C) in 2007 Model Code.</p> <p>(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</p>	<p><i>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.</i></p> <p>COMMENT</p> <p>[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, the term "recusal" is used interchangeably with the term "disqualification."</p> <p>[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.</p> <p>[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.</p>

ABA Model Code	Current Washington Code	Final Task Force Recommendation
<p>[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.</p> <p>[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.</p> <p>[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.</p>	<p>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.</p> <p style="text-align: center;">✎</p> <p>Canon 3(D)(1) Comment: Rule 2.11 Comment [4] in 2007 Model Code.</p> <p style="text-align: center;">Comment</p> <p><i>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</i></p>	<p>[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.</p> <p>[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.</p> <p>[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:</p> <p>(1) an interest in the individual holdings within a mutual or common investment fund;</p> <p>(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;</p>

ABA Model Code	Current Washington Code	Final Task Force Recommendation
<p>[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.</p> <p>[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:</p> <p>(1) an interest in the individual holdings within a mutual or common investment fund;</p> <p>(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;</p> <p>(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</p>	<p><i>"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.</i></p>	<p>(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</p> <p>(4) an interest in the issuer of government securities held by the judge.</p> <p><i>[7] 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 more than two times but less than 10 times the dollar amount of the campaign contribution limit established by RCW 42.17, if the judge concludes the judge’s impartiality might reasonably be questioned. In making this determination the judge should consider:</i></p> <p><i>(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,</i></p> <p><i>(2) the timing between the financial support and the pendency of the matter, and</i></p> <p><i>(3) any additional circumstances pertaining to disqualification.</i></p> <p><i>[8] A judge should not ordinarily disqualify himself or herself based on an amount less than two times the campaign contribution limit, absent</i></p>

ABA Model Code	Current Washington Code	Final Task Force Recommendation
<p>(4) an interest in the issuer of government securities held by the judge.</p>		<p><i>additional circumstances supporting disqualification.</i></p>
<p>RULE 2.12 Supervisory Duties</p> <p>(A) A judge shall require court staff, court officials, and others subject to the judge's direction and control to act in a manner consistent with the judge's obligations under this Code.</p> <p>(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.</p> <p>COMMENT</p> <p>[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.</p> <p>[2] Public confidence in the judicial system</p>	<p>Canon 3(B)(2): Rule 2.12(A) and Comment [1] in 2007 Model Code. Does not have 2.12(B) or Comment [2].</p> <p>(B) Administrative Responsibilities.</p> <p>(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.</p> <p style="text-align: center;">✎</p>	<p>RULE 2.12 Supervisory Duties</p> <p>(A) A judge shall require court staff, court officials, and others subject to the judge's direction and control to act <i>with fidelity and in a diligent manner consistent</i> with the judge's obligations under this Code.</p> <p>(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.</p> <p>COMMENT</p> <p>[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.</p> <p>[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</p>

ABA Model Code	Current Washington Code	Final Task Force Recommendation
<p>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.</p>		<p>needed to ensure that judges under his or her supervision administer their workloads promptly.</p>
<p>RULE 2.13 <i>Administrative Appointments</i></p> <p>(A) In making administrative appointments, a judge:</p> <p>(1) shall exercise the power of appointment impartially* and on the basis of merit; and</p> <p>(2) shall avoid nepotism, <i>favoritism</i>, and unnecessary appointments.</p> <p>(B) A judge shall not appoint a lawyer to a position if the judge either knows* that the lawyer, or the lawyer's spouse or domestic partner,* has contributed more than \$[insert amount] within the prior [insert number] year[s] to the judge's election campaign, or learns of such a contribution* by means of a timely motion by a party or other person properly interested in the matter, unless:</p> <p>(1) the position is substantially uncompensated;</p> <p>(2) the lawyer has been selected in</p>	<p>Canon 3(B)(3): Rule 2.13(A) and (C) in 2007 Model Code. Does not have 2.13(B).</p> <p>(B) Administrative Responsibilities.</p> <p>(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.</p> <p style="text-align: center;">✎</p> <p>Canon 3(B) Comment: Rule 2.13 Comments [1] and [2] in 2007 Model Code. Does not have Comment [3].</p> <p style="text-align: center;">Comment</p> <p><i>Appointees of the judge include officials such as referees, commissioners, special masters, receivers, guardians and personnel</i></p>	<p>RULE 2.13 <i>Administrative Appointments</i></p> <p>(A) In making administrative appointments, a judge:</p> <p>(1) shall exercise the power of appointment impartially* and on the basis of merit; and</p> <p>(2) shall avoid nepotism and unnecessary appointments.</p> <p>(B) A judge shall not appoint a lawyer to a <i>position under circumstances where it would be reasonably to be interpreted to be quid pro quo for campaign contributions or other favors</i>, unless:</p> <p>(1) the position is substantially uncompensated;</p> <p>(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</p> <p>(3) the judge or another presiding or administrative judge affirmatively finds that no</p>

ABA Model Code	Current Washington Code	Final Task Force Recommendation
<p>rotation from a list of qualified and available lawyers compiled without regard to their having made political contributions; or</p> <p>(3) the judge or another presiding or administrative judge affirmatively finds that no other lawyer is willing, competent, and able to accept the position.</p> <p>(C) A judge shall not approve compensation of appointees beyond the fair value of services rendered.</p> <p>COMMENT</p> <p>[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).</p> <p>[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.</p>	<p><i>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.</i></p>	<p>other lawyer is willing, competent, and able to accept the position.</p> <p>(C) A judge shall not approve compensation of appointees beyond the fair value of services rendered.</p> <p>COMMENT</p> <p>[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).</p> <p>[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.</p>

ABA Model Code	Current Washington Code	Final Task Force Recommendation
<p><i>[3] The rule against making administrative appointments of lawyers who have contributed in excess of a specified dollar amount to a judge's election campaign includes an exception for positions that are substantially uncompensated, such as those for which the lawyer's compensation is limited to reimbursement for out-of-pocket expenses.</i></p>		
<p>RULE 2.14 <i>Disability and Impairment</i></p> <p>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.</p> <p>COMMENT</p> <p>[1] "Appropriate action" means action intended and reasonably likely to help the judge or lawyer in question address the problem and prevent harm to the justice system. Depending upon the circumstances, appropriate action may include but is not limited to speaking directly to the impaired person, notifying an individual with supervisory responsibility over the impaired person, or making a referral to an assistance program.</p>	<p>∅</p>	<p>RULE 2.14 <i>Disability and Impairment</i></p> <p>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.</p> <p>COMMENT</p> <p>[1] "Appropriate action" means action intended and reasonably likely to help the judge or lawyer in question address the problem and prevent harm to the justice system. Depending upon the circumstances, appropriate action may include but is not limited to speaking directly to the impaired person, notifying an individual with supervisory responsibility over the impaired person, or making a referral to an assistance program.</p> <p>[2] Taking or initiating corrective action by way of referral to an assistance program may satisfy</p>

ABA Model Code	Current Washington Code	Final Task Force Recommendation
<p>[2] Taking or initiating corrective action by way of referral to an assistance program may satisfy a judge's responsibility under this Rule. Assistance programs have many approaches for offering help to impaired judges and lawyers, such as intervention, counseling, or referral to appropriate health care professionals. Depending upon the gravity of the conduct that has come to the judge's attention, however, the judge may be required to take other action, such as reporting the impaired judge or lawyer to the appropriate authority, agency, or body. See Rule 2.15.</p>		<p>a judge's responsibility under this Rule. Assistance programs have many approaches for offering help to impaired judges and lawyers, such as intervention, counseling, or referral to appropriate health care professionals. Depending upon the gravity of the conduct that has come to the judge's attention, however, the judge may be required to take other action, such as reporting the impaired judge or lawyer to the appropriate authority, agency, or body. See Rule 2.15.</p>
<p>RULE 2.15 <i>Responding to Judicial and Lawyer Misconduct</i></p> <p>(A) A judge having knowledge* that another judge has committed a violation of this Code that raises a substantial question regarding the judge's honesty, trustworthiness, or fitness as a judge in other respects shall inform the appropriate authority.*</p> <p>(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</p>	<p>Canon 3(C)(1) : Rule 2.15(A) and (C) in 2007 Model Code. Does not have Comments.</p> <p>(C) Disciplinary Responsibilities.</p> <p>(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</p>	<p>RULE 2.15 <i>Responding to Judicial and Lawyer Misconduct</i></p> <p>(A) A judge having knowledge* that another judge has committed a violation of this Code that raises a substantial question regarding the judge's honesty, trustworthiness, or fitness as a judge in other respects shall inform the appropriate authority.*</p> <p>(B) A judge having knowledge that a lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial question regarding the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects shall inform the appropriate authority.</p>

ABA Model Code	Current Washington Code	Final Task Force Recommendation
<p>shall inform the appropriate authority.</p> <p>(C) A judge who receives information indicating a substantial likelihood that another judge has committed a violation of this Code shall take appropriate action.</p> <p>(D) A judge who receives information indicating a substantial likelihood that a lawyer has committed a violation of the Rules of Professional Conduct shall take appropriate action.</p> <p>COMMENT</p> <p>[1] Taking action to address known misconduct is a judge's obligation. Paragraphs (A) and (B) impose an obligation on the judge to report to the appropriate disciplinary authority the known misconduct of another judge or a lawyer that raises a substantial question regarding the honesty, trustworthiness, or fitness of that judge or lawyer. Ignoring or denying known misconduct among one's judicial colleagues or members of the legal profession undermines a judge's responsibility to participate in efforts to ensure public respect for the justice system. This Rule limits the reporting obligation to those offenses that an independent judiciary must vigorously endeavor to prevent.</p> <p>[2] A judge who does not have actual</p>	<p>informing the appropriate authority.</p> <p>Canon 3(C)(2): Rule 2.15(B) and (D) in 2007 Model Code.</p> <p>(C) Disciplinary Responsibilities.</p> <p>(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.</p>	<p>(C) A judge who receives <i>credible</i> information indicating a substantial likelihood that another judge has committed a violation of this Code shall take appropriate action.</p> <p>(D) A judge who receives <i>credible</i> information indicating a substantial likelihood that a lawyer has committed a violation of the Rules of Professional Conduct shall take appropriate action.</p> <p>COMMENT</p> <p>[1] Taking action to address known misconduct is a judge's obligation. Paragraphs (A) and (B) impose an obligation on the judge to report to the appropriate disciplinary authority the known misconduct of another judge or a lawyer that raises a substantial question regarding the honesty, trustworthiness, or fitness of that judge or lawyer. Ignoring or denying known misconduct among one's judicial colleagues or members of the legal profession undermines a judge's responsibility to participate in efforts to ensure public respect for the justice system. This Rule limits the reporting obligation to those offenses that an independent judiciary must vigorously endeavor to prevent.</p> <p>[2] A judge who does not have actual knowledge that another judge or a lawyer may have committed misconduct, but receives information indicating a substantial likelihood of such misconduct, is required to take appropriate action under paragraphs (C) and (D). Appropriate action may include, but is not</p>

ABA Model Code	Current Washington Code	Final Task Force Recommendation
<p>knowledge that another judge or a lawyer may have committed misconduct, but receives information indicating a substantial likelihood of such misconduct, is required to take appropriate action under paragraphs (C) and (D). Appropriate action may include, but is not limited to, communicating directly with the judge who may have violated this Code, communicating with a supervising judge, or reporting the suspected violation to the appropriate authority or other agency or body. Similarly, actions to be taken in response to information indicating that a lawyer has committed a violation of the Rules of Professional Conduct may include but are not limited to communicating directly with the lawyer who may have committed the violation, or reporting the suspected violation to the appropriate authority or other agency or body.</p>		<p>limited to, communicating directly with the judge who may have violated this Code, communicating with a supervising judge, or reporting the suspected violation to the appropriate authority or other agency or body. Similarly, actions to be taken in response to information indicating that a lawyer has committed a violation of the Rules of Professional Conduct may include but are not limited to communicating directly with the lawyer who may have committed the violation, or reporting the suspected violation to the appropriate authority or other agency or body.</p>
<p>RULE 2.16 <i>Cooperation with Disciplinary Authorities</i></p> <p>(A) A judge shall cooperate and be candid and honest with judicial and lawyer disciplinary agencies.</p> <p>(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</p>	<p>∅</p>	<p>RULE 2.16 <i>Cooperation with Disciplinary Authorities</i></p> <p>(A) A judge shall cooperate and be candid and honest with judicial and lawyer disciplinary agencies.</p> <p>(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.</p>

ABA Model Code	Current Washington Code	Final Task Force Recommendation
<p>judge or a lawyer.</p> <p>COMMENT</p> <p>[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.</p>		<p>COMMENT</p> <p>[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.</p>

ABA Model Code	Current Washington Code	Final Task Force Recommendation
----------------	-------------------------	---------------------------------

CANON 3

RULE 3.1 Extrajudicial Activities in General 59

RULE 3.2 Appearances before Governmental Bodies and Consultation with Government Officials 62

RULE 3.3 Testifying as Character Witness..... 63

RULE 3.4 Appointments to Governmental Positions. 65

RULE 3.5 Use of Nonpublic Information. 66

RULE 3.6 Affiliation with Discriminatory Organizations..... 67

RULE 3.7 Participation in Educational, Religious, Charitable, Fraternal, or
Civic Organizations and Activities 69

RULE 3.8 Appointments to Fiduciary Positions 73

RULE 3.9 Service as Arbitrator or Mediator..... 74

RULE 3.10 Practice of Law..... 75

RULE 3.11 Financial, Business, or Remunerative Activities 76

RULE 3.12 Compensation for Extrajudicial Activities..... 78

RULE 3.13 Acceptance and Reporting of Gifts, Loans, Bequests, Benefits, or
Other Things of Value 79

RULE 3.14 Reimbursement of Expenses and Waivers of Fees or Charges..... 84

RULE 3.15 Reporting Requirements 87

ABA Model Code	Current Washington Code	Final Recommendation
<i>A JUDGE SHALL CONDUCT THE JUDGE'S PERSONAL AND EXTRAJUDICIAL ACTIVITIES TO MINIMIZE THE RISK OF CONFLICT WITH THE OBLIGATIONS OF JUDICIAL OFFICE.</i>		<i>A JUDGE SHALL CONDUCT THE JUDGE'S PERSONAL AND EXTRAJUDICIAL ACTIVITIES TO MINIMIZE THE RISK OF CONFLICT WITH THE OBLIGATIONS OF JUDICIAL OFFICE.</i>
RULE 3.1 <i>Extrajudicial Activities in General</i> A judge may engage in extrajudicial	Canon 4 first paragraph: Rule 3.1 in 2007 Model Code.	RULE 3.1 <i>Extrajudicial Activities in General</i>

ABA Model Code	Current Washington Code	Final Task Force Recommendation
<p>activities, except as prohibited by law* or this Code. However, when engaging in extrajudicial activities, a judge shall not:</p> <p>(A) participate in activities that will interfere with the proper performance of the judge's judicial duties;</p> <p>(B) participate in activities that will lead to frequent disqualification of the judge;</p> <p>(C) participate in activities that would appear to a reasonable person to undermine the judge's independence,* integrity,* or impartiality;*</p> <p>(D) engage in conduct that would <i>appear to a reasonable person to</i> be coercive; or</p> <p>(E) make use of court premises, staff, stationery, equipment, or other resources, except for incidental use <i>for activities that concern the law, the legal system, or the administration of justice, or unless such additional use is permitted by law.</i></p> <p>COMMENT</p> <p>[1] To the extent that time permits, and judicial independence and impartiality are not compromised, judges are encouraged to engage in appropriate extrajudicial activities. Judges are uniquely qualified to engage in extrajudicial activities that concern the</p>	<p style="text-align: center;">CANON 4</p> <p style="text-align: center;"><i>Judges may engage in activities to improve the law, the legal system and the administration of justice.</i></p> <p>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:</p> <p>Canon 5(B): Rules 3.1, 3.7(A) and (A)(6) in 2007 Model Code. Applies only to civic and charitable activities. Activities must not affect impartiality or judicial duties.</p> <p>(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</p>	<p>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:</p> <p>(A) participate in activities that will interfere with the proper performance of the judge's judicial duties</p> <p>(B) participate in activities that will lead to frequent disqualification of the judge; <i>except activities expressly allowed under this code. This rule does not apply to national or state military service.</i></p> <p>(C) participate in activities that would undermine the judge's independence,* integrity,* or impartiality;*</p> <p>(D) engage in conduct that would be coercive; or</p> <p>(E) make <i>extrajudicial or personal</i> use of court premises, staff, stationery, equipment, or other resources, except for incidental use permitted by law.</p> <p>COMMENT</p> <p>[1] <i>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.</i> To the extent that time permits, and judicial independence and impartiality are not</p>

ABA Model Code	Current Washington Code	Final Task Force Recommendation
<p>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.</p> <p>[2] Participation in both law-related and other extrajudicial activities helps integrate judges into their communities, and furthers public understanding of and respect for courts and the judicial system.</p> <p>[3] Discriminatory actions and expressions of bias or prejudice by a judge, even outside the judge's official or judicial actions, are likely to appear to a reasonable person to call into question the judge's integrity and impartiality. Examples include jokes or other remarks that demean individuals based upon their race, sex, gender, religion, national origin, ethnicity, disability, age, sexual orientation, or socioeconomic status. For the same reason, a judge's extrajudicial activities must not be conducted in connection or affiliation with an organization that practices invidious discrimination. See Rule 3.6.</p>	<p>members, subject to the following limitations:</p> <p style="text-align: center;"><i>∞</i></p> <p>Canon 4 Comment first paragraph: Rule 3.1 Comment [1] in 2007 Model Code.</p> <p style="text-align: center;">Comment</p> <p><i>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.</i></p> <p>Canon 5(A): Rule 3.1 Comment [2] in 2007 Model Code. Does not have Comments [3] and [4].</p> <p>(A) Avocational Activities. Judges may write, lecture, teach and speak on nonlegal subjects, and engage in the arts,</p>	<p>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.</p> <p>[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.</p> <p>[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</p>

ABA Model Code	Current Washington Code	Final Task Force Recommendation
<p>[4] While engaged in permitted extrajudicial activities, judges must not coerce others or take action that would reasonably be perceived as coercive. For example, depending upon the circumstances, a judge's solicitation of contributions or memberships for an organization, even as permitted by Rule 3.7(A), might create the risk that the person solicited would feel obligated to respond favorably, or would do so to curry favor with the judge.</p>	<p>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.</p> <p>Canon 5(A) Comment.</p> <p>Comment</p> <p><i>Complete separation of judges from extrajudicial activities is neither possible nor wise; they should not become isolated from the society in which they live.</i></p>	<p>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.</p> <p><i>[4] Before speaking or writing about social or political issues, judges should consider the impact of their statements under Canon 3.</i></p>
<p>RULE 3.2 <i>Appearances before Governmental Bodies and Consultation with Government Officials</i></p> <p>A judge shall not appear voluntarily at a public hearing before, or otherwise consult with, an executive or a legislative body or official, except:</p> <p>(A) in connection with matters concerning the law, the legal system, or the administration of justice;</p> <p>(B) in connection with matters about which the judge acquired knowledge or</p>	<p>Canon 4(B): Rule 3.2 in 2007 Model Code. Does not have Comments.</p> <p>(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.</p>	<p>RULE 3.2 <i>Appearances before Governmental Bodies and Consultation with Government Officials</i></p> <p>A judge shall not appear voluntarily at a public hearing before, or otherwise consult with, an executive or a legislative body or official, except:</p> <p>(A) in connection with matters concerning the law, the legal system, or the administration of justice;</p> <p>(B) in connection with matters about which the judge acquired knowledge or expertise in the course of the judge's judicial duties; or</p>

ABA Model Code	Current Washington Code	Final Task Force Recommendation
<p>expertise in the course of the judge's judicial duties; or</p> <p>(C) when the judge is acting pro se in a matter involving the judge's legal or economic interests, or when the judge is acting in a fiduciary* capacity.</p> <p>COMMENT</p> <p>[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.</p> <p>[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.</p> <p><i>[3] In general, it would be an unnecessary and unfair burden to prohibit judges from appearing before governmental</i></p>		<p>(C) when the judge is acting <i>in a matter involving the judge's, the judge's marital community's, or the judge's domestic partnership's</i> legal or economic interests, <i>or those of members of the judge's immediate family residing in the judge's household</i>, or when the judge is acting in a fiduciary* capacity. <i>In engaging in such activities, however, judges must exercise caution to avoid abusing the prestige of judicial office.</i></p> <p>COMMENT</p> <p>[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.</p> <p>[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.</p>

ABA Model Code	Current Washington Code	Final Task Force Recommendation
<p><i>bodies or consulting with government officials on matters that are likely to affect them as private citizens, such as zoning proposals affecting their real property. In engaging in such activities, however, judges must not refer to their judicial positions, and must otherwise exercise caution to avoid using the prestige of judicial office.</i></p>		
<p>RULE 3.3 Testifying as a Character Witness</p> <p>A judge shall not testify as a character witness in a judicial, administrative, or other adjudicatory proceeding or otherwise vouch for the character of a person in a legal proceeding, except when duly summoned.</p> <p>COMMENT</p> <p>[1] A judge who, without being subpoenaed, testifies as a character witness abuses the prestige of judicial office to advance the interests of another. See Rule 1.3. Except in unusual circumstances where the demands of justice require, a judge should discourage a party from requiring the judge to testify as a character witness.</p>	<p>Canon 2(B): Rules 2.4(B) and (C), 1.3 and 3.3 in 2007 Model Code.</p> <p>(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.</p> <p style="text-align: center;">✍</p> <p>Canon 2(B) Comment second paragraph: Rule 3.3 Comment [1] in 2007 Model Code. Does not include language on discouraging parties from calling judge as witness.</p>	<p>RULE 3.3 Acting as a Character Witness</p> <p>A judge shall not <i>act</i> 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.</p> <p>COMMENT</p> <p>[1] A judge who, without being subpoenaed, <i>acts</i> 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 <i>act</i> as a character witness.</p> <p><i>[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].</i></p>

ABA Model Code	Current Washington Code	Final Task Force Recommendation
	<p style="text-align: center;">Comment</p> <p><i>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.</i></p> <p><i>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.</i></p>	
<p>RULE 3.4 <i>Appointments to Governmental Positions</i></p> <p>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.</p>	<p>Canon 5(G) Comment: Rule 3.4 Comment [1] in 2007 Model Code.</p> <p style="text-align: center;">Comment</p> <p><i>Valuable services have been rendered in the past to the states and the nation by judges appointed by the executive to undertake important extrajudicial</i></p>	<p>RULE 3.4 <i>Appointments to Governmental Positions</i></p> <p>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. <i>A judge may represent his or her country, state, or locality on ceremonial occasions or in connection with</i></p>

ABA Model Code	Current Washington Code	Final Task Force Recommendation
<p>COMMENT</p> <p>[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.</p> <p><i>[2] A judge may represent his or her country, state, or locality on ceremonial occasions or in connection with historical, educational, or cultural activities. Such representation does not constitute acceptance of a government position.</i></p>	<p><i>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.</i></p> <p>Canon 5(G): Rule 3.4 and Comment [2] in 2007 Model Code.</p> <p>(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.</p> <p style="text-align: center;">♫</p>	<p><i>historical, educational, or cultural activities.</i></p> <p>COMMENT</p> <p>[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.</p>

ABA Model Code	Current Washington Code	Final Task Force Recommendation
<p>RULE 3.5 <i>Use of Nonpublic Information</i></p> <p>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.</p> <p>COMMENT</p> <p><i>[1] In the course of performing judicial duties, a judge may acquire information of commercial or other value that is unavailable to the public. The judge must not reveal or use such information for personal gain or for any purpose unrelated to his or her judicial duties.</i></p> <p>[2] This rule is not intended, <i>however</i>, to affect a judge’s ability to act on information as necessary to protect the health or safety of the judge or a member of a judge’s family, court personnel, or other judicial officers if consistent with other provisions of this Code.</p>	<p>Canon 5(C)(7): Rule 3.5 in 2007 Model Code. Includes any information acquired in judicial capacity and specifically mentions financial dealings. Does not include Comments.</p> <p>(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:</p> <p>(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).</p> <p>(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.</p> <p style="text-align: center;">✍</p>	<p>RULE 3.5 <i>Use of Nonpublic Information</i></p> <p>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.</p> <p>COMMENT</p> <p>[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.</p>
<p>RULE 3.6 <i>Affiliation with Discriminatory</i></p>	<p>Canon 2(C): Rule 3.6(A) in 2007 Model Code.</p>	<p>RULE 3.6 <i>Affiliation with Discriminatory</i></p>

ABA Model Code	Current Washington Code	Final Task Force Recommendation
<p>Organizations</p> <p>(A) A judge shall not hold membership in any organization that practices invidious discrimination on the basis of race, sex, gender, religion, national origin, ethnicity, or sexual orientation.</p> <p>(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.</p> <p>COMMENT</p> <p>[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.</p>	<p>(C) Judges should not hold membership in any organization practicing discrimination prohibited by law.</p> <p style="text-align: center;">✍</p>	<p>Organizations</p> <p>(A) A judge shall not hold membership in any organization that practices invidious discrimination on the basis of race, sex, gender, religion, national origin, ethnicity, sexual orientation <i>or other classification protected by law.</i></p> <p>(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.</p> <p>COMMENT</p> <p>[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.</p> <p><i>[2] Whether an organization practices</i></p>

ABA Model Code	Current Washington Code	Final Task Force Recommendation
<p>[2] <i>An organization is generally said to discriminate invidiously if it arbitrarily excludes from membership on the basis of race, sex, gender, religion, national origin, ethnicity, or sexual orientation persons who would otherwise be eligible for admission. Whether an organization practices invidious discrimination is a complex question to which judges should be attentive. The answer cannot be determined from a mere examination of an organization's current membership rolls, but rather, depends upon how the organization selects members, as well as other relevant factors, such as whether the organization is dedicated to the preservation of religious, ethnic, or cultural values of legitimate common interest to its members, or whether it is an intimate, purely private organization whose membership limitations could not constitutionally be prohibited.</i></p> <p>[3] When a judge learns that an organization to which the judge belongs engages in invidious discrimination, the judge must resign immediately from the organization.</p> <p>[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.</p> <p>[5] <i>This Rule does not apply to national or state military service.</i></p>		<p><i>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.</i></p> <p>[3] <i>If</i> a judge learns that an organization to which the judge belongs engages in invidious discrimination, the judge must resign immediately from the organization.</p> <p>[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.</p>

ABA Model Code	Current Washington Code	Final Task Force Recommendation
<p>RULE 3.7 <i>Participation in Educational, Religious, Charitable, Fraternal, or Civic Organizations and Activities</i></p> <p>(A) Subject to the requirements of Rule 3.1, a judge may participate in activities sponsored by organizations or governmental entities concerned with the law, the legal system, or the administration of justice, and those sponsored by or on behalf of educational, religious, charitable, fraternal, or civic organizations not conducted for profit, including but not limited to the following activities:</p> <p>(1) assisting such an organization or entity in planning related to fund-raising, and participating in the management and investment of the organization's or entity's funds;</p> <p>(2) soliciting* contributions* for such an organization or entity, but only from members of the judge's family,* or from judges over whom the judge does not exercise supervisory or appellate authority;</p> <p><i>(3) soliciting membership for such an organization or entity, even though the membership dues or fees generated may be used to support the objectives of the organization or entity, but only if</i></p>	<p>Canon 4: Rule 3.7(A) in 2007 Model Code.</p> <p>Canon 5(B)(2): Rules 3.7(A)(2) and (4) and Comment [4] in 2007 Model Code. Prohibition is on using prestige of office to solicit contributions. Permission for "listing" as officer compares to Model Code permission to use judge's title "in connection with" event of approved entity and permission to use title in letterhead. Prohibits speaking at or being guest of honor at fundraising events.</p> <p>Canon 5(B)(1): Rule 3.7(A)(6) (a) and (b) in 2007 Model Code. Written in prohibitory rather than permissive terms and comparable prohibition to (6)(b) is on regular engagement in state courts.</p> <p>Canon 4(C): Various portions of Rule 3.7(A) in 2007 Model Code. Does not include (A)(3), (A)(6)(a) and (b), (B) or Comments [1] or [5].</p> <p style="text-align: center;">✍</p> <p>Canon 5(B)(1) Comment: Rule 3.7 Comment [2] in 2007 Model Code.</p>	<p>RULE 3.7 <i>Participation in Educational, Religious, Charitable, Fraternal, or Civic Organizations and Activities</i></p> <p>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:</p> <p>(1) assisting such an organization or entity in planning related to fund-raising, and participating in the management and investment of the organization's or entity's funds, or volunteering services or goods at fundraising events as long as the situation could not reasonably be deemed coercive;</p> <p>(2) soliciting* contributions* for such an organization or entity, but only from members of the judge's family,* or from judges over whom the judge does not exercise supervisory or appellate authority;</p> <p>(3) appearing or speaking at, receiving an award or other recognition at, being featured on the program of, and</p>

ABA Model Code	Current Washington Code	Final Task Force Recommendation
<p><i>the organization or entity is concerned with the law, the legal system, or the administration of justice;</i></p> <p>(4) appearing or speaking at, receiving an award or other recognition at, being featured on the program of, and permitting his or her title to be used in connection with an event of such an organization or entity, but if the event serves a fund-raising purpose, the judge may participate only if the event concerns the law, the legal system, or the administration of justice;</p> <p><i>(5) making recommendations to such a public or private fund-granting organization or entity in connection with its programs and activities, but only if the organization or entity is concerned with the law, the legal system, or the administration of justice; and</i></p> <p>(6) serving as an officer, director, trustee, or nonlegal advisor of such an organization or entity, unless it is likely that the organization or entity:</p> <p>(a) will be engaged in proceedings that would ordinarily come before the judge; or</p> <p>(b) will frequently be engaged in adversary proceedings in the court of which the judge is a member, or in any court subject to the</p>	<p>(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:</p> <p>(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.</p> <p>Canon 5(B)(2) Comment first paragraph: Rule 3.7 Comment [3] in 2007 Model</p>	<p>permitting his or her title to be used in connection with an event of such an organization or entity, but if the event serves a fund-raising purpose, the judge may do so only if the event concerns the law, the legal system, or the administration of justice;</p> <p>(4) serving as an officer, director, trustee, or nonlegal advisor of such an organization or entity, unless it is likely that the organization or entity:</p> <p>(a) will be engaged in proceedings that would ordinarily come before the judge; or</p> <p>(b) will frequently be engaged in adversary proceedings in the court of which the judge is a member, or in any court subject to the appellate jurisdiction of the court of which the judge is a member.</p> <p>COMMENT</p> <p>[1] The activities permitted by paragraph (A) generally include those sponsored by or undertaken on behalf of public or private not-for-profit educational institutions, and other not-for-profit organizations, including law-related, charitable, and other organizations.</p> <p>[2] Even for law-related organizations, a judge should consider whether the membership and purposes of the organization, or the</p>

ABA Model Code	Current Washington Code	Final Task Force Recommendation
<p>appellate jurisdiction of the court of which the judge is a member.</p> <p><i>(B) A judge may encourage lawyers to provide pro bono publico legal services.</i></p> <p>COMMENT</p> <p>[1] The activities permitted by paragraph (A) generally include those sponsored by or undertaken on behalf of public or private not-for-profit educational institutions, and other not-for-profit organizations, including law-related, charitable, and other organizations.</p> <p>[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.</p> <p>[3] Mere attendance at an event, whether or not the event serves a fund-raising purpose, does not constitute a violation of paragraph (A)(4). It is also generally permissible for a judge to serve as an usher or a food server or preparer, or to perform similar functions, at fund-raising events sponsored by educational, religious, charitable, fraternal, or civic</p>	<p>Code. No Model Code equivalent to specific permission to pay to attend fundraising event.</p> <p>(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.</p> <p style="text-align: center;">Comment</p> <p><i>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.</i></p> <p>Canon 4 Comment second paragraph: Rule 3.7 Comment [4] in 2007 Model Code.</p> <p><i>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</i></p>	<p>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.</p> <p>[3] Mere attendance at an event, whether or not the event serves a fund-raising purpose, does not constitute a violation of paragraph (A)(3). It is also generally permissible for a judge to serve as an usher or a food server or preparer, or to perform similar functions, at fund-raising events sponsored by educational, religious, charitable, fraternal, or civic organizations. Such activities are not solicitation and do not present an element of coercion or abuse the prestige of judicial office.</p> <p>[4] Identification of a judge's position in educational, religious, charitable, fraternal, or civic organizations on letterhead used for fund-raising or membership solicitation does not violate this Rule. The letterhead may list the judge's title or judicial office if comparable designations are used for other persons.</p> <p>[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</p>

ABA Model Code	Current Washington Code	Final Task Force Recommendation
<p>organizations. Such activities are not solicitation and do not present an element of coercion or abuse the prestige of judicial office.</p> <p>[4] Identification of a judge's position in educational, religious, charitable, fraternal, or civic organizations on letterhead used for fund-raising or membership solicitation does not violate this Rule. The letterhead may list the judge's title or judicial office if comparable designations are used for other persons.</p> <p>[5] In addition to appointing lawyers to serve as counsel for indigent parties in individual cases, a judge may promote broader access to justice by encouraging lawyers to participate in pro bono publico legal services, if in doing so the judge does not employ coercion, or abuse the prestige of judicial office. Such encouragement may take many forms, including providing lists of available programs, training lawyers to do pro bono publico legal work, and participating in events recognizing lawyers who have done pro bono publico work.</p>	<p><i>organization, and if comparable designations are listed for other persons.</i></p> <p>Canon 5(B)(2) Comment second paragraph: Rule 3.7 Comment [4] in 2007 Model Code. Does not include permission to use judicial title.</p> <p>(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.</p> <p style="text-align: center;">Comment</p> <p><i>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.</i></p> <p><i>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.</i></p>	<p>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.</p> <p>[6] <i>A judge may not directly solicit funds, except as permitted under Rule 3.7(A)(2), 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.</i></p> <p>[7] <i>A judge may encourage lawyers to provide pro bono legal services.</i></p> <p>[8] <i>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.</i></p> <p>[9] <i>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</i></p>

ABA Model Code	Current Washington Code	Final Task Force Recommendation
	<p>Canon 4 Comment third paragraph: Rule 3.7 Comment [3] in 2007 Model Code.</p> <p><i>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.</i></p> <p>Canon 4 Comment fourth paragraph: No Model Code equivalent.</p> <p><i>Extrajudicial activities are governed by Canon 5.</i></p>	<p><i>for funding of such projects and programs.</i></p>
<p>RULE 3.8 <i>Appointments to Fiduciary Positions</i></p> <p>(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.</p> <p>(B) A judge shall not serve in a fiduciary</p>	<p>Canon 5(D): Rule 3.8(A) in 2007 Model Code.</p> <p>(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:</p>	<p>RULE 3.8 <i>Appointments to Fiduciary Positions</i></p> <p>(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.</p> <p>(B) A judge shall not serve in a fiduciary position if the judge as fiduciary will likely</p>

ABA Model Code	Current Washington Code	Final Task Force Recommendation
<p>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.</p> <p>(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.</p> <p>(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.</p> <p>COMMENT</p> <p>[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.</p>	<p>Canon 5(D)(1): Rule 3.8(B) in 2007 Model Code.</p> <p>(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.</p> <p>Canon 5(D)(2): Rule 3.8(C) in 2007 Model Code. Does not have (D).</p> <p>(2) While acting as a fiduciary, judges are subject to the same restrictions on financial activities that apply to them in their personal capacities.</p> <p style="text-align: center;"><i>✍</i></p> <p>Canon 5(D) Comment: Rule 3.8 Comment [1] in 2007 Model Code.</p> <p style="text-align: center;">Comment</p> <p><i>Judges' obligations under this canon and their obligations as a fiduciary may come into conflict. For example, judges should</i></p>	<p>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.</p> <p>(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.</p> <p>(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 <i>one year</i> after becoming a judge.</p> <p>COMMENT</p> <p>[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.</p>

ABA Model Code	Current Washington Code	Final Task Force Recommendation
	<p><i>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).</i></p>	
<p>RULE 3.9 <i>Service as Arbitrator or Mediator</i></p> <p>A judge shall not act as an arbitrator or a mediator or perform other judicial functions apart from the judge’s official duties unless expressly authorized by law.*</p> <p>COMMENT</p> <p>[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 <i>expressly</i> authorized by law.</p>	<p>Canon 5(E): Rule 3.9 in 2007 Model Code. Does not have Comments.</p> <p>(E) Arbitration. Judges should not participate as arbitrators or mediators or otherwise perform judicial functions in a private capacity unless expressly authorized by law.</p> <p style="text-align: center;">✍</p>	<p>RULE 3.9 <i>Service as Arbitrator or Mediator</i></p> <p>A judge shall not act as an arbitrator or a mediator or perform other judicial functions in a private capacity_ unless authorized by law.*</p> <p>COMMENT</p> <p>[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.</p> <p>[2] <i>Retired, part time, or pro tempore judges may be exempt from this section. (See Application).</i></p>
<p>RULE 3.10 <i>Practice of Law</i></p> <p>A judge shall not practice law. A judge may</p>	<p>Canon 5(F): Rule 3.10 in 2007 Model Code. Does not have Comments.</p> <p>(F) Practice of Law. Judges shall not</p>	<p>RULE 3.10 <i>Practice of Law</i></p> <p>(A) A judge shall not practice law. A judge may act pro se <i>or on behalf of his or her marital</i></p>

ABA Model Code	Current Washington Code	Final Task Force Recommendation
<p>act pro se and may, without compensation, give legal advice to and draft or review documents for a member of the judge's family,* but is prohibited from serving as the family member's lawyer in any forum.</p> <p>COMMENT</p> <p>[1] A judge may act pro se in all legal matters, including matters involving litigation and matters involving appearances before or other dealings with governmental bodies. A judge must not use the prestige of office to advance the judge's personal or family interests. See Rule 1.3.</p>	<p>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.</p>	<p><i>community or domestic partnership</i> 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 <i>adjudicative</i> forum.</p> <p><i>(B) This rule does not prevent the practice of law pursuant to national or state military service.</i></p> <p>COMMENT</p> <p>[1] A judge may act pro se <i>or on behalf of his or her marital community or domestic partnership</i> 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.</p>
<p>RULE 3.11 <i>Financial, Business, or Remunerative Activities</i></p> <p>(A) A judge may hold and manage investments of the judge and members of the judge's family.*</p> <p>(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:</p>	<p>Canon 5(C)(3): Rule 3.11(A) and (B) in 2007 Model Code. Does not specify investments of judge or judge's family, gives real estate example, allows judges to engage in other remunerative activity, does not include exception for serving as officer in family business. Does not have Comment [1].</p> <p>(C) Financial Activities.</p>	<p>RULE 3.11 <i>Financial, Business, or Remunerative Activities</i></p> <p>(A) A judge may hold and manage investments of the judge and members of the judge's family.*</p> <p>(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:</p>

ABA Model Code	Current Washington Code	Final Task Force Recommendation
<p>(1) a business closely held by the judge or members of the judge's family; or</p> <p>(2) a business entity primarily engaged in investment of the financial resources of the judge or members of the judge's family.</p> <p>(C) A judge shall not engage in financial activities permitted under paragraphs (A) and (B) if they will:</p> <p>(1) interfere with the proper performance of judicial duties;</p> <p>(2) lead to frequent disqualification of the judge;</p> <p>(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</p> <p>(4) result in violation of other provisions of this Code.</p> <p>COMMENT</p> <p>[1] Judges are generally permitted to engage in financial activities, including managing real estate and other investments for themselves or for members of their families. Participation</p>	<p>(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.</p> <p>Canon 5(C)(1): Rule 3.11(C)(1) and (4) in 2007 Model Code. Judges "should refrain" from business dealings that "tend to reflect adversely" on impartiality, interfere with judicial duties or exploit position.</p> <p>(C) Financial Activities.</p> <p>(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.</p> <p>Canon 5(C)(4): Rule 3.11(C)(2) and Comment [2] in 2007 Model Code.</p> <p>(C) Financial Activities.</p>	<p>(1) a business closely held by the judge or members of the judge's family; or</p> <p>(2) a business entity primarily engaged in investment of the financial resources of the judge or members of the judge's family.</p> <p>(C) A judge shall not engage in financial activities permitted under paragraphs (A) and (B) if they will:</p> <p>(1) interfere with the proper performance of judicial duties;</p> <p>(2) lead to frequent disqualification of the judge;</p> <p>(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</p> <p>(4) result in violation of other provisions of this Code.</p> <p><i>(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.</i></p> <p>COMMENT</p> <p>[1] Judges are generally permitted to engage</p>

ABA Model Code	Current Washington Code	Final Task Force Recommendation
<p>in these activities, like participation in other extrajudicial activities, is subject to the requirements of this Code. For example, it would be improper for a judge to spend so much time on business activities that it interferes with the performance of judicial duties. See Rule 2.1. Similarly, it would be improper for a judge to use his or her official title or appear in judicial robes in business advertising, or to conduct his or her business or financial affairs in such a way that disqualification is frequently required. See Rules 1.3 and 2.11.</p> <p>[2] As soon as practicable without serious financial detriment, the judge must divest himself or herself of investments and other financial interests that might require frequent disqualification or otherwise violate this Rule.</p>	<p>(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.</p> <p style="text-align: center;">Canon 5(C)(2) : Rule 3.11(C)(3) in 2007 Model Code. Similar to 1990 Model Code Canon 4D(1)(b) but replaces “shall” with “should” and does not include continuing business relationships.</p> <p>(C) Financial Activities.</p> <p>(2) Judges should not involve themselves in frequent business transactions with lawyers or persons likely to come before the court on which they serve.</p>	<p>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.</p> <p><i>[2] There is a limit of not more than one (1) year allowed to comply with Rule 3.11(D). (See Application)</i></p>
<p>RULE 3.12 <i>Compensation for Extrajudicial Activities</i></p>	<p>Canon 6 first paragraph: Rules 3.12 and 3.14(A) in 2007 Model Code.</p>	<p>RULE 3.12 <i>Compensation for Extrajudicial Activities</i></p> <p>A judge may accept reasonable compensation</p>

ABA Model Code	Current Washington Code	Final Task Force Recommendation
<p>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.*</p> <p>COMMENT</p> <p>[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.</p> <p>[2] Compensation derived from extrajudicial activities may be subject to public reporting. See Rule 3.15.</p>	<p style="text-align: center;">CANON 6</p> <p style="text-align: center;"><i>Judges shall regularly file reports of compensation received for quasi-judicial and extra-judicial activities.</i></p> <p>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:</p> <p>Canon 6(A): Rule 3.12 in 2007 Model Code.</p> <p>(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.</p> <p style="text-align: center;"><i>℘</i></p> <p>Canon 6 Comment: Rule 3.12 Comment [1] in 2007 Model Code. Does not have Comment [2].</p>	<p>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.*</p> <p>COMMENT</p> <p>[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.</p> <p>[2] Compensation derived from extrajudicial activities may be subject to public reporting. See Rule 3.15.</p>

ABA Model Code	Current Washington Code	Final Task Force Recommendation
	<p>financial disclosures as required by law.</p> <p style="text-align: center;">Comment</p> <p><i>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.</i></p>	
<p>RULE 3.13 Acceptance and Reporting of Gifts, Loans, Bequests, Benefits, or Other Things of Value</p> <p>(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</p>	<p>Canon 5(C)(5): Rule 3.13(A), (B) and (C) in 2007 Model Code. Does not have 3.13(B)(1), (5), (8) or (C)(2)(b).</p> <p>(C) Financial Activities.</p> <p>(5) Judges should not accept, and should</p>	<p>RULE 3.13 Acceptance and Reporting of Gifts, Loans, Bequests, Benefits, or Other Things of Value</p> <p>(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</p>

ABA Model Code	Current Washington Code	Final Task Force Recommendation
<p>reasonable person to undermine the judge's independence,* integrity,* or impartiality.*</p> <p>(B) Unless otherwise prohibited by law, or by paragraph (A), a judge may accept the following <i>without publicly reporting such acceptance</i>:</p> <p>(1) items with little intrinsic value, such as plaques, certificates, trophies, and greeting cards;</p> <p>(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;</p> <p>(3) ordinary social hospitality;</p> <p>(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;</p> <p>(5) rewards and prizes given to competitors or participants in random drawings, contests, or other events that</p>	<p>urge members of their families residing in their households not to accept a gift, bequest, favor or loan from anyone except as follows:</p> <p>Canon 5(C)(5)(a): Rule 3.13(B)(7), (C)(1) and (2)(a) in 2007 Model Code.</p> <p>(C) Financial Activities.</p> <p>(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:</p> <p>(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;</p> <p>Canon 5(C)(5)(b): Rule 3.13(B)(3), (2), (4) and (6) in 2007 Model Code. Does not include exemption on gifts from friends or other persons whose appearance</p>	<p>undermine the judge's independence,* integrity,* or impartiality.*</p> <p>(B) Unless otherwise prohibited by law, or by paragraph (A), a judge may accept the following:</p> <p>(1) items with little intrinsic value, such as plaques, certificates, trophies, and greeting cards;</p> <p>(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;</p> <p>(3) ordinary social hospitality;</p> <p>(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;</p> <p>(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;</p> <p>(6) scholarships, fellowships, and similar</p>

ABA Model Code	Current Washington Code	Final Task Force Recommendation
<p>are open to persons who are not judges;</p> <p>(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;</p> <p>(7) books, magazines, journals, audiovisual materials, and other resource materials supplied by publishers on a complimentary basis for official use; or</p> <p>(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.</p> <p><i>(C) Unless otherwise prohibited by law or by paragraph (A), a judge may accept the following items, and must report such acceptance to the extent required by Rule 3.15:</i></p> <p><i>(1) gifts incident to a public testimonial;</i></p> <p><i>(2) invitations to the judge and the judge's spouse, domestic partner, or guest to attend without charge:</i></p> <p>(a) an event associated with a bar-related function or other activity</p>	<p>before judge would require disqualification and does not include financial items other than loans. Extends prohibition to members of judges' families residing in their households. Adds exemption for wedding and engagement gifts.</p> <p>(C) Financial Activities.</p> <p>(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:</p> <p>(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;</p> <p>Canon 5(C)(5)(c): Rule 3.13(C)(3) in 2007 Model Code.</p>	<p>benefits or awards, if they are available to similarly situated persons who are not judges, based upon the same terms and criteria;</p> <p>(7) books, magazines, journals, audiovisual materials, and other resource materials supplied by publishers on a complimentary basis for official use; or</p> <p>(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.</p> <p>(9) gifts incident to a public testimonial;</p> <p>(10) invitations to the judge and the judge's spouse, domestic partner, or guest to attend without charge:</p> <p>(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</p> <p>(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.</p>

ABA Model Code	Current Washington Code	Final Task Force Recommendation
<p>relating to the law, the legal system, or the administration of justice; or</p> <p>(b) an event associated with any of the judge's educational, religious, charitable, fraternal or civic activities permitted by this Code, if the same invitation is offered to nonjudges who are engaged in similar ways in the activity as is the judge; and</p> <p><i>(3) gifts, loans, bequests, benefits, or other things of value, if the source is a party or other person, including a lawyer, who has come or is likely to come before the judge, or whose interests have come or are likely to come before the judge.</i></p> <p>COMMENT</p> <p>[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, <i>according to the magnitude of the risk. Paragraph (B) identifies circumstances in which the risk that the acceptance would appear to undermine the judge's independence, integrity, or impartiality is low, and explicitly provides that such items need not be publicly reported. As the value of</i></p>	<p>(C) Financial Activities.</p> <p>(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:</p> <p>(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).</p> <p style="text-align: center;">✍</p> <p>Canon 5(C)(5) Comment: Rule 3.13 Comment [5]. Includes no other 3.13 Comments.</p> <p style="text-align: center;">Comment</p> <p><i>This canon does not apply to contributions to a judge's campaign for judicial office, a matter governed by Canon 7.</i></p>	<p>COMMENT</p> <p>[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. <i>Acceptance of any gift or thing of value may require reporting pursuant to Rule 3.15 and Washington law.</i></p> <p>[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.</p> <p>[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</p>

ABA Model Code	Current Washington Code	Final Task Force Recommendation
<p><i>the benefit or the likelihood that the source of the benefit will appear before the judge increases, the judge is either prohibited under paragraph (A) from accepting the gift, or required under paragraph (C) to publicly report it.</i></p> <p>[2] Gift-giving between friends and relatives is a common occurrence, and ordinarily does not create an appearance of impropriety or cause reasonable persons to believe that the judge's independence, integrity, or impartiality has been compromised. In addition, when the appearance of friends or relatives in a case would require the judge's disqualification under Rule 2.11, there would be no opportunity for a gift to influence the judge's decision making. Paragraph (B)(2) places no restrictions upon the ability of a judge to accept gifts or other things of value from friends or relatives under these circumstances, and does not require public reporting.</p> <p>[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</p>		<p>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.</p> <p>[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.</p> <p>[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.</p>

ABA Model Code	Current Washington Code	Final Task Force Recommendation
<p>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.</p> <p>[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.</p> <p>[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.</p>		

ABA Model Code	Current Washington Code	Final Task Force Recommendation
<p>RULE 3.14 <i>Reimbursement of Expenses and Waivers of Fees or Charges</i></p> <p>(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.</p> <p>(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 <i>and, when appropriate to the occasion, by the judge's spouse, domestic partner,* or guest.</i></p> <p><i>(C) A judge who accepts reimbursement of expenses or waivers or partial waivers of fees or charges on behalf of the judge or the judge's spouse, domestic partner, or guest shall publicly report such acceptance as required by Rule 3.15.</i></p> <p>COMMENT</p>	<p>Canon 6(B): Rule 3.14(A) and (B) in 2007 Model Code. Does not have 3.14 Comments.</p> <p>(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.</p> <p style="text-align: center;">✍</p>	<p>RULE 3.14 <i>Reimbursement of Expenses and Waivers of Fees or Charges</i></p> <p>(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.</p> <p>(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.</p> <p>COMMENT</p> <p>[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.</p>

ABA Model Code	Current Washington Code	Final Task Force Recommendation
<p>[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.</p> <p>[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.</p> <p>[3] A judge must assure himself or herself that acceptance of reimbursement or fee waivers would not appear to a</p>		<p>[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 <i>and Washington law</i>.</p> <p>[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:</p> <p>(a) whether the sponsor is an accredited educational institution or bar association rather than a trade association or a for-profit entity;</p> <p>(b) whether the funding comes largely from numerous contributors rather than from a single entity and is earmarked for programs</p>

ABA Model Code	Current Washington Code	Final Task Force Recommendation
<p>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:</p> <p>(a) whether the sponsor is an accredited educational institution or bar association rather than a trade association or a for-profit entity;</p> <p>(b) whether the funding comes largely from numerous contributors rather than from a single entity and is earmarked for programs with specific content;</p> <p>(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;</p> <p>(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;</p> <p>(e) whether information concerning the activity and its funding sources is available upon inquiry;</p>		<p>with specific content;</p> <p>(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;</p> <p>(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;</p> <p>(e) whether information concerning the activity and its funding sources is available upon inquiry;</p> <p>(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;</p> <p>(g) whether differing viewpoints are presented; and</p> <p>(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.</p>

ABA Model Code	Current Washington Code	Final Task Force Recommendation
<p>(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;</p> <p>(g) whether differing viewpoints are presented; and</p> <p>(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.</p>		
<p>RULE 3.15 <i>Reporting Requirements</i></p> <p>(A) A judge shall publicly report the amount or value of:</p> <p>(1) compensation received for extrajudicial activities as permitted by Rule 3.12;</p> <p>(2) gifts and other things of value as permitted by Rule 3.13(C), unless the value of such items, alone or in the aggregate with other items received from the same source in the same calendar year, does not exceed \$[insert amount]; and</p> <p>(3) reimbursement of expenses and</p>	<p>Canon 6(C): Rule 3.15 in 2007 Model Code. Only requires reports required by law.</p> <p>(C) Public Reports. A judge shall make such financial disclosures as required by law.</p> <p>Canon 6: Rule 3.15(A)(1) in 2007 Model Code. Applies to compensation for quasi and extrajudicial activities.</p> <p style="text-align: center;">CANON 6</p> <p style="text-align: center;"><i>Judges shall regularly file reports of compensation received for quasi-judicial</i></p>	<p>RULE 3.15 <i>Reporting Requirements</i></p> <p><i>A judge shall make such financial disclosures as required by law.</i></p>

ABA Model Code	Current Washington Code	Final Task Force Recommendation
<p>waiver of fees or charges permitted by Rule 3.14(A), unless the amount of reimbursement or waiver, alone or in the aggregate with other reimbursements or waivers received from the same source in the same calendar year, does not exceed \$[insert amount].</p> <p>(B) When public reporting is required by paragraph (A), a judge shall report the date, place, and nature of the activity for which the judge received any compensation; the description of any gift, loan, bequest, benefit, or other thing of value accepted; and the source of reimbursement of expenses or waiver or partial waiver of fees or charges.</p> <p>(C) The public report required by paragraph (A) shall be made at least annually, except that for reimbursement of expenses and waiver or partial waiver of fees or charges, the report shall be made within thirty days following the conclusion of the event or program.</p> <p>(D) Reports made in compliance with this Rule shall be filed as public documents in the office of the clerk of the court on which the judge serves or other office designated by law,* and, when technically feasible, posted by the court or office personnel on the court's website.</p>	<p><i>and extra-judicial activities.</i></p>	

ABA Model Code	Current Washington Code	Final Task Force Recommendation
----------------	-------------------------	---------------------------------

CANON 4

RULE 4.1 Political and Campaign Activities of Judges and Judicial Candidates in General.....90
RULE 4.2 Political and Campaign Activities of Judicial Candidates in Public Elections.....100
RULE 4.3 Activities of Candidates for Appointive Judicial Office104
RULE 4.4 Campaign Committees.....105
RULE 4.5 Activities of Judges Who Become Candidates for Nonjudicial Office107

- Canon 7(A)(4) Comment:** No Model Code equivalent
- Canon 7(A)(5):** Deleted in 2007 Model Code
- Canon 7(B)(2) Comment:** No Model Code equivalent
- Canon 7(B)(3):** No Model Code equivalent

ABA Model Code	Current Washington Code	Final Recommendation
<p><i>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.</i></p>	<p>Canon 7: Canon 4 in 2007 Model Code.</p> <p style="text-align: center;">CANON 7</p> <p><i>Judges shall refrain from political activity inappropriate to their judicial office.</i></p>	<p><i>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.</i></p>
<p>RULE 4.1 <i>Political and Campaign Activities of Judges and Judicial Candidates in General</i></p> <p>(A) Except as permitted by law,* or by Rules 4.2, 4.3, and 4.4, a judge or a</p>	<p>Canon 7(A)(1)(a): Rule 4.1(A)(1) in 2007 Model Code.</p> <p>(A) Political Conduct in General.</p> <p>(1) Judges or candidates for election to</p>	<p>RULE 4.1 <i>Political Activities of Judges and Judicial Candidates in General</i></p> <p>(A) Except as permitted by law,* or by Rules 4.2 (Political and Campaign Activities of Judicial Candidates in Public Elections), 4.3</p>

ABA Model Code	Current Washington Code	Final Task Force Recommendation
<p>judicial candidate* shall not:</p> <p>(1) act as a leader in, or hold an office in, a political organization;*</p> <p>(2) make speeches on behalf of a political organization;</p> <p>(3) publicly endorse or oppose a candidate for any public office;</p> <p>(4) solicit funds for, pay an assessment to, or make a contribution* to a political organization or a candidate for public office;</p> <p>(5) attend or purchase tickets for dinners or other events sponsored by a political organization or a candidate for public office;</p> <p>(6) publicly identify himself or herself as a candidate of a political organization;</p> <p>(7) seek, accept, or use endorsements from a political organization;</p> <p>(8) personally solicit* or accept campaign contributions other than through a campaign committee authorized by Rule 4.4;</p> <p>(9) use or permit the use of campaign contributions for the private benefit of the judge, the candidate, or others;</p>	<p>judicial office shall not:</p> <p>(a) act as leaders or hold any office in a political organization;</p> <p>Canon 7(A)(1)(b): Rule 4.1(A)(2) and (3) in 2007 Model Code. Adds prohibition on speeches for nonjudicial candidate and specifies endorsement for nonjudicial candidate.</p> <p>(A) Political Conduct in General.</p> <p>(1) Judges or candidates for election to judicial office shall not:</p> <p>(b) make speeches for a political organization or nonjudicial candidate or publicly endorse a nonjudicial candidate for public office;</p> <p>Canon 7(A)(1)(c): Rule 4.1(A)(4) in 2007 Model Code. Specifies nonjudicial candidate.</p> <p>(A) Political Conduct in General.</p> <p>(1) Judges or candidates for election to</p>	<p>(Activities of Candidates for Appointive Judicial Office), and 4.4 (Campaign Committees), a judge or a judicial candidate* shall not:</p> <p>(1) act as a leader in, or hold an office in, a political organization;*</p> <p>(2) make speeches on behalf of a political organization <i>or nonjudicial candidate</i>;</p> <p>(3) publicly endorse or oppose a nonjudicial candidate for any public office, <i>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.</i></p> <p>(4) solicit funds for, pay an assessment to, or make a contribution* to a political organization or a nonjudicial candidate for public office;</p> <p>(5) publicly identify himself or herself as a member or a candidate of a political organization, <i>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.</i></p> <p>(6) seek, accept, or use endorsements from a political organization;</p> <p>(7) personally solicit* or accept campaign</p>

ABA Model Code	Current Washington Code	Final Task Force Recommendation
<p>(10) use court staff, facilities, or other court resources in a campaign for judicial office;</p> <p>(11) knowingly,* or with reckless disregard for the truth, make any false or misleading statement;</p> <p>(12) make any statement that would reasonably be expected to affect the outcome or impair the fairness of a matter pending* or impending* in any court; or</p> <p>(13) in connection with cases, controversies, or issues that are likely to come before the court, make pledges, promises, or commitments that are inconsistent with the impartial* performance of the adjudicative duties of judicial office.</p> <p>(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).</p> <p>COMMENT</p> <p>GENERAL CONSIDERATIONS</p> <p>[1] Even when subject to public election, a judge plays a role different from that of</p>	<p>judicial office shall not:</p> <p>(c) solicit funds for or pay an assessment or make a contribution to a political organization or nonjudicial candidate;</p> <p>Canon 7(A)(1)(f): Rule 4.1(A)(4) in 2007 Model Code. Applies only to contributions, adds political party and specifies nonjudicial candidate.</p> <p>(A) Political Conduct in General.</p> <p>(1) Judges or candidates for election to judicial office shall not:</p> <p>(f) contribute to a political party, a political organization or nonjudicial candidate.</p> <p>Canon 7(A)(1)(d): Rule 4.1(A)(5) in 2007 Model Code. Does not have 4.1(A)(6) – (10). Does not include events sponsored by candidate for public office.</p> <p>(A) Political Conduct in General.</p> <p>(1) Judges or candidates for election to judicial office shall not:</p>	<p>contributions other than through a campaign committee authorized by Rule 4.4, <i>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).</i></p> <p>(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;</p> <p>(9) use court staff, facilities, or other court resources in a campaign for judicial office <i>except as permitted by law;</i></p> <p>(10) knowingly,* or with reckless disregard for the truth, make any false or misleading statement;</p> <p>(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</p> <p>(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.</p>

ABA Model Code	Current Washington Code	Final Task Force Recommendation
<p>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.</p> <p>[2] When a person becomes a judicial candidate, this Canon becomes applicable to his or her conduct.</p> <p>PARTICIPATION IN POLITICAL ACTIVITIES</p> <p>[3] Public confidence in the independence and impartiality of the judiciary is eroded if judges or judicial candidates are perceived to be subject to political influence. Although judges and judicial candidates may register to vote as members of a political party, they are prohibited by paragraph (A)(1) from assuming leadership roles in political organizations.</p>	<p>(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);</p> <p>Canon 7(B)(1)(c)(ii): Rule 4.1(A)(12) in 2007 Model Code. Replaces “would reasonably be expected to affect the outcome or impair the fairness” with “commit or appear to commit” and “matter pending or impending in any court” with “cases, controversies or issues that are likely to come before the court.”</p> <p>(B) Campaign Conduct.</p> <p>(1) Candidates, including an incumbent judge, for a judicial office;</p> <p>(c) should not</p> <p>(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</p> <p>Canon 7(B)(1)(c)(i): Rule 4.1(A)(13) in 2007 Model Code. Replaces “shall” with “should,” does not include introductory</p>	<p>(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).</p> <p>COMMENT</p> <p>GENERAL CONSIDERATIONS</p> <p>[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.</p> <p>[2] When a person becomes a judicial candidate, this Canon becomes applicable to his or her conduct.</p> <p>PARTICIPATION IN POLITICAL ACTIVITIES</p> <p>[3] Public confidence in the independence and impartiality of the judiciary is eroded if</p>

ABA Model Code	Current Washington Code	Final Task Force Recommendation
<p>[4] Paragraphs (A)(2) and (A)(3) prohibit judges and judicial candidates from making speeches on behalf of political organizations or publicly endorsing or opposing candidates for public office, respectively, to prevent them from abusing the prestige of judicial office to advance the interests of others. See Rule 1.3. These Rules do not prohibit candidates from campaigning on their own behalf, or from endorsing or opposing candidates for the same judicial office for which they are running. See Rules 4.2(B)(2) and 4.2(B)(3).</p> <p>[5] Although members of the families of judges and judicial candidates are free to engage in their own political activity, including running for public office, there is no “family exception” to the prohibition in paragraph (A)(3) against a judge or candidate publicly endorsing candidates for public office. A judge or judicial candidate must not become involved in, or publicly associated with, a family member’s political activity or campaign for public office. To avoid public misunderstanding, judges and judicial candidates should take, and should urge members of their families to take, reasonable steps to avoid any implication that they endorse any family member’s candidacy or other political activity.</p>	<p>“in connection” phrase, does not include “commitments” and only “faithful and impartial performance of the duties of the office” allowed.</p> <p>B) Campaign Conduct.</p> <p>(1) Candidates, including an incumbent judge, for a judicial office;</p> <p>(c) should not</p> <p>(i) make pledges or promises of conduct in office other than the faithful and impartial performance of the duties of the office;</p> <p>Canon 7(B)(1)(a): Rules 4.1(B) and 4.2(A)(1) in 2007 Model Code. Does not have 4.2(A)(2) or (3).</p> <p>(B) Campaign Conduct.</p> <p>(1) Candidates, including an incumbent judge, for a judicial office;</p> <p>(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;</p>	<p>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.</p> <p>[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).</p> <p>[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 <i>nonjudicial</i> 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</p>

ABA Model Code	Current Washington Code	Final Task Force Recommendation
<p>[6] Judges and judicial candidates retain the right to participate in the political process as voters in both primary and general elections. For purposes of this Canon, participation in a caucus-type election procedure does not constitute public support for or endorsement of a political organization or candidate, and is not prohibited by paragraphs (A)(2) or (A)(3).</p> <p>STATEMENTS AND COMMENTS MADE DURING A CAMPAIGN FOR JUDICIAL OFFICE</p> <p>[7] Judicial candidates must be scrupulously fair and accurate in all statements made by them and by their campaign committees. Paragraph (A)(11) obligates candidates and their committees to refrain from making statements that are false or misleading, or that omit facts necessary to make the communication considered as a whole not materially misleading.</p> <p>[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</p>	<p>Canon 7(B)(1)(b): Rules 4.1(B) and 4.2(A)(4) in 2007 Model Code.</p> <p>(B) Campaign Conduct.</p> <p>(1) Candidates, including an incumbent judge, for a judicial office;</p> <p>(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;</p> <p>Canon 7(A)(1)(e): Rule 4.1 Comment [6] in 2007 Model Code. No Model Code equivalent to prohibition on identifying as member of political party.</p> <p>(A) Political Conduct in General.</p> <p>(1) Judges or candidates for election to judicial office shall not:</p> <p>(e) identify themselves as members of a political party, except as necessary to vote</p>	<p>that they <i>are using the prestige of the their judicial office to</i> endorse any family member's candidacy or other political activity.</p> <p>[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) <i>and is allowed by Paragraphs (A)(2) and (A)(5). Since 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</i></p>

ABA Model Code	Current Washington Code	Final Task Force Recommendation
<p>allegations may be made that bear upon a candidate's integrity or fitness for judicial office. As long as the candidate does not violate paragraphs (A)(11), (A)(12), or (A)(13), the candidate may make a factually accurate public response. In addition, when an independent third party has made unwarranted attacks on a candidate's opponent, the candidate may disavow the attacks, and request the third party to cease and desist.</p> <p>[9] Subject to paragraph (A)(12), a judicial candidate is permitted to respond directly to false, misleading, or unfair allegations made against him or her during a campaign, although it is preferable for someone else to respond if the allegations relate to a pending case.</p> <p>[10] Paragraph (A)(12) prohibits judicial candidates from making comments that might impair the fairness of pending or impending judicial proceedings. This provision does not restrict arguments or statements to the court or jury by a lawyer who is a judicial candidate, or rulings, statements, or instructions by a judge that may appropriately affect the outcome of a matter.</p> <p>PLEDGES, PROMISES, OR COMMITMENTS INCONSISTENT WITH</p>	<p>in an election;</p> <p>Canon 7(A)(2): Rule 4.1(B)(4) and (2) in 2007 Model Code. Applies during judicial campaign. Does not specifically include ticket purchase or events sponsored by candidate for public office. Adds permission to speak on behalf of other judicial candidate but applies only to political gatherings. Does not have (B)(1), (3), (5) or (C) or any 4.2 Comments.</p> <p>(A) Political Conduct in General.</p> <p>(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.</p> <p style="text-align: center;">✎</p> <p>Canon 7(B)(1)(c) Comment: Rule 4.1 Comment [14] in 2007 Model Code. Has no other 4.1 Comments.</p> <p style="text-align: center;"><i>Comment</i></p>	<p><i>participation to selection of delegates for various candidates.</i></p> <p>STATEMENTS AND COMMENTS MADE DURING A CAMPAIGN FOR JUDICIAL OFFICE</p> <p>[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.</p> <p>[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</p>

ABA Model Code	Current Washington Code	Final Task Force Recommendation
<p>IMPARTIAL PERFORMANCE OF THE ADJUDICATIVE DUTIES OF JUDICIAL OFFICE</p> <p>[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.</p> <p>[12] Paragraph (A)(13) makes applicable to both judges and judicial candidates the prohibition that applies to judges in Rule 2.10(B), relating to pledges, promises, or commitments that are inconsistent with the impartial performance of the adjudicative duties of judicial office.</p> <p>[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</p>	<p><i>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.</i></p>	<p>attacks, and request the third party to cease and desist.</p> <p>[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.</p> <p>[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.</p> <p>PLEDGES, PROMISES, OR COMMITMENTS INCONSISTENT WITH IMPARTIAL PERFORMANCE OF THE ADJUDICATIVE DUTIES OF JUDICIAL OFFICE</p> <p>[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</p>

ABA Model Code	Current Washington Code	Final Task Force Recommendation
<p>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.</p> <p>[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.</p> <p>[15] Judicial candidates may receive questionnaires or requests for interviews from the media and from issue advocacy or other community organizations that seek to learn their views on disputed or controversial legal or political issues. Paragraph (A)(13) does not specifically address judicial responses to such inquiries.</p>		<p>conduct campaigns that provide voters with sufficient information to permit them to distinguish between candidates and make informed electoral choices.</p> <p>[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.</p> <p>[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.</p> <p>[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</p>

ABA Model Code	Current Washington Code	Final Task Force Recommendation
<p>Depending upon the wording and format of such questionnaires, candidates' responses might be viewed as pledges, promises, or commitments to perform the adjudicative duties of office other than in an impartial way. To avoid violating paragraph (A)(13), therefore, candidates who respond to media and other inquiries should also give assurances that they will keep an open mind and will carry out their adjudicative duties faithfully and impartially if elected. Candidates who do not respond may state their reasons for not responding, such as the danger that answering might be perceived by a reasonable person as undermining a successful candidate's independence or impartiality, or that it might lead to frequent disqualification. See Rule 2.11.</p>		<p>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.</p> <p>[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. <i>Candidates who do respond to questionnaires should post the questionnaire and their substantive answers so they are accessible to the general public.</i> Candidates who do not respond may state their reasons for not responding, such as the danger that answering might be perceived by a</p>

ABA Model Code	Current Washington Code	Final Task Force Recommendation
		<p>reasonable person as undermining a successful candidate's independence or impartiality, or that it might lead to frequent disqualification. See Rule 2.11.</p> <p>PERSONAL SOLICITATION OF CAMPAIGN FUNDS</p> <p><i>[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.</i></p>
<p>RULE 4.2 <i>Political and Campaign Activities of Judicial Candidates in Public Elections</i></p> <p>(A) A judicial candidate* in a partisan, <i>nonpartisan, or retention</i> public election* shall:</p>		<p>RULE 4.2 <i>Political and Campaign Activities of Judicial Candidates in Public Elections</i></p> <p>(A) A judicial candidate* in a nonpartisan, public election* shall:</p>

ABA Model Code	Current Washington Code	Final Task Force Recommendation
<p>(1) act at all times in a manner consistent with the independence,* integrity,* and impartiality* of the judiciary;</p> <p>(2) comply with all applicable election, election campaign, and election campaign fund-raising laws and regulations of this jurisdiction;</p> <p>(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</p> <p>(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.</p> <p>(B) A candidate for elective judicial office may, unless prohibited by law,* and not earlier than [insert amount of time] before the first applicable primary election, caucus, or general or retention election:</p> <p>(1) establish a campaign committee pursuant to the provisions of Rule 4.4;</p> <p>(2) speak on behalf of his or her</p>	<p>Canon 7(A)(3): Rule 4.2(B)(6) in 2007 Model Code. Applies only to contributions by judges and only to judicial candidates. No Model Code equivalent to prohibition against soliciting contributions for candidates.</p> <p>(A) Political Conduct in General.</p> <p>(3) Judges may contribute to, but shall not solicit funds for another judicial candidate.</p>	<p>(1) act at all times in a manner consistent with the independence,* integrity,* and impartiality* of the judiciary;</p> <p>(2) comply with all applicable election, election campaign, and election campaign fund-raising laws and regulations of this jurisdiction;</p> <p>(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</p> <p>(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.</p> <p>(B) A candidate for elective judicial office may:</p> <p>(1) establish a campaign committee pursuant to the provisions of Rule 4.4;</p> <p>(2) speak on behalf of his or her candidacy through any medium, including but not limited to advertisements, websites, or other campaign literature;</p> <p>(3) seek, accept, or use endorsements from any person or organization.</p>

ABA Model Code	Current Washington Code	Final Task Force Recommendation
<p>candidacy through any medium, including but not limited to advertisements, websites, or other campaign literature;</p> <p><i>(3) publicly endorse or oppose candidates for the same judicial office for which he or she is running;</i></p> <p><i>(4) attend or purchase tickets for dinners or other events sponsored by a political organization* or a candidate for public office;</i></p> <p>(5) seek, accept, or use endorsements from any person or organization <i>other than a partisan political organization;</i> and</p> <p><i>(6) contribute to a political organization or candidate for public office, but not more than \$[insert amount] to any one organization or candidate.</i></p> <p>(C) A judicial candidate in a partisan public election may, unless prohibited by law, and not earlier than [insert amount of time] before the first applicable primary election, caucus, or general election:</p> <p>(1) identify himself or herself as a candidate of a political organization; and</p> <p>(2) seek, accept, and use</p>		<p>COMMENT</p> <p>[1] Paragraph (B) permits judicial candidates in public elections to engage in some political and campaign activities otherwise prohibited by Rule 4.1.</p> <p>[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).</p> <p>[3] Judicial candidates are permitted to attend or purchase tickets for dinners and other events sponsored by political organizations <i>on behalf of their own candidacy or that of another judicial candidate.</i></p> <p>[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.</p> <p>[5] Although judicial candidates in nonpartisan public elections are prohibited from running on a ticket or slate</p>

ABA Model Code	Current Washington Code	Final Task Force Recommendation
<p>endorsements of a political organization.</p> <p>COMMENT</p> <p>[1] Paragraphs (B) and (C) permit judicial candidates in public elections to engage in some political and campaign activities otherwise prohibited by Rule 4.1. Candidates may not engage in these activities earlier than [insert amount of time] before the first applicable electoral event, such as a caucus or a primary election.</p> <p>[2] Despite paragraphs (B) and (C), judicial candidates for public election remain subject to many of the provisions of Rule 4.1. For example, a candidate continues to be prohibited from soliciting funds for a political organization, knowingly making false or misleading statements during a campaign, or making certain promises, pledges, or commitments related to future adjudicative duties. See Rule 4.1(A), paragraphs (4), (11), and (13).</p> <p>[3] In partisan public elections for judicial office, a candidate may be nominated by, affiliated with, or otherwise publicly identified or associated with a political organization, including a political party. This relationship may be maintained throughout the period of the public campaign, and may include use of</p>		<p>associated with a political organization, they may group themselves into slates or other alliances to conduct their campaigns more effectively.</p>

ABA Model Code	Current Washington Code	Final Task Force Recommendation
<p>political party or similar designations on campaign literature and on the ballot.</p> <p>[4] In nonpartisan public elections or retention elections, paragraph (B)(5) prohibits a candidate from seeking, accepting, or using nominations or endorsements from a partisan political organization.</p> <p>[5] Judicial candidates are permitted to attend or purchase tickets for dinners and other events sponsored by political organizations.</p> <p>[6] For purposes of paragraph (B)(3), candidates are considered to be running for the same judicial office if they are competing for a single judgeship or if several judgeships on the same court are to be filled as a result of the election. In endorsing or opposing another candidate for a position on the same court, a judicial candidate must abide by the same rules governing campaign conduct and speech as apply to the candidate's own campaign.</p> <p>[7] Although judicial candidates in nonpartisan public elections are prohibited from running on a ticket or slate associated with a political organization, they may group themselves into slates or other alliances to conduct their campaigns more effectively.</p>		

ABA Model Code	Current Washington Code	Final Task Force Recommendation
<p>Candidates who have grouped themselves together are considered to be running for the same judicial office if they satisfy the conditions described in Comment [6].</p>		
<p>RULE 4.3 <i>Activities of Candidates for Appointive Judicial Office</i></p> <p>A candidate for appointment to judicial office may:</p> <p>(A) communicate with the appointing or confirming authority, including any selection, screening, or nominating commission or similar agency; and</p> <p>(B) seek endorsements for the appointment from any person or organization <i>other than a partisan political organization.</i></p> <p>COMMENT</p> <p>[1] When seeking support or endorsement, or when communicating directly with an appointing or confirming authority, a candidate for appointive judicial office must not make any pledges, promises, or commitments that are inconsistent with the impartial performance of the adjudicative duties of the office. See Rule 4.1(A)(13).</p>	<p>Has no equivalent to 2007 Model Code Rule 4.3</p>	<p>RULE 4.3 <i>Activities of Candidates for Appointive Judicial Office</i></p> <p>A candidate for appointment to judicial office may:</p> <p>(A) communicate with the appointing or confirming authority, including any selection, screening, or nominating commission or similar agency; and</p> <p>(B) seek endorsements for the appointment from any person or organization.</p> <p>COMMENT</p> <p>[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).</p>

ABA Model Code	Current Washington Code	Final Task Force Recommendation
<p>RULE 4.4 <i>Campaign Committees</i></p> <p>(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.*</p> <p>(B) A judicial candidate subject to public election shall direct his or her campaign committee:</p> <p>(1) to solicit and accept only such campaign contributions* as are reasonable, in any event not to exceed, in the aggregate,* \$[insert amount] from any individual or \$[insert amount] from any entity or organization;</p> <p>(2) not to solicit or accept contributions for a candidate’s current campaign more than [insert amount of time] before the applicable primary election, caucus, or general or retention election, nor more than [insert number] days after the last election in which the candidate participated; and</p>	<p>Canon 7(B)(2): Rule 4.4 in 2007 Model Code. Does not have Comments.</p> <p>(B) Campaign Conduct.</p> <p>(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</p>	<p>RULE 4.4 <i>Campaign Committees</i></p> <p>(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.*</p> <p>(B) A judicial candidate subject to public election shall direct his or her campaign committee:</p> <p>(1) to solicit and accept only such campaign contributions* as are reasonable, in any event not to exceed, in the aggregate amount <i>allowed as provided for by law;</i></p> <p>(2) not to solicit contributions for a candidate’s current campaign more than <i>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.</i></p> <p>(3) to comply with all applicable statutory requirements for disclosure and divestiture of campaign contributions,</p>

ABA Model Code	Current Washington Code	Final Task Force Recommendation
<p>(3) to comply with all applicable statutory requirements for disclosure and divestiture of campaign contributions, and to file with <i>[name of appropriate regulatory authority] a report stating the name, address, occupation, and employer of each person who has made campaign contributions to the committee in an aggregate value exceeding \$[insert amount]. The report must be filed within [insert number] days following an election, or within such other period as is provided by law.</i></p> <p>COMMENT</p> <p>[1] Judicial candidates are prohibited from personally soliciting campaign contributions or personally accepting campaign contributions. See Rule 4.1(A)(8). This Rule recognizes that in many jurisdictions, judicial candidates must raise campaign funds to support their candidacies, and permits candidates, other than candidates for appointive judicial office, to establish campaign committees to solicit and accept reasonable financial contributions or in-kind contributions.</p> <p>[2] Campaign committees may solicit and accept campaign contributions, manage the expenditure of campaign funds, and generally conduct</p>	<p>delivered directly to the candidate, receipt and prompt delivery of the contribution to the appropriate campaign official is not prohibited.</p>	<p>and to file <i>with the Public Disclosure Commission all reports as required by law.</i></p> <p>COMMENT</p> <p>[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.</p> <p>[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.</p>

ABA Model Code	Current Washington Code	Final Task Force Recommendation
<p>campaigns. Candidates are responsible for compliance with the requirements of election law and other applicable law, and for the activities of their campaign committees.</p> <p>[3] At the start of a campaign, the candidate must instruct the campaign committee to solicit or accept only such contributions as are reasonable in amount, appropriate under the circumstances, and in conformity with applicable law. Although lawyers and others who might appear before a successful candidate for judicial office are permitted to make campaign contributions, the candidate should instruct his or her campaign committee to be especially cautious in connection with such contributions, so they do not create grounds for disqualification if the candidate is elected to judicial office. See Rule 2.11.</p>		
<p>RULE 4.5 <i>Activities of Judges Who Become Candidates for Nonjudicial Office</i></p> <p>(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.</p> <p>(B) Upon becoming a candidate for a nonjudicial appointive office, a judge is</p>	<p>Canon 7(A)(4): Rule 4.5(A) in 2007 Model Code. Does not have (B) or Comments.</p> <p>(A) Political Conduct in General.</p> <p>(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</p>	<p>RULE 4.5 <i>Activities of Judges Who Become Candidates for Nonjudicial Office</i></p> <p>(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.</p> <p>(B) Upon becoming a candidate for a nonjudicial appointive office, a judge is not required to resign from judicial office,</p>

ABA Model Code	Current Washington Code	Final Task Force Recommendation
<p>not required to resign from judicial office, provided that the judge complies with the other provisions of this Code.</p> <p>COMMENT</p> <p>[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.</p> <p>[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.</p>	<p>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.</p>	<p>provided that the judge complies with the other provisions of this Code.</p> <p>COMMENT</p> <p>[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.</p> <p>[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.</p>

TAB 7

~~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.
- -
- [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).~~

TAB 8

Bibliography

Washington State Supreme Court Code of Judicial Conduct Task Force

American Bar Association, *Model Code of Judicial Conduct*, ABA Publishing, Chicago, 2007.

available at: <http://www.abanet.org/>

Becker, Mary Kay, Judge, Court of Appeals Division I. Memorandum to Code of Judicial Conduct Task Force Members RE: Appearance of Impropriety. February 19, 2009.

Bopp, James Jr. and Woudenberg, Anita Y. "Comment of James Madison Center for Free Speech on Judicial Canon 5.02(D) For The ABA's Joint Commission To Evaluate The Model Code Of Judicial Conduct." September 15, 2005. James Madison Center for Free Speech. <http://www.jamesmadisoncenter.org/>

Bopp, James Jr. and Woudenberg, Anita Y. "Second Supplemental Comment of James Madison Center for Free Speech On Judicial Canons 2.12(A)(5) And 5 For The ABA's Joint Commission To Evaluate The Model Code Of Judicial Conduct." July 26, 2006. James Madison Center for Free Speech. <http://www.jamesmadisoncenter.org/>

Bopp, James Jr. and Woudenberg, Anita Y. "An Announce Clause by Any Other Name: The Unconstitutionality of Disciplining Judges Who Fail to Disqualify Themselves for Exercising Their Freedom to Speak." 55 Drake L. Rev. 723 (2007)
information available at: <http://www.law.drake.edu/>
<http://students.law.drake.edu/lawReview/>

Bopp, James Jr. and Woudenberg, Anita Y. "Comments of The James Madison Center for Free Speech on Indiana Proposed Judicial Canons 4, 2.10(B) And 2.11." May 5, 2008. James Madison Center for Free Speech. <http://www.jamesmadisoncenter.org/>

Bopp, James Jr. and Neeley, Josiah. "How Not To Reform Judicial Elections: Davis, White, And The Future Of Judicial Campaign Financing ." 86 Denv. U.L. Rev. (forthcoming 2008).
available at: <http://www.law.du.edu/>

Bopp, James Jr. and Woudenberg, Anita Y. "Supplemental Comment of James Madison Center for Free Speech on Judicial Canons 2.11(C), 2.12(5) and 5 for The ABA's Joint Commission to Evaluate the Model Code of Judicial Conduct." James Madison Center for Free Speech. <http://www.jamesmadisoncenter.org/>

Bopp, James Jr. and Woudenberg, Anita Y. "An Announce Clause by Any Other Name: The Unconstitutionality of Disciplining Judges Who Fail to Disqualify Themselves for Exercising Their Freedom to Speak." 55 Drake L. Rev. 723.
<http://students.law.drake.edu/lawReview/>

Bopp, James Jr. and Woudenberg, Anita Y. "To Speak or Not to Speak: Unconstitutional Regulation in the Wake of White ." Special Issue: Judicial Conduct and Ethics. Editors: Stephen L. Wasby and Luke Bierman. Perspective on Republican Party v. White. 28 JUSTSYSJ 329.

Callner, J. Reiko, Executive Director, Commission on Judicial Conduct. Memorandum to Code of Judicial Conduct Task Force Members RE: Appearance of Impropriety as an Enforceable Standard. March 2, 2009.

Callner, J. Reiko, Executive Director, Commission on Judicial Conduct. Memorandum to Judge Joel Penoyar RE: Further examples of Canon 2(A) violations. March 23, 2009.

Campbell, Sue. "Comparison between Washington Code of Judicial Conduct and ABA Model Code of Judicial Conduct." December 2008.
available at: <http://www.abanet.org/>

Carey v. Wolnitzek, No. 3:06-cv-00036, 2006 WL 2916814 (E.D. Ky. Oct. 10, 2006)

Duwe v. Alexander, 490 F.Supp.2d 968, (United States District Court, W.D. Wisconsin)

Fleck, Judge Deborah. "Proposed Amendment To ABA MCJC 2.11(A)(4) for Disqualification of a Judge Based on Financial Support for the Judge's Election Campaign." Disqualification and Recusal Committee of the Judicial Selection Coalition. Spokesperson: Charles K. Wiggins. November 2008.

Gray, Cynthia. "Avoiding the Appearance of Impropriety: With Great Power Comes Great Responsibility." Judicature July 1, 2005.
available at:
<http://www.encyclopedia.com/Judicature/publications.aspx?date=200507&pageNumber=1>

Hora, Peggy Fulton and Stalcup, Theodore. Article, "Drug Treatment Courts in the Twenty-First Century: The Evolution of The Revolution in Problem-Solving Courts." Georgia Law Review, Spring (2008).

"Justice Not for Sale." Editorial. New York Times, New York edition. 3 March 2009: A26.
available at : <http://www.nytimes.com>

Rotunda, Ronald D.,Judicial Ethics, the Appearance of Impropriety, and the Proposed New ABA Judicial Code. Hofstra Law Review, Vol. 34, No. 4, pp. 1337-1377, Summer 2006; George Mason Law & Economics Research Paper No. 06-43.
available at SSRN: <http://ssrn.com/abstract=926437>

Rotunda, Ronald D., "Judicial Ethics, The Appearance of Impropriety, and the Proposed New ABA Judicial Code," 34 Hofstra L. Rev. 1337, 1340 (2006).

available at: <http://law.hofstra.edu/Home/index.html>

Sample, James, Counsel, Brennan Center for Justice at NYU School of Law. Letter to Wiggins & Masters, P.L.L.C. December 16, 2008.

“Status of State Review of ABA Model Code of Judicial Conduct 2007.” American Bar Association. available at: <http://www.abanet.org/>

“State Adoption of Revised Model Code of Judicial Conduct.” American Bar Association Center for Professional Responsibility.
available at: <http://www.abanet.org/>

Washington State Court Rules: Code of Judicial Conduct (CJC)
available at:

http://www.courts.wa.gov/court_rules/?fa=court_rules.list&group=ga&set=CJC

Wiggins, Charles K., “Proposed Amendment To ABA MCJC 2.11(A)(4) For Disqualification of a Judge Based on Financial Support for The Judge’s Election Campaign.” Proposal to the Supreme Court Code of Judicial Conduct Task Force from the Disqualification and Recusal Committee of the Judicial Selection Coalition, Judge Deborah Fleck, Chair.