CHAPTER 33. CODE OF JUDICIAL CONDUCT

Subch.

Subchapter A. CANONS

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.
2. A judge shall perform the duties of judicial office impartially, compentently, and diligently.
3. A judge shall conduct the judge's personal and extrajudicial activities to minimize the risk of conflict with the obligations of judicial office.
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.

Source

The provisions of this Chapter 33, Subchapter A adopted November 21, 1973, effective January 1, 1974, 3 Pa.B. 2914; amended November 21, 2005, effective immediately, 35 Pa.B. 6647; amended January 8, 2014, effective July 1, 2014, persons to whom the Code of Judicial Conduct applies shall comply with Rules 3.4, 3.7, 3.8 and 3.11 as soon as reasonably possible and shall do so in any event by July 1, 2015, 44 Pa.B. 455, unless otherwise noted. Immediately preceding text appears at serial pages (334829), (334830), (358463) to (358466), (319845) to (319848), (333491), (360121) and (360122).

Preamble

(1) This Code shall constitute the "canon of . . . judicial ethics" referenced in Article V, Section 17(b) of the Pennsylvania Constitution, which states, in pertinent part: "Justices and judges shall not engage in any activity prohibited by law and shall not violate any canon of legal or judicial ethics prescribed by the (Pennsylvania) Supreme Court."

(2) An independent, fair, honorable and impartial judiciary is indispensable to our system of justice. The Pennsylvania legal system is founded upon the principle that an independent, fair, impartial, and competent judiciary, composed of persons of integrity, will interpret and apply the law that governs our society. The judiciary consequently plays a fundamental role in ensuring the principles of justice and the rule of law. The rules contained in this Code necessarily require judges, individually and collectively, to treat and honor the judicial office as a public trust, striving to preserve and enhance legitimacy and confidence in the legal system.

(3) Judges should uphold the dignity of judicial office at all times, avoiding both impropriety and the appearance of impropriety in their professional and personal lives. They should at all times conduct themselves in a manner that garners the highest level of public confidence in their independence, fairness, impartiality, integrity, and competence.

(4) The Pennsylvania Code of Judicial Conduct denotes standards for the ethical behavior of judges and judicial candidates. It is not an all-encompassing model of appropriate conduct for judges and judicial candidates, but rather a complement to general ethical standards and other rules, statutes and laws governing such persons' judicial and personal conduct. The Code is designed to assist judges in practicing the highest standards of judicial and personal conduct and to establish a basis for disciplinary agencies to regulate judges' conduct.

(5) The Rules of this Code of Conduct are rules of reason that should be applied consistently with constitutional requirements, statutes, other court rules, and decisional law, and with due regard for all relevant circumstances. The Code is to be construed so as not to impinge on the essential independence of judges in making judicial decisions.

(6) 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. Moreover, it is not intended that disciplinary action would be appropriate for every violation of the Code's provisions. Whether disciplinary action is appropriate, and the degree of discipline to be imposed, should be determined through a reasonable application of the text and should depend on such factors as the seriousness of the violation, the intent of the judge, whether there is a pattern of improper activity, and the effect of the improper activity on others or on the judicial system.

(7) This 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.

(8) The Ethics Committee of the Pennsylvania Conference of State Trial Judges is designated as the approved body to render advisory opinions regarding ethical concerns involving judges, other judicial officers and judicial candidates subject to the Code of Judicial Conduct. Although such opinions are not, *per se*, binding upon the Judicial Conduct Board, the Court of Judicial Discipline or the Supreme Court of Pennsylvania, action taken in reliance thereon and pursuant thereto shall be taken into account in determining whether discipline should be recommended or imposed.

(9) In 2014, this Code was reformatted and revised in material respects, upon guidance taken from the 2011 edition of the American Bar Association's Model Code of Judicial Conduct, other

states' codes, and experience.

Terminology

Aggregate—In relation to contributions for a candidate, includes contributions in cash or kind made directly to a candidate's campaign committee or 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.

Appropriate authority—The authority having responsibility for initiation of disciplinary process in connection with the violation to be reported.

Contribution—Both financial and in-kind contributions, such as professional or volunteer services, advertising, and other assistance, which if otherwise obtained, would require a financial expenditure.

Domestic partner—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.

Economic interest—More than a *de minimis* legal or equitable ownership 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.

Fiduciary—Includes relationships such as executor, administrator, trustee, or guardian.

Impartial, impartiality, impartially—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.

Impending matter—A matter that is imminent or expected to occur in the near future.

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.

Independence—A judge's freedom from influence or controls other than those established by law or Rule.

Integrity—Probity, fairness, honesty, uprightness, and soundness of character.

Judicial candidate—Any person, including a sitting judge, who is seeking appointment, election or retention 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 appointment or election authority, or where permitted, engages in solicitation or acceptance of contributions or support, or is nominated for appointment or election to office.

Knowingly, knowledge, known, and knows—Actual knowledge of the fact in question. A person's knowledge may be inferred from the circumstances.

Law—Refers to constitutional provisions, statutes, decisional law, Supreme Court Rules and directives, including this Code of Judicial Conduct and the Unified Judicial System Policy of Non-Discrimination and Equal Opportunity, and the like which may have an effect upon judicial conduct.

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

Member of the judge's family residing in the judge's household—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.

Nonpublic information—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, presentence reports, dependency cases, or psychiatric reports.

Party—A person or entity who has a legal interest in a court proceeding.

Pending matter—A matter that has commenced and continuing on until final disposition.

Personally solicit—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.

Political organization—A political party or 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, excluding a judicial candidate's campaign committee created as authorized by this Code.

Public election—Includes primary, municipal, and general elections, partisan elections, nonpartisan elections, and retention elections.

Third degree of relationship—Includes the following persons: great-grandparent, grandparent, parent, uncle, aunt, brother, sister, child, grandchild, great-grandchild, nephew, and niece.

Application

(1) The provisions of this Code shall apply to all judges as defined in paragraph (2) *infra*.

(2) A judge within the meaning of this Code is any one of the following judicial officers who perform judicial functions, whether or not a lawyer: all Supreme Court Justices; all Superior Court Judges; all Commonwealth Court Judges; all Common Pleas Court Judges; all judges of the Philadelphia Municipal Court, except for Traffic Division; and all senior judges as set forth in (3) *infra*.[1]

(3) All senior judges, active or eligible for recall to judicial service, shall comply with the provisions of this Code; provided however, a senior judge may accept extra-judicial appointments which are otherwise prohibited by Rule 3.4 (Appointments to Governmental Positions and Other Organizations); and incident to such appointments a senior judge is not required to comply with Rule 3.2 (Appearances Before Governmental Bodies and Consultation with Government Officials). However, during the period of such extrajudicial appointment the senior judge shall refrain from judicial service.

(4) Canon 4 (governing political and campaign activities) applies to all judicial candidates.

(5) This Code shall not apply to magisterial district judges and judges of the Philadelphia Municipal Court, Traffic Division.[2]

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[1] Though not covered by this Code, there is a Code of Conduct for Employees of the Unified Judicial System (''Employee Code''). It applies to ''employees'' defined as, ''Employees of the Unified Judicial System'' and includes 1) all state-level court employees, and 2) all county-level court employees who are under the supervision and authority of the President Judge of a Judicial District of Pennsylvania, unless otherwise indicated by Supreme Court order or rule. This Code and the Employee Code do not apply to nonemployee special masters, commissioners, and judges *pro tem*.

[2] Specific rules governing standards of conduct of magisterial district judges, and judges of the Philadelphia Municipal Court, Traffic Division, are set forth in the Supreme Court Rules Governing Standards of Conduct of Magisterial District Judges.

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

Rule 1.1. Compliance with the Law.

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

Comment:

This Rule concerns a judge's duty to comply with the law. For a judge's duty to uphold and apply the law in judicial decision-making, see Rule 2.2 and Comment (3) to Rule 2.2.

Rule 1.2. Promoting Confidence in the Judiciary.

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

Comment:

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

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

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

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

(5) ''Impropriety'' is a defined term in the Terminology Section of the Code. 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. This test differs from the formerly applied common law test of whether ''a significant minority of the lay community could reasonably question the court's impartiality.''

(6) Judges are encouraged to 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 preferential 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. A judge should also not lend the prestige of his or her office to advance the private interests of others, nor convey or knowingly permit others to convey the impression that they are in a special position to influence the judge.

(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 and promotion of such writing to avoid such exploitation.

Canon 2. A judge shall perform the duties of judicial office impartially, competently, and diligently.

Rule

Rule 2.1. Giving Precedence to the Duties of Judicial Office.

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

Comment:

(1) A judge's personal and extrajudicial activities should be arranged so as not to interfere unreasonably with the diligent discharge of the Judge's duties of office.

(2) 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.

(3) 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 administration of justice.

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. This comment is not intended to restrict the appropriate functions of the courts in statutory or common law review.

(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 heard fairly and impartially.

Rule 2.3. Bias, Prejudice, and Harassment.

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

(B) A judge shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice, or engage in harassment, including but not limited to bias, prejudice, or harassment based upon race, sex, gender, religion, national origin, ethnicity, disability, age, sexual orientation, marital status, socioeconomic status, or political affiliation, and shall not permit court staff, court officials, or others subject to the judge's direction and control to do so.

(C) A judge shall require lawyers in proceedings before the court to refrain from manifesting

bias or prejudice, or engaging in harassment, based upon attributes including but not limited to race, sex, gender, religion, national origin, ethnicity, disability, age, sexual orientation, marital status, socioeconomic status, or political affiliation, against parties, witnesses, lawyers, or others.

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

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) The Supreme Court's Rules and Policies, e.g., the Rules of Judicial Administration and the Unified Judicial System Policy on Non-Discrimination and Equal Employment Opportunity, have continued force and effect.

Rule 2.4. External Influences on Judicial Conduct.

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

(B) A judge shall not permit family, social, political, financial, or other interests or relationships to influence the judge's judicial conduct or judgment.

(C) A judge shall not convey or permit others to convey the impression that any person or organization is in a position to influence the judge.

Comment:

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

Rule 2.5. Competence, Diligence and Cooperation.

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

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

Comment:

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

(2) A judge should seek the necessary docket time, court staff, expertise, and resources to discharge all adjudicative and administrative responsibilities.

(3) Prompt disposition of the court's business requires a judge to devote adequate time to judicial duties, to be punctual in attending court and expeditious in determining matters under submission, and to take reasonable measures to ensure that court officials, litigants, and their lawyers cooperate with the judge to that end. The obligation of this Rule includes, for example, the accurate, timely and complete compliance with the requirements of Pa.R.J.A. No. 703 (Reports of Judges) where applicable.

(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 or entity who has a legal interest in a proceeding, or that person or entity's lawyer, the right to be heard according to law.

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

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 procedure 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 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 where the judge has recused himself or herself or when disqualification is required by Rule 2.11 or other law.

Comment:

(1) Judges shall be available to decide the matters that come before the court. Although there are times when disqualification or recusal 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 or recusal 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 should not use disqualification or recusal to avoid cases that present difficult, controversial, or unpopular issues.

(2) This Rule describes the duty of a judge to decide matters assigned to the judge. However, there may be instances where a judge is disqualified from presiding over a particular matter or shall recuse himself or herself from doing so. A judge is disqualified from presiding over a matter when a specified disqualifying fact or circumstance is present. *See* Rule 2.11. The concept of recusal envisioned in this Rule overlaps with disqualification. In addition, however, a judge may recuse himself or herself from presiding over a matter even in the absence of a disqualifying fact or circumstance where—in the exercise of discretion, in good faith, and with due consideration for the general duty to hear and decide matters—the judge concludes that prevailing facts and circumstances could engender a substantial question in reasonable minds as to whether disqualification nonetheless should be required. This test differs from the formerly applied common law test of whether ''a significant minority of the lay community could reasonably question the court's impartiality.''

(3) 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 or recusal, even if the judge believes there is no proper basis for disqualification or recusal.

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 the verdict of the jury other than in a court order or opinion in a proceeding. This Rule does not prohibit a judge from expressing appreciation to the jurors for their service to the judicial system and to the community. Judges are expected to maintain their supervisory role over a deliberating jury.

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, except as follows:

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

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

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

(2) A judge may obtain the written advice of a disinterested expert on the law applicable to a proceeding before the judge, if the judge gives advance notice to the parties of the person to be consulted and the subject matter of the advice to be solicited, and affords the parties a reasonable opportunity to object and respond to the notice and to the advice received.

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

(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 promptly notify the parties of the substance of the communication and provide the parties with an opportunity to respond.

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

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

(E) It is not a violation of this Rule for a judge to 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, a judge may assume a more interactive role with the parties, treatment providers, probation officers, social workers, and others.

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 shall avoid comments and interactions that may be interpreted as *ex parte* communications concerning pending matters or matters that may appear before the court, including a judge who participates in electronic social media.

(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).

(8) In order to obtain the protection afforded to *ex parte* communication under paragraph (E) of this Rule, a judge should take special care to make sure that the participants in such voluntary

special court programs are made aware of and consent to the possibility of *ex parte* communications under paragraph (E).

Rule 2.10. Judicial Statements on Pending and Impending Cases.

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

(B) A judge shall not, in connection with cases, controversies, or issues that are likely to come before the court, make pledges, promises, or commitments that are inconsistent with the impartial performance of the adjudicative duties of judicial office.

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

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

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

Comment:

(1) This Rule's restrictions on judicial speech are essential to the maintenance of the independence, integrity, and impartiality of the judiciary. A judge should be mindful that comments of a judge regarding matters that are pending or impending in any court can sometimes affect the outcome or impair the fairness of proceedings in a matter. See Rule 1.2.

(2) This Rule does not prohibit a judge from commenting on proceedings in which the judge is a litigant in a personal capacity, or represents a client as permitted by these Rules. In cases in which the judge is a litigant in an official capacity, such as a writ of mandamus, the judge must not comment publicly.

(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) This Rule is not intended to impede a judge from commenting upon legal issues or matters for pedagogical purposes.

Rule 2.11. Disqualification.

(A) A judge shall disqualify himself or herself in any proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to the following circumstances:

(1) The judge has a personal bias or prejudice concerning a party or a party's lawyer, or personal knowledge of facts that are in dispute in the proceeding.

(2) The judge knows that the judge, the judge's spouse or domestic partner, or a person within the third degree of relationship to either of them, or the spouse or domestic partner of such a person is:

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

(b) acting as a lawyer in the proceeding;

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

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

(3) The judge knows that he or she, individually or as a fiduciary, or the judge's spouse, domestic partner, parent, or child, or any other member of the judge's family residing in the judge's household, has an economic interest in the subject matter in controversy or is a party to the proceeding.

(4) The judge knows or learns that a party, a party's lawyer, or the law firm of a party's lawyer has made a direct or indirect contribution(s) to the judge's campaign in an amount that would raise a reasonable concern about the fairness or impartiality of the judge's consideration of a case involving the party, the party's lawyer, or the law firm of the party's lawyer. In doing so, the judge should consider the public perception regarding such contributions and their effect on the judge's ability to be fair and impartial. There shall be a rebuttable presumption that recusal or disqualification is not warranted when a contribution or reimbursement for transportation, lodging, hospitality or other expenses is equal to or less than the amount required to be reported as a gift on a judge's Statement of Financial Interest.

(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 in the matter during such association;

(b) served in governmental employment, and in such capacity participated personally and substantially as a lawyer or public official concerning the proceeding, or has publicly expressed in such capacity an opinion concerning the merits of the particular matter in controversy; or

(c) was a material witness concerning the matter.

(B) A judge shall keep informed about the judge's personal and fiduciary economic interests, and make a reasonable effort to keep informed about the personal economic interests of the judge's spouse or domestic partner and minor children residing in the judge's household.

(C) A judge subject to disqualification under this Rule, other than for bias or prejudice under paragraph (A)(1), may disclose on the record the basis of the judge's disqualification and may ask the parties and their lawyers to consider, outside the presence of the judge and court personnel, whether to waive disqualification. If, following the disclosure, the parties and lawyers agree, without participation by the judge or court personnel, that the judge should not be disqualified, the judge may participate in the proceeding. The agreement shall be incorporated into the record of the proceeding.

Comment:

(1) Under this Rule, a judge is disqualified whenever the judge's impartiality might reasonably be questioned, regardless of whether any of the specific provisions of paragraphs (A)(1) through (6) apply.

(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) Rule 2.11(A)(4) represents a first inroad into complex issues associated with the financing of judicial campaigns in the scheme prescribed by the Pennsylvania Constitution, per which judicial officers are elected by the citizenry. See Pa. Const. art. V, § 13. For example, the rule presently does not address a number of circumstances which have arisen in the context of public judicial elections, including the involvement of political action committees (''PACs''). Under the direction of an independent board of directors, such entities may aggregate then distribute individual contributions among judicial campaigns, political campaigns, their own operating expenses, and other expenditures. There is no attempt, under the present rule, to require disqualification on account of individual contributions made to a PAC, so long as the organization does not serve as the alter-ego of a specific donor or donors. Rulemaking, in this regard, would require further study and deliberation in order to appropriately balance all respective interests involved. Thus, the Court has reserved any treatment to a later time.

Source

The provisions of this Rule 2.11 amended June 23, 2014, effective July 1, 2014, 44 Pa.B. 4338. Immediately preceding text appears at serial pages (370679) to (370680).

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 in a manner consistent with the judge's obligations under this Code.

(B) A judge with supervisory authority for the performance of other judges shall take reasonable measures to ensure that those judges properly discharge their judicial responsibilities, including the prompt disposition of matters before them.

Comment:

(1) A judge is responsible for his or her own conduct and for the conduct of others, such as staff, when those persons are acting at the judge's direction or control. A judge may not direct court personnel to engage in conduct on the judge's behalf or as the judge's representative when such conduct would violate the Code if undertaken by the judge.

(2) Public confidence in the judicial system depends upon timely justice. To promote the efficient administration of justice, a judge with supervisory authority must take the steps needed to ensure that judges under his or her supervision administer their workloads promptly. Determinations of the local board of judges in each county, and/or the Supreme Court, will determine whether the President Judge of the county has the supervisory authority contemplated herein.

Rule 2.13. Administrative Appointments.

(A) In making administrative appointments and hiring decisions, a judge:

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

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

(B) A judge shall not appoint a lawyer to a position if the judge either knows that the lawyer, or the lawyer's spouse or domestic partner, has contributed as a major donor within the prior two years to the judge's election campaign, or learns of such a contribution by means of a timely motion by a party or other person properly interested in the matter, unless:

(1) the position is substantially uncompensated;

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

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

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

Comment:

(1) The concept of ''appointment'' includes hiring decisions. 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) Nepotism is the appointment of a judge's spouse or domestic partner, or any relative within the third degree of relationship of either the judge or the judge's spouse or domestic partner, or the spouse or domestic partner of such relative.

(3) The rule against making administrative appointments of lawyers who have contributed as a major donor to a judge's campaign includes an exception for positions that are substantially uncompensated, such as those for which the lawyer's compensation is limited to reimbursement for out-of-pocket expenses.

Rule 2.14. Disability and Impairment.

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

Comment:

(1) ''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 shall inform the appropriate authority.

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

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

(D) A judge who receives information indicating a substantial likelihood that a lawyer has committed a violation of the Pennsylvania 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 authority or other agency or body 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:

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

Rule 3.1. Extrajudicial Activities in General.

Judges shall regulate their extrajudicial activities to minimize the risk of conflict with their judicial duties and to comply with all provisions of this Canon. However, 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;

(C) participate in activities that would reasonably appear to undermine the judge's independence, integrity, or impartiality;

(D) engage in conduct that would reasonably appear to be coercive; or

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

Comment:

(1) To the extent that time permits, and judicial independence and impartiality are not compromised, judges are encouraged to engage in appropriate extrajudicial activities. Judges are uniquely qualified to engage in extrajudicial activities that concern the law, the legal system, and the administration of justice, such as by speaking, writing, teaching, or participating in scholarly research projects. In addition, judges are permitted and encouraged to engage in educational, religious, charitable, fraternal or civic extrajudicial activities not conducted for profit, even when the activities do not involve the law. See Rule 3.7.

(2) Participation in both law-related and other extrajudicial activities helps integrate judges into their communities, and furthers public understanding of and respect for courts and the judicial system.

(3) Discriminatory actions and expressions of bias or prejudice by a judge, even outside the judge's official or judicial actions, are likely to appear to a reasonable person to call into question the judge's integrity and impartiality. Examples include jokes or other remarks that demean individuals based upon their race, sex, gender, religion, national origin, ethnicity, disability, age, sexual orientation, or socioeconomic status. For the same reason, a judge's extrajudicial activities must not be conducted in connection or affiliation with an organization that practices invidious discrimination. See Rule 3.6.

(4) While engaged in permitted extrajudicial activities, judges must not coerce others or take action that would reasonably be perceived as coercive.

(5) Paragraph (E) of this Rule is not intended to prohibit a judge's occasional use of office resources, such as a telephone, for personal purposes.

Rule 3.2. Appearances Before Governmental Bodies and Consultation with Government Officials.

A judge shall not make a presentation to a public hearing before, or otherwise consult with, an executive or legislative body or official, except:

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

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

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

(D) a judge may consult with and make recommendations to public and private fund-granting agencies on projects and programs concerning the law, the legal system, or the administration of justice.

Comment:

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

(2) In appearing before governmental bodies or consulting with government officials, judges must be mindful that they remain subject to other provisions of this Code, such as Rule 1.3, prohibiting judges from using the prestige of office to advance their own or others' interests, Rule 2.10, governing public comment on pending and impending matters, and Rule 3.1(C), prohibiting judges from engaging in extrajudicial activities that would appear to a reasonable person to undermine the judge's independence, integrity, or impartiality.

(3) In general, it would be an unnecessary and unfair burden to prohibit judges from appearing before governmental bodies or consulting with government officials on matters that are likely to affect them as private citizens, such as zoning proposals affecting their real property. In engaging

in such activities, however, judges must not refer to their judicial positions, and must otherwise exercise caution to avoid using the prestige of judicial office.

Rule 3.3. Testifying as a Character Witness.

Reserved.

Comment:

In Pennsylvania, this subject matter is addressed in Rule of Judicial Administration 1701(e).

Rule 3.4. Appointments to Governmental Positions and Other Organizations.

(A) 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.

(B) A judge may serve as a member, officer, or director of an organization or governmental agency devoted to the improvement of the law, the legal system, or the administration of justice. A judge shall not personally solicit funds but may attend fundraising events for such organizations.

(C) Senior judges eligible for recall to judicial service may accept extrajudicial appointments not permitted by Rule 3.4(B) but during the term of such appointment shall refrain from judicial service.

Comment:

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

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

Rule 3.5. Use of Nonpublic Information.

Nonpublic information acquired by judges in their judicial capacity shall not be used or disclosed by them in financial dealings or for any other purpose not related to their judicial duties.

Comment:

(1) In the course of performing judicial duties, a judge may acquire information of commercial or other value that is unavailable to the public. The judge must not reveal or use such information

for personal gain or for any purpose unrelated to his or her judicial duties.

(2) This Rule is not intended, however, to affect a judge's ability to act on information as necessary to protect the health or safety of the judge or a member of the judge's family, court personnel, other judicial officers or other persons if consistent with other provisions of this Code.

Rule 3.6. Affiliation with Discriminatory Organizations.

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

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

Comment:

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

(2) An organization is generally said to discriminate invidiously if it arbitrarily excludes from membership on the basis of race, sex, gender, religion, national origin, ethnicity, disability 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.

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

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

(5) This Rule does not apply to national or state military service.

Rule 3.7. Participation in Educational, Religious, Charitable, Fraternal or Civic Organizations and Activities.

(A) Avocational activities. Judges may write, lecture, teach, and speak on non-legal 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.

(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 an officer, director, trustee, or nonlegal advisor 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) A judge shall not serve if it is likely that the organization will be engaged in proceedings that would ordinarily come before the judge or will be regularly engaged in adversary proceedings in any court.

(2) A judge shall not personally solicit funds for any educational, religious, charitable, fraternal, or civic organization, or use or permit the use of the prestige of the judicial office for that purpose, but may be listed as an officer, director, or trustee of such an organization. A judge shall not be a speaker or the guest of honor at an organization's fundraising events that are not for the advancement of the legal system, but may attend such events.

(3) A judge shall not give investment advice to such an organization.

(C) Notwithstanding any of the above, a judge may encourage lawyers to provide *pro bono publico* legal services.

Comment:

(1) The nature of many outside organizations is constantly changing and what may have been innocuous at one point in time may no longer be so. Cases in point are boards of hospitals and banks. Judges must constantly be vigilant to ensure that they are not involved with boards of organizations that are often before the court.

(2) Judges are also cautioned with regard to organizations of which they were members while in practice, and/or in which they remain members, such as the District Attorney's organization, the Public Defender's organization, and MADD, as examples only. Review should be made to make sure that a reasonable litigant appearing before the judge would not think that membership in such an organization would create an air of partiality on the part of the tribunal.

Rule 3.8. Fiduciary Activities.

A judge shall not serve as the executor, administrator, trustee, guardian, attorney in fact, or other personal representative or other fiduciary, 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. As family fiduciaries judges are subject to the following restrictions:

(A) They shall not serve if it is likely that as fiduciaries 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.

(B) While acting as fiduciaries judges are subject to the same restrictions on financial activities that apply to them in their personal capacity.

(C) 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) Judges' obligations under this Canon and their obligations as fiduciaries may come into conflict. For example, a judge should resign as trustee if divesting the trust of holdings that place the judge in violation of Rule 3.1 of this Code would result in detriment to the trust.

(2) The Effective Date of Compliance provision of this Code, found at No. 419 Judicial Administration Docket, qualifies this subsection with regard to a judge who is an executor, administrator, trustee, or other fiduciary at the time this Code becomes effective.

Rule 3.9. Service as Arbitrator or Mediator.

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

Comment:

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

Rule 3.10. Practice of Law.

A judge shall not practice law. A judge may act *pro se* in a legal action in which he or she is personally involved, 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. Such limited practice is also subject to the disclosure of employment within the Unified Judicial System to the parties and the court in which the judge represents himself or herself. A judge is not prohibited from practicing law pursuant to military service, if the judge is otherwise permitted by law to do so.

Comment:

A judge may act *pro se* in all legal matters, including matters involving litigation and matters involving appearances before and 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 Activities.

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

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

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

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

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

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

(2) lead to frequent disqualification of the judge;

(3) involve the judge in frequent transactions or continuing business relationships with lawyers or other persons likely to come before the court on which the judge serves; or

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

Comment:

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

(2) As soon as practicable without serious financial detriment, the judge must divest himself or herself of investments and other financial interests that might require frequent disqualification or otherwise violate this Rule. Alternatively, a jurist may place such investments or other financial interests in a blind trust or similarly protective financial vehicle. So long as continuation will not interfere with the proper performance of judicial duties, a judge serving as an officer or director otherwise precluded by Rule 3.11(B), may complete the term of service if such may be accomplished in twelve months or less.

(3) Pursuant to Order No. 231, Magisterial Docket No. 1 (June 1, 2006), no judge shall have a financial interest, as defined by Section 1512(B) of the Pennsylvania Race Horse Development and Gaming Act (4 Pa.C.S. § 1101 et seq.), in or be employed, directly or indirectly, by any licensed racing entity or licensed gaming entity, or any holding, affiliate, intermediary or subsidiary company thereof or any such applicant, or engage in the active ownership or participate in the management of any such entities and related companies. The term ''judge'' shall include justices, judges of the Superior Court, judges of the Commonwealth Court, judges of the Courts of Common Pleas and judges of the Philadelphia Municipal Court, but shall not include lawyers and non-lawyers performing judicial functions, including but not limited to masters and arbitrators, for the Unified Judicial System.

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 shall be subject to public reporting. See Rule 3.15.

Rule 3.13. Acceptance of Gifts, Loans, Bequests, Benefits, or Other Things of Value.

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

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

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

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

(3) ordinary social hospitality;

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

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

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

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

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

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

(1) gifts incident to a public testimonial;

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

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

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

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

(D) A judge must report, to the extent required by Rule 3.15, gifts, loans, bequests, benefits, or other things of value received by 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, if the source is a party or other person, including a lawyer, who has come or is likely to come before the judge, or whose interests have come or are likely to come before the judge.

Comment:

(1) Whenever a judge accepts a gift or other thing of value without paying fair market value, there is a risk that the benefit might be viewed as a means to influence the judge's decision in a case. Rule 3.13 restricts the acceptance of such benefits, according to the magnitude of the risk. Paragraph (B) identifies circumstances in which the risk that the acceptance would appear to undermine the judge's independence, integrity, or impartiality is low, and explicitly provides that such items need not be publicly reported. As the value of the benefit or the likelihood that the source of the benefit will appear before the judge increases, the judge is prohibited under paragraph (A) from accepting the gift, or required under paragraph (C) and (D) to publicly report it.

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

(3) Businesses and financial institutions frequently offer 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 offered 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. This concern is reduced if the judge merely incidentally benefits from a gift or benefit given to such other persons. A judge should, however, inform family and household members of the restrictions imposed upon judges, and urge them to consider these restrictions when deciding whether to accept 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 and, when appropriate to the occasion, by the judge's spouse, domestic partner, or guest.

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

Comment:

(1) Educational, civic, religious, fraternal, and charitable organizations often sponsor meetings, seminars, symposia, dinners, awards ceremonies, and similar events. Judges are encouraged to attend educational programs, as both teachers and participants, in law-related and academic disciplines, in furtherance of their duty to maintain competence in the law. This Code also permits and supports participation in a variety of other extrajudicial activity.

(2) Often, sponsoring organizations invite certain judges to attend seminars or other events on a fee-waived or partial-fee-waived basis, sometimes including reimbursement for necessary travel, food, lodging, or other incidental expenses. A judge's decision whether to accept reimbursement of expenses or 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 reasonably obtain and consider information necessary to make an informed judgment about whether acceptance would be consistent with the requirements of this Code.

(3) A judge must be confident that acceptance of reimbursement or fee waivers would not

reasonably 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 a 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 restricted to programs with specific content;

(c) whether the content is related or unrelated to the subject matter of litigation pending before the judge, or to matters that are likely to come before the judge;

(d) whether the activity is primarily educational, rather than recreational, and whether the costs of the event are reasonable and comparable to those associated with similar events sponsored by the judiciary, bar associations, or similar groups;

(e) whether information concerning the activity and its funding sources is available upon inquiry;

(f) whether the sponsor or source of funding is generally associated with particular parties or interests currently appearing or likely to appear in the judge's court, thus possibly requiring disqualification of the judge under Rule 2.11;

(g) whether differing viewpoints are presented; and

(h) whether a broad range of judicial and nonjudicial participants are invited, whether a large number of participants are invited, and whether the program is designed exclusively for judges.

Rule 3.15. Reporting Requirements.

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

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

(2) gifts and other things of value as permitted by Rule 3.13(C), unless the value of such items, alone or in the aggregate with other items received from the same source in the same calendar year, does not exceed $250; and

(3) reimbursement of expenses and waiver of fees or charges permitted by Rule 3.14(A), unless the amount of reimbursement or waiver, alone or in the aggregate with other reimbursements or waivers received from the same source in the same calendar year, does not exceed $650.

(B) When public reporting is required by paragraph (A), a judge shall report:

(1) the date, place, and nature of the activity for which the judge received any compensation;

(2) the date and description of any gift, loan, bequest, benefit, or other thing of value accepted;

(3) the date and source of any reimbursement of expenses or waiver or partial waiver of fees or charges; and

(4) the date and source of any gifts, loans, bequests, benefits, or other things of value received by 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 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.

(C) The public report required by paragraph (A) shall be made at the filing due date for the Pennsylvania Supreme Court Statement of Financial Interest.

(D) Reports made in compliance with this Rule shall be filed as public documents on the Pennsylvania Supreme Court Statement of Financial Interest form.

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

Rule 4.1. Political and Campaign Activities of Judges and Judicial Candidates in General.

(A) Except as permitted by Rules 4.2, 4.3, and 4.4, 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 a candidate for any public office;

(3) publicly endorse or publicly oppose a candidate for any public office;

(4) solicit funds for, pay an assessment to, or make a contribution to a political organization or a candidate for public office;

(5) attend or purchase tickets for dinners or other events sponsored by a political organization or a candidate for public office;

(6) use or permit the use of campaign contributions for the private benefit of the judge or others;

(7) personally solicit or accept campaign contributions other than through a campaign committee authorized by Rule 4.4;

(8) use court staff, facilities, or other court resources in a campaign for judicial office;

(9) knowingly or with reckless disregard for the truth make any false or misleading statement;

(10) make any statement that would reasonably be expected to affect the outcome or impair the fairness of a matter pending in any court;

(11) engage in any political activity on behalf of a political organization or candidate for public office except on behalf of measures to improve the law, the legal system, or the administration of justice; 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 extent reasonably 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. These Rules do not prohibit candidates from campaigning on their own behalf, from endorsing or opposing candidates for the same judicial office for which they are a candidate, or from endorsing candidates for another elective judicial office appearing on the same ballot. See Rules 4.2(B)(2) and 4.2(B)(3). Candidates do not publicly endorse another candidate for public office by having their name on the same ticket.

Participation in Political Activities

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

(4) Paragraphs (A)(2) and (A)(3) prohibit judges 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.

(5) Although members of the families of judges and judicial candidates are free to engage in their own political activity, including becoming a candidate for public office, there is no ''family exception'' to the prohibition in Rule 4.1(A)(3) against a judge or candidate publicly endorsing candidates for public office. A judge or judicial candidate must not become involved in, or publicly associated with, a family member's political activity or campaign for public office. To avoid public misunderstanding, judges and judicial candidates should take, and should urge members of their families to take, reasonable steps to avoid any implication that they endorse any family member's candidacy or other political activity.

(6) Judges and judicial candidates retain the right to participate in the political process as voters in both primary and general elections.

Pledges, Promises, or Commitments Inconsistent with Impartial Performance of the Adjudicative Duties of Judicial Office

(7) 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.

(8) Rule 4.1(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.

(9) 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 whether 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.

(10) 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.

(11) 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 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.

Source

The provisions of this Rule 4.1 amended October 31, 2014, effective immediately, 44 Pa.B. 7168. Immediately preceding text appears at serial pages (370692) and (373683) to (373684).

Rule 4.2. Political and Campaign Activities of Judicial Candidates in Public Elections.

(A) A judicial candidate in a 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 fundraising 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 this Rule.

(B) A candidate for elective judicial office may, unless prohibited by law, and not earlier than immediately after the General Election in the year prior to the calendar year in which a person may become a candidate for such office:

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

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

(3) publicly endorse or speak on behalf of, or publicly oppose or speak in opposition to, candidates for the same judicial office for which he or she is a judicial candidate, or publicly endorse or speak on behalf of candidates for any other elective judicial office appearing on the same ballot;

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

(5) seek, accept, or use endorsements from any person or organization;

(6) contribute to a political organization or candidate for public office;

(7) identify himself or herself as a member or candidate of a political organization; and

(8) use court facilities for the purpose of taking photographs, videos, or other visuals for campaign purposes to the extent such facilities are available on an equal basis to other candidates for such office.

(C) A judge who is a candidate for elective judicial office shall not:

(1) use or permit the use of campaign contributions for the private benefit of the candidate or others;

(2) use court staff, facilities, or other court resources in a campaign for judicial office except that a judge may use court facilities for the purpose of taking photographs, videos, or other visuals for campaign purposes to the extent such facilities are available on an equal basis for other candidates for such office;

(3) knowingly or with reckless disregard for the truth, make, or permit or encourage his or her campaign committee to make, any false or misleading statement; or

(4) 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.

Comment:

General Considerations

(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 immediately after the General Election in the year prior to the calendar year in which a person may become a candidate for such office.

(2) Despite paragraph (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) and (12), and Rule 4.2(C), paragraph (3).

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

(4) Judicial candidates are permitted to attend or purchase tickets for dinners and other events sponsored by political organizations.

(5) For purposes of paragraph (B)(3), candidates are considered to be a candidate for the same judicial office if they are competing for a single judgeship or for one of several judgeships on the same court 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.

Statements and Comments Made During a Campaign for Judicial Office

(6) Judicial candidates must be scrupulously fair and accurate in all statements made by them and by their campaign committees. Paragraph (C)(3) 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.

(7) 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 (C)(3) or (C)(4), or Rule 4.1, paragraph (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.

(8) Subject to paragraph (C)(4), 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.

(9) Paragraph (C)(4) 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.

Source

The provisions of this Rule 4.2 amended September 18, 2014, effective immediately, 44 Pa.B. 6204; amended October 31, 2014, effective immediately, 44 Pa.B. 7168. Immediately preceding text appears at serial pages (373684) to (373686).

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:

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).

Source

The provisions of this Rule 4.3 amended October 31, 2014, effective immediately, 44 Pa.B. 7168. Immediately preceding text appears at serial page (373686).

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, including seeking, accepting, and using endorsements from any person or organization, subject to the provisions of this Code. The candidate shall take reasonable steps to cause his or her campaign committee to comply with applicable provisions of this Code and other applicable law.

(B) A judicial candidate subject to public election shall take reasonable steps to cause the judge's campaign committee:

(1) to solicit and accept only such campaign contributions as are permitted by law or Rule;

(2) not to solicit or accept contributions earlier than immediately after the General Election in the year prior to the calendar year in which a person may become a candidate for such office, and all fundraising activities in connection with such judicial campaign shall terminate no later than the last calendar day of the year in which the judicial election is held; and

(3) to comply with all applicable statutory requirements for disclosure and divestiture of campaign contributions, and to file with the Secretary of the Commonwealth 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 $250 and the name and address of each person who has made campaign contributions to the committee in an aggregate value exceeding $50. The report must be filed not later than thirty days following an election, or within such other period as is provided by law.

Comment:

(1) Judicial candidates are prohibited from personally soliciting campaign contributions or personally accepting campaign contributions. See Rule 4.1(A)(7). This Rule recognizes that in Pennsylvania, judicial campaigns must raise campaign funds to support their candidates, 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, accept, and use campaign contributions and endorsements, and may generally conduct campaigns. Candidates are responsible for compliance with the requirements of election law and other applicable law, and for the activities of their campaign committees.

(3) At the start of a campaign, the candidate should instruct the campaign committee to solicit or accept only such contributions as are 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 or recusal if the candidate is elected to judicial office. See Rule 2.11.

Source

The provisions of this Rule 4.4 amended September 18, 2014, effective immediately, 44 Pa.B. 6204; amended October 31, 2014, effective immediately, 44 Pa.B. 7168. Immediately preceding text appears at serial pages (373686) to (373687).

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.

(C) Notwithstanding Rule 4.5(A) and (B) a judge may continue to hold a judicial office while being a candidate for election to serve or while serving as a delegate to a state constitutional convention if the judge is otherwise permitted by law to do so.

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) is required by Article V, Section 18(d)(4) of the Pennsylvania Constitution, which states: ''A justice, judge or justice of the peace who files for nomination for or election to any public office other than a judicial office shall forfeit automatically his judicial office.'' It 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.

Subchapter B. FORMAL OPINIONS

Sec.

(*Editor's Note*: This subchapter contains formal opinions issued by the Ethics Committee of the Pennsylvania Conference of State Trial Judges. Under section (8) of the preamble to the Code of Judicial Conduct, the Ethics Committee has been designated by the Supreme Court ''as the approved body to render advisory opinions regarding ethical concerns involving judges, other judicial officers and judicial candidates subject to the Code of Judicial Conduct.'' Section (8) further explains: ''Although such opinions are not, *per se*, binding upon the Judicial Conduct Board, the Court of Judicial Discipline or the Supreme Court of Pennsylvania, action taken in reliance thereon and pursuant thereto shall be taken into account in determining whether discipline should be recommended or imposed.'')

§ 99-1. Campaign Advertising.

The Code of Judicial Conduct provides that a candidate for judicial office, including an incumbent judge, should maintain the dignity appropriate to judicial office (Canon 7). Campaign advertising must, therefore, be dignified and appropriate to judicial office. The electorate is best served by advertising which accurately showcases the candidate's credentials. The ads should not pander to the electorate. The candidate must take particular care that the ad does not in any way suggest that he or she will favor any particular group of litigants or make decisions on any basis other than the facts and the law.

A campaign ad may compare a candidate's credentials to those of other candidates for the same office. However, Canon 7 provides that a candidate should not misrepresent his qualifications or any other fact. A candidate must be scrupulously careful that what the ads say about the candidate's opponents is accurate. Once again, the ads must be dignified. Vituperative personal attacks against one's opponents are per se undignified.

The Ethics Committee will not approve or disapprove any particular campaign ad. Moreover, if a candidate seeks and obtains advice from the Committee regarding campaign advertising, the candidate may not claim that the Committee's advice constitutes an endorsement or approval of a particular campaign ad.

A candidate is responsible for any ads published by his or her campaign committee. A candidate should not permit others nor suggest to others that they publish ads which contravene the constraints of the Canons.

• Canon 7 does not specifically proscribe ''negative advertising.'' While in some limited circumstances negative advertising may be appropriate, given the nature of political ads, the Committee strongly discourages negative ads. Given the time limits of television and radio ads (10 and 30 second spots), it is very difficult to say something negative about one's opponent

which is not misleading. One could, for instance, say of a sitting judge, ''Judge X freed three accused murderers.'' Though such a statement might be accurate, it might also be misrepresentation by innuendo. If, for instance, Judge X freed the accused murderers because either the judge or the jury acquitted the accused, then the effect of the ad would be to vilify someone for doing what was totally proper. The clear implication of the ad is that the judge treated murderers leniently, which is misleading.

• An ad should not paint an attorney with the reputation of his or her clients.

• An ad which either directly or by innuendo refers to the ethnic background of one's opponent is improper.

• To suggest that one's opponent favors one gender over another simply because he or she is of the opposite gender of the candidate being promoted by an ad would be a totally baseless falsification. If, on the other hand, a candidate acted in a manner which truly indicated gender bias, that fact would be fair comment.

• An ad can be accurate, but it can also be misleading. An ad which is factually accurate, but is intended to mislead the electorate by giving a false impression about one's opponent violates Canon 7. Once again, the electorate is best served by ads which showcase a candidate's credentials and seek the support of the electorate on the basis of those credentials.

In summary, Canon 7 provides that:

A candidate . . . should maintain the dignity appropriate to judicial office . . . [and] should not make pledges or promises of conduct in office other than the faithful and impartial performance of the duties of the office; announce his views on disputed legal or political issues; or misrepresent his identity, qualifications, present position, or other fact . . .

The principal parameters of campaign advertising are accuracy and dignity.

At the end of the Code of Judicial Conduct is a section entitled ''Reliance on Advisory Opinions'' which provides that although the advisory opinions of the Judicial Ethics Committee are not binding upon the [Judicial Conduct Board and the Court of Judicial Discipline] and the Supreme Court of Pennsylvania, the opinions shall be taken into account in determining whether discipline should be recommended or imposed. The ''rule of reliance'' applies to this Formal Opinion. However, before engaging in contemplated conduct, any judge who, out of an abundance of caution, desires a Committee opinion which will provide advice about the judge's particular set of facts and to which the ''rule of reliance'' will also apply, may submit an inquiry to a member of the Committee, ordinarily, a member serving in the judge's Conference zone.

Source

The provisions of this Formal Opinion 99-1 adopted December 10, 1999, effective December 11, 1999, 29 Pa.B. 6236.

§ 99-2. Reporting Suspected Tax Evasion.

What, if any, is the responsibility of a trial judge to report suspected tax evasion to the

appropriate tax authority?

This question was asked of the Committee by the administrative judge of a large metropolitan family court on behalf of the judges of that court. Recognizing the statewide implications of the inquiry, the Committee has decided to issue a formal opinion in this matter.

The Code of Judicial Conduct does not mandate reports of suspected tax evasion to tax authorities. The only mandatory reporting provision in the Code provides that:

A judge should take or initiate appropriate disciplinary measures against a judge or lawyer for unprofessional conduct of which the judge may become aware.

Clearly, this provision of the Canons does not apply to suspected tax evasion or fraud. The court is not an agent of the tax authorities.

In cases of obvious and egregious fraud, a judge should consider the possibility that his or her failure to report the fraud may undermine confidence in the integrity of the judiciary.

Canon 2 provides that:

A judge should respect . . . the law and should conduct himself at all times in a manner that promotes public confidence in the integrity . . . of the judiciary.

The decision as to whether and when a case rises to such a level must be made by the judge on a case-by-case basis.

If a judge makes a decision to report such facts to the appropriate tax authority, it is the recommendation of the Committee that the judge do simply that—report the facts without judgment.

At the end of the Code of Judicial Conduct is a section entitled ''Reliance on Advisory Opinions'' which provides that although the advisory opinions of the Judicial Ethics Committee are not binding upon the [Judicial Conduct Board and the Court of Judicial Discipline] and the Supreme Court of Pennsylvania, the opinions shall be taken into account in determining whether discipline should be recommended or imposed. The ''rule of reliance'' applies to this Formal Opinion. However, before engaging in contemplated conduct, any judge who, out of an abundance of caution, desires a Committee opinion which will provide advice about the judge's particular set of facts and to which the ''rule of reliance'' will also apply, may submit an inquiry to a member of the Committee, ordinarily, a member serving in the judge's Conference zone.

Source

The provisions of this Formal Opinion 99-2 adopted December 10, 1999, effective December 11, 1999, 29 Pa.B. 6236.

§ 99-3. Judges and the Media.

A judge should not comment publicly about a proceeding pending before any court. Canon 3 provides, in pertinent part:

A judge should abstain from public comment about a pending proceeding in any court, and should require similar abstention on the part of court personnel subject to his direction and control. This subsection 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.

Commentary. ''Court personnel'' does not include the lawyers in a proceeding before a judge. The conduct of lawyers is governed by DR 7-107 of the Code of Professional Responsibility.

The Committee notes that Pennsylvania's prohibition against public comment about pending proceedings is more restrictive than the Model Code of Judicial Conduct adopted by the American Bar Association in 1990. The Model Code provides as follows:

A judge 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* (emphasis added).

The Committee suggests that the impact/fairness test of the Model Code is a good guide for deciding when a judge may make public statements in the course of his or her duties or explain the procedures of the court as permitted by Pennsylvania's Code. If there is a danger that the statement may affect the outcome of a proceeding, the judge must refrain from public comment.

Canon 3 also provides very extensive and detailed regulations with regard to the relationship between the court and the electronic media.

A judge should prohibit broadcasting, televising, recording or taking photographs in the courtroom and areas immediately adjacent thereto during sessions of court or recesses between sessions . . .

The Canon then goes on to outline certain circumstances in which electronic broadcasting is permitted in ''trial court non-jury civil proceedings.'' The Canon specifically excludes support, custody and divorce proceedings from his section.

A judge must be particularly circumspect with regard to criminal matters. Rule 326 of the Rules of Criminal Procedure provides specific guidelines to be followed in widely publicized or sensational cases. Rule 327 places specific limitations on court personnel. Finally, Rule 328 places very specific limitations on photography and broadcasting in the courtroom and its environs:

The taking of photographs in the courtroom or its environs or radio or television broadcasting from the courtroom or its environs during the progress of or in connection with any judicial proceedings, whether or not the court is actually in session, is prohibited. The environs of the courtroom is defined as the area immediately surrounding the entrances and exits to the courtroom.

This rule is not intended to prohibit the taking of photographs or radio or television broadcasting of proceedings such as naturalization ceremonies or the swearing in of public officials which may be conducted in the courtroom.

Once again, while the rules carefully circumscribe the coverage of matters pending before the

court, they do not completely prohibit contact with the medica. Canon 3 specifically permits public discussion of the work of the court. If, for instance, the court is establishing a new program, a judge may, in the course of his or her responsibilities, properly discuss the new program with the media, as long as the judge is careful to refrain from comment on any pending matter.

At the end of the Code of Judicial Conduct is a section entitled ''Reliance on Advisory Opinions'' which provides that although the advisory opinions of the Judicial Ethics Committee are not binding upon the [Judicial Conduct Board and the Court of Judicial Discipline] and the Supreme Court of Pennsylvania, the opinions shall be taken into account in determining whether discipline should be recommended or imposed. The ''rule of reliance'' applies to this Formal Opinion. However, before engaging in contemplated conduct, any judge who, out of an abundance of caution, desires a Committee opinion which will provide advice about the judge's particular set of facts and to which the ''rule of reliance'' will also apply, may submit an inquiry to a member of the Committee, ordinarily, a member serving in the judge's Conference zone.

Source

The provisions of this Formal Opinion 99-3 adopted December 10, 1999, effective December 11, 1999, 29 Pa.B. 6236.

§ 00-1. Signing Nominating Petitions.

(a) *Majority Opinion*.

The Committee has received several requests for advice asking whether it is permissible for a judge to sign a candidate's nomination petition. Because of the importance of this issue throughout the Commonwealth, the Committee issues this Formal Opinion. A bare majority of the Committee is of the opinion that signing a nomination petition is prohibited; a minority of the Committee is of the opinion that signing a nomination petition is permitted.

Candidates for elective office who wish to have their names placed on the ballot for the primary election of a major political party must obtain a certain number of signatures of the voters of the party on a nomination petition. *See generally* 25 P. S. sections 2862, 2869.

Code of Judicial Conduct 7A (1)(b) prohibits a judge or candidate for judicial office from publicly endorsing a candidate for public office except as authorized by section 7A (2). Code of Judicial Conduct 7A (2) permits a judge holding an office filled by public election between competing candidates, or a candidate for such office, among other things, ''to speak on behalf of any other judicial candidate for the same office.''

Code of Judicial Conduct 7A (4) prohibits a judge from engaging ''in other political activity except on behalf of measures to improve the law, the legal system, or the administration of justice.''

A majority of the Committee joins the Florida Committee and concludes that a judge may not sign a candidate's nomination petition. Florida Committee on Standards of Conduct for Judges Opinion 92-32. A majority of the Committee declines to follow other committees which have permitted signing.

Note

Arizona (Judicial Ethics Advisory Opinion 96-7) permits signing under certain circumstances. New York (Advisory Committee on Judicial Ethics Opinion 89-89), which permits signing, prohibits participation in any political campaign, but unlike Pennsylvania, does not expressly prohibit publicly endorsing a candidate. Tennessee (Opinion 90-4), which permits signing, prohibits publicly endorsing a candidate and taking a public petition on political issues. New Mexico (Judicial Advisory Opinion 96-01), which permits signing, has a less restrictive prohibition on endorsing than Pennsylvania. New Mexico prohibits publicly endorsing a candidate through the news media or in campaign literature. Michigan (Judicial Tenure Commission Advisory Opinion 25 (July 23, 1981)), which permits signing, unlike Pennsylvania does not have an express general prohibition against political activity.

Signing a nomination petition is the legal equivalent of a public endorsement and public endorsements are prohibited by Code of Judicial Conduct 7A (1)(b). Signing a nomination petition is not similar to exercising the right to vote. For example, voting is private. In contrast, a nomination petition is public; it is filed with the Department of State and is available for public inspection.

Note

Although the majority is aware that other committees have concluded otherwise, e.g., New York (Advisory Committee on Judicial Ethics Opinion 89-89); New Mexico (Judicial Advisory Opinion 96-01); Arizona (Judicial Ethics Advisory Opinion 96-7), the majority of the Committee rejects that view.

Moreover, the demographics of Pennsylvania suggest that signing nomination petitions would in most, if not all, judicial districts of small population be more likely to produce more harm than good and it is not appropriate for the conduct in question to have two entirely opposite results depend solely upon the size of the population of a judicial district.

The election process routinely causes or leads candidates to seize upon whatever tactical advantages exist without regard for undesirable collateral effects. When a judge signs a nomination petition often, especially in judicial districts with small populations, the candidate may publicize it as an endorsement regardless of the signer's intent. Because the judge in exercising the right to sign a nomination petition may prove to be one of the many casualties of an election war despite the judge's best efforts to stay off the field of battle, a uniform prohibition on signing nomination petitions is required.

Further, signing a nomination petition is prohibited as other political activity under Code of Judicial Conduct 7A (4).

Therefore, a majority of the Committee concludes that a judge is prohibited from signing a nomination petition.

(b) *Dissenting Opinion*.

A substantial minority of the Committee is of the opinion that a judge may sign a nomination petition of a candidate. This opinion agrees with the clear majority of other ethics committees which have addressed the issue. New York (Advisory Committee on Judicial Ethics Opinion

89-89), Tennessee (Opinion 90-4), New Mexico (Judicial Advisory Opinion 96-01), Michigan (Judicial Tenure Commission Advisory Opinion 25 (July 23, 1981)), and Arizona (Judicial Ethics Advisory Opinion 96-7) all permit signing a nomination petition.

Note

We do not agree with the single committee, Florida's committee, which has expressed a contrary view. Florida Committee on Standards of Conduct for Judges Opinion 92-32.

Signing a nomination petition is not the legal equivalent of a public endorsement. It is merely an act to permit a candidate to stand for election in a primary. It is similar to exercising the right to vote. New York (Advisory Committee on Judicial Ethics Opinion 89-89); New Mexico (Judicial Advisory Opinion 96-01); Arizona (Judicial Ethics Advisory Opinion 96-7).

The Arizona Judicial Ethics Advisory Opinion 96-7 states:

A nominating petition does not contain a promise to vote for the nominee or any endorsement of the nominee. The restriction on the number of petitions that any given elector may sign appears to be a device to ensure the earnestness of signatories and does not imply an endorsement. Accordingly, we find nothing inappropriate in the signing of a petition. Such activity is normal participation in the political process by a voter that Canon 5A intends to permit.

Moreover, the right to vote is a fundamental right. A Code of Judicial of Conduct provision which infringes upon a judge's fundamental right may be unconstitutional. *E.g.*, *Matter of Sanders*, 955 P.2d 369 (Wash. 1998) (First Amendment right outweighs Canons of Judicial Conduct).

The possibility that candidates may publicize the judge's signing as evidence of the judge's support is not sufficient to restrict judges from exercising their rights. A judge should not be stripped of the right to sign a nomination petition merely because candidates may improperly exploit the situation; the judge's right should not be lost because of the conduct of others.

Not all political activity is prohibited by Canon 7. Canon 7A (4) is a ''catch-all'' provision which prohibits a judge from engaging in political activity other than the activities specifically prohibited or permitted in Canon 7A (1) through 7A (3), and other than measures to improve the law, the legal system, or the administration of justice. The title to the Canon itself says that ''a Judge should refrain from political activity inappropriate to his judicial office.'' Furthermore, Canon 7A (1)(b) and (c) specifically except from the prohibitions contained therein the activities authorized by Canon 7A (2). Canon 7A (2) authorizes the activities therein described for ''[a] judge holding an office filled by public election between competing candidates . . .'' This is every judge in Pennsylvania, because all judicial offices in Pennsylvania are filled by such public election. In addition, voting is part of the political process, yet obviously, it also is not prohibited by the ''other political activity'' mentioned in Canon 7A (4).

The political activity forbidden by Canon 7A (4) is activity, other than that specifically prohibited or authorized by Canon 7, which is designed to persuade others to achieve a political result. Simply signing a nomination petition is not activity designed to persuade others to achieve a political result. It is a simply an act of one individual which when combined with the similar

and independent acts of a sufficient number of other individuals permits a candidate's name to be placed on the ballot. By signing, a judge is acting as an individual, not as a judge, and he or she is not attempting to persuade others to sign the candidate's nomination petition any more than the act of voting is an attempt to persuade others to vote for a particular candidate.

In contrast, a judge may not solicit others to sign a nomination petition and may not circulate a nomination petition. *Accord* New York (Advisory Committee on Judicial Ethics Opinion 89-89); *contra* New Mexico (Judicial Advisory Opinion 96-01). Those activities are attempts to influence others which are political activities forbidden by Canon 7A (4).

Source

The provisions of this § 00-1 adopted April 28, 2000, 30 Pa.B. 2125.

§ 02-1. Time Withdrawn Judicial Candidates Must End Fund Raising.

The Committee has received several requests for advice asking when judicial candidates who have withdrawn their candidacy must end fund raising. Because of the importance of this issue throughout the Commonwealth, the Committee issues this Formal Opinion.

History of Pennsylvania law

Effective January 1, 1999 the Supreme Court amended Canon 7B (2) of the Code of Judicial Conduct to expressly provide that fund raising of a judicial campaign must end ''no later than the last calendar day of the year in which the judicial election is held.'' Before the amendment the Code did not expressly provide when fund raising must end. However, before the amendment this Committee had decided that after an election, a judge could have only one fund raiser, the judge could not attend, and the fund raiser was required to be held within 6 months after the judge was sworn in.

The Pennsylvania Code of Judicial Conduct does not expressly address the time when a withdrawn judicial candidate must end fund raising.

Other Jurisdictions

In contrast to Pennsylvania, the Ohio Code of Judicial Conduct expressly provides the time when defeated or withdrawn judicial candidates must end fund raising. That time is the earlier of the time the campaign debt is paid off or 120 days after the defeat or withdrawal. Ohio Code of Judicial Conduct 7(C)(4)(b),(c). Candidates who participate in the general election may raise funds until 120 days after the general election. Ohio Code of Judicial Conduct 7(C)(4)(a).

In New York judicial candidates who do not run in the general election can raise funds for six months after the primary, convention, caucus, or meeting. New York Codes, Rules and Regulations sections 100.0 (Q), 100.5 (A)(5). Candidates who run in the general election may raise funds for six months after the general election. Id.

Some other jurisdictions measure the ending time for fund raising from the number days after the last election in which the candidate participates during the election year and do not expressly address withdrawn candidates. E.g., Nebraska Code of Judicial Conduct 5C (2) (30 days);

Washington Code of Judicial Conduct 7B (2) (60 days); North Dakota Code of Judicial Conduct 5C (2) (90 days); Alabama Canons of Judicial Ethics 7B (4)(b) (120 days). The 1972 American Bar Association Model Code of Judicial Conduct and the 1990 American Bar Association Model Code of Judicial Conduct provide for 90 days.

The Kentucky Code of Judicial Conduct prohibits any fund raising after the general election. Kentucky Rules of the Supreme Court 4.300, Code of Judicial Conduct 5B (2).

Louisiana permits post election fund raising only for the purpose of extinguishing campaign debt resulting from that election. Louisiana Code of Judicial Conduct 7D (3).

Rationale for the Committee's Opinion

Pennsylvania Code of Judicial Conduct 7B (2) provides in pertinent part:

A candidate's committees may solicit funds for his campaign no earlier than thirty (30) days prior to the first day for filing nominating petitions or the last day for filing a declaration of intention to seek reelection on a retention basis, and all fundraising activities *in connection with such judicial campaign* shall terminate no later than the last calendar day of the year in which the judicial election is held.

(Emphasis added).

The Committee observes that the Code limits candidates who participate in the general election to a post election fund raising period of less than sixty days, i.e. from the date after the general election (which is held in November) to December 31. The Committee considered whether candidates who withdraw should be limited to fund raising after their withdrawal by the same number of days as candidates who participate in the general election have after the general election, a period of less than sixty days. However, because the language of the Code provides the date by which fund raising must end rather than the number of days after the general election and does not refer to the general election in selecting the ending date, the Committee rejected the view that fund raising must end by a period of less than sixty days after the candidate withdraws, i.e. the number of days a candidate in the general election would have to fund raise after the general election.

However, as indicated by the above underlined portions of the Code, in addition to the December 31 cut off date, the Code limits fund raising ''for his campaign'' and ''in connection with such judicial campaign.'' These limits require that a withdrawn judicial candidate end fund raising when the campaign debt has been extinguished. The reason is that for a withdrawn candidate, because such judicial campaign has ended, any fund raising after the debt has been extinguished could not be for ''such judicial campaign.'' To give effect to all the provisions of Code of Judicial Conduct 7B (2), a withdrawn judicial candidate must end fund raising when the campaign debt has been extinguished or by December 31 of the election year, whichever occurs first.

Source

The provisions of this section 02-1 adopted March 16, 2002, 32 Pa.B. 1386.

§ 11-1. [Reserved].

Source

The provisions of this § 11-1 adopted December 24, 2011, 41 Pa.B. 6876; reserved July 31, 2015, 45 Pa.B. 4156. Immediately preceding text appears at serial pages (370706) to (370708) and (373689).

§ 14-1. Social Activities.

The Ethics Committee of the Pennsylvania Conference of State Trial Judges (the ''Committee'') regularly receives inquiries regarding the propriety of judges attending social activities.[i] By order of the Supreme Court of Pennsylvania, a new Code of Judicial Conduct (the ''new Code'') became effective on July 1, 2014. Although the new Code is more expansive than, and in some respects significantly different from, the prior Code of Judicial Conduct (''the old Code''), many of the relevant provisions of the old Code have been incorporated into the new Code. The Committee has issued a body of informal opinions under the old Code. It now issues this Formal Opinion to provide broad guidance to those subject to the new Code as they transition to its provisions.[ii]

As is always the case, if a judge has a specific question concerning the application of these general guidelines to his or her prospective behavior, and wishes to enjoy the rule of reliance on the Committee's advice,[iii] the judge should make a written request for advice from the Committee.

Social Activities[iv]

In general, inquiries to the Committee concerning social activities have involved (A) attorneys, law firms and attorney associations; (B) charitable organizations; and (C) other types of events.

A. *Social Activities Involving Attorneys, Law Firms and Attorney Associations*

The Committee has approved attendance at the following social activities sponsored by attorneys, law firms and attorney organizations under the old Code; and, as a general matter, the result would be the same under the new Code:[v]

• A ceremonial and social function held by a plaintiffs' bar association. (2/21/01)

• A bar association event held at a private law firm. (4/16/01)

• A summer associate reception at a law firm where the judge's spouse is a partner. No clients will be in attendance; and all spouses/significant others are invited. (5/27/07)

• A plaintiffs' bar association awards dinner which is a fund raising event. (10/1/09)

• A CLE program conducted by a criminal defense organization where the program has been approved for CLE credit, is open to the general bar, is held in a public forum, and is free to

judges. (4/28/10)

• A charity concert at a public venue when the tickets were purchased for the judge and the judge's spouse by the spouse's firm. The judge will not be sitting with the firm's clients. (5/7/10)

• The wedding of a former law clerk, who is now a local lawyer not currently involved in litigation before the judge. (9/19/12)

• A public event in a law firm's sky box suite where the firm has not appeared before the judge in any civil/criminal matter. (2/28/13)

The Committee has advised attendance at the following events could be violative of the old Code; and, as a general matter, the result would be the same under the new Code:

• Judge may not serve as a keynote speaker before an insurance industry group. (9/8/03)

• A legal seminar conducted solely for the members of the sponsoring firm. (9/8/04)

• A seminar given only for members of a certain law firm at the firm's office. (6/20/05)

• A spouse's firm retreat (including dinners and social events), even where the judge pays for his/her own airfare, lodging, and food.

• The retreat includes a dinner where the spouse would entertain clients and the judge would attend as the spouse's guest. (4/5/06)

• A private firm event featuring a well-known political commentator. The event is not held at the firm, but clients and prospective clients of the firm will be present. (9/15/08)

• A private party following a charity concert where the party is held by a spouse's firm for the purpose of entertaining clients. (5/7/10)

• An event open to the general bar, sponsored by a nonprofit, and held at a private law firm. The title of the event indicates that judges will be featured attendees. (8/26/10)

• An award breakfast honoring a retired U. S. Supreme Court Justice where clients of the firm will attend. (5/28/13)

In deciding whether to attend social functions sponsored by attorneys, law firms, and attorney associations, a judge should review the following non-exhaustive list of considerations implicated by the Code:

1. Is the event intended to improve the law, the legal system, or the administration of justice, or is it purely a social function?

2. Are the sponsoring attorneys currently involved or likely to be involved in litigation before the judge?

3. Is the event held at a law firm or off site?

4. Is attendance limited to attorneys in the sponsoring firm or is it open to other attorneys and/or

the general public?

5. Will the firm's clients or potential clients attend the event?

6. Will an appearance at the social event convey the impression that the sponsors are in a special position to influence the judge?

7. Will the judge's presence be advertised in advance of the event or will the judge be recognized during the event?

8. In the case of an event sponsored by an attorney association, is the function limited to one sector of the bar, such as the plaintiffs' bar, defense counsel, prosecutors, etc.?

9. Will attendance at the function call into question the judge's impartiality?

10. Will attendance interfere with the performance of the judge's judicial duties?

B. *Social Activities Sponsored by Charitable Organizations*

The old Code stated judges were not permitted to ". . . solicit funds for any educational, religious, charitable, fraternal, or civic organization, or use or permit the use of the prestige of their office for that purpose . . . [or] . . . be a speaker or the guest of honor at an organization's fundraising events, but they may attend such events."[vi] Accordingly, under the old Code the Committee approved attendance at the following social events sponsored by charitable organizations while, in some cases, noting particular concerns about the event:[vii]

• A nonprofit organization's fundraising event; however, where the judge would be given a free ticket to the event, there was concern that the organization intended to showcase the judge, which would be prohibited. (2/5/99)

• A charitable event if the judge is not being showcased as a means to encourage others to contribute. (4/11/05)

• A charitable event including a free ticket, if doing so would not reflect adversely on impartiality, interfere with the judge's ability to perform, or give the appearance of impropriety. (4/11/05)

• A Citizens' Crime Commission (a 501(c)(3) nonprofit) cocktail party as long as the judge is neither listed in the program nor an honoree. (2/28/06)

• A "Dancing with the Stars" event, when the judge's name is not used in advance publicity; the judge is identified at the dance by name, not title; the judge will be identified in the program as "guest dancer;" the judge will purchase his own ticket; and attendees will not bid on the judge's dance or pay extra because the judge is participating. (1/21b/2009)

Under the new Code, Rule 3.7(B)(2) permits judges to be a guest speaker or guest of honor at fundraising dinners or events that are for the advancement of the legal system, and have their name listed in the program; but, otherwise, the new Code continues to prohibit judges from being the guest speaker or guest of honor at fundraising dinners or events for other causes.

With respect to a judge receiving a free ticket to an event, or receiving other things of value, Rule 3.13(A) of the new Code prohibits such acceptance if ". . . prohibited by law or would appear to a reasonable person to undermine the judge's independence, integrity, or impartiality." However, subject to Rule 3.13(A) and the reporting requirements of Rule 3.15, Rule 3.13(C) permits judges to accept ". . . 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. . . ."

Faced with reduced budgets and shrinking charitable contributions, organizations have turned to novel and creative fundraising efforts to swell the crowd or otherwise raise money by involving judges. Examples of using a judge as an attraction or celebrity participant include "Dancing with the Stars" events, competing with judges in sporting events, and the judge as a celebrity auctioneer. While celebrities and other government officials may lend their personal or professional status to an organization's fundraising efforts, a judge is prohibited from doing so. A judge may not permit an organization to capitalize on or exploit his or her attendance at or participation in such an event by advertising that fact on invitations or other promotional materials in advance of an event that is not for the advancement of the legal system. A judge who allows himself or herself to be used in this manner is engaged in the solicitation of funds in direct violation of the Code. These prohibitions apply regardless of the worthiness of the charity. See Formal Opinion 2011-1 (Certain Fundraising Activities).

Most importantly, the judge must determine whether he/she is the "draw" for the charitable activity and, if so, decline the invitation. If the judge will be "showcased," thus allowing the prestige of the office to be used for the benefit of a charity that is not for the advancement of the legal system, the judge is prohibited from attending.

C. *Other Types of Social Activities*

Many social events fall outside the basic categories outlined in this Formal Opinion and can only be addressed on a case-by-case basis. Attendance at the following events was permitted by the Committee under the old Code based upon the specific facts represented in the inquiry:

• The inauguration of a university president and related social events. (9/6b/00)

• An elected official's inaugural ball. (12/17/01)

• A judicial symposium held by a nonpartisan group including lodging, meals, and money to defray transportation costs. (12/14b/04)

• A privately funded seminar with a partisan agenda, if the identity of the sponsors is publicized. (12/14b/04)

However, the Committee advised against accepting dinner at a private club as the guest of a senior judge whom the inquiring judge recently appointed in several cases. (12/12/13)

Conclusion

Judges must expect to be the subject of constant public scrutiny. They must freely and willingly accept restrictions on their conduct that might be viewed as burdensome by the ordinary citizen. This does not mean, however, that judges must isolate themselves from society or decline all social invitations. Indeed, the new Code continues to encourage judges to be involved in the communities in which they serve. However, the need to maintain an impartial and independent judiciary gives rise to special concerns. Accordingly, judges must carefully consider the ramifications of all social activities, both personal and judicial, to ensure that they uphold the independence, integrity, and impartiality of the judiciary, avoid impropriety and the appearance of impropriety, and do not lend the prestige of their office to advance the private interests of others. To that end, therefore, judges must be attentive to strictures that continue to be imposed by the new Code in relation to social activities. These include factors to be considered in deciding whether to attend social functions sponsored by attorneys, law firms, and attorney associations as well as social events sponsored by charitable organizations.

This Formal Opinion is intended to provide judges with broad guidance regarding one of the Ethics Committee's most frequent areas of inquiry. And judges are reminded that to enjoy the rule of reliance on the Committee's advice, they should make a written request for advice from the Committee tailored to the particular situation confronted. If a judge has a question concerning the application of these guidelines, the judge should make a written request for advice from a member of the Committee. The new Code provides that, although such opinions are not *per se* binding on the Judicial Conduct Board, the Court of Judicial Discipline, or the Supreme Court of Pennsylvania, action taken in reliance thereon shall be considered in determining whether discipline should be recommended or imposed.

[i] This Formal Opinion does not purport to address political events.

[ii] While the entire new Code is relevant, the following are the particularly relevant provisions of the new Code:

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.

Judges shall regulate their extrajudicial activities to minimize the risk of conflict with their judicial duties and to comply with all provisions of this Canon. However, 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;

(C) Participate in activities that would reasonably appear to undermine the judge's independence, integrity, or impartiality;

(D) Engage in conduct that would reasonably appear to be coercive; or

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

Comment [1]: To the extent that time permits, and judicial independence and impartiality are not compromised, judges are encouraged to engage in appropriate extrajudicial activities 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.

Comment [2]: Participation in both law-related and other extra-judicial activities helps integrate judges into their communities, and furthers public understanding of and respect for courts and the judicial system.

Comment [3]: . . . a judge's extrajudicial activities must not be conducted in connection or affiliation with an organization that practices invidious discrimination. See Rule 3.6.

Comment [4]: While engaged in permitted extrajudicial activities, judges must not coerce others or take action that would reasonably be perceived as coercive.

* * * * *

Rule 3.4. Appointments to Governmental Positions and Other Organizations.

(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.

(B) A judge may serve as a member, officer, or director of an organization or governmental agency devoted to the improvement of the law, the legal system, or the administration of justice. A judge shall not personally solicit funds but may attend fundraising events for such organizations.

(C) Senior judges eligible for recall to judicial service may accept extrajudicial appointments

not permitted by Rule 3.4(B) but during the term of such appointment shall refrain from judicial service.

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.

Comment [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 governmental position.

* * * * *

Rule 3.6. Affiliation with Discriminatory Organizations.

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

(B) A judge shall not use the benefits or facilities of an organization if the judge knows or should know that the organization practices invidious discrimination on one or more of the bases identified in paragraph (A). A judge's attendance at an event in a facility of an organization that the judge is not permitted to join 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.

Comment [2]: An organization is generally said to discriminate invidiously if it arbitrarily excludes from membership on the basis of race, sex, gender, religion, national origin, ethnicity, disability 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.

Comment [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.

Comment [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.

Comment [5]: The Rule does not apply to national or state military service.

Rule 3.7. Participation in Educational, Religious, Charitable, Fraternal or Civic Organizations and Activities.

(A) Avocational activities. Judges may write, lecture, teach, and speak on non-legal 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.

(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 an officer, director, trustee, or nonlegal advisor 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) A judge shall not serve if it is likely that the organization will be engaged in proceedings that would ordinarily come before the judge or will be regularly engaged in adversary proceedings in any court.

(2) A judge shall not personally solicit funds for any educational, religious, charitable, fraternal,

or civic organization, or use or permit the use of the prestige of the judicial office for that purpose, but may be listed as an officer, director, or trustee of such an organization. A judge shall not be a speaker or the guest of honor at an organization's fundraising events that are not for the advancement of the legal system, but may attend such events.

(3) A judge shall not give investment advice to such an organization.

(C) Notwithstanding any of the above, a judge may encourage lawyers to provide *pro bono publico* legal services.

Comment [1]: The nature of many outside organizations is constantly changing and what may have been innocuous at one point in time may no longer be so. Cases in point are boards of hospitals and banks. Judges must constantly be vigilant to ensure that they are not involved with boards of organizations that are often before the court.

Comment [2]: Judges are also cautioned with regard to organizations of which they were members while in practice, and/or in which they remain members, such as the District Attorney's organization, the Public Defender's organization, and MADD, as examples only. Review should be made to make sure that a reasonable litigant appearing before the judge would not think that membership in such an organization would create an air of partiality on the part of the tribunal.

* * * * *

Rule 3.13. Acceptance of Gifts, Loans, Bequests, Benefits, or Other Things of Value.

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

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

* * * * *

(3) ordinary social hospitality

* * * * *

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

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

(1) gifts incident to a public testimonial;

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

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

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

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

(D) A judge must report, to the extent required by Rule 3.15, gifts, loans, bequests, benefits, or other things of value received by 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, if the source is a party or other person, including a lawyer, who has come or is likely to come before the judge, or whose interests have come or are likely to come before the judge.

Comment [1]: Whenever a judge accepts a gift or other thing of value without paying fair market value, there is a risk that the benefit might be viewed as a means to influence the judge's decision in a case. Rule 3.13 restricts the acceptance of such benefits, according to the magnitude of the risk. Paragraph (B) identifies circumstances in which the risk that the acceptance would appear to undermine the judge's independence, integrity, or impartiality is low, and explicitly provides that such items need not be publicly reported. As the value of the benefit or the

likelihood that the source of the benefit will appear before the judge increases, the judge is prohibited under para

* * * * *

Comment [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. This concern is reduced if the judge merely incidentally benefits from a gift or benefit given to such other persons. A judge should, however, inform family and household members of the restrictions imposed upon judges, and urge them to consider these restrictions when deciding whether to accept such gifts or benefits.

* * * * *

In addition, the following are over-arching principles implicated generally in determining whether a judge may attend or otherwise participate in social functions: 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''); Rules 1.1 (judge to comply with the law) and 1.2 (judge to promote public confidence in the judiciary); and Comments 1 (principles apply to both the professional and personal conduct of a judge), 2 (judge to accept restrictions that might be viewed as burdensome if applied to other citizens), 3 (rule necessarily cast in general terms), 4 (judge to promote ethical conduct and support professionalism within the judiciary and legal profession), 5 (test for appearance of impropriety is whether conduct ''would create in reasonable minds a perception'' that the judge violated Code or engaged in ''other conduct that reflects adversely on the judge's honesty, impartiality, temperament, or fitness to serve as judge,'' and 6 (judge to act in manner consistent with Code while participating in outreach activities), Rule 1.3 (judge not to abuse the prestige of judicial office to advance personal or economic interests of the judge or others, or allow others to do so), and Comment 1; and Canon 2 (''A judge shall perform the duties of judicial office impartially, competently, and diligently''); Rule 2.1 (duties of judicial office ordinarily take precedence over judge's personal and extrajudicial activities), and Comments 1 (judge to arrange personal and extrajudicial activities to minimize interference with judge's duties) and 2 (judge to minimize risk of conflicts that would result in frequent disqualification), Rule 2.4 (B) (judge not to permit social interests or relationships to influence judicial conduct or judgment), and Rule 2.4 (C) (judge not to convey or permit others to convey impression judge can be influenced) and Comment (confidence in judiciary eroded if judicial decision-making is perceived to be subject to inappropriate outside influences).

The Terminology section of the new Code provides the following definitions:

Impartial, impartiality, impartially—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.

* * * * *

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.

Independence—A judge's freedom from influence or controls other than those established by law or Rule.

Integrity—Probity, fairness, honesty, uprightness, and soundness of character.

[iii] Under both the old Code and the new Code, the Committee is designated by the Supreme Court ''as the approved body to render advisory opinions regarding ethical concerns involving judges . . . subject to the Code of Judicial Conduct.'' As both Codes further provide, ''Although such opinions are not, *per se*, binding upon the Judicial Conduct Board, the Court of Judicial Discipline or the Supreme Court of Pennsylvania,'' action taken in reliance thereon and pursuant thereto ''shall be taken into account in determining whether discipline should be recommended or imposed.''

[iv] For purposes of this Opinion, the words ''activities,'' ''events,'' and ''functions'' are used interchangeably.

[v] Each Ethics Committee Opinion is based on a specific set of facts outlined by the inquiring judge. These facts may not be fully set forth in the Digest version of the Opinion (for example, to maintain the confidentiality of the inquirer). *Readers are cautioned* that the Judicial Conduct Board, the Court of Judicial Discipline, and/or the Supreme Court will only consider a judge's reliance on an advisory opinion rendered in response to *that judge's personal inquiry* (not an Opinion rendered to another judge) in determining whether discipline should be recommended or imposed.

[vi] Canon 5B(2) of the old Code.

[vii] *See* Footnote 2. graph (A) from accepting the gift, or required under paragraph (C) and (D) to publicly report it.

Source

The provisions of this § 14-1 adopted September 26, 2014, 44 Pa.B. 6083.

§ 15-1. Letters of Reference.

The Ethics Committee of the Pennsylvania Conference of State Trial Judges (''the Committee'') regularly receives inquiries regarding the propriety of sending letters of reference and other similar communications. Because of the frequency of such inquiries, the Committee issued Formal Opinions 93-1 and 98-1 to provide guidance to judicial officers subject to the Code of Judicial Conduct with respect to such matters. By Order of the Supreme Court of Pennsylvania a new code of Judicial Conduct became effective July 1, 2014 (''New Code''). The Committee issues this Formal Opinion to bring its advice in conformity with the New Code, and it supersedes Formal Opinions 93-1 and 98-1.

Under the New Code the overarching principle embodied in Canon 1 is now mandatory. Therefore, as with any inquiry, a judge's analysis of what conduct is or is not prohibited commences with the application of Canon 1 to the conduct.

Canon 1 of the Code of Judicial Conduct provides that:

A judge shall uphold and promote the independence, integrity, and impartiality of the judiciary, and shall avoid impropriety and the appearance of impropriety.

The Committee has recognized, as have other advisory bodies on judicial conduct throughout the country, that judges are sometimes requested to write letters of reference or similar communications on behalf of persons with whom the judge is familiar. New Rule 1.3 and Comment 2 thereto specifically address letters of reference and provide:

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 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 reasons of the judicial office.

In order to bring consistency to our decisions in this regard and provide guidance to judicial officers subject to the New Code, the Committee has adopted the following guidelines with regard to writing letters of reference:

(1) A judge should never write a letter of reference for a person he or she does not personally know.

(2) A judge may write a letter of reference if it is the type of letter that would be written in the ordinary course of business (e.g., a court employee seeking a reference with regard to the employee's work history) or a judge's personal relationship. The letter should include a statement of the source and extent of the judge's personal knowledge.

(3) The letter should ordinarily be addressed and mailed directly to the person or entity for whose information it is being written. On the other hand, if the judge is concerned that a letter addressed to a particular person or entity might be construed as the judge attempting to exert pressure by reason of the judicial office, e.g., in the case of a personal employee of the judge, such as a law clerk, who is seeking other employment, particularly with a lawyer or law firm before the court, the more general address and salutation of ''To Whom It May Concern'' may be used. Otherwise, the ''blank check'' letter ''To Whom It May Concern'' should be avoided as it can be abused more easily by being shopped around indiscriminately and beyond the judge's knowledge or control more so than a letter addressed to a particular person. If the law clerk is still employed by the Court, the law clerk must comply with Rules 1.11(d) and 1.12(b) of the Rules of Professional Conduct and advise the judge if the clerk is seeking employment with any lawyer or firm appearing in front of the judge. The judge will have to determine whether it is advisable to make a recommendation under those circumstances, but the better course would be to wait until the pending matter has concluded.

(4) Letters of reference may be written by a judge for someone whom the judge knows personally and not professionally, such as a relative or close friend, if they are the type that the judge would normally be requested to write as a result of the judge's personal relationship. The relationship should be such that the judge ordinarily would be disqualified from hearing that person's case.

(5) Any letter that may be written by a judge may be written on official stationery as permitted by Rule 1.3, Comment (2).

(6) The letter of reference may not be written if the judge has reason to believe the letter may be used for purposes of litigation.

(7) These guidelines are not intended to contravene Rule 1701(e) of the Rules of Judicial Administration, which remains in effect and provides: ''No judge or magisterial district judge shall testify voluntarily as a character witness.''

To summarize, letters of reference may be written by a judge if they are of the type that would be written in the ordinary course of business or personal relationships. A judge must take care, however, to be sure that a person with an insubstantial relationship to him or her is not attempting to use the judge's office to advance personal interests.

This Formal Opinion is intended to provide judicial officers subject to the New Code with broad

guidance regarding one of the Committee's most frequent areas of inquiry. Judicial officers are reminded that to enjoy the rule of reliance on the Committee's advice, they should make a written request for advice from the Committee tailored to the particular situation confronted. If a judicial officer subject to the Code has a question concerning the application of these guidelines, he or she should make a specific, written request for advice from a member of the Committee. The New Code provides that, although such opinions are not *per se* binding on the Judicial Conduct Board, the Court of Judicial Discipline, or the Supreme Court of Pennsylvania, action taken in reliance thereon shall be considered in determining whether discipline should be recommended or imposed.

Source

The provisions of this § 15-1 adopted April 10, 2015, 45 Pa.B. 1841.

§ 15-2. Affiliation with Discriminatory Organizations.

A function of the Ethics Committee of the Pennsylvania Conference of State Trial Judges (''the Committee'') is to provide guidance regarding ethical concerns to judicial officers subject to the Code of Judicial Conduct. The Code of Judicial Conduct that became effective on July 1, 2014, addressed, specifically, a judge's affiliation with organizations that discriminate invidiously on the basis of race, sex, gender, religion, national origin, ethnicity, disability or sexual orientation. The Committee issues this Formal Advisory Opinion to assist judges on a matter of general importance to judicial officers subject to the Code. This Formal Advisory Opinion is general in nature. It does not address a particular entity or group of persons, and is not in response to a specific request for an advisory opinion from a judicial officer. Therefore, the ''rule of reliance'' set forth in Preamble (8) of the new Code does not apply to this Formal Advisory Opinion.[1]

I.

Prior to July 1, 2014, the Code of Judicial Conduct then in effect simply encouraged judges to promote ''public confidence in the integrity and impartiality of the judiciary'' and permitted judges to ''participate in civic and charitable activities that do not reflect adversely upon their impartiality. . . .''[2] It did not specifically address membership in any organization or the use of its facilities.

However, the new Code, which became effective on July 1, 2014, addresses, specifically, a judge's affiliation with organizations that discriminate invidiously on the basis of race, sex, gender, religion, national origin, ethnicity, disability or sexual orientation. Rule 3.6 of the Code provides:

Affiliation with Discriminatory Organizations.

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

(B) A judge shall not use the benefits or facilities of an organization if the judge knows or should know that the organization practices invidious discrimination on one or more of the bases identified in paragraph (A). A Judge's attendance at an event in a facility of an organization that the judge is not permitted to join 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.

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[1] Preamble (8) states:

The Ethics Committee of the Pennsylvania Conference of State Trial Judges is designated as the approved body to render advisory opinions regarding ethical concerns involving judges, other judicial officers and judicial candidates subject to the Code of Judicial Conduct. Although such opinions are not, *per se*, binding upon the Judicial Conduct Board, the Court of Judicial Discipline or the Supreme Court of Pennsylvania, action taken in reliance thereon and pursuant thereto shall be taken into account in determining whether discipline should be recommended or imposed.

[2] Canons 2 A and 5 B of the pre-July 1, 2014, Code of Judicial Conduct.

And Comment (3) to the Rule states:

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

II.

A. *The "Organization"*

The Rule does not purport to reach informal, social groups. It is directed to an affiliation with a discriminatory ''organization.'' Nor does the Code define ''organization.'' Whether a particular group of persons or entity is an ''organization'' under the Rule may depend upon its formal level of structure. For example, whether it has by-laws, officers, or a mission statement; whether it is part of a hierarchy; and whether its membership is consistent and how they are added or replaced may be relevant factors in determining whether the group or entity is an ''organization.''

B. *Discrimination*

Use of the word ''discrimination'' often generates some confusion. As Robert K. Fullinwider wrote in *The Reverse Discrimination Controversy* (1980), at pp. 11-12:

The dictionary sense of 'discrimination' is neutral while the current political use of the term is frequently non-neutral, pejorative. With both a neutral and a non-neutral use of the word having currency, the opportunity for confusion in arguments about racial discrimination is enormously multiplied. For some, it may be enough that a practice is called discriminatory for them to judge

it wrong. Others may be mystified that the first group condemns the practice without further argument or inquiry. Many may be led to the false sense that they have actually made a moral argument by showing that the practice discriminates (distinguishes in favor or against). The temptation is to move from 'X discriminates' to 'X distinguishes in favor of or against' to 'X is wrong' without being aware of the equivocation involved.

''Discrimination'' simply means differentiation. Rule 3.6 requires a determination of whether any differentiation, i.e. separate treatment, is based on any of the following classifications: race, sex, gender, religion, national origin, ethnicity, disability or sexual orientation. Those classifications are referred to here as the ''protected classifications.''

The Rule pertains to any practice of the organization that discriminates, or treats one differently, on the basis of any of the protected classifications. Separate treatment can take many forms, e.g. whether one can become or becomes a member of the organization, whether one is afforded a different class of membership within the organization, whether one is afforded access to the same facilities or other privileges of the organization, whether one can become an officer or director of the organization, etc. Any treatment that is different is discrimination, and the Rule addresses those practices that differentiate on the basis of any one of the protected classifications. It does not mean individuals who are members of a protected classification are entitled to preferential treatment; it means they are not to be treated differently because of their race, sex, gender, religion, national origin, ethnicity, disability or sexual orientation.

C. *Invidious*

Not all discrimination is unlawful, unethical or actionable under the Code. The Rule addresses discrimination that is ''invidious.'' The term ''invidious'' is not defined in the Code. *Black's Law Dictionary* (7th ed.) defines ''invidious discrimination'' as ''[d]iscrimination that is offensive or objectionable, esp. because it involves prejudice or stereotyping.'' Definitions in other dictionaries include treating a class of persons unequally in a manner that is malicious, hostile or damaging; stigmatizing persons as inferior, odious or otherwise socially unacceptable; or in a way that is likely to arouse or incur resentment or anger. The court in *Farber v. City of Paterson*, 440 F.3d 131 (3d Cir. 2006), found discrimination invidious when the distinction is motivated by immutable characteristics which have no relationship to ability to perform or contribute to society.

Whether discrimination is ''invidious'' is a complex question that depends upon a variety of factors. Comment (2) to the Rule states:

[a]n organization is generally said to discriminate invidiously if it arbitrarily excludes from membership on the basis of . . . [any of the protected classifications] 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 its 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.

Other factors may include the history or purpose of the organization, whether the practices of the organization have a rational basis toward a legitimate purpose, and whether such practices are narrowly tailored to further that legitimate purpose. In short, the focus should be on the legitimacy of the distinguishing criteria employed to accomplish the organization's stated goals and interests, as opposed to stigmatizing or denigrating those who may be affected.

III.

The Committee recognizes the existence of competing interests at play. There is the ''expressive associational right'' of an organization to exclude persons whose views may impair the ability of the group to express its views. There is the freedom of individuals to associate, which presupposes the freedom not to associate. There is the state's interest in eliminating discrimination in education, employment, housing, public accommodations, etc. And there is the Supreme Court's interest in having a ''fair, honorable and impartial judiciary'' as ''indispensable to our system of justice,'' by requiring judges to ''avoid [ ] both impropriety and the appearance of impropriety in their professional and personal lives'' by conducting themselves ''in a manner that garners the highest level of public confidence in their independence, fairness, impartiality, integrity, and competence.''[3]

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[3] Code of Judicial Conduct, Preamble (2) and (3).

The overarching purpose, or rationale, for Rule 3.6 is stated in Comment (1) to the Rule:

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.

This reference to the appearance of impropriety and the public's confidence in the integrity and impartiality of the judiciary relates back to Canon 1 and Rule 1.2 of the Code.

Canon 1 provides:

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 provides:

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 appearance of impropriety.

In conducting any analysis, a judge must always be mindful of Canon 1 and Rule 1.2.[4]

In going through this analysis and applying these various factors, a judge must thoroughly investigate the history and purposes of the organization and fully understand the current policies and practices which are discriminatory. Also for a judge's consideration are the role the local chapter, council, branch, lodge, agency, etc., plays in developing and implementing or enforcing those policies and practices, and the nature of the organization's activities locally and in the broader geographic area where it operates.

Therefore, a judge must assess how the members of the public and the community which the judge serves perceive the organization and its policies and practices. A judge must determine whether membership would create in reasonable minds a perception that the judge violated the code or engaged in other conduct that reflects adversely on the judge's honesty, impartiality, temperament, or fitness to serve as a judge. A judge should consider whether the perception of ''reasonable minds'' in the geographic area served by the judge might vary from that of ''reasonable minds'' in other areas of Pennsylvania, and whether or not that could, or should, make a difference.

In addition to these comments, appellate courts may provide a source of information on whether membership limitations are constitutionally permitted or prohibited. *See*, *e.g.*, *Boy Scouts of America v. Dale*, 530 U.S. 640 (2000) (organization engaging in qualified right of ''expressive association'' not required to accept members who may impair organization's ability to advocate for its viewpoint). However, a judge must be aware that consideration of a constitutional challenge alone does not end the analysis under the Code. The mere fact the organization may have the constitutional right to discriminate does not necessarily mean a judge may be a member of it. In promulgating Rule 3.6, the Supreme Court is advancing its interests in trying to ensure a fair and impartial judiciary in which all citizens can have confidence. As the United States Supreme Court said in *Dale*:

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[4] Note, Comment (4) to the Rule provides that ''[a] judge's membership in a religious organization as a lawful exercise of the freedom of religion is not a violation of this Rule.''

> . . . the freedom of expressive association, like many freedoms, is not absolute. We have held that the freedom could be overridden ''by regulations adopted to serve compelling state interests, unrelated to the suppression of ideas, that cannot be achieved through means significantly less restrictive of associational freedoms.''

Id., 530 U.S. at 648. The advisory opinions of ethics committees of other states on the particular subject may also assist the judge, but they, of course, are not binding on our Supreme Court or the Committee.

Ultimately, a judge must be guided by the underlying purposes of Rule 3.6 that membership in an organization by a judge must not give rise to the appearance of impropriety thus diminishing public confidence in the integrity and impartiality of the judiciary, nor must it create a perception

that the judge's impartiality is impaired. And, a judge should be mindful of the admonition of Rule 3.1(C) that a judge shall not ''participate in activities that would reasonably appear to undermine the judge's independence, integrity or impartiality.''

While the Committee acknowledges judges would like definitive answers to their questions as to whether they may or may not belong to particular organizations, the Committee is unable to do so. The Committee does not possess the resources to perform the kind of investigation that would be required to decide that issue properly among the myriad of organizations and almost infinite subchapters to which our judges belong or to engage in the type of balancing between the competing interests at play. Each judge must decide this issue on the relevant facts being mindful of the various interests at play.

This Formal Advisory Opinion is intended to provide judicial officers subject to the Code of Judicial Conduct with broad guidance regarding one of the Committee's most difficult areas of inquiry. Judicial officers are reminded that to enjoy the rule of reliance on the Committee's advice, or if they have a question concerning the application of these guidelines, they should make a written request for advice from a member of the Committee tailored to the particular situation confronted. The Code provides that although such opinions are not *per se* binding on the Judicial Conduct Board, the Court of Judicial Discipline, or the Supreme Court of Pennsylvania, action taken in reliance thereon shall be considered in determining whether discipline should be recommended or imposed.

Source

The provisions of this § 15-2 adopted July 31, 2015, 45 Pa.B. 4154.

§ 15-3. Certain Fundraising Activities.

The Ethics Committee of the Pennsylvania Conference of State Trial Judges (''Ethics Committee'') regularly receives inquiries regarding the propriety of participating in fundraising events on behalf of civic and charitable activities in which judges are involved. Because of the frequency of such inquiries, the Ethics Committee has decided to issue this Formal Advisory Opinion in order to provide guidance to judicial officers subject to the Code of Judicial Conduct (''Code'').

Canon 3 of the Code addresses a judge's involvement in personal and extrajudicial activities. It provides: ''A judge shall conduct the judge's personal and extrajudicial activities to minimize the risk of conflict with the obligations of judicial office.''

Comment (1) under Rule 3.1 states:

. . . 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[.]

and Comment (2) states:

[p]articipation 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.

Rules 3.1, 3.6 and 3.7 address the broad limitations and concerns regarding the circumstances in which judges may properly participate in such activities. For example, judges may not participate in extrajudicial activities that ''will interfere with the proper performance'' of their judicial duties; ''lead to frequent disqualification;'' ''reasonably appear to undermine the judge's independence, integrity, or impartiality;'' ''engage in conduct that would reasonably appear to be coercive;'' ''hold membership in,'' or ''use the benefits or facilities'' of, an organization ''that practices invidious discrimination on the basis of race, sex, gender, religion, national origin, ethnicity, disability or sexual orientation;'' or be ''an officer, director, trustee, or nonlegal advisor'' of an organization that ''is likely . . . to be engaged in proceedings that would ordinarily come before the judge or will be regularly engaged in adversary proceedings in any court.''

This Formal Advisory Opinion addresses the nature and extent of fundraising activities held on behalf of civic and charitable organizations in which a judge's participation is permissible.

In pertinent part, Rule 3.7(B) of the Code provides:

* * * * *

(2) A judge shall not personally solicit funds for any educational, religious, charitable, fraternal or civic organization, or use or permit the use of the prestige of the judicial office for that purpose, but may be listed as an officer, director or trustee of such an organization. A judge shall not be a speaker or the guest of honor at an organization's fundraising events that are not for the advancement of the legal system, but may attend such events.

(3) A judge shall not give investment advice to such an organization.

* * * * *

The prohibition against judges *personally* soliciting funds for any educational, religious, charitable, fraternal or civic organization, or using or permitting the use of the prestige of their office for that purpose, is a change from the Code of Judicial Conduct that was in effect prior to July 1, 2014. With respect to those types of organizations, the prior code stated ''Judges should not solicit funds . . .''[1] The

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[1] Canon 5B(2) of the ''old'' Code of Judicial Conduct.

current Code, effective July 1, 2014, added the word ''personally.'' The prohibition applies regardless of how worthwhile the organization or its activities may be, and it prohibits judges from being the guest speaker or guest of honor at fundraising dinners or events that are not for

the advancement of the legal system. Judges, however, may attend such events and contribute to them subject to the broader limitations of the Rules.

Faced with reduced budgets and shrinking charitable contributions, organizations have turned to novel and creative fundraising efforts to swell the crowd or otherwise raise money by involving judges. The Ethics Committee has been presented with a wide variety of such efforts. Without attempting to offer an all inclusive list of all the potential activities that fall within the ambit of Rule 3.7(B), they have included using a judge as an attraction or celebrity participant such as Dancing with the Stars, Competing with the Stars in Sporting Events, Celebrity Auctioneer and Celebrity Contributor. While celebrities and other government officials may lend their personal, professional or other forms of celebrity status to the fundraising efforts of an organization, such activity by a judge is prohibited. In sum, a judge may not permit an organization to capitalize on, exploit or showcase a judge's attendance at or participation in such events by advertising that fact or issuing invitations citing the judge's attendance or participation in advance of the event. A judge who allows himself or herself to be used in this manner is engaged in a solicitation of funds in violation of Rule 3.7(B)(2).

This does not mean that a judge is precluded from receiving a well-earned award from an organization or even being recognized at an event. It means the judge cannot allow his or her presence at the event or the fact that he/she will receive an award at it be used to promote a fundraising event unless the exception for the advancement of the legal system applies. The critical harm to be avoided is the exploitation of the judicial office.

Therefore, while judges may attend fundraising events that do not violate the broader prohibition of reflecting adversely upon the judge's impartiality or interfere with the performance of the judge's judicial duties, a judge should not be featured as a highlight of any such event. Accordingly, advertising the judge's presence, placing the judge in a strategic position to influence potential customers or contributors, having a judge endorse a fundraising event or product, or having a judge sell tickets, may each lead to effects the Code is designed to prevent. These include making people feel obligated to contribute or otherwise participate in the event; enabling them, or others, to believe they are currying favor with the judge; diminishing the office of judge by turning it into a marketing tool; and pressuring other judges into participating in similar causes. A judge who allows himself or herself to be used in this manner is engaged in the solicitation of funds in direct violation of Rule 3.7(B)(2). Because of the overall prophylactic purpose of this Rule, the worthiness of the cause for which the funds are being raised is irrelevant.

If, after considering the foregoing principles, a judge decides to attend or participate in a fundraising event, additional consideration must be given to the mandate of Rule 3.7(A) that a judge's ''avocational activities do not detract from the dignity of their office''. Accordingly, the indicia of the office of judge, including the judicial robe, gavel and courtroom, should never be utilized or depicted in any manner which would compromise respect for the judiciary or the judicial process. Attendance at, or participation in events that do so, would also be prohibited by Rule 3.7.

This Opinion is obviously not intended as an exhaustive discussion of all of the potential activities permitted or prohibited under the Code. Instead, its primary focus is to address how judges may participate in the fundraising aspects of civic and charitable activities without running afoul of Rule 3.7's prohibition against using or permitting the use of the prestige of the

judicial office for the solicitation of funds on behalf of those organizations in which they are involved. By remaining sensitive to the potential exploitation of the judicial office—or more specifically, the ''judge as judge''—the salutary purposes animating the Code will be better served and the preservation of an independent judiciary can continue to be assured.

Commonly referred to as ''the rule of reliance,'' Preamble (8) of the Code of Judicial Conduct provides:

The Ethics Committee of the Pennsylvania Conference of State Trial Judges is designated as the approved body to render advisory opinions regarding ethical concerns involving judges, other judicial officers and judicial candidates subject to the Code of Judicial Conduct. Although such opinions are not binding per se upon the Judicial Conduct Board, the Court of Judicial Discipline or the Supreme Court of Pennsylvania, action taken in reliance thereon and pursuant thereto shall be taken into account in determining whether discipline should be recommended or imposed.

To obtain the ''rule of reliance,'' an individual subject to the Code of Judicial Conduct shall present to a member of the Ethics Committee a particular factual scenario, in writing, to which the inquirer seeks advice regarding his/her prospective conduct.

To reiterate, the purpose of this Formal Advisory Opinion is to provide guidance on a matter of general importance to the Conference. It is not a substitute for an advisory opinion by the Ethics Committee to an individual judicial officer on specific facts.

Source

The provisions of this § 15-3 adopted July 31, 2015, 45 Pa.B. 4156.

§ 15-4. Disqualification and Recusal.

A function of The Ethics Committee of the Pennsylvania Conference of State Trial Judges (the ''Committee'') is to provide guidance regarding ethical concerns to judicial officers subject to the Code of Judicial Conduct (the ''Code''). Inquiries regarding disqualification and recusal are among the more numerous questions addressed to the Committee. Because of the frequency of these inquiries, the Committee issues this Formal Advisory Opinion to assist judges on a matter of general importance to judicial officers subject to the Code.

This Formal Advisory Opinion is general in nature, does not address a particular situation, and is not in response to a specific request for an advisory opinion from a judicial officer. Therefore, the ''rule of reliance'' set forth in Preamble (8) of the Code does not apply to this Formal Advisory Opinion.[1]

''Disqualification'' and ''Recusal''

The terms ''disqualification'' and ''recusal'' have generated some confusion. According to the American Bar Association's Joint Commission to Evaluate the Model Code of Judicial Conduct, the terms are used interchangeably in many jurisdictions.[2] In fact, Rules 2.7 and 2.11 of the ABA Model Code, which are the bases of Rules 2.7 and 2.11 of the *Pennsylvania Code*, refer only to

''disqualification.'' The Model Code does not refer to ''recusal.''

Rules 2.7 and 2.11 of the *Pennsylvania Code* and their respective Comments use both terms and seem to recognize a distinction between them. Rule 2.7 of the *Code* provides:

A judge shall hear and decide matters assigned to the judge, except where the judge has recused himself or herself or when disqualification is required by Rule 2.11 or other law.

Comment (1) to Rule 2.7 states, in pertinent part:

. . . Although there are times when disqualification or recusal is necessary . . . [u]nwarranted disqualification or recusal may bring public disfavor to the court, and to the judge personally . . . [and] . . . a judge should not use disqualification or recusal to avoid cases that present difficult, controversial, or unpopular issues.

Comment (2) to Rule 2.7 provides:

This Rule [2.7] describes the duty of a judge to decide matters assigned to the judge. However, there may be instances where a judge is disqualified from presiding over a particular matter or shall recuse himself or herself from doing so. A judge is disqualified from presiding over a matter when a specified disqualifying fact or circumstance is present. *See* Rule 2.11. The concept of recusal envisioned in this Rule overlaps with disqualification. In addition, however, a judge may recuse himself or herself from presiding over a matter even in the absence of a disqualifying fact or circumstance where—in the exercise of discretion, in good faith, and with due consideration for the general duty to hear and decide matters—the judge concludes that prevailing facts and circumstances could engender a substantial question in reasonable minds as to whether disqualification nonetheless should be required. . . .

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[1] Preamble (8) states:

''The Ethics Committee of the Pennsylvania Conference of State Trial Judges is designated as the approved body to render advisory opinions regarding ethical concerns involving judges, other judicial officers and judicial candidates subject to the Code of Judicial Conduct. Although such opinions are not, *per se*, binding upon the Judicial Conduct Board, the Court of Judicial Discipline or the Supreme Court of Pennsylvania, action taken in reliance thereon and pursuant thereto shall be taken into account in determining whether discipline should be recommended or imposed.''

[2] American Bar Association's Joint Commission to Evaluate the Model Code of Judicial

Conduct, The Revised Model Code of Judicial Conduct, Rule 2.11, Comment (1).

Comment (3) to Rule 2.7 states:

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 or recusal, even if the judge believes there is no proper basis for disqualification or recusal.

Rule 2.11(A)(4) states:

. . . There shall be a rebuttable presumption that recusal or disqualification is not warranted when a contribution or reimbursement. . . .

And Comment (3) to Rule 2.6 states:

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 recusal may be appropriate. See Rule 2.11(A)(1).

In general, ''disqualification'' is a specified fact, circumstance or condition that makes one ineligible or unfit to serve, or otherwise deprives the judge of the power to preside. ''Recusal'' is the act of removing or absenting oneself in a particular case because the judge concludes that the prevailing facts or circumstances could engender a substantial question in reasonable minds whether the judge can be impartial.[3] Again,

. . . a judge may recuse himself or herself from presiding over a matter even in the absence of a disqualifying fact or circumstance where—in the exercise of discretion, in good faith, and with due consideration for the general duty to hear and decide matters—the judge concludes that prevailing facts and circumstances could engender a substantial question in reasonable minds as to whether disqualification nonetheless should be required.

Rule 2.7 Comment (2).[4]

Historical Perspective

The current Code became effective on July 1, 2014. Prior to that time, Canon 3 C of the then-existing code, titled ''Disqualification,'' stated:

Judges *should* disqualify themselves in a proceeding in which their impartiality might

reasonably be questioned. . . .

Code of Judicial Conduct (Pre-July 1, 2014), Canon 3 C. (Emphasis added.) Some have argued use of the word ''should'' made the command aspirational or permissive instead of mandatory, leaving the decision to recuse largely to the discretion of the judge.

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[3] *Black's Law Dictionary*, 7th Ed.

[4]But *see* Pennsylvania Rule 2.11(A): ''A judge shall disqualify himself or herself in any proceeding in which the judge's impartiality might reasonably be questioned, . . .''

The Committee rarely gave inquiring judges firm advice about the course of conduct to be taken in a particular situation; it simply issued a memorandum setting forth what it considered to be the relevant case law the judge should consider when exercising his/her discretion. A majority of the Committee felt only the Supreme Court or the Court of Judicial Discipline had the authority to relieve a judge of his/her duty to decide assigned matters; and, as a practical matter, if the Committee advised a judge to recuse in a particular situation, the judge would be almost obliged to follow that advice to avoid having to defend a potential charge of unethical conduct if the judge decided to reject the Committee's advice and proceed to hear the matter. Furthermore, many of the operative facts bearing on recusal are best ascertained and weighed by the inquiring judge rather than by the Committee.

The current Code clarifies the use of the word ''should.'' Preamble (6) provides:

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. . . .

The implication is the use of the word ''shall'' connotes an obligation.[5] It also clarified that a judge acting within the bounds of discretion should suffer no disciplinary action.

Canon 1

Canon 1 and the Rules under it reflect the broad, general, overarching principles of the Code. Canon 1 states:

A judge shall uphold and promote the independence, integrity, and impartiality of the judiciary, and shall avoid impropriety and the appearance of impropriety.

And Rule 1.2 states:

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.[6]

Although the Rules under Canon 1, including Rule 1.2, standing alone, can be the basis for discipline, the succeeding Canons and their associated Rules more specifically address situations concerning the judge performing the duties of judicial office (Canon 2), engaging in personal and extrajudicial activities (Canon 3), and participating in political or campaign activities (Canon 4).

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[5] Garwin, et al., *Annotated Model Code of Judicial Conduct*, 2nd Ed., 2011, p.7.

[6] The Code defines ''impartiality'':

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.

Terminology, ''Impartial, impartiality, impartially.''

The Code defines ''impropriety'' as:

. . . conduct that undermines a judge's independence, integrity, or impartiality.

Terminology, ''Impropriety.''

Rules 2.7 (Responsibility to Decide) and 2.11 (Disqualification)

As noted above, Rule 2.7 requires (''shall'') a judge to hear and decide assigned matters unless the judge recuses himself or herself, or is disqualified by Rule 2.11 or other law. Rule 2.11(A) provides:

A judge shall disqualify himself or herself in any proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to the following circumstances:

(1) The judge has a personal bias or prejudice concerning a party or a party's lawyer, or personal knowledge of facts that are in dispute in the proceeding.

(2) The judge knows that the judge, the judge's spouse or domestic partner, or a person within the third degree of relationship to either of them, or the spouse or domestic partner of such a

person is:

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

b. acting as a lawyer in the proceeding;

c. a person who has more than a de minimis interest that could be substantially affected by the proceeding;

or

d. likely to be a material witness in the proceeding.

(3) The judge knows that he or she, individually or as a fiduciary, or the judge's spouse, domestic partner, parent, or child, or any other member of the judge's family residing in the judge's household, has an economic interest in the subject matter in controversy or is a party to the proceeding.

(4) The judge knows or learns that a party, a party's lawyer, or the law firm of a party's lawyer has made a direct or indirect contribution(s) to the judge's campaign in an amount that would raise a reasonable concern about the fairness or impartiality of the judge's consideration of a case involving the party, the party's lawyer, or the law firm of the party's lawyer. In doing so, the judge should consider the public perception regarding such contributions and their effect on the judge's ability to be fair and impartial. There shall be a rebuttable presumption that recusal or disqualification is not warranted when a contribution or reimbursement for transportation, lodging, hospitality or other expenses is equal to or less than the amount required to be reported as a gift on a judge's Statement of Financial Interest.

(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 in the matter during such association;

b. served in governmental employment, and in such capacity participated personally and substantially as a lawyer or public official concerning the proceeding, or has publicly expressed in such capacity an opinion concerning the merits of the particular matter in controversy; or

c. was a material witness concerning the matter.

Id.

The enumerated circumstances are not exhaustive. Under the Rule, the judge must disqualify himself/herself in any proceeding in which ''the judge's impartiality might reasonably be questioned.'' *Id.*

Some of the circumstances outlined in the Rule are straightforward. E.g., there is little room for discretion where the judge or the judge's spouse or domestic partner is a party or acting as a lawyer or is likely to be a material witness in the proceeding, or if the judge served as a lawyer in the matter in controversy. See Rule 2.11(A)(2)(a), (b) and (d), and Rule 2.11(A)(6)(a), respectively. In those situations, the judge is disqualified. However, other circumstances require the exercise of judgment and discretion, e.g., whether the interest of the judge or the judge's spouse or domestic partner is ''de minimis.'' Rule 2.11(A)(2)(c).

Rule 2.11(A)(4) introduces, for the first time, the role of campaign contributions as a basis for mandatory disqualification.[7] However, this is not the first time judges have been cautioned that actions taken during a campaign can lead to recusal or disqualification. In *Caperton v. A. T. Massey Coal Co., Inc.*, 556 U.S. 868 (2009), the United States Supreme Court considered whether a state Supreme Court Justice's denial of a recusal motion based upon campaign contributions violated the Due Process Clause of the Fourteenth Amendment to the United States Constitution. The majority stated:

[U]nder our precedents there are objective standards that require recusal when ''the probability of actual bias on the part of the judge . . . is too high to be constitutionally tolerable.''

Id. at 872 (citation omitted). The Court found:

[T]here is a serious risk of actual bias—based on objective and reasonable perceptions—when a person with a personal stake in a particular case had a significant and disproportionate influence in placing the judge on the case by raising funds or directing the judge's election campaign when the case is pending or imminent. The inquiry centers on the contribution's relative size in comparison to the total amount of money contributed to the campaign, the total amount spent in the election, and the apparent effect such contribution had on the outcome of the election.

Id. at 884. The *Caperton* Court concluded the campaign efforts of the litigant's chairman, chief executive officer and president had ''a significant and disproportionate influence'' in placing the state Supreme Court Justice on the case, *id.*, and this influence,

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[7] Rule 2.11(A)(4) is a ''first inroad into complex issues associated with the financing of judicial campaigns. . . .''). *Id.* at Rule 2.11(A), Comment (6).

coupled with the temporal relationship between the election and the pending case[,] ''offer[s] a possible temptation to the average . . . judge to . . . lead him not to hold the balance nice, clear and true.''

Id. at 886 (citation omitted). The Court held that, under the circumstances, due process required recusal. *Id.* at 889-890.[8]

In all situations where the judge's ''impartiality might reasonably be questioned,'' the ethical standards for disqualification and recusal are an objective test. See, *Pepsico v. McMillen*, 764 F.2d 458, 460 (7th Cir. 1985) (whether an objective, disinterested observer fully informed of the facts underlying the grounds on which recusal was sought would entertain a significant doubt that justice would be done in the case).

Exceptions to Mandatory Disqualification

Unless the judge is disqualified for bias or prejudice under Rule 2.11(A)(1), Rule 2.11(C) permits a judge to disclose the basis for disqualification on the record and affords the parties and their lawyers the opportunity to consider, outside the presence of the judge and court personnel, whether they wish to waive the disqualification. If, following the disclosure, the parties and their 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 must be incorporated into the record of the proceeding.

In addition, the ''rule of necessity'' may override the requirement of disqualification. This rule permits a judge to decide a matter even though the judge would ordinarily be required to recuse, where the matter could not otherwise be heard by any other court, or the matter requires immediate judicial action and only that judge is available. Although Comment (3) to Rule 2.11 specifically recognizes that the ''rule of necessity'' may override the rule of disqualification, the effect of the Comments in the Code is unclear.[9] However, regardless of the effect of the Comments, the ''rule of necessity'' is based on common law and is an accepted

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[8] For example, the Tennessee Code of Judicial Conduct provides:

The fact that a lawyer in a proceeding, or a litigant, contributed to the judge's campaign, or supported the judge in his or her election does not of itself disqualify the judge. Absent other facts, campaign contributions within the limits of the ''Campaign Contributions Limits Act of 1995,'' *Tennessee Code Annotated* Title 2, Chapter 10, Part 3, or similar law should not result in disqualification. However, campaign contributions or support a judicial candidate receives may give rise to disqualification if the judge's impartiality might reasonably be questioned. In determining whether a judge's impartiality might reasonably be questioned for this reason, a judge should consider the following factors among others:

(1) The level of support or contributions given, directly or indirectly, by a litigant in relation both to aggregate support (direct and indirect) for the individual judge's campaign and to the total amount spent by all candidates for that judgeship;

(2) If the support is monetary, whether any distinction between direct contributions or independent expenditures bears on the disqualification question;

(3) The timing of the support or contributions in relation to the case for which disqualification is sought; and

(4) If the supporter or contributor is not a litigant, the relationship, if any, between the supporter or contributor and (i) any of the litigants, (ii) the issue before the court, (iii) the judicial candidate or opponent, and (iv) the total support received by the judicial candidate or opponent and the total support received by all candidates for that judgeship

Tennessee Code of Judicial Conduct, Rule 2.11, Comment 7.

[9] The ABA Revised Model Code of Judicial Conduct 2007 includes Comments as well as Canons and Rules. The Model Code states:

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. . . . .

Second, the Comments identify aspirational goals for judges. . . .

ABA Revised Model Code of Judicial Conduct 2007, Scope (3) and (4).

In contrast, the Pennsylvania Supreme Court's order of January 8, 2014, adopting the Pennsylvania Code, does not mention the Comments. The Order states, in part, that ''new Canons 1 through 4 of the Code of Judicial Conduct of 2014 and the corresponding Rules are

adopted in the attached form.''

part of Pennsylvania's jurisprudence. See, e.g., *Stilp v. Commonwealth*, 905 A.2d 918, 929 (Pa. 2006) (justices with pecuniary interest in outcome of case may decide challenge to law affecting judicial compensation where all other judges have similar interest and no other provision or procedure exists to consider matter)

When and What Should a Judge Disclose?

Comment (3) to Rule 2.7, addresses the issue of *what* information a judge should disclose:

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 or recusal, even if the judge believes there is no proper basis for disqualification or recusal.

Id. at Rule 2.7, Comment (3); *see also* Rule 2.11, Comment (5).

In deciding whether to disclose information and what information to disclose, a judge should first review the record to gain an understanding of the claims and defenses of the parties. A judge also should determine, to the extent possible, the identity of witnesses and the subject matter of their testimony. In obtaining information, a judge should avoid *ex parte* communications. Examples of appropriate disclosures include, but are not limited to, the following:

• A judge should disclose facts regarding the judge's current or former association or relationship with a party, a lawyer, or a witness.

• A judge should disclose that he or she provided legal services to a party or witness prior to taking the bench.

• A judge should disclose that a lawyer in the case represents or previously represented the judge.

• A judge should disclose that he or she holds an opinion about the merits of a claim or defense or the credibility of a witness. Even though the judge believes he or she can set aside the opinion and base decisions solely on the evidence and the law, the judge should disclose the opinion.

The Comments explain how a judge should make a disclosure. The disclosure should be on the record. In most instances, the judge will simply state the relevant facts on the record in the presence of the parties and the attorneys. The judge may also make a disclosure in a writing that is made part of the record. A judge may present documents or refer to records in other cases for the parties and lawyers to consider. In any case, after completing the disclosure, the judge should notify the parties that they may move orally or in writing for disqualification or recusal.

Disqualification and Recusal Decision Worksheet

Judges concerned about whether disqualification or recusal is appropriate may consider utilizing the following worksheet:

1.) Does the judge subjectively believe he/she can decide the case fairly and impartially? If so, proceed with the following steps of the worksheet. If not, the judge must recuse unless Question 7 (rule of necessity) is answered affirmatively.

2.) Is the fact pattern one of the enumerated examples in Rule 2.11(A) (1)—(6)? If so, disqualification is required unless either Question 6 (waiver) or Question 7 (rule of necessity) is answered affirmatively.

3.) Does the fact pattern suggest that the judge's impartiality might reasonably be questioned, that is, do the prevailing facts and circumstances engender a substantial question in reasonable minds that the judge would not be fair or impartial? If so, disqualification or recusal is required under Rule 2.11(A) or Rule 2.7 Comment (2) unless either Question 6 (waiver) or Question 7 (rule of necessity) is answered affirmatively.

4.) Even though the judge has concluded that disqualification or recusal is not required, are there facts or information the judge believes the parties or lawyers might reasonably consider relevant to a motion to disqualify or remove the judge? If so, the judge should disclose that information to the parties or lawyers.

5.) If a party moves for disqualification or recusal, the court should hold a hearing. ''A party seeking recusal bears the burden of producing evidence to establish bias, prejudice, or unfairness which raises a substantial doubt as to the jurist's ability to preside impartially.'' *Com. v. Watkins*, 108 A.3d 692, 734 (Pa. 2014) (citation omitted).

6.) Except in instances of a judge's personal bias or prejudice as outlined in Rule 2.11(A)(1), do the parties waive disqualification pursuant to Rule 2.11(C)? If so, the judge may participate in the case after using the following procedure:

a. the judge discloses the basis for the disqualification on the record;

b. the judge asks the parties and their lawyers to consider, outside the presence of the judge and court personnel, whether to waive disqualification; and

c. the judge incorporates any agreement to waive disqualification into the record of the proceeding.

7.) Does the rule of necessity override the rule of disqualification? See Comment 3 to Rule 2.11. If so, the judge may be able to participate.

a. If the judge is the only judge available to hear a matter requiring immediate judicial action, the judge must disclose on the record the basis for disqualification and make reasonable efforts to transfer the matter to another judge as soon as practicable.

b. Other issues of necessity must be addressed on a case-by-case basis.

Conclusion

Ultimately, the issue of disqualification or recusal requires the judge to determine whether his or her impartiality might reasonably be questioned. If the judge has a doubt as to disclosure, it is, of course, more prudent to err on the side of disclosure. A judge should consider the following principle stated by the Supreme Court of Pennsylvania:

Due consideration should be given by [the judge] to the fact that the administration of justice should be beyond the appearance of unfairness. But, while the mediation of courts is based upon the principle of judicial impartiality, disinterestedness, and fairness pervading the whole system of judicature, so that courts may as near as possible be above suspicion, there is, on the other side, an important issue at stake: that is, that causes may not be unfairly prejudiced, unduly delayed, or discontent created through unfounded charges of prejudice or unfairness made against the judge in the trial of a cause. . . .

Reilly by Reilly v. Southeastern Pennsylvania Transportation Authority, 489 A.2d 1291, 1299 (Pa. 1985). The Court further stated that judges should not permit ‘‘unfounded and ofttimes malicious charges . . . to discredit the judicial system.’’ *Id.* While frivolous claims will no doubt come before the courts, it is imperative that, first and foremost, judges remain mindful of their duty to fairness, impartiality and judicial independence.

The ‘‘Rule of Reliance’’

This Formal Advisory Opinion is intended to provide judges with broad guidance regarding one of the Ethics Committee’s most frequent areas of inquiry. Because this Formal Advisory Opinion does not address the specific facts of a particular case, a judge does not receive the benefit of the ‘‘rule of reliance’’ by reviewing the Committee’s general advice. If a judge has questions concerning the application of these guidelines, the judge should make a written request for advice from a member of the Committee, ordinarily from the representative for the zone in which the judge sits. The Code of Judicial Conduct provides that, although such opinions are not *per se* binding on the Judicial Conduct Board, the Court of Judicial Discipline, or the Supreme Court of Pennsylvania, action taken in reliance thereon shall be considered in determining whether discipline should be recommended or imposed. CODE, PREAMBLE (8).

Source

The provisions of this § 15-4 adopted September 26, 2015, 45 Pa.B. 5781.
