

# Chapter 11

## Ethics Standards And Financial Disclosure

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### § 1101. Short title of chapter

This chapter shall be known and may be cited as the Public Official and Employee Ethics Act.

### § 1101.1. Purpose

**(a) Declarations.--**The Legislature hereby declares that public office is a public trust and that any effort to realize personal financial gain through public office other than compensation provided by law is a violation of that trust. In order to strengthen the faith and confidence of the people of this Commonwealth in their government, the Legislature further declares that the people have a right to be assured that the financial interests of holders of or nominees or candidates for public office do not conflict with the public trust. Because public confidence in government can best be sustained by assuring the people of the impartiality and honesty of public officials, this chapter shall be liberally construed to promote complete financial disclosure as specified in this chapter. Furthermore, it is recognized that clear guidelines are needed in order to guide public officials and employees in their actions. Thus, the General Assembly by this chapter intends to define as clearly as possible those areas which represent conflict with the public trust.

**(b) Recognition.--**It is recognized that many public officials, including most local officials and members of the General Assembly, are citizen-officials who bring to their public office the knowledge and concerns of ordinary citizens and taxpayers. They should not be discouraged from maintaining their contacts with their community through their occupations and professions. Thus, in order to foster maximum compliance with its terms, this chapter shall be administered in a manner that emphasizes guidance to public officials and public employees regarding the ethical standards established by this chapter.

**(c) Legislative intent.**--It is the intent of the General Assembly that this chapter be administered by an independent commission composed of members who are cognizant of the responsibilities and burdens of public officials and employees and who have demonstrated an interest in promoting public confidence in government.

## **§ 1102. Definitions**

The following words and phrases when used in this chapter shall have, unless the context clearly indicates otherwise, the meanings given to them in this section:

**"Advice."** Any directive of the chief counsel of the State Ethics Commission issued under section 1107(11) (relating to powers and duties of commission) and based exclusively on prior commission opinions, this chapter, regulations promulgated pursuant to this chapter and court opinions which interpret this chapter.

**"Aggregate."** The total of all gifts received from a single source as provided in section 1105(b)(6) (relating to statement of financial interests).

**"Authority of office or employment."** The actual power provided by law, the exercise of which is necessary to the performance of duties and responsibilities unique to a particular public office or position of public employment.

**"Business."** Any corporation, partnership, sole proprietorship, firm, enterprise, franchise, association, organization, self-employed individual, holding company, joint stock company, receivership, trust or any legal entity organized for profit.

**"Business with which he is associated."** Any business in which the person or a member of the person's immediate family is a director, officer, owner, employee or has a financial interest.

**"Candidate."** Any individual who seeks nomination or election to public office by vote of the electorate, other than a judge of elections, inspector of elections or official of a political party, whether or not such individual is nominated or elected. An individual shall be deemed to be seeking nomination or election to such office if he has:

(1) received a contribution or made an expenditure or given his consent for any other person or committee to receive a contribution or make an expenditure for the purpose of influencing his nomination or election to such office, whether or not the individual has announced the specific office for which he will seek nomination or election at the time the contribution is received or the expenditure is made; or

(2) taken the action necessary under the laws of this Commonwealth to qualify himself for nomination or election to such office.

The term shall include individuals nominated or elected as write-in candidates unless they resign such nomination or elected office within 30 days of having been nominated or elected.

**"Commission."** The State Ethics Commission.

**"Confidential information."** Information not obtainable from reviewing a public document or from making inquiry to a publicly available source of information.

**"Conflict" or "conflict of interest."** Use by a public official or public employee of the authority of his office or employment or any confidential information received through his holding public office or employment for the private pecuniary benefit of himself, a member of his immediate family or a business with which he or a member of his immediate family is associated. The term does not include an action having a de minimis economic impact or which affects to the same degree a class consisting of the general public or a subclass consisting of an industry, occupation or other group which includes the public official or public employee, a member of his immediate family or a business with which he or a member of his immediate family is associated.

**"Contract."** An agreement or arrangement for the acquisition, use or disposal by the Commonwealth or a political subdivision of consulting or other services or of supplies, materials, equipment, land or other personal or real property. The term shall not mean an agreement or arrangement between the State or political subdivision as one party and a public official or public employee as the other party, concerning his expense, reimbursement, salary, wage, retirement or other benefit, tenure or other matters in consideration of his current public employment with the Commonwealth or a political subdivision.

**"De minimis economic impact."** An economic consequence which has an insignificant effect.

**"Executive-level State employee."** The Governor, Lieutenant Governor, cabinet members, deputy secretaries, the Governor's office staff, any State employee with discretionary powers which may affect the outcome of a State agency's decision in relation to a private corporation or business or any employee who by virtue of his job function could influence the outcome of such a decision.

**"Financial interest."** Any financial interest in a legal entity engaged in business for profit which comprises more than 5% of the equity of the business or more than 5% of the assets of the economic interest in indebtedness.

**"Findings report."** An initial report containing findings of fact as determined by the State Ethics Commission's investigation but not containing any conclusions of law or any determination of whether there has been a violation of law.

**"Frivolous complaint."** A complaint filed in a grossly negligent manner without basis in law or fact.

**"Gift."** As defined in section 13A03 (relating to definitions).

**"Governmental body."** Any department, authority, commission, committee, council, board, bureau, division, service, office, officer, administration, legislative body or other establishment in the executive, legislative or judicial branch of a state, a nation or a political subdivision thereof or any agency performing a governmental function.

**"Governmental body with which a public official or public employee is or has been**

**associated."** The governmental body within State government or a political subdivision by which the public official or employee is or has been employed or to which the public official or employee is or has been appointed or elected and subdivisions and offices within that governmental body.

**"Honorarium."** Payment made in recognition of published works, appearances, speeches and presentations and which is not intended as consideration for the value of such services which are nonpublic occupational or professional in nature. The term does not include tokens presented or provided which are of de minimis economic impact.

**"Hospitality."** As defined in section 13A03 (relating to definitions).

**"Immediate family."** A parent, spouse, child, brother or sister.

**"Income."** Any money or thing of value received or to be received as a claim on future services or in recognition of services rendered in the past, whether in the form of a payment, fee, salary, expense, allowance, forbearance, forgiveness, interest, dividend, royalty, rent, capital gain, reward, severance payment, proceeds from the sale of a financial interest in a corporation, professional corporation, partnership or other entity resulting from termination or withdrawal therefrom upon assumption of public office or employment or any other form of recompense or any combination thereof. The term refers to gross income and includes prize winnings and tax-exempt income. The term does not include gifts, governmentally mandated payments or benefits, retirement, pension or annuity payments funded totally by contributions of the public official or employee, or miscellaneous, incidental income of minor dependent children.

**"Indirect interest in real estate."** Any business entity the assets of which are 80% or more in real property.

**"Ministerial action."** An action that a person performs in a prescribed manner in obedience to the mandate of legal authority, without regard to or the exercise of the person's own judgment as to the desirability of the action being taken.

**"Nominee."** Any person whose name has been submitted to a public official or governmental body vested with the power to finally confirm or reject proposed appointments to public office or employment.

**"Nonministerial actions."** An action in which the person exercises his own judgment as to the desirability of the action taken.

**"Opinion."** A directive of the State Ethics Commission issued pursuant to section 1107(10) (relating to powers and duties of commission) setting forth a public official's or public employee's duties under this chapter.

**"Order."** A directive of the State Ethics Commission issued pursuant to section 1107(13) (relating to powers and duties of commission) at the conclusion of an investigation which contains findings of fact, conclusions of law and penalties.

**"Person."** A business, governmental body, individual, corporation, union, association, firm, partnership, committee, club or other organization or group of persons.

**"Political contribution."** Any advance, conveyance, deposit, distribution, transfer of funds, loan, payment, pledge, purchase of a ticket to a testimonial or similar fund-raising affair, or subscription of money or anything of value, except volunteer services, in connection with a political campaign, and any contract, agreement, promise or other obligations, whether or not legally enforceable, to make a political contribution.

**"Political subdivision."** Any county, city, borough, incorporated town, township, school district, vocational school, county institution district, and any authority, entity or body organized by the aforementioned.

**"Public employee."** Any individual employed by the Commonwealth or a political subdivision who is responsible for taking or recommending official action of a nonministerial nature with regard to:

- (1) contracting or procurement;
- (2) administering or monitoring grants or subsidies;
- (3) planning or zoning;
- (4) inspecting, licensing, regulating or auditing any person; or
- (5) any other activity where the official action has an economic impact of greater than a de minimis nature on the interests of any person.

The term shall not include individuals who are employed by this Commonwealth or any political subdivision thereof in teaching as distinguished from administrative duties.

**"Public official."** Any person elected by the public or elected or appointed by a governmental body or an appointed official in the executive, legislative or judicial branch of this Commonwealth or any political subdivision thereof, provided that it shall not include members of advisory boards that have no authority to expend public funds other than reimbursement for personal expense or to otherwise exercise the power of the State or any political subdivision thereof.

**"Represent."** To act on behalf of any other person in any activity which includes, but is not limited to, the following: personal appearances, negotiations, lobbying and submitting bid or contract proposals which are signed by or contain the name of a former public official or public employee.

**"Solicitor."** A person elected or appointed to the office of solicitor for the political subdivision.

**"Source."** Any person who is a provider of an item reportable under section 1105 (relating to statement of financial interests).

**"State consultant."** A person who, as an independent contractor, performs professional, scientific, technical or advisory service for an agency of this Commonwealth, and who receives a fee, honorarium or similar compensation for such services. A State consultant is not an executive-level employee.

### **§ 1103. Restricted activities**

(a) **Conflict of interest.**--No public official or public employee shall engage in conduct that

constitutes a conflict of interest.

**(b) Seeking improper influence.**--No person shall offer or give to a public official, public employee or nominee or candidate for public office or a member of his immediate family or a business with which he is associated, anything of monetary value, including a gift, loan, political contribution, reward or promise of future employment based on the offeror's or donor's understanding that the vote, official action or judgment of the public official or public employee or nominee or candidate for public office would be influenced thereby.

**(c) Accepting improper influence.**--No public official, public employee or nominee or candidate for public office shall solicit or accept anything of monetary value, including a gift, loan, political contribution, reward or promise of future employment, based on any understanding of that public official, public employee or nominee that the vote, official action or judgment of the public official or public employee or nominee or candidate for public office would be influenced thereby.

**(d) Honorarium.**--No public official or public employee shall accept an honorarium.

**(e) Contingent and severance payments.**--

(1) No person shall solicit or accept a severance payment or anything of monetary value contingent upon the assumption or acceptance of public office or employment.

(2) This subsection shall not prohibit:

(i) Payments received pursuant to an employment agreement in existence prior to the time a person becomes a candidate or is notified by a member of a transition team, a search committee or a person with appointive power that he is under consideration for public office or makes application for public employment.

(ii) Receipt of a salary, fees, severance payment or proceeds resulting from the sale of a person's interest in a corporation, professional corporation, partnership or other entity resulting from termination or withdrawal therefrom upon the assumption or acceptance of public office or employment.

(3) Payments made or received pursuant to paragraph (2)(i) and (ii) shall not be based on the agreement, written or otherwise, that the vote or official action of the prospective public official or employee would be influenced thereby.

**(f) Contract.**--No public official or public employee or his spouse or child or any business in which the person or his spouse or child is associated shall enter into any contract valued at \$500 or more with the governmental body with which the public official or public employee is associated or any subcontract valued at \$500 or more with any person who has been awarded a contract with the governmental body with which the public official or public employee is associated, unless the contract has been awarded through an open and public process, including prior public notice and subsequent public disclosure of all proposals considered and contracts awarded. In such a case, the public official or public employee shall not have any supervisory or overall responsibility for the implementation or administration of the contract. Any contract or subcontract made in violation of this subsection shall

be voidable by a court of competent jurisdiction if the suit is commenced within 90 days of the making of the contract or subcontract.

**(g) Former official or employee.**--No former public official or public employee shall represent a person, with promised or actual compensation, on any matter before the governmental body with which he has been associated for one year after he leaves that body.

**(h) Misuse of statement of financial interest.**--No person shall use for any commercial purpose information copied from statements of financial interests required by this chapter or from lists compiled from such statements.

**(i) Former executive-level employee.**--No former executive-level State employee may for a period of two years from the time that he terminates employment with this Commonwealth be employed by, receive compensation from, assist or act in a representative capacity for a business or corporation that he actively participated in recruiting to this Commonwealth or that he actively participated in inducing to open a new plant, facility or branch in this Commonwealth or that he actively participated in inducing to expand an existent plant or facility within this Commonwealth, provided that the above prohibition shall be invoked only when the recruitment or inducement is accomplished by a grant or loan of money or a promise of a grant or loan of money from the Commonwealth to the business or corporation recruited or induced to expand.

**(j) Voting conflict.**--Where voting conflicts are not otherwise addressed by the Constitution of Pennsylvania or by any law, rule, regulation, order or ordinance, the following procedure shall be employed. Any public official or public employee who in the discharge of his official duties would be required to vote on a matter that would result in a conflict of interest shall abstain from voting and, prior to the vote being taken, publicly announce and disclose the nature of his interest as a public record in a written memorandum filed with the person responsible for recording the minutes of the meeting at which the vote is taken, provided that whenever a governing body would be unable to take any action on a matter before it because the number of members of the body required to abstain from voting under the provisions of this section makes the majority or other legally required vote of approval unattainable, then such members shall be permitted to vote if disclosures are made as otherwise provided herein. In the case of a three-member governing body of a political subdivision, where one member has abstained from voting as a result of a conflict of interest and the remaining two members of the governing body have cast opposing votes, the member who has abstained shall be permitted to vote to break the tie vote if disclosure is made as otherwise provided herein.

#### **§ 1104. Statement of financial interests required to be filed**

**(a) Public official or public employee.**--Each public official of the Commonwealth shall file a statement of financial interests for the preceding calendar year with the commission no later than May 1 of each year that he holds such a position and of the year after he leaves such a position. Each public employee and public official of the Commonwealth shall file a statement of financial interests for the preceding calendar year with the department, agency, body or bureau in which he is employed or to which he is appointed or elected no later than May 1 of each year that he holds such a position and of the year after he leaves such a position. Any other public employee or public official shall file a statement of financial interests with the governing authority of the political subdivision by which he is employed or within which he is appointed or elected no later than May 1 of each year that he holds such a position and of the year after he leaves such a position. Persons who are full-time or part-time

solicitors for political subdivisions are required to file under this section.

**(b) Candidate.--**

(1) Any candidate for a State-level public office shall file a statement of financial interests for the preceding calendar year with the commission on or before the last day for filing a petition to appear on the ballot for election. A copy of the statement of financial interests shall also be appended to such petition.

(2) Any candidate for county-level or local office shall file a statement of financial interests for the preceding calendar year with the governing authority of the political subdivision in which he is a candidate on or before the last day for filing a petition to appear on the ballot for election. A copy of the statement of financial interests shall also be appended to such petition.

(3) No petition to appear on the ballot for election shall be accepted by the respective State or local election officials unless the petition has appended thereto a statement of financial interests as set forth in paragraphs (1) and (2). Failure to file the statement in accordance with the provisions of this chapter shall, in addition to any other penalties provided, be a fatal defect to a petition to appear on the ballot.

**(c) Nominee.--**Each State-level nominee for public office shall file a statement of financial interests for the preceding calendar year with the commission and with the official or body that is vested with the power of confirmation at least ten days before the official or body shall approve or reject the nomination. Each nominee for a county-level or local office shall file a statement of financial interests for the preceding calendar year with the governing authority of the political subdivision in which he or she is a nominee and, if different, with the official or body that is vested with the power of confirmation at least ten days before the official or body shall approve or reject the nomination.

**(d) Failure to file required statement.--**No public official shall be allowed to take the oath of office or enter or continue upon his duties, nor shall he receive compensation from public funds, unless he has filed a statement of financial interests as required by this chapter.

**(e) Public inspection and copying.--**All statements of financial interests filed pursuant to the provisions of this chapter shall be made available for public inspection and copying during regular office hours, and copying facilities shall be made available at a charge not to exceed actual cost.

**§ 1105. Statement of financial interests**

**(a) Form.--**The statement of financial interests filed pursuant to this chapter shall be on a form prescribed by the commission. All information requested on the statement shall be provided to the best of the knowledge, information and belief of the person required to file and shall be signed under oath or equivalent affirmation.

**(b) Required information.--**The statement shall include the following information for the prior calendar year with regard to the person required to file the statement:

(1) Name, address and public position.



(2) Occupation or profession.

(3) Any direct or indirect interest in any real estate which was sold or leased to the Commonwealth, any of its agencies or political subdivisions or purchased or leased from the Commonwealth, any of its agencies or political subdivisions or which was the subject of any condemnation proceedings by the Commonwealth, any of its agencies or political subdivisions.

(4) The name and address of each creditor to whom is owed in excess of \$6,500 and the interest rate thereon. However, loans or credit extended between members of the immediate family and mortgages securing real property which is the principal or secondary residence of the person filing shall not be included.

(5) The name and address of any direct or indirect source of income totaling in the aggregate \$1,300 or more. However, this provision shall not be construed to require the divulgence of confidential information protected by statute or existing professional codes of ethics or common law privileges.

(6) The name and address of the source and the amount of any gift or gifts valued in the aggregate at \$250 or more and the circumstances of each gift. This paragraph shall not apply to a gift or gifts received from a spouse, parent, parent by marriage, sibling, child, grandchild, other family member or friend when the circumstances make it clear that the motivation for the action was a personal or family relationship. However, for the purposes of this paragraph, the term "friend" shall not include a registered lobbyist or an employee of a registered lobbyist.

(7) The name and address of the source and the amount of any payment for or reimbursement of actual expenses for transportation and lodging or hospitality received in connection with public office or employment where such actual expenses for transportation and lodging or hospitality exceed \$650 in an aggregate amount per year. This paragraph shall not apply to expenses reimbursed by a governmental body or to expenses reimbursed by an organization or association of public officials or employees of political subdivisions which the public official or employee serves in an official capacity.

(8) Any office, directorship or employment of any nature whatsoever in any business entity.

(9) Any financial interest in any legal entity engaged in business for profit.

(10) The identity of any financial interest in a business with which the reporting person is or has been associated in the preceding calendar year which has been transferred to a member of the reporting person's immediate family.

**(c) Reporting amounts.**--Except where an amount is required to be reported pursuant to subsection (b)(6) and (7), the statement of financial interests need not include specific amounts for the items required to be listed.

**(d) Cost-of-living adjustments.**--On a biennial basis the commission shall review the dollar amounts set forth in this section and may increase these amounts to such rates as are deemed reasonable for assuring appropriate disclosure. The commission shall publish any such adjusted threshold amounts in the Pennsylvania Bulletin.

## § 1106. State Ethics Commission

**(a) Continuation of commission.**--The State Ethics Commission established under the act of October 4, 1978 (P.L. 883, No.170), referred to as the Public Official and Employee Ethics Law, is continued and shall be composed of seven members. The President pro tempore of the Senate, the Minority Leader of the Senate, the Speaker of the House and the Minority Leader of the House shall each appoint one member. Three members shall be appointed by the Governor without confirmation. No more than two of the members appointed by the Governor shall be of the same political party. No appointee shall have served as an officer in a political party for one year prior to his appointment.

**(b) Term of service.**--Members of the commission shall serve for terms of three years, except that members shall continue to serve until their successors are appointed and qualified.

**(c) Maximum number of terms.**--No member shall be appointed to more than two full three-year terms on the commission.

**(d) Prohibited activities.**--No individual while a member or employee of the commission shall:

- (1) hold or campaign for any other public office;
- (2) hold office in any political party or political committee;
- (3) actively participate in or contribute to any political campaign;
- (4) directly or indirectly attempt to influence any decision by a governmental body, other than a court of law or as a representative of the commission on a matter within the jurisdiction of the commission; or
- (5) be employed by the Commonwealth or a political subdivision in any other capacity, whether or not for compensation.

**(e) Vacancy.**--A majority of the commission by resolution shall declare vacant the position on the commission of any member who takes part in activities prohibited by subsection (d). An individual appointed to fill a vacancy occurring other than by the expiration of a term of office shall be appointed for the unexpired term of the member he succeeds and is eligible for appointment to two full three-year terms thereafter. Any vacancy occurring on the commission shall be filled within 30 days in the manner in which that position was originally filled.

**(f) Election of chairman and vice chairman.**--The commission shall elect a chairman and a vice chairman. The vice chairman shall act as chairman in the absence of the chairman or in the event of a vacancy in that position.

**(g) Quorum.**--Four members of the commission shall constitute a quorum and except as provided in section 1108(g) (relating to investigations by commission), the votes of a majority of the members present are required for any action or recommendation of the commission. The chairman or any four members of the commission may call a meeting provided that advance written notice is mailed to each member and to any person who requests notice of such meetings.

**(h) Compensation.--**Members of the commission shall be compensated at a rate of \$250 per day and shall receive reimbursement for their actual and necessary expenses while performing the business of the commission.

**(i) Staff.--**The commission shall employ an executive director, a chief counsel and such other staff as are necessary to carry out its duties pursuant to this chapter. The executive director shall be responsible for the administrative operations of the commission and shall perform such other duties as may be delegated or assigned to him by the commission, except that the commission shall not delegate the making of regulations to the executive director. The chief counsel shall be the chief legal officer of the commission. The commission may obtain the services of experts and consultants as necessary to carry out its duties pursuant to this chapter. The State Treasurer and the Attorney General shall make available to the commission such personnel, facilities and other assistance as the commission may request.

**(j) Regulations.--**The commission shall develop regulations that provide for a code of conduct to govern the activities and ethical standards of its members, which code shall subject the members of the commission to no less than is required for public officials or public employees under this chapter.

#### **§ 1107. Powers and duties of commission**

In addition to other powers and duties prescribed by law, the commission shall:

- (1) Prescribe and publish rules and regulations to carry out the provisions of this chapter.
- (2) Prescribe forms for statements and reports required to be filed by this chapter and furnish such forms to persons required to file such statements and reports.
- (3) Prepare and publish guidelines setting forth recommended uniform methods of accounting and reporting for use by persons required to file statements and reports by this chapter.
- (4) Accept and file any information voluntarily supplied that exceeds the requirements of this chapter.
- (5) Inspect statements of financial interests which have been filed in order to ascertain whether any reporting person has failed to file such a statement or has filed a deficient statement. If, upon inspection, it is determined that a reporting person has failed to file a statement of financial interests or that any statement which has been filed fails to conform with the requirements of section 1105 (relating to statement of financial interests), then the commission shall in writing notify the person. Such notice shall state in detail the deficiency and the penalties for failure to file or for filing a deficient statement of financial interests.
- (6) Provide that statements and reports filed with the commission be made available for public inspection and copying during regular office hours and provide that copying facilities be made available at a charge not to exceed actual cost and advise other State and local agencies of the provisions of this paragraph.

- (7) Compile and maintain an index of all reports and statements filed with the commission to facilitate public access to such reports and statements and instruct other State and local agencies which receive and file financial interest statements in the maintenance of systems which facilitate public access to such statements.
- (8) Prepare and publish annual summaries of statements and reports filed with the commission.
- (9) Preserve statements and reports filed with the commission for a period of five years from date of receipt and advise other State and local agencies which receive and store financial interest statements to preserve such statements for a period of five years from date of receipt.
- (10) Issue to any person upon such person's request or to the appointing authority or employer of that person upon the request of such appointing authority or employer an opinion with respect to such person's duties under this chapter. The commission shall, within 14 days, either issue the opinion or advise the person who made the request whether an opinion will be issued. No person who acts in good faith on an opinion issued to him by the commission shall be subject to criminal or civil penalties for so acting, provided that the material facts are as stated in the opinion request. The commission's opinions shall be public records and may from time to time be published. The person requesting the opinion may, however, require that the opinion shall contain such deletions and changes as shall be necessary to protect the identity of the persons involved.
- (11) Provide written advice to any person or the appointing authority or employer of such person, upon their request with respect to such person's duties under this chapter. Such advice shall be provided within 21 working days of the request, provided that the time may be extended for good cause. It shall be a complete defense in any enforcement proceeding initiated by the commission, and evidence of good faith conduct in any other civil or criminal proceeding, if the requester, at least 21 working days prior to the alleged violation, requested written advice from the commission in good faith, disclosed truthfully all the material facts and committed the acts complained of either in reliance on the advice or because of the failure of the commission to provide advice within 21 days of the request or such later extended time. The person requesting the advice may, however, require that the advice shall contain such deletions and changes as shall be necessary to protect the identity of the persons involved.
- (12) Initiate an inquiry, pursuant to section 1108(a) (relating to investigations by commission), where a complaint has not been filed but where there is a reasonable belief that a conflict may exist.
- (13) Issue findings, reports and orders relating to investigations initiated pursuant to section 1108, which set forth the alleged violation, findings of fact and conclusions of law. An order may include recommendations to law enforcement officials. Any order resulting from a finding that a public official or public employee has obtained a financial gain in violation of this chapter may require the restitution plus interest of that gain to the appropriate governmental body. The commission or the Office of Attorney General shall have standing to apply to the Commonwealth Court to seek enforcement of an order requiring such restitution. This restitution requirement shall be in addition to any other penalties provided for in this chapter.
- (14) Hold hearings, take testimony, issue subpoenas and compel the attendance of witnesses.

(15) Make recommendations to law enforcement officials either for criminal prosecution or dismissal of charges arising out of violations of this chapter.

(16) Prepare and publish special reports, educational materials, and technical studies to further the purposes of this chapter.

(17) Prepare and publish, prior to June 1 of each year, an annual report summarizing the activities of the commission.

(18) Transmit, free of charge, copies of each order, advice and opinion which has become a matter of public record quarterly to the law library of each county, one public library in each county, the State Library, the State Senate Library, each authority appointing commission members under this chapter, the Pennsylvania Association of County Commissioners, the Pennsylvania Association of Boroughs, the Pennsylvania State Association of Township Supervisors, the Pennsylvania State Association of Township Commissioners, the Pennsylvania School Boards Association and the Pennsylvania League of Cities.

(19) Hold at least two public hearings each year, of which at least one shall be held in Harrisburg and at least one shall be held in a location other than Harrisburg, to seek input from persons and organizations who represent any individual subject to the provisions of this chapter and from other interested parties.

#### **§ 1108. Investigations by commission**

**(a) Preliminary inquiry.**--Upon a complaint signed under penalty of perjury by any person or upon its own motion, the commission, through its executive director, shall conduct a preliminary inquiry into any alleged violation of this chapter. The commission shall keep information, records and proceedings relating to a preliminary inquiry confidential. The commission shall, however, have the authority to refer the case to law enforcement officials during a preliminary inquiry or anytime thereafter without providing notice to the subject of the inquiry. The commission shall complete its preliminary inquiry within 60 days of its initiation.

**(b) Termination of preliminary inquiry.**--If a preliminary inquiry fails to establish reason to believe that this chapter has been violated, the commission shall terminate the inquiry and so notify the complainant and the person who had been the subject of the inquiry. If the commission determines that a complaint is frivolous, it shall so state.

**(c) Initiation of investigation.**--If a preliminary inquiry establishes reason to believe that this chapter has been violated, the commission may, through its executive director, initiate an investigation to determine if there has been a violation. The commission shall keep information, records and proceedings relating to an investigation confidential until a final determination is made, except as otherwise provided in subsection (g). No investigation may be commenced until the person who is the subject of the investigation has been notified and provided a general statement of the alleged violation or violations of this chapter and other applicable statutes with respect to such investigation. Service of notice is complete upon mailing which shall be by certified or registered mail. The commission shall notify the complainant within 72 hours of the commencement of an investigation, and, thereafter, the commission shall advise the complainant and the person who is the

subject of the investigation of the status of the investigation at least every 90 days until the investigation is terminated. The commission shall, within 180 days of the initiation of an investigation, either terminate the investigation pursuant to subsection (d) or issue a findings report pursuant to subsection (e). Upon a showing by the executive director of the need for extension of this period, the commission may extend an investigation for up to two 90-day periods, provided that each 90-day extension shall be approved by a majority vote of members present. In no event shall a findings report be issued later than 360 days after initiation of an investigation.

**(d) Termination of investigation.**--If an investigation conducted under this chapter indicates that no violation has been committed, the commission shall immediately terminate the investigation and send written notice of such determination to the complainant and the person who was the subject of the investigation.

**(e) Findings report.**--The commission, upon the completion of an investigation, shall issue a findings report to the subject of the investigation setting forth the pertinent findings of fact. The subject shall have the right to respond to said findings and to request an evidentiary hearing on said matter. The commission shall grant any request for a hearing. Said hearing shall be held in Harrisburg or, at the request of the subject, in either Philadelphia or Pittsburgh. Any response to the findings report must either admit or deny by corresponding number and letter the pertinent facts set forth. The subject of the investigation shall have access to any evidence intended to be used by the commission at the hearing and any exculpatory evidence developed by the commission in the course of its investigation. Matters not specifically denied in the response shall be deemed admitted. The response must be filed within 30 days of the issuance of the findings report unless the time period is extended by the commission for good cause shown. Hearings conducted upon request shall be instituted within 45 days after the filing of the response.

**(f) Final order.**--Within 30 days of the receipt by the commission of the hearing record, or, if no hearing is to be held, within 30 days of the receipt by the commission of the response to the findings report, the commission shall issue an order which shall be final. Upon receipt of a final order, the subject shall have the right to file a petition for reconsideration in accordance with the regulations of the commission.

**(g) Procedure for hearing.**--Hearings conducted pursuant to this section shall be closed to the public unless the subject requests an open hearing. Any person who appears before the commission shall have all of the due process rights, privileges and responsibilities of a party or witness appearing before an administrative agency of this Commonwealth. All witnesses summoned for such hearings shall receive reimbursement for reasonable expenses in accordance with 42 Pa.C.S. § 5903 (relating to compensation and expenses of witnesses). At the conclusion of a hearing concerning an alleged violation and in a timely manner, the commission shall deliberate on the evidence and determine whether there has been a violation of this chapter. At least four members of the commission present at a meeting must find a violation by clear and convincing proof. The names of the members finding a violation and the names of those dissenting and abstaining shall be listed in the order. The determination of the commission, in the form of a final order and findings of fact, shall be a matter of public record.

**(h) Availability of final orders, files and records.**--Orders which become final in accordance with the provisions of this section shall be available as public documents, but the files and records of

the commission relating to the case shall remain confidential.

**(i) Appeal.**--Any person aggrieved by an opinion or order which becomes final in accordance with the provisions of this chapter who has direct interest in such opinion or order shall have the right to appeal therefrom in accordance with law and general rules.

**(j) Retaliation prohibited.**--No public official or public employee shall discharge any official or employee or change his official rank, grade or compensation or deny him a promotion or threaten to do so for filing a complaint with or providing information to the commission or testifying in any commission proceeding. No member of the commission and no employee of the commission shall discharge any employee of the commission or change his official rank, grade or compensation or threaten to do so for providing any information about the internal operations of the commission, not required by law to be kept secret, to any legislator or legislative staff member or testifying in any legislative proceeding.

**(k) Confidentiality.**--As a general rule, no person shall disclose or acknowledge, to any other person, any information relating to a complaint, preliminary inquiry, investigation, hearing or petition for reconsideration which is before the commission. However, a person may disclose or acknowledge to another person matters held confidential in accordance with this subsection when the matters pertain to any of the following:

- (1) final orders of the commission as provided in subsection (h);
- (2) hearings conducted in public pursuant to subsection (g);
- (3) for the purpose of seeking advice of legal counsel;
- (4) filing an appeal from a commission order;
- (5) communicating with the commission or its staff, in the course of a preliminary inquiry, investigation, hearing or petition for reconsideration by the commission;
- (6) consulting with a law enforcement official or agency for the purpose of initiating, participating in or responding to an investigation or prosecution by the law enforcement official or agency;
- (7) testifying under oath before a governmental body or a similar body of the United States of America;
- (8) any information, records or proceedings relating to a complaint, preliminary inquiry, investigation, hearing or petition for reconsideration which the person is the subject of; or
- (9) such other exceptions as the commission by regulation may direct.

**(l) Frivolous complaints and wrongful disclosure.**--If a public official or public employee has reason to believe the complaint is frivolous as defined by this chapter, or without probable cause and made primarily for a purpose other than that of reporting a violation of this chapter, or a person publicly disclosed or caused to be disclosed that a complaint against the public official or public



employee has been filed with the commission, the public official or public employee shall notify the commission and the commission, through its executive director, shall conduct an investigation.

**(m) Limitation of time.**--The commission may conduct an investigation within five years after the alleged occurrence of any violation of this chapter.

#### **§ 1109. Penalties**

**(a) Restricted activities violation.**--Any person who violates the provisions of section 1103(a), (b) and (c) (relating to restricted activities) commits a felony and shall, upon conviction, be sentenced to pay a fine of not more than \$10,000 or to imprisonment for not more than five years, or both.

**(b) Financial interests statement violation.**--Any person who violates the provisions of section 1103(d) through (j), 1104 (relating to statement of financial interests required to be filed) or 1105(a) (relating to statement of financial interests) commits a misdemeanor and shall, upon conviction, be sentenced to pay a fine of not more than \$1,000 or to imprisonment for not more than one year, or both.

**(c) Treble damages.**--Any person who obtains financial gain from violating any provision of this chapter, in addition to any other penalty provided by law, shall pay a sum of money equal to three times the amount of the financial gain resulting from such violation into the State Treasury or the treasury of the political subdivision. Treble damages shall not be assessed against a person who acted in good faith reliance on the advice of legal counsel.

**(d) Impeachment and disciplinary action.**--The penalties prescribed in this chapter do not limit the power of either house of the Legislature to discipline its own members or impeach a public official and do not limit the power of agencies or commissions to discipline officials or employees.

**(e) Other violations of chapter.**--Any person who violates the confidentiality of a commission proceeding pursuant to section 1108 (relating to investigations by commission) commits a misdemeanor and shall, upon conviction, be sentenced to pay a fine of not more than \$1,000 or to imprisonment for not more than one year, or both. Any person who engages in retaliatory activity proscribed by section 1108(j) commits a misdemeanor and, in addition to any other penalty provided by law, shall, upon conviction, be sentenced to pay a fine of not more than \$1,000 or to imprisonment for not more than one year, or both. Any person who willfully affirms or swears falsely in regard to any material matter before a commission proceeding pursuant to section 1108 commits a felony and shall, upon conviction, be sentenced to pay a fine of not more than \$5,000 or to imprisonment for not more than five years, or both.

**(f) Civil penalty.**--In addition to any other civil remedy or criminal penalty provided for in this chapter, the commission may, after notice has been served in accordance with section 1107(5) (relating to powers and duties of commission) and upon a majority vote of its members, levy a civil penalty upon any person subject to this chapter who fails to file a statement of financial interests in a timely manner or who files a deficient statement of financial interests, at a rate of not more than \$25 for each day such statement remains delinquent or deficient. The maximum penalty payable under this paragraph is \$250.



**(g) Reliance on solicitor's opinion.**--A public official of a political subdivision who acts in good faith reliance on a written, nonconfidential opinion of the solicitor of the political subdivision or upon an opinion of the solicitor of the political subdivision, publicly stated at an open meeting of the political subdivision and recorded in the official minutes of the meeting, shall not be subject to the penalties provided for in subsections (a) and (b) nor for the treble damages provided for in subsection (c). However, this subsection shall not apply in situations where the solicitor's opinion has been rendered under duress or where the parties seeking and rendering the solicitor's opinion have colluded to purposefully commit a violation of this chapter.

#### **§ 1110. Wrongful use of chapter**

**(a) Liability.**--A person who signs a complaint alleging a violation of this chapter against another is subject to liability for wrongful use of this chapter if:

- (1) the complaint was frivolous, as defined by this chapter, or without probable cause and made primarily for a purpose other than that of reporting a violation of this chapter; or
- (2) he publicly disclosed or caused to be disclosed that a complaint against a person had been filed with the commission.

**(b) Probable cause.**--A person who signs a complaint alleging a violation of this chapter has probable cause for doing so if he reasonably believes in the existence of the facts upon which the claim is based and either:

- (1) reasonably believes that under those facts the complaint may be valid under this chapter; or
- (2) believes to this effect in reliance upon the advice of counsel, sought in good faith and given after full disclosure of all relevant facts within his knowledge and information.

**(c) Commission procedures.**--When the commission determines that a complainant has violated the provisions set forth in subsection (a), the commission, upon receiving a written request from the subject of the complaint, shall provide the name and address of the complainant to said subject. If the commission determines that a complainant has not violated the provisions of subsection (a), the commission shall notify the subject accordingly. The subject shall have the right to appeal the commission's determination, and the commission shall schedule an appeal hearing. The subject shall show cause why the complainant violated the provisions of this section. If the commission grants the appeal, the commission shall immediately release the complainant's name and address to the subject. If the commission denies the appeal, it shall present evidence why the complainant's name and address shall not be released.

**(d) Damages.**--When the essential elements of an action brought pursuant to this section have been established, the plaintiff is entitled to recover for the following:

- (1) The harm to his reputation by a defamatory matter alleged as the basis of the proceeding.
- (2) The expenses, including any reasonable attorney fees, that he has reasonably incurred in proceedings before the commission.

- (3) Any specific pecuniary loss that has resulted from the proceedings.
- (4) Any emotional distress that has been caused by the proceedings.
- (5) Any punitive damages according to law in appropriate cases.

**§ 1111. Supplemental provisions**

Any governmental body may adopt requirements to supplement this chapter, provided that no such requirements shall in any way be less restrictive than the chapter.

**§ 1112. Conflict of law**

Except as otherwise provided in Chapter 13 (relating to lobby regulation and disclosure), if the provisions of this chapter conflict with any other statute, ordinance, regulation or rule, the provisions of this chapter shall control.

**§ 1113. Severability**

If any provision of this chapter or the application thereof to any person or circumstance is held invalid, the validity of the remainder of this chapter and the application of such provisions to other persons and circumstances shall not be affected thereby.

**PART II. CONDUCT STANDARDS**

Chap. Sec.  
33. CODE OF JUDICIAL CONDUCT ..... CANON 1  
39. GUIDELINES FOR ETHICAL CONDUCT IN JUDICIAL CAMPAIGNS ..... 39.1  
51. STANDARDS OF CONDUCT OF MAGISTERIAL DISTRICT JUDGES ..... Rule 1  
61. RULES GOVERNING THE CONDUCT OF MEMBERS OF THE COURT OF JUDICIAL DISCIPLINE ..... Rule 1  
71. MEMBERS CONDUCT RULES ..... M.C.R. 1

*(Editor’s Note: Part II of this title was originally Part III of Title 204, Judicial System General Provisions.)*

**CHAPTER 33. CODE OF JUDICIAL CONDUCT**

Subch.  
A. CANONS ..... Canon 1  
B. FORMAL OPINIONS ..... 99-1

**Subchapter A. CANONS**

Canon

- 1. Judges should uphold the integrity and independence of the judiciary.
- 2. Judges should avoid impropriety and the appearance of impropriety in all his activities.
- 3. Judges should perform the duties of their office impartially and diligently.
- 4. Judges may engage in activities to improve the law, the legal system, and the administration of justice.
- 5. Judges should regulate their extra-judicial activities to minimize the risk of conflict with their judicial duties.
- 6. Compensation received for quasi-judicial and extra-judicial activities permitted by this code.
- 7. Judges should refrain from political activity inappropriate to their judicial office.  
Compliance With The Code of Judicial Conduct.  
Effective date of compliance.  
Reliance on Advisory Opinions.

**Source**

The provisions of this Chapter 33 adopted November 21, 1973, effective January 1, 1974, 3 Pa.B. 2914; amended November 21, 2005, effective immediately, 35 Pa.B. 6647, unless otherwise noted. Immediately preceding text appears at serial pages (262113) to (262114), (198207) to (198212) and (294047) to (294050).

**Canon 1. Judges should uphold the integrity and independence of the judiciary.**

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

**Canon 2. Judges should avoid impropriety and the appearance of impropriety in all their activities.**

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

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

**Official Note:** Public confidence in the judiciary is eroded by irresponsible or improper conduct by judges. Judges must avoid all impropriety and appearance of impropriety. They must expect to be the subject of constant public scrutiny. They must therefore accept restrictions on their conduct that might be viewed as burdensome by the ordinary citizen and should do so freely and willingly.

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

**Canon 3. Judges should perform the duties of their office impartially and diligently.**

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

A. *Adjudicative responsibilities.*

(1) Judges should be faithful to the law and maintain professional competence in it. They should be unswayed by partisan interests, public clamor, or fear of criticism.

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

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

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

(4) Judges should accord to all persons who are legally interested in a proceeding, or their lawyers, full right to be heard according to law, and,

except as authorized by law, must not consider ex parte communications concerning a pending proceeding.

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

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

(6) Judges 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 their 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.

**Official Note:** "Court personnel" does not include the lawyers in a proceeding before a judge. The conduct of lawyers is governed by DR7-107 of the Code of Professional Responsibility.

(7) Judges should prohibit broadcasting, televising, recording or taking photographs in the courtroom and areas immediately adjacent thereto during sessions of court or recesses between sessions, except that a judge may authorize:

(a) the use of electronic or photographic means for the presentation of evidence, for the perpetuation of a record or for other purposes of judicial administration;

(b) the broadcasting, televising, recording, or photographing of investitive, ceremonial, or naturalization proceedings;

(c) the photographic or electronic recording and reproduction of appropriate court proceedings under the following conditions:

(i) the means of recording will not distract participants or impair the dignity of the proceedings; and

(ii) the parties have consented; and the consent to being depicted or recorded has been obtained from each witness appearing in the recording and reproductions; and

(iii) the reproduction will not be exhibited until after the proceeding has been concluded and all direct appeals have been exhausted; and

(iv) the reproduction will be exhibited only for instructional purposes in educational institutions.

(d) the use of electronic broadcasting, televising, recording and taking photographs in the courtroom and areas immediately adjacent thereto during sessions of court or recesses between sessions of any trial court non-jury civil proceeding, however, for the purposes of this subsection 'civil proceedings' shall not be construed to mean a support, custody or divorce proceeding. Subsection (iii) and (iv) shall not apply to nonjury civil pro-

ceedings as heretofore defined. No witness or party who expresses any prior objection to the judge shall be photographed nor shall the testimony of such witness or party be broadcast or telecast. Permission for the broadcasting, televising, recording and photographing of any civil nonjury proceeding shall have first been expressly granted by the judge, and under such conditions as the judge may prescribe in accordance with the guidelines contained in this Order.

**Official Note:** Temperate conduct of judicial proceedings is essential to the fair administration of justice. The recording and reproduction of a proceeding should not distort or dramatize the proceeding.

**Editor's Note**

Canon 3(A)7(d) shall be effective from October 1, 1979, to September 30, 1980, at which time Canon 3(A)7 shall be reinstated, without further order of the court, in its form immediately prior to the entry of this amendment.

**B. Administrative responsibilities.**

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

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

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

**Official Note:** Disciplinary measures may include reporting a judge's or lawyer's misconduct to an appropriate disciplinary body.

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

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

**C. Disqualification.**

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

- (a) they have a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding;
- (b) they served as a lawyer in the matter in controversy, or a lawyer with whom they previously practiced law served during such association as a lawyer concerning the matter, or the judge or such lawyer has been a material witness concerning it;

**Official Note:** A lawyer in a governmental agency does not necessarily have an association with other lawyers employed by that agency within the meaning of this subsection; judges formerly employed by a governmental agency, however, should disqualify themselves in a proceeding if their impartiality might reasonably be questioned because of such association.

- (c) they know that they, individually or as a fiduciary, or their spouse or minor child residing in their household, have a substantial financial interest in the subject matter in controversy or in a party to the proceeding, or any other interest that could be substantially affected by the outcome of the proceeding;
- (d) they or their spouse, or a person within the third degree of relationship to either of them, or the spouse of such a person:
  - (i) is a party to the proceeding, or an officer, director, or trustee of a party;
  - (ii) is acting as a lawyer in the proceeding;

**Official Note:** The fact that a lawyer in a proceeding is affiliated with a law firm with which a lawyer-relative of the judge is affiliated does not of itself disqualify the judge. Under appropriate circumstances, the fact that “their impartiality might reasonably be questioned” under Canon 3C(1), or that the lawyer-relative is known by the judge to have an interest in the law firm that could be “substantially affected by the outcome of the proceeding” under Canon 3C(1)(d)(iii) may require the judge’s disqualification.

- (iii) is known by the judge to have an interest that could be substantially affected by the outcome of the proceeding;
  - (iv) is to the judge’s knowledge likely to be a material witness in the proceeding;
- (2) Judges should inform themselves about their personal and fiduciary financial interests, and make a reasonable effort to inform themselves about the personal financial interests of their spouse and minor children residing in their household.
- (3) For the purposes of this section:
- (a) the degree of relationship is calculated according to the civil law system;

**Official Note:** According to the civil law system, the third degree of relationship test would, for example, disqualify judges if their or their spouse’s parents, grandparents, aunts or uncles, siblings, nieces or nephews or their spouses were a party or lawyer in the proceeding, but would not disqualify them if a cousin were a party or lawyer in the proceeding.

(b) “fiduciary” includes such relationships as executor, administrator, trustee, and guardian;

(c) “financial interest” means ownership of a legal or equitable interest, if substantial, or a relationship as director, advisor, or other active participant in the affairs of a party, except that:

(i) ownership in a mutual or common investment fund that holds securities is not a “financial interest” in such securities unless the judge participates in the management of the fund;

(ii) an office in an educational, religious, charitable, fraternal, or civic organization is not a “financial interest” in securities held by the organization;

(iii) the proprietary interest of a policy holder in a mutual insurance company, of a depositor in a mutual savings association, or a similar proprietary interest, is a substantial “financial interest” in the organization only if the outcome of the proceeding could substantially affect the value of the interest;

(iv) ownership of securities is a “financial interest” in the issuer only if the outcome of the proceeding could substantially affect the value of securities.

**Source**

The provisions of this Canon 3 amended September 20, 1979, effective October 1, 1979, 9 Pa.B. 3365. Immediately preceding text appears at serial page (15318).

**Canon 4. Judges may engage in activities to improve the law, the legal system, and the administration of justice.**

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

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

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

C. They 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. They may assist such an organization in raising funds and may participate in their management and investment, but should not personally participate in public fund raising activities. They may make recommendations to public and private fund-granting agencies on projects and programs concerning the law, the legal system, and the administration of justice.



**Official Note:** As a judicial officer and person specially learned in the law, judges are in a unique position to contribute to the improvement of the law, the legal system, and the administration of justice. To the extent that their time permits, they are encouraged to do so, either independently or through a bar association, judicial conference, or other organization dedicated to the improvement of the law.

Extra-judicial activities are governed by Canon 5.

**Canon 5. Judges should regulate their extra-judicial activities to minimize the risk of conflict with their judicial duties.**

*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.

**Official Note:** Complete separation of judges from extra-judicial activities is neither possible nor wise; they should not become isolated from the society in which they live.

*B. Civic and Charitable Activities.*

Judges may participate in civic and charitable activities that do not reflect adversely upon their impartiality or interfere with the performance of their judicial duties. Judges may serve as 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) Judges should not serve if it is likely that the organization will be engaged in proceedings that would ordinarily come before them or will be regularly engaged in adversary proceedings in any court.

**Official Note:** The changing nature of some organizations and of their relationship to the law makes it necessary for judges regularly to reexamine the activities of each organization with which they are affiliated to determine if it is proper for them to continue their relationship with it. For example, in many jurisdictions charitable hospitals are now more frequently in court than in the past. Similarly, the boards of some legal aid organizations now make policy decisions that may have political significance or imply commitment to causes that may come before the courts for adjudication.

- (2) Judges should not 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, but they may be listed as an officer, director, or trustee of such an organization. They should not be a speaker or the guest of honor at an organization's fund raising events, but they may attend such events.

- (3) Judges should not give investment advice to such an organization, but they may serve on its board of directors or trustees even though it has the responsibility for approving investment decisions.

**Official Note:** A judge's participation in an organization devoted to quasi-judicial activities is governed by Canon 4.

C. *Financial activities.*

(1) Judges should refrain from financial and business dealings that tend to reflect adversely on their impartiality, interfere with the proper performance of their judicial duties, exploit their judicial position, or involve them in frequent transactions with lawyers or persons likely to come before the court on which they serve.

(2) Subject to the requirement of subsection (1), judges may hold and manage investments, including real estate, and engage in other remunerative activity including the operation of a family business.

**Official Note:** The Effective Date of Compliance provision of this Code qualifies this subsection with regard to a judge engaged in a family business at the time this Code becomes effective.

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

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

**Official Note:** Pursuant to the authority granted by Article V, Section 10 of the Pennsylvania Constitution, the Supreme Court adopted the Code of Judicial Conduct as the exclusive means of regulating the conduct of judicial officers under the supervision of the Supreme Court (see also Rules Governing Standards of Conduct of Magisterial District Judges). Disqualification from proceedings is the most appropriate means of ensuring judicial integrity and impartiality in proceedings, including, but not limited to, those arising from the Pennsylvania Race Horse Development and Gaming Act (4 Pa.C.S.A. § 1101 et seq.).

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.A. § 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 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.

Canon 3(C) of the Code of Judicial Conduct continues to govern the disqualification of judges where the interest in or relationship with a licensed racing or licensed gaming entity or related company thereto, or any such applicant therefor, of the judge or a family member is at issue.

D. *Fiduciary Activities.*

Judges should not serve as the executor, administrator, trustee, guardian, or other fiduciary, except for the estate, trust, or person of a member of their family, and then only if such service will not interfere with the proper performance of their judicial duties. “Member of their family” includes a spouse, child, grandchild, parent, grandparent, or other relative or person with whom the judge maintains a close familial relationship. As a family fiduciary judges are subject to the following restrictions:

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

**Official Note:** The Effective Date of Compliance provision of this Code qualifies this subsection with regard to a judge who is an executor, administrator, trustee, or other fiduciary at the time this Code becomes effective.

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

**Official Note:** Judges’ obligations under this Canon and their obligations as a fiduciary may come into conflict. For example, a judge should resign as trustee if it would result in detriment to the trust to divest it of holdings whose retention would place the judge in violation of Canon 5C(3).

E. *Arbitration.*

Judges should not act as an arbitrator or mediator.

F. *Practice of law.*

Judges should not practice law.

G. *Extra-judicial appointments.*

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

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

**Source**

The provisions of this Canon 5 amended June 1, 2006, effective immediately, 36 Pa.B. 2954. Immediately preceding text appears at serial pages (315991) to (315993).

**Canon 6. Compensation received for quasi-judicial and extra-judicial activities permitted by this code.**

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

**A. Compensation.**

Compensation should not exceed a reasonable amount nor should it exceed what a person who is not a judge would receive for the same activity.

**B. Expense reimbursement.**

Expense reimbursement should be limited to the actual cost of travel, food, and lodging reasonably incurred by judges and, where appropriate to the occasion, by their spouses.

**Canon 7. Judges should refrain from political activity inappropriate to their judicial office.****A. Political conduct in general.**

(1) A judge or a candidate for election to judicial office should not:

- (a) act as a leader or hold any office in a political organization;
- (b) make speeches for a political organization or candidate or publicly endorse a candidate for public office; except as authorized in subsection A(2);

**Official Note:** Candidates do not publicly endorse another candidate for public office by having their name on the same ticket.

(c) solicit funds for or pay an assessment or make a contribution to a political organization or candidate, attend political gatherings, or purchase tickets for political party dinners, or other functions, except as authorized in subsection A(2);

(2) Judges holding an office filled by public election between competing candidates, or a candidate for such office, may, only insofar as permitted by law, attend political gatherings, speak to such gatherings on their own behalf when they are a candidate for election or reelection, or speak on behalf of any judicial candidate for the same office, identify themselves as a member of a political party, and contribute to a political party or organization.

(3) Judges should resign their office when they become a candidate either in a party primary or in a general election for a non-judicial office, except that they may continue to hold their judicial office while being a candidate for elec-

tion to or serving as a delegate in a state constitutional convention, if they are otherwise permitted by law to do so.

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

**B. Campaign conduct.**

(1) Candidates, including an incumbent judge, for a judicial office that is filled either by public election between competing candidates or on the basis of a merit system election:

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

(b) should prohibit public officials or employees subject to their direction or control from doing for them what judges are prohibited from doing under this Canon; and except to the extent authorized under subsection B(2) or B(3), they should not allow any other person to do for them what judges are prohibited from doing under this Canon;

(c) should not make pledges or promises of conduct in office other than the faithful and impartial performance of the duties of the office; make statements that commit the candidate with respect to cases, controversies or issues that are likely to come before the court; or misrepresent their identity, qualifications, present position, or other fact.

**Source**

The provisions of this Canon 7 amended March 18, 2008, effective immediately, 38 Pa.B. 1445. Immediately preceding text appears at serial pages (319848) to (319849).



(2) Candidates, including an incumbent judge, for a judicial office that is filled by public election between competing candidates should not themselves solicit or accept campaign funds, or solicit publicly stated support, but they may establish committees of responsible persons to secure and manage the expenditure of funds for their campaign and to obtain public statements of support for their candidacy. Such committees are not prohibited from soliciting campaign contributions and public support from lawyers. Candidates' committees may solicit funds for their campaign no earlier than thirty 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. Candidates should not use or permit the use of campaign contributions for the private benefit of themselves or members of their family.

(3) Incumbent judges who are candidates for retention in or reelection to office without a competing candidate may campaign and may obtain publicly stated support and campaign funds in the manner provided in subsection B(2).

#### **Compliance With The Code of Judicial Conduct**

Anyone, whether or not a lawyer, who is an officer of a judicial system performing judicial functions, including an officer such as a referee in bankruptcy, special master, court commissioner, or magistrate, is a judge for the purpose of this Code. All judges should comply with this Code except as provided below.

*Senior Judge.* Senior judges who receive the same compensation as full-time judges on the court from which they retired and are eligible for recall to judicial service should comply with all the provisions of this Code except Canon 5G, but they should refrain from judicial service during the period of an extra-judicial appointment not sanctioned by Canon 5G. All other senior judges eligible for recall to judicial service should comply with the provisions of this Code.

This Code shall not apply to magisterial district judges and judges of the Traffic Court of the City of Philadelphia.

**Official Note:** Specific rules governing standards of conduct of magisterial district judges, and judges of the Traffic Court of the City of Philadelphia, are set forth in the Rules Governing Standards of Conduct of Magisterial District Judges.

#### **Effective Date of Compliance**

Persons to whom this Code becomes applicable should arrange their affairs as soon as reasonably possible to comply with it. If, however, the demands on their time and the possibility of conflicts of interest are not substantial, persons who hold judicial office on the date this Code becomes effective may:

(a) continue to act as an officer, director, or nonlegal advisor of a family business;

(b) continue to act as an executor, administrator, trustee, or other fiduciary for the estate or person of one who is not a member of their family.

### Reliance on Advisory Opinions

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, justices and other judicial officers subject to the Code of Judicial Conduct, and, 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 thereupon and pursuant thereto shall be taken into account in determining whether discipline should be recommended or imposed.

*Commentary:* The United States Supreme Court in *Republican Party of Minnesota v. White*, 122 S. Ct. 2528 (2002), concluded that a canon of judicial conduct prohibiting judicial candidates from “announcing their views on disputed legal or political issues” is violative of the First Amendment of the United States Constitution.

### Source

The provisions of this Canon 7 amended September 9, 1991, effective September 7, 1991, 21 Pa.B. 4396; amended November 9, 1998, effective January 1, 1999, 28 Pa.B. 5849; order amended November 24, 1998, 28 Pa.B. 6069; amended November 21, 2002, effective immediately, 32 Pa.B. 5951. Immediately preceding text appears at serial pages (251691) to (251692) and (287549) to (287550).

## Subchapter B. FORMAL OPINIONS

- Sec.  
 99-1. Campaign Advertising.  
 99-2. Reporting Suspected Tax Evasion.  
 99-3. Judges and the Media.  
 00-1. Signing Nominating Petitions.  
 02-1. Time Withdrawn Judicial Candidates Must End Fund Raising.

### § 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 limita-

tions 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 media. 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 num-

ber 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.

### § 02-2. 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 Commit-

tee 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.

[Next page is 39-1.]

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(287554) No. 330 May 02

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CODE OF CONDUCT  
FOR UNITED STATES JUDGES<sup>1</sup>  
(Effective July 1, 2009)

**Introduction**

This Code applies to United States circuit judges, district judges, Court of International Trade judges, Court of Federal Claims judges, bankruptcy judges, and magistrate judges. Certain provisions of this Code apply to special masters and commissioners as indicated in the “Compliance” section. The Tax Court, Court of Appeals for Veterans Claims, and Court of Appeals for the Armed Forces have adopted this Code.

The Judicial Conference has authorized its Committee on Codes of Conduct to render advisory opinions about this Code only when requested by a judge to whom this Code applies. Requests for opinions and other questions<sup>2</sup> concerning this Code and its applicability should be addressed to the Chair of the Committee on Codes of Conduct by email or as follows:

Chair, Committee on Codes of Conduct  
c/o General Counsel  
Administrative Office of the United States Courts  
Thurgood Marshall Federal Judiciary Building  
One Columbus Circle, N.E.  
Washington, D.C. 20544

202-502-1100

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<sup>1</sup> The Code of Conduct for United States Judges was initially adopted by the Judicial Conference on April 5, 1973, and was known as the “Code of Judicial Conduct for United States Judges.” Since then, the Judicial Conference has made the following changes to the Code:

March 1987:	deleted the word “Judicial” from the name of the Code;
September 1992:	adopted substantial revisions to the Code;
March 1996:	revised part C of the Compliance section, immediately following the Code;
September 1996:	revised Canons 3C(3)(a) and 5C(4);
September 1999:	revised Canon 3C(1)(c);
September 2000:	clarified the Compliance section;
March 2009:	adopted substantial revisions to the Code.

<sup>2</sup> Procedural questions may be addressed to: Office of the General Counsel, Administrative Office of the United States Courts, Thurgood Marshall Federal Judiciary Building, Washington, D.C., 20544, 202-502-1100.

**CANON 1: A JUDGE SHOULD UPHOLD THE INTEGRITY AND INDEPENDENCE OF THE JUDICIARY**

An independent and honorable judiciary is indispensable to justice in our society. A judge should maintain and enforce high standards of conduct and should personally observe those standards, so that the integrity and independence of the judiciary may be preserved. The provisions of this Code should be construed and applied to further that objective.

**COMMENTARY**

Deference to the judgments and rulings of courts depends on public confidence in the integrity and independence of judges. The integrity and independence of judges depend in turn on their acting without fear or favor. Although judges should be independent, they must comply with the law and should comply with this Code. Adherence to this responsibility helps to maintain public confidence in the impartiality of the judiciary. Conversely, violation of this Code diminishes public confidence in the judiciary and injures our system of government under law.

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

The Code is designed to provide guidance to judges and nominees for judicial office. It may also provide standards of conduct for application in proceedings under the Judicial Councils Reform and Judicial Conduct and Disability Act of 1980 (28 U.S.C. §§ 332(d)(1), 351-364). Not every violation of the Code should lead to disciplinary action. Whether disciplinary action is appropriate, and the degree of discipline, should be determined through a reasonable application of the text and should depend on such factors as the seriousness of the improper activity, 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. Many of the restrictions in the Code are necessarily cast in general terms, and judges may reasonably differ in their interpretation. Furthermore, the Code is not designed or intended as a basis for civil liability or criminal prosecution. Finally, the Code is not intended to be used for tactical advantage.

**CANON 2: A JUDGE SHOULD AVOID IMPROPRIETY AND THE APPEARANCE OF IMPROPRIETY IN ALL ACTIVITIES**

- A. *Respect for Law.* A judge should respect and comply with the law and should act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.
- B. *Outside Influence.* A judge should not allow family, social, political, financial, or other relationships to influence judicial conduct or judgment. A judge should neither lend the prestige of the judicial office to advance the private interests of the judge or others nor convey or permit others to convey the impression that they are in a special position to influence the judge. A judge should not testify voluntarily as a character witness.

- C. *Nondiscriminatory Membership.* A judge should not hold membership in any organization that practices invidious discrimination on the basis of race, sex, religion, or national origin.

## COMMENTARY

**Canon 2A.** An appearance of impropriety occurs when reasonable minds, with knowledge of all the relevant circumstances disclosed by a reasonable inquiry, would conclude that the judge's honesty, integrity, impartiality, temperament, or fitness to serve as a judge is impaired. Public confidence in the judiciary is eroded by irresponsible or improper conduct by judges. A judge must avoid all impropriety and appearance of impropriety. This prohibition applies to both professional and personal conduct. A judge must expect to be the subject of constant public scrutiny and accept freely and willingly restrictions that might be viewed as burdensome by the ordinary citizen. Because it is not practicable to list all prohibited acts, the prohibition is necessarily cast in general terms that extend to conduct by judges that is harmful although not specifically mentioned in the Code. Actual improprieties under this standard include violations of law, court rules, or other specific provisions of this Code.

**Canon 2B.** Testimony as a character witness injects the prestige of the judicial office into the proceeding in which the judge testifies and may be perceived as an official testimonial. A judge should discourage a party from requiring the judge to testify as a character witness except in unusual circumstances when the demands of justice require. This Canon does not create a privilege against testifying in response to an official summons.

A judge should avoid lending the prestige of judicial office to advance the private interests of the judge or others. For example, a judge should not use the judge's judicial position or title to gain advantage in litigation involving a friend or a member of the judge's family. In contracts for publication of a judge's writings, a judge should retain control over the advertising to avoid exploitation of the judge's office.

A judge should be sensitive to possible abuse of the prestige of office. A judge should not initiate communications to a sentencing judge or a probation or corrections officer but may provide information to such persons in response to a formal request. Judges may participate in the process of judicial selection by cooperating with appointing authorities and screening committees seeking names for consideration and by responding to official inquiries concerning a person being considered for a judgeship.

**Canon 2C.** Membership of a judge in an organization that practices invidious discrimination gives rise to perceptions that the judge's impartiality is impaired. Canon 2C refers to the current practices of the organization. Whether an organization practices invidious discrimination is often a complex question to which judges should be sensitive. The answer cannot be determined from a mere examination of an organization's current membership rolls but rather depends on how the organization selects members and other relevant factors, such as that the organization is dedicated to the preservation of religious, ethnic or cultural values of legitimate common interest to its members, or that it is in fact and effect an intimate, purely private organization whose membership limitations could not be constitutionally prohibited. *See New York State Club Ass'n. Inc. v. City of New York*, 487 U.S. 1, 108 S. Ct. 2225, 101 L. Ed.

2d 1 (1988); *Board of Directors of Rotary International v. Rotary Club of Duarte*, 481 U.S. 537, 107 S. Ct. 1940, 95 L. Ed. 2d 474 (1987); *Roberts v. United States Jaycees*, 468 U.S. 609, 104 S. Ct. 3244, 82 L. Ed. 2d 462 (1984). Other relevant factors include the size and nature of the organization and the diversity of persons in the locale who might reasonably be considered potential members. Thus the mere absence of diverse membership does not by itself demonstrate a violation unless reasonable persons with knowledge of all the relevant circumstances would expect that the membership would be diverse in the absence of invidious discrimination. Absent such factors, an organization is generally said to discriminate invidiously if it arbitrarily excludes from membership on the basis of race, religion, sex, or national origin persons who would otherwise be admitted to membership.

Although Canon 2C relates only to membership in organizations that invidiously discriminate on the basis of race, sex, religion or national origin, a judge's membership in an organization that engages in any invidiously discriminatory membership practices prohibited by applicable law violates Canons 2 and 2A and gives the appearance of impropriety. In addition, it would be a violation of Canons 2 and 2A for a judge to arrange a meeting at a club that the judge knows practices invidious discrimination on the basis of race, sex, religion, or national origin in its membership or other policies, or for the judge to use such a club regularly. Moreover, public manifestation by a judge of the judge's knowing approval of invidious discrimination on any basis gives the appearance of impropriety under Canon 2 and diminishes public confidence in the integrity and impartiality of the judiciary, in violation of Canon 2A.

When a judge determines that an organization to which the judge belongs engages in invidious discrimination that would preclude membership under Canon 2C or under Canons 2 and 2A, the judge is permitted, in lieu of resigning, to make immediate and continuous efforts to have the organization discontinue its invidiously discriminatory practices. If the organization fails to discontinue its invidiously discriminatory practices as promptly as possible (and in all events within two years of the judge's first learning of the practices), the judge should resign immediately from the organization.

### **CANON 3: A JUDGE SHOULD PERFORM THE DUTIES OF THE OFFICE FAIRLY, IMPARTIALLY AND DILIGENTLY**

The duties of judicial office take precedence over all other activities. In performing the duties prescribed by law, the judge should adhere to the following standards:

#### **A. *Adjudicative Responsibilities.***

- (1) A judge should be faithful to, and maintain professional competence in, the law and should not be swayed by partisan interests, public clamor, or fear of criticism.
- (2) A judge should hear and decide matters assigned, unless disqualified, and should maintain order and decorum in all judicial proceedings.
- (3) A judge should be patient, dignified, respectful, and courteous to litigants, jurors, witnesses, lawyers, and others with whom the judge deals in an official capacity.



A judge should require similar conduct of those subject to the judge's control, including lawyers to the extent consistent with their role in the adversary process.

- (4) A judge should accord to every person who has a legal interest in a proceeding, and that person's lawyer, the full right to be heard according to law. Except as set out below, a judge should not initiate, permit, or consider ex parte communications or consider other communications concerning a pending or impending matter that are made outside the presence of the parties or their lawyers. If a judge receives an unauthorized ex parte communication bearing on the substance of a matter, the judge should promptly notify the parties of the subject matter of the communication and allow the parties an opportunity to respond, if requested. A judge may:
  - (a) initiate, permit, or consider ex parte communications as authorized by law;
  - (b) when circumstances require it, permit ex parte communication for scheduling, administrative, or emergency purposes, but only if the ex parte communication does not address substantive matters and the judge reasonably believes that no party will gain a procedural, substantive, or tactical advantage as a result of the ex parte communication;
  - (c) obtain the written advice of a disinterested expert on the law, but only after giving advance notice to the parties of the person to be consulted and the subject matter of the advice and affording the parties reasonable opportunity to object and respond to the notice and to the advice received; or
  - (d) with the consent of the parties, confer separately with the parties and their counsel in an effort to mediate or settle pending matters.
- (5) A judge should dispose promptly of the business of the court.
- (6) A judge should not make public comment on the merits of a matter pending or impending in any court. A judge should require similar restraint by court personnel subject to the judge's direction and control. The prohibition on public comment on the merits does not extend to public statements made in the course of the judge's official duties, to explanations of court procedures, or to scholarly presentations made for purposes of legal education.

**B. *Administrative Responsibilities.***

- (1) A judge should diligently discharge administrative responsibilities, maintain professional competence in judicial administration, and facilitate the performance of the administrative responsibilities of other judges and court personnel.
- (2) A judge should not direct court personnel to engage in conduct on the judge's behalf or as the judge's representative when that conduct would contravene the Code if undertaken by the judge.

- (3) A judge should exercise the power of appointment fairly and only on the basis of merit, avoiding unnecessary appointments, nepotism, and favoritism. A judge should not approve compensation of appointees beyond the fair value of services rendered.
- (4) A judge with supervisory authority over other judges should take reasonable measures to ensure that they perform their duties timely and effectively.
- (5) A judge should take appropriate action upon learning of reliable evidence indicating the likelihood that a judge's conduct contravened this Code or a lawyer violated applicable rules of professional conduct.

C. *Disqualification.*

- (1) A judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to instances in which:
  - (a) the judge has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding;
  - (b) the judge served as a lawyer in the matter in controversy, or a lawyer with whom the judge previously practiced law served during such association as a lawyer concerning the matter, or the judge or lawyer has been a material witness;
  - (c) the judge knows that the judge, individually or as a fiduciary, or the judge's spouse or minor child residing in the judge's household, has a financial interest in the subject matter in controversy or in a party to the proceeding, or any other interest that could be affected substantially by the outcome of the proceeding;
  - (d) the judge or the judge's spouse, or a person related to either within the third degree of relationship, or the spouse of such a person is:
    - (i) a party to the proceeding, or an officer, director, or trustee of a party;
    - (ii) acting as a lawyer in the proceeding;
    - (iii) known by the judge to have an interest that could be substantially affected by the outcome of the proceeding; or
    - (iv) to the judge's knowledge likely to be a material witness in the proceeding;
  - (e) the judge has served in governmental employment and in that capacity participated as a judge (in a previous judicial position), counsel, advisor, or material witness concerning the proceeding or has expressed an opinion concerning the merits of the particular case in controversy.

- (2) A judge should keep informed about the judge's personal and fiduciary financial interests and make a reasonable effort to keep informed about the personal financial interests of the judge's spouse and minor children residing in the judge's household.
- (3) For the purposes of this section:
  - (a) the degree of relationship is calculated according to the civil law system; the following relatives are within the third degree of relationship: parent, child, grandparent, grandchild, great grandparent, great grandchild, sister, brother, aunt, uncle, niece, and nephew; the listed relatives include whole and half blood relatives and most step relatives;
  - (b) "fiduciary" includes such relationships as executor, administrator, trustee, and guardian;
  - (c) "financial interest" means ownership of a legal or equitable interest, however small, or a relationship as director, advisor, or other active participant in the affairs of a party, except that:
    - (i) ownership in a mutual or common investment fund that holds securities is not a "financial interest" in such securities unless the judge participates in the management of the fund;
    - (ii) an office in an educational, religious, charitable, fraternal, or civic organization is not a "financial interest" in securities held by the organization;
    - (iii) the proprietary interest of a policyholder in a mutual insurance company, or a depositor in a mutual savings association, or a similar proprietary interest, is a "financial interest" in the organization only if the outcome of the proceeding could substantially affect the value of the interest;
    - (iv) ownership of government securities is a "financial interest" in the issuer only if the outcome of the proceeding could substantially affect the value of the securities;
  - (d) "proceeding" includes pretrial, trial, appellate review, or other stages of litigation.
- (4) Notwithstanding the preceding provisions of this Canon, if a judge would be disqualified because of a financial interest in a party (other than an interest that could be substantially affected by the outcome), disqualification is not required if the judge (or the judge's spouse or minor child) divests the interest that provides the grounds for disqualification.

- D. *Remittal of Disqualification.* Instead of withdrawing from the proceeding, a judge disqualified by Canon 3C(1) may, except in the circumstances specifically set out in subsections (a) through (e), disclose on the record the basis of disqualification. The judge may participate in the proceeding if, after that disclosure, the parties and their lawyers have an opportunity to confer outside the presence of the judge, all agree in writing or on the record that the judge should not be disqualified, and the judge is then willing to participate. The agreement should be incorporated in the record of the proceeding.

## COMMENTARY

**Canon 3A(3).** The duty to hear all proceedings fairly and with patience is not inconsistent with the duty to dispose promptly of the business of the court. Courts can be efficient and businesslike while being patient and deliberate.

The duty under Canon 2 to act in a manner that promotes public confidence in the integrity and impartiality of the judiciary applies to all the judge's activities, including the discharge of the judge's adjudicative and administrative responsibilities. The duty to be respectful includes the responsibility to avoid comment or behavior that could reasonably be interpreted as harassment, prejudice or bias.

**Canon 3A(4).** The restriction on ex parte communications concerning a proceeding includes communications from lawyers, law teachers, and others who are not participants in the proceeding. A judge may consult with other judges or with court personnel whose function is to aid the judge in carrying out adjudicative responsibilities. A judge should make reasonable efforts to ensure that law clerks and other court personnel comply with this provision.

A judge may encourage and seek to facilitate settlement but should not act in a manner that coerces any party into surrendering the right to have the controversy resolved by the courts.

**Canon 3A(5).** In disposing of matters promptly, efficiently, and fairly, a judge must demonstrate due regard for the rights of the parties to be heard and to have issues resolved without unnecessary cost or delay. A judge should monitor and supervise cases to reduce or eliminate dilatory practices, avoidable delays, and unnecessary costs.

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 personnel, litigants, and their lawyers cooperate with the judge to that end.

**Canon 3A(6).** The admonition against public comment about the merits of a pending or impending matter continues until the appellate process is complete. If the public comment involves a case from the judge's own court, the judge should take particular care so that the comment does not denigrate public confidence in the judiciary's integrity and impartiality, which would violate Canon 2A. A judge may comment publicly on proceedings in which the judge is a litigant in a personal capacity, but not on mandamus proceedings when the judge is a

litigant in an official capacity (but the judge may respond in accordance with Fed. R. App. P. 21(b)).

**Canon 3B(3).** A judge's appointees include assigned counsel, officials such as referees, commissioners, special masters, receivers, guardians, and personnel such as law clerks, secretaries, and judicial assistants. Consent by the parties to an appointment or an award of compensation does not relieve the judge of the obligation prescribed by this subsection.

**Canon 3B(5).** Appropriate action may include direct communication with the judge or lawyer, other direct action if available, reporting the conduct to the appropriate authorities, or, when the judge believes that a judge's or lawyer's conduct is caused by drugs, alcohol, or a medical condition, making a confidential referral to an assistance program. Appropriate action may also include responding to a subpoena to testify or otherwise participating in judicial or lawyer disciplinary proceedings; a judge should be candid and honest with disciplinary authorities.

**Canon 3C.** Recusal considerations applicable to a judge's spouse should also be considered with respect to a person other than a spouse with whom the judge maintains both a household and an intimate relationship.

**Canon 3C(1)(c).** In a criminal proceeding, a victim entitled to restitution is not, within the meaning of this Canon, a party to the proceeding or the subject matter in controversy. A judge who has a financial interest in the victim of a crime is not required by Canon 3C(1)(c) to disqualify from the criminal proceeding, but the judge must do so if the judge's impartiality might reasonably be questioned under Canon 3C(1) or if the judge has an interest that could be substantially affected by the outcome of the proceeding under Canon 3C(1)(d)(iii).

**Canon 3C(1)(d)(ii).** 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 of itself disqualify the judge. However, if "the judge's impartiality might reasonably be questioned" under Canon 3C(1), or the relative is known by the judge to have an interest in the law firm that could be "substantially affected by the outcome of the proceeding" under Canon 3C(1)(d)(iii), the judge's disqualification is required.

**CANON 4: A JUDGE MAY ENGAGE IN EXTRAJUDICIAL ACTIVITIES THAT ARE CONSISTENT WITH THE OBLIGATIONS OF JUDICIAL OFFICE**

A judge may engage in extrajudicial activities, including law-related pursuits and civic, charitable, educational, religious, social, financial, fiduciary, and governmental activities, and may speak, write, lecture, and teach on both law-related and nonlegal subjects. However, a judge should not participate in extrajudicial activities that detract from the dignity of the judge's office, interfere with the performance of the judge's official duties, reflect adversely on the judge's impartiality, lead to frequent disqualification, or violate the limitations set forth below.

A. *Law-related Activities.*

- (1) *Speaking, Writing, and Teaching.* A judge may speak, write, lecture, teach, and participate in other activities concerning the law, the legal system, and the administration of justice.
- (2) *Consultation.* A judge may consult with or appear at a public hearing before an executive or legislative body or official:
  - (a) on matters concerning the law, the legal system, or the administration of justice;
  - (b) to the extent that it would generally be perceived that a judge's judicial experience provides special expertise in the area; or
  - (c) when the judge is acting pro se in a matter involving the judge or the judge's interest.
- (3) *Organizations.* A judge may participate in and serve as a member, officer, director, trustee, or nonlegal advisor of a nonprofit organization devoted to the law, the legal system, or the administration of justice and may assist such an organization in the management and investment of funds. A judge may make recommendations to public and private fund-granting agencies about projects and programs concerning the law, the legal system, and the administration of justice.
- (4) *Arbitration and Mediation.* A judge should not act as an arbitrator or mediator or otherwise perform judicial functions apart from the judge's official duties unless expressly authorized by law.
- (5) *Practice of Law.* A judge should not practice law and should not serve as a family member's lawyer in any forum. A judge may, however, act pro se and may, without compensation, give legal advice to and draft or review documents for a member of the judge's family.

B. *Civic and Charitable Activities.* A judge may participate in and serve as an officer, director, trustee, or nonlegal advisor of a nonprofit civic, charitable, educational, religious, or social organization, subject to the following limitations:

- (1) A judge should not serve if it is likely that the organization will either be engaged in proceedings that would ordinarily come before the judge or be regularly engaged in adversary proceedings in any court.
- (2) A judge should not give investment advice to such an organization but may serve on its board of directors or trustees even though it has the responsibility for approving investment decisions.

- C. *Fund Raising.* A judge may assist nonprofit law-related, civic, charitable, educational, religious, or social organizations in planning fund-raising activities and may be listed as an officer, director, or trustee. A judge may solicit funds for such an organization from judges over whom the judge does not exercise supervisory or appellate authority and from members of the judge's family. Otherwise, a judge should not personally participate in fund-raising activities, solicit funds for any organization, or use or permit the use of the prestige of judicial office for that purpose. A judge should not personally participate in membership solicitation if the solicitation might reasonably be perceived as coercive or is essentially a fund-raising mechanism.
- D. *Financial Activities.*
- (1) A judge may hold and manage investments, including real estate, and engage in other remunerative activity, but should refrain from financial and business dealings that exploit the judicial position or 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.
  - (2) A judge may serve as an officer, director, active partner, manager, advisor, or employee of a business only if the business is closely held and controlled by members of the judge's family. For this purpose, "members of the judge's family" means persons related to the judge or the judge's spouse within the third degree of relationship as defined in Canon 3C(3)(a), any other relative with whom the judge or the judge's spouse maintains a close familial relationship, and the spouse of any of the foregoing.
  - (3) As soon as the judge can do so without serious financial detriment, the judge should divest investments and other financial interests that might require frequent disqualification.
  - (4) A judge should comply with the restrictions on acceptance of gifts and the prohibition on solicitation of gifts set forth in the Judicial Conference Gift Regulations. A judge should endeavor to prevent any member of the judge's family residing in the household from soliciting or accepting a gift except to the extent that a judge would be permitted to do so by the Judicial Conference Gift Regulations. A "member of the judge's family" means any relative of a judge by blood, adoption, or marriage, or any person treated by a judge as a member of the judge's family.
  - (5) A judge should not disclose or use nonpublic information acquired in a judicial capacity for any purpose unrelated to the judge's official duties.
- E. *Fiduciary Activities.* A judge may serve as the executor, administrator, trustee, guardian, or other fiduciary only for the estate, trust, or person of a member of the judge's family as defined in Canon 4D(4). As a family fiduciary a judge is subject to the following restrictions:

- (1) The judge should not serve if it is likely that as a fiduciary the judge would be engaged in proceedings that would ordinarily come before the judge or if the estate, trust, or ward becomes involved in adversary proceedings in the court on which the judge serves or one under its appellate jurisdiction.
  - (2) While acting as a fiduciary, a judge is subject to the same restrictions on financial activities that apply to the judge in a personal capacity.
- F. *Governmental Appointments.* A judge may accept appointment to a governmental committee, commission, or other position only if it is one that concerns the law, the legal system, or the administration of justice, or if appointment of a judge is required by federal statute. A judge should not, in any event, accept such an appointment if the judge's governmental duties would tend to undermine the public confidence in the integrity, impartiality, or independence of the judiciary. A judge may represent the judge's country, state, or locality on ceremonial occasions or in connection with historical, educational, and cultural activities.
- G. *Chambers, Resources, and Staff.* A judge should not to any substantial degree use judicial chambers, resources, or staff to engage in extrajudicial activities permitted by this Canon.
- H. *Compensation, Reimbursement, and Financial Reporting.* A judge may accept compensation and reimbursement of expenses for the law-related and extrajudicial activities permitted by this Code if the source of the payments does not give the appearance of influencing the judge in the judge's judicial duties or otherwise give the appearance of impropriety, subject to the following restrictions:
- (1) Compensation should not exceed a reasonable amount nor should it exceed what a person who is not a judge would receive for the same activity.
  - (2) Expense reimbursement should be limited to the actual costs of travel, food, and lodging reasonably incurred by the judge and, where appropriate to the occasion, by the judge's spouse or relative. Any additional payment is compensation.
  - (3) A judge should make required financial disclosures, including disclosures of gifts and other things of value, in compliance with applicable statutes and Judicial Conference regulations and directives.

#### COMMENTARY

**Canon 4.** Complete separation of a judge from extrajudicial activities is neither possible nor wise; a judge should not become isolated from the society in which the judge lives. As a judicial officer and a person specially learned in the law, a judge is in a unique position to contribute to the law, the legal system, and the administration of justice, including revising substantive and procedural law and improving criminal and juvenile justice. To the extent that the judge's time permits and impartiality is not compromised, the judge is encouraged to do so, either independently or through a bar association, judicial conference, or other organization



dedicated to the law. Subject to the same limitations, judges may also engage in a wide range of non-law-related activities.

Within the boundaries of applicable law (*see, e.g.*, 18 U.S.C. § 953) a judge may express opposition to the persecution of lawyers and judges anywhere in the world if the judge has ascertained, after reasonable inquiry, that the persecution is occasioned by conflict between the professional responsibilities of the persecuted judge or lawyer and the policies or practices of the relevant government.

A person other than a spouse with whom the judge maintains both a household and an intimate relationship should be considered a member of the judge's family for purposes of legal assistance under Canon 4A(5), fund raising under Canon 4C, and family business activities under Canon 4D(2).

**Canon 4A.** Teaching and serving on the board of a law school are permissible, but in the case of a for-profit law school, board service is limited to a nongoverning advisory board.

Consistent with this Canon, a judge may encourage lawyers to provide pro bono legal services.

**Canon 4A(4).** This Canon generally prohibits a judge from mediating a state court matter, except in unusual circumstances (*e.g.*, when a judge is mediating a federal matter that cannot be resolved effectively without addressing the related state court matter).

**Canon 4A(5).** A judge may act pro se in all legal matters, including matters involving litigation and matters involving appearances before or other dealings with governmental bodies. In so doing, a judge must not abuse the prestige of office to advance the interests of the judge or the judge's family.

**Canon 4B.** The changing nature of some organizations and their exposure to litigation make it necessary for a judge regularly to reexamine the activities of each organization with which the judge is affiliated to determine if the judge's continued association is appropriate. For example, in many jurisdictions, charitable hospitals are in court more often now than in the past.

**Canon 4C.** A judge may attend fund-raising events of law-related and other organizations although the judge may not be a speaker, a guest of honor, or featured on the program of such an event. Use of a judge's name, position in the organization, and judicial designation on an organization's letterhead, including when used for fund raising or soliciting members, does not violate Canon 4C if comparable information and designations are listed for others.

**Canon 4D(1), (2), and (3).** Canon 3 requires disqualification of a judge in any proceeding in which the judge has a financial interest, however small. Canon 4D requires a judge to refrain from engaging in business and from financial activities that might interfere with the impartial performance of the judge's judicial duties. Canon 4H requires a judge to report

compensation received for activities outside the judicial office. A judge has the rights of an ordinary citizen with respect to financial affairs, except for limitations required to safeguard the proper performance of the judge's duties. A judge's participation in a closely held family business, while generally permissible, may be prohibited if it takes too much time or involves misuse of judicial prestige or if the business is likely to come before the court on which the judge serves. Owning and receiving income from investments do not as such affect the performance of a judge's duties.

**Canon 4D(5).** The restriction on using nonpublic information is not intended to affect a judge's ability to act on information as necessary to protect the health or safety of the judge or a member of a judge's family, court personnel, or other judicial officers if consistent with other provisions of this Code.

**Canon 4E.** Mere residence in the judge's household does not by itself make a person a member of the judge's family for purposes of this Canon. The person must be treated by the judge as a member of the judge's family.

The Applicable Date of Compliance provision of this Code addresses continued service as a fiduciary.

A judge's obligation under this Code and the judge's obligation as a fiduciary may come into conflict. For example, a judge should resign as a trustee if it would result in detriment to the trust to divest holdings whose retention would require frequent disqualification of the judge in violation of Canon 4D(3).

**Canon 4F.** The appropriateness of accepting extrajudicial assignments must be assessed in light of the demands on judicial resources and the need to protect the courts from involvement in matters that may prove to be controversial. Judges should not accept governmental appointments that could interfere with the effectiveness and independence of the judiciary, interfere with the performance of the judge's judicial responsibilities, or tend to undermine public confidence in the judiciary.

**Canon 4H.** A judge is not required by this Code to disclose income, debts, or investments, except as provided in this Canon. The Ethics Reform Act of 1989 and implementing regulations promulgated by the Judicial Conference impose additional restrictions on judges' receipt of compensation. That Act and those regulations should be consulted before a judge enters into any arrangement involving the receipt of compensation. The restrictions so imposed include but are not limited to: (1) a prohibition against receiving "honoraria" (defined as anything of value received for a speech, appearance, or article), (2) a prohibition against receiving compensation for service as a director, trustee, or officer of a profit or nonprofit organization, (3) a requirement that compensated teaching activities receive prior approval, and (4) a limitation on the receipt of "outside earned income."

## **CANON 5: A JUDGE SHOULD REFRAIN FROM POLITICAL ACTIVITY**

- A. *General Prohibitions.* A judge should not:
- (1) act as a leader or hold any office in a political organization;
  - (2) make speeches for a political organization or candidate, or publicly endorse or oppose a candidate for public office; or
  - (3) solicit funds for, pay an assessment to, or make a contribution to a political organization or candidate, or attend or purchase a ticket for a dinner or other event sponsored by a political organization or candidate.
- B. *Resignation upon Candidacy.* A judge should resign the judicial office if the judge becomes a candidate in a primary or general election for any office.
- C. *Other Political Activity.* A judge should not engage in any other political activity. This provision does not prevent a judge from engaging in activities described in Canon 4.

### COMMENTARY

The term “political organization” refers to a political party, a group affiliated with a political party or candidate for public office, or an entity whose principal purpose is to advocate for or against political candidates or parties in connection with elections for public office.

### COMPLIANCE WITH THE CODE OF CONDUCT

Anyone who is an officer of the federal judicial system authorized to perform judicial functions is a judge for the purpose of this Code. All judges should comply with this Code except as provided below.

- A. *Part-time Judge.* A part-time judge is a judge who serves part-time, whether continuously or periodically, but is permitted by law to devote time to some other profession or occupation and whose compensation for that reason is less than that of a full-time judge. A part-time judge:
- (1) is not required to comply with Canons 4A(4), 4A(5), 4D(2), 4E, 4F, or 4H(3);
  - (2) except as provided in the Conflict-of-Interest Rules for Part-time Magistrate Judges, should not practice law in the court on which the judge serves or in any court subject to that court’s appellate jurisdiction, or act as a lawyer in a proceeding in which the judge has served as a judge or in any related proceeding.
- B. *Judge Pro Tempore.* A judge pro tempore is a person who is appointed to act temporarily as a judge or as a special master.

- (1) While acting in this capacity, a judge pro tempore is not required to comply with Canons 4A(4), 4A(5), 4D(2), 4D(3), 4E, 4F, or 4H(3); further, one who acts solely as a special master is not required to comply with Canons 4A(3), 4B, 4C, 4D(4), or 5.
  - (2) A person who has been a judge pro tempore should not act as a lawyer in a proceeding in which the judge has served as a judge or in any related proceeding.
- C. *Retired Judge.* A judge who is retired under 28 U.S.C. § 371(b) or § 372(a), or who is subject to recall under § 178(d), or who is recalled to judicial service, should comply with all the provisions of this Code except Canon 4F, but the judge should refrain from judicial service during the period of an extrajudicial appointment not sanctioned by Canon 4F. All other retired judges who are eligible for recall to judicial service (except those in U.S. territories and possessions) should comply with the provisions of this Code governing part-time judges. A senior judge in the territories and possessions must comply with this Code as prescribed by 28 U.S.C. §§ 373(c)(5) and (d).

#### APPLICABLE DATE OF COMPLIANCE

Persons to whom this Code applies should arrange their financial and fiduciary affairs as soon as reasonably possible to comply with it and should do so in any event within one year after appointment. If, however, the demands on the person's time and the possibility of conflicts of interest are not substantial, such a person may continue to act, without compensation, as an executor, administrator, trustee, or other fiduciary for the estate or person of one who is not a member of the person's family if terminating the relationship would unnecessarily jeopardize any substantial interest of the estate or person and if the judicial council of the circuit approves.