

CODE OF JUDICIAL CONDUCT

[Note: The following Code of Judicial Conduct of the American Bar Association, as amended by the New Jersey Supreme Court, replaces the Canons of Judicial Ethics of the American Bar Association.]

- Canon 1. A Judge Should Uphold the Integrity and Independence of the Judiciary
- Canon 2. A Judge Should Avoid Impropriety and the Appearance of Impropriety in All Activities
- Canon 3. A Judge Should Perform the Duties of Judicial Office Impartially and Diligently
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- Canon 6. A Judge Shall Not Receive Compensation for Quasi-Judicial and Extra-Judicial Activities
- Canon 7. A Judge Shall Refrain From Political Activity
- Applicability - Compliance With the Code of Judicial Conduct

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 participate in establishing, maintaining, and enforcing, and should personally 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. A Judge Should Avoid Impropriety and the Appearance of Impropriety in All Activities

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

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

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

The testimony of a judge as a character witness injects the prestige of the office into the proceeding in which the judge testifies and may be misunderstood to be an official testimonial. This Canon, however, does not afford a judge a privilege against testifying as a witness as to evidentiary facts of which the judge has personal knowledge.

Organizations dedicated to the preservation of religious, spiritual, charitable, civic or cultural values, that do not stigmatize any excluded persons as inferior and therefore unworthy of membership are not considered to discriminate invidiously.

Canon 3. A Judge Should Perform the Duties of Judicial Office Impartially and Diligently

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

A. Adjudicative Responsibilities.

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

(2) A judge should maintain order and decorum in judicial proceedings.

(3) A judge should be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, and others with whom the judge deals in an official capacity, and should not permit lawyers, court officials, and others subject to the judge's direction and control to display impatience or discourtesy or to detract from the dignity of the court.

Commentary: 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 business-like while being patient and deliberate.

(4) A judge should be impartial and should not discriminate because of race, color, religion, age, sex, sexual orientation, national origin, language, marital status, socioeconomic status, or disability.

(5) A judge shall require lawyers in proceedings before the judge to refrain from manifesting, by words or conduct, bias or prejudice based upon race, color, religion, age, sex, sexual orientation, national origin, language, marital status, socioeconomic status or disability against parties, witnesses, counsel, or others. This section does not preclude legitimate advocacy when race, color, religion, age, sex, sexual orientation, national origin, language, marital status, socioeconomic status or disability, or other similar factors are issues in the proceeding.

(6) A judge should accord to every person who is legally interested in a proceeding, or that person's lawyer, full right to be heard according to law, and, except as authorized by law, neither initiate nor consider ex parte or other communications concerning a pending or impending proceeding. A judge, however, may obtain the advice of a disinterested expert on the law applicable to or the subject matter of a proceeding if the judge gives notice to the parties of the person to be consulted and the nature of the advice, and affords the parties reasonable opportunity to participate and to respond.

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

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

(7) A judge should dispose promptly of the business of the court.

Commentary: Prompt disposition of the court's business requires a judge to devote adequate time to duties, to be punctual in attending court and expeditious in determining matters under submission, and to insist that court officials, litigants and lawyers cooperate to that end. In disposing of matters promptly, 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.

(8) A judge should abstain from public comment about a pending or impending proceeding in any court and should require similar abstention on the part of court personnel subject to the judge's 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 RPC 3.6 of the Rules of Professional Conduct.

(9) A judge should permit broadcasting, televising, recording, or taking photographs in the courtroom and areas immediately adjacent thereto during sessions of court or recesses between sessions only in accordance with the guidelines promulgated by the Supreme Court and subject to the restrictions contained therein.

Commentary: Temperate conduct of judicial proceedings is essential to the fair administration of justice. The broadcasting, televising or photographing of a proceeding may tend to distort or dramatize the proceeding.

(10) A judge shall not commend or criticize jurors for their verdict, other than in a court order or opinion in a proceeding, but may express appreciation to jurors for their service to the judicial system and the community.

B. Administrative Responsibilities.

(1) A judge should diligently discharge the administrative responsibilities of the office without bias or prejudice, maintain professional competence in judicial administration, and facilitate the performance of the administrative responsibilities of other judges and court officials.

(2) A judge should require staff, court officials, and others subject to the judge's direction and control to observe the standards of fidelity and diligence that apply to the judge and to refrain from manifesting bias or prejudice in the performance of their official duties.

(3) A judge has the following disciplinary responsibilities:

(a) A judge who receives information indicating a substantial likelihood that another judge has committed a violation of this Code should take appropriate action. A judge having knowledge that another judge has committed a violation of this Code that raises a substantial question as to the other judge's fitness for office shall inform the appropriate authority.

(b) A judge who receives information indicating a substantial likelihood that a lawyer has committed a violation of the Rules of Professional Conduct should take appropriate action. A judge having knowledge that a lawyer has committed a violation of the Rules of Professional

Conduct that raises a substantial question as to the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects shall inform the appropriate authority.

(c) Acts of a judge in the discharge of disciplinary responsibilities required or permitted by Sections 3B(3)(a) and 3B(3)(b) are part of a judge's judicial duties and shall be absolutely privileged, and no civil action predicated thereon may be instituted against the judge.

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

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

C. Disqualification. (see R. 1:12-1)

(1) A judge should disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to instances where:

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

(b) the judge served as 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 such lawyer has been a witness concerning it;

Commentary: 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; a judge formerly employed by a governmental agency, however, should disqualify himself or herself in a proceeding if the judge's impartiality might reasonably be questioned because of such association.

(c) the judge knows that he or she, individually or as a fiduciary, or the judge's spouse, parent or child or any other member of the judge's family 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 by the outcome of the proceeding;

(d) the judge or the judge's 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, or is in the employ of or associated in the practice of law with, a lawyer in the proceeding;

Commentary: The fact that a lawyer in a proceeding is affiliated with a law firm with which a lawyer-relative of the judge is affiliated of itself disqualifies the judge.

(iii) is known by the judge to have an interest that could be affected by the outcome of the proceeding;

(iv) is to the judge's knowledge likely to be a witness in the proceeding.

(2) A judge should keep informed about his or her personal and fiduciary financial interests and make a reasonable effort to keep informed about the personal financial interests of his or her spouse and children residing in his or her household.

(3) For the purposes of this section:

(a) the degree of relationship is calculated according to the common law;

Commentary: According to the common law, the third degree of relationship test would, for example, disqualify the judge if the judge's or the judge's spouse's parent, grandparent, uncle or aunt, brother or sister, cousin, nephew or his wife, or niece or her husband 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, however small, or a relationship as director, advisor, or other 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;

(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, of 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. Remittal of Disqualification. A judge disqualified by the terms of this Canon may not avoid disqualification by disclosing on the record the disqualifying interest and securing the consent of the parties.

Commentary: This provision is designed to avoid the chance that a party or lawyer will feel coerced into consent.

Canon 4. A Judge May Engage in Activities to Improve the Law, the Legal System, and the Administration of Justice

A judge, subject to the proper performance of judicial duties, may engage in the following quasi-judicial activities if in doing so the judge does not cast doubt on the judge's capacity to decide impartially any issue that may come before the court and provided the judge is not compensated therefor:

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

B. A judge may teach concerning the law, the legal system, and the administration of justice.

C. A judge 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 upon notice to and approval by the Supreme Court, and may otherwise consult with an executive or legislative body or official, but only on matters concerning the administration of justice with which the judge is charged with responsibility by the Rules of Court.

D. A judge may serve as a member, officer or director of a nongovernmental organization devoted to the improvement of the law, the legal system, or the administration of justice. A judge may not, however, assist such an organization in raising funds nor may a judge participate in their management and investment. A judge may make recommendations to public and private fund-granting agencies on projects and programs concerning the law, legal system, and the administration of justice.

Commentary: As a judicial officer and person specially learned in the law, a judge is in a unique position to contribute to the improvement of the law, the legal system, and the administration of justice, including revision of substantive and procedural law and improvement of criminal and juvenile justice. To the extent that time permits, a judge is encouraged to do so through a bar association, judicial conference, other organization dedicated to the improvement of the law or through an appropriate judicial official charged with administrative responsibility by the Rules of Court.

A full-time judge should not serve as an officer, trustee, or committee member of a local or state bar association, except that full-time judges may serve on committees of the New Jersey State Bar Association, subject to such conditions as determined by the Supreme Court. Extra-judicial activities are governed by Canon 5.

Canon 5. A Judge Shall so Conduct the Judge's Extra-Judicial Activities as to Minimize the Risk of Conflict With Judicial Obligations

A. Extra-Judicial Activities in General. A judge shall conduct all of the judge's extra-judicial activities so that they do not:

- (1) cast reasonable doubt on the judge's capacity to act impartially as a judge;
- (2) demean the judicial office; or
- (3) interfere with the proper performance of judicial duties.

Commentary: Complete separation of a judge from extra-judicial activities is neither possible nor wise; a judge should not become isolated from the community in which the judge lives.

Expressions of bias or prejudice by a judge, even outside the judge's judicial activities, may cast reasonable doubt on the judge's capacity to act impartially as a judge. Expressions that may do so include jokes or other remarks demeaning individuals on the basis of their race, sex, religion, national origin, disability, age, sexual orientation or socioeconomic status. See Section 2C and accompanying Commentary.

B. Avocational Activities.

(1) A judge may write, lecture, 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 the judicial office or interfere with the performance of judicial duties and provided the judge is not compensated therefor.

(2) A judge may teach on non-legal subjects provided the judge is not compensated therefor.

Commentary: Complete separation of a judge from extra-judicial activities is neither possible nor wise; a judge should not become isolated from society.

C. Civic and Charitable Activities. A judge may participate in civic and charitable activities that do not reflect adversely upon the judge's impartiality or interfere with the performance of judicial duties. A judge may serve as an officer, director, trustee, or non-legal advisor of an educational, religious, charitable, fraternal, or civic organization not conducted for the economic or political advantage of its members, subject to the following limitations:

(1) A judge should not serve if it is likely that the organization will be engaged in proceedings that would ordinarily come before the judge or will be regularly engaged in adversary proceedings in any court.

Commentary: The changing nature of some organizations and of their relationship to the law makes it necessary for a judge regularly to reexamine the activities of each organization with which he or she is affiliated to determine if it is proper to continue a relationship with it. For example, charitable hospitals are frequently in court. Similarly, the boards of legal aid organizations make policy decisions that may have political significance or imply commitment to causes that may come before the courts for adjudication.

(2) A judge shall not solicit funds for any educational, religious, charitable, fraternal, or civic organization, or use or permit the use of the prestige of the judicial office for that purpose, nor may a judge be listed as an officer, director, or trustee of such an organization in any letters or other documents used in such solicitations. A judge shall not be a speaker or the guest of honor at an organization's fundraising events, but may attend such events and contribute to such organizations.

(3) A judge shall not give investment advice to such an organization, nor may a judge serve on its board of directors or trustees if it has the responsibility for approving investment decisions.

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

D. Financial Activities.

(1) A judge should refrain from financial and business dealings that tend to reflect adversely on the judge's impartiality, interfere with the proper performance of judicial duties, exploit the judicial position, or involve the judge in transactions with lawyers or persons likely to come before the court on which the judge serves.

(2) A judge may hold investments, including real estate, but shall not serve as an officer, director, manager, advisor, or employee of any business.

(3) A judge should manage his or her investments and other financial interests to minimize the number of cases in which the judge is disqualified. As soon as a judge can do so without serious

financial detriment, the judge should divest himself or herself of investments and other financial interests that the judge could reasonably anticipate might require frequent disqualification.

(4) Neither a judge nor a member of the judge's family residing in the same household should accept a gift, bequest, favor, or loan from anyone except as follows:

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

(b) a judge or a member of the judge's family residing in the same household may accept ordinary social hospitality; a gift, bequest, favor, or loan from a lending institution in its regular course of business on the same terms generally available to persons who are not judges; or a scholarship or fellowship awarded on the same terms applied to other applicants;

(c) a judge or a member of the judge's family residing in the same household may accept any other gift, bequest, favor, or loan only if the donor is not a party or other person whose interests have come or are likely to come before the judge.

(5) For the purposes of this section, "member of the judge's family residing in the same household" means any relative of a judge by blood or marriage, or a person treated by a judge as a member of the family, who resides in the same household as the judge.

(6) A judge is not required by this Code to disclose income, debts, or investments, except as provided in this Canon and in Canon 3.

Commentary: Canon 3 requires a judge to disqualify himself or herself in any proceeding in which the judge has a financial interest, however small; Canon 5 requires a judge to refrain from engaging in business and from financial activities that might interfere with the impartial performance of judicial duties. A judge has the rights of any ordinary citizen, including the right to privacy of financial affairs, except to the extent that limitations thereon are required to safeguard the proper performance of judicial duties. Owning and receiving income from investments do not as such affect the performance of a judge's duties.

(7) Information acquired by a judge in a judicial capacity shall not be used or disclosed by the judge in financial dealings or for any other purpose not related to judicial duties.

E. Fiduciary Activities. A judge shall not serve as the executor, administrator, trustee, guardian, or other fiduciary, except for the estate, trust, or person of a member of the judge's family, and then only if such service will not interfere with the proper performance of judicial duties. "Member of the judge's family" includes only a spouse, child, grandchild, parent, grandparent, or other relative or person with whom the judge maintains a close familial relationship. As a familyfiduciary a judge is subject to the following restrictions:

(1) The judge should not serve if it is likely that as a fiduciary the judge will be engaged in proceedings that would ordinarily come before the judge's court, 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 for a member of the judge's family a judge is subject to the same restrictions on financial activities that apply to the judge in a personal capacity.

Commentary: A judge's obligations as a fiduciary and under this Canon generally 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 5D(3).

F. Arbitration. A judge shall not act as an arbitrator or mediator.

G. Practice of Law. A judge shall not practice law, with or without compensation.

H. Extra-Judicial Appointments. A judge shall not accept appointment to a governmental committee, commission, or other position except with prior approval of the Supreme Court as provided in the Rules of Court.

Commentary: 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 judicial manpower 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. See Guidelines for Extrajudicial Activities for New Jersey Judges.

Canon 6. A Judge Shall Not Receive Compensation for Quasi-Judicial and Extra-Judicial Activities

A judge may not receive compensation for the quasi-judicial and extra-judicial activities permitted by this Code but may receive reimbursement of actual expenses that the judge reasonably incurred for travel, food, and lodging, provided that the source of such payments does not give the appearance of influencing the judge in the exercise of judicial duties or otherwise give the appearance of impropriety.

Canon 7. A Judge Shall Refrain From Political Activity

A. A judge shall 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 a candidate for public office;
- (3) attend political functions that are likely to be considered as being political in nature;
- (4) solicit funds or pay an assessment or make a contribution to a political organization or candidate, or purchase tickets for political party dinners or other functions;

B. A judge shall resign from office when the judge becomes a candidate for an elective public office or for a nomination thereto.

C. A judge shall not otherwise engage in any political activity.

Applicability - Compliance With the Code of Judicial Conduct

All judges shall comply with this Code except as provided below.

A. Part-Time Judge. A part-time judge is a judge who serves on a continuing or periodic basis 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 Canon 5D(2), E, F, and G;
- (2) should not practice law except as permitted by the Rules of Court;
- (3) may receive compensation for activities encompassed by Canons 4B and 5B(2).

B. Retired Judge. All retired judges recalled to judicial service shall comply with the provisions of this Code governing full-time judges.

Note: The foregoing Code of Judicial Conduct of the American Bar Association, as amended by the New Jersey Supreme Court, adopted April 3, 1974, to be effective immediately; caption "Applicability" added and new paragraph A.(3) adopted to be effective September 8, 1980; new subparagraph 3A(7)(b) adopted October 8, 1980, to be effective immediately; subparagraph 3A(7)(b) amended June 9, 1981 to be effective immediately; new subparagraph 3A(4) adopted October 26, 1987, to be effective January 1, 1988 (with remaining subparagraphs of 3A renumbered accordingly); paragraphs 4(B) and 4(C) and commentary to Canon 4 amended October 26, 1987, to be effective January 1, 1988; paragraphs A(3) and B of Applicability section amended October 26, 1987, to be effective January 1, 1988; entire code and commentary amended October 26, 1987 so as to be degenderize, effective January 1, 1988; subparagraph 5A(2) amended February 1, 1988 to be effective immediately; commentary to Canon 4 amended February 1, 1988, to be effective immediately; subparagraph 3A(4) amended July 18, 1990, to be effective September 4, 1990; paragraph A(1) of Applicability section amended December 20, 1990 to be effective immediately; paragraphs 2B, 3A(3), 3A(4), 3A(8), 3A(8)(b), 3B(1), 3B(2), 3B(3), 3B(4), 3C(1)(a), 3C(1)(c), 3C(2), 5B(2), 5B(3), 5C(2), 5C(4), 5D, 5E, 5F, 5G, 6, 7, and Applicability paragraph and headings to paragraphs 5, 6, 7 amended and new paragraphs 2C, 3A(5), 3A(10), 3B(3)(a), 3B(3)(b), 3B(3)(c), 5A (with remaining subparagraphs of 3 and 5 renumbered accordingly), adopted July 13, 1994 to be effective September 1, 1994.