

RHODE ISLAND CODE OF JUDICIAL CONDUCT

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CODE OF JUDICIAL CONDUCT

PREAMBLE

[1] An independent, fair and impartial judiciary is indispensable to our system of justice. The United States legal system is based upon the principle that an independent, impartial, and competent judiciary, composed of men and women of integrity, will interpret and apply the law that governs our society. Thus, the judiciary plays a central role in preserving the principles of justice and the rule of law. Inherent in all the Rules contained in this Code are the precepts that judges, individually and collectively, must respect and honor the judicial office as a public trust and strive to maintain and enhance confidence in the legal system.

[2] Judges should maintain the dignity of judicial office at all times, and avoid both impropriety and the appearance of impropriety in their professional and personal lives. They should aspire at all times to conduct that ensures the greatest possible public confidence in their independence, impartiality, integrity, and competence.

[3] The Code of Judicial Conduct establishes standards for the ethical conduct of judges and judicial candidates and nominees. It is not intended as an exhaustive guide for the conduct of judges and judicial candidates and nominees, who are governed in their judicial and personal conduct by general ethical standards as well as by the Code. The Code is intended, however, to provide guidance and assist judges in maintaining the highest standards of judicial and personal conduct, and to provide a basis for regulating their conduct through disciplinary agencies.

SCOPE

[1] The Code of Judicial Conduct consists of four Canons, numbered Rules under each Canon, and Comments that generally follow and explain each Rule. Scope and Terminology sections provide additional guidance in interpreting and applying the Code. An Application section establishes when the various Rules apply to a judge, judicial officer or judicial nominee or candidate. A Judicial Advisory Committee is established to assist judges and judicial officers in complying with the Code.

[2] The Canons state overarching principles of judicial ethics that all judges should observe. Although a judge may be disciplined only for violating a Rule, the Canons provide important guidance in interpreting the Rules. Where a Rule contains a permissive term, such as “may” or “should,” the conduct being addressed is committed to the personal and professional discretion of the judge or candidate in question, and no disciplinary action should be taken for action or inaction within the bounds of such discretion.

[3] The Comments that accompany the Rules serve two functions. First, they provide guidance regarding the purpose, meaning, and proper application of the Rules. They contain explanatory material and, in some instances, provide examples of permitted or prohibited conduct. Comments neither add to nor subtract from the binding obligations set forth in the Rules. Therefore, when a Comment contains the term “must,” it does not mean that the Comment itself is binding or enforceable; it signifies that the Rule in question, properly understood, is obligatory as to the conduct at issue.

[4] Second, the Comments identify aspirational goals for judges. To implement fully the principles of this Code as articulated in the Canons, judges should strive to exceed the standards of conduct established by the Rules, holding themselves to the highest ethical standards and seeking to achieve those aspirational goals, thereby enhancing the dignity of the judicial office.

[5] The Rules of the Code of Judicial Conduct are rules of reason that should be applied consistent with constitutional requirements, statutes, other court rules, and decisional law, and with due regard for all relevant circumstances. The Rules should not be interpreted to impinge upon the essential independence of judges in making judicial decisions.

[6] Although the black letter of the Rules is binding and enforceable, it is not contemplated that every transgression will result in the imposition of discipline. Whether discipline should be imposed should be determined through a reasonable and reasoned application of the Rules, and should depend upon factors such as the seriousness of the transgression, the facts and circumstances that existed at the time of the transgression, the extent of any pattern of improper activity, whether there have been previous violations, and the effect of the improper activity upon the judicial system or others.

[7] The Code is not designed or intended as a basis for civil or criminal liability. Neither is it intended to be the basis for litigants to seek collateral remedies against each other or to obtain tactical advantages in proceedings before a court.

TERMINOLOGY

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

“Appropriate authority” means the authority having responsibility for initiation of disciplinary process in connection with the violation to be reported. See Rules 2.14 and 2.15.

“Continuing Part-Time Judge” means a judge who serves repeatedly on a part-time basis by election or under a continuing appointment. See Application III.

“Contribution” means both financial and in-kind contributions, such as goods, professional or volunteer services, advertising, and other types of assistance, which, if obtained by the recipient otherwise, would require a financial expenditure. See Rules 3.1, 3.7, and 4.1.

“De minimis,” in the context of interests pertaining to disqualification of a judge, means an insignificant interest that could not raise a reasonable question regarding the judge’s impartiality. See Rule 2.11 and 3.8.

“Domestic partner” means a person with whom another person maintains a household and an intimate relationship, other than a person to whom he or she is legally married. See Rules 2.11, 2.13, 3.13, and 3.14.

“Economic interest” means ownership of more than a de minimis legal or equitable interest. Except for situations in which the judge participates in the management of such a legal or equitable interest, or the interest could be substantially affected by the outcome of a proceeding before a judge, it does not include:

- (1) an interest in the individual holdings within a mutual or common investment fund;
- (2) an interest in securities held by an educational, religious, charitable, fraternal, or civil organization in which the judge or the judge’s spouse, domestic partner, parent, or child serves as a director, an officer, an advisor, or other participant;
- (3) a deposit in a financial institution or deposits or proprietary interests the judge may maintain as a member of a mutual savings association or credit union, or similar proprietary interests; or
- (4) an interest in the issuer of government securities held by the judge. See Rules 1.3, 2.11, 3.2, and 3.8.

“Employee” means a person working for another person or a business entity for financial remuneration under an express or implied contract of employment. It does not include an officer, director, manager, general partner, or advisor of any business entity. See Application II(B) and Rule 3.11.

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

“Impartial,” “impartiality,” and “impartially” mean absence of bias or prejudice in favor of, or against, particular parties or classes of parties, as well as maintenance of an open mind in considering issues that may come before a judge. See Canons 1, 2, 3, and 4, and Rules 1.2, 2.2, 2.6, 2.7, 2.8, 2.10, 2.11, 2.13, 3.1, 3.2, 3.4, 3.6, 3.7, 3.12, 3.13, 3.14, 4.1 and 4.2.

“Impending matter” is a matter that is imminent or expected to occur in the near future. See Rules 2.9, 2.10, 3.2, and 3.13.

“Impropriety” includes conduct that violates the law, court rules, or provisions of this Code, and conduct that undermines a judge’s independence, integrity, or impartiality. See Canon 1, Judicial Advisory Committee, and Rules 1.2, 3.6, and 3.13.

“Independence” means a judge’s freedom from influence or controls other than those established by law. See Canons 1 and 4, and Rules 1.2, 2.7, 2.10, 3.1, 3.2, 3.4, 3.7, 3.12, 3.13, 3.14, and 4.1.

“Integrity” means probity, fairness, honesty, uprightness, and soundness of character. See Canon 1, Canon 4, and Rule 1.2, 2.7, 2.10, 2.16, 3.1, 3.2, 3.6, 3.7, 3.12, 3.13 and 3.14.

“Judge” or “Judicial officer” means anyone who is authorized to perform judicial functions, including a judicial officer appointed for a term and confirmed by the Senate, a justice of the peace, magistrate, court commissioner, special master, municipal, probate or housing judge or referee.

“Judicial candidate” means any person, including a sitting judge, who is seeking selection for judicial office by the Judicial Nominating Commission, election, appointment, or reappointment. See Application I and Rule 3.3.

“Judicial nominee” means any person who has been nominated for judicial office by the governor or by other appointing authority. See Application I, Canon 4, and Rules 2.11, 4.1, and 4.2.

“Knowingly,” “knowledge,” “known,” and “knows” mean actual knowledge of the fact in question. A person’s knowledge may be inferred from circumstances. See Rules 1.3, 2.3, 2.5, 2.11, 2.15, 2.16, and 3.6.

“Law” encompasses court rules as well as statutes, constitutional provisions, and decisional law. See Application I and III, and Rules 1.1, 1.3, 2.1, 2.2, 2.4, 2.6, 2.7, 2.8, 2.9, 2.13, 3.1, 3.2, 3.4, 3.7, 3.9, 3.10, 3.12, 3.13, 3.14, and 4.1.

“Member of the nominee’s family” means a spouse, domestic partner, child, grandchild, parent, grandparent, or other relative or person with whom the nominee maintains a close familial relationship.

“Member of the judge’s family” means a spouse, domestic partner, child, grandchild, parent, grandparent, or other relative or person with whom the judge maintains a close familial relationship. See Rules 2.1, 2.4, 3.7, 3.8, 3.10, 3.11, 3.13, and 4.1.

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

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

“Pending matter” is a matter that has commenced. A matter continues to be pending through any appellate process until final disposition. See Judicial Advisory Committee and Rules 2.9, 2.10, 3.2, and 3.13.

“Periodic part time judge” means a judge who serves or expects to serve repeatedly on a part-time basis, but under a separate appointment for each limited period of service or for each matter. See Application IV.

“Political organization” means a political party or other group sponsored by or affiliated with a political party or candidate, the principal purpose of which is to further the election or appointment of candidates for political office. See Rule 4.1 and 4.2.

“Pro Tempore Part Time Judge” means a judge who serves or expects to serve once or only sporadically on a part-time basis under a separate appointment for each period of service or for each case heard. See Application IV.

“Solicit” means a direct request made by a judge or a judicial candidate for financial support or in-kind services, whether made by letter, telephone, or any other means of communication. See Rules 3.1, 3.7, and 4.1.

“Subject to mandatory recall” applies to retired justices of the Rhode Island Supreme Court as well as all other retired judges who retire on full pay pursuant to R.I. General Laws §§ 8-3-8, 28-30-16, or 28-30-16.2 and who, therefore, at the direction of the chief judge of the respective court shall be assigned to perform those judicial services as the chief judge may prescribe. See Application II(A) and Rule 3.10.

“Subject to voluntary recall” applies to retired judges who retire on reduced pay pursuant to R.I. General Laws §§ 8-3-7, 8-8.2-6, 8-8.2-9, 28-30-15, or 28-30-15.1, but who file an election in writing and make themselves available for recall at the direction of the chief judge of the respective court to be assigned to perform those judicial services as the chief judge may prescribe. See Application II(B) and Rule 3.10.

“Third degree of relationship” includes the following persons: great-grandparent, grandparent, parent, uncle, aunt, brother, sister, child, grandchild, great-grandchild, nephew, and niece. See Rules 2.11 and 2.13.

APPLICATION

The Application section establishes when the various Rules apply to a judge,* judicial candidate,* or judicial nominee.*

I. APPLICABILITY OF THIS CODE

The provisions of the Code apply to all judicial officers.* Parts II through IV of this section identify those provisions that apply to three distinct categories of retired or part-time judges. The categories of judicial service in other than a full-time capacity are necessarily defined in general terms because of the varying forms of judicial service. Judicial candidates* and judicial nominees* must abide by Canon 4.

COMMENT

[1] The Rules in this Code have been formulated to address the ethical obligations of any person who serves a judicial function, and are premised upon the supposition that a uniform system of ethical principles should apply to all those authorized to perform judicial functions.

[2] The determination of which category and, accordingly, which specific Rules apply to an individual judicial officer, depends upon the facts of the particular judicial service.

[3] In recent years many jurisdictions have created what are often called “problem solving” courts, in which judges are authorized by court rules to act in nontraditional ways. For example, judges presiding in drug courts and monitoring the progress of participants in those courts’ programs may be authorized and even encouraged to communicate directly with social workers, probation officers, and others outside the context of their usual judicial

role as independent decision makers on issues of fact and law.* Judges serving on “problem solving” courts shall comply with this Code except to the extent court rules or other law provide and permit otherwise.

II. RETIRED JUDGE SUBJECT TO RECALL

(A) A retired judge subject to mandatory recall* for service by law* is not required to comply:

- (1) with Rule 3.8 (Appointment to Fiduciary Positions), except while serving as a judge;* or
- (2) with Rule 3.9 (Service as Arbitrator or Mediator), except while serving as a judge; or
- (3) with the prohibition on serving as an officer, director, manager, general partner, or advisor of any business entity in Rule 3.11(B) (Financial, Business, or Reumerative Activities), except while serving as a judge; or
- (4) with Rule 3.15(A) (Reporting Requirements) unless he or she has been recalled to service during the applicable reporting year.

(B) A retired judge subject to voluntary recall* who files an election in writing to make himself or herself available for recall for service is not required to comply:

- (1) with Rule 3.8 (Appointment to Fiduciary Positions), except while serving as a judge; or
- (2) with Rule 3.9 (Service as Arbitrator or Mediator), except while serving as a judge; or
- (3) with Rule 3.11(B) (Financial, Business, or Remunerative Activities), except while serving as a judge; or
- (4) with Rule 3.15(A) (Reporting Requirements), unless he or she has been recalled to service during the applicable reporting year.

COMMENT

[1] For the purposes of this section, as long as a retired judge is subject to being recalled for service, whether mandatory or voluntary, the judge is considered to “perform judicial functions.”

[2] Under this section, a retired judge subject to mandatory recall is prohibited from serving in any of the enumerated capacities when recalled to the bench, but may hold such a position when not recalled to active service. He or she may never serve as an employee* of a business entity, as that term is defined in the Code, regardless of whether or not the retired judge is recalled to active service, however. Retired judges subject to voluntary recall, by contrast, need not comply with any of the provisions of Rule 3.11(B) unless he

or she has been recalled to active service.

III. CONTINUING PART-TIME JUDGE

A judge* who serves repeatedly on a part-time basis by election or under a continuing appointment (“continuing part-time judge”),*

- (A) is not required to comply:
 - (1) with Rules 2.10(A) and 2.10(B) (Judicial Statements on Pending and Impending Cases), except while serving as a judge; or
 - (2) at any time with Rules 3.2 (Appearances before Governmental Bodies and Consultation with Government Officials), 3.4 (Appointments to Governmental Positions), 3.8 (Appointments to Fiduciary Positions), 3.9 (Service as Arbitrator or Mediator), 3.10 (Practice of Law), 3.11 (Financial, Business, or Remunerative Activities), 3.14 (Reimbursement of Expenses and Waivers of Fees or Charges), 3.15 (Reporting Requirements), 4.1 (Political Activities of Judges and Judicial Nominees in General), 4.2 (Activities of Judicial Nominees and Candidates for Appointive Judicial Office), and 4.3 (Activities of Judges Who Become Candidates for Non-judicial Office); and
- (B) shall not practice law* in the court on which the judge serves or in any court subject to the appellate jurisdiction of the court on which the judge serves, shall not appear as a lawyer before any municipal body that either appointed or confirmed the judge in the jurisdiction in which he or she serves as a judge, and shall not act as a lawyer in a proceeding in which the judge has served as a judge or in any other proceeding related thereto.

COMMENT

[1] A person who has been a continuing part-time judge and is no longer a continuing part-time judge and who seeks to act as a lawyer in a proceeding in which he or she has served as a judge or in any other proceeding related thereto, must comply with Rule 1.12 of the Rhode Island Rules of Professional Conduct.

IV. PRO TEMPORE PART-TIME JUDGE

A pro tempore part-time judge* who serves or expects to serve once or only sporadically on a part-time basis under a separate appointment for each period of service or for each case heard is not required to comply:

- (A) except while serving as a judge,* with Rules 1.2 (Promoting Confidence in the Judiciary), 2.4 (External Influences on Judicial Conduct), or 2.10 (Judicial Statements on Pending and Impending Cases); or
- (B) at any time with Rules 3.2 (Appearances before Governmental Bodies and

Consultation with Government Officials), 3.4 (Appointments to Governmental Positions), 3.6 (Affiliation with Discriminatory Organizations), 3.7 (Participation in Educational, Religious, Charitable, Fraternal, or Civic Organizations and Activities), 3.8 (Appointments to Fiduciary Positions), 3.9 (Service as Arbitrator or Mediator), 3.10 (Practice of Law), 3.11 (Financial, Business, or Remunerative Activities), 3.13 (Acceptance and Reporting of Gifts, Loans, Bequests, Benefits, or Other Things of Value), 3.15 (Reporting Requirements), 4.1 (Political Activities of Judges and Judicial Nominees in General), and 4.3 (Activities of Judges Who Become Candidates for Non-judicial Office).

COMMENT

[1] An example of a pro tempore part-time judge is a lawyer who serves as an alternate or fills in for a probate judge when the probate judge is unavailable or is unable to serve.

[2] In the event that in the future periodic part-time judges* are appointed in either the Rhode Island state judiciary or in the various municipalities, those judges shall abide by the same Canons as pro tempore part-time judges.

V. TIME FOR COMPLIANCE

A person to whom this Code becomes applicable shall comply immediately with its provisions, except that those judges* to whom Rules 3.8 (Appointments to Fiduciary Positions) and 3.11 (Financial, Business, or Remunerative Activities) apply shall comply with those Rules as soon as reasonably possible, but in no event later than the specific time period for compliance set forth in each Rule, respectively.

COMMENT

[1] If serving as a fiduciary* when selected as judge,* a new judge may, notwithstanding the prohibitions in Rule 3.8, continue to serve as fiduciary, but only for that period of time necessary to avoid serious adverse consequences to the beneficiaries of the fiduciary relationship and in no event longer than one year. Similarly, if engaged at the time of judicial selection in a business activity, a new judge may, notwithstanding the prohibitions in Rule 3.11, continue in that activity for a reasonable period but in no event longer than two years.

CANON I

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

RULE 1.1

Compliance with the Law

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

RULE 1.2

Promoting Confidence in the Judiciary

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

COMMENT

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

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

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

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

[5] Actual improprieties include violations of law,* court rules or provisions of this Code. The test for appearance of impropriety is whether the conduct would create in reasonable minds a perception that the judge violated this Code or engaged in other conduct that reflects adversely on the judge's honesty, impartiality, temperament, or fitness to serve as a judge taking into consideration the judge's good faith perception of the circumstances and the manner in which he or she responded to the purported violation upon discovery.

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

RULE 1.3

Avoiding Abuse of the Prestige of Judicial Office

A judge* shall not abuse the prestige of judicial office to advance the personal or economic interests* of the judge or others, or allow others to do so.

COMMENT

[1] It is improper for a judge to use or attempt to use his or her position to gain personal advantage or deferential treatment of any kind. For example, it would be improper for a judge to allude to his or her judicial status to gain favorable treatment. Similarly, a judge must not use judicial letterhead to gain an advantage in conducting his or her personal business.

[2] A judge may provide a reference or recommendation for an individual based upon the judge's personal knowledge.* The judge may use official letterhead if the judge indicates that the reference is personal and if there is no likelihood that the use of the letterhead would reasonably be perceived as an attempt to exert pressure by reason of the judicial office.

[3] A judge may participate in the judicial selection process by cooperating with appointing authorities and screening committees, and by responding to inquiries from such entities concerning the professional qualifications of a person being considered for judicial office.

[4] Special considerations arise when judges write or contribute to publications of for-profit and nonprofit entities, whether related or unrelated to the law.* A judge should not permit anyone associated with the publication of such materials to exploit the judge's office in a manner that violates this Rule or other applicable law. In contracts for publication of a judge's writing, the judge should retain sufficient control over the advertising to avoid such exploitation.

CANON 2

A JUDGE SHALL PERFORM THE DUTIES OF JUDICIAL OFFICE IMPARTIALLY, COMPETENTLY, AND DILIGENTLY.

RULE 2.1

Giving Precedence to the Duties of Judicial Office

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

COMMENT

[1] To ensure that judges are available to fulfill their judicial duties, judges must conduct their personal and extrajudicial activities to minimize the risk of conflicts that

would result in frequent disqualification. See Canon 3.

[2] Judges may attend to personal and family situations, such as the illness or death of a family member,* take a vacation where there is no prejudice to litigants, or engage in professional extrajudicial activities, provided that it is reasonable to do so.

[3] Although it is not a duty of judicial office unless prescribed by law, judges are encouraged to participate in activities that promote public understanding of and confidence in the justice system.

RULE 2.2

Impartiality and Fairness

(A) A judge* shall uphold and apply the law,* and shall perform all duties of judicial office fairly and impartially.*

(B) A judge may make reasonable efforts, consistent with the law and court rules, to facilitate the ability of all litigants, including pro se or otherwise self-represented litigants, to be fairly heard.

COMMENT

[1] To ensure impartiality* and fairness to all parties, a judge must be objective and open-minded.

[2] Although each judge comes to the bench with a unique background and personal philosophy, a judge must interpret and apply the law without regard to whether the judge approves or disapproves of the law in question.

[3] When applying and interpreting the law, a judge sometimes may make good-faith errors of fact or law. Errors of this kind do not violate this Rule.

RULE 2.3

Bias, Prejudice, and Harassment

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

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

(C) A judge shall require lawyers in proceedings before the court to refrain from manifesting bias or prejudice, or engaging in harassment, based upon attributes including but not limited to race, sex, gender, religion, national origin, ethnicity,

disability, age, sexual orientation, marital status, socioeconomic status, or political affiliation, against parties, witnesses, lawyers, or others.

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

COMMENT

[1] A judge who manifests bias or prejudice in a proceeding impairs the fairness of the proceeding and brings the judiciary into disrepute.

[2] Examples of manifestations of bias or prejudice include but are not limited to epithets; slurs; demeaning nicknames; negative stereotyping; attempted humor based upon stereotypes; threatening, intimidating, or hostile acts; suggestions of connections between race, ethnicity, or nationality and crime; and irrelevant references to personal characteristics. Even facial expressions and body language can convey to parties and lawyers in the proceeding, jurors, the media, and others an appearance of bias or prejudice. A judge must avoid conduct that may reasonably be perceived as prejudiced or biased.

[3] Harassment, as referred to in paragraphs (B) and (C), is verbal or physical conduct that denigrates or shows hostility or aversion toward a person on bases such as race, sex, gender, religion, national origin, ethnicity, disability, age, sexual orientation, marital status, socioeconomic status, or political affiliation.

[4] Sexual harassment includes but is not limited to sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature that is unwelcome.

RULE 2.4

External Influences on Judicial Conduct

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

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

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

COMMENT

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

RULE 2.5

Competence, Diligence, and Cooperation

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

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

COMMENT

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

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

[3] Prompt disposition of the court's business requires a judge to devote adequate time to judicial duties, to be punctual in attending court and expeditious in determining matters under submission, and to take reasonable measures to ensure that court officials, litigants, and their lawyers cooperate with the judge to that end.

[4] In disposing of matters promptly and efficiently, a judge must demonstrate due regard for the rights of parties to be heard and to have issues resolved without unnecessary cost or delay. A judge should monitor and supervise cases in ways that reduce or eliminate dilatory practices, avoidable delays, and unnecessary costs.

RULE 2.6

Ensuring the Right to Be Heard

(A) A judge* shall accord to every person who has a legal interest in a proceeding, or that person's lawyer, the right to be heard according to law.*

(B) A judge may encourage parties to a proceeding and their lawyers to settle matters in dispute but shall not act in a manner that undermines any party's right to be heard.

COMMENT

[1] The right to be heard is an essential component of a fair and impartial* system of justice. Substantive rights of litigants can be protected only if procedures protecting the right to be heard are observed.

[2] The judge plays an important role in overseeing the settlement of disputes, but should be careful that efforts to further settlement do not unduly pressure any party into settlement or undermine any party's right to be heard according to law. The judge should keep in mind the effect that the judge's participation in settlement discussions may have,

not only on the judge's own views of the case, but also on the perceptions of the lawyers and the parties if the case remains with the judge after settlement efforts are unsuccessful. Among the factors that a judge should consider when deciding upon an appropriate settlement practice for a case are (1) whether the parties have requested or voluntarily consented to a certain level of participation by the judge in settlement discussions, (2) whether the parties and their counsel are relatively sophisticated in legal matters, (3) whether the case will be tried by the judge or a jury, (4) whether the parties participate with their counsel in settlement discussions, (5) whether any parties are unrepresented by counsel, and (6) whether the matter is civil or criminal.

[3] Judges must be mindful of the effect settlement discussions can have, not only on their objectivity and impartiality, but also on the appearance of their objectivity and impartiality. Despite a judge's best efforts, there may be instances when information obtained during settlement discussions could influence a judge's decision making during trial, and, in such instances, the judge should consider whether disqualification may be appropriate. See Rule 2.11(A)(1).

RULE 2.7

Responsibility to Decide

A judge* shall hear and decide matters assigned to the judge, except when disqualification is required by Rule 2.11 or other law.*

COMMENT

[1] Judges must be available to decide the matters that come before the court. Although there are times when disqualification is necessary to protect the rights of litigants and preserve public confidence in the independence,* integrity,* and impartiality* of the judiciary, judges must be available to decide matters that come before the courts. Unwarranted disqualification may bring public disfavor to the court and to the judge personally. The dignity of the court, the judge's respect for fulfillment of judicial duties, and a proper concern for the burdens that may be imposed upon the judge's colleagues require that a judge not use disqualification to avoid cases that present difficult, controversial, or unpopular issues.

RULE 2.8

Decorum, Demeanor, and Communication with Jurors

- (A) A judge* shall require order and decorum in proceedings before the court.
- (B) A judge shall be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, court staff, court officials, and others with whom the judge deals in an official capacity, and shall require similar conduct of lawyers, court staff, court officials, and others subject to the judge's direction and control.
- (C) A judge shall not commend or criticize jurors for their verdict other than in a court order or opinion in a proceeding.

COMMENT

[1] The duty to hear all proceedings with patience and courtesy is not inconsistent with the duty imposed in Rule 2.5 to dispose promptly of the business of the court. Judges can be efficient and businesslike while being patient and deliberate.

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

[3] A judge who is not otherwise prohibited by law* from doing so may meet with jurors who choose to remain after trial but should be careful not to discuss his or her opinion about the outcome of the case.

RULE 2.9

Ex Parte Communications

(A) A judge* shall not initiate, permit, or consider ex parte communications, or consider other communications made to the judge outside the presence of the parties or their lawyers, concerning a pending* or impending matter,* except as follows:

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

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

(b) in the absence of an agreement by the parties, the judge makes provision promptly to notify all other parties of the substance of the ex parte communication, and gives the parties an opportunity to be heard.

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

(3) A judge may, with the consent of the parties, confer separately with the parties and their lawyers in an effort to settle matters pending* before the judge.

(4) A judge may initiate, permit, or consider any ex parte communication when expressly authorized by law* to do so.

(5) When administering a specialized problem-solving calendar established by statute or administrative order, a judge may initiate, receive, permit, or consider ex parte communications with treatment providers, probation officers, social workers, and others, where appropriate.

(B) If a judge inadvertently receives an unauthorized ex parte communication bearing upon the substance of a matter, the judge shall make provision promptly to notify the parties of the substance of the communication and provide the parties with an opportunity to respond.

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

COMMENT

[1] To the extent reasonably possible, all parties or their lawyers shall be included in communications with a judge.

[2] Whenever the presence of a party or notice to a party is required by this Rule, it is the party's lawyer, or if the party is unrepresented, the party, who is to be present or to whom notice is to be given.

[3] The proscription against communications concerning a proceeding includes communications with lawyers, law teachers, and other persons who are not participants in the proceeding, except to the limited extent permitted by this Rule.

[4] A judge may consult with other judges on pending matters, but must avoid ex parte discussions of a case with judges who have previously been disqualified from hearing the matter, and with judges who have appellate jurisdiction over the matter.

[5] The prohibition against a judge investigating the facts in a matter extends to information available in all mediums, including electronic.

[6] A judge may consult ethics advisory committees, outside counsel, or legal experts concerning the judge's compliance with this Code.

RULE 2.10

Judicial Statements on Pending and Impending Cases

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

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

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

(D) Notwithstanding the restrictions in paragraph (A), a judge may explain court procedures, and may comment on any proceeding in which the judge is a litigant in a personal capacity.

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

COMMENT

[1] This Rule's restrictions on judicial speech are essential to the maintenance of the independence,* integrity,* and impartiality* of the judiciary.

[2] This Rule does not prohibit a judge from commenting on proceedings in which the judge is a litigant in a personal capacity. In cases in which the judge is a litigant in an official capacity, such as a writ of mandamus, the judge must not comment publicly.

[3] Depending upon the circumstances, the judge should consider whether it may be preferable for a third party, rather than the judge, to respond or issue statements in connection with allegations concerning the judge's conduct in a matter.

RULE 2.11

Disqualification

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

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

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

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

(b) acting as a lawyer in the proceeding;

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

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

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

(4) The judge, while a judge or a judicial nominee,* has made a public statement, other than in a court proceeding, judicial decision, or opinion, that commits or appears to commit the judge to reach a particular result or rule in a particular way in the proceeding or controversy.

(5) The judge:

(a) served as a lawyer in the matter in controversy, or was associated with a lawyer who participated substantially as a lawyer in the matter during such association;

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

(c) was a material witness concerning the matter; or

(d) previously presided as a judge over the matter in another court.

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

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

COMMENT

[1] Under this Rule, a judge is disqualified whenever the judge's impartiality might reasonably be questioned, regardless of whether any of the specific provisions of paragraphs (A)(1) through (5) apply. In this jurisdiction, the term "recusal" is often used interchangeably with the term "disqualification."

[2] A judge’s obligation not to hear or decide matters in which disqualification is required applies regardless of whether a motion to disqualify is filed.

[3] The rule of necessity may override the rule of disqualification. For example, a judge might be required to participate in judicial review of a judicial salary statute, or might be the only judge available in a matter requiring immediate judicial action, such as a hearing on probable cause or a temporary restraining order. In matters that require immediate action, the judge must disclose on the record the basis for possible disqualification and make reasonable efforts to transfer the matter to another judge as soon as practicable.

[4] The fact that a lawyer in a proceeding is affiliated with a law firm with which a relative of the judge is affiliated does not itself disqualify the judge. If, however, the judge’s impartiality might reasonably be questioned under paragraph (A), or the relative is known* by the judge to have an interest in the law firm that could be substantially affected by the proceeding under paragraph (A)(2)(c), the judge’s disqualification is required.

[5] A judge should disclose on the record information that the judge believes the parties or their lawyers might reasonably consider relevant to a possible motion for disqualification, even if the judge believes there is no basis for disqualification.

[6] “Economic interest,” as set forth in the Terminology section, means ownership of more than a de minimis legal or equitable interest. Except for situations in which a judge participates in the management of such a legal or equitable interest, or the interest could be substantially affected by the outcome of a proceeding before a judge, it does not include:

- (1) an interest in the individual holdings within a mutual or common investment fund;
- (2) an interest in securities held by an educational, religious, charitable, fraternal, or civic organization in which the judge or the judge’s spouse, domestic partner, parent, or child serves as a director, officer, advisor, or other participant;
- (3) a deposit in a financial institution or deposits or proprietary interests the judge may maintain as a member of a mutual savings association or credit union, or similar proprietary interests; or
- (4) an interest in the issuer of government securities held by the judge.

RULE 2.12

Supervisory Duties

(A) A judge* shall encourage court staff, court officials, and others subject to the judge’s direction and control to act in a manner consistent with the judge’s obligations under this Code in the performance of their official duties or in the presence of the judge.

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

COMMENT

[1] A judge is responsible for his or her own conduct and for the conduct of others, such as staff, when those persons are acting at the judge's direction or control. A judge may not direct court personnel to engage in conduct on the judge's behalf or as the judge's representative when such conduct would violate the Code if undertaken by the judge. To the extent that court personnel fails to act in a manner consistent with the judge's obligations under this Code in the performance of their official duties, the judge shall report such conduct to the appropriate authority.*

[2] Public confidence in the judicial system depends upon timely justice. To promote the efficient administration of justice, a judge with supervisory authority must take the steps needed to ensure that judges under his or her supervision administer their workloads promptly.

RULE 2.13

Administrative Appointments

- (A) In making administrative appointments, a judge:*

 - (1) shall exercise the power of appointment impartially* and on the basis of merit; and
 - (2) shall avoid nepotism, favoritism, and unnecessary appointments.

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

COMMENT

[1] Appointees of a judge include magistrates, assigned counsel, and officials, such as referees, commissioners, special masters, receivers, and guardians, and personnel such as clerks, secretaries, and bailiffs. Consent by the parties to an appointment or an award of compensation does not relieve the judge of the obligation prescribed by paragraph (A).

[2] Unless otherwise defined by law,* nepotism is the appointment or hiring of any relative within the third degree of relationship* of either the judge or the judge's spouse or domestic partner,* or the spouse or domestic partner of such relative.

RULE 2.14

Disability and Impairment

A judge,* having a reasonable belief that the performance of a lawyer or another judge is impaired by drugs or alcohol, or by a mental, emotional, or physical condition, should respond appropriately.

COMMENT

[1] An appropriate response includes actions intended and reasonably likely to help the judge or lawyer in question address the problem and prevent harm to the justice system. Depending upon the circumstances, an appropriate response may include but is not limited to speaking directly to the impaired person, notifying an individual with supervisory responsibility over the impaired person, or making a referral to an assistance program.

[2] Taking or initiating corrective action by way of referral to an assistance program may satisfy a judge's responsibility under this Rule. Assistance programs have many approaches for offering help to impaired judges and lawyers, such as intervention, counseling, or referral to appropriate health care professionals. Depending upon the gravity of the conduct that has come to the judge's attention, however, the judge may be required to take other action, such as reporting the impaired judge or lawyer to the appropriate authority,* agency, or body. See Rule 2.15.

RULE 2.15

Responding to Judicial and Lawyer Misconduct

(A) A judge* having knowledge* that another judge has committed a violation of this Code that raises a substantial question regarding the judge's honesty, trustworthiness, or fitness as a judge in other respects shall inform the appropriate authority.*

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

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

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

COMMENT

[1] Taking action to address known* misconduct is a judge's obligation. Paragraphs (A) and (B) impose an obligation on the judge to report to the appropriate disciplinary authority the known misconduct of another judge or a lawyer that raises a substantial question regarding the honesty, trustworthiness, or fitness of that judge or lawyer. Ignoring or denying known misconduct among one's judicial colleagues or members of the legal profession undermines a judge's responsibility to participate in efforts to ensure public respect for the justice system. This Rule limits the reporting obligation to those offenses that an independent judiciary must vigorously endeavor to prevent.

[2] A judge who does not have actual knowledge that another judge or a lawyer may have committed misconduct, but receives information indicating a substantial likelihood of such misconduct, is required to take appropriate action under paragraphs (C) and (D). Appropriate action may include, but is not limited to, communicating directly with the judge who may have violated this Code, communicating with a supervising judge, or reporting the suspected violation to the appropriate authority* or other agency or body. Similarly, actions to be taken in response to information indicating that a lawyer has committed a violation of the Rules of Professional Conduct may include but are not limited to communicating directly with the lawyer who may have committed the violation, or reporting the suspected violation to the appropriate authority or other agency or body.

RULE 2.16

Cooperation with Disciplinary Authorities

(A) A judge* shall cooperate and be candid and honest with judicial and lawyer disciplinary agencies.

(B) A judge shall not retaliate, directly or indirectly, against a person known* or suspected to have assisted or cooperated with an investigation of, or to have filed a complaint against, a judge or a lawyer.

COMMENT

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

[2] This rule also applies to judges who are the subject of an investigation or complaint as well as to judges who are requested to cooperate in an investigation of another judge or lawyer. However, the privilege against self-incrimination under the United States and Rhode Island Constitutions may be asserted. Such an assertion would not be a violation of Rule 2.16.

CANON 3

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

RULE 3.1

Extrajudicial Activities in General

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

(A) participate in activities that will interfere with the proper performance of the judge's judicial duties;

- (B) participate in activities that will lead to frequent disqualification of the judge;
- (C) participate in activities that would appear to a reasonable person to undermine the judge's independence,* integrity,* or impartiality;*
- (D) engage in conduct that a reasonable person would view as an effort to coerce others into participating in extrajudicial activities favored by the judge or refraining from participating in extrajudicial activities disfavored by the judge; or
- (E) make use of court premises, staff, stationery, equipment, or other resources, except for activities that concern the law, the legal system, or the administration of justice, or unless such additional use is permitted by law.

COMMENT

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

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

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

[4] While engaged in permitted extrajudicial activities, judges must not coerce others or take action that would reasonably be perceived as coercive. In fulfilling their extrajudicial roles, however, judges are not prohibited from zealously advocating for a particular position or viewpoint. For example, depending upon the circumstances, a judge may zealously advocate for a particular position or viewpoint and do so in any discussion and debate that takes place during his or her extrajudicial activities. Such conduct, in and of itself, is not inappropriate and generally would not amount to coercion. In contrast, and again depending upon the circumstances, a judge's solicitation* of contributions* or memberships for an organization, even as permitted by Rule 3.7(A), might create the risk that the person solicited would feel obligated to respond favorably, or would do so to curry favor with the judge.

RULE 3.2

Appearances before Governmental Bodies and Consultation with Government Officials

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

- (A) in connection with matters concerning the law,* the legal system, or the administration of justice; or
- (B) when the judge is acting pro se in a matter involving the judge's legal or economic interests,* or when the judge is acting in a fiduciary* capacity.

COMMENT

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

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

[3] In general, it would be an unnecessary and unfair burden to prohibit judges from appearing before governmental bodies or consulting with government officials on matters that are likely to affect them as private citizens, such as zoning proposals affecting their real property. In engaging in such activities, however, judges must not refer to their judicial positions, and must otherwise exercise caution to avoid using the prestige of judicial office.

RULE 3.3

Testifying as a Character Witness

A judge* shall not testify as a character witness in a judicial, administrative, or other adjudicatory proceeding or otherwise vouch for the character of a person in a legal proceeding, except when duly summoned. However, a judge may appear voluntarily at a public hearing of the Judicial Nominating Commission and at judicial selection or confirmation proceedings and may testify concerning a judicial candidate.*

COMMENT

[1] A judge who, without being subpoenaed, testifies as a character witness abuses the prestige of judicial office to advance the interests of another. See Rule 1.3.

RULE 3.4

Appointments to Governmental Positions

A judge* shall not accept appointment to a governmental committee, board, commission, or other governmental position, unless it is one that concerns the law,* the legal system, or the administration of justice.

COMMENT

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

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

RULE 3.5

Use of Nonpublic Information

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

COMMENT

[1] In the course of performing judicial duties, a judge may acquire information of commercial or other value that is unavailable to the public. The judge must not reveal or use such information for personal gain or for any purpose unrelated to his or her judicial duties.

[2] This rule is not intended, however, to affect a judge's ability to act on information as necessary to protect the health or safety of any person if consistent with other provisions of this Code.

RULE 3.6

Affiliation with Discriminatory Organizations

(A) A judge* shall not hold membership in any organization that practices invidious discrimination.

(B) A judge shall not use the benefits or facilities of an organization if the judge knows* or should know that the organization practices invidious discrimination. A judge's attendance at an event in a facility of an organization that the judge is not

permitted to join is not a violation of this Rule when the judge's attendance is an isolated event that could not reasonably be perceived as an endorsement of the organization's practices.

COMMENT

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

[2] An organization is generally said to discriminate invidiously if it, by way of example, arbitrarily excludes from membership on the basis of race, sex, gender, religion, national origin, ethnicity, disability, or sexual orientation persons who would otherwise be eligible for admission. Whether an organization practices invidious discrimination is a complex question to which judges should be attentive. The answer cannot be determined from a mere examination of an organization's current membership rolls, but rather, may depend upon how the organization selects members, as well as other relevant factors, such as whether the organization is dedicated to the preservation of religious, ethnic, or cultural values of legitimate common interest to its members, or whether it is an intimate, purely private organization whose membership limitations could not constitutionally be prohibited.

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

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

[5] This Rule does not apply to national or state military service.

RULE 3.7

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

(A) Subject to the requirements of Rule 3.1, a judge* may participate in activities sponsored by organizations or governmental entities concerned with the law,* the legal system, or the administration of justice, and those sponsored by or on behalf of educational, religious, charitable, fraternal, or civic organizations not conducted for profit, and a judge may serve as an officer, director, trustee, or non-legal advisor to such organizations or entities, except that a judge shall not:

(1) solicit* contributions* or allow his or her title to be used to solicit contributions for such an organization or entity, except from members of the judge's family,* or from judges over whom the judge does not exercise supervisory or appellate authority;

(2) solicit membership for such an organization or entity unless the organization or entity is concerned with the law, the legal system, or the administration of justice;

(3) make recommendations to a public or private fund-granting organization or entity in connection with its programs and activities, unless the organization or entity is concerned with the law, the legal system, or the administration of justice; or

(4) participate in activities sponsored by such an organization or entity, including serving as an officer, director, trustee, or non-legal advisor of such an organization or entity, if it is likely that the organization or entity:

(a) will be engaged in proceedings that would come before the judge; or

(b) will be engaged in adversary proceedings in the court of which the judge is a member.

(B) A judge may reasonably encourage lawyers to provide pro bono publico legal services.

COMMENT

[1] Some examples of a judge's acceptable participation in the organizations and entities outlined in this rule include, but are not limited to, assisting such organizations or entities in planning related to fund-raising, participating in the management and investment of the organizations' or entities' funds, and appearing or speaking at, receiving an award or other recognition at, being featured on the program of an event of such organizations or entities. Any participation by the judge in these activities is always subject to the requirements and restrictions listed in this Rule and Rule 3.1.

[2] The changing nature of some organizations and their relationship to the law make it necessary for a judge to regularly re-examine the activities of each organization and entity with which the judge is affiliated to determine if it is proper for the judge to continue the affiliation. Even for law-related organizations, a judge should consider whether the membership and purposes of the organization, or the nature of the judge's participation in or association with the organization, would conflict with the judge's obligation to refrain from activities that reflect adversely upon a judge's independence,* integrity,* and impartiality.* A judge should disqualify himself or herself in any case in which the decision could affect any organization or entity with which he or she is affiliated as an officer, director, trustee, or non-legal advisor.

[3] Mere attendance at an event, whether or not the event serves a fund-raising purpose, does not constitute a violation of this rule. It is also generally permissible for a judge to serve as an usher or a food server or preparer, or to perform similar functions, at fund-raising events sponsored by educational, religious, charitable, fraternal, or civic organizations. Such activities are not solicitation and do not present an element of coercion

or abuse the prestige of judicial office.

[4] Identification of a judge's position in educational, religious, charitable, fraternal, or civic organizations on letterhead used for fund-raising or membership solicitation does not violate this Rule. The letterhead may list the judge's title or judicial office if comparable designations are used for other persons.

[5] In addition to appointing lawyers to serve as counsel for indigent parties in individual cases, a judge may promote broader access to justice by encouraging lawyers to participate in pro bono publico legal services, if in doing so the judge does not employ coercion, or abuse the prestige of judicial office. Such encouragement may take many forms, including providing lists of available programs, training lawyers to do pro bono publico legal work, and participating in events recognizing lawyers who have done pro bono publico work.

RULE 3.8

Appointments to Fiduciary Positions

(A) A judge* shall not accept appointment to serve in a fiduciary* position, such as executor, administrator, trustee, guardian, attorney in fact, or other personal representative, except for the estate, trust, or person of a member of the judge's family,* and then only if such service will not interfere with the proper performance of judicial duties.

(B) A judge shall not serve in a fiduciary position if the judge as fiduciary will likely be engaged in proceedings that would ordinarily come before the judge, or if the estate, trust, or ward becomes involved in adversary proceedings in the court on which the judge serves.

(C) A judge acting in a fiduciary capacity shall be subject, at a minimum, to the same restrictions on engaging in financial activities that apply to a judge personally.

(D) If a person who is serving in a fiduciary position becomes a judge, he or she must comply with this Rule as soon as reasonably practicable, but in no event later than one year after becoming a judge.

COMMENT

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

RULE 3.9

Service as Arbitrator or Mediator

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

COMMENT

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

RULE 3.10

Practice of Law

(A) A judge, * a retired judge who by statute is subject to mandatory recall* for service, and a retired judge subject to voluntary recall* who makes himself or herself available for recall for service, shall not engage in the practice of law.* A judge or such retired judge may act pro se and may, without compensation, give legal advice to and draft or review documents for a member of the judge's family,* but is prohibited from serving as the family member's lawyer in any tribunal.

(B) A judge having a financial interest in a law practice when appointed to the bench shall within ninety (90) days after appointment, make a full written disclosure thereon to the Chief Justice of the Supreme Court and to the Presiding Justice or Chief Judge or Magistrate of the court on which that judge serves.

(C) Upon written request to the Supreme Court, a judge may engage in the limited practice of law pursuant to his or her military service.

COMMENT

[1] A judge, a retired judge who is subject to mandatory recall for service by law, and a retired judge subject to voluntary recall who makes himself or herself available for recall for service, may act pro se in all legal matters, including matters involving litigation and matters involving appearances before or other dealings with governmental bodies. A judge, a retired judge who is subject to mandatory recall for service by law, and a retired judge subject to voluntary recall who makes himself or herself available for recall for service, must not use the prestige of his or her office to advance the judge's personal or family interests, however. See Rule 1.3.

[2] "Tribunal" denotes a court, an arbitrator in a binding arbitration proceeding, or a legislative body, administrative agency, or other body acting in an adjudicative capacity. A legislative body, administrative agency, or other body, acts in an adjudicative capacity when a neutral official, after the presentation of evidence or legal argument by a party or parties, will render a binding legal judgment directly affecting a party's interests in a particular matter.

[3] A judge engaging in the practice of law pursuant to his or her military service may not take any action giving the impression that the judge is serving as an advocate on matters concerning the civilian justice system, nor may he or she engage in any conduct resembling the services provided by civilian attorneys for military members. Impermissible activities include, but are not limited to, providing legal advice or representation in areas of civil law such as family law, administrative law, tort claims, contract law, and personal and business financial law, and assisting military members with personal legal services such as drafting wills and powers of attorney. By contrast, permissible activities encompass those that pertain to strictly military issues, including, but not limited to, conducting military inspections, providing training on military justice and related policies, and rendering advice regarding operational law, casualty assistance, and the rules of war. In addition, a judge engaged in the practice of law pursuant to his or her military service may serve as a military judge, provided that such service involves matters of military justice and would not require frequent disqualification. See Canon 3.

[4] In addition to applying to active judges, this rule applies to (a) retired justices of the Rhode Island Supreme Court, (b) retired judges subject to mandatory recall who retire on full pay, and who, therefore, at the direction of the chief judge of the respective court shall be assigned to perform those judicial services as the chief judge may prescribe, and

(a) judges subject to voluntary recall who retire on reduced pay, but who at their own election and request make themselves available for recall at the direction of the chief judge of the respective court to be assigned to perform those judicial services as the chief judge may prescribe. In each case, the retired judge, either by mandatory or voluntary recall, is available and subject to recall for judicial service and is therefore considered to “perform judicial functions.” Consequently, it would not be appropriate for such retired judges to practice law. See R.I. General Laws §§ 8-3-7 and 8-3-8 (with respect to justices of the Supreme, Superior, Family, and District courts), §§ 28-30-15, 28-30-15.1, 28-30-16, and 28-30-16.2 (with respect to judges on the Workers’ Compensation Court), and §§ 8-8.2-6 and 8-8.2-9 (with respect to judges on the Rhode Island Traffic Tribunal) for the statutory provisions applicable to this rule.

RULE 3.11

Financial, Business, or Remunerative Activities

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

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

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

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

(C) Any active or retired judge may serve as a professor, teacher, lecturer, or other educator at a public or private educational institution.

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

- (1) interfere with the proper performance of judicial duties;
- (2) lead to frequent disqualification of the judge;
- (3) involve the judge in frequent transactions or continuing business relationships with lawyers or other persons likely to come before the court on which the judge serves; or
- (4) result in violation of other provisions of this Code.

(E) If a person who is serving as an officer, director, manager, general partner, advisor, or employee of any business entity becomes a judge, he or she must comply with this Rule as soon as reasonably practicable, but in no event later than two years after becoming a judge.

COMMENT

[1] Judges are generally permitted to engage in financial activities, including managing real estate and other investments for themselves or for members of their families. Participation in these activities, like participation in other extrajudicial activities, is subject to the requirements of this Code, however. For example, it would be improper for a judge to spend so much time on business activities that it interferes with the performance of his or her judicial duties. See Rule 2.1. Similarly, it would be improper for a judge to use his or her official title or appear in judicial robes in business advertising, or to conduct his or her business or financial affairs in such a way that disqualification is frequently required. See Rules 1.3 and 2.11. It would also be improper for a judge to engage in any activity inconsistent with the requirements and restrictions set forth in Rule 3.7 while serving as an officer, director, manager, general partner, or advisor of any business entity to the extent permitted under subsection (B) of this Rule.

[2] As soon as practicable without serious financial detriment, but in no event later than two years after becoming a judge, the judge must divest himself or herself of investments and other financial interests that might require frequent disqualification or otherwise violate this Rule.

RULE 3.12

Compensation for Extrajudicial Activities

A judge* may accept reasonable compensation for extrajudicial activities permitted by this Code or other law* unless such acceptance would appear to a reasonable person to undermine the judge's independence,* integrity,* or impartiality.*

COMMENT

[1] A judge is permitted to accept honoraria, stipends, fees, wages, salaries, royalties, or other compensation for speaking, teaching, writing, and other extrajudicial activities, provided the compensation is reasonable and commensurate with the task performed. The judge should be mindful, however, that judicial duties must take precedence over other activities. See Rule 2.1.

[2] Compensation derived from extrajudicial activities may be subject to public reporting. See Rule 3.15.

RULE 3.13

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

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

(B) A judge shall not accept gifts, loans, bequests, benefits, or other things of value, if the source is a party or other person, including a lawyer, who has come or is likely to come before the judge, or whose interests have come or are likely to come before the judge.

(C) Unless otherwise prohibited by law, or by paragraphs (A) or (B), a judge may accept the following without reporting such acceptance pursuant to Rule 3.15:

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

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

(3) ordinary social hospitality;

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

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

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

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

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

(D) Unless otherwise prohibited by law or by paragraphs (A) or (B), a judge may accept the following items, and must report receipt to the extent required by Rule 3.15:

- (1) gifts to him or her incident to a public testimonial;
- (2) invitations to the judge and the judge's spouse, domestic partner, or guest to attend without charge:
 - (a) except for an event associated with a bar-related function or other activity relating to the law, the legal system, or the administration of justice unless such value exceeds \$150 per year pursuant to Rule 3.15; or
 - (b) except for an event associated with any of the judge's educational, religious, charitable, fraternal or civic activities permitted by this Code, if the same invitation is offered to non-judges who are engaged in similar ways in the activity as is the judge unless such value exceeds \$150 per year pursuant to Rule 3.15.

COMMENT

[1] Whenever a judge accepts a gift or other thing of value without paying fair market value, there is a risk that the benefit might be viewed as intended to influence the judge's decision in a case. Rule 3.13 imposes restrictions upon the acceptance of such benefits, according to the magnitude of the risk. It is not the intent of subsection (B) to prohibit a judge from accepting items of little intrinsic value such as token gifts of appreciation. For example, the judge may receive a token gift in recognition of the judge's participation as a speaker at a seminar or as a presenter to a law-related, business, civic or charitable group. Paragraph (C) identifies circumstances in which the risk that the acceptance would appear to undermine the judge's independence, integrity, or impartiality is low, and explicitly provides that such items need not be publicly reported. As the value of the benefit or the likelihood that the source of the benefit will appear before the judge increases, the judge is either prohibited under paragraphs (A) and (B) from accepting the gift, or required under paragraph (D) to publicly report it.

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

[3] Businesses and financial institutions frequently make available special pricing, discounts, and other benefits, either in connection with a temporary promotion or for preferred customers, based upon longevity of the relationship, volume of business transacted, and other factors. A judge may freely accept such benefits if they are available to the general public, or if the judge qualifies for the special price or discount according to

the same criteria as are applied to persons who are not judges. As an example, loans provided at generally prevailing interest rates are not gifts, but a judge could not accept a loan from a financial institution at below-market interest rates unless the same rate was being made available to the general public for a certain period of time or only to borrowers with specified qualifications that the judge also possesses.

[4] Rule 3.13 applies only to acceptance of gifts or other things of value by a judge. Nonetheless, if a gift or other benefit is given to the judge's spouse, domestic partner, or member of the judge's family residing in the judge's household, it may be viewed as an attempt to evade Rule 3.13 and influence the judge indirectly. Where the gift or benefit is being made primarily to such other persons, and the judge is merely an incidental beneficiary, this concern is reduced. A judge should, however, remind family* and household members of the restrictions imposed upon judges, and urge them to take these restrictions into account when making decisions about accepting such gifts or benefits.

[5] Conduct not permitted by law* includes prohibited activities set forth in the State Ethics Code and regulations of the State Ethics Commission.

RULE 3.14

Reimbursement of Expenses and Waivers of Fees or Charges

(A) Unless otherwise prohibited by Rules 3.1, 3.13(A) or 3.13(B), or other law,* a judge* may accept reimbursement of necessary and reasonable expenses for travel, food, lodging, or other incidental expenses, or a waiver or partial waiver of fees or charges for registration, tuition, and similar items, from sources other than the judge's employing entity, if the expenses or charges are associated with the judge's participation in extrajudicial activities permitted by this Code.

(B) Reimbursement of expenses for necessary travel, food, lodging, or other incidental expenses shall be limited to the actual costs reasonably incurred by the judge, or reasonable per diem allowances and, when appropriate to the occasion, by the judge's spouse, domestic partner,* or guest.

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

COMMENT

[1] Educational, civic, religious, fraternal, and charitable organizations often sponsor meetings, seminars, symposia, dinners, awards ceremonies, and similar events. Judges are encouraged to attend educational programs, as both teachers and participants, in law-related and academic disciplines, in furtherance of their duty to remain competent in the law. Participation in a variety of other extrajudicial activity is also permitted and encouraged by this Code.

[2] Not infrequently, sponsoring organizations invite certain judges to attend seminars or other events on a fee-waived or partial-fee-waived basis, and sometimes include reimbursement for necessary travel, food, lodging, or other incidental expenses. A judge's decision whether to accept reimbursement of expenses, a per diem allowance, or a waiver or partial waiver of fees or charges in connection with these or other extrajudicial activities must be based upon an assessment of all the circumstances. The judge must undertake a reasonable inquiry to obtain the information necessary to make an informed judgment about whether acceptance would be consistent with the requirements of this Code.

[3] A judge must assure himself or herself that acceptance of reimbursement, per diem allowances, or fee waivers would not appear to a reasonable person to undermine the judge's independence,* integrity,* or impartiality.*

RULE 3.15

Reporting Requirements

- (A) A judge* shall publicly report the amount or value of:
 - (1) compensation received for extrajudicial activities as permitted by Rule 3.12;
 - (2) gifts and other things of value as permitted by Rule 3.13 (D), unless the value of such items, alone or in the aggregate with other items received from the same source in the same calendar year, does not exceed \$150; and
 - (3) reimbursement of expenses and per diem allowances, and waiver or partial waiver of fees or charges permitted by Rule 3.14 unless the amount of reimbursement or waiver, alone or in the aggregate with other reimbursements or waivers received from the same source in the same calendar year, does not exceed \$150.
- (B) When public reporting is required by paragraph (A), a judge shall report
 - (1) the payor, date, place, nature of the activity, and the time period for which compensation, reimbursement of expenses, or per diem allowance is received and for which waiver or partial waiver of fees or charges is permitted, unless disclosure would impair the confidentiality of parties involved in mediation; and
 - (2) the donor and description of any gift, loan, bequest, benefit, or other thing of value accepted.
- (C) The public report required by paragraph (A) shall be made annually on or before the last day of April.
- (D) Reports made in compliance with this Rule shall be filed as public documents in the office of the Chief Justice.

CANON 4

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

RULE 4.1

Political Activities of Judges and Judicial Nominees in General

(A) Except as permitted by law,* or by Rule 4.3, a judge* or a judicial nominee* shall not:

- (1) act as a leader in, or hold an office in, a political organization;*
- (2) make speeches on behalf of a political organization;
- (3) publicly endorse or oppose a candidate for any public office;
- (4) solicit* funds for, pay an assessment to, or make a contribution* to a political organization or a candidate for public office;
- (5) attend or purchase tickets for dinners or other events sponsored by a political organization or a candidate for public office;
- (6) publicly identify himself or herself as a candidate of a political organization;
- (7) seek, accept, or use endorsements from a political organization.

(B) A judge or judicial nominee shall take reasonable measures to ensure that other persons do not undertake, on behalf of the judge or judicial nominee, any activities prohibited under paragraph (A).

COMMENT

GENERAL CONSIDERATIONS

[1] A judge plays a role different from that of a legislator or executive branch official. Rather than making decisions based upon the expressed views or preferences of the electorate, a judge makes decisions based upon the law and the facts of every case. Therefore, in furtherance of this interest, judges and judicial nominees must, to the greatest extent possible, be free and appear to be free from political influence and political pressure. This Canon imposes narrowly tailored restrictions upon the political activities of all judges and judicial nominees.

[2] When a person becomes a judicial nominee, this Canon becomes applicable to his or her conduct.

PARTICIPATION IN POLITICAL ACTIVITIES

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

[4] Paragraphs (A)(2) and (A)(3) prohibit judges and judicial nominees from making speeches on behalf of political organizations or publicly endorsing or opposing candidates for public office, respectively, to prevent them from abusing the prestige of judicial office to advance the interests of others. See Rule 1.3. These Rules do not prohibit judicial nominees from seeking support or endorsement on their own behalf.

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

[6] Judges and judicial nominees retain the right to participate in the political process as voters in both primary and general elections.

[7] The ABA Model Code of Judicial Conduct contains rules relating to the election of judges and to the campaigns of elected judges. Rules relating to elected judges are not included in these Rules, as almost all judges in Rhode Island, including municipal judges, are appointed. There is, however, one municipality in Rhode Island that elects its probate judge, and it is possible that other municipalities would provide for such elected judges in the future. With respect to such elected judges, the rules of the ABA Model Code of Judicial Conduct relating to the election of judges and to the campaigns of elected judges are incorporated by reference and shall govern the conduct of such elected judges in Rhode Island.

RULE 4.2

Activities of Judicial Nominees and Candidates for Appointive Judicial Office

(A) A candidate for appointment to judicial office* and a judicial nominee* may:

- (1) communicate with the appointing or confirming authority, including any selection, screening, or nominating commission or similar agency; and
- (2) seek endorsements for the appointment from any person or organization other than a political organization.*

(B) Candidates for appointive judicial office and judicial nominees shall not, when seeking support or endorsement, or when communicating directly with an appointing or confirming authority, make any pledges, promises, or commitments

that are inconsistent with the impartial* performance of the adjudicative duties of the office.

RULE 4.3

Activities of Judges Who Become Candidates for Non-judicial Office

(A) Upon becoming a candidate for a non-judicial public elective office, a judge* shall resign from judicial office.

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

COMMENT

[1] In campaigns for non-judicial elective public office, candidates may make pledges, promises, or commitments related to positions they would take and ways they would act if elected to office. Although appropriate in non-judicial campaigns, this manner of campaigning is inconsistent with the role of a judge, who must remain fair and impartial* to all who come before him or her. The potential for misuse of the judicial office, and the political promises that the judge would be compelled to make in the course of campaigning for non-judicial elective office, together dictate that a judge who wishes to run for such an office must resign upon becoming a candidate.

[2] The “resign to run” rule set forth in paragraph (A) ensures that a judge cannot use the judicial office to promote his or her candidacy, and prevents post-campaign retaliation from the judge in the event the judge is defeated in the election. When a judge is seeking appointive non-judicial office, however, the dangers are not sufficient to warrant imposing the “resign to run” rule.

JUDICIAL ADVISORY COMMITTEE

In order to assist judges* in complying with the foregoing Code of Judicial Conduct, an advisory committee has been appointed by the Supreme Court with authority to interpret the code and to provide an opinion upon the request of any judge or judicial officer* concerning a proposed action and its propriety in the light of said code. The advisory committee consists of five (5) members of the judiciary, not more than two (2) of whom may be from the same court. The advisory committee will give the inquiring judge an opinion in respect to the propriety or impropriety* of the judge’s proposed action provided that an opinion may not be issued where the request concerns a matter that is pending* before a court. An opinion from the advisory committee that it is proper for the judge to take certain action will give rise to a conclusive presumption that the judge has acted properly. Any judge who acts in accordance with an opinion given by the advisory committee shall be presumed to have abided by the Code of Judicial Conduct.

RULE 5

Claims Against Members of the Judiciary.

Any person having a claim of a civil nature against a member of the judiciary may apply to the Supreme Court for the appointment of an attorney to represent such person at his or her own expense, and it shall be the duty of any attorney so appointed, as an officer of this court, to prosecute such claim.

RULE 6.

Mandatory Continuing Judicial Education.

Preamble. Of primary importance to the courts, the bar, and the public is that the members of the Rhode Island Judiciary continue their judicial and legal education in order to fulfill their obligation to serve the citizens of this state with competence, integrity, independence, and objectivity. This rule is adopted to establish mandatory minimum requirements as a means of standardizing continued professional growth.

RULE 6.1

Continuing Judicial Education

(a) *Definitions.*

(1) “*Director*” means the Executive Director of the education programs.

(2) “*In-person*” means a live judicial legal education program presented in a classroom setting devoted to the program with attendees in the same room as the instructor. Question and answer opportunity is made available.

(3) “*Judicial Education*” means judicial training or instruction in judicial process, procedure, skills, and attitudes. Judicial Education should be directed toward the advancement and application of the law* and instituted to assist in producing and supporting an impartial, competent, efficient, and effective Rhode Island Judiciary.

(4) “*Judicial Officers*” means the chief justice, justices, presiding justice, chief judges, associate justices, associate judges, chief magistrate, and magistrates comprising the Rhode Island Judiciary.

(5) “*MCLE Commission*” means the Rhode Island Mandatory Continuing Legal Education Commission.

(6) “*Reporting Year*” means the time period between January 1 and December 31 of any given year.

(7) “*Teleseminar*” means a live Judicial Education program broadcast via telephone to remote locations (i.e., a classroom setting or a central listening location) or to individual attendee telephone lines. Attendees may participate in the program in a group setting or individually. Question and answer opportunity is made available.

(8) “*Webcast/Webinar*” means a live Judicial Education program broadcast via the Internet to remote locations (i.e., a classroom setting or a central viewing or listening location) or to individual attendees. Attendees may participate in the program in a group setting or individually. Question and answer opportunity is made available.

(9) “*Video Replay*” means Judicial Education programs delivered via the Internet, consisting of on-demand, not live, webcasts/webinars (recorded online courses), or video lectures. Question and answer opportunity is not made available.

(b) The MCLE Commission, with the approval of the Supreme Court, shall have the authority to oversee and set standards for compliance with the mandatory Judicial Education requirements set forth below. The Director shall submit an annual report to the Chief Justice regarding compliance with the requirements of this rule and shall tally the attendance of the Judicial Officers at Judicial Education programs.

RULE 6.2

Mandatory Continuing Judicial Education Requirements.

(a) *Minimum Hours.* Every Judicial Officer in the unified judicial system shall be required to complete ten (10) hours of continuing Judicial Education per Reporting Year, a requirement that can be met through participation in the Judicial Conferences as set forth in subsection (c). Newly-appointed judges shall be required to attend the National Judicial College course or the equivalent appropriate to their appointment within their first year on the bench; hours spent in such attendance shall be counted toward their ten (10) hour requirement for that year. Judges now serving who have not attended the National Judicial College course appropriate to their appointment shall be required to attend as funding is available.

(b) *Ethics.* The on-going study of judicial ethics shall be required of all Judicial Officers. Judicial ethics shall also be included as part of the content of the Judicial Conferences as set forth in subsection (c)

(c) *Judicial Conferences.* In order to assist Judicial Officers in meeting the mandatory Judicial Education requirements, a judicial conference consisting of all the Judicial Officers of the Supreme, Superior, Family, District, and Workers' Compensation Courts and the Rhode Island Traffic Tribunal shall be scheduled in the fall and winter of each Reporting Year. Topics for the judicial conferences shall include, but are not limited to, Judicial Education, matters relating to judicial business, the improvement of the judicial system, and the administration of justice. Although active and retired Judicial Officers are not required to participate in the judicial conferences, they are encouraged to do so.

(d) *Exemptions.* Retired judges sitting less than half time shall be exempt from these requirements. Retired judges sitting half time or more shall be required to complete five (5) hours of continuing Judicial Education per Reporting Year, a requirement that can be met through participation in the Judicial Conferences as set forth in subsection (c).

RULE 6.3 Credits

Computation

(a) *Computation.* Judicial Education credit for a course or activity will be awarded on the basis of one (1) credit hour for each fifty (50) minutes actually spent in attendance. One-half credit shall be awarded for:

(1) Courses or activities exceeding standard credit increments by at least twenty-five (25) minutes (e.g. seventy-five (75) minutes = 1½ credits); and

(2) Legal ethics presentations of at least twenty-five (25) minutes duration, whether stand-alone or included in a larger program.

(b) *Calculation of Credits.* Credits are calculated by rounding down to the nearest half credit (e.g. 1.8 credits will be awarded 1.5 credits). NO credit will be allowed for any course or activity of less than twenty-five (25) minutes duration, regardless of the topic.

(c) *Course or Activity Credits.* In-person, live Webcast/Webinar, and live Teleseminar course or activity credits are unlimited.

(d) *Video Replay Credits.* A maximum of six (6) credits per Reporting Year may be earned for Video Replay courses.

(e) *Teaching Credits.* The MCLE Commission will award teaching credits, with an annual

limitation of six (6) credit hours, to a Judicial Officer who teaches a course or activity.

(1) Teaching a course or activity to persons pursuing a degree other than a J.D., L.L.B., L.L.M., or S.J.D degree for a semester (fifteen (15) weeks) or a trimester (ten (10) weeks) will qualify for teaching credit at a rate of six (6) teaching credits per Reporting Year.

(2) Teaching a course or activity to persons pursuing a J.D., L.L.B., L.L.M., or S.J.D degree for a semester (fifteen (15) weeks) or a trimester (ten (10) weeks) will qualify for teaching credit at a rate of six (6) teaching credits per Reporting Year.

(3) A single instructor of a course or activity teaching for less than a semester (fifteen (15) weeks) or trimester (ten (10) weeks) will qualify for teaching credits by multiplying the total number of minutes of instruction by three (3) and dividing this total by fifty (50) minutes for the credit hour.

(4) Multiple instructors (more than one (1) instructor presenting during the course or session), moderators of a panel, and/or panel participants on a teaching panel will qualify for teaching credit by multiplying the total number of minutes of instruction by two (2) and dividing this total by fifty (50) minutes for the credit hour.

A judicial officer shall not receive participation credit in addition to reaching credits. If a judicial officer has reached six (6) teaching credits for the Reporting Year and the judicial officer teaches additional courses or sessions, the judicial officer shall not received participation credit.

(5) Teaching a course or activity under the following circumstances does not qualify for teaching credit:

- (i) Actual instruction time was less than twenty-five (25) minutes;
- (ii) Materials were not distributed; and
- (iii) Presentation was to less than six (6) students not including the instructor.

(f) *Authorship Credits*. Upon application, Judicial Officers may be awarded credit for research activities when the following criteria are met:

(1) The activity has produced published findings in the form of articles, chapters, monographs, or books personally authored in whole, or in part, by the Judicial Officer.

(2) The activity has contributed substantially to the continuing Judicial Education of the Judicial Officer and/or the legal community.

(3) Such credit(s) shall not exceed five (5) credit hours per Reporting Year. The following information is required to be submitted:

- (i) Title of article, chapter, monograph, or book;
- (ii) Publisher;
- (ii) Volume and number;
- (iv) Date of publication;
- (v) Type of publication;
- (vi) Subject matter;
- (vii) Number of hours spent directly in preparation; and
- (viii) Submission of a copy of the publication to the Director.

(g) *Book Discussion Group Credits*. Judicial Officers may be awarded Book Discussion Group credits. A Book Discussion Group must be led by a teacher or facilitator and have in attendance not less than six (6) members. The book to be discussed must be preapproved by the MCLE Commission **before** credit will be awarded and include how the book qualifies for continuing judicial education and a proposed agenda for discussion. A Judicial Officer is limited to three (3) book discussion credits at a rate of 1.5 credits for each ninety (90) minute session per Reporting Year.

(h) *Excess Credits.* If a Judicial Officer earns more than ten (10) continuing Judicial Education credit hours in a Reporting Year, the excess hours may be used to fulfill, as far as possible, the Judicial Officer's requirement for the next ensuing year, but not thereafter. Excess credits must be reported in the year taken.

Rule 6.4

Filing and Records.

(A) On or before December 31 of each Reporting Year, every Judicial Officer shall file with the Director a Record of Coursework form for each course or activity attended that documents compliance with these requirements. Credit for participation in courses and activities shall require individual documentation for each course and/or activity completed.

(B) Requests for waivers or extensions by a Judicial Officer shall be submitted on or before December 31 of each Reporting Year to the Supreme Court in writing with a full explanation of the circumstances supporting the request. The Supreme Court shall review and approve or disapprove each request on an individual basis.

RULE 6.5

Failure to Comply

Any Judicial Officer who fails to comply and/or fails to document the completion of ten (10) hours of continuing Judicial Education within ninety (90) days of the end of each Reporting Year shall be referred to the chief justice of the Supreme Court by the Director and chairperson of the MCLE Commission. If the noncompliance cannot be resolved, the Judicial Officer may be referred to the Commission on Judicial Tenure and Discipline for possible discipline.

Rule 6.6

In-House Orientation.

Each newly-appointed or promoted Judicial Officer shall participate in an in-house orientation to the bench. A senior Judicial Officer on the respective court shall be partnered with the new Judicial Officer and shall serve as a mentor. The orientation/mentor partnership shall include observations and discussions on, among other topics, case flow, substantive law, sentencing, ethics, termination of legal practice, and bench skills. The partnership shall be for a period of one (1) to three (3) weeks, at the discretion of the chief justice, presiding justice, chief judge, or chief magistrate-of the court in which the newly-appointed or promoted Judicial Officer is to sit.

RULE 6.7

Expenses

All courses or activities shall be the financial responsibility of the judicial education budget, subject to funding. Any course or activity shall be reimbursable with the advance approval of the Administrative Office of State Courts

RULE 6.8
Confidentiality

Subject to the direction of the Supreme Court, the files, records, and proceedings of the MCLE Commission, as they may relate to the failure of a Judicial Officer to satisfy these continuing Judicial Education requirements, shall be confidential. If a matter is referred to the Commission on Judicial Tenure and Discipline, the rules of practice and procedure of that body shall apply as to what degree of confidentiality should be accorded to the files and records relating to a Judicial Officer's fulfillment of the Judicial Education requirements. The MCLE Commission may, in anonymous fashion, abstract statistical studies for the Commission's purposes.

RULE 7.
Judicial Performance Evaluation.

Preamble. The courts, the public and the bar have a vital interest in a responsive and respected judiciary. This Rule is adopted in recognition of the fact that the periodic evaluation of a judge's performance is a reliable method for promoting judicial excellence and competence.

RULE 7.1
Judicial Performance Evaluation Committee

(A) This court shall appoint a Judicial Performance Evaluation Committee, to develop and administer, under the Court's supervision, a program for the continuing evaluation of judicial performance. The Committee shall establish procedures to implement the program and shall oversee its daily operation. The Committee shall submit an annual report to the Court which shall contain a summary of evaluation results and recommendations for the improvement of the program.

RULE 7.2
Judicial Performance Evaluation Program

(A) There shall be established a Judicial Performance Evaluation Program, to the supervised by this Court and implemented and administered by the Judicial Performance Evaluation Committee. The primary goals of this program shall be the self-improvement of individual judges and the improvement of the judiciary as a whole. A secondary goal of the program shall be the improvement of the design and content of continuing judicial education programs. The Judicial Performance Evaluation Program shall be administered so that there shall be no interference with the performance of the regular duties of judges and no infringement on judicial integrity.

(B) Each judge in the unified judicial system shall be evaluated biennially. Newly appointed judges shall be evaluated at the end of their second year of service.

(C) The criteria for evaluation shall address all facets of a judge's performance, including, but not limited to, integrity, knowledge and understanding of law and procedure, communication skills, preparation, attentiveness, control over the proceeding, management skills, punctuality, service to the profession and the public, and effectiveness in working with other judges.

(D) The evaluation process shall employ acceptable, professionally recognized methods of data collection. The data shall be obtained from multiple sources to provide balanced information and shall be based on a judge's current performance. The data collection instruments shall be reviewed by experts in research techniques to ensure that such methods are valid and free from bias.

(E) Staff support for the program shall be provided by the Administrative Office of the State Courts.

RULE 7.3

Records

(A) *Confidentiality.* – All records and information obtained and maintained by the Committee concerning judicial performance shall be confidential and shall not be disclosed except in accordance with the Rule. The Committee shall ensure the confidentiality of all information, questionnaires, notes, memoranda, electronic and computer data, and any other data obtained in the course of a judicial performance evaluation and shall ensure the confidentiality of the identity of any person who provides information in the course of such an evaluation.

(B) *Disclosure.* – Evaluation information shall be used only to promote the goals of the program. For the purpose of self-improvement, individual data and results shall be provided only to the judge being evaluated and to the chief or presiding judge of his or her court, who shall review the data with the judge being evaluated. Evaluation information in summary form, without reference to the names of individual judges, shall be provided to the Supreme Court, to be used for the purposes of improving the administration of the judiciary, developing judicial education programs, and providing the public with information about judicial performance. Evaluation information shall not be used to discipline an individual judge or be disclosed to the Commission on Judicial Tenure and Discipline, except as required by the Canons of Judicial Ethics. (Code of Judicial Conduct.)

REGULATIONS OF THE JUDICIAL PERFORMANCE EVALUATION COMMITTEE

Preamble

7.3(a) Establishes broad confidentiality for JPEC materials and reports:

1. All records and information obtained and maintained by the Committee are required to be kept confidential.

2. All information, questionnaires, notes, memoranda, electronic and computer data, and any other data obtained in the course of a judicial performance evaluation is required to be kept confidential.

3. The identity of any person who provides information in the course of such an evaluation shall be kept confidential.

7.3(b) Provides how the material may be used: i.e., the very limited exceptions to confidentiality:

1. Individual data and results shall be provided only to the judge being evaluated and to the chief or presiding judge of his or her court, who shall review the data with the judge

being evaluated.

2. Evaluation information in summary form, without reference to the names of individual judges, shall be provided to the Supreme Court, to be used for the purposes of improving the administration of the judiciary, developing judicial education programs, and providing the public with information about judicial performance.

3. Evaluation information shall not be used to discipline an individual judge or be disclosed to the Commission on Judicial Tenure and Discipline, except as required by the Canons of Judicial Ethics (Code of Judicial Conduct).

The purpose of these regulations is:

1. To confirm the requirement of confidentiality and to clarify its application;
2. To provide for consistent treatment of evaluation records;
3. To establish the limits of the use of evaluations;
4. To establish uniform regulations for the disclosure of the results of performance evaluations.
5. To provide for sanctions for the violation of the confidentiality rules.

Based on the experience with the pre-existing superior court evaluation program and the clear benefits of disclosure of individual data to judges in that court, the release of individual data to judges being evaluated is recognized as important to the evaluation process. Judges who have been evaluated and for whom there are a number of individual evaluations should have the opportunity to review the individual evaluations at the time of the evaluation and thereafter. To that effect, each judge shall be custodian of the individual questionnaires and evaluations upon the conclusion of the evaluation. Each judge's retention of the individual questionnaires and evaluations shall none- the less be subject to the confidentiality requirements of these regulations.

Confidentiality of the records of the JPEC is critical to the willingness of individuals to participate in the evaluation program and to provide responses to questionnaires and the like. Accordingly, confidentiality is critical to the success of the program. The confidentiality that is at issue here is not a privilege personal to the judge under evaluation. The requirement of confidentiality has positive benefits to the judicial performance evaluation system and to the committee, irrespective of its benefits to the individual judge. Accordingly, the requirement of confidentiality cannot be waived by an individual judge. Thus, under the regulations adopted by the JPEC, no judge is authorized to disclose the results of an evaluation or to disclose any information concerning an evaluation, except as provided by Rule 4.3 and these regulations. This is true whether the evaluation is positive or negative.

Breach of the confidentiality requirement would have a serious effect on the success of the evaluation program. Furthermore, breach of the confidentiality may affect the interests of judges subject to evaluation and of those providing raw data for the purpose of evaluation. Thus, these regulations specify the nature of sanctions that may be imposed upon a person who violates the confidentiality requirement.

Regulation 1. All material to remain the property of the JPEC and to be subject to JPEC control for purposes of confidentiality/destruction.

All material of any kind whatsoever gathered or received by the JPEC for the purpose of evaluating a judge or judges, including but not limited to all information, questionnaires, notes, memoranda, electronic and computer data, and any other data obtained in the course of a judicial performance evaluation, shall be the property of the JPEC.

The chair of the JPEC shall be the legal custodian of all such records or materials, except those custody of which has been transferred to an individual judge.

The JPEC shall establish internal procedures for the control of all such material in order to

assure its confidentiality.

The JPEC shall establish internal procedures for the destruction of confidential material relating to an individual judge, upon such terms and conditions, and at such times, as the JPEC shall determine. Material, custody of which is transferred to an individual judge, shall be kept or destroyed, at the discretion of the individual judge.

Regulation 2. Disclosure of individual questionnaires and evaluations and statistical summaries to the chief or presiding judge and to the judge under evaluation for purpose of conducting evaluation; disclosure of summary information to Supreme Court.

The JPEC shall collect and retain in its care, custody, and control all information, questionnaires, notes, memoranda, electronic and computer data, and any other data obtained in the course of a judicial performance evaluation.

The JPEC shall segregate all such data by individual judge, in order to permit biannual evaluation of each judge.

The JPEC shall provide a single copy of all such data relating to an individual judge, including any statistical summaries the JPEC may have developed, to the chief or presiding judge of the court of which the judge being evaluated is a member. No additional or other copies of any of the individual data shall be made by either the chief or presiding judge or the judge under evaluation.

Upon receipt of the individual data and information and any statistical summary from the JPEC, a chief or presiding judge may review the material with the judge under evaluation and the judge under evaluation shall have the opportunity to review the material. The chief or presiding judge may enlist, if necessary, the assistance of a retired judge from that court to review the performance information with the judge being evaluated. Upon the conclusion of the evaluation, custody of the original data upon which the evaluation is based shall be transferred to the judge under evaluation.

The JPEC shall provide evaluation information in summary form, without reference to the names of individual judges, to the Chief Justice of the Supreme Court.

Regulation 3. Nondisclosure of individual data and summary data; exception for Commission on Judicial Tenure and Discipline.

(a) Individual data completely confidential and not to be disclosed. Individual data shall be absolutely confidential and privileged except as provided above. No member of the JPEC or person associated with the JPEC, no chief or presiding judge, and no judge who has been subject to evaluation, shall disclose the nature or contents of any individual questionnaire, notes, or memoranda, which formed a part of the evaluation or the material upon which the evaluation was based, in any context whatsoever.

(b) Summary data regarding individual judge completely confidential and not to be disclosed. If a statistical summary of the data regarding an individual judge is prepared and is provided to the chief or presiding judge and to the judge under evaluation, such summary shall be absolutely confidential and privileged, except as provided above. No member of the JPEC or person associated with the JPEC, no chief or presiding judge, and no judge who has been subject to evaluation, shall disclose the nature or contents of any individual questionnaire, notes, or memoranda, which formed a part of the evaluation, in any context whatsoever.

(c) Exception for Commission on Judicial Tenure and Discipline. If, upon review of evaluation material submitted by the JPEC, a chief or presiding judge determines that the evaluation material or some portion thereof requires the chief or presiding judge to file a

complaint to the Commission on Judicial Tenure and Discipline, the chief or presiding judge may make such complaint as the chief or presiding judge determines is required under the provisions of Canon 3(D)(1) of the Code of Judicial Conduct. In filing the complaint, the chief or presiding judge may disclose to the Commission on Judicial Tenure and Discipline such material from the evaluation information as the chief or presiding judge determines, in the exercise of discretion, is necessary to an appropriate complaint. An individual judge who has been the subject of a complaint filed by a chief or presiding judge, which complaint is based on or includes evaluation material or some portion thereof, may provide such additional evaluation material to the Commission on Judicial Tenure and Discipline as the individual judge determines is appropriate or necessary to defend against the allegations of the complaint. Upon the filing of the complaint and the response of an individual judge with the Commission on Judicial Tenure and Discipline, confidentiality as to the material disclosed to the Commission on Judicial Tenure and Discipline shall be determined by the rules of that commission.

Regulation 4. Disclosure of the results of performance evaluation.

No judge who has been evaluated, nor any chief, presiding, or retired judge who has participated in the performance evaluation of another judge, shall disclose the results of the individual evaluation to any other person, body, or agency, except the Commission on Judicial Tenure and Discipline, as provided above. No judge who has been the subject of an evaluation may waive the confidentiality requirement of the evaluation results.

Regulation 5. Sanctions for violation of the confidentiality rules.

Any judge who breaches the confidentiality and privilege requirements of these regulations may be guilty of violating the requirement of Canon 2 of the Code of Judicial Conduct that “[a] judge shall comply with the law ”

Any person other than a judge who breaches the confidentiality and privilege requirements of these regulations may be subject to appropriate sanction and may be guilty of contempt of court.