

JUDICIAL CONDUCT BOARD OF PENNSYLVANIA

NEWSLETTER

No. 2 Spring 2014

MESSAGE FROM THE CHAIR

The season has changed. Spring has sprung and there's newness all around us!

This Newsletter also brings news of something new. Effective July 1, 2014, judges on the Municipal Court of Philadelphia, the Courts of Common Pleas, the Superior and Commonwealth Courts, and the justices of the Supreme Court, will be subject to a new Code of Judicial Conduct. I was honored to have been selected by the Supreme Court to chair its Ad Hoc Committee to examine the existing Code and make recommendations for its revision.

The New Code was promulgated by the Supreme Court on January 8, 2014. Though it has fewer Canons than the one it replaces - - four rather than seven - - everything that was covered in the prior Code finds a place in the new one. The Code has been revamped and modernized with the hope of providing clearer guidance to the judicial officers who are subject to it, to the Judicial Conduct Board which is constitutionally bound to enforce it, and to the Court of Judicial Discipline and the Supreme Court which will be called upon to interpret it. A number of the provisions in the New Code are new, such as the prohibitions on serving on corporate and bank boards and hiring relatives and belonging to groups that practice invidious discrimination and the changes in the timing of campaigning and fundraising for judicial office. A copy of the New Code is included with this Newsletter along with an article written by Board counsel highlighting the changes wrought by the New Code.

In addition to a New Code, I am also proud and pleased to introduce the Bench to two new members of the Board: Richard T. Frazier, Esquire, and Harold E. "Hal" Flack II. Both were recently appointed to the Board by Governor Corbett bringing the Board to its full 12-member complement. Rich is a lawyer with Saul Ewing and Hal is an entrepreneur and philanthropist. Rich holds one of the three lawyer positions on the Board and Hal is one of the six non-lawyer electors.

As we noted in our initial Newsletter, we hope that this information is helpful to you and that you will provide feedback to the information that we provide.

With best personal and professional regards, I am

Most respectfully,

Anne

Anne E. Lazarus
Chair, Judicial Conduct Board

The Judicial Conduct Board of Pennsylvania NEWSLETTER is intended to inform and educate members of the Bench regarding activities and initiatives of the Judicial Conduct Board. To ensure that you receive each NEWSLETTER and announcement from the Judicial Conduct Board, please add us to your "safe recipients" list in your email system. Please do not reply to this email. Send any comments or questions to ContactUs@jcbpa.org.

MEET THE BOARD'S TWO NEWEST MEMBERS

Since the beginning of 2014, two new members have been appointed to the Judicial Conduct Board: Richard T. Frazier, Esquire, and Harold E. "Hal" Flack II.

Governor Tom Corbett appointed Mr. Frazier to the twelve-member Board on February 4, 2014. As specified in the Constitution, he will serve as one of three members of the Board from the bar of the Supreme Court of Pennsylvania. He is a member of the Republican Party and was appointed to a four-year term that will expire on February 4, 2018.

Rich is a partner in the Philadelphia and Chesterbrook offices of Saul Ewing, LLP. He joined the law firm as an associate in 1976 and served on its executive committee from 1999 until 2004. Rich concentrates his practice on business, tax and health law matters. He is Vice Chair of the Tax and Accounting Interest Group of the Health Law Section of the American Bar Association (ABA) and a member of the Joint Task Force of Health Law and Taxation Sections of the ABA which is preparing comments on Accountable Care Organizations for submission to the Internal Revenue Service. He is also a member of the Pennsylvania Department of State's Corporation Bureau Advisory Committee.

In addition to his professional associations, Rich is and has been involved in a number of civic activities. Since 2005, he has served on the Board of Supervisors of Easttown Township in Chester County and became Chairman of the Board in 2012. He is a member of the Joint Tredyffrin/Easttown Fire and Emergency Medical Services Task Force and the Chester County International Trade Council of the Chester County Industrial Development Council. He has served on the Board of and currently serves as counsel to Public Citizens for Children and Youth (formerly known as Philadelphia Citizens for Children and Youth), the leading child advocacy organization in the greater Philadelphia area, which he helped create in 1980.

Rich received his Bachelor's degree, with honors, from Dartmouth College. He received his Masters of Business Administration from Dartmouth's Tuck School of Business. He was awarded both his Juris Doctor degree, as well as his Masters of Legal Letters degree in Taxation, from the Villanova University School of Law where he served as editor of the law review and a member of the Order of the Coif. In 2005, Rich was selected for inclusion in Pennsylvania Super Lawyers.

The Governor appointed Mr. Flack to the Board on April 17, 2014. He will serve as one of the six constitutionally required non-lawyer members. He is a member of the Republican Party. His four-year term will expire on April 17, 2018.

Hal was the President of Diamond Manufacturing Company and co-owner of Diamond Consolidated industries for over 30 years. He also served as President of Exeter Architectural Products of Wyoming, Pennsylvania and Palm City, Florida. He retired in 2010 when Diamond Consolidated Industries merged with Reliance Steel and Aluminum Company. Diamond Manufacturing is North America's leading and largest producer of perforated metal products with plants in Pennsylvania, Indiana, Wisconsin, Tennessee, North Carolina and Texas. Diamond, founded by Mr. Flack's great grandfather, has been in business in Wyoming, Pennsylvania since 1915. Exeter Architectural Products, started by Flack and his brother Rusty in 1989, manufactures hurricane barrier screens, security screens and security doors for markets including governmental, institutional, educational and commercial entities.

A graduate of Wyoming Seminary Class of 1977, Hal earned a bachelor's degree from New England College in 1981. He holds six United States Patents relating to security and storm protection products.

His business and community activities included having served as a board member of Diamond Consolidated Industries, Exeter Architectural Products, Eastern Insurance Group, M&T Bank Northeastern Pennsylvania Advisory Board, and the Greater Wilkes-Barre Chamber of Business and Industry. He was a member of the Board of Trustees of New England College for 8 years where he served in various capacities, including Vice Chairman and Annual Fund Chairman. He also served as Chairman of the Wyoming Valley Chapter of Ducks Unlimited, Chairman of the Pennsylvania State Police Troop P Camp Cadet Program, Chairman of the Alexis de Tocqueville Society of the United Way, President of the Wyoming Business Club, and a Board Member of the Northeastern Pennsylvania Council of the Boy Scouts of America.

He currently serves on the Board of Trustees of Misericordia University, the Board of the North Mountain Club, the Wyoming Commemorative Association, and the Westmoreland Club where he is immediate Past President and Chairs the Nominating Committee.

In 2001, Hal and his family were named Outstanding Philanthropists of the Year by the Association of Fundraising Professionals. He and his wife, Jean, have been married for 32 years. They reside in Dallas, Pennsylvania and have four adult children.

THE CODE OF JUDICIAL CONDUCT OF 2014

By

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By Order of January 8, 2014, the Pennsylvania Supreme Court rescinded the current Code of Judicial Conduct and simultaneously adopted a new Code of Judicial Conduct of 2014 and corresponding Rules. The new provisions go into effect, with minor exceptions, on July 1, 2014.

This article will examine the revisions made to the Code. It will describe the new format of the Code, including the addition of a Preamble, and sections dealing with "Terminology" and "Application." It will note the changes made to existing provisions and describe newly added provisions.

INTRODUCTORY MATTERS AND STRUCTURE

The Code of Judicial Conduct of 2014¹ now structurally resembles the Rules of Professional Conduct which govern the conduct of lawyers.² Like the Rules of Professional Conduct, the New Code contains a "Preamble," a section entitled "Terminology," and a section entitled "Application." The Old Code contained none of these divisions although some of the matters addressed in them were addressed in the Old Code.

The Preamble explains that the New Code is the "canon of ... judicial ethics" referred to in Article V, Section 17(b) of the Pennsylvania Constitution.³ That section provides, in pertinent part, that justices and judges "shall not violate any canon of ... legal ethics prescribed by the Supreme Court."⁴ Therefore, a violation of a canon could subject a judge to investigation by the Judicial Conduct Board and sanction by the Court of Judicial Discipline.⁵

¹ The Supreme Court Order adopting the new canons refers to the new Code as the "Code of Judicial Conduct of 2014." This article will refer to this version as the "New Code." A Canon set forth in the New Code will be referred to as a "New Canon." The existing Code that was rescinded and is being replaced will be referred to as the "Old Code" and a Canon from the Old Code will be referred to as an "Old Canon."

² As will be explained in text, some of the provisions of the New Code are based on the Code of Professional Conduct.

³ New Code, Preamble [1].

⁴ Pa. Const., art. V, § 17(b).

⁵ Pa. Const., art. V, § 18(d)(1)(a judicial officer may be disciplined for "a violation of section 17 of this article").

The Preamble further explains that the rules contained in the New Code “necessarily require judges, individually and collectively, to treat and honor the judicial office as a public trust, striving to preserve and enhance legitimacy and confidence in the legal system.”⁶

The Preamble provides rules of interpretation for the New Code. It notes that the “Rules” set forth in the New Code “are rules of reason that should be applied consistently with constitutional requirements, statutes, other court rules, and decisional law, and with due regard for all relevant circumstances.”⁷ In setting forth this principal, the Supreme Court has clearly expressed that “[t]he Code is to be construed so as not to impinge on the essential independence of judges in making judicial decisions.”⁸

For the purpose of imposing discipline, the Preamble expounds:

Where a Rule contains a permissive term, such as “may” or “should,” the conduct being addressed is committed to the personal and professional discretion of the judge or candidate in question, and no disciplinary action should be taken for action or inaction within the bounds of such discretion. Moreover, it is not intended that disciplinary action would be appropriate for every violation of the Code’s provisions. Whether disciplinary action is appropriate, and the degree of discipline to be imposed, should be determined through a reasonable application of the text and should depend on such factors as the seriousness of the violation, the intent of the judge, whether there is a pattern of improper activity, and the effect of the improper activity on others or on the judicial system.⁹

The necessary corollary to the use of the permissive terms “may” and “should” is that the use of the word “shall” which now appears regularly throughout the New Code (and often where the word “should” appeared in the Old Code), implies an obligation on the part of the judicial officer. If a justice or judge violates such a proscription, he or she may be subject to disciplinary action.¹⁰

⁶ New Code, Preamble [2].

⁷ New Code, Preamble [5]. The Rules of Professional Conduct use the “rules of reason” language. See Pa.R.P.C. Preamble [14].

⁸ New Code, Preamble [5].

⁹ New Code, Preamble [6]. Similar language is found in the Rules of Professional Conduct. See Pa.R.P.C. Preamble [14].

¹⁰ Though not expressed in the New Code, the Rules of Professional Conduct state: “Some of the Rules are imperatives, cast in terms ‘shall’ or ‘shall not.’ These define proper conduct for purposes of professional discipline.” Pa.R.P.C. Preamble [14].

Like the Rules of Professional Conduct, the New Code explains that it “is not designed or intended as a basis for civil or criminal liability.”¹¹ It is also not “intended to be the basis for litigants to seek collateral remedies against each other or to obtain tactical advantages in proceedings before a court.”¹²

The New Code continues to designate the Ethics Committee of the Pennsylvania Conference of State Trial Judges as the approved body to render advisory opinions regarding ethical concerns involving judges, other judicial officers and judicial candidates subject to the New Code for purposes of the so-called “Rule of Reliance.” The Rule of Reliance requires the Judicial Conduct Board, the Court of Judicial Discipline and the Supreme Court of Pennsylvania to take into account that a judge sought guidance on an ethical question and acted in reliance on that guidance in determining whether discipline should be recommended or imposed.¹³

The “Terminology” section of the New Code is entirely new. It had no counterpart in the Old Code. It defines the following terms contained in the New Code: aggregate; appropriate authority; contribution; domestic partner; economic interest; fiduciary; impending matter; impropriety; independence; integrity; judicial candidate; knowingly, knowledge, known, and knows¹⁴; law; member of the candidate’s family; member of the judge’s family; member of the judge’s family residing in the judge’s household; nonpublic information; party; pending matter; personally solicit; political organization; public election; and third degree of relationship. Along with the obligatory language of the New Code, the inclusion of specific definitions will provide judges with a clearer understanding of what is required and expected of them and will provide the Judicial Conduct Board with better guidance as to what constitutes actionable misconduct.¹⁵

The “Application” section of the New Code states that it applies to “all Supreme Court Justices; all Superior Court Judges; all Commonwealth Court Judges; all Common Pleas Court Judges; all judges of the Philadelphia Municipal Court, except for Traffic Division; and all senior judges.”¹⁶ Under the New Code, a senior judge may accept an extrajudicial appointment which a judge in regular service would be precluded from accepting by New Rule 3.4, but must refrain from judicial service during the period of the

¹¹ New Code, Preamble [7]. *Compare* Pa.R.P.C. Preamble [19].

¹² New Code, Preamble [7]. *Compare* Pa.R.P.C. Preamble [19].

¹³ New Code, Preamble [8]. This Rule of Reliance was previously set forth in an addendum to the Old Code following old Canon 7.

¹⁴ This definition is virtually identical to that found in the Rules of Professional Conduct. See Pa.R.P.C. No. 1.0(f).

¹⁵ Other definitions are found in the New Code. For example, “nepotism” which is now proscribed in Rule 2.13 (A)(2) of the New Code is defined in the Comment to that New Rule. See Rule 2.13 Comment [2].

¹⁶ New Code, Application [2].

appointment.¹⁷ Like the Old Code, the New Code does not apply to magisterial district judges or judges of the Traffic Division of the Philadelphia Municipal Court.¹⁸

Subsection [4] of the Application section makes it clear that New Canon 4, relating to political and campaign activities, applies to all judicial candidates.¹⁹ This is consistent with Rule 8.2 of the Rules of Professional Conduct which provides that “[a] lawyer who is a candidate for judicial office shall comply with the applicable provisions of the Code of Judicial Conduct.”²⁰

One final prefatory matter should be addressed before explication of the New Code and Canons. The Supreme Court Order adopting the New Code makes it clear that “new Canons 1 through 4 of the Code of Judicial Conduct of 2014 and the corresponding Rules are adopted in the attached form.”²¹ Interspersed among the New Canons and New Rules are “Comments.” From the phrasing of the Order, the Comments were not adopted and they do not stand on the same footing as the New Canons and New Rules. While the New Rules are mentioned in the Preamble, any mention of the Comments is glaringly absent. The Preamble to the Rules of Professional Conduct does discuss the use of Comments in that document. It states that “Comments do not add obligations to the Rules but provide guidance for practicing in compliance with the Rules.”²² It must be assumed that the Comments in the New Code serve a similar function for the Commonwealth’s judicial officers. They offer guidance and examples, but are not of the same weight or import as the New Canons and Rules.

¹⁷ New Code, Application [3]. The Old Code was not as explicit in defining the judges to which it applied. The subject was addressed in a section entitled “Compliance with the Code of Judicial Conduct” which followed old Canon 7. That section of the Old Code provided that “[a]nyone, whether or not a lawyer, who is an officer of the judicial system performing judicial functions, including an officer such as a referee in bankruptcy, special master, court commissioner, or magistrate, is a judge for the purpose of this Code.”

¹⁸ New Code, Application [5]. The Old Code said that it applied to all judges except senior judges while serving extrajudicial appointments, magisterial district judges and judges of the Traffic Court of Philadelphia.

¹⁹ New Code, Application [4].

²⁰ Pa.R.P.C. No. 8.2(b). See also New Code, Canon 4, Rule 4.1, cmt. [2] (“When a person becomes a judicial candidate, this Canon becomes applicable to his or her conduct.”).

²¹ The Supreme Court Order of January 8, 2014 and the entire New Code are appended to this article in their entirety.

²² Pa.R.P.C. Preamble [14].

CANON 1

New Canon 1 of the New Code is a consolidation of the basic premises of Canons 1 and 2 of the Old Code. The new Canon combines the language of old Canons 1 and 2, as follows: "A JUDGE SHALL UPHOLD AND PROMOTE THE INDEPENDENCE, INTEGRITY AND IMPARTIALITY OF THE JUDICIARY, AND SHALL AVOID IMPROPRIETY AND THE APPEARANCE OF IMPROPRIETY."²³ Like the remainder of the New Code, New Canon 1 contains improved, definitive language and detailed Rules and Comments that provide standards and objective tests to be used in evaluating the conduct of judicial officers. In comparing New Canon 1 to Old Canons 1 and 2, it is helpful to categorize the differences.

The New Canon contains the word "shall" and therefore, judges are required to strictly comply with New Canon 1. This is distinguishable from the language of Old Canons 1 and 2 which contained the word "should." In the same way, the Rules of New Canon 1 consistently contain the word "shall," replacing the "should" language of the text of Old Canons 1 and 2. As discussed above, through the inclusion of the mandatory "shall" language, judges are now on notice as to the exact type of misconduct that will subject them to discipline under New Canon 1. There is no loophole or wiggle room for varied interpretation. If a judge fails to comply with the proscribed conduct of New Canon 1, she or he may be subject to discipline.

Under the Old Code, Canon 1 was considered to be hortatory or an overarching principal against which all other Canons were to be measured. Old Canon 1 urged judges to ". . . observe high standards of conduct so that the integrity and independence of the judiciary may be preserved." The Pennsylvania Supreme Court stated that Old Canon 1 is "primarily a statement of purpose and rule of construction rather than a separate rule of conduct."²⁴ Until now, because of that interpretation, the Court of Judicial Discipline has not considered a violation of Old Canon 1 to be a separate chargeable offense. Therefore, at present, the Judicial Conduct Board does not include violations of Old Canon 1 as a count of misconduct in its complaints against judicial officers.

Under the Old Code, the Court of Judicial Discipline has not disciplined judges solely for misconduct in violation of the title of Old Canon 2 which provides that "Judges should avoid impropriety or the appearance of impropriety in all their activities." For that reason, the Board has not included "engaged in conduct that was improper or gave the appearance of impropriety" as a count of misconduct in its complaints against judicial officers.

²³ New Code, Canon 1.

²⁴ *In re Cicchetti*, 560 Pa. 183, 201, 743 A.2d 431, 441 (2000)(citing *In re Larsen*, 532 Pa. 326, 387, 616 A.2d 529, 558 (1992)).

However, because New Canon 1 is broader in scope and more clearly defined than the former version, judges may expect that the Board will prosecute and the Court of Judicial Discipline may consider disciplinary sanctions for violations of New Canon 1. For example, the list of actual improprieties and the objective test for the appearance of impropriety set forth in the New Canon provide guidance to judges, the Board and the Court of Judicial Discipline that a charge of "improper conduct" may subject a judge to discipline following the implementation of the New Code.²⁵

One significant impediment to the enforceability of Old Canons 1 and 2 was the requirement that a judge was subject to discipline only if the misconduct affected the judicial decision-making process.²⁶ As explained in the Winter 2014 edition of this Newsletter, in October, 2013, the Supreme Court again analyzed Old Canons 1 and 2 and held that prospectively a judge who engages in illegal conduct may be subject to discipline "whether or not the conduct occurred within the judicial decision-making process."²⁷ Therefore, all judges are on notice that they are subject to discipline for engaging in illegal conduct 24 hours a day, seven days a week.

Now, under New Canon 1, a judicial officer's obligation to "comply with the law" is clearly set forth at Rule 1.1. The New Rule specifies that "law" includes the New Code.²⁸ Furthermore, the corresponding Comment clearly distinguishes between a judge's duty to comply with the law and a judge's responsibility to uphold and apply the law in judicial decision-making.²⁹ Although, neither Rule 1.1 nor its related Comment contain the "at all times" language of Rule 1.2, a judge who engages in illegal conduct, whether it

²⁵ New Canon 1, Rule 1.2 cmt. [5]. This analysis is aided by the fact that the New Code contains a definition of the word "impropriety" as noted above.

²⁶ *In re Cicchetti*, 560 Pa. at 201, 743 A.2d at 441 (a common pleas judge's off the bench sexual misconduct did not violate Canons 1 and 2A). See also *In re Harrington*, 587 Pa. 407, 899 A.2d 1120 (2006)(in *dicta*, Supreme Court disapproved Court of Judicial Discipline decision that magisterial district judge's uncharged but admittedly criminal actions violated Canon 2A because her conduct "did not implicate the judicial decision-making process").

²⁷ *In re Carney*, ___ Pa. ___, ___, 79 A.3d 490, 507 (2013)(magisterial district judge incited road rage incident, waved gun out car window and entered guilty plea to two counts of disorderly conduct).

²⁸ "Law" as used in the New Code and this New Rule "refers to constitutional provisions, statutes, decisional law, Supreme Court Rules and directives, including this Code of Judicial Conduct and the Unified Judicial System Policy of Non-Discrimination and Equal Opportunity, and the like which may have an effect upon judicial conduct." New Code, Terminology, "Law."

²⁹ New Code, Canon 1, Rule 1.1, Comment ("This Rule concerns a judge's duty to comply with the law. For a judge's duty to uphold and apply the law in judicial decision-making, see Rule 2.2 and Comment [3] to Rule 2.2.").

takes place on or off the bench, is subject to discipline by the Court of Judicial Discipline and review by the Supreme Court.³⁰

New Rule 1.2 provides: "A judge shall act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary, and shall avoid impropriety and the appearance of impropriety." It merges language from the titles and text of Old Canons 1 and 2. The related Comments provide the framework for its application. If a judge's on or off the bench misconduct is improper or gives the appearance of impropriety, it erodes public confidence in the judiciary and the judicial officer is subject to discipline.³¹ Judges are held to a higher standard of conduct than the general public. The standard of conduct applies 24 hours a day, seven days a week and is an inherent part of the job description.³² The analysis for failure to promote public confidence in the judiciary includes whether the conduct compromises or appears to compromise the independence, integrity and impartiality of a judge. If answered in the affirmative, then the misconduct undermines public confidence in the judiciary and the judge is subject to discipline.³³ The Comment to the New Rule provides a non-exclusive list of examples of actual improprieties, including: violations of the law; violations of court rules; violations of the Code of Conduct.³⁴

Included in Comment [5] to New Rule 1.2 is an objective measure for the appearance of impropriety. The test 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."³⁵ This new test differs from the former test of whether "a significant minority of the lay community could reasonably question the court's impartiality."³⁶ Therefore, a judge's failure to comply with New Rule 1.2, prohibiting impropriety or the appearance of impropriety, is now a chargeable offense even if the misconduct did not violate another part of the Code.³⁷

³⁰ *Carney*, ___ Pa. at ___, 79 A.3d at 507.

³¹ New Code, Canon 1, Rule 1.2 cmt. [1].

³² New Code, Canon 1, Rule 1.2 cmt. [2].

³³ New Code, Canon 1, Rule 1.2 cmt. [3].

³⁴ New Code, Canon 1, Rule 1.2 cmt. [5].

³⁵ *Id.*

³⁶ *Id.*

³⁷ The case of *In re Nocella*, 79 A.3d 766 (Pa.Ct.Jud.Disc. 2013), *appeal pending*, 35 EAP 2013, is a good example of conduct that reflects adversely on the judge's honesty or fitness to serve as a judge. *Nocella* involved a judicial candidate who repeatedly misrepresented his qualifications and other facts in questionnaires submitted to a bar committee that was rating candidates. The candidate also failed to disclose that he had also been held in contempt of court while serving as a Municipal Court judge. *In re Ballentine*, ___ A.3d ___ WL2619259 (Pa.Ct.Jud.Disc. 2013), also illustrates

Under New Rule 1.3, “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.” This Rule tracks the language of Old Canon 2B, yet the Comments provide new concrete examples of abuse of the prestige of judicial office. Judges are prohibited from attempting to gain favorable treatment from traffic law officials and from the use of judicial letterhead for personal business.³⁸ Notably, the language of Comment [1], “should also not lend the prestige of his or her office to advance the private interests of others . . .” differs from and is inconsistent with the “shall not” language of Rule 1.3 itself. Since the Comments to the Rules are advisory, the language of the Rule is controlling.

Comment [2] is permissive and illustrates the specific limitations on the provision of references and recommendations by a judge. These are areas where the Ethics Committee of the Pennsylvania Conference of State Trial Judges has previously opined and the Comment is consistent with the views of the committee.

Comment [3] is also permissive. It suggests that a judge or judicial candidate is allowed to participate in the process of judicial appointment or selection by responding to inquiries regarding his or her qualifications to be a judge.

Lastly, Comment [4] discusses the “special considerations” surrounding a judge’s submission of written works for publication to a for-profit organization. In language that appears more permissive than the rule itself, the Comment states that judges “should not permit” exploitation by those individuals associated with their publication and “should retain sufficient control” to avoid exploitation in the promotion of those materials. To the extent that the use of “should” rather than “shall” may be inconsistent with the language of the Rule, the Comment makes clear that a judge “should not permit any exploitation “in a manner that violates” New Rule 1.3 or any other applicable law. Properly read, then, any failure to retain such control resulting in a violation of the rule could subject the judge to discipline.³⁹

CANON 2

Like New Canon 1 that blends elements of Old Canons 1 and 2, New Canon 2 combines parts of Old Canons 2, 3, 5, and 7, and even incorporates

conduct which reflects adversely on the judge’s honesty, impartiality or fitness to serve. In that case, a judge dismissed three of her own parking tickets. In the future, cases such as these may result in charges for failure to comply with New Rule 1.2.

³⁸ New Code, Canon 1, Rule 1.3 cmt. [1].

³⁹ New Code, Canon 1, Rule 1.3 cmt. [4].

provisions previously found only in the Rules Governing Standards of Conduct of Magisterial District Judges.⁴⁰ The language of New Canon 2 states simply: "A JUDGE SHALL PERFORM THE DUTIES OF JUDICIAL OFFICE IMPARTIALLY, COMPETENTLY, AND DILIGENTLY."⁴¹ Through 16 Rules and accompanying Comments, the New Canon offers a more detailed road map to guide judges' behavior in carrying out their judicial duties. For this New Canon, notable changes provide more specific direction on what conduct will (or will not) lead to a violation of the New Code.

For example, Old Canon 3 only references bias and prejudice in terms of the requirement to disqualify. New Rule 2.3 imposes a direct responsibility on judges to perform their duties "without bias or prejudice."⁴² It also prohibits judges, their staffs, and others subject to their direction and control, through words or conduct, from manifesting "bias or prejudice, or engag[ing] in harassment."⁴³ It affirmatively requires judges to ensure that lawyers refrain from such conduct.⁴⁴ Judges making irreverent or off-color remarks, racial slurs, or facial expressions showing hostility or aversion toward persons, while performing judicial duties, risk violating new Canon 2.⁴⁵

As a guide, New Rule 2.3 explains that "manifesting bias or prejudice, or engaging in harassment" includes words or conduct "based on race, sex, gender, religion, national origin, ethnicity, disability, age, sexual orientation, marital status, socioeconomic status, or political affiliation."⁴⁶ In Comment [2], a non-exclusive list of "manifestations of bias or prejudice" is provided and includes epithets, slurs, attempted humor based upon stereotypes, and suggesting connections between race and crime.⁴⁷

In Comments [4] and [5], the rule adds further nuance to the definition of "harassment." The Comments note that such conduct (based on race, sex, gender, *etc.*) includes "verbal or physical conduct that denigrates or shows hostility or aversion toward a person" and sexual harassment (*i.e.* "sexual advances, requests for favors, and other verbal or physical conduct of a sexual nature that is unwelcome").⁴⁸

⁴⁰ The Rules Governing Standards of Conduct of Magisterial District Judges ("RGSCMDJ") are still in force and apply to all magisterial district judges and judges of the Philadelphia Municipal Court, Traffic Division. See New Code, Application, cmt. [5], n. 2.

⁴¹ New Code, Canon 2.

⁴² New Code, Canon 2, Rule 2.3(A).

⁴³ New Code, Canon 2, Rule 2.3(B).

⁴⁴ New Code, Canon 2, Rule 2.3(C).

⁴⁵ New Code, Canon 2, Rule 2.3 cmt. [2].

⁴⁶ New Code, Canon 2, Rule 2.3(B).

⁴⁷ New Code, Canon 2, Rule 2.3 cmt. [2].

⁴⁸ New Code, Canon 2, Rule 2.3 cmts. [4] and [5].

While the Old Code simply does not address the issue, New Canon 2 now includes a provision at Rule 2.6 expressly permitting judges to encourage settlement so long as they do not “act in a manner that coerces any party into settlement.”⁴⁹ Comment [2], while noting the important role a judge plays in overseeing the settlement of disputes, sets forth factors a judge should consider when deciding upon appropriate settlement procedures. Such factors include considering whether the matter is criminal or civil, whether the matter is a bench or jury trial, whether any party is *pro se*, whether the parties and their counsel requested the judge’s participation in settlement discussions, and whether they are sophisticated in legal matters.⁵⁰ With the consent of the parties, which would address any concern about *ex parte* communications, a judge may meet separately with the parties and their lawyers in conducting such settlement discussions.⁵¹

In Rule 2.7, New Canon 2 makes it the duty of a judge to “hear and decide matters assigned to the judge.”⁵² Unless a judge recuses or is disqualified, he or she must be available to decide matters.⁵³ Comment [1] warns that “[u]nwarranted disqualification or recusal may bring public disfavor to the court and to the judge personally.”⁵⁴ For the first time, under Comment [2], the Code provides the “substantial question in reasonable minds” test as a guide for disqualification. Even if a judge feels he or she can preside impartially, a judge may still disqualify if “in the exercise of discretion, in good faith, and with due consideration for the general duty to hear and decide matters,” the judge concludes that facts and circumstances “could engender in reasonable minds as to whether disqualification nonetheless should be required.”⁵⁵ Comment [2] distinguishes this new test from the old common law test of whether “a significant minority of the lay community could reasonably question the court’s impartiality.”⁵⁶

Another first for the New Code is its reference to disclosure in Comment [3], which states that a judge should disclose information to the parties or their lawyers which they “might reasonably consider relevant” to a motion for recusal or disqualification. According to the Comment, such disclosure should be made “even if the judge believes there is no proper basis for disqualification or recusal.”⁵⁷

⁴⁹ New Code, Canon 2, Rule 2.6(B).

⁵⁰ New Code, Canon 2, Rule 2.6 cmt. [2].

⁵¹ New Code, Canon 2, Rule 2.9(A)(4).

⁵² New Code, Canon 2, Rule 2.7.

⁵³ *Id.*

⁵⁴ New Code, Canon 2, Rule 2.7 cmt. [1].

⁵⁵ New Code, Canon 2, Rule 2.7 cmt. [2].

⁵⁶ *Id.* This common law test was set forth by the Supreme Court in *Commonwealth v. Darush*, 501 Pa. 15, 22-23, 459 A.2d 727, 731-32 (1983). The New Code also addresses the change in this test in Comment [5] to new Rule 1.2. See New Code, Canon 1, Rule 1.2, cmt. [5].

⁵⁷ New Code, Canon 2, Rule 2.7 cmt. [3].

In the area of judicial demeanor, New Canon 2 requires under Rule 2.8(B) that a judge not only be patient, dignified and courteous to litigants, jurors, witnesses, and lawyers, but specifically now also includes "court staff [and] court officials."⁵⁸ This is a change from old Canon 3A(3). While old Canon 3A(3) has been interpreted by the Court of Judicial Discipline to include court staff and officials,⁵⁹ revised Canon 2 crystalizes that a judge cannot mistreat such court personnel.

For the first time, under New Rule 2.8(C), judges are also prohibited from commending or criticizing a jury's verdict other than in a court order or opinion.⁶⁰ Comment [2] points out that when a judge criticizes a jury for its verdict, he or she may impair a juror's ability to be fair and impartial in future cases because it implies a judicial expectation of a certain type of decision.⁶¹

Regarding *ex parte* communications, Old Canon 3A(4) only prohibits a judge from considering *ex parte* communications about a pending matter.⁶² Under new Rule 2.9(A), however, which is similar to Rule 4D of the Rules Governing Standards of Conduct of Magisterial District Judges, the prohibition has been augmented to also prohibit initiating or permitting *ex parte* communications about a matter that is pending or impending.⁶³ While Old Canon 3A(4) requires that a judge not consider an *ex parte* communication, it imposes no affirmative obligation to stop it or stop others (court staff, etc.) from engaging in an *ex parte* communication. In contrast, Rule 2.9A requires that a judge not permit *ex parte* communications. A judge must now stop a person from engaging in an *ex parte* communication with him or her about a pending or impending matter.⁶⁴ Rule 2.9(D) also imposes a duty on a judge to ensure that the *ex parte* rule is not violated "by court staff, court officials, and others subject to the judge's direction and control."⁶⁵

Rule 2.9(A)(1) provides a safe harbor for *ex parte* communications dealing with scheduling, administrative, or emergency purposes provided the judge reasonably believes no party would gain a procedural, substantive, or tactical advantage from the communication and the other parties are promptly notified and given an opportunity to respond.⁶⁶ Further, under New Rule 2.9(E), *ex parte* communications expressly authorized by law for

⁵⁸ New Code, Canon 2, Rule 2.8(B).

⁵⁹ See, e.g., *In re Lokuta*, 964 A.2d 988 (Pa.Ct.Jud.Disc. 2008)

⁶⁰ New Code, Canon 2, Rule 2.8(C).

⁶¹ New Code, Canon 2, Rule 2.8 cmt. [2].

⁶² Old Code, Canon 3A(4).

⁶³ See New Code, Canon 2, Rule 2.9(A) and compare R.G.S.C.M.D.J. No. 4D.

⁶⁴ New Code, Canon 2, Rule 2.9(A).

⁶⁵ New Code, Canon 2, Rule 2.9(D).

⁶⁶ New Code, Canon 2, Rule 2.9(A)(1).

therapeutic or problem-solving courts, mental health courts, or drug courts, are not to be considered violations of the rule.⁶⁷

Two additional changes include the issues of obtaining outside legal advice and engaging in *ex parte* investigations. First, New Rule 2.9(A)(2) permits a judge to obtain written advice from a disinterested expert on the law applicable to a proceeding. So long as the judge gives advance notice to the parties of the person to be consulted and the subject matter of the advice, and affords the parties reasonable opportunity to object and respond to the notice and advice, a judge may seek the outside legal advice.⁶⁸ A similar provision already exists in Rule 4D of the Rules Governing Standards of Conduct of Magisterial District Judges, but this is the first time it has become a part of the Code of Judicial Conduct.⁶⁹ Second, while it would seem obvious that a judge should not engage in an *ex parte* investigation of the facts of a matter before the judge, Rule 2.9(C) removes any possible doubt by explicitly prohibiting a judge from "investigating facts in a matter independently."⁷⁰

On disqualification, New Rule 2.11(A) now mandates disqualification when a judge's impartiality might reasonably be questioned.⁷¹ New Rule 2.11(A)(2) also encompasses same sex relationships. It now requires disqualification where the judge, or his or her "domestic partner," or a person with the third degree of relationship to either: (a) is a party to a proceeding or an officer, director, general partner, managing member, or trustee of a party; (b) is a lawyer in a proceeding; (c) has more than a de minimis interest that could be substantially affected by the proceeding; or (d) is likely to be a material witness.⁷²

While Old Canon 3C never addressed whether a judge was required to disqualify if a party or the party's lawyer contributed to the judge's campaign, New Rule 2.11(A)(4) requires disqualification if a judge "knows or learns that a party, a party's lawyer, or the law firm of a party's lawyer has made a direct or indirect contribution(s) to the judge's campaign" where the amount would raise a "reasonable concern" about whether the judge could be fair and impartial.⁷³ The rule provides for a rebuttable presumption that

⁶⁷ New Code, Canon 2, Rule 2.9(E).

⁶⁸ New Code, Canon 2, Rule 2.9(A)(2).

⁶⁹ Compare R.G.S.C.M.D.J. No. 4D.

⁷⁰ New Code, Canon 2, Rule 2.9(C).

⁷¹ New Code, Canon 2, Rule 2.11(A).

⁷² *Id.*

⁷³ New Code, Canon 2, Rule 2.11(A). This New Canon requires judges to determine the amount of contributions, both direct and indirect (or "in kind"), made by all the lawyers of a law firm in order to assess whether the amount raises a reasonable concern about the judge's ability to be fair and impartial. This may pose a problem for firms having a number of offices. For the due process implications of large campaign contributions and recusal, see

disqualification is not required when a campaign contribution or reimbursement for travel expenses (food, lodging, transportation, or other expense) is less than or equal to what a judge would be required to report as a gift in the judge's Statement of Financial Interest.⁷⁴ Currently, judges must report gifts of at least \$250.00 in value.

New Rule 2.11 also provides a procedure for the parties and their counsel to waive disqualification and incorporate such an agreement into the record.⁷⁵

By New Rule 2.12(A), New Canon 2 imposes a direct responsibility on a judge to supervise his or her staff, as well as court officials subject to the judge's direction and control, to ensure compliance with the New Code.⁷⁶ New Rule 2.12(B) also imposes the duty upon a judge with supervisory authority, such as the President Judge, to ensure that other judges discharge their judicial duties, including the prompt disposition of their workloads.⁷⁷ Comment [2] states that a supervising judge "must take steps needed" to promote the efficient administration of justice.⁷⁸

In the realm of hiring and appointment, a significant change from Old Canon 3B(4) is the direct prohibition against "nepotism." Old Canon 3B(4) directs that judges "should not" make unnecessary appointments and should only exercise their power of appointment "on the basis of merit, avoiding favoritism." It does not mention the word "nepotism." Under New Rule 2.13(A)(2), a judge cannot hire relatives or favor friends or relatives of friends or other judges for court jobs. Rule 2.13(A)(2) now mandates that a judge, when hiring or appointing, "shall avoid nepotism, favoritism, and unnecessary appointments."⁷⁹ It more closely follows what has been required of magisterial district judges under Rule 5C of the Rules Governing

Caperton v. A.T. Massey Coal Co., Inc., 556 U.S. 868, 129 S.Ct. 2252, 173 L.Ed.2d 1208 (2009).

⁷⁴ All judges subject to the Code of Judicial Conduct are required by Supreme Court rule to file a Statement of Financial Interest annually. See *In re: Financial Disclosure and Reporting Requirements for Judicial Officers*, 47 Jud. Adm. Dkt. 1 (Pa. 1984),.

⁷⁵ New Code, Canon 2, Rule 2.11(C). This is similar to Rule 9A of the Rules Governing Standards of Conduct of Magisterial District Judges. R.G.S.C.M.D.J. No. 9A.

⁷⁶ New Code, Canon 2, Rule 2.12(A).

⁷⁷ New Code, Canon 2, Rule 2.12(B).

⁷⁸ New Code, Canon 2, Rule 2.12, cmt. [2]. The Comment notes that "[d]eterminations of the local board of judges in each count, and/or the Supreme Court, will determine whether the President Judge of the county has the supervisory authority contemplated herein." With this statement, it appears that whatever supervisory authority a President Judge possesses is not absolute or without limits.

⁷⁹ New Code, Canon 2, Rule 2.13(A)(2).

Standards of Conduct of Magisterial District Judges than the old Canon. Rule 5C states that a magisterial district judge “shall not make unnecessary appointments” and shall make any appointments “only on the basis of merit, avoiding nepotism and favoritism.”⁸⁰ New Rule 2.13(B) also prohibits a judge from appointing a lawyer to a court job if the lawyer or the lawyer’s spouse or domestic partner was a “major donor” to the judge’s campaign within the prior two years to the judge’s election campaign.⁸¹ The rule provides some limited exceptions, however, including where the position is “substantially uncompensated.”⁸²

Another addition to the Code previously not covered is new Rule 2.14 on disability and impairment, which now imposes on a judge the duty to “take appropriate action” when he or she has a reasonable belief that a lawyer or another judge is “impaired by drugs or alcohol, or by a mental, emotional, or physical condition.”⁸³ Comment [1] defines “appropriate action” as something reasonably likely to help the lawyer or judge with the problem and prevent harm to the justice system. Appropriate action may include talking to the person or making a referral to an assistance program.⁸⁴ Comment [2] explains that “[d]epending upon the gravity of the conduct that has come to the judge’s attention ... the judge may be required to take other action, such as reporting the impaired judge or lawyer to the appropriate authority, agency, or body.”⁸⁵ Such an “appropriate authority, agency or body” would be the Judicial Conduct Board.⁸⁶

Additionally, New Canon 2 also imposes a more expansive reporting requirement for lawyer and judicial misconduct than under the Old Canon. Old Canon 3B(3) directed that a judge “should” take disciplinary measures against a judge or lawyer “for unprofessional conduct of which the judge may become aware.” The disciplinary measures included reporting to the appropriate disciplinary body, but it was not mandatory.⁸⁷ Under new Rule 2.15(A) and (B) this reporting is now mandatory. It tracks a lawyer’s

⁸⁰ R.G.S.C.M.D.J. No. 5A.

⁸¹ New Code, Canon 2, Rule 2.13(B). Like the phrase “reasonable concern” used in new Rule 2.11(A)(4) relating to disqualification based on political contributions, the phrase “major donor” used in this rule is undefined. The phrases imply a measure of discretion and allow for different results based on different circumstances. What constitutes a “reasonable concern” or a “major donor” in a major metropolitan area is, in all likelihood, different from how those phrases would be interpreted in a more rural, less populous area.

⁸² New Code, Canon 2, Rule 2.13(B)(1)-(3).

⁸³ New Code, Canon 2, Rule 2.14.

⁸⁴ New Code, Canon 2, Rule 2.14 cmt. [1].

⁸⁵ New Code, Canon 2, Rule 2.14 cmt. [2]. See *also* New Code, Canon 2, Rule 2.15.

⁸⁶ See Pa. Const., art. V, § 18(a)(9)(Board has authority to investigate allegations that a judge is suffering from a mental or physical disability).

⁸⁷ Old Code, Canon 3B(3).

professional obligation to report misconduct violations and directs that a judge “shall” report another judge or lawyer to the Judicial Conduct Board or the Disciplinary Board when the judge has “knowledge” that another judge or a lawyer has violated the rules of conduct applicable to judges, magisterial district judges or lawyers in a manner “that raises a substantial question” regarding either the “honesty, trustworthiness, or fitness” of the lawyer or judge.⁸⁸ Likewise, under Rule 2.15(C) and (D), if a judge receives information about a judge or lawyer indicating “a substantial likelihood” they have violated their respective rules of conduct, he or she must take “appropriate action.”⁸⁹ Comment [2] outlines “appropriate action” as including talking with the judge or lawyer, talking to the judge’s supervising judge, or reporting a suspected violation to the Judicial Conduct Board or the Disciplinary Board.⁹⁰

Concerning public comment, Old Canon 3A(6) directed that a judge “should abstain” from public comment about a “pending proceeding.”⁹¹ Under New Rule 2.10(A), a judge “shall not” make a public statement about a “pending or impending” matter in any court that might reasonably be expected to affect the outcome or impair fairness.⁹² The rule goes even further to prohibit “any nonpublic statement” that “might substantially interfere with a fair trial or hearing.”⁹³ This would not, however, prohibit a judge from commenting on proceedings in which the judge is a litigant in a personal capacity rather than in an official capacity (“such as a writ of mandamus”), explaining court procedures, or commenting in the course of official duties.⁹⁴ The New Rule prohibits a judge from making pledges, promises, or commitments “inconsistent with the impartial performance of the adjudicative duties.”⁹⁵ The “inconsistent” language serves to broaden what a judge may say, as Old Canon 7B(1)(c) is written in more

⁸⁸ New Code, Canon 2, Rule 2.15(A) and (B). *Compare* Pa.R.P.C. No. 8.3(a) and (b). The word “knowledge,” along with the words “knowingly,” “known,” and “knows,” are defined in the Terminology section of the New Code. They mean “actual knowledge of the fact in question.” New Code, Terminology, “Knowingly, knowledge, known, and knows.” The definition further provides: “A person’s knowledge may be inferred from the circumstances.” *Id.* This definition is virtually identical to that found in the Rules of Professional Conduct. See Pa.R.P.C. No. 1.0(f).

⁸⁹ New Code, Canon 2, Rule 2.15(C) and (D).

⁹⁰ New Code, Canon 2, Rule 2.15 cmt. [2]. It appears that the difference in required action is based on whether or not the judge has actual knowledge of a potential violation.

⁹¹ Old Code, Canon 3A(6).

⁹² New Code, Canon 2, Rule 2.10(A).

⁹³ *Id.*

⁹⁴ New Code, Canon 2, Rule 2.10(D) and cmt. [2].

⁹⁵ New Code, Canon 2, Rule 2.10(B). This prohibition is repeated verbatim in Rule 4.1 of New Canon 4 relating to political and campaign activities of judges and judicial candidates. See New Code, Canon 4, Rule 4.1 (A)(11).

circumscribed language and directs that a judge should not make pledges or promises “other than the faithful and impartial performance of the duties of the office.”⁹⁶

Finally, in a provision not contained in the Old Code, New Rule 2.16 imposes upon a judge the obligation to cooperate with investigations conducted by the Judicial Conduct Board or the Disciplinary Board.⁹⁷ It also directly prohibits any retaliation “against a person known or suspected to have assisted or cooperated with an investigation of a judge or a lawyer.”⁹⁸ While the Judicial Conduct Board has understood such retaliation on the part of a judicial officer to constitute misconduct separate from the matter being investigated, this new Rule makes this view explicit.

CANON 3

As is the case with the rest of the New Code, Canon 3 has been completely revised and Canon-specific Rules with Comments have been set forth as guideposts for its interpretation. As noted above, former Canon 3 is now encapsulated within New Canon 2 or one of its 16 corresponding Rules. New Canon 3 states: “A JUDGE SHALL CONDUCT THE JUDGE’S PERSONAL AND EXTRAJUDICIAL ACTIVITIES TO MINIMIZE THE RISK OF CONFLICT WITH THE OBLIGATIONS OF THE JUDICIAL OFFICE.”⁹⁹ The descriptive Rules that follow New Canon 3 are written in terms of describing the types of activities that judges are forbidden from doing in their personal or extrajudicial professional lives with limited exceptions to those prohibitions spelled out (e.g., “A judge shall not do x...unless the following exceptions apply...”). In the Old Code, this subject matter appeared in a broader form in Canon 4 (judges may engage in activities to improve law); Canon 5 (regulation of extrajudicial activities to minimize conflict); and Canon 6 (compensation received for extra-judicial activities permitted). In the main, the provisions and theme of these Old Canons have been incorporated into New Canon 3 and have been refined with greater detail in the descriptive Rules and Comments.

Perhaps the most striking difference between the requirements of the Old Code and New Canon 3 is the inclusion of New Rule 3.6 relating to the prohibition on affiliating with discriminatory organizations. This Rule is entirely new, and it has no counterpart in the Old Code. New Rule 3.6 states:

Affiliation with Discriminatory Organizations

⁹⁶ Old Code, Canon 7B(1)(c).

⁹⁷ New Code, Canon 2, Rule 2.16(A).

⁹⁸ New Code, Canon 2, Rule 2.16(B).

⁹⁹ New Code, Canon 3.

- (A) A judge shall not hold membership in any organization that practices invidious discrimination¹⁰⁰ on the basis of race, sex, gender, religion, national origin, ethnicity, disability or sexual orientation.
- (B) A judge shall not use the benefits or facilities of an organization if the judge knows or should know that the organization practices invidious discrimination on one or more of the bases identified in paragraph (A). A judge's attendance at an event in a facility of an organization that the judge is not permitted to join is not a violation of this Rule when the judge's attendance is an isolated event that could not reasonably be perceived as an endorsement of the organization's practices.¹⁰¹

Under this New Rule, a judge may be subject to official sanction for either membership in or use of the benefits of an organization that practices invidious discrimination, even though membership in such an organization may be legal for other citizens. This prohibition reflects both the well-settled precept that a judge should expect to be the subject of public scrutiny that might be viewed as burdensome if applied to other citizens¹⁰² and the recurring theme of New Canon 3 - a judge's otherwise legal extrajudicial behavior may undermine the judge's independence, integrity, and impartiality.¹⁰³

New Canon 3 also departs markedly from the Old Code in that it now regulates a judge's personal financial activities to a far greater degree, and it includes financial reporting requirements for judges receiving extrajudicial compensation, gifts, or reimbursement. For example, while a judge is generally permitted by New Rule 3.12 to receive compensation for extrajudicial activities, New Rule 3.11(B) generally forbids a judge from

¹⁰⁰ The phrase "invidious discrimination" is not specifically defined in the New Code. Comment [2] to New Rule 3.6 states: "An organization is said to discriminate invidiously if it arbitrarily excludes from membership on the basis of race, sex, gender, religion, national origin, ethnicity, disability or sexual orientation persons who would otherwise be eligible for admission." New Code, Canon 3, Rule 3.6 cmt. [2]. The contours of invidious discrimination in the context of the New Rule will have to await development through application to the different situations presented and by interpretation in the Court of Judicial Discipline and the Supreme Court of Pennsylvania. Equal Protection jurisprudence will likely serve as a relevant guide for the development of the law in this area.

¹⁰¹ New Code, Canon 3, Rule 3.6.

¹⁰² See New Code, Canon 1, Rule 1.2 cmt. [2].

¹⁰³ New Code, Canon 3, Rule 3.1(C).

serving as “an officer, director, manager, general partner, advisor, or employee of any business entity.”¹⁰⁴

Rule 3.11(B) is a marked deviation from Old Canon 5(C)(2), which permitted judges to “hold and manage investments, and engage in other remunerative activity, including the operation of a family business.”¹⁰⁵ Under the prevailing interpretation of Old Canon 5, judges were permitted, among other things, to serve on for-profit or nonprofit corporate boards or to be employed as an officer or director of a corporate entity and to receive payment for such service or employment. Subject to the exception set forth in Rule 3.11(C),¹⁰⁶ Rule 3.11(B) flatly forbids a judge from engaging in such service or other such extrajudicial employment for non-family third parties.

Comments to New Rule 3.11 provide guidance to jurists with respect to complying with this new Rule. With regard to otherwise permissible family businesses, a judge may not devote so much time to the interests of that business so as to interfere with the performance of judicial duties.¹⁰⁷ A judge must divest herself or himself of investments and other financial interests that might require frequent disqualification or which might violate New Rule 3.11, and must do so “[a]s soon as practicable without serious financial detriment.”¹⁰⁸ A judge may use a “blind trust or similarly protective financial vehicle to avoid problems under the Rule.”¹⁰⁹ The Comment establishes a one-year “safe harbor” provision for judicial officers currently engaged in service or employment that would be otherwise prohibited by New Rule 3.11(B).¹¹⁰ This “safe harbor” provision is reflected in the Supreme Court’s Order promulgating the New Code. While most of the New Code is effective on July 1, 2014, New Rules 3.4, 3.7, 3.8 and 3.11 must be complied with by

¹⁰⁴ New Code, Canon 3, Rule 3.11(A) and (B). There are exceptions to this Rule if the business entity is either closely held by the judge or by members of the judge’s family or the business entity for which the judge serves is primarily engaged in the investment of the financial resources of the judge or members of the judge’s family. New Code, Canon 3, Rule 3.11(B).

¹⁰⁵ See Old Code, Canon 5(C)(2).

¹⁰⁶ The exceptions preclude a judge from engaging in activities allowed for family-owned businesses or investment entities if the judge’s participation in such endeavors will interfere with the proper performance of judicial duties, lead to frequent disqualification, involve the judge in frequent transactions or continuing relationships with lawyers and other persons likely to come before the judge’s court, or result in violations of other provisions of the Code. New Code, Canon 3, Rule 3.11(C).

¹⁰⁷ New Code, Canon 3, Rule 3.11 cmt. [1].

¹⁰⁸ New Code, Canon 3, Rule 3.11 cmt. [2].

¹⁰⁹ *Id.*

¹¹⁰ *Id.* (“So long as continuation will not interfere with the proper performance of judicial duties, a judge serving as an officer or director otherwise precluded by Rule 3.11(B), may complete the term of service if such may be accomplished in twelve months or less.”).

July 1, 2015.¹¹¹ Thus, within one year following the effective date of the New Canons and Rules, judges must divest themselves of investments or employment that would otherwise violate New Rule 3.11(B).

New Rule 3.13 sets forth detailed directives for judges regarding the acceptance and reporting of gifts, loans, bequests, benefits, or other things of value which do not appear in the Old Canons. Generally, the Rule forbids a judge from accepting 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.¹¹² Judges may accept some gifts, loans, bequests, benefits, or other things of value without compromising their independence, integrity, or impartiality. The New Rule sets forth parameters for judges to report receipt of same on their annual statements of financial interest. Some items may be accepted without the need to report it on the judges' annual statements of financial interest.¹¹³ Other items may be accepted but the receiving judges must report their receipt on their statements of financial interest.¹¹⁴ Finally, the new Rule mandates that a judge must report things of value received by the business, profession, or separate activity of a spouse, domestic partner, or a family member residing in the judge's household if the source of the property is a party or other person or a lawyer who has appeared or is likely to appear before the judge or whose interests have come or are likely to come before the judge.¹¹⁵

New Rule 3.14 regulates a judge's acceptance of reimbursement and waivers of fees or charges for the judge's extrajudicial activities, if such reimbursement or waivers comes from sources other than the entity employing the judge.¹¹⁶ Such reimbursement of expenses is permitted for a judge and her or his spouse, domestic partner or guest.¹¹⁷ Receipt of such reimbursements is subject to the reporting requirements of new Rule 3.15.¹¹⁸

¹¹¹ See *In Re: Rescission of Former Code of Judicial Conduct and Adoption of Code of Judicial Conduct of 2014*, No. 419 Jud. Admin. Dkt., Per Curiam Order of January 8, 2014.

¹¹² New Code, Canon 3, Rule 3.13(A). See also New Code, Canon 1, Rule 1.2 ("A judge shall act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary, and shall avoid impropriety and the appearance of impropriety."). In many places, the proscriptions and directives of the new Rules overlap.

¹¹³ New Code, Canon 3, Rule 3.13(B). These include gifts from relatives and friends. *Id.* cmt. [2].

¹¹⁴ New Code, Canon 3, Rule 3.13(C).

¹¹⁵ New Code, Canon 3, Rule 3.13(D).

¹¹⁶ New Code, Canon 3, Rule 3.14(A).

¹¹⁷ New Code, Canon 3, Rule 3.14(B).

¹¹⁸ New Code, Canon 3, Rule 3.14(C).

These several financial Rules conclude with new Rule 3.15, which defines a judge's duty to publicly report compensation for extrajudicial activities, gifts and other things of value received by the judge and to publicly report the judge's reimbursement for extrajudicial expenses and waiver of fees for extrajudicial activities.¹¹⁹ In essence, Rules 3.12 through 3.15 codify, expand, and refine the standards of reporting for judicial officers that had been established originally by Supreme Court Order in 1984,¹²⁰ and the guidelines established for the implementation of that Order by the Administrative Office of Pennsylvania Courts.

Viewed as a whole, New Canon 3 reflects these precepts: (1) the duties of judicial office are paramount to all other worldly pursuits undertaken by judges; and (2) judges are held to the same high standards of conduct in regulating their off-bench personal and financial affairs as they are in their self-regulation of their judicial duties. In due recognition of the gravity of these precepts, New Canon 3 provides a workable framework for judges to conform their off-bench conduct to those standards to ensure the independence, integrity, and impartiality of the judiciary.

CANON 4

As is the case with the rest of the New Code, New Canon 4 has been revamped and revised. It states: "A JUDGE OR CANDIDATE FOR JUDICIAL OFFICE SHALL NOT ENGAGE IN POLITICAL OR CAMPAIGN ACTIVITY THAT IS INCONSISTENT WITH THE INDEPENDENCE, INTEGRITY, OR IMPARTIALITY OF THE JUDICIARY."¹²¹ This is a marked contrast from the language of old Canon 7 which New Canon 4 replaces.¹²² Found in New Canon 4 are Rules applicable to judges and candidates for judicial office. As with revisions set forth in the other New Canons, many of the New Rules are reiterations of precepts previously found in the provisions of Old Canon 7.¹²³

¹¹⁹ New Code, Canon 3, Rule 3.15.

¹²⁰ See *In re: Financial Disclosure and Reporting Requirements for Judicial Officers*, 47 Jud. Adm. Dkt. 1 (Pa. 1984).

¹²¹ New Code, Canon 4.

¹²² The old Canon stated: "Judges should refrain from political activity inappropriate to their judicial office." Old Code, Canon 7.

¹²³ See New Code, Canon 4, Rules 4.1(A)(1) - (6), (8), (11), (B), 4.2(A)(4), (B)(4), (6), (7), (C) (1), (2), (4), 4.4(A), 4.5(A), (C); and compare Old Code, Canon 7A(1)(a) - (c), 7A(2), (3), 7B(1)(b), (c), 7B(2). In addition, new Rule 4.1(A)(9) allows judges or judicial candidates to engage in political activity "on behalf of measures to improve the law, the legal system, or the administration of justice." New Code, Canon 4, Rule 4.1(A)(10). The Old Code permitted such activity under old Canon 4A. Old Code, Canon 4.

New Rule 4.1 generally prohibits judges and judicial candidates from engaging in most political activity. In addition to prohibitions that are carried over from the Old Code, the new Rule has some newly expressed prohibitions. Under New Rule 4.1(A)(7), judges or judicial candidates shall not “use court staff, facilities, or other court resources in a campaign for judicial office.”¹²⁴ A Supreme Court Order has previously prohibited employees of the unified judicial system from engaging in partisan political activity.¹²⁵ Judges who enlisted the aid of judicial employees in their campaign were subject to discipline for that activity despite the fact that it was not specifically reflected in the Old Code because they could be disciplined for violating both the Code and orders of the Supreme Court.¹²⁶ The New Code now makes this prohibition explicit. It also applies to prohibit the use of court facilities and resources (such as computers and office supplies) for campaign activity.

Judges and candidates for judicial office also shall not “make any statement that would reasonably be expected to affect the outcome or impair the fairness of a matter pending in any court.”¹²⁷ This precludes appearing as a so-called “talking head” on television shows that discuss ongoing trials. It applies to a matter appearing “in any court” and not just in the judge’s court or in a court in Pennsylvania if the statement “would reasonably be expected to affect the outcome or impair the fairness of a matter.” Similar language appears in the New Code at Rule 2.10(A). Different from New Rule 2.10(A), however, New Rule 4.1(A)(9) does not apply to “impending” matters. That may be because New Rule 4.1(A)(11), in language drawn from Old Canon 7B(1)(c), precludes judges or candidates from making pledges, promises, or commitments “in connection with cases, controversies or issues that are likely to come before the court ... that are inconsistent with the impartial performance of the adjudicative duties of judicial office.”¹²⁸ This preclusion would appear to capture any “impending” matters (i.e. those that may be “impending” in any court), making this Rule consistent with New Rule 2.10(A).

The Comments to the New Rule explicate its reach. To the extent that there is any question, Comment [1] clarifies that the new Canon applies to all elections for judicial office, both contested and retention, as well as to those

¹²⁴ New Code, Canon 4, Rule 4.1(A)(7).

¹²⁵ See *In re: Prohibited Political Activity by Court-Appointed Employees*, 201 Jud. Adm. Dkt. 1 (Pa. 1998)(reaffirming prior order of 1987); *In re: Prohibited Political Activity by Court-Appointed Employees*, 82 Jud. Admin. Dkt. 1 (Pa. 1987).

¹²⁶ The Pennsylvania Constitution allows a judge to be disciplined for violations of canons adopted or orders issued by the Supreme Court. See Pa. Const., art. V, §§ 17(b) and 18(d)(1).

¹²⁷ New Code, Canon 4, 4.1(A)(9).

¹²⁸ New Code, Canon 4, Rule 4.1(A)(11).

appointed or seeking appointment to judicial office.¹²⁹ It notes that “[t]his Canon imposes narrowly tailored restrictions upon the political and campaign activities of all judges and judicial candidates, *taking into account the various methods of selecting judges.*”¹³⁰

Comment [2] explains that this New Canon becomes applicable when a person becomes a judicial candidate.¹³¹ For lawyers becoming judicial candidates, this Rule dovetails with Rule 8.2(b) of the Rules of Professional Conduct which provides that “[a] lawyer who becomes a candidate for judicial office shall comply with the applicable provisions of the Code of Judicial Conduct.”¹³² The Terminology section of the New Code includes a definition of “judicial candidate” as follows: “Any person, including a sitting judge, who is seeking appointment, election or retention to judicial office. A person becomes a candidate for judicial office as soon as he or she makes a public announcement of candidacy, declares or files as a candidate with the appointment or election authority, or where permitted, engages in solicitation or acceptance of contributions or support, or is nominated for appointment or election to office.”¹³³

While it has long been prohibited, the question of judges participating in the campaigns of family members is now addressed for the first time in discussing new Rule 4.1. In obligatory language, Comment [5] explains that such conduct is prohibited.

Although members of the families of judges and judicial candidates are free to engage in their own political activity, including becoming a candidate for public office, there is no “family exception” to the prohibition in Rule 4.1(A)(3) against a judge or candidate publicly endorsing candidates for public office. A judge or judicial candidate must not become involved in, or publicly associated with, a family member’s political activity or campaign for public office. To avoid public misunderstanding, judges and judicial candidates should take, and should urge members of their families to take, reasonable steps to avoid any implication that they endorse any family member’s candidacy or other political activity.¹³⁴

¹²⁹ See *also* New Code, Terminology, “Judicial Candidate.”

¹³⁰ New Code, Canon 4, Rule 4.1 cmt. [1](emphasis added).

¹³¹ New Code, Canon 4, Rule 4.1 cmt. [2].

¹³² Pa.R.P.C. 8.2(b).

¹³³ New Code, Terminology, “Judicial Candidate.”

¹³⁴ New Code, Canon 4, Rule 4.1 cmt. [5]. This prohibition derives from new Rule 1.3 which declares: “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.” A judge’s participation in any campaign, including a campaign of a family member, would reasonably be seen as using (or abusing) the prestige of judicial office to advance the personal interests of

The Comments provide several examples of the types of campaign conduct that is permitted as well as that which is not permitted. Candidates are permitted to campaign on their own behalf and may endorse and oppose candidates for the same judicial office.¹³⁵ They may appear on the same ticket with other candidates for other offices, including non-judicial offices, without running afoul of the prohibition on endorsing candidates for public office.¹³⁶ While they may not make pledges, promises, or commitments that are inconsistent with the impartial performance of the adjudicative duties of judicial office, judges' and judicial candidates' pledges, promises, or commitments "must be contrasted with statements or announcements of personal views on legal, political, or other issues, which are not prohibited."¹³⁷ Moreover, without violating the "pledges, promises, or commitments" proscription, they "may make campaign promises related to judicial organization, administration, and court management, such as a promise to dispose of a backlog of cases, start court sessions on time, or avoid favoritism in appointments and hiring."¹³⁸ Additionally, judges and judicial candidates may respond to "questionnaires or requests for interviews from the media and from issue advocacy or other community organizations that seek to learn their views on disputed or controversial legal or political issues" without violating the "pledges, promises, or commitments" clause if the responders are careful in the wording of their responses so that they are not "viewed as pledges, promises, or commitments to perform the adjudicative duties of office other than in an impartial way."¹³⁹ To avoid violating this proscription, judges and judicial candidates are cautioned to "give assurances that they will keep an open mind and will carry out their adjudicative duties faithfully and impartially if elected."¹⁴⁰

New Rule 4.2, like New Rules 4.3 and 4.4, act as exceptions to the general prohibitions contained in New Rule 4.1. New Rule 4.2 addresses political and campaign activities in public elections.¹⁴¹ As retention elections are "public elections," the Rules precepts apply to them. Among the new requirements of the Rule are: 1) to act at all times in a manner consistent with the independence, integrity, and impartiality of the judiciary;¹⁴² 2) to comply with all elections laws and regulations, including those related to campaign financing;¹⁴³ and 3) to review and approve all materials prepared

the family member." New Code, Canon 1, Rule 1.3. See also New Code, Canon 4, Rule 4.1 cmt. [4].

¹³⁵ New Code, Canon 4, Rule 4.1 cmt. [2].

¹³⁶ *Id.* See also New Code, Canon 4, Rule 4.1(A)(3).

¹³⁷ New Code, Canon 4, Rule 4.1 cmt. [9].

¹³⁸ New Code, Canon 4, Rule 4.1 cmt. [10].

¹³⁹ New Code, Canon 4, Rule 4.1 cmt. [11].

¹⁴⁰ *Id.* It would appear that the same would be true for an appointee.

¹⁴¹ New Code, Canon 4, Rule 4.2.

¹⁴² New Code, Canon 4, Rule 4.2(A)(1).

¹⁴³ New Code, Canon 4, Rule 4.2(A)(2).

by the judicial candidate or the candidate's committee before their dissemination.¹⁴⁴ Relying on a provision in the Rules Governing Standards of Conduct of Magisterial District Judges, the new Rule designates that a judicial candidate may begin campaigning the day after the General Election in the year before the calendar year in which the judicial election is to be held.¹⁴⁵

In apparent recognition of political reality, a judicial candidate may now "publicly endorse or speak on behalf of candidates for any other elective judicial office appearing on the same ballot."¹⁴⁶ They are no longer limited to only speaking on behalf of candidates for the same judicial office.

Another significant change from the Old Code is found in New Rule 4.2(B)(4). Under Old Canon 7B(2), candidates were prohibited from personally seeking statements of public support for their candidacies. They had to rely on their campaign committees to do so.¹⁴⁷ Now, judicial candidates may "seek, accept, or use endorsements from any person or organization."¹⁴⁸

Despite the prohibition of New Rule 4.1(A)(7) against using court facilities for campaign purposes, New Rule 4.2(B)(8) allows candidates to "use court facilities for the purpose of taking photographs, videos, or other visuals for campaign purposes to the extent such facilities are available on an equal basis to other candidates for such office."¹⁴⁹

The New Rule contains a number of "thou shalt nots" for judicial candidates, some of which are reiterations of prior prohibitions and some of which are new. Judges who are candidates for elective judicial office are still not permitted to personally solicit campaign contributions or to use campaign funds for private purposes.¹⁵⁰ Nor may they make statements "that would

¹⁴⁴ New Code, Canon 4, Rule 4.2(A)(3).

¹⁴⁵ New Code, Canon 4, Rule 4.2(B); *compare* R.G.S.C.M.D.J. No. 15C. Under the new Rule, a judicial candidate may form a campaign committee, speak on behalf of his or her candidacy and may purchase advertising, and may publicly endorse or oppose other candidates for the same judicial office for which he or she is a candidate. New Code, Canon 4, Rule 4.2(B)(1)-(3).

¹⁴⁶ New Code, Canon 4, Rule 4.2(B)(3).

¹⁴⁷ Old Code, Canon 7B(2).

¹⁴⁸ New Code, Canon 4, Rule 4.2(B)(5).

¹⁴⁹ New Code, Canon 4, Rule 4.2(B)(8).

¹⁵⁰ New Code, Canon 4, Rule 4.2(C)(1), (2). As written, this section of the New Rule appears to apply only to judges who are candidates and not to all candidates for elective judicial office. *Compare* New Canon 4, Rule 4.2(B)(referring to a "candidate for elective judicial office"). However, Comment [1] to New Rule 4.4 observes: "Judicial candidates are prohibited from personally soliciting campaign contributions or personally accepting campaign contributions." As authority for this prohibition, the Comment directs the reader to "See [New] Rule 4.2(C)(1)." It appears, therefore, that

reasonably be expected to affect the outcome or impair the fairness of a matter pending or impending in any court.”¹⁵¹

Judicial candidates and their committees are forbidden from “knowingly or with reckless disregard for the truth, mak[ing], or permit[ting] or encourag[ing] his or her campaign committee to make, any false or misleading statement.”¹⁵² This language replaces earlier language suggesting that candidates “should not ... misrepresent their identity, qualifications, present position, or other fact.”¹⁵³ Where a candidate is the subject of false, misleading or unfair allegations, the candidate or the candidate’s committee may respond. In making any response, care must be taken not to violate these rules in the same fashion as those statements to which the candidate or committee is responding.¹⁵⁴

Rule 4.3 addresses a topic not previously addressed in the Code: activities of candidates for appointive judicial office.¹⁵⁵ Such candidates may communicate with the Governor (“the appointing authority”) and the Senate (“the confirming authority”), as well as any screening or nominating commissions.¹⁵⁶ They may personally seek endorsements for the appointment “from any person or organization.”¹⁵⁷ The Comment to this new Rule clarifies that a candidate for appointment is bound by new Rule 4.1(A)(11) and “must not make any pledges, promises, or commitments that are inconsistent with the impartial performance of the adjudicative duties of the office.”¹⁵⁸

New Rule 4.4 covers the ground that had been covered by Old Canon 7B(2) concerning campaign committees. By use of the phrase “subject to public election,” the new Rule encompasses both contested elections and

this Rule applies to all judicial candidates. See New Code, Canon 4, Rule 4.4 cmt. [1].

¹⁵¹ New Code, Canon 4, Rule 4.2(C)(4). Note that in this Rule, the prohibition includes “impending” matters. See New Code, Canon 2, Rule 2.10(A)(including the word “impending”); compare New Code, Canon 4, Rule 4.1(A)(9)(removing the word “impending”).

¹⁵² New Code, Canon 4, Rule 4.2(C)(4). See also New Code, Canon 4, Rule 4.1(A)(8)(same prohibition pertaining to judges and candidates themselves). This “knowingly or with reckless disregard for the truth” limitation is an apparent recognition of the First Amendment implications of limitations on speech. See *New York Times v. Sullivan*, 376 U.S. 254, 84 S.Ct. 710, 11 L.Ed.2d 686 (1964).

¹⁵³ Old Code, Canon 7B(1)(c).

¹⁵⁴ New Code, Canon 4, Rule 4.2 cmts. [7] and [8](noting that it is preferable for someone else to respond “if the allegations relate to a pending case”).

¹⁵⁵ New Code, Canon 4, Rule 4.3.

¹⁵⁶ New Code, Canon 4, Rule 4.3(A).

¹⁵⁷ New Code, Canon 4, Rule 4.3(B).

¹⁵⁸ New Code, Canon 4, Rule 4.3 cmt.

retention bids.¹⁵⁹ It clarifies that campaign fundraising may commence “immediately after the General Election in the year prior to the calendar year in which a person may become a candidate for such office,” tracking the language of new Rule 4.2(B) for the beginning of campaigning generally.¹⁶⁰

New to the Code is a provision requiring all campaign committees to “comply with all applicable statutory requirements for disclosure and divestiture of campaign contributions.”¹⁶¹ This provision requires the filing of campaign finance reports with the Secretary of the Commonwealth in language that approximates the requirements of section 1626 of the Election Code¹⁶², requiring a listing of “the name, address, occupation, and employer of each person who has made campaign contributions to the committee in an aggregate value exceeding \$250 and the name and address of each person who has made campaign contributions to the committee in an aggregate value exceeding \$50.”¹⁶³ New Rule 4.4 requires that the campaign finance reports “be filed not later than thirty days following an election, or within such other period as is provided by law.”¹⁶⁴ The Election Code requires the filing of these reports periodically during and after the election season,¹⁶⁵ so the time frames set forth in the statute and not the new Rule will prevail since that is “such other period as is provided by law.”

Concerning campaign contributions from lawyers and others who might appear before a successful judicial candidate, the New Code cautions that a campaign committee should be cautious in accepting such contributions, “so they do not create grounds for disqualification or recusal if the candidate is elected to judicial office,” directing the candidate to “[s]ee [new] Rule 2.11 [relating to disqualification].”¹⁶⁶ As noted above, Rule 2.11(A)(4) requires disqualification if a judge “knows or learns that a party, a party’s lawyer, or the law firm of a party’s lawyer has made a direct or indirect contribution(s) to the judge’s campaign” where the amount would raise a “reasonable concern” about whether the judge could be fair and impartial. Though the judicial candidate is required to establish a committee to engage in fundraising, the candidate must police the contributions in order to determine if disqualification is required after the candidate is elected.

¹⁵⁹ New Code, Canon 4, Rule 4.4(A).

¹⁶⁰ New Code, Canon 4, Rule 4.4(B)(2). This is a significant change from Old Canon 7(B)(2) which restricted judges’ and judicial candidates’ campaign committees to soliciting campaign funds “no earlier than thirty days prior to the first day for filing nominating petitions or the last day for filing a declaration of intention to seek reelection on a retention basis.” Old Code, Canon 7(B)(2).

¹⁶¹ New Code, Canon 4, Rule 4.4(B)(3).

¹⁶² 25 P.S. § 3246(b)(1), (2).

¹⁶³ *Id.* Compare 25 P.S. § 3246(b)(1), (2).

¹⁶⁴ New Code, Canon 4, Rule 4.4(B)(3).

¹⁶⁵ 25 P.S. § 3246(d), (e).

¹⁶⁶ New Code, Canon 4, Rule 4.4 cmt. [3].

Finally, New Rule 4.5 addresses what is required of judges who become candidates for nonjudicial office. A judge who becomes a candidate for a nonjudicial elective office must resign from the bench.¹⁶⁷ As the Comment to the Rule explains, “[t]he ‘resign to run’ rule set forth in [New Rule 4.5](A) is required by Article V, Section 18(d)(4) of the Pennsylvania Constitution, which states: ‘A justice, judge or justice of the peace who files for nomination for or election to any public office other than a judicial office shall forfeit automatically his judicial office.’” In spite of this clear constitutional command, the Old Canon seemed to make resignation discretionary when it said “[j]udges *should* resign their office when they become a candidate in a party primary or in a general election for a non-judicial office.”¹⁶⁸ A resignation is not required of a judge seeking a nonjudicial appointive office.¹⁶⁹ A judge in that position is still required to abide by all of the other provisions of the Code.¹⁷⁰ Judges are not required to resign if they seek election to or serve as a delegate to a state constitutional convention.¹⁷¹ Election to and service as a convention delegate continues a provision of the Old Code.¹⁷²

CONCLUSION

Though whittled down from seven to four Canons, the New Code covers all of the same ground as the Old and then some. It contains several new provisions and it generally speaks in obligatory, not permissive language. The New Code’s Rules provide clearer guidance for the judges who are bound by them, the Judicial Conduct Board that enforces them, and the Court of Judicial Discipline which interprets them. The Comments provide examples of what is expected and further refine the reach of the New Canons and Rules. Less is left to interpretation than the Old Code. Where there is doubt, the wise judge will seek guidance from the Ethics Committee of the Conference of State Trial Judges.

¹⁶⁷ New Code, Canon 4, Rule 4.5(A).

¹⁶⁸ Old Code, Canon 7A(3)(emphasis added).

¹⁶⁹ New Code, Canon 4, Rule 4.5(B).

¹⁷⁰ *Id.*

¹⁷¹ New Code, Canon 4, Rule 4.5(C).

¹⁷² *Id.*; compare Old Code, Canon 7B(3).

IN THE SUPREME COURT OF PENNSYLVANIA

IN RE: : NO. 419
: :
RESCISSION OF FORMER : JUDICIAL aDMINISTRATION
CODE OF JUDICIAL CONDUCT : :
AND ADOPTION OF CODE : DOCKET
OF JUDICIAL CONDUCT OF 2014 :

ORDER

PER CURIAM

AND NOW, this 8th day of January, 2014, **IT IS ORDERED** pursuant to Article V, Section 10 of the Constitution of Pennsylvania that the existing provisions of the Code of Judicial Conduct are rescinded effective July 1, 2014, and new Canons 1 through 4 of the Code of Judicial Conduct of 2014 and the corresponding Rules are adopted in the attached form.

To the extent that notice of proposed rulemaking would otherwise be required by Pa.R.J.A. No. 103, the immediate promulgation of the Code of Judicial Conduct of 2014 is found to be in the interests of justice and efficient administration.

This **ORDER** shall be processed in accordance with Pa.R.J.A. No. 103(b), and the Code of Judicial Conduct of 2014 shall be effective on July 1, 2014. A person to whom the Code of Judicial Conduct of 2014 becomes applicable shall comply with all provisions of that Code by July 1, 2014 except for Rules 3.4, 3.7, 3.8 and 3.11; such persons shall comply with Rules 3.4, 3.7, 3.8 and 3.11 as soon as reasonably possible and shall do so in any event by July 1, 2015.

Code of Judicial Conduct

PREAMBLE

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

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

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

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

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

[6] Where a Rule contains a permissive term, such as “may” or “should,” the conduct being addressed is committed to the personal and professional discretion of the judge or candidate in question, and no disciplinary action should be taken for action or inaction within the bounds of such discretion. Moreover, it is not intended that disciplinary action would be appropriate for every violation of the Code’s provisions. Whether disciplinary action is appropriate, and the degree

of discipline to be imposed, should be determined through a reasonable application of the text and should depend on such factors as the seriousness of the violation, the intent of the judge, whether there is a pattern of improper activity, and the effect of the improper activity on others or on the judicial system.

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

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

[9] In 2014, this Code was reformatted and revised in material respects, upon guidance taken from the 2011 edition of the American Bar Association's Model Code of Judicial Conduct, other states' codes, and experience.

TERMINOLOGY

Aggregate - In relation to contributions for a candidate, includes contributions in cash or kind made directly to a candidate's campaign committee or indirectly with the understanding that they will be used to support the election of a candidate or to oppose the election of the candidate's opponent.

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

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

Domestic partner - A person with whom another person maintains a household and an intimate relationship, other than a person to whom he or she is legally married.

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

(1) an interest in the individual holdings within a mutual or common investment fund;

(2) an interest in securities held by an educational, religious, charitable, fraternal, or civic organization in which the judge or the judge's spouse, domestic partner, parent, or child serves as a director, an officer, an advisor, or other participant;

(3) a deposit in a financial institution or deposits or proprietary interests the judge may maintain as a member of a mutual savings association or credit union, or similar proprietary interests; or

(4) an interest in the issuer of government securities held by the judge.

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

Impartial, impartiality, impartially – Absence of bias or prejudice in favor of, or against, particular parties or classes of parties, as well as maintenance of an open mind in considering issues that may come before a judge.

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

Impropriety – Includes conduct that violates the law, court rules, or provisions of this Code, and conduct that undermines a judge's independence, integrity, or impartiality.

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

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

Judicial candidate - Any person, including a sitting judge, who is seeking appointment, election or retention to judicial office. A person becomes a candidate for judicial office as soon as he or she makes a public announcement of candidacy, declares or files as a candidate with the appointment or election authority, or where permitted, engages in solicitation or acceptance of contributions or support, or is nominated for appointment or election to office.

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

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

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

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

Member of the judge's family residing in the judge's household - Any relative of a judge by blood or marriage, or a person treated by a judge as a member of the judge's family, who resides in the judge's household.

Nonpublic information – Information that is not available to the public. Nonpublic information may include, but is not limited to, information that is sealed by statute or court order or impounded or communicated in camera, and information offered in grand jury proceedings, presentence reports, dependency cases, or psychiatric reports.

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

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

Personally solicit – A direct request made by a judge or a judicial candidate for financial support or in-kind services, whether made by letter, telephone, or any other means of communication.

Political organization - A political party or group sponsored by or affiliated with a political party or candidate, the principal purpose of which is to further the election or appointment of candidates for political office, excluding a judicial candidate's campaign committee created as authorized by this Code.

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

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

APPLICATION

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

[2] A judge within the meaning of this Code is any one of the following judicial officers who perform judicial functions, whether or not a lawyer: all Supreme Court Justices; all Superior Court Judges; all Commonwealth Court

Judges; all Common Pleas Court Judges; all judges of the Philadelphia Municipal Court, except for Traffic Division; and all senior judges as set forth in [3] *infra*.¹

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

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

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

CANON 1

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

RULE 1.1

Compliance with the Law

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

COMMENT:

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

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

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

RULE 1.2

Promoting Confidence in the Judiciary

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

COMMENT:

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

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

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

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

[5] “Impropriety” is a defined term in the Terminology Section of the Code. Actual improprieties include violations of law, court rules or provisions of this Code. The test for appearance of impropriety is whether the conduct would create in reasonable minds a perception that the judge violated this Code or engaged in other conduct that reflects adversely on the judge’s honesty, impartiality, temperament, or fitness to serve as a judge. This test differs from the formerly applied common law test of whether “a significant minority of the lay community could reasonably question the court’s impartiality.”

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

RULE 1.3

Avoiding Abuse of the Prestige of Judicial Office

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

COMMENT:

[1] It is improper for a judge to use or attempt to use his or her position to gain personal advantage or preferential treatment of any kind. For example, it would be improper for a judge to allude to his or her judicial status to gain favorable treatment in encounters with traffic officials. Similarly, a judge must not use judicial letterhead to gain an advantage in conducting his or her personal business. A judge should also not lend the prestige of his or her office to advance the private interests of others, nor convey or knowingly permit others to convey the impression that they are in a special position to influence the judge.

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

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

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

CANON 2

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

RULE 2.1

Giving Precedence to the Duties of Judicial Office

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

COMMENT:

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

[2] To ensure that judges are available to fulfill their judicial duties, judges must conduct their personal and extrajudicial activities to minimize the risk of conflicts that would result in frequent disqualification. See Canon 3.

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

RULE 2.2

Impartiality and Fairness

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

COMMENT:

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

[2] Although each judge comes to the bench with a unique background and personal philosophy, a judge must interpret and apply the law without regard to whether the judge approves or disapproves of the law in question. This comment is not intended to restrict the appropriate functions of the courts in statutory or common law review.

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

[4] It is not a violation of this Rule for a judge to make reasonable accommodations to ensure *pro se* litigants the opportunity to have their matters heard fairly and impartially.

RULE 2.3

Bias, Prejudice, and Harassment

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

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

(C) A judge shall require lawyers in proceedings before the court to refrain from manifesting bias or prejudice, or engaging in harassment, based upon

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

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

COMMENT:

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

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

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

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

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

RULE 2.4

External Influences on Judicial Conduct

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

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

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

COMMENT:

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

RULE 2.5

Competence, Diligence and Cooperation

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

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

COMMENT:

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

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

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

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

RULE 2.6

Ensuring the Right to Be Heard

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

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

COMMENT:

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

[2] The judge plays an important role in overseeing the settlement of disputes, but should be careful that efforts to further settlement do not undermine any party's right to be heard according to law. The judge should keep in mind the effect that the judge's participation in settlement discussions may have, not only on the judge's own views of the case, but also on the perceptions of the lawyers and the parties if the case remains with the judge after settlement efforts are unsuccessful. Among the factors that a judge should consider when deciding upon an appropriate settlement procedure for a case are (1) whether the parties have requested or voluntarily consented to a certain level of participation by the judge in settlement discussions, (2) whether the parties and their counsel are relatively sophisticated in legal matters, (3) whether the case will be tried by the judge or a jury, (4) whether the parties participate with their counsel in settlement discussions, (5) whether any parties are unrepresented by counsel, and (6) whether the matter is civil or criminal.

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

RULE 2.7

Responsibility to Decide

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

COMMENT:

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

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

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

RULE 2.8

Decorum, Demeanor, and Communication with Jurors

(A) A judge shall require order and decorum in proceedings before the court.

(B) A judge shall be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, court staff, court officials, and others with whom the judge deals in an official capacity, and shall require similar conduct of lawyers, court staff, court officials, and others subject to the judge's direction and control.

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

COMMENT:

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

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

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

RULE 2.9

Ex parte Communications

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

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

- (a) the judge reasonably believes that no party will gain a procedural, substantive, or tactical advantage as a result of the *ex parte* communication; and**
- (b) the judge makes provision promptly to notify all other parties of the substance of the *ex parte* communication, and gives the parties an opportunity to respond.**

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

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

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

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

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

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

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

(E) It is not a violation of this Rule for a judge to initiate, permit, or consider *ex parte* communications expressly authorized by law, such as when serving on therapeutic or problem-solving courts, mental health courts, or drug courts. In this capacity, a judge may assume a more interactive role with the parties, treatment providers, probation officers, social workers, and others.

COMMENT:

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

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

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

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

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

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

[7] A judge may consult ethics advisory committees, outside counsel, or legal experts concerning the judge's compliance with this Code. Such consultations are not subject to the restrictions of paragraph (A)(2).

[8] In order to obtain the protection afforded to *ex parte* communication under paragraph (E) of this Rule, a judge should take special care to make sure that the participants in such voluntary special court programs are made aware of and consent to the possibility of *ex parte* communications under paragraph (E).

RULE 2.10

Judicial Statements on Pending and Impending Cases

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

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

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

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

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

COMMENT:

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

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

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

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

RULE 2.11

Disqualification

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

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

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

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

(b) acting as a lawyer in the proceeding;

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

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

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

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

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

(6) The judge:

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

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

(c) was a material witness concerning the matter.

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

(C) A judge subject to disqualification under this Rule, other than for bias or prejudice under paragraph (A)(1), may disclose on the record the basis of the judge's disqualification and may ask the parties and their lawyers to

consider, outside the presence of the judge and court personnel, whether to waive disqualification. If, following the disclosure, the parties and lawyers agree, without participation by the judge or court personnel, that the judge should not be disqualified, the judge may participate in the proceeding. The agreement shall be incorporated into the record of the proceeding.

COMMENT:

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

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

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

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

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

RULE 2.12

Supervisory Duties

(A) A judge shall require court staff, court officials, and others subject to the judge's direction and control to act in a manner consistent with the judge's obligations under this Code.

(B) A judge with supervisory authority for the performance of other judges shall take reasonable measures to ensure that those judges properly

discharge their judicial responsibilities, including the prompt disposition of matters before them.

COMMENT:

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

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

RULE 2.13

Administrative Appointments

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

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

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

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

(1) the position is substantially uncompensated;

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

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

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

COMMENT:

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

[2] Nepotism is the appointment of a judge’s spouse or domestic partner, or any relative within the third degree of relationship of either the judge or the judge’s spouse or domestic partner, or the spouse or domestic partner of such relative.

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

RULE 2.14.

Disability and Impairment

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

COMMENT:

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

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

RULE 2.15

Responding to Judicial and Lawyer Misconduct

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

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

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

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

COMMENT:

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

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

RULE 2.16

Cooperation with Disciplinary Authorities

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

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

COMMENT:

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

CANON 3

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

RULE 3.1

Extrajudicial Activities in General

Judges shall regulate their extrajudicial activities to minimize the risk of conflict with their judicial duties and to comply with all provisions of this Canon. However, a judge shall not:

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

(B) participate in activities that will lead to frequent disqualification of the judge;

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

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

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

COMMENT:

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

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

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

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

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

RULE 3.2.

Appearances Before Governmental Bodies and Consultation with Government Officials

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

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

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

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

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

COMMENT:

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

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

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

RULE 3.3:

Testifying as a Character Witness

Reserved.

COMMENT:

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

RULE 3.4

Appointments to Governmental Positions and Other Organizations

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

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

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

COMMENT:

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

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

RULE 3.5

Use of Nonpublic Information

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

COMMENT:

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

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

RULE 3.6

Affiliation with Discriminatory Organizations

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

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

COMMENT:

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

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

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

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

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

RULE 3.7

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

(A) Avocational activities. Judges may write, lecture, teach, and speak on non-legal subjects and engage in the arts, sports, and other social and recreational activities, if such avocational activities do not detract from the dignity of their office or interfere with the performance of their judicial duties.

(B) Civic and Charitable Activities. Judges may participate in civic and charitable activities that do not reflect adversely upon their impartiality or interfere with the performance of their judicial duties. Judges may serve as an officer, director, trustee, or nonlegal advisor of an educational, religious, charitable, fraternal, or civic organization not conducted for the economic or political advantage of its members, subject to the following limitations:

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

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

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

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

COMMENT:

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

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

RULE 3.8

Fiduciary Activities

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

judicial duties. As family fiduciaries judges are subject to the following restrictions:

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

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

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

COMMENT:

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

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

RULE 3.9

Service as Arbitrator or Mediator

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

COMMENT:

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

RULE 3.10

Practice of Law

A judge shall not practice law. A judge may act *pro se* in a legal action in which he or she is personally involved, and may, without compensation, give legal advice to and draft or review documents for a member of the

judge's family, but is prohibited from serving as the family member's lawyer in any forum. Such limited practice is also subject to the disclosure of employment within the Unified Judicial System to the parties and the court in which the judge represents himself or herself. A judge is not prohibited from practicing law pursuant to military service, if the judge is otherwise permitted by law to do so.

COMMENT:

A judge may act pro se in all legal matters, including matters involving litigation and matters involving appearances before and dealings with governmental bodies. A judge must not use the prestige of office to advance the judge's personal or family interests. See Rule 1.3.

RULE 3.11

Financial Activities

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

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

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

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

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

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

(2) lead to frequent disqualification of the judge;

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

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

COMMENT:

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

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

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

RULE 3.12

Compensation for Extrajudicial Activities

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

COMMENT:

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

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

RULE 3.13

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

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

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

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

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

(3) ordinary social hospitality;

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

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

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

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

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

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

(1) gifts incident to a public testimonial;

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

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

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

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

(D) A judge must report, to the extent required by Rule 3.15, gifts, loans, bequests, benefits, or other things of value received by the business, profession, or other separate activity of a spouse, a domestic partner, or other family member of a judge residing in the judge's household, if the source is a party or other person, including a lawyer, who has come or is likely to come before the judge, or whose interests have come or are likely to come before the judge.

COMMENT:

[1] Whenever a judge accepts a gift or other thing of value without paying fair market value, there is a risk that the benefit might be viewed as a means to influence the judge's decision in a case. Rule 3.13 restricts the acceptance of such benefits, according to the magnitude of the risk. Paragraph (B) identifies circumstances in which the risk that the acceptance would appear to undermine

the judge's independence, integrity, or impartiality is low, and explicitly provides that such items need not be publicly reported. As the value of the benefit or the likelihood that the source of the benefit will appear before the judge increases, the judge is prohibited under paragraph (A) from accepting the gift, or required under paragraph (C) and (D) to publicly report it.

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

[3] Businesses and financial institutions frequently offer special pricing, discounts, and other benefits, either in connection with a temporary promotion or for preferred customers, based upon longevity of the relationship, volume of business transacted, and other factors. A judge may freely accept such benefits if they are available to the general public, or if the judge qualifies for the special price or discount according to the same criteria as are applied to persons who are not judges. As an example, loans provided at generally prevailing interest rates are not gifts, but a judge could not accept a loan from a financial institution at below-market interest rates unless the same rate was offered to the general public for a certain period of time or only to borrowers with specified qualifications that the judge also possesses.

[4] Rule 3.13 applies only to acceptance of gifts or other things of value by a judge. Nonetheless, if a gift or other benefit is given to the judge's spouse, domestic partner, or member of the judge's family residing in the judge's household, it may be viewed as an attempt to evade Rule 3.13 and influence the judge indirectly. This concern is reduced if the judge merely incidentally benefits from a gift or benefit given to such other persons. A judge should, however, inform family and household members of the restrictions imposed upon judges, and urge them to consider these restrictions when deciding whether to accept such gifts or benefits. [5] Rule 3.13 does not apply to contributions to a judge's campaign for judicial office. Such contributions are governed by other Rules of this Code, including Rules 4.3 and 4.4.

RULE 3.14

Reimbursement of Expenses and Waivers of Fees or Charges

(A) Unless otherwise prohibited by Rules 3.1 and 3.13(A) or other law, a judge may accept reimbursement of necessary and reasonable expenses for travel, food, lodging, or other incidental expenses, or a waiver or partial waiver of fees or charges for registration, tuition, and similar items, from

sources other than the judge's employing entity, if the expenses or charges are associated with the judge's participation in extrajudicial activities permitted by this Code.

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

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

COMMENT:

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

[2] Often, sponsoring organizations invite certain judges to attend seminars or other events on a fee-waived or partial-fee-waived basis, sometimes including reimbursement for necessary travel, food, lodging, or other incidental expenses. A judge's decision whether to accept reimbursement of expenses or waiver or partial waiver of fees or charges in connection with these or other extrajudicial activities must be based upon an assessment of all the circumstances. The judge must reasonably obtain and consider information necessary to make an informed judgment about whether acceptance would be consistent with the requirements of this Code.

[3] A judge must be confident that acceptance of reimbursement or fee waivers would not reasonably undermine the judge's independence, integrity, or impartiality. The factors that a judge should consider when deciding whether to accept reimbursement or a fee waiver for attendance at a particular activity include:

(a) whether the sponsor is an accredited educational institution or a bar association rather than a trade association or a for-profit entity;

(b) whether the funding comes largely from numerous contributors rather than from a single entity and is restricted to programs with specific content;

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

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

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

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

(g) whether differing viewpoints are presented; and

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

RULE 3.15

Reporting Requirements

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

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

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

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

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

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

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

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

(4) the date and source of any gifts, loans, bequests, benefits, or other things of value received by the business, profession, or other separate activity of a spouse, a domestic partner, or other family member of a judge residing in the judge's household if the source is a party or other person, including a lawyer, who has come or is likely to come before the judge, or whose interests have come or are likely to come before the judge.

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

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

CANON 4

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

RULE 4.1

Political and Campaign Activities of Judges and Judicial Candidates in General

(A) Except as permitted by Rules 4.2, 4.3, and 4.4, a judge or a judicial candidate shall not:

(1) act as a leader in, or hold an office in, a political organization;

(2) make speeches on behalf of a political organization or a candidate for any public office;

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

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

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

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

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

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

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

(10) engage in any political activity on behalf of a political organization or candidate for public office except on behalf of measures to improve the law, the legal system, or the administration of justice; or

(11) in connection with cases, controversies or issues that are likely to come before the court, make pledges, promises, or commitments that are inconsistent with the impartial performance of the adjudicative duties of judicial office.

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

COMMENT:

GENERAL CONSIDERATIONS

[1] Even when subject to public election, a judge plays a role different from that of a legislator or executive branch official. Rather than making decisions based upon the expressed views or preferences of the electorate, a judge makes decisions based upon the law and the facts of every case. Therefore, in furtherance of this interest, judges and judicial candidates must, to the extent reasonably possible, be free and appear to be free from political influence and political pressure. This Canon imposes narrowly tailored restrictions upon the political and campaign activities of all judges and judicial candidates, taking into account the various methods of selecting judges.

[2] When a person becomes a judicial candidate, this Canon becomes applicable to his or her conduct. These Rules do not prohibit candidates from campaigning on their own behalf, from endorsing or opposing candidates for the same judicial office for which they are a candidate, or from endorsing candidates for another elective judicial office appearing on the same ballot. See Rules 4.2(B)(2) and 4.2(B)(3). Candidates do not publicly endorse another candidate for public office by having their name on the same ticket.

PARTICIPATION IN POLITICAL ACTIVITIES

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

[4] Paragraphs (A)(2) and (A)(3) prohibit judges from making speeches on behalf of political organizations or publicly endorsing or opposing candidates for public office, respectively, to prevent them from abusing the prestige of judicial office to advance the interests of others. See Rule 1.3.

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

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

PLEDGES, PROMISES, OR COMMITMENTS INCONSISTENT WITH IMPARTIAL PERFORMANCE OF THE ADJUDICATIVE DUTIES OF JUDICIAL OFFICE

[7] The role of a judge is different from that of a legislator or executive branch official, even when the judge is subject to public election. Campaigns for judicial office must be conducted differently from campaigns for other offices. The narrowly drafted restrictions upon political and campaign activities of judicial candidates provided in Canon 4 allow candidates to conduct campaigns that provide voters with sufficient information to permit them to distinguish between candidates and make informed electoral choices.

[8] Rule 4.1(A)(11) makes applicable to both judges and judicial candidates the prohibition that applies to judges in Rule 2.10(B), relating to pledges, promises, or commitments that are inconsistent with the impartial performance of the adjudicative duties of judicial office.

[9] The making of a pledge, promise, or commitment is not dependent upon, or limited to, the use of any specific words or phrases; instead, the totality of the statement must be examined to determine whether the candidate for judicial office has specifically undertaken to reach a particular result. Pledges, promises, or commitments must be contrasted with statements or

announcements of personal views on legal, political, or other issues, which are not prohibited. When making such statements, a judge should acknowledge the overarching judicial obligation to apply and uphold the law, without regard to his or her personal views.

[10] A judicial candidate may make campaign promises related to judicial organization, administration, and court management, such as a promise to dispose of a backlog of cases, start court sessions on time, or avoid favoritism in appointments and hiring. A candidate may also pledge to take action outside the courtroom, such as working toward an improved jury selection system, or advocating for more funds to improve the physical plant and amenities of the courthouse.

[11] Judicial candidates may receive questionnaires or requests for interviews from the media and from issue advocacy or other community organizations that seek to learn their views on disputed or controversial legal or political issues. Paragraph (A)(11) does not specifically address judicial responses to such inquiries. Depending upon the wording and format of such questionnaires, candidates' responses might be viewed as pledges, promises, or commitments to perform the adjudicative duties of office other than in an impartial way. To avoid violating paragraph (A)(11), therefore, candidates who respond to media and other inquiries should also give assurances that they will keep an open mind and will carry out their adjudicative duties faithfully and impartially if elected. Candidates who do not respond may state their reasons for not responding, such as the danger that answering might be perceived by a reasonable person as undermining a successful candidate's independence or impartiality, or that it might lead to frequent disqualification. See Rule 2.11.

RULE 4.2

Political and Campaign Activities of Judicial Candidates in Public Elections

(A) A judicial candidate in a public election shall:

(1) act at all times in a manner consistent with the independence, integrity, and impartiality of the judiciary;

(2) comply with all applicable election, election campaign, and election campaign fundraising laws and regulations of this jurisdiction;

(3) review and approve the content of all campaign statements and materials produced by the candidate or his or her campaign committee, as authorized by Rule 4.4, before their dissemination; and

(4) take reasonable measures to ensure that other persons do not undertake on behalf of the candidate activities, other than those described in Rule 4.4, that the candidate is prohibited from doing by this Rule.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

COMMENT:

GENERAL CONSIDERATIONS

[1] Paragraphs (B) and (C) permit judicial candidates in public elections to engage in some political and campaign activities otherwise prohibited by Rule 4.1. Candidates may not engage in these activities earlier than immediately after the General Election in the year prior to the calendar year in which a person may become a candidate for such office.

[2] Despite paragraph (B) and (C), judicial candidates for public election remain subject to many of the provisions of Rule 4.1. For example, a candidate continues to be prohibited from soliciting funds for a political organization, knowingly making false or misleading statements during a campaign, or making certain promises, pledges, or commitments related to future adjudicative duties. See Rule 4.1(A), paragraphs (4) and (11), and Rule 4.2(C), paragraph (4).

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

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

[5] For purposes of paragraph (B)(3), candidates are considered to be a candidate for the same judicial office if they are competing for a single judgeship or for one of several judgeships on the same court to be filled as a result of the election. In endorsing or opposing another candidate for a position on the same court, a judicial candidate must abide by the same rules governing campaign conduct and speech as apply to the candidate's own campaign.

STATEMENTS AND COMMENTS MADE DURING A CAMPAIGN FOR JUDICIAL OFFICE

[6] Judicial candidates must be scrupulously fair and accurate in all statements made by them and by their campaign committees. Paragraph (C)(4) obligates candidates and their committees to refrain from making statements that

are false or misleading, or that omit facts necessary to make the communication considered as a whole not materially misleading.

[7] Judicial candidates are sometimes the subject of false, misleading, or unfair allegations made by opposing candidates, third parties, or the media. For example, false or misleading statements might be made regarding the identity, present position, experience, qualifications, or judicial rulings of a candidate. In other situations, false or misleading allegations may be made that bear upon a candidate's integrity or fitness for judicial office. As long as the candidate does not violate paragraphs (C)(4) or (C)(5), or Rule 4.1, paragraph (A)(11), the candidate may make a factually accurate public response. In addition, when an independent third party has made unwarranted attacks on a candidate's opponent, the candidate may disavow the attacks, and request the third party to cease and desist.

[8] Subject to paragraph (C)(5), a judicial candidate is permitted to respond directly to false, misleading, or unfair allegations made against him or her during a campaign, although it is preferable for someone else to respond if the allegations relate to a pending case.

[9] Paragraph (C)(5) prohibits judicial candidates from making comments that might impair the fairness of pending or impending judicial proceedings. This provision does not restrict arguments or statements to the court or jury by a lawyer who is a judicial candidate, or rulings, statements, or instructions by a judge that may appropriately affect the outcome of a matter.

RULE 4.3

Activities of Candidates for Appointive Judicial Office

A candidate for appointment to judicial office may:

(A) communicate with the appointing or confirming authority, including any selection, screening, or nominating commission or similar agency; and

(B) seek endorsements for the appointment from any person or organization.

COMMENT:

When seeking support or endorsement, or when communicating directly with an appointing or confirming authority, a candidate for appointive judicial office must not make any pledges, promises, or commitments that are inconsistent with the impartial performance of the adjudicative duties of the office. See Rule 4.1(A)(11).

RULE 4.4

Campaign Committees

(A) A judicial candidate subject to public election may establish a campaign committee to manage and conduct a campaign for the candidate, including seeking, accepting, and using endorsements from any person or organization, subject to the provisions of this Code. The candidate shall take reasonable steps to cause his or her campaign committee to comply with applicable provisions of this Code and other applicable law.

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

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

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

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

COMMENT:

[1] Judicial candidates are prohibited from personally soliciting campaign contributions or personally accepting campaign contributions. See Rule 4.2(C)(1). This Rule recognizes that in Pennsylvania, judicial campaigns must raise campaign funds to support their candidates, and permits candidates, other than candidates for appointive judicial office, to establish campaign committees to solicit and accept reasonable financial contributions or in-kind contributions.

[2] Campaign committees may solicit, accept, and use campaign contributions and endorsements, and may generally conduct campaigns. Candidates are responsible for compliance with the requirements of election law and other applicable law, and for the activities of their campaign committees.

[3] At the start of a campaign, the candidate should instruct the campaign committee to solicit or accept only such contributions as are in conformity with applicable law. Although lawyers and others who might appear before a successful candidate for judicial office are permitted to make campaign contributions, the candidate should instruct his or her campaign committee to be especially cautious in connection with such contributions, so they do not create grounds for disqualification or recusal if the candidate is elected to judicial office. See Rule 2.11.

RULE 4.5

Activities of Judges Who Become Candidates for Nonjudicial Office

(A) Upon becoming a candidate for a nonjudicial elective office, a judge shall resign from judicial office, unless permitted by law to continue to hold judicial office.

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

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

COMMENT:

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

[2] The “resign to run” rule set forth in paragraph (A) is required by Article V, Section 18(d)(4) of the Pennsylvania Constitution, which states: “A justice, judge or justice of the peace who files for nomination for or election to any public office other than a judicial office shall forfeit automatically his judicial office.” It ensures that a judge cannot use the judicial office to promote his or her candidacy, and prevents post-campaign retaliation from the judge in the event the judge is defeated in the election. When a judge is seeking appointive nonjudicial office, however, the dangers are not sufficient to warrant imposing the “resign to run” rule.