

PROPOSED OHIO CODE OF JUDICIAL CONDUCT

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Note: Except for Latin terms, words and phrases that appear in italicized type in each rule denote terms that are defined in Terminology or Rule 4.6.

1 **Preamble**

2
3 [1] An independent, fair, and impartial judiciary is indispensable to our system of
4 justice. The United States legal system is based upon the principle that an independent,
5 impartial, and competent judiciary, composed of men and women of integrity, will interpret and
6 apply the law that governs our society. Thus, the judiciary plays a central role in preserving the
7 principles of justice and the rule of law. Inherent in all the rules contained in this code are the
8 precepts that judges, individually and collectively, must respect and honor the judicial office as a
9 public trust and strive to maintain and enhance confidence in the legal system.

10
11 [2] Judges should maintain the dignity of judicial office at all times and avoid both
12 impropriety and the appearance of impropriety in their professional and personal lives. They
13 should aspire at all times to conduct that ensures the greatest possible public confidence in their
14 independence, impartiality, integrity, and competence.

15
16 [3] The ~~Model~~ Ohio Code of Judicial Conduct establishes standards for the ethical
17 conduct of judges and judicial candidates. It is not intended as an exhaustive guide for the
18 conduct of judges and judicial candidates, who are governed in their judicial and personal
19 conduct by general ethical standards as well as by the Code. The Code is intended, however, to
20 provide guidance and assist judges in maintaining the highest standards of judicial and personal
21 conduct and to provide a basis for regulating their conduct through disciplinary agencies.

22
23 **Scope**

24
25 [1] The ~~Model~~ Ohio Code of Judicial Conduct consists of four Canons, numbered
26 rules under each Canon, and comments that generally follow and explain each rule. Scope and
27 Terminology sections provide additional guidance in interpreting and applying the Code. An
28 Application section establishes when the various rules apply to a judge or judicial candidate.

29
30 [2] The Canons state overarching principles of judicial ethics that all judges must
31 observe. Although a judge may be disciplined only for violating a rule, the Canons provide
32 important guidance in interpreting the rules. Where a rule contains a permissive term, such as
33 “may” or “should,” the conduct being addressed is committed to the personal and professional
34 discretion of the judge or candidate in question, and no disciplinary action should be taken for
35 action or inaction within the bounds of such discretion.

36
37 [3] The comments that accompany the rules serve two functions. First, they provide
38 guidance regarding the purpose, meaning, and proper application of the rules. They contain
39 explanatory material and, in some instances, provide examples of permitted or prohibited
40 conduct. Comments neither add to nor subtract from the binding obligations set forth in the
41 rules. Therefore, when a comment contains the term “must,” it does not mean that the comment
42 itself is binding or enforceable; it signifies that the rule in question, properly understood, is
43 obligatory as to the conduct at issue.

44
45 [4] Second, the comments identify aspirational goals for judges. To implement fully
46 the principles of this code as articulated in the Canons, judges should strive to exceed the

47 standards of conduct established by the rules, holding themselves to the highest ethical standards
48 and seeking to achieve those aspirational goals, thereby enhancing the dignity of the judicial
49 office.

50
51 [5] The rules of the ~~Model~~ Ohio Code of Judicial Conduct are rules of reason that
52 should be applied consistent with constitutional requirements, statutes, other court rules, and
53 decisional law, and with due regard for all relevant circumstances. The rules should not be
54 interpreted to impinge upon the essential independence of judges in making judicial decisions.

55
56 [6] Although the black letter of the rules is binding and enforceable, it is not
57 contemplated that every transgression will result in the imposition of discipline. Whether
58 discipline should be imposed should be determined through a reasonable and reasoned
59 application of the rules and should depend upon factors such as the seriousness of the
60 transgression, the facts and circumstances that existed at the time of the transgression, the extent
61 of any pattern of improper activity, whether there have been previous violations, and the effect of
62 the improper activity upon the judicial system or others.

63
64 [7] The Code is not designed or intended as a basis for civil or criminal liability.
65 Neither is it intended to be the basis for litigants to seek collateral remedies against each other or
66 to obtain tactical advantages in proceedings before a court.

67
68

69 **Comparison to Ohio Code of Judicial Conduct**

70
71 The Preamble is new and contains statements not found in the Ohio Code. Scope [1], [2],
72 [3], and [4] have antecedents in the first paragraph of the existing Preamble, and portions of
73 Scope [5], [6], and [7] are found in the second, third, and fourth paragraphs of the Preamble to
74 the Ohio Code.

75 **Comparison to ABA Model Code of Judicial Conduct**

76
77 The Preamble and Scope are substantively identical to the Model Code provisions.
78

Application

The Application section establishes how and when the various rules apply to a judge or judicial candidate.

I. Applicability of this Code

(A) ~~The provisions of the code apply~~ This code applies to all fulltime judges. ~~Parts II through V of this~~ The Application section ~~identify those~~ identifies provisions that do not apply to ~~four~~ distinct categories of part-time judges. ~~The four categories of judicial service in other than a full-time capacity are necessarily defined in general terms because of the widely varying forms of judicial service.~~ Canon 4 applies to judicial candidates.

(B) A judge, within the meaning of this code, is ~~anyone~~ a lawyer who is authorized to perform judicial functions within a court, including an officer such as a ~~justice of the peace, magistrate, court commissioner, or special master, referee, or member of the administrative law judiciary.~~

Comment

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

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

[3] ~~In recent years many jurisdictions have created what are often called “problem solving” courts, in which judges are authorized by court rules to act in nontraditional ways. For example, judges presiding in drug courts and monitoring the progress of participants in those courts’ programs may be authorized and even encouraged to communicate directly with social workers, probation officers, and others outside the context of their usual judicial role as independent decision makers on issues of fact and law. When local rules specifically authorize conduct not otherwise permitted under these rules, they take precedence over the provisions set forth in the code. Nevertheless, judges serving on “problem solving” courts shall comply with this code except to the extent local rules provide and permit otherwise. [RESERVED]~~

II. Retired Judge Subject to Recall

A This code applies to a retired judge subject to recall for service, who by law is not permitted to practice law, except that a retired judge is not required to comply with either of the following:

(A) ~~With~~ Rule 3.9, except while serving as a judge;

47 (B) ~~At any time with~~ Rule 3.8, at any time.

48
49 **Comment**

50
51 [1] For the purposes of this section, as long as a retired judge is subject to being
52 recalled for service, the judge is considered to ~~“perform~~ be performing judicial functions.”

53
54 **III. Continuing Parttime Judge**

55
56 (A) ~~A This code applies to a judge who serves repeatedly on a parttime basis by~~
57 ~~election or under a continuing appointment, including a retired judge subject to recall who is~~
58 ~~permitted to practice law (“continuing parttime judge”), except that a parttime judge is not~~
59 ~~required to comply~~

60
61 (A) ~~Is not required to comply with any of the following:~~

62
63 (1) ~~Rules 2.10(A) and 2.10(B), except while serving as a judge;~~

64
65 (2) ~~at any time with Rules 3.4, 3.8, 3.9, 3.10, and 3.11, 3.14, 3.15, 4.1, 4.2, 4.3, 4.4,~~
66 ~~and 4.5 (A) and (B), at any time.~~

67
68 (B) ~~Shall~~ A parttime judge shall not practice law in the court on which the judge
69 serves or in any court subject to the appellate jurisdiction of the court on which the judge serves,
70 and shall not act as a lawyer in a proceeding in which the judge has served as a judge or in any
71 other proceeding related thereto.

72 **Comment**

73
74 [1] When a person who has been a ~~continuing~~ parttime judge is no longer a
75 ~~continuing~~ parttime judge, including a retired judge no longer subject to recall, that person may
76 act as a lawyer in a proceeding in which he or she has served as a judge or in any other
77 proceeding related thereto only with the informed consent of all parties; and pursuant to Rule
78 1.12 of the Ohio Rules of Professional Conduct.

79
80 [2] Division (B) prohibits a parttime judge from appearing in his or her own court and
81 from appearing in another court from which matters may be appealed to the parttime judge’s
82 court. For example, a parttime judge could not practice in a mayor’s court within the territorial
83 jurisdiction of the court on which the parttime judge serves.

84
85 **IV. Periodic Parttime Judge**

86
87 ~~A periodic parttime judge who serves or expects to serve repeatedly on a parttime basis,~~
88 ~~but under a separate appointment for each limited period of service or for each matter,~~

89
90 (A) ~~Is not required to comply with any of the following:~~

91
92 (1) ~~Rule 2.10, except while serving as a judge;~~

93
94 (2) ~~At any time with Rules 3.4, 3.7, 3.8, 3.9, 3.10, 3.11, 3.13, 3.15, 4.1, and~~
95 ~~4.5;~~

96
97 (B) ~~Shall not practice law in the court on which the judge serves or in any court~~
98 ~~subject to the appellate jurisdiction of the court on which the judge serves, and shall not~~
99 ~~act as a lawyer in a proceeding in which the judge has served as a judge or in any other~~
100 ~~proceeding related thereto. [RESERVED]~~

101
102 **V. ~~Pro Tempore Parttime~~ Acting Judge**

103
104 ~~A pro tempore parttime~~ This code applies to an acting judge who serves or expects to
105 serve once or only sporadically on a parttime basis under a separate by appointment for each
106 period of service or for each case heard made pursuant to R.C. 1901.10, 1901.12, or 1907.14,
107 except that an acting judge is not required to comply with any of the following:

108
109 (A) ~~Except while serving as a judge, with~~ Rules 1.2, 2.4, 2.10, ~~or~~ 3.2, 3.12, or 3.13,
110 except while serving as an acting judge;

111
112 (B) ~~At any time with~~ Rules 3.4, ~~3.6,~~ 3.7, 3.8, 3.9, 3.10, 3.11, ~~3.13,~~ 3.15, 4.1 ~~and,~~ 4.2,
113 4.3, 4.4, 4.5, and 4.6, at any time.

114
115 **Comment**

116
117 [1] An acting judge violates Rule 1.3 by engaging in the solicitation or receipt of
118 campaign contributions on behalf of the judge who appointed the acting judge while serving as
119 an acting judge.

120
121 [2] Although division (B) exempts an acting judge from compliance with Rules 4.1 to
122 4.6, this exemption does not apply to an acting judge who is a judicial candidate as defined in
123 Rule 4.6. See Rule 8.2(b) of the Ohio Rules of Professional Conduct.

124
125 **VI. Time for Compliance**

126
127 A person to whom this code becomes applicable shall comply immediately with its
128 provisions, ~~except that those judges to whom as otherwise provided in~~ Rules 3.8 and 3.11 ~~(apply~~
129 ~~shall comply with those Rules as soon as reasonably possible, but in no event later than one year~~
130 ~~after the code becomes applicable to the judge.~~

131
132 **Comment**

133
134 [1] ~~If serving as a fiduciary when selected as judge, a new judge may,~~
135 ~~notwithstanding the prohibitions in Rule 3.8, continue to serve as fiduciary, but only for that~~
136 ~~period of time necessary to avoid serious adverse consequences to the beneficiaries of the~~
137 ~~fiduciary relationship and in no event longer than one year. Similarly, if engaged at the time of~~
138 ~~judicial selection in a business activity, a new judge may, notwithstanding the prohibitions in~~

139 ~~Rule 3.11, continue in that activity for a reasonable period but in no event longer than one year.~~
140 [RESERVED]

141

142

143

Comparison to Ohio Code of Judicial Conduct

144

145 The Application section is analogous to the Compliance section of the Ohio Code.

146

147 Part I corresponds to division (A) of the Compliance section.

148

149 Part II (retired judges) corresponds to division (D) of the Compliance section. Part II is
150 more restrictive than the Compliance section of the Ohio Code in that it does not include
151 exemptions from compliance by a retired judge with prohibitions related to outside business
152 activities [*c.f.*, Ohio Canon 2(C)(3) and Rule 3.11(B)] and accepting appointments to
153 governmental committees and commissions [*c.f.*, Ohio Canon 4(C)(2) and Rule 3.4].

154

155 The exemptions contained in Part III (parttime judges) are analogous to those contained
156 in division (B) of the Compliance section, except that Part III exempts a parttime judge from
157 compliance with Rule 3.9 (Service as an Arbitrator or Mediator).

158

159 Part V (acting judges) corresponds to, but is structured differently from, division (C) of
160 the Compliance section. The Ohio Code lists certain provisions from which an acting judge is
161 exempt while serving in that capacity. The new Compliance section adds several exemptions in
162 division (A), but specifies that the acting judge must adhere to the exempted provisions while
163 serving in that capacity. The exemptions listed in division (B) apply at anytime and, except for
164 the addition of Rule 3.7, are substantively identical to those contained in the Ohio Code.

165

166 Part V, Comment [1] is intended to clarify that an acting judge, consistent with Rule 1.3,
167 may not engage in political activity, including fundraising on behalf of the appointing judge,
168 while serving as an acting judge. This comment has no antecedent in the Ohio Code. Comment
169 [2] is a restatement of current Ohio law as reflected in Ohio Canon 7(A)(1) [new Rule 4.6(E)]
170 and Rule 8.2(b) of the Ohio Rules of Professional Conduct.

171

172 Part VI corresponds to the Effective Date of Compliance section of the Ohio Code.

173

174

175

Comparison to ABA Model Code of Judicial Conduct

176

177 Part I of the Application section is modified from the Model Code to conform to Ohio
178 law. As executive branch employees, administrative hearing officers are excluded from
179 application of the Code as is the case in the existing Ohio Code. Comment [3] is stricken
180 because it suggests that a court, through the adoption of local rules, can nullify provisions of the
181 Code of Judicial Conduct. Such a suggestion is contrary to the plenary authority of the Supreme
182 Court to regulate the conduct of the judiciary and the concept of prescribing a uniform set of
183 standards applicable to all judicial officers.

184

185 Part II contains minor, stylistic changes.

186

187 Part III is modified to reflect the nature of parttime judges in Ohio as elected public
188 officials. Comment [2] is added to clarify the limitations on the practice of law by parttime
189 judges.

190

191 Part IV is stricken as inapplicable in Ohio.

192

193 Part V is modified to reflect the designation of “acting judge” used in Ohio law and other
194 provisions relative to the appointment of acting judges. Two comments are added to Part V to
195 expand on limits on political activity by acting judges and application of Canon 4 to an acting
196 judge who is a candidate for judicial office.

197

198 Part VI is modified to reflect Ohio law and the provisions of Rules 3.8 and 3.11.

Terminology

As used in Canons 1 to 3 of this Code:

~~“Aggregate,” in relation to contributions for a candidate, means not only contributions in cash or in kind made directly to a candidate’s campaign committee, but also all contributions made 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. See Rules 2.11 and 4.4.~~

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

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

“*De minimis*,” in the context of interests pertaining to disqualification of a judge, means an insignificant interest that could not raise a reasonable question regarding the judge’s impartiality. See Rules 2.11 and 3.7.

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

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

- (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;
- (4) An interest in the issuer of government securities held by the judge.

See Rules 1.3 and 2.11.

46 “Ex parte communication” means a communication, concerning a pending or impending
47 matter, between counsel or an unrepresented party and the court when opposing counsel or an
48 unrepresented party is not present or any other communication made to the judge outside the
49 presence of the parties or their lawyers. See Rule 2.9.

50
51 “Fiduciary” includes relationships such as executor, administrator, trustee, or guardian.
52 See Rules 2.11, 3.2, and 3.8.

53
54 “Impartial,” “impartiality,” and “impartially” mean absence of bias or prejudice in favor
55 of, or against, particular parties or classes of parties, as well as maintenance of an open mind in
56 considering issues that may come before a judge. See Canons 1 and 2 and Rules 1.2, 2.2, 2.10,
57 2.11, 2.13, 3.1, 3.7, 3.12, 3.13, and 3.14.

58
59 “Impending matter” is a matter that is imminent or expected to occur in the near future.
60 See Rules 2.9, 2.10, and 3.13.

61
62 “Impropriety” includes conduct that violates the law, court rules, or provisions of this
63 code, and conduct that undermines a judge’s independence, integrity, or impartiality. See Canon
64 1 and Rule 1.2.

65
66 “Independence” means a judge’s freedom from influence or controls other than those
67 established by law. See Canon 1 and Rules 1.2, 3.1, 3.7, 3.12, 3.13, and 3.14

68
69 “Integrity” means probity, fairness, honesty, uprightness, and soundness of character.
70 See Canon 1 and Rules 1.2, 3.1, 3.7, 3.12, 3.13, and 3.14.

71
72 ~~“Judicial candidate” means any person, including a sitting judge, who is seeking selection~~
73 ~~for or retention in judicial office by election or appointment. A person becomes a candidate for~~
74 ~~judicial office as soon as he or she makes a public announcement of candidacy, declares or files~~
75 ~~as a candidate with the election or appointment authority, authorizes or, where permitted,~~
76 ~~engages in solicitation or acceptance receipt of contributions or support, or is nominated for~~
77 ~~election or appointment to office~~ has the same meaning as in Rule 4.6. See Rule 2.11.

78
79 “Knowingly,” “knowledge,” “known,” and “knows” mean actual knowledge of the fact in
80 question. A person’s knowledge may be inferred from circumstances. See Rules 2.11, 2.15,
81 2.16, 3.5, and 3.6.

82
83 “Law” encompasses court rules ~~as well as,~~ including this code and the Ohio Rules of
84 Professional Conduct, statutes, constitutional provisions, and decisional law. See Rules 1.1, 2.1,
85 2.2, 2.6, 2.7, 2.9, 3.1, 3.2, 3.4, 3.7, 3.9, 3.12, 3.13, 3.14, and 3.15.

86
87 ~~“Member of the candidate’s family” means a spouse, domestic partner, child, grandchild,~~
88 ~~parent, grandparent, or other relative or person with whom the candidate maintains a close~~
89 ~~familial relationship.~~

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

94
95 “Member of a judge’s family residing in the judge’s household” means any relative of a
96 judge by blood or marriage, or a person treated by a judge as a member of the judge’s family,
97 who resides in the judge’s household. See Rules 2.11 and 3.13.

98
99 “Nonpublic information” means information that is not available to the public.
100 Nonpublic information may include, but is not limited to, information that is sealed by statute or
101 court order or impounded or communicated in camera, and information offered in grand jury
102 proceedings, presentencing reports, dependency cases, or psychiatric reports. See Rule 3.5.

103
104 “Pending matter” is a matter that has commenced. A matter continues to be pending
105 through any appellate process until final disposition. See Rules 2.9, 2.10, and 3.13.

106
107 ~~“Personally solicit” means a direct request made by a judge or a judicial candidate for~~
108 ~~financial support or in kind services, whether made by letter, telephone, or any other means of~~
109 ~~communication. See Rule 4.1.~~

110
111 ~~“Political organization” means a political party or other group sponsored by or affiliated~~
112 ~~with a political party or candidate, the principal purpose of which is to further the election or~~
113 ~~appointment of candidates for political office. For purposes of this Code, the term does not~~
114 ~~include a judicial candidate’s campaign committee created as authorized by Rule 4.4. See Rules~~
115 ~~4.1 and 4.2.~~

116
117 ~~“Public election” includes primary and general elections, partisan elections, and~~
118 ~~nonpartisan elections, and retention elections. See Rules 4.2 and 4.4.~~

119
120 “Specialized docket” means a docket or court specifically created by statute or pursuant
121 to the authority of the Rules of Superintendence of the Courts of Ohio to address similar cases
122 and parties in a nonadversarial setting. “Specialized dockets” include, but are not limited to,
123 drug courts, mental health courts, domestic violence courts, child support enforcement courts,
124 sex offender courts, OMVI/DUI courts, reentry courts, housing courts, and environmental courts.
125 Courts created in the Ohio Constitution or Revised Code, including appellate courts, common
126 pleas courts and divisions of a common pleas court, municipal courts, and county courts are not,
127 without more, a specialized docket. See Rule 2.9.

128
129 “Third degree of relationship” includes the following persons: great-grandparent,
130 grandparent, parent, uncle, aunt, brother, sister, child, grandchild, great-grandchild, nephew, and
131 niece. See Rule 2.11.

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Comparison to Ohio Code of Judicial Conduct

The words and phrases defined in the Terminology section are comparable to those found in the corresponding section of the Ohio Code, with the following exceptions:

- “Appropriate authority,” “contribution,” “domestic partner,” “*ex parte* communication,” “impartial,” “impending matter,” “impropriety,” “independence,” “integrity,” “judicial candidate,” “pending matter,” and “specialized docket” are newly defined terms;
- The Ohio Code definition of “court personnel” is not included in the Terminology section.

Comparison to ABA Model Code of Judicial Conduct

The following modifications are made to the ABA Terminology section:

- The definition of “aggregate” is stricken, due to the deletion of Rule 2.11(A)(4), and moved to Rule 4.6;
- The definition of “judicial candidate” is modified reference the definition in Rule 4.6;
- The definition of “law” is modified to reference specifically the Ohio Code of Judicial Conduct and the Ohio Rules of Professional Conduct;
- The definitions of “member of the candidate’s family,” “personally solicit,” “political organization,” and “public election” are stricken because those terms are not used in Canons 1-3;
- Definitions of “*ex parte* communication” and “specialized docket” are added to correspond to modifications made to Rules 2.9 and 2.11.

Canon 1

1
2
3
4

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

1 **Rule 1.1. Compliance with the Law**

2
3 A judge shall comply with the *law*, ~~including the Code of Judicial Conduct.~~

4
5
6 **Comparison to Ohio Code of Judicial Conduct**

7
8 Rule 1.1 is comparable to the first portion of Canon 2 of the Ohio Code.

9
10 **Comparison to ABA Model Code of Judicial Conduct**

11
12 Rule 1.1 is identical to Model Rule 1.1, except that the phrase “including the Code of
13 Judicial Conduct” is deleted. See the definition of “law” in the Terminology section.

1 **RULE 1.2 Promoting Confidence in the Judiciary**

2
3 A judge shall act at all times in a manner that promotes public confidence in the
4 *independence, integrity, and impartiality* of the judiciary, and shall avoid *impropriety* and the
5 appearance of *impropriety*.
6

7
8 **Comment**
9

10 [1] Public confidence in the judiciary is eroded by improper conduct and conduct that
11 creates the appearance of impropriety. This principle applies to both the professional and
12 personal conduct of a judge.
13

14 [2] A judge should expect to be the subject of public scrutiny that might be viewed as
15 burdensome if applied to other citizens, and must accept the restrictions imposed by the code.
16

17 [3] Conduct that compromises or appears to compromise the independence, integrity,
18 and impartiality of a judge undermines public confidence in the judiciary. Because it is not
19 practicable to list all such conduct, the rule is necessarily cast in general terms.
20

21 [4] Judges should participate in activities that promote ethical conduct among judges
22 and lawyers, support professionalism within the judiciary and the legal profession, and promote
23 access to justice for all.
24

25 [5] Actual improprieties include violations of law, court rules, or provisions of this
26 code. The test for appearance of impropriety is an objective standard that focuses on whether the
27 conduct would create, in reasonable minds, a perception that the judge violated this code,
28 engaged in conduct that is prejudicial to public confidence in the judiciary, or engaged in other
29 conduct that reflects adversely on the judge’s honesty, impartiality, temperament, or fitness to
30 serve as a judge.
31

32 [6] A judge should initiate and participate in ~~community outreach~~ activities for the
33 purpose of promoting public understanding of and confidence in the administration of justice. In
34 conducting such activities, the judge must act in a manner consistent with this code. See Rules
35 3.1 and 3.7.
36

37
38 **Comparison to Ohio Code of Judicial Conduct**
39

40 Rule 1.2 substantially combines the first portion of Canon 2 and the provisions of Canon
41 1 of the Ohio Code.
42

43 **Comparison to ABA Code of Judicial Conduct**
44

45 Rule 1.2 is identical to Model Rule 1.2.
46

47 Comment [5] is modified to be consistent with *In re Complaint Against Harper* (1996),
48 77 Ohio St.3d 211 and *Office of Disciplinary Counsel v. Medley* (2001), 93 Ohio St.3d 474.
49

50 Comment [6] is modified to broaden the scope of activities that are encouraged.

1 **RULE 1.3 Avoiding Abuse of the Prestige of Judicial Office**

2
3 A judge shall not abuse the prestige of judicial office to advance the personal or *economic*
4 *interests* of the judge or others, or allow others to do so.
5

6
7 **Comment**
8

9 [1] It is improper for a judge to use or attempt to use his or her position to gain
10 personal advantage or deferential treatment of any kind. For example, it would be improper for a
11 judge to allude to his or her judicial status to gain favorable treatment in encounters with traffic
12 officials. Similarly, a judge must not use judicial letterhead to gain an advantage in conducting
13 his or her personal business.
14

15 [2] A judge may provide a reference or recommendation for an individual based upon
16 the judge’s personal knowledge. The judge may use official letterhead ~~if the judge indicates that~~
17 ~~the reference is personal and if there is no likelihood that the use of the letterhead would~~
18 ~~reasonably be perceived as an attempt to exert pressure by reason of the judicial office~~ for such
19 reference.
20

21 [3] Judges may participate in the process of judicial selection by cooperating with
22 appointing authorities and screening committees, and by responding to inquiries from such
23 entities concerning the professional qualifications of a person being considered for judicial
24 office. However, a judge should not serve on any screening committee.
25

26 [4] Special considerations arise when judges write or contribute to publications of
27 for-profit entities, ~~whether related or unrelated to the law.~~ A judge should not permit anyone
28 associated with the publication of such materials to exploit the judge’s office in a manner that
29 violates this rule or other applicable law. ~~In contracts for publication of a judge’s writing, the~~
30 ~~judge should retain sufficient control over the advertising to avoid such exploitation~~ A judge
31 who writes or contributes to a publication that concerns the law, the legal system, or the
32 administration of justice does not violate this rule by allowing his or her title and judicial
33 experience to be used as a means of identification or to demonstrate an expertise in the subject-
34 matter of the publication. When writing for other publications, such as a work of fiction, a judge
35 may state his or her title in conjunction with biographical information that accompanies the
36 publication but may not use or permit the use of his or her judicial experience for the purpose of
37 advertising or promoting such publications.
38
39

40 **Comparison to Ohio Code of Judicial Conduct**
41

42 Rule 1.3, in many respects, is comparable to Ohio Canon 4(A). However, Canon 4(A)
43 uses the standard “lend the prestige of judicial office” as the test for a violation. Rule 1.3 adopts
44 a test that prohibits the “abuse of judicial office.” The test for a violation may be less restrictive
45 than under the Ohio Code.
46

47 **Comparison to ABA Model Code of Judicial Conduct**

48

49 Rule 1.3 is identical to Model Rule 1.3.

50

51 Comment [2] is less restrictive than the Model Rule comment in that it does not require
52 the judge to indicate that the reference is personal, and the perception requirement is removed.
53 Further, Comment [2] is consistent with Advisory Opinions 95-5 and 98-4 issued by the Board of
54 Commissioners on Grievances and Discipline.

55

56 Comment [3] is clarified to advise that while a judge may participate in the process of
57 judicial selection, participation as a member of a screening committee is prohibited.

58

59 Comment [4] regarding publications has been amended to provide a more workable and
60 practical standard.

Canon 2

1
2
3
4

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

1 **RULE 2.1 Giving Precedence to the Duties of Judicial Office**

2
3 The duties of judicial office, as prescribed by *law*, shall take precedence over all of a
4 judge’s ~~personal and extrajudicial~~ other activities.
5

6
7 **Comment**

8
9 [1] To ensure that judges are available to fulfill their judicial duties, judges must
10 conduct their personal and extrajudicial activities to minimize the risk of conflicts that would
11 result in frequent disqualification or unavailability. See Canon 3.
12

13 [2] Although it is not a duty of judicial office unless prescribed by law, judges are
14 encouraged to participate in activities that promote public understanding of and confidence in the
15 justice system.
16

17
18 **Comparison to Ohio Code of Judicial Conduct**

19
20 Rule 2.1 is comparable to Ohio Canon 3(A) and does not depart substantively from that
21 rule.
22

23 **Comparison to ABA Model Code of Judicial Conduct**

24
25 Rule 2.1 is modified to substitute the word “other” for the phrase “personal and
26 extrajudicial,” thus retaining language found in the Ohio Code. “Other” is broader and more
27 encompassing than the Model Code language.

1 **RULE 2.2 Impartiality and Fairness**

2
3 A judge shall uphold and apply the *law*, and shall perform all duties of judicial office
4 fairly and *impartially*.

5
6
7 **Comment**

8
9 [1] To ensure impartiality and fairness to all parties, a judge must be objective and
10 open-minded.

11
12 [2] Although each judge comes to the bench with a unique background and personal
13 philosophy, a judge must interpret and apply the law without regard to whether the judge
14 approves or disapproves of the law in question.

15
16 [3] When applying and interpreting the law, a judge sometimes may make good-faith
17 errors of fact or law. Errors of this kind do not violate this rule.

18
19 [4] ~~It is not a violation of this rule for a judge to make reasonable accommodations to~~
20 To ensure *pro se* self-represented litigants the opportunity to have their matters fairly heard, a
21 judge may make reasonable accommodations to a self-represented litigant consistent with the
22 law. See also Rule 2.6, Comment [1A].

23
24
25 **Comparison to Ohio Code of Judicial Conduct**

26
27 Rule 2.2 is comparable to Ohio Canons 3(B)(2) and (B)(5). Canon 3(B)(2) specifies a
28 judge’s duty to be competent in the law and avoid being swayed by outside influences, and the
29 first sentence of Canon 3(B)(5) requires a judge to perform judicial duties without bias or
30 prejudice. By contrast, Rule 2.2 addresses these duties in terms of a judge’s responsibility to
31 uphold and apply the law and perform all judicial duties fairly and impartially. Avoiding
32 external influences and maintaining competency are addressed by Rules 2.4 and 2.5,
33 respectively.

34
35 **Comparison to ABA Model Code of Judicial Conduct**

36
37 Rule 2.2 is the same as Model Rule 2.2. Comment 4 is modified to be consistent with
38 Ohio law concerning a judge’s duties toward self-represented litigants.

1 **RULE 2.3 Bias, Prejudice, and Harassment**
2

3 (A) A judge shall perform the duties of judicial office, including administrative duties,
4 without bias or prejudice.
5

6 (B) A judge shall not, in the performance of judicial duties, by words or conduct
7 manifest bias or prejudice, or engage in harassment, including but not limited to bias, prejudice,
8 or harassment based upon race, sex, gender, religion, national origin, ethnicity, disability, age,
9 sexual orientation, marital status, socioeconomic status, or political affiliation, and shall not
10 permit court staff, court officials, or others subject to the judge’s direction and control to do so.
11

12 (C) A judge shall require lawyers in proceedings before the court to refrain from
13 manifesting bias or prejudice, or engaging in harassment, based upon attributes including but not
14 limited to race, sex, gender, religion, national origin, ethnicity, disability, age, sexual orientation,
15 marital status, socioeconomic status, or political affiliation, against parties, witnesses, lawyers, or
16 others.
17

18 (D) The restrictions of divisions (B) and (C) of this rule do not preclude judges or
19 lawyers from making legitimate reference to the listed factors, or similar factors, when they are
20 relevant to an issue in a proceeding.
21

22
23 **Comment**
24

25 [1] A judge who manifests bias or prejudice in a proceeding impairs the fairness of
26 the proceeding and brings the judiciary into disrepute.
27

28 [2] Examples of manifestations of bias or prejudice include, but are not limited to,
29 epithets; slurs; demeaning nicknames; negative stereotyping; attempted humor based upon
30 stereotypes; threatening, intimidating, or hostile acts; suggestions of connections between race,
31 ethnicity, or nationality and crime; and irrelevant references to personal characteristics. Even
32 facial expressions and body language can convey to parties and lawyers in the proceeding, jurors,
33 the media, and others an appearance of bias or prejudice. A judge must avoid conduct that may
34 reasonably be perceived as prejudiced or biased.
35

36 [3] Harassment, as referred to in divisions (B) and (C), is verbal or physical conduct
37 that denigrates or shows hostility or aversion toward a person on bases such as race, sex, gender,
38 religion, national origin, ethnicity, disability, age, sexual orientation, marital status,
39 socioeconomic status, or political affiliation.
40

41 [4] Sexual harassment includes, but is not limited to, sexual advances, requests for
42 sexual favors, and other verbal or physical conduct of a sexual nature that is unwelcome.
43

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Comparison to Ohio Code of Judicial Conduct

Rule 2.3 is substantially comparable to Ohio Canons 3(B)(5) and (6). Rules 2.3(B) and (C) add “sex,” “marital status,” and “political affiliation” to the categories of prohibited discrimination.

Comparison to ABA Model Code of Judicial Conduct

Rule 2.3 is identical to Model Rule 2.3.

1 **RULE 2.4 External Influences on Judicial Conduct**

2
3 (A) A judge shall not be swayed by public clamor or fear of criticism.

4
5 (B) A judge shall not permit family, social, political, financial, or other interests or
6 relationships to influence the judge’s judicial conduct or judgment.

7
8 (C) A judge shall not convey or permit others to convey the impression that any
9 person or organization is in a position to influence the judge.

10
11
12 **Comment**

13
14 [1] An independent judiciary requires that judges decide cases according to the law
15 and facts, without regard to whether particular laws or litigants are popular or unpopular with the
16 public, the media, government officials, or the judge’s friends or family. Confidence in the
17 judiciary is eroded if judicial decision making is perceived to be subject to inappropriate outside
18 influences.

19
20 **Comparison to Ohio Code of Judicial Conduct**

21
22 Rule 2.4(A) is comparable to a sentence contained in Ohio Canon 3(B)(2), and Rule
23 2.4(B) is comparable to a sentence in Canon 4(A). Rule 2.4(B) uses the phrase “interests or
24 relationships,” which is more precise, and therefore preferable to the word “relationships ” used in
25 Canon 4(A).

26
27 Rule 2.4(C) is comparable to a sentence of Canon 4(A). However, the rule clarifies that a
28 judge must not allow others to convey the impression that any person or organization is in a
29 position to influence the judge.

30
31 The comment explains that the purpose of the rule is not only that actual external
32 influences should not influence a judge in the performance of his or her judicial duties, but the
33 judge should not give the impression that he or she can be influenced by persons or organizations
34 or permit others to do so. The Ohio Code commentary does not address this purpose.

35
36 **Comparison to ABA Model Code of Judicial Conduct**

37
38 Rule 2.4 is identical to Model Rule 2.4.

1 **RULE 2.5 Competence, Diligence, and Cooperation**

2
3 (A) A judge shall perform judicial and administrative duties competently and
4 diligently and shall comply with guidelines set forth in the Rules of Superintendence for the
5 Courts of Ohio.

6
7 (B) A judge shall cooperate with other judges and court officials in the administration
8 of court business.

9
10
11 **Comment**

12
13 [1] Competence in the performance of judicial duties requires the legal knowledge,
14 skill, thoroughness, and preparation reasonably necessary to perform a judge’s responsibilities of
15 judicial office.

16
17 [2] A judge should seek the necessary docket time, court staff, expertise, and
18 resources to discharge all adjudicative and administrative responsibilities.

19
20 [3] Prompt disposition of the court’s business requires a judge to devote adequate
21 time to judicial duties, ~~to~~ be punctual in attending court and expeditious in determining matters
22 under submission, and ~~to~~ take reasonable measures to ensure that court officials, litigants, and
23 their lawyers cooperate with the judge to that end.

24
25 [4] In disposing of matters promptly and efficiently, a judge must demonstrate due
26 regard for the rights of parties to be heard and to have issues resolved without unnecessary cost
27 or delay. A judge should monitor and supervise cases in ways that reduce or eliminate dilatory
28 practices, avoidable delays, and unnecessary costs.

29
30 [5] In discharging the obligation to cooperate with other judges and court officials in
31 the performance of administrative duties, a judge must place the public’s interest in an efficient
32 and well-run court system above any personal or partisan interests. Where good faith differences
33 of opinion exist, unrelated to personal or partisan interests but relative to the administration of
34 court business, the duty to cooperate requires the judge to engage in efforts to reach compromise
35 for the good of the court but does not require compromise.

36
37
38 **Comparison to Ohio Code of Judicial Conduct**

39
40 Rule 2.5 addresses matters now found in Ohio Canons 3(B)(8) and (C)(1). Rule 2.5(B)
41 contains language from Canon 3(C)(1) regarding cooperation with judges and court officials on
42 administrative matters. “Should,” as used in the Canon, is changed to “shall” to reflect the
43 mandatory obligation of the rule.
44

45 **Comparison to ABA Model Code of Judicial Conduct**

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Rule 2.5(A) is modified to include language from Ohio Canon 3(B)(8) requiring compliance with the Ohio Rules of Superintendence. Among other requirements, the Rules of Superintendence include time guidelines for the disposition of cases and statistical reporting requirements applicable to Ohio judges. This language was added to the Ohio Code in 1997 and provides a specific basis for charging misconduct arising from noncompliance with requirements contained in the Rules of Superintendence.

Comment [5] is added to more fully address the cooperation required by Rule 2.5(B).

1 **RULE 2.6 Ensuring the Right to Be Heard**

2
3 (A) A judge shall accord to every person who has a legal interest in a proceeding, or
4 that person’s lawyer, the right to be heard according to *law*.

5
6 (B) A judge may encourage parties to a proceeding and their lawyers to settle matters
7 in dispute but shall not act in a manner that coerces any party into settlement.
8

9
10 **Comment**

11
12 [1] The right to be heard is an essential component of a fair and impartial system of
13 justice. Substantive rights of litigants can be protected only if procedures protecting the right to
14 be heard are observed.

15
16 [1A] The rapid growth in litigation involving self-represented litigants and increasing
17 awareness of the significance of the role of the courts in promoting access to justice have led to
18 additional flexibility by judges and other court officials in order to facilitate a self-represented
19 litigant’s ability to be heard. By way of illustration, individual judges have found the following
20 affirmative, nonprejudicial steps helpful in this regard: (1) providing brief information about the
21 proceeding and evidentiary and foundational requirements; (2) modifying the traditional order of
22 taking evidence; (3) refraining from using legal jargon; (4) explaining the basis for a ruling; and
23 (5) making referrals to any resources available to assist the litigant in the preparation of the case.
24

25 [2] The judge plays an important role in overseeing the settlement of disputes, but
26 should be careful that efforts to further settlement do not undermine any party’s right to be heard
27 according to law. The judge should keep in mind the effect that the judge’s participation in
28 settlement discussions may have, not only on the judge’s own views of the case, but also on the
29 perceptions of the lawyers and the parties if the case remains with the judge after settlement
30 efforts are unsuccessful. Among the factors that a judge should consider when deciding upon an
31 appropriate settlement practice for a case are: (1) whether the parties have requested or
32 voluntarily consented to a certain level of participation by the judge in settlement discussions; (2)
33 whether the parties and their counsel are relatively sophisticated in legal matters; (3) whether the
34 case will be tried by the judge or a jury; (4) whether the parties participate with their counsel in
35 settlement discussions; (5) whether any parties are unrepresented by counsel; and (6) whether the
36 matter is civil or criminal.
37

38 [3] Judges must be mindful of the effect settlement discussions can have, not only on
39 their objectivity and impartiality, but also on the appearance of their objectivity and impartiality.
40 Despite a judge’s best efforts, there may be instances when information obtained during
41 settlement discussions could influence a judge’s decision making during trial, and, in such
42 instances, the judge should consider whether disqualification may be appropriate. See Rule
43 2.11(A)(1).
44
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Comparison to Ohio Code of Judicial Conduct

The Ohio Code contains no provision analogous to Rule 2.6.

Comparison to ABA Model Code of Judicial Conduct

Rule 2.6 and Comments [1], [2], and [3] are identical to Model Rule 2.6.

Comment [1A] is new language not found in the Model Rule. The first sentence acknowledges that the number of litigants who represent themselves, voluntarily or involuntarily, is increasing and that for many of those litigants, the lack of familiarity with the law and the rules of procedure may prevent them from participating in a meaningful way. Judges sometimes struggle with the need to facilitate access while maintaining appropriate neutrality. The second sentence of the comment is included to provide some guidance, particularly to trial judges, about how to facilitate access while maintaining appropriate neutrality. The language is adapted, in part, from a comment proposed to the American Bar Association for inclusion in Model Rule 2.6 by Chief Justice Karla Gray of the Montana Supreme Court.

1 **RULE 2.7 Responsibility to Decide**

2
3 A judge shall hear and decide matters assigned to the judge, except when disqualification
4 is required by Rule 2.11 or other *law*.

5
6
7 **Comment**

8
9 [1] Judges must be available to decide the matters that come before the court.
10 Although there are times when disqualification is necessary to protect the rights of litigants and
11 preserve public confidence in the independence, integrity, and impartiality of the judiciary,
12 judges must be available to decide matters that come before the courts. Unwarranted
13 disqualification may bring public disfavor to the court and to the judge personally. The dignity
14 of the court, the judge’s respect for fulfillment of judicial duties, and a proper concern for the
15 burdens that may be imposed upon the judge’s colleagues require that a judge not use
16 disqualification to avoid cases that present difficult, controversial, or unpopular issues.

17
18
19 **Comparison to Ohio Code of Judicial Conduct**

20
21 Rule 2.7 is comparable to Ohio Canon 3(B)(1).

22
23 **Comparison to ABA Model Code of Judicial Conduct**

24
25 Rule 2.7 is identical to Model Rule 2.7.

1 **RULE 2.8 Decorum, Demeanor, and Communication with Jurors**

2
3 (A) A judge shall require order and decorum in proceedings before the court.

4
5 (B) A judge shall be patient, dignified, and courteous to litigants, jurors, witnesses,
6 lawyers, court staff, court officials, and others with whom the judge deals in an official capacity,
7 and shall require similar conduct of lawyers, court staff, court officials, and others subject to the
8 judge’s direction and control.

9
10 (C) A judge shall not commend or criticize jurors for their verdict other than in a
11 court order or opinion in a proceeding.

12
13
14 **Comment**

15
16 [1] The duty to hear all proceedings with patience and courtesy is not inconsistent
17 with the duty imposed in Rule 2.5 to dispose promptly of the business of the court. Judges can
18 be efficient and businesslike while being patient and deliberate.

19
20 [2] Commending or criticizing jurors for their verdict may imply a judicial
21 expectation in future cases and may impair a juror’s ability to be fair and impartial in a
22 subsequent case. This rule does not preclude a judge from expressing appreciation to jurors for
23 their service to the judicial system and the community or from communicating with jurors
24 personally, in writing, or through court personnel to obtain information for the purpose of
25 improving the administration of justice.

26
27 [3] A judge who is not otherwise prohibited by law from doing so may meet with
28 jurors who choose to remain after trial but should be careful not to discuss the merits of the case.

29
30
31 **Comparison to Ohio Code of Judicial Conduct**

32
33 Rule 2.8(A) is identical to Ohio Canon 3(B)(3).

34
35 Rule 2.8(B) is identical to Ohio Canon 3(B)(4).

36
37 Rule 2.8(C) is identical to Ohio Canon 3(B)(10).

38
39 **Comparison to ABA Model Code of Judicial Conduct**

40
41 Rule 2.8 and Comments [1] and [3] are identical to Model Rule 2.8.

42
43 Comment [2] is expanded to set forth permissible conduct involving jurors.

1 **RULE 2.9 *Ex Parte* Contacts and Communications with Others**

2
3 (A) A judge shall not initiate, receive, permit, or consider *ex parte communications*, ~~or~~
4 ~~consider other communications made to the judge outside the presence of the parties or their~~
5 ~~lawyers, concerning a *pending* or *impending matter*~~, except as follows:
6

7 (1) When circumstances require it, an *ex parte communication* for scheduling,
8 administrative, or emergency purposes, that does not address substantive matters or
9 issues on the merits, is permitted, provided ~~both of the following apply: (a) The~~ the judge
10 reasonably believes that no party will gain a procedural, substantive, or tactical advantage
11 as a result of the *ex parte* communication;
12

13 ~~(b) The judge makes provision promptly to notify all other parties of the~~
14 ~~substance of the *ex parte* communication, and gives the parties an opportunity to~~
15 ~~respond.~~
16

17 (2) A judge may obtain the ~~written~~ advice of a disinterested expert on the *law*
18 applicable to a proceeding before the judge, if the judge gives ~~advance~~ notice to the
19 parties of the person ~~to be~~ consulted and the subject-matter of the advice ~~to be~~ solicited,
20 and affords the parties a reasonable opportunity to object ~~and or~~ or respond to ~~the notice and~~
21 ~~to the advice received;~~ ;
22

23 (3) A judge may consult with court staff and court officials whose functions are to aid
24 the judge in carrying out the judge's adjudicative responsibilities, or with other judges,
25 provided the judge makes reasonable efforts to avoid receiving factual information that is
26 not part of the record and does not abrogate the responsibility personally to decide the
27 matter; ;
28

29 (4) A judge, with the consent of the parties, may confer separately with the parties
30 and their lawyers in an effort to settle matters pending before the judge; ;
31

32 (5) A judge may initiate, receive, permit, or consider ~~any~~ an *ex parte communication*
33 when expressly authorized by *law* to do so;
34

35 (6) A judge may initiate, receive, permit, or consider an *ex parte communication*
36 when presiding over a *specialized docket*, provided the judge reasonably believes that no
37 party will gain a procedural, substantive, or tactical advantage as a result of the *ex parte*
38 *communication*.
39

40 (B) If a judge ~~inadvertently~~ receives an unauthorized *ex parte communication* bearing
41 upon the substance of a matter, the judge shall make provision promptly to notify the parties of
42 the substance of the communication and provide the parties with an opportunity to respond.
43

44 (C) A judge shall not investigate facts in a matter independently, and shall consider
45 only the evidence presented and any facts that may properly be judicially noticed.
46

47 (D) A judge shall make reasonable efforts, including providing appropriate
48 supervision, to ensure that this rule is not violated by court staff, court officials, and others
49 subject to the judge's direction and control.
50

51 **Comment**

52
53
54 [1] To the extent reasonably possible, all parties or their lawyers shall be included in
55 communications with a judge.
56

57 [2] Whenever the presence of a party or notice to a party is required by this rule, it is
58 the party's lawyer, or if the party is unrepresented, the party, who is to be present or to whom
59 notice is to be given.
60

61 [3] The proscription against communications concerning a proceeding includes
62 communications with lawyers, law teachers, and other persons who are not participants in the
63 proceeding, except to the limited extent permitted by this rule.
64

65 [4] A judge may initiate, receive, permit, or consider *ex parte* communications
66 expressly authorized by law, such as when ~~servicing on therapeutic or problem-solving courts,~~
67 ~~mental health courts, or drug courts:~~ (1) an indigent defendant demonstrates a particularized
68 need to retain an expert witness and has not determined whether the expert will testify at trial; (2)
69 the judge obtains information that may result in a confidential referral of counsel to a lawyers
70 assistance program [see Rule 2.14], or (3) in order to comply with Crim. R. 46(C) provided the
71 prosecutor and accused, or accused's attorney, are apprised of the information prior to any
72 decision that is made as a result of the information gathered by the judge or member of the
73 judge's staff.
74

75 [4A] A judge may initiate, receive, permit, or consider *ex parte* communications when
76 administering a specialized docket established under the authority of the Rules of
77 Superintendence or other law. In this capacity, judges may assume a more interactive role with
78 parties, treatment providers, probation officers, social workers, and others.
79

80 [5] A judge may consult with other judges on pending matters, but must avoid *ex*
81 *parte* discussions of a case with judges who have previously been disqualified from hearing the
82 matter and with judges who have appellate jurisdiction over the matter.
83

84 [6] The prohibition against a judge investigating the facts in a matter extends to
85 information available in all mediums, including electronic.
86

87 [7] A judge may consult ethics advisory committees, outside counsel, or legal experts
88 concerning the judge's compliance with this code. Such consultations are not subject to the
89 restrictions of division (A)(2).
90
91

92 **Comparison to Ohio Code of Judicial Conduct**

93
94 Rule 2.9(A) is substantially comparable to Ohio Canon 3(B)(7).

95
96 Rule 2.9(A)(1) is substantially the same as Ohio Canon 3(B)(7)(a).

97
98 Rule 2.9(A)(2) is comparable to Ohio Canon 3(B)(7)(b).

99
100 Rule 2.9(A)(3) expands upon former Ohio Canon 3(B)(7)(c) by describing conduct a
101 judge should attempt to avoid when consulting with court staff and officials and other judges.

102
103 Rule 2.9(A)(4), dealing with the judge’s settlement authority, has no comparable
104 provision in the Ohio Code.

105
106 Rule 2.9(A)(5) is comparable to Ohio Canon 3(B)(7)(d).

107
108 Rule 2.9(A)(6), addressing the conduct of a judge who presides over a specialized docket,
109 has no comparable provision in the Ohio Code.

110
111 Rules 2.9(B), (C), and (D) have no comparable provisions in the Ohio Code.

112
113 **Comparison with ABA Model Code of Judicial Conduct**

114
115 The title to Rule 2.9 is modified to more accurately reflect the content of the rule.

116
117 Rule 2.9(A) is modified to add a prohibition against the receipt of an *ex parte*
118 communication, a concept contained in Ohio Canon 3(B)(7). Deleted from division (A) is a
119 reference to a judge’s consideration of other communications outside the presence of the parties
120 or their lawyers concerning a pending or impending matter. This phrase is incorporated in the
121 definition of “*ex parte* communication” found in the Terminology section of the Code.

122
123 Rule 2.9(A)(1) is modified to retain the provisions of Ohio Canon 3(B)(7)(a). Further,
124 Model Rule 2.9(A)(1)(b) is deleted because if a judge complies with provisions of the modified
125 rule, notice to the other parties is unnecessary.

126
127 Rule 2.9(A)(2) retains the concept of after-the-fact notification to the parties when the
128 judge obtains advice from a legal expert, as compared to the before-the-fact notice requirements
129 contained in the Model Rules. The advance notice requirements contained in Model Rule
130 2.9(A)(2) would be unworkable in many situations.

131
132 Rule 2.9(A)(6) is added due the increasing prevalence of specialized dockets in Ohio and
133 the necessity to make provision for the manner in which communications with parties and others
134 must occur to facilitate the proper administration of a specialized docket.

135
136 Comment [4] is divided into [4] and [4A] to treat two separate and distinct matters.
137 Comment [4] deals with *ex parte* communications authorized by law and addresses the

138 requirements in *State v. Mason* (1998), 82 Ohio St.3d 144 and *State v. Smith* (1991), 61 Ohio
139 St.3d 284, as well as the well-recognized confidentiality in Ohio for referrals to a lawyer
140 assistance program. Comment [4A] deals with *ex parte* communications that are necessary for
141 proper administration of a specialized docket.

1 **RULE 2.10 Judicial Statements on Pending and Impending Cases**

2
3 (A) A judge shall not make any public statement that might reasonably be expected to
4 affect the outcome or impair the fairness of a matter *pending* or *impending* in any court, or make
5 any nonpublic statement that might substantially interfere with a fair trial or hearing.
6

7 (B) A judge shall not, in connection with cases, controversies, or issues that are likely
8 to come before the court, make pledges, promises, or commitments that are inconsistent with the
9 *impartial* performance of the adjudicative duties of judicial office.
10

11 (C) A judge shall require court staff, court officials, and others subject to the judge’s
12 direction and control to refrain from making statements that the judge would be prohibited from
13 making by divisions (A) and (B) of this rule.
14

15 (D) Notwithstanding the restrictions in division (A) of this rule, a judge may make
16 public statements in the course of official duties, may explain court procedures, and may
17 comment on any proceeding in which the judge is a litigant in a personal, nonjudicial capacity.
18

19 (E) Subject to the requirements of division (A) of this rule, a judge may respond
20 directly or through a third-party to allegations in the media or elsewhere concerning the judge’s
21 conduct in a matter.
22

23
24 **Comment**

25
26 [1] This rule’s restrictions on judicial speech are essential to the maintenance of the
27 independence, integrity, and impartiality of the judiciary.
28

29 [2] This rule does not prohibit a judge from commenting on proceedings in which the
30 judge is a litigant in a personal, *i.e.*, nonjudicial capacity. In cases in which the judge is a litigant
31 in ~~an official~~ a judicial capacity, such as a writ of mandamus, the judge must not comment
32 publicly.
33

34 [3] Depending upon the circumstances, the judge should consider whether it may be
35 preferable for a third party, rather than the judge, to respond or issue statements in connection
36 with allegations concerning the judge’s conduct in a matter.
37

38
39 **Comparison to Ohio Code of Judicial Conduct**

40
41 Rule 2.10(A) corresponds to Ohio Canons 3(B)(9) and 7(B)(2)(e).
42

43 Rule 2.10(B) corresponds to Ohio Canons 7(B)(2)(c) and (d), except that it does not
44 encompass judicial candidates and it is narrower with respect to its prohibitions. Placing this
45 particular restriction in Rule 2.10 makes it clear that the prohibition applies to pledges and
46 promises made by a judge even when made outside the context of a political campaign.

47 However, in light of the decision issued by the United States Supreme Court in *Republican Party*
48 *of Minnesota v. White*, 536 U. S. 765 (2002), the prohibition is limited to pledges, promises, or
49 commitments that are made in connection with cases, controversies, or issues likely to come
50 before the court and that are inconsistent with the impartial performance of a judge’s
51 adjudicative duties. For the same reason, the reference in Canon 7(B)(2)(d) to “statements that
52 commit or appear to commit the judge” is not retained in this rule.
53

54 Rule 2.10(C) corresponds to the second sentence of Ohio Canon 3(B)(9), but replaces the
55 phrase “court personnel” with “court staff, court officials, and others” so as to include all persons
56 subject to the judge’s direction and control.
57

58 Rule 2.10(D) corresponds with the third and fourth sentences of Ohio Canon 3(B)(9).
59

60 Rule 2.10(E) is new and is intended to allow a judge to respond to allegations in the
61 media or elsewhere concerning the judge’s conduct in a particular matter, so long as the response
62 would not affect the outcome or impair the fairness of that proceeding.
63

64 **Comparison with ABA Model Code of Judicial Conduct** 65

66 Rule 2.10 is identical to ABA Model Rule 2.10, except for the addition of wording in
67 Rule 2.10(D) and Comment [2]. The added language distinguishes between lawsuits in which a
68 judge may be named personally, but arising out of his or her judicial conduct, and those in which
69 a judge is involved in a purely personal, nonjudicial capacity.

1 **RULE 2.11 Disqualification**

2
3 (A) A judge shall disqualify himself or herself in any proceeding in which the judge’s
4 *impartiality* might reasonably be questioned, including but not limited to the following
5 circumstances:

6
7 (1) The judge has a personal bias or prejudice concerning a party or a party’s lawyer,
8 or personal *knowledge* of facts that are in dispute in the proceeding.

9
10 (2) The judge *knows* that the judge, the judge’s spouse or *domestic partner*, or a
11 person within the *third degree of relationship* to either of them, or the spouse or *domestic*
12 *partner* of such a person is any of the following:

13
14 (a) A party to the proceeding, or an officer, director, general partner,
15 managing member, or trustee of a party;

16
17 (b) Acting as a lawyer in the proceeding;

18
19 (c) Has more than a *de minimis* interest that could be substantially affected by
20 the proceeding;

21
22 (d) Likely to be a material witness in the proceeding.

23
24 (3) The judge knows that he or she, individually or as a *fiduciary*, or the judge’s
25 spouse, *domestic partner*, parent, or child, or any other member of the *judge’s family*
26 *residing in the judge’s household*, has an *economic interest* in the subject matter in
27 controversy or in a party to the proceeding.

28
29 ~~(4) The judge knows or learns by means of a timely motion that a party, a party’s~~
30 ~~lawyer, or the law firm of a party’s lawyer has within the previous [insert number]~~
31 ~~year[s] made aggregate contributions to the judge’s campaign in an amount that [is~~
32 ~~greater than \$[insert amount] for an individual or \$[insert amount] for an entity] [is~~
33 ~~reasonable and appropriate for an individual or an entity]. [RESERVED]~~

34
35 (5) The judge, while a judge or a *judicial candidate*, has made a public statement,
36 other than in a court proceeding, judicial decision, or opinion, that commits or appears to
37 commit the judge to reach a particular result or rule in a particular way in the proceeding
38 or controversy.

39
40 (6) The judge knows that the judge’s spouse or *domestic partner*, or a person within
41 the *third degree of relationship* to either of them, or the spouse or *domestic partner* of
42 such a person has acted as a judge in the proceeding.

43
44 (7) The judge meets any of the following criteria:
45

46 (a) The judge served as a lawyer in the matter in controversy or was
47 associated with a lawyer who participated substantially as a lawyer in the matter
48 during such association;

49
50 (b) The judge served in governmental employment, and in such capacity
51 participated personally and substantially as a lawyer or public official concerning
52 the ~~proceeding~~ particular matter, or has publicly expressed in such capacity an
53 opinion concerning the merits of the particular matter in controversy;

54
55 (c) The judge was a material witness concerning the matter;

56
57 (d) The judge previously presided as a judge over the matter in another court.
58

59 (B) A judge shall keep informed about the judge's personal and *fiduciary economic*
60 *interests*, and make a reasonable effort to keep informed about the personal economic interests of
61 the judge's spouse or *domestic partner* and minor children residing in the judge's household.
62

63 (C) A judge subject to disqualification under this rule, other than for personal bias or
64 prejudice under division (A)(1) of this rule, may disclose on the record the basis of the judge's
65 disqualification and may ask the parties and their lawyers to consider, outside the presence of the
66 judge and court personnel, whether to waive disqualification. If, following the disclosure, the
67 parties and lawyers agree, without participation by the judge or court personnel, that the judge
68 should not be disqualified, the judge may participate in the proceeding. The agreement shall be
69 incorporated into the record of the proceeding.
70

71 72 **Comment** 73

74 [1] Under this rule, a judge is disqualified whenever the judge's impartiality might
75 reasonably be questioned, regardless of whether any of the specific provisions of divisions (A)(1)
76 to (6) apply. ~~In many jurisdictions, the term "recusal" is used interchangeably with the term~~
77 ~~"disqualification."~~
78

79 [2] A judge's obligation not to hear or decide matters in which disqualification is
80 required applies regardless of whether a motion to disqualify is filed.
81

82 [3] The rule of necessity may override the rule of disqualification. For example, a
83 judge might be required to participate in judicial review of a judicial salary statute or might be
84 the only judge available in a matter requiring immediate judicial action, such as a hearing on
85 probable cause or a temporary restraining order. In matters that require immediate action, the
86 judge must disclose on the record the basis for possible disqualification and make reasonable
87 efforts to transfer the matter to another judge as soon as practicable.
88

89 [4] The fact that a lawyer in a proceeding is affiliated with a law firm with which a
90 relative of the judge is affiliated does not itself disqualify the judge. If, however, the judge's
91 impartiality might reasonably be questioned under division (A), or the relative is known by the

92 judge to have an interest in the law firm that could be substantially affected by the proceeding
93 under division (A)(2)(c), the judge’s disqualification is required.

94
95 [5] A judge should disclose on the record information that the judge believes the
96 parties or their lawyers might reasonably consider relevant to a possible motion for
97 disqualification, even if the judge believes there is no basis for disqualification.

98
99 [6] “Economic interest,” ~~as set forth~~ is defined in the Terminology section, ~~means~~
100 ~~ownership of more than a *de minimis* legal or equitable interest. Except for situations in which a~~
101 ~~judge participates in the management of such a legal or equitable interest, or the interest could be~~
102 ~~substantially affected by the outcome of a proceeding before a judge, it does not include any of~~
103 ~~the following:~~

104
105 (1) ~~An interest in the individual holdings within a mutual or common investment~~
106 ~~fund;~~

107
108 (2) ~~An interest in securities held by an educational, religious, charitable, fraternal, or~~
109 ~~civic organization in which the judge or the judge’s spouse, domestic partner, parent, or~~
110 ~~child serves as a director, officer, advisor, or other participant;~~

111
112 (3) ~~A deposit in a financial institution or deposits or proprietary interests the judge~~
113 ~~may maintain as a member of a mutual savings association or credit union, or similar~~
114 ~~proprietary interests;~~

115
116 (4) ~~An interest in the issuer of government securities held by the judge.~~

117 118 119 **Comparison to Ohio Code of Judicial Conduct**

120
121 Rule 2.11 is comparable to Ohio Canons 3(E) and (F) with the exception of Rule
122 2.11(A)(5), which has no comparable provision in the Ohio Code.

123 124 **Comparison to ABA Model Code of Judicial Conduct**

125
126 With two exceptions, Rule 2.11 is comparable to Model Rule 2.11. Division (A)(4),
127 relative to the disqualification of a judge who receives a campaign contribution in excess of a
128 specific amount, is not adopted, in part because Rule 4.4 contains what are considered reasonable
129 contribution limits applicable to individuals and organizations, including parties, lawyers, and
130 law firms.

131
132 Division (A)(6) is new language that addresses disqualification when a judge’s spouse
133 has previously acted as a judge in the same proceeding. This provision is comparable to Ohio
134 Canon 3(E)(1)(d)(iii) but is not found in the Model Code.

135
136 Comment [1] is modified slightly to remove a reference to the fact that some jurisdictions
137 use interchangeably the terms “recusal” and “disqualification.” Comment [6] is modified

138 because it merely restates the definition of “economic interest” found in the Terminology
139 section.

1 **RULE 2.12 Supervisory Duties**

2
3 (A) A judge shall require court staff, court officials, and others subject to the judge’s
4 direction and control to act in a manner consistent with the judge’s obligations under this code.
5

6 (B) A judge with supervisory authority for the performance of other judges shall take
7 reasonable measures to ensure that those judges properly discharge their judicial responsibilities,
8 including the prompt disposition of matters before them.
9

10
11 **Comment**

12
13 [1] A judge is responsible for his or her own conduct and for the conduct of others,
14 ~~such as staff,~~ when those persons are acting at the judge’s direction or control. A judge may not
15 direct court personnel to engage in conduct on the judge’s behalf or as the judge’s representative
16 when such conduct would violate the Code if undertaken by the judge.
17

18 [2] Public confidence in the judicial system depends upon timely justice. To promote
19 the efficient administration of justice, a judge with supervisory authority must take the steps
20 needed to ensure that judges under his or her supervision administer their workloads promptly.
21

22
23 **Comparison to Ohio Code of Judicial Conduct**

24
25 Rule 2.12(A) is comparable to Ohio Canon 3(C)(2), and Rule 2.12(B) is comparable to
26 Ohio Canon 3(C)(3).
27

28 **Comparison to ABA Model Code of Judicial Conduct**

29
30 Rule 2.12 is identical to Model Rule 2.12, except for the deletion of surplus language in
31 Comment [1].

1 **RULE 2.13 Administrative Appointments**

2
3 (A) In making administrative appointments, a judge shall do both of the following:

4
5 (1) Exercise the power of appointment *impartially* and on the basis of merit;

6
7 (2) Avoid nepotism, favoritism, and unnecessary appointments.

8
9 (B) ~~A judge shall not appoint a lawyer to a position if the judge either *knows* that the~~
10 ~~lawyer, or the lawyer’s spouse or *domestic partner*, has contributed more than **\$(insert amount)**~~
11 ~~within the prior **[insert number]** year[s] to the judge’s election campaign, or learns of such a~~
12 ~~*contribution* by means of a timely motion by a party or other person properly interested in the~~
13 ~~matter, unless any of the following applies:~~

14
15 (1) ~~The position is substantially uncompensated;~~

16
17 (2) ~~The lawyer has been selected in rotation from a list of qualified and available~~
18 ~~lawyers compiled without regard to their having made political contributions;~~

19
20 (3) ~~The judge or another presiding or administrative judge affirmatively finds that no~~
21 ~~other lawyer is willing, competent, and able to accept the position. [RESERVED]~~

22
23 (C) A judge shall not approve compensation of appointees beyond the fair value of
24 services rendered.

25
26
27 **Comment**

28
29 [1] Appointees of a judge include assigned counsel, officials such as ~~referees~~
30 magistrates, commissioners, special masters, receivers, and guardians, and personnel such as
31 clerks, secretaries, and bailiffs. Consent by the parties to an appointment or an award of
32 compensation does not relieve the judge of the obligation prescribed by division (A).
33

34 [2] Unless otherwise defined by law, nepotism is the appointment or hiring of any
35 relative within the third degree of relationship of either the judge or the judge’s spouse or
36 domestic partner, or the spouse or domestic partner of such relative.
37

38 [3] ~~The rule against making administrative appointments of lawyers who have~~
39 ~~contributed in excess of a specified dollar amount to a judge’s election campaign includes an~~
40 ~~exception for positions that are substantially uncompensated, such as those for which the~~
41 ~~lawyer’s compensation is limited to reimbursement for out-of-pocket expenses. [RESERVED]~~
42
43

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Comparison to Ohio Code of Judicial Conduct

Rule 2.13(A) and (C) are substantially similar to Ohio Canon 3(C)(4).

Comparison to ABA Model Code of Judicial Conduct

Model Rule 2.13(B) and the corresponding Comment [3] are not adopted. Rule 4.4 contains limitations on campaign contributions applicable to lawyers and requires that court appointees be specifically identified on campaign finance reports. Rule 8 of the Rules of Superintendence contains additional procedures applicable to court appointments. These provisions are substitutes for the disqualification provisions of the Model Rule.

Comment [1] is modified to substitute “magistrate” for “referee.”

1 **RULE 2.14 Disability and Impairment**

2
3 (A) A judge having a reasonable belief that the performance of a lawyer or another
4 judge is impaired by drugs or alcohol, or by a mental, emotional, or physical condition, shall take
5 appropriate action, which may include a confidential referral to a lawyer or judicial assistance
6 program.

7
8 (B) Any information obtained by a member or agent of a committee or subcommittee
9 of a bar or judicial association or by a member, employee, or agent of a nonprofit corporation
10 established by a bar association, designed to assist lawyers and judges with substance abuse or
11 mental health problems, shall be privileged for all purposes under this rule, provided the
12 information was obtained while the member, employee, or agent was performing duties as a
13 member, employee, or agent of the committee, subcommittee, or nonprofit corporation.

14
15
16 **Comment**

17
18 [1] “Appropriate action” means action intended and reasonably likely to help the
19 judge or lawyer in question address the problem and prevent harm to the justice system.
20 Depending upon the circumstances, appropriate action may include, but is not limited to, (1)
21 speaking directly to the impaired person, and (2) notifying a partner, a colleague, or an individual
22 with supervisory responsibility over the impaired person; or making a referral to an assistance
23 program.

24
25 [2] Taking or initiating corrective action by way of referral to an assistance program
26 may satisfy a judge’s responsibility under this rule. Assistance programs have many approaches
27 for offering help to impaired judges and lawyers, such as intervention, counseling, or referral to
28 appropriate health care professionals. Depending upon the gravity of the conduct that has come
29 to the judge’s attention, however, the judge may be required to take other action, such as
30 reporting the impaired judge or lawyer to the appropriate authority, agency, or body. See Rule
31 2.15.

32
33
34 **Comparison to Ohio Code of Judicial Conduct**

35
36 There is no Ohio Canon comparable to Rule 2.14(A). Rule 2.14(B) corresponds to Ohio
37 Canon 3(D)(4).

38
39
40 **Comparison to ABA Model Code of Judicial Conduct**

41
42 Model Rule 2.14 is modified to add division (B) that is taken from Ohio Canon 3(D)(4).

1 **RULE 2.15 Responding to Judicial and Lawyer Misconduct**

2
3 (A) A judge having *knowledge* that another judge has committed a violation of this
4 Code that raises a ~~substantial~~ question regarding the judge’s honesty, trustworthiness, or fitness
5 as a judge in other respects shall inform the *appropriate authority*.
6

7 (B) A judge having *knowledge* that a lawyer has committed a violation of the Ohio
8 Rules of Professional Conduct that raises a ~~substantial~~ question regarding the lawyer’s honesty,
9 trustworthiness, or fitness as a lawyer in other respects shall inform the *appropriate authority*.
10

11 (C) ~~A judge who receives information indicating a substantial likelihood that another~~
12 ~~judge has committed a violation of this Code shall take appropriate action.~~ [RESERVED]
13

14 (D) ~~A judge who receives information indicating a substantial likelihood that a lawyer~~
15 ~~has committed a violation of the Ohio Rules of Professional Conduct shall take appropriate~~
16 ~~action.~~ [RESERVED]
17
18

19 **Comment**

20
21 [1] Taking action to address known misconduct is a judge’s obligation. Divisions (A)
22 and (B) impose an obligation on the judge to report to the appropriate disciplinary authority the
23 known misconduct of another judge or a lawyer that raises a ~~substantial~~ question regarding the
24 honesty, trustworthiness, or fitness of that judge or lawyer. Ignoring or denying known
25 misconduct among one’s judicial colleagues or members of the legal profession undermines a
26 judge’s responsibility to participate in efforts to ensure public respect for the justice system.
27 This rule limits the reporting obligation to those offenses that an independent judiciary must
28 vigorously endeavor to prevent.
29

30 [2] A judge who does not have actual knowledge, but who receives information
31 indicating a substantial likelihood that another judge or a lawyer ~~may have~~ has committed
32 misconduct, ~~but receives information indicating a substantial likelihood of such misconduct, is~~
33 ~~required to~~ should take appropriate action ~~under divisions (C) and (D).~~ Appropriate action may
34 include, but is not limited to, communicating directly with the judge ~~who may have violated this~~
35 ~~code, communicating with a supervising judge or lawyer involved, communicating with a~~
36 supervisor, partner, or colleague, or reporting the suspected violation to the appropriate
37 disciplinary authority or other agency or body. ~~Similarly, actions to be taken in response to~~
38 ~~information indicating that a lawyer has committed a violation of the Rules of Professional~~
39 ~~Conduct may include but are not limited to communicating directly with the lawyer who may~~
40 ~~have committed the violation, or reporting the suspected violation to the appropriate authority or~~
41 ~~other agency or body.~~
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Comparison to Ohio Code of Judicial Conduct

Rule 2.15 corresponds to Ohio Canon 3(D)(1) and (2), although the latter imposes a strict reporting requirement once a judge has knowledge of a violation by a lawyer or judge. Rule 2.15 follows the standard created in Rule 8.3 of the Ohio Rules of Professional Conduct for reporting attorney misconduct: reporting is required when the conduct raises a question about the honesty, trustworthiness, or fitness of a lawyer or judge.

Comparison to ABA Model Code of Judicial Conduct

Rules 2.15(A) and (B) are altered to require a judge to report misconduct when the judge possesses knowledge that raises a “question” about a lawyer or judge’s honesty, trustworthiness, or fitness. Model Rule 2.15(A) and (B) imposes a reporting requirement when the judge possesses knowledge that raises a “substantial question.” With these changes, Rules 2.15(A) and (B) conform to the reporting requirement in Rule 8.3 of the Ohio Rules of Professional Conduct.

Model Rules 2.15(C) and (D), which are stricken from Rule 2.15, address a judge’s responsibility when the judge receives information indicating a disciplinary violation may have occurred but does not possess actual knowledge regarding the alleged violation. In lieu of a mandatory reporting obligation, Comment [2] suggests courses of action a judge may consider in this circumstance.

1 **RULE 2.16 Cooperation with Disciplinary Authorities**

2
3 (A) A judge shall cooperate and be candid and honest with judicial and lawyer
4 disciplinary agencies.

5
6 (B) A judge shall not retaliate, directly or indirectly, against a person *known* or
7 suspected to have assisted or cooperated with an investigation of a judge or a lawyer.

8
9
10 **Comment**

11
12 [1] Cooperation with investigations and proceedings of judicial and lawyer discipline
13 agencies, as required in division (A), instills confidence in ~~judges'~~ the commitment of judges to
14 the integrity of the judicial system and the protection of the public.

15
16
17 **Comparison to Ohio Code of Judicial Conduct**

18
19 There is no Ohio Canon comparable to Rule 2.16, although Canon 3(D)(3) addresses a
20 judge's duty to respond to requests from disciplinary authorities.

21
22 **Comparison to ABA Model Code of Judicial Conduct**

23
24 Rule 2.16 is substantially the same as Model Rule 2.16.

Canon 3

1
2
3
4

A judge shall conduct the judge's personal and extrajudicial activities so as to minimize the risk of conflict with the obligations of judicial office.

1 **RULE 3.1 Extrajudicial Activities in General**

2
3 A judge may engage in extrajudicial activities, except as prohibited by *law* ~~or this code~~.
4 However, when engaging in extrajudicial activities, a judge shall not do any of the following:

5
6 (A) Participate in activities that will interfere with the proper performance of the
7 judge’s judicial duties;

8
9 (B) Participate in activities that will lead to frequent disqualification of the judge;

10
11 (C) Participate in activities that would appear to a reasonable person to undermine the
12 judge’s *independence, integrity, or impartiality*;

13
14 (D) Engage in conduct that would appear to a reasonable person to be coercive;

15
16 (E) Make use of court premises, staff, stationery, equipment, or other resources,
17 except for incidental use for activities that concern the law, the legal system, or the
18 administration of justice, or unless such additional use is permitted by *law*.

19
20
21 **Comment**

22
23 [1] To the extent that time permits, and judicial independence and impartiality are not
24 compromised, judges are encouraged to engage in appropriate extrajudicial activities. Judges are
25 uniquely qualified to engage in extrajudicial activities that concern the law, the legal system, and
26 the administration of justice, such as by speaking, writing, teaching, or participating in scholarly
27 research projects. In addition, judges are permitted and encouraged to engage in educational,
28 religious, charitable, fraternal, or civic extrajudicial activities not conducted for profit, even
29 when the activities do not involve the law. See Rule 3.7. However, a judge should consider
30 whether engaging in a particular extrajudicial activity could give rise to an unlawful interest in a
31 public contract as prohibited by R.C. 2921.42.

32
33 [2] Participation in both law-related and other extrajudicial activities helps integrate
34 judges into their communities and furthers public understanding of and respect for courts and the
35 judicial system.

36
37 [3] Discriminatory actions and expressions of bias or prejudice by a judge, even
38 outside the judge’s official or judicial actions, are likely to appear to a reasonable person to call
39 into question the judge’s integrity and impartiality. Examples include jokes or other remarks that
40 demean individuals based upon their race, sex, gender, religion, national origin, ethnicity,
41 disability, age, sexual orientation, or socioeconomic status. For the same reason, a judge’s
42 extrajudicial activities must not be conducted in connection or affiliation with an organization
43 that practices invidious discrimination. See Rule 3.6.

44
45 [4] While engaged in permitted extrajudicial activities, judges must not coerce others
46 or take action that would reasonably be perceived as coercive. For example, depending upon the

47 circumstances, a judge’s solicitation of contributions or memberships for an organization, even
48 as permitted by Rule 3.7(A), might create the risk that the person solicited would feel obligated
49 to respond favorably, or would do so to curry favor with the judge.

50
51

52 **Comparison to Ohio Code of Judicial Conduct**

53

54 Rules 3.1(A), (D), and (E) have no counterparts in the Ohio Code. Rules 3.1(B) and (C)
55 are found in Ohio Canon 2(A).

56

57 **Comparison to ABA Model Rules of Judicial Conduct**

58

59 With the minor addition made in Rule 3.1(E), Rule 3.1 is identical to Model Rule 3.1.
60 Comment [1] is modified to remind judges that it may not be permissible to engage in certain
61 extrajudicial activities given statutory prohibitions applicable to public officials. See Advisory
62 Opinion 2006-7 issued by the Board of Commissioners on Grievances and Discipline.

1 **RULE 3.2 Appearances before Governmental Bodies and Consultation with**
2 **Government Officials**

3
4 A judge shall not appear voluntarily at a public hearing before, or otherwise consult with,
5 an executive or a legislative body or official, except as follows:
6

7 (A) In connection with matters concerning the *law*, the legal system, or the
8 administration of justice;
9

10 (B) In connection with matters about which the judge acquired knowledge or
11 expertise in the course of the judge’s judicial duties;
12

13 (C) When the judge is acting *pro se* in a matter involving the judge’s legal or
14 economic interests, or when the judge is acting in a *fiduciary* capacity.
15
16

17 **Comment**

18
19 [1] Judges possess special expertise in matters of law, the legal system, and the
20 administration of justice, and may properly share that expertise with governmental bodies and
21 executive or legislative branch officials.
22

23 [2] In appearing before governmental bodies or consulting with government officials,
24 judges must be mindful that they remain subject to other provisions of this code, such as Rule
25 1.3, prohibiting judges from using the prestige of office to advance their own or others’ interests,
26 Rule 2.10, governing public comment on pending and impending matters, and Rule 3.1(C),
27 prohibiting judges from engaging in extrajudicial activities that would appear to a reasonable
28 person to undermine the judge’s independence, integrity, or impartiality.
29

30 [3] In general, it would be an unnecessary and unfair burden to prohibit judges from
31 appearing before governmental bodies or consulting with government officials on matters that
32 are likely to affect them as private citizens, such as zoning proposals affecting their real property.
33 In engaging in such activities, however, judges must not refer to their judicial positions, and must
34 otherwise exercise caution to avoid using the prestige of judicial office.
35
36

37 **Comparison to Ohio Code of Judicial Conduct**

38
39 Rule 3.2(A) is comparable to Ohio Canon 2(A)(2).

40
41 Rule 3.2(B) has no comparable provision in the Ohio Code.
42

43 Rule 3.2(C) is comparable to a portion of Ohio Canon 4(C)(1).
44

45
46
47

Comparison to ABA Model Code of Judicial Conduct

Rule 3.2 is identical to Model Rule 3.2.

1 **RULE 3.3 Testifying as a Character Witness**

2
3 A judge shall not testify as a character witness in a judicial, administrative, or other
4 adjudicatory proceeding or otherwise vouch for the character of a person in a legal proceeding,
5 except when duly summoned.
6

7
8 **Comment**

9
10 [1] A judge who, without being subpoenaed, testifies as a character witness abuses
11 the prestige of judicial office to advance the interests of another. See Rule 1.3. Except in
12 unusual circumstances where the demands of justice require, a judge should discourage a party
13 from requiring the judge to testify as a character witness.
14

15
16 **Comparison to Ohio Code of Judicial Conduct**

17
18 Rule 3.3 is comparable to the last sentence in Ohio Canon 4(A).
19

20 **Comparison to ABA Model Code of Judicial Conduct**

21
22 Rule 3.3 is identical to Model Rule 3.3.

1 **RULE 3.4 Appointments to Governmental Positions**

2
3 A judge shall not accept appointment to a governmental committee, board, commission,
4 or other governmental position, unless it is one that concerns the *law*, the legal system, or the
5 administration of justice.
6

7
8 **Comment**
9

10 [1] Rule 3.4 implicitly acknowledges the value of judges accepting appointments to
11 entities that concern the law, the legal system, or the administration of justice. Even in such
12 instances, however, a judge should assess the appropriateness of accepting an appointment,
13 paying particular attention to the subject matter of the appointment and the availability and
14 allocation of judicial resources, including the judge’s time commitments, and giving due regard
15 to the requirements of the independence and impartiality of the judiciary.
16

17 [2] A judge may represent his or her country, state, or locality on ceremonial
18 occasions or in connection with historical, educational, or cultural activities. Such representation
19 does not constitute acceptance of a government position.
20

21 **Comparison to Ohio Code of Judicial Conduct**

22
23
24 Rule 3.4 is comparable to the first sentence in Ohio Canon 4(C)(2), and Comment [2] is
25 identical to the second sentence in Ohio Canon 4(C)(2).
26

27 **Comparison to ABA Model Code of Judicial Conduct**

28
29 Rule 3.4 is identical to Model Rule 3.4.

1 **RULE 3.5 Use of Nonpublic Information**

2
3 A judge shall not ~~intentionally~~ knowingly disclose or use *nonpublic information* acquired
4 in a judicial capacity for any purpose unrelated to the judge’s judicial duties.
5

6
7 **Comment**
8

9 [1] In the course of performing judicial duties, a judge may acquire information of
10 commercial or other value that is unavailable to the public. The judge must not reveal or use
11 such information for personal gain or for any purpose unrelated to his or her judicial duties.
12

13 [1A] The premature disclosure of confidential information regarding the outcome of
14 pending cases gives the appearance of partiality and fosters obvious public distrust of the
15 judiciary and legal profession. Among other things, premature disclosure creates the potential
16 for the release of inaccurate information and allows attorneys, litigants, and others with access to
17 the information to use it for personal gain before it becomes public knowledge.
18

19 [2] This rule is not intended, however, to affect a judge’s ability to act on information
20 as necessary to protect the health or safety of the judge or a member of a judge’s family, court
21 personnel, or other judicial officers if consistent with other provisions of this code.
22

23 [3] Nothing in this rule shall prohibit the disclosure of any of the following: (1) a
24 decision that has been announced on the record or in open court, but that has not been
25 journalized in a written opinion, entry, or other document; (2) information regarding the probable
26 or actual decision in a pending case or legal proceeding to a judge or employee of the court in
27 which the matter is pending; (3) other information that is a matter of public record or that may be
28 disclosed pursuant to law.
29

30 [4] The imposition of discipline upon a judge for violation of this rule shall not
31 preclude prosecution for a violation of any applicable provision of the Revised Code, including,
32 but not limited to, R.C. 102.03(B).
33

34
35 **Comparison to Ohio Code of Judicial Conduct**
36

37 Other than Ohio Canon 3(B)(11), addressing the disclosure of information regarding
38 pending matters before the Supreme Court of Ohio, the courts of appeals, and a panel of judges
39 in the common pleas courts, there is no Ohio rule comparable to Rule 3.5.
40

41 Comments [1A], [3], and [4] are taken from Ohio Canon 3(B)(11).
42

Comparison to ABA Model Code of Judicial Conduct

43
44
45
46
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48

Rule 3.5 is modified to incorporate the standard of “knowingly” contained in Ohio Canon 3(B)(11), instead of the “intentionally” standard contained in Model Rule 3.5.

Comments [1A], [3], and [4] were added from Ohio Canon 3(B)(11).

1 **RULE 3.6 Affiliation with Discriminatory Organizations**

2
3 (A) A judge shall not hold membership in any organization that practices invidious
4 discrimination on the basis of race, sex, gender, religion, national origin, ethnicity, or sexual
5 orientation.

6
7 (B) A judge shall not use the benefits or facilities of an organization if the judge
8 *knows* or should know that the organization practices invidious discrimination on one or more of
9 the bases identified in division (A) of this rule. A judge’s attendance at an event in a facility of
10 an organization that the judge is not permitted to join is not a violation of this rule when the
11 judge’s attendance is an isolated event that could not reasonably be perceived as an endorsement
12 of the organization’s practices.

13
14
15 **Comment**

16
17 [1] A judge’s public manifestation of approval of invidious discrimination on any
18 basis gives rise to the appearance of impropriety and diminishes public confidence in the
19 integrity and impartiality of the judiciary. A judge’s membership in an organization that
20 practices invidious discrimination creates the perception that the judge’s impartiality is impaired.

21
22 [2] An organization is generally said to discriminate invidiously if it arbitrarily
23 excludes from membership on the basis of race, sex, gender, religion, national origin, ethnicity,
24 or sexual orientation persons who would otherwise be eligible for admission. Whether an
25 organization practices invidious discrimination is a complex question to which judges should be
26 attentive. The answer cannot be determined from a mere examination of an organization’s
27 current membership rolls, but rather, depends upon how the organization selects members, as
28 well as other relevant factors, such as whether the organization is dedicated to the preservation of
29 religious, ethnic, or cultural values of legitimate common interest to its members, or whether it is
30 an intimate, purely private organization whose membership limitations could not constitutionally
31 be prohibited.

32
33 [3] When a judge learns that an organization to which the judge belongs engages in
34 invidious discrimination, the judge must resign immediately from the organization.

35
36 [4] A judge’s membership in a religious organization as a lawful exercise of the
37 freedom of religion is not a violation of this rule.

38
39 [5] This rule does not apply to national or state military service.

40
41
42 **Comparison to Ohio Code of Judicial Conduct**

43
44 Rule 3.6(A) is substantially the same as Ohio Canon 4(B). Rule 3.6(A) adds to the list of
45 organizations to which a judge may not belong any organizations that discriminate on the basis
46 of sex, ethnicity, or sexual orientation.

47
48
49
50
51
52

There is no Ohio Canon comparable to Rule 3.6(B).

Comparison to ABA Model Code of Judicial Conduct

Rule 3.6 is identical to Model Rule 3.6.

1 **RULE 3.7 Participation in Educational, Religious, Charitable, Fraternal, or**
2 **Civic Organizations and Activities**
3

4 (A) Subject to the requirements of Rule 3.1, a judge may participate in activities
5 sponsored by organizations or governmental entities concerned with the *law*, the legal system, or
6 the administration of justice, and those sponsored by or on behalf of educational, religious,
7 charitable, fraternal, or civic organizations not conducted for profit, including but not limited to
8 the following activities:
9

10 (1) Assisting such an organization or entity in planning related to fundraising, and
11 participating in the management and investment of the organization's or entity's funds;
12

13 (2) Soliciting *contributions* for such an organization or entity, but only from *members*
14 *of the judge's family*, or from judges over whom the judge does not exercise supervisory
15 or appellate authority;
16

17 (3) Participating in but not soliciting funds for *de minimis* fundraising activities that
18 are directed at a broad range of the community and that may be performed by other
19 volunteers who do not hold judicial office;
20

21 (4) Soliciting membership for such an organization or entity, even though the
22 membership dues or fees generated may be used to support the objectives of the
23 organization or entity, but only if the organization or entity is concerned with the *law*, the
24 legal system, or the administration of justice;
25

26 ~~(4)(5)~~ Appearing or speaking at, receiving an award or other recognition at, being
27 featured on the program of, and permitting his or her title to be used in connection with
28 an event of such an organization or entity, ~~but if the event serves a fundraising purpose,~~
29 ~~the judge may participate only if the event concerns the law, the legal system, or the~~
30 ~~administration of justice provided the participation does not reflect adversely on the~~
31 ~~judge's independence, integrity, or impartiality;~~
32

33 ~~(5)(6)~~ Making recommendations to such a public or private fund-granting organization
34 or entity in connection with its programs and activities, but only if the organization or
35 entity is concerned with the *law*, the legal system, or the administration of justice;
36

37 ~~(6)(7)~~ Serving as an officer, director, trustee, or nonlegal advisor of such an organization
38 or entity, unless it is likely that the organization or entity will be engaged in either of the
39 following:
40

41 (a) Proceedings that would ordinarily come before the judge;

42
43 (b) Frequently in adversary proceedings in the court of which the judge is a
44 member, or in any court subject to the appellate jurisdiction of the court of which
45 the judge is a member.
46

47 (B) A judge may encourage lawyers to provide *pro bono publico* legal services.
48
49

50 **Comment**

51
52 [1] The activities permitted by division (A) generally include those sponsored by or
53 undertaken on behalf of public or private not-for-profit educational institutions, and other not-
54 for-profit organizations, including law-related, charitable, and other organizations.
55

56 [2] Even for law-related organizations, a judge should consider whether the
57 membership and purposes of the organization, or the nature of the judge's participation in or
58 association with the organization, would conflict with the judge's obligation to refrain from
59 activities that reflect adversely upon a judge's independence, integrity, and impartiality.
60

61 [3] Mere attendance at an event, whether or not the event serves a fundraising
62 purpose, does not constitute a violation of division (A)(~~4~~5). It is also generally permissible for
63 a judge to serve as an usher or a food server or preparer, or to perform similar functions, at
64 fundraising events sponsored by educational, religious, charitable, fraternal, or civic
65 organizations. Such activities are not solicitation and do not present an element of coercion or
66 abuse the prestige of judicial office.
67

68 [4] Identification of a judge's position in educational, religious, charitable, fraternal,
69 or civic organizations on letterhead used for fundraising or membership solicitation does not
70 violate this rule. The letterhead may list the judge's title or judicial office if comparable
71 designations are used for other persons.
72

73 [5] In addition to appointing lawyers to serve as counsel for indigent parties in
74 individual cases, a judge may promote broader access to justice by encouraging lawyers to
75 participate in *pro bono publico* legal services, if in doing so the judge does not employ coercion,
76 or abuse the prestige of judicial office. Such encouragement may take many forms, including
77 providing lists of available programs, training lawyers to do *pro bono publico* legal work, and
78 participating in events recognizing lawyers who have done *pro bono publico* work.
79
80

81 **Comparison to Ohio Code of Judicial Conduct**

82
83 Rule 3.7(A)(1) corresponds to the first portion of Ohio Canon 2(B)(2)(a). Rule 3.7(A)(2)
84 corresponds to Ohio Canon 2(B)(2)(a)(i), with the addition that a judge may solicit contributions
85 from members of the judge's family
86

87 Rule 3.7(A)(3) is identical to Ohio Canon 2(B)(2)(a)(ii).
88

89 Rule 3.7(A)(4) is similar to Ohio Canon 2(B)(2)(c) in that it allows judges to solicit
90 persons for membership in civic organizations, but the rule alters the test for determining
91 whether membership solicitations are permissible. Under the Ohio Canon, membership
92 solicitation is prohibited if it might reasonably be perceived as coercive and is essentially a

93 fundraising mechanism for the organization. Rule 3.7(A)(4) deletes the coercion test but allows
94 membership solicitation only if the organization is concerned with the law, legal system, or
95 administration of justice and even if the membership dues or fees will be used to support the
96 organization's objectives.

97
98 Rule 3.7(A)(5) allows a judge to participate in certain activities sponsored by educational,
99 religious, charitable, fraternal, and civic organizations, including those that might have a
100 fundraising purpose, provided the judge's participation does not reflect adversely on his or her
101 independence, integrity, or impartiality. Ohio Canons 2(B)(2)(a) and (d) limit a judge's
102 involvement in these activities if there is a fundraising component.

103
104 Rules 3.7(A)(6) corresponds to Ohio Canon 2(B)(2)(b), and Rule 3.7(A)(7) corresponds
105 to Ohio Canon 2(B)(1).

106
107 Rule 3.7(B) has no counterpart in the Ohio Code.

108 109 **Comparison to ABA Model Code of Judicial Conduct**

110
111 Rule 3.7 differs from Model Rule 3.7 in two respects. Division (A)(3) incorporates a
112 2004 amendment to the Ohio Code that specifically authorizes judicial participation in certain *de*
113 *minimis* fundraising activities. Division (A)(5) is modified to alter the test for determining
114 whether a judge may participate in an event sponsored by an educational, religious, charitable,
115 fraternal, or civic organizations. Where such an event serves a fundraising purpose, the Model
116 Code permits judicial participation only if the event concerns the law, legal system, or the
117 administration of justice. The Ohio version of Rule 3.7 allows a judge to participate in these
118 activities, without regard to whether they have a fundraising purpose, provided the participation
119 does not reflect adversely on the judge's independence, integrity, or impartiality. This is
120 consistent with the test used elsewhere in the Code.

121
122 Comment [3] is modified to correct a cross-reference to the rule.

1 **RULE 3.8 Appointments to Fiduciary Positions**

2
3 (A) A judge shall not accept appointment to serve in a *fiduciary* position, such as
4 executor, administrator, trustee, guardian, attorney in fact, or other personal representative,
5 except for the estate, trust, or person of a *member of the judge’s family*, and then only if such
6 service will not interfere with the proper performance of judicial duties.

7
8 (B) A judge shall not serve in a *fiduciary* position if the judge as *fiduciary* will likely
9 be engaged in proceedings that would ordinarily come before the judge, or if the estate, trust, or
10 ward becomes involved in adversary proceedings in the court on which the judge serves, or one
11 under its appellate jurisdiction.

12
13 (C) A judge acting in a *fiduciary* capacity shall be subject to the same restrictions on
14 engaging in financial activities that apply to a judge personally.

15
16 (D) If a person who is serving in a *fiduciary* position becomes a judge, he or she must
17 comply with this rule as soon as reasonably practicable, but in no event later than six months
18 after becoming a judge.

19
20
21 **Comment**

22
23 [1] A judge should recognize that other restrictions imposed by this code may conflict
24 with a judge’s obligations as a fiduciary; in such circumstances, a judge should resign as
25 fiduciary. For example, serving as a fiduciary might require frequent disqualification of a judge
26 under Rule 2.11 because a judge is deemed to have an economic interest in shares of stock held
27 by a trust if the amount of stock held is more than *de minimis*.

28
29
30 **Comparison to Ohio Code of Judicial Conduct**

31
32 Rule 3.8(A), (B), and (C) are substantially the same as Ohio Canon 4(D)(1), (2), and (3).
33 There is no Ohio Canon comparable to Rule 3.8(D).

34
35
36 **Comparison to ABA Model Code of Judicial Conduct**

37
38 Rule 3.8 is identical to Model Rule 3.8. Ohio chose to adopt a six-month compliance
39 window in division (D).

1 **RULE 3.9 Service as Arbitrator or Mediator**

2
3 A judge shall not act as an arbitrator or a mediator or perform other judicial functions
4 apart from the judge’s official duties unless expressly authorized by *law*.

5
6
7 **Comment**

8
9 [1] This rule does not prohibit a judge from participating in arbitration, mediation, or
10 settlement conferences performed as part of assigned judicial duties. Rendering dispute
11 resolution services apart from those duties, whether or not for economic gain, is prohibited
12 unless it is expressly authorized by law.

13
14
15 **Comparison to Ohio Code of Judicial Conduct**

16
17 Rule 3.9 is substantially the same as Ohio Canon 4(E).

18
19 **Comparison to ABA Model Code of Judicial Conduct**

20
21 Rule 3.9 is identical to Model Rule 3.9.

1 **RULE 3.10 Practice of Law**
2

3 A judge shall not practice law. A judge may act *pro se* and may, without compensation,
4 give legal advice to and draft or review documents for a *member of the judge's family*, but is
5 prohibited from serving as the family member's lawyer in any forum.
6

7
8 **Comment**
9

10 [1] A judge may act *pro se* in all legal matters, including matters involving litigation
11 and matters involving appearances before or other dealings with governmental bodies. A judge
12 must not use the prestige of office to advance the judge's personal or family interests. See Rule
13 1.3.
14

15 **Comparison to Ohio Code of Judicial Conduct**
16

17 Rule 3.10 is substantially the same as Ohio Canon 4(F).
18

19 **Comparison to ABA Model Code of Judicial Conduct**
20

21 Rule 3.10 is identical to Model Rule 3.10.
22

1 **RULE 3.11 Financial, Business, or Remunerative Activities**

2
3 (A) A judge may hold and manage investments of the judge and *members of the*
4 *judge’s family*.

5
6 (B) A judge shall not serve as an officer, director, manager, general partner, advisor,
7 or employee of any business entity except that a judge may manage or participate in any of the
8 following:

9
10 (1) A business closely held by the judge or *members of the judge’s family*;

11
12 (2) A business entity primarily engaged in investment of the financial resources of the
13 judge or *members of the judge’s family*.

14
15 (C) A judge shall not engage in financial activities permitted under divisions (A) and
16 (B) of this rule if they will do any of the following:

17
18 (1) Interfere with the proper performance of judicial duties;

19
20 (2) Lead to frequent disqualification of the judge;

21
22 (3) Involve the judge in frequent transactions or continuing business relationships
23 with lawyers or other persons likely to come before the court on which the judge
24 serves;

25
26 (4) Result in violation of other provisions of this code.

27
28 (D) As soon as practicable without serious financial detriment, the judge shall divest
29 himself or herself of investments and other financial interests that might require frequent
30 disqualification or otherwise violate this rule.

31
32
33 **Comment**

34
35 [1] Judges are generally permitted to engage in financial activities, including
36 managing real estate and other investments for themselves or for members of their families.
37 Participation in these activities, like participation in other extrajudicial activities, is subject to the
38 requirements of this code. For example, it would be improper for a judge to spend so much time
39 on business activities that it interferes with the performance of judicial duties. See Rule 2.1.
40 Similarly, it would be improper for a judge to use his or her official title or appear in judicial
41 robes in business advertising or to conduct his or her business or financial affairs in such a way
42 that disqualification is frequently required. See Rules 1.3 and 2.11.

43
44 [2] ~~As soon as practicable without serious financial detriment, the judge must divest~~
45 ~~himself or herself of investments and other financial interests that might require frequent~~
46 ~~disqualification or otherwise violate this rule.~~ [RESERVED]

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Comparison to Ohio Code of Judicial Conduct

Rule 3.11 is comparable to Ohio Canon 2(C)(1) to (4).

Comparison to ABA Model Code of Judicial Conduct

Rule 3.11 and Comment [1] are identical to Model Rule 3.11. Comment [2], which is comparable to Canon 2(C)(4), is moved to division (D) to emphasize in the text of the rule that a judge must divest himself or herself of financial interests that might lead to frequent disqualifications or are otherwise contrary to Rule 3.11.

1 **RULE 3.12 Compensation for Extrajudicial Activities**

2
3 A judge may accept reasonable compensation for extrajudicial activities permitted by this
4 code or other *law* unless such acceptance would appear to a reasonable person to undermine the
5 judge’s *independence, integrity, or impartiality*.
6

7
8 **Comment**

9
10 [1] ~~A~~ Unless otherwise prohibited by law, a judge is permitted to accept honoraria,
11 ~~stipends, fees,~~ wages, salaries, royalties, or other compensation for ~~speaking,~~ teaching, writing,
12 and other extrajudicial activities, provided the compensation is reasonable and commensurate
13 with the task performed. The judge should be mindful, however, that judicial duties must take
14 precedence over other activities. See Rule 2.1.
15

16 [1A] A judge is prohibited by R.C. 102.03(H) from receiving an honorarium, including
17 any payment made in consideration for a speech given, article published, or attendance at a
18 public or private conference, convention, meeting, social event, meals, or similar gathering. See
19 R.C. 102.01(H).
20

21 [1B] Compensation for an extrajudicial activity shall not exceed a reasonable amount
22 or what a person who is not a judge would receive for the same activity.
23

24 [2] Compensation derived from extrajudicial activities ~~may be~~ is subject to public
25 reporting. See Rule 3.15.
26

27
28 **Comparison to Ohio Code of Judicial Conduct**

29
30 Rule 3.12 corresponds to Ohio Canon 2(D), except that the receipt of compensation for
31 extrajudicial activities is permitted only where such receipt would not “appear to a reasonable
32 person to undermine the judge’s independence, integrity or impartiality.” Receipt of
33 compensation under Ohio Canon 2(D) is prohibited where “the source of the compensation * * *
34 give[s] the appearance of influencing the judge in his or her judicial duties or otherwise give[s]
35 the appearance of impropriety.” The new standard gives clearer and more objective guidance to
36 judges and is consistent with the standard used elsewhere in the Code.
37

38 Reimbursement of expenses, which is included in Ohio Canon 2(D), is now addressed in
39 Rule 3.14.
40

41 Comment [1] makes it clear that any extrajudicial activities must not take precedence
42 over the judge’s judicial duties.
43

44 Comment [1A] corresponds to the referenced statutory prohibitions against the
45 solicitation or receipt of honorarium by public officials. Comment [1B] reflects the

46 pronouncement in current Canon 2(D)(1) that the compensation “shall not exceed a reasonable
47 amount or what a person who is not a judge would receive for the same act.”

48

49

Comparison to ABA Model Code of Judicial Conduct

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51

52

53

Rule 3.12 is identical to Model Rule 3.12. Comment [1] is modified and Comment [1A] is added to reflect the statutory ban on the solicitation or receipt of honorarium. See R.C. 102.03(H). Comment [1B] is added from Ohio Canon 2(D)(1).

1 **RULE 3.13 Acceptance and Reporting of Gifts, Loans, Bequests, Benefits, or**
2 **Other Things of Value**

3
4 (A) A judge shall not accept, and shall urge the judge's spouse, domestic partner, and
5 other members of the judge's family residing in the judge's household not to accept, any gifts,
6 loans, bequests, benefits, or other things of value, ~~if acceptance is prohibited by law or would~~
7 ~~appear to a reasonable person to undermine the judge's independence, integrity, or impartiality.~~
8 except as follows:

9
10 (B) ~~Unless otherwise prohibited by law, or by division (A) of this rule, a judge may~~
11 ~~accept any of the following without publicly reporting such acceptance:~~ [RESERVED]

12
13 (1) Items with little intrinsic value, such as plaques, certificates, trophies, and
14 greeting cards;

15
16 (2) Gifts, loans, bequests, benefits, or other things of value from friends, relatives, or
17 other persons, including lawyers, whose appearance or interest in a proceeding *pending*
18 or *impending* before the judge would in any event require disqualification of the judge
19 under Rule 2.11;

20
21 (3) Ordinary social hospitality;

22
23 (4) Commercial or financial opportunities and benefits, including special pricing and
24 discounts, and loans from lending institutions in their regular course of business, if the
25 same opportunities and benefits or loans are made available on the same terms to
26 similarly situated persons who are not judges;

27
28 (5) Rewards and prizes given to competitors or participants in random drawings,
29 contests, or other events that are open to persons who are not judges;

30
31 (6) Scholarships, fellowships, and similar benefits or awards, if they are available to
32 similarly situated persons who are not judges, based upon the same terms and criteria;

33
34 (7) Books, magazines, journals, audiovisual materials, and other resource materials
35 supplied by publishers on a complimentary basis for official use;

36
37 (8) Gifts, awards, or benefits associated with the business, profession, or other
38 separate activity of a spouse, a *domestic partner*, or other member of the judge's family
39 residing in the judge's household, but that incidentally benefit the judge, provided the
40 gift, award, or benefit does not give the appearance of influencing the judge in his or her
41 judicial duties or otherwise appear to a reasonable person to undermine the judge's
42 independence, integrity, or impartiality;

43
44 (9) A gift from a relative or friend for a social occasion, such as a wedding,
45 anniversary, or birthday, if the gift is commensurate with the relationship and occasion;
46

93 decision in a case. Rule 3.13 ~~imposes restrictions upon~~ prohibits the acceptance of such benefits,
94 according to the magnitude of the risk. Division (B) identifies circumstances in which the risk
95 that the acceptance would appear to undermine the judge's independence, integrity, or
96 impartiality is low, and explicitly provides that such items need not be publicly reported. As the
97 value of the benefit or the likelihood that the source of the benefit will appear before the judge
98 increases, the judge is either prohibited under division (A) from accepting the gift, or required
99 under division (C) to publicly report it except in circumstances where the risk of improper
100 influence is low and subject to applicable financial disclosure requirements. See Rule 3.15 and
101 R.C. 102.02.

102
103 [2] Gift-giving between friends and relatives is a common occurrence, and ordinarily
104 does not create an appearance of impropriety or cause reasonable persons to believe that the
105 judge's independence, integrity, or impartiality has been compromised. In addition, when the
106 appearance of friends or relatives in a case would require the judge's disqualification under Rule
107 2.11, there would be no opportunity for a gift to influence the judge's decision making. Division
108 ~~(B)~~ (A)(2) places no restrictions upon the ability of a judge to accept gifts or other things of
109 value from friends or relatives under these circumstances, ~~and does not require~~ but requires
110 public reporting.

111
112 [3] Businesses and financial institutions frequently make available special pricing,
113 discounts, and other benefits, either in connection with a temporary promotion or for preferred
114 customers, based upon longevity of the relationship, volume of business transacted, and other
115 factors. A judge may freely accept such benefits if they are available to the general public, or if
116 the judge qualifies for the special price or discount according to the same criteria as are applied
117 to persons who are not judges. As an example, loans provided at generally prevailing interest
118 rates are not gifts, but a judge could not accept a loan from a financial institution at below-
119 market interest rates unless the same rate was being made available to the general public for a
120 certain period of time or only to borrowers with specified qualifications that the judge also
121 possesses.

122
123 [4] ~~Rule 3.13 applies only to acceptance of gifts or other things of value by a judge.~~
124 ~~Nonetheless, if a gift or other benefit is given to the judge's spouse, domestic partner, or member~~
125 ~~of the judge's family residing in the judge's household, it may be viewed as an attempt to evade~~
126 ~~Rule 3.13 and influence the judge indirectly. Where the gift or benefit is being made primarily~~
127 ~~to such other persons, and the judge is merely an incidental beneficiary, this concern is reduced.~~
128 ~~A judge should, however, remind family and household members of the restrictions imposed~~
129 ~~upon judges and urge them to take these restrictions into account when making decisions about~~
130 ~~accepting such gifts or benefits.~~ [RESERVED]

131
132 [5] Rule 3.13 does not apply to contributions to a judge's campaign for judicial
133 office. Such contributions are governed by other rules of this code, including Rules 4.3 and 4.4.

136 **Comparison to Ohio Code of Judicial Conduct**

137
138 Rule 3.13 corresponds to Ohio Canon 2(C)(5). That provision, together with R.C.
139 102.03, generally bars a judge from accepting gifts, loans, bequests, or benefits, except for those
140 items specifically permitted in Canon 2(C)(5)(a) to (h). The new rule is essentially the same as
141 the existing standards, with the exception that Rules 3.13(A)(1), (A)(5), and (A)(11)(b) are new
142 provisions with no counterpart in the Ohio Code. Specifically:

- 143
- 144 • Rule 3.13(A)(2) corresponds to Ohio Canon 2(C)(5)(e);
- 145
- 146 • Rule 3.13(A)(3) corresponds to Ohio Canon 2(C)(5)(c);
- 147
- 148 • Rule 3.13(A)(4) corresponds to Ohio Canon 2(C)(5)(f);
- 149
- 150 • Rule 3.13(A)(6) corresponds to Ohio Canon 2(C)(5)(g);
- 151
- 152 • Rule 3.13(A)(7) corresponds to a portion of Ohio Canon 2(C)(5)(a);
- 153
- 154 • Rule 3.13(A)(8) corresponds to Ohio Canon 2(C)(5)(b) but adds “domestic partner” and
155 incorporates the “independence, integrity, or impartiality” standards used throughout the
156 Code;
- 157
- 158 • Rule 3.13(A)(9) corresponds to Ohio Canon 2(C)(5)(d);
- 159
- 160 • Rules 3.13(A)(10) and (A)(11)(a) correspond to portions of Ohio Canon 2(C)(5)(a);
- 161
- 162 • Rule 3.13(A)(12) corresponds to Ohio Canon 2(C)(5)(h), but is expanded to address gifts
163 from a person who is doing or seeking to do business with the court.
- 164

165 Comment [3] provides guidance to judges in situations where special pricing, discounts,
166 and other benefits are made available by businesses and financial institutions.

167
168 Requirements for the reporting of gifts and other things of value are addressed in Rule
169 3.15.

170 **Comparison to ABA Model Code of Judicial Conduct**

171
172
173 Model Rule 3.13 is reorganized entirely to be consistent with Ohio law. The Model Rule
174 3.13 divides gifts and other things of value into three categories: those that a judge may not
175 accept under any circumstances [Rule 3.13(A)]; those that a judge may accept without having to
176 report the acceptance of the item [Rule 3.13(B)]; and those that a judge may accept, provided the
177 acceptance is publicly reported [Rule 3.13(C)]. By contrast, the Ohio version of Rule 3.13(A)
178 prohibits the acceptance of any gift or item of value, except those expressly listed that would not
179 create an appearance of impropriety or cause a reasonable person to believe that the judge’s
180 independence, integrity, or impartiality has been compromised. Rule 3.13(C) requires disclosure

181 of any gift or other item of value as required by Rule 3.15. The comments are revised to
182 correspond to the rule.

1 **Rule 3.14 Reimbursement of Expenses and Waivers of Fees or Charges**

2
3 (A) ~~Unless otherwise prohibited by Rules 3.1 and 3.13(A) or other law,~~ a Δ judge
4 may accept reimbursement of necessary and reasonable expenses for travel, food, lodging, or
5 other incidental expenses, or a waiver or partial waiver of fees or charges for registration, tuition,
6 and similar items, ~~from sources other than the judge's employing entity,~~ if the both of the
7 following apply:
8

9 (1) The expenses or charges are associated with the judge's participation in
10 extrajudicial activities permitted by this code;
11

12 (2) The source of the reimbursement or waiver does not give the appearance of
13 influencing the judge in his or her judicial duties or otherwise appear to a reasonable
14 person to undermine the judge's independence, integrity, or impartiality.
15

16 (B) Reimbursement of expenses for necessary travel, food, lodging, or other
17 incidental expenses shall be limited to the actual costs reasonably incurred by the judge and,
18 when appropriate to the occasion, by the judge's spouse, *domestic partner*, or guest. Any
19 reimbursement in excess of actual cost is compensation and shall be publicly reported as required
20 by Rule 3.15.
21

22 (C) A judge who accepts reimbursement of expenses or waivers or partial waivers of
23 fees or charges on behalf of the judge or the judge's spouse, *domestic partner*, or guest shall
24 publicly report such acceptance as required by Rule 3.15.
25

26
27 **Comment**
28

29 [1] Educational, civic, religious, fraternal, and charitable organizations often sponsor
30 meetings, seminars, symposia, dinners, awards ceremonies, and similar events. Judges are
31 encouraged to attend educational programs, as both teachers and participants, in law-related and
32 academic disciplines, in furtherance of their duty to remain competent in the law. Participation
33 in a variety of other extrajudicial activity is also permitted and encouraged by this code.
34

35 [2] Not infrequently, sponsoring organizations invite certain judges to attend
36 seminars or other events on a fee-waived or partial fee-waived basis, and sometimes include
37 reimbursement for necessary travel, food, lodging, or other incidental expenses. A judge's
38 decision whether to accept reimbursement of expenses or a waiver or partial waiver of fees or
39 charges in connection with these or other extrajudicial activities must be based upon an
40 assessment of all the circumstances. The judge must undertake a reasonable inquiry to obtain the
41 information necessary to make an informed judgment about whether acceptance would be
42 consistent with the requirements of this code.
43

44 [3] A judge must ~~assure himself or herself that~~ determine whether acceptance of
45 reimbursement or fee waivers would ~~not~~ appear to a reasonable person to undermine the judge's

46 independence, integrity, or impartiality. The factors that a judge should consider when deciding
47 whether to accept reimbursement or a fee waiver for attendance at a particular activity include:
48

49 (a) whether the sponsor is an accredited educational institution or bar association
50 rather than a trade association or a for-profit entity;
51

52 (b) whether the funding comes largely from numerous contributors rather than from a
53 single entity and is earmarked for programs with specific content;
54

55 (c) whether the content is related or unrelated to the subject matter of litigation
56 pending or impending before the judge, or to matters that are likely to come before the
57 judge;
58

59 (d) whether the activity is primarily educational rather than recreational, and whether
60 the costs of the event are reasonable and comparable to those associated with similar
61 events sponsored by the judiciary, bar associations, or similar groups;
62

63 (e) whether information concerning the activity and its funding sources is available
64 upon inquiry;
65

66 (f) whether the sponsor or source of funding is generally associated with particular
67 parties or interests currently appearing or likely to appear in the judge's court, thus
68 possibly requiring disqualification of the judge under Rule 2.11;
69

70 (g) whether differing viewpoints are presented;
71

72 (h) whether a broad range of judicial and nonjudicial participants are invited, whether
73 a large number of participants are invited, and whether the program is designed
74 specifically for judges.
75

76 **Comparison to Ohio Code of Judicial Conduct**

77
78
79 Rule 3.14 is generally comparable to Ohio Canon 2(D). However, the existing
80 prohibition on the acceptance of compensation, expenses, or fee waivers that give the appearance
81 of impropriety is replaced by a standard that looks to whether the acceptance of the
82 compensation, expense, or fee waiver would appear to a reasonable person to undermine the
83 judge's independence, integrity, or impartiality. This modification is consistent with the
84 independence, integrity, and impartiality standard used elsewhere in the Code.
85

86 As is the case with other rules, Rules 3.14(B) and (C) include a reference to "domestic
87 partner."
88

89 **Comparison to ABA Model Code of Judicial Conduct**
90

91 Model Rule 3.14(A) is modified in two respects. First, Ohio law contains no exemption
92 for expense reimbursements and fee waivers that a judge receives from his or her employing
93 entity, thus necessitating removal of the exemption that appears in the Model Code. Second,
94 Model Rule 3.14(A) conditions the acceptance of expense reimbursements or fee waivers solely
95 on whether the expenses or charges are associated with the judges' participation in permissible
96 extrajudicial activities. Rule 3.14(A) sets a higher standard by requiring an Ohio judge to
97 consider whether the source of the reimbursement or waiver gives the appearance of influencing
98 the judge or otherwise appears to a reasonable person to undermine the judge's independence,
99 integrity, or impartiality. Rule 3.14(A)(1) applies this standard to expense reimbursements or fee
100 waivers that a judge may receive for any activity permitted by the Code, and not only
101 extrajudicial activities.
102

103 Rule 3.14(B) adds language taken from Ohio Canon 2(D)(2) providing that
104 reimbursement in excess of actual cost is compensation and must be publicly reported.

1 **RULE 3.15 Reporting Requirements**

2
3 (A) A judge shall publicly report the amount or value of all of the following:

4
5 (1) Compensation received for extrajudicial activities as permitted by Rule 3.12;

6
7 (2) Gifts and other things of value as permitted by Rule 3.13(C), unless the value of
8 such items, alone or in the aggregate with other items received from the same source in the same
9 calendar year, does not exceed \$[insert amount];

10
11 (3) Reimbursement of expenses and waiver of fees or charges permitted by Rule
12 3.14(A), unless the amount of reimbursement or waiver, alone or in the aggregate with other
13 reimbursements or waivers received from the same source in the same calendar year, does not
14 exceed \$[insert amount] file annually the disclosure statement required by R.C. 102.02 with the
15 secretary of the Board of Commissioners on Grievances and Discipline of the Supreme Court of
16 Ohio. The completion and filing of the annual disclosure statement fulfills the reporting
17 requirements set forth in Rules 3.12, 3.13, and 3.14.

18
19 (B) ~~When public reporting is required by division (A) of this rule, a judge shall report~~
20 ~~the date, place, and nature of the activity for which the judge received any compensation; the~~
21 ~~description of any gift, loan, bequest, benefit, or other thing of value accepted; and the source of~~
22 ~~reimbursement of expenses or waiver or partial waiver of fees or charges. [RESERVED]~~

23
24 (C) ~~The public report required by division (A) of this rule shall be made at least~~
25 ~~annually, except that for reimbursement of expenses and waiver or partial waiver of fees or~~
26 ~~charges, the report shall be made within thirty days following the conclusion of the event or~~
27 ~~program. [RESERVED]~~

28
29 (D) ~~Reports made in compliance with this rule shall be filed as public documents in~~
30 ~~the office of the clerk of the court on which the judge serves or other office designated by law,~~
31 ~~and, when technically feasible, posted by the court or office personnel on the court’s website.~~
32 ~~[RESERVED]~~

33
34
35 **Comment**

36
37 [1] The information required to be reported by Rules 3.12, 3.13, and 3.14 is a portion
38 of the information that must be included on the annual financial disclosure statement mandated
39 by R.C. 102.02. A judge is obligated to disclose fully and accurately all information requested
40 on the annual disclosure statement and does not fulfill the statutory obligation by reporting only
41 the information required by Rules 3.12, 3.13, and 3.14.

42
43 [2] Previously, judges were required to report extrajudicial income and gifts on both
44 the statutorily mandated form and on a quasi-judicial or extrajudicial activity compensation
45 report that was required to be filed with the Board of Commissioners on Grievances and

46 Discipline. Rule 3.15 simplifies the reporting requirements by allowing judges to complete a
47 single form to satisfy the reporting requirements of this Code and the Revised Code.
48

49

50

Comparison to Ohio Code of Judicial Conduct

51

52 Rule 3.15 continues the requirement of Ohio Canon 2(D)(3)(a) to file the annual financial
53 disclosure statement required by R.C. 102.02. This filing satisfied the reporting requirements of
54 Rules 3.12, 3.13, and 3.14.

55

56 Comment [1] explains that a judge shall report other information on the annual financial
57 disclosure statement mandated by R.C. 102.02. This is implied, but not expressed, in Canon
58 2(D)(3)(a).

59

60 Rule 3.15 no longer requires a judge to file a separate statement of quasijudicial or
61 extrajudicial compensation as prescribed by Ohio Canon 2(D)(3)(b). The content of this
62 statement is included within the statutorily mandated financial disclosure statement, and Rule
63 3.15 requires the filing of only the statement required by R.C. 102.02.

64

65

Comparison to ABA Model Code of Judicial Conduct

66

67 The reporting requirements and detail of the Model Rule are eliminated from Rule 3.15 in
68 favor of a reference to the annual financial disclosure statement required by R.C. 102.02.

Canon 4

1
2
3
4
5

A judge or judicial candidate for ~~judicial office~~ shall not engage in political or campaign activity that is inconsistent with the *independence, integrity, or impartiality* of the judiciary.

1 **RULE 4.1 Political and Campaign Activities of Judges and Judicial Candidates**

2
3 (A) A judge or judicial candidate shall not do any of the following:

4
5 (1) Act as a leader of, or hold an office in, a political party;

6
7 (2) Make speeches on behalf of a political party or another candidate for public
8 office;

9
10 (3) Publicly endorse or oppose a candidate for another public office;

11
12 (4) Solicit funds for or make a contribution or expenditure of campaign funds to a
13 political party or a candidate for public office, except as permitted by division (B)(2) or
14 (3) of this rule;

15
16 (5) Comment on any substantive matter relating to a specific case pending on the
17 docket of any judge;

18
19 (6) Make any statement that would reasonably be expected to affect the outcome or
20 impair the fairness of a matter pending or impending in any court;

21
22 (7) In connection with cases, controversies, or issues that are likely to come before
23 the court, make pledges, promises, or commitments that are inconsistent with the
24 impartial performance of the adjudicative duties of judicial office.

25
26 (B) A judge or judicial candidate may do any of the following, subject to limitations
27 set forth in this canon:

28
29 (1) Attend or speak to a political gathering;

30
31 (2) Make a contribution or expenditure of campaign funds to purchase a ticket to
32 attend a social or fundraising event held by or on behalf of another public official or
33 candidate for public office;

34
35 (3) Make a contribution or expenditure of campaign funds to a political party or to
36 purchase a ticket to attend a social event sponsored by a political party, provided the
37 contribution or expenditure will be used for any of the purposes set forth in R.C.
38 3517.18(A) and will not be used for any of the purposes set forth in R.C. 3517.18(B).

39
40
41 **Comment**

42
43 General Considerations

44
45 [1] Though subject to public election, a judge plays a role different from that of a
46 legislator or executive branch official. Rather than making decisions based upon the expressed

47 views or preferences of the electorate, a judge makes decisions based upon the law and the facts
48 of each case. Therefore, in furtherance of this interest, judges and judicial candidates must, to
49 the greatest extent possible, be free and appear to be free from political influence and political
50 pressure. This Canon imposes narrowly tailored restrictions upon the political and campaign
51 activities of all judges and judicial candidates.

52
53 [2] When a person becomes a judicial candidate, this Canon becomes applicable to
54 his or her conduct. See Rule 4.6.

55
56 *Participation in Political Activities*

57
58 [3] Public confidence in the independence and impartiality of the judiciary is eroded
59 if judges or judicial candidates are perceived to be subject to political influence. Although
60 judges and judicial candidates may register to vote as members of a political party, they are
61 prohibited by division (A)(1) from assuming leadership roles in political organizations.

62
63 [4] Divisions (A)(2) and (A)(3) prohibit judges and judicial candidates from making
64 speeches on behalf of political organizations or publicly endorsing or opposing candidates for
65 public office to prevent them from abusing the prestige of judicial office to advance the interests
66 of others. See Rule 1.3. These rules do not prohibit candidates from campaigning on their own
67 behalf or from other permitted conduct. See Rule 4.2(C).

68
69 [5] Although members of the families of judges and judicial candidates are free to
70 engage in their own political activity, including running for public office, there is no “family
71 exception” to the prohibition in division (A)(3) against a judge or candidate publicly endorsing
72 candidates for public office. A judge or judicial candidate must not become involved in, or
73 publicly associated with, a family member’s political activity or campaign for public office. To
74 avoid public misunderstanding, judges and judicial candidates should take, and should urge
75 members of their families to take, reasonable steps to avoid any implication that they endorse
76 any family member’s candidacy or other political activity.

77
78 [6] Judges and judicial candidates retain the right to participate in the political
79 process as voters in both primary and general elections.

80
81 *Statements and Comments Made during a Campaign for Judicial Office*

82
83 [7] Divisions (A)(5) and (A)(6) prohibit judicial candidates from making comments
84 that might impair the fairness of pending or impending judicial proceedings. This provision does
85 not restrict arguments or statements to the court or jury by a lawyer who is a judicial candidate,
86 or rulings, statements, or instructions by a judge that may appropriately affect the outcome of a
87 matter.

88

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

91
92 [8] The role of a judge is different from that of a legislator or executive branch
93 official, even when the judge is subject to public election. A judge must at all times strive for the
94 respect and confidence of all persons who come before the judge and decide each case on the law
95 and facts presented. Campaigns for judicial office must be conducted differently from
96 campaigns for other offices so as to foster and enhance respect and confidence for the judiciary.
97 Judicial candidates have a special obligation to ensure the judicial system is viewed as fair,
98 impartial, and free from partisanship. To that end, judicial candidates are urged to conduct their
99 campaigns in such a way that will allow them, if elected, to maintain an open mind and
100 uncommitted spirit with respect to cases or controversies coming before them. The narrowly
101 drafted restrictions upon political and campaign activities of judicial candidates provided in
102 Canon 4 allow candidates to conduct campaigns that provide voters with sufficient information
103 to permit them to distinguish between candidates and make informed electoral choices.

104
105 [9] Division (A)(7) makes applicable to both judges and judicial candidates the
106 prohibition that applies to judges in Rule 2.10(B), relating to pledges, promises, or commitments
107 that are inconsistent with the impartial performance of the adjudicative duties of judicial office.

108
109 [10] The making of a pledge, promise, or commitment is not dependent upon, or
110 limited to, the use of any specific words or phrases; instead, the totality of the statement must be
111 examined to determine if a reasonable person would believe that the candidate for judicial office
112 has specifically undertaken to reach a particular result. Pledges, promises, or commitments must
113 be contrasted with statements or announcements of personal views on legal, political, or other
114 issues, which are not prohibited. When making such statements or announcements, a judge
115 should acknowledge the overarching judicial obligation to apply and uphold the law without
116 regard to his or her personal views.

117
118 [11] A judicial candidate may make campaign promises related to judicial
119 organization, administration, and court management, such as a promise to dispose of a backlog
120 of cases, start court sessions on time, or avoid favoritism in appointments and hiring. A
121 candidate may also pledge to take action outside the courtroom, such as working toward jury
122 selection system, or advocating for more funds to improve the physical plant and amenities of the
123 courthouse.

124
125 [12] Judicial candidates may receive questionnaires or requests for interviews from the
126 media and from issue advocacy or other community organizations that seek to learn their views
127 on disputed or controversial legal or political issues. Division (A)(7) does not specifically
128 address responses to such inquiries. Depending upon the wording and format of such
129 questionnaires, judicial candidates' responses might be viewed as pledges, promises, or
130 commitments to perform the adjudicative duties of office other than in an impartial way. To
131 avoid violating division (A)(7), therefore, candidates who respond to media and other inquiries
132 should also give assurances that they will keep an open mind and will carry out their adjudicative
133 duties faithfully and impartially if elected. Candidates who do not respond may state their
134 reasons for not responding, such as the danger that answering might be perceived by a reasonable

135 person as undermining a successful candidate’s independence or impartiality, or that it might
136 lead to frequent disqualification. See Rule 2.11.

137
138 Permitted Conduct

139
140 [13] Subject to the other requirements in this canon, a judge or judicial candidate may
141 attend and speak to a political gathering and may make contributions and expend campaign funds
142 to attend a social or fundraising event on behalf of or sponsored by another office holder or
143 candidate.

144
145
146 **Comparison to Ohio Code of Judicial Conduct**

147
148 Rule 4.1 contains the provisions applicable to judges and judicial candidates that are
149 found in Ohio Canons 7(B) and (C)(7)(b) and (c). Specifically:

- 150
- 151 • Rules 4.1(A)(1) to (3) correspond to Ohio Canons 7(B)(2)(a) and (b);
 - 152
 - 153 • Rules 4.1(A)(4) and (B)(2) and (3) correspond to Ohio Canons 7(C)(7)(b) and (c);
 - 154
 - 155 • Rule 4.1(A)(5) corresponds to Ohio Canon 7(B)(2)(e);
 - 156
 - 157 • Rule 4.1(B)(1) corresponds to Ohio Canons 7(B)(3)(a)(i) and (ii).
 - 158

159 Rule 4.1(A)(6) is a new rule insofar as it addresses a statement made by a judge or
160 judicial candidate in the course of political and campaign activity. However, the rule is similar
161 to Ohio Canons 3(B)(9) and 7(B)(2)(e). Also see Rule 2.10(A)(1).

162
163 Rule 4.1(A)(7) replaces Ohio Canons 7(B)(2)(c) and (d), with the primary difference
164 being elimination of the phrase “appear to commit” found in Canon 7(B)(2)(d).

165
166 **Comparison to ABA Model Code of Judicial Conduct**

167
168 Rule 4.1 is analogous to portions of Model Rule 4.1. Specifically:

- 169
- 170 • Rule 4.1 retains, with minor modifications, the provisions of Model Rules 4.1(A)(1), (2),
171 (3), (12), and (13);
 - 172
 - 173 • Rules 4.1(A)(4) and (B)(2) and (3) replace Model Rules 4.1(A)(4) and (5);
 - 174
 - 175 • Model Rules 4.1(A)(6) and (7) are not adopted since Rule 4.2 permits judicial candidates
176 to solicit political party endorsements and advertise or otherwise state party affiliation,
177 membership, nominations, and endorsements;
 - 178
 - 179 • Model Rule 4.1(A)(8) is moved to Rule 4.4;
 - 180

181 • Model Rules 4.1(A)(9) and (10) contain prohibitions found in the Ohio Revised Code and
182 are thus duplicative;

183

184 • Model Rule (A)(11) is moved to Rule 4.3(A);

185

186 • Model Rule 4.1(B) is moved to Rule 4.2(A)(3).

187

188 Comments [1] to [6] are taken from the corresponding comments to Model Rule 4.1.

189 Comment [1] does not contain a phrase found in the Model Rule comment that references

190 different judicial selection methods. Comment [4] is modified to remove a phrase contained in

191 the Model Rule comment that would permit candidate endorsements prohibited by Rule

192 4.1(A)(3). Comment [6] is revised to delete a reference to caucus elections.

193

194 Comment [7] corresponds to Model Rule 4.1, Comment [10], and Comments [8] to [12]

195 correspond to Model Rule Comments [11] to [15]. Comment [8] is revised to further underscore

196 the need for narrowly tailored limitations on the campaign activity of judicial candidates. The

197 inserted language is based on the public reprimand administered by the Supreme Court of Florida

198 to Judge Carven Angel in 2004. See Florida Bar News, July 1, 2004. Comment [13] is added to

199 acknowledge conduct that is permissible under Rule 4.1(C).

1 **RULE 4.2 Political and Campaign Activities of Judicial Candidates**

2
3 (A) A *judicial candidate* shall be responsible for all of the following:

4
5 (1) Acting at all times in a manner consistent with the *independence, integrity, and*
6 *impartiality* of the judiciary;

7
8 (2) Reviewing and approving the content of all campaign statements and materials
9 produced by the *judicial candidate* or his or her campaign committee before their
10 dissemination;

11
12 (3) The content of any statement communicated in any medium by his or her
13 campaign committee and for compliance by his or her campaign committee with the
14 limitations on campaign solicitations and *contributions* contained in Rule 4.4, if the
15 candidate knew of the statement, solicitation, or *contribution*;

16
17 (4) No earlier than one year prior to or no later than thirty days after certification of
18 his or her candidacy by the election authority, completing a two-hour course in campaign
19 practices, finance, and ethics accredited by the Commission on Continuing Legal
20 Education and certifying such completion within five days of the date of the course to the
21 Board of Commissioners on Grievances and Discipline.

22
23 (B) A *judicial candidate* shall not do any of the following:

24
25 (1) Jointly raise funds with a candidate for nonjudicial office, except as permitted by
26 division (C) of this rule;

27
28 (2) Appear in a joint campaign advertisement with a candidate for nonjudicial office,
29 except as permitted by division (C) of this rule;

30
31 (3) Expend funds in a judicial campaign that have been contributed to the *judicial*
32 *candidate* to promote his or her candidacy for a nonjudicial office.

33
34 (C) A *judicial candidate* may do any of the following:

35
36 (1) Conduct joint fundraising activities with other *judicial candidates*;

37
38 (2) Appear in joint campaign advertisements with other *judicial candidates*;

39
40 (3) Participate with *judicial* and nonjudicial *candidates* in fundraising activities
41 organized or sponsored by a *political party*;

42
43 (4) Appear with other candidates for public office on slate cards, sample ballots, and
44 other publications of a *political party* that identify all of the candidates endorsed by the
45 party in an election;

93 Rule 4.2(C)(6) permits the use of party affiliation, membership, nominations, and
94 endorsements in campaign communications throughout a judicial campaign. This provision
95 replaces the standards contained in Ohio Canons 7(B)(3)(a)(iii) and (iv) and (B)(3)(b) that
96 prohibit the use of party affiliation and membership in campaign advertisements after the date of
97 the primary election campaign but allow the fact of nominations and endorsements to be
98 communicated at any time.

99
100 **Comparison to ABA Model Code of Judicial Conduct**

101
102 Model Rule 4.2 sets forth standards applicable to judicial candidates who are subject to
103 public election, whether the election is a retention election or partisan or nonpartisan in nature.
104 Rule 4.2 retains many of these standards and modifies or eliminates others to reflect the present
105 system of selecting judges in Ohio.

106
107 Model Rule 4.2(A)(1) is retained in Rule 4.2(A)(1).

108
109 Model Rule 4.2(A)(2) is unnecessary in light of statutory provisions contained in Title 35
110 of the Revised Code applicable to all candidates for public office.

111
112 Model Rule 4.2(A)(3) is identical in substance to Rule 4.2(A)(2), and Model Rule
113 4.2(A)(4) is replaced by the more definitive requirement found in Rule 4.2(A)(3). Rule
114 4.2(A)(4) has no counterpart in the Model Code.

115
116 Model Rules 4.2(B) and (C) are replaced by the provisions of Rule 4.2(B) and (C) that
117 are taken from Ohio Canon 7.

118
119 Comments [1] and [2] correspond to Model Rule 4.2, Comments [2] and [3], with
120 modifications to conform the comments to the rule. Comments [1] and [4] to [7] of the Model
121 Rule are inconsistent with Rule 4.2 and other provisions of Canon 4 and are not adopted.

1 **RULE 4.3 Campaign Standards and Communications**
2

3 During the course of any campaign for nomination or election to judicial office, a *judicial*
4 *candidate*, by means of campaign materials, including sample ballots, advertisements on radio or
5 television or in a newspaper or periodical, electronic communications, a public speech, press
6 release, or otherwise, shall not *knowingly* or with reckless disregard do any of the following:
7

8 (A) Post, publish, broadcast, transmit, circulate, or distribute information concerning
9 the *judicial candidate* or an opponent, either *knowing* the information to be false or with a
10 reckless disregard of whether or not it was false or, if true, that would be deceiving or misleading
11 to a reasonable person;
12

13 (B) Manifest bias or prejudice toward an opponent based on race, sex, religion,
14 national origin, disability, age, sexual orientation, or socioeconomic status;
15

16 (C) Use the title of an office not currently held by a *judicial candidate* in a manner
17 that implies that the *judicial candidate* does currently hold that office;
18

19 (D) Use the term “judge” when the *judicial candidate* is not a judge unless that term
20 appears after or below the name of the *judicial candidate* and is accompanied by either or both of
21 the following:
22

23 (1) The words “elect” or “vote,” in prominent lettering, before the *judicial*
24 *candidate’s* name;
25

26 (2) The word “for,” in prominent lettering, between the name of the *judicial*
27 *candidate* and the term “judge;”
28

29 (E) Use the term “re-elect” in either of the following circumstances:
30

31 (1) When the *judicial candidate* has never been elected at a general or special
32 election to the office for which he or she is a *judicial candidate*;
33

34 (2) When the *judicial candidate* is not the current occupant of the office for which he
35 or she is a *judicial candidate*;
36

37 (F) Misrepresent his or her identity, qualifications, present position, or other fact or
38 the identity, qualifications, present position, or other fact of an opponent;
39

40 (G) Make a false statement concerning the formal schooling or training completed or
41 attempted by a *judicial candidate*; a degree, diploma, certificate, scholarship, grant, award, prize
42 of honor received, earned, or held by a *judicial candidate*; or the period of time during which a
43 *judicial candidate* attended any school, college, community technical school, or institution;
44

45 (H) Make a false statement concerning the professional, occupational, or vocational
46 licenses held by a *judicial candidate*, or concerning any position a *judicial candidate* held for
47 which he or she received a salary or wages;

48
49 (I) Make a false statement that a *judicial candidate* has been arrested, indicted, or
50 convicted of a crime;

51
52 (J) Make a statement that a *judicial candidate* has been arrested, indicted, or
53 convicted of any crime without disclosing the outcome of all pending or concluded legal
54 proceedings resulting from the arrest, indictment, or conviction;

55
56 (K) Make a false statement that a *judicial candidate* has a record of treatment or
57 confinement for mental disorder;

58
59 (L) Make a false statement that a *judicial candidate* has been subjected to military
60 discipline for criminal misconduct or dishonorably discharged from the armed services;

61
62 (M) Falsely identify the source of a statement, issue statements under the name of
63 another person without authorization, or falsely state the endorsement of or opposition to a
64 *judicial candidate* by a person, organization, political party, or publication.

65 66 67 **Comment**

68
69 [1] A *judicial candidate* must be scrupulously fair and accurate in all statements made
70 by the candidate and his or her campaign committee. This rule obligates the candidate and the
71 committee to refrain from making statements that are false or misleading or that omit facts
72 necessary to make the communication considered as a whole not materially misleading. Also see
73 Rule 4.2.

74
75 [2] A sitting judge, who is a *judicial candidate* for a *judicial office* other than the
76 court on which he or she currently serves, violates Rule 4.3(C) if he or she uses the title “judge”
77 without identifying the court on which the judge currently serves.

78 79 80 **Comparison to Ohio Code of Judicial Conduct**

81
82 Rule 4.3 contains standards governing the content of campaign communications that are
83 taken from Ohio Canons 7(B), (D), and (E). Specifically:

- 84
85 • Rules 4.3(A) and (B) correspond to Ohio Canons 7(E)(1) and (2);
86
87 • Rule 4.3(C) corresponds to Ohio Canon 7(D)(1);
88
89 • Rule 4.3(D) corresponds to Ohio Canon 7(D)(3);
90

- 91 • Rule 4.3(E) corresponds to Ohio Canon 7(D)(4), with a modification to preclude a former
92 judge from using the term “re-elect” when seeking to return to the office to which he or
93 she was previously elected. See *In re Judicial Campaign Complaint Against Lilly* (2008),
94 117 Ohio St.3d 1467.
95
96 • Rule 4.3(F) corresponds to Ohio Canon 7(B)(2)(f);
97
98 • Rules 4.3(G) to (M) correspond to Ohio Canons 7(D)(5) to (11).
99

100 Comment [2] indicates that use of the title “judge” by an incumbent judge who is running
101 for a different judicial office is a violation of Rule 4.3(C) if the incumbent does not identify the
102 court on which he or she presently serves. See Ohio Canon 7(D)(2).
103

104 **Comparison to ABA Model Code of Judicial Conduct**

106 Because Ohio judges are elected, Model Rule 4.3, which governs the conduct of
107 candidates for appointive judicial office, is not adopted in Ohio. The Ohio version of Rule 4.3
108 contains standards governing the content of campaign communications by judicial candidates.
109

110 Comment [1] corresponds to Model Rule 4.1, Comment [7]. Comment [2] is added to
111 note that the prohibition contained in Canon 7(D)(2) is now encompassed by the prohibition in
112 Rule 4.3(C) against misusing the title of an office not currently held by the judicial candidate.
113

1 **RULE 4.4 Campaign Solicitations and Contributions**

2
3 (A) A judicial candidate shall not personally solicit or receive campaign
4 contributions. A judicial candidate may establish a campaign committee to manage and conduct
5 a campaign for the candidate, subject to the provisions of this Code. The judicial candidate is
6 responsible for ensuring that his or her campaign committee complies with applicable provisions
7 of this Code and other applicable law.

8
9 (B) A judicial candidate shall prohibit public employees subject to his or her direction
10 or control from soliciting or receiving campaign contributions.

11
12 (C) The campaign committee of a judicial candidate shall not knowingly solicit or
13 receive, directly or indirectly, for any political or personal purpose any of the following:

14
15 (1) A contribution from any employee of the court or person who does business with
16 the court in the form of a contractual or other arrangement in which the person, in the
17 current year or any of the previous six calendar years, received as payment for goods or
18 services aggregate funds or fees regardless of the source in excess of two hundred fifty
19 dollars. The committee may receive campaign contributions from lawyers who are not
20 employees of the court or doing business with the court in the form of a contractual or
21 other arrangement.

22
23 (2) A contribution from any appointee of the court unless the campaign committee,
24 on its campaign contribution and expenditure statement, reports the name, address,
25 occupation, and employer of the appointee, identifies the person as an appointee of the
26 court, and indicates whether the appointee, in the current year or in any of the previous
27 six calendar years, received aggregate compensation from court appointments in excess
28 of two hundred fifty dollars.

29
30 (3) A contribution from a political party unless the contribution is made from a
31 separate fund established by the political party solely to receive donations for judicial
32 candidates and the political party reports on the contribution and expenditure statements
33 filed by the party the name, address, occupation, and employer of each person who
34 contributed to the separate fund established by the political party.

35
36 (D) As used in division (C) of this rule:

37
38 (1) “Appointee” does not include a person whose appointment is approved, ratified,
39 or made by the court based on an intention expressed in a document such as a will, trust,
40 agreement, or contract.

41
42 (2) “Court” means the court for which the judicial candidate is seeking election and,
43 if applicable, the court on which he or she currently serves. If the judicial candidate is
44 seeking election to a division of a court of common pleas or a municipal court, “court”
45 means the division of the court for which the judicial candidate is seeking election and, if
46 applicable, the court or division of the court on which he or she currently serves.

47
48 (3) “Division” means any of the following whether separate or in combination:
49 general division of the court of common pleas; domestic relations division of the court of
50 common pleas; juvenile division of the court of common pleas; probate division of the
51 court of common pleas; housing or environmental division of the municipal court.

52
53 (4) “Compensation” does not include reasonable reimbursement for travel, meals, and
54 other expenses received by an appointee who serves in a volunteer capacity.

55
56 (E) A judicial candidate shall not participate in or receive campaign contributions
57 from a judicial fundraising event that categorizes or identifies participants by the amount of the
58 contribution made to the event.

59
60 (F) The campaign committee of a judicial candidate may begin soliciting and
61 receiving contributions no earlier than one hundred twenty days before the first Tuesday after the
62 first Monday in May of the year in which the general election is held. If the general election is
63 held in 2000 or any fourth year thereafter, the campaign committee of a judicial candidate may
64 begin soliciting and receiving contributions no earlier than one hundred twenty days before the
65 first Tuesday after the first Monday in March of the year in which the general election is held.
66 Except as provided in divisions (G) and (H) of this rule, the solicitation and receipt of
67 contributions may continue until one hundred twenty days after the general election.

68
69 (G) If the candidate is defeated prior to the general election, the solicitation and
70 receipt of contributions may continue until such time as the contributions solicited are sufficient
71 to pay the campaign debts and obligations of the judicial candidate incurred on or before the date
72 of the primary election, plus the costs of solicitation incurred after the date of the primary
73 election, but in no event shall the solicitation or receipt of contributions continue beyond one
74 hundred twenty days after the date of the election at which the defeat occurred. Notwithstanding
75 division (K) of this rule, the limits on contributions in a primary election period shall apply to
76 any contributions solicited or received by the campaign committee of the defeated judicial
77 candidate after the date of the primary election.

78
79 (H) In the case of the death or withdrawal of a judicial candidate, the solicitation and
80 receipt of contributions may continue until such time as the contributions solicited are sufficient
81 to pay the campaign debts and obligations of the judicial candidate incurred on or before the date
82 of death or withdrawal, plus the costs of solicitation incurred after the date of death or
83 withdrawal, but in no event shall the solicitation or receipt of contributions continue beyond one
84 hundred twenty days after the date of death or withdrawal.

85
86 (I) Notwithstanding any provision of division (F) of this rule to the contrary, a
87 judicial candidate may do either or both of the following:

88
89 (1) Not more than ninety days prior to the commencement of the one hundred twenty-
90 day fundraising period described in division (F) of this rule, contribute personal funds to
91 his or her campaign committee;
92

93 (2) After the conclusion of the applicable fundraising period described in division (F),
94 (G), or (H) of this rule, contribute personal funds to his or her campaign committee for
95 the express purpose of satisfying any campaign debt that was incurred during the
96 applicable fundraising period and that remains unpaid at the conclusion of the applicable
97 fundraising period. The name of the individual or entity to whom the debt is owed, the
98 amount of the debt, and the date on which the debt was incurred shall be clearly noted on
99 the appropriate campaign contribution and expenditure statement.

100
101 (J) Except as otherwise provided in division (K) of this rule, the campaign committee
102 of a *judicial candidate* shall not directly or indirectly solicit or receive in the fundraising period
103 allowed by division (F), (G), or (H) of this rule a campaign *contribution aggregating* more than
104 the following:

105
106 (1) From an individual other than the *judicial candidate* or a member of his or her
107 *immediate family*, three thousand dollars in the case of a *judicial candidate* for chief
108 justice or justice of the Supreme Court, one thousand dollars in the case of a *judicial*
109 *candidate* for the court of appeals, or five hundred dollars in the case of a *judicial*
110 *candidate* for the court of common pleas, municipal court, or county court.

111
112 (2) From any *organization*, five thousand five hundred dollars in the case of a *judicial*
113 *candidate* for chief justice or justice of the Supreme Court or three thousand dollars in the
114 case of all other *judicial candidates*.

115
116 (3) From a *political party*:

117
118 (a) Two hundred seventy-five thousand dollars in the case of a *judicial*
119 *candidate* for chief justice or justice of the Supreme Court;

120
121 (b) Sixty thousand dollars in the case of a *judicial candidate* for the court of
122 appeals;

123
124 (c) Sixty thousand dollars in the case of a *judicial candidate* for a court of
125 common pleas, municipal court, or county court that serves a territorial
126 jurisdiction with a population of more than seven hundred fifty thousand;

127
128 (d) Fifty thousand dollars in the case of a *judicial candidate* for a court of
129 common pleas, municipal court, or county court that serves a territorial
130 jurisdiction with a population of seven hundred fifty thousand or less;

131
132 (K) If a *judicial candidate* is opposed in a primary election, the campaign committee
133 of that *judicial candidate* shall not directly or indirectly solicit or receive either of the following:

134
135 (1) A campaign *contribution* from an individual or an *organization aggregating* more
136 than the applicable limitation contained in division (J)(1) or (2) of this rule in a primary
137 election period or in a general election period;

139 (2) A campaign contribution from a political party aggregating more than the
140 applicable limitation contained in division (J)(3) of this rule in a general election period
141 or aggregating more than the following during a primary election period:

142
143 (a) One hundred fifty thousand dollars in the case of a judicial candidate for
144 chief justice or justice of the Supreme Court;

145
146 (b) Thirty thousand dollars in the case of a judicial candidate for the court of
147 appeals;

148
149 (c) Thirty thousand dollars in the case of a judicial candidate for a court of
150 common pleas, municipal court, or county court that serves a territorial
151 jurisdiction with a population of more than seven hundred fifty thousand;

152
153 (d) Twenty-five thousand dollars in the case of a judicial candidate for a court
154 of common pleas, municipal court, or county court that serves a territorial
155 jurisdiction with a population of seven hundred fifty thousand or less.

156
157 (L) As used in division (K) of this rule, “primary election period” begins on the first
158 day on which contributions may be solicited and received pursuant to division (F) of this rule
159 and ends on the day of the primary election, and “general election period” begins on the day after
160 the primary election and ends on the last day on which contributions may be solicited or received
161 pursuant to division (F) of this rule.

162
163 (M) For purposes of division (J), (K), and (L) of this rule:

164
165 (1) Contributions received from political action committees that are established,
166 financed, maintained, or controlled by the same corporation, nonprofit corporation,
167 partnership, limited liability company, association, professional association, continuing
168 association, estate, trust, business trust, or other entity, including any parent, subsidiary,
169 local, division, or department of that same corporation, nonprofit corporation,
170 partnership, limited liability company, association, professional association, continuing
171 association, estate, trust, business trust, or other entity, shall be considered to have been
172 received from a single political action committee.

173
174 (2) All contributions received by a judicial candidate from a national, state, or county
175 political party shall be combined in applying the limits set forth in division (J)(3) of this
176 rule.

177
178 (3) In-kind contributions consisting of goods and compensated services shall be
179 assigned a fair market value by the campaign committee and shall be subject to the same
180 limitations and reporting requirements as other contributions.

181
182 (4) A loan made to a campaign committee by a person other than the judicial
183 candidate or a member of his or her immediate family shall not exceed an amount equal
184 to two times the applicable contribution limit, and amounts in excess of the applicable

185 contribution limit shall be repaid within the fundraising period allowed by division (F) of
186 this rule. A debt remaining at the end of the fundraising period shall be treated as a
187 contribution and subject to the applicable contribution limit.

188
189 (5) A debt incurred by a judge or judicial candidate in a previous campaign for public
190 office and forgiven by the individual, organization, or political party to whom the debt is
191 owed shall not be considered a campaign contribution.

192
193 (N) In applying the contribution limits contained in division (J) and (K) of this rule,
194 the contributions of an individual or organization to a judicial candidate fund established by a
195 political party shall not be aggregated with other contributions from the same individual or
196 organization made directly to the campaign committee of a judicial candidate unless the
197 campaign committee of the judicial candidate directly or indirectly solicited the contribution to
198 the judicial candidate fund.

199
200 (O) On or before the first day of December beginning in 2008 and every four years
201 thereafter, the secretary of the Board of Commissioners on Grievances and Discipline shall
202 determine the percentage change over the preceding forty-eight months in the Consumer Price
203 Index for All Urban Consumers, or its successive equivalent, as determined by the United States
204 Department of Labor, Bureau of Labor Statistics, or its successor in responsibility, for all items,
205 Series A. The secretary shall apply that percentage change to the contribution limitations then in
206 effect and notify the Supreme Court of the results of that calculation. The Supreme Court may
207 adopt revised contribution limitations based on the secretary's calculation or other factors that
208 the Court considers appropriate.

209 210 211 **Comment**

212
213 [1] A judicial candidate is prohibited from personally soliciting campaign
214 contributions or personally receiving campaign contributions. Likewise, public employees
215 subject to the direction or control of a judicial candidate are prohibited from soliciting or
216 receiving campaign contributions.

217
218 [2] A judicial candidate may establish a judicial campaign committee to solicit and
219 accept campaign contributions, manage the expenditure of campaign funds, and generally
220 conduct the campaign. In so doing, the campaign committee shall follow the provisions of the
221 rule regarding the solicitation and receipt of contributions. A campaign committee shall follow
222 all time guidelines controlling when judicial fundraising shall begin and end in reference to a
223 particular judicial election.

224
225 [3] The campaign committee may accept contributions that do not exceed the
226 limitations established for individuals, organizations, and political parties. The judicial candidate
227 is responsible under Rule 4.2(A)(3) for compliance by his or her campaign committee with the
228 limitations established on campaign solicitations and contributions.

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Comparison to Ohio Code of Judicial Conduct

Rule 4.4 corresponds to Ohio Canon 7(C), with two substantive differences:

- The provisions of Ohio Canon 7(C)(7), governing the use of campaign funds, are moved to Rules 4.1(A)(4), 4.1(B)(2) and (3), and 4.2(B)(3);
- The requirement of Ohio Canon 7(C)(8), requiring a successful candidate to file copies of his or her campaign finance reports with the clerk of court, is not retained. Increasingly, campaign finance statements are available electronically, through web sites maintained by the Secretary of State and county boards of election.

Comparison to ABA Model Code of Judicial Conduct

Model Rule 4.4, governing the conduct of judicial campaign committees, is replaced by Ohio’s more comprehensive provisions regulating the solicitation and receipt of campaign contributions. The Ohio version of Rule 4.4 has provisions analogous to Model Rule 4.4(B)(1) and (2).

Rule 4.4, Comments [1] and [2] correspond to the same comments in Model Rule 4.4, with modifications to reflect the content of the Ohio rule. Comment [3] is new and does not correspond to Comment [3] of the Model Rule.

1 **RULE 4.5 Activities of a Judge Who Becomes a Candidate for Nonjudicial**
2 **Office**

3
4 Upon becoming a candidate in a primary or general election for a nonjudicial elective
5 office, a judge shall resign from judicial office. A judge may continue to hold judicial office
6 while he or she is a candidate for election to or serving as a delegate in a state constitutional
7 convention, if the judge is otherwise permitted by law to do so.
8
9

10 **Comment**

11
12 [1] In campaigns for nonjudicial elective public office, candidates may make pledges,
13 promises, or commitments related to positions they would take and ways they would act if
14 elected to office. Although appropriate in nonjudicial campaigns, this manner of campaigning is
15 inconsistent with the role of a judge, who must remain fair and impartial to all who come before
16 him or her. The potential for misuse of the judicial office, and the political promises that the
17 judge would be compelled to make in the course of campaigning for nonjudicial elective office,
18 together dictate that a judge who wishes to run for such an office must resign upon becoming a
19 candidate.
20

21 [2] The “resign to run” rule ensures that a judge cannot use the judicial office to
22 promote his or her candidacy, and prevents post-campaign retaliation from the judge in the event
23 the judge is defeated in the election.
24
25

26 **Comparison to Ohio Code of Judicial Conduct**

27
28 Rule 4.5 is identical in substance to Ohio Canon 7(B)(4).
29

30 **Comparison to ABA Model Code of Judicial Conduct**

31
32 Rule 4.5 is similar to Model Rule 4.5. However, the Ohio rule contains an absolute
33 requirement that a judge resign from judicial office upon becoming a candidate for nonjudicial
34 office, without drawing a distinction between elective and appointive office. The Ohio rule also
35 includes language that allows a judge to remain in office while seeking election to or serving as a
36 delegate in a state constitutional convention.

1 **RULE 4.6 Definitions**

2
3 As used in Canon 4:

4
5 (A) “Aggregate” means not only contributions in cash or in-kind made directly to a
6 candidate’s campaign committee, but also all contributions made indirectly with the
7 understanding that they will be used to support the election of a candidate or to oppose the
8 election of the candidate’s opponent.

9
10 (B) “Contribution” has the same meaning as in R.C. 3517.01 and includes an in-kind
11 contribution.

12
13 (C) “Immediate family” means a spouse or domestic partner or any of the following
14 who are related by blood or marriage to the judicial candidate:

15
16 (1) Parent;

17
18 (2) Child;

19
20 (3) Brother or sister;

21
22 (4) Grandparent;

23
24 (5) Grandchild;

25
26 (6) Uncle or aunt;

27
28 (7) Nephew or niece;

29
30 (8) Great-grandparent;

31
32 (9) First cousin.

33
34 (D) “Independence,” “integrity,” and “impartiality” have the same meaning as in the
35 Terminology section of this code.

36
37 (E) “In-kind contribution” has the same meaning as in R.C. 3517.01.

38
39 (F) “Judicial candidate” means a person who has made a public announcement of
40 candidacy for judicial office, declared or filed as a candidate for judicial office with the election
41 authority, or authorized the solicitation or receipt of contributions or support for judicial office,
42 whichever occurred first.

43
44 (G) “Knowingly” means actual knowledge of the fact in question. A person’s
45 knowledge may be inferred from circumstances.

46

47 (H) “Law firm” means a lawyer or lawyers in a law partnership, professional
48 corporation, sole proprietorship, or other association authorized to practice law or lawyers
49 engaged in a private or public legal aid or public defender organization, a legal services
50 organization, the legal department of a corporation or other organization, or the attorney general,
51 prosecuting attorney, law director, or other public office.

52
53 (I) “Loan” means an advance of money with an absolute promise to pay, with or
54 without interest, and includes loan guarantees.

55
56 (J) “Organization” means any entity or combination of two or more persons, other
57 than a political party, including, but not limited to, a corporation, nonprofit corporation,
58 partnership, limited liability company, association, professional association, continuing
59 association, estate, trust, business trust, political action committee as defined in R.C. 3517.01,
60 law firm, organization affiliated with a political party, labor organization, campaign committee
61 of another candidate for public office, or caucus campaign committee.

62
63 (K) “Organization affiliated with a political party” means a combination of two or
64 more persons, other than a political party or an organization, that is identified by its name or
65 association with a national, state, or county political party or expressly promotes the interests,
66 philosophy, or candidates of a political party.

67
68 (L) “Political action committee” has the same meaning as in R.C. 3517.01.

69
70 (M) “Political party” has the same meaning as in R.C. 3517.01 and includes any
71 national, state, or county political party.

72 73 74 **Comparison to Ohio Code of Judicial Conduct**

75
76 Rule 4.6 is analogous to Ohio Canon 7(A). The following definitions in Rule 4.6 have
77 been added to or modified from those contained in Ohio Canon 7(A):

- 78
79 • A definition of “aggregate” has been added based on the definition contained in the
80 Terminology section of the Model Code;
81
82 • “Immediate family” has been modified to include a reference to “domestic partner” and
83 specify that the definition includes first cousins only;
84
85 • Definitions of “integrity,” “independence,” and “impartiality” have been added to
86 correspond to the Terminology section of the code.
87
88 • “In-kind contribution” has been modified to conform to the statutory definition contained
89 in R.C. 3517.01. See *Disciplinary Counsel v. Spicer* 106 Ohio St.3d 247, 2005-Ohio-
90 4788;
91

- 92 • “Law firm” has been modified to conform to the definition found in Rule 1.0 of the Ohio
93 Rules of Professional Conduct, with the addition of references to lawyers who practice
94 together in a public office.

95

96

Comparison to ABA Model Code of Judicial Conduct

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98

99

The Model Code contains no rule analogous to Rule 4.6. The definitions applicable to Model Canon 4 are contained in the Terminology section of the Model Code.