

Guide to Judiciary Policy

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§ 110 Overview

The primary sources of information for ethical guidance are the applicable codes of conduct, which set forth general standards of conduct for judges and judicial employees. Four codes of conduct have been adopted by the Judicial Conference:

- [Code of Conduct for United States Judges](#), containing the ethical canons applicable to federal judges, as well as commentary on them;
- [Code of Conduct for Judicial Employees](#), applicable to virtually all judicial employees, including judges' law clerks and judicial assistants;
- [Code of Conduct for Federal Public Defender Employees](#), applicable to all employees in federal public defender offices; and
- [Model Code of Conduct for Federal Community Defender Employees](#), which must be adopted by a community defender organization's board of directors and made applicable to all the community defender organization's employees.

Reviewing these codes of conduct should be the first step in researching ethical questions. The codes provide useful guidance about the proper performance of official duties and about engaging in a variety of outside activities.

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Ch 2: Code of Conduct for United States Judges

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Introduction

The Code of Conduct for United States Judges was initially adopted by the Judicial Conference on April 5, 1973, and was known as the "Code of Judicial Conduct for United States Judges." **See:** [JCUS-APR 73](#), pp. 9-11. Since then, the Judicial Conference has made the following changes to the Code:

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

- March 2014: revised part C of the Compliance section, which appears below, immediately following the Code.

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

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

Chair, Committee on Codes of Conduct
c/o General Counsel
Administrative Office of the United States Courts
Thurgood Marshall Federal Judiciary Building
One Columbus Circle, N.E.
Washington, D.C. 20544
202-502-1100

Procedural questions may be addressed to:

Office of the General Counsel
Administrative Office of the United States Courts
Thurgood Marshall Federal Judiciary Building
One Columbus Circle, N.E.
Washington, D.C. 20544
202-502-1100

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

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

COMMENTARY

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

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

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

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

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

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

COMMENTARY

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

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

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

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

Canon 2C. Membership of a judge in an organization that practices invidious discrimination gives rise to perceptions that the judge's impartiality is impaired. Canon 2C refers to the current practices of the organization. Whether an organization practices invidious discrimination is often a complex question to which judges should be sensitive. The answer cannot be determined from a mere examination of an

organization's current membership rolls but rather depends on how the organization selects members and other relevant factors, such as that the organization is dedicated to the preservation of religious, ethnic or cultural values of legitimate common interest to its members, or that it is in fact and effect an intimate, purely private organization whose membership limitations could not be constitutionally prohibited. See *New York State Club Ass'n. Inc. v. City of New York*, 487 U.S. 1, 108 S. Ct. 2225, 101 L. Ed. 2d 1 (1988); *Board of Directors of Rotary International v. Rotary Club of Duarte*, 481 U.S. 537, 107 S. Ct. 1940, 95 L. Ed. 2d 474 (1987); *Roberts v. United States Jaycees*, 468 U.S. 609, 104 S. Ct. 3244, 82 L. Ed. 2d 462 (1984). Other relevant factors include the size and nature of the organization and the diversity of persons in the locale who might reasonably be considered potential members. Thus the mere absence of diverse membership does not by itself demonstrate a violation unless reasonable persons with knowledge of all the relevant circumstances would expect that the membership would be diverse in the absence of invidious discrimination. Absent such factors, an organization is generally said to discriminate invidiously if it arbitrarily excludes from membership on the basis of race, religion, sex, or national origin persons who would otherwise be admitted to membership.

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

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

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

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

A. *Adjudicative Responsibilities.*

- (1) A judge should be faithful to, and maintain professional competence in, the law and should not be swayed by partisan interests, public clamor, or fear of criticism.
- (2) A judge should hear and decide matters assigned, unless disqualified, and should maintain order and decorum in all judicial proceedings.
- (3) A judge should be patient, dignified, respectful, and courteous to litigants, jurors, witnesses, lawyers, and others with whom the judge deals in an official capacity. A judge should require similar conduct of those subject to the judge's control, including lawyers to the extent consistent with their role in the adversary process.
- (4) A judge should accord to every person who has a legal interest in a proceeding, and that person's lawyer, the full right to be heard according to law. Except as set out below, a judge should not initiate, permit, or consider ex parte communications or consider other communications concerning a pending or impending matter that are made outside the presence of the parties or their lawyers. If a judge receives an unauthorized ex parte communication bearing on the substance of a matter, the judge should promptly notify the parties of the subject matter of the communication and allow the parties an opportunity to respond, if requested. A judge may:
 - (a) initiate, permit, or consider ex parte communications as authorized by law;
 - (b) when circumstances require it, permit ex parte communication for scheduling, administrative, or emergency purposes, but only if the ex parte communication does not address substantive matters and the judge reasonably believes that no party will gain a procedural, substantive, or tactical advantage as a result of the ex parte communication;

- (c) obtain the written advice of a disinterested expert on the law, but only after giving advance notice to the parties of the person to be consulted and the subject matter of the advice and affording the parties reasonable opportunity to object and respond to the notice and to the advice received; or
 - (d) with the consent of the parties, confer separately with the parties and their counsel in an effort to mediate or settle pending matters.
- (5) A judge should dispose promptly of the business of the court.
 - (6) A judge should not make public comment on the merits of a matter pending or impending in any court. A judge should require similar restraint by court personnel subject to the judge's direction and control. The prohibition on public comment on the merits does not extend to public statements made in the course of the judge's official duties, to explanations of court procedures, or to scholarly presentations made for purposes of legal education.

B. *Administrative Responsibilities.*

- (1) A judge should diligently discharge administrative responsibilities, maintain professional competence in judicial administration, and facilitate the performance of the administrative responsibilities of other judges and court personnel.
- (2) A judge should not direct court personnel to engage in conduct on the judge's behalf or as the judge's representative when that conduct would contravene the Code if undertaken by the judge.
- (3) A judge should exercise the power of appointment fairly and only on the basis of merit, avoiding unnecessary appointments, nepotism, and favoritism. A judge should not approve compensation of appointees beyond the fair value of services rendered.
- (4) A judge with supervisory authority over other judges should take reasonable measures to ensure that they perform their duties timely and effectively.
- (5) A judge should take appropriate action upon learning of reliable evidence indicating the likelihood that a judge's conduct

contravened this Code or a lawyer violated applicable rules of professional conduct.

C. *Disqualification.*

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

the proceeding or has expressed an opinion concerning the merits of the particular case in controversy.

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

proceeding could substantially affect the value of the securities;

(d) “proceeding” includes pretrial, trial, appellate review, or other stages of litigation.

(4) Notwithstanding the preceding provisions of this Canon, if a judge would be disqualified because of a financial interest in a party (other than an interest that could be substantially affected by the outcome), disqualification is not required if the judge (or the judge’s spouse or minor child) divests the interest that provides the grounds for disqualification.

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

COMMENTARY

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

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

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

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

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

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

Canon 3A(6). The admonition against public comment about the merits of a pending or impending matter continues until the appellate process is complete. If the public comment involves a case from the judge's own court, the judge should take particular care so that the comment does not denigrate public confidence in the judiciary's integrity and impartiality, which would violate Canon 2A. A judge may comment publicly on proceedings in which the judge is a litigant in a personal capacity, but not on mandamus proceedings when the judge is a litigant in an official capacity (but the judge may respond in accordance with Fed. R. App. P. 21(b)).

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

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

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

Canon 3C(1)(c). In a criminal proceeding, a victim entitled to restitution is not, within the meaning of this Canon, a party to the proceeding or the subject matter in

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

Canon 3C(1)(d)(ii). The fact that a lawyer in a proceeding is affiliated with a law firm with which a relative of the judge is affiliated does not of itself disqualify the judge. However, if "the judge's impartiality might reasonably be questioned" under Canon 3C(1), or the relative is known by the judge to have an interest in the law firm that could be "substantially affected by the outcome of the proceeding" under Canon 3C(1)(d)(iii), the judge's disqualification is required.

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

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

A. Law-related Activities.

- (1) *Speaking, Writing, and Teaching.* A judge may speak, write, lecture, teach, and participate in other activities concerning the law, the legal system, and the administration of justice.
- (2) *Consultation.* A judge may consult with or appear at a public hearing before an executive or legislative body or official:
 - (a) on matters concerning the law, the legal system, or the administration of justice;
 - (b) to the extent that it would generally be perceived that a judge's judicial experience provides special expertise in the area; or
 - (c) when the judge is acting pro se in a matter involving the judge or the judge's interest.

- (3) *Organizations.* A judge may participate in and serve as a member, officer, director, trustee, or nonlegal advisor of a nonprofit organization devoted to the law, the legal system, or the administration of justice and may assist such an organization in the management and investment of funds. A judge may make recommendations to public and private fund-granting agencies about projects and programs concerning the law, the legal system, and the administration of justice.
 - (4) *Arbitration and Mediation.* A judge should not act as an arbitrator or mediator or otherwise perform judicial functions apart from the judge's official duties unless expressly authorized by law.
 - (5) *Practice of Law.* A judge should not practice law and should not serve as a family member's lawyer in any forum. A judge may, however, act pro se and may, without compensation, give legal advice to and draft or review documents for a member of the judge's family.
- B. *Civic and Charitable Activities.* A judge may participate in and serve as an officer, director, trustee, or nonlegal advisor of a nonprofit civic, charitable, educational, religious, or social organization, subject to the following limitations:
- (1) A judge should not serve if it is likely that the organization will either be engaged in proceedings that would ordinarily come before the judge or be regularly engaged in adversary proceedings in any court.
 - (2) A judge should not give investment advice to such an organization but may serve on its board of directors or trustees even though it has the responsibility for approving investment decisions.
- C. *Fund Raising.* A judge may assist nonprofit law-related, civic, charitable, educational, religious, or social organizations in planning fund-raising activities and may be listed as an officer, director, or trustee. A judge may solicit funds for such an organization from judges over whom the judge does not exercise supervisory or appellate authority and from members of the judge's family. Otherwise, a judge should not personally participate in fund-raising activities, solicit funds for any organization, or use or permit the use of the prestige of judicial office for that purpose. A judge should not personally participate in membership solicitation if the solicitation might reasonably be perceived as coercive or is essentially a fund-raising mechanism.

D. *Financial Activities.*

- (1) A judge may hold and manage investments, including real estate, and engage in other remunerative activity, but should refrain from financial and business dealings that exploit the judicial position or involve the judge in frequent transactions or continuing business relationships with lawyers or other persons likely to come before the court on which the judge serves.
- (2) A judge may serve as an officer, director, active partner, manager, advisor, or employee of a business only if the business is closely held and controlled by members of the judge's family. For this purpose, "members of the judge's family" means persons related to the judge or the judge's spouse within the third degree of relationship as defined in Canon 3C(3)(a), any other relative with whom the judge or the judge's spouse maintains a close familial relationship, and the spouse of any of the foregoing.
- (3) As soon as the judge can do so without serious financial detriment, the judge should divest investments and other financial interests that might require frequent disqualification.
- (4) A judge should comply with the restrictions on acceptance of gifts and the prohibition on solicitation of gifts set forth in the Judicial Conference Gift Regulations. A judge should endeavor to prevent any member of the judge's family residing in the household from soliciting or accepting a gift except to the extent that a judge would be permitted to do so by the Judicial Conference Gift Regulations. A "member of the judge's family" means any relative of a judge by blood, adoption, or marriage, or any person treated by a judge as a member of the judge's family.
- (5) A judge should not disclose or use nonpublic information acquired in a judicial capacity for any purpose unrelated to the judge's official duties.

E. *Fiduciary Activities.* A judge may serve as the executor, administrator, trustee, guardian, or other fiduciary only for the estate, trust, or person of a member of the judge's family as defined in Canon 4D(4). As a family fiduciary a judge is subject to the following restrictions:

- (1) The judge should not serve if it is likely that as a fiduciary the judge would be engaged in proceedings that would ordinarily come before the judge or if the estate, trust, or ward becomes involved in

adversary proceedings in the court on which the judge serves or one under its appellate jurisdiction.

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

COMMENTARY

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

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

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

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

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

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

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

Canon 4B. The changing nature of some organizations and their exposure to litigation make it necessary for a judge regularly to reexamine the activities of each organization with which the judge is affiliated to determine if the judge's continued

association is appropriate. For example, in many jurisdictions, charitable hospitals are in court more often now than in the past.

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

Canon 4D(1), (2), and (3). Canon 3 requires disqualification of a judge in any proceeding in which the judge has a financial interest, however small. Canon 4D requires a judge to refrain from engaging in business and from financial activities that might interfere with the impartial performance of the judge's judicial duties. Canon 4H requires a judge to report compensation received for activities outside the judicial office. A judge has the rights of an ordinary citizen with respect to financial affairs, except for limitations required to safeguard the proper performance of the judge's duties. A judge's participation in a closely held family business, while generally permissible, may be prohibited if it takes too much time or involves misuse of judicial prestige or if the business is likely to come before the court on which the judge serves. Owning and receiving income from investments do not as such affect the performance of a judge's duties.

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

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

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

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

Canon 4F. The appropriateness of accepting extrajudicial assignments must be assessed in light of the demands on judicial resources and the need to protect the courts from involvement in matters that may prove to be controversial. Judges should not accept governmental appointments that could interfere with the effectiveness and

independence of the judiciary, interfere with the performance of the judge's judicial responsibilities, or tend to undermine public confidence in the judiciary.

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

CANON 5: A JUDGE SHOULD REFRAIN FROM POLITICAL ACTIVITY

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

COMMENTARY

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

Compliance with the Code of Conduct

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

A. Part-time Judge

A part-time judge is a judge who serves part-time, whether continuously or periodically, but is permitted by law to devote time to some other profession or occupation and whose compensation for that reason is less than that of a full-time judge. A part-time judge:

- (1) is not required to comply with Canons 4A(4), 4A(5), 4D(2), 4E, 4F, or 4H(3);
- (2) except as provided in the Conflict-of-Interest Rules for Part-time Magistrate Judges, should not practice law in the court on which the judge serves or in any court subject to that court's appellate jurisdiction, or act as a lawyer in a proceeding in which the judge has served as a judge or in any related proceeding.

B. Judge Pro Tempore

A judge pro tempore is a person who is appointed to act temporarily as a judge or as a special master.

- (1) While acting in this capacity, a judge pro tempore is not required to comply with Canons 4A(4), 4A(5), 4D(2), 4D(3), 4E, 4F, or 4H(3); further, one who acts solely as a special master is not required to comply with Canons 4A(3), 4B, 4C, 4D(4), or 5.
- (2) A person who has been a judge pro tempore should not act as a lawyer in a proceeding in which the judge has served as a judge or in any related proceeding.

C. Retired Judge

A judge who is retired under 28 U.S.C. § 371(b) or § 372(a) (applicable to Article III judges), or who is subject to recall under § 178(d) (applicable to judges on the Court of Federal Claims), or who is recalled to judicial service, should comply with all the provisions of this Code except Canon 4F, but the judge should refrain from judicial service during the period of

extrajudicial appointment not sanctioned by Canon 4F. All other retired judges who are eligible for recall to judicial service (except those in U.S. territories and possessions) should comply with the provisions of this Code governing part-time judges. However, bankruptcy judges and magistrate judges who are eligible for recall but who have notified the Administrative Office of the United States Courts that they will not consent to recall are not obligated to comply with the provisions of this Code governing part-time judges. Such notification may be made at any time after retirement, and is irrevocable. A senior judge in the territories and possessions must comply with this Code as prescribed by 28 U.S.C. § 373(c)(5) and (d).

COMMENTARY

The 2014 amendment to the Compliance section, regarding retired bankruptcy judges and magistrate judges and exempting those judges from compliance with the Code as part-time judges if they notify the Administrative Office of the United States Courts that they will not consent to recall, was not intended to alter those judges' statutory entitlements to annuities, cost-of-living adjustments, or any other retirement benefits.

Applicable Date of Compliance

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

Guide to Judiciary Policy

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§ 310 Overview

§ 310.10 Scope

- (a) This Code of Conduct applies to all employees of the judicial branch, including interns, externs, and other volunteer court employees, except it does not apply to Justices; judges; and employees of the United States Supreme Court, the Administrative Office of the United States Courts, the Federal Judicial Center, the Sentencing Commission, and federal public defender offices.

- (b) Justices and employees of the Supreme Court are subject to standards established by the Justices of that Court. Judges are subject to the [Code of Conduct for United States Judges \(Guide, Vol 2A, Ch 2\)](#). Employees of the AO and the FJC are subject to their respective agency codes. Employees of the Sentencing Commission are subject to standards established by the Commission. Federal public defender employees are subject to the [Code of Conduct for Federal Public Defender Employees \(Guide, Vol 2A, Ch 4\)](#). Intermittent employees [[HR Manual, Sec 5, Ch 4.7](#)] are subject to canons 1, 2, and 3 and such other provisions of this code as may be determined by the appointing authority.
- (c) Employees who occupy positions with functions and responsibilities similar to those for a particular position identified in this code should be guided by the standards applicable to that position, even if the position title differs. When in doubt, employees may seek an advisory opinion as to the applicability of specific code provisions.
- (d) Contractors and other nonemployees not covered above who serve the judiciary are not covered by this code, but appointing authorities may impose these or similar ethical standards on such nonemployees, as appropriate.

§ 310.20 History

- (a) With the adoption of the Code of Conduct for Judicial Employees on September 19, 1995, the Judicial Conference repealed the Code of Conduct for Clerks (and Deputy Clerks), the Code of Conduct for United States Probation Officers (and Pretrial Services Officers), the Code of Conduct for Circuit Executives, the Director of the Administrative Office, the Director of the Federal Judicial Center, the Administrative Assistant to the Chief Justice, and All Administrative Office Employees Grade GS-15 and Above, the Code of Conduct for Staff Attorneys of the United States, the Code of Conduct for Federal Public Defenders, and the Code of Conduct for Law Clerks. [JCUS-SEP 95](#), p. 74.
- (b) This Code of Conduct for Judicial Employees took effect on January 1, 1996.
- (c) In March 2001, the Conference revised Canon 3F(4). [JCUS-MAR 01](#), pp. 10-12.
- (d) The Conference revised the following provisions in March 2013: "Scope" (§ 310.10(a) and (d)); "Definitions" (§ 310.30(a)); Canon 1; Canon 3F(2)(a)(ii); Canon 4A; and Canon 5B. [JCUS-MAR 13](#), p. 9.

§ 310.30 Definitions

(a) Member of a Judge's Personal Staff

As used in this code in canons 3F(2)(b), 3F(5), 4B(2), 4C(1), and 5B, a member of a judge's personal staff means a judge's secretary or judicial assistant, a judge's law clerk, intern, extern, or other volunteer court employee, and a courtroom deputy clerk or court reporter whose assignment with a particular judge is reasonably perceived as being comparable to a member of the judge's personal staff.

(b) Third Degree of Relationship

As used in this code, the third degree of relationship is calculated according to the civil law system to include the following relatives: parent, child, grandparent, grandchild, great grandparent, great grandchild, brother, sister, aunt, uncle, niece and nephew.

§ 310.40 Further Guidance

(a) The Judicial Conference has authorized its Committee on Codes of Conduct to render advisory opinions concerning the application and interpretation of this code. Employees should consult with their supervisor and/or appointing authority for guidance on questions concerning this code and its applicability before a request for an advisory opinion is made to the Committee on Codes of Conduct.

(b) In assessing the propriety of one's proposed conduct, a judicial employee should take care to consider all relevant canons in this code, the Ethics Reform Act, and other applicable statutes and regulations (*e.g.*, receipt of a gift may implicate canon 2 as well as canon 4C(2) and the Ethics Reform Act gift regulations).

(c) Should a question remain after this consultation, the affected judicial employee, or the chief judge, supervisor, or appointing authority of such employee, may request an advisory opinion from the Committee. Requests for advisory opinions may be addressed to the chair of the Committee on Codes of Conduct by email or as follows:

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

§ 320 Text of the Code

Canon 1: A Judicial Employee Should Uphold the Integrity and Independence of the Judiciary and of the Judicial Employee's Office

An independent and honorable Judiciary is indispensable to justice in our society. A judicial employee should personally observe high standards of conduct so that the integrity and independence of the Judiciary are preserved and the judicial employee's office reflects a devotion to serving the public. Judicial employees should require adherence to such standards by personnel subject to their direction and control. The provisions of this code should be construed and applied to further these objectives. The standards of this code do not affect or preclude other more stringent standards required by law, by court order, or by the appointing authority.

Canon 2: A Judicial Employee Should Avoid Impropriety and the Appearance of Impropriety in All Activities

A judicial employee should not engage in any activities that would put into question the propriety of the judicial employee's conduct in carrying out the duties of the office. A judicial employee should not allow family, social, or other relationships to influence official conduct or judgment. A judicial employee should not lend the prestige of the office to advance or to appear to advance the private interests of others. A judicial employee should not use public office for private gain.

Canon 3: A Judicial Employee Should Adhere to Appropriate Standards in Performing the Duties of the Office

In performing the duties prescribed by law, by resolution of the Judicial Conference of the United States, by court order, or by the judicial employee's appointing authority, the following standards apply:

- A. A judicial employee should respect and comply with the law and these canons. A judicial employee should report to the appropriate supervising authority any attempt to induce the judicial employee to violate these canons.

Note: A number of criminal statutes of general applicability govern federal employees' performance of official duties. These include:

- [18 U.S.C. § 201](#) (bribery of public officials and witnesses);

- [18 U.S.C. § 211](#) (acceptance or solicitation to obtain appointive public office);
- [18 U.S.C. § 285](#) (taking or using papers relating to government claims);
- [18 U.S.C. § 287](#) (false, fictitious, or fraudulent claims against the government);
- [18 U.S.C. § 508](#) (counterfeiting or forging transportation requests);
- [18 U.S.C. § 641](#) (embezzlement or conversion of government money, property, or records);
- [18 U.S.C. § 643](#) (failing to account for public money);
- [18 U.S.C. § 798](#) and [50 U.S.C. § 783](#) (disclosure of classified information);
- [18 U.S.C. § 1001](#) (fraud or false statements in a government matter);
- [18 U.S.C. § 1719](#) (misuse of franking privilege);
- [18 U.S.C. § 2071](#) (concealing, removing, or mutilating a public record);
- [31 U.S.C. § 1344](#) (misuse of government vehicle);
- [31 U.S.C. § 3729](#) (false claims against the government).

In addition, provisions of specific applicability to court officers include:

- [18 U.S.C. §§ 153, 154](#) (court officers embezzling or purchasing property from bankruptcy estate);
- [18 U.S.C. § 645](#) (embezzlement and theft by court officers);
- [18 U.S.C. § 646](#) (court officers failing to deposit registry moneys);
- [18 U.S.C. § 647](#) (receiving loans from registry moneys from court officer).

This is not a comprehensive listing but sets forth some of the more significant provisions with which judicial employees should be familiar.

- B. A judicial employee should be faithful to professional standards and maintain competence in the judicial employee's profession.
- C. A judicial employee should be patient, dignified, respectful, and courteous to all persons with whom the judicial employee deals in an official capacity, including the general public, and should require similar conduct of personnel subject to the judicial employee's direction and control. A judicial employee should diligently discharge the responsibilities of the office in a prompt, efficient, nondiscriminatory, fair, and professional manner. A judicial employee should never influence or attempt to influence the assignment of cases, or perform any discretionary or ministerial function of the court in a manner that improperly favors any

litigant or attorney, nor should a judicial employee imply that he or she is in a position to do so.

D. A judicial employee should avoid making public comment on the merits of a pending or impending action and should require similar restraint by personnel subject to the judicial employee's direction and control. This proscription does not extend to public statements made in the course of official duties or to the explanation of court procedures. A judicial employee should never disclose any confidential information received in the course of official duties except as required in the performance of such duties, nor should a judicial employee employ such information for personal gain. A former judicial employee should observe the same restrictions on disclosure of confidential information that apply to a current judicial employee, except as modified by the appointing authority.

E. A judicial employee should not engage in nepotism prohibited by law.

Note: See also [5 U.S.C. § 3110](#) (employment of relatives); [28 U.S.C. § 458](#) (employment of judges' relatives).

F. Conflicts of Interest

(1) A judicial employee should avoid conflicts of interest in the performance of official duties. A conflict of interest arises when a judicial employee knows that he or she (or the spouse, minor child residing in the judicial employee's household, or other close relative of the judicial employee) might be so personally or financially affected by a matter that a reasonable person with knowledge of the relevant facts would question the judicial employee's ability properly to perform official duties in an impartial manner.

(2) Certain judicial employees, because of their relationship to a judge or the nature of their duties, are subject to the following additional restrictions:

(a) A staff attorney or law clerk should not perform any official duties in any matter with respect to which such staff attorney or law clerk knows that:

(i) he or she has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding;

- (ii) he or she served as lawyer in the matter in controversy, or a lawyer with whom he or she previously practiced law had served (during such association) as a lawyer concerning the matter (provided that the prohibition relating to the previous practice of law does not apply if he or she did not work on the matter, did not access confidential information relating to the matter, and did not practice in the same office as the lawyer), or he, she, or such lawyer has been a material witness;
 - (iii) he or she, individually or as a fiduciary, or the spouse or minor child residing in his or her household, has a financial interest in the subject matter in controversy or in a party to the proceeding;
 - (iv) he or she, a spouse, or a person related to either within the third degree of relationship (as defined above in § 310.40), or the spouse of such person (A) is a party to the proceeding, or an officer, director, or trustee of a party; (B) is acting as a lawyer in the proceeding; (C) has an interest that could be substantially affected by the outcome of the proceeding; or (D) is likely to be a material witness in the proceeding;
 - (v) he or she has served in governmental employment and in such capacity participated as counsel, advisor, or material witness concerning the proceeding or has expressed an opinion concerning the merits of the particular case in controversy.
- (b) A secretary to a judge, or a courtroom deputy or court reporter whose assignment with a particular judge is reasonably perceived as being comparable to a member of the judge's personal staff, should not perform any official duties in any matter with respect to which such secretary, courtroom deputy, or court reporter knows that he or she, a spouse, or a person related to either within the third degree of relationship, or the spouse of such person (i) is a party to the proceeding, or an officer, director, or trustee of a party; (ii) is acting as a lawyer in the proceeding; (iii) has an interest that could be substantially affected by the outcome of the proceeding; or (iv) is likely to be a material witness in

the proceeding; provided, however, that when the foregoing restriction presents undue hardship, the judge may authorize the secretary, courtroom deputy, or court reporter to participate in the matter if no reasonable alternative exists and adequate safeguards are in place to ensure that official duties are properly performed. In the event the secretary, courtroom deputy, or court reporter possesses any of the foregoing characteristics and so advises the judge, the judge should also consider whether the Code of Conduct for United States Judges may require the judge to recuse.

- (c) A probation or pretrial services officer should not perform any official duties in any matter with respect to which the probation or pretrial services officer knows that:
 - (i) he or she has a personal bias or prejudice concerning a party;
 - (ii) he or she is related within the third degree of relationship to a party to the proceeding, or to an officer, director, or trustee of a party, or to a lawyer in the proceeding;
 - (iii) he or she, or a relative within the third degree of relationship, has an interest that could be substantially affected by the outcome of the proceeding.
- (3) When a judicial employee knows that a conflict of interest may be presented, the judicial employee should promptly inform his or her appointing authority. The appointing authority, after determining that a conflict or the appearance of a conflict of interest exists, should take appropriate steps to restrict the judicial employee's performance of official duties in such matter so as to avoid a conflict or the appearance of a conflict of interest. A judicial employee should observe any restrictions imposed by his or her appointing authority in this regard.
- (4) A judicial employee who is subject to canon 3F(2)(a) should keep informed about his or her personal and fiduciary financial interests and make a reasonable effort to keep informed about the personal financial interests of a spouse or minor child residing in the judicial employee's household. For purposes of this canon, "financial interest" means ownership of a legal or equitable interest, however

small, or a relationship as director, advisor, or other active participant in the affairs of a party, except that:

- (a) ownership in a mutual or common investment fund that holds securities is not a "financial interest" in such securities unless the employee participates in the management of the fund;
 - (b) an office in an educational, religious, charitable, fraternal, or civic organization is not a "financial interest" in securities held by the organization;
 - (c) the proprietary interest of a policy holder in a mutual insurance company, or a depositor in a mutual savings association, or a similar proprietary interest, is a "financial interest" in the organization only if the outcome of the proceeding could substantially affect the value of the interest;
 - (d) ownership of government securities is a "financial interest" in the issuer only if the outcome of the proceeding could substantially affect the value of the securities.
- (5) A member of a judge's personal staff should inform the appointing judge of any circumstance or activity of the staff member that might serve as a basis for disqualification of either the staff member or the judge, in a matter pending before the judge.

Canon 4: In Engaging in Outside Activities, a Judicial Employee Should Avoid the Risk of Conflict with Official Duties, Should Avoid the Appearance of Impropriety, and Should Comply with Disclosure Requirements

A. Outside Activities

A judicial employee's activities outside of official duties should not detract from the dignity of the court, interfere with the performance of official duties, or adversely reflect on the operation and dignity of the court or office the judicial employee serves. Subject to the foregoing standards and the other provisions of this code, a judicial employee may engage in such activities as civic, charitable, religious, professional, educational, cultural, avocational, social, fraternal, and recreational activities, and may speak, write, lecture, and teach. If such outside activities concern the law,

the legal system, or the administration of justice, the judicial employee should first consult with the appointing authority to determine whether the proposed activities are consistent with the foregoing standards and the other provisions of this code. A judicial employee should not accept a governmental appointment that has the potential for dual service to and/or supervision by independent branches of government (including state courts) or different governments during judicial employment.

B. Solicitation of Funds

A judicial employee may solicit funds in connection with outside activities, subject to the following limitations:

- (1) A judicial employee should not use or permit the use of the prestige of the office in the solicitation of funds.
- (2) A judicial employee should not solicit subordinates to contribute funds to any such activity but may provide information to them about a general fund-raising campaign. A member of a judge's personal staff should not solicit any court personnel to contribute funds to any such activity under circumstances where the staff member's close relationship to the judge could reasonably be construed to give undue weight to the solicitation.
- (3) A judicial employee should not solicit or accept funds from lawyers or other persons likely to come before the judicial employee or the court or office the judicial employee serves, except as an incident to a general fund-raising activity.

C. Financial Activities

- (1) A judicial employee should refrain from outside financial and business dealings that tend to detract from the dignity of the court, interfere with the proper performance of official duties, exploit the position, or associate the judicial employee in a substantial financial manner with lawyers or other persons likely to come before the judicial employee or the court or office the judicial employee serves, provided, however, that court reporters are not prohibited from providing reporting services for compensation to the extent permitted by statute and by the court. A member of a judge's personal staff should consult with the appointing judge concerning any financial and business activities that might reasonably be interpreted as violating this code and should refrain from any activities that fail to conform to the foregoing standards or that the

judge concludes may otherwise give rise to an appearance of impropriety.

- (2) A judicial employee should not solicit or accept a gift from anyone seeking official action from or doing business with the court or other entity served by the judicial employee, or from anyone whose interests may be substantially affected by the performance or nonperformance of official duties; except that a judicial employee may accept a gift as permitted by the Ethics Reform Act of 1989 and the Judicial Conference regulations thereunder. A judicial employee should endeavor to prevent a member of a judicial employee's family residing in the household from soliciting or accepting any such gift except to the extent that a judicial employee would be permitted to do so by the Ethics Reform Act of 1989 and the Judicial Conference regulations thereunder.

Note: See [5 U.S.C. § 7353](#) (gifts to federal employees). See also [5 U.S.C. § 7342](#) (foreign gifts); [5 U.S.C. § 7351](#) (gifts to superiors).

- (3) A judicial employee should report the value of gifts to the extent a report is required by the Ethics Reform Act, other applicable law, or the Judicial Conference of the United States.

Note: See [5 U.S.C. App. §§ 101 to 111](#) (Ethics Reform Act financial disclosure provisions).

- (4) During judicial employment, a law clerk or staff attorney may seek and obtain employment to commence after the completion of the judicial employment. However, the law clerk or staff attorney should first consult with the appointing authority and observe any restrictions imposed by the appointing authority. If any law firm, lawyer, or entity with whom a law clerk or staff attorney has been employed or is seeking or has obtained future employment appears in any matter pending before the appointing authority, the law clerk or staff attorney should promptly bring this fact to the attention of the appointing authority.

D. Practice of Law

A judicial employee should not engage in the practice of law except that a judicial employee may act pro se, may perform routine legal work incident to the management of the personal affairs of the judicial employee or a member of the judicial employee's family, and may provide pro bono legal services in civil matters, so long as such pro se, family, or pro bono legal

work does not present an appearance of impropriety, does not take place while on duty or in the judicial employee's workplace, and does not interfere with the judicial employee's primary responsibility to the office in which the judicial employee serves, and further provided that:

- (1) in the case of pro se legal work, such work is done without compensation (other than such compensation as may be allowed by statute or court rule in probate proceedings);
- (2) in the case of family legal work, such work is done without compensation (other than such compensation as may be allowed by statute or court rule in probate proceedings) and does not involve the entry of an appearance in a federal court;
- (3) in the case of pro bono legal services, such work (a) is done without compensation; (b) does not involve the entry of an appearance in any federal, state, or local court or administrative agency; (c) does not involve a matter of public controversy, an issue likely to come before the judicial employee's court, or litigation against federal, state or local government; and (d) is reviewed in advance with the appointing authority to determine whether the proposed services are consistent with the foregoing standards and the other provisions of this code.

Judicial employees may also serve as uncompensated mediators or arbitrators for nonprofit organizations, subject to the standards applicable to pro bono practice of law, as set forth above, and the other provisions of this code.

A judicial employee should ascertain any limitations imposed by the appointing judge or the court on which the appointing judge serves concerning the practice of law by a former judicial employee before the judge or the court and should observe such limitations after leaving such employment.

Note: See also [18 U.S.C. § 203](#) (representation in matters involving the United States); [18 U.S.C. § 205](#) (claims against the United States); [28 U.S.C. § 955](#) (restriction on clerks of court practicing law).

E. Compensation and Reimbursement

A judicial employee may receive compensation and reimbursement of expenses for outside activities provided that receipt of such compensation and reimbursement is not prohibited or restricted by this code, the Ethics

Reform Act, and other applicable law, and provided that the source or amount of such payments does not influence or give the appearance of influencing the judicial employee in the performance of official duties or otherwise give the appearance of impropriety. Expense reimbursement should be limited to the actual cost of travel, food, and lodging reasonably incurred by a judicial employee and, where appropriate to the occasion, by the judicial employee's spouse or relative. Any payment in excess of such an amount is compensation.

A judicial employee should make and file reports of compensation and reimbursement for outside activities to the extent prescribed by the Ethics Reform Act, other applicable law, or the Judicial Conference of the United States.

Notwithstanding the above, a judicial employee should not receive any salary, or any supplementation of salary, as compensation for official government services from any source other than the United States, provided, however, that court reporters are not prohibited from receiving compensation for reporting services to the extent permitted by statute and by the court.

Note: See [5 U.S.C. App. §§ 101 to 111](#) (Ethics Reform Act financial disclosure provisions); [28 U.S.C. § 753](#) (court reporter compensation). See also [5 U.S.C. App. §§ 501 to 505](#) (outside earned income and employment).

Canon 5: A Judicial Employee Should Refrain from Inappropriate Political Activity

A. Partisan Political Activity

A judicial employee should refrain from partisan political activity; should not act as a leader or hold any office in a partisan political organization; should not make speeches for or publicly endorse or oppose a partisan political organization or candidate; should not solicit funds for or contribute to a partisan political organization, candidate, or event; should not become a candidate for partisan political office; and should not otherwise actively engage in partisan political activities.

B. Nonpartisan Political Activity

A member of a judge's personal staff, lawyer who is employed by the court and assists judges on cases, clerk of court, chief probation officer, chief

pretrial services officer, circuit executive, and district court executive should refrain from nonpartisan political activity such as campaigning for or publicly endorsing or opposing a nonpartisan political candidate; soliciting funds for or contributing to a nonpartisan political candidate or event; and becoming a candidate for nonpartisan political office. Other judicial employees may engage in nonpartisan political activity only if such activity does not tend to reflect adversely on the dignity or impartiality of the court or office and does not interfere with the proper performance of official duties. A judicial employee may not engage in such activity while on duty or in the judicial employee's workplace and may not utilize any federal resources in connection with any such activity.

Note: See also [18 U.S.C. chapter 29](#) (elections and political activities).

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§ 410 Overview

§ 410.10 Scope

- (a) This code of conduct applies to all federal public defender employees (When Actually Employed (WAE) employees are subject to canons 1, 2, and 3 and such other provisions of this code as may be determined by the appointing authority).
- (b) This code of conduct does not apply to private counsel appointed under the Criminal Justice Act, or to attorneys provided by a bar association or legal aid agency or by a community defender organization established in accordance with the provisions of the Criminal Justice Act ([18 U.S.C. § 3006A\(g\)\(2\)\(B\)](#)). (For the Model Code of Conduct for Federal Community Defender Employees, see: [Guide, Vol 7A, Appx 4B.](#))
- (c) Nothing contained in these canons is intended to limit or modify the primary responsibility of public defenders, as appointed counsel, to render effective legal representation to clients as required by the Constitution and laws of the United States and by applicable rules governing professional conduct, including the codes of professional responsibility applicable in the jurisdiction in which the public defender practices.

§ 410.20 History

- (a) This Code was adopted September 19, 1995 by the Judicial Conference of the United States and became effective January 1, 1996. With the adoption of the Code of Conduct for Federal Public Defenders Employees on September 19, 1995, the Judicial Conference repealed the Code of the Conduct for Federal Public Defenders.
- (b) Canon 6 was revised at the September 1998 Judicial Conference.

§ 410.30 Definitions

- (a) Federal Public Defender Employees, or Defender Employees

As used in this code, "federal public defender employees" (or "defender employees") means federal public defenders, assistant federal public defenders, and all other staff employees of the federal public defender office.

(b) Public Defenders

“Public defenders” means only the federal public defenders and assistant federal public defenders.

§ 410.40 Further Guidance

- (a) The Judicial Conference has authorized its Committee on Codes of Conduct to render advisory opinions concerning the application and interpretation of this code. Defender employees (other than the federal public defender) should consult with the federal public defender, and the federal public defender may consult with the court of appeals, for guidance on questions concerning this code and its applicability before a request for an advisory opinion is made to the Committee on Codes of Conduct.
- (b) In assessing the propriety of one's proposed conduct, a defender employee should take care to consider all relevant canons in this code, the Ethics Reform Act, and other applicable statutes and regulations (e.g., receipt of a gift may implicate canon 2 as well as canon 5C(2) and the Ethics Reform Act gift regulations).
- (c) Should a question remain after this consultation, the affected defender employee may request an advisory opinion from the Committee. Requests for advisory opinions may be addressed to:

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

§ 420 Text of the Code

Canon 1: A Federal Public Defender Employee Should Uphold the Integrity and Independence of the Office

An independent and honorable defender system is indispensable to justice in our society. A defender employee should personally observe high standards of conduct so that the integrity and independence of the office are preserved and so that the defender office reflects a devotion to serving the public defender's clients and the principle of equal justice under law. Defender employees should require adherence to such standards by personnel subject to their direction and control. The provisions of this

code should be construed and applied to further these objectives. The standards of this code shall not affect or preclude other more stringent standards required by law, by applicable codes of professional responsibility, by court order, or by the federal public defender.

Canon 2: A Federal Public Defender Employee Should Avoid Impropriety and the Appearance of Impropriety in All Activities

A defender employee should not engage in any activities that would put into question the propriety of the defender employee's conduct in carrying out the duties of the office. A defender employee should not use public office for private gain.

Canon 3: A Federal Public Defender Employee Should Adhere to Appropriate Standards in Performing the Duties of the Office

In performing the duties prescribed by law, by resolution of the Judicial Conference of the United States, by court order, or by the federal public defender, the following standards apply:

- A. A defender employee should respect and comply with the law and these canons. A defender employee should report to the appropriate supervising authority any attempt to induce the defender employee to violate these canons.

Note: A number of criminal statutes of general applicability govern defender employees' performance of official duties. These include:

- [18 U.S.C. § 201](#) (bribery of public officials and witnesses);
- [18 U.S.C. § 211](#) (acceptance or solicitation to obtain appointive public office);
- [18 U.S.C. § 285](#) (taking or using papers relating to government claims);
- [18 U.S.C. § 287](#) (false, fictitious, or fraudulent claims against the government);
- [18 U.S.C. § 508](#) (counterfeiting or forging transportation requests);
- [18 U.S.C. § 641](#) (embezzlement or conversion of government money, property, or records);

- [18 U.S.C. § 643](#) (failing to account for public money);
- [18 U.S.C. § 798](#) and [50 U.S.C. § 783](#) (disclosure of classified information);
- [18 U.S.C. § 1001](#) (fraud or false statements in a government matter);
- [18 U.S.C. § 1719](#) (misuse of franking privilege);
- [18 U.S.C. § 2071](#) (concealing, removing, or mutilating a public record);
- [31 U.S.C. § 1344](#) (misuse of government vehicle);
- [31 U.S.C. § 3729](#) (false claims against the government).

This is not a comprehensive listing but sets forth some of the more significant provisions with which defender employees should be familiar.

- B. A defender employee should be faithful to professional standards and maintain competence in the defender employee's profession.
- C. A defender employee should be patient, dignified, respectful, and courteous to all persons with whom the defender employee deals in an official capacity, and should require similar conduct of personnel subject to the defender employee's direction and control. A defender employee should diligently discharge the responsibilities of the office in a nondiscriminatory fashion.
- D. A defender employee should not solicit or accept a payment of money or anything of value from a client, except that a defender employee may accept an appropriate memento or token that is neither money nor of commercial value. A defender employee should never disclose any confidential communications from a client, or any other confidential information received in the course of official duties, except as authorized by law. A former defender employee should observe the same restrictions on disclosure of confidential information that apply to a current defender employee.
- E. A defender employee should not engage in nepotism prohibited by law.

Note: See also [5 U.S.C. § 3110](#) (employment of relatives); [28 U.S.C. § 458](#) (employment of judges' relatives).

F. Conflicts of Interest

- (1) In providing legal representation to clients, a public defender should observe applicable rules of professional conduct governing the disclosure and avoidance of conflicts of interest.
- (2) In the performance of administrative duties, a defender employee should avoid conflicts of interest. A conflict of interest arises when a defender employee knows that he or she (or the spouse, minor child residing in the defender employee's household, or other close relative of the defender employee) might be so personally or financially affected by a matter that a reasonable person with knowledge of the relevant facts would question the defender employee's ability properly to perform administrative duties.
- (3) When a defender employee knows that a conflict of interest may be presented in the performance of duties, the defender employee should promptly inform the federal public defender. The federal public defender, after determining that a conflict or the appearance of a conflict of interest exists, should take appropriate steps to restrict the defender employee's performance of duties in such a matter so as to avoid a conflict or the appearance of a conflict of interest. If the conflict involves a conflict between or among clients, the federal public defender should consider withdrawal from one or more representations, or other appropriate remedial actions, as necessary to comply with applicable rules of professional conduct. A defender employee should observe any restrictions imposed by the federal public defender in this regard.

Canon 4: A Federal Public Defender Employee May Engage in Activities to Improve the Law, the Legal System, and the Administration of Justice

A defender employee, subject to the proper performance of official duties, may engage in the law-related activities enumerated below.

- A. A defender employee may speak, write, lecture, teach, and participate in other activities concerning defender services, the legal system, and the administration of justice.

- B. A defender employee may serve as a member, officer, or director of an organization or governmental agency devoted to the improvement of the law, the legal system, or the administration of justice. A defender employee may assist such an organization in raising funds and may participate in the management and investment of such funds. A defender employee may make recommendations to public and private fund-granting agencies on projects and programs concerning the law, the legal profession, and the administration of justice. A defender employee may solicit funds for law-related activities, subject to the following limitations:
- (1) A defender employee should not use or permit the use of the prestige of the office in the solicitation of funds.
 - (2) A defender employee should not solicit subordinates to contribute funds to any such activity but may provide information to them about a general fund-raising campaign.
 - (3) A defender employee should not solicit or accept funds from lawyers, clients, or other persons likely to have official business with the federal public defender office, except as an incident to a general fund-raising activity.
- C. A defender employee may promote the development of professional organizations and foster the interchange of information and experience with others in the profession. A defender employee may make himself or herself available to the public at large for speaking engagements and public appearances designed to enhance the public's knowledge of the operation of defender services and the criminal justice system.

Canon 5: A Federal Public Defender Employee Should Regulate Extra-official Activities to Minimize the Risk of Conflict with Official Duties

A. Avocational Activities

A defender employee may write, lecture, teach, and speak on subjects unrelated to the profession, and may engage in the arts, sports, and other social and recreational activities, if such avocational activities do not detract from the dignity of the office, interfere with the performance of official duties, or adversely reflect on the public defender's role as an advocate. A defender employee may solicit funds for avocational activities, subject to the limitations set forth in canon 4B.

B. Civic and Charitable Activities

A defender employee may participate in civic and charitable activities that do not detract from the dignity of the office, interfere with the performance of official duties, or adversely reflect on the public defender's role as an advocate. A defender employee may serve as an officer, director, trustee or advisor of an educational, religious, charitable, fraternal, or civic organization, and may solicit funds for any such organization subject to the limitations set forth in canon 4B.

C. Financial Activities

- (1) A defender employee should refrain from financial and business dealings that tend to detract from the dignity of the office or interfere with the performance of official duties.
- (2) A defender employee should not solicit or accept a gift from anyone seeking official action from or doing business with the federal public defender office, or from anyone whose interests may be substantially affected by the performance or nonperformance of official duties; except that a defender employee may accept a gift as permitted by the Ethics Reform Act of 1989 and the Judicial Conference regulations thereunder. A defender employee should endeavor to prevent a member of a defender employee's family residing in the household from soliciting or accepting any such gift except to the extent that a defender employee would be permitted to do so by the Ethics Reform Act of 1989 and the Judicial Conference regulations thereunder.

Note: See [5 U.S.C. § 7353](#) (gifts to federal employees). See also [5 U.S.C. § 7342](#) (foreign gifts); [5 U.S.C. § 7351](#) (gifts to superiors).

- (3) A defender employee should report the value of gifts to the extent a report is required by the Ethics Reform Act, other applicable law, or the Judicial Conference of the United States.

Note: See [5 U.S.C. App. §§ 101 to 111](#) (Ethics Reform Act financial disclosure provisions).

D. Practice of Law

A defender employee should not engage in the private practice of law. Notwithstanding this prohibition, a defender employee may act pro se and may, without compensation, give legal advice to and draft or review

documents for a member of the defender employee's family, so long as such work does not present an appearance of impropriety and does not interfere with the defender employee's primary responsibility to the defender office.

Note: See [18 U.S.C. § 3006A\(g\)\(2\)\(A\)](#) (prohibiting public defenders from engaging in the private practice of law). See also [18 U.S.C. § 203](#) (representation in matters involving the United States); [18 U.S.C. § 205](#) (claims against the United States).

Canon 6: A Federal Public Defender Employee Should Regularly File Reports of Compensation Received for All Extra-official Activities

A defender employee may receive compensation and reimbursement of expenses for outside activities provided that receipt of such compensation or reimbursement is not prohibited or restricted by this code, the Ethics Reform Act, and other applicable law, and provided that the source or amount of such payments does not influence or give the appearance of influencing the defender employee in the performance of official duties or otherwise give the appearance of impropriety. Expense reimbursement should be limited to the actual cost of travel, food, and lodging reasonably incurred by a defender employee and, where appropriate to the occasion, by the defender employee's spouse or relative. Any payment in excess of such an amount is compensation. A defender employee should make and file reports of compensation and reimbursement for outside activities to the extent prescribed by the Ethics Reform Act, other applicable law, or the Judicial Conference of the United States.

Notwithstanding the above, a defender employee (other than a defender employee serving without compensation) should not receive any salary, or any supplementation of salary, as compensation for official government services from any source other than the United States.

Note: See [5 U.S.C. App. §§ 101 to 111](#) (Ethics Reform Act financial disclosure provisions). See also [5 U.S.C. App. §§ 501 to 505](#) (outside earned income and employment).

Canon 7: A Federal Public Defender Employee Should Refrain from Inappropriate Political Activity

- A. A defender employee should not be a candidate for or hold partisan elective office and should not solicit partisan political contributions. A defender employee should not engage in any political activity while on duty or in the defender employee's workplace and may not utilize any

federal resources in any such activity. Political activity includes, but is not limited to, displaying campaign literature, badges, stickers, signs or other items of political advertising on behalf of any party, political committee, or candidate for political office and soliciting signatures for political candidacy or membership in a political party.

- B. A defender employee may engage in political activity not otherwise prohibited, provided that such activity does not detract from the dignity of the office or interfere with the proper performance of official duties. A defender employee who participates in political activity should not use his or her position or title in connection with such activity.

Note: See also [18 U.S.C. chapter 29](#) (elections and political activities).