Guide to Judiciary Policy

Volume 2: Ethics and Judicial Conduct

Part A: Codes of Conduct
  Chapter 1: Overview
  Chapter 2: Code of Conduct for United States Judges
  Chapter 3: Code of Conduct for Judicial Employees
  Chapter 4: Code of Conduct for Federal Public Defender Employees

Part B: Ethics Advisory Opinions
  Chapter 1: Overview
  Chapter 2: Published Advisory Opinions
  Chapter 3: Compendium of Selected Opinions

Part C: Ethics Statutes, Regulations, and Judicial Conference Resolutions
  Chapter 1: Overview
  Chapter 2: Certificates of Divestiture
  Chapter 3: Conflicts of Interest
  Chapter 4: Conflicts Screening Requirements
  Chapter 5: Disqualification and Recusal
  Chapter 6: Gifts to Judicial Officers and Employees
  Chapter 7: Receipt of Foreign Gifts and Decorations
  Chapter 8: Judges Personally Implicated in Criminal Proceedings
  Chapter 9: Nepotism
  Chapter 10: Outside Earned Income, Honoraria, and Employment
  Chapter 11: Part-Time Judicial Officers
  Chapter 12: Practice of Law
  Chapter 13: Privately Funded Educational Seminars
  Chapter 14: STOCK Act Compliance
  Chapter 15: Gifts to the Judicial Branch

Part D: Financial Disclosure
  Chapter 1: Overview
  Chapter 2: Filing Requirements
  Chapter 3: Report Contents
  Chapter 4: Report Review
  Chapter 5: Report Redaction and Release
  Chapter 6: Related Penalties

Part E: Judicial Conduct and Disability Act and Related Materials
  Chapter 1: Overview
  Chapter 2: [Reserved; see Judicial Conduct and Disability Act, 28 U.S.C. chapter 16]
  Chapter 3: Rules for Judicial-Conduct and Judicial-Disability Proceedings
  Chapter 4: Rules for Processing Judicial Council Certificates of Potential Impeachable Conduct
  Chapter 5: Procedure for Transmitting Documents to Judicial Conference Committee

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Topic Links for *Guide*, Volume 2 (Ethics and Judicial Conduct)
(Note: Unless otherwise indicated, all citations refer to this volume of the *Guide to Judiciary Policy*. This collection of “topic links” draws heavily on commonly submitted *Guide* search terms that have a connection to this volume and is by no means a comprehensive volume index. Report any errors or suggestions [here](#).

Transmittals of substantive Vol 2 amendments

Codes of Conduct: Part A
United States judges: *Vol 2A, Ch 2* (public version)
- **Canon 1**: Integrity, judiciary independence
- **Canon 2**: Impropriety and its appearance
- **Canon 3**: Fairly, impartially, diligently
- **Canon 4**: Extrajudicial activities
  - financial disclosure (Canon 4H(3))
  - fund raising (Canon 4C)
- **Canon 5**: Political activity

Judicial employees: *Vol 2A, Ch 3* (public version)
- **Canon 1**: Integrity, judiciary independence
- **Canon 2**: Impropriety and its appearance
- **Canon 3**: Appropriate performance
  - conflicts of interest (Canon 3F)
- **Canon 4**: Outside activities
  - financial activities (Canon 4C)
  - fund raising (Canon 4B)
  - practice of law (Canon 4D)
- **Canon 5**: Inappropriate political activity
  - partisan (Canon 5A); nonpartisan (5B)
- Social media use by judicial employees – resources for developing guidelines

Federal public defender employees: *Vol 2A, Ch 4*
- **Canon 1**: Integrity, independence
- **Canon 2**: Impropriety and its appearance
- **Canon 3**: Appropriate performance
  - conflicts of interest (Canon 3F)
- **Canon 4**: Activities to improve law, legal system, and administration of justice
- **Canon 5**: Extra-official activities
  - fund raising (Canon 5C(2))
- **Canon 6**: Extra-official compensation
- **Canon 7**: Political activity

Model code of conduct for federal community defender employees: *Vol 7A, Appx 4B*
Definitions (multiple): *Vol 2A, § 310.30, § 410.30*

Ethics Advisory Opinions: Part B
Published advisory opinions (Vol 2B, Ch 2) (public version)
- nonprofit organizations: Adv. Ops. 2 and 35
  - *Note*: Hatch Act inapplicable to Judiciary
• relatives, conflicts of interest
• law firm employment: Adv. Op. 58
• special master: Adv. Op. 61

Compendium of Selected Opinions (Vol 2B, Ch 3):
• Canon 1: Integrity, judicial independence
• Canon 2: Impropriety and its appearance
  • nepotism, favoritism (§ 2.8)
  • part-time magistrate judges (§ 2.15)
  • relationships – potential parties (§ 2.10)
• Canon 3: Fairly, impartially, diligently
  • recusal, conflicts (§ 3.0-§ 3.6)
  • ex parte communications (§ 3.9-2)
• Canon 4: Extrajudicial activities
  • fund raising (§ 4.3)
  • gifts on special occasions (§ 4.8-8)
  • investitures (§ 4.8-3)
  • robes (§ 4.8-3(e))
  • speaking, teaching, writing (§ 4.1-1)
• Canon 5: Refrain from political activity
• Ethics Reform Act
  • gifts and donations (§ 21– § 29)
  • outside earned income limit (§ 33)
    • for senior judges: Vol 3, § 840.30
  • honoraria (§ 34)
  • outside employment (§ 35)

Statutes, Regulations and Judicial Conference Resolutions: Part C
Certificates of divestiture: Vol 2C, Ch 2
Conflicts of interest: Vol 2C, Ch 3
Conflicts screening: Vol 2C, Ch 4
Definitions (multiple): Vol 2C, § 210.40, § 1020.20
Disqualification, recusal: Vol 2C, Ch 5
Gifts, gratuities: Vol 2C, Ch 6 (public version)
  • donations: Vol 2C, § 620.40, Vol 2C, Ch 15
  • foreign gifts: Vol 2C, Ch 7
  • honoraria: Vol 2C, § 620.25(i)
  • prizes: Vol 2C, § 620.25
  • to the judicial branch: Vol 2C, Ch 15
Judges personally implicated in criminal proceedings: Vol 2C, Ch 8
Nepotism: Vol 2C, Ch 9
Outside income, honoraria: Vol 2C, Ch 10 (public version)
  • outside income limits: JNet page
  • senior judges: Vol 3, § 840.30
  • teaching: Vol 2C, Ch 10, incl. § 1020.35
Part-time judicial officers: Vol 2C, Ch 11
Practice of law: Vol 2C, Ch 12
Privately funded seminars: Vol 2C, Ch 13
Procurement integrity and ethics: Vol 14, § 150
Use of government property: Vol 15, § 525

**Financial Disclosure: Part D**
- Definitions: Vol 2D, § 170
- Filing requirements: Vol 2D, Ch 2
- Gifts and reimbursements: Vol 2D, § 330
- How and where to file: Vol 2D, § 220
- Income: Vol 2D, § 320
- Instructions: JNet page
- Interests in property: Vol 2D, § 315
- Late report penalty: Vol 2D, § 610
- Penalties: Vol 2D, Ch 6
- Positions: Vol 2D, § 355
- Professional fees reimbursement: Vol 2D, § 230
- Public access regulations: Vol 2D, Ch 5
- Release and redaction of reports: Vol 2D, Ch 5
- Reportable property types: Vol 2D, § 312
- Reporting thresholds for assets: Vol 2D, § 310
- Requesting a report (Form AO 10A): Vol 2D, § 540
- Required report contents: Vol 2D, Ch 3
- Reviewing reports: Vol 2D, Ch 4
- Security issues: Vol 2D, § 370
- Spouses and dependent children: Vol 2D, § 360
- Transactions: Vol 2D, § 325
- Who must file and when: Vol 2D, § 210

**Judicial Conduct and Disability Act and Related Materials: Part E**
- Statutory text: 28 U.S.C. chapter 16
- Rules governing proceedings: Vol 2E, Ch 3
- Potential impeachable conduct certificates: Vol 2E, Ch 4
- Transmitting docs to JCUS committee: Vol 2E, Ch 5
- Resources: public webpage
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.
Guide to Judiciary Policy

Vol. 2: Ethics and Judicial Conduct
Pt. A: Codes of Conduct

Ch. 2: Code of Conduct for United States Judges

Introduction

Canon 1: A Judge Should Uphold the Integrity and Independence of the Judiciary

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

Canon 3: A Judge Should Perform the Duties of the Office Fairly, Impartially and Diligently

Canon 4: A Judge May Engage in Extrajudicial Activities That Are Consistent With the Obligations of Judicial Office

Canon 5: A Judge Should Refrain From Political Activity

Compliance with the Code of Conduct

Applicable Date of Compliance

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;
March 2019: adopted revisions to Canon 2A Commentary, Canon 3, Canon 3A(3), Canon 3B(4), Canon 3B(4) Commentary, Canon 3B(6), and Canon 3B(6) Commentary.

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, including harassment and other inappropriate workplace behavior. 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. The judge should perform those duties with respect for others, and should not engage in behavior that is harassing, abusive, prejudiced, or biased. 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 by 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 should practice civility, by being patient, dignified, respectful, and courteous, in dealings with court personnel, including chambers staff. A judge should not engage in any form of harassment of court personnel. A judge should not retaliate against those who report misconduct. A judge should hold court personnel under the judge’s direction to similar standards.

(5) A judge with supervisory authority over other judges should take reasonable measures to ensure that they perform their duties timely and effectively.

(6) A judge should take appropriate action upon receipt of reliable information indicating the likelihood that a judge’s conduct contravened this Code, that a judicial employee’s conduct contravened the Code of Conduct for Judicial Employees, or that 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(4). A judge should neither engage in, nor tolerate, workplace conduct that is reasonably interpreted as harassment, abusive behavior, or retaliation for reporting such conduct. The duty to refrain from retaliation includes retaliation against former as well as current judiciary personnel.

Under this Canon, harassment encompasses a range of conduct having no legitimate role in the workplace, including harassment that constitutes discrimination on impermissible grounds and other abusive, oppressive, or inappropriate conduct directed at judicial employees or others. See Rules for Judicial-Conduct and Judicial-Disability Proceedings, Rule 4(a)(2) (providing that “cognizable misconduct includes: (A) engaging in unwanted, offensive, or abusive sexual conduct, including sexual harassment or assault; (B) treating litigants, attorneys, judicial employees, or others in a demonstrably egregious and hostile manner; or (C) creating a hostile work environment for judicial employees”) and Rule 4(a)(3) (providing that “cognizable misconduct includes intentional discrimination on the basis of race, color, sex, gender, gender identity, pregnancy, sexual orientation, religion, national origin, age, or disability”).

Canon 3B(6). Public confidence in the integrity and impartiality of the judiciary is promoted when judges take appropriate action based on reliable information of likely misconduct. Appropriate action depends on the circumstances, but the overarching goal of such action should be to prevent harm to those affected by the misconduct and to prevent recurrence. A judge, in deciding what action is appropriate, may take into account any request for confidentiality made by a person complaining of or reporting misconduct. See Rules for Judicial-Conduct and Judicial-Disability Proceedings, Rule 4(a)(6) (providing that “cognizable misconduct includes failing to call to the attention of the relevant chief district judge or chief circuit judge any reliable information reasonably likely to constitute judicial misconduct or disability. A judge who receives such reliable information shall respect a request for confidentiality but shall nonetheless disclose the information to the chief district judge or chief circuit judge, who shall also treat the information as confidential. Certain reliable information may be protected from disclosure by statute or rule. A judge’s assurance of confidentiality must yield when there is reliable information of misconduct or disability that threatens the safety or security of any person or that is serious or egregious such that it threatens the integrity
and proper functioning of the judiciary. A person reporting information of misconduct or disability must be informed at the outset of a judge’s responsibility to disclose such information to the relevant chief district judge or chief circuit judge. Reliable information reasonably likely to constitute judicial misconduct or disability related to a chief circuit judge should be called to the attention of the next most-senior active circuit judge. Such information related to a chief district judge should be called to the attention of the chief circuit judge.

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 cooperating with or 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

Vol. 2: Ethics and Judicial Conduct
Pt. A: Codes of Conduct

Ch. 3: Code of Conduct for Judicial Employees

§ 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

§ 310.20 History

§ 310.30 Definitions

§ 310.40 Further Guidance

§ 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

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

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

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

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

Last revised (Transmittal 02-046) March 12, 2019
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.

(e) The Conference revised the following provisions in March 2019: Canon 3C(1); Canon 3D(2); and Canon 3D(3). JCUS-MAR 19, p. ___.

§ 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.** Standards of Conduct

(1) A judicial employee should be patient, dignified, respectful, and courteous to all persons with whom the judicial employee deals in an official capacity, including other employees and the general public. A judicial employee should not engage in sexual or other forms of harassment of court employees or retaliates against those who report misconduct. A judicial employee should hold court personnel under the judicial employee's direction to similar standards. A judicial employee should take appropriate action upon receipt of reliable information indicating a likelihood of conduct contravening this Code. Appropriate action depends on the circumstances and may include, for example, reporting such conduct to a supervisor, court executive, or chief judge. For
relevant elaboration, see Code of Conduct for United States Judges, Commentary to Canons 3B(4) and 3B(6).

(2) 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. Duty of Confidentiality

(1) 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.

(2) A judicial employee should not use for personal gain any confidential information received in the course of official duties.

(3) 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. A former judicial employee should observe the same restriction on disclosure of confidential information that applies to a current judicial employee, except as modified by the appointing authority. This general restriction on use or disclosure of confidential information does not prevent, nor should it discourage, an employee or former employee from reporting or disclosing misconduct, including sexual or other forms of harassment, by a judge, supervisor, or other person.

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.
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.


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 also 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).
§ 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


(b) Canon 6 was revised at the September 1998 Judicial Conference.

(c) The Conference revised Canon 3C and Canon 3D in March 2020.

§ 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 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

§ 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 will 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, including other employees and the general public. A defender employee should not engage in sexual or other forms of harassment of other employees or retaliate against those who report misconduct. A defender employee should hold personnel under the defender employee's direction to similar standards. A defender employee should take appropriate action upon receipt of reliable information indicating a likelihood of conduct contravening this Code. Appropriate action depends on the circumstances and may include, for example, reporting such conduct to a supervisor, court executive, or chief judge. For relevant elaboration, see Code of Conduct for United States Judges, Commentary to Canons 3B(4) and 3B(6). A defender employee should diligently discharge the responsibilities of the office in a nondiscriminatory fashion.

D. (1) 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.

(2) A defender employee should not use for personal gain any confidential information received in the course of official duties.

(3) 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. This general restriction on use or disclosure of confidential information does not prevent, nor should it discourage, an employee or former employee from reporting or disclosing misconduct, including sexual or other forms of harassment, by a judge, supervisor, or other person.

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


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.

**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 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).
§ 110 Overview

(a) The Committee on Codes of Conduct is authorized by the Judicial Conference of the United States to publish formal advisory opinions on issues frequently raised or issues of broad application.

(b) The Committee's first 26 published Advisory Opinions were issued prior to the Judicial Conference’s adoption in 1973 of the Code of Conduct for United States Judges. Although those opinions originally interpreted the Canons of Judicial Ethics of the American Bar Association, the opinions have been revised to conform to the Code of Conduct for United States Judges. Subsequent opinions interpret the Code of Conduct for United States Judges (Guide, Vol. 2A, Ch. 2), the Code of Conduct for Judicial Employees (Guide, Vol. 2A, Ch. 3), and the Code of Conduct for Federal Public Defender Employees (Guide, Vol. 2A, Ch. 4). Revisions to the Code of Conduct for United States Judges were approved in September 1992. Further revisions to the Code of Conduct for United States Judges became effective July 1, 2009. All of the Advisory Opinions have been updated to reflect the substantive and numbering changes of the 2009 revised code. See: Guide, Vol. 2B, Ch. 2.

§ 120 Further Guidance

In addition to the published Advisory Opinions, persons subject to the Codes of Conduct should consult:

- the Codes (see: Guide, Vol. 2A),
• the Ethics Reform Act of 1989 and the related regulations (see: Guide, Vol. 2C, Ch. 6 (Gifts) and Ch. 10 (Outside Income, Honoraria, and Employment)); and

• the Compendium of Selected Opinions (see: Guide, Vol. 2B, Ch. 3), which summarize certain published and unpublished opinions of the Committee.

§ 130 Confidential Advisory Opinions

(a) The Committee on Codes of Conduct may provide confidential advisory opinions in response to confidential inquiries from persons who are bound by the judicial branch codes of conduct and ethics regulations, and who are authorized by the Judicial Conference to request an opinion from the Committee. See: Guide, Vol. 1, § 430.23.

(b) A request for an advisory opinion should be addressed, by email if possible, to the Chair of the Committee on Codes of Conduct, or else by mail as follows:

Chair, Committee on Codes of Conduct  
c/o General Counsel  
Administrative Office of the U.S. Courts  
1 Columbus Circle, NE  
Washington, DC 20544

(c) Consistent with the Committee's jurisdiction to render confidential advisory opinions, the Committee on Codes of Conduct and its staff treat all inquiries, the Committee's response to such inquiries, and the absence of an inquiry as confidential. The Committee will not reveal any information related to an inquiry unless required by law or where the inquirer has consented or waived confidentiality, either expressly or impliedly. Except as prohibited by law, the Committee will provide the inquirer notice of any request for disclosure before producing information. Disclosure of inquiry-related information by the inquirer to an immediate supervisor does not constitute a waiver of confidentiality. The Committee may summarize and disclose its analysis of an inquiry but will safeguard confidentiality by omitting details that might tend, directly or indirectly, to reveal the identity of the inquirer.
§ 220 Committee on Codes of Conduct Advisory Opinions

No. 2: Service on Governing Boards of Nonprofit Organizations
No. 3: Participation in a Seminar of General Character
No. 7: Service as Faculty Member of the National College of State Trial Judges
No. 9: Testifying as a Character Witness
No. 11: Disqualification Where Long-Time Friend or Friend’s Law Firm Is Counsel
No. 17: Acceptance of Hospitality and Travel Expense Reimbursements From Lawyers
No. 19: Membership in a Political Club
No. 20: Disqualification Based on Stockholdings by Household Family Member
No. 24: Financial Settlement and Disqualification on Resignation From Law Firm
No. 26: Disqualification Based on Holding Insurance Policy from Company that is a Party
No. 27: Disqualification Based on Spouse’s Interest as Beneficiary of a Trust from which Defendant Leases Property
No. 28: Service as Officer or Trustee of Hospital or Hospital Association
No. 29: Service as President or Director of a Corporation Operating a Cooperative Apartment or Condominium
No. 32: Limited Solicitation of Funds for the Boy Scouts of America
No. 33: Service as a Co-trustee of a Pension Trust
No. 34: Service as Officer or on Governing Board of Bar Association
No. 35: Solicitation of Funds for Nonprofit Organizations, Including Listing of Judges on Solicitation Materials
No. 36: Commenting on Legal Issues Arising before the Governing Board of a Private College or University
No. 37: Service as Officer or Trustee of a Professional Organization Receiving Governmental or Private Grants or Operating Funds
No. 38: Disqualification When Relative Is an Assistant United States Attorney
No. 40: Service on Governing Board of Nonprofit Organization that Tends to Become Involved in Court Proceedings
No. 42: Participation in Fund Raising for a Religious Organization
No. 43: Service as a Statutory Member of a Citizens' Supervisory Commission of the County Personnel Board
No. 44: Service on Governing Board of a Public College or University
No. 46: Acceptance of Public Testimonials or Awards
No. 47: Acceptance of Complimentary or Discounted Club Memberships
No. 48: Application of Judicial Conference Conflict-of-Interest Rules for Part-Time Magistrate Judges
No. 49: Disqualification Based on Financial Interest in Member of a Trade Association
No. 50: Appearance Before a Legislative or Executive Body or Official
No. 51: Law Clerk Working on Case in Which a Party Is Represented by Spouse’s Law Firm
No. 52: American Bar Association or Other Open-Membership Bar Association Appearing as a Party
No. 53: Political Involvement of a Judge’s Spouse
No. 55: Extrajudicial Writings and Publications
No. 57: Disqualification Based on Stock Ownership in Parent Corporation of a Party or Controlled Subsidiary of a Party
No. 58: Disqualification When Relative is Employed by a Participating Law Firm
No. 59: Providing Recommendations or Evaluations of Nominees for Judicial, Executive, or Legislative Branch Appointments
No. 60: Appointment of Spouse of an Assistant United States Attorney as Part-Time Magistrate Judge
No. 61: Appointment of Law Partner of Judge’s Relative as Special Master
No. 63: Disqualification Based on Interest in Amicus that is a Corporation
No. 64: Employing a Judge’s Child as Law Clerk
No. 65: Providing a Recommendation for Commutation, Pardon, or Parole
No. 66: Disqualification Following Conduct Complaint Against Attorney or Judge
No. 67: Attendance at Independent Educational Seminars
No. 69: Removal of Disqualification by Disposal of Interest
No. 70: Disqualification When Former Judge Appears as Counsel
No. 71: Disqualification After Oral Argument
No. 72: Use of Title “Judge” by Former Judges
No. 73: Providing Letters of Recommendation and Similar Endorsements
No. 74: Pending Cases Involving Law Clerk’s Future Employer
No. 75: Disqualification Based on Military or Other Governmental Pensions
No. 76: Service of State Employees as Part-Time United States Magistrate Judges
No. 78: Disqualification When Judge Is a Utility Ratepayer or Taxpayer
No. 79: Use of Chambers, Resources, and Staff for Law-Related Activities Permitted by Canon 4
No. 80: Use of Chambers, Resources, and Staff for Activities Permitted by Canon 4 that are Not Related to the Law
No. 81: United States Attorney as Law Clerk’s Future Employer
No. 82: Joining Organizations
No. 83: Payments to Law Clerks from Future Law Firm Employers
No. 84: Pursuit of Post-Judicial Employment
No. 85: Membership and Participation in the American Bar Association
No. 86: Applying the Honoraria, Teaching, and Outside Earned Income Limitations
No. 87: Participation in Continuing Legal Education Programs
No. 88: Receipt of Mementoes or Other Tokens Under the Prohibition Against the Receipt of Honoraria for Any Appearance, Speech, or Article
No. 89: Acceptance of Honors Funded Through Voluntary Contributions
No. 90: Duty to Inquire When Relatives May Be Members of Class Action
No. 91: Solicitation and Acceptance of Funds from Persons Doing Business With the Courts
No. 92: Political Activities Guidelines for Judicial Employees
No. 93: Extrajudicial Activities Related to the Law
No. 94: Disqualification Based on Mineral Interests
No. 95: Judges Acting in a Settlement Capacity
No. 96: Service as Fiduciary of an Estate or Trust
No. 97: Disqualification of Magistrate Judge Based on Appointment or Reappointment Process
No. 98: Gifts to Newly Appointed Judges
No. 99: Disqualification Where Counsel Is Involved in a Separate Class Action in Which the Judge or a Relative Is a Class Member
No. 100: Identifying Parties in Bankruptcy Cases for Purposes of Disqualification
No. 101: Disqualification Due to Debt Interests
No. 102: Disqualification Issues Relating to Judge Being Sued in Official Capacity, Including Representation By Department of Justice
No. 103: Disqualification Based on Harassing Claims Against Judge
No. 104: Participation in Court Historical Societies and Learning Centers
No. 105: Participation in Private Law-Related Training Programs
No. 106: Mutual or Common Investment Funds
No. 107: Disqualification Based on Spouse’s Business Relationships
No. 108: Participation in Government-Sponsored Training of Government Attorneys
No. 109: Providing Conflict Lists to Departing Law Clerks
No. 110: “Separately Managed” Accounts
No. 111: Interns, Externs and Other Volunteer Employees
No. 112: Use of Electronic Social Media by Judges and Judicial Employees
No. 113: Ethical Obligations for Recall-Eligible Magistrate and Bankruptcy Judges
No. 114: Promotional Activity Associated with Extrajudicial Writings and Publications
No. 115: Appointment, Hiring, and Employment Considerations: Nepotism and Favoritism
No. 116: Participation in Educational Seminars Sponsored by Research Institutes, Think Tanks, Associations, Public Interest Groups, or Other Organizations Engaged in Public Policy Debates
### § 210 Index

<table>
<thead>
<tr>
<th>Subject</th>
<th>Advisory Opinion</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Amicus Curiae</strong></td>
<td><strong>No. 63.</strong> Disqualification Based on Interest in Amicus that is a Corporation</td>
</tr>
<tr>
<td><strong>Chambers Staff</strong></td>
<td><strong>No. 79.</strong> Use of Chambers, Resources, and Staff for Law-Related Activities Permitted by Canon 4</td>
</tr>
<tr>
<td></td>
<td><strong>No. 80.</strong> Use of Chambers, Resources, and Staff for Activities Permitted by Canon 4 that are Not Related to the Law</td>
</tr>
<tr>
<td></td>
<td><strong>No. 111.</strong> Interns, Externs and Other Volunteer Employees</td>
</tr>
<tr>
<td></td>
<td><strong>No. 112.</strong> Use of Electronic Social Media by Judges and Judicial Employees</td>
</tr>
<tr>
<td><strong>Character Witness</strong></td>
<td><strong>No. 9.</strong> Testifying as a Character Witness</td>
</tr>
<tr>
<td><strong>Class Actions</strong></td>
<td><strong>No. 90.</strong> Duty to Inquire When Relatives May Be Members of Class Action</td>
</tr>
<tr>
<td></td>
<td><strong>No. 99.</strong> Disqualification Where Counsel Is Involved in a Separate Class Action in Which the Judge or a Relative Is a Class Member</td>
</tr>
<tr>
<td><strong>Clubs</strong></td>
<td><strong>No. 47.</strong> Acceptance of Complimentary or Discounted Club Memberships</td>
</tr>
<tr>
<td><strong>Compensation/Honoraria</strong></td>
<td><strong>No. 86.</strong> Applying the Honoraria, Teaching, and Outside Earned Income Limitations</td>
</tr>
<tr>
<td></td>
<td><strong>No. 88.</strong> Receipt of Mementoes or Other Tokens Under the Prohibition Against the Receipt of Honoraria for Any Appearance, Speech, or Article</td>
</tr>
<tr>
<td><strong>Director of Nonprofit Organization</strong></td>
<td><strong>No. 2.</strong> Service on Governing Boards of Nonprofit Organizations</td>
</tr>
<tr>
<td></td>
<td><strong>No. 28.</strong> Service as Officer or Trustee of Hospital or Hospital Association</td>
</tr>
<tr>
<td></td>
<td><strong>No. 34.</strong> Serving as Officer or on Governing Board of Bar Association</td>
</tr>
<tr>
<td></td>
<td><strong>No. 36.</strong> Commenting on Legal Issues Arising before the Governing Board of a Private College or University</td>
</tr>
<tr>
<td>Subject</td>
<td>Advisory Opinion</td>
</tr>
<tr>
<td>---------</td>
<td>------------------</td>
</tr>
<tr>
<td><strong>Disqualification/ Recusal – Business, Personal and Organization Relationships</strong></td>
<td></td>
</tr>
<tr>
<td>No. 37. Service as Officer or Trustee of a Professional Organization Receiving Governmental or Private Grants or Operating Funds</td>
<td></td>
</tr>
<tr>
<td>No. 11. Disqualification Where Long-Time Friend or Friend’s Law Firm Is Counsel</td>
<td></td>
</tr>
<tr>
<td>No. 24. Financial Settlement and Disqualification on Resignation From Law Firm</td>
<td></td>
</tr>
<tr>
<td>No. 52. American Bar Association or Other Open-Membership Bar Association Appearing as a Party</td>
<td></td>
</tr>
<tr>
<td>No. 70. Disqualification When Former Judge Appears as Counsel</td>
<td></td>
</tr>
<tr>
<td>No. 102. Disqualification Issues Relating to Judge Being Sued in Official Capacity, Including Representation by Department of Justice</td>
<td></td>
</tr>
<tr>
<td><strong>Disqualification/Recusal – Family Relationships</strong></td>
<td></td>
</tr>
<tr>
<td>No. 20. Disqualification Based on Stockholdings by Household Family Member</td>
<td></td>
</tr>
<tr>
<td>No. 27. Disqualification Based on Spouse’s Interest as Beneficiary of a Trust from which Defendant Leases Property</td>
<td></td>
</tr>
<tr>
<td>No. 38. Disqualification When Relative Is an Assistant United States Attorney</td>
<td></td>
</tr>
<tr>
<td>No. 51. Law Clerk Working on Case in Which a Party Is Represented by Spouse’s Law Firm</td>
<td></td>
</tr>
<tr>
<td>No. 58. Disqualification When Relative is Employed by a Participating Law Firm</td>
<td></td>
</tr>
<tr>
<td>No. 90. Duty to Inquire When Relatives May Be Members of Class Action</td>
<td></td>
</tr>
<tr>
<td>No. 99. Disqualification Where Counsel Is Involved in a Separate Class Action in Which the Judge or a Relative Is a Class Member</td>
<td></td>
</tr>
<tr>
<td>No. 107. Disqualification Based on Spouse’s Business Relationships</td>
<td></td>
</tr>
<tr>
<td>Subject</td>
<td>Advisory Opinion</td>
</tr>
<tr>
<td>----------------------------------------------</td>
<td>-----------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>Disqualification/Recusal – Financial Interests</td>
<td></td>
</tr>
<tr>
<td><strong>No. 20.</strong> Disqualification Based on Stockholdings by Household Family Member</td>
<td></td>
</tr>
<tr>
<td><strong>No. 24.</strong> Financial Settlement and Disqualification on Resignation From Law Firm</td>
<td></td>
</tr>
<tr>
<td><strong>No. 26.</strong> Disqualification Based on Holding Insurance Policy from Company that is a Party</td>
<td></td>
</tr>
<tr>
<td><strong>No. 49.</strong> Disqualification Based on Financial Interest in Member of a Trade Association</td>
<td></td>
</tr>
<tr>
<td><strong>No. 57.</strong> Disqualification Based on Stock Ownership in Parent Corporation of a Party or Controlled Subsidiary of a Party</td>
<td></td>
</tr>
<tr>
<td><strong>No. 63.</strong> Disqualification Based on Interest in Amicus that is a Corporation</td>
<td></td>
</tr>
<tr>
<td><strong>No. 69.</strong> Removal of Disqualification by Disposal of Interest</td>
<td></td>
</tr>
<tr>
<td><strong>No. 75.</strong> Disqualification Based on Military or Other Governmental Pensions</td>
<td></td>
</tr>
<tr>
<td><strong>No. 78.</strong> Disqualification When Judge Is a Utility Ratepayer or Taxpayer</td>
<td></td>
</tr>
<tr>
<td><strong>No. 94.</strong> Disqualification Based on Mineral Interests</td>
<td></td>
</tr>
<tr>
<td><strong>No. 99.</strong> Disqualification Where Counsel Is Involved in a Separate Class Action in Which the Judge or a Relative Is a Class Member</td>
<td></td>
</tr>
<tr>
<td><strong>No. 100.</strong> Identifying Parties in Bankruptcy Cases for Purposes of Disqualification</td>
<td></td>
</tr>
<tr>
<td><strong>No. 101.</strong> Disqualification Due to Debt Interests</td>
<td></td>
</tr>
<tr>
<td><strong>No. 106.</strong> Mutual or Common Investment Funds</td>
<td></td>
</tr>
<tr>
<td><strong>No. 110.</strong> “Separately Managed” Accounts</td>
<td></td>
</tr>
<tr>
<td>Disqualification/Recusal – Reasonable Basis re Impartiality</td>
<td></td>
</tr>
<tr>
<td><strong>No. 66.</strong> Disqualification Following Conduct Complaint Against Attorney or Judge</td>
<td></td>
</tr>
</tbody>
</table>
## § 210 Index

<table>
<thead>
<tr>
<th>Subject</th>
<th>Advisory Opinion</th>
</tr>
</thead>
<tbody>
<tr>
<td>Subject</td>
<td></td>
</tr>
<tr>
<td>Advisory Opinion</td>
<td></td>
</tr>
<tr>
<td>No. 70. Disqualification When Former Judge Appears as Counsel</td>
<td></td>
</tr>
<tr>
<td>No. 71. Disqualification After Oral Argument</td>
<td></td>
</tr>
<tr>
<td>No. 97. Disqualification of Magistrate Judge Based on Appointment or Reappointment Process</td>
<td></td>
</tr>
<tr>
<td>No. 103. Disqualification Based on Harassing Claims Against Judge</td>
<td></td>
</tr>
<tr>
<td>Disqualification/Recusal – Timing and Procedures</td>
<td></td>
</tr>
<tr>
<td>No. 69. Removal of Disqualification by Disposal of Interest</td>
<td></td>
</tr>
<tr>
<td>No. 71. Disqualification After Oral Argument</td>
<td></td>
</tr>
<tr>
<td>No. 90. Duty to Inquire When Relatives May Be Members of Class Action</td>
<td></td>
</tr>
<tr>
<td>No. 100. Identifying Parties in Bankruptcy Cases for Purposes of Disqualification</td>
<td></td>
</tr>
<tr>
<td>Divestiture</td>
<td></td>
</tr>
<tr>
<td>No. 69. Removal of Disqualification by Disposal of Interest</td>
<td></td>
</tr>
<tr>
<td>Expense Reimbursement</td>
<td></td>
</tr>
<tr>
<td>No. 3. Participation in a Seminar of General Character</td>
<td></td>
</tr>
<tr>
<td>No. 17. Acceptance of Hospitality and Travel Expense Reimbursements From Lawyers</td>
<td></td>
</tr>
<tr>
<td>No. 67. Attendance at Independent Educational Seminars</td>
<td></td>
</tr>
<tr>
<td>Extrajudicial Activities</td>
<td></td>
</tr>
<tr>
<td>No. 2. Service on Governing Boards of Nonprofit Organizations</td>
<td></td>
</tr>
<tr>
<td>No. 40. Service on Governing Board of Nonprofit Organization that Tends to Become Involved in Court Proceedings</td>
<td></td>
</tr>
<tr>
<td>No. 43. Service as a Statutory Member of a Citizens’ Supervisory Commission of the County Personnel Board</td>
<td></td>
</tr>
<tr>
<td>No. 44. Service on Governing Board of a Public College or University</td>
<td></td>
</tr>
<tr>
<td>Subject</td>
<td>Advisory Opinion</td>
</tr>
<tr>
<td>---------</td>
<td>------------------</td>
</tr>
<tr>
<td><strong>No. 50.</strong> Appearance Before a Legislative or Executive Body or Official</td>
<td></td>
</tr>
<tr>
<td><strong>No. 79.</strong> Use of Chambers, Resources, and Staff for Law-Related Activities Permitted by Canon 4</td>
<td></td>
</tr>
<tr>
<td><strong>No. 80.</strong> Use of Chambers, Resources, and Staff for Activities Permitted by Canon 4 that are Not Related to the Law</td>
<td></td>
</tr>
<tr>
<td><strong>No. 82.</strong> Joining Organizations</td>
<td></td>
</tr>
<tr>
<td><strong>No. 85.</strong> Membership and Participation in the American Bar Association</td>
<td></td>
</tr>
<tr>
<td><strong>No. 93.</strong> Extrajudicial Activities Related to the Law</td>
<td></td>
</tr>
<tr>
<td><strong>No. 112.</strong> Use of Electronic Social Media by Judges and Judicial Employees</td>
<td></td>
</tr>
<tr>
<td><strong>For-profit Activities</strong></td>
<td><strong>No. 29.</strong> Service as President or Director of a Corporation Operating a Cooperative Apartment or Condominium</td>
</tr>
<tr>
<td><strong>Former and Retired Judges</strong></td>
<td><strong>No. 70.</strong> Disqualification When Former Judge Appears as Counsel</td>
</tr>
<tr>
<td></td>
<td><strong>No. 72.</strong> Use of Title “Judge” by Former Judges</td>
</tr>
<tr>
<td></td>
<td><strong>No. 84.</strong> Pursuit of Post-Judicial Employment</td>
</tr>
<tr>
<td></td>
<td><strong>No. 113.</strong> Ethical Obligations for Recall-Eligible Magistrate and Bankruptcy Judges</td>
</tr>
<tr>
<td><strong>Fund Raising</strong></td>
<td><strong>No. 32.</strong> Limited Solicitation of Funds for the Boy Scouts of America</td>
</tr>
<tr>
<td></td>
<td><strong>No. 35.</strong> Solicitation of Funds for Nonprofit Organizations, Including Listing of Judges on Solicitation Materials</td>
</tr>
<tr>
<td></td>
<td><strong>No. 42.</strong> Participation in Fund Raising for a Religious Organization</td>
</tr>
<tr>
<td></td>
<td><strong>No. 91.</strong> Solicitation and Acceptance of Funds from Persons Doing Business With the Courts</td>
</tr>
<tr>
<td>Subject</td>
<td>Advisory Opinion</td>
</tr>
<tr>
<td>---------------------------------</td>
<td>--------------------------------------------------------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td><strong>Gifts, Mementoes</strong></td>
<td><em>No. 88.</em> Receipt of Mementoes or Other Tokens Under the Prohibition Against the Receipt of Honoraria for Any Appearance, Speech, or Article</td>
</tr>
<tr>
<td></td>
<td><em>No. 98.</em> Gifts to Newly Appointed Judges</td>
</tr>
<tr>
<td><strong>Historical Societies</strong></td>
<td><em>No. 104.</em> Participation in Court Historical Societies and Learning Centers</td>
</tr>
<tr>
<td><strong>Honors/Awards</strong></td>
<td><em>No. 46.</em> Acceptance of Public Testimonials or Awards</td>
</tr>
<tr>
<td></td>
<td><em>No. 89.</em> Acceptance of Honors Funded Through Voluntary Contributions</td>
</tr>
<tr>
<td><strong>Law Clerks</strong></td>
<td><em>No. 51.</em> Law Clerk Working on Case in Which a Party Is Represented by Spouse’s Law Firm</td>
</tr>
<tr>
<td></td>
<td><em>No. 64.</em> Employing a Judge’s Child as Law Clerk</td>
</tr>
<tr>
<td></td>
<td><em>No. 74.</em> Pending Cases Involving Law Clerk’s Future Employer</td>
</tr>
<tr>
<td></td>
<td><em>No. 83.</em> Payments to Law Clerks from Future Law Firm Employers</td>
</tr>
<tr>
<td></td>
<td><em>No. 109.</em> Providing Conflict Lists to Departing Law Clerks</td>
</tr>
<tr>
<td></td>
<td><em>No. 112.</em> Use of Electronic Social Media by Judges and Judicial Employees</td>
</tr>
<tr>
<td></td>
<td><em>No. 116.</em> Participation in Educational Seminars Sponsored by Research Institutes, Think Tanks, Associations, Public Interest Groups, or Other Organizations Engaged in Public Policy Debates</td>
</tr>
<tr>
<td><strong>Law Firm/Former Law Firm</strong></td>
<td><em>No. 24.</em> Financial Settlement and Disqualification on Resignation From Law Firm</td>
</tr>
<tr>
<td><strong>Law-related Extrajudicial Activities</strong></td>
<td><em>No. 7.</em> Service as Faculty Member of the National College of State Trial Judges</td>
</tr>
<tr>
<td></td>
<td><em>No. 79.</em> Use of Chambers, Resources, and Staff for Law-Related Activities Permitted by Canon 4</td>
</tr>
<tr>
<td>Subject</td>
<td>Advisory Opinion</td>
</tr>
<tr>
<td>---------------------------------</td>
<td>----------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>§ 210 Index</td>
<td></td>
</tr>
<tr>
<td><strong>Subject</strong></td>
<td><strong>Advisory Opinion</strong></td>
</tr>
<tr>
<td><strong>Magistrate Judges</strong></td>
<td></td>
</tr>
<tr>
<td>No. 105. Participation in Private Law-Related Training Programs</td>
<td></td>
</tr>
<tr>
<td>No. 116. Participation in Educational Seminars Sponsored by Research Institutes, Think Tanks, Associations, Public Interest Groups, or Other Organizations Engaged in Public Policy Debates</td>
<td></td>
</tr>
<tr>
<td><strong>Nepotism and Favoritism</strong></td>
<td></td>
</tr>
<tr>
<td>No. 48. Application of Judicial Conference Conflict-of-Interest Rules for Part-time Magistrate Judges</td>
<td></td>
</tr>
<tr>
<td>No. 76. Service of State Employees as Part-time United States Magistrate Judges</td>
<td></td>
</tr>
<tr>
<td>No. 97. Disqualification of Magistrate Judge Based on Appointment or Reappointment Process</td>
<td></td>
</tr>
<tr>
<td>No. 113. Ethical Obligations for Recall-Eligible Magistrate and Bankruptcy Judges</td>
<td></td>
</tr>
<tr>
<td><strong>Non-law-related Extrajudicial Activities</strong></td>
<td></td>
</tr>
<tr>
<td>No. 61. Appointment of Law Partner of Judge’s Relative as Special Master</td>
<td></td>
</tr>
<tr>
<td>No. 64. Employing a Judge’s Child as Law Clerk</td>
<td></td>
</tr>
<tr>
<td>No. 115. Appointment, Hiring, and Employment Considerations: Nepotism and Favoritism</td>
<td></td>
</tr>
<tr>
<td><strong>Political Activities</strong></td>
<td></td>
</tr>
<tr>
<td>No. 19. Membership in a Political Club</td>
<td></td>
</tr>
<tr>
<td>No. 53. Political Involvement of a Judge’s Spouse</td>
<td></td>
</tr>
<tr>
<td>No. 92. Political Activities Guidelines for Judicial Employees</td>
<td></td>
</tr>
<tr>
<td><strong>Post-judicial Employment</strong></td>
<td></td>
</tr>
<tr>
<td>No. 84. Pursuit of Post-Judicial Employment</td>
<td></td>
</tr>
<tr>
<td><strong>Recommendations</strong></td>
<td></td>
</tr>
<tr>
<td>No. 59. Providing Recommendations or Evaluations of Nominees for Judicial, Executive, or Legislative Branch Appointments</td>
<td></td>
</tr>
<tr>
<td>Subject</td>
<td>Advisory Opinion</td>
</tr>
<tr>
<td>---------------------------------</td>
<td>----------------------------------------------------------------------------------</td>
</tr>
<tr>
<td></td>
<td><strong>No. 65.</strong> Providing a Recommendation for Commutation, Pardon, or Parole</td>
</tr>
<tr>
<td></td>
<td><strong>No. 73.</strong> Providing Letters of Recommendation and Similar Endorsements</td>
</tr>
<tr>
<td>Representation by DOJ</td>
<td><strong>No. 102.</strong> Disqualification Issues Relating to Judge Being Sued in Official Capacity, Including Representation by Department of Justice</td>
</tr>
<tr>
<td>Scholarships</td>
<td><strong>No. 89.</strong> Acceptance of Honors Funded Through Voluntary Contributions</td>
</tr>
<tr>
<td>Seminars and Training</td>
<td><strong>No. 3.</strong> Participation in a Seminar of General Character</td>
</tr>
<tr>
<td></td>
<td><strong>No. 67.</strong> Attendance at Independent Educational Seminars</td>
</tr>
<tr>
<td></td>
<td><strong>No. 87.</strong> Participation in Continuing Legal Education Programs</td>
</tr>
<tr>
<td></td>
<td><strong>No. 105.</strong> Participation in Private Law-Related Training Programs</td>
</tr>
<tr>
<td></td>
<td><strong>No. 108.</strong> Participation in Government-Sponsored Training of Government Attorneys</td>
</tr>
<tr>
<td></td>
<td><strong>No. 116.</strong> Participation in Educational Seminars Sponsored by Research Institutes, Think Tanks, Associations, Public Interest Groups, or Other Organizations Engaged in Public Policy Debates</td>
</tr>
<tr>
<td>Settlement</td>
<td><strong>No. 95.</strong> Judges Acting in a Settlement Capacity</td>
</tr>
<tr>
<td>Special Master</td>
<td><strong>No. 61.</strong> Appointment of Law Partner of Judge’s Relative as Special Master</td>
</tr>
<tr>
<td>Trusts, Trustee</td>
<td><strong>No. 27.</strong> Disqualification Based on Spouse’s Interest as Beneficiary of a Trust from which Defendant Leases Property</td>
</tr>
</tbody>
</table>
§ 210 Index

<table>
<thead>
<tr>
<th>Subject</th>
<th>Advisory Opinion</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>No. 33. Service as a Co-trustee of a Pension Trust</td>
</tr>
<tr>
<td></td>
<td>No. 44. Service on Governing Board of a Public College or University</td>
</tr>
<tr>
<td></td>
<td>No. 96. Service as Fiduciary of an Estate or Trust</td>
</tr>
<tr>
<td>United States Attorneys</td>
<td>No. 38. Disqualification When Relative Is an Assistant United States Attorney</td>
</tr>
<tr>
<td></td>
<td>No. 60. Appointment of Spouse of an Assistant United States Attorney as Part-time Magistrate Judge</td>
</tr>
<tr>
<td></td>
<td>No. 81. United States Attorney as Law Clerk’s Future Employer</td>
</tr>
<tr>
<td></td>
<td>No. 102. Disqualification Issues Relating to Judge Being Sued in Official Capacity, Including Representation by Department of Justice</td>
</tr>
<tr>
<td>Writings and Publications</td>
<td>No. 55. Extrajudicial Writings and Publications</td>
</tr>
<tr>
<td></td>
<td>No. 114. Promotional Activity Associated with Extrajudicial Writings and Publications</td>
</tr>
</tbody>
</table>

§ 220 Committee on Codes of Conduct Advisory Opinions

Committee on Codes of Conduct Advisory Opinion
No. 2: Service on Governing Boards of Nonprofit Organizations

Judges are often invited to serve on the governing boards of nonprofit religious, civic, charitable, educational, fraternal, or social organizations. This opinion addresses the propriety under Canon 4B of a judge serving on the board of a nonprofit organization. This opinion does not address judges’ involvement with law-related nonprofit organizations, which is covered by Canon 4A(3). See also Advisory Opinion No. 34 (“Service as Officer or on Governing Board of Bar Association”).

Judges who wish to participate in their communities through service on nonprofit boards are at liberty to do so, subject to certain restrictions discussed below and in Canon 4 of the Code of Conduct for United States Judges. In deciding whether to serve on a particular nonprofit board, judges should bear in mind the Code’s basic imperative that “[a] judge should avoid impropriety and the appearance of impropriety in all activities.” Canon 2. The judge should also consider the following factors:
• The judge must not receive any compensation for service to the organization, although the judge may receive reimbursement for expenses reasonably related to that service.

• The judge’s service must not interfere with the prompt and proper performance of judicial duties. “The duties of judicial office take precedence over all other activities.” Canon 3. Accordingly, a judge should consider existing judicial and extrajudicial obligations before accepting membership on a nonprofit board.

• The judge may not serve on the board of any organization that practices invidious discrimination. Canon 2C.

• The judge should not serve on the board of a nonprofit civic, charitable, educational, religious or social organization “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.” Canon 4B(1). This proscription would likely preclude judges serving on boards for certain types of nonprofit organizations, such as legal aid bureaus. See also Advisory Opinion Nos. 28 (“Service as Officer or Trustee of Hospital or Hospital Association”) and 40 (“Service on Governing Board of Nonprofit Organization that Tends to Become Involved in Court Proceedings”).

• The judge must not personally engage in fund-raising for the organization, subject to the exceptions noted in Canon 4C regarding family members and certain judicial colleagues. The judge should not use or permit the use of the prestige of office for fund-raising purposes. Canon 4C. However, a judge may assist a nonprofit organization in planning fund-raising activities. Id. Further, the organization’s letterhead may list the judge’s name and title if comparable information and designations are listed for others. Commentary to Canon 4C. See also Advisory Opinion No. 35 (“Solicitation of Funds for Nonprofit Organizations, Including Listing of Judges on Solicitation Materials”).

• The judge may not give investment advice to the organization, although it is acceptable to sit on a board that is responsible for approving investment decisions. Canon 4B(2).

• The judge should not serve on the board of a nonprofit organization if the judge perceives there is any other ethical obligation that would preclude such service. For example, if the organization takes public positions on controversial topics, association with the group might raise a reasonable question regarding the judge’s impartiality. The judge should bear in mind
that the public will normally be uninformed of any restriction or qualification that the judge may have placed on affiliation with the organization.

- The judge should remain knowledgeable about the group’s activities in order to regularly reassess whether participation in the organization continues to be appropriate.

With these cautions in mind, the Committee reiterates that judges may contribute to their communities through service on nonprofit boards, subject to certain ethical obligations.

June 2009
Committee on Codes of Conduct Advisory Opinion
No. 3: Participation in a Seminar of General Character

This opinion discusses participation by judges in seminars of general character. Canon 4H of the Code of Conduct for United States Judges provides that “[a] judge may accept compensation and reimbursement of expenses for the law-related and extrajudicial activities permitted by this Code if the source of 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 limitations: . . . (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.” For example, judges may properly accept a limited scholarship for partial reimbursement of travel and subsistence expenses incurred while attending and participating in the Appellate Judges Seminar conducted each summer under the auspices of the New York University Law School. At the seminar, federal and state judges in attendance address subjects relating to the operation and functioning of appellate courts. Participating judges are not compensated. The Committee advises that there is no impropriety under the Code in the attendance by a federal judge at such a seminar, or the judge’s acceptance of such a scholarship.

As an additional example, the Committee also advises that it is permissible for a judge to participate as a faculty member in a two-week seminar on humanist studies. The content of the seminar is broadly based, philosophic in nature, and intended to promote discussion in depth among faculty and participants. No compensation is paid to the judge, but the judge is reimbursed for the travel, food and lodging expenses of the judge and the judge’s spouse during the period of the institute. The Committee is of the opinion that the judge may properly participate so long as the commitment does not interfere with official duties and provides no ground for any reasonable suspicion that the judge persuaded others to patronize or contribute to the seminar sponsor. See also Advisory Opinion No. 67 (relating to attendance at privately-funded seminars).

June 2009
Committee on Codes of Conduct Advisory Opinion
No. 7: Service as Faculty Member of the National College of State Trial Judges

This opinion addresses the propriety of serving as a member of the faculty of the National College of State Trial Judges. The judge would receive no compensation for such services, but would be reimbursed for travel and subsistence for the judge and the judge’s spouse. We assume that the membership would not interfere or impinge upon the full performance of judicial duties.

The Committee is of the opinion that there is no impropriety in a judge participating as a faculty member of the National College of State Trial Judges. Canon 4A(1). We also believe that the judge and the judge’s spouse or relative may accept reimbursement for travel and subsistence, so long as that reimbursement does not exceed the actual costs of travel, food, lodging and related expenses. Canon 4H(2). However, the judge should make any required financial disclosures. Canon 4H(3).

June 2009
Committee on Codes of Conduct Advisory Opinion
No. 9: Testifying as a Character Witness

This opinion addresses the issue of a judge testifying as a character witness. By way of example, we consider the following situation: A state court trial judge is on trial on federal fraud charges. The defendant proposes to ask one or more of the federal judges of the district court in which the prosecution is proceeding to testify as a character witness. The district judges hold differing views as to the propriety of appearing as a witness, especially in the judges’ own district.

Canon 2 of the Code of Conduct for United States Judges and its Commentary provide valuable guidance. Canon 2B states that “[a] judge should not testify voluntarily as a character witness.” The Commentary elaborates further on this advice:

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.

The Committee believes that the practice of judges appearing as character witnesses should be discouraged, except where justice demands, but we affirm that a judge must respond to a subpoena. If a judge testifies in response to a subpoena, some of the otherwise unfortunate effects of providing character testimony may be dissipated if the trial judge, either on direct or cross-examination, makes it clear that the judge-witness is testifying in response to official summons. Moreover, to the extent that the trial court has discretion to limit character evidence generally, the trial judge should consider limiting the number of judges providing that evidence.

June 2009
Committee on Codes of Conduct Advisory Opinion
No. 11: Disqualification Where Long-Time Friend or Friend’s Law Firm Is Counsel

This opinion addresses whether a judge should recuse in a case where one of the attorneys is either a long-time friend of the judge or from a long-time friend’s law firm. As an example, we consider whether a judge should recuse in cases where one of the attorneys is a friend of long standing and is also a godfather of one of the judge’s children. We further discuss whether the judge should sit in cases where a party is represented by a member or associate of that friend’s firm.

The first question is not capable of answer by crisp formulation. Canon 2B prohibits a judge from allowing family, social or various other relationships to influence judicial conduct or judgment. It likewise directs judges not to convey or allow others to convey the impression that another person is in a special position to influence the judge. In a similar vein, Canon 3C requires a judge to recuse when “the judge’s impartiality might reasonably be questioned, including but not limited to” a number of enumerated circumstances, including the appearance of relatives who are within the third degree of relationship as counsel or a party.

A godfather is not a “relative” within the meaning of Canon 3C(1)(d) and is not otherwise covered by any of the enumerated circumstances requiring recusal. Recusal may nonetheless be required if the circumstances are such that the judge’s impartiality could reasonably be questioned. No such question would be raised if the relationship were simply one of historical significance, the godfather being merely within the wide circle of the judge’s friends, and the obligation having been perfunctorily assumed. By contrast, if the godfather is a close friend whose relationship is like that of a close relative, then the judge’s impartiality might reasonably be questioned. Ultimately, the question is one that only the judge may answer.

The question regarding members or associates of the firm of the friend and godfather poses no problem. We do not believe that judges must recuse from all cases handled by a law firm simply because judges have law firm members for friends. Although there may be special circumstances dictating disqualification, a friendly relationship is not sufficient reason in itself.

June 2009
Committee on Codes of Conduct Advisory Opinion
No. 17: Acceptance of Hospitality and Travel Expense Reimbursements From Lawyers

This opinion addresses a judge’s acceptance of hospitality extended by lawyers. The pertinent canons of the Code of Conduct for United States Judges are Canon 2, which requires a judge to avoid the appearance of impropriety, Canon 2B, which provides that a judge should not lend the prestige of 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, and Canon 4H(2), which permits reimbursement for extrajudicial activities permitted by the Code, limited to the actual cost of travel, food, and lodging reasonably incurred by the judge and, where appropriate to the occasion, by the judge’s spouse or relative. Also relevant are the Ethics Reform Act Gift Regulations. Sections 3(a) and (b) of the Gift Regulations exclude from the definition of a gift “social hospitality based on personal relationships” and “modest items, such as food and refreshments, offered as a matter of social hospitality.” Sections 5(b)(3) and (b)(4) permit judges to accept invitations to bar-related functions and appropriate gifts from relatives and friends.

Canon 4H of the Code provides:

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: . . . (2) Expense reimbursement should be limited to the actual cost 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.

Application of these standards to the context of hospitality extended by lawyers requires recognition of both the need to avoid the appearance of impropriety and the appropriateness of encouraging judges to maintain collegial relationships with members of the bar. We consider the issue separately with respect to lawyer organizations, law firms, and individual lawyers.

When hospitality is extended by lawyer organizations, the risk of an appearance of impropriety is markedly reduced, compared to hospitality conferred by a particular law firm or lawyer. Section 5(b)(3) of the Gift Regulations specifically authorizes acceptance of an invitation and travel expenses for the judge and a family member to attend bar-related functions. We see no impropriety if a judge and spouse are reimbursed for hotel and travel expenses reasonably required for their attendance at dinners and similar social events sponsored by lawyer organizations such as bar associations. An appearance of impropriety might arise, however, if the hospitality was
extended by lawyer organizations identified with a particular viewpoint regularly advanced in litigation.

Hospitality extended by a law firm obviously can more readily raise questions about the appearance of impropriety. Also, section 5(a) of the Gift Regulations restricts judges from accepting gifts from persons who are seeking official action from or doing business with the court, or whose interests may be substantially affected by the performance or nonperformance of the judge’s official duties. In this context, we believe that a judge and spouse may attend cocktail parties hosted by law firms in connection with bar association gatherings and an infrequent dinner commemorating a firm’s significant anniversary, but should not accept hotel and travel expense reimbursement.

Hospitality of an individual lawyer is a matter of private social relationships. Sections 3(a) and (b) of the Gift Regulations exclude from the definition of “gift” “social hospitality based on personal relationships” and “modest items, such as food and refreshments, offered as a matter of social hospitality,” and section 5(b)(4) permits judges to accept ordinary social hospitality and appropriate gifts from relatives and friends. Individual determinations must be made as to the appropriate extent of such relationships and the point at which such relationships warrant recusal from cases in which the lawyer appears.

Finally, attention should be called to Advisory Opinion Nos. 3 and 67, which relate to participation in and attendance at seminars, and include consideration of accepting reimbursement for related expenses.

June 2009
Committee on Codes of Conduct Advisory Opinion
No. 19: Membership in a Political Club

This opinion addresses the propriety of a judge continuing membership in a political club. We consider as an example: A club’s certificate of incorporation states that one of the main purposes of the club is advocating and maintaining the principles of the named political party. The club is very active politically, but the judge does not actively participate in the club. The judge’s participation is limited to eating lunch at the club on an average of once a year.

Canon 5 of the Code of Conduct for United States Judges provides:

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.

The Commentary to Canon 5 states: “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.”

The ethical proscription on judges engaging in partisan activities is longstanding. The American Bar Association adopted the Canons of Judicial Ethics in 1923; Canon 28 of those Canons was a predecessor of Canon 5 of the Code of Conduct. In interpreting Canon 28, the ABA Committee on Professional Ethics stated in its Formal Opinion 113:

A judge is entitled to entertain his personal views of political questions, but should not directly nor indirectly participate in partisan political activities. It is generally accepted in a rational philosophy of life that with every benefit there is a corresponding
burden. Accordingly, one who accepts judicial office must sacrifice some of the freedom in political matters that otherwise he might enjoy. When he accepts a judicial position, _ex necessitate rei_, he thereby voluntarily places certain well recognized limitations upon his activities.

The club employed as an example here is a “political organization” under Canon 5, and thus a judge’s membership could be considered as giving the appearance of partisan activities. At all times a judge’s conduct is to be free of the appearance of impropriety. Canon 2. As the Commentary to Canon 2A instructs, in part, “[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.” The Committee advises that a judge should resign such a membership in a political club.

June 2009
Committee on Codes of Conduct Advisory Opinion  
No. 20: Disqualification Based on Stockholdings by Household Family Member  

This opinion addresses recusal issues related to stock investments by a judge’s household family member. The Committee takes as an example a district judge whose spouse owns 150 shares of stock worth about $10,000 in one of the largest American corporations. We consider in this opinion whether it would be proper for that judge to hear and decide a case to which the stock-issuing corporation is a party, where the judge told all the lawyers in advance of the spouse’s holdings, asked if they objected to the judge hearing the case, and was told by the lawyers for both sides that they had no objection.

Canon 3 of the Code of Conduct for United States Judges provides, “[a] judge should perform the duties of the office fairly, impartially and diligently,” and Canon 3C further provides:

(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:

* * *

(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[.]

These provisions are similar to those found in 28, United States Code, section 455(b)(4), which requires a judge to disqualify under the circumstances set forth above. While the Committee is not authorized to interpret the statute, the Committee does have authority to interpret the provisions of the canon, which are substantially identical to section 455(b)(4).

It is clear that under the provisions of Canon 3C(1)(c) a judge must disqualify himself or herself in any case in which the judge’s spouse or minor child residing in the household own stock in a party to the proceeding. (Further, the Commentary to Canon 3C explains that, for purposes of recusal, “considerations applicable to a judge’s spouse should 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(3)(c) provides that a financial interest “means ownership of a legal or equitable interest, however small,” with certain exceptions not applicable to this situation. Ownership of even one share of stock by the judge’s spouse would require disqualification.
Due to the mandatory language of Canon 3, remittal of disqualification in these circumstances is not permitted.

June 2009
Committee on Codes of Conduct Advisory Opinion
No. 24: Financial Settlement and Disqualification on Resignation From Law Firm

This opinion addresses how a newly-appointed federal judge who is withdrawing from private practice at a law firm should address related financial settlement and disqualification issues. As an example, we consider the following situation: The newly-appointed judge is in active practice in a law partnership. The partnership agreement provides for payment of an agreed amount representing the retiring partner’s interest in the firm. Some of the payments are to be paid in the years following the partner’s appointment as a judge.

A partner who leaves a law firm to become a federal judge should, if possible, agree with the partners on an exact amount that the judge will receive for his or her interest in the firm, whether that sum is to be paid within the year or over a period of years.

Such agreed-upon payments may be made to the judge provided (1) it is clear that the judge is not sharing in profits of the firm earned after the judge’s departure, as distinguished from sharing in an amount representing the fair value of the judge’s interest in the firm, including the fair value of the judge’s interest in fees to be collected in the future for work done before leaving the firm, and (2) the judge does not participate in any case in which any attorney in the former firm is counsel until the firm has paid the full amount the judge is entitled to receive under the agreement.

Apart from recusal during the period when the judge is receiving payments from a former law firm, there is a broader question of the appearance of impropriety in the judge’s hearing cases involving that firm. Many judges have a self-imposed automatic rule of disqualification for a specified number of years after leaving the law firm. How long a judge should continue to recuse depends upon various circumstances, such as the relationship the judge had at the law firm with the lawyer appearing before the judge, the length of time since the judge left the law firm, and the relationship between the judge and the particular client, and the importance of that client to the firm’s practice. The Committee recommends that judges consider a recusal period of at least two years, recognizing that there will be circumstances where a longer period is more appropriate. In all cases in which the judge’s former law firm appears before the judge, the judge should carefully analyze the situation to determine whether his or her participation would create any appearance of impropriety.

June 2009
Committee on Codes of Conduct Advisory Opinion
No. 26: Disqualification Based on Holding Insurance Policy from Company that is a Party

Occasionally, cases arise in which an insurance company is a party and the judge has a relationship to that company, generally in the form of an insurance policy involving the judge, the judge’s spouse or the judge’s children. The policy may be for health insurance, life insurance or other types of coverage. This opinion addresses whether a judge should recuse in that situation.

Canon 3C(1) of the Code of Conduct for United States Judges provides:

(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:

* * *

(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[.]

Thus, in any litigation in which an insurance company is a party, if the outcome of the litigation could substantially affect the value of the judge’s interest, i.e. the policy in the company involved, the judge should recuse. The judge should also recuse if any other interest (other than a financial interest) could be affected substantially by the outcome of the proceeding. The same rules apply to policies held by the judge’s spouse or minor children residing in the judge’s household. (Note that for purposes of recusal, “considerations applicable to a judge’s spouse should 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 Commentary.)

This issue initially arose in 1973 when we considered whether judges who hold Blue Cross policies could sit in a case brought by an insurance company against a local Blue Cross organization. At the time, all but two of the circuit judges throughout the country, whether in active or senior status, participated in various health benefit plans with Blue Cross-Blue Shield or some other insurance company or association as the carrier. The federal government would negotiate coverage by Blue Cross-Blue Shield, and the Administrative Office would pay a lump sum for the coverage provided the judiciary. The federal government did not do business with local organizations. This type of practice was followed with respect to the other insurers participating in the federal employees health benefits program. It appeared that practically all circuit judges
could be affected in a slight degree by the result of the pending case in which Blue Cross was a party.

The Committee determined that the interests that the judges had in the Blue Cross policies would not be considered “financial interests” within the meaning of that term as it is used in the Code of Conduct for United States Judges. We concluded the interest was analogous to “the proprietary interest of a policyholder in a mutual insurance company, or a depositor in a mutual savings association, or a similar proprietary interest,” which Canon 3C(3)(c)(iii) states “is a ‘financial interest’ in the organization only if the outcome of the proceeding could substantially affect the value of the interest.” We rendered similar advice regarding judges who were insured under a government-wide indemnity plan written by the Aetna Casualty and Surety Company.

In sum, the Committee advises that when an insurance company is a party, the judge ordinarily need not recuse unless the judge has a financial interest in the company. The judge has a financial interest in the company only if the outcome of the proceeding could substantially affect the value of the judge’s interest in the company. This could occur if, as a result of a judgment against the insurance company in the particular case, the judge’s premiums could be significantly increased or coverage substantially reduced. Conceivably, a huge judgment against a medical insurer could make it impossible for the insurer to continue to operate at all, or at its prior level.

June 2009
Committee on Codes of Conduct Advisory Opinion
No. 27: Disqualification Based on Spouse’s Interest as Beneficiary of a Trust from which Defendant Leases Property

This opinion considers whether a judge should recuse in a case in which the judge’s spouse is the beneficiary of a trust from which the defendant leases property. By way of explanation, we consider the following circumstances: A judge is assigned a class action case alleging federal and state antitrust allegations and various statutory and constitutional violations. Defendants are various major distilling companies, local wholesalers, retail drug stores, the state through its alcoholic beverage commission, and the State Wholesale Liquor Dealers Association.

One of the drug store defendants is a lessee in a shopping center. The lessor is a national bank, acting as trustee. The judge’s spouse is the sole beneficiary of the trust as it relates to the shopping center operation. The lease was in existence at the time the spouse acquired the interest, and will continue for several years in the future. The annual rental income is substantial, but barely exceeds five figures. The property is managed by a real estate firm.

Canon 3C(1)(c) of the Code of Conduct for United States Judges provides:

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:

* * *

(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[.]

Canon 3C(3)(c) states that a “financial interest’ means ownership of a legal or equitable interest, however small . . . .” It would appear that the spouse does not have a financial interest in the subject matter in controversy or in a party to the proceeding, as financial interest is defined in Canon 3C(3)(c).

Whether the spouse has “[an]other interest that could be affected substantially by the outcome of the proceeding” cannot be determined on the facts used in this example. Information as to the extent of the operations of the drug store lessee and the potential effect of an adverse judgment would help to determine whether the interest of the judge’s spouse could be substantially affected by the outcome of the antitrust action. However, such a determination would not completely resolve the question, as
disqualification is not limited to the specifically enumerated instances under Canon 3C(1), of which (c) is but one.

Canon 3C(1) is clear that a judge should disqualify in any proceeding in which his or her impartiality might reasonably be questioned. This directive is to be read in connection with Canon 2, which states that “[a] judge should avoid impropriety and the appearance of impropriety in all activities.” To preside in a case involving a defendant who pays a substantial amount of rent that is ultimately credited to the judge’s spouse might, in our opinion, raise a reasonable question regarding the judge’s propriety and impartiality. However, if recusal is required pursuant to an appearance of impropriety or a question of impartiality, but is not mandatory under one of the specific circumstances set out in Canon 3C(1)(a) through (e), the remittal procedure under Canon 3D remains available.

June 2009
Committee on Codes of Conduct Advisory Opinion
No. 28: Service as Officer or Trustee of Hospital or Hospital Association

A judge is permitted under the Code of Conduct for United States Judges to participate in civic and charitable activities, such as service as an officer or trustee of a hospital or hospital association. The canons do, however, impose limits on such participation. Canon 4 generally provides that a judge may participate in extrajudicial civic and charitable activities that do not detract from the dignity of the judge’s office, reflect adversely upon the judge’s impartiality, interfere with the performance of a judge’s official duties, or lead to frequent disqualification. Canon 4B reads:

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.

Canon 4C further provides that a judge may assist in planning fund-raising activities for such nonprofit organizations and may be listed as an officer, director, or trustee, but a judge should not personally solicit funds or use or permit the use of the prestige of judicial office for that purpose. Further, “[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.”

Canon 4F also imposes a limitation on the judge’s service in terms of governmental appointments: “[a] judge should not . . . accept . . . an appointment [to a governmental committee, commission, or other position concerning the law] if the judge’s governmental duties would tend to undermine the public confidence in the integrity, impartiality, or independence of the judiciary.”

The Commentary to Canon 4B notes particular concerns for a judge to consider in determining whether to serve a hospital or hospital organization in some capacity:

The changing nature of some organizations and their exposure to litigation makes 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. (Emphasis added.)
Additional issues specific to hospital officers or trustees – such as challenges under the employment laws, the minimum wage laws, tax exemptions and the like – should also be considered in deciding whether to take on such a responsibility.

In sum, a judge should carefully evaluate Canon 4B’s limitations when determining whether to accept a post as an officer or trustee of a hospital or hospital association. Also, as suggested by Canon 4B’s Commentary, a judge should continually re-evaluate the organization to ensure that continued involvement is consistent with the judge’s ethical obligations under the canons.

June 2009
Committee on Codes of Conduct Advisory Opinion
No. 29: Service as President or Director of a Corporation Operating a Cooperative Apartment or Condominium

This opinion considers whether a judge may hold a position, such as an officer or director, of a corporation that controls the operations of a cooperative apartment or condominium in which the judge resides. The following prescriptions are pertinent to this question:

1. The still-effective 1963 formal resolution of the Judicial Conference of the United States (see Judicial Conference of the United States, Report of the Proceedings 62 (Sep. 1963)) states:

   No justice or judge appointed under the authority of the United States shall serve in the capacity of an officer, director, or employee of a corporation organized for profit.

2. Canon 4 of the Code of Conduct for United States Judges instructs that “[a] judge should not participate in extra-judicial activities that . . . interfere with the performance of the judge’s official duties.”

3. Canon 4B, concerning a judge’s civic and charitable activities, provides:

   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.

4. Canons 4D(1) and (2), relating to a judge’s financial activities provide:

   (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.

We assume, of course, that the judge who serves as an officer or director of the corporation controlling the operations of the cooperative apartment or condominium receives no compensation for this service. See Judicial Conference Ethics Reform Act Regulations on Outside Earned Income, Honoraria, and Outside Employment § 5(a) (prohibiting service for compensation as an officer, board member, or fiduciary). We further assume that the duties are confined to activities unrelated to profit-making, in the sense that they relate only to the operation and maintenance of the members’ residence facility. The activities, although relating in part to residents other than the judge, are equivalent to those the judge would find necessary to undertake were the judge living in a privately owned, single-family residence.

On these assumptions, the Committee is of the opinion that the judge’s service as an officer or director of this type of corporation does not, in and of itself, violate the 1963 Resolution.

The Committee is also of the opinion, however, that service in this capacity is not readily characterized either as “civic or charitable” activity within the permissive reach of Canon 4B or as a “business dealing” within the contemplation of Canon 4D(1). The endeavor possesses certain commercial features that make it unlike a “civic or charitable” activity. The service is, however, directed at the saving of expense and wise expenditure of funds rather than to the maximization of income. The service does not appear akin to the forbidden type of “business dealing” that exploits the judicial office; it may more closely approximate permissible real estate investment.

The Committee is of the view that each case depends upon its facts. If the cooperative or condominium is not large or substantial, and if the duties of being an officer or director are routine and primarily internal (allocating responsibilities; employing maintenance, security, and essential personnel; providing for services; passing on prospective occupants; formulating occupancy rules; and the like), the activity would not appear to violate the provisions or spirit of the 1963 Resolution or the Code. If, however, the duties entail substantial or numerous business-type contacts with outside enterprises, particularly of the kind that could result in litigation, a judge’s participation becomes questionable. The judge should then consider leaving those responsibilities to others. Throughout, the judge should keep in mind the basic requirements of Canon 2 (that the judge “should avoid impropriety and the appearance of impropriety in all activities”) and Canon 3 (that “[t]he duties of judicial office take precedence over all other activities”). The judge must also bear in mind that positions held by a federal judge should not be so great in number as to jeopardize the performance of judicial duties.

June 2009
Committee on Codes of Conduct Advisory Opinion
No. 32: Limited Solicitation of Funds for the Boy Scouts of America

This opinion considers the propriety of a judge soliciting funds for the Boy Scouts of America. As an example, we consider whether a judge, who chairs the finance committee for an area council of the Boy Scouts, may solicit financial support from board members and trust funds.

Canon 4C of the Code of Conduct for United States Judges states, in pertinent part:

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.

In Advisory Opinion No. 2, we state in substance that a judge may serve without compensation on governing boards of organizations that are similar to the Boy Scouts, provided the judge does not solicit funds for the organization. Canon 4C does not make any exception for persons whom may be solicited. The solicitation by a judge of funds for an area council of the Boy Scouts, even though the solicitation is of a limited class of persons, is thus forbidden by the Code.

June 2009
Committee on Codes of Conduct Advisory Opinion  
No. 33: Service as a Co-trustee of a Pension Trust

This opinion addresses whether, following appointment, a judge may continue to serve as co-trustee of a federal savings and loan pension trust. The general subject of the service of a judge as a fiduciary of an estate or trust is also addressed in Advisory Opinion 96. By way of example, we consider the following circumstances:

The pension trust is almost a dry trust. It is a trust approved by the Internal Revenue Service, and hence there are no policy determinations relating to the trust. The judge renders no legal advice to the trust; the trust has never been in litigation and is not likely to be as no difficulty has been experienced during its almost 17 years of operation. The trust covers the officers and employees of the association who qualify under its terms. The judge receives no compensation nor any expenses attendant to the fiduciary obligation, which the judge continued after appointment as a judge as a matter of past loyalty to a valued former client. The duties entailed are nominal and consist of signing about two checks a year to the insurance company.

Such a trust would appear to be a part of an arrangement deemed necessary for managing the affairs of a business, within the meaning of Canon 4D(1) of the Code of Conduct for United States Judges; the trust can be viewed as a segment of a business.

The duties of a co-trustee are, while nominal, fiduciary in nature. Canon 4E would seem to rule out service as a fiduciary for a trust other than the trust of a family member. Service as a fiduciary for other than a family member is permitted to continue in limited circumstances, as provided in the Code’s “Applicable Date of Compliance” section, but this section seems to contemplate a relationship with an individual rather than with a pension plan. In any event, even such a permissible nonfamily fiduciary relationship is to be terminated, as stated in the Compliance section, if it would not unnecessarily jeopardize any financial interest of the beneficiary.

Canon 4B(2), which prohibits a judge giving any investment advice to a civic or charitable organization that the judge may serve as trustee or director, is also implicated. In the pension trust considered here, it might be presumed that there could be some residual duty of giving advice on investments.

If, in fact, no duties other than the ministerial one of check signing are involved, the practical likelihood of conflict or litigation may be remote. But the canons taken together appear to bar this co-trustee relationship.

June 2009
Committee on Codes of Conduct Advisory Opinion
No. 34: Service as Officer or on Governing Board of Bar Association

We address whether a judge may serve on the governing board of a bar association. In doing so, we consider this policy statement adopted by the Judicial Conference of the United States in October 1971:

Federal judges should not serve as officers or directors of organizations, national, regional or local, which are present or potential litigants in the federal courts or are the promoters, sponsors or financiers of organizations sponsoring litigation in the federal courts.

We examine two aspects of this issue in particular: (1) whether it is a violation of the statement of policy for a judge to serve as a member of the governing board of a bar association when the association might be involved in litigation and the board determines whether the association should file amicus curiae briefs; and (2) whether the spirit and intent of the statement of policy is satisfied by the judge abstaining from discussion, debate and vote on matters being considered by the board of governors that present a conflict of interest or that might give the appearance of impropriety if the judge participated in the debate and vote.

Canon 4 of the Code of Judicial Conduct reads, in pertinent part:

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.

More specifically, under Canon 4A(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.
The Commentary to Canon 4 reads, in part:

As a judicial officer and person specially learned in the law, a judge is in a unique position to contribute to the improvement of the law, the legal system, and the administration of justice, including 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 improvement of the law. Subject to the same limitations, judges may also engage in a wide range of non-law-related activities.

Although Canon 4A(3) does not contain an explicit limitation regarding law-related organizations’ involvement with litigation (see Canon 4B limiting participation in civic and charitable organizations that regularly engage in adversary proceedings), a similar concern animates participation in bar association activities. Under the provision of Canon 4 covering all extrajudicial activity, the judge should not participate in law-related activities “that reflect adversely on the judge’s impartiality,” and so should refrain from participation in determining whether the bar association should become involved in litigation as a party or as amicus curiae if an appearance of partiality could reasonably arise. For example, a judge should not be responsible for developing positions on controversial political or social matters that are frequently the subject of federal court litigation, and should abstain from debating or voting on such matters. Further, a judge sitting on a board of a law-related organization must refrain from offering legal advice that could constitute the practice of law under Canon 4A(5).

In conclusion, we are of the opinion that a judge may properly serve as an officer or member of a board, council or committee of a bar association, subject to the restrictions set forth in Canon 4. The spirit and intent of the Code and of the 1971 Judicial Conference policy statement are satisfied if the judge abstains from discussion, debate and vote on matters that may present a conflict of interest or may give the appearance of impropriety if the judge did participate in the discussion and vote. See also Advisory Opinion No. 85 (“Membership and Participation in the American Bar Association”) and Advisory Opinion No. 93 (“Extrajudicial Activities Related to the Law”).

June 2009
Committee on Codes of Conduct Advisory Opinion
No. 35: Solicitation of Funds for Nonprofit Organizations, Including Listing of Judges on Solicitation Materials

Judges are often involved in their communities through nonprofit organizations, which are frequently engaged in fund-raising activities. This opinion discusses limitation on judges’ involvement in soliciting funds for nonprofit organizations. It includes guidance regarding how judges may be identified on letterhead and in other solicitation materials.

In Advisory Opinion Nos. 2 and 82, the Committee affirms that a judge may be a member of or serve on the governing board of a nonprofit organization, subject to certain restrictions imposed by the Code of Conduct for United States Judges. Canon 4C sets out the acceptable limits to judges’ involvement in soliciting funds:

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.

Although the Code precludes personal solicitation of funds by judges, a judge may assist in planning fund-raising activities for nonprofit organizations, if that participation is not prohibited based on any other ethical obligation. Internal brainstorming of fund-raising ideas is an example of such a permitted planning activity.

The Commentary to Canon 4C explains that “[u]se 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.” In other words, the judge’s name and office may not be selectively emphasized by the organization.

The Commentary to Canon 4C further states that “[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.”

Finally, the Committee advises that a judge may be included in a list of contributors disseminated by a nonprofit organization. The list may use the judge’s title,
as long as the judge is designated in a similar manner to other contributors, and is in no way specially emphasized.

June 2009
Committee on Codes of Conduct Advisory Opinion
No. 36: Commenting on Legal Issues Arising before the Governing Board of a Private College or University

This opinion addresses the propriety of a judge, who is a member of a governing board of a private college or university, commenting on legal issues arising before that board. Our discussion is informed by the following two examples:

1. A judge serves as a member of a “Lay Advisory Committee” of a college. Although the judge participates in no fund-raising activities for the organization, the judge has on occasion, as a board or committee member, expressed views as to the legal effect of contemplated action under discussion.

2. A judge serves as a trustee of a college. Although the college has its own counsel, the judge has, with other board members, reviewed and commented on legal aspects of leases and other instruments.

One federal statute and two provisions of Canon 4 of the Code of Conduct for United States Judges must be considered regarding this issue.

Section 454 of title 28, United States Code, provides:

Any justice or judge appointed under the authority of the United States who engages in the practice of law is guilty of a high misdemeanor.

Canon 4 provides, in pertinent part:

A(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 [certain] limitations[.]

Subject to other restrictions in Canon 4, a judge may serve as a member of the governing board of a private college or university, and may vote, as any other member, to approve or disapprove leases and other instruments. But a judge should leave to counsel for the college the responsibility for reviewing, passing upon and commenting on the legal aspects of the proposed leases and other instruments. A judge may with
propriety suggest that there are legal questions involved in a proposed instrument or course of action, and suggest that the matter be referred to counsel for a legal opinion. See also Advisory Opinion No. 44 ("Service on Governing Board of a Public College or University").

June 2009
Committee on Codes of Conduct Advisory Opinion
No. 37: Service as Officer or Trustee of a Professional Organization Receiving Governmental or Private Grants or Operating Funds

This opinion considers the propriety of judges serving as officers or trustees of professional organizations that receive governmental or private grants or operating funds. We take as an example a professional organization that requests and receives operating funds and grants from federal as well as state and local governments. The professional group is organized for educational, research and study purposes.

We consider whether the judge’s prestige is an important factor in obtaining such financing, possibly to the detriment of similar organizations that lack participation by judges. This particular question deals with the prospect that an organization with which a judge may otherwise be properly associated may nevertheless be in a unique position because of the fact that the judge’s organization seeks and obtains federal or state grants.

Canon 4 of the Code of Conduct for United States Judges provides that “[a] judge may engage in extrajudicial activities, including law-related pursuits and civil, charitable [and] educational . . . activities.” The Committee concludes that mere service on the board of a Canon 4A (law-related) or 4B (civic or charitable) organization is not inappropriate by reason of the fact that the organization utilizes funds received from federal, state, or local governments. See also Advisory Opinion No. 28 (“Service as Officer or Trustee of Hospital or Hospital Association”). Further, with respect to a law-related organization, “[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.” Canon 4A(3).

June 2009
Committee on Codes of Conduct Advisory Opinion
No. 38: Disqualification When Relative Is an Assistant United States Attorney

Over the years, the Committee on Codes of Conduct has received a number of inquiries regarding recusal considerations when a judge’s spouse, child, or other relative serves as an Assistant United States Attorney (“AUSA”). This opinion summarizes the Committee’s advice on that topic.

Canon 3C(1)(d), Code of Conduct for United States Judges, provides in part:

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:

   * * *

   (d) the judge or the judge’s spouse1, or a person related to either within the third degree of relationship, or the spouse of such a person is:

   * * *

   (ii) acting as a lawyer in the proceeding[.]

The Commentary under subsection 3C(1)(d)(ii) provides:

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.

We note first that service as an AUSA is distinguishable from service as an attorney in a private law firm or representation of a private litigant. As the United States Supreme Court has explained:

The United States Attorney is the representative not of an ordinary party to a controversy, but of a sovereignty whose obligation to govern impartially is as compelling as its obligation to govern at all; and whose interest, therefore, in a criminal prosecution is not that it shall win a case, but that justice shall be done. As such, he is in a
peculiar and very definite sense the servant of the law, the twofold aim of which is that guilt shall not escape or innocence suffer.

Berger v. United States, 295 U.S. 78, 88 (1934). A similar dual aim applies in civil litigation advanced by the United States Attorney’s Office. For these reasons, it would be unreasonable to question a judge’s impartiality merely because the judge’s relative is an AUSA. Likewise, an AUSA does not have an “interest” in the United States Attorney’s Office in the same sense that a partner, member or shareholder may have an interest in a private law firm.

Specific circumstances may, however, require recusal. The most frequent circumstances are addressed below.

1. **Acting as an attorney.** Recusal is required by Canon 3C(1)(d)(ii) if the relative has acted as an attorney in or relating to the proceeding. This restriction includes cases in which the relative has done any work or given any advice, whether that advice was given or work done before or after the action was filed. Recusal for this reason is not subject to remittal under Canon 3D because the basis for recusal falls within the specific disqualifying circumstances described in Canon 3C(1)(a)-(e).

2. **Acting as a supervisor.** Recusal is also necessary if the relative has supervisory responsibility over the attorney handling a case before the judge, even if the relative is not personally involved and has no knowledge of the case. Such a circumstance falls within Canon 3C(1)’s “catch-all” provision requiring disqualification in a proceeding “in which the judge’s impartiality might reasonably be questioned.” Disqualification under this catch-all provision is subject to remittal under Canon 3D.

3. **Acting United States Attorney.** If the relative serves as either the United States Attorney or Acting United States Attorney, the judge should recuse in all cases in which the office appears.

Recusal decisions are also governed by the recusal statutes, 28 U.S.C. §§ 455 and 144, and the case law interpreting them. Although the Committee on Codes of Conduct is not authorized to render advisory opinions interpreting §§ 455 and 144, Canon 3C of the Code of Conduct for United States Judges closely tracks the language of § 455, and the Committee is authorized to provide advice regarding the application of the Code.

**Note for Advisory Opinion No. 38**

1 For purposes of 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 Commentary.

June 2009
Committee on Codes of Conduct Advisory Opinion
No. 40: Service on Governing Board of Nonprofit Organization that Tends to Become Involved in Court Proceedings

This opinion considers the propriety of service by judges as officers or directors of nonprofit organizations that tend to become involved in court proceedings. Our discussion has been informed by considering the examples of a variety of organizations that, in pursuit of their goals, regularly become involved in legal proceedings.

Canon 4 generally affirms the propriety of judicial participation in nonprofit civic, charitable, educational, religious and social organizations, and service as an officer, director, trustee, or non-legal advisor in such organizations, so long as such activities do not detract from the dignity of the judicial office, interfere with the performance of the judge’s official duties, reflect adversely on the judge’s impartiality, or lead to frequent disqualification. See Advisory Opinion No. 2 ("Service on Governing Boards of Nonprofit Organizations"). Canon 4B(1) provides the limitation, however, that “[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 will be regularly engaged in adversary proceedings in any court.”

These unambiguous principles should be applied in accordance with the good judgment of each individual judge. It may well be that, in a given time and place, it is not likely that the organization in question will be engaged in proceedings that would ordinarily come before the judge. Therefore, the first caveat of Canon 4B(1) would be inapplicable.

However, the judge should recognize that some organizations frequently appeal to the courts in furtherance of their stated goals. This fact gives rise to the probability that the organization will be regularly engaged in adversary proceedings in various courts. If such is the case, the second proscription of Canon 4B(1) would act to bar judicial participation as an officer or director of the group.

The changing nature of some organizations and of their relationship to the law makes it necessary for a judge regularly to reexamine the activities of each organization to determine if it is proper to continue the relationship. See Commentary to Canon 4B. The judge involved in the group is in the best position to determine whether Canon 4B(1) applies, requiring resignation as an officer or director of the organization.

On a final note, although Canon 4B(1) is limited by its terms to service as an officer, director, trustee or non-legal advisor, the Committee is of the view that the same considerations are applicable to and govern membership in such organizations. See also Advisory Opinion Nos. 82 (“Joining Organizations”) and 93 (“Extrajudicial Activities Related to the Law”).

June 2009
Committee on Codes of Conduct Advisory Opinion
No. 42: Participation in Fund Raising for a Religious Organization

This opinion considers whether the participation of a judge in the fund-raising activities of a religious organization by “taking part in the every-member canvass (each year or two years)” is in violation of the Code of Conduct for United States Judges.

The question is dealt with by our Advisory Opinion Nos. 2 and 35, in which the Committee advises that a judge should not engage in any personal solicitation of funds for a nonprofit religious, civic, charitable, educational or social organization, except as permitted by Canon 4C. The Committee believes that this rule applies to the solicitation of funds in an every-member campaign for a church. See Canon 4C and its Commentary.

To the extent, however, that “taking part” means contributing funds, a judge may certainly participate in the fund-raising by contributing funds to a religious organization.

June 2009
Committee on Codes of Conduct Advisory Opinion
No. 43: Service as a Statutory Member of a Citizens’ Supervisory Commission of the County Personnel Board

This opinion considers the propriety of a judge serving as an *ex officio* member of a citizens’ supervisory commission of the personnel board of the county of the judge’s residence.

The commission, which supervises the state civil service system, is created by an act of the state legislature. The act designates United States district judges as members of the commission.

Canon 4F of the Code of Conduct for United States Judges provides that a judge may accept appointment to a governmental commission only if it is one that concerns the law, the legal system, or the administration of justice. The Commentary to Canon 4F states that the “appropriateness of accepting extrajudicial assignments must be assessed in light of the demand on judicial resources and the need to protect the courts from involvement in matters that may prove to be controversial,” and that “[j]udges 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 duties, or tend to undermine the public confidence in the judiciary.”

The citizens’ supervisory commission of the personnel board is not concerned with the improvement of the law, the legal system, or the administration of justice as those terms are used in Canon 4F. In discharging its statutory duties, the commission will of necessity deal with issues of fact or policy. We conclude that it would be improper under Canon 4F for a United States district judge to serve as a member of this governmental supervisory commission. *See also* Advisory Opinion No. 93 (*“Extrajudicial Activities Related to the Law”*).

June 2009
Committee on Codes of Conduct Advisory Opinion  
No. 44: Service on Governing Board of a Public College or University

This opinion considers the propriety of serving on the governing board of a public college or university, for example a board of visitors or a board of regents.

Canon 4 of the Code of Conduct for United States Judges provides, in part:

[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, [or] lead to frequent disqualification. . . .

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, charitable, fraternal, or social organization . . . .

If Canon 4B stood alone, there would be no apparent objection to a judge’s service on the board of a public college or university; however, this authority to serve is a part of a section addressing “civic and charitable activities.” Those activities must be distinguished from “governmental appointments,” which are treated under Canon 4F.

Canon 4F provides:

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 the 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.

Canon 4F limits service by a judge to governmental (federal, state or local) institutions concerning “the law, the legal system, or the administration of justice.” The Commentary to Canon 4A specifically instructs that “[t]eaching 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.” We conclude that service on a state board vested with authority to operate a public college or university would be in violation of the prohibition contained in Canon 4F. See also Advisory Opinion No. 36 (“Commenting on Legal Issues Arising before the Governing Board of a Private College or University”); Code of Conduct for United States Judges, Compliance with the Code of Conduct, § C
(“Retired Judge. A retired judge who is retired under 28 U.S.C. §§ 371(b) or 372(a), 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 an extra-judicial appointment not sanctioned by Canon 4F . . . ”).

June 2009
Committee on Codes of Conduct Advisory Opinion
No. 46: Acceptance of Public Testimonials or Awards

This opinion considers the issue of acceptance by judges of public testimonials or awards. The Committee frequently receives inquiries regarding this topic.

Judges who have achieved a preeminence prompting public recognition should ordinarily be able to accept such honors. In addition to the personal gratification involved, the entire judiciary benefits from public recognition of one of its members.

Before accepting such recognition, however, a judge should take certain factors into consideration. A judge must consider whether acceptance of the award would raise the appearance of impropriety or partiality, as enjoined by Canon 2 of the Code of Conduct for United States Judges. For example, notwithstanding the spirit in which it is proffered, an award should not be accepted from an organization whose public image embodies a clearly defined point of view on controversial legal, social or political issues. Neither should an award be accepted from an organization that is apt to come before the courts as a litigant. See Advisory Opinion No. 40 (“Service on Governing Board of Nonprofit Organization that Tends to Become Involved in Court Proceedings”).

Finally, a judge must be cautious if the award is presented in conjunction with a fund-raising dinner or event. The Commentary to Canon 4C states that “[a] judge may attend fund-raising activities 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.” When a judge is chosen to receive an award, it would appear likely that the judge would be either a “guest of honor” or a “speaker” at such an event. Additionally, the judge should consider whether the judge’s presence is being employed as a device to promote publicity and the sale of tickets.

The nature of these cautions, and the variety of situations to which they apply, make it clear that the decision in each case must remain within the conscientious discretion of the judge, consistent with the obligation to avoid the appearance of impropriety or partiality.

June 2009
Committee on Codes of Conduct Advisory Opinion
No. 47: Acceptance of Complimentary or Discounted Club Memberships

Congress passed a law effective October 13, 2008, restricting judges’ acceptance of “honorary club memberships.” In particular, the law specifies that “a judicial officer may not accept a gift of an honorary club membership with a value of more than $50 in any calendar year.” Pub. L. No. 110-402, § 2, 122 Stat. 4255 (Oct. 13, 2008), codified at note to 5 U.S.C. § 7353. This opinion provides guidance on whether under the law a judge may accept, or continue to hold, a complimentary or discounted membership in a given club.

Shortly following the passage of 5 U.S.C. § 7353, the Director of the Administrative Office of the Courts issued a memorandum on the new club membership law. Memorandum from A.O. Director to United States Judges, October 20, 2008. The Director addressed three questions regarding the law: (1) applicability; (2) effective date; and (3) covered clubs. The memorandum concluded that the statute applies to all judicial officers, including bankruptcy and magistrate judges. The memorandum noted that the law became effective immediately and further advised that judges should cease accepting the benefit of any ongoing honorary club membership that was accepted before the effective date. Finally, the memorandum concluded that the honorary club membership prohibition extends to recreational and social clubs – such as country clubs, athletic clubs, or eating clubs – but does not restrict judges from accepting discounted or complimentary memberships in professional organizations, including bar associations.

Since the law’s enactment, the Committee on Codes of Conduct has received a number of informal and formal requests for opinions relating to compliance with the club legislation. These inquiries have included questions about discounted or complimentary memberships in professional groups such as Inns of Court, service clubs such as Rotary, and a range of membership arrangements in social clubs, eating clubs and athletic clubs.

In providing advice to individual judges, the Committee has referred to the terms of the statute itself, the Director’s initial guidance memorandum, and the Judicial Conference Regulations Concerning Gifts (“Gift Regulations”). The Gift Regulations provide helpful guidance for evaluating whether certain club memberships might run afoul of the new restriction. In particular, the Gift Regulations define a “gift” to mean “any gratuity, favor, discount, entertainment, hospitality, loan, forbearance, or other similar item having monetary value.” Gift Regulations § 3. The Regulations exclude from the definition of “gift” “opportunities and benefits, including favorable rates and commercial discounts, that are available based on factors other than judicial status,” and “anything for which market value is paid by the judicial officer or employee.” Gift Regulations §§ 3(e) & (h).
Applying these principles, the Committee has advised that in some circumstances a judge may accept discounted membership in a social or recreational club that offers multiple membership categories associated with different levels of membership privileges and sets membership dues or fees according to broad occupational categories that are not directed to judges or to a narrow category of members. Due to the wide variance in club bylaws and membership practices, it is difficult in the abstract to draw a bright line regarding which memberships are acceptable.

While advising that some memberships are permissible, the Committee has advised that certain types of discounted memberships in recreational and social clubs should not be accepted in light of the statute and the Gift Regulations. The Committee has advised, for example, that a judge should not accept a discounted membership that is offered to a very limited group selected by the club to enhance its reputation. The Committee has also advised that a judge should not continue to accept the benefit of a now prohibited honorary club membership with a value of more than $50 per year that was accepted prior to the law’s enactment.

Additionally, the Committee has advised that a judge may accept “honorary” membership in a service club that exempts the judge from paying annual dues. In reaching this decision the Committee relied in part on an opinion by the General Counsel of the Administrative Office concluding that service organizations are not, as a general matter, the types of clubs that Congress intended to include within the statutory prohibition on honorary club memberships. With respect to Inns of Court and similar professional organizations, the Committee has advised that judges may accept a discounted or complimentary membership because such organizations are not “clubs” within the meaning of the statute and such memberships do not constitute prohibited gifts.

Through a series of inquiries, the Committee has learned that the details of club memberships vary widely. Although some general principles may be drawn from the individual inquiries, the Committee’s conclusions are based on the specific characteristics of the club. Any judge who has a question related to compliance with the club membership statute therefore is encouraged to request a confidential advisory opinion from the Committee. Additionally, the Committee’s guidance does not address financial disclosure issues. As with all gifts, the judge must comply with the pertinent financial disclosure requirements of the Ethics in Government Act and the Judicial Conference. Judges should contact the Financial Disclosure Committee staff for questions related to reporting club memberships.

Before accepting a complimentary or discounted club membership, judges must consider the other restrictions on membership in organizations. They should ascertain that the club is not involved or likely to become regularly involved in litigation. Judges must also consider whether the offer of membership is designed to exploit the judicial position or the court. They must be cautious that membership in the club would not
convey the impression that lawyers who are also members are in a special position to influence the judge. Finally, the judge should not accept membership in an organization or club that practices invidious discrimination. See also Advisory Opinion Nos. 2 ("Service on Governing Boards of Nonprofit Organizations") and 82 ("Joining Organizations").

June 2009
Committee on Codes of Conduct Advisory Opinion
No. 48: Application of Judicial Conference Conflict-of-Interest Rules for Part-Time Magistrate Judges

This opinion considers the application of conflict-of-interest rules to part-time magistrate judges. The Committee takes this scenario as an example: A part-time magistrate judge was formerly a partner in a law firm. Approximately two years ago the judge withdrew from the partnership, at which time the judge’s name was dropped from the firm name. Since that time the judge has not participated in the profits or losses of the firm. The judge has continued to occupy office space, for which the judge pays the law firm a flat monthly charge. The judge’s name appears on the firm stationery as “of counsel.” The judge uses the firm’s conference room for arraignments and trials conducted as a part-time magistrate. The judge does not appear to have been assigned additional duties under title 28 U.S.C. § 636(b).

A partner in the law firm has been consulted by a client in a tax matter being handled by the intelligence division of the Internal Revenue Service. It appears that the IRS is conducting an investigation to determine if there has been tax fraud and, if warranted, to assess a tax fraud penalty.

The scenario presents two separate questions. Before addressing these questions, it should be noted that part-time magistrate judges are treated differently than full-time magistrate judges in the Federal Magistrates Act. (28 U.S.C. § 631 et seq.) The history of the Act indicates that this distinction was largely to provide magistrate judge service in areas where the workload is insufficient for the appointment of a full-time magistrate judge, and to upgrade the part-time magistrate judges, whose work under the commissioner system had been frequently performed by persons with little or no legal training or experience.

The Act provides:

(b) Part-time United States magistrates shall render such service as judicial officers as is required by law. While so serving they may engage in the practice of law, but may not serve as counsel in any criminal action in any court of the United States, nor act in any capacity that is, under such regulations as the [Judicial C]onference may establish, inconsistent with the proper discharge of their office. Within such restrictions, they may engage in any other business, occupation, or employment which is not inconsistent with the expeditious, proper, and impartial performance of their duties as judicial officers.

The Judicial Conference took into account the special issues pertinent to part-time magistrates when devising the Conflict-of-Interest Rules for Part-time U.S. Magistrates. These conflict rules are set forth in *Guide to Judiciary Policy, Vol. 2C, § 1110*.

Applying the conflict rules to the example, the part-time magistrate judge is not prohibited from renting space from former law partners. Additionally, the judge may serve as counsel to the law firm and have his or her name on its letterhead. The judge may use the law firm’s conference room for hearings and trials, but may not use the judge’s official office to refer cases either to associates or others.

The second question from this example presents a more difficult problem. We must first determine whether the former partner of the part-time magistrate judge is an associate within the conflict rules, and particularly under Rule 2. The Judicial Conference adopted the rules in the form in which they were submitted by the Magistrates Committee. The Magistrates Committee used the word “associates” in these rules as a broad term intended to include any office arrangement or association existing between two lawyers other than a partnership. In this example, where the part-time magistrate judge has withdrawn from the firm but continues the office arrangement outlined, we believe the firm partner who was consulted on the tax question and the judge are associates.

Next we must determine whether the work tendered to the firm partner is in a civil or criminal action. If it is in a civil case, then under Conflict-of-Interest Rule 1, the associate may appear before the judge, assuming the part-time magistrate judge has not been involved in the matter in connection with official duties. If it is a criminal case in the district in which the part-time magistrate judge serves, then Conflict-of-Interest Rule 4 would appear to preclude the appearance.

Tax fraud or tax penalty proceedings are not handled uniformly throughout the United States, although they are regarded by the IRS as civil cases. Usually a proceeding to recover a tax fraud penalty is not started until the IRS has exhausted the criminal remedies available or has decided not to proceed criminally. This is not universally true, however. In this example, it would be advisable for the part-time magistrate judge or the judge’s former partner to check with the United States Attorney’s office as to whether there is any intention to proceed criminally in the federal court of the district in which the part-time magistrate judge serves. In the event the United States Attorney declines to answer, the magistrate judge would need to assume a criminal proceeding is in the offing. If the former partner accepts the employment, the part-time magistrate should recuse if assigned any part of the criminal proceedings.

As a final note, a part-time magistrate judge is of course subject to Canon 2, requiring judges to avoid impropriety and the appearance of impropriety, and must consider that proscription in addition to the conflict rules.
Committee on Codes of Conduct Advisory Opinion
No. 49: Disqualification Based on Financial Interest in Member of a Trade Association

This opinion considers whether a judge who owns a small percentage of the outstanding publicly-traded shares of one or more members of a trade association is required by the Code of Conduct for United States Judges to disqualify where the association appears as a party.

Under Canon 3C:

(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:

* * *

(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.

“Financial interest” is defined in Canon 3C(3)(c) as:

ownership of a legal or equitable interest, however small . . . 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 funds; . . .

(iii) 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.

While the exceptions of Canon 3C(3)(c) do not specifically refer to trade associations, the judge’s small financial interest in a member of the association should be considered a “similar proprietary interest” within the meaning of that provision.
Accordingly, the Committee sees no impropriety in a judge serving in a proceeding where a trade association appears as a party, even though the judge owns a small percentage of the publicly-traded shares of one or more members of the association, so long as that interest could not be substantially affected by the outcome of the proceeding.

Recusal decisions are also governed by the recusal statutes, 28 U.S.C. §§ 455 and 144, and the case law interpreting them. Although the Committee on Codes of Conduct is not authorized to render advisory opinions interpreting §§ 455 and 144, Canon 3C of the Code of Conduct for United States Judges closely tracks the language of § 455, and the Committee is authorized to provide advice regarding the application of the Code.

June 2009
Committee on Codes of Conduct Advisory Opinion
No. 50: Appearance Before a Legislative or Executive Body or Official

This opinion considers the propriety of a judge appearing before a legislative or executive body or official as a witness or as a supporter or opponent of proposed legislation.

Canon 4 of the Code of Conduct for United States Judges provides, in part:

A judge may engage in extrajudicial activities, including law-related pursuits and civic, charitable religious, social, financial, fiduciary, and governmental activities, and may speak, write, lecture and teach both law-related and non-legal 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, [or] lead to frequent disqualification . . .

A. Law Related Activities

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

(2) 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 expertise in the area; or

(c) when the judge is acting pro se in a matter involving the judge or the judge’s interest.

The accompanying Commentary states:

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 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 improvement of the law.

Under Canon 4, a judge properly may appear before a legislative or executive body or official, at a public hearing or in private consultation, with respect to matters concerning the administration of justice. Examples would be matters relating to court personnel, budget, equipment, housing, and procedures. These matters are all vital to the judiciary’s housekeeping functions and the smooth operation of the dispensation of justice generally. This much is clear. See also Advisory Opinion No. 59 (“Providing Recommendations or Evaluations of Nominees for Judicial, Executive, or Legislative Branch Appointments”).

Less clear, however, is the propriety of a judge appearing on behalf of, or against, particular proposed legislation that relates to subject matter other than the administration of justice. Advocacy for or against legislation aimed at vital political issues or policy may well raise questions of propriety despite the fact that the judge, too, is a citizen and may be affected by the legislation. Such legislation also may spawn litigation likely to come before the judge. Although Canon 4A(2)(a)’s phrase “matters concerning the law” could be broadly construed to embrace nearly all legislation and executive decisions, the Committee advises that the reach of the canon is not that broad and, indeed, was intended to be comparatively narrow. See Advisory Opinion No. 93 (“Extrajudicial Activities Under Canon 4”).

There will, of course, be subject matter that falls close to the line between the permissible and impermissible categories for consultation with public bodies. The judge then must use his or her best judgment, having in mind the basic purpose and intent of the canon, and the likelihood that litigation relating to the subject matter will come before the judge.

In summary, with the exception noted below, a judge may appear at a public hearing before or consult with an executive or legislative body or official relative to matters not concerning judicial administration only “to the extent that it would generally be perceived that a judge’s judicial experience provides special expertise in that area.” Canon 4A(2).

An exception is made when the judge’s interest as an individual will be affected. See Canon 4A(2)(c). Proposed rezoning of property, or the imposition of assessments for improvements, are ready illustrations. The Committee sees no impropriety in the judge appearing at a public hearing relative to a subject of that type. However, as the Commentary to the corresponding rule in the ABA Model Code of Judicial Conduct observes, “In general, it would be an unnecessary and unfair burden to prohibit judges from appearing before governmental bodies or consulting with governmental officials on matters that are likely to affect them as private citizens, such as zoning proposals affecting their real property. In engaging in such activities, however, judges must not
refer to their judicial positions, and must otherwise exercise caution to avoid using the prestige of the judicial office." MODEL CODE OF JUDICIAL CONDUCT, Rule 3.2 Comment [3] (ABA 2007 Edition).

June 2009
Committee on Codes of Conduct Advisory Opinion
No. 51: Law Clerk Working on Case in Which a Party Is Represented by Spouse’s Law Firm

This opinion considers the propriety of a judge’s law clerk working on cases in which the law firm of the law clerk’s spouse represents a party.

Among judicial employees, law clerks are in a unique position since their work may have direct input into a judicial decision. Even if this is not true in all judicial chambers, the legal community perceives that this is the case based upon the confidential and close nature of the relationship between clerk and judge.

The significance of the relationship between judge and law clerk is reflected in certain provisions of the Code of Conduct for Judicial Employees (Employees’ Code) that are directly relevant to the inquiry. Canon 3F(2)(a)(iv)(B) precludes a law clerk from performing official duties in any matter where the law clerk’s spouse is acting as a lawyer in the proceeding. Canon 3F(2)(a)(iii) provides that law clerks should disqualify themselves in cases where their spouses or minor children have a financial interest in a matter in controversy. We have previously concluded that a partner in a law firm has a financial interest in all matters handled by the firm. Accordingly, if the law clerk’s spouse is working on the case, or if the spouse is a partner in the firm handling the matter, the law clerk should not participate in the case.

A more difficult question arises when the spouse is an associate in a large firm and has no involvement in the case. Even under these circumstances, the Committee concludes that the clerk should not be permitted to work on any cases of the firm that employs the law clerk’s spouse. To do so violates the spirit of Canon 2 of the Employees’ Code and Canon 2A of the Code of Conduct for United States Judges in that it may erode public confidence in the integrity and impartiality of the judiciary. The dangers, real and perceived, of the exploitation of the relationship to the law firm’s financial or other advantage call for a per se rule of recusal when the firm employs the law clerk’s spouse.1

In so concluding, the Committee recognizes that it has not applied a similar blanket recusal rule for judges. For example, we have concluded previously that a judge was not required to recuse when the judge’s child was an associate in a law firm representing a party in a case before the court. In that instance, the child was not working on the matter and the child’s compensation was not affected by the outcome of the case.

The Committee believes that several factors justify making a distinction. Clerks often come to clerkships directly from law school. As a rule, they are not as steeped in or sensitive to the ethical issues that govern a judge’s conduct and are not likely to have the same level of judgment as the more experienced judges for whom they work. Law clerks and their spouses are more likely to find themselves in situations where attorneys
or others may intentionally or inadvertently discuss matters that are pending before the law clerk’s judge. To avoid these dangers and any appearance of impropriety, a blanket recusal policy is necessary, and from this it follows that the recused clerk should avoid any discussion of the case with the judge, law clerks, or others.

Finally, the disqualification of a judge is far more disruptive to the administration of justice than the disqualification of a law clerk. Most judges have more than one clerk, and the matter may be transferred easily to another clerk. If a judge has only one clerk, an arrangement may be made to trade the services of the law clerk for the services of a law clerk to another judge on the same bench. A balancing of the relative ease of handling the consequences of law clerk recusal against the considerations outlined herein and Canon 2 concerns for the appearance of impropriety accordingly supports a blanket recusal policy.

The Committee additionally observes that for many of the reasons articulated in Advisory Opinion No. 38 (“Disqualification When Relative Is an Assistant United States Attorney”), a similar blanket rule does not apply where the spouse of the judge’s law clerk is employed as a lawyer for the United States Attorney, public defender or other government agency.

**Note for Advisory Opinion No. 51**

1 An amendment to the Code of Conduct for United States Judges, which became effective July 1, 2009, advises judges that, for purposes of 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.” Commentary to Canon 3C. No similar amendment has yet been made to the Employees’ Code, although a judge may impose the more stringent requirement on staff members. A law clerk should, therefore, determine the judge’s preference as to recusal if such circumstances are presented.

June 2009
Committee on Codes of Conduct Advisory Opinion  
No. 52: American Bar Association or Other Open-Membership Bar Association Appearing as a Party

This opinion considers whether a judge should recuse where a national, state, or other bar association appears as a party (plaintiff or defendant) and the judge is a member of the association. The Committee assumes that the association has an open membership.

This question implicates Canons 2A, providing that a judge “should act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary,” and 3C(1), instructing:

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:

* * *

(c) the judge knows that . . . [he or she] 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.

Canon 3C(3) goes on to provide:

For the purposes of this section:

* * *

(c) “financial interest” means ownership of a legal or equitable interest, however small, or arelationship 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 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;

(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.

In Advisory Opinion No. 26, relating to litigation involving health insurance companies, the Committee concludes judges holding health insurance policies are not disqualified from sitting in a case where the issuing health insurance organization is a defendant. The judges’ interests as health insurance policy-holders are not deemed “financial interests” within the meaning of that term as it is used in the Code. The Committee considers the interest analogous to the property interest of a policy-holder in a mutual insurance company, or that of a depositor in a mutual savings association, and that, in any event, on the facts the interest could not be regarded as substantial. Similarly, in Advisory Opinion No. 49, addressing ownership of a small percentage of the outstanding publicly-traded shares of a corporation member of a trade association, the Committee advises there is no impropriety in the judge sitting on a case in which the trade association is a party. In each of these instances, the Committee’s conclusion is subject to the general qualifications set forth in Canons 3C(1)(c) and (3)(c).

The Committee concludes that a like analysis applies to the financial interest a judge holds through membership in an open-member bar association. The judge’s interest in a professional organization of the bar association type is particularly tenuous, for the “financial” aspect is inconsequential, if it could be said to exist at all. The Committee therefore sees no impropriety in a judge sitting on a case where an open-membership bar association of which the judge is a member is a party. The judge must determine, however, that no other disqualifying interest exists, for example, participation in development of the bar association position on the matter or service as an officer or board member of the association. See Advisory Opinion No. 85 (“Membership and Participation in the American Bar Association”). Again, this conclusion is subject to the general qualifications contained in Canons 3C(1)(c) and (3)(c).

As an additional consideration, the Committee advises that unwarranted recusal may bring public disfavor to the bench and to the judge. Where the provisions of the Code point to recusal, then recusal must follow; but where the only factor present is hypersensitivity on the part of the judge, or a distaste for the litigation, or annoyance at a party’s suggestion that the judge recuse – and nothing more – the dignity of the bench, the judge’s respect for the fulfillment of judicial duties, and a proper concern for judicial colleagues all require that the judge not recuse.

To close, the Committee notes that recusal decisions are also governed by the recusal statutes, 28 U.S.C. §§ 455 and 144, and the case law interpreting them. Although the Committee on Codes of Conduct is not authorized to render advisory opinions interpreting §§ 455 and 144, Canon 3C of the Code of Conduct for United
States Judges closely tracks the language of § 455, and the Committee is authorized to provide advice regarding the application of the Code.

June 2009
Committee on Codes of Conduct Advisory Opinion  
No. 53: Political Involvement of a Judge’s Spouse

Canon 5 (refrain from political activity) and Canon 2 (avoid impropriety and the appearance of impropriety in all activities) of the Code of Conduct for United States Judges define a judge’s obligations where the judge’s spouse engages in political activity. The Code does not govern the conduct of a judge’s spouse, however. Therefore, a judge should, to the extent possible, disassociate himself or herself from the spouse’s political involvement.

The judge should not, for example,

(a) accompany the spouse to any political function or any function that is likely to be considered political in nature. However, when the spouse is a candidate for elected office, the judge may attend civic gatherings sponsored by nonpolitical organizations to which all candidates are invited. Additionally, judges may attend purely ceremonial events, such as inaugurations, as those events are not considered political;

(b) join in the use of the marital home for political meetings or fund-raising events, and should disassociate himself or herself from any such gathering;

(c) join in or approve any reference to the relationship between the judge and spouse in any communication relating directly or indirectly to the spouse’s political activity. However, the judge may appear in a family photograph used in campaign materials, so long as that photograph does not identify the judge as a judge.

A spouse’s involvement in political activities or candidacy for elected office may increase the frequency with which a judge is required to recuse. Judges should pay attention to that increased likelihood. Additionally, if there is a person other than a spouse with whom the judge maintains both a household and an intimate relationship, the judge should consider the cautions contained in this opinion in order to avoid any appearance of impropriety.

June 2009
Committee on Codes of Conduct Advisory Opinion
No. 55: Extrajudicial Writings and Publications

This opinion considers the topic of extrajudicial writing and publishing. We consider two particular aspects of this issue: (1) the propriety of a judge writing about cases that the judge has heard; and (2) the extent of permissible advertising of the judge’s publications. While it is difficult to prescribe precise guidelines, the following factors are worthy of consideration by a judge contemplating these endeavors. If after consideration of these factors a judge remains uncertain about the propriety of a particular action, the Committee stands ready to answer specific inquiries.

Writing Generally

As a general matter, the Code of Conduct for United States Judges advises that a “judge may . . . write . . . on both law-related and nonlegal subjects.” Canon 4. Indeed, the Commentary to Canon 4 notes that “[a]s 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 . . . .” The Code’s authorization for extrajudicial writing, however, is subject to various limitations. Canon 4 imposes the general caveat that “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 [or] lead to frequent disqualification . . . .” Canon 4G restricts the use of court resources to undertake extrajudicial writing, instructing that a “judge should not to any substantial degree use judicial chambers, resources, or staff to engage in extrajudicial activities permitted by this Canon.”

Regarding compensation for extrajudicial writing, Canon 4H states: “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 . . . .” The Code, however, restricts this allowance in the following ways: (1) compensation must be reasonable and not exceed what a non-judge would receive for the same activity; (2) expense reimbursement should be limited to the actual costs reasonably incurred by the judge, and, where appropriate to the occasion, by the judge’s spouse or relative; excess payments should be treated as gifts or compensation and not expense reimbursement; and (3) the judge should file the required financial disclosures. Canon 4H(1)-(3).

Writing About Cases the Judge Has Heard

A judge must exercise special caution when writing about a case the judge has heard. To start, a “judge should not make public comment on the merits of a matter pending or impending in any court.” Canon 3A(6). However, “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." *Id.* The Commentary to Canon 3 elaborates on the public comment restriction:

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)).

Commentary to Canon 3A(6).

The Committee offers these additional suggestions, which are not intended to be comprehensive. When writing about a case the judge has heard, even after final disposition, the judge should be especially careful to avoid the potential for exploitation of the judicial position. If referring to a criminal case, the judge should consider whether the comments might afford a basis for collateral attack on the judgment. A judge must avoid writings that are likely to lead to disqualification. In every case, the judge should avoid sensationalism and comments that may result in confusion or misunderstanding of the judicial function or detract from the dignity of the office. Finally, the judge should consider the language, intent, and spirit of the entire Code when deciding to write about a case handled by the judge.

*Advertising*

The judge should, as far as possible, make certain that advertising for the judge’s publications does not violate the language, spirit, or intent of the Code. A judge should be particularly careful to comply with Canon 2B, which, in part, counsels against lending the prestige of the judicial office to advance the private interests of the judge or others. To that end, in contracting for publication it would be advisable for a judge to retain a measure of control over the advertising (including the right to veto inappropriate advertising), so that the advertising does not exploit the judicial position or use the prestige of the judge’s office to advance the private interests of the judge or others.

June 2009
Committee on Codes of Conduct Advisory Opinion
No. 57: Disqualification Based on Stock Ownership in Parent Corporation of a Party or Controlled Subsidiary of a Party

This opinion considers the question of whether a judge should recuse when the judge owns stock in the parent corporation of a controlled subsidiary that is a party or owns stock in a controlled subsidiary and its parent corporation is a party.

Canon 3C(1) of the Code of Conduct for United States Judges provides that:

(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:

* * *

(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.

Canon 3C(3)(c) defines a “financial interest” as “ownership of a legal or equitable interest, however small.” The provision enumerates exceptions to the definition, including ownership in a mutual or common investment fund; the proprietary interest of a policy-holder in a mutual insurance company, or a similar proprietary interest, where the outcome of the proceeding could not substantially affect the value of the interest; and ownership of government securities, where the outcome of the proceeding could not substantially affect the value of the securities. None of these exceptions directly apply, and the Committee does not consider the situation at issue to be analogous to the exceptions. See also Advisory Opinion Nos. 26 (“Disqualification Based on Holding Insurance Policy from Company that is a Party”) and 49 (“Disqualification Based on Financial Interest in Member of a Trade Association”).

The Committee concludes that under the Code the owner of stock in a parent corporation has a financial interest in a controlled subsidiary. Therefore, when a judge knows that a party is controlled by a corporation in which the judge owns stock, the judge should recuse. See Canon 3C(3)(c). When a parent company does not own all or a majority of stock in the subsidiary, the judge should determine whether the parent has control of the subsidiary. The Committee advises that the 10% disclosure requirement in Fed. R. App. P. 26.1 is a benchmark measure of parental control for recusal purposes. However, if the judge owns stock in the subsidiary rather than the parent corporation, and the parent corporation appears as a party in a proceeding, the judge must recuse only if the interest in the subsidiary could be substantially affected by the proceeding. Id.
In closing, the Committee notes that recusal decisions are also governed by the recusal statutes, 28 U.S.C. §§ 455 and 144, and the case law interpreting them. Although the Committee is not authorized to render advisory opinions interpreting §§ 455 and 144, Canon 3C of the Code closely tracks the language of § 455, and the Committee is authorized to provide advice regarding the application of the Code.

December 2017
Questions often arise regarding recusal based on employment by a law firm of a relative of the judge. In most instances, the relative is the child of the judge. This opinion, however, applies to all relatives within the third degree of relationship to either the judge or the judge’s spouse, as defined in Canon 3C(3)(a) of the Code of Conduct for United States Judges. It also applies to offers of employment, and to employment by individual lawyers. Additionally, for purposes of 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.” Commentary to Canon 3C.

The Committee advises that if the relative participates in the representation of a party in a case before the judge or is an equity partner in a law firm that represents a party, the judge must recuse. Canon 3C(1)(d)(ii) and (iii) of the Code provide:

(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:

    * * *

(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 person is:

    * * *

(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[.]

The Committee concludes that an equity partner in a law firm generally has “an interest that could be substantially affected by the outcome of the proceeding” in all cases where the law firm represents a party before the court.

The typical and more difficult situation arises when the relative is employed by the firm as either an associate or a non-equity partner. For the purposes of this opinion, a non-equity partner is understood as one who receives a fixed salary, is not entitled to share in the firm’s profits, and has no interest in the firm’s client list or goodwill. If the relative is an associate or non-equity partner and has not participated in the preparation or presentation of the case before the judge, and the relative’s compensation is in no manner dependent upon the result of the case, recusal is not mandated.
The judge, however, always must be mindful of Canon 2A, which directs that a judge should act at all times in a manner that “promotes public confidence in the integrity and impartiality of the judiciary,” as well as the general command of Canon 3C(1) that a judge should recuse in a proceeding in which the “judge’s impartiality might reasonably be questioned.” Accordingly, although recusal may not be prescribed for participation by a relative who is an associate or non-equity partner, other circumstances may arise that in combination with the relative’s status at the firm could raise a question about the judge’s impartiality and thereby warrant recusal.

As a cautionary note, the Committee further observes that the remittal procedures of Canon 3D are not available if the judge’s relative is acting as a lawyer in the case or is a partner in the law firm representing a party before the court. Recusal is required. As discussed, recusal is not mandated if the firm representing a party before the court employs a judge’s relative as an associate or non-equity partner and the relative has no involvement in the case. If nonetheless a judge is concerned that his or her impartiality might reasonably be questioned, the judge may invoke the remittal procedures of Canon 3D.

The Committee notes that recusal decisions are also governed by the recusal statutes, 28 U.S.C. §§ 455 and 144, and the case law interpreting them. Although the Committee is not authorized to render advisory opinions interpreting §§ 455 and 144, Canon 3C of the Code closely tracks the language of § 455, and the Committee is authorized to provide advice regarding the application of the Code.

June 2009
Committee on Codes of Conduct Advisory Opinion
No. 59: Providing Recommendations or Evaluations of Nominees for Judicial, Executive, or Legislative Branch Appointments

Judges are frequently asked by federal and state merit selection commissions for recommendations of suitable judicial nominees or for evaluations of pending judicial nominees. Judges also are sometimes asked to provide recommendations about executive or legislative nominees.

Canon 2A of the Code of Conduct for United States Judges directs that judges should act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary. The Commentary to Canon 2A states that “[a]n 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.” Canon 2B advises judges against lending the prestige of judicial office to advance the private interests of others and against conveying the impression that others are in a special position to influence the judge.

This opinion explains how judges may, within the parameters of the Code of Conduct, provide recommendations or evaluations concerning potential appointees for judicial, executive, or legislative branch appointments.

The Committee notes that the cautions raised in this opinion are consistent with, and should not discourage, judges’ efforts to consult with legislative or executive branch officials with respect to matters concerning the administration of justice—including general issues related to judgeships, judicial vacancies, and judicial resources. See Canon 4A(2); Advisory Op. No. 50.

Involvement by Judges in Screening or Reviewing Judicial Nominees

Judges commonly receive inquiries about potential judicial nominees from various entities, including federal and state merit selection commissions or national, state, and local bar associations. The Commentary to Canon 2B expressly provides that 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.” The Committee views the term “appointing authority” as intended to include federal executive and legislative officers, such as the President and senators, and their selection committees or commissions and their staff, along with state executive officers, such as governors, and their selection committees or commissions and their staff. The Committee views “screening committee” as intended to include bar committees or other groups that are officially charged with evaluating the professional qualifications of a judicial nominee. For example, this definition includes the Department of Justice, judicial committees that facilitate the hiring of magistrate and bankruptcy judges, the
American Bar Association judicial rating committees, and state appointing or screening authorities.

### Initiating Contact or Responding to a Request

Judges should not initiate communications with federal or state appointing authorities, such as Congress or the White House, or screening committees for the purpose of supporting or opposing any candidate or nominee for judicial, executive or legislative branch appointment. Unsolicited contact with an appointing authority or screening committee is contrary to Canon 2B’s proscription against lending the prestige of the judicial office to advance the private interests of others. A judge also should not respond to media requests, issue any statements, or participate in joint efforts with others to support or oppose a nominee. Such contact might also transgress Canon 5C and its proscriptions against engaging in political activity.

In contrast, based on the Commentary to Canon 2B, judges may respond to requests from an appointing authority or screening committee. A judge, if asked, may recommend and evaluate judicial nominees based on the judge’s insight and experience, with the objective of maintaining a qualified and honorable judiciary. The Committee also advises that judges may—when requested to do so—provide recommendations of persons to be considered for judicial office. Any opinion offered by a judge should be, and should appear to be, directed only to the nominee’s qualifications and factors relevant to the performance of the judicial office. A judge also should not publicly advocate for or oppose, or otherwise lend his or her name to any publicity campaign associated with any nominee for judicial appointment. In any communications regarding a nominee, however, judges should be mindful of Canon 5, which mandates that judges refrain from both partisan and nonpartisan political activity. Further, a judge should not volunteer to testify at a confirmation hearing as that would run contrary to Canon 2B (“A judge should not testify voluntarily as a character witness”).

A judge may permit a judicial nominee to list the judge as a reference in the nominee’s application. If the screening committee has required that all nominees submit a letter of recommendation from a judge, and the nominee has requested a letter of recommendation, the judge may respond, but responses and recommendations should be directed only to the nominee’s qualifications and factors relevant to the performance of the judicial office. The strictures of Canons 2B and 5C should serve as a guide to a judge communicating any recommendation or evaluation.

### Involvement by Judges in Screening or Reviewing Executive and Legislative Branch Appointments

Similar considerations apply with respect to communications on behalf of a nominee for an executive or legislative branch appointment. (See also Note 1 below)
concerning legislative vacancies.) Canon 2 is implicated in any request for recommendations regarding nominees for such appointments. As is the case with judicial nominees, a judge would act contrary to Canon 2B if he or she were to initiate communications with an appointing authority regarding a nominee for an executive or legislative branch appointment, such as sending an unsolicited letter of recommendation. On the other hand, in light of the Commentary to Canon 2B, the Committee believes that there would be no impropriety in a judge answering an inquiry from a screening committee or appointing authority with respect to the judge’s knowledge concerning the qualifications and other relevant factors of a nominee for appointment to any public office. As in responding to inquiries of or about judicial nominees, any opinion the judge offers should be, and should appear to be, directed only to the nominee’s qualifications and factors relevant to performance of the office, and the judge should not publicly advocate for or against a nominee.

Providing Advice to Potential Applicants

Additionally, judges sometimes are asked by a potential applicant about the judicial selection process. A judge who answers a prospective applicant’s questions regarding the selection process and encourages a qualified individual to apply for the position is not using the judicial position to initiate contact with the reviewing authority. The judge is not indicating a preference to a reviewing authority for one applicant over another. The Committee also believes that there is no appearance of impropriety in meeting with prospective applicants or in urging qualified practitioners to apply, because the judge is promoting the public interest in obtaining a high level of quality and integrity in the judiciary, and there is no need to recuse from matters involving potential judicial applicants on this particular basis. See Canon 3C. If after consulting the judge, an attorney chooses to apply, however, it would be improper for the judge to initiate contact with the selection committee or appointing authority.

Involvement of Judicial Employees in Screening or Reviewing Nominees

Similar constraints apply to judicial employees providing evaluations of judicial, executive, or legislative nominees to appointing authorities or screening committees. Canon 2 of the Code of Conduct for Judicial Employees directs that a judicial employee should avoid impropriety and the appearance of impropriety in all activities. Canon 2 further directs that a judicial employee should not lend the prestige of the office to advance or to appear to advance the private interests of others. Thus, judicial employees, like judges, should not initiate communications, but may respond to requests from an appointing authority or screening committee with information directed only to the nominee’s qualifications and factors relevant to the performance of the office.

Additionally, Canon 5 of the Employees’ Code cautions that judicial employees should refrain from inappropriate political activity. See Advisory Op. No. 92. In keeping with Canon 5, a judicial employee should not initiate or circulate a petition or publicly
endorse or oppose, including on social media, a judicial, executive, or legislative nominee. A judicial employee also should not initiate or circulate a recall petition.

Notes for Advisory Opinion No. 59

1 Occasionally, interim nominees for a legislative vacancy will arise. This opinion applies when a judge is asked to respond to an inquiry about such a nominee.

October 2019
Committee on Codes of Conduct Advisory Opinion  
No. 60: Appointment of Spouse of an Assistant United States Attorney as Part-Time Magistrate Judge

This opinion considers whether a district court may appoint the spouse of an Assistant United States Attorney (“AUSA”) as a magistrate judge, where the AUSA would not appear in any case over which the magistrate judge presides, and the couple would in fact perform their duties in different divisions of the district. Before addressing this question, the Committee notes that “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.” Commentary to Canon 3C of the Code of Conduct for United States Judges.

In Advisory Opinion No. 38, the Committee addressed in detail the recusal considerations when a judge’s relative serves as an AUSA, concluding that a judge would not be disqualified per se from hearing all cases in which the United States was represented by any member of the United States Attorney’s office if the judge’s relative accepted a position as an AUSA. The Committee did caution that recusal might be required in certain specific circumstances, such as where the judge’s relative is acting as attorney, supervisor, or the United States Attorney in a proceeding. But because there is no per se disqualification from all cases, we find no barrier in the Code to the appointment of a spouse of an assistant United States attorney to the position of magistrate judge.

In addition to the Code, the Judicial Conference has adopted a specific rule for part-time magistrate appointees that also applies to this question. The Judicial Conference Conflict-of-Interest Rules for Part-Time Magistrate Judges provide that:

1. A part-time magistrate judge, [and] his or her partners and associates, may appear as counsel in any civil action in any court or governmental agency, including matters in which the United States is a party or has a direct and substantial interest, but they may not appear in cases in which the part-time magistrate judge has been involved in connection with his or her official duties.

   * * *

4. A part-time magistrate judge’s partners and associates may appear as counsel in any criminal action in any state court and in any federal court other than in the district in which the part-time magistrate judge serves, provided that the part-time magistrate judge has not been involved in such criminal proceeding in connection with his or her official duties.

If the spousal relationship were considered analogous to the law partner-part-time magistrate judge relationship, then under the conflict rules a part-time magistrate judge would have difficulty presiding in a district where the spouse was an AUSA, except where the prosecutor appeared only in civil cases. However, we conclude that the relationship of spouses and current law partners is not an analogous situation. The sharing of income among spouses on annual fixed salaries is very different from the sharing of a law firm’s income among partners whose draw depends on the firm’s income. The firm’s income varies from year to year, and so may the partners’ percentages. In addition, reputation and standing are more important to the annual economic success of a law firm than they are to a married couple holding government jobs. While under other circumstances the analogy may be close enough to require application to spouses of the law partner conflict rules, the situation of spouses both employed in government service does not.

The Committee concludes that there is no impropriety in the appointment of a part-time magistrate judge whose spouse is employed by the United States Attorney’s office in a division of the district different from the magistrate judge. We believe this separation in divisions should ensure that neither the spouse nor anyone supervised by the spouse would be assigned to or have any involvement with a case before the magistrate judge. We express no opinion on the propriety of simultaneous service of one spouse as judge and another as prosecutor in a very small district where such service would cause significant distortion in the allocation of caseloads due to required disqualifications.

June 2009
Committee on Codes of Conduct Advisory Opinion
No. 61: Appointment of Law Partner of Judge’s Relative as Special Master

This opinion considers the propriety of a judge appointing as special master an attorney who is a law partner in a firm in which a relative of the judge is also a partner. The Committee considers an example with the following characteristics. The special master would be appointed pursuant to Rule 53 of the Federal Rules of Civil Procedure to supervise discovery in a civil case pending before the judge. The proposed special master is a partner in a firm of which the judge’s nephew is also a partner. Additionally, the firm has employed on a part-time basis the judge’s child, currently a law student. The judge has previously taken the position that no member of the firm may appear before the judge in any matter. The proposed special master is eminently qualified to handle the assignment. Under Rule 53, compensation for the special master would be fixed by the court and charged to the parties.

Canon 3B(3) of the Code of Conduct for United States Judges provides: “[a] judge should exercise the power of appointment fairly and only on the basis of merit, avoiding unnecessary appointments, nepotism, and favoritism.” By including “favoritism” as an impermissible objective in making appointments, the canon goes beyond the statutory ban on nepotism contained in 28 U.S.C. § 458, which prohibits appointment of any person “related by affinity or consanguinity within the degree of first cousin to any justice or judge of such court.”

These circumstances raise the question of when an appointment, even though initially proposed on the basis of merit, ought to be precluded because of relationships that either indicate or create the appearance of favoritism. In another context the Committee has concluded that the appearance of an attorney who is a partner in a firm of which another partner is related to the judge within the third degree of relationship is grounds for recusal of the judge. See Advisory Opinion No. 58 (“Disqualification When Relative is Employed by a Participating Law Firm”). That conclusion was prompted by concern about the judge’s decision affecting compensation of a relative because the relative would participate in the fee of the attorney appearing before the judge.

The Committee believes the same concern applies to a judge’s relative who shares in a fee derived from a law partner’s compensation for duties as a special master. Even if a partner of the firm is not obliged to share fees earned for professional services rendered as a special master, the appearance of impropriety standard of Canon 2 ought to preclude a judge from determining the compensation of a partner of the judge’s relative. Similarly, even if the special master waived fees, the appointment would likely be regarded in the community as conferring a monetary benefit. In addition, waiver of compensation would raise the additional issue of the impropriety of a law firm performing costly favors for the court. The Committee notes that there are also situations in which a proposed appointment, without compensation, of the law partner of a judge’s relative would be considered “favoritism” within the meaning of Canon 3B(3) or would create the appearance of impropriety within the meaning of Canon 2.
The Committee has no doubt that in these circumstances the selection of the attorney to serve as a special master was made entirely on the basis of merit and with no thought of conferring a benefit on the judge’s relative. But we do not believe that an appointment’s propriety under Canon 3B(3) can turn solely upon an individual assessment of high professional competence. We therefore conclude that, in the circumstances described, a judge should not appoint as special master a law partner of the judge’s nephew.

June 2009
Committee on Codes of Conduct Advisory Opinion
No. 63: Disqualification Based on Interest in Amicus that is a Corporation

In this opinion we consider whether recusal is required when a judge has an interest in a corporation that is an amicus curiae. This opinion does not consider other recusal questions that may arise in relation to amici, such as when a law firm that is on a judge’s recusal list represents an amicus, or when a judge has an interest in a nonprofit organization that is an amicus. See, e.g., Advisory Opinion No. 34 (“Serving as Officer or on Governing Board of Bar Association”).

Canon 3C(1)(c) of the Code of Conduct for United States Judges provides that the judge shall disqualify when:

[T]he 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.

Canon 3C(3)(c) defines “financial interest” as “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.” In most cases, a judge with an interest in a corporate amicus will not have a legal or equitable interest in a party to the proceeding or in the subject matter in controversy that would constitute a financial interest under the Code. There remains, however, the question of whether the judge’s interest in the amicus constitutes “any other interest that could be affected substantially by the outcome of the proceeding.”

Any interest that could be substantially affected by the outcome of a proceeding is a disqualifying interest; this restriction applies to an ownership interest in any corporation, whether or not the corporation appears as an amicus. An example of when an ownership interest in an amicus could result in disqualification would be when the amicus is in the same industry as the party and the value of industry stock generally could be substantially affected by the decision in the pending case. Even in those situations where an ownership interest could be substantially affected, one might doubt that a judge’s impartiality might reasonably be questioned if the interest is minimal. However, under the Code the extent of the judge’s interest is irrelevant.

Given the mandatory nature of Canon 3C(1)(c), the requirement to recuse if a disqualifying interest in an amicus exists is the same even when the amicus does not surface until, for example, the rehearing stage.

In the event that a decision in a pending case will not substantially affect a judge’s interest in an amicus, the judge still must consider whether recusal is required because “the judge’s impartiality might reasonably be questioned.” Canon 3C(1).
To conclude, if an interest in an *amicus* would not be substantially affected by the outcome, and if the judge’s impartiality might not otherwise reasonably be questioned, stock ownership in an *amicus* is not *per se* a disqualification.

The Committee notes that recusal decisions are also governed by the recusal statutes, 28 U.S.C. §§ 455 and 144, and the case law interpreting them. Although the Committee on Codes of Conduct is not authorized to render advisory opinions interpreting §§ 455 and 144, Canon 3C of the Code of Conduct for United States Judges closely tracks the language of § 455, and the Committee is authorized to provide advice regarding the application of the Code.

June 2009
Committee on Codes of Conduct Advisory Opinion
No. 64: Employing a Judge’s Child as Law Clerk

This opinion discusses whether it is proper for a federal judge to employ as law clerk the son or daughter of another federal judge. We consider the issue vis-a-vis judges on the same court, judges on related courts, and judges on courts in different districts or circuits.

At the outset, we note that 28 U.S.C. § 458 expressly prohibits some appointments within the court system. It provides:

No person shall be appointed to or employed in any office or duty in any court who is related by affinity or consanguinity within the degree of first cousin to any justice or judge of such court.

The term “court” is generally construed so that each district court and each circuit court of appeals constitutes a different court. See 28 U.S.C. § 451 (defining courts). Accordingly, the statutory provision, if applicable, would not apply to other than judges of the same court. This conclusion makes it unnecessary to resolve the question of whether the position of law clerk is “any office or duty of the court” as defined in the statute.1

Although interpretation of § 458 is beyond the jurisdiction of the Committee, the same principles evident in the statute are reflected in Canon 3B of the Code of Conduct for United States Judges related to nepotism and favoritism. As discussed in this opinion, we conclude that whether or not § 458 is directly applicable, both the Code and the congressional policy underlying § 458 would in any event counsel against a judge hiring as a clerk the son or daughter of a judge who sits on the same court. In the case of judges sitting on different courts, such hiring is permissible, subject to appropriate ethical safeguards.

Same Court

Section 458 evinces a congressional policy that the judiciary should be kept free from the practice, or the appearance, of nepotistic hiring. Canon 3B(3) of the Code goes beyond the statutory ban in that it proscribes “favoritism,” a broader term than nepotism. It provides:

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.

Hiring the son or daughter of a colleague raises two principal concerns. First, a judge should not use the hiring prerogative to dispense government offices for his or her
personal advantage or that of a colleague. This would be an improper use of judicial office in violation of Canon 2 (avoid impropriety and appearance of impropriety) as well as Canon 3B(3). Second, employment of a related law clerk might undermine the impartiality, or give the appearance of that fault, when the employing judge and the judge who is a parent of the law clerk work closely with each other on the same court. This would contravene Canon 3.

We think that to avoid the fact or appearance of the improprieties noted above, and to give meaning to the congressional policies underlying § 458—regardless of its applicability to the specific position of law clerk—it is improper for a judge to hire as law clerk a son or daughter of a judge of the same court.

For purposes of this opinion and related nepotism/favoritism rulings, magistrate judges are properly regarded as serving on the same court as district judges in their district. Likewise, bankruptcy judges are properly regarded as serving on the same court as district judges in their district. Thus, it is ordinarily improper for a district judge to hire the child of a magistrate or bankruptcy judge in the same district, and vice versa.

Separate and Unrelated Courts

At the other extreme from hiring within the same court as the applicant’s parent lies the case presented when a federal judge employs the son or daughter of another federal judge who sits on a court that is a separate entity and that has no jurisdictional relation to the court of employment, e.g., the District of Idaho and the District of Maine, or the District of Idaho and the Court of Appeals for the First Circuit. Although the danger of favoritism in the dispensation of government offices is not altogether absent in such cases, it is neither as compelling nor as apparent as where the judges sit as colleagues. The rights and legitimate expectations of the prospective clerk, moreover, should not be ignored in this instance. The children of judges already bear some of the sacrifices of the offices held by their parent. It is unfair, we think, to visit upon them a blanket disability from seeking an employment that is often the reward of academic excellence. Also it appears that any threat to impartiality is entirely absent. Thus we see no impropriety in hiring the son or daughter of a judge of a different court with no jurisdictional relationship or connection to the court of the employing judge. The judge who is a parent should not, of course, use his or her judicial or personal position to influence the selection of the clerk.

Related Courts

When the judges involved sit on courts with a jurisdictional connection, e.g., a court of appeals and a district court within the same circuit, the Committee believes it is not appropriate to prohibit all hiring of children of judges within the same circuit but on different courts. The Committee advises that each judge should consider the facts of the individual case, with reference to the factors discussed below.
The first consideration is whether hiring the applicant will constitute favoritism, in fact or appearance. The hiring judge should make an appointment only with confidence that the fact of the applicant’s family connections is not a factor in the decision to hire, and that no appearance to the contrary will arise. In this regard, the hiring judge should examine the personal and formal contacts he or she has with the parent of the applicant. Ethical questions cannot always be answered by per se rules and in this instance, as in others, the decision must of necessity be that of the judge. See Advisory Opinion No. 11 (“Disqualification Where Long-Time Friend or Friend’s Law Firm Is Counsel”).

As for the necessity of maintaining the fact and the appearance of impartiality, it is unacceptable for a reviewing judge to rely upon the assistance of a clerk who is the son or daughter of a judge who decided the case in the lower court. We have previously recognized that:

Among judicial employees, law clerks are in a unique position since their work may have direct input into a judicial decision. Even if this is not true in all judicial chambers, the legal community perceives that this is the case based upon the confidential and close nature of the relationship between clerk and judge.

Advisory Opinion No. 51.

The Committee concludes, however, that the remedy of excluding the related clerk from participation in any discussion or research involving the case is a sufficient safeguard against a threat to impartiality so that a general prohibition against hiring the clerk is unnecessary. The Committee has applied the same rule when a case is argued by a firm in which the clerk’s spouse is employed. See id.

When a circuit judge hires a district judge’s child: A circuit judge, before making the decision to hire a clerk who is related to a district judge whose work will be reviewed, should consider whether it will be necessary to insulate the clerk from case participation with frequency and, if so, whether such insulation will disrupt orderly procedures within the reviewing judge’s chambers or court.

If the hiring judge has considered these factors and finds no ground for concern either that favoritism will occur or that impartiality or orderly procedures will be undermined, a circuit judge may, with propriety and without violating Canons 2 and 3, hire as law clerk the son or daughter of a judge from a district court even if there is a jurisdictional relation between the courts. The same considerations govern a circuit judge’s decision whether to hire the child of a bankruptcy or magistrate judge in the same circuit.

When a district judge hires a circuit judge’s child: Ordinarily the need for the district judge to isolate the law clerk will arise only infrequently; that is, only when a case
is returned by that circuit judge to the district judge. However, the more significant problem lies in the fact that a circuit judge should ordinarily recuse in appeals of cases that were decided by the district judge at the time that the circuit judge’s child was a law clerk in the district judge’s chambers. The circuit judge should also consider recusing in appeals from the employing district judge that arise while the child serves as a law clerk, whether or not the cases were decided by the district judge during the child’s clerkship. Most circuits are sufficiently large that it might not be overly burdensome for a circuit judge to recuse in all cases coming from a particular district judge during that time. However, it would mean that the circuit en banc court would be one judge short with respect to appeals from the decision of a district judge who hired as a law clerk the child of a circuit judge.

In making a hiring decision in this situation, the district judge should consider, in addition to the factors discussed above (pertaining to favoritism and impartiality), that hiring the child of a circuit judge in the same circuit will necessitate the latter’s recusal in many cases. The same considerations govern a bankruptcy or magistrate judge’s decision whether to hire the child of a circuit judge in the same circuit.

Conclusions

A. The Committee concludes that to avoid the fact or appearance of nepotism or favoritism in hiring, a judge should not hire as a law clerk a son or daughter of a judge serving on the same court.

B. The Committee finds no impropriety in hiring a son or daughter of a judge sitting on a different court that has no jurisdictional connection with the court of the employing judge.

C. The Committee concludes that a judge may hire as a law clerk the son or daughter of a judge of another court that has a jurisdictional connection with the court of the hiring judge, with the exercise of care and discretion. If the hiring decision will not be influenced by the applicant’s family connections, or reasonably appear to be so influenced, if impartiality can be preserved with efficiency by excluding the clerk from any connection with the cases decided by his or her parent, and if disruption and undue disqualification can be minimized in the chambers of both the hiring and the parent judges, then the hiring presents no conflict with the objectives of Canons 2 and 3.

Notes for Advisory Opinion No. 64

1 A Comptroller General’s opinion, 15 Comp. Gen. 765 (1936), advises that a law clerk occupies a position personal to the judge, and that this employment is distinct from “any office or duty” of the court as the phrase is used in the statute. The Committee expresses no opinion upon the correctness of the Comptroller General’s statutory interpretation.
2 For simplicity’s sake, we discuss the situation of court of appeals and district court judges. The same principles apply, however, to the judges of other courts in a hierarchical situation, such as the judges of the Court of International Trade, the Court of Appeals for Veterans Claims and the Court of Federal Claims, all of whose decisions are reviewed by the Court of Appeals for the Federal Circuit.

June 2009
Committee on Codes of Conduct Advisory Opinion
No. 65: Providing a Recommendation for Commutation, Pardon, or Parole

This opinion addresses the propriety of actions by a judge in relation to an application for commutation of sentence, pardon, or parole.

The responsibility for making commutation, pardon, and parole decisions falls to the executive branch. Indeed, in opposing transfer of the Parole Commission from the Justice Department to the judiciary, the Judicial Conference adopted the statement, inter alia, that parole is a form of clemency inherently connected with the executive function of prosecution and incarceration. Further, the Conference cited the possible problem with respect to Court review of Parole Commission policy, practices, or decisions. (JCUS-SEP 79, p. 74).

The Committee advises against making a recommendation (favorable or unfavorable) regarding commutation, pardon, or parole upon the request of a prisoner, or someone acting on his/her behalf, or of a third party, such as a victim. The Committee’s reason for advising against such recommendations is rooted in Canon 2’s charge to avoid impropriety or the appearance of impropriety, including prestige of office issues and character witness issues. This advice applies to recommendations to either the Justice Department or an equivalent state authority. Moreover, because recommendations sought as personal favors would be addressed to the Justice Department, and because that department is a frequent litigant in the federal courts, the potential exists that undue influence would be felt. Therefore, an appearance of impropriety could arise from a judge’s personal recommendation that the Justice Department act favorably or unfavorably with respect to a prisoner within its custody.

The Committee advises against any unsolicited communication with the Justice Department. If contacted by the Justice Department, this opinion does not prohibit a judge’s transmission of objective information (without recommendation) that the judge may be privy to and that the Justice Department may not have which would assist it in making its determination; nor does it prohibit a sentencing judge’s response to a Justice Department request for other information or for a recommendation (favorable or unfavorable) concerning commutation, pardon, or parole. The same advice applies to an equivalent state authority.

December 2018
Committee on Codes of Conduct Advisory Opinion
No. 66: Disqualification Following Conduct Complaint Against Attorney or Judge

Canon 3B(5) of the Code of Conduct for United States Judges requires that 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.” State laws often contain similar requirements. This opinion considers whether a judge must recuse if an attorney against whom the judge has filed a complaint of unprofessional conduct appears before the judge. The opinion also discusses whether a judge must recuse following a complaint filed by an attorney against the judge.

Canon 3C(1)(a) provides:

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. . . .

The Committee concludes that when a judge files a complaint of unprofessional conduct against a lawyer, either in compliance with a state law or Canon 3B(5), and the lawyer is before the judge as counsel in the case giving rise to the unprofessional conduct, or in a later case, the judge is not required to recuse on grounds of bias or prejudice simply because the complaint was filed.

Opinions formed by a judge on the basis of facts introduced or events occurring in the course of current or prior proceedings ordinarily do not constitute a basis to show bias or partiality. Strongly stated judicial views rooted in the record, a stern and short-tempered judge’s efforts at courtroom administration, expressions of impatience, dissatisfaction, annoyance and even anger directed to an attorney or a party should not be confused with judicial bias. Thus, a showing of bias warranting recusal generally must be based on extra-judicial conduct and not conduct that arises in a judicial context unless the conduct displays a deep-seated favoritism or antagonism that would make fair judgment impossible. See Liteky v. United States, 510 U.S. 540, 555 (1994). A judge still needs to consider, however, whether the judge does hold a bias or prejudice that would require recusal and, additionally, whether any circumstances would create a reasonable question of the judge’s impartiality. Canon 3C(1).
Recusal is also not automatically warranted when an attorney has filed a complaint against the judge before whom the attorney is appearing. In such an instance, the judge must determine whether the judge holds a personal bias or prejudice against the attorney, or whether the circumstances would create a reasonable question of the judge’s impartiality. Canon 3C. The Committee addresses some similar concerns in Advisory Opinion No. 103 ("Disqualification Based on Harassing Claims Against Judge"). While remittal under Canon 3D is not available if the judge determines recusal is warranted under 3C(1)(a) due to personal bias or prejudice, it would be available for recusal under 3C(1) due to a question of the judge’s impartiality.

The Committee notes that recusal decisions are also governed by the recusal statutes, 28 U.S.C. §§ 455 and 144, and the case law interpreting them. Although the Committee is not authorized to render advisory opinions interpreting §§ 455 and 144, Canon 3C of the Code closely tracks the language of § 455, and the Committee is authorized to provide advice regarding the application of the Code.

June 2009
Committee on Codes of Conduct Advisory Opinion
No. 67: Attendance at Independent Educational Seminars

The Committee often receives inquiries as to whether judges may attend seminars and similar educational programs organized, sponsored, or funded by entities other than the federal judiciary and have the expenses of attendance paid or reimbursed by such entities. As discussed below, judges may ordinarily accept such invitations to independent educational seminars, except when particular circumstances make it inadvisable.1 However, judges must comply with the requirements of the Judicial Conference Policy on Judges’ Attendance at Privately Funded Educational Programs (available at http://www.uscourts.gov/RulesAndPolicies/PrivateSeminarDisclosure.aspx) and the annual financial disclosure requirements for judges under the Ethics in Government Act, 5 U.S.C. app. §§ 101-111.

The education of judges in various academic and law-related disciplines serves the public interest. That a lecture or seminar may emphasize a particular viewpoint or school of thought does not necessarily preclude a judge from attending. Judges are continually exposed to competing views and arguments and are trained to consider and analyze them. Yet, notwithstanding the general principle that judges may attend independent seminars and accept the provision of or reimbursement for expenses, there are instances in which attendance at such seminars would be inconsistent with the Code of Conduct for United States Judges. It is consequently essential for judges to assess each invitation on a case-by-case basis.

Canon 4 of the Code of Conduct for United States Judges permits judges to engage in a wide range of outside activities, both law-related and non-law-related. Under Canon 4 and its Commentary, judges are encouraged to take part in law-related activities. The Commentary to Canon 4 observes, “[c]omplete 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.” Judges who engage in extrajudicial activities are expected to conform their conduct to the standards set forth in Canon 4, which advises judges to ensure that their activities “do not detract from the dignity of judicial office, interfere with the performance of the judge’s official duties, reflect adversely on the judge’s impartiality, [or] lead to frequent disqualification. . . .” Consistent with these standards, judges are permitted to speak, write, lecture, teach, and participate in other extrajudicial activities concerning legal and non-legal subjects.

Participation in outside activities must also be consistent with Canons 2A and 3C(1). Canon 2A applies to judges’ personal as well as professional conduct, and advises judges to “act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary”; judges therefore should not attend seminars sponsored by organizations with which the judge may not properly be associated (such as organizations referred to in Canon 2C). Canon 3C(1) advises judges to recuse from any proceedings in which their impartiality might reasonably be questioned. In
determining whether to attend and accept benefits associated with a particular seminar, a judge should be guided by Canon 2 and should consider any consequent recusal obligation under Canon 3C(1). In doing so, judges should keep in mind their obligation to conduct themselves in a manner that minimizes the occasion for recusal.

Payment of tuition and expenses involved in attendance at an independent seminar constitutes a gift within the meaning of the Code of Conduct and ethics regulations. Canon 4D(4) permits a judge to accept a gift as permitted by the Judicial Conference Gift Regulations. Under section 5(a) of the Gift Regulations, judicial officers may accept gifts as long as they are not from someone seeking official action from or doing business with the court or other entity served by the judicial officer or employee, or from any other person or whose interests may be substantially affected by the performance or nonperformance of official duties. Gifts offered by such interested persons may be accepted only in narrowly-defined circumstances. In particular, section 5(b)(3) of the Gift Regulations permits a judicial officer or employee to accept a gift consisting of “an invitation and travel expenses, including the cost of transportation, lodging, and meals for the judicial officer or employee and a family member to attend a bar-related function, an educational activity, or an activity devoted to the improvement of the law, the legal system, or the administration of justice.” Judges who accept such benefits should be mindful of their financial disclosure obligations.

A variety of factors may affect the propriety of a judge’s attendance at an independent seminar. These include:

(1) the identity of the seminar sponsor, for example:

   (a) whether the sponsor is an accredited institution of higher learning or a bar association, which are recognized and customary providers of educational programs; sponsorship by such a provider usually raises fewer concerns than sponsorship by other entities;

   (b) whether the sponsor is a business corporation, law firm, attorney, other for-profit entity or a non-profit organization not described above; invitations by such a provider should be carefully examined by the invited judge;

(2) the nature and source of seminar funding, for example:

   (a) whether there are numerous contributors to seminar funding, none of which contributes a substantial portion of the cost; when no single entity contributes more than a small proportion of a seminar’s cost, there is little reason for concern about the identity of individual contributors as the resulting benefits are too minor and attenuated to create ethical concerns;

   (b) whether an entity other than the sponsor is a source of substantial funding of the seminar; factors applicable to seminar sponsors also apply to such contributors;
(c) whether the seminar is funded by contributions earmarked for specific seminar programs, or by general contributions to the sponsoring entity; in the latter situation, the benefits being provided are attributable to the sponsor and not to underlying contributors;

(3) whether a sponsor or a source of substantial funding of the seminar is currently involved as a party or attorney in litigation before the judge or is likely to be so involved;

(4) the subject matter of the seminar, including:

(a) whether the topics covered in the seminar are likely to be in some manner related to the subject matter of litigation before the judge in which the sponsor or source of substantial funding is involved as a party or attorney; for example, it would be improper for a judge to attend a seminar if the sponsor or source of substantial funding for the seminar is a litigant before the judge and the topics covered in the seminar are directly related to the subject matter of the litigation;

(b) whether contributors to seminar funding control the curriculum, faculty, or invitation list;

(5) the nature of expenses paid or reimbursed:

(a) whether the expenses are reasonable in amount;

(b) whether the seminar is primarily educational and not recreational in nature; and

(6) whether the seminar provider makes public disclosure about the sources of seminar funding and curriculum; public disclosure by the seminar provider will ordinarily obviate the need for further inquiry.

Factors other than those set forth above may be relevant in particular cases. A judge’s determination whether to attend the seminar should be made considering the totality of the circumstances. If, in light of all the relevant factors, the judge concludes that there is a reasonable question concerning the propriety of attendance, the judge should not attend the seminar.

If there is insufficient information for the judge to decide whether to attend, the judge should decline the invitation or take reasonable steps to obtain additional information. Information about the seminar sponsor, subject matter, and curriculum will typically be apparent from the invitation and materials. Information about the nature and source of seminar funding may not be available unless it is requested from the sponsor.

If the necessary additional information is not available, whether through public disclosure, disclosure from the sponsor upon inquiry, or other sources, the judge should not attend the seminar. If the information obtained by the judge does not resolve the
question concerning the propriety of attendance, the judge should not attend. To the extent the judge obtains additional information from the sponsor of the seminar, the judge should make clear that the information is not confidential and that the judge may make the information public.

**Note for Advisory Opinion No. 67**

1 This opinion does not address reimbursement of expenses for judges’ participation in seminars or other programs as speakers or panelists.

June 2009
Committee on Codes of Conduct Advisory Opinion
No. 69: Removal of Disqualification by Disposal of Interest

Judges regularly inquire whether disposing of a disqualifying interest would remove the disqualification and permit them to continue to sit in a case. Ideally, the employment of careful conflict checks by the individual judge and the judge’s court prevent a judge participating at all in a case in which the judge has a disqualifying interest. This opinion, however, addresses the circumstance of a disqualifying interest not surfacing until after the judge has been assigned a case. Inquiries to the Committee have demonstrated this circumstance arising in multiple variants. For example, a judge or judge’s spouse owns stock in a corporation that intervenes as a party or that is found to be a corporate parent of a party. The existence of a disqualifying interest may be learned directly by the judge or may come to light in counsel’s motion for recusal. The question may arise after the judge has taken minimal action, after years of discovery orders, or after trial but before decision. The issue arises in single and multi-judge districts and in appellate courts.

Canon 3C(1) provides that “[a] judge shall disqualify himself or herself in a proceeding in which the judge’s impartiality might reasonably be questioned. . . .” Canon 3C(1) then provides a non-exhaustive list of circumstances requiring disqualification. Canon 3C(4), however, recognizes that in some instances, such as those listed above, the disqualification may not exist or be known until after the judge has participated in the case, and addresses the propriety of the judge continuing to sit on such a case:

Notwithstanding the preceding provisions of this Canon, if a judge to whom a matter has been assigned 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 the disqualification.

Canon 3C(4). See also 28 U.S.C. § 455.

The Committee believes that this provision applies to cases in which a judge has already expended a substantial amount of time, cases in which a judge has expended no time, and those in between. Accordingly, if a judge learns of a disqualifying financial interest in a party before expending judicial time on the case, the judge may avoid disqualification by divesting himself or herself of the interest. Because in this situation a judge could recuse, divest and then have the matter reassigned to the judge, the Committee has concluded that Canon 3C(4) should apply, as any other interpretation would require the judge to perform a futile act.
While disposing of a disqualifying interest may allow a judge to continue to sit on a case, Canon 3C(4) limits this option to the disposal of financial interests that will not be substantially affected by the outcome of the litigation. If the financial interest could be substantially affected, even after divestment the judge could not continue to sit on the case under Canon 3C(4). In determining whether a financial interest could be substantially affected, the Committee looks to the application of Canon 3C(1)(c), which provides for disqualification if the judge holds “any other interest that could be affected substantially by the outcome of the litigation.” The natural reading of Canon 3C(1)(c) and 3C(4) is that it is the interest itself that must be substantially affected. Ultimately, an individual judge must decide the potential effect on the interest. The key inquiry is not the size of the interest, but the size of the impact on the interest.

The possibility that the judge may appear to be seeking to participate in a case by disposing of a disqualifying interest may under some circumstances create an appearance of impropriety. Though that possibility should be considered, the Committee considers the likelihood of such an appearance remote.

In a case in which a great deal of time and effort had been invested by the judge, counsel, and the litigants by the time the disqualifying interest came to light, the public interest in the efficient administration of justice would appear to outweigh concern for an appearance that the judge is seeking to continue participation in a particular case. Though disposal of the interest removes any question of the propriety of the judge’s continued participation, the stage in the litigation at which the disqualifying interest is learned and the availability of another judge may, of course, influence the judge’s decision to continue participation. The Committee further advises that, in general, the manner in which the fact of a disqualifying interest is learned, and the particular nature of the interest, are not important.

Finally, the Committee advises that should a judge decide to continue to participate in a matter following disposal of a disqualifying interest, the facts giving rise to the disqualification, the judge’s disposal of the disqualifying interest, and the public interest in continued participation of the judge should generally be disclosed to the parties and on the record in the case.

To close, the Committee notes that recusal decisions are also governed by the recusal statutes, 28 U.S.C. §§ 455 and 144, and the case law interpreting them. Although the Committee is not authorized to render advisory opinions interpreting §§ 455 and 144, Canon 3C of the Code closely tracks the language of § 455, and the Committee is authorized to provide advice regarding the application of the Code.

June 2009
Committee on Codes of Conduct Advisory Opinion
No. 70: Disqualification When Former Judge Appears as Counsel

This opinion addresses recusal considerations when former judges, including judges who resign pursuant to 28 U.S.C. § 371(a), appear as counsel before the court in which they once held judicial office. It does not directly address the ethical obligations of the former judge who later appears as counsel, although these obligations may be relevant to whether the former judge or his or her law firm should be disqualified from representation. Those obligations are governed by the rules of professional responsibility applicable to attorneys in the relevant jurisdiction. See, e.g., Rule 1.12, ABA Model Rules of Professional Conduct (“ABA Rule 1.12”).

The Code of Conduct for United States Judges and 28 U.S.C. § 455(a) require recusal when the impartiality of a judge might reasonably be questioned. The Code also directs recusal where an appearance of impropriety might exist. These principles govern the duties of the judge when a former colleague appears as counsel. See Canon 2A and Canon 3B(3). Although the Committee on Codes of Conduct is not authorized to render advisory opinions interpreting the recusal statutes, Canon 3C of the Code closely tracks the language of 28 U.S.C. § 455, and the Committee is authorized to provide advice regarding the application of the Code.

The Committee recommends that courts announce a policy that for a fixed period after the retirement or resignation of a colleague, judges recuse themselves in any case in which the former colleague appears as counsel. The Committee’s experience suggests that a recusal period of one to two years would be appropriate, depending on the size of the bench and the degree and nature of interactions among the judges. The advantage of such a policy is that it is evenhanded, can be cited as supplying an objective basis for recusal, and may be formulated without respect to particular individuals. Advance adoption of a policy also gives fair notice of the practice restrictions a judge will face after resignation or retirement.

Even though a fixed period may have expired, a judge may be required to recuse in a case in which counsel for a party is a former judge with whom the sitting judge had a particularly close association. The standard applied here is the same as when a former associate or partner in a law firm, or a close friend, is an attorney in the case. The relevant considerations are set forth in Advisory Opinion No. 11 (“Disqualification Where Long-Time Friend or Friend’s Law Firm Is Counsel”). We have suggested a two-fold test. First, does the judge feel capable of disregarding the relationship; second, can others reasonably be expected to believe the relationship is disregarded? In applying that test, the judge should consider the closeness of the relationship, the length of service together, the size of the bench, and the period that has elapsed since the former judge left the bench.

In a large court, personal or social associations may not have been close. If the former judge had been a colleague for a short time, it may be easier to disregard the
past relationship, and more likely that litigants will feel the relationship will play no part in the decision. When the association between the sitting and former judge has been long, close, and continuing, the judge’s impartiality might reasonably be questioned, and the judge should consider recusal.

A discrete problem arises when a former judge appears as counsel in a case that was filed in his or her former court before he or she resigned. In such circumstances, the presiding judge should confirm that the attorney’s representation is not in violation of the applicable rules of professional responsibility. Although the rules of some jurisdictions may allow waiver of conflicts resulting from an attorney’s prior judicial service, the Committee concludes that waiver would not be appropriate to allow a former federal judge to represent parties in any case that had been assigned to the former judge’s individual docket during his or her judicial tenure. See generally ABA Rule 1.12(a) (“[A] lawyer shall not represent anyone in connection with a matter in which the lawyer participated personally and substantially as a judge . . . unless all parties to the proceeding give informed consent, confirmed in writing.”). Appropriate steps may include review of the docket sheet to insure the case was not previously assigned to the attorney during his or her judicial service or inquiry of the parties.

If the principles stated here are followed, the Committee finds no objection to appearances by former judges. That the former colleague may have superior knowledge of the viewpoints of the sitting judges does not require disqualification. The same information is available from a thorough study of the sitting judge’s opinions, or from observation of the judge in the courtroom. Lawyers who frequently litigate before a particular judge may acquire the same type of information, yet no one would suggest recusal or disqualification in such cases.

If a judge sits in a case in which a former colleague appears as counsel, care should be exercised in the courtroom to avoid using or permitting indications of familiarity. The former colleague should not use or be called by his or her former title. See Advisory Opinion No. 72 (“Use of Title ‘Judge’ by Former Judges”). First names and references to past association, events, or discussions should be avoided.

Absent special circumstances giving rise to reasonable questions regarding the impartiality of the sitting judge, the fact that a former judge is an associate or partner of the law firm appearing in the case, where the former judge does not appear or work on the case, does not of itself require recusal of the judge. Advisory Opinion No. 11, pertaining to the law firm of a close friend, sets forth the considerations here. The judge should, however, be alert to concerns relating to disqualification of the firm which, like disqualification of the former judge, is governed by the relevant jurisdiction’s rules of professional responsibility. See, e.g., ABA Rule 1.12(c) (“If a lawyer is disqualified by paragraph (a), no lawyer in a firm with which that lawyer is associated may knowingly undertake or continue representation in the matter unless: (1) the disqualified lawyer is timely screened from any participation in the matter and is apportioned no part of the
fee therefrom; and (2) written notice is promptly given to the parties and any appropriate tribunal to enable them to ascertain compliance with the provisions of this rule.

June 2009
Committee on Codes of Conduct Advisory Opinion
No. 71: Disqualification After Oral Argument

This opinion considers the recusal obligations of the remaining judges on a panel when one judge must recuse after the matter has been argued. Inquiries have raised two questions regarding this situation: (1) whether a decision that has been entered must be vacated, and the case submitted to a new panel, when it is discovered after entry of the decision that one of the judges who participated in it was disqualified; and (2) whether, after a panel has conferred but has not reached a decision, a judge finds that he or she is disqualified, the other judges are also disqualified or may proceed to decide the case?

The first question encompasses areas beyond this Committee’s authority. Determination of what circumstances may taint a decision already entered is a judicial function, not that of a committee established to advise on ethical standards of the conduct of judges.

The Committee does advise that a judge should disclose to the parties the facts bearing on disqualification as soon as those facts are learned, even though that may occur after entry of the decision. The parties may then determine what relief they may seek and a court (without the disqualified judge) will decide the legal consequence, if any, arising from the participation of the disqualified judge in the entered decision. Similar considerations would apply when a judgment is entered in a district court by a judge and it is later learned that the judge was disqualified.

The second question, because it concerns the appearance of impropriety and Canon 3C of the Code of Conduct for United States Judges, is within the Committee’s purview. Canon 3C(1) provides that “[a] judge shall disqualify himself or herself in a proceeding in which the judge’s impartiality might reasonably be questioned . . . .” The Committee is of the opinion that the remaining two judges on the panel are not disqualified merely because they conferred with the disqualified judge. Numerous situations arise in which a judge becomes aware of an important fact and yet must proceed to decide without regard to that fact (e.g., inadmissible evidence in a trial). Those who might believe that the disqualified judge exerted influence on the other two, and those who might believe the disqualified judge would attempt to influence his colleagues on the new panel, are unlikely to be satisfied regardless of what is done. Canon 3C looks to disqualification when the impartiality of the two remaining panel members can “reasonably be questioned.” The Committee believes that no reasonable basis exists for questioning the impartiality of the remaining panel members when the third judge recuses, whether that recusal occurs after oral argument or after conference on the case.

The Committee notes that recusal decisions are also governed by the recusal statutes, 28 U.S.C. §§ 455 and 144, and the case law interpreting them. Although the Committee on Codes of Conduct is not authorized to render advisory opinions
interpreting §§ 455 and 144, Canon 3C of the Code of Conduct for United States Judges closely tracks the language of § 455, and the Committee is authorized to provide advice regarding the application of the Code.

June 2009
Committee on Codes of Conduct Advisory Opinion
No. 72: Use of Title “Judge” by Former Judges

This opinion considers the use of the title “judge” by former judges who have returned to the practice of law and whether sitting judges have any ethical responsibilities relating to such use.

Historically, former judges have been addressed as “judge” as a matter of courtesy. Until recently there have been very few former federal judges. With federal judges returning to the practice of law in increasing numbers, ethical considerations arise. The prospect of former federal judges actively practicing in federal courts turns what otherwise might be an academic question into a matter of practical significance.

Canon 2A of the Code of Conduct for United States Judges instructs judges to “act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.” A litigant whose lawyer is called “Mr.,” and whose adversary’s lawyer is called “Judge,” may reasonably lose a degree of confidence in the integrity and impartiality of the judiciary. In addition, application of the same title to advocates and to the presiding judicial officer can tend to demean the court as an institution. Judges should insure that the title “judge” is not used in the courtroom or in papers involved in litigation before them to designate a former judge, unless the designation is necessary to accurately describe a person’s status at a time pertinent to the lawsuit. The Committee notes that recusal obligations that may arise related to the appearance of a former judicial colleague are addressed in Advisory Opinion No. 70.

June 2009
Committee on Codes of Conduct Advisory Opinion
No. 73: Providing Letters of Recommendation and Similar Endorsements

Judges are often asked for letters of recommendation or other endorsements of particular persons. These requests come in a variety of circumstances. They may include requests on behalf of applicants for admission to colleges or law schools, persons seeking election or appointment to governmental offices, persons seeking appointment or employment by public and private entities, and persons seeking other forms of favor or consideration. This opinion considers how a judge should respond to such requests. It does not deal with recommendations for judicial office or appointments to executive branch positions requiring Senate confirmation, subjects that are covered by Advisory Opinion No. 59.

Because such requests, and the entities to which a recommendation would be addressed, are so varied, no single rule is universally applicable. Judges receiving such requests should evaluate them in the light of certain established ethical considerations under the Code of Conduct for United States Judges.

To start, it is clear under Canon 5 of the Code that a judge should not recommend persons seeking election to political office, or otherwise permit himself or herself to become involved in politics.

With respect to non-political recommendations, judges should pay mind to the Canon 2B requirement that a judge “should [not] lend the prestige of the judicial office to advance the private interests of the judge or others . . . .” Accordingly, at the very least, a judge should not make a recommendation in support of a commercial venture, or when a recommendation is, or could reasonably appear to be, requested primarily because of the prestige of office. This is very likely to be the case whenever the relationship between the judge and the person seeking the recommendation is such that the judge is in no better position than many others would be to evaluate that person.

It must be recognized, however, that judges are members of society, and of the community at large, and that not every action of a judge is intended, or could reasonably be perceived, as an assertion of the prestige of judicial office. When a judge is personally aware of facts or circumstances that would facilitate an accurate assessment of the individual under consideration, a judge may properly communicate that knowledge, and his or her opinions based thereon, to those responsible for making decisions concerning the applicant. The judge’s awareness may be based, for example, on a longstanding and intimate knowledge of the person or special knowledge derived from some relationship, such as that with a law clerk. The judge may communicate this information through a letter of recommendation or through another format.

In light of concerns under Canon 2B, some judges have adopted a policy of inviting the applicant to list the judge as a reference, instead of initiating letters of
recommendation, with the understanding that, if requested to do so, the judge would respond with information known to the judge concerning the applicant.

In any event, when responding to any type of request, the judge should carefully consider whether the recommendation or endorsement might reasonably be perceived as exerting pressure by reason of the judicial office, and should avoid any action that could be so understood.

December 2017
Committee on Codes of Conduct Advisory Opinion
No. 74: Pending Cases Involving Law Clerk’s Future Employer

This opinion addresses the issue of appropriate procedures a judge should take when it is contemplated that a law clerk may accept employment with a lawyer or law firm that is participating in a pending case.

The Committee advises that such a circumstance does not in itself mandate disqualification of the judge. The law clerk, however, should have no involvement whatsoever in pending matters handled by the prospective employer. The Committee believes that the need to exclude the law clerk from pending matters handled by the prospective employer arises whenever an offer of employment has been extended to the law clerk and either has been, or may be, accepted by the law clerk; the formalities are not crucial.

The occasion for these precautionary measures does not arise merely because the law clerk has submitted an application for employment, but there may be situations in which, because of the nature of the litigation, or the likelihood that a future employment relationship with the clerk will develop, the judge feels it advisable to take these precautionary measures even at a preliminary stage of the employment discussions.

To deal appropriately with this issue, the judge should take reasonable steps to require that law clerks keep the judge informed of their future employment plans and prospects. See, generally, Canon 4C(4) of the Code of Conduct for Judicial Employees.

In appropriate circumstances, the judge may elect to inform counsel that the law clerk may have a prospective employment relation with counsel and that the procedures described here are being followed.

June 2009
Committee on Codes of Conduct Advisory Opinion
No. 75: Disqualification Based on Military or Other Governmental Pensions

A number of judges receive pensions earned in the course of their military service or other governmental service. This opinion considers whether such a judge should disqualify when a military service or public body is a party.

The Committee advises that no reasonable basis for questioning the impartiality of the judge is raised when a judge who is receiving a military pension participates in a proceeding in which a military service is a party. See Canon 3C(1) of the Code of Conduct for United States Judges. Likewise, judges receiving a pension for other governmental service—local, state or federal—are not disqualified from cases in which the governmental entity is a party. Judges regularly participate in cases in which the federal government, from which the judge receives compensation for judicial services, is a party, without raising any reasonable question of the judge's impartiality.

Disqualification would be mandatory, however, when the outcome of the case could substantially affect the amount of the judge's pension or the judge's right to receive it. Canon 3C(1)(c). The mere presence of the military service or governmental entity as a party, however, when a judge's interest in the pension is not substantially affected, raises no question of disqualification.

The Committee notes that recusal decisions are also governed by the recusal statutes, 28 U.S.C. §§ 455 and 144, and the case law interpreting them. Although the Committee on Codes of Conduct is not authorized to render advisory opinions interpreting §§ 455 and 144, Canon 3C of the Code of Conduct for United States Judges closely tracks the language of § 455, and the Committee is authorized to provide advice regarding the application of the Code.

June 2009
Committee on Codes of Conduct Advisory Opinion
No. 76: Service of State Employees as Part-Time United States Magistrate Judges

This opinion considers the propriety of appointing state or local public defenders or prosecutors as part-time United States Magistrate Judges.

The Committee advises that it would be inappropriate to appoint as part-time United States Magistrate Judges persons who are simultaneously serving as state or local public defenders or prosecutors. Likewise, it would be inappropriate for a part-time United States Magistrate Judge to serve as a state or local public defender or prosecutor.

The Judicial Conference has adopted Conflict-of-Interest Rules for Part-time Magistrate Judges. See Guide to Judiciary Policy, Vol. 2C, § 1110. Rule 3 provides that a part-time magistrate judge may appear as counsel in criminal actions in a state court. That provision relates to appearances as private counsel for the defendant and is permissible so long as it does not interfere with the performance of duty as a part-time magistrate judge.

Appearances in court of a part-time magistrate judge as a representative of the state or local government, whether as prosecutor or public defender, implicates two Canons of the Code of Conduct for United States Judges: Canon 1, that a judge should uphold the independence of the judiciary, and Canon 2, that a judge should avoid impropriety and the appearance of impropriety. Dual employment of the same person in the federal and in state or local judicial systems would be in conflict with the intent of these canons.

June 2009
Committee on Codes of Conduct Advisory Opinion
No. 78: Disqualification When Judge Is a Utility Ratepayer or Taxpayer

This opinion considers whether a judge needs to recuse when a party to a proceeding is a utility of which the judge is a customer or a governmental entity to which the judge pays taxes.

The Committee advises that mere status as a utility ratepayer, or as a taxpayer, is not in itself disqualifying. If the outcome of the proceeding could substantially affect the amount to be paid by the judge to the utility or in taxes, disqualification under Canon 3C(1)(c) of the Code of Conduct for United States Judges would be required.

The Committee notes that recusal decisions are also governed by the recusal statutes, 28 U.S.C. §§ 455 and 144, and the case law interpreting them. Although the Committee is not authorized to render advisory opinions interpreting §§ 455 and 144, Canon 3C of the Code closely tracks the language of § 455, and the Committee is authorized to provide advice regarding the application of the Code.

June 2009
Committee on Codes of Conduct Advisory Opinion
No. 79: Use of Chambers, Resources, and Staff for Law-Related Activities Permitted by Canon 4

This opinion addresses the use of judicial resources for the preparation of writings, speeches, and teaching materials that are related to the law, the legal system, and the administration of justice. Although we have attempted to furnish some rules of general applicability to govern the use of such resources, we recognize that questions pertaining to particular uses will often be context dependent and will require line-drawing on the part of the judge involved. Consequently, we have incorporated a number of examples into our opinion to offer additional guidance with respect to this difficult issue.

Guidelines for determining whether an extrajudicial activity is law-related or non-law-related are contained in Advisory Opinion No. 93. This opinion addresses only the use of chambers, resources and staff for law-related extrajudicial activity. Advisory Opinion No. 80 addressed the use of judicial resources for activities that are not related to the law.

The use of judicial resources— including judicial chambers and staff, as well as legal research materials— for extrajudicial law-related activities is both authorized and limited by Canon 4 of the Code of Conduct for United States Judges. Under Canon 4, a “judge may engage in extrajudicial activities, including law-related pursuits” and “may speak, write, lecture, and teach on . . . law-related . . . subjects.” In particular, the Code specifies that the following law-related pursuits are permissible:

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.

Canon A(1)-(3).¹

In fact, the Code encourages judges to involve themselves in extrajudicial law-related activities:

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.

Commentary to Canon 4.

Although the authorization is limited, the Code allows judges to use judicial resources when pursuing permissible extrajudicial law-related activities. In particular, the Code states the following: “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.” Canon 4G. To some extent, then, the Code contemplates that a judge may properly use judicial resources in furtherance of permissible extrajudicial law-related activities. This opinion therefore gives guidance regarding the application of Canon 4G to a judge’s involvement in law-related activities.

Two steps are required to determine whether the use of judicial resources for law-related activities is appropriate. First, the judge must determine whether the activity is “judicial” or “extrajudicial.” If the activity is judicial, then the strictures of Canon 4G do not apply and a judge may make unlimited use of judicial resources. If the activity is extrajudicial, then the judge must next determine whether the use of judicial resources is “not to any substantial degree.” Canon 4G.

In determining the scope of judicial duties, we start with the premise that a judge’s central function is to decide cases. Accordingly, any activity directly related to this function is clearly judicial in nature. By itself, however, such a definition constitutes too limited a view of a judge’s official duties. In addition to deciding cases, society properly expects a judge to supervise and educate members of the bar in the practice of
law in the judge's court and to act as an official representative of the judiciary. A federal judge is performing a judicial function when, for example, the judge gives a lecture to the local bar on the rules of procedure in the judge's court, gives a Law Day speech at the local high school, or presents a civics lecture on the judiciary to local community groups. Ultimately, however, the test for whether a particular activity qualifies as judicial rather than extrajudicial depends on whether the activity may properly be considered part of the judge's official duties.

Another rough way to gauge whether a judge is performing a judicial function is to look to who is paying the judge for the activity in question. A judge may not properly receive "compensation" beyond his or her normal salary for performance of a judicial activity. It generally follows that if a judge concludes it would be appropriate to receive compensation from a party other than the judicial branch of the United States for a law-related activity, the judge has necessarily determined that the activity is extrajudicial. However, this inference does not mean that all uncompensated activity should be regarded as judicial activity. See, e.g., Ethics Reform Act, 5 U.S.C. App., §§ 501-505 (restricting the receipt of outside earned income and honoraria).

Once a law-related activity is determined to be extrajudicial, Canon 4G prohibits a judge from using judicial resources to any substantial degree. In interpreting this restriction, the Committee is mindful that judicial resources are held in public trust to assist judges in performing their official duties, and that to allow judges to draw upon these resources for extrajudicial activities diverts these resources from the function for which they were dedicated. At the same time, we recognize that judges are in a unique position to contribute to the improvement of the law and the judicial system by means of extrajudicial activities, and that these activities indirectly assist judges in the discharge of their official duties. See Commentary to Canon 4. Allowing judges some limited judicial resources to perform these activities permits such activities to be accomplished more efficiently, with resulting benefits for the functioning of the judge's entire office and the public more generally.

With these considerations in mind, we believe the following three criteria must be satisfied in order for a judge's use of judicial resources for extrajudicial activity to qualify as insubstantial. First, the absolute amount of staff time devoted to such activity must be minor or limited in amount. Ordinarily, the use of law clerks for one or two days for "blue-booking," cite-checking, editing, or discrete research assignments will qualify as a minor or limited use of law clerk time. By contrast, the use of law clerks for extensive research for, or drafting of, a substantial scholarly article ordinarily will not satisfy the requirements of this first criterion. These examples, of course, are not intended to represent bright-line rules; the amount of time for which a staff member is used must always be examined in the context of the individual's particular duties.

Second, if the extrajudicial activity is "compensated," a judge should not utilize judicial staff except as provided here. A judge may use judicial resources such as the library, chambers, and computers for compensated activity so long as this use is within
reasonable limits and the government incurs no incremental cost. However, the use of judicial personnel to assist the judge in performing activities for which extra compensation is to be received raises too great a risk of abuse to permit. The danger exists that a judge may pressure current or potential staff members to work on the judge’s projects, and this danger is compounded by the difficulty of distinguishing between a staff member’s official and unofficial time. Furthermore, extra compensation paid by the judge to the staff does not eliminate the danger that public resources will be misused for private gain. Thus, a judge may not avoid these restrictions on the use of judicial personnel for compensated activities, even if the judge offers to share this compensation with his or her staff.

We note that under the Code “compensation” is different than “expense reimbursement.” See, e.g., Canon 4H(1) & (2) (distinguishing “compensation” from “expense reimbursement”). “Expense reimbursement” within the meaning of the Code is limited “to 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.” Canon 4H(2) (emphasis added.). As a result, insubstantial use of chambers staff is generally permitted where the extrajudicial law-related activity results in “expense reimbursement” to the judge, but the judge does not receive “compensation.” The absence of a profit motive reduces the risk of abuse mentioned in the preceding paragraph.

Third, the judge’s use of judicial resources for extrajudicial law-related activity must not interfere with the judge’s official duties. No judicial resources should be devoted to extrajudicial tasks if the judge needs these resources to perform judicial functions in a timely fashion. Accordingly, even a minor use of judicial resources may be regarded as substantial under Canon 4G if such use has an adverse impact on the business of the court.

Finally, when federal statutes or regulations impose other more stringent duties and obligations on judges pertaining to the appropriate use of government resources, these statutes or regulations, of course, control.

Note for Advisory Opinion No. 79

1 Other legal activities outside the official judicial function, such as private arbitration or mediation and the practice of law, are prohibited. Canon 4A(4)-(5). For these prohibited activities, it would never be appropriate to use judicial resources.

June 2009
Committee on Codes of Conduct Advisory Opinion
No. 80: Use of Chambers, Resources, and Staff for Activities Permitted by
Canon 4 that are Not Related to the Law

In a pluralistic society, judges can enrich their communities and their own lives by participation in those civic, charitable, and avocational activities best suited to their talents, interests, and backgrounds. A judge can preserve the integrity of the judicial office without undergoing complete isolation from community life.

In this opinion, the Committee supplies advice concerning the use of judicial resources by judges for activities that are not related to the law. Guidelines for determining whether an extrajudicial activity is law-related or not are contained in Advisory Opinion No. 93. Advisory Opinion No. 79 addresses the use of judicial resources for law-related extrajudicial activities.

Canon 4 of the Code of Conduct for United States Judges permits judges to engage in a variety of activities not related to the law. In pertinent part, Canon 4B states: “A judge may engage in extrajudicial activities, including . . . civic, charitable, educational, religious, social, financial, fiduciary, and governmental activities, and may speak, write, lecture, and teach on . . . nonlegal subjects.” Noting that a “[c]omplete separation of a judge from extrajudicial activities is neither possible nor wise,” and observing that “a judge should not become isolated from the society in which the judge lives[,] the Code makes plain that, subject to limitations, judges “may [] engage in a wide range of non-law-related activities.” Commentary to Canon 4.

There are, however, both general and specific limitations to that authorization. For example, “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 [or] lead to frequent disqualification[,]” Canon 4. Specific limitations also apply, such as to a judge’s involvement in civic and charitable activities; fund-raising activity; financial ventures; fiduciary matters; and governmental committees and commissions. Canon 4B-F. Judges must also refrain from political activity. Canon 5. Still further, a judge should not use “the judicial office to advance the private interests of the judge or others . . . .” Canon 2B.

We reaffirm the need for judges to observe these limits on non-law-related activities. That said, where a non-law-related activity is permitted by Canon 4, there is a further question whether the judge may make use of judicial resources, including chambers, facilities, and staff, and, if so, to what extent.

Although the authorization is limited, the Code allows judges to use judicial resources when pursuing permissible non-law-related activities. In particular, the Code states: “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.” Canon 4G.¹ To some extent, then, the Code contemplates that a judge may properly use judicial resources in furtherance of the judge’s permissible non-law-related activities; this Advisory Opinion gives guidance regarding the application of Canon 4G to a judge’s involvement in non-law-related activities.

First, Canon 4G prohibits a judge from using judicial resources to any substantial degree. In interpreting this restriction, the Committee is mindful that judicial resources are held in public trust to assist judges in performing their official duties, and that to allow judges to draw upon these resources for extrajudicial activities diverts these resources from the function for which they were dedicated. We are also mindful that, unlike extrajudicial law-related activities, which are encouraged by the Code, non-law-related activities are permissible, but not specifically encouraged. See Commentary to Canon 4. Therefore, a judge contemplating the use of judicial resources for non-law-related activities should start with a sensitivity to these twin observations and limit use accordingly.

Second, we believe that many of the principles regarding use of judicial resources for law-related activities set forth in Advisory Opinion 79 are applicable to non-law-related activities. (Although we do not advise that a permissible use of judicial resources for a law-related activity is necessarily permissible for a non-law-related activity). Thus, the absolute amount of staff time devoted to non-law-related activities must be minor or limited in amount. For example, the use of staff to maintain extensive files, correspondence, or equipment regarding non-law-related activities would be inappropriate. Furthermore, if the non-law-related activity is “compensated,” a judge should not utilize judicial staff. In addition, no judicial resources should be devoted to non-law-related activities if the judge needs these resources to perform his or her judicial functions in a timely fashion. Accordingly, even a minor use of judicial resources may be regarded as substantial under Canon 4G if it has an adverse impact on the business of the court.

Third, there are some categories of use that are generally appropriate. For example, a judge may perform a permissible non-law-related activity in chambers so long as the activity does not interfere with the full and prompt performance of judicial duties and so long as the government incurs no incremental costs. Appropriate use of judicial resources is also exemplified by occasional telephone calls, scheduling, and storage of files, books, or equipment.

Fourth, anything more than the most minor use of government-owned supplies for non-law-related activities is inadvisable. Thus, it is prudent to use the judge’s own funds to purchase the supplies necessary to perform the non-law-related activity. For example, a judge should purchase postage for use in non-law-related activities.

Finally, when federal statutes or regulations impose other, more stringent duties and obligations on judges pertaining to the appropriate use of government resources, those statutes or regulations, of course, control.
Note for Advisory Opinion No. 80

With the most recent revision of the Code, the prior “de minimis” standard for use of judicial resources for non-law-related activities was omitted. Compare Code of Conduct for United States Judges, Canon 4G (2009) with Code of Conduct for United States Judges, Canon 5H (last clarified, September, 2000). The standard stated in Canon 4G of the present Code is now the same for law-related and non-law-related activities.

June 2009
Committee on Codes of Conduct Advisory Opinion
No. 81: United States Attorney as Law Clerk’s Future Employer

In Advisory Opinion No. 74, the Committee dealt with appropriate procedures when a law clerk has been extended an offer of employment by a lawyer or a law firm and the offer has been or may be accepted by the clerk. This opinion deals with appropriate procedures when a clerk has been offered employment by a particular United States Attorney’s office, and the offer has been or may be accepted by the law clerk. The United States Attorney’s office is not a law firm and the law clerk would have no financial interest in that office. See Advisory Opinion No. 38 (“Disqualification When Relative Is an Assistant United States Attorney”). Nonetheless, participation by the law clerk in a pending case involving the prospective employer may reasonably create an appearance of impropriety and a cause for concern on the part of opposing counsel. See Canon 3F(1) of the Code of Conduct for Judicial Employees.

The judge should isolate the law clerk from cases in which that particular United States Attorney’s office appears. See Advisory Opinion No. 74.

To avoid a future appearance of impropriety or potential grounds for questioning the impartiality of the court, a former law clerk should be disqualified from work in the United States Attorney’s office on any cases that were pending in the court during the law clerk’s employment with the court. A court rule may be adopted for this purpose. See, e.g., Sup. Ct. R. 7; D.C. Circuit Rule 1(c).

June 2009
Committee on Codes of Conduct Advisory Opinion
No. 82: Joining Organizations

Judges are interested in joining a wide variety of organizations and are often invited to join different organizations. Under Canon 4 of the Code of Conduct for United States Judges, judges are authorized to contribute their time and energy to a wide range of organizations, subject to certain limitations. See Advisory Opinion No. 93 ("Extrajudicial Activities Related to the Law"). Indeed, the Code recognizes that "a judge should not become isolated from the society in which the judge lives." Commentary to Canon 4.

When contemplating joining an organization, a judge must consider carefully the Code’s fundamental commands to avoid impropriety or the appearance of impropriety, not lend the prestige of office, and not participate in activities that would detract from the dignity of the judge’s office, interfere with the performance of official duties, reflect adversely on the judge’s impartiality, or lead to frequent disqualification.

The motivation of the numerous organizations that have invited judges to join may vary from a simple desire to have the benefit of the judge’s advice to a desire to employ the prestige of the judge’s office to advance the organization’s own interests. The activities of the inviting organization also vary widely. The Committee is neither equipped nor chartered to investigate or evaluate the motivation or activities of the inviting organization. Although the Committee is always available to provide specific guidance, in general individual judges must determine case-by-case whether it is appropriate to join a particular organization.

In Advisory Opinion No. 2, the Committee details factors that judges should consider when deciding whether to serve on the governing board of a nonprofit organization. The Committee believes the factors apply as well to the decision to join an organization (although the judge’s determination may be affected by what role the judge anticipates in the organization) and so repeats them here. In addition to the basic principles outlined above, a judge should consider these factors before joining an organization:

- The judge must not receive any compensation for service to the organization, although the judge may receive reimbursement for expenses reasonably related to that service.
- The judge’s membership must not interfere with the prompt and proper performance of judicial duties. “The duties of judicial office take precedence over all other activities.” Canon 3. Accordingly, a judge should consider existing judicial and extrajudicial obligations before joining an organization.
• The judge may not join any organization that practices invidious discrimination. Canon 2C.

• The judge should not become a member of an organization “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.” Canon 4B(1). This proscription would likely preclude judges’ involvement with certain types of nonprofit organizations, such as legal aid bureaus. See also Advisory Opinion Nos. 28 (“Service as Officer or Trustee of Hospital or Hospital Association”) and 40 (“Service on Governing Board of Nonprofit Organization that Tends to Become Involved in Court Proceedings”).

• The judge must not personally engage in fund-raising solicitation for the organization, subject to the exceptions noted in Canon 4C regarding family members and certain judicial colleagues. The judge should not use or permit the use of the prestige of office for fund-raising purposes. Canon 4C. However, a judge may assist a nonprofit organization in planning fund-raising activities. Id. Further, the organization’s letterhead may list the judge’s name and title if comparable information and designations are listed for others. Commentary to Canon 4C. See also Advisory Opinion No. 35 (“Solicitation of Funds for Nonprofit Organizations, Including Listing of Judges on Solicitation Materials”).

• The judge may not give investment advice to the organization, although it is acceptable to sit on a board that is responsible for approving investment decisions. Canon 4B(2).

• The judge should not join an organization if the judge perceives there is any other ethical obligation that would preclude such membership. For example, if the organization takes public positions on controversial topics, association with the group might raise a reasonable question regarding the judge’s impartiality. The judge should bear in mind that the public will normally be uninformed of any restriction or qualification that the judge may have placed on affiliation with the organization.

• The judge should remain knowledgeable about the group’s activities in order to regularly reassess whether participation in the organization continues to be appropriate.

June 2009
Committee on Codes of Conduct Advisory Opinion
No. 83: Payments to Law Clerks from Future Law Firm Employers

This opinion discusses the ethical propriety of law clerks receiving payments, either before or during their clerkships, from the law firms for which they have agreed to work following their clerkships. The Committee considers payments from law firms in the form of bonuses, payments for deferring employment start dates, salary advances, benefits such as health insurance, or reimbursement for bar-related and relocation expenses. The guidance in this opinion would also apply to any other form of payments offered to clerks by their prospective law firm employers. For the purposes of discussion, the Committee assumes that the clerk will not participate in any judicial decisions that involve the clerk’s future employer. See Advisory Opinion No. 74 (“Pending Cases Involving Law Clerk’s Future Employer”).

The Committee notes that the guidance in this opinion applies equally to law clerks who are paid for their work by the United States government and to individuals who work for judges in an unpaid capacity. It does not matter what term is used for these individuals: “volunteer law clerk,” “extern,” “intern,” etc. Like paid clerks, these volunteers are subject to the Code of Conduct for Judicial Employees (“Employees’ Code”). Voluntary and uncompensated services to the court are governed by 28 U.S.C. § 604(a)(17)(A), wherein the Clerk of Court is delegated by the Director of the Administrative Office to accept such services. See Guide to Judiciary Policy, Vol. 12, §§ 550.20 and 550.80. As a matter of judicial policy, most volunteers are deemed judicial employees, albeit uncompensated ones. Id. The Employees’ Code applies to all judicial employees (except those officials or employees who have governing codes of conduct from other sources), and the Committee has previously recognized that unpaid interns should follow the Employees’ Code. Additionally, 5 U.S.C. § 7353, which provides that employees of the judicial branch are restricted in when they can receive or solicit gifts or other things of value from those seeking official action or doing business with the court, also applies to unpaid externs.

Canon 4 of the Employees’ Code provides guidance on whether law clerks may receive payments from prospective law firm employers during their clerkships. Canon 4C states that “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.” Canon 4B(3) instructs that judicial employees “should not solicit or accept funds from lawyers or other persons likely to come before the judicial employee or the court.” Additionally, 5 U.S.C. § 7353(a) provides that:

no . . . employee of the executive, legislative, or judicial branch shall solicit or accept anything of value from a person –

(1) seeking official action from [or] doing business with . . . the individual’s employing entity; or
(2) whose interests may be substantially affected by the performance or nonperformance of the individual’s official duties.

Law clerks are offered payments by prospective law firm employers for a variety of reasons. Sometimes firms provide a “clerkship bonus” that is paid solely on the basis that the individual served as a law clerk for a judge. In other instances firms provide a bonus uniformly to all new associates of the firm, such as a “signing bonus” paid when the offer of employment is accepted. Some firms have developed programs through which associates will defer the start date to their firm employment in return for specified payments. Firms also often provide reimbursement for expenses related to relocation and taking the bar exam. Some firms offer salary advances that must be repaid when the law clerk begins working at the firm. Some of these assorted payments are scheduled for acceptance before the clerkship, some during, and some after. Based on the ethical considerations raised, we will discuss acceptance of payments according to when the payments would be accepted.

Acceptance of Payments Before the Clerkship: The Code of Conduct for Judicial Employees applies only to “employees of the Judicial Branch,” not to prospective employees. Similarly, 5 U.S.C. § 7353 applies only to “employees” of the judicial branch. Accordingly, a prospective law clerk is not prohibited from accepting a payment from a law firm before the beginning of the clerkship, provided that the law clerk is not legally obligated to repay the firm. However, judges are advised against appointing volunteer externs who are provided payments by law firms before, during or after the externship that are dependent on the individual serving as a judicial extern, for instance through a starting date deferral program that included such a restriction. This restriction would not preclude appointing, subject to other ethical restrictions, an extern who would receive a deferral payment before or following (though not during) an externship that was not tied to serving as a judicial extern.

A judge should not permit a law clerk to accept a salary advance from a law firm, either before or during the clerkship. The Committee views a salary advance as a loan from the law firm to the law clerk, through which the law firm effectively provides a supplement to the law clerk’s salary during the clerkship. Acceptance of a salary advance could undermine public confidence in the integrity and independence of the court, and is contrary to Canon 4B and 4E of the Employee Code.

Acceptance of Payments During the Clerkship: A law clerk may not, during his or her service as a law clerk, accept any payment or salary advance from a law firm, except as noted below regarding reimbursement. Accepting any payments during the clerkship would violate Canon 4B(3) and 4C, as well as the prohibitions of 5 U.S.C. § 7353. In addition, benefits paid for by a law firm may not be accepted during the period of service to the courts; for example, a volunteer extern may not accept health insurance benefits from a law firm during the term of the externship.
The Committee has also advised that a law clerk may not accept, during a clerkship, travel and other expenses associated with attending a “retreat” with a law firm that is the law clerk’s future employer. Accepting such payments would be contrary to Canon 2 (avoiding the appearance of impropriety) and Canon 4C(2) of the Employee Code (prohibiting the acceptance of a gift from anyone seeking official action from or doing business with the court or whose interests might be substantially affected by the performance or nonperformance of an employee’s official duties). See also, Judicial Conference Gift Regulations § 3 (Guide to Judiciary Policy, Vol. 2C, § 620.35(a)).

Acceptance of Payments Following the Clerkship: As with prospective clerks, the Code and § 7353 do not apply to former clerks, and so would not prohibit acceptance by former clerks of payments such as clerkship bonuses. The Committee includes this category, however, to caution judges against appointing volunteer externs who may receive payments following their externships that are tied specifically to serving as a judicial extern.

Reimbursement for Bar-Related and Relocation Expenses: The Committee observes no problem with law clerks accepting reimbursement for relocation or bar-related expenses from a future employer, whenever that reimbursement is received. Prospective judicial employees are not covered by the Code, so the acceptance of reimbursement before the clerk begins work for the judge would not be prohibited. With regard to accepting such reimbursement payments during the clerkship, the Judicial Conference Gift Regulations, § 5(b)(6), specifically permits a judicial employee “who has obtained employment to commence after judicial employment ends” to accept “reimbursement of relocation and bar-related expenses customarily paid by the employer, so long as conflicts of interest are avoided.” Judicial Conference Gift Regulations § 5(b)(6) (Guide to Judiciary Policy, Vol. 2C, § 620.35(b)(6)).

The Committee recognizes, of course, that some judges may prohibit their future or present law clerks from accepting bonuses or other payments that are permissible under this opinion. Accordingly, the present or future law clerk should consult with his or her judge before accepting any payment or reimbursement from the clerk’s future law firm.

Note for Advisory Opinion No. 83

1 This guidance may not apply to certain types of volunteers who are not considered to be judicial employees. See, e.g., Guide to Judiciary Policy, Volume 12, § 550.60 (College Work-Study Programs); § 550.70 (Cooperative Education and Fellowship Programs); and § 550.80 (Volunteers).

August 2011
Committee on Codes of Conduct Advisory Opinion
No. 84: Pursuit of Post-Judicial Employment

This opinion considers measures that judges contemplating retirement or resignation may appropriately take to explore post-judicial employment.

A judge is subject to a number of obligations under the Code of Conduct for United States Judges in relation to this exploration. Canon 2A directs judges to avoid impropriety and the appearance of impropriety, and to act “at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.” Canon 3 instructs that the “duties of judicial office take precedence over all other activities.” Canon 3C(1) requires a judge to “disqualify himself or herself in a proceeding in which the judge’s impartiality might reasonably be questioned.” Canon 4D(3) provides that “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.” Canon 4D(1) also provides that, while a judge may engage in remunerative activity, the judge “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.”

The Committee concludes that a judge contemplating retirement or resignation appropriately may explore a professional relationship with law firms or other potential employers, provided that the judge proceeds in a dignified manner and complies with the Code. Although this opinion discusses exploration of employment opportunities with a law firm, the principles discussed would apply to other potential employers.

After the initiation of any discussions with a law firm, no matter how preliminary or tentative the exploration may be, the judge must recuse, subject to remittal, on any matter in which the firm appears. Absent such recusal, a judge’s impartiality might reasonably be questioned. In addition, judges who are contemplating post-judicial employment with any private entity must comply with relevant provisions of the STOCK Act, Pub. L. No. 112-105, 126 Stat. 291 (2012). Among other requirements, the STOCK Act requires judges to submit a statement within three days of the commencement of any negotiation or agreement for post-judicial employment, and to file similar statements concerning recusal with respect to a future employer. For further information on complying with the STOCK Act, refer to the Guide to Judiciary Policy, Vol. 2C, Ch. 14.

In deciding what law firms to contact, a judge should be sensitive to public perspective and to obligations under the Code. At one extreme, a judge steers far from any impropriety or appearance of impropriety by negotiating only with firms that have not appeared before the judge. At the other extreme, a judge should refrain from negotiating with a firm, if the firm’s cases before the court are of a character or frequency such that the judge’s recusal (which would be required) would adversely affect litigants or would have an impact on the court’s ability to handle its docket. In
such cases, judicial duties would have to take precedence over the legitimate personal interest in post-judicial employment.

In this regard, the Committee believes that a judge properly may negotiate with a law firm that appears before the court on which the judge serves, but only if the judge’s recusal in such cases would not unduly affect the litigants or the court’s docket. For example, it may be feasible to transfer those cases to other judges on the court without undue burden. But a judge should not negotiate for future employment with a firm, if transferring the cases would unduly burden the court by causing undue delays to these and other pending cases, or unduly prejudice litigants by causing repetition and delays of proceedings.

A judge should not explore employment opportunities with a law firm that has appeared before the judge until the passage of a reasonable interval of time, so that the judge’s impartiality in the handling of the case cannot reasonably be questioned. The appropriate interval of time will depend upon all the particular facts and circumstances. If a judge begins negotiations for future employment, but later decides not to leave the bench, the judge should continue to recuse from cases involving the firms or entities with which the judge negotiated, subject to remittal. Again, the appropriate interval for such recusals depends on the circumstances, including the nature and scope of the negotiations, but the Committee recommends recusal, subject to remittal, for a period of at least one year from the conclusion of the negotiations.

The Committee has approved the propriety of the procedure whereby the judge makes known a future retirement or resignation date, and during a reasonable time in the interim between the announcement and the projected retirement date the judge would complete pending assignments but not take on new cases. However, in the case of an active judge, the Committee concluded that it would be inappropriate for a judge to withdraw from all judicial duties during the interim between such an announcement and the projected retirement date. That approach would violate the duty of an active judge to perform judicial duties and would violate the requirement that judicial duties take precedence over all other activities.

A variety of ethical questions may arise concerning activities related to a judge’s future employer. The Committee has advised that it is generally inappropriate for a judge to attend meetings or engage in communications with the judge’s future employer concerning the employer’s business. The Committee has advised, more generally, that attending social functions sponsored by a future employer gives rise to an appearance of impropriety, and therefore should be avoided until the judge’s resignation is effective.

Questions also may arise concerning a future employer’s desire to announce or otherwise advertise a judge’s post-judicial employment. On these questions, the Committee has advised that once the judge has actually resigned and joined the new employer, it is not improper for the employer’s formal announcement of affiliation to identify the office and court from which the judge retired or resigned. However, that
guidance assumes the announcement is made after the judge has left the bench. A post-resignation announcement avoids the appearance of impropriety because, after a judge has left the bench, the judge has no judicial position, and therefore no position to exploit. However, while a judge remains in office, this risk remains. In addition, the Committee has advised that by allowing a future employer to advertise the judge’s employment while the judge remains in office, the judge unavoidably lends the prestige of judicial office to advance the private interests of the future employer. Similarly, the prospect of a pre-resignation announcement raises Canon 2 concerns for the judge. Although the judge may not enjoy any immediate profit from the announcement, the judge’s future employer likely benefits from its association with a sitting judge, and the judge arguably stands to gain indirectly from the public advertisement of the judge’s post-judicial employment. It follows that announcements of the judge’s future employment made through interviews or contacts with the media are subject to the same restrictions.

April 2016
Committee on Codes of Conduct Advisory Opinion
No. 85: Membership and Participation in the American Bar Association

This opinion considers the propriety of a judge holding membership in the American Bar Association and actively participating in ABA programs, such as speaking on panels, considering that the ABA occasionally takes positions on controversial issues. It also discusses whether a judge who is an ABA member is required to recuse in a case in which the ABA files an *amicus curiae* brief.

The Commentary to Canon 4 specifically encourages participation in bar associations:

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 person specially learned in the law, a judge is in a unique position to contribute to the improvement of the law, the legal system, and the administration of justice, including revision of substantive and procedural law and improvement of criminal and juvenile justice. To the extent that the judge’s time permits, the judge is encouraged to do so, either independently or through a bar association, judicial conference, or other organization dedicated to the improvement of the law.

Canon 4 further provides, however, that 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 [in Canons 4A through 4H].” The Committee has set forth considerations judges should take into account when joining organizations or serving on the boards of organizations in *Advisory Opinion Nos. 2* and *82*. *Advisory Opinion 93* discusses generally participation in extrajudicial activities related to the law.

The Committee advises that it is permissible for a judge to be a member or officer of an open membership bar association and that recusal is not required where such a bar association is a party or files an *amicus curiae* brief, so long as the judge has not participated in the development of the bar association position on the matter in question in the suit. See *Advisory Opinion Nos. 34* (“Service as Officer or on Governing Board of Bar Association”), *52* (“American Bar Association or Other Open-Membership Bar Association Appearing as a Party”), *82* (“Joining Organizations”), and *93* (“Extrajudicial Activities Related to the Law”).

In the Committee’s view, the judge’s membership in the ABA and participation on an ABA panel, as long as the panel is not devoted to a controversial subject, cannot
reasonably be viewed by the bar or the public as an endorsement of any of the positions
the ABA has occasionally taken on controversial issues.

June 2009
Committee on Codes of Conduct Advisory Opinion
No. 86: Applying the Honoraria, Teaching, and Outside Earned Income Limitations

This opinion considers an application of the rules governing judges regarding honoraria, teaching and outside earned income. The Committee takes as an example a judge who has already received for the calendar year “outside earned income” equal to the 15% limit imposed by 5 U.S.C. App. § 501(a)(1), but, in addition, plans to deliver in the same year a lecture at a law school for which the school would ordinarily pay a stipend. (The Committee notes at the outset that § 502(b) was amended in 1991 to exclude from the 15% cap income received by senior justices and judges for approved teaching.) We discuss three questions arising from this situation.

1. Is There An Option to Treat the Stipend for the Lecture Either as Honorarium or as Compensation from Teaching?

The lecture falls squarely within the definition of teaching in the Judicial Conference Ethics Reform Act Regulations on Outside Earned Income, Honoraria, and Outside Employment, § 5(b) (“course of study at an accredited educational institution or participating in an educational program of any duration that is sponsored by such an institution and is part of its educational offering. Examples of the latter are a lecture . . . .”). Regulation § 4(b)(2) defines honorarium to mean a payment for, *inter alia*, a speech, but excludes from the definition of an honorarium “[c]ompensation received for teaching activity, . . . approved pursuant to § 5 hereof.” The Committee addresses whether the regulation could be read to give the judge an option to treat the lecture stipend *either* as an honorarium or as compensation from teaching, i.e., by reading Regulation § 4(b)(2) as excluding teaching compensation from the definition of honoraria only if the teaching activity is actually approved in the prescribed manner. Thus, by declining to obtain such approval, the judge in the example could in effect elect to treat the lecture stipend as an honorarium. The judge would then be able to take advantage of § 501(c) of the statute, which would permit the law school on behalf of the judge to pay the lecture stipend (up to $2,000) to charity.

The Committee’s interpretation of the statute and regulation is that the lecture stipend is compensation for teaching, and cannot be treated as an honorarium. The intent of the regulations was to define teaching to include the educational offerings (including a lecture or lecture series) of an accredited law school, and to exclude from the definition of honoraria compensation received for teaching as thus defined. The regulation was not intended to allow a judge an option to obtain prior approval and treat such an amount as teaching, or to fail to obtain prior approval and treat the amount as an honorarium. This interpretation is supported by the Commentary:

The Act does not define “teaching.” These regulations define it to include meaningful participation in *bona fide* components of an educational curriculum or plan, regardless of the duration or format
of the particular program in which the [judicial officer] participates. The statutory authority to “teach” for compensation thus includes permission to participate in the educational program of an accredited institution in the manner in which that institution plans and carries out its teaching function. When speeches and lectures are sponsored by and presented within the overall educational program of an accredited institution, the Conference believes that they do not provide the occasion for any of the evils Congress was seeking to avert [in the ban on honoraria] and accordingly, they should qualify as “teaching.” Thus, a lecture, lecture series, symposia, moot courts, and jurist-in-residence programs may be compensated as “teaching,” provided, of course, the strictures of the Codes of Conduct are met.

2. Can 5 U.S.C. App. § 501(c) Be Expansively Read to Encompass Teaching Compensation as Well as Honoraria?

We next address whether the rationale of § 501(c) of the statute (permitting an otherwise banned honorarium to be paid on behalf of a judge to charity) can be expanded to compensation for teaching, which the law school is willing to pay, but that the judge cannot receive because of the 15% cap. In other words, if a judge directs the law school to give to charity amounts (up to the § 501(c) limit of $2,000) that the law school otherwise would have paid the judge, will such amounts be “deemed not to be received” under § 501(c), thus avoiding the 15% limit on outside earned income under § 501(a)(1). It has been suggested that similarities between honoraria and teaching compensation would make it rational for the § 501(c) rule to apply to both. However, the Committee interprets the statute and regulations to permit § 501(c) payments to charity only for honoraria, and not for teaching compensation. The fact that Congress limited § 501(c) to honoraria evidences a congressional intent that § 501(c) apply only to honoraria and not to teaching compensation. Moreover, one of the purposes of the 15% cap was to provide a bright line limit on outside activities to ensure that primary effort was devoted to the governmental function. This interpretation furthers that purpose.

3. Is the Lecture Stipend Excluded from “Outside Earned Income” under Regulation § 3(b)(6)?

Finally, the Committee considers whether Regulation § 3(b)(6) might exclude the stipend from the definition of “outside earned income” if the stipend is paid directly to a charity designated by the judge. That regulation excludes from the definition of “outside earned income”:

Anything of value earned or received for services rendered which is not includible as gross income in the relevant calendar year under controlling provisions of the Internal Revenue Code[.]
It has been suggested that under the complex tax principle of assignment of income, it is uncertain whether such amounts would be included in gross income for tax purposes.

Regulation § 3(b)(6) was included in the regulations because the regulations could not possibly provide adequate guidance on all of the questions likely to arise about the concept of earned income and the allocation of earned income to reporting years. The reference to the Internal Revenue Code in that section was intended to simplify the administration of the cap on earned income and provide judges with greater assurance that their conduct would not be called into question in those instances in which they received something of value that clearly would be excludable from that year’s “gross income” for tax purposes. Where it is doubtful whether the amount in issue would properly be excludable from the judge’s gross income for tax purposes, the Committee advises that the judge include the amount when planning compliance with the 15% cap, particularly where to do otherwise would appear to undermine the purposes of the cap. Accordingly, unless a judge is confident that the amounts diverted to charity would not be includible in gross income for tax purposes in the reporting year as having been constructively received, the Committee’s advice is that the judge include those amounts in planning compliance with the 15% cap on outside earned income.

June 2009
Committee on Codes of Conduct Advisory Opinion
No. 87: Participation in Continuing Legal Education Programs

The Committee regularly receives inquiries from judges concerning various forms of participation in continuing legal education (CLE) programs and the impact of the Code of Conduct for United States Judges, together with various statutory and regulatory provisions, on such participation. This opinion summarizes the Committee’s views concerning the ethical implications of judicial participation in such programs, and sets out important caveats at the end of the opinion. In Advisory Opinion No. 105, the Committee addresses judges’ participation in private law-related training programs other than those offered by CLE providers, accredited institutions, and similar established educational providers. The caveats at the end of this opinion are equally applicable to Advisory Opinion No. 105.

In general, under Canon 4, judges are permitted to teach and write, and to receive compensation and reimbursement of expenses for doing so: “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 . . . .” Canon 4H. Judges are not, however, permitted to accept honoraria, defined as including payment for a personal appearance, speech, or article. See 5 U.S.C. App. § 501(b); § 505(3)-(4); Judicial Conference Regulations On Outside Earned Income, Honoraria, and Outside Employment § 4(b); Guide to Judiciary Policy, Vol. 2C, § 1020.30 (“Regulations”).

The Regulations make clear that “participation in continuing legal education programs for which credit is given by licensing authorities or programs which are sponsored by recognized providers of continuing legal education” constitutes teaching activity for which compensation (and reimbursement of expenses) may properly be accepted, and that such compensation is not prohibited honoraria. Regulation § 5(b). See also Regulations § 4(b)(2); 5 U.S.C. App. § 505(3)-(4).

It is, of course, necessary for the judge to obtain advance approval from the chief judge of the circuit before engaging in such teaching activity. Regulation § 5(c)-(d). Additionally, the normal restrictions on extrajudicial compensation and reimbursement of expenses apply, including: the compensation must be reasonable in amount and no greater than a similarly situated non-judge would receive for the same service; the 15% cap on “outside earned income” is applicable to the compensation paid; 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 treated as compensation; and the payment must be included in the judge’s annual financial disclosure report. See Canon 4H; Regulation § 3.
Judges are permitted to receive separate or additional compensation for preparing written instructional materials for use in CLE programs. Ordinarily, such payments constitute compensation for teaching activities, rather than a sale of intellectual property or receipt of a royalty, and therefore such payments fall within the 15% “outside earned income” limitation. There may, however, be situations involving a CLE program and the sale of copyrighted material where the sale of intellectual property may not be considered as producing “outside earned income.” The Regulations permit judges to receive “[r]oyalties, fees, and their functional equivalent, from the use or sale of copyright . . . received from established users or purchasers of those rights.” Regulation § 3(b)(5). In addition, the Regulations permit judges to exclude such sums from the computation of the annual “earned income” cap. Id. (The Committee notes that it is authorized to address inquiries from judges regarding whether income is properly treated as “outside earned income” or excluded royalty income for purposes of the regulations. Regulation § 6.)

**Avoiding Improper Exploitation of Judicial Office**

The Code bars a judge from lending the “prestige of the judicial office to advance the private interests of the judge or others . . . .” Canon 2B. Thus, a “judge should be sensitive to possible abuse of the prestige of office.” Commentary to Canon 2B. This caution applies to a judge deciding whether to participate in a CLE program.

The Committee believes that a judge who, when writing or teaching, utilizes the special insights derived from his or her judicial experience, is not engaging in improper exploitation of the judicial office if the subject is not principally concerned with the specific court on which the judge sits.

A judge who writes on a legal topic or teaches in the field of law inevitably draws to some degree upon his or her experience as a judge. This is unavoidable if judges are to write and teach as the Code encourages them to do. See Commentary to 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.”). And, as noted earlier, the Code expressly approves the receipt of reasonable compensation for permissible scholarly activity. But the Committee believes that there is a distinction between a judge’s writing or teaching for compensation when the subject matter is how to practice before the judge’s own court, and writing or teaching for compensation on other legal topics with respect to which the judge does not occupy a unique position by virtue of his or her own particular judgeship. The “unique position” mentioned in the Commentary to Canon 4 means the judicial position in general, rather than the particular judgeship of that particular judge.
For a judge to derive financial benefit, over and above the judicial salary, from the publication and sale of a book about his or her own court, or from participation in a seminar on the same topic, would constitute exploiting the judicial position for financial gain. It could also permit others—the publisher of the book, the sponsor of the seminar—to benefit from the judge’s exploitation of his or her judicial position. When the subject matter is so limited, there is the likelihood that a lawyer practicing in that court could reasonably believe that purchase of the publication, or attendance at the seminar, is endorsed or expected by the judiciary.

In short, it is the Committee’s view that it is inappropriate for a judge to sell his or her expertise on the idiosyncrasies of practice before that particular court. This does not mean that a judge cannot lecture or write on that subject, only that the judge may not properly do so for compensation. Nor does this mean that a judge who is lecturing or writing for profit about some aspect of legal practice or procedure is foreclosed from giving illustrations from his or her own experience on the court, only that a judge may not charge for giving a lecture or writing a book where the principal focus is how to practice before the judge’s court and where, as a necessary result, a substantial part of the value and appeal to the audience arises from the fact that the lecturer or author is an “insider.”

Limitations on Uncompensated Teaching or Writing

As stated above, when a judge’s teaching or writing focuses upon the ins-and-outs of practice before that judge’s court, his or her particular judicial position is being exploited, to some extent. It is therefore improper for the judge to receive compensation for such activities, because to do so would be to exploit the judicial office for his or her own private gain. By the same token, when the sponsoring entity of the seminar or course is a private individual or a for-profit entity, the judge could be said to be exploiting the judicial position for the private benefit of the sponsor, irrespective of whether the judge is being compensated. See Advisory Opinion No. 105 (“Participation in Private Law-Related Training Programs”). With the caveats noted below, where the sponsoring organization is a law-related non-profit entity, however, these restrictions do not normally apply: Canon 4 permits judges to assist in the activities of law-related entities, including to a limited degree their fund-raising activities, so long as the judge does not personally participate in fund-raising activities. Hence, there is no ethical impediment to a judge teaching or writing about the practices of his or her own court, if the sponsor is a law-related non-profit entity, provided the judge does not accept compensation for doing so and the judge’s presentation is not essentially a fund-raising mechanism. In such a circumstance, the judge may accept reimbursement of expenses, but not compensation, from the law-related non-profit entity.

In summary, it is permissible for judges to engage in teaching and writing, including participating in CLE seminars, and to accept compensation for doing so, unless the subject matter primarily relates to practice before the judge’s own particular
court. When the subject matter is thus focused, a judge may participate only if no compensation is accepted, and only if the sponsoring organization is a non-profit entity.

It is the continuing obligation of the participating judge to monitor any promotional activities associated with his or her participation to ensure that no improper exploitation of judicial office occurs. See Advisory Op. No. 55 (“Extrajudicial Writings and Publications”).

Important Caveats

Canons 2A and 2B of the Code are concerned with (1) preserving the appearance of impartiality, (2) prohibiting the lending of a judge’s prestige to advance the interests of others, and (3) avoiding the impression that others are in a position to influence the judge. Thus, even though Canon 4 encourages judges to assist with legal education, the Committee has previously applied Canon 2 principles to participation in legal training programs, whether such programs offer CLE credit or not and whether the sponsor is a “for-profit” or “non-profit” entity.

In other words, merely because a provider offers CLE credit or is a “non-profit” entity does not eliminate the requirement that a judge determine whether his or her participation runs afoul of Canon 2. The following four examples illustrate how Canon 2 concerns may override the general desirability of judicial participation in the education of lawyers.

Example 1. The way in which seminars are marketed is important when considering whether Canon 2 trumps Canon 4 regarding judicial participation in seminars providing CLE for lawyers. For example, the Committee has advised against judicial participation in a CLE seminar, even though the judge would not be compensated, where the seminar exhibited in varying degrees all of the following characteristics: (a) the seminar focused on specialized litigation topics (for example, employment discrimination litigation, ERISA litigation, or asbestos claims) and required the payment of substantial fees in order to attend; (b) the seminar was aggressively marketed by a for-profit provider using marketing materials that highlighted the judge’s participation (sometimes including photographs of the judge in marketing materials) to the exclusion of other speakers; (c) the seminar marketing materials suggested that participants would obtain special or exclusive access to the judge; (d) the seminar marketing materials described judicial participation in non-neutral terms, suggesting that the judge’s participation would help attendees be more effective in court; and (e) seminar attendees were predominantly lawyers with a particular orientation (for example, members of the defense bar). Considering all these factors together, the Committee concluded that judicial participation in such a seminar could lead a reasonable person to question the judge’s impartiality, to believe that the judge is biased in favor of defendants, and
to conclude that the judge’s prestige had been lent to advance the interests of the seminar sponsor or attendees. The Committee concluded that the special nature of the seminar and the privileged ability to learn helpful litigation tactics also suggested to a reasonable person that the sponsor or the attendees may be in a special position to influence a participating judge.

Example 2. In another “marketing” inquiry, the Committee recommended against judicial participation in a seminar (a) where the fees charged for attendance were likely to be substantially in excess of the direct cost of providing CLE credit to the seminar attendees; (b) where the marketing materials used by the sponsor prominently featured the biographies and photographs of the judges; (c) where the marketing materials suggested that participants would obtain special or exclusive access to the judges; and (d) where the seminar focused on the judges’ courtroom practices. The Committee reasoned that when seminar marketing materials imply that a judge will give special access to a limited group of lawyers on matters pertaining to that particular judge’s courtroom practices, and when lawyers pay a substantial fee to a third party to participate in the seminar, then the judge cannot be said to have avoided the appearance of impropriety. Rather, under those circumstances, it can be said that a judge has lent the prestige of his or her office to the sponsor by participating. In the foregoing example, the Committee recommended against participation even though the judges were to receive no compensation and even though the sponsor might have been a “non-profit” entity.

Example 3. As suggested by the preceding example, the fact that a sponsor is denominated a “non-profit” organization does not mean that the Committee automatically will treat the sponsor as a non-profit organization for purposes of applying Canon 2 of the Code of Conduct. Thus, if a seminar provider offering CLE credit (a) acts as if it is a private business when it offers seminars in which judges participate by aggressively emphasizing judicial participation as a marketing mechanism and (b) charges fees that are likely to be substantially in excess of the direct cost of providing CLE credit to seminar attendees, the Committee will consider the sponsor to be a “for-profit” entity without regard to its precise corporate or tax status.

Example 4. The involvement of lawyers from a single law firm in conjunction with a seminar providing CLE credit and offered by a separate third-party sponsor has caused the Committee to question the propriety of judicial participation. Thus, even though the judges were to receive no compensation, where (a) members from one law firm solicited judges to participate in a seminar offered by a separate provider; (b) those same law
firm members were scheduled to serve as the sole seminar moderators; and (c) the seminar was focused on practice in those particular judges’ courtrooms, the Committee recommended against judicial participation. The Committee believed that a reasonable person could conclude that the law firm was in a special position to influence the judges.

September 2010
Committee on Codes of Conduct Advisory Opinion
No. 88: Receipt of Mementoes or Other Tokens Under the Prohibition Against the Receipt of Honoraria for Any Appearance, Speech, or Article

Judges making presentations to nonprofit organizations often receive mementoes. This opinion considers whether a memento falls within the definition of “honorarium” as defined in the Judicial Conference Ethics Reform Act Regulations on Outside Earned Income, Honoraria, and Outside Employment (“Regulations”), promulgated under Title VI of the Ethics Reform Act of 1989, 5 U.S.C. App., §§ 501, 505, and whether it is permissible for the judge to be reimbursed for travel expenses in connection with the presentation.

Section 4(a) of the Regulations provides that no judicial officer or employee shall receive an honorarium. Section 4(b) defines “honorarium” as:

a payment of money or anything of value (excluding or reduced by travel expenses as provided in 5 U.S.C. App., §§ 505(3) and (4)) for an appearance, speech or article by a judicial officer or employee, provided that the following shall not constitute an honorarium:

* * *

(2) Compensation received for teaching activity . . . approved pursuant to Section 5 hereof.

* * *

(7) A suitable memento or other token in connection with an occasion or article, provided that it is neither money nor of commercial value.

Guide to Judiciary Policies and Procedures, Volume 2, Chapter 6, Part H (emphasis added) [see Guide to Judiciary Policy, Vol. 2C, Ch. 10].

The Committee notes at the outset that a presentation to a nonprofit institute may constitute a teaching activity that is exempt from the definition of “honorarium.” The Commentary to the Regulations states that “[t]eaching may also include participation in programs sponsored by bar associations or professional associations or other established providers of continuing legal education programs for practicing lawyers.” If the institute is an established provider of continuing legal education programs for practicing lawyers, a presentation sponsored by it would appear to be a teaching activity. If so, the receipt of a memento or other token would not constitute an honorarium for purposes of the Ethics Reform Act.

Assuming that the presentation was a teaching activity and the judge had no advance knowledge that the organization would provide anything other than expenses, the receipt of a memento or other token following a presentation would not, in the
Committee’s view, convert the presentation into “compensated teaching” that required prior approval. Under these circumstances, the ethical propriety of accepting the gift is to be determined under the Judicial Conference Ethics Reform Act Gift Regulations, the Code of Conduct for United States Judges’s gift provisions (Canon 4D(4)), and the Code’s prohibition of conduct giving the appearance of impropriety (Canon 2). If the institute is a bona fide customary provider of continuing legal education programs, the Committee believes that receipt of a memento or other token would be a permissible gift under the Gift Regulations and Canon 4D(4) and would not violate Canon 2.

Assuming that the presentation was not a teaching activity, the determinative issue is whether the gift would constitute an “honorarium” or a “suitable memento or other token.” In order to be a suitable memento or token under the Regulations, the item received must be (1) something other than money and (2) without “commercial value.” The prohibition on receiving anything of “commercial value” is intended to foreclose compensation in kind for a speech or appearance as a substitute for the payment of cash. A judge could not properly receive, for example, securities or other resalable property as compensation for a speech. The Regulations must be construed with this overall purpose in mind.

In this context, without “commercial value” does not refer to the absence of any commercial value in the hands of the manufacturer of the article or in the hands of the sponsor of the presentation. Any article, including the letter opener referred to in the Commentary to the Regulations as an example of a suitable memento, will have some commercial value in the hands of the manufacturer or sponsor, and such an interpretation would render the “suitable memento or other token” exception meaningless. Rather, the appropriate question is whether the gift would have meaningful commercial value in the hands of the judge if accepted.

This advice does not mean that a judge is free to accept any gift in connection with a presentation, no matter what its commercial value in the hands of the manufacturer or the sponsor. The article tendered must be “suitable” as a reminder of the occasion and must be in the nature of a “token.” Thus a judge may accept a gift in connection with an appearance, speech, or article if its value to the judge is solely as a reminder of the occasion; a judge may not accept such a gift if it confers any other benefit upon him or her. While the “suitability” of a memento has no necessary relationship to the commercial value of the gift in the hands of the manufacturer or sponsor, if that value is in the neighborhood of $300 or less, it will be unlikely to have either a utilitarian or a prestige value to the judge beyond its value as a reminder of the occasion.

Assuming that the gift is a “suitable memento” and not an “honorarium,” there remains the issue of whether it is a permissible gift under the Gift Regulations, and therefore also permissible under Canon 4D(4). If the gift is properly viewed as a gift from the organization as an entity, and not as a gift on behalf of identifiable lawyers, the receipt of the gift would be permissible under Gift Regulations Section 3(I), which
excludes from the definition of gift those benefits “the acceptance of which is permitted by the Regulations of the Judicial Conference Concerning Outside Earned Income, Honoraria, and Outside Employment,” and Section 5(a), which restricts judges from accepting a gift “from anyone who is seeking official action from or doing business with the court or other entity served by the judicial officer or employee, or from any other person whose interests may be substantially affected by the performance or nonperformance of the judicial officer’s or employee’s official duties.”

We now turn to the propriety of accepting reimbursement of travel expenses in connection with the presentation. Under the provisions of 5 U.S.C. App., § 505 cited in Regulation § 4(b) supra, which excludes travel expenses from the definition of “honorarium,” the term “travel expenses” means “necessary travel expenses incurred by such individual (and one relative)” and includes “the cost of transportation, and the cost of lodging and meals while away from his or her residence or principal place of employment.” Thus, acceptance of reimbursement for the costs of transportation, lodging, and meals associated with the presentation is appropriate.

June 2009
Committee on Codes of Conduct Advisory Opinion
No. 89: Acceptance of Honors Funded Through Voluntary Contributions

The Committee is often asked to advise on the propriety of a judge consenting to or participating in a project to raise funds for scholarships and similar beneficial enterprises to be named in honor of the judge. In the past, projects to honor judges involved, for example, endowment of professorships or research chairs, or construction of practice courtrooms, libraries and the like. In Advisory Opinion No. 46, the Committee discusses the considerations bearing on judges’ acceptance of honors and awards, while this opinion addresses the considerations relating to accompanying fund-raising efforts.

Under Canon 4, a judge may participate in a wide variety of good causes, both law-related and non-law-related. For example, for law-related 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.

Canon 4A(3).

But, the judge’s fund-raising activities for any type of organization are restricted:

A judge may assist nonprofit law-related, civic, charitable, educational, religious, or social organization 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.

Canon 4C.
In addition to the restrictions placed on fund raising by Canon 4C, Canon 2’s general prohibition against lending the prestige of the judicial office to a judge’s activities includes those activities permissible under Canon 4. The Commentary to Canon 4 reflects the Committee’s caution regarding lending the prestige of office to organizations for fund-raising purposes: “A judge may attend fund-raising activities of a law-related or other organization although the judge may not be a speaker, a guest of honor, or featured on the program of such an event.”

The Committee has considered a number of proposals to raise funds for projects to honor a judge. Typically, but not exclusively, former law clerks of a judge come together to establish a scholarship named after the judge. The clerks may seek funds from lawyers outside their ranks. Our consideration of these matters has led us to conclude that a judge may consent to others raising funds for scholarships and similar enterprises to be named in honor of the judge, but the degree of the judge’s involvement in the project is controlled by Canon 2 and 4C, which prohibit lending the prestige of judicial office to advance private interests - even when the interests are charitable.

Examined in this light, the Committee recognizes that scholarships, libraries, courtrooms, reading rooms, and the like are named after judges, and funded through voluntary contributions, with some regularity without hint of scandal or public disapproval. While there are concerns about using the prestige of the judicial office, we believe these concerns would be offset by the fact that the judge neither (a) initiates, (b) encourages, (c) solicits funds, nor (d) knows who gave money or even who was asked to give money for the project. Our opinion that a judge may accept an honor if the judge is distanced from the process of initiating, developing and financing it is not dependent on whether the honor is associated with a law-related institution or some other charitable or educational institution. Judges have distinguished themselves as practitioners or patrons of a wide range of arts and sciences. A judge may legitimately receive recognition for a life’s effort in realms other than the law.

A judge may therefore accept an honor, such as a scholarship or reading room or professorship named after the judge, that is funded through voluntary contributions if (1) the honor is associated with an organization or institution in which the judge could participate consistent with the provisions of Canons 4A(3) and 4C, (2) the judge neither initiates nor participates in the conception or completion of the fund-raising project, and (3) the judge makes a reasonable effort to remain unaware of the identity of those who fund the project. A senior judge who no longer hears cases need not be shielded from learning the identity of contributors after contributions have been made.

June 2009
Committee on Codes of Conduct Advisory Opinion
No. 90: Duty to Inquire When Relatives May Be Members of Class Action

This opinion considers whether, in a class action brought pursuant to Rule 23(b)(3), a judge must investigate to determine whether the interests of any of the judge’s (or the judge’s spouse’s) relatives within the third degree of relationship, or the spouses of such relatives, place the relatives within the definition of the class. Class membership by the relative would then require the judge’s recusal. The Committee notes that, for purposes of 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.” Commentary to Canon 3C.

The Committee previously advised a judge to undertake such an investigation and, if any of such third degree relatives or their spouses happened to be within the class definition, to ask them if they would be willing to opt out of the class, as Rule 23(c)(2) permits. The Committee has reconsidered the subject and now reaches a different conclusion.

Canon 3C(1)(d)(I) of the Code of Conduct for United States Judges provides:

(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:

* * *

(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[.]”

The Judicial Code contains a similar provision. 28 U.S.C. § 455(b)(5)(I). Although the Committee on Codes of Conduct is not authorized to render advisory opinions interpreting § 455, Canon 3C of the Code of Conduct for United States Judges closely tracks the language of § 455, and the Committee is authorized to provide advice regarding the application of the Code.

Our previous advice was based on two considerations. First, we believed that all members of a Rule 23(b)(3) class action are parties within the meaning of Canon 3C(1)(d)(I). The Committee previously advised that all members of a class are parties, whether named or unnamed, so long as they have not opted out of the class. Second, we thought that if a judge failed to make these inquiries and then, at some later time, had to recuse upon discovering that a third degree relative or spouse thereof was a
class member, whatever rulings the judge had already made in the case might have to be vacated.

The effect of our advice was to place judges in the position of having to delve into the financial affairs of third degree relatives who were not members of their household. (Relatives “within the third degree of relationship” include one’s parents, grandparents, great grandparents, children, grandchildren, great grandchildren, uncles, aunts, brothers, sisters, nieces and nephews but do not include first cousins. See Canon 3C(3)(a).) Our former advice on this point was somewhat at odds, although not entirely inconsistent, with advice we have previously given that a judge is not bound to keep informed of the financial interests of relatives other than his or her spouse and minor children residing in the household. See generally Canon 3C(2).

The Committee adheres to its previous position that Rule 23(b)(3) class members are “parties” for purposes of Canon 3C(1)(d)(I). (The Committee expresses no view regarding Rule 23(b)(2) class actions. See In re City of Houston, 745 F.2d 925 (5th Cir. 1984).) This straightforward approach not only is consistent with the reasoning of decisions such as In re Cement Antitrust Litigation, 688 F.2d 1297 (9th Cir. 1982), and Union Carbide Corp. v. U.S. Cutting Service, Inc., 782 F.2d 710, 714 (7th Cir. 1986), but also avoids the considerable difficulties that would arise in trying to draw distinctions between Rule 23(b)(3) class members who should be considered parties and those who should not.

The Committee now concludes, however, that a judge in a Rule 23(b)(3) class action does not have a duty to investigate whether his or her relatives within the third degree and their spouses are class members. If at some point the judge discovers that one of them was a class member, Canon 3C(1)(d)(I) would require recusal, but this does not mean the judge, prior to such discovery, was acting unethically by sitting on the case. The situation is thus unlike Liljeberg v. Health Services Acquisition Corp., 486 U.S. 847 (1988), interpreting 28 U.S.C. § 455(a), a provision comparable to Canon 3C(1), which provides that a judge must disqualify “himself in any proceeding in which his impartiality might reasonably be questioned.” See Liteky v. United States, 510 U.S. 540 (1994). Liljeberg applied § 455(a) “retroactively” because the provision’s disqualification standard does not depend on the judge’s knowledge of the disqualifying facts. In other words, the provision is violated although the judge is unaware of the facts creating the appearance of impropriety. See 486 U.S. at 859-61. However, when a rule contains a knowledge requirement, there can be no violation until the judge obtains the requisite knowledge.

The knowledge requirement flows from the structure of Canon 3C. As Chief Justice Rehnquist said in dissent in Liljeberg, 486 U.S. at 871, with respect to § 455, “[u]nlike the more open-ended provision adopted in subsection (a), the language of subsection (b) requires recusal only in specific circumstances, and is phrased in such a way as to suggest a requirement of actual knowledge of the disqualifying circumstances.” The same is true with respect to Canon 3C. The other specifically
enumerated examples in Canon 3C either expressly contain a knowledge requirement, or involve situations in which it is almost impossible for the judge not to know of the disqualifying circumstance. See Canon 3C(1)(a)-(e); *Liteky v. United States*, 510 U.S. at 553-54 n.2.

In the case of Rule 23(b)(3) class actions, however, it is not necessarily true that a judge would know whether his or her relative is a party. If the judge later discovered this fact, the analysis in *Liljeberg* would not give rise to any retroactive consequences. Canon 3C(1)(d)(1) requires knowledge. Canon 3C(2) assures that judges will have such knowledge with respect to themselves, their spouses and their minor children living in the household: “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.” The clear implication is – and the Committee has so concluded – that the judge is under no duty to acquire knowledge of the financial affairs of his or her other relatives within the third degree, or of their spouses. Without such information, a judge sitting on a case in which a relative was, without the judge’s knowledge, a class member would not be acting in violation of the Code. In addition, cases in which third degree relatives turned out to be members of a class would doubtless fall within the Supreme Court’s qualification in *Liljeberg* that “there is surely room for harmless error committed by busy judges who inadvertently overlook a disqualifying circumstance.” 486 U.S. at 862.

In short, the Committee is of the view that the unknown presence of a judge’s relative as a party in a Rule 23(b)(3) class action does not create a risk of injustice to the parties, and does not undermine the public’s confidence in the judicial process - so long as the judge recuses upon learning of the relative’s status as a party. There is thus little risk of the sort of retroactive relief we sought to avoid when we previously advised that a judge should investigate to determine if any third degree relatives fit within the class definition. Accordingly, the Committee is now of the opinion that judges need not undertake such inquiries. Requiring judges to investigate imposes untenable burdens on them and puts judges in the potentially awkward and uncomfortable position of intruding into the personal affairs of those outside their households.

June 2009
Committee on Codes of Conduct Advisory Opinion
No. 91: Solicitation and Acceptance of Funds from Persons Doing Business With the Courts

This opinion addresses whether judicial employees may solicit funds from vendors who do business with the courts in order to defray the expenses of a conference devoted to improvement of the judicial system that is sponsored by an association whose members are judicial employees. The Committee also considers the related question of whether, if such solicitation is inappropriate, an unsolicited gift of funds for the conference may be accepted.

The Judicial Conference Regulations Concerning Gifts define a “gift” to mean “any gratuity, favor, discount, entertainment, hospitality, loan, forbearance, or other similar item having monetary value.” Gift Regulations § 3(e). Funds to support a conference sponsored by an employee association fall under this definition. For the reasons that follow, the Committee advises that the Ethics Reform Act, the Gift Regulations, and the Code of Conduct for Judicial Employees (“Employees’ Code”) prohibit solicitation of such gifts from persons doing business with the courts.

The Ethics Reform Act provides, in part:

(a) Except as permitted by subsection (b), no . . . employee of the . . . judicial branch shall solicit or accept anything of value from a person –

(1) seeking official action from, [or] doing business with . . . the individual’s employing entity; or

(2) whose interests may be substantially affected by the performance or nonperformance of the individual’s official duties.

(b)(1) Each supervising ethics office is authorized to issue rules or regulations implementing the provisions of this section and providing for such reasonable exceptions as may be appropriate.

5 U.S.C. § 7353. The Judicial Conference, the supervising ethics office for the judicial branch, implemented these provisions through Gift Regulations sections 4 and 5. The statute and Regulations bar both solicitation and acceptance of gifts from vendors doing business with the courts, as well as from vendors whose interests may be substantially affected by official action of the courts. Although the Regulations permit some exceptions with respect to acceptance of gifts, they allow no exceptions to the prohibition against solicitation of gifts from persons doing business with the courts. The fact that the purpose of the conference involves improvement of the judicial system is not sufficient to avoid the prohibition.
The Committee concludes that the Ethics Reform Act and implementing regulations prohibit the solicitation from vendors doing business with the courts for a conference sponsored by an employee association. The Committee also concludes that the solicitation of such gifts from court vendors is contrary to Canon 2 of the Employees' Code because it would create an appearance of impropriety. The Committee advises that judges should exercise their supervisory powers to preclude employees under their supervision from making such solicitations.

A related question is whether an employee association may accept funds from vendors doing business with the courts if the funds are not improperly solicited. In other words, this follow-up question contemplates a genuinely voluntary offer by a court vendor to provide substantial funding to defray the conference expenses. We need not address whether such gifts to the association would contravene the gift prohibitions in the Ethics Reform Act, the Gift Regulations, and the Employees' Code, because the Committee concludes that, in any event, it would create an appearance of impropriety under Canon 2 for judicial employees to make arrangements with a court vendor through which the vendor would provide substantial financial support to assist an employee association in putting on a conference. The Committee has advised in the past that it would create an appearance of impropriety for a group of judges or judicial personnel to arrange with a vendor known to be doing business with the court to provide financial support for an event to be held at a conference or meeting sponsored by the judges or judicial personnel. The same conclusion applies here, and, therefore, if it comes to the attention of a judge who has supervisory authority that the employee plans to accept such a gift, the judge should prohibit the acceptance.

June 2009
Committee on Codes of Conduct Advisory Opinion
No. 92: Political Activities Guidelines for Judicial Employees

The Committee on Codes of Conduct has developed the guidelines set forth below for judicial employees covered by the Code of Conduct for Judicial Employees (“Employees’ Code”) who are contemplating involvement in political activities. Judicial employees who are covered by the Employees’ Code should comply with Canon 5, which regulates permissible political activity. This opinion provides guidelines regarding clearly permissible and clearly impermissible activities under Canon 5. It then offers some cautionary guidelines for employees who are permitted under Canon 5B to participate in nonpartisan political activities. The guidelines in the opinion are not intended to be exclusive or all-encompassing. If questions remain after consulting these guidelines, covered judicial employees may seek advice as set forth in the Introduction to the Employees’ Code.

I. Political Activities Permitted for All Covered Employees

The following activities are consistent with the provisions of Canon 5 of the Employees’ Code. For example, covered employees may:

a. register and vote in any primary or general election, including register as a member of a political party;
b. express an opinion privately as an individual citizen regarding a political candidate or party; and
c. participate in the nonpolitical activities of a civic, charitable, religious, professional, educational, cultural, avocational, social, fraternal, or recreational organization described in Canon 4 of the Code.

II. Partisan Political Activities Prohibited for All Covered Employees

Under Canon 5A, a covered judicial employee should refrain from partisan political activity, including the following:

a. taking an active role in a partisan political organization;
b. becoming a candidate for partisan political office;
c. publicly endorsing a partisan political candidate or organization by authorizing use of the employee’s name, making speeches, or participating in a partisan political convention, caucus, rally, or fund-raising activity. However, employees who may permissibly participate in nonpartisan activities under Canon 5B may participate in caucuses in those states where caucuses substitute for primary elections, but only to the extent necessary to cast a vote. They may not participate beyond that
extent, for example by attempting to influence other voters, and they may not identify themselves as associated with the court;

d. publicly displaying a campaign picture, sign, sticker, badge, or button for a partisan political candidate or organization;

e. soliciting funds for or contributing to a partisan political organization, candidate, or event;

f. initiating or circulating a nominating petition for a candidate in a partisan political election;

g. participating in a campaign in support of or in opposition to a candidate in a partisan political election; or

h. serving in any position at a polling place in a partisan election or serving in any other position that relates to voting in a partisan election.

III. Nonpartisan Political Activities Prohibited for Members of a Judge’s Personal Staff and Certain Court Unit Heads

Under Canon 5B, 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, or district court executive, should refrain from nonpartisan political activity, including the following:

a. becoming a candidate for nonpartisan political office;

b. participating in a campaign in support of or in opposition to a candidate in a nonpartisan political election, including publicly displaying a campaign picture, sticker, badge or button or making speeches for or against nonpartisan candidates;

c. making speeches for or publicly endorsing or opposing a nonpartisan political candidate;

d. soliciting funds for or contributing to a nonpartisan political candidate or event;

e. initiating or circulating a nominating petition for a candidate for a nonpartisan political election; or

f. serving in any position at a polling place in a nonpartisan election or serving in any other position that relates to voting in a nonpartisan election.
IV. Nonpartisan Political Activities Permitted for Certain Covered Employees

Under Canon 5B, a judicial employee who is not 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, or district court executive may participate 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.” Canon 5B. When considering whether a nonpartisan political activity is permissible according to this standard, a judicial employee should consider, at a minimum, whether the following factors weigh against participation:

a. whether the nonpartisan activity involves a controversial issue that is being publicly debated;

b. whether the nonpartisan activity involves an issue that either currently is being litigated in federal court or may be litigated in federal court;

c. whether the nonpartisan activity involves an organization that frequently litigates in federal court;

d. the degree of responsibility and leadership the participation involves; and

e. whether the employee will be identified during the activity as an employee of the court.

If the judicial employee has any question about the propriety of engaging in a nonpartisan activity, the employee should first consult with the employee’s supervisor or appointing authority. The employee and the supervisor or appointing authority are welcome to seek further guidance on the question from the Committee.

Note for Advisory Opinion No. 92

1 The Code of Conduct for Judicial Employees, and these guidelines, cover all employees of the judicial branch except Justices; judges; and employees of the United States Supreme Court, the Administrative Office of the U.S. Courts, the Federal Judicial Center, the Sentencing Commission, and federal public defender offices. Judges and judicial employees who are not covered by the Employees’ Code should consult the codes and ethical standards applicable to them for guidance on participation in political activities.

April 2017
Committee on Codes of Conduct Advisory Opinion
No. 93: Extrajudicial Activities Related to the Law

The Committee regularly is asked to give advice regarding involvement in extrajudicial activities related to the law. Canon 4 of the Code of Conduct for United States Judges applies to all extrajudicial activities; its heading states that “[a] judge may engage in extrajudicial activities that are consistent with the obligations of judicial office.” This opinion is intended to explain the principles by which the Committee determines whether extrajudicial activity related to the law is consistent with the obligations of judicial office, and to clarify our precedents on the issue. Advisory Opinion No. 79 (“Use of Chambers, Resources, and Staff for Law-Related Activities Permitted by Canon 4”) addresses, in part, whether an activity should be considered judicial or extrajudicial.

Canon 4 states that “[a] judge may engage in extrajudicial activities, including law-related pursuits and civic, charitable, educational, religious, social, financial, and governmental activities, and may speak, write, lecture, and teach on both law-related and nonlegal subjects.”

Canon 4 then continues: “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 [in the following paragraphs of Canon 4].”

In assessing an extrajudicial activity, it is often useful to determine whether the activity is related to the law or not. While the Code permits judicial participation in non-law-related activities, judicial participation in law-related activities is actively encouraged. Canon 4A; Commentary to Canon 4 (“a judge is encouraged to” contribute to the law, the legal system, and the administration of justice). Accordingly, a judge will be given greater latitude when participating in law-related activities expressly encouraged by Canon 4A. An example of a distinction between law-related and non-law-related activity is found in Canon 4F, which permits a judge to accept appointment to a governmental position only if it concerns the law, the legal system, or the administration of justice, unless such an appointment is required by law. As another example, a judge may generally serve on the board of a law school, but may not serve on a state board responsible for operating a public university. Compare Commentary to 4A with Advisory Opinion No. 44. Whether a judge permissibly may use judicial resources to engage in law-related and non-law-related activities involves a variety of different factors, which are dealt with in Advisory Opinion Nos. 79 and 80.

A judge’s participation in law-related activities is encouraged because “[a]s a judicial officer and a person specially learned in the law, a judge is in a unique position to contribute” to such endeavors. Commentary to Canon 4. However, not every activity that involves the law or the legal system is considered a permissible activity. Law is, after all, a tool by which many social, charitable and civic organizations seek to advance
a variety of policy objectives. We have concluded, for example, that participating in an organization lobbying for legislation to implement a particular policy pertaining to drug and alcohol abuse is not consistent with the obligations of judicial office. Similarly, we have advised that judicial participation in organizations that may engage in litigation in furtherance of stated policy goals is not permissible. Advisory Opinion No. 40. In addition, judicial participation as an arbitrator or mediator, or otherwise performing judicial functions apart from the judge’s official duties, is prohibited unless expressly authorized by law. Canon 4A(4). Rather, to qualify as an acceptable law-related activity, the activity must be directed toward the objective of improving the law, *qua* law, or improving the legal system or administration of justice, and not merely utilizing the law or the legal system as a means to achieve an underlying social, political, or civic objective.

Two formulations emerge from our prior advice. First, permissible law-related activities are “limited to the kinds of matters a judge, by virtue of [the judge’s] judicial experience, is uniquely qualified to address.” If a judge’s participation is sought for some reason other than his or her judicial expertise, the activity is less likely to be a permissible activity. For example, we have advised that service on a Senate Ethics Advisory Panel was not an activity designed to improve the law, where the judge’s participation was sought primarily because of his previous experience as a state senator.

Consistent with this emphasis upon whether a judge brings to bear a special expertise, Canon 4A(2) provides that a judge may appear before or consult with an executive or legislative body or official only to the extent that it would generally be perceived that a judge’s judicial experience provides special expertise in the area at issue. We have accordingly advised that legislative appearances by a judge are generally permissible only where the subject matter reasonably may be considered to merit the attention and comment of a judge as a judge, and not merely as an individual. See Advisory Opinion No. 50 (suggesting that a judge should not testify before a legislative committee on social legislation). A similar inquiry pertains regarding appointment to governmental committees and commissions, which is covered by Canon 4F.

Second, we look to see if the beneficiary of the activity is the law or legal system itself. A permissible activity, in other words, is one that serves the interests generally of those who use the legal system, rather than the interests of any specific constituency, or enhances the prestige, efficiency or function of the legal system itself. The clearest examples of permissible activities are those addressing the legal process. Thus, we have concluded that judicial participation in such activities as an educational videotape to improve the quality of court reporters; a nonprofit organization to promote the concept of the resolution of disputes through arbitration; an organization that researches and provides information on the juvenile justice system; an organization sponsoring informative programs on trial practice; and an organization to eliminate gender bias in the judiciary is permissible. Whether an activity benefits a specific constituency or the
legal system as a whole will sometimes be a close question; it should be answered by evaluating how closely related the substance of the activity is to the core mission of the court of delivering unbiased, effective justice to all.

Although such matters as the administration of the business of the courts, the delivery of legal services, or the preparation of codifications of judicial decisions are the clearest examples of permissible activities, a broader range of activities is permissible. The Commentary to Canon 4 encourages judicial participation in the improvement of the law, the legal system, and the administration of justice, including “revising substantive and procedural law and improving criminal and juvenile justice.” Therefore, activities directed toward substantive legal issues, where the purpose is to benefit the law and legal system itself rather than any particular cause or group, may be permissible. We have concluded, for example, that activities of the National Conference of Commissioners on Uniform State Laws, whose purpose is to promote uniformity in the law across jurisdictions, and the American Law Institute, whose purpose is to distill, rationalize and restate the law, are permissible. Similarly, the Working Group on Detention of the United Nations Human Rights Commission, which reports to the United Nations on compliance with the Universal Declaration of Human Rights, was deemed an organization devoted to the improvement of the law. However, judicial participation in organizations that advocate particular causes rather than the general improvement of the law is prohibited. See Advisory Opinion No. 40.

Additionally, a judge may teach and write on substantive legal issues. Judicial scholarship is particularly encouraged by Canon 4. See Canon 4A. The evolution and exposition of the law is at the core of a judge’s role. Judges, therefore, have the ability to make a unique contribution to academic activities such as teaching and scholarly writing, which similarly serve to advance the law. See Advisory Opinion No. 55.

A judge’s extrajudicial activity related to the law will often implicate other canons aside from Canon 4. Sometimes we have referred to those canons explicitly; sometimes we have integrated the principles of those canons through explaining Canon 4. The key restrictions regarding extrajudicial activity contained in other canons are Canon 1’s mandate that a judge uphold the independence of the judiciary; Canon 2’s prohibition against impropriety and the appearance of impropriety in all activities; and Canon 5’s restrictions on political activity.

Canon 1 provides that a judge should uphold the integrity and independence of the judiciary. A federal judge’s extrajudicial activity directed toward improving the law may be impermissible, for example, to the extent that it enmeshes the judge in, or subordinates the judge to, the operation of a state or local government. For instance, we have advised that it would be inappropriate under Canon 4 for a judge to serve on a state law reform agency created by the state legislature and given quasi-legislative responsibilities, even though the goal of the agency was the improvement of state law. We noted that “a federal judge should not sit as a member of an official state body charged with quasi-legislative responsibilities.” Although we did not explicitly discuss
Canon 1, Canon 1’s prescription for an independent federal judiciary was at the core of the advice.

Other times we have invoked Canon 1 explicitly. For example, we expressly relied on Canon 1 in advising that a judge may not serve on a state board of law examiners, an arm of the state supreme court. Similarly, we invoked Canon 1 in concluding that a judge may not serve, through appointment by the state supreme court, upon a state supreme court commission on racial and ethnic bias in the state court system. Although in both cases we observed that such extrajudicial activity was related to the law, it was prohibited because it could compromise the independence of the federal judiciary. We noted that federal courts occasionally are required to consider decisions of the state supreme court, and thus a federal judge should not sit on a committee of the state court.

Canon 2 may also preclude a judge’s participation in an extrajudicial activity designed to improve the law. Canon 2 provides that a judge should avoid impropriety and the appearance of impropriety in all activities. We have advised, therefore, that although participation as a member or officer of an open member bar association is generally a permissible Canon 4 activity, see Advisory Opinion Nos. 85 and 34, a judge may not run for a contested position in a bar association because of the unseemliness and potential for creating an appearance of impropriety of a federal judge seeking votes.

Canon 2A’s provision that a judge should act at all times in a manner that promotes public confidence in the impartiality of the judiciary may preclude a judge’s participation in law-related activities or organizations concerning highly controversial subjects. Thus, a judge may remain a member of a bar association that takes controversial positions on policy issues, so long as the judge abstains from participating in the debate or vote on such matters in a manner in which the public may be effectively informed of the judge’s abstention (see Advisory Opinion Nos. 82 and 34); however, we have advised that a judge may not serve as the chair of a section of the American Bar Association that concentrates its efforts on many of the most controversial political issues of the day. See Advisory Opinion No. 82. On the other hand, we have advised that membership in a United Nations human rights group is permissible, as the group only rarely, if ever, becomes involved in matters so controversial that a judge’s involvement could jeopardize his or her effectiveness as a judge at home. Further, Canon 2B’s restrictions against lending the prestige of the judicial office to advance the private interests of others also applies to Canon 4 activities. See Advisory Opinion No. 89. We have advised, for example, that a bankruptcy judge should not serve on the board of an organization designed to certify individual lawyers as bankruptcy specialists because it would violate Canon 2’s prohibition against lending the prestige of the judicial position to a private interest.

Finally, we note that Canon 5 states a judge should not engage in political activity. Although the political prohibitions in Canon 5A are absolute, the catch-all prohibition in Canon 5C against “other political activity” contains a qualification that
Canon 5C “should not prevent a judge from engaging in the activities described in Canon 4.” However, engaging in law-related extrajudicial activities where the activity is political in nature is fraught with risks for judges. Thus, before deciding to engage in law-related activity with political overtones, a judge should consider whether the express or implied values of other canons will be contravened. For example, we have advised that a judge should not serve on an official state committee formed to select state trial and appellate court judges. Although such activity is law-related and thus is to be evaluated under Canons 4 and 5C it might compromise the judge’s independence, and therefore violate Canon 1. A judge should be sensitive to the nature and tone of the activity, and should not be drawn into an activity in a manner that would contravene Canon 2’s goals of propriety and impartiality or Canon 5A’s prohibition of activities pertaining to political organizations and candidates. Further, because of the ethical risks associated with any politically-oriented activity, we construe permissible Canon 4 activities in this context narrowly, restricted to those activities that are most directly related to the law and legal process.

June 2009
Committee on Codes of Conduct Advisory Opinion  
No. 94: Disqualification Based on Mineral Interests

This opinion addresses two issues involving mineral interests:

(1) whether a judge must recuse whenever a purchaser of oil or gas, in which the judge has a fractional royalty interest, is a party in a case before the judge; and

(2) whether a judge who holds the executory rights to lease minerals for production must recuse whenever the lessee is a party in a case before the judge.

Of course, if the subject of the case before the judge involves the judge’s fractional mineral royalty interest or the lease to which the judge is a party, the judge must recuse. This opinion addresses situations where the case before the judge does not involve either the lease or the minerals in which the judge has a royalty interest, but nevertheless one of the parties happens to be the purchaser of oil or gas in which the judge owns a fractional royalty interest or is a lessee of a mineral estate leased by the judge, who holds the executory rights to lease.

It is not uncommon, particularly in regions of the country where oil and gas production is concentrated, for a party to appear before a judge to whom the party is making royalty payments based on purchases of oil or gas in which the judge has a fractional royalty interest. For example, if a judge owns a fractional royalty interest in oil or gas that is being purchased by a major oil or gas company, it is likely that, during a time the judge is receiving royalty payments from the company, that company will be a party in cases before the judge on issues entirely unrelated to the judge’s royalty interest.

A variation of that scenario occurs when the judge holds the executory rights to lease the mineral estate for development. If the judge signs a lease with a major oil or gas company it is, once again, possible that the company will appear occasionally as a party before the judge on matters completely unrelated to the lease while it is still in effect. In this scenario, the judge may either have had a history of direct contract negotiations with that party or, at the least, the judge will be a direct signatory to a lease involving that party.

Canon 3C(1)(c) of the Code of Conduct for United States Judges provides:

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:
(c) the judge knows that the judge, individually or as a fiduciary, . . . 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.

Neither receiving royalty payments from a party nor leasing a mineral estate to a party qualifies as a “financial interest” in a party, which is defined in Canon 3C(3)(c) as “ownership of a legal or equitable interest, however small, . . . in the affairs of a party.” Compare Advisory Opinion No. 75 (judge receiving military pension need not recuse when military service is a party); Advisory Opinion No. 27 (judge’s spouse who is the beneficiary of a trust that leased property to defendant does not have a “financial interest” in the defendant).

The inquiry, however, does not end there. Canon 3C(1)(c) also requires a judge to recuse whenever he or she has “any other interest that could be affected substantially by the outcome of the proceeding.” See also 28 U.S.C. § 455(b)(4). (We note that although the Committee on Codes of Conduct is not authorized to render advisory opinions interpreting recusal statute 28 U.S.C. § 455, Canon 3C of the Code of Conduct closely tracks the language of § 455, and we are authorized to provide advice regarding the application of the Code.) Recusals, therefore, would be necessary under Canon 3C(1)(c) when the value of the judge’s fractional royalty interest could be “substantially” affected, even though it cannot be characterized as a legal or equitable interest in the party appearing before the judge. The fact that the amount of royalties received might be small is not decisive; it is not the size of the interest that is a concern under Canon 3C(1)(c), but rather whether the interest could be substantially affected. Thus, we have said that a $.60 per month increase would not have a substantial effect on a judge’s utility bill, but that the doubling of a utility bill from $10 to $20 per month would be substantial. However, unless the suit before the judge was of such a magnitude that it could realistically impact the party’s financial ability to pay royalties to the judge, the “interest that could be affected substantially” clause of Canon 3C(1)(c) is not implicated. Moreover, even if the suit were of that magnitude, it might not have the potential to substantially affect the judge’s royalty interest if it is clear that the oil or gas could and would be marketed to others at a comparable price in the eventuality that the purchaser/party before the judge no longer remained a viable purchaser as a result of the suit.

We turn next to consideration of the more general prohibition in Canon 3C(1) that a judge must recuse when the judge’s “impartiality might reasonably be questioned.” We have said that a judge’s impartiality might reasonably be questioned in a variety of situations where a judge is asked to hear a case involving a party with whom the judge does business. For example, where a judge’s spouse was the principal beneficiary of a trust that leased property to a party in a case, and the amount of rent was substantial, we said that it would create an appearance of impropriety for the judge to hear that
case. **Advisory Opinion No. 27.** We also have said that it would create an appearance of impropriety for a judge who contracts with a party for the use of a service mark to hear cases involving that party. We also have advised that an appearance of impropriety is created when a party before the judge is either a lessor of real estate to the judge or a lessee of real estate owned by the judge. In all of these cases, the judge should recuse, subject to remittal under Canon 3D.

On the other hand, we have recognized that a judge must be allowed to manage his or her investments and to purchase goods and services, and that a commercial relationship with a party does not always require recusal. For example, we have said that a judge’s impartiality cannot reasonably be questioned when a judge sits on a case involving an insurance company of which the judge is a policy holder, so long as the case will not substantially affect the judge’s interest in the policy. A judge who is a bondholder and periodically receives interest payments on the bonds may hear cases involving the bond issuer so long as the case does not involve the bonds held by the judge. Maintaining a bank account does not require a judge to recuse from cases in which the bank is a party, nor does owing money to a bank require recusal, absent special circumstances such as unusually favorable terms or a default. A judge who is a utility customer may hear cases involving the utility. A judge who receives a military pension may sit on cases in which the military is a party. **Advisory Opinion No. 75.**

Consideration of several factors can help to reconcile these opinions and assist in identifying when recusal is necessary: (1) When a transaction is standardized and generally available to all who qualify, it is not likely to require recusal. To the extent that the parties to the transaction are fungible, with either party able to go elsewhere, the power of each party over the other is diminished, and therefore so is the appearance of impropriety. (2) When, during the pendency of the litigation before the judge, a relationship has previously been structured and is not likely to be restructured or to give rise to controversy regarding the duties of the parties, recusal is less likely to be required. The converse is also true: When a relationship is being negotiated or is likely to be renegotiated during the time a party is in court or there is a reasonable possibility that the relationship may become the subject of controversy during the pendency of the court proceeding before the judge, it is much more likely to require recusal. (3) The size of the investment is a relevant consideration in evaluating an appearance of impropriety. (4) It is relevant to consider whether the transaction gave rise to a personal and recurring relationship between the judge and the party or whether it is an impersonal market relationship. (5) Finally, it is necessary to consider whether there are any other unique characteristics of the transaction that give rise to an appearance of impropriety.

Applying these factors to the first question posed, we believe that the judge presiding over a suit involving a party who pays royalties to a judge on unrelated mineral production will not ordinarily give rise to an appearance of impropriety. First, typically the judge as a fractional royalty interest owner will not have had any direct personal negotiations or a direct personal relationship with the party. Second, ordinarily the interests of most fractional royalty interest owners are fairly standardized within a
particular community or producing field. Finally, many, although certainly not all, fractional royalty interests will be fairly small in both amount and percentage. Under these circumstances, we do not believe that an appearance of impropriety would arise merely because a party appearing before a judge is making royalty payments to the judge on an unrelated fractional royalty interest owned by the judge, and we do not believe that the judge is required to recuse in that situation. Of course, the various factors set forth above need to be evaluated in each situation because of the potential variability that may exist in the actual relationship. If the judge is uncertain whether the various factors in his or her particular situation might give rise to a reasonable concern regarding the judge’s impartiality, then the judge should consider utilizing the remittal procedure set forth in Canon 3D.

We then turn to the second question of whether a judge properly could hear a case when one of the parties, in an unrelated matter, entered into a mineral lease with the judge who held the executory rights to lease those minerals for production. The difference between this situation and the previous situation is that here the judge is likely to have signed a lease with the party and to have been more directly involved with the party. The judge holding the executory rights to lease typically will be both the surface landowner and an owner of a royalty interest in the minerals to be developed under the lease. The judge could be expected to have continued direct involvement with the lessee as the lessee enters upon the land to develop and produce oil and gas and as it markets those minerals in which the judge likely has a royalty interest. Further, there is often a reasonable possibility that controversy may arise concerning either the meaning of the lease or the parties’ performance under the lease, and if such a controversy does arise, the judge likely will be directly involved.

Once again, Canon 3C(1)(c) is not implicated because the judge does not have a financial interest in the lessee. Similarly, the judge could not preside over the suit if the suit before the judge could substantially affect the judge’s interests. Canon 3C(1)(c). Here, however, the judge’s role as a contracting party with the lessee, the likelihood of ongoing relations directly with the lessee, the reasonable possibility that controversy may arise concerning the lease that will implicate the judge directly, and the nature of the judge’s interests all suggest that the judge’s impartiality might reasonably be questioned, implicating Canon 3C(1), if he or she were to preside over any suit involving that lessee. Therefore, the judge should ordinarily recuse in this situation, subject, of course, to the possibility of remittal upon full disclosure to all the parties. See Canon 3D. However, once again, each case must be examined on its own facts because of the potential variability that may exist in the actual relationship.

The second scenario raises one other consideration of which the judge should be aware. Although a judge may manage his or her own real estate investments and may even act as a fiduciary for family members, a judge may not act as a fiduciary for non-family members. Canon 4E; Judicial Conference Ethics Reform Act Regulations Concerning Outside Earned Income, Honoraria, and Outside Employment § 5(a)(3) and Commentary ¶ 10, set forth in Guide to Judiciary Policy, Vol. 2C, Ch. 10. It is not
uncommon that non-family members will have fractional royalty interests in the oil and gas produced under the lease signed by the judge. If, under controlling state law, the judge’s role as lessor of mineral rights in which non-family entities have an interest imposes fiduciary obligations upon the judge toward such non-family entities, the judge should remove himself or herself from that role.

June 2009
Committee on Codes of Conduct Advisory Opinion
No. 95: Judges Acting in a Settlement Capacity

Concerns have arisen about the practice of judges acting in a settlement capacity in a case. In this opinion, the Committee considers the following facets of this issue:

(1) whether a judge presiding over a trial may properly participate directly in settlement discussions with the parties;

(2) whether the existence of an established local rule permitting the practice has any bearing on the propriety of the judge’s action;

(3) whether it makes any difference if the case is to be tried before a jury rather than the judge; and

(4) whether a judge may act as a mediator in a state court case.

The Code of Conduct for United States Judges contains two provisions bearing on the subject of judges’ involvement in settlement discussions. First, Canon 3A(4) advises that judges should not engage in ex parte communications on the merits of the case. As an exception to this general advice, Canon 3A(4)(d) provides that a “judge may, with consent of the parties, confer separately with the parties and their counsel in an effort to mediate or settle pending matters.” Second, Canon 3C(1) sets out the standard for impartiality that judges must meet in the performance of their judicial duties, including participation in settlement discussions. Canon 3C(1) provides that “[a] judge shall disqualify himself or herself in a proceeding in which the judge’s impartiality might reasonably be questioned. . . .”

Nothing in the Code expressly addresses the practice of judges discussing settlement with all parties simultaneously or presiding over joint settlement conferences. Since the drafters of the Code believed it was necessary to expressly permit ex parte settlement discussions between judges and parties with their consent, it is reasonable to infer that joint settlement discussions do not contravene the Code. We read the Code to acknowledge that judges may engage in a range of permissible settlement activities, and that recusal follows from those activities only where a judge’s impartiality might reasonably be questioned because of what occurred during the course of those discussions.

Discussion of the possibility of settlement is a common practice at pretrial and status conferences and is expressly sanctioned in general terms by the Federal Rules of Civil Procedure. Rule 16(a)(5) allows judges to convene pretrial conferences for the purposes of facilitating settlement. Rule 16(c)(2)(I) authorizes the court to “use dispute resolution procedures authorized by statute or local rule.” The clear implication in Rule 16 is that judges will be involved in facilitating settlement. Rule 16 does not prevent a judge who engaged in settlement discussions from presiding over a trial.
The Committee advises that a trial judge’s participation in settlement efforts is not inherently improper under the Code. As with any aspect of a judge’s conduct of a case, particular actions may raise ethical concerns in some cases, but there is no per se impropriety in a judge’s participation in settlement discussions or in a judge’s conduct of a trial following participation in settlement talks. The existence of local rules explicitly permitting judges to preside over settlement discussions lends support to the propriety of a judge’s actions in this respect. On the other hand, the existence of local rules prohibiting judges from handling successive settlement and trial responsibilities forecloses judges in some jurisdictions from exercising certain combinations of settlement and trial responsibilities (or from doing so without consent). In the absence of a local rule prohibiting the judge’s participation, whether ethical concerns arise in a particular proceeding is a specific determination that depends on the nature of the judge’s actions and whether the judge’s impartiality might reasonably be questioned. Judges should evaluate their actions under the standards discussed in this opinion.

Ethical concerns are less likely to arise when a judge handles settlement negotiations and then presides over a jury trial, or when the parties consent to the judge’s handling of successive settlement and trial phases. Concerns are more likely to arise in nonjury trials. In that scenario, a judge may be involved in settlement discussions, probe the parties’ assessments of the value of the case, review the parties’ settlement offers (and perhaps suggest to them specific settlement amounts), and then, when settlement talks fail, try the case and award damages. In the latter circumstances of a nonjury trial, it may be reasonable to question whether the trial judge can be an objective trier of fact, or whether the case should instead be tried by another judge unfamiliar with the settlement discussions.

The Code’s ethical standards are not violated every time a judge in a nonjury case learns of inadmissible information as a result of settlement discussions and then tries the case. Judges (and juries, as well) periodically receive information that is not admissible and exclude it from their deliberations before rendering judgment. It is not unreasonable to credit their ability to be impartial in these circumstances. Nor does it necessarily offend Canon 3C(1) for a trial judge to comment on the strengths and weaknesses of the parties’ case before trial. On the other hand, comments a judge makes in the course of settlement discussions may create an appearance of bias. Similarly, a trial judge’s awareness of information obtained during settlement discussions that is otherwise unlikely to be made known to the judge during the trial may undermine the judge’s objectivity as a fact finder and give rise to questions about impartiality. When a judge’s impartiality might reasonably be questioned, Canon 3C(1) advises that the judge “shall disqualify.” See also 28 U.S.C. § 455(a). “An appearance of impropriety occurs, when reasonable minds, with knowledge of all 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.” Canon 2A.
Participation in settlement efforts in a state court matter raises concerns under the Code. Canon 4A(4) states that “[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.” The Commentary to Canon 4A(4) specifically observes that judges may not mediate state court matters, but contemplates an exception with respect to related matters: “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).”

In conclusion, the Committee advises that settlement practices must be examined on a case-by-case basis to determine their ethical propriety. Factored into this calculus should be a consideration of whether the case will be tried by judge or jury, whether the parties themselves or only counsel will be involved in the discussions, and whether the parties have consented to the discussions or to a subsequent trial by the settlement judge. Judges must be mindful of the effect settlement discussions can have not only on their actual objectivity and impartiality, but also on the appearance of their objectivity and impartiality. Despite a judge’s best efforts there may be instances where information obtained during settlement discussions could influence a judge’s decision-making during trial. Parties who have confronted deficiencies in their cases, or who have negotiated candidly as to the value of their claims, may question whether the judge can set aside this knowledge in a case tried to the judge, whereas in a case tried to a jury, there may be less reason to question the judge’s impartiality. The extent to which a judge’s impartiality may be compromised, in either reality or appearance, will depend in part on the nature and degree of the judge’s participation in settlement discussions and the extent to which the judge has become privy to information that relates directly to the issues the judge will be called upon to decide. In the end, a judge’s recusal decision following involvement in settlement discussions will be specific to the facts of the situation and should be informed by an appropriate sensitivity to the requirements of maintaining impartiality and the appearance of impartiality.

June 2009
Committee on Codes of Conduct Advisory Opinion
No. 96: Service as Fiduciary of an Estate or Trust

The Committee frequently is asked to give advice regarding whether a judge may serve as a fiduciary of an estate or trust. This opinion will summarize the applicable principles.

Canon 4E of the Code of Conduct for United States Judges provides:

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.

Canon 4E places substantial restrictions on the ability of judges to serve as a trustee or other fiduciary. Judges may not serve as fiduciaries in non-family situations, even where the amount of work involved is minimal. See Advisory Opinion No. 33 (judge should not serve as co-trustee of pension trust). Although judges are permitted to serve as fiduciaries in family situations, Canon 4E(1) advises against doing so if it would interfere with judicial duties or lead to litigation in the judge’s court. Canon 4D(4) contains a relatively expansive definition of family member for these purposes: Residence in the judge’s household is not required in order for a person to be considered a member of the judge’s family, nor must the person be related by blood, adoption, or marriage. However, more is required than mere residence in the household, longstanding affective ties, or an underlying business relationship. Persons must be treated by the judge as a member of the judge’s family in order to be considered family members under Canon 4D(4).

Newly appointed judges who are serving as fiduciaries when they are appointed should refer to the Applicable Date of Compliance provision set out at the end of the Code. The compliance provision advises newly appointed judges to “arrange their financial and fiduciary affairs as soon as reasonably possible to comply with” the Code and to do so in any event within one year following appointment. This means that judges should discontinue their service as nonfamily fiduciaries within a year of their
appointment. However, the compliance provision provides for an exception to this advice in the following circumstances:

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.

Under Canon 3C(1)(c), judges are required to recuse in any proceeding in which they know they hold a financial interest in a party, whether the interest is held individually or as a fiduciary. Canon 4E(2) confirms that judges acting as fiduciaries are subject to the same restrictions on financial activities that apply in their personal capacity. A judge who serves as a trustee is deemed to have a financial interest in all assets held by the trust and, therefore, is required to recuse in cases where a corporation whose securities are held by the trust is a party. In this event, the remittal provisions of Canon 3D are not available; in other words, the parties may not waive the judge’s disqualification and permit the judge to serve. Judges have an obligation under Canon 3C(2) to keep informed about their fiduciary financial interests so they can recuse themselves when necessary.

Canon 4D(3) also bears on a judge’s service as a trustee; it advises that judges “should divest investments and other financial interests that might require frequent disqualification” as soon as reasonably possible. A judge who serves as a trustee may be able to divest the trust of holdings whose retention would require the judge to recuse frequently, assuming this can be done consistently with the judge’s fiduciary obligations as trustee. If not, and if the trust assets trigger frequent disqualifications that prove disruptive to the court, the judge should consider whether he or she may properly continue to serve or whether resignation would be appropriate, consistent with the judge’s obligations under Canon 4D.

A judge who is permitted to serve as a trustee for a family trust may accept compensation for such service if the source of the compensation does not give the appearance of influencing the judge in the judge’s judicial duties or otherwise give the appearance of impropriety, if the compensation does not exceed a reasonable amount, and if it does not exceed what a person who is not a judge would receive for the same activity. Canon 4H. Such compensation must be reported on the judge’s annual Financial Disclosure Form, and is subject to the limitations on outside earned income set forth in the Ethics Reform Act of 1989 and the regulations issued thereunder by the Judicial Conference. See Judicial Conference Regulations Concerning Outside Earned Income, Honoraria, and Outside Employment § 3 and Commentary ¶ 10. Although
these regulations also prohibit judges from serving as a fiduciary for compensation, that prohibition "does not apply to service . . . as an executor or trustee of a family estate or trust as permitted by the Codes of Conduct where the [judge] does no more than provide the service that would be provided by a lay person in the same capacity." See id. However, even in the limited circumstances where judges may continue to serve as a nonfamily trustee, as noted above, judges should not accept compensation for service as a nonfamily trustee.

June 2009
Committee on Codes of Conduct Advisory Opinion
No. 97: Disqualification of Magistrate Judge Based on Appointment or Reappointment Process

This opinion discusses the ethical obligations of a magistrate judge arising out of the relationship between members of the selection panel and the magistrate judge (1) following the initial appointment process, and (2) during and following the reappointment process.

We begin by briefly reviewing the appointment process. Magistrate judges are appointed and reappointed in accordance with the procedures set forth in 28 U.S.C. § 631 and regulations promulgated by the Judicial Conference of the United States. See Guide to Judiciary Policy, Vol. 3, Ch. 4. The active district judges appoint a selection panel with at least seven members consisting of lawyers and other members of the community. At least two members of the panel must be nonlawyers. The size and composition of panels varies from district to district, but the usual practice is to appoint active federal practitioners and prominent citizens of the community. Frequently United States Attorneys and Federal Defenders, or their designees, also serve on these panels.

When an appointment is being made to a vacant or newly created position, the panel is required to submit a list of five nominees to the court within ninety days of its creation. A majority of the active district judges selects a candidate from the list of five nominees. When a magistrate judge is being considered for reappointment, the panel reports to the court whether or not it recommends reappointment of the incumbent after the public and bar have been given notice and an opportunity to submit comments.

Throughout the appointment process, both the panel and the court are required to keep all information received, including the names of potential nominees and individuals recommended by the panel, in strict confidence.

The appointment and reappointment process for magistrate judges implicates Canons 2 and 3 of the Code of Conduct for United States Judges. Canon 2 provides:

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. . . .
Canon 3 provides:

A judge should perform the duties of the office fairly, impartially and diligently . . . .

C. Disqualification.

(1) A judge shall disqualify himself or herself in a proceeding in which the judge’s impartiality might reasonably be questioned . . . .

Canon 3C(1) continues with a non-exhaustive list of circumstances under which a judge’s impartiality might reasonably be questioned; however, none of these circumstances is applicable to this issue.

Canons 2 and 3 are designed not only to ensure against actual partiality, but also against the appearance of partiality. The critical consideration is whether reasonable persons would perceive the judge as partial. The Commentary to Canon 2A sets forth an objective test for the appearance of impropriety, and this test is also useful in evaluating the impartiality requirement under Canon 3, namely, whether “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.” Of course, the perception of partiality will vary depending on the facts and circumstances of any particular situation.

We will consider several specific questions regarding ethical obligations during the different steps in the appointment and reappointment process.

Initial Appointment

1. Should a magistrate judge notify all parties of the fact that a lawyer or party in the case was a member of the panel that originally considered the judge’s application?

2. If such notification is required, for what period of time must this notification be given?

3. Is a magistrate judge required to recuse whenever a member of the panel appears as either a lawyer or party to a case?

The panel fulfills its charge by recommending five nominees to the court and the court makes the appointment. While carrying out its responsibilities, the panel is under an obligation to conduct its activities in strict confidence. Therefore, the presumption is that a candidate has no knowledge of the views or positions of individual panel members with respect to any candidate. During the selection process, a candidate will undoubtedly be interviewed by members of the panel and may also be contacted by a
member of the panel to obtain approval before third parties are contacted about the candidate.

In the opinion of the Committee, a magistrate judge is not obligated following initial appointment to notify the parties in a case that either a lawyer or a party in that case was a member of the panel that considered the judge's application since there is no reasonable basis for questioning the magistrate judge's integrity, impartiality, or competence. The selection process is a formalized one established in a way that encourages an objective evaluation of candidates based on merit. It is unlikely that an interpersonal relationship will develop between the candidate and any member of the panel during the selection process. Since the panel operates under a requirement of strict confidentiality, a candidate is not privy to the individual opinions of the panel members concerning any candidate. At best, a candidate who is selected can infer that at least a majority of the panel agreed to place the candidate's name on the list of nominees. The candidate assumes the office of magistrate judge after the panel has completed its work.

Under these circumstances, a reasonable person, with knowledge of all the relevant circumstances that a reasonable inquiry would disclose, would not perceive a magistrate judge's ability to carry out judicial responsibilities with integrity, impartiality and competence to be impaired merely because an attorney or a party who was a member of the panel that considered the judge's application was appearing in a case before that judge. Of course, in the unlikely event that during the selection process something were to occur between a panel member and the magistrate judge that bears directly on the magistrate judge's ability to be, or to be perceived as being, fair and impartial in any case involving that panel member, then the facts of that particular situation would have to be evaluated by the magistrate judge to determine if recusal is warranted and if notification should be provided to the parties.

**Reappointment Process**

1. Should the incumbent recuse from any matter in which an attorney who is a member of the panel represents a party? Should such a recusal apply to all members of the attorney's firm?

2. If recusal is required, for how long is it required?

3. If recusal is not required, is the incumbent required to notify all parties in a case that one of the attorneys serves on the nomination panel? If so, for what period of time is the incumbent required to advise the parties of this situation?

4. If the United States Attorney or Federal Defender, or their designee, is a member of the panel, must the incumbent recuse in any matters involving these agencies during the reappointment process?
5. Both the nonlawyer and lawyer members of the panel tend to be prominent citizens of the community who have investments in and sit on boards of a number of businesses and community organizations. Should the incumbent recuse from any case in which a panel member has a financial interest? If so, how can the incumbent learn of the panel member’s interests, since financial disclosures by panel members are not currently required?

6. May an incumbent advise attorneys and parties that the comment period is open and that they may make comments on the reappointment?

When a court is considering reappointing a magistrate judge, a panel is selected prior to the expiration of the incumbent’s term, in the manner previously described. Public notice is given soliciting comments from the public and the bar. During the process, the incumbent continues to adjudicate cases. After the panel makes its recommendation on reappointment to the court, the court decides whether or not to reappoint. If the court decides not to reappoint the incumbent, the incumbent is notified and the selection procedures prescribed for filling a vacant position are commenced.

An incumbent seeking reappointment obviously has a substantial interest in receiving a favorable recommendation from the panel and is well aware that his or her past service as a magistrate judge is being carefully reviewed and scrutinized. In the opinion of the Committee, during the period of time that the panel is evaluating the incumbent and considering what recommendation to make concerning reappointment, a perception would be created in reasonable minds that the magistrate judge’s ability to carry out judicial responsibilities with impartiality is impaired in any case involving an attorney or a party who is a member of the panel. Therefore, under Canon 3C(1), the magistrate judge is required to recuse in such a case. However, under Canon 3D, recusal in this situation would be subject to remittal should the magistrate judge decide to utilize the remittal procedure.

In the opinion of the Committee, recusal would be required only during that period of time when reappointment is under consideration by the panel and court. Following reappointment, the disqualifying factor is removed and recusal is not necessary unless, as previously noted, something occurred during the selection process between a panel member and the incumbent that directly related to the incumbent’s ability to be, or to be perceived as being, fair and impartial in any case involving that panel member.

A situation may also arise in which the incumbent is not reappointed. Due to the strict requirement of confidentiality, the recommendation of the panel presumably will not be known to the incumbent. However, since it is probable that failure to be reappointed is due at least in part to an adverse recommendation of some of the panel, a magistrate judge in such a situation should continue to recuse, subject to remittal, for the balance of the term of office.
When an attorney is a member of the panel, the magistrate judge need only recuse, subject to remittal, in those cases in which that attorney appears, and need not recuse in cases in which other members of that attorney’s firm appear. The Committee believes the relationship between other members of the firm and the panel is sufficiently indirect and attenuated that a reasonable person, with knowledge of the relevant circumstances set forth above, would not perceive the magistrate judge’s ability to carry out judicial responsibilities impartially to be impaired.

Similarly, where a designee of the United States Attorney or Federal Public Defender is a member of the panel, the magistrate judge must recuse, subject to remittal, only in cases in which those designees appear and not in cases involving other attorneys from those offices. However, in those situations where the United States Attorney or the Federal Public Defender serves on the panel, recusal is necessary, subject to remittal, in all cases (criminal and civil) involving that attorney and that attorney’s office due to the direct supervisory role those officials have over the attorneys and the cases in their respective offices.

If the magistrate judge knows that a lawyer or nonlawyer member of a panel, who is neither a lawyer nor a party in a case, has a financial or other personal interest that could be substantially affected by the outcome of a case, then the magistrate judge should recuse, subject to remittal. A reasonable person with knowledge of the relevant circumstances would perceive that the magistrate judge’s ability to carry out judicial responsibilities impartially in such a case was impaired. The mere fact that a panel member is on the board of a business or community organization that is a party in a case is not necessarily in and of itself a sufficient basis to require recusal unless, for example, the panel member has a financial or other personal interest that could be substantially affected by the outcome of the case, or will be involved in the case as a witness or as a board member, trustee, or officer with a decision-making role concerning the litigation. Such determinations will necessarily be specific to the facts in any given case.

In the event that a magistrate judge is aware of or concerned about whether a panel member has a financial or other personal interest or role in a case, the magistrate judge should inform counsel and the parties about the reappointment process and disclose the names of the panel members. Counsel and the parties should be requested to notify the magistrate judge if anybody involved in the case is a member of the panel, and, if so, whether to their knowledge that individual has a financial or other personal interest in the case that could be substantially affected by its outcome or will participate in any way in the litigation. Once the magistrate judge has the requested information, a determination concerning recusal can be made. Any recusal would be subject to the remittal procedure, at the magistrate judge’s discretion.

The magistrate judge may not advise attorneys and parties that the comment period is open and that they can make comments on the reappointment. No matter how well intentioned the magistrate judge might be in providing this information to attorneys
and parties, there is a significant risk that they might feel pressured to comment favorably on the magistrate judge who is presiding over their case. Under Canon 2, a judge may not take advantage of the judicial office to promote personal interest. Any such action by a magistrate judge would run a significant risk of creating the appearance of impropriety.

**Post Reappointment**

After reappointment is the magistrate judge required to recuse or to notify the parties and attorneys in a proceeding in which a member of the panel is appearing as counsel or as a party?

In the opinion of the Committee, after reappointment the magistrate judge is not required to recuse or to notify the parties and attorneys in a proceeding in which a member of the panel is appearing as counsel or as a party for the same reasons that a magistrate judge is not required to do so after completion of the initial appointment procedure. The only exception to this would be if something occurred during the selection process between the panel member and the magistrate judge that bears directly on the magistrate judge’s actual or perceived ability to be fair and impartial in a case involving that panel member. The particular facts of such a situation would have to be evaluated by the magistrate judge to determine if recusal is an issue and if notification should be provided to the parties.

In closing, the Committee notes that recusal decisions are also governed by the recusal statutes, 28 U.S.C. §§ 455 and 144, and the case law interpreting them. Although the Committee is not authorized to render advisory opinions interpreting §§ 455 and 144, Canon 3C of the Code closely tracks the language of § 455, and the Committee is authorized to provide advice regarding the application of the Code.

June 2009
Committee on Codes of Conduct Advisory Opinion
No. 98: Gifts to Newly Appointed Judges

Newly appointed judges frequently are offered gifts and benefits on the occasion of their investitures. These offers, arising at or near the time of the judge’s appointment, warrant an early focus on ethical guidelines. This opinion provides guidance for new judges regarding the applicable restrictions.

The standards governing a judge’s acceptance of gifts are set forth in Canon 4 of the Code of Conduct for United States Judges, the Ethics Reform Act, and the Judicial Conference Ethics Reform Act Gift Regulations. A “gift” is defined as “any gratuity, favor, discount, entertainment, hospitality, loan, forbearance, or other similar item having monetary value.” Gift Regulations § 3(e). Depending on the circumstances, the guidance contained in Canons 2 (avoid impropriety and appearance of impropriety) and 5 (refrain from political activity) of the Code may also bear on the propriety of accepting investiture-related benefits.

Canon 4D(4) requires that judges “comply with the restrictions on acceptance of gifts set forth in the Judicial Conference Gift Regulations.” The Gift Regulations generally prohibit judges from accepting gifts unless the gifts fall within several enumerated exceptions:

A judicial officer or employee shall not accept a gift from anyone who is seeking official action from or doing business with the court or other entity served by the judicial officer or employee, or from any other person whose interests may be substantially affected by the performance or nonperformance of the judicial officer’s or employee’s official duties.

Gift Regulations § 5(b)(a).

Sections 5(b)(1) and (b)(4) of the Gift Regulations describe relevant exceptions that may apply to investiture-related gifts:

(b) Notwithstanding this general rule, a judicial officer or employee may accept a gift from a donor identified above in the following circumstances:

(1) the gift is made incident to a public testimonial and is fairly commensurate with the occasion;

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(4) the gift is from a relative or friend, if the relative’s or friend’s appearance or interest in a matter would in any event require that the officer or employee take no official action with respect to the matter, or if the gift is made in connection with a special occasion, such as a wedding, anniversary, or birthday, and the gift is fairly commensurate with the occasion and the relationship . . . .
In no event do the foregoing provisions permit a judge to solicit gifts on the occasion of an investiture or otherwise. The Ethics Reform Act, the implementing Gift Regulations, and the Code all prohibit the solicitation of gifts. 5 U.S.C. § 7353; Gift Regulations § 4; Canon 4D(4). As with any gift, judges should be aware that financial reporting provisions may require the disclosure of certain information. Canon 4H(3).

One benefit commonly extended to new judges is an offer by a private entity or individual either to sponsor or contribute to a reception in honor of the judge’s investiture. Whether a judge may properly accept such an offer depends in part on the identity of the proposed donor and the donor’s relationship to the judge. If the donor or sponsor is a former law firm, corporate employer, business client, or group of colleagues, the Gift Regulations recognize that the offer may be accepted as a gift from a friend on a special occasion, assuming the gift is fairly commensurate with the occasion and the relationship. It may also be accepted as a gift incident to a public testimonial. In addition, to the extent the judge plans to recuse for a period of time following appointment from cases in which the former employer, clients, or colleagues appear, the judge will not be taking any official action affecting the donors and thus no appearance of impropriety would be created.

Likewise, receptions sponsored by bar associations generally do not present ethical concern as they may properly be considered gifts incident to public testimonials. Also, as we have noted previously, “[w]hen hospitality is extended by lawyer organizations, the risk of an appearance of impropriety is markedly reduced, compared to hospitality conferred by a particular law firm or lawyer.” Advisory Opinion No. 17 (“Acceptance of Hospitality and Travel Expense Reimbursements From Lawyers”).

Concerns may arise with respect to other prospective donors. Where the proposed donor is a for-profit company that has no pre-existing or longstanding relationship with the judge, permitting the company to host an investiture reception would necessitate the judge’s recusal from cases involving the company. This might also “permit others to convey the impression that they are in a special position to influence the judge,” which would not be consistent with Canon 2B.

Some gifts may be impermissible because acceptance would be interpreted as endorsement of a donor or its activities, which may be inconsistent with a judge’s independence and impartiality. Judges are advised not to associate themselves with entities that are publicly identified with controversial legal, social, or political positions or that regularly engage in adversarial proceedings in the federal courts. Canon 4B(1). Under Canon 5, judges are also advised to refrain from joining political organizations or engaging in political activities. Donors engaging in these sorts of activities should not be permitted to serve as a host or sponsor of a reception.

It is also common for judges to receive tangible gifts and mementoes in connection with their appointment and investiture. Judges may properly accept such gifts, consistent with the provisions outlined above. The Code and the Gift Regulations
recognize the propriety of accepting appropriate gifts from friends, relatives, and colleagues to mark this special occasion and serve as a form of public testimonial. Examples of gifts the Committee has found to be appropriate include: a judicial robe given by former law partners; a clock given by a bar association; a chair given by former state judicial colleagues; and a gavel and $500 monetary gift given by a former client.

Acceptance of a gift offered in connection with a judge's investiture may necessitate the judge’s recusal from matters involving the donor. In many instances, the donors are likely to be persons whose appearance in a case would in any event necessitate the judge’s recusal, at least for some period of time. These include former law partners, close friends, and former clients. Where the gift is given by a group and the cost is shared proportionately, recusal may not be required if the amount of each individual contribution is relatively small. A judge’s determination whether to recuse, and for how long, should be guided by the standards set forth in Canon 3C(1).

June 2009
Committee on Codes of Conduct Advisory Opinion
No. 99: Disqualification Where Counsel Is Involved in a Separate Class Action in Which the Judge or a Relative Is a Class Member

In light of the number of class actions with very large classes, it sometimes happens that the attorneys in a case pending before a judge are involved in a separate class action in which the judge or one of the judge’s relatives is a class member. This opinion addresses the considerations that bear on whether the judge should recuse in such a case.

Under Canon 3C(1) of the Code of Conduct for United States Judges, judges should recuse, subject to remittal, in cases in which one of the parties is represented by a lawyer who is a member of a firm that currently represents the judge in an unrelated matter. The same advice applies if, to the judge’s knowledge, the lawyer’s firm represents, in an unrelated matter, the judge’s spouse or minor child residing in the judge’s household. (The Committee notes that, for purposes of recusal, “considerations applicable to a judge’s spouse should be considered with respect to a person other than a spouse with whom the judge maintains both a household and an intimate relationship.” Commentary to Canon 3C.)

The question addressed here is whether, and to what extent, that general advice should apply to cases in which the representation of the judge or the judge’s relative in an unrelated matter consists of representation in a Rule 23(b)(3) class action.

The Committee is of the view that there is no absolute requirement of recusal in cases in which the judge or the judge’s relatives are represented in the unrelated matter solely in their capacity as class members. In some instances, the relationship between the judge (or the judge’s relatives) and the attorney for the class may be quite similar to the relationship between attorney and client in a conventional setting and, in such cases, recusal would be required. However, where the class action is a large one, in which the judge (or the judge’s relatives) are not lead plaintiffs or named plaintiffs, have had no role in selecting the attorney for the class, have not had – and do not expect to have – personal contact with the attorney, and have no reasonable expectation of a substantial personal recovery, the case for recusal is not nearly as strong. In that setting, the Committee is of the view that the mere fact that the judge, or a relative of the judge, is represented as a class member by the same attorney or firm that is appearing before the judge does not give rise to a reasonable question as to the judge’s impartiality and therefore does not require recusal under Canon 3C(1).

A different case would be presented if the class of which the judge is a member is small, if the judge is a named plaintiff, or if the judge is playing an active role in the litigation, or if the judge has a reasonable expectation of a substantial recovery. In that setting, the judge would be required to recuse, subject to remittal, if an attorney appearing before the judge in the case in question is a member of the firm that represents the class in the class action.
Finally, the Committee notes that recusal decisions are also governed by the recusal statutes, 28 U.S.C. §§ 455 and 144, and the case law interpreting them. Although the Committee is not authorized to render advisory opinions interpreting §§ 455 and 144, Canon 3C of the Code closely tracks the language of § 455, and the Committee is authorized to provide advice regarding the application of the Code.

June 2009
Committee on Codes of Conduct Advisory Opinion
No. 100: Identifying Parties in Bankruptcy Cases for Purposes of Disqualification

Canon 3C(1)(c) of the Code of Conduct for United States Judges requires recusal when the judge knows that the judge, the judge’s spouse, or a minor child residing in the judge’s household “has a financial interest . . . in a party to the proceeding.”  (The Committee notes that, for purposes of recusal, “considerations applicable to a judge’s spouse should be considered with respect to a person other than a spouse with whom the judge maintains both a household and an intimate relationship.”  Commentary to Canon 3C.)  Similarly, Canon 3C(1)(d) requires a judge to recuse if the judge, 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.”  In most matters filed in the federal courts, it is easy to identify who is “a party to the proceeding” by reviewing the caption of the pleadings and proofs of service.  However, bankruptcy cases are quite different because such cases regularly involve creditors who may have some interest in the proceedings, but no intention of participating in a capacity akin to a party.

Identifying who is “a party to the proceeding” for purposes of recusal in bankruptcy cases is important not only to the bankruptcy courts, but also to the district courts sitting as bankruptcy courts after withdrawal of the reference, to the district courts sitting as appellate courts, to the bankruptcy appellate panels, and to the circuit courts of appeal.  The Committee consistently has taken the position that simply being a creditor or an interest holder of a bankruptcy estate is not a sufficient interest to make that creditor “a party to the proceeding.”  In that same vein, the acts of filing a proof of claim, or submitting a ballot on a proposed plan of reorganization, are not in themselves sufficient to raise the creditor or interest holder to the status of a party.  It takes something more.

The Committee has advised that if a creditor accepts appointment to a committee of creditors, that change in status is sufficient to make each such creditor or interest holder “a party” because of the statutory responsibilities assumed by acceptance of such an appointment.  In addition, the following participants in bankruptcy proceedings should be considered parties for these purposes:  the debtor; a trustee; parties to an adversary proceeding; and participants in a contested matter.  These entities occupy a central role in the proceedings or are actively involved in matters requiring judicial adjudication.  As a consequence, we advise that they are sufficiently akin to parties that they should be treated as such for purposes of judicial disqualification.

Part of the ethical challenge in bankruptcy cases lies in the fact that the identity of “a party to the proceeding” may change with any motion, objection, or adversary proceeding.  When the issue arises in this fashion, and a participant becomes a party for these purposes, the question of recusal must be considered.  Judges sitting in bankruptcy matters should be vigilant to the possibility that a creditor or interest holder’s
status may at some time change to “a party.” The Committee has advised, however, that in the ordinary bankruptcy case a judge has no obligation to review the schedules of creditors and interest holders to look for possibly disqualifying circumstances.

Finally, the Committee notes that recusal decisions are also governed by the recusal statutes, 28 U.S.C. §§ 455 and 144, and the case law interpreting them. Although the Committee is not authorized to render advisory opinions interpreting §§ 455 and 144, Canon 3C of the Code closely tracks the language of § 455, and the Committee is authorized to provide advice regarding the application of the Code.

June 2009
Committee on Codes of Conduct Advisory Opinion
No. 101: Disqualification Due to Debt Interests

On their annual financial disclosure reports, judges must disclose various debt interests owned by themselves or their close relatives. This opinion addresses a judge’s obligation to recuse due to ownership of a debt interest in a party. Debt interests include, for example, United States, state or municipal bonds, sewer revenue bonds, industrial development bonds, municipal transit authority bonds, and corporate bonds.

Canon 3C(1)(c) of the Code of Conduct for United States Judges provides as follows:

(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:

* * *

(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 a party to the proceeding, or any other interest that could be affected substantially by the outcome of the proceeding.

These provisions are substantially identical to those found in 28 U.S.C. § 455(b)(4). While the Committee is not authorized to interpret § 455, the Committee does have authority to interpret the provisions of the Code.

Canon 3C(3)(c) defines financial interest as “ownership of a legal or equitable interest, however small.” Under Canon 3C(1)(c), judges therefore must recuse when: (1) they or their spouses or minor children “own[] a legal or equitable interest, however small” in a party or, (2) they have any other interest that could be affected substantially by the outcome of the proceeding. (The Committee notes that, for purposes of recusal, “[r]ecusal 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.” Commentary to Canon 3C.)

Judges must also disclose stock holdings on their annual financial disclosure reports. Ownership of any stock in a party, however small, automatically requires a judge’s disqualification because it constitutes a financial interest in the party. Disqualification under these circumstances is not subject to remittal. See Canon 3D.

Debt interests are not considered to give rise to a financial interest in the debtor that issued the debt security because the debt obligation does not convey an ownership interest in the issuer. Therefore, disqualification is not required solely because a party in a matter before the judge is a corporation or governmental entity that has issued a
debt security owned by the judge. Under the Code, governmental securities are an exception to the definition of “financial interest”: Canon 3C(3)(c)(iv) states that “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.”

However, a convertible debt security, that is, one that may be converted to stock, should be considered as stock for the purpose of determining a financial interest in a party because the value of such a security is inextricably related to the value of the issuer’s stock. As with stocks, ownership of a convertible debt security interest in a party, however small, requires a judge’s disqualification and such disqualification is not subject to remittal.

Ownership of any type of debt interest, including government securities, may in some circumstances occasion disqualification if the judge’s interest is such that it could be substantially affected by the outcome of the proceeding. Canon 3C(1)(c). In determining whether a debt interest could be substantially affected, what must be evaluated is not the size of the interest but the extent to which that interest could be affected. In those rare cases where there is a potential that the judge’s debt interest could be substantially affected by the outcome of the proceeding, the judge may need to obtain relevant information from the litigants in order to make the determination. When a debt interest is disqualifying on this basis, the disqualification is not subject to remittal. See Canon 3D.

June 2009
Committee on Codes of Conduct Advisory Opinion
No. 102: Disqualification Issues Relating to Judge Being Sued in Official Capacity, Including Representation By Department of Justice

This opinion discusses recusal issues that arise when a judge is sued in an official capacity, particularly recusal questions vis-a-vis representation of the judge. When judges are sued in an official capacity, it is not uncommon for representation to be provided by an attorney from the Department of Justice (“DOJ”), which includes members of the local U.S. Attorney’s staff. In the event a DOJ attorney is assigned to represent a judge, it is not necessary for the judge to recuse in unrelated litigation in which other DOJ attorneys appear. It may even be unnecessary to recuse from cases handled by the same attorney assigned to represent the judge, depending upon the nature of the representation and the judge’s relationship with the attorney.

Judicial disqualification in this situation is guided by the standards in Canon 3C of the Code of Conduct for United States Judges, which provides in relevant part, “[a] judge shall disqualify himself or herself in a proceeding in which the judge’s impartiality might reasonably be questioned.” In the Committee’s view, a judge’s impartiality cannot reasonably be questioned in unrelated matters handled by the DOJ simply because the Department provides representation in a lawsuit naming the judge in an official capacity. When accepting representation by the Department, a judge is not choosing a personal attorney, and the DOJ is not the same as a private law firm. See Advisory Opinion No. 38 (“Disqualification When Relative Is an Assistant United States Attorney”). Under 28 U.S.C. §§ 516 to 519, the DOJ has the statutory function to represent officers and agencies of the United States sued in an official capacity.

Nor is disqualification always required in unrelated matters handled by the individual attorney assigned to represent the judge. Numerous lawsuits against judges are filed by disgruntled litigants and are patently frivolous; they are often dismissed promptly and without any discovery on the basis of the judge’s absolute judicial immunity. In these instances, a judge often will have little personal contact with the government attorney providing representation. Thus, disqualification is not always required, but instead depends on the particular facts and circumstances of the case and the nature of the relationship the judge develops with the attorney.

Similar advice applies to the related question of whether a judge’s colleagues should recuse when a judge is named in a complaint. When a judge is a named defendant, the other judges of that court are not necessarily and automatically disqualified. If the litigation is patently frivolous, or if judicial immunity is plainly applicable, recusal would rarely be appropriate.

When a judge is sued and representation is provided through a local U.S. Attorney’s office, the question arises whether the judge should seek representation by an attorney from outside his or her own judicial district. In the Committee’s view, the Code does not require judges to seek representation by government attorneys outside
of their districts. But when a judge accepts government representation, he or she must be attentive to situations that require disqualification under Canon 3C(1).

Although disqualification is not routinely required from unrelated matters handled by a government attorney assigned to represent a judge, it may be appropriate in some instances. This situation may arise because of the nature of the claims (i.e., those involving personal liability and not subject to absolute immunity) or because of the attorney-client relationship necessary to mount a proper defense (i.e., where extensive factual development or discovery is needed). Often this circumstance will be apparent when the complaint is filed. In these situations, assignment of an Assistant U.S. Attorney or DOJ lawyer from outside the judge’s district would reduce the potential for disruption of the judge’s docket stemming from multiple disqualifications that might otherwise occur if the assigned attorney had an extensive docket before the judge. Some judges might prefer an out-of-district attorney, notwithstanding the administrative inconvenience of dealing with geographically remote counsel. If the local U.S. Attorney’s office is to provide representation, disruptive disqualifications can be minimized through assignment of an attorney who appears only infrequently before the judge.

The Committee notes, in closing, that recusal decisions are also governed by the recusal statutes, 28 U.S.C. §§ 455 and 144, and the case law interpreting them. Although the Committee is not authorized to render advisory opinions interpreting §§ 455 and 144, Canon 3C of the Code closely tracks the language of § 455, and the Committee is authorized to provide advice regarding the application of the Code.

June 2009
Committee on Codes of Conduct Advisory Opinion
No. 103: Disqualification Based on Harassing Claims Against Judge

From time to time, the Committee receives inquiries from judges asking if they should recuse themselves from cases involving litigants who register complaints against judges in retaliation for unfavorable judicial decisions or setbacks in their legal proceedings. These complaints may take the form of a civil action, a complaint of misconduct or disability under the Judicial Conduct and Disability Act, 28 U.S.C. §§ 351 to 364, or other initiatives affecting judges’ personal interests. Some litigants file repeated complaints naming the original judge, while others name additional judges with each succeeding setback. Occasionally, lawsuits are initiated naming all judges of a court. In some instances, a pattern of frivolous or vexatious filings may lead judges to enter protective orders restricting a litigant from submitting further filings without leave of court.

All of these situations – from initiation of a complaint against a single judge to review of successive pleadings under a protective order – can give rise to recusal considerations, which must be weighed carefully. Important reasons exist for a judge not to disqualify routinely, as this would permit and might even encourage litigants to manipulate and abuse the judicial process, which could undermine public confidence in the integrity of the judiciary. Automatic disqualification of a judge cannot be obtained by the simple act of suing the judge, particularly where the suit is primarily based on the judge’s prior judicial rulings. On the other hand, a universal refusal to recuse could also lead to disrespect for and a loss of public confidence in the integrity of the judicial process.

This opinion summarizes the Committee’s views concerning the decision to recuse in various situations involving harassing claims against judges. The Committee notes that the related recusal issues arising from a judge’s representation by the U.S. Department of Justice in legal proceedings are addressed in Advisory Opinion No. 102.

Canon 3C(1) of the Code of Conduct for United States Judges governs many of the issues related to this type of harassing litigation. It provides, in relevant part:

(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; . . .

(c) the judge knows that the judge . . . has a financial interest in the subject matter in controversy . . . or any other interest that could be affected substantially by the outcome of the proceeding;
(d) the judge . . . is:

(i) a party to the proceeding . . .

(iii) known . . . to have an interest that could be substantially affected by the outcome of the proceeding; or

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

When recusal is not mandated by one of the specifically enumerated categories in Canon 3C(1), the Committee has identified a number of non-exclusive factors to be considered in determining whether a “judge’s impartiality might reasonably be questioned.” These include the nature of the complaint, the applicable law, the possibility of factual issues involving the credibility of the named judge or judges, and any other circumstances that might provide a reasonable ground for questioning the impartiality of the assigned judge.

Civil Actions Against the Assigned Judge

A judge must recuse if he or she is named as a defendant in a proceeding that has been assigned to the judge. Canon 3C(1)(d)(I) provides that a judge shall recuse himself or herself when “the judge . . . is . . . a party to the proceeding.”

Civil Actions Against Other Judges on the Assigned Judge’s Court

If one or more of an assigned judge’s judicial colleagues – but not the assigned judge – is named as a defendant in a civil action, the assigned judge need not automatically recuse from the case. This situation is governed by Canon 3C(1)’s general admonition against presiding over cases in which “the judge’s impartiality might reasonably be questioned.” Whether it would be appropriate for a judge to handle a matter naming judicial colleagues depends on the surrounding circumstances, including the factors identified above.

In typical harassing litigation, a claim against a judge is barred by the doctrine of judicial immunity, and the complaint is subject to prompt dismissal on judicial immunity or other grounds. Review of a complaint against a judicial colleague where the litigation is patently frivolous or judicial immunity is plainly applicable will not ordinarily give rise to a reasonable basis to question the assigned judge’s impartiality, and disqualification would rarely be appropriate. Thus, the mere naming of a judicial colleague as a defendant does not require automatic recusal of every judge in the district or on the court under Canon 3C(1). Because each case must necessarily depend upon its own unique circumstances, however, it should be noted that if, after a review of all the surrounding circumstances, the assigned judge determines that his or her impartiality might reasonably be questioned, recusal would be appropriate.

Civil Actions Against All Judges on a Court
When all sitting judges of a court are named as defendants in a civil action, each defendant judge is ordinarily required to recuse from hearing the case under Canon 3C(1)(d)(I) because they are parties to the case. This situation may be addressed by assigning the matter to a newly appointed judge who joins the court after the filing of the complaint or by arranging for a judge from another district, or judges from another circuit, to handle the matter. Whether a judge may nevertheless handle such a matter under the rule of necessity is a question of law beyond the scope of this opinion. Judges should consult their circuit precedent on this question.

Unrelated Cases Involving Same Litigant

A litigant with a case pending before a judge may respond to an adverse ruling by initiating a complaint against the judge. The judge is disqualified from handling the new case against himself or herself for the reasons discussed above, but the question is whether the new complaint necessitates the judge’s recusal from the pending, unrelated case he or she had already been handling.

A judge is not automatically disqualified from participating in other, unrelated cases involving the same litigant, whether they are filed before or after the complaint in which the judge is a defendant. Judicial immunity usually will be a complete defense against a new complaint of this nature, and the court in which the complaint is filed likely will dismiss it as frivolous. In such circumstances, the mere fact that a litigant has filed a new frivolous complaint against a judge based on the judge’s official actions will not disqualify the judge from continuing to preside over the earlier, unrelated matter brought by the same litigant. The same holds true when a litigant who previously filed a complaint naming a judge subsequently files an unrelated case against others that is assigned to the named judge.

Although there might be some question regarding the impartiality of the judge in these situations, Canon 3C(1) requires that the basis for questioning a judge’s impartiality must be “reasonable” for the judge to be required to recuse. The factors the judge should consider in making the reasonableness determination are identified above, i.e., the nature of the complaint, the applicable law, and other relevant circumstances. A complaint filed against a judge that is subject to prompt dismissal on judicial immunity grounds will not ordinarily give rise to a reasonable basis to question the judge’s impartiality in unrelated cases filed against others by the same litigant. Such a nonmeritorious complaint, standing alone, will not lead reasonable minds to conclude that the judge is biased against the litigant or that the judge’s impartiality can reasonably be questioned, and thus will not require the judge to recuse.

Issuance and Administration of Protective Orders

Some courts have entered protective orders against litigants who engage in a pattern of repeated frivolous filings, enjoining the litigants from future filings without the approval of a designated judge. As a preliminary matter, the issuing of a protective
order of broad applicability by a judge is not improper, even though it may indirectly or incidentally benefit the issuing judge.

For example, although any federal judge or federal employee may be a defendant in a future filing and may thus fall within the class of persons protected by the order, we do not believe a judge should refrain from entering the order solely on the basis that such relief could potentially extend to the judge. Of course, a judge’s impartiality could reasonably be questioned if the judge issued an order – either at the request of others or on the judge’s own initiative – naming or describing the judge individually, providing tangible relief for his or her own personal benefit, or otherwise directly protecting the judge’s own personal interests.

Once a protective order is issued, a judge who has been sued by a litigant may be called upon to review that litigant’s filings for compliance with the order. The actual review by a designated judge raises additional recusal issues. Again, Canon 3C(1)’s standard for assessing when a judge’s impartiality might reasonably be questioned is the applicable standard. If the reviewing judge is named as a defendant in an action the litigant is attempting to file, that judge must recuse because one could reasonably question the judge’s impartiality. If the assigned judge is not named as a defendant in the proposed filing, but is or was a defendant in another action brought by the same litigant, the judge ordinarily will not be prevented from assessing the litigant’s compliance with the protective order. But the judge must still evaluate the factors enumerated above concerning whether his or her impartiality might reasonably be questioned. As in the situations described above, pending complaints against the designated judge that are subject to prompt dismissal on judicial immunity or other grounds will not ordinarily give rise to reasonable questions about the assigned judge’s impartiality. Thus, generally speaking, a judge named by a litigant in one case is not disqualified in another case (not naming the judge) from assessing the litigant’s compliance with an injunction restricting future filings.

Complaints of Misconduct or Disability Against the Assigned Judge

Harassing litigants occasionally file complaints of misconduct or disability against judges under the Judicial Conduct and Disability Act (“JCDA”), 28 U.S.C. §§ 351 to 364. When a JCDA complaint is filed, disqualification is governed by the same general principles as disqualification when a civil lawsuit is filed against the judge. In neither instance is a disgruntled litigant allowed to disqualify a judge from other cases by the simple expedient of filing a complaint. But judges must be attentive to the possibility that unusual circumstances may arise warranting recusal in individual cases.

When a complaint is filed against a judge under the JCDA, he or she is not required to recuse from a case involving the complainant unless, under the general principles of Canon 3C(1), the circumstances raise a reasonable question about the judge’s impartiality. Such a reasonable question about the judge’s impartiality arises if
there is a realistic potential for the complaint to lead to adverse consequences for the judge.

It may be possible for the judge to await an internal administrative decision on a JCDA complaint before making a recusal decision in a pending case involving the complainant. JCDA complaints are transmitted to the chief judge of the circuit, who is responsible for reviewing them and has the power to dismiss them on various statutory grounds. A dismissal may be appealed to the judicial council of the circuit. If a prompt dismissal is not ordered or the complaint is not otherwise concluded, the chief judge is required to arrange for an investigation and submission of a report to the judicial council. 28 U.S.C. § 353.

Thus, when a litigant files a JCDA complaint against a judge, it is preferable, if feasible, for the judge to await the initial decision of the chief judge before considering recusal from cases involving that litigant. If the chief judge declines to dismiss the complaint and an investigation begins, the judge should normally recuse immediately. But, if the chief judge dismisses the complaint, as occurs in most JCDA cases, the judge will not face the potential for any adverse consequences. No reasonable person would then question the ability of the judge to participate impartially in the complaining litigant's case. If the chief judge's dismissal is subsequently overturned by the judicial council, the judge should normally recuse upon receiving notice of that decision.

If it is not feasible to await the decision of the chief judge, it is appropriate for the judge who is the subject of the complaint to determine whether the complaint meets one of the statutory grounds for dismissal. If the judge determines that the complaint meets any of the statutory grounds for dismissal, the judge will not face an actual or apparent threat of adverse consequences from the complaint. In those circumstances, so long as the judge holds that view, no reasonable person would question the judge's impartiality in the complainant's case, and recusal is not necessary. If the chief judge thereafter decides that the complaint is not subject to dismissal and arranges for an investigation, the judge should re-evaluate his or her position and ordinarily recuse from the case.

Given that most misconduct complaints are dismissed by chief judges at the outset, the foregoing advice makes recusal unnecessary in most cases. With respect to complaints that are not dismissed by chief judges, we conclude that no across-the-board rule is appropriate. We do believe a relevant question in this situation is whether it appears that there is a realistic potential for a sanction of some kind to be ordered against the judge.

In closing, the Committee notes that recusal decisions are also governed by the recusal statutes, 28 U.S.C. §§ 455 and 144, and the case law interpreting them. Although the Committee is not authorized to render advisory opinions interpreting §§ 455 and 144, Canon 3C of the Code closely tracks the language of § 455, and the Committee is authorized to provide advice regarding the application of the Code.
June 2009
Committee on Codes of Conduct Advisory Opinion
No. 104: Participation in Court Historical Societies and Learning Centers

Court historical societies have been established in many communities for the purpose of developing, preserving, and promoting historical information and materials pertaining to a court or circuit and its judges, attorneys, and notable litigation. In addition, learning centers have been established to perform educational and outreach functions to educate the public about the role of the federal courts in American society and to present the history of a court or circuit.

The involvement of judges and court personnel in court history preservation activities funded solely from court funds does not present ethical concerns under the Codes of Conduct. Often historical societies and learning centers are operated, however, by nonprofit corporations that raise funds to finance programs and activities. The society or center may employ staff to conduct its operations and to engage in fund raising. Their boards of directors and officers may include judges, judicial employees, and attorneys who practice in the court or circuit. This opinion addresses the ethical issues that may arise when judges and court personnel are involved in court historical societies or learning centers that engage in fund raising.

Under Canon 4A(3) and 4B of the Code of Conduct for United States Judges ("Judges’ Code"), judges may participate in nonprofit organizations such as historical societies and learning centers, subject to certain conditions. Likewise, under Canon 4A of the Code of Conduct for Judicial Employees ("Employees’ Code"), court personnel may participate in nonprofit organizations such as historical societies and learning centers, subject to restrictions.

The Codes place limitations, however, on how judges and employees may participate in fund-raising efforts by court historical societies and learning centers. Canon 4C of the Judges’ Code sets out the restrictions for fund raising by judges on behalf of any organization:

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.
Other Canons of the Judges’ Code indirectly place restrictions on fund raising; for example, under Canon 2 a judge may not lend the prestige of office to a fund-raising effort (as is repeated in Canon 4C). Canon 2 also prohibits a judge from being involved with a fund-raising effort that would create an appearance of impropriety. See also Advisory Opinion No. 35 (“Solicitation of Funds for Nonprofit Organizations, Including Listing of Judges on Solicitation Materials”).

Canon 4B of the Employees’ Code states the restrictions on fund raising by court personnel:

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.

Other provisions of the Employee’s Code place independent restrictions on fund raising by court personnel. Like the Judges’ Code, Canon 2 of the Employees’ Code prohibits involvement with any fund raising that would raise an appearance of impropriety.

Judges and court personnel may therefore participate in fund raising efforts for court historical societies and learning centers only to the extent set out above. In light of these limitations, judges and court personnel should be sensitive to public perception of whether the court itself is engaged in fund-raising activities on behalf of a court historical society or learning center. Public perception of the court’s involvement with fund-raising activities of a court historical society or learning center is affected by several factors including: (1) the extent of involvement of judges or court personnel as the organization’s founders, incorporators, members of the governing board, chair, officers, or staff; (2) the physical location of the program inside the courthouse or in a separate facility; (3) the identification of the organization as independent of the court in its written materials and fund-raising activities; (4) the name chosen for the organization;
and (5) the location of activities or of permanent plaques designed to recognize financial contributors to the organization.

The public may reasonably perceive that fund-raising activities conducted by a court historical society or learning center whose creation, governance, and staffing is dominated by judges or court employees or whose programs and materials are housed inside the courthouse rather than in a separate facility are fund-raising activities of the judges and court employees themselves rather than those of an independent organization. Likewise, the public may reasonably attribute the organization’s fund-raising activities to the court’s judges and employees if a reception honoring financial donors is conducted in the courthouse or a permanent plaque recognizing contributors is placed inside the courthouse. The judge or court employee should assess how the factors listed above, or any other such factors that surface, affect the permissibility of participating in a court historical society or learning center or of becoming involved in that organization’s fund-raising activities.

June 2009
Committee on Codes of Conduct Advisory Opinion
No. 105: Participation in Private Law-Related Training Programs

In Advisory Opinion No. 87, the Committee provides guidance about judges’ participation in continuing legal education programs and sets forth important caveats at the end of that opinion. This opinion focuses on judges’ participation in private law-related training programs other than those offered by CLE providers, accredited institutions, or similar established educational providers. The caveats in Advisory Opinion No. 87 are equally applicable to the issues discussed here, and, although not repeated below, should be read in conjunction with this opinion.

The law-related training programs considered in this opinion include varied programs of instruction on trial and appellate advocacy, judicial procedure, and substantive law. Programs of this nature are offered to a select audience of attorneys and/or litigants, and are designed to improve attendees’ legal skills or performance in judicial proceedings. However, the training in question is not offered by established educational providers (such as universities, law schools, and CLE firms) and is not available to a broad spectrum of attendees; rather, it is offered by entities seeking to train their own employees, clients, or associates. This opinion summarizes the Committee’s earlier advice and discusses ethical issues that judges should consider before accepting an invitation to participate in such programs.1

Invitations to participate in private law-related training programs should be distinguished from the array of invitations judges may receive to provide law-related education, for outreach to the public, or to maintain relations with the bar. For example, judges may be asked to speak to students, to welcome new bar members, to address bar association meetings and international conferences, or to offer general remarks to gatherings of civic or community groups. Events of this nature do not generally involve providing instruction and training on matters of legal advocacy or substantive law and procedure. The Commentary to Canon 4 of the Code of Conduct for United States Judges specifically encourages judges’ participation in such opportunities because judges are “in a unique position to contribute” to programs dedicated to improving the law and promoting public understanding of the legal system. Judges may participate in public outreach of this nature so long as they avoid concerns about improperly lending the prestige of their office under Canon 2.

Participation in private law-related training programs implicates several provisions of the Code. Canon 2 advises judges to act with integrity and impartiality and counsels against lending “the prestige of the judicial office to advance the private interests of the judge or others . . . .” Canon 4A states that a “judge may speak, write, lecture, teach, and participate in other activities concerning the law, the legal system, and the administration of justice.” The Commentary to Canon 4 encourages judges to participate in law-related activities, either independently or through bar associations and other organizations, reflecting a recognition of the special contributions judges may make to the improvement of the law and the administration of justice. Canon 4D(1)
mandates that a judge 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.” When speaking to an audience that predominantly includes attorneys or clients on one side of litigation, a judge should be mindful of not giving advice that would favor or assist that audience at the expense of their litigation adversaries to avoid an appearance of bias that could arise contrary to Canon 2A. A judge speaking to such an audience must be equally available to address the other litigation constituency.

The Committee has relied on several interrelated factors to distinguish permissible from impermissible law-related training activities. Because judges are invited to participate in such a broad range of programs—involving diverse sponsors, audiences, and subject matter—it is difficult to draw bright line rules in this area. This opinion focuses on situations in which the Committee has expressed caution, or alternatively, programs that generally do not raise ethical concerns. In general, the factors that may affect a judge’s decision as to the propriety of participation in a law-related training program include:

1. the sponsor of the training program;
2. the subject matter;
3. whether there is a commercial motivation for the program;
4. the attendees, including whether members of different constituencies are invited to attend; and
5. other factors, including the location of the program and advertising or promotion of the event.

Below we discuss these factors in the context of specific types of programs.

**Programs Sponsored by a Law Firm or Legal Department**

Law-related training programs sponsored by law firms or business legal departments raise concerns on several levels. First, participation by a judge in a law firm’s training program for its attorneys, or a similar program offered by a business legal department for in-house attorneys, provides direct assistance to a particular law firm or business entity in violation of Canon 2B. Involvement in such a program can create the impression of a special relationship between the judge and the sponsor—that the judge wishes to do the sponsor a favor, that the sponsor wishes to do the judge a favor, or that the firm or business entity has some special influence that enables it to enlist the judge’s support for its private training programs. This can also be viewed as lending the prestige of judicial office to a private interest. Based on these same concerns, the Committee advised against participation in an educational program for in-house lawyers sponsored by a private, for-profit corporation. See also Advisory Opinion No. 87, [including “Important Caveats,”] Example 4 (the Committee questioned the propriety of judicial participation where there was significant involvement of lawyers from a single
law firm in the organization and presentation of a seminar offering CLE credit to anyone willing to pay a fee to a separate third-party sponsor).

The location of the training program is also an important consideration. For example, a judge’s participation in private educational programs that are held at the offices of attorneys appearing before the judge, and that are closed to other members of the bar, creates an appearance of a special relationship, favoritism, or partiality.

As with any commercial, for-profit activity, judges should avoid participating in law firm and legal department training activities that improperly exploit the judicial position or lend the prestige of judicial office to advance private interests. For example, judges are advised to refrain from teaching at for-profit programs about “the ins-and-outs of practice before that judge’s court.” See Advisory Opinion No. 87 (“Participation in Continuing Legal Education Programs”). Judges also should take steps to ensure that their names or positions are not exploited in advertising or used as an endorsement of the law firm or business sponsor. See Advisory Opinion No. 55 (“Extrajudicial Writings and Publications”); see also Advisory Opinion No. 87, [including “Important Caveats,”] Examples 1 & 2.

**Business-related Programs**

Requests to speak at seminars sponsored by consulting firms or other business entities raise concerns under Canon 2B regarding lending the prestige of office. While not ruling out altogether judicial participation in such circumstances, the Committee recommends a variety of checks on both the judge’s and the sponsor’s activities to limit the possibility that the judicial office will be improperly exploited.

When a program is sponsored by a business entity, a judge should consider whether the program is designed to promote the sponsor’s business services to current or prospective clients, and whether the program is presented in a way that suggests that the participating judge has endorsed the sponsor’s services. The Committee has advised that the judge may properly participate in a business program where the judge’s appearance, and the program’s brochures, do not imply an endorsement by the judge. In contrast, a judge’s participation in a conference intended to attract litigators and sponsored by a group that provides witnesses for court proceedings strongly implicates the concern that the prestige of the judicial office is being employed to benefit a commercial endeavor. For similar reasons the Committee has advised against speaking at a program on discovery issues hosted by a for-profit company offering discovery services, where the company marketed its services in part through the training program.

Seminars sponsored by for-profit educational providers that are open to attendees for a fee present differing considerations. As noted above, it is inappropriate for a judge to sell his or her expertise about the local rules and practices of the judge’s own court by lecturing on this topic at a program sponsored by a for-profit entity. But
judges may lecture on other topics. For example, the Committee found no impropriety in a judge’s lecture at a seminar sponsored by a for-profit entity on a law-related subject of interest to attorneys and lay persons alike, provided that the judge avoided exploitation of the judicial office in the advertising and promotional materials. Similarly, the Committee advised that a judge could properly speak at a for-profit program for corporate and government attorneys on topics unrelated to the operations of the judge’s court.

The Committee cautions judges to remain vigilant that the organizers of business-related programs do not exploit judicial participation by overemphasizing judges’ participation, either in promotional materials for the event or by otherwise implying that the participating judge endorses the sponsor’s commercial activities. It is therefore inadvisable for judges to provide blanket authorization to sponsors to use their names, positions, or likenesses for advertising and marketing purposes. Judges have a continuing obligation to monitor promotional activities associated with their participation in such programs to ensure that no improper exploitation of judicial office occurs. See Advisory Opinion No. 87, [including “Important Caveats,”] Examples 1 & 2.

Programs sponsored by a bar association or other nonprofit entity

Bar associations and other nonprofit entities on occasion offer law-related educational programs that are not part of a CLE curriculum (as noted above, CLE programs are addressed in Advisory Opinion No. 87). These programs raise fewer concerns than those sponsored by for-profit entities, mainly because the sponsors do not have a commercial motivation and the programs are generally open to a broad audience. The Commentary to Canon 4 specifically encourages judges to participate in law-related activities such as those sponsored by bar associations. Bar association training programs offer valuable opportunities for judges to share their experience and expertise with the legal community by making themselves available to a large and diverse group of practitioners. Accordingly, the Committee has advised that a judge could properly participate in a law-related forum sponsored by a not-for-profit civic organization and open to the public, even though the organization charged admission to defray its costs.

However, not all nonprofit groups have the same characteristics. Thus, there will be instances when the precise corporate or tax status of an entity must be disregarded for ethical purposes. See, e.g., Advisory Opinion No. 87, [including “Important Caveats,”] Example 3 (a nonprofit entity will be treated as a for-profit entity when offering CLE credit if that seminar provider (a) acts as if it were a private business by aggressively emphasizing judicial participation as a marketing mechanism and (b) charges fees that are likely to be substantially in excess of the direct cost of providing CLE credit to the seminar attendees). Moreover, a judge's participation in a training program that will only benefit a specific constituency, as opposed to the legal system as a whole, cannot be characterized as an activity to improve the law within the meaning of Canon 4. For example, judge participation in legal training offered by an issue-specific
advocacy group that appears regularly in the judge’s court may be perceived as lending
the prestige of the judicial office to advance the interests of the group.

Note for Advisory Opinion No. 105

1 Judges who participate in the select programs addressed in this opinion
should be aware that such law-related training activities (other than
accredited teaching and CLE) generally do not constitute “teaching” for
which compensation may be accepted (with proper approval). That is,
compensation (beyond reimbursement for actual expenses) for such
programs would instead likely constitute a prohibited “honorarium” under
the Judicial Conference Regulations On Outside Earned Income,
Honoraria, and Outside Employment; Guide to Judiciary Policy, Vol. 2C,
Ch. 10 (“Regulations”). Compare Regulations § 4 (defining “honorarium”)
with § 5(b) (defining “teaching”).

September 2010
Committee on Codes of Conduct Advisory Opinion  
No. 106: Mutual or Common Investment Funds

This opinion addresses recusal considerations related to ownership of mutual or common investment funds ("mutual funds"). Canon 3C is intended to set a standard for economic disqualification that assures impartiality and the appearance of impartiality, while also allowing judges to make non-disqualifying investments. We approach our analysis with the following principle firmly in mind: that the Code should be interpreted to the extent reasonably possible to enable judges to invest in funds without transgressing the Code or engaging in a conflict of interest.

Canon 3C(1)(c) requires a judge to disqualify himself or herself when the judge knows that he or she “has a financial interest in the subject matter in controversy or in a party to the proceeding,” or when the judge has “any other interest that could be affected substantially by the outcome of the proceeding.” However, “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.” Canon 3C(3)(c)(i). These Code provisions, read together, provide that investments in a mutual fund will normally avoid triggering recusal concerns with respect to the securities that the fund holds, with some exceptions discussed below.

Consistent with the “safe harbor” concept, the Committee has advised that investment in a mutual fund does not convey an ownership interest in the companies whose stock the fund holds. We also have advised that a judge who invests in a mutual fund has no duty to affirmatively monitor the underlying investments of the fund for recusal purposes. For these reasons, it is important for a judge to determine whether a particular proposed investment is a "mutual or common investment fund" and, therefore, qualifies under the safe harbor provision of Canon 3C.

**Determining whether a fund is a “mutual or common investment fund”**

Although the Code does not define "mutual or common investment fund," determining whether a fund qualifies for the safe harbor contemplated under Canon 3C(3)(c)(i) involves several related considerations, including: (1) the number of participants in the fund; (2) the size and diversity of fund investments; (3) the ability of participants to direct their investments; (4) the ease of access to and frequency of information provided about the fund portfolio; (5) the pace of turnover in fund investments; and (6) any ownership interest investors have in the individual assets of the fund.

The Committee concludes that most mutual funds that are registered with the Securities and Exchange Commission and sold to the public as mutual funds will likely meet the criteria above.
The Committee has advised, however, that certain financial investments, including some that are registered and sold to the public, do not qualify as “mutual or common investment funds.” For example, we have advised that a judge’s former law firm’s 401(k) retirement plan could not be considered a mutual fund under the Code because it was managed by the law firm, had a relatively small number of participants, and provided the participants with detailed access to investment information regarding the plan. Similarly, the Committee has advised that a judge’s IRA did not meet the mutual fund exception where it owned units of an investment vehicle that held stock of 15 named corporations, the portfolio was not actively managed, and the securities would not be sold or exchanged before termination of the investment vehicle in ten years. In contrast, the Committee concluded that a law firm’s retirement fund qualified for the mutual fund exception because there were a large number of participants, the participants could not directly control the investments, the participants could not easily access information about the fund’s portfolio, and the fund’s assets turned over frequently.

The Committee has also advised that the Code’s mutual fund exception did not apply to a brokerage account in which stocks were held in the judge’s name, the judge could receive immediate notice of transactions, and the judge controlled the asset mix and some investment decisions. Similarly, the Committee concluded that an investment program did not qualify as a mutual or common investment fund where title to securities was held in the judge’s name, the judge had the legal authority to direct investment decisions, and the judge received regular information about the portfolio. Similarly, we advised that the mutual fund exception did not apply where a judge owned shares of stock purchased by the fund, and the judge had some control over the fund’s investment decisions by designating areas of no investment and directing the sale of particular stocks from the judge’s account.

Recusal considerations related to mutual or common investment funds

As discussed above, investment in a mutual fund normally will avoid recusal concerns because the judge is not considered to have a direct financial interest in the securities that the fund holds. However, there is an additional factor for a judge to consider in determining whether owning a particular mutual fund will effectively avoid recusal considerations related to that fund. In unusual circumstances, recusal may be required under Canon 3C(1)(c) because the judge has an “interest that could be affected substantially by the outcome of the proceeding.”

For purposes of this analysis, the Committee assumes that a judge owning a particular mutual fund does not participate in the management of the fund or have authority to make investment decisions for it, and does not have an ownership interest in the individual assets of the fund. We also assume that a mutual fund is registered with the Securities and Exchange Commission and offered to the public.
The Committee notes that it is the value of the interest itself that must be substantially affected by the outcome of the proceeding; its effect on the judge’s overall financial condition is irrelevant. For example, recusal may be required if a judge owns shares in a specific mutual fund that is involved in a matter before the judge and the outcome of the litigation could substantially increase or decrease the value of the judge’s investment in the fund. Ultimately, the judge must decide the potential effect on his or her financial interest in the mutual fund.

Whether litigation might have a substantial effect on the judge’s interest in a mutual fund will often turn on the size and diversity of the fund’s investments. The value of a mutual fund that invests in many companies in a variety of industries would rarely be substantially affected by the outcome of litigation involving one particular company. In contrast, a mutual fund that invests in only a few companies in a particular industry would be more likely to be substantially affected by certain types of litigation involving one of them. The same would be true if the outcome of the litigation might affect the value of non-party companies in the same industry, whose stock the fund also holds.

In recent years, certain types of mutual funds have raised these recusal considerations. These include funds that are “sector” or “industry” funds which specialize in an industrial sector, and certain types of exchange traded funds (“ETFs”). ETFs, a relatively new investment vehicle, differ principally from other mutual funds in that they are traded on an exchange all day, rather than being issued or redeemed by the fund itself based on the net asset value of the fund at the end of the day. ETFs hold assets such as stocks or bonds and are sometimes simply an exchange-traded version of a more conventional fund. They may also hold commodities or commodity-based instruments. Determining whether a particular sector fund, industry fund, or ETF qualifies as a “mutual or common investment fund” under the Code involves the same criteria applied to more conventional mutual funds, of which they are a species. We conclude that such funds normally should be treated as mutual or common investment funds under the Code, and are subject to the same recusal analysis as other funds.

At the same time, however, a judge who chooses to invest in such mutual funds should evaluate whether his or her “interest” in the fund might be affected substantially by the outcome of a particular case, which would require recusal under Canon 3C(1)(c). In purchasing shares of narrow industry or sector funds, judges also should be mindful of their obligation to avoid investments that might result in frequent recusal. Canon 4D(3) states that “[a] judge should divest investments and other financial interests that might require frequent disqualification.” Thus, a judge who regularly hears matters involving a particular industry should carefully consider whether purchasing a mutual fund which focuses on that industry might result in frequent recusal.

Finally, Canon 3C(1) directs judges to disqualify if the judge’s impartiality might reasonably be questioned. For example, if a case challenges the fees charged by the mutual fund management company to manage a particular fund, and the judge owns shares in that particular fund, then the judge’s impartiality might reasonably be
questioned and recusal would be required. Situations such as these are likely to arise only rarely and should be assessed on a case-by-case basis.

**Issues related to investment management and advisory companies**

Additional questions may arise when the management or investment advisory company for the judge’s mutual fund is a party. These companies have managerial responsibility for investing the funds of participants and fiduciary responsibility for doing so in accordance with principles of trust and securities law.

Ownership of shares in a particular mutual fund does not give rise to an ownership interest in the company managing the fund or providing it with investment advice. Even if the management company is technically owned by the shareholders of all the mutual funds operated by the company, those shareholders do not have a financial interest in the management company. They do not receive dividends from the management company (only from the funds) or benefit from any increase in value of the shares of the management company. Instead, these situations are analogous to a savings account or a mutual insurance company policy, ownership of which does not give the account or policy holder an equity ownership interest in the bank or insurance company.

The same analysis applies to ownership of a mutual fund. Because an investment in a fund does not convey an ownership interest in the fund management or investment advisory company, the fact that the management or investment advisory company for the judge’s fund appears as a party does not require the judge’s disqualification. Under Canon 3C(3)(c)(iii), the proprietary interest of such an account or policy holder is considered a disqualifying financial interest in the bank or insurance company only if the outcome of the proceeding could substantially affect the value of the interest.

In closing, the Committee notes that recusal decisions are also governed by the recusal statutes, 28 U.S.C. §§ 455 and 144, and the case law interpreting them. Although the Committee is not authorized to render advisory opinions interpreting §§ 455 and 144, Canon 3C closely tracks the language of § 455, and the Committee is authorized to provide advice regarding the application of the Code.

March 2011
Committee on Codes of Conduct Advisory Opinion
No. 107: Disqualification Based on Spouse’s Business Relationships

A spouse’s business relationships with a party, law firm, or attorney appearing before a judge may result in the judge’s disqualification under Canon 3C(1) of the Code of Conduct for United States Judges. For example, recusal is mandatory under Canon 3C(1)(c) and (d) when:

- the judge’s spouse is an officer, director, or trustee of a party in a proceeding before the judge (Canon 3C(1)(d)(i));
- the judge’s spouse is an attorney representing a party in a proceeding before the judge (Canon 3C(1)(d)(ii));
- the judge’s spouse is known to have an interest that could be substantially affected by the outcome of a proceeding before the judge (as when the spouse is an equity partner at a law firm that appears before the judge) (Canon 3C(1)(c) and (d)(iii) and Advisory Opinion No. 58);
- the judge’s spouse is to the judge’s knowledge likely to be a material witness in a proceeding before the judge (Canon 3C(1)(d)(iv)).

Recusal is not mandatory in other situations involving spousal business relationships that are less direct or consequential. Recusal in these situations will depend on a number of facts and circumstances that must be evaluated on a case-by-case basis to determine, in accordance with Canon 3C(1), whether “the judge’s impartiality might reasonably be questioned.”

This opinion offers guidance when a judge knows his or her spouse has a business relationship with a party, law firm, or attorney appearing before the judge in an unrelated proceeding. This opinion does not address situations described in Canon 3C(1)(c) or (d), above, which mandate the judge’s recusal. The opinion also does not address situations in which the spouse or the spouse’s business provides services in the proceeding before the judge. The Committee notes that, for purposes of recusal, “considerations applicable to a judge’s spouse should be considered with respect to a person other than a spouse with whom the judge maintains both a household and an intimate relationship.” Commentary to Canon 3C.

This opinion addresses two particular forms of business relationships: (1) client relationships, where the spouse or spouse’s business provides services to a client and that client appears before the judge in an unrelated proceeding as a party, law firm, or attorney, and (2) service provider relationships, where a party, law firm, or attorney that appears before the judge provides services to the spouse or the spouse’s business that are unrelated to the proceeding before the judge. As a general proposition, the fact that the spouse or the spouse’s business has a business relationship with an entity that
appears in an unrelated proceeding before the judge usually does not require the judge's recusal.

I. Client Relationships

When a judge knows that a client of the judge's spouse or the spouse's business appears before the judge, the Committee has advised that the judge should evaluate certain factors to determine whether recusal is warranted. These factors include: (1) the spouse's personal role or lack of personal role in providing services to the client, (2) whether the services provided to the client are substantial and ongoing, (3) the nature of the client's relationship to the spouse or the spouse's business, and (4) the financial connection between the client, the business, and the judge's spouse (including the percentage of business revenue the client provides and the amount of compensation the spouse earns from the client). Additionally, judges should consider recusal whenever they become aware of circumstances suggesting that the hiring of the spouse or the spouse's business may have been influenced by the judge's position.

A. Spouse Not Personally Engaged in Providing Services. In the Committee's view, judges generally are not required to recuse from cases involving a current client of a spouse or a spouse's business if the spouse is not then personally engaged in work for that client. The spouse's connection to such a client is indirect and attenuated, and absent other factors a reasonable person would not question the judge's impartiality if the client appeared before the judge in an unrelated proceeding. This is true even if the spouse personally worked for the client in the past but is not currently engaged in work for the client.

B. Spouse Personally Engaged in Providing Services. When the judge knows that his or her spouse is personally engaged in providing services to a client appearing before the judge (including the supervision of services performed by other employees for the client), an additional consideration is the degree of involvement of the spouse or the spouse's business. If the relationship to the client involves only an occasional or isolated transaction, recusal is not required unless some other particular fact or circumstance gives rise to reasonable questions about the judge's impartiality.

The Committee has advised that a judge whose spouse was a clinical psychologist need not recuse when a law firm appearing before the judge had retained the judge's spouse on one or two occasions in an unrelated matter, where there was no ongoing relationship between the spouse and the law firm. The Committee gave similar advice where a spouse's notary business had an insubstantial, noncontinuous relationship with a client that appeared before the judge. The Committee has also advised that a judge whose spouse owned and operated a legal or executive recruitment business need not recuse merely because a law firm appearing before the judge engaged the judge's spouse, either currently or in the past, to recruit an additional lawyer, or because the spouse made preliminary overtures to recruit attorneys but no contract or employment negotiations resulted. Similarly, a judge need not recuse
because an attorney spouse represented members of a class action who filed unrelated actions in the judge’s court, where the spouse had no close professional or personal relationship with the class members.

At the other end of the spectrum, when the spouse is personally engaged in providing services to a client who appears before the judge in an unrelated proceeding, recusal is appropriate if the judge knows that the spouse or the spouse’s business has an exclusive arrangement, or a substantial and ongoing relationship, with a client that appears before the judge. For example, the Committee concluded that a current engagement of the spouse’s executive recruitment business for the spouse to work on a law firm’s merger would require the judge’s recusal when the law firm appeared before the judge, as would other similar efforts that would result in a substantial change in the law firm and thus constitute an undertaking of similar importance for the future of the firm. A spouse who personally performed four high level executive recruitments in the same year for the same company for substantial fees for each recruitment would be considered to have a substantial and ongoing relationship with the company, requiring the judge’s recusal, but if the work were spread out over a substantially longer period, recusal may not be required.

C. Nature of Spouse/Client Relationship. When a spouse is employed by or owns a business whose major or sustaining client appears before the judge, appearance concerns may arise even if the spouse personally performs no services for the client. These concerns are generally heightened when the spouse’s business is small and the client is a significant client, so that the spouse is personally identified with the client, or the client can be reasonably perceived as the sustaining or sole client of the business.

The Committee has advised that if a judge knows a particular company appearing before the judge is the prime or sole client of the spouse’s small business, and a ruling in the case could jeopardize the client’s continued existence, the spouse would have an interest that could be substantially affected by the case and the judge should therefore recuse.

Concerns may also arise if a judge knows the spouse’s business or law firm effectively serves as general counsel or in a managerial relationship to the client, rather than simply providing services in arms’ length transactions. In a relationship of sufficient magnitude, the client may be considered equivalent to an employer of the spouse, in which case the judge should consider recusal based on the considerations applicable when a party or law firm before the judge directly employs the judge’s spouse. See, e.g., Advisory Opinion No. 58.

D. Financial Considerations. The nature and size of the client’s financial connection to the spouse and the spouse’s business can also affect the assessment of the judge’s impartiality. A key consideration is the spouse’s actual or potential financial benefit from the client. For example, the spouse’s compensation may be paid by the
spouse’s employer and related only indirectly, insignificantly, or not at all to the fees
paid by the client to the spouse’s employer. In this regard, the Committee has advised
that a judge’s impartiality could not reasonably be questioned because the judge was
aware the spouse earned a relatively small sales commission, in an ordinary, arms’
length contract, from a party appearing before the judge in an unrelated proceeding.

Alternatively, a spouse may receive a commission or direct payment from the
client. The Committee concluded that a one-time payment made to a spouse for
employment recruitment services rendered to a law firm did not require the judge’s
recusal, where the fee was but a small percentage of the spouse’s compensation, was
typical for the type of services rendered, was neither a major outlay nor a matter of
great significance for the law firm client, and no other features of the transaction
suggested impropriety. However, if the judge knew the spouse directly received a
portion of client fees amounting to more than a small percentage of the spouse’s
income, the judge’s impartiality might reasonably be questioned in a proceeding
involving the client, in which case the judge should recuse. In situations of this nature,
involving large fees paid by a client to the spouse, it is immaterial whether the spouse
personally works for the client or collects fees in the nature of finders’ fees or fees
based on the services provided to the client by others.

The client’s financial contribution to the spouse’s business assumes more
significance when the spouse is a partner, shareholder, or owner of the business. A
major or sustaining client may provide more than a small percentage of the revenue of
the spouse’s business and, in turn, the spouse’s income as a partner, shareholder, or
owner. Departure of such a client could materially reduce the spouse’s income or
threaten the existence of the business. In such circumstances, the spouse’s business,
and the spouse as a partner, shareholder, or owner, may be so dependent upon the
client that the judge’s impartiality may reasonably be questioned in a proceeding
involving the client. Additionally, the spouse who is a partner, shareholder, or owner
may be so generally identified with the client that the judge’s impartiality may
reasonably be questioned in a proceeding before the judge involving the client.
However, a judge is not automatically disqualified when a client of the spouse’s
business appears in a proceeding, even if the spouse is a shareholder, partner, or
owner; this is simply one additional factor to consider. Further, if the client’s financial
contribution to the spouse’s business is a relatively small percentage of the revenue of
the spouse’s business (and, in turn, of the spouse’s income as a partner, shareholder,
or owner), recusal is not required simply because the client appears before the judge in
an unrelated proceeding.

If the judge’s spouse is a salaried employee, rather than a partner or owner, and
receives no bonus or commission based on the work performed for clients, the spouse
will not be considered to have an interest in business clients that would require the
judge’s disqualification in an unrelated proceeding involving such clients. See Advisory
Opinion No. 58 (a judge need not recuse from matters involving a relative’s law firm, so
long as the relative is not an equity partner and has not participated in the matter, and
the relative’s compensation is in no manner dependent upon the outcome). This conclusion is not affected by the spouse’s involvement in a client’s matters, so long as matters in which the spouse is involved are not at issue in the proceeding before the judge.

II. Relationships with Service Providers

A spouse’s business and professional employment may involve relationships with a variety of service providers, such as surety companies, landlords, banks or other lending institutions, and law firms. Companies that provide services to the spouse or the spouse’s business may from time to time appear before the judge in unrelated proceedings. Whether such a business relationship warrants the judge’s recusal depends on the nature of the relationship and services provided.

When a service provider’s transactions with the judge’s spouse or the spouse’s business are in the regular course of business, routine in nature, and are unaccompanied by special circumstances suggesting that the selection of the spouse or the spouse’s business may have been influenced by the judge’s position, recusal is ordinarily not required. The Committee has advised against recusal in various situations where a party, law firm, or attorney appearing before the judge also provided services to the spouse’s business. For example, the Committee advised that a judge need not recuse from proceedings involving banks and other lenders to the spouse’s business where the relationship with the spouse’s business involved traditional bank accounts and loans and no special circumstances were present (such as unusually favorable terms).

In other circumstances, the special character of the relationship between service providers and the spouse or the spouse’s business may make recusal advisable should the service provider appear before the judge. In this regard, the Committee has advised that a judge should recuse from matters handled by a law firm subleasing space to the judge’s spouse, because the judge’s impartiality might reasonably be questioned. For similar reasons, the judge should recuse if the spouse’s business is a tenant in the offices of a company that appears as a party before the judge.

Recusal considerations also arise when members of a law firm that provides services to a spouse’s business appear before a judge in unrelated proceedings. In this situation, the Committee has advised that if the judge knows that the same attorney who represents the spouse’s business even in a routine matter appears before the judge, the judge should recuse. The judge should also recuse if an attorney represents the judge’s spouse’s business in a matter that the judge knows could substantially affect the spouse’s interest, and other members of the attorney’s firm appear before the judge. However, if an attorney represents the spouse’s business in routine matters that would have no substantial effect on the business or the spouse’s interest therein, the judge’s impartiality could not reasonably be questioned merely because another attorney from the same law firm appears before the judge.
III. Other Considerations

Most of the business relationships mentioned in this opinion do not fall within the definition of financial interest in Canon 3C(3)(c) and, consequently, judges have no obligation under Canon 3C(2) to ask their spouses about those business relationships. However, Canon 3C(2) does oblige judges to make a reasonable effort to keep informed about a spouse’s personal financial interests. As defined in Canon 3C(3)(c), financial interest means a legal or equitable interest, such as stock ownership, or a relationship as director, advisor, or other active participant in the affairs of a party.

Further, if a judge is not aware that a party, law firm, or attorney in a proceeding before the judge has a business relationship with the spouse’s business, the judge’s impartiality could not reasonably be questioned. See Advisory Opinion No. 90 (advising that a judge need not investigate whether any relative is a member of a class action because “the unknown presence of a judge’s relative as a party . . . does not create a risk of injustice to the parties, and does not undermine the public’s confidence in the judicial process – so long as the judge recuses upon learning of the relative’s status as a party”). If a judge nevertheless becomes aware that a client of or service provider to the spouse’s business is involved in a proceeding before the judge, the judge should consider the facts presented and recuse under the circumstances set forth in this opinion.

When a spouse’s business relationships with a party, law firm, or attorney appearing before the judge cause the judge’s impartiality reasonably to be questioned, the judge must recuse, absent remittal. See Canon 3D. Remittal is not available for any of the mandatory recusal situations described in Canon 3C(1)(a)-(e), including when the judge knows the spouse has an interest that could be substantially affected by the outcome of the proceeding before the judge. In most of the circumstances described above, however, the judge’s disqualification is pursuant to Canon 3C(1), and remittal is available.

In closing, the Committee notes that recusal decisions are also governed by the recusal statutes, 28 U.S.C. §§ 455 and 144, and the case law interpreting them. Although the Committee is not authorized to render advisory opinions interpreting §§ 455 and 144, Canon 3C of the Code closely tracks the language of § 455, and the Committee is authorized to provide advice regarding the application of the Code.

June 2009
Committee on Codes of Conduct Advisory Opinion
No. 108: Participation in Government-Sponsored Training of Government Attorneys

Judges may participate in government-sponsored training of attorneys employed by a governmental entity subject to the following limitations:

1. Judges may appear at “closed” programs (open only to a one-sided audience), but should be willing and available to participate in training for interested attorneys representing the other side;

2. Judges should not provide guidance on the ins-and-outs of practice before their courts if the audience is closed and includes attorneys likely to appear before them;¹

3. Judges should not suggest a particular interpretation of a disputed legal issue or other predilection as to the application of the law;

4. Judges should not provide direct assistance in a given case; and

5. Judges should avoid the appearance of bias or favoritism in the content of their presentations.

We note that this advisory opinion represents a change to some of the Committee’s previous guidance on this topic. The Committee previously has advised judges not to participate in government-sponsored training of government attorneys based on the limited nature of the audience (e.g., only prosecuting or only defense attorneys) and the likelihood that members of the audience would appear before the judge in the future. The Committee has reconsidered that advice and now reaches the conclusions outlined above.

This opinion modifies the Committee’s prior advice only to the extent that such advice relates to judicial participation in government-sponsored training of attorneys employed by the government. It does not modify prior advice limiting judicial participation in privately sponsored legal training or in the training of witnesses. See Advisory Opinion No. 105 (addressing judicial participation in privately sponsored legal training). The Committee continues to advise, for example, that judges should not participate in programs for expert witnesses or programs designed to teach law enforcement officers how to be more effective witnesses in federal court.

Other court personnel may participate in any training in which it would be appropriate for a judge to participate, as explained above. In addition, court personnel (other than chambers staff) may participate in closed-audience training of local attorneys relating to technical matters such as court rules or procedures (e.g., electronic filing procedures) so long as similar training is made available to other similar closed audiences.
Note for Advisory Opinion No. 108

1 See generally Advisory Opinions 87 and 105 (discussing this limitation in the context of privately sponsored training programs).

June 2009
Committee on Codes of Conduct Advisory Opinion
No. 109: Providing Conflict Lists to Departing Law Clerks

Judges sometimes receive requests from law firms for which their law clerks will work after the clerkships end. These firms ask, for the purpose of screening for conflicts of interest, the clerk or judge to identify the matters that the clerk worked on or that passed through chambers during the clerkship period. This opinion addresses whether a judge should provide law firms and clerks with a list of matters the clerk worked on while in chambers, as well as whether a judge should provide a list of all matters that were pending before the judge or the court during the clerk’s tenure.

A. Matters the Clerk Worked on While in Chambers

Judges and clerks should generally decline to provide law firms with lists of matters the clerks worked on while in chambers. Granting such requests may result in the disclosure of confidential information. The assignment of a law clerk to a particular case is rarely revealed by any court, whether appellate, district, or bankruptcy. Moreover, assignment of particular appellate judges to an appeal may remain confidential until shortly before oral argument. See, e.g., Practitioners’ Guide to the U.S. Court of Appeals for the Fifth Circuit at 69 (Nov. 2011) (“About 30 days before the beginning of oral argument sessions, we post the case names and numbers, and the locations of the arguments on our internet site. The week before argument we post the names of the judges who will hear the cases.”), available at www.ca5.uscourts.gov/clerk/docs/pracguide.pdf. Also, the involvement of particular judges in some internal appellate proceedings, such as certain aspects of en banc activity, inquiry to other panels, holding mandates, etc., is not publicly disclosed.

Canon 3D of the Code of Conduct for Judicial Employees mandates that 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. This provision binds clerks even after their clerkships end. Canon 3D states, “[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.” Employees’ Code, Canon 3D. This provision is intended to protect the ability of judges to confer privately with their law clerks without fear that those interactions will later be revealed, thus chilling the ability of judges to receive assistance from their clerks. Canon 3D also insures that present and former law clerks will not later use their privileged access to the judiciary for personal gain.

As a general matter, the Employees’ Code respects the confidentiality owed by incoming law clerks to former employers or organizations by not requiring law clerks to provide a list of the cases they previously worked on or other confidential client information. Rather, the Employees’ Code puts the onus on the law clerks to self-identify cases as to which they have disqualifying information due to personal relations,
financial investments, or former employment at the outset of their clerkships without requiring any case list. Under Canon 3F,

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.

Employees’ Code, Canon 3F(3). Just as law clerks identify conflicts to their judges instead of being required to submit a list of their former employer’s matters or cases that may include confidential information, former clerks who are employed by law firms should be trusted to recognize those cases whose very pendency is confidential but from which they should be isolated due to clerkship-related conflicts. This process can occur without resorting to a case list divulging confidential information in violation of the continuing confidentiality obligation under Canon 3D.

We assume that a former clerk must refrain from working on all cases in which he or she participated during the clerkship, and may be required by the judge, by court rule, or by attorney ethical rules to refrain from work on cases pending before the judge even if the law clerk had no personal involvement in them. See, e.g., 9th Cir. R. 46-5 (2011) (“No former employee of the Court shall participate or assist, by way of representation, consultation, or otherwise, in any case that was pending in the Court during the employee’s period of employment. It shall be the responsibility of any former employee, as well as the persons employing or associating with a former employee in the practice of law before this Court, to ensure compliance with this rule. . . . An attorney who is a former employee may apply to the Court for an exemption.”); accord Fed. Cir. R. 50 (2011) (“No former employee of the court may participate or assist, by representation, consultation, or otherwise, in any case that was pending in the court during the period of employment.”); Federal Judicial Center, Maintaining the Public Trust—Ethics for Federal Judicial Law Clerks at p. 25 (3d ed. 2012) (“You may not participate in any matter that was pending before your judge during your clerkship.”); Advisory Opinion No. 81 (“United States Attorney as Law Clerk’s Future Employer”); Advisory Opinion No. 74 (“Pending Cases Involving Law Clerk’s Future Employer”).

The Committee is mindful not only of attorneys’ ethical obligations regarding conflicts but also the desire of firms to avoid disqualification, disgorgement of fees, or other consequences resulting from a failure to screen lawyers who have ethical conflicts. Although the Committee is not authorized to interpret the ABA Model Rules of Professional Conduct, we are not aware of any provision in these rules that would require the disclosure of broad lists of all matters that a former clerk worked on. Indeed, law firms themselves have recognized the pitfalls and barriers in obtaining confidential
information from lateral hires who are presumably subject to the ABA Model Rules or similar derivative rules. See, e.g., Susan P. Shapiro, Tangled Loyalties: Conflict of Interest in Legal Practice 330 (U. of Mich. Press 2002) (quoting a Chicago law firm hiring partner about how he might screen for conflicts: “See, I can’t ask an associate, ‘What clients have you worked on?’ That would be a breach of ethics for them to disclose it to me.”); see also Paul R. Remblay, Migrating Lawyers and the Ethics of Conflict Checking, 19 Geo. J. Legal Ethics 489, 491-93 (Spring 2006) (noting that, because the ABA Model Rules lack specific guidance about the scope of permissible conflict checks, law firms tend to ask proposed lateral hires about “the work that they did at their old firms, and about their former and existing clients" while observing the rule not to reveal presumptively confidential client information).

In light of these considerations, judges and clerks should generally decline law firms’ requests for lists of all matters the clerks participated in, because such requests may call for the disclosure of confidential information, especially for clerks currently employed by the court. The concerns underlying the requests can be effectively addressed through less intrusive means. First, judges may suggest to clerks that they maintain a list of cases in which they have participated in order to facilitate the identification of conflicts of interest during their future employment (keeping in mind that such lists are not to be disclosed to anyone). Second, law firms can also provide to the former clerk who joins the firm a list of cases whose pendency before a specific judge or court is a matter of public record, and ask the clerk to identify those cases where there is a conflict (without identifying to anyone the cases the clerk worked on). Third, at the start of the former clerk’s employment and for whatever time period deemed appropriate, firms can isolate former clerks from all cases pending before a particular judge or court (as identified from the public docket).

**B. Matters Pending Before the Judge or the Court During the Clerk’s Tenure**

Some law firms have requested that judges and clerks provide a list of all matters pending before the particular court—or the particular district, bankruptcy, or magistrate judge—during the clerk’s tenure, not simply those on which the clerk worked. Although these requests present fewer problems because they do not associate a clerk with work on a particular case, they can still create confidentiality concerns, as well as practical problems.

On one hand, it is possible a clerk will not have knowledge of all cases pending before his or her judge during the clerkship. One way to avoid future conflicts would be for the court to provide to the clerk upon departure a list disclosing only publicly available information about pending cases. Such a list would not run afoul of Canon 3D’s prohibition on disclosing confidential information. On the other hand, depending on the caseload of the particular court, it could create an administrative burden for the Clerk’s Office to generate such lists for each departing clerk. Further, the lists may not be comprehensive, as judges on the same court sometimes confer with one another on a given case even when not assigned to that case. In the appellate context, such a list
should include cases considered by the court rather than by an individual judge, 
because the panel assigned to a case is often not publicly revealed until shortly before 
oral argument, and because non-panel judges may be involved in the resolution of 
cases, for instance in en banc considerations.

For the foregoing reasons, judges may decide on an individual basis to provide 
such lists to clerks of all cases assigned to the judge’s court during the relevant time, or 
in the case of district, bankruptcy, or magistrate judges, all cases assigned to that judge. 
The Code does not preclude this. However, judges are under no obligation to provide 
such lists. The onus remains on the law clerks to identify cases as to which they have a 
disqualifying connection. Judges deciding to provide such lists should not provide them 
to law firms directly but instead to the individual clerk.

July 2012
Committee on Codes of Conduct Advisory Opinion
No. 110: “Separately Managed” Accounts

This opinion addresses recusal considerations related to ownership of SMAs (sometimes known as “separately managed accounts,” “single managed accounts,” or “managed asset accounts”), an increasingly popular investment vehicle. SMAs are similar to mutual funds in many ways. Like mutual funds, SMAs are managed by investment firms; unlike mutual funds, however, investors own the underlying securities or assets. Such individual ownership permits investors to customize their SMAs, for instance, by exercising more or less control over the investment portfolios. See, e.g., FINRA, “Managed account,” 401(k) Glossary, http://www.finra.org/investors/401k-glossary (last visited May 18, 2015).

Some judges may assume that SMAs are functionally equivalent to mutual funds and therefore do not trigger any recusal obligations. This assumption misunderstands Canon 3C, which requires disqualification when a judge has a financial interest in the subject matter of the controversy or in a party, or has any other interest that could be affected substantially by the outcome of the proceeding. “Financial interest” means “ownership of a legal or equitable interest, however small.” Canon 3C(3)(c). While the Canons create a safe harbor for mutual and common investment funds (hereinafter the “mutual fund safe harbor”) by providing that “[o]wnership 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,” Canon 3C(3)(c)(i), SMAs are not eligible for this safe harbor. We explore the safe harbor in Advisory Opinion No. 106 (“Mutual or Common Investment Funds”), in which we explain that “investment in a mutual fund does not convey an ownership interest in the companies whose stock the fund holds.” We have thus advised that an investment vehicle qualifies for the mutual fund safe harbor, inter alia, only if the fund, not the judge, owns the individual securities. In an SMA, the investor owns the individual securities, and this fact is dispositive. Whether or not a judge’s SMA is otherwise similar to a mutual fund – for example, because both funds are managed – the judge’s ownership of the underlying securities categorically precludes invocation of the safe harbor. (See Advisory Opinion No. 106 for a more detailed discussion of the mutual fund safe harbor.)

Although an SMA does not qualify for the mutual fund safe harbor, some judges may assume that an SMA structured like a “blind trust” triggers no recusal obligations. Generally, the beneficiary of a blind trust “has no knowledge of the trust’s holdings and no right to participate in the trust’s management.” Black’s Law Dictionary 1648 (9th ed. 2009). Thus, if a judge structures an SMA like a blind trust, the judge will not know – or control – what securities the SMA portfolio contains. Yet an SMA structured like a blind trust would remain ineligible for the mutual fund safe harbor, so the recusal obligations of Canon 3C would continue to apply. A judge’s use of a blind trust does not obviate the judge’s recusal obligations. See Canon 3C(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.”) The Committee has consistently advised that the use of a blind trust would be incompatible with a judge’s duty to “keep informed” about financial interests under Canon 3C(2).

We remind judges investing in SMAs to be mindful of both their recusal and their financial disclosure obligations. Under the Judicial Conference policy on electronic conflicts screening [Guide to Judiciary Policy, Vol. 2C, § 410.20], JCUS-SEP 06, at p. 11, a judge has a continuing obligation to update the judge’s list of financial interests that would require recusal, which would include securities held in SMAs. Similarly, because judges investing in SMAs own the underlying securities, the scope of their financial disclosure obligations may change as their SMA portfolio develops. The Committee does not address financial disclosure issues, however, so judges should consider the guidance in the filing instructions for financial disclosure reports and contact the Financial Disclosure Committee with any questions.

August 2013
Committee on Codes of Conduct Advisory Opinion
No. 111: Interns, Externs and Other Volunteer Employees

The Code of Conduct for Judicial Employees [Guide to Judiciary Policy, Vol. 2A, Ch. 3] (“the Employees’ Code”) was amended in 2013 to expressly cover interns, externs, and other volunteer court employees. JCUS-MAR 13, p. 9. The amendment was an extension of the Committee on Codes of Conduct’s precedents that advised that these groups were subject to the Employees’ Code even though they were not expressly included. See Advisory Opinion No. 83. The amendment was made to insure that all those who perform substantive work (as opposed to mere observation) for the courts, even on a voluntary basis, were aware that they were bound by the same ethical restraints and considerations as compensated employees. The Committee also wanted to insure that all judges, who are required by Canon 1 of the Code of Conduct for United States Judges [Guide, Vol. 2A, Ch. 2] to maintain and enforce high standards of conduct for themselves and members of their staffs, will take an active part in explaining and applying the parameters of the Employees’ Code to interns, externs, and other volunteer court employees.

This opinion addresses ethics issues that may arise concerning the employment of volunteers, either from the employees’ perspective under the Employees’ Code, or from the judges’ perspective under the Judges’ Code. It is important to note that although chambers’ staff members are subject to some of the more restrictive constraints of the Employees’ Code, the provisions of the Employees’ Code addressed here apply to all judicial employees.

Canon 4E of the Employees’ Code prohibits a judicial employee from receiving a salary, or any supplementation of salary, as compensation for official government services from any source other than the United States. See Advisory Opinion No. 83 (advising that a volunteer employee such as an extern may not accept during the externship any payment or salary advance from a law firm, or any benefits such as health insurance paid for by a law firm). The Committee recognizes that various courts have historically used unpaid interns, externs, or other volunteer court employees who received educational stipends while they perform work for the courts. While such an arrangement would ostensibly be prohibited by Canon 4E, the Committee’s opinion is that this limited circumstance, as more fully delineated below, does not run afoul of the spirit or intent of the Code, and, therefore, is not prohibited by Canon 4E.

The spirit of the Employees’ Code is to preserve the integrity and independence of the judiciary and of the judicial employee’s office by requiring judicial employees to observe high standards of conduct (Canon 1), avoid conduct that might lead to an appearance of impropriety (Canon 2), avoid conflicts of interest and the disclosure of confidential or sensitive information (Canons 3D & 3F), and not engage in prohibited political activity (Canon 5), violations of which could diminish public confidence in the judiciary and possibly prevent the swift and unbiased administration of justice.
As a general proposition, an intern, extern, or other volunteer court employee may accept an educational stipend or similar payment after checking with the court or the judge to ensure that certain conditions are met. This would involve an evaluation by the judge to determine whether the funding arrangement would raise ethical concerns under either the Employees' Code or the Judges' Code. In making this evaluation, the judge should consider questions including the source of the funds (i.e., whether the funds are from a politically-based organization, a group that regularly appears before the federal courts, or attorneys who regularly appear before the federal court) and the nature of the payment arrangement (i.e., whether the funding is for a short-term, educationally-based position).

Examples of the Committee’s advice on similar issues provide some guidance in addressing the various circumstances that may arise.

The Committee has found that there was no appearance of impropriety under Canon 2 of the Judges’ Code in a judge’s accepting the volunteer services of an intern who received a stipend from a foreign government, assuming the government was not a litigant in the judge’s court. In that matter, the Committee viewed the intern, who was a foreign attorney seeking an internship with the court as part of her training to become a judge, to be in a situation similar to a law student extern or a “cooperative education” student performing services in the court in exchange for academic credit. See Guide, Vol. 12, § 550.80 et seq. (“Volunteers”) and § 550.70 et seq. (“Cooperative Education and Fellowship Programs”). The Committee found no ethical impediment to the arrangement, and directed the judge to the applicable requirements for volunteer service programs so the judge could insure compliance with those rules and policies. See 28 U.S.C. § 604(a)(17)(A) (giving the Director of the Administrative Office of the United States Courts the authority to accept voluntary and uncompensated services to the court); Guide, Vol. 12, § 550.20(b) (indicating that the Director has delegated this authority to the heads of all units in the judiciary, including the Clerks of Court and Circuit Executives), § 550.70.20 (“Cooperative Education and Fellowship Program Roles and Responsibilities”), § 550.80.20 (“Roles and Responsibilities” governing court volunteers). Before commencement of such voluntary services to the court, the court unit executive must execute a Form AO 196A (Acknowledgment of Gratuitous Services), as provided in § 550.80.20(a)(1).

The Committee reached the same conclusion for a law school graduate who served as a volunteer law clerk and received a stipend through a law school fellowship program. The Committee found the fellowship program, being of limited duration (which to date has been found to include up to six months) and awarded through an academic institution, analogous to a cooperative educational program. The Committee opined that, assuming the law school was not a party to litigation in the judge’s court or otherwise doing business with the court, there would be no appearance of impropriety in the intern accepting a modest stipend from the law school. Consequently, the Committee found that the arrangement was permissible under Canon 2A of the Judges’ Code (“A judge ... should act at all times in a manner that promotes public confidence in
the integrity and impartiality of the judiciary.”) The Committee also found no violation of the Employees’ Code Canon 4B(3) (prohibiting the acceptance of funds from someone “likely to come before the judicial employee or the court”) or Canon 4C(2) (prohibiting the acceptance of funds from “anyone seeking official action from or doing business with the court” or “anyone whose interests may be substantially affected by the performance or nonperformance of official duties”) because the prospective intern’s nominal stipend was not being paid in anticipation of future employment by her law school, and did not give rise to concerns regarding undue influence or other impropriety. The Committee noted that nothing in the law school’s program indicated a special or exclusive relationship between the judge and the law school such as giving that law school’s graduates preferred access to the judge’s chambers or others on the judge’s court.

The Committee has advised, however, that a judge should not accept the services of a volunteer law clerk who would be privately compensated by the law school from which the clerk graduated, where the funds would be solicited from lawyers. The Committee noted that the circumstances differed from previous opinions because it did not involve a short-term, academically-based internship, but rather was for a full-time law clerk compensated by alternative means involving funds solicited by the law school from attorneys and law firms.

An intern’s funding provided by a pool of local law firms is also inadvisable. Thus, the Committee has advised against allowing payment of a law student intern stipend from a local bar association, even when the funding came from pooled contributions by law firms, because the funding sources were a group of specific local law firms that were likely to come before the court and whose interests may be substantially affected by the intern’s performance of official duties under Canons 4B(3) and 4C(2) of the Employees’ Code. The controlling factor was the source of funding, which was mostly specific local law firms. The Committee also found that the proposal raised concerns for the judge under Canon 2A of the Judges’ Code because the funding, being from lawyers, might raise an appearance of impropriety. The Committee also repeated that “judges are advised against appointing volunteer externs who are provided payments by law firms before, during or after the externship that are dependent on the individual serving as a judicial extern.” Advisory Op. No. 83. On the other hand, where the funding for an intern’s stipend derives from a blind source, such as funding through a national bar association, educational institution, or charitable organization, comprised of sources that are not likely to have interests that may be substantially affected by the intern’s performance, such a funding arrangement would not violate Canons 4B(3), 4C(2), or 4E of the Employees’ Code. Remember that a judge should not personally participate in fund-raising activities or solicit funds for such an organization or institution consistent with Canon 4C of the Judges’ Code.

In light of the conclusions reached here and in the past, it is the Committee’s opinion that, as a general proposition, an intern, extern, or other volunteer court employee may accept a stipend or similar payment for a short-term, academically-
based (or other organizationally-sponsored) position after checking with the court or the judge to ensure that certain conditions are met. This would involve an evaluation by the judge to determine whether the funding arrangement would raise ethical concerns under either the Employees’ Code or the Judges’ Code. The evaluation should examine, among other issues, the source of the funds, the purpose of the funds, and the duration of the anticipated volunteer services.

It is also important to stress that the application of the Employees’ Code to interns, externs, or other volunteer court employees affects other aspects of their conduct, and affects the conduct of the judges who use their services. In particular, volunteer employees are subject to the ethical rules on conflicts of interest set forth at Canon 3F of the Employees’ Code. Under those rules, for instance, these volunteers, like law clerks, may not work on cases involving future employers (Advisory Opinion No. 74), may not work on cases in which a party is represented by a volunteer court employee’s spouse’s law firm (Advisory Opinion No. 51), are bound by the prohibition against engaging in certain political activities (Advisory Opinion No. 92), and are limited in their conduct and representations on social media outlets (Advisory Opinion No. 112). Likewise, because interns, externs, or other volunteer court employees are now expressly treated the same as compensated employees, they are implicated in provisions of the Judges’ Code that address staff employment matters. For example, these volunteer employees are covered by the judges’ restraints against employing the child of another federal judge. See Advisory Opinion No. 64. This is not an exhaustive list of the application of the Employees’ Code or the Judges’ Code to interns, externs, or other volunteer court employees, but merely an illustration of the reach of those Codes to provide some guidance for the future.

The Judicial Conference has also issued policy guidance concerning the acceptance of volunteer services in the courts. See Guide to Judiciary Policy, Vol. 12, § 550.35 (Policy Requirements Regarding Volunteer Services in Courts). The Judicial Conference policy emphasizes that conflict of interest rules and other related ethics guidance applies to volunteer court employees, and to courts when accepting services from volunteer employees. The policy also cautions against engaging in nepotism or favoritism in the hiring of volunteer employees, stating that courts may not accept volunteer services from individuals related to judges or a public official of the court, consistent with the limitation on the employment of certain relatives of a judge in 28 U.S.C. § 458(a)(1) and the limitation on the employment of certain relatives of a public official in 5 U.S.C. § 3110(a)-(c).

A judicial intern, extern, or other volunteer should not accept a simultaneous governmental appointment that has the potential for dual service with other branches of government or of the state government, in accordance with Canon 4A of the Employees’ Code. For example, the Committee has advised that a judge should not appoint an intern who is paid by the Department of Justice. Similarly, a concurrent internship with a state attorney general’s office or with an executive agency of the federal government would place the intern under the supervision of a federal judge and
of a state attorney general or federal agency head, contrary to the required separation from other governmental units or court systems.

An intern may not engage in the practice of law under Canon 4D. Thus, the Committee has advised that a judicial intern should not be permitted to perform legal or paralegal work at a law firm, as the performance of legal tasks for lawyers is treated as practicing law, in violation of Canon 4D. Also, an internship that is concurrent with providing assistance to a pro bono legal non-profit organization is permissible under Canon 4D(3) if it does not present an appearance of impropriety, does not take place while on duty or in chambers, does not interfere with the intern’s service to the court, is uncompensated, does not involve appearing in any court or administrative agency, does not involve a matter of public controversy, does not involve an issue likely to come before the court, and does not involve litigation against the federal, state, or local government. See Employee’s Code, Canon 4D.

November 2015
Committee on Codes of Conduct Advisory Opinion
No. 112: Use of Electronic Social Media by Judges and Judicial Employees

This opinion provides the Committee’s guidance on an array of ethical issues that may arise from the use of social media by judges and judicial employees, particularly members of a judge’s personal staff. This guidance is intended to supplement information the Committee developed in 2011 to assist courts with the development of guidelines on the use of social media by judicial employees. See Resource Packet for Developing Guidelines on Use of Social Media for Judicial Employees. The Committee noted in the Resource Packet that “[t]he Code of Conduct for Judicial Employees applies to all online activities, including social media. The advent of social media does not broaden ethical restrictions; rather, the existing Code extends to the use of social media.” The Committee also recognizes that electronic social media may provide valuable new tools for the courts, and that some courts have begun to use social media for official court purposes. This opinion is not intended to discourage the official use of social media by the courts in a manner that does not otherwise raise ethics concerns. Nor is this opinion intended to supplant any social media policy enacted within each judge’s chambers which may govern that specific judge’s internal chambers’ operation. If an individual judge’s personal chambers’ policy is stricter than that set forth below, the individual judge’s policy should prevail.

I. Ethical Implications of Social Media

The use of social media by judges and judicial employees raises several ethical considerations, including: (1) confidentiality; (2) avoiding impropriety in all conduct; (3) not lending the prestige of the office; (4) not detracting from the dignity of the court or reflecting adversely on the court; (5) not demonstrating special access to the court or favoritism; (6) not commenting on pending matters; (7) remaining within restrictions on fundraising; (8) not engaging in prohibited political activity; and (9) avoiding association with certain social issues that may be litigated or with organizations that frequently litigate. These considerations implicate Canons 2, 3D, 4A, and 5 of the Code of Conduct for Judicial Employees, and Canons 2, 3A(6), 4, and 5 of the Code of Conduct for United States Judges. The Committee recognizes that due to the ever-broadening variety of social media forums and technologies available, different types of social media will implicate different Canons and to varying degrees. For that reason, many of the proscriptions set forth in this opinion, like those set forth in the Employees’ and Judges’ Code, are cast in general terms. The Committee’s advice is to be construed to further the objective of “[a]n independent and honorable judiciary.” Canon 1.

Social media include an array of different communication tools that can mimic interpersonal communication on the one hand, and act as a news broadcast to a larger audience on the other. For example, some social media sites can serve primarily as communication tools to connect families, friends, and colleagues and provide for sharing private and direct messages, posting of photos, comments, and articles in a tight-knit community limited by the user’s security preferences. The same media,
however, can serve to broadcast to a broader audience with fewer restrictions. Similarly, some social media sites can serve as semi-private communication media depending on how they are used, or can instantly serve as a connection to a large audience. Aside from social communication sites, users also have access to others’ sites where they may comment on everything from the posting of a photograph, to a legal or political argument, or to the quality of a meal at a restaurant. This type of media can implicate other concerns since the user is now validating or endorsing the image, person, product, or service. Finally, there are media where the user is personally publishing commentary in the form of blogs. The Committee recognizes that the Canons cover all aspects of communication, whatever form they may take, and therefore offers general advice that can be applied to the specific mode. In short, although the format may change, the considerations regarding impropriety, confidentiality, appearance of impropriety and security remain the same.

II. Appearance of Impropriety

Canon 2 of the Employees’ Code provides: “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.” Similarly, Canon 2 of the Judges’ Code states that “a judge should avoid impropriety and the appearance of impropriety in all activities.” The Codes forbid judges and judicial employees from using, or appearing to use, the prestige of the office to advance the private interests of others. Canon 2 therefore is implicated when an employee or judge engages in the use of social media while also listing his or her affiliation with the court. For example, the Committee has advised that a law clerk who chooses to maintain a blog should remove all references to the clerk’s employment. The Committee concluded that such reference would implicate Canon 2 concerning the use of the prestige of the office and the appearance of impropriety. The same can be true for a judge if she is using the prestige of the office in some manner in social media that could be viewed as advancing the private interest of another. For example, if the judge is using the media to support a particular establishment known to be frequented by lawyers near the courthouse, and the judge identifies him/herself as a supporter, the judge has used the office to aid that establishment’s success. Similarly, if a judge comments on a blog that supports a particular cause or individual, the judge may be deemed as endorsing that position or individual. The Committee therefore cautions judges to analyze the post, comment, or blog in order to take into account the Canons that prohibit the judge from endorsing political views, engaging in dialogue that demeans the prestige of the office, commenting on issues that may arise before the court, or sending the impression that another has unique access to the Court.

III. Improper Communications with Lawyers or Others

Another example of social media activity that raises concerns under Canon 2 is the exchange of frequent messages, “wall posts,” or “tweets” between a judge or judicial employee and a “friend” on a social network who is also counsel in a case pending
before the court. In the Committee’s view, social media exchanges need not directly concern litigation to raise an appearance of impropriety issue; rather, any frequent interaction between a judge or judicial employee and a lawyer who appears before the court may “put into question the propriety of the judicial employee’s conduct in carrying out the duties of the office.” Employees’ Code, Canon 2. With respect to judges, communication of this nature may “convey or permit others to convey the impression that they are in a special position to influence the judge.” Judges’ Code, Canon 2B. A similar concern arises where a judge or judicial employee uses social media to comment—favorably or unfavorably—about the competence of a particular law firm or attorney. Of course, any comment or exchange between an attorney and the judge must also be scrutinized so as not to constitute an ex parte communication. At all times, the Court must be screening for potential conflicts with those she communicates with on social media, and the Canon 3C provisions which govern recusal situations may be implicated and may require analysis.

The connection with a litigant need not be so direct and obvious to raise ethics concerns. The same Canon 2 concern arises, for example, when a judge or judicial employee demonstrates on a social media site a comparatively weak but obvious affiliation with an organization that frequently litigates before the court (i.e., identifying oneself as a “fan” of an organization), or where a judge or judicial employee circulates a fundraising appeal to a large group of social network site “friends” that includes individuals who practice before the court.

IV. Extrajudicial Activities

Circumstances such as those described above also implicate Canon 4 of both the Employees’ and Judges’ Codes, which govern participation in outside activities. Canon 4 of the Employees’ Code provides that “[i]n 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.” Canon 4 of the Judges’ Code states that 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, or lead to frequent disqualification. Invoking Canon 4 of the Employees’ Code, the Committee has advised that maintaining a blog that expresses opinions on topics that are both politically sensitive and currently active, and which could potentially come before the employee’s own court, conflicts with Canon 4. Such opinions have the potential to reflect poorly upon the judiciary by suggesting that cases may not be impartially considered or decided. This advice would also apply to judges’ use of social media. A judge would be permitted to discuss and exchange ideas about outside activities that would not pose any conflict with official duties, (e.g., gardening, sports, cooking), yet the judge must always consider whether those outside activities invoke a potentially debatable issue that might present itself to the court, or an issue that involves a political position.

V. Identification of the Judge or Judicial Employee
Canons 2 and 4 are also implicated when a judge or judicial employee identifies him/herself as such on a social networking site. Through self-description or the use of a court email address, for example, the judge or employee highlights his or her affiliation with the federal judiciary in a manner that may lend the court’s prestige. The Committee has recommended that courts address in their social media policies whether judicial employees may identify themselves as employed by a specific court or judge. It is the Committee’s view that social media policies should, at the very least, restrict judicial employees from identifying themselves with a specific court or judge on social networking sites, except that judicial employees, with the permission of their court or judge, may state their association with the court or judge on professional networking sites like LinkedIn. The Committee also advises against any use of a judge’s or judicial employee’s court email address to engage in social media or professional social networking. The court employee or judge should consult the court’s policies on permitted and prohibited use of court email, and the court’s guidance on the employee’s conduct while using a court email server and court email address. Similarly, the court email address should not be used for forwarding “chain letter type” correspondences, the solicitation of donations, the posting of property for sale or rent, or the operation of a business enterprise. See Guide to Judiciary Policy, Vol. 15, § 525.50 (“Inappropriate personal use of government-owned equipment includes ... using equipment for commercial activities or in support of commercial activities or in support of outside employment or business activity....” This policy also prohibits use of the email system for “fund-raising activity, endorsing any product or service, participating in any lobbying activity, or engaging in any partisan political activity.”)

VI. Dignity of the Court

Furthermore, Canon 4A of the Employees’ Code provides that “[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.” Certain uses of social media raise concerns under Canon 4A that are not within the ambit of Canon 2. For example, a judge or judicial employee may detract from the dignity of the court by posting inappropriate photos, videos, or comments on a social networking site. The Committee advises that all judges and judicial employees behave in a manner that avoids bringing embarrassment upon the court. Due to the ubiquitous nature of information transmitted through the use of social media, judges and employees should assume that virtually all communication through social media can be saved, electronically re-transmitted to others without the judge’s or employee’s knowledge or permission, or made available later for public consumption.

VII. Confidentiality

Canon 3D of the Employees’ Code provides in relevant part that a “judicial employee should avoid making public comment on the merits of a pending or impending action ....” Canon 3D further states that a judicial employee “should never disclose any
confidential information received in the course of official duties except as required in performance of such duties, nor should a judicial employee employ such information for personal gain.” Canon 3A(6) of the Judges’ Code provides that “[a] judge should not make public comment on the merits of a matter pending or impending in any court.” Canon 4D(5) of the Judges’ Code provides that “a judge should not disclose or use nonpublic information acquired in a judicial capacity for any purpose unrelated to the judge’s official duties.” Most social media forums provide at least one—and often several—tools to communicate instantaneously with anywhere from a few to thousands of individuals. Any posting on a social networking site that, for example, broadly hints at the likely outcome in a pending case, divulges confidential case processing procedures, or reveals non-public information about the status of jury deliberations violates Canon 3D. Such communications need not be case-specific to implicate Canon 3; even commenting vaguely on a legal issue without directly mentioning a particular case may raise confidentiality concerns and impropriety concerns. Thus the Committee advises that in all online activities involving social media, the employee may not reveal any confidential, sensitive, or non-public information obtained through the court. The Committee further advises that judicial employees who are on the judge’s personal staff refrain from participating in any social media that relate to a matter likely to result in litigation or to any organization that frequently litigates in court. Lastly, the Committee reminds that former judicial employees should also observe the same restrictions on disclosure of confidential information that apply to a current judicial employee, except as modified by the appointing authority.

VIII. Political Activity

Canon 5 of the Employees’ Code specifically addresses political activity: “A judicial employee should refrain from inappropriate political activity.” Similarly, Canon 5 of the Judges’ Code states that a “judge should not … publicly endorse or oppose a candidate for public office” or “engage in any other political activity.” Judges’ Code, Canon 5A(2), 5(C). In the social media context, judges and judicial employees should avoid any activity that affiliates the judge or employee to any degree with political activity. This includes but is not limited to posting materials in support of or endorsing a candidate or issue, “liking” or becoming a “fan” of a political candidate or movement, circulating an online invitation for a partisan political event (regardless of whether the judge/employee plans to attend him/herself), and posting pictures on a social networking profile that affiliates the employee or judge with a political party or partisan political candidate. Furthermore, the Committee advises that while there is not an obligation for a judicial employee to search out and modify or delete endorsements or statements of political views that predate the judicial employment, the Committee recommends that if such endorsements or statements appear to be current, they be modified to clarify that they predate the judicial employment. To the extent that it is impractical or impossible to modify such previous endorsements or statements, the Committee suggests posting the following statement on the applicable website: “I have taken a position that precludes me from making further public political comments or endorsements and this site will no longer be updated concerning these issues.” For
example, on some social media it may be possible to remove one’s political affiliation, and replace it with the above statement, when it is impractical or impossible to remove all posts or likes that appear to be current political endorsements or statements. The Committee reminds that while Canon 5B of the Employees’ Code permits certain nonpartisan political activity for some judicial employees, the Codes specify that all judges, members of judges’ personal staffs, and high-level court officers must refrain from all political activity.

IX. Conclusion

In light of the reality that users of social media can control what they post but often lack control over what others post, judges and judicial employees should regularly screen the social media websites they participate in to ensure nothing is posted, whether by the employee him/herself or by others on the employee’s webpage, that may raise questions about the propriety of the employee’s conduct, suggest the presence of a conflict of interest, detract from the dignity of the court, or, depending upon the status of the judicial employee, suggest an improper political affiliation. We also note that the use of social media also raises significant security and privacy concerns for courts and court employees that must be considered by judges and judicial employees to ensure the safety and privacy of the court.

While the purpose of this opinion is to provide guidance with respect to ethical issues arising from the use of social media by judges and judicial employees, the Committee also notes that social media technology is subject to rapid change, which may lead to new or different ethics concerns. Each form of media and each factual situation involved may implicate numerous ethical Canons and may vary significantly depending on the unique factual scenario presented in this rapidly changing area of communication. There is no “one size fits all” approach to the ethical issues that may be presented. Judges and judicial employees who have questions related to the ethical use of social media may request informal advice from a Committee member or a confidential advisory opinion from the Committee.

Notes for Advisory Opinion No. 112

1 The Code of Conduct for Judicial Employees (“the Employees’ Code”) defines a member of a judge’s personal staff as “a judge’s secretary, a judge’s law clerk, 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.” The term judicial employee also covers interns, externs, and other court volunteers.

April 2017
Committee on Codes of Conduct Advisory Opinion
No. 113: Ethical Obligations for Recall-Eligible Magistrate and Bankruptcy Judges

Bankruptcy and magistrate judges who have retired or are considering doing so have several options to consider, depending on whether they continue to hear cases on recall status, practice law, or engage in pursuits outside the court system other than the practice of law. A retired judge’s choice of status impacts whether that judge remains subject to both the Code of Conduct for United States Judges and the limitations on outside earned income. This advisory opinion sets out the options available to retired judges, as well as the effect of each on the retired judge’s ethical obligations.

I. Judges serving on recall status

Retired judges may be recalled to service in accordance with regulations promulgated by the Judicial Conference under 28 U.S.C. § 155(b) (for bankruptcy judges) or § 636(h) (for magistrate judges). A circuit judicial council may recall a retired judge, but only with the judge’s consent.

Retired bankruptcy judges recalled to serve, and almost all retired magistrate judges recalled to serve (the exceptions are described in Section IV below), are subject to the provisions of 28 U.S.C. §§ 153(b) and 632(a) and the Code of Conduct in the same manner as active judges. See Guide to Judiciary Policy (Guide), Vol. 3, §§ 920.25, 1020.25, 1120.60, and 1220.60; Code of Conduct for United States Judges (Guide, Vol. 2A, Ch. 2), Compliance with the Code of Conduct. These judges are also subject to limitations on outside earned income. See 5 U.S.C. App. § 501(a)(1); Guide, Vol. 2C, §§ 1020.20(b) and 1020.25(a). Recalled magistrate and bankruptcy judges do not qualify for an exemption from the outside earned income limitations for approved teaching. See 28 U.S.C. §§ 371(b) and 372(a); 5 U.S.C. App. § 502(b); Guide, Vol. 2C, § 1020.25(b)(7).

II. Judges eligible for recall status but not serving

Judges eligible for recall status but not serving are subject to the portions of the Code applicable to part-time judges. Compliance with the Code of Conduct ¶ C. Retired bankruptcy and magistrate judges who are eligible for recall to judicial service should review the Code of Conduct carefully, continue to follow the many parts of the Code that continue to apply to them, and conduct themselves accordingly during retirement. Many of the same ethics considerations that apply to sitting judges continue to apply to recall-eligible retired judges. The Compliance section of the Code provides that recall-eligible retired judges are subject to the provisions of the Code governing part-time judges. These include all sections of the Code other than Canon 4A(4) (arbitration and mediation), 4A(5) (practice of law), 4D(2) (business activities), 4E (fiduciary activities), 4F (governmental appointments), and 4H(3) (financial disclosures). For example, judges who are eligible to be recalled 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. Canon 1.

• 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. Canon 2.

• avoid membership in any organization that practices invidious discrimination on the basis of race, sex, religion, or national origin. Canon 2.

• not allow family, social, political, financial, or other relationships to influence judicial conduct or judgment. Canon 2.

• avoid testifying voluntarily as a character witness. Canon 2.

• refrain from public comment on the merits of a matter pending or impending in any court. Canon 3.

• avoid civic and charitable activities if it is likely that the organization will be regularly engaged in litigation. Canon 4B(1).

• avoid giving investment advice to civic and charitable organizations. Canon 4B(2).

• not serve on the board of a nonprofit organization if the judge perceives there is any other ethical obligation that would preclude such service (for example, if the organization takes public positions on controversial topics). Advisory Opinion No. 2.

• 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. Canon 4C.

• refrain from financial and business dealings that might exploit the judicial position or involve frequent transactions or continuing business relationships with lawyers or other persons likely to come before the court on which the judge served or may serve in the future. Canon 4D(1).

• comply with the restrictions on acceptance of gifts and the prohibition on solicitation of gifts set forth in the Judicial Conference Gift Regulations, and 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. Canon 4D(4).

- not disclose or use nonpublic information acquired in a judicial capacity for any purpose unrelated to official duties. Canons 2 and 4D(5).
- not act as a leader or hold any office in a political organization, make speeches for a political organization or candidate, or publicly endorse or oppose a candidate for public office. Canons 5A(1) and 5A(2).
- refrain from soliciting funds for, paying an assessment to, or making a contribution to a political organization or candidate, or attending or purchasing a ticket for a dinner or other event sponsored by a political organization or candidate. Canon 5A(3).
- not become a candidate in a primary or general election for any office. Canon 5B.
- avoid engaging in any other political activity (but this provision does not prevent a judge from engaging in activities permitted by Canon 4). Canon 5C.

On the other hand, a retired judge who is eligible for recall is exempt from compliance with several parts of the Code, including the following:

- the restrictions on serving as an officer, director, active partner, manager, advisor, or employee of a nonfamily business set forth in Canon 4D(2).
- the prohibitions on engaging in various types of fiduciary activities for nonfamily members. Canon 4E.
- the restrictions on accepting certain types of governmental appointments. Canon 4F.
- the requirement to make and file financial disclosures. Canon 4H(3).

A judge who is eligible for recall service but not now serving is not subject to the outside earned income limitations. However, if such judge accepts a recall appointment during the year, that judge then becomes subject to the earned income limitations for such year. In some situations, that restriction may affect the timing of when during the year a judge accepts a recall appointment. In such a case, the outside income limitation is determined on a pro rata basis according to the method identified in the Outside Earned Income Regulations. See Guide, Vol. 2C, § 1020.50(c).

As noted below in Section V, if a recall-eligible judge files an election to practice law for compensation, then the judge is no longer subject to the Code, but the judge is
also no longer eligible for recall service. A recall-eligible judge is, however, exempt from the Canon 4A(5) prohibition on the practice of law. For that reason, a recall-eligible judge may be permitted to practice law pro bono and without compensation in certain limited circumstances.

A recall-eligible judge who is considering pro bono practice of law should be aware of certain important limitations in that regard. Most importantly, a judge “should not practice law in the court on which the judge serves or in any court subject to that court’s appellate jurisdiction ....” The Committee has interpreted “the court on which the judge serves” to include the judge’s former courts. In addition, a judge should not “act as a lawyer in a proceeding in which the judge has served as a judge or in any related proceeding.” See Compliance With the Code of Conduct A(2).

III. Judges eligible for recall status but who have filed a statement saying they will not accept a recall appointment

Judges who are eligible for recall status but have filed a statement saying they will not accept recall are not subject to the Code or the outside earned income limitations. The filing of such a statement, once made, is irrevocable. Any judge wishing to exercise this option should file a signed notice stating that “in accordance with Judicial Conference Recall Regulations (Guide, Vol. 3, Chs. 9–12) and the Compliance Section of the Code of Conduct, I have decided that I will not now, or in the future, consent to recall service. I understand that this notice is irrevocable and that, as a result, I will no longer be subject to the Code of Conduct for United States Judges.” Unlike an election to practice law (Section V below), exercise of the option not to accept recall service does not affect the annuity to which the judge is entitled under 28 U.S.C. § 377.

IV. Special Rules Regarding Certain Part-time and “When Actually Employed” Magistrate Judges

The sets of rules applicable to a recalled magistrate judge serving on a less than full-time basis depends on whether the judge served as a full- or part-time magistrate judge prior to retirement, as well as whether the judge retired under the Judicial Retirement System (“JRS”) or the Civil Service Retirement System (“CSRS”). Almost all recalled magistrate judges, whether they serve “full-time” or “less than full-time” are intended to be covered by the entire Code. The only exceptions are (1) judges who served on a part-time basis, and therefore were during active service able to practice law and engage in other outside business activities; and (2) judges who retired under Title 5 (the Civil Service Retirement System or the Federal Employees Retirement System (“FERS”)) and are later recalled under a “when actually employed” basis.

The small number of judges falling into these two categories are subject to the Code of Conduct for part-time judges, meaning that such judges may practice law, conduct mediations or arbitrations, serve as fiduciaries, and conduct business activities
not permissible for other judges serving on recall. See Guide, Vol. 3, § 1120.60(b); Compliance with the Code of Conduct. Such judges are also subject to the Conflict of Interest Rules for Part-Time Magistrate Judges. See Guide, Vol. 3, § 1120.60(b). They are not subject to limitations on outside earned income. See Guide, Vol. 2C, §§ 1020.20(b) and 1020.25(a). We emphasize, though, that any recalled magistrate judge who retired pursuant to 28 U.S.C. § 377 is subject to the Code of Conduct for full-time judicial officers, as well as 28 U.S.C. § 632(a), which limits the outside activities of full-time magistrate judges, and the limitations on outside earned income. See Compliance with the Code of Conduct; Guide, Vol. 2C, §§ 1020.20(b) and 1020.25(a); Vol. 3, §§ 1120.60 and 1220.60.

Magistrate judges who have retired under title 5 (the Civil Service Retirement System or the Federal Employees Retirement System) and are later recalled on a “when actually employed” (part-time) basis are subject to 28 U.S.C. § 632(b), the Code of Conduct governing part-time magistrate judges, and the Conflict of Interest Rules for Part-Time Magistrate Judges. See Guide, Vol. 3, § 1120.60; Compliance with the Code of Conduct. However, magistrate judges who have retired under the Judicial Retirement System and are later recalled on a “when actually employed” (part-time) basis are subject to the Code of Conduct for full-time judicial officers, as well as 28 U.S.C. § 632(a), which limits the outside activities of full-time magistrate judges; the judges are also subject to the limitations on outside earned income found in the Guide, Vol. 2C, Ch. 10. See 5 U.S.C. App. § 501(a)(1); Guide, Vol. 2C, §§ 1020.20(b) and 1020.25(a), Vol. 3, § 1120.60. These recalled judges do not qualify for an exemption from the outside earned income limitations for approved teaching. See 28 U.S.C. §§ 371(b) and 372(a); 5 U.S.C. App. § 502(b); Guide, Vol. 2C, § 1020.25(b)(7).

V. Judges who have elected to practice law

Judges who have elected to practice law are not subject to either the Code or earned income limitations, but are no longer eligible for recall service.

A judge who retires under JRS [including “hybrid” JRS] and practices law without first filing an election to practice law, or practices law before the election becomes effective, forfeits the entire JRS annuity for life. 28 U.S.C. § 377(m)(1)(A). A judge who makes an election to practice law is entitled to receive a JRS annuity, but forfeits any future cost-of-living adjustments on that annuity after the election becomes effective. Id. at § 377(m)(1)(B)(i)(II). No such penalties apply to CSRS or FERS annuitants who practice law.

The election, once it takes effect, is irrevocable. Id. at § 377(m)(1)(B)(ii). A judge who retires under JRS and thereafter practices law for compensation is permanently ineligible for recall service. Id. at § 377(m)(2).

All rights to receive a JRS annuity are forfeited during any period in which compensation is received by a retired judge “for civil office or employment under the
United States Government” (other than service as a recalled judge). *Id. at § 377(m)(3).* Under CSRS and FERS, a reemployed annuitant (including a recalled judge) generally continues to receive an annuity, but his or her compensation is offset by the amount of that annuity.

Notes for Advisory Opinion No. 113

1 *Compliance with the Code of Conduct ¶ C* has been revised to include the following language: “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.”

August 2018
Committee on Codes of Conduct Advisory Opinion
No. 114: Promotional Activity Associated with Extrajudicial Writings and Publications

This opinion provides guidance about judicial participation in book promotions. It expands upon the Committee’s advice in Advisory Opinion No. 55, which addresses ethical considerations related to extrajudicial writings and publications.

As a general matter, the Code of Conduct for United States Judges provides that a judge may write on both law-related and nonlegal subjects, and may receive compensation and reimbursement for doing so. Canons 4 & 4H. In addition, the Commentary to Canon 4 specifically encourages judges to engage in law-related extrajudicial pursuits, because “a judge is in a unique position to contribute to the law, the legal system, and the administration of justice.”

In line with these provisions, the Committee has consistently advised that judges may engage in dignified promotions of the substance of their extrajudicial writings and publications. However, judges should avoid conduct that violates the Code, whether by appearing to exploit or to detract from the dignity of the office, or by reflecting adversely on judicial impartiality. See Canons 2B & 4.

In this opinion, we evaluate these Canons in the context of participation by judges in promotions of their books. Although the opinion is framed in terms of book promotions, our advice also applies to other forms of extrajudicial writings and publications. We assess advertising, personal appearances, media interviews, and book reviews and forewords.

Advertising

As far as possible, judges should make certain that the advertisements for their publications do not violate the language, spirit, or intent of the Code. Advisory Opinion No. 55. This duty continues after a judge’s book is published. Id. Accordingly, to ensure ongoing compliance with the Canons, judicial authors should contract to retain control over advertising for the books they write. Commentary to Canon 2B; Advisory Opinion No. 55.

The following restrictions apply to advertising materials. A judge may mention his or her judicial position, length of service, and court in a book jacket or in other similar straightforward author summaries, provided that the identification is without embellishment and appears in the context of other biographical information. However, the Committee has generally advised against using the same information in other advertising materials. In addition, the Committee has advised against preceding a judge’s name with the title “judge” in any advertisements. Finally, in advertising for a personal appearance by a judge, it would be improper to suggest that attendees would
obtain special access to or influence with the judge, or to suggest that attendees were
expected to purchase the judge’s book.

Judges should also avoid using government-owned equipment or systems,
including court email systems, to promote judicial writings. See Guide to Judiciary
Policy, Vol. 15, § 525.50 ("Inappropriate personal use of government-owned equipment
includes . . . using equipment for commercial activities or in support of commercial
activities or in support of outside employment or business activity, such as . . . selling
goods or services.").

**Personal Appearances**

Judges who write books may appear as authors to speak about and to sign
copies of their work. However, the intended composition of an audience affects the
ethical considerations of an appearance.

On the one hand, a judge who writes books may appear as an author at book
stores and other public venues, assuming the events are free, do not interfere with the
performance of official duties, and are not associated with marketing materials that
violate the advertising guidelines identified in the previous section of this opinion. At
these events, which may be labeled “book signings” or “discussions,” a judge may sign
copies of his or her work, which may also be available for sale. However, there should
be no suggestion that attendees are required to purchase books, or that participants
may enjoy special influence over the judge. During the events, the judge may read from
and discuss the work in a dignified manner that focuses on the substance of the work
and not merely on the author’s status as a federal judge. Discussing the contents of the
book, or how it came to be written, would generally be acceptable. Urging attendees to
buy the book would not.

Assuming these guidelines are met, selling a book to an individual who happens
to be an attorney or responding to a subsequent request for a signature does not
amount to engaging in a prohibited transaction or continuing business relationship with
a person likely to come before the court, particularly if the book has not been marketed
to the particular legal constituency the person represents and the judge is unaware of
the person’s relationship (if any) to cases before the judge’s own court.

However, conducting a book signing or a discussion directed to attorneys or to
other members of the legal community has the potential to raise additional concerns
under the Code. In those circumstances, a judge should assume that members of the
audience know of the judge’s current position, and should take particular care to ensure
that neither the events nor their marketing exploits the judicial office or leads to an
appearance of impropriety.

An event that includes only representatives from a particular legal constituency
also raises concerns under the Code, particularly if the event is held at a non-neutral
location. In those circumstances, discussing or signing a book the judge has written may lend the impression the judge has exploited the judicial office before a favored set of attorneys or litigants. For example, while it might be permissible for a judge to discuss a book during an event sponsored by a general membership bar association at a neutral location, it might be improper to engage in the same activity on behalf of or on the premises of a private law firm or advocacy organization, particularly if the event were closed to opposing constituencies.

This advice is consistent with the guidance the Committee has provided in the related but distinct context of judges appearing as speakers before particular legal constituencies. In that context, the Committee has advised that it is rarely permissible to accept an invitation to address an individual law firm or advocacy group, particularly if the event occurs at the offices of the firm or advocacy group, because doing so may suggest that the judge favors the organization and the interests it represents. See Advisory Opinion Nos. 87 & 105. It may be acceptable for a judge to speak at a neutral location before attorneys who specialize in certain practice areas or represent particular legal viewpoints, but the judge must be available to address opposing or contrasting constituencies and should take care to avoid any appearance of impropriety. The rationale for these guidelines is that a judge who speaks before a particular legal constituency at a non-neutral location may lend the prestige of the office to the interests of the constituency and create the impression of a special relationship between the judge and the sponsor. These concerns of favoritism are reduced if the events are open to a variety of attendees and held at neutral locations, and if the judge is available to address opposing or contrasting constituencies. A judge’s signing or discussing books during an event before a narrow legal constituency at a non-neutral location raises similar concerns because the choice of attendees and location may suggest the judge favors the organization and the interests it represents. Moreover, the activity involves the judge’s commercial interests in the sale of books and may lend the impression the judge has exploited the office before a preferred set of attorneys.

**Media Interviews**

Judges who participate in media interviews to discuss their books should do so in a dignified manner, ensuring that the discussions and any mentions of the judicial position do not appear to exploit or to detract from the office. During the interviews, the judges may read from and discuss the substance of the work, although the judges should not discuss pending or impending cases, confidential information, or controversial matters.

Judges should approach live interviews with particular caution, especially if they anticipate being questioned about subjects whose public discussion might lead (even if unintentionally) to an appearance of impropriety. The duty of a judge to promote public confidence in the integrity and impartiality of the judiciary may be at risk when a judge voluntarily injects him or herself into the limelight of public controversy or discussions of sensitive matters, including confidential aspects of the judicial process. Related
commentary to the press may generate further disputes, lead to disqualification, or embroil the judge in personal and professional disputes. Accordingly, judges should take care in their approach to press interactions, particularly live press interactions, although ultimately the judges themselves are in the best position to weigh the ethical considerations that apply to a particular situation and to choose the manner in which they respond.

**Book Reviews and Forewords**

Judges are sometimes asked to review or to write forewords for books. These activities are acceptable so long as the writings are bona fide contributions addressing the substance of the volumes, and neither the books nor the judicial writings exploit or detract from the dignity of the office. With respect to the second of these points, judges should undertake reasonable efforts to guard against the subsequent use of their reviews or forewords in promotional materials that may tend to exploit the prestige of the office or violate the guidelines outlined above.

November 2014
Committee on Codes of Conduct Advisory Opinion
No. 115: Appointment, Hiring, and Employment Considerations: Nepotism and Favoritism

The Committee on Codes of Conduct receives a variety of inquiries concerning appointment and employment issues that arise in the operation of our courts. This opinion summarizes the Committee’s guidance for judges and court employees when confronted with making a decision about whether a particular person may be “appointed to” or “employed in” a particular court, as such decisions relate to nepotism and/or favoritism. Additional guidance related to this topic may be found in *Advisory Opinion No. 61 (“Appointment of Law Partner of Judge’s Relative as Special Master”)* and *Advisory Opinion No. 64 (“Employing a Judge’s Child as Law Clerk”).*

Canon 3B(3) of the Code of Conduct for United States Judges (the “Code”) provides the starting point for analysis of these issues. In pertinent part, it states that “[a] judge should exercise the power of appointment fairly and only on the basis of merit, avoiding unnecessary appointments, nepotism, and favoritism.” Similarly, Canon 3E of the Code of Conduct for Judicial Employees (the “Employees’ Code”) provides that judicial employees “should not engage in nepotism prohibited by law.”

I. Nepotism

The anti-nepotism provisions in the Codes of Conduct reflect, in part, statutory prohibitions on nepotism found in 28 U.S.C. § 458 and 5 U.S.C. § 3110. Under 28 U.S.C. § 458, “[n]o person shall be appointed to or employed in any office or duty in any court who is related by affinity or consanguinity within the degree of first cousin to any justice or judge of such court.” 5 U.S.C. § 3110 provides that “a public official may not appoint, employ, promote, advance, or advocate for appointment, employment, promotion or advancement in or to a civilian position in the agency in which he is serving or over which he exercises jurisdiction or control any individual who is a relative of the public official.”

Although interpretation of the statutory provisions on nepotism is beyond the jurisdiction of the Committee, the Committee considers those provisions in the context of providing guidance about whether certain workplace or employment relationships violate Canon 3B(3).

A. Employment decisions implicating Canon 3B(3) of the Code

Considerations of nepotism can arise in a variety of circumstances involving appointment and hiring. The Commentary to Canon 3B(3) indicates the range of situations that may implicate this canon: “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.”
Applying Canon 3B(3), the Committee has concluded that appointing the husband of another judicial colleague to act as a special master is one type of “duty” or “office” implicating the Code and found such an appointment to be impermissible. Similarly, in Advisory Opinion No. 61, the Committee counseled that the appointment of a law partner of a judge’s nephew as a special master was also improper. Further, the Committee advised that a judge should not hire as a judicial assistant the spouse of another judge within the same district.

Canon 3B(3) also applies to the appointment and hiring of volunteer employees, for example when a judge appoints a law student as an unpaid voluntary extern. See Advisory Opinion No. 111 (“Interns, Externs and Other Volunteer Employees” noting that volunteer employees are subject to the Code of Conduct); and Guide to Judiciary Policy, Vol. 12, § 550.35 (Policy Requirements for Volunteer Services in Courts and FPDOS) (courts may not accept volunteer services from individuals related to judges or a public official of the court).

The Committee has counseled against appointing a judge’s child to serve as defense counsel under the Criminal Justice Act, but has concluded that colleagues on the court may appoint another judge’s child to serve as defense counsel, so long as the appointment does not constitute de facto full-time service and so long as no other unusual circumstances create the appearance that the court is favoring the child of one of its own judges.

The Committee has also concluded that the spouse of a bankruptcy judge may be listed on a register of mediators for the bankruptcy court when no member of the court is involved in the selection for placement on the register or in the selection of the mediator in a particular case and provided the spouse does not serve as a mediator in a case assigned to the judge.

Advisory Opinion No. 64, which discusses the appointment of law clerks in considerable depth, indicates that while a judge may not appoint as a law clerk a person related to a judge of the same court, the judge may appoint as a law clerk a person who is related to a judge of another federal court within the same circuit. The Committee reached this conclusion even though a Comptroller General Opinion in 1936 held that law clerks are not an “office” or “duty” within the ambit of the nepotism statute. See 15 Comp. Gen. 765 (Mar. 6, 1936). Under Advisory Opinion No. 64, it is clear that the appointment or employment of law clerks is within the ambit of Canon 3B.

Advisory Opinion No. 64 also comprehensively addresses the distinctions that may be drawn between appointment or employment in a judge’s own court compared with appointment or employment in a related court or in a totally separate court. Applying this guidance, the Committee has advised that it is ordinarily improper for a district judge to hire the relative of a magistrate or bankruptcy judge in the same district and vice-versa. Similarly, in the case of bankruptcy and magistrate judges within the same district, it is inadvisable for one judge to hire the relative of another. See Advisory
Op. No. 64. The Committee has also concluded that a district court judge should not hire the child or the spouse of a grandchild of a senior district judge of the same court.

B. Employment circumstances not strictly involving appointment

Canon 3B(3) and the relevant statutes may also encompass workplace situations other than initial appointment or employment decisions. 28 U.S.C. § 458, for example, states that “[n]o person shall be … employed in any office or duty in any court” if the person is related to a judge within the degree of first cousin (emphasis added).

In these situations, the Committee has advised that Canon 3B(3) relating to nepotism and favoritism applies to the appointment of employees, but generally does not prevent the continued employment of an existing court employee who, for example, becomes a relative of a judge of the court after being hired. Even so, the Committee has cautioned judges to avoid the appearance of impropriety in these situations by ensuring that the affected employee is not supervised by, and promotions are not dependent on, the actions of the judge. In other words, the duty to avoid nepotism applies not only to the initial employment decision but also to the continuing employment relationship.

For example, the Committee has advised that a judge does not violate Canon 3B(3) by continuing to employ a law clerk who is related to another judge on the same court, where the law clerk was selected before the other judge was nominated or appointed to the court, and where the law clerk does not work on cases handled by the relative/judge. See Advisory Op. No. 64.

Similarly, the Committee concluded that the marriage of a magistrate judge to a law clerk already employed by another magistrate judge would not preclude the continued employment of the law clerk, because under those circumstances, the power of appointment has not been implicated.

C. Nepotism by judicial employees


28 U.S.C. § 458 applies to appointment and employment of judges and their relatives. Under that statute, a judicial employee with appointment and employment authority may not appoint or employ someone “in any office or duty in any court who is related by affinity or consanguinity within the degree of first cousin to any justice or judge of such court.” See id. § 458(a)(1).

5 U.S.C. § 3110 broadly prohibits a judicial employee from appointing, employing, or promoting his or her own relative “to a civilian position in the agency in which he is serving or over which he exercises jurisdiction.” Section 3110 also prohibits
a judicial employee’s relative from accepting or receiving compensation for such
appointment, employment, or promotion. “Relative” is defined as the public official’s
“father, mother, son, daughter, brother, sister, uncle, aunt, first cousin, nephew, niece,
husband, wife, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law,
sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half
brother, or half sister.” 5 U.S.C. § 3110(a)(3).

The Committee has applied Canon 3E of the Employee Code to a broad range of
situations involving appointments and employment. For example, the Committee has
advised that a chief probation officer should not make or influence any personnel
decision affecting his spouse, who was a probation officer within the same office.

Likewise, the Committee concluded that the daughter of a federal judge should
not be hired as a United States probation officer to serve the district court in which that
judge sits. The Committee has also advised that a chief probation officer should not hire
the spouse of the deputy chief probation officer.

II. Favoritism

A. Issues arising under Canon 3B(3) of the Code

Canon 3B(3) requires judges to avoid not only nepotism, but also “favoritism.” In
contrast to nepotism, favoritism is not a concept that is limited to defined family
relationships. Instead, the focus of the Canon is on the appearance that someone may
gain an advantage in the appointment or employment process, for reasons other than
merit, because of his or her broader connections to a judge or judicial employee.

As noted in Advisory Opinion No. 61, by including “favoritism” as an
impermissible condition in the appointment or employment process, the scope of Canon
3B(3) exceeds the statutory ban on nepotism found in 28 U.S.C. § 458. In the context of
the acts described in Advisory Opinion No. 61, the Committee observed that some
“circumstances raise the question of when an appointment, even though initially
proposed on the basis of merit, ought to be precluded because of relationships that
either indicate or create the appearance of favoritism.”

Applying these principles, for example, the Committee advised that a judge
should not hire a person with whom the judge is in a serious romantic relationship.
Further, the Committee advised against the appointment of a retired federal district
judge as a special master charged with the responsibility of resolving claims for large
amounts of attorney’s fees sought in a complex lawsuit. Concerned that the court would
be setting the special master’s compensation, the Committee concluded that the
appointment created the appearance of favoritism and might undermine public
confidence in the impartiality of the judiciary. However, the Committee did not find an
improper appearance of favoritism when a judge hired a law clerk who was the child of
Favoritism principles may also counsel against an appointment where the appointment poses a significant risk of ongoing conflicts of interest. In the context of a magistrate judge appointment, for example, the Committee advised that although the appointment of the spouse of the clerk of court as a magistrate judge in the same court would not violate the nepotism canon (where neither clerk nor the clerk’s spouse are related to a judge on the court), each judge involved in the appointment process should evaluate whether, if selected, the judge’s relationship to the clerk of court would give rise to the appearance of favoritism.

B. Issues arising under Canons 2A and 2B of the Code

The provisions of Canons 2A and 2B also bear on issues of favoritism in hiring and employment practices:

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.

Concerns under these Canons often arise when a judge is asked to recommend someone for appointment to a judicial or other office. The Commentary to Canon 2B is helpful when discerning a judge’s role in the selection of other judges. That Commentary provides that “[j]udges 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.” Commentary to Canon 2B. For example, responding to an inquiry from the ABA concerning a potential candidate’s qualifications for appointment to the bench would be proper where the response is based on the judge’s personal observations of the candidate. A judge may also respond to official inquiries concerning a person being considered for a judgeship but should not “initiate communications” on such topic. See Advisory Opinion No. 59 (“Providing Recommendations or Evaluations of Nominees for Judicial, Executive, or Legislative Branch Appointments”).

April 2016
Committee on Codes of Conduct Advisory Opinion
No. 116: Participation in Educational Seminars Sponsored by Research Institutes, Think Tanks, Associations, Public Interest Groups, or Other Organizations Engaged in Public Policy Debates

This opinion considers the propriety of participation by a judge or law clerk (either current or future) in programs sponsored by research institutes, think tanks, associations, public interest groups, or other organizations engaged in public policy debates. Over time, the Committee has received multiple inquiries generally related to this topic, including requests related to organizations as varied as national bar associations; state and local bar associations; associations of lawyers, judges, and law students; advocacy groups; research institutes; public interest groups; and other organizations.

A. Background: The Organizations

In recent years, the types of organizations covered by this Advisory Opinion have played an ever-more prominent role in the public policy discourse of the nation. As a result, judges and judicial employees are more frequently called upon to decide whether participation in a particular educational seminar or conference is consistent with their role in the judiciary. Organizations that were once clearly engaged in efforts to educate judges and lawyers have become increasingly involved in contentious public policy debates. Gone are the days when it was possible for a judge to identify the sponsoring organization and know that the judge was within a bright-line “safe zone” for participation.

In assessing the propriety of participation in a conference or seminar (either as lecturer, panel member, or attendee), a number of important considerations confront the judge or judicial employee. The factors that relate to the sponsoring organization itself include: (1) its identity; (2) its stated mission, including any political or ideological point of view; (3) whether it engages in education, lobbying, or outreach to members of Congress, key congressional staffers, or policymakers in the executive branch; (4) whether it conducts outreach or educational programs for the media, academia, or policy communities; (5) whether it is actively involved in litigation in the state or federal courts, including the filing of amicus briefs, participating in moot courts or boards to prepare candidates or advocates; (6) whether it holds rallies, meetings, or appearances in conjunction with hearings or trials with a view towards influencing public opinion; (7) whether it advocates for specific outcomes on legal or political issues; (8) its sources of funding; and (9) whether it is generally viewed by the public as having adopted a consistent political or ideological point of view equivalent to the type of partisanship often found in political organizations.

Additional factors that relate to the educational program itself need to be considered by the judge or judicial employee, including: (1) whether the cost of attendance (including items such as scholarships, tuition waivers, and room and board)
will be borne by sponsoring organization; (2) whether the sponsoring organization requests that participation, materials, or subject matter be maintained secret or confidential; and (3) whether participation is limited to certain applicants based on criteria designed to screen out persons of particular backgrounds or points of view or is open for general participation.

B. Applicable Canons and Commentary Background

The activities of judges and judicial employees are governed by different codes of conduct, but many of the obligations under both the Code of Conduct for United States Judges ("Judges’ Code") and the Code of Conduct for Judicial Employees ("Employees’ Code") are the same for either a judge or law clerk participating in outside educational activities.

The foundational principle of the Judges’ Code is found in Canon 1: “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.” As explained in the Commentary to Canon 1, this foundational principle exists because “[d]eference to the judgments and rulings of courts depends on public confidence in the integrity and independence of judges.” A judge’s compliance with the law and the Judges’ Code preserves public confidence in the impartiality of the judiciary, whereas “violation of this Code diminishes public confidence in the judiciary and injures our system of government under law.” Commentary to Canon 1. Indeed, Canon 2A directs that “[a] judge should . . . act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.”

The Employees’ Code mirrors the foundational Canon 1 principle of the Judges’ Code. Canon 1 of the Employees’ Code states: “An independent and honorable Judiciary is indispensable to justice in our society.” Judicial employees must therefore “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.” Id. All provisions of the Employees’ Code should be construed and applied to further these objectives.” Id. Notably, in addition to the standards called for under the Employees’ Code, judicial employees are further subject to potentially “more stringent standards required by law, by court order, or by the appointing authority.” Id. Canon 2 of the Employees’ Code similarly directs that a judicial employee should not engage in any activities that would call into question the propriety of the judicial employee’s conduct in carrying out the duties of the office.

Participation in outside educational activities also must be consistent with the Canon 2 principle, found in both the Judges’ and Employees’ Codes, mandating the avoidance of both impropriety and the appearance of impropriety in all activities. To that end, Canon 2B of the Judges’ Code provides:
A judge should not allow . . . 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.

In nearly identical terms, Canon 2 of the Employees’ Code provides that “[a] judicial employee should not allow . . . social, or other relationships to influence official conduct or judgment. A judicial employee should not lend the prestige of the office to advance or appear to advance the private interests of others.”

In determining whether to attend or participate in an outside activity, judges also should be guided by Canon 3, which directs a judge to perform the duties of the office “fairly, impartially, and diligently.” Canon 3A(1) admonishes that “a judge … should not be swayed by partisan interests, public clamor, or fear of criticism.” The Commentary to Canon 3A(3) also reaffirms a judge’s “duty under [the Judges’ Code] to act in a manner that promotes public confidence in the integrity and impartiality of the judiciary applies to all of the judge’s activities,” whether professional or personal. Likewise, law clerks should be guided by Canon 3 of the Employees’ Code, which requires employees to “adhere to appropriate standards in performing the duties of the office.” Specifically, Canon 3C mandates:

A judicial employee should diligently discharge the responsibilities of the office in a prompt, efficient, nondiscriminatory, fair, and professional manner . . . [and] should never . . . perform any . . . 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.

Of particular relevance to outside educational activities, Canon 4 of both the Judges’ Code and Employees’ Code offers guidance on participation in extrajudicial activities. For judges, Canon 4 allows that “a judge may engage in extrajudicial activities, including law-related pursuits . . . and may speak, write, lecture and teach on both law-related and nonlegal subjects” but cautions that “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, [or] lead to frequent disqualification.” The Commentary to Canon 4 reflects that, because a judge is “a judicial officer and 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” and that, “[t]o the extent the judge’s . . . 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.” For law clerks, Canon 4 directs that, “[i]n 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.” When considering
outside activities that concern the law, the legal system, or the administration of justice, however, a judicial employee must “first consult with the appointing authority to determine whether the proposed activities are consistent with . . . [the] code.”

Additionally, judges and employees must consider canons governing reimbursement for expenses. Canon 4H of the Judges’ Code allows a judge to “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 certain restrictions. However, judges must be cognizant of Canon 4D(4), which requires judges to “comply with the restrictions on acceptance of gifts and the prohibition on solicitation of gifts set forth in [The Judicial Conference Ethics Reform Act Gift Regulations ("Gift Regulations")].” Canon 4E of the Employees’ Code similarly reflects:

A judicial employee may receive compensation and receipt of expenses for outside activities provided that receipt . . . is not prohibited or restricted by this code, the Ethics Reform Act, and other applicable law, and provided that the source of the payment 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.

Canon 4E further directs that expense reimbursement “be limited to the actual cost of travel, food, and lodging reasonably incurred by a judicial employee . . . . Any payment in excess of such an amount is compensation.”

Lastly, outside activities also are governed by Canon 5 restrictions found in both the Judges’ and Employees’ Codes regarding the proscription against political activity. Canon 5A specifies that “[a] judge should not make speeches for a political organization” or attend any “event sponsored by a political organization.” The Commentary to Canon 5 defines “[t]he term ‘political organization’ . . . [as] a political party, a group affiliated with a political party or candidate, or an entity whose principal purpose is to advocate for or against political candidates or parties in connection with elections for public office.” Canon 5(C) provides further that “[a] judge should not engage in any other political activity.”

For law clerks, the Employees’ Code likewise directs against engaging in political activity, whether partisan or nonpartisan. In particular, Canon 5A provides that “[a] judicial employee should refrain from partisan political activity; . . . should not make speeches for or publicly endorse or oppose a partisan political organization or candidate; . . . and should not otherwise actively engage in partisan political activities.” Canon 5(B) further provides that “[a] member of the judge’s personal staff [or] a lawyer who is employed by the court and assists judges on cases . . . should refrain from nonpartisan political activity.”
C. Summary of Prior Committee Advisory Opinions on Attendance or Participation in Privately Funded Seminars

The Committee has provided guidance on the permissibility of judicial participation in legal seminars in Advisory Opinion Nos. 67, 87, 93, and 105.

Advisory Opinion No. 67 addresses a judge’s attendance at “seminars and similar educational programs organized, sponsored, or funded by entities other than the federal judiciary.” Notably, this Advisory Opinion applies equally to law clerks, who are subject to nearly identical standards under the Employees’ Code. As stated in Advisory Opinion No. 67, the education of judges (and law clerks) in various academic and law-related disciplines serves the public interest, except where particular circumstances make attendance inadvisable. That Advisory Opinion sets out six nonexclusive factors that may affect the propriety of attendance at a seminar:

1. whether the sponsor is a recognized and customary provider of educational programs;
2. whether an entity other than the sponsor is a substantial source of funding;
3. whether the sponsor or a source of substantial funding of the seminar is currently involved or is likely to be involved as a party or attorney in litigation before the judge;
4. the subject matter of the seminar, including whether contributors of seminar funding play a role in designing the curriculum or are involved as parties to litigation;
5. the nature of the expenses paid or reimbursed or whether the seminar is primarily educational and not recreational in nature; and
6. whether the seminar provider makes public disclosure about the sources of seminar funding and curriculum.

Advisory Opinion No. 67 specifically notes that the circumstances of the educational program may raise questions under Canons 2, 3, and 4 of the Judges’ Code. If there is insufficient information for the judge (or law clerk) to decide whether attendance may run afoul of the Code, the judge (or law clerk) should decline the invitation or take reasonable steps to obtain additional information. Ultimately, if the necessary additional information is not available or if additional information obtained does not resolve questions concerning the propriety of attendance, the judge (or law clerk) should not attend. Finally, judges and law clerks should keep in mind that payment of tuition and expenses involved in attendance at an independent seminar constitutes a gift within the meaning of the Code, the Gift Regulations, and applicable statutes, and thus acceptance of such payment may be restricted or prohibited. It is the
judge’s or law clerk’s obligation to ensure that acceptance of the payments is in compliance with all applicable rules.

Advisory Opinion Nos. 87 and 105 also provide guidance on the permissibility of judicial participation in legal seminars. Advisory Opinion No. 87 discusses participation in continuing legal education ("CLE") programs offered by "CLE providers, accredited institutions, and similar established educational providers." In Advisory Opinion No. 87, the Committee opined that Canon 2 principles are implicated when a judge participates in legal training programs whether such programs offer CLE credit or not and whether the sponsor is a "for-profit" or "non-profit" entity. Thus, merely because a provider offers CLE credit or is a "non-profit" entity does not eliminate the requirement that a judge determine whether his or her participation runs afoul of Canon 2.

Advisory Opinion No. 105 focuses on “private law-related training programs other than those offered by CLE providers, accredited institutions, and similar established educational providers . . . offered to a selected audience of attorneys and/or litigants and designed to improve attendees’ legal skills or performance in judicial proceedings.” Advisory Opinion No. 105 identifies five factors that a judge should consider before participating in a private law-related training program:

(1) the sponsor of the training program;

(2) the subject matter;

(3) whether there is a commercial motivation for the program;

(4) the attendees, including whether members of different constituencies are invited to attend; and

(5) other factors, including the location of the program and advertising or promotion of the event.

In the case of programs offered by bar associations and other nonprofit entities, consideration of these five factors “raise[s] fewer concerns than [in programs] sponsored by for-profit entities, mainly because the sponsors do not have a commercial motivation and the programs are generally open to a broad audience.” Id. However, “[a] judge’s participation in a training program that will only benefit a specific constituency, as opposed to the legal system as a whole, cannot be characterized as an activity to improve the law within the meaning of Canon 4.” Id. As an example, the Committee has said that “judge participation in legal training offered by an issue-specific advocacy group that appears regularly in the judge’s court may be perceived as lending the prestige of the judicial office to advance the interests of the group.” Id.

Advisory Opinion No. 93 addresses the ethical implications of a judge’s or law clerk’s extrajudicial, law-related activities arising under Canons 1, 2, 4, and 5:
To qualify as an acceptable law-related activity, the activity must be directed toward the objective of improving the law, qua law, or improving the legal system or administration of justice, and not merely utilizing the law or the legal system as a means to achieve an underlying social, political, or civic objective.

Advisory Opinion No. 93 further states that, while “[a] judge’s participation in law-related activities is encouraged . . . not every activity that involves the law or the legal system is considered a permissible activity.” This is so because “[l]aw is, after all, a tool by which many social, charitable and civic organizations seek to advance a variety of policy objectives.” Id. “A permissible activity . . . is one that serves the interests generally of those who use the legal system, rather than the interests of any specific constituency, or [a permissible activity is one that] enhances the prestige, efficiency or function of the legal system itself.” Id. On the other hand, “judicial participation in organizations that advocate particular causes rather than the general improvement of the law is prohibited.” Id.

D. Law Clerks Who Have Accepted an Offer but Not Yet Entered into Service

Concerns are also raised when a conference or seminar is directed to future law clerks. While the Employees’ Code applies only to “employees of the Judicial Branch” and not to prospective employees, the Committee has counseled judges that they may impose limits on the pre-employment conduct of their future law clerks to avoid activities contrary to the Employees’ Code, such as accepting a salary advance from a law firm prior to a clerkship. See, e.g., Advisory Op. No. 83 (advising that “[a] judge should not permit a law clerk to accept a salary advance from a law firm, either before or during the clerkship” because acceptance “could undermine public confidence in the integrity and independence of the court, and is contrary to [Canons] of the Employees’ Code”). The Committee also has recognized that judges may prohibit their future law clerks from engaging in conduct otherwise permissible under the Employees’ Code. Id. (acknowledging that “some judges may prohibit their future . . . law clerks from accepting bonuses or payments that are [otherwise] permissible”). In directing advice to future law clerks, the Committee has restricted the term “future law clerks” to those persons who have accepted future employment in a judge’s chambers but who have not yet entered into actual service. The conduct of persons who merely aspire to become employed as a law clerk at some future date are beyond the scope of the Employees’ Code.

That said, the Committee is sensitive to the public perception that “law clerks are in a unique position since their work may have direct input into a judicial decision,” and “[e]ven if this is not true in all judicial chambers, the legal community perceives that this is the case based upon the confidential and close nature of the relationship between clerk and judge.” Advisory Op. No. 51.
It is the Committee’s view that a judge has the discretion to instruct a future law clerk regarding pre-employment educational opportunities that may have an impact on the clerkship. A future law clerk should consult his or her appointing authority for guidance. The appointing authority should recognize that future law clerks are not fully subject to the Employees’ Code until they enter into service, so care should be taken by the judge to ensure that a directive not to participate in First Amendment protected activity be limited to the extent actually necessary to protect the judiciary from the identified harm.

E. Ethical Concerns for Participating in a Sponsored Educational Conference or Seminar

The Committee has counseled that it is essential for judges to assess each invitation to participate or attend a seminar on a case-by-case basis. As stated in Advisory Opinion No. 67, “[t]hat a lecture or seminar may emphasize a particular viewpoint or school of thought does not necessarily preclude a judge from attending,” and a judge’s determination whether to attend a particular seminar should be made considering the totality of the circumstances. (See also Note 1 below).

(1) The identity of the seminar sponsor

Concerns are raised when the sponsor is regularly engaged in contentious public policy debates. That is so even where the seminar or conference is an isolated offering of education. Additional concerns are raised where the seminar or conference specifically targets judges or judicial employees. See also, Judicial Conference Policy on Judges’ Attendance at Privately Funded Educational Programs, at https://www.uscourts.gov/judges-judgeships/privately-funded-seminars-disclosure/judicial-conference-policy-judges-attendance.

One concern arises from the prohibition in Advisory Opinion No. 105 of “lending the prestige of the judicial office” to advance the interests of a special interest or issue specific group. In that Advisory Opinion, we cautioned that a judge’s participation in legal training offered by an issue-specific advocacy group that would benefit only a particular constituency, as opposed to the legal system as a whole, could not be characterized as proper extrajudicial activity involving the law. The Committee has advised that participation in viewpoint-specific programs poses fewer ethical concerns if attendance is open to the general legal community. When the seminar or conference targets a narrow audience of incoming or current judicial employees or judges, the judge or employee must take care to ascertain that the program is not such that it could be seen to curry influence with the employee or judge or to impact the outcome of future cases. While it is undoubtedly true that neither judges nor judicial employees are likely to be influenced by a single seminar, both the Judges’ Code and the Employees’ Code prohibit participation in programs that might cause a neutral observer to question whether this type of influence is being sought by the sponsoring organization. Participation in a viewpoint-specific training program that will only benefit a specific
constituency, as opposed to the legal system as a whole, cannot be characterized as a permissible activity to improve the law.

(2) Nature and source of seminar funding

The Committee has advised that the existence of additional “private sponsors” at bar association CLE programs does not categorically prohibit a judge from participating as a speaker or panelist. However, the presence of such sponsors cannot be ignored by judges who participate. In fact, the presence of private sponsors likely increases the need for additional scrutiny. Thus, the Committee has advised in the past that a judge must factor funding and sponsorship information into the evaluation of whether to attend a particular educational program.

(3) Whether a sponsor or a source of substantial funding is involved in litigation or likely to be involved

Even if the sponsoring organization is not engaged in litigation, issues are raised if the funding to sponsor the seminar is from sources that are involved in litigation or political advocacy. Where the funding sources are unknown or likely to be from sources engaged in litigation or political advocacy, judges and judicial employees should not participate. The Committee has cautioned that, if there is insufficient information for the judge to decide whether to attend a seminar, then the judge should decline the invitation or take reasonable steps to obtain additional information. Advisory Op. No. 67.

(4) Subject matter of the seminar

Ordinarily, the subject matter of seminars is not an issue unless the judge or judicial employee is aware that the sponsor or source of substantial funding for the seminar is a litigant before the judge and that the topics covered in the seminar are directly related to the subject matter of the litigation. Advisory Op. No. 67. When the judge or judicial employee is unable to determine the sources of funding, the Committee cautions potential speakers or applicants against participation.

Further, Canon 4A of the Employees’ Code reminds judicial employees that, as a general matter, their outside activities “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.” The Committee has previously advised that these concerns may be present when an advocacy organization takes positions on legal issues that frequently come before the federal courts. Where the participation of a judge or judicial employee in a seminar could create the impression of a predisposition regarding a legal issue or could suggest that a proposed decision may be influenced by the relationship with the advocacy group, participation is likely inappropriate. The Committee previously has advised that, although attendance at a seminar that emphasizes a particular viewpoint could be perceived as merely legal
training, attendance that requires the attendee to form a lasting association with the sponsoring organization is impermissible.

(5) **Nature of expenses paid**

Payment of tuition and expenses involved in attendance at an independent seminar constitutes a gift within the meaning of the Code, the Gift Regulations, and applicable statutes, and thus acceptance of such payment is subject to restrictions.

The Gift Regulations, which implement 5 U.S.C. §§ 7351 and 7353, prohibit judicial officers and employees from soliciting or accepting a gift from any person (1) who is seeking official action from or doing business with the court or (2) whose interests may be substantially affected by the performance or nonperformance of the judge’s or employee’s official duties. *Guide to Judiciary Policy*, Vol. 2C, Ch. 6, §§ 620.30, 620.35. The acceptance of gifts by judges and judicial employees implicates Canons 1, 2, 3, 4, and 5 of the Judges’ and Employees’ Codes regarding preserving the integrity and independence of the judiciary, avoiding even the appearance of impropriety, and discharging the duties of their offices with respect, dignity, and impartiality. See also Advisory Op. No. 67.

The Gift Regulations preclude a judicial officer or employee from accepting a gift “if a reasonable person would believe it was offered in return for being influenced in the performance of an official act or in violation of any statute or regulation.” *Guide to Judiciary Policy*, Vol. 2C, Ch. 6, § 620.45. The Committee has previously opined that judges and law clerks may accept a waiver of tuition and reimbursement of expenses to attend independent, law-related seminars where neither the sponsor nor the source of the funding for such activities (1) is involved in litigation before the court, (2) is likely to come before the court, (3) is seeking to do business with the court, or (4) has any interests that may be substantially affected by the performance or nonperformance of the judge’s or law clerk’s official duties. In addition, where the sources of the funding for the event are unknown, judges and law clerks should inquire as to the specific sources to ensure that there is no actual or potential conflict or appearance of impropriety.

(6) **Other Factors**

One additional factor meriting further consideration is political activity. Canon 5 of both the Judges’ Code and the Employees’ Code prohibits political activity by judges and law clerks. The Committee has broadly interpreted “political activity” to include any activity involving “hot-button issues in current political campaigns” or which is “politically-oriented” or has “political overtones.” For instance, the Committee has advised law clerks to avoid outside activities that involve contentious political issues and has advised law clerks not to attend a legal training program sponsored by an issue-specific advocacy group that may be involved in federal litigation.
When a judge engages in law-related activity with political overtones, a judge should consider whether the express or implied values of other canons will be contravened. “A judge should be sensitive to the nature and tone of the activity, and should not be drawn into an activity in a manner that would contravene Canon 2’s goals of propriety and impartiality or Canon 5A’s prohibition of activities pertaining to political organizations and candidates.” Advisory Op. No. 93. Where participation would undermine public confidence in the impartiality of the judiciary, would give rise to an appearance of engaging in political activity and of undue influence on the judge, or would otherwise give the appearance of impropriety, the Committee has advised against attending a seminar or conference.

Notes for Advisory Opinion No. 116

Although Advisory Opinion No. 67 provides guidance to judges, this guidance is equally applicable to law clerks. As members of a judge’s personal staff, law clerks must be more circumspect in their activities than other court employees due to their direct association with a single judge. Because of this close association and the application of similar ethical standards, the Committee’s evaluation of whether a judge may participate in a seminar or conference also incorporates whether a law clerk may participate, except as otherwise noted.

February 2019
Ch. 3: Compendium of Selected Opinions

(Note: No unauthorized disclosure of this policy guidance outside the judiciary is permitted.)

Introduction

PART ONE: CODE OF CONDUCT FOR UNITED STATES JUDGES

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

COMPENDIUM OF SELECTED OPINIONS CONCERNING CANON 1

§ 1. Preserving the Integrity and Independence of the Judiciary
   § 1.1 Duty To Report Misconduct
   § 1.2 Integrity and Independence of Judiciary: General
      § 1.2-1 Integrity and Independence of Judiciary [Judicial Employees]
   § 1.3 Service in State Government Positions
      § 1.3-1 Service in State Government Positions [Judicial Employees]

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

COMPENDIUM OF SELECTED OPINIONS CONCERNING CANON 2

§ 2. Avoiding Impropriety and the Appearance of Impropriety
   § 2.1 Recommendations and Endorsements
      § 2.1-1 Recommendations and Endorsements [Judicial Employees]
   § 2.2 Additional Compensation for Performing Judicial Duties
   § 2.3 Financial Dealings with Members of the Judge’s Staff
   § 2.4 Defense Funds
   § 2.5 Future Employment of Judges
      § 2.5-1 Future Employment [Judicial Employees]
   § 2.6 Former Judges
   § 2.7 Withdrawing from Law Practice To Become a Judge or Judicial Employee
      § 2.7-1 Withdrawing from Law Practice to Become a Judge or Judicial Employee [Judicial Employees]
   § 2.8 Avoiding Nepotism and Favoritism.
<table>
<thead>
<tr>
<th>Section</th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>§ 2.8-1</td>
<td>Avoiding Nepotism and Favoritism [Judicial Employees]</td>
<td>23</td>
</tr>
<tr>
<td>§ 2.9</td>
<td>Benefits Received from Entities Doing Business with the Courts</td>
<td>23</td>
</tr>
<tr>
<td>§ 2.9-1</td>
<td>Benefits Received from Entities Doing Business with the Courts [Judicial Employees]</td>
<td>25</td>
</tr>
<tr>
<td>§ 2.10</td>
<td>Relationships with Entities Likely To Appear Before Courts</td>
<td>25</td>
</tr>
<tr>
<td>§ 2.10-1</td>
<td>Relationships with Entities Likely To Appear Before Courts [Judicial Employees]</td>
<td>28</td>
</tr>
<tr>
<td>§ 2.11</td>
<td>Doing Business with Parties Before the Court</td>
<td>29</td>
</tr>
<tr>
<td>§ 2.11-1</td>
<td>Doing Business with Parties Before the Court [Judicial Employees]</td>
<td>29</td>
</tr>
<tr>
<td>§ 2.12</td>
<td>Lending Prestige of Office</td>
<td>30</td>
</tr>
<tr>
<td>§ 2.12-1</td>
<td>Lending Prestige of Office [Judicial Employees]</td>
<td>33</td>
</tr>
<tr>
<td>§ 2.13</td>
<td>Testimony</td>
<td>33</td>
</tr>
<tr>
<td>§ 2.14</td>
<td>Membership in Discriminatory Organizations</td>
<td>34</td>
</tr>
<tr>
<td>§ 2.15</td>
<td>Conflict-of-Interest Rules for Part-time Magistrate Judges</td>
<td>36</td>
</tr>
<tr>
<td>§ 2.16</td>
<td>Miscellaneous Canon 2 Issues</td>
<td>37</td>
</tr>
<tr>
<td>§ 2.16-1</td>
<td>Miscellaneous Canon 2 Issues [Judicial Employees]</td>
<td>38</td>
</tr>
</tbody>
</table>

**CANON 3:** A JUDGE SHOULD PERFORM THE DUTIES OF THE OFFICE FAIRLY, IMPARTIALLY AND DILIGENTLY ................................................................. 38

**COMPENDIUM OF SELECTED OPINIONS CONCERNING CANON 3** ................................................................. 45

<table>
<thead>
<tr>
<th>Section</th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>§ 3.0</td>
<td>Fair, Impartial and Diligent Performance of Judicial Duties; Recusal and Disqualification</td>
<td>45</td>
</tr>
<tr>
<td>§ 3.0-1</td>
<td>Activities Requiring Frequent Recusal</td>
<td>46</td>
</tr>
<tr>
<td>§ 3.0-2</td>
<td>Bias, Prejudice or Personal Knowledge</td>
<td>46</td>
</tr>
<tr>
<td>§ 3.1</td>
<td>Recusal: Financial Interests</td>
<td>46</td>
</tr>
<tr>
<td>§ 3.1-1</td>
<td>Stock Ownership and Other Ownership Interests</td>
<td>46</td>
</tr>
<tr>
<td>§ 3.1-2</td>
<td>“Blind Trust” Unavailing To Obviate Recusal; Other Trust Issues</td>
<td>48</td>
</tr>
<tr>
<td>§ 3.1-3</td>
<td>Mutual Funds and Other “Common Funds” Excepted</td>
<td>49</td>
</tr>
<tr>
<td>§ 3.1-4</td>
<td>Debt Securities</td>
<td>51</td>
</tr>
<tr>
<td>§ 3.1-5</td>
<td>Convertible Securities</td>
<td>52</td>
</tr>
<tr>
<td>§ 3.1-6</td>
<td>Financial Interest in Subject Matter or Party to the Proceeding: Defining “Subject Matter,” “Party” and “Proceeding”</td>
<td>52</td>
</tr>
<tr>
<td>§ 3.1-6[1]</td>
<td>Amicus Curiae</td>
<td>53</td>
</tr>
<tr>
<td>§ 3.1-6[2]</td>
<td>Fiduciary Capacity</td>
<td>53</td>
</tr>
<tr>
<td>§ 3.1-6[3]</td>
<td>Official Capacity Suits</td>
<td>53</td>
</tr>
<tr>
<td>§ 3.1-6[4]</td>
<td>Class Actions</td>
<td>54</td>
</tr>
<tr>
<td>§ 3.1-6[5]</td>
<td>Bankruptcy Proceedings</td>
<td>55</td>
</tr>
<tr>
<td>§ 3.1-6[5][i]</td>
<td>Bankruptcy Proceedings [Judicial Employees]</td>
<td>56</td>
</tr>
</tbody>
</table>
§ 3.1-6[6]  Trade Associations........................................57
§ 3.1-6[7]  Criminal Victims........................................57
§ 3.1-7  Other Interests Which May Be Substantially Affected by the Outcome of Litigation .......................58
§ 3.1-7[1]  Policyholder of Insurance; Utility Ratepayer;
            Taxpayer ................................................59
§ 3.1-7[2]  Pensions ................................................60
§ 3.1-7[3]  Holdings of Judges’ Relatives ..................60
§ 3.1-8  Financial Conflicts [Judicial Employees] ................61
§ 3.1-9  Duty to Keep Informed of Financial Interests ..........61
§ 3.1-9[1]  Duty to Keep Informed of Financial Interests
            [Judicial Employees] .................................61
§ 3.2  Recusal:  Family Relationships ........................................61
§ 3.2-1  Judge’s Relatives (Definition)..........................62
§ 3.2-2  Spousal Relationships .........................................63
§ 3.2-2[1]  Spousal Relationships [Judicial Employees] .................................67
§ 3.2-3  Partner Related to Judge or Judge’s Spouse ..........67
§ 3.2-4  Government Attorneys Related to the Judge ..........68
§ 3.2-5  Relative Is an Associate or Other Employee ........70
§ 3.2-6  Relative Is a Member of the Judiciary ..................71
§ 3.3  Recusal:  Former Employment ..................................71
§ 3.3-1  Withdrawal from Firm; Former Firm Appearing in Case .................................................................72
§ 3.3-1[1]  Former Firm Appearing in Case [Judicial Employees] .................................................................73
§ 3.3-2  Other Business Relationships with Former Law Firm or
        Its Members and Associates ................................74
§ 3.3-3  Prior Government Employment ..............................74
§ 3.4  Recusal:  Other Miscellaneous Business and Personal
       Relationships ................................................................77
§ 3.4-1  Co-Authors ..................................................77
§ 3.4-2  Landlord-Tenant ..............................................78
§ 3.4-3  Law School Teaching .........................................78
§ 3.4-4  Co-Owners ....................................................79
§ 3.4-5  Parties to a Contract ..........................................79
§ 3.4-6  Charitable and Religious Organizations ................80
§ 3.4-6[1]  Charitable and Religious Organizations [Judicial Employees] ........................................80
§ 3.4-7  Judges Negotiating for Future Employment ..........80
§ 3.4-7[1]  Future Employment [Judicial Employees] ..........81
§ 3.5  Recusal:  Members of the Judge’s Staff; Former Staff and Their
       Relatives ...................................................................81
§ 3.5-1 Isolating Judge's Staff When Relatives or Relatives' Interests are Involved in Litigation [Judicial Employees] .................................................................................................................. 83
§ 3.6 Recusal: Reasonable Basis for Questions of Impartiality .......... 86
§ 3.6-1 Litigation Involving the Judge .................................................. 86
§ 3.6-1[1] Official Capacity Defendant Associate of Spouse .............................. 88
§ 3.6-2 Where Judge (or Judge's Spouse) Is or Has Been a Client of Lawyer or Law Firm Appearing in the Case ... 88
§ 3.6-3 Lawyer Representing Party Opposing Judge in Other Litigation ................................................................. 90
§ 3.6-4 Attorneys and Law Firms Who Are Clients of a Relative of the Judge ............................................................................ 91
§ 3.6-5 When Former Client Is a Party .............................................. 91
§ 3.6-6 Involvement of Present or Former Judicial Colleagues 92
§ 3.6-6[1] Other Judges as Parties .................................................. 93
§ 3.6-7 Complaints Against Judge; Complaints Made by Judge ................................................................................................. 93
§ 3.6-8 Other Reasonable Bases for Questions of Impartiality. 94
§ 3.7 Related Discovery or Appearance of a Disqualifying Interest .... 97
§ 3.8 Remedying Disqualifications ......................................................... 98
§ 3.8-1 Disposing of a Disqualifying Interest ....................................... 98
§ 3.8-2 Obtaining Waivers of Disqualification for Appearance of Impropriety ................................................................. 99
§ 3.8-2[1] Procedure for Remittal Pursuant to Canon 3D .............................. 99
§ 3.9 Adjudicative Responsibilities ......................................................... 99
§ 3.9-1 Avoid Comment on Pending Matters ......................................... 99
§ 3.9-1[1] Avoid Comment on Pending Matters [Judicial Employees] ........ 101
§ 3.9-2 Ex Parte Communications ......................................................... 101
§ 3.10 Administrative Responsibilities ...................................................... 102
§ 3.10-1 Maintaining Professional Standards ....................................... 102
§ 3.10-2 Appointments ........................................................................... 102
§ 3.10-3 Diligently Discharging Administrative Responsibilities 103
§ 3.10-4 Unprofessional Conduct ......................................................... 103

CANON 4: A JUDGE MAY ENGAGE IN EXTRAJUDICIAL ACTIVITIES THAT ARE CONSISTENT WITH THE OBLIGATIONS OF JUDICIAL OFFICE ....... 104

COMPRENDIUM OF SELECTED OPINIONS CONCERNING CANON 4 ................... 110
§ 4 Extrajudicial Activities........................................................................ 110
§ 4.1 Law-related Activities ..................................................................... 110
§ 4.1-1 Speaking, Writing, and Teaching ............................................. 110
§ 4.1-1[1] Teaching and Lecturing (Law School, Bar and CLE) .................................................... 110
§ 4.1-1[2] Teaching and Lecturing (Other Than Law School, Bar and CLE) ......................... 111
§ 4.1-1[3] Writing and Editing ........................................... 113
§ 4.1-2 Consultation With or Hearings Before Executive or Legislative Bodies or Officials ........ 117
§ 4.1-3 Nonprofit Organizations Devoted to the Law, Legal System, or Administration of Justice .................................................................................. 117
§ 4.1-3[1] Participation in Bar Association Activities ................................................ 117
§ 4.1-3[2] Service on Boards and Committees — Permissible Activities ........................... 120
§ 4.1-4 Arbitration, Mediation, and Judicial Activities in Other Courts ......................... 123
§ 4.1-5 Practice of Law ........................................................................ 125
§ 4.2 Nonprofit Civic, Charitable, Educational, Religious, or Social Organizations .................................................................................. 129
§ 4.2-1 Participation in Civic, Charitable, and Other Non-Business Activities ......................... 129
§ 4.2-2 Organizations That Sponsor or Fund Litigation, or That Are Likely To Be Frequent Litigators ................................................ 131
§ 4.2-3 Organizations Devoted To Espousing Positions on Public Issues, or on Issues Likely To Be the Subject of Litigation ................................................ 132
§ 4.2-4 Educational Organizations ........................................................................ 134
§ 4.2-5 Church Activities ........................................................................ 136
§ 4.2-6 Social and Avocational Activities ........................................................................ 137
§ 4.2-7 Nonprofit Civic, Charitable, Educational, Religious, or Social Organizations [Judicial Employees] ............................................. 137
§ 4.3 Fundraising .................................................................................. 139
§ 4.3-1 Fundraising Activities ........................................................................ 139
§ 4.3-2 Organizations and Events Involved in Fundraising ........................................... 141
§ 4.3-3 Permissible Fundraising Activities ........................................................................ 141
§ 4.3-4 Impermissible Fundraising Activities ......................................................................... 143
§ 4.4 Financial Activities .................................................................................. 145
| § 4.4-1 | Business Activities | 145 |
| § 4.4-2 | Active Involvement in Nonfamily Business Prohibited | 145 |
| § 4.4-3 | Passive Investments in Nonfamily Businesses | 147 |
| § 4.4-4 | Participation in Family-Owned Businesses | 147 |
| § 4.4-5 | Financial Activities That Require Frequent Recusal | 148 |
| § 4.4-6 | Business Activities [Judicial Employees] | 148 |
| § 4.5 | Fiduciary Activities | 152 |
| § 4.5-1 | Family Trusts and Estates | 152 |
| § 4.5-2 | Nonfamily Fiduciaries | 153 |
| § 4.5-3 | Continuation of Pre-Existing Fiduciary Relationships | 154 |
| § 4.6 | Governmental Appointments | 154 |
| § 4.6-1 | Governmental Agencies and Entities | 154 |
| § 4.6-2 | Military and National Guard Service | 155 |
| § 4.6-3 | Other Similar Service | 156 |
| § 4.6-4 | Governmental Appointments – Permissible Activities | 156 |
| § 4.6-5 | Governmental Appointments – Impermissible Activities | 157 |
| § 4.6-6 | Governmental Appointments [Judicial Employees] | 160 |
| § 4.7 | Chambers, Resources, and Staff | 162 |
| § 4.7-1 | Use of Staff and Chambers | 162 |
| § 4.8 | Compensation, Reimbursement, and Financial Reporting | 163 |
| § 4.8-1 | Gifts | 163 |
| § 4.8-2 | Honorary/Reduced-Rate Memberships | 163 |
| § 4.8-3 | Investitures and Similar Ceremonies | 165 |
| § 4.8-4 | Travel and Lodging | 167 |
| § 4.8-5 | Discounts | 167 |
| § 4.8-6 | Hospitality | 167 |
| § 4.8-7 | Attendance at Seminars and Reimbursement of Expenses | 169 |
| § 4.8-7[1] | Attendance at Seminars and Reimbursement of Expenses [Judicial Employees] | 171 |
| § 4.8-8 | Gifts on Special Occasions | 171 |
| § 4.8-9 | Gifts from Persons Likely To Appear Before Judge | 172 |
| § 4.8-10 | Miscellaneous Gift Rulings | 172 |
| § 4.8-11 | Receipt of Compensation by Judges and Judicial Employees | 173 |
| § 4.8-12 | Expense Reimbursement | 174 |

**CANON 5:** A JUDGE SHOULD REFRAIN FROM POLITICAL ACTIVITY | 174

**COMPRENDIUM OF SELECTED OPINIONS CONCERNING CANON 5** | 175
| § 5. | Political Activities | 175
| § 5.0 | Voting and Registration | 175
§ 5.1 Attendance at Meetings ................................................................. 176
§ 5.2 Relationships with Elected Officials, Including Contributions to
Campaigns .................................................................................................. 176
§ 5.2-1 Relationships with Elected Officials [Judicial Employees]
............................................................................................................... 178
§ 5.3 Spouse's and Other Relatives' Political Activities ..................... 178
§ 5.3-1 Spouse's and Other Relatives' Political Activities
[Judicial Employees] ............................................................................ 179
§ 5.4 Public Support Causes .................................................................. 180
§ 5.4-1 Public Support Causes [Judicial Employees] ......................... 181
§ 5.5 Other Partisan Political Activities [Judicial Employees] .......... 181
§ 5.6 Other Nonpartisan Political Activities [Judicial Employees] .... 183
§ 5.7 Issues Raised By Judge's Candidacy for/Election to State Office
184

COMPLIANCE WITH THE CODE OF CONDUCT ......................................................... 184

APPLICABLE DATE OF COMPLIANCE ............................................................. 185

COMPRENDIUM OF SELECTED OPINIONS CONCERNING COMPLIANCE AND
APPLICABILITY SECTIONS OF THE CODE OF CONDUCT .............................. 185
§ 6 Applicability and Compliance .............................................................. 185

PART TWO: ETHICS REFORM ACT CONCERNING GIFTS ................................. 187
§ 21 General: Purpose and Scope .............................................................. 187
   § 21.1-1 Gifts Creating Appearance of Impropriety .............................. 187
§ 22 Definition of Judicial Officer or Employee ........................................ 187
§ 23 Definition of Gift in Gift Regulations ................................................. 187
   § 23.1 Social Hospitality Based on Personal Relationships .................. 188
   § 23.2 Modest Items Offered as Social Hospitality ............................... 188
   § 23.3 Items of Little Intrinsic Value ..................................................... 188
   § 23.4 Loans From Banks ................................................................... 189
   § 23.5 Opportunities, Favorable Rates and Commercial Discounts ...... 189
   § 23.6 Rewards and Prizes Open to Public ........................................... 189
   § 23.7 Scholarships or Fellowships ....................................................... 189
   § 23.8 Market Value Paid for Item ......................................................... 189
   § 23.9 Payments Permitted by Regulations Concerning Outside
   Employment ........................................................................................... 189
§ 24 Solicitation of Gifts ............................................................................. 190
   § 24.1 Limitation in Gift Regulation on Soliciting Gifts from Persons Doing
   Business with Court ............................................................................... 190
   § 24.2 Limitation in Gift Regulation on Soliciting or Making Gift to Superior
   or Accepting Gift From Employee Making Less Pay ......................... 190
   § 24.2-1 Exception: Special Occasion .................................................... 190
   § 24.2-2 Exception: Other Circumstances Where Gifts Traditional
   ........................................................................................................... 190
§ 25 Acceptance of Gifts; General Rule Against Gifts with Specific Exceptions
Where Gifts Ordinarily Permissible ........................................................... 190
§ 25.1 Gifts Incident to Public Testimonial ................................................ 190
§ 25.2 Gifts of Books, Etc. Supplied by Publisher on Complimentary Basis for Official Use ................................................................. 192
§ 25.3 Gifts Incident to Bar-Related Function, Educational Activity, or Activity To Improve Legal System ........................................ 193
§ 25.4 Gift for Special Occasion ................................................................. 194
§ 25.5 Gift from Relative or Close Friend Whose Appearance Would in Any Event Require Recusal .................................................... 195
§ 25.6 Benefits from Prospective Employer .............................................. 195
§ 25.7 Bar Related Expenses ................................................................. 196
§ 25.8 Gift Incident to Separate Activity of Family Member ..................... 196
§ 25.9 De Minimis Gifts ........................................................................... 196
§ 25.10 Other Gifts Ordinarily Permissible Unless One of the Following Situations Applies ......................................................... 196
§ 25.10-1 Donor Seeking Official Action from or Doing Business with the Court or Other Entity Served by the Judicial Officer or Employee ......................................................... 196
§ 25.10-2 Donor’s Interests May Be Substantially Affected by the Performance or Nonperformance of Official Duties .... 196
§ 25.10-3 In Case of Employee Other Than Judge, Donor Has Had or Is Likely To Have an Interest in the Performance of Employee’s Duties ..................................................... 198

§ 26 Overarching Prohibition; Gift Regulation, Guide, Vol. 2C, § 620.45 ...... 198
§ 26.2 Against Gifts Giving Appearance of Use of Public Office for Private Gain .................................................................................. 198


§ 29 Disposition of Prohibited Gifts; Gift Regulation, Guide, Vol. 2C, § 620.60 ........................................................................................... 198

PART THREE: ETHICS REFORM ACT CONCERNING OUTSIDE EARNED INCOME, HONORARIA, AND OUTSIDE EMPLOYMENT ................................................................. 198
§ 31 General: Purpose and Scope ............................................................... 198
§ 31.1 Ethics Reform Act Outside Employment Regulations Are in Addition to Standards of Code of Conduct ...................................................... 198
§ 31.2 Ethics Reform Act Outside Employment Regulations Are in Addition to Disclosure Requirements of Ethics in Government Act of 1978 and Instructions of Committee on Financial Disclosure .............. 198
§ 32 Definitions ................................................................................................... 198
  § 32.1 “Judicial Officer or Employee” ........................................................ 198
  § 32.2 “Covered Senior Employee” ........................................................... 199
§ 33 Outside Earned Income Limitation .......................................................... 199
  § 33.1 Outside Earned Income Cannot Exceed 15%............................... 199
  § 33.2 Outside Earned Income Per Outside Employment Regulation,
      (Less Ordinary and Necessary Expenses); Subject to Following
      Exceptions ....................................................................................... 200
    § 33.2-1 Services Rendered to or for United States.................. 200
    § 33.2-2 Pensions, Annuities, Deferred Compensation ............ 200
    § 33.2-3 Investment Income ....................................................... 200
    § 33.2-4 Income from Family Business to the Extent Not
           Resulting from Significant Personal Services ......... 201
    § 33.2-5 Royalties or Functional Equivalent ........................................ 201
    § 33.2-6 Anything Earned or Received for Services Rendered
           Which Is Not Includable as Gross Income Under Internal
           Revenue Code ............................................................................. 202
    § 33.2-7 Teaching by Some Senior Judges ........................................ 202
  § 33.3 Outside Earned Income Is Attributed Solely to the Actual Earner
      Regardless of Community Property Laws ..................................... 202
§ 34 Prohibition on Receipt of Honoraria .......................................................... 202
  § 34.1 Definition of Honorarium Per Outside Employment Regulation,
      Guide, Vol. 2C, § 1020.30(b): Money or Anything of Value
      (Excluding Travel Expenses per 5 U.S.C. App. §§ 505(3) and (4))
      Paid for Appearance, Speech or Article; Subject to the Following
      Exceptions ....................................................................................... 203
    § 34.1-1 Series of Related Appearances, Speeches or Articles if
           Subject Matter Is Not Directly Related to Official Duties
           and Payment Is Not Made Because of Status with
           Government .......................................................... 204
    § 34.1-2 Teaching ........................................................................ 205
    § 34.1-3 Writing More Extensive Than an Article ...................... 206
    § 34.1-4 Suitable Memento Provided It Is Neither Money nor of
           Commercial Value ................................................................ 206
  § 34.2 Exclusion for Honorarium Paid on Behalf of Judge to Qualified
      Charity Provided It Does Not Exceed $2000 and Is Not Made to a
      Charity from Which Judge or Specified Family Members Derive Any
      Financial Benefit ............................................................................. 207
§ 35 Limitations on Outside Employment .......................................................... 207
  § 35.1 Affiliating With Any Entity To Provide Professional Services
         Involving a Fiduciary Relationship for Compensation .......... 208
  § 35.2 Permitting Use of Name by Any Such Entity ....................... 208
  § 35.3 Practicing a Profession Involving a Fiduciary Relationship for
         Compensation ............................................................................. 208
COMPENDIUM OF SELECTED OPINIONS (January 2021)

Introduction

This Compendium contains a summary of selected published and unpublished opinions issued by the Committee on Codes of Conduct. To address an ethical issue, the reader should consult the current Codes of Conduct, the Ethics Reform Act of 1989, and the regulations promulgated thereunder, other relevant statutes such as 28 U.S.C. § 455, the published advisory opinions of this Committee, and this Compendium.

This Compendium contains summaries of the advice given in response to confidential fact-specific inquiries over a period of several decades. This may result in some seeming inconsistencies between entries. While these summaries are intended to provide general guidance, the factual circumstances of each inquiry inevitably vary, and the advice given previously may not be applicable to a current question. Accordingly, the reader is encouraged to consult the Committee or one of its members with respect to any specific factual situation he or she is confronting. Each member of the Committee has a set of the Committee’s unpublished opinions and can answer any questions the reader may have regarding a particular one, without, of course, disclosing the identity of the person who solicited the advice. The procedures for obtaining an advisory opinion from the Committee are set forth in the “Introduction” section of each code of conduct in Part A of this volume.

The Compendium has three Parts. Part One contains opinions interpreting the Code of Conduct for United States Judges, including some opinions interpreting the Codes that cover various judicial employees. Sections 1 through 5 of Part One correspond to Canons 1 through 5 of the Code of Conduct for United States Judges. Each section begins with the applicable Canon and Commentary. It should be remembered that an activity which is permissible under a particular section may be subject to one of the more general caveats of the canons (e.g., appearance of impropriety). Similarly, the Ethics Reform Act of 1989 and the regulations promulgated thereunder by the Judicial Conference impose additional restrictions, in particular with respect to the receipt of gifts or compensation.
Throughout Part One, opinions based on the Code of Conduct for Judicial Employees are found in separate sections immediately following similar materials related to judges.

Part Two contains opinions interpreting the Ethics Reform Act of 1989 concerning gifts, 5 U.S.C. §§ 7351 and 7353 and the regulations thereunder promulgated by the Judicial Conference. The headings and the chronology of Part Two follow generally that of the gift regulations. Activities that are said to be permissible in Part Two may nevertheless be subject to restriction under the Codes of Conduct.

Part Three contains opinions interpreting the Ethics Reform Act of 1989 concerning outside earned income, honoraria, and outside employment, 5 U.S.C. App. §§ 501-505, and the regulations thereunder promulgated by the Judicial Conference. The headings and chronology of Part Three follow generally that of the outside employment regulations. Activities that are said to be permissible in Part Three may nevertheless be subject to restriction under the Codes of Conduct.

This Compendium may be cited as follows: Compendium § (month + year).
PART ONE: CODE OF CONDUCT FOR UNITED STATES JUDGES

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.
COMPENDIUM OF SELECTED OPINIONS CONCERNING CANON 1

§ 1. Preserving the Integrity and Independence of the Judiciary

§ 1.1 Duty To Report Misconduct

(a) A judge may report to the appropriate authorities perceived professional misconduct by a physician-witness.

(b) Where a judge in the course of judicial duties obtains information suggesting that a crime has been committed in a foreign country, it is appropriate to report the matter to the United States Attorney’s Office for such referral as the latter may deem warranted.

(c) A judge should not assume a prosecutorial role, nor chill public access to the courts by assuming the role of a policeman. The Code of Conduct neither prohibits nor requires judges to report perceived criminal misconduct to the appropriate authorities. But if the perceived transgression is of such a nature as to create a likelihood that failure to report it would reflect adversely upon the judiciary, a judge should take appropriate steps to bring the matter to the attention of the authorities. Cf. 18 U.S.C. §§ 4, 3057.

(d) When a judge decides to take action in response to perceived misconduct, the reference to appropriate authorities should be made in a neutral fashion. It is preferable simply to supply a copy of pertinent portions of the transcript of judicial proceedings.

§ 1.2 Integrity and Independence of Judiciary: General

➢ Advisory Opinion No. 93 (extrajudicial activities).

(a) Canon 1 (integrity and independence of judiciary) and Canon 2 (lending prestige) would be implicated by a judge’s testimony about the judge’s own thought processes in a decision in a previous case. It is not inappropriate to solicit assistance of United States Attorney in effort to quash subpoena.

(b) The participation of bankruptcy judges in a procedure to review records and prepare proposed orders in social security cases for district judges, even if legal, would be inappropriate in the absence of full disclosure to the parties. Canon 1 (integrity of the judiciary).

(c) A judge should not accept appointment by the FBI Director to a board established to advise the FBI on DNA testing; such an appointment would risk sacrificing independence of the judiciary concerns expressed in Canon 1 and the second sentence of Canon 4F.
(c-1) A judge should not participate in a training course designed to teach law enforcement officers how to be more effective witnesses in federal court. Similarly, a judge should not attend a closed-door presentation by the United States Attorney’s Office and FBI on the technology of electronic surveillance. Similarly, a bankruptcy judge should not assist in training U.S. trustee staff, or other small, specialized groups of advocates, in the judge’s own district, but may permit use of courtroom facilities by such groups (assuming no legal or practical impediments). Similarly, a judge should not participate in a conference organized by the agency appearing in all the court’s cases and designed to improve the agency’s operations and practices in that court. See Advisory Opinion No. 108.

(c-2) A judge should not serve as president of a national organization designed to promote the authority and independence of prosecutors.

(c-3) A judge should not serve on the board of an organization that assists government and private entities to improve leadership in law enforcement organizations.

(d) Where Congress requires a court to fund a pro bono program out of the court’s operating budget, leading to potential administrative conflict between the court’s and litigants’ needs, judges’ exercise of statutory responsibilities in deciding to fund (or not to fund) the program does not impinge on the integrity or independence of the judiciary.

(e) Where court rules impose a confidentiality requirement, a judge should not issue a public statement that would breach confidentiality.

(f) Due to Canon 1 and Canon 5 concerns, judge should not serve on a city council committee responsible for drafting city ordinances for possible enactment.

(g) Although there is no express ethical prohibition against a judge’s service on a state court jury, and, depending on the circumstances, such service may implicate several Canons of the Code of Conduct, the Canon 2A command that judges “should respect and comply with the law” permits a judge to appear for jury service unless exempt or excused from such service, assuming that the jury service is not so potentially prolonged as to take away from the judge’s duties. A judge serving as a juror should respectfully avoid answering voir dire questions that address the judge’s practices and beliefs as a federal judge. Receipt of payment for service as a state court juror should not raise any concerns under the Code of Conduct, and it is unnecessary to decline such payment.
§ 1.2-1 **Integrity and Independence of Judiciary [Judicial Employees]**

(a) Probation Office should not invite contractor employees to government training programs, but may offer training to contractors if it is available to other prospective service providers.

§ 1.3 **Service in State Government Positions**

- Advisory Opinion No. 76 (service of state employees as part-time United States Magistrate Judges).
- Advisory Opinion No. 93 (extrajudicial activities).
- Compendium §4.6.

(a) A judge should not serve as member of a state Board of Law Examiners. Same for bankruptcy judge. It is inappropriate for a federal judge, who will regularly be called upon by litigants in habeas corpus matters to indirectly review the decisions of the highest court of state, to serve at the appointment and direction of that court on one of its committees. See Compendium § 4.6-5.

(a-1) Nor should a magistrate judge serve on an attorney grievance committee of the state bar.

(a-2) Nor should a judge serve on a state supreme court’s committee developing standard civil jury instructions, but federal judges may work closely with the committee in a coordinated endeavor assuming the state court neither appoints them nor directs their participation. Similarly, a judge should not serve on a state bar committee that reviews and prepares proposals for changes to the state court rules of procedure.

(a-3) A judge may teach a legal education seminar to state appellate court judges within judge’s circuit because teaching did not involve policymaking for an arm of the state government, but should not accept compensation.

(a-4) A judge should not serve on a CLE board appointed by the state supreme court and exercising rulemaking, budget and subpoena power for the court. Same, for a commission appointed by the state supreme court to develop strategies for providing legal services to the poor.

(b) A part-time magistrate judge may not also serve in a state judicial position. See also Advisory Opinion No. 76. Similarly, judge who previously served on state court should not accept appointment as senior judge of that court, even in inactive status. Similarly, a part-time magistrate judge should not simultaneously serve as a staff attorney for a state court. Similarly, a part-time magistrate judge should not serve as a member of a hearing committee appointed by the state supreme court to address attorney grievances and discipline.
(b-1) A part-time magistrate judge assigned exclusively criminal matters may serve from time to time as a contract hearing officer with respect to specific and narrow legal issues involving local planning and zoning matters. See Code of Conduct for United States Judges, Compliance, Part A. Such contract service does not constitute the dual employment that Advisory Opinion No. 76 found to implicate concern for the independence of the judiciary, and does not involve duties that would overlap the magistrate judge’s duties. See also Compendium § 2.15.

(b-2) A judge may hire as a part-time law clerk a person who has taken a leave of absence from previous work on a contract, hourly paid basis serving as a state hearing officer for unemployment benefits.

(b-3) Judge who formerly served on state court should not enter supplementary findings in remanded state criminal case previously handled by judge, even though state law authorizes this.

(b-4) Judge who formerly served on state court should not agree to serve as special consultant to the state as a condition of receiving cost of living increases in state annuity, even though the likelihood of actually serving is small.

(b-5) A judge should not preside, even ministerially, over proceedings in a state-established diversionary program for juvenile offenders.

(b-6) Volunteering as a judge pro tem or serving as a volunteer small claims judge in state court is not a permissible activity for a law clerk. Same for federal public defender employees.

(c) A judge should not serve on investigative, fact-finding ethics advisory panel of state senate.

(d) A judge may be appointed as a state superior court judge pro tempore for one day for the limited purpose of performing, without compensation, the wedding ceremony of the judge’s law clerk, where the service performed in the role of state judge is strictly ceremonial in nature. However, a judge should not accept a one-day state judicial appointment for the purpose of admitting an attorney to the state bar, where the state judicial service involves exercising the judicial authority of a state judge.

(e) A judge may serve on a state court commission intended to promote and advance civic education for students and citizens when the judge will not be appointed by a state government official and membership on the commission will not enmesh the judge in state or local government.
§ 1.3-1 Service in State Government Positions [Judicial Employees]

(a) A law clerk should not serve on a state court’s disciplinary board hearing panel.

(b) Under the Code of Conduct for Federal Public Defenders, federal public defender may serve on a state bar advisory committee and conduct investigations of federal bar disciplinary matters without compromising independence of office, interfering with official duties or adversely reflecting on his or her role as an advocate.

(c) A federal public defender should not serve in a temporary, nonpaying position as part of a transition team for the attorney general of the state. See Advisory Opinion No. 76.

(d) Canon 4D of the Code of Conduct for Judicial Employees does not permit judicial employees to serve as arbitrators in state court arbitration programs, which would entail active involvement in state court proceedings. Similarly, Canon 4D prevents a law clerk from serving as a state court-appointed arbitrator or mediator. Similarly, a law clerk should not serve on a state court commission that reviews crime victims’ claims for compensation from a state reparations fund.

(e) A law clerk should not accept a state court appointment to serve as a volunteer guardian ad litem for children in the juvenile court system. But see Compendium § 4.1-3[4] (advising that membership on the board of CASA-like organizations is permissible under Canon 4A of Code of Conduct for Judicial Employees). A judicial employee may file a petition in state court for the appointment of a guardian ad litem without raising concerns for the potential of dual service to or supervision by different governments during judicial employment.

(f) A law clerk should not accept appointment to a state government ethics commission, due to concerns under Canons 2, 4, and 5. Same, for service by a judicial employee on a committee that evaluates character and fitness for state bar admission.

(g) A judicial employee should not serve on the board of a public charter school because it would likely create the potential for dual service to and/or supervision by different governments during judicial employment.

(h) A judicial employee may contract with a state court to rate oral interpretation exams on an infrequent basis.
CANON 2: A JUDGE SHOULD AVOID IMPROPIETY AND THE APPEARANCE OF IMPROPIETY 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, including harassment and other inappropriate workplace behavior. 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.

COMПENDIUM OF SELECTED OPINIONS CONCERNING CANON 2

§ 2. Avoiding Impropriety and the Appearance of Impropriety

- Advisory Opinion No. 51 (propriety of judge’s law clerk working on a case in which a party is represented by the spouse’s law firm).
- Advisory Opinion No. 53 (political involvement of judge’s spouse).
- Advisory Opinion No. 76 (service of state employees as part-time United States magistrate judges).

§ 2.1 Recommendations and Endorsements

- Advisory Opinion No. 59 (propriety of a judge giving evaluation of judicial candidate to screening or appointing authority).
- Advisory Opinion No. 65 (judge’s recommendation for pardon or parole).
- Advisory Opinion No. 73 (requests for letters of recommendation and similar endorsements).
- Compendium §§ 2.12, 2.13.

(a) A judge should not attempt to use “influence” or the prestige of judicial office to advance the private interests of the judge or others, nor improperly intrude upon or interfere in the judicial proceedings or other legal proceedings being conducted by other officials.

(b) A judge should not recommend a pardon, but may provide factual information in response to requests from appropriate federal or state authorities, or may make a recommendation in response to a Justice Department request (addressed, for example, to the sentencing judge). Advisory Opinion No. 65. Similarly, a judge should not volunteer information in connection with a defendant’s application for release on bond. Nor should a judge submit a letter supporting expungement of a friend’s state criminal record.

(b-1) A judge may respond to a request for information from a state disciplinary authority about an attorney.

(b-2) When a state parole or pardon or clemency authority is considering an individual’s application, a judge should not take the initiative of writing to the state authority to communicate information or opinions about the application, including when the information or opinions have their source outside the judge’s work as a judge, such as through pre-judgeship legal representation of the applicant or the crime victims. Upon receiving a request from the state authority,
the judge may respond, but the judge should avoid recommendations about the application outcome, one way or the other, and should limit the response to furnishing factual, objective information of potential relevance to the state authority’s decision that the authority might not already know.

(c) A judge should not initiate communications with the sentencing judge, on behalf of relatives, friends, or other persons about to be sentenced; the judge may, however, provide factual information in response to appropriate requests for such information.

(c-1) A judge should not initiate communications with a sentencing judge about the character of a lawyer who is a criminal defendant and about whether the conduct alleged constitutes a felony.

(d) A judge should not furnish endorsements or “blurbs” that will be used to promote sales of books or services. Similarly, a judge should not endorse or permit use of the judge’s photo in a commercial brochure for a fitness school. Similarly, a judge should not provide a letter of recommendation to assist the courthouse builder’s marketing efforts. Also, a judge should not participate in a promotional video for the judge’s high school.

(d-1) A judge may write a “foreword” for a new book, but any use of the judge’s name or office in the contemplated television advertisements would have a tendency to use the prestige of office. See Advisory Opinion No. 55.

(d-2) A judge may write a review of a book on a legal topic, but use of the judge’s name or office for promotional purposes may tend to exploit the prestige of judicial office. See Advisory Opinion No. 55.

(d-3) A judge may preside at a mock trial, but may not allow exploitation of his or her name or office in the marketing of the trial seminar or its published record.

(d-4) A bankruptcy judge may generally encourage debtors to seek financial management services, but should not provide lists of entities providing such services.

(d-5) Judges should not authorize the use of their name, office, or comments to publicize or promote the sale of particular commercial products used by the court, but they may speak or write generally about new technologies and offer their views to colleagues within the judiciary.

(d-6) It is not improper to mention a judge’s position on a book jacket statement about the author. Similarly, a judge may engage in activities to promote sales of a book authored by the judge, provided that those activities do not exploit the judicial office. See Advisory Opinion Nos. 55 and 87.
(d-7) A judge may permit an artist to use the judge’s likeness in a portfolio or art show, but the judge should not endorse the artist nor should this be implied.

(d-8) Due to Canon 2 concerns, a judge should not speak at a program on discovery hosted by a for-profit company offering discovery services, where the company plans to market its services at the program and advertise the program to current and future clients.

(e) A judge should not permit his or her name to appear on a list of names supporting the election of a lawyer to the ABA House of Delegates, even though the judge’s title would not appear, where many of the recipients of the list would know he or she was a federal judge and where it may reasonably appear to many recipients that the endorsement was sought primarily because of the prestige of office. Advisory Opinion No. 73.

(f) A judge may not voluntarily appear and give character testimony, whether in person or by affidavit, but may respond to valid subpoenas for such testimony. Similarly, a judge should not submit a character letter on behalf of a bar reinstatement applicant. Nor should a judge submit a character letter to a regulatory agency considering a friend’s license reinstatement. See also Compendium § 2.13.

(f-1) A judge should not send a letter praising a colleague to a legislative committee investigating alleged judicial misconduct.

(g) A bankruptcy judge’s service on the Board of Directors of a nonprofit corporation formed for the purpose of certifying lawyer specialization in the field of bankruptcy law would be contrary to Canons 2A and 2B. See Compendium § 2.10(b); see also Advisory Opinion No. 73. Same for judge’s service on state court board authorized to certify attorneys.

(h) A bankruptcy judge should not submit a letter of recommendation for an attorney applying for certification by American Bankruptcy Board of Certification, a Virginia nonprofit organization, although recommendation by a bankruptcy judge is a requirement for certification. See also Advisory Opinion No. 73.

(h-1) Bankruptcy judge should not participate in certifying attorneys as bankruptcy specialists as part of state bar advisory committee process.

(i) It is not inappropriate for a judge’s recommendation of a former law clerk to appear in a pamphlet prepared by a law school, along with the recommendations of all other graduates of the law school seeking placement at the hiring conference sponsored by the Association of American Law Schools. The pamphlet is prepared for the hiring conference, which is the traditional venue for initial interviewing for teaching positions at law schools.
(j) There is no impropriety in a judge attending a reception honoring Congressional Black Caucus, where it is neither a fundraising affair nor a “political gathering” intended to promote a party or candidate (Canon 5A(3) ) and the judge’s mere attendance as a guest of a friend does not lend the prestige of office.

(k) A judge may write letters of recommendation for law clerks and law students and be listed as a reference for an individual attorney, where the judge has special knowledge of the individual based on a long-standing or close working relationship. See Advisory Opinion No. 73. Similarly, a judge may serve as a reference for a bar applicant.

(k-1) Similarly, a judge may initiate contacts with employees of the legislative and executive branches of the federal government on behalf of a relative seeking employment in both federal and nonfederal sectors, where the judge merely communicates information regarding the relative’s qualifications for employment and avoids contacting persons or agencies that may have matters before the judge’s court.

(k-2) Judges should not initiate such communications, but may respond to requests from an appointing officer or screening committee with objective information about state or federal judicial candidates. Similar considerations apply with respect to communications on behalf of a nominee for an executive branch appointment. See Advisory Opinion No. 59.

(k-3) There is no appearance of impropriety in a judge agreeing to answer prospective applicants’ questions concerning the judicial selection process and encouraging qualified individuals to apply for judgeships.

(l) A judge should not provide a statement about the quality of law clerks from a particular law school for use in the law school’s promotional brochure.

(m) A judge may be photographed for a law school’s admissions catalog with the judge’s law clerk, who attended the law school.

(n) A judge should not appear in a video prepared by a private foundation to honor a law firm, as the video might be used for fundraising, commercial, or promotional purposes and would appear to be an endorsement of the firm and the foundation. Similarly, a judge should not appear in a video that will be used by a non-profit organization to honor an attorney whose law firm practices before the judge’s court.

(o) A judge’s participation in selecting for-profit companies to receive ethics awards improperly lends the prestige of office to commercial ventures.

(p) A judge should not write a letter in support of a friend’s application for citizenship, but may be listed as a reference on the application. See Advisory Opinion No. 73.
(q) A judge should not participate in a bar association meeting to advocate naming a courthouse after a judicial colleague, due to Canon 2 concerns.

(r) A judge may write a letter of recommendation for an attorney seeking appointment to a Criminal Justice Act panel to represent indigent defendants, provided that the letter is not a character reference and describes the attorney’s skills based on the judge’s professional experience with the attorney.

(s) A judge should not provide an employment reference for an individual who is participating in a court-sponsored reentry program, if the relationship between the judge and the person seeking the reference is such that the judge is in no better position than others would be to evaluate that person. See Advisory Opinion No. 73.

(t) A judge should not issue a “certificate of rehabilitation” or other similar recommendation for a convicted defendant, due to concerns under Canon 2B.

§ 2.1-1 Recommendations and Endorsements [Judicial Employees]

(a) Due to Canon 2 concerns, a judicial assistant should not sign a petition in opposition to a parole request of a state prisoner.

(b) Clerks of court should not authorize the use of their name, office, or comments to publicize or promote the sale of particular commercial products used by the court, but they may speak or write generally about new technologies and offer their views to colleagues within the judiciary.

(c) A law clerk should not provide a character letter to a sentencing judge on behalf of a friend, due to concerns under Canons 1 and 2.

(d) A judicial employee should not permit a non-profit organization to use the employee’s comment about one of its programs in its promotional materials along with the employee’s name and court. However, the employee may allow the non-profit organization to use the comment anonymously.

§ 2.2 Additional Compensation for Performing Judicial Duties

(a) A judge may neither charge nor accept a fee or other compensation for performing a wedding.

(a-1) Reimbursement of expenses necessarily incident to judge’s performance of marriage ceremony is neither honorarium nor compensation for official activity, and is not otherwise inappropriate. Reimbursement of expenses for judge’s spouse to attend the wedding also raises no appearance of impropriety.
§ 2.3 Financial Dealings with Members of the Judge’s Staff

(a) A judge may lend money to a member of the judge’s staff, so long as the transaction is a genuine loan, and is not viewed by either party as supplying additional compensation for the services rendered by the staff member.

§ 2.4 Defense Funds

(a) A judge facing criminal prosecution may not solicit or accept, from attorneys or persons whose interests have or are likely to come before the court, financial contributions to a defense fund.

(b) A judge facing criminal prosecution may permit others (excluding the judge’s family, staff or counsel) to solicit contributions to a “blind” defense fund on the judge’s behalf, provided no contributions are solicited or accepted from attorneys who regularly appear before the judge, or from persons whose interests have or are likely to come before the judge’s court or whose interests may be substantially affected by the performance or nonperformance of the judge’s official duties, or from persons who have sought or are seeking to do business with the judge’s court; and provided the identities of the persons solicited and of the persons contributing are not disclosed to the judge. Contributions in excess of the reasonable cost of defense may be either refunded to the donors, pro rata, or donated to an appropriate charitable organization. Same for judicial employee whose child faces criminal or quasi-criminal prosecution.

(c) A judge may contribute to the defense fund of a friend facing criminal prosecution, provided the fact of the judge’s contributions is not used to encourage contributions from others.

(d) It is permissible for judge to contribute to legal defense fund of former political appointee facing criminal prosecution, provided contribution is divorced from judge’s official position, criminal matter could not come before judge’s court, and fact of judge’s contribution is not used to solicit contributions from others.

§ 2.5 Future Employment of Judges

- Advisory Opinion No. 97 (recusal due to appointment or reappointment of a magistrate judge).
- Advisory Opinion No. 84 (judge’s pursuit of post-judicial employment).
- Advisory Opinion No. 83 (law clerks’ bonuses and reimbursement for relocation and bar-related expenses).
- Advisory Opinion No. 81 (when law clerk’s future employer is the United States Attorney).
- Advisory Opinion No. 74 (law clerk’s future employer).
- Advisory Opinion No. 70 (disqualification when former judge appears as counsel).
(a) It is permissible for a judge who is considering leaving the bench, to explore future employment possibilities with law firms, on a private, dignified, basis. The judge must, of course, recuse from all cases handled by any such law firm during any such negotiations, and for a reasonable period after the negotiations terminate (the exact length of time depending upon the nature of the discussions, the reasons for termination, etc.). Because of this recusal problem, it is advisable to confine such discussions to a limited number of law firms, and over a brief period of time. Advisory Opinion No. 84.

(a-1) It would be inappropriate, in such circumstances, for an active judge to announce his or her intention to resign, and to accept no new case assignments in the interim.

(b) When a judge retires from office to affiliate with a law firm, it is not improper for the formal announcement of affiliation to identify the office and court from which the judge retired.

(b-1) A judge should not permit a law firm to advertise the judge's future employment with the firm while the judge remains in office, due to concerns under Canon 2B and 4D(1).

(c) Newly appointed magistrate judges, and reappointed magistrate judges (after reappointment), need not recuse or notify parties that an attorney or party served on the panel that considered the magistrate judge's application. Sitting magistrate judges seeking reappointment should: (1) recuse (subject to remittal) from cases involving a party or an attorney serving on the selection panel, while reappointment is under consideration or (on failure to be reappointed) for the balance of the term; (2) recuse (subject to remittal) if they know a panel member has a financial or other interest that could be affected substantially by the outcome of a case; and (3) not advise attorneys or parties that comments may be made on the reappointment.

(d) A judicial officer who seeks employment with a government entity that is the named respondent in all cases before the judicial officer should recuse, but may use the remittal process. Whether it is proper to seek such employment depends on whether recusal would unduly affect the litigants or the court's docket; considerations include the availability of other judicial officers, the parties' agreement to remittal, and the length of the hiring process. Advisory Opinion No. 84.

(e) A judge should not attend a partnership retreat with the law firm that is the judge's future employer, even if the judge does not accept reimbursement of travel expenses from the firm. Similarly, a judge who is seeking future employment with an alternative dispute resolution provider should not attend a training seminar or meet with company officers. Similarly, a judge should not engage in communications with a future law firm employer regarding general firm business matters or the judge's future law practice at the firm, meet with firm clients, or attend social events sponsored by the firm.
(f) A magistrate judge should recuse, subject to remittal, where the judge is under consideration for a district court appointment and a member of the appointment screening committee appears as an attorney.

(g) A judge who is seeking post-judicial employment with a law school should not attend law school functions at which the judge’s future employment would be announced, perform any public duties related to the future employment, or permit the school to engage in advertisement or marketing related to the judge’s future employment.

§ 2.5-1 Future Employment [Judicial Employees]

- Advisory Opinion No. 83 (law clerks’ bonuses and reimbursement for relocation and bar-related expenses).
- Advisory Opinion No. 81 (when law clerk’s future employer is the United States Attorney).
- Advisory Opinion No. 74 (law clerk’s future employer).

(a) A law clerk planning self employment after a clerkship ends may, while still clerking (and with judge’s approval), form a professional corporation and announce plans to friends and family, but should not undertake overt activities to procure clients and establish a practice and should not: (1) distribute business cards; (2) make public announcements; (3) meet with or provide materials to attorneys; (4) enter into contracts to provide services after clerkship ends.

(b) Law clerk who will work for a law firm before and after clerkship should not be permitted to work during the clerkship on a massive lawsuit that could have a substantial effect on the law firm’s major client; insulating law clerk from working for that client while at the law firm may not adequately avoid appearance of impropriety.

(c) A law clerk may occasionally go to lunch or dinner with law firms that are considering extending employment offers, and it is not inappropriate for the law firms to pay for the law clerk’s meal.

(d) A law clerk may attend social events sponsored by spouse’s law firm, but should avoid accepting such hospitality if the firm has a case pending before the judge.

(e) A prospective law clerk may accept, prior to commencement of the clerkship, a clerkship, signing, or other bonus from a future employer. No signing bonus of any kind may be accepted during the clerkship, but bar-related and relocation expenses may be reimbursed. See Advisory Opinion No. 83. A bonus should not be accepted during a clerkship from a firm that appears occasionally in that court, even if the firm does not appear before the clerk’s judge.

(e-1) A law clerk may accept from future employer reimbursement of the costs of a bar review course and related fees, as well as a stipend to permit a
period of study for the bar examination prior to commencement of the clerkship. Compensation offered by law firm in excess of relocation and bar-related expenses may not be accepted during the clerkship.

(e-2) A law clerk may accept a bonus that is not connected to the performance of official duties and that is offered by a prospective employer who is not an attorney or litigant in the court.

(e-3) A law clerk may not accept, during a clerkship, a paid trip to a retreat with the law firm that is the clerk’s future employer.

(e-4) Law clerk may accept, during a clerkship, payment of a referral fee from the law clerk’s former firm to compensate the law clerk for referring an attorney who was hired by the firm during the law clerk’s tenure with the firm, but law clerk may not accept an additional referral fee that is contingent on the law clerk’s agreement to return to the firm after the clerkship ends.

(e-5) Law clerk may not accept, before or during the clerkship, a salary advance from the law firm that is the law clerk’s future employer, even though the advance must be repaid from the law clerk’s future salary. Advisory Opinion No. 83.

(f) A volunteer law clerk may not accept any financial benefits from a law firm, including health benefits through the firm’s benefit plan, during the term of the clerkship. This guidance would not prohibit a volunteer clerk from accepting financial benefits from the firm before or after the term of the clerkship, assuming the specific arrangements are otherwise appropriate under Canon 4 of the Code of Conduct for Judicial Employees and Canon 2 of the Code of Conduct for United States Judges. See Advisory Opinion No. 83.

§ 2.6 Former Judges

- Advisory Opinion No. 70 (disqualification when former judge appears as counsel).
- Advisory Opinion No. 72 (use of title “Judge” by former judges).

(a) A judge should not permit former judges appearing as counsel to use the title “judge” in any court proceeding. Advisory Opinion No. 72.

(b) A judge should not permit a former judge to appear as counsel in any case that was pending in the court during the former judge’s tenure.

(c) A judge should recuse in cases in which a former colleague appears as counsel for a reasonable period of time after the former judge leaves the bench. The exact length of time depends upon the length of the prior association and the closeness
of the relationship with the former colleague (rule of thumb: two years or longer). Advisory Opinion No. 70.

(d) In circumstances where a bankruptcy judge is under no obligation to recuse because of the appearance of a former bankruptcy judge as counsel, it is permissible to appoint the former judge as receiver or trustee where the frequency of appointment is consistent with that of other bankruptcy lawyers.

(e) A retired bankruptcy judge no longer eligible for recall to judicial service is not covered by the Codes of Conduct.

(e-1) A retired bankruptcy judge who is not eligible for recall is no longer subject to the Code of Conduct, and the Code therefore does not restrict the former judge’s employment as a mediator. If the retired judge’s former colleagues on the court are required to address an issue related to the mediator, the judges should consider whether recusal might be appropriate under the guidance in Advisory Opinion No. 70.

(f) Where former member of court returned to the practice of law, court may hang portrait of former judge in library but should refrain from holding ceremony for this purpose while former judge has any cases pending before the court. Similarly, a portrait of a former judge should not be displayed in a courtroom when a case is being heard if the former judge has entered an appearance as counsel in the case.

§ 2.7 Withdrawing from Law Practice To Become a Judge or Judicial Employee

- Advisory Opinion No. 24 (financial settlement and disqualification on judge’s resignation from law firm).

(a) Judges may receive appropriate payment for their interests in a law firm and compensation for legal services they rendered before becoming judges. It is inappropriate for judges to share in compensation for legal services rendered by the former law firm after the judge’s departure, or to share in the post-departure earnings of the firm; and payments received by the judge from his or her former law firm may not be conditioned, or measured in any way, upon the post-departure fortunes of the firm.

(a-1) When a judge is entitled to retirement benefits from a former firm, it is preferable that the amount be fixed, but a judge may receive vested retirement benefits that are by contract tied to firm earnings if restructuring the benefits is not legally or economically practicable.

(a-2) A judge who leaves a law firm during a calendar year may apportion firm income based on the portion of the year worked.
(a-3) After taking the bench, a judge may continue to negotiate with the judge’s former law firm concerning the judge’s share of fees that were earned but not collected before the judge’s departure from the firm.

(b) It is permissible for the departing judge to share in contingent fees received at the end of the litigation, provided a fixed percentage or fixed ceiling is agreed upon, and reasonably reflects the value of services previously rendered by the departing judge.

(b-1) While it is permissible for a judge to share in future contingent fees under the circumstances previously set forth, the judge should first attempt to reach agreement with his former partners on a fixed sum.

(b-2) The Code does not prohibit a judge from seeking disputed fees through settlement or adjudication, so long as the fee received reasonably reflects services rendered and the judge recuses during the dispute.

(c) A judge who was a sole practitioner, or who otherwise has no single successor to the law practice, may distribute pending cases, including contingent-fee cases, to various lawyers or law firms, and thereafter receive fixed amount or a fixed percentage that is reasonable in light of the services previously rendered by the departing judge. A judge who in private practice referred a matter to another firm may receive similar fees under the referral agreement.

(d) Where cases handled before appointment as judge are transferred to other attorneys, and fees for judge’s prior services are payable at end of litigation, the judge must recuse in all cases handled by successor law firms or attorneys, until all transferred cases are ended and fees paid.

(e) When, long after the judge’s departure, additional assets are discovered that should have been transferred to the judge at the time of departure (delayed refund under health insurance plan), there is no ethical impediment to the judge’s receipt of the appropriate distribution.

(f) Because of an appearance of impropriety, a judge should recuse, subject to remittal, in all cases involving members of the former law firm when the judge has left a retirement account in the former law firm’s profit sharing trust. Similarly, a judge should recuse in all matters involving the firm, subject to remittal, even where a judge’s retirement payments are fixed and not contingent on the firm’s income or the performance of the firm’s investment assets.

(g) A judge who prosecuted a case before appointment may not actively assist former colleagues in the appeal of the case and may not render advice, counsel or opinions about legal issues or the conduct of the appeal. However, the judge may respond to questions from successor counsel as to historical facts not readily apparent
from the file, factual details in the judge’s peculiar knowledge, and similar matters of clarification.

(h) A judge should not permit a former law firm to continue using the judge’s name; where the firm plans to remove the judge’s name that year, the judge need not take steps to compel an immediate change.

§ 2.7-1 Withdrawing from Law Practice to Become a Judge or Judicial Employee [Judicial Employees]

(a) Before starting a clerkship, a law clerk should end a relationship as a named partner in a professional limited liability company providing legal services, remove his or her name from the company’s name, and arrange to receive any compensation owed by the company.

(a-1) A law clerk should not use a former law firm’s office and secretary while clerking, should not permit the firm to use his or her name, and, while leasing space to the law firm, should not work on cases handled by the firm.

(b) A judicial employee may receive compensation for services provided to the employee’s former law firm, but only if it is clear that the employee is not sharing in profits of the firm earned after the employee’s departure from the firm.

§ 2.8 Avoiding Nepotism and Favoritism

➢ Advisory Opinion No. 60 (appointment of the spouse of an assistant United States attorney as part-time magistrate judge).
➢ Advisory Opinion No. 61 (appointment of a law partner of the judge’s nephew as a special master).
➢ Advisory Opinion No. 64 (employing judge’s child as law clerk).
➢ Advisory Opinion No. 115 (appointment, hiring, and employment considerations: nepotism and favoritism)
➢ Compendium § 3.10-2.

(a) A judge may not appoint as law clerk a person who is related within the third degree of consanguinity to another judge of the same court, but may appoint as law clerk a person who is related to a judge of another federal court within the same circuit, including a court bearing a hierarchical relationship to the court on which the appointing judge sits, if appropriate safeguards are adopted. Advisory Opinion No. 64.

(b) A judge may appoint as law clerk a person whose spouse is the niece of the spouse of a judge who serves on the same court but in a different city.

(c) A judge may appoint as law clerk the child of the first cousin of the spouse of another judge on the same court.
(d) A judge may not appoint as law clerk the niece or nephew or other relative within the third degree of kinship of another judge on the same court. Similarly, even when the nepotism canon is not applicable, in making appointments, a judge should avoid the appearance that someone may gain an advantage in the appointment or employment process, for reasons other than merit, because of his or her broader connections to a judge or judicial employee.

(d-1) Judge does not violate Canon 2 or 3B(3) by employing law clerk who is related to another judge on the same court, where law clerk was selected before judge was nominated or appointed to the court and where law clerk does not work on cases handled by relative. See Advisory Opinion No. 64. Same, where law clerk’s spouse is appointed as a magistrate judge.

(d-2) A judge should not hire a step-sibling’s child as a law clerk.

(e) For purposes of Advisory Opinion No. 64 and related nepotism/favoritism rulings, bankruptcy judges and magistrate judges are regarded as part of the district court for that district.

(e-1) It is ordinarily improper for a district judge to hire the child of a magistrate or bankruptcy judge in the same district, and vice versa. Similarly, in the case of bankruptcy and magistrate judges in the same district, it is inadvisable for one judge to hire the child of another. Advisory Opinion No. 64. Similarly, a judge should not hire the child of the judge’s law clerk as an unpaid intern due to the special relationship between a judge and a law clerk.

(f) A judge may not appoint as secretary the spouse of a magistrate judge in the same district.

(g) Where a judge appoints a law student as a voluntary extern, even though compensation is waived, the nepotism canon applies. Same, for the appointment of a volunteer to work for a district’s re-entry court.

(h) Canon 3B(3) relating to nepotism and favoritism applies to the appointment of employees, and does not apply to prevent the continued employment of an existing court employee who marries the child of a judge of the court. Appearance of impropriety concerns can be avoided if the employee is not supervised by, and promotions are not dependent upon the actions of, the judge who is also the parent-in-law. See also 28 U.S.C. § 458; 5 U.S.C. § 3110.

(h-1) Since the nepotism provision of Canon 3B(3) relates only to the appointment of employees, the provision is not violated when a judge’s secretary and the judge marry and the secretary continues in the employment. The continued employment presents no appearance of impropriety so long as the judge does not directly or indirectly cause or contribute to any promotion or salary increases (other than within-grade salary increases received in the normal
course) and so long as the judge and the judge’s influence is removed from other personnel decisions affecting the employment.

(i) Judge should not appoint the judge’s child to serve as defense counsel under the Criminal Justice Act, but colleagues on the court may appoint judge’s child to serve as defense counsel so long as the appointments do not constitute de facto full time service and so long as no other unusual circumstances create the appearance that the court is favoring the child of one of its judges.

(i-1) Where a division of court has only one judge, the court may omit from the panel of attorneys eligible for CJA appointment a partner of the judge’s child, to avoid the necessity for the judge to recuse.

(i-2) A judge should not appoint the spouse of another judge to serve as a special master, due to concerns under Canon 2A and 3B(3).

(i-3) Due to Canon 2 concerns, a former judge should not be appointed as a compensated special master in any case in which the judge also served as the presiding judge.

(j) A bankruptcy judge must determine whether deciding on the fee application of a colleague’s spouse, appointed as special counsel by the trustee pursuant to the judge’s authorization, would create an appearance of impropriety in light of the amount of the fee requested and the relationships between the judge and the colleague and between the judge and the colleague’s spouse.

(k) The spouse of a bankruptcy judge may be listed on a register of mediators for the bankruptcy court, when no member of the court is involved in the selection for placement on the register or in the selection of the mediator in a particular case, and provided that the spouse does not serve as mediator in a case assigned to the judge.

(l) The provision in Canon 3B(3) that judges avoid nepotism and favoritism in appointments precludes a district judge from hiring the child, or the spouse of a grandchild, of a senior district judge of the same court. Same, with respect to the appointment of a senior judge’s child to a magistrate judge position on the same court.

(m) A part-time magistrate judge should not hire spouse as judicial secretary.

(n) A judge should not appoint as special master an attorney from a firm with which the judge has an ongoing financial relationship.

(n-1) In exceptional circumstances, there is no appearance of impropriety in judge appointing as special master a person who has a business relationship with the judge’s son, where appointment does not arise from the business relationship or benefit judge’s son, the parties jointly request the appointment, the
individual to be appointed had earlier served as special master in the same case, and it was difficult to find another qualified master.

(o) Although appointment of the spouse of the clerk of court as a magistrate judge in the same court does not violate the nepotism canon (where neither clerk nor spouse are related to a judge on the court), each judge involved in the appointment should evaluate whether the judge’s relationship to the clerk of court would give rise to the appearance of favoritism if the spouse were selected. See Advisory Opinion No. 64.

(p) Probation office should not hire the child of a judge on the court as a probation officer, due to nepotism and favoritism concerns under Canons 2 and 3B(3).

§ 2.8-1 Avoiding Nepotism and Favoritism [Judicial Employees]

(a) Due to appearance concerns, a chief probation officer should not hire the spouse of the deputy chief probation officer.

(a-1) Chief probation officer who is married to a probation officer in the same office is prohibited from making or influencing any personnel decision affecting spouse.

(b) Federal public defender may employ, as an investigator/paralegal, the son of a judge who sits in the division of the court where the son would be employed, subject to appropriate ethical safeguards. See Advisory Opinion No. 64.

(b-1) Marriage of assistant public defender to federal customs officer poses no actual or apparent conflict of interest where office to which assistant is assigned has infrequent involvement in customs office cases and steps are taken to insulate the assistant from involvement in such cases.

(b-2) Hiring the spouse of the chief probation officer for the position of federal public defender in the same judicial district would lead to a violation of Canon 3F, and raises concerns under Canon 1 and 2, of the Code of Conduct for Federal Public Defender Employees.

(c) Probation office should not hire the child of a judge on the court as a probation officer, due to nepotism and favoritism concerns under Canons 2 and 3B(3).

(d) It is a violation of Canon 3E of the Code of Conduct for Federal Public Defender Employees to advocate for the employment of a relative. Although the Code does not provide for any specific remedial actions when a violation of Canon 3E has occurred, the Committee advises against hiring an employee’s relative under such circumstances.

§ 2.9 Benefits Received from Entities Doing Business with the Courts

➢ Advisory Opinion No. 3 (participation in a seminar of general character).
Advisory Opinion No. 17 (travel and hotel expenses – judge and a family member).
Advisory Opinion No. 27 (financial interest – judge’s spouse beneficiary of a trust from which Defendant leases property).
Advisory Opinion No. 88 (receipt of mementos or other tokens under the prohibition against receipt of honoraria for any appearance, speech, or article).
Advisory Opinion No. 91 (solicitation and acceptance from persons doing business with the court of funds to defray expenses of conference for improvement of the law).
Advisory Opinion No. 98 (gifts to newly appointed judges).
Advisory Opinion No. 107 (judge’s recusal due to a spouse’s business relationships).
Compendium §§ 25.1

(a) Judges may attend bar association events such as receptions where a legal publishing firm has donated the hors d’oeuvres and beverages to the bar association. It is not appropriate, however, for a group of judges or judicial personnel to allow a legal publishing firm or any other vendor doing business with their court to donate food and beverages for a meeting of the judges or judicial employees.

(a-1) Neither Canon 2 nor the Ethics Reform Act prohibits a judge whose part-time teaching at law school has been approved from using service provided by Westlaw free of charge to all full and part-time faculty members of the law school, if that use is incidental to the judge’s teaching duties and otherwise uncompensated scholarly research.

(a-2) Ethics provisions do not prohibit a law firm from sponsoring a reception, after a naturalization ceremony, that is not affiliated with the court; judges and court employees may attend.

(b) Judge may accept, from an organization devoted to improvement of the law, an award in the form of a framed certificate and reimbursement of travel expenses to attend the organization’s meeting at which the judge will be honored, although the organization will purchase the framed certificate and make the reimbursement with funds donated to it by a legal publishing company doing business with the courts.

(b-1) A judge who receives a prestigious distinguished service award honoring service to the public and to the administration of justice may also accept the accompanying substantial cash award, where the award is funded by a company doing business with the courts but is administered by an entity that does not do business with, or frequently appear before, the courts.

(c) No appearance of impropriety in judges’ accepting invitation to attend free mediation training session offered by organization selected by court to provide training to court mediators, where invitation to judges was issued after organization was selected and where training will assist in implementing mediation in the court.
(d) Judge may accept a non-monetary award from former employer (Department of Justice) for a case the judge worked on during tenure there.

§ 2.9-1 Benefits Received from Entities Doing Business with the Courts [Judicial Employees]

(a) Although mere attendance (along with others similarly situated) without paying registration fee would not create an appearance of impropriety, it would create an appearance of impropriety for employees of the Administrative Office to accept from a legal publishing firm a gift of transportation, lodging and meals in connection with a professional training program sponsored by the firm.

(b) Clerks of court are precluded from soliciting contributions for annual conference from vendors doing business with court. See Advisory Opinion No. 91. Judicial employees should not accept benefits solicited by a private foundation for this purpose unless the foundation is truly separate, functions independently, is not under the guidance or control of judicial employees (or so perceived), and no judicial employee participates in the arrangements.

(c) Professional association of law clerks should not accept free use of legal publisher’s staff or other gratuitous administrative services. 5 U.S.C. § 7353(a)(2).

(d) Judicial employees may not solicit or arrange for gifts at a meeting from companies that do business with the courts, but may accept unsolicited gifts of food, beverages, and promotional items of minor value, assuming no Canon 2 concerns are presented (e.g., donor doing substantial business with the courts; employees with significant official responsibilities affecting the donors).

(e) It would create an appearance of impropriety for a judicial employee to accept a very large monetary prize in a random drawing from an entity that transacts much business with the employee’s court and office.

§ 2.10 Relationships with Entities Likely To Appear Before Courts

- Advisory Opinion No. 51 (propriety of judge’s law clerk working on case in which a party is represented by the spouse’s law firm).
- Advisory Opinion No. 52 (judge not required to disqualify in a case where the American Bar Association or another open-membership bar association is a party).
- Advisory Opinion No. 97 (recusal due to the appointment or reappointment of a magistrate judge).
- Advisory Opinion No. 107 (judge’s recusal due to a spouse’s business relationships).

(a) Applicant for judicial appointment should not solicit support from lawyers or others likely to appear before the judge.
(b) Although the organization is devoted to the improvement of the administration of justice, a bankruptcy judge’s service on the Board of Directors of a nonprofit corporation formed for the purpose of certifying specialization in the field of bankruptcy law would be contrary to Canons 2A and 2B. See Advisory Opinion No. 73.

(c) It would create an appearance of impropriety for a judge to permit a for-profit company to host a reception following the judge’s investiture, where the judge had no preexisting relationship with the company, would not otherwise have been required to recuse, and the circumstances would convey the impression that the company was in a special position to influence the judge. Canon 2B. See Compendium § 25.1 (gift regulations).

(c-1) Judge should not permit organization to host reception following investiture where the organization is identified with particular legal, social or political positions likely to be advanced in the courts or where the judge has no preexisting relation with the organization and sponsorship could reasonably be viewed as putting the organization’s members in a special position of influence.

(c-2) Although the gift regulations permit a judge to accept a gift commemorating years of service on the bench (as a gift incident to a public testimonial), it would present an appearance of impropriety under Canon 2 to accept a very expensive gift from a small, specialized bar association whose members will continue to appear before the judge.

(d) Although judge should not attend “brown bag” lunch with members, associates or clerks of a law firm in the law firm’s offices because of Canon 2 implications (special influence), a judge may do so in the courthouse if the judge makes known a willingness to do this with interested groups. Similarly, a judge may speak at a reception sponsored by multiple law firms to encourage minority law students to consider law firm careers. Similarly, a judge should not participate in a bar association program to be a mentor to an individual attorney.

(d-1) Judges may accept invitations to receptions and dinners at law-related functions sponsored by organizations that litigate regularly before the court, where judges’ attendance will be educational and informative, the event provides an appropriate forum for public outreach by the court, a diverse group of litigants attends, and judges are willing to offer similar outreach to others.

(d-2) Judge should not attend, as guest of honor, a law firm’s reception to promote the retention, mentoring, and professional development of the firm’s minority attorneys.

(d-3) A court may permit a law firm to take a group photograph in a courtroom, provided that the court would make the same opportunity available to other firms and attorneys on request.
(d-4) A judge may, in his or her official capacity, participate in a panel presentation about the importance of pro bono practice for lawyers and paralegals at a law firm, provided that the judge is willing to do similar presentations for other firms and for the bar generally.

(e) No appearance of impropriety arises when a judge’s former law clerks solicit law firms and lawyers to contribute to a scholarship bearing the judge’s name. Judge should make reasonable efforts to remain unaware of the identities of contributors and those who declined to contribute, and neither the judge nor current law clerks or staff should participate in or encourage the solicitations.

(e-1) Same, when law school establishes and solicits for the scholarship.

(e-2) Same, when bar association members contribute funds for portrait of judge to be donated to the court, in honor of judge’s lengthy service.

(f) A judge may not accept an endowed adjunct professorship where the professorship is endowed by and named after a local law firm or lawyer who practices before the judge’s court.

(f-1) A judge should not accept the honor of having a library named for the judge by a federal public defender office whose attorneys appear before the judge.

(g) Judges should not conduct private educational seminars where the “educators” are lawyers who practice before the court, the programs are directed to areas of law that are likely to arise before the court, and the only persons present are judges, law clerks, and the invited educators. But judges may attend seminars for state and federal judges sponsored by bar associations, and this should not disqualify attending judges from cases handled by the attorney-lecturers. See also Compendium § 4.8-7.

(h) A court’s bankruptcy judges and Chapter 13 trustees may consult and meet together in connection with the design and implementation of administrative policy, plans and procedures. However, topics of substantive law that may be subject of proceedings under Chapter 13 should be avoided.

(i) No appearance of impropriety in judge’s attending and speaking at former law firm’s 125th anniversary celebration.

(j) A judge may participate in periodic social gatherings at participants’ homes with a group including an attorney acquaintance who appears in the judge’s court, if the judge does not attend when the attorney appears before the judge. See also Compendium § 3.6-8(g-2).
Similarly, a judge may attend a wedding of an attorney, but if the attorney then has matters pending before the judge, the judge should consider recusing or not attending.

Judge may serve on a panel that reviews and rates grant applications from local hospitals and community organizations engaged in breast cancer education and treatment; if grant applicant appears before the judge, then judge should either recuse or avoid participation in the relevant grant application review.

There is no appearance of impropriety in judge’s accepting the volunteer services of an intern who receives a stipend from a foreign government, assuming the government is not a litigant in the judge’s court. Same, for a law school graduate who serves as a volunteer law clerk and receives a stipend through a law school fellowship program that is analogous to a cooperative educational program. See also Guide to Judiciary Policy, Vol. 12, Ch. 5, § 550.50. However, a judge should not accept the services of a volunteer law clerk who would be privately compensated with funds solicited from lawyers by the law school from which the clerk graduated. Similarly, a judge should not accept the services of a volunteer law clerk who would be compensated through a bar association fund that consists of contributions from law firms.

§ 2.10-1 Relationships with Entities Likely To Appear Before Courts [Judicial Employees]

Advisory Opinion No. 51 (propriety of judge’s law clerk working on case in which a party is represented by the spouse’s law firm).

Where it is widely known that clerk’s office personnel are generally and equally available for this purpose to lawyers and law firms, their attendance at law firm “brown bag” luncheons as part of a program of educating the bar as to the procedures and workings of the clerk’s office should not present an unacceptable risk of lending the prestige of the clerk’s office or conveying the impression that a law firm is in a special position to influence the clerk.

A law clerk who is serving a temporary clerkship on leave of absence from a law firm should not during the term of his or her clerkship work on cases handled by or receive any compensation or benefits from the law firm. But group health insurance coverage may be retained if the law clerk reimburses the firm for any expense.

Proposal by judge’s secretary to seek assignments from court to type transcripts of electronically recorded court hearings requested by parties presents concerns under Canon 2 (appearance of favoritism) and Canons 4C and 4D (financial relationships with lawyers likely to come before the court) of the Code of Conduct for Judicial Employees.
(d) It would lend the prestige of office for a bankruptcy clerk to accept an invitation and expenses to speak on bankruptcy issues at a seminar for outside counsel sponsored by a for-profit company that is a litigant in the clerk’s court.

§ 2.11 Doing Business with Parties Before the Court

- Advisory Opinion No. 91 (solicitation and acceptance from persons doing business with the court of funds to defray expenses of conference for improvement of the law).
- Advisory Opinion No. 107 (judge’s recusal due to a spouse’s business relationships).

(a) Generally, a bankruptcy judge should not trade with parties before the judge. However, no impropriety in occasional purchases from public utility, governmental unit, other de facto monopoly, or other situations where judge has no other reasonable alternative and purchase is in regular course of business. See also 18 U.S.C. § 154.

(a-1) Because of appearances of impropriety, a judge should not purchase at a public sale conducted by the United States Marshal. Similarly, it would be improper to purchase assets from an estate in bankruptcy. However, where an independent party purchases the asset from the bankrupt estate, and is not acting as agent or nominee for the judge, there is no impropriety in the judge’s subsequent arm’s length purchase from the independent party.

(b) Because of appearance of impropriety, a judge who has contracted with a party or parties for use of a service mark created by the judge must recuse from all cases involving such parties or their counsel so long as the royalty agreement remains in effect.

(c) Assuming the court is not receiving special treatment in terms of rates or amenities, there is no appearance of impropriety in conducting a meeting at a hotel that has cases pending before the court, and judges who attend the meeting need not recuse in pending matters involving the hotel.

§ 2.11-1 Doing Business with Parties Before the Court [Judicial Employees]

(a) Canon 2 does not prohibit a bankruptcy court employee from purchasing property from a bankruptcy debtor, where the property was abandoned by the trustee and no longer part of the bankruptcy estate, and where the employee did not use his or her official position to identify or assess the property.

(b) Clerk’s office employees may make personal purchases from a company in bankruptcy, assuming no violation of 18 U.S.C. § 154.

(c) Judicial employees should not purchase property through the United States Marshals Service or a real estate agent, whether by auction or private sale, if the
employee’s court is involved in any capacity in the authorization or supervision of the sale, including the disposition of the sale proceeds. But, if an independent party first purchases the property in conjunction with a federal judicial order, a judicial employee is not precluded from buying the property from that party provided the party was not acting as the judicial employee’s agent at the time of the original purchase.

§ 2.12 Lending Prestige of Office

- Advisory Opinion No. 2 (service on governing boards of nonprofit organizations).
- Advisory Opinion No. 19 (judge’s membership in a political club).
- Advisory Opinion No. 55 (judicial writings and publications).
- Advisory Opinion No. 89 (judge’s acceptance of honors funded through voluntary contributions).
- Advisory Opinion No. 104 (court historical societies and learning centers).
- Advisory Opinion No. 105 (participation in private law-related training programs).

(a) Writing or lecturing on how to practice before a judge’s court may be appropriate (notwithstanding the inevitable lending of prestige to the program) when the program is sponsored by a bar association or other nonprofit devoted to improvement of the legal system, but it is inappropriate when a for-profit entity stands to profit. Canon 2B. See Advisory Opinion Nos. 87 and 105.

(a-1) Although illustrations from a judge’s own experience are appropriate during a judge’s writing or lecturing on general substantive or procedural issues, it is inappropriate for a judge to sell his or her expertise on how to practice before the judge’s court.

(a-2) To avoid lending the prestige of judicial office to a commercial endeavor, a judge should not speak at a conference for litigators run by a for-profit consulting firm whose business includes providing expert testimony in court.

(a-3) A judge’s appearance in a video to be shown at a fundraising event for a legal aid organization would lend the prestige of office, and might suggest the organization’s attorneys enjoy a special relationship with the court.

(a-4) No matter how worthy the cause being promoted, a judge should not appear in a television commercial, robed or otherwise identified as a judge. A judge may not participate in television commercials on behalf of a charity. A judge should not appear in an advertising campaign promoting a local university.

(a-5) Due to Canon 2 concerns, a judge should not participate as an actor in commercial advertisements or corporate training videos.

(b) A judge should not permit a vendor to use the judge’s courtroom for commercial product demonstrations.
(b-1) A bankruptcy judge may generally encourage debtors to seek financial management services, but should not provide lists of entities providing such services.

(b-2) A court may permit a law firm to take a group photograph in a courtroom, provided that the court would make the same opportunity available to other firms and attorneys on request.

(c) It would create an appearance of lending the prestige of office for three federal judges to serve as a committee to recommend revisions in disciplinary procedures for an athletic association.

(d) An appellate judge with appointment and review authority over the bankruptcy court should appear personally in the bankruptcy court only to the extent that circumstances require the judge’s appearance in addition to that of the judge’s attorney (e.g., as a litigant or witness).

(e) A judge may serve on a board to advise a law school on matters relating to the judiciary, in connection with the law school’s proposed bid to an agency of the federal government for the contract to develop a program to improve the legal system in the former Soviet Union, so long as the judge’s name and position are listed in the same manner as all other participants, so that there is no impermissible lending of the prestige of office.

(f) A judge may join a Committee that is requesting a county Board of Supervisors to name a newly constructed Hall of Justice after a recently deceased member of the local bar, and judge may allow his or her name to be used so long as the judge’s name and position are listed in the same manner as all other committee members.

(g) Judge should not be designated as company representative for nonfamily business, even for limited purpose of using company’s sports club membership, when such designation suggests an employee or agency relationship with the company. See Canon 2 (lending prestige of office) and Canon 4D.

(h) Where judge’s spouse is offered a financial opportunity with minimal investment, no risk, and large return, the judge should consider whether the offer implicates Canons 2A (public confidence in integrity of the judiciary), 2B (lending prestige of office), or 4D (exploitation of judicial position).

(i) A judge may record music for sale and perform live music, so long as it does not detract from the dignity of the court. The judge’s name and photo (not in judicial robe) may be used in promotional material, but the judge’s position or title may not be used to promote sales.
(j) Donors to independent court-related organizations (i.e., historical societies, public education groups) should not be recognized in the courthouse. See Advisory Opinion No. 104.

(k) A judge may host social events to introduce an attorney friend to local attorneys, but should not do so to assist the friend’s employment, business, or commercial purposes.

(l) Service on the board of an organization devoted to advancing positions on controversial environmental policy issues that are frequently litigated in federal court lends the prestige of office to a private entity, in contravention of Canon 2.

(m) Permitting attorneys to withdraw from a mandatory appointment program for in forma pauperis cases by contributing to a legal services organization approved by the court violates Canon 2B by suggesting that the organization is in a special position to influence the court.

(m-1) Soliciting lawyer volunteers for a charitable project in which judges and court employees plan to participate lends the prestige of the court to a private endeavor in violation of Canon 2, and involves the court and its judges in membership solicitation on behalf of a charitable organization in violation of Canon 4C. Likewise, using court resources to inform the bar about non-judicial branch employment opportunities, or to advertise CLE programs that are not sponsored by the court, raises similar concerns under Canons 1 and 2. Similar considerations apply to court employees engaging in such activities under Canons 2 and 4B3 of the Code of Conduct for Judicial Employees.

(m-2) Similarly, a court should not permit the use of the court’s email system to distribute an announcement of a fundraising event for a pro bono legal organization. Similarly, a court should not display flyers in the courtroom vestibule or provide a link on the court’s website to publicize the educational offerings of a non-profit law-related organization.

(n) Judge should not assist a management consulting firm in its efforts to obtain a contract for a state court improvement project, or serve as a consultant on the project; such assistance or service would raise concerns under Canon 2 and 4D.

(o) It would raise concerns under Canon 2 for judges to collect funds from members of the bar practicing in that court for the installation of computer equipment for use by the bar. Such a fundraising project, even by non-judges, would violate Canon 2 if the project is, or is reasonably perceived to be, controlled by the judges or the court.

(p) Judge may express public support, and encourage others to support, a nonprofit organization’s effort to promote cooperation in the electronic discovery process, provided that the judge avoids Canon 2 concerns about lending the prestige of office.
(q) Judge may employ as the judge's personal driver a person who is also seeking (or who has obtained) employment with a company that provides courthouse security services. Similarly, a judge may employ courthouse custodians to clean the judge's home periodically, but should avoid any impropriety or the appearance of impropriety under Canon 2.

(r) A judge should not engage in negotiations with an administrative agency on behalf of the judge or a family member if the agency frequently appears before the judge.

(s) Due to Canon 2 concerns, a former judge should not be appointed as a compensated special master in any case in which the judge also served as the presiding judge.

§ 2.12-1 Lending Prestige of Office [Judicial Employees]

(a) It would lend the prestige of the court to permit a bank to make sales presentation to court employees offering a special package deal. See also 41 C.F.R. § 102-74.500 and § 102-74.505.

(b) An association of court employees may contract with a private company to provide benefits to members and may receive standard fees from the company, but court employees should not agree to promote the company or endorse its products.

(c) Professional association of law clerks lends prestige of office by giving special privileges to and by adopting the official publications of a legal publisher.

(d) It is inappropriate for a law clerk to serve on the governing board of an advocacy organization that actively lobbies state officials on issues that are subject to debate in the political arena. Such service would be likely to lend the prestige of the law clerk's office to the organization and the positions it espouses.

§ 2.13 Testimony

- Advisory Opinion No. 9 (judge testifying as a character witness).

(a) Canon 1 (integrity and independence of judiciary) and Canon 2 (lending prestige) would be implicated by a judge's testimony about the judge's own thought processes in a decision in a previous case. It is not inappropriate to solicit assistance of United States Attorney in effort to quash subpoena.

(a-1) If subpoenaed, judge may testify about statement made in previous case, but should avoid testimony about thought processes and deliberations and should not provide a voluntary statement to one party.
(a-2) Without exception, a judge should not testify voluntarily as a character witness and should testify only under subpoena. See Canon 2B and Commentary.

(b) Canon 2 does not preclude or excuse a judge from testifying as a fact witness in an attorney disciplinary proceeding, pursuant to subpoena. Similarly, a judge is not precluded or excused from honoring a subpoena to provide fact testimony in a legal malpractice case, but should only testify in response to a subpoena. Similarly, a law clerk may testify as a fact witness when subpoenaed to do so, but he or she should make clear that the testimony is not being offered in his or her capacity as a law clerk.

(c) A judge should discourage a friend from subpoenaing the judge as a character witness if testimony is being sought primarily because of the judge’s office and potential influence, but where testimony is uniquely material and therefore necessary in the interests of justice, the judge may testify pursuant to subpoena.

(d) A judge may not voluntarily appear and give character testimony, whether in person or by affidavit, but may respond to valid subpoenas for such testimony.

(e) A judge should not serve as an expert witness in a legal malpractice case, as this could lend undue weight and the prestige of office to a private interest. Similarly, a judge who previously represented a criminal defendant should not voluntarily provide a declaration about whether certain evidence would have been helpful to the defense in a habeas case.

(f) A judge may testify or provide an affidavit as to disputed facts in a child’s insurance claim, but should not describe the judge’s position or judicial experience and should not offer legal opinions.

(g) Unless authorized by law, a judge should not meet with the Department of Justice to discuss the conduct of prosecutors who handled a case before the judge. Similarly, a judge should not write a letter on behalf of a government attorney whose conduct is under investigation.

(h) A judge may respond to an investigator’s questionnaire in a child custody matter to the extent that the judge can provide responsive factual information, but the judge should not provide opinions or character testimony.

(i) A judge should not voluntarily present testimony against a defendant arising from statements the judge made while presiding at a confidential, voluntary plea negotiation conference.

§ 2.14 Membership in Discriminatory Organizations

- Advisory Opinion No. 67 (attendance at educational seminars).
- Advisory Opinion No. 82 (joining organizations).
(a) Judge should not belong to an organization that practices invidious discrimination.

(b) Masonic Order, represented to be a fraternal organization devoted to charitable work with religious focus and not providing business or professional opportunities to members, is not considered to be an organization practicing invidious discrimination although women are not permitted to be full-fledged members. Organization is considered to be dedicated to the preservation of religious and cultural values of legitimate common interest to members. Commentary to Canon 2C.

(c) Membership in all male local club that meets once a year for purposes of fellowship and to decide on gift to a local charity and that provides no business or commercial advantage does not violate Canon 2C prohibition of membership in organizations that practice invidious discrimination.

(c-1) All male club with purely social purpose, limited membership chosen according to selective criteria, no business or commercial purpose, and not in violation of state or local law, cannot be said to practice invidious discrimination; judge need not resign from club but should periodically reevaluate club membership policies for conformance with Canon 2C.

(c-2) Female health club that does not confer any professional or business advantages does not practice invidious discrimination.

(d) A judge who had resigned membership in a club because it practiced invidious discrimination may rejoin that club when it has amended its bylaws to preclude discrimination and has, in fact, admitted a significant number of women and minorities into membership.

(e) Judge is advised not to join social club having no minority members where the membership criteria may be perceived as racially exclusionary.

(f) Membership in the Junior League, a nonprofit social and charitable group limited to women, is not inconsistent with Canon 2; the membership restriction is directly related to the organization’s primary and legitimate goal of assisting young women.

(g) A church-founded organization’s preference that Christians serve on its board does not constitute invidious discrimination; the organization preserves religious values of legitimate common interest to its members.

(h) Judge’s service on committee to select a minister for judge’s church does not constitute invidious discrimination even though women and non-church members are unlikely to apply or be chosen for the position.
§ 2.15 Conflict-of-Interest Rules for Part-time Magistrate Judges

- Advisory Opinion No. 48 (conflict-of-interest rules for part-time magistrate judges, including permissible office arrangements).
- Advisory Opinion No. 76 (service of state employees as part-time United States magistrate judges).

(a) Part-time magistrate judges and their partners may appear as counsel in civil cases in any court, including the court in which the part-time magistrate judge serves, as permitted under Rule 1 of the Conflict-of-Interest Rules for Part-Time Magistrate Judges. Rule 7, which prohibits part-time magistrate judge who accepts additional duties under 28 U.S.C. § 636(b) or (c) from appearing in any case, civil or criminal, in the court for which the part-time magistrate judge is appointed, does not prohibit appearance in civil cases in the court by part-time magistrate judge’s partners. When § 636(b) or (c) is widely used, recommend consideration, in consultation with district court, of procedures to reasonably insure against participation in any pending matter in which the part-time magistrate judge’s partners have appeared or are likely to appear.

(a-1) Rule 4 of the Conflict-of-Interest Rules for Part-Time Magistrate Judges does not permit law partner of a part-time magistrate judge to remain counsel in a criminal case in the district in which the part-time magistrate judge serves.

(b) A part-time magistrate judge should not review the decisions or actions of state court judges before whom the magistrate judge appears as an attorney.

(c) Part-time magistrate judges may arbitrate or mediate private and state court matters and need not recuse from unrelated federal cases involving the same attorneys, so long as the magistrate judge is not personally involved in contractual dealings with the attorneys and the matters do not involve unusual or nonstandard fees.

(d) A part-time magistrate judge who performs duties under § 636(a) may represent a client in a civil forfeiture action in district court, provided the judge had no involvement in the matter as part of official duties.

(e) A part-time magistrate judge may represent municipalities, may serve occasionally as counsel for indigent defendants due to state public defender conflicts, and may handle municipal code violations that are more civil than criminal in nature and are not reviewable in federal court. These activities are not inconsistent with Advisory Opinion No. 76. See also Compendium §§ 1.3(b), (b-1).

(f) A part-time magistrate judge may continue service as an attorney in the military reserve, provided that conflicts of interest can be avoided.
(g) Although part-time magistrate judge may serve as administrator of a nonfamily member’s estate, judge should consider discontinuing such service when the estate and the administrator are involved in significant litigation.

(h) A part-time magistrate judge should not simultaneously serve as a staff attorney for a state court. Similarly, a part-time magistrate judge should not serve as a member of a hearing committee appointed by the state supreme court to address attorney grievances and discipline.

§ 2.Z Miscellaneous Canon 2 Issues

(a) A judge who is disqualified from hearing an en banc appeal because of the judge’s personal knowledge of the facts of that case, by virtue of the judge’s former position in state government, may not sit on a parallel en banc appeal presenting essentially the same questions of law where the two cases are to be heard and decided together. There is a reasonable perception that the judge’s participation in argument and conference in one appeal will directly affect the court’s deliberation in the other appeal from which the judge is recused.

(b) Judge should exercise caution in accepting an award with a substantial monetary gift, to ensure that the donor is not identified with controversial positions or questionable practices and does not exploit the judge’s acceptance of the award to advance its own interests.

(b-1) Same for a gift of substantial value; judge or judicial employee may accept a trip paid for by a personal friend who does not engage in litigation or appear before the judge or judicial employee, where the trip is entirely social and gives no appearance of exploitation of office for the donor’s or others’ private interests.

(c) No impropriety in a judge’s acceptance of a plaque from a bar association at a joint reception also honoring a U.S. Senator.

(d) Where use of government resource does not result in incremental costs, Canon 2 does not require an absolute ban on personal use no matter how insubstantial; but individual courts may impose such a ban.

(e) A judge should not invest in a gaming operation, where the operation must be approved by the state and the judge’s role would be publicly disclosed, because of appearance considerations under Canon 2A. See also Compendium § 3.2-2(h).

(f) A judge may thank jurors for their service in off-the-record meetings or by letter and may send letters on official stationery and at government expense, but should avoid suggesting approval of the jury’s decision.
(g) A judge may authorize another person to affix the judge’s electronic signature on court documents approved by the judge.

(h) A court should not donate attorney admissions funds to a for-profit educational entity partly owned by judges of the court, even if those judges do not participate in the decision. A district court may donate bench and bar funds to all law schools within the district for a scholarship in a fair and equitable manner, but a judge who is a trustee of a law school in the district should not participate in the decision to donate funds to that school.

(i) Although the Code does not prohibit holding a court meeting in a facility that legally offers gambling, the Committee recommends serious consideration of related appearance concerns under Canon 2.

§ 2.Z-1 Miscellaneous Canon 2 Issues [Judicial Employees]

(a) Where law clerk has significant interest in company seeking to do business with the court, clerk of court should ensure that any agreement between the court and the company satisfies applicable contracting requirements and does not present an appearance of impropriety; clerk should consider public bidding process and other procedures to minimize any appearance that an agreement resulted from clerk’s relationship with law clerk.

(b) Clerk of court should decline appointment to state medical licensing board because of concerns under Canon 2 (appearance of impropriety) and Canon 4C(1) (frequent transactions with persons likely to come before the court).

(c) Court reporter’s activities for a private reporting firm should be “wholly disassociated” from official court work, and the court reporter should not use the private firm name and address on official court transcripts.

(d) Pretrial services employees should not join a sports team sponsored by and using the name of a defense attorney practicing in that district.

(e) No appearance of impropriety if spouse of chief probation officer obtains employment with a mental health agency with which the probation office has a contract.

(f) Federal Defender does not violate Canon 1 or 2 by giving token gifts to thank judges and judiciary employees for participating in a training seminar for CJA panel attorneys.

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. The judge should perform those duties with respect for others, and should not engage in behavior
that is harassing, abusive, prejudiced, or biased. 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 by 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 should practice civility, by being patient, dignified, respectful, and courteous, in dealings with court personnel, including chambers staff. A judge should not engage in any form of harassment of court personnel. A judge should not retaliate against those who report misconduct. A judge should hold court personnel under the judge’s direction to similar standards.

(5) A judge with supervisory authority over other judges should take reasonable measures to ensure that they perform their duties timely and effectively.

(6) A judge should take appropriate action upon receipt of reliable information indicating the likelihood that a judge’s conduct contravened this Code, that a judicial employee’s conduct contravened the Code of Conduct for Judicial Employees, or that 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(4). A judge should neither engage in, nor tolerate, workplace conduct that is reasonably interpreted as harassment, abusive behavior, or retaliation for reporting such conduct. The duty to refrain from retaliation includes retaliation against former as well as current judiciary personnel.

Under this Canon, harassment encompasses a range of conduct having no legitimate role in the workplace, including harassment that constitutes discrimination on impermissible grounds and other abusive, oppressive, or inappropriate conduct directed at judicial employees or others. See Rules for Judicial-Conduct and Judicial-Disability Proceedings, Rule 4(a)(2) (providing that “cognizable misconduct includes: (A) engaging in unwanted, offensive, or abusive sexual conduct, including sexual harassment or assault; (B) treating litigants, attorneys, judicial employees, or others in a demonstrably egregious and hostile manner; or (C) creating a hostile work environment for judicial employees”) and Rule 4(a)(3) (providing that “cognizable misconduct includes intentional discrimination on the basis of race, color, sex, gender, gender identity, pregnancy, sexual orientation, religion, national origin, age, or disability”).

Canon 3B(6). Public confidence in the integrity and impartiality of the judiciary is promoted when judges take appropriate action based on reliable information of likely misconduct. Appropriate action depends on the circumstances, but the overarching goal of such action should be to prevent harm to those affected by the misconduct and to prevent recurrence. A judge, in deciding what action is appropriate, may take into account any request for confidentiality made by a person complaining of or reporting misconduct. See Rules for Judicial-Conduct and Judicial-Disability Proceedings, Rule 4(a)(6) (providing that “cognizable misconduct includes failing to call to the attention of the relevant chief district judge or chief circuit judge any reliable information reasonably likely to constitute judicial misconduct or disability. A judge who receives such reliable information shall respect a request for confidentiality but shall nonetheless disclose the information to the chief district judge or chief circuit judge, who shall also treat the information as confidential. Certain reliable information may be protected from disclosure by statute or rule. A judge’s assurance of confidentiality must yield when there is reliable information of misconduct or disability that threatens the safety or security of any person or that is serious or egregious such that it threatens the integrity and proper functioning of the judiciary. A person reporting information of misconduct or disability must be informed at the outset of a judge’s responsibility to disclose such information to the relevant chief district judge or chief circuit judge. Reliable information reasonably likely to constitute judicial misconduct or disability related to a chief circuit judge should be called to the attention of the next most-senior active circuit judge. Such
information related to a chief district judge should be called to the attention of the chief circuit judge.

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 cooperating with or 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.

COMPENDIUM OF SELECTED OPINIONS CONCERNING CANON 3

§ 3. Fair, Impartial and Diligent Performance of Judicial Duties; Recusal and Disqualification

§ 3.0 Recusal: General

(a) Canon 3A(2) imposes on all judges a duty to sit and hear assigned cases to completion, absent a legitimate basis for disqualification. Likewise, frequent recusal after case assignment without a legitimate basis for recusal needlessly delays the judicial process, raising concerns under Canon 3A(5) (“A judge should dispose promptly of the business of the court.”). Any judge’s retention of preferred cases, while avoiding matters the judge subjectively deems less desirable, may create the appearance of a biased tribunal and may engender a perception of favoritism.
§ 3.0-1 Activities Requiring Frequent Recusal

- Advisory Opinion No. 84 (judge’s pursuit of post-judicial employment).

§ 3.0-2 Bias, Prejudice or Personal Knowledge

(a) Where an organization’s leadership generally criticized a judge’s court, leading the judge to resign from the organization, the judge need not recuse due to bias or prejudice merely because a party belongs to the same organization; nor can the judge’s impartiality reasonably be questioned in this situation.

(b) Bias or prejudice do not inevitably arise because a former employee practicing before a judge departed in acrimony and filed claims that were subsequently resolved. See also Compendium § 3.6-1(i).

(c) Judge should recuse where judge attended the event on which a case is based, either because the judge may have become aware of disputed facts or because the judge’s impartiality may reasonably be questioned.

(d) Personal knowledge regarding the law at issue (including its history), as opposed to disputed evidentiary facts, does not trigger recusal under Canon 3C(1)(a).

§ 3.1 Recusal: Financial Interests

(a) 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. Commentary to Canon 3C

§ 3.1-1 Stock Ownership and Other Ownership Interests

(a) When the judge, the judge’s spouse, or a minor child residing in the judge’s household has a beneficial interest in, or the judge is a fiduciary of, a trust or estate, the judge is disqualified from cases in which a corporation in which the trust holds stock or a similar ownership interest is a party.

(a-1) A judge serving on the board of directors of a charitable foundation is not disqualified from cases in which one of the parties is a corporation whose stock the foundation holds in its investment portfolio.

(a-2) A judge does not have a “financial interest” and thus has no duty to keep informed about the underlying securities held by a trust in which the judge has only a contingent remainder interest (i.e., one that could be divested by the judge’s parent by the exercise of a special power of appointment). Same where the judge’s spouse or minor child is a contingent beneficiary.

(a-3) Same where the judge is only a potential beneficiary of the exercise by an independent trustee of its sole and absolute discretion to distribute income
or corpus and where it is unlikely the judge will actually receive such distributions.

(a-4) Same where judge has no present interest in a trust, receives no income or principal distributions, is not a trustee or manager of the trust, and will inherit only if the judge survives the parent beneficiary of the trust.

(a-5) A judge who inherited a share of a parent’s estate is disqualified from cases in which a company in which the estate holds stock is a party.

(b) A judge has a duty to take reasonable steps to keep informed of the investments of trusts in which the judge’s spouse or minor children residing in the judge’s household have a legal or equitable interest.

(b-1) A judge’s Canon 3C(2) duty to keep informed about a spouse’s personal financial interests does not require the judge to inquire about interests held in a fiduciary capacity only.

(c) A convertible debenture or other security convertible into corporate stock is to be treated as stock for recusal purposes.

(d) For recusal purposes, every member of the class in a class action is deemed to be a party.

(e) The fact that the judge’s spouse owned the stock before marriage, or that recusal would involve great inconvenience, is immaterial; recusal is mandatory.

(f) A judge who owns stock in a parent corporation must recuse when a subsidiary is a party. Advisory Opinion No. 57. When a parent company does not own all or a majority of stock in the subsidiary, the judge should determine whether the parent has control of the subsidiary, necessitating recusal. The 10% disclosure requirement in Fed. R. App. P. 26.1 is a benchmark measure of parental control.

(f-1) When a judge, individually or as a fiduciary, owns stock, whether recusal is required when a sister corporation is a party depends upon whether the judge’s stock could be substantially affected by the outcome.

(f-2) A judge who owns stock in a subsidiary company does not have a financial interest in the parent company and must recuse when the parent is a party only if the interest could be substantially affected by the proceeding.

(g) A judge who owns stock in a bank is disqualified in litigation in which the bank is a party, even though the bank is acting in a fiduciary capacity in that litigation. Recusal is under Canon 3C(1)(c) and therefore the remittal provisions of Canon 3D are not available.
(h) A judge must recuse if the corporation in which the judge or the judge’s spouse owns stock is a real party in interest in the litigation. Advisory Opinion No. 20.

(i) A judge who is a participant in a law firm’s KEOGH plan has a financial interest in all of the corporations whose stock is owned by the plan, and must keep informed of the plan’s investments, unless the plan is a common fund. See Compendium § 3.1-3(b), (c), and (e).

(j) Where stock is in the name of judge’s spouse and spouse’s parent as joint tenants with right of survivorship, judge’s spouse has a “financial interest.”

(k) A judge owning stock in a company that is not a party but produces the product that is the subject of litigation should recuse where the judge’s verdict could influence the initiation of subsequent claims against the company or otherwise affect the value of the company’s stock; judge has “a financial interest in the subject matter in controversy . . . or any other interest that could be affected substantially by the outcome of the proceeding.” Canon 3C(1)(c).

(l) Judge should recuse if he or she knows that a parent’s interest in a trust owning stock in companies involved in a proceeding before the judge could be substantially affected by the outcome of the proceeding. Canon 3C(1)(d)(iii).

(m) Where a judge owns stock in a company that has formally agreed to merge with a company that may seek restitution in a criminal case, the judge should recuse from the criminal case only if the judge’s interest could be substantially affected by the outcome of the proceeding under Canon 3C(1)(d)(iii), or if the judge’s impartiality might reasonably be questioned under Canon 3C(1).

(n) A judge does not have a financial interest in an investment company that manages the judge’s assets and need not recuse from all cases involving the company, but the judge should recuse under Canon 3C(1) (subject to remittal) if the relationship with the company raises reasonable questions about impartiality. Same analysis applies when a judge owns mortgage securities issued by an investment company.

(o) A party’s agreement to purchase goods from a company in which the judge’s spouse owns stock does not give rise to a financial interest in the party.

§ 3.1-2 “Blind Trust” Unavailing To Obviate Recusal; Other Trust Issues

   ➢ Advisory Opinion No. 96 (service as fiduciary of an estate or trust).

   (a) A judge’s use of a “blind trust” does not obviate the need to recuse.

   (b) See Compendium §§ 3.1-1(a), (b).

   (c) A judge does not have a “financial interest” and thus has no duty to keep informed about the underlying securities held by a trust in which the judge has only a
contingent remainder interest (i.e., one that could be divested by the judge’s parent by the exercise of a special power of appointment).

(d) Same where the judge is only a potential beneficiary of the exercise by an independent trustee of its sole and absolute discretion to distribute income or corpus and where it is unlikely the judge will actually receive such distributions.

(e) Judge’s entitlement to receive periodic payments of a percentage of the fair market value of a trust constitutes a financial interest under Canon 3C(3)(c); judge must keep informed as to holdings of the trust and must recuse in cases involving companies whose stock is held by the trust.

(f) A judge whose name is on a parent’s brokerage account to assist in administering the parent’s affairs has a financial interest, as a fiduciary, in the account assets and must recuse from cases involving companies whose stock is held in the account.

(f-1) A judge holding a power of attorney does not have a disqualifying financial interest unless under state law the power conveys a legal or equitable ownership interest in property subject to the power, but the judge’s impartiality might reasonably be questioned if the judge exercised the power to buy or sell stock in companies appearing before the judge.

(g) Where friends establish a trust in memory of a judge’s deceased spouse, for the benefit of the judge’s children, the judge should make reasonable efforts to keep informed of the trust’s financial interests and recuse where necessary (no remittal). The judge should also recuse where the trustee’s law firm serves as counsel (absent remittal).

§ 3.1-3 Mutual Funds and Other “Common Funds” Exempted

- Advisory Opinion No. 106 (Mutual or Common Investment Funds).

(a) An interest in a mutual fund or other similar “common fund” does not constitute an interest in the corporations whose stock is owned by the mutual fund. The mere fact that a judge’s mutual fund owns stock in a company appearing before the judge does not necessitate the judge’s disqualification. Advisory Opinion No. 106.

(a-1) A judge has no duty to monitor investments of a mutual fund unless the judge is active in the management of the fund. If fund itself is a party or if the outcome of the case could substantially affect the judge’s interest in the fund, then the judge should recuse.

(a-2) A judge who owns a mutual fund limited to the health care industry need not recuse from cases involving health care companies unless the judge knows that the outcome of a case could substantially affect the judge’s interest.
(a-3) Investment in a mutual fund does not convey an ownership interest in the fund’s management or investment advisory company, and the appearance as a party of the management or advisory company for the judge’s mutual fund does not necessitate the judge’s disqualification.

(a-4) When a judge owns shares in a mutual fund and the judge or the judge’s spouse is involved in management of the fund, recusal is required under Canon 3C(1)(c) in cases involving corporations whose stock is owned by the mutual fund.

(a-5) A judge who invests in a narrow industry or sector mutual fund should evaluate whether his or her interest in the fund might be affected substantially by the outcome of a particular case, which would require recusal under Canon 3C(1)(c). Whether litigation might have a substantial effect on the judge’s interest in a mutual fund will often turn on the size and diversity of the fund’s investments. See Advisory Opinion No. 106.

(b) A judge who is covered by the American Bar Association retirement plan administered by an insurance company does not have a disqualifying interest in the corporations in which the plan invests. Same where judge’s spouse’s municipal retirement system owns stock in corporations appearing before the judge.

(c) A law firm’s KEOGH plan or 401k plan (managed by the firm, small number of participants, ready access to investment information) does not qualify for the “common fund” exception.

(c-1) A law firm’s retirement fund qualifies for the “common investment fund” exception where the financial interest is indirect (due to the number of participants and the size and diversity of investments), directed investment by participants is not available, and the participants do not know and cannot easily find out about a fund’s portfolio, which turns over frequently.

(d) An interest in a limited partnership designed to engage in particular investment strategies can fall within the concept of a “common investment fund” even when there are only a small number of limited partners (30 in this case) when the judge has no control or influence over the general partner or over the investment decisions. The investment vehicle is sufficiently similar to a mutual fund to be accorded the same status.

(d-1) Stocks owned by family partnership in which judge is limited partner do not fall within “common fund” exception where judge has ability to obtain information about and influence partnership investments. Same, for a family organization structured as a limited liability company.

(e) Judge has a “financial interest” in each of the named underlying equity securities when the judge’s IRA owns units of an investment vehicle which holds 15
named corporations, the portfolio is not actively managed, and it is not contemplated the securities will be sold or exchanged prior to termination of the investment vehicle in ten years. Investment vehicle does not qualify as “mutual fund or common investment fund” under Canon 3C.

(e-1) The mutual fund exception does not apply to a brokerage account in which stocks are held in the judge’s name, the judge can receive immediate notice of transactions, and the judge controls the asset mix and some investment decisions. Same, for a managed account in which stocks held in the account are personally owned by the account holder.

(f) An investment program is not a “common fund” where title to securities is in the judge’s name, the judge has the legal authority to direct investment decisions (even though the judge does not intend to do so), and the judge receives regular information about the portfolio. Same, where judge owns shares of stock purchased by the fund and has a measure of control over the fund’s investment decisions by designating areas of no investment and directing the sale of particular stocks from the judge’s account.

(g) An account qualifies as a “common investment fund” where it does not own shares directly but is invested in portfolios that own stock in numerous companies, the investor has no control over purchase or sale of stock in the portfolios, and the portfolios are managed on behalf of all brokerage customers. Examples include funds tracking the S&P 500 stock index.

(h) A judge who owns mutual funds is not disqualified from cases involving the fund management company in which the judge has no financial interest.

(i) An exchange-traded fund that is registered under the Investment Company Act of 1940 and is diversified would meet the definition of “mutual fund” and would, for that reason, generally qualify as “permitted property” under the judiciary’s regulations concerning Certificates of Divestiture.

§ 3.1-4 Debt Securities

➢ Advisory Opinion No. 101 (disqualification due to debt interests).

(a) Debt securities do not give rise to a financial interest in the debtor which issued the securities. Hence, recusal is not necessary by virtue of ownership of debt securities, unless the outcome of the litigation could substantially affect the value of the investment. If the judge is unsure of whether the litigation could have a substantial effect on the debt securities, the judge may ask the litigants about the possible effects of the litigation on the securities.

(b) Examples of debt securities include: sewer revenue bonds; municipal bonds; state bonds; money on deposit; debt security; industrial development bonds; corporate bonds; and bonds of a municipal transit authority.
(c) A judge who is indebted to a bank in a routine loan transaction is not thereby disqualified from cases in which the bank is a party.

(d) A debt security which is convertible into stock should be treated as stock for recusal purposes.

(e) Because depositary shares will automatically convert to common stock on a date certain, they are considered to be convertible debt securities. Therefore, a judge who owns depositary shares issued by a given corporation has a financial interest pursuant to Canon 3C(1)(c), and must recuse in any matter involving that corporation as a real party in interest. Depositary shares are a hybrid type of instrument. They are similar to debt securities since they contain a fixed rate of return until converted, and are automatically converted into common stock at a fixed future date, or earlier at the issuing corporation’s option but only upon paying a price which represents a significant capital appreciation.

§ 3.1-5 Convertible Securities

(a) Convertible securities are treated as stock for recusal purposes.

(b) Because depositary shares will automatically convert to common stock on a date certain, they are considered to be convertible debt securities. Therefore, a judge who owns depositary shares issued by a given corporation has a financial interest pursuant to Canon 3C(1)(c), and must recuse in any matter involving that corporation as a real party in interest. Depositary shares are a hybrid type of instrument. They are similar to debt securities since they contain a fixed rate of return until converted, and are automatically converted into common stock at a fixed future date, or earlier at the issuing corporation’s option but only upon paying a price that represents a significant capital appreciation.

§ 3.1-6 Financial Interest in Subject Matter or Party to the Proceeding: Defining “Subject Matter,” “Party” and “Proceeding”

(a) Stock ownership is an automatic ground for recusal only if the company is a party to proceedings over which the judge presides. If a company was a party in an earlier proceeding but is no longer, the judge must recuse only if the outcome of the case could substantially affect the judge’s interest.

(b) A financial interest in an insurance carrier that must indemnify a party is not a “financial interest in the subject matter,” nor is the insurance company a party necessitating recusal, but recusal is required if the judge knows his or her interest in the company could be substantially affected. See Compendium § 3.1-9(b).

(c) A judge need not recuse where a party is an independent company managing facilities owned by members, and the judge owns stock in members that have less than a 10% interest and no role in management of the party.
(d) A judge who owns stock in a company whose records are subpoenaed by a grand jury does not have a financial interest in a party or the subject matter of the proceeding, but recusal could be required if the judge’s interest could be substantially affected or if the company’s status changed (i.e., becoming a target, moving to quash, or defending contempt proceedings). Same, with respect to a judge’s consideration of search warrant applications directed at a company in which the judge owns stock.

(e) Recusal is not required when a judge has a financial interest in a non-party corporation whose interests could be affected by the litigation, unless the judge knows that his or her financial interest may be substantially affected by the outcome of the litigation.

§ 3.1-6[1] Amicus Curiae

(a) For purposes of recusal decisions on a financial interest, an amicus curiae is not regarded as a party to the litigation. Recusal is required if the interest of the judge could be substantially affected by the outcome of the proceedings or if the judge’s impartiality might otherwise reasonably be questioned. Advisory Opinion No. 63.

(a-1) A judge need not recuse, even when an amicus has a real institutional stake in the outcome of a case, if the judge’s financial interest in the amicus would not be substantially affected and no other facts raise reasonable questions about the judge’s impartiality.

(b) A judge should recuse from a case when judge’s spouse is the executive director of an advocacy organization that has filed an amicus curiae brief before the court, unless the judge can obtain remittal of disqualification.

(c) In a case remanded to appellate judge’s court, the judge should recuse, subject to remittal, where judge’s spouse is an equity partner in a law firm that filed an amicus brief in the Supreme Court or filed an amicus brief after remand.

§ 3.1-6[2] Fiduciary Capacity

(a) A judge who owns stock in a bank is disqualified in litigation in which the bank is a party, even though the bank is acting in a fiduciary capacity in that litigation. Recusal is under Canon 3C(1)(c) and therefore the remittal provisions of Canon 3D are not available.

(b) Judges are not automatically disqualified when a spouse has a financial interest, in a fiduciary capacity only, in a party to a proceeding before the judge.

§ 3.1-6[3] Official Capacity Suits

(a) In some circumstances, an interest or personal relationship which would ordinarily be disqualifying is of no moment when a party is suing or being sued in his or her official capacity only.
(b) Where a judge’s spouse is an associate, and a partner in the law firm is sued in an official capacity unrelated to the law firm, recusal is not required.

§ 3.1-6[4] Class Actions

- Advisory Opinion No. 99 (judge’s obligation to recuse where one party’s attorney is involved in a separate class action in which the judge or a relative is a member of the class).
- Advisory Opinion No. 90 (judge’s duty to inquire when relatives may be members of class action).

(a) All members of the class are parties, whether named or unnamed, so long as they have not opted out of the class.

(a-1) Where a class has not been certified, the only parties are those named in the complaint or otherwise joined. A judge who is a putative member of an uncertified class, but who does not have a pre-existing asset, property interest, or contractual relationship linked to the proceeding, does not have a financial interest in the subject matter or other interest that could be substantially affected (Canon 3C(1)(c)). However, if the judge’s interest is the same as any putative class member, the judge’s impartiality may reasonably be questioned under Canon 3C(1), and the judge should either recuse (subject to remittal) or renounce putative class membership and waive any future claim.

(a-2) Appellate judges who are class members must recuse where judges disclosed the basis of class membership and waived any interest in the class before oral argument, but after investing substantial time on the case; recusal not required if waiver occurs immediately on assignment of the case.

(b) A judge who is a member of the plaintiff class challenging the applicability of FICA to federal judges need not recuse from other cases to which the United States government or an agency thereof (including the Social Security Administration) is a party.

(c) If a judge or any person within the third degree of relationship remains a member of a class entitled to receive damages as a customer of a public utility, the judge should recuse. However, if the judge and such persons within the third degree of relationship opt out of the class, the judge is not required to recuse merely because of the judge’s status as a utility customer, notwithstanding the possible beneficial effect on future utility bills, unless the savings as a customer might reasonably be considered to be substantial. In this case, 60 cents per month as of 1984 plus normal increases is not considered substantial. See Advisory Opinion No. 78.

(d) A judge’s inclusion as a class member in a Rule 23(b)(2) class action seeking only injunctive and declaratory relief, in which a substantial segment of the general public are also members, does not require recusal, unless the judge has an
interest in the action unique from that of members of the general public included in the class.

(e) A judge who opts out of the class need not recuse from a class action. Nor must the judge recuse where the court is a member of the class but any recovery will go to the general treasury and not the court. A judge who opts out of the class should disclose to the parties and their counsel both the facts giving rise to the disqualification and the actions taken to remove the disqualification.

(e-1) Judge should recuse (subject to remittal) when the clerk of court is a putative class member and any future recovery is likely to benefit the court as a whole.

(e-2) After the time for opting out of the underlying class action has expired, a judge may cure potential conflicts by filing a written waiver and release of all potential claims that could be made in the underlying class action.

(f) A judge who is a member of a large class action need not recuse when an attorney or law firm representing the class appears before the judge in other matters, where the judge is not a named plaintiff, had no role in selecting attorneys for the class, has no personal contact with attorneys for the class, and has no reasonable expectation of substantial recovery. Judges have no duty to inquire whether attorneys appearing before them represent members of a class in unrelated cases that may include the judge (or relatives).

(g) In the unusual situation where a judge is an unnamed member of a class comprising all federal judges with respect to judicial compensation, the judge need not recuse when class counsel appears before the judge in an unrelated matter.

§ 3.1-6[5] Bankruptcy Proceedings

➢ Advisory Opinion No. 100 (identifying bankruptcy parties for purposes of recusal).

(a) For purposes of recusal decisions in bankruptcy proceedings, the following are deemed to be parties: the debtor, all members of a creditors committee, and all active participants in the proceeding; but merely being a scheduled creditor, or voting on a reorganization plan, does not suffice to designate an entity a “party.” Bankruptcy judges are expected to keep informed as to their investments in firms which are active participants in the proceeding, but ordinarily need not familiarize themselves with the scheduled creditors.

(a-1) Where the judge’s sibling is an officer of a bank that is a member of the creditor’s committee or active in the litigation, the judge must recuse under Canon 3C(1)(d)(i) (no remittal), but an officer of a bank advisory board is not an officer of the bank for these purposes. Nor is a member of a bank’s community advisory board an officer of the bank.
(a-2) An accounting firm employed by a party is not a party in bankruptcy, and recusal is not required when a judge’s third degree relative works for the firm unless the relative works on the matter, is a material witness, or has an interest that could be substantially affected by the outcome.

(a-3) A company owning substantial stock in a creditor is not a party to the bankruptcy proceeding; the judge need not recuse because the judge’s spouse’s law firm represents the company in unrelated matters.

(b) In advice to rules committee of circuit court with respect to disclosure of interested parties, in context of bankruptcy appeals, appellate judges should know the identity of (1) the debtor; (2) the members of the creditor’s committee; and (3) any entity which is an active participant in the proceeding before the judge. In addition, it was suggested that the rules committee might consider requiring a fourth disclosure, any other entity known to declarant whose stock or equity value could be substantially affected by the outcome of the proceeding.

(c) Assistant United States trustee appointed to bankruptcy judgeship required to recuse in all cases in which the Trustee’s Office made an appearance, filed a disputed motion, or otherwise exercised discretion. Recusal not required for perfunctory administrative matters. Same for bankruptcy administrator appointed as bankruptcy judge.

(c-1) A judge who formerly served as assistant U.S. trustee and handled more than perfunctory administrative matters in a bankruptcy case should recuse from any adversary proceedings in the case.

(d) Judge need recuse only in cases in which U.S. Trustee spouse or spouse’s subordinates are actually litigating an appeal; judge need not recuse in cases in which the spouse has exercised supervisory control in a clerical manner, such as sending out pre-printed guidelines for debtors, but may need to recuse in cases in which the spouse has exercised supervisory discretionary control.

(e) Where a bankruptcy judge’s relative is a partner in a law firm, the judge should recuse if the firm files motions or actively participates in proceedings before the judge, but need not recuse if the firm represents secured creditors who take no action other than voting on any proposed reorganization plan.

(f) A judge whose third degree relative is a partner in an accounting firm should not approve a party’s appointment of the firm or amount of fees.

§ 3.1-6[5][i] Bankruptcy Proceedings [Judicial Employees]

(a) A bankruptcy law clerk should not work on an adversary proceeding on which the law clerk worked while at a law firm, nor should the law clerk work on other matters initiated by the law firm during the law clerk’s tenure there, but the law clerk may work
on other adversary proceedings in that bankruptcy proceeding, so long as he or she
does not possess disqualifying knowledge or information. See Code of Conduct for
Judicial Employees, Canon 3F(2)(a)(i), (ii).

§ 3.1-6[6] Trade Associations

(a) The fact that a judge owns stock in or is doing business with a member of a
trade association does not disqualify the judge from hearing a case in which the trade
association is a party. Advisory Opinion No. 49.

(a-1) A judge is not required to recuse in a case involving the American
Bar Association or some other open-membership bar association of which the
judge is a member, so long as the judge has not participated in the development
of the bar association position on the matter in question in the suit and is not an
officer of, or on the governing board of, the association. Advisory Opinion
Nos. 52, 85.

(b) A union pension fund is not to be considered as a party to litigation merely
because one of the constituent unions is a party.

(c) Where a judge’s spouse is general counsel to a trade association, the judge
should recuse if the association is a party, or if an association member is a party and
the spouse worked on the matter or the outcome of the matter could substantially affect
the spouse’s financial, employment or property interests. The judge should also recuse
(subject to remittal) if the spouse or the association is so closely identified with the
matter as to raise reasonable questions about the judge’s impartiality.

§ 3.1-6[7] Criminal Victims

(a) If the sentencing judge owns stock or has any financial interest in a
corporation that would be entitled to restitution from the defendant, the judge must
recuse only if the judge’s interest could be substantially affected by the outcome of the
proceeding under Canon 3C(1)(d)(iii), or if the judge’s impartiality might reasonably be
questioned under Canon 3C(1). Also, recusal is not required solely because a judge
has a routine loan from a bank that may receive restitution.

(b) Where judge’s spouse owns (or is beneficiary of trust that owns) stock in
bank that may be entitled to restitution, the judge must recuse only if the judge’s interest
could be substantially affected by the outcome of the proceeding under Canon
3C(1)(d)(iii), or if the judge’s impartiality might reasonably be questioned under Canon
3C(1).
§ 3.1-7 Other Interests Which May Be Substantially Affected by the Outcome of Litigation

(a) A judge owning stock in a corporation named as a co-conspirator, but which is not a party in the pending anti-trust case, should recuse if the judge’s interest could be substantially affected by the decision.

(a-1) A judge owning stock in a company that is not a party but produces the product that is the subject of litigation should recuse where the judge’s award could influence the initiation of subsequent claims against the company or otherwise affect the value of the company’s stock; judge has “a financial interest in the subject matter in controversy . . . or any other interest that could be affected substantially by the outcome of the proceeding.” Canon 3C(1)(c).

(a-2) A judge handling consolidated cases should recuse if rulings in those cases will have a substantial effect on the judge’s stock interest in a party to a similar case, not before the judge.

(b) A judge who is a member of the American Bar Association but who is not insured under the American Bar Association endowment policy is not disqualified in litigation brought by the endowment to obtain a tax refund.

(c) A judge whose investment portfolio consists mainly of tax-free municipal bonds should recuse from litigation concerning the tax-exempt status of such bonds.

(d) The fact that a judge or a judge’s spouse has an account with or owes money to a bank does not necessitate recusal in cases in which the bank is a party, absent some special circumstances (e.g., a pending, dubious, loan application; unusually favorable terms; loan in default; etc.). A financial interest under the Code of Conduct means “ownership of a legal or equitable interest, however small,” but a judge has no financial interest in a financial institution that merely acts as a custodian of the judge’s money or property. Same, where judge is the conservator rather than the account holder.

(e) A judge who is a guarantor of the notes of a corporation should recuse in any case in which the corporation is a party.

(f) A judge owning stock in a financial corporation that is not itself a party to bankruptcy proceedings need not recuse merely because it is owed money by the debtor or has other interests in the proceeding, unless the outcome of the proceeding could substantially affect the value of the judge’s investment.

(g) A judge who is a member of the plaintiff class challenging the applicability of FICA to federal judges need not recuse from other cases to which the United States government or an agency thereof (including the Social Security Administration) is a party.
(h) A judge who owns a fractional mineral royalty interest does not have a “financial interest” in the purchaser of those minerals, and need not recuse when the purchaser is a party, as long as the case could not “substantially affect” the value of the judge’s interest. Where the royalty interest is small, the judge’s impartiality cannot reasonably be questioned. However, a judge who holds the executory rights to lease minerals for production must recuse subject to remittal when the lessee is a party, because the judge’s impartiality could reasonably be questioned.

(i) Where a bankruptcy judge must determine if a debtor’s retirement account is exempt from creditors, and the judge and spouse have the same retirement account, the judge has an interest that could be affected substantially by the outcome of the proceeding and should recuse.

(j) A bankruptcy judge entitled to additional payments for pre-appointment work on a case should recuse from matters handled by an attorney who may be required to disgorge fees in order to redistribute payments to all attorneys in the case; the judge has an interest that could be substantially affected because rulings on fees payable to the attorney in other cases could affect the attorney’s ability to disgorge prior fees.

(k) Recusal is not required where a proceeding could affect the spouse’s municipal retirement benefit in an insubstantial manner (i.e., in an amount less than 0.2 percent).

(l) Recusal not required where both the judge and the plaintiff experienced a financial loss resulting from ownership of the same company’s stock, where the company is not a defendant and the judge does not have a financial interest in any defendant.

§ 3.1-7[1] Policyholder of Insurance; Utility Ratepayer; Taxpayer

(a) A judge who holds a life insurance policy need not recuse when the mutual insurance company appears unless the policy could be substantially affected by the outcome. Same for a medical insurance policy.

(b) A judge to whom an insurance policy has been issued by a mutual insurance company or other insurance company need not, for that reason alone, recuse in cases to which the insurance company is a party. Nor is recusal required from an unrelated action against an insurer because the judge’s (or family member’s) care provider is a member of the class suing the insurer, absent a close personal relationship or other special factors affecting the judge’s impartiality.

(b-1) A judge holding a Blue Cross policy need not for that reason alone recuse in an antitrust case in which a local Blue Cross organization is a party. Advisory Opinion No. 26.
(b-2) A judge insured under a Government-Wide Indemnity Plan written by Aetna Company need not for that reason alone recuse in a case in which Aetna is a party. Advisory Opinion No. 26.

(c) If a judge or any person within the third degree of relationship remains a member of a class entitled to receive damages as a customer of a public utility, the judge should recuse. However, if the judge and such persons within the third degree of relationship opt out of the class, the judge is not required to recuse merely because of the judge’s status as a utility customer, notwithstanding the possible beneficial effect on future utility bills, unless the savings as a customer might reasonably be considered to be substantial. In this case, 60 cents per month as of 1984 plus normal increases is not considered substantial. See Advisory Opinion No. 78.

(d) A judge who holds a VA life insurance policy is not thereby disqualified from cases involving the VA or other federal agencies or instrumentalities.

(e) A judge’s status as a utility customer does not indicate recusal in cases involving the utility, unless the outcome of the case could substantially affect the judge’s utility bill. A ten dollar per month increase is one which might reasonably be considered substantial, and accordingly recusal was suggested. Recusal is not necessary where the proceeding will likely affect rates only remotely or not at all.

(f) A judge’s mere status as a resident/taxpayer of a city filing for bankruptcy is not an interest that could be substantially or uniquely affected by the outcome of the proceeding, requiring recusal.

§ 3.1-7[2] Pensions

(a) A judge who receives a military or other governmental pension is not thereby disqualified from cases involving the respective governmental entity. Advisory Opinion No. 75.

§ 3.1-7[3] Holdings of Judges’ Relatives

(a) A judge whose spouse owns shares of stock in a corporation is not disqualified in litigation in which the political action committee of that corporation is one of 11 such PACs whose election activities are being challenged.

(b) A judge whose son is employed by a union pension fund need not recuse from a case in which one of the constituent unions, but not the pension fund, is a party.

(c) A judge has no financial interest in stock owned by judge’s parent and should recuse only if judge knows that the parent’s stock could be substantially affected by the outcome. Canon 3C(1)(d)(iii).
(c-1) Judge should recuse if he or she knows that a parent’s interest in a trust owning stock in companies involved in a proceeding before the judge could be substantially affected by the outcome of the proceeding. Canon 3C(1)(d)(iii).

(d) A judge whose spouse owns AT&T stock need not recuse in cases involving AT&T ERISA plans where neither AT&T nor AT&T Information Systems is a named party or real party in interest (e.g., responsible for relief requested).

§ 3.1-8 Financial Conflicts [Judicial Employees]

(a) An automation employee owning stock in a software company does not have a conflict of interest unless the stock interest causes reasonable persons to question the employee’s ability to perform official duties impartially.

§ 3.1-9 Duty to Keep Informed of Financial Interests

➢ Advisory Opinion No. 107 (Judge’s Recusal Due to a Spouse’s Business Relationships).

(a) A judge’s Canon 3C(2) duty to keep informed about a spouse’s personal financial interests does not require the judge to inquire about interests held in a fiduciary capacity only.

(b) A judge has no duty to inquire whether an insurance company indemnifies a party, but if the judge has an interest in a company known to be indemnifying a party, recusal is required if the judge knows the interest could be substantially affected.

(d) The Code of Conduct does not require judges to investigate corporate parents of parties before corporate parent disclosure statements are filed, nor does the Code prohibit judges from ruling on preliminary motions before disclosure statements are received.

§ 3.1-9[1] Duty to Keep Informed of Financial Interests [Judicial Employees]

(a) A law clerk has the same duty as a judge to disqualify from cases involving corporations in which the law clerk (or law clerk’s spouse) owns stock and to keep informed about the personal financial interests of a spouse. The judge need not recuse, but the law clerk should be isolated from the case.

§ 3.2 Recusal: Family Relationships

➢ Advisory Opinion No. 90 (judges’ duty to inquire when relatives may be members of class action).
§ 3.2-1 Judge’s Relatives (Definition)

(a) "Relative" in this context includes all persons within the third degree of consanguinity, measured according to the civil law system. If the relative is personally involved in handling the case, or if the relative’s interests could be substantially affected by the outcome of the case, the judge is disqualified, and the Canon 3D remittal procedure is not available. Thus, if the relative is a partner in the law firm, recusal is mandatory, regardless of whether the relative is actually familiar with or involved in the litigation. If the relative is an associate or other employee of the firm who is paid a salary and does not share in the profits of the firm, and the relative is not personally involved in the case, the only issue is whether the surrounding circumstances are such that the judge’s impartiality might reasonably be questioned. Where the judge’s impartiality might reasonably be questioned, the judge must recuse unless there is a waiver pursuant to Canon 3D. Advisory Opinion No. 58.

(a-1) A judge whose child is an assistant United States attorney need not for that reason alone recuse from all cases in which the United States Attorney appears as counsel, although the child may not participate in cases before the parent. Advisory Opinion No. 38.

(a-2) A judge whose relative is employed privately by the U.S. Attorney in a non-legal position need not recuse from cases in which the U.S. Attorney appears as counsel.

(b) A judge has a duty to be informed about personal “financial interests,” individually and as a fiduciary, and must make a reasonable effort to keep informed about personal financial interests of the judge’s spouse and minor children residing in the judge’s household. Canon 3C(2). With respect to other relatives, the judge has no such duty.

(c) Where circuit court judge’s child serves a one-year term as law clerk for a district judge within the circuit, it is appropriate for the circuit judge to devise a practical procedure that would be reasonably calculated to trigger the circuit judge’s recusal from cases that were under active consideration by the district judge during the child’s law clerk tenure. See Advisory Opinion No. 64.

(d) Judge need not recuse where the spouse of the judge’s child works as a middle manager for a party but has no involvement in the case, unless the spouse’s interests could be substantially affected by the outcome of the case (no remittal) or the judge’s impartiality might reasonably be questioned (remittable).

(e) Recusal is not required when a judge’s third degree relative works for an accounting firm employed in a bankruptcy case unless the relative works on the matter, is a material witness, or has an interest that could be substantially affected by the outcome.
(f) Recusal is required under Canon 3C(1)(d)(i) when a judge’s spouse’s sibling is appointed to state office and added as a defendant in an official capacity.

(g) A judge need not recuse from unrelated cases involving a government agency with which the judge’s sibling filed a claim. Same, where a judge’s relative is involved with a government investigation that is unrelated to the case before the judge, absent circumstances that suggest the judge's impartiality may reasonably be questioned.

(h) A judge’s same-sex marriage partner should be treated as a spouse for purposes of complying with the Code of Conduct, notwithstanding the legal status of the partner. See Commentary to Canon 3C.

(i) Absent other facts, a judge’s impartiality may not reasonably be questioned because a child was occasionally treated at a clinic owned by a party.

§ 3.2-2  Spousal Relationships

- Advisory Opinion No. 107 (Judge’s Recusal Due to a Spouse’s Business Relationships).

- Commentary to 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)

(a) A judge whose spouse is a member of city council must recuse in all cases to which the city is a party, if the city council actively participates in litigation involving the city. Otherwise, the judge’s recusal depends on the level of city council involvement with the issues in the case.

(a-1) A judge whose spouse serves as chairman of state housing authority must recuse in all cases to which the housing authority is a party.

(a-2) A judge whose spouse serves on a board of a federal agency need not recuse from other agency matters not involving the board, as long as the spouse played no role in the matter before the judge.

(a-3) A judge whose child is a legislator should recuse, subject to remittal, in any case involving a challenge to legislation for which the judge's child served as a sponsor or author.

(a-4) A judge whose spouse serves as the director of the state department of corrections must recuse in habeas cases brought against a state detention facility. Similarly, a judge should recuse in cases when an individual may be placed in a facility where the judge’s spouse serves as director of the facility.
(b) Neither a judge nor the judge’s spouse should participate in the management of a family-owned business that does business with attorneys appearing before the judge.

(c) A judge should recuse from a case in which the chief executive officer of one of the parties is co-chair of the election campaign committee of the judge’s spouse.

(d) No recusal is required where a judge’s spouse (psychologist) is retained in an unrelated case by a law firm appearing before judge. The result would be different if the spouse were regularly retained by the law firm.

(d-1) Where judge’s spouse operates legal search firm, judge need not recuse merely because a law firm appearing before judge has engaged the judge’s spouse, either currently or in the past, to recruit an additional lawyer. Same where judge’s spouse performs executive recruiting for companies that appear before the judge in unrelated cases. However, recusal (subject to remittal) would be appropriate in other circumstances, e.g., an exclusive arrangement, a substantial ongoing relationship, or a current engagement with respect to a merger effort or other effort of similar import to the law firm. Same where judge’s spouse is a partner in an accounting firm whose clients appear before the judge.

(d-2) Where parties before the judge are, in other matters, clients of the judge’s spouse, and the spouse (or the spouse’s law firm) regularly represents the clients in other matters, the judge should recuse, subject to remittal; judge need not recuse if representation is only in isolated circumstances and spouse’s interest in the pending litigation is minimal.

(d-3) Recusal is not required when insurers or creditors used by the judge’s spouse’s business, or clients of the business, appear before the judge in unrelated matters, absent an exclusive, substantial, and ongoing relationship. Where the nature of the relationship, the size of commissions, or other factors require recusal, the judge must recuse (absent remittal) from all matters in which the client appears as a party within the meaning of Advisory Opinion No. 100.

(d-4) Recusal is not required when a client of the spouse’s business appears before the judge, where the spouse is a salaried employee and does not receive client-related bonuses or commissions.

(d-5) Recusal is not required where a party or attorney before the judge is a client of an accounting firm in which the judge’s spouse is a partner but the spouse does not work for the client, unless particular circumstances raise impartiality concerns (e.g., large client whose fees are more than a small percentage of firm revenue; spouse shares client fees that are more than a small percentage of spouse’s income).
(e) A judge need not recuse when city is party even though judge’s spouse represents city in unrelated matters. Same when judge’s spouse represents the governor and the state (or a state entity) is a party in unrelated matters.

(f) Employment of a judge’s spouse as a program coordinator in the state Office of Substance Abuse does not require recusal in all cases in which the state is a party, only those in which the spouse was personally involved in any way or which involved the particular governmental entity the spouse works for. Similarly, a spouse’s employment by a city library does not disqualify the judge from matters involving the city; same for matters involving the library, unless the spouse is personally involved or could be substantially affected by the matter. Similarly, spouse’s employment as a university professor does not disqualify the judge from all matters involving the university. Similarly, a spouse’s employment as a school teacher does not disqualify the judge from all matters involving the school district.

(g) Per Canon 3C(1)(d)(ii), a judge must recuse in any matter arising in the judge’s court wherein a federal agency is a party and the judge’s spouse is acting as counsel for the agency or where the spouse has any knowledge of the case or is involved in any way with the preparation of the case. The judge is not otherwise obligated to recuse from cases in which the agency is a party. See Advisory Opinion No. 38. It is recommended, however, that a judge disclose on the record that the spouse is employed as staff attorney by the agency but is in no way involved in the matter before the judge.

(h) A transfer to the judge’s spouse of investment in gaming corporation that is legal under law of jurisdiction in which the judge resides does not affect the judge’s Canon 3 obligations concerning recusal or Canon 2’s obligation to avoid the appearance of impropriety.

(i) A judge need not recuse in a case merely because a lawyer who resides with a deputy clerk appears therein. The circumstances may require isolation of the clerk from the case and an appropriate record notation.

(j) Perceiving that the judge’s impartiality might reasonably be questioned, a judge recused from a pending case involving an insurance company as a party because the judge’s spouse had an unrelated coverage dispute with the insurance company. After settlement of the spouse’s dispute, a judge need only recuse for a reasonable time, taking into consideration the circumstances of the unrelated dispute and any hostility engendered.

(k) A magistrate judge may not preside in a case where the judge’s spouse appears as a witness or where the spouse worked on the case as a law enforcement officer, but the magistrate judge may hear cases involving other officers in the spouse’s agency so long as the spouse has neither direct nor supervisory involvement in that case.
(k-1) Similarly, magistrate judge married to law enforcement officer may hear cases involving law enforcement agencies other than spouse’s.

(k-2) A judge whose spouse is the head of a law enforcement agency should recuse, subject to remittal, in all cases involving officers from that agency.

(l) A judge should recuse from a case when judge’s spouse is the executive director of an advocacy organization that has filed an *amicus curiae* brief before the court, unless the judge can obtain remittal of disqualification. Same, where judge’s spouse holds a leadership position in an organization that has taken a public position on an issue in litigation pending before the judge.

(m) Judge should recuse (subject to remittal) when attorney appearing before judge represents judge’s spouse’s business in any matter. Judge should also recuse (subject to remittal) when attorney appearing before judge is partner of attorney who represents judge’s spouse’s business in matter that could substantially affect spouse’s interests; but recusal is not indicated where partner represents spouse’s business in routine matters unlikely to affect business substantially.

(n) A judge should recuse from cases in which the judge’s spouse is serving or has served as a mediator.

(o) Judge need not recuse from unrelated cases brought by prisoners who are members of a class represented by the judge’s spouse, where the spouse is not involved in the cases, the cases do not raise claims related to the class action, and the spouse has no special relationship to the attorneys or parties appearing before the judge.

(p) A judge whose spouse works for a nonprofit legal aid office is disqualified from matters in which the spouse participates, but not from other matters handled by the office. If the spouse is chief attorney for the office, the judge should recuse (or remit) from all matters.

(q) A judge should recuse (or remit) when the spouse is executive director of a nonprofit entity whose executive committee member or legal advisor appears as a party or attorney. The judge need not recuse because an executive committee member or legal advisor has a financial interest in a party or is employed by a law firm appearing before the judge, absent reasonable questions about the judge’s impartiality due to substantial involvement of the member or advisor, or likely effect on the spouse’s position, etc.

(r) Where judge’s spouse’s law firm won a civil judgment against a defendant, judge should recuse from subsequent criminal case against the same defendant arising out of the same factual circumstances.
§ 3.2-2[1] Spousal Relationships [Judicial Employees]

(a) Marriage of assistant public defender to federal customs officer poses no actual or apparent conflict of interest where office to which assistant is assigned has infrequent involvement in customs office cases and steps are taken to insulate the assistant from involvement in such cases.

(a-1) The Code of Conduct for Federal Public Defender Employees is not violated where the chief assistant public defender avoids all contact with cases in which appears an assistant United States attorney with whom the defender has lived for ten years, where the defender advises all those the defender personally represents of the relationship and where, due to the large size of the offices in question, the administrative burdens of avoiding conflict are minimal.

(a-2) Same, where attorney in Federal Defender office and probation officer in same district are married, but defender should inquire of spouse whether they are involved in the same cases and advise the defender’s supervisor of any potential conflicts, and must immediately withdraw from cases to which spouse is assigned.

§ 3.2-3 Partner Related to Judge or Judge’s Spouse

- Advisory Opinion No. 58 (disqualification in case where relative is employed by a participating law firm).
- Advisory Opinion No. 107 (recusal due to spouse’s business relationships)

(a) A judge should recuse where the spouse of the judge is a partner in firm appearing before the judge. Same where the judge’s brother or brother-in-law is a partner. This advice is not altered by the nature of the proceeding (i.e., civil or criminal), the significance of the case, or the size of the firm.

(a-1) Judge need not recuse where spouse’s law firm was contacted by a party but did not accept employment and never entered an appearance.

(a-2) A judge should recuse, subject to remittal, from cases handled by an attorney practicing as a solo practitioner who also shares a law partnership, office, and employees with the judge’s brother; recusal is not required if the attorney’s solo practice is wholly independent of the brother.

(a-3) A judge need no longer disqualified from law firm matters when the judge’s sibling, who was formerly a partner, retires and no longer has an equity interest in the firm.

(a-4) A judge should consider recusal under Canon 3C(1) when the law firm of the judge’s “significant other” appears before the judge. See Commentary to Canon 3C.
(b) A judge should recuse when the judge’s brother-in-law is a partner, even though in a distant branch of the law firm. Same for judge’s son-in-law. Same for judge’s stepson-in-law.

(c) A judge should recuse where a nephew (by blood or marriage) of the judge or the judge’s spouse is a partner.

(d) A judge need not recuse, absent a close personal relationship or other similar circumstances, where the son of the fiancé of the judge’s father-in-law is a partner (i.e., the judge’s prospective stepbrother-in-law).

(e) A judge is not disqualified when a nephew of the judge’s deceased spouse is a partner in a firm appearing before the judge. Relations of a former spouse are not within the relations described in Canon 3C(1)(d). Same for the former spouse of a judge’s sibling.

(f) A judge should recuse in a criminal case in which defendant is represented by an associate in the firm in which judge’s spouse is a partner.

(g) A judge is not required to recuse where a lawyer is godfather of judge’s child unless the lawyer is treated as a member of judge’s family. Advisory Opinion No. 11; see Compendium §3.6-8(g).

(h) A judge is not disqualified because a sibling’s law firm represents parties in a state case closely related to a matter before the judge involving the same parties, but the judge should recuse if the sibling’s firm acts as counsel and provides advice in the federal matter.

§ 3.2-4 Government Attorneys Related to the Judge

- Advisory Opinion No. 60 (appointment of spouse of assistant U.S. attorney as part-time magistrate judge).

(a) Judges whose relatives are attorneys in government employment must recuse in all cases handled by such relative, or for which the relative bore some responsibility; but recusal is not necessary in other cases involving the federal agency. Advisory Opinion No. 38. Same where judge’s relative is a summer law clerk in the government’s employ.

(a-1) A judge should recuse where spouse or third degree relative is attorney in government employment and has supervisory authority over attorney appearing before the judge. However, if the government office implements a procedure that relieves the relative of supervisory responsibility, and the screening mechanism or other procedure requires minimal effort to implement and can be easily explained to the public, then recusal is not required.
(a-2) Where a judge’s spouse is a federal public defender, the judge need not disqualify from criminal cases handled by other federal public defenders in which the spouse has no involvement.

(a-3) Judge whose relative is serving in a supervisory position in a law enforcement agency must recuse in all cases handled by such relative, or for which the relative bore some responsibility.

(b) Per Canon 3C(1)(d)(ii), a judge must recuse in any matter arising in the judge’s court wherein a federal agency is a party and where the judge’s spouse or a person within the third degree of relationship to the judge, or the spouse of such a person is acting as counsel for the agency or has any knowledge of the case or is involved in any way with the case. A judge is not otherwise obligated to recuse from all cases in which the agency is a party. See Advisory Opinion No. 38. It is recommended, however, that the judge disclose on the record that the spouse is employed as staff attorney by the agency but in no way involved in the matter before the judge.

(c) Where judge’s spouse or third-degree relative or spouse of such person (Canon 3C(1)(d)) is working as an attorney in a government agency, but is not personally involved and has no knowledge of the case before the judge, but does have supervisory responsibility over the attorney handling the case before the judge, then only Canon 3C(1) requires recusal and Canon 3D remittal is available. But if the agency creates a wall so the relative does not supervise an attorney’s work on a specific case, and the judge’s impartiality cannot otherwise be questioned, recusal is not required.

(c-1) If the government office implements a procedure that relieves the judge’s relative of such supervisory responsibility, then recusal is not required.

(d) Where judge’s spouse or third-degree relative or spouse of such person (Canon 3C(1)(d)) works as an attorney for the state Attorney General, Canon 3C(1) (remittal available) governs the judge’s decision to recuse in a case in which the Attorney General is a real party in interest, but recusal is not required where a habeas petitioner mistakenly names the Attorney General as party defendant or where the Attorney General is named party defendant only for the technical reason required by Rule 2(b), Rules Governing 28 U.S.C. § 2254. Nor is recusal required where the Attorney General is named as a party in an official capacity due only to that officer’s law enforcement role.

(e) Where judge’s third degree relative is a U.S. attorney who recused from a case, never participated in a case, and will not supervise the conduct of a case before the judge, the judge need not recuse under Canon 3C(1)(d)(ii) but should consider recusal under Canon 3C(1) (to the extent impartiality could reasonably be questioned) and remittal under Canon 3D.
(e-1) Where a judge’s spouse is a U.S. Attorney, the judge’s impartiality could reasonably be questioned in all matters handled by that office; the judge should recuse, subject to remittal.

§ 3.2-5 Relative Is an Associate or Other Employee

- Advisory Opinion No. 58 (disqualification in case where relative is employed by a participating law firm).
- Advisory Opinion No. 107 (disqualification due to spouse’s business relationships)

(a) Where a judge’s child is employed by a law firm in a salaried position (e.g., clerical, paralegal, associate), this fact by itself is not sufficient to raise a reasonable question regarding the judge’s impartiality in cases in which the law firm appears. However, a reasonable question as to impartiality would be raised if the child actually worked on the matter before the judge or if the matter otherwise involved the child’s duties. In addition, other circumstances could combine to raise a reasonable question as to impartiality. The more responsibility held by the child within the firm, the greater likelihood that a reasonable question as to impartiality would be raised. Similar considerations apply where a judge’s spouse is employed by a law firm. Similar considerations apply where a judge’s close relative is a private investigator who is hired by law firms to work on particular cases.

(a-1) No reasonable question as to impartiality would be raised when a judge’s child holds a position as a runner, messenger, or file clerk with the firm.

(a-2) Where judge’s spouse is an independent contractor with a firm and receives a set salary plus a percentage of new client billings, the judge should recuse from all cases handled by or brought to the firm by the spouse.

(a-3) Recusal is not required from matters handled by a law firm with which the judge’s parent is associated, where the parent receives no salary or employee benefits and was never a partner.

(a-4) Recusal is not required when a judge’s sibling is employed in a separate business of an attorney who appears before the judge.

(a-5) No recusal is required where a judge’s child contracts to make individual business presentations to law firms, some of which appear before the judge. The result would be different if the child had a substantial or ongoing relationship with a law firm. See also Compendium § 3.2-2(d).

(b) A judge’s relative who, although designated as a “partner” in a law firm, is paid a fixed salary and does not share in the firm’s profits, is regarded as an associate or employee, for purposes of the judge’s recusal decisions.
(b-1) A judge’s brother-in-law is an “income” partner, and thus like an employee or associate. Recusal is not mandated when brother-in-law’s firm (e.g., lawyer other than brother-in-law) appears.

(b-2) A bankruptcy judge may preside over cases handled by an attorney associated with the judge’s sibling, where the sibling shares office space and receives a percentage of the attorneys’ fees in non-bankruptcy cases.

(c) Where a judge’s relative is an officer at a bank that is likely to appear before the judge, recusal is mandatory if the judge’s relative holds an equity position at the bank, sharing in the bank’s profits, and the bank is a party to the proceeding (i.e., is a member of the creditors’ committee, a debtor, or a creditor actively involved in litigating an issue). However, where the relative is an employee receiving a salary, recusal is generally not required if the relative would not profit or lose from the judge’s action in the case, either financially or otherwise. Finally, if any case arises involving a loan for which a judge’s relative is accountable, recusal is required since under the circumstances the judge’s impartiality might reasonably be questioned.

(d) Judge need not recuse from cases involving government agency that employs spouse of judge’s child unless spouse has gained privileged knowledge or has been involved in the case, either personally or as supervisor. Same when a judge’s child applies for or accepts a job with a city agency.

(e) Judge need not recuse due to child’s previous employment by large accounting firm that is a party, where child did no work on the matter, had no financial interest in the firm, and left the firm’s employment before the case was assigned to the judge.

(f) A judge’s impartiality is not reasonably questioned because the judge’s stepchild was hired by a party, where the stepchild previously worked as a long-term contractor for the party and the position is unrelated to the litigation.

§ 3.2-6 Relative Is a Member of the Judiciary

(a) Federal judge’s impartiality might reasonably be questioned, in violation of Canon 3C(1), if the judge were to consider habeas corpus petitions from state inmates where the judge’s child was a state judge and had participated in the state judicial action challenged in the federal habeas action.

(b) A judge whose spouse serves as a state court judge should recuse (subject to remittal) in cases seeking review of the state court’s opinion or order.

§ 3.3 Recusal: Former Employment

➢ Advisory Opinion No. 24 (financial settlement on judge’s resignation from law firm and disqualification in cases in which former firm appears).
§ 3.3-1 Withdrawal from Firm; Former Firm Appearing in Case

Compendium § 2.7.

(a) When the judge’s former law firm is being sued for malpractice, based upon events that occurred while the judge was in the firm, the judge should recuse. But recusal is not required due to the judge’s potential residual liability with a former firm for taxes, where no claim is pending or likely.

(b) A judge must recuse in all cases handled by the former law firm until all payments due the judge have been received, and for a reasonable period of time thereafter. Same with respect to a law firm to which judge upon appointment refers cases. Recusal after payments end is necessary only if the reasonable period needed to allay impartiality concerns (generally, at least two years) exceeds the financial payment period.

(b-1) There is no impropriety in a judge’s negotiating with his or her former law firm for prepayment of a fixed amount in lieu of collecting amounts payable from the firm as they become due in future years.

(c) The fact that a party to litigation is, in other matters, a client of the judge’s former law firm does not necessitate recusal.

(d) The fact that the judge’s former law firm represents certain state agencies does not necessitate recusal from litigation in which other state agencies, not represented by the firm, are parties.

(e) After 15 years on the bench, a judge need not recuse from cases handled by the judge’s former law firm. A judge should recuse as long as the judge is receiving payments attributable to his or her partnership interest and so long thereafter as necessary to avoid having the judge’s impartiality reasonably questioned.

(f) When, following the judge’s withdrawal, the law firm breaks up, and former members affiliate with various other law firms, recusal decisions should be based upon a realistic assessment of the connection between the judge’s old law firm and the new law firms as to the particular case or matter, the duration and closeness of personal relationships between the judge and former partners and associates, etc.

(g) Where a judge’s arrangement with former law firm upon appointment to the bench includes a financial incentive to return to the firm should the judge ever leave the bench, the judge should recuse whenever the former firm appears unless the chances of leaving the bench are remote.

(h) A bankruptcy judge has a payout agreement with former firm that is adequately secured by real estate, although partners are also liable. One former
partner has joined a new and unrelated firm. A judge should recuse when former partner appears, but not in all cases in which new firm appears.

(i) A judge should recuse under Canon 3C(1)(b) when a case is so closely related to a matter handled by the judge’s former firm while the judge was there that it should be considered the same matter in controversy (i.e., common parties, overlapping factual issues, or the decision will have preclusive effect). Same, where judge’s former firm represented a party to a federal agency proceeding and the agency’s decision is under review by the court.

(j) A judge is not disqualified from a matter handled by public interest law firms for which the judge handled similar matters nine years ago, where the judge did not participate in the pending matter or take a position on the merits.

§ 3.3-1[1] Former Firm Appearing in Case [Judicial Employees]

(a) A bankruptcy law clerk should not work on an adversary proceeding on which the law clerk worked while at a law firm, nor should the law clerk work on other matters initiated by the law firm during the law clerk’s tenure there, but the law clerk may work on other adversary proceedings in that bankruptcy proceeding, so long as he or she does not possess disqualifying knowledge or information. See Code of Conduct for Judicial Employees, Canon 3F(2)(a)(i), (ii).

(b) A law clerk who has applied for or received a fellowship to work at a public interest organization’s local office, and who is a member and former employee of the organization, should not handle matters in which the national or local office is a party or amicus, but the clerk may handle such matters if he or she does not accept the fellowship and discontinues membership.

(c) A district court law clerk who previously worked for a firm may not participate in chamber’s handling of any case the law clerk knows the firm handled while the law clerk was employed there. Facts should be placed on record and the law clerk should be isolated from the case. Same where the law clerk is a contract attorney, which is functionally equivalent to a firm associate.

(c-1) A law clerk who is serving a temporary clerkship on leave of absence from a law firm should not during the term of his or her clerkship work on cases handled by or receive any compensation or benefits from the law firm.

(c-2) Law clerk who will work for a law firm before and after clerkship should not be permitted to work during the clerkship on a massive lawsuit that could have a substantial effect on the law firm’s major client.

(c-3) Where a law clerk worked for a judge, then worked for a law firm handling a case before the judge, then resumed working for the judge, the law clerk should not be permitted to work on the case.
(c-4) Law clerk should not work on case a former law firm handled when the law clerk was associated as counsel with the firm. See Code of Conduct for Judicial Employees, Canon 3F(2)(a)(ii).

(c-5) A law clerk should not be permitted to work on a case in which the law clerk’s former firm was, or is likely to be, a material witness.

§ 3.3-2 Other Business Relationships with Former Law Firm or Its Members and Associates

(a) A judge who has sold a building to his or her former law firm and holds a mortgage on the property should recuse from all cases handled by that firm so long as the mortgage remains outstanding.

(b) A judge should recuse (subject to remittal) from cases handled by a former law firm that continues to manage the judge's pension and retirement accounts. Same for the former law firm that established and is contingently liable for the judge’s spouse’s vested pension benefit. Same while the spouse’s former firm is repaying the spouse’s capital contribution in monthly installments. Similarly, a judge should recuse in all matters involving the firm, subject to remittal, even where a judge’s retirement payments are fixed and not contingent on the firm’s income or the performance of the firm’s investment assets. The Pension Benefit Guaranty Corporation’s ultimate contingent liability for a pension does not affect this analysis.

(b-1) Where a firm buys an annuity to fund the judge’s pension benefit, but the firm holds the annuity and remains contingently liable for the pension, the judge should recuse from all matters handled by the firm. Recusal is not necessary where the judge rather than the firm owns the annuity and the firm has no continuing liability, except that the judge should recuse in any case pending prior to the purchase of the annuity if the firm appears therein.

(b-2) A judge should recuse (subject to remittal) when the judge’s former corporate employer or parent company, which administer the judge’s retirement plan, appear as a party.

§ 3.3-3 Prior Government Employment

(a) A judge who formerly served as United States Attorney is disqualified pursuant to Canon 3C(1)(e) (no remittal) in all cases involving investigations or prosecutions that were pending in the United States Attorney’s Office during the judge’s tenure, and from all cases involving matters that came under the judge’s supervision during the judge’s tenure as United States Attorney. Similar principles are applicable for judges who previously served at higher levels of the Department of Justice with respect to “participation” within meaning of Canon 3C(1)(e). Same for judge who served as state solicitor general for cases where the judge was personally involved or the solicitor general’s office bore some responsibility.
(a-1) The disqualification of the former United States Attorney (now judge) is pursuant to Canon 3C(1)(e) (no remittal) with respect to cases that were litigated in the judge's name during the judge's tenure as United States Attorney, notwithstanding the judge's lack of personal involvement.

(a-2) With respect to matters that were pending in the office but never ripened into cases and thus were never litigated in the name of the former United States Attorney (now judge), the judge is disqualified pursuant to Canon 3C(1)(e) (no remittal) if the judge was personally involved, but only 3C(1) disqualification applies (remittal available) if the judge was not personally involved and the matter was handled exclusively by subordinates and was not litigated in the judge's name.

(a-3) Canon 3C(1)(e) (no remittal) requires a judge to disqualify from a civil case that arises out of the same fact situation and involves the same defendants that were involved in a criminal investigation in which the judge was personally involved during the judge's previous tenure as United States Attorney. Canon 3C(1)(a) also requires recusal because the judge has personal knowledge of disputed facts relevant to the civil cases. Similarly, Canon 3C(1)(e) (no remittal) requires a judge to disqualify when the legal and factual disputes in a case substantially overlap with a related case in which the judge's name appeared on the briefs as the Acting Assistant Attorney General.

(a-4) A judge who formerly served as the Federal Public Defender should disqualify in all cases in which the Federal Public Defender's Office represented defendants in investigations or prosecutions pending during the judge's tenure in that office. (Canon 3C(1)(e) no remittal). The judge should also consider whether a blanket recusal (Canon 3C(1) remittal available) for a period of time in all Federal Public Defender cases is necessary to avoid the judge's impartiality being reasonably questioned. The appropriate length of time depends upon such factors as the judge's length of service in the office and relationship with former colleagues and subordinates.

(a-5) In view of the responsibilities and role of principal assistant U.S. attorney, similar advice applies; judge should recuse (absent remittal) from unrelated civil case involving activities that were under investigation during the judge's tenure, though judge did not handle investigation and no criminal case resulted.

(a-6) Judge who formerly headed a Justice Department Division need not recuse from U.S. attorneys' office matters that the judge did not personally handle, approve, or supervise.

(b) A judge who formerly served as Assistant or Deputy United States Attorney should recuse from all cases involving matters with which the judge came in contact during the judge's tenure, or for which the judge bore some responsibility, but need not
recuse from cases in which the judge did not participate. Same, for a judge who formerly served as Assistant Federal Public Defender. Similarly, judge who participated in investigation of a defense contractor need not recuse from unrelated cases involving the contractor, where the subject and issues are completely unrelated.

(c) A judge is not required to recuse merely because agency that the judge headed at the time filed an amicus brief in another case addressing the same issue now before the court. The judge did not prepare the brief and remembers the agency’s involvement in the issue only vaguely.

(d) Assistant United States trustee appointed to bankruptcy judgeship required to recuse in all cases in which the assistant or a subordinate made an appearance, filed a disputed motion, or exercised discretion through motions to convert or dismiss for lack of progress or failure to comply with operating instructions. Recusal not required for assistant or subordinate’s work in other clerical matters, including issuance of operating instructions to debtors or initial appointment of creditors’ committees.

(d-1) However, Chapter 13 Standing Trustee appointed to bankruptcy judgeship required to recuse in all cases in which he or she served as trustee.

(e) A judge who formerly served as a state assistant attorney general should recuse in cases in which former associates appear only so long after the relationship has terminated as is necessary to avoid having the judge’s impartiality reasonably questioned, and the judge’s selection of two years would be a reasonable period for Canon 3C(1) recusal. The appropriate length of time may vary based on the facts and circumstances. Same for bankruptcy judge who formerly worked in the U.S. Trustee’s Office. Same for judge who served in state solicitor general’s office or at the Department of Justice.

(f) A judge who is disqualified from hearing an en banc appeal because of the judge’s personal knowledge of the facts of that case, by virtue of the judge’s former position in state government, may not sit on a parallel en banc appeal presenting essentially the same questions of law where the two cases are to be heard and decided together. There is a reasonable perception that the judge’s participation in argument and conference in one appeal will directly affect the court’s deliberation in the other appeal from which the judge is recused.

(g) Legal arguments made as a lawyer on behalf of clients do not call into question a judge’s impartiality when presiding over a later, different case, even if it involves related legal issues.

(h) A judge who served in a state legislature is not disqualified under Canon 3C(1)(a) (knowledge of disputed evidentiary facts) or 3C(1)(d) and (e) (material witness or expression of opinion) from challenges to legislation for which the judge voted; nor is it reasonable to question the impartiality of a judge who did not sponsor or author the legislation and whose previous actions do not otherwise raise doubts about
his or her ability to preside fairly. Nor is a judge disqualified because of a spouse’s similar legislative service.

(i) Recusal not required under Canon 3C(1)(e) where a judge served as counsel to a congressional committee that was involved in drafting a statute and legislative history related to a case before the judge’s court, but the judge was not involved in the drafting process during the congressional employment.

(j) A former state court judge should recuse from reviewing federal habeas petitions of prisoners whose direct appeals or habeas petitions the judge adjudicated while on the state court, but recusal is not required when a prisoner whose conviction or sentence the judge adjudicated as a state court judge files an unrelated claim in federal court.

(k) A federal judge’s prior service as a state court judge does not categorically require the judge to recuse from any state court cases removed to federal court that were initially filed in the state court after completion of the judge’s state judicial service. Similarly, a federal judge’s service as a municipal court judge ten years prior does not require the judge to recuse from cases where the municipality is a party when the judge did not participate in the proceeding as a municipal court judge and the judge is no longer receiving compensation or benefits from the municipality.

§ 3.4 Recusal: Other Miscellaneous Business and Personal Relationships

(a) A judge may accept the honor of a state legislature naming a public work for the judge; this is unlikely to necessitate the judge’s recusal.

(b) A judge who belongs to an alumni association is not disqualified from handling matters involving the school, absent circumstances reasonably calling into question the judge’s impartiality.

(c) Accepting a valuable vacation trip from a close friend who is a law firm partner would necessitate the judge’s recusal from matters handled by the firm.

§ 3.4-1 Co-Authors

(a) A judge who, with a lawyer, has co-authored a book from which both are entitled to receive royalties should recuse from all cases handled by that lawyer or the lawyer’s law firm, so long as the royalty arrangement continues. Same for a bankruptcy judge who co-authors a book with a bankruptcy trustee. Same, even if the lawyer co-author has waived any claim to royalties, but not if the co-authorship has ceased for revisions of the book.

(a-1) However, a judge need not recuse from cases handled by the co-author’s law firm where the law firm does not share in royalties or have a financial interest in the book.
§ 3.4-2  Landlord-Tenant

(a) A judge who is receiving benefits from a law firm (free storage space) should recuse from cases handled by that firm so long as the relationship continues.

(b) Where judge’s spouse is the owner of a shopping center and a party defendant is one of the tenants paying rent, judge’s spouse does not have a financial interest; and Canon 3C(1)(c) would apply only if the outcome of the case could substantially affect the payment of rent; but the judge’s impartiality could reasonably be questioned (Canon 3C(1)) and thus the judge should disqualify subject to remittal. Advisory Opinion No. 27. Similar principles apply where a lawyer appearing before the judge is a tenant of a building owned by the judge or the judge and his or her children.

(b-1) A judge should recuse from cases in which law firm appears where judge is tenant in residential building owned by spouse of partner in law firm.

(b-2) Judge should recuse from cases in which law firm leasing space to judge’s spouse appears, subject to remittal.

(c) A judge, as landlord, may receive rent from tenant subsidized by Section 8 as Section 8 requires tenant, not landlord, to apply. A judge who is a landlord of a tenant subsidized by Section need not recuse in all cases where HUD is a party, only where the case deals directly with the Section 8 program because the judge’s impartiality might reasonably be questioned. Where the Section 8 Program is involved, recusal is required under 3C(1) subject to remittal under Canon 3D.

(d) A bankruptcy judge whose tenant files for bankruptcy has a “financial interest in the subject matter” and should recuse from the case.

§ 3.4-3  Law School Teaching

(a) A judge who teaches at a law school should recuse from all cases involving that educational institution as party. The judge should recuse (or remit) from cases involving the university, as well as those involving the law school, where the judge’s impartiality might reasonably be questioned in view of the size and cohesiveness of the university, the degree of independence of the law school, the nature of the case, and related factors. Similar factors govern recusal of judges serving on a university advisory board. Teaching at a state law school does not necessitate recusal from all cases involving the state or its agencies.

(b) The fact that a chief judge teaches at the law school involved does not disqualify the chief judge in reviewing requests from judges for prior approval of compensated teaching at that school, because impartiality cannot reasonably be questioned.
(c) Judge who teaches at law school generally need not recuse where law school’s nonprofit clinical program represents party in case, except where judge’s impartiality could reasonably be questioned due to significance of case or judge’s close relationship to clinical program or participants. Where clinical program’s professor is involved in approving judge’s teaching contract, reasonable person might question judge’s impartiality depending on facts, but ordinarily such involvement would be insufficient to raise ethical concerns.

(d) A judge need not recuse because an amicus brief is submitted by law professors from the school with which the judge is associated, unless the specific circumstances cast reasonable doubt on the judge’s impartiality.

(e) A judge need not recuse under Canon 3C(1) when the government agency where the judge’s co-teacher works represents a party to a case before the judge and the co-teacher has no personal knowledge or involvement in the case.

§ 3.4-4 Co-Owners

(a) A judge should recuse from cases in which a business partner of the judge (passive investment) is a party or counsel, so long as the business relationship continues. On the other hand, a judge who is a passive investor in a project, along with numerous other persons whose identities are unknown to the judge, need not recuse from cases handled by a lawyer who is also a co-investor in the project, absent a general partnership relationship or frequent business dealings between them.

(b) A judge who previously participated in a joint venture with an attorney should recuse from any cases in which the attorney appears during the joint venture relationship and for a reasonable period of time after it concludes.

§ 3.4-5 Parties to a Contract

- Advisory Opinion No. 94 (recusal when a party before the judge pays mineral royalties to or leases mineral rights from the judge)

- (a) Because a judge’s impartiality might reasonably be questioned, a judge who has contracted with a party or parties for use of a service mark created by the judge must recuse from all cases involving such parties or their counsel so long as the royalty agreement remains in effect.

- (b) A judge who owns a fractional mineral royalty interest does not have a “financial interest” in the purchaser of those minerals, and need not recuse when the purchaser is a party, as long as the case could not “substantially affect” the value of the judge’s interest. Where the royalty interest is small, the judge’s impartiality cannot reasonably be questioned. However, a judge who holds the executory rights to lease minerals for production must recuse subject to remittal when the lessee is a party, because the judge’s impartiality could reasonably be questioned.
(c) A judge’s purchase of an attorney’s vehicle, for market value in an arm’s length transaction, does not necessitate recusal and need not be disclosed if the attorney appears.

(d) A judge whose spouse has a contractual right to receive income from the spouse’s former employer is not required to recuse when the spouse’s former employer is a party, where the terms of the contract are fixed, the contract derives from a long-terminated employment relationship, and no unique characteristics of the transaction suggest the judge’s impartiality might reasonably be questioned. Advisory Opinion No. 94.

§ 3.4-6 Charitable and Religious Organizations

(a) A judge serving on the board of directors of a charitable foundation is not disqualified from cases in which one of the parties is a corporation whose stock the foundation holds in its investment portfolio.

(b) A judge need not recuse merely because lawyers who accept appointments as counsel for the poor by legal service associations to which the judge has contributed financially appear as counsel of record in cases before that judge.

(c) A judge may serve as president of a local council of the Boy Scouts, subject to recusal when any council of the Boy Scouts appears as a party.

(d) Judge who has been involved for many years as a volunteer leader for a charitable organization should recuse in a case involving a constitutional challenge to the organization’s activities.

(e) A judge’s former membership in an organization does not preclude the judge from sitting in cases involving the organization, absent factors that suggest a reasonable basis to question the judge’s impartiality under Canon 3C(1).

§ 3.4-6[1] Charitable and Religious Organizations [Judicial Employees]

(a) A judicial employee serving on a distribution committee of a foundation whose sole responsibility is making grant decisions need not be isolated from cases in which one of the parties is a corporation whose stock the foundation holds in its investment portfolio.

(b) A law clerk is not disqualified from working on a bankruptcy case involving a religious organization simply because the law clerk is a member of that religion, but the law clerk should not participate if the case could significantly affect the law clerk’s local church or child’s school.

§ 3.4-7 Judges Negotiating for Future Employment

➤ Compendium § 2.5.
§ 3.4-7[1] Future Employment [Judicial Employees]

(a) Where judge’s law clerk has merely submitted application for employment, the clerk need not necessarily be isolated from cases where potential employer appears, but the judge may feel it is desirable in some circumstances, e.g., likely that clerk will eventually be employed. See Advisory Opinion Nos. 74 and 81.

(b) A law clerk who has applied for or received a fellowship to work at a public interest organization’s local office, and who is a member and former employee of the organization, should not handle matters in which the national or local office is a party or amicus, but the clerk may handle such matters if he or she does not accept the fellowship and discontinues membership.

(c) Although Code of Conduct for Judicial Employees does not contain a remittal provision, judge may, in unusual circumstances, consider using remittal procedure to permit law clerk to continue working on a case in which clerk’s future employer appears (unusual circumstances included that the firm appeared in a criminal case for a limited purpose, clerk worked extensively on case before future firm became involved, and clerk would not be employed as a firm partner).

(d) Following judicial employment, a former probation officer should avoid representing a client whom he or she supervised or on whose file he or she worked due to concerns about confidentiality under Canon 3D of the Code of Conduct for Judicial Employees. Compare Advisory Opinion No. 109.

§ 3.5 Recusal: Members of the Judge’s Staff; Former Staff and Their Relatives

(a) A judge must recuse from cases in which the spouse of the judge’s secretary appears as counsel. But see Compendium § 3.5(a-2). Recusal is not required when spouse of chief probation officer, or members of spouse’s firm, appear as counsel, absent special circumstances affecting the judge’s impartiality.

(a-1) Where spouse of judge’s secretary is employed by law firm, judge must recuse where spouse actually participates in case through appearance or supervision of others who appear. Where spouse’s firm appears (but spouse does not actually participate), judge must recuse if spouse has a significant financial interest in the case. Spouse who is partner in firm may be presumed to have significant financial interest, except for routine cases unlikely to affect firm reputation or finances. Spouse who is associate in firm may be presumed not to have significant financial interest, except in rare cases likely to have major effect on firm reputation or finances.

(a-2) Where spouse of judge’s secretary is employed by law firm, but spouse does not participate in case and does not have significant financial interest, judge need not recuse if steps are taken to minimize appearance of
impropriety (e.g., remove secretary from direct involvement in case, caution staff that secretary is to be isolated from case, and disclose on the record).

(a-3) Upon a secretary’s termination of employment, a judge may hear cases involving the former secretary’s spouse.

(b) A judge need not recuse where spouse of an outgoing law clerk is attorney in the case, where the law clerk did no work on the case.

(c) A judge need not recuse where the spouse of the judge’s secretary is an assistant United States attorney, but the secretary should not be permitted to do any work on any case in which the spouse is or was involved. Same where law clerk’s spouse is an assistant United States attorney.

(d) A judge need not recuse where the spouse of the judge’s law clerk or the spouse of a deputy clerk of court appears as counsel, but must ensure that neither the law clerk nor the deputy clerk does any work on the case; the same ruling applies where the law clerk’s spouse is also a former law clerk of the judge. It is advisable not only to isolate the current law clerk from that case, but also to inform the parties that this is being done.

(d-1) A judge should not appoint as law clerk the child of a lawyer who regularly appears before the judge unless the law clerk can be isolated in those cases.

(e) Where a law clerk worked for a judge, then worked for a law firm handling a case before the judge, then resumed working for the judge, the law clerk should not be permitted to work on the case, but the judge need not recuse absent additional facts.

(f) A judge need not recuse in a case merely because a lawyer who resides with a deputy clerk appears therein. The circumstances may require isolation of the clerk from the case and an appropriate record annotation.

(g) Judge should recuse where spouse of judge’s secretary did investigatory work for a criminal defendant and was a potential witness at trial.

(h) A law clerk whose spouse is a member of a state retirement plan has a financial interest in a party and/or the subject matter of a lawsuit filed by the plan seeking recovery for members. Where other relatives are plan members, a law clerk may work on the case unless the relative’s interest in the plan could be substantially affected by the outcome.

(i) Judge should recuse where judge’s law clerk was previously employed by a law firm, the firm handled the case before the judge while the law clerk was employed by the firm, and the judge permitted the law clerk to work on the case. In addition to the law clerk’s actual conflict, the law clerk’s shared law teaching position with a member of
the law firm on a topic related to the case before the judge raises a reasonable question about the judge’s impartiality under Canon 3C(1) of the Code of Conduct for U.S. Judges.

(j) A judge need not recuse when a party is represented by an attorney who formerly employed the judge’s administrative assistant, who is not a lawyer and ended employment with the attorney before the attorney began handling the case.

(k) Subject to the discretion of the individual judge and the employing court, and pursuant to Canon 4D of the Code of Conduct for Judicial Employees, there should be a reasonable period of time before a former law clerk is permitted to appear before the judge. The Code places the responsibility on the former law clerk to determine what limitations will be imposed following the conclusion of judicial employment. In addition, pursuant to Canon 3D of the Code of Conduct for Judicial Employees, a former clerk must refrain from working on all cases in which he or she participated during the clerkship, and may be required by the judge, by court rule, or by attorney ethical rules to refrain from work on cases pending before the judge even if the law clerk had no personal involvement in them. See Advisory Opinion No. 109.

(l) A judge who has hired a future law clerk who is an associate in a law firm should recuse, subject to remittal, in cases in which the future law clerk appears as counsel.

(m) A judge who recused due to a law clerk conflict in a matter is not required to recuse in a related case if the law clerk is no longer employed by the judge.

§ 3.5-1 Isolating Judge’s Staff When Relatives or Relatives’ Interests are Involved in Litigation [Judicial Employees]

- Advisory Opinion No. 74 (pending cases involving law clerk’s future employer)

(a) Where the spouse of the judge’s secretary is an assistant United States attorney, the judge need not recuse but the secretary should not be permitted to do any work on any case in which the spouse is or was involved. Same where law clerk’s spouse is an assistant United States attorney.

(a-1) Law clerk whose spouse is, or has been, the U.S. Attorney may not work on any case in which the spouse has been directly or indirectly involved, including any case that was investigated or prosecuted, or otherwise litigated, by the U.S. Attorney’s office during the spouse’s tenure as the U.S. Attorney.

(b) Where a judge’s law clerk has accepted employment with Civil Rights Division of Justice Department, the law clerk should be isolated from any case involving the Civil Rights Division, but may work on other Department of Justice cases. Same, where law clerk will be employed in Office of the Deputy Attorney General. Same
where law clerk will work for the Civil Division, which handles majority of cases in that court. Same where law clerk will work for INS. Law clerk who will work for U.S. attorney’s office in another district may work on criminal cases in judge’s district. Law clerk who will work for U.S. trustee in another region may not work on cases in which that trustee’s office appears.

(c) Law clerk whose father is an assistant United States attorney may not work on any case in which the father is involved, but judge need not recuse from cases in which the father appears. Same, where law clerk’s husband is an assistant federal public defender.

(d) Where the spouse of the judge’s law clerk or the spouse of a deputy clerk of court appears as counsel, the judge must ensure that neither the law clerk nor the deputy clerk does any work on the case; the same ruling applies where the law clerk’s spouse is also a former law clerk of the judge. It is advisable not only to isolate the current law clerk from that case, but also to inform the parties that this is being done.

(e) A judge’s law clerk who is married to FBI agent is only disqualified from working on those cases in which spouse actually had some participation.

(f) A law clerk whose spouse is an associate in a firm should be isolated from any case handled by that firm, whether the spouse actually participates in the representation or not. The judge may wish to inform the parties of the relationship and the insulation of the clerk. See Advisory Opinion No. 51. Same where the judge’s court reporter’s spouse works for a law firm appearing before the judge. Same, where spouse of clerk of court, or spouse’s law firm, appears before the judges of the court. But an electronic court reporter may work on matters handled by spouse’s firm as long as the spouse is not a partner or personally involved.

(f-1) Per se rule of recusal outlined in Advisory Opinion No. 51 is not required where law clerk is not yet married and future spouse is not yet employed by law firm, absent special circumstances.

(g) A judge need not recuse in a case merely because a lawyer who resides with a deputy clerk appears therein. The circumstances may require isolation of the clerk from the case and an appropriate record annotation.

(h) A law clerk who, after doing substantial work on a complex bankruptcy case, comes into a conflict of interest (by virtue of a spouse’s employment) on a confirmation matter, may not work on any part of the bankruptcy; confirmation issues can always reasonably be perceived as inseparable from other aspects of the case.

(i) Judge should preclude a court reporter from working on any case in which the court reporter’s spouse appears as counsel. Similarly, judge should preclude probation officer from working or supervising work on any case in which the officer’s spouse appears as counsel. See Canon 3F(2)(c), Code of Conduct for Judicial Employees.
Similarly, judge should preclude courtroom deputy from working on any case in which the courtroom deputy’s child appears as counsel.

(j) Law clerk whose first cousin is a U.S. attorney need not automatically be isolated from cases from that office, because the first cousin relationship is not within the third degree; but appearance of impartiality concerns might be implicated if the relationship between the two first cousins is particularly close, and also in high profile cases and in cases in which the first cousin/U.S. attorney personally appears or plays a significant role.

(k) A law clerk whose spouse is a member of a state retirement plan has a financial interest in a party and/or the subject matter of a lawsuit filed by the plan seeking recovery for members. Where other relatives are plan members, a law clerk may work on the case unless the relative's interest in the plan could be substantially affected by the outcome.

(l) A judicial employee who has retained an attorney may work on cases in which the attorney appears, where it is clear that the judicial employee is not in a position to benefit the attorney.

(m) A staff attorney who previously held a supervisory attorney position in state government should not work on cases in which he or she participated or provided substantive advice.

(n) Where a lawyer is representing the estate of a law clerk's parent, a judge should not permit the law clerk to work on cases in which the attorney appears, but may permit the law clerk to work on cases involving other lawyers from the attorney’s firm.

(o) Where a law clerk’s relative works for a company that is a party in a case before the judge, there is no conflict of interest unless the relative has an interest that could be substantially affected by the outcome of the proceeding or if the relative is likely to be a witness.

(p) A former law clerk should not appear as an attorney in a state court matter that is closely related to a case that was pending with the law clerk’s judge during the clerkship; the confidentiality restrictions of Canon 3D apply to former judicial employees and are intended to protect the confidentiality of judges' discussions with law clerks and to prohibit former employees from profiting as a result of those discussions.

(q) Judge and law clerks (both current and former) should decline to comply with a law firm’s request for a list of matters that a clerk worked on or that passed through chambers during the period of the clerkship, because responding would improperly implicate the disclosure of confidential information.

(r) A law clerk should not be permitted to work on a case in which the law clerk’s former firm was, or is likely to be, a material witness.
(s) A law clerk should not be permitted to work on any case in which the law clerk’s former firm was involved during the law clerk’s tenure with the firm. Under Canon 3F(2)(a) of the Code of Conduct for Judicial Employees, a law clerk may not work on a case even if the former firm’s involvement was de minimis, subject to the specific exceptions set forth in the Code.

§ 3.6 Recusal: Reasonable Basis for Questions of Impartiality

§ 3.6-1 Litigation Involving the Judge

- Advisory Opinion No. 102 (representation by the Department of Justice).
- Advisory Opinion No. 103 (recusal considerations arising from harassing claims against judges).

(a) A judge who is personally involved in litigation to which the United States is a party should recuse from cases involving the governmental agency that is the party in interest. However, the judge is not disqualified as to other cases to which the United States or some other governmental agency is a party.

(a-1) Similarly, where judge’s spouse is involved in litigation against a governmental agency, judge should recuse from cases involving that agency but need not recuse from cases involving other governmental agencies.

(a-2) A judge who joins a class action arising from former employment with the Department of Justice should recuse (subject to remittal) from: (1) cases where DOJ is a named or real party in interest or where DOJ administrative actions or policies are at issue and (2) cases handled by a DOJ attorney directly involved in the class action or the underlying administrative decisions leading to it, a class plaintiff active in the class action, or an attorney with the law firm representing the class. The judge need not recuse from unrelated cases involving other agencies (including subsidiary agencies of DOJ) where DOJ appears only in a representative capacity, absent special circumstances.

(a-3) A judge who is a plaintiff in litigation against the U.S. Attorney’s office that is the judge’s former employer should recuse under Canon 3C(1)(a) (no remittal) in all cases involving that office until the litigation is completed.

(a-4) A magistrate judge who is a defendant in a lawsuit arising from former government employment should recuse, subject to remittal, in cases that are referred to the magistrate judge by the district judge who is presiding over the case involving the magistrate judge, unless the case involving the magistrate judge is patently frivolous or barred by absolute immunity.

(b) A judge who is a co-defendant with a state agency that is paying for the judge’s defense should recuse from cases involving that agency during the pendency of
the litigation. The judge is not disqualified in other cases to which the state or another of its agencies is a party.

(c) A judge who is personally involved in litigation with the IRS should recuse, subject to remittal, from cases in which IRS investigative persons will appear as witnesses before the judge; from cases where the investigative agents are the same persons investigating the judge’s dispute with the IRS; and from cases in which the assistant United States attorneys appearing before the judge are also litigating the judge’s dispute with the IRS.

(d) A judge who is named in a pending action is not precluded from reviewing a new complaint by the same plaintiff (not naming the judge) to determine whether it complies with an injunction prohibiting frivolous, vexatious filings; the judge’s impartiality cannot reasonably be questioned.

(e) A judge who is seeking action from a city zoning commission should recuse from cases involving the zoning commission, but need not recuse from cases involving other city agencies. If the matter is appealed to the city council, the judge should recuse from cases involving the city and may need to recuse from cases involving other city agencies, depending on their involvement in the matter. A judge who has a dispute with a county agency should recuse, absent remittal, for a reasonable time after the dispute is fully resolved.

(f) When a state has asserted malpractice claims against a judge’s former law firm and, though not personally involved, the judge could be liable under state law, reasonable persons might question the judge’s ability to remain impartial in matters involving the state or any of its agencies; the judge should therefore recuse, subject to remittal.

(g) Judges are disqualified from hearing any case in which they are named as defendants by a pro se litigant (Canon 3C(1)(d)(i)), but they are not required to recuse in other cases brought by the same litigant involving other parties or other judges on the same court, unless their impartiality could reasonably be questioned (Canon 3C(1)).

(g-1) An appellate judge’s impartiality cannot reasonably be questioned for hearing appeals from a district judge who previously disposed of an uncontested, frivolous matter involving the appellate judge.

(g-2) A judge is not disqualified from a government action seeking injunctive relief against vexatious litigants even though the judge could potentially benefit (as all judges could theoretically benefit). Recusal is advisable if the government seeks relief in the judge’s name.

(h) A judge is not foreclosed from pursuing a minor child’s claim against government officials, which must be brought in that district, even if this causes
colleagues to recuse and leads to the judge’s recusal in matters involving that government entity.

(i) A judge’s impartiality may reasonably be questioned when a former employee, who departed in acrimony and filed claims that were subsequently resolved, appears before the judge; recusal for one year is advisable. Judges who were not involved need not recuse.

(j) A judge who was named without permission as plaintiff in a lawsuit, and then immediately dismissed, need not recuse from cases involving the defendants or counsel or disclose these facts; but the judge should recuse from cases involving the plaintiff law firm if the judge refers the firm or its attorneys for disciplinary action.

§ 3.6-1[1] Official Capacity Defendant Associate of Spouse

(a) A judge need not recuse where spouse is a partner or associate of a defendant sued in unrelated official capacity as a member of the state board of elections.

§ 3.6-2 Where Judge (or Judge’s Spouse) Is or Has Been a Client of Lawyer or Law Firm Appearing in the Case

- Advisory Opinion No. 102 (representation by the Department of Justice).
- Advisory Opinion No. 107 (disqualification due to spouse’s business relationships).

(a) Where an attorney-client relationship exists between the judge and a lawyer whose law firm appears in the case, the judge should recuse absent remittal. Same where an attorney represents the court in personnel matters.

(a-1) After a pending bankruptcy case was disposed of, the judge hired (for personal, unrelated matter) another lawyer in the firm that had represented the debtor. Motion for reconsideration was filed, and the debtor changed lawyers. The judge need not recuse because a law firm formerly involved in the case now represents the judge, unless particular circumstances would indicate an appearance of partiality.

(a-2) A judge’s impartiality could reasonably be questioned if the judge presided in a matter handled by the attorney (or law firm) representing the clerk’s office in an employment dispute; each judge should recuse, subject to remittal.

(a-3) With respect to an attorney who is retained to assist with an investigation related to potential judicial misconduct, recusal is required, absent remittal, as to the subject judge and any judge who serves on the investigating committee.
(b) A judge should recuse absent remittal if a lawyer appearing in the case represents, in other matters, a class of which the judge is a member. But see Compendium § 3.1-6[4](f).

(c) Where there is no existing or continuing attorney-client relationship, recusal is not required because a lawyer appearing in the case previously represented the judge; same where lawyer or law firm previously represented the judge's minor child.

(d) The fact that a lawyer appearing in the case represents the judge's former law firm in other litigation is not disqualifying, unless the judge's personal interests are at stake in that other litigation.

(e) A judge need not recuse merely because, in other litigation, the judge has appointed the lawyer as a trustee or receiver, and will be required to pass upon the lawyer's compensation in that case.

(f) Where an attorney from the Justice Department has been assigned to represent the judge in litigation, the judge need not recuse in other cases in which the Justice Department appears; and, depending on the precise nature of the representation and relationship, it may not be necessary for the judge to recuse even from cases handled by the same attorney who is representing the judge. Though not required, it is good practice to disclose the representation to parties in cases in which the attorney appears.

(g) A judge should recuse absent remittal if a lawyer who represents the judge's child appears in the case, but not recuse if the lawyer represents the child's employer.

(h) Where a lawyer is performing extensive estate-planning services for a wealthy grandparent of the judge, the judge should recuse absent remittal from cases handled by that lawyer or the lawyer's law firm if, as appears likely, the estate-planning services being performed may significantly affect the interests of the judge and other close family members.

(h-1) Canon 3C(1)'s general provision (judge's impartiality might reasonably be questioned) applies where judge's spouse is represented (in unrelated matters) by law firm appearing before judge, but is subject to the remittal procedures. The standard is fact specific and may not give rise to a reasonable question of partiality where the representation does not relate to significant matters, is of short duration, or is otherwise minimal and casual.

(i) A judge is not required to recuse in matters handled by an attorney who represents the widow of the judge's brother-in-law in unrelated matters.

(j) Under ordinary circumstances of lawyers donating services to court committee, judges are not required to recuse because impartiality could be questioned. Canon 3C(1).
(k) Judge should recuse (subject to remittal) when attorney appearing before judge represents judge’s spouse’s business in any matter. Judge should also recuse (subject to remittal) when attorney appearing before judge is partner of attorney who represents judge’s spouse’s business in matter that could substantially affect spouse’s interests; but recusal is not required where partner represents spouse’s business in routine matters unlikely to affect business substantially.

(l) A judge should recuse (subject to remittal) from cases handled by the law firm hired by the judge’s professional association to provide legal and legislative counsel if the judge is an officer or Board member of the association actively involved in negotiating the agreement or in regular contact. Others (including officers and Board members not interacting with the firm and nonmember judges) need not recuse.

(I-1) Similar factors apply to homeowner’s associations. Where the association is small, was formed to initiate a legal challenge, and most members are active in the selection of and interaction with its attorneys, a judge who is a member should recuse, subject to remittal, from matters handled by the association’s law firm.

(I-2) In the unusual situation where a judge is an unnamed member of a class comprising all federal judges with respect to judicial compensation, the judge need not recuse when class counsel appears before the judge in an unrelated matter.

(I-3) A judge should recuse (subject to remittal) from cases handled by a law firm for the duration of the attorney-client relationship when the judge serves on the board of directors for a nonprofit corporation that has hired an attorney from the firm and the judge has had direct contact with the attorney.

(m) Judge need not recuse from matters handled by the spouse of an attorney who previously represented the judge’s spouse.

§ 3.6-3 Lawyer Representing Party Opposing Judge in Other Litigation

(a) A judge should recuse from cases handled by a law firm, one of whose members or associates represents a party adverse to the judge in other litigation. Similarly, a judge who joins a class action arising from former employment with the Department of Justice should recuse (subject to remittal) from cases handled by a DOJ attorney directly involved in the class action or the underlying administrative decisions leading to it.

(b) Recusal is not required when a lawyer or law firm previously represented an adverse party in litigation to which the judge or the judge’s minor child was a party, after the matter has been finally closed.
(c) Judge should recuse, subject to remittal, from cases in which the bankruptcy trustee’s counsel is an attorney in a firm whose partner is suing the judge in unrelated litigation.

(d) When a former law firm is involved in litigation that may result in the judge’s personal liability, the judge should recuse (absent remittal) where the following persons appear: lawyers who are parties against the law firm; law firms representing plaintiffs against the law firm; lawyers who are lay and expert witnesses against the law firm; specific lawyers representing the law firm; other members of the firms representing the law firm.

(e) A judge should recuse from matters handled by a law firm representing a developer, where the judge’s property value would be diminished substantially by the development, the judge has publicly opposed it, and the matter is in litigation (though the judge is not a party).

(f) A judge’s impartiality cannot reasonably be questioned because a party moved, in unrelated litigation, to add as a defendant a company in which the judge had a financial interest, but then withdrew the motion.

§ 3.6-4 Attorneys and Law Firms Who Are Clients of a Relative of the Judge

➢ Advisory Opinion No. 107 (Judge’s Recusal Due to a Spouse’s Business Relationships).

(a) A judge should recuse when spouse is retained to represent, in an unrelated matter, an attorney in a firm appearing before the judge.

(b) When a judge’s spouse represents a client in a malpractice suit against an attorney, and that attorney is among the nominees to a class steering committee to be appointed by the judge, the judge should recuse from making any appointments to the class steering committee. The judge need not recuse from the class litigation if the attorney is appointed.

§ 3.6-5 When Former Client Is a Party

(a) When former client is a party to litigation and former representation is in any way related to the current litigation, recusal is mandatory no matter how long ago the representation ended, e.g., 18 years ago. Recusal is not required because a debtor in a bankruptcy proceeding was represented by the judge in a different bankruptcy proceeding 20 years earlier.

(b) If a former client of the judge is a party, but the litigation is totally unrelated to the earlier representation, whether recusal is required depends upon such factors as the length of time since the earlier representation ended; the nature, duration, and intensity
of the earlier representation; the presence or absence of ongoing personal relationships; etc.

(b-1) Similar factors apply when a party before the judge was a party adverse to the judge’s former client in an unrelated matter handled by the judge.

(b-2) Judge who represented a client decades earlier, with no continuing relationship, need not recuse from an unrelated matter involving the former client’s child.

(c) A judge who formerly represented various law firms in defending malpractice suits should recuse from all cases handled by such firms for a reasonable period (two to five years), regardless of whether the fees were paid by the firm or its insurance carrier.

(d) Recusal is required when a party before a judge was represented in the same matter by judge’s former firm while judge was associated with firm, even though the party now is represented by a new firm.

(e) Although a criminal defendant was judge’s client in civil matters nearly 20 years ago, a judge should recuse because the judge would be required to sentence the defendant if convicted and the judge has personal knowledge regarding the defendant’s background.

(f) A judge need not recuse because a former client of the judge’s firm appeared as a witness in an unrelated case, where the judge had no personal or professional involvement with the client and the firm’s representation ended ten years earlier.

§ 3.6-6 Involvement of Present or Former Judicial Colleagues

(a) Absent a Canon 3D waiver, a judge should recuse if a magistrate judge from that district appears as a witness.

(b) A judge should recuse in cases in which a former colleague appears as counsel, for a reasonable period of time after the former judge leaves the bench. The exact length of time depends upon the length of the prior association and the closeness of the relationship with the former colleague (rule of thumb: two years or longer). Advisory Opinion No. 70.

(b-1) The two-year rule of thumb does not apply to a district judge’s recusal when a former bankruptcy judge colleague appears; recusal there should be considered on a case-by-case basis.

(c) Magistrate judge should not, absent remittal, review the decisions of a former state judge who is now a district judge with authority over the magistrate judge’s reappointment.
(d) A retired bankruptcy judge who is not eligible for recall is no longer subject to the Code of Conduct, and the Code therefore does not restrict the former judge's employment as a mediator. If the retired judge's former colleagues on the court are required to address an issue related to the mediator, the judges should consider whether recusal might be appropriate under the guidance in Advisory Opinion No. 70.

§ 3.6-6[1] Other Judges as Parties

(a) A judge should not award counsel fees to the former law firm of a colleague, if the colleague will share in the award; the judge should recuse, and seek designation of a judge from another court to hear the matter. Similarly, a judge should recuse, subject to remittal, in a class action case in which class counsel includes a nominee for a seat on the judge's court.

(a-1) Similarly, a judge should recuse, subject to remittal, in a case involving an award of attorney's fees to the spouse of a judicial colleague where the judge's decision would have a notable and direct financial impact on the spouse of the fellow judge, with whom the judge regularly works and communicates. See also Compendium § 2.8(j) (advising that a judge should consider whether deciding on a fee application of a colleague's spouse would create an appearance of impropriety in light of the amount of the fee requested and the relationships between the judge and the colleague and between the judge and the colleague's spouse).

(b) When a judge or judicial nominee is named as a defendant and his credibility or personal or financial interests are at issue, all judges of the same district should recuse, unless the litigation is patently frivolous or judicial immunity is clearly applicable. Similar considerations apply to a judicial colleague's involvement in a class action case. Similar considerations apply when the spouse of a judicial colleague is a party.

(b-1) The fact that a bankruptcy judge files a claim or seeks relief from the automatic stay in a bankruptcy case does not per se require other bankruptcy or district judges in the district to recuse, but their participation might be inadvisable to the extent the claimant judge has a financial interest and seeks discretionary relief.

(c) When all judges in the district are named as defendants in a lawsuit, the general rule is that all must recuse and a visiting judge be obtained.

§ 3.6-7 Complaints Against Judge; Complaints Made by Judge

(a) Automatic recusal is not necessary when a 28 U.S.C. § 351 complaint is filed. Recusal is not necessary if a chief judge dismisses the complaint as frivolous, related to the merits, etc. If a judge cannot await a chief judge's dismissal, the judge should determine whether the complaint is frivolous, related to the merits, etc., and if so, recusal is not necessary. A judge should normally recuse if the complaint is not
dismissed. If sanctions are imposed against a judge, the judge should recuse from matters involving the complainant for a reasonable period of time during which the judge’s impartiality might reasonably be questioned.

(a-1) Judge need not recuse from a case involving a party that filed suit against the judge, where judicial immunity will be a complete defense to the action against the judge.

(b) A judge’s findings of unprofessional conduct by an attorney appearing before the judge and forwarding same to the state disciplinary counsel does not by itself mandate disqualification, provided the judge feels he or she can treat the attorney impartially. It is also unnecessary to recuse in a subsequent case because attorney informs judge of intention to take some “action” against the judge. Advisory Opinion No. 66.

§ 3.6-8 Other Reasonable Bases for Questions of Impartiality

(a) Where an appellate judge initially recused from case, but when case voted en banc a close examination revealed that the judge was not in fact disqualified, the judge need not recuse merely because of the earlier erroneous recusal. If original recusal has become public, the judge should place foregoing facts on the record. Similarly, judge need not recuse from reopened case when basis for recusal from original case no longer exists and judge explains on the record.

(b) Canon 3 rules on disqualification apply to all of judge’s judicial duties (including designating cases for oral argument or presiding over initial appearance of criminal defendant appearing without counsel). Same, for service as a mediator as part of judicial duties under Canon 4A(4).

(c) A judge need not recuse when spouse of another judge on that court appears as counsel before the inquiring judge. Same, when spouse of the clerk of court, or spouse’s law firm, appears as counsel in cases before the court.

(d) A judge’s findings of unprofessional conduct by an attorney appearing before the judge and forwarding same to the state disciplinary counsel does not by itself mandate disqualification, provided the judge feels he or she can treat the attorney impartially. It is also unnecessary to recuse in a subsequent case because the attorney informs the judge of an intention to take some “action” against the judge. Advisory Opinion No. 66.

(e) A judge on the Court of Appeals for the Armed Forces who is seeking a recommendation from the Department of Defense for reappointment should recuse under Canon 3C(1) when Department of Defense is a named party or the real party in interest, but the judge need not recuse in ordinary criminal cases or associated requests for extraordinary writs.
(f) Facts of a proceeding solely obtained by a judge in his or her judicial capacity are not personal knowledge resulting in disqualification under Canon 3C(1)(a).

(g) Because a judge’s impartiality could reasonably be questioned, a judge should recuse when attorney who appears before the judge is the godparent of the judge’s minor child and makes periodic gifts of $500 to $1000 to be held for child’s college education. See Compendium § 3.2-3(g). Same, where judge appointed personal friend as receiver and also made plans to spend vacation with friend one month before trial, due to Canon 2 and 3 concerns.

(g-1) A judge should consider the effect on his or her impartiality when a close personal friend (who is also the spouse of the judge’s law clerk) appears in a case; disqualification under Canon 3C(1) may be remitted but not under 3C(1)(a). Same for a longstanding friend who is a former co-clerk and regular social and travel companion. Same for close personal friends who work in the United States Attorney’s Office.

(g-2) A judge need not recuse from cases handled by an attorney acquaintance who participates in periodic social gatherings at the judge’s and others’ homes, where the judge does not attend when the attorney appears before the judge; but if over time the relationship becomes close, reasonable minds may question the judge’s impartiality, in which case the judge should recuse (or seek remittal). See also Compendium § 2.10(j).

(g-3) Absent exceptional circumstances that would suggest a reasonable basis to question a judge’s impartiality, a judge is not required to recuse when a former probation officer is appointed as a sentencing guidelines consultant to a party in a case before the judge.

(h) A judge’s impartiality cannot be reasonably questioned merely because an attorney opposed the judge’s Senate confirmation. Same when an attorney submitted an unsolicited, informative letter in connection with an investigation of the judge.

(i) Based on judge’s pending veteran’s injury claim, judge recused from hearing cases involving similar injury. Without judge’s knowledge, agency sua sponte expanded the injuries covered by the judge’s personal claims. As a result, after his personal claims had been expanded, but before the judge became aware of the expansion of claims, the judge heard other claims similar to the injuries his claim had been expanded to include. No appearance of impropriety or remedial action necessary in light of judge’s lack of knowledge.

(j) Receipt of honorary degree many years ago from college with which judge has no other affiliations does not require judge to recuse from case in which college is a party.
(k) A judge who served on a three-judge district panel and decided one claim in a case should recuse under Canon 3C(1) from hearing the appeal of a decision on another claim in the case, even though the claims were severed and the judge took no part in the decision that is on appeal. Similarly, a judge handling consolidated cases who severs claims involving a party in which the judge owns stock is nevertheless disqualified from the remaining cases when the party has a contractual interest in any recovery in those cases. See also Compendium § 3.3-3(f).

(l) Judge’s appointment of attorney to represent party in court proceeding does not present an appearance of partiality towards the attorney necessitating judge’s recusal.

(m) A part-time magistrate judge should not review the decisions or actions of state court judges before whom the magistrate judge appears as an attorney.

(n) Whether a judge should try a case following participation in settlement discussions depends on factors such as whether the case will be tried by judge or jury, whether the parties consent to trial by the judge, and the nature and extent of the judge’s involvement in the discussions. See Advisory Opinion No. 95.

(o) A judge should recuse, subject to remittal, for a reasonable time following contributions made by an attorney or law firm that established a scholarship in the judge’s name.

(p) A judge’s impartiality cannot reasonably be questioned in a case involving a government entity because the judge invested in a company whose subsidiary is involved in unrelated litigation with the government entity.

(q) A judge who received political contributions in a state election five years earlier need not recuse in cases where contributors appear. See Compendium § 5.3(b). Nor is recusal required because a party or attorney before the judge contributed to or received funding from a PAC run by the judge’s spouse’s employer.

(r) A judge’s impartiality cannot reasonably be questioned because 20 years previously the judge had a nodding acquaintance with a party due to their residence in the same apartment building.

(s) Recusal not required in antitrust case involving several hospitals as parties, where judge had once complained about an unsatisfying experience with a physician who was associated with one of the defendant hospitals, and where there was some possibility that the physician would be called as a witness on an unrelated issue.

(t) Absent unique circumstances that would give rise to a reasonable public perception that a judge is incapable of deciding a particular case impartially, a recently-appointed judge is not required to recuse in a case that has electoral or partisan implications.
(u) When a judge’s former law clerk is employed by a government agency and has no personal knowledge or involvement in a case assigned to the judge, the situation falls outside the ambit of Canon 3C(1), and disqualification is unnecessary.

§ 3.7 Belated Discovery or Appearance of a Disqualifying Interest

- Advisory Opinion No. 90 (judges’ duty to inquire when relatives may be members of class action).
- Advisory Opinion No. 71 (disqualification after oral argument).

(a) Upon learning of a disqualifying interest, a judge should immediately (1) recuse, and (2) make full disclosure to parties through counsel. But see Canon 3C(4) (permitting divestiture of the disqualifying interest in lieu of recusal in certain circumstances).

(a-1) No violation of Canon 3C(1)(c) occurs where judge fails to recuse because judge was misinformed about investments held by family limited partnership; however, upon learning of possibly disqualifying investments, judge should review all investments and make appropriate disclosure on the record.

(b) Upon learning of a spouse’s disqualifying financial interest, the judge must recuse but may, particularly when requested to do so by all parties, grant a certification of finality under Fed. R. Civ. P. 54(b), and enter other similar orders clarifying earlier rulings.

(c) When an appellate judge learns of a disqualifying interest after argument but before decision, other members of the panel need not recuse; written work prepared before learning of the disqualifying interest may be shared with the other panel members, but there should be no further participation by the recused judge. But see Canon 3C(4) (permitting divestiture of the disqualifying interest in lieu of recusal in certain circumstances).

(d) Under Canon 3C(4), judge need not recuse from matters to which substantial judicial time has been devoted where an otherwise disqualifying financial interest (which would not be substantially affected by the outcome of any such matter) “appears” through the judge’s inheritance of stock, because the stock was divested within one week of inheritance. Judge also need not recuse from matters with respect to which no judicial time had been devoted, since judge could simply recuse and then be reassigned matters after divestment; such a futile act is not required. See Commentary to Canon 3C(4)

(d-1) The Canon 3C(4) exemption from disqualification does not apply when the judge’s disqualifying interest could be “substantially affected” by the matter under advisement. In deciding whether an interest is “substantially affected,” the issue is the effect on the interest.
(e) A judge inadvertently heard a case involving a defendant in which the judge owned stock, and plaintiff has moved to vacate judgment. Even if the judge no longer owns the stock, reasonable persons may question whether the judge can rule impartially on a motion seeking relief based on the judge’s own admittedly improper actions; recusal is recommended.

(f) Judge who suspects he or she had a financial interest in a party to a closed case ought to investigate and, if the judge did have a financial interest, disclose this to the parties. If the parties attempt to reopen the case by asserting that the judge acted improperly in handling the case while holding the financial interest, the judge should recuse.

(g) If a judge learns that he or she acted in a case in which the spouse had a financial interest, the judge should disclose to the parties that the judge unknowingly acted in a matter when the judge was disqualified. If a party seeks to reopen the case because of this disqualification, another judge should decide the matter.

§ 3.8 Remedying Disqualifications

- Advisory Opinion No. 71 (disqualification after oral argument).
- Advisory Opinion No. 70 (judge should recuse when former judicial colleague appears as counsel for reasonable period after former judge left bench).

§ 3.8-1 Disposing of a Disqualifying Interest

(a) See Advisory Opinion No. 69, as modified by the directives of 28 U.S.C. § 455(f), for remedying a disqualification by disposing of the subject interest.

(b) Judge who recused from a matter because close relative’s law firm was involved is no longer disqualified when the law firm’s involvement ends; matter may be reassigned to judge when the disqualifying interest is removed, so long as this does not affect appearance of impartiality.

(c) Judge who belatedly discovered ownership of stock in a party and then sold the stock is not disqualified from handling the ongoing case, so long as the interest divested was not one that could be substantially affected by the outcome of the case, and so long as other circumstances do not reasonably call into question the judge’s impartiality; judge should disclose relevant facts on the record. In assessing whether an interest might be substantially affected, the issue is not the size of the interest but the effect on it, whatever its size. See Compendium § 3.1-7[1](c), (e).

(d) A bankruptcy judge who owns bonds issued by a frequent claimant need not dispose of the bonds; recusal would be required only if the bonds’ value could be substantially affected, which, based on the facts involved in the inquiry, was unlikely to occur.
§ 3.8-2 Obtaining Waivers of Disqualification for Appearance of Impropriety

§ 3.8-2[1] Procedure for Remittal Pursuant to Canon 3D

(a) Where a district judge seeks remittal, it is appropriate for the Clerk of Court to send the request to counsel in a memo detailing the specifics of the situation and asking that each party respond to the judge’s request.

(b) After a judge has recused, if it becomes apparent that the recusal was unnecessary and should not have occurred, it is permissible for the judge to reverse the decision and continue with the case, but only with full explanation to the parties.

(b-1) Once a judge has determined that there is a reasonable appearance of impropriety and invoked the Canon 3D waiver, the judge cannot withdraw the waiver; if any party fails to consent, the judge must recuse.

(c) The decision as to whether there is or is not a reasonable appearance of impropriety is a decision to be made by the judge; counsel or parties should not be consulted on that issue. If the judge determines that there is a reasonable appearance of impropriety, the judge must either recuse, or invoke the Canon 3D procedure in full.

(d) A judge who has decided to recuse because of a spouse’s financial or other interest giving rise to an appearance of impropriety need not thereafter supply any additional information concerning the spouse’s investments.

(e) Remittal of a disqualification under Canon 3D is unworkable if the disqualifying circumstance would be present in substantial numbers of existing or future incoming cases on the judge’s docket.

§ 3.9 Adjudicative Responsibilities

§ 3.9-1 Avoid Comment on Pending Matters

➤ Advisory Opinion No. 55 (judicial writings and publications).

(a) A judge should abstain from public comment about a pending or impending proceeding in any court.

(b) A judge may cooperate with a commercial film company in making a film based upon the judge’s life, and may receive reasonable compensation for the time spent in that effort (but not a share in the proceeds from distribution of the film), provided (1) the company is not a litigant or likely to become a litigant before the judge, (2) discussion of specific past or pending cases is limited to general terms that do not identify litigants, and (3) the judge reserves the right to review and monitor promotional activities, to ensure there is no exploitation of the judicial office.
(c) Following the trial of a criminal case that is on appeal, the trial judge should not meet privately with the Justice Department Office of Professional Responsibility to discuss allegations of prosecutorial misconduct where the same issues may be raised in the appeal.

(c-1) A judge should not consent to an *ex parte* interview with the Office of Professional Responsibility absent an agreement by the other parties with an interest in the matter, and if a meeting occurs the judge should only provide factual information.

(d) Following published reports criticizing a judge's actions in a case and indicating some parties may move to overturn the actions, a judge should not comment publicly out of court about the merits of the impending motions. Canon 3A(6) does not bar comment in final, completed cases, so long as judges refrain from revealing deliberative processes and do not place in question their impartiality in similar future cases.

(d-1) Similarly, a sitting judge should refrain from discussing a pending case during Senate confirmation hearing to fill a vacancy on another court, but may respond to allegations of insensitivity to particular groups or parties related to the case.

(e) A court policy limiting press releases to announcing the caption, case number, and availability of an order or opinion is consistent with and should prevent inadvertent violation of Canon 3A(6) (restricting public comment on the merits of cases).

(f) Judges may respond to a congressional inquiry about pending cases by providing information about matters of public record and court procedure, but should avoid comment on the merits or discussion of the judges’ deliberative process.

(g) District judge’s proposal to send letter to court of appeals (with copy to the parties) regarding possible misstatement of facts by counsel at oral argument raises Canon 2 concerns about the judge’s impartiality.

(h) A judge should not agree to speak at a conference about the effect of a decision in a pending case and how other judges might assist in the implementation of the decision in their courts. Any such comments should be made on the record in open court while the case is pending.

(i) Neither a judge nor the court of which the judge is a member should file an *amicus curiae* brief in a matter pending before a state supreme court where the judge is closely connected to the appeal but is not a litigant. The prohibition against public comment on pending litigation under Canon 3A(6) applies with equal force to a collective judicial statement by the judge’s court in the form of an amicus curiae brief.
(i-1) An association of judges should not file an *amicus curiae* brief in an appeal where no members of the association are parties to the appeal.

(j) A judge may write a law review article discussing pending or impending matters under Canon 3A(6)'s exemption for "scholarly presentations made for purposes of legal education," so long as the discussion is limited to stating the procedural history and does not opine on the merits.

§ 3.9-1[1] Avoid Comment on Pending Matters [Judicial Employees]

(a) A law clerk must receive authorization from his or her judge before providing information to legal publisher regarding pending matters or matters already decided.

(b) A law clerk may establish an online discussion forum on legal issues, for compensation and outside of working hours, but should not be identified as a law clerk and should not provide information about cases pending or likely to arise before the court.

§ 3.9-2 Ex Parte Communications

- Advisory Opinion No. 95 (judges acting in a settlement capacity).

(a) Where judge’s non-party friend initiated ex parte communications, judge properly informed friend of impropriety of discussing matter, terminated conversations, and disregarded statements made. If the communication had any bearing on the substance of the matter before the judge, the judge should promptly notify the parties of the subject matter of the communication and allow the parties an opportunity to respond, if requested. Canon 3A(4)(d). Judge need not recuse unless judge believes impartiality might reasonably be questioned.

(b) Unless authorized by law, a judge’s response to a request from the Department of Justice for juror contact information (without disclosing the communication with DOJ to the parties) constitutes an ex parte communication under Canon 3A(4). Whether an ex parte communication is “authorized by law” is a legal issue for the judge to decide.

(c) Court practice of making telephone inquiries seeking trial status information, when addressed solely to the government’s counsel, does not violate Code prohibition on ex parte contacts but does create an appearance of impropriety under Canon 2.

(d) Unless authorized by law, a judge should not meet with the Department of Justice to discuss the conduct of prosecutors who handled a case before the judge.

(e) Where a judge received a letter containing an apparent confession to a murder from a criminal defendant in a past unrelated case the judge presided over, the judge should treat the letter as an ex parte communication, file the letter under seal, and
direct the clerk of court to send a copy to the United States Attorney and defense counsel.

§ 3.10 Administrative Responsibilities

§ 3.10-1 Maintaining Professional Standards

(a) In accordance with Canon 3B provision requiring faithfulness to the highest professional standards, assistant federal public defender should disclose to prospective clients fact that defender is subject of nonfrivolous inquiry to determine whether federal law was violated in unrelated proceeding.

§ 3.10-2 Appointments

- Advisory Opinion No. 76 (state employee should not be appointed as part-time magistrate judge).
- Advisory Opinion No. 64 (hiring a judge’s child as law clerk).
- Advisory Opinion No. 61 (judge should not appoint law partner of judge’s relative as special master).
- Advisory Opinion No. 60 (appointment of spouse of assistant U.S. attorney as part-time magistrate judge).
- Advisory Opinion No. 115 (appointment, hiring, and employment considerations: nepotism and favoritism)
- Compendium § 2.8.

(a) A judge may hire as a part-time law clerk a person who has taken a leave of absence from previous work on a contract, hourly paid basis serving as a state hearing officer for unemployment benefits

(b) Canon 3B(4)’s injunction to avoid favoritism in appointments is not limited to appointment of persons who are relatives by affinity or consanguinity but includes other similarly close relationships. Similarly, even when the nepotism canon is not applicable, in making appointments a judge should avoid the appearance that someone may gain an advantage in the appointment or employment process, for reasons other than merit, because of his or her broader connections to a judge or judicial employee.

(c) Several statutes address the issue of nepotism and place restrictions on the appointment powers of judges and court officers. See Guide to Judiciary Policy, Volume 2C, Chapter 9.

(d) No ethical impropriety in a judge’s hiring as a law clerk the child of a legislative branch official responsible for judicial legislation, where the child is an excellent candidate and appointment would be based on merit and not favoritism. If the judge has legislative responsibilities for the court, the judge should take appropriate steps to avoid conflicts of interest.
(e) Court should not consider appointing as magistrate judge the child of an active senior judge on the court.

(e-1) Although appointment of the spouse of the clerk of court as a magistrate judge in the same court does not violate the nepotism canon (where neither clerk nor spouse are related to a judge on the court), each judge involved in the appointment should evaluate whether the judge’s relationship to the clerk of court would give rise to the appearance of favoritism if the spouse were selected. See Advisory Opinion No. 64.

(f) A judge should not appoint an attorney paid by the Department of Justice as an unpaid intern.

(g) A judge should not appoint a volunteer law clerk who is receiving any financial benefits from a law firm, including health benefits through the firm’s benefit plan, during the term of the clerkship. This guidance would not prohibit the appointment of a volunteer clerk who receives financial benefits from the firm before or after the term of the appointment, assuming the specific arrangements are otherwise appropriate under Canon 4 of the Code of Conduct for Judicial Employees and Canon 2 of the Code of Conduct for United States Judges. See Advisory Opinion No. 83.

§ 3.10-3 Diligently Discharging Administrative Responsibilities

(a) Where Congress requires a court to fund a pro bono program out of the court’s operating budget, leading to potential administrative conflict between the court’s and litigants’ needs, judges’ exercise of statutory responsibilities in deciding to fund (or not to fund) the program does not violate Canon 3B.

(b) It would not violate the Code of Conduct for judges responsible for court administration to arrange for independent court-related organizations (i.e., historical societies, public education groups) to use court space in accordance with applicable legal requirements, but judges or judicial employees serving in such organizations should refrain from participating in related court administrative decisions. See Advisory Opinion No. 104.

(c) A court should not donate attorney admissions funds to a for-profit educational entity partly owned by judges of the court, even if those judges do not participate in the decision.

(d) It is not improper for judges voluntarily to share the cost of lunch when meeting with members of Congress in furtherance of the administration of justice.

§ 3.10-4 Unprofessional Conduct

(a) A judge who has reliable evidence that a colleague engaged in unprofessional conduct should “take appropriate action” under Canon 3B(3), which may
be done by discussing it with the colleague, reporting it to the circuit chief judge or circuit judicial council, filing a written complaint with the clerk of the court of appeals, or making a confidential referral to an assistance program when the judge believes that the misconduct is caused by drugs, alcohol, or a medical condition. See Commentary to Canon 3B(3).

(b) Attorney’s implicit offer to dismiss judge’s relative from case so judge could continue presiding may constitute unprofessional conduct that judge should consider reporting to appropriate disciplinary authorities.

(c) The Committee generally does not advise one judge as to the propriety of another judge’s conduct or assess the propriety of prior activities.

(c-1) Similarly, the Committee ordinarily will not advise judges about the propriety of prior activities by clerks’ office employees, but will provide advice to chief judges with supervisory authority.

(d) A judge’s intentional public disclosure of confidential, internal court communications may violate several provisions of the Code of Conduct, including Canon 4D(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.”).

**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.”


COMPENDIUM OF SELECTED OPINIONS CONCERNING CANON 4

§ 4. Extrajudicial Activities

§ 4.1 Law-related Activities

- Advisory Opinion No. 93 (extrajudicial activities).
- Advisory Opinion No. 7 (judge may participate as faculty member of national college of state trial judges).

§ 4.1-1 Speaking, Writing, and Teaching

- Advisory Opinion No. 55 (Judicial writings and publications).
- Advisory Opinion No. 87 (Participation in continuing legal education programs).
- Advisory Opinion No. 93 (extrajudicial activities).
- Advisory Opinion No. 105 (Participation in private law-related training programs).
- Advisory Opinion No. 108 (Participation in government-sponsored training of government attorneys).
- Advisory Opinion No. 116 (participation in educational seminars sponsored by research institutes, think tanks, associations, public interest groups, or other organizations engaged in public policy debates).


(a) Compensation received by judges for extrajudicial activities must be reasonable in amount, and not in excess of what would be paid to other nonjudge professionals for similar services.

(a-1) Judges may be paid at a higher rate than other adjunct professors but a lower rate than full-time and emeritus professors.

(b) Judges may teach in law schools. However, no lawyer who serves on the body setting the judge’s teaching salary should appear before the judge. Also, the judge should not participate in any case in which the school or its employees are parties.

(b-1) While a judge may teach in a law school, the Code does not suggest that a judge may also be considered an “employee” of the school.

(c) Judges may teach in bar-review and CLE courses, including teaching via videotape or by discussing legal subjects on radio or television.

(d) Judges may be compensated for preparing bar examination questions.

(f) A judge may not accept an endowed adjunct professorship where the professorship is endowed by and named after a local law firm or lawyer who practices before the judge’s court.
(g) A judge may accept compensation for teaching where the subject matter only incidentally relates to practice before the judge’s court. See Advisory Opinion No. 87.

(h) A judge may participate in an educational videotape that is an activity to improve the legal system.

(i) A judge should not participate in a CLE program concerning practice in the judge’s court that is sponsored by a law firm that appears in the judge’s court, due to concerns that the firm is in a special position to influence the court.

(j) A judge should not participate in a CLE or other legal training program that is aggressively marketed to focus on federal judge participants, and where the sponsor implies that attendees will enjoy special access to “network” with the judges, judicial participation is expressed in non-neutral terms, and the programs are primarily attended by attorneys with a particular practice orientation (e.g., the defense or plaintiffs’ bar). See Advisory Opinion No. 87.

(k) Although a judge may teach a course in appellate advocacy, a judge should not participate in a legal clinic that is directly involved in advocacy on behalf of particular clients whose cases are before the federal courts, due to concerns under Canon 4A(5) (practice of law) and Canon 2 (appearance of impropriety).

§ 4.1-1[2] Teaching and Lecturing (Other Than Law School, Bar and CLE)

- Advisory Opinion No. 105 (participation in private law-related training programs).
- Advisory Opinion No. 108 (participation in government-sponsored training of government attorneys).
- Advisory Opinion No. 116 (participation in educational seminars sponsored by research institutes, think tanks, associations, public interest groups, or other organizations engaged in public policy debates).

(a) A judge should not participate in a training course designed to teach law enforcement officers how to be more effective witnesses in federal court. Similarly, a bankruptcy judge should not assist in training U.S. trustee staff, or other small, specialized groups of advocates, in the judge’s own district, but may permit use of courtroom facilities by such groups (assuming no legal or practical impediments). Similarly, a judge should not participate in a conference organized by the agency appearing in all the court’s cases and designed to improve the agency’s operations and practices in that court. See Advisory Opinion No. 108.

(b) Writing or lecturing on how to practice before a judge’s court may be appropriate (notwithstanding the inevitable lending of prestige to the program) when the program is sponsored by a bar association or other nonprofit devoted to improvement of the legal system, but it is inappropriate when a for-profit entity stands to profit. Canon 2B. See Advisory Opinion Nos. 87 and 105.
(b-1) Although illustrations from a judge’s own experience are appropriate during a judge’s writing or lecturing on general substantive or procedural issues, it is inappropriate for a judge to sell his or her expertise on how to practice before the judge’s court.

(b-2) To avoid lending the prestige of judicial office to a commercial endeavor, a judge should not speak at a conference for litigators run by a for-profit consulting firm whose business includes providing expert testimony in court.

(c) A judge may be a panelist or participant at a seminar and receive reimbursement of expenses. It is also permissible for a judge to attend social events sponsored by businesses or law firms in conjunction with the seminar. No compensation may be accepted unless the activity qualifies as teaching under the Ethics Reform Act and outside employment regulations.

(c-1) A judge may lecture at a seminar organized by a nonprofit foundation with corporate sponsors and may accept reimbursement of expenses but not compensation. See Compendium § 34.1-2(k). Same, for lecturing at a continuing education program for physicians. Same, for participation in an international conference geared towards improvement of a foreign court system.

(d) A judge should not participate in training lawyers at a particular law firm. Same for a law clerk. Nor should a judge participate in an educational program for a company’s in-house lawyers.

(d-1) A judge may participate in an advocacy training program for young women attorneys attended by prosecutors and defense counsel.

(d-2) A judge may speak on appellate advocacy at national conference for state attorneys general. Same, for seminar sponsored by a national organization primarily composed of members of the defense bar.

(e) A judge should not lead a panel discussion focusing on issues that could arise in the judge’s cases at a conference sponsored by a nonprofit special interest advocacy group that litigates frequently in the judge’s court.

(f) A judge may participate in a training program for prosecutors at the Department of Justice’s National Advocacy Center, provided that the judge makes reasonable efforts to provide similar training to the opposing constituency (e.g., federal public defenders, CJA panel attorneys, and other defense attorneys).

(g) A judge may appear on a panel at a legal conference sponsored by a for-profit company and may accept reimbursement of expenses; but the judge should ensure promotional materials used at the conference do not overemphasize the judge’s participation or imply the judge’s endorsement of the company’s commercial services.
(h) A judge’s uncompensated speech on a legal topic unrelated to the operations of the judge’s court does not improperly lend the prestige of judicial office to the private interests of the sponsoring for-profit entity, but the judge should monitor promotional activities to ensure that no improper exploitation of the judicial office occurs.

(i) Due to Canon 2 concerns, a judge should not speak at a program on discovery hosted by a for-profit company offering discovery services, where the company plans to market its services at the program and advertise the program to current and future clients.

(j) A judge should not speak at a training seminar organized by a law firm for business entities that represent only one side of litigation before the judge and where the topics would exploit the judicial office to advance private interests.

(k) To avoid lending the prestige of judicial office to a commercial endeavor, a judge should not speak at a conference for litigators run by a for-profit consulting firm whose business includes providing expert testimony in court.

(l) Judge may participate as panelist in public forum addressing law-related issues, sponsored by nonprofit organization that charges admission and solicits contributions to defray costs of forum, where admission charge and contributions reflect only cost of producing event and judge does not participate in solicitation of contributions.

(m) A judge may speak on legal ethics at a program sponsored by a for-profit organization, where the sponsors do not exploit the judicial office through improper promotion, the program does not provide special access to one constituency, and the judges will not discuss the ins-and-outs of practice in the judge’s court.

(n) While a judge’s general remarks on constitutional and statutory interpretation must comport with Canons 2 and 3, if those standards are met, the judge’s expression of those views in a speaking engagement would not reasonably be understood as an endorsement of the sponsoring organization simply because those general remarks coincide with some positions promoted by the organization. See also Advisory Opinion No. 116.


(a) A judge may write books and permit law clerks to do so provided the prestige of the office is neither exploited nor used to advance the interests of the publisher. A judge should retain control over the advertising and promotion of a judge’s writings to avoid exploitation of the judge’s office. Same for circuit librarian, who should take care to prevent exploitation of the official position for private gain. See Advisory Opinion No. 55.
(b) A bankruptcy judge may write an article concerning general substantive law and relevant statutes, in co-authorship with an attorney who practices before the judge’s court; depending on the personal or financial relationship with the attorney co-author, the judge should consider recusal from cases handled by that attorney.

(c) To avoid exploitation of office, a judge who authors a legal book may include a factual statement about the judge’s length of service and court but should not use this information in the book title or in marketing.

(d) A judge should not write an article discussing a high-profile case recently completed and still on appeal.

(e) A judge may write an introductory preface to a book written by another or contribute to a trial manual, provided it is a genuine contribution to the work, and not a “blurb” or promotional effort exploiting the judge’s name and position.

(f) A bankruptcy judge may serve as editor of a law journal published by the National Conference of Bankruptcy Judges or of a bankruptcy newsletter.

(g) A judge should not serve as editor of, or advisor to, a Department of Justice publication.

(h) Although illustrations from a judge’s own experience are appropriate during a judge’s writing or lecturing on general substantive or procedural issues, it is inappropriate for a bankruptcy judge to sell his or her expertise on how to practice before the judge’s court. Canon 4D(1). Although writing/lecturing on how to practice before a judge’s court is appropriate (notwithstanding the inevitable lending of prestige to the program) when the program is sponsored by a bar association or other nonprofit devoted to improvement of the legal system, it is inappropriate when a for-profit entity stands to profit. Canon 2B. See Advisory Opinion No. 87; Compendium § 2.12(a).

(i) A judge may write a “foreword” for a new book, but any use of the judge’s name or office in the contemplated television advertisements would have a tendency to use the prestige of office. See Advisory Opinion No. 55.

(j) A judge may write a review of a book on a legal topic, but should not authorize use of the review for promotional purposes. See Advisory Opinion No. 55.

(k) As part of a grant process, a judge may evaluate and provide a report about a law school program. See Canon 4A(3).

(l) Although there is no per se prohibition against writing letters to the editor, judges should avoid expressing personal opinions on the merits of cases or on contentious public issues and should avoid actions that could raise reasonable doubts about their impartiality.
(m) A judge may discuss the judge’s experience as a former prosecutor in the investigation and trial of a case with the author of a proposed book, but should take care to avoid Canon 2 concerns (undermining public confidence in the courts and lending prestige of office) and should avoid public comment on merits of pending or impending action under Canon 3A(6), even where there has been a final disposition in the case.

(n) Judge’s proposal to write a work of fiction based on a well-known criminal case the judge presided over would raise insurmountable concerns under Canons 2, 3, and 4. Similarly, a judge should not participate in an interview for a documentary film concerning a prior case.

(o) A judge may participate as co-author in an academic research project on juror bias, using former jurors as subjects of the study, provided that concerns related to Canons 2A (diminishing public confidence in the courts), 2B (lending prestige of office), and 4C (involvement in fundraising) can be avoided.

(p) A judge should not participate in a television interview, or documentary film, about a case the judge handled either as a judge or during prior employment, where it is clear that the production is commercial in nature, rather than educational, and the judge’s participation would primarily be used to advance the private interests of the filmmakers or potential advertisers. Moreover, public confidence in the integrity and impartiality of the judiciary could be put at risk if a judge’s public comments or contributions to a television program or film are likely to generate public controversy or draw the judge into providing a further defense or explanation of the judge’s initial comments.

(q) A judge’s proposal to use internal court documents in a judge’s extrajudicial publication raises concerns under the Code about preserving the confidentiality of judicial decision-making in the court as a whole. The integrity of the judiciary would be undermined if confidential work and communications between staff attorneys and judges are unilaterally disclosed to the public. Such use of internal court materials would also be inappropriate under Canon 4D(5).

(r) A newly-appointed judge should take reasonable steps to ensure that blog or social media posts that pre-date judicial appointment are not viewed as current assertions of the judge’s views on political issues. However, due to the judge’s and the judiciary’s interests in maintaining the historical record, the judge is not required to delete or remove such posts. See also Advisory Opinion No. 112 (advising that, if political endorsements or other statements on social media appear to be current, a judicial employee should clarify that they predate judicial employment, including, for example, by posting a statement that the employee has taken a position that precludes making further public political comments or endorsements and that such postings will no longer be updated concerning those issues).

(a) Subject to consulting with the appointing judge, a law clerk may teach at a law school or college, may receive compensation and reimbursement of expenses, and may accept legal research services provided to all teachers. A law clerk should not use as teaching materials cases the judge or the law clerk worked on during the clerkship; the law clerk may use other cases from the same court but should avoid disclosing confidential information.

(b) A bankruptcy clerk should not accept an invitation and expenses to speak on bankruptcy issues at a seminar for outside counsel sponsored by a for-profit company that is a litigant in the clerk’s court.

(c) A law clerk may write an article on the law with the judge’s permission, provided the prestige of the office is neither exploited nor used to advance the interests of the publisher.

(d) A circuit librarian may write a book on legal research, but should take care to prevent exploitation of the official position for private gain.

(e) A judicial employee proposing to write a chapter for a bar association publication should consult in advance with his or her appointing authority.

(f) A law clerk may write a book of fiction on the federal judiciary based on public records of the court as long as the law clerk does not use confidential information received in the course of the law clerk’s duties in the book. See Canons 3D and 4D, Code of Conduct for Judicial Employees.

(g) A law clerk may accept a fellowship to study foreign affairs offered by a nonpartisan group that does not take legal positions or litigate in federal court.

(h) A law clerk may establish an online discussion forum on legal issues, for compensation and outside of working hours, but should not be identified as a law clerk and should not provide information about cases pending or likely to arise before the court. Same for online CLE course, but the law clerk should remain anonymous and avoid interactive communication with attorney/students who appear in the clerk’s court.

(i) A new law clerk may accept, either before or during the clerkship, a monetary grant for the publication of a law journal article where the article was completed and selected for publication prior to the start of the clerkship.

(j) Law clerks should consult their court’s social media policies before engaging in online activity. The Committee recommends that law clerks not identify the judge for whom they work when engaging in online activity. Any online postings should avoid personal opinion about political issues or matters likely to come before the courts.
§ 4.1-2 Consultation With or Hearings Before Executive or Legislative Bodies or Officials

(a) Judge with special expertise may testify in public hearings before Congress in favor of a constitutional amendment if the substance and manner of the testimony is within the contours of the judge’s special expertise and if the circumstances rule out the appearance of endorsing or opposing any candidate or political organization. The judge should not otherwise speak publicly in support of (or against) the proposed amendment. Similarly, a judge may testify at a Congressional hearing regarding proposed legislation when testimony draws on judicial expertise and would be limited to the judge’s views on how existing law may be improved.

(b) Judge may employ a professional representative to consult privately with Congress about legislation affecting the judge’s court and benefits, to the same extent the judge could permissibly do so directly. See Advisory Opinion No. 50.

(c) Judge may write to the President and Congress about government funding for a law-related organization, but should limit communication to areas where the judge’s judicial experience provides special expertise and should avoid stating a personal position or opinions based on prior nonjudicial experience; judge should also avoid any appearance of endorsing or opposing any candidate or political organization identified with the issue.

(d) A judge may consult with a member of Congress concerning a matter involving the judge’s personal interest, taking care to avoid lending the prestige of office. See Advisory Opinion No. 50.

(e) Judges may consult with, or participate in facilitated discussions with, legislative branch officials on matters concerning the administration of justice.

(f) Consulting under Canon 4A(2) is generally limited to law-related activities. It does not involve private conversations with public officials.

§ 4.1-3 Nonprofit Organizations Devoted to the Law, Legal System, or Administration of Justice

§ 4.1-3[1] Participation in Bar Association Activities

➢ Compendium § 1.3.

(a) Federal judges are not required to be members of any bar association; such membership is permitted, even encouraged; and bar association membership and participation in bar association activities do not constitute the practice of law.

(b) A judge may serve on a committee of the state bar association. Same for service on a commission to evaluate the structure of the state bar.
(c) A judge may chair a section of the American Bar Association, provided this does not repeatedly involve the judge in issues that are likely to come before the court.

(c-1) A judge should not chair an American Bar Association section responsible for developing positions on controversial political and social matters that are frequently the subject of federal court litigation, where the judge could not advocate such policies individually and cannot as a practical matter be disassociated from the section’s positions.

(c-2) A judge may serve in the ABA House of Delegates, so long as the judge abstains from debating and voting on matters in which judges cannot participate and a record of abstentions is available to interested persons upon reasonable inquiry.

(d) A judge should not engage in efforts to recruit lawyers to join the American Bar Association or any of its sections.

(e) A judge may serve as secretary of a bar foundation, but may not personally engage in fundraising.

(f) A judge may serve as an officer of a state bar association, but may not campaign for election to that office. See Advisory Opinion No. 34.

(f-1) A judge should not accept office in a bar association if the selection is likely to be contested, as opposed to noncontested or appointed. In situation where opposition arose after judge indicated a willingness to accept, but where the judge’s withdrawal was still feasible, Committee concurred in judge’s judgment to withdraw.

(f-2) A judge should not serve as an officer of a mandatory state bar, due to concerns of dual service to a state government, potential entanglement in litigation and other matters of public controversy, and potential interference with the performance of judicial duties.

(g) Federal public defender may serve on a state bar advisory committee and conduct investigations of federal bar disciplinary matters without compromising independence of office, interfering with official duties or adversely reflecting on his or her role as an advocate.

(h) A judge should not serve as a bar association’s audit and compliance officer responsible for investigating allegations of fraud and other law violations. Similarly, a judge should not serve as an advisory member of a state bar ethics committee that considers legal ethics opinions and proposed amendments to the state rules of professional conduct. The same concerns do not apply, however, to a judge’s service on a bar association committee responsible for drafting non-binding model rules of conduct for judges and attorneys.
(i) A judge may urge other judges (but not lawyers) to join the American Bar Association or a section thereof.

(j) A judge should not publicly support a candidate for bar association office.

(k) A judge who is a member of the American Bar Association is not regarded as personally supporting positions taken by the Association without the judge’s involvement (here, abortion issues), need not resign on that account, and need not recuse on that account. Advisory Opinion No. 85.

(l) A judge should not continue membership in an organization that champions the cause of civil defense lawyers as this could raise concerns about the judge’s capacity to decide issues impartially. Same for organization of former prosecutors. Same for organization that requires members’ law practice to be “congruent with or at least not opposed to” the interests of institutional mortgage lenders and their attorneys.

(m) A judge’s membership in a legal organization whose members address issues related to all aspects of the construction industry does not raise reasonable doubt about the judge’s capacity to decide cases impartially. Same, with respect to an open-membership legal and educational organization that does not engage in lobbying or federal litigation.

(n) A judge may accept membership as a judicial fellow in a selective honorary society for attorneys, provided the judge can avoid appearance of impropriety that may arise from the small and selective nature of the organization.

(o) A judge may serve on a bar association committee that makes occasional grants to legal services organizations, but should consider recusal if the grantee appears before the judge soon thereafter; the judge should abstain from grants to entities that the judge is not permitted to support individually (e.g., political candidates and organizations).

(p) A judge may serve on a bar committee that recommends recipients of awards for public service and jurisprudence.

(q) A judge should not allow his name to be placed on the ballot in a contested election to a regional board of trustees of an organization dedicated to the improvement of the law and the administration of justice whose membership includes judges, lawyers, law professors and law students.

(r) A judge should not serve as a member or chairman of a bar committee to review, and recommend amendments to, a state constitution. Similarly, a judge should not serve on a state bar committee that reviews and prepares proposals for changes to the state court rules of procedure.
(s) A judge may serve on a committee established to address access to the courts and to recommend ways to expand pro bono activities of the private bar, provided that the committee’s activities are sufficiently removed from litigation to make membership in it permissible under the Code.

(t) A judge should not serve on a bar association task force on human trafficking issues that is developing guidance for employers, law enforcement officials, and prosecutors. Similarly, a judge should not serve on a bar committee that serves as a resource for attorneys who provide legal assistance to a particular constituency or group.

§ 4.1-3[2] Service on Boards and Committees — Permissible Activities

➤ Compendium §§ 1.3.

(a) A judge may serve on the advisory board of a nonprofit organization for the advancement of liberty and equality through law.

(b) A judge may serve on the advisory council of the National Center for State Courts.

(c) A judge may serve on the board of directors and otherwise participate in organizations devoted to the observance of the Bicentennial of the Constitution.

(d) A judge may serve on the board of an organization that supports the merit selection of state judges, and to contribute funds to it.

(e) A judge may serve on the board of directors of the “Women Judges’ Fund for Justice,” a nonprofit organization essentially aimed to reduce gender bias in the state and federal judiciary.

(f) Service as a member of the Advisory Board of a nonprofit dispute settlement organization created by the American Arbitration Association, is permissible so long as the judge does not serve as an arbitrator or mediator, raise funds or recommend the employment of particular arbitrators.

(g) Judge may serve on short-term special advisory board in Department of Defense whose purpose is to consider procedures to insure the accuracy, efficiency and integrity of the investigative function of the Department and report recommendations to the Secretary of Defense where the investigative functions in question ordinarily are directed to matters governed by the Uniform Code of Military Justice.

(h) A judge may serve on the board of an organization dedicated to the improvement of the law and the administration of justice; and if the Board takes a position on occasion with respect to which the judge would prefer not to be identified, the judge could abstain. Further, if the organization is appointed as a facilitator in a
federal case, the judge should consider discontinuing board service if such service could raise reasonable questions about the judge's impartiality in similar cases.

(h-1)  A judge may serve as president of a nonprofit bankruptcy organization, but should comply with Canon 4C restrictions on fundraising and fund management. Similarly, a law clerk may volunteer for a nonprofit bankruptcy organization by writing case summaries and articles for its journal and serving on a committee.

(i)  A judge may serve on the National Conference of Commissioners on Uniform State Laws and as a member of the American Law Institute without violating Canons 4A(2), 4A(3), and 4F provided that the judge does not personally engage in activity designed to promote particular legislation or a rule of law before any official governmental agency.

(j)  A judge may serve on a private, bipartisan commission examining continuity of government operations after disasters, but should refrain from policy discussions pertaining to the executive and legislative branches, controversial matters that might jeopardize impartiality, and advocating proposals to the executive and legislative branches.

(k)  A judge may serve on a board to advise a law school on matters relating to the judiciary, in connection with the law school's proposed bid to an agency of the federal government for the contract to develop a program to improve the legal system in the former Soviet Union, as long as the judge's name and position are listed in the same manner as all other participants, so that there is no impermissible lending of the prestige of office.

(l)  A judge may serve on a law school's Board of Visitors (an advisory group to assist the law school dean), without restriction based on whether the law school is a private or public institution. A judge may also serve on the Board of Trustees of a law school.

(m)  A judge may serve on an advisory board for a law school's judicial education program, where the board's purpose is to provide advice on suitable programs and to encourage attendance by judicial colleagues. Similarly, a judge may serve on the advisory board of a law school journal.

(n)  A judge may serve as an elected board member of a non-profit educational organization, provided the judge is careful to avoid lending the prestige of office through participation in the board election.
§ 4.1-3[3]  Service on Boards and Committees — Impermissible Activities

(a) A judge should not serve on judicial selection advisory board established by governor because of political implications. Same for U.S. Senator’s judicial screening committee. Same for bar association committee that selects candidates to be appointed by the mayor.

   (a-1) A judge should not serve on a state Board of Law Examiners that is appointed and supervised by state’s highest court. The judge’s habeas cases involve indirect review of decisions of that state court, creating Canon 1 concerns relating to an independent federal judiciary.

   (a-2) A judge should not serve on an investigative, fact-finding ethics advisory panel of a state senate.

   (a-3) A judge should not serve on a state court task force examining the causes of wrongful criminal convictions. Same, for an advisory committee to assist a state task force studying capital punishment.

(b) Although the organization is devoted to the improvement of the administration of justice, a bankruptcy judge’s service on the Board of Directors of a nonprofit corporation formed for the purpose of certifying specialization in the field of bankruptcy law would be contrary to Canons 2A and 2B.

   (b-1) Bankruptcy judge should not participate in certifying attorneys as bankruptcy specialists as part of state bar advisory committee process.

(c) A judge should not serve on the Board of Directors of an organization whose primary purpose is to represent in litigation abused and neglected children. Same with respect to a nonprofit organization providing legal services to low-income individuals.

(d) A judge should not work with a private group to design proposed amendments to a controversial law that addresses issues other than the administration of justice and that raises constitutional issues likely to come before the judge’s court.


(a) A judicial employee may contact others in support of a friend’s bid for election to bar association office, but should do so using own time and resources, should ensure that the friend does not imply court endorsement, and should consider whether a restricted role is advisable due to controversial bar association issues or litigation.

   (b) A law clerk should not serve as bar association liaison to a legal services provider that litigates in the law clerk’s court.
(c) A law clerk may serve on the board of a national organization that identifies and trains volunteers to serve as guardians ad litem for children in state juvenile court. But see Compendium § 1.3-1(e) (advising that a law clerk should not accept appointment to serve as a volunteer guardian ad litem, but that a judicial employee may file a petition in state court for the appointment of a guardian ad litem). Similarly, a probation officer may serve on the board of a nonprofit organization that assists ex-offenders with re-entry into society.

(d) A law clerk may serve as a member, officer or director of professional association of law clerks.

(e) A judge's law clerk should not hold a leadership position in a lawyer's association that will be involved in litigating controversial social and political issues likely to come before the courts and should not publish an interview about the association and its purpose.

(f) A law clerk should avoid engaging in fundraising efforts that are directed towards law firms, legal vendors, and individuals who are likely to appear before the court.

(g) Probation officers should avoid involvement in staffing, marketing, or soliciting resources for nonprofit organization assisting at-risk youth, where participants may involve federal offenders, due to potential conflicts of interest.

§ 4.1-4 Arbitration, Mediation, and Judicial Activities in Other Courts

- Compendium § 1.3.
- See Commentary to 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).

(a) A court of appeals judge should not conduct settlement negotiations in a district court case, unless duly designated and authorized to sit in the district court for that purpose.

(b) Canon 4A(4) precludes a judge from serving as a mediator for cases in state court.

(c) Federal judges, including judges on senior status, may not serve as arbitrators or mediators in cases not on the docket of that judge's court or a court upon which the judge is designated to sit unless expressly authorized by law. Similarly, judges should not sit as settlement judges in state court.
(c-1) Similarly, Canon 4A(4) precludes a retired judge of the Court of Federal Claims who is subject to recall, or who is serving in recall status, from engaging in mediation or arbitration apart from the judge’s official duties.

(d) A senior judge designated to a particular federal district court may offer his services to settle cases and may serve as a mediator in that court, without additional compensation.

(e) Judges may participate in and support efforts to promote alternative dispute resolution, with knowledge that such support is probably a condition of future federal funding of such programs.

(f) Service as a member of the Advisory Board of a nonprofit dispute settlement organization created by the American Arbitration Association is permissible, provided that the judge does not serve as an arbitrator or mediator, raise funds or recommend the employment of particular arbitrators.

(g) A judge may participate in establishing nonprofit international arbitration organization for resolving sports disputes so long as the judge is not involved in the operation or delivery of arbitration services to resolve private disputes or to advance private interests.

(h) Serving as fact-finder with respect to disciplinary matters for athletic association is comparable to serving as an arbitrator.

(i) Canon 4D(2) (prohibiting service as officer, etc., of nonfamily business) and 4A(4) (prohibiting service as arbitrator or mediator) preclude a judge from serving for compensation on a committee of a national stock exchange when the jurisdiction of the committee is to rule upon proposed ethical violations of members of the exchange.

(j) A judge may assist the parties in structuring an arbitration agreement on a matter that is not pending before the judge, but that is ancillary and related to the pending matter, provided that the judge is mindful of potential recusal issues. See Canon 3A(4) and Advisory Opinion No. 95.


(a) Canon 4D of Code of Conduct for Judicial Employees does not permit judicial employees to serve as arbitrators in state court arbitration programs, which would entail active involvement in state court proceedings.

(b) Canon 4D of the Code of Conduct for Judicial Employees prevents a law clerk from serving as a state court-appointed arbitrator or mediator.

(c) Although the Code of Conduct for U.S. Judges allows a judge, with the consent of the parties, to act in a settlement capacity in matters pending before his or
her court, the Code of Conduct for Judicial Employees contains no similar provision suggesting that a law clerk may conduct a settlement conference in a case that may be heard by the law clerk’s appointing judge.

§ 4.1-5 Practice of Law

➢ Advisory Opinion No. 36 (judge should not comment on legal issues arising before college board of trustees of which judge is member).

(a) Judge may not seek pro hac vice authority to practice in a court in order to represent a child in state court traffic violation proceeding.

(b) A judge who prosecuted a case before appointment may not actively assist former colleagues in the appeal of the case and may not render advice, counsel or opinions about legal issues or the conduct of the appeal. However, the judge may respond to questions from successor counsel as to historical facts not readily apparent from the file, factual details in the judge’s peculiar knowledge, and similar matters of clarification.

(c) Judge should not consult with attorney or with executor of a will in order to advise a friend (who is a beneficiary of the will) how to proceed; this is tantamount to practicing law. Judge may suggest that friend retain counsel for assistance but should not recommend a particular lawyer.

(d) A judge may represent self before a city zoning commission but may not represent neighbors or a developer. Similarly, a judge who was sole owner of a law firm may represent self pro se in collecting accounts receivable but may not represent the firm.

(e) A judge serving as executor of a parent’s estate may appear in a wrongful death action if under state law the appearance is considered pro se and not representative.

(e-1) Similarly, a judge may represent his or her own personal interests but may not represent a spouse or trustee.

(e-2) When a judge’s interests are synonymous with the interests of the judge’s family members due to a joint ownership arrangement, the judge may act pro se in a way that incidentally benefits the family’s interests, but should not act or claim to be the family’s legal representative.

(f) A judge should not accept a JAG position to develop an international procedure for handling civilian misconduct on foreign bases, as this would inherently entail resolving legal issues and providing legal advice.
(g) Assisting a charity to negotiate a media contract is likely to involve reviewing and drafting contract provisions, offering legal advice, and representing the client’s legal interests, which constitute the practice of law. After a contract is executed, a judge may consult with the contractor about improving services, so long as the judge does not lend the prestige of judicial office.

(h) A judge may represent self and spouse in purchasing a residence and may also accept a broker’s commission on the transaction as permitted to attorneys under state law.

(i) Although a judge may teach a course in appellate advocacy, a judge should not participate in a legal clinic that is directly involved in advocacy on behalf of particular clients whose cases are before the federal courts, due to concerns under Canon 4A(5) (practice of law) and Canon 2 (appearance of impropriety).

§ 4.1-5[1] Practice of Law [Judicial Employees]

(a) It would constitute the practice of law for federal public defender to accept a referral fee for recommending a lawyer. Serving as arbitrator would also constitute the practice of law. Federal public defenders may not engage in the private practice of law, even on their own time and without compensation.

(a-1) An assistant federal public defender may not accept appointment as an arbitrator; such action would violate the proscription against the practice of law in Canon 5D of the Code of Conduct for Federal Public Defender Employees.

(a-2) Law clerk may not serve as arbitrator or mediator under state court program of binding arbitration. Service as a mediator or arbitrator, though not expressly prohibited by the Code of Conduct for Judicial Employees, would be perceived as the practice of law and in violation of Canon 4D. Such service would also raise problems of independence under Canons 1 and 2. Similarly, Canon 4D prevents a law clerk from serving as a state court-appointed arbitrator or mediator. Similarly, a law clerk may not, separate from official duties, conduct a mediation or settlement conference in a case assigned to the judge or court.

(a-3) Assistant federal public defender may not maintain private law practice, even though appointment as assistant federal public defender is temporary.

(a-4) It would be considered the practice of law for a law clerk’s name to be used by a professional limited liability company providing legal services and for the law clerk to have a continued fiduciary duty to company clients and a continued right to share in profits.

(a-5) A law clerk should not serve as a municipal judge, presiding at hearings and taking pleas, which would constitute the practice of law.
(a-6) An assistant federal public defender’s representation of a state criminal defendant constitutes the private practice of law and is not permitted. Same, for representation of minors in state court name-change proceedings.

(a-7) It would violate Canon 5D of the Code of Conduct for Federal Public Defender Employees for an assistant federal public defender to take a position as an adjunct supervisor of a law school clinical program that reviews cases of felons who claim innocence.

(a-8) A judicial employee may serve as an uncompensated arbitrator or mediator for a nonprofit organization, subject to the standards applicable to pro bono practice of law in Canon 4D.

(b) Canon 4D of the Code of Conduct for Judicial Employees imposes a less stringent ban on the practice of law than does the Code of Conduct for United States Judges. Thus, subject to such additional limitations imposed by the law clerk’s judge, the Canon itself would not prohibit a law clerk’s service without remuneration as a volunteer at a community family law center.

(b-1) The phrase “in a court of the United States” in Canon 5D(2) of the Code of Conduct for Law Clerks means a court of the federal government, and not more broadly any court within the United States. Thus, a law clerk performing necessary legal work for a member of the law clerk’s family may appear before state or local courts so long as the other requirements of Canon 5D are met. [Refers to law clerks code that was withdrawn; compare to current Canon 4D, Code of Conduct for Judicial Employees.] Similarly, Canon 4D of the Code of Conduct for Judicial Employees permits a law clerk to file documents and provide legal advice on behalf of a sibling named in a civil action in state court. Same for a law clerk representing a parent in a state malpractice action.

(b-2) Canon 4D of the Code of Conduct for Judicial Employees prohibiting pro bono law practice in federal, state and local courts does not prohibit pro bono work in foreign countries. However, a judicial employee should not engage in pro bono legal work in a foreign country or court that involves a matter of public controversy and/or that may implicate the Canon 5 prohibition on partisan or nonpartisan political activity.

(b-3) A law clerk may not continue pro bono representation of a criminal defendant after the clerkship begins. See Canon 4D.

(b-4) Law clerk may serve as uncompensated member of a committee that advises board of a credit union; to the extent such service requires legal skills it is permitted as pro bono legal service.
(b-5) A judicial intern may accept a concurrent internship with a pro bono legal non-profit organization, provided that it is consistent with the practice of law restrictions of Canon 4D(3).

(c) Law clerks, including part-time law clerks, may practice law only under the circumstances expressly permitted by the Code of Conduct for Judicial Employees.

(c-1) The Code of Conduct for Judicial Employees does not exempt part-time law clerks from Canon 4D, prohibiting the practice of law.

(c-2) A judge’s part-time law student intern should not be permitted to perform paralegal work at a law firm; the performance of legal tasks for lawyers in these circumstances should be treated as practicing law, which is not permitted under Canon 4D of the Code of Conduct for Judicial Employees. Similarly, a judicial employee should not simultaneously work as an independent legal document assistant because it would require the performance of duties that are closely tied to the practice of law.

(c-3) A law clerk should not be permitted to work for a law firm editing attorney writings and filings and performing legal research, as that would involve the practice of law.

(c-4) A law clerk may not file a brief in a U.S. Court of Appeals as pro bono counsel in an immigration matter as such would involve an appearance in federal court and litigation against the federal government in violation of the Code of Conduct for Judicial Employees. Even though pro bono service would begin one week before the end of the clerkship, practice of law restrictions are not subject to a de minimis exception.

(c-5) A probation officer should not be permitted to accept a position assisting attorneys with real estate closings in a state where such activity is considered the practice of law.

(d) A part-time pretrial services officer attending law school may practice law for the summer after a grant of leave without pay if all conflicts are avoided.

(d-1) An assistant federal public defender (who like a pretrial services officer is not subject to Ethics Reform Act, 5 U.S.C. App. § 501(a) imposing a 15% cap or § 502(a) limiting outside employment) may teach at a law school, open a law clinic for poor persons and supervise law students in connection therewith, so long as this is done only during an extended (6 months here) leave of absence from the Public Defender’s Office without pay, so long as care is taken to avoid any conflicts of interest, and so long as the nature of the activity does not present inherent conflicts of interest or otherwise detract from the independence and integrity of the Public Defender’s Office.
(d-2) An assistant federal public defender may take an extended leave (here, almost a year) to serve as a state judge, so long as conflicts are avoided and the position does not present inherent conflicts or otherwise detract from the defender office.

(e) Law clerk’s service on state board of law examiners does not constitute the practice of law.

(f) A law clerk planning self employment after a clerkship ends may, while still clerking (and with judge’s approval), form a professional corporation and announce plans to friends and family, but should not undertake overt activities to procure clients and establish a practice and should not: (1) distribute business cards; (2) make public announcements; (3) meet with or provide materials to attorneys; or (4) enter into contracts to provide services after clerkship ends.

(g) Preparing returns for a tax preparation service, without holding oneself out as an attorney, is not the practice of law; a law clerk may do this with judge’s approval.

(h) A law clerk is permitted to accept compensation for part-time employment writing case law summaries for a legal news service.

(h-1) A law clerk should not write blog posts on legal topics for a law firm; the performance of such tasks should be considered the practice of law under Canon 4D.

(i) A part-time law clerk may assist with the non-legal work of a spouse’s sole-proprietor law firm.

(j) A judicial employee should not engage in military reserve service that involves the practice of law, such as service as a judge advocate general (“JAG”), because Canon 4D of the Code of Conduct for Judicial Employees prohibits the practice of law with limited exceptions for uncompensated pro bono legal services.

§ 4.2 Nonprofit Civic, Charitable, Educational, Religious, or Social Organizations

§ 4.2-1 Participation in Civic, Charitable, and Other Non-Business Activities

 Advisory Opinion No. 28 (service as officer or trustee of hospital or hospital association).

(a) A judge may serve on the board of a charity that is not extensively involved in litigation or sponsoring litigation. Same for service on the board of a church-affiliated retirement center.

(b) A judge may serve as advisor to an organization sponsored by the Ford Foundation for the “study of national service”; a local unit of the American Cancer Society; or a local symphony society.
(c) A judge may serve on the board of the Urban League.

(d) A judge may serve on the board of directors of an education and research foundation, if satisfied that the organization does not advocate positions on issues likely to come before the court, that the judge would not be so identified with the views of the organization as to undermine the public perception of the judge’s impartiality, and that frequent recusals would not be required.

(e) A judge may not participate in television commercials on behalf of a charity.

(f) A judge may serve as a trustee of a charitable trust established by the will of a close family friend and spouse of former law partner, where the judge’s participation is limited to overseeing charitable activities and does not include fundraising or the rendering of investment advice.

(g) A judge may serve on the board of directors of a nonprofit community housing organization that is unlikely to engage regularly in litigation; same with respect to nonprofit youth counseling organization. The same considerations govern a judge’s service on a health system ethics committee.

(h) A judge who serves on the board of a charity may accept reimbursement of travel expenses to inspect the charity’s research program from a for-profit company that donates supplies for the research, where the judge has recused from all cases involving the company and the judge’s role will not be publicized.

(i) A judge may serve on the board of a nonprofit art museum.

(j) A judge may serve on the board of a nonprofit company operating an endangered species park. Same, for service on the board of a nonprofit organization dedicated to protection and restoration of a state historical site.

(k) A judge may participate in a children’s health initiative aimed at preventing underage drinking, whether or not the request to participate is due to the judge’s position as spouse of an elected official.

(l) A judge may serve without compensation on the board of a nonprofit, nongovernmental organization providing humanitarian aid, subject to restrictions on fundraising, litigation, advocacy, and political activity.

(m) A judge may speak at a student scholarship awards luncheon that is not a fundraiser.

(n) A judge may serve as president of a local council of the Boy Scouts, subject to Canon 4 restrictions on fund raising, litigation, etc. Same, for service as a county district chairman of the Boy Scouts.
(o) Judge may serve on a panel that reviews and rates grant applications from local hospitals and community organizations engaged in breast cancer education and treatment; if grant applicant appears before the judge, then judge should either recuse or avoid participation in the relevant grant application review.

(p) Judges and judicial employees are generally permitted to participate in charitable activities, including making donations to charitable organizations, subject to certain restrictions on fundraising and other issues. During a government furlough or similar event, a judge may contribute funds to a non-profit organization, such as a bar association, that offers assistance to affected judicial employees, provided that the organization is not likely to appear in court, and the assistance is offered to affected federal employees in general (i.e., not only to judicial employees). Judicial employees may accept such assistance consistent with the Code of Conduct for Judicial Employees.

§ 4.2-2 Organizations That Sponsor or Fund Litigation, or That Are Likely To Be Frequent Litigators

- Advisory Opinion No. 40 (service on governing board of nonprofit organization that tends to become involved in court proceedings).
- Advisory Opinion No. 28 (service as officer or trustee of hospital or hospital association).
- Advisory Opinion No. 116 (participation in educational seminars sponsored by research institutes, think tanks, associations, public interest groups, or other organizations engaged in public policy debates).

(a) A judge should not serve as director of a foundation that funds numerous organizations’ litigation efforts.

(b) A judge should not serve on the “council on legislation” of Rotary International.

(c) A judge should not serve on the board of directors of a nonprofit hospital because the hospital “will be regularly engaged in adversary proceedings in any court.” Canon 4B(1).

(d) A judge should not serve on the Board of Directors of an organization whose primary purpose is to represent in litigation abused and neglected children. Same with respect to a nonprofit organization providing legal services to low-income individuals. Same with respect to a religious charity providing legal services to immigrants. Same with respect to a legal services provider representing low-income families in bankruptcy, in the judge’s district or elsewhere. Same with respect to a bar association board established to provide legal services to low-income clients. Same, with respect to a judge’s service on an advisory board of an organization that engages in litigation in federal courts and before administrative agencies.
(d-1) A judge may serve on a bar committee that makes occasional grants to legal services organizations. See Compendium § 4.1-3[1](o).

(d-2) A judge should not volunteer as an intake worker for an organization providing legal services to indigent clients.

(e) Canons 2 and 4 advise against assisting a law firm that appears before the judge in selecting firm scholarship recipients.

(f) A current law clerk or a future law clerk who has accepted an offer but not yet entered into service should consult his or her appointing authority for guidance regarding educational opportunities that may have an impact on the clerkship. A current law clerk should avoid participating in an educational seminar that is sponsored by an organization that is actively involved in litigation before state or federal courts, including the filing of amicus briefs or participating in moot courts to prepare advocates, or whose mission is to advance a political or ideological point of view. See Advisory Opinion No. 116.

§ 4.2-3 Organizations Devoted To Espousing Positions on Public Issues, or on Issues Likely To Be the Subject of Litigation

- Advisory Opinion No. 82 (joining organizations).
- Advisory Opinion No. 46 (judges’ acceptance of public testimonials or awards).
- Advisory Opinion No. 40 (service on governing board of nonprofit organization that tends to become involved in court proceedings).
- Advisory Opinion No. 116 (participation in educational seminars sponsored by research institutes, think tanks, associations, public interest groups, or other organizations engaged in public policy debates).

(a) A judge should not serve as a director of the Lawyers Alliance for Nuclear Arms Control. Same for service on the board of the ACLU.

(b) Whether a judge should serve on the national board of an ethnic group depends upon the extent to which the group is likely to be involved in litigation, whether the group principally espouses particular points of view on public issues, and whether the judge would reasonably be perceived as personally and publicly supporting those positions. The same considerations govern a judge’s service on a health system ethics committee.

(c) A judge who is a member of the National Rifle Association should recuse from cases in which the NRA is a party, and from cases involving issues on which the NRA has taken a public position. See Advisory Opinion No. 40.

(d) A judge may serve on the council of academic advisors of the American Enterprise Institute, unless the judge concludes that such service would reasonably be
viewed as endorsing the views of that organization on issues that are likely to come before the court.

(d-1) Similarly, a judge may serve on the Advisory Board of the National Alumni Forum under the same circumstances.

(e) A judge may remain a member of the American Bar Association, notwithstanding its stated position on certain controversial issues such as abortion.

(f) A judge should not accept an award from the ACLU, an organization which is likely to come before the judge’s court; however, it is permissible where the judge has retired and will hear no more cases.

(f-1) Similarly, a judge should not accept an award from a legislative caucus that embodies a clearly defined view on a controversial issue that is the subject of litigation in state and federal courts.

(g) A judge may contribute financially to legal service associations that provide counsel for the poor. A judge need not recuse merely because lawyers who accept appointments by such associations are also counsel of record in cases before that judge. Similarly, a judge may donate funds to sponsor an academic achievement award for a law student who intends to pursue a career as a public defender.

(h) A judge may participate in an international conference focusing on improving the administration of justice with respect to crimes against journalists, where the judge’s participation will not entail taking any positions on governmental policies.

(i) Judges should avoid public expressions of personal opinion regarding contentious social or political issues that may arise in federal cases and therefore should not sign petitions raising such issues.

(j) Service on the board of an organization devoted to advancing positions on controversial environmental policy issues that are frequently litigated in federal court would reasonably be seen as personal advocacy of those positions and as impairing the judge’s impartiality in environmental cases.

(k) Service on the board of an organization devoted to fostering particular positions on controversial issues of constitutional law and public policy that are frequently litigated in federal court would reasonably be seen as personal advocacy of those positions and as impairing the judge’s impartiality on matters of constitutional law. Same, with respect to serving as an organizer of a local chapter of such organization, or being identified in the organization’s mailings as an officer, board member, or chapter organizer.
(l) A judge should not participate in an organization’s advocacy campaign by being listed on a public website that takes a position regarding a contentious social or political issue that may arise in federal cases, due to concerns about impartiality.

(m) A current law clerk or a future law clerk who has accepted an offer but not yet entered into service should consult his or her appointing authority for guidance regarding educational opportunities that may have an impact on the clerkship. A current law clerk should avoid participating in an educational seminar that is sponsored by an organization that is actively involved in litigation before state or federal courts, including the filing of amicus briefs or participating in moot courts to prepare advocates, or whose mission is to advance a political or ideological point of view. See Advisory Opinion No. 116.

§ 4.2-4 Educational Organizations

- Advisory Opinion No. 87 (participation in CLE programs)
- Advisory Opinion No. 44 (judge should not serve as trustee of state supported college or university).
- Advisory Opinion No. 36 (judge should not comment on legal issues arising before college board of trustees of which judge is member).
- Advisory Opinion No. 3 (participation in a seminar of general character).

Note: Title VI of the Ethics Reform Act of 1989 bars compensation for service as an officer or member of a board.

(a) A judge may serve on the board of regents of a university, where that board is not a governing body, but not on a state board of regents that is responsible for the operation of state colleges and universities. Also, a judge may serve on the advisory council of a state university’s business school.

(a-1) Canon 4F does not bar a judge’s service on a committee whose function is to recommend for final selection by the board of trustees of the university three to five candidates for president of a public university. The judge’s service on the committee would not involve the judge in the governance of the university, and the circumstances did not indicate a highly visible or controversial matter.

(a-2) A judge may serve on the governing board of a private college, subject to the limitations in Canons 4B(1), 4C and 4B(2).

(b) A judge may serve on the board of trustees of a university foundation (no fundraising involved). Same for service on a university advisory board.

(c) A judge may serve as principal speaker at a university’s “founder’s day.”
(d) A judge may serve on the board of directors of a private college. Same for board of trustees of private, nonprofit charter school. Same for board of regents of private high school, but the judge may not advise the board on legal issues.

(d-1) Due to concerns arising under Canon 1 (judicial independence) and Canon 4F (governmental appointments), a judge should not serve on the board of a public charter school because of the school's connection to state and local government.

(e) A judge may serve on a panel to evaluate curriculum proposals for a law school.

(e-1) A judge may serve on a site evaluation team preparing law school accreditation recommendations, may attend associated training, and may accept reimbursement of expenses.

(e-2) The following is also within the Canon 4F exception relating to the improvement of the legal system: A judge’s service on a committee organized by a prominent law school in the United States; the function of the committee is to review proposed legislation for the reorganization of the court system in Russia.

(f) A judge may serve as trustee of a foundation to fund a religious school for children.

(f-1) Similarly, a judge may serve as trustee of a university foundation, so long as the judge does not personally engage in fundraising.

(g) A judge may serve on a committee to nominate recipients of foundation-supported fellowships to be chosen by a separate Selection Committee.

(h) A judge should not serve on the “development council” of a university, where such service would implicate the judge in fundraising.

(i) A judge should not serve on the board of a private foundation established to provide service and benefits to state-supported community college.

(j) A judge should not serve as regional vice-president of his or her college’s “athletic education foundation” if it might involve personal fundraising or exploitation of judicial office; or on a university’s “development council” if it would involve the judge in similar fundraising activities; the judge should not “introduce” fund-solicitors to others.

(k) A judge can sit on the board of directors of a foundation that fosters the cultural and academic interests of the Chinese community, so long as fundraising and exploitation of office are avoided.
(l) Use of a judge’s name to designate a scholarship fund established at a law school does not violate Canon 4 prohibition of a judge’s permitting the prestige of the judicial office to be used in the fundraising efforts of an educational organization, so long as the identities of contributors and those who decline to contribute are not revealed, and neither the judge nor current law clerks or staff participate in or encourage the solicitations.

(l-1) Where a university names a scholarship fund for a judge’s late spouse, the judge may attend the event where the award is made but should not permit use of his or her name on solicitations or announcements of fundraising and should ask the university not to disclose names of donors to the judge.

(l-2) A judge may not serve as sole trustee of a scholarship fund named in the judge’s honor since this would require the judge to know the identity of donors and to invest and manage the funds, but the judge may be empowered to designate the recipients of the scholarship.

(m) Judge may accept nomination for and serve as president of an alumni association for former state university students, but judge should refrain from any lobbying or fundraising activities. A judge may also serve on the board of a nonpartisan, nonprofit alumni association for former White House fellows, with the same restrictions. Same for the board of a nonprofit organization supporting a public school.

(n) A judge may serve on an advisory board for a law school’s judicial education program, where the board’s purpose is to provide advice on suitable programs and to encourage attendance by judicial colleagues. Similarly, a judge may serve on the advisory board of a law school journal.

§ 4.2-5 Church Activities

➢ Advisory Opinion No. 42 (judge should not participate in every-member canvass fundraising of local church).

Note: Title VI of the Ethics Reform Act of 1989 bars compensation for service as an officer or member of a board.

(a) A judge may serve on the board of directors of a church foundation. A law clerk may serve on a church board; service is not improper because the church board sponsors a housing project seeking government funding. A judicial employee may serve as the board president for an ecumenical organization.

(b) A judge may serve on a committee on world peace and social development of the United States Catholic Conference.

(c) A judge may serve as deacon of a church.
(d) A senior judge may serve as a missionary of his or her church. Similarly, a judge may go on a religious/humanitarian mission with license approval required for travel to Cuba.

(e) A judge may serve on the long-range planning committee of his or her church. Same, for committee to select a minister for judge’s church. Same, for participation in church-sponsored programs on conflict resolution for families and individuals.

(f) Where a judge indicates that he or she need not personally participate in either planning or actual solicitation of funds and need not give investment advice and would not personally be identified as the fund raiser, no impropriety for judge to serve as vice-president or president of his or her church council.

(g) Judge should not accept church leadership position with responsibility for soliciting and collecting contributions from church members.

(g-1) However, a judge may serve as a church usher and pass the collection plate as part of that service, provided that the judicial title is not associated with the process and the judge takes reasonable steps to avoid learning who contributed or in what amount.

(h) A judge may accept appointment to the Order of Malta, a religious order that provides aid to the sick and poor, but should take care to avoid personal involvement in any disputes with the U.S. government or in activities in which the organization’s position that it is a sovereign state is central to such activities.

(i) Attending the annual Red Mass does not raise an ethical concern under the Code, but in order to promote public confidence in the independence of the judiciary a judge should consider attending in regular business attire, not in judicial robes.

(j) A judge may participate as a speaker to say a prayer on an assigned topic related to the observance of a National Day of Prayer or similar event, provided that the judge is not representing the judiciary, the event is not exclusive, and the judge is not aware of any controversial issues surrounding the ceremony that might detract from the dignity of the court or the independence of the judiciary.

§ 4.2-6 Social and Avocational Activities

§ 4.2-7 Nonprofit Civic, Charitable, Educational, Religious, or Social Organizations [Judicial Employees]

(a) A clerk’s participation in historical Civil War reenactments does not detract from the dignity of the court or adversely reflect on the operation of the court, where the clerk’s participation is limited to reenactments and does not address political or social controversies.
(b) Judicial employees may work with court historical society to develop historical information about their courts.

(c) A judicial employee should not serve on the board of a legal services organization if it litigates in federal court, but may serve if litigation is confined to state or local venues. The employee may not litigate except as permitted under Canon 4D of the Code of Conduct for Judicial Employees.

(d) It is inappropriate for a law clerk to serve on the governing board of an advocacy organization that actively lobbies state officials on issues that are subject to debate in the political arena. Such service would be likely to lend the prestige of the law clerk's office to the organization and the positions it espouses.

(e) Staff attorneys should avoid involvement with advocacy groups if the association suggests a predisposition as to legal issues or influence due to the relationship; concerns increase with the attorney's level of involvement (i.e., attendee, contributor, member, officer), the group's degree of advocacy, and any overlap between the group's activities and the attorney's official duties. Similar considerations govern involvement in public protests.

(f) Judicial employees may contribute through the Combined Federal Campaign ("CFC") to public policy advocacy groups that are not political organizations.

(g) A new judicial employee should not continue service as chair of the board of an organization that advocates positions on controversial public issues that are frequently the topic of litigation in federal courts.

(h) A law clerk should not attend a legal training program sponsored by an issue-specific advocacy group that may be involved in federal litigation.

(i) A probation officer may join a gun club that requires its members to be members of the National Rifle Association, provided that the officer avoids participation in the association's work on controversial policy or political issues.

(j) As members of a judge's personal staff, law clerks must be more circumspect in their activities than other court employees due to their direct association with a single judge. Law clerks should exercise caution and seek approval from their judges when contemplating membership in groups that take positions on particularly contentious subjects and on issues likely to arise in the federal courts.

(k) A judicial employee may be a member of a law enforcement oriented fraternal organization.

(l) A law clerk should not form or become part of an extra-governmental working group relating to criminal justice systems generally or treatment of juveniles within a criminal justice system, state or federal, while serving as a law clerk.
(m) A law clerk should not serve as a “judicial observer” and attend Military Commission proceedings on behalf of a non-profit organization that is often involved in federal litigation and takes public positions on contentious issues, including those related to the Military Commission.

§ 4.3 Fundraising

§ 4.3-1 Fundraising Activities

- Advisory Opinion No. 104 (court historical societies and learning centers).
- Advisory Opinion No. 89 (judges’ acceptance of honors funded through voluntary contributions).

(a) Judges may not personally participate in fundraising for law-related activities, and judicial employees acting under the direction and control of a committee of judges may not solicit donations or seek to raise funds from private entities in order to provide financing for law-related activities sponsored by the judges’ committee.

(a-1) Solicitation of funds on behalf of a court task force that is reasonably perceived as an activity or function of the court, under its guidance and control, will inevitably be attributed to the court and its judges, which is inconsistent with the Code of Conduct. If the task force is truly independent, under the guidance and control of entities other than the court, judges may participate in its activities so long as they do not personally engage in fundraising.

(a-2) Same advice applies where judges establish and control a court historical society, unless the society is truly independent of the court; factors demonstrating independence include: non-judge incorporators, board members, and chair; independent staffing; physical separation from the court; and statements in society fundraising and other literature distinguishing the society from the court. Same for an organization to educate the public about the courts. See Advisory Opinion No. 104.

(a-3) Permitting attorneys to withdraw from a mandatory appointment program for in forma pauperis cases by contributing to a legal services organization approved by the court is contrary to the Canon 4C prohibitions on fundraising and membership solicitation by judges.

(a-4) Judges and court employees may assist in organizing a nonprofit organization for the benefit of participants in a “support court” or similar entity, provided that the organization is independent from the court and judicial employees are not involved in soliciting or disbursing funds for the organization.

(b) A judge should not solicit funds from judges in the state judicial system, even though the beneficiary is a law school.
(c) Canon 4A(3) permits judge to submit letter to public agency in support of grant application for program focusing on legal and ethical issues of medical research.

(d) See Compendium § 2.4 pertaining to fundraising for legal defense funds. See Compendium §§ 2.10(e) pertaining to fundraising for scholarships and honors.

(e) A judge who is past president of a bar association may be listed in the association’s fundraising materials, with other past presidents and without selective emphasis, as a member of a committee to restore a courthouse lobby; such use of the judge’s name does not constitute “personal participation” in fundraising. The judge also may be listed on courthouse plaque after fundraising is completed.

(f) Even if use of a judge’s name to designate a scholarship fund established at a law school constitutes assistance in raising money for the fund, Canon 4 does not require the judge to request that judge’s name not be used. The judge should not authorize use of the judge’s or court’s name to solicit funds, should make reasonable efforts to remain unaware of those who do and do not contribute, and should ask the school to avoid public display of donor names and to indicate that the judge will not be advised of donors.

(g) A judge may help establish a university fellowship program by asking attorneys to raise funds, where neither the judge’s nor the court’s name will be associated with the fundraising and the attorneys are retired and thus unlikely to appear before the judge.

(h) A judge may serve on a panel of a bar association program where any excess proceeds will go to a pro bono project; fees are based on estimated costs and not to generate funds, the program is not advertised as a fundraiser, and fundraising will not occur there. Similarly, the fact that an organization derives revenue from its seminars does not make a particular seminar a fundraiser, where it is not advertised or designed for that purpose.

(h-1) Participation by judges and law clerks in CLE program for which the provider would charge a fee that exceeds the costs associated with producing the program and donate the proceeds to a legal aid organization would violate Canon 4C prohibition on personal participation in fundraising activities. Same, with respect to service on a committee to plan a dinner promoting diversity in the legal profession, where a portion of the dinner ticket fee will be donated to a scholarship fund.

(i) A judge (or senior judge) should not appear in a video to be used primarily in fundraising for a legal services organization, but the judge may provide factual and historical information to use in the video.

(j) A judge should not donate to a law foundation auction a dinner to be prepared and served at the judge’s home.
(k) It is not improper for a civic organization chaired by a judge to endorse an independent effort by attorneys to raise funds for legal services.

(l) A judge may donate the judge’s signed artwork to a charity auction, provided that the judge’s title is not associated with the auction process, and the judge takes reasonable steps to avoid learning the names of persons bidding for or buying the artworks.

(m) Judges and judicial employees may participate in a fundraising walk-a-thon or similar event in their personal capacity, without reference to their official titles, but should not participate together as a group identified as being from the court (for example, by using banners or other displays naming the court).

§ 4.3-2 Organizations and Events Involved in Fundraising

- Advisory Opinion No. 89 (judges’ acceptance of honors funded through voluntary contributions).
- Advisory Opinion No. 46 (judges’ acceptance of public testimonials or awards).
- Advisory Opinion No. 42 (judge should not participate in every-member canvass fundraising of local church).
- Advisory Opinion No. 37 (judge may serve as officer or trustee of professional organization receiving governmental or private grants).
- Advisory Opinion No. 35 (judge’s name may appear on letterheads and other solicitation material of charitable organization).
- Advisory Opinion No. 32 (judge should not solicit funds for Boy Scouts).
- Advisory Opinion No. 2 (service on governing boards of nonprofit organizations).

§ 4.3-3 Permissible Fundraising Activities

(a) Newly appointed judge may accept an award at a fundraiser occurring shortly after appointment, where arrangements were made before appointment; but the judge should ensure that his or her name is not used to solicit money.

(b) It is permissible to serve on the board of a bicentennial foundation if no direct fundraising is involved.

(c) A judge who is on the board of a charitable club may assist with its annual fundraising auction in an administrative capacity (i.e., as bookkeeper or cashier) so long as there is no focus on the judge’s identity, but the judge should not directly assist with or encourage participation in the bidding.

(d) A judge may accept a “distinguished citizen” award at the annual dinner of a Boy Scouts organization, if no fundraising will occur at the dinner, and the ticket prices are reasonably related to the cost of the dinner. Same for being designated as a “role model” and attending Girl Scouts luncheon.
(d-1) Judge’s attendance at annual televised pageant, at which judge receives public achievement award from nonprofit company, does not impermissibly involve judge in fundraising, where judge’s receipt of award is not announced in advance and televised tapes or pictures of judge will not be used for promotional or commercial purposes.

(d-2) Where a voluntary bar association solicited law firm contributions for its annual dinner but then returned the contributions, and the dinner does not otherwise involve fundraising, a judge may accept an award at the dinner.

(d-3) A judge may allow a charity award to be named for the judge so long as it is not presented at or designed to promote fundraising events. Similarly, a judge may accept an award from an organization of law enforcement officers under similar circumstances.

(e) A judge may participate in seminar during celebration of law school’s history. The fact that fundraiser is announced during celebration — but not at the seminar — does not convert every aspect of the celebration into fundraising.

(f) The same is true with respect to a judge participating in a singing group at charitable fundraiser so long as the judge is not featured or prestige of office otherwise exploited.

(g) A judge may be listed on the letterhead as a member of the board of a charitable organization in the solicitation of contributions and the judge’s title may be used if comparable designations are listed for other persons. See Commentary on Canon 4C.

(h) Use of law clerk’s name and title in biographical profile contained in college’s annual fundraising brochure does not constitute “use . . . of the prestige of the office in the solicitation of funds,” where judge is not named and law clerk does not personally participate in fundraising.

(i) A judge may serve as honorary chairperson of a charity, in the capacity of spouse of an elected official, but may not engage in fundraising or serve as speaker or guest of honor at fundraising events.

(j) A judge may contribute an essay about the judge’s college for a book to be sent to all alumni; distribution of the book with information about the college’s capital campaign does not make the essay a fundraising effort.

(k) A judge may serve as president of a civic and charitable organization but should refrain from fundraising activities.

(l) A judge may lend his or her home as a charity fundraiser show house, where the judge’s name is not used, the judge does not personally participate in fundraising,
and selection of the home is unconnected to the judge’s position. The judge may accept associated home improvements.

(m) A judge who serves on the board of a memorial foundation honoring a relative may attend the organization’s fund raiser; mere attendance is not inconsistent with the restriction on being a speaker, guest of honor, or featured on the program.

(n) A judge may donate items for a fund-raising auction held by a charitable organization, provided that the judge is not identified to potential bidders as the source of the items and that there is little likelihood that potential bidders will know that the judge is the donor.

§ 4.3-4 Impermissible Fundraising Activities

(a) A senior judge is subject to Canon 4C and should not solicit funds or otherwise engage in fundraising activities for a charitable organization, except as permitted by Canon 4C.

(b) Where friends establish a trust in memory of a judge’s deceased spouse for the benefit of the judge’s children, the judge’s title should not be used in solicitations, judges should not solicit contributions, and the names of those who do and do not contribute should not be disclosed to the judge.

(c) A judge who offers to match charitable donations made by others should not permit the charity to identify the judge by name or title, but the offer may be made anonymously. Similarly, a judge should not be listed as a sponsor in an organization’s fundraising solicitation.

(d) A judge should not be listed as a reference on a charitable organization’s grant application, as this would lend the prestige of office to fundraising.

(e) A judge may not serve on a board of citizen advisors of a nonprofit corporation, when circumstances suggest that the purpose of the board is to exploit the members’ official positions in aid of the organization’s fundraising.

(f) A judge should not be the guest of honor at a fundraising dinner. Nor should a judge accept an award at a fundraising event, even an inactive senior judge. Nor should a judge speak as part of a panel presentation at a fundraising event.

(g) A judge should not serve on a university’s “development council” if it would engage the judge in direct fundraising activities, exploit the judge’s judicial office for fundraising or require the judge to “introduce” fund-solicitors to others.

(h) A judge should not serve as master of ceremonies at a charity fundraiser except where the judge’s role is neither announced in advance nor used subsequently
to raise funds, the judge serves as a facilitator and not an honoree or focus of the program, and fundraising or solicitations do not occur at the event.

(i) A judge should not accept an award at a dinner sponsored by a correctional reform organization where it appears that the judge’s name and position would be used to attract invitees in order to raise funds for the organization.

(j) A judge may not accept a university’s award for legal service at a dinner where the judge would be a guest of honor, featured on the program and where one purpose of the event is to raise money for the university.

(k) A judge should not sign a letter soliciting funds from alumni.

(l) A judge should not serve on the board of a private foundation established to provide benefits and service to a state-supported community college.

(m) A judge should not serve as chairperson of the board of managers of a local YMCA, where it appears that the judge would be expected to lead extensive fundraising activities, nor should the judge serve as chairperson of a YMCA fund-drive.

(n) A judge should not serve on the board of a preservation commission whose sole purpose is to raise funds to acquire property, but the judge may serve if the commission will pursue other purposes permitted by Canon 4B. Similarly, a judge should not serve as campaign chairman in what is essentially a fundraising position or head an organization whose sole purpose is fundraising.

(o) A judge should not participate in a charitable event involving fundraising on the basis of bowling scores.

(p) A judge should not be involved in fundraising for the Combined Federal Campaign. Under Canon 4B of the Code of Conduct for Judicial Employees, the Clerk may call subordinates’ attention to such a general fundraising campaign.

(q) A judge may not participate in the fundraising activities of a committee establishing a legal intern fellowship and may not permit the use of the judge’s position in the committee’s fundraising activities. Similarly, a judge should not lend his or her name to an organization’s student intern fellowship supported by fundraising solicitations.

(r) A judge’s current law clerk and judicial employees should have no involvement in soliciting funds for a gift or dinner honoring the judge’s years of service.

(s) A judge may not participate in television commercials on behalf of a charity.

(t) A judge should not serve on a committee that selects for-profit companies to receive ethics awards at a fundraising event.
(u) A judge may solicit volunteers for charity work, but may not do so in joint presentations with those soliciting funds.

(v) A law clerk should avoid engaging in fundraising efforts that are directed towards law firms, legal vendors, and individuals who are likely to appear before the court.

§ 4.4 Financial Activities

§ 4.4-1 Business Activities

- Advisory Opinion No. 55 (judicial writings and publications).

(a) Judge may serve as officer or director of homeowners’ association for development in which judge resides, where duties consist of routine civic responsibilities not involving extensive business contacts likely to lead to litigation. See Advisory Opinion No. 29.

(b) Where judge’s spouse is offered a financial opportunity with minimal investment, no risk, and large return, the judge should consider whether the offer implicates Canons 2A (public confidence in integrity of the judiciary), 2B (lending prestige of office), or 4D(1) (exploitation of judicial position).

(c) A judge may record music for sale and perform live music, so long as it does not detract from the dignity of the court, but the judge may not use the judicial position or title to promote sales.

(d) A judge may sell real property to a public corporation, but should consider recusal (subject to remittal) for a reasonable time in future cases involving the corporation.

§ 4.4-2 Active Involvement in Nonfamily Business Prohibited

(a) A full-time magistrate judge may not be employed as a real estate salesman or broker on weekends.

(b) A judge may not serve as officer or director of a for-profit golf club, or act as advisor to that entity.

(c) A judge may not serve as officer or director of a holding company which has for-profit subsidiaries, or as officer or director of such subsidiaries. Similarly, a judge should not serve on the board of a non-profit organization where the nature and scope of the organization’s operations are similar to a business under Canon 4D(2), particularly where the organization has significant interests in for-profit businesses.

(d) A judge may not serve as director of a nonfamily corporation; Committee on Codes of Conduct is not authorized to grant exceptions. A judge should not serve as an
officer or director of a law firm professional corporation, except that service may continue after appointment for a reasonable period (not to exceed one year) to wind up a practice.

(d-1) Canon 4D(2) (prohibiting service as officer, etc., of nonfamily business) and 4A(4) (prohibiting service as arbitrator or mediator) preclude a judge from serving for compensation on a committee of a national stock exchange when the jurisdiction of the committee is to rule upon alleged ethical violations of members of the exchange.

(d-2) A judge may not serve as a director or officer of a corporation in which any nonfamily member owns any substantial interest because such a business is not a family business.

(e) A judge should not serve on advisory board of legal publisher in violation of Canon 4D(2) prohibition against a judge serving as advisor to a nonfamily business. Similarly, a judge should not serve on the advisory board of a for-profit company that provides legal writing programs for attorneys.

(f) Complimentary use of an automobile granted by a rental agency to a judge in exchange for the judge’s transporting the vehicle between cities might make the judge an employee in violation of Canon 4D(2), even though no other compensation was involved. However, a bona fide rental offered at a discount might avoid the problem.

(f-1) Judge should not be designated as company representative for nonfamily business, even for limited purpose of using company’s sports club membership, when such designation suggests an employee or agency relationship with the company. See Canon 2 (lending prestige of office) and Canon 4D(2).

(g) Under Canon 4D(2), a judge should not serve as a business advisor, and hence should not accept a “finder’s fee” for advising a former client of a business acquisition opportunity. Nor should a judge accept a “finder’s fee” for assisting friends in making business contacts leading to contracts.

(h) A judge may serve as a volunteer trail guide at a ski area, but should not accept compensation or benefits and should take steps to ensure that the ski company does not exploit the judge’s position to promote its business.

(i) A judge should not accept employment as a member of a café musical group, but may volunteer; the dignity of judicial office is not damaged solely because the café is at a casino.

(j) Judge should not assist management consulting firm in its efforts to obtain a contract for a state court improvement project, or serve as a consultant on the project; such assistance or service would raise concerns under Canon 2 and 4D(2).
(k) A judge may engage in an artistic or other performance, provided that the activity does not exploit the judge’s position for private gain and does not make the judge an “employee” of a nonfamily business within the meaning of Canon 4D(2). The judge should not wear the judicial robe or use the judicial title in promotional materials or while performing.

(k-1) Similarly, a judge’s limited service as a consultant for a documentary film based on the judge’s book may be viewed as an artistic endeavor, but any compensation for such service is subject to the limit on outside earned income.

(l) A judge should not participate in a “moot court” or similar legal training for a law firm or other business entity, due to concerns under Canon 2. In addition, depending on the financial arrangements involved, such activities may violate Canon 4D(2) unless the business is closely held and controlled by members of the judge’s family. See Advisory Opinion No. 105.

(m) While a judge may teach in a law school, the Code does not suggest that a judge may also be considered an “employee” of the school.

§ 4.4-3 Passive Investments in Nonfamily Businesses

(a) A judge may be a passive investor in a business venture, but may not actively participate in the operation or management of such venture. Examples include: a cable television company; a trailer park; a real estate venture; a general partnership.

(b) A judge who is a passive investor in a real estate limited-partnership venture may, in an emergency occasioned by the serious illness of the general partner, call, and preside at, an emergency meeting of the partnership held for the purpose of selecting a new general partner, but may not otherwise or publicly engage in the management or operation of the venture.

(c) A judge may have a passive investment as a general partner in a partnership engaged in real estate investment. Canon 4D(2) prohibits active business participation.

§ 4.4-4 Participation in Family-Owned Businesses

(a) Where a corporation wholly owned by the judge is a limited partner (passive investor) in a venture with the judge’s sibling, the arrangement is permissible.

(b) Where a family-owned business is managed entirely by the judge’s sibling, it is permissible for the sibling to negotiate with the United States Postal Service concerning real estate, and to bid at a public sale conducted by the Postal Service.

(c) A judge may be an uncompensated officer or director of a business wholly owned by members of the judge’s family.
(d) A judge should not become involved in any business which has extensive dealings with lawyers likely to appear in the judge’s court, or litigants likely to have interests in litigation in that court.

(e) A judge may form a corporation to produce a documentary film, provided that the resulting corporation is a wholly-owned family business. Likewise, the judge may apply for a grant offered to the public on an open and competitive basis to fund the expenses incurred to produce the film, provided that the granting organization is unlikely to be a litigant before the court and the judge’s title is not disclosed on the grant application.

(f) A judge may advise the judge’s spouse concerning a family-owned business, but may not accept compensation for providing legal advice.

§ 4.4-5 Financial Activities That Require Frequent Recusal

(a) A judge should remove his or her retirement account from former law firm’s profit-sharing trust where members of former law firm appear regularly in federal court in the judge’s district requiring frequent disqualification by the judge.

   (a-1) When a judge leaves a retirement account in former firm’s retirement plan, thus causing recusal, judge should consider Canon 4D(3) (manage investments to minimize recusals); and if the judge’s continued recusals would impose a significant burden on other judges, the judge should ordinarily withdraw the account if feasible.

(b) A judge may retain an interest in a pension fund at the judge’s former law firm when the judge’s spouse is presently a partner at the same firm because recusal would be required in any event from all cases involving that firm.

§ 4.4-6 Business Activities [Judicial Employees]

(a) An appellate judge should not hire secretary who would continue to manage a court reporting business because public would reasonably question whether lawyers would patronize the business because of the relationship to the judge. Cf. Canon 4C(1), Code of Conduct for Judicial Employees.

   (a-1) Proposal by judge’s secretary to seek assignments from court to type transcripts of electronically recorded court hearings requested by parties presents concerns under Canon 2 (appearance of favoritism) and Canon 4C (financial relationships with lawyers likely to come before the court) of the Code of Conduct for Judicial Employees.

   (a-2) A judge should not permit his or her secretary to perform secretarial or paralegal work for area law firms, even if the firms do not appear in that court.
(a-3) Judicial assistant may engage in jewelry-selling business, provided that all sales activity takes place outside the court premises, on non-work hours, and does not involve sales to people who appear frequently before the court.

(b) For the same reason, Canon 4C(1) of the Code of Conduct for Judicial Employees suggests that a deputy clerk who services court computers should not engage in outside employment that would involve assisting law firms in selection and installation of computers. Also, this would involve the deputy clerk in frequent transactions with lawyers likely to come before the court.

(b-1) Deputy clerks working on the judiciary’s electronic filing software should not engage in directly-related outside employment, as this could be perceived as exploiting official position for private gain. Same, for staff interpreter’s proposed outside business activity to provide instruction on federal court interpreter examination.

(b-2) With the judge’s approval, a law clerk may serve as law clerk to a special master in an unrelated matter in another court and accept compensation.

(b-3) Probation officer should not accept outside employment with a company that provides offender monitoring services, as it would appear to be exploiting official position for private gain. Same, with respect to operating a business that provides background screening services.

(b-4) Probation officer should not seek simultaneous part-time employment as a police officer, due to the potential for conflicts of interest and the perception of partiality created by such work.

(b-5) Probation officer may purchase services from a company that is owned by an offender who is under the officer’s supervision, but only if conflicts of interest can be avoided under Canon 3F(3).

(b-6) A judicial employee whose responsibilities are not case-related may be a co-owner of an office building and rent space to attorneys who may practice before the employee’s court, provided that any potential future conflict of interest can be avoided under Canon 3F(3).

(b-7) A judicial employee should not accept a consulting position that involves providing advice to private contractors where it is clear that the position has been offered because of the employee’s specialized knowledge acquired through judicial employment.

(b-8) Probation officers should avoid involvement in staffing, marketing, or soliciting resources for nonprofit organization assisting at-risk youth, where participants may involve federal offenders, due to potential conflicts of interest.
(c) A law clerk is not prohibited from part-time work as anonymous typist in free time, where work will be done at home and work will be limited to transcripts of state proceedings that are not likely to ever get to federal court.

(d) Under the Judicial Conference Regulations on Outside Employment, a member of the legal staff of the United States Sentencing Commission should not earn a commission for assisting a real estate broker or salesperson, a referral fee for referring a prospective buyer or seller, or a flat or hourly fee for conducting an “open house” or for informing prospective sellers or buyers about the nuances of real estate marketing and transactions.

(e) A chief pretrial services officer is not subject to 5 U.S.C. App. § 502(a) limiting outside employment and may invest in an automotive business where officer will not perform personal services or participate in the business except as a passive investor. Same for probation officer, who may teach officer safety classes.

(f) With approval of the court, a probation officer may serve without compensation in a fiduciary capacity as a board member of a credit union subject to the limitations set forth in Canon 5C(1) of the Code of Conduct for United States Probation Officers. Canon 5C(1) of the probation officers’ code differs substantially from the judges’ code with respect to business and financial dealings and service in a fiduciary capacity. See also Compendium § 32.2(a), 35(c) (Ethics Reform Act limitation on outside employment as fiduciary not applicable to probation officers). [Refers to probation officers’ code that was withdrawn; compare to current Canon 4C(1), Code of Conduct for Judicial Employees.]

(f-1) Law clerk may serve as uncompensated member of a committee that advises board of a credit union; to the extent such service requires legal skills it is permitted as pro bono legal service.

(g) Where law clerk has significant interest in company seeking to do business with the court, clerk of court should ensure that any agreement between the court and the company satisfies applicable contracting requirements and does not present an appearance of impropriety; clerk should consider public bidding process and other procedures to minimize any appearance that an agreement resulted from clerk’s relationship with law clerk.

(h) Where law clerk has significant interest in company seeking to do business with the court, law clerk should refrain from any involvement in company’s dealings with the court.

(i) Clerk of court should decline appointment to state medical licensing board because of concerns under Canon 2 (appearance of impropriety) and Canon 4C(1) (frequent transactions with persons likely to come before the court).
(j) Bankruptcy court employee may serve as a consultant to local police department, where the work will not interfere with official duties and is unlikely to associate the employee with persons who transact business in bankruptcy court.

(k) Court reporter’s activities for a private reporting firm should be “wholly disassociated” from official court work, and the court reporter should not use the private firm name and address on official court transcripts.

(k-1) Court reporter’s proposal to purchase and operate a private court reporting agency that has court reporting contracts with federal courts would be contrary to Canons 2, 3, and 4 of the Code of Conduct for Judicial Employees.

(k-2) An official court reporter’s decision to hire a substitute court reporter from the official court reporter’s private court reporting firm would not raise concerns under the Code of Conduct for Judicial Employees.

(l) Canon 4C(1) of the Code of Conduct for Judicial Employees permits a clerk of court to form a corporation to purchase, refurbish, and sell homes, where chief judge approves and no activities will take place on court premises or during working hours.

(m) A law clerk may teach massage therapy courses in accordance with Canon 4A of the Code of Conduct for Judicial Employees.

(n) A law clerk may recruit athletes for a sports agent, provided such activity does not involving the practice of law.

(o) A law clerk should not serve as chapter president of a professional trade association while it actively lobbies against state regulatory legislation and should not serve on a state board committee drafting regulations for the profession.

(p) A judicial employee may serve on the board of a family timber business.

(q) Canon 4C(1) of the Code of Conduct for Judicial Employees does not prohibit a law clerk from starting a company to educate students about the law, where the clerk’s position with the court will not be revealed, there will be no use of judicial time or resources, and the attorney-instructors do not practice in federal court.

(r) A law clerk may sell wildlife photographs through an art gallery and on a web site, assuming no exploitation of office and no transactions at the courthouse.

(s) A law clerk should not work as a part-time real estate agent where the proposed employer is a party to cases in the judge’s court and proposed work would involve frequent transactions with attorneys who appear before the court.
(t) A judicial assistant may not accept private compensation for tasks treated as part of official duties (i.e., performed during work hours, with other judicial employees, using court facilities).

(u) Canon 6 of the Code of Conduct for Public Defender Employees permits an attorney to take a paid leave of absence from a law firm to serve as an unpaid assistant federal public defender.

(v) A judicial employee may accept part-time employment as a title examiner, where the work would not involve the practice of law or service as a fiduciary. Similarly, a judicial employee may assist with the non-legal work of a spouse’s sole-proprietor law firm.

(w) A law clerk should not continue outside employment involving consulting contracts with public policy advocacy organizations that take positions on issues likely to be the subject of federal litigation.

(x) A part-time judicial assistant may engage in part-time outside employment for a state court that is not in the same state as the federal court, provided that potential conflicts of interest can be avoided.

(y) Judicial employees may operate a business translating documents, provided that the business does not involve the practice of law, overlap with the employees’ official duties, lend the prestige of the office, or lead to public entanglement in court proceedings.

(z) Judicial employee should consider potential conflicts of interest related to membership on board of an organization that will apply for gaming and liquor licenses, and should consider whether involvement with the organization may detract from the dignity of the court or lead to appearance of impropriety.

§ 4.5 Fiduciary Activities

§ 4.5-1 Family Trusts and Estates

➢ Advisory Opinion No. 96 (service as fiduciary of an estate or trust).

(a) A judge may serve as co-executor of his or her uncle’s estate.

(b) A judge may serve as co-executor of his or her father-in-law’s estate.

(c) A judge may serve as trustee of a family trust, including a testamentary trust.

(d) A judge may serve as testamentary trustee for the estate of the aged parent of the judge’s deceased ex-spouse, where the judge’s children are the beneficiaries.
(e) A judge may serve as fiduciary for a family member and, in that capacity, engage in adversary proceedings in court (other than the judge’s own court or one under the appellate jurisdiction of judge’s court). But a judge should not serve as a family fiduciary if service will involve negotiations with an administrative agency that frequently appears before the judge.

(e-1) A judge serving as executor of a parent’s estate may appear in a wrongful death action if under state law the appearance is considered pro se and not representative.

(f) A judge may serve as director of nonprofit family corporation set up to solicit contributions from family members for college scholarships for family members, but cannot solicit funds.

(g) In determining the scope of “family” for purpose of permissible service as family fiduciary, Canon 4D(4) definition of any relative of a judge by blood, adoption or marriage, includes the spouse of the judge’s second cousin.

(h) In determining the scope of “family” for purpose of permissible service by a judge as family fiduciary, testator’s status as judge’s close family friend and spouse of former law partner does not by itself qualify testator as a “person treated by a judge as a member of the judge’s family” under Canon 4D(4).

§ 4.5-2 Nonfamily Fiduciaries

- Advisory Opinion No. 33 (judge should not serve as co-trustee of pension trust).
  
  (a) A judge may not serve as executor under the will of a nonfamily member.

  (b) A judge may not serve as executor trustee for a member of the family of the fiancee of the judge, but such service would be permitted after the marriage.

  (c) Although a judge may not serve as executor or trustee under the will of a nonfamily member, designation as such in a will or trust instrument “effective at such time as [the judge] is willing and able to serve” is not a violation of the Canons.

  (d) A judge may not serve as trustee of a settlement fund generated by litigation in another federal court.

  (e) A judge may serve on the “board of control” established to select charitable organizations to receive charitable bequests, if such selection is the sole function to be performed, and the relationship does not constitute a true trusteeship.

  (f) Under Canon 4E judge may serve as trustee for friend’s child, where child is treated by judge as a member of judge’s family.
(f-1) A judge may serve as executor of close friend’s will, and guardian of friend’s children, where friend and children are treated as members of the judge’s family, but the judge should consider declining to serve if it is likely to involve serious litigation.

(g) A judge may not serve as sole trustee of a scholarship fund named in the judge’s honor since this would require the judge to know the identity of donors and to invest and manage the funds, but the judge may be empowered to designate the recipients of the scholarship.

§ 4.5-3 Continuation of Pre-Existing Fiduciary Relationships

(a) A judge who, before ascending the bench, served as an executor of the estate of a nonfamily member, or as trustee of a nonfamily trust may, with the approval of the judicial council of the circuit, continue in that capacity if resignation would cause undue hardship to the estate and its beneficiaries, but may not receive compensation for such service.

(b) A judge who, before ascending the bench, served as a guardian, and continued in that service after becoming a judge, may not thereafter commence serving as executor of the same estate.

(c) A judge who, before ascending the bench, was named trustee under a large number of deeds of trust (a form of real estate security transaction) should resign from each trust before taking any action to enforce the trust; but in view of the expense and inconvenience involved, the judge need not resign where the judge’s function is purely passive (i.e., no action as trustee required except to acknowledge satisfaction of the underlying debt when paid). Similarly, a judge who served as trustee for a deed of trust may acknowledge satisfaction to terminate the trusteeship.

§ 4.6 Governmental Appointments

§ 4.6-1 Governmental Agencies and Entities

- Advisory Opinion No. 44 (judge should not serve as trustee of state-supported college or university).
- Advisory Opinion No. 43 (judge should not serve as statutory member of citizen’s supervisory commission of county personnel board).
- Compendium §§ 1.3.

(a) A judge may attend or be a guest of honor at a ceremonial event hosted by a foreign government. See Canon 4F.
§ 4.6-2  Military and National Guard Service

(a) A part-time magistrate judge should not serve as a full-time active member of a state national guard, in the capacity of legal advisor to the state adjutant general. Advisory Opinion No. 76.

(b) A bankruptcy judge should not serve as staff judge advocate in the state’s national guard, nor serve as a hearing officer in disciplinary proceedings in the national guard — this constitutes either the practice of law or involves the receipt of additional compensation for performing judicial services. Same for law clerk participating as a lawyer in a court-martial or engaging in duties in the military reserves that call for providing legal advice. Same, for staff attorney or other judicial employee service as a judge advocate in the national guard, because such service constitutes the prohibited practice of law under Canon 4D of the Code of Conduct for Judicial Employees.

(c) A judge should not accept a JAG position to develop an international procedure for handling civilian misconduct on foreign bases, as this would inherently entail resolving legal issues and providing legal advice.

(d) A magistrate judge in the military reserve should not provide legal advice in any capacity or serve as a military judge. Nor should a magistrate judge head a military legal services group and supervise its attorneys. If called to active duty and on an extended unpaid leave of absence, Canon 4A(5) would not prohibit the judge from providing legal advice or serving as a military judge (but see 28 U.S.C. § 632(a)).

(d-1) A part-time magistrate judge may continue service as an attorney in the military reserve, provided that conflicts of interest can be avoided.

(d-2) Military service that involves the practice of law while a judge or judicial employee is actively employed by the federal judiciary violates the practice of law prohibitions of Canon 4A(5) of the Code of Conduct for U.S. Judges or Canon 4D of the Code of Conduct for Judicial Employees, a prohibition that is essential to maintaining the independence of the federal judiciary under Canon 1.

(e) A judge should not serve on a special military tribunal or in a similar judicial capacity for the military.

(f) A judge may serve as a temporary, unpaid volunteer advising the military as to improving communication and cooperation with state entities, subject to the restrictions in Canon 5.

(g) A judge who serves in the military reserve in a non-legal capacity may conduct research and compile information on foreign legal systems, but the judge may not offer legal advice or impart his or her own assessment of the foreign legal systems.
§ 4.6-3 Other Similar Service

(a) Although a judge could serve in Civil Aeronautics Patrol, an auxiliary of the U.S. Air Force, a judge should not serve as a wing commander whose responsibilities include drug-related law enforcement. A judge has a duty to avoid activities that would require frequent recusal.

§ 4.6-4 Governmental Appointments – Permissible Activities

(a)Canon 4F does not bar a judge’s service on a committee whose function is to recommend for final selection by the Board of Trustees of the university three to five candidates for president of a public university. The judge's service on the committee would not involve the judge in the governance of the university, and the circumstances did not indicate a highly visible or controversial matter.

(b) A judge may serve on the National Conference of Commissioners on Uniform State Laws and as a member of the American Law Institute without violating Canons 4A(2), 4A(3) and 4F provided that the judge does not personally engage in activity designed to promote particular legislation or a rule of law before any official governmental agency.

(c) A judge may accept appointment by the United States Government to serve as a member of the Working Group of a United Nations Commission, the work of which relates to the unlawful detention of persons. The work involves improvement of the administration of justice and thus is not barred by Canon 4F or Canon 5C. The judge’s nomination by the United States Government avoids any problem of interfering with foreign policy, see e.g., 18 U.S.C. § 953. The work would be done in the name of the United Nations, and thus minimize the problem of lending the prestige of judicial office. While the Working Group could become involved in matters so controversial as to jeopardize the judge’s effectiveness as a judge, such situations should be rare and should afford sufficient warning to permit the judge’s withdrawal.

(d) A judge may serve on a university “board of regents” which is not a governing body.

(e) A judge may serve on a Presidential commission “on the federal appointment process” pursuant to the Ethics in Government Act.

(f) A judge may serve on the advisory council of the National Center for State Courts.

(g) Canon 4F prohibits a judge’s service in a governmental position concerned with issues of fact or policy. There is an exception, however, for matters relating to the improvement of the legal system. A state commission to review and improve pardon procedures falls within the exception. Same for national commission studying
prevention of prison rape. Same for a bar committee to analyze a state indigent criminal defense system.

(g-1) The following is also within the Canon 4F exception relating to the improvement of the legal system: A judge’s service on a committee organized by a prominent law school in the United States, where the function of the committee is to review proposed legislation for the reorganization of the court system in Russia.

(g-2) Judge may serve on short-term special advisory board in Department of Defense whose purpose is to consider procedures to insure the accuracy, efficiency and integrity of the investigative function of the Department and report recommendations to the Secretary of Defense where the investigative functions in question ordinarily are directed to matters governed by the Uniform Code of Military Justice.

(g-3) Where the statute makes clear Congress intended judges to serve, there is no impropriety in serving on an international dispute resolution panel.

(g-4) A judge may serve on a law-related panel of the National Academy of Sciences, but should avoid involvement in matters within the jurisdiction of legislative and executive branch agencies and should refrain from litigation-related activities, including filing of amicus briefs. Recusal should be considered if the panel’s work is introduced in a case before the judge.

(h) Canon 4F would prohibit serving on a Children Services Board and Children’s Trust Fund, a county agency, but a judge can serve on the county’s Juvenile Justice Advisory Board because it is an organization devoted to improvement of law, etc.

(i) A study group addressing foreign political and economic developments, requested and partly funded by Congress, is not a law-related activity permitted by Canon 4F, but a senior judge may participate so long as the judge refrains from judicial service during the appointment.

§ 4.6-5 Governmental Appointments – Impermissible Activities

(a) A federal judge is employed full-time in the Judicial Branch of the Federal Government. Generally speaking, a judge is not permitted to be employed by, receive compensation from, or participate in policy-making or the execution of policy on behalf of, any state or local government or other branch of the Federal Government, with the limited exceptions mentioned in Advisory Opinion No. 50.

(b) A judge should not serve on a United States Senator’s committee to screen applicants for appointment to the service academies.
(c) A judge should not serve on a state board of regents that operates state colleges and universities or on the board of a community college foundation. Also, a judge should not serve on a governmental board, appointed by the governor, overseeing hospital facilities.

(c-1) Due to concerns arising under Canon 1 (judicial independence) and Canon 4F (governmental appointments), a judge should not serve on the board of a public charter school because of the school's connection to state and local government.

(d) A judge should not serve on the board of the civil service league of a state (watchdog agency). Similarly, a judge should not serve on an advisory group for a county inspector general office.

(e) A judge should not accept appointment by a state agency to a committee to screen applicants for the position of state education commissioner.

(f) It is inappropriate for a judge, formerly a state judge, to accept designation as a “special commissioner,” eligible for recall to state judicial service.

(f-1) Judge who previously served on state court should not accept appointment as senior judge of that court, even in inactive status.

(f-2) Judge who formerly served on state court should not agree to serve as special consultant to the state as a condition of receiving cost of living increases in state annuity, even though the likelihood of actually serving is small.

(g) A judge should not serve on a state “law institute” which makes annual reports to the legislature, suggesting changes in state law. Similarly, a judge should not chair state law revision commission responsible for recommending improvements in state law. Nor should a judge serve on a commission studying criminal justice and corrections systems for the state executive and legislative branches. Same, for a state court task force examining the causes of wrongful criminal convictions. Same, for an advisory committee to assist a state task force studying capital punishment. Same, for a federal board that makes recommendations on the operations of state courts and awards grants to improve state courts.

(h) It is inadvisable to serve on a government study commission of local government.

(h-1) Similarly, a judge should not chair a committee examining coroner’s inquest procedures for the county executive.

(h-2) A judge should not serve on a commission charged with advising the mayor as to the internal policy and operations of the police department following a controversial incident that could lead to federal litigation.
Similarly, a judge should not serve on a city council committee responsible for drafting city ordinances for possible enactment.

A judge should not serve on state Alcohol and Drug Abuse Commission. Similarly, a judge should not accept appointment by a state governor to a state mental health commission.

A judge may not chair a group established to reduce youth violence, where the group includes state officials, works closely with state agencies, receives state funding, and carries out social policy for the benefit of state residents; the judge should not accept this role even in the capacity of spouse of an elected official.

A judge should not serve on a committee to conduct an evaluation of a city’s public school system, due to concerns under Canons 4B and 4F.

Canon 4F precludes a judge’s service on a government committee established to study preventive, educational, social, and legal strategies addressing problems of violence and to report back to the legislature. Such service would inappropriately involve the judge in matters of public policy and would not be limited to matters of improving the law as to which the judge would have a unique perspective. In addition, service on such a committee could give rise to questions of judicial participation in legislative functions and could require frequent recusal in cases involving the interpretation of such laws.

A judge should not accept appointment by the FBI Director to a board established to advise the FBI on DNA testing; such an appointment would risk sacrificing independence of the judiciary concerns expressed in Canon 1 and 4F. Same, for appointment to a board established to advise the FBI Director concerning policy, technical, and operational issues related to criminal justice information systems.

A judge should not serve as advisor to a federal agency recommending compensation for families of deceased federal employees.

Although Canon 4F excepts matters related to improvement of the legal system, a judge should not serve on judicial selection board established by Governor because of political implications. Same for U.S. Senator’s judicial screening committee.

Although Canon 4F excepts matters relating to the improvement of the legal system, the concerns expressed in Canon 1 relating to an independent federal judiciary indicate that a judge should not serve as a member of a state Board of Law Examiners. In habeas matters a federal judge is required to review indirectly decisions of the state’s highest court, and it would be inappropriate for the judge to be appointed or sit on a committee subject to the direction of that court. See Compendium § 1.3(a). However, law clerk may serve on state board
of law examiners if judge approves and law clerk is isolated from all habeas cases.

(l-2) A judge should not serve on investigative, fact-finding ethics advisory panel of state senate.

(m) A judge should not serve as trustee of Park Commission although its activities resemble those of charitable and civic organizations because the Committee views it as a governmental commission as its activities are tied too closely to the government of the town. Similarly, a judge should not serve on a local government’s Library Board.

(n) A judge cannot serve as Honorary Vice Consul of a foreign country. It is a governmental position within meaning of 4F as it requires appointment by a government and accreditation by the State Department. Similarly, a senior judge should not serve as an ambassador to a foreign country while retaining a federal judgeship.

(o) A full-time magistrate judge should not serve on a state board established to determine payments from a liability fund for attorney malpractice claims, but a part-time magistrate judge is not subject to Canons 4A(4) and 4F and may do so.

(p) A judge should not serve as an expert advisor to a foreign tribunal that is responsible for restructuring a corporation, due to concerns under Canon 2, 4A(4) and 4F.

§ 4.6-6 Governmental Appointments [Judicial Employees]

(a) Law clerk may serve on committee to review city tax expenditures where the position is unpaid and has no governmental power but is advisory only; law clerk should ensure that any publicity about committee’s recommendations refrains from identifying the clerk as a law clerk or court employee.

(b) A pretrial services officer may serve on an advisory state commission honoring a historic civil rights case, but should restrict fundraising and refrain from related partisan political activity.

(c) Canon 4F would prohibit judge from accepting appointment to Oral Appraisal Board of a state’s Department of Civil Service; but because there is no similar provision in the Code of Conduct for United States Probation Officers, a judge can approve the probation officer’s outside employment in this capacity provided duties are performed while on leave, duties do not impair the probation officer’s ability to perform assigned work, and probation duties are limited to the cases on the criminal docket of the district court. [Refers to probation officers code that was withdrawn; compare to current Code of Conduct for Judicial Employees.]
(d) Staff counsel may accept uncompensated appointment to advisory committee for city water board where the committee’s work is advisory only, will not interfere with the performance of official duties, and is unlikely to give rise to federal litigation or involve the counsel with frequent litigants in federal court.

(e) A federal public defender may serve without pay on a board setting policy for a local housing agency; the duties are quite distinct from defender duties and do not involve law enforcement.

(f) A probation officer assistant may remain on inactive status (no duties) with a sheriff’s department, but should refrain from working on matters stemming from sheriff’s department investigations.

(g) A law clerk may serve on state board of law examiners if judge approves and law clerk is isolated from all habeas cases.

(h) Although clerks of court are not subject to Canon 4F of judges’ code restricting appointment to governmental commissions, clerk should nevertheless decline appointment to state medical licensing board because of concerns under Canon 2 (appearance of impropriety) and Canon 4C(1) (frequent transactions with persons likely to come before the court).

(h-1) A deputy clerk should not serve on a local zoning board that exercises governmental powers and would entail association with lawyers who appear in federal court. Same for judicial employee’s service on town planning and zoning commission likely to lead to contentious public debate and state and federal litigation. Same, for clerk of court’s service on state commission that would make recommendations concerning state judicial retention elections. Same, for a judicial employee’s proposed service on a state board that is responsible for certifying and licensing court reporters. Same, for service by a judicial employee on a committee that evaluates character and fitness for state bar admission. Same, for law clerk’s service on a county commission where appointment is made by an elected official and the commission makes recommendations to legislature on the allocation of tax dollars. Same, for staff attorney’s service on a community board where appointment is made by an elected official and board directly influences the exercise of local governmental power. Same, for judicial employee’s proposed service on state judicial council where appointment is made by state governor or state supreme court, the council exercises governmental and policymaking powers, and service may involve overseeing lawyers who also appear in federal court.

(h-2) An assistant federal public defender should not serve on a state alcohol beverage control commission in a position involving judicial and law enforcement responsibilities.
(h-3) A judge’s secretary should not accept appointment to a local water board that has governmental as opposed to advisory responsibilities, that is likely to be involved in challenges in federal court, and that would involve association with lawyers or other litigants in federal court.

(h-4) A probation officer should not serve on a local board responsible for hiring, firing, and discipline of police officers and firefighters.

(h-5) A chief pretrial services officer should not serve in a corrections policy organization set up by the Department of Justice and should not attend organization conferences at DOJ expense.

(h-6) A law clerk should not accept appointment to a state government ethics commission, due to concerns under Canons 2, 4, and 5.

(h-7) A judicial intern should not accept a concurrent internship with a state or federal government agency. See Canon 4A. Similarly, a judicial employee should not accept volunteer employment with a local district attorney’s office, due to concerns regarding “dual service to and/or supervision by . . . different governments” in violation of Canon 4A.

(h-8) A judicial employee should not assist with an evaluation of a state university athletic department’s compliance with federal law, due to risk of litigation and potential for dual service or supervision by another government entity during judicial employment. See Canon 4A.

(h-9) A judicial employee should not serve on a nonpartisan redistricting commission because of the commission’s prominent role in a hot-button political issue that will likely become the subject of contentious public debate.

(i) A judicial employee should not serve on the board of a public charter school because it would likely create the potential for dual service to and/or supervision by different governments during judicial employment.

§ 4.7 Chambers, Resources, and Staff

§ 4.7-1 Use of Staff and Chambers

- Advisory Opinion No. 79 (use of chambers, resources, and staff for activities permitted by Canon 4).

(a) A judge who writes a law-related periodical and receives compensation therefor should not use secretary to type manuscripts. See Advisory Opinion No. 79.

(b) A judge who chairs a bar association committee may use chambers’ local telephone, FAX and e-mail for these activities (where legally permitted and the
government does not incur extra charges) but should not use government postage and letterhead.

(c) It would be inconsistent with Canon 4G for a judge to accept compensation for supervising mock court proceedings in judicial facilities, but this would not apply to programs in nongovernmental facilities.

(d) A court may permit an outside group to use courthouse facilities for a CLE or other educational event, provided that the event does not interfere with regular court use, other groups are also permitted to use courthouse facilities for similar educational purposes on request, and permitting the activity does not otherwise raise Canon 2 concerns by showing a preference for one particular group over another.

(e) A judge’s proposal to use internal court documents in a judge’s extrajudicial publication raises concerns under the Code about preserving the confidentiality of judicial decision-making in the court as a whole. The integrity of the judiciary would be undermined if confidential work and communications between staff attorneys and judges are unilaterally disclosed to the public. Such use of internal court materials would also be inappropriate under Canon 4D(5).

§ 4.8 Compensation, Reimbursement, and Financial Reporting

§ 4.8-1 Gifts

- Compendium §§ 21 et seq. (Ethics Reform Act Concerning Gifts).

§ 4.8-2 Honorary/Reduced-Rate Memberships

- Advisory Opinion No. 47 (acceptance of complimentary or discounted club memberships).

(a) A judge may accept a free membership in the “American Board of Trial Advocates,” the organization being devoted to the improvement of the law.

(b) It is permissible to accept free membership in a local bar association.

(c) Judge may accept a free one-year guest membership in a hunting club offered by a longstanding family friend, unless acceptance creates a perception that club members who are attorneys are in a special position to influence the judge; remittal should be considered if other club members appear before the judge.

(d) Judge may accept membership in a social club that offers multiple membership categories, and sets membership dues and fees based on broad occupational categories; in this situation judges are eligible for membership in a category that includes government attorneys and other professionals, and that entails reduced membership privileges. Such memberships are not prohibited gifts, and do not

(e) Judge may accept honorary membership in a service club that exempts the judge from paying annual dues. Such membership is consistent with Canon 4B and is not prohibited by statutory restrictions concerning honorary club memberships. See Public Law 110-402, 122 Stat. 4255 (Oct. 13, 2008).

(f) Judge may accept a discounted or complimentary membership in a professional organization, including a bar association or an Inn of Court. Such memberships are not prohibited gifts, and do not fall within the statutory restrictions regarding honorary club memberships. See Public Law 110-402, 122 Stat. 4255 (Oct. 13, 2008) and Memorandum from James C. Duff to U.S. Judges (October 20, 2008).

(g) Judges may accept offer of limited access to a social club for a monthly fee; the same offer is extended to a broad group that includes judges, the clergy, and the military. Such privileges, which do not constitute full membership and entail restricted rights in the club, are not prohibited gifts and do not fall within statutory restrictions regarding honorary club memberships. See Public Law 110-402, 122 Stat. 4255 (Oct. 13, 2008).

(h) Judge may accept membership in a dining club that offers multiple membership categories, and sets membership dues and fees based on broad occupational categories; in this situation judges are eligible for membership in a category that includes government attorneys and that entails reduced membership privileges. Such memberships are not prohibited gifts, and do not fall within the statutory restrictions regarding honorary club memberships. See Public Law 110-402, 122 Stat. 4255 (Oct. 13, 2008).

(i) After the October 13, 2008 effective date of the statutory restriction regarding honorary club memberships, a judge should not continue to accept the benefit of a prohibited honorary club membership with a value of more than $50 per year. See Public Law 110-402, 122 Stat. 4255 (Oct. 13, 2008) and Memorandum from James C. Duff to U.S. Judges (October 20, 2008).

(j) Judge may accept the benefits of a golf club membership received by the judge’s spouse in consideration for legal services provided by the judge’s spouse in connection with the development of the club. Such membership is not a prohibited gift, and does not fall within the statutory restrictions regarding honorary club memberships. See Public Law 110-402, 122 Stat. 4255 (Oct. 13, 2008). Same, with respect to an athletic club membership received by a judge’s spouse incident to the spouse’s business or profession.

(k) Judge should not accept a reduced-rate membership in a dining club, where the membership offer is highly selective (only 50 persons at a time may hold such memberships) and the memberships are intended to enhance the reputation of the club.
Such memberships constitute prohibited gifts under the Judicial Conference Gift Regulations.

(l) Judge may accept social club’s offer to waive annual dues where judge had been a dues-paying member for over 35 years and club offered dues waiver in recognition of long-standing membership. A dues waiver under these circumstances is not a prohibited gift and does not fall within statutory restrictions regarding honorary club memberships. See Public Law 110-402, 122 Stat. 4255 (Oct. 13, 2008).

(m) The opportunity to eat lunch at a judge’s own expense at a private social club, offered to judges solely because of their judicial status, constitutes a gift. A judge should not accept the club’s offer if the value of the gift is greater than $50 per year. See Public Law 110-402, 122 Stat. 4255 (Oct. 13, 2008).

(n) Judges should not accept honorary membership in a social club that offers such memberships only to select groups of individuals and it is clear that such membership is offered to judges solely because of their judicial status. In this situation honorary members do not pay the club initiation fee or monthly dues that all other members must pay. Such memberships constitute prohibited gifts under the Judicial Conference Gift Regulations and also fall within the statutory restrictions regarding honorary club memberships. See Public Law 110-402, 122 Stat. 4255 (Oct. 13, 2008).

(o) Judge may accept invitation to use recreation facilities at a military base, where the Department of Defense extends a similar invitation to many others (including all civilian Department employees) and where judges must pay the same fees to use the facilities as others. Such an invitation does not fall within statutory restrictions regarding honorary club memberships. See Public Law 110-402, 122 Stat. 4255 (Oct. 13, 2008).

(p) A free membership to a shooting range does not fall within the statutory restrictions regarding honorary club memberships, but the judge should not accept the offer of free membership under the Gift Regulations, where the free membership is based solely on judicial status.

(q) Honorary membership in a golf club that was awarded in recognition of the judge’s efforts to develop the golf course prior to becoming a judge does not fall within statutory restrictions regarding honorary club memberships. See Public Law 110-402, 122 Stat. 4255 (Oct. 13, 2008).

§ 4.8-3 Investitures and Similar Ceremonies

➢ Advisory Opinion No. 98 (gifts to newly appointed judges).

(a) A judge may accept a gavel and a $500 gift from a former client on the occasion of the judge’s investiture.
(b) A judge may accept a gavel and a contribution toward the cost of the reception from a local bar association on the occasion of the judge’s investiture.

(b-1) Judge may permit bar association to host reception following investiture. Judge should not permit another organization to do so where the organization is identified with particular legal, social or political positions likely to be advanced in the courts or where the judge has no preexisting relation with the organization and sponsorship could reasonably be viewed as putting the organization’s members in a special position of influence.

(c) A judge may accept leather notebook and pen from Law Institute as a memento of a judge’s presentation. See Advisory Opinion No. 88.

(d) Bankruptcy judge may serve on committee planning testimonial for retiring chief judge that will be sponsored by and funded by contributions from bankruptcy bar associations and panel trustees’ association so long as judge does not participate in solicitation of contributions. See Canon 4D(4); Gift Regulations, Guide, Vol. 2C, Ch. 6; Advisory Opinion No. 46.

(e) Gifts of $10 or less (toward robe to be presented at investiture) by former colleagues and friends of new judge are permitted gifts incident to public testimonial or gifts from friends on special occasion, and give rise to no impropriety or need to recuse.

(f) Gift from former law firm (reception following investiture) to new judge upon investiture is a gift incident to a testimonial or a gift from friends upon a special occasion. Although substantial in amount ($1000-$3000) and although impropriety might be indicated in other circumstances where a donor likely to appear before the judge makes a substantial gift, because the judge intends in any event to recuse for two years from cases in which the former firm appears, the circumstances here indicate no impropriety.

(g) It would create an appearance of impropriety for a judge to permit a for-profit company to host a reception following the judge’s investiture, where the judge had no preexisting relationship with the company, would not otherwise have been required to recuse, and the circumstances would convey the impression that the company was in a special position to influence the judge. Canon 2B. See Compendium §§ 2.10 and 25.1 (Ethics Reform Act Concerning Gifts).

(h) A judge should not accept an expensive investiture gift from an attorney acquaintance who is not a close, personal friend.

(i) A court’s use of non-appropriated funds, collected through attorney admission fees, to pay for the costs of an investiture reception does not raise ethics concerns. See also Advisory Opinion No. 98.
§ 4.8-4  Travel and Lodging

(a) A judge may accept free travel and hotel reimbursement from a former client for attending a seminar or for attending an anniversary celebration of a client, provided the donor is not likely to come before the court. Canon 4D(4)

(b) A judge may not permit travel expenses incurred in the performance of judicial duties to be paid by litigants.

(c) A judge or spouse may not accept free transportation from a former client or anyone else whose interests have come before the judge or may in the future come before the judge.

(d) Judge may accept, from an organization devoted to improvement of the law, an award in the form of a framed certificate and reimbursement of travel expenses to attend the organization’s meeting at which the judge will be honored, although the organization will purchase the framed certificate and make the reimbursement with funds donated to it by a legal publishing company doing business with the courts.

§ 4.8-5  Discounts

(a) A judge may accept a “professional courtesy” reduction in brokerage fees or attorney’s fees if, and only if, the same concession is routinely made to other professionals.

(b) A judge may accept a professional courtesy waiver of attorney’s fees if it is extended by a particular law firm to all members of the bar. However, where members of the firm offering the discount have appeared before the judge or are likely to appear before the judge in the future, he or she may not accept the waiver of attorney’s fees.

§ 4.8-5 [1] Discounts [Judicial Employees]

(a) Bankruptcy court employees should not accept discounted or pro bono legal representation in bankruptcy proceedings from an attorney who frequently practices before the court.

(b) Judicial employee may accept free or reduced-rate legal services from a friend who does not seek action from, or do business with, the employee’s court or office, provided that the friend’s interests would not be substantially affected by the performance of the employee’s duties and Canon 2 concerns can be avoided.

§ 4.8-6  Hospitality

(a) A judge may attend, and accept hospitality at bar association events and meetings of other organizations devoted to improvement of the law, legal system, or the administration of justice. With respect to attendance at cocktail parties hosted by law firms in connection with bar meetings, judicial conferences, and the like, there is no
impropriety in a judge accepting such invitations in the absence of reason to believe that such attendance will reasonably reflect unfavorably on the judge's impartiality or is likely to be exploited by the law firm. Advisory Opinion No. 17.

(a-1) Attendance at a law firm buffet dinner held in conjunction with a circuit judicial conference is also permissible, where other judges and a cross-section of attendees are invited and attendance facilitates collegial bench-bar relations, subject to individual determinations of impropriety due to pending cases or other factors.

(b) Judges may attend bar association events such as receptions where a legal publishing firm has donated the hors d'oeuvres and beverages to the bar association. It is not appropriate, however, for a group of judges or judicial personnel to allow a legal publishing firm or any other vendor doing business with their court to donate food and beverages for a meeting of the judges or judicial employees. See Compendium § 2.9.

(b-1) Although mere attendance (along with others similarly situated) without paying registration fee would not create an appearance of impropriety, it would create an appearance of impropriety for employees of the Administrative Office to accept from a legal publishing firm a gift of transportation, lodging and meals in connection with a professional training program sponsored by the firm.

(b-2) It would create an appearance of impropriety for a judge to permit a for-profit company to host a reception following the judge's investiture, where the judge had no preexisting relationship with the company, would not otherwise have been required to recuse, and the circumstances would convey the impression that the company was in a special position to influence the judge. Canon 2B. See Compendium §§ 2.10 and 25.1 (Ethics Reform Act Concerning Gifts).

(b-3) No appearance of special influence in violation of Canons 1 or 2 or acceptance of prohibited gift in judge's acceptance of testimonial reception honoring retirement, sponsored and paid for by bar associations, or in acceptance (and acknowledgment thereof) of donated invitations from company which has no direct business with the court and is owned by retiring judge's old friend.

(b-4) When judge is retiring, contributions by lawyers who have appeared before the judge and businesses that have done business with the court to a retirement party for the judge raises fewer ethics concerns because such lawyers or businesses will not appear before the judge in the future and because the event is sponsored by the bar association. The modest additional contributions in this case will not change the perception of who is sponsoring the event.

(c) A judge may be the guest of honor at a public dinner arranged by former law clerks, attended by lawyers and other members of the public, as well as the law clerks.
The law clerks should make clear on the invitations and other papers relating to the dinner not only the fact that the dinner is sponsored solely by present and former law clerks, but that the amount paid by other attendees is solely to cover the cost of the dinner, that no fundraising activity is involved, and that no part of the amount paid by the attendees for the dinner will be employed in the purchase of a gift for the honoree.

(d) In connection with a judicial meeting, judges should not accept an invitation and tickets to an event that provides special access to benefits not available to the general public, regardless whether the judges pay for the tickets.

§ 4.8-7 Attendance at Seminars and Reimbursement of Expenses

- Advisory Opinion No. 67 (attendance at educational seminars).
- Compendium § 2.10.

(a) Subject to the conditions and limitations set forth in Advisory Opinion No. 67, a judge may accept reimbursement of expenses and tuition waivers for attendance at a seminar given by a hospital association, but not if the interest of that association has, or is likely to, come before the court or if the association has interests that may be substantially affected by the performance or nonperformance of the judge's official duties. The judge should be satisfied that there is no appearance of attempting to influence decision of specific cases. See Advisory Opinion No. 17.

(a-1) A judge may accept reimbursement of expenses to attend a private environmental law seminar where neither the sponsor nor source of funding is involved in litigation before the judge's court (i.e., is a party; controls, is controlled by, or is under common control with a party; or is a party's attorney); but the judge should consider recusal if he or she gains extra-judicial knowledge of disputed facts in a case before the judge.

(b) A judge may participate in an international conference concerning minimum standards of judicial independence, and accept reimbursement of travel expenses from the (foreign) university-sponsor. Similarly, a judge may participate in, and accept reimbursement of travel expenses associated with, a trip abroad sponsored by a non-profit organization to promote cross-cultural understanding.

(b-1) A judge may speak at a bar association convention, or an international congress of maritime arbitrators, and accept reimbursement for travel and lodging expenses.

(c) A judge may serve as advisor for a bankruptcy law institute that conducts educational seminars, and may accept reimbursement of expenses for attending meetings of that body.
(c-1) Judges may attend a bench/bar conference focusing on law-related issues; no impropriety due to its small, informal nature and social interactions even though some attorneys are invited to attend but it is also open to others.

(d) A judge may accept reimbursement of expenses for attending law-related seminars.

(d-1) Bankruptcy judges may accept from a bankruptcy bar association (open to all bankruptcy practitioners and representative of all interests in bankruptcy court) reimbursement for expenses incurred in attending National Conferences of Bankruptcy Judges.

(d-2) Judges may accept invitation to attend free mediation training session offered by organization previously selected by court to provide training to court mediators.

(d-3) Judge may accept reimbursement of expenses to address meeting of an association of corporate attorneys, where the association is not a likely litigant in judge’s court.

(d-4) Judges should not conduct private educational seminars where the “educators” are lawyers who practice before the court, the programs are directed to areas of law that are likely to arise before the court, and the only persons present are judges, law clerks, and the invited educators. But judges may attend seminars for state and federal judges sponsored by bar associations, and this should not disqualify attending judges from cases handled by the attorney-lecturers.

(e) A judge may attend a George Mason University seminar under factors set forth in Advisory Opinion No. 67: (1) the sponsor is a center at an accredited institution of higher learning; (2) the seminar is funded by general contributions to a university center and not by funds earmarked for judicial seminars; (3) the university and the center are not involved in litigation before the judge and are unlikely to be in the future; (4) the subject matter (American history) is unlikely to relate to litigation before the judge and is not controlled by contributors; (5) expenses covered are reasonable in amount and educational rather than recreational in nature; and (6) although contributors are not publicly identified, no corporate donor provides more than two percent of center funds.

(f) A judge may attend a Medina seminar under factors set forth in Advisory Opinion No. 67: (1) the sponsors include a government entity (the FJC) and an arm of an accredited institution of higher learning (Princeton University); (2) the seminar is funded by donations to a government foundation and attendee fees; (3) the sponsors are not involved in litigation before the judge and are unlikely to be in the future; (4) the subject matters (world events, humanities and the sciences) are unlikely to relate to litigation before the judge and are not controlled by contributors; (5) expenses covered are reasonable in amount and educational rather than recreational in nature; and (6)
although contributors are not publicly identified, funding comes from private, unrestricted gifts to a government foundation.

§ 4.8-7[1] Attendance at Seminars and Reimbursement of Expenses
[Judicial Employees]

(a) Law clerks and staff attorneys may accept waiver of tuition for attending a law-related seminar, although the sponsor of the seminar is a profit-making educational institution, when the sponsor is not likely to come before or seeking to do business with the court and its interests would not be substantially affected by the performance or nonperformance of the judicial employees’ official duties.

(b) Law clerk may accept reimbursement of costs of attending a legal education conference from prospective employer that does not practice before law clerk’s court.

(c) A law clerk should not participate in CLE programs sponsored by the law clerk’s former employer, where participation could create the impression of a special relationship between the law clerk’s court and the sponsor.

(d) A law clerk should not accept reimbursement of expenses for attendance at an educational event if a reasonable person would believe the reimbursement is being offered in return for being influenced in the performance of an official act. Where the sources of the funding for the event are unknown, a law clerk should inquire to ensure that there is no actual or potential impropriety.

§ 4.8-8 Gifts on Special Occasions

    Advisory Opinion No. 89 (judges’ acceptance of honors funded through voluntary contributions).

(a) A judge may accept a gift of a trip aboard a cruising ship (costing about $1500) on the occasion of 20th anniversary as a United States judge where the donors consist exclusively of persons who have worked directly with the judge (i.e., law clerks, secretaries, courtroom deputies, and court reporters), there are a sufficient number of donors that no individual contribution to the gift is unusually large, and the judge is not made aware of the amounts contributed by the respective donors.

(b) On occasion of taking senior status, judge may accept gift from law clerks of golfing trip.

(c) No impropriety for former law clerks to solicit from other law clerks to establish scholarship in honor of retiring judge. Judge and present law clerks should not solicit.

(d) Judges may accept clocks valued from $81.40 to $101.40 from bar association upon the occasion of their appointment to the federal bench. A judge may
also accept a chair valued at $238 from judges of a state court bench on which he previously served upon the same occasion.

§ 4.8-9 Gifts from Persons Likely To Appear Before Judge

(a) Although Canon 4D(4) prohibits gift from person who has come or is likely to come before judge, this does not apply when the judge would recuse in any event.

§ 4.8-10 Miscellaneous Gift Rulings

- Advisory Opinion No. 91 (solicitation and acceptance from persons doing business with the court of funds to defray expenses of conference for improvement of the law).

(a) Under the Judicial Conference Regulations on Gifts, it may be permissible to accept books from a publishing company for official use. However, this exception to the usual prohibition on acceptance of gifts does not include the acceptance of a complimentary subscription to books from a publishing company.

(b) It is permissible for a judge’s children to accept scholarships awarded on the same terms and based on the same criteria applied to other applicants. Similarly, a judge may accept a scholarship awarded on the same terms and based on the same criteria applied to other applicants and that is based on factors other than judicial status; this is not considered a gift under the Gift Regulations.

(c) Gifts from a friend not prohibited where friend not likely to ever appear in judge’s court.

(d) Neither Canon 2 nor the Ethics Reform Act prohibits a judge whose part-time teaching at law school has been approved from using service provided by Westlaw free of charge to all full and part-time faculty members of the law school, if that use is incidental to the judge’s teaching duties and otherwise uncompensated scholarly research.

(e) Where a judge’s retirement account is left in former firm’s retirement plan and partners of the firm serve without compensation as trustees, their unpaid services are appropriately considered to be part of the agreement reached with the firm at the time of withdrawal from the firm and not a gift.

(e-1) A judge who receives a prestigious distinguished service award honoring service to the public and to the administration of justice may also accept the accompanying substantial cash award, where the award is funded by a company doing business with the courts but is administered by an entity that does not do business with, or frequently appear before, the courts.

(f) Canon 3D of the Code of Conduct for Federal Public Defender Employees permits acceptance of mementoes or tokens from clients, but not valuable gifts.
(f-1) Handmade crafts valued between $50 and $150 are not mementoes or tokens permitted under Canon 3D.

(g) Gifts to the judicial branch may be accepted by the Director of the Administrative Office; personal gifts may be accepted by individual judges consistent with the gift regulations.

§ 4.8-11 Receipt of Compensation by Judges and Judicial Employees

› Compendium §§ 31-35 (Ethics Reform Act concerning outside earned income, honoraria, and outside employment).

(a) A judge may accept compensation from a nonprofit organization to assist with drafting a national constitution.

(b) Compensation received by judges for extrajudicial activities must be reasonable in amount, and not in excess of what would be paid to other nonjudge professionals for similar services.

(c) Judges may be paid at a higher rate than other adjunct professors but a lower rate than full-time and emeritus professors.

(d) Judges may be compensated for preparing bar examination questions.

(e) A judge may not accept an endowed adjunct professorship where the professorship is endowed by and named after a local law firm or lawyer who practices before the judge’s court.

(f) A judge may accept compensation for teaching where the subject matter only incidentally relates to practice before the judge’s court. See Advisory Opinion No. 87.

(g) Subject to consulting with the appointing judge, a law clerk may teach at a law school or college, may receive compensation and reimbursement of expenses, and may accept legal research services provided to all teachers. A law clerk should not use as teaching materials cases the judge or the law clerk worked on during the clerkship; the law clerk may use other cases from the same court but should avoid disclosing confidential information.

(h) A judge may accept compensation from a government corporation to assess proposals for case management software and to design case management training for a foreign judiciary, assuming that the software vendors submitting proposals do not do business with the judge’s court.

(i) A judge may accept reasonable compensation for participating in a clinical drug trial from a company not involved with the court.
(j) A judge may accept compensation from a foreign government’s judicial department to develop and conduct training for judges on alternative dispute resolution.

(k) Under Canon 4H, a judge’s “compensation” should be considered broadly to include both monetary payment, such as salary or wages, and acceptance of other tangible benefits afforded to an employee.

§ 4.8-12 Expense Reimbursement

- Compendium §§ 25, 34.1, and 35.4.

(a) A judge may accept reimbursement of travel expenses for self and spouse to attend a meeting of a charity of which the judge is trustee. Where reimbursement is paid by a related corporation rather than by the charity, the judge should ensure that the corporation does not have interests before the court.

(b) A judge who serves on the board of a charity may accept reimbursement of travel expenses to inspect the charity’s research program from a for-profit company that donates supplies for the research, where the judge has recused from all cases involving the company and the judge’s role will not be publicized.

(c) A judge may be a panelist or participant at a seminar and receive reimbursement of expenses. It is also permissible for a judge to attend social events sponsored by businesses or law firms in conjunction with the seminar. No compensation may be accepted unless the activity qualifies as teaching under the Ethics Reform Act and outside employment regulations.

(d) A judge may lecture at a seminar organized by a nonprofit foundation with corporate sponsors and may accept reimbursement of expenses but not compensation. See Compendium § 34.1-2(k). Same, for lecturing at a continuing education program for physicians. Same, for participation in an international conference geared towards improvement of a foreign court system.

(e) A judge may appear on a panel at a legal conference sponsored by a for-profit company and may accept reimbursement of expenses; but the judge should ensure promotional materials used at the conference do not overemphasize the judge’s participation or imply the judge’s endorsement of the company’s commercial services.

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.

COMPRENDIUM OF SELECTED OPINIONS CONCERNING CANON 5

§ 5. Political Activities

Advisory Opinion No. 98 (gifts to newly appointed judges).

(a) “Political activity” for purposes of Canon 5 includes activities that associate a judge with a political officeholder, candidate, party or organization, or that promote the policies or positions thereof.

(b) A judge should not participate in a program designed to encourage the establishment of political parties in foreign countries.

§ 5.0 Voting and Registration

(a) There is no blanket prohibition against voting in primary elections and judges may vote in a primary run by a board of elections and accomplished by secret ballot; but judges should not participate in primary proceedings that require open and public expressions of support for candidates (e.g., caucuses that require a public expression of support for a candidate). Same for law clerks and other chambers staff.

(b) Judicial employees who may permissibly participate in nonpartisan activities under Canon 5B may participate in caucuses in those states where caucuses substitute for primary elections, but only to the extent necessary to cast a vote. See Advisory Opinion No. 92.
§ 5.1 Attendance at Meetings

- Advisory Opinion No. 19 (judge should not be member of partisan political club).

  (a) A judge may not attend any political meeting or rally, or otherwise associate himself or herself, with a candidate for political office, even when the candidate is the judge’s spouse. Similarly, a judge should not accept an invitation to meet with a political party official. See Commentary to Canon 5.

  (b) A judge may not attend a national political convention, even though a close relative is a leading candidate.

  (c) A judge may make a speech at the annual convention of a union formerly represented by the judge, where the meeting is remote in time from any political campaign, there are no political overtones to the meeting, and the judge’s speech will not address political topics or issues.

  (d) A judge may attend purely ceremonial functions involving elected officials, including inaugural festivities and installation ceremonies, where the price of the ticket (if any) is not a political contribution.

  (d-1) There is no impropriety in a judge attending a reception honoring Congressional Black Caucus, where it is not a fundraising affair nor an event intended to promote a party or candidate (Canon 5A(3) and the judge’s mere attendance as a guest of a friend does not lend the prestige of office (Canon 2B). Same, where the judge plans to attend the event and administer a ceremonial oath.

  (e) A judge should not give a speech at a meeting of a partisan political group.

  (f) A judge should not perform with a musical group at a political fundraiser, as this could be viewed as a political endorsement and/or contribution.

§ 5.2 Relationships with Elected Officials, Including Contributions to Campaigns

- Advisory Opinion No. 73 (requests for letters of recommendation and similar endorsements).
- Advisory Opinion No. 59 (a judge may properly recommend and give an evaluation of a judicial candidate to screening or appointing authority).

  (a) A judge whose spouse is an elected official may attend purely ceremonial and social functions, but not political functions. Events and gatherings that associate the judge with a political candidate or party or promote the policies or positions of a political party (such as political meetings and rallies) are not permissible.

  (b) A judge should not serve on a United States Senator’s committee to screen applicants for the various service academies.
(c) It is inappropriate for a judge to serve on a committee to screen applicants for appointment by the governor to the State Education Commission.

(d) A judge may contribute to a scholarship fund established by a congressman.

(e) A judge should not serve on judicial selection board established by Governor because of political implications. See Compendium § 4.6. Same for U.S. Senator's judicial screening committee. Same for bar association committee that selects candidates to be appointed by the mayor. But see Advisory Opinion No. 59 (allowing judges to respond to requests from appointing authorities/screening committees for suggested names of judicial candidates).

(f) A judge may join a Committee that is requesting a county Board of Supervisors to name a newly constructed Hall of Justice after a recently deceased member of the local bar, and judge may allow his or her name to be used so long as the judge's name and position are listed in the same manner as all other committee members.

(g) A judge should avoid giving advice to elected officials running for public office because of the risk of contravening Canons 1, 2, 3, 4, and 5 and should not participate in political campaigns; any consultation with candidates should be infrequent, private, and circumscribed to focus on matters concerning the administration of justice rather than political or social issues of the day.

(h) Judge who previously served as a legal and political advisor to an elected official should refrain from responding during a subsequent election campaign to public criticism of their previous actions; this may be viewed as an indirect political endorsement.

(i) A social or professional relationship between a judge and a candidate for political office does not affect the categorical prohibition of Canon 5A(3) against a judge making a contribution to a political candidate or organization.

(j) A part-time magistrate judge may not make political contributions, and may not permit the law firm in which he or she is a partner to make such contributions; individual contributions from partners, using their own funds, are not prohibited.

(k) A judge does not violate Canon 5A(3) by paying a mandatory bar fee for a legislatively-created state appellate judicial campaign fund, because the fund is neither a political organization nor a candidate within the meaning of Canon 5A(3) and the fee is mandatory for bar members under state law. Same result for members of a judge's personal staff under Canon 5B of Code of Conduct for Judicial Employees.
§ 5.2-1 Relationships with Elected Officials [Judicial Employees]

(a) A Circuit Executive may not accept membership on a merit selection panel functioning as part of a political apparatus of an elected official.

(b) Members of a judge's personal staff do not violate Canon 5B of Code of Conduct for Judicial Employees by paying a mandatory bar fee for a legislatively-created state appellate judicial campaign fund, because the fund is neither a political organization nor a candidate and the fee is mandatory for bar members under state law.

§ 5.3 Spouse's and Other Relatives' Political Activities

(a) A judge's spouse may freely contribute to political campaigns and causes so long as the judge plays no role in the decision to contribute and makes reasonable efforts to ensure that the contribution is perceived as that of the spouse and not the judge, including, but not limited to, requiring that the contribution be made from a separate account over which the judge has no control. Advisory Opinion No. 53.

(b) A judge whose spouse is a candidate for elected office may not attend political meetings, should avoid active involvement in the campaign, and must recuse from cases in which contributors to the spouse's campaign are parties or appear as counsel. The judge should not attend: the spouse's announcement of candidacy; political gatherings where the spouse appears or speaks (whether or not they involve fundraising); public debates if they are political or campaign functions; or a victory celebration. The judge may attend civic gatherings sponsored by nonpolitical organizations to which all candidates (including the spouse) are invited, and may attend inaugural festivities because these are not political gatherings. Where recusal is indicated due to a contributor's involvement, the judge may use the remittal procedures of Canon 3D.

(b-1) A judge can be responsible for recusing only with respect to those contributors to a spouse's campaign of whom the judge is aware; where state law requires public disclosure of the identity of contributors, the judge may choose to examine the public records but is not required to do so. It is reasonable for a judge to limit the time frame in which contributions will be examined.

(b-2) Judge need not recuse from cases involving contributors and active supporters of child's campaign who are not identified to the judge; also, judge need not make inquiry to identify such contributors and supporters.

(b-3) Where an attorney contributed to a spouse's campaign, the judge need not recuse from matters handled by other attorneys at the law firm, unless the firm itself contributed or is closely identified with the campaign.

(b-4) A judge whose spouse is running for elected office may appear in a family photo that may be used in campaign advertising and literature, but the
judge's title or office should not be identified in the photo or campaign material. The judge should not place a campaign bumper sticker on the judge's personal vehicle.

(c) When the spouse of a judge uses the marital home to host political events, such as receptions for candidates and fundraisers, the judge must not in any manner encourage, assist or concur in the holding of the events and must take all reasonable measures to dissociate himself or herself from them, including steps to avoid being seen by those in attendance during the events, which if necessary would include leaving the premises for the duration of the event. Similarly, a judge should take steps to disassociate self from minor child's political campaign activities.

(d) A judge whose spouse proposes to post a political candidate's sign at the marital home should try to dissuade the spouse from doing so and, failing that, should make reasonable efforts to disassociate himself or herself from the sign (e.g., by posting a disclaimer, listing spouse's name only on the sign, or placing the sign on the spouse's automobile that judge would not drive). Law clerk should take similar steps to disassociate from spouse's partisan political activities.

(e) A judge may permit a minor child to take part in a public recital, one segment of which has political overtones.

(f) The Code of Conduct for United States Judges does not prohibit a judge's spouse from serving in a political campaign, but the judge should disassociate him or herself from the spouse's political activities.

(g) Canon 5 does not prevent a judge's spouse from co-chairing a political campaign, but the judge may not attend political functions including a victory celebration.

§ 5.3-1 Spouse's and Other Relatives' Political Activities [Judicial Employees]

(a) A law clerk may not attend political meetings or accompany a spouse campaigning for political office door-to-door; however, a family picture may be used in the spouse's campaign material if the clerk's judicial employment is not identified in any way; the marital home may be used for political meetings if the law clerk does not appear at such meetings; bumper stickers are also permissible if the car is used by the spouse and not the law clerk.

(b) A probation officer should not attend fundraisers or campaign functions and should not accompany a candidate spouse campaigning door-to-door. Where the home is campaign headquarters, the probation officer generally need not leave during meetings unless their size and frequency make it difficult to avoid interacting with campaign workers.
(c) Law clerk should not attend any political functions with spouse who is working for a political campaign; this includes social events that have some political purpose such as developing campaign strategy.

(d) A judge should advise his or her secretary whose spouse is running for political office that the secretary should not appear at political meetings and should use caution in determining whether to engage in nonpublic campaign support activities, such as envelope-stuffing, with other supporters. The secretary may appear in a family portrait with his or her spouse if the secretary is not identified as having any connection with the judge and may engage in nonpublic campaign support activities alone.

(e) A deputy clerk whose spouse is running for a nonpartisan city office may assist in the campaign, so long as the clerk’s activities do not reflect adversely on the dignity or impartiality of the court or interfere with official duties. The deputy clerk may also appear in family photo but should not be identified as a judicial employee.

(f) A staff attorney is not considered part of the judges’ personal staff and may assist in a spouse’s campaign for local nonpartisan office. [Note: This guidance was superseded by the amendment to Canon 5B of the Code of Conduct for Judicial Employees in March 2013.]

(g) A court employee whose relative is a candidate for a non-partisan office should not participate in the campaign if the candidate seeks the endorsement of a political party. By seeking the endorsement, the relative became a partisan political candidate, and the judicial employee’s participation in the campaign is prohibited under Canon 5A.

§ 5.4 Public Support Causes

(a) A judge not publicly support a referendum to revise the state constitution.

(b) A judge should not state publicly a position on a proposal for a state lottery.

(c) A judge should not serve on a commission to study local government and make public recommendations concerning possible changes.

(d) A judge may serve on a commission appointed by the President pursuant to the Ethics in Government Act.

(e) Judge with special expertise may testify in public hearings before Congress in favor of a constitutional amendment if the substance and manner of the testimony is within the contours of the judge’s special expertise and if the circumstances rule out the appearance of endorsing or opposing any candidate or political organization. The judge should not otherwise speak publicly in support of (or against) the proposed amendment.
(f) Judge should not sign a state initiative petition that would affect a class of litigants who regularly appear before the judge where public and media would construe signing as support for the proposed initiative.

(g) A judge should not give a speech on governmental policy matters devoted exclusively to the executive and legislative branches, including giving a speech on foreign policy, that criticizes the executive and legislative branches of government.

(h) A judge should not attend, seated in the VIP section, a politically-oriented event in which elected officials and others will address a highly controversial matter of federal policy, legislation, or law enforcement.

(i) A Special Master of the Court of Federal Claims should comply with the Code of Conduct for U.S. Judges, and should not engage in political activities or public advocacy on a controversial matter of federal policy, legislation, or law enforcement.

§ 5.4-1 Public Support Causes [Judicial Employees]

(a) Judicial employees should avoid politically-oriented events involving controversial issues in the political arena, including public protests. Chambers staff, staff attorneys, and unit executives governed by Canon 5(B) should not participate in public protests in order to protect the impartiality of the courts. Other employees have greater latitude to participate in public protests, but should examine the factors in Advisory Opinion No. 92 and exercise prudence in the choice of events to attend and their level and manner of participation.

(b) Public policy advocacy groups that advocate policy views to government officials but do not promote or oppose political parties, candidates for partisan political office, or partisan political groups are not “political organizations” for purposes of Canon 5 of the Code of Conduct for Judicial Employees.

(c) Law clerks should not distribute political leaflets.

§ 5.5 Other Partisan Political Activities [Judicial Employees]

- Advisory Opinion No. 92 (political activities guidelines for judicial employees).

(a) Judicial employees subject to the Code of Conduct for Judicial Employees should refrain from partisan political activity. Judicial employees subject to this code (excepting a member of a judge’s personal staff, clerk of court, chief probation officer, chief pretrial services officer, circuit executive, and district executive) may participate in nonpartisan political activity. See Advisory Opinion No. 92.

(a-1) “Partisan” political office includes offices for which any candidate is nominated or elected as representing a political party. See 5 U.S.C. § 7322(2). Where candidates run in a party primary and nominees receive party support, the election is considered partisan, even if party labels are not on the ballot.
Likewise, a nonpartisan election may be considered a partisan election for purposes of the Code when a candidate for a nonpartisan office seeks the endorsement of a political party.

(b) A law clerk may be a member of a political party, but it is impermissible for the law clerk to attend political functions as a member of a local partisan political group. Neither should a law clerk contribute to a political action committee whose purpose is to fund state and local political candidates in partisan elections.

(c) Canon 7A of the Code of Conduct for Federal Public Defender Employees prohibits defender employees from running for public office in partisan elections, but does not prohibit them from running as a delegate for a political party. An assistant federal public defender may also hold a meeting at home designed to provide an opportunity to meet a candidate for partisan political office, provided that the candidate does not solicit funds at the meeting and the employee’s position or title are not used in connection with the meeting.

(c-1) An assistant federal public defender may engage in door knocking and phone banking on behalf of a candidate for partisan political office, provided that he or she does not solicit funds. Any permitted political activity should be consistent with Canon 7 of the Code of Conduct for Federal Public Defender Employees.

(d) A deputy clerk should not post partisan political signs at the family home, should attempt to dissuade spouse from doing so, and, failing that, should make reasonable efforts to disassociate himself or herself from signs posted by the spouse.

(e) A deputy clerk may sign a nominating petition to place a candidate on the ballot for partisan office, but may not initiate or circulate the petition or publicly endorse the candidate. Similarly, a judge may sign a nominating petition provided that the judge’s office is not identified.

(e-1) A judicial employee should not initiate or circulate a recall petition. Merely signing a recall petition does not violate Canon 5, provided that signing the petition does not involve public disclosure of the employee’s support of, or opposition to, a particular candidate.

(f) A judicial employee may not serve as a “touch screen technician” or similar officer at the polls in a partisan political election. See Advisory Opinion No. 92.

(g) A law clerk should not post on the internet a photograph of the law clerk wearing clothing that endorses a political candidate.

(h) A judicial employee should not display any partisan political bumper sticker in court facilities regardless of the timing of the political campaign.
(i) A judicial employee should not be permitted to take a leave of absence from judicial employment to run for elected office; the employee should either resign from judicial employment or refrain from running for office. Similarly, a law clerk should not contact a political party to express interest in being appointed as a delegate after the clerkship ends.

(j) Although the Code of Conduct does not impose an affirmative duty on a law clerk to modify or attempt to delete expressions of political views on public websites that predate the clerkship, a law clerk should take action to clarify the matter, such as posting a statement explaining that the law clerk's employment precludes further political commentary or endorsement and that the website therefore will not be updated during the employment.

§ 5.6 Other Nonpartisan Political Activities [Judicial Employees]

- Advisory Opinion No. 92 (political activities guidelines for judicial employees).
- Compendium §§ 5.2-1, 5.3-1, 5.4-1, 5.5.

(a) An operations manager in a clerk’s office may run as a candidate for school board in a nonpartisan election. Same for a probation officer. Similarly, a federal public defender employee may run for and hold a seat on the board of regents of a university in a nonpartisan election. However, a defender employee should not include his or her title or position in campaign materials.

(b) With judge’s approval, judge’s secretary who is newly subject to Code of Conduct for Judicial Employees may, for a reasonable additional period of time (not to exceed one year), carry out previous commitment to serve in nonpartisan political office, which was previously permitted but is prohibited under the new code.

(c) Deputy clerk may gather signatures for a petition relating to arena construction, so long as the activity does not reflect adversely on the dignity or impartiality of the court or interfere with the performance of official duties.

(d) Deputy clerk should not manage the campaign of a city council candidate, even though it is nonpartisan, where the election is contested and involves a highly visible public office, and where the court has a history of adjudicating local election disputes.

(e) A law clerk should not make monetary contributions to a nonpartisan campaign, even in a city distant from the clerk’s judicial district.

(f) A clerk of court may not engage in nonpartisan political activities, which includes running for or holding appointive political office.

(g) Career law clerk should not run for election to a local state judicial seat while serving as a law clerk even though the election is nonpartisan.
(h) A law clerk may be considered for a potential appointment to a state judgeship or executive branch position while serving as a law clerk, provided that the law clerk is isolated from all cases involving the potential future employer.

§ 5.7 Issues Raised By Judge’s Candidacy for/Election to State Office

(a) A magistrate judge who was an unsuccessful candidate for elected office before becoming a judge may not solicit contributions to pay off lingering campaign debts, and may not accept any such contributions from lawyers or from any person whose interests have or may come before the magistrate judge.

(b) A judge should not use a campaign fund accumulated during his or her tenure as an elected official to defray the cost of the judge’s investiture, or to host a party for former campaign workers.

(c) A newly-appointed judge should resign elected political office upon appointment as judge.

(d) Judge should not donate excess property from state court judgeship campaign to a political organization or candidate, but may donate the items to other (e.g., civic or charitable) organizations.

(e) A judge does not violate Canon 5B merely because filing deadline for alderman election comes before retirement date as a magistrate judge, when there will be no campaigning or other activity until magistrate judge’s actual date of resignation.

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), or who is subject to recall under § 178(d), 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 an 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. 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).

**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.

**COMPRENDIUM OF SELECTED OPINIONS CONCERNING COMPLIANCE AND APPLICABILITY SECTIONS OF THE CODE OF CONDUCT**

§ 6 **Applicability and Compliance**

(a) Retired magistrate and bankruptcy judges who are eligible for recall but not serving in recall status are subject to the Code of Conduct provisions governing part-time judges, even if their annuity under 28 U.S.C. § 377 equals or exceeds the compensation they received at the time of retirement. A magistrate judge who retires before reaching 65 years of age with a deferred JRS annuity is not eligible for recall and therefore is not subject to the Code as applied to part-time judges. However, it would
be prudent for the judge to remain mindful of the Code to avoid potential conflicts if the
judge ultimately chooses to accept a recall appointment once eligible.

(b) Date of Compliance section in judges’ code does not permit judge to
continue to hold elected political office beyond the time reasonably needed to arrange
resignation from office.

(c) With judge’s approval, judge’s secretary who is newly subject to Code of
Conduct for Judicial Employees may, for a reasonable additional period of time (not to
exceed one year), carry out previous commitment to serve in nonpartisan political office,
which was previously permitted but is prohibited under the new code.

(d) Land commissioners appointed pursuant to Fed. R. Civ. P. 71A(h) are judges
pro tempore within the meaning of section B of the compliance section and therefore
are not required to comply with Canon 5’s prohibition on political activities.

(e) A senior judge is subject to Canon 4C and should not solicit funds or
otherwise engage in fundraising activities for a charitable organization.

(f) A senior judge who still performs judicial duties should comply with the
provisions of Canon 4F. But a senior judge may accept an appointment not permitted
by Canon 4F if the judge refrains from judicial service during the appointment.

(g) Newly appointed judge may accept an award at a fundraiser occurring shortly
after appointment, where arrangements were made before appointment; but the judge
should ensure that his or her name is not used to solicit money.

(h) A judge retired under 28 U.S.C. § 371(a) no longer holds judicial office and is
not subject to the Code of Conduct, but a judge retired under § 372(a), whether or not
accepting case assignments, should comply with all provisions of the Code except
Canon 4F.

(i) A judge should not serve as an officer or director of a law firm professional
corporation, except that service may continue after appointment for a reasonable period
(not to exceed one year) to wind up the practice.

(j) Retired judges eligible for recall but not serving in that capacity are exempt
from the Canon 4 restrictions on mediation, arbitration and practice of law. The
Compliance section prohibiting such judges from practicing law in their own court (or
circuit) does not extend to mediation and arbitration. Alternating periods of mediation or
arbitration with judicial service may give rise to concerns under Canons 2, 3, and 4D(1);
these concerns are obviated if judges who mediate or arbitrate are ineligible for recall.

(k) The Code of Conduct for U.S. Judges does not apply to judicial nominees,
and does not require a nominee to withdraw from cases that are pending before the
court for which the person has been nominated.

(m) Although a recall-eligible bankruptcy or magistrate judge may be permitted to engage in the pro bono practice of law under certain circumstances, Compliance Section A(2) restricts the judge from such pro bono practice before the judge’s current or former court.

(n) A former law clerk who volunteers to serve as a member of a court’s advisory group is not subject to the Code of Conduct for Judicial Employees, but the appointing authority may impose ethical standards on the volunteer members of the group.

PART TWO: ETHICS REFORM ACT CONCERNING GIFTS

§ 21 General: Purpose and Scope


- § 21.1 Ethics Reform Act Gift Regulations Are in Addition to Standards of Code of Conduct

  § 21.1-1 Gifts Creating Appearance of Impropriety

- Advisory Opinion No. 91 (solicitation and acceptance from persons doing business with the court of funds to defray expenses of conference for improvement of the law).

- Compendium § 2.9.

  (a) A judge does not receive a “gift” or “anything of value” within the meaning of 5 U.S.C. § 7353, when the judge’s former law clerks establish a scholarship fund in the judge’s name at a law school and increase the amount of the fund by soliciting contributions from others.

  (b) Where judge learns that donor of gift had subsequent commercial intentions, judge may return gift to avoid appearance of impropriety.

§ 22 Definition of Judicial Officer or Employee


§ 23 Definition of Gift in Gift Regulations

- See also Compendium § 4.8

  (a) Where a judge’s retirement account is left in former firm’s retirement plan and partners of the firm serve without compensation as trustees, their unpaid services are
considered to be part of the agreement reached with the firm at the time of withdrawal from the firm and not a gift.

(b) Bar association members’ contributions of funds for judge’s portrait to be donated to the court, in honor of judge’s lengthy service, is not a gift to the judge.

§ 23.1 Social Hospitality Based on Personal Relationships

➢ Advisory Opinion No. 17

(a) A judge may accept dinner and theater tickets from a former partner and social friend who does not appear before the judge, but not if the expenses are reimbursed by the law firm, which does appear before the judge.

§ 23.2 Modest Items Offered as Social Hospitality


(a) At bar association or similar meeting, a judge may attend social event open to all participants even though event is sponsored by a law firm or business organization so long as there are no special circumstances giving rise to an appearance of impropriety.

(a-1) Judges may accept invitations to receptions and dinners at law-related functions sponsored by organizations that litigate regularly before the court, where judges’ attendance will be educational and informative, the event provides an appropriate forum for public outreach by the court, a diverse group of litigants attends, and judges are willing to offer similar outreach to others.

(b) Employees of clerk of court’s office are not prevented by gift regulations from receiving “gifts” or “gratuities” in the nature of cakes, cookies or candy to commemorate the Christmas holidays or other festive occasions. Such items are not “gifts” as contemplated by the Act as they would have de minimis pecuniary value to any member of the office. See Guide, Vol. 2C, § 620.35(b)(8). Furthermore, even if these items were “gifts” under the Act, they would fall within the “ordinary social hospitality” exception to the rule against acceptance of gifts by federal employees.

§ 23.3 Items of Little Intrinsic Value


(a) Judge may accept an award in the form of a framed certificate or plaque; this is not considered a gift under the gift definition in the Gift Regulations.
§ 23.4 Loans From Banks


§ 23.5 Opportunities, Favorable Rates and Commercial Discounts


(a) Benefits offered to travelers for relinquishing a reserved seat reflect mutual consideration and are not gifts.

(b) A free membership to a shooting range does not fall within the statutory restrictions regarding honorary club memberships, but the judge should not accept the offer of free membership under the Gift Regulations, where the free membership is based solely on judicial status.

(c) A judicial employee may accept a low-interest loan and a gift card from a charitable organization formed by the state bar association when the low-interest loan and gift card are available based on factors other than judicial status.

§ 23.6 Rewards and Prizes Open to Public


(a) A judicial employee may not accept a prize from an entity doing business with the court where the raffle was not “open to the public” as required by the gift definition.

§ 23.7 Scholarships or Fellowships


(a) It is permissible for a judge’s children to accept scholarships awarded on the same terms and based on the same criteria applied to other applicants. Similarly, a judge may accept a scholarship awarded on the same terms and based on the same criteria applied to other applicants and that is based on factors other than judicial status; this is not considered a gift under the Gift Regulations.

§ 23.8 Market Value Paid for Item


§ 23.9 Payments Permitted by Regulations Concerning Outside Employment

§ 24 Solicitation of Gifts


(a) Former law clerks are not subject to prohibition on solicitation of gifts and may raise money for scholarship fund to honor judge; judge may play no role in solicitation and should remain unaware of contributors.

(b) Neither a judge nor the judge's current law clerk should solicit funds for a gift or dinner honoring the judge's years of service.

§ 24.1 Limitation in Gift Regulation on Soliciting Gifts from Persons Doing Business with Court

Advisory Opinion No. 91 (solicitation and acceptance from persons doing business with the court of funds to defray expenses of conference for improvement of the law).

§ 24.2 Limitation in Gift Regulation on Soliciting or Making Gift to Superior or Accepting Gift From Employee Making Less Pay

(a) The statutory restriction on giving gifts to a superior or accepting gifts from subordinates does not prohibit judges from giving gifts to their staff.

(b) A judge may give and secretary may accept a cash Christmas gift.

§ 24.2-1 Exception: Special Occasion

(a) The statutory restriction on giving gifts to a superior or accepting gifts from subordinates has been modified by the Judicial Conference Gift Regulations, Guide, Vol. 2C, § 620.40, to permit gifts on special occasions; hence judges may accept holiday gifts from their staff.

§ 24.2-2 Exception: Other Circumstances Where Gifts Traditional

§ 25 Acceptance of Gifts; General Rule Against Gifts with Specific Exceptions Where Gifts Ordinarily Permissible

(a) Westlaw's offer of free service to judge whose teaching at law school has been approved is not a gift to judge if service is made available to all other faculty members, full and part-time, and its use is incidental to the judge's teaching duties.

§ 25.1 Gifts Incident to Public Testimonial

Advisory Opinion No. 46.

(a) Although hosting reception following investiture may be an excepted gift incident to a public testimonial, it would create an appearance of impropriety for a judge to permit a for-profit company to host a reception following the judge’s investiture, where the judge had no preexisting relationship with the company, would not otherwise have been required to recuse, and the circumstances would convey the impression that the company was in a special position to influence the judge. Canon 2B. Similarly, a judge should not accept contributions for a reception from law firms with no employment or other close relationship to the judge.

(a-1) Although the gift regulations permit a judge to accept a gift commemorating years of service on the bench (as a gift incident to a public testimonial), it would present an appearance of impropriety under Canon 2 to accept a very expensive gift from a small, specialized bar association whose members will continue to appear before the judge.

(a-2) A privately-organized, invitation-only dinner honoring the judge’s years of service is not a public testimonial within the meaning of the gift regulations.

(b) Bankruptcy judge may serve on committee planning testimonial for retiring chief judge that will be sponsored by and funded by contributions from bankruptcy bar associations and panel trustees’ association, so long as judge does not participate in solicitation of contributions.

(c) No appearance of special influence in violation of Canons 1 or 2 or acceptance of prohibited gift in judge’s acceptance of testimonial reception honoring retirement, sponsored and paid for by bar associations, or in acceptance (and acknowledgment thereof) of donated invitations from company that has no direct business with the court and is owned by retiring judge’s old friend. See also Compendium § 25.10-2(c).

(c-1) When judge is retiring, contributions by lawyers who have appeared before the judge and businesses that have done business with the court to a retirement party for the judge raises fewer ethics concerns because such lawyers or businesses will not appear before the judge in the future and because the event is sponsored by the bar association. The modest additional contributions in this case will not change the perception of who is sponsoring the event. See also Compendium § 25.10-2(c-1).

(d) Judge may accept gifts of silver tray and right to designate $1000 scholarship incident to public achievement award presented to judge by nonprofit company that is unlikely to appear before and does no business with the court.

(e) Judge may accept honor (such as scholarship, reading room, or professorship named after judge) funded through voluntary contributions so long as (1) the honor is associated with an organization or institution in which the judge may
participate consistent with Canon 4 (e.g., not an organization espousing a particular point of view on controversial issues or one likely to be a litigant), (2) the judge neither initiates nor participates in any fundraising, and (3) the judge makes a reasonable effort to remain unaware of the identity of those who contribute. Advisory Opinion No. 89.

(e-1) Same, when bar association members contribute funds for portrait of judge to be donated to the court, in honor of judge’s lengthy service.

(f) A judge who receives a prestigious distinguished service award honoring service to the public and to the administration of justice may also accept the accompanying substantial cash award, which is a “gift incident to a public testimonial” permitted by the Gift Regulations.

(g) Gift of dinner for judge and spouse at former law firm’s 125th anniversary celebration is a permissible gift incident to a public testimonial or a gift on a special occasion, commensurate with the occasion and the relationship; but the judge should consider whether accepting the gift creates an appearance of impropriety or a need to recuse.

(h) A judge may accept a $100 dining certificate from a law-related association in recognition of the judge’s past service as president.

(i) A judge may accept an engraved tray presented as a public testimonial after a speech, where the donor only occasionally appears in the judge’s court and has not appeared before the judge for some years.

§ 25.2 Gifts of Books, Etc. Supplied by Publisher on Complimentary Basis for Official Use


(a) Neither Canon 2 nor the Ethics Reform Act prohibits a judge whose part-time teaching at law school has been approved from using service provided by Westlaw free of charge to all full and part-time faculty members of the law school, if that use is incidental to the judge’s teaching duties and otherwise uncompensated scholarly research.

(b) Judge should not accept gift of computer software for use in judge’s chambers from company that is doing business, or seeking to do business, with the court.

(c) Judge may accept a gift of a book written by an attorney who appears in the judge’s court, but should refrain from using the book as a resource in cases involving the attorney or the attorney’s firm.

(d) Judges may accept bar association’s gift of a book, where the book was presented in connection with the author’s remarks at a circuit judicial conference.
(e) Under the Judicial Conference Regulations on Gifts, it may be permissible to accept books from a publishing company for official use. However, this exception to the usual prohibition on acceptance of gifts does not include the acceptance of a complimentary subscription to books from a publishing company.

§ 25.3 Gifts Incident to Bar-Related Function, Educational Activity, or Activity To Improve Legal System

- Advisory Opinion No. 17.

(a) Bankruptcy judge may accept complimentary room and registration fee for bankruptcy seminar sponsored by nonprofit forum established to further the interests of bankruptcy practice.

(a-1) Bankruptcy judges may accept from a bankruptcy bar association (open to all bankruptcy practitioners and representative of all interests in bankruptcy court) reimbursement for expenses incurred in attending National Conferences of Bankruptcy Judges.

(a-2) Judges may accept invitation to attend free mediation training session offered by organization previously selected by court to provide training to court mediators.

(b) Employees of the Administrative Office are not prevented by gift regulations from receiving from legal publishing firm doing business with the Administrative Office reimbursement of travel, lodging, and meal expenses in connection with professional training program, because such expenses are incident to an activity devoted to the administration of justice and thus excepted under the Gift Regulations. However, such a gift would create an appearance of impropriety under Canon 2.

(c) Law clerk may accept reimbursement of costs of attending a legal education conference from prospective employer that does not practice before law clerk’s court.

(c-1) Law clerks and staff attorneys may accept waiver of tuition for attending a law-related seminar, although the sponsor of the seminar is a profit-making educational institution, when the sponsor is not likely to come before nor seeking to do business with the court and its interests would not be substantially affected by the performance or nonperformance of the judicial employees’ official duties.

(d) A judge may speak at a bar association convention, or an international congress of maritime arbitrators, and accept reimbursement for travel and lodging expenses. Similarly, where the judge is to speak at a program on board a cruise ship, the judge may accept reimbursement for food, lodging, and passage aboard ship.
(d-1) A judge may accept reimbursement of expenses for appearing on a panel at a legal conference sponsored by a for-profit company.

(e) Judge may accept, from an organization devoted to improvement of the law, an award in the form of a framed certificate and reimbursement of travel expenses to attend the organization’s meeting at which the judge will be honored, although the organization will purchase the framed certificate and make the reimbursement with funds donated to it by a legal publishing company doing business with the courts.

(f) A judge may accept modest hospitality at bar functions for the judge and a date, but may accept transportation, lodging, and meals to attend bar functions only for the judge and a family member, not a date.

§ 25.4 Gift for Special Occasion

- Advisory Opinion No. 98 (gifts to newly appointed judges).

(a) Gift to judge from law clerks of a trip aboard a cruising ship (costing about $1500) on the occasion of the 20th anniversary as a judge satisfies the special occasion exception.

(b) The same rule applies with respect to the occasion of taking senior status.

(c) Gift of dinner for judge and spouse at former law firm’s 125th anniversary celebration is a permissible gift incident to a public testimonial or a gift on a special occasion, commensurate with the occasion and the relationship; but the judge should consider whether accepting the gift creates an appearance of impropriety or a need to recuse.

(d) Judges may accept clocks valued from $81.40 to $101.40 from bar association upon the occasion of their appointment to the federal bench. A judge may also accept a chair valued at $238 from judges of a state court bench on which he previously served upon the same occasion.

(e) Gifts of $10 or less (toward robe to be presented at investiture) by former colleagues and friends of new judge are permitted gifts incident to public testimonial or gifts from friends on special occasion, and give rise to no impropriety or need to recuse.

(f) A judge may accept a small birthday gift from a former law clerk, assuming the donor has no matters before the judge and the judge is satisfied there is no appearance of impropriety.

(g) A gift and dinner honoring a judge’s years of service are gifts for a special occasion that may be accepted, if commensurate with the relationship, from relatives
and friends (which may include some but presumably not all court employees and attorneys appearing in the court).

(h) A judicial employee may receive wedding gifts from friends who also do business with or appear before the court, provided the gifts are fairly commensurate with the occasion and the relationships.

§ 25.5 Gift from Relative or Close Friend Whose Appearance Would in Any Event Require Recusal


(a) Gift from former law firm (reception following investiture) to new judge upon investiture is a gift incident to a testimonial or a gift from friends upon a special occasion. Although substantial in amount ($1000-$3000) and although impropriety might be indicated in other circumstances where a donor likely to appear before the judge makes a substantial gift, because the judge intends in any event to recuse for two years from cases in which the former firm appears, the circumstances here indicate no impropriety. See also Compendium § 25.1(a).

(b) Judge may accept a trip paid for by a personal friend who does not engage in litigation or appear before the judge, where the trip is entirely social and gives no appearance of exploitation of office for the donor’s or others’ private interests. Same, regarding gift (in this situation a $1000 hotel gift certificate) from former client intended to express gratitude for services performed while judge was in private law practice.

(c) A judge may accept payment of a child’s private school tuition from a close personal friend who is unlikely to come before the judge and who would in any event prompt the judge’s recusal, so long as the payment does not create an appearance of impropriety or exploit the judicial position.

(d) Judge may accept gifts of discounted or free professional services from close friends where the friends gave the judge gifts of similar value before the judge’s appointment, the value of the gifts do not suggest they are given for reasons other than long-standing friendship, and the judge would recuse from any cases involving the friends even in the absence of the gifts. Same, for gifts to judicial employees from close friends.

§ 25.6 Benefits from Prospective Employer


(a) A law clerk may occasionally go to lunch or dinner with law firms that are considering extending employment offers, and it is not inappropriate for the law firms to pay for the law clerk’s meal.
§ 25.7 Bar Related Expenses


§ 25.8 Gift Incident to Separate Activity of Family Member


§ 25.9 De Minimis Gifts


(a) Employees of clerk of court’s office are not prevented by gift regulations from receiving “gifts” or “gratuities” in the nature of cakes, cookies or candy to commemorate the Christmas holidays or other festive occasions. Such items are not “gifts” as contemplated by the Act as they would have de minimis pecuniary value to any member of the office. See Gift Regulation, Guide, Vol. 2C, § 620.35(b)(8). Furthermore, even if these items were “gifts” under the Act, they would fall within the “ordinary social hospitality” exception to the rule against acceptance of gifts by federal employees.

§ 25.10 Other Gifts Ordinarily Permissible Unless One of the Following Situations Applies

§ 25.10-1 Donor Seeking Official Action from or Doing Business with the Court or Other Entity Served by the Judicial Officer or Employee

(a) Judges may accept reduced rate membership in a law-related organization where the reduction is funded by entities that do not seek action from or do business with the federal courts.

§ 25.10-2 Donor’s Interests May Be Substantially Affected by the Performance or Nonperformance of Official Duties

(a) Where a judge as a member of the board of a nonprofit hospital receives gift of free medical examinations, the judge may accept the gift since the judge would be disqualified in any event from hearing any case involving the hospital.

(b) Where a judge receives a suitable memento which is not an honorarium for speaking at a continuing legal education program, the judge may accept the gift assuming the donor is the sponsor of the program and not identifiable lawyers who have come or are likely to come before the judge.

(b-1) Where a program organizer is an attorney unlikely to appear before the court, the judge may accept a memento but should consider recusal for a reasonable period thereafter, should the attorney appear before the judge.

(c) No appearance of special influence in violation of Canons 1 or 2 or acceptance of prohibited gift in judge’s acceptance of testimonial reception honoring
retirement sponsored and paid for by bar associations, or in acceptance (and acknowledgment thereof) of invitations donated by company that has no direct business with the court and is owned by the retiring judge's old friend. See also Compendium § 25.1(c).

(c-1) When judge is retiring, contributions by lawyers who have appeared before the judge and businesses that have done business with the court to a retirement party for the judge raises fewer ethics concerns because such lawyers or businesses will not appear before the judge in the future and because the event is sponsored by the bar association. The modest additional contributions in this case will not change the perception of who is sponsoring the event. See also Compendium § 25.1(c-1).

(d) A judge may accept a professional courtesy waiver of attorney’s fees if it is extended by a particular law firm to all members of the bar. However, where members of the firm offering the discount have appeared before the judge or are likely to appear before the judge in the future, the judge may not accept the waiver of attorney’s fees.

(e) Judge may accept a free one-year guest membership in a hunting club offered by a longstanding family friend, unless acceptance creates a perception that club members who are attorneys are in a special position to influence the judge; remittal should be considered if other club members appear before the judge.

(f) A judge may accept a monetary award from a college where neither the college nor the panelists who selected the award recipient are likely to come before the judge’s court or to be affected by the judge's performance of official duties, and where no other features present an appearance of impropriety. Same for private foundation that has no business or interests before the court.

(g) A judge may accept a clock commemorating committee service from a local attorney who is unlikely to appear before the judge.

(h) A judge should not accept a gift from a litigant shortly after the conclusion of proceedings.

(i) A judge should not accept an invitation to visit a government facility, involving free transportation and lodging, where the offering agency is a party before the judge.

(j) Judges may accept a local bar association’s gift robe for shared use at a remote courthouse.

(k) A judge should not accept an invitation to attend a corporate conference from a company that is a regular litigant in the judge’s court.
§ 25.10-3 In Case of Employee Other Than Judge, Donor Has Had or Is Likely To Have an Interest in the Performance of Employee’s Duties

(a) Where Clerk’s Office employees initiate fund for the benefit of family member of co-employee who has cancer, employees should not accept gift for the fund from law firm that practices in the court. Law firm is likely to have an interest in the performance of employee’s official duties.

§ 26 Overarching Prohibition; Gift Regulation, Guide, Vol. 2C, § 620.45


§ 26.2 Against Gifts Giving Appearance of Use of Public Office for Private Gain


§ 29 Disposition of Prohibited Gifts; Gift Regulation, Guide, Vol. 2C, § 620.60

(a) A federal public defender who cannot properly accept a gift from a former client, and who cannot locate the client to return the gift, may turn it over to the clerk of court, who should continue efforts to return it.

PART THREE: ETHICS REFORM ACT CONCERNING OUTSIDE EARNED INCOME, HONORARIA, AND OUTSIDE EMPLOYMENT

§ 31 General: Purpose and Scope

§ 31.1 Ethics Reform Act Outside Employment Regulations Are in Addition to Standards of Code of Conduct

§ 31.2 Ethics Reform Act Outside Employment Regulations Are in Addition to Disclosure Requirements of Ethics in Government Act of 1978 and Instructions of Committee on Financial Disclosure

§ 32 Definitions

§ 32.1 “Judicial Officer or Employee”

(a) A judge retired under 28 U.S.C. § 371(a) no longer holds judicial office and is not subject to the outside employment regulations, but a judge retired under § 372(a) is subject to the regulations. Similarly, a retired bankruptcy or magistrate judge who is
recalled to judicial service is subject to the outside employment regulations, including the limitations on outside earned income.

§ 32.2 “Covered Senior Employee”

(a) A probation officer is not a “covered senior employee” as defined in section 2(b) of the outside employment regulations, and therefore is not subject to the outside earned income limitation in section 4 or the limitations on outside employment in section 5. Same for law clerk. Same for judge’s secretary. Same for bankruptcy administrator.

(b) A part-time Sentencing Commissioner appointed to work no more than 130 days per year is not subject to the Ethics Reform Act outside earned income, honoraria, and outside employment provisions as a special Government employee exempted under 5 U.S.C. App. § 505(2).

(c) A recalled bankruptcy or magistrate judge is a “covered senior employee” and is therefore subject to the Ethics Reform Act limitations on outside earned income and employment.

§ 33 Outside Earned Income Limitation

§ 33.1 Outside Earned Income Cannot Exceed 15%

(a) Where service as family fiduciary involves work performed over several years, but fee is paid in a single year, it is consistent with the statute and outside employment regulations for the judge, in applying the 15% cap, to allocate the amount of the fee over the several years in proportion to the work actually performed during each year. See Compendium § 33.2-2(a).

(a-1) Similarly, in applying the outside earned income cap, a judge may attribute teaching income received in one calendar year to a different calendar year based on a good faith allocation reflecting the work done.

(b) When a judge is the sole residual legatee under an estate and also serves as its executor, the executor’s commission paid to the judge is regarded as earned income for purposes of 5 U.S.C. App. § 501 even though the judge would have received those funds as legatee under the will if they were not received as executor’s commissions.

(c) Income for service as trustee of family trust is subject to outside earned income cap.

(d) A judicial employee may serve as trustee for a family member’s charitable trust and receive compensation therefor.
§ 33.2 Outside Earned Income Per Outside Employment Regulation, *Guide, Vol. 2C, § 1020.25(b)*: Any Compensation for Services (Less Ordinary and Necessary Expenses); Subject to Following Exceptions

(a) A covered senior employee may accept from a law school reimbursement for “ordinary and necessary expenses” incurred in traveling between the employee’s principal place of employment in Washington, D.C., and the law school, even though the employee maintains a residence near the law school, so long as each trip is “necessary” to enable the employee to teach and not merely for the purpose of the employee’s visiting the residence.

(b) Amounts received as reimbursement for expenses incurred in producing income may be deducted to determine the amount of income subject to the earnings limitation.

(c) Amounts received for sale of an option to make a documentary film based on a judge’s book, or fee received from a filmmaker to produce a documentary film based on a judge’s book, does not constitute outside earned income subject to the earnings limitation.

§ 33.2-1 Services Rendered to or for United States

(a) A research grant from a government agency constitutes funds “for services rendered to or for the U.S. government,” and is therefore excluded from the outside earnings ceiling.

(b) A judge may accept a cash award that constitutes compensation for prior government employment, but should consider recusal in cases involving government officials who were responsible for award selection.

§ 33.2-2 Pensions, Annuities, Deferred Compensation

(a) Where fee for serving as family fiduciary represents work done before January 1, 1991, the effective date of the Ethics Reform Act, as well as work done thereafter, a judge may make good faith allocation of the fee to reflect the amount attributable to services performed before the effective date, which amount would not be subject to the 15% cap.

§ 33.2-3 Investment Income

(a) Income from rental property owned by a judge is excluded from the outside earned income limit except to the extent that such income, or a portion of it, is attributable to the significant personal services of the judge.
§ 33.2-4  Income from Family Business to the Extent Not Resulting from Significant Personal Services

§ 33.2-5  Royalties or Functional Equivalent

(a) Flat fee of $250 received by judge from publisher (established user or purchaser of copyright and other forms of intellectual property) for writing a chapter in publisher’s treatise is not excludable from the definition of outside earned income. The payment is a fixed and unconditional cash payment for a manuscript that is wholly unrelated to the sales or distribution of the ensuing publication. Thus, the fee is subject to the 15% cap. Same where the judge receives a flat fee for producing a volume of legal forms and transferring the copyright to the publisher.

(b) Where judge serves as editor-in-chief of a law journal and receives a royalty of 15% of the net cash receipts from the sale of the publication, the amount is considered a royalty and thus not subject to the 15% cap.

(c) Although fee paid to one who serves largely as an editor may in other circumstances be deemed a royalty from use or sale of a copyright, it was not so here where a fixed fee was paid, was characterized by the payor as a publication fee, and the material in question was mainly authored by someone else.

(d) A royalty of 15% of the shares of a handbook on criminal procedure written annually by a judge is not subject to the 15% cap.

(d-1) Proceeds from sale of fiction or nonfiction book are not subject to outside earned income limitation to the extent they take the form of royalties or functional equivalent.

(d-2) Same, for compensation related to the sale of jewelry based on a judge’s designs.

(e) Payment of a flat fee for the selection of law review articles to appear in an anthology of criminal law is not a royalty, and is not excludable from the definition of outside earned income.

(f) Where a judge creates a federally-registered service mark, income generated by licensure of the service mark to another party does not constitute “outside earned income” pursuant to the Ethics Reform Act outside employment regulations, Guide, Vol. 2C, § 1020.25, but is a royalty under the exception found in § 1020.25(b)(5), provided that the judge’s compensation is based upon the use or sale of the service mark and is not a guaranteed flat fee.

(g) Fees from the sale of copies of art works are akin to royalties for the sale of books and do not fall within the definition of outside earned income when they are
received from art collectors and other established users or purchasers of copyrighted material.

(h) Royalties received for writing and publishing music are not subject to the earnings ceiling, but pay for performances is.

§ 33.2-6 Anything Earned or Received for Services Rendered Which Is Not Includable as Gross Income Under Internal Revenue Code

- Advisory Opinion No. 86 (honoraria, teaching, and outside earned income limitation).

(a) Value of judge’s use of Westlaw service provided to all law school faculty members in connection with judge’s duties as part-time member of law school faculty is not counted in arriving at Ethics Reform Act’s 15% cap on outside earned income because it is not a thing of value that must be included in gross income under Internal Revenue Code.

§ 33.2-7 Teaching by Some Senior Judges

(a) With respect to those senior judges designated in 5 U.S.C. App. § 502(b), compensation received from approved teaching is excluded from the 15% cap. Although Ethics Reform Act is satisfied, provisions of Code of Conduct for United States Judges must also be satisfied.

(b) Compensation for teaching earned during the year in which a judge takes senior status should be allocated to the period in which it is earned or to which it is attributable. Teaching income earned after taking senior status is not counted against the annual earnings ceiling.

§ 33.3 Outside Earned Income Is Attributed Solely to the Actual Earner Regardless of Community Property Laws

§ 34 Prohibition on Receipt of Honoraria

(a) It would violate the statute and outside employment regulations for a law clerk to write an article for compensation during clerkship even though publication of the article and receipt of the honorarium would occur after the clerkship ends.

(a-1) Before beginning the clerkship, a law clerk may accept compensation for an article that has been completed and accepted for publication but will be published during the clerkship.

(b) Where article is written and accepted prior to January 1, 1991, the effective date of the Ethics Reform Act, the fee paid after that date is not covered by the honoraria provisions of the statute. Same where article is written and accepted before judicial employment commences.
(c) Civic group honors worthy individuals by making annual cash awards to a charity of the honoree’s choosing. Because a judge-honoree has no option to receive the cash award or anything of value, it is not a prohibited honorarium and is not subject to the $2000 limit of 5 U.S.C. App. § 501(c).

(d) Where award is clearly made in recognition of past service and not for an appearance or speech, it is not a prohibited honorarium, even though judge will appear and say a few words of thanks at the recognition dinner.

(e) A judge who returns a proffered honorarium to the charitable institution that offered it does not accept or donate that honorarium within the meaning of the Ethics Reform Act where, in accordance with the institution’s instructions for return of the funds, the judge cashes the institution’s check and immediately returns the money by writing own check to the institution.

(f) The Ethics Reform Act and its implementing regulations prohibit judges from receiving honoraria; the Committee on Codes of Conduct is not authorized to advise as to the constitutionality of this provision.

(g) Judge may not accept a cash gift for speaking at a church program.

§ 34.1 Definition of Honorarium Per Outside Employment Regulation, Guide, Vol. 2C, § 1020.30(b): Money or Anything of Value (Excluding Travel Expenses per 5 U.S.C. App. §§ 505(3) and (4)) Paid for Appearance, Speech or Article; Subject to the Following Exceptions

(a) Fee for performing wedding is not honorarium. However, canons bar a judge from accepting additional compensation for performing judicial activities.

    (a-1) Reimbursement of expenses necessarily incident to judge’s performance of marriage ceremony is neither honorarium nor compensation for official activity, and is not otherwise inappropriate.

(b) Reimbursement of travel expenses (as defined in 5 U.S.C. App. § 505) for judge and one relative does not constitute honorarium.

(c) Compensation received by a career law clerk for service as dog show arbitrator (unlike Code of Conduct for United States Judges, Code of Conduct for Law Clerks does not prohibit service as arbitrator) does not constitute honorarium. [Refers to law clerks code that was withdrawn; compare to current Code of Conduct for Judicial Employees.]

(d) Where judge’s paper for continuing legal education program was later published and later still won $3000 cash award at sponsor’s annual award program, the award is not a payment for the speech or article, and thus was not an honorarium. An after-the-fact award based on merit for scholarly work, like the Nobel prize, is an award in recognition of prior meritorious service and not in exchange therefor.
(e) Freelance writing as art critic for newspaper is continuing employment relationship and thus the fee-per-article compensation received by judge's secretary is not honorarium. Outside earned income limitations not applicable because the secretary is not a “covered senior employee.”

(f) Law school's payment to judge of a flat amount for reviewing scholarly papers prepared by others and for presenting critique of one paper at a conference is a prohibited honorarium. Teaching exception not addressed because no prior approval.

(g) When a judge must be present and deliver remarks to receive a monetary award, it is an honorarium (payment for an appearance); the judge may not accept it but may direct that it be donated to charity.

(h) Payment for writing a paper and presenting it at a symposium is a prohibited honorarium.

(i) Receipt of a grant to conduct extended research and make a related presentation does not constitute an honorarium.

(j) A stipend for providing an evaluation and report about a law school program is not an honorarium.

(k) A law clerk may accept compensation to attend meetings for the purpose of reviewing grant applications for a nonprofit foundation; such compensation is not a prohibited honorarium.

(l) A law clerk should not accept payment to attend and participate in a conference sponsored by a private educational foundation. Such payment would constitute a prohibited honorarium.

§ 34.1-1 Series of Related Appearances, Speeches or Articles if Subject Matter Is Not Directly Related to Official Duties and Payment Is Not Made Because of Status with Government

(a) Payment for a series of opera appearances falls within the exception from the definition of honorarium, because it is a payment for a series of related appearances not directly related to the judge’s official duties or status.

(b) Payments for music album reviews for a newspaper fall within the exception from the definition of honorarium, because they are payments for a series of related articles not directly related to the law clerk’s duties or status. Same for series of articles about architecture.

(c) Payment for a series of law school lectures on religious freedom falls within the exception as long as the subject matter does not directly relate to the judge’s official duties.
(d) A judge may accept fees for a series of related appearances at academic conferences to discuss the judge’s work on military history. Same for a series of related religious talks or sermons.

§ 34.1-2 Teaching

(a) See Outside Employment Regulation, Guide, Vol. 2C, § 1020.35(b) and Compendium § 35.6 for definition of teaching.

(b) See Advisory Opinion No. 86 (honoraria, teaching, and outside earned income limitation).

(c) Fee paid to judge for preparation of questions to be used in a state bar examination is not an honorarium, but rather falls under the definition of teaching that requires prior approval.

(d) Compensation for teaching a seminar for prospective law students and preparation of course materials does not constitute an honorarium.

(d-1) Judge’s work to revise teaching materials and teaching methodologies for law school course is considered “meaningful participation in bona fide components of an educational curriculum or plan” and qualifies as teaching for which the judge may be compensated. Same, for judge’s participation in law school’s effort to redesign its curriculum. Same, for judge’s service as the faculty supervisor of a law school moot court competition.

(e) Compensation for 15-20 minute speech at class day during college graduation exercise constitutes an honorarium.

(f) Compensation on a regular basis in a fixed amount for outside teaching by United States Probation Officer does not constitute an honorarium pursuant to 5 U.S.C. App. § 501(b).

(g) Westlaw’s free provision of its service to judge in judge’s capacity as a member of a law school faculty is not a prohibited honorarium so long as the free service’s use is merely incidental to the judge’s teaching duties and restricted to that purpose.

(h) Qualified teaching is not limited to legal education, but includes, for example, participation in educational programs at accredited colleges and universities.

(i) Review of law students’ papers and ranking of five top entrants in a national competition sponsored by a trade association constitutes teaching for which compensation may be received.

(j) University’s payment of a summer research stipend to a tenured faculty member on leave of absence is payment for teaching and not an honorarium.
(k) A lecture at a seminar organized by a nonprofit foundation with corporate sponsors does not qualify as teaching; the judge may accept reimbursement of expenses but not compensation. Same, for lecturing at a continuing education program for physicians. Same, for participation in an international conference geared towards improvement of a foreign court system.

(l) A judicial employee may accept payment derived from a USAID grant for participating in a workshop concerning foreign legal education where the workshop was administered by an accredited educational institution and the employee’s participation was an extension of his or her academic responsibilities at the institution.

§ 34.1-3 Writing More Extensive Than an Article

(a) Fee received by judge as editor-in-chief of a law journal is not an honorarium, but rather is compensation for writing more extensive than an article.

(a-1) Fee paid to judge was not an honorarium because judge’s role was more extensive than writing an article, more nearly resembling the role of an editor — e.g., suggesting idea for reprint of selected essays, selecting several works to be reprinted, and writing the foreword.

(b) A judge who authors a substantial piece of scholarship for inclusion as a chapter of a treatise and receives compensation therefor has not received a prohibited honorarium, but rather has written a work more extensive than an article. In general, however, a judge should not accept compensation for writing a law review article.

(c) Compensation to law clerk for authoring or editing legal treatises or manuals, or updating same, does not constitute honorarium. Same, with respect to compensation to law clerk for writing case law summaries for a legal news service.

(d) A law clerk may establish an online discussion forum on legal issues, for compensation and outside of working hours, but should not be identified as a law clerk and should not provide information about cases pending or likely to arise before the court. Same for online CLE course, but the law clerk should remain anonymous and avoid interactive communication with attorney/students who appear in the clerk’s court.

§ 34.1-4 Suitable Memento Provided It Is Neither Money nor of Commercial Value

➢ Advisory Opinion No. 88 (receipt of mementos or other tokens under prohibition against receipt of honoraria).

(a) The test for commercial value is whether the memento would have commercial value in the hands of the judge. Where the circumstances are such that a judge could not, consistent with the intent of the donor, transfer the tendered article to another, then a memento would ordinarily not have commercial value within the
meaning of the outside employment regulations. Whether a memento is “suitable”
depends upon whether its value is solely as a reminder of the occasion. If, in 1991, the
value is $200 or less, it is unlikely to have utilitarian or prestige value beyond its value
as a reminder of the occasion.

(b) A judge may accept a leather notebook and pen from Law Institute as a
memento of a judge’s presentation. See Advisory Opinion No. 88. Judge may also
accept a framed picture after speaking at a law student banquet.

(c) A judge may accept cufflinks from the attorney organizer after making
remarks at a tribute to the legal profession, but the judge should consider recusal for a
reasonable period thereafter, should the attorney appear before the judge.

§ 34.2 Exclusion for Honorarium Paid on Behalf of Judge to Qualified Charity Provided It
Does Not Exceed $2000 and Is Not Made to a Charity from Which Judge or
Specified Family Members Derive Any Financial Benefit

➢ Advisory Opinion No. 86 (honoraria, teaching, and outside earned income
limitation).

(a) Where judge’s lawyer-parent is compensated by a law firm that performs
more than half the legal work of a University, the parent derives a financial benefit from
the University and the judge may not direct an honorarium to be paid to that University.

(b) Judge who may not accept honorarium may direct that it be paid to charity,
so long as amount does not exceed $2,000 and judge’s close relatives do not directly
benefit financially from the charity. Judge may direct payment in lieu of an honorarium
to a Donor Advised Fund, so long as the ultimate recipients of the subsequent
charitable contributions also meet the requirements of 26 U.S.C. § 170(c) and the
contributions do not provide any financial benefit to the judge or the judge’s family. See

§ 35 Limitations on Outside Employment

(a) Limitations on outside employment under 5 U.S.C. App. § 502(a) apply to
judges and to specified covered senior judicial employees, which does not include
assistant federal public defenders, who thus do not have to receive prior approval
before teaching.

(b) A chief pretrial services officer is not subject to 5 U.S.C. App. § 502(a)
limiting outside employment and may invest in an automotive business where officer will
not perform personal services or participate in the business except as a passive
investor.

(c) A probation officer is not subject to 5 U.S.C. App. § 502(a), limiting outside
employment as a fiduciary, and may (with court approval) serve without compensation
in a fiduciary capacity as a board member of a credit union. See Compendium § 32.2(a); Outside Employment Regulation, Guide, Vol. 2C, §§ 1020.20(b) and 1020.35(a).

§ 35.1 Affiliating With Any Entity To Provide Professional Services Involving a Fiduciary Relationship for Compensation

(a) A member of the legal staff of the United States Sentencing Commission should not earn a commission for assisting a real estate broker or salesperson, a referral fee for referring a prospective buyer or seller, or a flat or hourly fee for conducting an "open house" or for informing prospective sellers or buyers about the nuances of real estate marketing and transactions.

§ 35.2 Permitting Use of Name by Any Such Entity

(a) A judge should not permit a former law firm to continue using the judge's name; where the firm plans to remove the judge's name that year, the judge need not take steps to compel an immediate change.

§ 35.3 Practicing a Profession Involving a Fiduciary Relationship for Compensation

(a) Serving as a fiduciary of a family estate or trust as permitted by Canon 5D of the Code of Conduct for United States Judges does not constitute practicing a profession involving a fiduciary relationship under this section. See Commentary to Outside Employment Regulations; Advisory Opinion No. 96.

§ 35.4 Serving for Compensation as an Officer or Member of the Board of an Association, Corporation or Other Entity

(a) Service for compensation as editor-in-chief of a bankruptcy law journal is not the equivalent of being an officer or member of the board of an entity, and thus is not barred by this section.

(b) Although judge cannot receive compensation for service as a family fiduciary where the trust directs the operating policy of a charity because that would be the functional equivalent of serving as an officer or member of the board of directors in violation of 5 U.S.C. App. § 502(4), where the judge serves as family fiduciary charged only with duties normally exercised by a family fiduciary 5 U.S.C. App. § 502(4) is inapplicable. Rather, § 502(3) applies, as does the family fiduciary exception. Thus, the judge may receive compensation subject to the 15% cap.

(c) A judge's status as partner of a family partnership or shareholder of a family corporation is not the equivalent of serving as officer or member of the board of an entity, and thus the financial return to the judge as partner or shareholder is not prohibited by 5 U.S.C. App. § 502(4).
(d) A judge cannot receive compensation for serving as an officer or member of the board of a charitable or civic association, corporation, or other entity, but may accept reimbursement of reasonable expenses including transportation and meals and lodging away from home.

(d-1) A judge may not receive compensation for serving as director or officer of corporation, even if it is family business.

(e) A judge may not accept compensation for service as a trustee of a charitable trust that is functionally equivalent to a “charitable organization” under Canon 5B.

§ 35.5 Receiving Compensation for Teaching Without Prior Approval

➢ Advisory Opinion No. 87 (participation in CLE programs).

§ 35.6 Definition of Teaching

(a) A judge’s participation in continuing legal education program sponsored by recognized provider of continuing legal education qualifies the compensation as being received from teaching as distinguished from honoraria.

(b) Qualified teaching is not limited to legal education, but includes, for example, participation in educational programs at accredited colleges and universities.

(c) University’s payment of a summer research stipend to a tenured faculty member on leave of absence is payment for teaching for which the judge should obtain prior approval.

(d) A seminar for foreign justices offered by an accredited law school falls within the definition of teaching.

(e) Judge’s work to revise teaching materials and teaching methodologies for law school course is considered “meaningful participation in bona fide components of an educational curriculum or plan” and qualifies as teaching for which the judge may be compensated.

§ 35.7 Outside Employment Regulation, Guide, Vol. 2C, § 1020.35(c) and (d), Detail Procedures for Obtaining Prior Approval for Teaching

(a) Where a judge failed to obtain prior approval of teaching, Chief Judge has authority to approve teaching for compensation nunc pro tunc if satisfied that the failure was occasioned by excusable neglect, the application would have been approved if timely filed, and other criteria for approval are satisfied. If circumstances do not justify nunc pro tunc approval, the judge’s only recourse is to refund the compensation.
§ 110 Background

Part C of Volume 2 contains Judicial Conference regulations and resolutions related to ethics, and related statutes. The regulations and statutes include ethics requirements that are in addition to the codes of conduct. For example, judges’ outside income and employment are subject to the relevant Ethics Reform Act provisions, and other Ethics Reform Act provisions regulate the acceptance of gifts and honoraria by judges and judicial employees. For these reasons, it is important to review applicable statutes and regulations as well as the applicable codes of conduct.
Guide to Judiciary Policy

Vol. 2: Ethics and Judicial Conduct
Pt. C: Ethics Statutes, Regulations, and Judicial Conference Resolutions

Ch. 2: Certificates of Divestiture

(Note: No unauthorized disclosure of this policy guidance outside the judiciary is permitted.)

§ 210 Overview
  § 210.10 History
  § 210.20 Authority
  § 210.30 Purpose and Scope
  § 210.40 Definitions

§ 220 Availability of Certificates of Divestiture

§ 230 Unavailability of Certificates of Divestiture

§ 240 How to Obtain a Certificate of Divestiture
  § 240.10 Factors Considered Related to Preemptive Divestiture

§ 250 Divestiture and Reinvestment in Permitted Property

§ 260 Confidentiality

§ 270 Role of the Internal Revenue Service

§ 210 Overview

§ 210.10 History

These regulations became effective on September 18, 2007 (JCUS-SEP 07, p.11).

§ 210.20 Authority


§ 210.30 Purpose and Scope

  (a) These regulations implement 26 U.S.C. (I.R.C.) § 1043, which allows an eligible person to defer paying capital gains tax on property sold to comply
with conflict of interest requirements. To defer the gains, an eligible person must obtain a Certificate of Divestiture before selling the property. Pursuant to a delegation from the Judicial Conference, the Committee on Codes of Conduct (Committee) is authorized to establish procedures for, and take dispositive action on, requests for Certificates of Divestiture relating to judges and judicial officers other than the Chief Justice of the United States and the associate justices of the Supreme Court. These regulations describe the circumstances when an eligible person may obtain a Certificate of Divestiture and establish the procedures that the Committee uses to issue Certificates of Divestiture.

(b) The purpose of 26 U.S.C. (I.R.C.) § 1043 and these regulations is to minimize the burden that would result from paying capital gains tax on the sale of assets to comply with conflict of interest requirements. Minimizing this burden aids in attracting and retaining highly qualified personnel in the judicial branch and strengthens the confidence of the public in the integrity of the federal judiciary (JCUS-SEP 07, p.11; and JCUS-MAR 07, p.6).

§ 210.40 Definitions

For purposes of this chapter:

(a) Eligible Person

(1) A judge of a United States court of appeals, a district court (including a bankruptcy, magistrate, or territorial judge), the Court of International Trade, the Tax Court (including a special trial judge), the Court of Federal Claims, the Court of Appeals for Veterans Claims, and the United States Court of Appeals for the Armed Forces;

(2) The spouse or any minor or dependent child of the individual referred to in subparagraph (1) of this definition; and

(3) Any trustee holding property in a trust in which an individual referred to in subparagraph (1) or (2) of this definition has a beneficial interest in principal or income.

(b) Permitted Property


Note: Not all forms of permitted property under the OGE regulations will necessarily avoid subsequent conflicts under Canon 3C(3)(c). Judges
may seek guidance from the Committee as to recusal considerations arising from subsequently acquired permitted property.

§ 220 Availability of Certificates of Divestiture

(a) The Committee may issue a Certificate of Divestiture for specific property as provided by these regulations if the Committee determines that divestiture of the property by an eligible person is reasonably necessary to comply with 28 U.S.C. § 455, Canon 3C of the Code of Conduct for United States Judges, or any other federal conflict of interest statute, regulation, rule, or judicial canon.

(b) The Committee may issue a Certificate of Divestiture in the following circumstances:

(1) Current Conflict

To divest property presenting a conflict of interest in a proceeding that is currently before the judge;

(2) Preemptive Divestiture

To divest property likely to result in a conflict of interest in proceedings that may come before the judge. See: § 240.10.

Example #1: A circuit judge owns shares in a number of companies that often have appeals in the judge’s court. A Certificate of Divestiture may be issued to permit the judge to divest all shares in those companies, provided that the judge agrees to divest shares in all companies that present the same likely conflict. The judge may retain stock in companies that do not present the same likely conflict.

Example #2: A district judge owns a pooled stock investment through a broker in which the judge has no prior knowledge of or control over the trades, which occur frequently and result in unavoidable financial conflicts. A Certificate of Divestiture may be issued to permit the judge to divest all similar pooled stock investments.

Example #3: A bankruptcy judge and the judge’s spouse both own stock in local banks that appear regularly as parties in bankruptcy cases. A Certificate of Divestiture may be issued to permit the judge and spouse to divest all stock in local banks and similar financial institutions.
§ 230 Unavailability of Certificates of Divestiture

(a) Federal law does not provide for issuance of a Certificate of Divestiture in the following circumstances:

(1) Sale of the property will not give rise to capital gains (e.g., because any gain is ordinary income or because no gain results);

(2) The property owner is not an eligible person;

(3) The property was sold before issuance of a Certificate of Divestiture.

(b) The Committee, in its sole discretion, may deny a request for a Certificate of Divestiture, including in the following circumstances:

(1) The Committee concludes that divestiture is not reasonably necessary to comply with conflict of interest requirements within the meaning of 26 U.S.C. (I.R.C.) § 1043;

(2) The entire conflict of interest (either current or preemptive) will not be resolved because an eligible person has not agreed to divest all similar or related property that presents the same conflict;

(3) The property is held in a pension, profit-sharing, stock bonus, or other employee benefit plan or retirement plan and the eligible person can otherwise roll over the property into an eligible tax-deferred retirement plan within the 60-day reinvestment period;

(4) The property was acquired voluntarily (e.g., by purchase or gift, but not by inheritance) at a time when ownership of the property created a conflict in the proceeding that gives rise to the request for a Certificate of Divestiture;

(5) The eligible person received a preemptive Certificate of Divestiture under § 220(b)(2) and subsequently acquired the property voluntarily (e.g., by purchase or gift, but not by inheritance) at a time when acquisition of the property presented the same likely conflict addressed in the earlier Certificate of Divestiture.

§ 240 How to Obtain a Certificate of Divestiture

A judge seeking a Certificate of Divestiture must submit a written request to the Committee. (Application for Certificate of Divestiture (Form AO 308) is available for this purpose). The request must contain:
(a) A full and specific description of the property to be divested (e.g., if the property is corporate stock, the number of shares for which the Certificate of Divestiture is sought);

(b) A brief description of how and when the eligible person acquired the property;

(c) A certification that divestiture of the property will resolve the entire conflict;

(d) A statement from the eligible person(s) (or legal representative) holding the property agreeing to divest the property within a reasonable time;

(e) A copy of the judge’s latest financial disclosure report and a statement indicating the section and line number of the report where the property to be divested is reported. If the property is not reported in the latest financial disclosure report, a statement explaining why it is not;

(f) In the case of property held in a trust, a copy of the trust instrument, as well as a list of the trust’s current holdings, unless the holdings are listed on the most recent financial disclosure report;

Note: In certain cases involving divestiture of property held in a trust, the Committee may decline to issue a Certificate of Divestiture unless the parties take actions which, in the opinion of the Committee, are appropriate to exclude, to the extent practicable, parties other than eligible persons from benefitting from the deferral of capital gains. Such actions may include, as permitted by applicable state law, division of the trust into separate portfolios, special distributions, dissolution of the trust, or anything else deemed feasible by the Committee, in its sole discretion.

(g) A statement that describes why divestiture of the property is reasonably necessary to comply with a federal conflict of interest statute, regulation, rule, or judicial canon, including a certification that divestiture is sought for conflict reasons and not for purposes of financial management;

(h) In the case of divestiture under 28 U.S.C. § 455(f) and/or Canon 3C(4), a statement indicating whether the property to be divested could be substantially affected by the outcome of the matter giving rise to the conflict of interest; and

(i) Any additional information requested by the Committee.

After reviewing the materials submitted and making a determination that all requirements have been met, the Committee may issue a Certificate of Divestiture.
§ 240.10 Factors Considered Related to Preemptive Divestiture

(a) In making a decision on an application for preemptive divestiture the Committee will consider all of the relevant circumstances, including, where the property consists of shares in a company:

(1) the number of times a conflict of interest may arise if the property is not divested, including:

(A) the legal or physical presence of the company in the judicial circuit or district;

(B) the actual litigation history of the company in the judicial circuit or district; and

(C) any recent merger, acquisition, or other activity indicating the company may become engaged in litigation in the judicial circuit or district;

(2) the availability of other judges on the court to hear cases when the requesting judge has a conflict of interest due to the property for which divestiture is sought;

(3) whether the disqualification of the requesting judge would unduly burden judicial resources in the judicial circuit or district;

(4) the length of time the requesting judge (or eligible person) has owned the property;

(5) whether granting the preemptive divestiture would give rise to an appearance of impropriety.

(b) As a general matter, preemptive divestiture of the property should be sought no later than 18 months following:

(1) the date of the appointment;

(2) the date the judge (or eligible person) acquires the property; or

(3) the date on which it becomes apparent that facts about the property (e.g., in the case of shares in a company, the company's legal or physical presence in the judicial circuit or district) have changed so as to substantially increase the likelihood of a conflict of interest.
§ 250 Divestiture and Reinvestment in Permitted Property

An eligible person who receives a Certificate of Divestiture must divest the property within a reasonable time (not to exceed 90 days, absent special circumstances). In order to qualify for deferral of capital gains, an eligible person must reinvest the proceeds from the sale of the property divested pursuant to a Certificate of Divestiture into permitted property during the 60-day period beginning on the date of the sale. The proceeds may be reinvested into one or more types of permitted property.

§ 260 Confidentiality

Requests for Certificates of Divestiture and the Committee’s responses thereto are confidential and will be disclosed only when the eligible person consents by waiving confidentiality, either expressly or impliedly, or when required by law. For the purposes of this section, disclosure to the Internal Revenue Service (IRS) does not constitute a waiver of confidentiality.

§ 270 Role of the Internal Revenue Service

The IRS has jurisdiction over the tax aspects of a divestiture made pursuant to a Certificate of Divestiture. An eligible person who elects to defer capital gains from the sale of property pursuant to a Certificate of Divestiture must follow IRS requirements for reporting the sale of the property, the reinvestment transaction (including whether the proposed acquisition meets the requirement for permitted property), and the election under 26 U.S.C. (I.R.C.) § 1043 not to recognize capital gains. An eligible person should consult a personal tax advisor or the IRS for guidance on these matters.
§ 310 Statutory Texts on Conflicts of Interest

The following statutes relate to conflicts of interest:

- Fee Agreements in Cases under Title 11 and Receiverships (18 U.S.C. § 155);
- Compensation to Members of Congress, Officers, and Others in Matters Affecting the Government (18 U.S.C. § 203);
- Activities of Officers and Employees in Claims Against and Other Matters Affecting the Government (18 U.S.C. § 205);
- Purchase of Claims for Fees by Court Officials (18 U.S.C. § 291); and
- Appointment and Tenure (28 U.S.C. § 631(c)).
§ 410 Mandatory Conflict Screening

§ 410.10 Overview

The Judicial Conference of the United States adopted the following policy in September 2006 (JCUS-SEP 06, p. 11).

§ 410.20 Policy

The Judicial Conference recognizes the efforts of the many courts which, with the assistance of the Administrative Office, have instituted automated conflict screening. Based on the proven effectiveness of automated screening and the importance of extending its use to all courts, the Judicial Conference adopts a mandatory conflict screening policy. This policy will be administered and directed by the circuit councils under the authority set forth in 28 U.S.C. 332(d)(1) (or by the individual courts not subject to the authority of a circuit council) and will provide that:

(a) The Administrative Office, in cooperation with the courts, shall continue developing, refining and deploying the necessary hardware and software for use in automated conflict screening in the Case Management/Electronic Case Files (CM/ECF) system, shall examine methods to improve the screening (including incorporating more sophisticated matching mechanisms and features available in other software), and shall provide information, training, and assistance to facilitate implementation of and participation in the screening. **Note:** This Judicial Conference policy extends to courts of appeals, district courts, the Court of International Trade, the Court of Federal Claims, and bankruptcy courts, and to the judicial officers thereof, but does not extend to the Supreme Court.

(b) Each court shall implement automated conflict screening to identify financial conflicts of interest for judicial officers, and to notify the judicial officer (or designee) when a financial conflict is identified, through the
screening component of the CM/ECF system (or other software with comparable function approved by the circuit council). The clerk’s office shall administer the screening (including obtaining from the parties and entering upon receipt, or causing the parties to enter and update, if feasible, corporate parent information and other relevant information). The clerk’s office shall screen for financial conflicts on a regular schedule, including screening new matters as they are filed, and shall make reports as requested by the chief judge of the court and the respective circuit council. Each clerk’s office shall also provide information (including periodic reminders to judicial officers), training, and assistance to facilitate participation in the screening. See: Fed. R. App. P. 26.1; Fed. R. Civ. P. 7.1; Fed. R. Crim. P. 12.4; Fed. R. Bankr. P. 7007.1.

(c) In addition to each judicial officer’s personal review of cases for conflicts, each judicial officer shall develop a list identifying financial conflicts for use in conflict screening, shall review and update the list at regular intervals, and shall employ the list personally or with the assistance of court staff to participate in automated conflict screening. A model form, Checklist for Financial Conflicts (AO 300), is available for this purpose.

(d) Each chief judge shall report to the respective circuit council by November 30, 2006, with an initial report on the status of automated financial conflict screening in the court, the number of judicial officers participating in automated conflict screening, and any additional information sought by the circuit council. Each circuit council shall report to the Judicial Conference by January 31, 2007, with a preliminary plan for implementation of the mandatory financial conflict screening program within the circuit, and shall thereafter make such further reports as are required by the Judicial Conference.

(e) Each circuit council shall make all necessary and appropriate orders to implement the foregoing mandatory conflict screening policy within the circuit, taking into account the specific circumstances of that circuit and each judicial officer and court within it, and providing for appropriate exceptions (e.g., a seriously ill judge who is not being assigned cases).

(f) Each court not subject to the authority of a circuit council shall assume the responsibilities described above for circuit councils.
§ 510 Statutory and Rules Texts on Disqualification and Recusal

The following statutes and rules relate to disqualification and recusal:

- Disqualification of trial judge to hear appeal (28 U.S.C. § 47);
- Bias or prejudice of judge (28 U.S.C. § 144);
- Disqualification of justice, judge, or magistrate judge (28 U.S.C. § 455);
- Disqualification of bankruptcy judge (Bankruptcy Rule 5004); and
- Prohibition of ex parte contacts in bankruptcy proceedings (Bankruptcy Rule 9003).

§ 515 Model Forms for Waiver of Disqualification

(a) Canon 3D of the Code of Conduct for United States Judges (Guide, Vol 2A, Ch 2) provides that, when a judge is disqualified in a proceeding because "the judge's impartiality might reasonably be questioned" under Canon 3C(1), instead of withdrawing from the proceeding the judge may disclose on the record the basis of disqualification and may continue to preside if all parties consent. Canon 3D further provides, in particular, that “[t]he 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.”
(b) The Judicial Conference has approved three versions of a Model Form for Waiver of Judicial Disqualification: one for civil pro se cases, one for all other civil cases, and one for criminal cases. JCUS-SEP 2011, p.12. For each case type, the Model Form consists of two parts:

(1) The first part of each model form is a notice that may be issued by the clerk of court to inform the parties of a judge’s intent to disqualify under Canon 3C(1).

(2) The second part of each model form is a sample “waiver of disqualification letter” that attorneys or pro se litigants may use if they agree to waive a judge’s disqualification in response to the clerk’s notice.

(c) The Model Forms are available on JNet’s Ethics Forms page.

§ 520 Interest in Litigation

In October 1971, the Judicial Conference adopted the following resolution (JCUS-OCT 71, pp.68-69):

In all cases involving actual, potential, probable or possible conflicts of interest, a federal judge should reach his own determination as to whether he should recuse himself from a particular case, without calling upon counsel to express their views as to the desirability of his remaining in the case. The too frequent practice of advising counsel of a possible conflict and asking counsel to indicate their approval of a judge's remaining in a particular case is fraught with potential coercive elements which make this practice undesirable.
§ 610 Statutory Texts on Gifts

The following statutes relate to gifts:

- Gifts to Superiors (5 U.S.C. § 7351); and

§ 620 Judicial Conference Regulations on Gifts

§ 620.10 Authority

§ 620.15 Purpose and Scope

(a) These regulations implement 5 U.S.C. §§ 7351 and 7353, which prohibit the giving, solicitation, or acceptance of certain gifts by officers and employees of the judicial branch and provide for the establishment of such reasonable exceptions to those prohibitions as the Judicial Conference of the United States finds appropriate. The regulations do not proscribe all gifts but only those from certain persons and in certain circumstances, specifically defined below.

(b) Nothing in these regulations alters any other requirements imposed by statutes, other regulations, or the Codes of Conduct adopted by the Judicial Conference of the United States, which may in certain circumstances prohibit or advise against acceptance of gifts not prohibited by these regulations.

(c) Any violation of any provision of these regulations will make the officer or employee involved subject to appropriate disciplinary action.

(d) These regulations do not apply to a gift that is accepted under specific statutory authority, including 5 U.S.C. § 7342 for foreign gifts and decorations, and 28 U.S.C. § 604(a)(17) for gifts to the judicial branch. See: Guide, Vol. 2C, Ch. 7 and Ch. 15.

§ 620.20 Definition of Judicial Officer or Employee

In these regulations, a “judicial officer or employee” means a United States circuit judge, district judge, judge of the Court of International Trade, judge of the Court of Federal Claims, judge and special trial judge of the Tax Court, judge of the Court of Appeals for Veterans Claims, bankruptcy judge, magistrate judge, commissioner of the Sentencing Commission, and any employee of the judicial branch other than an employee of the Supreme Court of the United States or the Federal Judicial Center.

§ 620.25 Definition of Gift

“Gift” means any gratuity, favor, discount, entertainment, hospitality, loan, forbearance, or other similar item having monetary value but does not include:

(a) social hospitality based on personal relationships;

(b) modest items, such as food and refreshments, offered as a matter of social hospitality;

(c) greeting cards and items with little intrinsic value, such as plaques, certificates, and trophies, which are intended solely for presentation;
(d) loans from banks and other financial institutions on terms that are available based on factors other than judicial status;

(e) opportunities and benefits, including favorable rates and commercial discounts, that are available to the public, a class consisting of all federal employees, or are available based on factors other than judicial status;

(f) rewards and prizes given to competitors in contests or events, including random drawings, that are open to the public and that are available based on factors other than judicial status;

(g) scholarships or fellowships awarded on the same terms and based on the same criteria applied to other applicants and that are based on factors other than judicial status;

(h) anything for which market value is paid by the judicial officer or employee;

(i) any payment, compensation, or reimbursement the acceptance of which is permitted by the Regulations of the Judicial Conference Concerning Outside Earned Income, Honoraria, and Outside Employment; and

(j) anything that is paid for by the judiciary or secured by the judiciary under contract.

§ 620.30 Solicitation of Gifts by a Judicial Officer or Employee

A judicial officer or employee is not permitted to solicit a gift from any person who is seeking official action from or doing business with the court or other entity served by the judicial officer or employee, or from any other person whose interests may be substantially affected by the performance or nonperformance of the judicial officer's or employee's official duties.

§ 620.35 Acceptance of Gifts by a Judicial Officer or Employee; Exceptions

(a) A judicial officer or employee is not permitted to accept a gift from anyone who is seeking official action from or doing business with the court or other entity served by the judicial officer or employee, or from any other person whose interests may be substantially affected by the performance or nonperformance of the judicial officer's or employee's official duties.

(b) Notwithstanding this general rule, a judicial officer or employee may accept a gift from a donor identified above in the following circumstances:

(1) the gift is made incident to a public testimonial and is fairly commensurate with the occasion;
(2) the gift consists of books, calendars, or other resource materials related to the official duties of the judicial officer or employee that are supplied on a complimentary basis, so long as acceptance of the gift does not create an appearance of impropriety;

(3) the gift consists of an invitation and travel expenses, including the cost of transportation, lodging, and meals for the officer or employee and a family member (or other person with whom the officer or employee maintains both a household and an intimate relationship) to attend a bar-related function, an educational activity, or an activity devoted to the improvement of the law, the legal system, or the administration of justice;

(4) the gift is from a relative or friend, if the relative's or friend's appearance or interest in a matter would in any event require that the officer or employee take no official action with respect to the matter, or if the gift is made in connection with a special occasion, such as a wedding, anniversary, or birthday, and the gift is fairly commensurate with the occasion and the relationship;

(5) the gift consists of meals, lodgings, transportation, and other benefits customarily provided by a prospective employer in connection with bona fide employment discussions, so long as conflicts of interest are avoided;

(6) in the case of a judicial officer or employee who has obtained employment to commence after judicial employment ends, the gift consists of reimbursement of relocation and bar-related expenses customarily paid by the employer, so long as conflicts of interest are avoided;

(7) the gift is incident to the business, profession or other separate activity of the officer or employee or the spouse or other family member of an officer or employee residing in the officer's or employee's household, including gifts for the use of both the spouse or other family member and the officer or employee (as spouse or family member), so long as the gift is of the type customarily provided to others in similar circumstances and is not offered or enhanced because of the judicial officer's or employee's official position; or

(8) the gift (other than cash or investment interests) is to a judicial officer or employee other than a judge or a member of a judge's personal staff and has an aggregate market value of $50 or less per occasion, provided that the aggregate market value of
individual gifts accepted from any one person under the authority of this subsection does not exceed $100 in a calendar year.

§ 620.40 Solicitation and Acceptance of Gifts Among Judicial Officers and Employees

(a) A judicial officer or employee is not permitted to solicit a contribution from another officer or employee for a gift to an official superior, make a donation as a gift or give a gift to an official superior, or accept a gift from an officer or employee receiving less pay than himself or herself.

(b) Notwithstanding this general rule, a judicial officer or employee may on an occasional basis:

(1) collect voluntary contributions for a gift, or make a voluntary gift, to an official superior, or accept a gift from a judicial officer or employee receiving less pay, on a special occasion such as marriage, anniversary, birthday, retirement, illness, or under other circumstances in which gifts are traditionally given or exchanged;

(2) share food and refreshments with other judicial officers or employees in the court or office;

(3) offer hospitality at the residence of the judicial officer or employee, or accept items given in connection with the receipt of hospitality, provided that the hospitality offered and the items given are of the same type and value customarily extended to personal friends; or

(4) accept a gift from a judicial officer or employee receiving less pay than himself or herself when there is a personal relationship that would justify the gift and the recipient does not exercise any authority over the officer or employee offering the gift.

§ 620.45 Additional Limitations

Notwithstanding the provisions of § 620.35, no gift may be accepted by a judicial officer or employee if a reasonable person would believe it was offered in return for being influenced in the performance of an official act or in violation of any statute or regulation, nor may a judicial officer or employee accept gifts from the same or different sources on a basis so frequent that a reasonable person would believe that the public office is being used for private gain. A judicial officer or employee should decline a gift permitted by these regulations if acceptance would cause the officer or employee to violate any applicable provision of the Codes of Conduct.
§ 620.50 Disclosure Requirements

Judicial officers and employees subject to the Ethics in Government Act of 1978 and the instructions of the Financial Disclosure Committee of the Judicial Conference of the United States must comply with the Act and the instructions in disclosing gifts.

§ 620.55 Advisory Opinions

The Committee on Codes of Conduct of the Judicial Conference of the United States is authorized to render advisory opinions interpreting Title III of the Ethics Reform Act of 1989 (5 U.S.C. §§ 7351 and 7353) and these regulations (JCUS-MAR 1990, pp. 14-15). Any person covered by the Act and these regulations may request an advisory opinion by sending an email to the chair of the Committee on Codes on Conduct or by writing 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

§ 620.60 Disposition of Prohibited Gifts

(a) A judicial officer or employee who has received a gift that cannot be accepted under these regulations should return any tangible item to the donor, except that a perishable item may be given to an appropriate charity, shared within the recipient’s office, or destroyed.

(b) A judicial agency may authorize disposition or return of gifts at Government expense.

§ 620.65 Commentary on Regulations

(a) All officers and employees of the judicial branch hold appointive positions. Title III of the Ethics Reform Act of 1989 (5 U.S.C. §§ 7351 and 7353) thus applies to all officers and employees of the judicial branch. However, the Judicial Conference has delegated its administrative and enforcement authority under the Act for officers and employees of the Supreme Court of the United States to the Chief Justice of the United States and for employees of the Federal Judicial Center to its Board. For this reason, the definition of “judicial officer or employee” does not include every judicial officer or employee whose conduct is governed by Title III. For purposes of Title III and these regulations, employees of the Tax Court and the Court of Appeals for Veterans Claims are employees of the judicial branch.
(b) Several provisions in the regulations refer to persons seeking official action from or doing business with a judge’s court. A judge’s court encompasses, in the case of an appellate judge, any case coming before the court in which the judge personally participates in the decision of the court; in the case of a trial court, the judge’s court encompasses only cases on the particular judge’s docket and not cases before another judge of the same court.

(c) These regulations do not repeal the gift provisions of the Codes of Conduct promulgated by the Judicial Conference. The scope of the gift provisions of the Codes exceeds that of these regulations and the statute, however, in that they impose certain responsibilities on an officer or employee with respect to the acceptance of gifts by members of the officer’s or employee’s family residing in his or her household. Guide, Vol. 2C, § 620.35 is based upon former Canon 5C(4) of the Code of Conduct for United States Judges.

(d) Guide, Vol. 2C, § 620.35(b)(3) permits acceptance of travel expenses for a judicial officer or employee and one family member (or other person with whom the officer or employee maintains both a household and an intimate relationship) to attend bar-related, educational, and law-related functions. Where due to infirmity or disability the judicial officer or employee requires an accompanying personal or medical assistant in order to attend, payment or reimbursement of the assistant’s travel expenses is considered a component of the gift to the judicial officer or employee, which may properly be accepted under this section.

(e) A judge covered by the Judicial Councils Reform and Judicial Conduct and Disability Act of 1980 (28 U.S.C. §§ 332(d)(1), 351 to 364) who violates these regulations is subject to discipline as provided in that Act. Any other judicial officer or employee who violates these regulations is subject to discipline consistent with existing customary practices.

§ 620.70 Notes on Regulations

(a) The “Regulations of the Judicial Conference of the United States Under Title III of the Ethics Reform Act of 1989 Concerning Gifts” were adopted on May 18, 1990, by the Judicial Conference, through its Executive Committee (JCUS-SEP 1990, p. 60).

(b) On August 15, 1990, the Judicial Conference, through its Executive Committee, amended these regulations to implement the prohibition against gifts to superiors as required by the Ethics Reform Act of 1989, 5 U.S.C. § 7351.
(c) At its March 1991 session, the Judicial Conference amended these regulations to include procedures for requesting advisory opinions from the Committee on Codes of Conduct interpreting Title III and these regulations (JCUS-MAR 1991, p. 14).

(d) These regulations were amended by the Judicial Conference at its September 1991 session to cover the Tax Court and the Sentencing Commission and make certain minor technical corrections (JCUS-SEP 1991, p. 54).

(e) The Judicial Conference amended these regulations at its March 1992 session to cover judges and employees of the Court of Appeals for Veterans Claims (JCUS-MAR 1992, pp. 16-17).

(f) At its September 1994 session, the Judicial Conference renumbered these regulations and revised them to include a new definition of the term "gift;" a new section 4(a) prohibiting the solicitation of gifts; revised sections 4(b), 5(b), and 6 incorporating general limitations on the acceptance of gifts; a new section 5(h) permitting most employees to accept gifts of minimal value; and a new section 9 regarding the return or disposal of gifts that may not properly be accepted (JCUS-SEP 1994, p. 46).

(g) The Judicial Conference amended these regulations at its March 1997 session to add a new subsection (i) (the existing subsection (i) was renumbered (j)) (JCUS-MAR 1997, pp. 14-15).

(h) The Judicial Conference adopted revised and renumbered regulations in September 2003. The revisions did not, except in a few modest respects, alter the substantive standards embodied in the former regulations as they had previously been interpreted and applied (JCUS-SEP 2003, pp. 11-12).

(i) At its March 2021 session, the Judicial Conference approved adding anything that is paid for by the judiciary or secured by the judiciary under contract to the exclusions from the definition of gift; modifying the gift exception permitting the acceptance of books or other resource materials to clarify that acceptance is permitted when the resource materials relate to the official duties of the judicial officer or employee and acceptance does not create an appearance of impropriety; updating the reference to a "family member" in the gift exception for travel expenses to attend law-related events to include any person with whom a judicial officer or employee maintains both a household and an intimate relationship; and reorganizing and updating the provision governing gifts among judicial officers and employees to permit explicitly the occasional sharing or exchanging of hospitality, food, refreshments, and other gifts under certain specified circumstances. The Judicial Conference also approved various technical changes (JCUS-MAR 2021, p. 13).
§ 710 Overview

(a) The Foreign Gifts and Decorations Act of 1966, as amended, 5 U.S.C. § 7342, governs the acceptance, disposition, and reporting of gifts and decorations received from foreign governments.

(b) Gifts and decorations received by officers and employees of the judiciary (including judges and judicial officials) and their spouses or dependents are covered by this Act.

(c) Gifts may consist of tangible or intangible presents, including the expenses of travel.

(d) The term “foreign government” includes:

(1) any unit of a foreign government,

(2) any international or multinational organization whose membership is composed of foreign governments, and

(3) any agent or representative of those entities.
(e) Gifts of more than minimal value must be reported to the employing agency, which is defined in the Act as the Administrative Office of the United States Courts (AO).

§ 720 Acceptance of Gifts

Gifts from foreign governments may be accepted in two circumstances:

(a) Minimal Value

A gift of minimal value (as that term is currently defined — see § 770) in the nature of a souvenir or mark of courtesy may be accepted and retained by the employee.

(b) More Than Minimal Value

(1) A gift of more than minimal value may be accepted:

(A) when the gift consists of:

   (i) an educational scholarship or

   (ii) medical treatment, or

(B) where refusal of the gift:

   (i) would cause offense or embarrassment or

   (ii) would otherwise adversely affect the foreign relations of the United States.

(2) Tangible gifts of more than minimal value that fall within this second category are:

   (A) deemed to be accepted on behalf of the United States and
   (B) become the property of the United States.

(3) Gifts of expenses for travel taking place entirely outside the United States may be accepted by the employee if acceptance is:

   (A) appropriate,
   (B) consistent with the interests of the United States, and
   (C) permitted by the AO.
§ 730 Acceptance and Disposition of Tangible Gifts

(a) As noted above, gifts of minimal value may be retained by the employee.

(b) The employee must deposit tangible gifts of more than minimal value (other than travel expenses and decorations discussed below) with the AO within 60 days after acceptance.

(1) The AO may dispose of a gift:

(A) by forwarding it to the General Services Administration or

(B) by designating it for the official use of the judiciary.

(2) In the latter case, the gift may be returned to the court for official use (such as display).

(c) Employees should contact the Office of the General Counsel for specific guidance before physically forwarding gifts to the agency.

§ 740 Acceptance and Disposition of Decorations

(a) Decorations recognizing military service or other meritorious performance that are received from foreign governments may be accepted, retained, and worn by the employee, subject to the approval of the AO.

(b) Without this approval, decorations are deemed to be accepted on behalf of the United States and become the property of the United States. In those instances, as in the case of tangible gifts, the employee must, within 60 days after acceptance, deposit the decoration with the AO to be disposed of or designated for official use.

(c) An employee who receives a decoration from a foreign government should provide a brief letter to the Office of the General Counsel:

(1) describing the circumstances surrounding receipt of the decoration and

(2) requesting approval to retain it.

§ 750 Acceptance of Travel Expenses

(a) The Foreign Gifts and Decorations Act permits an employee to accept gifts of more than minimal value of travel or expenses for travel taking
place entirely outside the United States (such as transportation, food, and lodging). However, such a gift must be:

(1) appropriate,
(2) consistent with the interests of the United States, and
(3) reported to and permitted by the AO.

(b) An employee receiving a gift of travel expenses of more than minimal value should submit a letter to the Office of the General Counsel describing:

(1) the nature and purpose of the travel expenses received,
(2) the date received,
(3) the identity of the donor, and
(4) the estimated value.

(c) Gifts of travel expenses received by a spouse or dependent must be included in the letter.

(d) These reports should be submitted within 30 days after the travel is completed or, in any event, no later than the annual reporting date discussed below in § 770.

§ 760 Prohibition on Requests

The Foreign Gifts and Decorations Act expressly prohibits employees from requesting or encouraging any foreign government to tender a gift or decoration.

§ 770 Reporting Procedures

(a) The Foreign Gifts and Decorations Act requires the Director of the AO to report to the Secretary of State by January 31 of each year as to:

(1) any tangible gifts of more than minimal value, and
(2) any gifts of travel expenses of more than minimal value:

(A) that are not accepted in accordance with § 750, above, and
(B) that have been received from foreign governments during the preceding calendar year by officers and employees of the judiciary.

(b) Each year the AO issues a memorandum to judges and other officers and employees of the judiciary reminding them of the need to report any gifts of more than minimal value received from a foreign government that have not previously been reported to the AO.

(1) The memorandum:

(A) requests that reports be transmitted to the Office of the General Counsel by a specified date, usually in mid-January; and

(B) advises recipients of the current definition of “minimal value.”

(2) Reports should describe:

(A) the item received,

(B) its estimated value,

(C) the date and circumstances of its acceptance, and

(D) the identity of the donor.

(3) Specific questions about what should be reported may be directed to the Office of the General Counsel.
Guide to Judiciary Policy

Vol. 2: Ethics and Judicial Conduct
Pt. C: Ethics Statutes, Regulations, and Judicial Conference Resolutions

Ch. 8: Judges Personally Implicated in Criminal Proceedings

(Note: No unauthorized disclosure of this policy guidance outside the judiciary is permitted.)

§ 810 Overview

§ 820 Policy

§ 810 Overview

The Judicial Conference of the United States adopted the following policy in September 1995 (JCUS-SEP 95, p. 87).

§ 820 Policy

Federal judges who are indicted or formally charged for any offense which is subject to punishment by imprisonment of one year or more shall have all of their criminal cases reassigned, and may be permitted to continue with their civil dockets and administrative duties until it is determined that they must devote their time primarily to their own defense; and federal judges who have been implicated in a criminal process by way of arrest, or informed that they are the target of a federal or state criminal investigation for a crime which is subject to punishment by imprisonment of one year or more, may be permitted to continue with their criminal and civil dockets and administrative duties until the judicial council determines, after considering all the circumstances, to adopt the limitations which the nature of the investigation and charges justify.
§ 910 Statutory Texts and Rules on Nepotism

The following statutes and rules relate to nepotism:

- Employment of Relatives; Restrictions (5 U.S.C. § 3110);
- Definition of “relative” (11 U.S.C. § 101(45));
- Nepotism in Appointment of Receiver or Trustee (18 U.S.C. § 1910);
- Relative of Justice or Judge Ineligible to Appointment (28 U.S.C. § 458);
- Appointment and Tenure of Magistrate Judges (28 U.S.C. § 631(b)); and
- Restrictions on Appointments (Bankruptcy Rule 5002).

See also: Guide, Vol 12, § 540 (Employment of Relatives).
§ 1010 Statutory Texts on Outside Earned Income, Honoraria, and Employment

The following statutes relate to Outside Earned Income, Honoraria, and Employment:

- Government-Wide Limitations on Outside Earned Income and Employment (5 U.S.C. App. § 501-505);
- Outside Earned Income Limitation (5 U.S.C. App. § 501);
- Limitations on Outside Employment (5 U.S.C. App. § 502);
- Administration (5 U.S.C. App. § 503);
- Civil Penalties (5 U.S.C. App. § 504);
- Definitions (5 U.S.C. App. § 505); and
- Tax Treatment of Honoraria Donated to Charity (26 U.S.C. § 7701(k)).
§ 1020 Judicial Conference Regulations on Outside Earned Income, Honoraria, and Outside Employment

§ 1020.10 Authority


§ 1020.15 Purpose and Scope

(a) These Regulations of the Judicial Conference of the United States Under Title VI of the Ethics Reform Act of 1989 Concerning Outside Earned Income, Honoraria, and Outside Employment implement Title VI of the Ethics Reform Act of 1989, 5 U.S.C. App. §§ 501-505, by prescribing:

(1) limitations on:

(A) the amount of outside earned income that certain officers and employees of the judiciary may receive, and

(B) the types of outside employment activities in which such officers and employees may engage; and

(2) a prohibition against the acceptance of honoraria for any appearance, speech, or article by certain officers or employees of the judiciary.

(b) Nothing in these regulations alters any other standards or Codes of Conduct adopted by the Judicial Conference of the United States.

(c) Any violation of any provision of these regulations will make the officer or employee involved subject to appropriate disciplinary action, which may be in addition to any penalty prescribed by statute or regulation.

§ 1020.20 Definitions

(a) A “judicial officer or employee” means any

(1) United States circuit judge,

(2) district judge,

(3) judge of the Court of International Trade,
(4) judge of the Court of Federal Claims,
(5) judge and special trial judge of the Tax Court,
(6) judge of the Court of Appeals for Veterans Claims,
(7) bankruptcy judge,
(8) magistrate judge,
(9) commissioner of the Sentencing Commission, and
(10) any employee or officer of the judicial branch other than a part-time magistrate judge, or an officer or employee of the Supreme Court of the United States or the Federal Judicial Center.

(b) A “covered senior employee” means an individual who is a noncareer officer or employee (defined for these purposes as the following officers and employees):

(1) circuit judges,
(2) district judges,
(3) judges of the Court of International Trade,
(4) judges of the Court of Federal Claims,
(5) judges and special trial judges of the Tax Court,
(6) judges of the Court of Appeals for Veterans Claims,
(7) bankruptcy judges,
(8) full-time magistrate judges,
(9) the commissioners and staff of the Sentencing Commission,
(10) the Director of the Administrative Office of the United States Courts,
(11) the Deputy Director of the Administrative Office of the United States Courts, or
(12) employees of the Administrative Office of the United States Courts appointed by the Director to a position exempted under the Administrative Office of the United States Courts Personnel Act of 1990, § 3(a)(5)(B), or to a position paid under 28 U.S.C. § 603;
— and whose rate of basic pay is equal to or greater than 120 percent of the minimum rate of basic pay payable for GS-15 of the General Schedule.

(c) The terms “judicial officer or employee” and “covered senior employee” set forth in § 1020.20(a) and § 1020.20(b) do not include any special government employee as defined in 18 U.S.C. § 202.

§ 1020.25 Outside Earned Income Limitation

(a) No covered senior employee may have outside earned income attributable to a calendar year which exceeds 15 percent of the annual rate of basic pay for Level II of the Executive Schedule under 5 U.S.C. § 5313 as of January 1 of that calendar year.

(b) “Outside earned income” means all wages, salaries, commissions, professional fees, and payments and compensation of any kind for services rendered or to be rendered by the covered senior employee, less the ordinary and necessary expenses paid or incurred in producing the income, provided, however, that the following shall not constitute outside earned income:

(1) Funds received for services rendered to or for the United States government and income attributable to service with the National Guard;

(2) Pensions, annuities, deferred compensation (whether qualified or nonqualified) and other funds received for services rendered by the reporting individual before becoming a covered senior employee, or before January 1, 1991;

(3) Funds received from investments to the extent not attributable to significant personal services of the covered senior employee;

(4) Funds received from a business totally owned by the covered senior employee, or his or her family, as defined in Canon 4D(2) of the Code of Conduct for United States Judges, to the extent that such funds do not result from significant personal services of the covered senior employee;

(5) Royalties, fees, and their functional equivalent, from the use or sale of copyright, patent, and similar forms of legally recognized intellectual property rights, when received from established users or purchasers of those rights;
(6) Anything of value earned or received for services rendered which is not included as gross income in the relevant calendar year under controlling provisions of the Internal Revenue Code; and

(7) Compensation received by a senior judge for approved teaching under § 1020.35(a)(5) if the senior judge –

(A) retired from regular active service under § 371(b) and is certified as having met the requirements of 28 U.S.C. § 371(e); or

(B) retired from regular active service on permanent disability under 28 U.S.C. § 372(a).

(c) “Outside earned income” is attributed solely to the actual earner, even though under applicable community property law one-half of any personal service income earned by a covered senior employee may be deemed to belong to a spouse.

§ 1020.30 Prohibition on Receipt of Honoraria

(a) No judicial officer or employee shall receive any honorarium while that individual is a judicial officer or employee.

(b) “Honorarium” means a payment of money or anything of value (excluding or reduced by travel expenses as provided in 5 U.S.C. App. §§ 505(3) and (4)) for an appearance, speech or article by a judicial officer or employee, provided that the following shall not constitute an honorarium:

(1) Payment for a series of related appearances, speeches or articles, provided that the subject matter is not directly related to the officer's or employee's official duties and that the payment is not made because of the officer's or employee's status with the Government.

(2) Compensation received for teaching activity, provided that in the case of covered senior employees such teaching activity is approved pursuant to § 1020.35 hereof.

(3) Awards for artistic, literary or oratorical achievement made on a competitive basis under established criteria.

(4) Compensation for any performance using an artistic, athletic, musical, or other skill or talent or any oral presentation incidental thereto, provided that the subject matter is not directly related to the officer's or employee's official duties and further provided that the
opportunity is not extended because of the officer's or employee's official position.

(5) Compensation for any writing more extensive than an article.

(6) Compensation for works of fiction, poetry, lyrics, script or other literary or artistic works.

(7) A suitable memento or other token in connection with an occasion or article, provided that it is neither money nor of commercial value.

(c) Any honorarium which, except for § 1020.30(a) hereof, might be paid to a judicial officer or employee, but which is paid instead on behalf of such officer or employee to a charitable organization described in section 170(c) of the Internal Revenue Code of 1986, shall be deemed not to be received by such individual for purposes of that subsection so long as such payment does not exceed $2,000 and is not made to a charitable organization from which such individual or a parent, sibling, spouse, child, or dependent relative of such individual derives any direct financial benefit separate from and beyond any general benefit conferred by the organization's activities. However, no payment may be made to a charitable organization under this subsection if the judicial officer or employee would be prohibited from receiving and retaining the honorarium by any applicable standards of conduct other than § 1020.25(a) or § 1020.30(a) (for example, where an appearance, speech or article is prepared as part of official duties).

§ 1020.35 Limitations on Outside Employment

(a) No covered senior employee shall:

(1) affiliate with or be employed by a firm, partnership, association, corporation, or other entity to provide professional services which involve a fiduciary relationship for compensation;

(2) permit the use of his or her name by any such firm, partnership, association, corporation, or other entity;

(3) practice a profession which involves a fiduciary relationship for compensation;

(4) serve for compensation as an officer or member of the board of any association, corporation, or other entity; or

(5) receive compensation for teaching, without the prior notification and approval as herein provided.
(b) “Teaching” in these regulations includes teaching a course of study at an accredited educational institution or participating in an educational program of any duration that is sponsored by such an institution and is part of its educational offering. Examples of the latter are a lecture, lecture series or symposia sponsored by a law school or college. Teaching also includes participation in continuing legal education programs for which credit is given by licensing authorities or programs which are sponsored by recognized providers of continuing legal education.

(c) A covered senior employee who obtains prior approval from the chief judge of the circuit, or in the case of the chief judge from the judicial council, may engage in part-time teaching for compensation.

(1) Covered senior employees of the Court of International Trade or the Court of Federal Claims shall obtain approval from the chief judges of those courts.

(2) Covered senior employees of the Tax Court shall obtain approval from the chief judge of the Tax Court.

(3) Covered senior employees of the Court of Appeals for Veterans Claims shall obtain approval from the chief judge of the Court of Appeals for Veteran Claims.

(4) Covered senior employees of the Sentencing Commission shall obtain approval from the Chairman of the Sentencing Commission.

(5) Covered senior employees of the Administrative Office of the United States Courts must obtain approval from the Director of the Administrative Office.

(d) The procedures for obtaining prior approval of teaching activities are as follows:

(1) A request for approval for compensated teaching shall be made –

(A) prior to the commencement of any compensated teaching;

(B) during the performance of a previously approved teaching commitment, prior to any material increase in the compensation or the time required; and

(C) during the performance of a previously approved long-term teaching commitment, prior to the commencement of teaching in any new academic year (i.e., the Fall semester).
(2) A request for approval for compensated teaching shall state the institution for which the teaching will be done, the source and amount of compensation, and the time required, including travel. The requester shall represent that the proposed activity will be consistent with the relevant Code of Conduct.

(3) The chief judges of the circuits, the Court of International Trade, the Court of Federal Claims, the Tax Court, and the Court of Appeals for Veterans Claims shall approve or disapprove a request based on whether

(A) the proposed activity will be consistent with the Codes of Conduct,

(B) the requester is current in his or her judicial work, and

(C) the proposed activity is unlikely to affect adversely the ability of the court in which the requester serves to conduct its operations efficiently.

In the case of a request by the chief judge of the circuit, the judicial council of that circuit shall approve or disapprove the request. A request by the chief judge of the Court of Appeals for the Federal Circuit, the Court of International Trade, the Court of Federal Claims, the Tax Court, or the Court of Appeals for Veterans Claims shall be approved or disapproved by majority vote of their respective courts.

In the case of a covered senior employee of a district court, the chief judge of the circuit shall consult with the chief judge of the district court and, where appropriate, the chief judge of the bankruptcy court before making the decision.

In the case of a senior judge, the chief judge shall make adjustments in the criteria for approval to take account of the senior judge's status and decreased work assignments.

(4) The decision by the chief judge may be appealed to the judicial council, or the Court of Appeals for the Federal Circuit, the Court of International Trade, the Court of Federal Claims, the Tax Court, or the Court of Appeals for Veterans Claims as appropriate. A majority vote to approve or disapprove the request shall be final.

(e) Reports of teaching requests and rulings covering the 12-month period ending June 30 shall be sent by chief judges or others authorized to approve such requests to the Judicial Conference Committee on Codes of
Conduct by July 31 of each year. That committee shall monitor these submissions and report to the Judicial Conference.

§ 1020.40 Advisory Opinions

The Committee on Codes of Conduct of the Judicial Conference of the United States is authorized to render advisory opinions interpreting Title VI of the Ethics Reform Act of 1989 (5 U.S.C. App. §§ 503(3), 504(b)) and these regulations (JCUS-MAR 90, pp.14-15). Any person covered by the Act and these regulations may request an advisory opinion by writing to the Chairman of the Committee on Codes of Conduct, in care of the Administrative Office of the United States Courts, Washington, D.C. 20544.

§ 1020.45 Effective Date

These regulations will become effective on January 1, 1991, if, but only if, the provisions of 5 U.S.C. App. §§ 501, 502, 503, 504, and 505 are then in effect.

§ 1020.50 Commentary on Regulations

(a) Judges and judicial employees who are covered by Codes of Conduct promulgated by the Judicial Conference of the United States may receive outside earned income, make speeches and appearances, write articles, and engage in extrajudicial activities only in conformity with the provisions of both the Codes of Conduct and these regulations.

(b) Title VI of the Ethics Reform Act of 1989 (the Act) applies to officers and employees of the judicial branch. However, the Judicial Conference has delegated its administrative and enforcement authority under the Act for officers and employees of the Supreme Court of the United States to the Chief Justice of the United States and for employees of the Federal Judicial Center to its Board (JCUS-MAR 90, pp. 14-15). For this reason, the definitions of "judicial officer or employee" and "covered senior employee" exclude the judicial officers and employees of the Supreme Court and the Center. For purposes of Title VI and these regulations, employees of the Tax Court and the Court of Appeals for Veterans Claims are employees of the judicial branch.

(c) "Outside earned income" includes anything of value received in consideration for the provision of services by a covered senior employee with the exceptions specified in § 1020.25(b). Under § 1020.25(b)(5), the advance payment of permissible royalties, fees, or the functional equivalent thereof, is not outside earned income if it must be deducted from amounts that subsequently become payable. A covered senior employee may, under § 1020.25(b)(6), determine outside earned income in a manner consistent with his or her income tax return, or may allocate any amount received in a calendar year over two or more years pursuant
to a good faith allocation reflecting the work done. The outside earned income limitation that applies to an individual who becomes a covered senior employee during a calendar year is determined on a pro rata basis by dividing the annual income limitation by 365 and multiplying it by the number of days during that calendar year that the individual serves as a covered senior employee. Income earned before an individual becomes a covered senior employee is not subject to this limitation.

(d) A covered senior employee, in planning for compliance with the limitation on outside earned income, may be required to estimate in advance income producing expenses for a calendar year. Should the actual expenses turn out to be less than anticipated, causing the outside earned income to exceed the statutory limitation, the requirements of § 1020.25 are satisfied if the resulting excess is refunded to the payor promptly after the close of the year.

(e) The Act prohibits a judicial officer or employee from accepting any “honorarium” and defines “honorarium” as “a payment of money or any thing of value for an appearance, speech or article (including a series of appearances, speeches, or articles if the subject matter is directly related to the individual's official duties or the payment is made because of the individual's status with the Government).” The ban on the receipt of honoraria does not preclude a judicial officer or employee from accepting compensation for a series of thematically connected presentations, works, or articles not directly related to his or her official duties so long as the compensation is not being paid because of the individual's status with the judicial branch. Also, payments for artistic and literary works or performances generally are not considered honoraria and are excluded from the ban. Nor does the ban prohibit reimbursement of actual expenses such as typing, editing, and reproduction costs incurred in connection with an appearance, speech or article.

(f) The general prohibition standing alone could be read to foreclose the receipt of compensation for appearances, lectures, and speeches in the context of a bona fide educational program. This was clearly not the intent of Congress, however, since Title VI specifically approves teaching for compensation by judicial officers and senior employees so long as an appropriate entity designated by the Judicial Conference gives prior approval to such teaching and so long as the compensation received, together with other outside earned income, does not exceed the 15% limit on outside earned income. (Compensation received by senior judges for teaching is excluded from the 15% limit on outside earned income if the judge retired from regular active service under 28 U.S.C. § 371(b) and is certified as having met the requirements of 28 U.S.C. § 371(e) or retired
on permanent disability under 28 U.S.C. § 372(a).) Thus, the prohibition on receipt of honoraria does not foreclose teaching for compensation.

(g) Compensation received from a law school for writing a law review article is an example of an honorarium. On the other hand, compensation received as the author or co-author of a *bona fide* legal treatise or book is an example of compensation for scholarly writing more extensive than an article and therefore is not an honorarium. Of course, compensation for writing more extensive than an article is excluded from the definition of an honorarium only if it is *bona fide* compensation for the writing, e.g., compensation received from an established publisher pursuant to usual and customary contractual terms.

(h) The same rules apply whether the writing is legal or nonlegal, scholarly or otherwise. For example, compensation received for writing a nonlegal article for a newspaper or magazine is an honorarium. On the other hand, compensation received as the author or co-author of a nonlegal book is not an honorarium.

(i) The definition of a prohibited “honorarium” excludes a suitable memento or other token in connection with an occasion or article, provided it is neither money nor of commercial value. The test for commercial value is whether the memento would have commercial value in the hands of the recipient. Examples of suitable mementos include a plaque or letter opener. Examples of “other tokens” that are not honoraria include benefits incidental to attending the occasion or to the publication of an article such as food and beverages consumed, waiver of a registration fee, copies of publications containing articles, reprints of a law review article, a free subscription provided to the author of the article, or tapes of appearances or speeches and similar items that provide a record of the event.

(j) The prohibition against practicing a profession that involves a fiduciary relationship includes the providing of legal, real estate, consulting and advising, insurance, medicine, architectural, or financial services when those services involve such a relationship. The prohibition does not apply to service by a covered senior employee as an executor or trustee of a family estate or trust as permitted by the Codes of Conduct where the covered senior employee does no more than provide the service that would be provided by a lay person in the same capacity. Compensation received for such services is subject to the 15 percent limitation on outside earned income.

(k) Covered senior employees are required to notify the authority designated to grant approvals and obtain approval *prior* to engaging in compensated teaching activities. Further, during the performance of a previously approved teaching commitment, approval is required prior to any material
increase in the compensation or the time required. Those who have previously secured approval for compensated teaching pursuant to a long-term contract must reapply for approval prior to the commencement of any new academic year.

(l) The Act does not define “teaching.” These regulations define it to include meaningful participation in bona fide components of an educational curriculum or plan, regardless of the duration or format of the particular program in which the covered senior employee participates. The statutory authority to “teach” for compensation thus includes permission to participate in the educational program of an accredited institution in the manner in which that institution plans and carries out its teaching function. When speeches and lectures are sponsored by and presented within the overall educational program of an accredited institution, the Conference believes that they do not provide the occasion for any of the evils Congress was seeking to avert and accordingly, they should qualify as “teaching.” Thus, a lecture, lecture series, symposia, moot courts, and jurist-in-residence programs may be compensated as “teaching,” provided, of course, the strictures of the Codes of Conduct are met. Teaching may also include participation in programs sponsored by bar associations or professional associations or other established providers of continuing legal education programs for practicing lawyers. Participation in bar review courses or in the preparation and grading of bar examinations also qualifies as teaching.

(m) The Codes of Conduct permit a covered senior employee to receive compensation for part-time teaching so long as:

(1) the compensation received is reasonable in amount and does not exceed that normally received by others for the same activity,

(2) the source of the compensation does not give the appearance of impropriety, and

(3) the teaching activity does not interfere with the performance of judicial duties.

These requirements are continued as criteria for approval of teaching requests.

(n) Covered senior employees who wish to participate in a symposium, lecture series, or other teaching activity of limited duration and receive compensation therefor must secure the same prior approval as those who teach conventional courses for compensation. No such approval is required for teaching when no payment is received or when payment is received only to reimburse the ordinary and necessary expenses incurred
in providing the teaching services, such as travel, lodging, and meals for the covered senior employee and a relative accompanying him or her; such reimbursement of expenses is not “compensation.” No prior approval is required for compensated teaching activity of an employee of the judicial branch whose basic pay is less than 120 percent of the minimum rate of basic pay payable for GS-15 of the General Schedule.

(o) In addition to the civil penalty provided in 5 U.S.C. App. § 504(a), a judge covered by the Judicial Councils Reform and Judicial Conduct and Disability Act of 1980 (28 U.S.C. §§ 332(d)(1), 351 to 364) who violates these regulations shall be subject to discipline as provided in that Act and any other judicial officer or employee who violates these regulations shall be subject to discipline in accordance with existing customary practices.

§ 1020.55 Notes on Regulations

(a) The “Regulations of the Judicial Conference of the United States under Title VI of the Ethics Reform Act of 1989 concerning Outside Earned Income, Honoraria, and Outside Employment” were adopted on August 15, 1990, by the Judicial Conference, through its Executive Committee (JCUS-SEP 90, p. 64).

(b) At its March 1991 session, the Judicial Conference amended these regulations to exclude part-time magistrate judges from the ban against the receipt of honoraria (JCUS-MAR 91, p. 14).

(c) The regulations were amended at the Judicial Conference's September 1991 session to cover the Tax Court and the Sentencing Commission and to make certain technical corrections (JCUS-SEP 91, p. 54).

(d) The Judicial Conference amended these regulations at its March 1992 session to:

(1) cover judges and employees of the Court of Appeals for Veterans Claims,

(2) reflect amendments to the Ethics Reform Act relating to the definition of “honorarium” and the exclusion from the limitation on outside earned income of compensation from approved teaching activities by certain senior judges (see: JCUS-SEP 93, p. 43), and

(3) to clarify when and under what circumstances prior approval for compensated teaching activities must be obtained (JCUS-MAR 92, pp. 16-17).
(e) At its March 1994 session, the Judicial Conference amended the definition of Administrative Office employees who are included in the term “judicial officer or senior employee.” JCUS-MAR 04, p. 15.

(f) At its September 1994 session, the Judicial Conference amended the definition of outside earned income in §1020.25(b)(1) to exclude income from National Guard service; revised §1020.30(b)(2) to clarify that the requirement for approval of teaching activities extends only to covered senior employees; revised the definition of an honorarium in §1020.30(b)(3), §1020.30(b)(4), and §1020.30(b)(6) to exclude compensation for various artistic and athletic endeavors; amended §1020.30(c) to clarify when honoraria may properly be donated to charitable organizations; and made additional editorial revisions. The Commentary was also revised (JCUS-SEP 94, p.46).

(g) The Judicial Conference added a new §1020.20(c), excluding special government employees from these regulations, at its March 1996 session (JCUS-MAR 96, p. 12).
§ 1110 Conflict-of-Interest Rules for Part-Time Magistrate Judges

§ 1110.10 Overview

(a) Under 28 U.S.C. § 632(b), the Judicial Conference has adopted the following Conflict-of-Interest Rules applicable to part-time magistrate judges.


§ 1110.20 Text of Rules

(1) A part-time magistrate judge, his or her partners, and his or her associates, may appear as counsel in any civil action in any court or governmental agency, including matters in which the United States is a party or has a direct and substantial interest, but they may not appear in cases in which the part-time magistrate judge has been involved in connection with his or her official duties. (JCUS-MAR 69, pp. 32-33.)

(2) A part-time magistrate judge, his or her partners, and his or her associates, may appear as counsel in any matter before the Internal Revenue Service, other than in those matters in which the part-time
magistrate judge has been involved in connection with his or her official duties. (JCUS-MAR 69, pp. 32-33.)

(3) A part-time magistrate judge may appear as counsel in a criminal action in any state court, but is precluded from appearing as counsel in any criminal action in any court of the United States. (JCUS-MAR 69, pp. 32-33.)

(4) A part-time magistrate judge's partners and associates may appear as counsel in any criminal action in any state court and in any federal court other than in the district in which the part-time magistrate judge serves, provided that the part-time magistrate judge has not been involved in such criminal proceeding in connection with his or her official duties. (JCUS-MAR 69, pp. 32-33.)

(5) A part-time magistrate judge is precluded from using his or her official office to refer cases to his or her partners, associates, or to others. (JCUS-MAR 69, pp. 32-33.)

(6) Generally, a part-time magistrate judge represents conflicting interests when, on behalf of the government, it is his or her official duty to take certain action or contend for that which duty to another would require him or her to oppose. (JCUS-MAR 69, pp. 32-33.)

(7) A part-time magistrate judge who is assigned additional duties under Section 636(b) or who conducts civil proceedings with the consent of the parties under Section 636(c) of Title 28, United States Code, may not appear as counsel in any case, civil or criminal, in the district court for which he or she is appointed. This prohibition shall not extend to a part-time magistrate judge whose additional assignments are limited to the review of prisoner petitions, service as a special master in a specified case, the receipt of indictments returned by grand juries, or the conduct of arraignments. (JCUS-OCT/NOV 69, p. 79; JCUS-MAR 77, pp. 27-28; JCUS-MAR 91, p. 14.)

(8) A part-time magistrate judge may not use his or her official position in any way to promote his or her private law practice. In this regard, he or she may not use his or her official stationery in the conduct of his or her law practice nor include his or her official title on general office letterhead. (JCUS-OCT 72, p. 68.)
§ 1120 Part-Time Magistrate Judge Accepting Fees for Service as a Special Master

§ 1120.10 Overview

In April 1976 (JCUS-APR 76, pp. 19-20), the Judicial Conference adopted the following statement of policy concerning special master references to part-time magistrate judges.

§ 1120.20 Policy

A part-time magistrate judge is precluded from accepting fees, in addition to the salary set for his or her position by the Conference, for services performed as a special master, whether or not such service is rendered in the magistrate judge's official capacity, and further, that no fees should be taxed against the litigants for such service.

Note: The prohibition against the taxing of fees against the litigants applies only to payment for the services performed by the part-time magistrate judge, and not to other necessary costs incident to the reference.
Guide to Judiciary Policy

Vol. 2: Ethics and Judicial Conduct
Pt. C: Ethics Statutes, Regulations, and Judicial Conference Resolutions

Ch. 12: Practice of Law

(Note: No unauthorized disclosure of this policy guidance outside the judiciary is permitted.)

§ 1210 Statutory Texts on Practice of Law

§ 1220 Judicial Conference Resolutions on Practice of Law

§ 1220.10 Text of Resolutions

§ 1220.20 Notes on Resolutions

§ 1210 Statutory Texts on Practice of Law

The following statutes relate to practice of law:

- Salaries of Bankruptcy Judges; Character of Service (28 U.S.C. § 153(b));
- Recall of Certain Judges and Magistrate Judges (28 U.S.C. § 375(b));
- Practice of Law by Justices and Judges (28 U.S.C. § 454);
- Practice of Law by Magistrate Judges; Character of Service (28 U.S.C. § 632);
- Clerks of Court; Practice of Law Restricted (28 U.S.C. § 955); and

§ 1220 Judicial Conference Resolutions on Practice of Law

§ 1220.10 Text of Resolutions

(a) The Judicial Conference adopted the following resolution in September 1958 (JCUS-SEP 58, pp. 17-18):

Resolved, That no person employed on a full-time basis in the federal judicial establishment shall engage in the private practice of the law.
(b) The Conference in March 1978 (JCUS-MAR 78, p. 5) modified a 1940 resolution by adopting the following resolution:

1. A law clerk or a secretary to any judge of the United States, as defined by 28 U.S.C. § 451, shall not engage in any employment outside of his or her official position which would be incompatible with the full and proper discharge of the duties of that position.

2. No such law clerk, during his or her tenure in that capacity, shall practice law in any federal, state, or local court or undertake to perform legal services for any private client in return for remuneration. This prohibition, however, shall not be construed to preclude the performance of routine legal work necessary to the management of the personal affairs of the law clerk or a member of his or her family so long as:

   A) such work is done without compensation or for nominal compensation;

   B) it does not require the entry of an appearance in a court of the United States or any other act which would suggest that the position of law clerk is being misused, that preferential treatment is being sought by virtue of the holding of that position, or which would otherwise be inconsistent with the law clerk's primary responsibility to the employing judge and court; and

   C) so long as such activity does not have actual conflict or appear in conflict with court duties or will not reflect discreditably on the court or create the appearance of impropriety.

3. Such law clerk or secretary shall not be prohibited from performing and receiving compensation for such activities as teaching, lecturing, authoring or editing articles, publications, and books. Nor shall such law clerk be prohibited from performing any activity related to the judicial process which tends toward the improvement of the law, the legal system, or the administration of justice, or which is unrelated to the judicial process. Regardless of any other provisions set out above, any such otherwise permitted activity may be undertaken only after notice to the employing judge and upon his or her finding that it poses no inconsistency with the function of law clerk or secretary including the responsibility to maintain the confidentiality of the judicial process and that it will not inhibit the devotion of the full business day to that position during the tenure of the incumbent in such capacity.
§ 1220.20 Notes on Resolutions

(a) The appointment of certain persons listed in the resolution to dual offices has been authorized by statute and by the Judicial Conference.

(b) In September 1995, the Judicial Conference adopted a new Code of Conduct for Judicial Employees [Guide, Vol 2A, Ch 3], Canon 4D of which contains restrictions on the practice of law by judicial employees (JCUS-SEP 95, p. 74).
§ 1310 Judicial Conference Policy on Judges’ Attendance at Privately Funded Educational Seminars


(a) A nongovernmental source,¹ other than a state or local bar association, a subject-matter bar association, a judicial association, the Judicial Division of the American Bar Association, or the National Judicial College, that wishes to pay for or reimburse federal judges’² expenses (i.e., travel, food, lodging, or anything that would be considered a gift under the Judicial Conference Ethics Reform Act Gift Regulations)³ above the threshold at which judges must report reimbursements on their annual financial disclosure reports⁴ in connection with attending, as a speaker or participant, a program, a significant purpose of which is the education of United States federal or state judges, shall disclose to the Administrative Office of the U.S. Courts in writing the following information:

(1) the name of the program provider(s);

¹ Private and public educational institutions are included in the reporting requirement.
² This term includes Article III judges as well as fixed-term judges and judicial officers.
³ The term "expenses" is not intended to include seminar books and materials.
⁴ Currently, a judge must report any reimbursement exceeding the threshold figure in Guide, Vol. 2D, § 330.20 (Reimbursements). This figure is subject to change every three years in accordance with the cost of living as determined by the Administrator of General Services. See 5 U.S.C. § 7342(a)(5); 41 CFR 102-42; see also 5 U.S.C. app. § 102(a)(2)(B).
(2) the name or title of the program;
(3) the dates and location of the program;
(4) the various presentation topics and the speakers expected respectively to address each topic; and
(5) all the program provider’s source(s) of support, financial or otherwise, as defined below.

The Administrative Office of the U.S. Courts shall develop a detailed form for this purpose. Upon receipt, the Administrative Office shall promptly post the information on the Judiciary’s website (www.uscourts.gov) so that it is publicly available and available to judges. The filing shall be retained for a period of three years from the date of filing.

(b) A federal judge shall not accept travel, food, lodging, reimbursement, or anything that would be considered a gift under the Judicial Conference Ethics Reform Act Gift Regulations from a nongovernmental source other than a state or local bar association, a subject-matter bar association, a judicial association, the Judicial Division of the American Bar Association, or the National Judicial College, in connection with attending, as a speaker or participant, a program, a significant purpose of which is the education of United States federal or state judges, unless the judge:

(1) ascertains from the Judiciary’s website that the program provider has made the disclosures required in (a); and

(2) within 30 days following the conclusion of the educational program, files a report in the office of the relevant clerk of court (court of appeals, district court, Court of International Trade, Court of Federal Claims, or bankruptcy court, as appropriate), disclosing the dates of attendance, the name of the program provider(s), and the title of the educational program. The Administrative Office of the U.S. Courts shall develop a form for this purpose. This filing shall be available on the local court’s website. The filing shall be retained for a period of three years from the date of filing.

(c) This is a policy of the Judicial Conference. It is not intended to change the Code of Conduct for United States Judges (see in particular Advisory Opinion No. 67 of the Judicial Conference Committee on Codes of Conduct) or the annual financial disclosure reporting requirements for judges under the Ethics in Government Act, 5 U.S.C. app. §§ 101-111.
§ 1320 Definition of Source of Financial or Other Support

(a) If the support, financial or otherwise, comes from the general revenues of the program provider(s), and/or from endowments or gifts not raised for the particular educational program or for the purpose of educating judges, then it is sufficient to identify the program provider(s) as the source of support.

(b) If the support, financial or otherwise, comes in whole or in part from money, goods or services from others (e.g., corporations, nonprofit organizations, foundations, individual donors) specifically for the particular educational program, or for the education of judges generally, list every such donor. This policy is not intended to require the disclosure and reporting of monies derived from tuition, educational program registration fees, and other similar enrollment fees.

§ 1330 Judicial Branch Committee Statement of Purpose

(a) The continuing education of judges is in the public interest. Judges need to enhance their understanding of law, science, history, economics, sociology, philosophy, and other disciplines to the same extent as lawyers and other professionals. In an age where rapid technological changes are revolutionizing virtually every aspect of American life, the law must keep pace with changes that society undergoes. Without such knowledge of the world around them, judges would be ill-prepared to make informed and fair decisions.

(b) In view of the compelling need for and many benefits of continuing education, the Judicial Conference believes that neither it nor any other entity should seek to limit judges' access to knowledge or censor their right to increase that knowledge.

(c) The Federal Judicial Center provides high quality educational programs to the judiciary, but it does not and likely never will have sufficient resources to meet the needs of every judge. Private funding of expenses for attendance at educational programs facilitates judges' participation in these activities.

(d) Judicial attendance at privately funded educational programs poses certain concerns, however. Some observers believe that judges may be influenced inappropriately by those who sponsor or contribute (financially or otherwise) to these seminar programs and who might be litigants before those judges. That influence, it is argued, may be exerted through program content, contact between judges and those who litigate before them, and perquisites provided to program attendees.
(e) To address these concerns, the Judicial Conference has adopted the above policy that provides for timely disclosure by educational program providers and judges who attend those programs. The required disclosure includes judges’ attendance at the program, dates and location of the program, topics to be presented, speakers who will address each topic, funding source for the program, and sponsors of the programs.

(f) The Conference’s overarching objective in preparing this policy is greater transparency. The required disclosure by program providers will better enable judges to determine whether they should attend a program. The disclosure will also enable a party or an attorney or the public to check on a local court’s website to determine whether a judge has recently attended an educational seminar covered by this policy. A party, an attorney, or the public may consult the judiciary’s website (www.uscourts.gov) to access further details concerning the educational program. This transparency and accountability should strengthen public and congressional confidence in federal judicial ethics.

(g) This new policy appropriately balances judges’ educational needs and the desire of the public to be informed promptly when judges meet those needs by attending privately funded programs.
Guide to Judiciary Policy

Vol. 2: Ethics and Judicial Conduct
Pt. C: Ethics Statutes, Regulations, and Judicial Conference Resolutions

Ch. 14: STOCK Act Compliance

(Note: No unauthorized disclosure of this policy guidance outside the judiciary is permitted.)

§ 1410 Overview

§ 1420 STOCK Act Requirements and Compliance

§ 1430 Ethics Guidance

§ 1410 Overview


§ 1420 STOCK Act Requirements and Compliance

(a) Most provisions of the STOCK Act apply only to certain employees of the legislative and executive branches, but several requirements apply to those judges and judicial employees who are required to file financial disclosure reports (referred to here as “covered judiciary personnel”).

(b) The STOCK Act provisions that apply to the judiciary do not amend the Ethics in Government Act or modify the existing financial disclosure reporting process. The STOCK Act does not limit the construction of the existing anti-fraud provisions of the securities laws with respect to judges and judicial employees.

(c) The requirements of the STOCK Act that specifically apply to the judiciary are as follows:

(1) The Judicial Conference is required to issue “interpretive guidance,” as necessary, to clarify that the covered judiciary personnel are prohibited from using nonpublic information derived from their position or gained from the performance of their official responsibilities “as a means for making a private profit.” STOCK Act, § 9(a).
(2) Covered judiciary personnel are not exempt from insider trading provisions arising under federal securities laws. The STOCK Act affirms that covered judiciary personnel have “a duty arising from a relationship of trust and confidence to the United States government and the citizens of the United States with respect to material, nonpublic information derived from such person’s position . . . or gained from the performance of such person’s official responsibilities.” STOCK Act, §§ 5 and 9(b).

(3) With respect to securities that are the subject of an initial public offering, the covered judiciary personnel may not purchase such securities “in any manner other than is available to members of the public generally.” STOCK Act, § 12.

(4) Covered judiciary personnel who are negotiating agreements with private entities for post-judicial employment or compensation, or who have made such agreements, must file statements that include “the name of the private entity or entities involved in such negotiations or agreement, and the date such negotiations or agreement commenced.” STOCK Act, § 17(a).

(5) These statements should be filed with the supervising ethics office (defined for this purpose as the Judicial Conference) within 3 business days after the “commencement of such negotiation or agreement.” STOCK Act, § 17(a).

(6) Covered judiciary personnel who have filed statements concerning post-judicial employment, as outlined above, must recuse themselves “whenever there is a conflict of interest, or appearance of a conflict of interest, for such individual with respect to the subject matter of the statement,” and must “notify” the supervising ethics office of such recusals. STOCK Act, § 17(b).

(d) These provisions were effective immediately upon enactment of the STOCK Act, on April 4, 2012. Covered judiciary personnel who on or after that date were negotiating agreements for post-judicial employment or have made such agreements, must file the statements and any recusal notices required under Section 17 of the Act. Any such statement or notice should be submitted to the Judicial Conference by means of an email to the Judicial Conference Secretary at Aodb_OGCEthics@ao.uscourts.gov and will not be subject to disclosure except as may be directed by the Judicial Conference.
§ 1430 Ethics Guidance

(a) With the exception of the new reporting requirement described above, the judiciary’s existing ethics rules already cover, in general terms, the specific items addressed in the STOCK Act. For example, Canon 4D(5) of the Code of Conduct for United States Judges (Guide, Vol 2A, Ch 2), provides, regarding financial activities, that “a judge should not disclose or use nonpublic information acquired in a judicial capacity for any purpose unrelated to the judge’s official duties.” Similarly, Canon 2 of the Code of Conduct for Judicial Employees (Guide, Vol 2A, Ch 3) states that “a judicial employee should not use public office for private gain.”

(b) Existing ethics rules also provide guidance concerning potential conflicts of interest related to post-judicial employment. Canon 3C of the Code of Conduct for United States Judges (Guide, Vol 2A, Ch 2) addresses recusal and disqualification, while Canon 3F of the Code of Conduct for Judicial Employees (Guide, Vol 2A, Ch 3) covers employee conflicts of interest. For judges, an advisory opinion of the Judicial Conference Committee on Codes of Conduct provides guidance on recusal issues related to negotiations for post-judicial employment. See: Guide, Vol 2B, Ch 2, Advisory Opinion No. 84 (Pursuit of Post-Judicial Employment). That advisory opinion concludes that “after the initiation of any discussions with [a future employer], no matter how preliminary or tentative the exploration may be, the judge should recuse on any matter in which the [future employer] appears.”
§ 1510 Overview and Scope

(a) Under 28 U.S.C. § 604(a)(17), the Director of the Administrative Office of the U.S. Courts (AO) has authority to accept voluntary and uncompensated (gratuitous) services as well as gifts of personal property for the purpose of aiding or facilitating the work of the judicial branch.

(b) This chapter does not apply to:

(1) gifts of personal property to judges or judiciary employees that are not for the purpose of aiding or facilitating the work of the judicial branch (see: Guide, Vol. 2C, Ch. 6);

(2) gifts offered by foreign governments (see: Guide, Vol. 2C, Ch. 7);

(3) volunteer arrangements in a court or federal public defender organization focusing either exclusively or primarily on providing an educational experience for the volunteer, or part of a work-training program (see: Guide, Vol. 12, § 550);

(4) the AO’s student intern program (see: AO Manual, Vol. 4, § 450); and

(5) accommodations to hold court that are furnished without cost to the judicial branch (see: 28 U.S.C. § 462(a)).

(c) For purposes of this chapter, “gift” means any favor, discount, entertainment, forbearance, or other item having monetary value, including an in-kind item, offered or provided without consideration. It does not include:
(1) opportunities and benefits, including favorable rates and commercial discounts, that are available to the public or all federal government agencies;

(2) anything that is paid for by the judiciary or secured by the judiciary under contract; and

(3) any item or service offered or provided by a federal entity (see: Guide, Vol. 14, § 550).


(e) Questions concerning this chapter should be addressed to the AO’s Office of the General Counsel.

§ 1520 Acceptance of Gifts

(a) For delegations of authority to accept gifts of privately owned legal research resources, see: Guide, Vol. 21, § 230.

(b) For delegations of authority to accept gifts of other types of personal property, see: Guide, Vol. 16, § 520.10(c)(2).

(c) For acceptance of offers from state, local, or private entities for probation or pretrial services officers to use a firing range at no cost for official purposes, see: Guide, Vol. 8H, § 320.20.10(d)(3).

(d) A judge or judiciary employee who has not been delegated authority to accept gifts on behalf of the judiciary must forward any gift offers of personal property that are for the purpose of aiding or facilitating the work of the judicial branch to the General Counsel via email or by mail to:

Office of the General Counsel
Administrative Office of the United States Courts
One Columbus Circle, N.E.
Washington, D.C. 20544

(e) Any gift of personal property accepted under the AO Director’s statutory authority becomes official government property and is subject to the policies that apply to government property. See: Guide, Vol. 16, Ch. 4 and Ch. 5.
§ 1530 Acceptance of Voluntary and Uncompensated Services

A judge or judiciary employee who has not been delegated authority to accept and utilize voluntary and uncompensated (gratuitous) services must forward any offer of services covered under this chapter to the General Counsel via email or by mail to the address listed in § 1520(d). The General Counsel may require the execution of a gratuitous services agreement as a condition of accepting the services.

§ 1540 Prohibition Against Solicitation

No judge or judiciary employee may solicit voluntary and uncompensated (gratuitous) services, or any gift of personal property, covered under this chapter on behalf of the judicial branch without the prior written approval of the AO Director.
§ 110 Introduction

§ 120 Authority
The regulations in this volume are issued under the Act’s authority. The Judicial Conference of the United States is responsible for compliance with, and implementation of, the Act by the federal judiciary (see: 5 U.S.C. app. § 111). In 1990 and 2017, the Conference delegated this authority to its Committee on Financial Disclosure, as authorized by the Act (see: JCUS-SEP 1990, p. 85; JCUS-SEP 2017, p. 13). In 2017, the Committee approved a revised set of financial disclosure regulations. The Committee has prescribed Form AO 10 for filing financial disclosure reports.
§ 130 Purpose

This volume supplements and implements Title I of the Act with respect to judicial officers and judicial employees, by providing more specifically the uniform procedures and requirements for the judiciary’s financial disclosure system.

§ 140 Applicability

This part of Volume 2 applies to all judicial officers and judicial employees required by the Act to file financial disclosure reports.

§ 150 In General

(a) Title I of the Act requires that designated federal officials disclose publicly their personal financial interests, to ensure confidence in the integrity of the federal government by demonstrating that they are able to carry out their duties without compromising the public trust.

(b) Financial disclosure reports are not net-worth statements. Financial disclosure systems seek only the information that the judiciary has deemed relevant to the administration and application of conflict of interest laws, statutes on ethical conduct or financial interests, and regulations on standards of ethical conduct.

(c) Nothing in the Act or these regulations requiring reporting of information or the filing of any report may be deemed to authorize:

- receipt of income, honoraria, gifts, or reimbursements;
- holding of assets, liabilities, or positions; or
- involvement in transactions that are prohibited by law or regulation.

See: § 160, below.

(d) The Administrative Office of the U.S. Courts (AO) is responsible for processing, maintaining, and releasing financial disclosure reports according to the statute and this part of Volume 2.

(1) As required by the statute, the reports are maintained for six years, after which they are destroyed unless needed in an ongoing investigation.

(2) For individuals who file a report as a nominee under Guide, Vol. 2D, § 210.20 and are not later confirmed by the Senate, such reports will be destroyed one year after the individual is no longer
under consideration by the Senate, unless needed in an ongoing investigation.

§ 160 Relationship to Codes of Conduct

(a) This part of Volume 2 governs only the filing of financial disclosure reports.

(b) The disclosure requirements and exemptions from disclosure contained in the Ethics in Government Act neither define nor limit the standards imposed by the Code of Conduct for United States Judges and other rules of the Judicial Conference or the statutory provisions for disqualification or recusal.

(c) Article III judges, bankruptcy judges, and magistrate judges are governed by the Code of Conduct for United States Judges (Guide, Vol. 2A, Ch. 2).

(d) Judicial employees are governed by the Code of Conduct for Judicial Employees (Guide, Vol. 2A, Ch. 3).

(e) Federal public defender employees are governed by the Code of Conduct for Federal Public Defender Employees (Guide, Vol. 2A, Ch. 4).

(f) AO employees are governed by the Code of Conduct for Administrative Office Employees (AO Manual, Vol. 4, Ch. 2).

§ 170 Definitions

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<tr>
<th>Term</th>
<th>Definition</th>
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</thead>
<tbody>
<tr>
<td>Beneficial interest</td>
<td>In a trust, this means that the beneficiary has a right to receive an asset or the income from an asset but does not hold title to the asset itself.</td>
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<td>Dependent child</td>
<td>When used with respect to any reporting individual, any individual who is a son, daughter, stepson, or stepdaughter and who is: (1) unmarried, under age 21, and living in the household of the reporting individual; or (2) a dependent of the reporting individual within the meaning of 26 U.S.C. § 152.</td>
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<tr>
<td>Designated agency ethics official</td>
<td>The Judicial Conference's Committee on Financial Disclosure, a subcommittee, or member of either, or counsel of either designated to administer the provisions of the Act and these regulations within the judiciary.</td>
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<tr>
<td>Filer</td>
<td>Used interchangeably with “reporting individual,” and includes both judicial officers and judicial employees.</td>
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### § 170 Definitions

| **Gift** | A payment, advance, forbearance, rendering, or deposit of money, or anything of value, unless consideration of equal or greater value is received by the donor, including food and beverages consumed in connection with a gift of overnight lodging.  
**Note:** A gift does not include:  
(1) bequests and other forms of inheritance;  
(2) suitable mementos of a function honoring the reporting individual;  
(3) food, lodging, transportation, and entertainment provided by a foreign government within a foreign country or by the United States government, the District of Columbia, or a state or local government or its political subdivision;  
(4) food and beverages that are consumed without a gift of overnight lodging;  
(5) communications to the offices of a reporting individual, including subscriptions to newspapers and periodicals; and  
| **Honorarium** | A payment of money or anything of value for an appearance, speech, or article (including a series of appearances, speeches, or articles if the subject matter is directly related to the individual’s official duties or the payment is made because of the individual’s status with the government) by an employee excluding any actual and necessary travel expenses incurred by such individual (and one relative) to the extent that such expenses are paid or reimbursed by any other person, and the amount otherwise determined shall be reduced by the amount of any such expenses to the extent that such expenses are not paid or reimbursed. |
| **Income** | All monies, compensation, and wages from whatever source derived, whether or not they are taxable for federal income tax purposes (e.g., municipal bond interest). Generally, income means “gross income” as determined in conformity with the Internal Revenue Service principles at 26 CFR 1.61-1 through 1.61-15 and 1.61-21.  
**Note:** It includes but is not limited to the following items:  
- earnings such as compensation for services, fees, commissions, salaries, wages, and similar items;  
- gross income derived from business (and net income if the individual elects to include it);  
- gains derived from dealings in property including capital gains (whether actually received or reinvested);  
- income from rental property, even if a profit is not realized;  
- interest;  
- rents; |
### § 170 Definitions

<table>
<thead>
<tr>
<th><strong>Definitions</strong></th>
<th><strong>Description</strong></th>
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<tbody>
<tr>
<td>royalties;</td>
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<td>dividends;</td>
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<td>annuities;</td>
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<td>income from the investment portion of life insurance and endowment contracts;</td>
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<tr>
<td>pensions;</td>
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<td>income from discharge of indebtedness;</td>
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<td>distributive share of partnership income; and</td>
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<td>income from an interest in an estate or trust.</td>
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<td><strong>Judicial employee</strong></td>
<td>Any employee of the federal judiciary, of the Tax Court, of the United States Sentencing Commission, of the Court of Federal Claims, of the Court of Appeals for Veterans Claims, or of the United States Court of Appeals for the Armed Forces, who:</td>
</tr>
<tr>
<td></td>
<td>(1) is not a judicial officer and who is authorized to perform adjudicatory functions with respect to proceedings in the judicial branch, or</td>
</tr>
<tr>
<td></td>
<td>(2) occupies a position for which the rate of basic pay is equal to or greater than 120 percent of the minimum rate of basic pay payable for GS-15 of the General Schedule.</td>
</tr>
<tr>
<td><strong>Judicial officer</strong></td>
<td>Justices of the Supreme Court, judges of the United States courts of appeals, United States district courts (including the district courts in Guam, the Northern Mariana Islands, and the Virgin Islands), Court of Appeals for the Federal Circuit, Court of International Trade, Tax Court, Court of Federal Claims, Court of Appeals for Veterans Claims, United States Court of Appeals for the Armed Forces, and any court created by Act of Congress, the judges of which are entitled to hold office during good behavior.</td>
</tr>
<tr>
<td><strong>Marriage</strong></td>
<td>Includes a same-sex marriage regardless of the filer's state of residency.</td>
</tr>
<tr>
<td><strong>Personal hospitality of any individual</strong></td>
<td>Hospitality extended for a nonbusiness purpose by an individual, not a corporation or organization, at the personal residence of or on property or facilities owned by that individual or his family.</td>
</tr>
<tr>
<td><strong>Personal residence</strong></td>
<td>Any real property used exclusively as a private dwelling by the filer or filer's spouse that is not rented during any portion of the reporting period.</td>
</tr>
<tr>
<td><strong>Note:</strong></td>
<td>The term is not limited to one's domicile. Consequently, there may be more than one personal residence, including a vacation home.</td>
</tr>
</tbody>
</table>
§ 170 Definitions

| Property | (1) Any real estate (e.g., a personal residence, vacation home, rental holding, land, mineral or royalty interests);  
| (2) Any possessions, objects, and goods (e.g., automobiles, furniture, paintings, coins, stamps); or  
| (3) Any financial holdings (e.g., stocks, bonds, mutual funds, IRAs, 401K and other retirement accounts, education funds, bank accounts, certain life insurance policies). |

| Reimbursement | Any payment or other thing of value received by the reporting individual (other than gifts, as defined above) to cover travel-related expenses of such individual, other than those that are:  
| (1) provided by the United States Government, the District of Columbia, or a state or local government or its political subdivision; or  
| (2) required to be reported by the filer under 5 U.S.C. § 7342 (the Foreign Gifts and Decorations Act). |

| Relative | An individual who is related to the filer, as father, mother, son, daughter, brother, sister, uncle, aunt, great uncle, great aunt, first cousin, nephew, niece, husband, wife, grandfather, grandmother, grandson, granddaughter, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half-brother, half-sister, or who is the grandfather or grandmother of the spouse of the filer, and is deemed to include the future spouse of the filer.  
| Note: The term “relative” includes a same-sex spouse and those related to the spouse as described here. |

| Reporting individual | Used interchangeably with “filer,” and includes both judicial officers and judicial employees. |

| Reviewing official | The Committee on Financial Disclosure, a subcommittee, or a member of either, or designated counsel and staff to the Committee. |

| Spouse | Includes a same-sex spouse regardless of the filer’s state of residency. |

| Value | A good faith estimate of the fair market value if the exact value is neither known nor easily obtainable to the filer without undue hardship or expense.  
| Note: In the case of any interest in property, see: the alternative valuation options in Guide, Vol. 2D, § 315.60. For gifts and reimbursements, see: Guide, Vol. 2D, § 330.50. |
§ 210 Who Must File and When

§ 210.10 New Entrants
(a) Within 30 days of assuming a position as a judicial officer or judicial employee (as defined in Guide, Vol. 2D, § 170), or within 30 days of receiving notification from the Administrative Office of the U.S. Courts (AO), whichever is later, an individual must file a financial disclosure report. However, no report is required if the individual:

(1) has, within 30 days prior to assuming such position, left another position or office for which a public financial disclosure report under the Act was required to be filed; or

(2) has already filed such a report as a nominee or candidate for the position.
(b) A new entrant who has left another position or office within 30 days and who is not required to file a new financial disclosure report according to this section must, upon the request of the Judicial Conference's Committee on Financial Disclosure (Committee) or its staff, provide to the Committee a copy of the filer’s most recent financial disclosure report filed with the former office or agency. For special rules for initial reports, see: § 210.30.

Example: Y, a Treasury Department employee who has previously filed public financial disclosure reports under the Act, terminates employment with that department on January 12, 2015, and begins employment with the judiciary on February 10, 2015, in a covered position that requires the filing of a financial disclosure report. Y is not a new entrant since Y has assumed a position described in § 210.10 within 30 days of leaving a similarly described position. Y, therefore, need not file a new report.

(c) A filer’s first annual report is due by May 15 of the year following the first calendar year in which the filer works more than 60 days in a covered position. See: § 210.40. As a result, the first annual report ordinarily will overlap the period covered by the nomination or initial report.

Example 1: If a filer performs official duties for more than 60 days during a calendar year (i.e., enters on duty or reaches the filing threshold on or before November 1), an annual report for that year must be filed, and the period of the report will be January 1 through December 31 of that year. Thus, a filer who entered on duty on October 12, 2012 must file an annual report by May 15, 2013, and the reporting period would be January 1, 2012 to December 31, 2012.

Example 2: If a filer performs official duties for 60 days or fewer during a calendar year (i.e., enters on duty or reaches the filing threshold on or after November 2), an annual report is not required for that calendar year, but an annual report must be filed for the following calendar year. Thus, a filer who entered on duty on December 1, 2012, would file an annual report by May 15, 2014, and the reporting period would be January 1, 2013 to December 31, 2013.

§ 210.20 Nominees

(a) Within five days of the transmittal by the President of the United States to the Senate of the nomination of an individual to a position, appointment to which requires the advice and consent of the Senate, such individual must file a financial disclosure report containing the information described in § 210.30 and Guide, Vol. 2D, §§ 310-330.
(b) An individual whom the President of the United States or President-elect has publicly announced that he or she intends to nominate to a position may file the financial disclosure report required by this section at any time after that public announcement, but not later than five days after the transmittal of the nomination to the Senate.

§ 210.20.10 Updated Disclosure

(a) Each individual described in § 210.20 who is nominated by the President of the United States for appointment to a position that requires advice and consent of the Senate, must, at or before the commencement of the first Senate committee hearing to consider the nomination, submit to the Judicial Conference’s Committee on Financial Disclosure an amendment to the report previously filed under § 210.20 and transmit copies of the amendment to the designated agency ethics official referred to in Guide, Vol. 2D, § 430 and to the AO.

(b) The amendment to the report must update, through the period ending no more than five days prior to the commencement of the hearing, the disclosure of information required with respect to receipt of:

(1) outside earned income; and

(2) honoraria, as defined in Guide, Vol. 2D, § 170.

§ 210.30 Special Rules for Initial and Nomination Reports

Each financial disclosure report filed under § 210.10(a) and (b) and § 210.20 must include a full and complete statement of the information required to be reported according to the provisions of Guide, Vol. 2D, Ch. 3, except for § 315.40 (relating to transactions) and § 330 (relating to gifts and reimbursements). The following special rules also apply:

(a) Interests in Property

For purposes of Guide, Vol. 2D, § 310, the report must include all interests in property (as defined in Guide, Vol. 2D, § 170) specified by that section that are held on or after a date that is fewer than 31 days before the date on which the report is filed.

(b) Income

(1) For purposes of Guide, Vol. 2D, § 320, the report must include all income items specified by that section that are generated by or attributable to an asset during the period beginning on January 1 of the preceding calendar year and ending on the date on which the
(2) The report must identify the filer’s sources of compensation (other than from United States government employment) exceeding $5,000 during either of the preceding two calendar years or during the current calendar year up to the date of filing, and must briefly describe the nature of the duties performed or services rendered by the reporting individual for each such source of compensation. Information need not be reported, however, that is considered confidential as a result of a privileged relationship, established by law, between the reporting individual and any person. The report also need not contain any information with respect to any person for whom services were provided by any firm or association of which the reporting individual was a member, partner, or employee, unless such individual was directly involved in the provision of such services.

Example 1: A new entrant hired on June 30, 2015 must file a first financial disclosure report by July 30, 2015. The filer must provide the source of income received exceeding $5,000 and a description of the duties performed or services rendered by the filer, from any position during the calendar year 2013, other than from the United States government, from January 1, 2013 through the date of filing. The filer must also provide the source, type, and amount of income received by the filer, aggregating $200 or more from any source other than the United States government, from January 1, 2014 through the date of filing. See: Guide, Vol. 2D, § 320.10.

Example 2: A nominee who is a partner or employee of a law firm who has worked on a matter involving a client from which the firm received fees during a calendar year must report the name of the client and the filer’s amount of compensation if the compensation received by the nominee exceeded $5,000. The name of the client would not normally be considered confidential.

(c) Liabilities

For purposes of Guide, Vol. 2D, § 335, the report must include all liabilities specified by that section that are owed during the period beginning on January 1 of the preceding calendar year and ending fewer than 31 days before the date on which the report is filed.
(d) Agreements and Arrangements

For purposes of Guide, Vol. 2D, § 340, the report must include only those agreements and arrangements that still exist at the time of filing.

(e) Outside Positions

For purposes of Guide, Vol. 2D, § 355, the report must include all such positions held during the preceding two calendar years and the current calendar year up to the date of filing.

§ 210.40 Annual Filers

(a) Any individual who is a judicial officer or judicial employee (as defined in Guide, Vol. 2D, § 170) during any calendar year and performs the duties of his or her position or office for a period in excess of 60 days in that calendar year must file a financial disclosure report.

(b) Each report must include a full and complete statement of the information for the preceding calendar year for which reporting is required by Guide, Vol. 2D, Ch. 3. Reports are due on or before May 15 of the following year.

§ 210.40.10 Part-Time Magistrate Judges

A part-time magistrate judge whose salary level is equal to or less than 10 percent of the salary of a full-time magistrate judge (i.e., Salary Level 5) normally will perform the duties of the office for less than 61 days each year, and is therefore not required to notify the Committee of exempt status. See: § 210.60.10.

§ 210.50 Separation from Employment

(a) On or before the 30th day after separation from employment, or a reduction in base salary to below the reporting threshold, but no more than 15 days prior to separation, a judicial officer (except as provided below in paragraph (c) or (d)) or judicial employee (as defined in Guide, Vol. 2D, § 170, except as provided below in paragraph (e)) must file a final financial disclosure report. If the judicial officer or employee files prior to the separation date and there are any changes between the filing date and the separation date, the judicial officer or employee must update the report. The judicial officer or employee should acknowledge this obligation to update the report in an explanation on the financial disclosure form. However, if within 30 days of such separation the individual assumes employment in another position or office for which a public report is required to be filed under the Act, no final report is required under this paragraph.
(b) If the filer’s annual report for the preceding year has not yet been filed, the preceding year must be included in the final report as well. Each final report must include a full and complete statement of the information required to be reported under Guide, Vol. 2D, Ch. 3 for the period beginning on the last date covered by the most recent financial disclosure report filed by the reporting individual under this part, or on January 1 of the preceding calendar year, whichever is later, and ending on the date on which the filer separates from employment, or on which the filer’s base salary falls below the reporting threshold.

Example: If a filer retires on April 5, 2015, and has not yet filed an annual report for 2014, the final report must be filed by May 5, 2015, and the reporting period would be January 1, 2014 to April 5, 2015.

(c) A judicial officer who works more than 60 days in a calendar year is required to file a final report within 30 days after retiring under 28 U.S.C. § 371(a) or otherwise ceasing to continue in such position.

(d) A judicial officer who retires under 28 U.S.C. § 371(b) is not required at that time to file a final report, but continues to be obligated to file an annual report, unless the judge certifies that he or she did not perform the duties of the office for more than 60 days (see: § 210.60.10).

(1) If that judicial officer is no longer authorized the employment of at least one law clerk or judicial assistant by the relevant circuit judicial council, and he or she:

(A) does not reasonably expect to perform the duties of the office for more than 60 days in any calendar year in the future, he or she may so certify, and then be authorized to file a final report; or

(B) certified, in lieu of filing an annual financial disclosure report (according to § 210.60.10(b)), that he or she has not performed the duties of his or her office for more than 60 days in a preceding calendar year, and determines that he or she does not reasonably expect to perform the duties of the office for more than 60 days in any calendar year in the future, he or she may be authorized to file a final certification in lieu of filing a final report.

(2) Once a final report has been filed or a final certification has been made, if a judicial officer performs the duties of his or her office for more than 60 days in a calendar year, he or she must notify the Committee on Financial Disclosure, and he or she must file an
annual report, followed by annual reports for each year that the reporting requirements are met.

**Example:** If a judicial officer filed an annual report for calendar year 2015, certified that he or she did not perform the duties of his or her office for more than 60 days in calendar year 2016, and certified on May 1, 2018 that he or she retired under 28 U.S.C. § 371(b)(2), that he or she did not perform the duties of his or her office for more than 60 days in calendar year 2017, and that he or she does not expect to perform the duties of his or her office for more than 60 days in any calendar year in the future, the judicial officer may be authorized to terminate his or her annual filing and certification requirements without filing a final report.

(e) Recalled judges or re-employed annuitants who are employed immediately after retirement, and who performed the duties of their positions for more than 60 days in the calendar year, should not file a final report, but should continue to file annual reports.

(1) Recalled judges or re-employed annuitants who are not employed within 60 days of retirement should file a final report.

(2) After filing a final report, if the recalled judge or re-employed annuitant performs the duties of his or her position for more than 60 days in a calendar year, he or she must file an initial report, followed by annual reports for each year that the reporting requirements are met.

§ 210.60 Persons Excluded by Rule

§ 210.60.10 Employment of 60 Days or Less

(a) Any judicial officer or judicial employee (as defined in Guide, Vol. 2D, § 170) who performs the duties of his or her position or office for a period of 60 days or less in a calendar year, is not required to file an annual financial disclosure report for that calendar year.

(b) However, the filer must certify in writing to the Committee by May 15th that the filer did not work more than 60 days during the preceding calendar year.

§ 210.60.20 Special Waiver of Reporting Requirements (130-Day Rule)

(a) General Rule

In unusual circumstances, the Committee may grant a request for a waiver of the reporting requirements for an individual who is reasonably expected
to perform, or has performed, the duties of an office or position for fewer than 130 days in a calendar year, but only if the Committee determines that:

1. the individual is not a full-time employee of the United States government;

2. the individual is able to provide services specially needed by the United States government;

3. it is unlikely that the individual’s outside employment or financial interests will create a conflict of interest; and

4. public financial disclosure by the individual is not necessary under the circumstances.

(b) Procedure

Requests for waivers must be submitted in writing to the Committee in sufficient time prior to the filing deadline for the Committee to consider the request. The request must include:

1. the name of the individual and his or her position, the approximate number of days in a calendar year that he or she expects to serve or the actual number of days that he or she did serve in that position, and a request to waive the reporting requirements under this chapter; and

2. the reasons for the individual’s belief that the conditions of § 210.60.20(a)(1)-(4) are met in the particular case.

§ 210.70 Timeliness

(a) The date of filing is determined by the date a report is received by the Committee through its electronic filing system.

(b) To remind and assist filers of their annual reporting obligation, each spring the Committee electronically sends filing information to all filers. The information contains links to resource material and software required to complete the report.

(c) Each filer is personally responsible for filing an annual financial disclosure report, whether or not filing information or a reminder is received.

(d) Reports that are not filed in a timely manner are subject to a late filing fee (see: Guide, Vol. 2D, § 610).
§ 210.80 Extensions

(a) A filer may request from the Committee an extension of the due date up to a maximum of 90 days (see: 5 U.S.C. App. § 101 (g)(1)).

(b) Extension requests should be submitted to the Committee through the electronic filing system, and must state the number of additional days requested and why the extension is necessary.

(c) If, after an extension, the new due date falls on a weekend or holiday, the report will be due on the next business day that is not a weekend or holiday.

§ 220 How and Where to File

§ 220.10 Confidential Registration

(a) The use of the electronic filing system requires the one-time submission of a confidential registration form.

(b) This form must be mailed to the AO’s Financial Disclosure Office and must bear the filer’s original (“wet”) signature.

(c) Upon receipt of this document, the filer will be advised that his or her electronic filing privileges have been activated.

(d) Each filer acknowledges that:

(1) all further communication with the Committee will be accomplished through the electronic filing system;

(2) it is the responsibility of the filer to maintain his or her primary and secondary personal email addresses in the electronic filing system; and

(3) all documents submitted through the electronic filing system under the filer’s unique login and password, combined with a signature as defined in § 220.40, will be treated as signed by the filer for all purposes.

§ 220.20 Reporting Form

The Committee provides an approved form for reporting the information described in Guide, Vol. 2D, Ch. 3. All reports, amended reports, and responses to letters of inquiry from the Committee must be filed utilizing this form.
§ 220.30 Electronic Filing

(a) The Committee has implemented a system for the electronic filing of financial disclosure reports.

(b) All financial disclosure reports filed according to this chapter and amendments (including amendments filed in response to letters of inquiry) must be submitted electronically through the filing system approved by the Committee and maintained by the AO.

(c) The Committee does not accept filings by paper, email, or facsimile unless permitted under § 220.50.

§ 220.40 Electronic Signature

(a) The Committee requires that the financial disclosure report contain the filer’s electronic signature (e.g., “s/name”) as inserted by the electronic software.

(b) Other types of signatures (e.g., digital signatures, scanned signatures, signature graphics, PDF typed signatures) should not be included.

§ 220.50 Use of Alternative Formats

(a) In exceptional circumstances, it is permissible to provide the required information in any part of the financial disclosure report in an alternative format, but only upon a specific written determination by the Committee that such alternative reporting is acceptable.

(b) Requests to use an alternative format must be submitted to the Committee through the electronic system stating in detail the format sought to be used, why the request is being made, and whether it is for the current report only or for future reports as well.

(c) Absent permission to use an alternative format, no extrinsic reports or documents (such as a brokerage report) may be used or attached as a substitute for disclosure.

§ 230 Reimbursement of Professional Fees

(a) Judges and employees of the United States courts of appeals, district courts, Court of Federal Claims, territorial courts, federal public defender organizations, and the AO who incur professional fees rendered by an accountant, a stock broker, an attorney, or similar licensed professional in the preparation of financial disclosure reports filed under the Act may request reimbursement of the amount of those fees up to a maximum of
$1,370 for all work performed through the closure of a report required by the Act, with the exception of a nomination report.  JCUS-SEP/OCT 2001, p. 59; JCUS-MAR 2019, p. 21-22.

**Note:** The reimbursement policy is limited to those courts and agencies of the judicial branch governed by the Judicial Conference and therefore does not include the United States Supreme Court, the Federal Judicial Center, or the United States Sentencing Commission. The Court of Appeals for the Federal Circuit and the Court of International Trade have discretion to reimburse such fees out of their separate appropriations.

**Example 1:** Filer incurs $2,000 in professional fees rendered by an accountant who assists filer in preparing his or her annual report. Filer later receives a letter of inquiry (LOI) from the Committee requiring filer to provide additional information and re-file an amended annual report. Filer’s accountant helps prepare the response to the LOI in the form of an amended annual report, charging filer an additional $1,000. Filer is only entitled to seek reimbursement for up to $1,370 for all the work performed by the accountant through the closure of the annual report, which includes the preparation of the original annual report, the response to the LOI, and the preparation and filing of the amended annual report. Filer is **not** entitled to seek reimbursement of $1,370 per activity the accountant performs.

**Example 2:** In May 2017, a filer incurs $2,500 in professional fees rendered by an accountant who assists the filer to prepare and file an annual report. In September 2017, the filer retires from the judiciary and incurs $1,500 in professional fees rendered by an accountant who assists the filer to prepare and file a final report. As these are separate reports required by the Act, the filer may seek up to $1,370 reimbursement for each report (i.e., $1,370 for the annual report and $1,370 for the final report).

(b) For more detailed guidance on the reimbursement request process, see: Guide, Vol. 13, § 430.10.30 (Reimbursement for Financial Disclosure Professional Preparation Fees).
Guide to Judiciary Policy

Vol. 2: Ethics and Judicial Conduct
Pt. D: Financial Disclosure

Ch. 3: Report Contents

§ 310 Reporting Thresholds for Assets

§ 312 Types of Reportable Property

§ 315 Interests in Property
  § 315.10 Economic Entities (Businesses and Partnerships)
  § 315.20 Exceptions
  § 315.30 Identification of Assets
  § 315.40 Transactions
  § 315.50 Value Categories
  § 315.60 Valuation of Interests in Property

§ 320 Income
  § 320.10 Non-Investment Income
  § 320.20 Investment Income
  § 320.30 Life Insurance Policies

§ 325 Purchases, Sales, and Exchanges
  § 325.10 Generally
  § 325.20 Exceptions

§ 330 Gifts and Reimbursements
  § 330.10 Gifts
  § 330.20 Reimbursements
  § 330.30 Exclusions
  § 330.40 Aggregation Exception
  § 330.50 Value of Gifts and Reimbursements
  § 330.60 Waiver Rule in the Case of Certain Gifts

§ 335 Liabilities
  § 335.10 Generally
  § 335.20 Exceptions

§ 340 Agreements and Arrangements

§ 345 Trustees, Executors, Administrators, and Custodians

§ 350 Power of Attorney

§ 355 Outside Positions
§ 310 Reporting Thresholds for Assets

(a) As a general rule, when reporting assets, a filer must list each asset that:

(1) exceeds $1,000 in value during the reporting period (see: § 315), or

(2) generated more than $200 in income during the reporting period (see: § 320).

(b) The income and value of each asset held in brokerage or managed accounts must be reported individually (see: § 315.30).

§ 312 Types of Reportable Property

Subject to the exceptions in § 315.20, examples of the types of property required to be reported include, but are not limited to:

(a) real estate;

(b) beneficial real estate interests (e.g., royalty and mineral rights);

(c) stocks (including stock options), bonds, securities, and futures contracts;

(d) livestock owned for commercial purposes;

(e) commercial crops, either standing or held in storage;
(f) antiques or art held for resale or investment;

(g) beneficial interests in trusts and estates (but not contingent interests);

(h) cash and cash-equivalent accounts in banks or other financial institutions;

(i) pensions, retirement accounts, and annuities (assets must be listed individually), except as provided in § 315.20(c);

(j) mutual funds;

(k) 529 college education funds;

(l) accounts or other funds receivable; and

(m) capital accounts or other asset ownership in a business or partnership, as well as the business or partnership itself.

§ 315 Interests in Property

(a) Each financial disclosure report filed must include the identity and a brief description of any interest in property having a fair market value in excess of $1,000:

(1) held by the filer during the reporting period in a trade or business; or

(2) for investment or the production of income.

(b) The report must designate the category of value of the property as of the end of the reporting period consistent with § 315.50.

(1) Each item of property must be disclosed separately.

(2) The underlying asset(s) of each of the following items must be separately disclosed (see: § 315.30), unless the entity qualifies for special treatment under § 365:

(A) individual retirement accounts (IRAs),

(B) brokerage accounts,

(C) managed accounts,

(D) trusts,

(E) pension funds,
(F) 401(k) and 403(b) retirement accounts,
(G) 529 college education funds, and
(H) other entities with portfolio holdings.

§ 315.10 Economic Entities (Businesses and Partnerships)

For property held in a trade, business, partnership, or other business enterprise (e.g., an LLC or sole proprietorship), the filer must list the name and ownership interest in the trade or business, and provide a description of the nature of the trade or business. The source, type, and the actual amount or value of gross income from such a partnership or business must be reported under § 320.10 and § 320.20(b).

(a) Active Assets

Assets actively used in the operation of a trade or business are active assets, which do not need to be individually listed.

(b) Passive Assets

Assets that are passively held in the trade or business and are not related to the nature of the trade or business are passive assets. A filer must list each individual passive asset that is:

(1) valued at more than $1,000, or
(2) earning more than $200 in income.

(c) Examples:

(1) Before coming to the judiciary, the filer was a partner in a firm. The filer is not required to list the active assets used in the operation of the law firm, such as furniture, computers, and supplies. However, if the law firm held property for an investment purpose that was not used in the operation of the law firm’s day-to-day business, such passive assets would need to be individually listed if they held a value of more than $1,000 or earned more than $200 in income, such as a mutual fund held by the firm or an investment in a painting or land.

(2) Filer’s spouse holds an interest in a family farm. The filer is not required to list the active assets used in the operation of the farm, such as equipment and livestock. Like the example above, however, if the farm invests money in stocks, mutual funds, or any other form of investment that is not used in the day-to-day operation of the farm, such passive assets would need to be
individually listed if they held a value of more than $1,000, or earned more than $200 in income.

§ 315.20 Exceptions

The following property interests are exempt from the reporting requirements described above in § 315 and § 315.10:

(a) personal cash-equivalent accounts (defined as any checking, savings, money market account, and certificate of deposit in a bank, savings and loan association, credit union, or similar financial institution) in a single financial institution aggregating $5,000 in value or less in that institution at the end of the reporting period, and earning $200 or less in income during the reporting period;

(b) a personal residence of the filer or his or her spouse (as defined in Guide, Vol. 2D, § 170); and

(c) financial interests in any retirement system of the United States (e.g., Thrift Savings Plan, Social Security).

§ 315.30 Identification of Assets

(a) Each asset required to be reported must be individually listed and identified with sufficient detail so the reader can readily identify the asset type and/or asset nature.

Examples:

(1) For stocks, bonds, and other securities, indicate the type of the holding and its name (e.g., "common" or "preferred"). Commonly used market abbreviations and tickers are permitted (e.g., "GE Common Stock" for "General Electric" or "GM Preferred Stock" for "General Motors").

(2) For a cash-equivalent account (savings, checking, money market, CDs) within a bank, credit union, savings and loan, or similar financial institution, valued at or aggregating more than $5,000 or producing aggregate annual income over $200, list the name of the institution followed by "cash-equivalent account(s)" (e.g., Bank of America cash-equivalent accounts). Information for all cash-equivalent accounts held at each named institution may be aggregated. There is no need to indicate the precise type of account (e.g., savings or checking). Do not list account numbers or addresses for a financial institution or its branches.
(3) For mutual funds, when not listing the ticker symbol, filers must identify both the fund family and the name of the fund (e.g., “Vanguard S&P Index 500 Fund”).

(4) For each real estate interest, indicate the city or county, and state. If more than one parcel of real estate is owned in the same geographic area, identify each parcel by number (e.g., Parcel 1, 2, 3). Do not identify real estate by street address, lot, or block number.

(5) For an interest in a trust, indicate the nature of the interest (e.g., “income beneficiary”) and the trust’s name (e.g., “family trust #1”).

(b) Non-Widely-Held Investments

If the filer owns or has the ability to select individual stocks, bonds, or other assets within an account or plan, even if the filer defers to the decisions of an investment manager, it is not a widely-held investment fund. The filer is therefore required to disclose the individual assets that are part of the plan.

Examples:

(1) For a brokerage account or stock management account with a financial management company, bank, or similar financial institution, list the individual stocks, mutual funds or money market funds (including the fund family and the name of each fund), bonds, cash-equivalent accounts (including the name of the financial institution where the account is held), and other assets within.

(2) For variable life insurance or annuity assets, filers are required to disclose the individual funds, stocks, bonds, and other assets that have been selected from the investment options provided by the company.

(3) For educational savings plans where the filer must select assets, as opposed to investment strategies, the individual assets within these plans must be listed.

(c) Widely-Held Investment Funds

(1) A filer is not required to list the individual holdings of a widely-held investment fund, which is defined as a money market fund, mutual fund, or other such portfolio:

(A) that is publicly traded or whose assets are widely diversified, and
(B) over whose financial interests the filer neither can nor does exercise control (i.e., the filer is unable to select the specific stocks, bonds, or other assets).

(2) The filer must provide:

(A) the specific name of the plan (including the fund family and the name of the fund) and include words in the plan’s description to delineate it as a general investment strategy rather than a self-directed plan (e.g., “Bright Star 529 Plan, Age-Based Investment”);

(B) income from the fund;

(C) the fund’s value at the end of the reporting period; and

(D) fund transactions exceeding $1,000 in value (e.g., increasing or decreasing one’s interest in the fund).

Note: This does not refer to individual transactions made by the managers of the widely-held investment fund.

(3) Example: A filer invests $100 a month into a dependent child’s 529, which is an age-based publicly traded education plan. At the beginning of the filing period, the fund has a value of $1,000. At the end of the filing period, it has a value of $2,500—an increase of $1,500:

$1,200 from deposits made by the filer;

a $150 increase in value attributable to market fluctuation; and

a $150 increase in value attributable to capital gains and dividends reinvested.

Since this is a widely-held investment fund, the filer must report:

(A) the name and description of the plan (e.g., “Unique College Investing Plan 529, Age-Based Portfolio 2016”);

(B) any income generated by or attributable to the plan during the reporting period (i.e., $150);

(C) the value of the plan at the end of the reporting period (i.e., $2,500); and

(D) any reportable transactions with regard to the fund (in this example, no reporting requirement is necessary as none of
the monthly purchases meet the reporting requirement threshold of $1,000).

**Note:** The filer does not have to report individual stock or mutual fund purchases made by the plan.

§ 315.40 Transactions

(a) Transactions during the reporting period that involve any purchase, sale, or exchange of any property or asset (see: Guide, Vol. 2D, § 170) exceeding $1,000 must be reported.

(b) A filer must report the:

1. type of transaction (e.g., buy, sell, redeem, etc.);
2. date of the transaction;
3. value of the consideration paid or received;
4. opening of a bank account and closing of a bank account that has been reported on a prior report, and
5. mandatory distributions from retirement accounts;

(c) If a reportable asset has been bought and sold during the same reporting period, you must provide the required information about both transactions.

§ 315.40.10 Exceptions

A filer is not required to report the following transactions:

(a) transactions solely between filer, filer’s spouse, and filer’s dependent children;

(b) transactions in which the then-fair market value paid or received did not exceed $1,000;

(c) transactions involving property used solely as the personal residence of the filer and the filer’s spouse;

(d) transactions involving a mere change in the form of the asset (e.g., a stock split);

(e) transactions involving deposits or withdrawals from bank accounts, money market accounts, and certificates of deposit within any given financial
institution, other than the opening or closing of all accounts at such institution;

(f) transactions involving the reinvestment of dividends, interest, and capital gain distributions (see: § 320.20.10);

(g) cash inheritances or inherited property not held for the production of income that was received by the filer or the filer’s spouse or dependent children; or

(h) donations made to a charity or to a non-dependent relative by the filer or the filer’s spouse or dependent children.

§ 315.50 Value Categories

(a) The value categories specified for property items are as follows:

(1) $0 – $15,000;
(2) $15,001 – $50,000;
(3) $50,001 – $100,000;
(4) $100,001 – $250,000;
(5) $250,001 – $500,000;
(6) $500,001 – $1,000,000; and
(7) greater than $1,000,000.

(b) With respect to items held by the filer alone or held jointly by the filer with the filer’s spouse and/or dependent children, the following additional categories over $1,000,000 apply:

(1) $1,000,001 – $5,000,000;
(2) $5,000,001 – $25,000,000;
(3) $25,000,001 – $50,000,000; and
(4) greater than $50,000,000.
§ 315.60 Valuation of Interests in Property

(a) A good faith estimate of the fair market value of interests in property and assets may be made in any case in which the exact value cannot be obtained without undue hardship or expense to the filer.

(b) Fair market value may also be determined by:

(1) the purchase price (in which case, the filer should indicate date of purchase);

(2) recent appraisal;

(3) the assessed value for tax purposes (adjusted to reflect the market value of the property used for the assessment if the assessed value is computed at less than 100 percent of that market value);

(4) the year-end book value of nonpublic traded stock, the year-end exchange value of corporate stock, or the face value of corporate bonds or comparable securities;

(5) the net worth of a business partnership;

(6) the equity value of an individually owned business; or

(7) any other recognized indication of value (such as the last sale on a stock exchange).

(c) Examples:

(1) A filer has a $4,000 savings account in Bank A. The filer’s spouse has a $2,500 certificate of deposit issued by Bank B and the filer’s dependent daughter has a $200 savings account in Bank C. The filer does not have to disclose the accounts, as the total value of the accounts in any one bank does not exceed $5,000. Note, however, that the source and the amount of interest income from any bank, along with the category of value of the accounts, is required to be reported under § 320 if it exceeds the $200 reporting threshold for income.

(2) A filer has a collection of Post-Impressionist paintings that have been carefully selected over the years. From time to time, as new paintings have been acquired, the filer has made sales of both less desirable works from the collection and of paintings that the filer acquired through inheritance. Under these circumstances, the filer must report the value of all the paintings that he or she retains as interests in property as well as income from the sales of paintings...
under § 320.20. Recurrent sales from a collection indicate that the collection is being held for investment or the production of income.

(3) A filer has investments that his or her broker holds in an IRA, invested in stocks, bonds, and mutual funds. Each such asset having a fair market value in excess of $1,000 or earns income in excess of $200 at the close of the reporting period must be separately listed, and the value and income must be shown.

§ 320 Income

§ 320.10 Non-Investment Income

(a) Each financial disclosure report filed must disclose the source, type, and the actual amount or value of earned or other non-investment income aggregating $200 or more from any one source that is received by the filer or has accrued to the filer’s benefit during the reporting period, including the following:

(1) Salaries, fees, commissions, wages, and any other compensation for personal services (other than from United States government employment).

(2) Retirement benefits other than from United States government employment (e.g., Thrift Savings Plan, Social Security).

(3) Any honoraria (the source, date, and amount of payments), including payments made or to be made to charitable organizations on behalf of the filer in lieu of honoraria.

Note: Filers should not list the name of the recipient of an honoraria made on behalf of the filer on the financial disclosure report. Rather, the filer must simultaneously file with the Judicial Conference's Committee on Financial Disclosure (Committee), on a confidential basis, a corresponding list of all recipients of such payments, together with the dates and amounts.

(4) Any other non-investment income, such as:

• earnings from teaching,
• prizes,
• awards,
• discharge of indebtedness, and
• fees earned as trustee of a family trust or executor of a family estate.
(b) The following do not have to be reported as non-investment income:

1. death benefits under insurance policies;
2. inheritances;
3. tort recoveries and other compensation for injuries and sickness;
4. disability compensation;
5. income tax refunds; and
6. veteran’s benefits.

(c) Examples:

1. A filer serves on the board of directors at a bank, for which he or she receives a $500 fee each calendar quarter. The filer also receives an annual fee of $1,500 for service as trustee of a private trust. In both instances, such fees received or earned during the reporting period must be disclosed, and the actual amount must be shown.

2. A filer is a participant in a retirement plan of Coastal Airlines. Under such plan, the filer and the filer’s spouse receive passage on some Coastal flights without charge, and they receive passage on other flights at a discounted fare. The difference between what Coastal charges members of the public generally and what the filer and the filer’s spouse are charged for a particular flight is deemed income in-kind and must be disclosed by this reporting individual if it exceeds the $200 threshold.

§ 320.20 Investment income

Each financial disclosure report filed under this subpart must disclose the following:

(a) The source and type of investment income, including dividends, rents, interest, capital gains, or income from qualified or excepted trusts (see: § 365), that is generated by or attributable to an asset during the reporting period, and that exceeds $200 in amount or value from any one source.

1. Examples include, but are not limited to:
   - income derived from real estate,
   - collectible items,
   - stocks,
   - bonds,
• notes,
• copyrights,
• pensions,
• mutual funds,
• 401(k) and 403(b) retirement accounts,
• 529 college education funds,
• the investment portion of life insurance contracts,
• loans,
• mineral rights and royalties, and
• personal cash or cash equivalent accounts (as defined in § 315.20(b)).

(2) For entities with portfolio holdings, such as individual retirement accounts (IRAs), brokerage accounts, managed asset accounts, and trusts, each underlying source of income must be separately disclosed, unless the entity qualifies for special treatment under § 365. The amount or value of income from each reported source must be disclosed and categorized consistent with the following table:

(A) $0 – $1,000;
(B) $1,001 – $2,500;
(C) $2,501 – $5,000;
(D) $5,001 – $15,000;
(E) $15,001 – $50,000;
(F) $50,001 – $100,000;
(G) $100,001 – $1,000,000;
(H) greater than $1,000,000; but with respect to investment income of the filer alone or joint investment income of the filer with the filer’s spouse and/or dependent children, the following additional categories over $1,000,000 apply:
(i) $1,000,001 – $5,000,000; and
(ii) greater than $5,000,000.

(b) The source, type, and the actual amount or value of gross income from a business, distributive share of a partnership, joint business venture income, payments from an estate or an annuity or endowment contract, or any other items of income not otherwise covered by § 320.10 and
§ 320.20(a) that are generated by or attributable to an asset during the reporting period and that exceed $200 from any one source.

Examples:

(1) A filer rents out a portion of his or her residence. The filer receives rental income of $600 from one individual for four months and $1,200 from another individual for the remaining eight months of the year covered by the filer’s annual financial disclosure report. The filer must identify the property, specify the type of income (rent), and indicate the category of the total amount of rent received. The filer must also disclose the asset information required by § 315.

(2) Filer pays a mortgage of $2,000 a month on a rental property. Filer receives rental income of $1,500 a month. Even though the filer does not realize a profit, filer must report the $1,500 rental income.

(3) A filer has three savings accounts with Bank A:

- The first is in the filer’s name and earned $85 in interest during the reporting period.
- The second is a joint account with the filer’s spouse and earned $120 in interest.
- The third is in the name of the filer and the filer’s dependent daughter and earned $35 in interest.

Since the aggregate interest income from this bank exceeds $200, the filer must disclose the name of the bank, the type of income, and the category of the total amount of interest earned from all three accounts, along with the category of value of the accounts. The filer must also disclose the accounts as assets under § 315 if, in the aggregate, they total more than $5,000 in that bank.

(4) A filer has an ownership interest in a fast-food restaurant from which he or she receives $10,000 in annual income. The filer must specify on his or her financial disclosure report the type of income (e.g., partnership distributive share, gross business income) and indicate the actual amount of such income. Additionally, the filer must describe the business and categorize its asset value, as required under § 315.

§ 320.20.10 Reportable Income

(a) Reportable income can differ from taxable income.
(b) For purposes of the financial disclosure report, all reportable interest, dividends, and other income generated by or attributable to an asset during the reporting period must be listed, regardless of whether that income is taxable, tax deferred, or tax exempt.

(c) Income from mutual fund holdings includes short-term and long-term capital gains along with dividends that are reinvested.

Examples:

1. A filer invests in a tax-deferred mutual fund or IRA that generates $500 “income" that was reinvested within the mutual fund during the reportable year. Though the $500 may not have to be reported as income on the filer’s tax return, it must be reported as income on the filer’s financial disclosure report.

2. A filer has a retirement or pension plan (other than with the United States government) that generates more than $200 income during the reporting year that is reinvested in the retirement or pension plan. The filer must report that income on the financial disclosure report.

3. A filer invests in a 529 college savings plan for a dependent. If the plan is reportable, the filer must report any income generated by the plan on the financial disclosure report, even if it is reinvested in the plan.

§ 320.30 Life Insurance Policies

(a) Term Insurance

A term insurance policy pays a benefit if the insured person dies during the term of the policy, and when the policy expires, no value remains. Since the insured person does not have an ownership interest in the value of the policy, term insurance is not reportable.

(b) Cash Value Insurance

Cash value insurance is part insurance and part investment (e.g., Prudential Whole-Life Insurance Policy). Such policies require premiums during the life of the insured person in exchange for a fixed sum of money to be paid to a beneficiary when the insured person dies. A part of the premium pays for the expense of the insurance portion of the policy, and the remainder goes into a tax-deferred cash reserve that is invested and builds the policy’s cash value. An insured person would have an ownership interest in the investment portion of such a policy that would require reporting.
Variable Policy

Generally, the purchaser of an insurance policy does not select specific investment funds other than a general category of risk (e.g., high, medium, or low-risk). Under a “variable” or “universal variable” policy that allows the insured person to choose specific investments from options offered by the insurer, the filer must report the name of the insurance company and the fund selected (e.g., “Prudential Variable Life: Prudential Money Market Fund”). If assets were allocated to more than one fund, all funds to which investments were allocated must be reported.

§ 325 Purchases, Sales, and Exchanges

§ 325.10 Generally

Except as indicated in Guide, Vol. 2D, § 210.30, each financial disclosure report filed must include a brief description, the date, and value (using the categories of value in § 315.50) of any purchase, sale, or exchange of a reportable asset during the reporting period, in which the transaction amount exceeds $1,000. See: Guide, Vol. 2D, § 170.

§ 325.20 Exceptions

(a) The following transactions do not need to be reported:

(1) Any transaction solely by and between the filer, filer’s spouse, and dependent children.

(2) Transactions involving government-issued Treasury bills, Treasury notes, and Treasury bonds; and personal cash-equivalent accounts (as defined in § 315.20(b)) that occur at rates, terms, and conditions available generally to members of the public.

Note: Likewise, transactions involving portfolio holdings of qualified and investment trusts and excepted funds described in § 365.20.

(3) Any transaction that occurred at a time when the reporting individual was not a judicial officer or judicial employee.

(b) Examples:

(1) A filer sells his or her personal residence for $100,000 and purchases a new personal residence for $200,000. The filer need not report the first residence’s sale or the second residence’s purchase.
(2) A filer sells his or her beach home for $50,000. Because the filer has rented it out for one month every summer, it does not qualify as a personal residence. He or she must disclose the sale under this section and any capital gain realized on the sale under § 320.

(3) A filer sells a ranch to his or her dependent child. The filer need not report the sale because it is a transaction between the reporting individual and a dependent child. However, any capital gain, except for that portion attributable to a personal residence, must be reported under § 320.

(4) A filer sells an apartment building and realizes a loss of $100,000. The filer must report the sale of the building under § 325 if the sale price of the property exceeds $1,000. Since the sale did not result in a capital gain, the filer need not report any income from the sale under § 320.

§ 330 Gifts and Reimbursements

§ 330.10 Gifts

Except as indicated in Guide, Vol. 2D, § 210.30, each financial disclosure report must contain the identity of the source, a brief description, and the value of all gifts aggregating more than $415 in value that are received by the filer during the reporting period from any one source. For in-kind travel-related gifts, include travel locations, dates, and nature of expenses provided. (For exclusions, see: § 330.30.)

§ 330.20 Reimbursements

Except as indicated in Guide, Vol. 2D, § 210.30, each financial disclosure report must contain the identity of the source and a brief description (including travel locations, dates, and nature of expenses provided) of any travel-related reimbursements aggregating more than $415 in value that are received by the filer from one source during the reporting period.

§ 330.30 Exclusions

(a) Reports need not contain any information about gifts and reimbursements to which the provisions of this section would otherwise apply that are received from relatives (as defined in Guide, Vol. 2D, § 170) or during a period in which the filer was not a judicial officer or judicial employee.

(b) Any food, lodging, or entertainment received as “personal hospitality of any individual” (as defined in Guide, Vol. 2D, § 170) need not be reported. Certain exclusions are also specified in the definitions of gift and reimbursement in Guide, Vol. 2D, § 170.
§ 330.40 Aggregation Exception

(a) Any gift or reimbursement with a fair market value of $166 or less need not be aggregated for purposes of the reporting rules of this section.

(b) Examples:

(1) A filer accepts a print, a pen and pencil set, and a letter opener from a community service organization that he or she has worked with solely in his or her private capacity. The filer determines, consistent with § 330.50, that these gifts are valued as follows:

• Gift 1 (print): $240
• Gift 2 (pen and pencil set): $185
• Gift 3 (letter opener): $20

The filer must disclose gifts 1 and 2, since individually they exceed $166 in value and together they aggregate more than $415 in value from the same source. Gift 3 need not be aggregated, because its value does not exceed $166.

(2) A filer receives the following gifts from a single source:

• Gift 1 (dinner for two at a local restaurant): $120
• Gift 2 (round-trip taxi fare to meet at the restaurant): $25
• Gift 3 (dinner at friend’s city residence): value uncertain
• Gift 4 (round-trip airline transportation and hotel accommodations to visit Epcot Center in Florida): $420
• Gift 5 (weekend at friend’s country home, including duck hunting and tennis match): value uncertain.

The filer need only disclose Gift 4. Gift 1 falls within the exclusion in § 170 (Gift) for food and beverages not consumed in connection with a gift of overnight lodging. Gifts 3 and 5 need not be disclosed because they fall within the exception for personal hospitality of an individual. Gift 2 need not be aggregated and reported, because its value does not exceed $166.

(3) An outside source provides free tickets for the filer and his or her spouse to attend an awards banquet at a local club. The value of the tickets exceeds the minimum reporting threshold. Even though this is a gift that exceeds the threshold amount for disclosure, the official need not report it, because of the exclusion in the definition of “gift” in § 170 (Gift) for food and beverages not consumed in connection with a gift of overnight lodging.
Note: Before accepting this gift of tickets, the individual should consult an ethics official at his or her agency to determine whether standards of conduct rules will permit acceptance, depending on:

- whether or not the donor is a prohibited source,
- the exact nature of the event, and
- whether the tickets were given because of the filer’s official position.

(4) A filer is asked to speak at an out-of-town meeting on a matter that is unrelated to his or her official duties and the judiciary. The round-trip airfare exceeds the minimum reporting threshold. Regardless of whether the filer pays for the ticket and is then reimbursed by the organization to which he or she spoke, or the organization provided the ticket, the filer should disclose the information under § 330.20.

§ 330.50 Value of Gifts and Reimbursements

(a) The value to be assigned to a gift or reimbursement is its fair market value.

(b) For most reimbursements, this will be the amount actually received.

(c) For gifts, the value should be determined using one of the following means:

   (1) if the gift has been newly purchased or is readily available in the market, the value should be its retail price (the filer need not contact the donor, but may contact a retail establishment selling similar items to determine the present cost in the market); or

   (2) if the item is not readily available in the market, such as a piece of art, a handmade item, or an antique, the filer may make a good faith estimate of the value of the item.

Note: "Readily available in the market" means that an item generally is available for retail purchase in the metropolitan area nearest to the filer’s residence or from an internet retailer.

(d) Example: Items such as a pen and pencil set, letter opener, leather case, or engraved pen are generally available in the market and can be determined by contacting stores that sell like items or researching retail prices on the internet and ascertaining the retail price of each.

Note: The market value of a ticket entitling the holder to attend an event that includes food, refreshments, entertainment, or other benefits is the
face value of the ticket, which may exceed the actual cost of the food and other benefits. The value of food and beverages (which may be excludable under the definition of “gift” in Guide, Vol. 2D, § 170) may be determined by:

- making a good faith estimate, or
- determining their actual cost from the caterer, restaurant, or similar source.

§ 330.60 Waiver Rule in the Case of Certain Gifts

(a) In unusual cases, the value of a gift as defined in Guide, Vol. 2D, § 170 need not be aggregated for reporting threshold purposes under this section and, therefore, the gift need not be reported if the Committee receives a written request for and issues a waiver, after determining that:

(1) both the basis of the relationship between the grantor and the grantee and the motivation behind the gift are personal; and

(2) no countervailing public purpose requires public disclosure of the nature, source, and value of the gift.

(b) Any determination by the Committee that a filer does or does not have to report a gift under this section is not a determination that the filer may properly accept the gift under the appropriate Code of Conduct for the filer or any other applicable ethics statute or regulation (see: Guide, Vol. 2D, § 160).

(c) Example: A filer and his or her spouse receive the following two wedding gifts:

- Gift 1: A crystal decanter valued at $485 from the filer’s former college roommate and lifelong friend, who is a real estate broker.

- Gift 2: A gift of a print valued at $550 from a business partner of the spouse, who owns a catering company.

Under these circumstances, the Committee may grant a request for a waiver of the requirement to report each of these gifts.
§ 335 Liabilities

§ 335.10 Generally

(a) Each financial disclosure report filed must identify and include a brief description of the filer’s liabilities over $10,000 owed to any creditor at any time during the reporting period, and the name of the creditors to whom such liabilities are owed.

(b) The report also must designate the category of value of the liabilities consistent with § 315.50, reporting the amount owed to the creditor at the end of the reporting period.

§ 335.20 Exceptions

(a) The following are not required to be reported:

(1) personal liabilities owed to a spouse or to the parent, brother, sister, or child of the filer, spouse, or dependent child;

(2) any mortgage secured by a personal residence of the filer or the filer’s spouse;

(3) any loan secured by a personal motor vehicle, household furniture, or appliances, provided that the loan does not exceed the purchase price of the item that secures it;

(4) any revolving charge account with an outstanding liability that does not exceed $10,000 at the close of the reporting period; and

(5) any liability:

(A) that is the sole financial liability or responsibility of the spouse or child;

(B) that is not in any way, past or present, derived from the assets, income, or activities of the reporting person;

(C) from which the reporting person does not derive or expect to derive a benefit; and

(D) regarding which the reporting person has no knowledge.

Note: Omission of such data indicates a certification of these statutory conditions.
(b) **Examples:** A filer has the following debts outstanding at the end of the calendar year.

1. Mortgage on personal residence of $80,000: disclosure not required under § 335.20(b) because the mortgage is secured by the personal residence.
2. Mortgage on rental property of $50,000: disclosure required.
3. Credit card debt of $1,000: disclosure not required under § 335.20(d) because the debt is considered a revolving charge account with an outstanding liability that does not exceed $10,000 at the end of the reporting period.
4. Credit card debt of $11,000: disclosure required because this revolving charge account exceeds $10,000 at the end of the reporting period.
5. Loan balance of $15,000, secured by family automobile purchased for $16,200: disclosure not required under § 335.20(c) because it is secured by a personal motor vehicle that was purchased for more than the value of the loan.
6. Loan balance of $10,500, secured by antique furniture purchased for $8,000: disclosure required because the loan is secured by household furniture that was purchased for less than the value of the loan.
7. Loan from parents of $20,000: disclosure not required because the creditors are persons specified in § 335.20(a).

§ 340 Agreements and Arrangements

(a) Each financial disclosure report filed under this section must identify the parties to, the date of, and a brief description of the terms of, any agreement or arrangement of the filer in existence at any time during the reporting period with respect to:

1. future employment;
2. a leave of absence from employment during the period of the reporting individual's government service;
3. continuation of payments by a former employer other than the United States government; and
(4) continuing participation in an employee welfare or benefit plan maintained by a former employer.

(b) Example: Before coming to the judiciary, the filer worked for a law firm that maintained a defined benefit retirement plan for the filer. If the filer maintains his or her interest in the plan, he or she must disclose the terms of the agreement or arrangement with the law firm.

§ 345 Trustees, Executors, Administrators, and Custodians

(a) If the filer is a trustee, executor, administrator, custodian, or in any other similar position, the filer has the legal authority and responsibility to exercise control over and manage the assets in a trust or estate.

(b) The reporting of a position as trustee, executor, administrator, custodian, or any similar position requires a listing of the assets involved if the filer, filer’s spouse, or any dependent child receives income from, or has a beneficial interest in, the estate or fund with which filer is associated.

§ 350 Power of Attorney

A filer is not required to list the assets (see: § 312, § 315, and § 320); purchases, sales, and exchanges of assets (see: § 325); and liabilities (see: § 335) subject to a power of attorney, whether or not the power has been exercised. However, the power of attorney position must be reported under § 355.

§ 355 Outside Positions

§ 355.10 Generally

(a) Each financial disclosure report filed must identify all positions held by the filer at any time during the reporting period and any time up to the date of the filing of the report, as an officer, director, trustee, general partner, proprietor, representative, executor, employee, or consultant of any corporation, company, firm, partnership, trust, or other business enterprise, any nonprofit organization, any labor organization, or any educational or other institution other than the United States.

(b) When a filer lists trustee, executor, or a similar position, the filer must also list the assets in the trust or estate for which the position is held if the filer, the filer’s spouse, or any dependent child receives income from, or has a beneficial interest in, the estate or fund with which the filer is associated. See: § 365.
§ 355.10.10 Compensation and Financial Interest

Outside positions must be disclosed even if the filer is not compensated and even if neither the filer nor the filer’s family has any financial interest in the entities listed.

§ 355.20 Exceptions

The following need not be reported:

(a) positions held in any religious, social, fraternal, or political entity; and

(b) positions solely of an honorary nature, such as those with an emeritus designation.

§ 360 Spouses and Dependent Children

§ 360.10 Special Disclosure Rules

Each report required under Guide, Vol. 2D, Ch. 2 must also include the following information with respect to the spouse or dependent children of the reporting individual:

(a) Income

For purposes of § 320, the filer must report the following income:

(1) Spouse Non-investment Income

(A) Non-investment income includes such items as salary, royalties, and lottery winnings.

(B) The filer must report the source but not the amount of the spouse’s non-investment income (other than honoraria and investment income) exceeding $1,000 from any one source (other than from the spouse’s current employment by the United States government).

(C) If items of earned income are derived from a spouse’s self-employment in a business or profession, the filer must report the nature of the business or profession but not the amount of the earned income.

(2) Spouse Honoraria

The source and actual amount or value of any honoraria received by or accrued to the spouse (or payments made or to be made to charity on the spouse’s behalf in lieu of honoraria), and the date on which the services were provided must be reported.
(3) Spouse and Dependent Child Investment Income

With respect to a spouse or dependent child, the type and source, and the amount or value (category or actual amount, consistent with § 320) of all other income exceeding $200 from any one source, such as investment income from interests in property (if the property itself is reportable under § 315).

Examples:

(A) The spouse of a filer is employed as a teller at Bank X and earns $23,000 per year. The report must disclose that the spouse is employed by Bank X. The amount of the spouse’s earnings need not be disclosed.

(B) The spouse of a reporting individual is self-employed as a pediatrician. The report must disclose that he or she is self-employed as a physician but need not disclose the amount of income.

(C) The spouse of a filer has a Roth IRA with his or her employer, with a total of $85,000 in it. The report must disclose the underlying assets of that retirement account, as well as any income generated by them, even if that income is tax-deferred or re-invested.

(b) Gifts and Reimbursements

For purposes of § 330, the filer must report the identity and a brief description of reportable gifts, and the identity of the source and a brief description of reportable reimbursements received by a spouse or dependent child. Gifts and reimbursements that are received from a relative or totally independent of their relationship to the filer do not have to be reported.

Examples:

(1) After the filer participates in a symposium at the law school, the dean gives the filer and the filer’s spouse each a gift. If the value of either gift exceeds the reporting threshold, the filer must report it, including the spouse’s gift, because it was received through the filer’s relationship with the law school.

(2) If a coworker gives the filer’s spouse a gift in appreciation for his or her assistance on a project, the filer is not required to report the gift because the spouse’s relationship with the coworker is totally independent of the filer.
(c) Interests in Property, Transactions, and Liabilities

For purposes of § 315, § 325, and § 335, the filer must report all information concerning property interests, transactions, or liabilities referred to by those sections of a spouse or dependent child, unless the following three conditions are satisfied:

1. the filer certifies that the item represents the spouse’s or dependent child’s sole financial interest or responsibility, and that the filer has no specific knowledge regarding that property;

2. the item is not in any way, past or present, derived from the income, assets or activities of the filer; and

3. the filer neither derives, nor expects to derive, any financial or economic benefit from the item.

Note: One who prepares a joint tax return with his or her spouse will normally derive a financial or economic benefit from assets held by the spouse, and will also be charged with knowledge of such items. Consequently, the filer could not invoke this exception.

§ 360.20 Exception (New Entrant and Nominee)

For a report filed by a new entrant or nominee under Guide, Vol. 2D, § 210.10 or § 210.20, no information regarding gifts and reimbursements or transactions is required for a spouse or dependent child.

§ 360.30 Divorce and Separation

A reporting individual need not report any information about:

(a) a spouse living separate and apart from the reporting individual with the intention of terminating the marriage or providing for permanent separation;

(b) a former spouse or a spouse from whom the reporting individual is permanently separated; or

(c) any income or obligations of the reporting individual arising from dissolution of the reporting individual’s marriage or permanent separation from a spouse.
§ 365 Trusts, Estates, and Investment Funds

§ 365.10 Generally

(a) Except as otherwise provided, each financial disclosure report must include the information required by this part of Volume 2 about the holdings — and income from the holdings — of any trust, estate, investment fund, or other financial arrangement from which income is received, or with respect to which a beneficial interest (as defined in Guide, Vol. 2D, § 170) in principal or income is held by the filer or the filer’s spouse or dependent child. Disclosure of the holdings of a trust in which the filer or the filer’s spouse or dependent child has a contingent beneficial interest is not required.

(b) Revocable Living Trust

Nothing in this section requires the reporting of the holdings or income of a revocable inter vivos trust (also known as a “living trust”) with respect to which the filer, the filer’s spouse, or dependent child has only a remainder interest, vested or not, provided that the grantor of the trust is neither the filer, the filer’s spouse, nor the filer’s dependent child.

Furthermore, nothing in this section requires the reporting of the holdings or income from the holdings of a revocable inter vivos trust from which the filer, the filer’s spouse, or dependent child receives any discretionary distribution, provided that the grantor of the trust is neither the filer, nor the filer’s spouse, nor the filer’s dependent child. Distributions from the trust received by the filer, the filer’s spouse, or the filer’s dependent child are reportable as income from the trust.

(c) Trust Income Exclusion

Filers are not required to report the source of income from any trust:

(1) that was not created directly by the filer, the filer’s spouse, or any dependent child; and

(2) the holdings or sources of income of which the filer, the filer’s spouse, and any dependent child have no knowledge.

(d) Life Insurance Policies Within Trusts

A trust whose sole asset is a term life insurance policy need not be listed, as term insurance is not regarded as an investment asset.
§ 365.20 Qualified Trusts and Excepted Trusts

The Code of Conduct for United States Judges (see: Guide, Vol. 2A, Ch. 2, Canon 3C(2)) precludes judges, their spouses, and dependent children from owning a blind trust. Other judiciary filers may own beneficial interests in a qualified blind trust with the approval of the Committee. For those filers:

(a) Qualified Trust Reporting Exceptions

(1) A filer should not report information about the holdings or income from holdings of any qualified blind trust or any qualified diversified trust.

(2) For a qualified blind trust, a financial disclosure report must disclose the category of the aggregate amount of the trust’s income attributable to the beneficial interest of the filer, the filer’s spouse, or dependent child in the trust.

(3) For a qualified diversified trust, a financial disclosure report must disclose the category of the aggregate amount of income with respect to such a trust that is actually received by the filer, the filer’s spouse, or dependent child, or applied for the benefit of any of them.

(b) In the case of an excepted trust, a filer should indicate the general nature of its holdings, to the extent known, but will not otherwise need to report information about the trust’s holdings or income from holdings.

(1) The category of the aggregate amount of income from an excepted trust that is received by the filer, the filer’s spouse, or dependent child must be reported on financial disclosure reports.

(2) For purposes of this part, the term “excepted trust” means a trust:

(A) that was not created directly by the filer, spouse, or dependent child; and

(B) the holdings or sources of income of which the filer, spouse, or dependent child have no specific knowledge through a report, disclosure, or constructive receipt, whether intended or inadvertent.

§ 370 Security Issues

The Act makes financial disclosure reports available to the public. Revealing certain identifying information can pose a security risk to the filer or the filer’s family. Reporting
of the following information is not required, and the Committee recommends that it not be included in financial disclosure reports.

(a) Real Estate

(1) Home Address

Filers should not disclose their home address for any purpose connected with the report. Filers should use their chambers or office address.

(2) Rental Properties

Filers only need to provide the city (or county) and state in which the property is located. Do not use street addresses, lot numbers, or survey descriptions.

(b) Unnecessary Financial Detail

(1) Account Numbers

Filers should not include any bank or brokerage account numbers.

(2) Social Security Number

Filers should not include nor use the social security number for themselves, their spouse, nor their dependent children.

(3) Bank Details

Filers only need to provide the name of a bank, not its address or the branch frequented. Bank account numbers should never be included in a report.

(c) Names of Relatives

Filers should not identify relatives by name nor designation (e.g., “daughter,” “brother,” or “mother-in-law”). Trusts or estates should be identified by number (e.g., “Trust #1” or “Estate #2”).

(d) Financial Documents

Filers should not attach financial documents, brokerage statements, tax returns, deeds, or trust agreements to their report.
§ 375 No Incorporation by Reference

Each financial disclosure report submitted by a filer must be complete in itself. No information may be adopted or incorporated by reference to prior financial disclosure reports or financial documents, statements, or reports.
**Guide to Judiciary Policy**

Vol. 2: Ethics and Judicial Conduct  
Pt. D: Financial Disclosure

**Ch. 4: Report Review**

**§ 410 In General**

**§ 420 Responsibilities of Reviewing Officials**  
§ 420.10 Initial Review  
§ 420.20 Signature by Reviewing Official  
§ 420.30 Requests for Additional Information  
§ 420.40 Compliance with Applicable Laws and Regulations  
§ 420.50 Administrative Closure

**§ 430 Expedited Procedure for Presidential Appointees Subject to Senate Confirmation**

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**§ 410 In General**

(a) The Judicial Conference of the United States is the designated agency ethics official (see: Guide, Vol. 2D, § 170) for judges and judiciary employees and serves as the reviewing official for judiciary financial disclosure reports.

(b) That responsibility has been delegated to the Conference's Committee on Financial Disclosure (Committee), which has in turn delegated certain responsibilities to Committee counsel and staff.

(c) The date that a report or supplemental report is received will be noted.

(d) Except as indicated in § 420.30, all reports should be reviewed within 60 days after the date of filing.

(e) Final certification under § 420.20 may, of necessity, occur later, where additional information is being sought, or remedial action is being taken.
§ 420 Responsibilities of Reviewing Officials

§ 420.10 Initial Review
The reviewing official must examine the report to determine, to his or her satisfaction that:

(a) each required item is completed; and

(b) no interest or position disclosed on the form violates or appears to violate:

(1) the Act, as amended, and the implementing regulations; and

(2) items specifically set out in the filer’s certification stated at the filer’s signature block of the report, including:

• outside employment,
• honoraria, or
• gifts.

§ 420.20 Signature by Reviewing Official

(a) If the reviewing official determines that the report meets the requirements of § 420.10, he or she must certify it by signature and date.

(b) The reviewing official need not audit the report to ascertain whether the disclosures are correct.

(c) Disclosures should be presumed correct unless:

(1) there is a patent omission or ambiguity, or

(2) the office has independent knowledge of matters outside the report.

(d) A report signed by a reviewing official certifies that:

(1) the judiciary has reviewed the report;

(2) the reviewing official has concluded that each required item has been sufficiently reported; and

(3) on the basis of information in the report, the filer is in compliance with applicable laws and regulations noted in § 420.10(b).
§ 420.30 Requests for Additional Information

(a) If the reviewing official believes that additional information is required, he or she will request that it be submitted by a specified date.

(b) If the additional information needed is required to be in the filer’s report, the filer must submit an amended report with the additional information specified by the reviewing official.

(c) If the reviewing official concludes, based on the information in the report and any additional information submitted, that the report fulfills the requirements of § 420.10, he or she must sign and date the report.

§ 420.40 Compliance with Applicable Laws and Regulations

(a) If the reviewing official concludes that report information may reveal a violation of the laws and regulations specified in § 420.10, the official will:

(1) notify the filer of that conclusion;

(2) afford the filer a reasonable opportunity to respond; and

(3) determine, after considering any response, whether or not the filer has complied with applicable laws and regulations specified in § 420.10(b).

(b) If the reviewing official concludes that the report fulfills the requirements, he or she will sign and date the report.

(c) If the reviewing official determines that the report does not fulfill the requirements, he or she will:

(1) notify the filer of the conclusion;

(2) afford the filer an opportunity for personal consultation if practicable;

(3) determine what action should be taken to bring the report into compliance with § 420.10; and

(4) notify the filer in writing of the action that is needed, and the date by which such action should be taken.
§ 420.50 Administrative Closure

(a) In extraordinary circumstances, the Committee on Financial Disclosure’s Subcommittee on Compliance may administratively close a financial disclosure report that:

(1) otherwise does not meet the requirements provided in Guide, Vol. 2D, Ch. 2 and Ch. 3, and

(2) cannot be certified by a reviewing official as required under § 420.

(b) Factors that the Subcommittee will consider when determining whether to administratively close a report include:

(1) the absence of evidence indicating that the filer is knowingly and willfully failing to act;

(2) in the case of a non-responsive filer, the number of, type of, and time period over which efforts were made to contact the filer, and the unsuccessful results;

(3) in the case of a filer incapable of filing or responding to a letter of inquiry because of sickness, infirmity, or other such reason, a sufficient indication of the filer’s incapacity and the likelihood of its continuation (e.g., a letter from a doctor, family member, representative, or chief judge who is aware of or knowledgeable about the situation); and

(4) in the case of a filer who is no longer in a governmental decision-making position, the absence of any likelihood that official actions would be compromised by a conflict of interest.

(c) Administrative closures will not be used in situations where a filer does not want to report required information.

(d) A report that is administratively closed will be neither certified nor signed by a reviewing official.

§ 430 Expedited Procedure for Presidential Appointees Subject to Senate Confirmation

The following procedures apply in cases of a report filed by an individual described in Guide, Vol. 2D, § 210.20 who is nominated by the President for appointment to a position that requires the advice and consent of the Senate.
(a) The Executive Office of the President will furnish the applicable financial disclosure report form to the nominee. The completed report will be forwarded to the Judicial Conference’s Committee on Financial Disclosure.

(b) The Committee will complete an accelerated review of the report according to the standards and procedures in § 420.

(c) If the Committee is satisfied that the report meets the requirements of the Act and its implementing regulations, the reviewing official will sign and date the report form, and then either return the report to the nominee, or submit the report to the appropriate Senate committee expressing the opinion whether, based on the report information, the nominee has complied with all applicable conflict laws and regulations.
Guide to Judiciary Policy

Vol. 2: Ethics and Judicial Conduct
Pt. D: Financial Disclosure

Ch. 5: Report Redaction and Release

§ 510 Overview

§ 520 Applicability

§ 530 Responsibility

§ 540 Requesting a Report (Form AO 10A)
  § 540.10 Request to View a Report
  § 540.20 Cost for Copies of Reports
  § 540.30 Notification of a Request

§ 550 Limitations on Release
  § 550.10 Custody of Financial Disclosure Reports
  § 550.20 Incomplete or Improper Request
  § 550.30 Security

§ 560 Use of Reports

§ 570 Reporting Requirements

§ 510 Overview


(b) In September 2017, the Conference delegated to its Committee on Financial Disclosure (Committee) the authority to adopt and amend regulations under 5 U.S.C. app. § 105(b)(3)(D) (JCUS-SEP 2017, p. 13).

(c) The regulations in this chapter govern access to the financial disclosure reports filed by judicial officers and judicial employees under the Ethics in Government Act, 5 U.S.C. app. §§ 101–111.
§ 520 Applicability

These regulations apply to the processing of requests for copies of the financial disclosure reports of judicial officers and judicial employees maintained by the Administrative Office of the U.S. Courts (AO).

§ 530 Responsibility

(a) The Committee on Financial Disclosure:

(1) monitors the release of financial disclosure reports to ensure compliance with the statute and the Committee’s guidance;

(2) reviews and, within the Committee’s discretion, approves or disapproves any requests for the redaction of statutorily mandated information where the release of the information could endanger a filer or a filer’s family member, as provided in § 550.30;

(3) reviews and approves or disapproves any requests for waiver of costs associated with a request for the release of a financial disclosure report; and

(4) provides guidance when questions not covered in these regulations arise.

(b) The Committee’s Subcommittee on Public Access and Security is delegated the authority to act for the Committee where necessary to implement the provisions of these regulations.

§ 540 Requesting a Report (Form AO 10A)

(a) Requesters must submit a Form AO 10A to the AO’s Financial Disclosure Office. The form must:

(1) include a list of the filers whose reports are requested,

(2) be signed and dated by the requester, and

(3) contain the information identified below in § 540(c).

(b) Each Form AO 10A received that results in the release or viewing of a report will be retained throughout the period that the report is available to the public (see: § 550.10), except as provided in § 540.30(b).
(c) Under 5 U.S.C. app. § 105(b)(2), all requests to examine, or for a copy of, a financial disclosure report must be submitted in writing to the Committee on Financial Disclosure and contain the following:

(1) the requester’s name, occupation, and address;

(2) the name and address of any other person or organization on whose behalf the inspection or copy is requested; and

(3) that the requester is aware of the prohibitions and restrictions with regard to obtaining or viewing the report.

§ 540.10 Request to View a Report

(a) Financial disclosure reports may be viewed in the AO’s Financial Disclosure Office by appointment.

(b) Appointments must be made at least five working days in advance.

(c) Staff will provide the requester with an approved copy of the requested report(s) to view.

§ 540.20 Cost for Copies of Reports

(a) Unless otherwise requested, financial disclosure reports will be provided on an electronic storage device at no charge.

(b) If a paper copy of a report is requested, the requester will be charged $0.20 per page to cover reproduction and mailing costs.

(c) A paper copy of a requested report may be furnished without charge or at a reduced charge if it is determined that waiver or reduction of the fee is in the public interest, particularly the requester’s inability to pay the fee.

(d) Requests for waiver must be presented in writing to the Committee.

§ 540.30 Notification of a Request

(a) The Financial Disclosure Office will notify the filer when a Form AO 10A is received requesting the release of a filer’s financial disclosure report(s) and will provide each filer with a copy of the requester’s Form AO 10A.

(b) When a request involves a filer who is the subject of an ongoing criminal or ethics investigation by the U.S. Department of Justice, a Judicial Conference committee, or a circuit judicial council, the Committee will not notify a filer of the request and later release of a financial disclosure report where the request’s originator affirmatively asks that the filer not be
notified. The Committee staff will coordinate with the Committee Chair on the release of reports related to such investigations.

§ 550 Limitations on Release

§ 550.10 Custody of Financial Disclosure Reports

(a) Any report filed under Guide, Vol. 2D, Ch. 2 will be retained by the AO for six years after receipt.

(b) After the six-year period, the report will be destroyed unless needed in an ongoing investigation.

(c) For individuals who file a report as a nominee under Guide, Vol. 2D, § 210.20 and are not later confirmed by the Senate, such reports will be destroyed one year after the individual is no longer under consideration by the Senate, unless needed in an ongoing investigation.

§ 550.20 Incomplete or Improper Request

Under 5 U.S.C. app. § 105, financial disclosure reports will not be released to any individual who fails to properly complete Form AO 10A or pay assessed costs.

§ 550.30 Security

(a) Financial Disclosure Committee staff will take reasonable steps to ensure the privacy and security of individuals required to file a financial disclosure report according to the statute and the guidance provided by the Committee.

(b) The staff will not release or allow the viewing of any report until notice has been given to the filer, except as provided in § 540.30.

(c) According to Committee direction, Committee staff will continue to monitor compliance with the Act, while minimizing security risks by removing information that is not required by the Act, including without limitation:

   (1) spouse’s and dependent’s names, initials, and designations (e.g., “spouse,” “son,” “dependent child,” “dc”);

   (2) home addresses;

   (3) social security numbers;

   (4) financial account and bank account numbers;
(5) street addresses of rental properties, business properties, and financial institutions (including branch names or location identifiers);

(6) ownership codes (e.g., “joint,” “JTWROS,” “UGMA,” “UTMA”); and

(7) filer’s signature.

(d) A report that may be disseminated to the public may be redacted under 5 U.S.C. app. § 105 to prevent public disclosure of personal or sensitive information that could directly or indirectly endanger the filer or a filer’s family member by a member of the public hostile to the filer or a filer’s family member. The following procedure will be used to determine whether redaction is appropriate.

(1) When an annual report is filed, the filer may request redactions believed to be appropriate before release of a report that may be disseminated to the public. Redaction requests may also be made after a filer receives a notification of a request under § 540.30.

(2) Reports that will not be considered as ones that may be disseminated to the public include, but are not limited to:

(A) reports released upon request to appropriate committees of the Senate or House of Representatives; and

(B) reports released upon request to appropriate executive-branch officials.

Note: In the case of (A) and (B), redaction of the filer’s signature under § 550.30(c)(7) may not occur if so indicated by the requester.

(3) The filer must state with specificity what material is sought to be redacted. The filer must also state in detail the reasons justifying redaction. These reasons may include, but are not limited to:

(A) the purposes and need for an ongoing protective detail provided by the United States Marshals Service;

(B) particular threats or inappropriate communications;

(C) involvement in a high threat trial or appeal; or

(D) certain information on the form that could endanger the filer or a family member directly or indirectly if possessed by a member of the public hostile to the filer or a family member.
(4) The Committee will determine, in consultation with the U.S. Marshals Service, whether information sought to be redacted could, if disseminated to the public, directly or indirectly endanger the filer or a family member, then grant or deny the request as appropriate.

(A) Information that could facilitate the financial harassment of a filer or a family member (e.g., identity theft) may be deemed information that could endanger a filer or a family member.

(B) However, no redaction will be granted that eliminates disclosure of the existence, rather than extent, of an interest in an entity that would disqualify the filer from serving as a judge in litigation involving that entity, unless disclosure of that interest would:

(i) reveal the location of a residence of the filer or a family member,

(ii) reveal the place of employment of the filer or a family member, or

(iii) possibly increase an existing danger to a filer or a family member based on circumstances described in § 550.30(d)(3)(A)-(C).

(C) The Committee may redact material without a request from a filer if it has received credible evidence that the release of information contained in a financial report could endanger the filer or a family member.

(e) Information may be redacted from a report according to such finding to the extent necessary to protect the judicial officer or judicial employee who filed the report and their families, and the redactions will be made for as long as the reasons for redacting the report exist.

(f) The Committee staff will notify a filer when a report is actually released or reviewed and provide the filer with a copy of the redacted report. The staff will maintain a copy of the redacted material for as long as the original report is maintained.

(g) A request for redaction and its supporting documents, except for copies of the financial disclosure report and any amendments to it, are considered confidential and will only be used to determine whether to grant a request for redaction. Such documents are not considered part of any report available for release under 5 U.S.C. app. § 105(b)(1).
§ 560 Use of Reports

(a) Under 5 U.S.C. app. § 105, it is unlawful for any person to obtain or use a report for:

(1) any unlawful purpose;

(2) any commercial purpose other than by news and communications media for dissemination to the general public;

(3) determining or establishing the credit rating of any individual; or

(4) use directly or indirectly in the solicitation of money for any political, charitable, or other purpose.

(b) The Attorney General may bring a civil action against any person who obtains or uses a report for any purpose prohibited by this section. The court in which such action is brought may assess against such person a penalty in any amount not to exceed $10,000. Such remedy may be in addition to any other remedy available under statutory or common law. See also: Guide, Vol. 2D, § 630.

§ 570 Reporting Requirements

The AO will report the following to the appropriate Congressional Committees by March 30 of each year:

(a) the total number of reports in which required information is redacted under exercise of the authority delineated in § 550.30(d);

(b) the total number of individuals whose reports have been redacted under exercise of the authority in § 550.30(d);

(c) the types of threats against filers whose reports are redacted, if appropriate;

(d) the nature or type of information redacted;

(e) what steps or procedures are in place to ensure that sufficient information is available to litigants to determine whether there is a conflict of interest;

(f) principles used to guide implementation of redaction authority; and

(g) any public complaints received relating to redaction.
§ 610 Filing a Late Report

§ 610.10 Late Filing Fee

(a) Under 5 U.S.C. app. § 104(d), any individual required to file a financial disclosure report must transmit a $200 late filing fee payable to the United States Treasury if such report is filed more than 30 days after the later of:

1. the date such report must be filed under Guide, Vol. 2D, Ch. 2; or
2. the last day of any filing extension period granted under Guide, Vol. 2D, § 210.80.

Note: If the 30th day from the last day of the filing extension falls on a weekend or holiday, such report must be filed by the next day that is not a weekend or holiday.

(b) Examples:

1. For an annual report due on May 15, 2016, the filer seeks and receives approval for a 60-day extension, making the report due by Thursday, July 14, 2016. Ordinarily, if the report is not received by the Financial Disclosure Office by Saturday, August 13, 2016, the filer would be assessed a $200 late filing fee. Since August 13, 2016 is a Saturday, the late fee would be assessed if the report is not received by Monday, August 15, 2016.
(2) For an annual report due on May 15, 2014, filer seeks and receives approval for a 30-day extension, making the report due by Saturday, June 14, 2014. Because June 14 is a Saturday, the report would be due on Monday, June 16, 2014. The 30-day period prior to assessing the late fee is calculated from the due date whether or not that day is a weekend or holiday. In this case, it would be calculated from Saturday, June 14, 2014, and the late fee would be imposed if the report is not filed by Monday, July 14, 2014.

(c) The date of filing for purposes of determining whether a public financial disclosure report is filed more than 30 days late will be the date of receipt by the Administrative Office of the U.S. Courts (AO).

(d) The 30-day period prior to imposing a late filing fee is adequate allowance for administrative delays in the receipt of reports.

§ 610.20 Waiver of Late Fee

(a) The Judicial Conference’s Committee on Financial Disclosure may waive the late filing fee if it determines that the delay in filing was caused by extraordinary circumstances, including a failure by the AO to notify a new entrant, first-time annual filer, or separated filer of the requirement to file the public financial disclosure report, which made the delay reasonably necessary.

(b) Filers requesting a waiver of the late filing fee from the Committee must request the waiver in writing with supporting documentation. The Committee’s determination will be made in writing to the filer, and a copy will be maintained in his or her financial disclosure report file.

§ 610.30 Procedure

(a) The Committee’s staff will maintain a record of the due dates for all financial disclosure reports that must be filed, along with the new filing dates under any granted extensions.

(b) The date of receipt of each report will be noted.

(c) For any report not received by the end of the period specified in § 610.10, the Committee will advise the delinquent filer, in writing, that:

(1) because his financial disclosure report is more than 30 days overdue, a $200 late filing fee is due at the time of filing, under 5 U.S.C. app. § 104(d) and Guide, Vol. 2D, § 610.10;
(2) the filer is directed to transmit to the AO the $200 fee, payable to the United States Treasury, with the completed report;

(3) the filer will be subject to debt collection procedures if he or she fails to transmit the $200 fee when filing his or her late report; and

(4) if extraordinary circumstances exist that would justify a request for a fee waiver under § 610.20, such request and supporting documentation must be submitted immediately.

(d) The late filing fee is in addition to other sanctions which may be imposed, including agency disciplinary action, civil action, or criminal action.

§ 620 Failure to File or Falsifying a Report

Under 5 U.S.C. app. § 104(b), the Judicial Conference through its Committee on Financial Disclosure can refer to the United States Attorney General the name of any individual that the Committee has reasonable cause to believe has:

(a) willfully failed to file a report,

(b) willfully falsified a report, or

(c) willfully failed to file information required to be reported.

§ 620.10 Civil Action


(a) The Attorney General may bring a civil action in any appropriate U.S. district court against any filer who knowingly and willfully falsifies or who knowingly and willfully fails to file or report any information that such individual is required to report.

(b) The court in which such action is brought may assess against such non-compliant filer a civil penalty as prescribed by § 104(a)(1) and adjusted by the inflation adjustment procedures prescribed in the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended.

§ 620.20 Criminal Action

Under 5 U.S.C. app. § 104(a)(2), an individual may be criminally prosecuted for knowingly and willfully falsifying or failing to file or report any financial disclosure information that such person is required to report under 5 U.S.C. app. § 102.
§ 630 Misuse of Public Reports

(a) The Attorney General may bring a civil action against any person who obtains or uses a report for any purpose prohibited by 5 U.S.C. app. § 105(c)(1), as incorporated in Guide, Vol. 2D, § 560.

(b) The court in which the action is brought may assess against the person a civil monetary penalty for any such violation as provided by 5 U.S.C. app. § 105(c)(2), with an inflation adjustment as prescribed in the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended.

(c) This remedy will be in addition to any other remedy available under statutory or common law.
§ 110 Overview

(a) The authorities and policies in this chapter apply to a complaint alleging that a judge has committed misconduct or is disabled. They establish a process that requires a circuit chief judge or judicial council to take appropriate action on each complaint. Such action cannot include impeachment, which is solely the province of Congress.

(b) The complaint process is prescribed — and terms such as “judge,” “misconduct,” and “disability” are defined — by the Judicial Conduct and Disability Act, 28 U.S.C. §§ 351-364, and by the Rules for Judicial-Conduct and Judicial-Disability Proceedings (Chapter 3 of this Part), which the Judicial Conference promulgated under 28 U.S.C. § 358.

(c) The Conference’s Rules for the Processing of Certificates from Judicial Councils that a Judicial Officer Has Engaged in Conduct that Might Constitute Grounds for Impeachment (Chapter 4 of this Part) specify when and how the Conference would bring potentially impeachable conduct to the attention of Congress. These Rules are triggered only in rare circumstances.

(d) The Conference’s Committee on Judicial Conduct and Disability supports and monitors the complaint process. Courts must make submissions to the Committee as required by the Rules for Judicial-Conduct and Judicial-Disability Proceedings (Chapter 3 of this Part) and in the form specified by the Committee’s procedures for Submitting Documents to the Committee on Judicial Conduct and Disability (Chapter 5 of this Part).
§ 120 Uniform Docket Numbering for Judicial Conduct and Disability Complaints

(a) Under Rule 8(a) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings, the circuit clerk must, upon receiving a complaint, “assign a docket number according to a uniform numbering scheme promulgated by the Committee on Judicial Conduct and Disability.” The scheme promulgated by the Committee specifies the format and content of docket numbers for judicial conduct and disability complaints.

(b) Under the scheme promulgated by the Committee on Judicial Conduct and Disability, circuits must reserve docket numbers beginning with 90000 for complaints under the Judicial Conduct and Disability Act, 28 U.S.C. §§ 351-364. Each number must consist of the following components:

| CC | circuit in which matter is ongoing |
| YY | year in which matter was initiated |
| 9  | non-variable signifier for judicial conduct and disability complaints |
| NNNN | matter number (one per subject judge, sequentially assigned) |

(c) A multi-judge complaint must be docketed separately for each judge who is the subject of the complaint. For example, a complaint naming five subject judges must be docketed five times, using a different matter number for each named judge.
ARTICLE I. GENERAL PROVISIONS

1. Scope and Covered Judges
2. Construction and Effect
3. General Definitions

ARTICLE II. MISCONDUCT AND DISABILITY

4. Misconduct and Disability Definitions

ARTICLE III. INITIATION OF COMPLAINT

5. Identification of Complaint
6. Filing of Complaint
7. Where to Initiate Complaint
8. Action by Circuit Clerk
9. Time for Filing or Identifying Complaint
10. Abuse of Complaint Procedure

ARTICLE IV. REVIEW OF COMPLAINT BY CHIEF JUDGE

11. Chief Judge's Review

ARTICLE V. INVESTIGATION AND REPORT BY SPECIAL COMMITTEE

12. Special Committee’s Composition
13. Conduct of Special-Committee Investigation
14. Conduct of Special-Committee Hearings
15. Subject Judge’s Rights
16. Complainant's Rights in Investigation
17. Special-Committee Report

ARTICLE VI. REVIEW BY JUDICIAL COUNCIL

18. Petition for Review of Chief-Judge Disposition Under Rule 11(c), (d), or (e)
20. Judicial-Council Action Following Appointment of Special Committee

ARTICLE VII. REVIEW BY COMMITTEE ON JUDICIAL CONDUCT AND DISABILITY

21. Committee on Judicial Conduct and Disability
22. Procedures for Review

ARTICLE VIII. MISCELLANEOUS RULES

23. Confidentiality
24. Public Availability of Decisions
25. Disqualification
26. Transfer to Another Judicial Council
27. Withdrawal of Complaint or Petition for Review
28. Availability of Rules and Forms
29. Effective Date

Appendix to the Rules: Form AO 310 (Complaint of Judicial Misconduct or Disability)

§ 310 Overview

Section 320 of this chapter reproduces the Rules for Judicial-Conduct and Judicial-Disability Proceedings. They were adopted on March 11, 2008, and took effect on April 10, 2008. They were amended on September 17, 2015, and again on March 12, 2019.

§ 320 Rules for Judicial-Conduct and Judicial-Disability Proceedings

Preface

These Rules were promulgated by the Judicial Conference of the United States, after public comment, pursuant to 28 U.S.C. §§ 331 and 358, to establish standards and procedures for addressing complaints filed by complainants or identified by chief judges under the Judicial Conduct and Disability Act, 28 U.S.C. §§ 351–364.

ARTICLE I. GENERAL PROVISIONS

1. Scope and Covered Judges

   (a) Scope. These Rules govern proceedings under the Judicial Conduct and Disability Act (Act), 28 U.S.C. §§ 351–364, to determine whether a
covered judge has engaged in conduct prejudicial to the effective and expeditious administration of the business of the courts or is unable to discharge the duties of office because of mental or physical disability.

(b) Covered Judge. A covered judge is defined under the Act and is limited to judges of United States courts of appeals, judges of United States district courts, judges of United States bankruptcy courts, United States magistrate judges, and judges of the courts specified in 28 U.S.C. § 363.

COMMENTARY ON RULE 1

In September 2006, the Judicial Conduct and Disability Act Study Committee ("Breyer Committee"), appointed in 2004 by Chief Justice Rehnquist, presented a report ("Breyer Committee Report"), 239 F.R.D. 116 (Sept. 2006), to Chief Justice Roberts that evaluated implementation of the Judicial Conduct and Disability Act of 1980, 28 U.S.C. §§ 351–364. The Breyer Committee had been formed in response to criticism from the public and Congress regarding the effectiveness of the Act’s implementation. The Executive Committee of the Judicial Conference directed its Committee on Judicial Conduct and Disability to consider the Breyer Committee’s recommendations and to report on their implementation to the Conference.

The Breyer Committee found that it could not evaluate implementation of the Act without establishing interpretive standards, Breyer Committee Report, 239 F.R.D. at 132, and that a major problem faced by chief judges in implementing the Act was the lack of authoritative interpretive standards. Id. at 212–15. The Breyer Committee then established standards to guide its evaluation, some of which were new formulations and some of which were taken from the “Illustrative Rules Governing Complaints of Judicial Misconduct and Disability,” discussed below. The principal standards used by the Breyer Committee are in Appendix E of its Report. Id. at 238.

Based on the Breyer Committee’s findings, the Committee on Judicial Conduct and Disability concluded that there was a need for the Judicial Conference to exercise its power under Section 358 of the Act to fashion standards guiding the various officers and bodies that must exercise responsibility under the Act. To that end, the Committee on Judicial Conduct and Disability proposed rules based largely on Appendix E of the Breyer Committee Report and the Illustrative Rules.

The Illustrative Rules were originally prepared in 1986 by the Special Committee of the Conference of Chief Judges of the United States Courts of Appeals, and were subsequently revised and amended, most recently in 2000, by the predecessor to the Committee on Judicial Conduct and Disability. The Illustrative Rules were adopted, with minor variations, by circuit judicial councils, to govern complaints under the Judicial Conduct and Disability Act.
After being submitted for public comment pursuant to 28 U.S.C. § 358(c), the Judicial Conference promulgated the present Rules on March 11, 2008. They were amended on September 17, 2015, and again on March 12, 2019.

The definition of a covered judge tracks the Judicial Conduct and Disability Act. See 28 U.S.C. § 351(d)(1) (defining the term “judge” as “a circuit judge, district judge, bankruptcy judge, or magistrate judge”). As long as the subject of a complaint retains the judicial office and remains a covered judge as defined in Rule 1(b), a complaint must be addressed. Id.; 28 U.S.C. §§ 371(b); 372(a).

Rules 8(c) and (d) address the procedures for processing a complaint involving allegations against a person not covered by the Act, such as other court personnel, or against both a covered judge and a noncovered person. Court employees seeking to report, or file a claim related to, misconduct or the denial of rights granted under their Employment Dispute Resolution (EDR) plan by other court personnel may wish to consult the Model EDR Plan and the EDR plan for the relevant court, among other resources. See Guide to Judiciary Policy, vol. 12, appx. 2B.

2. Construction and Effect

(a) Generally. These Rules are mandatory; they supersede any conflicting judicial-council rules. Judicial councils may promulgate additional rules to implement the Act as long as those rules do not conflict with these Rules.

(b) Exception. A Rule will not apply if, when performing duties authorized by the Act, a chief judge, a special committee, a judicial council, the Committee on Judicial Conduct and Disability, or the Judicial Conference expressly finds that exceptional circumstances render application of that Rule in a particular proceeding manifestly unjust or contrary to the purposes of the Act or these Rules.

COMMENTARY ON RULE 2

Unlike the Illustrative Rules, these Rules provide mandatory and nationally uniform provisions governing the substantive and procedural aspects of misconduct and disability proceedings under the Act. The mandatory nature of these Rules is authorized by 28 U.S.C. § 358(a) and (c). Judicial councils retain the power to promulgate rules consistent with these Rules. For example, a local rule may authorize the electronic distribution of materials pursuant to Rule 8(b).

Rule 2(b) recognizes that unforeseen and exceptional circumstances may call for a different approach in particular cases.
3. General Definitions

The following general definitions apply to these Rules. Cognizable misconduct and disability are defined in Rule 4.

(a) Chief Judge. “Chief judge” means the chief judge of a United States court of appeals, of the United States Court of International Trade, or of the United States Court of Federal Claims.

(b) Circuit Clerk. “Circuit clerk” means a clerk of a United States court of appeals, the clerk of the United States Court of International Trade, the clerk of the United States Court of Federal Claims, or the circuit executive of the United States Court of Appeals for the Federal Circuit.

(c) Complaint. A “complaint” is:

1. a document that, in accordance with Rule 6, is filed by, or on behalf of, any person, including a document filed by an organization; or

2. information from any source, other than a document described in (c)(1), that gives a chief judge probable cause to believe that a covered judge, as defined in Rule 1(b), has engaged in misconduct or may have a disability, whether or not the information is framed as or is intended to be an allegation of misconduct or disability.

(d) Court of Appeals, District Court, and District Judge. “Court of appeals,” “district court,” and “district judge,” where appropriate, include the United States Court of Federal Claims, the United States Court of International Trade, and the judges thereof.


(f) Judicial Employee. “Judicial Employee” includes judicial assistants, law clerks, and other court employees, including unpaid staff, such as interns, externs, and other volunteer employees.

(g) Magistrate Judge. “Magistrate judge,” where appropriate, includes a special master appointed by the Court of Federal Claims under 42 U.S.C. § 300aa-12(c).

(h) Subject Judge. “Subject judge” means a covered judge, as described in Rule 1(b), who is the subject of a complaint.
COMMENTARY ON RULE 3

Rule 3 is derived and adapted from the Breyer Committee Report and the Illustrative Rules.

Unless otherwise specified or the context otherwise indicates, the term “complaint” is used in these Rules to refer both to complaints identified by a chief judge under Rule 5 and to complaints filed by a complainant under Rule 6.

Under the Act, a “complaint” may be filed by “any person” or “identified” by a chief judge. See 28 U.S.C. § 351(a), (b). Under Rule 3(c)(1), a complaint may be submitted by, or on behalf of, any person, including a document filed by an organization. Traditional standing requirements do not apply. Individuals or organizations may file a complaint even if they have not been directly injured or aggrieved.

Generally, the word “complaint” brings to mind the commencement of an adversary proceeding in which the contending parties are left to present the evidence and legal arguments, and judges play the role of an essentially passive arbiter. The Act, however, establishes an administrative, inquisitorial process. For example, even absent a complaint filed by a complainant under Rule 6, chief judges are expected in some circumstances to trigger the process — “identify a complaint,” see 28 U.S.C. § 351(b) and Rule 5 — and conduct an investigation without becoming a party. See 28 U.S.C. § 352(a); Breyer Committee Report, 239 F.R.D. at 214; Illustrative Rule 2(j). Where the complainant reveals information of misconduct or disability but does not claim it as such, the chief judge is not limited to the “four corners of the complaint” and should proceed under Rule 5 to determine whether identification of a complaint is appropriate. See Breyer Committee Report, 239 F.R.D. at 183–84.

An allegation of misconduct or disability filed under Rule 6 is a “complaint,” and the Rule so provides in subsection (c)(1). However, both the nature of the process and the use of the term “identify” suggest that the word “complaint” covers more than a document formally triggering the process. The process relies on chief judges considering known information and triggering the process when appropriate. “Identifying” a “complaint,” therefore, is best understood as the chief judge’s concluding that information known to the judge constitutes probable cause to believe that misconduct occurred or a disability exists, whether or not the information is framed as, or intended to be, an accusation. This definition is codified in subsection (c)(2).

The remaining subsections of Rule 3 provide technical definitions clarifying the application of the Rules.
ARTICLE II. MISCONDUCT AND DISABILITY

4. Misconduct and Disability Definitions

(a) Misconduct Generally. Cognizable Misconduct is conduct prejudicial to the effective and expeditious administration of the business of the courts. Cognizable misconduct includes, but is not limited to, the following:

(1) Violation of Specific Standards of Judicial Conduct. Cognizable misconduct includes:

(A) using the judge’s office to obtain special treatment for friends or relatives;

(B) accepting bribes, gifts, or other personal favors related to the judicial office;

(C) engaging in improper ex parte communications with parties or counsel for one side in a case;

(D) engaging in partisan political activity or making inappropriately partisan statements;

(E) soliciting funds for organizations; or

(F) violating rules or standards pertaining to restrictions on outside income or knowingly violating requirements for financial disclosure.

(2) Abusive or Harassing Behavior. Cognizable misconduct includes:

(A) engaging in unwanted, offensive, or abusive sexual conduct, including sexual harassment or assault;

(B) treating litigants, attorneys, judicial employees, or others in a demonstrably egregious and hostile manner; or

(C) creating a hostile work environment for judicial employees.

(3) Discrimination. Cognizable misconduct includes intentional discrimination on the basis of race, color, sex, gender, gender
identity, pregnancy, sexual orientation, religion, national origin, age, or disability;

(4) Retaliation. Cognizable misconduct includes retaliating against complainants, witnesses, judicial employees, or others for participating in this complaint process, or for reporting or disclosing judicial misconduct or disability;

(5) Interference or Failure to Comply with the Complaint Process. Cognizable misconduct includes refusing, without good cause shown, to cooperate in the investigation of a complaint or enforcement of a decision rendered under these Rules; or

(6) Failure to Report or Disclose. Cognizable misconduct includes failing to call to the attention of the relevant chief district judge or chief circuit judge any reliable information reasonably likely to constitute judicial misconduct or disability.

A judge who receives such reliable information shall respect a request for confidentiality but shall nonetheless disclose the information to the relevant chief district judge or chief circuit judge, who shall also treat the information as confidential. Certain reliable information may be protected from disclosure by statute or rule. A judge’s assurance of confidentiality must yield when there is reliable information of misconduct or disability that threatens the safety or security of any person or that is serious or egregious such that it threatens the integrity and proper functioning of the judiciary.

A person reporting information of misconduct or disability must be informed at the outset of a judge’s responsibility to disclose such information to the relevant chief district judge or chief circuit judge.

Reliable information reasonably likely to constitute judicial misconduct or disability related to a chief circuit judge should be called to the attention of the next most-senior active circuit judge. Such information related to a chief district judge should be called to the attention of the chief circuit judge.

(7) Conduct Outside the Performance of Official Duties. Cognizable misconduct includes conduct occurring outside the performance of official duties if the conduct is reasonably likely to have a prejudicial effect on the administration of the
business of the courts, including a substantial and widespread lowering of public confidence in the courts among reasonable people.

(b) Conduct Not Constituting Cognizable Misconduct.

(1) Allegations Related to the Merits of a Decision or Procedural Ruling. Cognizable misconduct does not include an allegation that calls into question the correctness of a judge’s ruling, including a failure to recuse.

If the decision or ruling is alleged to be the result of an improper motive, e.g., a bribe, ex parte contact, racial or ethnic bias, or improper conduct in rendering a decision or ruling, such as personally derogatory remarks irrelevant to the issues, the complaint is not cognizable to the extent that it calls into question the merits of the decision.

(2) Allegations About Delay. Cognizable misconduct does not include an allegation about delay in rendering a decision or ruling, unless the allegation concerns an improper motive in delaying a particular decision or habitual delay in a significant number of unrelated cases.

(c) Disability. Disability is a temporary or permanent impairment, physical or mental, rendering a judge unable to discharge the duties of the particular judicial office. Examples of disability include substance abuse, the inability to stay awake during court proceedings, or impairment of cognitive abilities that renders the judge unable to function effectively.

COMMENTARY ON RULE 4

The phrase “prejudicial to the effective and expeditious administration of the business of the courts” is not subject to precise definition, and subsection (a) therefore provides some specific examples. 28 U.S.C. § 351(a). The Code of Conduct for United States Judges sets forth behavioral guidelines for judges. While the Code’s Canons are instructive, ultimately the responsibility for determining what constitutes cognizable misconduct is determined by the Act and these Rules, as interpreted and applied by judicial councils, subject to review and limitations prescribed by the Act and these Rules. See also Rule 24 (Public Availability of Decisions).

Even where specific, mandatory rules exist — for example, governing the receipt of gifts by judges, outside earned income, and financial disclosure obligations — the distinction between the misconduct statute and these specific, mandatory rules must be borne in mind. For example, an inadvertent, minor violation of any one of these rules,
promptly remedied when called to the attention of the judge, might still be a violation but might not rise to the level of misconduct under the Act. By contrast, a pattern of such violations of the Code might well rise to the level of misconduct.

Rule 4(a)(2)(A) provides expressly that unwanted, offensive, or abusive sexual conduct by a judge, including sexual harassment or assault, constitutes cognizable misconduct. The Rule recognizes that anyone can be a victim of unwanted, offensive, or abusive sexual conduct, regardless of their sex and of the sex of the judge engaging in the misconduct.

Under Rule 4(a)(4), a judge’s efforts to retaliate against any person for reporting or disclosing misconduct, or otherwise participating in the complaint process constitute cognizable misconduct. The Rule makes the prohibition against retaliation explicit in the interest of promoting public confidence in the complaint process.

Rules 4(a)(2), (3), and (4) reflect the judiciary’s commitment to maintaining a work environment in which all judicial employees are treated with dignity, fairness, and respect, and are free from harassment, discrimination, and retaliation. See Code of Conduct for United States Judges, Canon 3A(3) cmt. (“The duty to be respectful includes the responsibility to avoid comment or behavior that could reasonably be interpreted as harassment, prejudice or bias.”).

Rule 4(a)(5) provides that a judge’s refusal, without good cause shown, to cooperate in the investigation of a complaint or enforcement of a decision rendered under these Rules constitutes cognizable misconduct. While the exercise of rights under the Fifth Amendment to the Constitution would constitute good cause under Rule 4(a)(5), given the fact-specific nature of the inquiry, it is not possible to otherwise anticipate all circumstances that might also constitute good cause. The Commentary on Rule 13 provides additional discussion regarding Rule 4(a)(5). The Rules contemplate that judicial councils will not consider commencing proceedings under Rule 4(a)(5) except as necessary after other means to acquire the information or enforce a decision have been tried or have proven futile.

All judges have a duty to bring to the attention of the relevant chief district judge or chief circuit judge reliable information reasonably likely to constitute judicial misconduct or disability. See Rule 4(a)(6). This duty is included within every judge’s obligation to assist in addressing allegations of misconduct or disability and to take appropriate action as necessary. Public confidence in the integrity and impartiality of the judiciary is promoted when judges take appropriate action based on reliable information of likely misconduct. Appropriate action depends on the circumstances, but the overarching goal of such action should be to prevent harm to those affected by the misconduct and to prevent recurrence. See Code of Conduct for United States Judges, Canon 3B(6) & cmt. These Rules incorporate those principles while allowing for appropriate, expeditious, fair, and effective resolutions of all such complaints.
The formal procedures outlined in these Rules are intended to address serious issues of judicial misconduct and disability. By statute and rule, the chief circuit judge administers the misconduct and disability complaint process, including the authority to investigate an allegation and, if warranted, to identify a formal complaint. See Rule 5. Disclosures made to or otherwise brought to the attention of the appropriate chief district judge of reliable information of misconduct or disability that threatens the safety or security of any person or that is serious or egregious such that it threatens the integrity and proper functioning of the judiciary warrant communication to and consultation with the chief circuit judge in light of the chief circuit judge’s statutory responsibility for overseeing any required final action.

In practice, however, not all allegations of misconduct or disability will warrant resort to the formal procedures outlined in these Rules because they appear likely to yield to effective, prompt resolution through informal corrective action. In such cases, allegations may initially be addressed to the chief district judge or the chief circuit judge to determine whether informal corrective action will suffice and to initiate such steps as promptly as is reasonable under the circumstances.

A person who seeks to report information of misconduct or disability on a confidential or anonymous basis may proceed through various alternative avenues within the judiciary, including the Office of Judicial Integrity and/or comparable offices within the circuits.

Rule 4(a)(7) reflects that an allegation can meet the statutory standard for misconduct even though the judge’s alleged conduct did not occur in the course of the performance of official duties. Furthermore, some conduct specified in Rule 4(a)(1) through 4(a)(6), or not specified within these Rules, might constitute misconduct occurring outside the performance of official duties. The Code of Conduct for United States Judges expressly covers a wide range of extra-official activities, and some of these activities may constitute misconduct under the Act and these Rules. For example, allegations that a judge solicited funds for a charity or other organization or participated in a partisan political event are cognizable under the Act even though they did not occur in the course of the performance of the judge’s official duties.

Rule 4(b)(1) tracks the Act, 28 U.S.C. § 352(b)(1)(A)(ii), in excluding from the definition of misconduct allegations “[d]irectly related to the merits of a decision or procedural ruling.” This exclusion preserves the independence of judges in the exercise of judicial authority by ensuring that the complaint procedure is not used to collaterally call into question the substance of a judge’s decision or procedural ruling. Any allegation that calls into question the correctness of an official decision or procedural ruling of a judge — without more — is merits-related. The phrase “decision or procedural ruling” is not limited to rulings issued in deciding Article III cases or controversies. Thus, a complaint challenging the correctness of a chief judge’s determination to dismiss a prior misconduct complaint would be properly dismissed as merits-related — in other words, as challenging the substance of the judge’s
administrative determination to dismiss the complaint — even though it does not concern the judge’s rulings in Article III litigation. Similarly, an allegation that a judge incorrectly declined to approve a Criminal Justice Act voucher is merits-related under this standard.

Conversely, an allegation that a judge conspired with a prosecutor to make a particular ruling is not merits-related, even though it “relates” to a ruling in a colloquial sense. Such an allegation attacks the propriety of conspiring with the prosecutor and goes beyond a challenge to the correctness — “the merits” — of the ruling itself. An allegation that a judge ruled against the complainant because the complainant is a member of a particular racial or ethnic group, or because the judge dislikes the complainant personally, is also not merits-related. Such an allegation attacks the propriety of arriving at rulings with an illicit or improper motive. Similarly, an allegation that a judge used an inappropriate term to refer to a class of people is not merits-related even if the judge used it on the bench or in an opinion; the correctness of the judge’s rulings is not at stake. An allegation that a judge treated litigants, attorneys, judicial employees, or others in a demonstrably egregious and hostile manner is also not merits-related.

The existence of an appellate remedy is usually irrelevant to whether an allegation is merits-related. The merits-related ground for dismissal exists to protect judges’ independence in making rulings, not to protect or promote the appellate process. A complaint alleging an incorrect ruling is merits-related even though the complainant has no recourse from that ruling. By the same token, an allegation that is otherwise cognizable under the Act should not be dismissed merely because an appellate remedy appears to exist (for example, vacating a ruling that resulted from an improper ex parte communication). However, there may be occasions when appellate and misconduct proceedings overlap, and consideration and disposition of a complaint under these Rules may be properly deferred by the chief judge until the appellate proceedings are concluded to avoid inconsistent decisions.

Because of the special need to protect judges’ independence in deciding what to say in an opinion or ruling, a somewhat different standard applies to determine the merits-relatedness of a non-frivolous allegation that a judge’s language in a ruling reflected an improper motive. If the judge’s language was relevant to the case at hand — for example, a statement that a claim is legally or factually “frivolous” — then the judge’s choice of language is presumptively merits-related and excluded, absent evidence apart from the ruling itself suggesting an improper motive. If, on the other hand, the challenged language does not seem relevant on its face, then an additional inquiry under Rule 11(b) is necessary.

With regard to Rule 4(b)(2), a complaint of delay in a single case is excluded as merits-related. Such an allegation may be said to challenge the correctness of an official action of the judge, i.e., assigning a low priority to deciding the particular case. But, an allegation of a habitual pattern of delay in a significant number of unrelated
cases, or an allegation of deliberate delay in a single case arising out of an improper motive, is not merits-related.

Rule 4(c) relates to disability and provides only the most general definition, recognizing that a fact-specific approach is the only one available. A mental disability could involve cognitive impairment or any psychiatric or psychological condition that renders the judge unable to discharge the duties of office. Such duties may include those that are administrative. If, for example, the judge is a chief judge, the judicial council, fulfilling its obligation under 28 U.S.C. § 332(d)(1) to make “necessary and appropriate orders for the effective and expeditious administration of justice,” may find, under 28 U.S.C. § 45(d) or § 136(e), that the judge is “temporarily unable to perform” his or her chief-judge duties. In that event, an appropriate remedy could involve, under Rule 20(b)(1)(D)(vii), temporary reassignment of chief-judge duties to the next judge statutorily eligible to perform them.

Confidentiality as referenced elsewhere in these Rules is directed toward protecting the fairness and thoroughness of the process by which a complaint is filed or initiated, investigated (in specific circumstances), and ultimately resolved, as specified under these Rules. Nothing in these Rules concerning the confidentiality of the complaint process or the Code of Conduct for Judicial Employees concerning use or disclosure of confidential information received in the course of official duties prevents judicial employees from reporting or disclosing misconduct or disability. See Rule 23(c).

ARTICLE III. INITIATION OF COMPLAINT

5. Identification of Complaint

(a) Identification. When a chief judge has information constituting reasonable grounds for inquiry into whether a covered judge has engaged in misconduct or has a disability, the chief judge may conduct an inquiry, as he or she deems appropriate, into the accuracy of the information even if no related complaint has been filed. A chief judge who finds probable cause to believe that misconduct has occurred or that a disability exists may seek an informal resolution that he or she finds satisfactory. If no informal resolution is achieved or is feasible, the chief judge may identify a complaint and, by written order stating the reasons, begin the review provided in Rule 11. If the evidence of misconduct is clear and convincing and no informal resolution is achieved or is feasible, the chief judge must identify a complaint. A chief judge must not decline to identify a complaint merely because the person making the allegation has not filed a complaint under Rule 6. This Rule is subject to Rule 7.
(b) Submission Not Fully Complying with Rule 6. A legible submission in substantial but not full compliance with Rule 6 must be considered as possible grounds for the identification of a complaint under Rule 5(a).

COMMENTARY ON RULE 5

This Rule is adapted from the Breyer Committee Report, 239 F.R.D. at 245–46.

The Act authorizes a chief judge, by written order stating reasons, to identify a complaint and thereby dispense with the filing of a written complaint. See 28 U.S.C. § 351(b). Under Rule 5, when a chief judge becomes aware of information constituting reasonable grounds to inquire into possible misconduct or disability on the part of a covered judge, and no formal complaint has been filed, the chief judge has the power in his or her discretion to begin an appropriate inquiry. A chief judge’s decision whether to informally seek a resolution and/or to identify a complaint is guided by the results of that inquiry. If the chief judge concludes that there is probable cause to believe that misconduct has occurred or a disability exists, the chief judge may seek an informal resolution, if feasible, and if failing in that, may identify a complaint. Discretion is accorded largely for the reasons police officers and prosecutors have discretion in making arrests or bringing charges. The matter may be trivial and isolated, based on marginal evidence, or otherwise highly unlikely to lead to a misconduct or disability finding. On the other hand, if the inquiry leads the chief judge to conclude that there is clear and convincing evidence of misconduct or a disability, and no satisfactory informal resolution has been achieved or is feasible, the chief judge is required to identify a complaint.

An informal resolution is one agreed to by the subject judge and found satisfactory by the chief judge. Because an informal resolution under Rule 5 reached before a complaint is filed under Rule 6 will generally cause a subsequent Rule 6 complaint alleging the identical matter to be concluded, see Rule 11(d), the chief judge must be sure that the resolution is fully appropriate before endorsing it. In doing so, the chief judge must balance the seriousness of the matter against the particular judge’s alacrity in addressing the issue. The availability of this procedure should encourage attempts at swift remedial action before a formal complaint is filed.

When a chief judge identifies a complaint, a written order stating the reasons for the identification must be provided; this begins the process articulated in Rule 11. Rule 11 provides that once a chief judge has identified a complaint, the chief judge, subject to the disqualification provisions of Rule 25, will perform, with respect to that complaint, all functions assigned to the chief judge for the determination of complaints filed by a complainant.

In high-visibility situations, it may be desirable for a chief judge to identify a complaint without first seeking an informal resolution (and then, if the circumstances
warrant, dismiss or conclude the identified complaint without appointment of a special
committee) in order to assure the public that the allegations have not been ignored.

A chief judge’s decision not to identify a complaint under Rule 5 is not appealable
and is subject to Rule 4(b)(1), which excludes merits-related complaints from the
definition of misconduct.

A chief judge may not decline to identify a complaint solely on the basis that the
unfiled allegations could be raised by one or more persons in a filed complaint, but none
of these persons has opted to do so.

Subsection (a) concludes by stating that this Rule is “subject to Rule 7.” This is
intended to establish that only (i) the chief judge of the home circuit of a potential
subject judge, or (ii) the chief judge of a circuit in which misconduct is alleged to have
occurred in the course of official business while the potential subject judge was sitting
by designation, shall have the power or a duty under this Rule to identify a complaint.

Subsection (b) provides that submissions that do not comply with the
requirements of Rule 6(d) must be considered under Rule 5(a). For instance, if a
complaint has been filed but the form submitted is unsigned, or the truth of the
statements therein are not verified in writing under penalty of perjury, then a chief judge
must nevertheless consider the allegations as known information and as a possible
basis for the identification of a complaint under the process described in Rule 5(a).

6. Filing of Complaint

(a) Form. A complainant may use the form reproduced in the Appendix
to these Rules or a form designated by the rules of the judicial
council in the circuit in which the complaint is filed. A complaint
form is also available on each court of appeals’ website or may be
obtained from the circuit clerk or any district court or bankruptcy
court within the circuit. A form is not necessary to file a complaint,
but the complaint must be written and must include the information
described in (b).

(b) Brief Statement of Facts. A complaint must contain a concise
statement that details the specific facts on which the claim of
misconduct or disability is based. The statement of facts should
include a description of:

(1) what happened;

(2) when and where the relevant events happened;

(3) any information that would help an investigator check the
facts; and
(4) for an allegation of disability, any additional facts that form the basis of that allegation.

(c) Legibility. A complaint should be typewritten if possible. If not typewritten, it must be legible. An illegible complaint will be returned to the complainant with a request to resubmit it in legible form. If a resubmitted complaint is still illegible, it will not be accepted for filing.

(d) Complainant’s Address and Signature; Verification. The complainant must provide a contact address and sign the complaint. The truth of the statements made in the complaint must be verified in writing under penalty of perjury. If any of these requirements are not met, the submission will be accepted, but it will be reviewed under only Rule 5(b).

(e) Number of Copies; Envelope Marking. The complainant shall provide the number of copies of the complaint required by local rule. Each copy should be in an envelope marked “Complaint of Misconduct” or “Complaint of Disability.” The envelope must not show the name of any subject judge.

COMMENTARY ON RULE 6

The Rule is adapted from the Illustrative Rules and is largely self-explanatory. As discussed in the Commentary on Rule 4 and in Rule 23(c), confidentiality as referenced elsewhere in these Rules does not prevent judicial employees from reporting or disclosing misconduct or disability.

7. Where to Initiate Complaint

(a) Where to File. Except as provided in (b),

(1) a complaint against a judge of a United States court of appeals, a United States district court, a United States bankruptcy court, or a United States magistrate judge must be filed with the circuit clerk in the jurisdiction in which the subject judge holds office.

(2) a complaint against a judge of the United States Court of International Trade or the United States Court of Federal Claims must be filed with the respective clerk of that court.

(3) a complaint against a judge of the United States Court of Appeals for the Federal Circuit must be filed with the circuit executive of that court.
(b) Misconduct in Another Circuit; Transfer. If a complaint alleges misconduct in the course of official business while the subject judge was sitting on a court by designation under 28 U.S.C. §§ 291–293 and 294(d), the complaint may be filed or identified with the circuit clerk of that circuit or of the subject judge’s home circuit. The proceeding will continue in the circuit of the first-filed or first-identified complaint. The judicial council of the circuit where the complaint was first filed or first identified may transfer the complaint to the subject judge’s home circuit or to the circuit where the alleged misconduct occurred, as the case may be.

COMMENTARY ON RULE 7

Title 28 U.S.C. § 351 states that complaints are to be filed with “the clerk of the court of appeals for the circuit.” However, in many circuits, this role is filled by circuit executives. Accordingly, the term “circuit clerk,” as defined in Rule 3(b) and used throughout these Rules, applies to circuit executives.

Section 351 uses the term “the circuit” in a way that suggests that either the home circuit of the subject judge or the circuit in which misconduct is alleged to have occurred is the proper venue for complaints. With an exception for judges sitting by designation, the Rule requires the filing or identification of a misconduct or disability complaint in the circuit in which the judge holds office, largely based on the administrative perspective of the Act. Given the Act’s emphasis on the future conduct of the business of the courts, the circuit in which the judge holds office is the appropriate forum because that circuit is likely best able to influence a judge’s future behavior in constructive ways.

However, when judges sit by designation, the non-home circuit has a strong interest in redressing misconduct in the course of official business, and where allegations also involve a member of the bar — ex parte contact between an attorney and a judge, for example — it may often be desirable to have the judicial and bar misconduct proceedings take place in the same venue. Rule 7(b), therefore, allows transfer to, or filing or identification of a complaint in, the non-home circuit. The proceeding may be transferred by the judicial council of the filing or identified circuit to the other circuit.

8. Action by Circuit Clerk

(a) Receipt of Complaint. Upon receiving a complaint against a judge filed under Rule 6 or identified under Rule 5, the circuit clerk must open a file, assign a docket number according to a uniform numbering scheme promulgated by the Committee on Judicial Conduct and Disability, and acknowledge the complaint’s receipt.
(b) Distribution of Copies. The circuit clerk must promptly send copies of a complaint filed under Rule 6 to the chief judge or, where the chief judge is disqualified from considering a complaint, to the judge authorized to act as chief judge under Rule 25(f), and copies of complaints filed under Rule 6 or identified under Rule 5 to each subject judge. The circuit clerk must retain the original complaint. Any further distribution should be as provided by local rule.

(c) Complaint Against Noncovered Person. If the circuit clerk receives a complaint about a person not holding an office described in Rule 1(b), the clerk must not accept the complaint under these Rules.

(d) Complaint Against Judge and Another Noncovered Person. If the circuit clerk receives a complaint about a judge described in Rule 1(b) and a person not holding an office described in Rule 1(b), the clerk must accept the complaint under these Rules only with regard to the judge and must so inform the complainant.

COMMENTARY ON RULE 8

This Rule is adapted from the Illustrative Rules and is largely self-explanatory.

The uniform docketing scheme described in subsection (a) should take into account potential problems associated with a complaint that names multiple judges. One solution may be to provide separate docket numbers for each subject judge. Separate docket numbers would help avoid difficulties in tracking cases, particularly if a complaint is dismissed with respect to some, but not all of the named judges.

Complaints against noncovered persons are not to be accepted for processing under these Rules but may, of course, be accepted under other circuit rules or procedures for grievances.

9. Time for Filing or Identifying Complaint

A complaint may be filed or identified at any time. If the passage of time has made an accurate and fair investigation of a complaint impracticable, the complaint must be dismissed under Rule 11(c)(1)(E).

COMMENTARY ON RULE 9

This Rule is adapted from the Act, 28 U.S.C. §§ 351, 352(b)(1)(A)(iii), and the Illustrative Rules.
10. Abuse of Complaint Procedure

(a) Abusive Complaints. A complainant who has filed repetitive, harassing, or frivolous complaints, or has otherwise abused the complaint procedure, may be restricted from filing further complaints. After giving the complainant an opportunity to show cause in writing why his or her right to file further complaints should not be limited, the judicial council may prohibit, restrict, or impose conditions on the complainant’s use of the complaint procedure. Upon written request of the complainant, the judicial council may revise or withdraw any prohibition, restriction, or condition previously imposed.

(b) Orchestrated Complaints. When many essentially identical complaints from different complainants are received and appear to be part of an orchestrated campaign, the chief judge may recommend that the judicial council issue a written order instructing the circuit clerk to accept only a certain number of such complaints for filing and to refuse to accept additional complaints. The circuit clerk must send a copy of any such order to anyone whose complaint was not accepted.

COMMENTARY ON RULE 10

This Rule is adapted from the Illustrative Rules.

Rule 10(a) provides a mechanism for a judicial council to restrict the filing of further complaints by a single complainant who has abused the complaint procedure. In some instances, however, the complaint procedure may be abused in a manner for which the remedy provided in Rule 10(a) may not be appropriate. For example, some circuits have been inundated with submissions of dozens or hundreds of essentially identical complaints against the same judge or judges, all submitted by different complainants. In many of these instances, persons with grievances against a particular judge or judges used the Internet or other technology to orchestrate mass complaint-filing campaigns against them. If each complaint submitted as part of such a campaign were accepted for filing and processed according to these Rules, there would be a serious drain on court resources without any benefit to the adjudication of the underlying merits.

A judicial council may, therefore, respond to such mass filings under Rule 10(b) by declining to accept repetitive complaints for filing, regardless of the fact that the complaints are nominally submitted by different complainants. When the first complaint or complaints have been dismissed on the merits, and when further, essentially identical submissions follow, the judicial council may issue a second order noting that these are identical or repetitive complaints, directing the circuit clerk not to accept these
complaints or any further such complaints for filing, and directing the clerk to send each putative complainant copies of both orders.

ARTICLE IV. REVIEW OF COMPLAINT BY CHIEF JUDGE

11. Chief Judge’s Review

(a) Purpose of Chief Judge’s Review. When a complaint is identified by the chief judge or is filed, the chief judge must review it unless the chief judge is disqualified under Rule 25, in which case the most-senior active circuit judge not disqualified will review the complaint. If a complaint contains information constituting evidence of misconduct or disability, but the complainant does not claim it as such, the chief judge must treat the complaint as if it did allege misconduct or disability and give notice to the subject judge. After reviewing a complaint, the chief judge must determine whether it should be:

(1) dismissed;

(2) concluded on the ground that voluntary corrective action has been taken;

(3) concluded because intervening events have made action on the complaint no longer necessary; or

(4) referred to a special committee.

(b) Chief Judge’s Inquiry. In determining what action to take under Rule 11(a), the chief judge may conduct a limited inquiry. The chief judge, or a designee, may communicate orally or in writing with the complainant, the subject judge, and any others who may have knowledge of the matter, and may obtain and review transcripts and other relevant documents. In conducting the inquiry, the chief judge must not determine any reasonably disputed issue. Any such determination must be left to a special committee appointed under Rule 11(f) and to the judicial council that considers the committee’s report.

(c) Dismissal.

(1) Permissible grounds. A complaint may be dismissed in whole or in part to the extent that the chief judge concludes that the complaint:
(A) alleges conduct that, even if true, is not prejudicial to the effective and expeditious administration of the business of the courts and does not indicate a mental or physical disability resulting in the inability to discharge the duties of judicial office;

(B) is directly related to the merits of a decision or procedural ruling;

(C) is frivolous;

(D) is based on allegations lacking sufficient evidence to raise an inference that misconduct has occurred or that a disability exists;

(E) is based on allegations that are incapable of being established through investigation;

(F) has been filed in the wrong circuit under Rule 7; or

(G) is otherwise not appropriate for consideration under the Act.

(2) Impermissible grounds. A complaint must not be dismissed solely because it repeats allegations of a previously dismissed complaint if it also contains material information not previously considered and does not constitute harassment of the subject judge.

(d) Corrective Action. The chief judge may conclude a complaint proceeding in whole or in part if:

(1) an informal resolution under Rule 5 satisfactory to the chief judge was reached before the complaint was filed under Rule 6; or

(2) the chief judge determines that the subject judge has taken appropriate voluntary corrective action that acknowledges and remedies the problems raised by the complaint.

(e) Intervening Events. The chief judge may conclude a complaint proceeding in whole or in part upon determining that intervening events render some or all of the allegations moot or make remedial action impossible as to the subject judge.
(f) Appointment of Special Committee. If some or all of a complaint is not dismissed or concluded, the chief judge must promptly appoint a special committee to investigate the complaint or any relevant portion of it and to make recommendations to the judicial council. Before appointing a special committee, the chief judge must invite the subject judge to respond to the complaint either orally or in writing if the judge was not given an opportunity during the limited inquiry. In the chief judge’s discretion, separate complaints may be joined and assigned to a single special committee. Similarly, a single complaint about more than one judge may be severed and more than one special committee appointed.

(g) Notice of Chief Judge’s Action; Petition for Review.

(1) When chief judge appoints special committee. If the chief judge appoints a special committee, the chief judge must notify the complainant and the subject judge that the matter has been referred to a committee, notify the complainant of a complainant’s rights under Rule 16, and identify the members of the committee. A copy of the order appointing the special committee must be sent to the Committee on Judicial Conduct and Disability.

(2) When chief judge disposes of complaint without appointing special committee. If the chief judge disposes of a complaint under Rule 11(c), (d), or (e), the chief judge must prepare a supporting memorandum that sets forth the reasons for the disposition. If the complaint was initiated by identification under Rule 5, the memorandum must so indicate. Except as authorized by 28 U.S.C. § 360, the memorandum must not include the name of the complainant or of the subject judge. The order and memoranda incorporated by reference in the order must be promptly sent to the complainant, the subject judge, and the Committee on Judicial Conduct and Disability.

(3) Right to petition for review. If the chief judge disposes of a complaint under Rule 11(c), (d), or (e), the complainant and the subject judge must be notified of the right to petition the judicial council for review of the disposition, as provided in Rule 18. If the chief judge so disposes of a complaint that was identified under Rule 5 or filed by its subject judge, the chief judge must transmit the order and memoranda incorporated by reference in the order to the judicial council for review in accordance with Rule 19. In the event of such a transmission, the subject judge may make a written submission to the
judicial council but will have no further right of review except as allowed under Rule 21(b)(1)(B). When a disposition is to be reviewed by the judicial council, the chief judge must promptly transmit all materials obtained in connection with the inquiry under Rule 11(b) to the circuit clerk for transmittal to the council.

(h) Public Availability of Chief Judge’s Decision. The chief judge’s decision must be made public to the extent, at the time, and in the manner provided in Rule 24.

COMMENTARY ON RULE 11

This Rule describes complaint-review actions available either to the chief judge or, where that judge is the subject judge or is otherwise disqualified under Rule 25, such as where the complaint is filed against the chief judge, to the judge designated under Rule 25(f) to perform the chief judge’s duties under these Rules. Subsection (a) of this Rule provides that where a complaint has been filed under Rule 6, the ordinary doctrines of waiver do not apply. The chief judge must identify as a complaint any misconduct or disability issues raised by the factual allegations of the complaint even if the complainant makes no such claim with regard to those issues. For example, an allegation limited to misconduct in fact-finding that mentions periods during a trial when the judge was asleep must be treated as a complaint regarding disability. A formal order giving notice of the expanded scope of the proceeding must be given to the subject judge.

Subsection (b) describes the nature of the chief judge’s inquiry. It is based largely on the Breyer Committee Report, 239 F.R.D. at 243–45. The Act states that dismissal is appropriate “when a limited inquiry . . . demonstrates that the allegations in the complaint lack any factual foundation or are conclusively refuted by objective evidence.” 28 U.S.C. § 352(b)(1)(B). At the same time, however, Section 352(a) states that “[t]he chief judge shall not undertake to make findings of fact about any matter that is reasonably in dispute.” These two statutory standards should be read together so that a matter is not “reasonably” in dispute if a limited inquiry shows that the allegations do not constitute misconduct or disability, that they lack any reliable factual foundation, or that they are conclusively refuted by objective evidence.

In conducting a limited inquiry under subsection (b), the chief judge must avoid determinations of reasonably disputed issues, including reasonably disputed issues as to whether the facts alleged constitute misconduct or disability, which are ordinarily left to the judicial council and its special committee. An allegation of fact is ordinarily not “refuted” simply because the subject judge denies it. The limited inquiry must reveal something more in the way of refutation before it is appropriate to dismiss a complaint that is otherwise cognizable. If it is the complainant's word against the subject judge’s—in other words, there is simply no other significant evidence of what happened or of the
complainant’s unreliability — then there must be a special-committee investigation. Such a credibility issue is a matter “reasonably in dispute” within the meaning of the Act.

However, dismissal following a limited inquiry may occur when a complaint refers to transcripts or to witnesses and the chief judge determines that the transcripts and witnesses all support the subject judge. Breyer Committee Report, 239 F.R.D. at 243. For example, consider a complaint alleging that the subject judge said X, and the complaint mentions, or it is independently clear, that five people may have heard what the judge said. Id. The chief judge is told by the subject judge and one witness that the judge did not say X, and the chief judge dismisses the complaint without questioning the other four possible witnesses. Id. In this example, the matter remains reasonably in dispute. If all five witnesses say the subject judge did not say X, dismissal is appropriate, but if potential witnesses who are reasonably accessible have not been questioned, then the matter remains reasonably in dispute. Id.

Similarly, under subsection (c)(1)(A), if it is clear that the conduct or disability alleged, even if true, is not cognizable under these Rules, the complaint should be dismissed. If that issue is reasonably in dispute, however, dismissal under subsection (c)(1)(A) is inappropriate.

Essentially, the standard articulated in subsection (b) is that used to decide motions for summary judgment pursuant to Fed. R. Civ. P. 56. Genuine issues of material fact are not resolved at the summary judgment stage. A material fact is one that “might affect the outcome of the suit under the governing law,” and a dispute is “genuine” if “the evidence is such that a reasonable jury could return a verdict for the nonmoving party.” Anderson v. Liberty Lobby, 477 U.S. 242, 248 (1986). Similarly, the chief judge may not resolve a genuine issue concerning a material fact or the existence of misconduct or a disability when conducting a limited inquiry pursuant to subsection (b).

Subsection (c) describes the grounds on which a complaint may be dismissed. These are adapted from the Act, 28 U.S.C. § 352(b), and the Breyer Committee Report, 239 F.R.D. at 239–45. Subsection (c)(1)(A) permits dismissal of an allegation that, even if true, does not constitute misconduct or disability under the statutory standard. The proper standards are set out in Rule 4 and discussed in the Commentary on that Rule. Subsection (c)(1)(B) permits dismissal of complaints related to the merits of a decision by a subject judge; this standard is also governed by Rule 4 and its accompanying Commentary.

Subsections (c)(1)(C)–(E) implement the statute by allowing dismissal of complaints that are “frivolous, lacking sufficient evidence to raise an inference that misconduct has occurred, or containing allegations which are incapable of being established through investigation.” 28 U.S.C. § 352(b)(1)(A)(iii).
Dismissal of a complaint as “frivolous” under Rule 11(c)(1)(C) will generally occur without any inquiry beyond the face of the complaint. For instance, when the allegations are facially incredible or so lacking in indicia of reliability that no further inquiry is warranted, dismissal under this subsection is appropriate.

A complaint warranting dismissal under Rule 11(c)(1)(D) is illustrated by the following example. Consider a complainant who alleges an impropriety and asserts that he knows of it because it was observed and reported to him by a person who is identified. The subject judge denies that the event occurred. When contacted, the source also denies it. In such a case, the chief judge’s proper course of action may turn on whether the source had any role in the allegedly improper conduct. If the complaint was based on a lawyer’s statement that he or she had an improper ex parte contact with a judge, the lawyer’s denial of the impropriety might not be taken as wholly persuasive, and it would be appropriate to conclude that a real factual issue is raised. On the other hand, if the complaint quoted a disinterested third party and that disinterested party denied that the statement had been made, there would be no value in opening a formal investigation. In such a case, it would be appropriate to dismiss the complaint under Rule 11(c)(1)(D).

Rule 11(c)(1)(E) is intended, among other things, to cover situations when no evidence is offered or identified, or when the only identified source is unavailable. Breyer Committee Report, 239 F.R.D. at 243. For example, a complaint alleges that an unnamed attorney told the complainant that the subject judge did X. Id. The subject judge denies it. The chief judge requests that the complainant (who does not purport to have observed the subject judge do X) identify the unnamed witness, or that the unnamed witness come forward so that the chief judge can learn the unnamed witness’s account. Id. The complainant responds that he has spoken with the unnamed witness, that the unnamed witness is an attorney who practices in federal court, and that the unnamed witness is unwilling to be identified or to come forward. Id. at 243–44. The allegation is then properly dismissed as containing allegations that are incapable of being established through investigation. Id.

If, however, the situation involves a reasonable dispute over credibility, the matter should proceed. For example, the complainant alleges an impropriety and alleges that he or she observed it and that there were no other witnesses; the subject judge denies that the event occurred. Unless the complainant’s allegations are facially incredible or so lacking indicia of reliability as to warrant dismissal under Rule 11(c)(1)(C), a special committee must be appointed because there is a material factual question that is reasonably in dispute.

Dismissal is also appropriate when a complaint is filed so long after an alleged event that memory loss, death, or changes to unknown residences prevent a proper investigation.
Subsection (c)(2) indicates that the investigative nature of the process prevents the application of claim preclusion principles where new and material evidence becomes available. However, it also recognizes that at some point a renewed investigation may constitute harassment of the subject judge and should not be undertaken, depending of course on the seriousness of the issues and the weight of the new evidence.

Rule 11(d) implements the Act’s provision for dismissal if voluntary appropriate corrective action has been taken. It is largely adapted from the Breyer Committee Report, 239 F.R.D. at 244–45. The Act authorizes the chief judge to conclude the complaint proceedings if “appropriate corrective action has been taken.” 28 U.S.C. § 352(b)(2). Under the Rule, action taken after a complaint is filed is “appropriate” when it acknowledges and remedies the problem raised by the complaint. Breyer Committee Report, 239 F.R.D. at 244. Because the Act deals with the conduct of judges, the emphasis is on correction of the judicial conduct that was the subject of the complaint. Id. Terminating a complaint based on corrective action is premised on the implicit understanding that voluntary self-correction or redress of misconduct or a disability may be preferable to sanctions. Id. The chief judge may facilitate this process by giving the subject judge an objective view of the appearance of the judicial conduct in question and by suggesting appropriate corrective measures. Id. Moreover, when corrective action is taken under Rule 5 satisfactory to the chief judge before a complaint is filed, that informal resolution will be sufficient to conclude a subsequent complaint based on identical conduct.

“Corrective action” must be voluntary action taken by the subject judge. Breyer Committee Report, 239 F.R.D. at 244. A remedial action directed by the chief judge or by an appellate court without the participation of the subject judge in formulating the directive or without the subject judge’s subsequent agreement to such action does not constitute the requisite voluntary corrective action. Id. Neither the chief judge nor an appellate court has authority under the Act to impose a formal remedy or sanction; only the judicial council can impose a formal remedy or sanction under 28 U.S.C. § 354(a)(2). Id. Compliance with a previous judicial-council order may serve as corrective action allowing conclusion of a later complaint about the same behavior. Id.

Where a subject judge’s conduct has resulted in identifiable, particularized harm to the complainant or another individual, appropriate corrective action should include steps taken by that judge to acknowledge and redress the harm, if possible, such as by an apology, recusal from a case, or a pledge to refrain from similar conduct in the future. Id. While the Act is generally forward-looking, any corrective action should, to the extent possible, serve to correct a specific harm to an individual, if such harm can reasonably be remedied. Id. In some cases, corrective action may not be “appropriate” to justify conclusion of a complaint unless the complainant or other individual harmed is meaningfully apprised of the nature of the corrective action in the chief judge’s order, in a direct communication from the subject judge, or otherwise. Id.
Voluntary corrective action should be proportionate to any plausible allegations of misconduct in a complaint. The form of corrective action should also be proportionate to any sanctions that the judicial council might impose under Rule 20(b), such as a private or public reprimand or a change in case assignments. Breyer Committee Report, 239 F.R.D. at 244–45. In other words, minor corrective action will not suffice to dispose of a serious matter. *Id.*

Rule 11(e) implements Section 352(b)(2) of the Act, which permits the chief judge to “conclude the proceeding,” if “action on the complaint is no longer necessary because of intervening events,” such as a resignation from judicial office. Ordinarily, stepping down from an administrative post such as chief judge, judicial-council member, or court-committee chair does not constitute an event rendering unnecessary any further action on a complaint alleging judicial misconduct. Breyer Committee Report, 239 F.R.D. at 245. As long as the subject of a complaint retains the judicial office and remains a covered judge as defined in Rule 1(b), a complaint must be addressed. *Id.; 28 U.S.C. §§ 371(b); 372(a).*

Concluding a complaint proceeding, by either the judicial council of the subject judge or the judicial council to which a complaint proceeding has been transferred, precludes remedial action under the Act and these Rules as to the subject judge. But the Judicial Conference and the judicial council of the subject judge have ample authority to assess potential institutional issues related to the complaint as part of their respective responsibilities to promote “the expeditious conduct of court business,” 28 U.S.C. § 331, and to “make all necessary and appropriate orders for the effective administration of justice within [each] circuit.” *Id.* at § 332(d)(1). Such an assessment might include an analysis of what conditions may have enabled misconduct or prevented its discovery, and what precautionary or curative steps could be undertaken to prevent its recurrence. The judicial council may request that the Committee on Judicial Conduct and Disability transmit its order to relevant Congressional entities.

If a complaint is not disposed of pursuant to Rule 11(c), (d), or (e), a special committee must be appointed. Rule 11(f) states that a subject judge must be invited to respond to the complaint before a special committee is appointed, if no earlier response was invited.

Subject judges receive copies of complaints at the same time that they are referred to the chief judge, and they are free to volunteer responses to them. Under Rule 11(b), the chief judge may request a response if it is thought necessary. However, many complaints are clear candidates for dismissal even if their allegations are accepted as true, and there is no need for the subject judge to devote time to a defense.

The Act requires that the order dismissing a complaint or concluding a proceeding contain a statement of reasons and that a copy of the order be sent to the complainant. 28 U.S.C. § 352(b). Rule 24, dealing with availability of information to the public, contemplates that the order will be made public, usually without disclosing the
names of the complainant or the subject judge. If desired for administrative purposes, more identifying information can be included in a non-public version of the order.

When a complaint is disposed of by the chief judge, the statutory purposes are best served by providing the complainant with a full, particularized, but concise explanation, giving reasons for the conclusions reached. See also Commentary on Rule 24 (dealing with public availability).

Rule 11(g) provides that the complainant and the subject judge must be notified, in the case of a disposition by the chief judge, of the right to petition the judicial council for review. Because an identified complaint has no “complainant” to petition for review, the chief judge’s dispositive order on such a complaint will be transmitted to the judicial council for review. The same will apply where a complaint was filed by its subject judge. A copy of the chief judge’s order, and memoranda incorporated by reference in the order, disposing of a complaint must be sent by the circuit clerk to the Committee on Judicial Conduct and Disability.

ARTICLE V. INVESTIGATION AND REPORT BY SPECIAL COMMITTEE

12. Special Committee’s Composition

(a) Membership. Except as provided in (e), a special committee appointed under Rule 11(f) must consist of the chief judge and equal numbers of circuit and district judges. These judges may include senior judges. If a complaint is about a district judge, bankruptcy judge, or magistrate judge, then, when possible, the district-judge members of the special committee must be from districts other than the district of the subject judge. For the courts named in 28 U.S.C. § 363, the special committee must be selected from the judges serving on the subject judge’s court.

(b) Presiding Officer. When appointing the special committee, the chief judge may serve as the presiding officer or else must designate a committee member as the presiding officer.

(c) Bankruptcy Judge or Magistrate Judge as Adviser. If the subject judge is a bankruptcy judge or magistrate judge, he or she may, within 14 days after being notified of the special committee’s appointment, ask the chief judge to designate as a committee adviser another bankruptcy judge or magistrate judge, as the case may be. The chief judge must grant such a request but may otherwise use discretion in naming the adviser. Unless the adviser is a Court of Federal Claims special master appointed under 42 U.S.C. § 300aa-12(c), the adviser must be from a district other than the district of the subject bankruptcy judge or subject magistrate judge.
judge. The adviser cannot vote but has the other privileges of a special-committee member.

(d) Provision of Documents. The chief judge must certify to each other member of the special committee and to any adviser copies of the complaint and statement of facts, in whole or relevant part, and any other relevant documents on file.

(e) Continuing Qualification of Special-Committee Member. A member of a special committee may continue to serve on the committee even though the member relinquishes the position of chief judge, active circuit judge, or active district judge, as the case may be, but only if the member continues to hold office under Article III, Section 1, of the Constitution of the United States, or under \(28\text{ U.S.C. \& § 171}\).

(f) Inability of Special-Committee Member to Complete Service. If a member of a special committee can no longer serve because of death, disability, disqualification, resignation, retirement from office, or other reason, the chief judge must decide whether to appoint a replacement member, either a circuit or district judge as needed under (a). No special committee appointed under these Rules may function with only a single member, and the votes of a two-member committee must be unanimous.

(g) Voting. All actions by a special committee must be by vote of a majority of all members of the committee.

COMMENTARY ON RULE 12

This Rule is adapted from the Act and the Illustrative Rules.

Rule 12 leaves the size of a special committee flexible, to be determined on a case-by-case basis. The question the size of a special committee is one that should be weighed with care in view of the potential for consuming the members' time; a large committee should be appointed only if there is a special reason to do so. Rule 12(a) acknowledges the common practice of including senior judges in the membership of a special committee.

Although the Act requires that the chief judge be a member of each special committee, \(28\text{ U.S.C. \& § 353(a)(1)}\), it does not require that the chief judge preside. Accordingly, Rule 12(b) provides that if the chief judge does not preside, he or she must designate another member of the special committee as the presiding officer.

Rule 12(c) provides that the chief judge must appoint a bankruptcy judge or magistrate judge as an adviser to a special committee at the request of a bankruptcy or magistrate subject judge. Subsection (c) also provides that the adviser will have all the
privileges of a member of the special committee except a vote. The adviser, therefore, may participate in all deliberations of the special committee, question witnesses at hearings, and write a separate statement to accompany the committee’s report to the judicial council.

Rule 12(e) provides that a member of a special committee who remains an Article III judge may continue to serve on the committee even though the member’s status otherwise changes. Thus, a special committee that originally consisted of the chief judge and an equal number of circuit and district judges, as required by the law, may continue to function even though changes of status alter that composition. This provision reflects the belief that stability of membership will contribute to the quality of the work of such committees.

Stability of membership is also the principal concern animating Rule 12(f), which deals with the case in which a special committee loses a member before its work is complete. The Rule permits the chief judge to determine whether a replacement member should be appointed. Generally, appointment of a replacement member is desirable in these situations unless the special committee has conducted evidentiary hearings before the vacancy occurs. However, cases may arise in which a special committee is in the late stages of its work, and in which it would be difficult for a new member to play a meaningful role. The Rule also preserves the collegial character of the special-committee process by prohibiting a single surviving member from serving as a committee and by providing that a committee of two surviving members will, in essence, operate under a unanimity rule.

Rule 12(g) provides that actions of a special committee must be by vote of a majority of all the members. All the members of a special committee should participate in committee decisions. In that circumstance, it seems reasonable to require that special-committee decisions be made by a majority of the membership, rather than a majority of some smaller quorum.

13. Conduct of Special-Committee Investigation

(a) Extent and Methods of Special-Committee Investigation. A special committee should determine the appropriate extent and methods of its investigation in light of the allegations in the complaint and the committee’s preliminary inquiry. In investigating the alleged misconduct or disability, the special committee should take steps to determine the full scope of the potential misconduct or disability, including whether a pattern of misconduct or a broader disability exists. The investigation may include use of appropriate experts or other professionals. If, in the course of the investigation, the special committee has cause to believe that the subject judge may have engaged in misconduct or has a disability that is beyond the specific pending complaint, the committee must refer the new matter to the
chief judge for a determination of whether action under Rule 5 or Rule 11 is necessary before the committee’s investigation is expanded to include the new matter.

(b) Criminal Conduct. If the special committee’s investigation concerns conduct that may be a crime, the committee must consult with the appropriate prosecutorial authorities to the extent permitted by the Act to avoid compromising any criminal investigation. The special committee has final authority over the timing and extent of its investigation and the formulation of its recommendations.

(c) Staff. The special committee may arrange for staff assistance to conduct the investigation. It may use existing staff of the judiciary or may hire special staff through the Director of the Administrative Office of the United States Courts.

(d) Delegation of Subpoena Power; Contempt. The chief judge may delegate the authority to exercise the subpoena powers of the special committee. The judicial council or special committee may institute a contempt proceeding under 28 U.S.C. § 332(d) against anyone who fails to comply with a subpoena.

COMMENTARY ON RULE 13

This Rule is adapted from the Illustrative Rules.

Rule 13, as well as Rules 14, 15, and 16, are concerned with the way in which the special committee carries out its mission. They reflect the view that the special committee has two roles that are separated in ordinary litigation. First, the special committee has an investigative role of the kind that is characteristically left to executive branch agencies or discovery by civil litigants. 28 U.S.C. § 353(c). Second, it has a formalized fact-finding and recommendation-of-disposition role that is characteristically left to juries, judges, or arbitrators. Id. Rule 13 generally governs the investigative stage. Even though the same body has responsibility for both roles under the Act, it is important to distinguish between them in order to ensure that appropriate rights are afforded at appropriate times to the subject judge.

Rule 13(a) includes a provision making clear that the special committee may choose to consult appropriate experts or other professionals if it determines that such a consultation is warranted. If, for example, the special committee has cause to believe that the subject judge may be unable to discharge all of the duties of office by reason of mental or physical disability, the committee could ask the subject judge to respond to inquiries and, if necessary, request the judge to undergo a medical or psychological examination. In advance of any such examination, the special committee may enter into an agreement with the subject judge as to the scope and use that may be made of
the examination results. In addition or in the alternative, the special committee may ask to review existing records, including medical records.

The extent of the subject judge’s cooperation in the investigation may be taken into account in the consideration of the underlying complaint. If, for example, the subject judge impedes reasonable efforts to confirm or disconfirm the presence of a disability, the special committee may still consider whether the conduct alleged in the complaint and confirmed in the investigation constitutes disability. The same would be true of a complaint alleging misconduct.

The special committee may also consider whether such a judge might be in violation of his or her duty to cooperate in an investigation under these Rules, a duty rooted not only in the Act’s definition of misconduct but also in the Code of Conduct for United States Judges, which emphasizes the need to maintain public confidence in the judiciary, see Canon 2(A) and Canon 1 cmt., and requires judges to “facilitate the performance of the administrative responsibilities of other judges and court personnel,” Canon 3(B)(1). If the special committee finds a breach of the duty to cooperate and believes that the breach may amount to misconduct under Rule 4(a)(5), it should determine, under the final sentence of Rule 13(a), whether that possibility should be referred to the chief judge for consideration of action under Rule 5 or Rule 11. See also Commentary on Rule 4.

One of the difficult questions that can arise is the relationship between proceedings under the Act and criminal investigations. Rule 13(b) assigns responsibility for coordination to the special committee in cases in which criminal conduct is suspected, but gives the committee the authority to determine the appropriate pace of its activity in light of any criminal investigation.

Title 28 U.S.C. § 356(a) provides that a special committee will have full subpoena powers as provided in 28 U.S.C. § 332(d). Section 332(d)(1) provides that subpoenas will be issued on behalf of a judicial council by the circuit clerk “at the direction of the chief judge of the circuit or his designee.” Rule 13(d) contemplates that, where the chief judge designates someone else as presiding officer of the special committee, the presiding officer also be delegated the authority to direct the circuit clerk to issue subpoenas related to committee proceedings. That is not intended to imply, however, that the decision to use the subpoena power is exercisable by the presiding officer alone. See Rule 12(g).

14. Conduct of Special-Committee Hearings

(a) Purpose of Hearings. The special committee may hold hearings to take testimony and receive other evidence, to hear argument, or both. If the special committee is investigating allegations against more than one judge, it may hold joint or separate hearings.
(b) **Special-Committee Evidence.** Subject to Rule 15, the special committee must obtain material, nonredundant evidence in the form it considers appropriate. In the special committee’s discretion, evidence may be obtained by committee members, staff, or both. Witnesses offering testimonial evidence may include the complainant and the subject judge.

(c) **Counsel for Witnesses.** The subject judge has the right to counsel. The special committee has discretion to decide whether other witnesses may have counsel present when they testify.

(d) **Witness Fees.** Witness fees must be paid as provided in [28 U.S.C. § 1821](https://www.law.cornell.edu/uscode/text/28/1821).

(e) **Oath.** All testimony taken at a hearing must be given under oath or affirmation.

(f) **Rules of Evidence.** The Federal Rules of Evidence do not apply to special-committee hearings.

(g) **Record and Transcript.** A record and transcript must be made of all hearings.

**COMMENTARY ON RULE 14**

This Rule is adapted from the Act, 28 U.S.C. § 353, and the Illustrative Rules.

Rule 14 is concerned with the conduct of fact-finding hearings. Special-committee hearings will normally be held only after the investigative work has been completed and the committee has concluded that there is sufficient evidence to warrant a formal fact-finding proceeding. Special-committee proceedings are primarily inquisitorial rather than adversarial. Accordingly, the Federal Rules of Evidence do not apply to such hearings. Inevitably, a hearing will have something of an adversary character. Nevertheless, that tendency should be moderated to the extent possible. Even though a proceeding will commonly have investigative and hearing stages, special-committee members should not regard themselves as prosecutors one day and judges the next. Their duty — and that of their staff — is at all times to be impartial seekers of the truth.

Rule 14(b) contemplates that material evidence will be obtained by the special committee and presented in the form of affidavits, live testimony, etc. Staff or others who are organizing the hearings should regard it as their role to present evidence representing the entire picture. With respect to testimonial evidence, the subject judge should normally be called as a special-committee witness. Cases may arise in which the subject judge will not testify voluntarily. In such cases, subpoena powers are available, subject to the normal testimonial privileges. Although Rule 15(c) recognizes
the subject judge’s statutory right to call witnesses on his or her own behalf, exercise of this right should not usually be necessary.

15. Subject Judge’s Rights

(a) Notice.

(1) Generally. The subject judge must receive written notice of:

(A) the appointment of a special committee under Rule 11(f);

(B) the expansion of the scope of an investigation under Rule 13(a);

(C) any hearing under Rule 14, including its purposes, the names of any witnesses the special committee intends to call, and the text of any statements that have been taken from those witnesses.

(2) Suggestion of additional witnesses. The subject judge may suggest additional witnesses to the special committee.

(b) Special-Committee Report. The subject judge must be sent a copy of the special committee's report when it is filed with the judicial council.

(c) Presentation of Evidence. At any hearing held under Rule 14, the subject judge has the right to present evidence, to compel the attendance of witnesses, and to compel the production of documents. At the request of the subject judge, the chief judge or the judge’s designee must direct the circuit clerk to issue a subpoena to a witness under 28 U.S.C. § 332(d)(1). The subject judge must be given the opportunity to cross-examine special-committee witnesses, in person or by counsel.

(d) Presentation of Argument. The subject judge may submit written argument to the special committee and must be given a reasonable opportunity to present oral argument at an appropriate stage of the investigation.

(e) Attendance at Hearings. The subject judge has the right to attend any hearing held under Rule 14 and to receive copies of the transcript, of any documents introduced, and of any written arguments submitted by the complainant to the special committee.
(f) **Representation by Counsel.** The subject judge may choose to be represented by counsel in the exercise of any right enumerated in this Rule. As provided in Rule 20(e), the United States may bear the costs of the representation.

**COMMENTARY ON RULE 15**

This Rule is adapted from the Act and the Illustrative Rules.

The Act states that these Rules must contain provisions requiring that “the judge whose conduct is the subject of a complaint . . . be afforded an opportunity to appear (in person or by counsel) at proceedings conducted by the investigating panel, to present oral and documentary evidence, to compel the attendance of witnesses or the production of documents, to cross-examine witnesses, and to present argument orally or in writing.” 28 U.S.C. § 358(b)(2). To implement this provision, Rule 15(e) gives the subject judge the right to attend any hearing held for the purpose of receiving evidence of record or hearing argument under Rule 14.

The Act does not require that the subject judge be permitted to attend all proceedings of the special committee. Accordingly, the Rules do not give a right to attend other proceedings — for example, meetings at which the special committee is engaged in investigative activity, such as interviewing persons to learn whether they ought to be called as witnesses or examining for relevance purposes documents delivered pursuant to a subpoena duces tecum, or meetings in which the committee is deliberating on the evidence or its recommendations.

16. **Complainant’s Rights in Investigation**

(a) **Notice.** The complainant must receive written notice of the investigation as provided in Rule 11(g)(1). When the special committee’s report to the judicial council is filed, the complainant must be notified of the filing. The judicial council may, in its discretion, provide a copy of the report of a special committee to the complainant.

(b) **Opportunity to Provide Evidence.** If the complainant knows of relevant evidence not already before the special committee, the complainant may briefly explain in writing the basis of that knowledge and the nature of that evidence. If the special committee determines that the complainant has information not already known to the committee that would assist in the committee’s investigation, a representative of the committee must interview the complainant.

(c) **Presentation of Argument.** The complainant may submit written argument to the special committee. In its discretion, the special committee may permit the complainant to offer oral argument.
(d) Representation by Counsel. A complainant may submit written argument through counsel and, if permitted to offer oral argument, may do so through counsel.

COMMENTARY ON RULE 16

This Rule is adapted from the Act and the Illustrative Rules.

In accordance with the view of the process as fundamentally administrative and inquisitorial, these Rules do not give the complainant the rights of a party to litigation and leave the complainant’s role largely to the discretion of the special committee. However, Rule 16(b) gives the complainant the prerogative to make a brief written submission showing that he or she is aware of relevant evidence not already known to the special committee. (Such a submission may precede any written or oral argument the complainant provides under Rule 16(c), or it may accompany that argument.) If the special committee determines, independently or from the complainant’s submission, that the complainant has information that would assist the committee in its investigation, the complainant must be interviewed by a representative of the committee. Such an interview may be in person or by telephone, and the representative of the special committee may be either a member or staff.

Rule 16 does not contemplate that the complainant will ordinarily be permitted to attend proceedings of the special committee except when testifying or presenting oral argument. A special committee may exercise its discretion to permit the complainant to be present at its proceedings, or to permit the complainant, individually or through counsel, to participate in the examination or cross-examination of witnesses.

The Act authorizes an exception to the normal confidentiality provisions where the judicial council in its discretion provides a copy of the report of the special committee to the complainant and to the subject judge. 28 U.S.C. § 360(a)(1). However, the Rules do not entitle the complainant to a copy of the special committee’s report.

17. Special-Committee Report

The special committee must file with the judicial council a comprehensive report of its investigation, including findings and recommendations for council action. The report must be accompanied by a statement of the vote by which it was adopted, any separate or dissenting statements of special-committee members, and the record of any hearings held under Rule 14. In addition to being sent to the subject judge under Rule 15(b), a copy of the report and any accompanying statements and documents must be sent to the Committee on Judicial Conduct and Disability.

COMMENTARY ON RULE 17
This Rule is adapted from the Illustrative Rules and is self-explanatory. The provision for sending a copy of the special-committee report and accompanying statements and documents to the Committee on Judicial Conduct and Disability was new at the time the Judicial Conference promulgated the Rules for Judicial-Conduct and Judicial-Disability Proceedings in 2008.

ARTICLE VI. REVIEW BY JUDICIAL COUNCIL

18. Petition for Review of Chief-Judge Disposition Under Rule 11(c), (d), or (e)

(a) Petition for Review. After the chief judge issues an order under Rule 11(c), (d), or (e), the complainant or the subject judge may petition the judicial council of the circuit to review the order. By rules promulgated under 28 U.S.C. § 358, the judicial council may refer a petition for review filed under this Rule to a panel of no fewer than five members of the council, at least two of whom must be district judges.

(b) When to File; Form; Where to File. A petition for review must be filed in the office of the circuit clerk within 42 days after the date of the chief judge’s order. The petition for review should be in letter form, addressed to the circuit clerk, and in an envelope marked “Misconduct Petition” or “Disability Petition.” The name of the subject judge must not be shown on the envelope. The petition for review should be typewritten or otherwise legible. It should begin with “I hereby petition the judicial council for review of . . .” and state the reasons why the petition should be granted. It must be signed.

(c) Receipt and Distribution of Petition. A circuit clerk who receives a petition for review filed in accordance with this Rule must:

(1) acknowledge its receipt and send a copy to the complainant or subject judge, as the case may be;

(2) promptly distribute to each member of the judicial council, or its relevant panel, except for any member disqualified under Rule 25, or make available in the manner provided by local rule, the following materials:

(A) copies of the complaint;

(B) all materials obtained by the chief judge in connection with the inquiry;

(C) the chief judge’s order disposing of the complaint;
(D) any memorandum in support of the chief judge’s order;

(E) the petition for review; and

(F) an appropriate ballot; and

(3) send the petition for review to the Committee on Judicial Conduct and Disability. Unless the Committee on Judicial Conduct and Disability requests them, the circuit clerk will not send copies of the materials obtained by the chief judge.

(d) Untimely Petition. The circuit clerk must refuse to accept a petition that is received after the time allowed in (b).

(e) Timely Petition Not in Proper Form. When the circuit clerk receives a petition for review filed within the time allowed but in a form that is improper to a degree that would substantially impair its consideration by the judicial council — such as a document that is ambiguous about whether it is intended to be a petition for review — the circuit clerk must acknowledge its receipt, call the filer’s attention to the deficiencies, and give the filer the opportunity to correct the deficiencies within the original time allowed for filing the petition or within 21 days after the date on which a notice of the deficiencies was sent to the complainant, whichever is later. If the deficiencies are corrected within the time allowed, the circuit clerk will proceed according to paragraphs (a) and (c) of this Rule. If the deficiencies are not corrected, the circuit clerk must reject the petition.

COMMENTARY ON RULE 18

Rule 18 is adapted largely from the Illustrative Rules.

Subsection (a) permits the subject judge, as well as the complainant, to petition for review of the chief judge’s order dismissing a complaint under Rule 11(c), or concluding that appropriate corrective action or intervening events have remedied or mooted the problems raised by the complaint pursuant to Rule 11(d) or (e). Although the subject judge may ostensibly be vindicated by the dismissal or conclusion of a complaint, the chief judge’s order may include language disagreeable to the subject judge. For example, an order may dismiss a complaint, but state that the subject judge did in fact engage in misconduct. Accordingly, a subject judge may wish to object to the content of the order and is given the opportunity to petition the judicial council of the circuit for review.

Subsection (b) contains a time limit of 42 days to file a petition for review. It is important to establish a time limit on petitions for review of chief judges’ dispositions in
order to provide finality to the process. If the complaint requires an investigation, the investigation should proceed; if it does not, the subject judge should know that the matter is closed.


Rule 18(e) provides for an automatic extension of the time limit imposed under subsection (b) if a person files a petition that is rejected for failure to comply with formal requirements.


(a) Rights of Subject Judge. At any time after a complainant files a petition for review, the subject judge may file a written response with the circuit clerk. The circuit clerk must promptly distribute copies of the response to each member of the judicial council or of the relevant panel, unless that member is disqualified under Rule 25. Copies must also be distributed to the chief judge, to the complainant, and to the Committee on Judicial Conduct and Disability. The subject judge must not otherwise communicate with individual judicial-council members about the matter. The subject judge must be given copies of any communications to the judicial council from the complainant.

(b) Judicial-Council Action. After considering a petition for review and the materials before it, the judicial council may:

(1) affirm the chief judge’s disposition by denying the petition;

(2) return the matter to the chief judge with directions to conduct a further inquiry under Rule 11(b) or to identify a complaint under Rule 5;

(3) return the matter to the chief judge with directions to appoint a special committee under Rule 11(f); or

(4) in exceptional circumstances, take other appropriate action.

(c) Notice of Judicial-Council Decision. Copies of the judicial council’s order, together with memoranda incorporated by reference in the order and separate concurring or dissenting statements, must be given to the complainant, the subject judge, and the Committee on Judicial Conduct and Disability.
(d) Memorandum of Judicial-Council Decision. If the judicial council’s order affirms the chief judge’s disposition, a supporting memorandum must be prepared only if the council concludes that there is a need to supplement the chief judge’s explanation. A memorandum supporting a judicial-council order must not include the name of the complainant or the subject judge.

(e) Review of Judicial-Council Decision. If the judicial council’s decision is adverse to the petitioner, and if no member of the council dissented, the complainant must be notified that he or she has no right to seek review of the decision. If there was a dissent, the petitioner must be informed that he or she can file a petition for review under Rule 21(b).

(f) Public Availability of Judicial-Council Decision. Materials related to the judicial council’s decision must be made public to the extent, at the time, and in the manner set forth in Rule 24.

COMMENTARY ON RULE 19

This Rule is adapted largely from the Act and is self-explanatory.

The judicial council should ordinarily review the decision of the chief judge on the merits, treating the petition for review for all practical purposes as an appeal. The judicial council may respond to a petition for review by affirming the chief judge’s order, remanding the matter, or, in exceptional cases, taking other appropriate action.

Under Rule 19(b), after considering a petition for review and the materials before it, a judicial council may return a matter to the chief judge to take various actions, including conducting further inquiry under Rule 11(b), identifying a complaint under Rule 5, or appointing a special committee under Rule 11(f).

A petition for review of a judicial council’s decision under this Rule may be filed in any matter in which one or more members of the council dissented from the order. See Rule 21(b).

20. Judicial-Council Action Following Appointment of Special Committee

(a) Subject Judge’s Rights. Within 21 days after the filing of the report of a special committee, the subject judge may send a written response to the members of the judicial council. The subject judge must also be given an opportunity to present argument, personally or through counsel, written or oral, as determined by the judicial council. The subject judge must not otherwise communicate with judicial-council members about the matter.
(b) Judicial-Council Action.

(1) Discretionary actions. Subject to the subject judge’s rights set forth in subsection (a), the judicial council may:

(A) dismiss the complaint because:

(i) even if the claim is true, the claimed conduct is not conduct prejudicial to the effective and expeditious administration of the business of the courts and does not indicate a mental or physical disability resulting in inability to discharge the duties of office;

(ii) the complaint is directly related to the merits of a decision or procedural ruling;

(iii) the facts on which the complaint is based have not been established; or

(iv) the complaint is otherwise not appropriate for consideration under 28 U.S.C. §§ 351–364.

(B) conclude the proceeding because appropriate corrective action has been taken or intervening events have made the proceeding unnecessary.

(C) refer the complaint to the Judicial Conference with the judicial council’s recommendations for action.

(D) take remedial action to ensure the effective and expeditious administration of the business of the courts, including:

(i) censuring or reprimanding the subject judge, either by private communication or by public announcement;

(ii) ordering that no new cases be assigned to the subject judge for a limited, fixed period;

(iii) in the case of a magistrate judge, ordering the chief judge of the district court to take action specified by the council, including the initiation of removal proceedings under 28 U.S.C. § 631(i) or 42 U.S.C. § 300aa-12(c)(2);
(iv) in the case of a bankruptcy judge, removing the judge from office under 28 U.S.C. § 152(e);

(v) in the case of a circuit or district judge, requesting the judge to retire voluntarily with the provision (if necessary) that ordinary length-of-service requirements be waived;

(vi) in the case of a circuit or district judge who is eligible to retire but does not do so, certifying the disability of the judge under 28 U.S.C. § 372(b) so that an additional judge may be appointed; and

(vii) in the case of a circuit chief judge or district chief judge, finding that the judge is temporarily unable to perform chief-judge duties, with the result that those duties devolve to the next eligible judge in accordance with 28 U.S.C. § 45(d) or § 136(e).

(E) take any combination of actions described in (b)(1)(A)—(D) of this Rule that is within its power.

(2) Mandatory actions. A judicial council must refer a complaint to the Judicial Conference if the council determines that a circuit judge or district judge may have engaged in conduct that:

(A) might constitute ground for impeachment; or

(B) in the interest of justice, is not amenable to resolution by the judicial council.

(c) Inadequate Basis for Decision. If the judicial council finds that a special committee’s report, recommendations, and record provide an inadequate basis for decision, it may return the matter to the committee for further investigation and a new report, or it may conduct further investigation. If the judicial council decides to conduct further investigation, the subject judge must be given adequate prior notice in writing of that decision and of the general scope and purpose of the additional investigation. The judicial council’s conduct of the additional investigation must generally accord with the procedures and powers set forth in Rules 13 through 16 for the conduct of an investigation by a special committee.

(d) Judicial-Council Vote. Judicial-council action must be taken by a majority of those members of the council who are not disqualified. A
decision to remove a bankruptcy judge from office requires a majority vote of all the members of the judicial council.

(e) Recommendation for Fee Reimbursement. If the complaint has been finally dismissed or concluded under (b)(1)(A) or (B) of this Rule, and if the subject judge so requests, the judicial council may recommend that the Director of the Administrative Office use funds appropriated to the judiciary to reimburse the judge for reasonable expenses incurred during the investigation, when those expenses would not have been incurred but for the requirements of the Act and these Rules. Reasonable expenses include attorneys’ fees and expenses related to a successful defense or prosecution of a proceeding under Rule 21(a) or (b).

(f) Judicial-Council Order. Judicial-council action must be by written order. Unless the judicial council finds that extraordinary reasons would make it contrary to the interests of justice, the order must be accompanied by a memorandum setting forth the factual determinations on which it is based and the reasons for the council action. Such a memorandum may incorporate all or part of any underlying special-committee report. If the complaint was initiated by identification under Rule 5, the memorandum must so indicate. The order and memoranda incorporated by reference in the order must be provided to the complainant, the subject judge, and the Committee on Judicial Conduct and Disability. The complainant and the subject judge must be notified of any right to review of the judicial council’s decision as provided in Rule 21(b). If the complaint was identified under Rule 5 or filed by its subject judge, the judicial council must transmit the order and memoranda incorporated by reference in the order to the Committee on Judicial Conduct and Disability for review in accordance with Rule 21. In the event of such a transmission, the subject judge may make a written submission to the Committee on Judicial Conduct and Disability but will have no further right of review.

COMMENTARY ON RULE 20

This Rule is largely adapted from the Illustrative Rules.

Rule 20(a) provides that within 21 days after the filing of the report of a special committee, the subject judge may address a written response to all of the members of the judicial council. The subject judge must also be given an opportunity to present argument to the judicial council, personally or through counsel, or both, at the direction of the council. Whether that argument is written or oral would be for the judicial council
to determine. The subject judge may not otherwise communicate with judicial-council members about the matter.

Rule 20(b)(1)(B) allows a judicial council to conclude a proceeding where appropriate corrective action has been taken or intervening events have made the proceeding unnecessary. This provision tracks Rules 11(d) and (e), which provide for similar action by the chief judge. As with Rule 11(d), appropriate corrective action must acknowledge and remedy the problem raised by the complaint. See Breyer Committee Report, 239 F.R.D. at 244. And similar to Rule 11(e), although “action on the complaint is no longer necessary because of intervening events,” the Judicial Conference and the judicial council of the subject judge may nonetheless be able to take action on potential institutional issues related to the complaint (such as an analysis of what conditions may have enabled misconduct or prevented its discovery, and what precautionary or curative steps could be undertaken to prevent its recurrence). 28 U.S.C. § 352(b)(2).

Rule 20(b)(1)(D) recites the remedial actions enumerated in 28 U.S.C. § 354(a)(2) while making clear that this list is not exhaustive. A judicial council may consider lesser remedies. Some remedies may be unique to senior judges, whose caseloads can be modified by agreement or through statutory designation and certification processes.

Under 28 U.S.C. §§ 45(d) and 136(e), which provide for succession where “a chief judge is temporarily unable to perform his duties as such,” the determination whether such an inability exists is not expressly reserved to the chief judge. Nor, indeed, is it assigned to any particular judge or court-governance body. Clearly, however, a chief judge’s inability to function as chief could implicate “the effective and expeditious administration of justice,” which the judicial council of the circuit must, under 28 U.S.C. § 332(d)(1), “make all necessary and appropriate orders” to secure. For this reason, such reassignment is among a judicial council’s remedial options, as subsection (b)(1)(D)(vii) makes clear. Consistent with 28 U.S.C. §§ 45(d) and 136(e), however, any reassignment of chief-judge duties must not outlast the subject judge’s inability to perform them. Nor can such reassignment result in any extension of the subject judge’s term as chief judge.

Rule 20(c) provides that a judicial council may return a matter to a special committee to augment its findings and report of its investigation to include additional areas of inquiry and investigation to allow the judicial council to reach a complete and fully informed judgment. Rule 20(c) also provides that if the judicial council decides to conduct an additional investigation, the subject judge must be given adequate prior notice in writing of that decision and of the general scope and purpose of the additional investigation. The conduct of the investigation will be generally in accordance with the procedures set forth in Rules 13 through 16 for the conduct of an investigation by a special committee. However, if hearings are held, the judicial council may limit testimony or the presentation of evidence to avoid unnecessary repetition of testimony and evidence before the special committee.
Rule 20(d) provides that judicial-council action must be taken by a majority of those members of the council who are not disqualified, except that a decision to remove a bankruptcy judge from office requires a majority of all the members of the council as required by 28 U.S.C. § 152(e). However, it is inappropriate to apply a similar rule to the less severe actions that a judicial council may take under the Act. If some members of the judicial council are disqualified in the matter, their disqualification should not be given the effect of a vote against council action.

With regard to Rule 20(e), the judicial council, on the request of the subject judge, may recommend to the Director of the Administrative Office that the subject judge be reimbursed for reasonable expenses incurred, including attorneys’ fees. The judicial council has the authority to recommend such reimbursement where, after investigation by a special committee, the complaint has been finally dismissed or concluded under subsection (b)(1)(A) or (B) of this Rule. It is contemplated that such reimbursement may be provided for the successful prosecution or defense of a proceeding under Rule 21(a) or (b), in other words, one that results in a Rule 20(b)(1)(A) or (B) dismissal or conclusion.

Rule 20(f) requires that judicial-council action be by order and, normally, that it be supported with a memorandum of factual determinations and reasons. Notice of the action must be given to the complainant and the subject judge, and must include notice of any right to petition for review of the judicial council’s decision under Rule 21(b). Because an identified complaint has no “complainant” to petition for review, a judicial council’s dispositive order on an identified complaint on which a special committee has been appointed must be transmitted to the Committee on Judicial Conduct and Disability for review. The same will apply where a complaint was filed by its subject judge.

ARTICLE VII. REVIEW BY COMMITTEE ON JUDICIAL CONDUCT AND DISABILITY

21. Committee on Judicial Conduct and Disability

(a) Committee Review. The Committee on Judicial Conduct and Disability, consisting of seven members, considers and disposes of all petitions for review under (b) of this Rule, in conformity with the Committee’s jurisdictional statement. Its review of judicial-council orders is for errors of law, clear errors of fact, or abuse of discretion. Its disposition of petitions for review is ordinarily final. The Judicial Conference may, in its sole discretion, review any such Committee decision, but a complainant or subject judge does not have a right to this review.

(b) Reviewable Matters.
(1) Upon petition. A complainant or subject judge may petition the Committee for review of a judicial-council order entered in accordance with:

(A) Rule 20(b)(1)(A), (B), (D), or (E); or

(B) Rule 19(b)(1) or (4) if one or more members of the judicial council dissented from the order.

(2) Upon Committee’s initiative. At its initiative and in its sole discretion, the Committee may review any judicial-council order entered under Rule 19(b)(1) or (4), but only to determine whether a special committee should be appointed. Before undertaking the review, the Committee must invite that judicial council to explain why it believes the appointment of a special committee is unnecessary, unless the reasons are clearly stated in the council’s order denying the petition for review. If the Committee believes that it would benefit from a submission by the subject judge, it may issue an appropriate request. If the Committee determines that a special committee should be appointed, the Committee must issue a written decision giving its reasons.

(c) Committee Vote. Any member of the Committee from the same circuit as the subject judge is disqualified from considering or voting on a petition for review related to that subject judge. Committee decisions under (b) of this Rule must be by majority vote of the qualified Committee members. Those members hearing the petition for review should serve in that capacity until final disposition of the petition, whether or not their term of committee membership has ended. If only six members are qualified to consider a petition for review, the Chief Justice shall select an additional judge to join the qualified members to consider the petition. If four or fewer members are qualified to consider a petition for review, the Chief Justice shall select a panel of five judges, including the qualified Committee members, to consider it.

(d) Additional Investigation. Except in extraordinary circumstances, the Committee will not conduct an additional investigation. The Committee may return the matter to the judicial council with directions to undertake an additional investigation. If the Committee conducts an additional investigation, it will exercise the powers of the Judicial Conference under 28 U.S.C. § 331.
(e) **Oral Argument; Personal Appearance.** There is ordinarily no oral argument or personal appearance before the Committee. In its discretion, the Committee may permit written submissions.

(f) **Committee Decision.** A Committee decision under this Rule must be transmitted promptly to the Judicial Conference. Other distribution will be by the Administrative Office at the direction of the Committee chair.

(g) **Finality.** All orders of the Judicial Conference or of the Committee (when the Conference does not exercise its power of review) are final.

**COMMENTARY ON RULE 21**

This Rule is largely self-explanatory.

Rule 21(a) is intended to clarify that the delegation of power to the Committee on Judicial Conduct and Disability to dispose of petitions for review does not preclude review of such dispositions by the Judicial Conference. However, there is no right to such review in any party.

Rules 21(b)(1)(B) and (b)(2) are intended to fill a jurisdictional gap as to review of a dismissal or a conclusion of a complaint under Rule 19(b)(1) or (4). Where one or more members of a judicial council reviewing a petition have dissented, the complainant or the subject judge has the right to petition for review by the Committee. Under Rule 21(b)(2), the Committee may review such a dismissal or conclusion in its sole discretion, whether or not a dissent occurred, and only as to the appointment of a special committee. Any review under Rule 21(b)(2) will be conducted as soon as practicable after the dismissal or conclusion at issue. No party has a right to such review, and such review will be rare.

Rule 21(c) provides for review only by Committee members from circuits other than that of the subject judge. The Rule provides that every petition for review must be considered and voted on by at least five, and if possible by seven, qualified Committee members to avoid the possibility of tie votes. If six, or four or fewer, members are qualified, the Chief Justice shall appoint other judges to join the qualified members to consider the petition for review. To the extent possible, the judges whom the Chief Justice selects to join the qualified members should be drawn from among former members of the Committee.

Under this Rule, all Committee decisions are final in that they are unreviewable unless the Judicial Conference, in its discretion, decides to review a decision. Committee decisions, however, do not necessarily constitute final action on a complaint for purposes of Rule 24.
22. Procedures for Review

(a) Filing Petition for Review. A petition for review of a judicial-council decision on a reviewable matter, as defined in Rule 21(b)(1), may be filed by sending a brief written statement to the Committee on Judicial Conduct and Disability at JCD_PetitionforReview@ao.uscourts.gov or to:

Judicial Conference Committee on Judicial Conduct and Disability
Attn: Office of the General Counsel
Administrative Office of the United States Courts
One Columbus Circle, NE
Washington, D.C. 20544

The Administrative Office will send a copy of the petition for review to the complainant or the subject judge, as the case may be.

(b) Form and Contents of Petition. No particular form is required. The petition for review must contain a short statement of the basic facts underlying the complaint, the history of its consideration before the appropriate judicial council, a copy of the council’s decision, and the grounds on which the petitioner seeks review. The petition for review must specify the date and docket number of the judicial-council order for which review is sought. The petitioner may attach any documents or correspondence arising in the course of the proceeding before the judicial council or its special committee. A petition for review should not normally exceed 20 pages plus necessary attachments. A petition for review must be signed by the petitioner or his or her attorney.

(c) Time. A petition for review must be submitted within 42 days after the date of the order for which review is sought.

(d) Action on Receipt of Petition. When a petition for review of a judicial-council decision on a reviewable matter, as defined in Rule 21(b)(1), is submitted in accordance with this Rule, the Administrative Office shall acknowledge its receipt, notify the chair of the Committee on Judicial Conduct and Disability, and distribute the petition to the members of the Committee for their deliberation.

COMMENTARY ON RULE 22

Rule 22 is self-explanatory.
ARTICLE VIII. MISCELLANEOUS RULES

23. Confidentiality

(a) Confidentiality Generally. Confidentiality under these Rules is intended to protect the fairness and thoroughness of the process by which a complaint is filed or initiated, investigated (in specific circumstances), and ultimately resolved, as specified under these Rules.

(b) Confidentiality in the Complaint Process.

(1) General Rule. The consideration of a complaint by a chief judge, a special committee, a judicial council, or the Committee on Judicial Conduct and Disability is confidential. Information about this consideration must not be publicly disclosed by any judge or judicial employee, or by any person who records or transcribes testimony except as allowed by these Rules. A chief judge, a judicial council, or the Committee on Judicial Conduct and Disability may disclose the existence of a proceeding under these Rules when necessary or appropriate to maintain public confidence in the judiciary’s ability to redress misconduct or disability.

(2) Files. All files related to a complaint must be separately maintained with appropriate security precautions to ensure confidentiality.

(3) Disclosure in Decisions. Except as otherwise provided in Rule 24, written decisions of a chief judge, a judicial council, or the Committee on Judicial Conduct and Disability, and dissenting opinions or separate statements of members of a council or the Committee may contain information and exhibits that the authors consider appropriate for inclusion, and the information and exhibits may be made public.

(4) Availability to Judicial Conference. On request of the Judicial Conference or its Committee on Judicial Conduct and Disability, the circuit clerk must furnish any requested records related to a complaint. For auditing purposes, the circuit clerk must provide access to the Committee on Judicial Conduct and Disability to records of proceedings under the Act at the site where the records are kept.
(5) Availability to District Court. If the judicial council directs the initiation of proceedings for removal of a magistrate judge under Rule 20(b)(1)(D)(iii), the circuit clerk must provide to the chief judge of the district court copies of the report of the special committee and any other documents and records that were before the council at the time of its decision. On request of the chief judge of the district court, the judicial council may authorize release to that chief judge of any other records relating to the investigation.

(6) Impeachment Proceedings. If the Judicial Conference determines that consideration of impeachment may be warranted, it must transmit the record of all relevant proceedings to the Speaker of the House of Representatives.

(7) Subject Judge’s Consent. If both the subject judge and the chief judge consent in writing, any materials from the files may be disclosed to any person. In any such disclosure, the chief judge may require that the identity of the complainant, or of witnesses in an investigation conducted under these Rules, not be revealed.

(8) Disclosure in Special Circumstances. The Judicial Conference, its Committee on Judicial Conduct and Disability, a judicial council, or a chief judge may authorize disclosure of information about the consideration of a complaint, including the papers, documents, and transcripts relating to the investigation, to the extent that disclosure is justified by special circumstances and is not prohibited by the Act. For example, disclosure may be made to judicial researchers engaged in the study or evaluation of experience under the Act and related modes of judicial discipline, but only where the study or evaluation has been specifically approved by the Judicial Conference or by the Committee on Judicial Conduct and Disability. Appropriate steps must be taken to protect the identities of the subject judge, the complainant, and witnesses from public disclosure. Other appropriate safeguards to protect against the dissemination of confidential information may be imposed.

(9) Disclosure of Identity by Subject Judge. Nothing in this Rule precludes the subject judge from acknowledging that he or she is the judge referred to in documents made public under Rule 24.
(10) Assistance and Consultation. Nothing in this Rule prohibits a chief judge, a special committee, a judicial council, or the Judicial Conference or its Committee on Judicial Conduct and Disability, in the performance of any function authorized under the Act or these Rules, from seeking the help of qualified staff or experts or from consulting other judges who may be helpful regarding the performance of that function.

(c) Disclosure of Misconduct and Disability. Nothing in these Rules and Commentary concerning the confidentiality of the complaint process, or in the Code of Conduct for Judicial Employees concerning the use or disclosure of confidential information received in the course of official duties, prevents a judicial employee from reporting or disclosing misconduct or disability.

COMMENTARY ON RULE 23

Rule 23 was adapted from the Illustrative Rules.

The Act applies a rule of confidentiality to “papers, documents, and records of proceedings related to investigations conducted under this chapter” and states that they may not be disclosed “by any person in any proceeding,” with enumerated exceptions. 28 U.S.C. § 360(a). Three questions arise: Who is bound by the confidentiality rule, what proceedings are subject to the rule, and who is within the circle of people who may have access to information without breaching the rule?

With regard to the first question, Rule 23(b)(1) provides that judges, employees of the judiciary, and those persons involved in recording proceedings and preparing transcripts are obliged to respect the confidentiality requirement. This of course includes subject judges who do not consent to identification under Rule 23(b)(9).

With regard to the second question, Rule 23(b)(1) applies the rule of confidentiality broadly to consideration of a complaint at any stage.

With regard to the third question, there is no barrier of confidentiality among a chief judge, a judicial council, the Judicial Conference, and the Committee on Judicial Conduct and Disability. Each may have access to any of the confidential records for use in their consideration of a referred matter, a petition for review, or monitoring the administration of the Act. A district court may have similar access if the judicial council orders the district court to initiate proceedings to remove a magistrate judge from office, and Rule 23(b)(5) so provides.

In extraordinary circumstances, a chief judge, a judicial council, or the Committee on Judicial Conduct and Disability may disclose the existence of a proceeding under these Rules. The disclosure of such information in high-visibility or controversial cases is to reassure the public that the judiciary is capable of redressing judicial misconduct or
disability. Moreover, the confidentiality requirement does not prevent a chief judge from “communicat[ing] orally or in writing with . . . [persons] who may have knowledge of the matter,” as part of a limited inquiry conducted by the chief judge under Rule 11(b).

Rule 23 recognizes that there must be some exceptions to the Act’s confidentiality requirement. For example, the Act requires that certain orders and the reasons for them must be made public. 28 U.S.C. § 360(b). Rule 23(b)(3) makes it explicit that written decisions, as well as dissenting opinions and separate statements, may contain references to information that would otherwise be confidential and that such information may be made public. However, subsection (b)(3) is subject to Rule 24(a), which provides the general rule regarding the public availability of decisions. For example, the name of a subject judge cannot be made public in a decision if disclosure of the name is prohibited by that Rule.

The Act makes clear that there is a barrier of confidentiality between the judicial branch and the legislative branch. It provides that material may be disclosed to Congress only if it is believed necessary to an impeachment investigation or trial of a judge. 28 U.S.C. § 360(a)(2). Accordingly, Section 355(b) of the Act requires the Judicial Conference to transmit the record of a proceeding to the House of Representatives if the Conference believes that impeachment of a subject judge may be appropriate. Rule 23(b)(6) implements this requirement.

The Act provides that confidential materials may be disclosed if authorized in writing by the subject judge and by the chief judge. 28 U.S.C. § 360(a)(3). Rule 23(b)(7) implements this requirement. Once the subject judge has consented to the disclosure of confidential materials related to a complaint, the chief judge ordinarily will refuse consent only to the extent necessary to protect the confidentiality interests of the complainant or of witnesses who have testified in investigatory proceedings or who have provided information in response to a limited inquiry undertaken pursuant to Rule 11. It will generally be necessary, therefore, for the chief judge to require that the identities of the complainant or of such witnesses, as well as any identifying information, be shielded in any materials disclosed, except insofar as the chief judge has secured the consent of the complainant or of a particular witness to disclosure, or there is a demonstrated need for disclosure of the information that, in the judgment of the chief judge, outweighs the confidentiality interest of the complainant or of a particular witness (as may be the case where the complainant is delusional or where the complainant or a particular witness has already demonstrated a lack of concern about maintaining the confidentiality of the proceedings).

Rule 23(b)(8) permits disclosure of additional information in circumstances not enumerated. For example, disclosure may be appropriate to permit prosecution for perjury based on testimony given before a special committee, where a special committee discovers evidence of a judge’s criminal conduct, to permit disciplinary action by a bar association or other licensing body, or in other appropriate circumstances.
Under subsection (b)(8), where a complainant or other person has publicly released information regarding the existence of a complaint proceeding, the Judicial Conference, the Committee on Judicial Conduct and Disability, a judicial council, or a chief judge may authorize the disclosure of information about the consideration of the complaint, including orders and other materials related to the complaint proceeding, in the interest of assuring the public that the judiciary is acting effectively and expeditiously in addressing the relevant complaint proceeding.

Subsection (b)(8) also permits the authorization of disclosure of information about the consideration of a complaint, including the papers, documents, and transcripts relating to the investigation, to judicial researchers engaged in the study or evaluation of experience under the Act and related modes of judicial discipline. The Rule envisions disclosure of information from the official record of a complaint proceeding to a limited category of persons for appropriately authorized research purposes only, and with appropriate safeguards to protect individual identities in any published research results. In authorizing disclosure, a judicial council may refuse to release particular materials when such release would be contrary to the interests of justice, or when those materials constitute purely internal communications. The Rule does not envision disclosure of purely internal communications between judges and their colleagues and staff.

Under Rule 23(b)(10), any of the specified judges or entities performing a function authorized under these Rules may seek expert or staff assistance or may consult with other judges who may be helpful regarding performance of that function; the confidentiality requirement does not preclude this. A chief judge, for example, may properly seek the advice and assistance of another judge who the chief judge deems to be in the best position to communicate with the subject judge in an attempt to bring about corrective action. As another example, a new chief judge may wish to confer with a predecessor to learn how similar complaints have been handled. In consulting with other judges, of course, a chief judge should disclose information regarding the complaint only to the extent the chief judge deems necessary under the circumstances.

Rule 23(c) provides that confidentiality as referenced in these Rules and Commentary is directed toward protecting the fairness and thoroughness of the process by which a complaint is filed or initiated, investigated (in specific circumstances), and ultimately resolved, as specified under these Rules. Nothing in these Rules concerning the confidentiality of the complaint process or the Code of Conduct for Judicial Employees concerning use or disclosure of confidential information received in the course of official duties prevents judicial employees from reporting or disclosing misconduct or disability.

Judges should bring such matters to the attention of the relevant chief district judge or chief circuit judge in accordance with Rule 4(a)(6). Judges should be mindful of Canon 3(B)(6) of the Code of Conduct for United States Judges, which provides in part that a judge “should take appropriate action upon receipt of reliable information indicating the likelihood that a judge’s conduct contravened this Code.”
24. Public Availability of Decisions

(a) General Rule; Specific Cases. When final action has been taken on a complaint and it is no longer subject to review as of right, all orders entered by the chief judge and judicial council, including memoranda incorporated by reference in those orders and any dissenting opinions or separate statements by members of the judicial council, must be made public, with the following exceptions:

(1) if the complaint is finally dismissed under Rule 11(c) without the appointment of a special committee, or if it is concluded under Rule 11(d) because of voluntary corrective action, the publicly available materials generally should not disclose the name of the subject judge without his or her consent.

(2) if the complaint is concluded because of intervening events, or dismissed at any time after a special committee is appointed, the judicial council must determine whether the name of the subject judge should be disclosed.

(3) if the complaint is finally disposed of by a privately communicated censure or reprimand, the publicly available materials must not disclose either the name of the subject judge or the text of the reprimand.

(4) if the complaint is finally disposed of under Rule 20(b)(1)(D) by any remedial action other than private censure or reprimand, the text of the dispositive order must be included in the materials made public, and the name of the subject judge must be disclosed.

(5) the name of the complainant must not be disclosed in materials made public under this Rule unless the chief judge or the judicial council orders disclosure.

(b) Manner of Making Public. The orders described in (a) must be made public by placing the orders on the court’s public website and by placing them in a publicly accessible file in the office of the circuit clerk. If the orders appear to have precedential value, the chief judge may cause them to be published. In addition, the Committee on Judicial Conduct and Disability will make available on the judiciary’s website, www.uscourts.gov, selected illustrative orders described in paragraph (a), appropriately redacted, to provide additional information to the public on how complaints are addressed under the Act.
(c) Orders of Committee on Judicial Conduct and Disability. Orders of the Committee on Judicial Conduct and Disability constituting final action in a complaint proceeding arising from a particular circuit will be made available to the public in the office of the circuit clerk of the relevant court of appeals. The Committee on Judicial Conduct and Disability will also make such orders available on the judiciary’s website, www.uscourts.gov. When authorized by the Committee on Judicial Conduct and Disability, other orders related to complaint proceedings will similarly be made available.

(d) Complaints Referred to Judicial Conference. If a complaint is referred to the Judicial Conference under Rule 20(b)(1)(C) or 20(b)(2), materials relating to the complaint will be made public only if ordered by the Judicial Conference.

COMMENTARY ON RULE 24

Rule 24 is adapted from the Illustrative Rules and the recommendations of the Breyer Committee.

The Act requires the circuits to make available only written orders of a judicial council or the Judicial Conference imposing some form of sanction. 28 U.S.C. § 360(b). The Judicial Conference, however, has long recognized the desirability of public availability of a broader range of orders and other materials. In 1994, the Judicial Conference “urge[d] all circuits and courts covered by the Act to submit to the West Publishing Company, for publication in Federal Reporter 3d, and to Lexis all orders issued pursuant to [the Act] that are deemed by the issuing circuit or court to have significant precedential value to other circuits and courts covered by the Act.” Report of the Proceedings of the Judicial Conference of the United States, Mar. 1994, at 28. Following this recommendation, the 2000 revision of the Illustrative Rules contained a public availability provision very similar to Rule 24. In 2002, the Judicial Conference again voted to encourage the circuits “to submit non-routine public orders disposing of complaints of judicial misconduct or disability for publication by on-line and print services.” Report of the Proceedings of the Judicial Conference of the United States, Sept. 2002, at 58. The Breyer Committee Report further emphasized that “[p]osting such orders on the judicial branch’s public website would not only benefit judges directly, it would also encourage scholarly commentary and analysis of the orders.” Breyer Committee Report, 239 F.R.D. at 216. With these considerations in mind, Rule 24 provides for public availability of a wide range of materials.

Rule 24 provides for public availability of orders of a chief judge, a judicial council, and the Committee on Judicial Conduct and Disability, as well as the texts of memoranda incorporated by reference in those orders, together with any dissenting opinions or separate statements by members of the judicial council. No memoranda other than those incorporated by reference in those orders shall be disclosed.
However, these orders and memoranda are to be made public only when final action on the complaint has been taken and any right of review has been exhausted. The provision that decisions will be made public only after final action has been taken is designed in part to avoid public disclosure of the existence of pending proceedings. Whether the name of the subject judge is disclosed will then depend on the nature of the final action. If the final action is an order predicated on a finding of misconduct or disability (other than a privately communicated censure or reprimand) the name of the subject judge must be made public. If the final action is dismissal of the complaint, the name of the subject judge must not be disclosed. Rule 24(a)(1) provides that where a proceeding is concluded under Rule 11(d) by the chief judge on the basis of voluntary corrective action, the name of the subject judge generally should not be disclosed, except where the complainant or another person has disclosed the existence of a complaint proceeding to the public. Shielding the name of the subject judge in this circumstance should encourage informal disposition.

If a complaint is dismissed as moot, or because intervening events have made action on the complaint unnecessary, after appointment of a special committee, Rule 24(a)(2) allows the judicial council to determine whether the subject judge will be identified. In such a case, no final decision has been rendered on the merits, but it may be in the public interest — particularly if a judicial officer resigns in the course of an investigation — to make the identity of the subject judge known.

Once a special committee has been appointed, and a proceeding is concluded by the full judicial council on the basis of a remedial order of the council, Rule 24(a)(4) provides for disclosure of the name of the subject judge.

Rule 24(a)(5) provides that the identity of the complainant will be disclosed only if the chief judge so orders. Identifying the complainant when the subject judge is not identified would increase the likelihood that the identity of the subject judge would become publicly known, thus circumventing the policy of nondisclosure. It may not always be practicable to shield the complainant’s identity while making public disclosure of the judicial council’s order and supporting memoranda; in some circumstances, moreover, the complainant may consent to public identification.

Rule 24(b) makes clear that circuits must post on their external websites all orders required to be made public under Rule 24(a). The judiciary will seek ways to make decisions on complaints filed in their courts more readily accessible to the public through searchable electronic indices.

Matters involving orders issued following a special-committee investigation often involve highly sensitive situations, and it is important that judicial councils have every opportunity to reach a correct and just outcome. This would include the ability to reach informal resolution before a subject judge’s identity must be released. But there must also come a point of procedural finality. The date of finality — and thus the time at which other safeguards and rules such as the publication requirement are triggered —
is the date on which the judicial council issues a Final Order. See In re Complaint of Judicial Misconduct, 751 F.3d 611, 617 (2014) (requiring publication of a judicial council order “[e]ven though the period for review had not yet elapsed” and concluding that “the order was a final decision because the Council had adjudicated the matter on the merits after having received a report from a special investigating committee”). As determined in the cited case, modifications of this kind to a final order are subject to review by the Committee on Judicial Conduct and Disability.

25. Disqualification

(a) General Rule. Any judge is disqualified from participating in any proceeding under these Rules if the judge concludes that circumstances warrant disqualification. If a complaint is filed by a judge, that judge is disqualified from participating in any consideration of the complaint except to the extent that these Rules provide for a complainant’s participation. A chief judge who has identified a complaint under Rule 5 is not automatically disqualified from considering the complaint.

(b) Subject Judge. A subject judge, including a chief judge, is disqualified from considering a complaint except to the extent that these Rules provide for participation by a subject judge.

(c) Chief Judge Disqualified from Considering Petition for Review of Chief Judge’s Order. If a petition for review of the chief judge’s order entered under Rule 11(c), (d), or (e) is filed with the judicial council in accordance with Rule 18, the chief judge is disqualified from participating in the council’s consideration of the petition.

(d) Member of Special Committee Not Disqualified. A member of the judicial council who serves on a special committee, including the chief judge, is not disqualified from participating in council consideration of the committee’s report.

(e) Subject Judge’s Disqualification After Appointment of Special Committee. Upon appointment of a special committee, the subject judge is disqualified from participating in the identification or consideration of any complaint, related or unrelated to the pending matter, under the Act or these Rules. The disqualification continues until all proceedings on the complaint against the subject judge are finally terminated with no further right of review.

(f) Substitute for Disqualified Chief Judge. If the chief judge is disqualified from performing duties that the Act and these Rules assign to a chief judge (including where a complaint is filed against a
chief judge), those duties must be assigned to the most-senior active circuit judge not disqualified. If all circuit judges in regular active service are disqualified, the judicial council may determine whether to request a transfer under Rule 26, or, in the interest of sound judicial administration, to permit the chief judge to dispose of the complaint on the merits. Members of the judicial council who are named in the complaint may participate in this determination if necessary to obtain a quorum of the council.

(g) Judicial-Council Action When Multiple Judges Disqualified. Notwithstanding any other provision in these Rules to the contrary,

(1) a member of the judicial council who is a subject judge may participate in its disposition if:

(A) participation by one or more subject judges is necessary to obtain a quorum of the judicial council;

(B) the judicial council finds that the lack of a quorum is due to the naming of one or more judges in the complaint for the purpose of disqualifying that judge or those judges, or to the naming of one or more judges based on their participation in a decision excluded from the definition of misconduct under Rule 4(b); and

(C) the judicial council votes that it is necessary, appropriate, and in the interest of sound judicial administration that one or more subject judges be eligible to act.

(2) otherwise disqualified members may participate in votes taken under (g)(1)(B) and (g)(1)(C).

(h) Disqualification of Members of Committee on Judicial Conduct and Disability. No member of the Committee on Judicial Conduct and Disability is disqualified from participating in any proceeding under the Act or these Rules because of consultations with a chief judge, a member of a special committee, or a member of a judicial council about the interpretation or application of the Act or these Rules, unless the member believes that the consultation would prevent fair-minded participation.

COMMENTARY ON RULE 25

Rule 25 is adapted from the Illustrative Rules.
Subsection (a) provides the general rule for disqualification. Of course, a judge is not disqualified simply because the subject judge is on the same court. However, this subsection recognizes that there may be cases in which an appearance of bias or prejudice is created by circumstances other than an association with the subject judge as a colleague. For example, a judge may have a familial relationship with a complainant or subject judge. When such circumstances exist, a judge may, in his or her discretion, conclude that disqualification is warranted.

Subsection (e) makes it clear that the disqualification of the subject judge relates only to the subject judge’s participation in any proceeding arising under the Act or these Rules. For example, the subject judge cannot initiate complaints by identification, conduct limited inquiries, or choose between dismissal and special-committee investigation as the threshold disposition of a complaint. Likewise, the subject judge cannot participate in any proceeding arising under the Act or these Rules as a member of any special committee, the judicial council of the circuit, the Judicial Conference, or the Committee on Judicial Conduct and Disability. The Illustrative Rule, based on Section 359(a) of the Act, is ambiguous and could be read to disqualify a subject judge from service of any kind on each of the bodies mentioned. This is undoubtedly not the intent of the Act; such a disqualification would be anomalous in light of the Act’s allowing a subject judge to continue to decide cases and to continue to exercise the powers of chief circuit or district judge. It would also create a substantial deterrence to the appointment of special committees, particularly where a special committee is needed solely because the chief judge may not decide matters of credibility in his or her review under Rule 11.

While a subject judge is barred by Rule 25(b) from participating in the disposition of the complaint in which he or she is named, Rule 25(e) recognizes that participation in proceedings arising under the Act or these Rules by a judge who is the subject of a special committee investigation may lead to an appearance of self-interest in creating substantive and procedural precedents governing such proceedings. Rule 25(e) bars such participation.

Under the Act, a complaint against the chief judge is to be handled by “that circuit judge in regular active service next senior in date of commission.” 28 U.S.C. § 351(c). Rule 25(f) provides that seniority among judges other than the chief judge is to be determined by date of commission, with the result that complaints against the chief judge may be routed to a former chief judge or other judge who was appointed earlier than the chief judge. The Rules do not purport to prescribe who is to preside over meetings of the judicial council. Consequently, where the presiding member of the judicial council is disqualified from participating under these Rules, the order of precedence prescribed by Rule 25(f) for performing “duties that the Act and these Rules assign to a chief judge” does not apply to determine the acting presiding member of the council. That is a matter left to the internal rules or operating practices of each judicial council. In most cases the most senior active circuit judge who is a member of the judicial council and who is not disqualified will preside.
Sometimes a single complaint is filed against a large group of judges. If the normal disqualification rules are observed in such a case, no court of appeals judge can serve as acting chief judge of the circuit, and the judicial council will be without appellate members. Where the complaint is against all circuit and district judges, under normal rules no member of the judicial council can perform the duties assigned to the council under the statute.

A similar problem is created by successive complaints arising out of the same underlying grievance. For example, a complainant files a complaint against a district judge based on alleged misconduct, and the complaint is dismissed by the chief judge under the statute. The complainant may then file a complaint against the chief judge for dismissing the first complaint, and when that complaint is dismissed by the next senior judge, still a third complaint may be filed. The threat is that the complainant will bump down the seniority ladder until, once again, there is no member of the court of appeals who can serve as acting chief judge for the purpose of the next complaint. Similarly, complaints involving the merits of litigation may involve a series of decisions in which many judges participated or in which a rehearing en banc was denied by the court of appeals, and the complaint may name a majority of the judicial council as subject judges.

In recognition that these multiple-judge complaints are virtually always meritless, the judicial council is given discretion to determine: (1) whether it is necessary, appropriate, and in the interest of sound judicial administration to permit the chief judge to dispose of a complaint where it would otherwise be impossible for any active circuit judge in the circuit to act, and (2) whether it is necessary, appropriate, and in the interest of sound judicial administration, after appropriate findings as to need and justification are made, to permit subject judges of the judicial council to participate in the disposition of a petition for review where it would otherwise be impossible to obtain a quorum.

Applying a rule of necessity in these situations is consistent with the appearance of justice. See, e.g., *In re Complaint of Doe*, 2 F.3d 308 (8th Cir. Jud. Council 1993) (invoking the rule of necessity); *In re Complaint of Judicial Misconduct*, No. 91-80464 (9th Cir. Jud. Council 1992) (same). There is no unfairness in permitting the chief judge to dispose of a patently insubstantial complaint that names all active circuit judges in the circuit.

Similarly, there is no unfairness in permitting subject judges, in these circumstances, to participate in the review of the chief judge’s dismissal of an insubstantial complaint. The remaining option is to assign the matter to another body. Among other alternatives, the judicial council may request a transfer of the petition under Rule 26. Given the administrative inconvenience and delay involved in these alternatives, it is desirable to request a transfer only if the judicial council determines that the petition for review is substantial enough to warrant such action.
In the unlikely event that a quorum of the judicial council cannot be obtained to consider the report of a special committee, it would normally be necessary to request a transfer under Rule 26.

Rule 25(h) recognizes that the jurisdictional statement of the Committee on Judicial Conduct and Disability contemplates consultation between members of the Committee and judicial participants in proceedings under the Act and these Rules. Such consultation should not automatically preclude participation by a member in that proceeding.

26. Transfer to Another Judicial Council

In exceptional circumstances, a chief judge or a judicial council may ask the Chief Justice to transfer a proceeding based on a complaint identified under Rule 5 or filed under Rule 6 to the judicial council of another circuit. The request for a transfer may be made at any stage of the proceeding before a reference to the Judicial Conference under Rule 20(b)(1)(C) or 20(b)(2) or a petition for review is filed under Rule 22. Upon receiving such a request, the Chief Justice may refuse the request or select the transferee judicial council, which may then exercise the powers of a judicial council under these Rules.

COMMENTARY ON RULE 26

Rule 26 implements the Breyer Committee’s recommended use of transfers. Breyer Committee Report, 239 F.R.D. at 214–15.

Rule 26 authorizes the transfer of a complaint proceeding to another judicial council selected by the Chief Justice. Such transfers may be appropriate, for example, in the case of a serious complaint where there are multiple disqualifications among the original judicial council, where the issues are highly visible and a local disposition may weaken public confidence in the process, where internal tensions arising in the council as a result of the complaint render disposition by a less involved council appropriate, or where a complaint calls into question policies or governance of the home court of appeals. The power to effect a transfer is lodged in the Chief Justice to avoid disputes in a judicial council over where to transfer a sensitive matter and to ensure that the transferee council accepts the matter.

Upon receipt of a transferred proceeding, the transferee judicial council shall determine the proper stage at which to begin consideration of the complaint — for example, reference to the transferee chief judge, appointment of a special committee, etc.

27. Withdrawal of Complaint or Petition for Review

(a) Complaint Pending Before Chief Judge. With the chief judge’s consent, the complainant may withdraw a complaint that is before
the chief judge for a decision under Rule 11. The withdrawal of a complaint will not prevent the chief judge from identifying or having to identify a complaint under Rule 5 based on the withdrawn complaint.

(b) Complaint Pending Before Special Committee or Judicial Council. After a complaint has been referred to the special committee for investigation and before the committee files its report, the complainant may withdraw the complaint only with the consent of both the subject judge and either the special committee or the judicial council.

(c) Petition for Review. A petition for review addressed to the judicial council under Rule 18, or the Committee on Judicial Conduct and Disability under Rule 22, may be withdrawn if no action on the petition has been taken.

COMMENTARY ON RULE 27

Rule 27 is adapted from the Illustrative Rules and treats the complaint proceeding, once begun, as a matter of public business rather than as the property of the complainant. Accordingly, the chief judge or the judicial council remains responsible for addressing any complaint under the Act, even a complaint that has been formally withdrawn by the complainant.

Under subsection (a), a complaint pending before the chief judge may be withdrawn if the chief judge consents. Where the complaint clearly lacked merit, the chief judge may accordingly be saved the burden of preparing a formal order and supporting memorandum. However, the chief judge may, or be obligated under Rule 5, to identify a complaint based on allegations in a withdrawn complaint.

If the chief judge appoints a special committee, Rule 27(b) provides that the complaint may be withdrawn only with the consent of both the body before which it is pending (the special committee or the judicial council) and the subject judge. Once a complaint has reached the stage of appointment of a special committee, a resolution of the issues may be necessary to preserve public confidence. Moreover, the subject judge is given the right to insist that the matter be resolved on the merits, thereby eliminating any ambiguity that might remain if the proceeding were terminated by withdrawal of the complaint.

With regard to all petitions for review, Rule 27(c) grants the petitioner unrestricted authority to withdraw the petition. It is thought that the public’s interest in the proceeding is adequately protected, because there will necessarily have been a decision by the chief judge and often by the judicial council as well in such a case.
28. Availability of Rules and Forms

These Rules and copies of the complaint form as provided in Rule 6(a) must be available without charge in the office of the circuit clerk of each court of appeals, district court, bankruptcy court, or other federal court whose judges are subject to the Act. Each court must also make these Rules, the complaint form, and complaint-filing instructions available on the court’s website, or provide an Internet link to these items on the appropriate court of appeals website or on www.uscourts.gov.

29. Effective Date

These Rules will become effective after promulgation by the Judicial Conference of the United States.

Appendix to the Rules: Form AO 310 (Complaint of Judicial Misconduct or Disability)
§ 410 Overview

The Judicial Conference approved the following amended Rules for the Processing of Certificates from Judicial Councils that a Judicial Officer Has Engaged in Conduct that Might Constitute Grounds for Impeachment. These rules were revised by the Conference on September 23–24, 1991 (JCUS-SEP 91, p. 71).

§ 420 The Rules

(1) When a certificate from a judicial council that a judicial officer has engaged in conduct that might constitute grounds for impeachment is premised entirely upon a judgment of conviction in a criminal case, or when the Judicial Conference is otherwise informed that a judge or judicial officer has been convicted of a felony, and the judgment has become final by the exhaustion or termination of all rights of direct judicial review, the Judicial Conference, in its discretion, may accept the final judgment as conclusive and, without notice to the accused judicial officer, may make its own determination by a majority vote as to whether or not it will forward a final certificate to the House of Representatives of the United States Congress.

(2) Except when the Judicial Conference of the United States determines that the full Conference should act upon the matter pursuant to Rule 1, all such certification matters shall be referred in the first instance, by the Conference or its Executive Committee, to an ad hoc committee of Conference members or to the Committee to Review Circuit Council Conduct and Disability Orders [now the Committee on Judicial Conduct]
and Disability] for processing and the preparation of a report with recommendations back to the Conference.

(3) When a certification proceeding is referred to a committee for a report and recommendation as provided in Rule 2, the relevant committee shall (1) provide the accused judicial officer with a copy of the certificate and a copy of all papers filed with the Judicial Conference in support of the certificate unless a copy of all such documents has previously been furnished to the accused judicial officer, or (2) in its discretion, make all such papers available for inspection by the judicial officer and his or her counsel in the Administrative Office in Washington, D.C., or some other convenient, designated place.

(4) The accused judicial officer shall have sixty days within which to file a written response to the certificate. The sixty-day period will begin to run when (1) a copy of all relevant papers is furnished or made available for inspection, or (2) when he or she is given written notice of the right to file such a written response, whichever later occurs. For good cause, the committee may extend the time within which a written response may be filed.

(5) The committee may receive written argument from a complainant if the committee determines that it may be assisted by such receipt.

(6) Oral argument ordinarily will not be allowed, but may be allowed if the committee determines that it would be assisted by it.

(7) In the preparation and filing of the written response and in oral argument, if allowed, the judicial officer is entitled to representation by counsel of choice at his or her expense.

(8) If the Judicial Conference or its committee determines that additional investigation is necessary or appropriate, notice that such investigation will be conducted will be given in advance to the accused judicial officer. The notice will be given at least ten days in advance of the commencement of the investigation, unless an emergency situation requires an earlier commencement of investigatory measures.

(b) During the course of any such investigation, the accused judicial officer will be afforded those opportunities as provided in 28 U.S.C. § 372(c)(11)(B) [now 28 U.S.C. § 358(b)(2)], and the complainant will be afforded those opportunities as provided in 28 U.S.C. § 372(c)(11)(C) [now 28 U.S.C. § 358(b)(3)].
(c) At the conclusion of any such investigation, the investigation panel will file a written report, a copy of which will be furnished the accused judicial officer or made available for his or her inspection and, if the committee decides that it is appropriate, to the complainant. The report of the investigation will be made a part of the record, and the time within which the accused judicial officer may file a written response will not begin to run before a copy of the report is furnished to or made available for inspection by the judicial officer.

(9) The committee will file with the Conference a report, including a recommendation or recommendations. The report will be received by the Conference as the reports of other of its committees. The Conference may adopt the report, including its recommendations, in its entirety, or adopt it in part and reject it in part.

(10) Since the committee’s report is an internal document and an accused judicial officer will already have been given an opportunity to file a full written response to the certificate, a copy of the committee’s report need not be furnished to him.
§ 510 Documents That Must Be Sent to the Committee

The Rules for Judicial-Conduct and Judicial-Disability Proceedings (Guide, Vol. 2E, Ch. 3) require the following documents be sent to the Committee on Judicial Conduct and Disability:

<table>
<thead>
<tr>
<th>Rule</th>
<th>Required Documents</th>
</tr>
</thead>
<tbody>
<tr>
<td>Rule 11(g)(1)</td>
<td>copy of circuit chief judge’s order appointing special committee under Rule 11(f)</td>
</tr>
<tr>
<td>Rule 11(g)(2)</td>
<td>copy of circuit chief judge’s order (and memoranda incorporated by reference in the order) dismissing or concluding matter under Rule 11(c), 11(d), or 11(e)</td>
</tr>
<tr>
<td>Rule 17</td>
<td>copy of special committee’s Rule 17 report (accompanied by statement of vote by which it was adopted, separate or dissenting statements of committee members, and record of any hearings held under Rule 14)</td>
</tr>
<tr>
<td>Rule 18(c)(3)</td>
<td>copy of petition for judicial council review of circuit chief judge’s order under Rule 11(c), 11(d), or 11(e)</td>
</tr>
<tr>
<td>Rule 19(a)</td>
<td>copy of subject judge’s written response to petition for judicial council review of circuit chief judge’s order under Rule 11(c), 11(d), or 11(e)</td>
</tr>
<tr>
<td>Rule 19(c)</td>
<td>copy of judicial council order (and memoranda incorporated by reference in the order, and separate or dissenting statements) deciding petition for review of circuit chief judge’s order under Rule 11(c), 11(d), or 11(e)</td>
</tr>
</tbody>
</table>
§ 510 Documents That Must Be Sent to the Committee

<table>
<thead>
<tr>
<th>Rule</th>
<th>Required Documents</th>
</tr>
</thead>
<tbody>
<tr>
<td>Rule 20(f)</td>
<td>copy of judicial council order (and memoranda incorporated by reference in the order) acting on report of special committee appointed under Rule 11(f)</td>
</tr>
<tr>
<td></td>
<td>(Note: If a complaint was identified under Rule 5 or filed by its subject judge, the judicial council must transmit the order and memoranda incorporated by reference in the order to the Committee for review in accordance with Rule 21.)</td>
</tr>
<tr>
<td>Rule 23(b)(4)</td>
<td>copy of any records related to complaint that are requested by the Committee</td>
</tr>
<tr>
<td></td>
<td>(Note: The Committee has issued a standing request for a copy of any complaint filed by a lawyer, a non-litigant, a public official, or a judicial employee.)</td>
</tr>
</tbody>
</table>

**Note:** The Committee need not be sent any documents obtained during a circuit chief judge’s limited inquiry or documents that a special committee used but did not include in its report.

§ 520 Method of Sending Documents to the Committee

(a) Each document noted above must be sent to the Committee as a PDF attached to an email message sent to JudicialConductandDisability@ao.uscourts.gov.

(b) Each email message must contain only one attachment consisting of only one document.

(c) The subject line of each email message and the filename of each attached PDF document must consist of the following components:

**CC-YY-9NNNN.T**

<table>
<thead>
<tr>
<th>CC-YY-9NNNN</th>
<th>complaint docket number (see: Guide, Vol. 2E, Ch. 1)</th>
</tr>
</thead>
<tbody>
<tr>
<td>T</td>
<td>document type indicator:</td>
</tr>
<tr>
<td>O</td>
<td>chief judge order</td>
</tr>
<tr>
<td>S</td>
<td>special committee report</td>
</tr>
<tr>
<td>P</td>
<td>petition for review</td>
</tr>
<tr>
<td>R</td>
<td>subject judge response to petition for review</td>
</tr>
<tr>
<td>J</td>
<td>judicial council order</td>
</tr>
</tbody>
</table>
CC-YY-9NNNN | complaint docket number (see: Guide, Vol. 2E, Ch. 1)
---|---
L | complaint — lawyer
NL | complaint — non-litigant
PO | complaint — public official
JE | complaint — judicial employee

(d) Unless the Administrative Office of the U.S. Courts (AO) specifies otherwise, documents that relate to more than one complaint should be sent separately for each complaint to which they apply, and the subject line of each transmittal should reflect that complaint’s docket number.

§ 530 Further Guidance

Questions about this procedure may be directed to the AO’s Office of the General Counsel at 202-502-1100.