Comparison of Alaska's current Code of Judicial Conduct
to the Supreme Court's Approved Tentative Draft
of the Revised Code
(September 2025)

Overview:

Alaska's current Code of Judicial Conduct, which is based on the 1990 version of the American Bar Association's Model Code of Judicial Conduct, is divided into five groups of rules — five "Canons", each of which addresses a broad principle of judicial conduct. Our current Code also uses this same term, "Canon", as a label for each of the individual rules within the five general Canons.

In 2007, the American Bar Association issued a new, restructured Model Code of Judicial Conduct. In this 2007 Model Code, the rules of conduct are divided into four major sections. The ABA still calls these sections "Canons", but now the individual rules within each section are called "Rules".

Also, in this 2007 version of the Model Code, the ABA adopted the same numbering system used in the ABA's Model Rules of Professional Conduct. Under this system, the individual rules within each major section of the Model Code are numbered #.1, #.2, #.3, etc., where "#" is the number of the section where the rule is found. Thus, the rules found in the second section of the Model Code (ABA Canon 2) are numbered 2.1, 2.2, 2.3, etc.

The Supreme Court's proposed revision of the Alaska Code of Judicial Conduct follows the structure of the ABA's 2007 Model Code, but the four major sections of the Code are called "Articles", not canons. The term "Article" was chosen to avoid any implication that the titles of the four major sections of the Code were themselves enforceable rules of conduct.

For this same reason, the titles of the Code's four Articles do not begin with the ABA's stock opening phrase, "A judge shall ... ". Instead, each of the four Articles begins with the words, "The overarching principle of this Article is ... " or "The overarching principles of this Article are ... ".

(This difference in wording is not a change in substance from the ABA Model Code. The ABA's introductory "Scope" section explains — in Paragraph [2] — that even though the titles of the four Canons of the ABA's Model Code all begin with the phrase, "A judge shall ...", these section titles are not enforceable rules. They merely "state overarching principles of judicial ethics" which "provide important guidance in interpreting the Rules". The ABA declares that "a judge may be disciplined only for violating a Rule", not a Canon.)

The four Articles of Alaska's Revised Code (and the equivalent four canons of the ABA's 2007 Model Code) correspond loosely to Canons 2 through 5 of Alaska's current Code of Judicial Conduct. There is no Article corresponding to Alaska's current Canon 1 because current Canon 1 does not contain any rules of judicial conduct. (This is explained on pages 1–2 of this document.)

The format of this comparison document:

This comparison document is divided into two parts. Part One focuses on Alaska's current rules of judicial conduct — the rules found in Alaska's current Code of Judicial Conduct, plus the special rules for senior judges found in Alaska Administrative Rule 23(f) and the additional rules of judicial disqualification found in AS 22.20.020(a). For each of these rules, this document identifies the corresponding provisions of the Supreme Court's Revised Code — or, in a few instances, this document explains why there is no corresponding rule in the Revised Code.

Part Two of this document describes the rules of conduct that are new in the Revised Code —*i.e.*, the rules that have no direct counterpart in Alaska's current Code.

Part One
Alaska's existing rules of judicial conduct, and their counterparts in the Revised Code

Alaska's Current Canon 1

Alaska's current Canon 1 consists of three sentences:

> An independent and honorable judiciary is indispensable to achieving justice in our society. A judge should participate in establishing, maintaining, and enforcing high standards of judicial conduct. The provisions of this Code are intended to preserve the integrity and the independence of the judiciary; the Code should be construed and applied to further these objectives.

The first sentence of this Canon does not state a rule of conduct; rather, it explains why we have a Code of Judicial Conduct in the first place.

The second sentence of Alaska's current Canon 1 uses the word "should" rather than "shall". As explained in the second Paragraph of Alaska's current Preamble, the use of "should" means that this sentence states an aspirational goal, not a rule of conduct. [1]

(The Revised Code follows this same rule of usage; see Paragraph [2] of the "Scope" section of the Revised Code.)

The third sentence of Alaska's current Canon 1 establishes a rule of construction that applies to the Code as a whole. As a practical matter, this rule of construction is intended to guide the decisions of the Judicial Conduct Commission and the Alaska Supreme Court. It is not a rule of conduct for individual judges.

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[1] "When the text [of the Code] uses 'shall' or 'shall not', it is intended to impose binding obligations the violation of which can result in disciplinary action. When 'should' or 'should not' is used, the text is intended as hortatory and as a statement of what is or is not appropriate conduct but not as a binding rule under which a judge may be disciplined."

Because Alaska's current Canon 1 does not state any rules of judicial conduct, the Revised Code does not contain an Article corresponding to existing Canon 1.

Instead, major portions of Alaska's existing Canon 1 are now included in the Preamble to the Revised Code. A revised version of Canon 1's first sentence is found in Paragraph [1] of the new Preamble. A lengthy reformulation of Canon 1's second sentence is now found in the last sentence of Paragraph [1] and in Paragraph [2] of the new Preamble. The third sentence of Canon 1 (the rule of construction) has been dropped.

Alaska's Current Canon 2

Canon 2A

Alaska's current Canon 2A declares that in all of a judge's activities — both judicial and extrajudicial — "a judge shall exhibit respect for the rule of law, [shall] comply with the law, [shall] avoid impropriety and the appearance of impropriety, and [shall] act in a manner that promotes public confidence in the integrity and the impartiality of the judiciary."

A judge's duty to comply with the law is found in Rule 1.1 of the Revised Code.

A judge's duty to avoid impropriety or the appearance of impropriety in all of the judge's activities is found in Rule 1.2 of the Revised Code.

Likewise, proposed Rule 1.2 echoes Alaska's current Canon 2A by declaring that judges have duty to act "in a manner promoting public confidence in the independence, integrity, and impartiality of the judiciary".

The Revised Code does not explicitly codify a requirement that judges "exhibit respect for the rule of law". However, the Revised Code requires judges to:

- "comply with the law" (Rule 1.1);
- "uphold and apply the law" (Rule 2.2);
- "act at all times in a manner promoting public confidence in the independence, integrity, and impartiality of the judiciary" (Rule 1.2);
- refrain from any conduct that would "convey ... the impression that someone is in a position to influence the judge" (Rule 2.4(C)); and
- "perform all duties of judicial office fairly, impartially, and without bias or prejudice" (Rule 2.2).

As a practical matter, if a judge complies with these provisions of the Revised Code, the judge's conduct will exhibit respect for the rule of law.

Canon 2B

The first sentence of Alaska's existing Canon 2B declares that a judge "shall not allow family, social, political, or other relationships to influence the judge's judicial conduct or judgment." This rule is now found in Rule 2.4(B) of the Revised Code.

The next sentence of Canon 2B declares that a judge "shall not use or lend the prestige of judicial office to advance the private interests of the judge or others." This rule is now found in Rule 1.3 of the Revised Code.

The third sentence of Canon 2B declares that a judge "shall not knowingly convey or permit others to convey the impression that anyone is in a special position to influence the judge." This rule is now found in Rule 2.4(C) of the Revised Code.

The fourth sentence of Canon 2B declares that a judge "shall not testify voluntarily as a character witness, except that a judge may testify as a character witness in a criminal proceeding if the judge or a member of the judge's family is a victim of the offense or if the defendant is a member of the judge's family." A slightly different version of this rule is now found in Rule 3.3 of the Revised Code.

Specifically, Rule 3.3 of the Revised Code allows a judge to testify as a character witness on behalf of a family member in *any* proceeding (not just a criminal case), but

the rule requires the judge to "[make] it clear to the fact-finder and the other participants that the judge is acting in a purely personal capacity and not in a judicial capacity."

Canon 2C

Alaska's current Canon 2C prohibits a judge from holding membership in any organization that the judge knows practices invidious discrimination on the basis of race, sex, religion or national origin.

A more expansive version of this rule is now found in Rule 3.6 of the Revised Code. Proposed Rule 3.6(A) prohibits a judge from knowingly holding membership in any organization that "practices invidious discrimination on the basis of race, sex, gender, gender identity, religion, national origin, ethnicity, or sexual orientation, or on the basis of any other classification protected by federal, state, or local law where the judge lives or regularly serves."

(Because the military has traditionally adhered to policies that violate these kinds of laws, Rule 3.6(A) makes an exception for "a judge's service in the national or state military".)

Alaska's present Canon 2C also prohibits a judge from regularly using the facilities of an organization that practices invidious discrimination — or from even using the facilities of such an organization on an occasional basis "unless there are no alternative facilities in the community and [the judge's] use of the facilities would not give rise to an appearance of endorsing the discriminatory practices of the organization."

A slightly revised version of this rule is now found in Rule 3.6(B) of the Revised Code. Under proposed Rule 3.6(B), a judge is still forbidden from *regularly* using "the benefits or facilities of an organization if the judge knows that the organization practices any form of discrimination described in [Rule 3.6(A)]." But Rule 3.6(B) allows a judge to arrange, or attend, an isolated event in the facility of such an organization "if the judge's action could not reasonably be perceived as an endorsement of the organization's discriminatory practices."

(See also Rule 3.1(C) of the Revised Code, which prohibits a judge from "participat[ing] in activities that would appear to a reasonable person to undermine the judge's independence, integrity, or impartiality".)

Alaska's Current Canon 3

Canon 3A

Alaska's current Canon 3A declares that "the judicial duties of a judge take precedence over all the judge's other activities" — and that these judicial duties "include all the duties of the judge's office prescribed by law."

A slightly reworded version of this rule is now found in Rule 2.1 of the Revised Code: "The duties of judicial office shall take precedence over a judge's extrajudicial activities."

The scope of this obligation is clarified in Paragraph [2] of the Comment that accompanies Rule 2.1:

> Family obligations, illnesses, emergencies, and permissible extrajudicial activities may sometimes require a judge's immediate attention. Attending to those obligations and situations in a reasonable manner is not prohibited by this Rule. In addition, a judge should be able to take a reasonable amount of personal leave. However, a judge's attendance to family and other extrajudicial obligations and situations, as well as a judge's leave, should be guided by the Alaska Court System's applicable policies.

Canon 3B(1)

Alaska's current Canon 3B(1) requires a judge to "consider and decide all matters assigned to the judge except [when] the judge's disqualification is required."

This rule is now found in Rule 2.7 of the Revised Code: "A judge shall hear and decide matters assigned to the judge, except when disqualification is required by Rule 2.11 or other law."

Canon 3B(2)(a)

Alaska's current Canon 3B(2)(a) states that a judge "shall maintain professional competence in the law." This duty is found in Rule 2.5(A) of the Revised Code, but it is expressed somewhat differently.

Proposed Rule 2.5(A) declares that a judge "shall perform all duties of judicial office competently and diligently", and then Paragraph [1] of the accompanying Comment explains that the "competence in the performance of judicial duties" required by Rule 2.5(A) means that judges must have "the legal knowledge, skill, thoroughness, and preparation reasonably necessary to perform the responsibilities of judicial office."

Canon 3B(2)(b)

Alaska's current Canon 3B(2)(b) requires a judge to be "faithful to the law", and it further declares that a judge must not "deviate from the law to appease public clamor, to avoid criticism, or to advance an improper interest." This rule is now found in Rule 2.4(A) of the Revised Code.

Canon 3B(3)

Alaska's current Canon 3B(3) requires a judge to "take reasonable steps to maintain and ensure order and decorum in judicial proceedings before that judge." This rule (slightly reworded) is now found in Rule 2.8(A) of the Revised Code: "A judge shall require order and decorum in proceedings before the court."

Canon 3B(4)

Alaska's current Canon 3B(4) declares that a judge "shall be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, and others with whom the judge deals in an official capacity." Canon 3B(4) also requires a judge to "take reasonable steps" to make sure that "lawyers and ... court staff and others subject to the judge's direction and control" adhere to this same standard of conduct.

Both aspects of Canon 3B(4) are now found in Rule 2.8(B) of the Revised Code: "A judge shall be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, court personnel, and others with whom the judge deals in an official capacity, and shall require similar conduct of lawyers, court staff, court officials, and others subject to the judge's direction and control."

Canon 3B(5)

The first sentence of Alaska's current Canon 3B(5) states that, during the performance of a judge's judicial duties, the judge "shall act without bias or prejudice and shall not manifest, by words or conduct, bias or prejudice based upon race, color, sex, religion, national origin, disability, age, marital status, changes in marital status, pregnancy, parenthood, sexual orientation, or social or economic status.

The second sentence of Canon 3B(5) declares that a judge must also police the conduct of court staff and other people whom the judge supervises: "A judge shall not permit court staff and others subject to the judge's direction and control to deviate from these standards [of unbiased conduct] in their duties."

Both of these duties are carried forward in Rule 2.3(A) of the Revised Code.

See also Rule 2.2 of the Revised Code: "A judge ... shall perform all duties of judicial office fairly, impartially, and without bias or prejudice".

Canon 3B(6)

Alaska's current Canon 3B(6) supplements the duties imposed by Canon 3B(5), by adding that judges have a similar duty to police the conduct of the lawyers in proceedings before them — making sure that these lawyers do not manifest bias or prejudice:

> A judge shall require lawyers in proceedings before the judge to refrain from manifesting, by words or conduct, bias or prejudice based upon race, color, sex, religion, national origin, disability, age, marital status, changes in marital status, pregnancy, parenthood, sexual orientation, or social or economic status.

However, the final clause of Canon 3B(6) explains that this rule does not require or allow a judge to interfere with a lawyer's "legitimate advocacy" in instances where one or more of these listed factors, "or other similar factors", are issues in the proceeding.

A judge's duty to police the conduct of lawyers for improper manifestations of bias or prejudice is now found in Rule 2.3(B) of the Revised Code. The clarification that this duty does not require or allow a judge to interfere with legitimate advocacy is found in Rule 2.3(C) of the Revised Code.

Canon 3B(7)

Alaska's current Canon 3B(7) contains many different rules.

The first sentence of Canon 3B(7) declares that a judge must "accord to every person the right to be heard according to law." This rule is now found in Rule 2.6(A) of the Revised Code.

The remainder of Canon 3B(7) deals with *ex parte* communications.

The second sentence of Canon 3B(7) states that "a judge shall not initiate, permit, or consider ex parte communications or [any] other communications made to the judge

outside the presence of the parties concerning a pending or impending proceeding" unless the *ex parte* communication is authorized by another provision of Canon 3B(7). This general restriction on *ex parte* communications is now found in Rule 2.9(B) of the Revised Code.

Turning, then, to the types of *ex parte* communications that are expressly authorized by Alaska's current Canon 3B(7):

- Canon 3B(7)(a) authorizes a judge to initiate or consider an *ex parte* communication when the judge is expressly authorized by law to do so.

  This rule is now found in Rule 2.9(C)(5) of the Revised Code.

- Canon 3B(7)(b) authorizes a judge to engage in *ex parte* communications for scheduling or other administrative purposes, provided that:

  (i) the communications do not deal with substantive matters or the merits of the issues to be litigated,

  (ii) the judge reasonably believes no party will gain a procedural or tactical advantage because the communication is *ex parte*, and

  (iii) the judge takes reasonable steps to notify all other parties promptly of the substance of the *ex parte* communication and, when practicable, allows them an opportunity to respond. This subsection does not apply to *ex parte* communications by law clerks or other court staff concerning scheduling or administrative matters.

  This provision (with significantly condensed wording) is now found in Rule 2.9(C)(1) of the Revised Code.

  Another provision of Rule 2.9 — Paragraph (D)(1) — adds a new procedural requirement pertaining to certain authorized *ex parte* communications: Paragraph (D)(1) specifies that "when circumstances require an *ex parte* communication between a trial judge and an appellate court with respect to a pending matter, the communication shall be in writing."

- Canon 3(7)(c) authorizes a judge to engage in *ex parte* communication on specified administrative topics with one or more parties if all the parties have agreed to this procedure beforehand, either in writing or on the record.

  A modified version of this provision is found in Rule 2.9(C)(2) of the Revised Code.

- Canon 3B(7)(d) authorizes a judge to consult *ex parte* with other judges, law clerks, and other court staff whose function is to aid the judge in carrying out the judge's adjudicative responsibilities.

  This rule is now found in Rule 2.9(C)(3) of the Revised Code, but in an expanded form. Rule 2.9(C)(3) declares that, when a judge consults other judges or court personnel (such as law clerks and staff attorneys) whose function is to aid the judge in carrying out the judge's adjudicative responsibilities, the judge must make "reasonable efforts to avoid receiving factual information that is not part of the record", and the judge must not violate the duty "to personally decide the matter based only on adjudicative facts in the record before them."

  In addition, a related provision of Rule 2.9 — Paragraph (D)(2) — clarifies that a judge is not allowed to engage in *ex parte* communications with three groups of people:
  - with other judges, law clerks, or court staff who have been, or who would be, disqualified from hearing the matter;
  - with judges who have appellate jurisdiction over the matter, or with "any other judge who may be called upon to review the judge's decision in the matter"; or
  - with "any judge, magistrate judge, or master whom the court has appointed to serve in some capacity in the proceeding, and whose recommendation or findings will be reviewed by the judge."

- Canon B(7)(e) authorizes a judge to confer separately with the parties and their lawyers in an effort to mediate or settle matters pending before the judge, if the parties have consented.

This rule is now found in Rule 2.9(C)(2) of the Revised Code.

Note that the third sentence of Alaska's current Canon 3B(7) requires judges to "make reasonable efforts to see that law clerks and other court staff carrying out similar functions under the judge's supervision do not violate the provisions [relating to *ex parte* communications]." This rule is now found in Rule 2.9(E) of the Revised Code.

In addition to the types of authorized *ex parte* communications already discussed here, Rule 2.9(C)(4) of the Revised Code authorizes judges to consult *ex parte* with the Alaska Commission on Judicial Conduct, or with other judges or legal experts or outside counsel, concerning the requirements of the Code of Judicial Conduct.

Finally, Rule 2.9(D) of the Revised Code imposes a new duty on judges who receive an *ex parte* communication that is not authorized by the Rule: the judge must promptly notify all parties, furnish them with the text or the substance of the communication, and provide the parties with an opportunity to respond.

Canon 3B(8)

Alaska's current Canon 3B(8) states that a judge "shall dispose of all judicial matters promptly, efficiently, and fairly."

A modified version of this rule is now found in Rule 2.5(B) of the Revised Code: "A judge shall dispose of all judicial matters promptly and efficiently."

Rule 2.5(B) does not mention a judge's duty to decide matters "fairly" because Rule 2.5 deals only with a judge's duties of "competence", "diligence", and administrative "cooperation" with other judges and court officials.

A judge's duty to decide matters fairly is now found in Rule 2.2: "A judge shall uphold and apply the law, and shall perform all duties of judicial office fairly, impartially, and without bias or prejudice."

Canon 3B(9)

Alaska's current Canon 3B(9) prohibits a judge from "[making] any public comment that might reasonably be expected to affect [the] outcome or impair [the] fairness" of any pending or impending proceeding, or from making any nonpublic comment "that might substantially interfere with a fair trial or hearing". However, Canon 3B(9) has an exception for public statements that judges make in the course of their official duties (*e.g.*, announcing a ruling that will, or may, affect the outcome of the proceeding).

This rule, and this exception, are now found in Rule 2.10(A) of the Revised Code.

In addition, Alaska's current Canon 3B(9) requires judges to "take reasonable steps" to make sure that "court staff subject to the judge's direction and control" likewise do not make any public or non-public statements that would violate the restrictions of the canon. This rule is found in Rule 2.10(C) of the Revised Code.

Finally, Canon 3B(9) declares that these restrictions do not apply to a judge's statements pertaining to "proceedings in which the judge is a litigant in a personal capacity." This rule is found in Rule 2.10(E) of the Revised Code.

Canon 3B(10)

Alaska's current Canon 3B(10) declares that, although a judge "may express appreciation to jurors for their service to the judicial system and the community", a judge "shall not commend or criticize jurors for their verdict other than in a court order or opinion in a proceeding".

A modified version of this rule is now found in Rule 2.8(C) of the Revised Code. Rule 2.8(C) does not make an exception for judges who commend or criticize a jury's verdict in a court order or opinion. Instead, Rule 2.8(C) simply declares that a judge "shall not commend or criticize the jurors for their verdict."

The drafting committee concluded that the existing language in Canon 3B(10) about "court orders and opinions" was meant to clarify that judges could decide motions for relief from a jury verdict based on the assertion that the verdict was not supported by the evidence, or was against the weight of the evidence — even though the judge's decision could be viewed as an implicit commendation or criticism of the jury's verdict.

But the language of existing Canon 3B(10) is inappropriately broad. Canon 3B(10)'s exception for "court orders and opinions" is not confined to the situations that justify it. Rather, this exception seemingly allows judges to openly and explicitly commend or criticize jury verdicts for any reason, so long as the judge's commendation or criticism is contained in some sort of order or opinion.

To cure this problem, proposed Rule 2.8(C) does not include current Canon 3B(10)'s broad language about "court orders and opinions". Instead, Paragraph [3] of the Comment that accompanies Rule 2.8 explains that Rule 2.8(C) was not intended to "prohibit a judge from impliedly commending or criticizing a jury verdict when the judge issues a court order, opinion, or oral decision that resolves a request for relief from the verdict — for example, a request for relief based on an assertion that the verdict is not supported by the evidence, is against the weight of the evidence, or was affected by juror misconduct."

Canon 3B(11)

Alaska's current Canon 3B(11) states that "a judge who acquires nonpublic information in a judicial capacity shall not disclose the information for any purpose unrelated to the judge's judicial duties, nor shall the judge use the information for the financial gain of the judge or any other person."

A modified version of this rule is now found in Rule 3.5 of the Revised Code. Rule 3.5 contains the same prohibitions as Canon 3B(11), but it also contains an exception that allows judges to "disclose such [nonpublic] information as necessary to protect any person from what the judge reasonably believes to be a substantial risk of immediate death or serious bodily harm."

Canon 3B(12)

Alaska's current Canon 3B(12) states that "a judge shall not engage in independent ex parte investigation of the facts of a case" unless the judge gives the parties "prior notice ... and an opportunity to respond."

This rule is now found in Rule 2.4(D) of the Revised Code: "A judge shall not investigate the facts of a matter independently without notice and consent of the parties."

Canon 3C(1)

Alaska's current Canon 3C(1) contains two rules and one aspirational goal.

The first clause of Canon 3(C)(1) declares that judges "shall maintain professional competence in judicial administration", and then the second clause of the canon says that judges "*should* cooperate with other judges and court staff in the administration of court business." The canon's use of the word "should" means that this second clause is an aspirational goal for judges: judges should try to achieve this goal, but judges cannot be disciplined for failing to meet this goal. See the second Paragraph of the Preamble to Alaska's current Code.

The first clause of Canon 3(C)(1), requiring judges to maintain professional competence in judicial administration is now found, in a reworded form, in Rule 2.5(A) of the Revised Code. Rule 2.5(A) declares that "a judge shall perform all duties of judicial office competently and diligently." Because the Terminology section of the Revised Code defines both "duties of judicial office" and "judicial duties" as meaning "all of the adjudicative and administrative duties prescribed for the judge by law", Rule 2.5(A) requires judges to competently discharge their administrative responsibilities.

The second clause of Canon 3(C)(1) — what is now an aspirational goal of cooperating with other judges and court staff in the administration of court business — will become a judge's obligation under Rule 2.5(C) of the Revised Code. Rule 2.5(C) declares, "A judge *shall cooperate* with other judges and court officials in the administration of court business."

Finally, Canon 3C(1) states that a judge "shall diligently discharge the judge's administrative responsibilities without bias or prejudice."

A judge's obligation to diligently discharge *all* judicial duties (both adjudicative and administrative) is now found in Rule 2.5(A) of the Revised Code (quoted above), while a judge's obligation to discharge all judicial duties (again, both adjudicative and administrative) "without bias or prejudice" is now found in Rule 2.2 of the Revised Code.

Canon 3C(2)

Alaska's current Canon 3C(2) requires a judge to "take reasonable steps" to ensure "that court staff and others subject to the judge's direction and control observe the standards of fidelity to the law and diligence in the performance of their duties that apply to the judge", and that they likewise "refrain from manifesting bias or prejudice in the performance of their official duties."

With regard to the first part of Canon 3(C)(2) — the clauses requiring a judge to take reasonable steps to ensure that court staff and others subject to the judge's direction conduct themselves with the same fidelity to the law and diligence in the performance of their duties that apply to the judge — the Revised Code contains this same obligation, but it does not use the same wording to describe the obligation.

Instead, Rule 2.12(A) of the Revised Code declares that a judge "shall make reasonable efforts, including providing appropriate supervision, to ensure that court personnel and others subject to the judge's direction and control act in a manner consistent with the judge's obligations under this Code."

The final clause of Canon 3C(2) — requiring a judge to take reasonable steps to ensure that court staff and others subject to the judge's direction and control do not manifest bias or prejudice in the performance of their official duties — is now found in Rule 2.3(A) of the Revised Code.

Canon 3C(3)

Alaska's current Canon 3C(3) states that presiding judges and other judges who exercise supervisory authority over other judges "shall take reasonable steps to assure that, for matters within the supervising judge's scope of authority, the other judges properly perform their judicial responsibilities."

The Revised Code uses slightly different wording to describe this obligation: Rule 2.12(B) declares that "a judge with supervisory authority for the performance of other judges shall take reasonable measures to ensure that those judges properly discharge their judicial responsibilities, including the prompt disposition of matters before them."

Canon 3C(4)

Alaska's current Canon 3C(4) states that a judge "shall not make unnecessary appointments", that a judge "shall exercise the power of appointment impartially and on the basis of merit", and that a judge "shall avoid nepotism and favoritism" in making appointments. In addition, Canon 3(C)(4) declares that a judge "shall not approve compensation of appointees beyond the fair value of services rendered."

These rules are now found in Rule 2.13(A) of the Revised Code — and, to clarify the scope of these rules, Rule 2.13(A) explicitly governs both "appointments" and "hires".

Although Alaska's current Canon 3C(4) prohibits judges from engaging in nepotism when they make appointments and hires, our current Code does not contain a definition of nepotism — and the Alaska statutes contain several *different* definitions of "nepotism".

Rule 2.13(B) of the Revised Code remedies this problem by codifying a definition of "nepotism" that applies to a judge's appointments and hires:

> For the purposes of this Rule, "nepotism" means the hiring or appointment of a person within the third degree of relationship to the judge

or to the judge's spouse or domestic partner, or the hiring or appointment of the spouse or domestic partner of such a relative, unless the judge receives an appropriate waiver from the administrative director of the Alaska Court System.

Canons 3D(1) and 3D(2)

Alaska's current Canons 3D(1) and 3D(2) deal with a judge's duty in situations where the judge either is aware of a likelihood, or actually knows, that another judge has violated the Code of Judicial Conduct, or that a lawyer has violated the Rules of Professional Conduct. All of these situations are covered in Rule 2.15 of the Revised Code. Rules 2.15(A) and (C) are the counterparts to Canon 3D(1) (violations by other judges), while Rules 2.15(B) and (D) are the counterparts to Canon 3D(2) (violations by lawyers).

Under current Canon 3D(1), if a judge has information establishing a likelihood (*i.e.*, more probably than not) that another judge has violated the Code, the judge must "take appropriate action". This duty is now found in Rule 2.15(C) of the Revised Code.

If the evidence is stronger — if the judge *knows* that another judge has violated the Code — and if the violation of the Code "reflect[s] the other judge's lack of fitness for judicial office", then Canon 3D(1) specifies that the judge possessing this information must "inform the appropriate disciplinary authority" unless the judge reasonably believes that the other judge's misconduct has already been, or otherwise will be, reported.

Regarding the types of misconduct that "reflect a lack of fitness for judicial office", Canon 3D(1) declares that this category includes (1) soliciting or accepting a bribe, (2) acting dishonestly in other fashion in reaching a judicial or administrative decision, (3) improperly using or threatening to use the judge's judicial power to harm someone else's interests "for the purpose of inducing that person to bestow a benefit upon the judge or upon someone else pursuant to the judge's wishes", or (4) committing any other felony.

A modified version of Canon 3D(1) is now found in Rules 2.15(A) and 2.15(C) of the Revised Code.

Proposed Rule 2.15(A) is triggered when a judge *knows* (more than simply a likelihood) that another judge has violated the Code. But Rule 2.15(A) contains a slightly different test for whether the judge must "inform the appropriate authority". Under Rule 2.15(A), a judge must inform the appropriate disciplinary authority when the other judge's violation of the Code "raises a substantial question regarding the judge's honesty, trustworthiness, or fitness as a judge in [any] other respects".

(The term "appropriate authority" is defined in the Terminology section of the Revised Code. It means "the government entity or official having responsibility for initiating a disciplinary process in connection with the violation to be reported." This definition then continues:

> Normally, for judges appointed by the governor (including senior judges), this will be the Alaska Commission on Judicial Conduct. For other judicial officers, the appropriate authority will be the presiding judge of their judicial district. For lawyers, the appropriate authority will normally be the Discipline Counsel of the Alaska Bar Association.)

Alaska's current Canon 3D(2) imposes corresponding duties on a judge when the judge has information pertaining to an attorney's violation of the Rules of Professional Conduct.

Under Canon 3D(2), when a judge has information establishing that, more probably than not, an attorney has violated the Rules of Professional Conduct, Canon 3D(2) requires the judge to "take appropriate action". This duty is now found in Rule 2.15(D) of the Revised Code.

If a judge *knows* that an attorney has violated the Rules of Professional Conduct, and if the attorney's violation involves "an act of dishonesty, obstruction of justice, or breach of fiduciary", then Canon 3D(2) requires the judge to "inform the appropriate disciplinary authority" (again, unless the judge reasonably believes that the attorney's misconduct has already been, or otherwise will be, reported).

A modified version of this duty is now found in Rule 2.15(B) of the Revised Code. Like Canon 3D(2), proposed Rule 2.15(B) is triggered when a judge *knows* that an attorney has violated the Rules of Professional Conduct — but, under Rule 2.15(B), the test for whether the judge must "inform the appropriate authority" is whether the other judge's violation of the Code "raises a substantial question regarding the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects".

A clarification of a senior judge's duty to report known misconduct by a lawyer or by another judge

The Application section of Alaska's existing Code of Judicial Conduct declares that senior judges (*i.e.*, former judges who are eligible for pro tempore judicial service under Alaska Administrative Rule 23) are under a duty of confidentiality with respect to any information they obtain while serving as members of a judicial assistance program — a duty of confidentiality ostensibly so complete that these senior judges are prohibited from "report[ing] any failure of a judge referred to the [program] to admit [their] problem or submit to treatment". See Paragraph (B)(3) of the existing Application section.

But despite this ostensible duty of total confidentiality, Alaska judges serving as members of a judicial assistance program have always been required to report a judge who, because of serious incapacity or serious misconduct, is apparently unfit to perform the duties of judicial office. See existing Canon 3D(1).

The Revised Code clarifies this matter. Paragraph [4] of the Comment to Rule 2.15 declares that the Code does *not* prohibit judges who serve as members of a judicial assistance program from disclosing information they receive through their service on that program if the disclosure is required by Rule 2.14(A) or Rule 2.15(A), or if the disclosure is required or allowed by the statute or court rule establishing that assistance program. This rule applies to *all* judges serving on assistance programs, regardless of whether they are "senior judges" as defined in the Revised Code — *i.e.*, regardless of whether they are former judges who have been approved for pro tempore judicial service under Alaska Administrative Rule 23.

A new duty to take action when a judge reasonably believes that the performance of a lawyer or another judge is impaired

A separate rule of the Revised Code — Rule 2.14 — imposes a new (but related) duty on judges: it requires judges to take action in situations where the judge reasonably believes that the performance of another judge or the performance of a lawyer "is impaired by drugs or alcohol, or by a mental, emotional, or physical condition".

In these situations, Rule 2.14(A) requires the judge to "take appropriate action". Paragraph (B) of Rule 2.14 describes a range of potentially "appropriate actions" — including "speaking directly to the impaired person, notifying an individual with supervisory responsibility over the impaired person, or making a referral to the Lawyer's Assistance Program of the Alaska Bar Association or the Judicial Assistance Committee of the Alaska Court System."

If the impaired lawyer is currently participating in a matter before the judge, Paragraph (C) of Rule 2.14 authorizes the judge to "take immediate action" if the judge concludes that, because of the lawyer's impairment, "the lawyer is unable to provide competent representation to the lawyer's client." In other circumstances, the judge may defer action until the matter has been concluded.

(Again, a judge's duty to take appropriate action under Rule 2.14 applies equally to senior judges who learn of a judge's or lawyer's impairment through their service on an assistance program. See Comment [2] to Rule 2.14.)

Canon 3D(3)

Canon 3D(3) states that when a judge has non-privileged information concerning another judge's potential violation of the Code of Judicial Conduct, or concerning a lawyer's potential violation of the Rules of Professional Conduct, the judge must "fully reveal" this information upon receiving a proper request from any disciplinary authority or court investigating the potential misconduct.

A broader formulation of this duty is now found in Rule 2.16(A) of the Revised Code. Rule 2.16(A) states that a judge "shall cooperate and be candid and honest with the Alaska Commission on Judicial Conduct, the disciplinary arm of the Alaska Bar Association, and any other applicable judicial and lawyer disciplinary agencies" — although, again, a judge is not required to disclose privileged information.

In addition, Rule 2.16(B) now expressly forbids judges from retaliating, "directly or indirectly", against any person "known or suspected to have filed a complaint against any judge or lawyer", or against any person "known or suspected to have assisted or cooperated with a disciplinary investigation of a judge or a lawyer."

Canon 3D(4)

Canon 3D(4) declares that all of the acts that a judge is required or permitted to do by Canons 3D(1), 3D(2), and 3D(3) — in other words, all the acts that a judge performs "in the discharge of [the] disciplinary responsibilities" imposed by those three canons — "are part of a judge's judicial duties."

The drafters of the 2007 ABA Model Code concluded that this canon was unnecessary — because the Model Code defines the phrase "judicial duties" as "all of the adjudicative and administrative duties prescribed for the judge by law", and "law" is defined as including all of the duties imposed by the Code of Judicial Conduct. For this reason, the ABA Model Code no longer contains a rule like Canon 3D(4). Alaska's Revised Code has the same definitions of "judicial duties" and "law" as the ABA Model Code, so the Revised Code follows the same approach.

Canons 3E and 3F

In Alaska's current Code, Canons 3E(1) and Canon 3F function together to define the rules that govern a judge's disqualification. Canon 3E(1) lists various grounds for judicial disqualification, while Canon 3F specifies which of these grounds of disqualification can be waived by the parties, and the procedures that govern any such a waiver.

There is, however, an underlying problem with the Canon 3E / Canon 3F pairing: these two canons do not completely describe Alaska's law of judicial disqualification.

The Alaska Legislature has enacted a statute, AS 22.20.020(a), which prescribes nine separate grounds for disqualification. Some of these can be waived by the parties, and some cannot. To make things even more complicated, some of the waivable statutory grounds for disqualification apply only during the first years of a judge's service, while some are ongoing.

Alaska's current Canon 3E(1) is based on the corresponding canon of the 1990 ABA Model Code, so it does not incorporate Alaska's statutory grounds for disqualification. At the same time, Canon 3E was clearly not intended to supersede the statute — because the Comment to Canon 3E alerts readers that "additional grounds for disqualification are set out in AS 22.20.020(a)".

A further aspect of this same problem is that, when Canon 3F specifies the grounds for disqualification that can be waived by the parties, it only lists the grounds for disqualification that are found Canon 3E(1). It does not list the other grounds for disqualification codified in the statute. Readers must refer to the Comment to Canons E and F to find out which statutory grounds for disqualification can and cannot be waived.

Rule 2.11 of the Revised Code solves this problem by combining all of Alaska's judicial disqualification provisions into a single rule. Paragraph (A) of Rule 2.11 lists all the mandatory grounds for disqualification specified in current Canon 3F(1) or in AS 22.20.020(a) — grounds that cannot be waived by the parties. Paragraphs (B) and (C) of Rule 2.11 cover all the waivable grounds for disqualification that are currently found in current Canon 3E(1) or AS 22.20.020(a). Paragraph (D) of Rule 2.11 lists the waivable grounds for disqualification that are currently found in Alaska Administrative Rule 23(f) — special disqualification provisions that apply to senior judges who engage in private arbitration or mediation.

Paragraphs (E) and (F) of Rule 2.11 then describe the rules and procedures that judges must follow if there is a ground of disqualification.

Paragraph (A) of Rule 2.11 lists the four mandatory grounds for disqualification — the grounds that cannot be waived. These grounds are:

- when the judge has a personal bias or prejudice concerning a party or a party's lawyer;
- when the judge is, or will likely be, a party to the proceeding or a material witness in the proceeding;
- when the judge or the judge's spouse or domestic partner or a child of the judge has a more than de minimis economic interest that could be substantially affected by the pendency or outcome of the proceeding; or
- when the judge believes for any other reason that the judge cannot render a fair and impartial decision.

Paragraph (B) of Rule 2.11 lists the waivable grounds for disqualification that can be present throughout a judge's career. The list in Paragraph (B) includes the waivable grounds for disqualification found in our current Canon 3E(1) and in the 2007 ABA Model Code, but it also includes some of the waivable grounds for disqualification codified in AS 22.20.020(a) — the ones that are not time-limited.

It is important to note that the introductory clause of Paragraph (B) mirrors Alaska's current Canon 3E(1) when it declares that the specific disqualifying circumstances listed in Paragraph (B) are simply instances of the more general rule that "a judge is disqualified in any proceeding in which the judge's impartiality might reasonably be questioned". Thus, even though Rule 2.11(B) lists several specific grounds for disqualification, the Rule contemplates that there may be other situations where a judge is disqualified (*i.e.*, waivably disqualified) because the judge's impartiality might reasonably be questioned.

Paragraph (C) of Rule 2.11 lists four waivable *time-limited* grounds for disqualification — situations where the judge's disqualification hinges on an event that occurred, or a relationship that existed, during the two years preceding the judge's assignment to the matter, or during the two years preceding the filing of the action. All of these time-limited grounds of disqualification come from AS 22.20.020(a), and they apply primarily to recently appointed judges. (See Comment [1] to Rule 2.11.)

Finally, Paragraph (D) of Rule 2.11 lists three waivable grounds of disqualification that apply to senior judges who engage in private arbitration or mediation. These grounds of disqualification are based on provisions currently found in Administrative Rule 23(f) — although, with regard to a senior judge's disqualification based on the judge's prior service as an arbitrator or mediator for a lawyer or party in the case, the current period of disqualification (two years) has been reduced to six months in the Revised Code.

Paragraph (E) of Rule 2.11 describes a judge's duties when a ground of disqualification is presented.

Paragraph (E)(1) states that judges must recuse themselves if they conclude that they are disqualified under Paragraph (A) of the Rule (the mandatory grounds of disqualification), or if they conclude that they are disqualified under a provision of Paragraph (B), (C), or (D) of the Rule (the waivable grounds of disqualification) and that, given the circumstances, they would not accept the parties' waiver of the disqualification even if one were offered.

Paragraph (E)(1) does not require a judge to disclose this ground of disqualification, but Comment [13] to Rule 2.11 explains that judges are free to disclose the ground of disqualification "in the interest of transparency, or to promote public confidence in the judiciary (see Rule 1.2), or when the disclosure might negate any appearance that the judge is shirking the duty imposed by Rule 2.7 to hear and decide all matters assigned to the judge except when disqualification is required under this Rule."

Paragraph (E)(2) of Rule 2.11 applies when judges conclude that they are disqualified under a provision of Paragraph (B), (C), or (D) of the Rule (the waivable grounds of disqualification), but they also conclude that they would, or might be, willing to accept the parties' waiver of the disqualification. In these circumstances, judges must promptly disclose the known reason(s) for their disqualification, either at the beginning of the proceedings or as soon as the reason becomes known. Immediately following this disclosure, the judge shall inform the parties that the matter may remain before the judge if the parties waive the disqualification and the judge, upon reflection, accepts the parties' waiver.

Paragraph (F) of Rule 2.11 specifies the procedures that govern any waiver of a ground of disqualification by the parties. Rule 2.11(F) also provides that, even when the parties wish to waive a ground of disqualification, the judge is not bound by the parties' decision if the judge continues to believe that disqualification is appropriate.

Finally, Paragraph (G) of Rule 2.11 carries forward the obligations that are currently imposed on judges by Canon 3E(2): the obligation to keep informed about the judge's personal and fiduciary economic interests, and the obligation to make a reasonable effort to keep informed of the personal economic interests of the judge's spouse or domestic partner and the economic interests of the minor children residing in the judge's household.

Alaska's Current Canon 4

Canon 4A

Canon 4A contains restrictions that apply to all of a judge's extra-judicial activities. The canon sets forth three overall restrictions: extra-judicial activities must not "cast reasonable doubt on the judge's capacity to act impartially as a judge", or "demean the judicial office", or "interfere with the proper performance of [the judge's] judicial duties."

Rule 3.1 of the Revised Code contains a broader version of these overall restrictions. Under Rule 3.1, a judge is prohibited from participating in extrajudicial activities "that will interfere with the proper and timely performance of the judge's judicial duties or demean the judicial office" or "that will lead to frequent disqualification of the judge", or "that would appear to a reasonable person to undermine the judge's independence, integrity, or impartiality".

In addition, Rule 3.1 contains two more restrictions on a judge's extrajudicial activities: Judges must not "engage in conduct that would appear to a reasonable person to be coercive", and judges must not "make use of court premises, staff, stationery, equipment, or other resources, except for reasonable use for activities that concern the

law, the legal system, or the administration of justice, or any additional use is permitted by law or court system policy."

Canons 4B through 4G

Canons 4B, 4C, 4D, 4E, 4F, and 4G are a series of rules dealing with specific forms of extrajudicial activity. However, Canon 4B is structured differently from the other five canons in this series — because Canon 4B describes what judges are *allowed* to do, while (for the most part) Canons 4C, 4D, 4E, 4F, and 4G describe what judges are *prohibited* from doing.

Canon 4B

Canon 4B addresses a judge's educational activities. This canon declares that judges have a "professional responsibility" to educate the public about the judicial system and judicial office — but this language is misleading, because the Comment to Canon 4B explains that this "responsibility" is "not intended to be enforced through the disciplinary process." In other words, judges "should" educate the public about the judicial system, but they are not required to.

Canon 4B then declares that, except as limited by the requirements of the Code, judges are permitted to "speak, write, lecture, teach, and participate in other extra-judicial activities" concerning non-legal topics, or concerning "the law, the legal system, the administration of justice".

The Revised Code has no equivalent provision. That is, the Revised Code does not have a rule that expressly authorizes judges to speak, write, lecture, or teach. Instead, the Revised Code regards these activities as inherently authorized so long as the judge's speaking, writing, lecturing, or teaching does not violate the general restrictions found in Rule 3.1. (Those restrictions are described above, in the discussion of existing Canon 4A.)

This point is explained in Paragraph [2] of the Comment to Rule 3.1, which states that "judges are uniquely qualified to engage in extrajudicial activities that concern the law, the legal system, and the administration of justice, such as by speaking, writing, teaching, or participating in scholarly research projects" — so long as "time permits" (*i.e.*, so long as the judge diligently performs their judicial duties), and so long as "judicial independence and impartiality are not compromised".

Also, on the question of a judge's speaking, writing, and teaching, see Rule 3.12 of the Revised Code, which deals with a judge's compensation for extrajudicial activities. Rule 3.12 declares that a judge "may accept reasonable compensation for extrajudicial activities permitted by this Code unless the judge's acceptance [of this compensation] would appear to a reasonable person to undermine the judge's independence, integrity, or impartiality."

Paragraph [1] of the Comment to Rule 3.12 elaborates on this point: it explains that a judge "is permitted to accept honoraria, stipends, fees, wages, salaries, royalties, or other compensation for speaking, teaching, writing, and other extrajudicial activities permitted by this Code, provided the compensation is reasonable and commensurate with the task performed."

Canon 4C

Canon 4C bears the title, "Governmental, Civic, Charitable, and Law-related Activities", but its main focus is *prohibitions and restrictions* on these activities.

Canon 4C(1)

Subsection (1) of Canon 4C states that a judge "shall not appear at a public hearing before, or otherwise consult with, an executive or legislative body or official" unless the matter concerns the law, the legal system, or the administration of justice, or unless the matter involves the judge or the judge's personal interests. A similar restriction is found in Rule 3.2 of the Revised Code.

Rule 3.2 states that a judge "shall not *voluntarily* appear at a public hearing" — but the ABA annotation to Model Rule 3.2 explains that the addition of the word "voluntarily" is not intended to alter the meaning of the rule. Rather, it is meant to clarify that if a judge is formally summoned to appear before a legislative or executive branch body, the judge must appear. *ABA Annotated Model Rules of Judicial Conduct* (3rd edition), p. 377.

Rule 3.2 makes the same exceptions as Canon 4C(1) for matters involving "the law, the legal system, or the administration of justice", and for matters which concern "the judge's legal, economic, or personal interests, or those of the judge's family members residing in the judge's household, or when the judge is acting in a fiduciary capacity."

But Rule 3.2 also contains one additional exception that is not found in current Canon 4C(1). Paragraph (B) of Rule 3.2 authorizes judges to appear before, or to consult with, executive or legislative bodies or officials concerning "matters about which the judge acquired knowledge or expertise while performing the duties of judicial office". According to the ABA annotation, this provision was added because "in the course of carrying out their judicial duties, judges often gain expertise and special insight into legal and social problems and matters of public policy, and [they] should be permitted to share that information with other governmental bodies and officials." *ABA Annotated Model Rules of Judicial Conduct* (3rd edition), pp. 379–380.

Canon 4C(2)

Section (2) of Canon 4C declares that a judge "shall not accept appointment to or serve on a [non-judicial] governmental committee or commission or other governmental position that is concerned with issues of fact or policy" unless those issues focus on "the improvement of the law, the legal system, or the administration of justice."

Rule 3.4(A) of the Revised Code contains a reworded version of this same restriction. Instead of forbidding judges from "accepting appointment" to these types of executive-branch and legislative-branch offices, Rule 3.4(A) only forbids judges from *serving* in these offices. Thus, judges may accept the appointment at the time it is offered

(without rushing to resign their judgeship), but they must formally resign their judgeship before they commence serving in the non-judicial office.

Rule 3.4(A)'s restriction is further modified by Rule 3.4(B), which explains that when the scope of a non-judicial government office *includes* matters of law, the legal system, or the administration of justice, but the overall scope of the body is too broad to satisfy the "law / legal system / administration of justice" limitation of Paragraph (A), "a judge may accept appointment to that body if the judge is able to limit or structure the judge's service so that it conforms to the restrictions of Paragraph (A)."

Both existing Canon 4C(2) and proposed Rule 3.4(C) allow a judge to represent the government "on ceremonial occasions or in connection with historical, educational, or cultural activities." Rule 3.4(C) declares that this type of government representation "does not constitute the acceptance of a government position" for purposes of Rule 3.4.

Canon 4C(3)

Section (3) of Canon 4C states that a judge may serve "as an officer, director, trustee, or non-legal advisor of an organization or governmental agency devoted to the improvement of the law, the legal system, or the administration of justice", or of a non-profit educational, religious, charitable, fraternal, cultural, athletic, or civic organization, so long as the judge observes a number of limitations, or so long as the judge's activity falls within one of the exceptions to these limitations:

- A judge must not serve in one of the listed leadership positions if "it is likely that the organization will be engaged in proceedings that would ordinarily come before the judge", or if the organization "will be engaged frequently in adversary proceedings in the court of which the judge is a member or in any court subject to the appellate jurisdiction of the judge's court."

- Regardless of the judge's role within the organization, a judge is prohibited from personally participating in the solicitation of funds for the organization — which includes the solicitation of memberships if these memberships are essentially a fund-raising mechanism for the organization. Despite this

prohibition, Canon 4C(3) declares that a judge is allowed to personally solicit funds for these types of organizations in one narrow situation: if the solicitation is directed to other judges over whom the judge does not exercise supervisory or appellate authority.

- Judges are likewise prohibited from using the prestige of their judicial office (or allowing anyone else to use the prestige of their judicial office) to promote fund-raising or to promote membership solicitations. Apart from these restrictions, a judge may otherwise solicit people to become members of the organization so long as the judge's solicitation could not reasonably be perceived as coercive.

- Regardless of the judge's role within the organization, a judge is prohibited from appearing as the speaker or guest of honor at an organization's fund-raising event, unless the organization is one that "seek[s] improvement in the administration of justice", or seeks to "benefit indigent representation ... or [enhance] access to justice", or unless the organization has dedicated the proceeds from the event to "seek[ing] to improve the administration of justice, benefit indigent representation, or assist access to justice."

- Despite these restrictions, Canon 4C(3) expressly permits a judge to assist the organization in *planning* fund-raising activities, and to participate in the management and investment of the organization's funds.

- In addition, Canon 4C(3) allows a judge to "make recommendations to public or private fund-granting organizations on projects and programs concerning the law, the legal system, or the administration of justice".

All of these rules — slightly reworded, and better organized — are found in Rule 3.7 of the Revised Code.

Canons 4D(1) through 4D(4)

Paragraphs (1) through (4) of Canon 4D address a judge's business and financial activities.

Canon 4D(1)

Canon 4D(1) contains two general restrictions on a judge's business and financial activities. The first restriction is that a judge "shall not engage in financial or business dealings", nor permit their name to be used in connection with any business venture or commercial advertising program — regardless of whether the judge receives any compensation — if this financial or business activity "might reasonably be perceived to exploit the judge's judicial position."

This same prohibition is now found in Rules 1.3(A) and 1.3(B) of the Revised Code. Under Rule 1.3(A), a judge is prohibited from "us[ing] or lend[ing] the prestige of judicial office to advance the personal or economic interests of the judge or others", or from knowingly allowing others to do so. And under Rule 1.3(B), a judge is prohibited from "engag[ing] in financial or business activities, with or without compensation, if the activity might reasonably be perceived to exploit the judge's judicial position".

The second restriction found in Canon 4D(1) is that judges are prohibited from entering into financial or business dealings "that would 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."

This restriction is now found in Rule 3.11(C)(1) of the Revised Code.

Note that there is a separate provision of Rule 3.11 that imposes this same restriction on a judge's activity as a passive investor. Rule 3.11(B)(2) declares that a judge must not "participate as a passive investor in any business or financial enterprise [if] the judge's investment would ... 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."

This restriction on passive investment is new; it is not found in Alaska's corresponding rule, Canon 4D(2)

Canon 4D(2)

Canon 4D(2) governs a judge's activities as an investor. This canon allows a judge to "hold and [actively] manage investments of the judge and members of the judge's family, including real estate" In addition, Canon 4D(2) allows a judge to participate as a *passive* investor in any business. (For purposes of this canon, a judge is a "passive investor" if the judge is not a director, officer, manager, partner (except a limited partner in a limited partnership), advisor, employee, or controlling shareholder of the business.

This rule is now found in Rule 3.11(B) of the Revised Code — except that, as already noted, Rule 3.11(B) prohibits a judge from participating as a passive investor in any business or financial enterprise that would involve the judge in frequent transactions or continuing business relationships with lawyers or other persons likely to come before the judge's court.

Canon 4D(3)

Under Canon 4D(3), a judge may actively engage in any business or other remunerative activity so long as it does not violate the general restrictions found in Canon 4A and Canon 4D(1), and so long the judge would not expect the business or remunerative activity to:

(a) involve the judge or the judge's business associates in lobbying legislative or regulatory bodies within Alaska, or

(b) involve the judge or the judge's business associates in frequent appearances in front of legislative or regulatory bodies within Alaska, or

(c) have a major effect on the economic life of the community in which the judge serves. Under Canon 4D(3), a business has a "major effect on the economic life of the community" if the business employs more than five percent of the local work-force, or if it provides essential financial services (for example, banking or insurance) or essential utilities (for example, electricity, oil, gas, sewage treatment) to the community, or if it is the sole provider of an essential good or service within the community.

These rules are now found in Rule 3.11(C) of the Revised Code.

Canon 4D(4)

Canon 4D(4) requires a judge to "manage investments and business and other financial interests to minimize the number of cases in which the judge is disqualified." This canon also requires judges to "divest [themselves] of investments and business and other financial interests that might require frequent disqualification" as soon as the judge can do so "without serious financial detriment".

These rules are now found in Rule 3.11(D) of the Revised Code.

Canon 4D(5)

Canon 4D(5) deals with a completely different subject from Canons 4D(1) through 4D(4). This canon contains a lengthy set of rules that govern whether a judge is allowed to accept gifts, bequests, favors, or loans from other people. The canon also requires judges to "urge" other family members residing in their household to reject any such monetary benefits if the judge would be prohibited from accepting them.

More specifically, Canon 4D(5) declares that judges must not accept a gift, bequest, favor, or loan from anyone unless the acceptance of the gift is expressly authorized by one of the eight subsections of the canon.

The first seven subsections of Canon 4D(5) — subsections (a) through (g) — deal with the types of gifts which, by their nature, do not ordinarily give rise to any inference that the giver is attempting to influence the judge's performance of judicial duties.

The eighth subsection of Canon 4D(5), subsection (h) , is a catch-all provision that deals with "*any other* gift, bequest, favor, or loan" — *i.e.*, any gift, bequest, favor, or loan that is not expressly authorized by subsections (a) through (g) of Canon 4D(5).

The first sentence of subsection (h) declares that judges cannot accept such gifts, bequests, favors, or loans from a person who has come before the judge in the past or who is likely to come before the judge in the future, or from a person whose *interests* have come before the judge in the past or are likely to come before the judge in the future.

The second sentence of subsection (h) declares that even when the judge's acceptance of the gift or other thing of value is not prohibited by the first sentence of subsection (h), a judge who accepts such a gift or thing of value must report it as "compensation" when they file their annual report with the Administrative Director of the Alaska Court System if the value of the gift or thing of value is more than $250, or if the value of all the gifts or things of value that the judge has received from that same donor in that calendar year exceeds $250.

This reporting provision of subsection (h) is the only reporting requirement found in Canon 4D(5). By implication, this means that judges need not report the types of gifts or other things of value which judges are expressly authorized to accept by subsections (a) through (g) of the canon. (This implication that there is no need to report such gifts is now expressly codified in Rule 3.13(B) of the Revised Code.)

In the Revised Code, this entire topic is addressed in Rule 3.13.

Rule 3.13(A) sets forth the general principle that judges "shall not accept any gift, loan, bequest, benefit, or other thing of value if the judge's acceptance is prohibited by law or [if the judge's acceptance] would appear to a reasonable person to undermine the judge's independence, integrity, or impartiality."

Turning to Paragraph (B) of Rule 3.13, subsections (1) through (9) of Rule 3.13(B) are analogous to the first seven subsections of Canon 4D(5). The introductory language of Paragraph (B) declares that the types of gifts listed in subsections (1) through (9) need not be reported. These nine subsections authorize judges to accept various types of gifts which, by their nature, do not ordinarily give rise to any inference that the giver is attempting to influence the judge's performance of judicial duties.

Paragraph (C) of Rule 3.13 is analogous to subsection (h) of Canon 4D(5). Rule 3.13(C) begins by saying that judges may accept the types of gifts listed in its three subsections, but these gifts must be reported to the Administrative Director. As is true under Alaska's current Canon 4D(5)(h), Rule 3.13(C)(3) forbids judges from accepting any sort of gift or other thing of value if the donor or the donor's interests have come before the judge in the past or are likely to come before the judge in the future.

With regard to the acceptance of gifts, benefits, and other things of value by a judge's family members, Rule 3.13 no longer requires judges to "urge" other family members to reject the kinds of gifts, favors, and other monetary benefits that the judge could not accept personally. However, Comment [7] to Rule 3.13 states that a judge "should remind family and household members of the restrictions imposed upon judges, and urge them to take these restrictions into account when making decisions about accepting gifts or benefits."

Comment [7] to Rule 3.13 also notes that, if a judge's family member *does* accept a gift, favor, or benefit that the judge would be barred from accepting, there may be times when the family member's action will require the judge to alert the lawyers and parties to a proceeding that the judge's family member "has received a significant gift, benefit, or other thing of value from a person or entity whose interests are at stake or could be at stake in the controversy" — thus allowing the lawyers and parties to evaluate whether

the family member's acceptance of the benefit might be a potential ground for the judge's disqualification.

Canon 4E

Canon 4E addresses (and greatly restricts) a judge's ability to serve as a fiduciary.

Subsection (1) of Canon 4E states the general rule that a judge "shall not serve as executor, administrator, ... personal representative, trustee, guardian, attorney in fact, or [any] other fiduciary" unless the judge's service is "on behalf of the estate, trust, or person of a member of the judge's family".

Moreover, even when a judge is willing to serve as a fiduciary for a family member, Canon 4E(1) states that the judge is barred from serving if the judge's service will "interfere with the proper performance of the judge's judicial duties". Canon 4E(2) adds that the judge is barred from serving if it is likely that, in this fiduciary capacity, the judge "will be engaged in proceedings that would ordinarily come before the judge" — and that the judge must stop serving if the estate, trust, or ward whom the judge represents "becomes involved in adversary proceedings in the court on which the judge serves or a court under its appellate jurisdiction."

Finally, Canon 4E(3) declares that "the same restrictions on financial activities that apply to a judge personally also apply to the judge while acting in a fiduciary capacity."

All these rules are now found in Rule 3.8 of the Revised Code.

Canon 4F

Canon 4F prohibits active judges from serving as a private arbitrator or mediator, or from otherwise performing judicial functions in a private capacity (unless the judge's activity is expressly authorized by some other provision of the law).

This rule is now found in Rule 3.9 of the Revised Code.

Under both the current Code and the Revised Code, this prohibition on private arbitration and mediation does not apply to retired judges. However, if a retired judge agrees to become a senior judge — that is, if the judge applies to the Administrative Director and is accepted for inclusion in the *pro tempore* appointment list under Administrative Rule 23 — then, even though the judge can continue to engage in private arbitration or mediation, the judge is bound by the restrictions that are currently found in Alaska Administrative Rule 23(f), and which will be incorporated in Part II(B) of the Application section of the Revised Code.

Under Part II(B) of the new Application section, a senior judge who provides private arbitration or mediation services must not solicit or accept employment as an arbitrator or mediator from any lawyer or party "who is currently appearing in a case in which the judge is serving as a pro tempore judge, or who has appeared within the preceding six months in a case in which the judge was participating personally and substantially as a judge at the same time."

Canon 4G

Canon 4G prohibits judges from practicing law except when they are representing themselves. However, Canon 4G allows judges to give legal advice to members of their family (as defined in the Terminology section), or to draft documents for members of their family, so long as the judge does not receive compensation for these services.

This rule is now found in Rule 3.10 of the Revised Code.

Canon 4H

Canon 4H lays out the rules for compensation and reimbursements that judges may receive, and it establishes an annual reporting requirement for judges.

Under the Revised Code, these different facets of Canon 4H are split into three different rules. "Compensation" is governed by Rule 3.12; "reimbursement" is governed by Rule 3.14; and a judge's duty to report is governed by Rule 3.15.

Canon 4H(1) defines a judge's "compensation" as income that the judge receives for personal services or from business activities. The canon defines "reimbursement" as either (1) money that the judge receives to defray the judge's expenses or (2) any credit or discount given to the judge to reduce these expenses.

Canon 4H(2) declares that a judge's compensation must not exceed a reasonable amount for the services rendered, and it must not exceed what a non-judge would receive for the same activity.

Canon 4H(2) also declares that a judge must not receive compensation or reimbursement for extra-judicial activities that are not permitted by the Code, nor may the judge accept compensation or reimbursement if the source of the payment gives the appearance of influencing the judge's performance of judicial duties or otherwise creates an appearance of impropriety.

These two provisions are now found in Rule 3.12 of the Revised Code (in a slightly reworded form).

Rule 3.12 states: "A judge may accept reasonable compensation for extrajudicial activities permitted by this Code unless the judge's acceptance would appear to a reasonable person to undermine the judge's independence, integrity, or impartiality." Paragraph [1] of the Comment to Rule 3.12 provides guidance for assessing whether compensation is "reasonable" for purposes of this Rule.

With respect to reimbursement, Canon 4H(1)(b) declares that, with the exception of government-approved per diem, a judge's expense reimbursements must not exceed the actual cost of the travel, food, and lodging reasonably incurred by the judge and, "when appropriate to the occasion", by the judge's spouse or guest. If, apart from government per diem, the judge receives "reimbursement" that exceeds actual expenses, the excess is deemed "compensation" to the judge.

These rules are now found in Rule 3.14(C) of the Revised Code. With respect to "reimbursements" that exceed actual expenses, Rule 3.14(C) gives judges the choice of either returning the excess to the payor or reporting the excess as compensation.

Canon 4H(3) states that, at least once a year, a judge must submit a report to the Administrative Director of the Court System, listing the date, place, and nature of any extra-judicial activity for which the judge received compensation, plus the amount of the compensation received and the name of the person or organization who paid this compensation. The current Code does not require a judge to report reimbursements (unless they exceed the judge's actual expenses).

In Rule 3.14 of the Revised Code, reimbursements and waivers of fees and charges are divided into two categories.

Paragraph (A) of Rule 3.14 deals with the first category: reimbursements and waivers that a judge receives from a government entity. Rule 3.14(A) states that these reimbursements and waivers need not be reported.

Paragraph (B) of Rule 3.14 deals with reimbursements and waivers that a judge receives from any other person or organization. Under Rule 3.14(B), a judge is not allowed to receive reimbursements for expenses or waivers of fees or charges unless the expenses or fees or charges arose from the judge's participation in an extrajudicial activity that is permitted by the Code. And Rule 3.14(B) requires a judge to report these reimbursements and waivers.

The details of a judge's reporting requirement are set forth in Rule 3.15 of the Revised Code. Under Rule 3.15(A), a judge must report

- any compensation the judge receives for extrajudicial activities if the value of that compensation, or the aggregate value of all compensation received from the same source in the same calendar year, exceeds $500.

- the judge's receipt of any gift, benefit, or other thing of value, apart from the things of value exempted by Rule 3.13(B), if the value of the item, or the

aggregate value of all items received from the same source in the same calendar year, exceeds $500; and

- any reimbursement of expenses, or waiver of fees or charges, if the amount of the reimbursement or waiver, or the aggregate value of all reimbursements and waivers received from the same source in the same calendar year, exceeds $500.

Rule 3.15(B) also specifies the details that must be included in the judge's report with respect to compensation, reimbursement, and gifts, loans, or other benefits.

Canon 4I

Canon 4I states that judges are only required to disclose their income, debts, investments, and other assets to the extent that the disclosure is required by one or more of the provisions of Canon 4, or is required under Canons 3E and 3F for the purpose of disclosing potential grounds for the judge's disqualification, or is otherwise required by law.

In short, Canon 4I states the obvious: Judges — like all other persons — are required to disclose the details of their finances only if the disclosure is required by some provision of law. For this reason, the Revised Code does not contain any provision corresponding to Canon 4I.

Alaska's Current Canon 5

Canons 5A through 5E — an overview

Canons 5A, 5B, 5C, 5D, and 5E contain a series of rules dealing with the political activities of judges and candidates for judgeships.

Canon 5, as a whole, follows the format of the 1990 ABA Model Code — a format in which incumbent judges and non-judge candidates for judicial office are forbidden from engaging in any form of political activity unless some provision of the Code *expressly permits* the judge or candidate to engage in that form of activity. See, in particular, Canon 5D, which declares that incumbent judges "shall not engage in any political activity except as [expressly] authorized [by] this Code ... or by another provision of law", and Canon 5B(2), which declares that candidates seeking appointment to judicial office "may not engage in any political activity to secure appointment, with the following exceptions ... ".

Because of this format, and to implement it, the Terminology section of Alaska's current Code contains an extensive definition of "political activity". This definition lists thirteen types of activity that are declared to be "political activity" — followed by five types of behavior that are exempted from the definition of "political activity".

The Terminology section's definition of "political activity" is crucial to understanding the individual provisions of Alaska's current Canon 5 — again, because Canon 5 broadly prohibits judges and non-judge judicial candidates from engaging in any conduct that falls within the definition of "political activity", and then various provisions of Canon 5 carve out exceptions to this general prohibition.

Both the 2007 ABA Model Code and the Supreme Court's Revised Code follow a different format. Under Article 4 of the Revised Code, judges and non-judge judicial candidates are permitted to engage in political activity unless some provision of Article 4 *restricts or forbids* that political activity, or unless the activity violates the more general prohibitions and restrictions found in Articles 1, 2, and 3 — the Articles which contain the rules that apply to *all* of a judge's activities.

Because of this different format, the Revised Code does not have a definition of "political activity" in its Terminology section. Instead, all the restrictions on a judge's or non-judge candidate's political activity are set forth in the Rules of Article 4 — again, supplemented by the general prohibitions and restrictions found in Articles 1, 2, and 3.[2]

Because the Alaska's current Code and the Revised Code have different formats, their corresponding individual provisions are sometimes worded differently even when no difference in substance is intended.

Canon 5A(1)

Canon 5A(1) contains a list of political activities — although Canon 5A does not call them "political activities" — that are forbidden to judges and to non-judge judicial candidates unless the activity is expressly authorized either by Canon 5C (the canon that applies to incumbent judges seeking retention) or by Canon 5B(2), (the canon that applies to candidates seeking appointment to judicial office, regardless of whether the candidate is an incumbent judge or a non-judge). These prohibitions also apply to incumbent judges who are seeking appointment to a non-judicial office.

The specific activities prohibited by Canon 5A(1) are:

(a) acting as a leader of, or holding office in, a "political organization" (a term that is defined in the Terminology section);

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[2] Here are the Rules in Articles 1, 2, and 3 that potentially restrict a judge's political activities:

Rule 1.1 (judges must comply with the law, including Alaska's election statutes);

Rule 1.2 (judges must "act at all times in a manner promoting public confidence in the independence, integrity, and impartiality of the judiciary, and shall avoid impropriety and the appearance of impropriety");

Rule 2.4(C) (judges must not "convey or permit others to convey the impression that any person or organization in a position to inappropriately influence the judge");

Rule 3.1(C) (judges must not "participate in activities that would appear to a reasonable person to undermine the judge's independence, integrity, or impartiality");

Rule 3.6(A) (judges must not hold membership in an organization that practices invidious discrimination).

(b) publicly endorsing or opposing any candidate for public office;

(c) making speeches on behalf of a political organization;

(d) attending political gatherings; and

(e) soliciting funds for any political organization or any candidate for public office, or paying an assessment or making a contribution to any political organization or candidate for public office, or purchasing tickets for a political organization's dinners or other functions.

Note that many of the activities listed in Canon 5(A)(1) appear to be already prohibited, either fully or in part, by the definition of "political activity" that is found in the current Code's Terminology section — because, under Alaska's current Code, judges are prohibited from engaging in any activity that falls within the definition of "political activity" unless the some other provision of the Code expressly permits it.

The same prohibited activities listed in current Canon 5A(1) are now prohibited by Rule 4.1(B) of the Revised Code. Rule 4.1(B) also prohibits some additional related political activities.

Under Paragraphs (B)(1)–(2) of Rule 4.1, judges and non-judge candidates for judicial office are prohibited from acting as a leader of, or holding office in, or making speeches on behalf of a political organization. (The term "political organization" is defined in the Terminology section of the Revised Code; this definition is essentially the same as the one found in Alaska's current Code.)

Under Paragraph (B)(3) of Rule 4.1, judges and judicial candidates are prohibited from publicly endorsing or opposing any candidate for public office (including other judges who are running for retention). In addition, Paragraph (B)(3) prohibits judges and judicial candidates from publicly endorsing or opposing

- any candidate for office in a political party,
- any effort to recall a public official or a political party official, or
- any effort to enact or defeat a ballot proposition.

Paragraph (B)(3) then lists three exceptions to these prohibitions.

Two of these exceptions deal with information pertaining to candidates for judicial office (including candidates for retention in office). Under Paragraph (B)(3)(a), when false information about a judicial candidate is made public, a judge or judicial candidate who has knowledge of contrary facts is allowed to make these facts public. And under Paragraph (B)(3)(b), the chief justice of the Alaska Supreme Court, acting as chair of the Judicial Council, can vote on whether the Council will recommend a judge for retention in office and can explain the Council's retention recommendations to the public.

Paragraph (B)(3)'s third exception to the ban on political activity deals with a judge's support of, or opposition to, ballot propositions: Even though Rule 4.1 generally prohibits judges from publicly endorsing or opposing ballot propositions, Paragraph (B)(3)(c) allows judges to publicly endorse or oppose a ballot proposition to change the law pertaining to "the legal system or the administration of justice".

Note, however, that even though judges and judicial candidates can publicly endorse or oppose ballot propositions to change the legal system or the administration of justice, they are nevertheless prohibited by a separate subsection of the rule — Rule 4.1(B)(6) — from *initiating or circulating a petition* to put any ballot proposition before the voters; this includes ballot propositions to change the legal system or the administration of justice.

Rule 4.1(B) carries forward Alaska's current prohibitions on judges' soliciting funds for, or making contributions to, any political organization or any candidate for public office — including purchasing tickets for a political organization's dinners or other functions. See Rule 4.1(B)(4). Keep in mind that the full scope of these prohibitions hinges on the Terminology section's expansive definition of "political organization".

Another portion of Rule 4.1(B), Paragraph (B)(5), carries forward the current prohibition on judges' attending political gatherings — but Paragraph (B)(5) makes this prohibition more expansive. Under Alaska's current Code, judges and judicial candidates are only prohibited from "attending" political gatherings or from "purchasing tickets" for a political organization's dinners or other functions. Under Rule 4.1(B)(5) of the Revised Code, judges and judicial candidates are also prohibited from organizing, promoting, selling tickets to, or otherwise actively participating in any event, gathering,

or other fund-raising activity sponsored by or for a political organization or a candidate for public office.

Finally, Paragraph (B)(7) of Rule 4.1 prohibits judges and judicial candidates from acting as a recorder, a watcher, a challenger, or any similar position at the polls on behalf of a political party or candidate, or from driving voters to the polls on behalf of a political party or candidate, or from doing any other act as an official or unofficial representative of a political party or candidate, recall effort, or ballot proposition.

Canon 5A(2)

Although our current Canon 5 allows judges to seek *appointment* to a non-judicial office, Canon 5A(2) declares that a judge must resign upon becoming a candidate for an *elective* non-judicial office. The canon makes one exception to this rule of mandatory resignation: a judge is allowed to keep their judicial office while running to be elected as a delegate to a state or federal constitutional convention.

This exception for judges who seek to become constitutional delegates is based on four related statutes found in Title 22 of the Alaska Statutes. In these statutes, the Alaska legislature has authorized the judges of the four levels of court to run for a seat at a state or federal constitutional convention. *See* AS 22.05.130 (justices of the supreme court); AS 22.07.080 (judges of the court of appeals); AS 22.10.180 (judges of the superior court); and AS 22.15.210 (judges of the district court).

Rule 4.5(A) of the Revised Code likewise declares that a judge must resign "upon becoming a candidate in either a primary or general election for any non-judicial elective office." However, Rule 4.5(A) makes no exception for judges who run to become a delegate to a constitutional convention. They, too, must resign.

The drafting committee decided that Rule 4.5(A) should not make any exception for judges seeking to be elected as constitutional delegates because the committee concluded that AS 22.05.130 and AS 22.10.180 — the statutes that allow supreme court justices and superior court judges to remain in office while running to be a delegate to a constitutional convention — were probably unconstitutional. See Article IV, Section

14 of the Alaska Constitution, which forbids supreme court justices and superior court judges from "hold[ing] any other office or position of profit under the United States, the State, or its political subdivisions", and which further declares that "any supreme court justice or superior court judge filing for another elective public office forfeits [his or her] judicial position."

Compare the wording of Article II, Section 5 of the Alaska Constitution — the corresponding provision that forbids state legislators from holding outside office. Article II, Section 5 contains the same prohibition on holding "any other office or position of profit under the United States or the State" — but then it expressly states that this prohibition "shall not apply to [a legislator's] employment by or election to a constitutional convention."

Because the provision that applies to judges (Article IV, Section 14) does not contain this exception for serving as a delegate to a constitutional convention, the drafting committee concluded that our state constitution requires supreme court justices and superior court judges to resign if they become candidates for delegate to a constitutional convention — and that, therefore, the statutes which purport to allow these justices and judges to run for the office of delegate to a constitutional convention are unconstitutional.

Article IV, Section 14 speaks only of supreme court justices and superior court judges, so the Alaska legislature would still assumably have the power to allow court of appeals judges and district court judges to retain their judgeships while they seek to become delegates to a constitutional convention. But the committee decided (as a matter of policy) that if supreme court justices and superior court judges are required to resign in these circumstances, the same rule should apply to court of appeals judges and district court judges.

On this policy basis, the Supreme Court adopted the drafting committee's recommendation without resolving the constitutionality of AS 22.05.130 and AS 22.-10.180.

Canon 5A(3)(a)

Canon 5A(3)(a) states that all candidates for judicial office (including both sitting judges and non-judges) "shall maintain the dignity appropriate to judicial office and [shall] act in a manner consistent with the integrity and independence of the judiciary". These same rules are now found in Rule 4.2(B) of the Revised Code.

Canon 5A(3)(a) further states that all candidates for judicial office "shall encourage members of the candidate's family to adhere to the same standards that apply to the candidate." (The canon defines the "members of the candidate's family" as the candidate's spouse or domestic partner, children, grandchildren, parents, and grandparents, and any other persons (whether legally related to the candidate or not) with whom the candidate maintains a close familial relationship.)

On its face, because Canon 5A(3)(a) requires judicial candidates to encourage family members to "adhere to the same standards that apply to the candidate", the canon apparently requires all judicial candidates (*i.e.*, judges who are seeking retention or who are seeking appointment to a different judgeship, as well as all non-judge candidates for judicial office) to encourage their family members to "maintain the dignity appropriate to judicial office and act in a manner consistent with the integrity and independence of the judiciary".

But the Alaska Commentary to Canon 5A(3)(a) explains that the wording of the canon is misleading: the canon is only intended to require judicial candidates to "encourage members of [their own] family to adhere to the same standards of political conduct *in support of the [judicial] candidate* that apply to the candidate". A candidate's family members "are free to participate in other political activity".

In the Revised Code, these provisions of Canon 5A(3)(a) have been replaced by Rule 4.1(E), which requires judges and judicial candidates to "take reasonable measures to ensure that other persons do not undertake, on behalf of the judge or judicial applicant, any [of the political] activities prohibited under Paragraphs (B) or (C) [of Rule 4.1].

Note that the duty imposed by Rule 4.1(E) is broader than the duty imposed by Canon 5A(3)(a) in two respects: First, Rule 4.1(E) requires judges and non-judge

judicial candidates to make efforts to ensure that *no one* (not just their family members) undertakes political activities on their behalf that they themselves would be prohibited from engaging in. Second, under Rule 4.1(E), judges and non-judge judicial candidates must do more than simply "encourage" other people to refrain from prohibited political activity on behalf of their judicial candidacy. Instead, they are required to take "reasonable steps" to ensure that this does not happen.

Canon 5A(3)(b)

Canon 5A(3)(b) sets forth two rules. With regard to the employees and officials who serve at the pleasure of a judicial candidate, the candidate must "prohibit" these persons "from doing anything on the candidate's behalf that is forbidden to the candidate under these rules". And with regard to "all other employees and officials subject to [a] candidate's direction and control", the candidate must "discourage" these persons from "doing anything on the candidate's behalf that is forbidden to the candidate under these rules".

In the Revised Code, Canon 5A(3)(b) has been superseded by the more general provisions of Rule 4.1(E), which requires judges and judicial candidates to "take reasonable measures to ensure that other persons do not undertake, on behalf of the judge or judicial applicant, any [of the political] activities prohibited under Paragraphs (B) or (C) [of Rule 4.1]."

See also Rule 2.12 of the Revised Code ("Supervisory Duties"), which states that judges have a more general duty to "make reasonable efforts, including providing appropriate supervision, to ensure that court personnel and others subject to the judge's direction and control act in a manner consistent with the judge's obligations under this Code."

Canon 5A(3)(c)

Canon 5A(3)(c) states that candidates for judicial office "shall not authorize or permit any person to take actions forbidden to the candidate under these rules, except when these rules specifically allow other people to take actions that would be forbidden to the candidate personally."

The last clause of Canon 5A(3)(c) — about people who are specifically authorized to do things that the judge could not do personally — is a reference to Canon 5C(3), which applies in situations where there is active opposition to an incumbent judge who is seeking retention. In such situations, the incumbent judge can form a campaign committee — and, under the terms of Canon 5C(3), the judge's campaign committee can solicit and accept campaign contributions, and can solicit public support for the judge's retention, even though the judge is barred from doing these things personally.

As discussed earlier, Rule 4.1(E) of the Revised Code covers the problem of a judicial candidate's "authorizing or permitting" another person to take actions that are forbidden to the candidate personally — because Rule 4.1(E) requires judges and judicial candidates to "take reasonable measures to ensure that other persons do not undertake, on behalf of the judge or judicial applicant, any [of the political] activities prohibited under Paragraphs (B) or (C) [of Rule 4.1]."

The last clause of Canon 5A(3)(c) — the clause that recognizes a campaign committee's authority to engage in certain political activities that the judge could not personally engage in — is now addressed in Rule 4.1(C)(3) of the Revised Code. Rule 4.1(C)(3) states that a judge seeking retention shall not "solicit or accept campaign contributions other than through a campaign committee authorized by Rule 4.4".

Canon 5A(3)(d)

Canon 5A(3)(d) states that candidates for judicial office

- shall not make pledges or promises of conduct in judicial office, other than to faithfully and impartially perform the duties of the office;

- shall not make statements that commit, or that appear to commit, the candidate to a particular view or decision with respect to cases, controversies, or issues that are likely to come before the court; and
- shall not knowingly misrepresent any fact concerning the candidate or an opposing candidate for judicial office.

The first two provisions of Canon 5A(3)(d) — the provision dealing with pledges and promises, and the provision dealing with commitments or apparent commitments to decide cases or issues in a particular way — are now found (slightly reworded) in Rule 4.1(C)(8) of the Revised Code. Rule 4.1(C)(8) prohibits judicial candidates (including judges seeking retention) from making "pledges, promises, or commitments" in connection with "cases, controversies, or issues that are likely to come before the court" if the pledge, promise, or commitment is "inconsistent with the impartial performance of the adjudicative duties of judicial office."

In addition, Rule 4.1(C)(7) prohibits judges and judicial candidates from making "any statement that would reasonably be expected to affect the outcome or impair the fairness of a matter pending or impending in any court." Under current Canon 3B(9), and under Rule 2.10(A) of the Revised Code, incumbent judges are already prohibited from making such statements — but Rule 4.1(C)(7) extends this prohibition to non-judge judicial candidates.

The provision of Canon 5A(3)(d) that prohibits judges and judicial candidates from knowingly misrepresenting the facts concerning themselves or concerning other candidates is now found in a pair of rules: Rules 4.1(C)(6) and (C)(9).

Rule 4.1(C)(6) prohibits judges and judicial candidates from knowingly making any "false or deceptive statement", or from making a false or deceptive statement "with reckless disregard for the truth". (The term "deceptive", as used in this Rule, is defined in Rule 4.1(E).[3]) The second rule in this pair, Rule 4.1(C)(9), prohibits judges and

[3] "A statement is 'deceptive' for purposes of [Rule 4.1] if the statement, while perhaps literally true, gives rise to a false factual inference or impression, and the judge or judicial candidate who made the statement either knew or recklessly disregarded the falsity of this factual inference or impression, and the judge or judicial candidate either intended or knew

judicial candidates from knowingly misrepresenting "any fact concerning themselves, an individual or group opposing their retention, or a competing candidate for appointment".

Note: Rule 4.1(C) of the Revised Code also contains several new prohibitions and restrictions on the activities of candidates seeking appointment to judicial office and judges seeking retention — prohibitions and restrictions that are not found in our current Canon 5 (although these new rules are probably inherent in Canon 5). These additional prohibitions and restrictions are explained in Part Two of this document — the part describing the provisions of the Revised Code that have no direct counterpart in Alaska's existing Code.

Canon 5A(3)(e)

Canon 5A(3)(e) states that judicial candidates "may respond to personal attacks or attacks on the candidate's record, as long as the response contains no knowing misrepresentation of fact and does not violate [Canon] 5A(3)(d)."

This rule is, in essence, a specific application of Canon 5A(3)(d) — and, as just explained, it is covered by Rule 4.1(C)(6) and Rule 4.1(C)(9) of the Revised Code.

Canon 5B

Alaska's current Canon 5B deals with two categories of people: incumbent judges and non-judges who are candidates for appointment to a judicial office, and incumbent judges seeking appointment to a non-judicial office. Canon 5B does not cover judges who are seeking retention, nor does it cover judges who are seeking *election* to a non-judicial office (because, in fact, Alaska's current Code requires judges to resign if they file as a candidate for an elective non-judicial office).

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that, by making the statement, the judge or candidate would create or confirm this false inference or impression in other people's minds."

Canon 5B(1)

Alaska's current Canon 5B(1) states that judicial candidates for *appointive* office "shall not solicit or accept any funds, personally or through a committee or otherwise, to support [their] candidacy." This same rule, albeit worded significantly differently, is now found in Rule 4.2(B) of the Revised Code.

Rule 4.2(B) declares that judges who are candidates for appointment to non-judicial office "must maintain the dignity appropriate to judicial office and act in a manner consistent with the integrity and independence of the judiciary." Comment [3] to Rule 4.2 explains that this wording "is intended to incorporate the prohibition that was found in Canon 5B(1) of Alaska's prior Code — the prohibition on soliciting or accepting funds to support the judge's candidacy."

Canon 5B(2)

Subsection (a) of Alaska's current Canon 5B(2) states that judicial candidates for appointive office "may not engage in any political activity to secure [their] appointment", with certain enumerated exceptions. The exceptions are that candidates for appointment to office can:

- communicate with the appointing authority, including any selection, screening, or nominating bodies;
- seek privately communicated support or endorsement from organizations and individuals; and
- provide information regarding their qualifications for office to organizations and individuals from whom the candidate seeks support.

These three exceptions are now found in Rule 4.2(A) of the Revised Code.

Subsection (b) of Canon 5B(2) addresses a completely different issue — the continued political activity of *non-judge* candidates for appointment to judicial office. Canon 5B(2)(b) declares that these non-judge candidates may "retain [their] office in a political organization," may "attend political gatherings," and may "continue to pay

ordinary assessments and dues to political organizations and to purchase tickets for political party dinners or other functions."

The Revised Code will no longer allow non-judge candidates to continue these political activities. The treatment of this issue is explained in Comment [2] to proposed Rule 4.2.

> [2] Under Canon 5B(2)(b)[,] ... under the corresponding provision of the 1990 ABA Model Code, non-judge candidates for judicial office (*i.e.*, candidates who were not already judges) were allowed to continue to actively participate in partisan political activities — an exception to the normal rule that applicants for judicial office must begin complying with the Code's restrictions on political activity from the time they apply for office. See Rule 4.1(A) and (B). The drafters of the 2007 ABA Model Code concluded that this exception should not apply to candidates seeking judicial offices that are filled by appointment (as opposed to election). Because all judgeships in Alaska are appointive, Alaska's Code has eliminated this exception altogether.

Canons 5C(1) and 5C(2)

Alaska's current Canon 5C addresses the permissible political activity of incumbent judges who are seeking retention.

Subsection (1) of Canon 5C lists seven types of political activity that judges seeking retention can engage in, even if their candidacy has not drawn active opposition.

The authorization for these same political activities is now found in Rules 4.3(B)(1) through (B)(4).

In addition, Rule 4.3(B)(2) authorizes judges seeking retention to "create or maintain a website that provides the content included in the state election pamphlet and additional biographical information". Although this activity is not expressly listed in current Canon 5C(1), the Alaska Commission on Judicial Conduct has informally taken

the position that the creation or maintenance of such a website is consistent with the underlying principles of Canon 5C — in particular, the canon's authorization for judges to submit biographical information to the Division of Elections for inclusion in the state election pamphlet.

Section (2) of Canon 5C lists two additional types of political activity that judges seeking retention can engage in when there *is* active opposition to their retention: they can "advertise in newspapers, on television, and in other media in support of [their] candidacy", and they can "distribute pamphlets and other promotional literature supporting [their] candidacy."

Rule 4.3(B)(5) of the Revised Code incorporates these two types of authorized political activity, and it adds two more. Under Rule 4.3(B)(5)(d), judges facing active opposition to their retention are allowed to "speak on behalf of [their] candidacy for retention through any medium, including but not limited to advertisements, websites, or other campaign literature". And under Rule 4.3(B)(5)(e), judges facing active opposition to their retention are allowed to "seek, accept, or use endorsements from any person or organization other than partisan political organizations or other organizations whose support would cause reasonable persons to question the judge's independence, integrity, or impartiality."

Canon 5C(3)

Canon 5C(3) is a lengthy, undivided canon that contains several different rules.

The first sentence of Canon 5C(3) states that judges who are seeking retention are prohibited from (1) *personally* soliciting or accepting any funds to support their candidacy, and from (2) *personally* soliciting publicly stated support for their candidacy. (A judge's retention campaign committee is allowed to do these things.)

The prohibition on personally soliciting or accepting funds is now found in Rule 4.1(C)(3) of the Revised Code.

The prohibition on personally soliciting publicly stated support has been modified in the Revised Code. Under Rule 4.3(B)(5)(e), if there is active opposition to a judge's retention, the judge may personally solicit publicly stated support "from any person or organization other than partisan political organizations or other organizations whose support would cause reasonable persons to question the judge's independence, integrity, or impartiality."

The second sentence of Canon 5C(3) states that if there is active opposition to a judge's candidacy, the judge's campaign committee is authorized to "engage in media advertisements, brochures, mailings, candidate forums, and any other legal methods of pursuing the judge's [retention]."

A modified version of this rule is now found in Rule 4.3(B)(5) of the Revised Code. Under Rule 4.3(B)(5)(b), if there is active opposition to a judge's retention, both the judge and the judge's campaign committee are authorized to "advertise in newspapers, on television, and in other media in support of the judge's candidacy".

The third sentence of Canon 5C(3) states that a judge's campaign committee is authorized to "solicit and accept reasonable campaign contributions, manage and expend these funds on behalf of the judge's election campaign[,] and solicit and obtain public statements of support for the judge's candidacy."

The different clauses of this third sentence are now found in various provisions of Rule 4.3(B) and Rule 4.4(B) of the Revised Code.

The clauses pertaining to campaign contributions are found Rule 4.4(B)(1) and Rule 4.4(B)(3), respectively. Rule 4.4(B)(1) states that judges shall direct their campaign committees to "solicit and accept campaign contributions only in reasonable amounts, and only from donors and in such amounts as are permitted under state law and this Code". Rule 4.4(B)(3) states that judges shall direct their campaign committees to manage and expend campaign funds solely for purposes of, and on behalf of, the judge's retention campaign, and to not make use of these funds for the private benefit of any person, or permit anyone else to use these funds for the private benefit of any person".

In addition, Rules 4.4(B)(4) through (B)(6) require judges to direct their campaign committees

- "to comply with the filing requirements of the Alaska Public Offices Commission, and all applicable statutory and regulatory requirements for disclosure of campaign contributions, campaign expenditures, and the disposition of prohibited campaign contributions";
- "to decline contributions from any organization from which the judge cannot seek, accept, or use endorsements under Rule 4.1(C)(2), or from the campaign committee of another judge;" and
- to refrain from coordination or collaboration, directly or indirectly, with groups making independent expenditures in support of the judge's retention".

The clause of Canon 5C(3)'s third sentence pertaining to soliciting and obtaining public statements of support for the judge's retention is now found — in modified form — in Rule 4.3(B)(5)(e) of the Revised Code. Rule 4.3(B)(5)(e) provides that *both* the judge and the judge's campaign committee may "seek, accept, or use endorsements from any person or organization other than partisan political organizations or other organizations whose support would cause reasonable persons to question the judge's independence, integrity, or impartiality."

The fourth sentence of Canon 5C(3) states that a judge's campaign committee can solicit and accept "reasonable campaign contributions and public support [even] from lawyers" — that is, from people who might be expected to appear before the judge or who might otherwise be affected by the judge's rulings.

This rule does not appear *verbatim* in the Revised Code. Rule 4.4(B)(1) requires judges to direct their campaign committees "to solicit and accept campaign contributions only in reasonable amounts, and only from donors and in such amounts as are permitted under state law and this Code". However, Rule 4.4(B)(1) does not explicitly deal with the issue of contributions from lawyers. Instead, this issue addressed in Comment [3] to Rule 4.4:

> [3] This Rule requires that ... judges must instruct their campaign committees to solicit or accept only such contributions as are reasonable in amount, appropriate under the circumstances, and in conformity with

applicable law. Although lawyers and others who might appear before the judge are permitted to make campaign contributions, judges should instruct their campaign committees to be especially cautious regarding such contributions, so that these contributions do not create grounds for disqualification. See Rule 2.11 [*i.e.*, the rule that deals with judicial disqualification]; see also *Caperton v. A. T. Massey Coal Co.*, 556 U.S. 868, 129 S.Ct. 2252 (2009).

The fifth sentence of Canon 5C(3) sets a time limit for the campaign committee's actions: the committee can "solicit contributions and public support for the candidate's campaign preceding the election and for 90 days thereafter."

Under the Revised Code, the deadline for soliciting and accepting contributions is 45 days after the election. See Rule 4.4(B)(2).

Finally, the sixth sentence of Canon 5C(3) prohibits judges from "mak[ing] private use of campaign funds raised by [their] committee" or from using these funds "for the private benefit of any other person", or from "permit[ting] anyone else to use these funds for the private benefit of any person."

This rule is now found in two provisions of the Revised Code. Rule 4.1(C)(4) prohibits judges from using, or permitting anyone else to use, campaign contributions for the private benefit of the judge or others. And Rule 4.4(B)(3) requires judges to direct their campaign committees to adhere to this same restriction.

Canon 5C(4)

Canon 5C(4) declares that a judge who becomes a candidate for election as a delegate to a federal or state constitutional convention "may engage in any political activity to secure election allowed to other candidates for that office."

The Revised Code does not contain any equivalent provision — because, as explained earlier, Rule 4.5(A) of the Revised Code requires judges to resign if they become candidates for election as a delegate to a constitutional convention.

Canon 5D

Canon 5D declares that incumbent judges shall not engage in any political activity unless the activity is expressly authorized by the Code or by another provision of law, or unless the political activity is "on behalf of measures to improve the law, the legal system, or the administration of justice".

The function of Canon 5D in our current Code is to expressly authorize a judge's political activities "on behalf of measures to improve the law, the legal system, or the administration of justice" — because, as explained earlier, our current Code is structured on the principle that judges are barred from any and all political activity unless that activity is expressly authorized.

But the Revised Code, like the 2007 ABA Model Code on which it is based, is structured on the premise that judges are allowed to engage in political activity unless it is expressly *prohibited* by the Code or by some other provision of law, or unless it is inconsistent with the more general restrictions on judicial activity found in Articles 1, 2, and 3 of the Code — rules that apply to *all* of a judge's activities.

Because of this different approach, neither the 2007 ABA Model Code nor the Revised Code contains a provision equivalent to our existing Canon 5D. The drafters of the 2007 ABA Model Code concluded that, since judges are allowed to engage in political activity unless that activity is expressly prohibited, there was no longer a need for the Model Code to contain a provision that expressly authorizes political activity "on behalf of measures to improve the law, the legal system, or the administration of justice".

(It should be noted that, even though there is no need for a provision like Canon 5D under the approach taken in the 2007 ABA Model Code, at least seven jurisdictions which have adopted versions of the 2007 Model Code have nevertheless retained the language of Canon 5D (or equivalent language) in their codes, to make sure that judges

continue to be authorized to engage in political activity on behalf of "the law, the legal system, or the administration of justice".[4])

For the most part, the Revised Code authorizes judges to engage in the same scope of political activity as Alaska's current Code. However, the Revised Code imposes new restrictions on judges' activities with respect to ballot measures and with respect to some other forms of political activity involving proposals to change "the law".

Under Rule 4.1(B)(6) of the Revised Code, judges are prohibited from initiating or circulating any petition to put a ballot proposition before the voters. And under Rule 4.1(B)(3)(c) of the Revised Code, judges are prohibited from publicly endorsing or opposing any effort to enact or defeat a ballot proposition except when the ballot proposition would "change the legal system or the administration of justice".

At first blush, this might seem to describe a narrower range of political advocacy than Canon 5D of our current Code, which allows judges to engage in any form of political activity "on behalf of measures to improve *the law*, the legal system, or the administration of justice". But as explained in Comment [6] to Rule 4.1, the shorter phrasing used in Rule 4.1 is not intended to signify a departure from the Terminology section's definition of "the law, the legal system, or the administration of justice". Rather, the omission of the words "the law" in Paragraphs 4.1(B)(3)(c) and 4.1(D)(2) is intended "merely to emphasize that those two Paragraphs do not authorize judges to engage in political advocacy with respect to any and every measure to enact or amend a statute, regulation, or ordinance."

Thus, under Paragraphs 4.1(B)(3)(c) and 4.1(D)(2), judges are permitted to engage in political advocacy with respect to proposed enactments or amendments that would substantively alter "the law" as this phrase is defined in the Terminology section of the Revised Code — in the sense of "the overarching system of rules governing our society and to the public interest in the authority, efficacy, and fairness of that system."

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[4] *See* Arizona, Rule 4.1(C)(1); Connecticut, Canon 7(c); Missouri, Rule 2-4.1(D); New Hampshire, Rule 4.1(C); New Mexico, Rule 21-401.A; Pennsylvania, Canon 7A(4); and Wyoming, Rule 4.1(A)(6).

Rules 4.1(B)(1), (2), (4), and (5) of the Revised Code impose further restrictions on a judge's political activities with regard to ballot propositions. Under these provisions, judges are prohibited from acting as a leader of a "political organization", or making speeches on behalf of a political organization, or making contributions to a political organization, or attending a fund-raising event sponsored by a political organization.

These provisions constitute additional restrictions on a judge's political activities with respect to ballot propositions because, under the definition of "political organization" found in the Terminology section of the Revised Code, a "political organization" includes any group whose primary purpose is to initiate or influence the outcome of any ballot proposition — even those ballot propositions involving the legal system or the administration of justice.

Thus, even though Rule 4.1(B)(3) authorizes judges to publicly endorse or oppose ballot propositions that involve the legal system or the administration of justice, judges are nevertheless prohibited from speaking on behalf of a group whose primary purpose is to influence the outcome of the ballot proposition, and judges are likewise prohibited from donating money to such a group.

Canon 5E

The first sentence of Alaska's current Canon 5E declares that the provisions of Canon 5 apply to every incumbent judge and non-judge judicial candidate.

This is not exactly true. Under Paragraph (A) of Alaska's current Application section, only *full-time* judicial officers are governed by all the provisions of Canon 5. Paragraphs (C)(7) and (C)(8) of the Application section declare that part-time magistrate judges and deputy magistrates are either wholly or partially exempted from the restrictions on political activity found in Canon 5A(1)(d) (attending political gatherings), Canon 5A(1)(e) (solicitation and contribution of campaign funds), Canon 5A(2) (mandatory resignation upon becoming a candidate for non-judicial elective office), and Canon 5B (the restrictions on political activity to secure appointment to judicial or non-judicial public office).

Canon 5E then identifies the two disciplinary bodies which handle violations of Canon 5 by incumbent judges and by non-judge candidates for judicial office.

Specifically, Canon 5E declares that a successful judicial candidate, whether or not they were an incumbent judge when they became a candidate, "is subject to judicial discipline for his or her campaign conduct" (*i.e.*, subject to discipline by the Alaska Commission on Judicial Conduct). The Canon then declares that "[if] an unsuccessful candidate ... is a lawyer" — and, under Alaska law, almost every candidate for appointment to any level of court will be a lawyer — the unsuccessful candidate is "subject to lawyer discipline for his or her campaign conduct" (*i.e.*, subject to discipline by the Alaska Bar Association).

With regard to whether, and to what extent, judges and non-judge candidates for judicial office are bound by the provisions of the Code dealing with political activity (Article 4 of the Revised Code), these rules are now found in the Application section of the Revised Code.

With regard to the remaining clauses of Canon 5E, the Revised Code does not contain any equivalent rules. This is because these remaining clauses of Canon 5E do not actually establish any rules of judicial conduct. Rather, these clauses simply describe the effect of other existing law.

Canon 5E's declaration that "Canon 5 applies to all incumbent judges" is merely a restatement of the Application section of the current Code. Section (A) of the Application section states that all active judges of Alaska's four levels of court are required to comply with all provisions of the Code of Judicial Conduct (which includes the provisions of Canon 5).

(This same rule is now found in Part I(A) of the Application section of the Revised Code, which declares that all active judges of Alaska's four levels of court are bound by every provision of the Code.)

Canon 5E's declaration that all successful candidates for judicial office are subject to judicial discipline for violating the provisions of Canon 5 during their candidacy is merely a description of the statutory powers of the Alaska Commission on Judicial

Conduct — in particular, the powers described in AS 22.30.011(a), which authorizes the Commission to inquire (among other things) into allegations that a judge violated the Code of Judicial Conduct.

And when Canon 5E declares that lawyers who are unsuccessful candidates for judicial office are subject to bar discipline for violations of Canon 5 during their candidacy, Canon 5E is merely describing the legal effect of Alaska Professional Conduct Rule 8.2(b). As Canon 5E itself notes, this result follows from the fact that all Alaska lawyers are subject to the Alaska Rules of Professional Conduct, including Rule 8.2(b), and the fact that Rule 8.2(b) requires "a lawyer who is a candidate for judicial office [to] comply with the applicable provisions of Canon 5 of the Code of Judicial Conduct."

In sum, these clauses of Canon 5E do not codify any law; instead, they explain or reiterate the law that is codified in other places. Each of the canon's explanations is in the nature of a comment — and that is how the Revised Code treats them. The content of these remaining clauses of Canon 5E is now found in Comment [3] to Part I of the Application section of the Revised Code, and in Comment [2] to Rule 4.1.

Alaska's Current Application Section

Overview:

Both the Application section of the current Code and the Application section of the Revised Code divide Alaska judicial officers into four categories, and they prescribe which provisions of the Code apply to each category of judicial officer.

In addition, certain portions of the Application section contain additional ethical rules for special situations — rules that supplement the more general rules found in the regular Canons.

Part A of the Application section

Part A of the current Code's Application section declares that all full-time judicial officers must comply with all provisions of the Code. Part A defines "full-time judicial officers" as:

- active justices of the supreme court and active judges of the court of appeals, the superior court, and the district court (including acting district court judges);
- full-time magistrate judges and committing magistrate judges; and
- standing masters.

A slightly modified version of these provisions is found in Part I(A) of the Application section of the Revised Code. Under Part I(A), "all provisions of this Code apply to full-time judges". The definition of "full-time judge" is found in the Terminology section of the Revised Code: it means "active members of the supreme court, the court of appeals, the superior court, the district court (including acting district court judges), and magistrate judges who, under the terms of their appointment, are required to serve as judicial officers for, on average, at least 30 hours per week."

In addition, Part I(B) of the Revised Code's Application section states that all the provisions of Article 4 (*i.e.*, the provisions dealing with political and campaign activity) are binding on non-judge candidates for the supreme court, the court of appeals, the superior court, and the district court from the time the candidates file their applications with the Alaska Judicial Council.

Part B of the Application section

Part B of the current Application section applies to "senior judges", a category defined as all retired judges who are eligible for *pro tempore* judicial service under Alaska Administrative Rule 23. Part B declares that senior judges must comply with all provisions of the Code except the following Canons:

- 4D(1)(b) — the prohibition on transactions with persons likely to come before the judge's court;

- 4D(4) — duty to manage one's finances to minimize disqualification;

- 4E(1) — the prohibition on providing fiduciary service to persons other than family members; and

- 4E(2) — the prohibition on providing fiduciary service to family members if related proceedings are likely to come before the judge's court.

These same exemptions are now found in Part II(A) of the Application section of the Revised Code. (The pertinent Rule numbers of the Revised Code are 3.11(C)(1), 3.11(D), 3.8(A), and 3.8(B), respectively.)

Part B of the current Application section also exempts senior judges from Canon 4F (the prohibition on service as private arbitrator or mediator) — although the Commentary to Part B explains that if a senior judge serves as a private arbitrator or mediator, the senior judge must comply with the restrictions found in Alaska Administrative Rule 23(f).

The restrictions currently found in Administrative Rule 23(f) actually fall into two distinct categories: (1) restrictions on a senior judge's ability to solicit or accept clients for their private arbitration or mediation business, and (2) waivable grounds for disqualification if the senior judge serves *pro tempore* and any of the lawyers or parties to the case have been clients of the judge's private arbitration or mediation business.

In the Revised Code, the first category of restrictions (restrictions on a senior judge's ability to solicit or accept clients) are now found in Part II(B) of the Application section. But the waivable grounds of disqualification that arise from a senior judge's private arbitration or mediation business have been placed in Paragraph (D) of Rule 2.11 of the Revised Code — the rule dealing with judicial disqualification.

All these provisions were moved out of Administrative Rule 23(f), and were placed in the Revised Code, to clarify that the restrictions on a senior judge's service as a private arbitrator or mediator, as well as the grounds for disqualification that may arise from a senior judge's work as a private arbitrator or mediator, are *ethical* rules, not administrative rules. When the Revised Code is officially approved, the Supreme Court plans to rescind section (f) of Administrative Rule 23, because all of its provisions will be contained in the Code of Judicial Conduct.

On a different topic, Part B of the current Code's Application section partially exempts senior judges from the clause of Canon 5A(1) that prohibits judges from publicly endorsing or opposing a candidate for office: under the current Code, a senior judge may speak publicly regarding the qualifications of a judge who is seeking retention and who faces active opposition.

The Supreme Court concluded that senior judges should not be exempted from the rule that prohibits judges from publicly supporting a candidate for office — so the Revised Code does not include this exemption.

Part B of the current Application section further provides that senior judges need not comply with Canon 4C(2) — the rule that restricts a judge's eligibility for appointment to non-judicial government positions — except during the senior judge's periods of active *pro tempore* judicial service under Administrative Rule 23.

The Supreme Court concluded that this exemption was unworkable, because it would be rare that a senior judge could simply resign temporarily from a non-judicial government position, serve as a pro tem judge, and then resume their government position when their pro tem judicial service was completed. For this reason, the Revised Code does not include this exemption.

Finally, Part B of the current Application section declares that senior judges who serve as members of a judicial assistance committee have an additional ethical obligation (beyond the ones specified in Canons 2 through 5 of the Code) to maintain the confidentiality of communications received in their capacity as members of a judicial assistance committee — including the identities of the judges receiving the services of the committee, and whether those judges are cooperating with the committee and are responding favorably to counseling or treatment.

But as explained earlier in this document (pages 19–21), the duty of confidentiality described in the current Application section has never been enforced — because it conflicts with a judge's duty under Canon 3D(1) to take action when the judge knows that another judge is unfit to perform the duties of judicial office because of serious incapacity or serious misconduct. The Revised Code does not impose such a duty of confidentiality: see Rules 2.14 and 2.15.

Part C of the Application section

Part C of the current Application section applies to part-time magistrate judges as well as deputy magistrates. Part C declares that all part-time magistrate judges and all deputy magistrates are exempt from the following ten canons:

- 4C(1) — the prohibition on appearances before, or consultation with, executive or legislative bodies, but only if the magistrate judge or deputy magistrate holds an office or position of profit under the United States, the state, or its political subdivisions and the magistrate judge or deputy magistrate must engage in Canon 4C(1) activities in order to perform the duties of their office or position.

  This provision is now found in Part III(A) of the Application section of the Revised Code; the pertinent rule of the Revised Code is Rule 3.2.

- 4C(2) — the prohibition on accepting appointment to non-judicial government positions unless the scope of the position is limited to matters involving the improvement of the law, the legal system, or the administration of justice.

This provision is now found in Part III(A) of the Application section of the Revised Code; the pertinent rule of the Revised Code is Rule 3.4(A).

(Note: As explained on page 29 of this document, the Revised Code does not prohibit *accepting appointment* to such non-judicial government positions; rather, it prohibits *service* in these non-judicial positions.)

- 4D(1)(b) — the prohibition on transactions with persons likely to come before the judge's court.

  This provision is now found in Part III(A) of the Application section of the Revised Code; the pertinent rule of the Revised Code is Rule 3.11(C)(1).

- 4D(3)(c) — the prohibition on participating in business activities that have a major effect on the economic life of their community.

  This provision is now found in Part III(A) of the Application section of the Revised Code; the pertinent rule of the Revised Code is Rule 3.11(C)(3).

- 4E(1) — the prohibition on providing fiduciary service to persons other than family members.

  This provision is now found in Part III(A) of the Application section of the Revised Code; the pertinent rule of the Revised Code is Rule 3.8(A).

- 4G — the prohibition on practicing law.

  This provision is now found in Part III(C) of the Application section of the Revised Code, but it has been modified: Under the Revised Code, a part-time magistrate judge or a deputy magistrate who practices law "must not practice law in the court location in which they serve, and they must not act as a lawyer in any proceeding in which they served as a judge, or in any other related proceeding."

- 5A(1)(d) — the prohibition on attending political gatherings, but only if the magistrate judge or deputy magistrate holds or is seeking non-judicial public office.

  A somewhat different version of this provision is now found in Part III(B) of the Application section of the Revised Code. Part III(B) states that if a part-time magistrate judge or a deputy magistrate holds another government office, they may engage in political activities that would otherwise be prohibited under Rule 4.1, but only "to the extent that their political activities are in support of their own candidacy or in furtherance of their own currently held office or position."

- 5A(1)(e) — the prohibition on soliciting or contributing campaign funds, to the extent that the magistrate judge or deputy magistrate is soliciting funds for or contributing funds to their own campaign for non-judicial public office.

  A somewhat broader version of this provision is now found in Part III(B) of the Application section of the Revised Code. Part III(B) permits a part-time magistrate judge or a deputy magistrate who holds another government office to engage in political activities that would otherwise be prohibited under Rule 4.1, but only "to the extent that their political activities are in support of their own candidacy or in furtherance of their own currently held office or position."

- 5A(2) — the rule that requires judges to resign their judicial office upon becoming a candidate for an elective non-judicial office.

  This provision is now found in Part III(A) of the Revised Code; the pertinent rule of the Revised Code is Rule 4.5(A).

- 5B — the limitations on a judge's political activity to secure an appointive public office.

  This provision is now found in Part III(B) of the Revised Code; the pertinent rule of the Revised Code is Rule 4.1.

Part D of the Application section

Part D of the current Application section applies to special masters — *i.e.*, non-permanent masters appointed under Alaska Civil Rule 53(a) to serve in an auxiliary judicial role for a particular case or group of related cases.

(This definition of "special master" is now expressly codified in the Terminology section of the Revised Code.)

Part D is structured differently from Parts B and C. Rather than listing the canons that special masters are exempted from, Part D of the Application section lists the canons that special masters are required to comply with (if they are not otherwise judges and therefore subject to the Code for reasons apart from their service as special masters).

In the Revised Code, Part IV of the Application section — the part dealing with special masters — follows this same structure: it lists the Rules that special masters must comply with, rather than the Rules that they are exempted from.

Under our current Code, here are the canons that special masters must comply with:

- Canon 1 — the duty to uphold the integrity and independence of the judiciary; [*sic*: Current Canon 1 does not actually impose this duty on judges.]

  A reworded version of a special master's duty to uphold the integrity and independence of the judiciary is found in Part IV(A) of the Application section of the Revised Code. Part IV(A) requires special masters to comply with all the provisions of Article 1 of the Revised Code — and, within

Article 1, a judge's duty to "act at all times in a manner promoting public confidence in the independence, integrity, and impartiality of the judiciary" is found in Rule 1.2.

- The entirety of Canon 3 — all the rules connected to the performance of judicial duties, except that a special master need not comply with Canon 3B(9) (the prohibition on commenting publicly on pending or impending judicial matters) to the extent this canon would prohibit the special master from commenting about pending or impending proceedings that are unrelated to the proceedings in which he or she is a special master;

  The requirement to adhere to the rules governing the performance of judicial duties is now found in Part IV(A) of the Application section of the Revised Code. A special master's limited permission to make public statements that could reasonably affect the outcome of a pending or impending matter, so long as the matter has no relation to the proceedings in which the special master is serving, is found in Part IV(B) of the Application section.

- Canon 4A — the restrictions on extra-judicial activities in general;

  The Revised Code has a narrower restriction on a special master's extra-judicial activities. Part IV(B) of the Application section states that special masters need only adhere to the rules governing extra-judicial activities during their term of service as special masters, and then only insofar as these provisions relate to the proceedings in which the special master is serving or anticipates serving, or to the extent that these provisions otherwise relate to the judicial duties required or authorized by the terms of the special master's appointment. The pertinent rule of the Revised Code is Rule 3.1.

- Canon 4B — the restrictions on "avocational activities";

  The Revised Code does not have separate rules (or even a separate definition) for "avocational activities". These activities are simply part of

the extra-judicial activities governed by Rule 3.1 and by Part IV(B) of the Application section.

- Canon 4C(1) — the prohibition on appearing at public hearings or lobbying public officials, but only if the special master's appearance or lobbying is related to proceedings in which he or she is a special master;

  The requirement for special masters to adhere to the restrictions on appearances before, or consultation with, executive or legislative bodies is now found in Part IV(B) of the Application section of the Revised Code — but Part IV(B) specifies that this requirement only applies during the special master's term of service, and then only insofar as the special master's interaction with the executive or legislative body relates to proceedings in which the special master is serving or anticipates serving, or to the judicial duties required or authorized by the terms of the special master's appointment. The pertinent rule of the Revised Code is Rule 3.2.

- Canon 4D(1)(a) — the prohibition on financial or business dealings that appear to exploit one's judicial position;

  This requirement is found in Part IV(A) of the Application section of the Revised Code, which requires special masters to comply with all the provisions of Article 1. Rule 1.3(B) of the Revised Code prohibits judges from "engag[ing] in financial or business activities, with or without compensation, if the activity might reasonably be perceived to exploit the judge's judicial position".

- Canon 4E(3) — the rule that the restrictions on financial activities that apply to a judge personally also apply to the judge's service as a fiduciary;

  This rule is included in Part IV(B) of the Application section of the Revised Code. The pertinent rule of the Revised Code is Rule 3.8(C).

- Canon 4I — stating that a judge's financial affairs are private except when disclosure is required by law;

As explained earlier in this document (see pages 40–41, the discussion of current Canon 4I), the Revised Code does not have a provision corresponding to Canon 4I.

In addition, Part D(2) of the current Code's Application section requires special masters to comply with the following two canons during their periods of appointment:

- Canon 2A — the duty to avoid impropriety and the appearance of impropriety;

  The duty to avoid impropriety and the appearance of impropriety is part of Rule 1.2 of the Revised Code. Because this duty is included in Article 1 of the Revised Code, and because Part IV(A) of the Application section of the Revised Code requires special masters to comply with all the provisions of Article 1, special masters must abide by this duty.

- Canon 2B — the prohibition on inappropriate influence and misuse of judicial office;

  A judge's duty to avoid inappropriate influence is found in Rule 2.4 of the Revised Code. Because this duty is included in Article 2 of the Revised Code, and because Part IV(A) of the Application section of the Revised Code requires special masters to comply with all the provisions of Article 2, special masters must abide by this duty.

Finally, Part D(3) of the current Code's Application section declares that a person who has been a special master in a proceeding "shall not act as a lawyer in that proceeding or in any other proceeding related thereto" except as permitted by the waiver provisions of Rule 1.12(a) of the Alaska Rules of Professional Conduct.

This rule is now found in Part IV(C) of the Application section of the Revised Code.

Part E of the Application section

Part E of the current Code's Application section states that whenever the Code of Judicial Conduct becomes applicable to a person (that is, when the person becomes a judge), the person shall comply immediately with all provisions of the Code except Canons 4D(2) and 4D(3) (which pertain to business activities) and Canon 4E (which pertains to fiduciary activities). With respect to these provisions, Part E requires the person to comply as soon as reasonably possible, and in any event within one year.

This same rule (slightly reworded) is now found in Part V of the Application section of the Revised Code.

Part Two
Provisions of the Revised Code that have no direct counterpart in Alaska's existing Code

Rule 1.3(C): Prohibition of sexual harassment

(C) A judge shall not engage in sexual harassment of litigants, jurors, witnesses, lawyers, court personnel, or anyone else with whom the judge deals in an official capacity. As used in this Rule, "sexual harassment" consists of unwelcome sexual advances, requests for sexual favors, or any other communication or conduct of a sexual nature if the judge knew or reasonably should have known that the conduct or communication was unwelcome.

Rule 1.3(D): Prohibition of harassment

(D) A judge shall not engage in any form of harassment of litigants, jurors, witnesses, lawyers, court personnel, or anyone else with whom the judge deals in an official capacity. As used in this Rule, "harassment" consists of conduct, whether verbal or physical, that is so severe or sustained that a reasonable person would consider the conduct intimidating or abusive, unless the conduct bears a reasonable and proportionate relation to a legitimate purpose.

Rule 2.9(D): A judge's duty if the judge receives an unauthorized *ex parte* communication

(D) If a judge receives an unauthorized ex parte communication, the judge shall promptly notify all parties, furnish them with the text or the substance of the communication, and provide the parties with an opportunity to respond.

Rule 2.10(D): Public statements that a judge may permissibly make concerning pending or impending cases

Background:

Rules 2.10(A) and (B) of the Revised Code restate our current Code's rules which restrict a judge's ability to make public statements about pending or impending cases. Rule 2.10(A) declares that a judge "shall not make any public statement that would reasonably be expected to impair the fairness of any matter pending or impending in any court, nor shall a judge make any public statement that would reasonably be expected to affect the outcome of any matter pending or impending before another judge, or of an unassigned matter in any court." Rule 2.10(B) states the related rule that judges "shall not ... make pledges, promises, or commitments" that are "inconsistent with the impartial performance of the adjudicative duties of judicial office" regarding cases, controversies, or issues that are likely to come before their court.

In its 2007 Model Code, the ABA enlarged Rule 2.10 by adding language that describes what a judge is *permitted to say* about pending or impending cases. The Alaska Drafting Committee adopted this approach, but we reworded and re-organized the ABA's themes in a new Paragraph (D) of the Rule:

Rule 2.10(D):

> (D) Subject to the requirements of Paragraphs (A) and (B) [of Rule 2.10], a judge may publicly respond to allegations in the media or elsewhere concerning the propriety of the judge's conduct in a matter. This response may explain the law and the procedures that governed the judge's actions, and it may also explain the requirements of this Code. But other than this, the response shall not offer any rationale for the judge's actions or decisions beyond what the judge has already placed in the court record.

Rule 2.11(B)(8): Disqualification when a judge has previously presided over the matter in another court

> (B) *Waivable Disqualification*. In addition [to the mandatory grounds for disqualification listed in Paragraph (A) of Rule 2.11], unless all applicable grounds for disqualification [defined in this Paragraph] are waived by the parties under Paragraphs (D) and (E) of this Rule, a judge is disqualified in any proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to the following circumstances:
>
> . . .
>
> (8) The judge previously presided over the matter in another court.

Explanation: This new disqualification provision applies to (1) judges who handled a matter in a lower court and who were then appointed to a higher court, or to (2) judges who were already members of a higher court but who handled the matter while they were serving *pro tem* in a lower court, or to (3) superior court judges who handled a district court matter that is now being appealed to the superior court.

> (Technically, superior court judges who serve temporarily in the district court are not serving *pro tempore*; they are already empowered to preside in district court cases by virtue of their office as a superior court judge. See the last sentence of Administrative Rule 24(e).)

Rule 2.14: A judge's duty to take appropriate action if the judge reasonably believes that the performance of a judge or lawyer is impaired

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

Explanation: Alaska's current Code requires judges to take action if they have information indicating that another judge has violated the Code of Judicial Conduct or that a lawyer has violated the Rules of Professional Conduct. The Revised Code (and the 2007 ABA Model Code) expand this duty by requiring judges to take action if they reasonably believe that another judge or lawyer's performance is impaired.

Rule 2.16: A judge's duty to fully cooperate with disciplinary authorities, *and* The prohibition on taking retaliatory action against any person who the judge knows, or even merely suspects, to have (a) reported potential misconduct on the part of any judge or lawyer, or to have (b) assisted or cooperated with a disciplinary investigation of a judge or lawyer.

(A) A judge shall cooperate and be candid and honest with the Alaska Commission on Judicial Conduct, the disciplinary arm of the Alaska Bar Association, and any other applicable judicial and lawyer disciplinary agencies.

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

Explanation: This new Rule enlarges the existing duty of cooperation imposed by Alaska's current Canon 3D. Judges would now be expressly prohibited from retaliating against anyone who the judge knows, or even suspects, has initiated or assisted a disciplinary investigation.

Rule 3.1(B): A judge shall not "participate in [extra-judicial] activities that will lead to frequent disqualification of the judge".

Explanation: This new rule is a broader formulation of a principle found in three of Alaska's current canons. Canon 4A(3) requires judges to conduct all of their extra-judicial activities "so that these activities do not ... interfere with the proper performance of judicial duties." Canon 4D(1)(b) prohibits judges from entering into "financial or business dealings that would involve the judge in frequent transactions or continuing business relationships with those lawyers or other persons likely to come before the court on which the judge serves." And Canon 4D(4) requires judges to "manage [their] investments and business and other financial interests to minimize the number of cases in which the judge is disqualified."

Rule 3.1(D): General prohibition on coercive conduct in a judge's extra-judicial activities

A judge shall not "engage in [extra-judicial] conduct that would appear to a reasonable person to be coercive".

Rule 3.1(E): Restrictions on a judge's personal use of court premises and equipment

A judge shall not "make [extra-judicial] use of court premises, staff, stationery, equipment, or other resources, except for reasonable use for activities that concern the law, the legal system, or the administration of justice, or any additional use is permitted by law or court system policy."

Rule 3.2(B): An additional situation where judges are authorized to appear before, or to consult with, a body or an official of the legislative or executive branch.

As explained in Part One of this document, proposed Rule 3.2 generally re-codifies Canon 4C(1)'s restrictions on a judge's voluntary appearance before, or consultation with, executive and legislative branch bodies and officials. However, in addition to the exceptions found in Canon 4C(1) — exceptions that allow judges to appear before or consult with executive and legislative branch officials regarding matters that involve "the law, the legal system, or the administration of justice", and regarding matters that concern the judge's personal or fiduciary interests, Rule 3.2 contains one additional exception: Paragraph (B) of Rule 3.2 authorizes judges to appear before, or to consult with, executive or legislative bodies or officials concerning "matters about which the judge acquired knowledge or expertise while performing the duties of judicial office" — *i.e.*, matters involving legal or social problems, or issues of social policy, in which a judge has gained expertise or special insight in the course of carrying out the judge's judicial duties.

Rule 3.5(A): A modified prohibition on judges' use of nonpublic information for purposes unrelated to their judicial duties

Rule 3.5(A) declares that judges shall not intentionally disclose nonpublic information that they acquired in their judicial capacity for any purpose unrelated to their judicial duties — but the Rule now makes an exception for situations where a judge reasonably believes that another person faces "a substantial risk of immediate death or serious bodily harm." In such situations, the judge "may disclose such information as necessary to protect [the] person" from the danger of immediate death or serious bodily harm.

Rules 3.7(B) and (C): Two new provisions which relax the rule that normally prohibits judges from engaging in fund-raising, or soliciting memberships that serve an essentially fund-raising purpose, or appearing as a featured speaker or as an award recipient at an organization's fund-raising events. This prohibition no longer applies if the judge's activity is on behalf of an organization or entity concerned with "the law, the legal system, or the administration of justice".

Note: In the text that follows, the new provisions are italicized.

(B) Except as allowed by this Paragraph, a judge must not solicit contributions, solicit memberships that are effectively contributions, or directly engage in any other fund-raising activities for the organization or governmental entity. A judge may, however, assist in planning related to fund-raising and may assist in the management or investment of the organization's or entity's funds. *The prohibition on soliciting contributions or memberships does not apply if the judge makes the solicitation in a non- coercive fashion and the solicitation is made*

(1) for the benefit of an organization or entity concerned with the law, the legal system, or the administration of justice; or

(2) to members of the judge's family or to other judges over whom the judge does not exercise supervisory or appellate authority.

(C) If an event sponsored by an organization or entity serves a fund-raising purpose, *then unless the organization or entity is concerned with the law, the legal system, or the administration of justice*, a judge must not be a featured speaker at the event, must not receive an award or other recognition at the event, must not be featured on the program of the event, and must not otherwise permit their judicial title to be used in connection with the event.

Rule 3.7(F): Authorizing judges to non-coercively encourage lawyers to provide pro bono legal services.

(F) A judge may non-coercively encourage lawyers to provide pro bono legal services.

Rule 3.13(C)(2): A judge's duty to report their acceptance of invitations to attend public events at no charge (*i.e.*, events where most other attendees are paying to attend)

(C) *Items that may be accepted but must be reported*. Unless prohibited by Paragraph (A) [*i.e.*, unless the judge's acceptance would cause a reasonable person to question the judge's independence, integrity, or impartiality], a judge may accept the following items but must report them as required by Rule 3.15:

. . .

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

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

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

Rules 4.1(C)(1) and (C)(2):

(C) When seeking judicial appointment or retention in judicial office, a judge or a judicial candidate shall not:

(1) publicly identify as a candidate of a political organization; or

(2) seek, accept, or use endorsements from a political organization.

Rules 4.1(C)(4) and (C)(5):

(C) When seeking ... retention in judicial office, a judge or a judicial candidate shall not:

. . .

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

(5) use court staff, facilities, or other court resources in a campaign for retention.

Rule 4.3(A)(2): A judge's duty to comply with all applicable state election and campaign laws when seeking retention

(A) A judge who is a candidate for retention in judicial office shall:

. . .

(2) comply with all applicable state election, election campaign, and election campaign fund-raising laws and regulations except to the extent that those laws and regulations permit judges or their campaign committees to engage in conduct that is inconsistent with provisions of this Code ; and

Rule 4.3(A)(3): A judge's duty to review and approve (before their dissemination) all campaign statements and materials produced by the judge's campaign committee

(A) A judge who is a candidate for retention in judicial office shall:

. . .

(3) review and approve, before their dissemination, all campaign statements and materials produced by the judge's campaign committee authorized by Rule 4.4.

Rule 4.3(B)(5)(e): A judge's authority to seek, accept, and use endorsements when there is active opposition to the judge's retention

(B) Notwithstanding Rule 4.1(B)(3) [which forbids judges from publicly endorsing or opposing any candidate for office], judges who have filed a declaration of candidacy for retention with the Division of Elections may engage in the following political and campaign activities to support their candidacy:

. . .

(5) when there is active opposition to the judge's candidacy, [a judge may]

. . .

(e) seek, accept, or use endorsements from any person or organization other than partisan political organizations or other organizations whose support would cause reasonable persons to question the judge's independence, integrity, or impartiality.

Rule 4.5(B): Explicit authorization for judges to remain in their judicial office after they have become a candidate for an *appointive* non-judicial office.

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

(*Note*: This rule is new, but it is not new in substance: Rule 4.5(B) is the implicit counterpart to existing Canon 5A(2), the rule that requires judges to resign if they become a candidate for an *elective* non-judicial office. Rule 4.5(B) expressly states the inverse proposition: that judges need not resign if they become a candidate for an office that is *not* elective — *i.e.*, an appointive office.)

Application section,

Part II(B): Restrictions that apply to senior judges who engage in private arbitration or mediation regarding who they may solicit or accept as clients

and

Rule 2.11(D): Grounds for disqualification that apply when senior judges who engage in private arbitration or mediation also serve as *pro tempore* judicial officers

Again, these rules are new to the Code of Judicial Conduct, but they are not new to Alaska law. These same rules are currently found in Alaska Administrative Rule 23(f) — a series of special rules that apply to senior judges who choose to engage in private arbitration or mediation.

Subsections (f)(1) and (f)(5) of Rule 23 are restrictions on the senior judge's ability to solicit or accept clients for their arbitration or mediation business: The judge must not solicit or accept employment from a lawyer or party who is currently appearing in a case in which the judge is serving as a pro tempore judicial officer, or from a lawyer or party who, within the preceding six months, has appeared in any case in which the judge was participating personally and substantially as a judge at the same time.

Subsections (f)(2)–(f)(4) of Rule 23 are waivable grounds for judicial disqualification that apply when a senior judge who engages in private arbitration or mediation also serves as a *pro tempore* judicial officer: disqualification if the judge has previously served as an arbitrator or mediator, either in a private capacity or as a settlement judge, in the same matter, or if the judge is currently serving or is scheduled to serve as a private arbitrator or mediator for a lawyer or party in the case, or if the judge served as a private arbitrator or mediator for a lawyer or party in the case within the six months prior to the judge's assignment to the case.

Because all five of these provisions are ethics rules rather than administrative rules, the Supreme Court has moved them into the revised Code of Judicial Conduct — with the intention of rescinding Administrative Rule 23(f) once the Revised Code goes into effect.

The two provisions of Administrative Rule 23(f) that restrict a senior judge's ability to solicit or accept clients for their private arbitration or mediation business have been moved to Part II(B) of the Application section of the Revised Code — the part that authorizes senior judges to engage in private arbitration or mediation (by exempting them from Rule 3.9).

And with regard to the three provisions of Administrative Rule 23(f) that contain special disqualification rules for senior judges who engage in private arbitration or mediation, these disqualification provisions have been moved to Paragraph (D) of Rule 2.11 (the rule that governs disqualification).