

## Cross-Reference Table

<i>Existing Code</i>	<i>Proposed Revised Code</i>
<b>Canon 1</b> , first sentence	<b>Preamble</b> , ¶ [1], first sentence
<b>Canon 1</b> , second sentence	<b>Preamble</b> , ¶ [1], last sentence & ¶ [2]
<b>Canon 1</b> , third sentence	<i>No equivalent provision</i> (This is a rule of construction, not a rule of judicial ethics.)
<b>Canon 2A</b>	<b>Rule 1.1</b> (duty to comply with the law) <b>Rule 1.2</b> (duty to avoid impropriety or the appearance of impropriety, and duty to act in a manner promoting public confidence in the independence, integrity, and impartiality of the judiciary)
<b>Canon 2B</b>	<b>Rule 1.3(A)</b> (duty not to use or lend the prestige of judicial office to advance the private interests of the judge or others) <b>Rule 2.4(B)</b> (duty not to allow family, social, political, or other relationships to influence the judge's judicial conduct or judgment) <b>Rule 2.4(C)</b> (duty not to knowingly convey or permit others to convey the impression that anyone is in a special position to influence the judge) <b>Rule 3.3</b> (duty not to testify voluntarily as a character witness)
<b>Canon 2C</b>	<b>Rule 3.6</b>
<b>Canon 3A</b>	<b>Rule 2.1</b>

<b>Canon 3B(1)</b>	<b>Rule 2.7</b>
<b>Canon 3B(2)(a)</b>	<b>Rule 2.5(A) and Comment [1]</b>
<b>Canon 3B(2)(b)</b>	<b>Rule 2.4(A)</b>
<b>Canon 3B(3)</b>	<b>Rule 2.8(A)</b>
<b>Canon 3B(4)</b>	<b>Rule 2.8(B)</b>
<b>Canon 3B(5)</b>	<b>Rule 2.3(A);</b> see also <b>Rule 2.2</b> (“A judge ... shall perform all duties of judicial office fairly, impartially, and without bias or prejudice.”)
<b>Canon 3B(6)</b>	<b>Rule 2.3(B) &amp; (C)</b>
<b>Canon 3B(7), first sentence</b>	<b>Rule 2.6(A)</b> (judges must grant everyone their right to be heard)
<b>Canon 3B(7), third sentence</b>	<b>Rule 2.9(E)</b> (judges must make reasonable efforts to see that law clerks and other court staff carrying out similar functions under their supervision do not violate the provisions relating to <i>ex parte</i> communications)
<b>Canon 3B(7)(a)</b>	<b>Rule 2.9(C)(5)</b>
<b>Canon 3B(7)(b)</b>	<b>Rule 2.9(C)(1)</b>

**Canon 3B(7)(c)**

**Rule 2.9(C)(1)**, as supplemented by  
**Rule 2.9(D)(1)** (requiring that any *ex parte* communications between a trial court and an appellate court be in writing)

**Canon 3B(7)(d)**

**Rule 2.9(C)(3)**, as supplemented by  
**Rule 2.9(D)(2)** (forbidding *ex parte* communications with judges, law clerks, and other court personnel who are disqualified)

**Canon 3B(7)(e)**

**Rule 2.9(C)(2)**

new, but related to 3B(7)

**Rule 2.9(C)(4):** judges may 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.

new, but related to 3B(7)

**Rule 2.9(D):** a judge who receives an *ex parte* communication that is not authorized by Rule 2.9 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)**

**Rule 2.5(B)** (duty to dispose of all matters promptly and efficiently), and  
**Rule 2.2** (duty to decide all matters fairly)

**Canon 3B(9)**

**Rule 2.10(A)** (prohibiting public comments that would affect the outcome or prejudice the fairness of any proceeding)

**Rule 2.10(C)** (duty to take steps to ensure that court staff subject to the judge's direction and control do not make statements that would violate this restriction)

**Rule 2.10(E)** (clarifying that this restriction does not apply to a judge's statements pertaining to proceedings in which the judge is a litigant in a personal capacity)

**Canon 3B(10)**

**Rule 2.8(C)**

**Canon 3B(11)**

**Rule 3.5**

**Canon 3B(12)**

**Rule 2.4(D)**

**Canon 3C(1)**

**Rule 2.5(A) and Rule 2.5(C)**

**Canon 3C(2)**

**Rule 2.12(A)** (duty to take reasonable steps to ensure that court staff and others subject to the judge's direction and control act in a manner consistent with the judge's obligations under the Code)

**Rule 2.3(A)** (duty to take reasonable steps to ensure that court staff and other subject to the judge's direction and control do not manifest bias or prejudice in the performance of their duties)

**Canon 3C(3)**

**Rule 2.12(B)**

**Canon 3C(4)**

**Rule 2.13(A)** and  
**Rule 2.13(B)** (defines “nepotism”)

**Canon 3D(1)**

and

**Canon 3D(2)**

**Rule 2.15(A)** and **Rule 2.15(C)**

**Rule 2.15(B)** and **Rule 2.15(D)**

new, but related to 3D(1) – (2)

**Rule 2.14** (a judge’s duty to take action when the judge reasonably believes that the performance of another judge or a lawyer “is impaired by drugs or alcohol, or by a mental, emotional, or physical condition”.)

**Canon 3D(3)**

**Rule 2.16(A)**

new, but related to 3D(3)

**Rule 2.16(B)** (forbids a judge from retaliating, “directly or indirectly”, against any person known or suspected to have filed a complaint against any judge or lawyer, or to have assisted or cooperated with a judicial or bar disciplinary investigation)

**Canon 3D(4)**

*No equivalent provision*

(This rule is not needed: the Revised Code defines the phrase “judicial duties” as including “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.)

**Canon 3E**

**Rules 2.11(A), (B), and (C)** (mandatory and waivable grounds of disqualification currently found in Canon 3E and in AS 22.20.020(a))

new, but related to 3E:

**Rule 2.11(D)** (waivable grounds of disqualification that apply to senior judges who engage in private arbitration or mediation. These grounds of disqualification are currently found in Alaska Administrative Rule 23(f).)

**Canon 3E(2)**

**Rule 2.11(F)** (judges' duty to keep informed of their personal and fiduciary economic interests)

**Canon 3F**

**Rules 2.11(D) and (E)** (procedures governing any waiver of disqualification)

**Canon 4A**

**Rule 3.1**

**Canon 4B**

*No equivalent provision*

(Given the way the proposed Revised Code is structured, there is no need for a rule that expressly authorizes judges 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”. These activities are permitted unless some specific provision of the Code prohibits or restricts them.)

**Canon 4C(1)**

**Rule 3.2**

(Note the new provision of Rule 3.2(B) which allows 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”).)

**Canon 4C(2)**

**Rule 3.4**

**Canon 4C(3)**

**Rule 3.7**

**Canon 4D(1)**

**Rule 1.3(A)** (a judge must not use or lend the prestige of judicial office to advance the personal or economic interests of the judge or anyone else, and a judge must not knowingly allow others to do so)

**Rule 1.3(B)** (a judge must not engage in financial or business activities, whether compensated or not, if the activity might reasonably be perceived to exploit the judge’s judicial position)

**Rule 3.11(C)(1)** (a judge must not enter 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)

new, but related to 4D(1) & D(2)

**Rule 3.11(B)(2)** (a counterpart to Rule 3.11(C)(1), which imposes the same restrictions on a judge's *passive investments*: A judge must not hold passive investments 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)

**Canon 4D(3)**

**Rule 3.11(C)**

**Canon 4D(4)**

**Rule 3.11(D)**

**Canon 4D(5)**

**Rule 3.13**

**Canon 4E**

**Rule 3.8**

**Canon 4F**

**Rule 3.9**

**Canon 4G**

**Rule 3.10**

**Canon 4H**

**Rule 3.12** (rules pertaining to a judge's extrajudicial compensation)

**Rule 3.14** (rules pertaining to the private reimbursement of a judge's expenses and waivers of normal fees)

**Rule 3.15** (reporting requirements)



**Canon 4I**

*No equivalent provision*

(Canon 4I is unnecessary because it states the obvious: Judges are required to disclose their income, debts, investments, and other assets only to the extent that the disclosure is required by some provision of the Code or by some other provision of law.)

**Canon 5A(1)**

**Rule 4.1(B)**

**Canon 5A(2)**

**Rule 4.5(A)** (but this rule no longer allows judges to remain in office while running to be a delegate to a constitutional convention)

**Canon 5A(3)(a)**

**Rule 4.1(E)** (Note that the duty imposed by this Rule is broader than the duty imposed by Canon 5A(3)(a): First, it 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, 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, judicial candidates are required to take “reasonable steps” to ensure that this does not happen.)

**Canon 5A(3)(b)**

**Rule 4.1(E)**

**Canon 5A(3)(c)**

**Rule 4.1(E)** (all clauses of this Canon except the last)

**Rule 4.1(C)** (clause permitting a judge's campaign committee to engage in certain political activities that judges could not personally engage in)

**Canon 5A(3)(d)**

**Rule 4.1(C)(8)** (judges and non-judge judicial candidates must not make "pledges, promises, or commitments" in connection with cases, controversies, or issues that are likely to come before them if the pledge, promise, or commitment is "inconsistent with the impartial performance of the adjudicative duties of judicial office.")

**Rule 4.1(C)(9)** (judges and non-judge judicial candidates must not knowingly misrepresent "any fact concerning themselves, an individual or group opposing their retention, or a competing candidate for appointment")

new, but related to 5A(3)(d)

**Rule 4.1(C)(6)** (judges and non-judge judicial candidates are prohibited from knowingly making *any* "false or deceptive statement", or from making any false or deceptive statement "with reckless disregard for the truth")

**Canon 5A(3)(e)**

**Rules 4.1(C)(6) and (C)(9)**

**Canon 5B(1)**

**Rule 4(C)(3)**

**Canon 5B(2)(a)**

**Rule 4.2(A)**

**Canon 5B(2)(b)**

*No equivalent provision*

(The Drafting Committee rejected this rule on policy grounds; so did the ABA: see Comment [2] to Rule 4.2.)

**Canon 5C(1)**

**Rules 4.3(B)(1) – (B)(4)**

**Canon 5C(2)**

**Rule 4.3(B)(5)**

**Canon 5C(3)**

**Rule 4.4(B)(1)** (judges must 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)(2)** (the deadline for soliciting and accepting contributions is 45 days after the election)

**Rule 4.4(B)(3)** (judges must 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)

**Rule 4.3(B)(5)(b)** (if there is active opposition, 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)

**Rule 4.3(B)(5)(e)** (if there is active opposition, both the judge and the judge's campaign committee may now personally solicit public statements of support from persons or organizations, so long as the organization is not a partisan political organization or any other organizations whose support would cause reasonable persons to question the judge's independence, integrity, or impartiality)

**Rule 4.1(C)(3)** (judges who are actively opposed in seeking retention must not personally solicit campaign contributions)

**Rule 4.1(C)(4) and Rule 4.4(B)(3)** (judges must not use, or permit anyone else to use, campaign contributions for the private benefit of the judge or others, and judges must direct their campaign committees to adhere to this same restriction).

new, but related to 5C(3)

**Rule 4.4(B)(4)** (judges must direct their campaign committees to comply with the filing requirements of the Alaska Public Offices Commission and all other applicable statutory and regulatory requirements for the disclosure of campaign contributions and expenditures, and for the disposition of prohibited campaign contributions)

**Rule 4.4(B)(5)** (judges must direct their campaign committees 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)

**Rule 4.4(B)(6)** (judges must direct their campaign committees to refrain from coordination or collaboration with groups making independent expenditures in support of the judge’s retention)

**Canon 5C(4)**

*No equivalent provision*

(This rule authorizes judges who are seeking election as a delegate to a constitutional convention to “engage in any political activity to secure election allowed to other candidates for that office.” This rule would not be needed under the proposed Revised Code, because the Revised Code requires judges to resign if they become candidates for election as a delegate to a constitutional convention.)

**Canon 5D**

*No equivalent provision*

(This rule declares that incumbent judges must not engage in any political activity unless that political 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”. This is the basic approach of Alaska’s current Code, but the proposed revised Code follows a different approach. Under the Revised Code, judges are permitted to engage in political activity unless

the Code expressly prohibits or restricts that activity.)

## **Canon 5E**

**Application section** (specifying the portions of the Revised Code that apply to the various categories of judges and to non-judge judicial candidates)

(Note: The remaining clauses of Canon 5E simply explain the statutory powers of the Alaska Commission on Judicial Conduct and the fact that, under Alaska Professional Conduct Rule 8.2(b), lawyers who file for judicial office to must comply with the Code's restrictions on political activity. Because these clauses of Canon 5E do not codify any law, but rather explain or reiterate law that is codified elsewhere, the Revised Code puts these clauses in Comment [3] to Part I of the Application section and in Comment [2] to Rule 4.1.)

(See next page for the provisions of the Revised Code that have no direct counterpart in Alaska's current Code.)

## **New Provisions that Have No Direct Counterpart in Alaska's Current Code**

### **Rules 1.3(C) and 1.3(D): Abuse of the Power of Judicial Office**

The ABA's Model Rule 1.3 is titled, "Avoiding Abuse of the *Prestige* of Judicial Office", and it has only two paragraphs. Paragraph (A) prohibits a judge from using or lending the prestige of judicial office to advance the personal or economic interests of the judge or anyone else. Paragraph (B) prohibits a judge from engaging in financial or business activities if the activity might reasonably be perceived to exploit the judge's judicial position.

The Alaska Drafting Committee expanded the scope of Rule 1.3 with two new paragraphs that address a judge's abuse of the *power* of judicial office (and we changed the title of Rule 1.3 to reflect this).

Rule 1.3(C) prohibits a judge from engaging in 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) prohibits a judge from engaging in harassment, which is defined as conduct that a reasonable person would consider improperly intimidating or abusive:

(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 2.10(D):** What a judge *can say* about pending or impending cases

Rules 2.10(A) and (B) of the proposed Revised Code restate our current Code's restrictions on 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:

**Rule 2.10(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 same 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.

This new ground of disqualification 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 2.11(D):** Special rules of disqualification that apply to senior judges who engage in private arbitration or mediation.

*(D) Waivable Disqualification of Senior Judges Who Engage in Private Arbitration or Mediation.* In addition to the grounds for disqualification listed in Paragraphs (A), (B), and (C) of this Rule, a senior judge who engages in private arbitration or mediation is disqualified in any situation described in this Paragraph unless the applicable grounds for disqualification are waived by the parties under Paragraphs (E) and (F) of this Rule:

(1) the judge has previously served as an arbitrator or mediator, either in a private capacity or as a settlement judge, in the same matter;

(2) the judge is currently serving or is scheduled to serve as an arbitrator or mediator in a private capacity for any lawyer or party in the case; or

(3) the judge served as an arbitrator or mediator in a private capacity for any lawyer or party in the case within the six months prior to the judge's assignment to the case.

The provisions of this Paragraph do not apply to a senior judge who has been assigned to a case for the sole purpose of serving as a settlement judge — that is, solely for the purpose of consulting with the parties and assisting them in trying to resolve their dispute without a trial or other formal adjudicative hearing.

*Explanation:* These waivable grounds of disqualification that apply to senior judges who work as private arbitrators or mediators are currently found in Alaska Administrative Rule 23(f). But these provisions are rules of ethics, and senior judges should be subject to judicial discipline for violating them. Accordingly, the Supreme Court concluded that these grounds of disqualification should be put in the Code of Judicial Conduct, and that they should be placed in Rule 2.11 of the Code, which lists all the other grounds of judicial disqualification.

**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 information indicating that another judge has violated the Code of Judicial Conduct or that a lawyer has violated the Rules of Professional Conduct. This duty is expanded in the proposed Revised Code (and in the 2007 ABA Model Code): judges are required to take action if they reasonably believe that another judge's 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 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 a judge's existing duty under Alaska's current Canon 3D to cooperate with disciplinary authorities. 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 the judge's frequent disqualification

*Explanation:* This new rule is a broader formulation of a principle found in three of Alaska's current Canons. Alaska's current 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." Current 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 Current 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):** Judges must not engage in coercive conduct in their extra-judicial activities

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

*Explanation:* Rule 3.1 of the proposed Revised Code sets forth the general rules that govern all of a judge's extrajudicial activities. Rule 3.1(D) addresses the problem of judicial coercion, as explained in Comment [4] to Rule 3.1:

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

coercive. For example, depending upon the circumstances, a judge's solicitation of contributions or memberships for an organization, even as permitted by Rule 3.7(A), might create the risk that the person solicited would feel obligated to respond favorably, or would do so to curry favor with the judge. Similarly, a judge's asking a lawyer who appears in the judge's court to assist on a time-consuming extrajudicial project might create the risk that the lawyer would feel obligated to respond favorably or would do so to curry favor with the judge.

**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 circumstance where judges are authorized to appear voluntarily before, or to consult with, a body or an official of the legislative or executive branch

Proposed Rule 3.2 of the Revised Code generally re-codifies Alaska's existing restrictions on a judge's voluntary appearance before, or consultation with, executive and legislative branch bodies and officials. See current Canon 4C(1), which allows 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", or regarding matters that concern the judge's personal or fiduciary interests.

However, Paragraph (B) of proposed Rule 3.2 also 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.

The ABA added this provision to its 2007 Model Code, and our Drafting Committee adopted it — based in large measure on our familiarity with former Superior Court Judge Michael Jeffrey’s efforts to improve our state’s laws and policies pertaining to people who suffer the effects of fetal alcohol exposure.

**Rule 3.5(A):** A modification of the prohibition on judges’ use of nonpublic information for purposes unrelated to their judicial duties

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.”

Rule 3.5(A) re-codifies this rule, but it creates 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 rules that normally prohibit 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. These prohibitions no longer apply 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):** “(F) A judge may non-coercively encourage lawyers to provide pro bono legal services.”

**Rule 3.13(C)(2):** A judge’s new duty to report their acceptance of invitations to attend public events at no charge when most other attendees must pay 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[.]

**Rule 4.3(A)(2):** A judge’s duty to comply with all applicable state election and campaign laws when seeking retention, so long as those laws are consistent with the requirements of the Code



(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[.]

**Rule 4.3(A)(3):** A judge's duty to review and approve 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 prohibits judges from publicly endorsing or opposing any candidate for public 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.

*Explanation:* This rule is new, but it is not new in substance. Rather, Rule 4.5(B) is the implicit counterpart to Alaska's current 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):** The restrictions that apply to senior judges if they engage in private arbitration or mediation

(B) Senior judges are also exempt from Rule 3.9 (service as a private arbitrator or mediator), but a senior judge who provides private arbitration or mediation services must not solicit or accept employment as an arbitrator or mediator from a 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.

For purposes of these restrictions, a senior judge is not “serving as a pro tempore judge” or “participating personally and substantially as a judge” if the judge has been assigned to a case solely for the purpose of serving as a settlement judge. As used here, the term “settlement judge” means a judicial officer who is assigned to a case solely for the purpose of consulting with the parties and assisting them in trying to resolve their dispute without a trial or other formal adjudicative hearing.

*Explanation:* These restrictions on senior judges who work as private arbitrators or mediators are currently found in Alaska Administrative Rule 23(f). But because these provisions are rules of ethics, and because senior judges should be subject to judicial discipline for violating these rules, the Supreme Court concluded that the Code of Judicial Conduct is the proper place for these provisions.