Proposed Revised

CODE OF JUDICIAL CONDUCT

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Rule

Proposed Revised

ALASKA CODE OF JUDICIAL CONDUCT

Preamble

[1] Our legal system is based upon the principle that an independent, apolitical, and impartial judiciary will interpret and apply the law with competence, integrity, and fairness. The judiciary thus plays an indispensable role in achieving justice and preserving the rule of law, and judges themselves are a highly visible symbol of government. The Alaska Code of Judicial Conduct is based on the precepts that judges, individually and collectively, must respect and honor the judicial office as a public trust and strive to maintain and enhance confidence in our legal system.

[2] The Rules of this Code establish binding standards for the ethical conduct of judges and judicial candidates. Most of these standards govern specific aspects of a judge's judicial duties or extrajudicial activities, but some of these standards are general and wide-ranging, such as Rules 1.1's requirements that judges comply with the law and Rule 1.2's requirements that judges act at all times in a manner promoting public confidence in the independence, integrity, and impartiality of the judiciary, and that they avoid both impropriety and the appearance of impropriety in their professional and personal lives. The Comments accompanying the Rules, and also some provisions of the Rules themselves, identify additional nonbinding aspirational goals for judges. To implement fully the principles of this Code, judges should hold themselves to the highest ethical standards and should seek to achieve these aspirational goals, thereby enhancing the dignity of their judicial office.

Scope

[1] The Alaska Code of Judicial Conduct takes its structure from the 2007 version of the American Bar Association's Model Code of Judicial Conduct. Within Alaska's Code, the individual Rules of Judicial Conduct are organized into four sections, supplemented by a Terminology section that defines important terms used in the Rules and an Application section that identifies which Rules govern various classes of judicial officers.

[2] In the ABA Model Code, each of the four sections of the Rules is preceded by a "Canon" — a sentence that introduces that section of the Rules. Even though each of the ABA's four Canons begins with the phrase, "A judge shall . . .", the Preamble to the ABA Model Code explicitly states that a judge may only be disciplined for violating a Rule of Judicial Conduct, not a Canon. According to the ABA's Preamble, the Canons should be viewed only as providing guidance for interpreting the Rules. This, however, is more precisely the function of the Comments that accompany the Rules. Indeed, the ABA's four "Canons" are merely descriptive statements of the overarching principles that underlie each section of the Rules.

[3] To avoid any ambiguity regarding the legal significance of the titles that introduce each section of the Rules, and to make clear that judges and judicial disciplinary bodies should focus their attention on the Rules and the Comments, this Code eliminates the term "Canon" in favor of the term "Article". For similar reasons, this Code does not employ the phrase "A judge shall . . ." in the text of the Articles. Again, the aim is to avoid any misleading inference that the titles of the Articles are themselves enforceable rules of conduct. These changes are not intended to affect the precedential value of decisions under the prior versions of the Alaska Code where individual rules were referred to as "Canons".

[4] The Comments accompanying the Rules provide guidance, by explanation and example, in clarifying the intended purpose and meaning of the Rules, but these Comments are not additional Rules.

[5] When a Rule employs the word "may" in the sense of "is authorized to" or "is permitted to", the conduct being addressed is committed to the personal and professional discretion of the judge or judicial candidate in question, and no discipline should be imposed on the judge or judicial candidate for action or inaction within the reasonable bounds of that discretion.

[6] The Rules of this Code are rules of reason that should be applied consistent with constitutional requirements, statutes, other court rules, and decisional law, and with due regard for all relevant circumstances. The Rules should not be interpreted to impinge upon the essential independence of judges in making judicial decisions.

[7] Although the black letter of the Rules is binding and enforceable, it is not contemplated that every transgression will result in the imposition of discipline. Whether discipline should be imposed, and the degree of discipline imposed, should be determined through a reasonable interpretation and reasoned application of the Rules, and should depend upon factors such as the seriousness of the transgression, the facts and circumstances that existed at the time of the transgression, the extent of any pattern of improper activity, the existence and nature of any previous violations, and the effect of the improper activity upon the judicial system or others. Disciplinary proceedings under this Code shall comport with due process.

[8] This Code is not designed or intended to be a basis for civil or criminal liability.

Scope

Terminology

"Appearance of impropriety" as used in this Code means conduct by a judge that would create in reasonable minds a perception either that the judge violated this Code or that the judge lacks the ability or willingness to carry out judicial duties with integrity, impartiality, appropriate temperament, and competence.

This term is used in Rule 1.2 and Rule 4.4(B)(7).

See also Rule 2.10, Comment [5]; Rule 2.11, Comment [15]; Rule 2.12, Comment [1]; Rule 3.6, Comment [7]; Rule 3.13, Comment [4]; and Rule 3.14, Comment [1].

"Appropriate authority" means the government entity or official having responsibility for initiating a disciplinary process in connection with the violation to be reported. 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.

This term is used in Rule 2.15.

See also Rule 2.14, Comment [1].

"Bias" or "prejudice". As used in this Code, "bias" means an abiding judgment or opinion (whether favorable or unfavorable) regarding the members of a societal group or regarding one or more particular persons; "prejudice" means an abiding hostility or aversion toward the members of a societal group or toward one or more particular persons.

These terms are used in Rule 2.2 and Rule 2.11(A)(1), and a narrower definition of these terms is used in Rule 2.3(A) and (B).

See also Rule 2.6, Comment [2]; Rule 3.1, Comment [3]; and Rule 3.6, Comment [1].

"Candidate for judicial office" — see **"Judicial Candidate"**.

"Candidate for appointment to judicial office" — see **"Judicial Candidate"**.

"Candidate for retention in judicial office" — see **"Judicial Candidate"**.

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

This term is used in Rule 3.7(B) and (E)(3), Rule 4.1(B)(4) and (C)(3)–(4), and Rule 4.4(B)(1)–(2), (B)(4)–(5), and (C).

See also Rule 3.1, Comment [4]; and Rule 3.13, Comment [8].

"*De minimis*", in the context of economic interests pertaining to disqualification of a judge, means an insignificant economic interest that could not raise a reasonable question regarding the judge's impartiality.

This term is used in Rule 2.11 and in the definition of "economic interest".

See also Rule 3.8, Comment [1].

"Domestic partner" means a person with whom another person maintains a household and an intimate relationship even though they are not married.

This term is used in Rule 2.11, Rule 2.13(B), Rule 3.13(B)(9) and (C)(2), Rule 3.14, and in the definition of "family".

"Duties of judicial office" or **"judicial duties"** means all of the adjudicative and administrative duties prescribed for the judge by law.

These terms are used in Rule 2.1, Rule 2.2, Rule 2.3(A), Rule 2.5, Rule 2.10(B), Rule 3.1(A), Rule 3.5, Rule 3.8(A), Rule 3.9, Rule 3.11(A), and Rule 4.1(C)(8).

See also Rule 1.3, Comments [5] and [6]; Rule 2.5, Comments [1] and [3]; Rule 3.4, Comment [2]; Rule 3.9, Comment [1]; and Rule 3.12, Comment [3].

"Economic interest" means ownership of more than a *de minimis* legal or equitable economic interest in property or in an enterprise or organization. (See the definition of "*de minimis*" in this Terminology section.)

A person's legal or equitable interest is always more than *de minimis* for purposes of this Code if the person participates in the management of the interest. Except in that situation,

(1) a person who participates in a mutual fund or other common investment fund has only a *de minimis* economic interest in the individual holdings of that fund, so long as the person does not participate in the management of the fund's investment portfolio;

(2) a person has only a *de minimis* economic interest in the securities held by an educational, religious, charitable, fraternal, or civic organization of which the person is a member, even if the person serves as a

director, officer, advisor, or other similar active participant in the management of the organization;

(3) a person has only a *de minimis* economic interest in a financial institution in which the person maintains a deposit, including deposits or proprietary interests the person may hold as a member of a mutual savings association, credit union, or other similar group financial enterprise, unless the person participates in the management of that institution; and

(4) a person who holds government securities has only a *de minimis* economic interest in the government entity that issued those securities.

This term is used in Rule 1.3(A); Rule 2.11(A)(3), (B)(7)–(8), and (G); and Rule 3.2(C).

See also Rule 3.8, Comment [1]; and Rule 3.12, Comment [1].

"Extrajudicial activities" means all of the conduct that a judge might engage in other than the duties of the judge's judicial office.

This term is used in Rule 2.1, Rule 3.1, Rule 3.11(A), Rule 3.12, Rule 3.14(B), and Rule 3.15(A)(1) and (B)(1).

See also Rule 2.10, Comment [4]; Rule 3.2, Comment [3]; and Rule 3.8, Comment [1].

"Family" means a judge's or a judicial candidate's spouse or domestic partner, siblings, children, grandchildren, parents, and grandparents (whether by blood, marriage, or adoption), as well as any other relative or person with whom the judge or candidate maintains a close familial relationship.

This term is used in Rule 2.4(B), Rule 2.11(B)(8)(e), Rule 3.2(C), Rule 3.3, Rule 3.7(B), Rule 3.8(A), Rule 3.10, Rule 3.11(B)(1), Rule 3.13(B), and Rule 4.4(B)(7) and (C).

See also Rule 3.5, Comment [3]; and Rule 4.1, Comment [8].

Comment: This Code's definition of "family" refers to persons with whom the judge or candidate "maintains a close familial relationship". This phrase refers to any person whom the judge treats as a family member even though the person is not related to the judge within the first or second degree of relationship, or not even related to the judge at all.

To assess whether a judge maintains a close familial relationship with a person (rather than merely maintaining a close friendship), courts and judicial discipline commissions evaluate the relationship using a multi-factor test. These factors include (1) the length of the judge's relationship with the other person, (2) whether the judge and the other person address each other as intimates, (3) whether the judge and the other person attend each other's holiday celebrations and other family-oriented events, (4) whether the judge and the other person assist each other with their physical, medical, legal, or emotional needs, and (5) whether other people recognize that there is a particularly close relationship between the judge and the other person. None of these factors, standing alone, is determinative, and other relevant factors may be considered. The ultimate question is whether the judge's relationship with the person is both "close" and "familial".

See, e.g., *In re Horgos*, 682 A.2d 447 (Pa. Ct. of Judicial Discipline 1996); State of Washington Ethics Advisory Committee, Ethics Opinion No. 19-04 (July 8, 2019), https://www.courts.wa.gov/content/publicupload/eclips/2019%2007%2002%20Ethics%20Opinion%2019-04.pdf; *Attorney Disciplinary Bd. v.*

Ranniger, 981 N.W.2d 9, 17–18 (Iowa 2022); Cynthia Gray, *An Ethics Guide for Judges & Their Families* 83–85 (American Judicature Society 2001).

"Fiduciary" means a person who is under a duty to manage money or property or conduct financial or other affairs for another person's benefit. "Fiduciary" includes relationships such as executor, administrator, trustee, guardian, conservator, attorney-in-fact, and other personal representative.

This term is used in Rule 2.11(A)(3), (B)(8), and (G); Rule 3.2(C); Rule 3.8; and the Application section, Part V.

"Full-time judge" 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 an average of at least 30 hours per week.

This term is used in the Application section, Parts I and IV.

See also Rule 4.5, Comment [2].

"Impartial", **"impartiality"**, and **"impartially"** all refer to the absence of bias or prejudice, either in favor of, or against, particular parties or persons, or classes of parties or persons, as well as maintenance of an open mind in considering issues that may come before the judge.

These terms are used in Rule 1.2, Rule 2.2, Rule 2.10(B), Rule 2.11(A) and (B), Rule 2.13(A), Rule 3.1(C), Rule 3.12, Rule 3.13(A), Rule 4.1(C)(8), Rule 4.2(A)(2), and Rule 4.3(A)(1) and (B)(5)(e).

See also Rule 1.3, Comments [4] and [6]; Rule 2.3, Comments [2] and [6]; Rule 2.4, Comment [1]; Rule 2.6, Comments [2]–[3]; Rule 2.7, Comment; Rule 2.8, Comment [2]; Rule 3.2, Comment [3]; Rule 3.4, Comment [2]; Rule 3.6,

Comments [1] and [7]; Rule 3.7, Comment [2]; Rule 3.14, Comments [3] and [4]; and Rule 4.5, Comment [1].

"Impending matter" refers to a matter that is expected to come before the courts in the near future.

This term is used in Rule 2.9(A)(1), Rule 2.10(A), Rule 3.13(B)(2), and Rule 4.1(C)(7).

See also Rule 1.2, Comment [4]; Rule 1.3, Comment [2]; Rule 3.2, Comment [3]; and Rule 3.14, Comment [3].

"Impropriety" means conduct that violates the provisions of this Code or other law, as well as any other conduct that undermines a judge's independence, integrity, or impartiality.

This term is used in Rule 1.2.

See also Rule 2.10, Comment [5]; Rule 2.12, Comment [1]; Rule 3.6, Comment [7]; and Rule 3.14, Comment [1].

"Independence" means a judge's freedom from influence or controls other than those established by law.

This term is used in Rule 1.2, Rule 3.1(C), Rule 3.12, Rule 3.13(A), Rule 4.2(A)(2) and (B), and Rule 4.3(A)(1) and (B)(5)(e).

See also Rule 1.3, Comment [4]; Rule 2.4, Comment [1]; Rule 2.7, Comment; Rule 2.10, Comments [1] and [5]; Rule 3.2, Comment [3]; Rule 3.4, Comment [2]; Rule 3.6, Comment [7]; Rule 3.7, Comment [2]; Rule 3.14, Comment [3]; and Rule 4.1, Comments [3], [13], and [18].

"Integrity" means probity, fairness, honesty, uprightness, and soundness of character.

This term is used in Rule 1.2, Rule 3.1(C), Rule 3.12, Rule 3.13(A), Rule 4.2(A)(3) and (B); and Rule 4.3(A)(1) and (B)(5)(e).

See also Rule 1.3, Comments [4]–[6]; Rule 2.3, Comment [6]; Rule 2.7, Comment; Rule 2.10, Comments [1] and [5]; Rule 3.2, Comment [3]; Rule 3.4, Comment [2]; Rule 3.6, Comments [1] and [7]; Rule 3.7, Comment [2]; Rule 3.14, Comment [3]; and Rule 4.1, Comment [11].

"Judge" means anyone who is authorized to perform judicial functions in any level of the Alaska state courts, including justices, judges, magistrate judges (whether full-time or part-time), deputy magistrates, special masters, and senior judges.

This term is used throughout this Code and its Commentary.

"Judicial candidate" or **"candidate for judicial office"** means any person, including a sitting judge, who is seeking appointment to or retention in judicial office. A person becomes a judicial candidate by filing for appointment to office with the Alaska Judicial Council or by filing as a candidate for retention in office with the Alaska Division of Elections.

This term is used in Rule 2.11(B)(5), Rule 4.1, Rule 4.2, Rule 4.3, Rule 4.4(A), and in the Application section, Part I.

"Judicial duties" — see **"Duties of judicial office"**.

"Knowingly", **"knowledge"**, **"known"**, **"knows"**, and **"knew"** mean actual knowledge of the fact or circumstance in question. A person's knowledge may be inferred from the relevant circumstances.

These terms are used in Rule 1.3(A) and (C); Rule 2.11(B)(1), (B)(6)–(8), and (E)(2); Rule 2.15(A) and (B); Rule 2.16(B); Rule 3.6; Rule 3.15(B)(2); and Rule 4.1(B)(3)(a), (C)(6), (C)(9), and (E).

See also Rule 3.3, Comment [5].

"Law" as used in this Code has two distinct meanings.

Applicable or governing law. In the provisions of this Code which direct judges to comply with the law, to uphold and apply the law, to conform their actions to those prescribed by law, or to refrain from actions prohibited by law, the term "law" encompasses all binding sources of law, including but not limited to constitutional provisions, statutes, ordinances, regulations, court rules, and decisional law.

The term "law" is used in this sense in Rule 1.1, Rule 2.2, Rule 2.4(A), Rule 2.6(A), Rule 2.7, Rule 2.9(C)(5), Rule 3.1, Rule 3.6(A), Rule 3.9, Rule 3.13(A), Rule 4.3(A)(2), and Rule 4.4(A) and (B)(1).

See also Rule 1.2, Comment [2]; Rule 2.1, Comment [3]; Rule 2.3, Comment [2]; Rule 2.8, Comment [4]; Rule 3.11, Comment [2]; and Rule 4.1, Comment [1].

The law, the legal system, or the administration of justice. In the provisions of this Code which employ the phrase "the law, the legal system, or the administration of justice", the term "law" refers to the law in its sense of the overarching system of rules governing our society and to the public interest in the authority, efficacy, and fairness of that system.

The term "law" is used in this sense in Rule 3.1(E); Rule 3.2(A); Rule 3.4(A) and (B); Rule 3.7(A)(1), (B)(1), (C)(1), and (D); and Rule 3.13(C)(2)(a).

See also Rule 2.10, Comments [2] and [4]; Rule 3.3, Comment [4]; and Rule 4.1, Comment [6].

"Likelihood" and **"likely"** mean more probable than not.

These terms are used in Rule 2.10(B), Rule 2.11(A)(2) and (B)(6), Rule 2.14(B), Rule 2.15(C) and (D), Rule 3.7(E), Rule 3.8(B), Rule 3.11(B)(2) and (C), Rule 3.13(C)(3), and Rule 4.1(C)(8).

See also Rule 1.3, Comment [2]; Rule 3.1, Comment [3]; Rule 3.2, Comment [4]; Rule 3.4, Comment [2]; and Rule 3.14, Comment [3].

"Member of the candidate's family" — see "**Family**".

"Member of the judge's family" — see "**Family**".

"Part-time judge" means any judge who does not fall within the definition of "full-time judge", except that "part-time judge" does not include special masters who, apart from their appointment as a special master, would not otherwise qualify as a judge under this Code.

This term is used in the Application section, Parts I, III, and IV.

Comment: Deputy magistrates are, by definition, "part-time judges" even though they are usually full-time Alaska Court System employees. Administrative Rule 19.2(b)(1) declares that deputy magistrates must be Court System employees — and typically, a deputy magistrate will be the local clerk of court or the local judge's law clerk. But even though deputy magistrates may be full-time Court System employees, they are part-time judges because, under the terms of Administrative Rules 19.2(c)–(e), they can perform judicial duties

only when no judge or magistrate judge is available — and then only to the extent allowed by the nine subsections of Administrative Rule 19.2(d), by the provisions of Administrative Rule 19.2(e)(4) (which further restricts the functions of deputy magistrates who are not clerks of court), and by the terms of their individual appointments**.**

"Pending matter" refers to a matter that has commenced in the courts. A matter continues to be pending through the final disposition of any appellate process.

This term is used in Rule 2.9(A)(1) and (D)(1), Rule 2.10(A), Rule 3.13(B)(2), and Rule 4.1(C)(7).

See also Rule 1.2, Comment [4]; Rule 1.3, Comment [2]; Rule 3.2, Comment [3]; and Rule 3.14, Comment [3].

"Political organization" means a party, committee, association, club, foundation, fund, or any other organization, whether incorporated or not, whose primary purpose is to:

(1) influence the selection, nomination, election, or appointment of any individual to public office or to office in a political party, or

(2) initiate or influence the outcome of any recall effort or ballot proposition, or

(3) further or defeat proposals to change the law in matters other than the improvement of the law, the legal system, or the administration of justice.

However, this term does not include a judge's own retention campaign committee authorized by Rule 4.3(B).

This term is found in Rule 4.1 (throughout), Rule 4.2(A)(2), and Rule 4.3(B)(5)(e).

See also Rule 4.3, Comment [2].

"Prejudice" — see **"Bias or Prejudice"**.

"Senior judge" means any former judicial officer who is approved for inclusion in the pro tempore appointment list under the provisions of Alaska Administrative Rule 23.

This term is used in the Application section, Part II, and Rule 2.11(D).

See also Rule 2.14, Comment [2]; Rule 2.15, Comment [4]; Rule 3.9, Comment [2]; and Rule 4.5, Comment [2].

"Shall"/"Shall not" mean that the clause which follows is either a binding obligation or a binding prohibition, and a judge's failure to comply with this obligation or abide by this prohibition is a ground for judicial discipline.

These terms are used throughout this Code.

"Should"/"Should not" mean that the clause which follows describes conduct or a course of action to which judges should aspire, but a judge's failure to meet this aspirational goal is not a ground for judicial discipline.

These terms are used throughout this Code.

"Solicit contributions" or **"solicit funds"** refers to making an express or implied request for financial support or in-kind services.

This term is used in Rule 3.7(B) and (E)(3), Rule 4.1(B)(4) and (C)(3), and Rule 4.4(B)(1) and (B)(2).

See also Rule 3.1, Comment [4].

"Special master" means anyone who is appointed under Alaska Civil Rule 53(a) to serve in an auxiliary judicial role (*e.g.*, referee, auditor, examiner, or other preliminary fact-finder) for a particular case or group of related cases.

This term is used in the definition of "part-time judge" and in the Application section, Part IV.

See also Rule 2.13, Comment [1].

"Within the third degree of relationship" means the following persons, whether related by blood, marriage, or adoption: great-grandparent, grandparent, parent, uncle, aunt, brother, sister, child, grandchild, great-grandchild, nephew, and niece.

This term is used in Rule 2.11(B)(5)–(8) and in Rule 2.13(B).

Application

This Application section specifies the Rules of this Code that apply to different categories of judges and to non-judge candidates for judicial office.

Part I. General Applicability of This Code to Judges and Non-Judge Judicial Candidates

(A) *Judges.* All provisions of this Code apply to full-time judges. Parts II, III, and IV of this Application section address the various other categories of judges and identify the provisions of this Code that do not apply, or apply only partially, to the judges within each category.

(B) *Non-Judge Judicial Candidates.* All provisions of Article 4 of this Code (Political and Campaign Activity) apply to non-judge candidates for the supreme court, the court of appeals, the superior court, and the district court from the time they file their applications with the Alaska Judicial Council.

Comment

[1] This Code is premised on the proposition that a uniform system of ethical principles should apply to all persons who are authorized to perform judicial functions, and the Rules of this Code address and define the ethical obligations of all persons who serve a judicial function. Nevertheless, the particular Rules that govern a judge's conduct vary according to the judge's particular form of judicial service. All provisions of this Code apply to full-time judges. Part II of this Application section lists the provisions from which senior judges are exempted, while Part III lists the provisions from which part-time judges are exempted. Finally, Part IV of this Application section lists the provisions that govern special masters who are not otherwise full-time or part-time judges.

[2] Full-time magistrates are "full-time judges" within the meaning of this Code, and thus they are governed by this Code's normal restrictions on holding other government office and engaging in outside professional or business activities. See Paragraph (A) of Part I. Even though AS 22.15.210(b) ostensibly authorizes all magistrates to engage in a wider range of government, professional, and business activities than is allowed by this Code, full-time magistrates must comply with the more restrictive provisions of the Code.

[3] Successful candidates for judicial office are subject to judicial discipline for violating the provisions of Article 4 of this Code during their candidacy. Lawyers who are unsuccessful candidates for judicial office are subject to bar discipline under Alaska Professional Conduct Rule 8.2(b) for violating the provisions of Article 4 during their candidacy.

For the definitions of *full-time judge*, *judge*, *judicial candidate*, and *part-time judge*, see the Terminology section.

Part II. Senior Judges

(A) Senior judges are exempt from the following Rules:

Rule 3.8(A) (fiduciary service for persons other than family members);

Rule 3.8(B) (fiduciary service where proceedings are likely to come before the judge's court);

Rule 3.11(C)(1) (transactions with persons likely to come before the judge's court); and

Rule 3.11(D) (management of financial resources to minimize disqualification).

(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.

Comment

As stated in Paragraph (B) of this Part, senior judges are exempt from Rule 3.9, which ordinarily forbids judges from acting as an arbitrator or a mediator apart from their official duties. However, if senior judges engage in private arbitration or mediation, they are governed by the ethical rules set forth in Paragraph (B). These rules were formerly contained in Alaska Administrative Rule 23(f) — but because these rules are rules of ethics, and because senior judges should be subject to judicial discipline for violating these rules, this Code is the proper place for these provisions. Paragraph (B) distinguishes between senior judges who are assigned to a case solely as a settlement judge and senior judges whose assignment to a case includes adjudicative authority — that is, the authority to bind the parties with regard to one or more matters at issue in the case.

Application of the Code

For the definitions of *judge* and *senior judge*, see the Terminology section.

Part III. Part-Time Magistrate Judges; Deputy Magistrates

(A) Part-time magistrate judges and all deputy magistrates are exempt from the following Rules:

Rule 3.4(A) (appointment to nonjudicial government positions);

Rule 3.8(A) (fiduciary service for persons other than family members);

Rule 3.11(C)(1) (transactions with persons likely to come before their court);

Rule 3.11(C)(3) (participation in a business activity that has a major effect on the economic life of their community); and

Rule 4.5(A) (mandatory resignation upon becoming a candidate for nonjudicial office).

(B) Part-time magistrate judges and all deputy magistrates who either hold or are seeking an office or position of profit under the United States, the State of Alaska, or any of its political subdivisions are partially exempt from:

Rule 3.2 (appearance before, or consultation with, executive or legislative bodies), to the extent they must engage in these activities in order to perform the duties of their office or position; and

Rule 4.1 (political activity by judges), 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.

(C) Part-time magistrate judges and all deputy magistrates are partially exempt from Rule 3.10, which ordinarily prohibits judges from practicing law.

Part-time magistrate judges and all deputy magistrates may, if licensed, practice law, but they 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.

Comment

[1] Alaska Professional Conduct Rule 1.12(a) is related to Paragraph (C) of this Part: it governs the conduct of lawyers who were formerly judges (in any capacity). Under Professional Conduct Rule 1.12(a), a lawyer is barred from acting as a lawyer in any proceeding in which the lawyer participated personally and substantially as a judicial officer unless all parties give their informed consent.

[2] Under the provisions of Paragraphs (A) and (B) of Part III, part-time magistrate judges and deputy magistrates are partially exempted from several of this Code's restrictions on holding nonjudicial government office, engaging in political activity, and engaging in outside business or professional activity. By allowing part-time magistrate judges and deputy magistrates to engage in these activities, Part III of the Application section in some respects mirrors the provisions of AS 22.15.210(b). However, to the extent that AS 22.15.210(b) might ostensibly authorize part-time magistrate judges and deputy magistrates to engage in government, political, professional, or business activities that are prohibited to them by this Code, part-time magistrate judges and deputy magistrates must comply with the more restrictive provisions of this Code.

[3] Even though the provisions of Part III exempt or partially exempt part-time magistrate judges and deputy magistrates from several of the prohibitions and restrictions imposed by this Code, other Alaska court rules or Alaska Court System personnel rules may independently prohibit or restrict a part-time magistrate judge or deputy magistrate from engaging in these same activities.

The exemptions listed in Part III do not override these other rules, nor do they override the specific restrictions or limitations of a magistrate judge's or deputy magistrate's appointment.

For the definitions of *judge* and *part-time judge*, see the Terminology section.

Part IV. Special Masters

(A) Special masters who are not otherwise full-time or part-time judges must comply with the following provisions of this Code during the term of their service as special masters:

Article 1 (compliance with the law, and acting in a manner that promotes public confidence in the judiciary);

Article 2 (performing judicial duties impartially, competently, and diligently), except that special masters are partially exempt from Rule 2.10(A) as provided in Paragraph (B); and

Rule 3.5 (prohibited use of nonpublic information).

(B) Special masters who are not otherwise full-time or part-time judges must comply with the following provisions of this Code during the term of their service as special masters to the extent that these provisions relate to proceedings in which they are serving or anticipate serving, or to the extent that these provisions otherwise relate to the judicial duties required or authorized by the terms of their appointment:

Rule 2.10(A) (prohibiting public statements that would reasonably be expected to affect the outcome of a matter pending or impending before a court);

Rule 3.1 (restrictions on extrajudicial activities);

Rule 3.2 (restrictions on appearances before, or consultations with, executive or legislative bodies);

Rule 3.8(C) (actions in a fiduciary capacity); and

Rules 3.13(A) (restrictions on accepting gifts, loans, bequests, benefits, or other things of value).

(C) Special masters are only partially exempt from Rule 3.10, which prohibits judges from practicing law. Special masters may, if licensed, practice law, but they must not practice law in a proceeding, or in any other related proceeding, if they are currently serving as a special master in the proceeding or if they anticipate serving as a special master at a later stage of the proceeding.

Comment

Under Professional Conduct Rule 1.12(a), even after special masters have finished their service in a proceeding, they must not act as a lawyer in that proceeding, or in any other related proceeding, unless all parties give their informed consent as permitted by Rule 1.12(a) of the Alaska Rules of Professional Conduct.

For the definitions of *full-time judge*, *judicial duties*, *part-time judge*, and *special master*, see the Terminology section.

Part V. Time for Compliance

A person to whom this Code becomes applicable shall comply immediately with its provisions, except that any judge subject to Rule 3.8 (appointments to fiduciary positions) or Rule 3.11 (financial activities) shall have a reasonable amount of time to comply with those Rules, but in no event longer

than one year after those provisions of this Code become applicable to the judge. During this transition period, the judge must not hear cases when the judge's fiduciary role or financial activity requires disqualification under Rule 2.11.

Comment

If a new judge is serving as a fiduciary when appointed, the judge may continue to serve in that fiduciary capacity for a reasonable period of time necessary to avoid serious adverse consequences to the beneficiaries of the fiduciary relationship — but in no event longer than one year from taking office. Similarly, if a newly appointed judge is engaged at the time in a prohibited business activity, the judge may continue that activity for a reasonable period of time necessary to avoid serious adverse consequences to the business, but in no event longer than one year from taking office.

For the definitions of *fiduciary* and *judge*, see the Terminology section.

Article 1

The Overarching Principles Of This Article Are That Judges Uphold And Promote The Independence, Integrity, And Impartiality Of The Judiciary And Avoid Impropriety And The Appearance Of Impropriety.

Rule 1.1: Compliance with the Law

A judge shall comply with the law in all of the judge's activities.

Comment

[1] This Rule codifies one clause of former Canon 2A. This canon read, in part: "In all activities, a judge shall . . . comply with the law[.]" The latter clauses of former Canon 2A — a judge's duties to avoid impropriety and the appearance of impropriety, and to act in a manner that promotes public confidence in the integrity and the impartiality of the judiciary — are codified in Rule 1.2.

[2] Under both this Rule and Rule 1.2, judges are required to obey the law. (See Comment [2] to Rule 1.2.) However, as explained in Paragraph [7] of the Scope section of this Code, "it is not contemplated that every transgression [of this Code] will result in the imposition of [judicial] discipline." Rather, as noted in Paragraph [7], the questions of whether judicial discipline is appropriate and what degree of discipline to impose should be decided based on "factors such as the seriousness of the transgression, the facts and circumstances that existed at the time of the transgression, the extent of any pattern of improper activity, the existence and nature of any previous violations, and the effect of the improper activity upon the judicial system or others."

[3] Judges should be aware that, under AS 22.30.070(a), a judge is disqualified from acting as a judge if the judge has been charged by indictment

or information in any United States jurisdiction with conduct that constitutes a felony under either Alaska or federal law.

For the definition of *law*, see the Terminology section.

Rule 1.2: Promoting Confidence in the Judiciary

A judge shall 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.

Comment

[1] A judge should expect to be subject to public scrutiny that might be viewed as burdensome if applied to other citizens and should willingly accept the restrictions imposed by this Code.

[2] Conduct that compromises or reasonably appears to compromise a judge's independence, integrity, or impartiality undermines public confidence in the judiciary. For this reason, Rule 1.2 requires judges to avoid both impropriety and the appearance of impropriety. This principle applies to both the professional and personal conduct of a judge. Because it is not practicable to list all such conduct, Rule 1.2 is necessarily cast in general terms. However, the duty to avoid impropriety includes impropriety by violating the law.

[3] A judge should participate in activities that promote ethical conduct among judges and lawyers, support professionalism within the judiciary and the legal profession, and promote access to justice for all.

[4] A judge should participate in community outreach activities for the purpose of promoting public understanding of and confidence in the administration of justice. A judge may also maintain a biographical website to acquaint the public with the judge's background, community activities, hobbies, and the like. In all these activities, the judge must be mindful to act in a manner consistent with this Code. In particular, the judge must act in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary as required by Rule 1.2; must adhere to the restrictions on ex parte communications set forth in Rule 2.9; must not comment on any pending or

impending matter in violation of Rule 2.10(A)–(B); must not discuss or explain the reasoning behind any of the judge's judicial actions or decisions except as allowed by Rule 2.10(D); and must not make statements in support of any judge's retention in office except as allowed by Rule 4.3(B).

For the definitions of *appearance of impropriety*, *impartiality*, *impending matter*, *impropriety*, *independence*, *integrity*, *law*, and *pending matter*, see the Terminology section.

Rule 1.3: Avoiding Abuse of the Prestige or Power of Judicial Office

(A) A judge shall not use or lend, or attempt to use or lend, the prestige of judicial office to advance the personal or economic interests of the judge or others, or knowingly allow others to do so.

(B) A judge shall not engage in financial or business activities, with or without compensation, if the activity might reasonably be perceived to exploit the judge's judicial position.

(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 knows or reasonably should know that the conduct or communication is unwelcome.

(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.

Comment

[1] It is improper for a judge to use or attempt to use the judge's position to gain personal advantage or preferential treatment of any kind for the judge or anyone else. For example, it would be improper for a judge to allude to the judge's judicial position to gain favorable treatment in encounters with traffic officials. It would also be improper for a judge to use judicial letterhead in

personal matters, including but not limited to private business and financial activities, parental responsibilities, private disputes, charitable solicitations or endeavors, and political activities.

[2] A judge may use judicial letterhead in connection with law-related, community-outreach, and educational activities. In a judge's role as a civic leader, a judge may use judicial letterhead for messages of congratulation, recognition, appreciation, or condolence, so long as there is no reasonable likelihood that the letterhead's use would be perceived as an attempt to exert pressure by virtue of the judge's office or to gain any personal advantage or potential deferential treatment for the judge or others. A judge also may use judicial letterhead to provide a reference or recommendation so long as the judge's professional knowledge is germane to the purpose of the letter, such as a recommendation for a former law clerk, and there is no likelihood that the use of the letterhead would reasonably be perceived as an attempt to exert pressure by virtue of the judge's office. Judges should be cautious in writing letters for political figures and those having matters pending or impending before the court or appearing regularly before the court.

[3] Paragraph (B) of this Rule is taken from Canon 4D(1)(a) of Alaska's previous Code. This language was dropped from the 2007 ABA Model Code, but the drafters of this Code concluded that this restriction on judicial activity was too important to be omitted. Paragraph (B) requires a judge to refrain from any financial or business activities that might reasonably be perceived to exploit the judge's judicial position. Thus, for example, a judge should not permit anyone to use the judge's name in connection with a commercial business venture or advertising program.

[4] A judge may participate in the judicial selection process, and in nonpartisan selection processes for other justice-related positions such as the

Alaska Public Defender, by providing relevant information to the Alaska Judicial Council or other nonpolitical screening or appointing committees concerning the professional qualifications of a person being considered. (See Alaska Commission on Judicial Conduct, Advisory Opinion #97-1 (June 1997), which declares that judges may send unsolicited letters to the Alaska Judicial Council concerning the qualities and abilities of an applicant for a judicial position.) In addition, although a judge must not initiate a communication with a partisan appointing authority, a judge may respond to an inquiry from the Governor's Office concerning the professional qualifications of any of the nominees forwarded to the Governor by the Judicial Council (as long as the judge did not solicit the Governor to make the inquiry).

A judge may also provide information to federal officials for use in the selection process for federal judgeships and other federal justice-related positions — either in response to an inquiry from federal officials or their staff, or in response to an applicant's request for a letter of recommendation. In the context of federal appointments, the ability of a state judge to influence the decisions of federal officials — and, hence, the risk that the judge's actions will constitute an abuse of the prestige of the judge's office — is greatly diminished. Nevertheless, the judge's comments should be limited to matters within the judge's direct knowledge pertaining to the professional qualifications of the person being considered for appointment. (Again, see Advisory Opinion #97-1.)

In all of a judge's communications to appointing officials (whether state or federal), a judge should be mindful that the selection of judges and other justice-related officials can sometimes become politicized. Judges should take care that the content and tone of their communications remain apolitical. Also, judges must ensure that their participation in the selection process complies with the other provisions of this Code — in particular, Rule 1.2, which requires judges

to act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary, and Rule 3.1(C), which prohibits judges from engaging in activities that would appear to a reasonable person to undermine the judge's independence, integrity, or impartiality.

[5] Paragraph (C) of this Rule defines the term "sexual harassment" and prohibits judges from engaging in sexual harassment of any persons "with whom the judge deals in an official capacity." This language is intended to be broader than the phrase "in the performance of judicial duties"; it encompasses a judge's personal or social media contact with lawyers, litigants, court personnel, and others with whom the judge deals in an official capacity, even though this contact occurs outside of court.

A judge who commits sexual harassment may also violate other provisions of this Code. Paragraph (A) of this Rule separately prohibits a judge from using the prestige of judicial office for personal advantage. Rule 1.2 requires a judge to act at all times in a manner that promotes public confidence in the integrity of the judiciary. Rule 3.1(C) prohibits a judge from engaging in conduct that would reasonably appear to undermine the judge's integrity. And Rule 3.1(D) prohibits a judge from engaging in conduct that would reasonably appear to be coercive.

[6] Paragraph (D) of this Rule defines the term "harassment" and prohibits judges from engaging in harassment of any persons "with whom the judge deals in an official capacity." As in Paragraph (C) of this Rule, this language is intended to be broader than the phrase "in the performance of judicial duties"; it encompasses a judge's personal or social media contact with lawyers, litigants, court personnel, and others with whom the judge deals in an official capacity, even though this contact occurs outside of court.

Paragraph (D)'s definition of "harassment" is based on the definition found in Alaska Professional Conduct Rule 8.4(g)(1). It prohibits judges from

engaging in conduct that is so severe or sustained that "a reasonable person would consider the conduct intimidating or abusive", unless the judge's conduct "bears a reasonable and proportionate relation to a legitimate purpose."

By their nature, court proceedings may be intimidating to a broad spectrum of participants, but Paragraph (D) of this Rule uses the word "intimidating" in the narrower sense of judicial conduct that is *intended* to make someone feel intimidated — conduct involving the use of explicit or implicit threats, either to force someone to do something or to deter them from doing something.

There are times when a judge must take action that may be intimidating, or even coercive, such as when a participant disrupts court proceedings or refuses to comply with the court's orders. Because of this, and because of the ethical constraints on a judge's treatment of others, the context underlying a judge's actions is necessarily key to determining whether the judge's conduct, even if it is "severe or sustained", nevertheless "bears a reasonable and proportionate relation to a legitimate purpose" and is therefore allowed by Rule 1.3(D).

On the other hand, there will rarely be times when "abusive" conduct will bear a reasonable and proportionate relation to a legitimate purpose. See Rule 1.2, which requires a judge to act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary; Rule 2.8(B), which requires judges to "be patient, dignified, and courteous" to all persons with whom the judge deals in an official capacity; and Rule 3.1(D), which prohibits a judge from engaging in conduct that would reasonably appear to undermine the judge's own integrity or impartiality.

Although not directly binding on judges, the Alaska Court System's personnel rules that set standards of conduct for persons holding supervisory authority within the Court System can provide guidance to judges in their interactions with court personnel.

For the definitions of *economic interest*, *impartiality*, *independence*, *integrity*, *judicial duties*, *knowingly*, and *knows*, see the Terminology section.

Article 2

The Overarching Principle Of This Article Is That Judges Perform The Duties Of Judicial Office Impartially, Competently, And Diligently.

Rule 2.1: Giving Precedence to the Duties of Judicial Office

The duties of judicial office shall take precedence over a judge's extrajudicial activities.

Comment

[1] To ensure that judges are available to fulfill their judicial duties, this Rule requires judges to conduct all their other activities to minimize the risk that these activities will interfere with their proper performance of judicial duties or lead to their frequent disqualification. See Rule 3.1.

[2] 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.

[3] The wording of Alaska Rule 2.1 differs from the wording of ABA Model Rule 2.1 in two ways. First, the opening clause of Alaska Rule 2.1 omits the words "as prescribed by law". This phrase is omitted because, unlike the ABA Model Code, the Terminology section of this Code contains a definition of "duties of judicial office", and this definition specifies that the "duties of judicial office" are limited to the adjudicative and administrative duties prescribed for judges by law.

The second way in which the wording of Alaska Rule 2.1 differs from ABA Model Rule 2.1 is that it omits reference to a judge's "personal" activities. This word is omitted because, unlike the ABA Model Code, the Terminology section of this Code contains a definition of "extrajudicial activities" which covers all conduct that a judge might engage in beyond the duties of the judge's judicial office, regardless of whether that conduct is public, quasi-public, or personal.

For the definitions of *duties of judicial office*, *extrajudicial activities*, and *law*, see the Terminology section.

Rule 2.2: Impartiality and Fairness

A judge shall uphold and apply the law and shall perform all duties of judicial office fairly, impartially, and without bias or prejudice.

Comment

[1] Impartiality and fairness to all parties require that a judge be objective and open-minded.

[2] Although each judge comes to the bench with a unique background and personal philosophy, this Rule requires a judge to interpret and apply the law without regard to whether the judge personally approves or disapproves of the law in question.

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

[4] It is not a violation of this Rule for a judge to relax procedural requirements and make other reasonable accommodations to ensure that self-represented litigants are given a fair opportunity to have their matters heard. See Rule 2.6(A) and paragraph [4] of the accompanying Comment.

[5] ABA Model Rule 2.2, from which this Rule is drawn, requires judges to perform all the duties of judicial office "impartially", but it does not include the phrase "and without bias or prejudice". Nevertheless, this requirement is implicit in the ABA's version of the rule because the ABA's Terminology section defines the word "impartially" as including "[the] absence of bias or prejudice". To clarify this requirement, Alaska Rule 2.2 includes the phrase "without bias or prejudice".

[6] Although the first four paragraphs of this Comment focus on a judge's duty to act fairly, impartially, and without bias or prejudice when deciding cases,

Rule 2.2 requires judges to act fairly, impartially, and without bias or prejudice in *all* of their judicial duties — including their administrative duties.

For the definitions of *bias*, *duties of judicial office*, *impartiality*, *law*, and *prejudice*, see the Terminology section.

Rule 2.3: Bias and Prejudice

(A) A judge shall not, in the performance of judicial duties, manifest bias or prejudice based upon factors such as race, sex, sexual orientation, gender identity or expression, religion, national origin, citizenship, ethnicity, disability, age, marital status, socioeconomic status, or political affiliation. In addition, a judge shall not permit court personnel or others subject to the judge's direction and control to manifest such bias or prejudice in the performance of their duties.

(B) Judges shall require the lawyers in court proceedings before them to refrain from manifesting bias toward or prejudice against parties, witnesses, lawyers, or others based on factors such as race, sex, sexual orientation, gender identity or expression, religion, national origin, citizenship, ethnicity, disability, age, marital status, socioeconomic status, or political affiliation.

(C) The restrictions of Paragraphs (A) and (B) do not preclude judges or lawyers from making legitimate reference to the listed factors, or similar factors, when these factors are relevant to an issue in a proceeding.

(D) As used in this Rule, "bias" means an abiding judgment or opinion (whether favorable or unfavorable) regarding the members of a societal group, and "prejudice" means an abiding hostility or aversion toward the members of a societal group.

Comment

[1] Rule 2.2 prohibits a judge from allowing bias or prejudice to influence the judge's performance of judicial duties — both adjudicative and administrative duties. Rule 2.3(A) supplements Rule 2.2 by forbidding a judge from engaging in any other conduct during the performance of judicial duties which a reasonable observer would view as a demonstration of the judge's improper favoritism or animosity toward a particular societal group. Such

conduct impairs the perceived fairness of the proceeding and brings the judiciary into disrepute.

[2] Alaska Rule 2.3 is drawn from ABA Model Rule 2.3, but the ABA's model rule fails to define the terms "bias" and "prejudice", except by offering examples.

Traditionally, "bias" has been defined as *any* "inclination", "bent", or "personal judgment" about any subject — regardless of whether that personal judgment is reasoned or unreasoned, and regardless of whether that judgment is socially beneficial or not (for example, a predisposition to foster democratic institutions). Likewise, "prejudice" has traditionally been defined as *any* preconceived judgment or opinion. These definitions are still found in standard dictionaries.

In the ABA Reporter's "Explanation of Changes" that accompanies Model Rule 2.3, the Reporter indicates that Model Rule 2.3 was meant to incorporate this traditional definition of "bias". The Reporter declares that the term "bias", as used in ABA Model Rule 2.3, means "favoritism or opposition . . . *to an idea*". (Emphasis added.) But in common current usage, the words "bias" and "prejudice" are most often used in a narrower and pejorative sense — with "bias" referring to an unjustified or unreasoned judgment or opinion about another societal group, and "prejudice" referring to an unjustified or unreasoned hostility toward the members of a societal group. Indeed, all the examples of improper behavior listed in the Comment to ABA Model Rule 2.3(B) are manifestations of bias or prejudice in this contemporary pejorative sense. Alaska Rule 2.3 explicitly defines the terms "bias" and "prejudice" in accordance with this contemporary usage.

By defining "bias" and "prejudice" in this manner, Alaska Rule 2.3 explicitly rejects the ABA's suggestion that "bias" includes favoritism or

opposition to an idea. If the term "bias" were to be defined broadly enough to include all preconceptions or judgments about ideas, then this definition would conflict with the law as stated by the United States Supreme Court in *Republican Party of Minnesota v. White*, 536 U.S. 765 (2002).

According to *White*, society has a justifiable interest in demanding that judges approach their cases with open-mindedness. (Indeed, this duty of open-mindedness is included in the Terminology section's definition of "impartial" and "impartiality".) But the duty of open-mindedness does not require judges to approach their cases free of any preconceptions about the law.

As explained in *White*, it would be "not merely unusual, but extraordinary," if a judge approached each case with no tentative opinions about the law applicable to that case. 536 U.S. at 778. "Proof that a [judge's] mind . . . was a complete *tabula rasa* . . . would be evidence of lack of qualification, not lack of bias." *Id.* Thus, the requirement of judicial impartiality guarantees litigants the right to demand an equal and principled application of the law, but contrary to what the ABA Reporter asserts, judges are entitled to approach their cases with preconceptions about the issues of law raised in the case, so long as judges remain open-minded about those issues.

[3] Bias or prejudice is sometimes manifested by acts of incivility — for example, the use of epithets or demeaning nicknames, irrelevant references to personal characteristics, or threatening, intimidating, or hostile acts. When such conduct is motivated or reasonably appears to be motivated by animosity toward a particular societal group (a person's race, religion, national origin, sex, etc.), the conduct violates Rule 2.3. However, judges should not engage in these behaviors for *any* reason. Regardless of its motivation, such conduct violates Rule 2.8(B), which requires judges to "be patient, dignified, and courteous" to litigants, lawyers, witnesses, jurors, court personnel, and all others with whom

the judge deals in an official capacity. Rule 2.3 also forbids other behaviors that are closer to what most people think of when they hear the phrase "bias or prejudice" — for example, slurs, negative stereotyping, attempted humor based upon social stereotypes, or suggestions that there is some connection between a person's race, ethnicity, nationality, etc. and particular behavior.

[4] Alaska Rule 2.3 differs from ABA Model Rule 2.3 in another way: Alaska Rule 2.3 does not include a separate clause prohibiting judges from engaging in harassment. The prohibition on harassment is instead contained in Paragraph (D) of Rule 1.3 ("Avoiding Abuse of the Prestige or Power of Judicial Office"), and this Code's definition of "harassment" is substantially different from the definition found in the ABA's Comment [3] to Model Rule 2.3.

[5] ABA Model Rule 2.3 was apparently intended to encompass the separate issue of sexual harassment by judges in the performance of their judicial duties. See paragraph [4] of the ABA's Comment to Model Rule 2.3, which sets forth a definition of sexual harassment — "sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature that is unwelcome" — implying that the text of Model Rule 2.3 covers this type of misconduct. But ABA Model Rule 2.3 does not explicitly prohibit sexual harassment as that phrase is defined in paragraph [4] of the ABA's Comment.

The drafters of this Code agreed with the ABA that judges should be prohibited from engaging in sexual harassment of people with whom they deal in an official capacity. But this prohibition must be set forth in the text of a Rule of Conduct, not in a Comment to a Rule. (See paragraph [4] of the Scope section of this Code, which explains that the Comments accompanying the Rules of Judicial Conduct "are not additional Rules.")

For these reasons, the drafters of this Code created a separate rule prohibiting sexual harassment. And because sexual harassment is not necessarily

a manifestation of bias or prejudice, but rather is often an abuse of power, the rule on sexual harassment (including a definition of this term) is found in Paragraph (C) of Rule 1.3 ("Avoiding Abuse of the Prestige or Power of Judicial Office").

[6] The prohibitions of Rule 2.3 apply when a judge is engaged "in the performance of judicial duties". But even when a judge's manifestations of bias or prejudice do not occur in the judge's performance of judicial duties, the judge's conduct may still violate other provisions of this Code. See Rule 1.2, which requires a judge to act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary; Rule 2.8(B), which requires a judge to "be patient, dignified, and courteous" to litigants, lawyers, witnesses, jurors, court personnel, and all others with whom the judge deals in an official capacity; and Rule 3.1(C), which prohibits a judge from engaging in conduct that would reasonably appear to undermine the judge's own integrity or impartiality.

For the definition of *judicial duties*, see the Terminology section.

Rule 2.4: External Influences on Judicial Conduct

(A) A judge shall be faithful to the law. A judge shall not deviate from the law to appease public clamor, to avoid criticism, or to advance an improper interest.

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

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

(D) A judge shall consider only the evidence in a case and any facts properly judicially noticed. A judge shall not investigate the facts of a matter independently without notice and consent of the parties.

Comment

[1] The principles of judicial independence and impartiality require that judges decide cases according to the law and facts, without regard to whether particular laws or litigants are popular or unpopular with the public, the media, government officials, or the judge's friends or family. Confidence in the judiciary is eroded if judicial decision making is perceived to be subject to inappropriate outside influences.

[2] Paragraph (A) of this Rule carries forward the language of Canon 3B(2)(b) of Alaska's previous Code.

[3] Paragraph (D) of this Rule prohibits a judge from independently researching the facts in a matter. A corresponding prohibition is found in ABA Model Rule 2.9(C) ("Ex Parte Communications"). This Code places this prohibition in Rule 2.4 ("External Influences on Judicial Conduct"), rather than

in Rule 2.9, because a judge's independent factual research will often not be in the form of an ex parte communication. The prohibition against a judge investigating the facts in a matter extends to information available in all media, including electronic.

[4] Paragraph (D) does not prohibit a judge from exercising the judge's authority to independently call witnesses if the judge believes that these witnesses might shed light on the issues being litigated, see Alaska Evidence Rule 614, or to take judicial notice of certain facts, see Alaska Evidence Rule 201.

For the definitions of *family*, *impartiality*, *independence*, and *law*, see the Terminology section.

Rule 2.5: Competence, Diligence, and Cooperation

(A) A judge shall perform all duties of judicial office competently and diligently.

(B) A judge shall dispose of all judicial matters promptly and efficiently.

(C) A judge shall cooperate with other judges and court officials in the administration of court business.

Comment

[1] Competence in the performance of judicial duties requires the legal knowledge, skill, thoroughness, and preparation reasonably necessary to perform the responsibilities of judicial office. A judge should participate in judicial education and training programs.

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

[3] Rule 2.5(B) requires prompt and efficient disposition of the court's business. This requirement is carried forward from Canon 3B(8) of Alaska's previous Code. The purpose of this requirement is to avoid unreasonable or unnecessary delay or expense in the handling and resolution of judicial matters. A judge should devote adequate time to judicial duties, should be punctual in attending court, should reasonably prioritize matters under submission, and should decide those matters in a timely fashion. A judge should also take reasonable measures to ensure that court personnel, litigants, and their lawyers cooperate with the judge in the expeditious handling of matters.

[4] In disposing of matters promptly and efficiently, a judge should demonstrate due regard for the rights of parties to be heard and to have issues resolved without unnecessary cost or delay. A judge should monitor and

supervise cases in ways that reduce or eliminate dilatory practices, avoidable delays, and unnecessary costs.

[5] Paragraph (C) of this Rule requires judges to cooperate with other judges and court officials in the administration of court business. This duty of cooperation includes an obligation to abide by all properly issued administrative orders and directives by the chief justice of the supreme court, the chief judge of the court of appeals, and the presiding judge of the judge's judicial district.

For the definition of *duties of judicial office*, see the Terminology section.

Rule 2.6: Ensuring the Right to Be Heard

(A) A judge shall grant to every person the right to be heard according to law.

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

Comment

[1] The right to be heard is an essential component of a fair and impartial system of justice. Substantive rights of litigants can be protected only if procedures protecting the right to be heard are observed. Paragraph (A) is not intended to expand or alter the law of standing (a person's right to bring an action), nor is it intended to expand or alter the procedural rules governing the scope and manner of a person's right to be heard in a case.

[2] Judges may play an important role in facilitating settlements of disputes, but judges should take care that their efforts to further settlement do not undermine any party's right to be heard according to law. Judges should be mindful of the effect that their participation in settlement discussions can have, both on their own objectivity and impartiality and on the lawyers' and parties' perceptions of their objectivity and impartiality. Despite a judge's best efforts, there may be instances when information obtained during settlement discussions could influence a judge's decision-making during trial or on appeal, or might give rise to a reasonable perception that the judge could no longer be objective and impartial. In such instances, this Code requires the judge to consider whether disqualification may be appropriate. See Rule 2.11(A), which requires disqualification if the judge has developed a personal bias or prejudice concerning a party or a party's lawyer, or if the judge believes for any other

reason that the judge can no longer render a fair and impartial decision, and Rule 2.11(B), which imposes a waivable disqualification in any other circumstance in which the judge's impartiality might reasonably be questioned.

Among the factors that a judge should consider when deciding whether to actively assist the parties in seeking to reach a settlement are (1) whether the parties have requested or voluntarily consented to a certain level of participation by the judge in settlement discussions, (2) whether the parties and their counsel are relatively sophisticated in legal matters, (3) whether the case is pending trial or is already on appellate review, (4) if the case is pending trial, whether the case will be tried by a judge or by a jury, and if the case will be tried by a judge, whether the judge is the judicial officer who will try the case if the settlement discussions prove unsuccessful, (5) whether the parties will participate with their counsel in the settlement discussions, (6) whether any parties are unrepresented by counsel, and (7) whether the matter is civil or criminal.

[3] Judges should take an affirmative role in facilitating the ability of every person who has a legal interest in a proceeding to be fairly heard. In the interest of ensuring fairness and access to justice, judges should make reasonable accommodations for self-represented litigants. *See Breck v. Ulmer*, 745 P.2d 66, 75 (Alaska 1987) (holding that judges should inform self-represented litigants of the proper procedures for pursuing the actions or requests for relief that they are obviously attempting to pursue).

To ensure a self-represented litigant's right to be heard and access to justice, a judge may, in appropriate circumstances, (1) construe pleadings liberally, so as to facilitate the consideration of the issues the litigant is attempting to raise, (2) refer the litigant to any resources publicly available to assist the litigant in the preparation of the case, (3) explain legal concepts in everyday language, (4) ask neutral questions to elicit pertinent information from

the litigant or to clarify the litigant's presentation, (5) explain the rules governing a particular proceeding, (6) explain what will be happening in the case (and in what order), and what will be expected of the litigant during the various stages of the proceeding, (7) modify the traditional order of taking evidence, (8) permit narrative testimony, and (9) refer the litigant to available resources to assist the litigant in enforcing any court order.

A judge's authority to make these accommodations does not exempt self-represented litigants from the obligation to comply with, or satisfy, the requirements of applicable substantive law. A judge should not make accommodations for a self-represented litigant that would provide an unfair advantage to the litigant or would cause reasonable people to doubt the judge's ability or willingness to act impartially.

[4] Court-ordered mediation in a civil case is not coercion under Paragraph (B) of this Rule.

For the definitions of *impartial*, *impartially*, and *law*, see the Terminology section.

Rule 2.7: Responsibility to Hear and Decide Assigned Matters

A judge shall hear and decide all matters assigned to the judge except when disqualification is required by Rule 2.11 or other law.

Comment

Absent valid grounds for disqualification, judges have a duty to decide all matters assigned to them. Judges must make themselves available to decide the matters that come before them. See Rule 2.1. Although there are times when disqualification is necessary to protect the rights of litigants or to preserve public confidence in the independence, integrity, and impartiality of the judiciary, unwarranted disqualification is a violation of the judge's duty. In particular, it is improper for a judge to use disqualification to avoid cases that present difficult, controversial, or unpopular issues. This Rule does not prohibit a judge from requesting reassignment of cases for administrative purposes.

For the definitions of *impartiality*, *independence*, *integrity*, and *law*, see the Terminology section.

Rule 2.8: Decorum, Demeanor, and Communication with Jurors

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

(B) 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 personnel, and others subject to the judge's direction and control.

(C) A judge may express appreciation to jurors for their service, but the judge shall not commend or criticize jurors for their verdict.

Comment

[1] The duty to treat all persons with patience and courtesy is not inconsistent with the duty imposed in Rule 2.5 to dispose promptly of the business of the court. Judges can be efficient and businesslike while being patient and courteous.

[2] A judge's act of commending or criticizing jurors for their verdict may imply a judicial expectation or pre-judgment with respect to future cases, and it may impair jurors' ability to be fair and impartial in subsequent cases.

[3] Rule 2.8(C) does not 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.

[4] Unless prohibited by law, a judge may meet after trial with jurors who choose to remain to inquire about their experience as jurors and to explain legal procedures applicable to the case. However, because of Rule 2.9 (the ban on ex

parte communications), Rule 2.10 (the ban on public statements that might reasonably impair the fairness of other related cases, or the fairness of future proceedings in the same case), and Alaska Evidence Rule 606(b) (forbidding evidence of the jury's deliberative process), the judge should not discuss the merits of the case, nor should the judge allow the jurors to explain the reasons for their verdict or otherwise discuss the merits of the case in the judge's presence.

Rule 2.9: Ex Parte Communications

(A) "Ex parte communication" means a communication between a judge, or court personnel acting on behalf of a judge, and a party, a party's lawyer, or any other person when:

(1) the communication concerns the factual or legal merits of a matter currently pending before the judge or an impending matter that may come before the judge, and

(2) the communication occurs without notice to, or participation by, all the parties or their lawyers.

"Ex parte communication" does not include an electronic communication sent simultaneously to the judge and all parties or their respective lawyers, nor does it include a written communication that is served substantially simultaneously upon the judge and all parties or their respective lawyers prior to any court proceeding at which the written communication may be relevant.

(B) Except for the ex parte communications permitted under Paragraph (C) of this Rule, a judge shall not initiate, permit, or consider an ex parte communication.

(C) A judge may initiate, permit, or consider an ex parte communication:

(1) when circumstances require the communication for scheduling, administrative, or emergency purposes, provided that

(a) the communication does not address substantive matters,

(b) the judge reasonably believes that no party will gain a procedural, substantive, or tactical advantage as a result of the ex parte communication, and

(c) the judge promptly notifies all other parties of the substance of the ex parte communication and gives those parties an opportunity to respond;

(2) when all parties agree beforehand to the ex parte communication, such as when the parties in multi-party litigation designate a "lead" party for their side who is authorized to appear at pretrial hearings dealing with issues such as scheduling and discovery, or when the parties consent to have the judge confer separately with each party and their lawyer in an effort to settle a pending matter;

(3) when the judge consults with court personnel whose function is to aid the judge in carrying out the judge's adjudicative responsibilities, or consults with other judges, provided that the judge makes reasonable efforts to avoid receiving factual information that is not part of the record, and so long as the judge does not violate the judge's duty to personally decide the matter based only on adjudicative facts in the record;

(4) when the judge consults the Alaska Commission on Judicial Conduct, or consults other judges or legal experts or outside counsel, concerning the requirements of this Code; or

(5) when the ex parte communication is otherwise authorized by law.

(D) The following limitations apply to the ex parte communications authorized by Paragraph (C):

(1) 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.

(2) Paragraph (C)(3) does not authorize a judge to consult with

(a) judges, staff attorneys, law clerks, or other court personnel who have been or would be disqualified from hearing or participating in the matter,

(b) judges who have appellate jurisdiction over the matter, or any other judge who may be called upon to review the judge's decision in the matter or any of the judge's findings in the matter, or

(c) any judge, magistrate judge, or master who has been appointed to serve in some capacity in the proceeding, and whose recommendation or findings will be reviewed by the judge.

(E) 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.

(F) A judge shall make reasonable efforts, and shall exercise appropriate supervision, to ensure that this Rule is not violated by court personnel or others subject to the judge's direction and control.

Comment

[1] A judge should be mindful to avoid comments and interactions that may be interpreted as ex parte communications concerning pending or impending matters, including comments and interactions in electronic social media.

[2] This Code does not adopt ABA Model Rule 2.9(A)(2), which would authorize judges to engage in ex parte communications for the purpose of obtaining "the written advice of a disinterested expert on the law". When a judge concludes that the advice of a disinterested legal expert would be beneficial, the appropriate procedure is for the judge to issue a letter or order inviting the expert

to file a brief or memorandum as amicus curiae, or for the judge to call the expert as a witness in the proceeding.

[3] When a judge notifies the parties that the judge has received an unauthorized ex parte communication, the judge normally should disclose the identity of the person who initiated the improper communication. However, a judge may withhold the person's identity if the judge reasonably believes that this disclosure would endanger the safety of any person or would otherwise unfairly affect the resolution of the proceeding.

[4] This Rule does not contain the prohibition against independent research that appears in ABA Model Rule 2.9(C). Independent research by a judge is addressed in Rule 2.4(D) of this Code.

For the definitions of *impending matter*, *law*, and *pending matter*, see the Terminology section.

Rule 2.10: Judicial Statements on Pending and Impending Matters

(A) 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. This Paragraph does not prohibit judges from making public statements in the course of their official duties or from publicly explaining court procedures.

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

(C) Subject to the requirements of Paragraphs (A) and (B), 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 general legal principles 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.

(D) The restrictions in Paragraph (A) of this Rule do not apply to a judge's public statements about a matter in which the judge is a party in a personal capacity.

Comment

[1] This Rule's restrictions on judicial speech are essential to the maintenance of the independence, integrity, and impartiality of the judiciary. Judges should be mindful that their comments regarding matters pending or

impending in any court, including comments in online postings or social media, may have an effect on the outcome or impair the fairness of the adjudication of those matters.

[2] Paragraph (A) does not apply to oral or written statements or decisions by a judge in the course of adjudicative duties. A judge is encouraged to explain, on the record, the basis for the judge's decisions and rulings, thus helping litigants understand the judge's actions and promoting public understanding of the law and judicial procedures.

[3] This Rule permits the dissemination of public information to inform and educate the public and respond to concerns about the judicial process, while assuring the public that judicial decisions are based solely on the governing law and the evidence presented in court. A judge may publicly explain the court's procedures and general legal principles that governed the judge's action or decision. But a judge is not allowed to make public statements offering an after-the-fact legal or factual rationale or justification for the judge's action or decision. Because there is sometimes a fine line between explaining general legal principles and procedures (which is permitted) and offering an after-the-fact rationale for the judge's decision (which is prohibited), a judge whose conduct has been questioned or criticized in the media or other public forum should consider whether it might be preferable for the Alaska Court System, rather than the judge personally, to respond to these questions or criticisms.

[4] This Rule is not intended to foreclose judges from making public statements about the law, the legal system, or the administration of justice. As noted in Comment [3] to Rule 1.2 and in Comment [2] to Rule 3.1, judges are encouraged to participate in community outreach activities that promote public understanding of and confidence in the administration of justice, and judges are

uniquely qualified to engage in extrajudicial activities such as speaking, writing, and teaching about the law, the legal system, and the administration of justice.

Indeed, Rule 3.2 of this Code expressly authorizes judges to appear at public hearings before, or to otherwise consult with, executive and legislative bodies and officials in connection with matters concerning the law, the legal system, or the administration of justice, as well as matters affecting social or public policy about which the judge has acquired knowledge or expertise while performing the duties of judicial office. In addition, as part of their administrative duties, judges often participate in public discussions about potential changes to court rules or policies intended to improve the administration of justice.

But when judges engage in these kinds of public discourse, they remain subject to Rule 2.10's prohibition on public statements that would reasonably be expected to impair the fairness or affect the outcome of any pending or impending court matter — for example, comments on the merits of any such matter, or comments on the motives of the participants in any such matter.

There may be times when a public discussion of systemic issues pertaining to the law, the legal system, or the administration of justice may focus on pending or impending court matters. In such circumstances, judges should be mindful of their duty to avoid making the kinds of statements that are prohibited by Rule 2.10, as well as their duty to disavow any association with such statements if made by other participants in the discussion.

[5] This Rule does not prohibit a judge from making public statements about proceedings to which the judge is a party in a personal capacity. But even though a judge may make such public statements, the judge is still required to act in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary, and the judge is still required to avoid impropriety and the appearance of impropriety. See Rule 1.2.

For the definitions of *appearance of impropriety*, *duties of judicial office*, *impartial*, *impending matter*, *impropriety*, *independence*, *integrity*, *law*, and *pending matter*, see the Terminology section.

Rule 2.11: Disqualification

(A) *Mandatory Disqualification.* A judge is disqualified when:

(1) the judge has a personal bias or prejudice concerning a party or a party's lawyer;

(2) the judge is, or will likely be, a party or a material witness in the proceeding;

(3) the judge or the judge's spouse or domestic partner, either individually or as a fiduciary, 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

(4) the judge believes for any other reason that the judge cannot render a fair and impartial decision.

These grounds for disqualification cannot be waived.

(B) *Waivable Disqualification.* In addition, unless all applicable grounds for disqualification described in this Paragraph are waived by the parties under Paragraphs (E) and (F) 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:

(1) The judge has personal knowledge of facts that are in dispute in the proceeding, when that knowledge was obtained extrajudicially.

(2) The judge previously served as a lawyer in the matter.

(3) The judge previously worked as a nongovernment lawyer in the same law firm as another lawyer who, at the time, was participating substantially as a lawyer in the matter.

(4) The judge previously served as a lawyer or public official in a government agency and, in that capacity, the judge personally and substantially assisted the government lawyers who were handling the matter. As used here, the phrase "personally and substantially assisted" means giving those lawyers substantive advice concerning their investigation or litigation of the matter, making public statements asserting the merits of the government's position in the controversy, or otherwise assisting those lawyers beyond the administrative or nominal supervision that a senior official or senior attorney exercises over all the cases handled by their subordinates.

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

(6) The judge knows that any of the following persons is a party to the proceeding, or is an officer, director, general partner, managing member, or trustee of a party to the proceeding, or is acting as a lawyer in the proceeding, or is likely to be a material witness in the proceeding:

(a) the judge's spouse or domestic partner,

(b) any person within the third degree of relationship to the judge, or

(c) the spouse or domestic partner of such a relative.

(7) Other than when disqualification is required under Paragraph (A)(3) of this Rule, the judge knows that any of the following persons has a more than *de minimis* economic interest that could be substantially affected by the pendency or outcome of the proceeding:

(a) any person within the third degree of relationship to the judge, or

(b) the spouse or domestic partner of such a relative.

(8) Other than when disqualification is required under Paragraph (A)(3) of this Rule, the judge knows that any of the following persons has a more than *de minimis* economic interest in a party to the proceeding or in the subject matter in controversy:

(a) the judge, either individually or as a fiduciary,

(b) the judge's spouse or domestic partner, either individually or as a fiduciary,

(c) any person within the third degree of relationship to the judge,

(d) the spouse or domestic partner of such a relative, or

(e) any other person with whom the judge maintains a close familial relationship.

(9) The judge previously presided over the matter in another court.

(C) *Time-Limited Waivable Disqualification*. In addition to the grounds for disqualification listed in Paragraphs (A) and (B) of this Rule, a judge 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) within the two years preceding the judge's assignment to the matter, any party to the matter, other than the State of Alaska or a municipality of the state, retained the judge as the party's attorney or was professionally counseled by the judge as the party's attorney;

(2) within the two years preceding the judge's assignment to the matter, the judge, acting as an attorney, represented a person in a matter against any party to the present matter except the State of Alaska or a municipality of the state;

(3) within the two years preceding the filing of the action, an attorney for any party to the present matter either represented the judge in any matter or represented any person against the judge in any matter, in either the judge's public or private capacity; or

(4) a law firm, other than a government agency, with which the judge was associated in the practice of law within the two years preceding the filing of the action was retained by, or professionally counseled, any party with respect to the present matter.

(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.

(E) *Duty When a Ground of Disqualification is Presented.*

(1) Judges who conclude that they are disqualified under Paragraph (A) of this Rule shall recuse themselves. Judges shall also recuse themselves if they conclude that they are disqualified under Paragraph (B), Paragraph (C). or Paragraph (D) of this Rule and that, given the circumstances, they would not accept the parties' waiver of the disqualification even if one were offered.

(2) Judges who conclude that they are disqualified under Paragraph (B), Paragraph (C), or Paragraph (D) of this Rule, but who also conclude that they would or might be willing to accept the parties' waiver of the disqualification, shall promptly disclose on the record any known reason for their disqualification, either at the beginning of the proceedings or as soon as the reason becomes known to the judge. 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.

(F) *Procedures for Waivers of Disqualification.* If a judge is willing to accept a waiver of disqualification, the judge shall comply with the following procedures:

(1) The judge shall not participate in the parties' discussions concerning waiver and shall not comment on the merits or advisability of waiver. The judge must tell the parties that the decision whether to waive the ground of disqualification rests with each of them.

(2) The judge shall direct the parties to state their individual positions on the judge's disqualification using one of two methods (at the judge's option): either by affirmatively stating that they do not waive the ground of disqualification or, alternatively, by affirmatively stating that they waive the ground of disqualification. The judge shall give the parties a reasonable amount of time to state their positions. If the judge elects the first method, and if no party objects to the judge's participation within the time set for stating a position, the judge may (but is not required to) hear the case. If the judge elects the second method, and if the parties do not unanimously consent to the judge's participation within the time set for stating a position, the judge shall not participate further in the matter.

(3) All communications between the judge and the parties concerning waiver must be incorporated in the record of the proceeding.

A judge is not bound by the parties' decision to waive a ground of disqualification if, after reflection, the judge concludes that disqualification is appropriate.

(G) *Duty to Keep Informed of Economic Interests.* A judge shall keep informed about the judge's personal and fiduciary economic interests, and shall make a reasonable effort to keep informed about 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.

(H) *Definition of "Law Firm"*. For the purposes of this Rule, the term "law firm" means the lawyers in a law partnership, professional corporation, sole proprietorship, or other association authorized to practice law, as well as the lawyers employed in a legal services organization or in the legal department of a corporation or other business organization.

Comment

Article 2 – Rule 2.11

[1] Alaska Rule 2.11 is drawn from four sources: the provisions of ABA Model Rule 2.11, the provisions of Canons 3E and 3F of Alaska's previous Code, the provisions of former Alaska Administrative Rule 23(f), and the provisions of AS 22.20.020, the Alaska statute that specifies several grounds for judicial disqualification.

Paragraph (A) of Rule 2.11 lists the grounds for disqualification that cannot be waived. These grounds are declared non-waivable either in former Canon 3F or in AS 22.20.020(b). In contrast, the grounds for disqualification listed in Paragraphs (B), (C), and (D) of Rule 2.11 can be waived by the parties.

The grounds for disqualification listed in Paragraph (B) are drawn from the provisions of ABA Model Rule 2.11, the provisions of former Canon 3E, and the first four subsections of AS 22.20.020(a).

The grounds for disqualification listed in Paragraph (C) are drawn from subsections (5)–(8) of AS 22.20.020(a). These grounds for disqualification are grouped separately within Rule 2.11 because they are time-limited: that is, these disqualifications hinge on events that occurred, or relationships 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. Thus, these provisions apply primarily to recently appointed judges.

The grounds for disqualification listed in Paragraph (D) are drawn from the provisions of former Alaska Administrative Rule 23(f).

[2] Under Paragraph (B) of this Rule, a judge is disqualified whenever the judge's impartiality might reasonably be questioned, regardless of whether any of the specific provisions of Paragraphs (B)(1) through (9) apply. An appearance of partiality — like the other grounds specifically described in the numbered subsections of Paragraph (B) — can be waived by the parties as set out in this Rule.

[3] Judges have an obligation to disqualify themselves under this Rule regardless of whether a motion to disqualify is filed.

[4] The common law rule of necessity may override a judge's disqualification under this Rule. *See generally* Richard E. Flamm, *Judicial Disqualification* (3d edition, 2017), Chapter 53. Under the rationale of the rule of necessity, a judge otherwise subject to disqualification may nevertheless hear and decide a matter if the same ground of disqualification applies to every other available judge so that the case could not otherwise be heard. *See, e.g.*, *Hudson v. Johnstone*, 660 P.2d 1180, 1183 (Alaska 1983) (citing the rule of necessity as the legal basis for the supreme court's deciding a constitutional challenge to the legislature's modification of the judicial retirement system).

[5] Both Paragraph (A)(3) and Paragraph (B)(7) of this Rule require judges to disqualify themselves if the judge or a specified family member has a more than *de minimis* economic interest that could be substantially affected by the pendency or outcome of the proceeding. The corresponding ABA provision, Model Rule 2.11(A)(2)(c), is among the waivable grounds for disqualification under the ABA Model Code. But AS 22.20.020(a)(4) declares that when a "direct financial interest in the matter" is held by the judge, the judge's spouse or domestic partner, or the judge's child, this ground for disqualification is not waivable. Accordingly, this Code divides this ground for disqualification into a non-waivable portion, Rule 2.11(A)(3), and a waivable portion, Rule 2.11(B)(7).

The non-waivable provision, Rule 2.11(A)(3), does not use the same phrasing as the corresponding statute, AS 22.20.020(a)(4). Instead of the statutory phrase, "direct financial interest", Rule 2.11(A)(3) uses the phrase "more than *de minimis* economic interest". This difference in wording is based on the Alaska Supreme Court's decision in *Mitchell v. Teck Cominco Alaska Inc.*, 193 P.3d 751, 763–65 (Alaska 2008), where the supreme court held that the

statutory phrase "direct financial interest" does not include a *de minimis* financial or economic interest. Rule 2.11(A)(3) is worded, and is to be interpreted, in accordance with the statutory interpretation adopted in *Mitchell*.

[6] Paragraph (B)(3) of this Rule is based on the second clause of ABA Model Rule 2.11(A)(6)(a), but it differs from the ABA Model Rule in two significant ways.

First, Paragraph (B)(3) refers to a judge's having "previously worked . . . in the same law firm as another lawyer", rather than using the ABA Model Rule's phrasing, "was associated with a lawyer". The ABA's phrasing is problematic because it is potentially ambiguous enough to encompass affiliations outside the practice of law.

The ABA Model Rule is, in fact, intended to apply only to lawyers who were associated with the judge in the practice of law; indeed, the ABA annotation uses the phrase "lawyer[s] with whom the judge previously practiced law" when it restates this rule of disqualification. *See* Arthur H. Garwin et al., *Annotated Model Code of Judicial Conduct* 257 (3d ed. 2016). For this reason, Alaska Rule 2.11(B)(3) expressly refers to previous associations "in a law firm".

The definition of "law firm" codified in Paragraph (H) of this Rule is based on the corresponding definition found in Alaska Professional Conduct Rule 9.1.

The second way in which Paragraph (B)(3) of Alaska Rule 2.11 differs from the corresponding ABA Model Rule is that it declares that this ground for disqualification does not apply to situations when the judge and the lawyer formerly served together as lawyers in a government agency.

Lawyers who were formerly employed together in a government agency do not ordinarily have the types of continuing financial, business, or social relationships that would warrant a judge's disqualification. *See Keel v. State*, 552

P.2d 155 (Alaska 1976); Alaska Court of Appeals Standing Order No. 14 (January 16, 2018). Alaska's previous Code recognized this limitation on the scope of the disqualification in the Commentary to Canon 3E(1)(b), which stated: "A lawyer in a government agency does not ordinarily have an association with other lawyers employed by that agency [which would trigger disqualification] within the meaning of [Canon] 3E(1)(b) . . . ."

Alaska Rule 2.11(B)(3) moves this limitation from the Comment to the Rule itself, which now explicitly states that it does not apply to judges who previously served as lawyers in a government agency. Instead, the next provision of Rule 2.11 — Paragraph (B)(4) — governs the disqualification of judges who previously served as lawyers in a government agency. For a fuller explanation of Paragraph (B)(4), see paragraph [11] of this Comment.

[7] Under Paragraph (B)(6) of this Rule, a judge is disqualified if the judge knows that the judge's spouse or domestic partner, or any person within the third degree of relationship to the judge (or the spouse or domestic partner of such a relative) is acting as a lawyer in the proceeding. However, disqualification is not required merely because a lawyer in the proceeding is affiliated with the same law firm as the judge's spouse, domestic partner, or relative. In such situations, a judge should consider the particular circumstances and decide whether the judge's impartiality might reasonably be questioned, see the introductory clauses to Paragraph (B), or whether the judge's spouse, partner, or relative has an interest in the law firm that could be substantially affected by the outcome of the proceeding, see Paragraph (B)(7). If so, then the judge's disqualification is required unless the parties waive this ground for disqualification. Also, depending upon the nature of the association between the lawyer in the proceeding and the judge's spouse, domestic partner, or relative, disqualification may be required under other provisions of this Rule.

[8] Paragraph (B)(8) of this Rule requires disqualification if either the judge or a listed member of the judge's family has a more than *de minimis* economic interest in the subject matter in controversy or in a party to the proceeding. Paragraph (B)(8) is based on ABA Model Rule 2.11(A)(3) — but again, in accordance with the holding of *Mitchell v. Teck Cominco Alaska Inc.*, 193 P.3d 751 (Alaska 2008), Paragraph (B)(8) does not require disqualification if the interest in question is *de minimis*.

[9] Paragraph (B)(9) of this Rule requires disqualification when a judge previously heard the matter in another court. This refers to situations where a judge who previously adjudicated a matter is later called upon to review the matter as a judge of a higher level of court, or when a judge who previously reviewed a matter as a member of a higher court is later assigned to preside over the reconsideration or renewal of the matter in a lower court.

Paragraph (B)(9) does not require disqualification when a judge is called upon to reconsider, or to decide a challenge to, a decision that the judge previously made at the same level of court — for instance, when the judge previously issued a child custody order, or granted an application for a search warrant, or made recommendations relating to the resolution of the matter while serving as a standing master. Ordinarily, it is proper for a judge to reconsider or review the judge's own earlier decisions at the same level of court. There may be times, however, when a judge will conclude that the judge cannot dispassionately revisit the prior decision and that Paragraph (A)(4) therefore requires the judge's disqualification.

[10] Paragraph (C)(4) departs in one significant respect from the wording of its statutory source, AS 22.20.020(a)(8). The statute declares that disqualification is required when the judge was previously associated with a law

firm involved in the matter, but Paragraph (C)(4) declares that this ground of disqualification does not apply if the law firm was a government agency.

The Alaska Court of Appeals has construed AS 22.20.020(a)(8) as not applying to a judge's prior employment as a lawyer within a government agency. *See* Alaska Court of Appeals Standing Order No. 14 (January 16, 2018); *see also Keel v. State*, 552 P.2d 155 (Alaska 1976) (construing AS 22.20.020(a)(5) as not requiring disqualification of a judge who was previously employed as a prosecutor by the State of Alaska). Rule 2.11(C)(4) adopts this interpretation of the statute.

[11] Rule 2.11(B)(4) is a modified version of ABA Model Rule 2.11(A)(6)(b). It deals with judges who were formerly government lawyers or public officials.

Judges who were formerly *private* attorneys are disqualified from a matter if they were associated in the same law firm with the lawyer(s) who handled the matter, even if the judge did not personally work on the matter. See Rule 2.11(B)(3). But this rule of disqualification does not apply to judges who were formerly government lawyers because a lawyer working for a government agency does not ordinarily have the same kind of association with the other lawyers employed by that agency. *See Keel v. State*, 552 P.2d 155, 157 (Alaska 1976) (interpreting AS 22.20.020(a)(5)); Alaska Court of Appeals Standing Order No. 14 (January 16, 2018) (interpreting AS 22.20.020(a)(8)).

Nevertheless, as explained in the Commentary to Alaska's former Canon 3E(1)(b), judges who formerly served as government lawyers and who worked in the same agency as the lawyer(s) who handled the matter should disqualify themselves from that matter whenever, because of the particular circumstances of their association with those lawyers, "[their] impartiality might reasonably be questioned". ABA Model Rule 2.11(A)(6)(b) was intended to codify this concept

by listing the particular circumstances in which judges would be disqualified because of their former association with the other government lawyers who actively handled the matter. *See Muench v. Israel*, 524 F. Supp. 1115, 1116–19 (E.D. Wis. 1981) (describing the legislative history and underlying rationale of the corresponding provision of the federal judicial disqualification statute, 28 U.S.C. § 455(b)(3)).

[12] The waiver procedure described in Paragraphs (E) and (F) of this Rule allows the parties to proceed before the judge despite the existence of a ground for the judge's disqualification. Under this rule, all communications between the judge and the parties regarding the question of waiver (but not the parties' discussions among themselves) must be either on the record or in writing and included in the case file.

[13] Under Paragraph (E)(1) of this Rule, judges need not disclose the basis for their disqualification if they conclude that they are disqualified under Paragraph (A) of this Rule (the mandatory grounds for disqualification) or if they conclude that they are disqualified under Paragraph (B), Paragraph (C), or Paragraph (D) of this Rule (the waivable grounds for disqualification) and if, given the circumstances, they would not accept the parties' waiver of the disqualification even if one were offered.

In all other circumstances, even when a judge believes that there is no basis for disqualification, a judge should promptly disclose on the record any information that the judge believes the parties or their lawyers might consider relevant to the question of disqualification, bearing in mind that Paragraph (B) of this Rule calls for disqualification whenever the judge's impartiality might reasonably be questioned, regardless of whether any of the specific provisions of Paragraphs (B)(1) through (9) apply.

Even when Paragraph (E)(1) exempts judges from having to disclose the reason for their disqualification, a judge may choose to disclose this reason 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. Disclosure may have particular importance when judges disqualify themselves after participating and issuing substantive or important procedural decisions in matters, as the disqualification may give rise to questions about the validity of those prior decisions.

[14] Paragraph (F)(2) of this Rule provides that a judge shall give the parties a reasonable period of time to express their position about possible waiver of disqualification. What period of time is reasonable depends upon a number of factors, including the type of case and the procedural posture of the case. In a particularly time-sensitive matter, a reasonable period of time may be quite short.

[15] Paragraph (F) of this Rule concludes with the sentence, "A judge is not bound by the parties' decision to waive a ground of disqualification if, after reflection, the judge concludes that disqualification is appropriate." This principle is carried forward from former Canon 3F(1). Thus, for example, a judge may conclude that, despite the parties' waiver, the circumstances create an appearance of impropriety that is too significant to be ignored.

For the definitions of *appearance of impropriety*, *bias*, *domestic partner*, *de minimis*, *economic interest*, *fiduciary*, *impartial*, *impartiality*, *judicial candidate*, *known*, *knows*, *likely*, *prejudice*, *senior judge*, and *within the third degree of relationship*, see the Terminology section. For an explanation of the phrase *close familial relationship*, see the Comment to the definition of *family* in the Terminology section.

Rule 2.12: Supervisory Duties

(A) 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.

(B) 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.

Comment

[1] Judges are responsible for their own conduct and for the conduct of other persons, such as court personnel, when those persons are acting at the judge's direction or under the judge's control. This means that judges must not direct court personnel to engage in conduct on the judges' behalf, or as the judges' representative, when that conduct would violate this Code if it were undertaken by the judge. But even when a judge has not personally directed the other person's conduct, a judge is required to make reasonable efforts to ensure that persons who are subject to the judge's direction and control act in a manner consistent with the judge's obligations under this Code.

This does not mean that a judge must endeavor to have all these persons comply with every provision of this Code. For example, even though a judge is forbidden from engaging in partisan politics, court personnel retain their rights to engage in politics so long as they do this on their own time and they do not make use of court facilities or equipment for this purpose.

Rather, a judge must make reasonable efforts to ensure that persons under the judge's direction or control act in a manner "consistent with" the judge's

obligations under this Code — i.e., act in a manner that does not undercut *the judge's duty* to avoid impropriety under the Code, or the appearance of impropriety. Thus, for example, a judge must not countenance a staff member's dishonesty, breach of duty, conflict of interest, or lack of diligence.

[2] Public confidence in the judicial system depends upon timely justice. To promote the efficient administration of justice, a judge with supervisory authority over other judges must take reasonable steps to ensure that these judges administer their workloads efficiently and decide their cases promptly.

For the definitions of *appearance of impropriety* and *impropriety*, see the Terminology section.

Rule 2.13: Hiring and Administrative Appointments

(A) When hiring employees and making administrative appointments, a judge:

(1) shall exercise the power of hiring and appointment impartially, without favoritism and on the basis of merit;

(2) shall not engage in nepotism or unnecessary hires and appointments; and

(3) shall not approve compensation beyond the fair value of services rendered.

(B) For the purposes of this Rule, "nepotism" means the hiring or appointment of the judge's spouse or domestic partner, or 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.

Comment

[1] Hires or appointees of a judge include appointed counsel when the judge has discretion regarding the selection of the attorney; appointed officials such as guardians ad litem, court visitors, special masters, receivers, guardians, and conservators when the judge has discretion regarding the selection of these officials; and court personnel such as judicial assistants, law clerks, and other staff whose hiring is at the judge's discretion or who are selected by a group that includes the judge.

[2] Consent by the parties to an appointment or an award of compensation does not relieve the judge of the obligations prescribed by Paragraph (A).

[3] When making hires or appointments, a judge should consult the Alaska Court System's personnel rules because these rules may set different limitations on a judge's hires or appointments and may provide a mechanism for waiving normal hiring restrictions.

For the definitions of *domestic partner*, *impartiality*, and *third degree of relationship*, see the Terminology section.

Rule 2.14: Responding to Judicial and Lawyer Impairment

(A) 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.

(B) For purposes of this Rule, "appropriate action" means action intended and reasonably likely to help the judge or lawyer in question address the problem and prevent harm to the justice system. Depending upon the circumstances, appropriate action may include, but is not limited to, speaking directly to the impaired person, notifying an individual with supervisory responsibility over the impaired person, or making a referral to an Alaska Bar Association lawyer's assistance program or an Alaska Court System judicial assistance program.

(C) If a judge learns of a lawyer's impairment while the lawyer is participating in a proceeding before the judge, but the judge believes that the lawyer is providing competent representation to the lawyer's client despite the impairment, the judge may defer taking action until the proceeding is concluded. If the judge concludes that, because of the lawyer's impairment, the lawyer is unable to provide competent representation to the lawyer's client at the proceeding, the judge may take more immediate action.

Comment

[1] Judges may satisfy their obligation under Paragraph (A) of this Rule by taking or initiating action to refer an impaired judge or lawyer to an assistance program. Such assistance programs have many approaches for offering help to impaired judges and lawyers, including intervention, counseling, and referral to appropriate health care professionals. Likewise, judges who serve as members of an assistance program may satisfy Paragraph (A) by performing their expected duties as a member of the assistance program. However, depending upon the gravity of the conduct that has come to the judge's attention, or depending on the

impaired judge's or lawyer's response to the intervention, counseling, or treatment, Rule 2.14(A) may require a judge to take other action, such as reporting the impaired judge or lawyer to the appropriate authority, agency, or body. See Rule 2.15.

[2] Alaska's former Code of Judicial Conduct declared that senior judges (i.e., former judges who were eligible for pro tempore judicial service under former Alaska Administrative Rule 23) were under a duty of confidentiality with respect to any information they obtained while serving as members of a judicial assistance program — a duty of confidentiality so complete that these senior judges were prohibited from "report[ing] any failure of a judge referred to the [program] to admit the problem or submit to treatment". *See* Paragraph (B)(3) of Alaska's former 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 former Canon 3D(1).

Accordingly, this 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 applies to all judges serving on assistance programs, regardless of whether they are "senior judges" as defined in this Code — i.e., regardless of whether they are former judges who have been approved for pro tempore judicial service under Alaska Administrative Rule 23.

[3] Paragraph (C) of this Rule states that a judge may take more immediate action in response to a lawyer's impairment if, during a court proceeding, the judge concludes that the lawyer's impairment is preventing the

lawyer from providing competent representation to a client at the proceeding. The meaning of the word "may" in this context is explained in Paragraph [5] of the Scope section of this Code: When a Rule employs the word "may" in the sense of "is authorized to" or "is permitted to", the conduct at issue is committed to the personal and professional discretion of the judge. A judge therefore complies with Paragraph (C) so long as the judge's action or inaction is within the reasonable bounds of that discretion. In assessing whether to take more immediate action, a judge should consider the importance of the issues to be decided at the proceeding, as well as whether the lawyer's client has a constitutional right to competent representation in proceedings of that type (for example, criminal or child in need of aid proceedings).

For the definitions of *likely* and *senior judge*, see the Terminology section.

Rule 2.15: Responding to Judicial and Lawyer Misconduct

(A) A judge shall inform the appropriate authority if the judge knows that another judge has committed a violation of this Code that raises a substantial question regarding the other judge's honesty, trustworthiness, or fitness as a judge in other respects.

(B) A judge shall inform the appropriate authority if the judge knows that a lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial question regarding the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects.

(C) In situations not covered by Paragraph (A), a judge shall take appropriate action if the judge has information indicating a likelihood that another judge has committed a violation of this Code.

(D) In situations not covered by Paragraph (B), a judge shall take appropriate action if the judge has information indicating a likelihood that a lawyer has committed a violation of the Rules of Professional Conduct.

Comment

[1] Judges have an obligation to take action to address known misconduct by judges and lawyers. Like Canons 3D(1) and (2) of Alaska's former Code, Paragraphs (A) and (B) of this Rule require a judge to report to the appropriate disciplinary authority the known misconduct of another judge or a lawyer that raises a substantial question regarding the honesty, trustworthiness, or fitness of that judge or lawyer. Ignoring or denying known misconduct among one's judicial colleagues or members of the legal profession undermines a judge's responsibility to participate in efforts to ensure public respect for the justice system. When a judge knows of judicial or lawyer misconduct that does not raise a substantial question regarding the judge's or lawyer's honesty, trustworthiness,

or fitness as a judge or lawyer, the judge's obligation to take action is governed either by Paragraph (C) or Paragraph (D).

[2] A judge who does not know that another judge or a lawyer has committed misconduct, but has information indicating a likelihood of misconduct, is required to take appropriate action under Paragraphs (C) and (D). Appropriate action may include, but is not limited to, communicating directly with the judge or lawyer, communicating with a supervising judge or lawyer, or reporting the apparent violation to the appropriate authority. If the judge reasonably believes that the misconduct has been reported to the appropriate authority, the judge is not required to duplicate the report.

[3] Appropriate action will vary with particular situations and particular individuals. There will generally be a range of reasonable responses available to the judge. However, a judge who learns of misconduct must respond reasonably.

[4] Alaska's former Code of Judicial Conduct declared that senior judges (i.e., former judges who were eligible for pro tempore judicial service under former Alaska Administrative Rule 23) were under a duty of confidentiality with respect to any information they obtained while serving as members of a judicial assistance program — a duty of confidentiality so complete that these senior judges were prohibited from "report[ing] any failure of a judge referred to the [program] to admit the problem or submit to treatment". *See* Paragraph (B)(3) of Alaska's former 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 former Canon 3D(1).

Accordingly, this 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 applies to all judges serving on assistance programs, regardless of whether they are "senior judges" as defined in this Code — i.e., regardless of whether they are former judges who have been approved for pro tempore judicial service under Alaska Administrative Rule 23.

For the definitions of *appropriate authority*, *knows*, *likelihood*, and *senior judge*, see the Terminology section.

Rule 2.16: Cooperation with Disciplinary Authorities

(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. This duty of cooperation and candor does not require a judge to disclose privileged information.

(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.

Comment

[1] Paragraph (A) of this Rule, which is based on former Canon 3D(3), requires judges to cooperate with investigations conducted by judicial and lawyer disciplinary agencies and to respond candidly and honestly to these agencies' inquiries into potential judicial and lawyer misconduct — even when the agency is inquiring into the judge's own conduct, either as a judge or as a lawyer. Judges' cooperation with the investigations and proceedings of judicial and lawyer disciplinary agencies helps to foster public confidence in the integrity of the judicial system and in the judiciary's commitment to the rule of law and the protection of the public.

[2] A judge can violate the duty to respond candidly and honestly to the inquiries of disciplinary agencies not only by knowingly providing false or misleading information but also by knowingly omitting material information from an otherwise truthful response.

[3] Paragraph (B) of this Rule prohibits judges from retaliating in any fashion against a person who the judge knows or even suspects has initiated,

assisted, or cooperated with the disciplinary investigation of any judge or lawyer. This prohibition is an inherent facet of a judge's duty to cooperate with judicial and lawyer disciplinary agencies.

For the definitions of *knowingly*, *known*, and *knows*, see the Terminology section.

Article 3

The Overarching Principle Of This Article Is That Judges Conduct Their Extrajudicial Activities To Minimize The Risk Of Conflict With Their Judicial Obligations.

Rule 3.1: Extrajudicial Activities in General

A judge may engage in extrajudicial activities except as prohibited by this Code or other law. But when engaging in extrajudicial activities a judge shall not:

(A) participate in activities that will interfere with the proper and timely performance of the judge's judicial duties or demean the judicial office;

(B) participate in activities that will lead to frequent disqualification of the judge;

(C) participate in activities that would appear to a reasonable person to undermine the judge's independence, integrity, or impartiality;

(D) engage in conduct that would appear to a reasonable person to be a coercive use of judicial office; or

(E) 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 permitted by law or court system policy.

Comment

[1] Complete separation of a judge from extrajudicial activities is neither possible nor wise; a judge should not become isolated from the community. Participation in both law-related and other extrajudicial activities helps integrate

judges into their communities, and it furthers public understanding of and respect for courts and the judicial system.

[2] To the extent that time permits, and judicial independence and impartiality are not compromised, judges are encouraged to engage in appropriate extrajudicial activities. 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. In addition, judges are permitted and encouraged to engage in nonprofit educational, religious, charitable, fraternal, or civic extrajudicial activities even when the activities do not involve the law. *See* Rule 3.7.

[3] Discriminatory actions and expressions of bias or prejudice by a judge, even outside the judge's official or judicial actions, are likely to appear to a reasonable person to call into question the judge's integrity and impartiality. Examples include jokes or other remarks that demean individuals based upon the categories described in Rule 2.3. For the same reason, it would be inappropriate for a judge to participate in extrajudicial activities conducted in connection or affiliation with an organization that practices invidious discrimination. *See* Rule 3.6.

[4] While engaged in permitted extrajudicial activities, judges must not coerce others or take action that would reasonably be perceived as a coercive use of judicial office. 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.

[5] Paragraph (E) recognizes that reasonable use of public resources to support a judge's law-related activities advances legitimate interests of the public and the court system.

For the definitions of *bias*, *contribution*, *extrajudicial activities*, *impartiality*, *independence*, *integrity*, *judicial duties*, *law*, *prejudice*, and *solicit contributions*, see the Terminology section.

Rule 3.2: Appearances Before Government Bodies and Consultation with Government Officials

A judge shall not appear voluntarily at a public hearing before, or otherwise consult with, an executive or a legislative body or official, except in connection with:

(A) matters concerning the law, the legal system, or the administration of justice;

(B) matters about which the judge acquired knowledge or expertise while performing the duties of judicial office; or

(C) matters involving 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.

Comment

[1] Paragraph (B) of this Rule allows judges to voluntarily appear in front of executive or legislative bodies, or to consult with executive or legislative officials, concerning "matters about which the judge acquired knowledge or expertise while performing the duties of judicial office". This provision, which was not included in Alaska's previous Code, was added to Rule 3.2 in recognition that judges, in the course of carrying out their judicial duties, often gain expertise or special insight into legal and social problems or other matters of public policy. See Arthur H. Garwin et al., *Annotated Model Code of Judicial Conduct* 379–80 (3d ed. 2016), for an explanation of the addition of this provision to the Model Code.

Paragraph (B) of Rule 3.2 allows judges to share their expertise and special insight with other government bodies and officials even when the subject matter of the judge's input does not necessarily fit within the contours of Paragraph (A)'s "the law, the legal system, or the administration of justice".

However, Rule 3.2(B) is meant to apply only when it is clear that the judge's input to the executive or legislative branch is viewed as relevant and valuable, not simply because it represents the opinion of a member of the judicial branch, and not simply because of whatever prestige the judge may have acquired as a judicial officer, but because the judge's input derives from relevant specialized experience or insight that the judge has gained through serving as an official within the judicial system.

[2] When making a presentation under Paragraph (A) or (B), a judge should make clear that the judge's observations are based on the judge's experience, that other judges may have different viewpoints, and, unless the judge is authorized to speak on behalf of the Alaska Court System, that the judge's observations are personal and not intended to represent a position of the Alaska Court System.

[3] When appearing before government bodies or consulting with government officials, judges should be mindful that they remain subject to other provisions of this Code, such as Rule 1.3 (prohibiting judges from using the prestige of office to advance their own or others' interests), Rule 2.10 (governing public comment on pending and impending matters), and Rule 3.1(C) (prohibiting judges from engaging in extrajudicial activities that would appear to a reasonable person to undermine the judge's independence, integrity, or impartiality).

[4] In general, judges may appear before government bodies or consult with government officials on matters that are likely to affect them as private individuals. The corresponding provision of ABA Model Rule 3.2(C) authorizes judges to act on their own behalf in "a matter involving the judge's legal or economic interests, or when the judge is acting in a fiduciary capacity." Alaska Rule 3.2(C) uses a different phrase — "matters involving the judge's legal,

economic, or personal interests" — to clarify that judges may also advocate in favor of their non-economic interests. For example, a judge may speak to a school board regarding policies that will or may affect the judge's children. However, the phrase "personal interests" is not intended to include partisan political interests. When appearing before or making presentations to government bodies or officials, judges should exercise caution to avoid using or invoking the prestige of their judicial office and, when appropriate, judges should clarify that their appearance or presentation is in their personal capacity.

[5] When considering whether to testify, appear, or make a presentation before a statewide government body, a judge should consider consulting the Alaska Court System's administrative office to ensure more complete knowledge of the overall context of the issue or additional matters that may inform the substance of the judge's testimony or presentation.

[6] The administration of justice includes seeking funding for public service organizations that provide or seek increased access to justice, such as Alaska Legal Services Corporation, so long as the organization is not identified with a particular cause that may come before the courts.

For the definitions of *duties of judicial office*, *economic interest*, *extrajudicial activities*, *family*, *fiduciary*, *impartiality*, *impending matter*, *independence*, *integrity*, *law*, *likely*, and *pending matter*, see the Terminology section.

Rule 3.3: Serving as a Character Witness

A judge shall not serve as a character witness in a judicial, administrative, or other adjudicatory proceeding, nor shall a judge otherwise vouch for the character of a person in such a proceeding, unless the judge has received a subpoena or other formal summons compelling the judge's attendance at the proceeding, or unless the judge is serving as a character witness or otherwise vouching for a family member. When serving as a character witness or otherwise vouching for another person's character, a judge must 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.

Comment

[1] A judge's service as a character witness in a judicial, administrative, or other adjudicatory proceeding presents the danger of injecting the prestige of judicial office into the proceeding, and the judge's testimony may be misunderstood as an official testimonial. Moreover, when a judge serves as a character witness, lawyers who regularly appear before the judge may be placed in the awkward position of cross-examining the judge and attacking the accuracy or weight of the judge's testimony. Rule 3.3 is intended to apply to any proceeding where testimony is taken on a formal record. *See* Charles G. Geyh & W. William Hodes, *Reporters' Notes to the Model Code of Judicial Conduct* 60–61 (2009).

[2] Except in the unusual situation when the interest of justice requires the judge's testimony regarding a person's character, a judge should discourage any party from requiring the judge to serve as a character witness. Nonetheless, if the judge is subpoenaed or otherwise formally summoned to attend a proceeding and testify as a character witness, this Rule does not exempt the judge from complying with the subpoena or summons. For purposes of this Rule, the

terms "subpoena" and "formal summons" refer to any order (no matter how it is named) directing a person to appear and give testimony before a tribunal or other government body if the person can be penalized for noncompliance.

[3] Rule 3.3 applies to judicial, administrative, or other adjudicatory proceedings. The Rule does not apply outside this context. For instance, Rule 3.3 allows a judge to offer an appraisal of a person's character in response to questions from a bar association in connection with that person's bar admission application because such bar association inquiries are normally not conducted as administrative proceedings. But Rule 3.3 is not intended to authorize a judge to serve as a character witness or to otherwise vouch for a person's character in attorney disciplinary and judicial disciplinary proceedings, or in post-disciplinary petitions for reinstatement, or in the unusual situation when a person's application for bar admission leads to an administrative proceeding addressing the person's character.

[4] This Rule applies only to a judge's service as a character witness. It does not apply when a judge is called to testify as an expert concerning the law or as a fact witness when the judge has personal knowledge of events or circumstances relevant to a litigation.

For the definitions of *family* and *law*, see the Terminology section.

Rule 3.4: Appointments to Nonjudicial Government Positions

(A) A judge shall not serve on a committee, board, or commission, or in any other position within the executive or legislative branches of government, whether federal, state, or local, unless the position is one that concerns the law, the legal system, or the administration of justice and the judge's service complies with the requirements of Rule 3.1.

(B) When the scope of a nonjudicial government body includes matters of the law, the legal system, or the administration of justice, but the overall scope of the body is too broad to satisfy the law, the legal system, or the administration of justice limitation of Paragraph (A), a judge may serve on 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).

(C) A judge may represent the government on ceremonial occasions or in connection with historical, educational, or cultural activities. This type of representation does not constitute the acceptance of a government position for purposes of this Rule.

Comment

[1] Rule 3.4 strikes a balance between two competing principles. A judge's time and the prestige of judicial office should not be expended on the consideration and resolution of nonjudicial issues or on the consideration and resolution of political and social questions that are more properly the realm of the other two branches of government. Nevertheless, because of judges' familiarity with the legal system and their experience in administering the judicial system, our society benefits from having judges participate in government bodies whose aims and duties concern "the law" in a broader sense — including the legal system and the administration of justice.

[2] Even when a nonjudicial government position concerns the law, the legal system, or the administration of justice, a judge must assess the appropriateness of accepting the appointment under Rule 3.1, which states that the judge's service must not interfere with the proper performance of the judge's judicial duties, must not lead to frequent disqualification of the judge, and must not undermine a reasonable person's belief in the judge's independence, integrity, or impartiality. Thus, for example, a judge should consider whether the board or commission primarily represents only one point of view, whether the body will likely be viewed by the public as a political or advocacy group rather than a nonpartisan administrative body, and whether the body will take public positions on controversial legal issues that are likely to come before the courts. *See* Alaska Commission on Judicial Conduct, Advisory Opinion #2000-01 (September 2000). In addition, because the mission or the composition of a board or commission may change over time, judges should periodically reassess whether their continued service in a nonjudicial government position still complies with Rules 3.1 and 3.4.

[3] Paragraph (B) of this Rule allows a judge to serve on a nonjudicial government body whose scope is broader than the "the law, the legal system, or the administration of justice" limitation set forth in Paragraph (A) so long as the judge is able to limit or structure the judge's service so that it conforms to the restrictions of Paragraph (A). If the judge is not able to limit or structure the judge's service in this manner, this Rule forbids the judge from serving on the government body, but under Rule 3.2 the judge may nevertheless consult with or provide expertise to that body on matters concerning the law, the legal system, or the administration of justice. Again, see Alaska Commission on Judicial Conduct, Advisory Opinion #2000-01 (September 2000).

[4] This Rule establishes the ethical standards governing a judge's service in a nonjudicial government position. But even when a judge determines that this service is permitted under Rule 3.4, the judge may nevertheless question whether the judge's proposed participation on the commission or board would be consistent with the best interests of the Alaska Court System, the judicial branch, or the public. In those circumstances, a judge may wish to consult the Administrative Director of the Alaska Court System or the Chief Justice of the Alaska Supreme Court regarding the potential benefits and risks of the judge's proposed participation.

For the definitions of *impartiality*, *independence*, *integrity*, *judicial duties*, *law*, and *likely*, see the Terminology section.

Rule 3.5: Use of Nonpublic Information

(A) A judge shall not intentionally disclose nonpublic information acquired in a judicial capacity for any purpose unrelated to the judge's judicial duties, except that a judge may disclose such 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. A judge shall not use nonpublic information for the financial gain of the judge or any other person.

(B) As used in this Rule, "nonpublic information" means information that, by law, is not available to the public. Nonpublic information includes, but is not limited to, information that is sealed or made confidential by statute, regulation, court rule, or court order.

Comment

[1] In the course of performing judicial duties, judges may acquire information of commercial value that is unavailable to the public. This Rule prohibits judges from disclosing or using such information for personal gain or for any purpose unrelated to their judicial duties.

[2] ABA Model Rule 3.5 prohibits a judge from disclosing or using nonpublic information acquired in a judicial capacity for any purpose unrelated to the judge's judicial duties, but that formulation of the rule does not adequately address the problem presented when a judge obtains confidential information that has relevance to the judge's personal life outside of the financial sphere. A judge hearing a confidential proceeding might obtain information about a doctor that has potentially crucial relevance to the judge's decision of which doctor to employ. A judge who hears a search warrant application might obtain information that would affect the judge's decision regarding what daycare center to use or what restaurant to patronize. Even though the judge reveals this

information to no one, it would not strain the English language to say that a judge who makes decisions based on this information has "used" the nonpublic information for a purpose unrelated to the judge's official duties. Alaska Rule 3.5(A)'s first clause forbids "disclosure" of such information for any nonjudicial purpose (other than protecting a person from what the judge reasonably believes to be a substantial risk of immediate death or serious bodily harm), thus allowing the judge to "use" the information for personal purposes so long as the judge does not violate the second clause. The second clause of Rule 3.5(A) forbids any "use" of nonpublic information (with or without disclosure) for anyone's financial gain. A judge misusing financial information for financial gain would not necessarily need to disclose the information to anyone else; indeed, the amount of the improper financial gain may be directly proportionate to the judge's success in concealing the information from all other persons.

[3] Rule 3.5 contains some significant differences from the ABA Model Rule. First, the exception to the duty of confidentiality is moved from the Comment into the Rule, in accordance with this Code's general approach that the provisions for which judges might be disciplined, as well as all explicit exceptions to those disciplinary provisions, should be included in the text of the Rule itself rather than in the Comment. Second, as several other states have done, Rule 3.5 broadens the scope of the authorized disclosure to encompass the protection of any person who is at risk, rather than just the judge's family, court personnel, or other judicial officers. Third, to define the type of risk that triggers the exception, Rule 3.5 draws on the general criminal law concept of assault by requiring a substantial risk of immediate death or serious bodily harm. Consistent with the ABA Model Rule, this exception does not put the judge under a duty to disclose, but merely allows a judge to make a disclosure within the exception. See Alaska Rule of Professional Conduct 1.6(b)(1), which specifies the

circumstances in which an attorney is authorized, but not required, to disclose client confidences or secrets without the client's permission.

For the definitions of *family* and *judicial duties*, see the Terminology section.

Rule 3.6: Affiliation with Discriminatory Organizations

(A) A judge shall not knowingly hold membership in an organization that practices invidious discrimination on the basis of race, sex, gender identity or expression, 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. This Rule does not apply to a judge's service in the national or state military.

(B) A judge shall not regularly use the benefits or facilities of an organization if the judge knows that the organization practices any form of discrimination described in Paragraph (A). However, a judge may arrange or attend an isolated event in a facility of such an organization if the judge's action could not reasonably be perceived as an endorsement of the organization's discriminatory practices.

Comment

[1] Rule 3.6 addresses the problem of a judge's affiliation with organizations that invidiously limit their membership on the basis of any classification expressly listed in Paragraph (A) or any other classification protected by applicable law. When judges knowingly affiliate themselves with such organizations (either by being members of the organization or by regularly using the organization's facilities), this creates an appearance that the judge is biased and it diminishes public confidence in the integrity and impartiality of the judiciary.

[2] Generally speaking, an organization's membership practices will be invidiously discriminatory if one or more of the social groups protected under Paragraph (A) are excluded from membership arbitrarily, irrationally, or as the result of hostility or animus toward that group. However, assessing whether a

particular organization's discriminatory membership practices are invidious can sometimes be a complex question.

The First Amendment protects a private right of association. *See Roberts v. U.S. Jaycees*, 468 U.S. 609, 620, 622–23 (1984), and *New York State Club Ass'n v. City of New York*, 487 U.S. 1, 19 (1988) (O'Connor, J., concurring). Thus, even when an organization limits its membership on any of the bases covered by Paragraph (A), there still may be a question whether the organization's discriminatory practices are constitutionally protected (and thus not "invidious"). The answer to this question cannot necessarily be determined merely by examining how the organization selects its members. Rather, as explained in *U.S. Jaycees*, the answer may hinge on other factors — for example, whether the organization is dedicated to the preservation of religious, ethnic, or cultural values of legitimate common interest to its members, or whether the organization is an intimate, purely private organization whose membership cannot constitutionally be regulated.

[3] In addition to the traits expressly listed in Paragraph (A) — race, sex, gender identity or expression, religion, national origin, ethnicity, or sexual orientation — Rule 3.6 also covers invidious discrimination on the basis of any other classification protected by federal, state, or local law where the judge lives or regularly serves. The phrase "regularly serves" is intended to limit a judge's obligation under this Rule, so that a judge may continue to hold membership in an organization whose membership practices violate the local anti-discrimination laws of municipalities, cities, or boroughs where the judge serves only occasionally, or where the judge is serving only temporarily.

[4] One common instance of non-invidious (i.e., constitutionally protected) membership discrimination is addressed in the Comment to ABA Model Rule 3.6: A judge does not violate Rule 3.6 by holding membership in a

religious organization that excludes one or more of the groups protected under Paragraph (A), or that relegates these groups to a lesser status or restricts them from fully participating in rituals or other activities, when the judge's membership in the organization is a lawful exercise of the judge's freedom of religion.

[5] When, after joining an organization, a judge learns that the organization engages in invidious discrimination, Rule 3.6 obliges the judge to immediately resign from the organization.

[6] Rule 3.6(B) addresses whether a judge can use the benefits or facilities of an organization that practices unlawful discrimination when the judge has not endorsed the organization by becoming a member. Under ABA Model Rule 3.6(B), judges are permitted to attend isolated events at the facilities of these organizations, but judges are forbidden from scheduling or otherwise arranging such events. *See* Arthur H. Garwin et al., *Annotated Model Code of Judicial Conduct* 402 (3d ed. 2016). Rule 3.6(B) rejects the ABA approach in favor of the rule found in Alaska's former Canon 2C. Under Rule 3.6(B), judges are prohibited from making regular use of the benefits or facilities of an organization if the judge knows that the organization practices unlawful discrimination, but a judge may attend isolated events in a facility of such an organization, and may even arrange such events, so long as the judge's action could not reasonably be perceived as an endorsement of the organization's discriminatory practices.

Former Canon 2C included a separate additional requirement that there be no alternative facilities available in the community, but under Rule 3.6(B) the presence or absence of alternative facilities is just one of the factors to be considered when assessing whether the judge's action might reasonably be perceived as an endorsement of the organization's discriminatory practices.

[7] Even when Rule 3.6(A) does not proscribe a judge's membership in a particular organization, or when Rule 3.6(B) does not proscribe a judge's isolated use of the benefits or facilities of a particular organization, a judge's membership in that organization or a judge's use of that organization's facilities may nevertheless violate other provisions of this Code. In particular, Rule 1.2 requires a judge to "act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary, and shall avoid impropriety and the appearance of impropriety."

For the definitions of *appearance of impropriety*, *bias*, *impartiality*, *impropriety*, *independence*, *integrity*, *knowingly*, *knows*, and *law*, see the Terminology section.

Rule 3.7: Participation in Nonprofit Educational, Religious, Charitable, Fraternal, or Civic Organizations and Government Entities

(A) Subject to the requirements of Rule 3.1 and the conditions and limitations set forth in this Rule, a judge may affiliate with and participate in activities sponsored by

(1) organizations or government entities concerned with the law, the legal system, or the administration of justice, and

(2) nonprofit educational, religious, charitable, fraternal, or civic organizations.

(B) Except as allowed by this Paragraph or by Paragraph (C) of this Rule, a judge must not solicit contributions, solicit memberships that are effectively contributions, or directly engage in any other fundraising activities for an organization or government entity. A judge may, however, assist in planning related to fundraising 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 noncoercive fashion and the solicitation is made to members of the judge's family or to other judges over whom the judge does not exercise supervisory or appellate authority.

(C) Even when a judge is permitted to affiliate with and participate in the activities of an organization or entity under Paragraph (A) of this Rule, a judge must not be a featured speaker at a fundraising event sponsored by the organization or entity, 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 the judge's title to be used in connection with the event unless

(1) the organization or entity is concerned with the law, the legal system, or the administration of justice, or

(2) the proceeds from the event will be used primarily to improve the administration of justice, to expand or improve indigent representation, or to otherwise expand or improve access to justice.

(D) A judge must not make recommendations to a fund-granting organization or entity regarding the recipients or potential recipients of its funds unless the judge's recommendations are confined exclusively to grants furthering the law, the legal system, or the administration of justice.

(E) A judge must not serve as an officer, director, trustee, or nonlegal advisor of an organization described in Paragraph (A) if it is likely that the organization

(1) will be engaged in legal proceedings that would ordinarily come before the judge, or

(2) will frequently be engaged in adversarial proceedings in the court of which the judge is a member, or in any court that is subject to the appellate jurisdiction of the court of which the judge is a member, or

(3) will expect or encourage the judge to solicit contributions or memberships or to otherwise engage in fundraising activities outside the limitations of this Rule.

(F) A judge may noncoercively encourage lawyers to provide pro bono legal services.

Comment

[1] The activities permitted by Paragraph (A) generally include those sponsored by or undertaken on behalf of public or private not-for-profit organizations, including educational, law-related, and charitable organizations.

[2] Even for law-related organizations, a judge should consider whether the membership and purposes of the organization, or the nature of the judge's

participation in or association with the organization, would conflict with the judge's obligation to refrain from activities that reflect adversely upon a judge's independence, integrity, and impartiality.

[3] Mere attendance at an event, whether or not the event serves a fundraising purpose, does not constitute a violation of Paragraph (C) of this Rule. It is also generally permissible for a judge to serve as an usher or a food server or preparer, or to perform similar functions, at fundraising events sponsored by educational, religious, charitable, fraternal, or civic organizations. Such activities are not solicitations and normally do not present any element of coercion or suggest an abuse of the prestige of judicial office.

[4] Identification of a judge's position in an educational, religious, charitable, fraternal, or civic organization on letterhead stationery used for fundraising or membership solicitations does not violate this Rule. The letterhead may list the judge's title or judicial office if comparable designations are used for other persons.

[5] Even when this Rule permits a judge to solicit contributions or memberships, a judge should be cognizant that people may view these solicitations as carrying more weight, or even as implicitly coercive, because a judge is making the solicitation. Judges should be careful to avoid any action that would create the appearance that they are misusing the prestige of judicial office, *see* Rule 1.3, and judges should be aware that the potential for creating such an appearance increases in proportion to the amount of money involved in the contribution or membership.

[6] A judge may promote broader access to justice by encouraging lawyers to participate in pro bono legal services if, in doing so, the judge does not employ coercion or abuse the prestige of judicial office. Such encouragement may take many forms, including providing lists of available pro bono programs,

training lawyers to do pro bono legal work, and participating in events recognizing lawyers who have done pro bono work.

[7] Although Paragraph (A) allows judges to affiliate with and participate in activities sponsored by government entities concerned with the law, the legal system, or the administration of justice, Paragraph (A) does not permit affiliations or activities that are prohibited by Rule 3.2, by Rule 3.4, or by Article IV, section 14 of the Alaska Constitution as interpreted in *Begich v. Jefferson*, 441 P.2d 27 (Alaska 1968).

For the definitions of *contribution*, *family*, *impartiality*, *independence*, *integrity*, *law*, *likely*, and *solicit contributions*, see the Terminology section.

Rule 3.8: Appointments to Fiduciary Positions

(A) A judge shall not accept appointment to serve in a fiduciary position except as a fiduciary for the estate, trust, or person of a member of the judge's family, and then only if that service will not interfere with the judge's proper performance of judicial duties.

(B) A judge shall not serve in a fiduciary position if, because of that position, the judge will likely be engaged in proceedings that would ordinarily come before the court on which the judge serves, and a judge shall resign from a fiduciary position if the estate, trust, or ward that the judge serves becomes involved in adversary proceedings in the court on which the judge serves or in a lower court under its appellate jurisdiction.

(C) A judge acting in a fiduciary capacity is subject to the same restrictions on engaging in financial activities that apply to a judge personally.

Comment

[1] A judge's duties of judicial office take precedence over a judge's extrajudicial activities. A judge should recognize that fiduciary obligations may conflict with the duties and restrictions imposed by this Code; in such circumstances, a judge should resign as fiduciary. For example, a judge's service as the trustee of a financial trust might require frequent disqualification of the judge under Rule 2.11 because, under Paragraph (C) of this Rule, a judge is deemed to have an economic interest in the shares of stock held by the trust (if the value of the stock is more than *de minimis*).

[2] Paragraph (B) of this Rule forbids a judge from serving as a fiduciary in two circumstances even though Paragraph (A) of this Rule would otherwise allow it.

First, a judge must not serve as a fiduciary if it is likely that the judge's fiduciary duties would require the judge to be engaged in proceedings that would ordinarily come before the judge's court. Second, even if it initially appears unlikely that the judge's service as a fiduciary will require the judge to be engaged in legal proceedings in the judge's court, a judge must nevertheless resign as fiduciary if the estate, trust, or ward that the judge serves later becomes involved in adversary proceedings in the judge's court or in any lower court under its appellate jurisdiction.

These restrictions are based on the danger that a judge serving as a fiduciary may appear to have an improper advantage in a proceeding conducted before a fellow judge of the same court, or before a judge who is under that court's appellate jurisdiction. See Arthur H. Garwin et al., *Annotated Model Code of Judicial Conduct* 423 (3d ed. 2016), for an explanation.

Thus, for example, even though Paragraph (A) of this Rule generally authorizes judges to serve as the executor of a family member's estate, Paragraph (B) of this Rule will normally preclude superior court judges from serving in this role if the estate is to be probated in Alaska.

[3] A newly appointed judge who is already serving in a fiduciary position must comply with this Rule as soon as reasonably practicable, but in no event later than one year after becoming a judge. See Part V of the Application section.

For the definitions of *de minimis*, *economic interest*, *extrajudicial activities*, *family*, *fiduciary*, *judicial duties*, and *likely*, see the Terminology section.

Rule 3.9: Service as Arbitrator or Mediator

A judge shall not act as an arbitrator or a mediator or otherwise perform dispute resolution services apart from the judge's judicial duties unless expressly authorized by law.

Comment

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

[2] Although senior judges are exempt from this Rule, a senior judge who provides private arbitration or mediation services is subject to certain restrictions when the senior judge serves or has served as a pro tempore judge. See Application section, Part II(B), and Rule 2.11(D).

For the definitions of *judicial duties, law*, and *senior judge*, see the Terminology section.

Rule 3.10: Practice of Law

A judge shall not practice law. Judges may represent themselves and may, without compensation, give legal advice to and draft or review documents for a member of the judge's family, but judges are prohibited from serving as the family member's lawyer in any forum.

Comment

Judges may represent themselves in all legal matters, including matters involving litigation and matters involving appearances before or other dealings with governmental bodies, but in this self-representation a judge must not violate Rule 1.3 by using the prestige of office to advance the judge's personal or family interests.

For the definition of *family,* see the Terminology section.

Rule 3.11: Financial Activities

(A) *General Restrictions*. When engaging in any of the financial activities permitted by this Rule, a judge shall comply with the provisions of Rule 1.3 (prohibiting the abuse or exploitation of the prestige or power of judicial office), Rule 2.1 (requiring judges to give precedence to their judicial duties), Rule 3.1 (listing the restrictions that apply to all extrajudicial activities), and all other provisions of this Code.

(B) *Investments*.

(1) A judge may hold and manage the judge's own investments and the investments of members of the judge's family.

(2) A judge may participate as a passive investor in any business or other financial enterprise so long as the judge's investment would not 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. For purposes of this Paragraph, "passive investor" means that the judge is not an officer, director, manager, general partner, advisor, employee, or similar position, and the judge does not own a controlling interest in the enterprise.

(C) *Active Participation in Business and Other Financial Activities.* A judge may actively engage in any financial activity — including serving as an officer, director, manager, general partner, advisor, or employee of an enterprise, or owning a controlling interest — so long as the financial activity is not likely to:

(1) involve the judge in frequent transactions or continuing business relationships with lawyers or other persons likely to come before the court on which the judge serves,

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

(3) have a major effect on the economic life of the community in which the judge serves. For purposes of this Paragraph, a financial activity has a "major effect on the economic life of the community" if it employs more than five percent of the local work force, 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.

(D) *Avoiding Disqualification.* Judges shall manage their investments and financial activities to minimize the number of cases in which they are disqualified. If, at any time, it is reasonably foreseeable that a judge's investments or financial activities will require the judge's frequent disqualification, the judge shall sell or otherwise dispose of these investments or withdraw from the financial activity as soon as this can be done without serious financial detriment to the judge.

Comment

[1] Judges are generally permitted to engage in extrajudicial financial activities. Participation in these activities, like participation in other extrajudicial activities, is subject to the requirements of this Code — most especially, Rule 1.3 (prohibiting the abuse or exploitation of judicial office), Rule 2.1 (requiring judges to give precedence to their judicial duties), and Rule 3.1 (listing the general restrictions on a judge's extrajudicial activities). For example, under Rule 1.3(B), judges must not engage in financial or business activities, with or without compensation, if the activity might reasonably be perceived to exploit

the judge's judicial position. Under Rule 2.1 and Rule 3.1(A), it is improper for judges to spend so much time on financial activities that it interferes with the performance of their judicial duties. And under Rule 3.1(B), it is improper for judges to conduct their business or other financial activities in a way that requires their frequent disqualification under the provisions of Rule 2.11.

[2] Paragraph (A) of this Rule requires judges to limit their financial activities to those permitted by this Code. Rule 1.1 of this Code requires judges to comply with all pertinent law. Thus, Paragraph (A) of this Rule requires judges to comply with any governing municipal, state, or federal law when engaging in financial activities.

[3] Under Paragraph (D) of this Rule, judges must monitor their financial activities throughout their judicial careers to minimize the number of cases in which they are disqualified.

[4] A newly appointed judge who is engaged in financial activities that are not permitted by this Rule must comply with this Rule as soon as reasonably practicable, but in no event later than one year after becoming a judge. See Part V of the Application section.

For the definitions of *extrajudicial activities*, *family*, *judicial duties*, and *likely*, see the Terminology section.

Rule 3.12: Compensation for Extrajudicial Activities

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.

Comment

[1] 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. In assessing whether a judge's compensation is reasonable and commensurate with the task, one should consider (1) what compensation a non-judge would receive for the same or equivalent work, (2) whether the judge's knowledge and work experience would reasonably justify a higher rate of compensation than what a non-judge would receive, or, conversely, (3) whether the judge's receiving a higher rate of compensation would appear to a reasonable person to be an abuse or exploitation of the judge's position. *See* Rule 1.3 ("A judge shall not use or lend . . . the prestige of judicial office to advance the . . . economic interests of the judge or others[.]").

[2] Compensation derived from extrajudicial activities is subject to the public reporting required by Rule 3.15.

[3] Judges should be mindful that Rule 2.1 requires them to give precedence to their judicial duties over their other activities, and Rule 3.1(A) forbids them from participating in an extrajudicial activity that will interfere with the proper performance of their judicial duties.

For the definitions of *economic interest*, *extrajudicial activities*, *impartiality*, *independence*, *integrity*, and *judicial duties*, see the Terminology section.

Rule 3.13: Acceptance and Reporting of Gifts, Loans, Bequests, Benefits, and Other Things of Value

(A) *General restrictions.* A judge shall not accept any gift, loan, bequest, benefit, or other thing of value if the judge's acceptance is prohibited by law or would appear to a reasonable person to undermine the judge's independence, integrity, or impartiality.

(B) *Items that may be accepted and need not be reported.* Unless prohibited by Paragraph (A), a judge may accept the following items without publicly reporting them:

(1) items with little intrinsic value, such as plaques, certificates, trophies, and greeting cards;

(2) gifts, loans, bequests, benefits, or other things of value from family members, friends, or other persons (including lawyers) whose appearance or interest in a matter pending or impending before the judge would in any event require disqualification of the judge under Rule 2.11;

(3) gifts from family members, friends, or other persons (including lawyers), other than those described in Paragraph (B)(2), if given for a special occasion such as a wedding, anniversary, or birthday, so long as the value of the gift is fairly commensurate with the occasion and with the relationship between the judge and the giver;

(4) ordinary social hospitality;

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

(6) rewards and prizes given to competitors or participants in contests, random drawings, or other events that are open on the same terms to persons who are not judges;

(7) scholarships, fellowships, and similar benefits or awards, if they are available to similarly situated persons who are not judges, based upon the same terms and criteria;

(8) books, magazines, journals, audiovisual materials, and other resource materials supplied by publishers on a complimentary basis for official use; and

(9) gifts, awards, or benefits arising from or associated with the business, profession, or other separate activity of a spouse, a domestic partner, or other family member of a judge residing in the judge's household, but which incidentally benefit the judge.

(C) *Items that may be accepted but must be reported.* Unless prohibited by Paragraph (A), a judge may accept the following items but must report them as required by Rule 3.15:

(1) gifts incident to a public testimonial;

(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; and

(3) any other gift, loan, bequest, benefit, or thing of value not covered by the provisions of Paragraph (B) or by the other provisions of Paragraph (C), so long as neither the donor nor the donor's interests have come before the judge and are not likely to come before the judge in the future.

Comment

[1] When a judge accepts a gift, or accepts any other benefit or thing of value without paying fair market value for it, there is a risk that the gift, benefit, or other thing of value might be viewed as a potential influence on the judge's decision in a case involving the donor or the donor's interests. Rule 3.13 imposes restrictions upon the acceptance of such gifts, benefits, and other things of value according to the magnitude of this risk.

[2] Paragraph (A) of Rule 3.13 declares that a judge is prohibited from accepting any gift, benefit, or other thing of value if, under the circumstances, the judge's acceptance would reasonably appear to undermine the judge's independence, integrity, or impartiality. Paragraph (B) identifies circumstances which present a low risk that the judge's acceptance will appear to undermine the judge's independence, integrity, or impartiality thus, unless the judge's acceptance of the item is prohibited by Paragraph (A), Paragraph (B) allows the judge to accept the item, and it exempts the judge from reporting the item in the judge's financial disclosure report under Rule 3.15. Paragraph (C) identifies circumstances in which the judge is allowed to accept the gift, benefit, or other thing of value, but the judge is required to report it under the provisions of Rule 3.15.

[3] Paragraph (C)(3) is a special "residual" provision which authorizes a judge to accept any gift, benefit, or thing of value that is not otherwise described in Paragraphs (B) and (C), so long as neither the donor nor the donor's interests

have come before the judge, and so long as they are unlikely to come before the judge in the future. This provision is based on former Alaska Canon 4D(5)(h), and the inclusion of this provision means that Alaska's Rule 3.13 differs from the ABA Model Rule in two important respects.

First, ABA Model Rule 3.13 does not contain an analogous "residual" clause that allows a judge to accept gifts, benefits, or other things of value that are not expressly described in the other provisions of Rule 3.13.

Second, ABA Model Rule 3.13(C)(3) explicitly *allows* a judge to accept gifts, benefits, and other things of value from donors who have come before the judge, or who are likely to come before the judge in the future, or whose interests have come or are likely to come before the judge in the future — so long as the judge reports these gifts in the judge's annual financial disclosure report under Rule 3.15. This represents a substantial change from the ABA's 1990 Model Code, which barred judges from accepting gifts from such donors.

Alaska Rule 3.13(C)(3) preserves Alaska's pre-existing prohibition on a judge's acceptance of gifts, benefits, and other things of value from such donors. However, it should be noted that, under the explicit terms of Paragraph (C)(3), this prohibition applies only to gifts, benefits, and things of value that are not otherwise covered by the provisions of Paragraph (B) or any of the other provisions of Paragraph (C). This, too, is in keeping with former Canon 4D(5)(h).

[4] Gift-giving between friends and relatives is a common occurrence. When the gift takes the form of ordinary social hospitality, or when the gift is given in connection with a special occasion and the gift is reasonably commensurate with the occasion and with the relationship between the judge and the giver, the judge's acceptance of the gift ordinarily will not create an appearance of impropriety or cause reasonable persons to believe that the judge's independence, integrity, or impartiality has been compromised. See Paragraphs

B(3) and (4) of this Rule. In addition, when the giver is a close friend or relative whose appearance in a case would require the judge's disqualification under Rule 2.11, there would be no potential for a gift to influence the judge's decision-making. See Paragraph (B)(2) of this Rule. Thus, unless unusual circumstances trigger the prohibition codified in Paragraph (A), Paragraph (B) allows a judge to accept such gifts and does not require the judge to report them.

[5] Businesses and financial institutions frequently make available special pricing, discounts, and other benefits, either in connection with a temporary promotion or for preferred customers, based upon the longevity of the relationship, volume of business transacted, and other factors. A judge may freely accept such benefits if they are available on the same basis to the general public, or if the judge qualifies for the special price or discount according to the same criteria that the business or financial institution applies to persons who are not judges. As an example, loans provided at generally prevailing interest rates are not gifts, but a judge could not accept a loan from a financial institution at a below-market interest rate unless the same discounted rate was being made available to the general public on the same terms.

[6] Paragraph (C)(2) allows a judge to accept invitations for the judge and the judge's spouse, domestic partner, or guest to attend various events without paying the fees or charges that would normally be required. However, as noted in the introductory language of Paragraph (C), a judge's ability to accept such invitations is restricted by Rule 3.13(A), which prohibits the judge from accepting the invitation if "the judge's acceptance . . . would appear to a reasonable person to undermine the judge's independence, integrity, or impartiality."

Thus, for example, a judge should not accept an invitation to attend an event at no cost if the event is sponsored by a special interest bar association or

by any other educational or advocacy group that promotes a particular view of the law or is aligned with a particular group of parties in the litigation process. *See* Alaska Commission on Judicial Conduct, Advisory Opinion #99-5 (December 1999), declaring that a judge should not accept an offer of free travel to a judicial conference sponsored by The Roscoe Pound Foundation (a foundation that is affiliated with the Association of Trial Lawyers of America, a special bar association for plaintiffs' attorneys), because the judge's acceptance of these monetary benefits "would convey a special relationship to one side in the adversarial process".

[7] Rule 3.13 applies only to a judge's acceptance of gifts, benefits, or other things of value. Nonetheless, if a judge derives significant economic benefit from a gift, benefit, or other thing of value that is given to the judge's spouse, domestic partner, or other member of the judge's family residing in the judge's household, it may be viewed as an attempt to evade Rule 3.13 and influence the judge indirectly. When the primary beneficiary of the gift or benefit is the spouse, domestic partner, or other member of the judge's household, and the judge is merely an incidental beneficiary, this concern is reduced. A judge should, however, 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. And even though these gifts need not be reported under Rule 3.15, there may be times when a judge should alert the lawyers and parties to a proceeding that the judge's spouse, domestic partner, or other 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, so that the lawyers and the parties can evaluate whether there may be a potential ground for the judge's disqualification.

[8] Rule 3.13 does not apply to contributions to a campaign for a judge's retention in judicial office (when such a campaign is permitted under Article 4 of this Code). Instead, such contributions are governed by Article 4.

For the definitions of *appearance of impropriety*, *contribution*, *domestic partner*, *family*, *impending matter*, *impartiality*, *independence*, *integrity*, *law*, *likely*, and *pending matter*, see the Terminology section.

Rule 3.14: Reimbursement of Expenses and Waivers of Fees or Charges

(A) *From a government entity.* A judge (on the judge's personal behalf and, when appropriate to the occasion, on behalf of the judge's spouse, domestic partner, or guest) may accept reimbursement of necessary and reasonable expenses for travel, food, lodging, and other incidental expenses, as well as waivers or partial waivers of fees and charges for registration, tuition, and similar charges, from the Alaska Court System and, unless prohibited by Rule 3.13(A), from another federal, state, tribal, or local government entity. These reimbursements and waivers need not be reported under Rule 3.15.

(B) *From other organizations or entities.* Unless prohibited by Rule 3.13(A), a judge (on the judge's personal behalf and, when appropriate to the occasion, on behalf of the judge's spouse, domestic partner, or guest) may accept reimbursement of necessary and reasonable expenses for travel, food, lodging, or other incidental expenses, as well as waivers or partial waivers of fees and charges for registration, tuition, and similar items, from sources other than those listed in Paragraph (A), but only if those expenses or fees or charges arise from the judge's participation in extrajudicial activities permitted by this Code. The judge must report the value of these reimbursements and waivers as required by Rule 3.15.

(C) With the exception of per diem payments authorized by the Alaska Court System or another federal, state, tribal, or local government entity, if a judge receives reimbursement for travel, food, lodging, or other incidental expenses that exceeds the actual costs reasonably incurred by the judge and, when appropriate to the occasion, by the judge's spouse, domestic partner, or guest, the judge must either return the excess reimbursement or treat the excess reimbursement as compensation and report it as required by Rule 3.15.

Comment

[1] Paragraph (A) of this Rule governs a judge's acceptance of reimbursement of expenses, as well as waivers of fees and charges, from the Alaska Court System and other listed government entities. These reimbursements and waivers need not be reported under Rule 3.15 because, under normal circumstances, a judge's acceptance of reimbursements from these government sources would pose little or no danger of impropriety. In the occasional instances when reimbursement from a government entity would create an appearance of impropriety, the judge's acceptance of the reimbursement would violate Rule 3.13(A) and, thus, it would be prohibited by Paragraph (A).

The phrase "federal, state, tribal, and local government entity" used in Paragraphs (A) and (C) is not intended to include foreign government entities, nor is it intended to include tribes that are not recognized by the federal government. Reimbursements and waivers of fees or charges from foreign governments and non-federally recognized tribes are governed by Paragraphs (B) and (C) of this Rule.

[2] Educational, charitable, and other civic organizations often sponsor seminars, symposia, dinners, awards ceremonies, or similar events — and these sponsoring organizations often invite particular judges to attend their events. Frequently, these invitations will include an offer to waive normal fees and charges, in part or in whole, and sometimes may include an offer to reimburse travel, food, lodging, or other incidental expenses. These reimbursements and waivers of fees and charges are a form of gift; they are governed by Paragraph (B) of this Rule, which states that a judge may accept them so long as the judge's acceptance does not violate Rule 3.13(A).

[3] A judge who receives an offer of fee waivers or expense reimbursements should undertake a reasonable inquiry to determine whether acceptance of these monetary benefits would be consistent with the requirements of this Code. Rule 3.13(A) of this Code forbids a judge from accepting any reimbursement of expenses or waivers of fees or charges if the amount or the circumstances of these monetary benefits "would appear to a reasonable person to undermine the judge's independence, integrity, or impartiality." Thus, for example, a judge should not accept a reimbursement of expenses or a waiver of normal fees and charges to attend an event sponsored by a special interest bar association or any other educational or advocacy group that promotes a particular view of the law, or is aligned with a particular group of parties in the litigation process. *See* Alaska Commission on Judicial Conduct, Advisory Opinion #99-5 (December 1999), declaring that a judge should not accept an offer of free travel to a judicial conference sponsored by The Roscoe Pound Foundation (a foundation that is affiliated with the Association of Trial Lawyers of America, a special bar association for plaintiffs' attorneys), because the judge's acceptance of these monetary benefits "would convey a special relationship to one side in the adversarial process".

The factors that a judge should consider when deciding whether to accept reimbursement or a fee waiver for a particular event include:

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

(b) whether the funding for the event comes largely from numerous contributors rather than from a single entity;

(c) whether this funding is available to support the sponsoring organization's activities in general, or whether this funding is earmarked for programs with a specific content;

(d) whether the content of the event is related to the subject matter of, or to contested issues raised in, litigation pending or impending before the judge, or to matters that are likely to come before the judge;

(e) whether the event is primarily educational rather than recreational;

(f) whether the costs of the event are reasonable compared to the costs of similar events sponsored by the judiciary, bar associations, or similar groups;

(g) whether information concerning the event and the source of its funding is available to the public;

(h) whether the sponsor of the event, or the source of its funding, is generally associated with particular parties or interests that either are currently appearing in the judge's court or are likely to appear in the judge's court;

(i) whether differing viewpoints will be presented at the event; and

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

[4] Judges should not spend significant time away from court duties to attend events sponsored by educational, charitable, or other civic organizations. Nor should judges appear to use their judicial position for personal advantage by accepting an inordinate number of invitations to travel to popular or exotic locations at little or no personal expense. In addition, judges should not accept reimbursement for expenses if the source or the amount of the reimbursement

would cause reasonable persons to suspect that they have been subjected to undue influence or cause reasonable persons to question, for any other reason, their ability or willingness to be impartial.

For the definitions of *appearance of impropriety*, *domestic partner*, *extrajudicial activities*, *impartiality*, *impending matter*, *impropriety*, *independence*, *integrity*, *likely*, and *pending matter*, see the Terminology section.

Rule 3.15: Reporting Requirements

(A) At least annually, at the times and in the form prescribed by the Administrative Director of the Alaska Court System, a judge shall report the receipt of:

(1) any compensation received for extrajudicial activities if the value of the compensation, or the aggregate value of all compensation received from the same source in the same calendar year, exceeds $500;

(2) 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

(3) 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.

(B) In the public report required by Paragraph (A), a judge shall include:

(1) the date, place, and nature of the extrajudicial activity for which the judge received any compensation, as well as the name of the payor and the amount of compensation received, except that if a retired judge is serving *pro tempore* and has received extrajudicial compensation for performing private arbitration or mediation services, and if the judge has reported this compensation on Schedule A of a financial disclosure form filed with the Alaska Public Offices Commission, the judge can comply with this Paragraph by submitting Schedule A as an attachment to the report required by this Rule;

(2) a description of the gift, loan, bequest, benefit, or other thing of value that the judge accepted, including the name of the donor, the date the item was received, and the value or (if not known) the approximate value of the item; and

(3) a description of the reimbursement of expenses or waiver or partial waiver of fees or charges that the judge accepted, including the name of the person or organization who paid the reimbursement or granted the waiver, the date the reimbursement was paid or the waiver granted, and the amount of the reimbursement or the amount of fees and charges waived.

(C) All reports required by Paragraph (A) of this Rule shall be maintained as public documents by the Administrative Director of the Alaska Court System and shall be made available to the public as prescribed by the Alaska Administrative Rules.

Comment

Subject to the exemptions listed in Rule 3.13(B), Paragraph (A) of this Rule requires judges to report their receipt of various things of value from outside sources — specifically, their compensation for extrajudicial activities; their receipt of gifts, benefits, and other things of value; and the reimbursement of their expenses or waivers of fees or charges. This reporting requirement is triggered in either of two circumstances. First, the reporting requirement applies if the judge receives any single payment of compensation, any single thing of value, or any single reimbursement or waiver worth more than $500. Second, the reporting requirement applies if, in a single calendar year, the judge receives more than $500 in compensation, more than $500 in gifts, benefits, or other things of value, or more than $500 in reimbursements and waivers, from the same source. In this latter circumstance, a judge must describe each individual receipt

of compensation, each thing of value, or each reimbursement or waiver as required by Paragraph (B) of this Rule.

Take, for example, a judge who writes poems and regularly submits these poems to a literary journal, receiving payment whenever the journal accepts one or more of these poems. The judge would not have to report this extrajudicial income if the judge's total compensation from the literary journal during the calendar year was $500 or less. However, if the judge's total compensation from the literary journal exceeded $500 during a calendar year, the judge would be required to report each separate payment received from the literary journal during that year — and each of these payments would have to be identified by the information specified in Paragraph (B)(1) of this Rule (the provision that governs the reporting of extrajudicial compensation).

For the definitions of *extrajudicial activities* and *known*, see the Terminology section.

Article 4

The Overarching Principle Of This Article Is That Judges And Candidates For Judicial Office Engage In Political Or Campaign Activity Only When It Is Consistent With The Independence, Integrity, And Impartiality Of The Judiciary.

Rule 4.1: Political and Campaign Activities of Judges and Judicial Candidates in General

(A) This Rule applies to all judges and candidates for judicial office, subject to the exceptions for activities permitted by Rule 4.2 (governing the activities of persons seeking appointment to judicial office) or Rules 4.3 and 4.4 (governing the activities of judges seeking retention in judicial office).

(B) Judges and candidates for judicial office shall not:

(1) act as a leader in, or hold an office in, a political organization;

(2) make speeches on behalf of a political organization;

(3) publicly endorse or oppose a candidate for any public office or office in a political party, or an effort to recall the holder of such an office, or an effort to enact or defeat a ballot proposition, except that:

(a) when false information concerning a judicial candidate is made public, a judge or judicial candidate having knowledge of contrary facts may make the facts public;

(b) the chief justice of the supreme court, when acting in the constitutional role of chair of the Alaska Judicial Council, may, when required, vote on whether the Council will recommend that a judge be retained, and may explain the Council's retention recommendations to the public; and

(c) a judge or judicial candidate may publicly support or oppose an effort to enact a ballot proposition to change the legal system or the administration of justice;

(4) solicit funds for, pay an assessment to, or make a contribution to a political organization or a candidate for public office;

(5) attend, organize, promote, sell or purchase tickets to, or otherwise actively participate in events, gatherings, or other fundraising activities sponsored by or for a political organization or a candidate for public office;

(6) initiate or circulate a nominating petition, recall petition, or petition to put a ballot proposition before the voters; or

(7) act as a recorder, watcher, challenger, or similar position at the polls on behalf of a political organization or candidate, or drive voters to the polls on behalf of a political organization or candidate, or do any other act as an official or unofficial representative of a political organization or candidate.

(C) When seeking judicial appointment or retention in judicial office, judges or judicial candidates shall not:

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

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

(3) solicit or accept campaign contributions other than through a campaign committee authorized by Rule 4.4;

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

(5) use court staff, facilities, or other court resources to conduct any of the retention campaign activities authorized by Rule 4.3(B)(4) and (B)(5);

(6) knowingly, or with reckless disregard for the truth, make any false or deceptive statement;

(7) make any statement that would reasonably be expected to affect the outcome or impair the fairness of a matter pending or impending in any court;

(8) in connection with cases, controversies, or issues that are likely to come before the court, make pledges, promises, or commitments that are inconsistent with the impartial performance of the adjudicative duties of judicial office; or

(9) knowingly misrepresent any fact concerning themselves, an individual or group opposing their retention, or a competing candidate for appointment.

(D) This Rule does not preclude judges or candidates for judicial office from:

(1) maintaining a nonpolitical biographical website to acquaint the public with the judge's or candidate's background, community activities, hobbies, and the like;

(2) participating in the nonpolitical activities of a civic, community, social, labor, or professional organization;

(3) speaking or writing in support of or in opposition to proposals to change the legal system or the administration of justice;

(4) being a member of a political party;

(5) registering and voting; or

(6) expressing opinions in private on political subjects or candidates.

(E) A statement is "deceptive" for purposes of this Rule 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 that, by making the statement, the judge or candidate would create or confirm this false inference or impression in other people's minds.

(F) A judge or judicial candidate shall take reasonable measures to ensure that other persons do not undertake, on behalf of the judge or judicial candidate, any activities prohibited under Paragraphs (B) or (C).

Comment

General Principles

[1] A judge plays a role different from that of a legislator or executive branch official. Rather than making decisions based upon the expressed views or preferences of the electorate, or of a political party or faction, judges are required to make decisions based solely upon the law and the facts of each case. Therefore, judges and judicial candidates must, to the greatest extent possible, be free and appear to be free from political influence and political pressure. Consistent with the Supreme Court's holding in *Republican Party of Minnesota v. White*, 536 U.S. 765 (2002), Article 4 of this Code imposes narrowly tailored restrictions upon the political and campaign activities of all judges and judicial candidates, taking into account Alaska's particular merit-based selection and electoral retention processes.

[2] Non-judge candidates for judicial office are bound by the provisions of Article 4 from the time they file their applications with the Alaska Judicial

Council. In addition, Alaska Professional Conduct Rule 8.2(b) declares that lawyers who become candidates for judicial office must comply with the rules contained in Article 4.

Participation in Political Activities

[3] Public confidence in the independence and impartiality of the judiciary is eroded if judges or judicial candidates are perceived to be subject to political influence or are perceived to be partisan advocates of political interests. Although judges and judicial candidates may register to vote as members of a political party, they are prohibited by Paragraph (B)(1) from assuming leadership roles in political organizations.

[4] To prevent judges from using the prestige of judicial office to advance the political interests of others, Paragraphs (B)(2) and (B)(3) of this Rule prohibit judges and judicial candidates from making speeches on behalf of political organizations or publicly endorsing or opposing candidates for public office, including soliciting votes for or against a candidate. See also Rule 1.3. However, the provisions of this Rule and Rule 1.3 do not prohibit judges and judicial candidates from engaging in political activities on their own behalf as permitted by Rules 4.2, 4.3, and 4.4.

[5] Paragraphs (B)(3)(c) and (D)(2) of this Rule authorize judges to speak or write in support of or against proposals to change the legal system or the administration of justice, even when the proposal takes the form of a ballot proposition. Judges' training and experience often give them special insight regarding these issues, and society is better served if judges are allowed to take part in the public debate over such proposals. Nevertheless, Paragraph (B)(2) of this Rule prohibits judges from making speeches on behalf of a political organization — a category that includes committees or other organizations whose primary purpose is to influence the outcome of a ballot proposition. See

the definition of *political organization* in the Terminology section. Thus, even though this Rule authorizes judges to speak publicly regarding ballot propositions to change the legal system or the administration of justice, judges must not make such speeches to or on behalf of a political organization.

[6] Paragraphs (B)(3)(c) and (D)(2) of this Rule permit judges to engage in political advocacy with regard to ballot propositions and other proposals "to change the legal system or the administration of justice". This is a shortened version of a phrase that is defined in the Terminology section of this Code: "the law, the legal system, or the administration of justice". In this three-part phrase, the term "the law" does not refer to individual statutes, regulations, or ordinances, but instead to our society's overarching system of rules.

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. Rather, Paragraphs 4.1(B)(3)(c) and 4.1(D)(2) permit judges to engage in political advocacy only with respect to proposed enactments or amendments that would substantively alter the law, the legal system, or the administration of justice.

[7] Paragraph (B)(4) of this Rule prohibits judges and candidates for judicial office from making contributions to candidates for public office (other than themselves). For purposes of this Rule, all judges seeking retention are candidates for public office. Thus, judges are barred from contributing to the retention campaigns of other judges. *See* Alaska Commission on Judicial

Conduct, Advisory Opinion #98-3 (September 1998); Alaska Commission on Judicial Conduct, Advisory Opinion #2000-02 (October 2000).

[8] Although judges' and judicial candidates' family members are free to engage in their own political activity, including running for public office, there is no "family exception" to Paragraph (B)(3)'s prohibition against a judge or candidate publicly endorsing candidates for public office. A judge or judicial candidate must not become involved in, or publicly associated with, a family member's political activity or campaign for public office. To avoid public misunderstanding, judges and judicial candidates should take, and should urge members of their families to take, reasonable steps to avoid any implication that the judge or judicial candidate endorses any family member's candidacy or other political activity.

[9] Judges and judicial candidates retain the right to participate in the political process as voters in both primary and general elections. For purposes of this Rule, participation in a caucus-type election procedure does not constitute public support for or endorsement of a political organization or candidate, and is not prohibited by Paragraphs (B)(2) or (B)(3).

Statements and Comments Made While Seeking Appointment to, or Retention in, Judicial Office

[10] Judges seeking retention and all candidates for appointment to judicial office must be scrupulously fair and accurate in all their statements in support of their candidacy or retention — and, in the case of judges seeking retention, all statements made by their campaign committees. Paragraph (C)(6) prohibits statements that are false or deceptive.

[11] If judges seeking retention or judicial candidates seeking appointment to judicial office are the subject of false, misleading, or unfair allegations made by competing candidates, third parties, or the media bearing

upon their integrity or fitness for judicial office, they may make a factually accurate public response as long as this response does not violate Paragraphs (C)(6), (C)(7), or (C)(8).

[12] Paragraph (C)(7) prohibits judges and judicial candidates from making comments that might impair the fairness of pending or impending judicial proceedings. This provision is not intended to restrict appropriate arguments or statements to the court or jury by a lawyer who is a judicial candidate, or to restrict appropriate rulings, statements, or instructions by a judge that may affect the outcome of a matter. *See* Rule 2.10.

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

[13] The role of a judge is different from that of a legislator or executive branch official. For this reason, when a judge seeks retention in judicial office, the judge must not engage in the same scope of political activities as candidates for other offices. Article 4 of this Code allows judges to engage in limited political activity to support their retention and to conduct retention campaigns through the agency of a campaign committee under limited circumstances. The aim of these rules is to allow judges to provide voters with sufficient information to permit them to make informed electoral choices, while at the same time ensuring that judges' political activities are consistent with the independence and nonpartisan nature of the judicial branch of government.

[14] Paragraphs (C)(7) and (C)(8) of this Rule echo the provisions of Rule 2.10 — the rule that prohibits sitting judges from making public statements that might reasonably be expected to affect the outcome or impair the fairness of a matter pending or impending in any court, or from making pledges, promises, or commitments that are inconsistent with the impartial performance of the adjudicative duties of judicial office. Paragraphs (C)(7) and (C)(8) extend these

same prohibitions to non-judge candidates for judicial office, starting from the time they file their applications with the Alaska Judicial Council.

[15] Paragraph (C)(8) prohibits judges and judicial candidates from making any pledge, promise, or commitment that is inconsistent with the impartial performance of the adjudicative duties of judicial office, and this Paragraph applies to any statement made in the process of securing appointment to or retention in judicial office, including statements to the Alaska Judicial Council or the Governor's Office.

[16] The making of a pledge, promise, or commitment is not dependent upon, or limited to, the use of any specific words or phrases. Instead, the totality of the judge's or judicial candidate's statement must be examined to determine if a reasonable person would believe that the judge or candidate has specifically undertaken to reach a particular result or to take any other action that is inconsistent with a judge's obligation to impartially perform the adjudicative duties of judicial office.

[17] Acceptable public statements that may be made by a judicial candidate include reference to the candidate's personal and professional background as it relates to judicial skills and qualifications, as well as comments that address issues related to court administration and court management.

[18] On occasion, candidates for appointment to or retention in judicial office may receive questionnaires or requests for interviews from the media, advocacy groups, or other community organizations. Paragraphs (C)(7) and (C)(8) of this Rule limit the permissible responses to such inquiries. Candidates who choose to respond to an unsolicited request for a statement regarding their candidacy should give assurances that they will keep an open mind on contested issues that come before them and will carry out their adjudicative duties faithfully and impartially if they are retained or appointed. If candidates are asked

to violate Paragraphs (C)(7) or (C)(8) by committing themselves to particular views on disputed or controversial legal or political issues, they should decline to respond, but they may explain their reasons for not responding, such as the danger that their response might reasonably be perceived as casting doubt on their judicial independence or impartiality, or that their response might lead to frequent disqualification if their candidacy is successful. *See* Rule 2.11.

For the definitions of *contribution*, *duties of judicial office*, *family*, *impartial*, *impartiality*, *impending matter*, *independence*, *integrity*, *judicial candidate*, *knowingly*, *law*, *likely*, *pending matter, political organization*, *solicit contributions*, and *solicit funds*, see the Terminology section.

Rule 4.2: Political Activities of Candidates for Appointive Judicial Office and Judges who are Candidates for Appointive Nonjudicial Office

(A) Notwithstanding Rule 4.1(B)(3), candidates for appointment to judicial office and judges who are candidates for appointment to nonjudicial office may:

(1) communicate with the Alaska Judicial Council, the Office of the Governor, or other appointing authority, as well as the appointing authority's designees, regarding their own candidacy;

(2) seek privately communicated support or endorsement for their appointment from individuals or organizations other than political organizations or other organizations whose support would cause reasonable persons to question the candidate's independence, integrity, or impartiality; and

(3) provide information regarding their qualifications for office to organizations and individuals from whom the candidate seeks support.

(B) Candidates for appointment to judicial office and judges who are candidates for appointment to nonjudicial office must maintain the dignity appropriate to judicial office and act in a manner consistent with the integrity and independence of the judiciary.

Comment

[1] Candidates for judicial office and judges applying for an appointive nonjudicial office are required to comply with Rule 4.1 except as otherwise provided in this Rule or in the remaining Rules in this Article. For example, while Paragraph (A) of this Rule permits candidates to communicate with certain entities, those communications must comply with Rule 4.1.

[2] Under former Alaska Canon 5B(2)(b), and 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 candidates 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, this Code has eliminated this exception altogether.

[3] Paragraph (B) of this Rule requires judges who are candidates for appointment to nonjudicial office to act in a manner consistent with the integrity and independence of the judiciary. Among other things, this provision 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.

For the definitions of *candidate for judicial office*, *impartiality*, *independence*, *integrity*, and *political organization*, see the Terminology section.

Rule 4.3: Political and Campaign Activities of Judges in Retention Elections

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

(1) act at all times in a manner consistent with the independence, integrity, and impartiality required by this Code;

(2) comply with all applicable state election, election campaign, and election campaign fundraising 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

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

(B) Notwithstanding Rule 4.1(B)(3), 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:

(1) submit a photograph, a biographical statement, and a statement supporting the judge's candidacy for inclusion in the state election pamphlet;

(2) supplement a website created under Rule 4.1(D)(1) with the statement supporting the judge's candidacy that the judge has submitted for inclusion in the state election pamphlet;

(3) in response to an unsolicited request,

(a) speak to public gatherings on behalf of the judge's candidacy;

(b) appear on television and radio programs to discuss the judge's candidacy; and

(c) grant interviews regarding the judge's candidacy;

(4) in anticipation of active opposition to the judge's candidacy,

(a) form a committee of responsible persons to be ready to conduct a campaign to support the judge's retention pursuant to the provisions of Rule 4.4 in the event there later is active opposition to the judge's retention; and

(b) reserve media space, including internet domains and locations, design and prepare campaign materials, and spend necessary funds for these activities; and

(5) when there is active opposition to the judge's candidacy,

(a) form a committee of responsible persons to conduct a campaign to support the judge's retention pursuant to the provisions of Rule 4.4, or activate a committee that was previously formed under Paragraph (4)(a) of this Rule;

(b) advertise in newspapers, on television, and in other media in support of the judge's candidacy;

(c) distribute pamphlets and other promotional literature supporting the judge's candidacy;

(d) speak on behalf of the judge's candidacy for retention through any medium, including but not limited to advertisements, websites, or other campaign literature; and

(e) seek, accept, or use endorsements from any person or organization other than political organizations or other

organizations whose support would cause reasonable persons to question the judge's independence, integrity, or impartiality.

Comment

[1] Paragraph (B) of this Rule permits judges who are candidates for retention to engage in some political and campaign activities prior to the election that would otherwise be prohibited by Rule 4.1. However, judges must cease these activities after the election. And unless a political or campaign activity is expressly permitted by Rule 4.3 or 4.4, judges who are candidates for retention remain subject to the prohibitions found in Rule 4.1.

[2] Paragraph (B)(5)(e) does not permit a judge or a judge's retention campaign to seek, accept, or use endorsements from partisan political organizations or other organizations whose support would cause reasonable persons to question the candidate's independence, integrity, or impartiality. This corresponds to the prohibition found in Rule 4.2(A)(2) that individuals seeking appointment to judicial office must not solicit privately communicated support or endorsements from such organizations.

[3] Rule 4.1(B)(3) prohibits judges from publicly endorsing (or opposing) the retention of any other judge. Nevertheless, judges seeking retention may collaborate with each other to plan and conduct their campaigns more effectively, so long as the collaboration does not constitute a public endorsement of another judge's retention or create an appearance of such an endorsement.

[4] This Rule and Rule 4.4 allow judges seeking retention in office to engage in overt political activity if there is "active opposition" to their retention. This Code, like the previous Alaska Code, does not define "active opposition". However, the term is meant to be broadly construed. A negative recommendation by the Alaska Judicial Council constitutes active opposition. Opposing a judge's retention by holding a press conference, advertising, distributing brochures or

leaflets, and sending letters to voters opposing retention are all forms of active opposition. On the other hand, isolated individual statements opposing a judge's retention normally do not constitute active opposition. Active opposition may be conducted by individuals acting alone as well as by groups. The opposition need not be specifically targeted at one particular judge or at a discrete group of judges; a newspaper advertisement urging the rejection of all judges standing for retention would be viewed as active opposition to the candidacy of each individual judge. If a judge has information causing the judge to reasonably conclude that active opposition to the judge's retention has commenced, the judge may document the basis of this reasonable belief to the Alaska Commission on Judicial Conduct and may then proceed as if there were active opposition to the judge's candidacy.

For the definitions of *candidate for retention in judicial office*, *impartiality*, *independence*, *integrity*, *law*, and *political organization*, see the Terminology section.

Rule 4.4: Retention Campaign Committees

(A) If a judge seeking retention in office has formed a campaign committee pursuant to Rule 4.3(B)(4)(a) or Rule 4.3(B)(5)(a), the judge is responsible for ensuring that this campaign committee complies with all applicable provisions of this Code and other applicable law.

(B) Judges shall direct their campaign committees:

(1) 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;

(2) to not solicit or accept contributions before the judge has filed a declaration of candidacy for retention, nor more than 45 days after the judge's retention election;

(3) to manage and expend the 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;

(4) 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;

(5) 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;

(6) to refrain from coordination or collaboration, directly or indirectly, with groups making independent expenditures in support of the judge's retention; and

(7) to dispose of any remaining funds following the campaign only as follows:

(a) to pay bills incurred for expenditures reasonably related to the campaign and the winding up of the affairs of the campaign, or

(b) to make unconditional donations to the state's general fund or to a charitable organization qualified under 26 U.S.C. 501(c)(3), but only if the organization is not controlled by the judge or a member of the judge's family and the donation would not create an appearance of impropriety under this Code.

(C) A campaign committee may accept funds loaned by the judge, or by a member of the judge's family, only if the loan complies with all statutory requirements for such loans. If such a loan has been accepted, the loan may be repaid only from the campaign fund balance as of the election day, and must not be repaid from campaign contributions received after election day.

Comment

[1] Rule 4.1(C)(3) prohibits judicial candidates from personally soliciting or accepting campaign contributions, but under Rule 4.4 judges' campaign committees may solicit and accept campaign contributions, manage the expenditure of those funds, and generally manage the retention campaigns. Nevertheless, judges remain responsible for ensuring that their campaign committees conduct the campaigns in compliance with this Code, state election law, and other applicable law.

[2] Neither this Rule nor Rule 4.1 restricts the ability of judges to spend their own funds in support of their own candidacies.

[3] When Alaska election statutes authorize conduct prohibited under this Code, judges are obligated to adhere to this Code. As an example, the wording of the election statutes might imply that campaign contributions can be solicited by and accepted by the judge directly. See, *e.g.*, AS 15.13.070(d)(4)(B). But this conduct is prohibited by Rule 4.1(C)(3). A judge wishing to solicit or accept campaign contributions must do so by establishing a campaign committee, notwithstanding the wording of the statutes.

As another example, AS 15.13.070(d)(4)(B) expressly allows political parties to contribute to judicial retention candidates, but Rules 4.1(C)(3) and 4.4(B)(5) prohibit judicial candidates and their campaign committees from accepting such contributions. Because contributions are not allowed unless they are permitted under both the statutes and this Code, such contributions are prohibited.

[4] This Rule requires that, at the start of retention campaigns, judges 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 and this Code. 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; *see also Caperton v. A.T. Massey Coal Co.*, 556 U.S. 868 (2009).

[5] Paragraph (B)(7) of this Rule lists the permissible dispositions of any remaining retention campaign balance. Alaska Statute 15.13.116 contains a more expansive list of permissible dispositions, but the provisions of this Code govern; thus, judges are limited to the dispositions permitted by Paragraph (B)(7).

[6] Under Paragraph (C) of this Rule, judges seeking retention can make loans to their campaign committees, but the Rule limits the circumstances under which those loans can be repaid. Paragraph (C) also requires adherence to otherwise applicable law, including AS 15.13.070, which sets a monetary limit on repayment of loans from campaign committees to judges or their family members.

For the definitions of *contribution*, *family*, *judicial candidate*, *law*, and *solicit contributions*, see the Terminology section.

Rule 4.5: Activities of Judges Who Become Candidates for Nonjudicial Office

(A) A judge shall resign from judicial office upon becoming a candidate in either a primary or general election for any nonjudicial elective office.

(B) A judge is not required to resign from judicial office upon becoming a candidate for nonjudicial appointive office, but the judge must comply with the other provisions of this Code. A judge whose candidacy for a nonjudicial office is successful must resign from judicial office before the judge begins serving in the nonjudicial office unless

(1) the judge's service in that office is allowed by Rule 3.4(A), or

(2) the judge is exempt from Rule 3.4(A) under Part III or IV of the Application section.

Comment

[1] In campaigns for nonjudicial elective public office, candidates are generally expected to make pledges, promises, or commitments regarding the positions and actions they would take if elected to office. Although such pledges, promises, and commitments are appropriate in nonjudicial election campaigns, they are inconsistent with the role of a judge, who must remain objective, impartial, and open-minded in all controversies that come before the court. The political promises that a judge might be pressured to make in the course of campaigning for nonjudicial elective office, together with the potential for misuse of the judge's judicial office during such a campaign, dictate that judges who wish to run for nonjudicial elective office must resign from their judicial office upon becoming a candidate.

[2] The "resign to run" rule set forth in Paragraph (A) of this Rule ensures that judges cannot use their judicial office to promote their candidacy for nonjudicial elective office, and it prevents post-campaign retaliation by a judge

in the event the judge is defeated in the election. In contrast, when a judge is seeking an appointive nonjudicial office, the dangers are significantly fewer and are not sufficient to warrant a "resign to run" rule. Rule 3.4(A) describes the circumstances under which a full-time judge or a senior judge may serve in such an office.

For the definitions of *full-time judge*, *impartial*, and *senior judge*, see the Terminology section.