

CHAPTER 14: JUDICIAL CONDUCT



Judges may not **solicit donations** for campaigns (whether the judge's own campaign, or other political candidates), or solicit donations for other nonprofit organizations, with minor exceptions. (CJC Rule 4.1)

Similarly, judges cannot engage in most **political activities** (Rules 4.1-4.5).

Judges and their clerks cannot conduct their own factual research or investigation for pending cases, including Internet research (CJC Rule 2.9(C)).

Although judges may not accept substantial gifts (with exceptions), judges may accept reasonable compensation for speaking engagements, book royalties, teaching courses, and so on (CJC Rule 3.12).

Judges cannot serve on the board of directors, or as managers, officers, or employees of any business entity, with minor exceptions for the judge's family business, or certain nonprofit organizations (CJC Rule 3.11).

Similarly, judges cannot accept appointments as executors, administrators, or trustees of estates (CJC Rule 3.8) with a limited exception for family matters.

Judges should not praise or criticize jurors for their verdict, except in a (written) court order or opinion in a proceeding (Rule CJC 2.8).

Judges may not use their position to gain personal advantage or deferential treatment (Rule CJC 1.3, Comment 1).

Judges may not “make use of court premises, staff, stationery, equipment, or other resources, except for incidental use for activities that concern the law, the legal system, or the administration of justice, or unless such additional use is permitted by law.” (CJC Rule 3.1(E)).

As soon as possible after taking the bench, a judge must divest herself of any investments (i.e., substantial stock holdings or ownership shares of a business) that could require frequent disqualification or recusal of the judge (CJC Rule 3.1 1 Comment 1).

A judge may not serve as a character witness for anyone else in trials or other proceedings (CJC Rule 3.3).

Judges cannot use or disclose nonpublic information gleaned from their assigned cases – for example, judges must not engage in insider trading or stock purchases based on nonpublic information learned while adjudicating a matter (CJC Rule 3.5).

A judge may not be a member of any organization (such as a dining club or country club) that discriminates based on race, sex, gender, religion, national origin, ethnicity, or sexual orientation (CJC Rule 3.6).

An important exception: judges may attend, on an incidental basis, an event in a facility of such an organization, as long as merely attending the event does not appear to be an endorsement of the organization's discriminatory practices.

Membership in churches or other religious organizations is permissible, even though many religious groups have beliefs or practices that would be impermissible discrimination in other contexts, such as male-only clergy, doctrinal adherence for membership eligibility, or prohibitions on homosexuality.

Judges cannot accept gifts that could undermine judicial integrity, or even have the appearance of undermining judicial integrity (CJC Rule 3.13).

Important exceptions are small gifts: plaques, trophies, certificates, holiday gifts from relatives and friends, free tickets to fundraiser banquets, and other free items and discounts that are available to everyone else.

Model Code of Judicial Conduct RULE 1.3

Avoiding Abuse of the Prestige of Judicial Office

A judge shall not abuse the prestige of judicial office to advance the personal or economic interests* of the judge or others, or allow others to do so.

Model Code of Judicial Conduct RULE 1.3

COMMENT [1] It is improper for a judge to use or attempt to use his or her position to gain personal advantage or deferential treatment of any kind.

For example, it would be improper for a judge to allude to his or her judicial status to gain favorable treatment in encounters with traffic officials. Similarly, a judge must not use judicial letterhead to gain an advantage in conducting his or her personal business.

[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 make reasonable accommodations to ensure pro se litigants the opportunity to have their matters fairly heard.

NOTE - Comment 3 above on Rule 2.2 is directed at judges who deliberately or repeatedly disregard court orders or other clear requirements of law

Model Code of Judicial Conduct RULE 2.6

Ensuring the Right to Be Heard

(A) A judge shall accord to every person who has a legal interest in a proceeding, or that person's lawyer, 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.

RULE 2.11 Disqualification

(2) The judge knows* that the judge, the judge's spouse or domestic partner,* or a person within the third degree of relationship* to either of them, or the spouse or domestic partner of such a person is:

- (a) a party to the proceeding, or an officer, director, general partner, managing member, or trustee of a party;
- (b) acting as a lawyer in the proceeding;
- (c) a person who has more than a de minimis* interest that could be substantially affected by the proceeding; or
- (d) likely to be a material witness in the proceeding.

RULE 2.1 1 Disqualification

(3) The judge knows that he or she, individually or as a fiduciary,* or the judge's spouse, domestic partner, parent, or child, or any other member of the judge's family residing in the judge's household,* has an economic interest* in the subject matter in controversy or is a party to the proceeding.

(4) The judge knows or learns by means of a timely motion that a party, a party's lawyer, or the law firm of a party's lawyer has within the previous [insert number] year[s] made aggregate* contributions* to the judge's campaign in an amount that [is greater than \$[insert amount] for an individual or \$[insert amount] for an entity] [is reasonable and appropriate for an individual or an entity].

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

RULE 2.11 Disqualification - COMMENTS

COMMENT [6] “Economic interest,” as set forth in the Terminology section, means ownership of more than a de minimis legal or equitable interest. Except for situations in which a judge participates in the management of such a legal or equitable interest, or the interest could be substantially affected by the outcome of a proceeding before a judge, it does **not** include:

(1) an interest in the individual holdings within a **mutual or common investment fund;**

RULE 2.1 1 Disqualification

COMMENT [6] continued

- (2) an interest in **securities held by an educational, religious, charitable, fraternal, or civic organization** in which the judge or the judge's spouse, domestic partner, parent, or child serves as a director, officer, advisor, or other participant;
- (3) a deposit in a financial institution or deposits or proprietary interests the judge may maintain as a member of a mutual savings association or **credit union**, or similar proprietary interests; or
- (4) an interest in the issuer of government securities held by the judge.

RULE 3.1 Extrajudicial Activities in General

A judge may engage in extrajudicial activities, except as prohibited by law* or this Code.

However, when engaging in extrajudicial activities, a judge shall **not**:

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

(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 **coercive;** or

(E) **make use** of court premises, staff, stationery, equipment, or other resources, except for incidental use for activities that concern the law, the legal system, or the administration of justice, or unless such additional use is permitted by law.

RULE 3.1 COMMENT [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 their race, sex, gender, religion, national origin, ethnicity, disability, age, sexual orientation, or socioeconomic status.

For the same reason, a judge's extrajudicial activities must **not** be 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 coercive.

For example, depending upon the circumstances, a judge's solicitation of contributions or memberships for an organization, even as permitted by Rule 3.7(A), might create the risk that the person solicited would feel obligated to respond favorably, or would do so to curry favor with the judge.

RULE 3.5 Use of Nonpublic Information

A judge shall not intentionally disclose or use nonpublic information* acquired in a judicial capacity for any purpose unrelated to the judge's judicial duties.

COMMENT [1] In the course of performing judicial duties, a judge may acquire information of commercial or other value that is unavailable to the public. The judge must **not reveal** or **use** such information for personal gain or for any purpose unrelated to his or her judicial duties.

[2] This rule is not intended, however, to affect a judge's ability to act on information as **necessary to protect the health or safety** of the judge or a member of a judge's family, court personnel, or other judicial officers if consistent with other provisions of this Code.

RULE 3.6 Affiliation with Discriminatory Organizations

(A) A judge shall not hold membership in any organization that practices invidious discrimination on the basis of race, sex, gender, religion, national origin, ethnicity, or sexual orientation.

RULE 3.6 Affiliation with Discriminatory Organizations

(B) A judge shall not use the benefits or facilities of an organization if the judge knows* or should know that the organization practices invidious discrimination on one or more of the bases identified in paragraph (A).

RULE 3.6 Affiliation with Discriminatory Organizations

A judge's **attendance at an event in a facility** of an organization that the judge is not permitted to join is **not a violation** of this Rule when the judge's attendance is an isolated event that could not reasonably be perceived as an endorsement of the organization's practices.

COMMENT [4] A judge's membership in a religious organization as a lawful exercise of the freedom of religion is not a violation of this Rule.

[5] This Rule does not apply to national or state military service

RULE 3.7 Participation in Educational, Religious, Charitable, Fraternal, or Civic Organizations and Activities

(A) Subject to the requirements of Rule 3.1, a judge **may participate** in activities sponsored by organizations or governmental entities concerned with the law, the legal system, or the administration of justice, and those sponsored by or on behalf of educational, religious, charitable, fraternal, or civic organizations not conducted for profit, **including but not limited to the following activities:**

...including but not limited to the following activities:

(1) assisting such an organization or entity in planning related to fund-raising, and participating in the management and investment of the organization's or entity's funds;

...including but not limited to the following activities:

(2) soliciting* contributions* for such an organization or entity, but only from members of the judge's family,* or from judges over whom the judge does not exercise supervisory or appellate authority;

...including but not limited to the following activities:

(3) soliciting membership for such an organization or entity, even though the membership dues or fees generated may be used to support the objectives of the organization or entity, but **only** if the organization or entity is **concerned with the law, the legal system,** or the administration of justice;

RULE 3.7 MORE PERMISSIBLE ACTIVITIES

(4) **appearing or speaking** at, receiving an award or other recognition at, being featured on the program of, and permitting his or her title to be used in connection with an event of **such an organization or entity**, but if the event serves a fund-raising purpose, the judge may participate only if the event concerns the law, the legal system, or the administration of justice;

RULE 3.7 MORE PERMISSIBLE ACTIVITIES

(5) making recommendations to such a public or private fund-granting organization or entity in connection with its programs and activities, but **only if** the organization or entity is **concerned with the law**, the legal system, or the administration of justice; and

RULE 3.7 MORE PERMISSIBLE ACTIVITIES

(6) serving as an officer, director, trustee, or nonlegal advisor of such an organization or entity, unless it is likely that the organization or entity:

- (a) will be engaged in proceedings that would ordinarily come before the judge; or
- (b) will frequently be engaged in adversary proceedings in the court of which the judge is a member, or in any court subject to the appellate jurisdiction of the court of which the judge is a member.

(B) A judge may encourage lawyers to provide pro bono publico legal services.

RULE 3.8 Appointments to Fiduciary Positions

(A) A judge shall **not accept appointment** to serve in a fiduciary* position, such as executor, administrator, trustee, guardian, attorney in fact, or other personal representative, **except** for the estate, trust, or person of a member of the judge's **family**,* and then **only** if such service will not interfere with the proper performance of judicial duties.

RULE 3.8 Appointments to Fiduciary Positions

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

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

(D) If a person who is serving in a fiduciary position becomes a judge, he or she must comply with this Rule as soon as reasonably practicable, but in no event later than [one year] after becoming a judge

RULE 3.11 - Financial, Business, or Remunerative Activities

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

(B) A judge shall **not serve** as an **officer**, director, manager, general partner, advisor, or employee of **any business entity** except that a judge may manage or participate in:

- (1) a business closely held by the judge or members of the judge's **family**; or
- (2) a business entity primarily engaged in investment of the financial resources of the judge or members of the judge's **family**.

RULE 3.1 1 - Financial, Business, or Remunerative Activities

(C) A judge shall not engage in financial activities permitted under paragraphs (A) and (B) if they will:

- (1) interfere with the proper performance of judicial duties;
- (2) lead to frequent disqualification of the judge;
- (3) 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; or
- (4) result in violation of other provisions of this Code

RULE 3.1 1 - Financial, Business, or Remunerative Activities

COMMENT [1] Judges are generally permitted to engage in financial activities, including managing real estate and other investments for themselves or for members of their families.

Participation in these activities, like participation in other extrajudicial activities, is subject to the requirements of this Code.

RULE 3.1 1 - Financial, Business, or Remunerative Activities

COMMENT [1] ...**For example**, it would be improper for a judge **to spend so much time** on business activities that it interferes with the performance of judicial duties. See Rule 2.1.

RULE 3.1 1 - Financial, Business, or Remunerative Activities

Similarly, it would be improper for a **judge to use his or her official title or appear in judicial robes** in business advertising, or to conduct his or her business or financial affairs in such a way that disqualification is frequently required. See Rules 1.3 and 2.1 1.

RULE 3.11 - Financial, Business, or Remunerative Activities

[2] As soon as practicable without serious financial detriment, the judge must divest himself or herself of investments and other financial interests that might require frequent disqualification or otherwise violate this Rule.

RULE 3.12

Compensation for Extrajudicial Activities

A judge may accept reasonable compensation for extrajudicial activities permitted by this Code or other law* unless such acceptance would appear to a reasonable person to undermine the judge's independence,* integrity,* or impartiality.*

RULE 3.12 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, provided the compensation is reasonable and commensurate with the task performed. The judge should be mindful, however, that judicial duties must take precedence over other activities. See Rule 2.1.

[2] Compensation derived from extrajudicial activities may be subject to public reporting. See Rule 3.15

RULE 3.13 Acceptance and Reporting of Gifts, Loans, Bequests, Benefits, or Other Things of Value

(A) A judge shall not accept any gifts, loans, bequests, benefits, or other things of value, if acceptance is prohibited by law* or would appear to a reasonable person to undermine the judge's independence,* integrity,* or impartiality.*

RULE 3.13 Acceptance and Reporting of Gifts, Loans, Bequests, Benefits, or Other Things of Value

(B) Unless otherwise prohibited by law, or by paragraph (A), a judge **may accept** the following **without publicly reporting** such acceptance:

- (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 friends, relatives, or other persons, including lawyers, whose appearance or interest in a proceeding pending* or impending* before the judge would in any event require disqualification of the judge under Rule 2.11;
- (3) ordinary social hospitality;

MAY ACCEPT:

(4) 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 and benefits or loans are made available on the same terms to similarly situated persons who are not judges;

MAY ACCEPT:

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

(6) 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;

MAY ACCEPT:

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

(8) gifts, awards, or benefits 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 that incidentally benefit the judge.

RULE 3.13 Acceptance and Reporting of Gifts, Loans, Bequests, Benefits, or Other Things of Value

(C) Unless otherwise prohibited by law or by paragraph (A), a judge may accept the following items, and must report such acceptance to the extent required by Rule 3.15:

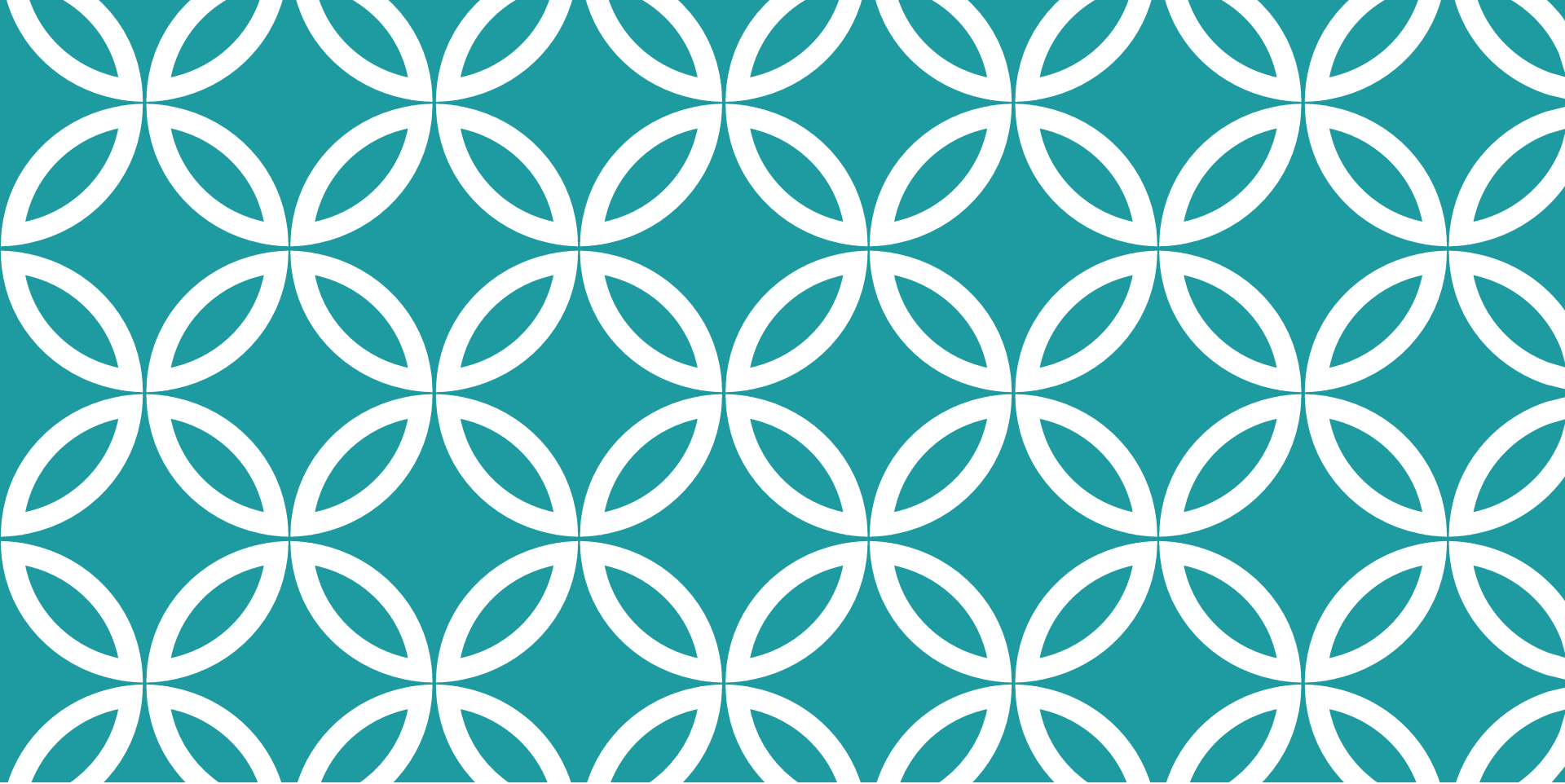
(1) gifts incident to a public testimonial;

MAY ACCEPT - (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

MAY ACCEPT - (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 nonjudges who are engaged in similar ways in the activity as is the judge; and

MAY ACCEPT - (3) gifts, loans, bequests, benefits, or other things of value, if the source is a party or other person, including a lawyer, who has come or is likely to come before the judge, or whose interests have come or are likely to come before the judge.



LAWYER RULES RELATED TO JUDGES

MRPC 1.12(b): Former Judge, Arbitrator, Mediator, or Other Third Party Neutral

A lawyer shall not negotiate for employment with any person who is involved as a party or as lawyer for a party in a matter in which the lawyer is participating personally and substantially as a judge or other adjudicative officer or as an arbitrator, mediator or other third-party neutral.

A lawyer serving as a law clerk to a judge or other adjudicative officer may negotiate for employment with a party or lawyer involved in a matter in which the clerk is participating personally and substantially, but only after the lawyer has notified the judge or other adjudicative officer.

A lawyer who knows that a judge has committed a violation of applicable rules of judicial conduct that raises a substantial question as to the judge's fitness for office shall inform the appropriate authority.

It is professional misconduct for a lawyer to knowingly assist a judge or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law.