

**NOTICE OF PROPOSAL FOR
REVISED CODE OF JUDICIAL CONDUCT
AND
REQUEST FOR COMMENT**

In 2007, the American Bar Association completed an extensive review of the ABA Model Code of Judicial Conduct. Chief Justice Bill Waller Jr. thereafter appointed a Mississippi Code of Judicial Conduct Study Committee charged with the responsibility of examining the Model Code, reviewing the present Mississippi Code of Judicial Conduct, and recommending such changes and revisions in the Mississippi Code of Judicial Conduct as they found to be needed. The Study Committee has now completed the first phase of its work, having prepared a draft revision of the Mississippi Code of Judicial Conduct, and now solicits comment on the draft from the bench, the bar, and interested lay individuals. Those comments will be reviewed by the Study Committee and will be submitted to the Supreme Court along with the Study Committee's final draft.

A summary of the most significant changes proposed and the full text of the Study Committee's draft are published with this notice. Additional materials, including a section by section comparison of the present code and the Study Committee's draft and the Study Committee's minutes are on file for public examination in the office of the Clerk of the Supreme Court.

All comments should be submitted in writing to the Clerk of the Supreme Court, Post Office Box 249, Jackson, Mississippi 39205. All comments should be submitted no later than Thursday, May 27, 2010.

89-L-99013

PRINCIPAL SUBSTANTIVE CHANGES FROM THE CURRENT
MISSISSIPPI CODE OF JUDICIAL CONDUCT

FILED

APR - 7 2010

April 5, 2010

OFFICE OF THE CLERK
SUPREME COURT
COURT OF APPEALS

ORGANIZATION AND STRUCTURE

The structure of the Code has been reorganized from Canons and Commentary to Canons, Rules, and Comments. The change in structure is intended to make the Code more intuitive and easier to navigate. Overall, Canon 1 of the revised Code combines most of the subject matter of the current Canons 1 and 2. Canon 2 addresses what is currently in Canon 3. The new Canon 3 addresses material that is currently in Canon 4. Finally, Canon 4 addresses what is currently in Canon 5.

CANON 1

Rule 1.2, Comment [5]: The Committee retained the prohibition on the “appearance of impropriety.”

Rule 1.3: The current Code states that a judge shall not “lend the prestige” of the judicial office to advance the private interests of the judge or others. The proposed Code as amended states that a judge is prohibited from *abusing* the prestige of judicial office. The change is intended to make it clear that there are situations in which a judge may legitimately lend the prestige of the office (ex. writing a letter of recommendation) but making it clear that it is always inappropriate for the judge to abuse the prestige of the judicial office.

CANON 2

Rule 2.2, Comment [2]: Comment [2] was amended to clarify the broad and unnuanced position that a judge “must interpret and apply the law without regard to whether the judge approves or disapproves of the law in question.” The Comment was amended to allow a judge to advance the law without facing the possibility of discipline, by allowing the judge to consider a nonfrivolous extension, modification or reversal of existing law or the establishment of new law in the judge’s decisions.

Rule 2.11(A)(4): This rule amends the current “Major Donor” rule in the current Code -- Canon 3E(2). The proposed Rule rejects the “Major Donor” terminology and adopts a test for disqualification based on the identity of the contributor and the amount and effect of the contribution. To this end, the revised Rule requires disqualification when a contributor (defined broadly) makes an aggregate in excess of that allowed by law *or* which creates an appearance of impropriety. This standard is a departure from the current code -- which requires disqualification

for contributions only when the contributions exceed a certain amount. An elaboration of the basis of the new Rule was included in Comment [7] to Rule 2.11.¹

Rule 2.13(B): Under the current Code (Canon 3C(5)), a judge is prohibited from appointing a “major donor” to a position -- with limited exceptions. The revised Code eliminates the “Major Donor” term and instead provides that a judge may not appoint a lawyer who has contributed more than \$2,500 within the prior 4 years to the judge’s election campaign.

CANON 3

Rule 3.7: Under the current Code (Canon 4C(3)(b)(i)), a judge may solicit funds (or engage in other fund raising activities) from judges over whom the judge does not exercise supervisory or appellate authority.” Rule 3.7(A)(2) eliminates this exception and prohibits all solicitation.

Rule 3.11: Rule 3.11 covers restrictions on financial and business activities of judges. Mississippi’s current version of the Code rejected the financial and business restrictions in the 1990 Model Code. Therefore, the adoption of these restrictions works a significant change to the current Code.

Rule 3.15: Under the current Code (Canon 4H), a judge is only required to report as required by law. Under the revised Code, reporting for gifts and reimbursements is required when the items (alone or in the aggregate) exceed \$500. In addition, Rule 3.15(D) was amended to make the Mississippi Supreme Court website the central location for public access to reports.

Canon 4:

The current provisions regarding Special Committees (Canon 5F) was completely reworked and its replacement is now found in Rule 4.6. In the place of a Special Committee, Rule 4.6 creates a Judicial Conduct Advisory Committee. The Committee has the authority not only to operate during elections but is a standing committee that provides advisory opinions to judges on issues of ethics upon request. Another significant change is the scope of the Committee’s authority. Under the current code, elections for justice court and municipal court judges are not subject to the jurisdiction of the Special Committee. Under the proposed Rules, these elections would be subject to oversight by the Judicial Conduct Advisory Committee.

¹ After the last meeting of the Committee, the ABA Standing Committee on Judicial Independence issued a draft version of “Proposed Amendments to the Model Code of Judicial Conduct” which specifically addresses issues of disqualification. A copy of the report is attached.

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OFFICE OF THE CLERK
SUPREME COURT
COURT OF APPEALS

MISSISSIPPI CODE OF JUDICIAL CONDUCT STUDY COMMITTEE

PROPOSED 2010 MISSISSIPPI CODE OF JUDICIAL CONDUCT

April 5, 2010

DRAFT

PREAMBLE

[1] An independent, fair and impartial judiciary is indispensable to our system of justice. The United States legal system is based upon the principle that an independent, impartial, and competent judiciary, composed of men and women of integrity, will interpret and apply the law that governs our society. Thus, the judiciary plays a central role in preserving the principles of justice and the rule of law. Inherent in all the Rules contained in this Code are 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 the legal system.

[2] Judges should maintain the dignity of judicial office at all times, and avoid both impropriety and the appearance of impropriety in their professional and personal lives. They should aspire at all times to conduct that ensures the greatest possible public confidence in their independence, impartiality, integrity, and competence.

[3] The Mississippi Code of Judicial Conduct establishes standards for the ethical conduct of judges and judicial candidates. It is not intended as an exhaustive guide for the conduct of judges and judicial candidates, who are governed in their judicial and personal conduct by general ethical standards as well as by the Code. The Code is intended, however, to provide guidance and assist judges in maintaining the highest standards of judicial and personal conduct, and to provide a basis for regulating their conduct through disciplinary agencies.

SCOPE

[1] The Mississippi Code of Judicial Conduct consists of four Canons, numbered Rules under each Canon, and Comments that generally follow and explain each Rule. Scope and Terminology sections provide additional guidance in interpreting and applying the Code. An Application section establishes when the various Rules apply to a judge or judicial candidate.

[2] The Canons state overarching principles of judicial ethics that all judges must observe. Although a judge may be disciplined only for violating a Rule, the Canons provide important guidance in interpreting the Rules. Where a Rule contains a permissive term, such as “may” or “should,” the conduct being addressed is committed to the personal and professional discretion of the judge or candidate in question, and no disciplinary action should be taken for action or inaction within the bounds of such discretion.

[3] The Comments that accompany the Rules serve two functions. First, they provide guidance regarding the purpose, meaning, and proper application of the Rules. They contain explanatory material and, in some instances, provide examples of permitted or prohibited conduct. Comments neither add to nor subtract from the binding obligations set forth in the Rules. Therefore, when a Comment contains the term “must,” it does not mean that the Comment itself is binding or enforceable; it signifies that the Rule in question, properly understood, is obligatory as to the conduct at issue.

[4] Second, the Comments identify aspirational goals for judges. To implement fully the principles of this Code as articulated in the Canons, judges should strive to exceed the standards of conduct established by the Rules, holding themselves to the highest ethical standards and seeking to achieve those aspirational goals, thereby enhancing the dignity of the judicial office.

[5] The Rules of the Mississippi Code of Judicial Conduct 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.

[6] 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 should be determined through a reasonable 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, whether there have been previous violations, and the effect of the improper activity upon the judicial system or others. The Mississippi Constitution sets out the only grounds for disciplining a sitting judge in this state. See Miss. Const. § 177A. Nothing in this Code is intended to depart from the constitutional grounds for discipline or to provide a basis for discipline of a judge for conduct not in violation of this constitutional provision.

[7] The Code is not designed or intended as a basis for civil or criminal liability. Neither is it intended to be the basis for litigants to seek collateral remedies against each other or to obtain tactical advantages in proceedings before a court.

[8] Acts of a judge in the discharge of disciplinary responsibilities, whether required or permitted, are part of a judge's judicial duties and shall be absolutely privileged, and no civil action predicated on the judge's discharge of these responsibilities may be instituted against the judge. See Rule 2.14 and 2.15.

TERMINOLOGY

"Aggregate," in relation to contributions for a candidate, means not only contributions in cash or in-kind made directly to a candidate's campaign committee, but also all contributions made indirectly with the understanding that they will be used to support the election of a candidate or to oppose the election of the candidate's opponent. See Rules 2.11 and 4.4.

"Appropriate authority" means the authority having responsibility for initiation of disciplinary process in connection with the violation to be reported. See Rules 2.14 and 2.15.

"Contribution" means both financial and in-kind contributions, such as goods, professional or volunteer services, advertising, and other types of assistance, which, if obtained by the recipient otherwise, would require a financial expenditure. Contribution does not include services, food, or beverages as defined by Miss. Code Ann. § 23-15-801(e)(ii). See Rules 2.11, 2.13, 3.7, 4.1, and 4.4.

"De minimis," in the context of interests pertaining to disqualification of a judge, means an insignificant interest that could not raise a reasonable question regarding the judge's impartiality. See Rule 2.11.

"Economic Interest" means ownership of more than a de minimis legal or equitable interest. Except for situations in which the judge participates in the management of such a legal or equitable interest, or the interests 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; (2) an interest in securities held by an educational, religious, charitable, fraternal, or civic organization in which the judge or the judge's spouse, child, or member of the judge's household serves as a director, an officer, and advisor, or other participant; (3) a deposit in a financial institution or deposits or propriety 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. See Rules 1.3 and 2.11.

"Fiduciary" includes relationships such as executor, administrator, trustee, or guardian. See Rules 2.11, 3.2, and 3.8.

"Impartial," "impartiality," and "impartially" means absence of bias or prejudice in favor of, or against, particular parties or classes of parties, as well as maintenance of an open mind in considering issues that may come before the judge. See Canons 1, 2, and 4, and Rules 1.2, 2.2, 2.10, 2.11, 2.13, 3.1, 3.12, 3.13, 4.1, and 4.2.

"Impending matter" is a matter that is imminent or expected to occur in the near future. Matters that could conceivably come before the judge at some indefinite point in the future are not impending. See Rules 2.9, 2.10, 3.13, and 4.1.

“Impropriety” means conduct that violates the law, court rules, or provisions of this Code, and conduct that undermines a judge’s independence, integrity, or impartiality. See Canon 1 and Rule 1.2.

“Independence” means a judge’s freedom from influence or controls other than those established by law. See Canons 1 and 4, and Rules 1.2, 3.1, 3.12, 3.13, and 4.2. “Impropriety” includes conduct that violates the law, court rules, or provisions of this Code, and conduct that undermines a judge’s independence, integrity, or impartiality. See Canon 1 and Rule 1.2.

“Integrity” means probity, fairness, honesty, uprightness, and soundness of character. See Canon 1 and Rule 1.2

"Judicial candidate" means any person, including a sitting judge, who is seeking selection for judicial office by election or appointment. A person becomes a candidate for judicial office as soon as he or she makes a public announcement of candidacy, declares or files as a candidate with the election or appointment authority, or is nominated for election or appointment to office. See Rules 2.11, 4.1, 4.2, and 4.4.

"Knowingly," "knowledge," "known," and "knows" means actual knowledge of the fact in question. A person's knowledge may be inferred from circumstances. See Rules 2.11, 2.13, 2.15, 2.16, 3.6, and 4.1.

“Law” encompasses court rules as well as statutes, constitutional provisions, and decisional law. See Rules 1.1, 2.1, 2.2, 2.6, 2.6, 2.9, 3.1, 3.4, 3.9, 3.12, 3.13, 3.14, 3.15, 4.1, 4.2, 4.4, and 4.5.

“Member of the judge’s family” means a spouse, household member, child, grandchild, parent, grandparent, or other relative or person with whom the judge maintains a close familial relationship. See Rules 3.7, 3.8, 3.10, and 3.11.

"Member of a judge's family residing in the judge's household" means any relative of a judge by blood or marriage, or a person treated by a judge as a member of the judge's family, who resides in the judge's household. See Rules 2.11 and 3.13.

“Nonpublic information” means information that is not available to the public. Nonpublic information may include, but is not limited to, information that is sealed by statute or court order. See Rule 3.5.

“Part-time judge” denotes a judge who serves for an extended, fixed term, but is allowed to practice law or any other profession or occupation. The term does not apply to magistrates, court commissioners, special masters, or referees.

“Pending matter” is a matter that has commenced. A matter continues to be pending through any appellate process until final disposition. See Rules 2.9, 2.10, 3.13, and 4.1.

“Personally solicit” means a direct request made by a judge or a judicial candidate for financial support or in-kind services, whether made by letter, telephone, or any other means of communication. See Rules 3.7 and 4.1.

“Political Organization” means a political party or other group sponsored or affiliated with a political party or candidate, the principal purpose of which is to further the election or appointment of candidates for political office. For purposes of this Code, the term does not include a judicial candidate’s campaign committee created as authorized by Rule 4.4. See Rules 4.1 and 4.2.

“Public election” includes primary and general elections, partisan elections and nonpartisan elections. See Rules 4.2 and 4.4.

"Third degree of relationship" includes the following persons: great-grandparent, grandparent, parent, uncle, aunt, brother, sister, child, grandchild, great-grandchild, nephew, and niece. See Rule 2.11.

APPLICATION

(A) Parties Affected. Anyone, whether or not a lawyer, who is an officer of a judicial system and who performs judicial functions, including an officer such as a magistrate, court commissioner, special master or referee, is a judge within the meaning of this Code. All judges shall comply with this Code except as provided below.

(B) Part-time Judge. A part time judge shall not be subject to the restrictions and limitations of Rule 3.2, 3.4, 3.7, 3.9, 3.10, and 3.11(C) except as regards practice in the court in which the part-time judge serves, and Rules 3.12 and 3.14.

(C) Special Judge. A special judge shall not, except while serving as a judge, be subject to the restrictions and limitations of Rule 3.1. A special judge shall not, at any time be subject to the restrictions and limitations of Rules 3.8, 3.9, 3.10 and 3.11. A special judge, except while serving as a special judge or while a candidate for judicial office, shall not be subject to the restrictions of Rule 4.6.

(D) Magistrates, court commissioners, special masters and referees shall not at any time be subject to the restrictions and limitations of Rules 3.1, 3.2, 3.4, 3.8, 3.9, 3.10, and 3.11. Magistrates, court commissioners, special masters and referees, except while a candidate for judicial office, shall not be subject to the restrictions of Rule 4.6.

(E) Time for Compliance. A person to whom this Code becomes applicable shall comply immediately with all provisions of this Code except Rule 3.11 and shall comply with that Rule as soon as reasonably possible and shall do so in any event within the period of one year. See Rule 3.11, Comment [2].

(F) Effective Date. The separate provisions of this Code shall govern acts, events and conduct of those subject to those provisions from and after the effective date of the adoption of each such provision. Acts, events and conduct which occur prior to the adoption of each provision shall be governed by the provisions of the Code effective at the time of such acts, events and conduct.

CANON 1

A JUDGE SHALL UPHOLD AND PROMOTE THE INDEPENDENCE, INTEGRITY, AND IMPARTIALITY OF THE JUDICIARY, AND SHALL AVOID IMPROPRIETY AND THE APPEARANCE OF IMPROPRIETY.

RULE 1.1: *Compliance with the Law*

A judge shall comply with the law, including the Code of Judicial Conduct.

RULE 1.2: *Promoting Confidence in the Judiciary*

A judge shall 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.

Comment

[1] Public confidence in the judiciary is eroded by improper conduct and conduct that creates the appearance of impropriety. This principle applies to both the professional and personal conduct of a judge.

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

[3] Conduct that compromises or appears to compromise the independence, integrity, and impartiality of a judge undermines public confidence in the judiciary. Because it is not practicable to list all such conduct, the Rule is necessarily cast in general terms.

[4] Judges 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.

[5] Actual improprieties means violations of law, court rules or provisions of this Code. The test for appearance of impropriety is whether the judge's conduct might be questioned as prejudicial to the administration of justice by a reasonable person knowing all the circumstances.

[6] A judge should initiate and participate in community outreach activities for the purpose of promoting public understanding of and confidence in the administration of justice. In conducting such activities, the judge must act in a manner consistent with this Code.

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.

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.

[2] A judge may provide a reference or recommendation for an individual based upon the judge's personal knowledge. The judge may use official letterhead if the judge indicates that the reference is personal and there is no likelihood that the use of the letterhead would reasonably be perceived as an attempt to exert pressure by reason of the judicial office.

[3] Judges may participate in the process of judicial selection by cooperating with appointing authorities and screening committees, and by responding to inquiries from such entities concerning the professional qualifications of a person being considered for judicial office.

[4] Special considerations arise when judges write or contribute to publications of for-profit entities, whether related or unrelated to the law. A judge should not permit anyone associated with the publication of such materials to exploit the judge's office in a manner that violates this Rule or other applicable law. In contracts for publication of a judge's writing, the judge should retain sufficient control over the advertising to avoid such exploitation.

CANON 2

A JUDGE SHALL PERFORM THE DUTIES OF JUDICIAL OFFICE IMPARTIALLY,
COMPETENTLY, AND DILIGENTLY.

RULE 2.1: *Giving Precedence to the Duties of Judicial Office*

The judicial duties of judges take precedence over all their other activities. The judges' judicial duties include all the duties of their office prescribed by law.

Comment

[1] To ensure that judges are available to fulfill their judicial duties, judges must conduct their other activities to minimize the risk of conflicts that would result in frequent disqualification. See Canon 3.

[2] Although it is not a duty of judicial office unless prescribed by law, judges are encouraged to participate in activities that promote public understanding and confidence in the justice system.

RULE 2.2: *Impartiality and Fairness*

A judge shall uphold and apply the law, and shall perform all duties of judicial office fairly and impartially.

Comment

[1] To ensure impartiality and fairness to all parties, a judge must be objective and open-minded.

[2] Although each judge comes to the bench with a unique background and personal philosophy, a judge must interpret and apply the law without regard to whether the judge approves or disapproves of the law in question. In applying the law, a judge's rulings must be warranted by existing law, or by a nonfrivolous extension, modification, or reversal of existing law or the establishment of new law.

[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.

RULE 2.3 *Bias, Prejudice, and Harassment*

(A) A judge shall perform the duties of judicial office, including administrative duties, without bias or prejudice.

(B) A judge shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice, or engage in harassment, including but not limited to bias, prejudice, or harassment based upon race, sex, gender, religion, national origin, ethnicity, disability, age, sexual orientation, marital status, socioeconomic status, or political affiliation, and shall not permit court staff, court officials, or others subject to the judge's direction and control to do so.

(C) A judge shall require lawyers in proceedings before the court to refrain from manifesting bias or prejudice, or engaging in harassment, based upon attributes including but not limited to race, sex, gender, religion, national origin, ethnicity, disability, age, sexual orientation, marital status, socioeconomic status, or political affiliation, against parties, witnesses, lawyers, or others.

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

Comment

[1] A judge who manifests bias or prejudice in a proceeding impairs the fairness of the proceeding and brings the judiciary into disrepute.

[2] Examples of manifestations of bias or prejudice include but are not limited to epithets; slurs; demeaning nicknames; negative stereotypes; attempted humor based upon stereotypes; threatening, intimidating, or hostile acts; suggestions of connections between race, ethnicity, or nationality and crime; and irrelevant references to personal characteristics. Even facial expressions and body language can convey to parties and lawyers in the proceedings, jurors, the media, and others and appearance of bias or prejudice. A judge must avoid conduct that may reasonably be perceived as prejudiced or biased.

[3] Harassment, as referred to in paragraphs (B) and (C), is verbal or physical conduct that denigrates or shows hostility or aversion toward a person on bases such as race, sex, gender, religion, national origin, ethnicity, disability, age, sexual orientation, marital status, socioeconomic status, or political affiliation.

[4] Sexual harassment includes but is not limited to sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature that is unwelcome.

RULE 2.4: *External Influences on Judicial Conduct*

(A) A judge shall not be swayed by public clamor or fear of criticism.

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

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

Comment

[1] An independent judiciary requires that judges decide cases according to the laws 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.

RULE 2.5: *Competence, Diligence, and Cooperation*

(A) A judge shall perform judicial and administrative duties, competently and diligently.

(B) A judge shall cooperate with other judges and court officials in the proper 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 a judge's responsibilities of judicial office.

[2] A judge should seek the necessary docket time, court staff, expertise, and resources to discharge all of his adjudicative and administrative responsibilities. Additionally, in a multi-judge court or district, each judge shall cooperate with the judge tasked with the administrative responsibility for that court.

[3] Prompt disposition of the court's business requires a judge to devote adequate time to judicial duties, to be punctual in attending court and expeditious in determining matters under submission, and to take reasonable measures to ensure that court officials, litigants, and their lawyers cooperate with the judge to that end.

[4] In disposing of matters promptly and efficiently, a judge must 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.

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.

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.

[2] The judge plays an important role in overseeing the settlement of disputes, but should be careful that efforts to further settlement do not undermine any party's right to be heard according to law. The judge should keep in mind the effect that the judge's participation in settlement discussions may have, not only on the judge's own views of the case, but also on the perceptions of the lawyers and the parties if the case remains with the judge after settlement efforts are unsuccessful. Among the factors that a judge should consider when deciding upon an appropriate settlement practice for a case 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 will be tried by the judge or a jury, (4) whether the parties participate with their counsel in settlement discussions, (5) whether any parties are unrepresented by counsel, and (6) whether the matter is civil or criminal.

[3] Judges must be mindful of the effect settlement discussions can have, not only on their objectivity and impartiality, but also on the appearance 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, and, in such instances, the judge should consider whether disqualification may be appropriate. See Rule 2.11(A)(1).

RULE 2.7: *Responsibility to Decide*

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

Comment

[1] Judges must be available to decide the matters that come before the court. Although there are times when disqualification is necessary to protect the rights of litigants and preserve public confidence in the independence, integrity, and impartiality of the judiciary, judges must be available to decide matters that come before the courts. Unwarranted disqualification may bring public disfavor to the court and to the judge personally. The dignity of the court, the judge's respect for fulfillment of judicial duties, and a proper concern for the burdens that may be imposed upon the judge's colleagues require that a judge not use disqualification to avoid cases that present difficult, controversial, or unpopular issues.

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 staff, court officials, and others with whom the judge deals in an official capacity, and shall require similar conduct of lawyers, court staff, court officials, and others subject to the judge's direction and control.

(C) A judge shall not commend or criticize jurors for their verdict other than in a court order or opinion in a proceeding, but a judge may express appreciation to jurors for their service to the judicial system and the community.

Comment

[1] The duty to hear all proceedings 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 deliberate.

[2] Commending or criticizing jurors for their verdict may imply a judicial expectation in future cases and may impair a juror's ability to be fair and impartial in a subsequent case.

[3] A judge who is not otherwise prohibited by law from doing so may meet with jurors who choose to remain after trial but should be careful not to discuss the merits of the case.

RULE 2.9: *Ex Parte Communications*

(A) A judge shall not initiate, permit, or consider *ex parte* communications, or consider other communications made to the judge outside the presence of the parties or their lawyers, concerning a pending or impending matter, except as follows:

(1) When circumstances require it, *ex parte* communication for scheduling, administrative, or emergency purposes, which does not address substantive matters, is permitted, provided:

- (a) the judge reasonably believes that no party will gain a procedural, substantive, or tactical advantage as a result of the *ex parte* communication; and
- (b) the judge makes provision promptly to notify all other parties of the substance of the *ex parte* communication, and gives the parties an opportunity to respond.

(2) A judge may obtain the written advice of a disinterested expert on the law applicable to a proceeding before the judge, if the judge gives advance notice to the parties of the person to be consulted and the subject matter of the advice to be solicited, and affords the parties a reasonable opportunity to object and respond to the notice and the advice received.

(3) A judge may consult with court staff and court officials whose functions are to aid the judge in carrying out the judge's adjudicative responsibilities, or with other judges, provided the judge makes reasonable efforts to avoid receiving factual information that is not part of the record and does not abrogate the responsibility personally to decide the matter.

(4) A judge may, with the consent of the parties, confer separately with the parties and their lawyers in an effort to settle matters pending before the judge.

(5) A judge may initiate, permit, or consider any *ex parte* communication when expressly authorized by law to do so.

(B) If a judge inadvertently receives an unauthorized *ex parte* communication bearing upon the substance of a matter, the judge shall make provision promptly to notify the parties of the substance of the communication and provide the parties with an opportunity to respond.

(C) A judge shall not investigate facts in a matter independently, and shall consider only the evidence presented and any facts that may properly be judicially noticed.

(D) A judge shall make reasonable efforts, including providing appropriate supervision, to ensure that this Rule is not violated by court staff, court officials, and others subject to the judge's direction and control.

Comment

[1] To the extent reasonably possible, all parties or their lawyers shall be included in communications with a judge.

[2] Whenever the presence of a party or notice to a party is required by this Rule, it is the party's lawyer, or if the party is unrepresented, the party, who is to be present or to whom notice is to be given.

[3] The proscription against communications concerning a proceeding includes communications with lawyers, law teachers, and other persons who are not participants in the proceeding, except to the limited extent permitted by this Rule.

[4] A judge may initiate, permit, or consider ex parte communications expressly authorized by law, such as when serving on therapeutic or problem-solving courts, mental health courts, youth courts, or drug courts. In this capacity, judges may assume a more interactive role with parties, treatment providers, probation officers, social workers, and others.

[5] A judge may consult with other judges on pending matters, but must avoid ex parte discussions of a case with judges who have previously been disqualified from hearing the matter, and with judges who have appellate jurisdiction over the matter.

[6] The prohibition against a judge independently investigating the facts in a matter extends to information available in all mediums, including electronic

[7] A judge may consult ethics advisory committees, outside counsel, or legal experts concerning the judge's compliance with this Code. Such consultations are not subject to the restrictions of paragraph (A)(2).

RULE 2.10: *Judicial Statements on Pending and Impending Cases*

(A) A judge shall not make any public statement that might reasonably be expected to affect the outcome or impair the fairness of a matter pending or impending in any court, or make any nonpublic statement that might substantially interfere with a fair trial or hearing.

(B) A judge shall not, 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.

(C) A judge shall require court staff, court officials, and others subject to the judge's direction and control to refrain from making statements that the judge would be prohibited from making by paragraphs (A) and (B).

(D) Notwithstanding the restrictions in paragraph (A), a judge may make public statements in the course of official duties, may explain court procedures, and may comment on any proceeding in which the judge is a litigant in a personal capacity.

(E) Subject to the requirements of paragraph (A), a judge may respond directly or through a third party to allegations in the media or elsewhere concerning the judge's conduct in a matter.

Comment

[1] This Rule's restrictions on judicial speech are essential to the maintenance of the independence, integrity, and impartiality of the judiciary. The requirement that judges abstain from public comment regarding a pending or impending proceeding continues during any appellate process and until final disposition.

[2] This Rule does not prohibit a judge from commenting on proceeding in which the judge is a litigant in a personal capacity. In cases in which the judge is a litigant in an official capacity, such as a writ of mandamus, the judge must not comment publicly.

[3] Depending on the circumstances, the judge should consider whether it may be preferable for a third party, rather than the judge, to respond or issue statements in connection with allegations concerning the judge's conduct in a matter.

RULE 2.11: *Disqualification*

(A) A judge shall disqualify himself or herself 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 a personal bias or prejudice concerning a party or a party's lawyer, or personal knowledge of facts that are in dispute in the proceeding.

(2) The judge knows that the judge, the judge's spouse or person living in the judge's household, or a person within the third degree of relationship to either of them, or the spouse or 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.

(3) The judge knows that he or she, individually or as a fiduciary, or the judge's spouse, parent, or child, or any other member of the judge's family or other person residing in

the judge's household, has an economic interest in the subject matter in controversy or in a party to the proceeding.

(4) The judge knows or learns by means of a timely motion that a party, a political action committee or similar group or Section 527 organization of which the party is a member or to which it is a contributor, a party's lawyer, or the law firm of a party's lawyer made aggregate contributions to the judge's campaign that exceeds the amount allowed by law or creates the appearance of impropriety.

(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.

(6) The judge:

(a) served as a lawyer in the matter in controversy, or was associated with a lawyer who participated substantially as a lawyer in the matter during such association;

(b) served in governmental employment, and in such capacity participated personally and substantially as a lawyer or public official concerning the proceeding, or has publicly expressed in such capacity an opinion concerning the merits of the particular matter in controversy;

(c) was a material witness concerning the matter; or

(d) previously presided as a judge over the matter in another court.

(B) A judge shall keep informed about the judge's personal and fiduciary economic interests, and make a reasonable effort to keep informed about the personal economic interests of the judge's spouse and persons residing in the judge's household.

(C) A judge subject to disqualification under this Rule, other than for bias or prejudice under paragraph (A)(1), may disclose on the record the basis of the judge's disqualification and may ask the parties and their lawyers to consider, outside the presence of the judge and court personnel, whether to waive disqualification. If, following the disclosure, the parties and lawyers agree, without participation by the judge or court personnel, that the judge should not be disqualified, the judge may participate in the proceeding. The agreement shall be incorporated into the record of the proceeding.

Comment

[1] Under 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 (A)(1) through (6) apply. The term "recusal" is used interchangeably with the term "disqualification."

[2] A judge's obligation not to hear or decide matters in which disqualification is required applies regardless of whether a motion to disqualify is filed.

[3] The rule of necessity may override the rule of disqualification. For example, a judge might be required to participate in judicial review of a judicial salary statute, or might be the only judge available in a matter requiring immediate judicial action, such as a hearing on probable cause or a temporary restraining order. In matters that require immediate action, the judge must disclose on the record the basis for possible disqualification and make reasonable efforts to transfer the matter to another judge as soon as practicable.

[4] The fact that a lawyer in a proceeding is affiliated with a law firm with which a relative of the judge is affiliated does not itself disqualify the judge. If, however, the judge's impartiality might reasonably be questioned under paragraph (A), or the relative is known by the judge to have an interest in the law firm that could be substantially affected by the proceeding under paragraph (A)(2)(c), the judge's disqualification is required.

[5] A judge should disclose on the record information that the judge believes the parties or their lawyers might reasonably consider relevant to a possible motion for disqualification, even if the judge believes there is no basis for disqualification.

[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; (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.

[7] The United States Supreme Court in *Caperton v. A.T. Massey*, 129 S.Ct. 2252 (2009), recognized there are extraordinary situations where the United States Constitution requires recusal. The inquiry in these situations centers on the aggregate contributions' or expenditures' relative size in comparison to the total money contributed to the campaign, the total amount spent in the election, and the apparent effect such contribution or expenditure had on the outcome of the election.

RULE 2.12: *Supervisory Duties*

(A) A judge shall require court staff, court officials, and others subject to the judge's direction and control to 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] A judge is responsible for his or her own conduct and for the conduct of others, such as staff, when those persons are acting at the judge's direction or control. A judge may not direct court personnel to engage in conduct on the judge's behalf or as the judge's representative when such conduct would violate the Code if undertaken by the judge.

[2] Public confidence in the judicial system depends upon timely justice. To promote the efficient administration of justice, a judge with supervisory authority must take the steps needed to ensure that judges under his or her supervision administer their workloads promptly.

RULE 2.13: *Administrative Appointments*

(A) In making administrative appointments, a judge:

- (1) shall exercise the power of appointment impartially and on the basis of merit;
- and
- (2) shall avoid nepotism, favoritism, and unnecessary appointments.

(B) A judge shall not appoint a lawyer to a position if the judge either knows that the lawyer, or the lawyer's spouse or person residing within the lawyer's household, has made aggregate contributions of more than \$2,500 within the prior 4 years to the judge's election campaign, or learns of such a contribution by means of a timely motion by a party or other person properly interested in the matter, unless:

- (1) the position is substantially uncompensated;
- (2) the lawyer has been selected in rotation from a list of qualified and available lawyers compiled without regard to their having made political contributions; or
- (3) the judge or another presiding or administrative judge affirmatively finds that no other lawyer is willing, competent, and able to accept the position.

(C) A judge shall not approve compensation of appointees beyond the fair value of services rendered.

Comment

[1] Appointees of a judge include assigned counsel, officials such as referees, commissioners, special masters, receivers, and guardians, and personnel such as law clerks, secretaries, and bailiffs. Consent by the parties to an appointment or an award of compensation does not relieve the judge of the obligation prescribed in paragraph (A).

[2] Nepotism is the appointment or hiring of any person related by blood or marriage within the third degree of relationship to either the judge or the judge's spouse or person living in the judge's household.

[3] The rule against making administrative appointments of lawyers who have contributed in excess of a specified dollar amount to a judge's election campaign includes an exception for positions that are substantially uncompensated, such as those for which the lawyer's compensation is limited to reimbursement for out-of-pocket expenses.

RULE 2.14: *Disability and Impairment*

A judge having a reasonable belief that the performance of a lawyer or another judge is impaired by drugs or alcohol, or by a mental, emotional, or physical condition, shall take appropriate action, which may include a confidential referral to the Lawyers' and Judges' Assistance Program of the Mississippi Bar.

Comment

[1] "Appropriate action" means action intended and likely to help the judge or lawyer in question address the problems 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 assistance program.

[2] Taking or initiating corrective action by way of referral to an assistance program may satisfy a judge's responsibility under this Rule. Assistance programs have many approaches for offering help to impaired judges and lawyers, such as intervention, counseling, or referral to appropriate health care professionals. Depending upon the gravity of the conduct that has come to the judge's attention, however, the judge may be required to take other action, such as reporting the impaired judge or lawyer to the appropriate authority, agency, or body. See Rule 2.15.

RULE 2.15: *Responding to Judicial and Lawyer Misconduct*

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

(B) A judge having knowledge 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 shall inform the appropriate authority.

(C) A judge who receives information indicating a substantial likelihood that another judge has committed a violation of this Code shall take appropriate action.

(D) A judge who receives information indicating a substantial likelihood that a lawyer has committed a violation of the Rules of Professional Conduct shall take appropriate action.

Comment

[1] Taking action to address known misconduct is a judge's obligation. Paragraphs (A) and (B) impose an obligation on the 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. This Rule limits the reporting obligation to those offenses that an independent judiciary must vigorously endeavor to prevent.

[2] A judge who does not have actual knowledge that another judge or a lawyer may have committed misconduct, but receives information indicating a substantial likelihood of such 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 who may have violated this Code, communicating with a supervising judge, or reporting the suspected violation to the appropriate authority or other agency or body. Similarly, actions to be taken in response to information indicating that a lawyer has committed a violation of the Rules of Professional Conduct may include but are not limited to communicating directly with the lawyer who may have committed the violation, or reporting the suspected violation to the appropriate authority or other agency or body.

RULE 2.16: *Cooperation with Disciplinary Authorities*

(A) A judge shall cooperate and be candid and honest with judicial and lawyer disciplinary agencies in accordance with law.

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

Comment

[1] Cooperation with investigations and proceedings of judicial and lawyer discipline agencies, as required in paragraph (A), instills confidence in judges' commitment to the integrity of the judicial system and the protection of the public.

CANON 3

A JUDGE SHALL CONDUCT THE JUDGE'S EXTRAJUDICIAL ACTIVITIES TO MINIMIZE THE RISK OF CONFLICT WITH THE OBLIGATIONS OF JUDICIAL OFFICE.

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, stationary, 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.

Comment

[1] 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 educational,

religious, charitable, fraternal or civic extrajudicial activities not conducted for profit, even when the activities do not involve the law. See Rule 3.7

[2] Participation in both law-related and other extrajudicial activities helps integrate judges into their communities, and furthers public understanding of and respect for courts and the judicial system.

[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 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 3.2: *Appearances before Governmental 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:

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

(B) in connection with matters about which the judge acquired knowledge or expertise in the course of the judge's judicial duties; or

(C) when the judge is acting pro se in a matter involving the judge's legal or economic interests, or when the judge is acting in a fiduciary capacity.

Comment

[1] Judges possess special expertise in matters of law, the legal system, and the administration of justice, and may properly share that expertise with governmental bodies and executive or legislative branch officials.

[2] In appearing before governmental bodies or consulting with government officials, judges must 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.

[3] In general, it would be an unnecessary and unfair burden to prohibit judges from appearing before governmental bodies or consulting with government officials on matters that are likely to affect them as private citizens, such as zoning proposals affecting their real property. In engaging in such activities, however, judges must not refer to their judicial positions, and must otherwise exercise caution to avoid using the prestige of judicial office.

RULE 3.3: *Testifying as a Character Witness*

A judge shall not testify as a character witness in a judicial, administrative, or other adjudicatory proceeding or otherwise vouch for the character of a person in a legal proceeding, except when duly subpoenaed.

Comment

[1] A judge who, without being subpoenaed, testifies as a character witness abuses the prestige of judicial office to advance the interests of another. See Rule 1.3. Except in unusual circumstances where the demands of justice require, a judge should discourage a party from requiring the judge to testify as a character witness.

RULE 3.4: *Appointments to Governmental Positions*

A judge shall not accept appointment to a governmental committee, board, commission, or other governmental position, unless it is one that concerns the law, the legal system, or the administration of justice.

Comment

[1] Rule 3.4 implicitly acknowledges the value of judges accepting appointments to entities that concern the law, the legal system, or the administration of justice. Even in such instances, however, a judge should assess the appropriateness of accepting an appointment, paying particular attention to the subject matter of the appointment and the availability and allocation of judicial resources, including the judge's time commitments, and giving due regard to the requirements of the independence and impartiality of the judiciary.

[2] A judge may represent his or her country, state, or locality on ceremonial occasions or in connection with historical, educational, or cultural activities. Such representation does not constitute acceptance of a government position.

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 others if consistent with other provisions of the 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.

(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). 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

[1] A judge's public manifestation of approval of invidious discrimination on any basis gives rise to the appearance of impropriety and diminishes public confidence in the integrity and impartiality of the judiciary. A judge's membership in an organization that practices invidious discrimination creates the perception that the judge's impartiality is impaired.

[2] An organization is generally said to discriminate invidiously if it arbitrarily excludes from membership on the basis of race, sex, gender, religion, national origin, ethnicity, or sexual orientation persons who would otherwise be eligible for admission. Whether an organization practices invidious discrimination is a complex question to which judges should be attentive. The answer cannot be determined from a mere examination of an organization's current

membership rolls, but rather, depends upon how the organization selects members, as well as other relevant factors, such as whether the organization is dedicated to the preservation of religious, ethnic, or cultural values of legitimate common interest to its members, or whether it is an intimate, purely private organization whose membership limitations could not constitutionally be prohibited.

[3] When a judge learns that an organization to which the judge belongs engages in invidious discrimination, the judge must resign immediately from the organization.

[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:

(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;

(2) soliciting contributions for such an organization or entity, but only from members of the judge's family;

(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;

(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;

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

(6) serving as an officer, 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.

Comment

[1] The activities permitted by paragraph (A) generally include those sponsored by or undertaken on behalf of private not-for-profit educational institutions, and other not-for-profit organizations, including law-related, charitable, and other 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 fund-raising purpose, does not constitute a violation of paragraph (A)(4). 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 fund-raising events sponsored by educational, religious, charitable, fraternal, or civic organizations. Such activities are not solicitation and do not present an element of coercion or abuse of the prestige of judicial office.

[4] Identification of a judge's position in educational, religious, charitable, fraternal, or civic organizations on letterhead used for fund-raising or membership solicitation 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] In addition to appointing lawyers to serve as counsel for indigent parties in individual cases, a judge may promote broader access to justice by encouraging lawyers to participate in pro bono publico 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 programs, training lawyers to do pro bono publico legal work, and participating in events recognizing lawyers who have done pro bono publico work.

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.

(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.

Comment

[1] A judge should recognize that other restrictions imposed by this Code may conflict with a judge's obligations as a fiduciary; in such circumstances, a judge should resign as fiduciary. For example, serving as a fiduciary might require frequent disqualification of a judge under Rule 2.11 because a judge is deemed to have an economic interest in shares of stock held by a trust if the amount of stock held is more than de minimis.

RULE 3.9: *Service as an Arbitrator or Mediator*

A judge shall not act as an arbitrator or a mediator or perform other judicial functions apart from the judge's official 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.

RULE 3.10: *Practice of Law*

A judge shall not practice law. A judge may act pro se and may, without compensation, give legal advice to and draft or review documents for a member of the judge's family,* but is prohibited from serving as the family member's lawyer in any forum.

Comment

[1] A judge may act pro se in all legal matters, including matters involving litigation and matters involving appearances before or other dealings with governmental bodies. A judge must not use the prestige of office to advance the judge's personal or family interests. Nothing in this Rule shall be interpreted to prohibit judges from practicing law as allowed by Miss. Code Ann. § 9-1-25 and § 9-9-9, which authorize judges on the Supreme Court, court of appeals, circuit courts, chancery courts, or county courts to continue to practice for six months before certain courts from the time they assume office in order to conclude pending cases. Any cases which a judge seeks to conclude must be pending. This does not include cases which are in the judge's office but not yet filed. *Mississippi Commission on Judicial Performance v. Osborne*, 876 So. 2d 324, 327 (Miss. 2004).

RULE 3.11: *Financial, Business, and 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 member of the judge's family.

(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.

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. 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. 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 2.11.

[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 violates 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.

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.

(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;

(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;

(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;

(7) books, magazines, journals, audiovisual materials, and other resource materials supplied by publishers or law schools 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, or other person or family member of a judge residing in the judge's household, but that incidentally benefit the judge.

(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;

(2) invitations to the judge and the judge's spouse 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 nonjudges who are engaged in similar ways in the activity as is the judge; and

(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.

Comment

[1] Whenever a judge accepts a gift or other thing of value without paying fair market value, there is a risk that the benefit might be viewed as intended to influence the judge's decision in a case. Rule 3.13 imposes restrictions upon the acceptance of such benefits, according to the magnitude of the risk. Paragraph (B) identifies circumstances in which the risk

that the acceptance would appear to undermine the judge's independence, integrity, or impartiality is low, and explicitly provides that such items need not be publicly reported. As the value of the benefit or the likelihood that the source of the benefit will appear before the judge increases, the judge is either prohibited under paragraph (A) from accepting the gift, or required under paragraph (C) to publicly report it.

[2] Gift-giving between friends and relatives is a common occurrence, and ordinarily does not create an appearance of impropriety or cause reasonable persons to believe that the judge's independence, integrity, or impartiality has been compromised. In addition, when the appearance of friends or relatives in a case would require the judge's disqualification under Rule 2.11, there would be no opportunity for a gift to influence the judge's decision making. Paragraph (B)(2) places no restrictions upon the ability of a judge to accept gifts or other things of value from friends or relatives under these circumstances, and does not require public reporting.

[3] 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 longevity of the relationship, volume of business transacted, and other factors. A judge may freely accept such benefits if they are available to the general public, or if the judge qualifies for the special price or discount according to the same criteria as are applied 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 below-market interest rates unless the same rate was being made available to the general public for a certain period of time or only to borrowers with specified qualifications that the judge also possesses.

[4] Rule 3.13 applies only to acceptance of gifts or other things of value by a judge. Nonetheless, if a gift or other benefit is given to the judge's spouse, member of the judge's household, it may be viewed as an attempt to evade Rule 3.13 and influence the judge indirectly. Where the gift or benefit is made primarily to such other persons, 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 such gifts or benefits.

[5] Rule 3.13 does not apply to contributions to a judge's campaign for judicial office. Such contributions are governed by other Rules of this Code, including Rules 4.3 and 4.4.

RULE 3.14: *Reimbursement of Expenses and Waivers of Fees or Charges*

(A) Unless otherwise prohibited by Rules 3.1 and 3.13(A) or other law, a judge may accept reimbursement of necessary and reasonable expenses for travel, food, lodging, or other incidental expenses, or a waiver or partial waiver of fees or charges for registration, tuition, and similar items, from sources other than the judge's employing entity, if the expenses or charges are associated with the judge's participation in extrajudicial activities permitted by this Code.

(B) Reimbursement of expenses for necessary travel, food, lodging, or other incidental expenses shall be limited to the actual costs reasonably incurred by the judge and, when appropriate to the occasion, by the judge's spouse or guest.

(C) A judge who accepts reimbursement of expenses or waivers or partial waivers of fees or charges on behalf of the judge or the judge's spouse or guest shall publicly report such acceptance as required by Rule 3.15.

Comment

[1] Educational, civic, religious, fraternal and charitable organizations often sponsor meetings, seminars, symposia, dinners, awards, ceremonies, and similar events. Judges are encouraged to attend educational programs, as both teachers and participants, in law-related and academic disciplines, in furtherance of their duty to remain competent in the law. Participation in a variety of other extrajudicial activity is also permitted and encouraged by this Code.

[2] Not infrequently, sponsoring organizations invite certain judges to attend seminars or other events on a fee-waived or partial-fee-waived basis, and sometimes include reimbursement for necessary travel, food, lodging, or other incidental expenses. A judge's decision whether to accept reimbursement of expenses or a waiver or partial waiver of fees or charges in connection with these or other extrajudicial activities must be based upon an assessment of all the circumstances. The judge must undertake a reasonable inquiry to obtain the information necessary to make an informed judgment about whether acceptance would be consistent with the requirements of this Code.

[3] A judge must assure himself or herself that acceptance of reimbursement or fee waivers would not appear to a reasonable person to undermine the judge's independence, integrity, or impartiality. The factors that a judge should consider when deciding whether to accept reimbursement or a fee waiver for attendance at a particular activity include:

- (a) whether the sponsor is an accredited educational institution or bar association rather than a trade association or a for-profit entity;
- (b) whether the funding comes largely from numerous contributors rather than from a single entity and is earmarked for programs with specific content;
- (c) whether the content is related or unrelated to the subject matter of litigation pending or impending before the judge, or to matters that are likely to come before the judge;

(d) whether the activity is primarily educational rather than recreational, and whether the costs of the event are reasonable and comparable to those associated with similar events sponsored by the judiciary, bar associations, or similar groups;

(e) whether information concerning the activity and its funding sources is available upon inquiry;

(f) whether the sponsor or source of funding is generally associated with particular parties or interests currently appearing or likely to appear in the judge's court, thus possibly requiring disqualification of the judge under Rule 2.11;

(g) whether differing viewpoints are presented;

(h) 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.

RULE 3.15: *Reporting Requirements*

(A) A judge shall publicly report the amount or value of:

(1) compensation received for extrajudicial activities as permitted by Rule 3.12;

(2) gifts and other things of value as permitted by Rule 3.13(C), unless the value of such items, alone or in the aggregate with other items received from the same source in the same calendar year, does not exceed \$500; and

(3) reimbursement of expenses and waiver of fees or charges permitted by Rule 3.14(A), unless the amount of reimbursement or waiver, alone or in the aggregate with other reimbursements or waivers received from the same source in the same calendar year, does not exceed \$500.

(B) When public reporting is required by paragraph (A), a judge shall report the date, place, and nature of the activity for which the judge received any compensation; the description of any gift, loan, bequest, benefit, or other thing of value accepted; and the source of reimbursement of expenses or waiver or partial waiver of fees or charges.

(C) The public report required by paragraph (A) shall be made at least annually, except that for reimbursement of expenses and waiver or partial waiver of fees or charges, the report shall be made within thirty days following the conclusion of the event or program.

(D) Reports made in compliance with this Rule shall be filed as public documents in the office of the clerk of the court on which the judge serves or other office designated by law, and, when technically feasible, posted by the court or office personnel on the Mississippi Supreme Court website or any other location as the Supreme Court shall direct.

**A JUDGE OR CANDIDATE FOR JUDICIAL OFFICE SHALL NOT ENGAGE IN POLITICAL OR
CAMPAIGN ACTIVITY THAT IS INCONSISTENT WITH THE INDEPENDENCE, INTEGRITY, OR
IMPARTIALITY OF THE JUDICIARY**

RULE 4.1 *Political and Campaign Activities of Judges and Judicial Candidates in General*

(A) Except as permitted by law, or by Rules 4.2, 4.3, and 4.4, a judge or judicial candidate 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 different public office;
- (4) solicit funds for, pay an assessment to, or make a contribution to a political organization or a candidate for public office;
- (5) attend or purchase tickets for dinners or other events sponsored by a political organization or a candidate for public office, except as provided in Rule 4.2(B)(4);
- (6) publicly identify himself or herself as a candidate for public office, except as provided in Rule 4.2(B)(1);
- (7) seek, accept, or use endorsements from a political organization, except as provided in Rule 4.2(B)(5);
- (8) personally solicit or accept campaign contributions other than through a campaign committee authorized by Rule 4.4;
- (9) use or permit the use of campaign contributions for the private benefit of the judge, the candidate, or others;
- (10) use court staff, facilities, or other court resources in a campaign for judicial office, except as allowed by Miss. Code Ann. § 25-15-973;
- (11) knowingly, or with reckless disregard for the truth, make any false or misleading statement;
- (12) 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; or
- (13) 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.

(B) 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 paragraph (A).

Comment

General Considerations

[1] Even when subject to public election, a judge plays a role different from that of a legislator or executive branch official. Rather than making decisions based on the express views of preferences of the electorate, a judge makes decisions based upon the law and the facts of every case. Therefore, in furtherance of this interest, judges and judicial candidates must, to the greatest extent possible, be free and appear to be free from political influence and political pressure. This Canon imposes narrowly tailored restrictions upon the political and campaign activities of all judges and judicial candidates, taking into account the various methods of selecting judges.

[2] When a person becomes a judicial candidate, this Canon becomes applicable to his or her conduct.

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. Although judges and judicial candidates may register to vote as members of a political party, they are prohibited by paragraph (A)(1) from assuming leadership roles in political organizations.

[4] Paragraphs (A)(2) and (A)(3) prohibit judges and judicial candidates from making speeches on behalf of political organizations or publicly endorsing or opposing candidates for public office, respectively, to prevent them from abusing the prestige of judicial office to advance the interests of others. See Rule 1.3. These Rules do not prohibit candidates from campaigning on their own behalf, or from endorsing or opposing candidates for the same judicial office for which they are running. See Rule 4.2(B)(2).

[5] Although members of the families of judges and judicial candidates are free to engage in their own political activity, including running for public office, there is no “family exception” to the prohibition in paragraph (A)(3) 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 they endorse any family member’s candidacy or other political activity.

[6] Judges and judicial candidates retain their right to participate in the political process as voters in both primary and general elections.

Statements and Comments Made during a Campaign for Judicial Office

[7] Judicial candidates must be scrupulously fair and accurate in all statements made by them and their campaign committees. Paragraph (A)(11) obligates candidates and their committees to refrain from making statements that are false or misleading, or that omit facts necessary to make the communication considered as a whole not materially misleading.

[8] Judicial candidates are sometimes the subject of false, misleading, or unfair allegations made by opposing candidates, third parties, or the media. For example, false or misleading statements might be made regarding the identity, present position, experience, qualifications, or judicial rulings of a candidate. In other situations, false or misleading allegations may be made that bear upon a candidate's integrity or fitness for judicial office. As long as the candidate does not violate paragraphs (A)(11), (A)(12), or (A)(13), the candidate may make a factually accurate public response. In addition, when an independent third party has made unwarranted attacks on a candidate's opponent, the candidate may disavow the attacks, and request the third party to cease and desist.

[9] Subject to paragraph (A)(12), a judicial candidate is permitted to respond directly to false, misleading, or unfair allegations made against him or her during a campaign, although it is preferable for someone else to respond if the allegations relate to a pending case.

[10] Paragraph (A)(12) prohibits judicial candidates from making comments that might impair the fairness of pending or impending judicial proceedings. This provision does not restrict arguments or statements to the court or jury by a lawyer who is a judicial candidate, or rulings, statements or instructions by a judge that may appropriately affect the outcome of a matter.

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

[11] The role of a judge is different from that of a legislator or executive branch official, even when the judge is subject to public election. Campaigns for judicial office must be conducted differently from campaigns for other offices. The narrowly drafted restrictions upon political and campaign activities of judicial candidates provided in Canon 4 allow candidates to conduct campaigns that provide voters with sufficient information to permit them to distinguish between candidates and make informed electoral choices.

[12] Paragraph (A)(13) makes applicable to both judges and judicial candidates the prohibition that applies to judges in Rule 2.10(B), relating to pledges, promises, or commitments that are inconsistent with the impartial performance of the adjudicative duties of judicial office.

[13] 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 statement must be examined to determine if a reasonable person would believe that the candidate for judicial office has specifically undertaken to reach a particular result. Pledges, promises, or commitments must be contrasted with statements or announcements of personal views on legal, political, or other issues, which are not prohibited. When making such statements, a judge should acknowledge the overarching judicial obligation to apply and uphold the law, without regard to his or her personal views.

[14] A judicial candidate may make campaign promises related to judicial organization, administration, and court management, such as a promise to dispose of a backlog of cases, start court sessions on time, or avoid favoritism in appointments and hiring. A candidate may also pledge to take action outside the courtroom, such as working toward an improved jury selection system, or advocating for more funds to improve the physical plant and amenities of the courthouse.

[15] Judicial candidates may receive questionnaires or requests for interviews from the media and from issue advocacy or other community organizations that seek to learn their views on disputed or controversial legal or political issues. Paragraph (A)(13) does not specifically address judicial responses to such inquiries. Depending upon the wording and format of such questionnaires, candidates' responses might be viewed as pledges, promises, or commitments to perform the adjudicative duties of office other than in an impartial way. To avoid violating paragraph (A)(13), therefore, candidates who respond to media and other inquiries should also give assurances that they will keep an open mind and will carry out their adjudicative duties faithfully and impartially if elected. Candidates who do not respond may state their reasons for not responding, such as the danger that answering might be perceived by a reasonable person as undermining a successful candidate's independence or impartiality, or that it might lead to frequent disqualification. See Rule 2.11.

RULE 4.2: *Political and Campaign Activities of Judicial Candidates in Public Elections*

(A) A judicial candidate in a public election shall:

(1) Act at all times in a manner consistent with the independence, integrity, and impartiality of the judiciary;

(2) Comply with all applicable election, election campaign, and election campaign fund-raising laws and regulations;

(3) Review and approve the content of all campaign statements and materials produced by the candidate or his or her campaign committee, as authorized by Rule 4.4, before their dissemination; and

(4) Take reasonable measures to ensure that other persons do not undertake on behalf of the candidate activities, other than those described in Rule 4.4, that the candidate is prohibited from doing by Rule 4.1.

(B) A candidate for elective judicial office may, unless prohibited by law, and not earlier than January 1 of the calendar year of the election:

(1) establish a campaign committee pursuant to the provisions of Rule 4.4;

(2) speak on behalf of his or her candidacy through any medium, including but not limited to advertisements, websites, or other campaign literature;

(3) [Omitted]

(4) attend or purchase tickets for dinners for other events sponsored by a political organization or a candidate for public office;

(5) seek, accept, or use endorsements from any person or organization other than a partisan political organization; and

(6) [Omitted]

(C) A judicial candidate in a partisan public election may, unless prohibited by law, and not earlier than January 1 before the first applicable primary election, caucus, or general election:

(1) identify himself or herself as a candidate of a political organization; and

(2) seek, accept, and use endorsements of a political organization.

Comment

[1] Paragraphs (B) and (C) permit judicial candidates in public elections to engage in some political and campaign activities otherwise prohibited by Rule 4.1. Candidates may not engage in these activities earlier than January 1 of the calendar year of the election.

[2] Despite paragraphs (B) and (C), judicial candidates for public election remain subject to many of the provisions of Rule 4.1. For example, a candidate continues to be prohibited from soliciting funds for a political organization, knowingly making false or misleading statements during a campaign, or making certain promises, pledges, or commitments related to future adjudicative duties. See Rule 4.1(A), paragraphs (4), (11), and (13).

[3] In partisan public elections for judicial office, a candidate may be nominated by, affiliated with, or otherwise publicly identified or associated with a political organization,

including a political party. This relationship may be maintained throughout the period of the public campaign, and may include use of political party or similar designations on campaign literature and on the ballot.

[4] In nonpartisan public elections, paragraph (B)(5) prohibits a candidate from seeking, accepting, or using nominations or endorsements from a partisan political organization.

[5] Judicial candidates are permitted to attend or purchase tickets for dinners and other events sponsored by political organizations.

[6] [Omitted]

[7] [Omitted]

RULE 4.3: *Activities of Candidates for Appointive Judicial Office*

A candidate for appointment to judicial office may:

(A) communicate with the appointing or confirming authority, including any selection, screening, or nominating commission or similar agency; and

(B) seek endorsements for the appointment from any person or organization other than a partisan political organization.

Comment

[1] When seeking support or endorsement, or when communicating directly with an appointing or confirming authority, a candidate for appointive judicial office must not make any pledges, promises, or commitments that are inconsistent with the impartial performance of the adjudicative duties of the office. See Rule 4.1(A)(13).

RULE 4.4: *Campaign Committees*

(A) A judicial candidate subject to public election may establish a campaign committee to manage and conduct a campaign for the candidate, subject to the provisions of this Code. The candidate is responsible for ensuring that the candidate's campaign committee complies with applicable provisions of this Code and other applicable law.

(B) A judicial candidate subject to public election shall direct his or her campaign committee:

(1) to solicit and accept only such campaign contributions as are reasonable, in any event not to exceed those limitations placed on contributions by individuals, political action committees and corporations by law;

(2) not to solicit or accept contributions for a candidate's current campaign earlier than 60 days before the qualifying deadline, nor more than 120 days after the last election in which the candidate participated; and

(3) to comply with all applicable statutory requirements for disclosure and reporting of contributions, loans and extensions of credit.

Comment

[1] Judicial candidates are prohibited from personally soliciting campaign contributions or personally accepting campaign contributions. See Rule 4.1(A)(8). This Rule recognizes that judicial candidates must raise campaign funds to support their candidacies, and permits candidates, other than candidates for appointive judicial office, to establish campaign committees to solicit and accept reasonable financial contributions or in-kind contributions.

[2] Campaign committees may solicit and accept campaign contributions, manage the expenditure of campaign funds, and generally conduct campaigns. Candidates are responsible for compliance with the requirements of election law and other applicable law, and for the activities of their campaign committees.

[3] At the start of a campaign, the candidate must instruct the campaign committee to solicit or accept only such contributions as are in conformity with applicable law. See Rule 2.11.

[4] Examples of applicable law include Miss. Code Ann. § 23-15-1021 which provides limits on contributions to judicial campaigns for Supreme Court, Court of Appeals, county, circuit, and chancery judicial campaigns. In addition, candidates for the Supreme Court, Court of Appeals, circuit judge, chancellor, county court judge, and family judge are required to file periodic reports of contributions and disbursements as required by Miss. Code Ann. § 23-15-807(c).

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

(A) Upon becoming a candidate for a nonjudicial elective office, a judge shall resign from judicial office, unless permitted by law to continue to hold judicial office.

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

Comment

[1] In campaigns for nonjudicial elective public office, candidates may make pledges, promises, or commitments related to positions they would take and ways they would act if elected to office. Although appropriate in nonjudicial campaigns, this manner of campaigning is inconsistent with the role of a judge, who must remain fair and impartial to all. The potential for misuse of the judicial office, and the political promises that the judge would be compelled to

make in the course of campaigning for nonjudicial elective office, together dictate that a judge who wishes to run for such an office must resign upon becoming a candidate.

[2] The “resign to run” rule set forth in paragraph (A) ensures that a judge cannot use the judicial office to promote the judge’s candidacy, and prevents post-campaign retaliation from the judge in the event the judge is defeated in the election. When a judge is seeking appointive nonjudicial office, however, the dangers are not sufficient to warrant imposing the “resign to run” rule.

RULE 4.6: *Standards of Judicial Conduct Advisory Committee*

(A) *Applicability.* Canon 4 generally applies to all incumbent judges and judicial candidates. In addition, the Standards of Judicial Conduct Advisory Committee may respond to campaign speech even though those responsible for the speech are not subject to discipline under the Code of Judicial Conduct or the Mississippi Rules of Professional Responsibility.

(B) *Standards of Judicial Conduct Advisory Committee.*

(1) Purpose. A Standards of Judicial Conduct Advisory Committee (“Judicial Advisory Committee”), shall be created, whose responsibility shall be as follows:

(a) To provide voter and judicial candidate education as to the role of the judiciary in our justice system.

(b) To discourage unethical campaign conduct and to respond to campaign conduct and prohibited false speech as necessary to protect the independence, integrity, and impartiality of the judiciary.

(c) To assist and publish advisory opinions concerning judicial ethics, and including but not limited to opinions concerning campaign conduct.

The Judicial Advisory Committee membership, forms, and operating procedures shall be posted on the Mississippi Supreme Court website.

(2) Composition. The Committee shall be composed of nine members chosen as follows:

(a) The Chief Justice of the Mississippi Supreme Court shall appoint three attorney members to the Committee, with one of the appointments designated for an attorney practicing primarily criminal law;

(b) The Governor shall appoint one attorney from any practice discipline and one non-attorney to the Committee;

(c) The Lieutenant Governor shall appoint one attorney and one non-attorney to the Committee.

(d) The Speaker of the House of Representatives shall appoint one attorney and one non-attorney to the Committee.

(3) Disqualifications. The disqualification provisions of the Mississippi Code of Judicial Conduct shall apply to the members of the Judicial Advisory Committee. Committee operating procedures shall establish procedures for motions to disqualify Committee members.

(4) Voting. Any action of the Judicial Advisory Committee shall require the vote of at least six members. If necessary to ensure the participation of nine members, the Chief Justice, or, if the Chief Justice is a candidate, the next senior justice not a candidate, may appoint temporary alternates to ensure a full complement of nine members are available to participate.

(5) Terms. Members shall be appointed to four-year terms. They shall serve without compensation but shall enjoy the same immunity from suit and from liability as if they were judges.

(6) Administrative Support. The Judicial Advisory Committee shall have such administrative support as the Mississippi Supreme Court determines.

(7) Advisory Opinions. Any judge or judicial candidate may at any time request, and, upon request the Judicial Advisory Committee may issue, advisory opinions on compliance with the Mississippi Code of Judicial Conduct in election campaigns and otherwise. The confidentiality of the judge requesting an advisory opinion shall be protected by redacting identifying names and data. The Committee will publish its opinions on its website. The opinions will be advisory only, but the Commission on Judicial Performance, the Mississippi Supreme Court, and all other regulatory and enforcement authorities shall take into account reliance by a judge or judicial candidate on such an opinion when considering any disciplinary action.

(8) Judicial Candidate Meeting. The Judicial Advisory Committee, including its chairman and any other designee, shall meet with all the judicial candidates in an educational session to be held within 20 days of the qualifying deadline. The Committee, in consultation with the Supreme Court, will determine the course curriculum. At the session, each judicial candidate will receive a copy of the Mississippi Code of Judicial Conduct, statutes applicable to judicial campaign conduct, Committee operating procedures, summaries of previously issued Committee opinions, Committee web/contact information, and campaign conduct complaint procedures.

(9) Written Certification by the Candidate of Receipt, Agreement, and Understanding.

(a) *Receipt of Materials and Agreement to be Bound.* Each candidate and campaign chairman in a contested election must certify that the candidate has received and read the material provided. Each candidate must also certify that the candidate agrees to be bound by the Mississippi Code of Judicial Conduct during the course of the campaign. Failure to so certify in writing within 10 days after the candidate meeting will authorize the Judicial Advisory Committee to immediately publicize that failure.

(b) *Understanding Concerning Prohibited False Speech.* Each candidate in a contested election must also specifically certify his or her understanding that certain false speech is prohibited. Prohibited false speech is speech that, in the opinion of the Judicial Advisory Committee, (i) makes or implies a false statement of fact with knowing or reckless disregard for its falsity; and (ii) undermines the public's respect for the independence, impartiality and integrity of the judiciary.

Failure to so certify in writing within 10 days after the candidate meeting will authorize the Judicial Advisory Committee to immediately publicize that failure.

(10) Contact Information. The judicial candidates and their committees shall provide the Judicial Advisory Committee contact information, including email addresses, fax numbers, and mailing address, for receipt of notice of complaints of unethical campaign conduct or for the receipt of other communications from the Committee. A judicial candidate shall maintain current contact information, including telephone number, fax number, email address, and mailing address with the Committee and shall check for email or mail on a daily basis.

(11) Written Notice of Complaint of Unethical Conduct of Prohibited False Speech. When the Judicial Advisory Committee takes or receives notice that unethical conduct or prohibited false speech may have occurred, it shall notify the offending candidate, committee, or other person of the alleged unethical conduct or prohibited false speech. The notice shall provide an opportunity for written rebuttal and state the time period within which a rebuttal should be received. Notice to parties or groups not subject to the Code of Judicial Conduct or the Mississippi Rules of Professional Responsibility shall also inform such person of the content of this rule.

(12) Rebuttal to Complaint. A written rebuttal submitted in response to notice of an allegation of unethical conduct or prohibited false speech may be submitted to the Judicial Advisory Committee at the address published on the Committee's website within the response period stated in the notice. The response may include evidence relevant to the complaint or response.

(13) Investigation and Deliberation. The Judicial Advisory Committee may investigate facts alleged in either a complaint or in a rebuttal. All proceedings under this rule

shall be informal and non-adversarial. The Committee may convene and conduct meetings either in person or by electronic media. The Committee may act on information duly gathered in its investigation without any requirement that it take testimony or hear oral argument.

(14) Confidentiality. Complaints and Judicial Advisory Committee action on such complaints will remain confidential until the Committee determines to release information.

(15) Evidentiary Standard. If, after a fair opportunity for rebuttal has been provided, at least six members of the Judicial Advisory Committee determine that facts clearly and convincingly show the unethical conduct or prohibited false speech has occurred, the Committee may take appropriate corrective measures.

(16) Corrective Measures. The Judicial Advisory Committee's response to unethical conduct or prohibited false speech may include:

(a) *Confidential Admonishment.* Written notice of the unethical conduct or prohibited false speech and an admonishment to the offending person.

(b) *Amends.* A request to the offending person to correct unethical conduct or the prohibited false speech.

(c) *Disavow.* A request to a candidate to publicly disavow unethical conduct or prohibited false speech by a third party if the conduct or speech would appear to a reasonable person to have been endorsed by the candidate.

(d) *Committee Disavowal and Publication.* The Judicial Advisory Committee may itself disavow unethical conduct or prohibited false speech and publish its own factual response. The Committee may also publicize the names of judicial candidates who have refused amend, or disavow unethical conduct or prohibited false speech.

(e) *No Disciplinary Power.* In no event shall the Judicial Advisory Committee have the authority to institute disciplinary action, criminal action, or civil actions.

(17) Voter Guide. The Judicial Advisory Committee shall public a voter guide on the Committee's website. The voter guide shall generally describe the judicial branch of state government, state the functions of the different courts, and set forth the role that judges play in the judicial process.

Comment

[1] The prior version of the Code of Judicial Conduct did not apply to justice court judges or municipal judges. Canon 5F of the current Code does apply to candidates for justice court positions. The need for professionalism in all judicial elections, and the need to ensure that

candidates for justice court and municipal positions are adequately informed of their ethical responsibilities, justified applying the responsibilities of this Rule to justice court and municipal court races.

[2] Any operating procedures adopted by the Judicial Conduct Advisory Committee are subject to approval of the Mississippi Supreme Court acting pursuant to its inherent authority under the Constitution of the State of Mississippi. *See Newell v. Mississippi*, 308 So. 2d 71 (Miss. 1975).