

# GEORGIA CODE OF JUDICIAL CONDUCT

## Table of Contents

<b>Preamble and Scope</b>	1
<b>Terminology</b>	3
<b>Application</b>	9
<b>A. Part-time Judges</b>	9
<b>B. Judges Pro Tempore</b>	10
<b>C. Time for Compliance</b>	12
<b>D. Ongoing Disciplinary Authority</b>	12
<b>Canons, Rules, and Commentary</b>	13
<b>Canon 1 – JUDGES SHALL UPHOLD THE INDEPENDENCE, INTEGRITY, AND IMPARTIALITY OF THE JUDICIARY AND SHALL AVOID IMPROPRIETY AND THE APPEARANCE OF IMPROPRIETY IN ALL OF THEIR ACTIVITIES</b>	13
<b>Rule 1.1 Complying With the Law</b>	13
<b>Rule 1.2 Promoting Public Confidence in the Judiciary</b>	13
<b>Rule 1.3 Respecting the Prestige of Judicial Office</b>	14
<b>Canon 2 – JUDGES SHALL PERFORM THE DUTIES OF JUDICIAL OFFICE IMPARTIALLY, COMPETENTLY, AND DILIGENTLY</b>	16
<b>Rule 2.1 Giving Priority to Judicial Duties in General</b>	16
<b>Rule 2.2 Impartiality and Fairness</b>	16

<b>Rule 2.3 Bias, Prejudice, and Harassment</b>	16
<b>Rule 2.4 External Influences on Judicial Conduct</b>	18
<b>Rule 2.5 Performing Administrative Responsibilities</b>	18
<b>Rule 2.6 Ensuring the Right to Be Heard</b>	19
<b>Rule 2.7 Responsibility to Decide</b>	19
<b>Rule 2.8 Adjudicating Pending Proceedings Fairly</b>	20
<b>Rule 2.9 Assuring Fair Hearings and Averting Ex Parte Communications</b>	21
<b>Rule 2.10 Judicial Statements on Pending Proceedings and Impending Matters</b>	24
<b>Rule 2.11 Disqualification and Recusal</b>	25
<b>Rule 2.12 Supervisory Duties</b>	29
<b>Rule 2.13 Administrative Appointments</b>	30
<b>Rule 2.14 Disability and Impairment</b>	31
<b>Rule 2.15 Responding to Judicial and Lawyer Misconduct</b>	31
<b>Rule 2.16 Reserved</b>	32
<b>Canon 3 – JUDGES SHALL REGULATE THEIR EXTRA-JUDICIAL ACTIVITIES TO MINIMIZE THE RISK OF CONFLICT WITH THEIR JUDICIAL DUTIES</b>	33
<b>Rule 3.1 Participation in Extra-Judicial or Avocational Activities</b>	33
<b>Rule 3.2 Appearances before Governmental Bodies and Consultation with Government Officials</b>	33
<b>Rule 3.3 Testifying as a Character Witness</b>	33
<b>Rule 3.4 Accepting Extra-Judicial Appointments</b>	34
<b>Rule 3.5 Use of Non-Public Information</b>	34
<b>Rule 3.6 Avoiding Associations That Undermine the Impartiality of Judges</b>	34
<b>Rule 3.7 Participation in Law-Related, Educational, Religious, Charitable, Fraternal, or Civic Organizations and Activities</b>	35
<b>Rule 3.8 Fiduciary Activities</b>	37
<b>Rule 3.9 Arbitration and Mediation</b>	38
<b>Rule 3.10 Practice of Law</b>	38
<b>Rule 3.11 Financial Activities and Business Dealings</b>	38
<b>Rule 3.12 Receiving Quasi-Judicial and Extra-Judicial Compensation</b>	40

<b>Rule 3.13 Gifts or Similar Benefits</b>	40
<b>Rule 3.14 Expense Reimbursement</b>	45
<b>Rule 3.15 Reports and Procedures for Reporting</b>	45
<b>Canon 4 – JUDGES SHALL REFRAIN FROM POLITICAL ACTIVITY INAPPROPRIATE TO THEIR JUDICIAL OFFICE</b>	47
<b>Rule 4.1 Political Conduct in General</b>	47
<b>Rule 4.2 Campaign Conduct</b>	47
<b>Rule 4.3 Candidacy for Appointive Judicial Office</b>	50
<b>Rule 4.4 Reserved</b>	50
<b>Rule 4.5 Candidacy for Non-Judicial Office</b>	50
<b>Rule 4.6 Applicability of the Political Conduct Rules</b>	51
<b>Effective Date of Revised Code and Amendments</b>	52
<b>Appendix: Citations to Terminology</b>	53

# PREAMBLE AND SCOPE

## Preamble

[1] Our legal system is based on the principle that an independent, fair, and competent judiciary will interpret and apply the laws that govern us. The role of the judiciary is central to American concepts of justice and the rule of law. Intrinsic to all sections of this Code are the precepts that judges, individually and collectively, must respect and honor the judicial office as a public trust and strive to enhance and maintain confidence in our legal system.

[2] Every judge should strive to maintain the dignity appropriate to the judicial office. The judge is an arbiter of facts and *law* for the resolution of disputes and a highly visible symbol of government under the rule of law. Judges should avoid both *impropriety* and the appearance of *impropriety* in their professional and personal lives. They should at all times exhibit behavior that ensures the greatest possible public confidence in their *independence, impartiality, integrity, and competence*. As a result, judges should be held to a higher standard, and should conduct themselves with the dignity accorded their esteemed position.

[3] The Code of Judicial Conduct establishes standards for ethical conduct of judges and *judicial candidates*. It consists of broad statements called Canons, specific Rules as well as Commentary set forth under each Canon, a Preamble, a Terminology section, and an Application section. The text of the Canons and the Rules, including the Terminology and Application sections, is authoritative. The Commentary and the Preamble, by explanation and example, provide guidance with respect to the purpose and meaning of the Canons and the Rules. Neither the Preamble nor the Commentary is intended as a statement of additional Rules. When the text uses “shall” or “shall not,” it is intended to impose binding obligations the violation of which are grounds for disciplinary action. When “should” or “should not” is used, the text is intended as an advisory statement of what is or is not appropriate conduct, and the violation of which may be grounds for disciplinary action. When “may” is used, it denotes permissible discretion or, depending on the context, it refers to action that is not covered by specific proscriptions.

## Scope

[1]-[3] Reserved.

[4] The Code of Judicial Conduct is not intended as an exhaustive guide for the conduct of judges and *judicial candidates*. They should also be governed in their professional and personal conduct by general ethical standards. Judges and *judicial candidates* should strive to achieve the highest ethical standards, even if not required by this Code. The mandatory provisions of the Canons and the Rules describe the basic minimal ethical requirements that should govern the behavior of all judges and *judicial candidates*, and provide guidance to assist them in establishing and maintaining high standards of professional and personal conduct.

[5] The Canons and the Rules should be applied as rules of reason consistent with constitutional requirements, statutes, other court rules, and decisional law, including advisory opinions issued by the Judicial Qualifications Commission, as well as in the context of all relevant circumstances. The Code is to be construed so as not to impinge on the essential *independence* of judges in making judicial decisions, or on judges' First Amendment rights of freedom of speech and association.

[6] The Canons and the Rules are intended to govern conduct of judges and *judicial candidates*, and in certain circumstances to be binding upon them. It is not intended, however, that every transgression will result in disciplinary action. Whether disciplinary action is appropriate, and the degree of discipline to be imposed, should be determined through a reasonable and reasoned application of the text and should depend on such factors as the seriousness of the transgression, whether there is a pattern of improper activity, and the effect of the improper activity on others or on the judicial system.

[7] The Code is designed to provide guidance to judges and *judicial candidates* and to provide a structure for regulating conduct through disciplinary agencies. It is not designed for nor intended as a basis for civil liability or criminal prosecution. 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.

# TERMINOLOGY

The terms defined below are noted using *italic print* in the Rules, Preamble, Application and Terminology sections of this Code. In the Commentary, which is presented using italic print, these defined terms are noted by use of regular print. The Code's concluding Appendix to Citations of Terminology lists specific Canons, Rules, and Commentary where defined terms are used.

**“Aggregate,”** in relation to *contributions* for a *judicial candidate*, means not only *contributions* in cash or in kind made directly to a *judicial candidate* or the *judicial candidate's campaign committee* within the current or immediately preceding *election cycle*, but also all *contributions* made indirectly or independently with the *knowledge* that they will be used to influence the election.

**“Appropriate action”** means action intended and reasonably likely to prevent harm to the justice system and help the judge or lawyer in question address the problem. 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.

**“Appropriate authority”** denotes the authority with responsibility for initiation of disciplinary process with respect to the violation to be reported, which in most cases is the Judicial Qualifications Commission.

**“Campaign committee”** is defined as that term is defined by the “Georgia Government Transparency and Campaign Finance Act of 2010” (OCGA § 21-5-3), as may be amended from time to time.

**“Campaign contribution disclosure report”** is defined as that term is defined by the “Georgia Government Transparency and Campaign Finance Act of 2010” (OCGA § 21-5-3), as may be amended from time to time.

**“Comment”** in connection with a case refers to evaluative statements judging the professional wisdom of specific lawyering tactics or the legal correctness of particular court decisions. In contrast, it does not mean the giving of generally informative explanations to describe litigation factors including the prima facie legal elements of case types pending before the courts, legal concepts such as burden of proof and duty of persuasion or principles such as innocent until proven guilty and knowing waiver of constitutional rights, variable realities illustrated by hypothetical factual patterns of aggravating or mitigating conduct, procedural phases of unfolding lawsuits, the social policy goals behind the *law* subject to application in various cases, as well as competing theories about what the *law* should be.

**“Contribution”** is defined as that term is defined by the “Georgia Government Transparency and Campaign Finance Act of 2010” (OCGA § 21-5-3), as may be amended from time to time.

**“De minimis”** denotes an insignificant interest that could not raise reasonable question as to a judge’s *impartiality*.

**“Degree of relationship”** means relatives within a specified range of kinship, such as the third or the sixth degree of relationship. By the civil law, this calculation is taken from the first person in interest up to the common relative, and then down again to the second person in interest. Each step is counted as one degree. See *Watkins v. State*, 125 Ga. 143, 144 (53 SE 1024) (1906).

**“Domestic partner”** means a person with whom another person maintains a household and an intimate relationship, other than a person to whom he or she is legally married.

**“Economic interest”** denotes ownership of a more than *de minimis* legal or equitable interest, or a relationship as officer, director, advisor, or other active participant in the affairs of a party, except that: (i) ownership of an interest in a mutual or common investment fund that holds securities is not an economic interest in such securities, unless the judge participates in the management of the fund or a *pending proceeding* or *impending matter* before the judge could substantially affect the value of the interest; (ii) service by a judge as an officer, director, advisor, or other active participant in an educational, religious, charitable, fraternal, or civic organization, or service by a judge’s spouse, *domestic partner* or *intimate partner*, parent, or child as an officer, director, advisor, or other active participant in any organization does not create an economic interest in securities held by that organization; (iii) a deposit in a financial institution, or the proprietary interest of a policyholder in a mutual insurance company, or of a depositor in a mutual savings association, is not an economic interest in the organization unless a *pending proceeding* or *impending matter* before the judge could substantially affect the value of the interest; (iv) ownership of government securities is not an economic interest in the issuer unless a *pending proceeding* or *impending matter* before the judge could substantially affect the value of the securities held by the judge.

**“Election cycle”** is defined as set forth in the “Georgia Government Transparency and Campaign Finance Act of 2010” (OCGA § 21-5-3), as may be amended from time to time.

**“Family”** means a spouse, *domestic partner*, *intimate partner*, child, grandchild, parent, grandparent, or other relative or person or in-laws thereof with whom the judge maintains a close familial relationship.



**“Fiduciary”** includes such relationships as executor, administrator, trustee, guardian, or conservator.

**“Financial disclosure statement”** is defined as set forth in the “Georgia Government Transparency and Campaign Finance Act of 2010” (OCGA § 21-5-50), as may be amended from time to time.

**“Impartial,” “impartiality,” and “impartially”** mean absence of bias or prejudice in favor of, or against, a particular party, parties, or classes of parties, as well as maintenance of an open mind in considering issues that may come before a judge.

**“Impending matter”** is a matter or judicial proceeding that is imminent or expected to occur in the near future.

**“Impropriety”** includes conduct that violates the *law*, court rules, or provisions of this Code; or conduct that undermines a judge’s *independence*, *integrity*, or *impartiality*; or conduct prejudicial to the administration of justice that brings the judiciary into disrepute.

**“Independence”** means a judge’s freedom from influence or controls other than those established by *law*.

**“Integrity”** means probity, fairness, honesty, uprightness, and soundness of character.

**“Intimate partner”** means a person with whom another person maintains an intimate relationship, other than a person to whom he or she is legally married.

**“Invidious discrimination”** is any action by an organization that characterizes a person’s age, disability, ethnicity, gender or sex, marital status, national origin, race, religion, or sexual orientation as odious or as signifying inferiority, which therefore is used to justify arbitrary exclusion of persons

possessing those traits from membership, position, or participation in the organization.

**“Judicial candidate”** is a person, including an incumbent judge, seeking selection for or retention in judicial office by election or appointment. A person becomes a candidate for judicial office as soon as he or she: (i) appoints or forms a *campaign committee*, (ii) makes a public announcement of candidacy, (iii) declares, files or qualifies as a candidate with the election or appointment authority, or (iv) authorizes solicitation or acceptance of *contributions* or *support*. The term “judicial candidate” has the same meaning when applied to a judge seeking election or appointment to non-judicial office.

**“Knowingly,” “knowledge,” “known,” or “knows”** denotes actual knowledge of the fact in question. A person’s knowledge may be inferred from circumstances.

**“Law”** denotes court rules as well as statutes, constitutional provisions, and decisional law, including the Code of Judicial Conduct and Advisory Opinions of the Judicial Qualifications Commission.

**“Member of a judge’s family residing in the judge’s household”** denotes 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 is residing or has resided in the judge’s household.

**“Non-public information”** denotes information that, by *law*, is not available to the public. Non-public information may include, but is not limited to, information that is sealed by statute or court order or impounded or communicated in camera, and information offered in grand jury proceedings, presentencing reports, dependency cases, or psychiatric reports.

**“Pending proceeding”** is a proceeding that has commenced. A matter continues to be pending through any appellate process until final disposition.

**“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, e-mail, social media, or any other means of communication.

**“Political organization”** denotes a political party or other group, the principal purpose of which is to further the election or appointment of candidates to political or public office. For purposes of this Code, the term does not include a *judicial candidate’s campaign committee*.

**“Public election”** includes primary and general elections; it includes partisan elections and nonpartisan elections and may include (as context demands) retention elections.

**“Require”** means a judge is to exercise reasonable direction and control over the conduct of those persons subject to the judge’s direction and control. The rules prescribing that a judge “require” certain conduct of others are, like all of the rules in this Code, rules of reason.

**“Serious crime”** means any felony; any lesser crime that reflects adversely on the judge’s honesty, trustworthiness, or fitness as a judge in other respects; crimes involving moral turpitude; driving under the influence of drugs and/or alcohol; unlawful possession of any controlled substance; or any crime a necessary element of which, as determined by the statutory or common law definition of the crime, involves interference with the administration of justice, false swearing, misrepresentation, fraud, deceit, bribery, extortion, misappropriation, theft, or willful failure to file income tax returns, or an attempt, conspiracy, or solicitation of another to commit a serious crime.

**“Support”** is defined as non-monetary assistance to a candidate.

# APPLICATION

Anyone, whether or not a lawyer, who performs judicial functions under the Constitution and *laws* of Georgia, including an associate judge, senior judge, special master, magistrate, or municipal judge, or any person who is a *judicial candidate* for any such office, is a judge for the purpose of this Code. All judges, whether full-time, part-time, or pro tempore, shall comply with this Code except as provided below.

*Commentary:*

[1] *The Rules in this Code have been formulated to address the ethical obligations of any person who serves a judicial function. They are premised upon the supposition that a uniform system of ethical principles should apply to all those authorized to perform judicial functions. Further, regardless of the title used by a governing body to designate a judge, besides full-time, there shall be only two other types, part-time and pro tempore, as defined below.*

[2] *Some officials may be made subject to the ethical obligations set forth in this Code by statute, regulation, or other laws. See, e.g., OCGA § 34-9-42 (b); Ga. Comp. R. & Regs., r. 616-1-1-.06. Such officials are judges for the purpose of this Code.*

## **A. Part-time Judges**

A part-time judge is a person selected to serve as a judge on a periodic or continuing basis, but is permitted by *law* to devote time to some other profession or occupation, including the private practice of *law*. Part-time judges:

(1) are not required to comply with Rules 3.4 [extra-judicial appointments], 3.8 [*fiduciary* activities], 3.9 [arbitration and mediation], 3.10 [practice of law], and 3.15 (A) (1) [annual financial reporting of quasi-judicial and extra-judicial compensation].

(2) shall not practice law in the court on which they serve, or act as lawyers in proceedings for which they have served as judges or in any proceeding related thereto; nor should they practice law in any court over which the court they serve as a part-time judge conducts appellate review.

*Commentary:*

*To illustrate: (i) part-time, lawyer judges of a Municipal Court, Magistrate Court, Probate Court, or Juvenile Court perform no appellate review, and therefore can practice law in any court other than their own; (ii) part-time State Court judges can practice law in any court other than their own, except where a State Court exercises appellate review over a Magistrate or Municipal Court, in which case such a part-time State Court judge cannot practice law in those Magistrate or Municipal Courts; (iii) inasmuch as the law [see OCGA § 5-4-1, and OCGA § 15-6-8 (3), (4)] permits writ of certiorari review and appellate review by Superior Courts for the correction of errors as well as to supervise and correct judgments in all inferior tribunals such as Magistrate Courts, or Municipal Courts or councils, any inferior judicature, or over any person exercising judicial power, in most instances a part-time judge sitting as a Superior Court judge may nevertheless practice law in any such inferior judicatories in the circuit where that part-time judge presided as a Superior Court judge. The restriction on practice of law by a part-time judge derives from the appellate jurisdiction of the court where that judge serves part-time, not from the appellate review power of another court to which that part-time judge may be called to serve as a judge, such as to a Superior Court.*

## **B. Judges Pro Tempore**

A judge pro tempore is a person, usually a practicing attorney, who is not otherwise a part-time judge, who is appointed to serve during any calendar year for a specific case or trial calendar, and who thereby serves as a judge temporarily rather than on a periodic or continuing basis.

(1) While acting as such, a judge pro tempore is not required to comply with Rules 3.4 [extra-judicial appointments], 3.8 [*fiduciary* activities], 3.9 [arbitration and mediation], 3.10 [practice of law], 3.11 [financial activities], and 3.15 (A) (1) [annual financial reporting of quasi-judicial and extra-judicial compensation].

(2) Persons who have served as judges pro tempore shall not act as lawyers in proceedings in which they have served as judges, or in other proceedings related thereto.

(3) After a second designation, together with actual performance of judicial functions in a particular court as a judge pro tempore, as well as during any period when performing judicial functions as a judge pro tempore, such a judge pro tempore becomes ineligible to practice law during the remainder of the calendar year in the court served as a judge pro tempore, while remaining eligible to serve as a judge on subsequent occasions. These provisions shall not apply to service as a special master.

*Commentary:*

*These Rules contemplate greater employment of standard judicial assistance law, such as OCGA §§ 15-1-9.1, 15-6-13, 15-7-25, 15-8-3, 15-9-13, 15-10-221, or 15-11-23, as well as use of senior judges, rather than designating practicing attorneys to function as judges for special situations resulting from judicial disqualification, personal emergency, or considerations of more effective caseload management. The rules are intended to endorse appointment or service by a lawyer as a judge pro tempore only for brief and infrequent periods of time.*

### **C. Time for Compliance**

A person to whom this Code becomes applicable shall comply immediately with all provisions of this Code except Rules 3.8 [*fiduciary* activities] and 3.11 (B), (C), (D), (E), or (F) [personal and family financial activities], but shall comply with these Rules as soon as reasonably possible and shall do so in any event within the period of one year from commencing service as a judge.

#### *Commentary:*

*If serving as a fiduciary when selected as a judge, a new judge may notwithstanding the prohibitions in Rule 3.8, continue to serve, but only for that period of time necessary to avoid serious adverse consequences to the beneficiary of the fiduciary relationship, and in no event longer than a year. Similarly, if engaged at the time of judicial selection in business activity, a new judge may, notwithstanding the prohibitions in Rule 3.11 (B), (C), and (D), continue in that activity for a reasonable period, but in no event longer than a year.*

### **D. Ongoing Disciplinary Authority**

In addition to the foregoing, the *appropriate authority* for judicial discipline shall have continuing jurisdiction over individuals to whom this Code is applicable regarding allegations of misconduct occurring during the individual's service as a judge, *judicial candidate*, or an officer of a judicial system, if a complaint is filed no later than one year following that service.

# CANONS, RULES, AND COMMENTARY

## Canon 1

***JUDGES SHALL UPHOLD THE INDEPENDENCE, INTEGRITY, AND IMPARTIALITY OF THE JUDICIARY AND SHALL AVOID IMPROPRIETY AND THE APPEARANCE OF IMPROPRIETY IN ALL OF THEIR ACTIVITIES.***

### **Rule 1.1 Complying With the *Law***

Judges shall respect and comply with the *law*.

### **Rule 1.2 Promoting Public Confidence in the Judiciary**

(A) Judges shall act at all times in a manner that promotes public confidence in the *independence, integrity, and impartiality* of the judiciary.

(B) An independent and honorable judiciary is indispensable to justice in our society. Judges shall participate in establishing, maintaining, and enforcing high standards of conduct, and shall personally observe such standards of conduct so that the *independence, integrity, and impartiality* of the judiciary may be preserved. The provisions of this Code should be construed and applied to further that objective.

#### *Commentary:*

[1] *Deference to the judgments and rulings of courts depends upon public confidence in the independence, integrity, and impartiality of judges. The independence, integrity, and impartiality of judges depends in turn upon their acting without fear or favor. Although judges should be independent, they shall comply with the law, including the provisions of this Code. Public confidence in the impartiality of the judiciary is maintained by the adherence of each judge to this responsibility. Conversely, violation of this Code*



*diminishes public confidence in the judiciary and thereby does injury to the system of government under law.*

*[2] Public confidence in the judiciary is eroded by irresponsible or improper conduct of judges. Judges must avoid all impropriety and appearance of impropriety. Judges must expect to be the subject of constant public scrutiny. Judges must therefore accept restrictions on their conduct that might be viewed as burdensome by the ordinary citizen, and they should do so freely and willingly.*

*[3] The prohibition against behaving with impropriety or the appearance of impropriety applies to both the professional and personal conduct of a judge. Because it is not practicable to list all prohibited acts, the proscription is necessarily cast in general terms that extend to conduct by judges that is harmful although not specifically mentioned in the Code. Actual improprieties under this standard include violations of law, court rules, or other specific provisions of this Code. The test for appearance of impropriety is whether the conduct would create in reasonable minds a perception that the judge's ability to carry out judicial responsibilities with integrity, impartiality, and competence is impaired. See also Rule 3.6.*

*[4] Judges are allowed to 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] Judges are allowed to initiate and participate in community outreach activities for the purpose of promoting public understanding of and confidence in the administration of justice. When engaging in such activities, judges must act in a manner consistent with this Code.*

### **Rule 1.3 Respecting the Prestige of Judicial Office**

Judges shall not lend the prestige of their office to advance the private interests of the judge or others.

*Commentary:*

*[1] Maintaining the prestige of judicial office is essential to a system of government in which the judiciary functions independently of the executive and legislative branches. Respect for the judicial office facilitates the orderly conduct of legitimate judicial functions. Judges should distinguish between proper and improper use of the prestige of office in all of their activities. For*

*example, it would be improper for a judge to allude to his or her judgeship to gain a personal advantage such as deferential treatment when stopped by a police officer for a traffic offense. Similarly, judicial letterhead must not be used for conducting a judge's personal business.*

*[2] Judges must avoid lending the prestige of judicial office for the advancement of the private interests of the judge and others. For example, a judge must not use the judge's position to gain advantage in a civil suit involving a member of the judge's family. In contracts for publication of a judge's writings, a judge should retain control over the advertising to avoid exploitation of the judge's office. Similarly, exploitation of judicial office for private gain can occur when a part-time judge attorney or pro tempore judge attorney advertises this judicial position as a reason for being retained as a lawyer. As to the acceptance of awards, see Rule 3.13 and Commentary.*

*[3] Although a judge should be sensitive to possible abuse of the prestige of office, a judge may, based on the judge's personal knowledge, serve as a reference or provide a letter of recommendation. The judge may use official letterhead if the judge indicates that the reference is personal, and if 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. However, a judge must not initiate the communication of information to a sentencing judge or probation or corrections officer, but may provide to such person information for the record in response to a formal request.*

*[4] Judges may participate in the process of judicial selection by cooperating with appointing authorities and screening committees seeking names for consideration, and by responding to official inquiries concerning a person being considered for a judgeship. See also Canon 4, regarding use of a judge's name in political activities.*

## Canon 2

### ***JUDGES SHALL PERFORM THE DUTIES OF JUDICIAL OFFICE IMPARTIALLY, COMPETENTLY, AND DILIGENTLY.***

#### **Rule 2.1 Giving Priority to Judicial Duties in General**

The judicial duties of judges take precedence over all their other activities. Their judicial duties include all the duties of their offices prescribed by *law*. But primarily, judges serve as the arbiters of facts and *law* for the resolution of disputes.

#### **Rule 2.2 Impartiality and Fairness**

Judges shall dispose of all judicial matters fairly, promptly, and efficiently.

*Commentary:*

*[1] In disposing of matters fairly, promptly, and efficiently, judges must demonstrate due regard for the rights of the parties to be heard and to have issues resolved without unnecessary cost or delay. 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] Containing costs while preserving fundamental rights of parties also protects the interests of witnesses and the general public. Judges should monitor and supervise cases so as to reduce or eliminate dilatory practices, avoidable delays and unnecessary costs.*

*[3] Prompt disposition of the court's business requires judges to devote adequate time to their duties, to be punctual in attending court and expeditious in determining matters under submission, and to insist that court officials, litigants, and their lawyers cooperate with the courts to achieve that end.*

#### **Rule 2.3 Bias, Prejudice, and Harassment**

(A) Judges shall perform judicial 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 age, disability, ethnicity, gender or sex, marital status, national origin, political affiliation, race, religion, sexual orientation, or socioeconomic status. Judges shall not permit court staff, court officials, or others subject to the judge's direction and control to do so.

(C) Judges 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, age, disability, ethnicity, gender or sex, marital status, national origin, political affiliation, race, religion, sexual orientation, or socioeconomic status, against parties, witnesses, lawyers, or others.

(D) This Rule does not preclude legitimate advocacy when age, disability, ethnicity, gender or sex, marital status, national origin, political affiliation, race, religion, sexual orientation, or socioeconomic status, or other similar factors are issues in the proceeding.

*Commentary:*

[1] *Judges must refrain from speech, gestures, or other conduct that could reasonably be perceived as prejudiced or biased or as harassment and must require the same standard of conduct of others subject to their direction and control.*

[2] *Judges must perform judicial duties impartially and fairly. Judges who manifest bias on any basis in a proceeding impair the fairness of the proceeding and bring the judiciary into disrepute. Facial expression and body language, in addition to oral communication, can give to parties, lawyers, jurors, the media, and others an appearance of judicial bias. Judges must be alert to avoid behavior that may be perceived as prejudicial.*

[3] *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.*

[4] *Judges who permit others to manifest bias or prejudice on any basis in a proceeding impair the fairness of the proceeding and bring the judiciary into disrepute.*

*[5] Examples of manifestations of bias or prejudice include but are not limited to epithets; slurs; demeaning nicknames; negative stereotyping; 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 proceeding, jurors, the media, and others an appearance of bias or prejudice.*

#### **Rule 2.4 External Influences on Judicial Conduct**

**(A)** Judges shall be faithful to the *law* and maintain professional competence in it. Judges shall not be swayed by partisan interests, public clamor or intimidation, or fear of criticism.

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

**(C)** Judges shall not convey or enable others to convey the impression that any person or organization is in a position to influence the judge.

*Commentary:*

*To ensure that judges are available to fulfill their judicial duties, judges must conduct their personal and extrajudicial activities to minimize the risk of conflict that would result in frequent disqualification. See Rule 2.11.*

#### **Rule 2.5 Performing Administrative Responsibilities**

**(A)** Judges shall perform judicial and administrative duties competently, diligently, and without bias or prejudice.

**(B)** Judges shall maintain professional competence in judicial administration, and shall cooperate with other judges and court officials in the administration of court business.

*Commentary:*

*[1] Judges may perform weddings during their normal office hours, when doing so does not interfere with or delay court proceedings, security, or*

*operations. Some courts and judges may have minimal time available for conducting weddings.*

*[2] Judges who perform weddings during their normal office hours, for which they are collecting a salary or are paid a per diem, shall not require payment for this service. Judges may receive a reasonable tip, gratuity, or negotiated consideration only for weddings performed both away from the courthouse and outside their normal office hours. See OCGA § 19-3-49. It is inappropriate for a judge to have a policy of performing weddings only after-hours and off-site in order to receive payment.*

*[3] Any remuneration received for performing a wedding shall be reported under Rule 3.15 as quasi-judicial compensation.*

### **Rule 2.6 Ensuring the Right to Be Heard**

**(A)** Judges 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)** The obligation of judges to dispose of matters promptly and efficiently must not take precedence over their obligation to dispose of matters fairly and with patience.

*Commentary:*

*Judges should encourage and seek to facilitate settlement, but parties should not feel coerced into surrendering the right to have their controversy resolved by courts. 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 a subsequent trial, and, in such instances, the judge should consider whether disqualification may be appropriate. See Rule 2.11.*

### **Rule 2.7 Responsibility to Decide**

Judges shall hear and decide matters assigned to them, except those in which they are disqualified.

*Commentary:*

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

[2] *This Rule should be applied in concert with the equally important obligation to dispose of court matters timely and effectively. See Rule 2.2.*

[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.*

## **Rule 2.8 Adjudicating Pending Proceedings Fairly**

(A) Judges shall *require* order and decorum in proceedings over which they preside.

(B) Judges shall be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, and others with whom they deal in their official capacity, and shall require similar conduct of all persons subject to their direction and control.

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

*Commentary:*

[1] *The duty to hear all proceedings fairly and with patience is not inconsistent with the duty to dispose promptly of the business of the court. Judges can be efficient and business-like while being patient and deliberate.*

[2] *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.*

[3] *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.*

[4] *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 Assuring Fair Hearings and Averting Ex Parte Communications**

(A) Judges 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*. Judges shall not initiate, permit, or consider ex parte communications, or consider other communications made to them outside the presence of the parties, or their lawyers, concerning a *pending proceeding* or *impending matter*, subject to the following exceptions.

(1) Where circumstances *require*, ex parte communications are authorized for scheduling, administrative purposes, or emergencies that do not deal with substantive matters or issues on the merits, provided that:

(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) Judges may obtain the advice of a disinterested expert on the *law* applicable to a proceeding before the court, if they give notice to the parties of the person consulted and the substance of the advice, and afford the parties reasonable opportunity to respond.

(3) Judges may consult with court staff and court officials whose functions are to aid in carrying out 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) Judges may, with the consent of the parties, confer separately with the parties or their lawyers in an effort to mediate or settle pending proceedings.



(5) Judges may initiate, permit, or consider *ex parte* communications when authorized by *law* to do so, such as when issuing temporary protective orders, arrest warrants, or search warrants, or when serving on therapeutic, problem-solving, or accountability courts, including drugs courts, mental health courts, and veterans' courts.

**(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 a reasonable opportunity to respond.

**(C)** Judges shall not investigate facts in a *pending proceeding* or *impending matter* independently, and in making adjudicative decisions shall consider only the evidence presented and any facts that may properly be judicially noticed. The facts a judge shall not investigate include those derived from personal observations or media, including printed publications, computer retrievable electronic data, or internet and social network communications.

**(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.

*Commentary:*

[1] *Judges shall immediately stop any attempted improper ex parte communication. Rule 2.9 (B) does not excuse a judge from this ethical requirement.*

[2] *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.*

[3] *See Rules 2.7 and 2.9 (C), addressing limits on the scope of evidence that may be legitimately considered by the court.*

[4] *In recent years, jurisdictions in Georgia have created what are often called therapeutic, problem-solving, or accountability courts, including drug courts, mental health courts, and veterans' courts. Judges presiding over these courts are often authorized and encouraged to act in non-traditional ways, such as monitoring the progress of participating defendants by communicating directly on issues of fact and law with members of the accountability court*

*team, which may include court staff, lawyers, case managers, service coordinators, and providers, compliance monitors, law enforcement officers, probation officers, and others. In this setting, ex parte communications that would otherwise be prohibited by this Code may be authorized by law, including general or local accountability court rules and standards that have been approved by the Supreme Court of Georgia. Courts using this authority should ensure that participating parties are advised of the potential for and scope of the permitted ex parte communications and have waived on the record with the advice of counsel any objection to such communications. Because the impartiality of a judge is essential to the legitimacy of all courts, any such waiver, while granting permission to the adjudicating authority to participate in ex parte communications, shall not operate as an irreversible bar to a motion for disqualification pursuant to Rule 2.11 based upon factual circumstance arising subsequent to the waiver.*

*[5] The proscription against communications concerning a proceeding includes communications from lawyers, law teachers, and other persons who are not participants in the proceeding, except to the limited extent permitted.*

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

*[7] Whenever 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 given.*

*[8] Judges may request a party to submit proposed findings of fact and conclusions of law, so long as the other parties are apprised of the request and are given an opportunity to respond to the proposed findings and conclusions.*

*[9] Judges may consult with other judges on pending proceedings and impending 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.*

*[10] Judges may consult with the Judicial Qualifications Commission, outside counsel, or legal experts concerning compliance with this Code. Such consultations are not subject to the restrictions of Rule 2.9.*

*[11] Impending matters and pending proceedings are only as good as the parties make them; neutral and detached impartial judges should not be concerned about augmenting cases.*

[12] *Judges must take reasonable efforts, including the provision of appropriate supervision, to ensure this Rule is not violated through law clerks or other personnel on their staff.*

**Rule 2.10 Judicial Statements on Pending Proceedings and Impending Matters**

(A) Judges shall not make, on any *pending proceeding* or *impending matter* in any court, any public *comment* that might reasonably be expected to affect its outcome or impair its fairness or make any non-public *comment* that might substantially interfere with a fair trial or hearing.

(B) Judges shall not, in connection with cases, controversies, or issues that are likely to come before the court, make promises or commitments that are inconsistent with the *impartial* performance of the adjudicative duties of judicial office.

(C) Judges 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 Rule 2.10.

(D) Notwithstanding the restrictions in Rule 2.10, 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) Reserved.

*Commentary:*

[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 proceeding or impending matter continues during any appellate process until final disposition.*

[2] *This Rule does not prohibit judges from commenting on proceedings in which the judge is a litigant in a personal capacity. In cases such as a writ*

*of mandamus where a judge is a litigant in an official capacity, the judge shall not comment.*

## **Rule 2.11 Disqualification and Recusal**

**(A)** Judges shall disqualify themselves in any proceeding in which their *impartiality* might reasonably be questioned, or in which:

(1) The judge has a personal bias or prejudice concerning a party or a party's lawyer, or personal *knowledge* of disputed evidentiary facts concerning an *pending matter* or a *pending proceeding*.

(2) The judge is within the third *degree of relationship* to any of the following listed persons, or the judge's spouse, *domestic partner, intimate partner*, or any other *member of a judge's family residing in the judge's household* is within the third *degree of relationship* to any of the following persons:

(a) a party to the proceeding, or an officer, director, or trustee of a party;

(b) a lawyer in the proceeding;

(c) a person *known* by the judge to have a more than *de minimis* interest that could be substantially affected by the outcome of the proceeding;  
or

(d) a person who to the judge's *knowledge* is likely to be a material witness in the proceeding.

(3) Reserved.

(4) The judge has received or benefited from an *aggregate* amount of campaign *contributions* or *support* so as to create a reasonable question as to the judge's *impartiality*. When determining *impartiality* with respect to campaign *contributions* or *support*, the following may be considered:

- (a) amount of the *contribution* or *support*;
- (b) timing of the *contribution* or *support*;
- (c) relationship of contributor or supporter to the parties;
- (d) impact of *contribution* or *support*;
- (e) nature of contributor's prior political activities or *support* and prior relationship with the judge;
- (f) nature of *impending matter* or *pending proceeding* and its importance to the parties or counsel;
- (g) *contributions* made independently in *support* of the judge over and above the maximum allowable *contribution* that may be *contributed* to the *judicial candidate*; and
- (h) any factor relevant to the issue of campaign *contribution* or *support* that causes the judge's *impartiality* to be questioned.

(5) The judge has made pledges or promises of conduct in office other than the faithful and *impartial* performance of the adjudicative duties of the office, or statements that commit the *judicial candidate* with respect to issues likely to come before the court in its adjudication of cases.

(6) The judge served as a lawyer in the matter of controversy, or a lawyer with whom the judge previously practiced law served during such association as a lawyer concerning it, or the judge has been a witness or party in the matter of controversy.

**(B)** Judges shall keep informed about their personal and *fiduciary* economic interests, and make a reasonable effort to keep informed about the personal financial interests of their spouse, *domestic partner*, *intimate partner*, and minor children residing in their households, because such interests may bear on the need for judicial disqualification.

(C) Judges disqualified by the terms of Rule 2.11 may disclose on the record, or in open court, the basis of their disqualification and may ask the parties and their lawyers to consider, out of the presence of the judge, whether to waive disqualification. If following disclosure of any basis for disqualification, other than personal bias or prejudice concerning a party, the parties and lawyers, without participation by the judge, all agree that the judge should not be disqualified, and the judge is then willing to participate, the judge may participate in the proceeding. The agreement shall be incorporated in the record or the file of the proceeding.

*Commentary:*

*[1] Under this Rule, judges are subject to disqualification whenever their impartiality might reasonably be questioned, regardless of whether any of the specific items in Rule 2.11 (A) apply. For example, if a judge were in the process of negotiating for employment with a law firm, the judge would be disqualified from any matters in which that firm appeared, unless the disqualification was waived by the parties after disclosure by the judge.*

*[2] Judges should disclose on the record, or in open court, information that the court believes the parties or their lawyers might consider relevant to the question of disqualification, even if they believe there is no legal basis for disqualification. The public filing of a campaign contribution disclosure report or financial disclosure statement shall be deemed disclosure to all parties of the information contained therein.*

*[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 the latter case, the judge shall disclose on the record the basis for possible disqualification and use reasonable efforts to transfer the matter to another judge as soon as possible.*

*[4] A disqualifying bias or prejudice may arise because the lawyer or the lawyer's firm has provided legal counsel either for or adverse to the judge, including in any personal matter or in a matter related to discipline before the Judicial Qualifications Commission, the State Bar of Georgia, or other appropriate authority.*

*[5] 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 of itself disqualify the*

*judge. Under appropriate circumstances, the fact that the judge's impartiality might "reasonably be questioned" under Rule 2.11 (A), or that the relative is known by the judge to have an interest in the law firm that could be "substantially affected by the outcome of the proceeding" under Rule 2.11 (A) (2) (c) requires the judge's disqualification.*

*[6] A lawyer in a government agency does not ordinarily have an association with other lawyers employed by that agency within the meaning of Rule 2.11 (A) (6); judges formerly employed by a government agency, however, should disqualify themselves in a proceeding if their impartiality might reasonably be questioned because of such association.*

*[7] See Rule 2.11 (B) and Rule 3.11 (E), addressing the judge's duty to maintain awareness of personal financial interests and those of family and related associates.*

*[8] A judge shall recuse when the judge knows or learns by means of a timely motion that a particular party, a party's lawyer, or law firm of a party's lawyer has within the current or immediately preceding election cycle of a judicial campaign for public election made aggregate contributions in an amount that is greater than the maximum allowable contribution permitted by law.*

*[9] There is a rebuttable presumption that there is no per se basis for disqualification where the aggregate contributions are equal to or less than the maximum allowable contribution permitted by law. However, because the presumption is rebuttable, a judge who knows or learns by means of a timely motion that a party, a party's lawyer, or the law firm of a party's lawyer has within the current or immediately preceding election cycle of a judicial campaign for public election made aggregate contributions permitted by law, should weigh the considerations in Rule 2.11 (A) (4) in deciding whether recusal may be appropriate.*

*[10] Where a motion to recuse is based upon campaign contributions to the judge and the aggregate of contributions alleged would result in a rebuttable presumption that there is no per se basis for disqualification under the provisions of this Rule, any affidavit required to be filed by court rule must specify additional facts demonstrating a basis for disqualification pursuant to the considerations set forth in Rule 2.11 (A) (4). In the absence of such additional facts, the affidavit shall not be deemed legally sufficient to require assignment to another judge under applicable court rules.*

*[11] In summary, Rule 2.11 (A) (4) provides that:*

*(i) If contributions made to a judicial candidate or to that candidate's campaign committee are permitted by the law and do not exceed the maximum allowable contribution, then there is no mandatory requirement that the judge recuse.*

*(ii) If (a) a judicial candidate has knowledge of a contribution made to the candidate or the candidate's campaign committee that exceeds the maximum allowable contribution permitted by law and (b) after having such knowledge, the violation is not corrected in a timely manner (i.e., usually accomplished by returning the contribution), then the judge shall recuse.*

*(iii) If a judge has knowledge of a pattern of contributions made by a particular party, a party's lawyer, or law firm of a party's lawyer that include contributions (a) made to a judicial candidate or to that candidate's campaign committee and/or (b) made to a third party attempting to influence the election of the judicial candidate, then the judge should consider whether recusal is appropriate in accordance with the considerations in Rule 2.11 (A) (4).*

*[12] A remittal procedure provides the parties an opportunity to proceed without delay, if they wish to waive the disqualification. To assure that consideration of the question of remittal is made independently to the court, judges must not solicit, seek, or hear comment on possible remittal or waiver of the disqualification, unless the lawyers jointly propose remittal after consultation as provided in Rule 2.11 (C). A party may act through counsel, if counsel represents on the record that the party has been consulted and consents. As a practical matter, judges may wish to have all parties and their lawyers sign a remittal agreement.*

## **Rule 2.12 Supervisory Duties**

**(A)** Judges shall require their staffs, court officials, and others subject to their direction and control to observe the standards of fidelity and diligence that apply to the judges, to refrain from manifesting bias or prejudice in the performance of their official duties, and to act in a manner consistent with the judge's obligations under this Code.

**(B)** Judges with supervisory authority for judicial performance of other judges should take reasonable measures to assure the prompt disposition of matters



before these judges, along with the proper performance of their other judicial responsibilities.

*Commentary:*

*[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 this 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 should 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)** Reserved.

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

*Commentary:*

*Appointees of judges include assigned counsel, officials such as referees, commissioners, special masters, receivers and guardians, and personnel such as 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 by Rule 2.13 (A) (1).*

## **Rule 2.14 Disability and Impairment**

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

## **Rule 2.15 Responding to Judicial and Lawyer Misconduct**

(A) Judges who receive information indicating a substantial likelihood that another judge has committed a violation of this Code should take *appropriate action*. Judges 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 for office shall inform the *appropriate authority*.

(B) Judges who receive information indicating a substantial likelihood that a lawyer has committed a violation of the Rules of Professional Conduct of the State Bar of Georgia should take *appropriate action*. Judges having *knowledge* that a lawyer has committed a violation of the Rules of Professional Conduct of the State Bar of Georgia that raises a substantial question as to the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects shall inform the *appropriate authority*.

(C) Acts of judges in the discharge of disciplinary responsibilities, required or permitted by Rule 2.15 (A) and Rule 2.15 (B), are part of their judicial duties and shall be absolutely privileged.

(D) A judge who is arrested for or has been charged by way of indictment, information, or complaint with a *serious crime*, shall inform the *appropriate authority* in writing within five days of being arrested or being charged.

*Commentary:*

[1] *Taking action to address known misconduct is a judge's obligation. Cooperation with appropriate authorities, as required by this Rule, in the investigations and proceedings of judicial and lawyer disciplinary agencies*

*instills public confidence in judges' commitment to the integrity of the judicial system and the protection of the public.*

*[2] Rule 2.15 (A) requires judges to inform the appropriate authority of another judge's violation of the Code of Judicial Conduct, if the violation raises a substantial question of fitness for office and if the violation is actually known to the reporting judge.*

*[3] Rule 2.15 (B) also requires judges to report to the State Bar of Georgia any violation by a lawyer of the Rules of Professional Conduct, if the violation raises a substantial question of the lawyer's fitness as a lawyer and, again, if the violation is actually known to the reporting judge.*

**Rule 2.16 Reserved.**

## Canon 3

### ***JUDGES SHALL REGULATE THEIR EXTRA-JUDICIAL ACTIVITIES TO MINIMIZE THE RISK OF CONFLICT WITH THEIR JUDICIAL DUTIES.***

#### **Rule 3.1 Participation in Extra-Judicial or Avocational Activities**

(A) Judges shall not engage in avocational activities that detract from the dignity of their office or interfere with the performance of their judicial duties.

(B) Reserved.

(C) Judges may engage in *law*-related or quasi-judicial activities, provided that doing so will not interfere with proper performance of judicial duties or cast doubt on their capacity to *impartially* decide any issue.

*Commentary:*

*Complete separation of judges from extra-judicial activities is neither possible nor wise; they should not become isolated from the society in which they live.*

#### **Rule 3.2 Appearances before Governmental Bodies and Consultation with Government Officials**

Judges may appear at public hearings before an executive or legislative body or official on matters concerning the *law*, the legal system, and the administration of justice, and they may otherwise consult with an executive or legislative body or official, but only on matters concerning the administration of justice.

#### **Rule 3.3 Testifying as a Character Witness**

Judges shall not testify voluntarily as a character witness.

*Commentary:*

*Judges must not testify voluntarily as a character witness, because to do so may lend the prestige of the judicial office in support of a party for whom the judge testifies. Moreover, when a judge testifies as a witness, a lawyer who regularly appears before the judge may be placed in the awkward position of cross-examining the judge. A judge may, however, testify when properly summoned.*

### **Rule 3.4 Accepting Extra-Judicial Appointments**

Judges should not accept appointment to a governmental committee, commission, or other position that is concerned with issues of fact or policy on matters other than the improvement of the *law*, the legal system, or the administration of justice, if acceptance of such appointment might reasonably cast doubt upon their impartiality or demean the judge's office.

*Commentary:*

*Valuable services have been rendered in the past to the states and the nation by judges appointed by the executive to undertake important extra-judicial assignments. The appropriateness of conferring these assignments on judges must be reassessed, however, in light of the demands on judicial officers created by today's crowded dockets and the need to protect the courts from involvement in extra-judicial matters that may prove to be controversial. Judges should not be expected or permitted to accept governmental appointments that could interfere with the effectiveness and independence of the judiciary.*

### **Rule 3.5 Use of Non-Public Information**

Judges shall not disclose or use, for any purpose unrelated to judicial duties, non-public information acquired in a judicial capacity.

### **Rule 3.6 Avoiding Associations That Undermine the *Impartiality* of Judges**

(A) A judge shall not hold membership in any organization that practices *invidious discrimination*.

(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*. 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.

*Commentary:*

[1] *A judge's public manifestation of approval of invidious discrimination 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, position or participation on the basis of age, disability, ethnicity, gender or sex, marital status, national origin, race, religion, 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 Law-Related, Educational, Religious, Charitable, Fraternal, or Civic Organizations and Activities**

(A) Judges may engage in activities concerning the *law*, the legal system, and the administration of justice, provided that doing so will not interfere with the

performance of their official duties or cast doubt on their capacity to *impartially* decide any issue.

(1) Judges may speak, write, lecture, teach, and participate in other activities concerning the *law*, the legal system, and the administration of justice.

(2) Judges may serve as members of an organization or governmental agency concerning the *law*, the legal system, or the administration of justice. Judges shall not give investment advice to such an organization, but they may serve on its board of directors or trustees and participate in its management, even when governance includes the responsibility for approving investment decisions.

(3) Judges may assist such organizations in raising funds, and may make recommendations to public and private fund-granting agencies on projects and programs concerning the *law*, the legal system, and the administration of justice, but judges shall not personally solicit funds during public fundraising activities.

**(B)** Judges may participate in educational, religious, charitable, fraternal, or civic activities that do not reflect adversely upon their *impartiality* or interfere with the performance of their judicial duties.

(1) Judges may serve as officers, directors, trustees, or non-legal advisors of educational, religious, charitable, fraternal, or civic organizations not conducted for the economic or political advantage of their members, subject to the following limitations:

(a) judges shall not serve if it is likely that the organization will be engaged in proceedings that would ordinarily come before them;

(b) judges shall not serve if it is likely that the organization will be regularly engaged in adversary proceedings in any court; and

(c) judges shall not give investment advice to such an organization, but they may serve on its board of directors or trustees and

participate in its management, even when governance includes the responsibility for approving investment decisions.

(2) Judges shall not personally solicit funds for any educational, religious, charitable, fraternal, or civic organization, or use or permit the use of the prestige of their office for that purpose, but they may be listed as officers, directors, or trustees of such organizations.

*Commentary:*

*[1] To the extent that time permits, and judicial independence and impartiality are not compromised, judges are encouraged to engage in appropriate quasi-judicial activities. As a judicial officer and person specially learned in the law, a judge is in a unique position to contribute to the improvement of the law, the legal system, and the administration of justice, including revision of substantive and procedural law and improvement of criminal and juvenile justice, either independently or through a bar association, judicial conference, or other organization dedicated to such improvements.*

*[2] Judges should be aware of the prohibitions in OCGA § 21-5-11 relating to the acceptance of a monetary fee or honorarium for a speaking engagement or participation in a seminar, discussion panel, or other activity that directly relates to the official duties or office of a public officer.*

*[3] The changing nature of some organizations and of their relationship to the law makes it necessary for judges regularly to re-examine the activities of each organization with which they are affiliated, to determine if it is proper for them to continue their relationship with it. For example, in many jurisdictions charitable hospitals are now more frequently in court than in the past. Similarly, the boards of some legal aid organizations now make policy decisions that may have political significance or imply commitment to causes that may come before the courts for adjudication.*

### **Rule 3.8 *Fiduciary Activities***

(A) Judges should not serve as *fiduciaries*, except for the estates, trusts, or persons of members of their *families*, and then only if such service will not interfere with the proper performance of their judicial duties. As *family fiduciaries*, judges are subject to the following restrictions.



(B) Judges should not serve if it is likely that as *fiduciaries*, they will be engaged in proceedings that would ordinarily come before them, or if the estates, trusts, or wards become involved in adversary proceedings in the court on which they serve or one under its appellate jurisdiction.

(C) While acting as *fiduciaries*, judges are subject to the same restrictions on financial activities that apply to them in their personal capacities.

*Commentary:*

*Judges' obligations under this Canon and their obligations as fiduciaries may come into conflict. For example, a judge should resign as trustee if it would result in detriment to the trust to divest it of holdings whose retention would place the judge in violation of Rule 3.11.*

### **Rule 3.9 Arbitration and Mediation**

Judges shall not act as arbitrators or mediators for compensation. This prohibition does not apply to senior judges who serve as judges.

### **Rule 3.10 Practice of Law**

Judges shall not practice law, unless allowed by *law*.

### **Rule 3.11 Financial Activities and Business Dealings**

(A) Information acquired by judges in their judicial capacity should not be used or disclosed by them in financial dealings or for any purpose not related to their judicial duties.

(B) Judges should refrain from financial and business dealings with lawyers, litigants, and others that tend to reflect adversely on their *impartiality*, interfere with the proper performance of their judicial duties, or exploit their judicial positions.

(C) Subject to the requirement of Rule 3.11 (B), judges may hold and manage investments, including real estate, and engage in other remunerative activity

including the operation of a business, as long as the business is not related to court-directed services.

**(D)** Judges should manage their investments and other financial interests to minimize the number of cases in which they are disqualified. As soon as they can do so without serious financial detriment, they should divest themselves of investments and other financial interests that might require frequent disqualification.

**(E)** Judges should keep informed about their personal and *fiduciary economic interests*, and make a reasonable effort to keep informed about the personal financial interests of their spouse, *domestic partner*, *intimate partner*, and minor children residing in their households.

**(F)** Judges are not required by this Code to disclose their income, debts, or investments, except as provided in Canons 2 and 3.

*Commentary:*

[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 extra-judicial 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 performance of judicial duties. 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 or that trades on the prestige of judicial office to promote the business.*

[2] *Canon 2 requires judges to disqualify themselves in any proceeding in which they have a more than de minimis financial interest; Canon 3 requires judges to refrain from financial activities that might interfere with the impartial performance of their judicial duties; Canon 3 requires judges to report certain gratuities as well as compensation they receive for activities involving personal services outside their judicial office. Judges have the rights of an ordinary citizen, including the right to privacy in their financial affairs, except to the extent that limitations thereon are required to safeguard the proper*

*performance of their duties. Owning and receiving income from investments do not as such affect the performance of a judge's duties.*

### **Rule 3.12 Receiving Quasi-Judicial and Extra-Judicial Compensation**

Judges may receive compensation and reimbursement of expenses for the quasi-judicial and extra-judicial activities permitted by this Code, unless the source of such payments gives the appearance of influencing the performance of judicial duties or otherwise would appear to a reasonable person to undermine the judge's *independence, integrity, or impartiality*. Such compensation should not exceed a reasonable amount, nor should it exceed what a person who is not a judge would receive for the same activity.

#### *Commentary:*

*When performing a wedding outside their normal office hours and outside the courthouse, judges may receive a reasonable tip, gratuity, or negotiated consideration. See OCGA § 19-3-49 and Rule 2.5. Any such remuneration shall be reported under Rule 3.15 as quasi-judicial compensation.*

### **Rule 3.13 Gifts or Similar Benefits**

#### **(A) When Always Prohibited —**

Judges shall not accept a gift or similar benefit if:

- (1) its acceptance is prohibited by *law*; or
- (2) its acceptance would appear to a reasonable person to undermine the judge's *independence, integrity, or impartiality*.

#### **(B) When the Source Has Interests Before the Judge —**

When the source has interests before the judge as a party or other person, including a lawyer, who has come or is likely to come before the court, the judge may accept a gift or similar benefit that does not exceed \$100 in value,

unless prohibited by Rule 3.13 (A). If the same source provides gifts or similar benefits exceeding, in the aggregate, \$500 in the same calendar year, the acceptance of all of those gifts or similar benefits must be reported under Rule 3.15.

**(C) When the Source Does Not Have Interests Before the Judge —**

When the source does not have interests before the judge as a party or other person, including a lawyer, who has come or is likely to come before the court, the judge may accept a gift or similar benefit, unless prohibited by Rule 3.13 (A). If the same source provides gifts or similar benefits exceeding, in the aggregate, \$500 in the same calendar year, the acceptance of all of those gifts or similar benefits must be reported under Rule 3.15.

**(D) When Generally Allowed —**

Except where prohibited by Rule 3.13 (A) and notwithstanding Rule 3.13 (B) and (C), judges may accept the following without reporting such acceptance:

(1) Invitations to the judge and the judge's spouse, *domestic partner*, *intimate partner*, or guest to attend without charge or with reimbursement of expenses:

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

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

(2) Gifts incident to a public testimonial to the judge.

(3) Items with little intrinsic value, such as plaques, certificates, trophies, and greeting cards.

(4) Ordinary social hospitality, including reciprocal socializing in which meals, lodging, recreational activities, tickets, or similar benefits are provided or paid for both by the judge and a friend or group of friends in substantially equal total amounts over a period of time.

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

(6) Rewards and prizes given to competitors or participants in random drawings, contests, or other events that are open to persons who are not judges.

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

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

(9) Gifts or similar benefits from friends, relatives, or other persons, including lawyers, whose appearance or interest in a *pending proceeding* or *impending matter* before the judge would in any event require disqualification of the judge under Rule 2.11.

(10) Gifts or similar benefits associated with the business, profession, or other separate activity of a spouse, a *domestic partner*, *intimate partner*, or other *family* member of a judge residing in the judge's household, which incidentally benefit the judge.

*Commentary:*

[1] *For purposes of this Rule, "gifts or similar benefits" includes any gift, bequest, benefit, favor, loan, or other thing of value, including such things as travel; lodging; meals; golf, hunting, and other recreational activities; and tickets to sporting, entertainment, and charitable events. The value of such*

*tickets is the face value of the ticket or, in the case of tickets to charitable events, the value of goods and services provided in exchange for the charitable contribution (i.e., the non-tax-deductible portion of the contribution).*

*[2] This Rule does not apply to contributions to a judge's campaign for judicial office, a matter governed by Canon 4.*

*[3] In dealing with gifts or similar benefits, judges must distinguish among things that can never be accepted, see Rule 3.13 (A); things for which acceptance, limits, and reporting requirements depend on whether the source has interests before the judge, see Rule 3.13 (B) or does not have such interests, see Rule 3.13 (C); and things that generally may be accepted and do not require reporting, see Rule 3.13 (D).*

*[4] Rule 3.13 applies only to the acceptance of gifts or similar benefits by a judge. Nonetheless, if a gift or similar benefit is given to someone in the judge's family, it may be viewed as an attempt to evade Rule 3.13 and to influence the judge indirectly and may require the judge's disqualification under the general provisions of Rule 2.11 (A). Where the gift or similar benefit is provided primarily to such other person and the judge is at most an incidental beneficiary, this concern is reduced. A judge should, however, remind family members of the restrictions imposed upon judges, and urge them to take these restrictions into account when making decisions about accepting gifts or similar benefits.*

*[5] Whenever a judge accepts a gift or similar benefit 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 and reporting of such benefits according to the magnitude of the risk. Rule 3.13 (D) identifies circumstances in which the risk is low that the acceptance would appear to undermine the judge's independence, integrity, or impartiality, and explicitly provides that such items need not be publicly reported.*

*[6] 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. Rule 3.13 (D) 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 reporting.*

*[7] 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.*

*[8] Georgia judges have traditionally participated in numerous bar-related functions and in a wide variety of educational, religious, charitable, fraternal, and civic activities. The sponsors of such events frequently waive registration and other fees associated with the events, and sometimes reimburse necessary travel, food, lodging, and incidental expenses, to allow and encourage judges to participate. Such participation by judges in the legal community and the general community is encouraged, and reporting of invitations to such events and public testimonials to judges at such events is not required because it could discourage these activities. However, before accepting such an invitation or testimonial, a judge should consider all of the circumstances that may make the acceptance, individually or when viewed in relation to other accepted invitations and testimonials, appear to a reasonable person to undermine the judge's independence, integrity, or impartiality and thus to require disqualification under Rule 3.13 (A) (2). These factors may include: 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; whether the event is primarily educational rather than recreational; whether the sponsor is an educational institution or bar association rather than a trade association or for-profit entity; whether the funding for the event comes largely from numerous contributors rather than from a single entity; 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; whether differing viewpoints are presented; and*

*whether a broad range of judicial and, if not a legal event, non-judicial participants are invited, whether a large number of participants are invited, and whether the program is designed specifically for judges.*

### **Rule 3.14 Expense Reimbursement**

Expense reimbursement should be limited to the actual cost of travel, food, and lodging and other necessary expenses reasonably incurred by judges and, where appropriate to the occasion, by their spouses, *domestic partners*, or *intimate partners*. Any payment in excess of such an amount is compensation.

### **Rule 3.15 Reports and Procedures for Reporting**

(A) Judges shall regularly file reports on the amount or value of:

(1) compensation received for quasi-judicial and extra-judicial activities as permitted by Rules 3.1 (C), 3.2, 3.7, and 3.11, if the value of such compensation exceeds \$500 in the same calendar year; and

(2) gifts or similar benefits as required by Rule 3.13, if the same source provides gifts or similar benefits exceeding, in the *aggregate*, \$500 in the same calendar year.

(3) Reserved.

(B) When reporting as required by Rule 3.15 (A), judges shall report the date, place, and nature of the activity for which they 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) All judges are required to file an annual report under this Rule, even if the report states that no reportable quasi-judicial and extra-judicial compensation or gifts and similar benefits were received.



**(D)** Judges' reports for each calendar year should be filed between January 1 and April 15 of the following year with the office of the Clerk of the Supreme Court of Georgia. Such reports shall be available for public inspection.

## Canon 4

### ***JUDGES SHALL REFRAIN FROM POLITICAL ACTIVITY INAPPROPRIATE TO THEIR JUDICIAL OFFICE.***

#### **Rule 4.1 Political Conduct in General**

(A) A judge or a *judicial candidate* for *public election* to judicial office shall not:

(1) act or hold himself or herself out as a leader or hold any office in a *political organization*;

(2) make speeches for a *political organization* or candidate or publicly endorse another candidate for public office; or

(3) solicit funds for or pay an assessment or make a *contribution* to a *political organization*, or purchase tickets for political party dinners or other functions, except as authorized in Rule 4.1 (B).

(B) Judges and *judicial candidates* holding an office filled either by retention election or by *public election* between competing candidates may attend political gatherings and speak to such gatherings on their own behalf when they are candidates for election or re-election.

*Commentary:*

A judicial candidate *does not publicly endorse another candidate for public office by having his or her name on the same ballot.*

#### **Rule 4.2 Campaign Conduct**

(A) *Judicial candidates:*

(1) shall prohibit officials or employees subject to their direction or control from doing for them what they are prohibited from doing under this

Canon, and shall not allow any other person to do for them what they are prohibited from doing under this Canon;

(2) shall not make statements or promises that commit the candidate with respect to issues likely to come before the court that are inconsistent with the *impartial* performance of the adjudicative duties of judicial office;

(3) shall not use or participate in the publication of a false statement of fact, or make any misleading statement concerning themselves or their candidacies, or concerning any opposing *judicial candidate* or candidacy, with *knowledge* of the statement's falsity or with reckless disregard for the statement's truth or falsity;

(4) shall be responsible for the content of any statement or advertisement published or communicated in any medium by a *campaign committee*, if the *judicial candidate* knew of or recklessly disregarded the content of said statement or advertisement prior to its release; and

(5) except where a statement or advertisement is published or communicated by a third party, shall be responsible for reviewing and approving the content of his or her statements and advertisements, and those of his or her *campaign committee*. Failure to do so will not be a defense to a complaint for violation of this Canon.

**(B)** *Judicial candidates may personally solicit campaign contributions and publicly stated support. Judicial candidates, including incumbent judges, shall not use or permit the use of campaign contributions for the private benefit of themselves or members of their families.*

*Commentary:*

*[1] This Canon does not prohibit a judge or judicial candidate from publicly stating his or her personal views on disputed issues, see Republican Party v. White, 536 U. S. 765 (122 SCt 2528, 153 LE2d 694) (2002). To ensure that voters understand a judge's duty to uphold the Constitution and laws of Georgia where the law differs from his or her personal belief, however, judges and judicial candidates are encouraged to emphasize in any public statement their duty to uphold the law regardless of their personal views.*

[2] Rule 4.2 (A) (2) prohibits judicial candidates from making comments that might impair the fairness of pending proceedings or impending matters. 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.

[3] 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. Rule 4.2 (A) (2) does not specifically address judicial responses to such inquiries. Depending upon the wording and format of such questionnaires, judicial 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 Rule 4.2 (A) (2), therefore, judicial 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. Judicial 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 judicial candidate's independence or impartiality, or that it might lead to frequent disqualification. See Rule 2.11 (A) (5).

[4] The determination of whether a judicial candidate knows of falsity or recklessly disregards the truth or falsity of his or her public communication is an objective one.

[5] Judicial candidates are sometimes the subject of false, misleading, or unfair allegations made by opposing judicial 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 judicial candidate. In other situations, false or misleading allegations may be made that bear upon a judicial candidate's integrity or fitness for judicial office. As long as the judicial candidate does not violate the Rules of Canon 4, the judicial candidate may make a factually accurate public response. In addition, when an independent third party has made unwarranted attacks on a judicial candidate's opponent, the judicial candidate may disavow the attacks, and request the third party to cease and desist.

[6] Subject to Rules 4.2 (A) (2) and 4.2 (A) (3), 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 proceeding.*

*[7] Judicial candidates must be scrupulously fair and accurate in all statements made by them and by their campaign committees. Rules 4.2 (A) (4) and 4.2 (A) (5) obligate judicial candidates and their campaign 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] The use of campaign committees is encouraged, because they may better maintain campaign decorum and reduce campaign activity that may cause requests for recusal, or the appearance of partisanship with respect to issues or the parties that require recusal.*

### **Rule 4.3 Candidacy for Appointive Judicial Office**

*A judicial candidate seeking 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*.

*Commentary:*

*When seeking support or endorsement, or when communicating directly with an appointing or confirming authority, judicial candidates for appointive 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 4.2 (A) (2).*

### **Rule 4.4 Reserved.**

### **Rule 4.5 Candidacy for Non-Judicial Office**

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

office, but regardless the judge must comply with all applicable provisions of this Code.

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

*Commentary:*

[1] *It is highly unlikely that any judge who engages in active campaigning for a non-judicial elective office could do so without violating a Canon 4 norm of permissible campaign practice. It is also more likely that such a judge will experience strict scrutiny of campaign behavior and will remain subject to professional discipline for any violation of the rules of judicial campaign behavior. Therefore, as suggested by this Rule, “resign to run” presents the better professional practice.*

[2] *In campaigns for non-judicial elective public office, candidates may make pledges, promises, or commitments related to positions they would take and ways they would act when elected to office. Although appropriate in campaigns for non-judicial elective office, this manner of campaigning is inconsistent with the role of judges, who must remain fair and impartial to all who bring disputes before them for resolution.*

[3] *This Rule ensures that judges who become candidates for non-judicial elective office cannot misuse the judicial office to promote that candidacy, and prevents post-campaign retaliation by such judges in the event of their defeat in such an election.*

#### **Rule 4.6 Applicability of the Political Conduct Rules**

This Canon generally applies to all incumbent judges and *judicial candidates*. A successful or unsuccessful *judicial candidate*, whether or not an incumbent, is subject to judicial discipline by the *appropriate authority* for improper campaign conduct.

*Commentary:*

*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 upon the expressed views or 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.*

### **Effective Date of Revised Code and Amendments**

The former Code of Judicial Conduct remains in effect as to conduct occurring before the effective date of this version, which is January 1, 2016. Subsequent amendments to this version having later effective dates are so indicated at the location of the amendments.

# APPENDIX: CITATIONS TO TERMINOLOGY

The defined terms listed below are presented in *italics* where they appear in the Rules, as well as the Preamble and Scope, Terminology, and Application sections, and in regular text when used in the Commentary. These defined terms may be located using the following cross-reference citations.

**“Aggregate”** See Rule 2.11 (A) (4); *Commentary [8], [9], and [10]* for Rule 2.11; Rule 3.15 (A) (2).

**“Appropriate action”** See Terminology Section; Rule 2.15 (A) and (B).

**“Appropriate authority”** See Terminology Section; Application Section; *Commentary [4]* for Rule 2.11; Rule 2.15 (A), (B), and (D); *Commentary [1] and [2]* for Rule 2.15.

**“Campaign committee”** See Terminology Section; *Commentary [12] (i), (ii), and (iii)* for Rule 2.11; Rule 4.2 (A) (4) and (5); *Commentary [7] and [8]* for Rule 4.2.

**“Campaign contribution disclosure report”** See *Commentary [2] and [11]* for Rule 2.11.

**“Comment”** See Rule 2.10 (A) and (D); *Commentary [1] and [2]* for Rule 2.10; *Commentary [2]* for Rule 4.2.

**“Contribution”** See Terminology Section; Rule 2.11 (A) (4) and (A) (4) (a), (b), (d), (g), (h); *Commentary [8], [9], [10], and [12]* for Rule 2.11; Rule 4.1 (A) (3); Rule 4.2 (B).



**“De minimis”** See Terminology Section; Rule 2.11 (A) (2) (c); *Commentary [2]* for Rule 3.11.

**“Degree of relationship”** See Rule 2.11 (A) (2).

**“Domestic partner”** See Terminology Section; Rule 2.11 (A) (2) and (B); Rule 3.11 (E); Rule 3.13 (D) (1) and (D) (10); Rule 3.14.

**“Economic interest”** See Rule 3.11 (E).

**“Election cycle”** See Terminology Section; *Commentary [8] and [9]* for Rule 2.11.

**“Family”** See Terminology Section; Application Section; Rule 2.4; Rule 2.11 (C); *Commentary [7]* for Rule 2.11; Rule 3.8 (A); *Commentary [1]* for Rule 3.11; Rule 3.13 (D) (10); *Commentary [4]* for Rule 3.13.

**“Fiduciary”** See Application Section; Rule 2.11 (B); Rule 3.8; Rule 3.8 (A), (B), and (C); *Commentary* for Rule 3.8; Rule 3.11 (E).

**“Financial disclosure statement”** See *Commentary [2] and [11]* for Rule 2.11.

**“Impartial,” “impartiality,” and “impartially”** See Preamble; Terminology Section; Canon 1; Rule 1.2 (A) and (B); *Commentary [1] and [3]* for Rule 1.2; Canon 2; Rule 2.2; *Commentary [2]* for Rule 2.3; *Commentary* for Rule 2.6; *Commentary [1]* for Rule 2.7; *Commentary [3]* for Rule 2.8; Rule 2.10; *Commentary [1]* for Rule 2.10; Rule 2.11 (A), Rule 2.11 (A) (4) (h), and (A) (5); *Commentary [1] and [5]* for Rule 2.11; Rule 2.13 (a) (1); Rule 3.1 (C); Rule 3.6; *Commentary [1]* for Rule 3.6; Rule 3.7 (B); *Commentary [1]* for Rule 3.7; Rule 3.11 (B); *Commentary [2]* for Rule 3.11; Rule 3.12; Rule 3.13 (A)

(2); *Commentary [5], [6], and [8]* for Rule 3.13; *Commentary [1]* for Rule 4.2; Rule 4.5.

**“Impending matter”** See Terminology Section; Rule 2.9 (A) and (C); *Commentary [9] and [11]* for Rule 2.9; Rule 2.10 (A); *Commentary [1]* for Rule 2.10; Rule 2.11 (A) (1) and (A) (4) (f); *Commentary [2]* for Rule 4.2.

**“Impropriety”** See Preamble; Canon 1; *Commentary [2] and [3]* for Rule 1.2; Canon 2; *Commentary [1]* for Rule 3.6; *Commentary [6]* for Rule 3.13.

**“Independence”** See Preamble; Scope; Terminology Section; Canon 1; Rule 1.2; *Commentary [1]* for Rule 1.2; *Commentary [1]* for Rule 2.10; *Commentary* for Rule 3.4; *Commentary [1]* for Rule 3.7; Rule 3.12; Rule 3.13 (A) (2); *Commentary [5], [6], and [8]* for Rule 3.13; *Commentary [3]* for Rule 4.2.

**“Integrity”** See Preamble; Terminology Section; Canon 1; Rule 1.2; *Commentary [1] and [3]* for Rule 1.2; *Commentary [1]* for Rule 2.10; *Commentary [1]* for Rule 2.15; *Commentary [1]* for Rule 3.6; Rule 3.12; Rule 3.13 (A) (2); *Commentary [5], [6], and [8]* for Rule 3.13.

**“Intimate partner”** See Terminology Section; Rule 2.11 (A) (2) and (B); Rule 3.11 (E); Rule 3.13 (D) (1) and (D) (10); Rule 3.14.

**“Invidious discrimination”** See Rule 3.6 (A) and (B); *Commentary [1], [2], and [3]* for Rule 3.6.

**“Judicial candidate”** See Scope; Application Section; Terminology Section; Rule 2.11 (A) (4) (g) and (A) (5); *Commentary [12]* for Rule 2.11; Rule 4.1 (A) and (B); *Commentary* for Rule 4.1; Rule 4.2 (A), (A) (3), (A) (4), and (B); *Commentary [1], [2], [3], [4], [5], [6], and [7]* for Rule 4.2; Rule 4.3; *Commentary* for Rule 4.3; Rule 4.6; *Commentary* for Rule 4.6.

**“Knowingly,” “knowledge,” “known,” or “knows”** See Terminology Section; *Commentary [2]* for Rule 2.2; Rule 2.11 (A) (1), (A) (2) (c) and (A) (2) (d); *Commentary [8] and [12]* for Rule 2.11; Rule 2.15 (A) and (B); *Commentary [1] and [2]* for Rule 2.15; Rule 3.6 (B).

**“Law”** See Preamble; Terminology Section; Application Section; Rule 1.1; Rule 2.1; Rule 2.4; Rule 2.6; *Commentary [3]* for Rule 2.7; *Commentary [4]* for Rule 2.8; Rule 2.9 (A), (A) (2), and (A) (5); *Commentary [4]* for Rule 2.9; *Commentary [9] and [11]* for Rule 2.11; Rule 3.1 (C); Rule 3.2; Rule 3.4; Rule 3.7 (A) (1), (A) (2), and (A) (3); *Commentary [1] and [3]* for Rule 3.7; Rule 3.10; Rule 3.13 (A) (1) and (D) (1) (a); *Commentary [1]* for Rule 4.2; Rule 4.5 (A) and (B); *Commentary* for Rule 4.6.

**“Member of a judge’s family residing in the judge’s household”** See Rule 2.11 (A) (2).

**“Non-public information”** See Rule 2.10 (A).

**“Pending proceeding”** See Terminology Section; Rule 2.9 (A) and (C); *Commentary [9] and [11]* for Rule 2.9; Rule 2.10 (A); *Commentary [1]* for Rule 2.10; Rule 2.11 (A) (1) and (A) (4) (f); *Commentary [2]* for Rule 4.2.

**“Personally solicit”** See Rule 3.7 (A) (3) and (B) (2); Rule 4.2 (B).

**“Political organization”** See Rule 4.1 (A) (1), (A) (2), and (A) (3); Rule 4.3 (B).

**“Public election”** See *Commentary [8]* for Rule 2.11 (B); Rule 4.1 (A); *Commentary* for Rule 4.6.

**“Require”** See *Commentary [1] and [3]* for Rule 2.1; Rule 2.3 (C); *Commentary [1]* for Rule 2.3; Rule 2.8 (A); Rule 2.9 (A) (1); Rule 2.10 (C).

**“Serious crime”** See Rule 2.15 (D).

**“Support”** See Terminology Section; Rule 2.11 (A) (4), and (A) (4) (a), (b), (d), (e), (h); Rule 4.2 (B).