

# Supreme Court of Kentucky

**IN RE:  
ORDER AMENDING  
RULES OF THE SUPREME COURT (SCR) 4.300**

**2018-03**

---

Effective January 31, 2018, the current SCR 4.300 Kentucky Code of Judicial Conduct is hereby deleted and replaced with the following:

SCR 4.300 Kentucky Code of Judicial Conduct

**KENTUCKY CODE  
OF  
JUDICIAL CONDUCT**

**PREAMBLE**

[1] An independent, fair, and impartial judiciary is indispensable to our system of justice. The United States and Kentucky legal systems are based upon the principle that an independent, impartial, and competent judiciary, composed of men and women of integrity, will interpret and apply the law that governs our society. Thus, the judiciary plays a central role in preserving the principles of justice and the rule of law. Inherent in all the Rules contained in this Code are the precepts that judges, individually and collectively, must respect and honor the judicial office as a public trust and strive to maintain and enhance confidence in the legal system.

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

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

## SCOPE

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

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

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

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

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

[6] Although the black letter of the Rules is binding and enforceable, it is not contemplated that every transgression will result in the imposition of discipline. Whether discipline should be imposed should be determined through a reasonable and reasoned application of the Rules, and should depend upon factors such as the seriousness of the transgression, the facts and circumstances that existed at the time of the transgression, the extent of any pattern of improper activity, whether there have been previous violations, and the effect of the improper activity upon the judicial system or others.

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

## TERMINOLOGY

**The first time any term listed below is used in a Rule (including a Rule's Comments) in its defined sense, it is followed by an asterisk (\*).**

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

**"Contribution"** means both financial and in-kind contributions, such as goods, professional or volunteer services, advertising, and other types of assistance, which, if obtained by the recipient otherwise, would require a financial expenditure. See Rules 3.1, 3.7, 3.13, 4.1, and 4.4.

**"De minimis,"** in the context of interests pertaining to disqualification of a judge, means an insignificant interest that could not raise a reasonable question regarding the judge's impartiality. See Rules 2.11 and 3.8.

**"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. See Rules 2.11, 2.13, 3.13, and 3.14.

**"Economic interest"** means ownership of more than a de minimis legal or equitable interest. Except for situations in which the judge participates in the management of such a legal or equitable interest, or the interest could be substantially affected by the outcome of a proceeding before a judge, it does not include:

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

See Rules 1.3, 2.11, 3.2, and 3.8.

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

**"Impartial," "impartiality," and "impartially"** mean absence of bias or prejudice in favor of, or against, particular parties or classes of parties, as well as maintenance of an open mind in considering issues that may come before a judge. See Canons 1, 2, and 4, and Rules 1.2, 2.2, 2.6, 2.7, 2.10, 2.11, 2.13, 3.1, 3.2, 3.4, 3.6, 3.7, 3.12, 3.13, 3.14, 4.1,

4.2, 4.3, and 4.5.

**“Impending”** means imminent or expected to occur in the near future. See Rules 2.9, 2.10, 3.13, and 3.14.

**“Impropriety”** includes conduct that violates the law, court rules, or provisions of this Code, and conduct that undermines a judge’s independence, integrity, or impartiality. See Canon 1 and Rules 1.2, 3.6, and 3.13.

**“Independence”** means a judge’s freedom from influence or controls other than those established by law. See Canons 1 and 4, and Rules 11.2, 2.7, 2.10, 3.1, 3.2, 3.4, 3.7, 3.12, 3.13, 3.14, 4.1, and 4.2.

**“Integrity”** means probity, fairness, honesty, uprightness, and soundness of character. See Canons 1 and 4, and Rules 1.2, 2.7, 2.10, 3.1, 3.2, 3.6, 3.7, 3.12, 3.13, 3.14, 4.1, and 4.2.

**“Judicial candidate”** means any person, including a sitting judge, who is seeking selection for judicial office by election or appointment. A person becomes a candidate for judicial office as soon as he or she makes a public announcement of candidacy, declares or files as a candidate with the election or appointment authority, authorizes or, where permitted, engages in solicitation or acceptance of contributions or support, or is nominated for election or appointment to office. See Rules 2.11, 3.15, 4.1, 4.2, and 4.4.

**“Knowingly,” “knowledge,” “known,” and “knows”** mean actual knowledge of the fact in question. A person’s knowledge may be inferred from circumstances. See Rules 1.3, 2.11, 2.15, 2.16, 3.2, 3.6, and 4.1.

**“Law”** encompasses court rules as well as statutes, constitutional provisions, and decisional law. See Rules 1.1, 1.2, 1.3, 2.1, 2.2, 2.4, 2.6, 2.7, 2.8, 2.9, 2.13, 3.1, 3.4, 3.9, 3.12, 3.13, 3.14, 4.1, 4.2, and 4.4.

**“Member of the candidate’s family”** means a spouse, domestic partner, child, grandchild, parent, grandparent, or other relative or person with whom the candidate maintains a close familial relationship. See Rules 4.1 and 4.2.

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

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

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

See Rule 3.5.

**“Pending”** means commenced. A matter continues to be pending through any appellate process until final disposition. See Rules 2.9, 2.10, 3.13, 3.14, and 4.1.

**“Personally solicit”** means a direct request made by a judge or a judicial candidate for financial support or in-kind services, whether made by letter, telephone, social media, or any other means of communication. See Rules 3.7, 4.1, and 4.4.

**“Political organization”** means a political party or other group sponsored by or affiliated with a political party or candidate, the principal purpose of which is to further the election or appointment of candidates for partisan political office. For purposes of this Code, the term does not include a judicial candidate’s campaign committee created as authorized by Rule 4.4. See Rules 4.1 and 4.3.

**“Third degree of relationship”** includes the following persons: great-grandparent, grandparent, parent, uncle, aunt, brother, sister, child, grandchild, great-grandchild, nephew, and niece. See Rules 2.11 and 2.13

## APPLICATION

The Application section establishes when the various Rules apply to a judge or judicial candidate.

### I. APPLICABILITY OF THIS CODE

**(A) The provisions of the Code apply to all full-time judges. Parts II through IV of this section identify provisions that apply to three distinct categories of part-time judges, including judicial officers, only while they are serving as judges, and provisions that do not apply to part-time judges/judicial officers at any time. All other Rules are therefore applicable to part-time judges/judicial officers at all times. The three categories of judicial service in other than a full-time capacity are necessarily defined in general terms because of the widely varying forms of judicial service. Canon 4 applies to judicial candidates.**

**(B) A judge, within the meaning of this Code, is anyone who is authorized to perform judicial functions, including a judicial officer as provided in Parts II through IV of this section, such as a court commissioner.**

### COMMENT

[1] The Rules in this Code have been formulated to address the ethical obligations of any person who serves a judicial function, and are premised upon the supposition that a uniform system of ethical principles should apply to all those authorized to perform judicial functions.

[2] The determination of which category and, accordingly, which specific Rules apply

to an individual judicial officer, depends upon the facts of the particular judicial service.

[3] In recent years many jurisdictions have created what are often called “specialty” or “problem solving” courts, in which judges are authorized by court rules to act in nontraditional ways. Judges presiding in drug courts and monitoring the progress of participants in those courts’ programs may be authorized and even encouraged to communicate directly with social workers, probation officers, and others outside the context of their usual judicial role as independent decision makers on issues of fact and law. Such conduct may be permissible under applicable law\* and not in violation of this Code. *See, e.g.*, Rule 2.9, Comment [4].

## **II. CONTINUING PART-TIME JUDGE**

**A judicial officer who serves repeatedly on a part-time basis under a continuing appointment (“continuing part-time judge”),**

**(A) is not required to comply:**

**(1) with Rule 4.1 (Political and Campaign Activities of Judges and Judicial Candidates in General) (A)(1) through (7), except while serving as a judge; or**

**(2) at any time with Rules 3.8(A) (Appointments to Fiduciary Positions), 3.9 (Service as Arbitrator or Mediator), 3.10 (Practice of Law), 3.11(B) (Financial, Business, or Remunerative Activities); and**

**(B) may practice law in the court in which the judge serves or in any court subject to the appellate jurisdiction of the court on which the judge serves, but shall not act as a lawyer in a proceeding in which the judge has served as a judge or in any other proceeding related thereto.**

## **COMMENT**

[1] Master commissioners, domestic relations commissioners and trial commissioners serve repeatedly on a part-time basis under a continuing appointment. These judicial officers are, therefore, subject to this rule.

[2] When a person who has been a continuing part-time judge is no longer a continuing part-time judge, that person may act as a lawyer in a proceeding in which he or she has served as a judge or in any other proceeding related thereto only with the informed consent of all parties, and pursuant to SCR 3.130(1.12).

## **III. PERIODIC PART-TIME JUDGE**

**A periodic part-time judge who serves or expects to serve repeatedly on a part-time basis, but under a separate appointment for each limited period of service or for each matter,**

**(A) is not required to comply:**

**(1) with Rule 4.1 (Political and Campaign Activities of Judges and Judicial Candidates in General) (A)(1) through (7), except while serving as a judge; or;**

**(2) at any time with 3.8(A) (Appointments to Fiduciary Positions), 3.9 (Service as Arbitrator or Mediator), 3.10 (Practice of Law), and 3.11(B) (Financial, Business, or Remunerative Activities); and**

**(B) may not practice law or serve as an arbitrator or mediator in the district or circuit court in which the judge serves or in any court subject to the appellate jurisdiction of the court on which the judge serves, and shall not act as a lawyer in a proceeding in which the judge has served as a judge or in any other proceeding related thereto.**

## **COMMENT**

[1] Retired/senior judges who participate in the Temporary Assignment of Retired Judges Program are subject to this Rule.

[2] Retired judges or justices who do not participate in the Temporary Assignment of Retired Judges Program but who are appointed to serve by the Chief Justice, pursuant to Kentucky Constitution § 110(5), are subject to this Rule.

## **IV. PRO TEMPORE PART-TIME JUDGE**

**A pro tempore part-time judge who serves or expects to serve once or only sporadically on a part-time basis under a separate appointment for each period of service or for each case heard is not required to comply:**

**(A) except while serving as a judge, with Rules 2.4 (External Influences on Judicial Conduct), 3.2 (Appearances before Governmental Bodies and Consultation with Government Officials), and Rule 4.1 (Political and Campaign Activities of Judges and Judicial Candidates in General) (A)(1) through (7); or**

**or**

**(B) at any time with 3.8 (Appointments to Fiduciary Positions), 3.9 (Service as Arbitrator or Mediator), 3.10 (Practice of Law), and 3.11(B) (Financial, Business, or Remunerative Activities).**

## **COMMENT**

[1] Special justices appointed to the Supreme Court by the Governor, pursuant to

Kentucky Constitution § 110(3), are subject to this Rule.

## **V. TIME FOR COMPLIANCE**

**A person to whom this Code becomes applicable shall comply immediately with its provisions, except that those judges to whom Rules 3.8 (Appointments to Fiduciary Positions) and 3.11 (Financial, Business, or Remunerative Activities) apply shall comply with those Rules as soon as reasonably possible, but in no event later than 90 days after the Code becomes applicable to the judge.**

### **COMMENT**

[1] If serving as a fiduciary when selected as judge, a new judge may, notwithstanding the prohibitions in Rule 3.8, continue to serve as fiduciary, but only for that period of time necessary to avoid serious adverse consequences to the beneficiaries of the fiduciary relationship and in no event longer than 90 days. Similarly, if engaged at the time of judicial selection in a business activity, a new judge may, notwithstanding the prohibitions in Rule 3.11, continue in that activity for a reasonable period but in no event longer than 90 days.



# CANON 1

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

## **RULE 1.1**

### ***Compliance with the Law***

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

## **RULE 1.2**

### ***Promoting Confidence in the Judiciary***

**A judge shall act at all times in a manner that promotes public confidence in the independence,\* integrity,\* and impartiality\* of the judiciary, and shall avoid impropriety\* and the appearance of impropriety.**

## **COMMENT**

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

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

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

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

[5] Actual improprieties include violations of law,\* court rules, or provisions of this Code. The test for appearance of impropriety is whether the conduct would create in reasonable minds a perception that the judge engaged in conduct that reflects adversely on the judge's honesty, impartiality, temperament, or fitness to serve as a judge.

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

### **RULE 1.3**

#### ***Avoiding Abuse of the Prestige of Judicial Office***

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

#### **COMMENT**

[1] It is improper for a judge to use or attempt to use his or her position to gain personal advantage or deferential treatment of any kind. For example, it would be improper for a judge to allude to his or her judicial status to gain favorable treatment in encounters with traffic officials. Similarly, a judge must not use judicial letterhead to gain an advantage in conducting his or her personal business.

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

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

[4] In contracts for publication of a judge's writing, the judge should retain sufficient control over the advertising to avoid exploitation of the judge's office in violation of this rule. A biography or description of the individual that includes office(s) currently or previously held is a communication of professional qualifications and is permitted by this rule.

## CANON 2

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

### **RULE 2.1**

#### ***Giving Precedence to the Duties of Judicial Office***

**The duties of judicial office, as prescribed by law,\* shall take precedence over all of a judge's personal and extrajudicial activities.**

#### **COMMENT**

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

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

### **RULE 2.2**

#### ***Impartiality and Fairness***

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

#### **COMMENT**

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

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

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

[4] A judge does not violate this Rule by making reasonable accommodations to ensure pro se litigants the opportunity to have their matters fairly heard.

## **RULE 2.3**

### ***Bias, Prejudice, and Harassment***

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

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

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

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

### **COMMENT**

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

[2] Examples of manifestations of bias or prejudice include but are not limited to epithets; slurs; demeaning nicknames; negative 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. A judge must avoid conduct that may reasonably be perceived as prejudiced or biased.

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

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

## **RULE 2.4**

### ***External Influences on Judicial Conduct***

- (A) A judge shall not be swayed by public clamor or fear of criticism.
- (B) A judge shall not permit family, social, political, financial, or other interests or relationships to influence the judge's judicial conduct or judgment.
- (C) A judge shall not convey or permit others to convey the impression that any person or organization is in a position to influence the judge.

#### **COMMENT**

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

## **RULE 2.5**

### ***Competence, Diligence, and Cooperation***

- (A) A judge shall perform judicial and administrative duties, competently, and diligently.
- (B) A judge shall cooperate with other judges and court officials in the administration of court business.

#### **COMMENT**

[1] Competence in the performance of judicial duties requires the legal knowledge, skill, thoroughness, and preparation reasonably necessary to perform a judge's responsibilities of judicial office.

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

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

[4] In disposing of matters promptly and efficiently, a judge must demonstrate due regard for the rights of parties to be heard and to have issues resolved without unnecessary cost or delay. A judge should monitor and supervise cases in ways that reduce or eliminate dilatory practices, avoidable delays, and unnecessary costs.

## **RULE 2.6**

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

**(A) A judge shall accord to every person who has a legal interest in a proceeding, or that person's lawyer, the right to be heard according to law.\***

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

#### **COMMENT**

[1] The right to be heard is an essential component of a fair and impartial system of justice. Substantive rights of litigants can be protected only if procedures protecting the right to be heard are observed.

[2] The judge plays an important role in overseeing the settlement of disputes, but should be careful that efforts to further settlement do not undermine any party's right to be heard according to law. The judge should keep in mind the effect that the judge's participation in settlement discussions may have, not only on the judge's own views of the case, but also on the perceptions of the lawyers and the parties if the case remains with the judge after settlement efforts are unsuccessful. Among the factors that a judge should consider when deciding upon an appropriate settlement practice for a case are (1) whether the parties have requested or voluntarily consented to a certain level of participation by the judge in settlement discussions, (2) whether the parties and their counsel are relatively sophisticated in legal matters, (3) whether the case will be tried by the judge or a jury, (4) whether the parties participate with their counsel in settlement discussions, (5) whether any parties are unrepresented by counsel, and (6) whether the matter is civil or criminal.

[3] Judges must be mindful of the effect settlement discussions can have, not only on their objectivity and impartiality,\* but also on the appearance of their objectivity and impartiality. Despite a judge's best efforts, instances may occur when information obtained during settlement discussions could influence a judge's decision making during trial, and, in such instances, the judge should consider whether disqualification may be appropriate. See Rule 2.11(A)(1).

## **RULE 2.7**

### ***Responsibility to Decide***

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

#### **COMMENT**

[1] Judges must be available to decide the matters that come before the court. Although there are times when disqualification is necessary to protect the rights of litigants and preserve public confidence in the independence,\* integrity,\* and impartiality\* of the judiciary, judges must be available to decide matters that come before the courts.

Unwarranted disqualification may bring public disfavor to the court and to the judge personally. The dignity of the court, the judge's respect for fulfillment of judicial duties, and a proper concern for the burdens that may be imposed upon the judge's colleagues require that a judge not use disqualification to avoid cases that present difficult, controversial, or unpopular issues.

## **RULE 2.8**

### ***Decorum, Demeanor, and Communication with Jurors***

- (A) A judge shall require order and decorum in proceedings before the court.
- (B) A judge shall be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, court staff, court officials, and others with whom the judge deals in an official capacity, and shall require similar conduct of lawyers, court staff, court officials, and others subject to the judge's direction and control.
- (C) A judge shall not commend or criticize jurors for their verdict other than in a court order or opinion in a proceeding.

## **COMMENT**

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

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

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

## **RULE 2.9**

### ***Ex Parte Communications***

- (A) A judge shall not initiate, permit, or consider *ex parte* communications, or consider other communications made to the judge outside the presence of the parties or their lawyers, concerning a pending\* or impending\* matter, except as follows:
  - (1) When circumstances require it, *ex parte* communication for scheduling, administrative, or emergency purposes, which does not address substantive matters, is permitted, provided:

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

(b) the judge makes provision promptly to notify all other parties of the substance of the ex parte communication, and gives the parties an opportunity to respond.

(2) As a part of legal research, a judge may obtain the advice of a disinterested expert on the law applicable to a proceeding before the judge.

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

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

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

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

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

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

## COMMENT

[1] To the extent reasonably possible, all parties or their lawyers shall be included in all communications to or from a judge. See Rule 2.6(A); see also *Commonwealth v. Carman*, 455 S.W.3d 916, 923 (Ky. 2015) (holding that ex parte communications to modify conditions of release are improper); *Commonwealth v. Wilson*, 384 S.W.3d 113, 114 (Ky. 2012) (holding that Commonwealth is entitled to notice and opportunity to be heard on criminal defendant's motion to vacate or set aside arrest warrant).



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

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

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

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

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

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

## **RULE 2.10**

### ***Judicial Statements on Pending and Impending Cases***

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

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

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

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

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

## COMMENT

[1] This Rule's restrictions on judicial speech are essential to the maintenance of the independence,\* integrity,\* and impartiality of the judiciary. Paragraphs (A) and (B) make clear that the prohibition applying to judges and judicial candidates in Rule 4.1(A)(12) and (13) applies to sitting judges at all times, and the Commentary to Rule 4.1(A)(12) and (13) is applicable to this Rule as well.

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

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

## RULE 2.11

### *Disqualification*

**(A) A judge shall disqualify himself or herself in any proceeding in which the judge's impartiality\* might reasonably be questioned, including but not limited to the following circumstances:**

**(1) The judge has a personal bias or prejudice concerning a party or a party's lawyer, or personal knowledge\* of facts that are in dispute in the proceeding.**

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

**(a) a party to the proceeding, or an officer, director, general partner, managing member, or trustee of a party;**

**(b) acting as a lawyer in the proceeding;**

**(c) a person who has more than a de minimis\* interest that could be substantially affected by the proceeding; or**

**(d) likely to be a material witness in the proceeding.**

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

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

**(5) The judge:**

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

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

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

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

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

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

## **COMMENT**

[1] Under this Rule, a judge is disqualified whenever the judge's impartiality might reasonably be questioned, regardless of whether any of the specific provisions of paragraphs (A)(1) through (5) apply. In many jurisdictions, the term "recusal" is used interchangeably with the term "disqualification."

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

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

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

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

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

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

## **RULE 2.12**

### ***Supervisory Duties***

**(A) A judge shall require court staff, court officials, and others subject to the judge's direction and control to act in a manner consistent with the judge's obligations under this Code.**

**(B) A judge with supervisory authority for the performance of other judges shall take reasonable measures to ensure that those judges properly discharge their judicial responsibilities, including the prompt disposition of matters before them.**

## COMMENT

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

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

## RULE 2.13

### *Administrative Appointments*

(A) In making administrative appointments, a judge:

(1) shall exercise the power of appointment impartially\* and on the basis of merit; and

(2) shall avoid nepotism, favoritism, and unnecessary appointments.

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

## COMMENT

[1] Appointees of a judge include assigned counsel, officials such as referees, commissioners, special masters, receivers, and guardians, and personnel such as 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 paragraph (A).

[2] Unless otherwise defined by law,\* nepotism is the appointment or hiring of any relative within the third degree of relationship\* of either the judge or the judge's spouse or domestic partner,\* or the spouse or domestic partner of such relative.

## RULE 2.14

### *Disability and Impairment*

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

## COMMENT

[1] “Appropriate action” means action intended and reasonably likely to help the judge or lawyer in question address the problem and prevent harm to the justice system. Depending upon the circumstances, appropriate action may include, but is not limited to, speaking directly to the impaired person, notifying an individual with supervisory responsibility over the impaired person, or making a referral to an assistance program.

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

## RULE 2.15

### *Responding to Judicial and Lawyer Misconduct*

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

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

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

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

**(E) A judge acting in good faith in the discharge of disciplinary responsibilities required or permitted by this Rule shall be immune from any action, civil or criminal.**

## COMMENT

[1] Taking action to address known misconduct is a judge’s obligation. Paragraphs (A) and (B) impose an obligation on the judge to report to the appropriate disciplinary authority the known misconduct of another judge or a lawyer that raises a substantial question regarding the honesty, trustworthiness, or fitness of that judge or lawyer.

Ignoring or denying known misconduct among one's judicial colleagues or members of the legal profession undermines a judge's responsibility to participate in efforts to ensure public respect for the justice system. This Rule limits the reporting obligation to those offenses that an independent judiciary must vigorously endeavor to prevent.

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

## **RULE 2.16**

### ***Cooperation with Disciplinary Authorities***

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

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

### **COMMENT**

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

## CANON 3

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

### **RULE 3.1**

#### ***Extrajudicial Activities in General***

**A judge may engage in extrajudicial activities, except as prohibited by law\* or this Code. However, when engaging in extrajudicial activities, a judge shall not:**

- (A) participate in activities that will interfere with the proper performance of the judge's judicial duties;**
- (B) participate in activities that will lead to frequent disqualification of the judge;**
- (C) participate in activities that would appear to a reasonable person to undermine the judge's independence,\* integrity,\* or impartiality;\***
- (D) engage in conduct that would appear to a reasonable person to be coercive; or**

### **COMMENT**

[1] To the extent that time permits, and judicial independence and impartiality are not compromised, judges are encouraged to engage in appropriate extrajudicial activities. Judges are uniquely qualified to engage in extrajudicial activities that concern the law, the legal system, and the administration of justice, such as by speaking, writing, teaching, or participating in scholarly research projects. In addition, judges are permitted and encouraged to engage in educational, religious, charitable, fraternal, or civic extrajudicial activities not conducted for profit, even when the activities do not involve the law. See Rule 3.7.

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

[3] Discriminatory actions and expressions of bias or prejudice by a judge, even outside the judge's official or judicial actions, are likely to appear to a reasonable person to call into question the judge's integrity and impartiality. Examples include jokes or other remarks that demean individuals based upon their race, sex, gender, religion, national origin, ethnicity, disability, age, sexual orientation, or socioeconomic status. For the same reason, a judge's extrajudicial activities must not be conducted in connection or affiliation with an organization that practices invidious discrimination. See Rule 3.6.



[4] While engaged in permitted extrajudicial activities, judges must not coerce others or take action that would reasonably be perceived as coercive. For example, depending upon the circumstances, a judge's solicitation of contributions\* or memberships for an organization, even as permitted by Rule 3.7(A), might create the risk that the person solicited would feel obligated to respond favorably, or would do so to curry favor with the judge.

## **RULE 3.2**

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

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

- (A) in connection with matters concerning the law, the legal system, or the administration of justice;**
- (B) in connection with matters about which the judge acquired knowledge\* or expertise in the course of the judge's judicial duties; or**
- (C) when the judge is acting pro se in a matter involving the judge's legal or economic interests,\* or when the judge is acting in a fiduciary\* capacity.**

## **COMMENT**

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

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

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

### **RULE 3.3**

#### ***Testifying as a Character Witness***

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

#### **COMMENT**

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

### **RULE 3.4**

#### ***Appointments to Governmental Positions***

**A judge shall not accept appointment to a governmental committee, board, commission, or other governmental position within the executive or legislative branches that exercises power to make governmental decisions within that branch or determines governmental policy, except as otherwise authorized or required by law.\***

#### **COMMENT**

[1] Rule 3.4 is based upon Kentucky Constitution Sections 27 (providing for the separation of governmental powers into three branches) and 28 (prohibiting officers of one branch from exercising any power properly belonging to another branch). The Rule prohibits a judge from accepting any governmental position within either the legislative or executive branches that makes governmental decisions or policy. The Rule does not prohibit a judge from serving upon such a board or commission where judicial participation is otherwise required by law, subject to compliance with the Constitutional mandate. The Rule does not prohibit a judge from accepting positions within the legislative or executive branches that are merely advisory and lack the authority to exercise the constitutional power of that branch. For example, service upon a board or committee that governs a state university would be prohibited, but service upon a university board that merely makes advisory suggestions to university officials would not be prohibited by this Rule. Even in such instances, however, a judge should assess the appropriateness of accepting an appointment, paying particular attention to the subject matter of the appointment and the availability and allocation of judicial resources, including the judge's time commitments, and giving due regard to the requirements of the independence\* and impartiality\* of the judiciary.

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

## **RULE 3.5**

### ***Use of Nonpublic Information***

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

#### **COMMENT**

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

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

## **RULE 3.6**

### ***Affiliation with Discriminatory Organizations***

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

**(B) A judge shall not use the benefits or facilities of an organization if the judge knows\* or should know that the organization practices invidious discrimination on one or more of the bases identified in paragraph (A). A judge's attendance at an event in a facility of an organization that the judge is not permitted to join is not a violation of this Rule when the judge's attendance is an isolated event that could not reasonably be perceived as an endorsement of the organization's practices.**

#### **COMMENT**

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

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

organization is dedicated to the preservation of religious, ethnic, or cultural values of legitimate common interest to its members, or whether it is an intimate, purely private organization whose membership limitations could not constitutionally be prohibited.

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

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

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

### **RULE 3.7**

#### ***Participation in Educational, Religious, Charitable, Fraternal, or Civic Organizations and Activities***

- (A) Subject to the requirements of Rules 3.1 and 3.4, a judge may participate in activities sponsored by organizations or governmental entities concerned with the law, the legal system, or the administration of justice, and those sponsored by or on behalf of educational, religious, charitable, fraternal, or civic organizations not conducted for profit, including but not limited to the following activities:
- (1) assisting such an organization or entity in planning related to fund-raising, and participating in the management and investment of the organization's or entity's funds;
  - (2) personally soliciting\* contributions\* for such an organization or entity, but only from members of the judge's family,\* or from judges over whom the judge does not exercise supervisory or appellate authority;
  - (3) soliciting membership for an organization or entity concerned with the law, the legal system, or the administration of justice, but not if the membership solicitation is essentially a fund-raising mechanism or if the solicitation might reasonably be perceived as coercive;
  - (4) appearing or speaking at, receiving an award or other recognition at, being featured on the program of, and permitting his or her title to be used in connection with an event of such an organization or entity, even if the event serves a fund-raising purpose, but may not personally engage in direct solicitation of contributions;
  - (5) making recommendations to such a public or private fund-granting organization or entity in connection with its programs and activities, but only if the organization or entity is concerned with the law, the legal system, or the administration of justice;

and

- (6) **serving as an officer, director, trustee, or nonlegal advisor of such an organization or entity, unless it is likely that the organization or entity:**
- (a) **will be engaged in proceedings that would ordinarily come before the judge; or**
  - (b) **will frequently be engaged in adversary proceedings in the court of which the judge is a member, or in any court subject to the appellate jurisdiction of the court of which the judge is a member.**

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

## COMMENT

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

[2] Even for law-related organizations, a judge should consider whether the membership and purposes of the organization, or the nature of the judge's participation in or association with the organization, would conflict with the judge's obligation to refrain from activities that reflect adversely upon a judge's independence,\* integrity,\* and impartiality.\*

[3] Mere attendance at an event, whether or not the event serves a fund-raising purpose, does not constitute a violation of paragraph (A)(4). It is also generally permissible for a judge to serve as an usher or a food server or preparer, or to perform similar functions, at fund-raising events sponsored by educational, religious, charitable, fraternal, or civic organizations. Such activities are not solicitation and do not present an element of coercion or abuse the prestige of judicial office.

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

[5] In addition to appointing lawyers to serve as counsel for indigent parties in individual cases, a judge may promote broader access to justice by encouraging lawyers to participate in pro bono public legal services, if in doing so the judge does not employ coercion, or abuse the prestige of judicial office. Such encouragement may take many forms, including providing lists of available programs, training lawyers to do pro bono public legal work, and participating in events recognizing lawyers who have done pro bono public work.

## **RULE 3.8**

### ***Appointments to Fiduciary Positions***

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

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

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

(D) If a person who is serving in a fiduciary position becomes a judge, he or she must comply with this Rule as soon as reasonably practicable, but in no event later than 90 days after becoming a judge.

#### **COMMENT**

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

## **RULE 3.9**

### ***Service as Arbitrator or Mediator***

**A judge shall not act as an arbitrator or a mediator or perform other judicial functions apart from the judge's official duties unless expressly authorized by law.\***

#### **COMMENT**

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

### **RULE 3.10**

#### ***Practice of Law***

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

#### **COMMENT**

[1] A judge may act pro se in all legal matters, including matters involving litigation and matters involving appearances before or other dealings with governmental bodies. A judge must not use the prestige of office to advance the judge's personal or family interests. See Rule 1.3.

### **RULE 3.11**

#### ***Financial, Business, or Remunerative Activities***

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

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

**(1) a business closely held by the judge or members of the judge's family; or**

**(2) a business entity primarily engaged in investment of the financial resources of the judge or members of the judge's family.**

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

**(1) interfere with the proper performance of judicial duties;**

**(2) lead to frequent disqualification of the judge;**

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

**(4) result in violation of other provisions of this Code.**

## COMMENT

[1] Judges are generally permitted to engage in financial activities, including managing real estate and other investments for themselves or for members of their families. Participation in these activities, like participation in other extrajudicial activities, is subject to the requirements of this Code. For example, it would be improper for a judge to spend so much time on business activities that it interferes with the performance of judicial duties. See Rule 2.1. Similarly, it would be improper for a judge to use his or her official title or appear in judicial robes in business advertising, or to conduct his or her business or financial affairs in such a way that disqualification is frequently required. See Rules 1.3 and 2.11.

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

### **RULE 3.12**

#### ***Compensation for Extrajudicial Activities***

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

## COMMENT

[1] A judge is permitted to accept honoraria, stipends, fees, wages, salaries, royalties or other compensation for speaking, teaching, writing, and other extrajudicial activities, provided the compensation is reasonable and commensurate with the task performed. The judge should be mindful, however, that judicial duties must take precedence over other activities. See Rule 2.1.

### **RULE 3.13**

#### ***Acceptance and Reporting of Gifts, Loans, Bequests, Benefits, or Other Things of Value***

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

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

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



- (2) gifts, loans, bequests, benefits, or other things of value from friends, relatives, or other persons, including lawyers, whose appearance or interest in a proceeding pending\* or impending\* before the judge would in any event require disqualification of the judge under Rule 2.11;**
- (3) ordinary social hospitality;**
- (4) commercial or financial opportunities and benefits, including special pricing and discounts, and loans from lending institutions in their regular course of business, if the same opportunities and benefits or loans are made available on the same terms to similarly situated persons who are not judges;**
- (5) rewards and prizes given to competitors or participants in random drawings, contests, or other events that are open to persons who are not judges;**
- (6) scholarships, fellowships, and similar benefits or awards, if they are available to similarly situated persons who are not judges, based upon the same terms and criteria;**
- (7) books, magazines, journals, audiovisual materials, and other resource materials supplied by publishers on a complimentary basis for official use;**
- (8) gifts, awards, or benefits associated with the business, profession, or other separate activity of a spouse, a domestic partner,\* or other family member of a judge residing in the judge's household,\* but that incidentally benefit the judge; or**
- (9) registration fees to the annual Kentucky bar convention; dues for state or local bar associations provided to a judge on a complimentary or discounted basis; an event associated with a bar-related function or other activity relating to the law, the legal system, or the administration of justice; or other benefits/expense reimbursements provided to all judges or justices from the Kentucky Court of Justice.**

## **COMMENT**

[1] Whenever a judge accepts a gift or other thing of value without paying fair market value, there is a risk that the benefit might be viewed as intended to influence the judge's decision in a case. Rule 3.13 imposes restrictions upon the acceptance of such benefits, according to the magnitude of the risk. The prohibition in Paragraph (A) includes gifts, loans, bequests, benefits, or other things of value, if the source is a party or other person, including a lawyer, who has come or is likely to come before the judge, or whose interests have come or are likely to come before the judge. Paragraph (B) identifies circumstances in which the risk that the acceptance would appear to undermine the judge's independence,

integrity, or impartiality is low, and explicitly provides that such items need not be publicly reported.

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

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

[4] Rule 3.13 applies only to acceptance of gifts or other things of value by a judge. Nonetheless, if a gift or other benefit is given to the judge's spouse, domestic partner, or member of the judge's family residing in the judge's household,\* it may be viewed as an attempt to evade Rule 3.13 and influence the judge indirectly. Where the gift or benefit is being made primarily to such other persons, and the judge is merely an incidental beneficiary, this concern is reduced. A judge should, however, remind family and household members of the restrictions imposed upon judges, and urge them to take these restrictions into account when making decisions about accepting such gifts or benefits.

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

[6] Benefits/expense reimbursements provided to all judges or justices from the Kentucky Court of Justice are not required to be reported under Paragraph (B)(9) because they are otherwise subject to public disclosure under the Administrative Procedures of the Court of Justice, Part XVII, Open Records of the Administrative Office of the Courts.

## **RULE 3.14**

### ***Reimbursement of Expenses and Waivers of Fees or Charges***

**(A) Unless otherwise prohibited by Rules 3.1 and 3.13(A) or other law,\* a judge may accept reimbursement of necessary and reasonable expenses for travel, food, lodging, or other incidental expenses, or a waiver or partial waiver of fees or charges for registration, tuition, and similar items, from**

**sources other than the judge's employing entity, if the expenses or charges are associated with the judge's participation in extrajudicial activities permitted by this Code.**

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

## **COMMENT**

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

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

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

- (a) whether the sponsor is an accredited educational institution or bar association rather than a trade association or a for-profit entity;
- (b) whether the funding comes largely from numerous contributors rather than from a single entity and is earmarked for programs with specific content;
- (c) whether the content is related or unrelated to the subject matter of litigation pending\* or impending\* before the judge, or to matters that are likely to come before the judge;
- (d) whether the activity is primarily educational rather than recreational, and whether the costs of the event are reasonable and comparable to those associated with similar events sponsored by the judiciary, bar associations, or similar groups;
- (e) whether information concerning the activity and its funding sources is available upon inquiry;

- (f) whether the sponsor or source of funding is generally associated with particular parties or interests currently appearing or likely to appear in the judge's court, thus possibly requiring disqualification of the judge under Rule 2.11;
- (g) whether differing viewpoints are presented; and
- (h) whether a broad range of judicial and nonjudicial participants are invited, whether a large number of participants are invited, and whether the program is designed specifically for judges.

### **RULE 3.15**

#### ***Reporting Requirements***

- (A) A judge shall publicly report reimbursement of expenses and waiver of fees or charges permitted by Rule 3.14(A), unless the amount of reimbursement or waiver, alone or in the aggregate with other reimbursements or waivers received from the same source in the same calendar year, does not exceed \$100.**
- (B) When public reporting is required by paragraph (A), a judge shall report the date, place, and nature of the activity for which the judge received any compensation; and the source of reimbursement of expenses or waiver or partial waiver of fees or charges.**
- (C) The public report required by paragraph (A) shall be filed with the Chief Justice within thirty days following the conclusion of the event or program.**
- (D) All judges and judicial candidates\* shall comply with KRS 61.710, et seq.**

#### **COMMENT**

[1] This Rule does not require public reporting of interest, dividends or other income received by a judge from his or her investments held as permitted under Rule 3.11.

## CANON 4

A JUDGE OR CANDIDATE FOR JUDICIAL OFFICE SHALL NOT ENGAGE IN POLITICAL OR CAMPAIGN ACTIVITY THAT IS INCONSISTENT WITH THE INDEPENDENCE, INTEGRITY, OR IMPARTIALITY OF THE JUDICIARY. THIS CANON IS TO BE INTERPRETED CONSISTENT WITH THE FIRST AMENDMENT TO THE UNITED STATES CONSTITUTION, OTHER CONSTITUTIONAL REQUIREMENTS, STATUTES, OTHER COURT RULES, AND DECISIONAL LAW.

### **RULE 4.1**

#### ***Political and Campaign Activities of Judges and Judicial Candidates in General***

(A) Except as permitted by law,\* or by Rules 4.2, 4.3, and 4.4, a judge or a judicial candidate\* shall not:

- (1) act as a leader in, or hold an office in, a political organization;\*
- (2) make speeches on behalf of a political organization;
- (3) publicly endorse or oppose a candidate for any public office;
- (4) solicit funds for, pay an assessment to, or make a contribution\* to a political organization or a candidate for public office;
- (5) attend or purchase tickets for dinners or other events sponsored by a political organization or a candidate for public office, except that a judge or judicial candidate\* may purchase tickets to political gatherings for the judge or candidate and one guest, may attend political gatherings, and may speak to such gatherings on the judge's or candidate's own behalf;
- (6) publicly identify himself or herself as a nominee of a political organization;
- (7) seek, accept, or use endorsements from a political organization;
- (8) personally solicit\* or accept financial or in-kind campaign contributions other than through a campaign committee authorized by Rule 4.4;
- (9) use or permit the use of campaign contributions for the private benefit of the judge, the candidate, or others;
- (10) use court staff, facilities, or other court resources in a campaign for judicial office;

**(11) knowingly,\* or with reckless disregard for the truth, make any false statement of material fact;**

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

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

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

## **COMMENT**

### **GENERAL CONSIDERATIONS**

[1] Even when subject to public election, a judge plays a role different from that of a legislator or executive branch official. Rather than making decisions based 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 Kentucky's non-partisan election of judges.

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

### **PARTICIPATION IN POLITICAL ACTIVITIES**

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

[4] Section 117 of the Kentucky Constitution requires that judges be elected on a nonpartisan basis; it forms the basis for "Kentucky's compelling interest in preventing judges from becoming (or being perceived as becoming) part of partisan political machines." *See Winter v. Wolnitzek*, 834 F.3d 681, 691 (6<sup>th</sup> Cir. 2016). "Judges are not politicians, even when they come to the bench by way of the ballot. And a State's decision to elect its judiciary does not compel it to treat judicial candidates like campaigners for political office." *Williams-Yulee v. Fla. Bar*, 135 S. Ct. 1656, 1662 (2015).

Paragraph (A)(1)'s proscription against acting as a leader of a political organization furthers this compelling interest in diminishing reliance on political parties in judicial selection, and in preserving public confidence in judges, by removing judges and judicial candidates from involvement in the political campaigns of others. Acting as a leader involves "advanc[ing] the political agenda of the party in a less formal way [than holding an office] through proactive planning, organizing, directing, and controlling of party functions with the goal of achieving success for the political party. These less formalized, leader-without-title, positions would include, for example, acting formally or informally as a party spokesperson; organizing, managing, or recruiting new members; organizing or managing campaigns; fundraising; and performing other roles exerting influence or authority over the rank and file membership albeit without a formal title. . . ." *Winter v. Wolnitzek*, 482 S.W.3d 768, 777-78 (Ky. 2016). A judge or judicial candidate also is prohibited from hosting political events. In addition to fund raisers for other candidates, political events include events sponsored by or associated with political organizations.

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

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

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

[8] Paragraph A(4) does not prohibit a judge or judicial candidate from making contributions to his or her own campaign.

[9] A judge or judicial candidate "in purchasing tickets to political gatherings," pursuant to paragraph A(5), should be careful that he or she does not create the impression that the purchase is solely a contribution to another candidate or political organization, which is prohibited, but, rather, is for the advancement of the judge or judicial candidate purchasing the ticket(s).

## CAMPAIGN CONDUCT

[10] “States may regulate judicial elections differently than they regulate political elections....” *Williams-Yulee v. Fla. Bar*, 135 S. Ct. 1656, 1667 (2015). “Kentucky has a right to prevent candidates from identifying themselves as *the* nominee of a political party of a judicial seat.” *Winter v. Wolnitzek*, 834 F.3d 681, 689 (6<sup>th</sup> Cir. 2016). By prohibiting a judge or judicial candidate from seeking, accepting, or using endorsements from a political organization, paragraph (A)(7) is designed to further this right and the requirement in Section 117 of the Kentucky Constitution that judges be elected on a nonpartisan basis. A political organization’s endorsement of a candidate is but slightly removed from the judge or candidate’s nomination as the political organization’s official candidate. Candidates remain free to announce their party affiliation but cannot render hollow the right of “citizens of the Commonwealth ... to vote for their judges in nonpartisan elections,” *id.*, by seeking, accepting, or using endorsements of political organizations in their campaigns.

A judge or judicial candidate is not required to disavow an endorsement to avoid being deemed to have accepted it. A judge or judicial candidate uses an endorsement of a political organization when the judge or judicial candidate employs or displays the endorsement in oral, written, or electronic communication.

[11] Paragraph A(10) does not prohibit court staff from using their own time, while not being paid as court staff, to assist in a campaign for judicial office consistent with Part III of the Administrative Procedures of the Kentucky Court of Justice, Personnel Policies.

### STATEMENTS AND COMMENTS MADE DURING A CAMPAIGN FOR JUDICIAL OFFICE

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

[13] Judicial candidates are sometimes the subject of false, misleading, or unfair allegations made by opposing candidates, third parties, or the media. For example, false or misleading statements might be made regarding the identity, present position, experience, qualifications, or judicial rulings of a candidate. In other situations, false or misleading allegations may be made that bear upon a candidate’s integrity\* or fitness for judicial office. As long as the candidate does not violate paragraphs (A)(11), (A)(12), or

(A)(13), the candidate may make a factually accurate public response. In addition, when an independent third party has made unwarranted attacks on a candidate’s opponent, the candidate may disavow the attacks, and request the third party to cease and desist.

[14] Subject to paragraph (A)(12), a judicial candidate is permitted to respond directly to false, misleading, or unfair allegations made against him or her during a campaign, although someone else, preferably, should respond if the allegations relate to a pending case. The judicial candidate shall make every effort to ensure that any response regarding a pending case does not impair the fairness of the pending judicial proceedings.

[15] Paragraph (A)(12) prohibits judicial candidates from making comments that



might impair the fairness of pending judicial proceedings. This provision does not restrict arguments or statements to the court or jury by a lawyer who is a judicial candidate, or rulings, statements, or instructions by a judge that may appropriately affect the outcome of a matter.

PLEDGES, PROMISES, OR COMMITMENTS INCONSISTENT WITH IMPARTIAL PERFORMANCE OF THE ADJUDICATIVE DUTIES OF JUDICIAL OFFICE

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

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

[18] This Rule does not prohibit a judge or judicial candidate from expressing, during a campaign, general legal principles, so long as those statements would not reasonably be expected to affect the outcome or impair the fairness of a pending matter or to constitute a commitment to reach a particular result in pending or future matters. The making of a pledge, promise, or commitment is not dependent upon, or limited to, the use of any specific words or phrases; instead, the totality of the statement must be examined to determine if a reasonable person would believe that the candidate for judicial office has specifically undertaken to reach a particular result. Pledges, promises, or commitments must be contrasted with statements or announcements of personal views on legal, political, or other issues, which are not prohibited. When making such statements, a judge should acknowledge the overarching judicial obligation to apply and uphold the law, without regard to his or her personal views.

[19] In prohibiting issue-based commitments “inconsistent with the impartial performance of the adjudicative duties of judicial office,” Kentucky has a compelling interest in forbidding judges and candidates from showing bias in favor or against parties or classes of parties. See *Winter v. Wolnitzek*, 834 F.3d 681, 694-95 (6<sup>th</sup> Cir. 2016).

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

[21] Judicial candidates may receive questionnaires or requests for interviews from the media and from issue advocacy or other community organizations that seek to learn their views on disputed or controversial legal or political issues. Paragraph (A)(13) does not specifically address judicial responses to such inquiries. Depending upon the wording

and format of such questionnaires, candidates' responses might be viewed as pledges, promises, or commitments to perform the adjudicative duties of office other than in an impartial way. To avoid violating paragraph (A)(13), therefore, candidates who respond to media and other inquiries should also give assurances that they will keep an open mind and will carry out their adjudicative duties faithfully and impartially if elected.

Candidates who do not respond may state their reasons for not responding, such as the danger that answering might be perceived by a reasonable person as undermining a successful candidate's independence or impartiality, or that it might lead to frequent disqualification. See Rule 2.11.

## **RULE 4.2**

### ***Political and Campaign Activities of Judicial Candidates in Public Elections***

**(A) A judicial candidate\* shall:**

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

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

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

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

**(B) A candidate for elective judicial office may, unless prohibited by law,\***

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

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

## **COMMENT**

[1] The restrictions on political and campaign activities by judges and judicial candidates lose efficacy if their proxies engage in the prohibited conduct. Accordingly, judges and judicial candidates shall ensure that anyone speaking on behalf of or acting for the judge or judicial candidate, such as the judge or judicial candidate's Campaign Committee, campaign manager, or official proxy, not take any actions that the judge or judicial candidate is prohibited from doing. The judge or judicial candidate shall encourage members of the candidate's family\* as well as friends and colleagues to

adhere to the same standards of political conduct in support of the candidate as apply to the candidate. A judge or judicial candidate shall prohibit public officials or employees subject to the candidate's direction and control from doing for the candidate what the candidate is prohibited from doing under this Canon.

[2] In acting pursuant to paragraph (B)(2), judicial candidates for public election remain subject to the provisions of Rule 4.1.

### **RULE 4.3**

#### ***Activities of Applicants for Appointive Judicial Office***

An applicant for appointment to judicial office may:

- (A) **communicate with the appointing or confirming authority, including any selection, screening, or nominating commission or similar agency; and**
- (B) **seek endorsements for the appointment from any person or organization.**

### **COMMENT**

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

### **RULE 4.4**

#### ***Campaign Committees***

- (A) **A judicial candidate\* may establish a campaign committee to manage and conduct a campaign for the candidate, subject to the provisions of this Code. The candidate is responsible for taking reasonable measures to ensure that his or her campaign committee complies with applicable provisions of this Code and other applicable law.\***
- (B) **A judicial candidate shall direct his or her campaign committee:**
  - (1) **to solicit and accept only such campaign contributions\* as are permitted by law;**
  - (2) **not to solicit or accept contributions for a candidate's current campaign more than 200 days before the applicable primary or general election;**
  - (3) **not to solicit contributions after a general election (see KRS 121.150); and**

**(4) to comply with all applicable statutory requirements for disclosure, reporting, and divestiture of campaign contributions.**

**COMMENT**

[1] Judicial candidates are prohibited from personally soliciting\* campaign contributions or personally accepting campaign contributions. See Rule 4.1(A)(8); *see also Williams-Yulee v. Fla. Bar*, 135 S. Ct. 1656 (2015) (upholding ban on personal solicitation of campaign contributions by judges or judicial candidates). This Rule recognizes that judicial candidates must raise campaign funds to support their candidacies, and permits candidates, other than candidates for appointive judicial office, to establish campaign committees to solicit and accept reasonable financial contributions or in-kind contributions.

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

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

[4] By limiting the period in which a candidate's committee may solicit and accept contributions to 200 days prior to a primary or general election, Canon 4.4(B)(2) "is focused exclusively on the solicitation and receipt of money — the activities most likely to harm public confidence in the judiciary. Additionally, the regulation prohibits the solicitation and receipt of funds only during the period of time that most implicates the government's stated interests, recognizing that contributions that are not proximate in time to an election can increase the appearance of impropriety and the risk of actual bias." *O'Toole v. O'Connor*, 802 F.3d 783, 789, 791-92 (6th Cir. 2015) (affirming denial of motion for preliminary injunction to bar enforcement of judicial canon imposing temporal restriction on when campaign committees can solicit and accept contributions in connection with claim that the canon violated the First Amendment and the Equal Protection Clause of the Fourteenth Amendment); *see also Gable v. Patton*, 142 F.3d 940, 950-51 (6th Cir. 1998) (holding that provision barring contributions by persons other than the candidate to his or her campaign during a 28-day window immediately prior to a gubernatorial election did not violate the First Amendment).

**RULE 4.5**

***Activities of Judges Who Become Candidates for Nonjudicial Office***

**(A) Upon becoming a candidate for a nonjudicial elective office, a judge shall resign from judicial office.**

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

## COMMENT

[1] In campaigns for nonjudicial elective public office, candidates may make pledges, promises, or commitments related to positions they would take and ways they would act if elected to office. Although appropriate in nonjudicial campaigns, this manner of campaigning is inconsistent with the role of a judge, who must remain fair and impartial\* to all who come before him or her. The potential for misuse of the judicial office, and the political promises that the judge would be compelled to make in the course of campaigning for nonjudicial elective office, together dictate that a judge who wishes to run for such an office must resign upon becoming a candidate.

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

All sitting. All concur.

ENTERED: January 18, 2018.



CHIEF JUSTICE