ALASKA RULES OF COURT

CODE OF JUDICIAL CONDUCT*

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Adopted Effective July 15, 1998

* **Editor's Note:** The Alaska Code of Judicial Conduct was rescinded and readopted by SCO 1322 effective July 15, 1998.

PREAMBLE

Our legal system is based on the principle that an independent, fair and competent judiciary will interpret and apply the laws that govern us. The role of the judiciary is central to American concepts of justice and the rule of law. Intrinsic to all Sections of this Code are the precepts that judges, individually and collectively, must respect and honor the judicial office as a public trust and strive to enhance and maintain confidence in our legal system. The judge is an arbiter of facts and law for the resolution of disputes and a highly visible symbol of government under the rule of law.

The Code of Judicial Conduct is intended to establish standards for ethical conduct of judges. It consists of this Preamble, broad statements called Canons, specific rules set forth in Sections under each Canon, a Terminology Section, an Application Section and ***Commentary.*** The text of the Preamble, the Canons, and the Sections, including the Terminology and Application Sections, is authoritative. The Commentary, by explanation and example, provides guidance with respect to the purpose and meaning of the Canons and Sections. The Commentary is not intended as a statement of additional rules. When the text uses "shall" or "shall not," it is intended to impose binding obligations the violation of which can result in disciplinary action. When "should" or "should not" is used, the text is intended as hortatory and as a statement of what is or is not appropriate conduct but not as a binding rule under which a judge may be disciplined. When "may" is used, it denotes permissible discretion or, depending on the context, it refers to action that is not covered by specific proscriptions.

The Canons and Sections are rules of reason. They should be applied consistently with constitutional requirements, statutes, other court rules and decisional law and in the context of all relevant circumstances. The Code is to be construed so as not to impinge on the essential independence of judges in making judicial decisions or to limit judges' legal rights.

The Code is designed to provide guidance to judges and candidates for judicial office and to provide a structure for regulating conduct through disciplinary agencies. It is not designed or intended as a basis for civil liability or criminal prosecution. Furthermore, the purpose of the Code would be subverted if the Code were invoked by lawyers for mere tactical advantage in a proceeding.

The text of the Canons and Sections is intended to govern conduct of judges and to be binding upon them. It is not intended, however, that every transgression will result in disciplinary action. Whether disciplinary action is appropriate, and the degree of discipline to be imposed, should be determined through a reasonable and reasoned application of the text and should depend on such factors as the seriousness of the transgression, whether there is a pattern of improper activity and the effect of the improper activity on others or on the judicial system. See ABA Standards Relating to Judicial Discipline and Disability Retirement./DD

The Code of Judicial Conduct is not intended as an exhaustive guide for the conduct of judges. They should also be governed in their judicial and personal conduct by general ethical standards. The Code is intended, however, to state basic standards which should govern the conduct of all judges and to provide guidance to assist judges in establishing and maintaining high standards of judicial and personal conduct.

While the Alaska Code of Judicial Conduct is based on the American Bar Association's Model Code of Judicial Conduct, there have been significant changes both to specific rules set forth in the Sections and to the ***Commentary.***

‡ 1. Judicial disciplinary procedures adopted in the jurisdictions should comport with the requirements of due process. The ABA Standards Relating to Judicial Discipline and Disability Retirement are cited as an example of how these due process requirements may be satisfied.

CANONS

Key to Symbols on Special or Limited Applicability of Sections

‡ means that Section does not apply to senior judges or applies to them only during periods of active judicial service.

◊ means that Section does not apply or has limited application to part-time magistrate judges or deputy magistrates.

■ means that Section applies to special masters.

Full-time judicial officers must comply with all provisions of this Code.

Terms marked with asterisk (*) are defined in Terminology Section.

(Amended by SCO 1829 effective October 15, 2014)

Canon 1. A Judge Shall Uphold the Integrity and Independence of the Judiciary.

■ An independent and honorable judiciary is indispensable to achieving justice in our society. A judge should participate in establishing, maintaining, and enforcing high standards of judicial conduct. The provisions of this Code are intended to preserve the integrity and the independence of the judiciary; the Code should be construed and applied to further these objectives.

Commentary.—*Deference to the judgments and rulings of courts depends upon public confidence in the integrity and independence of judges. The integrity and independence of judges depend in turn upon their acting without fear or favor. Public confidence in the impartiality of the judiciary is maintained when judges adhere to the provisions of this Code. Conversely, violation of this Code diminishes public confidence in the judiciary and thereby does injury to the system of government under law.*

(Adopted by SCO 1322 effective July 15, 1998)

Canon 2. A Judge Shall Avoid Impropriety and the Appearance of Impropriety in All the Judge's Activities.

A. ■ In all activities, a judge shall exhibit respect for the

rule of law, comply with the law,* avoid impropriety and the appearance of impropriety, and act in a manner that promotes public confidence in the integrity and the impartiality of the judiciary.

Commentary.—*Public confidence in the judiciary is eroded by irresponsible or improper conduct by judges. A judge must avoid all impropriety and appearance of impropriety. A judge must expect to be the subject of constant public scrutiny. A judge must therefore accept restrictions on the judge's conduct that might be viewed as burdensome by the ordinary citizen and should do so freely and willingly.*

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

See also Commentary to Section 2C.

B. ■ A judge shall not allow family, social, political, or other relationships to influence the judge's judicial conduct or judgment. A judge shall not use or lend the prestige of judicial office to advance the private interests of the judge or others. A judge shall not knowingly* convey or permit others to convey the impression that anyone is in a special position to influence the judge. A judge shall not testify voluntarily as a character witness, except that a judge may testify as a character witness in a criminal proceeding if the judge or a member of the judge's family* is a victim of the offense or if the defendant is a member of the judge's family.

Commentary.—*Maintaining the prestige of judicial office is essential to a system of government in which the judiciary functions independently of the executive and legislative branches. Respect for the judicial office facilitates the orderly conduct of legitimate judicial functions. Judges should distinguish between proper and improper use of the prestige of office in all of their activities. For example, it would be improper for a judge to allude to his or her judgeship to gain a personal advantage such as differential treatment when stopped by a police officer for a traffic offense. Similarly, judicial letterhead must not be used for conducting a judge's personal business.*

A judge must avoid lending the prestige of judicial office for advancement of the private interests of others. For example, a judge must not use the judge's judicial position to gain advantage in a civil suit involving a member of the judge's family. In contracts for publication of a judge's writings, a judge should retain control over the advertising to avoid exploitation of the judge's office. As to the acceptance of awards, see Section 4D(5)(a) and Commentary.

Although a judge should be sensitive to possible abuse of the prestige of office, a judge may, based on the judge's personal knowledge, serve as a reference or provide a letter of recommendation. However, except in very limited circumstances, a judge must not initiate the communication of information to a sentencing judge or a probation or corrections officer. A judge may provide to such persons information for the record in response to a formal request. A judge may also initiate the communication of information for the record if the judge or a member of the judge's family was a victim of the offense or the defendant is a member of the judge's family.

Judges may participate in the process of judicial selection by cooperating with appointing authorities and screening committees seeking names for consideration, and by responding to official inquiries concerning a person being considered for a judgeship. See also Canon 5 regarding use of a judge's name in political activities.

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

C. A judge shall not hold membership in any organization that the judge knows* practices invidious discrimination on the basis of race, sex, religion or national origin, nor shall a judge regularly use the facilities of such an organization. A judge shall not arrange to use the facilities of an organization that the judge knows* practices invidious discrimination on the basis of race, sex, religion, or national origin unless there are no alternative facilities in the community and use of the facilities would not give rise to an appearance of endorsing the discriminatory practices of the organization.

Commentary.—*This Section prohibits a judge from holding membership in any organization that the judge knows engages in invidious discrimination on the basis of race, sex, religion or national origin. The membership of a judge in an organization that practices such discrimination gives rise to perceptions among the public that a judge is insensitive to minorities, women, and others protected against discrimination.*

*The common judicial definition of invidious discrimination "is a classification which is arbitrary, irrational and not reasonably related to a legitimate purpose." **McLaughlin v. Florida**; 379 U.S. 184 (1964). Whether an organization practices invidious discrimination is often a complex question which requires careful consideration by the judge. The answer cannot be determined from a mere examination of an organization's current membership rolls but rather depends on how the organization selects members and other relevant factors, such as that the organization is dedicated to the preservation of religious, ethnic or cultural values of legitimate common interest to its members, or that it is in fact and effect an intimate, purely private organization whose*

membership limitations could not be constitutionally prohibited. Absent such factors, an organization is generally said to discriminate invidiously if it arbitrarily excludes from membership on the basis of race, religion, sex or national origin persons who would otherwise be admitted to membership. ***See New York State Club Ass'n v. City of New York****, 108 S. Ct. 2225, 101 L. Ed. 2d 1 (1988);* ***Board of Dirs. of Rotary Int'l v. Rotary Club of Duarte****, 481 U.S. 537, 107 S. Ct. 1940, 95 L. Ed. 2d 474 (1987);* ***Roberts v. United States Jaycees,*** *468 U.S. 609, 104 S. Ct. 3244, 82 L. Ed. 2d 462 (1984).*

Judges in Alaska must be particularly sensitive to this inquiry. Alaska's Human Rights Act has been narrowly construed as it applies to membership discrimination. Compare ***United States Jaycees v. Richardet,*** *666 P.2d 1008 (Alaska 1983) with* ***Roberts v. Jaycees****, 468 U.S. 609 (1984). Consequently, discriminatory practices which would not be illegal in Alaska may nevertheless be arbitrary, irrational, and unrelated to a legitimate organizational purpose, and thus covered by the prohibition in Section 2C. Nonetheless, some discrimination is viewed as innocuous when measured by contemporary standards and therefore not invidious.*

Section 2C prohibits regular use by a judge of the facilities of an organization which invidiously discriminates. It does not prohibit incidental use of such facilities, for example, attending a wedding reception in such a facility.

When a person who is a judge on the date this Code becomes effective learns that an organization to which the judge belongs engages in invidious discrimination that would preclude membership under Section 2C, the judge is permitted, in lieu of resigning, to make immediate efforts to have the organization discontinue its invidiously discriminatory practices, but is required to suspend participation in any other activities of the organization. If the organization fails to discontinue its invidiously discriminatory practices as promptly as possible (and in all events within a year of the judge's first learning of the practices), the judge is required to resign immediately from the organization.

Nothing in Section 2C should be interpreted to diminish a judge's right to the free exercise of religion.

(Adopted by SCO 1322 effective July 15, 1998)

Canon 3. A Judge Shall Perform the Duties of Judicial Office Impartially and Diligently.

A. ■ **Primacy of Judicial Duties.** The judicial duties* of a judge take precedence over all the judge's other activities. A judge's judicial duties include all the duties of the judge's office prescribed by law.* In performance of these duties, the following standards apply.

B. **Adjudicative Responsibilities.**

(1) ■ A judge shall consider and decide all matters assigned to the judge except those in which the judge's disqualification is required.

Commentary.—See Feichtinger v. State*, 779 P.2d 344, 348 (Alaska App. 1989) ("Judges will frequently be assigned cases involving unpleasant issues and difficult problems. Often litigants and their attorneys will be particularly vexatious. In many cases, publicity adverse to the judge is virtually certain no matter what decision he or she reaches. In such cases, judges insufficiently attuned to their responsibilities might readily welcome a baseless request for recusal as an escape from a difficult case. To surrender to such a temptation would justly expose the judiciary to public contempt based on legitimate public concern about judicial integrity and courage. While we agree that judges must avoid the appearance of bias, it is equally important to avoid the appearance of shirking responsibility.")*

(2) (a) ■ A judge shall maintain professional competence in the law.*

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

(3) ■ A judge shall take reasonable steps to maintain and ensure order and decorum in judicial proceedings before that judge.

Commentary.*—Section 3B(3) addresses a judge's responsibility to preserve order and decorum in court proceedings. "Order" refers to the level of regularity and civility required to guarantee that the business of the court will be accomplished in conformity with the rules governing the proceeding. "Decorum" refers to the atmosphere of attentiveness and earnest endeavor which communicates, both to the participants and to the public, that the matter before the court is receiving serious and fair consideration*

Clearly, individual judges have differing ideas and standards concerning the appropriateness of particular behavior, language, and dress for the attorneys and litigants appearing before them. What one judge may perceive to be an obvious departure from propriety, another judge may deem a harmless eccentricity or no departure at all. Also, some proceedings call for more formality than others. Thus, at any given time, courtrooms around the state will inevitably manifest a broad range of "order" and "decorum."

Section 3B(3) is not intended to establish a uniform standard of what constitutes "order" and "decorum." Rather, the Section requires a judge to take reasonable steps to achieve and maintain the level of order and decorum necessary to accomplish the business of the court in a manner that is both regular and fair, while at the same time giving attorneys, litigants, and onlookers assurance of that regularity and fairness.

(4) ■ A judge shall be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, and others with whom the judge deals in an official capacity. The judge shall take reasonable steps to maintain and ensure similar conduct from lawyers and from court staff and others subject to the judge's direction and control.

Commentary.—*The duty to hear all proceedings with patience, dignity, and courtesy is not inconsistent with the duty to dispose promptly of the business of the court. Judges can be efficient and businesslike while being patient and deliberate.*

(5) ■ In the performance of judicial duties,* a judge shall act without bias or prejudice* and shall not manifest, by words or conduct, bias or prejudice based upon race, color, sex, religion, national origin, disability, age, marital status, changes in marital status, pregnancy, parenthood, sexual orientation, or social or economic status. A judge shall not permit court staff and others subject to the judge's direction and control to deviate from these standards in their duties.

Commentary.—*A judge must refrain from speech, gestures, or other conduct that manifests bias or prejudice, including sexual harassment, and must require the same standard of conduct from others subject to the judge's direction and control.*

A judge must perform judicial duties impartially and fairly. A judge who manifests bias on any basis in a proceeding impairs the fairness of the proceeding and brings the judiciary into disrepute. Facial expression and body language, in addition to oral communication, can give others an appearance of judicial bias. A judge must be alert to avoid behavior that may be perceived as an expression of prejudice.

(6) ■ A judge shall require lawyers in proceedings before the judge to refrain from manifesting, by words or conduct, bias or prejudice* based upon race, color, sex, religion, national origin, disability, age, marital status, changes in marital status, pregnancy, parenthood, sexual orientation, or social or economic status. This Section 3B(6) does not preclude legitimate advocacy when race, color, sex, religion, national origin, disability, age, marital status, changes in marital status, pregnancy, parenthood, sexual orientation or social or economic status, or other similar factors, are issues in the proceeding.

Commentary.—*This Section is intended to prohibit not only express judicial support for the bias or prejudice but also speech, gestures, or inaction that could reasonably be interpreted as implicit approval of the expressed bias or prejudice. A judge may not ignore or overlook expressions of bias or prejudice in any judicial proceeding, even informal proceedings such as scheduling or settlement conferences. Appropriate action will depend on the circumstances. In some instances, a polite correction might be sufficient. However, deliberate or particularly offensive conduct will require more significant action, such as a specific direction from the judge, a private admonition, an admonition on the record, or, if the attorney repeats the misconduct after being warned, contempt.*

(7) ■ A judge shall accord to every person the right to be heard according to law.* A judge shall not initiate, permit, or consider ex parte communications or other communications made to the judge outside the presence of the parties concerning a pending or impending proceeding except as allowed by this Section. A judge shall make reasonable efforts to see that law clerks and other court staff carrying out similar functions under the judge's supervision do not violate the provisions of this Section.

(a) A judge may initiate or consider an ex parte communication when expressly authorized by law* to do so.

(b) When circumstances require, a judge may engage in ex parte communications for scheduling or other administrative purposes, provided that:

(i) the communications do not deal with substantive matters or the merits of the issues litigated,

(ii) the judge reasonably believes no party will gain a procedural or tactical advantage because the communication is ex parte, and

(iii) the judge takes reasonable steps to notify all other parties promptly of the substance of the ex parte communication and, when practicable, allows them an opportunity to respond. This subsection does not apply to ex parte communications by law clerks or other court staff concerning scheduling or administrative matters.

(c) If all the parties have agreed to this procedure beforehand, either in writing or on the record, a judge may engage in ex parte communication on specified administrative topics with one or more parties.

(d) A judge may consult other judges and law clerks or other court staff whose function is to aid the judge in carrying out the judge's adjudicative responsibilities.

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

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

Whenever presence of a party or notice to a party is required by Section 3B(7), it is the party's lawyer, or if the party is unrepresented the party, who is to be present or to whom notice is to be given.

A judge may request a party to submit proposed findings of fact and conclusions of law, so long as the other parties are apprised of the request and are given an opportunity to respond to the proposed findings and conclusions.

If communication between the trial judge and the appellate court with respect to a proceeding is permitted, a copy of any written communication or the substance of any oral communication should be provided to all parties.

The first sentence of Section 3B(7) ("A judge shall accord to every person the right to be heard according to law.") is not intended to expand or alter the law of standing (a person's right to bring an action), nor is it intended to expand or alter

the procedural rules governing the scope and manner of a person's right to be heard in a case.

Judges should endeavor to create some form of record of ex parte communications whenever possible, even when the communications are authorized under this Section.

Section 3B(7)(a) permits an ex parte communication when it is expressly authorized by law, including communications that may reveal privileged information. For example, a judge may engage in an ex parte communication when the judge must question a criminal defendant about the defendant's request for appointment of a different attorney, and the judge determines that privileged information will be revealed.

Under Section 3B(7)(b), a judge may engage in ex parte communications for "scheduling or other administrative purposes." For example, a judge may make or receive an ex parte communication when the sole purpose of the communication is to provide courtesy notification to the parties or to the court of a delay or change in scheduling. Another example of an ex parte communication contemplated by this Section is when a defense attorney notifies the judge that the defendant cannot be located, that the scheduled trial should be called off, and that the defense concedes that a bench warrant should be issued for the defendant's arrest.

Section 3B(7)(b) requires a judge to take reasonable steps to promptly notify all parties of any ex parte communication. The continuing development of communications technology will affect what steps are "reasonable." Telephone communication is now virtually ubiquitous and telefax communication is widespread. In the near future, it may be common to notify lawyers through computer mail or computer bulletin boards. A judge should consider these alternatives when deciding the most expeditious means of communication reasonably available to the court and the parties.

A judge's secretary or law clerk may also engage in ex parte communications to discuss scheduling or other administrative matters. Such communications are permitted as long as the requirements of Sections 3(B)(7)(b)(i) and (ii) are satisfied, that is, as long as the communications do not deal with the substance or merits of the litigation and no party gains an advantage as a result of the ex parte contact. When the communication is with a staff member rather than a judge, Section 3B(7)(b)(iii) does not apply. Thus, if an attorney asks about the status of a pending motion, the judge's secretary may provide this information without notifying the other parties of the communication or including them in a conference call.

Section 3B(7)(c) allows the various parties in multi-party litigation to designate a "lead" party for their side and have that party appear at pretrial hearings to deal with issues such as scheduling and discovery.

Section 3B(7)(d) assumes that the other judge or member of the judge's adjudicative staff is not disqualified from participating in the decision of the case. Thus, it would be improper for a judge to consult another judge who had been challenged either peremptorily or for cause, and it would likewise be improper for a judge to consult another judge, a law clerk, or anyone else who the judge knows has a disqualifying interest in the proceeding. Likewise, it would be improper for the judge to consult a member of an appellate court whose duty it would be to review the judge's decision.

The verb "consult" is intended to mean "engage in discussions regarding the substance or merits of the case." Just as a presiding judge may continue to perform purely administrative functions following his or her peremptory challenge—see Criminal Rule 25(d)(3)—a disqualified judge may engage in limited, purely administrative communication with the successor judge. Thus, when a new judge is assigned to a case following a judicial disqualification, the successor judge may speak to the disqualified judge about purely administrative matters (the dates already scheduled for court proceedings, the identities of the attorneys, etc.). However, the new judge may not speak to the disqualified judge about the merits of any pending issues, the merits of any previously decided issues, or the substance of any proceedings already held in the case. The new judge's information on these topics is to be gleaned from the court file or from the attorneys.

Section 3B(7)(d) is not intended to authorize a judge to engage in ex parte consultation with court staff such as custody investigators and court-employed juvenile intake officers, whose function is to provide evidence in the proceeding.

A judge may not ex parte seek advice on the law applicable to a proceeding from a disinterested expert.

(8) ■ A judge shall dispose of all judicial matters promptly, efficiently, and fairly.

Commentary.*—In disposing of matters promptly, efficiently, and fairly, a judge must demonstrate due regard for the rights of the parties to be heard and to have issues resolved without unnecessary cost or delay. Containing costs while preserving fundamental rights of parties also protects the interests of witnesses and the general public. A judge should monitor and supervise cases so as to reduce or eliminate dilatory practices, avoidable delays and unnecessary costs. A judge should encourage and seek to facilitate settlement, but should not coerce parties into surrendering the right to have their controversy resolved by the courts.*

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 insist that court officials, litigants and their lawyers cooperate with the judge to that end.

(9) ■ A judge shall not, while a proceeding is pending or impending in any court, make any public comment that might reasonably be expected to affect its outcome or impair its fairness, or make any nonpublic comment that might substantially interfere with a fair trial or hearing. The judge shall take reasonable steps to maintain and ensure similar abstention on the part of court staff subject to the judge's direction and control. This Section does not prohibit judges from making public statements in the course of their official duties or from explaining for public information the procedures of the court. This Section does not apply to proceedings in which the judge is a litigant in a personal capacity.

Commentary.—*The requirement that judges abstain from public comment regarding a pending or impending proceeding continues during any appellate process and until final disposition. This Section does not prohibit a judge from commenting on proceedings in which the judge is a litigant in a personal capacity, but in cases such as a writ of mandamus where the judge is a litigant in an official capacity, the judge must not comment publicly. The conduct of lawyers relating to trial publicity is governed by Rule 3.6 of the Alaska Rules of Professional Conduct.*

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

Commentary.—*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.*

(11) ■ A judge who acquires nonpublic information* in a judicial capacity shall not disclose the information for any purpose unrelated to the judge's judicial duties, nor shall the judge use the information for the financial gain of the judge or any other person.

Commentary.—*The ABA's version of this Section prohibits a judge from disclosing or using nonpublic information acquired in a judicial capacity for any purpose unrelated to judicial duties. This rule does not adequately address the problem presented when a judge obtains confidential information that has relevance to the judge's personal life outside of the financial sphere. A judge hearing a confidential proceeding might obtain information about a doctor that has potentially crucial relevance to the judge's decision of which doctor to employ. A judge who hears a search warrant application might obtain information that would affect the judge's decision regarding what day-care center to use or what restaurant to patronize. Even though the judge reveals this information to no one, it would not strain the English language to say that a judge who makes decisions based on this information has "used" the nonpublic information for a purpose unrelated to the judge's official duties.*

The Alaska version of the Section recognizes that a judge cannot reasonably be expected to disregard nonpublic information when it comes to the health or safety of the judge's immediate family. The first clause of the Alaska rule forbids "disclosure" of such information for any non-judicial purpose (thus allowing the judge to "use" the information for personal purposes so long as the judge does not violate the second clause).

The second clause forbids the "use" of nonpublic information for anyone's financial gain. A judge who wishes to misuse confidential information for financial gain will often not need to disclose the information to anyone else; indeed, the amount of the improper financial gain may be directly proportionate to the judge's success in concealing the information from all other persons.

(12) ■ Without prior notice to the parties and an opportunity to respond, a judge shall not engage in independent ex parte investigation of the facts of a case.

Commentary.—*This Section does not prohibit a judge from exercising the judge's authority to independently call witnesses if the judge believes that these witnesses might shed light on the issues being litigated or to take judicial notice of certain facts. See Evidence Rules 614 & 201.*

C. **Administrative Responsibilities.**

(1) ■ A judge shall maintain professional competence in judicial administration, and should cooperate with other judges and court staff in the administration of court business. A judge shall diligently discharge the judge's administrative responsibilities without bias or prejudice.*

Commentary.—*See Terminology, "bias or prejudice."*

The definition of "bias or prejudice" found in the terminology Section was written in an exclusionary manner to allow judges, with regard to administrative matters, to countenance legitimate distinctions relevant to the policies or decisions involved.

To the extent judges have administrative authority over other judges, that authority should likewise be exercised in such a way as to provide the best use of judicial resources and the optimum development of all judicial officers. Just as the individual court must perform judicial administration without bias or prejudice, so too, judges with administrative authority over others must do the same with respect to the judicial officers subject to their orders.

(2) ■ A judge shall take reasonable steps to ensure that court staff and others subject to the judge's direction and control observe the standards of fidelity to the law* and diligence in the performance of their duties that apply to the judge and refrain from manifesting bias or prejudice* in the performance of their official duties.

(3) ■ A presiding judge or any other judge with supervisory authority over other judges shall take reasonable steps to assure that, for matters within the supervising judge's scope of authority, the other judges properly perform their judicial responsibilities.

(4) ■ A judge shall not make unnecessary appointments. A judge shall exercise the power of appointment impartially and on the basis of merit. A judge shall avoid nepotism and favoritism. A judge shall not approve compensation of appointees beyond the fair value of services rendered.

Commentary.—*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 Section 3C(4).*

D. **Disciplinary Responsibilities.**

(1) ■ A judge having information establishing a likelihood that another judge has violated this Code shall take appropriate action. A judge having knowledge* that another judge has engaged in conduct reflecting the other judge's lack of fitness for judicial office shall inform the appropriate disciplinary authority,* unless the judge reasonably believes that the misconduct has been or will otherwise be reported. Conduct reflecting lack of fitness for judicial office includes:

(a) or accepting a bribe or otherwise acting dishonestly in reaching a judicial or administrative decision,

(b) improperly using or threatening to use the judge's judicial power in a manner adverse to someone else's interests for the purpose of inducing that person to bestow a benefit upon the judge or upon someone else pursuant to the judge's wishes, or

(c) commission of a felony.

(2) ■ A judge having information establishing a likelihood that a lawyer has violated the Rules of Professional Conduct shall take appropriate action. A judge who obtains information establishing a likelihood that a lawyer has committed a violation of the Rules of Professional Conduct by an act of dishonesty, obstruction of justice, or breach of fiduciary* duty shall inform the appropriate disciplinary authority,* unless the judge reasonably believes that the misconduct has been or will otherwise be reported.

(3) ■ A judge possessing nonprivileged information pertaining to another judge's potential violation of this Code shall fully reveal this information upon proper request of the appropriate disciplinary authority* or of any other tribunal empowered to investigate or act upon judicial misconduct. A judge possessing nonprivileged information pertaining to a lawyer's potential violation of the Rules of Professional Conduct shall fully reveal this information upon proper request of the appropriate disciplinary authority or of any other tribunal empowered to investigate or act upon attorney misconduct.

(4) ■ Acts of a judge, in the discharge of disciplinary responsibilities, required or permitted by Sections 3D(1), 3D(2), and 3D(3) are part of a judge's judicial duties. *

Commentary.—*Section 3D establishes a judge's duty to take action in response to the misconduct of another judge (Section 3D(1)) or the misconduct of a lawyer (Section 3D(2)). In many instances, Section 3D allows a judge a degree of discretion in determining how he or she should respond to misconduct; the Section specifies only that the judge shall take "appropriate action." Thus, a judge who learns that another judge has engaged in an improper but de minimis ex parte contact, or who learns that a judge has engaged in a fundraising activity for a charity, may believe that the only action needed is to point out to the other judge that his or her conduct violates the Code. Similarly, a judge who learns that another judge is suffering from alcohol or drug addiction might direct that other judge to counseling or might seek the help of the other judge's colleagues or friends or refer the matter to a judicial assistance committee. On the other hand, if the other judge refuses to admit the problem or submit to ameliorative measures, and if the other judge's intoxication is interfering with his or her judicial duties (so as to constitute a violation of Canon 1 and Section 3A), then a judge who knows of this problem may be obliged to report it to the Commission on Judicial Conduct, unless that judge is a senior judge acting as a member of a judicial assistance committee.*

Appropriate action will vary with particular situations and with particular individuals. There will generally be a range of reasonable responses available to the judge who learns of misconduct. However, a judge who learns of misconduct must respond reasonably. For example, the judge may not "respond" by explicitly or implicitly condoning the misconduct.

A judge's discretion to determine an appropriate response to misconduct is circumscribed in certain instances. Both Sections 3D(1) and 3D(2) grant no discretion—they require the judge to report misconduct to the appropriate disciplinary authority—if (a) the misconduct is serious and (b) the judge's awareness of the misconduct rises to the specified level of certainty.

With regard to this level of awareness, a judge must report judicial misconduct if he or she "knows" that another judge has engaged in serious misconduct, while a judge must report attorney misconduct if he or she has information "establishing a likelihood" that an attorney has engaged in serious misconduct. The term "knows" is defined in the Terminology Section. The term "likelihood" is used in the sense of "more probable than not," a preponderance of the evidence.

If the misconduct the judge learns of is not among the serious types of misconduct, or if the misconduct is serious but the judge's level of awareness of the misconduct does not rise to the specified degree of certainty, there is no absolute duty to report. However, the judge who is aware of a likelihood of misconduct will still be under the more general obligation to take appropriate action.

A judge is not required to report all conduct that indicates lack of fitness for judicial office, only conduct of the same seriousness as that described in Subsections 3D(1)(a)-(c).

Section 3D applies to magistrates. However, a magistrate may report serious misconduct to the presiding judge or chief justice instead of the Judicial Conduct Commission.

E. **Disqualification.**

(1) ■ Unless all grounds for disqualification are waived as permitted by Section 3F, a judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to instances where:

Commentary.—*Under this rule, a judge is disqualified whenever the judge's impartiality might reasonably be questioned, regardless of whether any of the specific rules in Section 3E(1) apply. For example, if a judge were in the process of negotiating for employment with a law firm, the judge would be disqualified from any matters in which that law*

firm appeared, unless the disqualification was waived by the parties after disclosure by the judge.

A judge should disclose on the record information that the judge believes the parties or their lawyers might consider relevant to the question of disqualification, even if the judge believes there is no real basis for disqualification.

By decisional law, the rule of necessity may override the rule of disqualification. For example, a judge might be required to participate in judicial review of a judicial salary statute, or might be the only judge available in a matter requiring immediate judicial action, such as a hearing on probable cause or a temporary restraining order. In the latter case, the judge must disclose on the record the basis for possible disqualification and use reasonable efforts to transfer the matter to another judge as soon as practicable.

(a) the judge has a personal bias or prejudice concerning a party or a party's lawyer, or personal knowledge of disputed evidentiary facts concerning the proceeding;

(b) the judge served as a lawyer in the matter in controversy, or a lawyer with whom the judge previously practiced law served during their association as a lawyer concerning the matter, or the judge has been a material witness concerning it;

Commentary.—*A lawyer in a government agency does not ordinarily have an association with other lawyers employed by that agency within the meaning of Section 3E(1)(b); a judge formerly employed by a government agency, however, should disqualify himself or herself in a proceeding if the judge's impartiality might reasonably be questioned because of such association.*

(c) the judge knows* that he or she, individually or as a fiduciary,* or the judge's spouse,* parent, or child wherever residing, or any other member of the judge's family* residing in the judge's household:

(i) has an economic interest* in the subject matter in controversy, or

(ii) is employed by or is a partner in a party to the proceeding or a law firm involved in the proceeding, or

(iii) has any other, more than de minimis interest* that could be substantially affected by the proceeding, or

(iv) is likely to be a material witness in the proceeding;

(d) the judge or the judge's spouse, or a person within the third degree of relationship* to either of them, or the spouse* of such a person:

(i) is a party to the proceeding or is known* by the judge to be an officer, director, or trustee of a party;

(ii) is acting as a lawyer in the proceeding;

(iii) is known* by the judge to have a more than de minimis interest* that could be substantially affected by the proceeding;

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

(e) For purposes of this Section, when a party is a governmental entity, a person is "employed by" the party when the person is employed by the agency, commission, department or (if the department is broken into divisions) division, or other unit of government directly involved in the matter to be litigated.

Commentary.—*The fact that a lawyer in a proceeding is affiliated with a law firm with which a relative of the judge is affiliated does not of itself disqualify the judge under Section 3E(1)(d). Under appropriate circumstances, the fact that "the judge's impartiality might reasonably be questioned" under Section 3E(1), or that the relative is known by the judge to have an interest in the law firm that could be "substantially affected by the outcome of the proceeding" under Section 3E(1)(d)(iii) may require the judge's disqualification.*

Cross Reference.—*Additional grounds for disqualification are set out in AS 22.20.020(a). This statute provides:*

(a A judicial officer may not act in a matter in which

(1) the judicial officer is a party;

(2) the judicial officer is related to a party or a party's attorney by consanguinity or affinity within the third degree;

(3) the judicial officer is a material witness;

(4) the judicial officer or the spouse of the judicial officer, individually or as a fiduciary, or a child of the judicial officer has a direct financial interest in the matter;

(5) a party, except the state or a municipality of the state, has retained or been professionally counseled by the judicial officer as its attorney within two years preceding the assignment of the judicial officer to the matter;

(6) the judicial officer has represented a person as attorney for the person against a party, except the state or a municipality of the state, in a matter within two years preceding the assignment of the judicial officer to the matter;

(7) an attorney for a party has represented the judicial officer or a person against the judicial officer, either in the judicial officer's public or private capacity, in a matter within two years preceding the filing of the action;

(8) the law firm with which the judicial officer was associated in the practice of law within the two years preceding the filing of the action has been retained or has professionally counseled either party with respect to the matter;

(9) The judicial officer feels that, for any reason, a fair and impartial decision cannot be given.

Most of the grounds for disqualification under AS 22.20.020(a) are also listed as grounds for disqualification under Section 3E(1) of the Code. But the statute requires a judge to disqualify himself or herself in four situations that are not expressly covered by Section 3E(1):

● *Under AS 22.20.020(a)(5), a judge must disqualify himself or herself if the judge served as an attorney for one of the parties within two years preceding assignment of the case to the judge. This disqualification does not apply if the party is the state or a municipality.*

● *Under AS 22.20.020(a)(6), a judge must disqualify himself or herself if the judge was opposing counsel in a matter involving one of the parties within two years preceding assignment of the case to the judge. Again, this disqualification does not apply if the party is the state or a municipality.*

● *Under AS 22.20.020(a)(7), a judge must disqualify himself or herself if an attorney in the case represented the judge, either in the judge's public or private capacity, within two years preceding the filing of the action. A judge must also disqualify himself or herself if an attorney in the case was opposing counsel in a matter involving the judge within two years preceding the filing of the action.*

● *Under AS 22.20.020(a)(8), a judge must disqualify himself or herself if the judge's former law firm is representing one of the parties in the case or has represented one of the parties with respect to the matter, and the judge was associated with the law firm within the two years preceding the filing of the case.*

The first two of these disqualifications would only be of concern to judges who have been on the bench less than two years.

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

Commentary.—*Many judges and their families either are or will be the beneficiaries of law firm annuities or pensions. Depending upon the type of pension or annuity arrangement, the law firm's success or failure in major litigation may affect the value or collectibility of pension or annuity benefits. When this economic interest is present, Sections E3(1)(c)(iii) or 3E(1)(d)(iii) may require a judge's disqualification from litigation involving the law firm, even though Sections 3E(1)(b), 3E(1)(c)(ii), and 3E(1)(d)(ii) would not otherwise require disqualification.*

F. **Waiver of Disqualification.**

(1) ■ A judge shall not seek or accept a waiver of disqualification when the judge has a personal bias or prejudice concerning a party or a lawyer, when, for any other reason, the judge believes that he or she cannot be fair and impartial, or when a waiver is not permitted under AS 22.20.020. In other circumstances, a judge who would be disqualified by the terms of Section 3E may disclose on the record the basis or bases of the judge's disqualification and ask the parties to consider whether they wish to waive disqualification. A judge is not bound by the parties' decision to waive a disqualification.

(2) ■ The judge shall not participate in the parties' discussions and shall require the parties to hold their discussions outside the presence of the judge. The judge shall not comment in any manner on the merits or advisability of waiver, other than to explain the right of disqualification or to further elucidate the ground or grounds of disqualification if requested by the parties. The judge is permitted to advise the parties that he or she is willing to participate in the case with the agreement of all the parties. But the judge must tell the parties that the decision whether to waive the ground of disqualification rests with each of them.

(3) ■ The judge may ask the parties to affirmatively indicate their position on the judge's disqualification, or give the parties a reasonable length of time to waive the disqualification, telling the parties either (a) that their failure to act will be construed as a decision to waive the potential disqualification or (b) that their failure to act will be construed as a decision not to waive the potential disqualification. If all parties decide to waive the potential disqualification, and if the judge is then willing to participate, the judge may participate in the proceeding.

(4) ■ All the communications between the judge and the parties must be incorporated in the record of the proceeding.

Commentary.—*A waiver procedure provides the parties an opportunity to proceed without delay if they wish to waive the disqualification. Under AS 22.20.020(b), the following disqualifications may not be waived:*

(1) the judicial officer is a party;

(2) the judicial officer is a material witness;

(3) the judicial officer or the spouse of the judicial officer, individually or as a fiduciary, or a child of the judicial officer has a direct financial in the matter;

(4) the judicial officer feels that, for any reason, a fair and impartial decision cannot be given.

The decision whether or not to waive a disqualification is not one that must be made by the client. An attorney may make the decision without consulting with the client if the client is not present or readily available, or if the attorney decides that consultation is unnecessary.

All aspects of the communications between the judge and the parties (but not the parties' discussions among themselves) must either be in writing and included in the case file or on the record in court.

(Adopted by SCO 1322 effective July 15, 1998; amended by SCO 1724 effective October 15, 2010; and by SCO 1768 effective October 14, 2011)

LAW REVIEW COMMENTARIES

"Silence at a Price? Judicial Questionnaires and the Independence of Alaska's Judiciary," 25 Alaska L. Rev. 303 (2008).

Canon 4. A Judge Shall So Conduct the Judge's Extra-Judicial Activities as to Minimize the Risk of Conflict with Judicial Obligations.

A. ■ **Extra-Judicial Activities in General.** A judge shall conduct all of the judge's extra-judicial activities so as to comply with the requirements of this Code and so that these activities do not:

(1) cast reasonable doubt on the judge's capacity to act impartially as a judge;

(2) demean the judicial office; or

(3) interfere with the proper performance of judicial duties.*

Commentary.—*Extra-judicial activities are intended to include both the quasi-judicial activities covered by Canon 4 and the extra-judicial activities covered by Canon 5 of the 1973 Code of Judicial Conduct.*

Complete separation of a judge from extra-judicial activities is neither possible nor wise; a judge should not become isolated from the community in which the judge lives.

Even outside the judicial role, a judge who expresses bias or prejudice may cast reasonable doubt on the judge's capacity to act impartially as a judge. Such expressions include jokes or other remarks demeaning individuals on the basis of their race, color, sex, religion, national origin, disability, age, marital status, changes in marital status, pregnancy, parenthood, sexual orientation, or social or economic status. See Section 2C and accompanying Commentary.

The ABA added the phrase "demean the judicial office" in Section 4A(2) in place of the phrase "detract from the dignity of his office" which appeared in the prior Code. According to the Reporter's Notes to the 1990 Model Code, the new language is intended "to proscribe injurious conduct, not necessarily undignified conduct, as the latter might in some cases be permissible. For example, a judge's appearing in a skit as part of the entertainment at a judicial organization's event might be at once undignified and perfectly proper."

Section 4A(2) is a legitimate limitation on a judge's extra-judicial activities to the extent that it forbids a judge from flagrantly violating community standards or engaging in activities that clearly bring disrepute to the courts or the legal system. However, Section 4A(2) should not be interpreted so broadly as to authorize disciplinary bodies to censure or penalize a judge for engaging in a non-conformist lifestyle or for privately pursuing interests or activities that might be offensive to segments of the community.

B. ■ **Educational Activities.** As part of the judicial role, a judge is encouraged to render public service to the community. Judges have a professional responsibility to educate the public about the judicial system and the judicial office, subject to the requirements of this Code. A judge may speak, write, lecture, teach, and participate in other extra-judicial activities concerning the law,* the legal system, the administration of justice, and non-legal topics, subject to the requirements of this Code.

Commentary.—*As a judicial officer and person specially learned in the law, a judge is in a unique position to contribute to the improvement of the law, the legal system, and the administration of justice, including revision of substantive and procedural law and improvement of criminal and juvenile justice. To the extent that time permits, a judge is encouraged to do so, either independently or through a bar association, judicial conference, or other organization dedicated to the improvement of the law. Judges may participate in efforts to promote the fair administration of justice, the independence of the judiciary, and the integrity of the legal profession. A judge may also encourage community involvement in court-affiliated programs and may invite public suggestions for the improvement of the law, the legal system, or the legal profession. In conducting these activities, judges should be mindful to comply with Canon 2 when recommending specific programs or activities.*

The responsibility to educate the public is not intended to be enforced through the disciplinary process.

C. ■ **Governmental, Civic, Charitable, and Law-related Activities.**

(1) ◊ ■ A judge shall not appear at a public hearing before, or otherwise consult with, an executive or legislative body or official except on matters concerning the law,* the legal system, or the administration of justice, or except when acting pro se in a matter involving the judge or the judge's interests.

Commentary.—*See Section 2B regarding the obligation to avoid improper influence.*

"Administration of justice" matters include seeking funding for public service organizations that provide or seek increased access to justice such as Alaska Legal Services, so long as the organization is not identified with a particular cause that may come before the courts. When testifying as an individual judge on administration of justice matters, the judge should be clear that the observations are based on his or her experience as a judge and that other judges may have different observations.

Section 4C(1) permits a judge to appear before a governmental body or government official on a matter concerning the judge's interests. The word "interests" should be interpreted broadly. A judge may speak on matters concerning the judge's social interests as well as matters affecting the judge's economic interests.

(2) ‡◊ A judge shall not accept appointment to or serve on a governmental committee or commission or other governmental position that is concerned with issues of fact or policy on matters other than the improvement of the law,* the legal system, or the administration of justice. A judge may,

however, represent a country, state, or locality on ceremonial occasions or in connection with historical, educational, cultural, or athletic activities.

Commentary.—*Section 4C(2) prohibits a judge from accepting any governmental position except one relating to the law, the legal system, or the administration of justice as authorized by Section 4C(3). The appropriateness of accepting extra-judicial assignments must be assessed in light of the demands on judicial resources created by crowded dockets and the need to protect the courts from involvement in extra-judicial matters that may prove to be controversial. Judges should not accept governmental appointments that are likely to interfere with the effectiveness and independence of the judiciary.*

Section 4C(2) does not govern a judge's service in a nongovernmental position. See Section 4C(3) permitting service by a judge with organizations devoted to the improvement of the law, the legal system, or the administration of justice and with educational, religious, charitable, fraternal, or civic organizations not conducted for profit. For example, service on the board of a public educational institution, unless it were a law school, would be prohibited under Section 4C(2), but service on the board of a public law school or any private educational institution would generally be permitted under Section 4C(3).

(3) A judge may serve as an officer, director, trustee, or non-legal advisor of an organization or governmental agency devoted to the improvement of the law,* the legal system, or the administration of justice, or of an educational, religious, charitable, fraternal, cultural, athletic, or civic organization not conducted for profit, subject to the following limitations:

Commentary.—*Section 4C(3) does not apply to a judge's service in a governmental position unconnected with the improvement of the law, the legal system or the administration of justice; see Section 4C(2).*

Participation by a judge in a non-profit organization may be governed by other provisions of Canon 4 in addition to Section 4C. For example, a judge is prohibited by Section 4G from serving as a legal advisor to a non-profit organization.

Section 4C(3) does not prohibit mere membership in a legal professional association that occasionally takes controversial or political positions.

(a) A judge shall not serve as an officer, director, trustee, or non-legal advisor if it is likely that the organization will be engaged in proceedings that would ordinarily come before the judge or will be engaged frequently in adversary proceedings in the court of which the judge is a member or in any court subject to the appellate jurisdiction of the judge's court.

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

(b) Regardless of the judge's role within the organization, a judge:

(i) may assist the organization in planning fundraising activities and may participate in the management and investment of the organization's funds, but shall not personally participate in the solicitation of funds or be the speaker or guest of honor at the organization's fundraising event, except a judge may be the speaker or guest of honor for public service organizations that seek improvement in the administration of justice, benefit indigent representation, or assist access to justice, or for any permitted organization under Section 4C(3) where the proceeds from the event seek to improve the administration of justice, benefit indigent representation, or assist access to justice. A judge may also solicit funds for any permitted organization under Section 4C(3) from other judges over whom the judge does not exercise supervisory or appellate authority;

(ii) may make recommendations to public or private fund-granting organizations on projects and programs concerning the law,* the legal system, or the administration of justice;

(iii) shall not personally participate in membership solicitation if the solicitation might reasonably be perceived as coercive;

(iv) shall not personally participate in membership solicitation, except as permitted in Section 4C(3)(b)(i), if the membership solicitation is essentially a fundraising mechanism;

(v) shall not use or permit anyone else to use the prestige of judicial office for fundraising or membership solicitation.

Commentary.—*A judge may solicit membership or endorse or encourage membership efforts for an organization devoted to the improvement of the law, the legal system or the administration of justice or a nonprofit educational, religious, charitable, fraternal or civic organization as long as the solicitation cannot reasonably be perceived as coercive and is not essentially a fundraising mechanism. Solicitation of funds for an organization and solicitation of memberships similarly involve the danger that the person solicited will feel obligated to respond favorably to the solicitor if the solicitor is in a position of influence or control. A judge must not engage in direct, individual solicitation of funds or memberships in person, in writing, or by telephone except in the following cases: (1) a judge may solicit other judges over whom the judge does not exercise supervisory or appellate authority, (2) a judge may solicit other persons for membership in the organizations described above if neither those persons nor persons with whom they are affiliated are likely ever to appear before the court on which the judge serves, and (3) a judge who is an officer of a Section 4C(3) organization may send a general membership solicitation mailing over the judge's signature.*

Use of an organization letterhead for fundraising or membership solicitation does not violate Section 4C(3)(b) provided the letterhead lists only the judge's name and office or other position in the organization, and, if comparable designations are listed for other persons, the judge's judicial designation. In addition, a judge must also make reasonable efforts to ensure that the judge's staff, court officials and others subject to the judge's direction and control do not solicit funds on the judge's behalf for any purpose, charitable or otherwise.

Section 4C(3)(b)(i) is intended to prohibit the direct solicitation of funds. Being the speaker or guest of honor at an organization's fundraising event is the functional equivalent of solicitation. However, judges may participate as workers at fundraising events such as car washes and carnivals, purchase admission to fundraising social events, and purchase goods and services (e.g., candy bars, commemorative buttons, or a car wash) that are being sold as a fundraising effort.

The limited exception allowing judges to be speakers or guests of honor for public service organizations that assist access to justice is meant to include not-for-profit organizations that exist to enhance access to justice or to seek improvement in the administration of justice, but judges should be mindful of the need to avoid creating the appearance that they are identifying with a particular cause or issue that is likely to come before them or before other judges on their court. See Canon 2 and accompanying Commentary. "Access to justice" includes increasing minority representation on the bench, preserving judicial independence, and assisting the advancement of the legal profession.

D. **Financial Activities.**

(1) *Generally.*

(a) ■ A judge shall not engage in financial or business dealings, or permit his or her name to be used in connection with any business venture or commercial advertising program, with or without compensation, if the activity might reasonably be perceived to exploit the judge's judicial position.

(b) ◊ A judge shall not enter into financial or business dealings that would involve the judge in frequent transactions or continuing business relationships with those lawyers or other persons likely to come before the court on which the judge serves.

Commentary.—*See Time for Compliance, Section 6E.*

When a judge acquires information in a judicial capacity, such as material contained in filings with the court, that is not yet generally known, the judge must not use the information for private gain. See Section 2B; see also Section 3B(11).

A judge must avoid financial and business dealings that involve the judge in frequent transactions or continuing business relationships with persons likely to come either before the judge personally or before other judges on the judge's court. In addition, a judge should discourage members of the judge's family from engaging in dealings that would reasonably appear to exploit the judge's judicial position. This rule is necessary to avoid creating an appearance of exploitation of office or favoritism and to minimize the potential for disqualification. With respect to affiliation of relatives of a judge with law firms appearing before the judge, see Commentary to Section 3E(1) relating to disqualification.

Participation by a judge in financial and business dealings is subject to the general prohibitions in Section 4A against activities that tend to reflect adversely on the impartiality of the judge, demean the judicial office, or interfere with the proper performance of judicial duties. Such participation is also subject to the general prohibition in Canon 2 against activities involving impropriety or the appearance of impropriety and the prohibition in Section 2B against the misuse of the prestige of judicial office. In addition, a judge must maintain high standards of conduct in all of the judge's activities, as set forth in Canon 1.

Under Section 4D(1)(b), a judge may enter into financial or business dealings with a lawyer who is a relative or close friend whose appearance or interest in a case would in any event require the judge's disqualification under Section 3E.

(2) *Judge as Investor.* A judge may hold and manage investments of the judge and members of the judge's family,* including real estate. In addition, a judge may participate as a passive investor in any business. For purposes of this Section, "passive investor" means that the judge is not a director, officer, manager, partner (except a limited partner in a limited partnership), advisor, employee, or controlling shareholder of the business.

Commentary.—*See Time for Compliance, Section 6E. For active investments and other business interests, see Section 4D(3).*

(3) A judge may actively engage in business or other remunerative activity, as long as the judge would not expect the business or remunerative activity to:

(a) involve the judge or the judge's business associates in lobbying legislative or regulatory bodies within Alaska, or

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

(c) ‡ ◊ have a major effect on the economic life of the community in which the judge serves. A business has a "major effect on the economic life of the community" when it employs more than five percent of the local work-force, when it provides essential financial services (for example, banking or insurance) or essential utilities (for example, electricity, oil, gas, sewage treatment) to the community, or when it is the sole provider of an essential good or service within the community.

Commentary.—*See Time for Compliance, Section 6E.*

(4) ‡ A judge shall manage investments and business and other financial interests to minimize the number of cases in which the judge is disqualified. As soon as the judge can do so without serious financial detriment, the judge shall divest

himself or herself of investments and business and other financial interests that might require frequent disqualification.

(5) A judge shall not accept, and shall urge members of the judge's family* residing in the judge's household not to accept a gift, bequest, favor, or loan from anyone, except for:

Commentary.—*Section 4D(5) does not apply to contributions to a judge's campaign for judicial office, a matter governed by Canon 5.*

Because a gift, bequest, favor, or loan to a member of the judge's family residing in the judge's household might be viewed as intended to influence the judge, a judge must inform those family members of the relevant ethical constraints upon the judge in this regard and discourage those family members from violating them. A judge cannot, however, reasonably be expected to know or control all of the financial or business activities of all family members residing in the judge's household.

(a) a gift incident to a public testimonial, or books, tapes, and other resource materials supplied by publishers on a complimentary basis for official use, or an invitation to the judge and the judge's spouse* or guest to attend a bar-related function or an activity devoted to the improvement of the law,* the legal system, or the administration of justice;

Commentary.—*Acceptance of an invitation to a law-related function is governed by Section 4D(5)(a); acceptance of an invitation paid for by an individual lawyer or group of lawyers is governed by Section 4D(5)(h).*

A judge may accept a public testimonial or a gift incident thereto only if the donor organization is not an organization whose members comprise or frequently represent the same side in litigation, and the testimonial and gift are otherwise in compliance with other provisions of this Code. See Sections 4A(1) and 2B.

(b) a gift, award, or benefit incident to the business, profession, or other separate activity of a spouse* or other family member* residing in the judge's household, including gifts, awards, and benefits for the use of both the spouse or other family member and the judge (as spouse or family member), provided that the gift, award, or benefit could not reasonably be perceived as intended to influence the judge in the performance of judicial duties;*

(c) ordinary social hospitality;

(d) a gift from a relative or friend for a special occasion such as a wedding, anniversary, or birthday, if the gift is fairly commensurate with the occasion and the relationship;

Commentary.—*A gift of excessive value to a judge or to a member of the judge's family living in the judge's household raises questions about the judge's impartiality and the integrity of the judicial office and might require disqualification of the judge when disqualification would not otherwise be required. See, however, Section 4D(5)(e).*

(e) a gift, bequest, favor, or loan from a relative or close personal friend whose appearance or interest in a case would in any event require the judge's disqualification under Section 3E;

(f) a loan from a lending institution in its regular course of business on the same terms generally available to persons who are not judges;

(g) a scholarship or fellowship awarded on the same terms and based on the same criteria applied to other applicants; or

(h) any other gift, bequest, favor, or loan, but only if the donor is not a person who has come or is likely to come before the judge, and if the person's interests have not come and are unlikely to come before the judge. If the value of the gift, bequest, favor, or loan exceeds $250.00, or if the cumulative value of more than one gift, bequest, favor, or loan received from a single donor in a calendar year exceeds $250, the judge shall report the gift, bequest, favor, or loan in the same manner as the judge reports compensation under Section 4H.

Commentary.—*Section 4D(5)(h) prohibits judges from accepting gifts, favors, bequests, or loans from lawyers or their firms if they have come or are likely to come before the judge; it also prohibits gifts, favors, bequests, or loans from clients of lawyers or their firms when the clients' interests have come or are likely to come before the judge.*

E. **Fiduciary Activities.**

(1) ‡ ◊ A judge shall not serve as executor, administrator, or other personal representative, trustee, guardian, attorney in fact, or other fiduciary* except on behalf of 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 the judge's judicial duties.*

(2) ‡ A judge shall not serve as a fiduciary* if it is likely that the judge, in his or her fiduciary capacity, will 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 a court under its appellate jurisdiction.

(3) ■ The same restrictions on financial activities that apply to a judge personally also apply to the judge while acting in a fiduciary* capacity.

Commentary.—*See Time for Compliance, Section 6E. The restrictions imposed by Canon 4 may conflict with the judge's obligation as a fiduciary. For example, a judge should resign as trustee if, by virtue of Sections 4D(4) and 4E(3), the judge would be obliged to sell or trade trust assets to the detriment of the trust.*

F. ‡ **Service as Arbitrator or Mediator.** A judge shall not act as an arbitrator or mediator or otherwise perform judicial functions in a private capacity unless expressly authorized by law.*

Commentary.—*Section 4F does not prohibit a judge from participating in arbitration, mediation, or settlement conferences performed as part of judicial duties. A senior judge may act as a private arbitrator or mediator subject to Administrative Rule 23(f), which states:*

(f) Private Arbitration and Mediation. If a retired judge acts as a private arbitrator or mediator, the judge must comply with the following rules to remain eligible for pro tempore appointment:

(1) The judge shall refrain from soliciting or accepting employment as an arbitrator or mediator from a lawyer or party who is currently appearing in a case assigned to the judge.

(2) The judge shall disqualify himself or herself from sitting as a pro tem judge in a case if the judge has previously served as an arbitrator or mediator in the same matter. This disqualification may be waived under Section 3F of the Code of Judicial Conduct.

(3) The judge shall disqualify himself or herself from sitting as a pro tem judge in a case if the judge is currently serving or scheduled to serve as an arbitrator or mediator for a lawyer or party in the case. This disqualification may be waived under Section 3F of the Code of Judicial Conduct.

(4) If within two years prior to the filing of a case assigned to a pro tem judge the judge has served as an arbitrator or mediator for a lawyer or party in that case, the judge shall disclose that fact on the record and disqualify himself or herself from sitting as a pro tem judge in that case. Disclosure must be made under this paragraph regardless of the amount of compensation that the judge received from the arbitration or mediation. This disqualification may be waived under Section 3F of the Code of Judicial Conduct.

(5) The judge shall refrain from accepting employment as an arbitrator or mediator from a lawyer or party who has appeared in a case assigned to the judge within the last six months.

G. ◊ **Practice of Law.** A judge shall not practice law. Notwithstanding this prohibition, 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.*

Commentary.—*This prohibition refers to the practice of law in a representative capacity and not in a pro se capacity. A judge may act for himself or herself in all legal matters, including matters involving litigation and matters involving appearances before or other dealings with legislative and other governmental bodies. However, in so doing, a judge must not abuse the prestige of office to advance the interests of the judge or the judge's family. See Section 2B.*

The Code allows a judge to give legal advice to and draft legal documents for members of the judge's family, provided the judge receives no compensation. A judge must not, however, act as an advocate or negotiator for a member of the judge's family in a legal matter.

Even though Section 4G does not apply to part-time magistrates and deputy magistrates, Administrative Rule 2 prohibits employees of the Alaska Court System from engaging directly or indirectly in the practice of law in any of the courts of the state.

H. **Compensation, Reimbursement, and Reporting.**

(1) *Compensation and Reimbursement Defined.*

(a) "Compensation" is income received by the judge for personal services or from business activities. It does not include income from a business or property that the judge does not actively manage.

(b) "Reimbursement" is money paid to defray a judge's expenses or any credit or discount given to reduce these expenses. Expense reimbursement other than government-approved per diem shall be limited to the actual cost of travel, food, and lodging reasonably incurred by the judge and, when appropriate to the occasion, the judge's spouse* or guest. Any payment, credit, or discount in excess of these limits is compensation.

(2) *Limits on Compensation and Reimbursement.* A judge may receive compensation and reimbursement of expenses for the extra-judicial activities permitted by this Code if the source of these payments does not give the appearance of influencing the judge's performance of judicial duties* or otherwise give the appearance of impropriety. Compensation shall not exceed a reasonable amount nor shall it exceed what a person who is not a judge would receive for the same activity.

(3) *Public Reports of Compensation.* At least once a year a judge shall report the date, place, and nature of any extra-judicial activity for which the judge received compensation, the name of the payor, and the amount of compensation received. If the judge is a retired justice or judge serving pro tempore who receives compensation for private arbitration or mediation services, it is sufficient for the judge to file a copy of Schedule A of the Public Official Financial Disclosure Statement that the justice or judge files with the Alaska Public Offices Commission. Compensation or income of a spouse* that is attributed to the judge by operation of a community property law is not extra-judicial compensation to the judge for purposes of this Code. The judge's report shall be submitted at the times and in the form prescribed by the Administrator Director of the Alaska Court System. The report shall be filed as a public document in the office of the Administrative Director.

Commentary.—*See Section 4D(5) regarding reporting of gifts, bequests, and loans.*

Section 4H is divided into three Sections. Section 1 contains the definitions of the terms "compensation" and "reimbursement." Section 2 prescribes the limits on compensation and reimbursement permitted by the Code for extra-judicial activities. Section 3 requires a judge to report compensation (not reimbursement) at least annually.

Section 4H(1)(a) defines "compensation." In general terms, this definition is intended to cover "earned income" - that is,

salary, wages, professional fees, tips, and any other income generated by the judge's personal efforts. Compensation does not include income generated by a judge's investments or by partnerships or businesses in which the judge is a passive participant (a limited partner, for example).

Section 4H(1)(b) defines "reimbursement" of expenses. The first sentence gives the general definition of reimbursement: any money, credit, or discount that defrays or reduces a judge's expenses. Reimbursement in the form of government per diem can exceed actual expenses and still not be classified as "compensation."

Section 4H(3) requires a judge to report any extra-judicial activity for which the judge received compensation. The second sentence applies to retired justices and judges who are serving in a pro tempore capacity. If that judge acts as a private arbitrator or mediator, the judge may comply with this section by filing a copy of Schedule A of the Public Official Financial Disclosure Statement that the judge files with the Alaska Public Offices Commission. That statement lists the names of self-employment businesses and the names of each client who paid the business over $5000. The judge is not required to individually name every client of the business, or to list the amounts received from each client. The judge is nonetheless required, under Administrative Rule 23, to disclose on the record if, within the two years prior to the filing of the assigned case, the judge has served as an arbitrator or mediator for a lawyer or a party in a case; the judge is also required to disqualify himself or herself from sitting pro tem in that case, unless the disqualification is waived.

This Code does not prohibit a judge from accepting honoraria or speaking fees provided that the compensation is reasonable and commensurate with the task performed. A judge should ensure, however, that no conflicts are created by the arrangement. A judge must not appear to use his or her judicial position for personal advantage. Nor should a judge spend significant time away from court duties to meet speaking or writing commitments for compensation. In addition, the source of the payment must not raise any question of undue influence or the judge's ability or willingness to be impartial.

I. ■ Disclosure of a judge's income, debts, and investments and other assets is required only to the extent specified in this Canon and in Sections 3E and 3F, or as otherwise required by law.*

Commentary.—*Section 3E requires a judge to disqualify himself or herself in any proceeding in which the judge has an economic interest. See "economic interest" as explained in the Terminology Section. Section 4D requires a judge to refrain from engaging in business and from financial activities that might interfere with the impartial performance of judicial duties. Section 4H requires a judge to report all compensation the judge received for activities outside judicial office. A judge's financial affairs are private except to the extent disclosure is required by law.*

(Adopted by SCO 1322 effective July 15, 1998, amended by SCO 1559 effective July 15, 2005; by SCO 1617 effective July 15, 2006; by SCO 1629 effective December 31, 2006; and by SCO 1657 effective nunc pro tunc to July 10, 2007)

Canon 5. A Judge or Judicial Candidate Shall Refrain from Inappropriate Political Activity.

A. **All Judges and Candidates.**

(1) Except as authorized in Sections 5B(2) and 5C, a judge or a candidate* for appointment to judicial office shall not:

(a) act as a leader of or hold office in a political organization.*

(b) publicly endorse or publicly oppose a candidate for any public office. However, when false information concerning a judicial candidate* is made public, a judge or candidate having knowledge* of contrary facts may make the facts public.

(c) make speeches on behalf of a political organization.*

(d) ◊ attend political gatherings.

(e) ◊ solicit funds for any political organization* or candidate for public office, pay an assessment or make a contribution to a political organization or candidate for public office, purchase tickets for a political organization's dinners or other functions.

Commentary.—*A judge or candidate for judicial office retains the right to participate in the political process as a voter.*

Section 5A(1)(b) does not prohibit a judge or judicial candidate from privately expressing his or her views on judicial candidates or other candidates for public office. Nor does this section restrict the Chief Justice, acting in the role of Chair of the Alaska Judicial Council, when explaining the Judicial Council's retention recommendations to the public.

Judges should be able to take part in the public debate over proposals to change the legal system or the administration of justice; judges' training and experience make them a valuable resource to the electorate wishing to decide these issues. Since many speeches are given in forums sponsored by political organizations, a question arises concerning the relationship between, on the one hand, a judge's right to speak publicly on issues concerning the legal system and the administration of justice, and, on the other hand, the prohibition contained in Section 5A(1)(d)—that a judge shall not attend the gathering of a political organization. Despite a judge's freedom to speak on legal issues, a judge shall not do so on behalf of a political organization or at a political gathering.

(2) ◊ A judge shall resign upon becoming a candidate* in either a primary or general election for any non-judicial office except the office of delegate to a state or federal constitutional convention.

(3) A candidate for judicial office:*

(a) shall maintain the dignity appropriate to judicial office and act in a manner consistent with the integrity and independence of the judiciary, and shall encourage members of the candidate's family to adhere to the same standards that apply to the candidate. "Members of the candidate's family" means the candidate's spouse,* children, grandchildren, parents, grandparents, and other relatives or persons with whom the candidate maintains a close familial relationship.

Commentary.—*Although a judicial candidate must encourage members of his or her family to adhere to the same standards of political conduct in support of the candidate that apply to the candidate, family members are free to participate in other political activity.*

(b) shall prohibit employees and officials who serve at the pleasure of the candidate, and shall discourage all other employees and officials subject to the candidate's direction and control, from doing anything on the candidate's behalf that is forbidden to the candidate under these rules.

(c) shall not authorize or permit any person to take actions forbidden to the candidate under these rules, except when these rules specifically allow other people to take actions that would be forbidden to the candidate personally.

(d) shall not:

(i) make pledges or promises of conduct in judicial office other than to faithfully and impartially perform the duties of the office;

(ii) make statements that commit or appear to commit the candidate to a particular view or decision with respect to cases, controversies or issues that are likely to come before the court; or

(iii) knowingly* misrepresent any fact concerning the candidate or an opposing candidate for judicial office.

Commentary.—*Section 5A(3)(d) prohibits a candidate for judicial office from making statements that appear to commit the candidate regarding cases, controversies, or issues likely to come before the court. As a corollary, a candidate for judicial office should emphasize in any public statement the candidate's duty to uphold the law regardless of his or her personal views. See also Section 3B(9), the general rule on public comment by judges. Section 5A(3)(d) does not prohibit a candidate from making pledges or promises respecting improvements in court administration. Nor does this Section prohibit an incumbent judge from making private statements to other judges or court personnel in the performance of judicial duties. This Section applies to any statement made in the process of securing judicial office, such as statements to commissions charged with judicial selection and tenure and legislative bodies confirming appointment. See also Rule 8. 2 of the Alaska Rules of Professional Conduct.*

*In **Buckley v. Illinois Judicial Inquiry Board**, 997 F. 2d 224 (7th Cir. 1993), the Seventh Circuit ruled that the ABA's proposed Section 5A(3)(d)(i) and the 1972 predecessor to the ABA's proposed Section 5A(3)(d)(ii) represent an unconstitutional abridgement of judicial candidates' right of free speech.*

*The Illinois rule at issue in **Buckley** prohibited judges and judicial candidates from making "pledges or promises of conduct in office other than the faithful and impartial performance of the duties of the office" and further prohibited judges and judicial candidates from "announc[ing] [their] views on disputed legal or political issues." These same restrictions are currently the law of Alaska: see Alaska Code of Judicial Conduct, Section 7B(1)(c). The Seventh Circuit held that these two restrictions on judges' speech are unconstitutionally overbroad.*

***Buckley** involved two plaintiffs. The first plaintiff was a judge from the intermediate appeals court who ran for the state supreme court; the Judicial Inquiry Board disciplined him for declaring, during the campaign, that he had "never written an opinion reversing a rape conviction." The second plaintiff was a legislator who campaigned for (and was elected to) a seat on the Cook County Circuit Court; he sought relief because "the risk of being sanctioned for violating [the judicial conduct rule] deterred him from speaking out in his campaign on issues that he believed to be important to Illinois voters, including capital punishment, abortion, the state's budget, and public school education."*

*The Seventh Circuit noted that **Buckley** presented the collision of two competing political principles: First, "Candidates for public office should be free to express their views on all matters of interest to the electorate." Second, "Judges [must] decide cases in accordance with law rather than [in accordance] with any express or implied commitments that they may have made to their campaign supporters or to others." Buckley, 997 F. 2d at 227.*

The court declared that "only a fanatic would suppose that…freedom of speech should . . . entitle a candidate for judicial office to promise to vote for one side or another in a particular case or class of cases[.]" On the other hand, the court likewise disavowed the idea "that the principle of impartial legal justice should…prevent a [judicial] candidate…from furnishing any information or opinion to the electorate beyond his name, rank, and serial number." Id. The court went on to state:

> *The difficulty with crafting a rule to prevent [a judicial candidate from making commitments] is that a commitment can be implicit as well as explicit… The candidate might make an explicit commitment to do something that was not, in so many words, taking sides in a particular case or class of cases but would be so understood by the electorate; he might for example promise always to give paramount weight to public safety or to a woman's right of privacy. Or he might discuss a particular case or class of cases in a way that was understood as a commitment to rule in a particular way, even though he avoided the language of pledges, promises, or commitments.*
>
> *The "pledges or promises" clause is not limited to pledges or promises to rule a particular way in particular cases or classes of case; all pledges and promises are*

forbidden except a promise that the candidate will if elected faithfully and impartially discharge the duties of his judicial office. The "announce" clause is not limited to declarations as to how the candidate intends to rule in particular cases or classes of case; he may not "announce his views on disputed legal or political issues," period. The rule certainly deals effectively with the abuse that the draftsmen were concerned with; but in so doing it gags the judicial candidate. He can say nothing in public about his judicial philosophy, he cannot, for example, pledge himself to be a strict constructionist, or for that matter a legal realist. He cannot promise a better shake for indigent litigants or harried employers. He cannot criticize Roe v. Wade. He cannot express his views about substantive due process, economic rights, search and seizure, the war on drugs, the use of excessive force by police, the conditions of the prisons, or products liability—or for that matter about laissez-faire economics, race relations, the civil war in Yugoslavia, or the proper direction of health-care reform . . . All these are disputed legal or political issues.

The rule this reaches far beyond speech that could reasonably be interpreted as committing the candidate in a way that would compromise his impartiality should he be successful in the election. Indeed, the only safe response to Illinois Supreme Court Rule 67(B)(1)(c) is silence. True, the silencing is temporary. It is limited to the duration of the campaign. But [the rule's] interference with the marketplace of ideas and opinions is at its zenith when the "customers" are most avid for the market's "product." The only time the public takes much interest in the ideas and opinions of judges or judicial candidates is when an important judicial office has to be filled . . . .

Id. *at 228-29. The Seventh Circuit noted, but expressed no opinion on, the ABA's proposed revision of the "announce his views" clause. In the 1990 version of the model Code, the ABA has amended this Section so that it now prohibits a judge or judicial candidate from making "statements that commit or appear to commit the judge to a particular view or decision with respect to cases, controversies, or issues… likely to come before [the judge's] court." According to the ABA commentary to Section 5A(3)(d)(ii), the predecessor "announce" rule was felt to be too broad.*

The Seventh Circuit points out in ***Buckley*** *that, even with this change, the ABA provisions may run afoul of First Amendment protections. For example, read too broadly, a Section that prohibits a judge from making any pledge or promise (other than to do a good job) could be used as a basis for disciplinary action against a judicial candidate who declared that he or she believed the courts should actively pursue sentencing alternatives to imprisonment. Conceivably, this same provision could subject a judge to discipline for declaring, as Ruth Ginsberg told the Senate Judiciary Committee on July 20, 1993 [as reported in the Anchorage Daily News of 7/21/93], "My approach [to service on the supreme court] is rooted in the [belief] that the place of the judiciary . . . in our democratic society [is] third in line behind the people and their elected representatives"—a comment that might be construed as a pledge to broadly construe the powers of the legislative branch and to narrowly circumscribe the reach of the Bill of Rights as a check on legislative activity. The Code should be interpreted in a manner that does not infringe First Amendment rights.*

(e) may respond to personal attacks or attacks on the candidate's record, as long as the response contains no knowing misrepresentation of fact and does not violate Section 5A(3)(d).

B. ◊ **Candidates Seeking Appointment to Judicial or Other Governmental Office.**

(1) A candidate* for appointment to judicial office or a judge seeking appointment to another governmental office shall not solicit or accept any funds, personally or through a committee or otherwise, to support his or her candidacy.

(2) A candidate* for appointment to judicial office or a judge seeking appointment to another governmental office may not engage in any political activity* to secure appointment, with the following exceptions:

(a) subject to Section 5A(3), such persons may:*

(i) communicate with the appointing authority, including any selection, screening, or nominating bodies;

(ii) seek privately-communicated support or endorsement from organizations and individuals; and

(iii) provide information regarding his or her qualifications for office to organizations and individuals from whom the candidate seeks support;

(b) a non-judge candidate* for appointment to judicial office may, in addition, unless otherwise prohibited by law:*

(i) retain an office in a political organization,*

(ii) attend political gatherings, and

(iii) continue to pay ordinary assessments and dues to political organizations* and to purchase tickets for political party dinners or other functions.

Commentary.—*Section 5B(2) provides a limited exception to the restrictions imposed by Sections 5A(1) and 5D. Under Section 5B(2), candidates seeking reappointment to the same judicial office or appointment to another judicial office or other governmental office may support their own candidacy and seek appropriate support from others.*

Sections 5B(2)(a)(ii) and (iii) should be read to allow judicial candidates, including judges who are candidates for appointment to other judicial office, to promote their candidacy by circulating letters to the general membership of the bar and to organizations interested in judicial selection. Similarly, a judge need not object when individual lawyers or groups of lawyers decide to circulate a letter in support of the judge's candidacy. However, these letters must not contain promises or statements forbidden by Section 5A(3)(d) (regarding the candidate's likely decisions or action if

appointed), must not contain false statements, and, in general, must not violate any other provision of the Code.

A different problem is presented when a judicial candidate approaches individual lawyers or organizations and seeks their endorsement of his or her candidacy. Even though Canon 5 generally tries to make the rules of political conduct uniform for all judicial candidates (both current judges and lawyers applying to be judges), a sitting judge's approach to individual lawyers inevitably presents problems that do not arise when a non-judge candidate approaches other members of the bar. Because a sitting judge will wield judicial power whether or not the judge's campaign for a different office is successful, a judge who asks individuals for political support runs the risk that the request will give the appearance of abuse of office. Because there is a latent potential for subtle coercion in such requests, a judge's request for the personal endorsement of a lawyer must be circumspect and framed cautiously. A judge must take pains to avoid even giving the appearance that he or she is using or threatening to use the power of judicial office to obtain endorsements.

Section 5B(2)(a)(ii) allows a candidate to seek privately-communicated support or endorsement. Under this provision, a candidate may ask individuals and organizations to send a letter to the Alaska Judicial Council or to the governor, or to speak in support of the candidate at a public hearing held by the Judicial Council or at a private meeting with the governor or the governor's staff. However, a candidate may not ask or authorize individuals or organizations to run newspaper advertisements endorsing the candidate or to send letters to their membership or to other organizations encouraging them to support the candidate. If the candidate is a judge, the candidate should ask individuals and organizations not to send copies of endorsement letters to the candidate.

Although under Section 5B(2)(b) non-judge candidates seeking appointment to judicial office are permitted during their candidacy to retain office in a political organization, attend political gatherings and pay ordinary dues and assessments, they remain subject to other provisions of this Code during their candidacy. See Sections 5E and Application Section.

C. **Judges Seeking Retention.**

(1) A judge who is a candidate* for retention in judicial office may engage in the following political activity to secure retention:

(a) submit a photograph and a statement supporting his or her candidacy for inclusion in the state election pamphlet under AS 15.58;

(b) in response to an unsolicited request,

(i) speak to public gatherings on behalf of his or her candidacy;

(ii) appear on television and radio programs to discuss his or her candidacy; and

(iii) grant interviews regarding his or her candidacy;

(c) form an election committee of responsible persons to conduct an election campaign in anticipation of active opposition to the judge's candidacy; and

(d) reserve media space, domains, and locations, and design and prepare campaign materials in anticipation of active opposition to the judge's candidacy and spend necessary funds for these activities.

(2) A judge who is a candidate* for retention in judicial office may engage in the following additional political activity when there is active opposition to the judge's candidacy:

(a) advertise in newspapers, on television, and in other media in support of his or her candidacy; and

(b) distribute pamphlets and other promotional literature supporting his or her candidacy.

Commentary.—*Sections 5C(1) and (2) permit a judge who is a candidate for retention to be involved in limited political activity. Section 5D, applicable solely to incumbent judges, would otherwise bar this activity.*

Section 5C(2) allows judges seeking retention in office to engage in overt political activity if there is "active opposition" to their candidacy. This Code, like the prior Code, does not define "active opposition." However, the term is meant to be broadly construed. A negative recommendation by the Alaska Judicial Council constitutes active opposition. Holding a press conference, advertising, distributing brochures or leaflets, and sending letters to voters are all forms of active opposition. On the other hand, statements made by individual speakers at Judicial Council meetings rarely constitute active opposition, regardless of what is said. Active opposition may be conducted by individuals acting alone as well as by groups. The opposition need not be specifically targeted at one particular judge or at a discrete group of judges—a newspaper advertisement urging the rejection of all judges standing for retention would be viewed as active opposition to the candidacy of each individual judge. If a judge has information and believes that active opposition is imminent, the judge may document the basis of this belief to the Judicial Conduct Commission and may then proceed as if there were active opposition to the judge's candidacy.

(3) A judge who is a candidate* for retention in judicial office shall not personally solicit or accept any funds to support his or her candidacy or personally solicit publicly stated support for his or her candidacy. However, if there is active opposition to the judge's candidacy, the judge's election committees may engage in media advertisements, brochures, mailings, candidate forums, and any other legal methods of pursuing the judge's election. Such committees may solicit and accept reasonable campaign contributions, manage and expend these funds on behalf of the judge's election campaign and solicit and obtain public statements of support for the judge's candidacy. Such committees are not prohibited from soliciting and accepting reasonable campaign contributions and public support from lawyers. A candidate's committee may solicit contributions and public support for the candidate's campaign preceding the election and for 90 days thereafter. A judge shall

not make private use of campaign funds raised by an election committee or use these funds for the private benefit of any other person or permit anyone else to use these funds for the private benefit of any person.

Commentary.—*Section 5C(2) permits a judge who is a candidate for retention to establish a campaign committee to solicit and accept public support and reasonable financial contributions if there is active opposition to the judge's candidacy. At the start of the campaign, the judge must instruct his or her campaign committee to solicit or accept only contributions that are reasonable under the circumstances. Though not prohibited, campaign contributions of which a judge has knowledge, made by lawyers or others who appear before the judge, may be relevant to disqualification under Section 3E.*

Campaign committees established under Section 5C(2) should manage campaign finances responsibly, avoiding deficits that might necessitate post-election fundraising, to the extent possible.

Section 5C(2) does not prohibit a judge who is a candidate for retention from initiating an evaluation by a judicial selection commission or bar association, or, subject to the requirements of this Code, from responding to a request for information from any organization.

Sections 5C and 5D are intended to restrict fundraising by and on behalf of individual judges. These Sections are not intended to prohibit an organization of judges from soliciting money from judges to establish a campaign fund to assist judges who face active opposition to their retention.

They are not intended to restrict the ability of judges to spend their own funds in support of their own candidacies.

(4) A judge who is a candidate* for selection as a delegate to a federal or state constitutional convention may engage in any political activity* to secure election allowed to other candidates for that office.

D. **Incumbent Judges.** A judge shall not engage in any political activity* except (i) as authorized under any other Section of this Code, (ii) on behalf of measures to improve the law,* the legal system, or the administration of justice, or (iii) as expressly authorized by another provision of law.

Commentary.—*Neither Section 5D nor any other Section of the Code prohibits a judge in the exercise of administrative functions from engaging in planning and other official activities with members of the executive and legislative branches of government. With respect to a judge's activity on behalf of measures to improve the law, the legal system, and the administration of justice, see Commentary to Section 4B and Section 4C(1) and its Commentary.*

E. **Applicability.** Canon 5 applies to all incumbent judges and judicial candidates.* A successful candidate, whether or not an incumbent, is subject to judicial discipline for his or her campaign conduct; an unsuccessful candidate who is a lawyer is subject to lawyer discipline for his or her campaign conduct. A lawyer who is a candidate for judicial office is subject to Rule 8.2(b) of the Alaska Rules of Professional Conduct.

(Adopted by SCO 1322 effective July 15, 1998; amended by SCO 1762 effective July 2, 2011)

APPLICATION OF THE CODE OF JUDICIAL CONDUCT

A. **Full-Time Judicial Officers.** The following judicial officers shall comply with all provisions of this Code:

(1) active justices of the supreme court and active judges of the court of appeals, the superior court, and the district court (including acting district court judges);

(2) full-time magistrate judges;

(3) committing magistrate judges; and

(4) standing masters.

B. **Senior Judges.**

(1) Senior judges (retired justices of the supreme court and retired judges of the court of appeals, the superior court, and the district court who are eligible for judicial service under Administrative Rule 23) shall comply with all provisions of this Code except:

(a) 4D(1)(b) (transactions with persons likely to come before the judge's court);

(b) 4D(4) (management of financial resources to minimize disqualification);

(c) 4E(1) (fiduciary service for persons other than family members);

(d) 4E(2) (fiduciary service where proceedings likely before judge's court);

(e) 4F (service as arbitrator or mediator). However, a senior judge who serves as an arbitrator or mediator must comply with Administrative Rule 23(f); and

(f) a senior judge may speak publicly regarding the qualification of a judge seeking retention who faces active opposition.

(2) In addition, a senior judge need not comply with Section 4C(2) (appointment to government positions) except during periods of appointment to active judicial service under Administrative Rule 23.

(3) Senior judges who serve as members of a judicial assistance committee have additional ethical obligations to maintain the confidentiality of communications received in that capacity, including the identities of those seeking the services of the committee or those referring matters to the committee. Consequently, senior judges serving in this capacity may not report any failure of a judge referred to the committee to admit the problem or submit to treatment.

Commentary.—*A senior judge—a retired justice or judge who is eligible for judicial service under Administrative Rule 23—must comply with all provisions of the Code except those listed. Thus, a senior judge may engage in financial and business dealings with any person and has no duty to manage investments and business and financial interests to minimize the number of cases in which the judge is disqualified. A senior judge may serve as a personal representative, trustee, guardian, or other fiduciary for persons other than family members. Although senior judges may not engage in the practice of law, they may serve as private arbitrators or mediators and may maintain private arbitration and mediation businesses, even during periods of pro tem service. However, in order to be eligible for judicial service, a judge who performs private arbitration or mediation must comply with the disclosure requirements and employment restrictions set out in Administrative Rule 23(e).*

Senior judges may publicly speak regarding the qualifications of judges facing active opposition. This limited exception to Canon 5A(1)(b) preserves the general insulation of judges from political pressures while allowing for an informed public debate on the qualifications of a judge up for retention.

A senior judge may serve on a government committee or commission or hold a government position except during periods of pro tem service.

Despite the relaxation of restrictions on senior judges' financial dealings, they remain subject to the disqualification provisions of Section 3E.

The special confidentiality obligations when serving as a member of a judicial assistance committee are narrowly tailored to provide for candid reporting to the judicial assistance committee.

C. **Part-Time Magistrate Judges and Deputy Magistrates.** Part-time magistrate judges and deputy magistrates shall comply with all provisions of this Code except:

(1) Section 4C(1) (appearance before or consultation with executive or legislative bodies) if the magistrate judge or deputy magistrate holds an office or position of profit under the United States, the state, or its political subdivisions and must engage in Section 4C(1) activities in order to perform the duties of this office or position;

(2) Section 4C(2) (appointment to government positions);

(3) Section 4D(1)(b) (transactions with persons likely to come before the judge's court);

(4) Section 4D(3)(c) (participation in business activity that has major effect on economic life of community);

(5) Section 4E(1) (fiduciary service for persons other than family members);

(6) Section 4G (practice of law);

(7) Section 5A(1)(d) (attendance at political gatherings) if the magistrate judge or deputy magistrate holds or is seeking non-judicial public office;

(8) Section 5A(1)(e) (solicitation and contribution of campaign funds) to the extent that the magistrate judge or deputy magistrate is soliciting funds for or contributing funds to the magistrate judge's own campaign for non-judicial public office;

(9) Section 5A(2) (resignation upon becoming a candidate for nonjudicial office); and

(10) Sections 5B (political activity to secure appointment to public office).

Commentary.—*AS 22.15.210(b) guarantees magistrates a conditional right to seek and hold any other office or position of profit under the United States, this State, or its political subdivisions, and to engage in the conduct of any profession or business that does not interfere with the performance of judicial duties or necessitate repeated disqualifications. Because of this statute, part-time magistrates are exempt from the restrictions on holding non-judicial public office. They are also permitted to engage in political activity necessary to secure and perform the duties of non-judicial public office. Note, however, that political activity by court system employees is also limited by Personnel Rule PX9.O. Under this rule, a court system employee forfeits his or her position upon becoming a candidate for state or national elective political office, other than the office of delegate to a state or federal constitutional convention.*

The Code exempts part-time magistrates from two restrictions on business activity, the duty to avoid financial and business dealings with persons likely to come before the magistrate's court, and the duty to avoid business activity that has a major effect on the economic life of the community. In a small community, it may be difficult for a magistrate to avoid business dealings with persons likely to come before the magistrate's court, and even a moderately-sized business venture may have a major effect on the community's economic life. Thus, these restrictions could make it impossible for a part-time magistrate to carry on outside business activity in order to supplement his or her part-time judicial salary. Part-time magistrates remain subject to Section 4D(4), which requires that they manage their financial dealings to minimize the number of cases in which they are disqualified. They also remain subject to the disqualification provisions of Section 3E. They are also subject to Personnel Rule PX5.04, which regulates outside employment by court system employees.

A part-time magistrate may serve as a fiduciary for persons other than family members, subject to Sections 4E(2) and 4E(3). A part-time magistrate who is an attorney may practice law, subject to Administrative Rule 2(d), which prohibits court system employees from engaging, directly or indirectly, in the practice of law in any of the courts of this state.

D. **Special Masters.**

(1) A special master who is not an active judge, magistrate judge, or standing master shall comply with the following provisions of this Code:

(a) Canon 1 (duty to uphold the integrity and independence of the judiciary);

(b) Canon 3 (judicial duties); however, a special master need not comply with Section 3B(9) to the extent this Section would prohibit the special master from commenting about pending or impending proceedings that are unrelated to the proceeding in which he or she is a special master;

(c) Section 4A (extra-judicial activities in general);

(d) Section 4B (avocational activities);

(e) Section 4C(1); however, a special master need not comply with Section 4C(1) to the extent this Section would prohibit the special master from appearing at public hearings or lobbying on matters that are unrelated to the proceeding in which he or she is a special master;

(f) Section 4D(1)(a) (financial or business dealings that appear to exploit judicial position);

(g) Section 4E(3) (restrictions on financial activity that apply personally also apply while acting as fiduciary); and

(h) Section 4I (financial affairs are private except where disclosure required by law).

(2) In addition, during periods of appointment as a master, a special master must comply with Section 2A (duty to avoid impropriety and appearance of impropriety) and 2B (inappropriate influence and misuse of judicial office).

(3) A person who has been a special master in a proceeding shall not act as a lawyer in that proceeding or in any other proceeding related thereto, except as otherwise permitted by Rule 1.12(a) of the Alaska Rules of Professional Conduct.

E. **Time for Compliance.** A person to whom this Code becomes applicable shall comply immediately with all provisions of this Code except Sections 4D(2) and 4D(3) (which pertain to business activities) and Section 4E (which pertains to fiduciary activities) and shall comply with these Sections as soon as reasonably possible and shall do so in any event within the period of one year.

Commentary.—*If serving as a fiduciary when selected as a judge, a new judge may, notwithstanding the prohibitions in Section 4E, continue to serve as fiduciary but only for that period of time necessary to avoid serious adverse consequences to the beneficiary of the fiduciary relationship and in no event longer than one year. Similarly, if engaged at the time of judicial selection in a business activity that is not permitted by Section 4D(3), a new judge may, notwithstanding the prohibitions in Section 4D(3), continue in that activity for a reasonable period but in no event longer than one year.*

(Adopted by SCO 1322 effective July 15, 1998; amended by SCO 1427 effective April 15, 2001; by SCO 1762 effective July 1, 2011; by SCO 1768 effective October 14, 2011; and by SCO 1829 effective October 15, 2014)

TERMINOLOGY

Terms defined below are marked with an asterisk in the Sections where they appear. In addition, each definition cross-references the Sections where the defined term appears.

"Appropriate disciplinary authority" means the governmental or quasi-governmental agency whose responsibility for initiation of the disciplinary process covers the violation to be reported. See Sections 3D(1), 3D(2), and 3D(3).

"Bias or prejudice" does not include references to or distinctions based upon race, color, sex, religion, national origin, disability, age, marital status, changes in marital status, pregnancy, parenthood, sexual orientation, or social or economic status when these factors are legitimately relevant to the advocacy or decision of the proceeding, or, with regard to administrative matters, when these factors are legitimately relevant to the policies or decisions involved. See Sections 3B(5), 3B(6), 3C(1), and 3C(2).

Commentary.—*The definition of "bias or prejudice" was written in an exclusionary manner to allow courts to countenance legitimate distinctions relevant to litigation before them. See Section 3B(6).*

The definition implies the obvious— that a court demonstrates impermissible bias or prejudice if it uses constitutionally or statutorily protected categories as a basis for unfairly discriminating. Bias or prejudice may also arise from other than legally impermissible categorization and still be something a court should recognize and avoid.

As the symbols and bastions of justice in our society it is important for courts to provide their services to all on essentially the same basis.

"Candidate" means a person seeking any public office. A person becomes a candidate as soon as he or she makes a public announcement of candidacy, or declares or files as a candidate with the election or appointment authority, or authorizes solicitation or acceptance of contributions or public support. See Preamble and Sections 5A(1), 5A(2), 5B(1), 5B(2), 5B(2)(b), 5C(1), 5C(2), 5C(3), and 5C(4).

"Candidate for judicial office" means a candidate seeking selection for or retention in judicial office, whether by election or appointment. This term is used interchangeably with "judicial candidate." See Sections 5A(1)(b), 5A(3), and 5E.

"De minimis interest" means an insignificant interest that would not lead reasonable persons to question a judge's impartiality. See Sections 3E(1)(c) and 3E(1)(d).

"Economic interest" means ownership of a more than de minimis legal or equitable interest or a relationship as an officer, director, advisor, or other legal participant in the affairs of a party, except that:

(i) ownership of an interest in a mutual or common investment fund that holds securities is not an economic interest in such securities unless the judge participates in the management of the fund or a proceeding pending or impending before the judge could substantially affect the value of the interest;

(ii) service by a judge as an officer, director, advisor, or other active participant in an educational, religious, charitable, fraternal, or civic organization, or service by a judge's spouse, parent, or child as an officer, director, advisor, or other active participant in any organization does not create an economic interest in securities held by that organization;

(iii) a deposit in a financial institution, the proprietary interest of a policy holder in a mutual insurance company, of a depositor in a mutual savings association or of a member in a credit union, or a similar proprietary interest, is not an economic interest in the organization unless a proceeding pending or impending before the judge could substantially affect the value of the interest;

(iv) ownership of government securities is not an economic interest in the issuer unless a proceeding pending or impending before the judge could substantially affect the value of the securities.

See Sections 3E(1)(c) and 3E(2).

"Fiduciary" means a person who has undertaken a duty to conduct financial or other affairs for another person's benefit. The term includes any person acting as executor, administrator, personal representative, trustee, guardian, or attorney in fact for another. It also includes any other person who, because of his or her relationship to another person, is obliged to give paramount consideration to the benefit of that other person and to abide by duties of care, good faith, and candor in the conduct of matters falling within the scope of the relationship, even when doing so conflicts with the self-interest of the fiduciary. See Sections 3D(2), 3E(1)(c), 3E(2), 4E(1), 4E(2), and 4E(3).

"Governmental office" means the four types of office a judge may seek without resigning:

(i) retention in the judge's current judicial office;

(ii) selection to a different judicial office;

(iii) selection as a delegate to a constitutional convention; or

(iv) selection to an appointive non-judicial public office.

See Sections 5B(1) and 5B(2).

Commentary.—*Canon 5 speaks of judges who are candidates for government office—both appointive government office (Section 5B) and elective government office (Section 5C(4)). However, Section 5A(2) requires judges to resign upon becoming a candidate for elective non-judicial office. Thus, the phrase "governmental office" is necessarily limited to the four types of office a judge may seek without resigning.*

"Judicial duties" means all the duties of a judge in connection with judicial proceedings and acts of the judge in discharge of disciplinary responsibilities required or permitted by Section 3D. See Sections 3A, 3B(5), 3B(11), 3D(4), 4A(3), 4D(5)(b), 4E(1), and 4H(2).

"Knowingly," "knowledge," "known," and "knows" mean that a person is aware of the existence of the fact or circumstance in question, or is aware of the substantial probability of its existence. However, a person does not "know" or have "knowledge" or act "knowingly" if the person actually believes, despite any indications to the contrary, that the fact or circumstance does not exist. See Sections 2B, 2C, 3D(1), 3E(1)(a), 3E(1)(c), 3E(1)(d), 5A(l)(b), and 5A(3)(d).

"Law" means court rules as well as statutes, constitutional provisions, and decisional law. See Sections 2A, 3A, 3B(2), 3B(7), 3B(7)(a), 3C(2), 4B, 4C(1), 4C(2), 4C(3), 4C(3)(b), 4D(5)(a), 4F, 4I, 5B(2)(b), and 5D.

"Member of the judge's family" means a spouse, child, grandchild, parent, grandparent, or other relative or person with whom the judge maintains a close familial relationship. See Sections 2B, 3E(1)(c), 4E(1), and 4G.

"Nonpublic information" means information that, by law, is not available to the public. Nonpublic information may include but is not limited to: information that is sealed by statute or court order, information impounded or communicated in camera, and information offered in grand jury proceedings, presentencing reports, dependency cases, or psychiatric reports. See Section 3B(11).

"Political activity" means:

(i) becoming a candidate for elective public office;

(ii) serving as an officer of a political party, a member of a national, state, or local committee of a political party, an officer or member of a committee of any other political organization, or becoming a candidate for any of these positions;

(iii) serving as a delegate, alternate, or proxy to a political party convention;

(iv) addressing a convention, caucus, rally, or similar gathering of a political party in support of or in opposition to a candidate for public office or political party office;

(v) organizing or re-organizing a political party or organization;

(vi) taking part in a political campaign to elect someone to public office or political party office, to recall someone from such an office, or to enact or defeat a ballot proposition;

(vii) taking any other part in the management of a political party or organization, or a political candidate, or a group for or against a ballot proposition;

(viii) soliciting votes in support of or in opposition to a candidate's election to public office or political party office, or

in support of or in opposition to an incumbent's recall from such an office, or in support of or in opposition to a ballot proposition;

(ix) publicly endorsing or opposing a candidate for public office or political party office, or publicly endorsing or opposing a ballot proposition, whether in a speech, a published letter, a political advertisement or broadcast, campaign literature, or any similar material;

(x) initiating or circulating a nominating petition, recall petition, or petition to put a ballot proposition before the voters.

(xi) directly or indirectly soliciting, receiving, collecting, handling, disbursing, or accounting for assessments, contributions, or other funds for a political purpose;

(xii) organizing, selling tickets to, promoting, or actively participating in a fund-raising activity of a candidate, political party, or political organization; or

(xiii) acting as a recorder, watcher, challenger, or similar officer at the polls on behalf of a political party or a candidate, or driving voters to the polls on behalf of a political party or a candidate, or doing any other act as an official or unofficial representative of a political party or candidate;

(xiv) but "political activity" does not include:

(a) being a member of a political party;

(b) registering and voting;

(c) expressing one's opinion in private on political subjects and candidates;

(d) participating in the non-partisan activities of a civic, community, social, labor, or professional organization; or

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

See Sections 5B(2), 5C(4), and 5D.

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

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

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

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

See Sections 5A(1)(a), 5A(1)(c), 5A(1)(e), and 5B(2)(b).

The words "shall" and "shall not" mean a binding obligation on judicial officers, and a judge's failure to comply with this obligation is a ground for disciplinary action.

The words "should" and "should not" mean conduct or a course of action to which judicial officers should aspire, but a judge's failure to meet such an aspirational goal is not a ground for disciplinary action.

"Spouse" includes not only a husband or wife but also any person with whom the judge maintains a shared household and conjugal relations. See Sections 3E(1)(c), 3E(l)(d), 3E(2), 4D(5)(a), 4D(5)(b), 4H(1)(b), 4H(3), and 5A(3)(a).

Commentary.—*Because the same potential conflicts of interest and loyalty arise when a judge maintains a shared household and conjugal relations with another person to whom the judge is not married, the provisions of Canons 3 and 4 should apply more broadly than simply to legally recognized spouses. Rather than try to reword each affected provision, this Code retains the ABA's use of "spouse" but includes an expanded definition of spouse in the Terminology Section.*

"Third degree of relationship." The following persons are relatives within the third degree of relationship: great-grandparent, grandparent, parent, uncle, aunt, brother, sister, child, grandchild, great-grandchild, nephew, and niece. See Section 3E(1)(d).

(Adopted by SCO 1322 effective July 15, 1998)