

CALIFORNIA CODE OF JUDICIAL ETHICS

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Preamble

Terminology

Canon 1. A judge shall uphold the integrity and independence of the judiciary.

Canon 2. A judge shall avoid impropriety and the appearance of impropriety in all of the judge's activities.

Canon 3. A judge shall perform the duties of judicial office impartially, competently, and diligently.

Canon 4. A judge shall so conduct the judge's quasi-judicial and extrajudicial activities as to minimize the risk of conflict with judicial obligations.

Canon 5. A judge or candidate for judicial office shall not engage in political or campaign activity that is inconsistent with the independence, integrity, or impartiality of the judiciary.

Canon 6. Compliance with the Code of Judicial Ethics.

PREFACE

Formal standards of judicial conduct have existed for more than 65 years. The original Canons of Judicial Ethics promulgated by the American Bar Association were modified and adopted in 1949 for application in California by the Conference of California Judges (now the California Judges Association).

In 1969, the American Bar Association determined that then current needs and problems warranted revision of the canons. In the revision process, a special American Bar Association committee, headed by former California Chief Justice Roger Traynor, sought and considered the views of the bench and bar and other interested persons. The American Bar Association Code of Judicial Conduct was adopted by the House of Delegates of the American Bar Association August 16, 1972.

Effective January 5, 1975, the California Judges Association adopted a new California Code of Judicial Conduct adapted from the American Bar Association 1972 Model Code. The California code was recast in gender-neutral form in 1986.

In 1990, the American Bar Association Model Code was further revised after a lengthy study. The California Judges Association again reviewed the model code and adopted a revised California Code of Judicial Conduct on October 5, 1992.

Proposition 190 (amending Cal. Const., art. VI, § 18, subd. (m), operative March 1, 1995) created a new constitutional provision that states, “The Supreme Court shall make rules for the conduct of judges, both on and off the bench, and for judicial candidates in the conduct of their campaigns. These rules shall be referred to as the Code of Judicial Ethics.”

The Supreme Court formally adopted the 1992 Code of Judicial Conduct in March 1995, as a transitional measure pending further review.

The Supreme Court formally adopted the Code of Judicial Ethics effective January 15, 1996.

The Supreme Court has formally adopted amendments to the Code of Judicial Ethics on several occasions. The Advisory Committee Commentary is published by the Supreme Court Advisory Committee on the Code of Judicial Ethics.

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 this code are the precepts that judges, individually and collectively, must respect and honor the judicial office as a public trust and must 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 is a highly visible member of government under the rule of law.

The Code of Judicial Ethics (“code”) establishes standards for ethical conduct of judges on and off the bench and for candidates for judicial office.* The code consists of broad declarations called canons, with subparts, and a terminology section. Following many canons is a commentary section prepared by the Supreme Court Advisory Committee on the Code of Judicial Ethics. The commentary, by explanation and example, provides guidance as to the purpose and meaning of the canons. The commentary does not constitute additional rules and should not be so construed. All members of the judiciary must comply with the code. Compliance is required to preserve the integrity* of the bench and to ensure the confidence of the public.

The canons should be read together as a whole, and each provision should be construed in context and consistent with every other provision. They are to be applied in conformance with constitutional requirements, statutes, other court rules, and decisional law. Nothing in the code shall either impair the essential independence* of judges in making judicial decisions or provide a separate basis for civil liability or criminal prosecution.

The code governs the conduct of judges and candidates for judicial office* and is binding upon them. Whether disciplinary action is appropriate, and the degree of discipline to be imposed, requires a reasoned application of the text and consideration of such factors as the seriousness of the transgression, if there is a pattern of improper activity, and the effect of the improper activity on others or on the judicial system.

TERMINOLOGY

Terms explained below are noted with an asterisk (*) in the canons where they appear. In addition, the canons in which these terms appear are cited after the explanation of each term below.

“Candidate for judicial office” is a person seeking election to or retention of a judicial office. A person becomes a candidate for judicial office as soon as he or she makes a public announcement of candidacy, declares or files as a candidate with the election authority, or authorizes solicitation or acceptance of contributions or support. See Preamble and Canons 3B(9) (Commentary), 3E(2)(b)(i), 3E(3)(a), 5, 5A, 5A (Commentary), 5B(1), 5B(2), 5B(3), 5B(4), 5B (Commentary), 5B(4) (Commentary), 5C, 5D, and 6E.

“Fiduciary” includes such relationships as executor, administrator, trustee, and guardian. See Canons 3E(5)(d), 4E(1), 4E(2), 4E(3), 4E (Commentary), 6B, and 6F (Commentary).

“Gender identity” means a person’s internal sense of being male, female, a combination of male and female, or neither male nor female. See Canons 2C, 2C (Commentary), 3B(5), 3B(6), 3C(1), and 3C(3).

“Gender expression” is the way people communicate or externally express their gender identity to others, through such means as pronouns used, clothing, appearance, and demeanor. See Canons 2C, 2C (Commentary), 3B(5), 3B(6), 3C(1), and 3C(3).

“Gift” means anything of value to the extent that consideration of equal or greater value is not received, and includes a rebate or discount in the price of anything of value unless the rebate or discount is made in the regular course of business to members of the public without regard to official status. See Canons 4D(5), 4D(5) (Commentary), 4D(6), 4D(6)(a), 4D(6)(b), 4D(6)(b) (Commentary), 4D(6)(d), 4D(6)(f), 4D(6)(i), 4D(6)(i) (Commentary), 4D(6) and 4D(7) (Commentary), 4H (Commentary), 5A (Commentary), 5B(4) (Commentary), 6D(2)(c), and 6D(7).

“Impartial,” “impartiality,” and “impartially” mean the absence of bias or prejudice in favor of, or against, particular parties or classes of parties, as well as the maintenance of an open mind in considering issues that may come before a judge. See Canons 1, 1 (Commentary), 2A, 2 and 2A (Commentary), 2B (Commentary), 2C (Commentary), 3, 3B(9) (Commentary), 3B(10) (Commentary), 3B(12), 3B(12) (Commentary), 3C(1), 3C(5), 3E(4)(b), 3E(4)(c), 4A(1), 4A (Commentary), 4C(3)(b) (Commentary), 4C(3)(c) (Commentary), 4D(1) (Commentary), 4D(6)(a) (Commentary), 4D(6)(b) (Commentary), 4D(6)(g) (Commentary), 4D(6)(i) (Commentary), 4H (Commentary), 5, 5A, 5A (Commentary), 5B (Commentary), 5B(4) (Commentary), 6D(2)(a), and 6D(3)(a)(vii).

1 “Impending proceeding” is a proceeding or matter that is imminent or expected to occur
2 in the near future. The words “proceeding” and “matter” are used interchangeably, and
3 are intended to have the same meaning. See Canons 2 and 2A (Commentary), 3B(7),
4 3B(7)(a), 3B(9), 3B(9) (Commentary), 4H (Commentary), and 6D(6). “Pending
5 proceeding” is defined below.

6
7 “Impropriety” includes conduct that violates the law, court rules, or provisions of this
8 code, as well as conduct that undermines a judge’s independence, integrity, or
9 impartiality. See Canons 2, 2 and 2A (Commentary), 2B (Commentary), 2C
10 (Commentary), 3B(9) (Commentary), 4D(1)(b) (Commentary), 4D(6)(g) (Commentary),
11 4D(6)(i) (Commentary), 4H, and 5.

12
13 “Independence” means a judge’s freedom from influence or control other than as
14 established by law. See Preamble, Canons 1, 1 (Commentary), 2C, 4C(2) (Commentary),
15 4D(6)(a) (Commentary), 4D(6)(g) (Commentary), 4D(6)(i) (Commentary), 4H(3)
16 (Commentary), 5, 5A (Commentary), 5B (Commentary), and 6D(1).

17
18 “Integrity” means probity, fairness, honesty, uprightness, and soundness of character.
19 See Preamble, Canons 1, 1 (Commentary), 2A, 2 and 2A (Commentary), 2B
20 (Commentary), 2C (Commentary), 3B(9) (Commentary), 3C(1), 3C(5), 4D(6)(a)
21 (Commentary), 4D(6)(b) (Commentary), 4D(6)(g) (Commentary), 4D(6)(i)
22 (Commentary), 4H (Commentary), 5, 5A (Commentary), 5B (Commentary), and 6D(1).

23
24 “Knowingly,” “knowledge,” “known,” and “knows” mean actual knowledge of the fact in
25 question. A person’s knowledge may be inferred from circumstances. See Canons
26 2B(2)(b), 2B(2)(e), 2C (Commentary), 3B(2) (Commentary), 3B(7)(a), 3B(7)(a)
27 (Commentary), 3D(2), 3D(5), 3E(5)(f), 5B(1)(b), 6D(3)(a)(i), 6D(3)(a) (Commentary),
28 6D(4) (Commentary), and 6D(5)(a).

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30 “Law” means constitutional provisions, statutes, court rules, and decisional law. See
31 Canons 1 (Commentary), 2A, 2C (Commentary), 3A, 3B(2), 3B(7), 3B(7)(c), 3B(8),
32 3B(8) (Commentary), 3B(12) (Commentary), 3E(1), 4C(3)(c) (Commentary), 4F, and
33 4H.

34
35 “Law, the legal system, or the administration of justice.” When a judge engages in an
36 activity that relates to the law, the legal system, or the administration of justice, the judge
37 should also consider factors such as whether the activity upholds the integrity,
38 impartiality, and independence of the judiciary (Canons 1 and 2A), whether the activity
39 impairs public confidence in the judiciary (Canon 2), whether the judge is allowing the
40 activity to take precedence over judicial duties (Canon 3A), and whether engaging in the
41 activity would cause the judge to be disqualified (Canon 4A(4)). See Canons 4B
42 (Commentary), 4C(1), 4C(1) (Commentary), 4C(2), 4C(2) (Commentary), 4C(3)(a),

1 4C(3)(b) (Commentary), 4C(3)(d)(ii), 4C(3)(d) (Commentary), 4D(6)(d), 4D(6)(e), 5A
2 (Commentary), 5D, and 5D (Commentary).

3
4 “Member of the judge’s family” means a spouse, registered domestic partner, child,
5 grandchild, parent, grandparent, or other relative or person with whom the judge
6 maintains a close familial relationship. See Canons 2B(3)(c), 2B (Commentary),
7 4C(3)(d)(i), 4D(1) (Commentary), 4D(2), 4D(5) (Commentary), 4E(1), and 4G
8 (Commentary).

9
10 “Member of the judge’s family residing in the judge’s household” means a spouse or
11 registered domestic partner and those persons who reside in the judge’s household and
12 who are relatives of the judge, including relatives by marriage or persons with whom the
13 judge maintains a close familial relationship. See Canons 4D(5), 4D(5) (Commentary),
14 4D(6), 4D(6)(b) (Commentary), 4D(6)(f) and 6D(2)(c).

15
16 “Nonpublic information” means information that, by law, is not available to the public.
17 Nonpublic information may include, but is not limited to, information that is sealed by
18 statute or court order, impounded, or communicated in camera, and information offered
19 in grand jury proceedings, presentencing reports, dependency cases, or psychiatric
20 reports. Nonpublic information also includes information from affidavits, jury results, or
21 court rulings before it becomes public information. See Canons 3B(11) and 6D(8)(a).

22
23 “Pending proceeding” is a proceeding or matter that has commenced. A proceeding
24 continues to be pending through any period during which an appeal may be filed and any
25 appellate process until final disposition. The words “proceeding” and “matter” are used
26 interchangeably, and are intended to have the same meaning. See Canons 2 and 2A
27 (Commentary), 2B(3)(a), 3B(7), 3B(9), 3B(9) (Commentary), 3E(5)(a), 4H
28 (Commentary), and 6D(6). “Impending proceeding” is defined above.

29
30 “Political organization” means a political party, political action committee, or other
31 group, the principal purpose of which is to further the election or appointment of
32 candidates to nonjudicial office. See Canon 5A.

33
34 “Registered domestic partner” means a person who has registered for domestic
35 partnership pursuant to state law or who is recognized as a domestic partner pursuant to
36 Family Code section 299.2. See Canons 3E(5)(d), 3E(5)(e), 3E(5)(i), 4D(6)(d), 4D(6)(f),
37 4D(6)(j), 4H(2), 5A (Commentary), 6D(3)(a)(v), and 6D(3)(a)(vi).

38
39 “Require.” Any canon prescribing that a judge “require” certain conduct of others means
40 that a judge is to exercise reasonable direction and control over the conduct of those
41 persons subject to the judge's direction and control. See Canons 3B(3), 3B(4), 3B(6),
42 3B(8) (Commentary), 3B(9), 3C(3), 6D(1), 6D(2)(a), and 6D(6).

1 “Service organization” includes any organization commonly referred to as a “fraternal
2 organization.” See Canons 3E(5)(d), 4C(2) (Commentary), 4C(3)(b), 4C(3)(b)
3 (Commentary), 4C(3)(d) (Commentary), 4D(6)(j), and 6D(2)(b).
4

5 “Subordinate judicial officer.” A subordinate judicial officer is, for the purposes of this
6 code, a person appointed pursuant to article VI, section 22 of the California Constitution,
7 including, but not limited to, a commissioner, referee, and hearing officer. See Canons
8 3D(3), 4G (Commentary), and 6A.
9

10 “Temporary Judge” means an active or inactive member of the bar who, pursuant to
11 article VI, section 21 of the California Constitution, serves or expects to serve as a judge
12 once, sporadically, or regularly on a part-time basis under a separate court appointment
13 for each period of service or for each case heard. See Canons 3E(5)(h), 4C(3)(d)(i),
14 4C(3)(d) (Commentary), 6A, and 6D.
15

16 “Third degree of relationship” includes the following persons: great-grandparent,
17 grandparent, parent, uncle, aunt, brother, sister, child, grandchild, great-grandchild,
18 nephew, and niece. See Canons 3E(5)(e), 3E(5)(i), and 6D(3)(a)(v).
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An independent, impartial,* and honorable judiciary is indispensable to justice in our society. A judge should participate in establishing, maintaining, and enforcing high standards of conduct, and shall personally observe those standards so that the integrity* and independence* of the judiciary is preserved. The provisions of this code are to be construed and applied to further that objective. A judicial decision or administrative act later determined to be incorrect legally is not itself a violation of this code.

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. Although judges should be independent, they must comply with the law* and the provisions of this code. Public confidence in the impartiality* of the judiciary is maintained by the adherence of each judge to this responsibility. Conversely, violations of this code diminish public confidence in the judiciary and thereby do injury to the system of government under law.*

The basic function of an independent, impartial, and honorable judiciary is to maintain the utmost integrity* in decisionmaking, and this code should be read and interpreted with that function in mind.*

1 CANON 2

2
3 A JUDGE SHALL AVOID IMPROPRIETY* AND THE
4 APPEARANCE OF IMPROPRIETY* IN ALL OF THE JUDGE'S
5 ACTIVITIES
6

7 A. Promoting Public Confidence
8

9 A judge shall respect and comply with the law* and shall act at all times in a manner that
10 promotes public confidence in the integrity* and impartiality* of the judiciary. A judge
11 shall not make statements, whether public or nonpublic, that commit the judge with
12 respect to cases, controversies, or issues that are likely to come before the courts or that
13 are inconsistent with the impartial* performance of the adjudicative duties of judicial
14 office.
15

16 ADVISORY COMMITTEE COMMENTARY: Canons 2 and 2A

17 *Public confidence in the judiciary is eroded by irresponsible or improper conduct*
18 *by judges.*

19 *A judge must avoid all impropriety* and appearance of impropriety.* A judge*
20 *must expect to be the subject of constant public scrutiny. A judge must therefore accept*
21 *restrictions on the judge's conduct that might be viewed as burdensome by other*
22 *members of the community and should do so freely and willingly.*

23 *A judge must exercise caution when engaging in any type of electronic*
24 *communication, including communication by text or email, or when participating in*
25 *online social networking sites or otherwise posting material on the Internet, given the*
26 *accessibility, widespread transmission, and permanence of electronic communications*
27 *and material posted on the Internet. The same canons that govern a judge's ability to*
28 *socialize and communicate in person, on paper, or over the telephone apply to electronic*
29 *communications, including use of the Internet and social networking sites. These canons*
30 *include, but are not limited to, Canons 2B(2) (lending the prestige of judicial office),*
31 *3B(7) (ex parte communications), 3B(9) (public comment about pending* or impending*
32 *proceedings*), 3E(2) (disclosure of information relevant to disqualification), and 4A*
33 *(conducting extrajudicial activities to avoid casting doubt on the judge's capacity to act*
34 *impartially,* demeaning the judicial office, or frequent disqualification).*

35 *The prohibition against behaving with impropriety* or the appearance of*
36 *impropriety* applies to both the professional and personal conduct of a judge.*

37 *The test for the appearance of impropriety* is whether a person aware of the facts*
38 *might reasonably entertain a doubt that the judge would be able to act with integrity,**
39 *impartiality,* and competence.*

40 *As to membership in organizations that practice invidious discrimination, see*
41 *Commentary under Canon 2C.*

42 *As to judges making statements that commit the judge with respect to cases,*
43 *controversies, or issues that are likely to come before the courts, see Canon 3B(9) and its*

commentary concerning comments about a pending proceeding,* Canon 3E(3)(a) concerning the disqualification of a judge who makes statements that commit the judge to a particular result, and Canon 5B(1)(a) concerning statements made during an election campaign that commit the candidate to a particular result. In addition, Code of Civil Procedure section 170.2, subdivision (b), provides that, with certain exceptions, a judge is not disqualified on the ground that the judge has, in any capacity, expressed a view on a legal or factual issue presented in the proceeding before the judge.

B. Use of the Prestige of Judicial Office

(1) A judge shall not allow family, social, political, or other relationships to influence the judge's judicial conduct or judgment, nor shall a judge convey or permit others to convey the impression that any individual is in a special position to influence the judge.

(2) A judge shall not lend the prestige of judicial office or use the judicial title in any manner, including any oral or written communication, to advance the pecuniary or personal interests of the judge or others. This canon does not prohibit the following:

(a) A judge may testify as a character witness, provided the judge does so only when subpoenaed.

(b) A judge may, without a subpoena, provide the Commission on Judicial Performance with a written communication containing (i) factual information regarding a matter pending before the commission or (ii) information related to the character of a judge who has a matter pending before the commission, provided that any such factual or character information is based on personal knowledge.* In commission proceedings, a judge shall provide information responsive to a subpoena or when officially requested to do so by the commission.

(c) A judge may provide factual information in State Bar disciplinary proceedings and shall provide information responsive to a subpoena or when officially requested to do so by the State Bar.

(d) A judge may respond to judicial selection inquiries, provide recommendations (including a general character reference relating to the evaluation of persons being considered for a judgeship), and otherwise participate in the process of judicial selection.

(e) A judge may serve as a reference or provide a letter of recommendation only if based on the judge's personal knowledge* of the individual. These written communications may include the judge's title and may be written on stationery that uses the judicial title.

1 (3) Except as permitted in subdivision (c) or otherwise authorized by law* or these
2 canons:

3
4 (a) A judge shall not advance the pecuniary or personal interests of the judge or
5 others by initiating communications with a sentencing judge or a representative of
6 a probation department about a proceeding pending* before the sentencing judge,
7 but may provide information in response to an official request. “Sentencing
8 judge” includes a judge who makes a disposition pursuant to Welfare and
9 Institutions Code section 725.

10
11 (b) A judge, other than the judge who presided over the trial of or sentenced the
12 person seeking parole, pardon, or commutation of sentence, shall not initiate
13 communications with the Board of Parole Hearings regarding parole or the Office
14 of the Governor regarding parole, pardon, or commutation of sentence, but may
15 provide these entities with information for the record in response to an official
16 request.

17
18 (c) A judge may initiate communications concerning a member of the judge’s
19 family* with a representative of a probation department regarding sentencing, the
20 Board of Parole Hearings regarding parole, or the Office of the Governor
21 regarding parole, pardon, or commutation of sentence, provided the judge is not
22 identified as a judge in the communication.

23
24 *ADVISORY COMMITTEE COMMENTARY: Canon 2B*

25 *A strong judicial branch, based on the prestige that comes from effective and*
26 *ethical performance, is essential to a system of government in which the judiciary*
27 *functions independently of the executive and legislative branches. A judge should*
28 *distinguish between proper and improper use of the prestige of office in all of his or her*
29 *activities.*

30 *As to those communications that are permitted under this canon, a judge must*
31 *keep in mind the general obligations to maintain high standards of conduct as set forth in*
32 *Canon 1, and to avoid any impropriety* or the appearance of impropriety* as set forth in*
33 *Canon 2. A judge must also be mindful of Canon 2A, which requires a judge to act at all*
34 *times in a manner that promotes public confidence in the integrity* and impartiality* of*
35 *the courts.*

36 *A judge must avoid lending the prestige of judicial office for the advancement of*
37 *the private interests of the judge or others. For example, a judge must not use the*
38 *judicial position to gain advantage in a civil suit involving a member of the judge’s*
39 *family,* or use his or her position to gain deferential treatment when stopped by a police*
40 *officer for a traffic offense.*

41 *If a judge posts on social networking sites such as Facebook or crowdsourced*
42 *sites such as Yelp or Trip Advisor, the judge may not lend the prestige of judicial office to*
43 *advance the pecuniary or personal interests of the judge or others. For example, a judge*

1 may not comment on, recommend, or criticize businesses, products, or services on such
2 sites if it is reasonably likely that the judge can be identified as a judge.

3 See canon 4C(3)(d)(iv) prohibiting the use of the prestige of judicial office for
4 fundraising or membership solicitation, but allowing a judge to be a speaker, guest of
5 honor, or recipient of an award for public or charitable service, provided the judge does
6 not personally solicit funds and complies with Canons 4A (1), (2), (3), and (4).

7 As to the use of a judge's title to identify a judge's role in the presentation and
8 creation of legal education programs and materials, see Commentary to Canon 4B. In
9 contracts for publication of a judge's writings, a judge should retain control over the
10 advertising, to the extent feasible, to avoid exploitation of the judge's office.

11 This canon does not afford a judge a privilege against testifying in response to any
12 official summons.

13 See also Canons 3D(1) and 3D(2) concerning a judge's obligation to take
14 appropriate corrective action regarding other judges who violate any provision of the
15 Code of Judicial Ethics and attorneys who violate any provision of the Rules of
16 Professional Conduct.

17 Except as set forth in Canon 2B(3)(a), this canon does not preclude consultations
18 among judges. Additional limitations on such consultations among judges are set forth in
19 Canon 3B(7)(a).

21 **C. Membership in Organizations**

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

27 This canon does not apply to membership in a religious organization.

29 **ADVISORY COMMITTEE COMMENTARY: Canon 2C**

30 Membership by a judge in an organization that practices invidious discrimination
31 on the basis of race, sex, gender, religion, national origin, ethnicity, or sexual orientation
32 gives rise to a perception that the judge's impartiality* is impaired. The code prohibits
33 such membership by judges to preserve the fairness, impartiality,* independence,* and
34 honor of the judiciary, to treat all parties equally under the law,* and to avoid
35 impropriety* and the appearance of impropriety.*

36 Previously, Canon 2C contained exceptions to this prohibition for membership in
37 religious organizations, membership in an official military organization of the United
38 States and, so long as membership did not violate Canon 4A, membership in a nonprofit
39 youth organization. The exceptions for membership in an official military organization
40 of the United States and nonprofit youth organizations have been eliminated as
41 exceptions to the canon. The exception for membership in religious organizations has
42 been preserved.

1 Canon 2C refers to the current practices of the organization. Whether an
2 organization practices invidious discrimination is often a complex question to which
3 judges should be sensitive. The answer cannot be determined from a mere examination
4 of an organization's current membership rolls, but rather depends on how the
5 organization selects members and other relevant factors, such as whether the
6 organization is dedicated to the preservation of religious, ethnic, or cultural values of
7 legitimate common interest to its members, or whether it is in fact and effect an intimate,
8 purely private organization whose membership limitations could not be constitutionally
9 prohibited. Absent such factors, an organization is generally said to discriminate
10 invidiously if it arbitrarily excludes from membership on the basis of race, religion, sex,
11 gender, gender identity,* gender expression,* national origin, ethnicity, or sexual
12 orientation persons who would otherwise be admitted to membership.

13 Although Canon 2C relates only to membership in organizations that invidiously
14 discriminate on the basis of race, sex, gender, gender identity,* gender expression,*
15 religion, national origin, ethnicity, or sexual orientation, a judge's membership in an
16 organization that engages in any discriminatory membership practices prohibited by
17 law* also violates Canon 2 and Canon 2A and gives the appearance of impropriety.* In
18 addition, it would be a violation of Canon 2 and Canon 2A for a judge to arrange a
19 meeting at a club that the judge knows* practices such invidious discrimination or for the
20 judge to use such a club regularly. Moreover, public manifestation by a judge of the
21 judge's knowing* approval of invidious discrimination on any basis gives the appearance
22 of impropriety* under Canon 2 and diminishes public confidence in the integrity* and
23 impartiality* of the judiciary in violation of Canon 2A.
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CANON 3

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

A. Judicial Duties in General

All of the judicial duties prescribed by law* shall take precedence over all other activities of every judge. In the performance of these duties, the following standards apply.

B. Adjudicative Responsibilities

(1) A judge shall hear and decide all matters assigned to the judge except those in which he or she is disqualified.

ADVISORY COMMITTEE COMMENTARY: Canon 3B(1)

Canon 3B(1) is based upon the affirmative obligation contained in Code of Civil Procedure section 170.

(2) A judge shall be faithful to the law* regardless of partisan interests, public clamor, or fear of criticism, and shall maintain professional competence in the law.*

ADVISORY COMMITTEE COMMENTARY: Canon 3B(2)

Competence in the performance of judicial duties requires the legal knowledge, skill, thoroughness, and preparation reasonably necessary to perform a judge's responsibilities of judicial office. Canon 1 provides that an incorrect legal ruling is not itself a violation of this code.*

(3) A judge shall require* order and decorum in proceedings before the judge.

(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, and shall require* similar conduct of lawyers and of all staff and court personnel under the judge's direction and control.

(5) A judge shall perform judicial duties without bias or prejudice. A judge shall not, in the performance of judicial duties, engage in speech, gestures, or other conduct that would reasonably be perceived as (a) bias, prejudice, or harassment, including but not limited to bias, prejudice, or harassment based upon race, sex, gender, gender identity,* gender expression,* religion, national origin, ethnicity, disability, age, sexual orientation, marital status, socioeconomic status, or political affiliation, or (b) sexual harassment.

1 (6) A judge shall require* lawyers in proceedings before the judge to refrain from (a)
2 manifesting, by words or conduct, bias, prejudice, or harassment based upon race, sex,
3 gender, gender identity,* gender expression,* religion, national origin, ethnicity,
4 disability, age, sexual orientation, marital status, socioeconomic status, or political
5 affiliation, or (b) sexual harassment against parties, witnesses, counsel, or others.
6 This canon does not preclude legitimate advocacy when race, sex, gender, gender
7 identity,* gender expression,* religion, national origin, ethnicity, disability, age,
8 sexual orientation, marital status, socioeconomic status, political affiliation, or other
9 similar factors are issues in the proceeding.

10
11 (7) A judge shall accord to every person who has a legal interest in a proceeding, or
12 that person's lawyer, the full right to be heard according to law.* Unless otherwise
13 authorized by law,* a judge shall not independently investigate facts in a proceeding
14 and shall consider only the evidence presented or facts that may be properly judicially
15 noticed. This prohibition extends to information available in all media, including
16 electronic. A judge shall not initiate, permit, or consider ex parte communications,
17 that is, any communications to or from the judge outside the presence of the parties
18 concerning a pending* or impending* proceeding, and shall make reasonable efforts
19 to avoid such communications, except as follows:

20
21 (a) Except as stated below, a judge may consult with other judges. A judge
22 presiding over a case shall not engage in discussions about that case with a judge
23 who has previously been disqualified from hearing that case; likewise, a judge
24 who knows* he or she is or would be disqualified from hearing a case shall not
25 discuss that matter with the judge assigned to the case. A judge also shall not
26 engage in discussions with a judge who may participate in appellate review of the
27 matter, nor shall a judge who may participate in appellate review of a matter
28 engage in discussions with the judge presiding over the case.

29
30 A judge may consult with court personnel or others authorized by law,* as long as
31 the communication relates to that person's duty to aid the judge in carrying out the
32 judge's adjudicative responsibilities.

33
34 In any discussion with judges or court personnel, a judge shall make reasonable
35 efforts to avoid receiving factual information that is not part of the record or an
36 evaluation of that factual information. In such consultations, the judge shall not
37 abrogate the responsibility personally to decide the matter.

38
39 For purposes of Canon 3B(7)(a), "court personnel" includes bailiffs, court
40 reporters, court externs, research attorneys, courtroom clerks, and other employees
41 of the court, but does not include the lawyers in a proceeding before a judge,
42 persons who are appointed by the court to serve in some capacity in a proceeding,

1 or employees of other governmental entities, such as lawyers, social workers, or
2 representatives of the probation department.

3
4 *ADVISORY COMMITTEE COMMENTARY: Canon 3B(7)(a)*

5 *Regarding communications between a judge presiding over a matter and a judge*
6 *of a court with appellate jurisdiction over that matter, see Government Code section*
7 *68070.5.*

8 *Though a judge may have ex parte discussions with appropriate court personnel, a*
9 *judge may do so only on matters that are within the proper performance of that person's*
10 *duties. For example, a bailiff may inform the judge of a threat to the judge or to the*
11 *safety and security of the courtroom, but may not tell the judge ex parte that a defendant*
12 *was overheard making an incriminating statement during a court recess. A clerk may*
13 *point out to the judge a technical defect in a proposed sentence, but may not suggest to*
14 *the judge that a defendant deserves a certain sentence.*

15 *A sentencing judge may not consult ex parte with a representative of the probation*
16 *department about a matter pending before the sentencing judge.*

17 *This canon prohibits a judge who is presiding over a case from discussing that*
18 *case with another judge who has already been disqualified from hearing that case. A*
19 *judge also must be careful not to talk to a judge whom the judge knows* would be*
20 *disqualified from hearing the matter.*

21
22 (b) A judge may initiate, permit, or consider ex parte communications, where
23 circumstances require, for scheduling, administrative purposes, or emergencies
24 that do not deal with substantive matters provided:

25
26 (i) the judge reasonably believes that no party will gain a procedural or tactical
27 advantage as a result of the ex parte communication, and

28
29 (ii) the judge makes provision promptly to notify all other parties of the
30 substance of the ex parte communication and allows an opportunity to respond.

31
32 (c) A judge may initiate, permit, or consider any ex parte communication when
33 expressly authorized by law* to do so or when authorized to do so by stipulation
34 of the parties.

35
36 (d) If a judge receives an unauthorized ex parte communication, the judge shall
37 make provision promptly to notify the parties of the substance of the
38 communication and provide the parties with an opportunity to respond.

39
40 *ADVISORY COMMITTEE COMMENTARY: Canon 3B(7)*

41 *An exception allowing a judge, under certain circumstances, to obtain the advice*
42 *of a disinterested expert on the law* has been eliminated from Canon 3B(7) because*
43 *consulting with legal experts outside the presence of the parties is inconsistent with the*

1 core tenets of the adversarial system. Therefore, a judge shall not consult with legal
2 experts outside the presence of the parties. Evidence Code section 730 provides for the
3 appointment of an expert if a judge determines that expert testimony is necessary. A
4 court may also invite the filing of amicus curiae briefs.

5 An exception allowing a judge to confer with the parties separately in an effort to
6 settle the matter before the judge has been moved from this canon to Canon 3B(12).

7 This canon does not prohibit court personnel from communicating scheduling
8 information or carrying out similar administrative functions.

9 A judge is statutorily authorized to investigate and consult witnesses informally in
10 small claims cases. Code of Civil Procedure section 116.520, subdivision (c).

11
12 (8) A judge shall dispose of all judicial matters fairly, promptly, and efficiently. A
13 judge shall manage the courtroom in a manner that provides all litigants the
14 opportunity to have their matters fairly adjudicated in accordance with the law.*

15
16 **ADVISORY COMMITTEE COMMENTARY: Canon 3B(8)**

17 The obligation of a judge to dispose of matters promptly and efficiently must not
18 take precedence over the judge's obligation to dispose of the matters fairly and with
19 patience. For example, when a litigant is self-represented, a judge has the discretion to
20 take reasonable steps, appropriate under the circumstances and consistent with the law*
21 and the canons, to enable the litigant to be heard. A judge should monitor and supervise
22 cases so as to reduce or eliminate dilatory practices, avoidable delays, and unnecessary
23 costs.

24 Prompt disposition of the court's business requires a judge to devote adequate
25 time to judicial duties, to be punctual in attending court and expeditious in determining
26 matters under submission, and to require* that court officials, litigants, and their lawyers
27 cooperate with the judge to those ends.

28
29 (9) A judge shall not make any public comment about a pending* or impending*
30 proceeding in any court, and shall not make any nonpublic comment that might
31 substantially interfere with a fair trial or hearing. The judge shall require* similar
32 abstention on the part of staff and court personnel subject to the judge's direction and
33 control. This canon does not prohibit judges from making statements in the course of
34 their official duties or from explaining the procedures of the court, and does not apply
35 to proceedings in which the judge is a litigant in a personal capacity. In connection
36 with a judicial election or recall campaign, this canon does not prohibit any judge
37 from making a public comment about a pending* proceeding, provided (a) the
38 comment would not reasonably be expected to affect the outcome or impair the
39 fairness of the proceeding, and (b) the comment is about the procedural, factual, or
40 legal basis of a decision about which a judge has been criticized during the election or
41 recall campaign. Other than cases in which the judge has personally participated, this
42 canon does not prohibit judges from discussing, in legal education programs and
43 materials, cases and issues pending in appellate courts. This educational exemption

1 does not apply to cases over which the judge has presided or to comments or
2 discussions that might interfere with a fair hearing of the case.

3
4 **ADVISORY COMMITTEE COMMENTARY: Canon 3B(9)**

5 *The requirement that judges abstain from public comment regarding a pending**
6 *or impending* proceeding continues during any appellate process and until final*
7 *disposition. A judge shall make reasonable efforts to ascertain whether a case is*
8 *pending* or impending* before commenting on it. This canon does not prohibit a judge*
9 *from commenting on proceedings in which the judge is a litigant in a personal capacity,*
10 *but in cases such as a writ of mandamus where the judge is a litigant in an official*
11 *capacity, the judge must not comment publicly.*

12 *“Making statements in the course of their official duties” and “explaining the*
13 *procedures of the court” include providing an official transcript or partial official*
14 *transcript of a court proceeding open to the public and explaining the rules of court and*
15 *procedures related to a decision rendered by a judge.*

16 *The provision allowing a judge to make a public comment about a pending**
17 *decision that is the subject of criticism during an election campaign applies to all judicial*
18 *elections, including recall elections. Depending on the circumstances, the judge should*
19 *consider whether it may be preferable for a third party, rather than the judge, to respond*
20 *or issue statements in connection with allegations concerning the decision. For purposes*
21 *of this provision, a recall campaign begins when a judge is served with a notice of*
22 *intention to circulate a recall petition (see Elec. Code, § 11006), and a judicial election*
23 *campaign begins when a judge or candidate for judicial office* files a declaration of*
24 *intention of candidacy for judicial office (see Elec. Code, § 8023).*

25 *Although this canon does not prohibit a judge from commenting on cases that are*
26 *not pending* or impending* in any court, a judge must be cognizant of the general*
27 *prohibition in Canon 2 against conduct involving impropriety* or the appearance of*
28 *impropriety.* A judge should also be aware of the mandate in Canon 2A that a judge*
29 *must act at all times in a manner that promotes public confidence in the integrity* and*
30 *impartiality* of the judiciary. In addition, when commenting on a case pursuant to this*
31 *canon, a judge must maintain the high standards of conduct, as set forth in Canon 1.*

32 *Although a judge is permitted to make nonpublic comments about pending* or*
33 *impending* cases that will not substantially interfere with a fair trial or hearing, the*
34 *judge should be cautious when making any such comments. There is always a risk that a*
35 *comment can be misheard, misinterpreted, or repeated. A judge making such a comment*
36 *must be mindful of the judge’s obligation under Canon 2A to act at all times in a manner*
37 *that promotes public confidence in the integrity* and impartiality* of the judiciary.*
38 *When a judge makes a nonpublic comment about a case pending* before that judge, the*
39 *judge must keep an open mind and not form an opinion prematurely or create the*
40 *appearance of having formed an opinion prematurely.*

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

4
5 *ADVISORY COMMITTEE COMMENTARY: Canon 3B(10)*

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

9
10 (11) A judge shall not disclose or use, for any purpose unrelated to judicial duties,
11 nonpublic information* acquired in a judicial capacity.

12
13 (12) A judge may participate in settlement conferences or in other efforts to resolve
14 matters in dispute, including matters pending before the judge. A judge may, with the
15 express consent of the parties or their lawyers, confer separately with the parties
16 and/or their lawyers during such resolution efforts. At all times during such
17 resolution efforts, a judge shall remain impartial* and shall not engage in conduct that
18 may reasonably be perceived as coercive.

19
20 *ADVISORY COMMITTEE COMMENTARY: Canon 3B(12)*

21 *While the judge plays an important role in overseeing efforts to resolve disputes,*
22 *including conducting settlement discussions, a judge should be careful that efforts to*
23 *resolve disputes do not undermine any party's right to be heard according to law.**

24 *The judge should keep in mind the effect that the judge's participation in dispute*
25 *resolution efforts may have on the judge's impartiality* or the appearance of*
26 *impartiality* if the case remains with the judge for trial after resolution efforts are*
27 *unsuccessful. Accordingly, a judge may wish to consider whether: (1) the parties or their*
28 *counsel have requested or objected to the participation by the trial judge in such*
29 *discussions; (2) the parties and their counsel are relatively sophisticated in legal matters*
30 *or the particular legal issues involved in the case; (3) a party is unrepresented; (4) the*
31 *case will be tried by the judge or a jury; (5) the parties will participate with their counsel*
32 *in settlement discussions and, if so, the effect of personal contact between the judge and*
33 *parties; and (6) it is appropriate during the settlement conference for the judge to express*
34 *an opinion on the merits or worth of the case or express an opinion on the legal issues*
35 *that the judge may later have to rule upon.*

36 *If a judge assigned to preside over a trial believes participation in resolution*
37 *efforts could influence the judge's decisionmaking during trial, the judge may decline to*
38 *engage in such efforts.*

39 *Where dispute resolution efforts of any type are unsuccessful, the judge should*
40 *consider whether, due to events that occurred during the resolution efforts, the judge may*
41 *be disqualified under the law* from presiding over the trial. See, e.g., Code of Civil*
42 *Procedure section 170.1, subdivision (a)(6)(A).*

C. Administrative Responsibilities

(1) A judge shall diligently discharge the judge's administrative responsibilities impartially,* on the basis of merit, without bias or prejudice, free of conflict of interest, and in a manner that promotes public confidence in the integrity* of the judiciary. A judge shall not, in the performance of administrative duties, engage in speech, gestures, or other conduct that would reasonably be perceived as (a) bias, prejudice, or harassment, including but not limited to bias, prejudice, or harassment based upon race, sex, gender, gender identity,* gender expression,* religion, national origin, ethnicity, disability, age, sexual orientation, marital status, socioeconomic status, or political affiliation, or (b) sexual harassment.

ADVISORY COMMITTEE COMMENTARY: Canon 3C(1)

In considering what constitutes a conflict of interest under this canon, a judge should be informed by Code of Civil Procedure section 170.1, subdivision (a)(6).

(2) A judge shall maintain professional competence in judicial administration, and shall cooperate with other judges and court officials in the administration of court business.

(3) A judge shall require* staff and court personnel under the judge's direction and control to observe appropriate standards of conduct and to refrain from (a) manifesting bias, prejudice, or harassment based upon race, sex, gender, gender identity,* gender expression,* religion, national origin, ethnicity, disability, age, sexual orientation, marital status, socioeconomic status, or political affiliation, or (b) sexual harassment in the performance of their official duties.

(4) A judge with supervisory authority for the judicial performance of other judges shall take reasonable measures to ensure the prompt disposition of matters before them and the proper performance of their other judicial responsibilities.

(5) A judge shall not make unnecessary court appointments. A judge shall exercise the power of appointment impartially,* on the basis of merit, without bias or prejudice, free of conflict of interest, and in a manner that promotes public confidence in the integrity* of the judiciary. A judge shall avoid nepotism and favoritism. A judge shall not approve compensation of appointees above the reasonable value of services rendered.

ADVISORY COMMITTEE COMMENTARY: Canon 3C(5)

Appointees of a judge include assigned counsel and officials such as referees, commissioners, special masters, receivers, and guardians. Consent by the parties to an appointment or an award of compensation does not relieve the judge of the obligation prescribed by Canon 3C(5).

D. Disciplinary Responsibilities

(1) Whenever a judge has reliable information that another judge has violated any provision of the Code of Judicial Ethics, that judge shall take appropriate corrective action, which may include reporting the violation to the appropriate authority. (See Commentary to Canon 3D(2).)

(2) Whenever a judge has personal knowledge,* or concludes in a judicial decision, that a lawyer has committed misconduct or has violated any provision of the Rules of Professional Conduct, the judge shall take appropriate corrective action, which may include reporting the violation to the appropriate authority.

ADVISORY COMMITTEE COMMENTARY: Canons 3D(1) and 3D(2)

Appropriate corrective action could include direct communication with the judge or lawyer who has committed the violation, writing about the misconduct in a judicial decision, or other direct action, such as a confidential referral to a judicial or lawyer assistance program, or a report of the violation to the presiding judge, appropriate authority, or other agency or body. Judges should note that in addition to the action required by Canon 3D(2), California law imposes additional mandatory reporting requirements to the State Bar on judges regarding lawyer misconduct. See Business and Professions Code sections 6086.7 and 6086.8, subdivision (a), and California Rules of Court, rules 10.609 and 10.1017.

“Appropriate authority” means the authority with responsibility for initiation of the disciplinary process with respect to a violation to be reported.

(3) A judge shall promptly report in writing to the Commission on Judicial Performance when he or she is charged in court by misdemeanor citation, prosecutorial complaint, information, or indictment with any crime in the United States as specified below. Crimes that must be reported are: (1) all crimes, other than those that would be considered misdemeanors not involving moral turpitude or infractions under California law; and (2) all misdemeanors involving violence (including assaults), the use or possession of controlled substances, the misuse of prescriptions, or the personal use or furnishing of alcohol. A judge also shall promptly report in writing upon conviction of such crimes.

If the judge is a retired judge serving in the Temporary Assigned Judges Program, he or she shall promptly report such information in writing to the Chief Justice rather than to the Commission on Judicial Performance. If the judge is a subordinate judicial officer,* he or she shall promptly report such information in writing to both the presiding judge of the court in which the subordinate judicial officer* sits and the Commission on Judicial Performance.

(4) A judge shall cooperate with judicial and lawyer disciplinary agencies.

1 *ADVISORY COMMITTEE COMMENTARY: Canons 3D(3) and 3D(4)*

2 *See Government Code section 68725, which requires judges to cooperate with and*
3 *give reasonable assistance and information to the Commission on Judicial Performance,*
4 *and rule 104 of the Rules of the Commission on Judicial Performance, which requires a*
5 *respondent judge to cooperate with the commission in all proceedings in accordance with*
6 *section 68725.*
7

8 (5) A judge shall not retaliate, directly or indirectly, against a person known* or
9 suspected to have assisted or cooperated with an investigation of a judge or a lawyer.
10

11 **E. Disqualification and Disclosure**
12

13 (1) A judge shall disqualify himself or herself in any proceeding in which
14 disqualification is required by law.*
15

16 *ADVISORY COMMITTEE COMMENTARY: Canon 3E(1)*

17 *The term “proceeding” as used in this canon encompasses prefiling judicial*
18 *determinations. Thus, if a judge has a disqualifying interest in a matter, the judge is*
19 *disqualified from taking any action in the matter, even if it predates the actual filing of a*
20 *case, such as making a probable cause determination, signing a search or arrest*
21 *warrant, setting bail, or ordering an own recognizance release. Interpreting*
22 *“proceeding” to include prefiling judicial determinations effectuates the intent of the*
23 *canon because it assures the parties and the public of the integrity* and fairness of the*
24 *judicial process.*
25

26 (2) In all trial court proceedings, a judge shall disclose on the record as follows:
27

28 (a) Information relevant to disqualification
29

30 A judge shall disclose information that is reasonably relevant to the question of
31 disqualification under Code of Civil Procedure section 170.1, even if the judge
32 believes there is no actual basis for disqualification.
33

34 (b) Campaign contributions in trial court elections
35

36 (i) Information required to be disclosed
37

38 In any matter before a judge who is or was a candidate for judicial office* in a
39 trial court election, the judge shall disclose any contribution or loan of \$100 or
40 more from a party, individual lawyer, or law office or firm in that matter as
41 required by this canon, even if the amount of the contribution or loan would
42 not require disqualification. Such disclosure shall consist of the name of the

1 contributor or lender, the amount of each contribution or loan, the cumulative
2 amount of the contributor's contributions or lender's loans, and the date of
3 each contribution or loan. The judge shall make reasonable efforts to obtain
4 current information regarding contributions or loans received by his or her
5 campaign and shall disclose the required information on the record.
6

7 (ii) Manner of disclosure
8

9 The judge shall ensure that the required information is conveyed on the record
10 to the parties and lawyers appearing in the matter before the judge. The judge
11 has discretion to select the manner of disclosure, but the manner used shall
12 avoid the appearance that the judge is soliciting campaign contributions.
13

14 (iii) Timing of disclosure
15

16 Disclosure shall be made at the earliest reasonable opportunity after receiving
17 each contribution or loan. The duty commences no later than one week after
18 receipt of the first contribution or loan, and continues for a period of two years
19 after the candidate takes the oath of office, or two years from the date of the
20 contribution or loan, whichever event is later.
21

22 *ADVISORY COMMITTEE COMMENTARY: Canon 3E(2)(b)*

23 *Code of Civil Procedure section 170.1, subdivision (a)(9)(C) requires a judge to*
24 *“disclose any contribution from a party or lawyer in a matter that is before the court that*
25 *is required to be reported under subdivision (f) of Section 84211 of the Government*
26 *Code, even if the amount would not require disqualification under this paragraph.” This*
27 *statute further provides that the “manner of disclosure shall be the same as that provided*
28 *in Canon 3E of the Code of Judicial Ethics.” Canon 3E(2)(b) sets forth the information*
29 *the judge must disclose, the manner for making such disclosure, and the timing thereof.*

30 *“Contribution” includes monetary and in-kind contributions. See Cal. Code*
31 *Regs., tit. 2, § 18215, subd. (b)(3). See generally Government Code section 84211,*
32 *subdivision (f).*

33 *Disclosure of campaign contributions is intended to provide parties and lawyers*
34 *appearing before a judge during and after a judicial campaign with easy access to*
35 *information about campaign contributions that may not require disqualification but could*
36 *be relevant to the question of disqualification of the judge. The judge is responsible for*
37 *ensuring that the disclosure is conveyed to the parties and lawyers appearing in the*
38 *matter. The canon provides that the judge has discretion to select the manner of making*
39 *the disclosure. The appropriate manner of disclosure will depend on whether all of the*
40 *parties and lawyers are present in court, whether it is more efficient or practicable given*
41 *the court's calendar to make a written disclosure, and other relevant circumstances that*
42 *may affect the ability of the parties and lawyers to access the required information. The*

1 following alternatives for disclosure are non-exclusive. If all parties are present in court,
2 the judge may conclude that the most effective and efficient manner of providing
3 disclosure is to state orally the required information on the record in open court. In the
4 alternative, again if all parties are present in court, a judge may determine that it is more
5 appropriate to state orally on the record in open court that parties and lawyers may
6 obtain the required information at an easily accessible location in the courthouse, and
7 provide an opportunity for the parties and lawyers to review the available information.
8 Another alternative, particularly if all or some parties are not present in court, is that the
9 judge may disclose the campaign contribution in a written minute order or in the official
10 court minutes and notify the parties and the lawyers of the written disclosure. See
11 California Supreme Court Committee on Judicial Ethics Opinions, CJEO Formal
12 Opinion No. 2013-002, pp. 7-8. If a party appearing in a matter before the judge is
13 represented by a lawyer, it is sufficient to make the disclosure to the lawyer.

14 In addition to the disclosure obligations set forth in Canon 3E(2)(b), a judge must,
15 pursuant to Canon 3E(2)(a), disclose on the record any other information that may be
16 relevant to the question of disqualification. As examples, such an obligation may arise as
17 a result of contributions or loans of which the judge is aware made by a party, lawyer, or
18 law office or firm appearing before the judge to a third party in support of the judge or in
19 opposition to the judge's opponent; a party, lawyer, or law office or firm's relationship to
20 the judge or role in the campaign; or the aggregate contributions or loans from lawyers
21 in one law office or firm.

22 Canon 3E(2)(b) does not eliminate the obligation of the judge to recuse himself or
23 herself where the nature of the contribution or loan, the extent of the contributor's or
24 lender's involvement in the judicial campaign, the relationship of the contributor or
25 lender, or other circumstance requires recusal under Code of Civil Procedure section
26 170.1, and particularly section 170.1, subdivision (a)(6)(A).

27
28 (3) A judge shall disqualify himself or herself in accordance with the following:

29
30 (a) Statements that commit the judge to a particular result

31
32 A judge is disqualified if the judge, while a judge or candidate for judicial office,*
33 made a statement, other than in a court proceeding, judicial decision, or opinion,
34 that a person aware of the facts might reasonably believe commits the judge to
35 reach a particular result or rule in a particular way in a proceeding.

36
37 (b) Bond ownership

38
39 Ownership of a corporate bond issued by a party to a proceeding and having a fair
40 market value exceeding \$1,500 is disqualifying. Ownership of a government bond
41 issued by a party to a proceeding is disqualifying only if the outcome of the
42 proceeding could substantially affect the value of the judge's bond. Ownership in

1 a mutual or common investment fund that holds bonds is not a disqualifying
2 financial interest.

3
4 *ADVISORY COMMITTEE COMMENTARY: Canon 3E(3)(b)*

5 *The distinction between corporate and government bonds is consistent with the*
6 *Political Reform Act (see Gov. Code, § 82034), which requires disclosure of corporate*
7 *bonds, but not government bonds. Canon 3E(3) is intended to assist judges in complying*
8 *with Code of Civil Procedure section 170.1, subdivision (a)(3) and Canon 3E(5)(d).*
9

10 (4) An appellate justice shall disqualify himself or herself in any proceeding if for any
11 reason:

12
13 (a) the justice believes his or her recusal would further the interests of justice; or

14
15 (b) the justice substantially doubts his or her capacity to be impartial;* or

16
17 (c) the circumstances are such that a reasonable person aware of the facts would
18 doubt the justice's ability to be impartial.*

19
20 (5) Disqualification of an appellate justice is also required in the following instances:

21
22 (a) The appellate justice has served as a lawyer in the pending* proceeding, or has
23 served as a lawyer in any other proceeding involving any of the same parties if
24 that other proceeding related to the same contested issues of fact and law as the
25 present proceeding, or has given advice to any party in the present proceeding
26 upon any issue involved in the proceeding.

27
28 *ADVISORY COMMITTEE COMMENTARY: Canon 3E(5)(a)*

29 *Canon 3E(5)(a) is consistent with Code of Civil Procedure section 170.1,*
30 *subdivision (a)(2), which addresses disqualification of trial court judges based on prior*
31 *representation of a party in the proceeding.*
32

33 (b) Within the last two years, (i) a party to the proceeding, or an officer, director or
34 trustee thereof, either was a client of the justice when the justice was engaged in
35 the private practice of law or was a client of a lawyer with whom the justice was
36 associated in the private practice of law; or (ii) a lawyer in the proceeding was
37 associated with the justice in the private practice of law.

38
39 (c) The appellate justice represented a public officer or entity and personally
40 advised or in any way represented that officer or entity concerning the factual or
41 legal issues in the present proceeding in which the public officer or entity now
42 appears.
43

(d) The appellate justice, his or her spouse or registered domestic partner,* or a minor child residing in the household, has a financial interest or is either a fiduciary* who has a financial interest in the proceeding, or is a director, advisor, or other active participant in the affairs of a party. A financial interest is defined as ownership of more than a 1 percent legal or equitable interest in a party, or a legal or equitable interest in a party of a fair market value exceeding \$1,500. Ownership in a mutual or common investment fund that holds securities does not itself constitute a financial interest; holding office in an educational, religious, charitable, service,* or civic organization does not confer a financial interest in the organization's securities; and a proprietary interest of a policyholder in a mutual insurance company or mutual savings association or similar interest is not a financial interest unless the outcome of the proceeding could substantially affect the value of the interest. A justice shall make reasonable efforts to keep informed about his or her personal and fiduciary* interests and those of his or her spouse or registered domestic partner* and of minor children living in the household.

(e)(i) The justice or his or her spouse or registered domestic partner,* or a person within the third degree of relationship* to either of them, or the spouse or registered domestic partner* thereof, is a party or an officer, director, or trustee of a party to the proceeding, or

(ii) a lawyer or spouse or registered domestic partner* of a lawyer in the proceeding is the spouse, registered domestic partner,* former spouse, former registered domestic partner,* child, sibling, or parent of the justice or of the justice's spouse or registered domestic partner,* or such a person is associated in the private practice of law with a lawyer in the proceeding.

(f) The justice

(i) served as the judge before whom the proceeding was tried or heard in the lower court,

(ii) has personal knowledge* of disputed evidentiary facts concerning the proceeding, or

(iii) has a personal bias or prejudice concerning a party or a party's lawyer.

(g) A temporary or permanent physical impairment renders the justice unable properly to perceive the evidence or conduct the proceedings.

(h) The justice has a current arrangement concerning prospective employment or other compensated service as a dispute resolution neutral or is participating in, or, within the last two years has participated in, discussions regarding prospective

1 employment or service as a dispute resolution neutral, or has been engaged in such
2 employment or service, and any of the following applies:

3
4 (i) The arrangement is, or the prior employment or discussion was, with a
5 party to the proceeding;

6
7 (ii) The matter before the justice includes issues relating to the enforcement of
8 either an agreement to submit a dispute to an alternative dispute resolution
9 process or an award or other final decision by a dispute resolution neutral;

10
11 (iii) The justice directs the parties to participate in an alternative dispute
12 resolution process in which the dispute resolution neutral will be an individual
13 or entity with whom the justice has the arrangement, has previously been
14 employed or served, or is discussing or has discussed the employment or
15 service; or

16
17 (iv) The justice will select a dispute resolution neutral or entity to conduct an
18 alternative dispute resolution process in the matter before the justice, and
19 among those available for selection is an individual or entity with whom the
20 justice has the arrangement, with whom the justice has previously been
21 employed or served, or with whom the justice is discussing or has discussed
22 the employment or service.

23
24 For purposes of Canon 3E(5)(h), “participating in discussions” or “has participated
25 in discussions” means that the justice (i) solicited or otherwise indicated an
26 interest in accepting or negotiating possible employment or service as an
27 alternative dispute resolution neutral, or (ii) responded to an unsolicited statement
28 regarding, or an offer of, such employment or service by expressing an interest in
29 that employment or service, making any inquiry regarding the employment or
30 service, or encouraging the person making the statement or offer to provide
31 additional information about that possible employment or service. If a justice’s
32 response to an unsolicited statement regarding a question about, or offer of,
33 prospective employment or other compensated service as a dispute resolution
34 neutral is limited to responding negatively, declining the offer, or declining to
35 discuss such employment or service, that response does not constitute participating
36 in discussions.

37
38 For purposes of Canon 3E(5)(h), “party” includes the parent, subsidiary, or other
39 legal affiliate of any entity that is a party and is involved in the transaction,
40 contract, or facts that gave rise to the issues subject to the proceeding.

41
42 For purposes of Canon 3E(5)(h), “dispute resolution neutral” means an arbitrator,
43 a mediator, a temporary judge* appointed under article VI, section 21 of the

1 California Constitution, a referee appointed under Code of Civil Procedure section
2 638 or 639, a special master, a neutral evaluator, a settlement officer, or a
3 settlement facilitator.

4
5 (i) The justice's spouse or registered domestic partner* or a person within the third
6 degree of relationship* to the justice or his or her spouse or registered domestic
7 partner,* or the person's spouse or registered domestic partner,* was a witness in
8 the proceeding.

9
10 (j) The justice has received a campaign contribution of \$5,000 or more from a
11 party or lawyer in a matter that is before the court, and either of the following
12 applies:

13
14 (i) The contribution was received in support of the justice's last election, if the
15 last election was within the last six years; or

16
17 (ii) The contribution was received in anticipation of an upcoming election.

18
19 Notwithstanding Canon 3E(5)(j), a justice shall disqualify himself or herself based on
20 a contribution of a lesser amount if required by Canon 3E(4).

21
22 The disqualification required under Canon 3E(5)(j) may be waived if all parties that
23 did not make the contribution agree to waive the disqualification.

24
25 *ADVISORY COMMITTEE COMMENTARY: Canon 3E*

26 *Canon 3E(1) sets forth the general duty to disqualify applicable to a judge of any*
27 *court. Sources for determining when recusal or disqualification is appropriate may*
28 *include the applicable provisions of the Code of Civil Procedure, other provisions of the*
29 *Code of Judicial Ethics, the Code of Conduct for United States Judges, the American Bar*
30 *Association's Model Code of Judicial Conduct, and related case law.*

31 *The decision whether to disclose information under Canon 3E(2) is a decision*
32 *based on the facts of the case before the judge. A judge is required to disclose only*
33 *information that is related to the grounds for disqualification set forth in Code of Civil*
34 *Procedure section 170.1.*

35 *Canon 3E(4) sets forth the general standards for recusal of an appellate justice.*
36 *The term "appellate justice" includes justices of both the Courts of Appeal and the*
37 *Supreme Court. Generally, the provisions concerning disqualification of an appellate*
38 *justice are intended to assist justices in determining whether recusal is appropriate and*
39 *to inform the public why recusal may occur.*

40 *The rule of necessity may override the rule of disqualification. For example, a*
41 *judge might be required to participate in judicial review of a judicial salary statute, or*
42 *might be the only judge available in a matter requiring judicial action, such as a hearing*
43 *on probable cause or a temporary restraining order. In the latter case, the judge must*

1 promptly disclose on the record the basis for possible disqualification and use reasonable
2 efforts to transfer the matter to another judge as soon as practicable.

3 In some instances, membership in certain organizations may have the potential to
4 give an appearance of partiality, although membership in the organization generally may
5 not be barred by Canon 2C, Canon 4, or any other specific canon. A judge holding
6 membership in an organization should disqualify himself or herself whenever doing so
7 would be appropriate in accordance with Canon 3E(1), 3E(4), or 3E(5) or statutory
8 requirements. In addition, in some circumstances, the parties or their lawyers may
9 consider a judge's membership in an organization relevant to the question of
10 disqualification, even if the judge believes there is no actual basis for disqualification. In
11 accordance with this canon, a judge should disclose to the parties his or her membership
12 in an organization, in any proceeding in which that information is reasonably relevant to
13 the question of disqualification under Code of Civil Procedure section 170.1, even if the
14 judge concludes there is no actual basis for disqualification.

15
16 (6) It shall not be grounds for disqualification that the justice:

17
18 (a) Is or is not a member of a racial, ethnic, religious, sexual, or similar group and
19 the proceeding involves the rights of such a group;

20
21 (b) Has in any capacity expressed a view on a legal or factual issue presented in
22 the proceeding, except as provided in Canon 3E(5)(a), (b), or (c);

23
24 (c) Has as a lawyer or public official participated in the drafting of laws* or in the
25 effort to pass or defeat laws,* the meaning, effect, or application of which is in
26 issue in the proceeding unless the judge believes that his or her prior involvement
27 was so well known* as to raise a reasonable doubt in the public mind as to his or
28 her capacity to be impartial.*

29
30 **ADVISORY COMMITTEE COMMENTARY: Canon 3E(6)**

31 Canon 3E(6) is substantively the same as Code of Civil Procedure section 170.2,
32 which pertains to trial court judges.

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A. Extrajudicial Activities in General

A judge shall conduct all of the judge's extrajudicial activities so that they do not

- (1) cast reasonable doubt on the judge's capacity to act impartially,*
- (2) demean the judicial office,
- (3) interfere with the proper performance of judicial duties, or
- (4) lead to frequent disqualification of the judge.

ADVISORY COMMITTEE COMMENTARY: Canon 4A

Complete separation of a judge from extrajudicial activities is neither possible nor wise; a judge should not become isolated from the community in which he or she lives. Expressions of bias or prejudice by a judge, even outside the judge's judicial activities, may cast reasonable doubt on the judge's capacity to act impartially as a judge. Expressions that may do so include inappropriate use of humor or the use of demeaning remarks. See Canon 2C and accompanying Commentary.*

Because a judge's judicial duties take precedence over all other activities (see Canon 3A), a judge must avoid extrajudicial activities that might reasonably result in the judge being disqualified.

B. Quasi-Judicial and Avocational Activities

A judge may speak, write, lecture, teach, and participate in activities concerning legal and nonlegal subject matters, subject to the requirements of this code.

ADVISORY COMMITTEE COMMENTARY: Canon 4B

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 may do so, either independently or through a bar or judicial association or other group dedicated to the improvement of the law.* It may be necessary to promote legal education programs and materials by identifying authors and speakers by judicial title.*

1 *This is permissible, provided such use of the judicial title does not contravene Canons 2A*
2 *and 2B.*

3 *Judges are not precluded by their office from engaging in other social, community,*
4 *and intellectual endeavors so long as they do not interfere with the obligations under*
5 *Canons 2C and 4A.*

7 **C. Governmental, Civic, or Charitable Activities**

9 (1) A judge shall not appear at a public hearing or officially consult with an executive
10 or legislative body or public official except on matters concerning the law, the legal
11 system, or the administration of justice,* or in matters involving the judge's private
12 economic or personal interests.

14 **ADVISORY COMMITTEE COMMENTARY: Canon 4C(1)**

15 *When deciding whether to appear at a public hearing or to consult with an*
16 *executive or legislative body or public official on matters concerning the law, the legal*
17 *system, or the administration of justice,* a judge should consider if that conduct would*
18 *violate any other provisions of this code. For a list of factors to consider, see the*
19 *explanation of “law, the legal system, or the administration of justice” in the*
20 *Terminology section. See also Canon 2B regarding the obligation to avoid improper*
21 *influence.*

23 (2) A judge shall not accept appointment to a governmental committee or commission
24 or other governmental position that is concerned with issues of fact or policy on
25 matters other than the improvement of the law, the legal system, or the administration
26 of justice.* A judge may, however, serve in the military reserve or represent a
27 national, state, or local government on ceremonial occasions or in connection with
28 historical, educational, or cultural activities.

30 **ADVISORY COMMITTEE COMMENTARY: Canon 4C(2)**

31 *Canon 4C(2) prohibits a judge from accepting any governmental position except*
32 *one relating to the law, legal system, or administration of justice* as authorized by*
33 *Canon 4C(3). The appropriateness of accepting extrajudicial assignments must be*
34 *assessed in light of the demands on judicial resources and the need to protect the courts*
35 *from involvement in extrajudicial matters that may prove to be controversial. Judges*
36 *shall not accept governmental appointments that are likely to interfere with the*
37 *effectiveness and independence* of the judiciary, or that constitute a public office within*
38 *the meaning of article VI, section 17 of the California Constitution.*

39 *Canon 4C(2) does not govern a judge's service in a nongovernmental position.*
40 *See Canon 4C(3) permitting service by a judge with organizations devoted to the*
41 *improvement of the law, the legal system, or the administration of justice* and with*
42 *educational, religious, charitable, service,* or civic organizations not conducted for*
43 *profit. For example, service on the board of a public educational institution, other than a*

1 law school, would be prohibited under Canon 4C(2), but service on the board of a public
2 law school or any private educational institution would generally be permitted under
3 Canon 4C(3).

4
5 (3) Subject to the following limitations and the other requirements of this code,

6
7 (a) a judge may serve as an officer, director, trustee, or nonlegal advisor of an
8 organization or governmental agency devoted to the improvement of the law, the
9 legal system, or the administration of justice* provided that such position does not
10 constitute a public office within the meaning of article VI, section 17 of the
11 California Constitution;

12
13 (b) a judge may serve as an officer, director, trustee, or nonlegal advisor of an
14 educational, religious, charitable, service,* or civic organization not conducted for
15 profit;

16
17 *ADVISORY COMMITTEE COMMENTARY: Canon 4C(3)*

18 *Canon 4C(3) does not apply to a judge's service in a governmental position*
19 *unconnected with the improvement of the law, the legal system, or the administration of*
20 *justice.* See Canon 4C(2).*

21 *Canon 4C(3) uses the phrase, "Subject to the following limitations and the other*
22 *requirements of this code." As an example of the meaning of the phrase, a judge*
23 *permitted by Canon 4C(3) to serve on the board of a service organization* may be*
24 *prohibited from such service by Canon 2C or 4A if the institution practices invidious*
25 *discrimination or if service on the board otherwise casts reasonable doubt on the judge's*
26 *capacity to act impartially* as a judge.*

27 *Service by a judge on behalf of a civic or charitable organization may be governed*
28 *by other provisions of Canon 4 in addition to Canon 4C. For example, a judge is*
29 *prohibited by Canon 4G from serving as a legal advisor to a civic or charitable*
30 *organization.*

31 *Service on the board of a homeowners association or a neighborhood protective*
32 *group is proper if it is related to the protection of the judge's own economic interests.*
33 *See Canons 4D(2) and 4D(4). See Canon 2B regarding the obligation to avoid improper*
34 *use of the prestige of a judge's office.*

35
36 (c) a judge shall not serve as an officer, director, trustee, or nonlegal advisor if it is
37 likely that the organization

38
39 (i) will be engaged in judicial proceedings that would ordinarily come before
40 the judge, or
41

(ii) 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 court of which the judge is a member.

ADVISORY COMMITTEE COMMENTARY: Canon 4C(3)(c)

The changing nature of some organizations and of their relationship to the law makes it necessary for the 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. Some organizations regularly engage in litigation to achieve their goals or fulfill their purposes. Judges should avoid a leadership role in such organizations as it could compromise the appearance of impartiality.**

(d) a judge as an officer, director, trustee, nonlegal advisor, or as a member or otherwise

(i) may assist such an organization in planning fundraising and may participate in the management and investment of the organization's funds. However, a judge shall not personally participate in the solicitation of funds or other fundraising activities, except that a judge may privately solicit funds for such an organization from members of the judge's family* or from other judges (excluding court commissioners, referees, court-appointed arbitrators, hearing officers, temporary judges,* and retired judges who serve in the Temporary Assigned Judges Program, practice law, or provide alternative dispute resolution services);

(ii) may make recommendations to public and 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 or if the membership solicitation is essentially a fundraising mechanism, except as permitted in Canon 4C(3)(d)(i);

(iv) shall not permit the use of the prestige of his or her judicial office for fundraising or membership solicitation but may be a speaker, guest of honor, or recipient of an award for public or charitable service provided the judge does not personally solicit funds and complies with Canons 4A(1), (2), (3), and (4).

ADVISORY COMMITTEE COMMENTARY: Canon 4C(3)(d)

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

1 administration of justice,* or a nonprofit educational, religious, charitable, service,* or
2 civic organization as long as the solicitation cannot reasonably be perceived as coercive
3 and is not essentially a fundraising mechanism. Solicitation of funds or memberships for
4 an organization similarly involves the danger that the person solicited will feel obligated
5 to respond favorably if the solicitor is in a position of influence or control. A judge must
6 not engage in direct, individual solicitation of funds or memberships in person, in
7 writing, or by telephone except in the following cases: (1) a judge may solicit other
8 judges (excluding court commissioners, referees, retired judges, court-appointed
9 arbitrators, hearing officers, and temporary judges*) for funds or memberships; (2) a
10 judge may solicit other persons for membership in the organizations described above if
11 neither those persons nor persons with whom they are affiliated are likely ever to appear
12 before the court on which the judge serves; and (3) a judge who is an officer of such an
13 organization may send a general membership solicitation mailing over the judge's
14 signature.

15 When deciding whether to make recommendations to public and private fund-
16 granting organizations on projects and programs concerning the law, the legal system, or
17 the administration of justice,* a judge should consider whether that conduct would
18 violate any other provision of this code. For a list of factors to consider, see the
19 explanation of "law, the legal system, or the administration of justice" in the
20 Terminology section.

21 Use of an organization's letterhead for fundraising or membership solicitation
22 does not violate Canon 4C(3)(d), provided the letterhead lists only the judge's name and
23 office or other position in the organization, and designates the judge's judicial title only
24 if other persons whose names appear on the letterhead have comparable designations. In
25 addition, a judge must also make reasonable efforts to ensure that the judge's staff, court
26 officials, and others subject to the judge's direction and control do not solicit funds on
27 the judge's behalf for any purpose, charitable or otherwise.

28
29 (e) A judge may encourage lawyers to provide pro bono publico legal services.
30

31 **ADVISORY COMMITTEE COMMENTARY: Canon 4C(3)(e)**

32 In addition to appointing lawyers to serve as counsel for indigent parties in
33 individual cases, a judge may promote broader access to justice by encouraging lawyers
34 to participate in pro bono publico legal services, as long as the judge does not employ
35 coercion or abuse the prestige of judicial office.
36

37 **D. Financial Activities**
38

39 (1) A judge shall not engage in financial and business dealings that
40

41 (a) may reasonably be perceived to exploit the judge's judicial position, or
42

(b) involve the judge in frequent transactions or continuing business relationships with lawyers or other persons likely to appear before the court on which the judge serves.

ADVISORY COMMITTEE COMMENTARY: Canon 4D(1)

The Time for Compliance provision of this code (Canon 6F) postpones the time for compliance with certain provisions of this canon in some cases. A judge must avoid financial and business dealings that involve the judge in frequent transactions or continuing business relationships with persons likely to appear either before the judge personally or before other judges on the judge's court. A judge shall discourage members of the judge's family from engaging in dealings that would reasonably appear to exploit the judge's judicial position or that would involve family members in frequent transactions or continuing business relationships with persons likely to appear before the judge. This rule is necessary to avoid creating an appearance of exploitation of office or favoritism and to minimize the potential for disqualification.*

Participation by a judge in financial and business dealings is subject to the general prohibitions in Canon 4A against activities that tend to reflect adversely on impartiality, 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 Canon 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.

(2) A judge may, subject to the requirements of this code, hold and manage investments of the judge and members of the judge's family,* including real estate, and engage in other remunerative activities. A judge shall not participate in, nor permit the judge's name to be used in connection with, any business venture or commercial advertising that indicates the judge's title or affiliation with the judiciary or otherwise lend the power or prestige of his or her office to promote a business or any commercial venture.

(3) A judge shall not serve as an officer, director, manager, or employee of a business affected with a public interest, including, without limitation, a financial institution, insurance company, or public utility.

ADVISORY COMMITTEE COMMENTARY: Canon 4D(3)

Although participation by a judge in business activities might otherwise be permitted by Canon 4D, a judge may be prohibited from participation by other provisions of this code when, for example, the business entity frequently appears before the judge's court or the participation requires significant time away from judicial duties. Similarly, a judge must avoid participating in any business activity if the judge's participation would involve misuse of the prestige of judicial office. See Canon 2B.

1 (4) A judge shall manage personal investments and financial activities so as to
2 minimize the necessity for disqualification. As soon as reasonably possible, a judge
3 shall divest himself or herself of investments and other financial interests that would
4 require frequent disqualification.

5
6 (5) Under no circumstance shall a judge accept a gift,* bequest, or favor if the donor
7 is a party whose interests have come or are reasonably likely to come before the
8 judge. A judge shall discourage members of the judge's family residing in the judge's
9 household* from accepting similar benefits from parties who have come or are
10 reasonably likely to come before the judge.

11
12 *ADVISORY COMMITTEE COMMENTARY: Canon 4D(5)*

13 *In addition to the prohibitions set forth in Canon 4D(5) regarding gifts,* other*
14 *laws* may be applicable to judges, including, for example, Code of Civil Procedure*
15 *section 170.9 and the Political Reform Act of 1974 (Gov. Code, § 81000 et seq.).*

16 *Canon 4D(5) does not apply to contributions to a judge's campaign for judicial*
17 *office, a matter governed by Canon 5, although such contributions may give rise to an*
18 *obligation by the judge to disqualify or disclose. See Canon 3E(2)(b) and accompanying*
19 *Commentary and Code of Civil Procedure section 170.1, subdivision (a)(9).*

20 *Because a gift,* bequest, or favor to a member of the judge's family residing in the*
21 *judge's household* might be viewed as intended to influence the judge, a judge must*
22 *inform those family members of the relevant ethical constraints upon the judge in this*
23 *regard and urge them to take these constraints into account when making decisions about*
24 *accepting such gifts,* bequests, or favors. A judge cannot, however, reasonably be*
25 *expected to know or control all of the financial or business activities of all family*
26 *members residing in the judge's household.**

27 *The application of Canon 4D(5) requires recognition that a judge cannot*
28 *reasonably be expected to anticipate all persons or interests that may come before the*
29 *court.*

30
31 (6) A judge shall not accept and shall discourage members of the judge's family
32 residing in the judge's household* from accepting a gift,* bequest, favor, or loan from
33 anyone except as hereinafter set forth. Gifts* that are permitted by Canons 4D(6)(a)
34 through (i) may only be accepted if the gift,* bequest, favor, or loan would neither
35 influence nor reasonably be perceived as intended to influence the judge in the
36 performance of judicial duties:

37
38 (a) a gift,* bequest, favor, or loan from a person whose preexisting relationship
39 with the judge would prevent the judge under Canon 3E from hearing a case
40 involving that person;

1 *ADVISORY COMMITTEE COMMENTARY: Canon 4D(6)(a)*

2 *Upon appointment or election as a judge or within a reasonable period of time*
3 *thereafter, a judge may attend an event honoring the judge's appointment or election as a*
4 *judge provided that (1) the judge would otherwise be disqualified from hearing any*
5 *matter involving the person or entity holding or funding the event, and (2) a reasonable*
6 *person would not conclude that attendance at the event undermines the judge's*
7 *integrity,* impartiality,* or independence.**

8
9 (b) a gift* for a special occasion from a relative or friend, if the gift* is fairly
10 commensurate with the occasion and the relationship;

11
12 *ADVISORY COMMITTEE COMMENTARY: Canon 4D(6)(b)*

13 *A gift* to a judge, or to a member of the judge's family residing in the judge's*
14 *household,* that is excessive in value raises questions about the judge's impartiality**
15 *and the integrity* of the judicial office and might require disqualification of the judge*
16 *where disqualification would not otherwise be required. See, however, Canon 4D(6)(a).*

17
18 (c) commercial or financial opportunities and benefits, including special pricing
19 and discounts, and loans from lending institutions in their regular course of
20 business, if the same opportunities and benefits or loans are made available on the
21 same terms to similarly situated persons who are not judges;

22
23 (d) any gift* incidental to a public testimonial, or educational or resource materials
24 supplied by publishers on a complimentary basis for official use, or a discounted
25 or complimentary membership in a bar-related association, or an invitation to the
26 judge and the judge's spouse or registered domestic partner* or guest to attend a
27 bar-related function or an activity devoted to the improvement of the law, the legal
28 system, or the administration of justice;*

29
30 (e) advances or reimbursement for the reasonable cost of travel, transportation,
31 lodging, and subsistence that is directly related to participation in any judicial,
32 educational, civic, or governmental program or bar-related function or activity
33 devoted to the improvement of the law, the legal system, or the administration of
34 justice;*

35
36 *ADVISORY COMMITTEE COMMENTARY: Canon 4D(6)(e)*

37 *Acceptance of an invitation to a law-related function is governed by Canon*
38 *4D(6)(d); acceptance of an invitation paid for by an individual lawyer or group of*
39 *lawyers is governed by Canon 4D(6)(g). See also Canon 4H(2) and accompanying*
40 *Commentary.*

41
42 (f) a gift,* award, or benefit incident to the business, profession, or other separate
43 activity of a spouse or registered domestic partner* or other member of the judge's

1 family residing in the judge's household,* including gifts,* awards, and benefits
2 for the use of both the spouse or registered domestic partner* or other family
3 member and the judge;

4
5 (g) ordinary social hospitality;

6
7 *ADVISORY COMMITTEE COMMENTARY: Canon 4D(6)(g)*

8 *Although Canon 4D(6)(g) does not preclude ordinary social hospitality, a judge*
9 *should carefully weigh acceptance of such hospitality to avoid any appearance of*
10 *impropriety* or bias or any appearance that the judge is misusing the prestige of judicial*
11 *office. See Canons 2 and 2B. A judge should also consider whether acceptance would*
12 *affect the integrity,* impartiality,* or independence* of the judiciary. See Canon 2A.*

13
14 (h) an invitation to the judge and the judge's spouse, registered domestic partner,*
15 or guest to attend an event sponsored by an educational, religious, charitable,
16 service,* or civic organization with which the judge is associated or involved, if
17 the same invitation is offered to persons who are not judges and who are similarly
18 engaged with the organization.

19
20 (i) a nominal gift,* provided the gift* is not from a lawyer, law firm, or other
21 person likely to appear before the court on which the judge serves, unless one or
22 more of the exceptions in this canon applies.

23
24 *ADVISORY COMMITTEE COMMENTARY: Canon 4D(6)(i)*

25 *For example, nominal gifts* include snacks or a token memento from jurors,*
26 *keychains or pens provided by vendors at legal conferences, or handicrafts or art*
27 *projects from students.*

28 *A judge should carefully weigh acceptance of any nominal gift to avoid any*
29 *appearance of impropriety* or bias or any appearance that the judge is misusing the*
30 *prestige of judicial office. See Canons 2 and 2B. A judge should also consider whether*
31 *acceptance would affect the integrity,* impartiality,* or independence* of the judiciary.*
32 *See Canon 2A.*

33
34 (7) A judge may accept the following, provided that doing so would neither influence
35 nor reasonably be perceived as intended to influence the judge in the performance of
36 judicial duties:

37
38 (a) a scholarship or fellowship awarded on the same terms and based on the same
39 criteria applied to other applicants;

40
41 (b) rewards and prizes given to competitors or participants in random drawings,
42 contests, or other events that are open to persons who are not judges.

1 *ADVISORY COMMITTEE COMMENTARY: Canons 4D(6) and 4D(7)*

2 *The references to such scholarships, fellowships, rewards, and prizes were moved*
3 *from Canon 4D(6) to Canon 4D(7) because they are not considered to be gifts* under*
4 *this code, and a judge may accept them.*

6 **E. Fiduciary* Activities**

8 (1) A judge shall not serve as executor, administrator, or other personal
9 representative, trustee, guardian, attorney in fact, or other fiduciary,* except for the
10 estate, trust, or person of a member of the judge's family,* and then only if such
11 service will not interfere with the proper performance of judicial duties. A judge may,
12 however, act as a health care representative pursuant to an advance health care
13 directive for a person whose preexisting relationship with the judge would prevent the
14 judge from hearing a case involving that person under Canon 3E(1).

16 (2) A judge shall not serve as a fiduciary* if it is likely that the judge as a fiduciary*
17 will be engaged in proceedings that would ordinarily come before the judge, or if the
18 estate, trust, or minor or conservatee will be engaged in contested proceedings in the
19 court on which the judge serves or one under its appellate jurisdiction.

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

24 *ADVISORY COMMITTEE COMMENTARY: Canon 4E*

25 *The Time for Compliance provision of this code (Canon 6F) postpones the time for*
26 *compliance with certain provisions of this canon in some cases.*

27 *The restrictions imposed by this canon may conflict with the judge's obligation as*
28 *a fiduciary.* For example, a judge shall resign as trustee if detriment to the trust would*
29 *result from divestiture of trust holdings the retention of which would place the judge in*
30 *violation of Canon 4D(4).*

32 **F. Service as Arbitrator or Mediator**

34 A judge shall not act as an arbitrator or mediator or otherwise perform judicial functions
35 in a private capacity unless expressly authorized by law.*

37 *ADVISORY COMMITTEE COMMENTARY: Canon 4F*

38 *Canon 4F does not prohibit a judge from participating in arbitration, mediation,*
39 *or settlement conferences performed as part of his or her judicial duties.*

41 **G. Practice of Law**

43 A judge shall not practice law.

1 *ADVISORY COMMITTEE COMMENTARY: Canon 4G*

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

8 *This prohibition applies to subordinate judicial officers,* magistrates, special*
9 *masters, and judges of the State Bar Court.*

10
11 **H. Compensation, Reimbursement, and Honoraria**

12
13 A judge may receive compensation and reimbursement of expenses as provided by law*
14 for the extrajudicial activities permitted by this code, if the source of such payments does
15 not give the appearance of influencing the judge's performance of judicial duties or
16 otherwise give the appearance of impropriety.*

17
18 (1) Compensation shall not exceed a reasonable amount nor shall it exceed what a
19 person who is not a judge would receive for the same activity.

20
21 (2) Expense reimbursement shall be limited to the actual cost of travel, food, lodging,
22 and other costs reasonably incurred by the judge and, where appropriate to the
23 occasion, by the judge's spouse, registered domestic partner,* or guest. Any payment
24 in excess of such an amount is compensation.

25
26 (3) No judge shall accept any honorarium. "Honorarium" means any payment made
27 in consideration for a speech given, an article published, or attendance at any public
28 or private conference, convention, meeting, social event, meal, or like gathering.
29 "Honorarium" does not include earned income for personal services that are
30 customarily provided in connection with the practice of a bona fide business, trade, or
31 profession, such as teaching or writing for a publisher, and does not include fees or
32 other things of value received pursuant to Penal Code section 94.5 for performance of
33 a marriage. For purposes of this canon, "teaching" includes presentations to impart
34 educational information to lawyers in events qualifying for credit under Minimum
35 Continuing Legal Education, to students in bona fide educational institutions, and to
36 associations or groups of judges.

37
38 *ADVISORY COMMITTEE COMMENTARY: Canon 4H*

39 *Judges should not accept compensation or reimbursement of expenses if*
40 *acceptance would appear to a reasonable person to undermine the judge's integrity,**
41 *impartiality,* or independence.**

42 *A judge must assure himself or herself that acceptance of reimbursement or fee*
43 *waivers would not appear to a reasonable person to undermine the judge's*

1 *independence,* integrity,* or impartiality.* The factors a judge should consider when*
2 *deciding whether to accept reimbursement or a fee waiver for attendance at a particular*
3 *activity include whether:*

4
5 *(a) the sponsor is an accredited educational institution or bar association rather*
6 *than a trade association or a for-profit entity;*

7
8 *(b) the funding comes largely from numerous contributors rather than from a*
9 *single entity, and whether the funding is earmarked for programs with specific*
10 *content;*

11
12 *(c) the content is related or unrelated to the subject matter of a pending* or*
13 *impending* proceeding before the judge, or to matters that are likely to come*
14 *before the judge;*

15
16 *(d) the activity is primarily educational rather than recreational, and whether the*
17 *costs of the event are reasonable and comparable to those associated with similar*
18 *events sponsored by the judiciary, bar associations, or similar groups;*

19
20 *(e) information concerning the activity and its funding sources is available upon*
21 *inquiry;*

22
23 *(f) the sponsor or source of funding is generally associated with particular parties*
24 *or interests currently appearing or likely to appear in the judge's court, thus*
25 *possibly requiring disqualification of the judge;*

26
27 *(g) differing viewpoints are presented;*

28
29 *(h) a broad range of judicial and nonjudicial participants are invited; or*

30
31 *(i) the program is designed specifically for judges.*

32
33 *Judges should be aware of the statutory limitations on accepting gifts.**

1 CANON 5

2
3 **A JUDGE OR CANDIDATE FOR JUDICIAL OFFICE* SHALL NOT ENGAGE**
4 **IN POLITICAL OR CAMPAIGN ACTIVITY THAT IS INCONSISTENT WITH**
5 **THE INDEPENDENCE,* INTEGRITY,* OR IMPARTIALITY* OF THE**
6 **JUDICIARY**
7

8 Judges and candidates for judicial office* are entitled to entertain their personal views on
9 political questions. They are not required to surrender their rights or opinions as citizens.
10 They shall, however, not engage in political activity that may create the appearance of
11 political bias or impropriety.* Judicial independence,* impartiality,* and integrity* shall
12 dictate the conduct of judges and candidates for judicial office.*
13

14 Judges and candidates for judicial office* shall comply with all applicable election,
15 election campaign, and election campaign fundraising laws* and regulations.
16

17 *ADVISORY COMMITTEE COMMENTARY: Canon 5*

18 *The term “political activity” should not be construed so narrowly as to prevent*
19 *private comment.*
20

21 **A. Political Organizations***
22

23 Judges and candidates for judicial office* shall not
24

25 (1) act as leaders or hold any office in a political organization;*

26
27 (2) make speeches for a political organization* or candidate for nonjudicial office, or
28 publicly endorse or publicly oppose a candidate for nonjudicial office; or
29

30 (3) personally solicit funds for a political organization* or nonjudicial candidate; or
31 make contributions to a political party or political organization* or to a nonjudicial
32 candidate in excess of \$500 in any calendar year per political party or political
33 organization* or candidate, or in excess of an aggregate of \$1,000 in any calendar
34 year for all political parties or political organizations* or nonjudicial candidates.
35

36 *ADVISORY COMMITTEE COMMENTARY: Canon 5A*

37 *This provision does not prohibit a judge or a candidate for judicial office* from*
38 *signing a petition to qualify a measure for the ballot, provided the judge does not use his*
39 *or her official title.*

40 *Although attendance at political gatherings is not prohibited, any such attendance*
41 *should be restricted so that it would not constitute an express public endorsement of a*
42 *nonjudicial candidate or a measure not affecting the law, the legal system, or the*
43 *administration of justice* otherwise prohibited by this canon.*

1 *Subject to the monetary limitation herein to political contributions, a judge or a*
2 *candidate for judicial office* may purchase tickets for political dinners or other similar*
3 *dinner functions. Any admission price to such a political dinner or function in excess of*
4 *the actual cost of the meal will be considered a political contribution. The prohibition in*
5 *Canon 5A(3) does not preclude judges from contributing to a campaign fund for*
6 *distribution among judges who are candidates for reelection or retention, nor does it*
7 *apply to contributions to any judge or candidate for judicial office.**

8 *Under this canon, a judge may publicly endorse or oppose a candidate for judicial*
9 *office.* Such positions are permitted because judicial officers have a special obligation*
10 *to uphold the integrity,* impartiality,* and independence* of the judiciary and are in a*
11 *unique position to know the qualifications necessary to serve as a competent judicial*
12 *officer.*

13 *Although family members of the judge or candidate for judicial office* are not*
14 *subject to the provisions of this code, a judge or candidate for judicial office* shall not*
15 *avoid compliance with this code by making contributions through a spouse or registered*
16 *domestic partner* or other family member.*

17 18 **B. Conduct During Judicial Campaigns and Appointment Process**

19
20 (1) A candidate for judicial office* or an applicant seeking appointment to judicial
21 office shall not:

22
23 (a) make statements to the electorate or the appointing authority that commit the
24 candidate or the applicant with respect to cases, controversies, or issues that are
25 likely to come before the courts, or

26
27 (b) knowingly,* or with reckless disregard for the truth, make false or misleading
28 statements about the identity, qualifications, present position, or any other fact
29 concerning himself or herself or his or her opponent or other applicants.

30
31 (2) A candidate for judicial office* shall review and approve the content of all
32 campaign statements and materials produced by the candidate or his or her campaign
33 committee before its dissemination. A candidate shall take appropriate corrective
34 action if the candidate learns of any misrepresentations made in his or her campaign
35 statements or materials. A candidate shall take reasonable measures to prevent any
36 misrepresentations being made in his or her support by third parties. A candidate
37 shall take reasonable measures to ensure that appropriate corrective action is taken if
38 the candidate learns of any misrepresentations being made in his or her support by
39 third parties.

40
41 (3) Every candidate for judicial office* shall complete a judicial campaign ethics
42 course approved by the Supreme Court no earlier than one year before or no later than
43 60 days after the filing of a declaration of intention by the candidate, the formation of

1 a campaign committee, or the receipt of any campaign contribution, whichever is
2 earliest. If a judge appears on the ballot as a result of a petition indicating that a
3 write-in campaign will be conducted for the office, the judge shall complete the
4 course no later than 60 days after receiving notice of the filing of the petition, the
5 formation of a campaign committee, or the receipt of any campaign contribution,
6 whichever is earliest.

7
8 Unless a judge forms a campaign committee or solicits or receives campaign
9 contributions, this requirement does not apply to judges who are unopposed for
10 election and will not appear on the ballot.

11
12 Unless an appellate justice forms a campaign committee or solicits or receives
13 campaign contributions, this requirement does not apply to appellate justices.

14
15 **ADVISORY COMMITTEE COMMENTARY: Canon 5B**

16 *The purpose of Canon 5B is to preserve the integrity* of the appointive and*
17 *elective process for judicial office and to ensure that the public has accurate information*
18 *about candidates for judicial office.* Compliance with these provisions will enhance the*
19 *integrity,* impartiality,* and independence* of the judiciary and better inform the public*
20 *about qualifications of candidates for judicial office.**

21 *This code does not contain the “announce clause” that was the subject of the*
22 *United States Supreme Court’s decision in Republican Party of Minnesota v. White*
23 *(2002) 536 U.S. 765. That opinion did not address the “commit clause,” which is*
24 *contained in Canon 5B(1)(a). The phrase “appear to commit” has been deleted because,*
25 *although candidates for judicial office* cannot promise to take a particular position on*
26 *cases, controversies, or issues prior to taking the bench and presiding over individual*
27 *cases, the phrase may have been overinclusive.*

28 *Canon 5B(1)(b) prohibits knowingly making false or misleading statements during*
29 *an election campaign because doing so would violate Canons 1 and 2A, and may violate*
30 *other canons.*

31 *The time limit for completing a judicial campaign ethics course in Canon 5B(3) is*
32 *triggered by the earliest of one of the following: the filing of a declaration of intention,*
33 *the formation of a campaign committee, or the receipt of any campaign contribution. If a*
34 *judge’s name appears on the ballot as a result of a petition indicating that a write-in*
35 *campaign will be conducted, the time limit for completing the course is triggered by the*
36 *earliest of one of the following: the notice of the filing of the petition, the formation of a*
37 *campaign committee, or the receipt of any campaign contribution. A financial*
38 *contribution by a candidate for judicial office* to his or her own campaign constitutes*
39 *receipt of a campaign contribution.*

40
41 (4) In judicial elections, judges may solicit campaign contributions or endorsements for
42 their own campaigns or for other judges and attorneys who are candidates for judicial
43 office.* Judges are permitted to solicit such contributions and endorsements from

1 anyone, including attorneys and other judges, except that a judge shall not solicit
2 campaign contributions or endorsements from California state court commissioners,
3 referees, court-appointed arbitrators, hearing officers, and retired judges serving in the
4 Temporary Assigned Judges Program, or from California state court personnel. In
5 soliciting campaign contributions or endorsements, a judge shall not use the prestige of
6 judicial office in a manner that would reasonably be perceived as coercive. See Canons
7 1, 2, 2A, and 2B.

8
9 **ADVISORY COMMITTEE COMMENTARY: Canon 5B(4)**

10 *Regarding campaign contributions for a judge's own campaign, see Canon*
11 *3E(2)(b) and accompanying Commentary addressing disclosure of campaign*
12 *contributions. See also Code of Civil Procedure section 170.1, subdivision (a)(9), which*
13 *provides that a judge is disqualified if the judge has received a campaign contribution*
14 *exceeding \$1,500 from a party or an attorney in the proceeding. Although it is improper*
15 *for a judge to receive a gift* from an attorney subject to exceptions noted in Canon*
16 *4D(6), a judge's campaign may receive attorney contributions. See also Government*
17 *Code section 8314, which prohibits any elected state or local officer from using public*
18 *resources, including buildings, telephones, and state-compensated time, for a campaign*
19 *activity. Under section 8314, subdivision (b)(2), "campaign activity" does not include*
20 *"the incidental and minimal use of public resources, such as equipment or office space,*
21 *for campaign purposes, including the referral of unsolicited political mail, telephone*
22 *calls, and visitors to private political entities."*

23 *Even though it is permissible for a judge to solicit endorsements and campaign*
24 *funds for attorneys who are candidates for judicial office,* the judge must be cautious.*
25 *Such solicitation may raise issues of disqualification and disclosure under Code of Civil*
26 *Procedure section 170.1, subdivision (a), and Canon 3E. Even if the judge is not*
27 *disqualified, disclosure may be required under Canon 3E(2)(a). For example, a judge*
28 *who has solicited campaign funds or endorsements for a candidate who is an attorney*
29 *must consider disclosing that solicitation in all cases in which the attorney candidate*
30 *appears before the judge. The judge should also consider Canon 4A(1) and Canon*
31 *4A(4), which require a judge to conduct extrajudicial activities so they do not cast*
32 *reasonable doubt on the judge's capacity to act impartially* or lead to frequent*
33 *disqualification.*

34 *"Judicial elections" includes recall elections.*
35

36 **C. Speaking at Political Gatherings**
37

38 Candidates for judicial office* may speak to political gatherings only on their own behalf
39 or on behalf of another candidate for judicial office.*
40
41
42
43

1 **D. Measures to Improve the Law**

2
3 A judge or candidate for judicial office* may engage in activity in relation to measures
4 concerning improvement of the law, the legal system, or the administration of justice,*
5 only if the conduct is consistent with this code.
6

7 *ADVISORY COMMITTEE COMMENTARY: Canon 5D*

8 *When deciding whether to engage in activity relating to measures concerning the*
9 *law, the legal system, or the administration of justice,* such as commenting publicly on*
10 *ballot measures, a judge must consider whether the conduct would violate any other*
11 *provisions of this code. See the explanation of “law, the legal system, or the*
12 *administration of justice” in the Terminology section.*

1 **CANON 6**

2
3 **COMPLIANCE WITH THE CODE OF JUDICIAL ETHICS**

4
5 **A. Judges**

6
7 Anyone who is an officer of the state judicial system and who performs judicial functions
8 including, but not limited to, a subordinate judicial officer,* a magistrate, a court-
9 appointed arbitrator, a judge of the State Bar Court, a temporary judge,* or a special
10 master, is a judge within the meaning of this code. All judges shall comply with this
11 code except as provided below.

12
13 *ADVISORY COMMITTEE COMMENTARY: Canon 6A*

14 *For the purposes of this canon, if a retired judge is serving in the Temporary*
15 *Assigned Judges Program, the judge is considered to “perform judicial functions.”*
16 *Because retired judges who are privately retained may perform judicial functions, their*
17 *conduct while performing those functions should be guided by this code.*

18
19 **B. Retired Judge Serving in the Temporary Assigned Judges Program**

20
21 A retired judge who has filed an application to serve on assignment, meets the eligibility
22 requirements set by the Chief Justice for service, and has received an acknowledgment of
23 participation in the Temporary Assigned Judges Program shall comply with all provisions
24 of this code, except for the following:

25
26 4C(2)—Appointment to governmental positions

27
28 4E—Fiduciary* activities

29
30 **C. Retired Judge as Arbitrator or Mediator**

31
32 A retired judge serving in the Temporary Assigned Judges Program is not required to
33 comply with Canon 4F of this code relating to serving as an arbitrator or mediator, or
34 performing judicial functions in a private capacity, except as otherwise provided in the
35 *Standards and Guidelines for Judicial Assignments* promulgated by the Chief Justice.

36
37 *ADVISORY COMMITTEE COMMENTARY: Canon 6C*

38 *Article VI, section 6 of the California Constitution provides that a “retired judge*
39 *who consents may be assigned to any court” by the Chief Justice. Retired judges who*
40 *are serving in the Temporary Assigned Judges Program pursuant to the above provision*
41 *are bound by Canon 6B, including the requirement of Canon 4G barring the practice of*
42 *law. Other provisions of California law,* and standards and guidelines for eligibility*

1 *and service set by the Chief Justice, further define the limitations on who may serve on*
2 *assignment.*

3
4 **D. Temporary Judge,* Referee, or Court-Appointed Arbitrator¹**

5
6 A temporary judge,* a person serving as a referee pursuant to Code of Civil Procedure
7 section 638 or 639, or a court-appointed arbitrator shall comply only with the following
8 code provisions:
9

10 (1) A temporary judge,* a referee, or a court-appointed arbitrator shall comply with
11 Canons 1 [integrity* and independence* of the judiciary], 2A [promoting public
12 confidence], 3B(3) [order and decorum], 3B(4) [patient, dignified, and courteous
13 treatment], 3B(6) [require* lawyers to refrain from manifestations of any form of bias
14 or prejudice], 3D(1) [action regarding misconduct by another judge], and 3D(2)
15 [action regarding misconduct by a lawyer], when the temporary judge,* referee, or
16 court-appointed arbitrator is actually presiding in a proceeding or communicating with
17 the parties, counsel, or staff or court personnel while serving in the capacity of a
18 temporary judge,* referee, or court-appointed arbitrator in the case.
19

20 (2) A temporary judge,* referee, or court-appointed arbitrator shall, from the time of
21 notice and acceptance of appointment until termination of the appointment:
22

23 (a) Comply with Canons 2B(1) [not allow family or other relationships to
24 influence judicial conduct], 3B(1) [hear and decide all matters unless disqualified],
25 3B(2) [be faithful to and maintain competence in the law*], 3B(5) [perform
26 judicial duties without bias or prejudice], 3B(7) [accord full right to be heard to
27 those entitled; avoid ex parte communications, except as specified], 3B(8) [dispose
28 of matters fairly and promptly], 3B(12) [remain impartial* and not engage in
29 coercive conduct during efforts to resolve disputes], 3C(1) [discharge
30 administrative responsibilities without bias and with competence and
31 cooperatively], 3C(3) [require* staff and court personnel to observe standards of
32 conduct and refrain from bias and prejudice], and 3C(5) [make only fair,
33 necessary, and appropriate appointments];
34

35 (b) Not personally solicit memberships or donations for religious, service,*
36 educational, civic, or charitable organizations from the parties and lawyers
37 appearing before the temporary judge,* referee, or court-appointed arbitrator;
38

39 (c) Under no circumstance accept a gift,* bequest, or favor if the donor is a party,
40 person, or entity whose interests are reasonably likely to come before the

¹ Reference should be made to relevant commentary to analogous or individual canons cited or described in this canon and appearing elsewhere in this code.

temporary judge,* referee, or court-appointed arbitrator. A temporary judge,* referee, or court-appointed arbitrator shall discourage members of the judge's family residing in the judge's household* from accepting benefits from parties who are reasonably likely to come before the temporary judge,* referee, or court-appointed arbitrator.

(3) A temporary judge* shall, from the time of notice and acceptance of appointment until termination of the appointment, disqualify himself or herself in any proceeding as follows:

(a) A temporary judge*—other than a temporary judge solely conducting settlement conferences—is disqualified to serve in a proceeding if any one or more of the following are true:

(i) the temporary judge* has personal knowledge* (as defined in Code of Civil Procedure section 170.1, subdivision (a)(1)) of disputed evidentiary facts concerning the proceeding;

(ii) the temporary judge* has served as a lawyer (as defined in Code of Civil Procedure section 170.1, subdivision (a)(2)) in the proceeding;

(iii) the temporary judge,* within the past five years, has given legal advice to, or served as a lawyer (as defined in Code of Civil Procedure section 170.1, subdivision (a)(2)), except that this provision requires disqualification if the temporary judge* represented a party in the past five years rather than the two-year period specified in section 170.1, subdivision (a)(2)) for a party in the present proceeding;

ADVISORY COMMITTEE COMMENTARY: Canon 6D(3)(a)(iii)

The application of Canon 6D(3)(a)(iii), providing that a temporary judge is disqualified if he or she has given legal advice or served as a lawyer for a party to the proceeding in the past five years, may depend on the type of assignment and the amount of time available to investigate whether the temporary judge* has previously represented a party. If time permits, the temporary judge* must conduct such an investigation. Thus, if a temporary judge* is privately compensated by the parties or is presiding over a particular matter known* in advance of the hearing, the temporary judge* is presumed to have adequate time to investigate. If, however, a temporary judge* is assigned to a high volume calendar, such as traffic or small claims, and has not been provided with the names of the parties prior to the assignment, the temporary judge* may rely on his or her memory to determine whether he or she has previously represented a party.*

1 (iv) the temporary judge* has a financial interest (as defined in Code of Civil
2 Procedure sections 170.1, subdivision (a)(3), and 170.5) in the subject matter
3 in the proceeding or in a party to the proceeding;
4

5 (v) the temporary judge,* or the spouse or registered domestic partner* of the
6 temporary judge,* or a person within the third degree of relationship* to either
7 of them, or the spouse or registered domestic partner* of such a person is a
8 party to the proceeding or is an officer, director, or trustee of a party;
9

10 (vi) a lawyer or a spouse or registered domestic partner* of a lawyer in the
11 proceeding is the spouse, former spouse, registered domestic partner,* former
12 registered domestic partner,* child, sibling, or parent of the temporary judge*
13 or the temporary judge's spouse or registered domestic partner,* or if such a
14 person is associated in the private practice of law with a lawyer in the
15 proceeding;
16

17 (vii) for any reason:
18

19 (A) the temporary judge* believes his or her recusal would further the
20 interests of justice;
21

22 (B) the temporary judge* believes there is a substantial doubt as to his or
23 her capacity to be impartial;* or
24

25 (C) a person aware of the facts might reasonably entertain a doubt that the
26 temporary judge* would be able to be impartial.* Bias or prejudice toward
27 an attorney in the proceeding may be grounds for disqualification; or
28

29 (viii) the temporary judge* has received a campaign contribution of \$1,500 or
30 more from a party or lawyer in a matter that is before the court and the
31 contribution was received in anticipation of an upcoming election.
32

33 (b) A temporary judge* before whom a proceeding was tried or heard is
34 disqualified from participating in any appellate review of that proceeding.
35

36 (c) If the temporary judge* has a current arrangement concerning prospective
37 employment or other compensated service as a dispute resolution neutral or is
38 participating in, or, within the last two years has participated in, discussions
39 regarding prospective employment or service as a dispute resolution neutral, or has
40 been engaged in such employment or service, and any of the following applies:
41

42 (i) The arrangement or current employment is, or the prior employment or
43 discussion was, with a party to the proceeding;

(ii) The temporary judge* directs the parties to participate in an alternative dispute resolution process in which the dispute resolution neutral will be an individual or entity with whom the temporary judge* has the arrangement, is currently employed or serves, has previously been employed or served, or is discussing or has discussed the employment or service; or

(iii) The temporary judge* will select a dispute resolution neutral or entity to conduct an alternative dispute resolution process in the matter before the temporary judge,* and among those available for selection is an individual or entity with whom the temporary judge* has the arrangement, is currently employed or serves, has previously been employed or served, or is discussing or has discussed the employment or service.

For the purposes of Canon 6D(3)(c), the definitions of “participating in discussions,” “has participated in discussions,” “party,” and “dispute resolution neutral” are set forth in Code of Civil Procedure section 170.1, subdivision (a)(8), except that the words “temporary judge” shall be substituted for the word “judge” in such definitions.

(d) A lawyer is disqualified from serving as a temporary judge* in a family law or unlawful detainer proceeding if in the same type of proceeding:

(i) the lawyer holds himself or herself out to the public as representing exclusively one side; or

(ii) the lawyer represents one side in 90 percent or more of the cases in which he or she appears.

ADVISORY COMMITTEE COMMENTARY: Canon 6D(3)(d)

Under Canon 6D(3)(d), “one side” means a category of persons such as landlords, tenants, or litigants exclusively of one gender.

(4) After a temporary judge* who has determined himself or herself to be disqualified from serving under Canon 6D(3)(a)–(d) has disclosed the basis for his or her disqualification on the record, the parties and their lawyers may agree to waive the disqualification and the temporary judge* may accept the waiver. The temporary judge* shall not seek to induce a waiver and shall avoid any effort to discover which lawyers or parties favored or opposed a waiver.

ADVISORY COMMITTEE COMMENTARY: Canon 6D(4)

Provisions addressing waiver of mandatory disqualifications or limitations, late discovery of grounds for disqualification or limitation, notification of the court when a disqualification or limitation applies, and requests for disqualification by the parties are

1 *located in rule 2.818 of the California Rules of Court. Rule 2.818 states that the waiver*
2 *must be in writing, must recite the basis for the disqualification or limitation, and must*
3 *state that it was knowingly* made. It also states that the waiver is effective only when*
4 *signed by all parties and their attorneys and filed in the record.*

5
6 (5) A temporary judge,* referee, or court-appointed arbitrator shall, from the time of
7 notice and acceptance of appointment until termination of the appointment:
8

9 (a) In all proceedings, disclose in writing or on the record information as required
10 by law,* or information that is reasonably relevant to the question of
11 disqualification under Canon 6D(3), including personal or professional
12 relationships known* to the temporary judge,* referee, or court-appointed
13 arbitrator, that he or she or his or her law firm has had with a party, lawyer, or law
14 firm in the current proceeding, even though the temporary judge,* referee, or
15 court-appointed arbitrator concludes that there is no actual basis for
16 disqualification; and
17

18 (b) In all proceedings, disclose in writing or on the record membership of the
19 temporary judge,* referee, or court-appointed arbitrator in any organization that
20 practices invidious discrimination on the basis of race, sex, gender, religion,
21 national origin, ethnicity, or sexual orientation, except for membership in a
22 religious organization.
23

24 (6) A temporary judge,* referee, or court-appointed arbitrator, from the time of notice
25 and acceptance of appointment until the case is no longer pending in any court, shall
26 not make any public comment about a pending* or impending* proceeding in which
27 the temporary judge,* referee, or court-appointed arbitrator has been engaged, and
28 shall not make any nonpublic comment that might substantially interfere with such
29 proceeding. The temporary judge,* referee, or court-appointed arbitrator shall
30 require* similar abstention on the part of staff and court personnel subject to his or
31 her control. This canon does not prohibit the following:
32

33 (a) Statements made in the course of the official duties of the temporary judge,*
34 referee, or court-appointed arbitrator; and
35

36 (b) Explanations about the procedures of the court.
37

38 (7) From the time of appointment and continuing for two years after the case is no
39 longer pending* in any court, a temporary judge,* referee, or court-appointed
40 arbitrator shall under no circumstances accept a gift,* bequest, or favor from a party,
41 person, or entity whose interests have come before the temporary judge,* referee, or
42 court-appointed arbitrator in the matter. The temporary judge,* referee, or court-
43 appointed arbitrator shall discourage family members residing in the household of the

1 temporary judge,* referee, or court-appointed arbitrator from accepting any benefits
2 from such parties, persons or entities during the time period stated in this subdivision.
3 The demand for or receipt by a temporary judge,* referee, or court-appointed
4 arbitrator of a fee for his or her services rendered or to be rendered would not be a
5 violation of this canon.
6

7 (8) A temporary judge,* referee, or court-appointed arbitrator shall, from the time of
8 notice and acceptance of appointment and continuing indefinitely after the termination
9 of the appointment:
10

11 (a) Comply with Canon 3B(11) [no disclosure of nonpublic information* acquired
12 in a judicial capacity] (except as required by law*);
13

14 (b) Not commend or criticize jurors sitting in a proceeding before the temporary
15 judge,* referee, or court-appointed arbitrator for their verdict other than in a court
16 order or opinion in such proceeding, but may express appreciation to jurors for
17 their service to the judicial system and the community; and
18

19 (c) Not lend the prestige of judicial office to advance his, her, or another person's
20 pecuniary or personal interests and not use his or her judicial title in any written
21 communication intended to advance his, her, or another person's pecuniary or
22 personal interests, except to show his, her, or another person's qualifications.
23

24 (9)(a) A temporary judge* appointed under rule 2.810 of the California Rules of
25 Court, from the time of the appointment and continuing indefinitely after the
26 termination of the appointment, shall not use his or her title or service as a
27 temporary judge* (1) as a description of the lawyer's current or former principal
28 profession, vocation, or occupation on a ballot designation for judicial or other
29 elected office, (2) in an advertisement about the lawyer's law firm or business, or
30 (3) on a letterhead, business card, or other document that is distributed to the
31 public identifying the lawyer or the lawyer's law firm.
32

33 (b) This canon does not prohibit a temporary judge* appointed under rule 2.810 of
34 the California Rules of Court from using his or her title or service as a temporary
35 judge* on an application to serve as a temporary judge,* including an application
36 in other courts, on an application for employment or for an appointment to a
37 judicial position, on an individual resume or a descriptive statement submitted in
38 connection with an application for employment or for appointment or election to a
39 judicial position, or in response to a request for information about the public
40 service in which the lawyer has engaged.
41

42 (10) A temporary judge,* referee, or court-appointed arbitrator shall comply with
43 Canon 6D(2) until the appointment has been terminated formally or until there is no

1 reasonable probability that the temporary judge,* referee, or court-appointed
2 arbitrator will further participate in the matter. A rebuttable presumption that the
3 appointment has been formally terminated will arise if, within one year from the
4 appointment or from the date of the last hearing scheduled in the matter, whichever is
5 later, neither the appointing court nor counsel for any party in the matter has informed
6 the temporary judge,* referee, or court-appointed arbitrator that the appointment
7 remains in effect.

8
9 (11) A lawyer who has been a temporary judge,* referee, or court-appointed arbitrator
10 in a matter shall not accept any representation relating to the matter without the
11 informed written consent of all parties.

12
13 (12) When by reason of serving as a temporary judge,* referee, or court-appointed
14 arbitrator in a matter, he or she has received confidential information from a party, the
15 person shall not, without the informed written consent of the party, accept
16 employment in another matter in which the confidential information is material.

17
18 **ADVISORY COMMITTEE COMMENTARY: Canon 6D**

19 *Any exceptions to the canons do not excuse a judicial officer's separate statutory*
20 *duty to disclose information that may result in the judicial officer's recusal or*
21 *disqualification.*

22
23 **E. Judicial Candidate**

24
25 A candidate for judicial office* shall comply with the provisions of Canon 5.

26
27 **F. Time for Compliance**

28
29 A person to whom this code becomes applicable shall comply immediately with all
30 provisions of this code except Canons 4D(4) and 4E and shall comply with Canons 4D(4)
31 and 4E as soon as reasonably possible and in any event within a period of one year.

32
33 **ADVISORY COMMITTEE COMMENTARY: Canon 6F**

34 *If serving as a fiduciary* when selected as a judge, a new judge may,*
35 *notwithstanding the prohibitions in Canon 4E, continue to serve as a fiduciary* but only*
36 *for that period of time necessary to avoid adverse consequences to the beneficiary of the*
37 *fiduciary* relationship and in no event longer than one year.*

38
39 **G. (Canon 6G repealed effective June 1, 2005; adopted December 30, 2002.)**

40
41 **H. Judges on Leave Running for Other Public Office**

1 A judge who is on leave while running for other public office pursuant to article VI,
2 section 17 of the California Constitution shall comply with all provisions of this code,
3 except for the following, insofar as the conduct relates to the campaign for public office
4 for which the judge is on leave:

5
6 2B(2)—Lending the prestige of judicial office to advance the judge’s personal interest

7
8 4C(1)—Appearing at public hearings

9
10 5—Engaging in political activity (including soliciting and accepting campaign
11 contributions for the other public office).

12
13 *ADVISORY COMMITTEE COMMENTARY: Canon 6H*

14 *These exceptions are applicable only during the time the judge is on leave while*
15 *running for other public office. All of the provisions of this code will become applicable*
16 *at the time a judge resumes his or her position as a judge. Conduct during elections for*
17 *judicial office is governed by Canon 5.*
18