

To: The Board of Directors of the American Judicature Society – Hawai‘i Chapter
From: AJS Special Committee on the 2007 ABA Model Code of Judicial Conduct
Date: May 2, 2008
Subject: Proposed Revisions to the 2007 ABA Model Code of Judicial Conduct

I. BACKGROUND AND INTRODUCTION.

A. The Committee’s Charge.

In February 2007, the American Bar Association (“ABA”) adopted a Revised Model Code of Judicial Conduct (“ABA Model Code” or “Model Code”), the first comprehensive revision of the Model Code since 1990. In August 2007, the Hawai‘i Board of the American Judicature Society impaneled a Special Committee on the ABA Model Code of Judicial Conduct (“Committee”) for the purpose of reviewing the ABA Model Code and to make appropriate recommendations with regard to its possible adoption by the Hawai‘i Supreme Court, in light of Hawai‘i’s existing Code of Judicial Conduct (“Hawai‘i Code”).¹ Approximately 30 other states have formed committees to consider the ABA Model Code, according to the ABA Center for Professional Responsibility, and committees in at least four states (Arkansas, Minnesota, Oklahoma, and Ohio) have released draft versions for public comment. The United States Judicial Conference Committee on Codes of Conduct has also released a Proposed Revised Code of Conduct for United States Judges for public comment.

B. The Committee.

The Honorable Richard W. Pollack and Lisa Ginoza, Esq., First Deputy Attorney General for the State of Hawai‘i, acted as the Committee’s Co-Chairpersons, with Colin O. Miwa, Esq., serving as the Committee’s Reporter. The Committee included Hawai‘i appellate and trial court level judges, concerned members of the public, and active members of the Hawai‘i bar.²

C. The Committee Review Process.

The ABA Model Code is generally organized into four Canons, with numbered Rules under each Canon and Comments that explain or clarify each Rule. The ABA Model Code also contains Preamble, Scope, and Terminology sections that provide additional guidance in interpreting the Model Code, and an Application section

¹ The AJS Hawai‘i Board’s statement of the purpose is attached hereto as Appendix 1.

² A list of the Committee members is attached hereto as Appendix 2.

describing situations in which the Rules may or may not apply. Accordingly, the Committee divided itself into four subcommittees, each of which was assigned one of the ABA Model Code's Canons and portions of the Preamble, Scope, Terminology, or Application sections. The subcommittees met several times and reported back to the whole Committee, which met on multiple occasions.

Committee members were provided with and reviewed a variety of materials during their consideration of the ABA Model Code, including: (1) a side-by-side comparison of the ABA Model Code with the existing Hawai'i Code; (2) the ABA Model Code of Judicial Conduct (February 2007); (3) an article entitled, "Proposed Revisions to the ABA Model Code of Judicial Conduct," by Cynthia Gray, published in the Judicial Conduct Reporter (Fall 2006); (4) the Proposed Amendments by the American Judicature Society; (5) an article entitled, "The 2007 ABA Model Code: Taking Judicial Ethics Standards to the Next Level," by Cynthia Gray, published in AJS Judicature (May-June 2007); (6) the Conference of Chief Justices Resolution 3 and various news releases; (7) an article entitled, "Avoiding the Appearance of Impropriety: With Great Power Comes Great Responsibility," by Cynthia Gray, published in AJS Judicature (July-August 2005); and (8) the Hawai'i Code.

II. PROPOSED REVISIONS TO THE ABA MODEL CODE.

Having reviewed and considered the ABA Model Code in light of the existing Hawai'i Code, the Committee recommends adoption of the ABA Model Code, subject to revisions proposed by this Committee ("Proposed Revisions" or the "Code"). The Committee's Proposed Revisions are set forth in Ramseyer format in Appendix 3, with explanatory comments included for each proposed revision. Highlights of the Proposed Revisions include the following:

1. The Committee named the proposed version of the ABA Model Code the "Hawai'i Code of Judicial Conduct," consistent with other rules promulgated by the Hawai'i Supreme Court and other states' treatments of the ABA Model Code (e.g. Proposed Ohio Code of Judicial Conduct).

2. It appears that the ABA Model Code may have been drafted by separate subcommittees, and the subcommittees did not consistently use the same definitions, conventions or terminology. For instance, the ABA Model Code referred in some instances to "paragraphs" of the proposed Rules, while in other cases, it referred to "Rules." Accordingly, many revisions address such stylistic and definitional inconsistencies in the ABA Model Code.

3. There were substantial discussions among Committee members with regard to the "appearance of impropriety" standard under Canon 1 of the ABA Model Code. While this Committee has not proposed any revisions to provisions referencing this term, the Committee has proposed a new definition of "appearance of impropriety"

for inclusion in the Terminology section. The new definition clarifies that prohibited conduct constitutes conduct that “reasonable minds, with knowledge of all the relevant circumstances, would perceive as materially impairing the judge’s independence, integrity, impartiality, temperament, or fitness to fulfill the duties of judicial office.” The Committee’s proposed definition is based upon the Commentary to the Proposed Revised Code of Conduct for United States Judges that was submitted to the U.S. Judicial Conference Committee on Codes of Conduct. Without this clarification, the Committee is concerned that the scope of prohibited conduct would be unduly vague.

4. Other important additions to the Terminology section include new definitions for “Code” and “Duties of judicial office,” two terms used throughout the ABA Model Code that were not previously defined. The Committee also modified the definition of the terms “Third degree of relationship,” “Member of the judge’s family” and “Member of a judge’s family residing in the judge’s household,” in order to integrate the definition of these terms with one another.

5. The Application section was reviewed closely by the Committee. Because certain categories of part-time judges covered by the ABA Model Code do not exist in Hawai‘i (e.g. pro-tempore part-time judges), the provisions discussing application of the Code to such judges have been deleted. The Committee further notes that the ABA Model Code (Section I) simply provides that its provisions apply to “anyone who is authorized to perform judicial functions.” Because non-lawyers may perform such functions (e.g. judiciary hearings officers), the Committee proposes that the Application section clarify that the Code may apply to both lawyers and non-lawyers, as provided under the current Hawai‘i Code. At the same time, however, the Committee recognizes that the Code’s applicability should be flexible in at least two cases. A mediator (appointed by the court) should be treated similarly to an arbitrator and be excluded from the Code’s definition of a judge. Second, wholesale application of the Code to a discovery master, for example, is neither advisable nor necessary, and would discourage accountants and lawyers from accepting such appointments. The Commentary to Section A of the Application section of the current Hawai‘i Code provides that the determination of “which specific Code provisions apply to an individual judicial officer, depends upon the facts of the particular judicial service.” The Committee’s Proposed Revisions include this very sensible limitation in the general text of the Application section.

6. Section I, Comment 3 of the ABA Model Code Application section recognizes that local rules may specifically authorize “problem solving” courts to engage in conduct that would not otherwise be permitted under the provisions of the Model Code. While the Comment provides that local rules are to be given precedence over the ABA Model Code, it is incongruous to have the Rules superseded by and based on the authority of a Comment. Additionally, Hawai‘i does not have any local rules that authorize conduct not permitted by the Hawai‘i Code, and therefore the Comment is inapplicable in this jurisdiction. Finally, the Committee proposes revisions to modify the

ABA Model Code to allow specialty courts to function in ways not otherwise permitted under the ABA Model Code. Therefore, the Committee proposes deletion of the Comment.

7. With regard to Rule 1.3 of Canon 1, the Committee agreed with the criticism of Cynthia Gray in her article, "The 2007 ABA Model Code: Taking Judicial Ethics Standards to the Next Level," *Judicature* (May - June 2007). Ms. Gray suggests that the Rule may be interpreted to mean that use of the prestige of judicial office is presumptively appropriate unless it rises to a vague level of "abusive" conduct. The Committee's proposed change is thus intended to provide more specificity and clarity as to the conduct prohibited under the Rule.

8. The Committee was quite concerned with the affirmative duty that the ABA Model Code places upon a judge to control the conduct of not only court staff and court officials subject to the judge's direction and control, but the conduct of third parties as well. Because all persons in a courtroom are subject to the judge's direction and control, it is appropriate to put a reasonable limitation upon the scope of a judge's responsibility to control the conduct of such third parties. Accordingly, Rules 2.3(B), 2.10(C), 2.12(A), and Comment 1 to Rule 2.12, are revised to provide that a judge's affirmative duty to restrain words and conduct is limited to court staff and court officials.

9. Judges in Hawai'i commonly recuse, rather than disqualify themselves from a case. The Committee, therefore, has proposed adding the term "recusal," both in Rule 2.7 and in other provisions of the ABA Model Code where the term "disqualification" appears. The terms "recusal" and "disqualification" do not necessarily have identical usage. "Recusal" appears to be self-initiated, and "disqualification" appears to be mandatory.

10. Rule 2.8(C) of the ABA Model Code provides that a judge "shall not commend or criticize jurors." The Committee proposes to modify the Rule to retain language from the 1994 ABA Model Code and the current Hawai'i Code, which specifically authorizes a judge to "express appreciation to jurors for their service to the judicial system and the community." It is common for judges in the First Circuit to write thank-you letters to jurors to acknowledge their service, and the Committee believes that this practice should be encouraged. The Committee is also concerned with Comment 3 to Rule 2.8(C), which prohibits a judge from discussing "the merits of the case" with the jurors after trial. The term "merits" means the "substantive consideration to be taken into account in deciding a case." Thus, Comment 3 goes far beyond Rule 2.8, which simply directs a judge to "not commend or criticize jurors for their verdict." Judicial/juror interaction is both educational and constructive for the court and jurors. The chilling effect of Comment 3 can be eliminated by its deletion, without causing any negative effect, as the modified Rule itself expressly provides guidance.

11. The Committee has also proposed revising Rule 2.9(A)(3), which generally allows a judge to engage in ex parte communications with court staff and court officials assisting the judge in carrying out the judge's adjudicative responsibilities. The ABA Model Code would prohibit the judge from receiving factual information not part of the record. The Committee views this prohibition as problematic. For instance, it would prohibit probation officers from communicating factual information to the court even though the communication is a statutory function of probation officers (see HRS § 806-73). The ABA Model Code appears to approach the issue of ex parte communications by prohibiting the communication even where the information communicated or obtained is useful. However, the real problem occurs when judicial decisions are based on information that one or more of the parties lack. Accordingly, the Committee's proposed revision allows such information to be communicated to and received by the judge, so long as it is timely disclosed to all parties. A similar revision pertaining to a judge's ex parte communications when serving on a therapeutic or specialty court, is proposed in Rule 2.9(A)(6), which is modeled on the proposed Ohio Code of Judicial Conduct.

12. An additional revision is proposed to Rule 2.9(A)(3). The Rule allows judges to consult with one another, provided the presiding judge makes a reasonable effort to avoid receiving factual information that is not part of the record and does not abrogate the responsibility to personally decide the matter. However, Comment 5 to Rule 2.9(A)(3) of the ABA Model Code limits application of this Rule by not allowing judges to consult with one another if one of the judges was previously disqualified from hearing the matter or the judge being consulted has appellate jurisdiction over the matter. This important qualifier to the Rule should be integrated into the Rule itself, and not relegated to a Comment. The Committee has so recommended.

13. A simple, but important, revision is recommended to Rule 2.9(B). The ABA Model Code requires that if a judge "inadvertently" receives an unauthorized ex parte communication bearing upon the substance of a matter, the judge must promptly notify the parties of the substance of the communication and provide the parties with the opportunity to respond. The Committee believes that the judge's response should be the same whether the communication was received inadvertently or otherwise. Hence, the Committee recommends deletion of the word "inadvertently." The deletion provides an additional benefit of relieving a judge from having to determine whether the communication was transmitted inadvertently.

14. An important addition to Rule 2.10(A) is proposed that would prohibit a judge from making any public statement that might reasonably be expected to affect the appearance of the judge's impartiality in a pending or impending case in any court. Under the ABA Model Code, a judge is only prohibited from making a public statement that might reasonably be expected to affect the outcome or impair the fairness of a pending or impending case. However, a judge should also be precluded from

making a public statement regarding controversial issues that might reasonably be expected to affect the appearance of the judge's impartiality in a pending or impending case in which the judge may later have to rule. While the judge may be subject to disqualification, a restriction upon such comments would avoid the subsequent disqualification issue.

15. Rule 2.10(D) permits a judge to comment on a proceeding in which the judge is a litigant in a personal capacity. On the other hand, Comment 2 to this Rule prohibits a judge from commenting publicly in cases in which the judge is a litigant in an official capacity, such as a writ of mandamus. It is not appropriate to establish a prohibition in a Comment. It is also inconsistent to address in a Rule the situation where a judge is a litigant in a personal capacity while addressing in a Comment the situation where a judge acts in an official capacity. The Committee therefore has incorporated Comment 2 into Rule 2.10(D).

16. A significant change is recommended to Rule 2.11(A). Rule 2.11(A) provides that a judge must disqualify himself or herself in any proceeding in which the judge's impartiality might reasonably be questioned. The Rule enumerates several such circumstances. In the Comment to this Rule, a very important exception to the Rule is stated: "The rule of necessity may override the rule of disqualification." A Comment should not supersede a Rule. The Committee accordingly has incorporated the exception directly into Rule 2.11(A). The Committee further notes that the rule of necessity is frequently invoked on the neighbor islands with respect to custody matters in criminal cases.

17. The Committee has proposed revising Rule 2.11(A)(6), which requires a judge to disqualify or recuse himself or herself if he or she served as a lawyer in the subject matter, or was associated with a lawyer who "participated substantially as a lawyer" in the subject matter. Because an "appearance of impropriety" is to be avoided, "substantial participation" by the associated lawyer is a higher degree of involvement than should be permitted. Accordingly, the rule was revised to require disqualification or recusal when the judge was associated with a lawyer who "participated substantively" in the subject matter.

18. Two significant changes are proposed with regard to Rule 2.11(C). The ABA Model Code permits a judge-initiated remittal or waiver procedure when the judge is subject to disqualification under Rule 2.11. Under the current Hawai'i rule, the remittal procedure may not be initiated by the judge. The Committee believes that judge-initiated waivers present potential for misuse and recommends that the current Hawai'i procedure be retained. Additionally, the waiver procedure established by Rule 2.11 is subject to HRS §§ 601-7(a)(1) and (2), which mandate disqualification under certain circumstances with no allowance for remittal or waiver.

19. Rule 3.7 of the ABA Model Code attempts to clarify the kinds of educational, religious, charitable, or civic non-profit organizations in which a judge may participate, subject to the overall limitations on extrajudicial activities imposed by Rule 3.1. However, in Rule 3.7(A)(3), the Model Code permits a judge to participate in membership solicitations for only those organizations “concerned with the law, the legal system, or the administration of justice.” Similarly, Rule 3.7(A)(4) permits a judge to appear or speak at fund-raising events of a non-profit organization, but only if the event “concerns the law, the legal system, or the administration of justice.” Rule 3.7(A)(5) contains a similar restriction, in connection with the judge’s recommendations to a public or private fund-granting organization. The Committee believes that these limitations on a judge’s participation in such extrajudicial activities is unduly restrictive. For instance, the ABA Model Code could be construed to prohibit a judge’s participation in fund-raising activities for schools or charitable organizations (organizations not directly concerned with the law), even if the judge’s participation complies with Rule 3.1. Therefore, the Committee’s proposed revisions delete the requirement that these organizations must be concerned with the law.

20. Rule 3.13(A) of the ABA Model Code prohibits the acceptance by a judge of certain gifts, loans, and other things of value. Unless prohibited by Rule 3.13(A) or by law, however, Rule 3.13(B) clarifies that a judge may accept certain items, and need not publicly report such acceptance. Rule 3.13(C) similarly provides that a judge may accept certain items, but provides that as to these items, the judge must report the acceptance to the extent required under Rule 3.15 (e.g. Rule 3.15(C)(3) permits acceptance of gifts from a party or lawyer “who has come or is likely to come before the judge”). Rule 3.15(A)(5) requires the judge accepting gifts under Rule 3.15(C)(3) to publicly report the amount or value of the item unless the value is below a certain level (\$200.00, as proposed by the Committee). The Committee believes that any gift from a party or lawyer “who has come or is likely to come before the judge” should be reported, regardless of the dollar value of the item. Accordingly, Rule 3.15(A)(5) has been revised.

21. The most significant revision made to Canon 4 of the Model Code, and the Rules under Canon 4, is the elimination of the phrases “candidate for judicial office” and “judicial candidate.”

The Committee believes it is too difficult to identify or define who is a “judicial candidate” during the various stages of the selection process in Hawai‘i. A candidate’s name may be suggested to the Judicial Selection Commission (JSC) by persons other than the candidate. Even assuming that, by definition, a person only becomes a “judicial candidate” upon submission of an application to the JSC, the candidate would be unaware for an extended time period whether he or she is actually a judicial candidate. This is because Rule 8 of the Judicial Selection Commission Rules (JSCR) provides that “[t]he commission may after it receives the applications eliminate from further consideration those applicants whom it evaluates to be unqualified for

judicial office.” The appointing authority is also under no obligation to release the names of the list of nominees. In other words, a “judicial candidate” could seemingly violate the Code, despite having already been eliminated from consideration for a judicial position. Confidential proceedings of the JSC would have to be compromised in order to determine whether the person was a “judicial candidate” when the Rule was violated. See Rule 5, § 2(A) of the JSCR.

One could provide that, by definition, a judicial candidate remains a candidate until a nominee is appointed and confirmed. But this approach would only exacerbate the undue burden placed upon judicial candidates. A “judicial candidate” is required to resign from all boards and affiliations, and withdraw from, for example, all political or party offices, commissions and other such activities. Enforcement of the Code upon judicial candidates would thus discourage qualified applicants from seeking judicial office. Those willing to make that sacrifice would also likely have to do so on a continuing basis, as many sitting judges have had to apply numerous times before being appointed.

It is useful to apply a cost/benefit analysis to the application of the Code to judicial candidates. Enforcement of the Code’s provisions upon a judicial candidate would result in an extremely high cost. If the JSC simply included a question on its application “Have you complied with the Code of Judicial Conduct?,” all applicants would have to resign and refrain from a host of beneficial activities. This would negatively impact both the applicant and the community, because in the vast majority of situations the resignation or refraining from activity would be unnecessary as the candidate would not become the nominee or appointee. On the other hand, the benefit is obscure. Any judicial candidate who engaged in conduct unbecoming a judge would almost certainly have that conduct brought to the attention of the JSC, the appointing authority, or, during the confirmation process, to the HSBA, the Senate, or the media.

While the Committee is aware that under the current Hawai‘i Code, a “judicial candidate” is subject to Canon 5, apparently no candidate has ever been subject to discipline for a Code violation. It is worthwhile noting that under current law, no judicial candidate could be subject to discipline. Under Rule 8.2(b) of the Rules of the Supreme Court, the jurisdiction of the Commission on Judicial Conduct is limited to the following persons: “justice or judge, full-time or part-time.” The Committee believes the proposed Code should be consistent with the Commission’s jurisdiction.

22. The Committee has also deleted various Rules that are intended to apply to judicial elections. Those Rules are inapplicable to Hawai‘i because judges are selected pursuant to the Hawai‘i State Constitution, which establishes the JSC.

III. APPENDICES.

Appendix 1 is the AJS Hawai'i Board's statement regarding the purpose of the Committee.

Appendix 2 is a listing of the Committee's members.

Appendix 3 contains the Committee's Proposed Revisions to the ABA Model Code in a three-column table format. The first column contains the ABA Model Code Canons, Rules, and Comments (as well as the text of the Preamble, Scope, Terminology, and Application sections). The second column sets forth in Ramseyer format those portions of the ABA Model Code that the Committee recommends should be revised. The proposed deletions from the ABA Model Code are shown in the second column by brackets and strike-throughs, and proposed additional material is underscored. Explanations for the Committee's Proposed Revisions are shown in the third column. Appendix 3 also contains Proposed Revisions to the Table of Contents.

Appendix 4 is a clean version of the ABA Model Code reflecting the Committee's Proposed Revisions.

IV. SUMMARY.

In closing, the Committee wishes to thank the AJS Board for the opportunity to review the ABA Model Code in order to suggest appropriate revisions. The Committee is mindful of the context in which the ABA Model Code has arisen – including the heightened public scrutiny of judges, their selection, and their independence – and it appreciates the consideration of these Proposed Revisions by the AJS Board.

APPENDIX 1

American Judicature Society Hawai'i Chapter
Special Committee on the
ABA Model Code of Judicial Conduct

The American Bar Association recently adopted its newly revised Model Code of Judicial Conduct. It contains changes that the Hawaii Supreme Court is now considering whether or not to adopt such changes.

The American Judicature Society ("AJS") throughout much of its history has promoted the highest ethical conduct for the members of our judiciary. AJS is the primary resource for judges and state judicial conduct organizations throughout the country through its Center for Judicial Ethics. The Center has provided advice, seminars and other training programs for judges and state conduct commissions for many years. The AJS is uniquely positioned to review and comment on the Model Code.

The AJS Hawaii Chapter has decided to review the ABA Model Code and its impact on our existing Code of Judicial Conduct. The Committee will conduct its review and may make recommendations to our Supreme Court as to what amendments, if any, should be adopted.

APPENDIX 2

**American Judicature Society Hawaii Chapter
Special Committee on the
ABA Model Code of Judicial Conduct**

Co-Chairs Hon. Richard W. Pollack, Judge, and Lisa Ginoza, Esq.

Reporter Colin O. Miwa, Esq.

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APPENDIX 3

PROPOSED HAWAII CODE OF JUDICIAL CONDUCT

MAY 2008

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Proposed Revisions to Preamble of the 2007 ABA Model Code of Judicial Conduct

ABA MODEL CODE CANON/RULE COMMENTS	PROPOSED REVISION	EXPLANATION
<p>PREAMBLE</p> <p>[1] An independent, fair and impartial judiciary is indispensable to our system of justice. The United States legal system is based upon the principle that an independent, impartial, and competent judiciary, composed of men and women of integrity, will interpret and apply the law that governs our society. Thus, the judiciary plays a central role in preserving the principles of justice and the rule of law. Inherent in all the Rules contained in this Code are the precepts that judges, individually and collectively, must respect and honor the judicial office as a public trust and strive to maintain and enhance confidence in the legal system.</p>		
<p>[2] Judges should maintain the dignity of judicial office at all times, and avoid both impropriety and the appearance of impropriety in their professional and personal lives. They should aspire at all times to conduct that ensures the greatest possible public confidence in their independence, impartiality, integrity, and competence.</p>		
<p>[3] The Model Code of Judicial Conduct establishes standards for the ethical conduct of judges and judicial candidates. It is not intended as an exhaustive guide for the conduct of judges and judicial candidates, who are governed in their judicial and personal conduct by general ethical standards as well as by the Code. The Code is intended, however, to provide assist judges in maintaining the highest standards of judicial and personal conduct, and to regulate their conduct through disciplinary agencies.</p>	<p>[3] The [Model] Hawai'i Code of Judicial Conduct establishes standards for the ethical conduct of judges [and judicial candidates]. It is not intended as an exhaustive guide for the conduct of judges [and judicial candidates], who are governed in their judicial and personal conduct by general ethical standards as well as by the Code. The Code is intended, however, to provide guidance and assist judges in maintaining the highest standards of judicial and personal conduct, and to provide a basis for regulating their conduct through disciplinary entities.</p>	<p>See Canon 4 explanation regarding judicial candidates.</p>

Proposed Revisions to Scope of the 2007 ABA Model Code of Judicial Conduct

ABA MODEL CODE CANON/RULE/COMMENTIS	PROPOSED REVISION	EXPLANATION
<p>SCOPE</p> <p>[1] The Model Code of Judicial Conduct consists of four Canons, numbered Rules under each Canon, and Comments that generally follow and explain each Rule. Scope and Terminology sections provide additional guidance in interpreting and applying the Code. An Application section establishes when the various Rules apply to a judge or judicial candidate.</p>	<p>[1] The [Model] Code [of Judicial Conduct] consists of four Canons, numbered Rules under each Canon, and Comments that generally follow and explain each Rule. Scope and Terminology sections provide additional guidance in interpreting and applying the Code. An Application section establishes when the various Rules apply to a judge [of judicial candidate].</p>	<p>The term "Code" is defined in the Terminology section. See Canon 4 explanation regarding judicial candidates.</p>
<p>[2] The Canons state overarching principles of judicial ethics that all judges must observe. Although a judge may be disciplined only for violating a Rule, the Canons provide important guidance in interpreting the Rules. Where a Rule contains a permissive term, such as "may" or "should," the conduct being addressed is committed to the personal and professional discretion of the judge or candidate in question, and no disciplinary action should be taken for action or inaction within the bounds of such discretion.</p>	<p>[2] The Canons state overarching principles of judicial ethics that all judges must observe. Although a judge may be disciplined only for violating a Rule, the Canons provide important guidance in interpreting the Rules. Where a Rule contains a permissive term, such as "may" or "should," the conduct being addressed is committed to the personal and professional discretion of the judge [of candidate] in question, and no disciplinary action should be taken for action or inaction within the bounds of such discretion.</p>	<p>See Canon 4 explanation regarding judicial candidates.</p>
<p>[3] The Comments that accompany the Rules serve two functions. First, they provide guidance regarding the purpose, meaning, and proper application of the Rules. They contain explanatory material and, in some instances, provide examples of permitted or prohibited conduct. Comments neither add to nor subtract from the binding obligations set forth in the Rules. Therefore, when a Comment contains the term "must," it does not mean that the Comment itself is binding or enforceable; it signifies that the Rule in question, properly understood, is obligatory as to the conduct at issue.</p>		

Proposed Revisions to Scope of the 2007 ABA Model Code of Judicial Conduct

ABA MODEL CODE CANON/RULE/COMMENTS	PROPOSED REVISION	EXPLANATION
<p>[4] Second, the Comments identify aspirational goals for judges. To implement fully the principles of this Code as articulated in the Canons, judges should strive to exceed the standards of conduct established by the Rules, holding themselves to the highest ethical standards and seeking to achieve those aspirational goals, thereby enhancing the dignity of the judicial office.</p>		
<p>[5] The Rules of the Model Code of Judicial Conduct are rules of reason that should be applied consistent with constitutional requirements, statutes, and decisional law, and with due regard for all relevant circumstances. The Rules should impinge upon the essential independence of judges in making judicial decisions.</p>	<p>[5] The Rules of [the Model] this Code [of Judicial Conduct] are rules of reason that should be applied consistent with constitutional requirements, statutes, other court rules, and decisional law, and with due regard for all relevant circumstances. The Rules should not be interpreted to impinge upon the essential independence of judges in making judicial decisions.</p>	<p>The term "Code" is defined in the Terminology section.</p>
<p>[6] Although the black letter of the Rules is binding and enforceable, it is not contemplated that every transgression will result in the imposition of discipline. Whether discipline should be imposed should be determined through a reasonable and reasoned application of the Rules, and should depend upon factors such as the seriousness of the transgression, the facts and circumstances that existed at the time of the transgression, the extent of any pattern of improper activity, whether there have been previous violations, and the effect of the improper activity upon the judicial system or others.</p>		
<p>[7] The Code is not designed or intended as a basis for civil or criminal liability. Neither is it intended to be the basis for litigants to seek collateral remedies against each other or to obtain tactical advantages in proceedings before a court.</p>		

Proposed Revisions to Terminology of the 2007 ABA Model Code of Judicial Conduct

ABA MODEL CODE CANON/RULE/COMMENTS	PROPOSED REVISION	EXPLANATION
<p>TERMINOLOGY</p> <p>“Aggregate,” in relation to contributions for a candidate, means not only contributions in cash or in kind made directly to a candidate’s campaign committee, but also all contributions made indirectly with the understanding that they will be used to support the election of a candidate or to oppose the election of the candidate’s opponent. See Rules 2.11 and 4.4.</p>	<p>“Aggregate,” in relation to contributions for a candidate, means not only contributions in cash or in kind made directly to a candidate’s campaign committee, but also all contributions made indirectly with the understanding that they will be used to support the election of a candidate or to oppose the election of the candidate’s opponent. See Rules 2.11 and 4.4.]</p>	<p>The Rules in which this term is referenced were recommended for deletion. The term is used in relation to judicial campaigns, which are not permitted in Hawai’i.</p>
<p>“Appropriate authority” means the authority having responsibility for initiation of disciplinary process in connection with the violation to be reported. See Rules 2.14 and 2.15.</p>		
	<p>“Appearance of impropriety” means conduct that reasonable minds, with knowledge of all the relevant circumstances, would perceive as materially impairing the judge’s independence, integrity, impartiality, temperament, or fitness to fulfill the duties of judicial office. See Canon 1, and Rule 1.2.</p>	<p>This proposed definition is based upon the proposed Commentary to the Proposed Revised Code of Conduct for United States Judges, which was released by the United States Judicial Conference Committee on Codes of Conduct for public comment.</p>
	<p>“Code” means the Hawai’i Code of Judicial Conduct. See Rules 1.1, 1.2, 2.12, 2.15, 3.1, 3.2, 3.5, 3.8, 3.10, 3.11, 3.12, 3.13, and 4.3.</p>	<p>In multiple instances, the Rules and Comments make reference to the “Code,” but no definition for the term was included in the Terminology section.</p>
<p>“Contribution” means both financial and in-kind contributions, such as goods, professional or volunteer services, advertising, and other types of assistance, which, if obtained by the recipient otherwise, would require a financial expenditure. See Rules 2.11, 2.13, 3.7, 4.1, and 4.4.</p>	<p>“Contribution” means both financial and in-kind contributions, such as goods, professional or volunteer services, advertising, and other types of assistance, which, if obtained by the recipient otherwise, would require a financial expenditure. See Rules [2.11, 2.13,] 3.7 and 4.1 [5 and 4.4].</p>	<p>The Rules referencing this term were recommended for deletion.</p>
<p>“De minimis,” in the context of interests pertaining to disqualification of a judge, means an insignificant interest that could not raise a reasonable question regarding the judge’s impartiality. See Rule 2.11.</p>		

Proposed Revisions to Terminology of the 2007 ABA Model Code of Judicial Conduct

ABA MODEL CODE CANON/RULE/COMMENTS	PROPOSED REVISION	EXPLANATION
<p>"Domestic partner" means a person with whom another person maintains a household and an intimate relationship, other than a person to whom he or she is legally married. See Rules 2.11, 2.13, 3.13, and 3.14.</p>		
<p>"Economic interest" means ownership of more than a de minimis legal or equitable interest. Except for situations in which the judge participates in the management of such a legal or equitable interest, or the interest could be substantially affected by the outcome of a proceeding before a judge, it does not include:</p>	<p><u>"Duties of judicial office"</u> means adjudicative functions and the broader range of administrative and related responsibilities that accompany the judicial office. See <u>Canons 2 and 3</u>, and <u>Rules 2.1.2.2, 2.3, 2.5, 2.10, 3.1.3.2, 3.5, 3.8, 3.9, 3.11, and 3.12.</u></p>	<p>The meaning of this very important term, "duties of judicial office," is found only within the Reporter's Explanation of Changes, which is not a formal part of the Code. The Committee believes that a definition for this term should be included in the Terminology section of the Code.</p>
<p>(1) an interest in the individual holdings within a mutual or common investment fund;</p> <p>(2) an interest in securities held by an educational, religious, charitable, fraternal, or civic organization in which the judge or the judge's spouse, domestic partner, parent, or child serves as a director, an officer, an advisor, or other participant;</p> <p>(3) a deposit in a financial institution or deposits or proprietary interests the judge may maintain as a member of a mutual savings association or credit union, or similar proprietary interests; or</p>	<p>"Economic interest" means ownership of more than a de minimis legal or equitable interest or a relationship as officer, director, advisor, or other active participant in the affairs of a party. Except for situations in which the judge participates in the management of such a legal or equitable interest, or the interest could be substantially affected by the outcome of a proceeding before a judge, [X] economic interest does not include:</p>	<p>The term "economic interest" is currently defined in the Hawai'i Code of Judicial Conduct as also including "a relationship as officer, director, advisor or other active participation in the affairs of a party." The Committee recommends retaining this language.</p> <p>A stylistic change to the second sentence of the definition is recommended for clarity.</p>
<p>(3) a deposit in a financial institution, [X] deposits or proprietary interests the judge may maintain as a member of a mutual savings association or credit union, or similar proprietary interests; or</p>		<p>A comma should be added after the term "institution," and the word "or" immediately following thereto should be deleted to clarify the meaning of this definition.</p>

Proposed Revisions to Terminology of the 2007 ABA Model Code of Judicial Conduct

ABA MODEL CODE CANON/RULE/COMMENTS	PROPOSED REVISION	EXPLANATION
(4) an interest in the issuer of government securities held by the judge. See Rules 1.3 and 2.11.		
"Fiduciary" includes relationships such as executor, administrator, trustee, or guardian. See Rules 2.11, 3.2, and 3.8.		
"Impartial," "impartiality," and "impartially" mean absence of bias or prejudice in favor of, or against, particular parties or classes of parties, as well as maintenance of an open mind in considering issues that may come before a judge. See Canons 1, 2, and 4, and Rules 1.2, 2.2, 2.10, 2.11, 2.13, 3.1, 3.12, 3.13, 4.1, and 4.2.	"Impartial," "impartiality," and "impartially" mean absence of bias or prejudice in favor of, or against, particular parties or classes of parties, as well as maintenance of an open mind in considering issues that may come before a judge. See Canons 1, 2, and 4, and Rules 1.2, 2.2, 2.10, 2.11, 2.13, 3.1, 3.12, 3.13, and 4.1 [and 4.2].	
"Impending matter" is a matter that is imminent or expected to occur in the near future. See Rules 2.9, 2.10, 3.13, and 4.1.		
"Impropriety" includes conduct that violates the law, court rules, or provisions of this Code, and conduct that undermines a judge's independence, integrity, or impartiality. See Canon 1 and Rule 1.2.	"Impropriety" includes conduct that violates the law, court rules, or provisions of this Code, and conduct that undermines a judge's independence, integrity, [or] impartiality, temperament, or fitness. See Canon 1 and Rule 1.2.	Inclusion of the terms "temperament" and "fitness" conforms to additions made within the Proposed Judicial Code of Conduct for United States Judges.
"Independence" means a judge's freedom from influence, or controls other than those established by law. See Canons 1 and 4, and Rules 1.2, 3.1, 3.12, 3.13, and 4.2.	"Independence" means a judge's freedom from influence or controls other than those established by law. See Canons 1 and 4, and Rules 1.2, 3.1, 3.12, and 3.13 [and 4.2].	
"Integrity" means probity, fairness, honesty, uprightness, and soundness of character. See Canon 1 and Rule 1.2.		

Proposed Revisions to Terminology of the 2007 ABA Model Code of Judicial Conduct

ABA MODEL CODE CANON/RULE/COMMENTS	PROPOSED REVISION	EXPLANATION
<p>"Judicial candidate" means any person, including a sitting judge, who is seeking selection for or retention in judicial office by election or appointment. A person becomes a candidate for judicial office as soon as he or she makes a public announcement of candidacy, declares or files as a candidate with the election or appointment authority, authorizes or, where permitted, engages in solicitation or acceptance of contributions or support, or is nominated for election or appointment to office. See Rules 2.11, 4.1, 4.2, and 4.4.</p>	<p>["Judicial candidate" means any person, including a sitting judge, who is seeking selection for or retention in judicial office by election or appointment. A person becomes a candidate for judicial office as soon as he or she makes a public announcement of candidacy, declares or files as a candidate with the election or appointment authority, authorizes or, where permitted, engages in solicitation or acceptance of contributions or support, or is nominated for election or appointment to office. See Rules 2.11, 4.1, 4.2, and 4.4.]</p>	<p>As discussed in the explanation to the proposed revision to Canon 4, it is the recommendation of the Committee that the Code not apply to an applicant for a judicial office unless the applicant is a judge.</p> <p>The portion of the definition applicable to a judicial election is deleted.</p>
<p>"Knowingly," "knowledge," "known," and "knows" mean actual knowledge of the fact in question. A person's knowledge may be inferred from circumstances. See Rules 2.11, 2.13, 2.15, 2.16, 3.6, and 4.1.</p>		
<p>"Law" encompasses court rules as well as statutes, constitutional provisions, and decisional law. See Rules 1.1, 2.1, 2.2, 2.6, 2.7, 2.9, 3.1, 3.4, 3.9, 3.12, 3.13, 3.14, 3.15, 4.1, 4.2, 4.4, and 4.5.</p>	<p>"Law" encompasses [enact] rules as well as statutes, ordinances, constitutional provisions, provisions of this Code, and decisional law. See Rules 1.1, 2.1, 2.2, 2.6, 2.7, 2.9, 3.1, 3.4, 3.9, 3.12, 3.13, 3.14, 3.15, and 4.1. [4.2, 4.4, and 4.5]</p>	<p>The term "law" is too narrowly defined, as it does not include a reference to ordinances or a specific reference to the provisions of this Code. In addition, the definition includes the term rules only in the context of "court rules," thereby excluding administrative rules. The latter omission has been addressed by deleting the word "court."</p>
<p>"Member of the candidate's family" means a spouse, domestic partner, child, grandchild, parent, grandparent, or other relative or person with whom the candidate maintains a close familial relationship.</p>	<p>["Member of the candidate's family" means a spouse, domestic partner, child, grandchild, parent, grandparent, or other relative or person].</p>	<p>The Terminology section does not provide a citation to use of the term "member of the candidate's family" within the Rules, and the term should be deleted.</p>

Proposed Revisions to Terminology of the 2007 ABA Model Code of Judicial Conduct

ABA MODEL CODE CANON/RULE/COMMENTS	PROPOSED REVISION	EXPLANATION
<p>"Member of the judge's family" means a spouse, domestic partner, child, grandchild, parent, grandparent, or other relative or person with whom the judge maintains a close familial relationship. See Rules 3.7, 3.8, 3.10, and 3.11.</p>	<p>"Member of the judge's family" means a spouse, domestic partner, [child, grandchild, parent, grandparent, or other] relative within the third degree of relationship, or other person with whom the judge maintains a close, intimate, or familial relationship or who is treated by the judge as a member of the judge's family. See Rules 3.7, 3.8, 3.10, and 3.11.</p>	<p>The definition of this term lists four specific relatives of a judge's family but also provides that the term includes any "other relative" of a judge, a broader category of people. The Model Revised Code includes a definition for "third degree of relationship," so it appears that the term "relative" was meant to encompass those within the third degree of relationship to a judge. A "member of the judge's family residing in the judge's household" is a subset of a "member of a judge's family." However, the definitions of these two terms are not consistent regarding the other "persons" who are considered members of the judge's family. The Committee sought to harmonize the two definitions. As revised, a person would be considered a member of the judge's family if the judge treats the person as a member of the judge's family or has a close, intimate, or familial relationship with the judge.</p>
<p>"Member of a judge's family residing in the judge's household" means any relative of a judge by blood or marriage, or a person treated by a judge as a member of the judge's family, who resides in the judge's household. See Rules 2.11 and 3.13.</p>	<p>"Member of a judge's family residing in the judge's household" means any [relative of a judge by blood or marriage or a person treated by a judge as a] member of the judge's family[.] who resides in the judge's household. See Rules 2.11 and 3.13.</p>	<p>Since it appears that "member of a judge's family residing in the judge's household" is a subset of a "member of a judge's family," it seems more logical to define the term by incorporating it into the definition "member of a judge's family."</p>
<p>"Nonpublic information" means information that is not available to the public. Nonpublic information may include, but is not limited to, information that is sealed by statute or court order or impounded or communicated in camera, and information offered in grand jury proceedings, presentencing reports, dependency cases, or psychiatric reports. See Rule 3.5.</p>		
<p>"Pending matter" is a matter that has commenced. A matter continues to be pending through any appellate process until final disposition. See Rules 2.9, 2.10, 3.13, and 4.1.</p>		

Proposed Revisions to Terminology of the 2007 ABA Model Code of Judicial Conduct

ABA MODEL CODE CANON/RULE/COMMENTS	PROPOSED REVISION	EXPLANATION
<p>“Personally solicited” means a direct request made by a judge or a judicial candidate for financial support or in-kind services, whether made by letter, telephone, or any other means of communication. See Rule 4.1.</p>	<p>“Personally solicited” means a direct request made by a judge or a judicial candidate for financial support or in-kind services, whether made by letter, telephone, or any other means of communication. See Rule 4.1.</p>	<p>The Rule in which this term is referenced was recommended for deletion.</p>
<p>“Political organization” means a political party or other group sponsored by or affiliated with a political party or candidate, the principal purpose of which is to further the election or appointment of candidates for political office. For purposes of this Code, the term does not include a judicial candidate’s campaign committee created as authorized by Rule 4.4. See Rules 4.1 and 4.2.</p>	<p>“Political organization” means a political party or other group sponsored by or affiliated with a political party or candidate, the principal purpose of which is to further the election or appointment of candidates for political office. [For purposes of this Code, the term does not include a judicial candidate’s campaign committee created as authorized by Rule 4.4.] See Rule[s] 4.1. [and 4.2]</p>	<p>The last sentence of the definition of “political organization” does not apply to the process for selection of Hawai‘i judges.</p>
<p>“Public election” includes primary and general elections, partisan elections, nonpartisan elections, and retention elections. See Rules 4.2 and 4.4.</p>	<p>“Public election” includes primary and general elections, partisan elections, nonpartisan elections, and retention elections. See Rules 4.2 and 4.4.]</p>	<p>The Rules in which this term is referenced were recommended for deletion. The term is used in relation to judicial elections, which are not permitted in Hawai‘i.</p>
<p>“Third degree of relationship” includes the following persons: great-grandparent, grandparent, parent, uncle, aunt, brother, sister, child, grandchild, great-grandchild, nephew, and niece. See Rule 2.11.</p>	<p>“Third degree of relationship” includes the following persons related to the judge by blood or marriage: great-grandparent, grandparent, parent, uncle, aunt, brother, sister, child, grandchild, great-grandchild, nephew, and niece. See Rule 2.11.</p>	<p>The inclusion of the phrase “related to the judge by blood or marriage” conforms to HRS § 601-7 (Supp. 2007).</p>

Proposed Revisions to Application of the 2007 ABA Model Code of Judicial Conduct

ABA MODEL CANON/RULE COMMENTS APPLICATION	PROPOSED REVISION	EXPLANATION
<p>The Application section establishes when the various Rules apply to a judge or judicial candidate.</p> <p>I. APPLICABILITY OF THIS CODE</p> <p>(A) The provisions of the Code apply to all full-time judges. Parts II through V of this section identify those provisions that apply to four distinct categories of part-time judges. The four categories of judicial service in other than a full-time capacity are necessarily defined in general terms because of the widely varying forms of judicial service. Canon 4 applies to judicial candidates.</p>	<p>The Application section establishes when the various Rules apply to a judge [or judicial candidate].</p> <p>(A) [The provisions of the] This Code [apply] applies to all full-time and part-time judges except as otherwise provided. [Parts II through V of this section identify these provisions that apply to four distinct categories of part-time judges. The four categories of judicial service in other than a full-time capacity are necessarily defined in general terms because of the widely varying forms of judicial service. Canon 4 applies to judicial candidates.]</p>	<p>As discussed in the explanation to the proposed revision to Canon 4, it is the recommendation of the Committee that the Code does not apply to an applicant for a judicial office unless the applicant is a judge.</p> <p>Parts II through V of this section actually identify those provisions that do not apply to part-time judges. The proposed revision simplifies this provision.</p>
<p>(B) A judge, within the meaning of this Code, is anyone who is authorized to perform judicial functions, including an officer such as a justice of the peace, magistrate, court commissioner, special master, referee, or member of the administrative law judiciary.</p>	<p>(B) A judge, within the meaning of this Code, is anyone, whether or not a lawyer, who is an officer of a judicial system and who [is authorized to] performs judicial functions, including an officer such as a [justice of the peace, magistrate, court commissioner, special master, referee, or hearing officer, member of the administrative law judiciary] but not including an arbitrator or mediator. However, with respect to a master, referee or hearing officer, the determination of which specific Code provisions apply to an individual judicial officer, depends upon the facts of the particular judicial service.</p>	<p>This provision has been revised to generally conform to Paragraph A of the Application section in Hawai'i's current Revised Code of Judicial Conduct. Retention of the phrase "who is an officer of a judicial system" limits applicability of the Code to judges and officers in the judiciary. Also, retention of the language "whether or not a lawyer" is recommended to emphasize that non-lawyers may be subject to the Code. For example, judiciary hearing officers within the Administrative Driver's License Revocation Office may not be lawyers but should be subject to this Code and therefore have been included. The judicial officers that have been deleted are inapplicable to legal practice in Hawai'i.</p> <p>Two changes to the current Hawai'i provision are recommended. A mediator (appointed by the court) should be treated similarly to an arbitrator and be excluded from the Code's definition of a judge. Second, wholesale application of the Code to a discovery master, for example, is neither advisable nor necessary, and would discourage accountants and lawyers from accepting such appointments. The Commentary to Section A of the Application section of Hawai'i's current Code provides that the determination of "which specific Code provisions apply to an individual judicial officer, depend upon the facts of the particular judicial service." This very sensible limitation should be set forth in the general text, and not relegated to a Comment.</p>

Proposed Revisions to Application of the 2007 ABA Model Code of Judicial Conduct

ABA MODEL CANON/RULE/COMMENTS	PROPOSED REVISION	EXPLANATION
<p>COMMENT</p> <p>[1] The Rules in this Code have been formulated to address the ethical obligations of any person who serves a judicial function, and are premised upon the supposition that a uniform system of ethical principles should apply to all those authorized to perform judicial functions.</p>		
<p>[2] The determination of which category and, accordingly, which specific Rules apply to an individual judicial officer, depends upon the facts of the particular judicial service.</p>		
<p>[3] In recent years many jurisdictions have created what are often called "problem solving" courts, in which judges are authorized by court rules to act in nontraditional ways. For example, judges presiding in drug courts and monitoring the progress of participants in those courts' programs may be authorized and even encouraged to communicate directly with social workers, probation officers, and others outside the context of their usual judicial role as independent decision makers on issues of fact and law. When local rules specifically authorize conduct not otherwise permitted under these Rules, they take precedence over the provisions set forth in the Code. Nevertheless, judges serving on "problem solving" courts shall comply with this Code except to the extent local rules provide and permit otherwise.</p>	<p>[3] In recent years many jurisdictions have created what are often called "problem solving" courts, in which judges are authorized by court rules to act in nontraditional ways. For example, judges presiding in drug courts and monitoring the progress of participants in those courts' programs may be authorized and even encouraged to communicate directly with social workers, probation officers, and others outside the context of their usual judicial role as independent decision makers on issues of fact and law. When local rules specifically authorize conduct not otherwise permitted under these Rules, they take precedence over the provisions set forth in the Code. Nevertheless, judges serving on "problem solving" courts shall comply with this Code except to the extent local rules provide and permit otherwise.]</p>	<p>There are three major concerns raised by this Comment. First, the Comment presumes that local rules take precedence over the provisions of the Code. It is not clear that this is the case in Hawai'i given that both local rules and the Code are promulgated by the Hawai'i Supreme Court. Second, there are no local rules in Hawai'i that "specifically authorize conduct not otherwise permitted under" the Code. Third, the Committee's proposed revisions specifically modify the ABA Model Code to allow specialty courts to function in ways that would not otherwise be permitted under the ABA Model Code. It is noted that the Proposed Ohio Code of Judicial Conduct, which incorporated similar modifications to its rules, also deleted this Comment.</p>
<p>II. RETIRED JUDGE SUBJECT TO RECALL</p> <p>A retired judge subject to recall for service, who by law is not permitted to practice law, is not required to comply:</p>	<p>II. RETIRED JUDGE [SUBJECT TO RECALL] RECALLED FOR SERVICE</p> <p>This Code applies to a [A] retired judge [subject to] recalled for service, who [by law] is not actively engaged in the [permitted to] practice of law, except a retired judge is not required to comply with either of the following:</p>	<p>Judges in Hawai'i are not subject to recall. At the request of the chief justice, a retired justice of the supreme court or a retired judge of the circuit court may serve as a substitute justice or judge, respectively. See HRS §§ 602-10, 603-41. These statutes use the terminology "not actively engaged in the practice of law."</p>

Proposed Revisions to Application of the 2007 ABA Model Code of Judicial Conduct

ABA MODEL CANON/RULE/COMMENT	PROPOSED REVISION	EXPLANATION
<p>(A) with Rule 3.9 (Service as Arbitrator or Mediator), except while serving as a judge; or</p> <p>(B) at any time with Rule 3.8 (Appointments to Fiduciary Positions)</p> <p>COMMENT</p> <p>[1] For the purposes of this section, as long as a retired judge is subject to being recalled for service, the judge is considered to "perform judicial functions."</p>	<p>[(A) with] Rule 3.9 [(Service as Arbitrator or Mediator)], except while serving as a judge; or</p> <p>[(B) at any time with] Rule 3.8, at any time.</p> <p>[(Appointments to Fiduciary Positions)]</p> <p>COMMENT</p> <p>[1] For the purposes of this section, as long as a retired judge is subject to being recalled for service, the judge is considered to "perform judicial functions."</p>	<p>The parenthetical identification of the title of the Rule is not utilized anywhere else in the Code except in the Application section, and it is preferable to encourage direct review of the rules.</p> <p>The revision to the Comment is made to conform to the changes made to subsection II.</p>
<p>III. CONTINUING PART-TIME JUDGE</p> <p>A judge who serves repeatedly on a part-time basis by election or under a continuing appointment, including a retired judge subject to recall who is permitted to practice law ("continuing part-time judge"), (A) is not required to comply:</p>	<p>III. [CONTINUING] PART-TIME JUDGE</p> <p>[(A) This Code applies to a [A] part-time judge [who serves repeatedly on a part-time basis-by-election-or under a continuing appointment], including a retired judge [subject to recall] recalled to service who is permitted to practice law and a per diem judge ("[continuing] part-time judge"), [(A)] except that a part-time judge is not required to comply with either of the following:</p>	<p>The reference in the title to "continuing" is not necessary in light of the recommended deletion of the words "repeated" and "continuing" and "continuing appointment."</p> <p>Part-time judges include both recalled retired judges permitted to practice law and per diem judges. Per diem judges are appointed by the chief justice pursuant to HRS § 604-2 and are permitted to engage in the private practice of law.</p>
<p>(1) with Rules 2.10(A) and 2.10(B) (Judicial Statements on Pending and Impending Cases), except while serving as a judge; or</p>	<p>(1) with] Rules 2.10(A) and 2.10(B) [(Judicial Statements on Pending and Impending Cases)], except while serving as a judge; or</p>	<p>The parenthetical identification of the title of the Rule is not utilized anywhere else in the Code except in the Application section, and it is preferable to encourage direct review of the rules.</p>
<p>(2) at any time with Rules 3.4 (Appointments to Governmental Positions), 3.8 (Appointments to Fiduciary Positions), 3.9 (Service as Arbitrator or Mediator), 3.10 (Practice of Law), 3.11 (Financial, Business, or Remunerative Activities), 3.14 (Reimbursement of Expenses and Waivers of Fees or Charges), 3.15 (Reporting Requirements), 4.1 (Political and Campaign Activities of Judges and Judicial Candidates in General), 4.2 (Political and Campaign Activities of Judicial Candidates in Public Elections), 4.3 (Activities of Judicial Candidates for Appointive Judicial Office), 4.4 (Campaign Committees), and 4.5 (Activities of Judges Who Become Candidates for Nonjudicial Office); and</p>	<p>(2) at any time with] Rules 3.4 [(Appointments to Governmental Positions)], 3.8 [(Appointments to Fiduciary Positions)], 3.9 [(Service as Arbitrator or Mediator)], 3.10 [(Practice of Law)], 3.11 [(Financial, Business, or Remunerative Activities)], 3.14 [(Reimbursement of Expenses and Waivers of Fees or Charges)], 3.15 [(Reporting Requirements)], 4.1 [(Political and Campaign Activities of Judges and Judicial Candidates in General)], 4.2 [(Political and Campaign Activities of Judicial Candidates in Public Elections)], 4.3 [(Activities of Judicial Candidates for Appointive Judicial Office)], 4.4 [(Campaign Committees)], and 4.5 [(Activities of Judges Who Become Candidates for Nonjudicial Office)], and 4.2, at any time; and</p>	<p>The parenthetical identification of the title of the Rule is not utilized anywhere else in the Code except in the Application section and it is preferable to encourage direct review of the rules.</p> <p>The deleted Rules are not applicable to Hawai'i law.</p>

Proposed Revisions to Application of the 2007 ABA Model Code of Judicial Conduct

ABA MODEL CANON/RULE/COMMENTS	PROPOSED REVISION	EXPLANATION
<p>(B) shall not practice law in the court on which the judge serves or in any court subject to the appellate jurisdiction of the court on which the judge serves, and shall not act as a lawyer in a proceeding in which the judge has served as a judge or in any other proceeding related thereto.</p>	<p>(B) A part-time judge shall not practice law in the court on which the judge serves for in any court subject to the appellate jurisdiction of the court on which the judge serves, and shall not act as a lawyer in a proceeding in which the judge has served as a judge or in any other proceeding related thereto. <u>For purposes of this Section, the District Family Courts and the District Courts are to be considered separate courts when determining disqualification.</u></p>	<p>Insertion of "part-time judge" is required because of the modified format.</p> <p>The language that does not permit practice of law "in any court subject to appellate jurisdiction of the court on which the judge serves" is deleted as it would have the effect in Hawai'i of excluding the part-time judge from practicing law.</p> <p>The second sentence is derived from a similar provision present in Hawai'i's Revised Code of Judicial Conduct.</p>
<p>COMMENT</p> <p>[1] When a person who has been a continuing part-time judge is no longer a continuing part-time judge, including a retired judge no longer subject to recall, that person may act as a lawyer in a proceeding in which he or she has served as a judge or in any other proceeding related thereto only with the informed consent of all parties, and pursuant to any applicable Model Rules of Professional Conduct. An adopting jurisdiction should substitute a reference to its applicable rule.</p>	<p>COMMENT</p> <p>[1] When a person who has been a [continuing] part-time judge is no longer a [continuing] part-time judge, including a retired judge who is no longer [subject to recall], that person may act as a lawyer in a proceeding in which he or she has served as a judge or in any other proceeding related [proceeding-related] thereto only with the informed consent of all parties, and in conformance with the Hawai'i [pursuant to any applicable Model] Rules of Professional Conduct. [An adopting jurisdiction should substitute a reference to its applicable rule.]</p>	<p>"Continuing" is deleted to conform with the changes made to Subsection III.</p> <p>"Proceeding related" is repeated in the sentence and is therefore deleted.</p> <p>The specific reference to the Hawai'i Rules of Professional Conduct is required.</p>
<p>IV. PERIODIC PART-TIME JUDGE</p> <p>A periodic part-time judge who serves or expects to serve repeatedly on a part-time basis, but under a separate appointment for each limited period of service or for each matter,</p>	<p>IV. PERIODIC PART-TIME JUDGE</p> <p>A periodic part-time judge who serves or expects to serve repeatedly on a part-time basis, but under a separate appointment for each limited period of service or for each matter,</p>	<p>This provision is not applicable to Hawai'i law.</p>
<p>(A) is not required to comply:</p> <p>(1) with Rule 2.10 (Judicial Statements on Pending and Impending Cases), except while serving as a judge; or</p>	<p>(A) is not required to comply:</p> <p>(1) with Rule 2.10 (Judicial Statements on Pending and Impending Cases), except while serving as a judge; or</p>	<p>This provision is not applicable to Hawai'i law.</p>

Proposed Revisions to Application of the 2007 ABA Model Code of Judicial Conduct

ABA MODEL CANON/RULE/COMMENTS	PROPOSED REVISION	EXPLANATION
<p>(2) at any time with Rules 3.4 (Appointments to Governmental Positions), 3.7 (Participation in Educational, Religious, Charitable, Fraternal, or Civic Organizations and Activities), 3.8 (Appointments to Fiduciary Positions), 3.9 (Service as Arbitrator or Mediator), 3.10 (Practice of Law), 3.11 (Financial, Business, or Remunerative Activities), 3.13 (Acceptance and Reporting of Gifts, Loans, Bequests, Benefits, or Other Things of Value), 3.15 (Reporting Requirements), 4.1 (Political and Campaign Activities of Judges and Judicial Candidates in General), and 4.5 (Activities of Judges Who Become Candidates for Nonjudicial Office); and</p>	<p>(2) at any time with Rules 3.4 (Appointments to Governmental Positions), 3.7 (Participation in Educational, Religious, Charitable, Fraternal, or Civic Organizations and Activities), 3.8 (Appointments to Fiduciary Positions), 3.9 (Service as Arbitrator or Mediator), 3.10 (Practice of Law), 3.11 (Financial, Business, or Remunerative Activities), 3.13 (Acceptance and Reporting of Gifts, Loans, Bequests, Benefits, or Other Things of Value), 3.15 (Reporting Requirements), 4.1 (Political and Campaign Activities of Judges and Judicial Candidates in General), and 4.5 (Activities of Judges Who Become Candidates for Nonjudicial Office); and</p>	<p>This provision is not applicable to Hawai'i law.</p>
<p>(B) shall not practice law in the court on which the judge serves or in any court subject to the appellate jurisdiction of the court on which the judge serves, and shall not act as a lawyer in a proceeding in which the judge has served as a judge or in any other proceeding related thereto.</p>	<p>(B) shall not practice law in the court on which the judge serves or in any court subject to the appellate jurisdiction of the court on which the judge serves, and shall not act as a lawyer in a proceeding in which the judge has served as a judge or in any other proceeding related thereto.</p>	<p>This provision is not applicable to Hawai'i law.</p>
<p>V. PRO TEMPORE PART-TIME JUDGE A pro tempore part-time judge who serves or expects to serve once or only sporadically on a part-time basis under a separate appointment for each period of service or for each case heard is not required to comply:</p>	<p>(V. PRO TEMPORE PART-TIME JUDGE A pro tempore part-time judge who serves or expects to serve once or only sporadically on a part-time basis under a separate appointment for each period of service or for each case heard is not required to comply:</p>	<p>This provision is not applicable to Hawai'i law.</p>
<p>(A) except while serving as a judge, with Rules 1.2 (Promoting Confidence in the Judiciary), 2.4 (External Influences on Judicial Conduct), 2.10 (Judicial Statements on Pending and Impending Cases), or 3.2 (Appearances before Governmental Bodies and Consultation with Government Officials); or</p>	<p>(A) except while serving as a judge, with Rules 1.2 (Promoting Confidence in the Judiciary), 2.4 (External Influences on Judicial Conduct), 2.10 (Judicial Statements on Pending and Impending Cases), or 3.2 (Appearances before Governmental Bodies and Consultation with Government Officials); or</p>	<p>This provision is not applicable to Hawai'i law.</p>

Proposed Revisions to Application of the 2007 ABA Model Code of Judicial Conduct

ABA MODEL CANON/RULE/COMMENTS	PROPOSED REVISION	EXPLANATION
<p>(B) at any time with Rules 3.4 (Appointments to Governmental Positions), 3.6 (Affiliation with Discriminatory Organizations), 3.7 (Participation in Educational, Religious, Charitable, Fraternal, or Civic Organizations and Activities), 3.8 (Appointments to Fiduciary Positions), 3.9 (Service as Arbitrator or Mediator), 3.10 (Practice of Law), 3.11 (Financial, Business, or Remunerative Activities), 3.13 (Acceptance and Reporting of Gifts, Loans, Bequests, Benefits, or Other Things of Value), 3.15 (Reporting Requirements), 4.1 (Political and Campaign Activities of Judges and Judicial Candidates in General), and 4.5 (Activities of Judges Who Become Candidates for Nonjudicial Office).</p>	<p>(B) at any time with Rules 3.4 (Appointments to Governmental Positions), 3.6 (Affiliation with Discriminatory Organizations), 3.7 (Participation in Educational, Religious, Charitable, Fraternal, or Civic Organizations and Activities), 3.8 (Appointments to Fiduciary Positions), 3.9 (Service as Arbitrator or Mediator), 3.10 (Practice of Law), 3.11 (Financial, Business, or Remunerative Activities), 3.13 (Acceptance and Reporting of Gifts, Loans, Bequests, Benefits, or Other Things of Value), 3.15 (Reporting Requirements), 4.1 (Political and Campaign Activities of Judges and Judicial Candidates in General), and 4.5 (Activities of Judges Who Become Candidates for Nonjudicial Office).</p>	<p>This provision is not applicable to Hawai'i law.</p>
<p>VI. TIME FOR COMPLIANCE</p> <p>A person to whom this Code becomes applicable shall comply immediately with its provisions, except that those judges to whom Rules 3.8 (Appointments to Fiduciary Positions) and 3.11 (Financial, Business, or Remunerative Activities) apply shall comply with those Rules as soon as reasonably possible, but in no event later than one year after the Code becomes applicable to the judge.</p> <p>COMMENT</p> <p>[1] If serving as a fiduciary when selected as judge, a new judge may, notwithstanding the prohibitions in Rule 3.8, continue to serve as fiduciary, but only for that period of time necessary to avoid serious adverse consequences to the beneficiaries of the fiduciary relationship and in no event longer than one year. Similarly, if engaged at the time of judicial selection in a business activity, a new judge may, notwithstanding the prohibitions in Rule 3.11, continue in that activity for a reasonable period but in no event longer than one year.</p>	<p>[VI] IV. TIME FOR COMPLIANCE</p> <p>A person to whom this Code becomes applicable shall comply immediately with its provisions, except that those judges to whom Rules 3.8 (Appointments to Fiduciary Positions) and 3.11 (Financial, Business, or Remunerative Activities) apply shall comply with those Rules as soon as reasonably possible, but in no event later than one year after the Code becomes applicable to the judge.</p>	<p>The parenthetical identification of the title of the Rule is not utilized anywhere else in the Code except in the Application section, and it is preferable to encourage direct review of the rules.</p>

Proposed Revisions to Canon 1 of the 2007 ABA Model Code of Judicial Conduct

ABA MODEL CODE CANON/RULE/COMMENTS	PROPOSED REVISION	EXPLANATION
<p>CANON 1</p> <p>A JUDGE SHALL UPHOLD AND PROMOTE THE INDEPENDENCE, INTEGRITY, AND IMPARTIALITY OF THE JUDICIARY, AND SHALL AVOID IMPROPRIETY AND THE APPEARANCE OF IMPROPRIETY.</p>		
<p>RULE 1.1 <i>Compliance with the Law</i></p> <p>A judge shall comply with the law, including the Code of Judicial Conduct.</p>		
<p>RULE 1.2 <i>Promoting Confidence in the Judiciary</i></p> <p>A judge shall act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary, and shall avoid impropriety and the appearance of impropriety.</p>		
<p>COMMENT</p> <p>[1] Public confidence in the judiciary is eroded by improper conduct and conduct that creates the appearance of impropriety. This principle applies to both the professional and personal conduct of a judge.</p>		
<p>[2] A judge should expect to be the subject of public scrutiny that might be viewed as burdensome if applied to other citizens, and must accept the restrictions imposed by the Code.</p>		

Proposed Revisions to Canon 1 of the 2007 ABA Model Code of Judicial Conduct

ABA MODEL CODE CANON/RULE/COMMENTS	PROPOSED REVISION	EXPLANATION
<p>[3] Conduct that compromises or appears to compromise the independence, integrity, and impartiality of a judge undermines public confidence in the judiciary. Because it is not practicable to list all such conduct, the Rule is necessarily cast in general terms.</p>		
<p>[4] Judges should participate in activities that promote ethical conduct among judges and lawyers, support professionalism within the judiciary and the legal profession, and promote access to justice for all.</p>		
<p>[5] Actual improprieties include violations of law, court rules or provisions of this Code. The test for appearance of impropriety is whether the conduct would create in reasonable minds a perception that the judge violated this Code or engaged in other conduct that reflects adversely on the judge's honesty, impartiality, temperament, or fitness to serve as a judge.</p>	<p>[5] Actual improprieties include violations of law, court rules or provisions of this Code. [The test for appearance of impropriety is whether the conduct would create in reasonable minds a perception that the judge violated this Code or engaged in other conduct that reflects adversely on the judge's honesty, impartiality, temperament, or fitness to serve as a judge].</p>	<p>The definition of "appearance of impropriety" was moved to the Terminology section.</p>
<p>[6] A judge should initiate and participate in community outreach activities for the purpose of promoting public understanding of and confidence in the administration of justice. In conducting such activities, the judge must act in a manner consistent with this Code.</p>		
<p>RULE 1.3 <i>Avoiding Abuse of the Prestige of Judicial Office</i> A judge shall not abuse the prestige of judicial office to advance the personal or economic interests of the judge or others, or allow others to do so.</p>	<p><i>Avoiding [Abuse] Misuse of the Prestige of Judicial Office</i> A judge shall not lend [abuse] the prestige of judicial office to advance the personal or economic interests of the judge or others, or allow others to do so.</p>	<p>Because "abuse" is more narrow than "lend," Rule 1.3 may have the effect of encouraging the misuse of the office. Rule 1.3 of the ABA Model Code may be interpreted as suggesting that use of the prestige of the office is presumptively appropriate unless it rises to some vague level of "abusive" conduct. See C. Gray, "The 2007 ABA Model Code: Taking Judicial Ethics Standards to the Next Level!"; Judicature (May - June 2007).</p>

Proposed Revisions to Canon 1 of the 2007 ABA Model Code of Judicial Conduct

ABA MODEL CODE CANON/RULE/COMMENTS	PROPOSED REVISION	EXPLANATION
<p>COMMENT</p> <p>[1] It is improper for a judge to use or attempt to use his or her position to gain personal advantage or preferential treatment of any kind. For example, it would be improper for a judge to allude to his or her judicial status to gain favorable treatment in encounters with traffic officials. Similarly, a judge must not use judicial letterhead to gain an advantage in conducting his or her personal business.</p>		
<p>[2] A judge may provide a reference or recommendation for an individual based upon the judge's personal knowledge. The judge may use official letterhead if the judge indicates that the reference is personal and if there is no likelihood that the use of the letterhead would reasonably be perceived as an attempt to exert pressure by reason of the judicial office.</p>		
<p>[3] Judges may participate in the process of judicial selection by cooperating with appointing authorities and screening committees, and by responding to inquiries from such entities concerning the professional qualifications of a person being considered for judicial office.</p>		
<p>[4] Special considerations arise when judges write or contribute to publications of for-profit entities, whether related or unrelated to the law. A judge should not permit anyone associated with the publication of such materials to exploit the judge's office in a manner that violates this Rule or other applicable law. In contracts for publication of a judge's writing, the judge should retain sufficient control over the advertising to avoid such exploitation.</p>		

Proposed Revisions to Canon 2 of the 2007 ABA Model Code of Judicial Conduct

ABA MODEL CODE CANON/RULE/COMMENTS	PROPOSED REVISION	EXPLANATION
<p>CANON 2</p> <p>A JUDGE SHALL PERFORM THE DUTIES OF JUDICIAL OFFICE IMPARTIALLY, COMPETENTLY, AND DILIGENTLY.</p>		
<p>RULE 2.1</p> <p><i>Giving Precedence to the Duties of Judicial Office</i></p> <p>The duties of judicial office, as prescribed by law, shall take precedence over all of a judge's personal and extrajudicial activities.</p>		
<p>COMMENT</p> <p>[1] To ensure that judges are available to fulfill their judicial duties, judges must conduct their personal and extrajudicial activities to minimize the risk of conflicts that would result in frequent disqualification. See Canon 3.</p>	<p>[1] To ensure that judges are available to fulfill their judicial duties the duties of judicial office, judges must conduct their personal and extrajudicial activities to minimize the risk of conflicts that would result in frequent disqualification. See Canon 3.</p>	<p>The Reporter's notes for Rule 2.1 explain that the phrase "Duties of judicial office" has replaced "judicial duties" "to emphasize that its application goes beyond adjudicative functions to reach the broader scope of responsibilities that accompany the judicial office." Comment [1] uses the phrase "judicial duties." Rule 2.1 and Comment [1] should be consistent. Therefore, the Comment has been modified to conform to Rule 2.1.</p>
<p>[2] Although it is not a duty of judicial office unless prescribed by law, judges are encouraged to participate in activities that promote public understanding of and confidence in the justice system.</p>	<p>[2] Although it is not a duty of judicial office unless prescribed by law, judges are encouraged to participate in activities that promote public understanding of and confidence in the justice system[,] although such participation is not a duty of judicial office unless prescribed by law.</p>	<p>The present wording of Comment 2 is grammatically awkward.</p>
<p>RULE 2.2</p> <p><i>Impartiality and Fairness</i></p> <p>A judge shall uphold and apply the law, and shall perform all duties of judicial office fairly and impartially.</p>		
<p>COMMENT</p> <p>[1] To ensure impartiality and fairness to all parties, a judge must be objective and open-minded.</p>		

Proposed Revisions to Canon 2 of the 2007 ABA Model Code of Judicial Conduct

ABA MODEL CODE CANON/RULE/COMMENTS	PROPOSED REVISION	EXPLANATION
<p>[2] Although each judge comes to the bench with a unique background and personal philosophy, a judge must interpret and apply the law without regard to whether the judge approves or disapproves of the law in question.</p>		
<p>[3] When applying and interpreting the law, a judge sometimes may make good-faith errors of fact or law. Errors of this kind do not violate this Rule.</p>	<p>[3] When applying and interpreting the law, a judge who [sometimes may] makes good-faith errors of fact or law [- Errors of this kind] does not violate this Rule.</p>	<p>The present wording of Comment 3 is awkward.</p>
<p>[4] It is not a violation of this Rule for a judge to make reasonable accommodations to ensure pro se litigants the opportunity to have their matters fairly heard.</p>		
<p>RULE 2.3 <i>Bias, Prejudice, and Harassment</i></p>		<p>Rules 2.1, 2.2, and 2.3(B) do not reference "administrative duties" in describing the duties of judicial office. The inclusion of the term here may unintentionally imply a different meaning to this provision.</p>
<p>(A) A judge shall perform the duties of judicial office, including administrative duties, without bias or prejudice.</p>	<p>(A) A judge shall perform the duties of judicial office [-including administrative duties-] without bias or prejudice.</p>	<p>The term "duties of judicial office" has been substituted for the term "judicial and administrative duties" to be consistent with the language in Rules 2.1, 2.2, and 2.3(A).</p>
<p>(B) A judge shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice, or engage in harassment, including but not limited to bias, prejudice, or harassment based upon race, sex, gender, religion, national origin, ethnicity, disability, age, sexual orientation, marital status, socioeconomic status, or political affiliation, [-and shall not permit court staff, court officials, or others subject to the judge's discretion and control to do so.]</p>	<p>(B) A judge shall not, in the performance of judicial duties] the duties of judicial office, by words or conduct manifest bias or prejudice, or engage in harassment, including but not limited to bias, prejudice, or harassment based upon race, sex, gender, religion, national origin, ethnicity, disability, age, sexual orientation, marital status, socioeconomic status, or political affiliation. [-and shall not permit court staff, court officials, or others subject to the judge's discretion and control to do so-] A judge shall make reasonable efforts, including providing appropriate supervision, to ensure that this Rule is not violated by court staff and court officials subject to the judge's direction and control.</p>	<p>The language "shall not permit" in Rule 2.3(B) is overly expansive in its application to a judge's power over court staff, court officials, and "others." The language in Rule 2.9(D) establishes a more appropriate standard and is substituted here. However, a judge's affirmative duty to restrain conduct should be limited to court staff and court officials. By deleting the problematic term "others...", a judge's duty to control third persons would not be unduly extended.</p>

Proposed Revisions to Canon 2 of the 2007 ABA Model Code of Judicial Conduct

ABA MODEL CODE CANON/RULE/COMMENT	PROPOSED REVISION	EXPLANATION
<p>(C) A judge shall require lawyers in proceedings before the court to refrain from manifesting bias or prejudice, or engaging in harassment, based upon attributes including but not limited to race, sex, gender, religion, national origin, ethnicity, disability, age, sexual orientation, marital status, socioeconomic status, or political affiliation, against parties, witnesses, lawyers, or others.</p>		
<p>(D) The restrictions of paragraphs (B) and (C) do not preclude judges or lawyers from making legitimate reference to the listed factors, or similar factors, when they are relevant to an issue in a proceeding.</p>	<p>(D) The restrictions of [paragraphs] Rules 2.3(B) and (C) do not preclude judges or lawyers from making legitimate reference to the listed factors, or similar factors, when they are relevant to an issue in a proceeding.</p>	<p>Reference to "paragraph" changed to the relevant "Rule" to be consistent with other such references.</p>
<p>COMMENT</p> <p>[1] A judge who manifests bias or prejudice in a proceeding impairs the fairness of the proceeding and brings the judiciary into disrepute.</p> <p>[2] Examples of manifestations of bias or prejudice include but are not limited to epithets; slurs; demeaning nicknames; negative stereotyping; attempted humor based upon stereotypes; threatening, intimidating, or hostile acts; suggestions of connections between race, ethnicity, or nationality and crime; and irrelevant references to personal characteristics. Even facial expressions and body language can convey to parties and lawyers in the proceeding, jurors, the media, and others an appearance of bias or prejudice. A judge must avoid conduct that may reasonably be perceived as prejudiced or biased.</p>		
<p>[3] Harassment, as referred to in paragraphs (B) and (C), is verbal or physical conduct that denigrates or shows hostility or aversion toward a person on bases such as race, sex, gender, religion, national origin, ethnicity, disability, age, sexual orientation, marital status, socioeconomic status, or political affiliation.</p>	<p>[3] Harassment, as referred to in [paragraphs] Rules 2.3(B) and (C), is verbal or physical conduct that denigrates or shows hostility or aversion toward a person on bases such as race, sex, gender, religion, national origin, ethnicity, disability, age, sexual orientation, marital status, socioeconomic status, or political affiliation.</p>	<p>Reference to "paragraph" changed to the relevant "Rule" to be consistent with other such references.</p>

Proposed Revisions to Canon 2 of the 2007 ABA Model Code of Judicial Conduct

ABA MODEL CODE CANON/RULE/COMMENTS	PROPOSED REVISION	EXPLANATION
<p>[4] Sexual harassment includes but is not limited to sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature that is unwelcome.</p>		
<p>RULE 2.4 <i>External Influences on Judicial Conduct</i></p> <p>(A) A judge shall not be swayed by public clamor or fear of criticism.</p> <p>(B) A judge shall not permit family, social, political, financial, or other interests or relationships to influence the judge's judicial conduct or judgment.</p> <p>(C) A judge shall not convey or permit others to convey the impression that any person or organization is in a position to influence the judge.</p>		
<p>COMMENT</p> <p>[1] An independent judiciary requires that judges decide cases according to the law and facts, without regard to whether particular laws or litigants are popular or unpopular with the public, the media, government officials, or the judge's friends or family. Confidence in the judiciary is eroded if judicial decision making is perceived to be subject to inappropriate outside influences.</p>		
<p>RULE 2.5 <i>Competence, Diligence, and Cooperation</i></p> <p>(A) A judge shall perform judicial and administrative duties, competently and diligently.</p>	<p>(A) A judge shall perform the duties of judicial [and administrative duties], office competently and diligently.</p>	<p>The first comma in Rule 2.5(A) is grammatically incorrect.</p> <p>The term "duties of judicial office" has been substituted for the term "judicial and administrative duties" to be consistent with the language in Rules 2.1 and 2.2 and the proposed revisions to Rule 2.3(A) and 2.3(B).</p>
<p>(B) A judge shall cooperate with other judges and court officials in the administration of court business.</p>		

Proposed Revisions to Canon 2 of the 2007 ABA Model Code of Judicial Conduct

ABA MODEL CODE CANON/RULE/COMMENTIS	PROPOSED REVISION	EXPLANATION
<p>COMMENT</p> <p>[1] Competence in the performance of judicial duties requires the legal knowledge, skill, thoroughness, and preparation reasonably necessary to perform a judge's responsibilities of judicial office.</p>	<p>[1] Competence in the performance of [judicial] the duties of judicial office requires the legal knowledge, skill, thoroughness, and preparation reasonably necessary to perform a judge's responsibilities of judicial office.</p>	<p>The term "duties of judicial office" has been substituted for the term "judicial duties" to be consistent with the language in Rules 2.1 and 2.2 and the proposed revisions to Rules 2.3(B) and 2.5(A).</p>
<p>[2] A judge should seek the necessary docket time, court staff, expertise, and resources to discharge all adjudicative and administrative responsibilities.</p>	<p>[2] A judge should seek the necessary docket time, court staff, expertise, and resources to discharge all adjudicative and administrative responsibilities.</p>	<p>Comment [2] has been deleted as individual judges in Hawai'i do not have the responsibility or ability to seek additional court staff or resources for court operations. Rule 3.2 allows judges to appear at public hearings before, or otherwise consult with, an executive or legislative body or official in connection with matters concerning the administration of justice. Therefore, this comment is unnecessary.</p>
<p>[3] Prompt disposition of the court's business requires a judge to devote adequate time to judicial duties, to be punctual in attending court and expeditious in determining matters under submission, and to take reasonable measures to ensure litigants, and their lawyers cooperate with the judge to that end.</p>	<p>[3] [2] Prompt disposition of the court's business requires a judge to devote adequate time to [judicial] the duties of judicial office, to be punctual in attending court and expeditious in determining matters under submission, and to take reasonable measures to ensure that court officials, litigants, and their lawyers cooperate with the judge to that end.</p>	<p>The term "duties of judicial office" has been substituted for the term "judicial duties" to be consistent with the language in Rules 2.1 and 2.2 and the proposed revisions to Rules 2.3(A), 2.3(B) and 2.5(A). If Comment [2] is deleted, Comment [3] should be renumbered as Comment [2]</p>
<p>[4] In disposing of matters promptly and efficiently, a judge must demonstrate due regard for the rights of parties to be heard and to have issues resolved without unnecessary cost or delay. A judge should monitor and supervise cases in ways that reduce or eliminate dilatory practices, avoidable delays, and unnecessary costs.</p>	<p>[4] [3] In disposing of matters promptly and efficiently, a judge must demonstrate due regard for the rights of parties to be heard and to have issues resolved without unnecessary cost or delay. <u>Containing costs while preserving fundamental rights of parties also protects the interests of witnesses and the general public.</u> A judge should monitor and supervise cases in ways that reduce or eliminate dilatory practices, avoidable delays, and unnecessary costs.</p>	<p>The Commentary to Canon 3B(8) (first paragraph) of the current Hawai'i Code contains the sentence, "Containing costs while preserving fundamental rights of parties also protects the interests of witnesses and the general public." The Committee believes that this text should be retained. If Comment [2] is deleted, Comment [4] should be renumbered as Comment [3]</p>
<p>RULE 2.6 <i>Ensuring the Right to Be Heard</i></p> <p>(A) A judge shall accord to every person who has a legal interest in a proceeding, or that person's lawyer, the right to be heard according to law.</p>		

Proposed Revisions to Canon 2 of the 2007 ABA Model Code of Judicial Conduct

ABA MODEL CODE CANON/RULE/COMMENTIS	PROPOSED REVISION	EXPLANATION
<p>(B) A judge may encourage parties to a proceeding and their lawyers to settle matters in dispute but shall not act in a manner that coerces any party into settlement.</p>	<p>(B) A judge may encourage settlement of disputed matters in [parties-to] a proceeding [and their-lawyers-to settle-matters-in-dispute] but shall not act in a manner that coerces any party into settlement.</p>	<p>Rule 2.6(B) encompasses both civil and criminal matters; however, judges in criminal proceedings, HRPP Rule 40 proceedings, and family court juvenile cases involving law violations and status offenses may not directly encourage a defendant or minor to settle. The proposed revision eliminates this incongruity.</p>
<p>COMMENT</p> <p>[1] The right to be heard is an essential component of a fair and impartial system of justice. Substantive rights of litigants can be protected only if procedures protecting the right to be heard are observed.</p> <p>[2] The judge plays an important role in overseeing the settlement of disputes, but should be careful that efforts to further settlement do not undermine any party's right to be heard according to law. The judge should keep in mind the effect that the judge's participation in settlement discussions may have, not only on the judge's own views of the case, but also on the perceptions of the lawyers and the parties if the case remains with the judge after settlement efforts are unsuccessful. Among the factors that a judge should consider when deciding upon an appropriate settlement practice for a case are (1) whether the parties have requested or voluntarily consented to a certain level of participation by the judge in settlement discussions, (2) whether the parties and their counsel are relatively sophisticated in legal matters, (3) whether the case will be tried by the judge or a jury, (4) whether the parties participate with their counsel in settlement discussions, (5) whether any parties are unrepresented by counsel, and (6) whether the matter is civil or criminal.</p>	<p>[2] The judge plays an important role in overseeing the settlement of disputes, but should be careful that efforts to further settlement do not undermine any party's right to be heard according to law. The judge should keep in mind the effect that the judge's participation in settlement discussions may have, not only on the judge's own views of the case, but also on the perceptions of the lawyers and the parties if the case remains with the judge after settlement efforts are unsuccessful. Among the factors that a judge should consider when deciding upon an appropriate settlement practice for a case are (1) whether the parties have requested or voluntarily consented to a certain level of participation by the judge in settlement discussions, (2) whether the parties and their counsel are relatively sophisticated in legal matters, (3) whether the case will be tried by the judge or a jury, (4) whether the parties participate with their counsel in settlement discussions, (5) whether any parties are unrepresented by counsel, [and] (6) whether the matter is civil or criminal, and (7) whether the settlement judge will be the trial judge in a non-jury matter.</p>	<p>Whether the settlement judge will be the trial judge in a case to be tried without a jury is a relevant factor that a judge should consider in determining what is an appropriate settlement practice for the case.</p>

Proposed Revisions to Canon 2 of the 2007 ABA Model Code of Judicial Conduct

ABA MODEL CODE CANON/RULE/COMMENTS	PROPOSED REVISION	EXPLANATION
<p>[3] Judges must be mindful of the effect settlement discussions can have, not only on their objectivity and impartiality, but also on the appearance of their objectivity and impartiality. Despite a judge's best efforts, there may be instances when information obtained during settlement discussions could influence a judge's decision making during trial, and, in such instances, the judge should consider whether disqualification may be appropriate. See Rule 2.11(A)(1).</p>	<p>[3] Judges must be mindful of the effect settlement discussions can have, not only on their objectivity and impartiality, but also on the appearance of their objectivity and impartiality. Despite a judge's best efforts, there may be instances when information obtained during settlement discussions could influence a judge's decision making during trial, and, in such instances, the judge should consider whether disqualification or recusal may be appropriate. See Rule 2.11(A)(1).</p>	<p>See the explanation to the proposed revision to Rule 2.7.</p>
<p>RULE 2.7 <i>Responsibility to Decide</i></p> <p>A judge shall hear and decide matters assigned to the judge, except when disqualification is required by Rule 2.11 or other law.</p>	<p>A judge shall hear and decide matters assigned to the judge, except when disqualification or recusal is required by Rule 2.11 or other law.</p>	<p>The terms "recusal" and "disqualification" do not necessarily have identical usage. "Recusal" appears to be self-initiated. HRS § 601-7 requires judges to disqualify themselves when litigants file an affidavit alleging that the judge is biased or prejudiced. Further, the statute implies that the disqualification procedure requires a judge to explain reasons for the disqualification, although a recusal order does not require such a statement.</p>
<p>COMMENT</p> <p>[1] Judges must be available to decide the matters that come before the court. Although there are times when disqualification is necessary to protect the rights of litigants and preserve public confidence in the independence, integrity, and impartiality of the judiciary, judges must be available to decide matters that come before the courts. Unwarranted disqualification or bring public disfavor to the court and to the judge personally. The dignity of the court, the judge's respect for fulfillment of judicial duties, and a proper concern for the burdens that may be imposed upon the judge's colleagues require that a judge not use disqualification to avoid cases that present difficult, controversial, or unpopular issues.</p>	<p>[1] Judges must be available to decide the matters that come before the court. Although there are times when disqualification or recusal is necessary to protect the rights of litigants and preserve public confidence in the independence, integrity, and impartiality of the judiciary, judges must be available to decide matters that come before the courts. Unwarranted disqualification or recusal may bring public disfavor to the court and to the judge personally. The dignity of the court, the judge's respect for fulfillment of judicial duties, and a proper concern for the burdens that may be imposed upon the judge's colleagues require that a judge not use disqualification or recusal to avoid cases that present difficult, controversial, or unpopular issues.</p>	<p>The addition of "recusal" is consistent with the same change made in other provisions of this Code.</p>

Proposed Revisions to Canon 2 of the 2007 ABA Model Code of Judicial Conduct

ABA MODEL CODE CANON/RULE/COMMENTIS	PROPOSED REVISION	EXPLANATION
<p>RULE 2.8 <i>Decorum, Demeanor, and Communication with Jurors</i></p> <p>(A) A judge shall require order and decorum in proceedings before the court.</p>		
<p>(B) A judge shall be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, court staff, court officials, and others with whom the judge deals in an official capacity, and shall require similar conduct of lawyers, court staff, court officials, and others subject to the judge's direction and control.</p>		
<p>(C) A judge shall not commend or criticize jurors for their verdict other than in a court order or opinion in a proceeding.</p>	<p>(C) A judge shall not commend or criticize jurors for their verdict other than in a court order or opinion in a proceeding, but may express appreciation to jurors for their service to the judicial system and the community.</p>	<p>The 1994 ABA Model Code and the current Hawai'i Code state that a judge "may express appreciation to jurors for their service to the judicial system and the community." This language, however, has been deleted from the 2007 ABA Model Code. Because Rule 2.8(C) now forbids "commending" jurors for their verdict, retention of the prior language clarifies that a judge may express appreciation to jurors for their service, either orally or in writing (e.g. judges in the First Circuit commonly send thank you letters to jurors.) The Proposed Ohio Code of Judicial Conduct has added a comparable provision to Rule 2.8.</p>
<p>COMMENT</p> <p>[1] The duty to hear all proceedings with patience and courtesy is not inconsistent with the duty imposed in Rule 2.5 to dispose promptly of the business of the court. Judges can be efficient and businesslike while being patient and deliberate.</p>		
<p>[2] Commending or criticizing jurors for their verdict may imply a judicial expectation in future cases and may impair a juror's ability to be fair and impartial in a subsequent case.</p>	<p>[2] Commending or criticizing jurors for their verdict [may imply a judicial expectation in future cases and] may impair a juror's ability to be fair and impartial in a subsequent case.</p>	<p>The language "may imply judicial expectations in future cases" is ambiguous and unnecessary. Commending or criticizing jurors for their verdict is improper regardless of any perceived expectation by the juror.</p>

Proposed Revisions to Canon 2 of the 2007 ABA Model Code of Judicial Conduct

ABA MODEL CODE CANON/RULE/COMMENTS	PROPOSED REVISION	EXPLANATION
<p>[3] A judge who is not otherwise prohibited by law from doing so may meet with jurors who choose to remain after trial but should be careful not to discuss the merits of the case.</p>	<p>[[3]-A judge who is not otherwise prohibited by law from doing so may meet with jurors who choose to remain after trial but should be careful not to discuss the merits of the case.]</p>	<p>The prohibition that jurors' verdicts not be commended or criticized is already addressed in Rule 2.8(C). Black's Law Dictionary defines the term "merits" as the "substantive considerations to be taken into account in deciding a case." Thus, discussing the merits of a case with jurors is not equivalent to commending or criticizing their verdict. If the Comment is intended to have no broader application than the rule, then it should not use the broadly inclusive language "merits of the case." If, on the other hand, the Comment is intended to have a broader meaning, then its application is contrary to the benefits obtained by judicial/jury interaction after trial. Furthermore, a Comment should not be more restrictive than the Rule that it explains. Finally, the advent of jury involvement in extended term sentencing means that a judge may not invariably meet with jurors "after trial" despite the language of this Comment.</p>
<p>RULE 2.9 <i>Ex Parte Communications</i></p> <p>(A) A judge shall not initiate, permit, or consider ex parte communications, or consider other communications made to the judge outside the presence of the parties or their lawyers, concerning a pending or impending matter, except as follows:</p>		
<p>(1) When circumstances require it, ex parte communication for scheduling, administrative, or emergency purposes, which does not address substantive matters, is permitted, provided:</p> <p>(a) the judge reasonably believes that no party will gain a procedural, substantive, or tactical advantage as a result of the ex parte communication; and</p> <p>(b) the judge makes provision promptly to notify all other parties of the substance of the ex parte communication, and gives the parties an opportunity to respond.</p>	<p>(1) When required by the circumstances [require-#], an ex parte communication for scheduling, administrative, or emergency purposes [-which] that does not address substantive matters [] is permitted, provided:</p>	<p>Rule 2.9(A)(1) is both grammatically incorrect and awkward, and has been modified.</p>

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ABA MODEL CODE CANON/RELEVANT COMMENTARIES	PROPOSED REVISION	EXPLANATION
<p>(2) A judge may obtain the written advice of a disinterested expert on the law applicable to a proceeding before the judge, if the judge gives advance notice to the parties of the person to be consulted and the subject matter of the advice to be solicited, and affords the parties a reasonable opportunity to object and respond to the notice and to the advice received.</p>	<p>(2) A judge may obtain the written advice of a disinterested expert on the law applicable to a proceeding before the judge, if the judge gives advance notice to the parties of the person to be consulted and the subject matter of the advice to be solicited, and affords the parties a reasonable opportunity to object and respond to the notice and respond to the advice received.</p>	<p>The last clause of the provision is awkward as the language requires the court to afford "the parties a reasonable opportunity to object and respond to the notice and to the advice received." This would seemingly require a party to object to the advice at the time the court gives advance notice of the person to be consulted.</p>
<p>(3) A judge may consult with court staff and court officials whose functions are to aid the judge in carrying out the judge's adjudicative responsibilities, or with other judges, provided the judge makes reasonable efforts to avoid receiving factual information that is not part of the record, and does not abrogate the responsibility personally to decide the matter.</p>	<p>(3) A judge may consult with court staff and court officials whose functions are to aid the judge in carrying out the judge's adjudicative responsibilities, provided that any factual information received by the judge that is not part of the record is timely disclosed to the parties. [or with other judges, provided the judge makes reasonable efforts to avoid receiving factual information that is not part of the record, and]. A judge may also consult with other judges, except the judge shall not have an ex parte discussion of a case with a judge who has either previously been disqualified from or has appellate jurisdiction over the matter. A consultation permitted under this Rule does not abrogate the judge's responsibility [personally] to personally decide the matter.</p>	<p>Rule 2.9(A)(3) permits a judge to consult with court staff and court officials, but requires a judge to make reasonable efforts to avoid receiving factual information that is not part of the record. This prohibition, if implemented, would seriously undermine the functioning of the Hope probation program and other specialty courts. Probation officers are appointed by the court (See HRS S 608-1) and must be considered as "court staff or court officials." Probation officers are required to "keep informed concerning the conduct and condition of the defendant and report thereon to the court." HRS S 806-73. Frequent communication between probation officers and the court is an important feature of specialty courts.</p> <p>Instead of precluding communication of factual information by a court official to a judge that is not part of the record, the Rule should ensure that the parties have timely access to that information. See <u>State v. Painga</u>, 67 Haw. 411 (1984) (if the confidential sentencing letter from the probation officer contains new factual information, it is incumbent on the judge to make it available to the defendant). The proposed revision adopts this approach and places an affirmative duty upon the judge to timely disclose new factual information to the parties.</p>

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ABA MODEL CODE CANON/RULE/COMMENTS	PROPOSED REVISION	EXPLANATION
		<p>Rule 2.9(A)(3) allows judges to consult with one another. However, Comment [5] to the Rule prohibits certain categories of ex parte communications between judges. It is problematic to prohibit in a Comment what is permitted in the Rule. The proposed revision incorporates the substance of Comment [5] into the Rule, at the time making the prohibition mandatory in contrast to the Comment's "must avoid" language.</p> <p>The term "personally" has been relocated in the last sentence of the Rule to provide proper emphasis to the intent of the provision.</p>
<p>(4) A judge may, with the consent of the parties, confer separately with the parties and their lawyers in an effort to settle matters pending before the judge.</p>	<p>(4) A judge may, with the consent of the parties, confer separately with the parties and their lawyers in an effort to settle matters pending before the judge, except in criminal-related matters or juvenile matters involving law violations or status offenses.</p>	<p>Similar to the problem in Rule 2.6(B), a judge in a criminal-related matter or a juvenile matter involving law violations or status offenses may not confer separately with the parties and their lawyers, even with the consent of the parties and their lawyers.</p>
<p>(5) A judge may initiate, permit, or consider any ex parte communication when expressly authorized by law to do so.</p>	<p>(5) A judge may initiate, permit, or consider any ex parte communication when expressly authorized by law or rule to do so.</p>	<p>The use of the word "any" is awkward.</p> <p>The language "expressly authorized by law" may be interpreted to exclude other provisions such as court rules that allow such communications. The amendment to add "rule" is unnecessary if the recommendation to modify the definition of "law" in the terminology section is adopted.</p>

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ABA MODEL CODE CANON/RULE/COMMENTS	PROPOSED REVISION	EXPLANATION
	<p>(6) A judge may initiate, permit, or consider an ex parte communication when serving on a therapeutic or specialty court, such as a mental health court or drug court, provided that the judge reasonably believes that no party will gain a procedural, substantive, or tactical advantage as a result of the ex parte communication and any factual information received that is not part of the record is timely disclosed to the parties.</p>	<p>Rule 2.9(A)(6) Comment [4] to Rule 2.9 authorizes a court, if expressly authorized by law, to initiate and permit ex parte communications to treatment providers and other professionals when a judge serves on a therapeutic or specialty court. Restricting such communications would have significant adverse effect on the functioning of specialty courts. While the objective of the Comment is laudable and necessary, the Comment is contrary to Rule 2.9 which requires a judge to avoid receiving factual information that is not part of the record. In order to give effect to Comment [4], its terms should be incorporated into a Rule. Additionally, the provision should be broadened in scope because it applies only when ex parte communications are "authorized by law," and in Hawai'i no such authorization exists for specialty court judges to communicate with treatment providers and other professionals.</p>
		<p>The proposed Ohio Code of Judicial Conduct has adopted a similar new Rule 2.9(A)(6) to allow a judge in a specialty court to communicate with treatment providers and other professionals.</p>
<p>(B) If a judge inadvertently receives an unauthorized ex parte communication bearing upon the substance of a matter, the judge shall make provision promptly to notify the parties of the substance of the communication and provide the parties with an opportunity to respond.</p>	<p>(B) If a judge [inadvertently] receives an unauthorized ex parte communication bearing upon the substance of a matter, the judge shall make provision promptly to notify the parties of the substance of the communication and provide the parties with an opportunity to respond.</p>	<p>The judge's response should be the same whether the communication was received inadvertently or otherwise.</p>
<p>(B) If a judge inadvertently receives an unauthorized ex parte communication bearing upon the substance of a matter, the judge shall make provision promptly to notify the parties of the substance of the communication and provide the parties with an opportunity to respond.</p>		

Proposed Revisions to Canon 2 of the 2007 ABA Model Code of Judicial Conduct

ABA MODEL CODE CANON/RULE/COMMENTS	PROPOSED REVISION	EXPLANATION
<p>(C) A judge shall not investigate facts in a matter independently, and shall consider only the evidence presented and any facts that may properly be judicially noticed.</p>	<p>(C) Subject to Rule 2.9(A)(3) and Rule 2.9(E), a judge shall not independently investigate facts in a matter independently case in any medium, including electronic, and but shall consider only the evidence presented and any facts that may be properly judicially noticed.</p>	<p>The prohibition contained in the Rule is tempered by the limited authority provided by Rule 2.9(A)(3) and Rule 2.9(A)(6) (originally Comment [4]) to obtain factual information that is not part of the record.</p> <p>The term “in all mediums” in Rule 2.9, Comment [5] should be incorporated within this subsection to give the Rule broad application and allow the deletion of Comment [6], which is otherwise redundant. The placement of the term “independently” in Rule 2.9(C) does not provide the emphasis it should and is grammatically incorrect.</p>
<p>(D) A judge shall make reasonable efforts, including providing appropriate supervision, to ensure that this Rule is not violated by court staff, court officials, and others subject to the judge’s direction and control.</p>	<p>(D) A judge shall make reasonable efforts, including providing appropriate supervision, to ensure that this Rule is not violated by court staff, and court officials, and others subject to the judge’s direction and control.</p>	<p>A judge’s affirmative duty to restrain ex parte communications should be limited to court staff and court officials. By deleting the problematic term “others...”, a judge’s duty to control third persons would not be unduly extended.</p>
<p>COMMENT</p> <p>[1] To the extent reasonably possible, all parties or their lawyers shall be included in communications with a judge.</p>		
<p>[2] Whenever the presence of a party or notice to a party is required by this Rule, it is the party’s lawyer, or if the party is unrepresented, the party, who is to be present or to whom notice is to be given.</p>	<p>[2] Whenever the presence of a party or notice to a party is required by this Rule, it is the party’s lawyer, or if the party is unrepresented, the party, who is to be present or to whom notice is to be given.</p>	<p>This Comment addresses the subject matter of the former ABA Rule 3B(7), which stated, “[w]henver presence of a party or notice to a party is required . . . , it is the party’s lawyer, or if the party is unrepresented, the party, who is to be present or to whom notice is to be given.” Rule 2.9 no longer specifically sets forth the requirements for presence of a party. Therefore, the Comment is a non-sequitor and should be deleted.</p>
<p>[3] The proscription against communications concerning a proceeding includes communications with lawyers, law teachers, and other persons who are not participants in the proceeding, except to the limited extent permitted by this Rule.</p>	<p>[3] [2]</p>	<p>If Comment [2] is deleted, Comment [3] should be renumbered as Comment [2].</p>

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ABA MODEL CODE CANON/RULE/COMMENTS	PROPOSED REVISION	EXPLANATION
<p>[4] A judge may initiate, permit, or consider ex parte communications expressly authorized by law, such as when serving on therapeutic or problem-solving courts, mental health courts, or drug courts. In this capacity, judges may assume a more interactive role with parties, treatment providers, probation officers, social workers, and others.</p>	<p>[4] [3] A judge may initiate, permit, or consider ex parte communications [expressly authorized by law, such as] when serving on therapeutic or problem-solving courts, such as mental health courts, or drug courts. In this capacity, judges may assume a more interactive role with parties, treatment providers, probation officers, social workers, and others.</p>	<p>If Comment [3] is deleted, Comment [4] should be renumbered.</p> <p>Since Hawai'i law does not expressly authorize specialty court judges to communicate with treatment providers and other professionals, this limiting provision is deleted.</p>
<p>[5] A judge may consult with other judges on pending matters, but must avoid ex parte discussions of a case with judges who have previously been disqualified from hearing the matter, and with judges who have appellate jurisdiction over the matter.</p>	<p>[5] A judge may consult with other judges on pending matters, but must avoid ex parte discussions of a case with judges who have previously been disqualified from hearing the matter, and with judges who have appellate jurisdiction over the matter.</p>	<p>This Comment logically fits within Rule 2.9(A)(3) and should be set forth in a Rule due to the potential conflict between the Rule, which allows for judge-to-judge communications, and the Comment, which prohibits them in certain situations. Therefore, the Comment has been integrated into Rule 2.9(A)(3).</p>
<p>[6] The prohibition against a judge investigating the facts in a matter extends to information available in all mediums, including electronic.</p>	<p>[6] The prohibition against a judge investigating the facts in a matter extends to information available in all mediums, including electronic.</p>	<p>This Comment is unnecessary if the phrase "in all mediums" is added to Rule 2.9(C), which concerns investigations by judges.</p>
<p>[7] A judge may consult ethics advisory committees, outside counsel, or legal experts concerning the judge's compliance with this Code. Such consultations are not subject to the restrictions of paragraph (A)(2).</p>	<p>[7] [4] A judge may consult ethics advisory committees, outside counsel, or legal experts concerning the judge's compliance with this Code. Such consultations are not subject to the restrictions of [paragraph] Rule 2.9 (A)(2).</p>	<p>If Comments [2], [5], and [6] are deleted, Comment [7] should be renumbered as Comment [4].</p> <p>Reference to "paragraph" changed to the relevant "Rule" to be consistent with other such references.</p>
<p>RULE 2.10 <i>Judicial Statements on Pending and Impending Cases</i></p> <p>(A) A judge shall not make any public statement that might reasonably be expected to affect the outcome or impair the fairness of a matter pending or impending in any court, or make any nonpublic statement that might substantially interfere with a fair trial or hearing.</p>	<p>(A) A judge shall not make any public statement that might reasonably be expected to affect the outcome or impair the fairness of a matter or affect the appearance of the judge's impartiality in a case pending or impending in any court, or make any nonpublic statement that might substantially interfere with a fair trial or hearing. Subject to this Rule's restrictions, a judge may make public statements in the performance of the duties of judicial office and may explain court procedures.</p>	<p>The addition of the language "impact the appearance of impartiality" is meant to address the situation of a judge making public statements regarding controversial issues that the judge may later have to rule upon. For example, Justice Scalia recently publicly opined that "so-called" torture might be legal in response to an imminent threat. No provision in the Model Code appears to preclude such comments, although Rule 2.1(A)(5) may require disqualification of the judge.</p>

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ABA MODEL CODE CANON/RULE/COMMENTS	PROPOSED REVISION	EXPLANATION
		<p>The structure of Rule 2.10 is odd: subsection (D) provides an exception to subsection (A). Usually, given this structure, (A) and (D) would be juxtaposed. The second clause of subsection (D) should be moved to subsection (A) with insertion of the limiting phrase "subject to this Rule's restrictions." See Rule 2.10(D), below. Without the limiting phrase, a judge could make public statements that explained court procedures that might reasonably be expected to impair the fairness of a pending matter.</p>
<p>(B) A judge shall not, in connection with cases, controversies, or issues that are likely to come before the court, make pledges, promises, or commitments that are inconsistent with the impartial performance of the adjudicative duties of judicial office.</p>		
<p>(C) A judge shall require court staff, court officials, and others subject to the judge's direction and control to refrain from making statements that the judge would be prohibited from making by paragraphs (A) and (B).</p>	<p>(C) A judge shall require court staff² and court officials and others subject to the judge's direction and control to refrain from making statements that the judge would be prohibited from making by paragraphs Rules 2.10(A) and (B).</p>	<p>Rule 2.10(C) requires judges to prohibit "court staff, court officials, and others subject to the judge's direction and control" from making statements that a judge could not make under the Rule. The limits of "others subject to the judge's direction and control" are unknown, and it would appear that everybody in a courtroom may fall within that definition. Judges, therefore, would have an affirmative duty to control a broad range of persons in every case. A judge's affirmative duty to restrain statements should be limited to court staff and court officials. By deleting the problematic term "others..." a judge's duty to control third persons would not be unduly extended.</p>
		<p>Reference to "paragraph" changed to the relevant "Rule" to be consistent with other such references.</p>

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ABA MODEL CODE CANON/RULE/COMMENTS	PROPOSED REVISION	EXPLANATION
<p>(D) Notwithstanding the restrictions in paragraph (A), a judge may make public statements in the course of official duties, may explain court procedures, and may comment on any proceeding in which the judge is a litigant in a personal capacity.</p>	<p>(D) Notwithstanding the restrictions in paragraph (A), a judge may make public statements in the course of official duties, may explain court procedures, and A judge may comment on any proceeding in which the judge is a litigant in a personal capacity. In cases in which the judge is a litigant in an official capacity, such as a writ of mandamus, the judge must not comment publicly.</p>	<p>The first clause of Rule 2.10(D) has been relocated to 2.10(A) as it addresses situations where a judge is not a litigant.</p> <p>The second clause concerns situations where a judge is a litigant in a personal capacity. When a judge is a litigant in an official capacity, the ability to publicly comment is currently set forth in Comment [2] to Rule 2.10. It appears illogical to apply a binding Rule when the judge is a litigant in a personal capacity and a non-binding Comment when the judge is a litigant in an official capacity; therefore the second sentence of Comment 2 is relocated here.</p>
<p>(E) Subject to the requirements of paragraph (A), a judge may respond directly or through a third party to allegations in the media or elsewhere concerning the judge's conduct in a matter.</p> <p>COMMENT</p> <p>[1] This Rule's restrictions on judicial speech are essential to the maintenance of the independence, integrity, and impartiality of the judiciary.</p> <p>[2] This Rule does not prohibit a judge from commenting on proceedings in which the judge is a litigant in a personal capacity. In cases in which the judge is a litigant in an official capacity, such as a writ of mandamus, the judge must not comment publicly.</p>	<p>(E) Subject to the requirements of [paragraph] Rule 2.10(A), a judge may respond directly or through a third party to allegations in the media or elsewhere concerning the judge's conduct in a matter.</p>	<p>Reference to "paragraph" changed to the relevant "Rule" to be consistent with other such references.</p>
<p>[3] Depending upon the circumstances, the judge should consider whether it may be preferable for a third party, rather than the judge, to respond or issue statements in connection with allegations concerning the judge's conduct in a matter.</p>	<p>[2] This Rule does not prohibit a judge from commenting on proceedings in which the judge is a litigant in a personal capacity. In cases in which the judge is a litigant in an official capacity, such as a writ of mandamus, the judge must not comment publicly.</p>	<p>The first sentence of this Comment is redundant, as Rule 2.10(D) already makes that point. The second sentence, concerning cases in which a judge is a litigant in an official capacity was moved to Rule 2.10(D) because the importance of the proscription merits its inclusion as an enforceable Rule rather than an advisory Comment.</p> <p>In light of the deletion of Comment [2], Comment [3] is renumbered as Comment [2].</p>

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ABA MODEL CODE CANON/RULE/COMMENTS	PROPOSED REVISION	EXPLANATION
<p>RULE 2.11 <i>Disqualification</i></p> <p>(A) A judge shall disqualify himself or herself in any proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to the following circumstances:</p>	<p>RULE 2.11 <i>Disqualification or recusal</i></p> <p>(A) Subject to the rule of necessity, a [A] judge shall disqualify or recuse himself or herself in any proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to the following circumstances:</p>	<p>The addition of "recusal" is consistent with the same change made in other provisions of this Code.</p> <p>Rule 2.11, Comment 3 provides that, "The rule of necessity may override the rule of disqualification." This exception is far too important to be reserved for a Comment and should be incorporated into Rule 2.11. Incorporation would also eliminate the conflict between Rule and Comment. The rule of necessity is a significant concern on the neighbor islands, and it is commonly invoked, particularly with respect to custody matters in criminal cases.</p>
<p>(1) The judge has a personal bias or prejudice concerning a party or a party's lawyer, or personal knowledge of facts that are in dispute in the proceeding.</p>	<p>(1) The judge has a personal bias or prejudice [concerning] for or against a party or a party's lawyer, or personal knowledge of facts that are in dispute in the proceeding.</p>	<p>The proposed revision parallels the language used in HRS § 601-7 and is more precise than the term "concerning."</p>
<p>(2) The judge knows that the judge, the judge's spouse or domestic partner, or a person within the third degree of relationship to either of them, or the spouse or domestic partner of such a person is:</p> <p>(a) a party to the proceeding, or an officer, director, general partner, managing member, or trustee of a party;</p>		
<p>(b) acting as a lawyer in the proceeding;</p>		
<p>(c) a person who has more than a de minimis interest that could be substantially affected by the proceeding; or</p>		
<p>(d) likely to be a material witness in the proceeding.</p>	<p>(d) likely to be a [material] witness in the proceeding.</p>	<p>"Material" in evidence law means anything of relevance. Therefore, the deletion of the term would not change the effect of the Rule, and, arguably, would enhance its application.</p>

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ABA MODEL CODE CANON/RULE/COMMENTS	PROPOSED REVISION	EXPLANATION
<p>(3) The judge knows that he or she, individually or as a fiduciary, or the judge's spouse, domestic partner, parent, or child, or any other member of the judge's family residing in the judge's household, has an economic interest in the subject matter in controversy or in a party to the proceeding.</p>		
<p>(4) The judge knows or learns by means of a timely motion that a party, a party's lawyer, or the law firm of a party's lawyer has within the previous year[s] made aggregate contributions to the judge's campaign in an amount that [is greater than \$[insert amount] for an individual or \$[insert amount] for an entity] [is reasonable and appropriate for an individual or an entity].</p>	<p>(4) Reserved. [The judge knows or learns by means of a timely motion that a party, a party's lawyer, or the law firm of a party's lawyer has within the previous year[s] made aggregate contributions to the judge's campaign in an amount that [is greater than \$[insert amount] for an individual or \$[insert amount] for an entity] [is reasonable and appropriate for an individual or an entity].</p>	<p>This subsection concerns contributions to a judge's campaign, and is thus inapplicable in Hawai'i.</p>
<p>(5) The judge, while a judge or a judicial candidate, has made a public statement, other than in a court proceeding, judicial decision, or opinion, that commits or appears to commit the judge to reach a particular result or rule in a particular way in the proceeding or controversy.</p>		
<p>(6) The judge: (a) served as a lawyer in the matter in controversy, or participated substantially as a lawyer who participated such association;</p>	<p>(6) The judge: (a) served as a lawyer in the matter in controversy, or was associated with a lawyer who participated [substantially] substantively as a lawyer in the matter during such association;</p>	<p>The Committee felt that because an appearance of impropriety is to be avoided to the extent possible, "substantial" participation is a higher threshold of involvement than should be permitted. The term "substantively" is more appropriate, and will still require that a judge's prior participation exceed the level of mere assignment of cases or ministerial approval of documents in order to necessitate disqualification.</p>
<p>(b) served in governmental employment, and in such capacity participated personally and substantially as a lawyer or public official concerning the proceeding, or has publicly expressed in such capacity an opinion concerning the merits of the particular matter in controversy;</p>	<p>(b) served in governmental employment, and in such capacity participated [substantially] substantively as a lawyer or public official concerning the proceeding, or has publicly expressed in such capacity an opinion concerning the merits of the particular matter in controversy;</p>	<p>See explanation for Comment 2.11(A)(6) above.</p>

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<p>(c) was a material witness concerning the matter; or</p>	<p>(c) was a [material] witness concerning the matter; or</p>	<p>“Material” in evidence law means anything of relevance. Therefore, the deletion of the term would not change the effect of the Rule, and, arguably, would enhance its application.</p>
<p>(d) previously presided as a judge over the matter in another court.</p>		
<p>(B) A judge shall keep informed about the judge’s personal and fiduciary economic interests, and make a reasonable effort to keep informed about the personal economic interests of the judge’s spouse or domestic partner and minor children residing in the judge’s household.</p>		
<p>(C) A judge subject to disqualification under this Rule, other than for bias or prejudice under paragraph (A)(1), may disclose on the record the basis of the judge’s disqualification and may ask the parties and their lawyers to consider, outside the presence of the judge and court personnel, whether to waive disqualification. If, following the disclosure, the parties and court personnel, whether to waive disqualification, agree, without participation by the judge or court personnel, that the judge should not be disqualified, the judge may participate in the proceeding. The agreement shall be incorporated into the record of the proceeding.</p>	<p>(C) Waiver of Disqualification or Recusal. A judge [subject to disqualification] disqualified or recused under this Rule, other than for bias or prejudice under [paragraph] Rule 2.11(A)(1) or any other ground mandating disqualification or recusal by law, may disclose on the record the basis of the judge’s disqualification or recusal [and may ask the parties and their lawyers to consider, outside the presence of the judge and court personnel, whether to waive disqualification]. If, following [the] disclosure of any basis for disqualification or recusal other than personal bias or prejudice concerning a party or other ground mandating disqualification or recusal by law, the parties and lawyers [agree], without participation by the judge [or court personnel], all agree that the judge should not be disqualified or recused, and the judge is then willing to participate, the judge may participate in the proceeding. The agreement shall be incorporated in the record of the proceeding.</p>	<p>The addition of the language “or any other ground mandating disqualification or recusal by law” is necessary because HRS §§ 601-7(a)(1) and (2) mandate disqualification under specific circumstances with no allowance for remittal or waiver.</p> <p>Rule 2.11 gives the judge the responsibility to initiate a waiver of disqualification, whereas Canon 3F of the current Hawai’i Code leaves it to the parties to initiate. Judge-initiated waivers present great potential for misuse. Moreover, the current Hawai’i Code is consistent with actual practice in Hawai’i trial courts. Therefore, proposed Rule 2.11(C) is replaced by Canon 3F of the current Hawai’i Code, save use of the term “remittal.” The term “waiver” is preferable to the term “remittal.”</p> <p>The addition of the language “or recusal” is consistent with the same change made in other provisions of this Code.</p> <p>Reference to “paragraph” changed to the relevant “Rule” to be consistent with other such references.</p>

Proposed Revisions to Canon 2 of the 2007 ABA Model Code of Judicial Conduct

ABA MODEL CODE CANON/RULE/COMMENTS	PROPOSED REVISION	EXPLANATION
<p>COMMENT</p> <p>[1] Under this Rule, a judge is disqualified whenever the judge's impartiality might reasonably be questioned, regardless of whether any of the specific provisions of paragraphs (A)(1) through (6) apply. In many jurisdictions, the term "recusal" is used interchangeably with the term "disqualification."</p>	<p>[1] Under this Rule, a judge is disqualified or recused whenever the judge's impartiality might reasonably be questioned, regardless of whether any of the specific provisions of paragraphs Rules 2.11(A)(1) through (6) apply. For example, if a judge were in the process of negotiating for employment with a law firm, the judge would be disqualified from any matters in which that law firm appeared, unless the disqualification was waived by the parties after disclosure by the judge. In many jurisdictions, the term "recusal" is used interchangeably with the term "disqualification."</p>	<p>The addition of the language "or recused" is consistent with the same change made in other provisions of this Code.</p> <p>The Commentary to Canon 3E(1) of the current Hawaii Code provided an example of disqualification based on the appearance of impropriety where a judge negotiated for employment with a law firm. The example is instructive, but not present in the ABA Model Code.</p> <p>The words "or recusal" have been recommended for addition after "disqualification" throughout the Code. Therefore, the last sentence of the Comment is deleted.</p> <p>Reference to "paragraph" changed to the relevant "Rule" to be consistent with other such references.</p>
<p>[2] A judge's obligation not to hear or decide matters in which disqualification is required applies regardless of whether a motion to disqualify is filed.</p>	<p>[2] A judge's obligation not to hear or decide matters in which disqualification is required to disqualify himself or herself under this Rule applies regardless of whether a motion to disqualify is filed.</p>	<p>The phrasing of Comment [2] is confusing. It can be interpreted to mean that a judge cannot hear a motion to disqualify. Such an interpretation would be problematic if the judge is unaware, without the aid of a motion, of circumstances that require his or her disqualification.</p>
<p>[3] The rule of necessity may override the rule of disqualification. For example, a judge might be required to participate in judicial review of a judicial salary statute, or might be the only judge available in a matter requiring immediate judicial action, such as a hearing on probable cause or a temporary restraining order. In matters that require immediate action, the judge must disclose on the record the basis for possible disqualification and make reasonable efforts to transfer the matter to another judge as soon as practicable.</p>	<p>[3] As provided for in Rule 2.11(A), if the rule of necessity may override the rule of disqualification or recusal. For example, a judge might be required to participate in judicial review of a judicial salary statute, or might be the only judge available in a matter requiring immediate judicial action, such as a hearing on probable cause or a temporary restraining order. In matters that require immediate action, the judge must disclose on the record the basis for possible disqualification or recusal and make reasonable efforts to transfer the matter to another judge as soon as practicable.</p>	<p>Rule 2.11, Comment 3 provides that the rule of necessity may trump disqualification under this Rule. This provision is too important to be placed in a non-binding Comment and has been incorporated into Rule 2.11. Thus, this proposed change to Comment [3] is dependent on adoption of the suggested modification to Rule 2.11(A).</p> <p>The addition of the language "or recusal" is consistent with the same change made in other provisions of this Code.</p>

Proposed Revisions to Canon 2 of the 2007 ABA Model Code of Judicial Conduct

ABA MODEL CODE CANON/RULE/COMMENTS	PROPOSED REVISION	EXPLANATION
<p>[4] The fact that a lawyer in a proceeding is affiliated with a law firm with which a relative of the judge is affiliated does not itself disqualify the judge. If, however, the judge's impartiality might reasonably be questioned under paragraph (A), or the relative is known by the judge to have an interest in the law firm that could be substantially affected by the paragraph (A)(2)(c), the judge's disqualification is required.</p>	<p>[4] The fact that a lawyer in a proceeding is affiliated with a law firm with which a relative of the judge is affiliated does not itself disqualify the judge. If, however, the judge's impartiality might reasonably be questioned under [paragraph] Rule 2.11(A), or the relative is known by the judge to have an interest in the law firm that could be substantially affected by the proceeding under [paragraph] Rule 2.11(A)(2)(c), the judge's disqualification or recusal is required.</p>	<p>The addition of the language "or recusal" is consistent with the same change made in other provisions of this Code.</p> <p>Reference to "paragraph" changed to the relevant "Rule" to be consistent with other such references.</p>
<p>[5] A judge should disclose on the record information that the judge believes the parties or their lawyers might reasonably consider relevant to a possible motion for disqualification, even if the judge believes there is no basis for disqualification.</p>	<p>[5] A judge should disclose on the record information that the judge believes the parties or their lawyers might reasonably consider relevant to a possible motion for disqualification, even if the judge believes there is no basis for disqualification.</p>	
<p>[6] "Economic interest," as set forth in the Terminology section, means ownership of more than a de minimis legal or equitable interest. Except for situations in which a judge participates in the management of such a legal or equitable interest, or the interest could be substantially affected by the outcome of a proceeding before a judge, it does not include:</p> <ul style="list-style-type: none"> (1) an interest in the individual holdings within a mutual or common investment fund; (2) an interest in securities held by an educational, religious, charitable, fraternal, or civic organization in which the judge or the judge's spouse, domestic partner, parent, or child serves as a director, officer, advisor, or other participant; (3) a deposit in a financial institution or deposits or proprietary interests the judge may maintain as a member of a mutual savings association or credit union, or similar proprietary interests; or (4) an interest in the issuer of government securities held by the judge. 	<p>[6] "Economic interest," [as set forth] is defined in the Terminology section. [] means ownership of more than a de minimis legal or equitable interest. Except for situations in which a judge participates in the management of such a legal or equitable interest, or the interest could be substantially affected by the outcome of a proceeding before a judge, it does not include:</p> <ul style="list-style-type: none"> — (1) an interest in the individual holdings within a mutual or common investment fund; — (2) an interest in securities held by an educational, religious, charitable, fraternal, or civic organization in which the judge or the judge's spouse, domestic partner, parent, or child serves as a director, officer, advisor, or other participant; — (3) a deposit in a financial institution or deposits or proprietary interests the judge may maintain as a member of a mutual savings association or credit union, or similar proprietary interests; or — (4) an interest in the issuer of government securities held by the judge. 	<p>Including the definition of "economic interest" in the Comments section is redundant and inconsistent with the manner in which other defined words are treated in the Code.</p>

Proposed Revisions to Canon 2 of the 2007 ABA Model Code of Judicial Conduct

ABA MODEL CODE CANON/RULE/COMMENTS	PROPOSED REVISION	EXPLANATION
<p>[1] A [revisi] waiver procedure provides the parties an opportunity to proceed without delay if they wish to waive the disqualification or recusal. To assure that consideration of the question of [revisi] waiver is made independently of the judge, a judge must not solicit, seek or hear comment on possible [revisi]-of-waiver of the disqualification or recusal unless the lawyers jointly propose [revisi] waiver after consultation as provided in the Rule. A party may act through counsel if counsel represents on the record that the party has been consulted and consents. As a practical matter, a judge may wish to have all parties and their lawyers sign the [revisi] waiver agreement.</p>	<p>[1] A [revisi] waiver procedure provides the parties an opportunity to proceed without delay if they wish to waive the disqualification or recusal. To assure that consideration of the question of [revisi] waiver is made independently of the judge, a judge must not solicit, seek or hear comment on possible [revisi]-of-waiver of the disqualification or recusal unless the lawyers jointly propose [revisi] waiver after consultation as provided in the Rule. A party may act through counsel if counsel represents on the record that the party has been consulted and consents. As a practical matter, a judge may wish to have all parties and their lawyers sign the [revisi] waiver agreement.</p>	<p>In light of the Committee's recommendation to retain Canon 3F of the current Hawai'i Code regarding the waiver/remittal procedure for a judge's disqualification in Rule 2.10(C), adoption of the commentary to Canon 3F is also appropriate and its text is incorporated in a new Comment [7].</p> <p>As to this revision, bracketed text indicates deletions from the commentary to Canon 3F; underscored text indicates additions; italicized text indicates recommended changes made to the commentary to Canon 3F.</p> <p>The addition of the language "or recusal" is consistent with the same change made in other provisions of this Code. Again, the Committee prefers the term "waiver" in lieu of "remittal."</p>
<p>RULE 2.12 <i>Supervisory Duties</i></p> <p>(A) A judge shall require court staff, court officials, and others subject to the judge's direction and control to act in a manner consistent with the judge's obligations under this Code.</p> <p>(B) A judge with supervisory authority for the performance of other judges shall take reasonable measures to ensure that those judges properly discharge their judicial responsibilities, including the prompt disposition of matters before them.</p>	<p>(A) A judge shall require court staff[,] and court officials[,] and others] subject to the judge's direction and control to act in a manner consistent with the judge's obligations under this Code.</p>	<p>As described more fully in the discussion of Rule 2.10(C), the phrase "and others subject to the judge's direction and control" is problematic due to its breadth.</p>
<p>COMMENT</p> <p>[1] A judge is responsible for his or her own conduct and for the conduct of others, such as staff, when those persons are acting at the judge's direction or control. A judge may not direct court personnel to engage in conduct on the judge's behalf or as the judge's representative when such conduct would violate the Code if undertaken by the judge.</p>	<p>[1] A judge is responsible for his or her own conduct and for the conduct of [others, such-as] court staff [.] and court officials when those persons are acting at the judge's direction or control. A judge may not direct court personnel to engage in conduct on the judge's behalf or as the judge's representative when such conduct would violate the Code if undertaken by the judge.</p>	<p>As described more fully in the discussion of Rule 2.10(C), the term "others" is problematic due to its breadth.</p>

Proposed Revisions to Canon 2 of the 2007 ABA Model Code of Judicial Conduct

ABA MODEL CODE/CANON/RULE/COMMENTS	PROPOSED REVISION	EXPLANATION
<p>[2] Public confidence in the judicial system depends upon timely justice. To promote the efficient administration of justice, a judge with supervisory authority must take the steps needed to ensure that judges under his or her supervision administer their workloads promptly.</p>		
<p>RULE 2.13 <i>Administrative Appointments</i></p> <p>(A) In making administrative appointments, a judge:</p> <p>(1) shall exercise the power of appointment impartially and on the basis of merit; and</p> <p>(2) shall avoid nepotism, favoritism, and unnecessary appointments.</p>		
<p>(B) A judge shall not appoint a lawyer to a position if the judge either knows that the lawyer, or the lawyer's spouse or domestic partner, has contributed more than \$[insert amount] within the prior [insert number] year[s] to the judge's election campaign, or learns of such a contribution by means of a timely motion by a party or other person properly interested in the matter, unless:</p> <p>(1) the position is substantially uncompensated;</p> <p>(2) the lawyer has been selected in rotation from a list of qualified and available lawyers compiled without regard to their having made political contributions; or</p> <p>(3) the judge or another presiding or administrative judge affirmatively finds that no other lawyer is willing, competent, and able to accept the position.</p> <p>(C) A judge shall not approve compensation of appointees beyond the fair value of services rendered.</p>	<p>(B) Reserved. [A judge shall not appoint a lawyer to a position if the judge either knows that the lawyer, or the lawyer's spouse or domestic partner, has contributed more than \$[insert amount] within the prior [insert number] year[s] to the judge's election campaign, or learns of such a contribution by means of a timely motion by a party or other person properly interested in the matter, unless:</p> <p>(1) the position is substantially uncompensated;</p> <p>(2) the lawyer has been selected in rotation from a list of qualified and available lawyers compiled without regard to their having made political contributions; or</p> <p>(3) the judge or another presiding or administrative judge affirmatively finds that no other lawyer is willing, competent, and able to accept the position.]</p>	<p>Rule 2.13(B) concerns judicial elections, but since Hawaii does not permit judicial elections, the Rule is deleted.</p>

Proposed Revisions to Canon 2 of the 2007 ABA Model Code of Judicial Conduct

ABA MODEL CODE/CANON/RULE/COMMENTS	PROPOSED REVISION	EXPLANATION
<p>COMMENT</p> <p>[1] Appointees of a judge include assigned counsel, officials such as referees, commissioners, special masters, receivers, and guardians, and personnel such as clerks, secretaries, and bailiffs. Consent by the parties to an appointment or an award of compensation does not relieve the judge of the obligation prescribed by paragraph (A).</p>	<p>[1] Appointees of a judge include assigned counsel, officials such as referees, commissioners, special masters, receivers, and guardians, and personnel such as clerks, secretaries, and bailiffs. Consent by the parties to an appointment or an award of compensation does not relieve the judge of the obligation prescribed by [paragraph] Rule 2.13(A).</p>	<p>Reference to "paragraph" changed to the relevant "Rule" to be consistent with other such references.</p>
<p>[2] Unless otherwise defined by law, nepotism is the appointment or hiring of any relative within the third degree of spouse or domestic partner, or the spouse or domestic partner of such relative.</p>	<p>[2] Unless otherwise defined by law For the purposes of this Rule, nepotism is the appointment [or hiring] of any relative who falls within the third degree of relationship of [either the judge or the judge's spouse or domestic partner, or the spouse or domestic partner of such relative] a judge, a member of a judge's family, or a member of a judge's family residing in the judge's household.</p>	<p>First, the term "unless otherwise defined by law" puts a burden on readers of the Code to review applicable law related to the definition of "nepotism." Second, use of the term "hiring" seems inconsistent with the previous Comment, in which personnel that are normally understood as being "hired" are termed "appointees." Third, "nepotism" should be defined by using terms contained within the Terminology section of the Code instead of by creating a new class of persons within this Comment.</p>
<p>[3] The rule against making administrative appointments of lawyers who have contributed in excess of a specified dollar amount to a judge's election campaign includes an exception for positions that are substantially uncompensated, such as those for which the lawyer's compensation is limited to reimbursement for out-of-pocket expenses.</p>	<p>[3] The rule against making administrative appointments of lawyers who have contributed in excess of a specified dollar amount to a judge's election campaign includes an exception for positions that are substantially uncompensated, such as those for which the lawyer's compensation is limited to reimbursement for out-of-pocket expenses.]</p>	<p>Rule 2.13, Comment [3] is deleted as it involves judicial elections.</p>
<p>RULE 2.14 <i>Disability and Impairment</i></p> <p>A judge having a reasonable belief that the performance of a lawyer or another judge is impaired by drugs or alcohol, or by a mental, emotional, or physical condition, shall take appropriate action, which may include a confidential referral to a lawyer or judicial assistance program.</p>		

Proposed Revisions to Canon 2 of the 2007 ABA Model Code of Judicial Conduct

ABA MODEL CODE CANON/RULE/COMMENTS	PROPOSED REVISION	EXPLANATION
<p>COMMENT</p> <p>[1] "Appropriate action" means action intended and reasonably likely to help the judge or lawyer in question address the problem and prevent harm to the justice system. Depending upon the circumstances, appropriate action may include but is not limited to speaking directly to the impaired person, notifying an individual with supervisory responsibility over the impaired person, or making a referral to an assistance program.</p>		
<p>[2] Taking or initiating corrective action by way of referral to an assistance program may satisfy a judge's responsibility under this Rule. Assistance programs have many approaches for offering help to impaired judges and lawyers, such as intervention, counseling, or referral to appropriate health care professionals. Depending upon the gravity of the conduct that has come to the judge's attention, however, the judge may be required to take other action, such as reporting the impaired judge or lawyer to the appropriate authority, agency, or body. See Rule 2.15.</p>		
<p>RULE 2.15 <i>Responding to Judicial and Lawyer Misconduct</i></p> <p>(A) A judge having knowledge that another judge has committed a violation of this Code that raises a substantial question regarding the judge's honesty, trustworthiness, or fitness as a judge in other respects shall inform the appropriate authority.</p> <p>(B) A judge having knowledge that a lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial question regarding the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects shall inform the appropriate authority.</p>		

Proposed Revisions to Canon 2 of the 2007 ABA Model Code of Judicial Conduct

ABA MODEL CODE CANON/RULE/COMMENT IS	PROPOSED REVISION	EXPLANATION
<p>(C) A judge who receives information indicating a substantial likelihood that another judge has committed a violation of this Code shall take appropriate action.</p> <p>(D) A judge who receives information indicating a substantial likelihood that a lawyer has committed a violation of the Rules of Professional Conduct shall take appropriate action.</p>	<p>(C) A judge who receives credible information indicating a substantial likelihood that another judge has committed a violation of this Code shall take appropriate action.</p> <p>(D) A judge who receives credible information indicating a substantial likelihood that a lawyer has committed a violation of the Hawai'i Rules of Professional Conduct shall take appropriate action.</p>	<p>The Committee reviewed Indiana's proposed changes to the ABA Model Code and looked favorably on its addition of the term "credible" in qualifying the information a judge receives that is sufficient to take appropriate action. Also, subsection (D) should cite specifically to the Hawai'i Rules of Professional Conduct.</p>
<p>COMMENT</p> <p>[1] Taking action to address known misconduct is a judge's obligation. Paragraphs (A) and (B) impose an obligation on the judge to report to the appropriate disciplinary authority the known misconduct of another judge or a lawyer that raises a substantial question regarding the honesty, trustworthiness, or fitness of that judge or lawyer. Ignoring or denying known misconduct among one's judicial colleagues or members of the legal profession undermines a judge's responsibility to participate in efforts to ensure public respect for the justice system. This Rule limits the reporting obligation to those offenses that an independent judiciary must vigorously endeavor to prevent.</p>	<p>[1] Taking action to address known misconduct is a judge's obligation. [Paragraphs] Rules 2.15(A) and (B) impose an obligation on the judge to report to the appropriate [disciplinary] authority the known misconduct of another judge or a lawyer that raises a substantial question regarding the honesty, trustworthiness, or fitness of that judge or lawyer. Ignoring or denying known misconduct among one's judicial colleagues or members of the legal profession undermines a judge's responsibility to participate in efforts to ensure public respect for the justice system. This Rule limits the reporting obligation to [these offenses] misconduct that an independent judiciary must vigorously endeavor to prevent.</p>	<p>The term "disciplinary" is unnecessary; "appropriate authority" is defined in the Terminology section of the Code in applicable part as "the authority having responsibility for initiation of the disciplinary process [.]"</p> <p>The term "those offenses" is ambiguous and may be unnecessarily limiting; "misconductor" is more suitable and is consistent with the language in the Comment.</p> <p>Reference to "paragraph" changed to the relevant "Rule" to be consistent with other such references.</p>

Proposed Revisions to Canon 2 of the 2007 ABA Model Code of Judicial Conduct

ABA MODEL CODE/CANON/RULE/COMMENT	PROPOSED REVISION	EXPLANATION
<p>[2] A judge who does not have actual knowledge that another judge or a lawyer may have committed misconduct, but receives information indicating a substantial likelihood of such misconduct, is required to take appropriate action under paragraphs (C) and (D). Appropriate action may include, but is not limited to, communicating directly with the judge who may have violated this Code, communicating with a supervising judge, or reporting the suspected violation to the appropriate authority or other agency or body. Similarly, actions to be taken in response to information indicating that a lawyer has committed a violation of the Rules of Professional Conduct may include but are not limited to communicating directly with the lawyer who may have committed the violation, or reporting the suspected violation to the appropriate authority or other agency or body.</p>	<p>[2] A judge who does not have actual knowledge that another judge or a lawyer may have committed misconduct, but receives <u>credible</u> information indicating a substantial likelihood of such misconduct, is required to take appropriate action under [paragraphs] Rules 2.15(C) and (D). Appropriate action may include, but is not limited to, communicating directly with the judge who may have violated this Code, communicating with a supervising judge, or reporting the suspected violation to the appropriate authority or other agency or body. Similarly, actions to be taken in response to <u>credible</u> information indicating that a lawyer has committed a violation of the <u>Hawai'i</u> Rules of Professional Conduct may include but are not limited to communicating directly with the lawyer who may have committed the violation, or reporting the suspected violation to the appropriate authority or other agency or body.</p>	<p>The Committee reviewed Indiana's proposed changes to the ABA Model Code and looked favorably on its addition of the term "credible" in qualifying the information a judge receives that is sufficient to take appropriate action. Also, specific reference to the Hawai'i Rules of Professional Conduct is required. These changes parallel the revisions made to Rule 2.15(C) and (D). Reference to "paragraph" changed to the relevant "Rule" to be consistent with other such references.</p>
<p>RULE 2.16 <i>Cooperation with Disciplinary Authorities</i> (A) A judge shall cooperate and be candid and honest with judicial and lawyer disciplinary agencies. (B) A judge shall not retaliate, directly or indirectly, against a person known or suspected to have assisted or cooperated with an investigation of a judge or a lawyer.</p>	<p>[1] Cooperation with investigations and proceedings of judicial and lawyer discipline agencies, as required in [paragraph] Rule 2.16(A), instills confidence in a judge's [judges'] commitment to the integrity of the judicial system and the protection of the public.</p>	<p>Reference to "paragraph" changed to the relevant "Rule" to be consistent with other such references. The text is modified to replace the plural form with the singular form.</p>
<p>COMMENT [1] Cooperation with investigations and proceedings of judicial and lawyer discipline agencies, as required in paragraph (A), instills confidence in judges' commitment to the integrity of the judicial system and the protection of the public.</p>	<p>[1] Cooperation with investigations and proceedings of judicial and lawyer discipline agencies, as required in [paragraph] Rule 2.16(A), instills confidence in a judge's [judges'] commitment to the integrity of the judicial system and the protection of the public.</p>	<p>Reference to "paragraph" changed to the relevant "Rule" to be consistent with other such references. The text is modified to replace the plural form with the singular form.</p>

Proposed Revisions to Canon 3 of the 2007 ABA Model Code of Judicial Conduct

ABA CANON/RULE/COMMENTS	PROPOSED REVISION	EXPLANATION
<p>CANON 3</p> <p>A JUDGE SHALL CONDUCT THE JUDGE'S PERSONAL AND EXTRAJUDICIAL ACTIVITIES TO MINIMIZE THE RISK OF CONFLICT WITH THE OBLIGATIONS OF JUDICIAL OFFICE.</p>	<p>A JUDGE SHALL CONDUCT THE JUDGE'S PERSONAL AND EXTRAJUDICIAL ACTIVITIES TO MINIMIZE THE RISK OF CONFLICT WITH THE [OBLIGATIONS] DUTIES OF JUDICIAL OFFICE.</p>	<p>As explained in regard to Rule 2.1, the term "Duties", is used throughout the ABA Model Code. To be consistent, the term "Duties" was substituted for the term "Obligations".</p>
<p>RULE 3.1</p> <p><i>Extrajudicial Activities in General</i></p> <p>A judge may engage in extrajudicial activities, except as prohibited by law or this Code. However, when engaging in extrajudicial activities, a judge shall not:</p>	<p>A judge may engage in law-related and other extrajudicial activities, except as prohibited by law or this Code. However, when engaging in extrajudicial activities, a judge shall not:</p>	<p>Adding "law-related and other" makes the rule consistent with the comments, which recognize both law-related and other types of extrajudicial activities in which judges may participate.</p>
<p>(A) participate in activities that will interfere with the proper performance of the judge's judicial duties;</p>	<p>(A) participate in activities that will interfere with the proper performance of the [judge's-judicial] duties of judicial offices;</p>	<p>The revision provides consistency with the language of Canon 3, i.e. "duties of judicial office".</p>
<p>(B) participate in activities that will lead to frequent disqualification of the judge;</p>	<p>(B) participate in activities that will lead to frequent disqualification or recusal of the judge;</p>	<p>See explanation with regard to Canon 2.</p>
<p>(C) participate in activities that would appear to a reasonable person to undermine the judge's independence, integrity, or impartiality;</p>		
<p>(D) engage in conduct that would appear to a reasonable person to be coercive; or</p>		
<p>(E) make use of court premises, staff, stationery, equipment, or other resources, except for incidental use for activities that concern the law, the legal system, or the administration of justice, or unless such additional use is permitted by law.</p>	<p>(E) make use of court premises, staff, stationery, equipment, or other resources, except for incidental use for activities that concern the law, the legal system, or the administration of justice, or unless such additional use is permitted by law, administrative rule or administrative policy.</p>	<p>As currently written, this rule would prohibit a judge from even using a telephone in the judge's chambers to call a spouse or to make a non-court-related appointment. The revision recognizes that the Chief Justice and the Office of the Administrative Director of the Courts may provide guidance in this area.</p>

Proposed Revisions to Canon 3 of the 2007 ABA Model Code of Judicial Conduct

ABA CANON/RULE/COMMENTS	PROPOSED REVISION	EXPLANATION
<p>COMMENT</p> <p>[1] To the extent that time permits, and judicial independence and impartiality are not compromised, judges are encouraged to engage in appropriate extrajudicial activities. Judges are uniquely qualified to engage in extrajudicial activities that concern the law, the legal system, and the administration of justice, such as by speaking, writing, teaching, or participating in scholarly research projects. In addition, judges are permitted and encouraged to engage in educational, religious, charitable, fraternal or civic extrajudicial activities not conducted for profit, even when the activities do not involve the law. See Rule 3.7.</p>		
<p>[2] Participation in both law related and other extrajudicial activities helps integrate judges into their communities, and furthers public understanding of and respect for courts and the judicial system.</p>	<p>[2] Participation in both law related and other extrajudicial activities helps integrate judges into their communities, and furthers public understanding of and respect for courts and the judicial system.</p>	<p>The revision clarifies that extrajudicial activities encompass both law-related and other activities.</p>
<p>[3] Discriminatory actions and expressions of bias or prejudice by a judge, even outside the judge's official or judicial actions, are likely to appear to a reasonable person to call into question the judge's integrity and impartiality. Examples include that demean individuals based upon their race, sex, gender, religion, national origin, ethnicity, disability, age, sexual orientation, or socioeconomic status. For the same reason, a judge's extrajudicial activities must not be conducted in connection or affiliation with an organization that practices invidious discrimination. See Rule 3.6.</p>	<p>[3] Discriminatory actions and expressions of bias or prejudice by a judge, even outside the judge's official or judicial actions duties of judicial office, are likely to appear to a reasonable person to call into question the judge's integrity and impartiality. Examples include jokes or other remarks that demean individuals based upon their race, sex, gender, religion, national origin, marital status, political affiliation, ethnicity, disability, age, sexual orientation, or socioeconomic status. For the same reason, a judge's extrajudicial activities must not be conducted in connection or affiliation with an organization that practices invidious discrimination. See Rule 3.6.</p>	<p>Changed to be consistent with Rule 2.3(B).</p>

Proposed Revisions to Canon 3 of the 2007 ABA Model Code of Judicial Conduct

ABA CANON/RULE/COMMENTS	PROPOSED REVISION	EXPLANATION
<p>[4] While engaged in permitted extrajudicial activities, judges must not coerce others or take action that would reasonably be perceived as coercive. For example, depending upon the circumstances, a judge's solicitation of contributions or memberships for an organization, even as permitted by Rule 3.7(A), might create the risk that the person solicited would feel favorably, or would do so to curry favor with the judge.</p>	<p>[4] While engaged in permitted extrajudicial activities, judges must not coerce others or take action that would reasonably be perceived as coercive. For example, depending upon the circumstances, a judge's solicitation of contributions or memberships [for] on behalf of an organization, even as permitted by Rule 3.7(A), [might] may create the risk that the person solicited would feel obligated to respond favorably, or would [do so] respond in a manner so as to curry favor with the judge.</p>	<p>Changes are stylistic and for clarification.</p>
<p>RULE 3.2 <i>Appearances before Governmental Bodies and Consultation with Government Officials</i></p> <p>A judge shall not appear voluntarily at a public hearing before, or otherwise consult with, an executive or a legislative body or official, except:</p>		
<p>(A) in connection with matters concerning the law, the legal system, or the administration of justice;</p>		
<p>(B) in connection with matters about which the judge acquired knowledge or expertise in the course of the judge's judicial duties; or</p>	<p>(B) in connection with matters about which the judge acquired knowledge or expertise in the course of the [judge's judicial] duties of judicial office; or</p>	<p>The revision provides consistency with the revised language of Canon 3, i.e. "duties of judicial office".</p>
<p>(C) when the judge is acting pro se in a matter involving the judge's legal or economic interests, or when the judge is acting in a fiduciary capacity.</p>		
<p>COMMENT</p> <p>[1] Judges possess special expertise in matters of law, the legal system, and the administration of justice, and may properly share that expertise with governmental bodies and executive or legislative branch officials.</p>	<p>[1] Judges possess special expertise in matters of law, the legal system, and the administration of justice, and may properly share that expertise with [governmental bodies and] executive or legislative [branch] bodies or officials.</p>	<p>Language revised to be consistent with the rule.</p>

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ABA CANON/RULE COMMENTS	PROPOSED REVISION	EXPLANATION
<p>[2] In appearing before governmental bodies or consulting with government officials, judges must be mindful that they remain subject to other provisions of this Code, such as Rule 1.3, prohibiting judges from using the prestige of office to advance their own or others' interests, Rule 2.10, governing public comment on pending and impending matters, and Rule 3.1(C), prohibiting judges from engaging in extrajudicial activities that would appear to a reasonable person to undermine the judge's independence, integrity, or impartiality.</p>		
<p>[3] In general, it would be an unnecessary and unfair burden to prohibit judges from appearing before governmental bodies or consulting with government officials on matters that are likely to affect them as private citizens, such as zoning proposals affecting their real property. In engaging in such activities, however, judges must not refer to their judicial positions, and must otherwise exercise caution to avoid using the prestige of judicial office.</p>		
<p>RULE 3.3 <i>Testifying as a Character Witness</i></p> <p>A judge shall not testify as a character witness in a judicial, administrative, or other adjudicatory proceeding or otherwise vouch for the character of a person in a legal proceeding, except when duly summoned.</p>	<p>A judge shall not testify as a character witness in a judicial, administrative, or other adjudicatory proceeding or otherwise vouch for the character of a person in a legal proceeding, except when duly summoned. <u>Unless there are unusual circumstances where the demands of justice require, a judge should discourage a party from requiring the judge to testify as a character witness</u></p>	<p>The added part is being moved from comment 1 to the Rule because the comment restricts the Rule.</p>
<p>COMMENT</p> <p>[1] A judge who, without being subpoenaed, testifies as a character witness abuses the prestige of judicial office to advance the interests of another. See Rule 1.3. Except in unusual circumstances where the demands of justice require, a judge should discourage a party from requiring the judge to testify as a character witness.</p>	<p>[1] A judge who, without being subpoenaed, testifies as a character witness [abuses] lends or misuses the prestige of judicial office to advance the interests of another. See Rule 1.3. Except in unusual circumstances where the demands of justice require, a judge should discourage a party from requiring the judge to testify as a character witness.</p>	<p>Similar language added to Rule 3.3.</p>

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ABA CANON/RULE/COMMENTS	PROPOSED REVISION	EXPLANATION
<p>RULE 3.4 <i>Appointments to Governmental Positions</i></p> <p>A judge shall not accept appointment to a governmental committee, board, commission, or other governmental position, unless it is one that concerns the law, the legal system, or the administration of justice.</p>	<p>A judge shall not accept appointment to a governmental committee, board, commission, or other governmental position, unless it the subject matter of the appointment or position is one that concerns the law, the legal system, or the administration of justice.</p>	<p>Clarification.</p>
<p>COMMENT</p> <p>[1] Rule 3.4 implicitly acknowledges the value of judges accepting appointments to entities that concern the law, the legal system, or the administration of justice. Even in such instances, however, a judge should assess the appropriateness of accepting an appointment, paying particular attention to the subject matter of the appointment and the availability and allocation of judicial resources, including the judge's time commitments, and giving due regard to the requirements of the independence and impartiality of the judiciary.</p>	<p>[1] Rule 3.4 implicitly acknowledges the value of judges accepting appointments to entities positions that concern the law, the legal system, or the administration of justice. Even in such instances, however, a judge should assess the appropriateness of accepting an appointment, paying particular attention to the subject matter of the appointment and the availability and allocation of judicial resources, including the judge's time commitments, and giving due regard to the requirements of the independence and impartiality of the judiciary.</p>	<p>Clarification.</p>
<p>[2] A judge may represent his or her country, state, or locality on ceremonial occasions or in connection with historical, educational, or cultural activities. Such representation does not constitute acceptance of a government position.</p>		
<p>RULE 3.5 <i>Use of Nonpublic Information</i></p> <p>A judge shall not intentionally disclose or use nonpublic information acquired in a judicial capacity for any purpose unrelated to the judge's judicial duties.</p>	<p>A judge shall not intentionally knowingly disclose or use nonpublic information acquired in a judicial capacity for any purpose unrelated to the judge's judicial duties of judicial office.</p>	<p>"Knowingly" replaces "intentionally" because there is a definition for "knowingly" in the terminology section. The other revision provides consistency with the revised language of Canon 3, i.e. "duties of judicial office".</p>
<p>COMMENT</p> <p>[1] In the course of performing judicial duties, a judge may acquire information of commercial or other value that is unavailable to the public. The judge must not reveal or use such information for personal gain or for any purpose unrelated to his or her judicial duties.</p>	<p>[1] In the course of performing the duties of judicial office entities, a judge may acquire information of commercial or other value that is unavailable to the public. The judge must not reveal or use such information for personal gain or for any purpose unrelated to his or her judicial the duties of judicial office.</p>	<p>The revision provides consistency with the revised language of Canon 3, i.e. "duties of judicial office".</p>

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ABA CANON/RULE/COMMENTS	PROPOSED REVISION	EXPLANATION
<p>[2] This rule is not intended, however, to affect a judge's ability to act on information as necessary to protect the health or safety of the judge or a member of a judge's family, court personnel, or other judicial officers if consistent with other provisions of this Code.</p>	<p>[2] This rule is not intended [however,] to affect a judge's ability to act on information as necessary to protect the health or safety of the judge or any other person [a member of a judge's family, court personnel, or other judicial officers] if consistent with other provisions of this Code.</p>	<p>Stylistic change. The Committee saw no reason to prevent a judge from acting on information as necessary to protect the health or safety of any person.</p>
<p>RULE 3.6 <i>Affiliation with Discriminatory Organizations</i> (A) A judge shall not hold membership in any organization that practices invidious discrimination on the basis of race, sex, gender, religion, national origin, ethnicity, or sexual orientation.</p>	<p>(A) A judge shall not hold membership in any organization that practices invidious discrimination on the basis of race, sex, gender, religion, national origin, marital status, political affiliation, ethnicity, [ex] disability, age, sexual orientation, or socioeconomic status.</p>	<p>Changed to be consistent with Rule 2.3(B).</p>
<p>(B) A judge shall not use the benefits or facilities of an organization if the judge knows or should know that the organization practices invidious discrimination on one or more of the bases identified in paragraph (A). A judge's attendance at an event in a facility of an organization that the judge is not permitted to join is not a violation of this Rule when the judge's attendance is an isolated event that could not reasonably be perceived as an endorsement of the organization's practices.</p>	<p>(B) A judge shall not use the benefits or facilities of an organization if the judge knows or should know that the organization practices invidious discrimination on one or more of the bases identified in [paragraph] Rule 3.6(A). A judge's attendance at an event in a facility of an organization that the judge is not permitted to join is not a violation of this Rule when the judge's attendance is an isolated event that could not reasonably be perceived as an endorsement of the organization's practices.</p>	<p>Reference to "paragraph" changed to the relevant "Rule" to be consistent with other such references.</p>
<p>COMMENT [1] A judge's public manifestation of approval of invidious discrimination on any basis gives rise to the appearance of impropriety and diminishes public confidence in the integrity and impartiality of the judiciary. A judge's membership in an organization that practices invidious discrimination creates the perception that the judge's impartiality is impaired.</p>		

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ABA CANON/RULE/COMMENTS	PROPOSED REVISION	EXPLANATION
<p>[2] An organization is generally said to discriminate invidiously if it arbitrarily excludes from membership on the basis of race, sex, gender, religion, national origin, ethnicity, or sexual orientation persons who would otherwise be eligible for admission. Whether an organization practices invidious discrimination is a complex question to which judges should be attentive. The answer cannot be determined from a mere examination of an organization's current membership rolls, but rather, depends upon how the organization selects members, as well as other relevant factors, such as whether the organization is dedicated to the preservation of religious, ethnic, or cultural values of legitimate common interest to its members, or whether it is an intimate, purely private organization whose membership limitations could not constitutionally be prohibited.</p>	<p>[2] An organization is generally said to discriminate invidiously if it arbitrarily excludes from membership on the basis of race, sex, gender, religion, national origin, marital status, political affiliation, ethnicity, disability, age, [or] sexual orientation, socioeconomic status, or persons who would otherwise be eligible for admission. Whether an organization practices invidious discrimination is a complex question to which judges should be attentive. The answer cannot be determined from a mere examination of an organization's current membership rolls, but rather, depends upon how the organization selects members, as well as other relevant factors, such as whether the organization is dedicated to the preservation of religious, ethnic, or cultural values of legitimate common interest to its members, or whether it is an intimate, purely private organization whose membership limitations could not constitutionally be prohibited.</p>	<p>Changed to be consistent with Rule 2.3(B).</p>
<p>[3] When a judge learns that an organization to which the judge belongs engages in invidious discrimination, the judge must resign immediately from the organization.</p>		
<p>[4] A judge's membership in a religious organization as a lawful exercise of the freedom of religion is not a violation of this Rule.</p>		
<p>[5] This Rule does not apply to national or state military service.</p>		

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ABA CANON/RULE/COMMENTS	PROPOSED REVISION	EXPLANATION
<p>RULE 3.7 <i>Participation in Educational, Religious, Charitable, Fraternal, or Civic Organizations and Activities</i> (A) Subject to the requirements of Rule 3.1, a judge may participate in activities sponsored by organizations or governmental entities concerned with the law, the legal system, or the administration of justice, and those sponsored by or on behalf of educational, religious, charitable, fraternal, or civic organizations not conducted for profit, including but not limited to the following activities:</p>	<p>(1) assisting such an organization or entity in planning related to fund-raising, and participating in the management and investment of the organization's or entity's funds;</p>	<p>Clarification and better readability. The addition of "volunteering services or goods at fund-raising events" is based on the Proposed Indiana Judicial Code, and clarifies that a judge may participate in some charitable fund-raising activities (see examples in Comment [3]), as long as the judge does so without using the judge's title.</p>
<p>(2) soliciting contributions for such an organization or entity, but only from members of the judge's family, or from judges over whom the judge does not exercise supervisory or appellate authority;</p>	<p>(1) assisting such an organization or entity in planning related to fund-raising for the organization or entity, and volunteering, without attribution of title, services or goods at fund-raising events, and participating in the management and investment of the organization's or entity's funds;</p>	<p>As originally worded, the Rule would prohibit mere attendance by a judge at a fund-raising event sponsored by an educational, religious, charitable, fraternal or civic organization, contrary to the apparent purpose of the Rule as stated in Comment [3]. The deletion of "appearing or" provides consistency between Rule 3.7(A)(4) and Comment [3]. This Rule remains "[s]ubject to the requirements of Rule 3.1," which provides appropriate guidance.</p>
<p>(3) soliciting membership for such an organization or entity, even though the membership dues or fees generated may be used to support the objectives of the organization or entity, but only if the organization or entity is concerned with the law, the legal system, or the administration of justice;</p>	<p>(4) appearing at speaking at, receiving an award or other recognition at, being featured on the program of, and permitting his or her title to be used in connection with an event of such an organization or entity, but if the event serves a fund-raising purpose, the judge may participate only if the event concerns the law, the legal system, or the administration of justice;</p>	<p>As originally worded, the Rule would prohibit mere attendance by a judge at a fund-raising event sponsored by an educational, religious, charitable, fraternal or civic organization, contrary to the apparent purpose of the Rule as stated in Comment [3]. The deletion of "appearing or" provides consistency between Rule 3.7(A)(4) and Comment [3]. This Rule remains "[s]ubject to the requirements of Rule 3.1," which provides appropriate guidance.</p>
<p>(4) appearing or speaking at, receiving an award or other recognition at, being featured on the program of, and permitting his or her title to be used in connection with an event of such an organization or entity, but if the event serves a fund-raising purpose, the judge may participate only if the event concerns the law, the legal system, or the administration of justice;</p>	<p>(4) appearing at speaking at, receiving an award or other recognition at, being featured on the program of, and permitting his or her title to be used in connection with an event of such an organization or entity, but if the event serves a fund-raising purpose, the judge may participate only if the event concerns the law, the legal system, or the administration of justice;</p>	<p>As originally worded, the Rule would prohibit mere attendance by a judge at a fund-raising event sponsored by an educational, religious, charitable, fraternal or civic organization, contrary to the apparent purpose of the Rule as stated in Comment [3]. The deletion of "appearing or" provides consistency between Rule 3.7(A)(4) and Comment [3]. This Rule remains "[s]ubject to the requirements of Rule 3.1," which provides appropriate guidance.</p>

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ABA CANON/RULE/COMMENTS	PROPOSED REVISION	EXPLANATION
<p>(5) making recommendations to such a public or private fund granting organization or entity in connection with its programs and activities, but only if the organization or entity is concerned with the law, the legal system, or the administration of justice; and</p> <p>(6) serving as an officer, director, trustee, or nonlegal advisor of such an organization or entity, unless it is likely that the organization or entity:</p> <p>(a) will be engaged in proceedings that would ordinarily come before the judge; or</p> <p>(b) will frequently be engaged in adversary proceedings in the court of which the judge is a member, or in any court subject to the appellate jurisdiction of the court of which the judge is a member;</p> <p>(B) A judge may encourage lawyers to provide pro bono publico legal services.</p>		
<p>COMMENT</p> <p>[1] The activities permitted by paragraph (A) generally include those sponsored by or undertaken on behalf of public or private not-for-profit educational institutions, and other not-for-profit organizations, including law-related, charitable, and other organizations.</p> <p>[2] Even for law-related organizations, a judge should consider whether the membership and purposes of the organization, or the nature of the judge's participation in or association with the organization, would conflict with the judge's obligation to refrain from activities that reflect adversely upon a judge's independence, integrity, and impartiality.</p>	<p>[1] The activities permitted by [paragraph] Rule 3.7(A) generally include those sponsored by or undertaken on behalf of public or private not-for-profit educational institutions, and other not-for-profit organizations, including law-related, charitable, and other organizations.</p>	<p>Reference to "paragraph" changed to the relevant "Rule" to be consistent with other such references.</p>

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ABA CANON/RULE/COMMENTS	PROPOSED REVISION	EXPLANATION
<p>[3] Mere attendance at an event, whether or not the event serves a fund-raising purpose, does not constitute a violation of paragraph 4(A). It is also generally permissible for a judge to serve as an usher or a food server or preparer, or to perform similar functions, at fund-raising events sponsored by educational, religious, charitable, fraternal, or civic organizations. Such activities are not solicitation and do not present an element of coercion or abuse the prestige of judicial office.</p>	<p>[3] Mere attendance at an event, whether or not the event serves a fund-raising purpose, does not constitute a violation of [paragraph 4(A)] Rule 3.7(A)(4). It is also generally permissible for a judge to serve as an usher or a food server or preparer, wash cars, collect scrips at a school carnival, contribute home-made brownies for a bake sale, or [to] perform similar functions[,] at fund-raising events sponsored by educational, religious, charitable, fraternal, or civic organizations, as long as the judge does so without using the judge's title. Such activities are not solicitation and do not present an element of coercion or [abuse] misuse the prestige of judicial office.</p>	<p>Reference to "paragraph" changed to the relevant "Rule" to be consistent with other such references. Corrects the reference to paragraph (A)(4). Provides additional examples of permissible participation, as long as such activities are not coercive and do not misuse the prestige of judicial office.</p>
<p>[4] Identification of a judge's position in educational, religious, charitable, fraternal, or civic organizations on letterhead used for fund-raising or membership solicitation does not violate this Rule. The letterhead may list the judge's title or judicial office if comparable designations are used for other persons.</p>		
<p>[5] In addition to appointing lawyers to serve as counsel for indigent parties in individual cases, a judge may promote broader access to justice by encouraging lawyers to participate in pro bono publico legal services, if in doing so the judge does not employ coercion, or abuse the prestige of judicial office. Such encouragement may take many forms, including providing lists of available programs, training lawyers to do pro bono publico legal work, and participating in events recognizing lawyers who have done pro bono publico work.</p>		
<p>RULE 3.8 <i>Appointments to Fiduciary Positions</i> (A) A judge shall not accept appointment to serve in a fiduciary position, such as executor, administrator, trustee, guardian, attorney in fact, or other personal representative, except for the estate, trust, or person of a member of the judge's family, and then only if such service will not interfere with the proper performance of judicial duties.</p>	<p>(A) A judge shall not accept appointment to serve in a fiduciary position, such as executor, administrator, trustee, guardian, attorney in fact, or other personal representative, except for the estate, trust, or person of a member of the judge's family, and then only if such service will not interfere with the proper performance of [judicial] the duties of judicial office.</p>	<p>The revision provides consistency with the revised language of Canon 3, i.e. "duties of judicial office".</p>

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ABA CANON/RULE/COMMENTS	PROPOSED REVISION	EXPLANATION
<p>(B) A judge shall not serve in a fiduciary position if the judge as fiduciary will likely be engaged in proceedings that would ordinarily come before the judge, or if the estate, trust, or ward becomes involved in adversary proceedings in the court on which the judge serves, or one under its appellate jurisdiction.</p>		
<p>(C) A judge acting in a fiduciary capacity shall be subject to the same restrictions on engaging in financial activities that apply to a judge personally.</p>		
<p>(D) If a person who is serving in a fiduciary position becomes a judge, he or she must comply with this Rule as soon as reasonably practicable, but in no event later than [one year] after becoming a judge.</p>	<p>(D) If a person who is serving in a fiduciary position becomes a judge, he or she must comply with this Rule as soon as reasonably practicable, but in no event later than one year after becoming a judge.</p>	<p>The Committee agrees with the one year period suggested by the ABA Model Code.</p>
<p>COMMENT [1] A judge should recognize that other restrictions imposed by this Code may conflict with a judge's obligations as a fiduciary, in such circumstances, a judge should resign as fiduciary. For example, serving as a fiduciary might require frequent disqualification of a judge under Rule 2.11 because a judge is deemed to have an economic interest in shares of stock held by a trust if the amount of stock held is more than de minimis.</p>		
<p>RULE 3.9 <i>Service as Arbitrator or Mediator</i> A judge shall not act as an arbitrator or a mediator or perform other judicial functions apart from the judge's official duties unless expressly authorized by law.</p>	<p>A judge shall not act as an arbitrator or a mediator or perform other judicial functions apart from the [judge's official] duties of <u>judicial office</u> unless expressly authorized by law.</p>	<p>The revision provides consistency with the revised language of Canon 3, i.e. "duties of judicial office".</p>

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ABA CANON/RULE/COMMENTS	PROPOSED REVISION	EXPLANATION
<p>COMMENT</p> <p>[1] This Rule does not prohibit a judge from participating in arbitration, mediation, or settlement conferences performed as part of assigned judicial duties. Rendering dispute resolution services apart from those duties, whether or not for economic gain, is prohibited unless it is expressly authorized by law.</p>	<p>[1] This Rule does not prohibit a judge from participating in arbitration, mediation, or settlement conferences performed as part of [assigned judicial] the duties of judicial office. Rendering dispute resolution services apart from those duties, whether or not for economic gain, is prohibited unless it is expressly authorized by law.</p>	<p>The revision provides consistency with the revised language of Canon 3, i.e. "duties of judicial office".</p>
<p>RULE 3.10 <i>Practice of Law</i></p> <p>A judge shall not practice law. A judge may act pro se and may, without compensation, give legal advice to and draft or review documents for a member of the judge's family, but is prohibited from serving as the family member's lawyer in any forum.</p>	<p>A judge shall not practice law. <u>Notwithstanding this prohibition, a [A] judge may act pro se and may, without compensation, give legal advice to and draft or review documents for a member of the judge's family, but is prohibited from serving as the family member's lawyer in any forum.</u></p>	<p>The proposed revision clarifies the exception and adds language from the existing Hawai'i Code, Canon 4(G).</p>
<p>COMMENT</p> <p>[1] A judge may act pro se in all legal matters, including matters involving litigation and matters involving appearances before or other dealings with governmental bodies. A judge must not use the prestige of office to advance the judge's personal or family interests. See Rule 1.3.</p>	<p>[1] A judge may act pro se in all legal matters, including matters involving litigation and matters involving appearances before or other dealings with governmental bodies. A judge must not use the prestige of office to advance the judge's personal or family interests. See Rule 1.3. <u>The Code allows a judge to give legal advice to and draft legal documents for a member of the judge's family, so long as the judge receives no compensation.</u></p>	<p>The added language is from the Hawai'i Code, commentary to Canon 4G.</p>
<p>RULE 3.11 <i>Financial, Business, or Remunerative Activities</i></p> <p>(A) A judge may hold and manage investments of the judge and members of the judge's family.</p> <p>(B) A judge shall not serve as an officer, director, manager, general partner, advisor, or employee of any business entity except that a judge may manage or participate in:</p>		

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ABA CANON/RULE/COMMENTS	PROPOSED REVISION	EXPLANATION
<p>(1) a business closely held by the judge or members of the judge's family; or</p> <p>(2) a business entity primarily engaged in investment of the financial resources of the judge or members of the judge's family.</p>		
<p>(C) A judge shall not engage in financial activities permitted under paragraphs (A) and (B) if they will:</p> <p>(1) interfere with the proper performance of judicial duties;</p> <p>(2) lead to frequent disqualification of the judge;</p> <p>(3) involve the judge in frequent transactions or continuing business relationships with lawyers or other persons likely to come before the court on which the judge serves; or</p> <p>(4) result in violation of other provisions of this Code.</p>	<p>(C) A judge shall not engage in financial activities permitted under [paragraphs] Rules 3.1.1(A) and (B) if they will:</p> <p>(1) interfere with the proper performance of <u>duties of judicial [estates] offices</u>;</p> <p>(2) lead to frequent <u>disqualification or recusal</u> of the judge;</p>	<p>Reference to "paragraph" changed to the relevant "Rule" to be consistent with other such references.</p> <p>The revision provides consistency with the revised language of Canon 3, i.e. "duties of judicial office".</p> <p>See explanation with regard to Canon 2.</p>
<p>COMMENT</p> <p>[1] Judges are generally permitted to engage in financial activities, including managing real estate and other investments for themselves or for members of their families. Participation in these activities, like participation in other extrajudicial activities, is subject to the requirements of this Code. For example, it would be improper for a judge to spend so much time on business activities that it interferes with the performance of judicial duties. See Rule 2.1. Similarly, it would be improper for a judge to use his or her official title or appear in judicial robes in business or financial affairs in such a way that disqualification is frequently required. See Rules 1.3 and 2.1.1.</p>	<p>[1] [Judges are] A judge is generally permitted to engage in financial activities, including managing real estate and other investments for [themselves] <u>himself or herself or for [members-of-their-families] a member of the judge's family</u>. Participation in these activities, like participation in other extrajudicial activities, is subject to the requirements of this Code. For example, it would be improper for a judge to spend so much time on business activities that it interferes with the performance of [judicial] duties of judicial office. See Rule 2.1. Similarly, it would be improper for a judge to use his or her official title or appear in judicial robes in business advertising, or to conduct his or her business or financial affairs in such a way that disqualification or recusal is frequently required. See Rules 1.3 and 2.1.1.</p>	<p>Stylistic changes.</p> <p>This revision provides consistency with the revised language of Canon 3, i.e. "duties of judicial office".</p> <p>See explanation with regard to Canon 2.</p>

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ABA CANON/RULE/COMMENTS	PROPOSED REVISION	EXPLANATION
<p>[2] As soon as practicable without serious financial detriment, the judge must divest himself or herself of investments and other financial interests that might require frequent disqualification or otherwise violate this Rule.</p>	<p>[2] As soon as practicable without serious financial detriment, the judge must divest himself or herself of investments and other financial interests that might require frequent disqualification or <u>recusal</u> or otherwise violate this Rule.</p>	<p>See explanation with regard to Canon 2.</p>
<p>RULE 3.12 <i>Compensation for Extrajudicial Activities</i></p> <p>A judge may accept reasonable compensation for extrajudicial activities permitted by this Code or other law unless such acceptance would appear to a reasonable person to undermine the judge's independence, integrity, or impartiality.</p>	<p>[1] A judge should be mindful that duties of judicial office must take precedence over other activities. See Rule 2.1. However, a [A] judge is permitted to accept honoraria, stipends, fees, wages, salaries, royalties, or other compensation for speaking, teaching, writing, and other extrajudicial activities, provided the compensation is reasonable and commensurate with the task performed. [The judge should be mindful, however, that judicial duties must take precedence over other activities. See Rule 2.1.]</p>	<p>The revision reinforces that duties of judicial office must take precedence.</p>
<p>COMMENT</p> <p>[1] A judge is permitted to accept honoraria, stipends, fees, wages, salaries, royalties, or other compensation for speaking, teaching, writing, and other extrajudicial activities, provided the compensation is reasonable and commensurate with the task performed. The judge should be mindful, however, that judicial duties must take precedence over other activities. See Rule 2.1.</p>		
<p>[2] Compensation derived from extrajudicial activities may be subject to public reporting. See Rule 3.15.</p>		
<p>RULE 3.13 <i>Acceptance and Reporting of Gifts, Loans, Bequests, Benefits, or Other Things of Value</i></p> <p>(A) A judge shall not accept any gifts, loans, bequests, benefits, or other things of value, if acceptance is prohibited by law or would appear to a reasonable person to undermine the judge's independence, integrity, or impartiality.</p>		

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ABA CANON/RULE COMMENTS	PROPOSED REVISION	EXPLANATION
<p>(B) Unless otherwise prohibited by law, or by paragraph (A), a judge may accept the following without publicly reporting such acceptance:</p>	<p>(B) Unless otherwise prohibited by law, or by [paragraph] Rule 3.13(A), a judge may accept the following without publicly reporting such acceptance:</p>	<p>Reference to "paragraph" changed to the relevant "Rule" to be consistent with other such references.</p>
<p>(1) items with little intrinsic value, such as plaques, certificates, trophies, and greeting cards;</p>	<p>(2) gifts, loans, bequests, benefits, or other things of value from friends, relatives, or other persons, including lawyers, whose appearance or interest in a proceeding pending or impending before the judge would in any event require disqualification or recusal of the judge under Rule 2.11;</p>	<p>See explanation with regard to Canon 2.</p>
<p>(3) ordinary social hospitality;</p>		
<p>(4) commercial or financial opportunities and benefits, including special pricing and discounts, and loans from lending institutions in their regular course of business, if the same opportunities and benefits or loans are made available on the same terms to similarly situated persons who are not judges;</p>		
<p>(5) rewards and prizes given to competitors or participants in random drawings, contests, or other events that are open to persons who are not judges;</p>		
<p>(6) scholarships, fellowships, and similar benefits or awards, if they are available to similarly situated persons who are not judges, based upon the same terms and criteria;</p>		
<p>(7) books, magazines, journals, audiovisual materials, and other resource materials supplied by publishers on a complimentary basis for official use; or</p>		
<p>(8) gifts, awards, or benefits associated with the business, profession, or other separate activity of a spouse, a domestic partner, or other family member of a judge residing in the judge's household, but that incidentally benefit the judge.</p>		

Proposed Revisions to Canon 3 of the 2007 ABA Model Code of Judicial Conduct

ABA CANON/RULE/COMMENTS	PROPOSED REVISION	EXPLANATION
<p>(C) Unless otherwise prohibited by law or by paragraph (A), a judge may accept the following items, and must report such acceptance to the extent required by Rule 3.15:</p> <p>(1) gifts incident to a public testimonial;</p> <p>(2) invitations to the judge and the judge's spouse, domestic partner, or guest to attend without charge:</p> <p>(a) an event associated with a bar related function or other activity relating to the law, the legal system, or the administration of justice; or</p> <p>(b) an event associated with any of the judge's educational, religious, charitable, fraternal or civic activities permitted by this Code, if the same invitation is offered to nonjudges who are engaged in similar ways in the activity as is the judge; and</p> <p>(3) gifts, loans, bequests, benefits, or other things of value, if the source is a party or other person, including a lawyer, who has come or is likely to come before the judge, or whose interests have come or are likely to come before the judge.</p>	<p>(C) Unless otherwise prohibited by law or by [paragraph] Rule 3.13(A), a judge may accept the following items, and must report such acceptance to the extent required by Rule 3.15:</p>	<p>Reference to "paragraph" changed to the relevant "Rule" to be consistent with other such references.</p>
<p>COMMENT</p> <p>[1] Whenever a judge accepts a gift or other thing of value without paying fair market value, there is a risk that the benefit might be viewed as intended to influence the judge's decision in a case. Rule 3.13 imposes restrictions upon the acceptance of such benefits, according to the magnitude of the risk. [Paragraph] Rule 3.13(B) identifies circumstances in which the risk that the acceptance would appear to undermine the judge's independence, integrity, or impartiality is low, and explicitly provides that such items need not be publicly reported. As the value of the benefit or the likelihood that the source of the benefit will appear before the judge increases, the judge is either prohibited under [paragraph] Rule 3.13(A) from accepting the gift, or [paragraph] Rule 3.13(C) to publicly report it.</p>	<p>[1] Whenever a judge accepts a gift or other thing of value without paying fair market value, there is a risk that the benefit might be viewed as intended to influence the judge's decision in a case. Rule 3.13 imposes restrictions upon the acceptance of such benefits, according to the magnitude of the risk. [Paragraph] Rule 3.13(B) identifies circumstances in which the risk that the acceptance would appear to undermine the judge's independence, integrity, or impartiality is low, and explicitly provides that such items need not be publicly reported. As the value of the benefit or the likelihood that the source of the benefit will appear before the judge increases, the judge is either prohibited under [paragraph] Rule 3.13(A) from accepting the gift, or required under [paragraph] Rule 3.13(C) to publicly report it.</p>	<p>Reference to "paragraph" changed to the relevant "Rule" to be consistent with other such references.</p>

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ABA CANON/RULE COMMENTS	PROPOSED REVISION	EXPLANATION
<p>[2] Gift giving between friends and relatives is a common occurrence, and ordinarily does not create an appearance of impropriety or cause reasonable persons to believe that the judge's independence, integrity, or impartiality has been compromised. In addition, when the appearance of friends or relatives in a case would require the judge's disqualification under Rule 2.11, there would be no opportunity for a gift to influence the judge's decision making. Paragraph (B)(2) places no restrictions upon the ability of a judge to accept gifts or other things of value from friends or relatives under these circumstances, and does not require public reporting.</p>	<p>[2] Gift giving between friends and relatives is a common occurrence, and ordinarily does not create an appearance of impropriety or cause reasonable persons to believe that the judge's independence, integrity, or impartiality has been compromised. In addition, when the appearance of friends or relatives in a case would require the judge's disqualification under Rule 2.11, there would be no opportunity for a gift to influence the judge's decision making. [Paragraph] Rule 3.13(B)(2) places no restrictions upon the ability of a judge to accept gifts or other things of value from friends or relatives under these circumstances, and does not require public reporting.</p>	<p>Reference to "paragraph" changed to the relevant "Rule" to be consistent with other such references.</p>
<p>[3] Businesses and financial institutions frequently make available special pricing, discounts, and other benefits, either in connection with a temporary promotion or for preferred customers, based upon longevity of the relationship, volume of business transacted, and other factors. A judge may freely accept such benefits if they are available to the general public, or if the judge qualifies for the special price or discount according to the same criteria as are applied to persons who are not judges. As an example, loans provided at generally prevailing interest rates are not gifts, but a judge could not accept a loan from a financial institution at below market interest rates unless the same rate was being made available to the general public for a certain period of time or only to borrowers with specified qualifications that the judge also possesses.</p>		

Proposed Revisions to Canon 3 of the 2007 ABA Model Code of Judicial Conduct

ABA CANON/RULE COMMENTS	PROPOSED REVISION	EXPLANATION
<p>[4] Rule 3.13 applies only to acceptance of gifts or other things of value by a judge. Nonetheless, if a gift or other benefit is given to the judge's spouse, domestic partner, or member of the judge's family residing in the judge's household, it may be viewed as an attempt to evade Rule 3.13 and influence the judge indirectly. Where the gift or benefit is being made primarily to such other persons, and the judge is merely an incidental beneficiary, this concern is reduced. A judge should, however, remind family and household members of the restrictions imposed upon judges, and urge them to take these restrictions into account when making decisions about accepting such gifts or benefits.</p>		
<p>[5] Rule 3.13 does not apply to contributions to a judge's campaign for judicial office. Such contributions are governed by other Rules of this Code, including Rules 4.3 and 4.4.</p>	<p>[5] Rule 3.13 does not apply to contributions to a judge's campaign for judicial office. Such contributions are governed by other Rules of this Code, including Rules 4.3 and 4.4.</p>	<p>Not applicable to Hawai'i.</p>
<p>RULE 3.14 <i>Reimbursement of Expenses and Waivers of Fees or Charges</i></p> <p>(A) Unless otherwise prohibited by Rules 3.1 and 3.13(A) or other law, a judge may accept reimbursement of necessary and reasonable expenses for travel, food, lodging, or other incidental expenses, or a waiver or partial waiver of fees or charges for registration, tuition, and similar items, from sources other than the judge's employing entity, if the expenses or charges are associated with the judge's participation in extrajudicial activities permitted by this Code.</p>		
<p>(B) Reimbursement of expenses for necessary travel, food, lodging, or other incidental expenses shall be limited to the actual costs reasonably incurred by the judge and, when appropriate to the occasion, by the judge's spouse, domestic partner, or guest.</p>		

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ABA CANON/RULE/COMMENTS	PROPOSED REVISION	EXPLANATION
<p>(C) A judge who accepts reimbursement of expenses or waivers or partial waivers of fees or charges on behalf of the judge or the judge's spouse, domestic partner, or guest shall publicly report such acceptance as required by Rule 3.15.</p>		
<p>COMMENT</p> <p>[1] Educational, civic, religious, fraternal, and charitable organizations often sponsor meetings, seminars, symposia, dinners, awards ceremonies, and similar events. Judges are encouraged to attend educational programs, as both teachers and participants, in law related and academic disciplines, in furtherance of their duty to remain competent in the law. Participation in a variety of other extrajudicial activity is also permitted and encouraged by this Code.</p>		
<p>[2] Not infrequently, sponsoring organizations invite certain judges to attend seminars or other events on a fee waived or partial fee waived basis, and sometimes include reimbursement for necessary travel, food, lodging, or other incidental expenses. A judge's decision whether to accept reimbursement of expenses or a waiver or partial waiver of fees or charges in connection with these or other extrajudicial activities must be based upon an assessment of all the circumstances. The judge must undertake a reasonable inquiry to obtain the information necessary to make an informed judgment about whether acceptance would be consistent with the requirements of this Code.</p>		
<p>[3] A judge must assure himself or herself that acceptance of reimbursement or fee waivers would not appear to a reasonable person to undermine the judge's independence, integrity, or impartiality. The factors that a judge should consider when deciding whether to accept reimbursement or a fee waiver for attendance at a particular activity include:</p>		

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ABA CANON/RULE/COMMENTS	PROPOSED REVISION	EXPLANATION
(a) whether the sponsor is an accredited educational institution or bar association rather than a trade association or a for profit entity;		
(b) whether the funding comes largely from numerous contributors rather than from a single entity and is earmarked for programs with specific content;		
(c) whether the content is related or unrelated to the subject matter of litigation pending or impending before the judge, or to matters that are likely to come before the judge;		
(d) whether the activity is primarily educational rather than recreational, and whether the costs of the event are reasonable and comparable to those associated with similar events sponsored by the judiciary, bar associations, or similar groups;		
(e) whether information concerning the activity and its funding sources is available upon inquiry;		
(f) whether the sponsor or source of funding is generally associated with particular parties or interests currently appearing or likely to appear in the judge's court, thus possibly requiring disqualification of the judge under Rule 2.1.1;		
(g) whether differing viewpoints are presented; and		
(h) whether a broad range of judicial and nonjudicial participants are invited, whether a large number of participants are invited, and whether the program is designed specifically for judges.		
RULE 3.15 Reporting Requirements (A) A judge shall publicly report the amount or value of:		
(1) compensation received for extrajudicial activities as permitted by Rule 3.12;		

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ABA CANON/RULE/COMMENTS	PROPOSED REVISION	EXPLANATION
<p>(2) gifts and other things of value as permitted by Rule 3.13(C), unless the value of such items, alone or in the aggregate with other items received from the same source in the same calendar year, does not exceed \$[insert amount]; and</p> <p>(3) reimbursement of expenses and waiver of fees or charges permitted by Rule 3.14(A), unless the amount of reimbursement or waiver, alone or in the aggregate with other reimbursements or waivers received from the same source in the same calendar year, does not exceed \$[insert amount].</p>	<p>(2) gifts and other things of value as permitted by Rule 3.13(C), unless the value of such items, alone or in the aggregate with other items received from the same source in the same calendar year, does not exceed \$[insert amount]; \$200.00, except that all gifts and other things of value as permitted by Rule 3.13(C)(3) shall be reported regardless of their dollar value; and</p> <p>(3) reimbursement of expenses and waiver of fees or charges permitted by Rule 3.14 (A), unless the amount of reimbursement or waiver, alone or in the aggregate with other reimbursements or waivers received from the same source in the same calendar year, does not exceed \$[insert amount]; \$200.00.</p>	<p>Inserts reasonable dollar amount, but requires reporting of all gifts permitted under Rule 3.13(C)(3).</p>
<p>(B) When public reporting is required by paragraph (A), a judge shall report the date, place, and nature of the activity for which the judge received any compensation; the description of any gift, loan, bequest, or other thing of value accepted; and the source of reimbursement of expenses or waiver or partial waiver of fees or charges.</p>	<p>(B) When public reporting is required by [paragraph] Rule 3.15(A), a judge shall report the date, place, and nature of the activity for which the judge received any compensation; the description of any gift, loan, bequest, benefit, or other thing of value accepted; and the source of reimbursement of expenses or waiver or partial waiver of fees or charges.</p>	<p>Reference to "paragraph" changed to the relevant "Rule" to be consistent with other such references.</p>
<p>(C) The public report required by paragraph (A) shall be made at least annually, except that for reimbursement of expenses and waiver of fees or charges, the report shall be made within thirty days following the conclusion of the event or program.</p>	<p>(C) The public report required by [paragraph] Rule 3.15(A) shall be made at least annually, except that for reimbursement of expenses and waiver or partial waiver of fees or charges, the report shall be made within thirty days following the conclusion of the event or program.</p>	<p>Reference to "paragraph" changed to the relevant "Rule" to be consistent with other such references. Provides additional time for reporting, but still within reasonable period.</p>
<p>(D) Reports made in compliance with this Rule shall be filed as public documents in the office of the clerk of the court on which the judge serves or other office designated by law, and, when technically feasible, posted by the court or office personnel on the court's website.</p>	<p>(D) Reports made in compliance with this Rule shall be filed as public documents in the office of the clerk of the court on which the judge serves or other office designated by law, and, when technically feasible, posted by the court or office personnel on the court's website.</p>	<p>Posting judicial disclosure forms on the court's website may pose a danger to judges and prompt liens to be placed on judges' properties. This issue needs to be studied further before a requirement for web-posting is included in a rule.</p>

Proposed Revisions to Canon 4 of the 2007 ABA Model Code of Judicial Conduct

ABA MODEL CODE CANON/RULE/COMMENTS	PROPOSED REVISION	EXPLANATION
<p>CANON 4</p> <p>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.</p>	<p>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.</p>	<p>The most significant revision made to proposed Canon 4 and the Rules under Canon 4 is the elimination of the phrases "candidate for judicial office", "judicial candidate" and "campaign for public office."</p> <p>The Committee believes it is too difficult to identify or define who is a "judicial candidate" during the various stages of the selection process. A candidate's name may be suggested to the Judicial Selection Commission (JSC) by persons other than the candidate. Even assuming that, by definition, a person only becomes a "judicial candidate" upon submission of an application to the JSC, the candidate would be unaware for an extended time period whether he or she is actually a judicial candidate. This is because Rule 8 of the Judicial Selection Commission Rules (JSCR) provides that "[t]he commission may after it receives the applications eliminate from further consideration those applicants whom it evaluates to be unqualified for judicial office." The appointing authority is also under no obligation to release the names of the list of nominees. In other words, a "judicial candidate" could seemingly violate the Code, despite having already been eliminated from consideration for a judicial position. Confidential proceedings of the JSC would have to be compromised, see Rule 5, § 2(A) of the JSCR, in order to determine whether the person was a "judicial candidate" when the Rule was violated.</p> <p>One could provide that, by definition, a judicial candidate remains a candidate until a nominee is appointed and confirmed. But this approach would only exacerbate the undue burden placed upon judicial candidates. A "judicial candidate" is required to resign from all boards and affiliations, and withdraw from, for example, all political or party offices, commissions and other such activities. Enforcement of the Code upon judicial candidates would discourage qualified applicants from seeking judicial office. Those willing to</p>

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ABA MODEL CODE CANON/RULE/COMMENTS	PROPOSED REVISION	EXPLANATION
		<p>make that sacrifice would also likely have to do so on a continuing basis, as many sitting judges have had to apply numerous times before being appointed.</p> <p>It is useful to apply a cost/benefit analysis to the application of the Code to judicial candidates. Enforcement of the Code's provisions upon a judicial candidate would result in an extremely high cost. If the JSC simply included a question on its application "Have you complied with the Code of Judicial Conduct?" all applicants would have to resign and refrain from a host of beneficial activities. This would negatively impact both the applicant and the community, because in the vast majority of situations the resignation or refraining from activity would be unnecessary, as the candidate would not become the nominee or appointee. The benefit is obscure. Any judicial candidate who engaged in conduct unbecoming a judge would almost certainly have that conduct brought to the attention of the JSC, the appointing authority, or, during the confirmation process, to the HSBA, the Senate, or the media.</p> <p>While the Committee is aware that under the current Hawai'i Code, a "judicial candidate" is subject to Canon 5, apparently no candidate has ever been subject to discipline for a Code violation. It is worthwhile to note that under current law, no judicial candidate could be subject to discipline. Under Rule 8.2(b) of the Rules of the Supreme Court, the jurisdiction of the Commission on Judicial Conduct is limited to the following persons: "justice or judge, full-time or part-time." The Committee believes the proposed Code should be consistent with the Commission's jurisdiction.</p> <p>The Committee has also deleted various Rules that are intended to apply to judicial elections. Those Rules are inapplicable to Hawai'i, where judges are selected pursuant to the Hawai'i State Constitution, which establishes the JSC.</p>

Proposed Revisions to Canon 4 of the 2007 ABA Model Code of Judicial Conduct

ABA MODEL CODE CANON/RULE/COMMENTS	PROPOSED REVISION	EXPLANATION
<p>RULE 4.1 <i>Political and Campaign Activities of Judges and Judicial Candidates in General</i> (A) Except as permitted by law, or by Rules 4.2, 4.3, and 4.4, a judge or a judicial candidate shall not:</p>	<p><i>Political [and Campaign/Activities of Judges (and Judicial Candidates in General)]</i> (A) Except as permitted by law, [or by Rules 4.2, 4.3, and 4.4,] a judge [or a judicial candidate] shall not:</p>	<p>See initial explanation.</p>
<p>(1) act as a leader in, or hold an office in, a political organization;</p>		
<p>(2) make speeches on behalf of a political organization;</p>		
<p>(3) publicly endorse or oppose a candidate for any public office;</p>		
<p>(4) solicit funds for, pay an assessment to, or make a contribution to a political organization or a candidate for public office;</p>		
<p>(5) attend or purchase tickets for dinners or other events sponsored by a political organization or a candidate for public office;</p>		
<p>(6) publicly identify himself or herself as a candidate of a political organization;</p>		
<p>(7) seek, accept, or use endorsements from a political organization;</p>		
<p>(8) personally solicit or accept campaign contributions other than through a campaign committee authorized by Rule 4.4;</p>	<p>[(8) personally solicit or accept campaign contributions other than through a campaign committee authorized by Rule 4.4.]</p>	<p>See initial explanation.</p>
<p>(9) use or permit the use of campaign contributions for the private benefit of the judge, the candidate, or others;</p>	<p>[(9) use or permit the use of campaign contributions for the private benefit of the judge, the candidate, or others.]</p>	<p>See initial explanation.</p>
<p>(10) use court staff, facilities, or other court resources in a campaign for judicial office;</p>	<p>[(10) use court staff, facilities, or other court resources in a campaign for judicial office.]</p>	<p>See initial explanation.</p>

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ABA MODEL CODE CANON/RULE/COMMENTS	PROPOSED REVISION	EXPLANATION
<p>(1) knowingly, or with reckless disregard for the truth, make any false or misleading statement;</p>	<p>[(1)] knowingly, or with reckless disregard for the truth, make any false or misleading statement;</p>	<p>See initial explanation.</p>
<p>(12) make any statement that would reasonably be expected to affect the outcome or impair the fairness of a matter pending or impending in any court; or</p>	<p>[(12)] make any statement that would reasonably be expected to affect the outcome or impair the fairness of a matter pending or impending in any court; or</p>	<p>See initial explanation. This prohibition is set forth in Rule 2.10 and is thus redundant here.</p>
<p>(13) in connection with cases, controversies, or issues that are likely to come before the court, make pledges, promises, or commitments that are inconsistent with the impartial performance of the adjudicative duties of judicial office.</p>	<p>[(13)] in connection with cases, controversies, or issues that are likely to come before the court, make pledges, promises, or commitments that are inconsistent with the impartial performance of the adjudicative duties of judicial office.</p>	<p>See initial explanation. This prohibition is set forth in Rule 2.10 and is thus redundant here.</p>
<p>(B) A judge or judicial candidate shall take reasonable measures to ensure that other persons do not on behalf of the judge or judicial candidate, any activities prohibited under paragraph (A).</p>	<p>(B) A judge (ex-judicial-candidate) shall take reasonable measures to ensure that other persons do not undertake, on behalf of the judge [ex-judicial-candidate], any activities prohibited under [paragraph] Rule 4.1(A).</p>	<p>See initial explanation. Reference to "paragraph" changed to the relevant "Rule" to be consistent with other such references.</p>
<p>COMMENT General Considerations [1] Even when subject to public election, a judge plays a role different from that of a legislator or executive branch official. Rather than making decisions upon the expressed views or preferences of the electorate, a judge makes decisions based upon the law and the facts of every case. Therefore, in furtherance of this interest, judges and judicial candidates must, to the greatest extent possible, be free and appear to be free from political influence and political pressure. This Canon imposes narrowly tailored restrictions upon the political and campaign activities of all judges and judicial candidates, taking into account the various methods of selecting judges.</p>	<p>[1] [Even when subject to public election, a judge plays a role different from that of a legislator or executive branch official. Rather than making decisions based upon the expressed views or preferences of the electorate, a judge makes decisions based upon the law and the facts of every case. Therefore, in furtherance of this interest,] Judges [and judicial candidates] must, to the greatest extent possible, be free and appear to be free from political influence and political pressure. [This Canon imposes narrowly tailored restrictions upon the political and campaign activities of all judges and judicial candidates, taking into account the various methods of selecting judges.]</p>	<p>See initial explanation.</p>
<p>[2] When a person becomes a judicial candidate, this Canon becomes applicable to his or her conduct.</p>	<p>[2] When a person becomes a judicial candidate, this Canon becomes applicable to his or her conduct.]</p>	<p>See initial explanation.</p>

Proposed Revisions to Canon 4 of the 2007 ABA Model Code of Judicial Conduct

ABA MODEL CODE CANON/RULE/COMMENTS	PROPOSED REVISION	EXPLANATION
<p>Participation In Political Activities</p> <p>[3] Public confidence in the independence and impartiality of the judiciary is eroded if judges or judicial candidates are perceived to be subject to political influence. Although judges and judicial candidates may register to vote as members of a political party, they are prohibited by paragraph (A)(1) from assuming leadership roles in political organizations.</p>	<p>[3] [2] Public confidence in the independence and impartiality of the judiciary is eroded if judges [or judicial candidates] are perceived to be subject to political influence. Although judges [and judicial candidates] may register to vote as members of a political party, they are prohibited by [paragraph] Rule 4.1(A)(1) from assuming leadership roles in political organizations.</p>	<p>See initial explanation.</p> <p>Reference to "paragraph" changed to the relevant "Rule" to be consistent with other such references.</p>
<p>[4] Paragraphs (A)(2) and (A)(3) prohibit judges and judicial candidates from making speeches on behalf of political organizations or publicly endorsing or opposing candidates for public office, respectively, to prevent them from abusing the prestige of judicial office to advance the interests of others. See Rule 1.3. These Rules do not prohibit candidates from campaigning on their own behalf, or from endorsing or opposing candidates for the same judicial office for which they are running. See Rules 4.2(B)(2) and 4.2(B)(3).</p>	<p>[4] [3] [Paragraphs] Rules 4.1 (A)(2) and (A)(3) prohibit judges [and judicial candidates] from making speeches on behalf of political organizations or publicly endorsing or opposing candidates for public office, respectively, to prevent them from [abusing] lending or misusing the prestige of judicial office to advance the interests of others. See Rule 1.3. [These Rules do not prohibit candidates from campaigning on their own behalf, or from endorsing or opposing candidates for the same judicial office for which they are running. See Rules 4.2(B)(2) and 4.2(B)(3)].</p>	<p>See initial explanation.</p> <p>Reference to "paragraph" changed to the relevant "Rule" to be consistent with other such references.</p>
<p>[5] Although members of the families of judges and judicial candidates are free to engage in their own political activity, including running for public office, there is no "family exception" to the prohibition in paragraph (A)(3) against a judge or candidate publicly endorsing candidates for public office. A judge or judicial candidate must not become involved in, or publicly associated with, a family member's political activity or campaign for public office. To avoid public misunderstanding, judges and judicial candidates should take, and should urge members of their families to take, reasonable steps to avoid any implication that they endorse any family member's candidacy or other political activity.</p>	<p>[5] [4] Although members of the families of judges [and judicial candidates] are free to engage in their own political activity, including running for public office, there is no "family exception" to the prohibition in [paragraph] Rule 4.1(A)(3) against a judge [or candidate] publicly endorsing candidates for public office. A judge [or judicial candidate] must not become involved in, or publicly associated with, a family member's political activity [or campaign for public office]. To avoid public misunderstanding, judges [and judicial candidates] should take, and should urge members of their families to take, reasonable steps to avoid any implication that they endorse any family member's candidacy or other political activity.</p>	<p>See initial explanation.</p> <p>Reference to "paragraph" changed to the relevant "Rule" to be consistent with other such references.</p> <p>Deletion of references to "judicial candidate" and "campaign for public office" were made to be consistent with similar changes in this Canon.</p>

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ABA MODEL CODE CANON/RULE/COMMENTS	PROPOSED REVISION	EXPLANATION
<p>[6] Judges and judicial candidates retain the right to participate in the political process as voters in both primary and general elections. For purposes of this Canon, participation in a caucus-type election procedure does not constitute public support for or endorsement of a political organization or candidate, and is not prohibited by paragraphs (A)(2) or (A)(3).</p>	<p>[6] Judges [and judicial candidates] retain the right to participate in the political process as voters in both primary and general elections. For purposes of this Canon, participation in a caucus-type election procedure [does not constitute public support for or endorsement of a political organization or candidate, and] is not prohibited by [paragraphs] Rules 4.1 (A)(2) or (A)(3), provided a judge shall make reasonable efforts to not disclose his or her vote.</p>	<p>See initial explanation for deletion of "judicial candidate." Additional revision to allow participation in caucus activities (which are used in Hawai'i) with some reasonable restriction. Reference to "paragraph" changed to the relevant "Rule" to be consistent with other such references.</p>
<p>STATEMENTS AND COMMENTS MADE DURING A CAMPAIGN FOR JUDICIAL OFFICE</p> <p>[7] Judicial candidates must be scrupulously fair and accurate in all statements made by them and by their campaign committees. Paragraph (A)(11) obligates candidates and their committees to refrain from making statements that are false or misleading, or that omit facts necessary to make the communication considered as a whole not materially misleading.</p>	<p>[STATEMENTS AND COMMENTS MADE DURING A CAMPAIGN FOR JUDICIAL OFFICE]</p> <p>[7] Judicial candidates must be scrupulously fair and accurate in all statements made by them and by their campaign committees. Paragraph (A)(11) obligates candidates and their committees to refrain from making statements that are false or misleading, or that omit facts necessary to make the communication considered as a whole not materially misleading.</p>	<p>See initial explanation. This prohibition is set forth in Rule 2.10 and is thus redundant here.</p>
<p>[8] Judicial candidates are sometimes the subject of false, misleading, or unfair allegations made by opposing candidates, third parties, or the media. For example, false or misleading statements might be made regarding the identity, present position, experience, qualifications, or judicial rulings of a candidate. In other situations, false or misleading allegations may be made that bear upon a candidate's integrity or fitness for judicial office. As long as the candidate does not violate paragraphs (A)(1), (A)(12), or (A)(13), the candidate may make a factually accurate public response. In addition, when an independent third party has made unwarranted attacks on a candidate's opponent, the candidate may disavow the attacks, and request the third party to cease and desist.</p>	<p>[8] Judicial candidates are sometimes the subject of false, misleading, or unfair allegations made by opposing candidates, third parties, or the media. For example, false or misleading statements might be made regarding the identity, present position, experience, qualifications, or judicial rulings of a candidate. In other situations, false or misleading allegations may be made that bear upon a candidate's integrity or fitness for judicial office. As long as the candidate does not violate paragraphs (A)(1), (A)(12), or (A)(13), the candidate may make a factually accurate public response. In addition, when an independent third party has made unwarranted attacks on a candidate's opponent, the candidate may disavow the attacks, and request the third party to cease and desist.</p>	<p>See initial explanation.</p>

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ABA MODEL CODE CANON/RULE/COMMENTS	PROPOSED REVISION	EXPLANATION
<p>[9] Subject to paragraph (A)(12), a judicial candidate is permitted to respond directly to false, misleading, or unfair allegations made against him or her during a campaign, although it is preferable for someone else to respond if the allegations relate to a pending case.</p>	<p>[9] Subject to paragraph (A)(12), a judicial candidate is permitted to respond directly to false, misleading, or unfair allegations made against him or her during a campaign, although it is preferable for someone else to respond if the allegations relate to a pending case.</p>	<p>See initial explanation.</p>
<p>[10] Paragraph (A)(12) prohibits judicial candidates from making comments that might impair the fairness of pending or impending judicial proceedings. This provision does not restrict arguments or statements to the court or jury by a lawyer who is a judicial candidate, or rulings, statements, or instructions by a judge that may appropriately affect the outcome of a matter.</p> <p>PLEDGES, PROMISES, OR COMMITMENTS INCONSISTENT WITH IMPARTIAL PERFORMANCE OF THE ADJUDICATIVE DUTIES OF JUDICIAL OFFICE</p>	<p>[10] Paragraph (A)(12) prohibits judicial candidates from making comments that might impair the fairness of pending or impending judicial proceedings. This provision does not restrict arguments or statements to the court or jury by a lawyer who is a judicial candidate, or rulings, statements, or instructions by a judge that may appropriately affect the outcome of a matter.]</p>	<p>See initial explanation.</p>
<p>[11] The role of a judge is different from that of a legislator or executive branch official, even when the judge is subject to public election. Campaigns for judicial office must be conducted differently from campaigns for other offices. The narrowly drafted restrictions upon political and campaign activities of judicial candidates provided in Canon 4 allow candidates to conduct campaigns that provide voters with sufficient information to permit them to distinguish between candidates and make informed electoral choices.</p> <p>PLEDGES, PROMISES, OR COMMITMENTS INCONSISTENT WITH IMPARTIAL PERFORMANCE OF THE ADJUDICATIVE DUTIES OF JUDICIAL OFFICE</p>	<p>[11] The role of a judge is different from that of a legislator or executive branch official, even when the judge is subject to public election. Campaigns for judicial office must be conducted differently from campaigns for other offices. The narrowly drafted restrictions upon political and campaign activities of judicial candidates provided in Canon 4 allow candidates to conduct campaigns that provide voters with sufficient information to permit them to distinguish between candidates and make informed electoral choices.</p>	<p>See initial explanation.</p>
<p>[12] Paragraph (A)(13) makes applicable to both judges and judicial candidates the prohibition that applies to judges in Rule 2.10(B), relating to pledges, promises, or commitments that are inconsistent with the impartial performance of the adjudicative duties of judicial office.</p>	<p>[12] Paragraph (A)(13) makes applicable to both judges and judicial candidates the prohibition that applies to judges in Rule 2.10(B), relating to pledges, promises, or commitments that are inconsistent with the impartial performance of the adjudicative duties of judicial office.</p>	<p>See initial explanation.</p>

Proposed Revisions to Canon 4 of the 2007 ABA Model Code of Judicial Conduct

ABA MODEL CODE CANON/RULE/COMMENTS	PROPOSED REVISION	EXPLANATION
<p>[13] The making of a pledge, promise, or commitment is not dependent upon, or limited to, the use of any specific words or phrases; instead, the totality of the statement must be examined to determine if a reasonable person would believe that the candidate for judicial office has specifically undertaken to reach a particular result. Pledges, promises, or commitments must be contrasted with statements or announcements of personal views on legal, political, or other issues, which are not prohibited. When making such statements, a judge should acknowledge the overarching judicial obligation to apply and uphold the law, without regard to his or her personal views.</p>	<p>[13] The making of a pledge, promise, or commitment is not dependent upon, or limited to, the use of any specific words or phrases; instead, the totality of the statement must be examined to determine if a reasonable person would believe that the candidate for judicial office has specifically undertaken to reach a particular result. Pledges, promises, or commitments must be contrasted with statements or announcements of personal views on legal, political, or other issues, which are not prohibited. When making such statements, a judge should acknowledge the overarching judicial obligation to apply and uphold the law, without regard to his or her personal views.</p>	<p>See initial explanation.</p>
<p>[14] A judicial candidate may make campaign promises related to judicial organization, administration, and court management, such as a promise to dispose of a backlog of cases, start court sessions on time, or avoid favoritism in appointments and hiring. A candidate may also pledge to take action outside the courtroom, such as working toward an improved jury selection system, or advocating for more funds to improve the physical plant and amenities of the courthouse.</p>	<p>[14] A judicial candidate may make campaign promises related to judicial organization, administration, and court management, such as a promise to dispose of a backlog of cases, start court sessions on time, or avoid favoritism in appointments and hiring. A candidate may also pledge to take action outside the courtroom, such as working toward an improved jury selection system, or advocating for more funds to improve the physical plant and amenities of the courthouse.</p>	<p>See initial explanation.</p>

Proposed Revisions to Canon 4 of the 2007 ABA Model Code of Judicial Conduct

ABA MODEL CODE CANON/RULE/COMMENTS	PROPOSED REVISION	EXPLANATION
<p>[15] Judicial candidates may receive questionnaires or requests for interviews from the media and from issue advocacy or other community organizations that seek to learn their views on disputed or controversial legal or political issues. Paragraph (A)(13) does not specifically address judicial responses to such inquiries. Depending upon the wording and format of such questionnaires, candidates' responses might be viewed as pledges, promises, or commitments to perform the adjudicative duties of office other than in an impartial way. To avoid violating paragraph (A)(13), therefore, candidates who respond to media and other inquiries should also give assurances that they will keep an open mind and will carry out their adjudicative duties faithfully and impartially if elected. Candidates who do not respond may state their reasons for not responding, such as the danger that answering might be perceived by a reasonable person as undermining a successful candidate's independence or impartiality, or that it might lead to frequent disqualification. See Rule 2.11.</p>	<p>[15] Judicial candidates may receive questionnaires or requests for interviews from the media and from issue advocacy or other community organizations that seek to learn their views on disputed or controversial legal or political issues. Paragraph (A)(13) does not specifically address judicial responses to such inquiries. Depending upon the wording and format of such questionnaires, candidates' responses might be viewed as pledges, promises, or commitments to perform the adjudicative duties of office other than in an impartial way. To avoid violating paragraph (A)(13), therefore, candidates who respond to media and other inquiries should also give assurances that they will keep an open mind and will carry out their adjudicative duties faithfully and impartially if elected. Candidates who do not respond may state their reasons for not responding, such as the danger that answering might be perceived by a reasonable person as undermining a successful candidate's independence or impartiality, or that it might lead to frequent disqualification. See Rule 2.11.]</p>	<p>See initial explanation.</p>
<p>RULE 4.2 <i>Political and Campaign Activities of Judicial Candidates in Public Elections</i> (A) A judicial candidate in a partisan, nonpartisan, or retention public election shall: (1) act at all times in a manner consistent with the independence, integrity, and impartiality of the judiciary; (2) comply with all applicable election, election campaign, and election campaign fund-raising laws and regulations of this jurisdiction; (3) review and approve the content of all campaign statements and materials produced by the candidate or his or her campaign committee, as authorized by Rule 4.4, before their dissemination; and</p>	<p>[RULE 4.2 <i>Political and Campaign Activities of Judicial Candidates in Public Elections</i> (A) A judicial candidate in a partisan, nonpartisan, or retention public election shall: (1) act at all times in a manner consistent with the independence, integrity, and impartiality of the judiciary; (2) comply with all applicable election, election campaign, and election campaign fund-raising laws and regulations of this jurisdiction; (3) review and approve the content of all campaign statements and materials produced by the candidate or his or her campaign committee, as authorized by Rule 4.4, before their dissemination; and</p>	<p>See initial explanation for deletion of "judicial candidate." Consideration was also given by the Committee to making this rule applicable to potential "candidates" for judicial office. However, it was difficult to try to define who would be a "candidate" and when they would be considered a "candidate", given the JSC process. The Committee also had concerns whether the Rule could be made applicable to a person who was not already a judge. The Committee finally chose not to adopt this Rule.</p>

Proposed Revisions to Canon 4 of the 2007 ABA Model Code of Judicial Conduct

ABA MODEL CODE/CANON/RULE/COMMENTIS	PROPOSED REVISION	EXPLANATION
<p>(4) take reasonable measures to ensure that other persons do not undertake on behalf of the candidate activities, other than those described in Rule 4.4, that the candidate is prohibited from doing by Rule 4.1.</p>	<p>(4) take reasonable measures to ensure that other persons do not undertake on behalf of the candidate activities, other than those described in Rule 4.4, that the candidate is prohibited from doing by Rule 4.1.</p>	<p>See initial explanation.</p>
<p>(B) A candidate for elective judicial office may, unless prohibited by law, and not earlier than [insert amount of time] before the first applicable primary election, caucus, or general or retention election:</p> <p>(1) establish a campaign committee pursuant to the provisions of Rule 4.4;</p> <p>(2) speak on behalf of his or her candidacy through any medium, including but not limited to advertisements, websites, or other campaign literature;</p> <p>(3) publicly endorse or oppose candidates for the same judicial office for which he or she is running;</p> <p>(4) attend or purchase tickets for dinners or other events sponsored by a political organization or a candidate for public office;</p> <p>(5) seek, accept, or use endorsements from any person or organization other than a partisan political organization; and</p> <p>(6) contribute to a political organization or candidate for public office, but not more than \$[insert amount] to any one organization or candidate.</p>	<p>(B) A candidate for elective judicial office may, unless prohibited by law, and not earlier than [insert amount of time] before the first applicable primary election, caucus, or general or retention election:</p> <p>(1) establish a campaign committee pursuant to the provisions of Rule 4.4;</p> <p>(2) speak on behalf of his or her candidacy through any medium, including but not limited to advertisements, websites, or other campaign literature;</p> <p>(3) publicly endorse or oppose candidates for the same judicial office for which he or she is running;</p> <p>(4) attend or purchase tickets for dinners or other events sponsored by a political organization or a candidate for public office;</p> <p>(5) seek, accept, or use endorsements from any person or organization other than a partisan political organization; and</p> <p>(6) contribute to a political organization or candidate for public office, but not more than \$[insert amount] to any one organization or candidate.</p>	<p>See initial explanation.</p>
<p>(C) A judicial candidate in a partisan public election may, unless prohibited by law, and not earlier than [insert amount of time] before the first applicable primary election, caucus, or general election:</p> <p>(1) identify himself or herself as a candidate of a political organization; and</p> <p>(2) seek, accept, and use endorsements of a political organization.</p>	<p>(C) A judicial candidate in a partisan public election may, unless prohibited by law, and not earlier than [insert amount of time] before the first applicable primary election, caucus, or general election:</p> <p>(1) identify himself or herself as a candidate of a political organization; and</p> <p>(2) seek, accept, and use endorsements of a political organization.</p>	<p>See initial explanation.</p>

Proposed Revisions to Canon 4 of the 2007 ABA Model Code of Judicial Conduct

ABA MODEL CODE CANON/RULE/COMMENTS	PROPOSED REVISION	EXPLANATION
<p>COMMENT</p> <p>[1] Paragraphs (B) and (C) permit judicial candidates in public elections to engage in some political and campaign activities otherwise prohibited by Rule 4.1. Candidates may not engage in these activities earlier than [insert amount of time] before the first applicable electoral event, such as a caucus or a primary election.</p>	<p>COMMENT</p> <p>[1] Paragraphs (B) and (C) permit judicial candidates in public elections to engage in some political and campaign activities otherwise prohibited by Rule 4.1. Candidates may not engage in these activities earlier than [insert amount of time] before the first applicable electoral event, such as a caucus or a primary election.</p>	<p>See initial explanation.</p>
<p>[2] Despite paragraphs (B) and (C), judicial candidates for public election remain subject to many of the provisions of Rule 4.1. For example, a candidate continues to be prohibited from soliciting funds for a political organization, knowingly making false or misleading statements during a campaign, or making certain promises, pledges, or commitments related to future adjudicative duties. See Rule 4.1(A), paragraphs (4), (1), and (13).</p>	<p>[2] Despite paragraphs (B) and (C), judicial candidates for public election remain subject to many of the provisions of Rule 4.1. For example, a candidate continues to be prohibited from soliciting funds for a political organization, knowingly making false or misleading statements during a campaign, or making certain promises, pledges, or commitments related to future adjudicative duties. See Rule 4.1(A), paragraphs (4), (1), and (13).</p>	<p>See initial explanation.</p>
<p>[3] In partisan public elections for judicial office, a candidate may be nominated by, affiliated with, or otherwise publicly identified or associated with a political organization, including a political party. This relationship may be maintained throughout the period of the public campaign, and may include use of political party or similar designations on campaign literature and on the ballot.</p>	<p>[3] In partisan public elections for judicial office, a candidate may be nominated by, affiliated with, or otherwise publicly identified or associated with a political organization, including a political party. This relationship may be maintained throughout the period of the public campaign, and may include use of political party or similar designations on campaign literature and on the ballot.</p>	<p>See initial explanation.</p>
<p>[4] In nonpartisan public elections or retention elections, paragraph (B)(5) prohibits a candidate from seeking, accepting, or using nominations or endorsements from a partisan political organization.</p>	<p>[4] In nonpartisan public elections or retention elections, paragraph (B)(5) prohibits a candidate from seeking, accepting, or using nominations or endorsements from a partisan political organization.</p>	<p>See initial explanation.</p>
<p>[5] Judicial candidates are permitted to attend or purchase tickets for dinners and other events sponsored by political organizations.</p>	<p>[5] Judicial candidates are permitted to attend or purchase tickets for dinners and other events sponsored by political organizations.</p>	<p>See initial explanation.</p>

Proposed Revisions to Canon 4 of the 2007 ABA Model Code of Judicial Conduct

ABA MODEL CODE CANON/RULE/COMMENTS	PROPOSED REVISION	EXPLANATION
<p>[6] For purposes of paragraph (B)(3), candidates are considered to be running for the same judicial office if they are competing for a single judgeship or if several judgeships on the same court are to be filled as a result of the election. In endorsing or opposing another candidate for a position on the same court, a judicial candidate must abide by the same rules governing campaign conduct and speech as apply to the candidate's own campaign.</p>	<p>[6] For purposes of paragraph (B)(3), candidates are considered to be running for the same judicial office if they are competing for a single judgeship or if several judgeships on the same court are to be filled as a result of the election. In endorsing or opposing another candidate for a position on the same court, a judicial candidate must abide by the same rules governing campaign conduct and speech as apply to the candidate's own campaign.</p>	<p>See initial explanation.</p>
<p>[7] Although judicial candidates in nonpartisan public elections are prohibited from running on a ticket or slate associated with a political organization, they may group themselves into slates or other alliances to conduct their campaigns more effectively. Candidates who have grouped themselves together are considered to be running for the same judicial office if they satisfy the conditions described in Comment [6].</p>	<p>[7] Although judicial candidates in nonpartisan public elections are prohibited from running on a ticket or slate associated with a political organization, they may group themselves into slates or other alliances to conduct their campaigns more effectively. Candidates who have grouped themselves together are considered to be running for the same judicial office if they satisfy the conditions described in Comment [6].</p>	<p>See initial explanation.</p>
<p>RULE 4.3 <i>Activities of Candidates for Appointive Judicial Office</i> A candidate for appointment to judicial office may: (A) communicate with the appointing or confirming authority, including any selection, screening, or nominating commission or similar agency; and</p>	<p>RULE [4-3] 4.2 <i>Activities of [Candidates for] Judges Seeking Retention in [Appointive/Judicial Offices] or Appointment to Judicial Office</i> [A candidate for appointment to] A judge seeking retention in or appointment to judicial office may: (A) communicate with the appointing, selecting or confirming authority, including any [selection] screening[] or nominating commission or similar agency; and</p>	<p>See initial explanation for deletion of "judicial candidate." The Rule was also revised to apply to judges seeking retention in as well as appointment to judicial office. The language was chosen to follow the ISC Rules. See Rule 12 of the JSJR. Some consideration was given to leaving the language as is and narrowly defining the term "judicial candidate" to mean only a sitting judge seeking retention or appointment to judicial office. However, the Committee believes that the phrase "judicial candidate" is inappropriate and would create confusion as it implies an elective procedure which does not exist in Hawai'i.</p>
<p>(B) seek endorsements for the appointment from any person or organization other than a partisan political organization.</p>		

Proposed Revisions to Canon 4 of the 2007 ABA Model Code of Judicial Conduct

ABA MODEL CODE CANON/RULE/COMMENTS	PROPOSED REVISION	EXPLANATION
<p>COMMENT</p> <p>[1] When seeking support or endorsement, or when communicating directly with an appointing or confirming authority, a candidate for appointive judicial office must not make any pledges, promises, or commitments that are inconsistent with the impartial performance of the adjudicative duties of the office. See Rule 4.1(A)(13).</p>	<p>[1] When seeking support or endorsement, or when communicating directly with an appointing or confirming authority, a [candidate-fee] judge seeking retention in [appointive-judicial-office] or appointment to judicial office must not make any pledges, promises, or commitments that are inconsistent with the impartial performance of the adjudicative duties of the office. [See Rule 4.1(A)(13).]</p> <p>[2] A judge seeking retention in or appointment to judicial office may arrange for letters of recommendation to nominating commissions or the Governor in support of the judge's petition or selection from friends, relatives, colleagues, and other members of the candidate's community, including lawyers. However, a judge seeking retention or appointment, particularly a judge seeking another judicial appointment, must be cautious about from whom and how these letters are obtained, and must avoid the misuse of the court's power as well as the perception of coercion, however subtle. A judge seeking retention or appointment should seek recommendations only from lawyers with whom the judge enjoys a significant professional relationship, should consider whether, in lieu of a direct request from the judge, another individual on the judge's behalf should solicit letters of recommendation, and the judge or another individual on behalf of the judge should avoid, when practical, requesting letters from lawyers with cases currently pending before the judge seeking retention or appointment.</p>	<p>See initial explanation for deletion of "judicial candidate."</p> <p>Comment [1] was revised to apply the Rule to judges seeking retention in as well as appointment to judicial office.</p> <p>The language for new Comment [2] comes substantially from the proposed Indiana Amendments to the 2007 ABA Model Code of Judicial Conduct, revised to eliminate the word "candidate" and substitute "judge seeking retention or selection." Additional revisions were made to make the language clearer. In discussion, the Committee was concerned that the Rule should specify that judges should avoid any type of coercive circumstances, and such language was thus specifically added.</p>

Proposed Revisions to Canon 4 of the 2007 ABA Model Code of Judicial Conduct

ABA MODEL CODE CANON/RULE/COMMENTS	PROPOSED REVISION	EXPLANATION
<p>RULE 4.4 <i>Campaign Committees</i></p> <p>(A) A judicial candidate subject to public election may establish a campaign committee to manage and conduct a campaign for the candidate, subject to the provisions of this Code. The candidate is responsible for ensuring that his or her campaign committee complies with applicable provisions of this Code and other applicable law.</p>	<p>RULE 4.4 <i>Campaign Committees</i></p> <p>(A) A judicial candidate subject to public election may establish a campaign committee to manage and conduct a campaign for the candidate, subject to the provisions of this Code. The candidate is responsible for ensuring that his or her campaign committee complies with applicable provisions of this Code and other applicable law.</p>	<p>See initial explanation.</p>
<p>(B) A judicial candidate subject to public election shall direct his or her campaign committee:</p> <p>(1) to solicit and accept only such campaign contributions as are reasonable, in any event not to exceed, in the aggregate, \$[insert amount] from any individual or \$[insert amount] from any entity or organization;</p>	<p>(B) A judicial candidate subject to public election shall direct his or her campaign committee:</p> <p>(1) to solicit and accept only such campaign contributions as are reasonable, in any event not to exceed, in the aggregate, \$[insert amount] from any individual or \$[insert amount] from any entity or organization;</p>	<p>See initial explanation.</p>
<p>(2) not to solicit or accept contributions for a candidate's current campaign more than [insert amount of time] before the applicable primary election, caucus, or general or retention election, nor more than [insert number] days after the last election in which the candidate participated; and</p>	<p>(2) not to solicit or accept contributions for a candidate's current campaign more than [insert amount of time] before the applicable primary election, caucus, or general or retention election, nor more than [insert number] days after the last election in which the candidate participated; and</p>	<p>See initial explanation.</p>
<p>(3) to comply with all applicable statutory requirements for disclosure and divestiture of campaign contributions, and to file with [name of appropriate regulatory authority] a report stating the name, address, occupation, and employer of each person who has made campaign contributions to the committee in an aggregate value exceeding \$[insert amount]. The report must be filed within [insert number] days following an election, or within such other period as is provided by law.</p>	<p>(3) to comply with all applicable statutory requirements for disclosure and divestiture of campaign contributions, and to file with [name of appropriate regulatory authority] a report stating the name, address, occupation, and employer of each person who has made campaign contributions to the committee in an aggregate value exceeding \$[insert amount]. The report must be filed within [insert number] days following an election, or within such other period as is provided by law.</p>	<p>See initial explanation.</p>

Proposed Revisions to Canon 4 of the 2007 ABA Model Code of Judicial Conduct

ABA MODEL CODE CANON/RULE/COMMENTS	PROPOSED REVISION	EXPLANATION
<p>COMMENT</p> <p>[1] Judicial candidates are prohibited from personally soliciting campaign contributions or personally accepting campaign contributions. See Rule 4.1(A)(8). This Rule recognizes that in many jurisdictions, judicial candidates must raise campaign funds to support their candidates, and permits candidates, other than candidates for appointive judicial office, to establish campaign committees to solicit and accept reasonable financial contributions or in-kind contributions.</p>	<p>COMMENT</p> <p>[1] Judicial candidates are prohibited from personally soliciting campaign contributions or personally accepting campaign contributions. See Rule 4.1(A)(8). This Rule recognizes that in many jurisdictions, judicial candidates must raise campaign funds to support their candidates, and permits candidates, other than candidates for appointive judicial office, to establish campaign committees to solicit and accept reasonable financial contributions or in-kind contributions.</p>	<p>See initial explanation.</p>
<p>[2] Campaign committees may solicit and accept campaign contributions, manage the expenditure of campaign funds, and generally conduct campaigns. Candidates are responsible for compliance with the requirements of election law and other applicable law, and for the activities of their campaign committees.</p>	<p>[2] Campaign committees may solicit and accept campaign contributions, manage the expenditure of campaign funds, and generally conduct campaigns. Candidates are responsible for compliance with the requirements of election law and other applicable law, and for the activities of their campaign committees.</p>	<p>See initial explanation.</p>
<p>[3] At the start of a campaign, the candidate must instruct the campaign committee to solicit or accept only such contributions as are reasonable in amount, appropriate under the circumstances, and in conformity with applicable law. Although lawyers and others who might appear before a successful candidate for judicial office are permitted to make campaign contributions, the candidate should instruct his or her campaign committee to be especially cautious in connection with such contributions, so they do not create grounds for disqualification if the candidate is elected to judicial office. See Rule 2.11.</p>	<p>[3] At the start of a campaign, the candidate must instruct the campaign committee to solicit or accept only such contributions as are reasonable in amount, appropriate under the circumstances, and in conformity with applicable law. Although lawyers and others who might appear before a successful candidate for judicial office are permitted to make campaign contributions, the candidate should instruct his or her campaign committee to be especially cautious in connection with such contributions, so they do not create grounds for disqualification if the candidate is elected to judicial office. See Rule 2.11.]</p>	<p>See initial explanation.</p>

Proposed Revisions to Canon 4 of the 2007 ABA Model Code of Judicial Conduct

ABA MODEL CODE CANON/RULE/COMMENTS	PROPOSED REVISION	EXPLANATION
<p>RULE 4.5 <i>Activities of Judges Who Become Candidates for Nonjudicial Office</i></p> <p>(A) Upon becoming a candidate for a nonjudicial elective office, a judge shall resign from judicial office, unless permitted by law to continue to hold judicial office.</p> <p>(B) Upon becoming a candidate for a nonjudicial appointive office, a judge is not required to resign from judicial office, provided that the judge complies with the other provisions of this Code.</p>	<p>RULE [4-5] 4.3</p>	
<p>COMMENT</p> <p>[1] In campaigns for nonjudicial elective public office, candidates may make pledges, promises, or commitments related to positions they would take and ways they would act if elected to office. Although appropriate in nonjudicial campaigns, this manner of campaigning is inconsistent with the role of a judge, who must remain fair and impartial to all who come before him or her. The potential for misuse of the judicial office, and the political promises that the judge would be compelled to make in the course of campaigning for nonjudicial elective office, together dictate that a judge who wishes to run for such an office must resign upon becoming a candidate.</p>		<p>The Committee discussed whether a judge may run to be a delegate for a Constitutional Convention. However, there was a consensus that no exception should be allowed.</p>
<p>[2] The “resign to run” rule set forth in paragraph (A) ensures that a judge cannot use the judicial office to promote his or her candidacy, and prevents post-campaign retaliation from the judge in the event the judge is defeated in the election. When a judge is seeking appointive nonjudicial office, however, the dangers are not sufficient to warrant imposing the “resign to run” rule.</p>	<p>[2] The “resign to run” rule set forth in [paragraph] Rule 4.3(A) ensures that a judge cannot use the judicial office to promote his or her candidacy, and prevents post-campaign retaliation from the judge in the event the judge is defeated in the election. When a judge is seeking appointive nonjudicial office, however, the dangers are not sufficient to warrant imposing the “resign to run” rule.</p>	<p>Reference to “paragraph” changed to the relevant “Rule” to be consistent with other such references.</p>

APPENDIX 4

**PROPOSED
HAWAI'I CODE OF JUDICIAL CONDUCT**

MAY 2008

**PROPOSED
HAWAII CODE OF JUDICIAL CONDUCT**

MAY 2008

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PREAMBLE

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

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

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

SCOPE

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

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

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

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

standards and seeking to achieve those aspirational goals, thereby enhancing the dignity of the judicial office.

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

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

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

TERMINOLOGY

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

“**Appearance of impropriety**” means conduct that reasonable minds, with knowledge of all the relevant circumstances, would perceive as materially impairing the judge’s independence, integrity, impartiality, temperament, or fitness to fulfill the duties of judicial office. See Canon 1, and Rule 1.2.

“**Code**” means the Hawai‘i Code of Judicial Conduct. See Rules 1.1, 1.2, 2.12, 2.15, 3.1, 3.2, 3.5, 3.8, 3.10, 3.11, 3.12, 3.13, and 4.3.

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

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

“**Domestic partner**” means a person with whom another person maintains a household and an intimate relationship, other than a person to whom he or she is legally married. See Rules 2.11, 2.13, 3.13, and 3.14.

“**Duties of judicial office**” means adjudicative functions and the broader range of administrative and related responsibilities that accompany the judicial office. See Canons 2 and 3, and Rules 2.1, 2.2, 2.3, 2.5, 2.10, 3.1, 3.2, 3.5, 3.8, 3.9, 3.11, and 3.12.

“**Economic interest**” means ownership of more than a de minimis legal or equitable interest or a relationship as officer, director, advisor, or other active participant in the affairs of a party. Except for situations in which the judge participates in the management of such a legal or

equitable interest, or the interest could be substantially affected by the outcome of a proceeding before a judge, economic interest does not include:

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

See Rules 1.3 and 2.11.

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

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

"Impending matter" is a matter that is imminent or expected to occur in the near future. See Rules 2.9, 2.10, 3.13, and 4.1.

"Impropriety" includes conduct that violates the law, court rules, or provisions of this Code, and conduct that undermines a judge's independence, integrity, impartiality, temperament, or fitness. See Canon 1 and Rule 1.2.

"Independence" means a judge's freedom from influence or controls other than those established by law. See Canons 1 and 4, and Rules 1.2, 3.1, 3.12, and 3.13.

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

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

"Law" encompasses rules as well as statutes, ordinances, constitutional provisions, provisions of this Code, and decisional law. See Rules 1.1, 2.1, 2.2, 2.6, 2.7, 2.9, 3.1, 3.4, 3.9, 3.12, 3.13, 3.14, 3.15, 4.1 and 4.3.

"Member of the judge's family" means a spouse, domestic partner, relative within the third degree of relationship, or other person with whom the judge maintains a close, intimate, or

familial relationship or who is treated by the judge as a member of the judge's family. See Rules 3.7, 3.8, 3.10, and 3.11.

“Member of a judge’s family residing in the judge’s household” means any member of the judge’s family who resides in the judge’s household. See Rules 2.11 and 3.13.

“Nonpublic information” means information that is not available to the public. Nonpublic information may include, but is not limited to, information that is sealed by statute or court order or impounded or communicated in camera, and information offered in grand jury proceedings, presentencing reports, dependency cases, or psychiatric reports. See Rule 3.5.

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

“Political organization” means a political party or other group sponsored by or affiliated with a political party or candidate, the principal purpose of which is to further the election or appointment of candidates for political office. See Rule 4.1.

“Third degree of relationship” includes the following persons related to the judge by blood or marriage: great-grandparent, grandparent, parent, uncle, aunt, brother, sister, child, grandchild, great-grandchild, nephew, and niece. See Rule 2.11.

APPLICATION

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

I. APPLICABILITY OF THIS CODE

(A) This Code applies to all full-time and part-time judges except as otherwise provided.

(B) A judge, within the meaning of this Code, is anyone, whether or not a lawyer, who is an officer of a judicial system and who performs judicial functions, including an officer such as a master, referee, or hearing officer, but not including an arbitrator or mediator. However, with respect to a master, referee or hearing officer, the determination of which specific Code provisions apply to an individual judicial officer, depends upon the facts of the particular judicial service.

COMMENT

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

[2] The determination of which category and, accordingly, which specific Rules apply to an individual judicial officer, depends upon the facts of the particular judicial service.

II. RETIRED JUDGE RECALLED FOR SERVICE

This Code applies to a retired judge recalled for service, who is not actively engaged in the practice of law, except a retired judge is not required to comply with either of the following: Rule 3.9, except while serving as a judge; or Rule 3.8, at any time.

COMMENT

[1] For the purposes of this section, as long as a retired judge is recalled for service, the judge is considered to "perform judicial functions."

III. PART-TIME JUDGE

(A) This Code applies to a part-time judge, including a retired judge recalled to service who is permitted to practice law and a per diem judge ("part-time judge"), except that a part-time judge is not required to comply with either of the following:

- (1) Rules 2.10(A) and 2.10(B), except while serving as a judge; or
- (2) Rules 3.4, 3.8, 3.9, 3.11, 3.14, 3.15, 4.1, and 4.2, at any time; and

(B) A part-time judge shall not practice law in the court on which the judge serves, and shall not act as a lawyer in a proceeding in which the judge has served as a judge or in any other proceeding related thereto. For purposes of this Section, the District Family Courts and the District Courts are to be considered separate courts when determining disqualification.

COMMENT

[1] When a person who has been a part-time judge is no longer a part-time judge, including a retired judge who is no longer recalled, that person may act as a lawyer in a proceeding in which he or she has served as a judge or in any other proceeding related thereto only with the informed consent of all parties, and in conformance with the Hawai'i Rules of Professional Conduct.

IV. TIME FOR COMPLIANCE

A person to whom this Code becomes applicable shall comply immediately with its provisions, except that those judges to whom Rules 3.8 and 3.11 apply shall comply with those Rules as soon as reasonably possible, but in no event later than one year after the Code becomes applicable to the judge.

COMMENT

[1] If serving as a fiduciary when selected as judge, a new judge may, notwithstanding the prohibitions in Rule 3.8, continue to serve as fiduciary, but only for that

period of time necessary to avoid serious adverse consequences to the beneficiaries of the fiduciary relationship and in no event longer than one year. Similarly, if engaged at the time of judicial selection in a business activity, a new judge may, notwithstanding the prohibitions in Rule 3.11, continue in that activity for a reasonable period but in no event longer than one year.

CANON 1

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

RULE 1.1 *Compliance with the Law*

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

RULE 1.2 *Promoting Confidence in the Judiciary*

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

COMMENT

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

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

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

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

[5] Actual improprieties include violations of law, court rules or provisions of this Code.

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

RULE 1.3 *Avoiding Misuse of the Prestige of Judicial Office*

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

COMMENT

[1] It is improper for a judge to use or attempt to use his or her position to gain personal advantage or deferential treatment of any kind. For example, it would be improper for a

judge to allude to his or her judicial status to gain favorable treatment in encounters with traffic officials. Similarly, a judge must not use judicial letterhead to gain an advantage in conducting his or her personal business.

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

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

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

CANON 2

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

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

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

COMMENT

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

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

RULE 2.2 *Impartiality and Fairness*

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

COMMENT

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

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

[3] When applying and interpreting the law, a judge who makes good-faith errors of fact or law does not violate this Rule.

[4] It is not a violation of this Rule for a judge to make reasonable accommodations to ensure pro se litigants the opportunity to have their matters fairly heard.

RULE 2.3 *Bias, Prejudice, and Harassment*

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

(B) A judge shall not, in the performance of the duties of judicial office, by words or conduct manifest bias or prejudice, or engage in harassment, including but not limited to bias, prejudice, or harassment based upon race, sex, gender, religion, national origin, ethnicity, disability, age, sexual orientation, marital status, socioeconomic status, or political affiliation. A judge shall make reasonable efforts, including providing appropriate supervision, to ensure that

this Rule is not violated by court staff and court officials subject to the judge's direction and control.

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

(D) The restrictions of Rules 2.3(B) and (C) do not preclude judges or lawyers from making legitimate reference to the listed factors, or similar factors, when they are relevant to an issue in a proceeding.

COMMENT

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

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

[3] Harassment, as referred to in Rules 2.3(B) and (C), is verbal or physical conduct that denigrates or shows hostility or aversion toward a person on bases such as race, sex, gender, religion, national origin, ethnicity, disability, age, sexual orientation, marital status, socioeconomic status, or political affiliation.

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

RULE 2.4 *External Influences on Judicial Conduct*

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

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

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

COMMENT

[1] An independent judiciary requires that judges decide cases according to the law and facts, without regard to whether particular laws or litigants are popular or unpopular with the

public, the media, government officials, or the judge's friends or family. Confidence in the judiciary is eroded if judicial decision making is perceived to be subject to inappropriate outside influences.

RULE 2.5 *Competence, Diligence, and Cooperation*

(A) A judge shall perform the duties of judicial office competently and diligently.

(B) A judge shall cooperate with other judges and court officials in the administration of court business.

COMMENT

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

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

[3] In disposing of matters promptly and efficiently, a judge must demonstrate due regard for the rights of parties to be heard and to have issues resolved without unnecessary cost or delay. Containing costs while preserving fundamental rights of parties also protects the interests of witnesses and the general public. A judge should monitor and supervise cases in ways that reduce or eliminate dilatory practices, avoidable delays, and unnecessary costs.

RULE 2.6 *Ensuring the Right to Be Heard*

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

(B) A judge may encourage settlement of disputed matters in a proceeding but shall not act in a manner that coerces any party into settlement.

COMMENT

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

[2] The judge plays an important role in overseeing the settlement of disputes, but should be careful that efforts to further settlement do not undermine any party's right to be heard according to law. The judge should keep in mind the effect that the judge's participation in settlement discussions may have, not only on the judge's own views of the case, but also on the perceptions of the lawyers and the parties if the case remains with the judge after settlement efforts are unsuccessful. Among the factors that a judge should consider when deciding upon an

appropriate settlement practice for a case are (1) whether the parties have requested or voluntarily consented to a certain level of participation by the judge in settlement discussions, (2) whether the parties and their counsel are relatively sophisticated in legal matters, (3) whether the case will be tried by the judge or a jury, (4) whether the parties participate with their counsel in settlement discussions, (5) whether any parties are unrepresented by counsel, (6) whether the matter is civil or criminal, and (7) whether the settlement judge will be the trial judge in a non-jury matter.

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

RULE 2.7 *Responsibility to Decide*

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

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

RULE 2.8 *Decorum, Demeanor, and Communication with Jurors*

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

(B) A judge shall be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, court staff, court officials, and others with whom the judge deals in an official capacity, and shall require similar conduct of lawyers, court staff, court officials, and others subject to the judge's direction and control.

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

COMMENT

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

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

RULE 2.9 *Ex Parte Communications*

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

(1) When required by the circumstances, an ex parte communication for scheduling, administrative, or emergency purposes that does not address substantive matters is permitted, provided:

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

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

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

(3) A judge may consult with court staff and court officials whose functions are to aid the judge in carrying out the judge's adjudicative responsibilities, provided that any factual information received by the judge that is not part of the record is timely disclosed to the parties. A judge may also consult with other judges, except the judge shall not have an ex parte discussion of a case with a judge who has either previously been disqualified from or has appellate jurisdiction over the matter. A consultation permitted under this Rule does not abrogate the judge's responsibility to personally decide the matter.

(4) A judge may, with the consent of the parties, confer separately with the parties and their lawyers in an effort to settle matters pending before the judge, except in criminal-related matters or juvenile matters involving law violations or status offenses.

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

(6) A judge may initiate, permit, or consider an ex parte communication when serving on a therapeutic or specialty court, such as a mental health court or drug court, provided that the judge reasonably believes that no party will gain a procedural, substantive, or tactical advantage as a result of the ex parte communication and any factual information received that is not part of the record is timely disclosed to the parties.

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

(C) Subject to Rule 2.9(A)(3) and Rule 2.9(E), a judge shall not independently investigate facts in a case in any medium, including electronic, but shall consider only the evidence presented and any facts that may be properly judicially noticed.

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

COMMENT

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

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

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

[4] A judge may consult ethics advisory committees, outside counsel, or legal experts concerning the judge's compliance with this Code. Such consultations are not subject to the restrictions of Rule 2.9(A)(2).

RULE 2.10 *Judicial Statements on Pending and Impending Cases*

(A) A judge shall not make any public statement that might reasonably be expected to affect the outcome or impair the fairness of a matter or affect the appearance of the judge's impartiality in a case pending or impending in any court, or make any nonpublic statement that might substantially interfere with a fair trial or hearing. Subject to this Rule's restrictions, a judge may make public statements in the performance of the duties of judicial office and may explain court procedures.

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

(C) A judge shall require court staff and court officials subject to the judge's direction and control to refrain from making statements that the judge would be prohibited from making by Rules 2.10(A) and (B).

(D) A judge may comment on any proceeding in which the judge is a litigant in a personal capacity. In cases in which the judge is a litigant in an official capacity, such as a writ of mandamus, the judge must not comment publicly.

(E) Subject to the requirements of Rule 2.10(A), a judge may respond directly or through a third party to allegations in the media or elsewhere concerning the judge's conduct in a matter.

COMMENT

[1] This Rule's restrictions on judicial speech are essential to the maintenance of the independence, integrity, and impartiality of the judiciary.

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

RULE 2.11 *Disqualification or recusal*

(A) Subject to the rule of necessity, a judge shall disqualify or recuse himself or herself in any proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to the following circumstances:

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

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

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

(b) acting as a lawyer in the proceeding;

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

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

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

(4) Reserved.

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

(6) The judge:

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

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

(c) was a witness concerning the matter; or

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

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

(C) Waiver of Disqualification or Recusal. A judge disqualified or recused under this Rule, other than for bias or prejudice under Rule 2.11(A)(1) or any other ground mandating disqualification or recusal by law, may disclose on the record the basis of the judge's disqualification or recusal. If, following disclosure of any basis for disqualification or recusal other than personal bias or prejudice concerning a party or other ground mandating disqualification or recusal by law, the parties and lawyers, without participation by the judge, all agree that the judge should not be disqualified or recused, and the judge is then willing to participate, the judge may participate in the proceeding. The agreement shall be incorporated in the record of the proceeding.

COMMENT

[1] Under this Rule, a judge is disqualified or recused whenever the judge's impartiality might reasonably be questioned, regardless of whether any of the specific provisions of Rules 2.11(A)(1) through (6) apply. For example, if a judge were in the process of negotiating for employment with a law firm, the judge would be disqualified from any matters in which that law firm appeared, unless the disqualification was waived by the parties after disclosure by the judge.

[2] A judge's obligation to disqualify himself or herself under this Rule applies regardless of whether a motion to disqualify is filed.

[3] As provided for in Rule 2.11(A), the rule of necessity may override the rule of disqualification or recusal. For example, a judge might be required to participate in judicial review of a judicial salary statute, or might be the only judge available in a matter requiring immediate judicial action, such as a hearing on probable cause or a temporary restraining order. In matters that require immediate action, the judge must disclose on the record the basis for possible disqualification or recusal and make reasonable efforts to transfer the matter to another judge as soon as practicable.

[4] The fact that a lawyer in a proceeding is affiliated with a law firm with which a relative of the judge is affiliated does not itself disqualify the judge. If, however, the judge's impartiality might reasonably be questioned under Rule 2.11(A), or the relative is known by the judge to have an interest in the law firm that could be substantially affected by the proceeding under Rule 2.11(A)(2)(c), the judge's disqualification or recusal is required.

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

[6] "Economic interest," is defined in the Terminology section.

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

RULE 2.12 *Supervisory Duties*

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

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

COMMENT

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

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

RULE 2.13 *Administrative Appointments*

(A) In making administrative appointments, a judge:

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

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

(B) Reserved.

COMMENT

[1] Appointees of a judge include assigned counsel, officials such as referees, commissioners, special masters, receivers, and guardians, and personnel such as clerks, secretaries, and bailiffs. Consent by the parties to an appointment or an award of compensation does not relieve the judge of the obligation prescribed by Rule 2.13(A).

[2] For the purposes of this Rule, nepotism is the appointment of any relative who falls within the third degree of relationship of a judge, a member of a judge's family, or a member of a judge's family residing in the judge's household.

RULE 2.14 *Disability and Impairment*

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

COMMENT

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

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

RULE 2.15 *Responding to Judicial and Lawyer Misconduct*

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

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

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

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

COMMENT

[1] Taking action to address known misconduct is a judge's obligation. Rules 2.15(A) and (B) impose an obligation on the judge to report to the appropriate authority the known misconduct of another judge or a lawyer that raises a substantial question regarding the honesty, trustworthiness, or fitness of that judge or lawyer. Ignoring or denying known misconduct among one's judicial colleagues or members of the legal profession undermines a judge's responsibility to participate in efforts to ensure public respect for the justice system. This Rule limits the reporting obligation to misconduct that an independent judiciary must vigorously endeavor to prevent.

[2] A judge who does not have actual knowledge that another judge or a lawyer may have committed misconduct, but receives credible information indicating a substantial likelihood of such misconduct, is required to take appropriate action under Rules 2.15(C) and (D). Appropriate action may include, but is not limited to, communicating directly with the judge who may have violated this Code, communicating with a supervising judge, or reporting the suspected violation to the appropriate authority or other agency or body. Similarly, actions to be taken in response to credible information indicating that a lawyer has committed a violation of the Hawai'i Rules of Professional Conduct may include but are not limited to communicating directly with the lawyer who may have committed the violation, or reporting the suspected violation to the appropriate authority or other agency or body.

RULE 2.16 *Cooperation with Disciplinary Authorities*

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

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

COMMENT

[1] Cooperation with investigations and proceedings of judicial and lawyer discipline agencies, as required in Rule 2.16(A), instills confidence in a judge's commitment to the integrity of the judicial system and the protection of the public.

CANON 3

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

RULE 3.1 *Extrajudicial Activities in General*

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

- (A) participate in activities that will interfere with the proper performance of the duties of judicial office;
- (B) participate in activities that will lead to frequent disqualification or recusal of the judge;
- (C) participate in activities that would appear to a reasonable person to undermine the judge's independence, integrity, or impartiality;
- (D) engage in conduct that would appear to a reasonable person to be coercive; or
- (E) make use of court premises, staff, stationery, equipment, or other resources, except for incidental use for activities that concern the law, the legal system, or the administration of justice, or unless such additional use is permitted by law, administrative rule or administrative policy.

COMMENT

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

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

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

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

RULE 3.2 *Appearances before Governmental Bodies and Consultation with Government Officials*

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

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

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

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

COMMENT

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

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

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

RULE 3.3 *Testifying as a Character Witness*

A judge shall not testify as a character witness in a judicial, administrative, or other adjudicatory proceeding or otherwise vouch for the character of a person in a legal proceeding, except when duly summoned. Unless there are unusual circumstances where the demands of justice require, a judge should discourage a party from requiring the judge to testify as a character witness

COMMENT

[1] A judge who, without being subpoenaed, testifies as a character witness lends or misuses the prestige of judicial office to advance the interests of another. See Rule 1.3.

RULE 3.4 *Appointments to Governmental Positions*

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

COMMENT

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

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

RULE 3.5 *Use of Nonpublic Information*

A judge shall not knowingly disclose or use nonpublic information acquired in a judicial capacity for any purpose unrelated to the duties of judicial office.

COMMENT

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

[2] This rule is not intended to affect a judge's ability to act on information as necessary to protect the health or safety of the judge or any other person if consistent with other provisions of this Code.

RULE 3.6 *Affiliation with Discriminatory Organizations*

(A) A judge shall not hold membership in any organization that practices invidious discrimination on the basis of race, sex, gender, religion, national origin, marital status, political affiliation, ethnicity, disability, age, sexual orientation, or socioeconomic status.

(B) A judge shall not use the benefits or facilities of an organization if the judge knows or should know that the organization practices invidious discrimination on one or more of

the bases identified in Rule 3.6(A). A judge's attendance at an event in a facility of an organization that the judge is not permitted to join is not a violation of this Rule when the judge's attendance is an isolated event that could not reasonably be perceived as an endorsement of the organization's practices.

COMMENT

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

[2] An organization is generally said to discriminate invidiously if it arbitrarily excludes from membership on the basis of race, sex, gender, religion, national origin, marital status, political affiliation, ethnicity, disability, age, sexual orientation, socioeconomic status, or persons who would otherwise be eligible for admission. Whether an organization practices invidious discrimination is a complex question to which judges should be attentive. The answer cannot be determined from a mere examination of an organization's current membership rolls, but rather, depends upon how the organization selects members, as well as other relevant factors, such as whether the organization is dedicated to the preservation of religious, ethnic, or cultural values of legitimate common interest to its members, or whether it is an intimate, purely private organization whose membership limitations could not constitutionally be prohibited.

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

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

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

RULE 3.7 *Participation in Educational, Religious, Charitable, Fraternal, or Civic Organizations and Activities*

(A) Subject to the requirements of Rule 3.1, a judge may participate in activities sponsored by organizations or governmental entities concerned with the law, the legal system, or the administration of justice, and those sponsored by or on behalf of educational, religious, charitable, fraternal, or civic organizations not conducted for profit, including but not limited to the following activities:

(1) assisting in planning of fund-raising for the organization or entity, volunteering, without attribution of title, services or goods at fund-raising events, and participating in management and investment of the organization's or entity's funds;

(2) soliciting contributions for such an organization or entity, but only from members of the judge's family, or from judges over whom the judge does not exercise supervisory or appellate authority;

(3) soliciting membership for such an organization or entity, even though the membership dues or fees generated may be used to support the objectives of the organization or

entity, but only if the organization or entity is concerned with the law, the legal system, or the administration of justice;

(4) speaking at, receiving an award or other recognition at, being featured on the program of, and permitting his or her title to be used in connection with an event of such an organization or entity, but if the event serves a fund-raising purpose, the judge may participate only if the event concerns the law, the legal system, or the administration of justice;

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

(6) serving as an officer, director, trustee, or nonlegal advisor of such an organization or entity, unless it is likely that the organization or entity:

(a) will be engaged in proceedings that would ordinarily come before the judge; or

(b) will frequently be engaged in adversary proceedings in the court of which the judge is a member, or in any court subject to the appellate jurisdiction of the court of which the judge is a member.

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

COMMENT

[1] The activities permitted by Rule 3.7(A) generally include those sponsored by or undertaken on behalf of public or private not-for-profit educational institutions, and other not-for-profit organizations, including law-related, charitable, and other organizations.

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

[3] Mere attendance at an event, whether or not the event serves a fund-raising purpose, does not constitute a violation of Rule 3.7(A)(4). It is also generally permissible for a judge to serve as an usher or a food server or preparer, wash cars, collect scrips at a school carnival, contribute home-made brownies for a bake sale, or perform similar functions at fund-raising events sponsored by educational, religious, charitable, fraternal, or civic organizations, as long as the judge does so without using the judge's title. Such activities are not solicitation and do not present an element of coercion or misuse the prestige of judicial office.

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

[5] In addition to appointing lawyers to serve as counsel for indigent parties in individual cases, a judge may promote broader access to justice by encouraging lawyers to participate in pro bono publico legal services, if in doing so the judge does not employ coercion, or abuse the prestige of judicial office. Such encouragement may take many forms, including

providing lists of available programs, training lawyers to do pro bono publico legal work, and participating in events recognizing lawyers who have done pro bono publico work.

RULE 3.8 *Appointments to Fiduciary Positions*

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

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

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

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

COMMENT

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

RULE 3.9 *Service as Arbitrator or Mediator*

A judge shall not act as an arbitrator or a mediator or perform other judicial functions apart from the duties of judicial office unless expressly authorized by law.

COMMENT

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

RULE 3.10 *Practice of Law*

A judge shall not practice law. Notwithstanding this prohibition, a judge may act pro se and may, without compensation, give legal advice to and draft or review documents for a

member of the judge's family, but is prohibited from serving as the family member's lawyer in any forum.

COMMENT

[1] A judge may act pro se in all legal matters, including matters involving litigation and matters involving appearances before or other dealings with governmental bodies. A judge must not use the prestige of office to advance the judge's personal or family interests. See Rule 1.3. The Code allows a judge to give legal advice to and draft legal documents for a member of the judge's family, so long as the judge receives no compensation.

RULE 3.11 *Financial, Business, or Remunerative Activities*

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

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

- (1) a business closely held by the judge or members of the judge's family; or
- (2) a business entity primarily engaged in investment of the financial resources of the judge or members of the judge's family.

(C) A judge shall not engage in financial activities permitted under Rules 3.11(A) and (B) if they will:

- (1) interfere with the proper performance of duties of judicial office;
- (2) lead to frequent disqualification or recusal of the judge;
- (3) involve the judge in frequent transactions or continuing business relationships with lawyers or other persons likely to come before the court on which the judge serves; or
- (4) result in violation of other provisions of this Code.

COMMENT

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

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

RULE 3.12 *Compensation for Extrajudicial Activities*

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

COMMENT

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

[2] Compensation derived from extrajudicial activities may be subject to public reporting. See Rule 3.15.

RULE 3.13 *Acceptance and Reporting of Gifts, Loans, Bequests, Benefits, or Other Things of Value*

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

(B) Unless otherwise prohibited by law, or by Rule 3.13(A), a judge may accept the following without publicly reporting such acceptance:

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

(2) gifts, loans, bequests, benefits, or other things of value from friends, relatives, or other persons, including lawyers, whose appearance or interest in a proceeding pending or impending before the judge would in any event require disqualification or recusal of the judge under Rule 2.11;

(3) ordinary social hospitality;

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

(5) rewards and prizes given to competitors or participants in random drawings, contests, or other events that are open to persons who are not judges;

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

(7) books, magazines, journals, audiovisual materials, and other resource materials supplied by publishers on a complimentary basis for official use; or

(8) gifts, awards, or benefits associated with the business, profession, or other separate activity of a spouse, a domestic partner, or other family member of a judge residing in the judge's household, but that incidentally benefit the judge.

(C) Unless otherwise prohibited by law or by Rule 3.13(A), a judge may accept the following items, and must report such acceptance to the extent required by Rule 3.15:

(1) gifts incident to a public testimonial;

(2) invitations to the judge and the judge's spouse, domestic partner, or guest to attend without charge:

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

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

(3) gifts, loans, bequests, benefits, or other things of value, if the source is a party or other person, including a lawyer, who has come or is likely to come before the judge, or whose interests have come or are likely to come before the judge.

COMMENT

[1] Whenever a judge accepts a gift or other thing of value without paying fair market value, there is a risk that the benefit might be viewed as intended to influence the judge's decision in a case. Rule 3.13 imposes restrictions upon the acceptance of such benefits, according to the magnitude of the risk. Rule 3.13(B) identifies circumstances in which the risk that the acceptance would appear to undermine the judge's independence, integrity, or impartiality is low, and explicitly provides that such items need not be publicly reported. As the value of the benefit or the likelihood that the source of the benefit will appear before the judge increases, the judge is either prohibited under Rule 3.13(A) from accepting the gift, or required under Rule 3.13(C) to publicly report it.

[2] Gift giving between friends and relatives is a common occurrence, and ordinarily does not create an appearance of impropriety or cause reasonable persons to believe that the judge's independence, integrity, or impartiality has been compromised. In addition, when the appearance of friends or relatives in a case would require the judge's disqualification under Rule 2.11, there would be no opportunity for a gift to influence the judge's decision making.

Rule 3.13(B)(2) places no restrictions upon the ability of a judge to accept gifts or other things of value from friends or relatives under these circumstances, and does not require public reporting.

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

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

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

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

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

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

COMMENT

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

[2] Not infrequently, sponsoring organizations invite certain judges to attend seminars or other events on a fee waived or partial fee waived basis, and sometimes include

reimbursement for necessary travel, food, lodging, or other incidental expenses. A judge's decision whether to accept reimbursement of expenses or a waiver or partial waiver of fees or charges in connection with these or other extrajudicial activities must be based upon an assessment of all the circumstances. The judge must undertake a reasonable inquiry to obtain the information necessary to make an informed judgment about whether acceptance would be consistent with the requirements of this Code.

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

- (a) whether the sponsor is an accredited educational institution or bar association rather than a trade association or a for profit entity;
- (b) whether the funding comes largely from numerous contributors rather than from a single entity and is earmarked for programs with specific content;
- (c) whether the content is related or unrelated to the subject matter of litigation pending or impending before the judge, or to matters that are likely to come before the judge;
- (d) whether the activity is primarily educational rather than recreational, and whether the costs of the event are reasonable and comparable to those associated with similar events sponsored by the judiciary, bar associations, or similar groups;
- (e) whether information concerning the activity and its funding sources is available upon inquiry;
- (f) whether the sponsor or source of funding is generally associated with particular parties or interests currently appearing or likely to appear in the judge's court, thus possibly requiring disqualification of the judge under Rule 2.11;
- (g) whether differing viewpoints are presented; and
- (h) whether a broad range of judicial and nonjudicial participants are invited, whether a large number of participants are invited, and whether the program is designed specifically for judges.

RULE 3.15 *Reporting Requirements*

- (A) A judge shall publicly report the amount or value of:
 - (1) compensation received for extrajudicial activities as permitted by Rule 3.12;
 - (2) gifts and other things of value as permitted by Rule 3.13(C), unless the value of such items, alone or in the aggregate with other items received from the same source in

the same calendar year, does not exceed \$200.00, except that all gifts and other things of value as permitted by Rule 3.13(C)(3) shall be reported regardless of their dollar value; and

(3) reimbursement of expenses and waiver of fees or charges permitted by Rule 3.14(A), unless the amount of reimbursement or waiver, alone or in the aggregate with other reimbursements or waivers received from the same source in the same calendar year, does not exceed \$200.00.

(B) When public reporting is required by Rule 3.15(A), a judge shall report the date, place, and nature of the activity for which the judge received any compensation; the description of any gift, loan, bequest, benefit, or other thing of value accepted; and the source of reimbursement of expenses or waiver or partial waiver of fees or charges.

(C) The public report required by Rule 3.15(A) shall be made at least annually, except that for reimbursement of expenses and waiver or partial waiver of fees or charges, the report shall be made within sixty days following the conclusion of the event or program.

(D) Reports made in compliance with this Rule shall be filed as public documents in the office of the clerk of the court on which the judge serves or other office designated by law.

CANON 4

A JUDGE SHALL NOT ENGAGE IN POLITICAL OR CAMPAIGN ACTIVITY THAT IS INCONSISTENT WITH THE INDEPENDENCE, INTEGRITY, OR IMPARTIALITY OF THE JUDICIARY.

RULE 4.1 *Political Activities of Judges*

(A) Except as permitted by law, a judge shall not:

- (1) act as a leader in, or hold an office in, a political organization;
- (2) make speeches on behalf of a political organization;
- (3) publicly endorse or oppose a candidate for any public office;
- (4) solicit funds for, pay an assessment to, or make a contribution to a political organization or a candidate for public office;
- (5) attend or purchase tickets for dinners or other events sponsored by a political organization or a candidate for public office;
- (6) publicly identify himself or herself as a candidate of a political organization;
- (7) seek, accept, or use endorsements from a political organization;

(B) A judge shall take reasonable measures to ensure that other persons do not undertake, on behalf of the judge, any activities prohibited under Rule 4.1(A).

COMMENT

General Considerations

[1] Judges must, to the greatest extent possible, be free and appear to be free from political influence and political pressure.

Participation In Political Activities

[2] Public confidence in the independence and impartiality of the judiciary is eroded if judges are perceived to be subject to political influence. Although judges may register to vote as members of a political party, they are prohibited by Rule 4.1(A)(1) from assuming leadership roles in political organizations.

[3] Rules 4.1(A)(2) and (A)(3) prohibit judges from making speeches on behalf of political organizations or publicly endorsing or opposing candidates for public office, respectively, to prevent them from lending or misusing the prestige of judicial office to advance the interests of others. See Rule 1.3.

[4] Although members of the families of judges are free to engage in their own political activity, including running for public office, there is no “family exception” to the prohibition in Rule 4.1(A)(3) against a judge publicly endorsing candidates for public office. A judge must not become involved in, or publicly associated with, a family member’s political activity. To avoid public misunderstanding, judges should take, and should urge members of their families to take, reasonable steps to avoid any implication that they endorse any family member’s candidacy or other political activity.

[5] Judges retain the right to participate in the political process as voters in both primary and general elections. For purposes of this Canon, participation in a caucus-type election procedure is not prohibited by Rules 4.1(A)(2) or (A)(3), provided a judge shall make reasonable efforts to not disclose his or her vote.

RULE 4.2 *Activities of Judges Seeking Retention in or Appointment to Judicial Office*

A judge seeking retention in or appointment to judicial office may:

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

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

COMMENT

[1] When seeking support or endorsement, or when communicating directly with an appointing or confirming authority, a judge seeking retention in or appointment to judicial office must not make any pledges, promises, or commitments that are inconsistent with the impartial performance of the adjudicative duties of the office.

[2] A judge seeking retention in or appointment to judicial office may arrange for letters of recommendation to nominating commissions or the Governor in support of the judge’s petition or selection from friends, relatives, colleagues, and other members of the candidate’s community, including lawyers. However, a judge seeking retention or appointment, particularly a judge seeking another judicial appointment, must be cautious about from whom and how these letters are obtained, and must avoid the misuse of the court’s power as well as the perception of coercion, however subtle. A judge seeking retention or appointment should seek recommendations only from lawyers with whom the judge enjoys a significant professional relationship, should consider whether, in lieu of a direct request from the judge, another individual on the judge’s behalf should solicit letters of recommendation, and the judge or another individual on behalf of the judge should avoid, when practical, requesting letters from lawyers with cases currently pending before the judge seeking retention or appointment.

RULE 4.3 *Activities of Judges Who Become Candidates for Nonjudicial Office*

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

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

COMMENT

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

[2] The “resign to run” rule set forth in Rule 4.3(A) ensures that a judge cannot use the judicial office to promote his or her candidacy, and prevents post-campaign retaliation from the judge in the event the judge is defeated in the election. When a judge is seeking appointive nonjudicial office, however, the dangers are not sufficient to warrant imposing the “resign to run” rule.

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