

## **RULE 2 CODE OF JUDICIAL CONDUCT**

### **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 and avoid both impropriety and the appearance of impropriety. They should aspire to conduct that ensures the greatest possible public confidence in their independence, impartiality, integrity, and competence.

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

## **SCOPE**

[1] The Code of Judicial Conduct consists of four canons, numbered rules under each canon, and comments that generally follow and explain each rule. Scope and Terminology sections provide additional guidance in interpreting and applying the code. An Application section establishes when the various rules apply to a judge or judicial candidate.

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

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

[4] Second, the comments identify aspirational goals for judges. To implement fully the principles of this code as articulated in the canons, judges should strive to

exceed the standards of conduct established by the rules, holding themselves to the highest ethical standards and seeking to achieve those aspirational goals, thereby enhancing the dignity of the judicial office.

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

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

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

## TERMINOLOGY

**“Appropriate disciplinary authority”** means the authority having responsibility for initiation of disciplinary process in connection with the violation to be reported. See Rules 2-2.14 and 2-2.15.

**“Contribution”** means both financial and in-kind contributions, such as goods, professional or volunteer services, advertising, and other types of assistance, that, if obtained by the recipient otherwise, would require a financial expenditure. See Rules 2-3.13, 2-4.1, and 2-4.2.

**“De minimis,”** in the context of interests pertaining to recusal of a judge, means an insignificant interest that could not raise a reasonable question regarding the judge’s impartiality. See Rule 2-2.11 and 2-3.8.

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

(1) an interest in the individual holdings within a mutual or common investment fund;

(2) an interest in securities held by an educational, religious, charitable, fraternal, or civic organization in which the judge or the judge’s spouse, parent, or child serves as a director, an officer, an advisor, or other participant;

(3) a deposit in a financial institution or deposits or proprietary interests the judge may maintain as a member of a mutual savings association or credit union, or similar proprietary interests;

(4) an interest in the issuer of government securities held by the judge; or

(5) ownership or other financial interest in small publicly traded corporations, unless a proceeding pending or impending before the judge could substantially affect the value of the shares. See Rules 2-1.3, 2-2.11, 2-3.2 and 2-3.8.

**“Fiduciary”** includes relationships such as personal representative, executor, administrator, trustee, attorney-in-fact under power of attorney, conservator, or guardian. See Rules 2-2.11, 2-3.2, and 2-3.8.

**“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 2-1.2, 2-2.2, 2-2.4, 2-2.6, 2-2.7, 2-2.10, 2-2.11, 2-2.13, 2-3.1, 2-3.2, 2-3.4, 2-3.6, 2-3.12, 2-3.13, and 2-4.2.

**“Impending matter”** is a matter that is imminent or expected to occur in the near future. See Rules 2-2.9, 2-2.10, 2-3.2, and 2-3.13.

**“Impropriety”** includes conduct that violates the law, court rules, or provisions of this code, and conduct that undermines a judge’s independence, integrity, or impartiality. See Canon 1 and Rules 2-1.2, 2-2.7, and 2-3.13.

**“Independence”** means a judge’s freedom from influence or controls other than those established by law. See Canons 1 and 4, and Rules 2-1.2, 2-2.4, 2-2.7, 2-2.10, 2-3.1, 2-3.4, 2-3.6, 2-3.12, and 2-3.13.

**“Integrity”** means probity, fairness, honesty, uprightness, and soundness of character. See Canons 1 and 4, and Rules 2-1.2, 2-2.7, 2-2.10, 2-2.16, 2-3.1, 2-3.6, 2-3.12, and 2-3.13.

**“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 Canon 4 and Rules 2-2.11, 2-4.1, and 2-4.2.

**“Knowingly,” “knowledge,” “known,” and “knows”** mean actual knowledge of the fact in question. A person’s knowledge may be inferred from circumstances. See Rules 2-1.3, 2-2.5, 2-2.11, 2-2.15, 2-2.16, 2-3.5, 2-3.6, and 2-4.2.

**“Law”** encompasses court rules as well as ordinances, administrative regulations, statutes, constitutional provisions, and decisional law. See Rules 2-1.1, 2-1.2, 2-1.3, 2-2.1, 2-2.2, 2-2.4, 2-2.6, 2-2.7, 2-2.8, 2-2.9, 2-2.13, 2-3.1, 2-3.2, 2-3.4, 2-3.6, 2-3.7, 2-3.9, 2-3.10, 2-3.12, 2-3.13, 2-3.14, 2-4.1, and 2-4.2.

**“Member of the candidate’s family”** means a spouse, child, grandchild, parent, grandparent, or other relative or person with whom the candidate maintains a close familial or intimate relationship. See Rule 2-4.2.

**“Member of the judge’s family”** means a spouse, child, grandchild, parent, grandparent, or other relative or person with whom the judge maintains a close familial or intimate relationship. See Rules 2-2.11, 2-3.5, 2-3.8, 2-3.10, and 2-3.11.

**“Member of a judge’s family residing in the judge’s household”** means any relative of a judge by blood or marriage, or a person treated by a judge as a member of the judge’s family, who resides in the judge’s household. See Rules 2-2.11 and 2-3.13.

**“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 2-3.5.

**“Pending matter”** is a matter that has commenced. A matter continues to be pending through any appellate process until final disposition. See Rules 2-2.9, 2-2.10, 2-2.11, 2-3.2, and 2-3.13.

**“Personally solicit”** means a direct request made by a judge or a judicial candidate for financial support or in-kind services, whether made in person, by letter, telephone, or any other means of communication. See Rules 2-3.7 and 2-4.2.

**“Political campaign”** means election contests between and among candidates for office. See Rule 2-4.1.

**“Public election”** includes primary and general elections, partisan elections, nonpartisan elections, and retention elections. See Rule 2-4.2.

**“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 2-2.11.



## **APPLICATION**

The application section establishes when the various rules apply to a judge or judicial candidate.

### **I. APPLICABILITY OF THIS CODE**

**(A) All provisions of this code apply to all full-time judges, commissioners, and masters. Parts II and III of this section identify the specific provisions of this code that apply to senior judges and other part-time judges, respectively. Canon 4 applies to judicial candidates.**

**(B) A judge, within the meaning of this code, is anyone who is authorized to perform judicial functions within the judicial branch.**

## **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] 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.

## **II. SENIOR JUDGE**

**A retired judge who has an application on file with the clerk of the Supreme Court or who is otherwise appointed by the Supreme Court to serve as a senior judge pursuant to article V, section 26.3 of the Missouri Constitution, shall comply with all provisions of this code except Rule 2-3.9 (Service as Arbitrator or Mediator) so long as the judge is in full compliance with Rule 11.09 (Senior Judge Limitations).**

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

**A judge, other than a Senior Judge, who serves on a part-time basis as a municipal judge by election or appointment, shall comply with all provisions of this code:**

**(A) except:**

**(1) Rules 2-3.2 to 2-3.15 and Rules 2-4.1 to 2-4.2; and**

**(2) Rule 2-2.10 (Judicial Statements on Pending and Impending Cases),**

**while not serving as a judge;**

**(B) but shall not:**

**(1) practice law in the municipal division of the circuit court on which the judge serves;**

**(2) act as a lawyer in any matter wherein any underlying facts occurred within the geographic boundaries of the political subdivision for which the judge serves and which matter could be brought by a proceeding in the municipal division of the circuit court in which the judge serves; or,**

**(3) act as a lawyer in a proceeding in which the judge has served as a judge or in any other proceeding related thereto.**

#### **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 2-3.8 (Appointments to Fiduciary Positions) and 2-3.11 (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.**

#### **COMMENT**

[1] If serving as a fiduciary when selected as judge, a new judge may, notwithstanding the prohibitions in Rule 2-3.8, 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 2-3.11, 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 2-1.1 *Compliance with the Law***

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

### **RULE 2-1.2 *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 by judges. A judge must avoid all impropriety and appearance of impropriety.

[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 under this standard 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's ability to carry out judicial responsibilities with integrity, impartiality, and appropriate temperament is impaired.

[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 2-1.3 Avoiding Abuse of the Prestige of Judicial Office***

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

#### **COMMENT**

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

[2] In addition, the need for every recommendation on official stationery to recite that it is the “personal” act of the judge is questionable. Recommendation letters of the type authorized by judicial codes are reviewed by sophisticated individuals with a sufficient knowledge that references are private, not official acts. References sent to educational institutions, governmental agencies, scholarship committees, and businesses are not likely to be misinterpreted as court acts.

[3] Judges may participate in the process of judicial selection by communicating with appointing authorities and screening committees 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 2-1.3 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 2-2.1 *Giving Precedence to the Duties of Judicial Office***

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

#### **COMMENT**

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

[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.

#### **RULE 2-2.2 *Impartiality and Fairness***

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

#### **COMMENT**

[1] In disposing of matters promptly and efficiently, a judge must demonstrate due regard for the rights of the parties to be heard and to have issues resolved without



unnecessary costs or delay. To ensure impartiality and fairness to all parties, a judge must be objective and open-minded.

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

[3] When applying and interpreting the law, a judge sometimes may make good-faith errors of fact or law. Errors of this kind do not violate this Rule 2-2.2.

[4] A judge may make reasonable accommodations to afford litigants the opportunity to have their matters fairly heard.

#### **RULE 2-2.3 *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 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, or marital status, and shall not permit court staff, court officials, or others subject to the judge's direction and control to do so.**

**(C) A judge shall require lawyers in proceedings before the court to refrain from manifesting bias or prejudice, or engaging in harassment, including but not**

**limited to race, sex, gender, religion, national origin, ethnicity, disability, age, sexual orientation, or marital status, against parties, witnesses, lawyers, or others.**

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

## **COMMENT**

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

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

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

[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 2-2.4 *External Influences on Judicial Conduct***

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

**(B) A judge shall not permit family, social, political, religious, or other 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 special position to influence the judge.**

**COMMENT**

[1] A fair, impartial, and 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 2-2.5 *Competence, Diligence, and Cooperation***

**(A) A judge shall perform judicial and administrative duties competently and diligently.**

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

## **COMMENT**

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

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

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

[4] In disposing of matters promptly, efficiently and fairly, 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 supervise cases in ways that reduce or eliminate dilatory practices, avoidable delays, and unnecessary costs.

## **RULE 2-2.6 *Ensuring the Right to Be Heard***

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

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

## **COMMENT**

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

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

[3] Judges must be mindful of the effect settlement discussions can have, not only on their objectivity and impartiality, but also on the appearance of their objectivity and impartiality. Despite a judge's best efforts, 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 recusal may be appropriate. See Rule 2-2.11(A)(1).

#### ***RULE 2-2.7 Responsibility to Decide***

**A judge shall hear and decide matters assigned to the judge, except when recusal is appropriate under this code or other law.**

#### **COMMENT**

[1] Judges must be available to decide the matters that come before the court. There are times when recusal is appropriate to avoid the appearance of impropriety, to protect the rights of litigants, and to preserve public confidence in the fairness, independence, integrity, and impartiality of the judiciary. 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 recusal to avoid cases that present difficult, controversial, or unpopular issues.

#### ***RULE 2-2.8 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 2-2.5 to dispose promptly of the business of the court. Judges can be efficient and businesslike while being patient and deliberate.

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

#### **RULE 2-2.9 *Ex Parte Communications***

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

**(1) When circumstances require it, ex parte communication for scheduling, administrative, or emergency purposes, which does not address substantive matters, is permitted, provided:**

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

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

**(2) 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.**

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

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



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

**(B) If a judge inadvertently receives an unauthorized ex parte communication that the judge considers bears upon the substance of a matter, the judge shall take appropriate action.**

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

**(D) A judge shall make reasonable efforts, including providing appropriate supervision, to ensure that this Rule 2-2.9 is not violated by court staff, court officials, and others subject to the judge's direction and control.**

## **COMMENT**

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

[2] Whenever the presence of a party or notice to a party is required by this Rule 2-2.9, 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.

[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 2-2.9.

[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.

[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 recused from hearing the matter, and with judges who have appellate jurisdiction over the matter.

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

#### ***RULE 2-2.10 Judicial Statements on Pending and Impending Cases***

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

**(B) A judge shall not, in connection with cases, controversies, or issues that are likely to come before the court, make pledges, promises, or commitments that are inconsistent with the impartial performance of the adjudicative duties of judicial office, unless the judge recuses under Rule 2-2.11(A)(4).**

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

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

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

## **COMMENT**

[1] The restrictions on judicial speech by this Rule 2-2.10 are essential to the maintenance of the independence, fairness, 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 2-2.11 *Recusal***

**(A) A judge shall 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 concerning a party or a party's lawyer or knowledge of facts that are in dispute in the proceeding that would preclude the judge from being fair and impartial.**

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

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

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

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

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

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

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

**(5) The judge:**

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

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

**(c) was a material witness concerning the matter.**

**(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 family members residing in the judge's household.**

**(C) A judge subject to recusal under this Rule 2-2.11, other than for bias or prejudice under paragraph (A)(1), may disclose on the record the basis of the judge's recusal and may ask the parties and their lawyers to consider, outside the presence of the judge and court personnel, whether to waive recusal. If, following the disclosure, the parties and lawyers agree, without participation by the judge or court personnel, that the judge need not recuse, the judge may participate in the proceeding. The agreement shall be incorporated into the record of the proceeding.**

## COMMENT

[1] Under this Rule 2-2.11, a judge should recuse whenever the judge's impartiality might reasonably be questioned, regardless of whether any of the specific provisions of paragraphs (A)(1) to (5) apply.

[2] The rule of necessity may override the rule of recusal. For example, a judge might be required to participate in judicial review of matters pertaining to the judiciary, 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 recusal and make reasonable efforts to transfer the matter to another judge as soon as practicable.

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

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

(1) an interest in the individual holdings within a mutual or common investment fund;

(2) an interest in securities held by an educational, religious, charitable, fraternal, or civic organization in which the judge or the judge's spouse, or member of the judge's family living in the same household 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;

(4) an interest in the issuer of government securities held by the judge; or

(5) ownership or other financial interest in small publicly traded corporations unless a proceeding pending or impending before a judge could substantially affect the value of the shares.

#### **RULE 2-2.12 *Supervisory Duties***

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

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

## COMMENT

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

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

### **RULE 2-2.13 *Administrative Appointments***

**(A) In making administrative appointments, a judge:**

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

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

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



## COMMENT

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

[2] Unless otherwise defined by law, nepotism is the appointment or hiring of any relative within the fourth degree of relationship by consanguinity or affinity. See Mo. Const. article VII, section 6.

### **RULE 2-2.14 *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 2-2.14. 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 disciplinary authority, agency, or body. See Rule 2-2.15.

**RULE 2-2.15 *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 disciplinary 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 disciplinary authority.**

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

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

## **COMMENT**

[1] Taking action to address known misconduct is a judge's obligation. Paragraphs (A) and (B) impose an obligation on the judge to report to the appropriate disciplinary authority the known misconduct of another judge or a lawyer that raises a substantial question regarding the honesty, trustworthiness, or fitness of that judge or lawyer. Ignoring or denying known misconduct among one's judicial colleagues or members of the legal profession undermines a judge's responsibility to participate in efforts to ensure public respect for the justice system. This Rule 2-2.15 limits the reporting obligation to those offenses that an independent judiciary must vigorously endeavor to prevent.

[2] A judge who does not have actual knowledge that another judge or a lawyer may have committed misconduct, but receives information indicating a substantial likelihood of such misconduct, is required to take appropriate action under paragraphs (C) and (D). Appropriate action may include, but is not limited to, communicating directly with the judge who may have violated this code, communicating with a supervising judge, or reporting the suspected violation to the appropriate disciplinary authority. 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 disciplinary authority.

### **RULE 2-2.16 *Cooperation with Disciplinary Authorities***

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

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

#### **COMMENT**

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

## **CANON 3**

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

#### **RULE 2-3.1 *Extrajudicial Activities in General***

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

**(A) participate in activities that will interfere with the proper performance of the judge’s judicial duties;**

**(B) participate in activities that will lead to frequent recusal of the judge;**

**(C) participate in activities that would demean the judicial office or cast reasonable doubt on the judge’s capacity to act impartially as a judge;**

**(D) engage in conduct that would appear to a reasonable person to be coercive.**

#### **COMMENT**

[1] Complete separation of a judge from extrajudicial activities is neither possible nor wise; a judge should not become isolated from the community in which the judge lives. As a judicial officer and person specially learned in the law, a judge is in a unique position to contribute to the improvement of the law, the legal system, and the administration of justice, including revision of substantive and procedural law and improvement of criminal and juvenile justice. To the extent that time permits, a judge is encouraged to do so, either independently or through a bar association, judicial

conference or other organization dedicated to the improvement of the law. Judges may participate in efforts to promote the fair administration of justice, the independence of the judiciary, and the integrity of the legal profession and may express opposition to the persecution of lawyers and judges in other countries because of their professional activities. A judge may speak, write, lecture, teach, and participate in other extrajudicial activities concerning the law, the legal system, the administration of justice and nonlegal subjects, subject to the requirements of this Rule 2-3.1.

[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.

**RULE 2-3.2 *Appearances before Governmental Bodies and Consultation with Government Officials***

**(A) 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.**

**(B) A judge also may consult with governmental bodies and executive or legislative branch officials when the judge is self-represented in a matter involving the judge or the judge's legal or economic interests.**

**(C) In all other respects, a judge shall not appear voluntarily at a public hearing before, or otherwise consult with, an executive or a legislative body or official.**

## COMMENT

In appearing before governmental bodies, judges must be mindful that they remain subject to other provisions of this code, such as Rule 2-1.3, prohibiting judges from using the prestige of office to advance their own or others' interests, Rule 2-2.10, governing public comment on pending and impending matters, and Rule 2-3.1(C), prohibiting judges from engaging in extrajudicial activities that would demean the judicial office or cast reasonable doubt on the judge's capacity to act impartially as a judge.

In engaging in such activities judges also must not refer to their judicial positions and must otherwise exercise caution to avoid using the prestige of judicial office.

### **RULE 2-3.3 *Testifying as a Character Witness***

**A judge shall not testify as a character witness in a judicial, administrative, or other adjudicatory proceeding, except when duly subpoenaed.**

## COMMENT

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

[2] Testifying as to the qualifications of a judicial nominee at a confirmation hearing does not violate this Rule 2-3.3.

#### **RULE 2-3.4 *Appointments to Governmental Positions***

**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.**

#### **COMMENT**

[1] Rule 2-3.4 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.

[2] A judge may represent a 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 2-3.5 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 judge's judicial duties.**

#### **COMMENT**

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

[2] This Rule 2-3.5 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, other judicial officers, or members of the public, if consistent with other provisions of this code.

### ***RULE 2-3.6 Affiliation with Discriminatory Organizations***

**(A) A judge shall not hold membership in any organization that practices invidious discriminatory conduct against any person who is protected by law from discrimination.**

**(B) A judge shall not use the benefits or facilities of an organization if the judge knows or should know that the organization practices invidious discrimination. A judge's attendance at an event in a facility of an organization that the judge is not permitted to join is not a violation of this Rule 2-3.6 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 reasonable person standard should be used to determine whether a judge's membership in the organization creates the perception that the judge's impartiality, integrity or independence is impaired.

[2] 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 against any person who is protected by law from discrimination, the judge must resign from the organization unless the organization corrects its practice within six months.

[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 2-3.6.

[5] This Rule 2-3.6 does not apply to national or state military service.

**RULE 2-3.7 *Participation in Educational, Religious, Charitable, Fraternal, or Civic Organizations and Activities***

**(A) A judge may serve as an officer, director, trustee, or nonlegal advisor of an organization or governmental agency devoted to the improvement of the law, the legal system, or the administration of justice or of an educational, religious, charitable, fraternal, or civic organization, not conducted for profit, subject to the following limitations and the other requirements of this Rule 2.**

**(1) A judge may assist such an organization in planning fund-raising and may participate in the management and investment of the organization's funds but shall not personally participate in the solicitation of funds or other fund raising activities, except that a judge may solicit funds from other judges over whom the judge does not exercise supervisory or appellate authority.**

**(2) A judge shall not personally participate in membership solicitation if the solicitation might reasonably be perceived as coercive or, except as permitted in Rule 2-2.7(A)(1), if the membership solicitation is essentially a fund-raising mechanism.**

**(3) A judge may make recommendations to public and private fund-granting organizations on projects and program concerning the law, the legal system or the administration of justice.**

**(4) A judge shall not serve as an officer, director, trustee or nonlegal advisor if it is likely that the organization:**

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

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

**(5) A judge as an officer, director, trustee or nonlegal advisor or as a member or otherwise shall not use or permit the use of the prestige of judicial office for fund-raising or membership solicitation.**

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

## **COMMENT**

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

[2] Mere attendance at an event, whether or not the event serves a fund-raising purpose, does not constitute a violation of paragraph (A)(4). It is also generally permissible for a judge to serve as an usher or a food server or preparer, or to perform

similar functions, at fund-raising events sponsored by educational, religious, charitable, fraternal, or civic organizations. Such activities are not solicitation and do not present an element of coercion or abuse the prestige of judicial office.

[3] 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 2-3.7. The letterhead may list the judge's title or judicial office if comparable designations are used for other persons.

[4] 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 2-3.8 *Appointments to Fiduciary Positions***

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

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

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

**(D) If a person who is serving in a fiduciary position becomes a judge, he or she must comply with this Rule 2-3.8 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 recusal of a judge under Rule 2-2.11 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 2-3.9 *Service as Arbitrator or Mediator***

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

## COMMENT

[1] This Rule 2-3.9 does not prohibit a judge from participating in arbitration, mediation, or settlement conferences performed as part of assigned judicial duties. Rendering dispute resolution services apart from those duties, whether or not for economic gain, is prohibited unless it is expressly authorized by law.

## **RULE 2-3.10 *Practice of Law***

**A judge shall not practice law. A judge may represent himself or herself 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 represent him or herself in all legal matters, including matters involving litigation and matters involving appearances before or other dealings with governmental bodies. A judge may practice law as part of his or her military service. A judge must not use the prestige of office to advance the judge's personal or family interests. See Rule 2-1.3.

**RULE 2-3.11 *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 if it will:**

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

**(2) lead to frequent 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] 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 2-2.1. 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 recusal is frequently required. See Rules 2-1.3 and 2-2.11.



[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 recusal or otherwise violate this Rule 2-3.11.

#### **RULE 2-3.12 *Compensation for Extrajudicial Activities***

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

#### **COMMENT**

[1] A judge is permitted to accept honoraria, stipends, fees, wages, salaries, royalties, or other compensation for speaking, teaching, writing, and other extrajudicial activities, provided the compensation is reasonable and commensurate with the task performed. The judge should be mindful, however, that judicial duties must take precedence over other activities. See Rule 2-2.1.

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

**RULE 2-3.13 *Acceptance and Reporting of Gifts, Loans, Bequests, Benefits, or Other Things of Value***

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

**(B) Unless otherwise prohibited by law, or by paragraph (A), a judge may accept, but must report if required by section 105.485, RSMo, 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 recusal of the judge under Rule 2-2.11;**

**(3) ordinary social hospitality, including wedding, engagement or shower gifts;**

**(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, 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 paragraph (A), a judge may accept the following items, and must report such acceptance to the extent required by Rule 2-3.15:**

**(1) gifts incident to a public testimonial;**

**(2) invitations to the judge and the judge's spouse, 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 2-3.13 imposes restrictions upon the acceptance of such benefits, according to the magnitude of the risk. Paragraph (B) identifies circumstances in which the risk that the acceptance would appear to undermine the judge's independence, integrity, or impartiality is low, and explicitly provides that such items need not be publicly reported. 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 (A) from accepting the gift, or required under paragraph (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 recusal under Rule 2-2.11, 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.

[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 2-3.13 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, or member of the judge's family residing in the judge's household, it may be viewed as an attempt to evade Rule 2-3.13 and influence the judge indirectly. Where the gift or benefit is being made primarily to such other persons, and the judge is merely an incidental beneficiary, this concern is reduced. A judge should, however, remind family and household members of the restrictions imposed upon judges, and urge them to take these restrictions into account when making decisions about accepting such gifts or benefits.

[5] Rule 2-3.13 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 2-4.1 and 2-4.2.

**RULE 2-3.14 *Reimbursement of Expenses and Waivers of Fees or Charges***

**(A) Unless otherwise prohibited by Rules 2-3.1 and 2-3.13(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, 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, or guest shall publicly report such acceptance as required by Rule 2-3.15.**

**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] Frequently, 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.

#### **RULE 2-3.15 *Reporting Requirements***

**A judge shall comply with the public reporting requirements of section 105.485, RSMo.**

## **CANON 4**

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

### ***RULE 2-4.1 Political Conduct of Judges and Judicial Candidates in General***

**(A) No judge appointed to or retained in office in the manner prescribed in section 25(a)-(g) of article V of the state constitution shall directly or indirectly make any contribution to or hold any office in a political party or organization or take part in any political campaign.**

**(B) If a judge is nominated and elected as a candidate of a political party, an incumbent judge or candidate for election to judicial office may attend or speak on the judge or candidate's own behalf at political gatherings and may make contributions to the campaign funds of the party of choice. However, neither the judge nor the candidate shall accept or retain a place on any party committee or act as party leader or solicit contributions to party funds.**

**(C) A judge shall resign judicial office when the judge becomes a candidate either in a party primary or in a general election for a nonjudicial office, except that a judge may continue to hold judicial office while being a candidate for election to or serving as a delegate in a state constitutional convention, if otherwise permitted by law to do so.**

**(D) A judge shall not engage in any other political activity except on behalf of measures to improve the law, the legal system, or the administration of justice.**



**(E) Persons appointed as a circuit or associate circuit judge selected pursuant to section 25(a)-(g) of article V of the state constitution and their employees shall not directly or indirectly make any contributions to or hold an office in a political party or organization or take part in any political campaign.**

**RULE 2-4.2 *Campaign Conduct of Judges and Judicial Candidates***

**(A) A candidate, including an incumbent judge, for a judicial office that is filled either by public election between competing candidates or on the basis of the non-partisan court plan:**

**(1) shall maintain the dignity appropriate to judicial office and shall encourage members of the candidate's family to adhere to the same standards of political conduct that apply to the candidate;**

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

**(3) shall not make pledges or promises of conduct in office other than the faithful and impartial performance of the duties of the office;**

**(4) shall review and approve the content of all campaign statements and materials produced by the candidate before their dissemination;**

**(5) shall not knowingly or with reckless disregard for the truth make any false or misleading statement or misrepresent the candidate's identity, qualifications, present position, or other fact; and**

**(6) shall prohibit public officials or employees subject to the candidate's direction or control from doing for the candidate what the candidate is prohibited from doing under this Canon 4; and except to the extent authorized under Rule 2-4.2(B) or Rule 2-4.2(C), such candidate shall not allow any other person to do for the candidate what the candidate is prohibited from doing under this Canon 4.**

**(B) A candidate, including an incumbent judge, for a judicial office that is filled by public election between competing candidates shall not solicit or accept campaign funds in a courthouse or on courthouse grounds. Such candidate shall not solicit in person campaign funds from persons likely to appear before the judge. A candidate may make a written campaign solicitation for campaign funds of any person or group, including any person or group likely to appear before the judge.**

**The candidate may establish committees of responsible persons to secure and manage the expenditure of funds for the campaign. Such committees are not prohibited from soliciting campaign contributions in person and may distribute the candidate's written requests for campaign funds.**

**A candidate shall not use or permit the use of campaign contributions for the private benefit of the candidate or members of the candidate's family.**

**(C) An incumbent judge who is a candidate for retention in or reelection to office without a competing candidate, and whose candidacy has drawn active opposition, may campaign in response thereto and may obtain publicly stated support and campaign funds in the manner provided in Rule 2-4.2(B).**

## COMMENT

[1] Under Rule 4-8.2(b) a lawyer who is a candidate for judicial office must comply with the applicable provisions of the Code of Judicial Conduct.

A candidate for judicial office should consider whether his or her conduct may create grounds for recusal for actual bias or a probability of bias pursuant to *Caperton v. A.T. Massey Coal Co.*, 556 U.S. \_\_\_\_ (2009), or whether the conduct otherwise may create grounds for recusal under this Rule 2 if the candidate is elected to or retained in judicial office.