

Proposed Revised Code  
of Judicial Conduct

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March 2016

1 **CANON 1**

2 **AN INDEPENDENT AND IMPARTIAL JUDICIARY IS INDISPENSABLE TO**  
3 **JUSTICE. A JUDGE THEREFORE SHALL UPHOLD AND SHOULD**  
4 **PROMOTE THE INDEPENDENCE, INTEGRITY, AND IMPARTIALITY OF**  
5 **THE JUDICIARY**

6  
7 **RULE 1.1 Independence, Integrity and Impartiality of the Judiciary**

8  
9 **A judge shall participate in establishing, maintaining and enforcing, and shall**  
10 **personally observe, high standards of conduct so that the integrity, impartiality and**  
11 **independence of the judiciary is preserved. This Code shall be construed and**  
12 **applied to further these objectives.**

13  
14 **RULE 1.2 Compliance with the Law**

15  
16 **A judge shall respect and comply with the law.**

17  
18 **COMMENT:**

19 **Violations of this Code, or violations of law or court rules that reflect adversely on a**  
20 **judge’s honesty, impartiality, temperament or fitness, constitute a failure to respect and**  
21 **comply with the law.**

22  
23 **CANON 2**

24 **A JUDGE SHALL AVOID IMPROPRIETY AND THE APPEARANCE OF**  
25 **IMPROPRIETY**

26  
27 **RULE 2.1 Promoting Confidence in the Judiciary**

28  
29 **A judge shall act at all times in a manner that promotes public confidence in the**  
30 **independence, integrity and impartiality of the judiciary, and shall avoid**  
31 **impropriety and the appearance of impropriety.**

32  
33 **COMMENT:**

34 **[1] Public confidence in the judiciary is eroded by irresponsible or improper conduct by**  
35 **judges. A judge must avoid all impropriety and appearance of impropriety and must**  
36 **expect to be the subject of constant public scrutiny. This principle applies to both the**  
37 **professional and personal conduct of a judge. A judge must therefore accept restrictions**  
38 **on personal conduct that might be viewed as burdensome by the ordinary citizen and**  
39 **should do so freely and willingly.**

40  
41 **[2] Actual impropriety is conduct that reflects adversely on the honesty, impartiality,**  
42 **temperament or fitness to serve as a judge.**

43  
44 **[3] With regard to the judicial conduct of a judge, the appearance of impropriety is**  
45 **conduct that would create in ordinary knowledgeable persons acquainted with the facts a**

1 perception that the judge violated this Code or engaged in other conduct that reflects  
2 adversely on the judge’s honesty, impartiality, temperament or fitness to serve as a judge.

3  
4 With regard to the personal conduct of a judge, an appearance of impropriety is created if  
5 an individual who observes the judge’s personal conduct has a reasonable basis to doubt  
6 the judge’s integrity and impartiality.

7  
8 **RULE 2.2 External Influences on Judicial Conduct**

9  
10 **Judges shall decide cases according to the law and facts. Judges shall not permit**  
11 **family, social, political, financial or other relationships or interests, to influence**  
12 **their judicial conduct or judgment.**

13  
14 **RULE 2.3 Avoiding Abuse of the Prestige of Judicial Office**

15  
16 **(A) A judge shall not abuse the prestige of judicial office to advance the personal or**  
17 **economic interests of the judge or others, or allow others to do so.**

18  
19 **(B) A judge shall not convey or permit others to convey the impression that any**  
20 **person or organization is in a position to influence the judge.**

21  
22 **COMMENT:**

23 [1] It is improper for judges to use or attempt to use their position to gain personal  
24 advantage or deferential treatment of any kind. For example, it would be improper for a  
25 judge to allude to his or her judicial status to gain favorable treatment in encounters with  
26 others, such as persons in official positions and members of the public.

27  
28 [2] The New Jersey Supreme Court has determined that in certain limited situations a  
29 judge may write a letter of recommendation for a current or former law clerk or intern on  
30 judicial letterhead; in all other situations, if a letter of recommendation is appropriate, it  
31 should be on the judge’s personal stationery.

32  
33 The situations in which the judge may use judicial letterhead for letters of  
34 recommendation for law clerks or interns are as follows: (a) when the letter is addressed  
35 to another state or federal government official (this would include letters regarding  
36 subsequent additional clerkships or internships); (b) when the letter is addressed to a law  
37 school, university, or college in connection with a possible teaching position for the law  
38 clerk or intern; and (c) when a potential employer requests a recommendation.

39  
40 [3] Judges may participate in the process of judicial selection or judicial reappointment  
41 by cooperating with appointing authorities and screening committees, and by responding  
42 to inquiries from such entities concerning the professional qualifications of a person  
43 being considered for judicial office.

1 **RULE 2.4 Testifying as a Character Witness**

2  
3 **A judge shall not testify as a character witness in a judicial, administrative, or other**  
4 **adjudicatory proceeding or otherwise vouch for the character of a person in a legal**  
5 **proceeding.**

6  
7 COMMENT:

8 The testimony of a judge as a character witness injects the prestige of the office into the  
9 proceeding in which the judge testifies and may be misunderstood to be an official  
10 testimonial. This rule, however, does not afford a judge a privilege against testifying as a  
11 witness as to evidentiary facts of which the judge has personal knowledge.

12  
13 **CANON 3**

14 **A JUDGE SHALL PERFORM THE DUTIES OF JUDICIAL OFFICE**  
15 **IMPARTIALLY AND DILIGENTLY**

16  
17 **RULE 3.1 Precedence of Judicial Office**

18  
19 **The judicial duties of a judge shall take precedence over all other activities. Judicial**  
20 **duties include the duties of the office prescribed by law, this Code, court rule, and**  
21 **administrative directive.**

22  
23 **RULE 3.2 Competence**

24  
25 **A judge shall maintain professional competence.**

26  
27 COMMENT:

28 Competence in the performance of judicial duties requires the legal knowledge, skill,  
29 thoroughness, and preparation reasonably necessary to perform judges' responsibilities of  
30 judicial office.

31  
32 **RULE 3.3 Judicial Independence**

33  
34 **A judge shall be unswayed by partisan interest, public clamor, or fear of criticism.**

35  
36 COMMENT:

37 A judge shall decide cases without regard to whether particular laws or litigants are  
38 popular or unpopular with the public, the media, government officials, or the judge's  
39 friends or family. Confidence in the judiciary is eroded if judicial decision-making is  
40 perceived to be subject to outside influences.

41  
42 **RULE 3.4 Decorum**

43  
44 **A judge shall maintain order and decorum in judicial proceedings.**

1 **RULE 3.5 Demeanor**

2  
3 **A judge shall be patient, dignified, and courteous to litigants, jurors, witnesses,**  
4 **lawyers and others with whom the judge deals in an official capacity, and shall not**  
5 **permit lawyers, court officials, and others subject to the judge's direction and**  
6 **control to display impatience or discourtesy or to detract from the dignity of the**  
7 **court.**

8  
9 **RULE 3.6 Bias and Prejudice**

10  
11 **(A) A judge shall be impartial and shall not discriminate because of race, creed,**  
12 **color, sex, gender identity or expression, religion/religious practices or observances,**  
13 **national origin/nationality, ancestry, language, ethnicity, disability or perceived**  
14 **disability, atypical hereditary cellular or blood trait, genetic information, status as a**  
15 **veteran or disabled veteran of, or liability for service in, the Armed Forces of the**  
16 **United States, age, affectional or sexual orientation, marital status, civil union**  
17 **status, domestic partnership status, socioeconomic status or political affiliation.**

18  
19 **(B) A judge shall require lawyers in proceedings before the judge to refrain from**  
20 **manifesting, by words or conduct, bias or prejudice, on the bases specified in Rule**  
21 **3.6(A), against parties, witnesses, counsel or others. This section does not preclude**  
22 **legitimate advocacy when the listed bases are issues in or relevant to the proceeding.**

23  
24 **(C) A judge shall not, in the performance of judicial duties, by words or conduct**  
25 **manifest bias or prejudice, or engage in harassment, including but not limited to**  
26 **bias, prejudice or harassment on the bases specified in Rule 3.6(A), and shall not**  
27 **permit court staff, court officials or others subject to the judge's direction and**  
28 **control to do so. This section does not preclude reference to the listed bases when**  
29 **they are issues in or relevant to the proceeding.**

30  
31 **COMMENT:**

32 [1] The prohibited bases in this rule are primarily drawn from the Law Against  
33 Discrimination, N.J.S.A. 10:5-1, et seq.

34  
35 [2] Examples of manifestations of bias or prejudice include but are not limited to epithets;  
36 slurs; demeaning nicknames; negative stereotyping; attempted humor based on  
37 stereotypes; threatening, intimidating, or hostile acts; suggestions of connections between  
38 race, ethnicity, or nationality and crime; and irrelevant references to personal  
39 characteristics. Even facial expressions and body language can convey to parties and  
40 lawyers in the proceeding, jurors, the media and others an appearance of bias or  
41 prejudice. A judge must avoid conduct that may reasonably be perceived as prejudiced or  
42 biased.

43  
44 [3] Harassment is verbal or physical conduct that denigrates or shows hostility or  
45 aversion toward a person on prohibited bases listed in Rule 3.6(A).

1 [4] Sexual harassment includes but is not limited to sexual advances, requests for sexual  
2 favors, and other verbal or physical conduct of a sexual nature that is unwelcome.

3  
4 **RULE 3.7 Ensuring the Right to Be Heard**

5  
6 **A judge shall accord to every person who is legally interested in a proceeding, or to  
7 that person's lawyer, the right to be heard according to law or court rule.**

8  
9 COMMENT:

10 A judge may make reasonable accommodations to ensure *pro se* litigants the opportunity  
11 to have their matters fairly heard.

12  
13 **RULE 3.8 Ex Parte Communications**

14  
15 **Except as authorized by law or court rule, a judge shall not initiate or consider *ex*  
16 *parte* or other communications concerning a pending or impending proceeding.**

17  
18 COMMENT:

19 [1] This rule does not prohibit a judge from appointing an independent expert in  
20 accordance with the rules of court.

21  
22 [2] The proscription against communications concerning a proceeding generally includes  
23 communications with or from lawyers and other persons who are participants in the  
24 proceeding. It does not preclude a judge from consulting with other judges on pending  
25 matters, provided that the judge avoids *ex parte* discussions of a case with judges who  
26 have previously been disqualified from hearing the matter and with judges who have  
27 appellate jurisdiction over the matter, or from consulting with court personnel whose  
28 function is to aid the judge in carrying out adjudicative responsibilities.

29  
30 [3] A judge may initiate, permit or consider *ex parte* communications appropriate to  
31 service in the drug court or other similar programs.

32  
33 [4] In general, settlement discussions, discussions regarding scheduling, and a judge's  
34 handling of emergent issues are not considered to constitute *ex parte* communications in  
35 violation of this rule.

36  
37 **RULE 3.9 Diligence**

38  
39 **A judge shall dispose promptly of the business of the court.**

40  
41 COMMENT:

42 Prompt disposition of the court's business requires judges to devote adequate time to their  
43 duties, to be punctual in attending court and expeditious in determining matters before the  
44 court, and to insist that court officials, litigants and lawyers cooperate to that end. In  
45 disposing of matters promptly, a judge must demonstrate due regard for the rights of the  
46 parties to be heard and to have issues resolved without unnecessary cost or delay.

1 **RULE 3.10 Judicial Statements on Pending and Impending Cases**

2  
3 **A judge shall not publicly comment about a pending or impending proceeding in**  
4 **any court and shall not permit court personnel subject to the judge's direction and**  
5 **control to do so. This rule does not prohibit judges from making public statements**  
6 **in the course of their official duties or from explaining to the public the procedures**  
7 **of the court.**

8  
9 **COMMENT:**

10 [1] "Court personnel" does not include the lawyers in a proceeding before a judge. The  
11 conduct of lawyers is governed by RPC 3.6 of the Rules of Professional Conduct.

12  
13 [2] This rule is not intended to prohibit a judge from discussing the facts and holdings,  
14 subject to the guidelines of the Advisory Committee on Extrajudicial Activities, in a  
15 matter that has been concluded.

16  
17 **RULE 3.11 Broadcasting**

18  
19 **A judge should permit broadcasting, televising, recording, or taking photographs in**  
20 **the courtroom and areas immediately adjacent thereto during sessions of court or**  
21 **recesses between sessions only in accordance with the guidelines promulgated by the**  
22 **Supreme Court and subject to the restrictions contained therein.**

23  
24 **RULE 3.12 Communication with Jurors**

25  
26 **(A) A judge shall not commend or criticize jurors for their verdict other than in a**  
27 **court order or opinion in a proceeding.**

28  
29 **(B) Following the verdict, a judge may express appreciation to jurors for their**  
30 **service to the judicial system and the community in open court and in the presence**  
31 **of counsel or the parties. A judge may not have post-verdict discussions with jurors,**  
32 **unless those discussions are part of a hearing ordered on good cause shown**  
33 **pursuant to Rule 1:16-1.**

34  
35 **RULE 3.13 Judicial Administration**

36  
37 **A judge shall diligently discharge the administrative responsibilities of the office**  
38 **without bias or prejudice, maintain professional competence in judicial**  
39 **administration, and facilitate the performance of the administrative responsibilities**  
40 **of other judges and court officials.**

41  
42 **RULE 3.14 Supervisory Duties**

43  
44 **A judge shall require staff, court officials and others subject to the judge's direction**  
45 **and control to observe the standards of fidelity and diligence that apply to the judge**

1 and to refrain from manifesting bias or prejudice in the performance of their  
2 official duties.

3  
4 **RULE 3.15 Responding to Judicial and Lawyer Misconduct**

5  
6 A judge has the following disciplinary responsibilities:

7  
8 (A) A judge who receives reliable information indicating a substantial likelihood  
9 that another judge has committed a violation of this Code should take appropriate  
10 action. A judge having knowledge that another judge has committed a violation of  
11 this Code that raises a substantial question as to the other judge's fitness for office  
12 shall inform the appropriate authority.

13  
14 (B) A judge who receives reliable information indicating a substantial likelihood  
15 that a lawyer has committed a violation of the Rules of Professional Conduct should  
16 take appropriate action. A judge having knowledge that a lawyer has committed a  
17 violation of the Rules of Professional Conduct that raises a substantial question as to  
18 the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects shall  
19 inform the appropriate authority.

20  
21 (C) Acts of a judge in the discharge of disciplinary responsibilities under this rule  
22 shall be absolutely privileged.

23  
24 COMMENT:

25 Appropriate action includes notification to the Assignment Judge, the Administrative  
26 Director of the Courts, or the proper disciplinary authority.

27  
28 **RULE 3.16 Administrative Appointments**

29  
30 (A) A judge shall not make unnecessary appointments and shall exercise the power  
31 of appointment only on the basis of merit, avoiding nepotism and favoritism.

32  
33 (B) A judge shall not approve compensation of appointees beyond the fair value of  
34 services rendered.

35  
36 COMMENT:

37 Appointees of the judge include officials such as commissioners, receivers, guardians and  
38 personnel such as clerks and secretaries. Consent by the parties to an appointment or to  
39 the fixing of compensation does not relieve the judge of the obligation prescribed by this  
40 rule.

41  
42 **RULE 3.17 Disqualification**

43  
44 (A) Judges shall hear and decide all assigned matters unless disqualification is  
45 required by this rule or other law.



1 **(B) Judges shall disqualify themselves in proceedings in which their impartiality or**  
2 **the appearance of their impartiality might reasonably be questioned, including but**  
3 **not limited to the following:**  
4

5 **(1) Personal bias, prejudice or knowledge. Judges shall disqualify themselves if they**  
6 **have a personal bias or prejudice toward a party or a party’s lawyer or have**  
7 **personal knowledge of disputed evidentiary facts involved in the proceeding.**  
8

9 **(2) Financial interest. Judges shall disqualify themselves if they individually or as a**  
10 **fiduciary have a financial interest in an enterprise related to the litigation. Subject**  
11 **to subparagraphs (i), (ii), (iii), and (iv) hereof, a financial interest means ownership**  
12 **of a legal or equitable interest, however small, or a relationship as director or**  
13 **advisor or other participation in the affairs of a party.**  
14

15 **(a) Financial interest does not include:**  
16

17 **(i) ownership of an interest in securities held by a mutual fund or common**  
18 **investment fund, or ownership of securities held in managed funds, provided, in**  
19 **respect of managed funds, that no investment discretion has been retained by the**  
20 **judge or the judge’s spouse, civil union partner, or domestic partner.**  
21

22 **(ii) ownership in securities held by an educational, religious, charitable, fraternal or**  
23 **civic organization in which the judge holds an office;**  
24

25 **(iii) the proprietary interest of a policyholder in a mutual insurance company, of a**  
26 **depositor in a mutual savings association, or a similar proprietary interest unless**  
27 **there is a reasonable possibility that the value of the interest will be affected by the**  
28 **judge’s decision;**  
29

30 **(iv) ownership of an interest in government securities unless there is a reasonable**  
31 **possibility that the value of the interest will be affected by the judge’s decision.**  
32

33 **(3) Personal Relationships. Judges shall disqualify themselves if:**  
34

35 **(a) the judge or the judge’s spouse, civil union partner, or domestic partner, and a**  
36 **first cousin or more closely related relative to either of them, or the spouse, civil**  
37 **union partner, or domestic partner of such relative, or to the judge’s knowledge, a**  
38 **second cousin or related relative to either of them, as defined below, or the spouse,**  
39 **civil union partner, or domestic partner of such relative, is a party to the proceeding**  
40 **or is likely to be called as a witness in the proceeding.**  
41

42 **(b) the judge or the judge’s spouse, civil union partner, or domestic partner, or a**  
43 **first cousin or more closely related relative to either of them, or the spouse, civil**  
44 **union partner, or domestic partner of such relative, is a lawyer for a party.**  
45

46 **(c) the judge or the judge’s spouse, civil union partner, or domestic partner, or any**  
47 **member of the judge’s family residing in the judge’s household has an interest in**

1 the litigation, including among other things, a financial interest in an enterprise  
2 related to the litigation.

3  
4 (d) the judge has a social relationship with a party or the lawyer for a party of a  
5 nature that would give rise to partiality or the appearance of partiality.

6  
7 (4) **Prior Professional Relationships.** Judges shall disqualify themselves based on  
8 their prior professional relationships as follows:

9  
10 (a) In proceedings in which the judge served as a lawyer in the matter in  
11 controversy or in which the judge has been a witness or may be called as a witness;

12  
13 (b) In proceedings in which a party was a former private client for whose matter the  
14 judge had primary responsibility, for a period of seven years from the conclusion of  
15 the representation. However, disqualification for a period of time in excess of seven  
16 years from the conclusion of the representation may be required. In making such a  
17 determination, a judge should consider, among other relevant factors: 1) the scope  
18 of the representation, including but not limited to the cumulative total of matters  
19 handled by the judge, whether a continuous fiduciary relationship existed with the  
20 client over an extended period of time, and the time that elapsed from the  
21 conclusion of the representation; 2) the duration of the representation; 3) the nature  
22 of the representation, including but not limited to the acrimonious nature of the  
23 underlying litigation, and any information acquired about the client as a  
24 consequence of the representation that could cast doubt on the judge's impartiality;  
25 and 4) in respect of a corporate client, whether the principals of the entity are the  
26 same as existed during the representation.

27  
28 For purposes of this rule, an insurance company that had retained the judge to  
29 defend its insureds in tort actions shall not be considered a former client of the  
30 judge.

31  
32 (c) In proceedings in which a party is a governmental entity that previously  
33 employed the judge:

34  
35 (i) for a period of two years following judicial appointment if the judge was  
36 employed as a state government attorney, county prosecutor or assistant county  
37 prosecutor, provided, however, that prior employment as state government  
38 attorneys with broad supervisory authority shall not disqualify judges who had no  
39 actual involvement in the matter while in government service;

40  
41 (ii) for a period of five years following judicial appointment if the judge represented  
42 a local government entity;

43  
44 (d) In proceedings in which the judge's former law firm is involved, for a period of  
45 at least seven years following termination of the relationship or until all financial  
46 obligations from the law firm to the judge are satisfied, whichever is longer;

1 (e) In proceedings in which the judge’s former law clerk is appearing or has signed  
2 papers, for a period of six months following the termination of the clerkship.  
3

4 (5) **Post-Retirement Employment.** Judges shall disqualify themselves if the judge  
5 has initiated contact about or discussed or negotiated his or her post-retirement  
6 employment with any party, attorney or law firm involved in any matter pending  
7 before the judge in which the judge is participating personally and substantially,  
8 regardless of whether or not the discussions or negotiations lead to employment of  
9 the judge by the party, attorney or law firm;  
10

11 (6) Irrespective of the time periods specified in this rule, judges shall disqualify  
12 themselves whenever the nature of the relationship to a party or a lawyer, because  
13 of a continuing social relationship or otherwise, would give rise to partiality or the  
14 appearance of partiality.  
15

16 (C) A disqualification required by this rule is not subject to the parties’ waiver. The  
17 judge shall, however, disclose to the parties any circumstance not deemed by the  
18 judge to require disqualification but which might be regarded by the parties as  
19 affecting the judge’s impartiality.  
20

21 (D) A judge shall address disqualification or issues of recusal and disqualification  
22 promptly upon recognition of grounds which would give rise to partiality or the  
23 appearance of partiality.  
24

25 (E) A judge shall not be automatically disqualified upon learning that a complaint  
26 has been filed against the judge with the Advisory Committee on Judicial Conduct,  
27 litigation naming the judge as a party, or any other complaint about the judge by a  
28 party. If, however, after consideration by the judge whether there is a reasonable  
29 basis to question the court’s impartiality, the judge may recuse himself or herself. A  
30 judge shall promptly disclose to the parties to the pending litigation that a complaint  
31 has been filed or made.  
32

33 COMMENT:

34 [1] Judges must be available to decide the matters that come before the court. Although  
35 there are times when disqualification is necessary to protect the rights of litigants and  
36 preserve public confidence in the independence, integrity and impartiality of the  
37 judiciary, unwarranted disqualification may bring public disfavor to the court and to the  
38 judge personally. The dignity of the court, the judge’s respect for fulfillment of judicial  
39 duties, and a proper concern for the burdens that may be imposed upon the judge’s  
40 colleagues require that a judge not use disqualification to avoid cases that present  
41 difficult, controversial or unpopular issues.  
42

43 [2] For purposes of this rule, as with New Jersey Court Rule 1:12-1, a “first cousin or  
44 more closely related relative” includes first cousin, aunt or uncle, niece or nephew,  
45 grandparent, grandchild, child, parent, or sibling.  
46

1 A “second cousin or related relative” includes a second cousin, great aunt or uncle, first  
2 cousin once removed (e.g., a first cousin’s child or a great aunt or uncle’s child), great  
3 grandparent, or grandniece or grandnephew, or great grandchild.  
4

5 Judges shall keep informed about their personal and fiduciary interests and make  
6 reasonable efforts to keep informed about the personal financial interests of their spouse,  
7 civil union partner, or domestic partner, and family members residing in the judge’s  
8 household.  
9

10 “Knowledge” means actual knowledge of the fact in question. However, knowledge may  
11 be inferred from the circumstances.  
12

13 [3] The fact that a lawyer in a proceeding is affiliated with a law firm with which a  
14 lawyer-relative of the judge is affiliated does not itself disqualify the judge. If, however,  
15 the judge’s impartiality might reasonably be questioned under paragraph (B), or the  
16 lawyer-relative is known by the judge to have an interest in the law firm that could be  
17 substantially affected by the proceeding under paragraph (B)(3)(c), the judge’s  
18 disqualification is required.  
19

20 In making such a determination, a judge should consider, among other relevant factors:  
21 (1) the degree of relationship between the judge and the relative affiliated with the firm  
22 (e.g., sister, nephew, nephew’s spouse); (2) the closeness of the relationship between the  
23 judge and the relative; (3) whether the relative’s affiliation with the firm was known to  
24 the judge without counsel making the court aware of such affiliation; (4) the size of the  
25 law firm the relative is affiliated with; (5) the relative’s role in the law firm (e.g., owner  
26 or equity interest holder, associate, intern); (6) the relative’s relationship, if any, to the  
27 lawyer in the proceeding; (7) whether the law firm represents a named party to the action,  
28 as opposed to an entity proceeding (or seeking to proceed) as *amicus curiae*; (8) the  
29 timing of the law firm’s commencement of participation in the proceeding; (9) whether  
30 the law firm is providing its services *pro bono*, if such arrangement is known by the  
31 judge; and (10) the nature of the proceedings.  
32

33 Note that this comment addresses only whether a lawyer-relative renders the judge  
34 disqualified from hearing all matters involving the law firm with which the relative is  
35 affiliated. Nothing in this comment should be read to permit a judge to hear proceedings  
36 in which a lawyer in the case is related (as first cousin or closer) to the judge or the  
37 judge’s spouse, civil union partner or domestic partner.  
38

39 [4] In evaluating whether a judge should be disqualified from proceedings in which a  
40 party was a former private client of the judge for a period of time in excess of seven years  
41 from the conclusion of the representation, judges should be guided by DeNike v. Cupo,  
42 196 N.J. 502.  
43

44 [5] A lawyer in a governmental agency does not necessarily have an association with  
45 other lawyers employed by that agency within the meaning of this rule; judges formerly  
46 employed by governmental agencies, however, should disqualify themselves in a

1 proceeding if their impartiality might reasonably be questioned because of the  
2 association.

3  
4 [6] With regard to Rule 3.17(B)(4)(c)(ii), a municipal court judge who was a former  
5 municipal prosecutor in the same municipality may preside over local ordinance  
6 violations.

7  
8 [7] A judge may not initiate contact about or discuss or negotiate his or her post-  
9 retirement employment with any party, attorney or law firm involved in any matter  
10 pending before the judge in which the judge is participating personally and substantially.  
11 A matter pending before the judge includes any matter or aspect of a matter which has  
12 not been completed, even if only the performance of a ministerial act remains  
13 outstanding, such as signing a consent order or a similar order. If the subject is raised in  
14 any fashion, the judge must put a halt to the discussion or negotiation at once, rebuff any  
15 offer, and disclose what occurred on the record in the presence of all parties and counsel.  
16 The judge, all parties and attorneys on the record should then evaluate objectively  
17 whether any further relief is needed.

18  
19 A judge who engages in post-retirement employment negotiations or discussions while  
20 still on the bench with any party, attorney or law firm that does not have a matter pending  
21 before the judge, must do so in a way that minimizes the need for disqualification, does  
22 not interfere with the proper performance of the judge's judicial duties, and upholds the  
23 integrity of the courts. A judge should delay starting any such negotiations or discussions  
24 until shortly before his or her planned retirement, and should discuss post-retirement  
25 employment opportunities with the fewest possible number of prospective employers. A  
26 judge should also inform the Appellate Division Presiding Judge for Administration or  
27 Deputy Presiding Judge for Administration, his or her Assignment Judge, or the Tax  
28 Court Presiding Judge about the post-retirement employment negotiations or discussions  
29 to the extent that such negotiations or discussions will interfere with the judge's regular  
30 assignments.

31  
32 A judge should not initiate contact about or discuss or negotiate his or her post-retirement  
33 employment with a party, attorney or law firm that has in the past appeared before the  
34 judge until the passage of a reasonable interval of time, so that the judge's impartiality in  
35 the handling of the case cannot reasonably be questioned. What is reasonable depends on  
36 the circumstances. For instance, it may be that an uncontested matter resolved swiftly by  
37 entry of a default judgment would not call for a lengthy interval of time. Prolonged or  
38 particularly acrimonious litigation may caution in favor of a longer delay. Actions likely  
39 to result in continuing post-judgment matters would also warrant a lengthier intervening  
40 period of time.

41  
42 [8] The rule of necessity may override the rule of disqualification. For example, a judge  
43 might be required to participate in judicial review of a judicial salary statute, or might be  
44 the only judge available in a matter requiring immediate judicial action, such as a hearing  
45 on probable cause or a temporary restraining order. In matters that require immediate

1 action, the judge must disclose on the record the basis for possible disqualification and  
2 make reasonable efforts to transfer the matter to another judge as soon as practicable.

3  
4 [9] The provision in Rule 3.17(C) is designed to avoid the possibility that a party or  
5 lawyer will feel coerced into consent.

6  
7 **CANON 4**

8 **A JUDGE MAY ENGAGE IN ACTIVITIES TO IMPROVE THE LAW, THE**  
9 **LEGAL SYSTEM, AND THE ADMINISTRATION OF JUSTICE**

10  
11 **RULE 4 Activities Related to the Judicial Function**

12  
13 **A judge, subject to the proper performance of judicial duties, may engage in the**  
14 **following related activities if in doing so the judge does not cast doubt on the judge's**  
15 **capacity to decide impartially any issue that may come before the court and**  
16 **provided the judge is not compensated therefor:**

17  
18 **(A) A judge may speak, write, lecture, and participate in other activities concerning**  
19 **the law, the legal system, and the administration of justice.**

20  
21 **(B) A judge may teach concerning the law, the legal system, and the administration**  
22 **of justice.**

23  
24 **(C) A judge may serve as a member, officer or director of a nongovernmental**  
25 **organization devoted to the improvement of the law, the legal system, or the**  
26 **administration of justice, but may not assist the organization in raising funds or**  
27 **participate in their management and investment. A full-time judge may participate**  
28 **as a member of a local or state bar association but may not serve as an officer or**  
29 **trustee, and may only serve on committees of the association subject to such**  
30 **conditions as determined by the Supreme Court.**

31  
32 **(D) A judge may encourage lawyers to provide pro bono legal services.**

33  
34 **COMMENT:**

35 A judge is in a unique position to contribute to the improvement of the law, the legal  
36 system and the administration of justice, including revision of substantive and procedural  
37 law and improvement of the justice system. To the extent that time permits, a judge is  
38 encouraged to do so through a bar association, judicial conference, other organization  
39 dedicated to the improvement of the law or through an appropriate judicial official  
40 charged with administrative responsibility by the Rules of Court.

41  
42 Nothing herein shall preclude a judge from serving as an officer of the Inns of Court.  
43 If guidance is required as to the application of this Canon, judges should consult with the  
44 Advisory Committee on Extra-Judicial Activities.

1 **CANON 5**

2 **A JUDGE SHALL SO CONDUCT THE JUDGE'S EXTRA-JUDICIAL**  
3 **ACTIVITIES AS TO MINIMIZE THE RISK OF CONFLICT WITH JUDICIAL**  
4 **OBLIGATIONS**

5  
6 **RULE 5.1 Extra-Judicial Activities in General**

7  
8 **(A) Judges shall conduct their extra-judicial activities in a manner that would not**  
9 **cast reasonable doubt on the judge's capacity to act impartially as a judge, demean**  
10 **the judicial office, or interfere with the proper performance of judicial duties.**

11  
12 **(B) A judge shall not:**

13  
14 **(1) participate in activities that can be reasonably anticipated to lead to frequent**  
15 **disqualification;**

16  
17 **(2) participate in activities that would appear to ordinary knowledgeable persons**  
18 **acquainted with the facts to undermine the judge's independence, integrity or**  
19 **impartiality;**

20  
21 **(3) make use of court premises, staff, stationery, equipment or other resources for**  
22 **extra-judicial activities, except for incidental use for activities that concern the law,**  
23 **the legal system or the administration of justice, or unless such additional use is**  
24 **permitted by law, administrative directive, or judiciary policy. *De minimis* or other**  
25 **incidental personal use of judiciary equipment or facilities, such as telephones,**  
26 **computers, scanners, fax machines, and copiers, do not violate this rule.**

27  
28 **(C) Upon notice to and approval by the Supreme Court, a judge may appear at a**  
29 **public hearing before an executive or legislative body or official on matters**  
30 **concerning the law, the legal system, and the administration of justice.**

31  
32 **(D) A judge may communicate with government officials on matters concerning the**  
33 **administration of justice within the judge's official responsibility.**

34  
35 **(E) A judge may act *pro se* in a matter involving the judge's legal or economic**  
36 **interests, or when the judge is acting in a fiduciary capacity.**

37  
38 **RULE 5.2 Avocational Activities**

39  
40 **(A) A judge may write, lecture and speak on non-legal subjects, and engage in the**  
41 **arts, sports and other social and recreational activities, provided these activities do**  
42 **not detract from the dignity of the judicial office or interfere with the performance**  
43 **of judicial duties, and provided further that the judge is not compensated therefor.**

44  
45 **(B) A judge may teach non-legal subjects provided the judge is not compensated**  
46 **therefor.**

1 **RULE 5.3 Affiliation with Discriminatory Organizations**

2  
3 **(A) A judge shall not hold membership in any organization that practices invidious**  
4 **discrimination on any of the bases prohibited by Rule 3.6(A).**

5  
6 **(B) A judge shall not accept benefits from or use facilities of an organization if the**  
7 **judge knows or should know that the organization practices invidious**  
8 **discrimination on any of the bases prohibited by Rule 3.6(A), or as otherwise**  
9 **proscribed by law.**

10  
11 **COMMENT:**

12 [1] A judge's membership in an organization that practices invidious discrimination  
13 creates the perception that the judge's impartiality is impaired.

14  
15 [2] An organization is generally said to discriminate invidiously if it arbitrarily excludes  
16 from membership, on the bases prohibited by Rule 3.6(A), persons who would otherwise  
17 be eligible for admission. Whether an organization practices invidious discrimination  
18 cannot be determined from an examination of an organization's current membership rolls,  
19 but rather, depends on how the organization selects members, as well as other relevant  
20 factors, including but not limited to whether the organization is dedicated to religious,  
21 ethnic or cultural values of legitimate common interest to its members. Organizations  
22 dedicated to the preservation of religious, spiritual, charitable, civic or cultural values,  
23 that do not stigmatize any excluded persons are not considered to discriminate  
24 invidiously.

25  
26 [3] When a judge learns that an organization to which the judge belongs engages in  
27 invidious discrimination, the judge must resign immediately from the organization.

28  
29 **RULE 5.4 Participation in Educational, Religious, Charitable, Fraternal or Civic**  
30 **Organizations and Activities**

31  
32 **A judge may participate in civic and charitable activities that do not reflect**  
33 **adversely on the judge's impartiality or interfere with the performance of judicial**  
34 **duties. A judge may serve as an officer, director, trustee or non-legal advisor of an**  
35 **educational, religious, charitable, fraternal or civic organization not conducted for**  
36 **the economic or political advantage of its members, subject to the following**  
37 **limitations:**

38  
39 **(A) A judge shall not serve if it is likely that the organization will be engaged in**  
40 **proceedings that would ordinarily come before the judge or will be regularly**  
41 **engaged in adversary proceedings in any court.**

42  
43 **(B) A judge shall not solicit funds for any educational, religious, charitable,**  
44 **fraternal or civic organization, or use or permit the use of the prestige of the judicial**  
45 **office for that purpose. A judge shall not be listed as an officer, director or trustee**  
46 **of such an organization in any letters or other documents used in such solicitations.**



1 **A judge shall not be a speaker or the guest of honor at an organization's fundraising**  
2 **events, but may attend such events and contribute to such organizations.**

3  
4 **(C) A judge shall not give investment advice to such an organization, nor may a**  
5 **judge serve on its board of directors or trustees if the board has the responsibility**  
6 **for approving investment decisions.**

7  
8 **(D) A judge's name, but not a judge's position and title, may appear on the**  
9 **letterhead of the organization or appear in any literature regarding that**  
10 **organization.**

11  
12 **COMMENT:**

13 [1] The changing nature of some organizations and of their relationship to the law makes  
14 it necessary for judges regularly to reexamine the activities of each organization with  
15 which they are affiliated to determine whether the relationship should be continued.

16  
17 [2] Judges shall inform organizations of the limitations associated with their participation  
18 in educational, religious, charitable, fraternal or civic organizations and activities.  
19 Specific prohibitions include identification of a judge's position and title on the letterhead  
20 of an organization, regardless of the intended use of that letterhead, and involvement of a  
21 judge in the solicitation of funds for the organization.

22  
23 [3] A judge's participation in an organization devoted to law-related activities is governed  
24 by Canon 4.

25  
26 [4] If guidance is required as to the application of this Canon, judges should consult with  
27 the Advisory Committee on Extra-Judicial Activities.

28  
29 **RULE 5.5 Financial, Business, or Remunerative Activities**

30  
31 **(A) Judges shall refrain from financial and business dealings that tend to reflect**  
32 **adversely on their impartiality, interfere with the proper performance of**  
33 **judicial duties, exploit the judicial position, or involve the judge in transactions with**  
34 **lawyers or persons likely to come before the court on which the judge serves.**

35  
36 **(B) Judges may hold investments, including real estate, but shall not serve as an**  
37 **officer, director, manager, advisor or employee of any business, except upon notice**  
38 **to and approval by the Supreme Court.**

39  
40 **(C) Judges should manage their investments and other financial interests to**  
41 **minimize the number of cases in which they are disqualified.**

42  
43 **RULE 5.6 Acceptance of Gifts, Loans, Bequests, Benefits, or Other Things of Value**

44  
45 **Neither a judge nor a member of the judge's family residing in the same household**  
46 **should accept a gift, bequest, favor or loan from anyone except as follows:**

1 (A) A judge may accept a gift of nominal value incident to a public testimonial;  
2 books supplied by publishers on a complimentary basis for official use; or an  
3 invitation to the judge to attend a bar-related function or activity devoted to the  
4 improvement of the law, the legal system or the administration of justice, except as  
5 limited in Rule 6;

6  
7 (B) A judge may accept gifts, loans, bequests, benefits or other things of value from  
8 persons whose appearance or interest in a proceeding pending or impending before  
9 the judge would in any event require disqualification of the judge under Rule 3.17,  
10 including Rule 3.17(B)(6), which requires disqualification of a judge when the  
11 nature of the judge's relationship with a party or an attorney would give rise to  
12 partiality or the appearance of partiality;

13  
14 (C) A judge or a member of the judge's family residing in the same household may  
15 accept ordinary social hospitality; gifts, favors or commercial loans made in the  
16 regular course of business on the same terms available to the general public; or a  
17 scholarship or fellowship awarded on the same terms applied to other applicants;

18  
19 (D) A judge or a member of the judge's family residing in the same household may  
20 accept any other gift, bequest, favor, or loan only if the donor is not a party or other  
21 person whose interests have come or are likely to come before the judge.

22  
23 (E) For the purposes of this rule, "member of the judge's family residing in the same  
24 household" means any relative of a judge by blood or marriage, civil union partner,  
25 domestic partner or a person treated by a judge as a member of the family, who  
26 resides in the same household as the judge.

#### 27 28 **RULE 5.7 Disclosure of Information**

29  
30 **Information acquired by a judge in a judicial capacity shall not be used or disclosed**  
31 **by the judge in financial dealings or for any purpose not related to judicial duties.**

32  
33 COMMENT:

34 [1] In the course of performing judicial duties, a judge may acquire information of  
35 commercial or other value that is unavailable to the public. Judges shall not reveal or use  
36 such information for personal gain or for any purpose unrelated to their judicial duties.

37  
38 [2] This rule is not intended to affect a judge's ability to act on information as necessary  
39 to protect the health or safety of the judge or a member of a judge's family, court  
40 personnel or other judicial officers when consistent with other provisions of this Code.

#### 41 42 **RULE 5.8 Fiduciary Activities**

43  
44 **A judge shall not serve as an executor, administrator, trustee, guardian or other**  
45 **fiduciary, except for the estate, trust or person of a member of the judge's family,**  
46 **and then only when such service will not interfere with the proper performance of**

1 judicial duties. "Member of the judge's family" includes a spouse, civil union  
2 partner, domestic partner, child, grandchild, parent, grandparent or other relative  
3 or person with whom the judge maintains or maintained a familial relationship. As  
4 a family fiduciary a judge is subject to the following restrictions:

5  
6 (A) The judge shall not serve as a fiduciary if that service is likely to result in  
7 litigation that would ordinarily come before the judge, or if the estate, trust or ward  
8 becomes involved in adversary proceedings in the court on which the judge serves  
9 or under its appellate jurisdiction.

10  
11 (B) While acting as a fiduciary for a member of the judge's family, a judge is subject  
12 to the same restrictions on financial activities that apply to the judge in a personal  
13 capacity.

14  
15 (C) On becoming a judge, persons serving as fiduciaries shall comply with this rule  
16 as soon as reasonably practicable, upon notice to and approval by the Supreme  
17 Court.

18  
19 COMMENT:

20 When a judge who is a beneficiary of an estate serves as an executor or administrator as  
21 permitted by this rule and receives a fee solely for the purpose of reducing the tax  
22 liability of the estate, receipt of that fee does not constitute "compensation" under Canon  
23 6.

24  
25 **RULE 5.9 Serving as Arbitrator or Mediator**

26  
27 **A judge shall not act as an arbitrator or mediator or perform other judicial**  
28 **functions apart from the judge's official duties unless expressly authorized by law.**

29  
30 COMMENT:

31 This Rule does not prohibit a judge from participating in arbitration, mediation, or  
32 settlement conferences performed as part of assigned judicial duties. Rendering dispute  
33 resolution services apart from those duties is prohibited unless it is expressly authorized  
34 by law.

35  
36 **RULE 5.10 Practice of Law**

37  
38 **A judge shall not practice law, with or without compensation.**

39  
40 **RULE 5.11 Appointments to Governmental Positions**

41  
42 **A judge shall not accept appointment to a governmental committee, commission, or**  
43 **other position except with prior approval of the Supreme Court as provided in the**  
44 **Rules of Court.**

1 **CANON 6**

2 **A JUDGE SHALL NOT RECEIVE COMPENSATION FOR QUASI-JUDICIAL**  
3 **AND EXTRA-JUDICIAL ACTIVITIES**

4  
5 **RULE 6 Compensation for Quasi-Judicial and Extrajudicial Activities**  
6

7 **A judge shall not receive compensation for quasi-judicial and extra-judicial**  
8 **activities permitted by this Code, but may receive reimbursement of actual expenses**  
9 **that the judge reasonably incurred for travel, food, and lodging, provided that the**  
10 **source or amount of such reimbursement, or the location of the activity, does not**  
11 **give the appearance of influencing the judge in the exercise of judicial duties or**  
12 **otherwise create an appearance of impropriety.**  
13

14 **CANON 7**

15 **A JUDGE SHALL REFRAIN FROM POLITICAL ACTIVITY**

16  
17 **RULE 7 Political Activity**  
18

19 **(A) A judge shall not engage in any political activity, including but not limited to:**

20  
21 **(1) holding membership or office in a political organization;**

22  
23 **(2) making speeches for a political organization or candidate, or publicly endorsing**  
24 **a candidate for public office;**

25  
26 **(3) attending political functions that are likely to be considered as political in**  
27 **nature;**

28  
29 **(4) soliciting funds, paying an assessment, or making a contribution to a political**  
30 **organization or candidate, or purchasing tickets for political party dinners or other**  
31 **functions;**  
32

33 **(B) A judge shall resign from office when the judge becomes a candidate for an**  
34 **elective public office or is nominated thereto.**  
35

36 **(C) A part-time municipal court judge shall not affiliate with a law firm as a**  
37 **partner, director, of counsel, associate, or some other comparable status if the law**  
38 **firm, or any lawyer of the firm on the law firm's behalf, makes political**  
39 **contributions such as those included in Section A(4). It shall be the responsibility of**  
40 **a part-time municipal judge to take reasonable measures to ensure that a law firm**  
41 **with which the judge is affiliated does not make political contributions. Lawyers**  
42 **within the firm with whom the part-time municipal judge is affiliated, may**  
43 **nonetheless make personal political contributions.**  
44  
45  
46

1 **Applicability**

2  
3 **Compliance with the Code of Judicial Conduct**

4  
5 **All judges shall comply with this Code except as provided below.**

6  
7 **A. Part-Time Judge.**

8 **A part-time judge is a judge who serves on a continuing or periodic basis but is**  
9 **permitted by law to devote time to some other profession or occupation and whose**  
10 **compensation for that reason is less than that of a full-time judge. A part-time**  
11 **judge:**

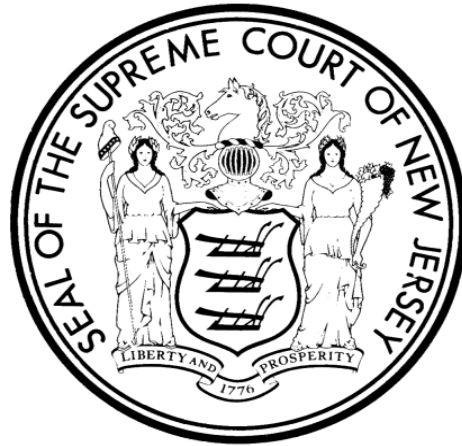
12  
13 **(1) is not required to comply with Rules 5.5(B), 5.8, 5.9, and 5.10;**

14  
15 **(2) shall not practice law except as permitted by the Rules of Court;**

16  
17 **(3) may receive compensation for activities encompassed by Rules 4.1(B) and 5.2(B).**

18  
19 **B. Recalled Judges**

20 **All retired judges recalled to judicial service shall comply with the provisions of this**  
21 **Code governing full-time judges.**



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**REPORT OF SUPREME COURT  
AD HOC COMMITTEE ON  
CODE OF JUDICIAL CONDUCT**

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**December 12, 2014**

SUPREME COURT OF NEW JERSEY  
*Ad Hoc Committee on Code of Judicial Conduct*



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Chief Justice Stuart Rabner  
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Dear Chief Justice:

I am pleased to submit to you the final report of the Supreme Court Ad Hoc Committee on the Code of Judicial Conduct. The Committee was charged by Chief Justice James Zazzali to conduct a comprehensive review of our existing *Code of Judicial Conduct* and to consider relevant provisions of the American Bar Association's ("ABA") *Model Code of Judicial Conduct* as adopted in 2007. The Court directed the Committee specifically to review and address issues involving judicial disqualifications and the appearance of impropriety, and to make findings and recommendations in respect of substantive and structural revisions to the Code.

The Committee undertook this task with the understanding that the Code of Judicial Conduct plays a critical role in the lives of every judicial officer in this State, and that it is integral to maintaining public confidence in the independence, integrity and impartiality of the Judiciary. Our goal was to maintain existing high standards of conduct for New Jersey's judges while, at the same time, updating and clarifying the Code. Our efforts have been focused on both substance and process, and on providing judges with a clear and informative set of rules to which they can conform their judicial conduct and responsibilities.

**Background**

As directed, the Committee considered the ABA's new Model Code, including background relating to its development over time and its relationship to our current New Jersey Code. As you are aware, in 1924, the ABA adopted the Canons of

Judicial Ethics, which consisted of a series of general admonitions and rules designed to guide judges in their conduct. The Canons were not intended to serve as a basis for judicial discipline but that is exactly what happened. With the creation of judicial disciplinary commissions in various states, the ABA decided to create a more specific set of rules so that judges would have a clearer idea of what was expected of them. A special ABA Committee created in 1969 proposed the first Code of Judicial Conduct, which the ABA adopted in 1972. Subsequently, in 1974, the New Jersey Supreme Court promulgated a modified version of the ABA Code that was stricter in some respects than the ABA version (e.g., no remittal of disqualification, disqualification required if judge related by blood or by marriage to party or attorney or office associate of attorney within the third degree of kindred under common law). However, the structure of New Jersey's Code generally paralleled the structure of the ABA Code so that it was relatively simple to compare provisions in the Model Code with provisions in New Jersey's Code. The Court also adopted Rule 2:15, creating the Advisory Committee on Judicial Conduct (ACJC).

In 1990, after a three-year review by the ABA's Standing Committee on Ethics and Professional Responsibility and its Judicial Code Subcommittee, the ABA adopted a substantially revised Model Code of Judicial Conduct. Much of the impetus for that undertaking can be attributed to complaints from judges that the existing Code did not fairly apprise them of the conduct for which they would be subject to disciplinary action. Judicial disciplinary commissions had by then become both widespread and active, and the judges were concerned about prosecution for violations of Code provisions that were not believed to be specific enough to give them fair notice regarding the nature of the proscribed conduct.

The 1990 Model Code was comprehensive and specific. "Should," which was used throughout the 1972 Model Code, was changed to "shall" in the Canons and the subsections of the Canons (which are known as Rules), and "should" was reserved for use in the Commentaries. The Preamble made it clear that the use of "shall" was "intended to impose binding obligations, the violation of which could result in disciplinary action," thereby shifting the focus of the 1990 Model Code to enforcement rather than education in respect of the proper norms of conduct.

The New Jersey Supreme Court created an *ad hoc* committee to study the new Model Code and to recommend to the Court whether the ABA Model should be adopted in New Jersey. That committee, chaired by Assignment Judge Reginald Stanton, recommended that the structure of the existing New Jersey Code be retained but that provisions from the new Model Code should be added as appropriate. Equally important, the committee further recommended generally retaining the word "should" instead of "shall" to retain the aspirational aspect of the New Jersey Code. In 1994, the New Jersey Supreme Court adopted the current Code, essentially accepting the proposed revisions of its *ad hoc* committee. The current New Jersey Code is considerably shorter than the 1990 ABA Model, in part because the ABA Model deals extensively with matters relating to judicial elections (surrogates, who are the only elected judicial officers in New Jersey, must consult the Code of Conduct for Judiciary Employees for guidance regarding permissible activities in connection with election campaigns), and because the ABA's detailed commentary on various topics was not included in the New Jersey Code.



Nine years later, in 2003, the ABA decided to undertake another review of the Model Code. The Joint Commission to evaluate the Model Code of Judicial Conduct conducted hearings throughout the country and determined that there was a demonstrated “need for a careful evaluation of the Model Code.” The members’ determination was based on “the extensively reported collective experience of judges, judicial regulators and judicial ethics commissions” and on issues that had been raised regarding the methods used to select judges, the development of new types of courts and court processes, and the increase in *pro se* litigants.

On February 12, 2007, the House of Delegates of the ABA adopted the current Model Code. The current Code is even more comprehensive than the 1990 Model Code and is organized differently. Canon 1 combines the provisions now contained in New Jersey’s Canon 1 and Canon 2; Canon 2 covers most of the substance of our Canon 3; Canon 3 covers our Canons 4 and 5; and Canon 4 deals with the conduct of candidates for elected judicial office and acceptable political conduct. (New Jersey’s Canon 6 deals solely with compensation for quasi-judicial and extra-judicial activities, and Canon 7 contains our prohibition against engaging in political activity.) This new structure reflects a Joint Commission decision to parallel the format of the Rules of Professional Conduct. In furtherance of that goal, in the Model Code, Canon 1 deals with the general obligations of a judge with regard to the independence, integrity, and impartiality of the Judiciary; Canon 2 deals with a judge’s professional duties and responsibilities; Canon 3 deals with personal conduct, such as extrajudicial activities and business or financial activities; and Canon 4 deals with the conduct of judicial candidates and acceptable political conduct for judges.

### **Recommendations**

The recommendations of the Ad Hoc Committee in respect of New Jersey’s current Code follow:

#### **Basic Policy Determinations**

In general, the Committee sought more precisely to describe the conduct prohibited (or permitted) by the Rules. Language in our current Code has been modified, not necessarily to conform to the language found in the ABA Model but, rather, to achieve the goals of clarity and specificity, e.g., the phrase “in All Activities” at the end of Canon 2 has been deleted as too vague. Further, the Committee decided to place any appropriate commentary at the end of each Rule more clearly to differentiate between black letter rules and interpretive remarks. Whenever new law required modifications, the Committee made them, including among others, incorporating the legal terms “civil unions” and “domestic partnership” into the Code where applicable.

Finally, as also directed by the Court, the Committee focused on the difficult and somewhat controversial issues of judicial disqualification and the appearance of impropriety. Those issues will be discussed in detail below.

#### **Format**

Against that background, the *Ad Hoc* Committee made a number of basic policy decisions, the first related to format. The Committee members found that the disciplinary

process had become more formal and public over the past several years and concluded, in that context, that the format of our Code could be confusing and that it is sometimes difficult to differentiate between general principles, rules, (the violation of which can result in discipline), and interpretive comments. The Committee therefore determined that there is a need for greater specificity in respect of those actions requiring discipline but that aspirational goals found in our current Code should be retained. That approach continues to build on both the bedrock principles under which our current system has operated and the over 30 years of New Jersey precedent interpreting the Canons. Thus, as does the ABA Model Code, the Committee's proposal contains Canons that express general principles of conduct followed by rules that prescribe specific standards of conduct.

While this format is similar to the ABA Model Code, the Committee decided not to follow the organization of the Model Code. The Committee chose instead to retain our seven judicial Canons, with minor revisions, as the foundation of the judicial disciplinary system. Those seven Canons provide the general framework for the ethical restrictions delineated in the Rules.

Consistent with the goal of certainty, the Committee unanimously recommends that the word "should" be changed to "shall" in every Canon and Rule where it previously existed, except in Canon 1 and as noted below. This recommendation follows the approach implemented in the revision of the 1990 ABA Model Code and found in the current Model Code.

#### **CANON 1**

**AN INDEPENDENT AND IMPARTIAL JUDICIARY IS INDISPENSABLE TO JUSTICE.  
A JUDGE THEREFORE SHALL UPHOLD AND SHOULD PROMOTE THE  
INDEPENDENCE, INTEGRITY, AND IMPARTIALITY OF THE JUDICIARY**

The Committee recommends amending our Canon 1 to include the foundational principle that an "independent and impartial judiciary is indispensable to justice," a phrase that is currently included in the descriptive portion of the Canon. The Committee also recommends including the term "impartiality" in this Canon, as it is an integral component of the principles of our system of justice. In addition, the Committee recommends requiring judges to "uphold" the independence, integrity, and impartiality of the Judiciary, but keeping a judge's obligation to "promote" independence, integrity, and impartiality aspirational. Lastly, the Committee recommends including "Compliance with the Law" under Canon 1, rather than under Canon 2 as in the current Code, because Canon 2 deals with impropriety and the appearance of impropriety and not the foundational principles found in Canon 1.

#### **CANON 2**

**A JUDGE SHALL AVOID IMPROPRIETY AND  
THE APPEARANCE OF IMPROPRIETY**

The spirit of our current Canon 2 remains unchanged. However, the Committee recommends separating the provisions of Canon 2 into individual rules dealing with impropriety and the appearance of impropriety. The Committee discussed argument for and

against retaining the appearance of impropriety standard. In 2004, the ABA's Joint Commission to evaluate the Model Code of Judicial Conduct, in response to negative reaction in the press, had reversed its planned elimination of the appearance of impropriety. However, later, in January 2007, a subcommittee of the Joint Commission effectively removed the appearance of impropriety standard by inserting language in the Scope Section of the proposed Model Code stating that a judge could be disciplined only for violating the Rules and not for violating the Canons themselves. Because the appearance of impropriety was mentioned only in Canon 1 and not in a Rule, a judge could not be disciplined for creating an appearance of impropriety. In response to opposition from an advisory member of the Joint Commission, the subsequent coverage that this issue again received in the press, and a resolution from the Conference of Chief Justices opposing "any revised version of the Model Code of Judicial Conduct that does not include a provision requiring avoidance of impropriety and the appearance of impropriety both as an aspirational goal for judges and as a basis for disciplinary enforcement," the Joint Commission restored the original language.

The Ad Hoc Committee recommends that the "Appearance of Impropriety" standard remain in the New Jersey Code because the members believe that judges should be held to a higher standard of conduct than ordinary persons and should accept restrictions on their conduct that ordinary persons may find burdensome. To provide additional guidance, the Committee recommends the addition of two comments under Rule 2.1: "[2] Actual impropriety is conduct that reflects adversely on the honesty, impartiality, temperament or fitness to serve as a judge." and "[3] The appearance of impropriety is conduct that would create in ordinary knowledgeable persons acquainted with the facts 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."

In respect of proposed Rule 2.2, the Committee recommends that the language: "Judges shall decide cases according to the law and facts" be added to reinforce the requirement that judges prevent external or outside interests from influencing their conduct or judgment.

Under Rule 2.3, regarding the use of the prestige of judicial office, the Committee recommends that the term "abuse" be substituted for "lend" in the current rule: "A judge shall not abuse the prestige of judicial office by advancing the personal or economic interests of the judge or others, or allow others to do so." The Committee agrees with the ABA Commission's view that the term "lend" is imprecise.

The Committee also recommends the addition of a comment to Rule 2.3 that addresses questions related to letters of recommendation: "[2] A judge may provide letters of recommendation in accordance with policies established by the Supreme Court." The ABA Model Code contains a comment regarding judges' use of official letterhead that is inconsistent with the current policy of the New Jersey Supreme Court: "[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."

### CANON 3

#### A JUDGE SHALL PERFORM THE DUTIES OF JUDICIAL OFFICE IMPARTIALLY AND DILIGENTLY

New Jersey's current Canon 3 is broken down into 4 subsections: Adjudicative Responsibilities, Administrative Responsibilities, Disqualification and Remittal of Disqualification. While the proposed Canon 3 is inclusive of those topics, it is not broken down by subsection; rather, it consists of specific rules that encompass a judge's adjudicative and administrative duties, and a judge's duties regarding judicial disqualification.

Rules 3.1 thru 3.12 follow the provisions in our current Canons 3(A)(1), 3(A)(2), 3(A)(3), 3(A)(4), 3(A)(5), 3(A)(6), 3(A)(7), 3(A)(8), 3(A)(9), and 3(A)(10) with minor stylistic changes. The Committee recommends removal of the language requiring judges to be "faithful to the law" because the concept is covered in Rule 1.2, Compliance with the Law. Also, the language in current Canon 3(A)(6) allowing judges to obtain the advice of a disinterested expert has been recast as a Comment: "[1] This Rule does not prohibit a judge from appointing an independent expert in accordance with the rules of court."

The Committee considered including language in Rule 3.12, Communication with Jurors, specifying appropriate communication with jurors and decided to recommend the adoption of the following: "(B) a judge may express appreciation to jurors for their service to the judicial system and the community. Following the verdict, a judge, with the consent of the jury and either on the record or in the presence of counsel or the parties, may discuss general questions of process and procedure with the jury, but shall not discuss any issue involved in the case." The Committee considered expanding the scope of permissible communications as an educational experience for jurors and counsel but was concerned that any discussion of substantive or procedural issues germane to the case could create a basis for appeal. That concern led to the members' recommendation to limit the scope of judges' exchanges with jurors.

Rules 3.13 thru 3.16 follow the provisions in our current Canons 3(B)(1), 3(B)(2), 3(B)(3), and 3(B)(4) with minor changes. With regard to Rule 3.15, Responding to Judicial and Lawyer Misconduct, the Committee removed language found in Canon 3(B)((3)(c) that it considers unnecessary. The Committee proposes that Rule 3.15(C) state: "Acts of a judge in the discharge of disciplinary responsibilities under this rule shall be absolutely privileged." and recommends the elimination of the language "and no civil action predicated thereon may be instituted against the judge."

Rule 3.17 deals with the issue of judicial disqualification, currently found in Canon 3(C). The Committee initially recommends that the Court adopt language requiring judges to "hear and decide all assigned matters unless disqualification is required by this rule or other law." Rule 3.17(A). The premise, based on the principle of judicial economy and efficiency, is that judges shall not unnecessarily disqualify themselves from a matter unless there is a basis for disqualification under the Code or other court rule.

The Committee conducted a comprehensive review of the issue of judicial disqualification. It recommends structuring the rule to identify the four major considerations underlying judges' decisions regarding disqualification: 1) Personal Bias, Prejudice or Knowledge, 2) Financial Interest, 3) Personal Relationships, and 4) Prior and Prospective Professional Relationships. After careful deliberation, the Committee decided to recommend a new approach in the area of "Financial Interests," which will be discussed in greater detail below. Also, the Committee has specifically identified those "Prior Professional Relationships" that require disqualification and has established disqualification terms for certain categories of those prior relationships.

The language regarding disqualification based on "Personal Bias, Prejudice or Knowledge" has not been changed (other than its specific identification as an area of concern). Indeed, the Model Code offers no new additions to this longstanding principle.

With regard to the language related to disqualification based on a judge's "Financial Interest" in a matter that is before the judge, the Committee debated this issue extensively. The result is a recommendation that a majority of the members believe offers a new and different perspective on the identification of a disqualifying financial interest and, also, the disclosure of that financial interest to the parties appearing before the judge. The majority has concluded that our current rule, the "one share rule," is unrealistic, overly burdensome, and does not serve the judicial system. Under the rule, if a judge owns one share or ten shares or even one hundred shares of stock in a major corporation, and that corporation is a party in the matter before the judge, recusal is required even when the judge's financial interest would not constitute either a controlling interest or an interest that would likely be affected by the judge's ruling. It is the opinion of the majority (hereinafter the "Committee") that a reasonable person well acquainted with the facts would not expect a judge's recusal under those circumstances.<sup>1</sup>

In considering this issue, the Committee identified two important criteria for determining whether a judge has a disqualifying financial interest in a matter before the judge: whether the judge's financial interest is a controlling interest and/or whether there is a reasonable possibility that the financial interest will be affected by the judge's ruling in the case. The Committee considered recommending a specific value that would constitute a disqualifying financial interest, i.e., an interest worth \$10,000, but determined that the purpose of the rule was not served by establishing an arbitrary value that did not take into account the above criteria. The ABA Model Code deals with this issue by defining a disqualifying "economic interest" as "ownership of more than a de minimis legal or equitable interest." The Committee chose not to recommend a standard of "more than de minimis," because it is highly subjective standard and depending on the context, would be difficult to

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<sup>1</sup> Five members of the Committee would retain the "one share" disqualification rule in our current code wherein any financial interest requires recusal. Indeed, during the Committee's deliberations it was observed that under the Committee's proposal, when there is a dispute over the proper classification of the judge's financial interest, a determination must be made whether the interest is controlling and/or whether there is a reasonable possibility that the "value of the ... interest will be affected by the judge's ruling in the case." The five dissenting members are of the opinion that such disputes inevitably will require additional judicial resources and delay proceedings. In contrast, the "one share" rule is straightforward and simple: The judge either has a financial interest, however small, or does not.

administer. Consequently, the Committee is proposing a rule that is anchored in the factual context, is understood by the public and, also, promotes transparency through judicial disclosure.

The proposed rule requires judges to make the initial determination whether a financial interest is disqualifying because the interest is either a controlling interest or there is a reasonable possibility that the interest is likely to be affected by the judge's decision. If the judge determines that the interest is disqualifying, then recusal is required. If the judge determines that the financial interest is not disqualifying, then the judge must disclose the financial interest so that the parties can determine whether to pursue an application for recusal. Rule 3.17(B)(2).

The Committee also considered the types of financial instruments that would not constitute a financial interest. In our current Code, it is recognized that ownership in a "mutual or common investment fund that holds securities" does not constitute a financial interest in those securities. The premise for that rule is that the owners of those funds have no investment discretion regarding the securities purchased. Similarly, the Committee recommends that securities held in managed funds do not constitute a financial interest provided that no investment discretion has been retained by the judge. Rule 3.17(B)(2)(a)(i).

In respect of disqualification based upon a judge's "Personal Relationships," the current Code remains essentially unchanged.<sup>2</sup> We note that in conformance with changes in the law, language identifying "civil union partners" and "domestic partners" in rules that refer to a judge's spouse has been added. Rule 3.17(B)(3)(a), 3.17(B)(3)(b) and 3.17(B)(3)(c).

The Committee has chosen to parse disqualification based upon a judge's "Prior and Prospective Professional Relationships," into five separate areas: 1) judge served as a lawyer or witness in a matter; 2) party in the matter is the judge's former client; 3) judge represented a governmental entity that has a matter before the judge; 4) judge's former law firm is involved in the matter before the judge; and 5) judge's former law clerk is involved in a matter before the judge.<sup>3</sup> In an effort to achieve greater clarity, the Committee has delineated areas of absolute disqualification coupled with limited time period disqualification depending on the prior relationship. These provisions are discussed at length below.

The Committee recommends that the current language requiring judges to disqualify themselves from proceedings in which the judge served as a lawyer in the matter in controversy should remain in the Code but has separated that provision from the other provisions contained in Canon 3(C)(1)(b).

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<sup>2</sup> The provisions under Canon 3(C)(1)(3) of our current Code, which remain essentially unchanged in Rule 3.17(B)(3)(a) and Rule 3.17(B)(3)(b), differ in respect of the degree and type of included relationships from those provisions contained in Rule 1:12-1. It is recommended that Rule 1:12-1 be revised to mirror the provisions of the Code.

<sup>3</sup> The Code of Judicial Conduct was amended on September 4, 2012 to include restrictions regarding post-retirement employment negotiations.

The Committee also recommends that judges disqualify themselves from proceedings in which a judge's former client is a party, provided the judge had the "primary responsibility" for handling the client's matter. To prevent mass disqualifications in insurance related cases, the Committee specifically recommends that "an insurance company that had retained the judge to defend its insureds in tort actions shall not be considered a former client of the judge." Rule 3.17(B)(4)(b).

With regard to cases involving governmental entities, the Committee recommends that judges disqualify themselves for a period of two years following judicial appointment in proceedings in which their former office is a party. Rule 3.17(B)(4)(c)(i) is applicable to judges who were employed as state government attorneys, county prosecutors or assistant county prosecutors, except that judges who served "as state government attorneys with broad supervisory authority" need not disqualify themselves if they "had no actual involvement in the matter while in government service." The Committee further recommends that judges disqualify themselves for a period of five years in proceedings involving local governmental entities that the judge had previously represented. Rule 3.17(B)(4)(c)(ii). The Committee believes judges are more identifiable with, and develop closer ties to, local governmental entities and therefore, a longer period of separation is needed to maintain public confidence.

With regard to proceedings in which the judge's former law firm is involved, the Committee recommends that a judge be disqualified "for a period of at least seven years following termination of the relationship or until all financial obligations from the law firm to the judge are satisfied, whichever is longer." Rule 3.17(B)(4)(d). The Committee believes that judges generally have close relationships, both personal and financial, with their former firms, requiring a substantial period of separation to maintain public confidence.

Lastly, the Committee recommends the adoption of a catch-all rule which requires judges to disqualify themselves, irrespective of the time periods established in the rules, "whenever the nature of the relationship to a party or a lawyer, because of a continuing social relationship or otherwise, would give rise to partiality or the appearance of partiality." Rule 3.17(B)(4)(e). This rule ensures that judges will disqualify themselves when the judge has a continuing relationship with a party or a lawyer who is involved in the case.

Canon 3(D) of our current Code prohibiting judges from seeking the consent of the parties to avoid disqualification has been retained with non-substantive modification as Rule 3.17(C). The Committee is concerned about coercion or the appearance of coercion and believes that a "no waiver" rule prevents a perception of unfairness. As earlier indicated, the Committee has added language requiring judges to disclose to the parties "any circumstances not deemed by the judge to require disqualification but which might be regarded by the parties as affecting the judge's impartiality," Rule 3.17(C), so as to introduce greater transparency in disqualification decisions.

#### **CANON 4**

#### **A JUDGE MAY ENGAGE IN ACTIVITIES TO IMPROVE THE LAW, THE LEGAL SYSTEM, AND THE ADMINISTRATION OF JUSTICE**

Canon 4 of our present Code is generally unchanged except for the placement of Canon 4(C) (which covers appearances at a public hearing before an executive or legislative body) under Canon 5, (which covers extra-judicial activities). The Committee also recommends the adoption of a provision from the Model Code that allows judges to encourage lawyers to provide pro bono legal services. Rule 4.1(D).

#### **CANON 5**

#### **A JUDGE SHALL SO CONDUCT THE JUDGE'S EXTRA-JUDICIAL ACTIVITIES AS TO MINIMIZE THE RISK OF CONFLICT WITH JUDICIAL OBLIGATIONS**

With regard to Canon 5, the Committee recommends the adoption of three provisions from the Model Code concerning extra-judicial activities in general. The first provision prohibits a judge's participation in "activities that can be reasonably anticipated to lead to frequent disqualification;" the second prohibits judges from participating in activities that "would appear to ordinary knowledgeable persons acquainted with the facts to undermine the judge's independence, integrity, or impartiality;" and the third prohibits judges from using "court premises, staff, stationary, equipment, or other resources for extra-judicial activities, 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 or administrative directive." Rule 5.1(B)(1), 5.1(B)(2), and 5.1(B)(3). The Committee recognizes that judges are in a unique position to contribute to their communities, but that judges must be mindful to avoid activities that undermine their independence, integrity and impartiality and must ensure that those activities do not encroach on their judicial duties or their judicial office.

Recommended Rule 5.2 is identical to Canon 5(B) except that the Committee has added Rule 5.3, Affiliation with Discriminatory Organizations, which was taken directly from the ABA Model Code. The rule prohibits judges from holding membership in any organization that practices invidious discrimination and also prohibits judges from accepting benefits from or using the facilities of an organization that the judge "knows or should know" practices invidious discrimination. The Committee believes that this rule is self-explanatory.

The remaining provisions under Canon 5 have been broken down into Rules 5.4 thru 5.11, with few revisions. With regard to Rule 5.4, Participation in Educational, Religious, Charitable, Fraternal, or Civic Organizations and Activities, the Committee recommends the addition of the following language: "A judge's name, but not a judge's position and title, may appear on the letterhead of the organization or appear in any literature regarding that organization." Rule 5.4(D). The Committee also added a comment requiring judges to inform organizations about the limitations associated with their participation, e.g., the prohibition against identifying "a judge's position and title on the letterhead of an organization, regardless of the intended use of that letterhead, and involvement of a judge in the solicitation of funds for the organization." Rule 5.4, Comment [2].



In respect of our current Canon 5(D)(3), the Committee recommends removing the language: “As soon as a judge can do so without serious financial detriment, the judge should divest himself or herself of investments and other financial interests that the judge could reasonably anticipate might require frequent disqualification.” The Committee believes that the changes to the rules regarding disqualification, Rule 3.17, obviate the need for this provision.

In proposed Rule 5.6, Acceptance of Gifts, Loans, Bequests, Benefits, or Other Things of Value, the Committee recommends the inclusion of a provision taken from the ABA Model Code regarding the acceptance of gifts: “a judge may accept gifts, loans, bequests, benefits, or other things of value from persons whose appearance or interest in a proceeding pending or impending before the judge would in any event require disqualification of the judge under Rule 3.17.” Rule 5.6(B). This proposed language would cover family members, friends and others who would be more likely to appropriately exchange gifts in any case.

In proposed Rule 5.8, Fiduciary Activities, the Committee recommends the inclusion of a provision taken from the Model Code regarding a judge’s compliance with the Rule: “On becoming a judge, persons serving as fiduciaries shall comply with this rule as soon as reasonably practicable, upon notice to and approval by the Supreme Court.” Rule 5.8(C). In the ABA Model Code, the judge is required to comply with the Rule within one year, but the Ad Hoc Committee thought the better approach would be to require the judge to seek guidance from the Supreme Court vis-à-vis an acceptable time frame for compliance.

The remaining proposed rules under Canon 5, Rules 5.9, 5.10, and 5.11, follow the existing language in our current Canon 5.

## **CANON 6**

### **A JUDGE SHALL NOT RECEIVE COMPENSATION FOR QUASI-JUDICIAL AND EXTRA-JUDICIAL ACTIVITIES**

The Committee discussed this Canon extensively because of the concern that an appearance of impropriety is created when judges attend meetings or conferences funded by outside organizations in “distant” locations. Mindful of that concern, the Committee recommends changes to this provision that allow judges to be reimbursed for actual expenses incurred provided “that the source or amount of such reimbursement, or the location of the activity, does not give the appearance of influencing the judge in the exercise of judicial duties or otherwise create an appearance of impropriety.” Rule 6.

## **CANON 7**

### **A JUDGE SHALL REFRAIN FROM POLITICAL ACTIVITY**

Proposed Rule 7 under Canon 7 is almost identical to the language found in our current Canon 7, except that in one subsection the Committee’s proposal prohibits judges from “holding membership or office in a political organization” whereas the current Canon

does not allow a judge to “act as a leader or hold any office in a political organization.” Rule 7.1(A)(1) and Canon 7(A)(1).<sup>4</sup>

## CONCLUSION

The Ad Hoc Committee has sought to present proposed revisions to the Code of Judicial Conduct that are both responsive to the Supreme Court’s charge and consistent with the high standards of excellence for which the Judiciary is recognized. Our proposal parallels the general format of the ABA Model Code without sacrificing the longstanding traditions and ideals that have served as the foundation for the New Jersey system. The revised Code includes black letter rules that judges can rely on for greater clarity and specificity, and commentary to provide guidance as appropriate. We commend our work to the Court.

I would like to take this opportunity to acknowledge the twenty-four members of the Committee who are directly responsible for this report and the proposed Code. The Committee consisted of appellate and trial judges, both sitting and retired, a member of the municipal court bench, and representatives from the bar. The members met frequently, both as a group, and as members of subcommittees that were formed to review the Canons and the structure of the ABA Model Code. This report and proposed Code is a product of spirited and lengthy debate concerning complex and controversial issues. The members gave of their time, to the detriment of their daily schedules, and deserve the thanks of the Judiciary for their efforts.

Finally, I, and the other members of the Committee, were guided in our work by one of our members, Judge Sylvia Pressler, up until the circulation of the last draft of this report when Judge Pressler passed away. As we all know, she was the preeminent authority on the New Jersey Court Rules, including the Code of Judicial Conduct, and a mentor to many of us on the Committee. Her contributions to our work were invaluable and shaped the discourse and the language of this report and the proposed Code.

I am proud to present the Committee’s report and proposed Code of Judicial Conduct for consideration by the Supreme Court.

Very truly yours,

Deborah T. Poritz  
Chief Justice (Ret.)  
Chair, Ad Hoc Committee on the  
Code of Judicial Conduct

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<sup>4</sup> We note that the Code of Judicial Conduct was amended on September 4, 2012 to include restrictions on part-time municipal court judges affiliated with law firms that make political contributions.