



SUPREME COURT OF VIRGINIA

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Supreme Court of Virginia Call for Comments

Contact: Muriel-Theresa Pitney, Chief Deputy Clerk

Release Date: July 1, 2021

THE SUPREME COURT OF VIRGINIA REQUESTS PUBLIC COMMENT ON PROPOSED AMENDMENTS TO PART SIX, SECTION III. CANONS OF JUDICIAL CONDUCT

RICHMOND – The Chief Justice of the Supreme Court of Virginia formed a Working Group in 2017 to review the existing Canons of Judicial Conduct and to make recommendations regarding possible revisions to the Canons. The Working Group was chaired by Glen A. Huff, Judge of the Court of Appeals of Virginia, and membership included the Honorable Marla Graff Decker, the Honorable Sage B. Johnson, the Honorable Mary Jane Hall, the Honorable Douglas L. Fleming, Jr., the Honorable Thomas O. Bondurant, Jr., the Honorable Pamela O’Berry, the Honorable Uley Norris Damiani, the Honorable Stephanie E. Merritt, Professor James E. Moliterno, Robert W. Loftin, Esquire Michael W. Robinson, Esquire, and Thomas E. Spahn, Esquire.

The attached revised Canons are the result of a four-year study and review by the Working Group and the Justices of the Supreme Court of Virginia. In developing these revised Canons, the Working Group did not adopt the 2007 ABA Model Code of Judicial Conduct or retain the structure of the current Canons.

The revised Canons are organized into three new canons:

1. A judge must be impartial.
2. A judge must uphold the public trust.
3. A judge must promote efficient and effective delivery of justice.

Binding, authoritative standards (“Standards”) follow each revised Canon. The Standards elaborate on the requirements of each revised Canon, and some Standards include binding examples of the application of a revised Canon to specific circumstances.

The Supreme Court of Virginia is considering proposed amendments to the Rules of Court, Part Six, Section III, Canons of Judicial Conduct. Comments on the proposed amended Canons must be **received** by **September 29, 2021** and must be addressed to:

Muriel-Theresa Pitney, Chief Deputy Clerk
Supreme Court of Virginia
Via email (scvclerk@vacourts.gov) with the subject line “Comment on Judicial Canons”

In the alternative, comments may be mailed to the Clerk’s office at:

Clerk, Supreme Court of Virginia
100 N 9th Street
5th Floor
Richmond, VA 23219

Part Six, Section III, Canons of Judicial Conduct.

CANONS OF JUDICIAL CONDUCT FOR THE COMMONWEALTH OF VIRGINIA

I. PREAMBLE

These Canons of Judicial Conduct are intended to establish principles for the ethical conduct of justices and judges (collectively “judges”) in the Commonwealth of Virginia. Our legal system is based on 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. Intrinsic to these Canons are the precepts that judges, individually and collectively, must respect and honor the judicial office as a public trust and strive to enhance and maintain confidence in our legal system. Judges should engage and serve their communities, and these Canons should not be construed as requiring judges to live and work in isolation from their communities. Judges should aspire at all times to live a life that ensures the greatest possible public confidence in the judge’s independence, impartiality, integrity, and competence.

These three broad Canons, with their associated standards, are authoritative. Each standard, by explanation or example, constitutes binding authority to achieve the purpose and meaning of the associated Canon.

In determining whether a judge’s conduct is consistent with these Canons and standards, the judge should consider three questions:

- (1) Will the action or inaction threaten the judge’s impartiality?
- (2) Will the action or inaction harm public trust in the fairness of the judiciary?
- (3) Will the action or inaction harm the efficient and effective delivery of justice?

The Canons and standards are rules of reason and are not intended to be an exhaustive guide for the conduct of judges. They should be applied consistently with constitutional requirements, statutes, other court rules, and case law. Not every transgression should result in disciplinary action. Whether disciplinary action is appropriate, and the degree of discipline to be imposed, should be determined through a reasonable and reasoned interpretation of the Canons and standards. Any decision to impose discipline, and the degree of discipline, should depend on such factors as the seriousness of the conduct, whether there is a pattern of improper activity, and the extent to which the conduct adversely affects impartiality, the public trust, or the efficient and effective delivery of justice.

These Canons are intended to assist judges in maintaining the highest levels of judicial and personal conduct. They are the authoritative source for advice from the Judicial Inquiry and Review Commission and the Judicial Ethics Advisory Committee. In addition to provisions of the Constitution of Virginia and Virginia Code, these Canons are the legal basis upon which the Judicial Inquiry and Review Commission acts on complaints against judges. Finally, these Canons are not designed or intended as a basis for civil liability or criminal prosecution and may not be invoked by lawyers for mere tactical advantage in a proceeding.

The Canons apply to (1) all active Justices and Senior Justices of the Supreme Court of Virginia, and Judges and Senior Judges of the Court of Appeals of Virginia, Circuit Courts, General District Courts, Juvenile and Domestic Relations District Courts, Commissioners of the State Corporation Commission, and Commissioners of the Virginia Workers' Compensation Commission; (2) retired judges and Commissioners who are in recall status; (3) substitute judges and special justices; and (4) persons selected for a full-time judgeship either by election by both houses of the General Assembly or appointment by the appropriate authority, but who have not taken the oath of office as a justice or judge; and (5) judges pro tempore while acting as a judge pro tempore. Magistrates are not bound by these Canons. However, Canons of Conduct for Virginia Magistrates were adopted by the Committee on District Courts effective January 1, 1980, and are applicable as amended.

II. TERMINOLOGY AND EXCEPTIONS TO APPLICABILITY

TERMINOLOGY

Bias—A subjective inclination, bent, or preconceived opinion based on extrajudicial factors (i.e. factors other than the law or evidence applicable in the matter under consideration), that impairs a judge from exercising fair and independent judgment regarding an issue, person, or party. Bias does not refer to the possession of a general judicial philosophy.

Contribution—Both financial and in-kind gifts or payments, such as goods, professional or volunteer services, advertising, and other assistance, which if otherwise obtained would require a financial expenditure.

De minimis—In the context of interests pertaining to disqualification of a judge, an insignificant interest that could not raise a reasonable question regarding the judge's impartiality.

Domestic partner—A person with whom another person maintains a household and an intimate relationship, other than a person to whom he or she is legally married.

Economic interest—More than a *de minimis* legal or equitable ownership interest. Economic interests do not include:

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

However, if in any of the above scenarios regarding economic interests 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, then it would constitute an economic interest.

Election—Includes general, primary, and special elections for public office or office in a political organization or to hold a referendum, whether the election is partisan or nonpartisan. The term “election” as used in these Canons, however, does not prohibit judges from voting in or holding elected positions in educational, religious, charitable, fraternal or civic organizations, including without limitation bar associations.

Family relationships—All relationships with persons defined as “*member(s) of the judge’s family*”.

Fiduciary—Includes relationships such as executor, administrator, trustee, or guardian.

Impartial, impartiality, impartially—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.

Impending—Imminent or expected to occur in the near future.

Improper—Includes conduct that violates the law, court rules, or provisions of these Canons, and conduct that undermines a judge’s impartiality, the public trust, or the efficient and effective delivery of justice.

Independence—A judge’s freedom from influence or controls other than those established by law or rule.

Integrity—Fairness, honesty, impartiality, and soundness of character.

Knowingly, knowledge, known, and knows—Actual knowledge of the fact in question. A person’s knowledge may be inferred from the circumstances.

Law—Constitutional provisions, statutes, administrative regulations, decisional law, and court rules.

Member of the judge’s family—The spouse, domestic partner, child, step-child, grandchild, parent, grandparent, other relative, or person with whom the judge maintains a close familial relationship. The definition of “family” may vary based on the particular standard involved.

Nonpublic information—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, presentence reports, dependency cases, or psychiatric reports.

Party—A person or entity named in a court proceeding.

Pending—Commenced and continuing through any appellate process until final disposition.

Personal business—Matters of personal concern completely unrelated to the business of the judiciary.

Political activity – Activity (1) in support of or on behalf of a political organization or candidate, or (2) activity which publicly advocates the adoption or rejection of legislation or policies of the federal, state, or local government that are not related to the improvement of the law, the legal system, or the administration of justice.

Political organization— A political party or group that (1) is sponsored by or affiliated with a political party or candidate, the principal purpose of which is to further the election or appointment of candidates for political office; or (2) has as its principal purpose to advocate for the adoption or rejection of legislation or policies of the federal, state, or local government that are not related to the improvement of the law, the legal system, or the administration of justice.

Prejudice—A fixed mental attitude or position of a judge, based on extrajudicial factors (i.e. factors other than the law or evidence applicable in the matter under consideration), that impairs a judge from dealing fairly and impartially with an issue, person, or party. The presence or absence of prejudice can be determined by the totality of the circumstances.

Protected class—Those persons belonging to groups protected against discrimination by the Constitution and Statutes of the Commonwealth of Virginia, and of the United States, and by relevant regulations and case law.

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

Social media—Internet-based services on which individuals share information, ideas, interests, activities, photos, and videos through virtual communities and networks using electronic devices.

Solicit—Directly requesting financial support, favor, in-kind goods or services, or membership, whether made by letter, telephone, email, social media, or any other means of communication.

Standards – Binding statements expounding on the meaning of the Canons. Standards will sometimes include examples or illustrations.

Within the third degree of relationship – The term “within the third degree of relationship” includes all relatives within the first, second, or third degree of relationship. “First degree relatives” include an individual’s parents, siblings, and children. “Second degree relatives” include an individual’s grandparents, grandchildren, uncles, aunts, nephews, nieces, and half-siblings. “Third degree relatives” include an individual’s great-grandparents, great grandchildren, great aunts/uncles, and first cousins.

EXCEPTIONS TO APPLICABILITY

1. Notwithstanding the provisions of Code §§ 17.1-106, 17.1-302, 17.1-401, and 16.1-69.22:1, for purposes of these Canons a “retired judge” is “in recall status” if: (a) the judge is included on the list known as the “Recall List” as determined by the Chief Justice and administered by the Office of the Executive Secretary of the Supreme Court of Virginia; or (b) the judge is not included on the Recall List but has otherwise been recalled to judicial service by the Chief Justice, in which case these Canons will apply to the judge only during the time that the judge has been recalled to active judicial service. A member of the State Corporation Commission or the Workers’ Compensation Commission is “eligible for recall to judicial service” if that member has been recalled to service under Code § 12.1-11.1 or Code § 65.2-705.

2. A judge pro tempore is a person who is appointed pursuant to §§ 17.1-109, 17.1-110, and 17.1-111 of the Code of Virginia to act temporarily as a judge.

(a) While acting as such, a judge pro tempore is required to comply with the Canons as they apply to the case that is pending before him or her. Compliance with the Canons is not required if the case has been appealed to another court and is no longer pending before the judge pro tempore.

(b) A person who has been a judge pro tempore may not act as a lawyer in a proceeding in which he or she has served as a judge or in any proceeding related thereto.

3. Retired judge, senior judge, or senior justice not in recall status. The provisions of Code § 51.1-309 and of these Canons apply to all retired judges, senior judges, or senior justices. Such judges, however, are not required to comply with Canons 2G, 2N(4), 2P, 2U(2), and 3G.

4. Substitute judge or special justice. A substitute judge or special justice may not act as a lawyer in a proceeding in which he or she has served as a judge or in any other proceeding related thereto but otherwise may practice law in the court on which he or she serves. A substitute judge or special justice is not required to comply with Canons 2H, 2N(1), and 2N(4), except that he or she may not use or permit the use of the prestige of judicial office for fund raising or membership solicitation. A substitute judge or special justice is not required to comply with Canons 2G, 2P, 2U(2), and 3G.

5. Person selected for judgeship. A person selected for a full-time position subject to the provisions of these Canons who is not already a justice or judge, from either election by both houses of the General Assembly or appointment by the appropriate authority until taking the oath of office as a justice or judge, is required to comply with Canons 1C(1) and (2), 1E, 1N(1), 2, 2A, 2D, 2J, 2L(1) and (2), 2N(4), 2O(4)(a, b, and c), 2U(1)(a), 2V, and 3I. Such person must arrange his or her affairs to be in compliance with the other appropriate parts of the Canons of Judicial Conduct at the time that he or she takes the oath of office.

III. CANONS:

CANON 1. A JUDGE MUST BE IMPARTIAL

The standards that follow this Canon are binding and authoritative in interpreting the Canon. Some standards will include illustrations. Such illustrations are intended to be applied to achieve the purposes of the Canon.

A. Relationships with parties or counsel (including family relationships)

A judge must not allow family, social, political, economic, or other relationships to influence the judge's judicial conduct or judgment. A judge must use discretion in maintaining social, personal, or business relationships with people, entities, or counsel who may appear before the judge in judicial proceedings in order to reduce the possibility that the judge will be disqualified.

B. Social media

The same provisions of these Canons that govern a judge's ability to socialize and communicate in person, in writing, or over the telephone also apply to the Internet and social networking sites. While a judge is not prohibited from participating in online social media sites or networks, a judge should exercise restraint and discretion in doing so. A judge must avoid any online activity that would cause a reasonable person to question a judge's ability to be impartial.

C. Using the prestige of office to advance private interests

1. Maintaining the prestige of judicial office is essential to a system of government in which the judiciary functions independently of the executive and legislative branches. Respect for the judicial office facilitates the orderly conduct of legitimate judicial functions. Judges should distinguish between proper and improper use of the prestige of office in all of their activities.

2. Except as provided in standard 1(F), a judge must avoid lending the prestige of judicial office for the advancement of the private interests of the judge or others.

3. In a criminal case, a judge may not approve a plea agreement or disposition that requires or permits the defendant to make a charitable monetary contribution or donation, or any other monetary payment other than a statutorily authorized fine, cost, or restitution or payment in satisfaction of an injury pursuant to Code § 19.2-151, as a condition of a suspended sentence or the reduction or dismissal of charges.

4. The following illustrations are examples of activities that are not permitted:

(a) It would be improper for a judge to allude to his or her judgeship to gain a personal advantage such as deferential treatment when stopped by a police officer for a traffic offense. Similarly, judicial email or letterhead must not be used for conducting a judge's personal business.

(b) A judge must not use the judge's judicial position to gain advantage for anyone or any entity in a civil, criminal, or administrative proceeding.

D. Recusal or Disqualification

1. A judge must recuse himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to instances where:

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

(b) the judge served as a lawyer in the matter in controversy;

(c) a lawyer with whom the judge previously practiced law personally and substantially participated in the matter as a lawyer while associated with the judge;

(d) the judge is a material witness in the matter;

(e) the judge previously presided over the matter in another court;

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

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

(i) is a party to the proceeding, or an officer, director, or trustee of a party;

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

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

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

2. Unless particular circumstances create a reasonable concern about impartiality, a judge is not disqualified from presiding over a matter merely because the judge is personally involved in a matter of the same general type.

3. A judge must 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 and minor children residing in the judge's household.

4. A judge should disclose information that the judge believes the parties or their lawyers might reasonably consider relevant to the question of disqualification, even if the judge believes there is no real basis for disqualification. Although a judge may disclose any information the judge deems appropriate, a judge's decision not to disclose past professional associations with lawyers or agencies that terminated more than one year prior is presumptively reasonable. Similarly, a judge's decision not to disclose the identity of past

clients that the judge represented, or participated in representing, as a lawyer, when such representation terminated more than three years prior is presumptively reasonable.

5. If a judge, in exercising the judge's discretion, determines that the judge should not preside over a matter, the judge may recuse himself or herself by so stating, but without stating the basis of the recusal on the record.

6. By decisional law, the rule of necessity may override the rule of disqualification.

7. A lawyer in a government agency does not ordinarily have an association with other lawyers employed by that agency; a judge formerly employed by a government agency, however, should recuse himself or herself in a proceeding if the judge's impartiality might reasonably be questioned because of such association. After one year of separation from the agency, a presumption arises that recusal is not required. *See* illustration 1(D)(10)(c).

8. The fact that a lawyer in a proceeding is affiliated with a law firm or government agency with which a member of the judge's family is affiliated does not of itself disqualify the judge. Under appropriate circumstances, the fact that the judge's impartiality might reasonably be questioned or that the relative is known by the judge to have an interest in the law firm or governmental agency that could be substantially affected by the outcome of the proceeding may require the judge's recusal.

9. A judge who may be disqualified may ask, or have the clerk of court ask, the parties and their lawyers to consider, out of the presence of the judge, whether to waive disqualification. If following disclosure of any basis for disqualification other than personal bias or prejudice concerning a party, the parties and lawyers, without participation by the judge, all agree that the judge should not be disqualified, and the judge is then willing to participate, the judge may participate in the proceeding. Written evidence of the agreement is to be incorporated in the record of the proceeding. Should any party or lawyer choose not to waive disqualification, the identity of that party or lawyer is not to be communicated to the judge.

10. The following illustrations are examples of appropriate application of recusal or disqualification standards:

(a) A judge may preside over traffic cases while the judge has a pending traffic infraction. In addition, a judge may preside over domestic relations matters during the pendency of the judge's divorce.

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

(c) As an example of disclosure and possible recusal required for a judge who recently has left the employ of a government agency, including, e.g., a Commonwealth's Attorney office: during the first year immediately following departure from the agency, a judge should disclose his or her prior association with the agency whenever the agency or its attorney is appearing before the judge. After one year of separation from the agency, disclosure of the prior employment would no longer be required although the judge, in his or her discretion, could make such disclosure if the judge deemed it appropriate.

E. Serving as a character witness

A judge may not testify as a character witness.

F. Providing a letter of recommendation

Although a judge should be sensitive to possible abuse of the prestige of office, a judge may, based on the judge's personal knowledge, serve as a reference or provide a letter of recommendation. When using court stationery for letters of recommendation, a judge should indicate that it is his or her personal opinion.

G. Providing information for the record

A judge may provide information for the record to a sentencing judge or a probation or corrections officer only in response to a formal request. This communication may not be initiated by the providing judge.

H. Bias or prejudice

A judge must perform judicial duties without bias or prejudice. A judge must not, in the performance of judicial duties, by words or conduct manifest bias or prejudice, including but not limited to bias or prejudice toward any member of a protected class, and must not permit staff, court officials, and others subject to the judge's direction and control to do so in the performance of their official duties. This does not preclude proper judicial consideration when characteristics related to membership in a protected class are at issue in the proceeding.

I. Ex parte communications

A judge is required to 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.

1. A judge may not initiate, permit, or consider *ex parte* communications, or consider other communications made to the judge outside the presence of the parties concerning a pending or impending proceeding except that:

(a) Where circumstances require, *ex parte* communications for scheduling or administrative purposes that do not deal with substantive matters or issues on the merits are authorized; provided:

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

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

(b) Where circumstances require, *ex parte* communications for emergencies that involve substantive matters or issues on the merits are authorized, provided the judge makes provision promptly to notify all other parties of the substance of the *ex parte* communication and allows an opportunity to respond.

(c) Defendants convicted of criminal or traffic offenses often have all or part of their sentences suspended upon conditions that include probation. If a defendant is alleged to have violated the terms of his or her suspended sentence or probation, the Commonwealth's Attorney or probation officer may file a request or motion seeking the issuance of a *capias*, show cause order, or other process against the defendant, and a hearing to revoke the defendant's probation and suspended sentence. For purposes of this Canon, the filing is not deemed to be a prohibited *ex parte* communication with the court. It is not a violation of this Canon 1I(1) for a judge to consider what has been filed in order to decide whether to issue process against the defendant, notwithstanding the fact that notice of the motion or request has not been provided to the defendant. The defendant must be given the opportunity to respond to the allegations at a hearing on the merits. If process is issued, it is recommended that copies of the documents requesting the issuance of process should be attached. This example is limited to the interpretation and application of Canon 1I(1) and is not intended to be in derogation of statutory or Constitutional requirements governing the revocation of a defendant's probation or suspended sentence.

(d) A judge may obtain the advice of a disinterested expert on the law applicable to a proceeding before the judge if the judge gives notice to the parties of the person consulted and the substance of the advice, and affords the parties a reasonable opportunity to respond. An appropriate and often desirable procedure for a court to obtain the advice of a disinterested expert on legal issues is to invite the expert to file a brief *amicus curiae*.

(e) 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.

(f) A judge may initiate or consider any *ex parte* communications when expressly authorized to do so by law or by these Canons.

(g) A judge has the discretion to open and review written communications addressed to the judge or the court to determine if such communications are *ex parte*, and for the purpose of determining an appropriate action.

(h) A judge may consider an *ex parte* communication when the excluded party has waived, expressly or implicitly, its right to review the communication or to be heard.

(i) The following illustration is an example of waiver allowing consideration of an *ex parte* communication: When the Commonwealth has waived its right to review inmate correspondence addressed to the judge, the judge may review and act on those communications.

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

3. To the extent reasonably possible, all parties or their lawyers are to be included in communications with a judge. A judge should always be cautious with regard to the possibility of prejudice or the appearance of such when communicating with a probation officer or a similarly situated person without the involvement of all parties.

4. Whenever presence of a party or notice to a party is required, the notice is to be given to the party's lawyer, or to the party if unrepresented.

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

6. A judge must make reasonable efforts, including the provision of appropriate supervision, to ensure that these standards are not violated through law clerks or other personnel on the judge's staff.

7. If communication between the trial judge and the appellate court with respect to a proceeding is permitted, a copy of any written communication or the substance of any oral communication should be provided to all parties. However, routine communications between clerks of the trial courts and of the appellate courts or between clerks of the two appellate courts are permitted to confirm the contents of the record, the entry of orders, and other procedural issues. In such instances, the clerks need not notify the parties of these communications.

8. Judges have historically played an important role in providing instruction, advice, and mentoring to lawyers as they begin and continue to develop their practice skills. Judges should ensure that the instruction and advice they provide will not result in unfair advantage to the recipient or harm to other parties in a pending proceeding.

J. Consultation with law clerks and administrative personnel

1. A judge may consult with law clerks whose function is to aid the judge in carrying out the judge's adjudicative responsibilities or with other judges or with staff members or with the Reporter of Decisions for his or her court.

2. A judge may consult with the Legal Research Department of the Office of the Executive Secretary of the Supreme Court of Virginia for aid in carrying out the judge's adjudicative responsibilities. A judge may request an advisory opinion from the Judicial Ethics Advisory Committee or advice from the Judicial Inquiry and Review Commission when the judge requires assistance or guidance regarding the judge's responsibilities under these Canons.

3. Consultations described in standards J(1) and (2) are not deemed to be *ex parte* communications and notice to the parties under standard I(1)(d) is not required.

K. Avoidance of independent investigations beyond evidence presented

A judge must not independently investigate facts in a case. A judge is entitled to consider only the evidence presented and matters of judicial notice as permitted by law.

L. Providing education, advice, and mentoring

A judge may participate in moot courts, speak, write, lecture, teach, and participate in other extrajudicial activities concerning the law, the legal system, the administration of justice, and non-legal subjects unless prohibited by one or more Canons or standards. A judge may write, lecture, speak, or teach on legal subjects and may express and explain his or her disagreement with existing precedent so long as he or she does so in a respectful manner and acknowledges his or her duty to faithfully apply existing precedent notwithstanding the judge's disagreement with it.

M. Avoiding favoritism

A judge may not engage in financial and business dealings that involve the judge in frequent transactions or continuing business relationships with those lawyers or other persons likely to come before the judge personally or before the court on which the judge serves. In addition, a judge should discourage members of the judge's family from engaging in dealings that would reasonably appear to exploit the judge's judicial position.

N. Acceptance of gifts, recognitions, and invitations

1. A judge must not accept, and must urge members of the judge's family residing in the judge's household not to accept, a gift, favor, or loan from anyone except for:

(a) a gift incident to a public testimonial, books, tapes and other resource materials supplied by publishers, law schools, or bar organizations on a complimentary basis for

official use, or an invitation to the judge and the judge's spouse or guest to attend a bar-related function or an activity devoted to the improvement of the law, the legal system, or the administration of justice;

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

(c) ordinary social hospitality;

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

(e) a gift, favor, or loan from a relative or close personal friend whose appearance or interest in a case would in any event require recusal;

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

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

2. Because a gift, favor, or loan to a member of the judge's family residing in the judge's household might be viewed as intended to influence the judge, a judge must inform those family members of the relevant ethical constraints upon the judge in this regard and discourage those family members from violating them. A judge cannot, however, reasonably be expected to know or control all of the financial or business activities of all family members residing in the judge's household. A gift to a judge, or to a member of the judge's family living in the judge's household, that is excessive in value raises questions about the judge's impartiality and the integrity of the judicial office and might require recusal of the judge where disqualification would not otherwise be required.

3. Acceptance of invitations to law-related functions and other social events are governed by the following:

(a) Virginia judges have traditionally participated in numerous bar-related functions and in a wide variety of educational, religious, charitable, fraternal, social, and civic activities. The sponsors of such events frequently waive registration and other fees associated with the events, and sometimes reimburse or provide necessary travel, food, lodging, and incidental expenses, to allow and encourage judges to participate. Such participation by judges in the legal community and the general community is encouraged.

(b) A judge's acceptance of an invitation from an attorney or a law firm or an association to a law-related function or social event does not automatically disqualify a judge from cases in which the attorney or law firm are involved as parties or as counsel. However, before accepting such an invitation or testimonial, a judge should consider all of the circumstances that may make the acceptance, individually or when viewed in relation to other accepted invitations and testimonials, appear to a reasonable person to undermine the judge's independence, integrity, or impartiality and thus to require recusal. These factors may include: whether the costs of the event are reasonable and comparable to those associated with similar events sponsored by the judiciary, bar associations, or similar groups; whether the event is primarily educational rather than recreational; whether the sponsor is an educational institution or bar association rather than a trade association or for-profit entity; whether the funding for the event comes largely from numerous contributors rather than from a single entity; whether the sponsor or source of funding is generally associated with particular parties or interests currently appearing or likely to appear before the judge; whether differing viewpoints are presented; whether a broad range of judicial and, if not a legal event, non-judicial participants are invited; whether a large number of participants are invited, and whether the program is designed specifically for judges.

O. Influence by the public

A judge must not be swayed or influenced by partisan interests, public clamor, or fear of criticism.

CANON 2. A JUDGE MUST UPHOLD THE PUBLIC TRUST

The standards that follow this Canon are binding and authoritative in interpreting the Canon. Some standards will include illustrations. Such illustrations are intended to be applied to achieve the purposes of the Canon.

A. Public and private behavior

Judges, by virtue of their office, have been placed in a position of public trust. While judges should engage in public matters and serve their communities, they must govern their public and private behavior to ensure the greatest public confidence in the judge's independence, impartiality, integrity, and competence.

B. Participation in judicial selection process

A judge may participate in the process of judicial selection by cooperating with and responding to members of appointing authorities or screening committees, such as a bar association screening committee concerning a person being considered for a judgeship. *See also* Canon 1F.

C. Voting

A judge may vote in general, primary, and special elections. For purposes of these Canons, voting in a special or primary election does not constitute participation in a political activity. The act of a judge voting in a special or primary election, like voting in general elections, is the discharge of an honorable civic duty and an obligation of responsible citizenship.

D. Participation in partisan politics

1. A judge is required to refrain from political activity on behalf of a political organization or candidate. Public confidence in the independence and impartiality of the judiciary is eroded if judges are perceived to be subject to political influence. This means that a judge must not act as a leader or hold any office in a political organization; make speeches for a political organization or candidate, or publicly endorse or oppose a candidate for public office; or solicit funds for or pay an assessment or make a contribution to a political organization or candidate, attend political gatherings, or purchase tickets for political party dinners, or other political functions.

2. A judge must resign the judge's office when the judge becomes a candidate either in a party primary or in a general election for a public office. A person governed by these Canons may not simultaneously hold elective office and serve as a judge. For the purpose of this standard, serving as a delegate in a state constitutional convention does not constitute a public office.

3. A judge must 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. Refraining from public comment regarding pending or impending cases

1. A judge must abstain from public comment about a pending or impending proceeding in any court and should direct similar abstention on the part of court personnel subject to his or her direction and control. This provision does not prohibit judges or court personnel from speaking on the legal system or the administration of justice, or from explaining for public information the procedures of the court. This provision does not apply to proceedings in which the judge is a litigant in a personal capacity.

2. The requirement that judges abstain from public comment regarding a pending or impending proceeding continues during any appellate process and through final disposition, including disposition after remand. Even after final disposition of a proceeding, a judge must refrain from public comment that would undermine the public's confidence in the judiciary or its decision making. Public confidence would be undermined, for example, by speech, written or oral, made in a derisive or derogatory tone, such that its overall import is to insult rather than analyze. This prohibition does not limit a judge's ability to comment on proceedings when such comments are made in the context of ruling on an issue or case, or participating in activities allowed by Canon 2L(2). Moreover, this provision does not

prohibit a judge from commenting on proceedings in which the judge is a litigant in a personal capacity or prohibit a judge from writing, lecturing, speaking, or teaching on legal subjects consistent with Standard 1L. In cases such as a writ of mandamus, a judge is a litigant in an official capacity and must not comment publicly.

F. Use of nonpublic information acquired in a judicial capacity

A judge may not disclose or use, for any purpose unrelated to judicial duties, information acquired in a judicial capacity but not otherwise generally available to the public, such as from public court proceedings or public documents filed.

G. Service as a fiduciary

1. A judge may serve as executor, administrator, or other personal representative, trustee, guardian, attorney in fact, or other fiduciary for the estate, trust, or person of a member of the judge's family or a non-family member who lives with the judge or for whom the judge has an existing relationship as a caregiver or caretaker; provided, however, that a judge may not serve as a fiduciary if it is likely that as a fiduciary the judge will be engaged in litigation in any courts of the Commonwealth.

2. The same restrictions on financial activities that apply to a judge personally also apply to the judge while acting in a fiduciary capacity.

3. The restrictions imposed by this standard may conflict with the judge's obligation as a fiduciary, thereby necessitating the judge's resignation as fiduciary.

4. This section does not apply to all judges as set forth in Exceptions to Applicability 3 & 4.

5. The following illustration is an example of a circumstance in which a judge should resign as fiduciary under these standards: A judge should resign as trustee if detriment to the trust would result from divestiture of holdings the retention of which would place the judge in violation of any of these Canons.

H. Service on boards of charitable, civic, religious, fraternal, or educational institutions

1. A judge may serve as an officer, director, trustee, or non-legal advisor of an organization or governmental agency devoted to the improvement of the law, the legal system, or the administration of justice, or of an educational, religious, charitable, fraternal, or civic organization not conducted for profit, subject to the limitations of standard 2H(2) and the other requirements of these Canons.

2. A judge may not serve as an officer, director, trustee, or non-legal advisor of a governmental, civic, or charitable organization 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.

3. This section does not apply to all judges as set forth in Exception to Applicability 4.

I. Exercise of religious beliefs

A judge is permitted to participate in religious activities and services, including but not limited to reading from the sacred texts of the judge's religious tradition; serving as a cantor, lector, speaker, or preacher; leading prayers; giving a personal faith story; serving communion; lighting candles or participating in other religious rituals; or serving as an usher, including passing collection plates or baskets, so long as the judge does not personally request participants to give or pledge funds. A judge's participation in a religious service in which attendees are asked to give or pledge funds, or become members, is not deemed to constitute the direct, individual solicitation of funds that is prohibited by this Canon and such participation is permitted.

J. Membership in discriminatory organizations

1. A judge may not hold membership in any organization that practices invidious discrimination against any protected class of individuals. Further, a judge may not hold a membership in any organization that discriminates in a manner that would give rise to the reasonable perception that the judge's impartiality is impaired.

2. A judge's membership in a religious denomination or organization as a lawful exercise of the freedom of religion is not a violation of this Canon.

K. Comment regarding a jury's verdict

A judge may 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 to the community.

L. Extrajudicial activities

1. Complete separation of a judge from extrajudicial activities is neither possible nor wise; a judge should not become isolated from the community.

2. A judge may engage in extrajudicial activities designed to improve the law, the legal system, and the administration of justice, and must conduct any such extrajudicial activities in a manner that minimizes the risk of conflict with judicial obligations. A judge may speak, write, lecture, participate in moot courts, or teach about the law, the legal system, the administration of justice, and non-legal subjects, subject to the requirements of these Canons.

3. A judge is required to conduct all extrajudicial activities so that they do not:

(a) cast reasonable doubt on the judge's capacity to act impartially; however, reasonable doubt as to a judge's impartiality cannot be shown merely because the judge in a respectful manner writes, lectures, speaks, or teaches on legal subjects consistent with Standard 1L;

(b) demean the judicial office; or

(c) interfere with the proper performance of judicial duties.

4. Becoming a judge does not require a judge to abdicate his or her parental authority and responsibility. A judge has a right to participate in the education of his or her minor children, and, where appropriate or upon invitation, his or her adult children.

5. In conducting personal business, a judge may wish to be contacted at his or her place of employment. For security reasons, a judge may not want to provide the judge's personal addresses or telephone numbers. A judge is allowed to provide the judge's business contact information to any person with whom the judge transacts personal business, so long as the judge does not do so in an attempt to exploit the judge's official position or to obtain treatment different from the treatment that a person who is not a judge would receive.

6. A judge who provides information about the judge's official position or requests assistance due to reasonable concerns about the safety of the judge or a member of the judge's family will not be deemed to be in violation of the Canons.

7. The following illustrations are examples of activities that are permitted under this standard:

(a) A judge may attend parent-teacher conferences and meetings with officials of schools or educational institutions regarding the educational progress, social progress, or discipline of the judge's child or any child under the judge's custody or care. A judge in this capacity acts not as a judge, but as a parent. In doing so, the judge must not employ coercion or assert the prestige of judicial office. The mere fact that a judge attends such a conference or meeting will not be deemed coercive without other accompanying coercive conduct or statements.

(b) Due to safety concerns, a judge may ask a security guard or law enforcement officer at an event to escort the judge to the judge's parked vehicle when such services are not normally provided to the general public.

M. Pro Bono Publico and access to justice

1. 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 a list of available programs, training lawyers to do pro bono publico service, and

participating in events recognizing lawyers who have done pro bono publico work, including nominating lawyers for such recognition. A judge may assist an organization in the recruitment of lawyers or law firms to provide these services so long as the recruitment effort cannot reasonably be perceived as coercive. This includes a judge requesting an attorney to accept pro bono representation of a party in a proceeding pending before the judge.

2. A judge may participate in programs concerning the law which promote the provision of pro bono legal services and may provide leadership in convening, participating, or assisting in advisory committees and community collaborations devoted to the provision of legal services to the indigent or those with low income. A judge may also support projects and programs directly related to the provision of services to indigent and low-income individuals coming before the courts and may comment upon the need for funding of such projects and programs.

N. Avoiding governmental appointments except as pertain to improvement of the law, the legal system, or the administration of justice

1. A judge may not appear at a public hearing before, or otherwise consult with, an executive or legislative body or official except on matters concerning the law, the legal system, or the administration of justice, or except when acting pro se in a matter involving the judge or the judge's interests. When appearing pro se a judge must explain that he or she is acting solely in a personal capacity. This section does not apply to all judges as set forth in Exception to Applicability 4.

2. A judge may represent a country, state, or locality on ceremonial occasions or in connection with historical, educational, or cultural activities.

3. A judge may serve on a governmental committee or commission for which the judicial membership is provided by law or that involves the improvement of the law, the legal system, or the administration of justice, provided the judge's role is limited to discussion of and voting on matters that are not issues in specific cases pending before or likely to come before the judge. Such service may include participating on committees or task forces created by the executive and legislative branches of state government, or by local governments, to review policies affecting entities that interact with the judicial system. This section does not apply to all judges as set forth in Exceptions to Applicability 3 & 4.

4. Nothing contained in these Canons is deemed to prohibit a judge from serving in a nonvoting capacity on the board or a committee, or as a trained volunteer, of The Virginia Judges & Lawyers Assistance Program, or any similar governmental program for judges or lawyers.

O. Fund raising

1. This Canon is not intended to prohibit judges from participating in all charitable events. Judges are encouraged to be involved in community activities so long as the judge does not participate in the direct solicitation of funds and the prestige of the office is not used for fund raising. The attendance of a judge at a fund-raising event may be permitted as long as the judge is not soliciting funds and the judge does not allow, or acquiesce in, the organization's use of the judge's attendance for fund raising. A judge must make reasonable efforts to ensure that the judge's staff, court officials, and others subject to the judge's direction and control do not solicit funds on the judge's behalf.

2. A judge as an officer, director, trustee, member, or non-legal advisor of a government, civic, or charitable organization, or as an attendee of such an organization's events, may:

- (a) attend an organization's fund-raising events;
- (b) assist such an organization in planning fund raising and participate in the management and investment of the organization's funds;
- (c) make recommendations to public and private fund-granting organizations on projects and programs concerning the law, the legal system, or the administration of justice;
- (d) as an officer of such an organization, send a general membership solicitation mailing over the judge's signature;
- (e) serve as an usher or a food server or preparer, or perform similar functions, at fund-raising events sponsored by educational, religious, charitable, fraternal, or civic associations; or
- (f) receive acknowledgment as a distinguished alumnus of a law school or other educational institution attended by the judge, or as a distinguished member of a government, civic, or charitable organization including providing or posing for photographs.

3. The following illustrations are examples of activities that are permitted so long as the judge's judicial office is not advertised or used to promote the events:

- (a) preparing or serving food and beverages, including handling sale proceeds, at school events, youth sports events, non-political picnics or gatherings, religious events, or other fund-raising events sponsored by organizations or associations described in this section;
- (b) decorating, setting up for events, cleaning up after events, assisting in registration for events, or providing assistance to people attending events;
- (c) attending an event at which a member of the judge's family or a personal friend is a speaker or guest of honor; or
- (d) assisting and accompanying their children in their fund-raising activities if the procedures employed are not coercive and the sums nominal.

4. A judge may not:

- (a) personally participate in the solicitation of funds;
- (b) personally participate in membership solicitation if the solicitation might reasonably be perceived as coercive or if the membership solicitation is essentially a fund-raising mechanism;
- (c) use or permit the use of the prestige of judicial office for fund raising or membership solicitation; or
- (d) be a speaker or guest of honor at an organization's fund-raising events, unless the events concern raising funds for improving access to the legal system for indigent or low-income individuals, but the judge may attend any such events.

5. Use of an organization's letterhead for fund raising or membership solicitation does not violate these Canons provided the letterhead lists only the judge's name and office or other position in the organization without identification that he or she is a judge.

P. Limitations on practice of law

A judge may not practice law. Notwithstanding this prohibition, a judge may act pro se. A judge may, without compensation, give legal advice to and draft or review documents for a member of the judge's family. However, a judge must not act as an advocate or negotiator for a member of the judge's family in a legal matter. This section does not apply to all judges as set forth in Exceptions to Applicability 3 & 4. The practice of law by retired judges and Commissioners who are receiving benefits under the Judicial Retirement System is governed by the provisions of the Virginia Code.

Q. Avoidance of facial expression, body language, or statements suggesting bias or prejudice

Expressions of bias or prejudice by a judge are prohibited. Such expressions cast reasonable doubt on the judge's capacity to act impartially as a judge.

Facial expression and body language, in addition to oral communication, can give to parties or lawyers in the proceeding, jurors, and the public, an appearance of judicial bias. A judge must be alert to avoid behavior that may reasonably call into question the judge's independence, impartiality, integrity, and competence.

R. Decorum in courtroom

A judge should require all persons appearing in proceedings before the judge to refrain from manifesting, by words or conduct, bias or prejudice based on membership in any protected class against parties, witnesses, counsel, or others. This does not preclude legitimate advocacy when membership in a protected class, or any similar factor, is at issue in the proceeding.

S. Judicial appointments

Judicial appointees include assigned counsel; officials such as commissioners, receivers, and guardians; and personnel such as clerks and secretaries. A judge should not make unnecessary appointments. A judge must exercise the power of appointment impartially. A judge must avoid nepotism and unfair preferential treatment. A judge may not approve compensation of appointees beyond the fair value of services rendered.

T. Disciplinary responsibilities

1. A judge who receives reliable information indicating a substantial likelihood that another judge has committed a violation of these Canons or standards that raises a substantial question as to the judge's fitness for office must inform the Judicial Inquiry and Review Commission.

2. A judge who receives reliable information indicating a substantial likelihood that a lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial question as to the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects must inform the Virginia State Bar.

3. A judge has absolute immunity from civil action with respect to the discharge of disciplinary responsibilities under this standard.

4. The provisions of this Canon do not require any action by a judge or the disclosure of knowledge or information gained by a judge who is a board or committee member of The Virginia Judges & Lawyers Assistance Program, or who is a board or committee member of any other wellness or assistance program, or who is a trained volunteer for any such program, or who is otherwise cooperating in a particular assistance effort when such knowledge or information is obtained for the purpose of fulfilling the recognized objectives of the program.

U. Financial activities

1. In order to avoid creating an appearance of exploitation of office or favoritism and to minimize the potential for disqualification, a judge must not engage in financial and business dealings that

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

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

2. A judge may, however, hold and manage investments of the judge and members of the judge's family, including real estate. A judge may not serve as an officer, director, manager, general partner, advisor, or employee of any business entity except that a judge may manage and participate in: (i) a business closely held by the judge or members of the judge's family, or (ii) a business entity primarily engaged in investment of the financial

resources of the judge or members of the judge's family. This section does not apply to all judges as set forth in Exceptions to Applicability 3 & 4.

3. A judge should manage the judge's investments and other financial interests to minimize the number of cases in which the judge is recused. As soon as the judge can do so without serious financial detriment, the judge must divest himself or herself of investments and other financial interests that might require frequent recusal.

V. Adherence to law

A judge must respect and comply with the law. Deference to the judgments and rulings of courts depends upon public confidence in the integrity and independence of judges. The integrity and independence of judges depends in turn upon their acting without fear or favor. Although judges should be independent, they must comply with the law, including the provisions of these Canons. Public confidence in the impartiality of the judiciary is maintained by the adherence of each judge to this responsibility. Conversely, violation of this Canon diminishes public confidence in the judiciary and thereby does injury to the system of government under law.

CANON 3. A JUDGE MUST PROMOTE EFFICIENT AND EFFECTIVE DELIVERY OF JUSTICE

The standards that follow this Canon are binding and authoritative in interpreting the Canon. Some standards will include illustrations. Such illustrations are intended to be applied to achieve the purposes of the Canon.

A. Judicial duties as priority

The judicial duties of a judge take precedence over all the judge's other activities. The judge's judicial duties include all the duties of the judge's office prescribed by law.

B. Prompt decision making

A judge is required to promptly hear and decide matters assigned to the judge. In the event that a trial court decision is being held under advisement for more than sixty days, written notice of the delay and a projected time of decision must be provided to the parties or their counsel. A judge must promptly decide whether the judge's recusal from a case is required.

C. Maintain professional competence

A judge is required to be faithful to the law and maintain professional competence in it.

D. Maintain decorum and civility

A judge should require order, decorum, and civility in proceedings before the judge.

E. Patient, dignified, and courteous behavior

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

F. Efficient discharge of administrative duties

A judge is required to diligently discharge the judge's administrative responsibilities without bias or prejudice, is required to maintain professional competence in judicial administration, and is required to cooperate with other judges and court officials in the administration of court business.

G. Mediation limited to court-administered programs

A judge must not act as an arbitrator or mediator or otherwise perform judicial functions in a private capacity. This restriction, however, does not prohibit a judge from participating in settlement conferences or court-administered programs performed as part of judicial duties. This section does not apply to all judges as set forth in Exceptions to Applicability 3 & 4.

H. Workplace conduct

A judge must refrain from speech, gestures, or other conduct that could reasonably be perceived as sexual harassment or creating a hostile work environment, and the judge must require the same standard of conduct of others subject to the judge's direction and control.

I. Expense reimbursement and compensation

1. A judge may receive compensation and reimbursement of expenses for the extrajudicial activities permitted by these Canons and standards if the source of such payments does not give the appearance of influencing the judge's performance of judicial duties or otherwise diminish public confidence in the judge's independence, impartiality, integrity, and competence. Compensation may not exceed a reasonable amount but may be commensurate with the judge's experience.

2. The following illustration is an example of permitted considerations in compensation for extrajudicial activities: A judge may be hired to serve as faculty at a law school, subject to other provisions of this Canon, and the judge's compensation may reflect the judge's high level of expertise in the subject matter of the engagement so long as the judge complies with all other applicable provisions of these Canons.

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