

Report and Recommendations of the  
Illinois Judicial Ethics Committee for  
Updating the Illinois Code of Judicial Conduct

June 29, 2021

## INTRODUCTION

The Illinois Judicial Ethics Committee (IJEC) respectfully submits the following Report and Proposed Illinois Code of Judicial Conduct. The proposed Code is based on the 2007 American Bar Association Model Code of Judicial Conduct. At last word, 37 states have revised their Codes of Judicial Conduct in response to the 2007 ABA Model Code, and most of the remaining states are in the process of studying that subject.

This report is the culmination of many years of careful study by the IJEC. The report (1) contains the proposed Illinois Code of Judicial Conduct, including canons, rules, and comments, and (2) summarizes the differences between each of the IJEC's proposed canons, rules, and comments, and both the 2007 ABA Model Code of Judicial Conduct provision and the analogous provision in the current Illinois Code of Judicial Conduct. The attached Appendix includes a copy of the proposed Code without any of the report's discussion.

The IJEC is a joint committee of the Illinois Judges Association, Illinois State Bar Association, and Chicago Bar Association that acts independently of, and without prior authorization from, its constituent organizations. Since its formation in 1992, the IJEC has helped judges address judicial ethics issues by publishing formal ethics opinions that are available on [the IJA website](#) as well as Lexis and Westlaw, providing informal ethics advice in response to inquiries from judges, publishing white papers, and conducting ethics programs at judicial conferences. The IJEC has also previously proposed revisions to the Illinois Code of Judicial Conduct that were adopted by the Illinois Supreme Court.

Respectfully submitted,

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**REPORT AND PROPOSED ILLINOIS CODE OF JUDICIAL CONDUCT**

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# REPORT AND PROPOSED ILLINOIS CODE OF JUDICIAL CONDUCT

## PREAMBLE & SCOPE

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

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

[3] The Code establishes standards for the ethical conduct of judges and judicial candidates. The Code is intended to guide and assist judges in maintaining the highest standards of judicial and personal conduct and to provide a basis for regulating their conduct through the Illinois Judicial Inquiry Board and the Illinois Courts Commission.

[4] The Code governs a judge's personal and judicial activities conducted in person, on paper, and by telephone or other electronic means. A violation of the Code may occur when a judge uses the internet, including social networking sites, to post comments or other materials such as links to websites, articles, or comments authored by others, photographs, cartoons, jokes, or any other words or images that convey information or opinion. Violations may occur even if a judge's distribution of a communication is restricted to family and friends and is not accessible to the public. Judges must carefully monitor their social media accounts to ensure that no communication can be reasonably interpreted as suggesting a bias or prejudice, an *ex parte* communication, the misuse of judicial power or prestige, a violation of restrictions on charitable, financial, or political activities, a comment on a pending or impending case, a basis for disqualification, or an absence of judicial independence, impartiality, integrity, or competence.

[5] The Code consists of four Canons, numbered Rules under each Canon, and Comments that generally follow and explain each Rule. The Policy and Scope and Terminology sections provide additional guidance in interpreting and applying the Code.

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

[7] The Comments that accompany the Rules serve two functions. First, they provide guidance regarding the purpose, meaning, and proper application of the Rules. They

contain explanatory material and, in some instances, provide examples of permitted or prohibited conduct. Comments neither add to nor subtract from the binding obligations set forth in the Rules. Therefore, when a Comment contains the term “must,” it does not mean that the Comment itself is binding or enforceable; it signifies that the Rule in question, properly understood, is obligatory as to the conduct at issue.

[8] Second, the Canons combined with the Comments identify aspirational goals for judges. To implement fully the principles of this Code as articulated in the Canons, judges should strive to exceed the standards of conduct established by the Rules, holding themselves to the highest ethical standards and seeking to achieve those aspirational goals, thereby enhancing the dignity of the judicial office.

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

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

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

<b>Changes from Current Illinois Code</b>	<b>Changes from ABA Model Code</b>
<p><u>Preamble and Scope</u>: The Illinois Code includes a section titled “Preamble,” but not a section titled “Scope.”</p>	<p><u>Preamble and Scope</u>: The 2007 ABA Model Code of Judicial Conduct includes separate Preamble and Scope sections.</p> <p>Because the Preamble and Scope sections of the ABA Model Code complement each other and, in some respects, overlap, the Illinois Judicial Ethics Committee (IJE) combined the two sections into a section titled “Preamble and Scope.”</p>
<p><u>Proposed Paragraph [1]</u> does not substantively differ from the Preamble section of the Illinois Code, but contains grammatical or syntax changes.</p>	<p><u>Proposed Paragraph [1]</u> is identical to Paragraph [1] of the Preamble of the ABA Model Code.</p>

<b>Changes from Current Illinois Code</b>	<b>Changes from ABA Model Code</b>
<p><u>Proposed Paragraph [2]</u> reflects the concepts addressed in the Preamble of the Illinois Code and Illinois Supreme Court Rules 61, 62, 63A(8), 65A, and 67A(1)(d).</p>	<p><u>Proposed Paragraph [2]</u> is identical to Paragraph [2] of the Preamble of the ABA Model Code.</p>
<p><u>Proposed Paragraph [3]</u> reflects the concepts addressed in the Preamble of the Illinois Code.</p>	<p><u>Proposed Paragraph [3]</u> does not substantively differ from the first and third sentences of Paragraph 3 of the Preamble of the ABA Model Code, but contains grammatical changes and substitutes “Illinois Code of Judicial Conduct” for “Model Code of Judicial Conduct,” substitutes the phrase “Judicial Inquiry Board and Courts Commission” for “disciplinary agencies.”</p> <p>Proposed Paragraph [3] omits the second sentence of Paragraph [3] of the Preamble of the ABA Model Code, which states, “It [the ABA Model Code] is not intended as an exhaustive guide for the conduct of judges and judicial candidates, who are governed in their judicial and personal conduct by general ethical standards as well as by the [ABA Model] Code.” The sixth paragraph of the Illinois Code includes a sentence similar to the deleted sentence. IJEC omitted the sentence to prevent the impression that a disciplinary action could be based on conduct other than that proscribed by the Rules of the Code.</p>
<p><u>Proposed Paragraph [4]</u> is new and has no counterpart in the Illinois Code. The IJEC added Proposed Paragraph [4] to alert judges to the seemingly endless ways in which judges have violated the provisions of judicial conduct codes when using social media and other forms of electronic communications.</p>	<p><u>Proposed Paragraph [4]</u> is new and has no counterpart in the ABA Model Code.</p>

Changes from Current Illinois Code	Changes from ABA Model Code
<p><u>Proposed Paragraph [5]</u> provides a brief roadmap to the Proposed Code of Judicial Conduct. A similar roadmap is found in the second sentence of the second paragraph of the Preamble to the Illinois Code.</p>	<p><u>Proposed Paragraph [5]</u> does not substantively differ from Paragraph [1] of the Scope section of the ABA Model Code, except that Proposed Paragraph [5] deletes a reference to the “Application section” of the Code because the Proposed Code does not include an “Application section.”</p>
<p><u>Proposed Paragraph [6]</u>: Paragraphs 2, 4, and 5 of the Preamble to the Illinois Code reflect the principles set forth in the first two sentences of Proposed Paragraph [6]. The Illinois Code does not define the terms “may” and “should.” Proposed Paragraph [6] defines those terms as aspirational.</p>	<p><u>Proposed Paragraph [6]</u> does not substantively differ from Paragraph [2] of the Scope section of the ABA Model Code, except the word “overarching” that immediately precedes the word “principles” in the ABA Code has been deleted.</p>
<p><u>Proposed Paragraph [7]</u>: The second paragraph of the Preamble of the Illinois Code explains the purpose of the Comments sections of the Code: “The Committee Commentary, by explanation, and example, provides guidance with respect to the purpose and meaning of the canons and rules. The Commentary is not intended as a statement of additional rules.” Proposed Paragraphs [7] and [8] explain the purpose of the Comments more specifically and accurately as (1) aiding in the interpretation of the Rules, and (2) in some instances, identifying aspirational goals for judges.</p>	<p><u>Proposed Paragraph [7]</u> is identical to Paragraph [3] of the Scope section of the ABA Model Code.</p>
<p><u>Proposed Paragraph [8]</u>: <i>See</i> Proposed Paragraph [7], <i>supra</i>.</p>	<p><u>Proposed Paragraph [8]</u> is identical to Paragraph [4] of the Scope section of the ABA Model Code, except the phrase “the Canons combined with” has been inserted in the first line to emphasize that both the Comments and the Canons identify aspirational goals for judges.</p>
<p><u>Proposed Paragraph [9]</u> does not substantively differ from the third paragraph of the Preamble of the Illinois Code, but contains grammatical or syntax changes.</p>	<p><u>Proposed Paragraph [9]</u> is identical to Paragraph [5] of the Scope section of the ABA Model Code, except that the IJEC substituted “Illinois Code” for “Model Code.”</p>

<b>Changes from Current Illinois Code</b>	<b>Changes from ABA Model Code</b>
<p><u>Proposed Paragraph [10]</u> reflects the concepts addressed in the fifth paragraph of the Preamble to the Illinois Code, but Proposed Paragraph [10] adds two factors to the list of considerations found in the Illinois Code used to determine whether a violation of the Code warrants a disciplinary charge. The two new factors are: “the facts and circumstances that existed at the time of the conduct,” and “whether there have been previous violations.”</p>	<p><u>Proposed Paragraph [10]</u> reflects the concepts addressed in Paragraph [6] of the Scope section of the ABA Model Code, but the word “conduct” was substituted for the words “transgression” and “activity.”</p>
<p><u>Proposed Paragraph [11]</u> reflects the concepts addressed in the fourth paragraph of the Preamble of the Illinois Code, which provides that the Code should not be used to gain a tactical advantage in a matter or as a basis for criminal or civil liability. Proposed Paragraph [11] adds that the Code is not intended to form “the basis for litigants to seek collateral remedies against each other.”</p>	<p><u>Proposed Paragraph [11]</u> is identical to Paragraph [7] of the Scope section of the ABA Model Code.</p>

## TERMINOLOGY

The first time any term listed below is used in a Rule in its defined sense, it is followed by an asterisk (\*).

**“Contributions”** means both financial and in-kind contributions, such as goods, professional or volunteer services, advertising, and other types of assistance, which, if obtained by the recipient otherwise, would require a financial expenditure. *See* Rules 3.7, 4.1, and 4.4.

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

**“Domestic partner”** means a person with whom another person maintains a household and an intimate relationship, other than a person’s legal spouse. *See* Rule 2.11.

**“Economic interest”** means ownership of more than a *de minimis* legal or equitable interest. Except for situations in which the judge participates in the management of such a legal or equitable interest or the interest could be substantially affected by the outcome of a proceeding before a judge, it does not include: (1) an interest in the individual holdings within a mutual or common investment fund; (2) an interest in securities held by an educational, religious, charitable, fraternal, or civic organization in which the judge or the judge’s spouse, 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. *See* Rules 1.3 and 2.11.

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

**“Impartial,” “impartiality,” and “impartially”** mean absence of bias or prejudice in favor of, or against, particular parties or classes of parties, as well as maintenance of an open mind in considering issues that may come before a judge. *See* Canons 1, 2, and 4, and Rules 1.2, 2.2, 2.10, 2.11, 2.13, 3.1, 3.12, 4.1, and 4.3.

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

**“Impropriety”** includes conduct that violates the law, court rules, or provisions of this Code and conduct that undermines a judge’s independence, integrity, or impartiality. *See* Canon 1 and Rule 1.2.

**“Independence”** means a judge’s freedom from influence or controls other than those established by law. *See* Canons 1 and 4, and Rules 1.2, 3.1, 3.12, 4.1, and 4.3.

**“Integrity”** means probity, fairness, honesty, uprightness, and soundness of character. *See* Canons 1 and 4, and Rules 1.2, 3.1, 3.12, 4.1, and 4.3.

**“Judicial candidate”** means any person, including a sitting judge, who is seeking selection for or retention in judicial office by election or appointment. A person becomes a candidate for judicial office as soon as such person makes a public announcement of candidacy, declares or files as a candidate with the election or appointment authority, authorizes or, where permitted, engages in solicitation or acceptance of contributions or support, or is nominated for election or appointment to office. *See* Rules 4.1, 4.3, and 4.4.

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

**“Law”** encompasses court rules as well as statutes, constitutional provisions, and decisional law. *See* Rules 2.11, 2.13, 2.14, 2.15, 2.16, 3.2, 3.6, 4.1, and 4.3.

**“Member of the judicial candidate’s family”** means a spouse, domestic partner, child, grandchild, parent, grandparent, or other relative or person with whom the judicial candidate maintains a close familial relationship. *See* Rule 4.1.

**“Member of the judge’s family”** means a spouse, domestic partner, child, grandchild, parent, grandparent, or other relative or person with whom the judge maintains a close familial relationship. *See* Rules 3.7, 3.8, and 3.11.

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

**“Must”** when used in a Rule imposes a mandatory duty on a judge to comply with the Rule. When used in a Comment, the term does not mean that the Comment itself is binding or enforceable; it signifies that the Rule in question, properly understood, is obligatory as to the conduct at issue.

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

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

**“Personally solicit”** means a direct request made by a judge or a judicial candidate for financial support or in-kind services, whether made by letter, telephone, or any other means of communication. *See* Rule 4.1.

**“Political organization”** means a political party or other group sponsored by or affiliated with a political party or candidate, the principal purpose of which is to further the election or appointment of candidates for political office. For purposes of this Code, the term does not include a judicial candidate’s campaign committee created as authorized by Rule 4.4. *See* Rules 4.1 and 4.2.

**“Public election”** includes primary and general elections, partisan elections, nonpartisan elections, and retention elections. *See* Rules 4.1 and 4.3.

**“Require”** when used in the context of the Rules prescribing that a judge “require” certain conduct of others, means that a judge is to exercise reasonable direction and control over the conduct of those persons subject to the judge’s direction and control. *See* Rules 2.8, 2.10, and 2.12.

**“Shall”** imposes a mandatory duty on a judge to comply with the Rule. When used in a Comment, the term does not mean that the Comment itself is binding or enforceable; it signifies that the Rule in question, properly understood, is obligatory as to the conduct at issue.

**“Third degree of relationship”** includes the following persons: great-grandparent, grandparent, parent, uncle, aunt, brother, sister, child, grandchild, great-grandchild, nephew, and niece. *See* Rule 2.11

Changes from Current Illinois Code	Changes from ABA Model Code
<p><u>Proposed definition of “Contribution”</u> is new and has no counterpart in the Illinois Code. The IJEC defined the term to alert judges that charitable and political contributions include things of value other than money.</p>	<p><u>Proposed definition of “Contribution”</u> is identical to the definition of “contribution” in the Terminology section of the ABA Model Code.</p>
<p><u>Proposed definition of “De minimis”</u> is identical to the definition of “De minimis” in the Illinois Code, but adds a preface that the definition applies only in the context of interests pertaining to judicial disqualification under Proposed Rule 2.11.</p>	<p><u>Proposed definition of “De minimis”</u> is identical to the definition of “De minimis” in the Terminology section of the ABA Model Code.</p>

Changes from Current Illinois Code	Changes from ABA Model Code
<p><u>Proposed definition of “Domestic partner”</u> is new and has no counterpart in the Illinois Code. The proposed definition is consistent with the common understanding of domestic, non-marital relationships. <i>See Black’s Law Dictionary</i> (11th ed. 2019) (domestic partnership).</p>	<p><u>Proposed definition of “Domestic partner”</u> is identical to the definition of “Domestic partner” in the Terminology section of the ABA Model Code.</p>
<p><u>Proposed definition of “Economic interest”</u> does not substantively differ from the definition of “Economic interest” in the Illinois Code. The definition of “economic interests” in the Illinois Code is identical to the definition of the term found in the 1990 ABA Model Code of Judicial Conduct. The 2007 ABA Model Code eliminated repetitious phrases and streamlined the definition in the 1990 ABA Code, but made no substantive changes to the 1990 ABA Model definition.</p>	<p><u>Proposed definition of “Economic interest”</u> is identical to the definition of “economic interest” in the Terminology section of the ABA Model Code.</p>
<p><u>Proposed definition of “Fiduciary”</u> is identical to the definition of “Fiduciary” in the Illinois Code, except for the addition of the word “such” after the word “relationships.”</p>	<p><u>Proposed definition of “Fiduciary”</u> is identical to the definition of “Fiduciary” in the Terminology section of the ABA Model Code.</p>
<p><u>Proposed definition of “Impending matter”</u> is new and has no counterpart in the Illinois Code. The IJEC defined “impending matter” to limit the term to matters that are reasonably foreseeable to come before the court. Matters that could conceivably come before the court at some indefinite time are not “impending” under the proposed definition. <i>See Charles G. Geyh and W. William Hodes, Reporters’ Notes to the Model Code of Judicial Conduct</i> 9 (2009).</p>	<p><u>Proposed definition of “Impending matter”</u> is identical to the definition of “Impending matter” in the Terminology section of the ABA Model Code.</p>

Changes from Current Illinois Code	Changes from ABA Model Code
<p><u>Proposed definition of “Independence”</u> is new and has no counterpart in the Illinois Code. The IJEC agreed with the ABA that judicial “independence is an elemental goal that the Code seeks to preserve, and as such warrants definition.” Charles G. Geyh and W. William Hodes, <i>Reporters’ Notes to the Model Code of Judicial Conduct</i> 9 (2009).</p>	<p><u>Proposed definition of “Independence”</u> is identical to the definition of “independence” in the Terminology section of the ABA Model Code.</p>
<p><u>Proposed definition of “Impropriety”</u> is new and has no counterpart in the Illinois Code. To minimize the inherent vagueness of the term, the IJEC agreed to include the ABA-approved definition of “impropriety.”</p>	<p><u>Proposed definition of “Impropriety”</u> is identical to the definition of “impropriety” in the Terminology section of the ABA Model Code.</p>
<p><u>Proposed definition of “Integrity”</u> is new and has no counterpart in the Illinois Code. In the proposed definition, “‘integrity’ is explained by identifying basic attributes characteristically associated with the term.” Charles G. Geyh and W. William Hodes, <i>Reporters’ Notes to the Model Code of Judicial Conduct</i> 9 (2009).</p>	<p><u>Proposed definition of “Integrity”</u> is identical to the definition of “integrity” in the Terminology section of the ABA Model Code.</p>
<p><u>Proposed definition of “Judge”</u> is identical to the definition included in the Terminology section of the Illinois Code. The Illinois Code defines “judge” to include “circuit and associate judges and judges of the appellate and supreme court.”</p>	<p><u>Proposed definition of “Judge”</u> is new and has no counterpart in the ABA Model Code of Judicial Conduct.</p>
<p><u>Proposed definition of “Judicial candidate”</u> is new and has no counterpart in the Illinois Code. The proposed definition permits judges to better apply the restrictions on political activity found in Proposed Rules 4.1, 4.2, and 4.4.</p>	<p><u>Proposed definition of “Judicial candidate”</u> is identical to the definition of “judicial candidate” in the Terminology section of the ABA Model Code.</p>
<p><u>Proposed definition of “Knowingly,” “knowledge,” “known,” and “knows”</u> does not substantively differ from the definition in the Illinois Code, but contains grammatical or syntax changes.</p>	<p><u>Proposed definition of “Knowingly,” “knowledge,” “known,” and “knows”</u> is identical to the definition of “knowingly,” “knowledge,” “known,” and “knows” in the Terminology section of the ABA Model Code.</p>

Changes from Current Illinois Code	Changes from ABA Model Code
<p><u>Proposed definition of “Member of the judicial candidate’s family”</u> reflects the concepts addressed in the definition of “Member of a candidate’s/judge’s family” in the Terminology section of the Illinois Code, but adds “domestic partner” to the listed relationships. The Proposed Terminology section provides separate definitions for the terms “member of the judicial candidates family” and “member of the judge’s family.”</p>	<p><u>Proposed definition of “Member of the judicial candidate’s family”</u> reflects the concepts addressed in the definition of “Member of the judicial candidate’s family” in the Terminology section of the ABA Model Code, but inserts the word “judicial” before the word “candidate’s” in both the term to be defined and the definition of the term.</p>
<p><u>Proposed definition of “Member of the judge’s family”</u> reflects the concepts addressed in the definition of “Member of a candidate’s/judge’s family” in the Terminology section of the Illinois Code, but adds the relationship of “domestic partner” to the quoted language. The Proposed Terminology section provides separate definitions for the terms “member of the judicial candidates family” and “member of the judge’s family.”</p>	<p><u>Proposed definition of “Member of the judge’s family”</u> is identical to the definition of “Member of the judge’s family” in the Terminology section of the ABA Model Code.</p>
<p><u>Proposed definition of “Member of the judge’s family residing in the judge’s household”</u> is identical to the definition of “Member of the judge’s family residing in the judge’s household” in the Terminology section of the Illinois Code, except that the proposed definition substitutes the introductory word “means” for the introductory word “denotes.”</p>	<p><u>Proposed definition of “Member of the judge’s family residing in the judge’s household”</u> reflects the concepts addressed in the definition of “Member of the judge’s family residing in a judge’s household” (emphasis added) in the Terminology Section of the ABA Model Code. The IJEC substituted “the” for “a” to conform to the wording of the phrase found in the Proposed Rules and Comments. <i>See</i> Rule 2.11(A)(3) and Rule 3.13 cmt. [4].</p>
<p><u>Proposed definition of “Must”</u>: The Illinois Code does not define the term “must.” The IJEC defined the term to explain its meaning when used in a Rule or Comment.</p>	<p><u>Proposed definition of “Must”</u> is new and has no counterpart in the ABA Model Code.</p>

<b>Changes from Current Illinois Code</b>	<b>Changes from ABA Model Code</b>
<p><u>Proposed definition of “Nonpublic information”</u> is new and has no counterpart in the Illinois Code. Because Proposed Rule 3.5 prohibits a judge from intentionally disclosing “nonpublic information,” the IJEC believed that a definition was necessary to guide judges in applying the Rule.</p>	<p><u>Proposed definition of “Nonpublic information”</u> is identical to the definition of “nonpublic information” in the Terminology section of the ABA Model Code.</p>
<p><u>Proposed definition of “Pending matter”</u> is new and has no counterpart in the Illinois Code. The IJEC included a definition in the Proposed Terminology section to advise judges that a matter remains pending through the appellate process.</p>	<p><u>Proposed definition of “Pending matter”</u> is identical to the definition of “pending matter” in the Terminology section of the ABA Model Code.</p>
<p><u>Proposed definition of “Personally solicit”</u> is new and has no counterpart in the Illinois Code. The IJEC defined the term to inform judges that Rule 4.1(E)(1) prohibits the personal solicitation of in-kind services as well as the personal solicitation of money.</p>	<p><u>Proposed definition of “Personally solicit”</u> is identical to the definition of “personally solicit” in the Terminology section of the ABA Model Code.</p>
<p><u>Proposed definition of “Political organization”</u> reflects the concepts addressed in the definition of “political organization” in the Illinois Code, but adds that an “other group” is a group sponsored by or affiliated with a political party or candidate.” The proposed definition also provides that the term “political organization” does not include a candidate’s campaign committee.</p>	<p><u>Proposed definition of “Political organization”</u> is identical to the definition of “political organization” in the Terminology section of the ABA Model Code.</p>
<p><u>Proposed definition of “Public election”</u> does not substantively differ from the definition of “Public election” in the Terminology section of the Illinois Code, but contains grammatical or syntax changes.</p>	<p><u>Proposed definition of “Public election”</u> is identical to the definition of “public election” in the Terminology section of the ABA Model Code.</p>

Changes from Current Illinois Code	Changes from ABA Model Code
<p><u>Proposed definition of “Require”</u> reflects the concepts addressed in the definition of “Require” in the Terminology section of the Illinois Code. The IJEC believes that it is important to include the definition even though the definition of “require” found in the 1990 ABA Code was omitted from the 2007 ABA Code. In the IJEC’s view, judges need to know that when a rule “requires” a judge to ensure certain conduct of others subject to the judge’s direction and control, the rule imposes a duty on the judge to “exercise reasonable direction and control over the conduct of those persons.</p>	<p><u>Proposed definition of “Require”</u>: The ABA Model Code does not include a definition of the word “require.”</p>
<p><u>Proposed definition of “Shall”</u> is new and has no counterpart in the Illinois Code. The IJEC defined the term to inform judges that “shall” imposes a mandatory duty and is not used in a discretionary or aspirational sense.</p>	<p><u>Proposed definition of “Shall”</u> is new and has no counterpart in the ABA Model Code.</p>
<p><u>Proposed definition of “Third degree of relationship”</u> reflects the concepts addressed in the definition of “Third degree of relationship” in the Terminology section of the Illinois Code, which defines “third degree of relationship” to include the identical categories of persons named in the proposed definition (“great-grandparent, grandparent, parent, uncle, aunt, brother, sister, child, grandchild, great-grandchild, nephew or niece”).</p>	<p><u>Proposed definition of “Third degree of relationship”</u> is identical to the definition of “third degree of relationship” in the Terminology section of the ABA Model Code.</p>
<p><u>Omitted definition of “He”</u>: The Terminology section of the Illinois Code defines the term “he” as follows: “Whenever this pronoun is used it includes the feminine as well as the masculine form.” The IJEC believes that the grammatical structure of this Proposed Code of Judicial Conduct no longer requires the definition.</p>	<p><u>Omitted definition of “He”</u>: The ABA Model Code does not include a definition of the word “He.”</p>

<b>Changes from Current Illinois Code</b>	<b>Changes from ABA Model Code</b>
<p><u>Omitted definition of “Aggregate”:</u> The Terminology section of the Illinois Code does not define “aggregate.”</p>	<p><u>Omitted definition of “Aggregate”:</u> The Terminology section of the ABA Model Code defines the term “aggregate,” which appears in ABA Model Rule 2.11(A)(4), 3.15(A)(2), 3.15(A)(3), 4.4(B)(1), and 4.4(B)(3). This use of the term “aggregate” was not adopted by the IJEC in the Proposed Code, and, therefore, was omitted from the Proposed Terminology Section.</p> <p>The term “aggregate” does appear in the Proposed Administrative Order included in Proposed Rule 3.15; however, the IJEC believes the meaning of this term in that context did not require definition.</p>

## CANON 1

A JUDGE SHALL UPHOLD AND PROMOTE THE INDEPENDENCE, INTEGRITY, AND IMPARTIALITY OF THE JUDICIARY, AND SHALL AVOID IMPROPRIETY AND THE APPEARANCE OF IMPROPRIETY IN ALL OF THE JUDGE'S ACTIVITIES.

### COMMENTS

- [1] An independent and honorable judiciary is indispensable for creating and preserving public trust and confidence in the legal system. This Code shall be construed and applied to further this objective.

Changes from Current Illinois Code	Changes from ABA Model Code
<p><u>Proposed Canon 1</u> reflects the concepts addressed in Illinois Supreme Court Rules 61 and 62. It identifies the overarching principles underlying all disciplinary rules and aspirational statements in the Code. Like the other Canons, Canon 1 cannot form the basis for a disciplinary charge. Although the Canons provide guidance in interpreting and applying the Rules, disciplinary charges must be based on the violation of a Rule. <i>See</i> Proposed Code, Scope [2].</p>	<p><u>Proposed Canon 1</u> is identical to Canon 1 of the ABA Model Code, except for the phrase “in all of the judge’s activities.” The IJEC borrowed the added phrase from Illinois Supreme Court Rule 62 to impress upon judges that the standards imposed by the Code apply to a judge’s conduct on and off the bench.</p>
<p><u>Proposed Comment [1]</u> reflects the concepts addressed in Illinois Supreme Court Rules 61 and 62A to reinforce the importance of judicial integrity, independence, and impartiality in a democratic society.</p>	<p><u>Proposed Comment [1]</u>: Canon 1 of the ABA Model Code includes no comments.</p>

**RULE 1.1: COMPLIANCE WITH THE LAW**

A judge shall\* comply with the law,\* including the Code.

<b>Changes from Current Illinois Code</b>	<b>Changes from ABA Model Code</b>
<p><u>Proposed Rule 1.1</u> reflects the concepts in Illinois Supreme Court Rule 62A. This rule requires a judge to personally comply with the law. Proposed Rule 2.2 requires judges to uphold and apply the law in the exercise of the judicial function.</p>	<p><u>Proposed Rule 1.1</u> is identical to ABA Model Rule 1.1.</p>

## **RULE 1.2: PROMOTING CONFIDENCE IN THE JUDICIARY**

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

### COMMENTS

- [1] Public confidence in the judiciary is eroded by improper conduct and conduct that creates the appearance of impropriety. This principle applies to both the professional and personal conduct of a judge.
- [2] A judge should expect to be the subject of public scrutiny that might be viewed as burdensome if applied to other citizens and must accept the restrictions imposed by the Code.
- [3] Conduct that compromises or appears to compromise the independence, integrity, and impartiality of a judge undermines public confidence in the judiciary. Because it is not practicable to list all such conduct, the Rule is necessarily cast in general terms.
- [4] Judges should participate in activities that promote ethical conduct among judges and lawyers, support professionalism within the judiciary and the legal profession, and promote access to justice for all.
- [5] Actual improprieties include violations of law, court rules, or provisions of this Code. The test for appearance of impropriety is whether the conduct would create in reasonable minds a perception that the judge violated this Code or engaged in other conduct that reflects adversely on the judge's honesty, impartiality, temperament, or fitness to serve as a judge.
- [6] A judge should initiate and participate in community outreach activities for the purpose of promoting public understanding of and confidence in the administration of justice. In conducting such activities, the judge must act in a manner consistent with this Code.

Changes from Current Illinois Code	Changes from ABA Model Code
<p><u>Proposed Rule 1.2</u> reflects the concepts addressed in Illinois Supreme Court Rule 62A, which provides, in part, that judges should conduct themselves in a manner that promotes public confidence in the “integrity and impartiality of the judiciary.” Proposed Rule 1.2 adopts this same requirement adding “independence” as another essential characteristic of a judiciary worthy of the public trust. “The importance of judicial independence, integrity, and impartiality is underscored by the recurrence of the phrase throughout the Rules.” Charles G. Geyh &amp; W. William Hodes, <i>Reporters’ Notes to the Model Code of Judicial Conduct</i> 19 (2009).</p> <p>Illinois Supreme Court Rule 62 states that “A Judge Should Avoid Impropriety and the Appearance of Impropriety in All of the Judge’s Activities.” The Committee Commentary to Illinois Supreme Court Rule 62 reiterates that “[a] judge must avoid all impropriety and appearance of impropriety.” These admonitions under Illinois Supreme Court Rule 62 to avoid “impropriety” and the “appearance of impropriety” have been treated as disciplinary rules. <i>See, e.g., In re Chmiel</i>, 08-CC-1, 3-4 (Ill. Cts. Comm’n Nov. 19, 2010). Proposed Rule 1.2 continues this interpretation of Illinois Supreme Court Rule 62 and makes conduct that constitutes an “impropriety” and conduct that creates an “appearance of impropriety” an independent basis for discipline. <i>See Proposed Code, Scope</i> [2].</p>	<p><u>Proposed Rule 1.2</u> is identical to ABA Model Rule 1.2.</p>
<p><u>Proposed Comment [1]</u> reflects the concepts addressed in the second and third sentences of the Committee Commentary to Illinois Supreme Court Rule 62.</p>	<p><u>Proposed Comment [1]</u> is identical to ABA Model Comment [1].</p>

Changes from Current Illinois Code	Changes from ABA Model Code
<p><u>Proposed Comment [2]</u> reflects the concepts addressed in the third and fourth sentences of the Committee Commentary to Illinois Supreme Court Rule 62.</p>	<p><u>Proposed Comment [2]</u> is identical to ABA Model Comment [2].</p>
<p><u>Proposed Comment [3]</u> reflects the concepts address in in the Committee Commentary to Illinois Supreme Court Rule 62. It reminds judges that conduct not otherwise prohibited by a specific black-letter Rule may come within the disciplinary categories of “impropriety” or “appearance of impropriety.”</p>	<p><u>Proposed Comment [3]</u> is identical to ABA Model Comment [3].</p>
<p><u>Proposed Comment [4]</u> is new and has no counterpart in the Illinois Code. Proposed Comment [4] is aspirational. It urges judges to engage in bar association and other activities that promote ethical conduct, professionalism, and access to justice, but it does not subject a judge to discipline for failure to do so. <i>See</i> Charles G. Geyh &amp; W. William Hodes, <i>Reporters’ Notes to the Model Code of Judicial Conduct</i> 22-23 (2009).</p>	<p><u>Proposed Comment [4]</u> is identical to ABA Model Comment [4].</p>
<p><u>Proposed Comment [5]</u> is new and has no counterpart in the Illinois Code. Because the necessarily vague concepts of impropriety and the appearance of impropriety may form the sole basis for disciplining a judge, the IJEC believes that definitions are essential. The definitions suggested in Proposed Comment [5] are intended to aid judges in determining whether their contemplated conduct violates either standard.</p>	<p><u>Proposed Comment [5]</u> is identical to ABA Model Comment [5].</p>

Changes from Current Illinois Code	Changes from ABA Model Code
<p>Proposed Comment [6] is new and has no counterpart in the Illinois Code. Encouraging judges to engage in community outreach programs promoting public understanding and faith in the justice system is aspirational. Failure to participate in outreach activities will not support a disciplinary charge.</p> <p>Proposed Comment [6] acknowledges the value of programs sponsored by the Illinois Supreme Court, other courts, and bar associations designed to enhance public confidence in the legal system. <i>See, e.g.</i>, Illinois Supreme Court, Welcome to Illinois Courts, Education, Judicial Speakers Bureau, <a href="http://www.illinoiscourts.gov?supremecourt/Speakers_Bureau/Speakers_Bureau.asp">http://www.illinoiscourts.gov?supremecourt/Speakers_Bureau/Speakers_Bureau.asp</a>.</p>	<p>Proposed Comment [6] is identical to ABA Model Comment [6].</p>

**RULE 1.3: AVOIDING MISUSE OF THE PRESTIGE OF JUDICIAL OFFICE**

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

COMMENTS

- [1] It is improper to use or attempt to use the judge’s position to gain personal advantage or deferential treatment of any kind. For example, it would be improper to allude to judicial status to gain favorable treatment in encounters with traffic officials. Similarly, a judge must not use the judicial title in letterhead, emails, or any other form of communication, including social media or social networking platforms, to gain an advantage in conducting personal business.
- [2] Judges may provide a reference or recommendation for an individual based on the judge’s personal knowledge. Judicial stationery may be used for references and recommendations.
- [3] Judges may participate in the process of judicial selection, except as otherwise prohibited or restricted by Canon 4.
- [4] [Reserved]

Changes from Current Illinois Code	Changes from ABA Model Code
<p><u>Proposed Rule 1.3</u> reflects the concepts addressed in Illinois Supreme Court Rule 62B, which provides that: “A judge should not lend the prestige of judicial office to advance the private interests of others; nor should a judge convey or permit others to convey the impression that they are in a special position to influence the judge.” Proposed Rule 1.3 improves on the Illinois rule in that (1) the proposed rule prohibits the misuse of office to further not only the interests of others but also the interests of the judge; (2) the <i>misuse</i> of prestige, rather than <i>lending</i> prestige, more accurately identifies the evil that the rule seeks to prevent; and (3) the rule specifically bars advancing both personal and economic interests. While the term “personal interests” includes “economic interests,” stating both “circumvents the possibility of confusion.” Charles G. Geyh &amp; W. William Hodes,</p>	<p><u>Proposed Rule 1.3</u> is identical to ABA Model Rule 1.3, except the proposed rule prohibits the <i>misuse</i> of judicial prestige, whereas the ABA model rule prohibits the <i>abuse</i> of judicial prestige.</p> <p>Both the 1972 and 1990 ABA Model Codes prohibited <i>lending</i> the prestige of judicial office to advance private interests. 1972 ABA CODE OF JUDICIAL CONDUCT Canon 2B; 1990 ABA MODEL CODE OF JUDICIAL CONDUCT Canon 2B. The IJEC agrees with the drafters of the 2007 ABA Model Code that the prohibition against <i>lending</i> the prestige of office paints with too broad a brush, arguably barring activities that in no way compromise public confidence in the judiciary. For example, writing an employment reference for a law clerk could subject a judge to criticism for lending judicial prestige to advance the clerk’s job prospects. But all professionals provide</p>

Changes from Current Illinois Code	Changes from ABA Model Code
<p><i>Reporters' Notes to the Model Code of Judicial Conduct 22-23 (2009).</i></p>	<p>references, and a judge doing so is not “problematic” because it does not reflect adversely on the judge’s honesty, impartiality, integrity, or fitness for office. <i>See</i> Charles G. Geyh &amp; W. William Hodes, <i>Reporters' Notes to the Model Code of Judicial Conduct 22-23 (2009)</i>.</p> <p>The drafters of ABA Rule 1.3 changed the disciplinary standard from lending prestige to abusing prestige to exclude non-offensive, inconsequential uses of official prestige in the everyday affairs of judges.</p> <p>While agreeing that the term “lend” should be replaced with a word more accurately describing the prohibition, the IJEC disagreed with the ABA’s choice of “abuse.” According to Black’s Law Dictionary, abuse can mean (1) to damage (a thing); (2) to depart from legal or reasonable use in dealing with (a person or thing); or (3) to misuse. BLACK’S LAW DICTIONARY (10th ed. 2014). The third definition, “misuse,” best characterizes the principle underlying the prohibition in Rule 1.3. Using misuse, rather than abuse, also eliminates potential issues concerning whether the particular action of a judge caused “damage” or was “legal” or “reasonable.”</p>

Changes from Current Illinois Code	Changes from ABA Model Code
<p><u>Proposed Comment [1]</u> is new and has no counterpart in the Illinois Code. The caution against the use of judicial letterhead to gain an advantage in personal dealings is included for two reasons. First, it is a judge’s use of official stationery in the exercise of family, business, financial, or charitable undertakings that most often implicates Rule 1.3. Second, Proposed Comment [1] excepts from Rule 1.3 uses of judicial stationary for private purposes that do not exploit the judicial office. For example, judicial prestige is not implicated when a judge uses official letterhead “to correspond[] with a longtime acquaintance who is well aware of the judge’s position.” Charles G. Geyh &amp; W. William Hodes, <i>Reporters’ Notes to the Model Code of Judicial Conduct</i> 23 (2009).</p>	<p><u>Proposed Comment [1]</u> is identical to ABA Model Comment [1], except that the prohibition against using judicial letterhead to gain an advantage in conducting personal business was expanded to prohibit the judge from using the judicial title in “letterhead, emails, or any other form of communication, including social media or social networking platforms.”</p>
<p><u>Proposed Comment [2]</u> is new and has no counterpart in the Illinois Code.</p> <p>The second sentence of Proposed Comment [2] authorizes the use of official stationery for any recommendation permitted by the Code. The IJEC found that this longstanding practice of using official stationery for reference letters does not violate the Illinois Code provision governing the misuse of judicial prestige. IJEC Opinion No. 96-2 (1996) (“A judge may recommend a neighbor for a State fellowship or internship if the judge has personal knowledge of the applicant and may use court stationery to send the recommendation.”).</p>	<p><u>Proposed Comment [2]</u>: The first sentence of Proposed Comment [2] does not substantively differ from ABA Model Comment [2], but the remainder of the proposed comment is new and has no counterpart in the ABA Model Code.</p> <p>Proposed Comment [2]’s bright-line test differs from Comment [2] to Rule 1.3 of the ABA Model Code. ABA Model Comment [2] does not automatically permit the use of official stationery for recommendation and reference letters. Instead, ABA Model Comment [2] provides that official letterhead may be used only if (1) the judge indicates in the letter that the reference is “personal,” and (2) “there is no likelihood that use of the letterhead would reasonably be perceived as an attempt to exert pressure by reason of the judicial office.” ABA MODEL CODE R. 1.3 cmt. [2]. The IJEC opted for the bright line rule to avoid inconsistent application of the ABA test.</p>

Changes from Current Illinois Code	Changes from ABA Model Code
<p><u>Proposed Comment [3]</u> is new and has no counterpart in the Illinois Code.</p>	<p><u>Proposed Comment [3]</u> differs from ABA Model Comment [3] in that Proposed Comment [3] clarifies that a judge may provide information, including opinions concerning judicial candidates, to judicial appointing authorities and screening committees without misusing judicial prestige.</p> <p>ABA Model Comment [3] provides that: “Judges may participate in the process of judicial selection by cooperating with appointing authorities and screening committees and by responding to inquiries from such entities concerning the professional qualifications of a person being considered for judicial office.” The wording of ABA Model Comment [3] arguably implies that a judge may only provide information to an appointing or screening authority when responding to a request from the authority.</p>

Changes from Current Illinois Code	Changes from ABA Model Code
<p><u>Comment [4]</u>: Not proposed. The IJEC does not recommend ABA Comment [4] to Rule 1.3 for inclusion in the Illinois Code.</p>	<p><u>Proposed Comment [4]</u>: ABA Model Comment [4] is not recommend for inclusion by the IJEC.</p> <p>ABA Model Comment [4] provides that “special considerations” apply when judges write for “publications of for-profit entities.” The ABA comment suggests that, when writing for for-profit publications, “a judge should not permit anyone associated with the publication . . . to exploit the judge’s office.” While good advice, the advice is equally applicable when a judge writes for non-profit publications or appears on a profit or non-profit radio program, television program, or podcast. A judge cannot exploit the judicial office for any reason, at any time, for any entity. The limits on a judge’s extrajudicial activities in general, and financial and business dealings in specific, are adequately set forth in Proposed Rules 3.1 and 3.11, respectively.</p> <p>ABA Model Comment [4] further suggests that a judge retain sufficient control over the advertising of the judge’s works published by for-profit entities to avoid exploitation of the judicial office. Besides suffering from underinclusiveness, this provision is of little practical assistance to a publishing judge. A better approach is to address the issue in an advisory opinion. <i>See, e.g.,</i> Ark. Judicial Ethics Advisory Comm. Op. 96-04 (1996) (advising that a contract clause permitting a publisher to use the judge’s name and qualifications in advertising, “in accordance with appropriate professional standards and ethics,” sufficient to meet judicial code requirements).</p>

**CANON 2**

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

<b>Changes from Current Illinois Code</b>	<b>Changes from ABA Model Code</b>
<p><u>Proposed Canon 2</u> reflects the concepts addressed in Illinois Supreme Court Rule 63, with two exceptions. First, it includes a directive that judges perform the duties of their office “competently.” Second, it is phrased in mandatory language, <i>i.e.</i>, “shall” versus “should.”</p>	<p><u>Proposed Canon 2</u> is identical to ABA Model Canon 2.</p>

## **RULE 2.1: GIVING PRECEDENCE TO THE DUTIES OF JUDICIAL OFFICE**

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

### COMMENTS

- [1] To ensure that judges are available to fulfill their judicial duties, judges must conduct their personal and extrajudicial activities, including their use of social media or participation on social networking platforms, to minimize the risk of conflicts that would result in frequent disqualification. *See* Canon 3.
- [2] Although it is not a duty of judicial office unless prescribed by law, judges are encouraged to participate in activities that promote public understanding of and confidence in the justice system.
- [3] Judges are reminded that Article VI, 13(b) of the Illinois Constitution requires that a judge "shall devote full time to judicial duties." *See* Rule 3.1 concerning a judge's ability to participate in teaching.

Changes from Current Illinois Code	Changes from ABA Model Code
<p><u>Proposed Rule 2.1</u> reflects the concepts addressed in Illinois Supreme Court Rule 63, with some technical changes.</p> <p>First, the heading of Illinois Supreme Court Rule 63 (“A Judge Should Perform the Duties of Judicial Office Impartially and Diligently”) was changed to “Giving Precedence to the Duties of Judicial Office”.</p> <p>Second, the term, “duties of a judge” as used in Illinois Supreme Court Rule 63 was changed to “duties of judicial office” in Proposed Rule 2.1; this emphasizes that the application of the Rule goes beyond adjudicative functions to reach the broader scope of responsibilities that accompany judicial office. <i>See Reporter’s Explanation of Changes</i>, ABA Model Code of Judicial Conduct, 2007.</p> <p>Third, Proposed Rule 2.1 states that the duties of judicial office “shall” take precedence over the judge’s other activities to make clear to judges that this priority must be honored. <i>See id.</i></p> <p>Finally, Proposed Rule 2.1 uses the more descriptive phrase, “all of a judge’s personal and extrajudicial activities” in place of the phrase in Illinois Supreme Court Rule 63, “all the judge’s other activities.” <i>Id.</i></p>	<p><u>Proposed Rule 2.1</u> is identical to ABA Model Rule 2.1.</p>
<p><u>Proposed Comment [1]</u> reflects the concepts addressed in Illinois Supreme Court Rule 65C(3), which requires judges to manage “investments and other financial interests” to minimize disqualification. Proposed Comment [1] speaks more broadly to “personal and extrajudicial activities.”</p>	<p><u>Proposed Comment [1]</u> is identical to ABA Model Comment 1, except that it adds a reminder to judges that they must monitor their use of social media and social networking platforms to avoid making comments or creating situations that may result in frequent disqualifications.</p>

<b>Changes from Current Illinois Code</b>	<b>Changes from ABA Model Code</b>
<p><u>Proposed Comment [2]</u> reflects the concepts addressed in the second paragraph of the Committee Commentary to Illinois Supreme Court Rule 64, which states, in part, as follows: “As a judicial officer and person specially learned in the law, a judge is in a unique position to contribute to the improvement of the law, the legal system, and the administration of justice.... To the extent that the judge’s time permits, he or she is encouraged to do so through appropriate channels.”</p>	<p><u>Proposed Comment [2]</u> is identical to ABA Model Comment [2].</p>
<p><u>Proposed Comment [3]</u> reflects the concepts addressed in Illinois Supreme Court Rule 63A(6) and the Committee Commentary thereto.</p>	<p><u>Proposed Comment [3]</u> is new and has no counterpart in the ABA Model Code.</p>

**RULE 2.2: IMPARTIALITY AND FAIRNESS**

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

COMMENTS

- [1] To ensure impartiality and fairness to all parties, a judge must be objective and open-minded.
- [2] Although each judge comes to the bench with a unique background and personal philosophy, a judge must interpret and apply the law without regard to whether the judge approves or disapproves of the law in question.
- [3] Good faith errors of fact or law do not violate this Rule.
- [4] It is not a violation of this Rule for a judge to make reasonable accommodations, consistent with the law and court rules, to ensure *pro se* litigants the opportunity to have their matters fairly heard.

<b>Changes from Current Illinois Code</b>	<b>Changes from ABA Model Code</b>
<u>Proposed Rule 2.2</u> reflects the concepts addressed in Illinois Supreme Court Rule 63A(1) (“Adjudicative Responsibilities”), which states, “A judge should be faithful to the law and maintain professional competence in it. A judge should be unswayed by partisan interests, public clamor, or fear of criticism.”	<u>Proposed Rule 2.2</u> is identical to ABA Model Rule 2.2.
<u>Proposed Comment [1]</u> is new and has no counterpart in the Illinois Code.	<u>Proposed Comment [1]</u> is identical to ABA Model Comment [1].
<u>Proposed Comment [2]</u> is new and has no counterpart in the Illinois Code. The ABA reporter stated that Proposed Comment [2] and Proposed Comment [3] were included to highlight the distinction between a judge whose honest understanding of the law is influenced by the judge’s background and a judge who disregards the law.	<u>Proposed Comment [2]</u> is identical to ABA Model Comment [2].

<b>Changes from Current Illinois Code</b>	<b>Changes from ABA Model Code</b>
<p><u>Proposed Comment [3]</u> is new and has no counterpart in the Illinois Code.</p>	<p><u>Proposed Comment [3]</u> does not substantively differ from ABA Model Comment [3], however, the IJEC shortened the first sentence, removing “[w]hen applying and interpreting the law, a judge sometimes may make good-faith errors of fact or law,” as it was repetitive.</p>
<p><u>Proposed Comment [4]</u> reflects the concepts addressed in Illinois Supreme Court Rule 63A(4).</p>	<p><u>Proposed Comment [4]</u> reflects the concepts addressed in ABA Model Comment [4], but the IJEC added “consistent with the law and court rules...”</p>

### **RULE 2.3: BIAS, PREJUDICE, AND HARASSMENT**

- (A) A judge shall perform the duties of judicial office, including administrative duties, without bias or prejudice.
- (B) A judge shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice or engage in harassment, including, but not limited to, bias, prejudice, or harassment based upon race, sex, gender, gender identity, religion, national origin, ethnicity, pregnancy, disability, age, sexual orientation, marital status, socioeconomic status, or political affiliation, and shall not permit court staff, court officials, or others subject to the judge's direction and control to do so.
- (C) Proceedings before the court shall be conducted without manifesting bias or prejudice or engaging in harassment, based upon attributes including but not limited to race, sex, gender, gender identity, religion, national origin, ethnicity, pregnancy, disability, age, sexual orientation, marital status, socioeconomic status, or political affiliation, by or against lawyers, parties, witnesses, or others.
- (D) The restrictions of paragraphs (B) and (C) do not preclude judges or lawyers from making legitimate reference to the listed factors, or similar factors, when they are relevant to an issue in a proceeding.
- (E) A judge shall not retaliate against those who report violations of Rule 2.3.
- (F) A violation of the Supreme Court of Illinois Non-Discrimination and Anti-Harassment Policy is a violation of this Rule.

### **COMMENTS**

- [1] A judge who manifests bias or prejudice in a proceeding impairs the fairness of the proceeding and brings the judiciary into disrepute.
- [2] Examples of manifestations of bias or prejudice include but are not limited to epithets; slurs; demeaning nicknames; negative stereotyping; attempted humor based upon stereotypes; threatening, intimidating, or hostile acts; suggestions of connections between race, ethnicity, or nationality and crime; and irrelevant references to personal characteristics. Even facial expressions and body language can convey to parties and lawyers in the proceeding, jurors, the media, and others an appearance of bias or prejudice. A judge must avoid conduct that may reasonably be perceived as prejudiced or biased.
- [3] Harassment is verbal, non-verbal, or physical conduct that denigrates or shows hostility or aversion toward a person based on the characteristics or classes identified in paragraphs (B) and (C).

- [4] Harassment based on sex includes, but is not limited to, sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature that is unwelcome.
- [5] Rule 2.15 requires judges to take “appropriate action” when they learn of another judge’s misconduct. In considering this obligation, judges should recognize that failing to inform court leadership of an incident may allow a pattern of misconduct to go undetected. Judges may have specific reporting obligations under the Supreme Court of Illinois Non- Discrimination and Anti-Harassment Policy.
- [6] Retaliation is an adverse action, performed directly or through others, that would deter a reasonable person from reporting or participating in the investigation of conduct prohibited by this Rule. The duty to refrain from retaliation includes retaliation against former or current court personnel.

<b>Changes from Current Illinois Code</b>	<b>Changes from ABA Model Code</b>
<p><u>Proposed Rule 2.3</u> reflects the concepts addressed in Illinois Supreme Court Rule 63A(9), which directs that judges shall not manifest “prejudice or bias, including but not limited to bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation or socioeconomic status.” Consistent with ABA Model Rule 2.3, the proposed rule adds the additional illustrative categories of gender, ethnicity, marital status, and political affiliation” and also specifically prohibits “harassment,” as well as discrimination. “Harassment,” or more specifically “sexual harassment,” is mentioned in the Committee Commentary to Illinois Supreme Court Rule 63A(9), but is not currently in the body of that rule.</p>	<p><u>Proposed Rule 2.3:</u> Paragraphs (A) and (D) are identical to ABA Model Rule 2.3.</p> <p>Paragraphs (B) and (C) have been amended to include “gender identity” and “pregnancy” as impermissible bases for the manifestation of bias, prejudice, or harassment.</p> <p>Paragraph (C) has been slightly reworded to broaden the scope of the first paragraph to the “proceedings” in general, rather than just the conduct of lawyers.</p> <p>IJEC recommends the addition of two new paragraphs to Proposed Rule 2.3. Paragraph (E) adds a prohibition against retaliation against those reporting violations of Proposed Rule 2.3. Paragraph (F) provides that a violation of the Supreme Court of Illinois Non-Discrimination and Anti-Harassment Policy also constitutes a violation of Proposed Rule 2.3</p>
<p><u>Proposed Comment [1]</u> reflects the concepts addressed in the second sentence of the comment to Illinois Supreme Court Rule 63A(9).</p>	<p><u>Proposed Comment [1]</u> is identical to ABA Model Comment [1].</p>

Changes from Current Illinois Code	Changes from ABA Model Code
<p><u>Proposed Comment [2]</u> is new and adds to Illinois law by giving specific examples of the manifestation of bias.</p>	<p><u>Proposed Comment [2]</u> is identical to ABA Model Comment [2].</p>
<p><u>Proposed Comment [3]</u> is new and adds to Illinois law by providing a specific definition of “harassment,” which may be on the basis of any of the eleven categories specified in the text of Proposed Rule 2.3(B). The only type of “harassment” mentioned in the current Code is the prohibition against “sexual harassment” in the Committee Commentary to Illinois Supreme Court Rule 63A(9).</p>	<p><u>Proposed Comment [3]</u> reflects the concepts addressed in ABA Model Comment [3], but rather than restating its own list of characteristics or classes protected from discrimination, Proposed Comment [3] simply incorporates by reference the lists stated in Paragraphs (B) and (C) of the proposed rule.</p>
<p><u>Proposed Comment [4]</u> reflects the concepts addressed in the Committee Commentary to Illinois Supreme Court Rule 63A(9), which currently states that judges must refrain from conduct which could reasonably be perceived as sexual harassment. Proposed Comment [4] adds to Illinois law by providing a specific definition of “sexual harassment.”</p>	<p><u>Proposed Comment [4]</u> broadens the definition in ABA Model Comment [4]. The ABA Model Rule defines only “sexual harassment,” but because the rule itself applies to harassment of various types, IJEC felt a broader definition was warranted.</p>
<p><u>Proposed Comment [5]</u> is new and has no counterpart in the Illinois Code.</p>	<p><u>Proposed Comment [5]</u> is new and has no counterpart in the ABA Model Code.</p>
<p><u>Proposed Comment [6]</u> is new and has no counterpart in the Illinois Code.</p>	<p><u>Proposed Comment [6]</u> is new and has no counterpart in the ABA Model Code.</p>

**RULE 2.4: EXTERNAL INFLUENCES ON JUDICIAL CONDUCT**

- (A) A judge shall not be swayed by public clamor or fear of criticism.
- (B) A judge shall not permit family, social, political, financial, or other interests or relationships to influence the judge’s judicial conduct or judgment.
- (C) A judge shall not convey or permit others to convey the impression that any person or organization is in a position to influence the judge.

**COMMENTS**

- [1] An independent judiciary requires that judges decide cases according to the law and facts, without regard to whether particular laws or litigants are popular or unpopular with the public, the media, government officials, or the judge’s friends or family. Confidence in the judiciary is eroded if judicial decision making is perceived to be subject to inappropriate outside influences.

Changes from Current Illinois Code	Changes from ABA Model Code
<p><u>Proposed Rule 2.3</u> reflects the concepts addressed in Illinois Supreme Court Rule 63A(9), which directs that judges shall not manifest “prejudice or bias, including but not limited to bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation or socioeconomic status.” Consistent with ABA Model Rule 2.3, the proposed rule adds the additional illustrative categories of gender, ethnicity, marital status, and political affiliation,” and also specifically prohibits “harassment” as well as discrimination. “Harassment,” or more specifically “sexual harassment,” is mentioned in the Committee Commentary to Illinois Supreme Court Rule 63A(9), but is not currently in the body of the rule.</p>	<p><u>Proposed Rule 2.3</u> is identical to ABA Model Rule 2.3.</p>
<p><u>Proposed Rule 2.4</u> reflects the concepts addressed in Illinois Supreme Court Rules 62B and 63A(1).</p>	<p><u>Proposed Rule 2.4</u> is identical to ABA Model Rule 2.4.</p>
<p><u>Proposed Comment [1]</u> reflects the concepts addressed in Illinois Supreme Court Rule 61.</p>	<p><u>Proposed Comment [1]</u> is identical to ABA Model Comment [1].</p>

**RULE 2.5: COMPETENCE, DILIGENCE, AND COOPERATION**

- (A) A judge shall perform judicial and administrative duties competently and diligently.
- (B) A judge shall cooperate with other judges and court officials in the administration of court business.

COMMENTS

- [1] Competence in the performance of judicial duties requires the legal knowledge, skill, thoroughness, and preparation reasonably necessary to perform a judge’s responsibilities of judicial office.
- [2] A judge should seek the necessary docket time, court staff, and resources to discharge all adjudicative and administrative responsibilities.
- [3] Prompt disposition of the court’s business requires a judge to be punctual in attending court and expeditious in determining matters under advisement and to take reasonable measures to ensure that court officials, litigants, and their lawyers cooperate to achieve that end.
- [4] In disposing of matters promptly and efficiently, a judge must demonstrate due regard for the rights of parties to be heard and to have issues resolved without unnecessary cost or delay. A judge shall monitor and supervise cases in ways that reduce or eliminate dilatory practices, avoidable delays, and unnecessary costs.

<b>Changes from Current Illinois Code</b>	<b>Changes from ABA Model Code</b>
<p><u>Proposed Rule 2.5(A)</u> reflects the concepts addressed in Illinois Supreme Court Rule 63A(1), which provides that a judge should be faithful to the law and maintain professional competence in it. Additionally, Illinois Supreme Court Rule 63B(1) requires a judge to diligently discharge the judge’s administrative responsibilities, maintain professional competence in judicial administration, and facilitate the performance of the administrative responsibilities of other judges and court officials.</p>	<p><u>Proposed Rule 2.5(A)</u> is identical to ABA Model Rule 2.5(A).</p>

Changes from Current Illinois Code	Changes from ABA Model Code
<p><u>Proposed Rule 2.5(B)</u> reflects the concepts addressed in Illinois Supreme Court Rule 63A(5)(b) provides that a judge may consult with court personnel whose function is to aid the judge in carrying out the judge’s adjudicative responsibilities, or with other judges.</p>	<p><u>Proposed Rule 2.5(B)</u> is identical to ABA Model Rule 2.5(B).</p>
<p><u>Proposed Comment [1]</u> is new and has no counterpart in the Illinois Code.</p>	<p><u>Proposed Comment [1]</u> is identical to ABA Model Comment [1].</p>
<p><u>Proposed Comment [2]</u> is new and has no counterpart in the Illinois Code.</p>	<p><u>Proposed Comment [2]</u> is identical to ABA Model Comment [2].</p>
<p><u>Proposed Comment [3]</u> is new and has no counterpart in the Illinois Code.</p>	<p><u>Proposed Comment [3]</u> reflects the concepts addressed in ABA Model Comment [3], with a few minor differences. First, Proposed Comment [3] eliminates the requirement that a judge “devote adequate time to judicial duties.” Additionally, the proposed comment changes the language of the requirement in ABA Model Comment [3] that a judge be punctual in attending court and expeditious in determining “matters under submission,” to requiring that a judge be punctual in attending court and expeditious in determining “matters under advisement.”</p>
<p><u>Proposed Comment [4]</u> is new and has no counterpart in the Illinois Code.</p>	<p><u>Proposed Comment [4]</u> reflects the concepts addressed in ABA Model Comment [4], but makes mandatory the judicial responsibility to monitor and supervise cases in ways that reduce or eliminate dilatory practices, avoidable delays, and unnecessary costs.</p>

**RULE 2.6: ENSURING THE RIGHT TO BE HEARD**

- (A) A judge shall accord to every person who has a legal interest in a proceeding or that person’s lawyer the right to be heard according to law.\*
- (B) A judge may encourage parties to a proceeding and their lawyers to settle matters in dispute, but shall not act in a manner that coerces any party.

COMMENTS

- [1] The right to be heard is an essential component of a fair and impartial system of justice. Substantive rights of litigants can be protected only if procedures protecting the right to be heard are observed.
- [2] The judge plays an important role in overseeing the settlement of disputes, but should be careful that efforts to further settlement do not undermine any party’s right to be heard according to law.
- [3] Judges should be mindful of the effect settlement discussions can have, not only on their objectivity and impartiality, but also on the appearance of their objectivity and impartiality. Despite a judge’s best efforts, there may be instances when information obtained during settlement discussions could influence a judge’s decision making during trial, and, in such instances, the judge should consider whether disqualification may be appropriate. *See* Rule 2.11(A)(1).

Changes from Current Illinois Code	Changes from ABA Model Code
<u>Proposed Rule 2.6(A)</u> reflects the concepts addressed in Illinois Supreme Court Rule 63A(4), which provides that a judge shall accord to every person who has a legal interest in a proceeding or that person’s lawyer the right to be heard according to law.	<u>Proposed Rule 2.6</u> is identical to ABA Model Rule 2.6(A).
<u>Proposed Rule 2.6(B)</u> reflects the concepts addressed in Illinois Supreme Court Rule 63A(5)(c), which provides that a judge may, with the consent of the parties, confer separately with the parties and their lawyers in an effort to mediate or settle matters pending before the judge.	<u>Proposed Rule 2.6(B)</u> reflects the concepts addressed in ABA Model Rule 2.6(B), except <u>Proposed Rule 2.6(B)</u> eliminates the phrase “to mediate” and provides the prohibition that, while encouraging a party to settle a matter, a judge may not act in any manner that coerces any party.
<u>Proposed Comment [1]</u> is new and has no counterpart in the Illinois Code.	<u>Proposed Comment [1]</u> is identical to ABA Model Comment [1].

<b>Changes from Current Illinois Code</b>	<b>Changes from ABA Model Code</b>
<p><u>Proposed Comment [2]</u> is new and has no counterpart in the Illinois Code.</p>	<p><u>Proposed Comment [2]</u> reflects the concepts addressed in ABA Model Comment [2], except that Proposed Comment [2] eliminates the sentence: “[t]he judge should keep in mind the effect that the judge’s participation in settlement discussions may have, not only on the judge’s own views of the case, but also on the perceptions of the lawyers and the parties if the case remains with the judge after settlement efforts are unsuccessful.”</p>
<p><u>Proposed Comment [3]</u> is new and has no counterpart in the Illinois Code.</p>	<p><u>Proposed Comment [3]</u> is identical to ABA Model Comment [3], except that it changes the directive that, “judges must be mindful of the effect settlement discussions can have, not only on their objectivity and impartiality...”, to simply requiring that judges “should” be mindful of the effect that settlement discussions can have on a judge’s objectivity and impartiality.</p>

**RULE 2.7: RESPONSIBILITY TO DECIDE**

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

COMMENTS

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

<b>Changes from Current Illinois Code</b>	<b>Changes from ABA Model Code</b>
<u>Proposed Rule 2.7</u> is new and has no counterpart in the Illinois Code.	<u>Proposed Rule 2.7</u> is identical to ABA Model Rule 2.7.
<u>Proposed Comment [1]</u> is new and has no counterpart in the Illinois Code.	<u>Proposed Comment [1]</u> reflects the concepts addressed in ABA Model Comment [1], except that it eliminates the first sentence, “Judges must be available to decide the matters that come before the Court.”

**RULE 2.8: DECORUM, Demeanor, AND COMMUNICATION WITH JURORS**

- (A) A judge shall require order and decorum in proceedings before the court.
- (B) A judge shall be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, court staff, court officials, and others with whom the judge deals in an official capacity and shall require similar conduct of lawyers, court staff, court officials, and others subject to the judge’s direction and control.
- (C) A judge shall not commend or criticize jurors for their verdict other than in a court order or opinion in a proceeding.

COMMENTS

- [1] The duty to hear all proceedings with patience and courtesy is not inconsistent with the duty imposed in Rule 2.5 to dispose promptly of the business of the court. Judges can be efficient and businesslike while being patient and deliberate.
- [2] Commending or criticizing jurors for their verdict, including on social media or social networking platforms may imply a judicial expectation in future cases and may impair a juror’s ability to be fair and impartial in a subsequent case.
- [3] A judge may meet with jurors who choose to remain at the completion of trial so long as the judge does not make any remarks that would adversely affect the judge’s impartiality.

Changes from Current Illinois Code	Changes from ABA Model Code
Proposed Rule 2.8(A) reflects the concepts addressed in Illinois Supreme Court Rule 63A(2), which requires that a judge maintain order and decorum in proceedings before the judge.	Proposed Rule 2.8(A) is identical to ABA Model Rule 2.8(A).
Proposed Rule 2.8(B) reflects the concepts addressed in Illinois Supreme Court Rule 63A(3) with the exception that the proposed rule makes the provisions of Illinois Supreme Court Rule 63A(3) mandatory on judges (e.g., “a judge must be patient...” rather than “a judge should be patient...”).	Proposed Rule 2.8(B) is identical to ABA Model Rule 2.8(B).

<b>Changes from Current Illinois Code</b>	<b>Changes from ABA Model Code</b>
<p><u>Proposed Rule 2.8(C)</u> is new and has no counterpart in the Illinois Code. This provision was the first sentence of Canon 3B(11) of the <i>1990 ABA Model Code of Judicial Conduct</i>.</p>	<p><u>Proposed Rule 2.8(C)</u> is identical to ABA Model Rule 2.8(C).</p>
<p><u>Proposed Comment [1]</u> is new and has no counterpart in the Illinois Code.</p>	<p><u>Proposed Comment [1]</u> is identical to ABA Model Comment [1].</p>
<p><u>Proposed Comment [2]</u> is new and has no counterpart in the Illinois Code.</p>	<p><u>Proposed Comment [2]</u> is identical to ABA Model Comment [2], except that it adds a reminder to judges that they may not use social media or social networking platforms to criticize jurors for their verdicts.</p>
<p><u>Proposed Comment [3]</u> is new and has no counterpart in the Illinois Code.</p>	<p><u>Proposed Comment [3]</u> reflects the concepts addressed in ABA Model Comment [3], except that the IJEC substituted the language “after trial” with the language “at the completion of their jury service.”</p>

**RULE 2.9: *EX PARTE* COMMUNICATIONS**

- (A) A judge shall not initiate, permit, or consider *ex parte* communications or consider other communications made to the judge outside the presence of the parties or their lawyers concerning a pending\* or impending matter,\* except as follows:
  - (1) When circumstances require it, *ex parte* communication for scheduling, administrative, or emergency purposes, which does not address substantive matters, is permitted, provided:
    - (a) the judge reasonably believes that no party will gain a procedural, substantive, or tactical advantage as a result of the *ex parte* communication; and
    - (b) the judge makes provision promptly to notify all other parties of the substance of the *ex parte* communication and gives the parties an opportunity to respond.
  - (2) [Reserved]
  - (3) A judge may consult with court staff and court officials whose functions are to aid the judge in carrying out the judge's adjudicative responsibilities, or with other judges, provided the judge makes reasonable efforts to avoid receiving factual information that is not part of the record and does not abrogate the responsibility personally to decide the matter.
  - (4) A judge may, with the consent of the parties, confer separately with the parties and their lawyers in an effort to mediate or settle matters pending before the judge.
  - (5) A judge may initiate, permit, or consider any *ex parte* communication when expressly authorized by law\* to do so.
- (B) If a judge inadvertently receives an unauthorized *ex parte* communication bearing upon the substance of a matter, the judge shall make provision promptly to notify the parties of the substance of the communication and provide the parties with an opportunity to respond.
- (C) A judge shall not investigate facts in a matter independently and shall consider only the evidence presented and any facts that may properly be judicially noticed.
- (D) A judge shall make reasonable efforts, including providing appropriate supervision, to ensure that this Rule is not violated by court staff, court officials, and others subject to the judge's direction and control.

## COMMENTS

- [1] To the extent reasonably possible, all parties or their lawyers shall be included in communications with a judge.
- [2] Whenever the presence of a party or notice to a party is required by this Rule, it is the party’s lawyer, or if the party is unrepresented, the party, who is to be present or to whom notice is to be given.
- [3] The proscription against communications concerning a proceeding includes communications with lawyers, law teachers, or other persons who are not participants in the proceeding and communications made on social or posted on social media or social networking platforms. A judge must make reasonable efforts to ensure that law clerks, court staff, court officials and others under the judge’s direction and control do not violate this Rule.
- [4] A judge may initiate, permit, or consider *ex parte* communications expressly authorized by law, such as when serving on therapeutic or problem-solving courts, mental health courts, or drug courts. In this capacity, judges may assume a more interactive role with parties, treatment providers, probation officers, social workers, and others.
- [5] A judge may consult with other judges on pending matters, but must avoid *ex parte* discussions of a case with judges who have previously been disqualified from hearing the matter and with judges who have appellate jurisdiction over the matter.
- [6] The prohibition against a judge investigating the facts in a matter extends to information available in all mediums, including electronic.
- [7] A judge may consult ethics advisory committees, outside counsel, or legal experts concerning the judge’s compliance with this Code.
- [8] Judges who maintain a presence on social media or social networking platforms should be aware of the potential for these sites to become an unintended vehicle for *ex parte* communications.

Changes from Current Illinois Code	Changes from ABA Model Code
<p><u>Proposed Rule 2.9(A)</u> is identical to Illinois Supreme Court Rule 63A(5), with the minor substitution of the words “pending or impending proceeding...” with “pending or impending matter...”</p>	<p><u>Proposed Rule 2.9(A)</u> is identical to ABA Model Rule 2.9(A).</p>

Changes from Current Illinois Code	Changes from ABA Model Code
<p><u>Proposed Rule 2.9(A)(1)</u> reflects the concepts addressed in Illinois Supreme Court Rule 63A(5)(a), which provides that where circumstances require, <i>ex parte</i> communications for scheduling, administrative purposes or emergencies that do not deal with substantive matters or issues on the merits are authorized, provided...”</p>	<p><u>Proposed Rule 2.9(A)(1)</u> is identical to ABA Model Rule 2.9(A)(1).</p>
<p><u>Proposed Rule 2.9(A)(1)(a)</u> is identical to Illinois Supreme Court Rule 63A(5)(a)(i).</p>	<p><u>Proposed Rule 2.9(A)(1)(a)</u> is identical to ABA Model Rule 2.9(A)(1)(a).</p>
<p><u>Proposed Rule 2.9(A)(1)(b)</u> does not substantively differ from Illinois Supreme Court Rule 63A(5)(a)(ii), but contains grammatical or syntax changes.</p>	<p><u>Proposed Rule 2.9(A)(1)(b)</u> is identical to ABA Model Rule 2.9(A)(1)(b).</p>
<p><u>Proposed Rule 2.9(A)(2)</u>: [Reserved]</p>	<p><u>Proposed Rule 2.9(A)(2)</u> was not adopted by the IJEC and is Reserved.</p>
<p><u>Proposed Rule 2.9(A)(3)</u> reflects the concepts addressed in Illinois Supreme Court Rule 63A(5)(b) with the additional requirement that the judge “makes reasonable efforts to avoid receiving factual information that is not part of the record and does not abrogate the responsibility personally to decide the matter.”</p>	<p><u>Proposed Rule 2.9(A)(3)</u> is identical to ABA Model Rule 2.9(A)(3).</p>
<p><u>Proposed Rule 2.9(A)(4)</u> is identical to Illinois Supreme Court Rule 63A(5)(c).</p>	<p><u>Proposed Rule 2.9(A)(4)</u> is identical to ABA Model Rule 2.9(A)(4).</p>
<p><u>Proposed Rule 2.9(A)(5)</u> does not substantively differ from Illinois Supreme Court Rule 63A(5)(d), but contains grammatical or syntax changes.</p>	<p><u>Proposed Rule 2.9(A)(5)</u> is identical to ABA Model Rule 2.9(A)(5).</p>
<p><u>Proposed Rule 2.9(B)</u> is new and has no counterpart in the Illinois Code.</p>	<p><u>Proposed Rule 2.9(B)</u> is identical to ABA Model Rule 2.9(B).</p>

Changes from Current Illinois Code	Changes from ABA Model Code
<p><u>Proposed Rule 2.9(C)</u> reflects the concepts addressed in the Committee Commentary to Illinois Supreme Court Rule 63A(5), which provides, “a judge must not independently investigate facts in a case and must consider only the evidence presented.”</p>	<p><u>Proposed Rule 2.9(C)</u> is identical to ABA Model Rule 2.9(C).</p>
<p><u>Proposed Rule 2.9(D)</u> reflects the concepts addressed in the Committee Commentary to Illinois Supreme Court Rule 63A(5), which provides “[a] judge must make reasonable efforts, including the provision of appropriate supervision, to ensure that paragraph A(5) is not violated through law clerks or other personnel on the judge’s staff.”</p>	<p><u>Proposed Rule 2.9(D)</u> is identical to ABA Model Rule 2.9(D).</p>
<p><u>Proposed Comment [1]</u> is new and has no counterpart in the Illinois Code.</p>	<p><u>Proposed Comment [1]</u> is identical to ABA Model Comment [1].</p>
<p><u>Proposed Comment [2]</u> is new and has no counterpart in the Illinois Code.</p>	<p><u>Proposed Comment [2]</u> is identical to ABA Model Comment [2].</p>
<p><u>Proposed Comment [3]</u> is new and has no counterpart in the Illinois Code.</p>	<p><u>Proposed Comment [3]</u> reflects the concepts addressed in ABA Model Comment [3], except that the IJEC eliminated the ending phrase, “except to the limited extent permitted by this Rule.”</p> <p>Additionally, Proposed Comment [3] extends the proscription against communications concerning a proceeding to communications made or posted on social media or social networking platforms and requires a judge to make reasonable efforts to ensure that this Rule is not violated through law clerks or other personnel on the judge’s staff.</p>

Changes from Current Illinois Code	Changes from ABA Model Code
<p><u>Proposed Comment [4]</u> reflects the concepts addressed in Illinois Supreme Court Rule 63A(5)(e), which provides, “[a] judge may consult with members of a Problem Solving Court Team when serving as a Judge in a certified Problem Solving Court as defined in the Supreme Court “Problem Solving Court Standards.”</p>	<p><u>Proposed Comment [4]</u> is identical to ABA Model Comment [4].</p>
<p><u>Proposed Comment [5]</u> is new and has no counterpart in the Illinois Code.</p>	<p><u>Proposed Comment [5]</u> is identical to ABA Model Comment [5].</p>
<p><u>Proposed Comment [6]</u> is new and has no counterpart in the Illinois Code.</p>	<p><u>Proposed Comment [6]</u> is identical to ABA Model Comment [6].</p>
<p><u>Proposed Comment [7]</u> is new and has no counterpart in the Illinois Code.</p>	<p><u>Proposed Comment [7]</u> is identical to ABA Model Comment [7], except that the IJEC eliminated the last sentence, “Such consultations are not subject to the restrictions of paragraph (A)(2).”</p>
<p><u>Proposed Comment [8]</u> is new and has no counterpart in the Illinois Code.</p>	<p><u>Proposed Comment [8]</u> is new and has no counterpart in the ABA Model Code.</p>

## **RULE 2.10: JUDICIAL STATEMENTS ON PENDING AND IMPENDING CASES**

- (A) A judge shall not make any public statement that might reasonably be expected to affect the outcome or impair the fairness of a matter pending\* or impending\* in any court or make any nonpublic statement that might substantially interfere with a fair trial or hearing.
- (B) A judge shall not, in connection with cases, controversies, or issues that are likely to come before the court, make pledges, promises, or commitments that are inconsistent with the impartial\* performance of the adjudicative duties of judicial office.
- (C) A judge shall require court staff, court officials, and others subject to the judge's direction and control to refrain from making statements that the judge would be prohibited from making by paragraphs (A) and (B).
- (D) Notwithstanding the restrictions in paragraph (A), a judge may make public statements in the course of official duties, may explain court procedures, and may comment on any proceeding in which the judge is a litigant in a personal capacity.
- (E) Subject to the requirements of paragraph (A), a judge may respond directly or through a third party to allegations in the media or elsewhere concerning the judge's conduct in a matter.

### **COMMENTS**

- [1] This Rule's restrictions on judicial speech are essential to the maintenance of the independence, integrity, and impartiality of the judiciary.
- [2] This Rule does not prohibit a judge from commenting on proceedings in which the judge is a litigant in a personal capacity. In cases in which the judge is a litigant in an official capacity, such as a writ of mandamus, the judge must not comment publicly.
- [3] Depending on the circumstances, the judge should consider whether it may be preferable for a third party, rather than the judge, to respond or issue statements in connection with allegations concerning the judge's conduct in a matter. The Rule does not prohibit a judge from responding to allegations concerning the judge's conduct in a proceeding that is not pending or impending in any court.
- [4] Judges who are active on social media or social networking platforms should understand how their comments in these forums might be considered "public" statements implicating this Rule. Judges should be aware of the nature and efficacy of privacy settings offered by social media or social networking platforms.

Changes from Current Illinois Code	Changes from ABA Model Code
<p><u>Proposed Rule 2.10(A)</u> reflects the concepts addressed in Illinois Supreme Court Rule 63A(7), which provides that a judge should abstain from public comment about a pending or impending proceeding. Proposed Rule 2.10(A) departs from the Illinois Code by making it mandatory that a judge shall not make public statements “that might reasonably be expected to affect the outcome or impair the fairness of a matter.” Furthermore, the proposed rule adds a restriction on non-public statements that “might substantially interfere with a fair trial or hearing.”</p>	<p><u>Proposed Rule 2.10(A)</u> is identical to ABA Model Rule 2.10(A).</p>
<p><u>Proposed Rule 2.10(B)</u> is new and has no counterpart in the Illinois Code.</p>	<p><u>Proposed Rule 2.10(B)</u> is identical to ABA Model Rule 2.10(B).</p>
<p><u>Proposed Rule 2.10(C)</u>: Subject to the amendments in Proposed Rule 2.10(A) and (B), this provision reflects the concepts addressed in Illinois Supreme Court Rule 63A(7), which provides that a judge “should require similar abstention on the part of court personnel subject to the judge’s direction and control.”</p>	<p><u>Proposed Rule 2.10(C)</u> is identical to ABA Model Rule 2.10(C).</p>
<p><u>Proposed Rule 2.10(D)</u> is new and has no counterpart in the Illinois Code. Permitting a judge to comment on any proceeding in which the judge is a litigant in a personal capacity is not made explicit in the Illinois Code.</p>	<p><u>Proposed Rule 2.10(D)</u> is identical to ABA Model Rule 2.10(D).</p>
<p><u>Proposed Rule 2.10(E)</u> is new and has no counterpart in the Illinois Code.</p>	<p><u>Proposed Rule 2.10(E)</u> is identical to ABA Model Rule 2.10(E).</p>
<p><u>Proposed Comment [1]</u> is new and has no counterpart in the Illinois Code.</p>	<p><u>Proposed Comment [1]</u> is identical to ABA Model Comment [1].</p>
<p><u>Proposed Comment [2]</u> is new and has no counterpart in the Illinois Code.</p>	<p><u>Proposed Comment [2]</u> is identical to ABA Model Comment [2].</p>

<b>Changes from Current Illinois Code</b>	<b>Changes from ABA Model Code</b>
<u>Proposed Comment [3]</u> is new and has no counterpart in the Illinois Code.	<u>Proposed Comment [3]</u> : The first sentence of Proposed Comment [3] is identical to ABA Model Comment [3]. The second sentence of Proposed Comment [3] is new and has no counterpart in the ABA Model Code.
<u>Proposed Comment [4]</u> is new and has no counterpart in the Illinois Code.	<u>Proposed Comment [4]</u> is new and has no counterpart in the ABA Model Code.

## RULE 2.11: DISQUALIFICATION

- (A) A judge shall be disqualified in any proceeding in which the judge's impartiality\* might reasonably be questioned, including, but not limited to, the following circumstances:
- (1) The judge has a personal bias or prejudice concerning a party or a party's lawyer or personal knowledge\* of facts that are in dispute in the proceeding.
  - (2) The judge knows\* that the judge, the judge's spouse or domestic partner,\* a person within the third degree of relationship\* to either of them, or the spouse or domestic partner of such a person is:
    - (a) a party to the proceeding, or an officer, director, general partner, managing member, or trustee of a party;
    - (b) acting as a lawyer in the proceeding;
    - (c) a person who has more than a *de minimis*\* interest that could be substantially affected by the proceeding; or
    - (d) likely to be a material witness in the proceeding.
  - (3) The judge knowingly, individually, or as a fiduciary\* or the judge's spouse, domestic partner, 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 is a party to the proceeding.
  - (4) The judge, while a judge or a judicial candidate,\* has made a public statement, other than in a court proceeding, judicial decision, or opinion that commits or appears to commit the judge to reach a particular result or rule in a particular way in the proceeding or controversy.
  - (5) The judge:
    - (a) served as a lawyer in the matter;
    - (b) represented any party to the matter while engaged in the private practice of law within a period of seven years following the last date on which the judge represented the party;
    - (c) within the preceding three years was associated in the private practice of law with any law firm or lawyer currently representing any party in the matter (provided that referral of cases when no monetary interest was retained shall not be deemed an association within the meaning of this paragraph);

- (d) served in governmental employment and in such capacity participated personally and substantially as a lawyer or public official concerning the matter or has publicly expressed in such capacity an opinion concerning the merits of the particular matter;
  - (e) was a material witness concerning the matter; or
  - (f) previously presided as a judge over the matter in another court.
- (B) A judge shall keep informed about the judge's personal and fiduciary economic interests and make a reasonable effort to keep informed about the personal economic interests of the judge's spouse or domestic partner and minor children residing in the judge's household.
- (C) A judge subject to disqualification under this Rule, other than for bias or prejudice under paragraph (A)(1), may disclose on the record the basis of the judge's disqualification and may ask the parties and their lawyers to consider, outside the presence of the judge and court personnel, whether to waive disqualification. If, following the disclosure, the parties and lawyers agree, without participation by the judge or court personnel, that the judge should not be disqualified, the judge may participate in the proceeding. The agreement shall be incorporated into the record of the proceeding.

## COMMENTS

- [1] Under this Rule, a judge is disqualified whenever the judge's impartiality might reasonably be questioned, regardless of whether any of the specific provisions of paragraphs (A)(1) through (6) apply. For example, the participation in a matter involving a person with whom the judge has an intimate relationship or a member of the judge's staff may require disqualification.
- [2] A judge's obligation not to hear or decide matters in which disqualification is required applies regardless of whether a motion to disqualify is filed.
- [3] The rule of necessity may override the rule of disqualification. For example, a judge might be required to participate in judicial review of a judicial salary statute or might be the only judge available in a matter requiring immediate judicial action, such as a hearing on probable cause or a temporary restraining order. In matters that require immediate action, the judge must disclose on the record the basis for possible disqualification and make reasonable efforts to transfer the matter to another judge as soon as practicable.
- [4] The fact that a lawyer in a proceeding is affiliated with a law firm with which a relative of the judge is affiliated does not itself disqualify the judge. If, however, the judge's impartiality might reasonably be questioned under paragraph (A), or the

relative is known by the judge to have an interest in the law firm that could be substantially affected by the proceeding under paragraph (A)(2)(c), the judge’s disqualification is required.

- [5] A judge should disclose on the record information that the judge believes the parties or their lawyers might reasonably consider relevant to a possible motion for disqualification, even if the judge believes there is no basis for disqualification.
  
- [6] “Economic interest,” as set forth in the Terminology section, means ownership of more than a *de minimis* legal or equitable interest. Except for situations in which a judge participates in the management of such a legal or equitable interest, or the interest could be substantially affected by the outcome of a proceeding before a judge, it does not include:
  - (1) an interest in the individual holdings within a mutual or common investment fund;
  - (2) an interest in securities held by an educational, religious, charitable, fraternal, or civic organization in which the judge or the judge’s spouse, domestic partner, parent, or child serves as a director, officer, advisor, or other participant;
  - (3) a deposit in a financial institution or deposits or proprietary interests the judge may maintain as a member of a mutual savings association or credit union, or similar proprietary interests; or
  - (4) an interest in the issuer of government securities held by the judge.
  
- [7] A judge’s use of social media or social networking platforms may create the appearance of a relationship between the judge and litigants or lawyers who may appear before the judge. Whether a relationship would cause the judge’s impartiality to “reasonably be questioned” depends on the facts. While the labels used by the social media or social networking platform (*e.g.*, “friend”) are not dispositive of the nature of the relationship, judges should consider the manner in which the rules on disqualification have been applied in traditional contexts and the additional ways in which social media or social networking platforms may amplify any connection to the judge.

<b>Changes from Current Illinois Code</b>	<b>Changes from ABA Model Code</b>
Proposed Rule 2.11(A) reflects the concepts addressed in Illinois Supreme Court Rule 63C(1).	Proposed Rule 2.11(A) is identical to ABA Model Rule 2.11(A).

<b>Changes from Current Illinois Code</b>	<b>Changes from ABA Model Code</b>
<u>Proposed Rule 2.11(A)(1)</u> reflects the concepts addressed in Illinois Supreme Court Rule 63(C)(1)(a).	<u>Proposed Rule 2.11(A)(1)</u> is identical to ABA Model Rule 2.11(A)(1).
<u>Proposed Rule 2.11(A)(2)</u> reflects the concepts addressed in Illinois Supreme Court Rule 63(C)(1)(e).	<u>Proposed Rule 2.11(A)(2)</u> is identical to ABA Model Rule 2.11(A)(2).
<u>Proposed Rule 2.11(A)(3)</u> reflects the concepts addressed in Illinois Supreme Court Rule 63(C)(1)(d).	<u>Proposed Rule 2.11(A)(3)</u> reflects the concepts addressed in ABA Model Rule 2.11(A)(3), but was amended to include a child “wherever residing” as opposed to only those residing in the judge’s household and to correct an apparent typographical error, changing “in a party to the proceeding” to “is . . .”
<u>Proposed Rule 2.11(A)(4)</u> reflects the concepts addressed in Illinois Supreme Court Rule 67(A)(3)(d)(i), which prohibits a judicial candidate from making statements that “commit or appear to commit the candidate with respect to cases, controversies or issues within cases that are likely to come before the court.”	<u>ABA Model Rule 2.11(A)(4)</u> was deleted and subsequent portions of the rule were renumbered accordingly. The deleted ABA Model Rule 2.11(A)(4) requires a judge to be disqualified based on an unspecified amount of campaign contributions made over an unspecified number of years.

Changes from Current Illinois Code	Changes from ABA Model Code
<p><u>Proposed Rule 2.11(A)(5)</u> reflects the concepts addressed in Illinois Supreme Court Rules 63C(1)(a), (1)(b), (1)(c), (1)(d), and (1)(e)(iv); however, Proposed Rule 2.11(A)(5)(d) and (f) are new and have no counterpart in the Illinois Code.</p>	<p><u>Proposed Rule 2.11(A)(5)</u> differs from ABA Model Rule 2.11(A)(6) as follows:</p> <p><u>Proposed Rule 2.11(A)(5)(a)</u> was amended to change the phrase “the matter in controversy” to “a matter.”</p> <p><u>Proposed Rule 2.11(A)(5)(b)</u> was added.</p> <p><u>Proposed Rule 2.11(A)(5)(c)</u> was amended so that the three-year period applies to <i>any</i> association (not just substantial participation) with a lawyer or firm currently representing a party in the matter, and adds a parenthetical exclusion contained in existing Illinois Supreme Court Rules 63C.(1)(d) which specifies that referral of cases without retaining a monetary interest does not constitute an association within the meaning of this paragraph).</p> <p><u>Proposed Rule 2.11(A)(5)(d)</u> was amended to change “proceeding” to “matter” and to remove the phrase “in controversy.”</p>
<p><u>Proposed Rule 2.11(B)</u> reflects the concepts addressed in Illinois Supreme Court Rule 63(C)(2).</p>	<p><u>Proposed Rule 2.11(B)</u> is identical to ABA Model Rule 2.11(B).</p>
<p><u>Proposed Rule 2.11(C)</u> reflects the concepts addressed in Illinois Supreme Court Rule 63(D).</p>	<p><u>Proposed Rule 2.11(C)</u> is identical to ABA Model Rule 2.11(C).</p>
<p><u>Proposed Comment [1]</u> reflects the concepts addressed in Illinois Supreme Court Rule 63C(1), which provides that “[a] judge shall disqualify himself or herself in a proceeding in which the judge’s impartiality might reasonably be questioned, including but not limited to [the following examples]”</p>	<p><u>Proposed Comment [1]</u>: The first sentence of Proposed Comment [1] is identical to ABA Model Comment [1], except that the proposed comment removes the sentence, “In many jurisdictions, the term ‘recusal’ is used interchangeably with the term ‘disqualification.’” The second sentence of Comment 1 is new.</p>

Changes from Current Illinois Code	Changes from ABA Model Code
<u>Proposed Comment [2]</u> reflects the concepts implied in Illinois Supreme Court Rule 63C, which provides that the judge <i>shall</i> be disqualified.	<u>Proposed Comment [2]</u> is identical to ABA Model Comment [2].
<u>Proposed Comment [3]</u> is new and has no counterpart in the Illinois Code. The rule of necessity is a common law doctrine in Illinois.	<u>Proposed Comment [3]</u> is identical to ABA Model Comment [3].
<u>Proposed Comment [4]</u> reflects the concepts addressed in Illinois Supreme Court Rule 63C(1)(e).	<u>Proposed Comment [4]</u> is identical to ABA Model Comment [4].
<u>Proposed Comment [5]</u> is new and has no counterpart in the Illinois Code.	<u>Proposed Comment [5]</u> is identical to ABA Model Comment [5].
<u>Proposed Comment [6]</u> is new and has no counterpart in the Illinois Code.	<u>Proposed Comment [6]</u> is identical to ABA Model Comment [6].
<u>Proposed Comment [7]</u> is new and has no counterpart in the Illinois Code.	<u>Proposed Comment [7]</u> is new and has no counterpart in the ABA Model Code.

**RULE 2.12: SUPERVISORY DUTIES**

- (A) A judge shall require court staff, court officials, and others subject to the judge’s direction and control to act in a manner consistent with the judge’s obligations under this Code.
- (B) A judge with supervisory authority for the performance of other judges shall take reasonable measures to ensure that those judges properly discharge their judicial responsibilities, including the prompt disposition of matters before them.

**COMMENTS**

- [1] A judge is responsible for personal conduct and for the conduct of others, such as staff, when those persons are acting at the judge’s direction or control. A judge may not direct court personnel to engage in conduct on the judge’s behalf or as the judge’s representative when such conduct would violate the Code if undertaken by the judge.
- [2] Public confidence in the judicial system depends upon timely justice. To promote the efficient administration of justice, a judge with supervisory authority must take the steps needed to ensure that supervised judges administer their workloads promptly. *See* Ill. Sup. Ct. R. 21(b) (2018).

Changes from Current Illinois Code	Changes from ABA Model Code
<u>Proposed Rule 2.12(A)</u> reflects the concepts addressed in Illinois Supreme Court Rule 63B(2), except that Proposed Rule 2.12(A) provides that a judge “ <i>shall require</i> [others] to act in a manner consistent with the judge’s obligations under this Code” (emphasis added), while the Illinois Code provides that a judge “ <i>should require</i> [others] to observe the standards of fidelity and diligence that apply to the judge.” (emphasis added).	<u>Proposed Rule 2.12(A)</u> is identical to ABA Model Rule 2.12(A).
<u>Proposed Rule 2.12(B)</u> is new and has no counterpart in the Illinois Code.	<u>Proposed Rule 2.12(B)</u> is identical to ABA Model Rule 2.11(B).
<u>Proposed Comment [1]</u> is new and has no counterpart in the Illinois Code.	<u>Proposed Comment [1]</u> is identical to ABA Model Comment [1].

<b>Changes from Current Illinois Code</b>	<b>Changes from ABA Model Code</b>
<p><u>Proposed Comment [2]</u> is new and has no counterpart in the Illinois Code.</p>	<p><u>Proposed Comment [2]</u> is identical to ABA Model Comment [2], except that it adds a citation to Illinois Supreme Court Rule 21(b), which grants general administrative authority to chief circuit judges, subject to the overall authority of the Illinois Supreme Court.</p>

**RULE 2.13: ADMINISTRATIVE APPOINTMENTS AND HIRING**

- (A) In making or facilitating administrative appointments and hiring court employees, a judge:
  - (1) shall exercise the power of appointment or election impartially\* and on the basis of merit; and
  - (2) shall avoid nepotism, favoritism, and unnecessary appointments.
- (B) A judge should refrain from casting a vote for the appointment or reappointment to the office of associate judge of the judge’s spouse, domestic partner, or of any person known by the judge to be within the third degree of relationship to the judge, the judge’s spouse, or domestic partner (or the spouse or domestic partner of such a person).
- (C) A judge shall not approve compensation of appointees beyond the fair value of services rendered.

COMMENTS

- [1] Unless otherwise defined by law, nepotism is the appointment or hiring of any relative within the third degree of relationship of either the judge or the judge’s spouse or domestic partner, or the spouse or domestic partner of such relative.

Changes from Current Illinois Code	Changes from ABA Model Code
<u>Proposed Rule Title</u> is new and has no counterpart in the Illinois Code.	<u>Proposed Rule Title</u> differs from the title of ABA Model Rule 2.13 by adding “and Hiring.”
<u>Proposed Rule 2.13(A)</u> reflects the concepts addressed in Illinois Supreme Court Rule 63B(4) and 63B(5). As such, this rule appears redundant to Proposed Rule 2.13(B), which more closely tracks the language of the Illinois Code.	<u>Proposed Rule 2.13(A)</u> : Consistent with the change to the title of the rule, Proposed Rule 2.13(A) was changed so that it also applies to the hiring of court employees as well as administrative appointments. Additionally, the phrase “or facilitating” was added.

Changes from Current Illinois Code	Changes from ABA Model Code
<p><u>Proposed Rule 2.13(B)</u>:</p> <p><u>Proposed Rule 2.13(B)(1)</u> is identical to the first and second sentences of Illinois Supreme Court Rule 63B(4).</p> <p><u>Proposed Rule 2.13(B)(2)</u> reflects the concepts addressed in Illinois Supreme Court Rule 63B(5), except that it has been revised to include domestic partners as well as spouses.</p>	<p><u>Proposed Rule 2.13(B)</u> is new. The entirety of ABA Model Rule 2.13(B) was removed and replaced. The removed provisions provided that:</p> <p>“(B) A judge shall not appoint a lawyer to a position if the judge either knows* that the lawyer, or the lawyer’s spouse or domestic partner,* has contributed more than \$[insert amount] within the prior [insert number] year[s] to the judge’s election campaign, or learns of such a contribution by means of a timely motion by a party or other person properly interest in the matter, unless:</p> <p>(1) the position is substantially uncompensated;</p> <p>(2) the lawyer has been selected in rotation from a list of qualified and available lawyers compiled without regard to their having made political contributions; or</p> <p>(3) the judge or another presiding or administrative judge affirmatively finds that no other lawyer is willing, competent, and able to accept the position.”</p>
<p><u>Proposed Rule 2.13(C)</u> is identical to the third sentence of Illinois Supreme Court Rule 63B(4).</p>	<p><u>Proposed Rule 2.13(C)</u> is identical to ABA Model Rule 2.13(C).</p>

## **RULE 2.14: DISABILITY AND IMPAIRMENT**

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

### COMMENTS

- [1] “Appropriate action” means action intended and reasonably likely to help the judge or lawyer in question address the problem and prevent harm to the justice system. Depending upon the circumstances, appropriate action may include, but is not limited to, speaking directly to the impaired person, notifying an individual with supervisory responsibility over the impaired person, or making a referral to an assistance program.
- [2] Taking or initiating corrective action by way of referral to an assistance program may satisfy a judge’s responsibility under this Rule. Assistance programs have many approaches for offering help to impaired judges and lawyers, such as intervention, counseling, or referral to appropriate health care professionals. Depending upon the gravity of the conduct that has come to the judge’s attention, however, the judge may be required to take other action, such as reporting the impaired judge or lawyer to the appropriate authority,\* agency, or body. *See* Rule 2.15.
- [3] A judge having reliable information that does not rise to the level of knowledge that the performance of a lawyer or another judge is impaired by drugs, alcohol, or other condition may take appropriate action.

<b>Changes from Current Illinois Code</b>	<b>Changes from ABA Model Code</b>
<u>Proposed Rule 2.14</u> is new and has no counterpart in the Illinois Code.	<u>Proposed Rule 2.14</u> reflects the concepts addressed in ABA Model Rule 2.14, except that it substitutes “a reasonable belief” with a knowledge requirement.
<u>Proposed Comment [1]</u> is new and has no counterpart in the Illinois Code.	<u>Proposed Comment [1]</u> is identical to ABA Model Comment [1].
<u>Proposed Comment [2]</u> is new and has no counterpart in the Illinois Code.	<u>Proposed Comment [2]</u> is identical to ABA Model Comment [2].

<b>Changes from Current Illinois Code</b>	<b>Changes from ABA Model Code</b>
<p><u>Proposed Comment [3]</u> is new and has no counterpart in the Illinois Code.</p>	<p><u>Proposed Comment [3]</u> is new and has no counterpart in the ABA Model Code. Proposed Comment [3] was added to clarify that a judge may take action when the judge does not have knowledge, but that the judge is not required to take action.</p>

**RULE 2.15: RESPONDING TO JUDICIAL AND LAWYER MISCONDUCT**

- (A) A judge knowing\* that another judge has committed a violation of this Code that raises a substantial question regarding the judge's honesty, trustworthiness, or fitness as a judge in other respects shall inform the Illinois Judicial Inquiry Board.
- (B) A judge knowing that a lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial question regarding the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects shall inform the Illinois Attorney Registration and Disciplinary Commission (ARDC).
- (C) A judge knowing that another judge has committed a violation of this Code, that does not raise a substantial question regarding honesty, trustworthiness, or fitness of a judge shall take appropriate action.
- (D) A judge knowing that a lawyer has committed a violation of the Rules of Professional Conduct that does not raise a substantial question regarding honesty, trustworthiness, or fitness of a lawyer shall take appropriate action.
- (E) The following provisions apply to judicial mentoring:
  - (1) Acts of a judge in mentoring a new judge pursuant to M.R. 14618 (Administrative Order of February 6, 1998, as amended June 5, 2000) and in the discharge of disciplinary responsibilities required or permitted by Canon 3 or article VIII of the Rules of Professional Conduct are part of a judge's judicial duties and shall be absolutely privileged.
  - (2) Except as otherwise required by the Supreme Court Rules, information pertaining to the new judge's performance which is obtained by the mentor in the course of the formal mentoring relationship shall be held in confidence by the mentor.

**COMMENTS**

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

[2] A judge having knowledge of a violation of the Code or the Rules of Professional Conduct that does not raise a substantial question regarding honesty, trustworthiness, or fitness of a judge or lawyer, respectively, is required to take appropriate action under paragraphs (C) or (D). Appropriate action may include, but is not limited to, communicating directly with the judge who may have violated this Code, communicating with a supervising judge, or reporting the suspected violation to the appropriate authority or other agency or body. Similarly, actions to be taken in response to information indicating that a lawyer has committed a violation of the Rules of Professional Conduct may include but are not limited to communicating directly with the lawyer who may have committed the violation when communicating is consistent with Rule 2.9 (“*Ex Parte* Communications”) and other provisions of this Code, initiating contempt proceedings, or reporting the suspected violation to the appropriate authority. In both cases, the Rule does not preclude a judge from taking or initiating more than a single appropriate disciplinary measure.

Changes from Current Illinois Code	Changes from ABA Model Code
<p><u>Proposed Rule 2.15</u> differs significantly from Illinois Supreme Court Rule 63B(3)(a). Rule 63B(3)(a) provides that a judge having knowledge of a violation of the Code of Judicial Ethics or Rule 8.4 of the Rules of Professional Conduct “shall take or initiate appropriate disciplinary measures.” By contrast, Proposed Rules 2.15(A) and (B) require that, when a judge knows of a violation that raises a substantial question regarding honesty, trustworthiness, or fitness, the judge <i>must</i> report that knowledge to the JIB or ARDC. For violations that do not raise a substantial question regarding honesty, trustworthiness, or fitness, Proposed Rules 2.15(C) and (D) still allow the judge discretion to determine appropriate disciplinary measures in the same manner as Illinois Supreme Court Rule 63B(3)(a).</p>	<p><u>Proposed Rule 2.15</u> generally adopts the format and substance of ABA Model Rule 2.15; however, it changes the triggering quantum of knowledge required for Proposed Rules 2.15 (C) and (D) from “[a] judge who receives information indicating a substantial likelihood ...” to “[a] judge knowing...”</p> <p>Additionally, Proposed Rule 2.15(E) was added to include the language of Illinois Supreme Court Rule 63B(3)(b) and (c) related to the confidentiality of judicial mentoring.</p>

Changes from Current Illinois Code	Changes from ABA Model Code
<p>Although the Committee Commentary to Rule 63B(3)(a) embraces the obligation of a judge who “has knowledge” of a violation of these rules and Rule 8.4 of the Rules of Professional Conduct to take “appropriate disciplinary measures,” Proposed Comments [1] and [2] are broader.</p> <p>Specifically:</p> <p>The Committee Commentary to Illinois Supreme Court Rule 63 B(3)(a) limits mandated judicial response to a violation of Rule 8.4 of the Illinois Rules of Professional Conduct. The current Comments to Illinois Supreme Court Rule 63 B(3)(a) limit mandated judicial response to a violation of Rule 8.4 of the Rules of Professional Conduct to “appropriate <i>disciplinary measures</i>” rather than the broader “appropriate action.”</p> <p>However, the Committee Commentary to Illinois Supreme Court Rule 63B(3)(a) reminds the judge of the possible statutory obligation to report the unprofessional conduct which is also criminal to an appropriate law enforcement official, which is omitted from the Proposed Comments to Proposed Rule 2.15.</p>	<p><u>Proposed Comment [1]</u> deletes the premise that, “Taking action to address known misconduct is a judge's obligation.”</p> <p><u>Proposed Comment [1]</u> adds a reiteration that “having knowledge” is the triggering standard for judicial action for (A) and (B).</p> <p><u>Proposed Comment [2]</u> raises the triggering standard for (C) and (D) violations to “having knowledge” from the lower “...information indicating a substantial likelihood...”</p> <p><u>Proposed Comment [2]</u> adds suggested actions a judge may take in response to a violation under (C) or (D) by a lawyer. It mirrors the suggested actions a judge may take in response to a similar violation by a judge.</p> <p><u>Proposed Comment [2]</u> adds the caveat that direct communication with a violating lawyer must be done within the constraints of Proposed Rule 2.9 regarding <i>ex parte</i> communications.</p> <p><u>Proposed Comment [2]</u> adds the Illinois provision that, “... the rule does not preclude a judge from taking or initiating more than a single appropriate disciplinary measure.” (This is the only reference in Proposed Rule 2.15 to “appropriate disciplinary measure.”)</p>

**RULE 2.16: COOPERATION WITH DISCIPLINARY AUTHORITIES**

- (A) A judge shall cooperate and be candid and honest with judicial and lawyer disciplinary agencies.
- (B) A judge shall not retaliate, directly or indirectly, against a person known\* or suspected to have assisted or cooperated with an investigation of a judge or lawyer.

**COMMENTS**

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

<b>Changes from Current Illinois Code</b>	<b>Changes from ABA Model Code</b>
<u>Proposed Rule 2.16</u> is new and has no counterpart in the Illinois Code.	<u>Proposed Rule 2.16</u> is identical to ABA Model Rule 2.16.
<u>Proposed Comment [1]</u> is new and has no counterpart in the Illinois Code.	<u>Proposed Comment [1]</u> is identical to ABA Model Comment [1].

### CANON 3

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

<b>Changes from Current Illinois Code</b>	<b>Changes from ABA Model Code</b>
<u>Proposed Canon 3</u> reflects the concepts addressed in Illinois Supreme Court Rule 65.	<u>Proposed Canon 3</u> is identical to ABA Model Canon 3.

### **RULE 3.1: EXTRAJUDICIAL ACTIVITIES IN GENERAL**

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

- (A) participate in activities that will interfere with the proper performance of the judge's judicial duties;
- (B) participate in activities that will lead to frequent disqualification of the judge;
- (C) participate in activities that would appear to a reasonable person to undermine the judge's independence,\* integrity,\* or impartiality;\*
- (D) engage in conduct that would appear to a reasonable person to be coercive; or
- (E) make use of court premises, staff, stationery, equipment, or other resources, except for incidental use.

### **COMMENTS**

- [1] To the extent that time permits, and judicial independence and impartiality are not compromised, judges are encouraged to engage in appropriate extrajudicial activities. Judges are uniquely qualified to engage in extrajudicial activities that concern the law, the legal system, and the administration of justice, such as by speaking, writing, teaching, or participating in scholarly research projects. In addition, judges are permitted and encouraged to engage in educational, religious, charitable, fraternal, social, recreational, or civic extrajudicial activities not conducted for profit, even when the activities do not involve the law. *See* Rule 3.7.
- [2] Participation in both law-related and other extrajudicial activities helps integrate judges into their communities and furthers public understanding of and respect for courts and the judicial system.
- [3] Discriminatory actions and expressions of bias or prejudice by a judge, even outside the judge's official or judicial actions, are likely to appear to a reasonable person to call into question the judge's integrity and impartiality. Examples include jokes or other remarks that demean individuals based upon their race, sex, gender, gender identity, religion, national origin, ethnicity, pregnancy, disability, age, sexual orientation, or socioeconomic status. For the same reason, a judge's extrajudicial activities must not be conducted in connection or affiliation with an organization that practices invidious discrimination. *See* Rule 3.6.
- [4] While engaged in permitted extrajudicial activities, judges must not coerce others or take action that would reasonably be perceived as coercive. For example, depending upon the circumstances, a judge's solicitation of contributions or memberships for an organization, even as permitted by Rule 3.7(A), might create

the risk that the person solicited would feel obligated to respond favorably or would do so to curry favor with the judge.

Changes from Current Illinois Code	Changes from ABA Model Code
<p><u>Proposed Rule 3.1</u> reflects the concepts addressed in Illinois Supreme Court Rules 64 and 65, which permit judges to participate in extrajudicial activities that are both law-related and not law-related.</p>	<p><u>Proposed Rule 3.1</u> is identical to ABA Model Rule 3.1.</p>
<p><u>Proposed Comment [1]</u> reflects the concepts addressed in Illinois Supreme Court Rules 64 and 65, and perhaps most specifically in Illinois Supreme Court Rule 64(C).</p>	<p><u>Proposed Comment [1]</u> is identical to ABA Model Comment [1], only adding “social” and “recreational” as examples of activities that judges are permitted and encouraged to engage in.</p>
<p><u>Proposed Comment [2]</u> reflects the concepts addressed in Illinois Supreme Court Rules 64 and 65.</p>	<p><u>Proposed Comment [2]</u> is identical to ABA Model Comment [2].</p>
<p><u>Proposed Comment [3]</u> is new and has no counterpart in the Illinois Code.</p>	<p><u>Proposed Comment [3]</u> is identical to ABA Model Comment [3], except that “gender identity” and “pregnancy” were added as impermissible bases for the manifestation of bias, prejudice, or harassment consistent with Rule 2.3(B) and (C).</p>
<p><u>Proposed Comment [4]</u> reflects the concepts addressed in Illinois Supreme Court Rules 64 and 65.</p>	<p><u>Proposed Comment [4]</u> is identical to ABA Model Comment [4].</p>

**RULE 3.2: APPEARANCES BEFORE GOVERNMENTAL BODIES AND CONSULTATION WITH GOVERNMENT OFFICIALS**

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

- (A) in connection with matters concerning the law, the legal system, or the administration of justice;
- (B) in connection with matters about which the judge acquired knowledge or expertise in the course of the judge's judicial duties; or
- (C) when the judge is acting *pro se* in a matter involving the judge's personal, legal, or economic interests or when the judge is acting in a fiduciary capacity.

COMMENTS

- [1] Judges possess special expertise in matters of law, the legal system, and the administration of justice, and may properly share that expertise with governmental bodies and executive or legislative branch officials.
- [2] In appearing before governmental bodies or consulting with government officials, judges must be mindful that they remain subject to other provisions of this Code, such as Rule 1.3, prohibiting judges from using the prestige of office to advance their own or others' interests, Rule 2.10, governing public comment on pending and impending matters, and Rule 3.1(C), prohibiting judges from engaging in extrajudicial activities that would appear to a reasonable person to undermine the judge's independence, integrity, or impartiality.
- [3] In general, it would be an unnecessary and unfair burden to prohibit judges from appearing before governmental bodies or consulting with government officials on matters that are likely to affect them as private citizens, such as zoning proposals affecting their real property. In engaging in such activities, however, judges must not refer to their judicial positions and must otherwise exercise caution to avoid using the prestige of judicial office.

Changes from Current Illinois Code	Changes from ABA Model Code
<p><u>Proposed Rule 3.2(A)</u> reflects the concepts addressed in Illinois Supreme Court Rule 64B, which allows judges to appear before government bodies and consult with government officials on certain topics.</p> <p>The proposed rule eliminates a restriction in Illinois Supreme Court Rule 64B that only allows a judge <i>to consult</i> with an executive or legislative official on only one type of matter, the administration of justice.</p>	<p><u>Proposed Rule 3.2(A)</u> is identical to ABA Model Rule 3.2.</p>
<p><u>Proposed Rule 3.2(B)</u> is new and has no counterpart in the Illinois Code.</p>	<p><u>Proposed Rule 3.2(B)</u> is identical to ABA Model Rule 3.2(B).</p>
<p><u>Proposed Rule 3.2(C)</u> is new and has no counterpart in the Illinois Code.</p>	<p><u>Proposed Rule 3.2(C)</u> reflects the concepts addressed in ABA Model Rule 3.2(C), except that it adds the term “personal” to the categories of interests on which a judge may appear at a public hearing of, or otherwise consult with, a legislative or executive body. The addition broadens those interests upon which a judge may voluntarily testify beyond the currently identified “legal” and “economic interests” and carries the same level of private, social, recreational, or avocational interest that may warrant a judge’s public contribution.</p>
<p><u>Proposed Comment [1]</u> reflects the concepts addressed in the Committee Commentary to Illinois Supreme Court Rule 64, which recognizes a judge’s unique position to contribute to the improvement of the law, the legal system, and the administration of justice and encourages judges to share their experiences through appropriate, albeit unspecified, channels.</p>	<p><u>Proposed Comment [1]</u> is identical to ABA Model Comment [1].</p>
<p><u>Proposed Comment [2]</u> is new and has no counterpart in the Illinois Code.</p>	<p><u>Proposed Comment [2]</u> is identical to ABA Model Comment [2].</p>
<p><u>Proposed Comment [3]</u> is new and has no counterpart in the Illinois Code.</p>	<p><u>Proposed Comment [3]</u> is identical to ABA Model Comment [3].</p>

**RULE 3.3: TESTIFYING AS A CHARACTER WITNESS**

A judge shall not testify as a character witness in a judicial, administrative, or other adjudicatory proceeding or otherwise vouch for the character of a person in a legal proceeding, except when duly summoned.

**COMMENTS**

[1] A judge who, without being subpoenaed, testifies as a character witness abuses the prestige of judicial office to advance the interests of another. *See* Rule 1.3. Nothing in this Rule will affect or prohibit a judge’s ability to provide a letter of recommendation on judicial letterhead for an individual based upon the judge’s personal knowledge. *See* Rule 1.3, Comment [2].

<b>Changes from Current Illinois Code</b>	<b>Changes from ABA Model Code</b>
<p><u>Proposed Rule 3.3</u> reflects the concepts addressed in Illinois Supreme Court Rule 62, but adds additional guidance to the prohibition on testifying voluntarily as a character witness.</p> <p>First, the proposed rule clarifies the prohibition is mandatory by the use of “shall,” rather than the suggestive language “should.”</p> <p>Second, the proposed rule combines Illinois Supreme Court Rule 62B’s prohibition on voluntary testimony with the exception for responding to official summons set out in the Rule’s official Committee Commentary.</p> <p>Third, consistent with the broad purposes of the prohibition set out in Illinois Supreme Court Rule 62B, the proposed rule broadens the existing prohibition beyond mere “testimony” to include “vouching” for a person’s character.</p>	<p><u>Proposed Rule 3.3</u> is identical to ABA Model Rule 3.3.</p>

<b>Changes from Current Illinois Code</b>	<b>Changes from ABA Model Code</b>
<p><u>Proposed Comment [1]</u> reflects the concepts addressed in Illinois Supreme Court Rule 62B and its accompanying Committee Commentary. The second sentence of Proposed Comment [1] is not reflected in any provision of the current Illinois Code, but is included to clarify that providing a letter of recommendation on judicial letterhead for an individual based on the judge’s personal knowledge is not prohibited.</p>	<p><u>Proposed Comment [1]</u> differs from ABA Model Comment [1] in two ways. First, it deletes the guidance that judges discourage others from compelling a judge to provide character testimony, except in unusual circumstances. Second, a new sentence clarifies that a judge may provide a letter of recommendation on judicial letterhead for an individual based on the judge’s personal knowledge.</p>

### **RULE 3.4: APPOINTMENTS TO GOVERNMENTAL POSITIONS**

In addition to the restrictions in Article VI, section 13 of the Illinois Constitution, a judge shall not accept appointment to a governmental committee, board, commission, or other governmental position, unless the appointment concerns the law, the legal system, or the administration of justice.

#### **COMMENTS**

[1] Article VI, section 13 of the Illinois Constitution prohibits a judge from holding any office under the United States, this State, unit of local government or school board. Rule 3.4 acknowledges this Constitutional limitation while implicitly recognizing the value of judges accepting appointments to entities that concern the law, the legal system, or the administration of justice. Even in such instances, however, a judge should assess the appropriateness of accepting an appointment, paying particular attention to the subject matter of the appointment and the availability and allocation of judicial resources, including the judge's time commitments, and giving due regard to the requirements of the independence and impartiality of the judiciary.

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

<b>Changes from Current Illinois Code</b>	<b>Changes from ABA Model Code</b>
<p><u>Proposed Rule 3.4</u> reflects the concepts addressed in Illinois Supreme Court Rules 64C and 65G, which allow judges to serve on, and accept appointment to, certain governmental bodies or positions that concern the law, the legal system, or the administration of justice. However, use of the phrase “shall not accept appointment” in the proposed rule eliminates any ambiguity found in the current Rule’s use of the terms “may serve” and “should not accept.” The proposed rule further eliminates potential ambiguity in Illinois Supreme Court Rule 65G’s applicability to government bodies or positions that address “issues of fact or policy.”</p>	<p><u>Proposed Rule 3.4</u> is identical to ABA Model Rule 3.4 with one addition. The prefatory language “[i]n addition to the restrictions in Article VI, section 13, of the Illinois Constitution” is new. This language is included to remind judges of the Constitutional origin of the prohibition on holding certain offices.</p>

<b>Changes from Current Illinois Code</b>	<b>Changes from ABA Model Code</b>
<p><u>Proposed Comment [1]</u> reflects the concepts addressed in the Committee Commentary to Illinois Supreme Court Rule 65G and repeats the language concerning the restrictions found in Article VI, section 13, of the Illinois Constitution.</p>	<p><u>Proposed Comment [1]</u> does not substantively differ from ABA Model Comment [1]; rather, the phrase “implicitly acknowledges” was replaced by “implicitly recognized.” Additionally, the prefatory language regarding Article VI, sec. 13, of the Illinois Constitution was added consistently with the reference in the proposed rule.</p>
<p><u>Proposed Comment [2]</u> reflects the concepts addressed in the second sentence of Illinois Supreme Court Rule 65G.</p>	<p><u>Proposed Comment [2]</u> is identical to ABA Model Comment [2].</p>

**RULE 3.5: USE OF NONPUBLIC INFORMATION**

A judge shall not intentionally disclose or use nonpublic information\* acquired in a judicial capacity for any purpose unrelated to the judge’s judicial duties.

COMMENTS

- [1] In the course of performing judicial duties, a judge may acquire information of commercial or other value that is unavailable to the public. The judge must not intentionally disclose or use such information for personal gain or for any purpose unrelated to judicial duties.
- [2] This Rule is not intended, however, to affect a judge’s ability to act on information as necessary to protect the health or safety of the judge or a member of a judge’s family, court personnel, attorneys, or other persons if consistent with other provisions of this Code.

Changes from Current Illinois Code	Changes from ABA Model Code
<p><u>Proposed Rule 3.5</u> reflects the concepts addressed in Illinois Supreme Court Rule 65C, but alters the limitations in three respects. First, it clarifies that the disclosure and use prohibitions apply only to “nonpublic information,” rather than the potentially broader “information” used in Illinois Supreme Court Rule 65.</p> <p>Second, it clarifies the prohibitions are applicable only to “intentional” disclosure or use.</p> <p>Finally, it clarifies the prohibitions are mandatory by use of “shall,” rather than the suggestive language “should.”</p>	<p><u>Proposed Rule 3.5</u> is identical to ABA Model Rule 3.5.</p>
<p><u>Proposed Comment [1]</u> does not substantively differ from the prohibition in Illinois Supreme Court Rule 65C on a judge’s disclosure or use of information for a judge’s personal gain or other use beyond the judge’s judicial duties.</p>	<p><u>Proposed Comment [1]</u> is identical to ABA Model Comment [1] except that the word “intentionally” was added to clarify that the Rule prohibits intentional disclosure and intentional use of nonpublic information.</p>

<b>Changes from Current Illinois Code</b>	<b>Changes from ABA Model Code</b>
<p><u>Proposed Comment [2]</u> is new and has no counterpart in the Illinois Code.</p>	<p><u>Proposed Comment [2]</u> reflects the concepts addressed in ABA Model Comment [2], but broadens the reach of a judge’s permissive disclosure by deleting ABA Model Comment [2]’s reference to “judicial officers” and replacing it with “attorneys, or other persons.”</p>

### **RULE 3.6: AFFILIATION WITH DISCRIMINATORY ORGANIZATIONS**

- (A) A judge shall not hold membership in any organization that practices invidious discrimination on the basis of race, sex, gender, gender identity, religion, national origin, ethnicity, or sexual orientation.
- (B) A judge shall not use the benefits or facilities of an organization if the judge knows\* or should know that the organization practices invidious discrimination on one or more of the bases identified in paragraph (A). A judge's attendance at an event in a facility of an organization that the judge is not permitted to join is not a violation of this Rule when the judge's attendance is an isolated event that could not reasonably be perceived as an endorsement of the organization's practices.

### COMMENTS

- [1] A judge's public manifestation of approval of invidious discrimination on any basis gives rise to the appearance of impropriety and diminishes public confidence in the integrity and impartiality of the judiciary. A judge's membership in an organization that practices invidious discrimination creates the perception that the judge's impartiality is impaired.
- [2] An organization is generally said to discriminate invidiously if it arbitrarily excludes from membership on the basis of race, sex, gender, gender identity, religion, national origin, ethnicity, or sexual orientation persons who would otherwise be eligible for admission. Whether an organization practices invidious discrimination is a complex question to which judges should be attentive. The answer cannot be determined from a mere examination of an organization's current membership rolls, but, rather, depends upon how the organization selects members, as well as other relevant factors, such as whether the organization is dedicated to the preservation of religious, ethnic, or cultural values of legitimate common interest to its members, or whether it is an intimate, purely private organization whose membership limitations could not constitutionally be prohibited.
- [3] When a judge learns that an organization to which the judge belongs engages in invidious discrimination, the judge must resign immediately from the organization.
- [4] A judge's membership in a religious organization as a lawful exercise of the freedom of religion is not a violation of this Rule.
- [5] This Rule does not apply to national or state military service.

<b>Changes from Current Illinois Code</b>	<b>Changes from ABA Model Code</b>
<u>Proposed Rule 3.6(A)</u> is new and has no counterpart in the Illinois Code.	<u>Proposed Rule 3.6(A)</u> is identical to ABA Model Rule 3.6, except that “gender identity” was added.
<u>Proposed Rule 3.6(B)</u> is new and has no counterpart in the Illinois Code.	<u>Proposed Rule 3.6(B)</u> is identical to ABA Model Rule 3.6.
<u>Proposed Comment [1]</u> is new and has no counterpart in the Illinois Code.	<u>Proposed Comment [1]</u> is identical to ABA Model Comment [1].
<u>Proposed Comment [2]</u> is new and has no counterpart in the Illinois Code.	<u>Proposed Comment [2]</u> is identical to ABA Model Comment [2], except that “gender identity” was added.
<u>Proposed Comment [3]</u> is new and has no counterpart in the Illinois Code.	<u>Proposed Comment [3]</u> is identical to ABA Model Comment [3].
<u>Proposed Comment [4]</u> is new and has no counterpart in the Illinois Code.	<u>Proposed Comment [4]</u> is identical to ABA Model Comment [4].
<u>Proposed Comment [5]</u> is new and has no counterpart in the Illinois Code.	<u>Proposed Comment [5]</u> is identical to ABA Model Comment [5].

**RULE 3.7: PARTICIPATION IN EDUCATIONAL, RELIGIOUS, CHARITABLE, FRATERNAL, OR CIVIC ORGANIZATIONS AND ACTIVITIES**

- (A) Subject to the requirements of Rule 3.1, a judge may participate in activities (i) sponsored by organizations or governmental entities concerned with the law, the legal system, or the administration of justice; and (ii) sponsored by or on behalf of educational, religious, charitable, fraternal, or civic organizations not conducted for profit, including, but not limited to, the following activities:
- (1) assisting such an organization or entity in planning related to fundraising, and participating in the management and investment of the organization's or entity's funds;
  - (2) soliciting\* contributions\* for such an organization or entity, but only from members of the judge's family\* or from judges over whom the judge does not exercise supervisory authority;
  - (3) soliciting membership for such an organization or entity, even though the membership dues or fees generated may be used to support the objectives of the organization or entity, but only if the organization or entity is concerned with the law, the legal system, or the administration of justice;
  - (4) appearing, speaking, receiving an award or other recognition, and permitting the judge's title to be used in connection with a fundraising or other event of such an organization or entity;
  - (5) making recommendations to such a public or private fund-granting organization or entity in connection with its programs and activities; and
  - (6) serving as an officer, director, trustee, or nonlegal advisor of such an organization or entity, unless it is likely that the organization or entity:
    - (a) will be engaged in proceedings that would ordinarily come before the judge; or
    - (b) will frequently be engaged in adversarial proceedings in the court of which the judge is a member or in any court subject to the appellate jurisdiction of the court of which the judge is a member.
- (B) A judge may encourage and solicit lawyers to provide *pro bono* public legal services.

**COMMENTS**

- [1] The activities permitted by paragraph (A) generally include those sponsored by or undertaken on behalf of public or private not-for-profit educational institutions and

other not-for-profit organizations, including law-related, charitable, and other organizations.

- [2] Before engaging in activities permitted by Rule 3.7, a judge should consider whether the membership and purposes of the organization, or the nature of the judge's participation in or association with the organization, would conflict with the judge's obligation to refrain from activities that reflect adversely upon a judge's independence, integrity, and impartiality.
- [3] Mere attendance at an event, whether or not the event serves a fundraising purpose, does not constitute a violation of paragraph (A)(4) so long as the judge does not engage in direct solicitation. It is also generally permissible for a judge to serve as an usher or a food server or preparer or to perform similar functions at fundraising events sponsored by educational, religious, charitable, fraternal, or civic organizations. Such activities are not solicitation and do not present an element of coercion or misuse the prestige of judicial office.
- [3A] A judge may not use social media or social networking platforms to promote the activities of educational, religious, charitable, fraternal, or civic organizations when the judge would be prohibited from doing so using another means of communication. For example, just as a judge may not write or telephone non-family members or judges over whom the judge has supervisory authority to encourage them to attend organizations' fundraising events, a judge may not promote those events via social media or social networking platforms.
- [4] Identification of a judge's position in law-related, educational, religious, charitable, fraternal, or civic organizations on letterhead or written materials used for fundraising or membership solicitation by such an organization or entity does not violate this Rule. The letterhead may list the judge's title or judicial office if comparable designations are used for other persons.
- [5] In addition to appointing lawyers to serve as counsel for indigent parties in individual cases, a judge may promote broader access to justice by encouraging lawyers to participate in *pro bono* public legal services if in doing so the judge does not employ coercion or misuse the prestige of judicial office. Such encouragement may take many forms, including providing lists of available programs, training lawyers to do *pro bono* public legal work, participating in events recognizing lawyers who have done *pro bono* public work, and requesting lawyers handle matters on a *pro bono* basis.
- [6] For guidance regarding a judge's involvement with political organizations, *see* Canon 4.

Changes from Current Illinois Code	Changes from ABA Model Code
<p><u>Proposed Rule 3.7(A)</u> reflects the concepts addressed in Illinois Supreme Court Rules 64 and 65. Illinois Supreme Court Rule 64 governs a judge’s extrajudicial activities concerning the law, the legal system, and the administration of justice (“law-related activities”). Illinois Supreme Court Rule 65B governs a judge’s participation in non-law-related extrajudicial activities including educational, religious, charitable, fraternal, and civic activities. For organizational and clarity purposes, the IJEC adopted the ABA’s suggestion to place the rules governing both law-related and non-law-related extrajudicial activities under one Rule, Rule 3.7.</p>	<p><u>Proposed Rule 3.7(A)</u> does not substantively differ from ABA Model Rule 3.7(A).</p>
<p><u>Proposed Rule 3.7(A)(1)</u> reflects the concepts addressed in Illinois Supreme Court Rules 64 and 65. Illinois Supreme Court Rule 64(C) provides that judges may assist law-related organizations in planning fundraising activities and may participate in the management and investment of the group’s funds. These same activities are implicitly, but not expressly, permitted by Illinois Supreme Court Rule 65 for educational, religious, charitable, fraternal, and civic organizations. Proposed Rule 3.7(A)(1) expressly permits a judge to assist in fundraising planning, management, and investment decisions for both law-related and non-law-related organizations.</p>	<p><u>Proposed Rule 3.7(A)(1)</u> is identical to ABA Model Rule 3.7(A)(1).</p>
<p><u>Proposed Rule 3.7(A)(2)</u> is new and has no counterpart in the Illinois Code.</p>	<p><u>Proposed Rule 3.7(A)(2)</u> differs from ABA Model Rule 3.7(A)(2) in one respect. The ABA model rule prohibits a judge from soliciting judges over whom the soliciting judge exercises supervisory or appellate authority. The IJEC agreed with the ABA that arguably a judge might feel pressured when solicited by a supervising judge who controls the assignment and other aspects of the potential donor’s professional life. Thus, the proposed rule bars solicitations by a supervising judge. But the ABA’s proscription against solicitations by</p>

Changes from Current Illinois Code	Changes from ABA Model Code
	<p>reviewing court judges rests on a much weaker premise. The unexpressed rationale behind this restriction is that a lower court judge could reasonably believe that the affirmance or reversal of a decision might not rest on the merits of a case, but on the judge’s level of generosity. Without some evidence to support this unwarranted view of the appellate process the IJEC choose not to include the ABA’s bar on solicitations by reviewing court judges.</p>
<p><u>Proposed Rule 3.7(A)(3)</u> is new and has no counterpart in the Illinois Code.</p>	<p><u>Proposed Rule 3.7(A)(3)</u> is identical to ABA Model Rule 3.7(A)(3).</p>
<p><u>Proposed Rule 3.7(A)(4)</u> reflects the concepts addressed in Illinois Supreme Court Rules 64C and 65B(2), which permit judges to appear, speak, receive an award at, and be featured on programs of events, including fundraising events, of law-related and non-law-related organizations.</p>	<p><u>Proposed Rule 3.7(A)(4)</u> differs from ABA Model Rule 3.7(A)(4) in that the proposed rule permits judges to speak and receive awards at the fundraising events of both law-related organizations and non-law-related educational, religious, charitable, fraternal, and civic organizations.</p> <p>The ABA model rule permits a judge to serve as a speaker or honoree at a fundraising event “only if the event concerns the law, the legal system, or the administration of justice.”</p> <p>The IJEC rejected the ABA rule for several reasons. First, Illinois has permitted judges to play featured roles at fundraisers at both law-related and non-law-related fund-raisers since 2011 without any adverse impact on public confidence in the judiciary. Indeed, speaking opportunities and the receipt of awards by judges for their professional and personal contributions to society increase public confidence.</p> <p>Second, the ABA model rule permits serving as a speaker or honoree at an event if the <i>event</i> is law-related. There is no requirement in the rule that the event be that of a law-related organization. However, the Reporters’ Notes to the Model Code of Judicial Conduct interprets ABA Model Rule 3.7(A)(4) to permit judges to</p>

Changes from Current Illinois Code	Changes from ABA Model Code
	<p>speaking and receiving awards at fundraising events only of law-related organizations. Charles G. Geyh &amp; W. William Hodes, <i>Reporters' Notes to the Model Code of Judicial Conduct</i> 70 (2009). This ambiguity militates against adopting the ABA rule.</p> <p>Third, the underlying rationale for restrictions on fundraising participation by judges is “to ensure that individuals will not be under pressure to attend fundraising events or to contribute to causes in order to please, or not displease, a judge.” Ill. Judicial Ethics Comm. Op. 98-11 (1998). This rationale does not support distinguishing between speaking and honoree roles at law-related and other charitable events. Indeed, the lawyers who fill most seats at law-related events might be more inclined to purchase a ticket to a fundraiser featuring a judge in order to please or not displease the judge than would the mostly non-lawyer attendees at a church, college, or civic fundraising event.</p>
<p><u>Proposed Rule 3.7(A)(5)</u> reflects the concepts addressed in Illinois Supreme Court Rule 64D, which provides that “[a] judge may make recommendations to public and private fund-granting agencies on projects and programs concerning the law, the legal system, and the administration of justice.” Illinois Supreme Court Rule 65 includes no similar provision permitting judges to make recommendations to fund-granting agencies on behalf of non-law-related groups.</p>	<p><u>Proposed Rule 3.7(A)(5)</u> differs from ABA Model Rule 3.7(A)(5) in that the ABA model rule only permits a judge to make a recommendation to a fund-granting group on behalf of programs and activities related to the law, the legal system or the administration of justice. The proposed rule permits a judge’s recommendation to a grant-making authority not only on behalf of law-related programs, but also on behalf of non-law-related educational, religious, charitable, fraternal, and civic groups.</p> <p>The IJEC believed that the danger of misusing the prestige of judicial office is no greater when the recommendation is for non-law-related charitable purposes than when the recommendation is for law-related purposes.</p>
<p><u>Proposed Rule 3.7(A)(6)</u> differs from Illinois Supreme Court Rule 65B, which bars a judge from “serv[ing] as an officer, director, trustee,</p>	<p><u>Proposed Rule 3.7(A)(6)</u> is identical to ABA Model Rule 3.7(A)(6).</p>

Changes from Current Illinois Code	Changes from ABA Model Code
<p>or nonlegal advisor of an educational, religious, charitable, fraternal, or civic organization ... conducted for the economic or political advantage of its members” (emphasis added). Proposed Rule 3.7(A) removes that prohibition and replaces it with the proviso that a judge may only engage in the activities authorized by Rule 3.7(A)(1)-(6) in support of educational, religious, charitable, fraternal, or civic organizations “not conducted for profit” (emphasis added).</p> <p>The change was made because (1) the 1990 and 2007 ABA Model Codes use the “not conducted for profit” language, and (2) many organizations to which judges belong might be seen, at least in part, as conducted for the members’ “political or economic advantage.” For example, one objective of judges’ associations is to ensure the independence of the judiciary by promoting fair compensation for its members.</p> <p>Illinois Supreme Court Rule 65B(1) is similar to Proposed Rule 3.7(A)(6) in that Illinois Supreme Court Rule 65B(1) prohibits serving in a leadership position in an educational, religious, charitable, fraternal, or civic organization “if it is likely that the organization will be engaged in proceedings that would ordinarily come before the judge or will be regularly engaged in adversary proceedings in any court.” Proposed Rule 3.7(A)(6) narrows the scope of current Illinois Supreme Court Rule 65B(1) by prohibiting leadership roles when the organization “will frequently be engaged in adversary proceedings in the court of which the judge is a member, or in any court subject to the appellate jurisdiction of [judge’s] court.” Illinois Supreme Court Rule 65B(1) more broadly prohibits a leadership role if the organization is regularly engaged in adversary proceedings in any court in any jurisdiction.</p>	

Changes from Current Illinois Code	Changes from ABA Model Code
<p>Unlike Illinois Supreme Court Rule 65, Illinois Supreme Court Rule 64 does not include a prohibition on leadership roles for judges in law-related groups that appear before the judge or are engaged in adversary proceedings in any court. Proposed Rule 3.7(A)(6) applies to both law-related and non-law-related organizations.</p>	
<p><u>Proposed Rule 3.7(B)</u> is new and has no counterpart in the Illinois Code.</p>	<p><u>Proposed Rule 3.7(B)</u> is identical to the ABA Model Rule 3.7(B), except that the phrase “and solicit” was added after “encourage” in recognition of the essential role of judges in promoting <i>pro bono</i> public legal services.</p>
<p><u>Proposed Comment [1]</u> is new and has no counterpart in the Illinois Code. The proposed comment states the noncontroversial proposition that the extrajudicial activities permitted by Rule 3.7 are generally undertaken by or on behalf of not-for-profit organizations.</p>	<p><u>Proposed Comment [1]</u> is identical to ABA Model Comment [1].</p>
<p><u>Proposed Comment [2]</u> reflects the concepts addressed in Illinois Supreme Court Rules 64 and 65B, which prohibit a judge from engaging in law-related or non-law-related extrajudicial activities that reflect adversely on the judge’s impartiality. <i>See also</i> Ill. Judicial Ethics Comm. Op. 2005-05 (2005) (discussing restrictions on a judge’s service as an officer, director, trustee, or non-legal advisor of an educational, religious, charitable, fraternal, or civic organization).</p>	<p><u>Proposed Comment [2]</u> is identical to ABA Model Comment [2], except that the introductory phrase in the ABA version, “Even for law-related organizations,” has been changed to, “Before engaging in activities permitted by Rule 3.7.”</p>
<p><u>Proposed Comment [3]</u> is new and has no counterpart in the Illinois Code. However, the authority to attend fund-raising events and serve in non-featured roles such as usher, food server, and food preparer at such events is implied by the Code’s provisions permitting judges to serve in featured roles at fundraising events.</p>	<p><u>Proposed Comment [3]</u> is identical to ABA Model Comment [3], except that the phrase “so long as the judge does not engage in direct solicitation” was added to the end of the first sentence, and “abuse” was replaced with “misuse.”</p>

Changes from Current Illinois Code	Changes from ABA Model Code
<p><u>Proposed Comment [3A]</u> is new and has no counterpart in the Illinois Code.</p>	<p><u>Proposed Comment [3A]</u> is new and has no counterpart in the ABA Model Code. This comment has been added to provide guidance regarding judges’ use of social media or social networking platforms in connection with the activities of educational, religious, charitable, fraternal, or civic organizations. Judges may not use social media or social networking platforms to promote the activities of those organizations when other means of communication would be prohibited.</p>
<p><u>Proposed Comment [4]</u> reflects the concepts addressed in Illinois Supreme Court Rule 64, which contains a similar provision permitting a judge’s name and title to appear on the letterhead of a law-related organization even if the letterhead is used for fundraising. Illinois Supreme Court Rule 65, however, prohibits a judge’s name and title from appearing on the letterhead of a non-law-related group when “the stationery is used to solicit funds.” The IJEC agreed with the ABA that, when a judge serves an organization in an official position such as officer or director, including the judge’s name and title on the group’s letterhead does not misuse judicial prestige as long as the titles of others listed on the stationery are included. <i>See</i> Charles G. Geyh &amp; W. William Hodes, <i>Reporters’ Notes to the Model Code of Judicial Conduct</i> 71 (2009).</p>	<p><u>Proposed Comment [4]</u> is identical to ABA Model Comment [4] except that the term “law-related” was inserted before the phrase “educational, religious, charitable, fraternal, or civic organizations,” and the phrase “by such an organization or entity” was inserted before “does not violate this rule.” These changes clarify that a judge’s name and title may be included on stationery and materials of both law-related and non-law related organizations and entities.</p>
<p><u>Proposed Comment [5]</u> is new and has no counterpart in the Illinois Code.</p>	<p><u>Proposed Comment [5]</u> is identical to ABA Model Comment [5], except that the phrase “and requesting lawyers handle matters on a pro bono basis” was added to the end of the Comment.</p>
<p><u>Proposed Comment [6]</u> is new and has no counterpart in the Illinois Code.</p>	<p><u>Proposed Comment [6]</u> is new and has no counterpart in the ABA Model Code. The IJEC added this comment to make clear that this rule does apply to political organizations, which fall under the scope of Proposed Canon 4.</p>

**RULE 3.8: APPOINTMENTS TO FIDUCIARY POSITIONS**

- (A) A judge shall not accept appointment to serve in a fiduciary\* position, such as executor, administrator, trustee, guardian, attorney in fact, or other personal representative, except for the estate, trust, or person of a member of the judge’s family and then only if the service will not interfere with the proper performance of judicial duties.
- (B) [Reserved]
- (C) A judge acting in a fiduciary capacity shall be subject to the same restrictions on engaging in financial activities that apply to a judge personally.
- (D) If a person who is serving in a fiduciary position becomes a judge, the new judge must\* comply with this Rule as soon as reasonably practicable, but in no event later than one year after becoming a judge.

**COMMENTS**

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

<b>Changes from Current Illinois Code</b>	<b>Changes from ABA Model Code</b>
<p><u>Proposed Rule 3.8(A)</u> reflects the concepts addressed in Illinois Supreme Court Rule 65D, except that it includes a few additional positions that would qualify as a “fiduciary.” For example, in addition to the positions prohibited by Illinois Supreme Court Rule 65D (executor, administrator, trustee, guardian, or other fiduciary), Proposed Rule 3.8(A) adds “attorney in fact” and “other personal representative.”</p>	<p><u>Proposed Rule 3.8(A)</u> is identical to ABA Model Rule 3.8(A).</p>

Changes from Current Illinois Code	Changes from ABA Model Code
<p><u>ABA Model Rule 3.8(B)</u> reflects the concepts addressed in Illinois Supreme Court Rule 65D(1). Rule 3.8(B) was not adopted by the IJEC because the concerns underlying the Model Rule and Illinois Supreme Court Rule 65D(1) are adequately addressed by the rules pertaining to disqualification.</p>	<p><u>Proposed Rule 3.8(B)</u> was not adopted by the IJEC. ABA Model Rule 3.8(B) provided that “A judge shall not serve in a fiduciary position of the judge as fiduciary will likely be engaged in proceedings that would ordinarily come before the judge, or if the estate, trust, or ward becomes involved in adversary proceedings in the court on which the judge serves, or one under its appellate jurisdiction.” The concerns underlying ABA Model Rule 3.8(B) are adequately addressed by the rules pertaining to disqualification.</p>
<p><u>Proposed Rule 3.8(C)</u> reflects the concepts addressed in Illinois Supreme Court Rule 65D(2).</p>	<p><u>Proposed Rule 3.8(C)</u> is identical to ABA Model Rule 3.8(C).</p>
<p><u>Proposed Rule 3.8(D)</u> is new and has no counterpart in the Illinois Code.</p>	<p><u>Proposed Rule 3.8(D)</u> is identical to ABA Model Rule 3.8(D), including the ABA’s suggestion of a one year period.</p>
<p><u>Proposed Comment [1]</u> reflects the concepts addressed in the Committee Commentary to Illinois Supreme Court Rule 65D(2), which reminds a judge of the need to resign from serving as a fiduciary if serving will conflict with other provisions of the Illinois Code (e.g., frequent disqualification under Proposed Rule 2.11). The Committee Commentary to Illinois Supreme Court Rule 65D(2) further provides an example that a judge should resign as a “trustee if it would result in detriment to the trust to divest it of holdings whose retention would place the judge in violation of Canon 5(C)3.”</p>	<p><u>Proposed Comment [1]</u> is identical to ABA Model Comment [1].</p>

**RULE 3.9: SERVICE AS ARBITRATOR OR MEDIATOR**

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

COMMENTS

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

<b>Changes from Current Illinois Code</b>	<b>Changes from ABA Model Code</b>
<u>Proposed Rule 3.9</u> reflects the concepts addressed in Illinois Supreme Court Rule 65E, which provides that a judge should not act as an arbitrator or mediator.	<u>Proposed Rule 3.9</u> is identical to ABA Model Rule 3.9.
<u>Proposed Comment [1]</u> is new and has no counterpart in the Illinois Code.	<u>Proposed Comment [1]</u> is identical to ABA Model Comment [1] except that it deletes the word “assigned” from the term “assigned judicial duties.”

**RULE 3.10: PRACTICE OF LAW**

A judge shall not practice law. A judge may act *pro se* in all legal matters.

COMMENTS

[1] A judge may act *pro se* in all legal matters, including matters involving litigation and matters involving appearances before or other dealings with governmental bodies. A judge must not use the prestige of office to advance the judge’s personal or family interests. *See* Rule 1.3.

Changes from Current Illinois Code	Changes from ABA Model Code
<p><u>Proposed Rule 3.10</u> reflects the concepts addressed in Illinois Supreme Court Rule 65F, except that Illinois Supreme Court Rule 65F uses the term “should” instead of “shall not” practice law. The Illinois Code contains no similar provision permitting a judge to act <i>pro se</i> in legal matters concerning the judge.</p>	<p><u>Proposed Rule 3.10</u>: The first sentence of Proposed Rule 3.10 is identical to the first sentence of ABA Model Rule 3.10.</p> <p>The second sentence of Proposed Rule 3.10 differs from ABA Model Rule 3.10 to be consistent with Article VI, Sec. 13(b) of the Illinois Constitution, which provides that judges “shall not practice law.”</p> <p>IJEC Op. 1995-19 concludes that a prohibition against practicing law prohibits giving legal advice to family members including dealing with a third party on behalf of a family member.</p> <p>Accordingly, the IJEC did not adopt the provision of ABA Model Rule 3.10 that a judge “may, without compensation, give legal advice to and draft or review documents for a member of the judge’s family, but is prohibited from serving as the family member’s lawyer in any forum.”</p> <p>The IJEC also added the language that a judge may act <i>pro se</i> “in all legal matters.”</p>
<p><u>Proposed Comment to Rule 3.10</u> is new and has no counterpart in the Illinois Code.</p>	<p><u>Proposed Comment [1]</u> is identical to ABA Model Comment [1].</p>

### **RULE 3.11: FINANCIAL, BUSINESS, OR REMUNERATIVE ACTIVITIES**

- (A) A judge may hold and manage investments of the judge and members of the judge's family.
- (B) A judge shall not serve as an officer, director, manager, general partner, advisor, or employee of any business entity. A judge, however, may:
  - (1) hold an equity interest in a business closely held by the judge or members of the judge's family or household; or
  - (2) manage a business entity primarily engaged in investment of the financial resources of the judge or members of the judge's family.
- (C) A judge shall cease engaging in those financial activities otherwise permitted under paragraphs (A) and (B) as soon as practicable if they will:
  - (1) interfere with the proper performance of judicial duties;
  - (2) lead to frequent disqualification of the judge;
  - (3) involve the judge in frequent transactions or continuing business relationships with lawyers or other persons likely to come before the court on which the judge serves; or
  - (4) result in violation of other provisions of this Code.

### **COMMENTS**

- [1] Although the Rule forbids a judge from assuming an active role in the management of any business, judges are generally permitted to engage in financial activities, including managing real estate and other investments for themselves or for members of their families. Participation in these activities, like participation in other extrajudicial activities, is subject to the requirements of this Code. For example, it would be improper for a judge to spend time on business activities that interferes with the performance of judicial duties. *See* Rule 2.1. Similarly, it would be improper for a judge to use the official title or appear in judicial robes in business advertising or to conduct personal business or financial affairs in such a way that disqualification is frequently required. *See* Rules 1.3 and 2.11.
- [2] Situations that require frequent disqualification of a judge or otherwise violate this Rule may exist at the time of taking judicial office or arise due to a change in circumstances. As soon as practicable without serious financial detriment, divestment of personal investments and other financial interests is required where frequent disqualification or other violations of this Rule might occur.

Changes from Current Illinois Code	Changes from ABA Model Code
<p><u>Proposed Rule 3.11(A)</u> reflects the concepts addressed in Illinois Supreme Court Rule 65C(2), except that the proposed rule allows the judge to not only manage investments of the judge, but also those of the judge’s family.</p>	<p><u>Proposed Rule 3.11(A)</u> is identical to ABA Model Rule 3.11(A).</p>
<p><u>Proposed Rule 3.11(B)</u> reflects the concepts addressed in Illinois Supreme Court Rule 65C(2): however, the Illinois Code does not expressly contain provisions similar to Proposed Rule 3.11(B)(1) or (B)(2).</p>	<p><u>Proposed Rule 3.11(B)</u> reflects the concepts addressed in ABA Model Rule 3.11(B), except that the proposed rule does not authorize a judge to manage a business that is closely held by the judge or members of the judge’s family or household.</p>
<p><u>Proposed Rule 3.11(C)(1)</u> reflects the concepts addressed in Illinois Supreme Court Rule 65C(1), which mandates that a judge “should refrain from financial and business dealings that tend to...interfere with the proper performance of the judge’s judicial duties...” The proposed rule makes the prohibition mandatory (<i>e.g.</i>, “shall” instead of “should”).</p> <p><u>Proposed Rule 3.11(C)(2)</u> is new and has no counterpart in the Illinois Code.</p> <p><u>Proposed Rule 3.11(C)(3)</u> reflects the concepts addressed in Illinois Supreme Court Rule 65C(1), except that the proposed rule makes it mandatory that a judge “cease engaging in ...financial activities otherwise permitted under paragraphs (A) and (B) that involve the judge in frequent transactions with lawyers or persons likely to come before the court on which the judge serves.”</p> <p><u>Proposed Rule 3.11(C)(4)</u> is new and has no counterpart in the Illinois Code.</p>	<p><u>Proposed Rule 3.11(C)</u> is substantially similar to ABA Model Rule 3.11(C), except the proposed rule requires that a judge “cease” engaging in those financial activities otherwise permitted under paragraphs (A) and (B) as soon as “practicable” if the activities fall within subparagraphs (1), (2), (3), or (4).</p>

Changes from Current Illinois Code	Changes from ABA Model Code
<p><u>Proposed Comment [1]</u> reflects the concepts addressed in Illinois Supreme Court Rule 65(C)(2), which similarly prohibits a judge from assuming an active role in the management of any business and the recognition that judges are permitted to engage in financial activities, including managing real estate and other investments for themselves. The Illinois Code does not, however, contain examples of situations where a judge’s activities would be improper, as are provided in the proposed comment.</p>	<p><u>Proposed Comment [1]</u> reflects the concepts addressed in ABA Model Comment [1], except the proposed comment begins with the reminder that Proposed Rule 3.11 forbids a judge from assuming an active role in the management of any business.</p>
<p><u>Proposed Comment [2]</u>: The first sentence of Proposed Comment [2] is new and has no counterpart in the Illinois Code.</p> <p>The second sentence of Proposed Comment [2], however, reflects the concepts addressed in Illinois Supreme Court Rule 65C(3), which provides that, “[a]s soon as the judge can do so without serious financial detriment, the judge should divest . . . investments and other financial interests that might require frequent disqualification.”</p> <p>Finally, Committee Commentary discussing Illinois Supreme Court Rule 65C(3) states that divestment is required “only when it would cause frequent disqualification, and even in that case, the divestment need not be made until the asset can be disposed of without serious financial detriment.”</p>	<p><u>Proposed Comment [2]</u> reflects the concepts addressed in ABA Model Comment [2], except that the Proposed Comment begins with an acknowledgment that situations that require frequent disqualification of a judge or otherwise violate Proposed Rule 3.11 may exist at the time a judge takes office or arise due to a change in circumstances.</p>

**RULE 3.12: COMPENSATION FOR EXTRAJUDICIAL ACTIVITIES**

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

COMMENTS

- [1] A judge is permitted to accept honoraria, stipends, fees, wages, salaries, royalties, or other compensation for speaking, teaching, writing, and other extrajudicial activities, provided the compensation is reasonable and provided that the source of the payments do not give the appearance of influencing the judge in the performance of judicial duties or otherwise give the appearance of impropriety. The judge should be mindful, however, that judicial duties must take precedence over other activities. *See* Rule 2.1 and Ill. Const. art. 6, § 13B.
- [2] Compensation derived from extrajudicial activities may be subject to public reporting. *See* Rule 3.15.
- [3] Judges may not accept payment or other compensation for performing weddings. *See* Ill. Sup. Ct. Rule 40.

<b>Changes from Current Illinois Code</b>	<b>Changes from ABA Model Code</b>
<p><u>Proposed Rule 3.12</u> reflects the concepts addressed in Illinois Supreme Court Rules 66 and 66A. The proposed rule removes reference to compensation for “law-related” activities, but makes reference to those types of activities in the proposed comment section. The proposed rule also adds a “reasonable person” standard and focuses on independence, integrity, and impartiality, as opposed to impropriety, which is instead included in Proposed Comment [1]. The purpose of this change was in recognition that significant overcompensation could be either a mask for an improper gift or an attempt to influence the judge’s conduct in office.</p>	<p><u>Proposed Rule 3.12</u> is identical to ABA Model Rule 3.12.</p>

Changes from Current Illinois Code	Changes from ABA Model Code
<p><u>Proposed Comment [1]</u> reflects the concepts addressed in Illinois Supreme Court Rule 66A, which reads, “[c]ompensation should not exceed a reasonable amount nor should it exceed what a person who is not a judge would receive for the same activity.” The proposed comment provides examples of acceptable forms of compensation, such as “honoraria, stipends, fees, wages, salaries, royalties, or other compensation for speaking, teaching, writing, and other extrajudicial activities...” The proposed comment also adopts language that was deleted from the main body of the proposed rule and emphasizes the source of payment should not give the appearance of influence or impropriety and that judicial duties must take precedence over other activities. Illinois Supreme Court Rule 66 does not provide this additional information and warning.</p>	<p><u>Proposed Comment [1]</u> adds the following language, “and provided that the source of the payments do not give the appearance of influencing the judge in the performance of judicial duties or otherwise give the appearance of impropriety” and deletes the phrase “and commensurate with the task performed.” In addition, the proposed comment adds a citation to Article 6, Section 13B of the Illinois Constitution. No other substantive changes.</p>
<p><u>Proposed Comment [2]</u> reflects the concepts addressed in Illinois Supreme Court Rule 66C, which indicated that compensation from extrajudicial activities may be subject to public reporting.</p>	<p><u>Proposed Comment [2]</u> is identical to ABA Model Comment [2].</p>
<p><u>Proposed Comment [3]</u> has no counterpart in the Illinois Code; however, it incorporates Illinois Supreme Court Rule 40, which provides that judges may not accept payment or compensation for performing weddings.</p>	<p><u>Proposed Comment [3]</u> is new and has no counterpart in the ABA Model Code, which does not reference compensation for performing weddings.</p>

**RULE 3.13: ACCEPTANCE OF GIFTS, LOANS, BEQUESTS, FAVORS, BENEFITS, OR OTHER THINGS OF VALUE**

A judge shall not accept any gifts, loans, bequests, benefits, favors, or other things of value, except as follows:

- (1) items with little intrinsic value, such as plaques, certificates, trophies, and greeting cards;
- (2) gifts, loans, bequests, benefits, favors, or other things of value from individuals whose relationship with the judge would require disqualification under Rule 2.11.
- (3) ordinary social hospitality;
- (4) commercial or financial opportunities and benefits, including special pricing and discounts, and loans from lending institutions in their regular course of business, if the same opportunities and benefits or loans are made available on the same terms to similarly situated persons who are not judges;
- (5) rewards and prizes given to competitors or participants in random drawings, contests, or other events that are open to persons who are not judges;
- (6) scholarships, fellowships, and similar benefits or awards, if they are available to similarly situated persons who are not judges, based upon the same terms and criteria;
- (7) books, magazines, journals, audiovisual materials, and other resource materials supplied by publishers on a complimentary basis for official use;
- (8) gifts incident to a public testimonial;
- (9) invitations to the judge and the judge's spouse, domestic partner, or guest to attend without charge:
  - (a) an event associated with a bar-related function or other activity relating to the law, the legal system, or the administration of justice; or
  - (b) an event associated with any of the judge's educational, religious, charitable, fraternal or civic activities permitted by this Code, if the same invitation is offered to nonjudges who are engaged in similar ways in the activity as is the judge; and
- (10) gifts, loans, bequests, benefits, favors, or other things of value, only if the donor is not a party or other person whose interests have come or are likely to come before the judge, including lawyers who practice or have practiced before the judge.

## COMMENTS

- [1] Whenever a judge accepts a gift or other thing of value without paying fair market value, there is a risk that the benefit might be viewed as intended to influence the judge's decision in a case. Rule 3.13 prohibits the acceptance of benefits except in circumstances where the risk of improper influence is low.
- [2] Gift giving between friends and relatives is a common occurrence and ordinarily does not create an appearance of impropriety or cause reasonable persons to believe that the judge's independence, integrity, or impartiality has been compromised. In addition, when the appearance of friends or relatives in a case would require the judge's disqualification under Rule 2.11, there would be no opportunity for a gift to influence the judge's decision making. Paragraph (2) places no restrictions upon the ability of a judge to accept gifts or other things of value from friends or relatives under these circumstances.
- [3] Businesses and financial institutions frequently make available special pricing, discounts, and other benefits, either in connection with a temporary promotion or for preferred customers based upon longevity of the relationship, volume of business transacted, and other factors. A judge may freely accept such benefits if they are available to the general public or if the judge qualifies for the special price or discount according to the same criteria as are applied to persons who are not judges. As an example, loans provided at generally prevailing interest rates are not gifts, but a judge could not accept a loan from a financial institution at below market interest rates unless the same rate was being made available to the general public for a certain period of time or only to borrowers with specified qualifications that the judge also possesses.
- [4] Rule 3.13 applies only to acceptance of gifts or other things of value by a judge. Nonetheless, if a gift or other benefit is given to the judge's spouse, domestic partner, or member of the judge's family residing in the judge's household, it may be viewed as an attempt to evade Rule 3.13 and influence the judge indirectly. Where the gift or benefit is being made primarily to such other persons and the judge is merely an incidental beneficiary, this concern is reduced. A judge should consider informing family and household members of the restrictions imposed upon judges by this Rule.
- [5] Contributions to a judge's campaign for judicial office are governed by Rules 4.3 and 4.4 of this Code.
- [6] "Ordinary social hospitality" includes the "routine amenities, favors, and courtesies which are normally exchanged between friends and acquaintances, and which would not create an appearance of impropriety to a reasonable, objective observer." *In re Corboy*, 124 Ill. 2d 29, 42 (1988). The touchstone of this objective test "is a careful consideration of social custom." *Id.* Factors relevant to this inquiry include (1) the monetary value of the gift, loan, bequest, or other item transferred from the

donor or lender to the judge; (2) the relationship between the judge and the donor or lender; (3) the social practices and customs associated with transfers of the type made between the judge and donor or lender; and (4) the circumstances surrounding the transaction. *See id.* at 42-43.

[7] Disclosure of economic interests including gifts is governed by Rule 3.15.

Changes from Current Illinois Code	Changes from ABA Model Code
<p><u>Proposed Rule 3.13</u> reflects the concepts addressed in Illinois Supreme Court Rule 65C(4)(a)-(c). The proposed rule is much more expansive and contains various examples of gifts and things of value that may be accepted by a judge. In addition, the beginning paragraph of the proposed rule only pertains to a judge, whereas Illinois Supreme Court Rule 65C(4) also references “a member of the judge’s family residing in the judge’s household.” The reference regarding gifts or things of value to a judge’s family member(s), however, is addressed in Proposed Comment [4].</p>	<p><u>Proposed Rule 3.13</u> reflects the concepts addressed in ABA Model Rule 3.13; however, ABA Model Rule 3.13 contains subparagraphs (A), (B), and (C), whereas Proposed Rule 3.13 only contains one main introductory paragraph, followed by subparagraphs (1)-(10), which will be discussed in greater detail below. The ABA Model Code makes it very clear that acceptance of gifts falls into three distinct categories: those that are (1) strictly prohibited (ABA Model Rule 3.13(A)), (2) acceptable and do not require any reporting (ABA Model Rule 3.13(B)), and (3) allowed, but must be reported and disclosed in accordance with 3.15 (ABA Model Rule 3.13(C)).</p> <p>The proposed rule removes the words “and Reporting” within the title, and therefore does not address reporting requirements, which fall within the scope of Proposed Rule 3.15. Another main difference in the first paragraph of the proposed rule adds the word “favors” and deletes reference to whether acceptance would appear to a reasonable person to undermine the judge’s independence, integrity, or impartiality. It also removes reference to those “prohibited by law.”</p>
<p><u>Proposed Rule 3.13(1)</u> reflects the concepts addressed in Illinois Supreme Court Rule 65C(4), but includes items with little intrinsic value, which are not listed in the Illinois Code.</p>	<p><u>Proposed Rule 3.13(1)</u> is identical to ABA Model Rule 3.13(A)(1).</p>
<p><u>Proposed Rule 3.13(2)</u> is new and has no counterpart in the Illinois Code.</p>	<p><u>Proposed Rule 3.13(2)</u> does not substantively differ from ABA Model Rule 3.13(A)(2), but may have grammatical or syntax changes.</p>

Changes from Current Illinois Code	Changes from ABA Model Code
<u>Proposed Rule 3.13(3)</u> reflects the concepts addressed in Illinois Supreme Court Rule 65C(4)(b).	<u>Proposed Rule 3.13(3)</u> is identical to ABA Model Rule 3.13(A)(3).
<u>Proposed Rule 3.13(4)</u> expands on the Illinois Code by including “commercial or financial opportunities and benefits, including special pricing and discounts[,]” as opposed to just loans, provided the same opportunities are available to similarly situated persons who are not judges.	<u>Proposed Rule 3.13(4)</u> is identical to ABA Model Rule 3.13(A)(4).
<u>Proposed Rule 3.13(5)</u> expands on the Illinois Code by including “rewards and prizes given to competitors or participants in random drawings, contests, or other events that are open to persons who are not judges.”	<u>Proposed Rule 3.13(5)</u> is identical to ABA Model Rule 3.13(A)(5).
<u>Proposed Rule 3.13(6)</u> reflects the concepts addressed in Illinois Supreme Court Rule 65C(4)(b).	<u>Proposed Rule 3.13(6)</u> is identical to ABA Model Rule 3.13(A)(6).
<u>Proposed Rule 3.13(7)</u> expands on the Illinois Code by adding “magazines, journals, audiovisual materials, and other resource materials.”	<u>Proposed Rule 3.13(7)</u> is identical to ABA Model Rule 3.13(A)(7).
<u>Proposed Rule 3.13(8)</u> is identical to Illinois Supreme Court Rule 65C(4)(a).	<u>Proposed Rule 3.13(8)</u> deletes ABA Model Rule 3.13(A)(8) in its entirety. Proposed Rule 3.13(8) is, however, identical to ABA Model Rule 3.13(C)(1).
<u>Proposed Rule 3.13(9)</u> reflects the concepts addressed in Illinois Supreme Court Rule 65C(4)(a), except the proposed introductory paragraph of 3.13(9) adds “domestic partner, or guest...without charge.” Proposed Rule 3.13(9)(b), however, includes a new section regarding an invitation to events “associated with any of the judge’s educational, religious, charitable, fraternal or civic activities permitted by this Code, if the same invitation is offered to nonjudges who are engaged in similar ways in the activity as is the judge.”	<u>Proposed Rule 3.13(9)</u> reflects the concepts addressed in ABA Model Rule 3.13(C)(2). Proposed Rule 3.13(9) is identical to ABA Model Rule 3.13(C)(2); Proposed Rule 3.13(9)(a) is identical to ABA Model Rule 3.13(C)(2)(a); Proposed Rule 3.13(9)(b) is identical to ABA Model Rule 3.13(C)(2)(b).

<b>Changes from Current Illinois Code</b>	<b>Changes from ABA Model Code</b>
<u>Proposed Rule 3.13(10)</u> reflects the concepts addressed in Illinois Supreme Court Rule 65C(4)(c), except it does not refer to a member of the judge’s family residing in the judge’s household.	<u>Proposed Rule 3.13(10)</u> reflects the concepts addressed in ABA Model Rule 3.13(C)(3) and also includes “favors.”
<u>Proposed Comment [1]</u> is new and has no counterpart in the Illinois Code.	<u>Proposed Comment [1]</u> differs from ABA Model Comment [1] by deleting the ABA’s classification of when gifts and other things of value are prohibited, acceptable with the need to report, and acceptable without the need to report. Proposed Comment [1] also adds a sentence making it clear that Proposed Rule 3.13 prohibits the acceptance of benefits expect where the risk of improper influence is low.
<u>Proposed Comment [2]</u> is new and has no counterpart in the Illinois Code.	<u>Proposed Comment [2]</u> does not substantively differ from ABA Model Comment [2], but contains grammatical or syntax changes.
<u>Proposed Comment [3]</u> is new and has no counterpart in the Illinois Code.	<u>Proposed Comment [3]</u> is identical to ABA Model Comment [3].
<u>Proposed Comment [4]</u> is new and has no counterpart in the Illinois Code.	<u>Proposed Comment [4]</u> reflects the concepts addressed in ABA Model Comment [4].
<u>Proposed Comment [5]</u> is new and has no counterpart in the Illinois Code.	<u>Proposed Comment [5]</u> reflects the concepts addressed in ABA Model Comment [5].
<u>Proposed Comment [6]</u> is new and has no counterpart in the Illinois Code.	<u>Proposed Comment [6]</u> is new and has no counterpart in the ABA Model Code.
<u>Proposed Comment [7]</u> is new and has no counterpart in the Illinois Code.	<u>Proposed Comment [7]</u> is new and has no counterpart in the ABA Model Code.

### **RULE 3.14: REIMBURSEMENT OF EXPENSES AND WAIVERS OF FEES OR CHARGES**

- (A) Unless otherwise prohibited by Rule 3.1 or other law,\* a judge may accept reimbursement of necessary and reasonable expenses for travel, food, lodging, or other incidental expenses or a waiver or partial waiver of fees or charges for registration, tuition, and similar items from sources other than the judge's employing entity, if the expenses or charges are associated with the judge's participation in extrajudicial activities permitted by this Code.
- (B) Reimbursement of expenses for necessary travel, food, lodging, or other incidental expenses shall be limited to the actual costs reasonably incurred by the judge and, when appropriate to the occasion, by the judge's spouse, domestic partner,\* or guest.
- (C) [Reserved]

#### **COMMENTS**

- [1] Educational, civic, religious, fraternal, and charitable organizations often sponsor meetings, seminars, symposia, dinners, awards ceremonies, and similar events. Judges are encouraged to attend educational programs as both teachers and participants in law-related and academic disciplines in furtherance of their duty to remain competent in the law. Participation in a variety of other extrajudicial activity is also permitted and encouraged by this Code.
- [2] Not infrequently, sponsoring organizations invite certain judges to attend seminars or other events on a fee-waived or partial-fee-waived basis and sometimes include reimbursement for necessary travel, food, lodging, or other incidental expenses. A judge's decision whether to accept reimbursement of expenses or a waiver or partial waiver of fees or charges in connection with these or other extrajudicial activities must be based upon an assessment of all the circumstances. The judge must undertake a reasonable inquiry to obtain the information necessary to make an informed judgment about whether acceptance would be consistent with the requirements of this Code.
- [3] A judge must be assured that acceptance of reimbursement or fee waivers would appear to a reasonable person not to undermine the judge's independence, integrity, or impartiality. The factors that a judge should consider when deciding whether to accept reimbursement or a fee waiver for attendance at a particular activity include:
  - (a) whether the sponsor is an accredited educational institution or bar association rather than a trade association or a for-profit entity;
  - (b) whether the funding comes largely from numerous contributors rather than from a single entity and is earmarked for programs with specific content;

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

<b>Changes from Current Illinois Code</b>	<b>Changes from ABA Model Code</b>
<p><u>Proposed Rule 3.14(A)</u> reflects the concepts addressed in Illinois Supreme Court Rule 66B, except that, in addition to authorizing judges to accept reimbursement for expenses associated with attending permitted extra-judicial activities, the proposed rule authorizes acceptance of waivers of registration of tuition fees for such activities.</p>	<p><u>Proposed Rule 3.14(A)</u> is identical to ABA Model Rule 3.14(A) except that the proposed rule omits reference to Model Rule 3.13(A) consistent with the IJEC’s omission of paragraph (A) in Proposed Rule 3.13.</p>

Changes from Current Illinois Code	Changes from ABA Model Code
<p><u>Proposed Rule 3.14(B)</u> reflects the concepts addressed in Illinois Supreme Court Rule 66B, which provides that reimbursement be limited to the actual cost of the expenses incurred by the judge and adds an acknowledgement that, in addition to a judge’s spouse, reimbursement might be offered to a judge’s domestic partner or guest. The proposed rule omits the recitation of Illinois Supreme Court Rule 66B that reimbursements in excess of actual cost constitute compensation, a conclusion that is not necessary to state in a rule.</p>	<p><u>Proposed Rule 3.14(B)</u> is identical to ABA Model Rule 3.14(B).</p>
<p><u>Proposed Rule 3.14(C)</u>: [Reserved]</p>	<p><u>Proposed Rule 3.14(C)</u> is reserved. ABA Model Rule 3.14(C), which was not adopted by the IJEC, provides that a judge who accepts a waiver of fees or reimbursement of expenses must publicly report that acceptance. The IJEC combined references to economic reporting obligations in Proposed Rule 3.15, which includes a Statement of Economic Interests to be filed annually by Illinois judges. Paragraph 9 of the Statement of Economic Interests addresses the reporting obligation in connection with fee waivers and reimbursed expenses for extra-judicial activities.</p>
<p><u>Proposed Comment [1]</u> reflects the concepts addressed in the Committee Commentary to Illinois Supreme Court Rule 64.</p>	<p><u>Proposed Comment [1]</u> is identical to ABA Model Comment [1].</p>
<p><u>Proposed Comment [2]</u> is new and has no counterpart in the Illinois Code.</p>	<p><u>Proposed Comment [2]</u> is identical to ABA Model Comment [2].</p>

<b>Changes from Current Illinois Code</b>	<b>Changes from ABA Model Code</b>
<p><u>Proposed Comment [3]</u> reflects the concepts addressed in Illinois Supreme Court Rule 66, which provides that reimbursements can be accepted only if doing so does not create the appearance of influencing the judge or the appearance of impropriety. The Illinois Code has no provisions comparable to the listing of factors to be considered in weighing the propriety of accepting reimbursements or waivers contained in subparagraphs (a) through (h) of Comment [3].</p>	<p><u>Proposed Comments [3](a)-(h)</u> are identical to ABA Model Comments [3](a)-(h).</p>

### **RULE 3.15: REPORTING REQUIREMENTS**

A judge shall file annually with the Clerk of the Illinois Supreme Court a verified written statement of economic interests. The contents of, and filing deadline for, the statement shall be as specified by administrative order of this court.

#### **COMMENTS**

The statement of economic interests required by this Rule is intended to (1) maintain and promote public confidence in the integrity, impartiality, fairness, and independence of the judiciary, (2) provide public information bearing on judges' potential conflicts of interest, and (3) foster compliance with the Code. The statement is designed to achieve an appropriate balance with respect to particular information which might reasonably bear on these objectives between the value of public disclosure of that information, on the one hand, and judges' legitimate privacy interests, on the other hand.

#### **ADMINISTRATIVE ORDER**

1. The verified written statement of economic interests referred to in Rule 3.15 shall be filed annually by all judges on or before April 30. Statements also shall be filed by every person who becomes a judge, within 45 days after assuming office. However, judges who assume office on or after December 1 and who file the statement before the following April 30 shall not be required to file another statement until the next year.
2. Before the first Monday in March of each year, the Director of the Administrative Office of the Illinois Courts (the Director) shall inform each judge of the requirements of Rule 3.15 and this order and shall provide a copy of the Statement of Economic Interests. The Director shall do the same for each new judge within 10 days of the judge assuming office.
3. The Clerk is authorized to redact any personal information that is not required to be disclosed in the statement.
4. The Clerk shall maintain a publicly available list of all judges and the last date on which each judge filed the statement.
5. The Clerk shall send a judge acknowledgement of receipt of the judge's statement and the date of filing.
6. All statements shall be made available to the public by written request submitted to the Clerk's office. Each person requesting a statement must first fill out a form prepared by the Director specifying the statement requested, identifying the examiner by name, occupation, address, telephone number, and email address, and listing the date of and the reason for the request. Copies of statements will be

supplied to persons requesting them on payment of a reasonable fee per page as required by the Clerk. Payment will be in the form required by the Clerk.

7. When a copy of a judge's statement is requested, the Clerk shall promptly send the judge a copy of the completed request form.

**STATEMENT OF ECONOMIC INTERESTS  
REQUIRED BY SUPREME COURT RULE 3.15**

**INSTRUCTIONS**

1. You (the "filing judge") are required to report economic interests owned by you or your spouse, domestic partner, or minor children living with you (collectively, "Covered Persons"). You shall keep informed about your economic interests and make a reasonable effort to keep informed about the economic interests of the other Covered Persons.
2. Economic interests must be reported as of the "Record Date," which is December 31 of the year before the date of this Statement.
3. For each category of economic interests, include all assets valued in excess of \$1,000 in which any Covered Person has an ownership interest, including those owned in an Individual Retirement Account (IRA), 401(k) plan, 403(b) plan, 457 plan, deferred compensation plan administered by the State of Illinois, 529 college savings plan, Uniform Gift to Minor Act account, or similar accounts (collectively, "Retirement/Investment Accounts").
4. With respect to dividends, interest, rent, royalties, or distributions (collectively, "income"), report any income received during the 12-month period before the Record Date. Only report whether income was received, and not any amount.
5. Attach additional pages if the space provided is insufficient.

1. NAME OF FILING JUDGE: \_\_\_\_\_

2. COURT: \_\_\_\_\_ DISTRICT/CIRCUIT \_\_\_\_\_.

3. CURRENT ECONOMIC INTERESTS.

a. FINANCIAL INSTITUTIONS.

- i. List each financial institution in which any Covered Person has assets valued in excess of \$1,000, including assets held in savings accounts, checking accounts, money market accounts, certificates of deposits, or “Retirement/Investment Accounts” (as defined in Paragraph 3 of the Instructions).
- ii. Do not provide account numbers. Multiple accounts at the same financial institution need not be separately listed.

Financial Institution

Check box if none.

b. STOCKS, BONDS, ETF, AND MUTUAL FUNDS.

- i. List stocks, bonds, exchange traded funds (ETF), and mutual funds valued in excess of \$1,000 owned by a Covered Person, including such assets held in a Retirement/Investment Account (as defined in Paragraph 3 of the Instructions).
- ii. Do not list (1) multiple holdings of the same security (*e.g.*, multiple U.S. Treasury Notes), (2) multiple securities issued by the same issuer, (3) different mutual funds in the same mutual fund family, (4) assets owned by a mutual fund or ETF, or (5) deposits or proprietary interests held as a member of a mutual savings association or credit union.

Name of Issuer or Mutual Fund or ETF Family	Nature of Security (i.e., stock, bond, mutual fund, ETF)

Check box if none.

c. REAL ESTATE.

- i. List all real estate in which any Covered Person has an ownership interest, including a beneficial interest in a land trust.
- ii. For each personal residence of a Covered Person or a Covered Person's family member, state "personal residence" and do not provide address.

Address (other than for a personal residence)	Type of Property (e.g., single-family residence, condominium, farmland, etc.)	Income Received? (Yes/No)

Check box if none.

- d. PENSION PLANS. List any non-judicial pension plan in which any Covered Person has an interest. This does not include: (1) Individual Retirement Accounts, 401(k) plans, 403(b) plans, or 457 plans; or (2) any benefits from the Social Security Administration.

Plan Sponsor/Administrator	Income Received? (Yes/No)

Check box if none.

- e. INTERESTS IN INTANGIBLE PROPERTY. List any interest valued in excess of \$1,000 in intangible property, not reported above, owned by any Covered Person. This includes, but is not limited to, an interest in any partnership, corporation, limited liability company, trust, copyright, trademark, or chose in action.

Description of Intangible Property	Nature of Interest	Income Received? (Yes/No)

Check box if none.

- f. EMPLOYMENT. List every paid employment of a Covered Person, with the exception of the filing judge's judicial employment.

Name of Employer

Check box if none.

- g. NON-INVESTMENT INCOME. List the nature of all non-investment income, other than employment income, received by a Covered Person from any one source that totals at least \$1,000 in the 12-month period before the Record Date. Income includes, but is not limited to, fees, commissions, payments for personal services, and royalties. Do not include the amount.

Source of Non-Investment Income	Nature of Non-Investment Income (Commission, Royalty, etc.)

Check box if none.

4. INDEBTEDNESS.

- a. List all creditors to whom amounts in excess of \$1,000 were owed by any Covered Person on the Record Date and identify any sureties or guarantors of any such indebtedness.
- b. Do not include any debt, including credit card debt, which was paid in its entirety within 90 days of when it was incurred. For these purposes, medical or dental expenses are not considered to be incurred until the amount of the Covered Person's financial responsibility is determined after the application of any insurance benefits.
- c. The amount of each listed indebtedness shall be reported by reference to a letter category, as follows: Category A – \$1,000.01-\$5,000; Category B – \$5000.01-\$15,000; Category C –\$15,000.01- \$50,000; Category D – \$50,000.01-\$100,000; Category E – \$100,000.01-\$250,000; and Category F – greater than \$250,000. This categorization shall be reported as of the Record Date.

Name of Creditor	Valuation Category on Record Date	Identity of any Surety or Guarantor of the Indebtedness

5. RELATIONSHIPS WITH LAWYERS.

- a. Identify all persons, other than Covered Persons, known by the filing judge to be licensed or registered to practice law who, at any time within the 12-month period before the Record Date, was a co-owner with a Covered Person of any economic interest, a co-obligor with or a creditor of a Covered Person, or the payor to a Covered Person of any income, payments, or benefits, required to be disclosed in Paragraphs 3 or 4. State the nature of each economic interest, indebtedness, or income, payments, or benefits, and whether it is ongoing or terminated as of the Record Date.

Name of Lawyer	Nature of Economic Interest, Indebtedness, or Income, Payments, or Benefits	Ongoing or Terminated

Check box if none.

- b. Identify all lawyers with whom the filing judge was associated in the private practice of law within three years of the date of this filing. The name of the firm may be substituted where the association was with five or more lawyers.

Name of Lawyer or Law Firm	Address

Check box if none.

6. BOARD SERVICE. List every office or directorship held by a Covered Person, regardless of whether compensation is received. Do not include any uncompensated or honorary positions in educational, religious, charitable, fraternal, civic, social, or law-related organizations unless those organizations are either conducted for profit or regularly engaged in adversary proceedings in any court.

Name of Organization	Position Held	Compensation Received? (Yes/No)

Check box if none.

7. LITIGATION.

- a. List all court cases or arbitration proceedings known to the filing judge pending on or within 12 months before the Record Date in which a Covered Person either was a party or had more than a *de minimis* financial interest (*i.e.*, a monetary interest that could not raise a reasonable question as to the judge’s impartiality). Do not include: (1) proceedings in which a Covered Person is a party solely in an official capacity; (2) class actions in which a Covered Person is not a named class representative; or (3) motor vehicle offenses that are punishable by fine only.

Case Name, Tribunal, and Case Number

Check box if none.

- b. List all cases in which the filing judge was a referring lawyer with an economic interest that are still pending on the Record Date or that were resolved within three years before the Record Date. Include the name of the lawyer or law firm to which the case was referred.

Case Name, Court Where Pending, and Case Number	Identity of Lawyer or Law Firm to Which the Case Was Referred	Pending Case? (Yes/No)

Check box if none.

8. **FIDUCIARY POSITIONS.** List all fiduciary positions held by the filing judge on the Record Date. Examples include service as a trustee, executor, estate administrator, guardian of the estate, or agent pursuant to a power of attorney for property. Do not include fiduciary positions held for the benefit of a family member of a Covered Person. Identify by name each person, other than a Covered Person, for whom the filing judge is serving as fiduciary.

Fiduciary Position	Name of Person for Whom the Filing Judge Is Serving as Fiduciary

Check box if none.

9. **HONORARIA, REIMBURSEMENT OF EXPENSES, AND WAIVERS OF FEES.** List all honoraria, reimbursement of expenses, and waivers of fees (collectively, “Benefits”) that (a) either individually or in the aggregate from the same provider of the Benefits exceed \$500.00, and (b) were received by a Covered Person, or a guest of the filing judge in connection with an event at which the Benefits were received, during the 12-month period prior to the Record Date. Do not report (a) waivers of fees to any unit of government, or (b) reimbursement or payment of expenses, or provision of resources, by any unit of government. Identify the provider of each Benefit and state the type of the recipient of each Benefit (*i.e.*, filing judge, filing judge’s guest, spouse, domestic partner, or child) rather than the specific name.

The value of each Benefit shall be reported by reference to a letter category, as follows:  
 Category A – \$500.00-\$2,500.00; Category B – \$2,500.01- \$5,000.00; Category C –greater than \$5,000.00.

Identity of Provider of the Benefit	Description of the Benefit	Type of Recipient of the Benefit	Value of the Benefit

Check box if none.

10. **GIFTS.** List all gifts that (a) either individually or in the aggregate from the same donor exceed \$500.00, and (b) were received by a Covered Person during the 12-month period prior to the Record Date. Do not include gifts between Covered Persons or between Covered Persons and any of their great-grandparents, grandparents, parents, uncles, aunts, brothers, sisters, grandchildren, great-grandchildren, nephews, and nieces. Identify the provider of each gift

and state the type of the recipient of each gift (*i.e.*, filing judge, spouse, domestic partner, or child) rather than the specific name.

The value of each gift shall be reported by reference to a letter category, as follows:  
 Category A – \$500.00-\$2,500.00; Category B – \$2,500.01- \$5,000.00; Category C –greater than \$5,000.00.

<b>Identity of Provider of the Gift</b>	<b>Description of the Gift</b>	<b>Type of Recipient of the Gift</b>	<b>Value of the Gift</b>

Check box if none.

11. **ADDITIONAL DISCLOSURES.** List any economic interest not previously disclosed in this Statement that could create a basis for disqualification of the filing judge under Supreme Court Rule 2.11. Identify the person whose economic interest could create a basis for disqualification, but if that person is a Covered Person state the type of that Covered Person (*i.e.*, filing judge, spouse, domestic partner, or child) rather than the specific name.

<b>Type of Covered Person or Identity of Other Person with an Economic Interest That Could Create a Basis for Disqualification</b>	<b>Nature of Economic Interest</b>

Check box if none.

## VERIFICATION

Pursuant to Supreme Court Rule 3.15, I declare that this Statement of Economic Interests, including any accompanying schedules and statements, has been examined by me and to the best of my knowledge and belief is true, correct, and complete.

\_\_\_\_\_  
(Signature of Filing Judge)

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
(Printed Name of Filing Judge)

<b>Changes from Current Illinois Code</b>	<b>Changes from ABA Model Code</b>
<p><u>Proposed Rule 3.15</u> reflects the concepts addressed in Illinois Supreme Court Rule 66C, which recites general rules for an annual report of economic interests, followed by an Administrative Order describing the specific information that must be disclosed and linking to the form to be used for disclosures. Proposed Rule 3.15 includes as text of the Rule only the general statement of an annual reporting obligation. Provisions identifying schedules for reporting and what information must be reported, as well as a form for reporting are all incorporated in a Proposed Administrative Order which is intended to be included in any publication of the proposed rule, consistent with the present publication of Illinois Supreme Court Rule 66C.</p>	<p><u>Proposed Rule 3.15</u> differs from ABA Model Rule 3.15 in that the ABA Model Rule addresses public reporting obligations concerning only compensation for extrajudicial activities, gifts, and expense reimbursements and fee waivers, while Proposed Rule 3.15 incorporates all economic interest reporting obligations for Illinois judges. Structurally, the proposed rule differs from the model rule by limiting the text of the rule to a statement of the general requirement of annual reporting of economic interests with specifics as to how reports are to be made and what information must be reported set forth in a Proposed Administrative Order. The Proposed Administrative Order includes requirements for reporting the limited economic interests addressed by ABA Model Rule 3.15 with some departures from the model rule which are explained below.</p>
<p><u>Proposed Comment</u> is new and has no counterpart in the Illinois Code.</p>	<p><u>Proposed Comment</u> is new and has no counterpart in the ABA Model Code.</p>

Changes from Current Illinois Code	Changes from ABA Model Code
<p><u>Proposed Administrative Order ¶1</u> reflects the current provisions governing dates for filing found in both the text of Illinois Supreme Court Rule 66C and the opening paragraph of the current Administrative Order.</p>	<p><u>Proposed Administrative Order ¶1</u> differs from ABA Model Rule 3.15, which requires reimbursements and fee waivers to be reported within 30 days of the event or program leading to payment. Instead, the Proposed Administrative Order provides for annual reporting of all economic interests, including reimbursements for expenses or fee waivers accepted by a judge in connection with extra-judicial activities.</p>
<p><u>Proposed Administrative Order ¶2</u> reflects the current provisions appearing at the concluding paragraph of the current Administrative Order for dates upon which the Director of the Administrative Office must notify judges of the annual reporting requirement and transmit the form to be used for the report.</p>	<p><u>Proposed Administrative Order ¶2</u> is new and has no counterpart in the ABA Model Code.</p>
<p><u>Proposed Administrative Order ¶3</u> reflects the concepts addressed in the concluding paragraph of the current Administrative Order by authorizing the Clerk to redact private information that a judge may include in a report; however, the current Administrative Order requires the Clerk to do so.</p>	<p><u>Proposed Administrative Order ¶3</u> is new and has no counterpart in the ABA Model Code.</p>
<p><u>Proposed Administrative Order ¶4</u> reflects the requirement in Illinois Supreme Court Rule 66C of maintaining a public list of all judges and the last date upon which they filed a statement of economic interest.</p>	<p><u>Proposed Administrative Order ¶4</u> is new and has no counterpart in the ABA Model Code.</p>
<p><u>Proposed Administrative Order ¶5</u> reflects the requirement in Illinois Supreme Court Rule 66C that the Clerk provide each filing judge an acknowledgement of receipt.</p>	<p><u>Proposed Administrative Order ¶5</u> is new and has no counterpart in the ABA Model Code.</p>
<p><u>Proposed Administrative Order ¶6</u> reflects the requirements of Illinois Supreme Court Rule 66C for making filed statements of economic interest available upon public inquiry, including that the inquirer must be identified in writing at the time of the request.</p>	<p><u>Proposed Administrative Order ¶6</u> does not adopt the provision of ABA Model Rule 3.15 requiring that the more limited disclosures required under that Rule should, where technically feasible, be published on a website.</p>

Changes from Current Illinois Code	Changes from ABA Model Code
<p><u>Proposed Administrative Order ¶7</u> reflects the requirement of Illinois Supreme Court Rule 66C that the Clerk promptly send any judge whose statement of economic interests has been requested by a member of the public a copy of the completed request form.</p>	<p><u>Proposed Administrative Order ¶7</u> is new and has no counterpart in the ABA Model Code.</p>
<p><u>Proposed Statement of Economic Interests – Instructions</u> differs from current reporting requirements in these respects:</p> <ol style="list-style-type: none"> <li>1) the proposed instructions set forth a definition of “Covered Persons” that includes domestic partners along with spouses and minor children living with the judge;</li> <li>2) the proposed instructions set a \$1000 threshold for all categories of assets held by Covered Persons that must be reported, whereas the current Administrative Order does not exempt reporting of assets with lower value; and</li> <li>3) the proposed instructions specify December 31 of the year preceding the report as the effective date of what data must be reported as opposed to the current effective date of 30 days prior to the report.</li> </ol>	<p><u>Proposed Statement of Economic Interests – Instructions</u> is new and has no counterpart in the ABA Model Code.</p>
<p><u>Proposed Statement of Economic Interests ¶3</u> differs from the current Administrative Order by breaking out seven different types of assets and income that must be reported and provides specific instructions relevant to each type. The format is intended to ease the decisions about what to report and how to report particular classes of income and assets and to promote the clarity and accuracy of reports.</p>	<p><u>Proposed Statement of Economic Interests ¶3</u> is new and has no counterpart in the ABA Model Code.</p>

Changes from Current Illinois Code	Changes from ABA Model Code
<p><u>Proposed Statement of Economic Interests ¶4</u> differs from the current Administrative Order by raising the threshold for amounts that must be disclosed from \$500 to \$1000, as set forth in the current Administrative Order at Paragraph 3. The Proposed Statement of Economic Interests also changes the standard for what credit card debt need not be reported. Currently, revolving credit card debt of less than \$5000 need not be reported. The Proposed Statement of Economic Interests exempts from reporting any credit card debt paid in its entirety within 90 days of when it was incurred.</p>	<p><u>Proposed Statement of Economic Interests ¶4</u> is new and has no counterpart in the ABA Model Code.</p>
<p><u>Proposed Statement of Economic Interests ¶5:</u> Paragraph 5(a) of the Proposed Statement of Economic Interests reflects the concepts addressed in Paragraph 4 of the current Administrative Order, which addresses reporting names of lawyers with whom the judge or another covered person holds economic interests and the nature of the interests. Paragraph 5(b) of the Proposed Statement of Economic Interests is new and has no counterpart in the current Administrative Order. This paragraph requires a report of lawyers or firms with which the judge was associated in the practice of law within three years of the date of filing the report.</p>	<p><u>Proposed Statement of Economic Interests ¶5</u> is new and has no counterpart in the ABA Model Code.</p>
<p><u>Proposed Statement of Economic Interests ¶6</u> reflects the concepts addressed in Paragraph 5 of the current Administrative Order, which addresses reporting board service by judges and other Covered Persons, except that the current Administrative Order exempts reporting of unsalaried positions in religious, social, or fraternal organizations, whereas the Proposed Statement of Economic Interests would require a judge to report board service for educational, religious, charitable, fraternal, civic, social, or law-related organizations if the organization is conducted for profit or if the organization is regularly</p>	<p><u>Proposed Statement of Economic Interests ¶6</u> is new and has no counterpart in the ABA Model Code.</p>

Changes from Current Illinois Code	Changes from ABA Model Code
engaged in adversary proceedings in any court.	
<p data-bbox="203 348 789 667"><u>Proposed Statement of Economic Interests ¶7</u> reflects the concepts addressed in Paragraph 6 of the current Administrative Order, which addresses pending litigation. Both provisions require reports of pending litigation in which a Covered Person is a party in interest. The Proposed Statement of Economic Interests differs from the current Administrative Order in that it:</p> <ol style="list-style-type: none"> <li data-bbox="237 716 789 814">1) requires reporting of litigation that was pending within 12 months of the reporting date, not just as of the reporting date;</li> <li data-bbox="237 863 789 1108">2) includes litigation in which a Covered Person has a more than <i>de minimis</i> interest in a matter, even if not a party (currently limited to matters in which a party is an economic entity in which a judge or member of the judge’s family has an interest);</li> <li data-bbox="237 1157 789 1255">3) excludes matters in which any Covered Person (not just the judge) is sued in an official capacity;</li> <li data-bbox="237 1304 789 1444">4) includes a provision concerning class actions, which need not be reported if a Covered Person is not a named class representative; and</li> <li data-bbox="237 1493 789 1549">5) excludes motor vehicle offenses punishable by fine only.</li> </ol> <p data-bbox="203 1591 789 1732">Paragraph 7(b) of the Proposed Statement of Economic Interests is new and has no counterpart in the current Administrative Order.</p>	<p data-bbox="820 348 1422 447"><u>Proposed Statement of Economic Interests ¶3:</u> ABA Model Rule 3.15 includes no comparable provision.</p>

Changes from Current Illinois Code	Changes from ABA Model Code
<p><u>Proposed Statement of Economic Interests ¶8</u> reflects the concepts addressed in Paragraph 7 of the current Administrative Order, except that the Proposed Statement of Economic Interests excludes fiduciary positions held for the benefit of a family member of a Covered Person.</p>	<p><u>Proposed Statement of Economic Interests ¶8</u> is new and has no counterpart in the ABA Model Code.</p>
<p><u>Proposed Statement of Economic Interests ¶9</u> reflects the concepts addressed in Paragraph 1 of the current Administrative Order, except that the Proposed Statement of Economic Interests requires a report when the payments or waivers from any one source exceed \$500 and were received within the 12 months preceding the report date, whereas the current Administrative Order does not include the \$500 threshold. In other respects, the provisions are comparable.</p>	<p><u>Proposed Statement of Economic Interests ¶9:</u> ABA Model Rule 3.15 requires reporting of the information covered by Paragraph 9 of the Proposed Statement of Economic Interests, but it differs in that: it requires reporting of all honoraria, reimbursements, and fee waivers whether or not the amounts exceed \$500 from the same source; it requires reporting of the date, place, and nature of the activity in connection with which the honoraria, reimbursements, or fee waivers occurred; and it requires the report to be made within 30 days of the event or program for which honoraria, reimbursements, or waivers occurred.</p>
<p><u>Proposed Statement of Economic Interests ¶10</u> reflects the concepts addressed in Paragraph 8 of the current Administrative Order. The differences are that Paragraph 9 of the Proposed Statement of Economic Interests sets a higher threshold value for gifts that must be reported (\$500, as compared to \$100 under the current Administrative Order), and it adds to the list of relative-donors whose gifts need not be reported. Currently, gifts from a spouse, child, or parent are exempted from report, whereas Proposed Paragraph 9 would add gifts from grandparents, great-grandparents, aunts, uncles, brothers, sisters, grandchildren, great-grandchildren, nephews and nieces.</p>	<p><u>Proposed Statement of Economic Interests ¶10</u> is new and has no counterpart in the ABA Model Code.</p>
<p><u>Proposed Statement of Economic Interests ¶11</u> reflects the concepts addressed in Paragraph 9 of the current Administrative Order, which requires a judge to report any interest not otherwise identified that could create a basis for disqualification.</p>	<p><u>Proposed Statement of Economic Interests ¶11</u> is new and has no counterpart in the ABA Model Code.</p>

**CANON 4**

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

<b>Changes from Current Illinois Code</b>	<b>Changes from ABA Model Code</b>
<p><u>Proposed Canon 4</u> reflects the concepts addressed in Illinois Supreme Court Rule 67, which provides that “A Judge or Judicial Candidate Shall Refrain from Inappropriate Political Activity.”</p>	<p><u>Proposed Canon 4</u> is identical to ABA Model Canon 4, except that it uses the defined term “Judicial Candidate” instead of “Candidate for Judicial Office.”</p>

**RULE 4.1: POLITICAL AND CAMPAIGN ACTIVITIES IN PUBLIC ELECTIONS**

- (A) Except as authorized in paragraphs (D)(2) and (F), a judge or judicial candidate shall not:
  - (1) act as a leader or hold an office in a political organization;\*
  - (2) publicly endorse or publicly oppose another candidate for public office;
  - (3) make speeches on behalf of a political organization; or
  - (4) solicit funds for, or pay an assessment to, a political organization or candidate.
- (B) A judge shall resign from judicial office upon becoming a candidate for a non-judicial elected office.
- (C) A judicial candidate:
  - (1) shall maintain the dignity appropriate to judicial office and act in a manner consistent with the independence, integrity, and impartiality of the judiciary;
  - (2) shall prohibit employees and officials who serve at the pleasure of the candidate, and shall discourage other employees and officials subject to the candidate's direction and control, from doing on the candidate's behalf what the candidate is prohibited from doing under the provisions of this Rule;
  - (3) except to the extent permitted by Paragraph (E), shall not authorize, encourage, or knowingly permit members of the judicial candidate's family\* or other persons to do for the candidate what the candidate is prohibited from doing under the provisions of this Rule;
  - (4) shall not:
    - (a) make pledges, promises, or commitments that are inconsistent with the impartial performance of the adjudicative duties of judicial office with respect to cases, controversies, or issues that are likely to come before the court; or
    - (b) knowingly misrepresent the identity, qualifications, present position, or other fact concerning the candidate or an opponent.
- (D) A judge or judicial candidate may, except as prohibited by law:
  - (1) at any time:

- (a) purchase tickets for and attend political gatherings;
  - (b) identify as a member of a political party; and
  - (c) contribute to a political organization.
- (2) when a candidate for public election:\*
- (a) speak to gatherings supporting candidacy;
  - (b) appear in advertisements and other electronic media supporting the candidacy;
  - (c) distribute campaign materials supporting the candidacy;
  - (d) publicly endorse or publicly oppose any judicial candidates in a primary or general election in which the judge or judicial candidate is running and use or allow the use of campaign materials authorized by Paragraph F;
  - (e) respond to personal attacks or attacks on the candidate's record as long as the response does not violate Paragraph (C)(4) and is not reasonably expected to impair the fairness of a matter pending or impending in any court. *See* Rule 2.10(D).
- (E) A judicial candidate shall not:
- (1) personally solicit\* or accept campaign contributions; or
  - (2) use or permit the use of campaign contributions for the private benefit of the candidate or others. *See* Rule 4.4.
- (F) A candidate for judicial office in a public election may permit the candidate's name or image to be included in campaign materials along with other candidates for elective public office.
- (G) A judge shall not engage in any political activity, except:
- (1) as authorized under Rule 4.1(D) and Rule 4.4;
  - (2) on behalf of measures that concern the law, the legal system, or the administration of justice; or
  - (3) as expressly authorized by law.

- (H) Rule 4.1 applies to all judges and judicial candidates. Judges and successful judicial candidates are subject to judicial discipline for their campaign conduct. Lawyers are subject to lawyer discipline for their campaign conduct that violates Rule 4.1 of the Rules of Professional Conduct.

## COMMENTS

- [1] A judge plays a role different from that of a legislator or executive branch official. Rather than making decisions based upon the expressed views or preferences of the electorate, a judge makes decisions based upon the law and the facts of every case. Therefore, in furtherance of this interest, judges and judicial candidates must, to the greatest extent possible, be free and appear to be free from political influence and political pressure. This Canon imposes narrowly tailored restrictions upon the political and campaign activities of all judges and judicial candidates.
- [2] When a person becomes a judicial candidate, this Canon becomes applicable.
- [2A] Except as may be specifically authorized in the context of judicial election campaigns, Rule 4.1 prohibits judges and judicial candidates from “publicly” endorsing or making “speeches” on behalf of political candidates or organizations. Comments by judges active on social media or social networking platforms may be considered “public” for purposes of this Rule.

## PARTICIPATION IN POLITICAL ACTIVITIES

- [3] Public confidence in the independence, integrity, and impartiality of the judiciary is eroded if judges or judicial candidates are perceived to be subject to political influence.
- [4] Paragraphs (A)(2) and (A)(3) prohibit judges and judicial candidates from making speeches on behalf of political organizations or publicly endorsing or opposing candidates for public office, respectively, to prevent them from abusing misusing the prestige of judicial office to advance the interests of others. *See* Rule 1.3. The prohibition contained in Paragraph (A)(3) does not prohibit candidates from campaigning on their own behalf or from endorsing or opposing candidates for judicial office in the same primary or general election.
- [5] Although members of the families of judges and judicial candidates are free to engage in their own political activity, including running for public office, there is no “family exception” to the prohibition in paragraph (A)(2) against a judge or candidate publicly endorsing candidates for public office. A judge or judicial candidate must not become involved in, or publicly associate with, a family member’s political activity or campaign for public office. To avoid public misunderstanding, judges and judicial candidates should take, and should urge members of their families to take, reasonable steps to avoid any implication that they endorse any family member’s candidacy or other political activity. The judge

or judicial candidate may, however, attend events advancing the candidacy of the family member and contribute financially to the family member's campaign to the same extent that a judge or judicial candidate may attend events and contribute money to any other candidate for public office.

- [5A] Because society recognizes the special relationship between members of a family, including the expectation that family members generally support each other in all facets of their lives, there is less danger that a judge's association with a family member's campaign for public office will create the impression that the judge is misusing judicial prestige to support the candidate. For example, a judge may appear in a photograph to be used in a family member's campaign for public office. A judge must not, however, be depicted in judicial robes in a courtroom or other context that suggests the prestige of judicial office is being misused.
- [5B] A judge or judicial candidate should encourage family members in supporting the candidacy of the judge or judicial candidate to adhere to the same standards of political conduct contained in this Canon.
- [6] Judges and judicial candidates retain the right to participate in the political process as voters in any election. Judges and judicial candidates may sign election-related petitions. Judicial candidates may also circulate petitions for themselves or other judicial candidates in the same election, but must not circulate petitions for any non-judicial candidates for public office.

#### STATEMENTS AND COMMENTS MADE DURING A CAMPAIGN FOR JUDICIAL OFFICE

- [7] Judicial candidates should be scrupulously fair and accurate in all statements made by them and by their campaign committees. Paragraph (C)(4)(b) obligates candidates to refrain from knowingly, or with reckless disregard for the truth, making statements that are false or misleading or that omit facts necessary to make the communication considered as a whole not a false or misleading statement.
- [8] Judicial candidates are sometimes the subject of false, misleading, or unfair allegations made by opposing candidates, third parties, or the media. For example, false or misleading statements might be made regarding the identity, present position, experience, qualifications, or judicial rulings of a candidate. In other situations, false or misleading allegations may be made that bear upon a candidate's integrity or fitness for judicial office. As long as the candidate does not violate paragraph (D)(2)(e), the candidate may make a factually accurate public response. In addition, when false or misleading statements have been made regarding a candidate's opponent, the candidate should disavow the statements and request the source of the statements to cease.
- [9] Subject to paragraph (D)(2)(e), a judicial candidate is permitted to respond directly to false or misleading allegations made against him or her. The candidate should

consider whether it is preferable for someone else to respond if the allegations relate to a pending case.

- [10] Paragraph (C)(4)(a) prohibits judicial candidates from making comments that might impair the fairness of pending or impending judicial proceedings. This provision does not restrict arguments or statements to the court or jury by a lawyer who is a judicial candidate or rulings, statements, or instructions by a judge that may appropriately affect the outcome of a matter.

#### PLEDGES, PROMISES, OR COMMITMENTS INCONSISTENT WITH IMPARTIAL PERFORMANCE OF THE ADJUDICATIVE DUTIES OF JUDICIAL OFFICE

- [11] The role of a judge is different from that of a legislator or executive branch official, even when the judge is subject to public election. Campaigns for judicial office must be conducted differently from campaigns for other offices. The narrowly drafted restrictions upon political and campaign activities of judicial candidates provided in Canon 4 allow candidates to conduct campaigns that provide voters with sufficient information to permit them to distinguish between candidates and make informed electoral choices.
- [12] Paragraph (C)(4)(a) makes applicable to both judges and judicial candidates the prohibition that applies to judges in Rule 2.10(B) relating to pledges, promises, or commitments that are inconsistent with the impartial performance of the adjudicative duties of judicial office.
- [13] The making of a pledge, promise, or commitment is not dependent upon, or limited to, the use of any specific words or phrases; instead, the totality of the statement must be examined to determine if a reasonable person would believe that the candidate for judicial office has specifically undertaken to reach a particular result. Pledges, promises, or commitments must be contrasted with statements or announcements of personal views on legal, political, or other issues, which are not prohibited. When making such statements, a judge should acknowledge the overarching judicial obligation to apply and uphold the law without regard to any personal views.
- [14] A judicial candidate may make promises related to judicial organization, administration, and court management, such as a promise to dispose of a backlog of cases, start court sessions on time, or avoid favoritism in appointments and hiring. A candidate may also pledge to take action outside the courtroom, such as working toward an improved jury selection system or advocating for more funds to improve the physical plant and amenities of the courthouse.
- [15] Judicial candidates who respond to questions or questionnaires or requests for interviews may have their responses viewed as improper pledges, promises, or commitments. *See* Comment 13. To avoid violating paragraph (D)(2)(e), candidates who respond should give assurances that they will keep an open mind

and will carry out their adjudicative duties faithfully and impartially. Candidates who do not respond may state their reasons such as the danger that answering might be perceived by a reasonable person as undermining a successful candidate’s independence or impartiality or that it might lead to frequent disqualification. *See* Rule 2.11.

Changes from Current Illinois Code	Changes from ABA Model Code
<u>Proposed Rule 4.1</u> reflects the concepts addressed in Illinois Supreme Court Rule 67, which provides instruction on the political and campaign activities of judges in public elections.	<u>Proposed Rule 4.1</u> as detailed below, the IJEC recommends combining the provisions of ABA Model Rules 4.1 and 4.2 into a single rule. While Proposed Rule 4.1 differs in structure from the ABA Model rules, it contains similar instruction on political and campaign activities of judges in public elections to those contained in ABA Model Rules 4.1 and 4.2.
<u>Proposed Rule 4.1(A)</u> reflects the concepts addressed in Illinois Supreme Court Rule 67A(1).	<u>Proposed Rule 4.1(A)</u> reflects the concepts addressed in ABA Model Rule 4.1(A) which states: “[e]xcept as permitted by law,* or by Rules 4.2, 4.3, and 4.4, a judge or judicial candidate* shall not...”
<u>Proposed Rule 4.1 (A)(1)</u> is identical to Illinois Supreme Court Rule 67A(1)(a).	<u>Proposed Rule 4.1(A)(1)</u> reflects the concepts addressed in ABA Model Rule 4.1(A)(1).
<u>Proposed Rule 4.1(A)(2)</u> is identical to Illinois Supreme Court Rule 67A(1)(b).	<u>Proposed Rule 4.1(A)(2)</u> is identical to ABA Model Rule 4.1(A)(3) and also reflects the concepts addressed in ABA Model Rule 4.2(B)(3), which allows a judicial candidate to “publicly endorse or oppose candidates for the same judicial office for which he or she is running.”
<u>Proposed Rule 4.1(A)(3)</u> is identical to Illinois Supreme Court Rule 67A(1)(c).	<u>Proposed Rule 4.1(A)(1)(3)</u> is identical to ABA Model Rule 4.1(A)(2).
<u>Proposed Rule 4.1(A)(4)</u> is identical to Illinois Supreme Court Rule 67A(1)(d).	<u>Proposed Rule 4.1(A)(4)</u> is identical to ABA Model Rule 4.1(A)(4). However, ABA Model Rule 4.2(B)(6) allows a judicial candidate to contribute to a political organization or candidate for public office.

Changes from Current Illinois Code	Changes from ABA Model Code
<p><u>Proposed Rule 4.1(B)</u> reflects the concepts addressed in Illinois Supreme Court Rule 67A(2), except that the proposed rule qualifies its application to candidates for non-judicial “elected” office. Additionally, Proposed Rule 4.1(B) eliminates the language “either in a primary or in a general election.”</p>	<p><u>Proposed Rule 4.1(B)</u> reflects the concepts addressed in ABA Model Rule 4.5.</p>
<p><u>Proposed Rule 4.1(C)(1)</u> reflects the concepts addressed in Illinois Supreme Court Rule 67A(3)(a), except that the proposed rule requires that judges also act in a manner consistent with the “impartiality” of the judiciary (<i>e.g.</i>, “independence, integrity, and impartiality” of the judiciary). Proposed Rule 4.1(C)(1) eliminates the following language contained in Illinois Supreme Court Rule 67A(3)(a): “and shall encourage members of the candidate’s family to adhere to the same standards of political conduct in support of the candidate as apply to the candidate.”</p>	<p><u>Proposed Rule 4.1(C)</u> reflects the concepts addressed in ABA Model Rule 1.2 (“A judge shall act at all times in a manner that promotes public confidence in the independence,* integrity,* and impartiality* of the judiciary, and shall avoid impropriety and the appearance of impropriety,”) and ABA Model Rule 4.2(A) (“A judicial candidate* in a partisan, nonpartisan, or retention public election* shall: (1) act at all times in a manner consistent with the independence,* integrity,* and impartiality* of the judiciary...”).</p>
<p><u>Proposed Rule 4.1(C)(2)</u> reflects the concepts addressed in Illinois Supreme Court Rule 67A(3)(b).</p>	<p><u>Proposed Rule 4.1(C)(2)</u> reflects the concepts addressed in ABA Model Rule 4.2(A)(4), which requires a judge or candidate to prohibit and discourage employees and officials subject to their control from doing things on behalf of the judge or candidate that the judge or candidate is prohibited from doing under the ABA Model Code of Judicial Conduct.</p>
<p><u>Proposed Rule 4.1(C)(3)</u> reflects the concepts addressed in Illinois Supreme Court Rule 67A(3)(c), except that the proposed rule prohibits judges from authorizing the family members of judicial candidates from doing what a judicial candidate is prohibited from doing under the provisions of Proposed Canon 4.</p>	<p><u>Proposed Rule 4.1(C)(3)</u> reflects the concepts addressed in ABA Model Rule 4.2(A)(4), except that it prohibits family members of a judge or judicial candidate from engaging in conduct on behalf of the judge or candidate that would violate the ABA Model Code of Judicial Conduct.</p>

<b>Changes from Current Illinois Code</b>	<b>Changes from ABA Model Code</b>
<p><u>Proposed Rule 4.1(C)(4)(a)</u> reflects the concepts addressed in Illinois Supreme Court Rule 67A(3)(d)(i), but specifically prohibits judicial candidates from making “pledges, promise, or commitments that are inconsistent with the impartial performance of the adjudicative duties of judicial office with respect to cases, controversies, or issues that are likely to come before the court...”.</p>	<p><u>Proposed Rule 4.1(C)(4)(a)</u> reflects the concepts addressed in ABA Model Rule 4.1(A)(13).</p>
<p><u>Proposed Rule 4.1(C)(4)(b)</u> is identical to Illinois Supreme Court Rule 67A(3)(d)(ii).</p>	<p><u>Proposed Rule 4.1(C)(4)(b)</u> reflects the concepts addressed in ABA Model Rule 4.1(11), except that the proposed rule is broader and specifically prohibits a judge or candidate from “knowingly misrepresent[ing] the identity, qualifications, present position, or other fact concerning the candidate or an opponent.”</p>
<p><u>Proposed Rule 4.1(D)(1)(a)</u> is identical to Illinois Supreme Court Rule 67B(1)(a)(i).</p>	<p><u>Proposed Rule 4.1(D)(1)(a)</u> reflects the concepts addressed in ABA Model Rule 4.1(A)(5) and ABA Model Rule 4.2(B)(4).</p>
<p><u>Proposed Rule 4.1(D)(1)(b)</u> is identical to Illinois Supreme Court Rule 67B(1)(a)(ii).</p>	<p><u>Proposed Rule 4.1(D)(1)(b)</u> reflects the concepts addressed in ABA Model Rule 4.1(A)(6), except that the proposed rule replaces “political organization” with “political party.”</p>
<p><u>Proposed Rule 4.1(D)(1)(c)</u> is identical to Illinois Supreme Court Rule 67B(1)(a)(iii).</p>	<p><u>Proposed Rule 4.1(D)(1)(c)</u> reflects the concepts addressed in ABA Model Rule 4.1(A)(4) and ABA Model Rule 4.2(B)(6).</p>
<p><u>Proposed Rule 4.1(D)(2)(a)</u> is identical to Illinois Supreme Court Rule 67B(1)(b)(i).</p>	<p><u>Proposed Rule 4.1(D)(2)(a)</u> reflects the concepts addressed in ABA Model Rule 4.2(B)(2), which allows a judicial candidate to speak supporting the candidacy through any medium.</p>
<p><u>Proposed Rule 4.1(D)(2)(b)</u> reflects the concepts addressed in Illinois Supreme Court Rule 67B(1)(b)(ii) except that it replaces “newspaper, television and other media advertisements supporting his or her candidacy” with “appear in advertisements and other electronic media...”.</p>	<p><u>Proposed Rule 4.1(D)(2)(b)</u> reflects the concepts addressed in ABA Model Rule 4.2(B)(2), which allows a judicial candidate to speak in support of the candidacy through any medium including advertisements, websites, or other campaign literature.</p>

Changes from Current Illinois Code	Changes from ABA Model Code
<p><u>Proposed Rule 4.1(D)(2)(c)</u> reflects the concepts addressed in Illinois Supreme Court Rule 67B(1)(b)(iii), except that it eliminates “pamphlets and other promotional campaign literature” from the list of permitted activities, and replaces it with “campaign materials” supporting the candidacy.</p>	<p><u>Proposed Rule 4.1(D)(2)(c)</u> reflects the concepts addressed in ABA Model Rule 4.1(B)(2). Although Rule 4.1(B)(2) does not expressly authorize candidates to distribute campaign materials supporting the candidacy, it is implied by Rule 4.1(B)(2) (<i>e.g.</i>, the rule expressly allows a judicial candidate to speak on behalf of the candidacy through any medium including advertisements, website, or other campaign literature).</p>
<p><u>Proposed Rule 4.1(D)(2)(d)</u> reflects the concepts addressed in Illinois Supreme Court Rule 67B(1)(b)(iv), except that the proposed rule allows a candidate to endorse or publicly oppose any judicial candidate in a primary or general election and to allow the judge or candidate to “use or allow the use of campaign materials authorized by Paragraph F” of Proposed Rule 4.1.</p>	<p><u>Proposed Rule 4.1(D)(2)(d)</u> reflects the concepts addressed in ABA Model Rule 4.2(B)(3), which allows a judicial candidate in either a primary or general election to publicly endorse or oppose candidates for the same judicial office.</p>
<p><u>Proposed Rule 4.1(D)(2)(e)</u> reflects the concepts addressed in Illinois Supreme Court Rule 67A(3)(e). The proposed rule, however, allows a judicial candidate to respond to attacks under the conditions stated in the Rule.</p>	<p><u>Proposed Rule 4.1(D)(2)(e)</u> is new and has no counterpart in the ABA Model Code. However, ABA Model Rule 4.1, Comment [8] provides: “[a]s long as the candidate does not violate paragraphs (A)(11), (A)(12), of (A)(13), the candidate may make a factually accurate public response” to false, misleading, or unfair allegations made by opposing candidates, third parties, or the media.</p>
<p><u>Proposed Rule 4.1(E)(1)</u> is identical to Illinois Supreme Court Rule 67B(2).</p>	<p><u>Proposed Rule 4.1(E)(1)</u> reflects the concepts addressed in ABA Model Rule 4.1(A)(8). Additionally, ABA Model Rule 4.2(A)(2) requires judicial candidates to comply with all applicable election, election campaign, and election campaign fundraising laws and regulations of the jurisdiction.</p>
<p><u>Proposed Rule 4.1(E)(2)</u> is identical to Illinois Supreme Court Rule 67B(2).</p>	<p><u>Proposed Rule 4.1(E)(2)</u> is identical to ABA Model Rule 4.1(A)(9).</p>

Changes from Current Illinois Code	Changes from ABA Model Code
<p><u>Proposed Rule 4.1(F)</u> reflects the concepts addressed in Illinois Supreme Court Rule 67B(3), except that the proposed rule is broader by allowing a candidate to permit both the use of the candidate’s name “or image to be included in campaign materials along with other candidate for elective public office.”</p>	<p><u>Proposed Rule 4.1(F)</u> reflects the concepts addressed in ABA Model Rule 4.2(B) and allows a candidate to “speak on behalf of his or her candidacy through any medium, including but not limited to advertisements, websites, or other campaign literature.”</p>
<p><u>Proposed Rule 4.1(G)(1)</u> reflects the concepts addressed in Illinois Supreme Court Rule 67C(i), except that it eliminates the heading: “Incumbent Judges” and includes references to Proposed Rules 4.1(D) and 4.4.</p>	<p><u>Proposed Rule 4.1(G)(1)</u> is new and has no counterpart in the ABA Model Code.</p>
<p><u>Proposed Rule 4.1(G)(2)</u> reflects the concepts addressed in Illinois Supreme Court Rule 67C(ii), except that it replaces “to improve the law” with “that concern the law.”</p>	<p><u>Proposed Rule 4.1(G)(2)</u> reflects the concepts addressed in ABA Model Rule 3.7, which permits judges to participate in activities by organizations or governmental entities concerned with the law, the legal system, or the administration of justice.</p>
<p><u>Proposed Rule 4.1(G)(3)</u> is identical to Illinois Supreme Court Rule 67C(iii).</p>	<p><u>Proposed Rule 4.1(G)(3)</u> is new and has no counterpart in the ABA Model Code.</p>
<p><u>Proposed Rule 4.1(H)</u> reflects the concepts addressed in Illinois Supreme Court Rule 67D.</p>	<p><u>Proposed Rule 4.1(H)</u> is new and has no counterpart in the ABA Model Code.</p>
<p><u>Proposed Comment [1]</u> reflects the concepts addressed in Illinois Supreme Court Rules 67A(1)(a)-(d) and 67C.</p>	<p><u>Proposed Comment [1]</u> reflects the concepts addressed in ABA Model Comment [1], except that it deletes the phrases: “Even when subject to public election” and “taking into account the various methods of selecting judges.”</p>
<p><u>Proposed Comment [2]</u> reflects the concepts addressed in Illinois Supreme Court Rule 67D.</p>	<p><u>Proposed Comment [2]</u> reflects the concepts addressed in ABA Model Comment [2], except that it deletes the phrase: “A successful candidate, whether or not an incumbent, is subject to judicial discipline for violation of this Rule. An unsuccessful candidate may also be subject to discipline under Rule 8.2(b) of the Rules of Professional Conduct for violation of this Rule.” This concept is contained in Proposed Rule 4.1(H).</p>

Changes from Current Illinois Code	Changes from ABA Model Code
<u>Proposed Comment [2A]</u> is new and has no counterpart in the Illinois Code.	<u>Proposed Comment [2A]</u> is new and has no counterpart in the ABA Model Code.
<u>Proposed Comment [3]</u> reflects the concepts addressed in Illinois Supreme Court Rule 67A.	<u>Proposed Comment [3]</u> reflects the concepts addressed in ABA Model Comment [3], except that it includes the word “integrity” between “independence” and “impartiality” and deletes the following phrase: “Although judges and judicial candidates may register to vote as members of a political party, they are prohibited by paragraph (A)(1) from assuming leadership roles in political organizations.” The language of the deleted phrase is addressed in Proposed Rule 4.1(A)(1).
<u>Proposed Comment [4]</u> <i>see</i> above commentary on Proposed Rule 4.1(D)(2)(d) regarding the proposed changes to the Illinois Code’s provisions on candidate endorsement.	<u>Proposed Comment [4]</u> reflects the concepts addressed in ABA Model Comment [4], except that the proposed comment replaces the word “abusing” with “misusing” and specifies that candidates are permitted to campaign on their own behalf or to endorse or oppose candidates for judicial office in the same primary or general election.
<u>Proposed Comment [5]</u> reflects the concepts addressed in Illinois Supreme Court Rule 67A(3)(a).	<u>Proposed Comment [5]</u> reflects the concepts addressed in ABA Model Comment [5], except that the proposed comment adds the following phrase: “The judge or judicial candidate may, however, attend events advancing the candidacy of the family member and contribute financially to the family member’s campaign to the same extent that a judge or judicial candidate may attend events and contribute money to any other candidate for public office.”
<u>Proposed Comment [5A]</u> reflects the concepts addressed in Illinois Supreme Court Rule 67A(3)(a).	<u>Proposed Comment [5A]</u> is new and has no counterpart in the ABA Model Code.
<u>Proposed Comment [5B]</u> reflects the concepts addressed in Illinois Supreme Court Rule 67A(3)(a).	<u>Proposed Comment [5B]</u> is new and has no counterpart in the ABA Model Code.

Changes from Current Illinois Code	Changes from ABA Model Code
<p><u>Proposed Comment [6]</u> reflects the concepts addressed in Illinois Supreme Court Rule 67B(1)(a)(i)-(iii).</p>	<p><u>Proposed Comment [6]</u> reflects the concepts addressed in ABA Model Comment [6]. The proposed comment is updated to delete the following phrase: “in both primary, and general elections.” It provides that “[f]or purposes of this Canon, participation in a caucus-type election procedure does not constitute public support for or endorsement of a political organization or candidate, and is not prohibited by paragraphs (A)(2) or (A)(3).” Additionally, the proposed comment adds that “[j]udges and judicial candidates may sign election-related petitions” and “[j]udicial candidates may also circulate petitions for themselves or other judicial candidates in the same election but must not circulate petitions for non-judicial candidates for public office.”</p>
<p><u>Proposed Comment [7]</u> reflects the concepts addressed in Illinois Supreme Court Rules 67A(3)(a)(iii) and 67A(3)(d)(i)-(ii).</p>	<p><u>Proposed Comment [7]</u> reflects the concepts addressed in ABA Model Comment [7], except that the proposed comment adds the phrase “knowingly, or with reckless disregard for the truth,” and eliminates the word “materially” from the phrase: “that omit facts necessary to make the communication considered as a whole not materially misleading.”</p>
<p><u>Proposed Comment [8]</u> reflects the concepts addressed in Illinois Supreme Court Rule 67A(3)(e).</p>	<p><u>Proposed Comment [8]</u> reflects the concepts addressed in ABA Model Comment [8], except that the proposed comment deletes the phrase: “an independent third party has made unwarranted attacks” and adds the phrase “false or misleading statements have been made regarding...” Finally, the proposed comment adds that “the candidate should disavow the statement, and request the source of the statements to cease.”</p>

<b>Changes from Current Illinois Code</b>	<b>Changes from ABA Model Code</b>
<u>Proposed Comment [9]</u> reflects the concepts addressed in Illinois Supreme Court Rules 67(A)(3)(d)(i) and 67(A)(3)(e).	<u>Proposed Comment [9]</u> reflects the concepts addressed in ABA Model Comment [9], except that the proposed comment replaces the term “unfair” with “misleading.” Additionally, the phrase, “During a campaign, although...” is replaced with the phrase, “The Candidate should.”
<u>Proposed Comment [10]</u> reflects the concepts addressed in Illinois Supreme Court Rules 67A(3)(a) and 67A(3)(e).	<u>Proposed Comment [10]</u> is identical to ABA Model Comment [10], except for minor editing to conform to the format of the Proposed Code.
<u>Proposed Comment [11]</u> reflects the concepts addressed in Illinois Supreme Court Rule 67A(3)(a).	<u>Proposed Comment [11]</u> is identical to ABA Model Comment [11].
<u>Proposed Comment [12]</u> reflects the concepts addressed in Illinois Supreme Court Rules 67A(3)(a), 67D, and 62A.	<u>Proposed Comment [12]</u> is identical to ABA Model Comment [12], except for minor editing to conform to the format of the Proposed Code.
<u>Proposed Comment [13]</u> reflects the concepts addressed in Illinois Supreme Court Rules 67A(3)(d)(i)-(ii) and 67B(1)(b)(i).	<u>Proposed Comment [13]</u> is identical to ABA Model Comment [13].
<u>Proposed Comment [14]</u> reflects the concepts addressed in Illinois Supreme Court Rules 67B(1)(b)(i) and 67C.	<u>Proposed Comment [14]</u> is identical to ABA Model Comment [14], except that the proposed comment deletes the word “campaign.”

Changes from Current Illinois Code	Changes from ABA Model Code
<p><u>Proposed Comment [15]</u> reflects the concepts addressed in Illinois Supreme Court Rules 67A(3)(a) and 67B(1)(b).</p>	<p><u>Proposed Comment [15]</u> reflects the concepts addressed in ABA Model Comment [15], but edits and deletes material in ABA Model Comment [15]. Specifically, the phrase “may receive” is replaced with “who respond to questions or” when discussing questionnaires or interview requests of judicial candidates. Further, significant verbiage discussing such questionnaires and interviews is deleted, specifically: “from the media and from issue advocacy or other community organizations that seek to learn their views on disputed or controversial legal or political issues. Paragraph (A)(13) does not specifically address judicial responses to such inquiries. Depending upon the wording and format of such questionnaires, candidates’...” Editing includes new language in the remainder of the first sentence of the proposed comment: “may have their responses might be viewed as improper pledges, promises, or commitments to perform the adjudicative duties of the office other than in an impartial way. <i>See</i> Proposed Comment [13].” In the remaining portion of the proposed comment, a citation is edited to match Proposed Rule 4.1 and phrases are deleted for clarity, specifically: “therefore”; “to media and other inquiries to questions about disputed or controversial legal issues”; “if elected”; “for”; and “not responding”.</p>

**RULE 4.2: RESERVED**

[Reserved]

<b>Changes from Current Illinois Code</b>	<b>Changes from ABA Model Code</b>
<u>Proposed Rule 4.2</u> : [Reserved]	<u>Proposed Rule 4.2</u> is Reserved. As detailed above, the substance of ABA Model Rule 4.2 is included in Proposed Rule 4.1.

### **RULE 4.3: ACTIVITIES OF CANDIDATES FOR APPOINTIVE JUDICIAL OFFICE**

A candidate for appointment to judicial office shall:

- (A) maintain the dignity appropriate to judicial office and act in a manner consistent with the independence,\* integrity,\* and impartiality of the judiciary;
- (B) prohibit employees and officials who serve at the pleasure of the candidate, and discourage other employees and officials subject to the candidate's direction and control, from doing on the candidate's behalf what the candidate is prohibited from doing under the provisions of this Rule;
- (C) A candidate shall not:
  - (1) make pledges, promises, or commitments that are inconsistent with the impartial performance of the adjudicative duties of judicial office with respect to cases, controversies, or issues that are likely to come before the court; or
  - (2) knowingly\* or with reckless disregard for the truth, make any false or misleading statement in connection with:
    - (a) an application for appointment; or
    - (b) the identity, qualifications, present position, or other fact concerning the candidate; or
    - (c) except to the extent permitted by Rule 4.1(E), authorize, encourage, or knowingly permit members of the judicial candidate's family or other persons to do for the candidate what the candidate is prohibited from doing under the provisions of this Rule.
- (D) A candidate for appointment to judicial office may, except as prohibited by law:
  - (1) at any time:
    - (a) purchase tickets for and attend political gatherings;
    - (b) personally identify as a member of a political party; and
    - (c) contribute to a political organization.

### **COMMENTS**

- [1] When seeking support or endorsement, or when communicating directly with an appointing or confirming authority, a candidate for appointive judicial office must

not make any pledges, promises, or commitments that are inconsistent with the impartial performance of the adjudicative duties of the office. *See* Rule 4.1(D)(4)(a).

- [2] “Appointment to judicial office” means appointment, assignment, or recall to any judicial office under Article VI of the Illinois Constitution.

<b>Changes from Current Illinois Code</b>	<b>Changes from ABA Model Code</b>
<u>Proposed Rule 4.3</u> reflects the concepts addressed in Illinois Supreme Court Rules 67A(3) and 67B.	<u>Proposed Rule 4.3</u> reflects the concepts addressed in ABA Model Rule 4.3, which governs the “Activities of Candidates for Appointive Judicial Office.”
<u>Proposed Rule 4.3(A)</u> is identical to Illinois Supreme Court Rule 67A(3)(a), except that the proposed rule includes the word “impartiality” (e.g., “to act in a manner consistent with the independence,* integrity,* and impartiality of the judiciary.”).	<u>Proposed Rule 4.3(A)</u> reflects the concepts addressed in ABA Model Rule 4.2(A)(1), which provides “[a] judicial candidate* in a partisan, nonpartisan, or retention public election* shall: (1) act at all times in a manner consistent with the independence,* integrity,* and impartiality* of the judiciary...”
<u>Proposed Rule 4.3(B)</u> reflects the concepts addressed in Illinois Supreme Court Rule 67A(3)(b).	<u>Proposed Rule 4.3(B)</u> reflects the concepts addressed in ABA Model Rule 4.2(A)(4).
<u>Proposed Rule 4.3(C)(1)</u> reflects the concepts addressed in Illinois Supreme Court Rule 67A(3)(d)(i), which provides that judges and judicial candidates shall not make “statements that commit or appear to commit the candidate with respect to cases, controversies or issues within cases that are likely to come before the court...”	<u>Proposed Rule 4.3(C)(1)</u> reflects the concepts addressed in ABA Model Rule 4.1(A)(13).
<u>Proposed Rule 4.3(C)(2)</u> reflects the concepts addressed in Illinois Supreme Court Rule 67A(3)(d)(ii).	<u>Proposed Rule 4.3(C)(2)</u> reflects the concepts addressed in ABA Model Rule 4.1(A)(11) which provides that a judge or judicial candidate shall not “knowingly,* or with reckless disregard for the truth, make any false or misleading statement...”
<u>Proposed Rule 4.3(C)(2)(a)</u> reflects the concepts addressed in Illinois Supreme Court Rule 67A(3)(d)(ii).	<u>Proposed Rule 4.3(C)(2)(a)</u> is new and has no counterpart in ABA Model Rule 4.3.

<b>Changes from Current Illinois Code</b>	<b>Changes from ABA Model Code</b>
<u>Proposed Rule 4.3(C)(2)(b)</u> reflects the concepts addressed in Illinois Supreme Court Rule 67A(3)(d)(ii).	<u>Proposed Rule 4.3(C)(2)(b)</u> reflects the concepts addressed in ABA Model Rule 4.1(A)(11) which provides that a judge or judicial candidate shall not “knowingly,* or with reckless disregard for the truth, make any false or misleading statement...”
<u>Proposed Rule 4.3(C)(2)(c)</u> reflects the concepts addressed in Illinois Supreme Court Rule 67A(3)(c).	<u>Proposed Rule 4.3(C)(2)(c)</u> reflects the concepts addressed in ABA Model Rule 4.1(B) which provides that a judicial candidate shall take “reasonable measures to ensure that other persons do not undertake on behalf of the judge or judicial candidate, any activities prohibited under paragraph (A),” and ABA Model Rule 4.2(A)(4) which provides that a judicial candidate shall “take reasonable measures to ensure that other persons do not undertake on behalf of the candidate activities, other than those described in Rule 4.4, that the candidate is prohibited from doing by Rule 4.1”.
<u>Proposed Rule 4.3(D)(1)(a)</u> is identical to Illinois Supreme Court Rule 67B(1)(a)(i).	<u>Proposed Rule 4.3(D)(1)(a)</u> reflects the concepts addressed in ABA Model Rule 4.1(A)(5).
<u>Proposed Rule 4.3(D)(1)(b)</u> is identical to Illinois Supreme Court Rule 67B(1)(a)(ii).	<u>Proposed Rule 4.3(D)(1)(b)</u> reflects the concepts addressed in ABA Model Rule 4.1(A)(6).
<u>Proposed Rule 4.3(D)(1)(c)</u> is identical to Illinois Supreme Court Rule 67B(1)(a)(iii).	<u>Proposed Rule 4.3(D)(1)(c)</u> reflects the concepts addressed in ABA Model Rule 4.1(A)(4).
<u>Proposed Comment [1]</u> reflects the concepts addressed in Illinois Supreme Court Rules 67(A)(3)(a) and 67(B)(1)(b).	<u>Proposed Comment [1]</u> is new and has no counterpart in the ABA Model Code.
<u>Proposed Comment [2]</u> is new and has no counterpart in the Illinois Code.	<u>Proposed Comment [2]</u> is new and has no counterpart in the ABA Model Code.

#### **RULE 4.4: CAMPAIGN COMMITTEES**

- (A) A judicial candidate subject to public election may establish a campaign committee to manage and conduct a campaign for the candidate, subject to the provisions of this Code. The candidate is responsible for ensuring that the campaign committee complies with applicable provisions of this Code and other applicable law.\*
- (B) A judicial candidate subject to public election shall direct the campaign committee:
  - (1) to solicit and accept campaign contributions\* only as permitted by law;
  - (2) not to solicit or accept contributions for a campaign more than 1 year before the applicable primary, general, or retention election, nor more than 90 days after the last election in which the candidate participated; and
  - (3) to comply with all applicable campaign finance laws.

#### **COMMENTS**

- [1] Judicial candidates are prohibited from personally soliciting campaign contributions or personally accepting campaign contributions. *See* Rule 4.1(A)(8). This Rule recognizes that, in many jurisdictions, judicial candidates must raise campaign funds to support their candidacies and permits candidates, other than candidates for appointive judicial office, to establish campaign committees to solicit and accept reasonable financial contributions or in-kind contributions.
- [2] Campaign committees may solicit and accept campaign contributions, manage the expenditure of campaign funds, and generally conduct campaigns. To the extent possible, campaign committees should manage campaign finances to avoid deficits that might necessitate post-election fundraising. Candidates are responsible for compliance with the requirements of election law and other applicable law and for the activities of their campaign committees.
- [3] The campaign committee may solicit and accept campaign contributions from lawyers and others who might appear before the candidate. The candidate should instruct the campaign committee to be cautious in connection with such contributions so it does not create grounds for disqualification. *See* Rule 2.11.
- [4] During the campaign, the candidate and the campaign committee should be aware that a contribution may affect the independence, integrity, and impartiality of the judge and may create grounds for disqualification if the candidate is elected to office.

Changes from Current Illinois Code	Changes from ABA Model Code
<u>Proposed Rule 4.4(A)</u> reflects the concepts addressed in Illinois Supreme Court Rule 67B(2).	<u>Proposed Rule 4.4(A)</u> reflects the concepts addressed in ABA Model Rule 4.4(A).
<u>Proposed Rule 4.4(B)(1)</u> reflects the concepts addressed in Illinois Supreme Court Rule 67B(2). The proposed rule eliminates the phrase “his or her campaign committee” and replaces it with “the campaign committee.”	<u>Proposed Rule 4.4(B)(1)</u> reflects the concepts addressed in ABA Model Rule 4.4(B)(1), except that the proposed rule deletes the words “only such” and “as are reasonable...from any entity or organization limits established” and replaces the words with “only as permitted by law.”
<u>Proposed Rule 4.4(B)(2)</u> reflects the concepts addressed in Illinois Supreme Court Rule 67B(2).	<u>Proposed Rule 4.4(B)(2)</u> reflects the concepts addressed in ABA Model Rule 4.4(B)(2).
<u>Proposed Rule 4.4(B)(3)</u> reflects the concepts addressed in Illinois Supreme Court Rule 67B(3).	<u>Proposed Rule 4.4(B)(3)</u> reflects the concepts addressed in ABA Model Rule 4.4(B)(3).
<u>Proposed Comment [1]</u> reflects the concepts addressed in Illinois Supreme Court Rule 67B(2).	<u>Proposed Comment [1]</u> reflects the concepts addressed in ABA Model Comment [1].
<u>Proposed Comment [2]</u> reflects the concepts addressed in Illinois Supreme Court Rule 67B(2).	<u>Proposed Comment [2]</u> reflects the concepts addressed in ABA Model Comment [2], except that the proposed comment includes the sentence: “To the extent possible, campaign committees should manage campaign finances to avoid deficits that might necessitate post-election fundraising.”
<u>Proposed Comment [3]</u> reflects the concepts addressed in Illinois Supreme Court Rule 67B(2) and also in Illinois Supreme Court Rules 67A(1)(d); 67A(3)(a); and 67A(3)(d)(i).	<u>Proposed Comment [3]</u> reflects the concepts addressed in ABA Model Comment [3], but the proposed comment deletes the first and second sentences of Model Comment [3] and adds the sentence: “The campaign committee may solicit and accept campaign contributions from lawyers and others who might appear before the candidate.”
<u>Proposed Comment [4]</u> reflects the concepts addressed in Illinois Supreme Court Rules 67A(3)(a) and 67A(3)(c)(1).	<u>Proposed Comment [4]</u> is new and has no counterpart in the ABA Model Code.

#### **RULE 4.5: ACTIVITIES OF JUDGES WHO BECOME CANDIDATES FOR NONJUDICIAL OFFICE**

- (A) Upon becoming a candidate for a nonjudicial elective office, a judge shall resign from judicial office, unless permitted by law\* to continue to hold judicial office. A person becomes a candidate for nonjudicial office by (1) making a public announcement of candidacy, (2) declaring or filing as a candidate with the election authority, (3) authorizing or, where permitted, engaging in solicitation or acceptance of contributions or support, or (4) being nominated for election. A judge may continue to hold office while a candidate for election to or serving as a delegate in a state constitutional convention.
- (B) Upon becoming a candidate for a nonjudicial appointive office, a judge is not required to resign from judicial office, provided that the judge complies with the other provisions of this Code.

#### COMMENTS

- [1] In campaigns for nonjudicial elective public office, candidates may make pledges, promises, or commitments related to positions they would take and ways they would act if elected to office. Although appropriate in nonjudicial campaigns, this manner of campaigning is inconsistent with the role of a judge, who must remain fair and impartial. The potential for misuse of judicial office, and the political promises that the judge may make in the course of campaigning for nonjudicial elective office, together dictate that a judge who wishes to run for such an office must resign upon becoming a candidate.
- [2] The “resign to run” rule set forth in paragraph (A) ensures that a judge cannot use the judicial office to promote such candidacy and eliminates any potential issue of post-campaign retaliation by a judge defeated in an election. When a judge is seeking appointive nonjudicial office, however, the dangers are not sufficient to warrant imposing the “resign to run” rule.

Changes from Current Illinois Code	Changes from ABA Model Code
<p><u>Proposed Rule 4.5(A)</u> reflects the concepts addressed in Illinois Supreme Court Rule 67A(2).</p>	<p><u>Proposed Rule 4.5(A)</u> reflects the concepts addressed in ABA Model Rule 4.5(A), except that the proposed rule deletes the following phrase: “either in a primary or a general election.” Additionally, Proposed Rule 4.5(A) adds two sentences. First, the proposed rule includes the sentence: “A person becomes a candidate for nonjudicial office by (1) making a public announcement of candidacy, (2) declaring or filing as a candidate with the election authority, (3) authorizing or, where permitted, engaging in solicitation or acceptance of contributions or support, or (4) being nominated for election.” Second, the proposed rule includes the sentence: “A judge may continue to hold office while a candidate for election to or serving as a delegate in a state constitutional convention.”</p>
<p><u>Proposed Rule 4.5(B)</u> is new and has no counterpart in the Illinois Code.</p>	<p><u>Proposed Rule 4.5(B)</u> is identical to ABA Model Rule 4.5(B).</p>
<p><u>Proposed Comment [1]</u> reflects the concepts addressed in Illinois Supreme Court Rule 67A(2).</p>	<p><u>Proposed Comment [1]</u> reflects the concepts addressed in ABA Model Comment [1], except that the proposed comment deletes the phrases: “to all who come before him or her,” and “would be compelled to.”</p>
<p><u>Proposed Comment [2]</u> reflects the concepts addressed in Illinois Supreme Court Rule 62A.</p>	<p><u>Proposed Comment [2]</u> reflects the concepts addressed in ABA Model Comment [2], except that it deletes “in the event the judge is defeated” and changes the words “prevents post-campaign retaliation” to “eliminates any potential issue of post-campaign retaliation.”</p>

# **APPENDIX**

# PROPOSED ILLINOIS CODE OF JUDICIAL CONDUCT

## PREAMBLE & SCOPE

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

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

[3] The Code establishes standards for the ethical conduct of judges and judicial candidates. The Code is intended to guide and assist judges in maintaining the highest standards of judicial and personal conduct and to provide a basis for regulating their conduct through the Illinois Judicial Inquiry Board and the Illinois Courts Commission.

[4] The Code governs a judge's personal and judicial activities conducted in person, on paper, and by telephone or other electronic means. A violation of the Code may occur when a judge uses the internet, including social networking sites, to post comments or other materials such as links to websites, articles, or comments authored by others, photographs, cartoons, jokes, or any other words or images that convey information or opinion. Violations may occur even if a judge's distribution of a communication is restricted to family and friends and is not accessible to the public. Judges must carefully monitor their social media accounts to ensure that no communication can be reasonably interpreted as suggesting a bias or prejudice, an *ex parte* communication, the misuse of judicial power or prestige, a violation of restrictions on charitable, financial, or political activities, a comment on a pending or impending case, a basis for disqualification, or an absence of judicial independence, impartiality, integrity, or competence.

[5] The Code consists of four Canons, numbered Rules under each Canon, and Comments that generally follow and explain each Rule. The Policy and Scope and Terminology sections provide additional guidance in interpreting and applying the Code.

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

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

[8] Second, the Canons combined with the Comments identify aspirational goals for judges. To implement fully the principles of this Code as articulated in the Canons, judges should strive to exceed the standards of conduct established by the Rules, holding themselves to the highest ethical standards and seeking to achieve those aspirational goals, thereby enhancing the dignity of the judicial office.

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

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

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

## TERMINOLOGY

The first time any term listed below is used in a Rule in its defined sense, it is followed by an asterisk (\*).

“**Contributions**” means both financial and in-kind contributions, such as goods, professional or volunteer services, advertising, and other types of assistance, which, if obtained by the recipient otherwise, would require a financial expenditure. *See* Rules 3.7, 4.1, and 4.4.

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

**“Domestic partner”** means a person with whom another person maintains a household and an intimate relationship, other than a person’s legal spouse. *See* Rule 2.11.

**“Economic interest”** means ownership of more than a *de minimis* legal or equitable interest. Except for situations in which the judge participates in the management of such a legal or equitable interest or the interest could be substantially affected by the outcome of a proceeding before a judge, it does not include: (1) an interest in the individual holdings within a mutual or common investment fund; (2) an interest in securities held by an educational, religious, charitable, fraternal, or civic organization in which the judge or the judge’s spouse, 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. *See* Rules 1.3 and 2.11.

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

**“Impartial,” “impartiality,” and “impartially”** mean absence of bias or prejudice in favor of, or against, particular parties or classes of parties, as well as maintenance of an open mind in considering issues that may come before a judge. *See* Canons 1, 2, and 4, and Rules 1.2, 2.2, 2.10, 2.11, 2.13, 3.1, 3.12, 4.1, and 4.3.

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

**“Impropriety”** includes conduct that violates the law, court rules, or provisions of this Code and conduct that undermines a judge’s independence, integrity, or impartiality. *See* Canon 1 and Rule 1.2.

**“Independence”** means a judge’s freedom from influence or controls other than those established by law. *See* Canons 1 and 4, and Rules 1.2, 3.1, 3.12, 4.1, and 4.3.

**“Integrity”** means probity, fairness, honesty, uprightness, and soundness of character. *See* Canons 1 and 4, and Rules 1.2, 3.1, 3.12, 4.1, and 4.3.

**“Judicial candidate”** means any person, including a sitting judge, who is seeking selection for or retention in judicial office by election or appointment. A person becomes a candidate for judicial office as soon as such person makes a public announcement of candidacy, declares or files as a candidate with the election or appointment authority, authorizes or, where permitted, engages in solicitation or acceptance of contributions or support, or is nominated for election or appointment to office. *See* Rules 4.1, 4.3, and 4.4.

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

**“Law”** encompasses court rules as well as statutes, constitutional provisions, and decisional law. *See* Rules 2.11, 2.13, 2.14, 2.15, 2.16, 3.2, 3.6, 4.1, and 4.3.

**“Member of the judicial candidate’s family”** means a spouse, domestic partner, child, grandchild, parent, grandparent, or other relative or person with whom the judicial candidate maintains a close familial relationship. *See* Rule 4.1.

**“Member of the judge’s family”** means a spouse, domestic partner, child, grandchild, parent, grandparent, or other relative or person with whom the judge maintains a close familial relationship. *See* Rules 3.7, 3.8, and 3.11.

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

**“Must”** when used in a Rule imposes a mandatory duty on a judge to comply with the Rule. When used in a Comment, the term does not mean that the Comment itself is binding or enforceable; it signifies that the Rule in question, properly understood, is obligatory as to the conduct at issue.

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

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

**“Personally solicit”** means a direct request made by a judge or a judicial candidate for financial support or in-kind services, whether made by letter, telephone, or any other means of communication. *See* Rule 4.1.

**“Political organization”** means a political party or other group sponsored by or affiliated with a political party or candidate, the principal purpose of which is to further the election or appointment of candidates for political office. For purposes of this Code, the term does not include a judicial candidate’s campaign committee created as authorized by Rule 4.4. *See* Rules 4.1 and 4.2.

**“Public election”** includes primary and general elections, partisan elections, nonpartisan elections, and retention elections. *See* Rules 4.1 and 4.3.

**“Require”** when used in the context of the Rules prescribing that a judge “require” certain conduct of others, means that a judge is to exercise reasonable direction and control over the conduct of those persons subject to the judge’s direction and control. *See* Rules 2.8, 2.10, and 2.12.

**“Shall”** imposes a mandatory duty on a judge to comply with the Rule. When used in a Comment, the term does not mean that the Comment itself is binding or enforceable; it signifies that the Rule in question, properly understood, is obligatory as to the conduct at issue.

**“Third degree of relationship”** includes the following persons: great-grandparent, grandparent, parent, uncle, aunt, brother, sister, child, grandchild, great-grandchild, nephew, and niece. *See* Rule 2.11

## **CANON 1**

A JUDGE SHALL UPHOLD AND PROMOTE THE INDEPENDENCE, INTEGRITY, AND IMPARTIALITY OF THE JUDICIARY, AND SHALL AVOID IMPROPRIETY AND THE APPEARANCE OF IMPROPRIETY IN ALL OF THE JUDGE'S ACTIVITIES.

### **COMMENTS**

- [1] An independent and honorable judiciary is indispensable for creating and preserving public trust and confidence in the legal system. This Code shall be construed and applied to further this objective.

### **RULE 1.1: COMPLIANCE WITH THE LAW**

A judge shall\* comply with the law,\* including the Code.

### **RULE 1.2: PROMOTING CONFIDENCE IN THE JUDICIARY**

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

### **COMMENTS**

- [1] Public confidence in the judiciary is eroded by improper conduct and conduct that creates the appearance of impropriety. This principle applies to both the professional and personal conduct of a judge.
- [2] A judge should expect to be the subject of public scrutiny that might be viewed as burdensome if applied to other citizens and must accept the restrictions imposed by the Code.
- [3] Conduct that compromises or appears to compromise the independence, integrity, and impartiality of a judge undermines public confidence in the judiciary. Because it is not practicable to list all such conduct, the Rule is necessarily cast in general terms.
- [4] Judges should participate in activities that promote ethical conduct among judges and lawyers, support professionalism within the judiciary and the legal profession, and promote access to justice for all.
- [5] Actual improprieties include violations of law, court rules, or provisions of this Code. The test for appearance of impropriety is whether the conduct would create

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

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

**RULE 1.3: AVOIDING MISUSE OF THE PRESTIGE OF JUDICIAL OFFICE**

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

COMMENTS

- [1] It is improper to use or attempt to use the judge's position to gain personal advantage or deferential treatment of any kind. For example, it would be improper to allude to judicial status to gain favorable treatment in encounters with traffic officials. Similarly, a judge must not use the judicial title in letterhead, emails, or any other form of communication, including social media or social networking platforms, to gain an advantage in conducting personal business.
- [2] Judges may provide a reference or recommendation for an individual based on the judge's personal knowledge. Judicial stationery may be used for references and recommendations.
- [3] Judges may participate in the process of judicial selection, except as otherwise prohibited or restricted by Canon 4.
- [4] [Reserved]

## CANON 2

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

### **RULE 2.1: GIVING PRECEDENCE TO THE DUTIES OF JUDICIAL OFFICE**

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

#### COMMENTS

- [1] To ensure that judges are available to fulfill their judicial duties, judges must conduct their personal and extrajudicial activities, including their use of social media or participation on social networking platforms, to minimize the risk of conflicts that would result in frequent disqualification. *See* Canon 3.
- [2] Although it is not a duty of judicial office unless prescribed by law, judges are encouraged to participate in activities that promote public understanding of and confidence in the justice system.
- [3] Judges are reminded that Article VI, 13(b) of the Illinois Constitution requires that a judge "shall devote full time to judicial duties." *See* Rule 3.1 concerning a judge's ability to participate in teaching.

### **RULE 2.2: IMPARTIALITY AND FAIRNESS**

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

#### COMMENTS

- [1] To ensure impartiality and fairness to all parties, a judge must be objective and open-minded.
- [2] Although each judge comes to the bench with a unique background and personal philosophy, a judge must interpret and apply the law without regard to whether the judge approves or disapproves of the law in question.
- [3] Good faith errors of fact or law do not violate this Rule.
- [4] It is not a violation of this Rule for a judge to make reasonable accommodations, consistent with the law and court rules, to ensure *pro se* litigants the opportunity to have their matters fairly heard.

### **RULE 2.3: BIAS, PREJUDICE, AND HARASSMENT**

- (A) A judge shall perform the duties of judicial office, including administrative duties, without bias or prejudice.
- (B) A judge shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice or engage in harassment, including, but not limited to, bias, prejudice, or harassment based upon race, sex, gender, gender identity, religion, national origin, ethnicity, pregnancy, disability, age, sexual orientation, marital status, socioeconomic status, or political affiliation, and shall not permit court staff, court officials, or others subject to the judge's direction and control to do so.
- (C) Proceedings before the court shall be conducted without manifesting bias or prejudice or engaging in harassment, based upon attributes including but not limited to race, sex, gender, gender identity, religion, national origin, ethnicity, pregnancy, disability, age, sexual orientation, marital status, socioeconomic status, or political affiliation, by or against lawyers, parties, witnesses, or others.
- (D) The restrictions of paragraphs (B) and (C) do not preclude judges or lawyers from making legitimate reference to the listed factors, or similar factors, when they are relevant to an issue in a proceeding.
- (E) A judge shall not retaliate against those who report violations of Rule 2.3.
- (F) A violation of the Supreme Court of Illinois Non-Discrimination and Anti-Harassment Policy is a violation of this Rule.

### **COMMENTS**

- [1] A judge who manifests bias or prejudice in a proceeding impairs the fairness of the proceeding and brings the judiciary into disrepute.
- [2] Examples of manifestations of bias or prejudice include but are not limited to epithets; slurs; demeaning nicknames; negative stereotyping; attempted humor based upon stereotypes; threatening, intimidating, or hostile acts; suggestions of connections between race, ethnicity, or nationality and crime; and irrelevant references to personal characteristics. Even facial expressions and body language can convey to parties and lawyers in the proceeding, jurors, the media, and others an appearance of bias or prejudice. A judge must avoid conduct that may reasonably be perceived as prejudiced or biased.
- [3] Harassment is verbal, non-verbal, or physical conduct that denigrates or shows hostility or aversion toward a person based on the characteristics or classes identified in paragraphs (B) and (C).

- [4] Harassment based on sex includes, but is not limited to, sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature that is unwelcome.
- [5] Rule 2.15 requires judges to take “appropriate action” when they learn of another judge’s misconduct. In considering this obligation, judges should recognize that failing to inform court leadership of an incident may allow a pattern of misconduct to go undetected. Judges may have specific reporting obligations under the Supreme Court of Illinois Non- Discrimination and Anti-Harassment Policy.
- [6] Retaliation is an adverse action, performed directly or through others, that would deter a reasonable person from reporting or participating in the investigation of conduct prohibited by this Rule. The duty to refrain from retaliation includes retaliation against former or current court personnel.

**RULE 2.4: EXTERNAL INFLUENCES ON JUDICIAL CONDUCT**

- (A) A judge shall not be swayed by public clamor or fear of criticism.
- (B) A judge shall not permit family, social, political, financial, or other interests or relationships to influence the judge’s judicial conduct or judgment.
- (C) A judge shall not convey or permit others to convey the impression that any person or organization is in a position to influence the judge.

**COMMENTS**

- [1] An independent judiciary requires that judges decide cases according to the law and facts, without regard to whether particular laws or litigants are popular or unpopular with the public, the media, government officials, or the judge’s friends or family. Confidence in the judiciary is eroded if judicial decision making is perceived to be subject to inappropriate outside influences.

**RULE 2.5: COMPETENCE, DILIGENCE, AND COOPERATION**

- (A) A judge shall perform judicial and administrative duties competently and diligently.
- (B) A judge shall cooperate with other judges and court officials in the administration of court business.

## COMMENTS

- [1] Competence in the performance of judicial duties requires the legal knowledge, skill, thoroughness, and preparation reasonably necessary to perform a judge's responsibilities of judicial office.
- [2] A judge should seek the necessary docket time, court staff, and resources to discharge all adjudicative and administrative responsibilities.
- [3] Prompt disposition of the court's business requires a judge to be punctual in attending court and expeditious in determining matters under advisement and to take reasonable measures to ensure that court officials, litigants, and their lawyers cooperate to achieve that end.
- [4] In disposing of matters promptly and efficiently, a judge must demonstrate due regard for the rights of parties to be heard and to have issues resolved without unnecessary cost or delay. A judge shall monitor and supervise cases in ways that reduce or eliminate dilatory practices, avoidable delays, and unnecessary costs.

### **RULE 2.6: ENSURING THE RIGHT TO BE HEARD**

- (A) A judge shall accord to every person who has a legal interest in a proceeding or that person's lawyer the right to be heard according to law.\*
- (B) A judge may encourage parties to a proceeding and their lawyers to settle matters in dispute, but shall not act in a manner that coerces any party.

## COMMENTS

- [1] The right to be heard is an essential component of a fair and impartial system of justice. Substantive rights of litigants can be protected only if procedures protecting the right to be heard are observed.
- [2] The judge plays an important role in overseeing the settlement of disputes, but should be careful that efforts to further settlement do not undermine any party's right to be heard according to law.
- [3] Judges should be mindful of the effect settlement discussions can have, not only on their objectivity and impartiality, but also on the appearance of their objectivity and impartiality. Despite a judge's best efforts, there may be instances when information obtained during settlement discussions could influence a judge's decision making during trial, and, in such instances, the judge should consider whether disqualification may be appropriate. *See* Rule 2.11(A)(1).

## **RULE 2.7: RESPONSIBILITY TO DECIDE**

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

### COMMENTS

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

## **RULE 2.8: DECORUM, DEMEANOR, AND COMMUNICATION WITH JURORS**

- (A) A judge shall require order and decorum in proceedings before the court.
- (B) A judge shall be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, court staff, court officials, and others with whom the judge deals in an official capacity and shall require similar conduct of lawyers, court staff, court officials, and others subject to the judge's direction and control.
- (C) A judge shall not commend or criticize jurors for their verdict other than in a court order or opinion in a proceeding.

### COMMENTS

- [1] The duty to hear all proceedings with patience and courtesy is not inconsistent with the duty imposed in Rule 2.5 to dispose promptly of the business of the court. Judges can be efficient and businesslike while being patient and deliberate.
- [2] Commending or criticizing jurors for their verdict, including on social media or social networking platforms may imply a judicial expectation in future cases and may impair a juror's ability to be fair and impartial in a subsequent case.
- [3] A judge may meet with jurors who choose to remain at the completion of trial so long as the judge does not make any remarks that would adversely affect the judge's impartiality.

**RULE 2.9: *EX PARTE* COMMUNICATIONS**

- (A) A judge shall not initiate, permit, or consider *ex parte* communications or consider other communications made to the judge outside the presence of the parties or their lawyers concerning a pending\* or impending matter,\* except as follows:
  - (1) When circumstances require it, *ex parte* communication for scheduling, administrative, or emergency purposes, which does not address substantive matters, is permitted, provided:
    - (a) the judge reasonably believes that no party will gain a procedural, substantive, or tactical advantage as a result of the *ex parte* communication; and
    - (b) the judge makes provision promptly to notify all other parties of the substance of the *ex parte* communication and gives the parties an opportunity to respond.
  - (2) [Reserved]
  - (3) A judge may consult with court staff and court officials whose functions are to aid the judge in carrying out the judge's adjudicative responsibilities, or with other judges, provided the judge makes reasonable efforts to avoid receiving factual information that is not part of the record and does not abrogate the responsibility personally to decide the matter.
  - (4) A judge may, with the consent of the parties, confer separately with the parties and their lawyers in an effort to mediate or settle matters pending before the judge.
  - (5) A judge may initiate, permit, or consider any *ex parte* communication when expressly authorized by law\* to do so.
- (B) If a judge inadvertently receives an unauthorized *ex parte* communication bearing upon the substance of a matter, the judge shall make provision promptly to notify the parties of the substance of the communication and provide the parties with an opportunity to respond.
- (C) A judge shall not investigate facts in a matter independently and shall consider only the evidence presented and any facts that may properly be judicially noticed.
- (D) A judge shall make reasonable efforts, including providing appropriate supervision, to ensure that this Rule is not violated by court staff, court officials, and others subject to the judge's direction and control.

## COMMENTS

- [1] To the extent reasonably possible, all parties or their lawyers shall be included in communications with a judge.
- [2] Whenever the presence of a party or notice to a party is required by this Rule, it is the party's lawyer, or if the party is unrepresented, the party, who is to be present or to whom notice is to be given.
- [3] The proscription against communications concerning a proceeding includes communications with lawyers, law teachers, or other persons who are not participants in the proceeding and communications made on social or posted on social media or social networking platforms. A judge must make reasonable efforts to ensure that law clerks, court staff, court officials and others under the judge's direction and control do not violate this Rule.
- [4] A judge may initiate, permit, or consider *ex parte* communications expressly authorized by law, such as when serving on therapeutic or problem-solving courts, mental health courts, or drug courts. In this capacity, judges may assume a more interactive role with parties, treatment providers, probation officers, social workers, and others.
- [5] A judge may consult with other judges on pending matters, but must avoid *ex parte* discussions of a case with judges who have previously been disqualified from hearing the matter and with judges who have appellate jurisdiction over the matter.
- [6] The prohibition against a judge investigating the facts in a matter extends to information available in all mediums, including electronic.
- [7] A judge may consult ethics advisory committees, outside counsel, or legal experts concerning the judge's compliance with this Code.
- [8] Judges who maintain a presence on social media or social networking platforms should be aware of the potential for these sites to become an unintended vehicle for *ex parte* communications.

### **RULE 2.10: JUDICIAL STATEMENTS ON PENDING AND IMPENDING CASES**

- (A) A judge shall not make any public statement that might reasonably be expected to affect the outcome or impair the fairness of a matter pending\* or impending\* in any court or make any nonpublic statement that might substantially interfere with a fair trial or hearing.
- (B) A judge shall not, in connection with cases, controversies, or issues that are likely to come before the court, make pledges, promises, or commitments that are

inconsistent with the impartial\* performance of the adjudicative duties of judicial office.

- (C) A judge shall require court staff, court officials, and others subject to the judge's direction and control to refrain from making statements that the judge would be prohibited from making by paragraphs (A) and (B).
- (D) Notwithstanding the restrictions in paragraph (A), a judge may make public statements in the course of official duties, may explain court procedures, and may comment on any proceeding in which the judge is a litigant in a personal capacity.
- (E) Subject to the requirements of paragraph (A), a judge may respond directly or through a third party to allegations in the media or elsewhere concerning the judge's conduct in a matter.

#### COMMENTS

- [1] This Rule's restrictions on judicial speech are essential to the maintenance of the independence, integrity, and impartiality of the judiciary.
- [2] This Rule does not prohibit a judge from commenting on proceedings in which the judge is a litigant in a personal capacity. In cases in which the judge is a litigant in an official capacity, such as a writ of mandamus, the judge must not comment publicly.
- [3] Depending on the circumstances, the judge should consider whether it may be preferable for a third party, rather than the judge, to respond or issue statements in connection with allegations concerning the judge's conduct in a matter. The Rule does not prohibit a judge from responding to allegations concerning the judge's conduct in a proceeding that is not pending or impending in any court.
- [4] Judges who are active on social media or social networking platforms should understand how their comments in these forums might be considered "public" statements implicating this Rule. Judges should be aware of the nature and efficacy of privacy settings offered by social media or social networking platforms.

#### **RULE 2.11: DISQUALIFICATION**

- (A) A judge shall be disqualified in any proceeding in which the judge's impartiality\* might reasonably be questioned, including, but not limited to, the following circumstances:
  - (1) The judge has a personal bias or prejudice concerning a party or a party's lawyer or personal knowledge\* of facts that are in dispute in the proceeding.

- (2) The judge knows\* that the judge, the judge's spouse or domestic partner,\* a person within the third degree of relationship\* to either of them, or the spouse or domestic partner of such a person is:
  - (a) a party to the proceeding, or an officer, director, general partner, managing member, or trustee of a party;
  - (b) acting as a lawyer in the proceeding;
  - (c) a person who has more than a *de minimis*\* interest that could be substantially affected by the proceeding; or
  - (d) likely to be a material witness in the proceeding.
- (3) The judge knowingly, individually, or as a fiduciary\* or the judge's spouse, domestic partner, 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 is a party to the proceeding.
- (4) The judge, while a judge or a judicial candidate,\* has made a public statement, other than in a court proceeding, judicial decision, or opinion that commits or appears to commit the judge to reach a particular result or rule in a particular way in the proceeding or controversy.
- (5) The judge:
  - (a) served as a lawyer in the matter;
  - (b) represented any party to the matter while engaged in the private practice of law within a period of seven years following the last date on which the judge represented the party;
  - (c) within the preceding three years was associated in the private practice of law with any law firm or lawyer currently representing any party in the matter (provided that referral of cases when no monetary interest was retained shall not be deemed an association within the meaning of this paragraph);
  - (d) served in governmental employment and in such capacity participated personally and substantially as a lawyer or public official concerning the matter or has publicly expressed in such capacity an opinion concerning the merits of the particular matter;
  - (e) was a material witness concerning the matter; or
  - (f) previously presided as a judge over the matter in another court.

- (B) A judge shall keep informed about the judge's personal and fiduciary economic interests and make a reasonable effort to keep informed about the personal economic interests of the judge's spouse or domestic partner and minor children residing in the judge's household.
- (C) A judge subject to disqualification under this Rule, other than for bias or prejudice under paragraph (A)(1), may disclose on the record the basis of the judge's disqualification and may ask the parties and their lawyers to consider, outside the presence of the judge and court personnel, whether to waive disqualification. If, following the disclosure, the parties and lawyers agree, without participation by the judge or court personnel, that the judge should not be disqualified, the judge may participate in the proceeding. The agreement shall be incorporated into the record of the proceeding.

## COMMENTS

- [1] Under this Rule, a judge is disqualified whenever the judge's impartiality might reasonably be questioned, regardless of whether any of the specific provisions of paragraphs (A)(1) through (6) apply. For example, the participation in a matter involving a person with whom the judge has an intimate relationship or a member of the judge's staff may require disqualification.
- [2] A judge's obligation not to hear or decide matters in which disqualification is required applies regardless of whether a motion to disqualify is filed.
- [3] The rule of necessity may override the rule of disqualification. For example, a judge might be required to participate in judicial review of a judicial salary statute or might be the only judge available in a matter requiring immediate judicial action, such as a hearing on probable cause or a temporary restraining order. In matters that require immediate action, the judge must disclose on the record the basis for possible disqualification and make reasonable efforts to transfer the matter to another judge as soon as practicable.
- [4] The fact that a lawyer in a proceeding is affiliated with a law firm with which a relative of the judge is affiliated does not itself disqualify the judge. If, however, the judge's impartiality might reasonably be questioned under paragraph (A), or the relative is known by the judge to have an interest in the law firm that could be substantially affected by the proceeding under paragraph (A)(2)(c), the judge's disqualification is required.
- [5] A judge should disclose on the record information that the judge believes the parties or their lawyers might reasonably consider relevant to a possible motion for disqualification, even if the judge believes there is no basis for disqualification.

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

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

[7] A judge’s use of social media or social networking platforms may create the appearance of a relationship between the judge and litigants or lawyers who may appear before the judge. Whether a relationship would cause the judge’s impartiality to “reasonably be questioned” depends on the facts. While the labels used by the social media or social networking platform (*e.g.*, “friend”) are not dispositive of the nature of the relationship, judges should consider the manner in which the rules on disqualification have been applied in traditional contexts and the additional ways in which social media or social networking platforms may amplify any connection to the judge.

## **RULE 2.12: SUPERVISORY DUTIES**

- (A) A judge shall require court staff, court officials, and others subject to the judge’s direction and control to act in a manner consistent with the judge’s obligations under this Code.
- (B) A judge with supervisory authority for the performance of other judges shall take reasonable measures to ensure that those judges properly discharge their judicial responsibilities, including the prompt disposition of matters before them.

## **COMMENTS**

[1] A judge is responsible for personal conduct and for the conduct of others, such as staff, when those persons are acting at the judge’s direction or control. A judge may not direct court personnel to engage in conduct on the judge’s behalf or as the

judge's representative when such conduct would violate the Code if undertaken by the judge.

- [2] Public confidence in the judicial system depends upon timely justice. To promote the efficient administration of justice, a judge with supervisory authority must take the steps needed to ensure that supervised judges administer their workloads promptly. *See* Ill. Sup. Ct. R. 21(b) (2018).

### **RULE 2.13: ADMINISTRATIVE APPOINTMENTS AND HIRING**

- (A) In making or facilitating administrative appointments and hiring court employees, a judge:
- (1) shall exercise the power of appointment or election impartially\* and on the basis of merit; and
  - (2) shall avoid nepotism, favoritism, and unnecessary appointments.
- (B) A judge should refrain from casting a vote for the appointment or reappointment to the office of associate judge of the judge's spouse, domestic partner, or of any person known by the judge to be within the third degree of relationship to the judge, the judge's spouse, or domestic partner (or the spouse or domestic partner of such a person).
- (C) A judge shall not approve compensation of appointees beyond the fair value of services rendered.

### **COMMENTS**

- [1] Unless otherwise defined by law, nepotism is the appointment or hiring of any relative within the third degree of relationship of either the judge or the judge's spouse or domestic partner, or the spouse or domestic partner of such relative.

### **RULE 2.14: DISABILITY AND IMPAIRMENT**

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

### **COMMENTS**

- [1] "Appropriate action" means action intended and reasonably likely to help the judge or lawyer in question address the problem and prevent harm to the justice system. Depending upon the circumstances, appropriate action may include, but is not

limited to, speaking directly to the impaired person, notifying an individual with supervisory responsibility over the impaired person, or making a referral to an assistance program.

- [2] Taking or initiating corrective action by way of referral to an assistance program may satisfy a judge's responsibility under this Rule. Assistance programs have many approaches for offering help to impaired judges and lawyers, such as intervention, counseling, or referral to appropriate health care professionals. Depending upon the gravity of the conduct that has come to the judge's attention, however, the judge may be required to take other action, such as reporting the impaired judge or lawyer to the appropriate authority,\* agency, or body. *See* Rule 2.15.
- [3] A judge having reliable information that does not rise to the level of knowledge that the performance of a lawyer or another judge is impaired by drugs, alcohol, or other condition may take appropriate action.

#### **RULE 2.15: RESPONDING TO JUDICIAL AND LAWYER MISCONDUCT**

- (A) A judge knowing\* that another judge has committed a violation of this Code that raises a substantial question regarding the judge's honesty, trustworthiness, or fitness as a judge in other respects shall inform the Illinois Judicial Inquiry Board.
- (B) A judge knowing that a lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial question regarding the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects shall inform the Illinois Attorney Registration and Disciplinary Commission (ARDC).
- (C) A judge knowing that another judge has committed a violation of this Code, that does not raise a substantial question regarding honesty, trustworthiness, or fitness of a judge shall take appropriate action.
- (D) A judge knowing that a lawyer has committed a violation of the Rules of Professional Conduct that does not raise a substantial question regarding honesty, trustworthiness, or fitness of a lawyer shall take appropriate action.
- (E) The following provisions apply to judicial mentoring:
  - (1) Acts of a judge in mentoring a new judge pursuant to M.R. 14618 (Administrative Order of February 6, 1998, as amended June 5, 2000) and in the discharge of disciplinary responsibilities required or permitted by Canon 3 or article VIII of the Rules of Professional Conduct are part of a judge's judicial duties and shall be absolutely privileged.

- (2) Except as otherwise required by the Supreme Court Rules, information pertaining to the new judge's performance which is obtained by the mentor in the course of the formal mentoring relationship shall be held in confidence by the mentor.

## COMMENTS

- [1] A judge having knowledge of misconduct committed by another judge or an attorney must take appropriate action to address the misconduct. Paragraphs (A) and (B) impose an obligation on the judge to report to the appropriate disciplinary authority the known misconduct of another judge or a lawyer that raises a substantial question regarding the honesty, trustworthiness, or fitness of that judge or lawyer. Ignoring or denying known misconduct among one's judicial colleagues or members of the legal profession undermines a judge's responsibility to participate in efforts to ensure public respect for the justice system. This Rule limits the reporting obligation to those offenses that an independent judiciary must vigorously endeavor to prevent.
- [2] A judge having knowledge of a violation of the Code or the Rules of Professional Conduct that does not raise a substantial question regarding honesty, trustworthiness, or fitness of a judge or lawyer, respectively, is required to take appropriate action under paragraphs (C) or (D). Appropriate action may include, but is not limited to, communicating directly with the judge who may have violated this Code, communicating with a supervising judge, or reporting the suspected violation to the appropriate authority or other agency or body. Similarly, actions to be taken in response to information indicating that a lawyer has committed a violation of the Rules of Professional Conduct may include but are not limited to communicating directly with the lawyer who may have committed the violation when communicating is consistent with Rule 2.9 ("*Ex Parte* Communications") and other provisions of this Code, initiating contempt proceedings, or reporting the suspected violation to the appropriate authority. In both cases, the Rule does not preclude a judge from taking or initiating more than a single appropriate disciplinary measure.

### **RULE 2.16: COOPERATION WITH DISCIPLINARY AUTHORITIES**

- (A) A judge shall cooperate and be candid and honest with judicial and lawyer disciplinary agencies.
- (B) A judge shall not retaliate, directly or indirectly, against a person known\* or suspected to have assisted or cooperated with an investigation of a judge or lawyer.

## COMMENTS

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

### CANON 3

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

#### RULE 3.1: EXTRAJUDICIAL ACTIVITIES IN GENERAL

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

- (A) participate in activities that will interfere with the proper performance of the judge's judicial duties;
- (B) participate in activities that will lead to frequent disqualification of the judge;
- (C) participate in activities that would appear to a reasonable person to undermine the judge's independence,\* integrity,\* or impartiality;\*
- (D) engage in conduct that would appear to a reasonable person to be coercive; or
- (E) make use of court premises, staff, stationery, equipment, or other resources, except for incidental use.

#### COMMENTS

- [1] To the extent that time permits, and judicial independence and impartiality are not compromised, judges are encouraged to engage in appropriate extrajudicial activities. Judges are uniquely qualified to engage in extrajudicial activities that concern the law, the legal system, and the administration of justice, such as by speaking, writing, teaching, or participating in scholarly research projects. In addition, judges are permitted and encouraged to engage in educational, religious, charitable, fraternal, social, recreational, or civic extrajudicial activities not conducted for profit, even when the activities do not involve the law. *See* Rule 3.7.
- [2] Participation in both law-related and other extrajudicial activities helps integrate judges into their communities and furthers public understanding of and respect for courts and the judicial system.
- [3] Discriminatory actions and expressions of bias or prejudice by a judge, even outside the judge's official or judicial actions, are likely to appear to a reasonable person to call into question the judge's integrity and impartiality. Examples include jokes or other remarks that demean individuals based upon their race, sex, gender, gender identity, religion, national origin, ethnicity, pregnancy, disability, age, sexual orientation, or socioeconomic status. For the same reason, a judge's extrajudicial

activities must not be conducted in connection or affiliation with an organization that practices invidious discrimination. *See* Rule 3.6.

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

### **RULE 3.2: APPEARANCES BEFORE GOVERNMENTAL BODIES AND CONSULTATION WITH GOVERNMENT OFFICIALS**

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

- (A) in connection with matters concerning the law, the legal system, or the administration of justice;
- (B) in connection with matters about which the judge acquired knowledge or expertise in the course of the judge's judicial duties; or
- (C) when the judge is acting *pro se* in a matter involving the judge's personal, legal, or economic interests or when the judge is acting in a fiduciary capacity.

### **COMMENTS**

- [1] Judges possess special expertise in matters of law, the legal system, and the administration of justice, and may properly share that expertise with governmental bodies and executive or legislative branch officials.
- [2] In appearing before governmental bodies or consulting with government officials, judges must be mindful that they remain subject to other provisions of this Code, such as Rule 1.3, prohibiting judges from using the prestige of office to advance their own or others' interests, Rule 2.10, governing public comment on pending and impending matters, and Rule 3.1(C), prohibiting judges from engaging in extrajudicial activities that would appear to a reasonable person to undermine the judge's independence, integrity, or impartiality.
- [3] In general, it would be an unnecessary and unfair burden to prohibit judges from appearing before governmental bodies or consulting with government officials on matters that are likely to affect them as private citizens, such as zoning proposals affecting their real property. In engaging in such activities, however, judges must not refer to their judicial positions and must otherwise exercise caution to avoid using the prestige of judicial office.

### **RULE 3.3: TESTIFYING AS A CHARACTER WITNESS**

A judge shall not testify as a character witness in a judicial, administrative, or other adjudicatory proceeding or otherwise vouch for the character of a person in a legal proceeding, except when duly summoned.

#### **COMMENTS**

- [1] A judge who, without being subpoenaed, testifies as a character witness abuses the prestige of judicial office to advance the interests of another. *See* Rule 1.3. Nothing in this Rule will affect or prohibit a judge's ability to provide a letter of recommendation on judicial letterhead for an individual based upon the judge's personal knowledge. *See* Rule 1.3, Comment [2].

### **RULE 3.4: APPOINTMENTS TO GOVERNMENTAL POSITIONS**

In addition to the restrictions in Article VI, section 13 of the Illinois Constitution, a judge shall not accept appointment to a governmental committee, board, commission, or other governmental position, unless the appointment concerns the law, the legal system, or the administration of justice.

#### **COMMENTS**

- [1] Article VI, section 13 of the Illinois Constitution prohibits a judge from holding any office under the United States, this State, unit of local government or school board. Rule 3.4 acknowledges this Constitutional limitation while implicitly recognizing the value of judges accepting appointments to entities that concern the law, the legal system, or the administration of justice. Even in such instances, however, a judge should assess the appropriateness of accepting an appointment, paying particular attention to the subject matter of the appointment and the availability and allocation of judicial resources, including the judge's time commitments, and giving due regard to the requirements of the independence and impartiality of the judiciary.
- [2] A judge may represent a country, state, or locality on ceremonial occasions or in connection with historical, educational, or cultural activities. Such representation does not constitute acceptance of a government position.

### **RULE 3.5: USE OF NONPUBLIC INFORMATION**

A judge shall not intentionally disclose or use nonpublic information\* acquired in a judicial capacity for any purpose unrelated to the judge's judicial duties.

## COMMENTS

- [1] In the course of performing judicial duties, a judge may acquire information of commercial or other value that is unavailable to the public. The judge must not intentionally disclose or use such information for personal gain or for any purpose unrelated to judicial duties.
- [2] This Rule is not intended, however, to affect a judge's ability to act on information as necessary to protect the health or safety of the judge or a member of a judge's family, court personnel, attorneys, or other persons if consistent with other provisions of this Code.

### **RULE 3.6: AFFILIATION WITH DISCRIMINATORY ORGANIZATIONS**

- (A) A judge shall not hold membership in any organization that practices invidious discrimination on the basis of race, sex, gender, gender identity, religion, national origin, ethnicity, or sexual orientation.
- (B) A judge shall not use the benefits or facilities of an organization if the judge knows\* or should know that the organization practices invidious discrimination on one or more of the bases identified in paragraph (A). A judge's attendance at an event in a facility of an organization that the judge is not permitted to join is not a violation of this Rule when the judge's attendance is an isolated event that could not reasonably be perceived as an endorsement of the organization's practices.

## COMMENTS

- [1] A judge's public manifestation of approval of invidious discrimination on any basis gives rise to the appearance of impropriety and diminishes public confidence in the integrity and impartiality of the judiciary. A judge's membership in an organization that practices invidious discrimination creates the perception that the judge's impartiality is impaired.
- [2] An organization is generally said to discriminate invidiously if it arbitrarily excludes from membership on the basis of race, sex, gender, gender identity, religion, national origin, ethnicity, or sexual orientation persons who would otherwise be eligible for admission. Whether an organization practices invidious discrimination is a complex question to which judges should be attentive. The answer cannot be determined from a mere examination of an organization's current membership rolls, but, rather, depends upon how the organization selects members, as well as other relevant factors, such as whether the organization is dedicated to the preservation of religious, ethnic, or cultural values of legitimate common interest to its members, or whether it is an intimate, purely private organization whose membership limitations could not constitutionally be prohibited.

- [3] When a judge learns that an organization to which the judge belongs engages in invidious discrimination, the judge must resign immediately from the organization.
- [4] A judge's membership in a religious organization as a lawful exercise of the freedom of religion is not a violation of this Rule.
- [5] This Rule does not apply to national or state military service.

**RULE 3.7: PARTICIPATION IN EDUCATIONAL, RELIGIOUS, CHARITABLE, FRATERNAL, OR CIVIC ORGANIZATIONS AND ACTIVITIES**

- (A) Subject to the requirements of Rule 3.1, a judge may participate in activities (i) sponsored by organizations or governmental entities concerned with the law, the legal system, or the administration of justice; and (ii) sponsored by or on behalf of educational, religious, charitable, fraternal, or civic organizations not conducted for profit, including, but not limited to, the following activities:
  - (1) assisting such an organization or entity in planning related to fundraising, and participating in the management and investment of the organization's or entity's funds;
  - (2) soliciting\* contributions\* for such an organization or entity, but only from members of the judge's family\* or from judges over whom the judge does not exercise supervisory authority;
  - (3) soliciting membership for such an organization or entity, even though the membership dues or fees generated may be used to support the objectives of the organization or entity, but only if the organization or entity is concerned with the law, the legal system, or the administration of justice;
  - (4) appearing, speaking, receiving an award or other recognition, and permitting the judge's title to be used in connection with a fundraising or other event of such an organization or entity;
  - (5) making recommendations to such a public or private fund-granting organization or entity in connection with its programs and activities; and
  - (6) serving as an officer, director, trustee, or nonlegal advisor of such an organization or entity, unless it is likely that the organization or entity:
    - (a) will be engaged in proceedings that would ordinarily come before the judge; or

- (b) will frequently be engaged in adversarial proceedings in the court of which the judge is a member or in any court subject to the appellate jurisdiction of the court of which the judge is a member.
- (B) A judge may encourage and solicit lawyers to provide *pro bono* public legal services.

## COMMENTS

- [1] The activities permitted by paragraph (A) generally include those sponsored by or undertaken on behalf of public or private not-for-profit educational institutions and other not-for-profit organizations, including law-related, charitable, and other organizations.
- [2] Before engaging in activities permitted by Rule 3.7, a judge should consider whether the membership and purposes of the organization, or the nature of the judge's participation in or association with the organization, would conflict with the judge's obligation to refrain from activities that reflect adversely upon a judge's independence, integrity, and impartiality.
- [3] Mere attendance at an event, whether or not the event serves a fundraising purpose, does not constitute a violation of paragraph (A)(4) so long as the judge does not engage in direct solicitation. It is also generally permissible for a judge to serve as an usher or a food server or preparer or to perform similar functions at fundraising events sponsored by educational, religious, charitable, fraternal, or civic organizations. Such activities are not solicitation and do not present an element of coercion or misuse the prestige of judicial office.
- [3A] A judge may not use social media or social networking platforms to promote the activities of educational, religious, charitable, fraternal, or civic organizations when the judge would be prohibited from doing so using another means of communication. For example, just as a judge may not write or telephone non-family members or judges over whom the judge has supervisory authority to encourage them to attend organizations' fundraising events, a judge may not promote those events via social media or social networking platforms.
- [4] Identification of a judge's position in law-related, educational, religious, charitable, fraternal, or civic organizations on letterhead or written materials used for fundraising or membership solicitation by such an organization or entity does not violate this Rule. The letterhead may list the judge's title or judicial office if comparable designations are used for other persons.
- [5] In addition to appointing lawyers to serve as counsel for indigent parties in individual cases, a judge may promote broader access to justice by encouraging lawyers to participate in *pro bono* public legal services if in doing so the judge does not employ coercion or misuse the prestige of judicial office. Such encouragement

may take many forms, including providing lists of available programs, training lawyers to do *pro bono* public legal work, participating in events recognizing lawyers who have done *pro bono* public work, and requesting lawyers handle matters on a *pro bono* basis.

- [6] For guidance regarding a judge's involvement with political organizations, *see* Canon 4.

### **RULE 3.8: APPOINTMENTS TO FIDUCIARY POSITIONS**

- (A) A judge shall not accept appointment to serve in a fiduciary\* position, such as executor, administrator, trustee, guardian, attorney in fact, or other personal representative, except for the estate, trust, or person of a member of the judge's family and then only if the service will not interfere with the proper performance of judicial duties.
- (B) [Reserved]
- (C) A judge acting in a fiduciary capacity shall be subject to the same restrictions on engaging in financial activities that apply to a judge personally.
- (D) If a person who is serving in a fiduciary position becomes a judge, the new judge must\* comply with this Rule as soon as reasonably practicable, but in no event later than one year after becoming a judge.

#### **COMMENTS**

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

### **RULE 3.9: SERVICE AS ARBITRATOR OR MEDIATOR**

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

#### **COMMENTS**

- [1] This Rule does not prohibit a judge from participating in arbitration, mediation, or settlement conferences performed as part of judicial duties. Rendering dispute

resolution services apart from those duties, whether or not for economic gain, is prohibited unless it is expressly authorized by law.

**RULE 3.10: PRACTICE OF LAW**

A judge shall not practice law. A judge may act *pro se* in all legal matters.

COMMENTS

- [1] A judge may act *pro se* in all legal matters, including matters involving litigation and matters involving appearances before or other dealings with governmental bodies. A judge must not use the prestige of office to advance the judge's personal or family interests. *See* Rule 1.3.

**RULE 3.11: FINANCIAL, BUSINESS, OR REMUNERATIVE ACTIVITIES**

- (A) A judge may hold and manage investments of the judge and members of the judge's family.
- (B) A judge shall not serve as an officer, director, manager, general partner, advisor, or employee of any business entity. A judge, however, may:
- (1) hold an equity interest in a business closely held by the judge or members of the judge's family or household; or
  - (2) manage a business entity primarily engaged in investment of the financial resources of the judge or members of the judge's family.
- (C) A judge shall cease engaging in those financial activities otherwise permitted under paragraphs (A) and (B) as soon as practicable if they will:
- (1) interfere with the proper performance of judicial duties;
  - (2) lead to frequent disqualification of the judge;
  - (3) involve the judge in frequent transactions or continuing business relationships with lawyers or other persons likely to come before the court on which the judge serves; or
  - (4) result in violation of other provisions of this Code.

## COMMENTS

- [1] Although the Rule forbids a judge from assuming an active role in the management of any business, judges are generally permitted to engage in financial activities, including managing real estate and other investments for themselves or for members of their families. Participation in these activities, like participation in other extrajudicial activities, is subject to the requirements of this Code. For example, it would be improper for a judge to spend time on business activities that interferes with the performance of judicial duties. *See* Rule 2.1. Similarly, it would be improper for a judge to use the official title or appear in judicial robes in business advertising or to conduct personal business or financial affairs in such a way that disqualification is frequently required. *See* Rules 1.3 and 2.11.
- [2] Situations that require frequent disqualification of a judge or otherwise violate this Rule may exist at the time of taking judicial office or arise due to a change in circumstances. As soon as practicable without serious financial detriment, divestment of personal investments and other financial interests is required where frequent disqualification or other violations of this Rule might occur.

### **RULE 3.12: COMPENSATION FOR EXTRAJUDICIAL ACTIVITIES**

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

## COMMENTS

- [1] A judge is permitted to accept honoraria, stipends, fees, wages, salaries, royalties, or other compensation for speaking, teaching, writing, and other extrajudicial activities, provided the compensation is reasonable and provided that the source of the payments do not give the appearance of influencing the judge in the performance of judicial duties or otherwise give the appearance of impropriety. The judge should be mindful, however, that judicial duties must take precedence over other activities. *See* Rule 2.1 and Ill. Const. art. 6, § 13B.
- [2] Compensation derived from extrajudicial activities may be subject to public reporting. *See* Rule 3.15.
- [3] Judges may not accept payment or other compensation for performing weddings. *See* Ill. Sup. Ct. Rule 40.

**RULE 3.13: ACCEPTANCE OF GIFTS, LOANS, BEQUESTS, FAVORS, BENEFITS, OR OTHER THINGS OF VALUE**

A judge shall not accept any gifts, loans, bequests, benefits, favors, or other things of value, except as follows:

- (1) items with little intrinsic value, such as plaques, certificates, trophies, and greeting cards;
- (2) gifts, loans, bequests, benefits, favors, or other things of value from individuals whose relationship with the judge would require disqualification under Rule 2.11.
- (3) ordinary social hospitality;
- (4) commercial or financial opportunities and benefits, including special pricing and discounts, and loans from lending institutions in their regular course of business, if the same opportunities and benefits or loans are made available on the same terms to similarly situated persons who are not judges;
- (5) rewards and prizes given to competitors or participants in random drawings, contests, or other events that are open to persons who are not judges;
- (6) scholarships, fellowships, and similar benefits or awards, if they are available to similarly situated persons who are not judges, based upon the same terms and criteria;
- (7) books, magazines, journals, audiovisual materials, and other resource materials supplied by publishers on a complimentary basis for official use;
- (8) gifts incident to a public testimonial;
- (9) invitations to the judge and the judge's spouse, domestic partner, or guest to attend without charge:
  - (a) an event associated with a bar-related function or other activity relating to the law, the legal system, or the administration of justice; or
  - (b) an event associated with any of the judge's educational, religious, charitable, fraternal or civic activities permitted by this Code, if the same invitation is offered to nonjudges who are engaged in similar ways in the activity as is the judge; and
- (10) gifts, loans, bequests, benefits, favors, or other things of value, only if the donor is not a party or other person whose interests have come or are likely to come before the judge, including lawyers who practice or have practiced before the judge.

## COMMENTS

- [1] Whenever a judge accepts a gift or other thing of value without paying fair market value, there is a risk that the benefit might be viewed as intended to influence the judge's decision in a case. Rule 3.13 prohibits the acceptance of benefits except in circumstances where the risk of improper influence is low.
- [2] Gift giving between friends and relatives is a common occurrence and ordinarily does not create an appearance of impropriety or cause reasonable persons to believe that the judge's independence, integrity, or impartiality has been compromised. In addition, when the appearance of friends or relatives in a case would require the judge's disqualification under Rule 2.11, there would be no opportunity for a gift to influence the judge's decision making. Paragraph (2) places no restrictions upon the ability of a judge to accept gifts or other things of value from friends or relatives under these circumstances.
- [3] Businesses and financial institutions frequently make available special pricing, discounts, and other benefits, either in connection with a temporary promotion or for preferred customers based upon longevity of the relationship, volume of business transacted, and other factors. A judge may freely accept such benefits if they are available to the general public or if the judge qualifies for the special price or discount according to the same criteria as are applied to persons who are not judges. As an example, loans provided at generally prevailing interest rates are not gifts, but a judge could not accept a loan from a financial institution at below market interest rates unless the same rate was being made available to the general public for a certain period of time or only to borrowers with specified qualifications that the judge also possesses.
- [4] Rule 3.13 applies only to acceptance of gifts or other things of value by a judge. Nonetheless, if a gift or other benefit is given to the judge's spouse, domestic partner, or member of the judge's family residing in the judge's household, it may be viewed as an attempt to evade Rule 3.13 and influence the judge indirectly. Where the gift or benefit is being made primarily to such other persons and the judge is merely an incidental beneficiary, this concern is reduced. A judge should consider informing family and household members of the restrictions imposed upon judges by this Rule.
- [5] Contributions to a judge's campaign for judicial office are governed by Rules 4.3 and 4.4 of this Code.
- [6] "Ordinary social hospitality" includes the "routine amenities, favors, and courtesies which are normally exchanged between friends and acquaintances, and which would not create an appearance of impropriety to a reasonable, objective observer." *In re Corboy*, 124 Ill. 2d 29, 42 (1988). The touchstone of this objective test "is a careful consideration of social custom." *Id.* Factors relevant to this inquiry include (1) the monetary value of the gift, loan, bequest, or other item transferred from the

donor or lender to the judge; (2) the relationship between the judge and the donor or lender; (3) the social practices and customs associated with transfers of the type made between the judge and donor or lender; and (4) the circumstances surrounding the transaction. *See id.* at 42-43.

[7] Disclosure of economic interests including gifts is governed by Rule 3.15.

#### **RULE 3.14: REIMBURSEMENT OF EXPENSES AND WAIVERS OF FEES OR CHARGES**

- (A) Unless otherwise prohibited by Rule 3.1 or other law,\* a judge may accept reimbursement of necessary and reasonable expenses for travel, food, lodging, or other incidental expenses or a waiver or partial waiver of fees or charges for registration, tuition, and similar items from sources other than the judge's employing entity, if the expenses or charges are associated with the judge's participation in extrajudicial activities permitted by this Code.
- (B) Reimbursement of expenses for necessary travel, food, lodging, or other incidental expenses shall be limited to the actual costs reasonably incurred by the judge and, when appropriate to the occasion, by the judge's spouse, domestic partner,\* or guest.
- (C) [Reserved]

#### **COMMENTS**

- [1] Educational, civic, religious, fraternal, and charitable organizations often sponsor meetings, seminars, symposia, dinners, awards ceremonies, and similar events. Judges are encouraged to attend educational programs as both teachers and participants in law-related and academic disciplines in furtherance of their duty to remain competent in the law. Participation in a variety of other extrajudicial activity is also permitted and encouraged by this Code.
- [2] Not infrequently, sponsoring organizations invite certain judges to attend seminars or other events on a fee-waived or partial-fee-waived basis and sometimes include reimbursement for necessary travel, food, lodging, or other incidental expenses. A judge's decision whether to accept reimbursement of expenses or a waiver or partial waiver of fees or charges in connection with these or other extrajudicial activities must be based upon an assessment of all the circumstances. The judge must undertake a reasonable inquiry to obtain the information necessary to make an informed judgment about whether acceptance would be consistent with the requirements of this Code.
- [3] A judge must be assured that acceptance of reimbursement or fee waivers would appear to a reasonable person not to undermine the judge's independence, integrity,

or impartiality. The factors that a judge should consider when deciding whether to accept reimbursement or a fee waiver for attendance at a particular activity include:

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

### **RULE 3.15: REPORTING REQUIREMENTS**

A judge shall file annually with the Clerk of the Illinois Supreme Court a verified written statement of economic interests. The contents of, and filing deadline for, the statement shall be as specified by administrative order of this court.

### **COMMENTS**

The statement of economic interests required by this Rule is intended to (1) maintain and promote public confidence in the integrity, impartiality, fairness, and independence of the judiciary, (2) provide public information bearing on judges' potential conflicts of interest, and (3) foster compliance with the Code. The statement is designed to achieve an appropriate balance with respect to particular information which might reasonably bear on

these objectives between the value of public disclosure of that information, on the one hand, and judges' legitimate privacy interests, on the other hand.

### **ADMINISTRATIVE ORDER**

1. The verified written statement of economic interests referred to in Rule 3.15 shall be filed annually by all judges on or before April 30. Statements also shall be filed by every person who becomes a judge, within 45 days after assuming office. However, judges who assume office on or after December 1 and who file the statement before the following April 30 shall not be required to file another statement until the next year.
2. Before the first Monday in March of each year, the Director of the Administrative Office of the Illinois Courts (the Director) shall inform each judge of the requirements of Rule 3.15 and this order and shall provide a copy of the Statement of Economic Interests. The Director shall do the same for each new judge within 10 days of the judge assuming office.
3. The Clerk is authorized to redact any personal information that is not required to be disclosed in the statement.
4. The Clerk shall maintain a publicly available list of all judges and the last date on which each judge filed the statement.
5. The Clerk shall send a judge acknowledgement of receipt of the judge's statement and the date of filing.
6. All statements shall be made available to the public by written request submitted to the Clerk's office. Each person requesting a statement must first fill out a form prepared by the Director specifying the statement requested, identifying the examiner by name, occupation, address, telephone number, and email address, and listing the date of and the reason for the request. Copies of statements will be supplied to persons requesting them on payment of a reasonable fee per page as required by the Clerk. Payment will be in the form required by the Clerk.
7. When a copy of a judge's statement is requested, the Clerk shall promptly send the judge a copy of the completed request form.

### **STATEMENT OF ECONOMIC INTERESTS REQUIRED BY SUPREME COURT RULE 3.15**

#### **INSTRUCTIONS**

1. You (the "filing judge") are required to report economic interests owned by you or your spouse, domestic partner, or minor children living with you (collectively, "Covered Persons"). You shall keep informed about your economic interests and

make a reasonable effort to keep informed about the economic interests of the other Covered Persons.

2. Economic interests must be reported as of the “Record Date,” which is December 31 of the year before the date of this Statement.
3. For each category of economic interests, include all assets valued in excess of \$1,000 in which any Covered Person has an ownership interest, including those owned in an Individual Retirement Account (IRA), 401(k) plan, 403(b) plan, 457 plan, deferred compensation plan administered by the State of Illinois, 529 college savings plan, Uniform Gift to Minor Act account, or similar accounts (collectively, “Retirement/Investment Accounts”).
4. With respect to dividends, interest, rent, royalties, or distributions (collectively, “income”), report any income received during the 12-month period before the Record Date. Only report whether income was received, and not any amount.
5. Attach additional pages if the space provided is insufficient.

---

1. NAME OF FILING JUDGE: \_\_\_\_\_

2. COURT: \_\_\_\_\_ DISTRICT/CIRCUIT \_\_\_\_\_.

3. CURRENT ECONOMIC INTERESTS.

a. FINANCIAL INSTITUTIONS.

- i. List each financial institution in which any Covered Person has assets valued in excess of \$1,000, including assets held in savings accounts, checking accounts, money market accounts, certificates of deposits, or “Retirement/Investment Accounts” (as defined in Paragraph 3 of the Instructions).

- ii. Do not provide account numbers. Multiple accounts at the same financial institution need not be separately listed.

<b>Financial Institution</b>

Check box if none.

**b. STOCKS, BONDS, ETF, AND MUTUAL FUNDS.**

- i. List stocks, bonds, exchange traded funds (ETF), and mutual funds valued in excess of \$1,000 owned by a Covered Person, including such assets held in a Retirement/Investment Account (as defined in Paragraph 3 of the Instructions).
- ii. Do not list (1) multiple holdings of the same security (e.g., multiple U.S. Treasury Notes), (2) multiple securities issued by the same issuer, (3) different mutual funds in the same mutual fund family, (4) assets owned by a mutual fund or ETF, or (5) deposits or proprietary interests held as a member of a mutual savings association or credit union.

<b>Name of Issuer or Mutual Fund or ETF Family</b>	<b>Nature of Security (i.e., stock, bond, mutual fund, ETF)</b>

Check box if none.

c. REAL ESTATE.

- i. List all real estate in which any Covered Person has an ownership interest, including a beneficial interest in a land trust.
- ii. For each personal residence of a Covered Person or a Covered Person’s family member, state “personal residence” and do not provide address.

Address (other than for a personal residence)	Type of Property (e.g., single-family residence, condominium, farmland, etc.)	Income Received? (Yes/No)

Check box if none.

- d. PENSION PLANS. List any non-judicial pension plan in which any Covered Person has an interest. This does not include: (1) Individual Retirement Accounts, 401(k) plans, 403(b) plans, or 457 plans; or (2) any benefits from the Social Security Administration.

Plan Sponsor/Administrator	Income Received? (Yes/No)

Check box if none.

- e. INTERESTS IN INTANGIBLE PROPERTY. List any interest valued in excess of \$1,000 in intangible property, not reported above, owned by any Covered Person. This includes, but is not limited to, an interest in any partnership, corporation, limited liability company, trust, copyright, trademark, or chose in action.

Description of Intangible Property	Nature of Interest	Income Received? (Yes/No)

Check box if none.

f. EMPLOYMENT. List every paid employment of a Covered Person, with the exception of the filing judge’s judicial employment.

Name of Employer

Check box if none.

g. NON-INVESTMENT INCOME. List the nature of all non-investment income, other than employment income, received by a Covered Person from any one source that totals at least \$1,000 in the 12-month period before the Record Date. Income includes, but is not limited to, fees, commissions, payments for personal services, and royalties. Do not include the amount.

Source of Non-Investment Income	Nature of Non-Investment Income (Commission, Royalty, etc.)

Check box if none.

4. INDEBTEDNESS.

- a. List all creditors to whom amounts in excess of \$1,000 were owed by any Covered Person on the Record Date and identify any sureties or guarantors of any such indebtedness.
- b. Do not include any debt, including credit card debt, which was paid in its entirety within 90 days of when it was incurred. For these purposes, medical or dental expenses are not considered to be incurred until the amount of the Covered Person’s financial responsibility is determined after the application of any insurance benefits.
- c. The amount of each listed indebtedness shall be reported by reference to a letter category, as follows: Category A – \$1,000.01-\$5,000; Category B – \$5000.01-\$15,000; Category C –\$15,000.01- \$50,000; Category D – \$50,000.01-\$100,000; Category E – \$100,000.01-\$250,000; and Category F – greater than \$250,000. This categorization shall be reported as of the Record Date.

Name of Creditor	Valuation Category on Record Date	Identity of any Surety or Guarantor of the Indebtedness

5. RELATIONSHIPS WITH LAWYERS.

- a. Identify all persons, other than Covered Persons, known by the filing judge to be licensed or registered to practice law who, at any time within the 12-month period before the Record Date, was a co-owner with a Covered Person of any economic interest, a co-obligor with or a creditor of a Covered Person, or the payor to a Covered Person of any income, payments, or benefits, required to be disclosed in Paragraphs 3 or 4. State the nature of each economic interest, indebtedness, or income, payments, or benefits, and whether it is ongoing or terminated as of the Record Date.

Name of Lawyer	Nature of Economic Interest, Indebtedness, or Income, Payments, or Benefits	Ongoing or Terminated

Check box if none.

- b. Identify all lawyers with whom the filing judge was associated in the private practice of law within three years of the date of this filing. The name of the firm may be substituted where the association was with five or more lawyers.

Name of Lawyer or Law Firm	Address

Check box if none.

6. BOARD SERVICE. List every office or directorship held by a Covered Person, regardless of whether compensation is received. Do not include any uncompensated or honorary positions in educational, religious, charitable, fraternal, civic, social, or law-related organizations unless those organizations are either conducted for profit or regularly engaged in adversary proceedings in any court.

Name of Organization	Position Held	Compensation Received? (Yes/No)

Check box if none.

7. LITIGATION.

- a. List all court cases or arbitration proceedings known to the filing judge pending on or within 12 months before the Record Date in which a Covered Person either was a party or had more than a *de minimis* financial interest (*i.e.*, a monetary interest that could not raise a reasonable question as to the judge’s impartiality). Do not include: (1) proceedings in which a Covered Person is a party solely in an official capacity; (2) class actions in which a Covered Person is not a named class representative; or (3) motor vehicle offenses that are punishable by fine only.

Case Name, Tribunal, and Case Number

Check box if none.

- b. List all cases in which the filing judge was a referring lawyer with an economic interest that are still pending on the Record Date or that were resolved within three years before the Record Date. Include the name of the lawyer or law firm to which the case was referred.

Case Name, Court Where Pending, and Case Number	Identity of Lawyer or Law Firm to Which the Case Was Referred	Pending Case? (Yes/No)

Check box if none.

8. FIDUCIARY POSITIONS. List all fiduciary positions held by the filing judge on the Record Date. Examples include service as a trustee, executor, estate administrator, guardian of the estate, or agent pursuant to a power of attorney for property. Do not include fiduciary positions held for the benefit of a family member of a Covered Person. Identify by name each person, other than a Covered Person, for whom the filing judge is serving as fiduciary.

Fiduciary Position	Name of Person for Whom the Filing Judge Is Serving as Fiduciary

Fiduciary Position	Name of Person for Whom the Filing Judge Is Serving as Fiduciary

Check box if none.

9. HONORARIA, REIMBURSEMENT OF EXPENSES, AND WAIVERS OF FEES. List all honoraria, reimbursement of expenses, and waivers of fees (collectively, “Benefits”) that (a) either individually or in the aggregate from the same provider of the Benefits exceed \$500.00, and (b) were received by a Covered Person, or a guest of the filing judge in connection with an event at which the Benefits were received, during the 12-month period prior to the Record Date. Do not report (a) waivers of fees to any unit of government, or (b) reimbursement or payment of expenses, or provision of resources, by any unit of government. Identify the provider of each Benefit and state the type of the recipient of each Benefit (*i.e.*, filing judge, filing judge’s guest, spouse, domestic partner, or child) rather than the specific name.

The value of each Benefit shall be reported by reference to a letter category, as follows:  
 Category A – \$500.00-\$2,500.00; Category B – \$2,500.01- \$5,000.00; Category C –greater than \$5,000.00.

Identity of Provider of the Benefit	Description of the Benefit	Type of Recipient of the Benefit	Value of the Benefit

Check box if none.

10. GIFTS. List all gifts that (a) either individually or in the aggregate from the same donor exceed \$500.00, and (b) were received by a Covered Person during the 12-month period prior to the Record Date. Do not include gifts between Covered Persons or between Covered Persons and any of their great-grandparents, grandparents, parents, uncles, aunts, brothers, sisters, grandchildren, great-grandchildren, nephews, and nieces. Identify the provider of each gift and state the type of the recipient of each gift (*i.e.*, filing judge, spouse, domestic partner, or child) rather than the specific name.

The value of each gift shall be reported by reference to a letter category, as follows:  
 Category A – \$500.00-\$2,500.00; Category B – \$2,500.01- \$5,000.00; Category C –greater than \$5,000.00.

<b>Identity of Provider of the Gift</b>	<b>Description of the Gift</b>	<b>Type of Recipient of the Gift</b>	<b>Value of the Gift</b>

Check box if none.

11. ADDITIONAL DISCLOSURES. List any economic interest not previously disclosed in this Statement that could create a basis for disqualification of the filing judge under Supreme Court Rule 2.11. Identify the person whose economic interest could create a basis for disqualification, but if that person is a Covered Person state the type of that Covered Person (*i.e.*, filing judge, spouse, domestic partner, or child) rather than the specific name.

<b>Type of Covered Person or Identity of Other Person with an Economic Interest That Could Create a Basis for Disqualification</b>	<b>Nature of Economic Interest</b>

Check box if none.

### VERIFICATION

Pursuant to Supreme Court Rule 3.15, I declare that this Statement of Economic Interests, including any accompanying schedules and statements, has been examined by me and to the best of my knowledge and belief is true, correct, and complete.

\_\_\_\_\_  
(Signature of Filing Judge)

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
(Printed Name of Filing Judge)

## CANON 4

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

### **RULE 4.1: POLITICAL AND CAMPAIGN ACTIVITIES IN PUBLIC ELECTIONS**

- (A) Except as authorized in paragraphs (D)(2) and (F), a judge or judicial candidate shall not:
  - (1) act as a leader or hold an office in a political organization;\*
  - (2) publicly endorse or publicly oppose another candidate for public office;
  - (3) make speeches on behalf of a political organization; or
  - (4) solicit funds for, or pay an assessment to, a political organization or candidate.
- (B) A judge shall resign from judicial office upon becoming a candidate for a non-judicial elected office.
- (C) A judicial candidate:
  - (1) shall maintain the dignity appropriate to judicial office and act in a manner consistent with the independence, integrity, and impartiality of the judiciary;
  - (2) shall prohibit employees and officials who serve at the pleasure of the candidate, and shall discourage other employees and officials subject to the candidate's direction and control, from doing on the candidate's behalf what the candidate is prohibited from doing under the provisions of this Rule;
  - (3) except to the extent permitted by Paragraph (E), shall not authorize, encourage, or knowingly permit members of the judicial candidate's family\* or other persons to do for the candidate what the candidate is prohibited from doing under the provisions of this Rule;
  - (4) shall not:
    - (a) make pledges, promises, or commitments that are inconsistent with the impartial performance of the adjudicative duties of judicial office with respect to cases, controversies, or issues that are likely to come before the court; or

- (b) knowingly misrepresent the identity, qualifications, present position, or other fact concerning the candidate or an opponent.
- (D) A judge or judicial candidate may, except as prohibited by law:
  - (1) at any time:
    - (a) purchase tickets for and attend political gatherings;
    - (b) identify as a member of a political party; and
    - (c) contribute to a political organization.
  - (2) when a candidate for public election: \*
    - (a) speak to gatherings supporting candidacy;
    - (b) appear in advertisements and other electronic media supporting the candidacy;
    - (c) distribute campaign materials supporting the candidacy;
    - (d) publicly endorse or publicly oppose any judicial candidates in a primary or general election in which the judge or judicial candidate is running and use or allow the use of campaign materials authorized by Paragraph F;
    - (e) respond to personal attacks or attacks on the candidate's record as long as the response does not violate Paragraph (C)(4) and is not reasonably expected to impair the fairness of a matter pending or impending in any court. *See* Rule 2.10(D).
- (E) A judicial candidate shall not:
  - (1) personally solicit\* or accept campaign contributions; or
  - (2) use or permit the use of campaign contributions for the private benefit of the candidate or others. *See* Rule 4.4.
- (F) A candidate for judicial office in a public election may permit the candidate's name or image to be included in campaign materials along with other candidates for elective public office.
- (G) A judge shall not engage in any political activity, except:

- (1) as authorized under Rule 4.1(D) and Rule 4.4;
  - (2) on behalf of measures that concern the law, the legal system, or the administration of justice; or
  - (3) as expressly authorized by law.
- (H) Rule 4.1 applies to all judges and judicial candidates. Judges and successful judicial candidates are subject to judicial discipline for their campaign conduct. Lawyers are subject to lawyer discipline for their campaign conduct that violates Rule 4.1 of the Rules of Professional Conduct.

## COMMENTS

- [1] A judge plays a role different from that of a legislator or executive branch official. Rather than making decisions based upon the expressed views or preferences of the electorate, a judge makes decisions based upon the law and the facts of every case. Therefore, in furtherance of this interest, judges and judicial candidates must, to the greatest extent possible, be free and appear to be free from political influence and political pressure. This Canon imposes narrowly tailored restrictions upon the political and campaign activities of all judges and judicial candidates.
- [2] When a person becomes a judicial candidate, this Canon becomes applicable.
- [2A] Except as may be specifically authorized in the context of judicial election campaigns, Rule 4.1 prohibits judges and judicial candidates from “publicly” endorsing or making “speeches” on behalf of political candidates or organizations. Comments by judges active on social media or social networking platforms may be considered “public” for purposes of this Rule.

## PARTICIPATION IN POLITICAL ACTIVITIES

- [3] Public confidence in the independence, integrity, and impartiality of the judiciary is eroded if judges or judicial candidates are perceived to be subject to political influence.
- [4] Paragraphs (A)(2) and (A)(3) prohibit judges and judicial candidates from making speeches on behalf of political organizations or publicly endorsing or opposing candidates for public office, respectively, to prevent them from abusing or misusing the prestige of judicial office to advance the interests of others. *See* Rule 1.3. The prohibition contained in Paragraph (A)(3) does not prohibit candidates from campaigning on their own behalf or from endorsing or opposing candidates for judicial office in the same primary or general election.
- [5] Although members of the families of judges and judicial candidates are free to engage in their own political activity, including running for public office, there is

no “family exception” to the prohibition in paragraph (A)(2) against a judge or candidate publicly endorsing candidates for public office. A judge or judicial candidate must not become involved in, or publicly associate with, a family member’s political activity or campaign for public office. To avoid public misunderstanding, judges and judicial candidates should take, and should urge members of their families to take, reasonable steps to avoid any implication that they endorse any family member’s candidacy or other political activity. The judge or judicial candidate may, however, attend events advancing the candidacy of the family member and contribute financially to the family member’s campaign to the same extent that a judge or judicial candidate may attend events and contribute money to any other candidate for public office.

- [5A] Because society recognizes the special relationship between members of a family, including the expectation that family members generally support each other in all facets of their lives, there is less danger that a judge’s association with a family member’s campaign for public office will create the impression that the judge is misusing judicial prestige to support the candidate. For example, a judge may appear in a photograph to be used in a family member’s campaign for public office. A judge must not, however, be depicted in judicial robes in a courtroom or other context that suggests the prestige of judicial office is being misused.
- [5B] A judge or judicial candidate should encourage family members in supporting the candidacy of the judge or judicial candidate to adhere to the same standards of political conduct contained in this Canon.
- [6] Judges and judicial candidates retain the right to participate in the political process as voters in any election. Judges and judicial candidates may sign election-related petitions. Judicial candidates may also circulate petitions for themselves or other judicial candidates in the same election, but must not circulate petitions for any non-judicial candidates for public office.

#### STATEMENTS AND COMMENTS MADE DURING A CAMPAIGN FOR JUDICIAL OFFICE

- [7] Judicial candidates should be scrupulously fair and accurate in all statements made by them and by their campaign committees. Paragraph (C)(4)(b) obligates candidates to refrain from knowingly, or with reckless disregard for the truth, making statements that are false or misleading or that omit facts necessary to make the communication considered as a whole not a false or misleading statement.
- [8] Judicial candidates are sometimes the subject of false, misleading, or unfair allegations made by opposing candidates, third parties, or the media. For example, false or misleading statements might be made regarding the identity, present position, experience, qualifications, or judicial rulings of a candidate. In other situations, false or misleading allegations may be made that bear upon a candidate’s integrity or fitness for judicial office. As long as the candidate does not violate

paragraph (D)(2)(e), the candidate may make a factually accurate public response. In addition, when false or misleading statements have been made regarding a candidate's opponent, the candidate should disavow the statements and request the source of the statements to cease.

- [9] Subject to paragraph (D)(2)(e), a judicial candidate is permitted to respond directly to false or misleading allegations made against him or her. The candidate should consider whether it is preferable for someone else to respond if the allegations relate to a pending case.
- [10] Paragraph (C)(4)(a) prohibits judicial candidates from making comments that might impair the fairness of pending or impending judicial proceedings. This provision does not restrict arguments or statements to the court or jury by a lawyer who is a judicial candidate or rulings, statements, or instructions by a judge that may appropriately affect the outcome of a matter.

#### PLEDGES, PROMISES, OR COMMITMENTS INCONSISTENT WITH IMPARTIAL PERFORMANCE OF THE ADJUDICATIVE DUTIES OF JUDICIAL OFFICE

- [11] The role of a judge is different from that of a legislator or executive branch official, even when the judge is subject to public election. Campaigns for judicial office must be conducted differently from campaigns for other offices. The narrowly drafted restrictions upon political and campaign activities of judicial candidates provided in Canon 4 allow candidates to conduct campaigns that provide voters with sufficient information to permit them to distinguish between candidates and make informed electoral choices.
- [12] Paragraph (C)(4)(a) makes applicable to both judges and judicial candidates the prohibition that applies to judges in Rule 2.10(B) relating to pledges, promises, or commitments that are inconsistent with the impartial performance of the adjudicative duties of judicial office.
- [13] The making of a pledge, promise, or commitment is not dependent upon, or limited to, the use of any specific words or phrases; instead, the totality of the statement must be examined to determine if a reasonable person would believe that the candidate for judicial office has specifically undertaken to reach a particular result. Pledges, promises, or commitments must be contrasted with statements or announcements of personal views on legal, political, or other issues, which are not prohibited. When making such statements, a judge should acknowledge the overarching judicial obligation to apply and uphold the law without regard to any personal views.
- [14] A judicial candidate may make promises related to judicial organization, administration, and court management, such as a promise to dispose of a backlog of cases, start court sessions on time, or avoid favoritism in appointments and hiring. A candidate may also pledge to take action outside the courtroom, such as

working toward an improved jury selection system or advocating for more funds to improve the physical plant and amenities of the courthouse.

- [15] Judicial candidates who respond to questions or questionnaires or requests for interviews may have their responses viewed as improper pledges, promises, or commitments. *See* Comment 13. To avoid violating paragraph (D)(2)(e), candidates who respond should give assurances that they will keep an open mind and will carry out their adjudicative duties faithfully and impartially. Candidates who do not respond may state their reasons such as the danger that answering might be perceived by a reasonable person as undermining a successful candidate's independence or impartiality or that it might lead to frequent disqualification. *See* Rule 2.11.

#### **RULE 4.2: RESERVED**

[Reserved]

#### **RULE 4.3: ACTIVITIES OF CANDIDATES FOR APPOINTIVE JUDICIAL OFFICE**

A candidate for appointment to judicial office shall:

- (A) maintain the dignity appropriate to judicial office and act in a manner consistent with the independence,\* integrity,\* and impartiality of the judiciary;
- (B) prohibit employees and officials who serve at the pleasure of the candidate, and discourage other employees and officials subject to the candidate's direction and control, from doing on the candidate's behalf what the candidate is prohibited from doing under the provisions of this Rule;
- (C) A candidate shall not:
  - (1) make pledges, promises, or commitments that are inconsistent with the impartial performance of the adjudicative duties of judicial office with respect to cases, controversies, or issues that are likely to come before the court; or
  - (2) knowingly\* or with reckless disregard for the truth, make any false or misleading statement in connection with:
    - (a) an application for appointment; or
    - (b) the identity, qualifications, present position, or other fact concerning the candidate; or

- (c) except to the extent permitted by Rule 4.1(E), authorize, encourage, or knowingly permit members of the judicial candidate’s family or other persons to do for the candidate what the candidate is prohibited from doing under the provisions of this Rule.
- (D) A candidate for appointment to judicial office may, except as prohibited by law:
- (1) at any time:
    - (a) purchase tickets for and attend political gatherings;
    - (b) personally identify as a member of a political party; and
    - (c) contribute to a political organization.

#### COMMENTS

- [1] When seeking support or endorsement, or when communicating directly with an appointing or confirming authority, a candidate for appointive judicial office must not make any pledges, promises, or commitments that are inconsistent with the impartial performance of the adjudicative duties of the office. *See* Rule 4.1(D)(4)(a).
- [2] “Appointment to judicial office” means appointment, assignment, or recall to any judicial office under Article VI of the Illinois Constitution.

#### **RULE 4.4: CAMPAIGN COMMITTEES**

- (A) A judicial candidate subject to public election may establish a campaign committee to manage and conduct a campaign for the candidate, subject to the provisions of this Code. The candidate is responsible for ensuring that the campaign committee complies with applicable provisions of this Code and other applicable law.\*
- (B) A judicial candidate subject to public election shall direct the campaign committee:
- (1) to solicit and accept campaign contributions\* only as permitted by law;
  - (2) not to solicit or accept contributions for a campaign more than 1 year before the applicable primary, general, or retention election, nor more than 90 days after the last election in which the candidate participated; and
  - (3) to comply with all applicable campaign finance laws.

## COMMENTS

- [1] Judicial candidates are prohibited from personally soliciting campaign contributions or personally accepting campaign contributions. *See* Rule 4.1(A)(8). This Rule recognizes that, in many jurisdictions, judicial candidates must raise campaign funds to support their candidacies and permits candidates, other than candidates for appointive judicial office, to establish campaign committees to solicit and accept reasonable financial contributions or in-kind contributions.
- [2] Campaign committees may solicit and accept campaign contributions, manage the expenditure of campaign funds, and generally conduct campaigns. To the extent possible, campaign committees should manage campaign finances to avoid deficits that might necessitate post-election fundraising. Candidates are responsible for compliance with the requirements of election law and other applicable law and for the activities of their campaign committees.
- [3] The campaign committee may solicit and accept campaign contributions from lawyers and others who might appear before the candidate. The candidate should instruct the campaign committee to be cautious in connection with such contributions so it does not create grounds for disqualification. *See* Rule 2.11.
- [4] During the campaign, the candidate and the campaign committee should be aware that a contribution may affect the independence, integrity, and impartiality of the judge and may create grounds for disqualification if the candidate is elected to office.

## **RULE 4.5: ACTIVITIES OF JUDGES WHO BECOME CANDIDATES FOR NONJUDICIAL OFFICE**

- (A) Upon becoming a candidate for a nonjudicial elective office, a judge shall resign from judicial office, unless permitted by law\* to continue to hold judicial office. A person becomes a candidate for nonjudicial office by (1) making a public announcement of candidacy, (2) declaring or filing as a candidate with the election authority, (3) authorizing or, where permitted, engaging in solicitation or acceptance of contributions or support, or (4) being nominated for election. A judge may continue to hold office while a candidate for election to or serving as a delegate in a state constitutional convention.
- (B) Upon becoming a candidate for a nonjudicial appointive office, a judge is not required to resign from judicial office, provided that the judge complies with the other provisions of this Code.

## COMMENTS

- [1] In campaigns for nonjudicial elective public office, candidates may make pledges, promises, or commitments related to positions they would take and ways they

would act if elected to office. Although appropriate in nonjudicial campaigns, this manner of campaigning is inconsistent with the role of a judge, who must remain fair and impartial. The potential for misuse of judicial office, and the political promises that the judge may make in the course of campaigning for nonjudicial elective office, together dictate that a judge who wishes to run for such an office must resign upon becoming a candidate.

- [2] The “resign to run” rule set forth in paragraph (A) ensures that a judge cannot use the judicial office to promote such candidacy and eliminates any potential issue of post-campaign retaliation by a judge defeated in an election. When a judge is seeking appointive nonjudicial office, however, the dangers are not sufficient to warrant imposing the “resign to run” rule.