

EXHIBIT B
HAWAI‘I REVISED CODE
OF JUDICIAL CONDUCT

Appended by Order of
August 29, 2008 and December 17, 2008
Replacing Former Exhibit B
Which Was Appended by Order of
September 9, 1992
With Further Amendments as Noted

The Judiciary
State of Hawai‘i

EXHIBIT B
HAWAI‘I REVISED CODE OF JUDICIAL CONDUCT

Table of Contents

PREAMBLE

SCOPE

TERMINOLOGY

APPLICATION

- I. APPLICABILITY OF THIS CODE
- II. RETIRED JUDGE RECALLED TO SERVICE
- III. PART-TIME JUDGE
- IV. RESERVED
- V. RESERVED
- VI. TIME FOR COMPLIANCE

CANON 1

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

- Rule 1.1. Compliance with the Law
- Rule 1.2. Promoting Confidence in the Judiciary
- Rule 1.3. Avoiding Misuse of the Prestige of Judicial Office

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
- Rule 2.2. Impartiality and Fairness
- Rule 2.3. Bias, Prejudice, and Harassment

- Rule 2.4. External Influences on Judicial Conduct
- Rule 2.5. Competence, Diligence, and Cooperation
- Rule 2.6. Ensuring the Right to Be Heard
- Rule 2.7. Responsibility to Decide
- Rule 2.8. Decorum, Demeanor, and Communication with Jurors
- Rule 2.9. Ex Parte Communications
- Rule 2.10. Judicial Statements on Pending and Impending Cases
- Rule 2.11. Disqualification or Recusal
- Rule 2.12. Supervisory Duties
- Rule 2.13. Administrative Appointments
- Rule 2.14. RESERVED.
- Rule 2.15. Responding to Judicial and Lawyer Misconduct
- Rule 2.16. Cooperation with Disciplinary Authorities

CANON 3

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

- Rule 3.1. Extrajudicial Activities in General
- Rule 3.2. Appearances Before Governmental Bodies and Consultation with Government Officials
- Rule 3.3. Testifying as a Character Witness
- Rule 3.4. Appointments to Governmental Positions
- Rule 3.5. Use of Nonpublic Information
- Rule 3.6. Affiliation with Discriminatory Organizations
- Rule 3.7. Participation in Educational, Religious, Charitable, Fraternal, or Civic Organizations and Activities
- Rule 3.8. Appointments to Fiduciary Positions
- Rule 3.9. Service as Arbitrator or Mediator
- Rule 3.10. Practice of Law
- Rule 3.11. Financial, Business, or Remunerative Activities
- Rule 3.12. Compensation for Extrajudicial Activities

- Rule 3.13. Acceptance and Reporting of Gifts, Loans, Bequests, Benefits, or Other Things of Value
- Rule 3.14. Reimbursement of Expenses and Waivers of Fees or Charges
- Rule 3.15. Reporting Requirements

CANON 4

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

- Rule 4.1. Political Activities of Judges in General
- Rule 4.2. RESERVED.
- Rule 4.3. Activities of Judges Seeking Retention in or Appointment to Judicial Office
- Rule 4.4. RESERVED.
- Rule 4.5. Activities of Judges Who Become Candidates for Nonjudicial Office

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EXHIBIT B
HAWAI'I REVISED CODE OF
JUDICIAL CONDUCT

PREAMBLE

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

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

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

SCOPE

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

[2] The Canons state overarching principles of judicial ethics that all judges must observe. Although a judge may be disciplined only for violating a Rule and not a Canon, the Canons, nevertheless, provide important guidance in interpreting the Rules. Where a Rule contains a permissive term, such as "may" or "should," the conduct being addressed is committed to the personal and professional discretion of the judge in question, and no disciplinary action should be taken for action or inaction within the bounds of such discretion.

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

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

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

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

previous transgressions, and the effect of the transgression upon the judicial system or others.

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

TERMINOLOGY

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

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

Code Comparison

The Hawai’i Revised Code of Judicial Conduct adds “appearance of impropriety” as a defined term.

“Appropriate authority” means the entity having responsibility for initiation of a disciplinary process in connection with a reported violation. See Rule 2.15.

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

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

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

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

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

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

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

(3) a deposit in a financial institution or deposits or proprietary interests the judge may maintain as a policy holder in a mutual insurance company, 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.

Code Comparison

The Hawai’i Revised Code of Judicial Conduct modifies the ABA Model Code’s definition of “economic interest” by adding “relationship as officer, director, advisor, or other active participant in the affairs of a party” as within the definition and adding “policy holder in a mutual insurance company” as outside the definition.

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

Code Comparison

The Hawai’i Revised Code of Judicial Conduct modifies the ABA Model Code’s definition of “fiduciary” by adding “conservator.”

“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 come or may come before a judge. See Canons 1, 2, and 4, and Rules 1.2, 2.2, 2.10, 2.11, 2.13, 3.1, 3.12, 3.13, and 4.1.

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

“Impropriety” includes conduct that violates the law, court rules, or provisions of this Code, and conduct that materially impairs a judge’s independence, integrity, impartiality, temperament, or fitness to fulfill the duties of judicial office. See Canon 1 and Rule 1.2.

Code Comparison

The Hawai’i Revised Code of Judicial Conduct modifies the ABA Model Code’s definition of “impropriety” by (1) substituting “materially impairs” for “undermines” and (2) adding “temperament, or fitness to fulfill the duties of judicial office.”

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

“Integrity” means probity, fairness, honesty, uprightness, and soundness of character. See Canons 1 and 4, and Rule 1.2, 3.1, 3.12, and 3.13.

“Judge” See Application section of this Code.

“Judicial officer” See Application section of this Code.

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

“Law” encompasses court rules as well as statutes, ordinances, constitutional provisions, provisions of this Code, and decisional law. See Rules 1.1, 2.1, 2.2, 2.6, 2.7, 2.9, 3.1, 3.9, 3.10, 3.12, 3.13, 3.14, 4.1, and 4.5.

“Member of the judge’s family” means a spouse, domestic partner, relative within the third degree of relationship, or other person with whom the judge maintains a close familial relationship or

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

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

“Nonpublic information” means information that, by law, 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.

Code Comparison

The Hawai’i Revised Code of Judicial Conduct modifies the ABA Model Code’s definition of “nonpublic information” by adding “by law.”

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

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

Code Comparison

The Hawai'i Revised Code of Judicial Conduct modifies the ABA Model Code's definition of "political organization" by deleting references to judicial elections and campaign committees.

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

APPLICATION

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

I. APPLICABILITY OF THIS CODE

(a) The provisions of this Code apply to full-time judges. Parts II and III of this section identify those provisions that apply to two distinct categories of part-time judges. The two categories of judicial service in other than full-time capacity are necessarily defined in general terms because of the widely varying forms of judicial service.

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

Code Comparison

The Hawai'i Revised Code of Judicial Conduct modifies ABA Model Code paragraph (B) by not applying the Code to justice of the peace, magistrate, court

commissioner, and member of the administrative law judiciary.

COMMENT:

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

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

[3] *RESERVED.*

II. RETIRED JUDGE RECALLED TO SERVICE

This Code applies to a retired judge recalled to service, who is not actively engaged in the practice of law, except a retired judge is not required to comply with either of the following:

(a) Rule 3.9 (Service as Arbitrator or Mediator), except while serving as a judge; or

(b) Rule 3.8 (Appointments to Fiduciary Positions) at any time.

COMMENT:

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

III. PART-TIME JUDGE

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

(1) Rules 2.10(a) and 2.10(b) (Judicial Statements on Pending and Impending Cases), except while serving as a judge; or

(2) Rules 3.4 (Appointments to Governmental Positions), 3.8 (Appointments to Fiduciary Positions), 3.9 (Service as Arbitrator or Mediator), 3.10 (Practice of Law), 3.11 (Financial, Business, or Remunerative Activities), 3.14 (Reimbursement of Expenses and Waivers of Fees or Charges), 4.1 (Political Activities of Judges in General), and 4.3 (Activities of Judges Seeking Retention in or Appointment to Judicial Office), at any time.

(b) A part-time judge shall not practice law in the court on which the judge serves and shall not act as a lawyer in a proceeding in which the judge has served as a judge or in any other proceeding related thereto.

(c) Courts Distinguished. For purposes of Part III(b) of this section, the District Family Courts and the District Courts are separate courts. A part-time judge assigned to preside solely in District Court is not disqualified from practicing before the District Family Court, and a part-time judge assigned to preside solely in the District Family Court is not disqualified from practicing before the District Court.

Code Comparison

The Hawai'i Revised Code of Judicial Conduct modifies ABA Model Code Section III by (1) defining a part-time judge as including a "per diem" judge rather than a judge "who serves repeatedly on a part-time basis by election or under a continuing appointment," (2) not including the resign-to-run Rule 4.5 as a rule that does not apply to per diem judges, and (3) adding paragraph (c).

COMMENT:

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

(Amended December 10, 2008, effective January 1, 2009.)

IV. RESERVED.

V. RESERVED.

VI. TIME FOR COMPLIANCE

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

COMMENT:

[1] If serving as a fiduciary when sworn into judicial office, a new judge may, notwithstanding the prohibitions in Rule 3.8, continue to serve as fiduciary, but only for that period of time necessary to avoid serious adverse consequences to the beneficiaries of the fiduciary relationship and in no event longer than one year. Similarly, if engaged at the time of judicial selection in a business activity, a new judge may, notwithstanding the prohibitions in Rule 3.11, continue in that activity for a reasonable period but in no event longer than one year.

CANON 1

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

Rule 1.1. COMPLIANCE WITH THE LAW

A judge shall comply with the law,* including the Hawai'i Revised Code of Judicial Conduct.

Rule 1.2. PROMOTING CONFIDENCE IN THE JUDICIARY

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

COMMENT:

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

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

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

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

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

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

Rule 1.3. AVOIDING MISUSE OF THE PRESTIGE OF JUDICIAL OFFICE

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

Code Comparison

The Hawai'i Revised Code of Judicial Conduct modifies ABA Model Code Rule 1.3 by substituting "misuse" and "lend" for "abuse."

COMMENT:

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

[1b] *A judge must avoid lending the prestige of judicial office for the advancement of the private interests of others. For example, a judge must not use the judge's judicial position to gain advantage in a civil suit involving a member of the judge's family.*

Code Comparison

The Hawai'i Revised Code of Judicial Conduct modifies ABA Model Code Comment [1] by adding paragraph [1b].

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

an attempt to exert pressure by reason of the judicial office.

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

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

CANON 2

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

Rule 2.1. GIVING PRECEDENCE TO THE DUTIES OF JUDICIAL OFFICE

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

COMMENT:

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

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

Rule 2.2. IMPARTIALITY AND FAIRNESS

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

COMMENT:

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

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

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

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

Rule 2.3. BIAS, PREJUDICE, AND HARASSMENT

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

(b) A judge shall not, in the performance of the duties of judicial office, by words or conduct manifest bias or prejudice, or engage in harassment, including but not limited to bias, prejudice, or harassment based upon race, sex, gender, religion, national origin, ethnicity, disability, age, sexual orientation, marital status, socioeconomic status, or political affiliation, and shall not permit court staff, court officials, or others subject to the judge's direction and control to do so.

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

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

COMMENT:

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

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

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

Code Comparison

The Hawai'i Revised Code of Judicial Conduct modifies ABA Model Code Comment [3] by adding personal characteristics.

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

Rule 2.4. EXTERNAL INFLUENCES ON JUDICIAL CONDUCT

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

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

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

COMMENT:

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

Rule 2.5. COMPETENCE, DILIGENCE, AND COOPERATION

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

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

COMMENT:

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

[2] *RESERVED.*

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

[4] In disposing of matters promptly and efficiently, a judge must demonstrate due regard for the rights of parties to be heard and to have issues resolved without unnecessary cost or delay. A judge should monitor and supervise cases in ways that reduce or eliminate dilatory practices and avoidable delays, and unnecessary costs.

Rule 2.6. ENSURING THE RIGHT TO BE HEARD

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

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

COMMENT:

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

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

judge or another judge, (4) whether the parties participate with their counsel in settlement discussions, (5) whether any parties are unrepresented by counsel, and (6) whether the matter is civil or criminal.

Code Comparison

The Hawai'i Revised Code of Judicial Conduct modifies ABA Model Code Comment [2]'s factor (3) by adding the second clause.

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

Code Comparison

The Hawai'i Revised Code of Judicial Conduct modifies ABA Model Code Comment [3] by adding "recusal" consistent with Hawaii's distinction between disqualification and recusal.

Rule 2.7. RESPONSIBILITY TO DECIDE

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

Code Comparison

The Hawai'i Revised Code of Judicial Conduct modifies ABA Model Code Rule 2.7 by adding "recusal" consistent with Hawaii's distinction between disqualification and recusal.

COMMENT:

[1] Judges must be available to decide the matters that come before the courts. Although there are times when disqualification or recusal is necessary to

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

Rule 2.8. DECORUM, Demeanor, AND COMMUNICATION WITH JURORS

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

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

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

COMMENT:

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

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

[3] RESERVED.

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, an ex parte communication for scheduling, administrative, or emergency purposes that does not address substantive matters is permitted, provided:

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

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

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

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

Code Comparison

The Hawai'i Revised Code of Judicial Conduct modifies ABA Model Code Rule 2.9(A)(3) by (1) permitting, rather than prohibiting, a judge from receiving factual information that is not part of the record, so long as the judge timely discloses such information to the parties and (2) prohibiting consultation with other judges in certain circumstances.

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

Code Comparison

The Hawai'i Revised Code of Judicial Conduct modifies ABA Model Code Rule 2.9(A)(4) by limiting the Rule to matters other than criminal and juvenile matters.

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

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

Code Comparison

The Hawai'i Revised Code of Judicial Conduct modifies ABA Model Code Rule 2.9(A) by incorporating Comment [4] into the Rule as Rule 2.9(a)(6).

(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) Subject to Rule 2.9(a)(3) and Rule 2.9(a)(6), a judge shall not investigate facts in a matter independently, but 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.

COMMENT:

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

[2] *Whenever the presence of a party or notice to a party is required by this Rule, it is the party's lawyer, or if the party is unrepresented, the party, who is to be present or to whom notice is to be given.*

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

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

[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 media, including electronic.*

Rule 2.9

REVISED CODE OF JUDICIAL CONDUCT

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

Rule 2.10. JUDICIAL STATEMENTS ON PENDING AND IMPENDING CASES

(a) A judge shall not make any public statement that might reasonably be expected to affect the outcome or impair the fairness of a matter 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 immediate direction and direct control to refrain from making statements that the judge would be prohibited from making by Rule 2.10(a) and Rule 2.10(b).

(d) Subject to the restrictions in Rule 2.10(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 Rule 2.10(a), a judge may respond directly or through a third party to allegations in the media or elsewhere concerning the judge's conduct in a matter. A judge shall not discuss the rationale for a decision unless the judge is relating what was already made part of the public record.

Code Comparison

The Hawai'i Revised Code of Judicial Conduct modifies ABA Model Code Rule 2.10(E) by adding the provision restricting a judge's response to relating what is already part of the public record.

COMMENT:

[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] *A judge may respond to criticism by reiterating without elaboration what is set forth in the public record in a case, including pleadings, documentary evidence, and the transcript of proceedings held in open court. 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.*

Rule 2.11. DISQUALIFICATION OR RECUSAL

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

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

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

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

(B) acting as a lawyer in the proceeding;

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

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

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

(4) RESERVED.

(5) RESERVED.

(6) The judge:

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

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

(C) was a witness concerning the matter; or

(D) on appeal, 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,* minor children, or any other person residing in the judge's household.

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

Code Comparison

The Hawai'i Revised Code of Judicial Conduct modifies ABA Model Code Rule 2.11 by adding "recusal" consistent with Hawaii's distinction between disqualification and recusal.

COMMENT:

[1] Under this Rule, a judge is disqualified or recused whenever the judge's impartiality might reasonably be questioned, regardless of whether any of the specific provisions of Rules 2.11(a)(1) through (6) apply.

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

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

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

[5] RESERVED.

[6] RESERVED.

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.

COMMENT:

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

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

Rule 2.13. ADMINISTRATIVE APPOINTMENTS

(a) In making administrative appointments, a judge:

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

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

(b) RESERVED.

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

COMMENT:

[1] *Appointees of a judge include assigned counsel, officials such as referees, commissioners, special masters, receivers, and guardians, and personnel such as*

clerks, secretaries, and bailiffs. Consent by the parties to an appointment or an award of compensation does not relieve the judge of the obligation prescribed by Rule 2.13(a).

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

[3] RESERVED.

Rule 2.14. RESERVED.**Rule 2.15. RESPONDING TO JUDICIAL AND LAWYER MISCONDUCT**

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

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

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

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

Code Comparison

The Hawai'i Revised Code of Judicial Conduct modifies ABA Model Code Rule 2.15(C) and (D) by adding "credible."

COMMENT:

[1] *Taking action to address known misconduct is a judge's obligation. Rules 2.15(a) and (b) impose an obligation on the judge to report to the appropriate authority the known misconduct of another judge or a lawyer that raises a substantial question regarding the honesty, trustworthiness, or*

fitness of that judge or lawyer. Ignoring or denying known misconduct among one's judicial colleagues or members of the legal profession undermines a judge's responsibility to participate in efforts to ensure public respect for the justice system. This Rule limits the reporting obligation to misconduct that an independent judiciary must vigorously endeavor to prevent.

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

Rule 2.16. COOPERATION WITH DISCIPLINARY AUTHORITIES

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

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

COMMENT:

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

CANON 3

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

Rule 3.1. EXTRAJUDICIAL ACTIVITIES IN GENERAL

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

(a) participate in activities that will interfere with the proper performance of the duties of judicial office;

(b) demean the judicial office;

(c) participate in activities that would appear to a reasonable person to materially impair the judge's independence,* integrity,* impartiality,* temperament, or fitness to fulfill the duties of judicial office; or

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

(e) RESERVED.

Code Comparison

The Hawai'i Revised Code of Judicial Conduct modifies ABA Model Code Rule 3.1 by (1) moving the Model Code's paragraph (B) into Comment [1], (2) adding as paragraph (b) "demean the judicial office," and (3) substituting "materially impair" for "undermine" and adding "temperament, or fitness to

fulfill the duties of judicial office” in paragraph (c).

COMMENT:

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

[2] *Participation in 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 duties of judicial office, are likely to appear to a reasonable person to call into question the judge’s integrity and impartiality. Examples include jokes or other remarks that demean individuals based upon their race, sex, gender, religion, national origin, ethnicity, disability, age, sexual orientation, marital status, socioeconomic status, political affiliation, or personal characteristics. 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.*

Code Comparison

The Hawai’i Revised Code of Judicial Conduct modifies ABA Model Code Comment [3] by adding marital status, political affiliation, and personal characteristics.

[4] *While engaged in permitted extrajudicial activities, judges must not coerce others or take action that would reasonably be perceived as coercive. For example, depending upon the circumstances, a judge’s solicitation of contributions or memberships on behalf of an organization, even as permitted by Rule 3.7(a), 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 performance of the duties of judicial office; or
- (c) when the judge is acting pro se in a matter involving the judge’s legal or economic interests, or when the judge is acting in a fiduciary* capacity.

COMMENT:

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

[2] *In appearing before governmental bodies or consulting with government officials, judges must be mindful that they remain subject to other provisions of this Code, such as Rule 1.3, prohibiting judges from using the prestige of office to advance their own or others’ interests, Rule 2.10,*

governing public comment on pending and impending matters, and Rule 3.1(c), prohibiting judges from engaging in extrajudicial activities that would appear to a reasonable person to materially impair the judge's independence, integrity, impartiality, temperament, or fitness to fulfill the duties of judicial office.

Code Comparison

The Hawai'i Revised Code of Judicial Conduct modifies ABA Model Code Comment [2] by (1) substituting "materially impair" for "undermine" and (2) adding "temperament, or fitness to fulfill the duties of judicial office."

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

Rule 3.3. TESTIFYING AS A CHARACTER WITNESS

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

Code Comparison

The Hawai'i Revised Code of Judicial Conduct modifies ABA Model Code Rule 3.3 by incorporating part of Comment [1] into the Rule.

COMMENT:

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

Rule 3.4. APPOINTMENTS TO GOVERNMENTAL POSITIONS

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

COMMENT:

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

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

Rule 3.5. USE OF NONPUBLIC INFORMATION

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

COMMENT:

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

[2] *This rule is not intended to affect a judge's ability to act on information as necessary to protect the health and safety of the judge or anyone else.*

Code Comparison

The Hawai'i Revised Code of Judicial Conduct modifies ABA Model Code Comment [2] by substituting "anyone else" for "member of a judge's family, court personnel, or other judicial officers."

Rule 3.6. AFFILIATION WITH DISCRIMINATORY ORGANIZATIONS

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

Code Comparison

The Hawai'i Revised Code of Judicial Conduct modifies ABA Model Code Rule 3.6(A) by adding disability, age, marital status, socioeconomic status, and personal characteristics.

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

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

COMMENT:

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

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

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

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

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

Rule 3.7. PARTICIPATION IN EDUCATIONAL, RELIGIOUS, CHARITABLE, FRATERNAL, OR CIVIC ORGANIZATIONS AND ACTIVITIES

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

(1) assisting in planning of fund-raising for the organization or entity 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 or appellate authority;

(3) soliciting membership for such an organization or entity, even though the membership dues or fees generated may be used to support the objectives of the organization or entity, but only if the organization or entity is concerned with the law, the legal system, or the administration of justice;

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

Code Comparison

The Hawai'i Revised Code of Judicial Conduct modifies ABA Model Code Rule 3.7(A)(4) by deleting "appearing [at]" an event.

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

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

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

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

(7) donating, without attribution of judicial title, services or goods at fundraising events.

Code Comparison

The Hawai'i Revised Code of Judicial Conduct modifies ABA Model Code Rule 3.7 by adding paragraph (7).

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

COMMENT:

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

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

Code Comparison

The Hawai'i Revised Code of Judicial Conduct modifies ABA

Model Code Comment [2] by adding “materially” and “temperament, or fitness to fulfill the duties of judicial office.”

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

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

[5] In addition to appointing lawyers to serve as counsel for indigent parties in individual cases, a judge may promote broader access to justice by encouraging lawyers to participate in pro bono publico legal services, if in doing so the judge does not employ coercion or misuse the prestige of judicial office. Such encouragement may take many forms, including providing lists of available programs, training lawyers to do pro bono publico legal work, and participating in events recognizing lawyers who have done pro bono publico work.

Rule 3.8. APPOINTMENTS TO FIDUCIARY POSITIONS

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

Code Comparison

The Hawai‘i Revised Code of Judicial Conduct modifies ABA Model Code Rule 3.8(A) by adding conservator.

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

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

(d) If a person who is serving in a fiduciary* position becomes a judge, he or she must comply with this Rule as soon as reasonably practicable, but in no event later than one year after being sworn into judicial office.

COMMENT:

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

Rule 3.9. SERVICE AS ARBITRATOR OR MEDIATOR

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

COMMENT:

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

Rule 3.10. PRACTICE OF LAW

A judge shall not practice law, except that a judge may act pro se and may, without compensation, give legal advice to and draft or review documents for a member of the judge's family,* but is prohibited from serving as the family member's lawyer in any forum. A judge is not prohibited from practicing law pursuant to military service, if the judge is otherwise permitted by law* to do so.

Code Comparison

The Hawai'i Revised Code of Judicial Conduct modifies ABA Model Code Rule 3.10 by adding the provision allowing the practice of law pursuant to military service.

COMMENT:

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

Rule 3.11. FINANCIAL, BUSINESS, OR REMUNERATIVE ACTIVITIES

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

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

(1) a business closely held by the judge or members of the judge's family;* or

(2) a business entity primarily engaged in investment of the financial resources of the judge or members of the judge's family.*

(c) A judge shall not engage in financial activities permitted under Rules 3.11(a) and (b) if they will:

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

(2) lead to frequent disqualification or recusal of the judge;

(3) involve the judge in frequent transactions or continuing business relationships with lawyers or other persons likely to come before the court on which the judge serves; or

(4) result in violation of other provisions of this Code.

COMMENT:

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

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

Rule 3.12. COMPENSATION FOR EXTRAJUDICIAL ACTIVITIES

A judge may accept reasonable compensation for extrajudicial activities permitted by this Code or other law* unless such acceptance would appear to a reasonable person to materially impair the judge's independence,* integrity,* impartiality,* temperament, or fitness to fulfill the duties of judicial office.

Code Comparison

The Hawai'i Revised Code of Judicial Conduct modifies ABA Model Code Rule 3.12 by (1) substituting "materially impair" for "undermine" and (2) adding "temperament, or fitness to fulfill the duties of judicial office."

COMMENT:

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

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

Rule 3.13. ACCEPTANCE AND REPORTING OF GIFTS, LOANS, BEQUESTS, BENEFITS, OR OTHER THINGS OF VALUE

(a) A judge shall not accept any gifts, loans, bequests, benefits, or other things of value, if acceptance is prohibited by law* or would appear to

a reasonable person to materially impair the judge's independence,* integrity,* impartiality,* temperament, or fitness to fulfill the duties of judicial office.

Code Comparison

The Hawai'i Revised Code of Judicial Conduct modifies ABA Model Code Rule 3.13 by (1) substituting "materially impair" for "undermine" and (2) adding "temperament, or fitness to fulfill the duties of judicial office."

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

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

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

(3) ordinary social hospitality;

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

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

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

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

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

(9) gifts incident to a public testimonial; or
 (10) 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.

Code Comparison

The Hawai'i Revised Code of Judicial Conduct modifies ABA Model Code Rule 3.13(B) by adding paragraphs (9) and (10) from ABA Model Rule 3.13(C).

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

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

(2) gifts, bequests, favors, loans, or other types of value exceeding \$200.00, if the donor is not a party or other person who has come or is likely to come or whose interests have come or are likely to come before the judge.

Code Comparison

The Hawai'i Revised Code of Judicial Conduct modifies ABA Model Code Rule 3.13(C) by recategorizing public testimonial gifts and event invitations as nonreportable gifts under Rule 3.13(b) and adding paragraph (2).

COMMENT:

[1] Whenever a judge accepts a gift or other thing of value without paying fair market value, there is a risk that the benefit might be viewed as intended to influence the judge's decision in a case. Rule 3.13

imposes restrictions upon the acceptance of such benefits, according to the magnitude of the risk. Rule 3.13(b) identifies circumstances in which the risk that the acceptance would appear to materially impair the judge's independence, integrity, impartiality, temperament, or fitness to fulfill the duties of judicial office is low and explicitly provides that such items need not be publicly reported. As the value of the benefit or the likelihood that the source of the benefit will appear before the judge increases, the judge is either prohibited under Rule 3.13(a) from accepting the gift or required under Rule 3.13(c) to publicly report it.

[2] Gift-giving between friends and relatives is a common occurrence and ordinarily does not create an appearance of impropriety or cause reasonable persons to believe that the judge's independence, integrity, impartiality, temperament, or fitness to fulfill the duties of judicial office has been compromised. In addition, when the appearance of friends or relatives in a case would require the judge's disqualification or recusal under Rule 2.11, there would be no opportunity for a gift to influence the judge's decision making. Rule 3.13(b)(2) places no restrictions upon the ability of a judge to accept gifts or other things of value from friends or relatives under these circumstances and does not require public reporting.

[3] Businesses and financial institutions frequently make available special pricing, discounts, and other benefits, either in connection with a temporary promotion or for preferred customers, based upon longevity of the relationship, volume of business transacted, and other factors. A judge may freely accept such benefits if they are available to the general public, or if the judge qualifies for the special price or discount according to the same criteria as are applied to persons who are not judges. As an example, loans provided at generally

prevailing interest rates are not gifts, but a judge could not accept a loan from a financial institution at below-market interest rates unless the same rate was being made available to the general public for a certain period of time or only to borrowers with specified qualifications that the judge also possesses.

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

[5] RESERVED.

(Amended December 10, 2008, effective January 1, 2009.)

Rule 3.14. REIMBURSEMENT OF EXPENSES AND WAIVERS OF FEES OR CHARGES

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

(b) Reimbursement of expenses for necessary travel, food, lodging, or other incidental expenses shall be limited to the actual costs reasonably incurred by the judge and, when appropriate to the

occasion, by the judge's spouse, domestic partner,* or guest.

(c) RESERVED.

COMMENT:

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

[2] Not infrequently, sponsoring organizations invite certain judges to attend seminars or other events on a fee-waived or partial-fee-waived basis and sometimes include reimbursement for necessary travel, food, lodging, or other incidental expenses. A judge's decision whether to accept reimbursement of expenses or a waiver or partial waiver of fees or charges in connection with these or other extrajudicial activities must be based upon an assessment of all the circumstances. The judge must undertake a reasonable inquiry to obtain the information necessary to make an informed judgment about whether acceptance would be consistent with the requirements of this Code.

[3] A judge must assure himself or herself that acceptance of reimbursement or fee waivers would not appear to a reasonable person to materially impair the judge's independence, integrity, impartiality, temperament, or fitness to fulfill the duties of judicial office. 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 or recusal of the judge under Rule 2.11;

(g) whether differing viewpoints are presented; and

(h) whether a broad range of judicial and nonjudicial participants are invited, whether a large number of participants are invited, and whether the program is designed specifically for judges.

Rule 3.15. REPORTING REQUIREMENTS

(a) A judge shall publicly report the amount or value of:

(1) compensation of \$1000 or more received for extrajudicial activities as permitted by Rule 3.12; and

(2) gifts and other things of value as permitted by Rule 3.13(c).

(3) RESERVED.

(b) When public reporting is required by Rule 3.15(a), a judge shall report the date, place, and nature of the activity for which the judge received any compensation and the description of any gift, loan, bequest, benefit, or other thing of value accepted.

(c) The public report required by Rule 3.15(a) shall be made annually.

(d) Reports made in compliance with this Rule shall be filed as public documents in the supreme court clerk's office.

Code Comparison

The Hawai'i Revised Code of Judicial Conduct modifies ABA Model Code Rule 3.15 by harmonizing its provisions with the Hawai'i financial disclosure rule.

CANON 4

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

Rule 4.1. POLITICAL ACTIVITIES OF JUDGES IN GENERAL

Code Comparison

The Hawai'i Revised Code of Judicial Conduct modifies ABA Model Code Canon 4 and Rule 4.1 by deleting references to judicial candidates and to campaign activity.

(a) Except as permitted by law,* or by Rule 4.3, a judge shall not:

(1) act as a leader, or hold an office, in a political organization;*

(2) make speeches on behalf of a political organization;*

(3) publicly endorse or oppose a candidate for any public office;

(4) solicit funds for, pay an assessment to, or make a contribution* to a political organization* or a candidate for public office;

Rule 4.1

REVISED CODE OF JUDICIAL CONDUCT

(5) attend or purchase tickets for dinners or other events sponsored by a political organization* or a candidate for public office;

(6) RESERVED.

(7) seek, accept, or use endorsements from a political organization;*

(8) RESERVED.

(9) RESERVED.

(10) RESERVED.

(11) RESERVED.

(12) make any statement that would reasonably be expected to affect the outcome or impair the fairness of a matter pending* or impending* in any court; or

(13) in connection with cases, controversies, or issues that are likely to come before the court, make pledges, promises, or commitments that are inconsistent with the impartial* performance of the adjudicative duties of judicial office.

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

COMMENT:

General Considerations

[1] Judges must, to the greatest extent possible, be free and appear to be free from political influence and political pressure. This Canon imposes narrowly tailored restrictions upon the political activities of all judges.

[2] RESERVED.

Participation in Political Activities

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

[4] Rules 4.1(a)(2) and (a)(3) prohibit judges from making speeches on behalf of political organizations or publicly endorsing or opposing candidates for public office,

respectively, to prevent them from misusing the prestige of judicial office to advance the interests of others. See Rule 1.3.

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

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

Code Comparison

The Hawai'i Revised Code of Judicial Conduct modifies ABA Model Code Comment [6] by adding the proviso.

[7]--[15] RESERVED.

Rule 4.2. RESERVED.

Rule 4.3. ACTIVITIES OF JUDGES SEEKING RETENTION IN OR APPOINTMENT TO JUDICIAL OFFICECode Comparison

The Hawai'i Revised Code of Judicial Conduct modifies ABA Model Code Rule 4.3 by substituting "judges seeking retention in or appointment to judicial office" for "judicial candidates for appointive judicial office."

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

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

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

COMMENT:

[1] When seeking support or endorsement, or when communicating directly with an appointing or confirming authority, a judge seeking retention in or appointment to judicial office must not make any pledges, promises, or commitments that are inconsistent with the impartial performance of the adjudicative duties of the office. See Rule 4.1(a)(13).

Rule 4.4. RESERVED.**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.

(b) Upon nomination for a nonjudicial appointive office, a judge shall resign from judicial office.

Code Comparison

The Hawai'i Revised Code of Judicial Conduct modifies ABA Model Code Rule 4.5(B)'s provision that allows a judge to remain in office upon becoming a candidate for nonjudicial appointive office.

COMMENT:

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

[2] The "resign to run" rule set forth in paragraph (a) ensures that a judge cannot use the judicial office to promote his or her candidacy and prevents post-campaign retaliation from the judge in the event the judge is defeated in the election.