

Order

Michigan Supreme Court
Lansing, Michigan

May 1, 2013

Robert P. Young, Jr.,
Chief Justice

ADM File No. 2005-11

Michael F. Cavanagh
Stephen J. Markman

Amendments of Canons 2, 4,
5, and 7 of the Code of Judicial Conduct
and Amendment of Rule 8.2
of the Michigan Rules of Professional
Conduct

Mary Beth Kelly
Brian K. Zahra
Bridget M. McCormack
David F. Viviano,
Justices

On order of the Court, notice of the proposed changes and an opportunity for comment in writing and at a public hearing having been provided, and consideration having been given to the comments received, the following amendments of Canons 2, 4, 5, and 7 of the Code of Judicial Conduct and amendment of Rule 8.2 of the Michigan Rules of Professional Conduct are adopted, effective September 1, 2013.

[The present language is amended as indicated below by underlining for new text and strikeover for text that has been deleted.]

Canon 2. A Judge Should Avoid Impropriety and the Appearance of Impropriety in All Activities

- A. Public confidence in the judiciary is eroded by irresponsible or improper conduct by judges. A judge must avoid all impropriety and appearance of impropriety. A judge must expect to be the subject of constant public scrutiny. A judge must therefore accept restrictions on conduct that might be viewed as burdensome by the ordinary citizen and should do so freely and willingly.
- B. A judge should respect and observe the law. At all times, the conduct and manner of a judge should promote public confidence in the integrity and impartiality of the judiciary. Without regard to a person's race, gender, or other protected personal characteristic, a judge should treat every person fairly, with courtesy and respect.
- C. A judge should not allow family, social, or other relationships to influence judicial conduct or judgment. A judge should not use the prestige of office to advance personal business interests or those of others, but participation in activities allowed in Canon 4 is not a violation of this principle.

- D. A judge should not appear as a witness in a court proceeding unless subpoenaed.
- ~~D.E.~~ A judge may respond to requests for personal references.
- ~~E.F.~~ A judge should not allow activity as a member of an organization to cast doubt on the judge's ability to perform the function of the office in a manner consistent with the Michigan Code of Judicial Conduct, the laws of this state, and the Michigan and United States Constitutions. A judge should be particularly cautious with regard to membership activities that discriminate, or appear to discriminate, on the basis of race, gender, or other protected personal characteristic. Nothing in this paragraph should be interpreted to diminish a judge's right to the free exercise of religion.
- G. No judge may accept any contribution of money, directly or indirectly, for a campaign deficit or for expenses associated with judicial office. Requests for payment of membership dues or fees in a judicial association do not constitute solicitation of funds for purposes of this provision.

Canon 4. A Judge May Engage in Extrajudicial Activities ~~to Improve the Law, the Legal System, and the Administration of Justice~~

As a judicial officer and person specially learned in the law, a judge is in a unique position to contribute to the improvement of the law, the legal system, and the administration of justice, including revision of substantive and procedural law and improvement of criminal and juvenile justice. To the extent that time permits, the judge is encouraged to do so, either independently or through a bar association, judicial conference, or other organization dedicated to the improvement of the law. A judge should regulate extrajudicial activities to minimize the risk of conflict with judicial duties.

A judge, ~~subject to the proper performance of judicial duties,~~ may engage in the following ~~quasi-judicial~~ activities:

A. Law-Related Activities.

- ~~A.~~(1) A judge may speak, write, lecture, teach, and participate in other activities concerning the law, the legal system, and the administration of justice.
- ~~B.~~(2) A judge may appear at a public hearing before an executive or legislative body or official on matters concerning the law, the legal system, and the administration of justice, and may otherwise consult with such executive or legislative body or official on such matters.

~~C.~~(3) A judge may serve as a member, officer, or director of an organization or governmental agency devoted to the improvement of the law, the legal system, or the administration of justice. A judge ~~may assist such an organization in raising funds and may participate in the their management and investment of such an organization's funds, but should not individually solicit funds.~~

(4) A judge may make recommendations to public and private fund-granting agencies on projects and programs concerning the law, the legal system, and the administration of justice.

~~Canon 5. A Judge Should Regulate Extra-Judicial Activities to Minimize the Risk of Conflict with Judicial Duties~~

~~(A)~~B. Avocational Activities. A judge may write, lecture, teach, speak, and consult on nonlegal subjects, appear before public nonlegal bodies, and engage in the arts, sports, and other social and recreational activities, if such avocational activities do not detract from the dignity of the office or interfere with the performance of judicial duties.

~~(B)~~C. Civic and Charitable Activities. A judge may participate in civic and charitable activities that do not reflect adversely upon the judge's impartiality or interfere with the performance of judicial duties. A judge may serve and be listed as an officer, director, trustee, or nonlegal advisor of a bona fide educational, religious, charitable, fraternal, or civic organization, ~~subject to the following limitations: (1).~~ A judge should not serve if it is likely that the organization will be engaged in proceedings that would ordinarily come before the judge or will be regularly engaged in adversary proceedings in any court.

~~(2) A judge should not individually solicit funds for any educational, religious, charitable, fraternal, or civic organization, or use or permit the use of the prestige of the office for that purpose, but may be listed as an officer, director, or trustee of such an organization. A judge may, however, join a general appeal on behalf of an educational, religious, charitable, or fraternal organization, or speak on behalf of such organization.~~

D. Fundraising Activities. A judge should not individually solicit funds for any educational, religious, charitable, fraternal, or civic organization or any organization or governmental agency devoted to the improvement of the law, the legal system, or the administration of justice or use or permit the use of the prestige of the office for that purpose. A judge may, however, serve as a member of an honorary committee or may join a general appeal on behalf of such an organization. A judge may speak at or receive an award or other recognition in

connection with an event of such an organization. A judge may allow his or her name or title to be used in advertising the judge's involvement in an event so long as the judge does not individually solicit funds.

C.E. Financial Activities.

- (1) A judge should refrain from financial and business dealings that tend to reflect adversely on the judge's impartiality or judicial office, interfere with the proper performance of judicial duties, exploit the judicial position, or involve the judge in frequent transactions with lawyers or persons likely to come before the court on which the judge serves.
- (2) Subject to the requirements of C.E.(1), a judge may hold and manage investments, including real estate, and engage in other remunerative activity, but should not serve as director, officer, manager, advisor, or employee of any business. Provided, however, with respect to a judge holding office and serving as an officer, director, manager, advisor, or employee of any business not prohibited heretofore by law or judicial canon, the effective date of the prohibition contained herein shall be the date of expiration of the judge's current judicial term of office.
- (3) A judge should manage investments and other financial interests to minimize the number of cases in which the judge is disqualified. As soon as it can be done without serious financial detriment, the judge should dispose of investments and other financial interests that require frequent disqualification.
- (4) Neither a judge nor a family member residing in the judge's household should accept a gift, bequest, favor, or loan from anyone except as follows:
 - (a) A judge may accept a gift or gifts not to exceed a total value of \$100, incident to a public testimonial; books supplied by publishers on a complimentary basis for official use; or an invitation to the judge and spouse to attend a bar-related function or activity devoted to the improvement of the law, the legal system, or the administration of justice.
 - (b) A judge or a family member residing in the judge's household may accept ordinary social hospitality; a gift, bequest, favor, or loan from a relative; a wedding or engagement gift; a loan from a lending

institution in its regular course of business on the same terms generally available to persons who are not judges; or a scholarship or fellowship awarded on the same terms applied to other applicants.

(c) A judge or a family member residing in the judge's household may accept any other gift, bequest, favor, or loan only if the donor is not a party or other person whose interests have come or are likely to come before the judge, and, if its value exceeds \$100, the judge reports it in the same manner as compensation is reported in Canon 6C.

(5) For the purposes of this section, "family member residing in the judge's household" means any relative of a judge by blood or marriage, or a person treated by a judge as a family member, who resides in the judge's household.

(6) A judge is not required by this code to disclose income, debts, or investments, except as provided in this canon and Canons 3 and 6.

(7) Information acquired by a judge in a judicial capacity should not be used or disclosed by the judge in financial dealings or for any other purpose not related to judicial duties.

D.F. **Fiduciary Activities.** A judge should not serve as an executor, administrator, testamentary trustee, or guardian, except for the estate, testamentary trust, or person of a member of the judge's immediate family, and then only if such service will not interfere with the proper performance of judicial duties. As a family fiduciary, a judge is subject to the following restrictions:

(1) A judge should not serve if it is likely that as such fiduciary the judge will 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.

(2) While acting as such fiduciary, a judge is subject to the same restrictions on financial activities that apply in the judge's personal capacity.

E.G. **Arbitration.** A judge should not act as an arbitrator or mediator, except in the performance of judicial duties.

~~F.H.~~ Practice of Law. A judge should not practice law for compensation except as otherwise provided by law.

~~G.I.~~ Extra-Judicial Appointments. A judge should not accept appointment to a governmental committee, commission, or other position that is concerned with issues of fact or policy on matters other than the improvement of the law, the legal system, or the administration of justice. A judge, however, may represent the country, state, or locality on ceremonial occasions or in connection with historical, educational, and cultural activities.

Canon 5 Applicability of the Code of Judicial Conduct to Judicial Candidates

All judicial candidates are subject to Canon 1, Canon 2, Canon 4A-4D and Canon 7 of the Code of Judicial Conduct as applicable during a judicial campaign. A successful candidate, whether or not an incumbent, and an unsuccessful candidate who is a judge, are subject to judicial discipline for campaign misconduct. An unsuccessful candidate who is a lawyer is subject to lawyer discipline for judicial campaign misconduct.

Canon 7. A Judge or a Candidate for Judicial Office Should Refrain from Political Activity Inappropriate to Judicial Office

A.-B.[Unchanged.]

~~C. Fund Raising Other Than for Campaign Purposes Prohibited: Except as provided in 7B(2)(b), (c),~~

- ~~(1) No judge shall accept a testimonial occasion on the judge's behalf where the tickets are priced to cover more than the reasonable costs thereof, which may include only a nominal gift;~~
- ~~(2) No judge or other person, party, committee, organization, firm, group or entity may accept any contribution of money or of a tangible thing of value, directly or indirectly, to or for a judge's benefit for any purpose whatever, including but not limited to, contribution for a campaign deficit, expenses associated with judicial office, testimonial, honorarium (other than for services, subject to Canon 6) or otherwise.~~

~~D.C. Applicability~~ Wind up of Law Practice.

- ~~(1) A successful candidate, whether or not an incumbent, and an unsuccessful candidate who is a judge, are subject to judicial discipline for campaign~~

~~misconduct. An unsuccessful candidate who is a lawyer is subject to lawyer discipline for judicial campaign misconduct.~~

- (2) A successful elected candidate who was not an incumbent has until midnight December 31 following the election to wind up the candidate's law practice, and has until June 30 following the election to resign from organizations and activities, and divest interests that do not qualify under Canons 4 ~~or~~ 5.
- (3)(2) Upon notice of appointment to judicial office, a candidate shall wind up the candidate's law practice prior to taking office, and has six months from the date of taking office to resign from organizations and activities and divest interests that do not qualify under Canons 4 ~~or~~ 5.

[The following amendment adopts a change in Rule 8.2 of the Michigan Rules of Professional Conduct]

Rule 8.2 Judicial and Legal Officials

- (a) A lawyer shall not make a statement that the lawyer knows to be false or with reckless disregard as to its truth or falsity concerning the qualifications or integrity of a judge, adjudicative officer, or public legal officer, or of a candidate for election or appointment to judicial or legal office.
- (b) A lawyer who is a candidate for judicial office shall comply with the applicable provisions of the Code of Judicial Conduct as provided under Canon 5.

Comment:

Assessments by lawyers are relied on in evaluating the professional or personal fitness of persons being considered for election or appointment to judicial office and to public legal offices, such as attorney general, prosecuting attorney and public defender. Expressing honest and candid opinions on such matters contributes to improving the administration of justice. Conversely, false statements by a lawyer can unfairly undermine public confidence in the administration of justice.

~~When a lawyer seeks judicial office, the lawyer should be bound by applicable limitations on political activity.~~

To maintain the fair and independent administration of justice, lawyers are encouraged to continue traditional efforts to defend judges and courts unjustly criticized.

Staff Comment: These amendments reflect an effort to make the judicial canons consistent regarding law-related and nonlaw-related extrajudicial activities in which judges may participate, and to clarify the activities that are allowed or prohibited. The proposal retains the explicit prohibition on a judge individually soliciting funds, and likewise prohibits the use of the prestige of the office for that purpose. The newly-constituted Canon 4, which consolidates previous Canon 4 and Canon 5 into one canon, permits a judge to engage in various specific activities, including serving as a member of an honorary committee or joining a general appeal, speaking at or receiving an award at an organization's event, and allowing the judge's name to be used in support of a fundraising event. The proposal also includes several suggested revisions that were recommended during the public comment period.

In addition to combining Canons 4 and 5 into one canon, the amendments eliminate the language of Canon 7C that prohibited a judge from accepting a testimonial, and move the reformulated language from Canon 7C(2) prohibiting a judge from accepting a contribution of money to Canon 2G. Also, the proposal clarifies Canon 2 so that activities allowed under Canon 4 are not considered a violation of the principle of use of the prestige of office. Further, the amendments clarify that certain canons of the Code of Judicial Conduct (specifically Canons 1, 2, 4[A]-[D] and 7) apply to all candidates for judicial office as part of the new language inserted as Canon 5. Finally, MRPC 8.2 (which applies to lawyers) is amended to reflect that the judicial canons applicable to judicial candidates are set out in new Canon 5.

Nearly all of the current language in Canon 2, 4, 5, and 7 is retained in this proposal. The new language adds explicit provisions to describe the types of activities that are allowed or prohibited for judges which until now had been undefined and therefore the source of confusion.

The staff comment is not an authoritative construction by the Court.



I, Corbin R. Davis, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

May 1, 2013

Corbin R. Davis

Clerk