

BEYOND THE BENCH

THE TENNESSEE BOARD OF JUDICIAL CONDUCT

Presented to the Tennessee Judicial Academy
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Purpose of the Board

Tenn. Code Ann. 17-5-101

- Provide an orderly and efficient method for making inquiry into:
 - 1. The physical, mental and/or moral fitness of any Tennessee judge.
 - 2. The manner of performance of duty.
 - 3. The judge's commission of any act calculated to reflect unfavorably upon the judiciary of the state or bring the judiciary into disrepute or which may adversely affect the administration of justice in the state; or
 - 4. The conduct of candidates for judicial office

Composition of the Board

Tenn. Code Ann. 17-5-201

- Two judges from the Appellate Courts.
- One trial judge or retired trial judge from each grand division of the state.
- Three practicing attorneys.
- Three public members.
- One General Sessions Judge or former General Sessions Judge from each grand division of the state.
- One Municipal Judge or former Municipal Judge.
- One Juvenile Judge or former Juvenile Judge.



RULES OF THE TENNESSEE SUPREME COURT

RULE 10

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.

SCOPE

(1) The Code of Judicial Conduct consists of four Canons, numbered Rules under each Canon, and Comments that generally follow and explain each Rule. Scope and Terminology sections provide additional guidance in interpreting and applying the Code. An Application section establishes when the various Rules apply to a judge or judicial candidate.



(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, the Canons provide important guidance in interpreting the Rules. Where a Rule contains a permissive term, such as "may" or "should," the conduct being addressed is committed to the personal and professional discretion of the judge or candidate in question, and no disciplinary action should be taken for action or inaction within the bounds of such discretion.



(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 improper activity, whether there have been previous violations, and the effect of the improper activity upon the judicial system or others.

Continuing Part-Time Judge

A judge who serves repeatedly on a part-time basis by election or under a continuing appointment is a "continuing part-time judge." These include, but are not limited to, part-time judges, magistrates, referees, and judicial commissioners in the general sessions, juvenile, municipal and other courts. A continuing part-time judge:



(A) is not required to comply at any time with RJC's 3.4 (Appointments to Governmental Positions), **3.8(A)** (Appointments to Fiduciary Positions), 3.9 (Service as Arbitrator or Mediator), 3.10 (Practice of Law), and 3.11(B) (Financial, Business, or Remunerative Activities), and



(B) shall not practice law in the court on which the judge serves or in any court subject to the appellate jurisdiction of 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.

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 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.



RULE 1.3 Avoiding Abuse of the Prestige of Judicial Office

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



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 a judge's personal and extrajudicial activities.



RULE 2.2 Impartiality and Fairness

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

RULE 2.3 Bias, Prejudice, and Harassment

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



(B) A judge shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice, or engage in harassment, including but not limited to bias, prejudice, or harassment based upon race, sex, gender, 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.

Rule 2.4 External Influences on Judicial Conduct

- (A) A judge shall not be swayed by partisan interests, 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.

Rule 2.5 Competence, Diligence, and Cooperation

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

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. A judge who participates in a judicial settlement conference shall not preside over the trial or any other contested issue in that matter.



Rule 2.7 Responsibility to Decide

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

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.

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- (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.

Rule 2.11 Disqualification

(A) A judge shall disqualify himself or herself in any proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to the following circumstances

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- 1) The judge has a personal bias or prejudice concerning a party or a party's lawyer, or personal knowledge of facts that are in dispute in the proceeding

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- 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 material 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 is a party to the proceeding.

(4) The judge knows or learns by means of a timely motion that a party, a party's lawyer, or the law firm of a party's lawyer has made contributions or given such support to the judge's campaign that the judge's impartiality might reasonably be questioned.

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- (5) The judge, while a judge or a judicial candidate, has made a public statement, other than in a court proceeding, judicial decision, or opinion, that commits or appears to commit the judge to reach a particular result or rule in a particular way in the proceeding or controversy.



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 material witness concerning the matter;

(d) previously presided as a judge over the matter in an inferior court; or

(e) previously participated in a judicial settlement conference in the matter. Prior participation in a judicial settlement conference does not prohibit the judge from disposing of any uncontested issues in the matter.

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- (B) A judge shall keep informed about the judge's personal and fiduciary economic interests, and make a reasonable effort to keep informed about the personal economic interests of the judge's spouse or domestic partner and minor children residing in the judge's household

- C) A judge subject to disqualification under this Rule, other than for bias or prejudice under paragraph (A)(1) or for participation in a judicial settlement conference under paragraph (A)(6)(e), may disclose on the record the basis of the judge's disqualification and may ask the parties and their lawyers to consider, outside the presence of the judge and court personnel, whether to waive disqualification.



If, following the disclosure, the parties and lawyers agree, without participation by the judge or court personnel, that the judge should not be disqualified, the judge may participate in the proceeding. The agreement shall be incorporated into the record of the proceeding.

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.



Canon 3

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

Rule 3.1 Extrajudicial Activities in General

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

- A) participate in activities that will interfere with the proper and timely performance of the judge's judicial duties;
- (B) participate in activities that will lead to frequent disqualification of the judge;

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- (C) participate in activities that would appear to a reasonable person to undermine the judge's independence, integrity, or impartiality;
 - D) engage in conduct that would appear to a reasonable person to be coercive; or
 - E) make inappropriate use of court premises, staff, stationery, equipment, or other resources.

Rule 3.2 Appearances before Governmental Bodies and Consultation with Government Officials

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

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

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 subpoenaed.

Rule 3.4 Appointments to Governmental Positions

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



Rule 3.5 Use of Nonpublic Information

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



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, or sexual orientation.



B) A judge shall not use the benefits or facilities of an organization if the judge knows or should know that the organization practices invidious discrimination on one or more of the bases identified in paragraph (A). A judge's attendance at an event in a facility of an organization that the judge is not permitted to join is not a violation of this Rule when the judge's attendance is an isolated event that could not reasonably be perceived as an endorsement of the organization's practices.

Rule 3.7 Participation in Educational, Religious, Charitable, Fraternal, or Civic Organizations and Activities

(A) Subject to the requirements of RJC 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:

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- (1) assisting such an organization or entity in planning related to fund-raising, 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) appearing or 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;

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- 5) making recommendations to such 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; and
 - 6) serving as an officer, director, trustee, or nonlegal advisor of such an organization or entity, unless it is likely that the organization or entity:

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

Rule 3.8 Appointments to Fiduciary Positions

A) A judge shall not accept appointment to serve in a fiduciary position, such as executor, administrator, trustee, guardian, conservator, attorney in fact, or other personal representative. A judge may, however, serve in one of these capacities for a member of the judge's family, or in a fiduciary capacity for the judge's place of worship, only if such service will not interfere with the proper performance of judicial duties.



(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 becoming a judge.



Rule 3.9 Service as Arbitrator or Mediator

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

Rule 3.10 Practice of Law

A judge shall not practice law. 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 newly elected or appointed judge can practice law only in an effort to wind up his or her practice, ceasing to practice as soon as reasonably possible and in no event longer than 180 days after assuming office.

This Rule does not prohibit the practice of law pursuant to, and in the context of, a judge's military service.

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.



See Rules 3.11, 3.12, and 3.13 regarding acceptance of gifts,
and the reporting requirements.



CANON 4

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

THE LINE BETWEEN LEGAL ERROR AND JUDICIAL MISCONDUCT

- The “Mere legal error” doctrine. / Clear legal error.
- Appealable Demeanor
- Failure to Exercise Discretion
- Pattern of Legal Error
- Decisions Made in Bad Faith
- Egregious Legal Error
- Contempt