

VIRGINIA:

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Wednesday the 2nd day of November 2016.

It is ordered that Section III of the Rules for Integration of the Virginia State Bar, Part Six of the Rules of Court, be amended, to become effective immediately.

Amend the Preamble to Section III to read as follows:

SECTION III. CANONS OF JUDICIAL CONDUCT FOR THE STATE OF VIRGINIA

PREAMBLE

Our legal system is based on the principle that an independent, fair and competent judiciary will interpret and apply the laws that govern us. The role of the judiciary is central to American concepts of justice and the rule of law. Intrinsic to all sections of these Canons are the precepts that judges, individually and collectively, must respect and honor the judicial office as a public trust and strive to enhance and maintain confidence in our legal system. The judge is an arbiter of facts and law for the resolution of disputes and a highly visible symbol of government under the rule of law.

The Canons of Judicial Conduct are intended to establish standards for ethical conduct of judges. They consist of broad statements called Canons, specific rules set forth in Sections under each Canon and Commentary. The text of the Canons and the Sections is authoritative. Each Commentary, by explanation and example, is advisory and provides guidance with respect to the purpose and meaning of the Canons and Sections. The Commentary shall be considered when interpreting the meaning of the Canons. To the extent that the Commentary contains examples or express statements that certain conduct is permissible or impermissible, the Commentary shall be considered to be a part of the rule that the Commentary seeks to explain. When the text uses “shall” or “shall not” or “must” or “must not” it is intended to impose binding obligations the violation of which can result in disciplinary action. When “should” or “should not” is used, the text is intended as a statement of what is or is not appropriate conduct but not as a binding rule under which a judge may be disciplined. When “may” is used, it denotes permissible discretion or, depending on the context, it refers to action that is not covered by specific proscriptions.

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Amend Canon 4 to read as follows:

Canon 4. A Judge May Engage in Extra-Judicial Activities Designed to Improve the Law, the Legal System, and the Administration of Justice, and Shall Conduct Any Such Extra-Judicial Activities in a Manner that Minimizes the Risk of Conflict with Judicial Obligations.

A. Extra Judicial Activities in General. — A judge shall conduct all of the judge's extra judicial activities so that they do not:

- (1) cast reasonable doubt on the judge's capacity to act impartially as a judge;
- (2) demean the judicial office; or
- (3) interfere with the proper performance of judicial duties.

B. Avocational Activities. — A judge may speak, write, lecture, teach and participate in other extra judicial activities concerning the law, the legal system, the administration of justice and non-legal subjects, subject to the requirements of these Canons.

C. A judge may encourage lawyers to provide pro bono publico legal services.

D. Governmental, Civic or Charitable Activities. —

(1) A judge shall not appear at a public hearing before, or otherwise consult with, an executive or legislative body or official except on matters concerning the law, the legal system or the administration of justice or except when acting pro se in a matter involving the judge or the judge's interests.

(2) A judge shall not accept appointment to a governmental committee or commission or other governmental 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 may, however, represent a country, state or locality on ceremonial occasions or in connection with historical, educational or cultural activities.

(3) A judge may serve as an officer, director, trustee or non legal advisor of an organization or governmental agency devoted to the improvement of the law, the legal system or the administration of justice or of an educational, religious, charitable, fraternal or civic organization not conducted for profit, subject to the following limitations and the other requirements of this Code.

(a) A judge shall not serve as an officer, director, trustee or non legal advisor of a governmental, civic, or charitable organization if it is likely that the organization:

(i) will be engaged in proceedings that would ordinarily come before the judge, or

(ii) will be engaged frequently in adversary proceedings in the court of which the judge is a member or in any court subject to the appellate jurisdiction of the court of which the judge is a member.

(b) A judge as an officer, director, trustee or non legal advisor, or as a member or otherwise:

(i) may assist such an organization in planning fund raising and may participate in the management and investment of the organization's funds, but shall not personally participate in the solicitation of funds, except that a judge may solicit funds from other judges over whom the judge does not exercise supervisory or appellate authority;

(ii) may make recommendations to public and private fund granting organizations on projects and programs concerning the law, the legal system or the administration of justice so long as one organization is not favored over another;

(iii) shall not personally participate in membership solicitation if the solicitation might reasonably be perceived as coercive or, except as permitted in Section 4C(3)(b)(i), if the membership solicitation is essentially a fund raising mechanism;

(iv) shall not use or permit the use of the prestige of judicial office for fund raising or membership solicitation; and

(v) shall not be a speaker or guest of honor at an organization's fund raising events, unless the events concern raising funds for improving access to the legal system for indigent or low income individuals, but may attend any such events.

E. Financial Activities. —

(1) A judge shall not engage in financial and business dealings that:

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

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

(2) A judge may, subject to the requirements of this Canon, hold and manage investments of the judge and members of the judge's family, including real estate.

(3) A judge shall not serve as an officer, director, manager, general partner, advisor or employee of any business entity except that a judge may, subject to the requirements of this Canon, manage and participate in:

(a) a business closely held by the judge or members of the judge's family, or

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

(4) A judge shall manage the judge's investments and other financial interests to minimize the number of cases in which the judge is disqualified. As soon as the judge can do so without serious financial detriment, the judge shall divest himself or herself of investments and other financial interests that might require frequent disqualification.

(5) A judge shall not accept, and shall urge members of the judge's family residing in the judge's household not to accept, a gift, favor or loan from anyone except for:

(a) a gift incident to a public testimonial, books, tapes and other resource materials supplied by publishers on a complimentary basis for official use, or an invitation to the judge and the judge's spouse or guest to attend a bar related function or an activity devoted to the improvement of the law, the legal system or the administration of justice;

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

(c) ordinary social hospitality;

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

(e) a gift, favor or loan from a relative or close personal friend whose appearance or interest in a case would in any event require disqualification under Section 3E;

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

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

F. Fiduciary Activities. —

(1) A judge shall not serve as executor, administrator or other personal representative, trustee, guardian, attorney in fact or other fiduciary, 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 judicial duties.

(2) A judge shall not serve as a fiduciary if it is likely that the judge as a fiduciary 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.

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

G. Service as Arbitrator or Mediator. — A judge shall not act as an arbitrator or mediator or otherwise perform judicial functions in a private capacity.

H. Practice of Law. — A judge shall not practice law. Notwithstanding this prohibition, 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.

I. Compensation, Reimbursement and Reporting. —

(1) Compensation and Reimbursement. A judge may receive compensation and reimbursement of expenses for the extra judicial activities permitted by these Canons, if the source of such payments does not give the appearance of influencing the judge's performance of judicial duties or otherwise give the appearance of impropriety.

(a) Compensation shall not exceed a reasonable amount nor shall it exceed what a person who is not a judge would receive for the same activity.

(b) Expense reimbursement shall be limited to the actual cost of travel, food and lodging reasonably incurred by the judge and, where appropriate to the occasion, by the judge's spouse or guest. Any payment in excess of such an amount is compensation.

(2) Public Reports. A Judge shall report compensation as required by § 2.2-3114 of the Code of Virginia.

Comment on Subdivision A: Complete separation of a judge from extra judicial activities is neither possible nor wise; a judge should not become isolated from the community in which the judge lives.

Expressions of bias or prejudice by a judge, even outside the judge's judicial activities, may cast reasonable doubt on the judge's capacity to act impartially as a judge. Expressions which

may do so include jokes or other remarks demeaning individuals on the basis of their race, sex, religion, national origin, disability, age, sexual orientation or socioeconomic status.

See Section 2C and accompanying Commentary.

Comment on Subdivision B: As a judicial officer and person specially learned in the law, a judge is in a unique position to contribute to the improvement of the law, the legal system, and the administration of justice. To the extent that time permits, a 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. Judges may participate in efforts to promote the fair administration of justice, the independence of the judiciary and the integrity of the legal profession.

Comment on Subdivision C: A judge may promote broader access to justice by encouraging lawyers to participate in pro bono public or legal services, if in doing so the judge does not employ coercion, or abuse the prestige of judicial office. Such encouragement may take many forms, including providing a list of available programs, training lawyers to do pro bono publico service or legal work, and participating in events recognizing lawyers who have done pro bono public work, including nominating lawyers for such recognition. A judge may assist an organization in the recruitment of lawyers or law firms to provide pro bono legal services so long as the recruitment effort cannot reasonably be perceived as coercive. This includes a judge requesting an attorney to accept pro bono representation of a party in a proceeding pending before the judge.

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

Comment on Subdivision D(1): See Section 2B regarding the obligation to avoid improper influence.

Comment on Subdivision D(2): A judge may serve on a governmental committee or commission concerned with issues of fact or policy, provided the judge's role is limited to discussion of and voting on matters (i) which involve the improvement of the law, the legal system or the administration of justice, and (ii) that are not issues in specific cases pending before or likely to come before the judge. This may include serving on committees or task forces created by the executive and legislative branches of state government or by local governments to review policies affecting entities that interact with the judicial system.

Comment on Subdivision D(3)(a): Nothing contained in these Canons shall be deemed to prohibit a judge from serving in a nonvoting capacity on the Board of Directors of Lawyers Helping Lawyers, or any committees of Lawyers Helping Lawyers.

Comment on Subdivision D(3)(b): A judge may solicit membership or endorse or encourage membership efforts for an organization devoted to the improvement of the law, the legal system or the administration of justice or a nonprofit educational, religious, charitable, fraternal or civic organization as long as the solicitation cannot reasonably be perceived as coercive and is not essentially a fund raising mechanism. Solicitation of funds for an organization and solicitation of memberships similarly involve the danger that the person solicited will feel obligated to respond favorably to the solicitor if the solicitor is in a position of influence or control. A judge must not engage in direct, individual solicitation of funds or memberships in person, in writing or by telephone except in the following cases: (1) a judge may solicit funds or memberships from other judges over whom the judge does not exercise supervisory or appellate authority, (2) a judge may solicit other persons for membership in the organizations described above if neither those persons nor persons with whom they are affiliated are likely ever to appear before the court on which the judge serves and (3) a judge who is an officer of such an organization may send a general membership solicitation mailing over the judge's signature.

This Canon is not intended to prohibit judges from participating in all charitable events. Judges are encouraged to be involved in community activities so long as the judge does not participate in the solicitation of funds and the prestige of the office is not used for fund raising.

Use of an organization letterhead for fund raising or membership solicitation does not violate Section 4C(3)(b) provided the letterhead lists only the judge's name and office or other position in the organization, and, if comparable designations are listed for other persons, the judge's judicial designation. In addition, a judge must also make reasonable efforts to ensure that the judge's staff, court officials and others subject to the judge's direction and control do not solicit funds on the judge's behalf for any purpose, charitable or otherwise.

Comment on Subdivision E(1): A judge must avoid financial and business dealings that involve the judge in frequent transactions or continuing business relationships with persons likely to come either before the judge personally or before other judges on the judge's court. In addition, a judge should discourage members of the judge's family from engaging in dealings that would reasonably appear to exploit the judge's judicial position. This rule is necessary to avoid creating an appearance of exploitation of office or favoritism and to minimize the potential for disqualification.

Comment on Subdivision E(2): This Section provides that, subject to the requirements of this Canon, a judge may hold and manage investments owned solely by the judge, investments owned solely by a member or members of the judge's family, and investments owned jointly by the judge and members of the judge's family. A judge may own real estate or other property with others, who are not family members, so long as the judge complies with Section 4D(1) and (2).

Comment on Subdivision E(3): Subject to the requirements of this Canon, a judge may participate in a business in which at least fifty percent is held either by the judge alone, by members of the judge's family, or by the judge and members of the judge's family.

Although participation by a judge in a closely held family business might otherwise be permitted by Section 4D(3), a judge may be prohibited from participation by other provisions of

these Canons when, for example, the business entity frequently appears before the judge's court or the participation requires significant time away from judicial duties. Similarly, a judge must avoid participating in a closely held family business if the judge's participation would involve misuse of the prestige of judicial office, subject the judge to public criticism or give the appearance of impropriety.

“Member of the judge's family” denotes a spouse, child, grandchild, parent, grandparent, or other relative or person with whom the judge maintains a close familial relationship.

Comment on Subdivision E(5): Because a gift, favor or loan to a member of the judge's family residing in the judge's household might be viewed as intended to influence the judge, a judge must inform those family members of the relevant ethical constraints upon the judge in this regard and discourage those family members from violating them. A judge cannot, however, reasonably be expected to know or control all of the financial or business activities of all family members residing in the judge's household.

Comment on Subdivision E(5)(a): Acceptance of an invitation to a law related function is governed by Section 4D(5)(a).

Comment on Subdivision E(5)(d): A gift to a judge, or to a member of the judge's family living in the judge's household, that is excessive in value raises questions about the judge's impartiality and the integrity of the judicial office and might require disqualification of the judge where disqualification would not otherwise be required. See, however, Section 4D(5)(e).

Comment on Subdivision F: The restrictions imposed by this Canon may conflict with the judge's obligation as a fiduciary. For example, a judge should resign as trustee if detriment to the trust would result from divestiture of holdings the retention of which would place the judge in violation of Section 4D(4).

Comment on Subdivision G: Section 4F does not prohibit a judge from participating in settlement conferences performed as part of judicial duties.

Comment on Subdivision H: This prohibition refers to the practice of law in a representative capacity and not in a pro se capacity. A judge may act for himself or herself in all legal matters, including matters involving litigation and matters involving appearances before or other dealings with legislative and other governmental bodies. However, in so doing, a judge must not abuse the prestige of office to advance the interests of the judge or the judge's family. See Section 2(B).

These Canons allow a judge to give legal advice to and draft legal documents for members of the judge's family, so long as the judge receives no compensation. A judge must not, however, act as an advocate or negotiator for a member of the judge's family in a legal matter.

Section 51.1-309 of the Virginia Code prohibits a retired judge who is receiving benefits under the Judicial Retirement System from appearing as counsel in any case in any court in the Commonwealth.

Comment on Subdivision I: The Canons do not prohibit a judge from accepting honoraria or speaking fees provided that the compensation is reasonable and commensurate with the task performed. A judge should ensure, however, that no conflicts are created by the arrangement. A judge must not appear to trade on the judicial position for personal advantage. Nor should a judge spend significant time away from court duties to meet speaking or writing commitments for compensation. In addition, the source of the payment must not raise any question of undue influence or the judge's ability or willingness to be impartial.

A Copy,

Teste:

Pat L Hamington

Clerk