

FOR PUBLICATION
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

RANDOLPH WOLFSON,
Plaintiff-Appellant,

v.

COLLEEN CONCANNON; LOUIS
FRANK DOMINGUEZ; PETER J.
ECKERSTROM; GEORGE H. FOSTER;
GUSTAVO ARAGON, JR.; ROGER
BARTON; S' LEE HINSHAW; DAVID
STEVENS; J. TYRELL TABER;
LAWRENCE F. WINTHROP, in their
official capacities as members of the
Arizona Commission on Judicial
Conduct; ANNA MARY GLAAB;
MARET VESSELLA, Chief Bar
Counsel of the State Bar of Arizona,
Defendants-Appellees.

No. 11-17634

D.C. No.
3:08-cv-08064-
FJM

OPINION

Appeal from the United States District Court
for the District of Arizona
Frederick J. Martone, Senior District Judge, Presiding

Argued and Submitted En Banc
September 9, 2015—San Francisco, California

Filed January 27, 2016

Before: Sidney R. Thomas, Chief Judge, and Diarmuid F. O'Scannlain, Susan P. Graber, William A. Fletcher, Ronald M. Gould, Marsha S. Berzon, Richard C. Tallman, Johnnie B. Rawlinson, Consuelo M. Callahan, Morgan Christen, and Andrew D. Hurwitz, Circuit Judges.

Opinion by Judge Gould;
Concurrence by Judge Berzon

SUMMARY*

Civil Rights

The en banc court affirmed the district court's summary judgment in favor of defendants in an action brought by Randolph Wolfson, an Arizona state judicial candidate in 2006 and 2008, who challenged several provisions of the Arizona Code of Judicial Conduct regulating judicial campaigns.

Wolfson challenged: (1) the Personal Solicitation Clause, Rule 4.1(A)(6); (2) the Endorsement Clauses, Rule 4.1(A)(2), (3), (4); and (3) the Campaign Prohibition, Rule 4.1(A)(5). Together, the clauses did not allow Wolfson, while running for judicial office, to personally solicit funds for his own campaign or for a campaign for another candidate or political organization, to publicly endorse another candidate for public office, to make speeches on behalf of another candidate or

* This summary constitutes no part of the opinion of the court. It has been prepared by court staff for the convenience of the reader.

political organization, or to actively take part in any political campaign.

Applying the Supreme Court's intervening decision in *Williams-Yulee v. Florida Bar*, 135 S. Ct. 1656 (2015), the en banc court first held that the district court erred when it bypassed strict scrutiny in favor of the intermediate level of scrutiny used by the Seventh Circuit. The panel nevertheless held that the district court arrived at the correct result because the Personal Solicitation Clause, the Endorsement Clauses, and the Campaign Prohibition Rule all withstood First Amendment analysis under strict scrutiny. The en banc court held that Arizona has a compelling interest in upholding public confidence in the judiciary and that in light of *Williams-Yulee*, the Rules were narrowly tailored to its compelling interest.

Concurring, Judge Berzon stated that in light of *Williams-Yulee*, she was in general agreement with Judge Gould's opinion for the en banc court. Judge Berzon concurred in order to highlight her concern about articulating the governmental interest at stake in regulating judicial elections. Judge Berzon stated that there is a separate, broader governmental basis for regulating judicial behavior that goes beyond a concern with biased decisionmaking in individual cases. In her view, the societal interest in maintaining an independent judiciary more accurately captures the reasons to limit judicial candidates' endorsements and campaigning activity. Judge Berzon also noted that the majority opinion did not distinguish between sitting judges who run for judicial office and judicial candidates who are not yet, and may never be, judges.

COUNSEL

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Robert W. Ferguson, Attorney General, and Alan D. Copsey, Deputy Solicitor General, Olympia, Washington, for Amicus Curiae States of Washington, Hawai'i, and Oregon.

OPINION

GOULD, Circuit Judge:

Plaintiff-Appellant Randolph Wolfson, an Arizona state judicial candidate in 2006 and 2008, challenges several provisions of the Arizona Code of Judicial Conduct regulating judicial campaigns. Specifically, Wolfson challenges: (1) the Personal Solicitation Clause, Rule 4.1(A)(6)¹; (2) the Endorsement Clauses, Rule 4.1(A)(2), (3), (4)²; and (3) the Campaign Prohibition, Rule 4.1(A)(5)³. Together, the clauses do not allow Wolfson, while running

¹ “A judge or a judicial candidate shall not . . . personally solicit or accept campaign contributions other than through a campaign committee authorized by Rule 4.4” Ariz. Code of Judicial Conduct Rule 4.1(A)(6) (2014), <http://www.azcourts.gov/portals/137/rules/Arizona%20Code%20of%20Judicial%20Conduct.pdf>.

² “A judge or a judicial candidate shall not . . . (2) make speeches on behalf of a political organization or another candidate for public office; (3) publicly endorse or oppose another candidate for any public office; (4) solicit funds for or pay an assessment to a political organization or candidate, make contributions to any candidate or political organization in excess of the amounts permitted by law, or make total contributions in excess of fifty percent of the cumulative total permitted by law” *Id.* at 4.1(A)(2), (3), (4).

³ “A judge or a judicial candidate shall not . . . actively take part in any political campaign other than his or her own campaign for election, reelection or retention in office.” *Id.* at 4.1(A)(5).

for judicial office, to personally solicit funds for his own campaign or for a campaign for another candidate or political organization, to publicly endorse another candidate for public office, to make speeches on behalf of another candidate or political organization, or to actively take part in any political campaign.

On May 21, 2008, Wolfson filed a complaint against the Commissioners of the Arizona Commission on Judicial Conduct and Chief Bar Counsel Robert B. Van Wyck (collectively “the Commission”) in the United States District Court for the District of Arizona, alleging that the campaign regulations violated his First Amendment rights of freedom of speech and freedom of association.⁴

The district court disagreed and granted the Commission’s motion for summary judgment.⁵ *Wolfson v. Brammer*, 822 F. Supp. 2d 925, 931–32 (D. Ariz. 2011). The district court held that strict scrutiny was inappropriate, and instead adopted the Seventh Circuit’s approach of applying an intermediate level of scrutiny to assess judicial campaign regulations like Arizona’s Rules. *Id.* at 929–30 (citing *Siefert v. Alexander*, 608 F.3d 974, 983–88 (7th Cir. 2010) and

⁴ Wolfson’s complaint also named as defendants Commissioners of Arizona Supreme Court Disciplinary Commission, but Wolfson has since voluntarily dismissed all claims against these defendants. *Wolfson v. Brammer*, 822 F. Supp. 2d 925, 926–27 (D. Ariz. 2011).

⁵ The district court originally dismissed Wolfson’s claims as moot because the election had passed and Wolfson was no longer a judicial candidate. *Wolfson v. Brammer*, No. CV-08-8064-PHX-FJM, 2009 WL 102951, at *3 (D. Ariz. Jan. 15, 2009). We disagreed, and reversed and remanded the case. *Wolfson v. Brammer*, 616 F.3d 1045, 1066–67 (9th Cir. 2010). We now review the decision made on remand.

Bauer v. Shepard, 620 F.3d 704, 713 (7th Cir. 2010)). Applying this level of scrutiny, the district court upheld Arizona’s Rules as striking an appropriate “constitutional balance” between judicial candidates’ First Amendment rights and the state’s compelling interests in protecting litigants’ due process rights and in ensuring the impartiality of the judiciary. *See id.* at 931–32.

Wolfson timely appealed. After an original panel hearing, *Wolfson v. Concannon*, 750 F.3d 1145 (9th Cir. 2014), the case was ordered to be reheard en banc, *Wolfson v. Concannon*, 768 F.3d 999 (9th Cir. 2014). Following this decision but before we reheard the case, the Supreme Court decided *Williams-Yulee v. Florida Bar*, 135 S. Ct. 1656 (2015).

I

The First Amendment, applicable to the States through the Due Process Clause of the Fourteenth Amendment, says that “Congress shall make no law . . . abridging the freedom of speech.” U.S. Const. amend. I; *McIntyre v. Ohio Elections Comm’n*, 514 U.S. 334, 336 n.1 (1995). Wolfson’s appeal requests that we address: (1) the district court’s application of intermediate scrutiny to assess Arizona’s restrictions on judicial candidate speech; and (2) the impact of *Williams-Yulee v. Florida Bar*, 135 S. Ct. 1656 (2015), on Arizona’s Personal Solicitation Clause, Endorsement Clauses, and Campaign Prohibition.

II

We first address whether the district court was correct in adopting the Seventh Circuit’s intermediate level of scrutiny

to assess Arizona’s judicial speech restrictions. We hold that, in light of *Williams-Yulee*, it was not.

The Supreme Court has repeatedly held that “[t]he First Amendment has its fullest and most urgent application to speech uttered during a campaign for political office.” *Citizens United v. Fed. Election Comm’n*, 558 U.S. 310, 339–40 (2010) (quoting *Eu v. S.F. Cty. Democratic Cent. Comm.*, 489 U.S. 214, 223 (1989)) (internal quotation marks omitted). This “requires us to err on the side of protecting political speech rather than suppressing it.” *Fed. Election Comm’n v. Wis. Right to Life, Inc.*, 551 U.S. 449, 457 (2007).

In *Williams-Yulee*, a plurality of the Supreme Court applied similar reasoning when addressing the level of scrutiny appropriate for assessing Florida’s Code of Judicial Conduct Canon 7C(1), a prohibition on personal solicitation during judicial campaigns. *See* 135 S. Ct. at 1664–65 (“As we have long recognized, speech about public issues and the qualifications of candidates for elected office commands the highest level of First Amendment protection.”). Picking up where the Court left off in *Republican Party of Minn. v. White*, 536 U.S. 765, 774–75 (2002) (*White I*) (assuming without deciding that strict scrutiny was appropriate for restrictions on judicial candidates’ ability to announce their views on various legal issues), the *Williams-Yulee* plurality held that strict scrutiny was warranted. *Williams-Yulee*, 135 S. Ct. at 1665. “A State may restrict the speech of a judicial candidate only if the restriction is narrowly tailored to serve a compelling interest.” *Id.*

We agree with the plurality and hold that strict scrutiny is appropriate here. Even before *Williams-Yulee*, other courts had come to similar conclusions. *See Carey v. Wolnitzek*,

614 F.3d 189, 199–200 (6th Cir. 2010); *Republican Party of Minn. v. White*, 416 F.3d 738, 748–49 (8th Cir. 2005) (en banc) (*White II*); *Weaver v. Bonner*, 309 F.3d 1312, 1315, 1322–23 (11th Cir. 2002). Additionally, our holding is not limited to Arizona’s Personal Solicitation Clause, which has no meaningful difference from Florida’s Canon 7C(1).⁶ We also hold that strict scrutiny is similarly appropriate for Arizona’s Endorsement Clauses and for its Campaign Prohibition. A decision otherwise would be contrary to the Supreme Court’s broad reasoning in *Williams-Yulee*, which addressed not just a prohibition on personal requests for campaign contributions, but state restrictions on judicial candidate speech generally. *See Williams-Yulee*, 135 S. Ct. at 1665. A decision otherwise also would put us in conflict with the approach taken by the Sixth, Eighth, and Eleventh Circuits.

⁶ Florida’s Canon 7C(1) reads: “A candidate, including an incumbent judge, for a judicial office that is filled by public election between competing candidates shall not personally solicit campaign funds, or solicit attorneys for publicly stated support, but may establish committees of responsible persons to secure and manage the expenditure of funds for the candidate’s campaign and to obtain public statements of support for his or her candidacy. Such committees are not prohibited from soliciting campaign contributions and public support from any person or corporation authorized by law.” Code of Judicial Conduct for the State of Florida 38 (2014), http://www.floridasupremecourt.org/decisions/ethics/Code_Judicial_Conduct.pdf. Arizona’s Personal Solicitation Clause similarly reads: “A judge or a judicial candidate shall not . . . personally solicit or accept campaign contributions other than through a campaign committee . . .” Ariz. Code of Judicial Conduct Rule 4.1(A)(6) (2014), <http://www.azcourts.gov/portals/137/rules/Arizona%20Code%20of%20Judicial%20Conduct.pdf>.

III

Federal, state, and local governments have struggled to meet strict scrutiny when defending speech restrictions. *See, e.g., Reed v. Town of Gilbert*, 135 S. Ct. 2218, 2231–32 (2015); *United States v. Playboy Entm’t Grp., Inc.*, 529 U.S. 803, 813–14, 816 (2000); *OSU Student All. v. Ray*, 699 F.3d 1053, 1062–64 (9th Cir. 2012); *United States v. Alvarez*, 617 F.3d 1198, 1215–18 (9th Cir. 2010). To overcome such a high standard of review, the government is required to prove that “the restriction ‘furthers a compelling interest and is narrowly tailored to achieve that interest.’” *Citizens United*, 558 U.S. at 340 (quoting *Wis. Right to Life*, 551 U.S. at 464). Following *Williams-Yulee*,⁷ we hold that Arizona meets that standard for all of the challenged restrictions on judicial candidate speech.

A. The Personal Solicitation Clause

Wolfson contends that Arizona’s Personal Solicitation Clause, which prohibits him, while running for judicial office, from personally soliciting funds for his own campaign, fails strict scrutiny. He argues that Arizona’s interest is not narrowly tailored, and that *Williams-Yulee* does not control our decision because Florida and Arizona have different interests in upholding their respective personal solicitation prohibitions.

⁷ With the exception of the level of scrutiny addressed in Part II, above, Chief Justice Roberts’ opinion in *Williams-Yulee* garnered a majority. *Williams-Yulee*, 135 S. Ct. at 1662.

1. Compelling Interest

Wolfson does not contend that Arizona lacks a compelling interest behind this solicitation prohibition. Instead, he argues that Arizona's interest is significantly different than Florida's interest in Canon 7C(1), making the Court's strict scrutiny analysis in *Williams-Yulee* inapplicable to Arizona's Clause. Attempting to distinguish the two states' interests, Wolfson first points to Florida's Code of Judicial Conduct Canon 1 and its commentary: "Deference to the judgments and rulings of courts depends upon public confidence in the integrity and independence of judges. The integrity and independence of judges depend in turn upon their acting without fear or favor." Code of Judicial Conduct for the State of Florida 6 (2014), http://www.floridasupremecourt.org/decisions/ethics/Code_Judicial_Conduct.pdf. He compares this language to that of Arizona's Code of Judicial Conduct Rule 1.2 and Comment 5, which he contends demonstrate that Arizona's interest is protecting the public's perception of "the judge's honesty, impartiality, temperament, or fitness." Ariz. Code of Judicial Conduct Rule 1.2 (2014), cmt. n.5, <http://www.azcourts.gov/portals/137/rules/Arizona%20Code%20of%20Judicial%20Conduct.pdf>. An interest in judicial "honesty, impartiality, temperament, or fitness," Wolfson argues, is different than a concern for "fear or favors."

This is a distinction without a material difference. Even if we consider the language to which Wolfson points, the Supreme Court did not uphold Florida's prohibition because of an interest in curbing "fear or favors." Instead, the Court was broad in its language and reasoning. "We have recognized the 'vital state interest' in safeguarding 'public confidence in the fairness and integrity of the nation's elected

judges,” *Williams-Yulee*, 135 S. Ct. at 1666 (quoting *Caperton v. A.T. Massey Coal Co.*, 556 U.S. 868, 889 (2009)), because the “judiciary’s authority . . . depends in large measure on the public’s willingness to respect and follow its decisions.” *Id.* Arizona’s interest, outlined in Rule 1.2 and its comments, is similar, if not identical.

Moreover, the Supreme Court recognized that the “concept of public confidence in judicial integrity does not easily reduce to precise definition.” *Id.* at 1667. Even if Arizona adopted slightly different language for its articulation of its interest,⁸ Arizona is similarly interested in upholding the judiciary’s credibility. There are no magic words required for a state to invoke an interest in preserving public confidence in the integrity of the state’s sitting judges.

Arizona’s interest behind its Personal Solicitation Clause is compelling.

2. Narrowly Tailored

Wolfson’s arguments that Arizona’s Personal Solicitation Clause is not narrowly tailored are precluded by *Williams-Yulee*. First, Wolfson contends that the Personal Solicitation Clause is overbroad because it covers solicitation methods, such as mass mailings and speeches to large groups, that

⁸ Wolfson’s articulation of Arizona’s interest stresses selective words and ignores the plain language of Rule 1.2 which is nearly identical to the interests Florida stated in Canon 1. “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.” Ariz. Code of Judicial Conduct Rule 1.2 (2014), <http://www.azcourts.gov/portals/137/rules/Arizona%20Code%20of%20Judicial%20Conduct.pdf>.

would not result in a *quid pro quo*. However, the Supreme Court rejected the argument that the state may prohibit only solicitation methods that are the most likely to erode public confidence. *Williams-Yulee*, 135 S. Ct. at 1671. The Court held that the argument “misperceives the breadth of the compelling interest” and that, though that “interest may be implicated to varying degrees in particular contexts, . . . the interest remains whenever the public perceives the judge personally asking for money.” *Id.*

Second, Wolfson argues that the Personal Solicitation Clause is not the least restrictive means to effectuate Arizona’s interest because Arizona could have adopted contribution limitations or a mandatory recusal rule. Again, the Supreme Court did not consider this argument persuasive. *Id.* at 1671–72. Forced recusals would disable jurisdictions with a small number of judges, erode public confidence in the judiciary, and create an incentive for litigants to make contributions for the sole purpose of forcing the judge to later recuse himself or herself from the litigant’s cases. *Id.* Contribution limits would be similarly ineffective. The improper appearance of a judicial candidate soliciting money would still remain and, even though the Court had previously held that contribution limitations advance the interest against *quid pro quo* corruption, a state is not restricted to pursuing its interest by a single means. *Id.* at 1672.

We hold that Arizona’s Personal Solicitation Clause is narrowly tailored to achieve the state’s compelling interest. The state reasonably wants to uphold the public’s perception of publicly elected judges as being fair-minded and unbiased, and may do so by prohibiting judicial candidates from making personal solicitations.

B. The Endorsement Clauses and the Campaign Prohibition

Wolfson also argues that Arizona's Endorsement Clauses and Campaign Prohibition are not narrowly tailored to Arizona's compelling interest in public confidence in the judiciary's integrity.⁹ These Clauses prohibit him, while running for judicial office, from personally soliciting funds for a campaign for another candidate or political organization, publicly endorsing or making a speech on behalf of another candidate for public office, or actively taking part in any political campaign. Wolfson contends that the prohibitions are underinclusive, overbroad, and generally not tailored enough to the interest at hand. We disagree. Arizona can properly restrict judges and judicial candidates from taking part in political activities that undermine the public's confidence that judges base rulings on law, and not on ?party affiliation.

1. Underinclusivity

Wolfson contends that Arizona's Endorsement Clauses and Campaign Prohibition are underinclusive because they allow judicial candidates to receive endorsements, allow judicial candidates to endorse public officials and non-candidates, and allow other candidates to participate in judicial campaigns. "[U]nderinclusiveness can raise 'doubts

⁹ Wolfson again does not contest that Arizona has a compelling interest in upholding the Endorsement Clauses and Campaign Prohibition. Arizona has a compelling interest in upholding the public confidence in the judiciary and furthers this interest through a ban on personal solicitation and curtailment of judicial candidates' ability to engage with the political branches of government.

about whether the government is in fact pursuing the interest it invokes, rather than disfavoring a particular speaker or viewpoint,” *Williams-Yulee*, 135 S. Ct. at 1668 (quoting *Brown v. Entm’t Merchs. Ass’n*, 131 S. Ct. 2729, 2740 (2011)), and can “reveal that a law does not actually advance a compelling interest.” *Id.* However, “[a] State need not address all aspects of a problem in one fell swoop” and can “focus on . . . [the] most pressing concerns.” *Id.*

Once again, *Williams-Yulee* controls our reasoning. In assessing whether Florida’s solicitation clause was underinclusive, the Court looked at whether Canon 7C(1) was “aim[ed] squarely at the conduct most likely to undermine public confidence in the integrity of the judiciary,” “applie[d] evenhandedly to all judges and judicial candidates, regardless of their viewpoint,” and was “not riddled with exceptions.” *Id.* at 1668–69. We do not believe that the analysis should be any different when assessing a prohibition of endorsements or participation in political campaigns. *Williams-Yulee* may have been about a prohibition on direct candidate solicitations of campaign contributions, but the Supreme Court’s reasoning was broad enough to encompass underinclusivity arguments aimed at other types of judicial candidate speech prohibitions such as Arizona’s Endorsement Clauses and its Campaign Prohibition.

And both the Endorsement Clauses and Campaign Prohibition fit easily under the *Williams-Yulee* underinclusivity analysis. First, Arizona squarely aimed at preventing conduct that could erode the judiciary’s credibility. When a judicial candidate actively engages in political campaigns, a judge’s impartiality can be put into question, and the public can lose faith in the judiciary’s ability to abide by the law and not make decisions along

political lines. Arizona's Endorsement Clauses and Campaign Prohibition are aimed at these valid concerns. *See* Arizona Judicial Code of Conduct Rule 4.1, Comment 1 ("Rather than making decisions based upon the expressed views or preferences of the electorate, a judge makes decisions based upon the law and the facts of every case. Therefore, in furtherance of this interest, judges and judicial candidates must, to the greatest extent possible, be free and appear to be free from political influence and political pressure."). Further, the Endorsement Clauses and Campaign Prohibition apply to both judges and judicial candidates and have few exceptions.¹⁰

We need not question whether Arizona could have, as Wolfson argues, prohibited more types of endorsements or campaign participation. "[P]olicymakers may focus on their most pressing concerns" and the fact that the state could "conceivably could have restricted even greater amounts of speech in service of their stated interests" is not a death blow under strict scrutiny. *Williams-Yulee*, 135 S. Ct. at 1668. Arizona's Endorsement Clauses and Campaign Prohibition are not underinclusive.

2. Overinclusivity

Wolfson next contends that the Endorsement Clauses and Campaign Prohibition are unconstitutionally overbroad because the Campaign Prohibition bans involvement with

¹⁰ Judges and judicial candidates may make limited contributions to another candidate or political organization under Rule 4.1(A)(4) and may engage in political activity that pertains to the legal system or attend dinners or similar functions that do not constitute a public endorsement of candidates under Rule 4.1(C).

ballot measures, and the Endorsement Clauses forbid judges from endorsing anyone, even candidates like the President of the United States who are highly unlikely to appear before the judge.¹¹ A regulation “may be overturned as impermissibly overbroad because a substantial number of its applications are unconstitutional, judged in relation to the statute’s plainly legitimate sweep.” *Wash. State Grange v. Wash. State Republican Party*, 552 U.S. 442, 449 n.6 (2008) (internal quotation marks omitted).

Again, *Williams-Yulee* forecloses Wolfson’s arguments. There, the petitioner contended that even though Florida could constitutionally prevent judges from soliciting one-on-one or in person with lawyers and litigants, Canon 7C(1) was overbroad because it included a prohibition of solicitation through mass mailings. *Williams-Yulee*, 135 S. Ct. at 1670–71. The petitioner argued that the latter would have less impact on the public confidence of the judiciary. *Id.* at 1671. But the Supreme Court was not convinced, reasoning that such distinctions became so fine as to be unworkable, and in large part, Florida’s restriction still left judicial candidates “free to discuss any issue with any person at any time.” *Id.* at 1670–71. Further, the Court held that though

¹¹ We need not reach whether Arizona could constitutionally forbid judges from discussing ballot measures. Arizona interprets the Clauses to allow candidates to discuss any disputed issue, including those in issue-based initiatives, while cautioning that judicial candidates shall not “with respect to 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 the office” and shall “act in a manner consistent with the impartiality, integrity and independence of the judiciary.” Ariz. Sup. Ct. Judicial Ethics Advisory Op. 06-05 (2006); *see also* Ariz. Sup. Ct. Judicial Ethics Advisory Op. 08-01 (2008).

these speech restrictions must be narrowly tailored, they need not be “perfectly tailored.” *Id.* at 1671 (quoting *Burson v. Freeman*, 504 U.S. 191, 209 (1992)). “[M]ost problems arise in greater and lesser gradations, and the First Amendment does not confine a State to addressing evils in their most acute form.” *Id.*; see also *O’Toole v. O’Connor*, No. 15-3614, 2015 WL 5515061, at *5 (6th Cir. Sept. 21, 2015).

Wolfson asks us to draw a similarly unworkable and unnecessary line. Although supporting a United States presidential candidate may have less of an effect on the public confidence than endorsing or campaigning for an Arizona State senator or a local prosecutor, creating a rigid line is as unworkable as it is unhelpful. Judges engaging in political acts may present different levels of impropriety in different situations. It is not our proper role to second-guess Arizona’s decisions in this regard. Much as the state drew a line between personal solicitation by candidates and by committees in order to preserve public confidence in the judiciary’s integrity, *Williams-Yulee*, 135 S. Ct. at 1671, so too can the state decide that judicial candidates should not engage in legislative or executive campaigns. “These considered judgments deserve our respect, especially because they reflect sensitive choices by States in an area central to their own governance—how to select those who ‘sit as their judges.’” *Id.* (quoting *Gregory v. Ashcroft*, 501 U.S. 452, 460 (1991)).

Our conclusion is consistent with *White I*. Arizona’s prohibitions do not prevent judicial candidates from announcing their views on disputed legal and political subjects. See *White I*, 536 U.S. at 788. Instead, Arizona simply makes the distinction that a judicial candidate may do so only in relation to his or her own campaign. This follows

the reasoning in *White I*, where the Supreme Court was concerned about restrictions on the ability to express legal views while campaigning, *see id.* at 770–74, not on the ability to advance the political views and aspirations of another candidate. The latter is not the kind of speech the Court in *White I* sought to protect. *See Wersal v. Sexton*, 674 F.3d 1010, 1026 (8th Cir. 2012) (“[T]he endorsement clause does not regulate speech with regard to any underlying issues, and thus the candidates are free to state their positions on these issues, in line with *White I*.”); *Siefert*, 608 F.3d at 984 (“While an interest in the impartiality and perceived impartiality of the judiciary does not justify forbidding judges from identifying as members of political parties, a public endorsement is not the same type of campaign speech [as that] targeted by the impermissible rule against talking about legal issues the Supreme Court struck down in *White I*.”); *Bauer*, 620 F.3d at 711–12 (holding that the reasoning employed in *Siefert* to uphold a prohibition against judicial candidate endorsements is equally applicable to a prohibition on partisan activities).

The compelling interest in preserving public confidence in the integrity of judiciary warrants a favorable view of Arizona’s attempt to foreclose judicial candidates from engaging in political campaigns other than their own. The Endorsement Clauses and Campaign Prohibition are not fatally overbroad.

3. Least Restrictive Means

Finally, Wolfson contends that Arizona’s Endorsement Clauses and Campaign Prohibition are not narrowly tailored because they do not offer the least restrictive means to further the state’s interest. He argues that the Clauses do not prevent

judges from favoring certain candidates that may appear in court, and even if they did, recusal would be the best way to handle such impartiality or appearance of impartiality. The government may only “regulate the content of constitutionally protected speech in order to promote a compelling interest if it chooses the least restrictive means to further the articulated interest.” *Sable Commc’ns of Cal., Inc. v. FCC*, 492 U.S. 115, 126 (1989).

But recusal is no answer at all, and this unworkable alternative was flatly dismissed in *Williams-Yulee*. A rule requiring judges to recuse themselves from every case where they endorsed or campaigned for one of the parties could “disable many jurisdictions” and cripple the judiciary. *See Williams-Yulee*, 135 S. Ct. at 1671. Four of Arizona’s counties have only one superior court judge and two other counties have only two superior court judges. Arizona Judicial Branch, Fiscal Year 2014 Annual Report 4, <http://www.azcourts.gov/Portals/38/2014%20Annual%20Report.pdf>. Campaigning for frequent litigants would cause an insurmountable burden that other judges and other counties may not be able to bear. Moreover, an extensive recusal record could cause the same erosion of public confidence in the judiciary that Arizona’s Endorsement Clauses and Campaign Prohibition are trying to prevent.

We hold that the Endorsement Clauses and Campaign Prohibition are narrowly tailored to achieve Arizona’s compelling interest.

IV

Even though the district court erred when it bypassed strict scrutiny in favor of the intermediate level of scrutiny

used by the Seventh Circuit, it arrived at the correct result. The Personal Solicitation Clause, Endorsement Clauses, and Campaign Prohibition all withstand First Amendment analysis under strict scrutiny. Arizona has a compelling interest in upholding public confidence in the judiciary. And in light of *Williams-Yulee*, we hold that Arizona's Rules are narrowly tailored to its compelling interest. The judgment of the district court is therefore

AFFIRMED.

BERZON, Circuit Judge, concurring:

Given *Williams-Yulee v. Florida Bar*, 135 S. Ct. 1656 (2015), I am in general agreement with Judge Gould's opinion for the en banc court ("main opinion"). There are two points, however, as to which the main opinion is terse, at best, and which therefore, in my view, deserve further exploration.

First, I concurred in the panel opinion to highlight my concern about articulating the governmental interests at stake in regulating judicial elections, and write separately here, too, to reiterate the same concern. *Wolfson v. Conannon*, 750 F.3d 1145, 1160 (9th Cir. 2014) (Berzon, J., concurring). The main opinion supports *all three* of Arizona's challenged restrictions on judicial candidates' behavior during judicial election campaigns on the basis of the same governmental interest — judicial impartiality. *See, e.g.*, Maj. Op. at 15–16. But three different species of speech regulation of judicial candidates are here at issue, not one. And while one of the regulations — the ban on personal solicitation — is closely

related to the restriction considered in *Williams-Yulee*, two — the bans on endorsements and campaigning for nonjudicial candidates and causes — are quite different. As to the latter two bans, I am not at all sure that the governmental interest in preventing biased judicial decisionmaking survives the compelling interest/narrowly tailored standard we are required to apply. I am convinced, however, that there is a societal interest underlying those two restrictions — maintaining an independent judiciary — that more accurately captures the reasons to limit judicial candidates’ endorsements and campaigning activity, and that does meet the compelling interest/narrow tailoring requirements.

Additionally, the main opinion does not distinguish between sitting judges who run for judicial office and judicial candidates who are not yet, and may never be, judges. This distinction turns out not to be dispositive of this case, but it is worth explaining why that is so.

1. As the main opinion and the Supreme Court recognize, “[t]he concept of public confidence in judicial integrity does not easily reduce to precise definition.” *Williams-Yulee v. Florida Bar*, 135 S. Ct. 1656, 1667 (2015). In my view, this case requires us to disentangle two distinct facets of this compelling interest.

First, society has an interest in judicial impartiality that is “both weighty and narrow.” *Wolfson*, 750 F.3d at 1163 (Berzon, J., concurring). This fundamental interest is enshrined in the Due Process Clause’s prohibition on a judge trying a case in which she “has an interest in the outcome.” *Caperton v. A.T. Massey Coal Co., Inc.*, 556 U.S. 868, 880 (2009).

It is this impartiality concern that underlay the solicitation restriction in *Williams-Yulee* and also undergirds Arizona's ban on judges' personal solicitation of funds. "[M]ost donors are lawyers and litigants who may appear before the judge they are supporting," *Williams-Yulee*, 135 S. Ct. at 1667, and "personal solicitation by a judicial candidate 'inevitably places the solicited individuals in a position to fear retaliation if they fail to financially support that candidate,'" *id.* at 1668 (quoting *Simes v. Ark. Judicial Discipline and Disability Com'n*, 368 Ark. 577, 585 (2007)). This impartiality interest is important; its reach is also fairly limited. Impartiality's "root meaning" refers to the lack of "bias for or against either party to the proceeding." *Republican Party of Minn. v. White*, 536 U.S. 765, 775 (2002) (emphasis in original). Restrictions that can be justified by society's interest in impartiality are those that aim at protecting the due process rights of litigants appearing before a judge in court.

There is, however, a separate, broader governmental basis for regulating judicial behavior that goes beyond a concern with biased decisionmaking in individual cases. That interest is society's concern with maintaining both the appearance and the reality of a *structurally independent* judiciary, engaged in a decisionmaking process informed by legal, not political or broad, nonlegal policy considerations. As I explained in my concurrence to the panel opinion,

Maintaining public trust in the judiciary as an institution driven by legal principles rather than political concerns is a structural imperative. The rule of law depends upon it.

The fundamental importance of this structural imperative has been recognized

from the founding of the nation. As Alexander Hamilton emphasized in *The Federalist No. 78*, the courts possess “neither FORCE nor WILL, but merely judgment” *Id.* at 433 (Clinton Rossiter ed., 1961). Deprived of those alternative sources of power, the authority of the judiciary instead “lies . . . in its legitimacy, a product of substance and perception that shows itself in the people’s acceptance of the Judiciary as fit to determine what the . . . law means and to declare what it demands.” *Planned Parenthood of Se. Pa. v. Casey*, 505 U.S. 833, 865 (1992); *see also White*, 536 U.S. at 793 (Kennedy, J., concurring) (“The power and the prerogative of a court . . . rest, in the end, upon the respect accorded to its judgments.”). It is the courts’ perceived legitimacy as institutions grounded in established legal principles, not partisanship, “that leads decisions to be obeyed and averts vigilantism and civil strife.” *Bauer*, 620 F.3d at 712. Loss of judicial legitimacy thus corrodes the rule of law, “sap[ping] the foundations of public and private confidence, and . . . introduc[ing] in its stead universal distrust and distress.” *The Federalist No. 78*, at 438. In this sense, “[t]he rule of law, which is a foundation of freedom, presupposes a functioning judiciary respected for its independence, its professional attainments, and the absolute probity of its judges.” *NY State Bd. of Elections v. Lopez Torres*,

552 U.S. 196, 212 (2008) (Kennedy, J., concurring).

This nation's political history demonstrates the disastrous effects of the perceived politicization of the courts. Charges that King George “ha[d] obstructed the Administration of Justice” and “ha[d] made judges dependent on his Will alone” were among the founding generation's justifications for the 1776 revolution. *The Declaration of Independence* para. 11 (U.S. 1776). Similar concerns apply outside the context of a monarchy: Where the judiciary is drawn into the political intrigues of its coordinate branches, the public might well “fear that the pestilential breath of faction may poison the fountains of justice. The habit of being continually marshaled on opposite sides will be too apt to stifle the voice both of law and of equity.” *The Federalist No. 81*, at 452 (Alexander Hamilton) (Clinton Rossiter ed., 1961). And where the politicization of the judiciary brings it into alliance with the politicians who staff the other two branches of government, the public may no longer consider “the courts of justice . . . as the bulwark of a limited Constitution against legislative encroachments,” *The Federalist No. 78*, at 437, or executive excesses. In short, when sitting judges support the campaigns of nonjudicial candidates — via endorsements, speeches, money, or other means — the public may begin to see them

not as neutral arbiters of a limited system of governance, but as participants in the larger game of politics.

Wolfson, 750 F.3d at 1164–65 (Berzon, J. concurring) (footnotes omitted).

In short, a deep-seated interest in the structural independence of the judiciary has been recognized as indispensable to our constitutional order since the founding era. *See id.* at 1164. An independent judge “must above all things put aside his estimate of political and legislative values” when interpreting the law. Benjamin Cardozo, *The Nature of the Judicial Process*, 90 (1921) (internal quotation mark omitted) (quoting Lorenz Brütt, *Die Kunst der Rechtsanwendung*, 57 (1907)).

When judges swap endorsements with legislative or executive candidates, or make speeches during nonjudicial political campaigns, their political and legislative values are brought to the fore, threatening the public’s perception of their independence. To quote again from my panel concurrence:

The defendants here express precisely this concern — that if sitting judges may support the campaigns of others, the public will perceive them as masters of the political game, powerbrokers “trading on the prestige of their office to advance other political ends” *Siefert*, 608 F.3d at 984; *see also* Model Code of Judicial Conduct R. 4.1, cmt.4 (2011) (justifying prohibitions on endorsements and speeches on behalf of other candidates as

“prevent[ing sitting judges] from abusing the prestige of judicial office to advance the interests of others”). The opposite fear is equally justified: Today’s powerbroker is tomorrow’s pawn, as the political winds shift and the next election cycle approaches. The endorsing judge entwines his fate with whomever he endorses and earns the enmity of his favored politician’s opponents. “This kind of *personal* affiliation between a member of the judiciary and a member of the political branches raises the specter — readily perceived by the general public — that the judge’s future rulings will be influenced by this political dependency.” *Wersal v. Sexton*, 674 F.3d 1010, 1034 (8th Cir. 2012) (Loken, J., concurring in the judgment) (emphasis in original).

Wolfson, 750 F.3d at 1165 (Berzon, J., concurring).

I read neither *Williams-Yulee* nor the main opinion to say anything to the contrary. Both impartiality and independence are implicit, for instance, in the majority’s reference to “the judiciary’s ability to abide by the law and not make decisions along political lines.” Maj. Op. at 15–16. But because First Amendment doctrine focuses on the breadth and nature of the interests at stake, it is important to be clear that the interests raised by this case are not limited to the due process concerns signaled by the term judicial impartiality.

This dual focus is particularly critical where, as in this case, the two interests affect aspects of the regulations at issue differently. The main opinion takes *Williams-Yulee*’s

reasoning regarding the personal solicitation of funds and applies it to uphold a ban on judicial candidates endorsing or campaigning for nonjudicial political candidates and organizations. But the concerns raised by these distinct activities only partially overlap. An in-person solicitation creates a unique risk of a quid pro quo arrangement, or at least the appearance of one, between a judicial candidate and a donor. See *Wersal v. Sexton*, 674 F.3d 1010, 1029 (8th Cir. 2012) (en banc). The risk of such an arrangement is more attenuated, though, when it comes to endorsements and campaigning for nonjudicial candidates and issues. Candidates can, of course, exchange endorsements in a mutually beneficial arrangement. But there may be many scenarios where “[a] judicial candidate’s endorsement of an executive or legislative candidate . . . benefits the endorsee more than the endorser.” *Id.* at 1049 (Beam, J., dissenting). The same can be true when a judicial candidate lends their time or credibility to a nonjudicial issue campaign.

Reframing the governmental interest underlying restrictions on judicial candidates’ role in campaigns or political organizations other than their own also brings better into focus the requisite “less-restrictive means” analysis. Personal recusal is an ineffective alternative to the solicitation bar because, as *Williams-Yulee* and the majority point out, it would be problematic to have many recusals in smaller jurisdictions, and individuals would have a “perverse incentive” to donate to judges in the hopes of forcing the judge to recuse if elected. *Williams-Yulee*, 135 S. Ct. at 1671–72; Maj. Op. at 13. In contrast, recusals might be a better alternative to the endorsement and campaign bars, if the only concern were avoiding conflicts of interest. The number of nonjudicial endorsements or campaign speeches a candidate makes is likely to be far lower than the number of

individuals donating to his or her campaign. And the concern of hostile donations as “a form of peremptory strike against a judge,” *Williams-Yulee*, 135 S. Ct. at 1672, disappears where the judicial candidate is the one choosing whom to endorse.

It is not clear to me, then, that the compelling interest of judicial impartiality, or the reasons for concluding that the restrictions are sufficiently narrowly focused, translate well from the solicitation realm to the practice of campaigning for or endorsing other candidates or issues. But these restrictions surely do advance the vital interest in structural judicial independence. The campaign and endorsement restrictions respond to a structural need — they restrict judges from engaging in nonjudicial campaigns, to prevent them from being entangled in the legislative and executive political process. Judges must have the confidence to stand firm against nonjudicial elected officials. That confidence could give way — or appear to give way — if judges behave just like those elected officials, by engaging in the usual, often contentious and fiercely partisan, political processes.

2. I also write to note another distinction that both the main opinion and *Williams-Yulee* elide. Both opinions lump together sitting judges running for re-election and nonjudge candidates aspiring to the office. See, e.g., *Williams-Yulee*, 135 S. Ct. at 1668; Maj. Op. at 14. The main opinion does so not only with respect to the restriction directly pertinent to the judicial election, the solicitation restriction, but with respect to the two other restrictions as well.

It is worth considering whether that uniform treatment is justified. On reflection, it seems to me that competing considerations pull in various directions with regard to the

application to sitting judges and judicial candidates of the nonjudicial endorsement and campaigning restrictions. In the end, I agree with the main opinion's conclusion that all three regulations at issue are valid with respect to both groups.

First, sitting judges are already public employees. The Supreme Court has held in the *Pickering* line of cases that public employee speech may be subject to greater restrictions than the First Amendment would otherwise allow. *See Pickering v. Bd. of Educ. of Twp. High Sch. Dist. 205, Will Cnty., Ill.*, 391 U.S. 563, 568 (1968). The Seventh Circuit, for instance, has applied *Pickering* to adopt a balancing test when evaluating restrictions on sitting judges' speech. *See Bauer v. Shepard*, 620 F.3d 704 (7th Cir. 2010); *Siefert v. Alexander*, 608 F.3d 974 (7th Cir. 2010). But *Pickering* does not appear to apply to the speech of candidates for judicial office who are not yet public employees.

Second, the structural judicial independence interest that to me is central to upholding two of the three judicial campaign restrictions here applicable comes into full force only when the individual elected actually ascends the bench. Before that, the concern is somewhat contingent — the candidate may *become* a judge. Still, that contingency may be sufficient reason for treating a judicial candidate who is not a sitting judge according to the rules of judicial ethics. The structural independence concerns are largely aspirational, and the public perception of the judicial role may be most at the forefront during judicial elections. So drawing the line on nonjudicial political participation at the point of declaration of judicial candidacy may help to forward both the reality and the appearance of a politically independent judiciary.

Moreover, if sitting judges were subject to greater restrictions on political activity than nonjudge candidates, two individuals may end up running for the same judicial office on somewhat uneven footing. The Supreme Court has “repeatedly rejected the argument that the government has a compelling state interest in ‘leveling the playing field’ that can justify undue burdens on political speech.” *Ariz. Free Enterprise Club’s Freedom Club PAC v. Bennett*, 131 S. Ct. 2806, 2825 (2011). But those cases have concerned attempts at government intervention designed to adjust for non-governmental disparities. Here, stricter restrictions during judicial campaigns on nonjudicial endorsement and campaigning for sitting judges than for nonincumbent candidates for judicial positions would *create* the disparity, not level it. Such political participation gives judicial candidates more opportunity for exposure to the electorate, and more chance to connect with voters on nonjudicial matters they care about. The inequity of allowing some candidates for judicial office but not others those opportunities, when added to the aspirational and appearance concerns just discussed, seem sufficiently compelling to justify parallel restrictions for sitting judges and nonjudges, when both are running for the same judicial office.

In sum, I concur in the main opinion, in light of the further conclusions I reach in this concurrence.

ARIZONA CODE OF JUDICIAL CONDUCT

2014

cited in Wolfson v. Concannon, No. 11-17634 archived on January 21, 2016

Arizona Supreme Court
Rule 81, Rules of the Supreme Court,

Effective September 1, 2009
Amended November 24, 2009

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ARIZONA CODE OF JUDICIAL CONDUCT

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PREAMBLE

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.

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.

This code establishes standards for the ethical conduct of judges and judicial candidates. It is not intended as an exhaustive guide for the conduct of judges and judicial candidates, who are governed in their judicial and personal conduct by general ethical standards as well as by the 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 agencies.

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SCOPE

This code 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.

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.

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. 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.

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

The black letter of the rules is binding and enforceable. It is not intended, however, 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.

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

“Appropriate authority” means the authority having responsibility for initiation of disciplinary process in connection with the violation to be reported.

“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.

“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.

“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.

“Economic interest” means ownership of more than a de minimis legal or equitable interest and is further defined, for purposes of compliance with state law, in A.R.S. § 38-502(11). Except for situations in which the judge participates in the management of such a legal or equitable interest, or the interest could be substantially affected by the outcome of a proceeding before a judge, it does not include:

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

“Fiduciary” includes relationships such as executor, administrator, trustee, or guardian.

“Impartial,” “impartiality,” and **“impartially”** mean absence of bias or prejudice in favor of, or against, particular parties or classes of parties, as well as maintenance of an open mind in considering issues that may come before a judge.

“Impending matter” is a matter that is imminent or expected to occur in the near future.

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

“Independence” means a judge’s freedom from influence or controls other than those established by law.

“Integrity” means probity, fairness, honesty, uprightness, and soundness of character.

“Judge” means any person who is authorized to perform judicial functions within the Arizona judiciary, including a justice or judge of a court of record, a justice of the peace, magistrate, court commissioner, special master, hearing officer, referee, or pro tempore judge.

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

“Knowingly,” “knowledge,” “known,” and “knows” means actual knowledge of the fact in question. A person’s knowledge may be inferred from circumstances.

“Law” encompasses court rules as well as ordinances, regulations, statutes, constitutional provisions, and decisional law.

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

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

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

“Pending matter” is a matter that has commenced. A matter continues to be pending through any appellate process until final disposition.

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

“Political organization” means a political party or other group sponsored by or affiliated with a political party or candidate, the principal purpose of which is to further the election or appointment of candidates for political office. For purposes of this code, the term does not include a judicial candidate’s campaign committee created as authorized by Rule 4.3.

“Public election” includes primary and general elections, partisan elections, nonpartisan elections, recall elections, and retention elections.

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

APPLICATION

The Application section establishes when the various rules apply to a judge or judicial candidate.

PART A. Applicability of this Code.

- (1) The provisions of the code apply to all judges. Parts B through D of this section identify exemptions that apply to part-time judges.
- (2) The provisions of Canon 4 apply to judicial candidates.

Comment

1. The rules in this code have been formulated to address the ethical obligations of any person who serves a judicial function within the Arizona judicial branch, and are premised upon the supposition that a uniform system of ethical principles should apply to all those authorized to perform judicial functions. The code does not apply to administrative law judges or administrative hearing officers in this state unless expressly made applicable by statute or by agency rules. Such officers are generally affiliated with the executive branch of government rather than the judicial branch and each agency should consider the unique characteristics of particular positions in adopting and adapting the code for administrative law judges or administrative hearing officers. See Arizona Judicial Ethics Advisory Committee, Opinion 92-03 (January 31, 1992).

2. The determination of which category of judicial service and, accordingly, which specific rules apply to an individual judicial officer, depends upon the nature of the particular judicial service.

3. Arizona has what are often called “problem-solving” courts, in which judges are authorized by court rules to act in nontraditional ways. For example, judges presiding in drug courts and monitoring the progress of participants in those courts’ programs may be authorized and even encouraged to communicate directly with social workers, probation officers, and others outside the context of their usual judicial role as independent decision makers on issues of fact and law. When local rules governing problem-solving courts, or protocols for problem-solving courts known and consented to by the participants, specifically authorize conduct not otherwise permitted under these rules, they take precedence over the provisions set forth in the code. Nevertheless, judges serving on “problem-solving” courts shall comply with this code except to the extent local rules or protocols provide and permit otherwise. See Rule 2.9, Comment 4.

PART B. Retired Judge Available for Assignment.

A retired judge available for assignment to judicial service need not comply with Rules 3.2 (appearances before governmental bodies and consultation with government officials), 3.3 (acting as a character witness), 3.4 (appointments to governmental positions), 3.7 (participation in educational, religious, charitable, fraternal, or civic organizations and activities), 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), 3.12 (compensation for extrajudicial activities),

3.13 (acceptance and reporting of gifts, loans, bequests, benefits, or other things of value), 3.14 (reimbursement of expenses and waivers of fees or charges), 3.15 (reporting requirements), and 4.1(A) (political and campaign activities of judges and judicial candidates in general).

PART C. Continuing or Periodic Part-Time Judge.

A judge who serves part-time on a continuing or periodic basis, but is permitted to devote time to another profession or occupation and whose compensation is less than that of a full-time judge, is not required to comply:

- (1) except while serving as a judge with Rules 2.10(A) and (B) (judicial statements on pending and impending cases); or
- (2) at any time with 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), 3.15 (reporting requirements), 4.1 (political and campaign activities of judges and judicial candidates in general), 4.2 (political and campaign activities of judicial candidates in public elections), 4.3 (activities of candidates for appointive judicial office), 4.4 (campaign committees), and 4.5 (activities of judges who become candidates for nonjudicial office).

Additionally, such a judge shall not practice law in the specific court on which the judge serves or in any court subject to the appellate jurisdiction of the specific 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.

Comment

When a person who has been a continuing part-time judge is no longer a continuing part-time judge, 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 pursuant to any applicable Rules of Professional Conduct.

PART D. Pro Tempore Part-Time Judge.

A pro tempore part-time judge is a person appointed pursuant to Article 6, § 31 of the Arizona Constitution, or municipal charter or ordinance, who serves or expects to serve repeatedly on a less than full-time basis, but under a separate appointment by a presiding judge for each limited period of service or for each matter.

- (1) A pro tempore part-time judge is not required to comply:
 - (a) except while serving as a judge with Rules 1.2 (promoting confidence in the judiciary), 2.4 (external influences on judicial conduct), 2.10 (judicial statements on pending and impending cases), 3.2 (appearance before governmental bodies and consultation with government officials), 3.3 (acting as a character witness); or

- (b) at any time with Rules 3.4 (appointments to governmental positions), 3.7 (participation in educational, religious, charitable, fraternal, or civic organizations and activities), 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), 3.13 (acceptance and reporting of gifts, loans, bequests, benefits, or other things of value), 3.15 (reporting requirements), 4.1 (political and campaign activities of judges and judicial candidates in general), and 4.5 (activities of judges who become candidates for nonjudicial office).
- (2) A person who has been a pro tempore part-time judge 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 except as otherwise permitted by Rule 1.12(a) of the Arizona Rules of Professional Conduct.
- (3) A pro tempore part-time judge who serves once or only sporadically in a specialized division of a court or in a court without specialized divisions may appear as a lawyer in such specialized division or court during such service.
- (4) A pro tempore part-time judge who serves repeatedly on a continuing scheduled basis in a specialized division of a court or in a court without specialized divisions shall not appear as a lawyer in such specialized division or court during such service.
- (5) A part-time pro tempore judge who is appointed to perform judicial functions of a nonappealable nature on a continuing scheduled basis shall not appear as a lawyer in other proceedings involving the function of the court in which the service was performed, but may appear as a lawyer in all other areas of practice before the court.

Comment

1. The restrictions of Part D apply to the members of a pro tempore part-time judge's law firm.
2. The purpose of Part D is to allow the greatest possible use of part-time pro tempore judges to augment judicial resources in order to reduce case backlogs and the time necessary to process cases to disposition while minimizing any potential for the appearance of impropriety.
3. The language of Part D is intended to allow, at a minimum, the following current practices:
 - (a) A lawyer sits as a part-time pro tempore judge for one family law trial and during this time appears in the family law divisions as a lawyer in other matters.
 - (b) A lawyer sits as a part-time pro tempore juvenile judge two or more half days a week on a continuing scheduled basis and during this time appears in court as a lawyer in all types of proceedings except for juvenile matters.
 - (c) A lawyer sits as a part-time pro tempore criminal judge in the after-hours and weekend initial appearance program and thereafter appears as a lawyer in the

criminal divisions except that the lawyer does not appear in the initial appearance program on behalf of clients.

- (d) A lawyer sits on a continuing scheduled basis as a part-time pro tempore judge in a satellite court in one community and otherwise appears in the main court located in a different community on all variety of matters, but does not appear in any proceeding in the satellite court.
- (e) A lawyer sits on a continuing scheduled basis as a pro tempore part-time justice of the peace in one precinct and appears as a lawyer in a justice court in another precinct.
- (f) A lawyer sits once or only sporadically as a pro tempore part-time magistrate in a municipal court and otherwise appears as a lawyer in the same court on all variety of matters.
- (g) These comments replace Advisory Opinion 92-16 (issued December 8, 1992, and reissued March 8, 1993) dealing with ethical constraints on lawyers serving as pro tempore judges.

PART E. Time for Compliance by New Judges.

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

If serving as a fiduciary when selected as judge, 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 Code of Judicial Conduct.

Comment

For a discussion of the judge's obligation when applying and interpreting the law, see Rule 2.2 and the related comment.

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. The test for appearance of impropriety is whether the conduct would create in reasonable minds a perception that the judge violated this code or engaged in other conduct that reflects adversely on the judge's honesty, impartiality, temperament, or fitness to serve as a judge. An appearance of impropriety does not exist merely because a judge has previously rendered a decision on a similar issue, has a general opinion about a legal matter that relates to the case before him or her, or may have personal views that are not in harmony with the views or objectives of either party. A judge's personal and family circumstances are generally not appropriate considerations on which to presume an appearance of impropriety.

6. A judge should initiate and participate in 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 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.

Comment

1. 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.

2. A judge may provide a reference or recommendation for an individual based upon the judge's personal knowledge. The judge may use judicial letterhead 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, by recommending qualified candidates for judicial office, and by responding to inquiries from and volunteering information to such entities concerning the professional qualifications of a person being considered for judicial office.

4. A judge who writes or contributes to publications of for-profit entities 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 Judicial Duties**

The judicial duties of a judge take precedence over all of a judge's other activities.

Comment

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

2. Judicial duties are those prescribed by law. In addition, 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 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. A good faith error of fact or law does not violate this rule. However, a pattern of legal error or an intentional disregard of the law may constitute misconduct.

4. It is not a violation of this rule for a judge to make reasonable accommodations to ensure self-represented litigants the opportunity to have their matters fairly heard.

RULE 2.3. Bias, Prejudice, and Harassment

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

(B) A judge shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice, or engage in harassment, including but not limited to bias, prejudice, or harassment based upon race, sex, gender, 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 paragraphs (B) and (C) do not preclude judges or lawyers from making legitimate reference to the listed factors, or similar factors, when they are relevant to an issue in a proceeding.

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. Facial expressions and body language may 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 paragraphs (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, or political affiliation.

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. See Arizona Supreme Court Administrative Order 92-33 (Oct. 19, 1992), for the judiciary's sexual harassment policy.

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.

Comment

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

RULE 2.5. Competence, Diligence, and Cooperation

(A) A judge shall perform judicial and administrative duties competently, diligently, and promptly.

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

(C) A judge shall participate actively in judicial education programs and shall complete mandatory judicial education requirements.

Comment

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

2. A judge should seek the necessary docket time, court staff, expertise, and resources to discharge all adjudicative and administrative responsibilities.

3. Prompt disposition of the court's business requires a judge to devote adequate time to judicial duties, 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, avoidable delays, and unnecessary costs.

5. Article 2, § 11 of the Arizona Constitution requires that "Justice in all cases shall be administered openly, and without unnecessary delay." Article 6, Section 21 provides that "Every matter submitted to a judge of the superior court for his decision shall be decided within sixty days from the submission thereof. The supreme court shall by rule provide for the speedy disposition of all matters not decided within such period." See Rule 91(e), Rules of the Supreme Court; A.R.S. § 12-128.01. In addition, A.R.S. § 11-424.02(A) prohibits a justice of the peace from receiving compensation if a cause "remains pending and undetermined for sixty days after it has been submitted for decision." These and other time requirements are discussed in depth in Arizona Judicial Ethics Advisory Committee, Advisory Opinion 06-02 (April 25, 2006).

RULE 2.6. Ensuring the Right to Be Heard

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

(B) A judge may encourage parties to a proceeding and their lawyers to settle matters in dispute, but shall not coerce 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 the judge or a jury, or is on appellate review, (4) whether the parties participate with their counsel in settlement discussions, (5) whether any parties are unrepresented by counsel, (6) whether the matter is civil or criminal, and (7) whether the judge involved in the settlement discussions will also be involved in the decision on the merits.

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 or on appeal and, in such instances, the judge should consider whether disqualification may be appropriate. See Rule 2.11(A)(1).

RULE 2.7. Responsibility to Decide

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

Comment

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

2. A judge is not ethically obligated to automatically recuse himself or herself from a case in which one of the litigants has filed a complaint against the judge with the Commission on Judicial Conduct. See Advisory Opinion 98-02.

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 imply a judicial expectation in future cases and may impair a juror's ability to be fair and impartial in a subsequent case. There are several exceptions to this general rule, however, and with certain qualifications judges may speak to a discharged jury following the return of a verdict. See Arizona Judicial Ethics Advisory Committee Opinion 01-01 (reissued January 22, 2003). This rule does not preclude a judge from communicating with jurors personally, in writing, or through court personnel to obtain information for the purpose of improving the administration of justice.

RULE 2.9. Ex Parte Communication

(A) A judge shall not initiate, permit, or consider ex parte communications, or consider other communications made to the judge outside the presence of the parties or their lawyers, concerning a pending or impending matter, except as follows:

- (1) When circumstances require it, ex parte communication for scheduling, administrative, or emergency purposes, which does not address substantive matters, is permitted, provided:
 - (a) the judge reasonably believes that no party will gain a procedural, substantive, or tactical advantage as a result of the ex parte communication; and
 - (b) the judge makes provision to promptly 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 advice of a disinterested expert on the law applicable to a proceeding.
- (3) A judge may consult with other judges, or with court personnel whose functions are to aid the judge in carrying out the judge's adjudicative responsibilities. If in doing so the judge acquires factual information that is not part of the record, the judge shall make provision promptly to notify the parties of the substance of the information and provide the parties with an opportunity to respond. The judge may not abrogate the responsibility personally to decide the matter.
- (4) A judge may, with the consent of the parties, confer separately with the parties and their lawyers in an effort to settle matters pending before the judge.
- (5) A judge may initiate, permit, or consider any ex parte communication when expressly authorized by law to do so.

(6) A judge may engage in ex parte communications when serving on problem-solving courts, if such communications are authorized by protocols known and consented to by the parties or by local rules.

(B) If a judge inadvertently receives an unauthorized ex parte communication bearing upon the substance of a matter, the judge shall make provision to promptly notify the parties of the substance of the communication and provide the parties with an opportunity to respond.

(C) Except as otherwise provided by law, a judge shall not investigate facts in a matter independently, and shall consider only the evidence presented and any facts that may properly be judicially noticed.

(D) A judge shall make reasonable efforts, including providing appropriate supervision, to ensure that this rule is not violated by court staff, court officials, and others subject to the judge's direction and control.

Comment

1. To the extent reasonably possible, all parties or their lawyers shall be included in communications with a judge. A judge may also direct judicial staff, without invoking the notice and disclosure provisions of this rule, to screen written ex parte communications and to take appropriate action consistent with this rule.

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 persons who are not participants in the proceeding, except to the limited extent permitted by this rule.

4. When serving on problem-solving courts, such as mental health courts or drug courts, judges may assume a more interactive role with parties, treatment providers, probation officers, social workers, and others. See Application, Part A, Comment 3.

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 independently investigating the facts in a matter extends to information available in all mediums, including electronic.

7. A judge may consult ethics advisory committees, outside counsel, or legal experts concerning the judge's compliance with this code.

8. An appropriate and often desirable procedure for a court to obtain the advice of a disinterested expert on legal issues is to invite the expert to file a brief amicus curiae.

9. A judge may request a party to submit proposed findings of fact and conclusions of law, so long as the other parties are apprised of the request and are given an opportunity to respond to the proposed findings and conclusions.

10. If communication between the trial judge and the appellate court with respect to a proceeding is permitted, a copy of any written communication or the substance of any oral communication should be provided to all parties.

RULE 2.10. Judicial Statements on Pending and Impending Cases

(A) A judge shall not make any public statement that might reasonably be expected to affect the outcome or impair the fairness of a matter pending or impending in any court, or make any nonpublic statement that might substantially interfere with a fair trial or hearing.

(B) A judge shall not, in connection with cases, controversies, or issues that are likely to come before the court, make pledges, promises, or commitments that are inconsistent with the impartial performance of the adjudicative duties of judicial office.

(C) A judge shall require court staff, court officials, and others subject to the judge's direction and control to refrain from making statements that the judge would be prohibited from making by paragraphs (A) and (B).

(D) Notwithstanding the restrictions in paragraph (A), a judge may make public statements in the course of official duties, may explain court procedures, and may comment on any proceeding in which the judge is a litigant in a personal capacity.

(E) Subject to the requirements of paragraph (A), a judge may respond directly or through a third party to allegations in the media or elsewhere concerning the judge's conduct in a matter.

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 administrative capacity, the judge may comment publicly on the merits of the case. In cases in which the judge is a litigant in a nominal capacity, such as a special action, the judge must not comment publicly except as otherwise specifically permitted by this rule.

3. Depending upon 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

(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:

- (1) The judge has a personal bias or prejudice concerning a party or a party's lawyer, or personal knowledge of facts that are in dispute in the proceeding.
- (2) The judge knows that the judge, the judge's spouse or domestic partner, 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, as defined by this code or Arizona law, in the subject matter in controversy or in 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 within the previous four years made aggregate contributions to the judge's campaign in an amount that is greater than the amounts permitted pursuant to A.R.S. § 16-905.
- (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 in the preceding four years 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; or
 - (d) previously presided as a judge over the matter in another court.

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

(C) A judge subject to disqualification under this rule, other than for bias or prejudice under paragraph (A)(1), may disclose on the record the basis of the judge's disqualification and may ask the parties and their lawyers to consider, outside the presence of the judge and court personnel, whether to waive disqualification. If, following the disclosure, the parties and lawyers agree, without participation by the judge or court personnel, that the judge should not

be disqualified, the judge may participate in the proceeding. The agreement shall be incorporated into the record of the proceeding.

(D) Official communications received in the course of performing judicial functions as well as information gained through training programs and from experience do not in themselves create a basis for disqualification.

Comment

1. Under this rule, a judge is disqualified whenever the judge's impartiality might reasonably be questioned, regardless of whether any of the specific provisions of paragraphs (A)(1) through (5) apply.

2. A judge's obligation not to hear or decide matters in which disqualification is required applies regardless of whether a motion to disqualify is filed.

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

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

5. A judge should disclose on the record information that the judge believes the parties or their lawyers might reasonably consider relevant to a possible motion for disqualification, even if the judge believes there is no basis for disqualification.

6. "Economic interest," as set forth in the Terminology section, means ownership of more than a de minimis legal or equitable interest and is further defined, for purposes of compliance with state law, in A.R.S. § 38-502(11). Except for situations in which a judge participates in the management of such a legal or equitable interest, or the interest could be substantially affected by the outcome of a proceeding before a judge, it does not include:

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

7. A lawyer in a government agency does not ordinarily have an association with other lawyers employed by that agency within the meaning of Rule 2.11(A)(6)(a); a judge formerly employed by a government agency, however, should disqualify himself or herself in a proceeding if the judge's impartiality might reasonably be questioned because of such association.

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.

(C) A judge shall require staff, court officials, and others subject to the judge's direction and control to comply with the provisions of the Code of Conduct for Judicial Employees adopted by the supreme court.

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) 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 paragraph (A).

2. Unless otherwise defined by law, nepotism is the appointment or hiring of any relative within the third degree of relationship of either the judge or the judge's spouse or domestic partner, or the spouse or domestic partner of such relative. Arizona's anti-nepotism statute, which applies to judicial officers, is found in A.R.S. § 38-481.

RULE 2.14. Disability and Impairment

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

Comment

1. “Appropriate action” means action intended and reasonably likely to help the judge or lawyer in question address the problem and prevent harm to the justice system. Depending upon the circumstances, appropriate action may include but is not limited to speaking directly to the impaired person, notifying an individual with supervisory responsibility over the impaired person, or making a referral to an assistance program.

2. Taking or initiating corrective action by way of referral to an assistance program may satisfy a judge’s responsibility under this rule. Assistance programs have many approaches for offering help to impaired judges and lawyers, such as intervention, counseling, or referral to appropriate health care professionals. Depending upon the gravity of the conduct that has come to the judge’s attention, however, the judge may be required to take other action, such as reporting the impaired judge or lawyer to the appropriate authority, agency, or body. See Rule 2.15.

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 in other respects 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 in other respects shall inform the appropriate authority.

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

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

(E) Acts of a judge in the discharge of disciplinary responsibilities required or permitted by Rule 2.15 are part of a judge’s judicial duties and shall be absolutely privileged, and no civil action predicated thereon may be instituted against the judge.

Comment

1. Taking action to address known misconduct is a judge’s obligation. Paragraphs (A) and (B) impose an obligation on the judge to report to the appropriate disciplinary authority the known misconduct of another judge or a lawyer that raises a substantial question regarding the honesty, trustworthiness, or fitness of that judge or lawyer. Ignoring or denying known misconduct among one’s judicial colleagues or members of the legal profession undermines a judge’s responsibility to participate in efforts to ensure public respect for the justice system. This

rule limits the reporting obligation to those offenses that an independent judiciary must vigorously endeavor to prevent.

2. A judge who does not have actual knowledge that another judge or a lawyer may have committed misconduct, but receives information indicating a substantial likelihood of such misconduct, is required to take appropriate action under paragraphs (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 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 paragraph (A), instills confidence in judges' commitment to the integrity of the judicial system and the protection of the public.

2. Judicial employees have a right to cooperate or communicate with the Commission on Judicial Conduct at any time, without fear of reprisal, for the purpose of discussing potential or actual judicial misconduct.

CANON 3**A JUDGE SHALL CONDUCT THE JUDGE'S EXTRAJUDICIAL
ACTIVITIES TO MINIMIZE THE RISK OF CONFLICT
WITH THE OBLIGATIONS OF JUDICIAL OFFICE****RULE 3.1. Extrajudicial Activities in General**

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

(A) participate in activities that will interfere with the proper performance of the judge's judicial duties;

(B) participate in activities that will lead to frequent disqualification of the judge;

(C) participate in activities that would appear to a reasonable person to undermine the judge's independence, integrity, or impartiality or demean the judicial office;

(D) engage in conduct that would appear to a reasonable person to be coercive; or

(E) make use of court premises, staff, stationery, equipment, or other resources, except for activities that concern the law, the legal system, or the administration of justice, or unless such additional use is permitted by law.

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. 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 judge's official or judicial actions, are likely to appear to a reasonable person to call into question the judge's integrity and impartiality. Examples include jokes or other remarks that demean individuals based upon their race, sex, gender, religion, national origin, ethnicity, disability, age, sexual orientation, marital status, political affiliation, or socioeconomic status. For the same reason, a judge's extrajudicial activities must not be conducted in connection or affiliation with an organization that practices invidious discrimination. See Rule 3.6.

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

5. The telecommunications policy of the Arizona judiciary, which defines the permissible uses of electronic equipment, is set forth in Part 1, Chapter 5, § 1-503 of the Arizona Code of Judicial Administration.

RULE 3.2. Appearances Before Governmental Bodies and Consultation with Government Officials.

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

(A) in connection with matters concerning the law, the legal system, or the administration of justice;

(B) in connection with matters about which the judge acquired knowledge or expertise in the course of the judge's judicial duties; or

(C) when the judge is acting in a matter involving the judge's 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 governmental bodies and executive or legislative branch officials.

2. In appearing before governmental bodies or consulting with government officials, judges must be mindful that they remain subject to other provisions of this code, such as Rule 1.3, prohibiting judges from using the prestige of office to advance their own or others' interests, Rule 2.10, governing public comment on pending and impending matters, and Rule 3.1(C), prohibiting judges from engaging in extrajudicial activities that would appear to a reasonable person to undermine the judge's independence, integrity, or impartiality.

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

RULE 3.3. Acting 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.

Comment

A judge who, without being subpoenaed, testifies as a character witness abuses the prestige of judicial office to advance the interests of another. See Rule 1.3. Except in unusual circumstances where the demands of justice require, a judge should discourage a party from requiring the judge to testify as a character witness.

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.

Comment

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

2. A judge may represent 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 intentionally disclose or use nonpublic information acquired in a judicial capacity for any purpose unrelated to the judge's judicial duties.

Comment

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

2. This rule is not intended to affect a judge's ability to act on information as necessary to protect the health or safety of any individual if consistent with other provisions of this code.

Rule 3.6. Affiliation with Discriminatory Organizations

(A) A judge shall not hold membership in any organization that practices invidious discrimination on the basis of race, sex, gender, 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.

(C) A judge's membership or participation in a religious organization as a lawful exercise of the freedom of religion, or a judge's membership or participation in an organization that engages in expressive activity from which the judge cannot be excluded consistent with the judge's lawful exercise of his or her freedom of expression or association, is not a violation of this rule.

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, or sexual orientation persons who would otherwise be eligible for admission. Whether an organization practices invidious discrimination is a complex question to which judges should be attentive. The answer cannot be determined from a mere examination of an organization's current membership rolls, but rather, depends upon how the organization selects members, as well as other relevant factors, such as whether the organization stigmatizes excluded persons as inferior and odious, whether it perpetuates and celebrates cultures, historical events, and ethnic or religious beliefs, identities, or traditions, 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. This rule does not prohibit a judge's national or state military service.

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

(A) A judge may not directly solicit funds for an organization. However, 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 such an organization or entity in planning related to fund-raising, volunteering services or goods at fund-raising events, 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 do so only if the event concerns the law, the legal system, or the administration of justice.

- (5) making or soliciting recommendations to such a public or private fund-granting organization or entity in connection with its fund-granting 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:
 - (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 legal services.
- (C) Subject to the preceding requirements, a judge may:
- (1) Provide leadership in identifying and addressing issues involving equal access to the justice system; develop public education programs; engage in activities to promote the fair administration of justice; and convene or participate or assist in advisory committees and community collaborations devoted to the improvement of the law, the legal system, the provision of services, or the administration of justice.
 - (2) Endorse projects and programs directly related to the law, the legal system, the administration of justice, and the provision of services to those coming before the courts, and may actively support the need for funding of such projects and programs.
 - (3) Participate in programs concerning the law or which promote the administration of justice.

Comment

1. The activities permitted by paragraph (A) generally include those sponsored by or undertaken on behalf of public or private not-for-profit educational institutions, and other not-for-profit organizations, including law-related, charitable, and other organizations. An organization concerned with the law, the legal system, and the administration of justice may include an accredited institution of legal education, whether for-profit or not-for-profit.

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 reflect adversely upon a judge's independence, integrity, and impartiality.

3. Mere attendance at an event, whether or not the event serves a fund-raising purpose, does not constitute participation in violation of paragraph (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. Such activities are not solicitation and do not present an element of coercion or abuse 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 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 lists of available programs, training lawyers to do pro bono legal work, and participating in events recognizing lawyers who have done pro bono work.

6. A judge may be an announced speaker at a fund-raising event benefitting indigent representation, scholarships for law students, or accredited institutions of legal education.

RULE 3.8. Appointments to Fiduciary Positions

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

(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 becoming a judge.

Comment

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

RULE 3.9. Service as Arbitrator or Mediator

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

Comment

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

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

2. Retired, part-time, or pro tempore judges may be exempt from this section. See Application, Parts B, C(2) and D(2).

RULE 3.10. Practice of Law

A judge shall not practice law. A judge may represent himself or herself 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.

Comment

1. A judge may act as his or her own attorney 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.

2. Retired, part-time, or pro tempore judges may be exempt from this section. See Application, Parts B, C(1)(b) and D(1)(b).

3. Judges who are actively practicing law at the time of their election or appointment to the bench are encouraged to become familiar with ethical considerations immediately affecting the transition from lawyer to judge. Arizona Judicial Ethics Advisory Committee Opinion 00-07 (December 20, 2000).

4. This rule does not prohibit the practice of law pursuant to 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.

(C) A judge shall not engage in financial activities permitted under paragraphs (A) and (B) if they will:

- (1) interfere with the proper performance of judicial duties;
- (2) lead to frequent disqualification of the judge;
- (3) involve the judge in frequent transactions or continuing business relationships with lawyers or other persons likely to come before the court on which the judge serves; or
- (4) result in violation of other provisions of this code.

Comment

1. Judges are generally permitted to engage in financial activities, including managing real estate and other investments for themselves or for members of their families. Participation in these activities, like participation in other extrajudicial activities, is subject to the requirements of this code. For example, it would be improper for a judge to spend so much time on business activities that it interferes with the performance of judicial duties. 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 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 otherwise violate this rule.

3. A judge's uncompensated participation as an officer, director, or advisor of an organization concerned with the law, the legal system, or the administration of justice is not prohibited by this rule. See Rule 3.7, Comment 1.

4. To the extent permitted by Rule 1.3, a judge's participation as a teacher at an educational institution is not prohibited by this rule. See Rule 3.12, Comment 1.

RULE 3.12. Compensation for Extrajudicial Activities

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

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 judicial duties 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 undermine the judge's independence, integrity, or impartiality.

(B) Unless otherwise prohibited by law or by paragraph (A), a judge may accept the following:

- (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 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 granted on the same terms and based on the same criteria applied to other applicants;
- (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;
- (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.

(C) A judge shall report the acceptance of any gift, loan, bequest, or other thing of value as required by Rule 3.15.

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 prohibits the acceptance of such benefits except in circumstances where the risk of improper influence is low and subject to applicable financial disclosure requirements. See Rule 3.15.

2. Gift-giving between friends and relatives is a common occurrence and ordinarily does not create an appearance of impropriety or cause reasonable persons to believe that the judge's independence, integrity, or impartiality has been compromised. In addition, when the appearance of friends or relatives in a case would require the judge's disqualification under Rule 2.11, there would be no opportunity for a gift to influence the judge's decision making.

Paragraph (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 but may require public reporting.

3. The receipt of ordinary social hospitality, commensurate with the occasion, is not likely to undermine the integrity of the judiciary. However, the receipt of other gifts and things of value from an attorney or party who has or is likely to come before the judge will be appropriate only in the rarest of circumstances.

4. 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.

5. 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 influence the judge indirectly. A judge should remind family and household members of the reporting requirements imposed upon judges by Rule 3.15 and urge them to take these restrictions into account when making decisions about accepting such gifts or benefits.

6. Rule 3.13 does not apply to contributions to a judge's campaign for judicial office. Such contributions are governed by other rules of this code, including Rules 4.2 and 4.3.

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) A judge who accepts reimbursement of expenses or waivers or partial waivers of fees or charges on behalf of the judge or the judge's spouse, domestic partner, or guest shall publicly report such acceptance as required by Rule 3.15.

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 determine whether acceptance of reimbursement or fee waivers would not appear to a reasonable person to undermine the judge's independence, integrity, or impartiality. The factors that a judge should consider when deciding whether to accept reimbursement or a fee waiver for attendance at a particular activity include:

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

RULE 3.15. Financial Reporting Requirements

(A) A judge shall file annually the financial disclosure statement required by A.R.S. § 38-542 or other applicable law. The completion and filing of the annual financial disclosure statement fulfills the reporting requirements set forth in this code.

(B) Reports made in compliance with this rule shall be filed as public documents in the office designated by law.

Comment

1. The information required to be reported by Rules 3.12, 3.13, and 3.14 is a portion of the information that must be included on the annual financial disclosure statement mandated by A.R.S. § 38-542 or other applicable law. A judge is obligated to disclose fully and accurately all information requested on the annual disclosure statement and does not fulfill the statutory obligation by reporting only the information required by Rules 3.12, 3.13, and 3.14. Applicable law requires sufficient disclosure of the financial interests of and gifts to a judge and members of his or her household to promote judicial accountability and integrity.

2. To avoid needless repetition of disclosure requirements, the Arizona judiciary deems compliance with the substantive legal requirement as sufficient to meet the ethical obligations of a judge and thus incorporates them in this code.

3. Reimbursement of expenses from a judge's employer need not be reported under Rule 3.14(C) or Rule 3.15.

RULE 3.16. Conducting Weddings

(A) The performance of wedding ceremonies by a judge is a discretionary function rather than a mandatory function of the court.

(B) A judge shall not interrupt or delay any regularly scheduled or pending court proceeding in order to perform a wedding ceremony.

(C) A judge shall not advertise his or her availability for performing wedding ceremonies.

(D) A judge shall not charge or accept a fee, honorarium, gratuity, or contribution for performing a wedding ceremony during court hours.

(E) A judge may charge a reasonable fee or honorarium to perform a wedding ceremony during non-court hours, whether the ceremony is performed in the court or away from the court.

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****RULE 4.1. Political and Campaign Activities of Judges and Judicial Candidates in
General**

(A) A judge or a judicial candidate shall not do any of the following:

- (1) act as a leader in, or hold an office in, a political organization;
- (2) make speeches on behalf of a political organization or another candidate for public office;
- (3) publicly endorse or oppose another candidate for any public office;
- (4) solicit funds for or pay an assessment to a political organization or candidate, make contributions to any candidate or political organization in excess of the amounts permitted by law, or make total contributions in excess of fifty percent of the cumulative total permitted by law. See, e.g., A.R.S. § 16-905.
- (5) actively take part in any political campaign other than his or her own campaign for election, reelection or retention in office;
- (6) personally solicit or accept campaign contributions other than through a campaign committee authorized by Rule 4.4;
- (7) use or permit the use of campaign contributions for the private benefit of the judge, the candidate, or others, except as provided by law;
- (8) use court staff, facilities, or other court resources in a campaign for judicial office;
- (9) 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
- (10) 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 or judicial candidate shall take reasonable measures to ensure that other persons do not undertake, on behalf of the judge or judicial candidate, any activities prohibited under paragraph (A).

(C) Except as prohibited by this code, a judge may:

- (1) engage in activities, including political activities, to improve the law, the legal system and the administration of justice; and
- (2) purchase tickets for political dinners or other similar functions, but attendance at any such functions shall be restricted so as not to constitute a public endorsement of a candidate or cause otherwise prohibited by these rules.

Comment

General Considerations

1. Even when subject to public election, a judge plays a role different from that of a legislator or executive branch official. Rather than making decisions based upon the expressed views or preferences of the electorate, a judge makes decisions based upon the law and the facts of every case. Therefore, in furtherance of this interest, judges and judicial candidates must, to the greatest extent possible, be free and appear to be free from political influence and political pressure.

2. When a person becomes a judicial candidate, this canon becomes applicable to his or her conduct. A successful judicial candidate is subject to discipline under the code for violation of any of the rules set forth in Canon 4, even if the candidate was not a judge during the period of candidacy. An unsuccessful judicial candidate who is a lawyer and violates this code may be subject to discipline under applicable court rules governing lawyers.

Participation in Political Activities

3. Public confidence in the independence and impartiality of the judiciary is eroded if judges or judicial candidates are perceived to be subject to political influence. Although judges and judicial candidates may register to vote as members of a political party, they are prohibited by paragraph (A)(1) from assuming leadership roles in political organizations. Examples of such leadership roles include precinct committeemen and delegates or alternates to political conventions. Such positions would be inconsistent with an independent and impartial judiciary.

4. Paragraphs (A)(2) and (A)(3) prohibit judges and judicial candidates from making speeches on behalf of political organizations or publicly endorsing or opposing candidates for public office, respectively, to prevent them from abusing the prestige of judicial office to advance the interests of others. Paragraph (A)(3) does not prohibit a judge or judicial candidate from making recommendations in complying with Rule 1.3 and the related comments. These rules do not prohibit candidates from campaigning on their own behalf or opposing candidates for the same judicial office for which they are running.

5. Paragraph (A)(3) does not prohibit a judge or judicial candidate from privately expressing his or her views on judicial candidates or other candidates for public office.

6. A candidate does not publicly endorse another candidate for public office by having that candidate's name on the same ticket.

7. Although members of the families of judges and judicial candidates are free to engage in their own political activity, including running for public office, there is no “family exception” to the prohibition in paragraph (A)(3) against a judge or candidate publicly endorsing candidates for public office. A judge or judicial candidate 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 and judicial candidates should take and should urge members of their families to take reasonable steps to avoid any implication that the judge or judicial candidate endorses any family member’s candidacy or other political activity.

8. Judges and judicial candidates retain the right to participate in the political process as voters in all 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 paragraphs (A)(2) or (A)(3).

Statements and Comments Made During a Campaign for Judicial Office

9. Subject to paragraph (A)(9), a judicial candidate is permitted to respond directly to false, misleading, or unfair allegations made against him or her during a campaign, although it is permissible for someone else, including another judge, to respond if the allegations relate to a pending case.

10. Paragraph (A)(9) prohibits judicial candidates from making comments that might impair the fairness of pending or impending judicial proceedings. This provision does not restrict arguments or statements to the court or jury by a lawyer who is a judicial candidate, or rulings, statements, or instructions by a judge that may appropriately affect the outcome of a matter.

11. Paragraph (A)(9) must be read in conjunction with Rule 2.10, which allows judges to make public statements in the course of their official duties.

Pledges, Promises, or Commitments Inconsistent with Impartial Performance of the Adjudicative Duties of Judicial Office

12. The role of a judge is different from that of a legislator or executive branch official, even when the judge is subject to public election. Campaigns for judicial office must be conducted differently from campaigns for other offices. The narrowly drafted restrictions upon political and campaign activities of judicial candidates provided in Canon 4 allow candidates to conduct campaigns that provide voters with sufficient information to permit them to distinguish between candidates and make informed electoral choices.

13. Paragraph (A)(10) makes applicable to both judges and judicial candidates the prohibition that applies to judges in Rule 2.10(B), relating to pledges, promises, or commitments that are inconsistent with the impartial performance of the adjudicative duties of judicial office.

14. The making of a pledge, promise, or commitment is not dependent upon, or limited to, the use of any specific words or phrases; instead, the totality of the statement must be examined to determine if a reasonable person would believe that the candidate for judicial office has specifically undertaken to reach a particular result. Pledges, promises, or commitments must be contrasted with statements or announcements of personal views on legal, political, or other

issues, which are not prohibited. When making such statements, a judge should acknowledge the overarching judicial obligation to apply and uphold the law, without regard to his or her personal views.

15. A judicial candidate may make campaign promises related to judicial organization, administration, and court management, such as a promise to dispose of a backlog of cases, start court sessions on time, or avoid favoritism in appointments and hiring. A candidate may also pledge to take action outside the courtroom, such as working toward an improved jury selection system or advocating for more funds to improve the physical plant and amenities of the courthouse.

16. Judicial candidates may receive questionnaires or requests for interviews from the media and from issue advocacy or other community organizations that seek to learn their views on disputed or controversial legal or political issues. Paragraph (A)(10) does not specifically address judicial responses to such inquiries. Depending upon the wording and format of such questionnaires, candidates' responses might be viewed as pledges, promises, or commitments to perform the adjudicative duties of office other than in an impartial way. To avoid violating paragraph (A)(10), therefore, candidates who respond to media and other inquiries should also give assurances that they will keep an open mind and will carry out their adjudicative duties faithfully and impartially if elected. Candidates who do not respond may state their reasons for not responding, such as the danger that answering might be perceived by a reasonable person as undermining a successful candidate's independence or impartiality, or that it might lead to frequent disqualification. See Rule 2.11.

RULE 4.2. Political and Campaign Activities of Judicial Candidates

(A) A judicial candidate shall:

- (1) act at all times in a manner consistent with the independence, integrity, and impartiality of the judiciary;
- (2) comply with all applicable election, election campaign, and election campaign fund-raising laws and regulations;
- (3) review and approve the content of all campaign statements and materials produced by the candidate or his or her campaign committee, as authorized by Rule 4.4, before their dissemination; and
- (4) take reasonable measures to ensure that other persons do not undertake on behalf of the candidate activities other than those described in Rule 4.4 that the candidate is prohibited from doing by Rule 4.1.

Rule 4.3. Campaign Standards and Communications

During the course of any campaign for nomination or election to judicial office, a judicial candidate, by means of campaign materials, including sample ballots, advertisements in the media, electronic communications, or a speech, press release, or any other public communication, shall not knowingly or with reckless disregard do any of the following:

(A) Post, publish, broadcast, transmit, circulate, or distribute information concerning the judicial candidate or an opponent that would be deceiving or misleading to a reasonable person;

(B) Manifest bias or prejudice toward an opponent that would be prohibited in the performance of judicial duties under Rule 2.3(B), which prohibition does not preclude a judicial candidate from making legitimate reference to the listed factors when they are relevant to the qualifications for judicial office;

(C) Use the title of an office not currently held by a judicial candidate in a manner that implies that the judicial candidate currently holds that office;

(D) Use the term “judge” when the judicial candidate is not a judge unless that term appears after or below the name of the judicial candidate and is accompanied by the words “elect” or “vote,” in prominent lettering, before the judicial candidate’s name or the word “for,” in prominent lettering, between the name of the judicial candidate and the term “judge”;

(E) Use the term “re-elect” when the judicial candidate has never been elected at a general or special election to the office for which he or she is a judicial candidate;

(F) Misrepresent the identity, qualifications, present position, or any other fact about the judicial candidate or an opponent;

(G) Make a false or misleading statement concerning the formal education or training completed or attempted by a judicial candidate; a degree, diploma, certificate, scholarship, grant, award, prize, or honor received, earned, or held by a judicial candidate; or the period of time during which a judicial candidate attended any school, technical program, college, or other educational institution;

(H) Make a false or misleading statement concerning the professional, occupational, or vocational licenses held by a judicial candidate, or the candidate’s employment history and descriptions of work-related titles or positions;

(I) Make a false or misleading statement about an opponent’s personal background or history;

(J) Falsely identify the source of a statement, issue statements under the name of another person without authorization, or falsely state the endorsement of or opposition to a judicial candidate by a person, organization, political party, or publication.

Comment

1. A judicial candidate must be scrupulously accurate, fair, and honest in all statements made by the candidate and his or her campaign committee. This rule obligates the candidate and the committee to refrain from making statements that are false or misleading or that omit facts necessary to avoid misleading voters.

2. A sitting judge, who is a judicial candidate for an office other than the court on which he or she currently serves, violates Rule 4.3(C) if he or she used the title “judge” without identifying the court on which the judge currently serves.

3. Judicial candidates are sometimes the subject of false, misleading, or unfair allegations made by opposing candidates, third parties, or the media. For example, false or misleading statements might be made regarding the identity, present position, experience, qualifications, or judicial rulings of a candidate. In other situations, false or misleading allegations may be made that bear upon a candidate's integrity or fitness for judicial office. As long as the candidate does not violate this rule, the candidate may make a factually accurate public response. In addition, when an independent third party has made unwarranted attacks on a candidate's opponent, the candidate may disavow the attacks and request the third party to cease and desist.

RULE 4.4. Campaign Committees

(A) A judicial candidate subject to public election may establish a campaign committee to manage and conduct a campaign for the candidate, subject to the provisions of this code. The candidate is responsible for ensuring that his or her campaign committee complies with applicable provisions of this code and other applicable law. See generally A.R.S. § 16-901 *et seq.*

(B) A judicial candidate subject to public election shall direct his or her campaign committee to solicit and accept only such campaign contributions as are permissible by law and to comply with all applicable statutory requirements for disclosure and divestiture of campaign contributions.

Comment

1. Judicial candidates are prohibited from personally soliciting campaign contributions or personally accepting campaign contributions. See Rule 4.1(A)(6). This rule recognizes that in many jurisdictions, judicial candidates must raise campaign funds to support their candidacies, and permits candidates, other than candidates for appointive judicial office, to establish campaign committees to solicit and accept lawful financial contributions or in-kind contributions.

2. Campaign committees may solicit and accept campaign contributions, manage the expenditure of campaign funds, and generally conduct campaigns. Candidates are responsible for compliance with the requirements of election law and other applicable law and for the activities of their campaign committees.

3. During the campaign, the candidate and his or her campaign committee should consider whether a contribution may affect the independence, integrity, and impartiality of the judge. The judicial candidate and his or her campaign committee should be aware that contributions could create grounds for disqualification if the candidate is elected to judicial office. See Rule 2.11.

Rule 4.5. Activities of Judges Who Become Candidates for Nonjudicial Office

(A) Upon becoming a candidate for a nonjudicial elective office other than as a candidate to a constitutional convention, a judge shall resign from judicial office.

(B) Upon becoming a candidate for a nonjudicial appointive office, a judge is not required to resign from judicial office, provided that the judge complies with the other provisions of this code.

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. When a judge is seeking appointive nonjudicial office, however, the dangers are not sufficient to warrant imposing the “resign to run” rule.

cited in Wolfson v. Concannon, No. 11-17634 archived on January 21, 2016

NOTES

cited in Wolfson v. Concannon, No. 11-17634 archived on January 21, 2016

INDEX TO THE CODE OF JUDICIAL CONDUCT

(Revised May 3, 2010)

This index is not a part of the official version of the code adopted by the Arizona Supreme Court. No representations are being made as to its completeness and suggestions for subject classifications are welcome at any time.

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Code of Judicial Conduct for the State of Florida
As Amended through June 19, 2014

Preamble

Definitions

Canon 1. A Judge Shall Uphold the Integrity and Independence of the Judiciary

Canon 2. A Judge Shall Avoid Impropriety and the Appearance of Impropriety in all of the Judge's Activities

Canon 3. A Judge Shall Perform the Duties of Judicial Office Impartially and Diligently

Canon 4. A Judge Is Encouraged to Engage in Activities to Improve the Law, the Legal System, and the Administration of Justice

Canon 5. A Judge Shall Regulate Extrajudicial Activities to Minimize the Risk of Conflict With Judicial Duties

Canon 6. Fiscal Matters of a Judge Shall be Conducted in a Manner That Does Not Give the Appearance of Influence or Impropriety; etc.

Canon 7. A Judge or Candidate for Judicial Office Shall Refrain From Inappropriate Political Activity

Application

Effective Date of Compliance

cited in Wolfson v. Cannon, No. 11-17634, archived on January 21, 2016

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 this Code 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 Code of Judicial Conduct establishes standards for ethical conduct of judges. It consists of broad statements called Canons, specific rules set forth in Sections under each Canon, a Definitions Section, an Application Section and Commentary. The text of the Canons and the Sections, including the Definitions and Application Sections, is authoritative. The Commentary, by explanation and example, provides guidance with respect to the purpose and meaning of the Canons and Sections. The Commentary is not intended as a statement of additional rules. When the text uses "shall" or "shall not," it is intended to impose binding obligations the violation of which, if proven, can result in disciplinary action. When "should" or "should not" is used, the text is intended as hortatory and 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.

The Canons and Sections are rules of reason. They should be applied consistent with constitutional requirements, statutes, other court rules and decisional law and in the context of all relevant circumstances. The Code is not to be construed to impinge on the essential independence of judges in making judicial decisions.

The Code is designed to provide guidance to judges and candidates for judicial office and to provide a structure for regulating conduct through disciplinary agencies. It is not designed or intended as a basis for civil liability or criminal prosecution. Furthermore, the purpose of the Code would be subverted if the Code were invoked by lawyers for mere tactical advantage in a proceeding.

The text of the Canons and Sections is intended to govern conduct of judges and to be binding upon them. It is not intended, however, that every transgression will result in disciplinary action. Whether disciplinary action is appropriate, and the degree of discipline to be imposed, should be determined through a reasonable and reasoned application of the text and should depend on such factors as the seriousness of the transgression, whether there is a pattern of improper activity and the effect of the improper activity on others or on the judicial system.

The Code of Judicial Conduct is not intended as an exhaustive guide for the conduct of judges. They should also be governed in their judicial and personal conduct by general

1 ethical standards. The Code is intended, however, to state basic standards which
2 should govern the conduct of all judges and to provide guidance to assist judges in
3 establishing and maintaining high standards of judicial and personal conduct.
4
5

cited in Wolfson v. Concannon, No. 11-17634 archived on January 21, 2016

Definitions

"Appropriate authority" denotes the authority with responsibility for initiation of disciplinary process with respect to the violation to be reported.

"Candidate." A candidate is a person seeking selection for or retention in judicial office by election or appointment. A person becomes a candidate for judicial office as soon as he or she makes a public announcement of candidacy, opens a campaign account as defined by Florida law, declares or files as a candidate with the election or appointment authority, or authorizes solicitation or acceptance of contributions or support. The term "candidate" has the same meaning when applied to a judge seeking election or appointment to nonjudicial office.

"Court personnel" does not include the lawyers in a proceeding before a judge.

"De minimis" denotes an insignificant interest that could not raise reasonable question as to a judge's impartiality.

"Economic interest" denotes ownership of a more than de minimis legal or equitable interest, or a relationship as officer, director, advisor, or other active participant in the affairs of a party, except that:

(i) ownership of an interest in a mutual or common investment fund that holds securities is not an economic interest in such securities unless the judge participates in the management of the fund or a proceeding pending or impending before the judge could substantially affect the value of the interest;

(ii) service by a judge as an officer, director, advisor, or other active participant in an educational, religious, charitable, fraternal, sororal, or civic organization, or service by a judge's spouse, parent, or child as an officer, director, advisor, or other active participant in any organization does not create an economic interest in securities held by that organization;

(iii) a deposit in a financial institution, the proprietary interest of a policy holder in a mutual insurance company, of a depositor in a mutual savings association, or of a member in a credit union, or a similar proprietary interest, is not an economic interest in the organization unless a proceeding pending or impending before the judge could substantially affect the value of the interest;

(iv) ownership of government securities is not an economic interest in the issuer unless a proceeding pending or impending before the judge could substantially affect the value of the securities.

"Fiduciary" includes such relationships as personal representative, administrator, trustee, guardian, and attorney in fact.

1 "Impartiality" or "impartial" denotes absence of bias or prejudice in favor of, or
2 against, particular parties or classes of parties, as well as maintaining an open
3 mind in considering issues that may come before the judge.

4
5 "Judge." When used herein this term means Article V, Florida Constitution judges and,
6 where applicable, those persons performing judicial functions under the direction or
7 supervision of an Article V judge.

8
9 "Knowingly," "knowledge," "known," or "knows" denotes actual knowledge of the fact
10 in question. A person's knowledge may be inferred from circumstances.

11
12 "Law" denotes court rules as well as statutes, constitutional provisions, and decisional
13 law.

14
15 "Member of the candidate's family" denotes a spouse, child, grandchild, parent,
16 grandparent, or other relative or person with whom the candidate maintains a close
17 familial relationship.

18
19 "Member of the judge's family" denotes a spouse, child, grandchild, parent,
20 grandparent, or other relative or person with whom the judge maintains a close familial
21 relationship.

22
23 "Member of the judge's family residing in the judge's household" denotes any relative of
24 a judge by blood or marriage, or a person treated by a judge as a member of the judge's
25 family, who resides in the judge's household.

26
27 "Nonpublic information" denotes information that, by law, is not available to the public.
28 Nonpublic information may include but is not limited to: information that is sealed by
29 statute or court order, impounded or communicated in camera; and information offered
30 in grand jury proceedings, presentencing reports, dependency cases, or psychiatric
31 reports.

32
33 "Political organization" denotes a political party or other group, the principal purpose of
34 which is to further the election or appointment of candidates to political office.

35
36 "Public election." This term includes primary and general elections; it includes partisan
37 elections, nonpartisan elections, and retention elections.

38
39 "Require." The rules prescribing that a judge "require" certain conduct of others are, like
40 all of the rules in this Code, rules of reason. The use of the term "require" in that context
41 means a judge is to exercise reasonable direction and control over the conduct of those
42 persons subject to the judge's direction and control.

43
44 "Third degree of relationship." The following persons are relatives within the third
45 degree of relationship: great-grandparent, grandparent, parent, uncle, aunt, brother,
46 sister, child, grandchild, great-grandchild, nephew, or niece.

47

1 **Canon 1. A Judge Shall Uphold the Integrity and Independence of the Judiciary**

2
3
4 An independent and honorable judiciary is indispensable to justice in our society. A
5 judge should participate in establishing, maintaining, and enforcing high standards of
6 conduct, and shall personally observe those standards so that the integrity and
7 independence of the judiciary may be preserved. The provisions of this Code should be
8 construed and applied to further that objective.

9
10 **COMMENTARY**

11
12 Deference to the judgments and rulings of courts depends upon public confidence in the
13 integrity and independence of judges. The integrity and independence of judges depend
14 in turn upon their acting without fear or favor. Although judges should be independent,
15 they must comply with the law, including the provisions of this Code. Public confidence
16 in the impartiality of the judiciary is maintained by the adherence of each judge to this
17 responsibility. Conversely, violation of this Code diminishes public confidence in the
18 judiciary and thereby does injury to the system of government under law.
19

cited in Wolfson v. Concannon, No. 11-17634 archived on January 21, 2016

Canon 2. A Judge Shall Avoid Impropriety and the Appearance of Impropriety in all of the Judge's Activities

A. A judge shall respect and comply with the law and shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

B. A judge shall not allow family, social, political or other relationships to influence the judge's judicial conduct or judgment. A judge shall not lend the prestige of judicial office to advance the private interests of the judge or others; nor shall a judge convey or permit others to convey the impression that they are in a special position to influence the judge. A judge shall not testify voluntarily as a character witness.

C. A judge should not hold membership in an organization that practices invidious discrimination on the basis of race, sex, religion, or national origin. Membership in a fraternal, sororal, religious, or ethnic heritage organization shall not be deemed to be a violation of this provision.

COMMENTARY

Canon 2A. Irresponsible or improper conduct by judges erodes public confidence in the judiciary. 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 the judge's conduct that might be viewed as burdensome by the ordinary citizen and should do so freely and willingly. Examples are the restrictions on judicial speech imposed by Sections 3B(9) and (10) that are indispensable to the maintenance of the integrity, impartiality, and independence of the judiciary.

The prohibition against behaving with impropriety or the appearance of impropriety applies to both the professional and personal conduct of a judge. Because it is not practicable to list all prohibited acts, the proscription is necessarily cast in general terms that extend to conduct by judges that is harmful although not specifically mentioned in the Code. Actual improprieties under this standard include violations of law, court rules, or other specific provisions of this Code. The test for appearance of impropriety is whether the conduct would create in reasonable minds, with knowledge of all the relevant circumstances that a reasonable inquiry would disclose, a perception that the judge's ability to carry out judicial responsibilities with integrity, impartiality, and competence is impaired.

See also Commentary under Section 2C.

Canon 2B. Maintaining the prestige of judicial office is essential to a system of government in which the judiciary functions independently of the executive and legislative branches. Respect for the judicial office facilitates the orderly conduct of legitimate judicial functions. Judges should distinguish between proper and improper

1 use of the prestige of office in all of their activities. For example, it would be improper
2 for a judge to allude to his or her judgeship to gain a personal advantage such as
3 deferential treatment when stopped by a police officer for a traffic offense. Similarly,
4 judicial letterhead must not be used for conducting a judge's personal business,
5 although a judge may use judicial letterhead to write character reference letters when
6 such letters are otherwise permitted under this Code.

7
8 A judge must avoid lending the prestige of judicial office for the advancement of the
9 private interests of others. For example, a judge must not use the judge's judicial
10 position to gain advantage in a civil suit involving a member of the judge's family. In
11 contracts for publication of a judge's writings, a judge should retain control over the
12 advertising to avoid exploitation of the judge's office. As to the acceptance of awards,
13 see Section 5D(5) and Commentary.

14
15 Although a judge should be sensitive to possible abuse of the prestige of office, a judge
16 may, based on the judge's personal knowledge, serve as a reference or provide a letter
17 of recommendation. However, a judge must not initiate the communication of
18 information to a sentencing judge or a probation or corrections officer but may provide
19 to such persons information for the record in response to a formal request.

20
21 Judges may participate in the process of judicial selection by cooperating with
22 appointing authorities and screening committees seeking names for consideration, and
23 by responding to official inquiries concerning a person being considered for a judgeship.
24 See also Canon 7 regarding use of a judge's name in political activities.

25
26 A judge must not testify voluntarily as a character witness because to do so may lend
27 the prestige of the judicial office in support of the party for whom the judge testifies.
28 Moreover, when a judge testifies as a witness, a lawyer who regularly appears before
29 the judge may be placed in the awkward position of cross-examining the judge. A judge
30 may, however, testify when properly summoned. Except in unusual circumstances
31 where the demands of justice require, a judge should discourage a party from requiring
32 the judge to testify as a character witness.

33
34 Canon 2C. Florida Canon 2C is derived from a recommendation by the American Bar
35 Association and from the United States Senate Committee Resolution, 101st Congress,
36 Second Session, as adopted by the United States Senate Judiciary Committee on
37 August 2, 1990.

38
39 Membership of a judge in an organization that practices invidious discrimination gives
40 rise to perceptions that the judge's impartiality is impaired. Whether an organization
41 practices invidious discrimination is often a complex question to which judges should be
42 sensitive. The answer cannot be determined from a mere examination of an
43 organization's current membership rolls but rather depends on the history of the
44 organization's selection of members and other relevant factors, such as that the
45 organization is dedicated to the preservation of religious, ethnic, or cultural values of
46 legitimate common interest to its members, or that it is in fact and effect an intimate,

1 purely private organization whose membership limitations could not be constitutionally
2 prohibited. See *New York State Club Ass'n. Inc. v. City of New York*, 487 U.S. 1, 108
3 S.Ct. 2225, 101 L.Ed.2d 1 (1988); *Board of Directors of Rotary International v. Rotary*
4 *Club of Duarte*, 481 U.S. 537, 107 S.Ct. 1940, 95 L.Ed.2d 474 (1987); *Roberts v. United*
5 *States Jaycees*, 468 U.S. 609, 104 S.Ct. 3244, 82 L.Ed. 2d 462 (1984). Other relevant
6 factors include the size and nature of the organization and the diversity of persons in the
7 locale who might reasonably be considered potential members. Thus the mere absence
8 of diverse membership does not by itself demonstrate a violation unless reasonable
9 persons with knowledge of all the relevant circumstances would expect that the
10 membership would be diverse in the absence of invidious discrimination. Absent such
11 factors, an organization is generally said to discriminate invidiously if it arbitrarily
12 excludes from membership on the basis of race, religion, sex, or national origin persons
13 who would otherwise be admitted to membership.

14
15 This Canon is not intended to prohibit membership in religious and ethnic clubs, such as
16 Knights of Columbus, Masons, B'nai B'rith, and Sons of Italy; civic organizations, such
17 as Rotary, Kiwanis, and The Junior League; young people's organizations, such as Boy
18 Scouts, Girl Scouts, Boy's Clubs, and Girl's Clubs; and charitable organizations, such as
19 United Way and Red Cross.

20
21 Although Section 2C relates only to membership in organizations that invidiously
22 discriminate on the basis of race, sex, religion or national origin, a judge's membership
23 in an organization that engages in any discriminatory membership practices prohibited
24 by the law of the jurisdiction also violates Canon 2 and Section 2A and gives the
25 appearance of impropriety. In addition, it would be a violation of Canon 2 and Section
26 2A for a judge to arrange a meeting at a club that the judge knows practices invidious
27 discrimination on the basis of race, sex, religion or national origin in its membership or
28 other policies, or for the judge to regularly use such a club. Moreover, public
29 manifestation by a judge of the judge's knowing approval of invidious discrimination on
30 any basis gives the appearance of impropriety under Canon 2 and diminishes public
31 confidence in the integrity and impartiality of the judiciary, in violation of Section 2A.

32
33 When a person who is a judge on the date this Code becomes effective learns that an
34 organization to which the judge belongs engages in invidious discrimination that would
35 preclude membership under Section 2C or under Canon 2 and Section 2A, the judge is
36 permitted, in lieu of resigning, to make immediate efforts to have the organization
37 discontinue its invidiously discriminatory practices, but is required to suspend
38 participation in any other activities of the organization. If the organization fails to
39 discontinue its invidiously discriminatory practices as promptly as possible (and in all
40 events within a year of the judge's first learning of the practices), the judge is required to
41 resign immediately from the organization.

42

Canon 3. A Judge Shall Perform the Duties of Judicial Office Impartially and Diligently

A. Judicial Duties in General.

The judicial duties of a judge take precedence over all the judge's other activities. The judge's judicial duties include all the duties of the judge's office prescribed by law. In the performance of these duties, the specific standards set forth in the following sections apply.

B. Adjudicative Responsibilities.

(1) A judge shall hear and decide matters assigned to the judge except those in which disqualification is required.

(2) A judge shall be faithful to the law and maintain professional competence in it. A judge shall not be swayed by partisan interests, public clamor, or fear of criticism.

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

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

(5) A judge shall perform judicial duties without bias or prejudice. A judge shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice, including but not limited to bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation, or socioeconomic status, and shall not permit staff, court officials, and others subject to the judge's direction and control to do so. This section does not preclude the consideration of race, sex, religion, national origin, disability, age, sexual orientation, socioeconomic status, or other similar factors when they are issues in the proceeding.

(6) A judge shall require lawyers in proceedings before the judge to refrain from manifesting, by words, gestures, or other conduct, bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation, or socioeconomic status, against parties, witnesses, counsel, or others. This Section 3B(6) does not preclude legitimate advocacy when race, sex, religion, national origin, disability, age, sexual orientation, socioeconomic status, or other similar factors are issues in the proceeding.

(7) 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. A judge shall not initiate, permit, or consider ex parte communications, or consider other communications made to the

1 judge outside the presence of the parties concerning a pending or impending
2 proceeding except that:

3
4 (a) Where circumstances require, ex parte communications for scheduling,
5 administrative purposes, or emergencies that do not deal with substantive matters or
6 issues on the merits are authorized, provided:

7
8 (i) the judge reasonably believes that no party will gain a procedural or tactical
9 advantage as a result of the ex parte communication, and

10
11 (ii) the judge makes provision promptly to notify all other parties of the substance of the
12 ex parte communication and allows an opportunity to respond.

13
14 (b) A judge may obtain the advice of a disinterested expert on the law applicable to a
15 proceeding before the judge if the judge gives notice to the parties of the person
16 consulted and the substance of the advice and affords the parties reasonable
17 opportunity to respond.

18
19 (c) A judge may consult with other judges or with court personnel whose function is to
20 aid the judge in carrying out the judge's adjudicative responsibilities.

21
22 (d) A judge may, with the consent of the parties, confer separately with the parties and
23 their lawyers in an effort to mediate or settle matters pending before the judge.

24
25 (e) A judge may initiate or consider any ex parte communications when expressly
26 authorized by law to do so.

27
28 (8) A judge shall dispose of all judicial matters promptly, efficiently, and fairly.

29
30 (9) A judge shall not, while a proceeding is pending or impending in any court, make
31 any public comment that might reasonably be expected to affect its outcome or impair
32 its fairness or make any nonpublic comment that might substantially interfere with a fair
33 trial or hearing. The judge shall require similar abstention on the part of court personnel
34 subject to the judge's direction and control. This Section does not prohibit judges from
35 making public statements in the course of their official duties or from explaining for
36 public information the procedures of the court. This Section does not apply to
37 proceedings in which the judge is a litigant in a personal capacity.

38
39 (10) A judge shall not, with respect to parties or classes of parties, cases, controversies
40 or issues likely to come before the court, make pledges, promises or commitments that
41 are inconsistent with the impartial performance of the adjudicative duties of the office.

42
43 (11) A judge shall not commend or criticize jurors for their verdict other than in a court
44 order or opinion in a proceeding, but may express appreciation to jurors for their service
45 to the judicial system and the community.

46

1 (12) A judge shall not disclose or use, for any purpose unrelated to judicial duties,
2 nonpublic information acquired in a judicial capacity.

3
4 C. Administrative Responsibilities.

5
6 (1) A judge shall diligently discharge the judge's administrative responsibilities without
7 bias or prejudice and maintain professional competence in judicial administration, and
8 should cooperate with other judges and court officials in the administration of court
9 business.

10
11 (2) A judge shall require staff, court officials, and others subject to the judge's direction
12 and control to observe the standards of fidelity and diligence that apply to the judge and
13 to refrain from manifesting bias or prejudice in the performance of their official duties.

14
15 (3) A judge with supervisory authority for the judicial performance of other judges shall
16 take reasonable measures to assure the prompt disposition of matters before them and
17 the proper performance of their other judicial responsibilities.

18
19 (4) A judge shall not make unnecessary appointments. A judge shall exercise the power
20 of appointment impartially and on the basis of merit. A judge shall avoid nepotism and
21 favoritism. A judge shall not approve compensation of appointees beyond the fair value
22 of services rendered.

23
24 D. Disciplinary Responsibilities.

25
26 (1) A judge who receives information or has actual knowledge that substantial likelihood
27 exists that another judge has committed a violation of this Code shall take appropriate
28 action.

29
30 (2) A judge who receives information or has actual knowledge that substantial likelihood
31 exists that a lawyer has committed a violation of the Rules Regulating The Florida Bar
32 shall take appropriate action.

33
34 (3) Acts of a judge, in the discharge of disciplinary responsibilities, required or permitted
35 by Sections 3D(1) and 3D(2) are part of a judge's judicial duties and shall be absolutely
36 privileged, and no civil action predicated thereon may be instituted against the judge.

37
38 E. Disqualification.

39
40 (1) A judge shall disqualify himself or herself in a proceeding in which the judge's
41 impartiality might reasonably be questioned, including but not limited to instances
42 where:

43
44 (a) the judge has a personal bias or prejudice concerning a party or a party's lawyer, or
45 personal knowledge of disputed evidentiary facts concerning the proceeding;
46

1 (b) the judge served as a lawyer or was the lower court judge in the matter in
2 controversy, or a lawyer with whom the judge previously practiced law served during
3 such association as a lawyer concerning the matter, or the judge has been a material
4 witness concerning it;

5
6 (c) the judge knows that he or she individually or as a fiduciary, or the judge's spouse,
7 parent, or child wherever residing, or any other member of the judge's family residing in
8 the judge's household has an economic interest in the subject matter in controversy or
9 in a party to the proceeding or has any other more than de minimis interest that could
10 be substantially affected by the proceeding;

11
12 (d) the judge or the judge's spouse, or a person within the third degree of relationship to
13 either of them, or the spouse of such a person:

14
15 (i) is a party to the proceeding, or an officer, director, or trustee of a party;

16
17 (ii) is acting as a lawyer in the proceeding;

18
19 (iii) is known by the judge to have a more than de minimis interest that could be
20 substantially affected by the proceeding;

21
22 (iv) is to the judge's knowledge likely to be a material witness in the proceeding;

23
24 (e) the judge's spouse or a person within the third degree of relationship to the judge
25 participated as a lower court judge in a decision to be reviewed by the judge;

26
27 (f) the judge, while a judge or a candidate for judicial office, has made a public
28 statement that commits, or appears to commit, the judge with respect to:

29
30 (i) parties or classes of parties in the proceeding;

31
32 (ii) an issue in the proceeding; or

33
34 (iii) the controversy in the proceeding.

35
36 (2) A judge should keep informed about the judge's personal and fiduciary economic
37 interests, and make a reasonable effort to keep informed about the economic interests
38 of the judge's spouse and minor children residing in the judge's household.

39
40 F. Remittal of Disqualification.

41
42 A judge disqualified by the terms of Section 3E may disclose on the record the basis of
43 the judge's disqualification and may ask the parties and their lawyers to consider, out of
44 the presence of the judge, whether to waive disqualification. If following disclosure of
45 any basis for disqualification other than personal bias or prejudice concerning a party,
46 the parties and lawyers, without participation by the judge, all agree the judge should

1 not be disqualified, and the judge is then willing to participate, the judge may participate
2 in the proceeding. The agreement shall be incorporated in the record of the proceeding.

3
4
5 COMMENTARY

6
7 Canon 3B(4). The duty to hear all proceedings fairly and with patience is not
8 inconsistent with the duty to dispose promptly of the business of the court. Judges can
9 be efficient and business-like while being patient and deliberate.

10
11 Canon 3B(5). A judge must refrain from speech, gestures or other conduct that could
12 reasonably be perceived as sexual harassment and must require the same standard of
13 conduct of others subject to the judge's direction and control.

14
15 A judge must perform judicial duties impartially and fairly. A judge who manifests bias
16 on any basis in a proceeding impairs the fairness of the proceeding and brings the
17 judiciary into disrepute. Facial expression and body language, in addition to oral
18 communication, can give to parties or lawyers in the proceeding, jurors, the media and
19 others an appearance of judicial bias. A judge must be alert to avoid behavior that
20 may be perceived as prejudicial.

21
22 Canon 3B(7). The proscription against communications concerning a proceeding
23 includes communications from lawyers, law teachers, and other persons who are not
24 participants in the proceeding, except to the limited extent permitted.

25
26 To the extent reasonably possible, all parties or their lawyers shall be included in
27 communications with a judge.

28
29 Whenever presence of a party or notice to a party is required by Section 3B(7), it is
30 the party's lawyer, or if the party is unrepresented, the party who is to be present or to
31 whom notice is to be given.

32
33 An appropriate and often desirable procedure for a court to obtain the advice of a
34 disinterested expert on legal issues is to invite the expert to file a brief as amicus curiae.

35
36 Certain ex parte communication is approved by Section 3B(7) to facilitate scheduling
37 and other administrative purposes and to accommodate emergencies. In general,
38 however, a judge must discourage ex parte communication and allow it only if all the
39 criteria stated in Section 3B(7) are clearly met. A judge must disclose to all parties all ex
40 parte communications described in Sections 3B(7)(a) and 3B(7)(b) regarding a
41 proceeding pending or impending before the judge.

42
43 A judge must not independently investigate facts in a case and must consider only the
44 evidence presented.

1 A judge may request a party to submit proposed findings of fact and conclusions of law,
2 so long as the other parties are apprised of the request and are given an opportunity to
3 respond to the proposed findings and conclusions.

4
5 A judge must make reasonable efforts, including the provision of appropriate
6 supervision, to ensure that Section 3B(7) is not violated through law clerks or
7 other personnel on the judge's staff.

8
9 If communication between the trial judge and the appellate court with respect to a
10 proceeding is permitted, a copy of any written communication or the substance of any
11 oral communication should be provided to all parties.

12
13 Canon 3B(8). In disposing of matters promptly, efficiently, and fairly, a judge must
14 demonstrate due regard for the rights of the parties to be heard and to have issues
15 resolved without unnecessary cost or delay. Containing costs while preserving
16 fundamental rights of parties also protects the interests of witnesses and the general
17 public. A judge should monitor and supervise cases so as to reduce or eliminate dilatory
18 practices, avoidable delays, and unnecessary costs. A judge should encourage and
19 seek to facilitate settlement, but parties should not feel coerced into surrendering the
20 right to have their controversy resolved by the courts.

21
22 Prompt disposition of the court's business requires a judge to devote adequate time to
23 judicial duties, to be punctual in attending court and expeditious in determining matters
24 under submission, and to insist that court officials, litigants, and their lawyers cooperate
25 with the judge to that end.

26
27 Canon 3B(9) and 3B(10). Sections 3B(9) and (10) restrictions on judicial speech are
28 essential to the maintenance of the integrity, impartiality, and independence of the
29 judiciary. A pending proceeding is one that has begun but not yet reached final
30 disposition. An impending proceeding is one that is anticipated but not yet begun. The
31 requirement that judges abstain from public comment regarding a pending or impending
32 proceeding continues during any appellate process and until final disposition. Sections
33 3B(9) and (10) do not prohibit a judge from commenting on proceedings in which the
34 judge is a litigant in a personal capacity, but in cases such as a writ of mandamus
35 where the judge is a litigant in an official capacity, the judge must not comment publicly.
36 The conduct of lawyers relating to trial publicity is governed by Rule 4-3.6 of the Rules
37 Regulating The Florida Bar.

38
39 Canon 3B(10). Commending or criticizing jurors for their verdict may imply a judicial
40 expectation in future cases and may impair a juror's ability to be fair and impartial in
41 a subsequent case.

42
43 Canon 3C(4). Appointees of a judge include assigned counsel, officials such as
44 referees, commissioners, special magistrates, receivers, mediators, arbitrators, and
45 guardians and personnel such as clerks, secretaries, and bailiffs. Consent by the parties

1 to an appointment or an award of compensation does not relieve the judge of the
2 obligation prescribed by Section 3C(4). See also Fla.Stat. § 112.3135 (1991).

3
4 Canon 3D. Appropriate action may include direct communication with the judge or
5 lawyer who has committed the violation, other direct action if available, or reporting the
6 violation to the appropriate authority or other agency. If the conduct is minor, the Canon
7 allows a judge to address the problem solely by direct communication with the offender.
8 A judge having knowledge, however, that another judge has committed a violation of
9 this Code that raises a substantial question as to that other judge's fitness for office or
10 has knowledge that a lawyer has committed a violation of the Rules of Professional
11 Conduct that raises a substantial question as to the lawyer's honesty, trustworthiness or
12 fitness as a lawyer in other respects, is required under this Canon to inform the
13 appropriate authority. While worded differently, this Code provision has the identical
14 purpose as the related Model Code provisions.

15
16 Canon 3E(1). Under this rule, a judge is disqualified whenever the judge's impartiality
17 might reasonably be questioned, regardless of whether any of the specific rules in
18 Section 3E(1) apply. For example, if a judge were in the process of negotiating for
19 employment with a law firm, the judge would be disqualified from any matters in
20 which that law firm appeared, unless the disqualification was waived by the parties
21 after disclosure by the judge.

22
23 A judge should disclose on the record information that the judge believes the parties or
24 their lawyers might consider relevant to the question of disqualification, even if the judge
25 believes there is no real basis for disqualification. The fact that the judge conveys this
26 information does not automatically require the judge to be disqualified upon a request
27 by either party, but the issue should be resolved on a case-by-case basis. Similarly, if a
28 lawyer or party has previously filed a complaint against the judge with the Judicial
29 Qualifications Commission, that fact does not automatically require disqualification of
30 the judge. Such disqualification should be on a case-by-case basis.

31
32 By decisional law, the rule of necessity may override the rule of disqualification. For
33 example, a judge might be required to participate in judicial review of a judicial salary
34 statute, or might be the only judge available in a matter requiring immediate judicial
35 action, such as a hearing on probable cause or a temporary restraining order. In the
36 latter case, the judge must disclose on the record the basis for possible
37 disqualification and use reasonable efforts to transfer the matter to another judge as
38 soon as practicable.

39
40 Canon 3E(1)(b). A lawyer in a government agency does not ordinarily have an
41 association with other lawyers employed by that agency within the meaning of Section
42 3E(1)(b); a judge formerly employed by a government agency, however, should
43 disqualify himself or herself in a proceeding if the judge's impartiality might reasonably
44 be questioned because of such association.

1 Canon 3E(1)(d). The fact that a lawyer in a proceeding is affiliated with a law firm with
2 which a relative of the judge is affiliated does not of itself disqualify the judge. Under
3 appropriate circumstances, the fact that "the judge's impartiality might reasonably be
4 questioned" under Section 3E(1), or that the relative is known by the judge to have an
5 interest in the law firm that could be "substantially affected by the outcome of the
6 proceeding" under Section 3E(1)(d)(iii) may require the judge's disqualification.
7

8 Canon 3E(1)(e). It is not uncommon for a judge's spouse or a person within the third
9 degree of relationship to a judge to also serve as a judge in either the trial or appellate
10 courts. However, where a judge exercises appellate authority over another judge, and
11 that other judge is either a spouse or a relationship within the third degree, then this
12 Code requires disqualification of the judge that is exercising appellate authority. This
13 Code, under these circumstances, precludes the appellate judge from participating in
14 the review of the spouse's or relation's case.
15

16 Canon 3F. A remittal procedure provides the parties an opportunity to proceed without
17 delay if they wish to waive the disqualification. To assure that consideration of the
18 question of remittal is made independently of the judge, a judge must not solicit, seek,
19 or hear comment on possible remittal or waiver of the disqualification unless the lawyers
20 jointly propose remittal after consultation as provided in the rule. A party may act
21 through counsel if counsel represents on the record that the party has been consulted
22 and consents. As a practical matter, a judge may wish to have all parties and their
23 lawyers sign the remittal agreement.
24

cited in Wolfson v. Concannon, No. 11-17634 archived on Jan 27, 2016

Canon 4. A Judge is Encouraged to Engage in Activities to Improve the Law, the Legal System, and the Administration of Justice

A. A judge shall conduct all of the judge's quasi-judicial activities so that they do not:

(1) cast reasonable doubt on the judge's capacity to act impartially as a judge;

(2) undermine the judge's independence, integrity, or impartiality;

(3) demean the judicial office;

(4) interfere with the proper performance of judicial duties;

(5) lead to frequent disqualification of the judge; or

(6) appear to a reasonable person to be coercive.

B. A judge is encouraged to speak, write, lecture, teach and participate in other quasi-judicial activities concerning the law, the legal system, the administration of justice, and the role of the judiciary as an independent branch within our system of government, subject to the requirements of this Code.

C. 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.

D. A judge is encouraged to serve as a member, officer, director, trustee or non-legal advisor of an organization or governmental entity devoted to the improvement of the law, the legal system, the judicial branch, or the administration of justice, subject to the following limitations and the other requirements of this Code.

(1) A judge shall not serve as an officer, director, trustee or non-legal advisor if it is likely that the organization

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

(b) 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.

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

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

5
6 (b) may appear or speak at, receive an award or other recognition at, be featured on the
7 program of, and permit the judge's title to be used in conjunction with an event of such
8 an organization or entity, but if the event serves a fund-raising purpose, the judge may
9 participate only if the event concerns the law, the legal system, or the administration of
10 justice and the funds raised will be used for a law related purpose(s);

11
12 (c) may make recommendations to public and private fund-granting organizations on
13 projects and programs concerning the law, the legal system or the administration of
14 justice;

15
16 (d) shall not personally or directly participate in membership solicitation if the solicitation
17 might reasonably be perceived as coercive;

18
19 (e) shall not make use of court premises, staff, stationery, equipment, or other
20 resources for fund-raising purposes, except for incidental use for activities that concern
21 the law, the legal system, or the administration of justice, subject to the requirements of
22 this Code.

23 24 25 COMMENTARY

26
27 Canon 4A. A judge is encouraged to participate in activities designed to improve the
28 law, the legal system, and the administration of justice. In doing so, however, it must be
29 understood that expressions of bias or prejudice by a judge, even outside the judge's
30 judicial activities, may cast reasonable doubt on the judge's capacity to act impartially as
31 a judge and may undermine the independence and integrity of the judiciary.
32 Expressions which may do so include jokes or other remarks demeaning individuals on
33 the basis of their race, sex, religion, national origin, disability, age, sexual orientation or
34 socioeconomic status. See Canon 2C and accompanying Commentary.

35
36 Canon 4B. This canon was clarified in order to encourage judges to engage in activities
37 to improve the law, the legal system, and the administration of justice. As a judicial
38 officer and person specially learned in the law, a judge is in a unique position to
39 contribute to the improvement of the law, the legal system, and the administration of
40 justice, including, but not limited to, the improvement of the role of the judiciary as an
41 independent branch of government, the revision of substantive and procedural law, the
42 improvement of criminal and juvenile justice, and the improvement of justice in the
43 areas of civil, criminal, family, domestic violence, juvenile delinquency, juvenile
44 dependency, probate and motor vehicle law. To the extent that time permits, a judge is
45 encouraged to do so, either independently or through a bar association, judicial
46 conference or other organization dedicated to the improvement of the law. Support of

1 pro bono legal services by members of the bench is an activity that relates to
2 improvement of the administration of justice. Accordingly, a judge may engage in
3 activities intended to encourage attorneys to perform pro bono services, including, but
4 not limited to: participating in events to recognize attorneys who do pro bono work,
5 establishing general procedural or scheduling accommodations for pro bono attorneys
6 as feasible, and acting in an advisory capacity to pro bono programs. Judges are
7 encouraged to participate in efforts to promote the fair administration of justice, the
8 independence of the judiciary and the integrity of the legal profession, which may
9 include the expression of opposition to the persecution of lawyers and judges in other
10 countries.

11
12 The phrase "subject to the requirements of this Code" is included to remind judges that
13 the use of permissive language in various sections of the Code does not relieve a judge
14 from the other requirements of the Code that apply to the specific conduct.

15
16 Canon 4C. See Canon 2B regarding the obligation to avoid improper influence.

17
18 Canon 4D(1). The changing nature of some organizations and of their relationship to the
19 law makes it necessary for a judge regularly to reexamine the activities of each
20 organization with which the judge is affiliated to determine if it is proper for the judge to
21 continue the affiliation. For example, the boards of some legal aid organizations now
22 make policy decisions that may have political significance or imply commitment to
23 causes that may come before the courts for adjudication.

24
25 Canon 4D(2). A judge may solicit membership or endorse or encourage membership
26 efforts for an organization devoted to the improvement of the law, the legal system or
27 the administration of justice as long as the solicitation cannot reasonably be perceived
28 as coercive. Personal or direct solicitation of funds for an organization and personal or
29 direct solicitation of memberships involve the danger that the person solicited will feel
30 obligated to respond favorably to the solicitor if the solicitor is in a position of influence
31 or control. A judge must not engage in direct, individual solicitation of funds or
32 memberships in person, in writing or by telephone except in the following cases: 1) a
33 judge may solicit for funds or memberships other judges over whom the judge does not
34 exercise supervisory or appellate authority, 2) a judge may solicit other persons for
35 membership in the organizations described above if neither those persons nor persons
36 with whom they are affiliated are likely ever to appear before the court on which the
37 judge serves and 3) a judge who is an officer of such an organization may send a
38 general membership solicitation mailing over the judge's signature.

39
40 A judge may be a speaker or guest of honor at an organization's fund-raising event if
41 the event concerns the law, the legal system, or the administration of justice, and the
42 judge does not engage in the direct solicitation of funds. However, judges may not
43 participate in or allow their titles to be used in connection with fund-raising activities on
44 behalf of an organization engaging in advocacy if such participation would cast doubt on
45 the judge's capacity to act impartially as a judge.

1 Use of an organization letterhead for fund-raising or membership solicitation does
2 not violate Canon 4D(2) provided the letterhead lists only the judge's name and
3 office or other position in the organization, and, if comparable designations are listed
4 for other persons, the judge's judicial designation. In addition, a judge must also
5 make reasonable efforts to ensure that the judge's staff, court officials and others
6 subject to the judge's direction and control do not solicit funds on the judge's behalf
7 for any purpose, charitable or otherwise.
8

cited in Wolfson v. Concannon, No. 11-17634 archived on January 21, 2016

Canon 5. A Judge Shall Regulate Extrajudicial Activities to Minimize the Risk of Conflict with Judicial Duties

A. Extrajudicial Activities in General. A judge shall conduct all of the judge's extrajudicial activities so that they do not:

- (1) cast reasonable doubt on the judge's capacity to act impartially as a judge;
- (2) undermine the judge's independence, integrity, or impartiality;
- (3) demean the judicial office;
- (4) interfere with the proper performance of judicial duties;
- (5) lead to frequent disqualification of the judge; or
- (6) appear to a reasonable person to be coercive.

B. Avocational Activities. A judge is encouraged to speak, write, lecture, teach and participate in other extrajudicial activities concerning non-legal subjects, subject to the requirements of this Code.

C. 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, the judicial branch, 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 educational, religious, charitable, fraternal, sororal 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 if it is likely that the organization

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

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

4
5 (b) A judge as an officer, director, trustee or non-legal advisor, or as a member or
6 otherwise:

7
8 (i) may assist such an organization in planning fund-raising and may participate in the
9 management and investment of the organization's funds, but shall not personally or
10 directly participate in the solicitation of funds, except that a judge may solicit funds from
11 other judges over whom the judge does not exercise supervisory or appellate authority;

12
13 (ii) shall not personally or directly participate in membership solicitation if the solicitation
14 might reasonably be perceived as coercive;

15
16 (iii) shall not use or permit the use of the prestige of judicial office for fund-raising or
17 membership solicitation.

18
19 D. Financial Activities.

20
21 (1) A judge shall not engage in financial and business dealings that

22
23 (a) may reasonably be perceived to exploit the judge's judicial position, or

24
25 (b) involve the judge in frequent transactions or continuing business relationships with
26 those lawyers or other persons likely to come before the court on which the judge
27 serves.

28
29 (2) A judge may, subject to the requirements of this Code, hold and manage
30 investments of the judge and members of the judge's family, including real estate, and
31 engage in other remunerative activity.

32
33 (3) A judge shall not serve as an officer, director, manager, general partner, advisor or
34 employee of any business entity except that a judge may, subject to the requirements of
35 this Code, manage and participate in:

36
37 (a) a business closely held by the judge or members of the judge's family, or

38
39 (b) a business entity primarily engaged in investment of the financial resources of the
40 judge or members of the judge's family.

41
42 (4) A judge shall manage the judge's investments and other financial interests to
43 minimize the number of cases in which the judge is disqualified. As soon as the judge
44 can do so without serious financial detriment, the judge shall divest himself or herself of
45 investments and other financial interests that might require frequent disqualification.

46

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

3
4 (a) a gift incident to a public testimonial, books, tapes and other resource materials
5 supplied by publishers on a complimentary basis for official use, or an invitation to the
6 judge and the judge's spouse or guest to attend a bar-related function or an activity
7 devoted to the improvement of the law, the legal system or the administration of justice;

8
9 (b) a gift, award or benefit incident to the business, profession or other separate activity
10 of a spouse or other family member of a judge residing in the judge's household,
11 including gifts, awards and benefits for the use of both the spouse or other family
12 member and the judge (as spouse or family member), provided the gift, award or benefit
13 could not reasonably be perceived as intended to influence the judge in the
14 performance of judicial duties;

15
16 (c) ordinary social hospitality;

17
18 (d) a gift from a relative or friend, for a special occasion, such as a wedding, anniversary
19 or birthday, if the gift is fairly commensurate with the occasion and the relationship;

20
21 (e) a gift, bequest, favor or loan from a relative or close personal friend whose
22 appearance or interest in a case would in any event require disqualification under
23 Canon 3E;

24
25 (f) a loan from a lending institution in its regular course of business on the same terms
26 generally available to persons who are not judges;

27
28 (g) a scholarship or fellowship awarded on the same terms and based on the same
29 criteria applied to other applicants; or

30
31 (h) any other gift, bequest, favor or loan, only if: the donor is not a party or other person
32 who has come or is likely to come or whose interests have come or are likely to come
33 before the judge; and, if its value, or the aggregate value in a calendar year of such
34 gifts, bequests, favors, or loans from a single source, exceeds \$100.00, the judge
35 reports it in the same manner as the judge reports gifts under Canon 6B(2).

36
37 E. Fiduciary Activities.

38
39 (1) A judge shall not serve as executor, administrator or other personal representative,
40 trustee, guardian, attorney in fact or other fiduciary, except for the estate, trust or person
41 of a member of the judge's family, and then only if such service will not interfere with the
42 proper performance of judicial duties.

43
44 (2) A judge shall not serve as a fiduciary if it is likely that the judge as a fiduciary will be
45 engaged in proceedings that would ordinarily come before the judge, or if the estate,

1 trust or ward becomes involved in adversary proceedings in the court on which the
2 judge serves or one under its appellate jurisdiction.

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

6
7 F. Service as Arbitrator or Mediator.

8
9 (1) A judge shall not act as an arbitrator or mediator or otherwise perform judicial
10 functions in a private capacity unless expressly authorized by law or Court rule. A judge
11 may, however, take the necessary educational and training courses required to be a
12 qualified and certified arbitrator or mediator, and may fulfill the requirements of
13 observing and conducting actual arbitration or mediation proceedings as part of the
14 certification process, provided such program does not, in any way, interfere with the
15 performance of the judge's judicial duties.

16
17 (2) A senior judge may serve as a mediator in a case in a circuit in which the senior
18 judge is not presiding as a judge only if the senior judge is certified pursuant to rule
19 10.100, Florida Rules for Certified and Court-Appointed Mediators. Such senior judge
20 may be associated with entities that are solely engaged in offering mediation or other
21 alternative dispute resolution services but that are not otherwise engaged in the practice
22 of law. However, such senior judge may not advertise, solicit business, associate with a
23 law firm, or participate in any other activity that directly or indirectly promotes his or her
24 mediation services and shall not permit an entity with which the senior judge associates
25 to do so. A senior judge shall not serve as a mediator in any case in a circuit in which
26 the judge is currently presiding as a senior judge. A senior judge who provides
27 mediation services shall not preside over any case in the circuit where the mediation
28 services are provided; however, a senior judge may preside over cases in circuits in
29 which the judge does not provide mediation services. A senior judge shall disclose if the
30 judge is being utilized or has been utilized as a mediator by any party, attorney, or law
31 firm involved in the case pending before the senior judge. Absent express consent of all
32 parties, a senior judge is prohibited from presiding over any case involving any party,
33 attorney, or law firm that is utilizing or has utilized the judge as a mediator within the
34 previous three years. A senior judge shall disclose any negotiations or agreements for
35 the provision of mediation services between the senior judge and any of the parties or
36 counsel to the case.

37
38 G. Practice of Law. A judge shall not practice law. Notwithstanding this prohibition, a
39 judge may act pro se and may, without compensation, give legal advice to and draft or
40 review documents for a member of the judge's family.

41
42
43 COMMENTARY

44
45 Canon 5A. Complete separation of a judge from extra-judicial activities is neither
46 possible nor wise; a judge should not become isolated from the community in which the

1 judge lives. For that reason, judges are encouraged to participate in extrajudicial
2 community activities.

3
4 Expressions of bias or prejudice by a judge, even outside the judge's judicial activities,
5 may cast reasonable doubt on the judge's capacity to act impartially as a judge and may
6 undermine the independence and integrity of the judiciary. Expressions which may do
7 so include jokes or other remarks demeaning individuals on the basis of their race, sex,
8 religion, national origin, disability, age, sexual orientation or socioeconomic status. See
9 Canon 2C and accompanying Commentary.

10
11 Canon 5B. In this and other sections of Canon 5, the phrase "subject to the
12 requirements of this Code" is used, notably in connection with a judge's governmental,
13 civic or charitable activities. This phrase is included to remind judges that the use of
14 permissive language in various sections of the Code does not relieve a judge from the
15 other requirements of the Code that apply to the specific conduct.

16
17 Canon 5C(1). See Canon 2B regarding the obligation to avoid improper influence.

18
19 Canon 5C(2). Canon 5C(2) prohibits a judge from accepting any governmental position
20 except one relating to the law, legal system or administration of justice as authorized by
21 Canon 4D. The appropriateness of accepting extrajudicial assignments must be
22 assessed in light of the demands on judicial resources created by crowded dockets and
23 the need to protect the courts from involvement in extrajudicial matters that may prove
24 to be controversial. Judges should not accept governmental appointments that are likely
25 to interfere with the effectiveness and independence of the judiciary.

26
27 Canon 5C(2) does not govern a judge's service in a nongovernmental position. See
28 Canon 5C(3) permitting service by a judge with educational, religious, charitable,
29 fraternal, sororal or civic organizations not conducted for profit. For example, service on
30 the board of a public educational institution, unless it were a law school, would be
31 prohibited under Canon 5C(2), but service on the board of a public law school or any
32 private educational institution would generally be permitted under Canon 5C(3).

33
34 Canon 5C(3). Canon 5C(3) does not apply to a judge's service in a governmental
35 position unconnected with the improvement of the law, the legal system or the
36 administration of justice; see Canon 5C(2).

37
38 See Commentary to Canon 5B regarding use of the phrase "subject to the following
39 limitations and the other requirements of this Code." As an example of the meaning of
40 the phrase, a judge permitted by Canon 5C(3) to serve on the board of a fraternal
41 institution may be prohibited from such service by Canons 2C or 5A if the institution
42 practices invidious discrimination or if service on the board otherwise casts reasonable
43 doubt on the judge's capacity to act impartially as a judge.

1 Service by a judge on behalf of a civic or charitable organization may be governed by
2 other provisions of Canon 5 in addition to Canon 5C. For example, Canon 5G prohibits
3 a judge from serving as a legal advisor to a civic or charitable organization.

4
5 Canon 5C(3)(a). The changing nature of some organizations and of their relationship to
6 the law makes it necessary for a judge to regularly reexamine the activities of each
7 organization with which the judge is affiliated in order to determine if it is proper for the
8 judge to continue the affiliation. For example, in many jurisdictions charitable hospitals
9 are now more frequently in court than in the past.

10
11 Canon 5C(3)(b). A judge may solicit membership or endorse or encourage membership
12 efforts for a nonprofit educational, religious, charitable, fraternal, sororal or civic
13 organization as long as the solicitation cannot reasonably be perceived as coercive and
14 is not essentially a fund-raising mechanism. Personal or direct solicitation of funds for
15 an organization and personal or direct solicitation of memberships similarly involve the
16 danger that the person solicited will feel obligated to respond favorably to the solicitor if
17 the solicitor is in a position of influence or control. A judge must not engage in direct,
18 individual solicitation of funds or memberships in person, in writing or by telephone
19 except in the following cases: 1) a judge may solicit for funds or memberships other
20 judges over whom the judge does not exercise supervisory or appellate authority, 2) a
21 judge may solicit other persons for membership in the organizations described above if
22 neither those persons nor persons with whom they are affiliated are likely ever to
23 appear before the court on which the judge serves and 3) a judge who is an officer of
24 such an organization may send a general membership solicitation mailing over the
25 judge's signature.

26
27 Mere attendance at an event, whether or not the event serves a fund-raising purpose,
28 does not constitute a violation of Canon 5C(3)(b). **Error! Bookmark not defined.** It is
29 also generally permissible for a judge to pass a collection plate at a place of worship or
30 for a judge to serve as an usher or food server or preparer, or to perform similar
31 subsidiary and unadvertised functions at fund-raising events sponsored by educational,
32 religious, charitable, fraternal, or civic organizations, so long as they do not entail direct
33 or personal solicitation. However, a judge may not be a speaker, guest of honor, or
34 otherwise be featured at an organization's fund-raising event, unless the event concerns
35 the law, the legal system, or the administration of justice as authorized by Canon
36 4D(2)(b).

37
38 Use of an organization letterhead for fund-raising or membership solicitation does not
39 violate Canon 5C(3)(b) provided the letterhead lists only the judge's name and office or
40 other position in the organization, and, if comparable designations are listed for other
41 persons, the judge's judicial designation. In addition, a judge must also make
42 reasonable efforts to ensure that the judge's staff, court officials and others subject to
43 the judge's direction and control do not solicit funds on the judge's behalf for any
44 purpose, charitable or otherwise.

1 Canon 5D(1). When a judge acquires in a judicial capacity information, such as material
2 contained in filings with the court, that is not yet generally known, the judge must not
3 use the information for private gain. See Canon 2B; see also Canon 3B(11).

4
5 A judge must avoid financial and business dealings that involve the judge in frequent
6 transactions or continuing business relationships with persons likely to come either
7 before the judge personally or before other judges on the judge's court. In addition, a
8 judge should discourage members of the judge's family from engaging in dealings that
9 would reasonably appear to exploit the judge's judicial position. This rule is necessary to
10 avoid creating an appearance of exploitation of office or favoritism and to minimize the
11 potential for disqualification. With respect to affiliation of relatives of the judge with law
12 firms appearing before the judge, see Commentary to Canon 3E(1) **Error! Bookmark**
13 **not defined.** relating to disqualification.

14
15 Participation by a judge in financial and business dealings is subject to the general
16 prohibitions in Canon 5A against activities that tend to reflect adversely on impartiality,
17 demean the judicial office, or interfere with the proper performance of judicial duties.
18 Such participation is also subject to the general prohibition in Canon 2 against activities
19 involving impropriety or the appearance of impropriety and the prohibition in Canon 2B
20 against the misuse of the prestige of judicial office. In addition, a judge must maintain
21 high standards of conduct in all of the judge's activities, as set forth in Canon 1. See
22 Commentary for Canon 5B regarding use of the phrase "subject to the requirements of
23 this Code."

24
25 Canon 5D(2). This Canon provides that, subject to the requirements of this Code, a
26 judge may hold and manage investments owned solely by the judge, investments
27 owned solely by a member or members of the judge's family, and investments owned
28 jointly by the judge and members of the judge's family.

29
30 Canon 5D(3). Subject to the requirements of this Code, a judge may participate in a
31 business that is closely held either by the judge alone, by members of the judge's
32 family, or by the judge and members of the judge's family.

33
34 Although participation by a judge in a closely-held family business might otherwise be
35 permitted by Canon 5D(3), a judge may be prohibited from participation by other
36 provisions of this Code when, for example, the business entity frequently appears
37 before the judge's court or the participation requires significant time away from judicial
38 duties. Similarly, a judge must avoid participating in a closely-held family business if the
39 judge's participation would involve misuse of the prestige of judicial office.

40
41 Canon 5D(5). Canon 5D(5) does not apply to contributions to a judge's campaign for
42 judicial office, a matter governed by Canon 7.

43
44 Because a gift, bequest, favor or loan to a member of the judge's family residing in the
45 judge's household might be viewed as intended to influence the judge, a judge must
46 inform those family members of the relevant ethical constraints upon the judge in this

1 regard and discourage those family members from violating them. A judge cannot,
2 however, reasonably be expected to know or control all of the financial or business
3 activities of all family members residing in the judge's household.

4
5 Canon 5D(5)(a). Acceptance of an invitation to a law-related function is governed by
6 Canon 5D(5)(a); acceptance of an invitation paid for by an individual lawyer or group of
7 lawyers is governed by Canon 5D(5)(h).

8
9 A judge may accept a public testimonial or a gift incident thereto only if the donor
10 organization is not an organization whose members comprise or frequently represent
11 the same side in litigation, and the testimonial and gift are otherwise in compliance with
12 other provisions of this Code. See Canons 5A(1) and 2B.

13
14 Canon 5D(5)(d). A gift to a judge, or to a member of the judge's family living in the
15 judge's household, that is excessive in value raises questions about the judge's
16 impartiality and the integrity of the judicial office and might require disqualification of the
17 judge where disqualification would not otherwise be required. See, however, Canon
18 5D(5)(e).

19
20 Canon 5D(5)(h). Canon 5D(5)(h) prohibits judges from accepting gifts, favors, bequests
21 or loans from lawyers or their firms if they have come or are likely to come before the
22 judge; it also prohibits gifts, favors, bequests or loans from clients of lawyers or their
23 firms when the clients' interests have come or are likely to come before the judge.

24
25 Canon 5E(3). The restrictions imposed by this Canon may conflict with the judge's
26 obligation as a fiduciary. For example, a judge should resign as trustee if detriment to
27 the trust would result from divestiture of holdings the retention of which would place the
28 judge in violation of Canon 5D(4).

29
30 Canon 5F(1). Canon 5F(1) does not prohibit a judge from participating in arbitration,
31 mediation or settlement conferences performed as part of judicial duties. An active
32 judge may take the necessary educational and training programs to be certified or
33 qualified as a mediator or arbitrator, but this shall not be a part of the judge's judicial
34 duties. While such a course will allow a judge to have a better understanding of the
35 arbitration and mediation process, the certification and qualification of a judge as a
36 mediator or arbitrator is primarily for the judge's personal benefit. While actually
37 participating in the mediation and arbitration training activities, care must be taken in the
38 selection of both cases and locations so as to guarantee that there is no interference or
39 conflict between the training and the judge's judicial responsibilities. Indeed, the training
40 should be conducted in such a manner as to avoid the involvement of persons likely to
41 appear before the judge in legal proceedings.

42
43 Canon 5F(2). The purpose of the admonitions in this canon is to ensure that the
44 impartiality of the senior judge is not subject to question. Although a senior judge may
45 act as a mediator or arbitrator in a circuit in which the judge is not presiding as a senior
46 judge, attention must be given to relationships with lawyers and law firms which may

1 require disclosure or disqualification. These provisions are intended to prohibit a senior
2 judge from soliciting lawyers to use the senior judge's mediation services when those
3 lawyers are or may be before the judge in proceedings where the senior judge is acting
4 in a judicial capacity and to require a senior judge to ensure that entities with which the
5 senior judge associates as a mediator abide by the same prohibitions on advertising or
6 promoting the senior judge's mediation service as are imposed on the senior judge.

7
8 Canon 5G. This prohibition refers to the practice of law in a representative capacity and
9 not in a pro se capacity. A judge may act for himself or herself in all legal matters,
10 including matters involving litigation and matters involving appearances before or other
11 dealings with legislative and other governmental bodies. However, in so doing, a judge
12 must not abuse the prestige of office to advance the interests of the judge or the judge's
13 family. See Canon 2B.

14
15 The Code allows a judge to give legal advice to and draft legal documents for members
16 of the judge's family, so long as the judge receives no compensation. A judge must not,
17 however, act as an advocate or negotiator for a member of the judge's family in a legal
18 matter.
19

cited in Wolfson v. Concannon, No. 11-17634 archived on January 21, 2016

Canon 6. Fiscal Matters of a Judge Shall be Conducted in a Manner That Does Not Give the Appearance of Influence or Impropriety; a Judge Shall Regularly File Public Reports as Required by Article II, Section 8, of the Constitution of Florida, and Shall Publicly Report Gifts; Additional Financial Information Shall be Filed With the Judicial Qualifications Commission to Ensure Full Financial Disclosure

A. Compensation for Quasi-Judicial and Extrajudicial Services and Reimbursement of Expenses.

A judge may receive compensation and reimbursement of expenses for the quasi-judicial and extrajudicial activities permitted by this Code, if the source of such payments does not give the appearance of influencing the judge in the performance of judicial duties or otherwise give the appearance of impropriety, subject to the following restrictions:

(1) Compensation. 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.

(2) Expense Reimbursement. 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, to the judge's spouse. Any payment in excess of such an amount is compensation.

B. Public Financial Reporting.

(1) Income and Assets. A judge shall file such public report as may be required by law for all public officials to comply fully with the provisions of Article II, Section 8, of the Constitution of Florida. The form for public financial disclosure shall be that recommended or adopted by the Florida Commission on Ethics for use by all public officials. The form shall be filed with the Florida Commission on Ethics on the date prescribed by law, and a copy shall be filed simultaneously with the Judicial Qualifications Commission.

(2) Gifts. A judge shall file a public report of all gifts which are required to be disclosed under Canon 5D(5)(h) of the Code of Judicial Conduct. The report of gifts received in the preceding calendar year shall be filed with the Florida Commission on Ethics on or before July 1 of each year. A copy shall be filed simultaneously with the Judicial Qualifications Commission.

(3) Disclosure of Financial Interests Upon Leaving Office. A judge shall file a final disclosure statement within 60 days after leaving office, which report shall cover the period between January 1 of the year in which the judge leaves office and his or her last day of office, unless, within the 60-day period, the judge takes another public position requiring financial disclosure under Article II, Section 8, of the Constitution of Florida, or is otherwise required to file full and public disclosure for the final disclosure period. The

1 form for disclosure of financial interests upon leaving office shall be that recommended
2 or adopted by the Florida Commission on Ethics for use by all public officials. The form
3 shall be filed with the Florida Commission on Ethics and a copy shall be filed
4 simultaneously with the Judicial Qualifications Commission.

5
6 C. Confidential Financial Reporting to the Judicial Qualifications Commission.
7

8 To ensure that complete financial information is available for all judicial officers, there
9 shall be filed with the Judicial Qualifications Commission on or before July 1 of each
10 year, if not already included in the public report to be filed under Canon 6B(1) and (2), a
11 verified list of the names of the corporations and other business entities in which the
12 judge has a financial interest as of December 31 of the preceding year, which shall be
13 transmitted in a separate sealed envelope, placed by the Commission in safekeeping,
14 and not be opened or the contents thereof disclosed except in the manner hereinafter
15 provided.
16

17 At any time during or after the pendency of a cause, any party may request information
18 as to whether the most recent list filed by the judge or judges before whom the cause is
19 or was pending contains the name of any specific person or corporation or other
20 business entity which is a party to the cause or which has a substantial direct or indirect
21 financial interest in its outcome. Neither the making of the request nor the contents
22 thereof shall be revealed by the chair to any judge or other person except at the
23 instance of the individual making the request. If the request meets the requirements
24 hereinabove set forth, the chair shall render a prompt answer thereto and thereupon
25 return the report to safekeeping for retention in accordance with the provisions
26 hereinabove stated. All such requests shall be verified and transmitted to the chair of
27 the Commission on forms to be approved by it.
28

29 D. Limitation of Disclosure.
30

31 Disclosure of a judge's income, debts, investments or other assets is required only to
32 the extent provided in this Canon and in Sections 3E and 3F, or as otherwise required
33 by law.
34

35
36 COMMENTARY
37

38 Canon 6A. See Section 5D(5)(a)-(h) regarding reporting of gifts, bequests and loans.
39

40 The Code does not prohibit a judge from accepting honoraria or speaking fees provided
41 that the compensation is reasonable and commensurate with the task performed. A
42 judge should ensure, however, that no conflicts are created by the arrangement. Judges
43 must not appear to trade on the judicial position for personal advantage. Nor should a
44 judge spend significant time away from court duties to meet speaking or writing
45 commitments for compensation. In addition, the source of the payment must not raise
46 any question of undue influence or the judge's ability or willingness to be impartial.
47

1 Canon 6C. Subparagraph A prescribes guidelines for additional compensation and the
2 reimbursement of expense funds received by a judge.

3
4 Subparagraphs B and C prescribe the three types of financial disclosure
5 reports required of each judicial officer.

6
7 The first is the Ethics Commission's constitutionally required form pursuant to Article II,
8 Section 8, of the Constitution. It must be filed each year as prescribed by law. The
9 financial reporting period is for the previous calendar year. A final disclosure statement
10 generally is required when a judge leaves office. The filing of the income tax return is
11 a permissible alternative.

12
13 The second is a report of gifts received during the preceding calendar year to be filed
14 publicly with the Florida Commission on Ethics. The gifts to be reported are in
15 accordance with Canon 5D(5)(h). This reporting is in lieu of that prescribed by statute as
16 stated in the Supreme Court's opinion rendered in In re Code of Judicial Conduct, 281
17 So. 2d 21 (Fla.1973). The form for this report is as follows:

18
19 Form 6A. Gift Disclosure

20
21 All judicial officers must file with the Florida Commission on Ethics a list of all
22 gifts received during the preceding calendar year of a value in excess of \$100.00
23 as provided in Canon 5D(5) and Canon 6B(2) of the Code of Judicial Conduct.

24
25 Name: _____

26
27 Telephone: _____

28
29 Address: _____

30
31 Position Held: _____

32
33
34 Please identify all gifts you received during the preceding calendar year of a value
35 in excess of \$100.00, as required by Canon 5D(5) and Canon 6B(2) of the Code of
36 Judicial Conduct.

37
38
39
40
41

42
43 OATH

44
45 State of Florida County of _____

1 I, _____, the public official filing this disclosure statement, being first duly sworn,
2 do depose on oath and say that the facts set forth in the above statement are true,
3 correct, and complete to the best of my knowledge and belief.

4 _____
5 (Signature of Reporting Official)

6 _____
7 (Signature of Officer Authorized to Administer Oaths)

8
9 My Commission expires _____.
10 Sworn to and subscribed before me this
11 _____ day of _____, 20____.

12 13 14 COMMENTARY

15
16 The third financial disclosure report is prescribed in subparagraph C. This provision
17 ensures that there will be complete financial information for all judicial officers
18 available with the Judicial Qualifications Commission by requiring that full disclosure
19 be filed confidentially with the Judicial Qualifications Commission in the event the
20 limited disclosure alternative is selected under the provisions of Article II, Section 8.

21
22 The amendment to this Canon requires in 6B(2) a separate gift report to be filed with the
23 Florida Commission on Ethics on or before July 1 of each year. The form to be used for
24 that report is included in the commentary to Canon 6. It should be noted that Canon 5,
25 as it presently exists, restricts and prohibits the receipt of certain gifts. This provision is
26 not applicable to other public officials.

27
28 With reference to financial disclosure, if the judge chooses the limited disclosure
29 alternative available under the provision of Article II, Section 8, of the Constitution of
30 Florida, without the inclusion of the judge's Federal Income Tax Return, then the judge
31 must file with the Commission a list of the names of corporations or other business
32 entities in which the judge has a financial interest even though the amount is less than
33 \$1,000. This information remains confidential until a request is made by a party to a
34 cause before the judge. This latter provision continues to ensure that complete
35 financial information for all judicial officers is available with the Judicial Qualifications
36 Commission and that parties who are concerned about a judge's possible financial
37 interest have a means of obtaining that information as it pertains to a particular cause
38 before the judge.

39
40 Canon 6D. Section 3E requires a judge to disqualify himself or herself in any proceeding
41 in which the judge has an economic interest. See "economic interest" as explained in
42 the Definitions Section. Section 5D requires a judge to refrain from engaging in
43 business and from financial activities that might interfere with the impartial performance
44 of judicial duties; Section 6B requires a judge to report all compensation the judge
45 received for activities outside judicial office. A judge has the rights of any other citizen,
46 including the right to privacy of the judge's financial affairs, except to the extent that

1 limitations established by law are required to safeguard the proper performance of the 2
2 judge's duties.
3

cited in Wolfson v. Concannon, No. 11-17634 archived on January 21, 2016

Canon 7. A Judge or Candidate for Judicial Office Shall Refrain From Inappropriate Political Activity

A. All Judges and Candidates.

(1) Except as authorized in Sections 7B(2), 7C(2) and 7C(3), a judge or a candidate for election or appointment to judicial office shall not:

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

(b) publicly endorse or publicly oppose another candidate for public office;

(c) make speeches on behalf of a political organization;

(d) attend political party functions; or

(e) solicit funds for, pay an assessment to or make a contribution to a political organization or candidate, or purchase tickets for political party dinners or other functions.

(2) A judge shall resign from judicial office upon becoming a candidate for a nonjudicial office either in a primary or in a general election, except that the judge may continue to hold judicial office while being a candidate for election to or serving as a delegate in a state constitutional convention if the judge is otherwise permitted by law to do so.

(3) A candidate for a judicial office:

(a) shall be faithful to the law and maintain professional competence in it, and shall not be swayed by partisan interests, public clamor, or fear of criticism;

(b) shall maintain the dignity appropriate to judicial office and act in a manner consistent with the impartiality, integrity, and independence of the judiciary, and shall encourage members of the candidate's family to adhere to the same standards of political conduct in support of the candidate as apply to the candidate;

(c) shall prohibit employees and officials who serve at the pleasure of the candidate, and shall discourage other employees and officials subject to the candidate's direction and control from doing on the candidate's behalf what the candidate is prohibited from doing under the Sections of this Canon;

(d) except to the extent permitted by Section 7C(1), shall not authorize or knowingly permit any other person to do for the candidate what the candidate is prohibited from doing under the Sections of this Canon;

(e) shall not:

- 1 (i) with respect to parties or classes of parties, cases, controversies, or issues that are
2 likely to come before the court, make pledges, promises, or commitments that are
3 inconsistent with the impartial performance of the adjudicative duties of the office; or
4
5 (ii) knowingly misrepresent the identity, qualifications, present position or other fact
6 concerning the candidate or an opponent;
7
8 (iii) while a proceeding is pending or impending in any court, make any public comment
9 that might reasonably be expected to affect its outcome or impair its fairness or make
10 any nonpublic comment that might substantially interfere with a fair trial or hearing. This
11 section does not apply to proceedings in which the judicial candidate is a litigant in a
12 personal capacity.
13
14 (iv) commend or criticize jurors for their verdict, other than in a court pleading, filing or
15 hearing in which the candidate represents a party in the proceeding in which the verdict
16 was rendered.
17
18 (f) may respond to personal attacks or attacks on the candidate's record as long as the
19 response does not violate Section 7A(3)(e).
20

21 B. Candidates Seeking Appointment to Judicial or Other Governmental Office.
22

23 (1) A candidate for appointment to judicial office or a judge seeking other governmental
24 office shall not solicit or accept funds, personally or through a committee or otherwise,
25 to support his or her candidacy.
26

27 (2) A candidate for appointment to judicial office or a judge seeking other governmental
28 office shall not engage in any political activity to secure the appointment except that:
29

30 (a) such persons may:
31

32 (i) communicate with the appointing authority, including any selection or nominating
33 commission or other agency designated to screen candidates;
34

35 (ii) seek support or endorsement for the appointment from organizations that regularly
36 make recommendations for reappointment or appointment to the office, and from
37 individuals; and
38

39 (iii) provide to those specified in Sections 7B(2)(a)(i) and 7B(2)(a)(ii) information as to
40 his or her qualifications for the office;
41

42 (b) a non-judge candidate for appointment to judicial office may, in addition, unless
43 otherwise prohibited by law:
44

45 (i) retain an office in a political organization,
46

1 (ii) attend political gatherings, and

2
3 (iii) continue to pay ordinary assessments and ordinary contributions to a political
4 organization or candidate and purchase tickets for political party dinners or other
5 functions.

6
7 C. Judges and Candidates Subject to Public Election.

8
9 (1) A candidate, including an incumbent judge, for a judicial office that is filled by public
10 election between competing candidates shall not personally solicit campaign funds, or
11 solicit attorneys for publicly stated support, but may establish committees of responsible
12 persons to secure and manage the expenditure of funds for the candidate's campaign
13 and to obtain public statements of support for his or her candidacy. Such committees
14 are not prohibited from soliciting campaign contributions and public support from any
15 person or corporation authorized by law. A candidate shall not use or permit the use of
16 campaign contributions for the private benefit of the candidate or members of the
17 candidate's family.

18
19 (2) A candidate for merit retention in office may conduct only limited campaign activities
20 until such time as the judge certifies that the judge's candidacy has drawn active
21 opposition. Limited campaign activities shall only include the conduct authorized by
22 subsection C(1), interviews with reporters and editors of the print, audio and visual
23 media, and appearances and speaking engagements before public gatherings and
24 organizations. Upon mailing a certificate in writing to the Secretary of State, Division of
25 Elections, with a copy to the Judicial Qualifications Commission, that the judge's
26 candidacy has drawn active opposition, and specifying the nature thereof, a judge may
27 thereafter campaign in any manner authorized by law, subject to the restrictions of
28 subsection A(3).

29
30 (3) A judicial candidate involved in an election or re-election, or a merit retention
31 candidate who has certified that he or she has active opposition, may attend a political
32 party function to speak in behalf of his or her candidacy or on a matter that relates to the
33 law, the improvement of the legal system, or the administration of justice. The function
34 must not be a fund raiser, and the invitation to speak must also include the other
35 candidates, if any, for that office. The candidate should refrain from commenting on the
36 candidate's affiliation with any political party or other candidate, and should avoid
37 expressing a position on any political issue. A judicial candidate attending a political
38 party function must avoid conduct that suggests or appears to suggest support of or
39 opposition to a political party, a political issue, or another candidate. Conduct limited to
40 that described above does not constitute participation in a partisan political party
41 activity.

42
43 D. Incumbent Judges. A judge shall not engage in any political activity except (i) as
44 authorized under any other Section of this Code, (ii) on behalf of measures to improve
45 the law, the legal system or the administration of justice, or (iii) as expressly authorized
46 by law.

1 E. Applicability. Canon 7 generally applies to all incumbent judges and judicial
2 candidates. A successful candidate, whether or not an incumbent, is subject to judicial
3 discipline for his or her campaign conduct; an unsuccessful candidate who is a lawyer is
4 subject to lawyer discipline for his or her campaign conduct. A lawyer who is a
5 candidate for judicial office is subject to Rule 4-8.2(b) of the Rules Regulating The
6 Florida Bar.

7
8 F. Statement of Candidate for Judicial Office. Each candidate for a judicial office,
9 including an incumbent judge, shall file a statement with the qualifying officer within 10
10 days after filing the appointment of campaign treasurer and designation of campaign
11 depository, stating that the candidate has read and understands the requirements of the
12 Florida Code of Judicial Conduct. Such statement shall be in substantially the following
13 form:

14
15
16 STATEMENT OF CANDIDATE FOR JUDICIAL OFFICE

17
18
19 I, _____, the judicial candidate, have received, have read, and understand
20 the requirements of the Florida Code of Judicial Conduct.

21
22
23 Signature of Candidate

24
25
26 Date

cited in Wolfson v. Concannon, No. 11-17634 archived on January 21, 2016

27
28
29 COMMENTARY

30
31 Canon 7A(1). A judge or candidate for judicial office retains the right to participate in the
32 political process as a voter.

33
34 Where false information concerning a judicial candidate is made public, a judge or
35 another judicial candidate having knowledge of the facts is not prohibited by Section
36 7A(1) from making the facts public.

37
38 Section 7A(1)(a) does not prohibit a candidate for elective judicial office from retaining
39 during candidacy a public office such as county prosecutor, which is not "an office in a
40 political organization."

41
42 Section 7A(1)(b) does not prohibit a judge or judicial candidate from privately
43 expressing his or her views on judicial candidates or other candidates for public office.

44
45 A candidate does not publicly endorse another candidate for public office by having that
46 candidate's name on the same ticket.

1 Canon 7A(3)(b). Although a judicial candidate must encourage members of his or her
2 family to adhere to the same standards of political conduct in support of the candidate
3 that apply to the candidate, family members are free to participate in other political
4 activity.

5
6 Canon 7A(3)(e). Section 7A(3)(e) prohibits a candidate for judicial office from making
7 statements that commit the candidate regarding cases, controversies or issues likely to
8 come before the court. As a corollary, a candidate should emphasize in any public
9 statement the candidate's duty to uphold the law regardless of his or her personal
10 views. Section 7A(3)(e) does not prohibit a candidate from making pledges or promises
11 respecting improvements in court administration. Nor does this Section prohibit an
12 incumbent judge from making private statements to other judges or court personnel in
13 the performance of judicial duties. This Section applies to any statement made in the
14 process of securing judicial office, such as statements to commissions charged with
15 judicial selection and tenure and legislative bodies confirming appointment.

16
17 Canon 7B(2). Section 7B(2) provides a limited exception to the restrictions imposed by
18 Sections 7A(1) and 7D. Under Section 7B(2), candidates seeking reappointment to the
19 same judicial office or appointment to another judicial office or other governmental office
20 may apply for the appointment and seek appropriate support.

21
22 Although under Section 7B(2) non-judge candidates seeking appointment to judicial
23 office are permitted during candidacy to retain office in a political organization, attend
24 political gatherings and pay ordinary dues and assessments, they remain subject to
25 other provisions of this Code during candidacy. See Sections 7B(1), 7B(2)(a), 7E and
26 Application Section.

27
28 Canon 7C. The term "limited campaign activities" is not intended to permit the use of
29 common forms of campaign advertisement which include, but are not limited to,
30 billboards, bumperstickers, media commercials, newspaper advertisements, signs, etc.
31 Informational brochures about the merit retention system, the law, the legal system or
32 the administration of justice, and neutral, factual biographical sketches of the candidates
33 do not violate this provision.

34
35 Active opposition is difficult to define but is intended to include any form of organized
36 public opposition or an unfavorable vote on a bar poll. Any political activity engaged in
37 by members of a judge's family should be conducted in the name of the individual family
38 member, entirely independent of the judge and without reference to the judge or to the
39 judge's office.

40
41 Canon 7D. Neither Section 7D nor any other section of the Code prohibits a judge in the
42 exercise of administrative functions from engaging in planning and other official
43 activities with members of the executive and legislative branches of government. With
44 respect to a judge's activity on behalf of measures to improve the law, the legal system
45 and the administration of justice, see Commentary to Section 4B and Section 4C and its
46 Commentary.

Application of the Code of Judicial Conduct

This Code applies to justices of the Supreme Court and judges of the District Courts of Appeal, Circuit Courts, and County Courts.

Anyone, whether or not a lawyer, who performs judicial functions, including but not limited to a civil traffic infraction hearing officer, court commissioner, general or special magistrate, domestic relations commissioner, child support hearing officer, or judge of compensation claims, shall, while performing judicial functions, conform with Canons 1, 2A, and 3, and such other provisions of this Code that might reasonably be applicable depending on the nature of the judicial function performed.

Any judge responsible for a person who performs a judicial function should require compliance with the applicable provisions of this Code.

If the hiring or appointing authority for persons who perform a judicial function is not a judge then that authority should adopt the applicable provisions of this Code.

A. Civil Traffic Infraction Hearing Officer

A civil traffic infraction hearing officer:

(1) is not required to comply with Section 5C(2), 5D(2) and (3), 5E, 5F, and 5G, and Sections 6B and 6C.

(2) should not practice law in the civil or criminal traffic court in any county in which the civil traffic infraction hearing officer presides.

B. Retired/Senior Judge

(1) A retired judge eligible to serve on assignment to temporary judicial duty, hereinafter referred to as "senior judge," shall comply with all the provisions of this Code except Sections 5C(2), 5E, 5F(1), and 6A. A senior judge shall not practice law or serve as a mediator in a circuit in which the judge is presiding as a senior judge, and shall refrain from accepting any assignment in any cause in which the judge's present financial business dealings, investments, or other extra-judicial activities might be directly or indirectly affected.

(2) If a retired justice or judge does not desire to be assigned to judicial service, such justice or judge who is a member of The Florida Bar may engage in the practice of law and still be entitled to receive retirement compensation. The justice or judge shall then be entitled to all the rights of an attorney-at-law and no longer be subject to this Code.

COMMENTARY

1 Section A. Please see In re Florida Rules of Practice and Procedure for Traffic Courts—
2 Civil Traffic Infraction Hearing Officer Pilot Program, 559 So.2d 1101 (Fla.1990),
3 regarding civil traffic infraction hearing officers.
4
5

cited in Wolfson v. Concannon, No. 11-17634 archived on January 21, 2016

1 **Effective Date of Compliance**

2
3
4 A person to whom this Code becomes applicable shall comply immediately with all
5 provisions of this Code except Sections 5D(2), 5D(3) and 5E and shall comply with
6 these Sections as soon as reasonably possible and shall do so in any event within the
7 period of one year.

8
9
10 **COMMENTARY**

11
12 If serving as a fiduciary when selected as judge, a new judge may, notwithstanding the
13 prohibitions in Section 5E, continue to serve as fiduciary but only for that period of time
14 necessary to avoid serious adverse consequences to the beneficiary of the fiduciary
15 relationship and in no event longer than one year. Similarly, if engaged at the time of
16 judicial selection in a business activity, a new judge may, notwithstanding the
17 prohibitions in Section 5D(3), continue in that activity for a reasonable period but in no
18 event longer than one year.

cited in Wolfson v. Concannon, No. 11-17634 archived on January 21, 2016



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Arizona Judicial Branch Fiscal Year 2014 Annual Report

Fiscal Year 2014 Caseload and Financial Highlights

Statewide

- ❖ The Arizona Judicial Branch comprised 1.25% of the overall state budget.
- ❖ Arizona's courts handled an average of 8,477 new cases each business day.
- ❖ Arizona's courts handled an average of 45 Jury Trials and an average of 254 Non-Jury Trials each week.
- ❖ Arizona's courts reduced their pending caseload - cases awaiting a final disposition - by 129,915 cases compared to the 2013 fiscal year.
- ❖ Over 79,000 defendants report to Arizona's Adult Probation Departments.
- ❖ Statewide, there were 2,127,823 case filings in FY 2014 in the Arizona Courts (Appellate, Superior, Tax, Justice and Municipal Courts) resulting in 9,742 more filings compared to FY 2013, an increase of 0.5%. That equates to an average of 8,477 cases filed among the Arizona courts every working day.
- ❖ Statewide, case filings increased by 0.5%, while revenue decreased by 1.7%. The trend in decreasing revenue continues to be driven by the overall decline in both criminal and civil traffic in the limited jurisdiction courts.

Fiscal Year 2014 Caseload and Financial Highlights

General Jurisdiction

- ❖ Superior Court case filings increased by 0.6% statewide. In Maricopa county, filings increased by 1.8%, while Pima county and the rural counties reported a decreases of 3.2% and 0.7%, respectively. The statewide increase was driven by increased filings in the Criminal and Domestic Relations case type categories, while the remaining categories experienced a decreased filings.
- ❖ Superior Court mental health filings decreased by 2.8% from FY 2013 to FY 2014. During the same period, terminations of mental health cases increased by 29.3%.
- ❖ Within Superior Court, the case type categories with the most significant case filing increase include; Felony (8.8%), other domestic relations (7.7%), Tort-Motor Vehicle (9.6%), adoption (9.1%) and juvenile dependency (8.0%).
- ❖ Superior Court criminal jury trials increased by 14.2% in FY 2014 when compared with FY 2013
- ❖ In FY 2014, juvenile dependency filings increased by 8.0% compared to FY 2013 and 82.7% when compared to FY 2011. During the same period, juvenile delinquency filings decreased by 10.1% and 32.5%, respectively.

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Limited Jurisdiction

- ❖ Statewide, civil traffic case filings account for 56.5% of all case filings in Justice and Municipal Courts. Civil traffic filings decreased by 3,990, or 0.4% from FY 2013 to FY 2014.
- ❖ There were 66,831 DUI charges filed in Justice and Municipal Courts. This represents a decrease of 4,507 case filings from FY 2013, or a 6.3% decrease. (Case filings in Justice and Municipal Courts are primarily counted by charge, not by defendant).
- ❖ Justice Courts reduced the pending caseload by 5.4%.
- ❖ Over 859,000 criminal and civil traffic filings were filed into municipal courts across the state during the 2014 fiscal year. These filing types make up about three quarters of the municipal court cases.

Judiciary Organizational Chart

Supreme Court

5 Justices, 6-year terms
Chief Justice, Vice Chief Justice
3 Associate Justices

Court of Appeals

22 Judges, 6-year terms

Division I, Phoenix

Chief Judge & 15 Associate Judges
Counties: Apache, Coconino, La Paz, Maricopa,
Mohave, Navajo, Yavapai, Yuma

Division II, Tucson

Chief Judge & 5 Associate Judges
Counties: Cochise, Gila, Graham, Greenlee,
Pima, Pinal, Santa Cruz

Superior Court

180 Judges, 4-year terms
Presiding Judge in each county

Apache	1	Greenlee	1	Pima	30
Cochise	5	La Paz	1	Pinal	10
Coconino	5	Maricopa	98	Santa Cruz	2
Gila	2	Mohave	7	Yavapai	7
Graham	1	Navajo	4	Yuma	6

In addition to the judicial positions listed above, there are approximately 111 full-time and part-time judges pro tempore, commissioners and hearing officers in the Superior Court.

Justice of the Peace Courts

88 Judges, 88 Precincts, 4-year terms

Apache	4	Mohave	5
Cochise	6	Navajo	6
Coconino	4	Pima	10
Gila	2	Pinal	8
Graham	2	Santa Cruz	2
Greenlee	2	Yavapai	5
La Paz	3	Yuma	3
Maricopa	26		

Municipal Courts

154 Full- and Part-time Judges, varying terms

	Judges	Courts		Judges	Courts
Apache	3	3	Mohave	5	4
Cochise	5	5	Navajo	4	4
Coconino	5	4	Pima	17	5
Gila	7	6	Pinal	9	9
Graham	3	3	Santa Cruz	2	2
Greenlee	1	1	Yavapai	12	9
La Paz	2	2	Yuma	5	4
Maricopa	75	23			

FY 2014 Case Filings by Court Level

APPELLATE	
COURT LEVEL	CASE FILINGS
SUPREME COURT	1,037
DIVISION ONE	2,630
DIVISION TWO	782
TOTAL	4,449

TRENDS
* Appellate Court case filings decreased by 256 (5.4%).
* General Jurisdiction Court case filings increased by 892 (0.4%).
* Limited Jurisdiction Court case filings increased by 9,106 (0.5%).

GENERAL JURISDICTION	
COUNTY	CASE FILINGS
APACHE	854
COCHISE	3,118
COCONINO	3,085
GILA	1,608
GRAHAM	1,306
GREENLEE	332
LA PAZ	640
MARICOPA	131,193
MOHAVE	6,638
NAVAJO	2,813
PIMA	27,309
PINAL	9,212
SANTA CRUZ	1,404
YAVAPAI	6,270
YUMA	5,388
TAX COURT	1,104
TOTAL	202,274

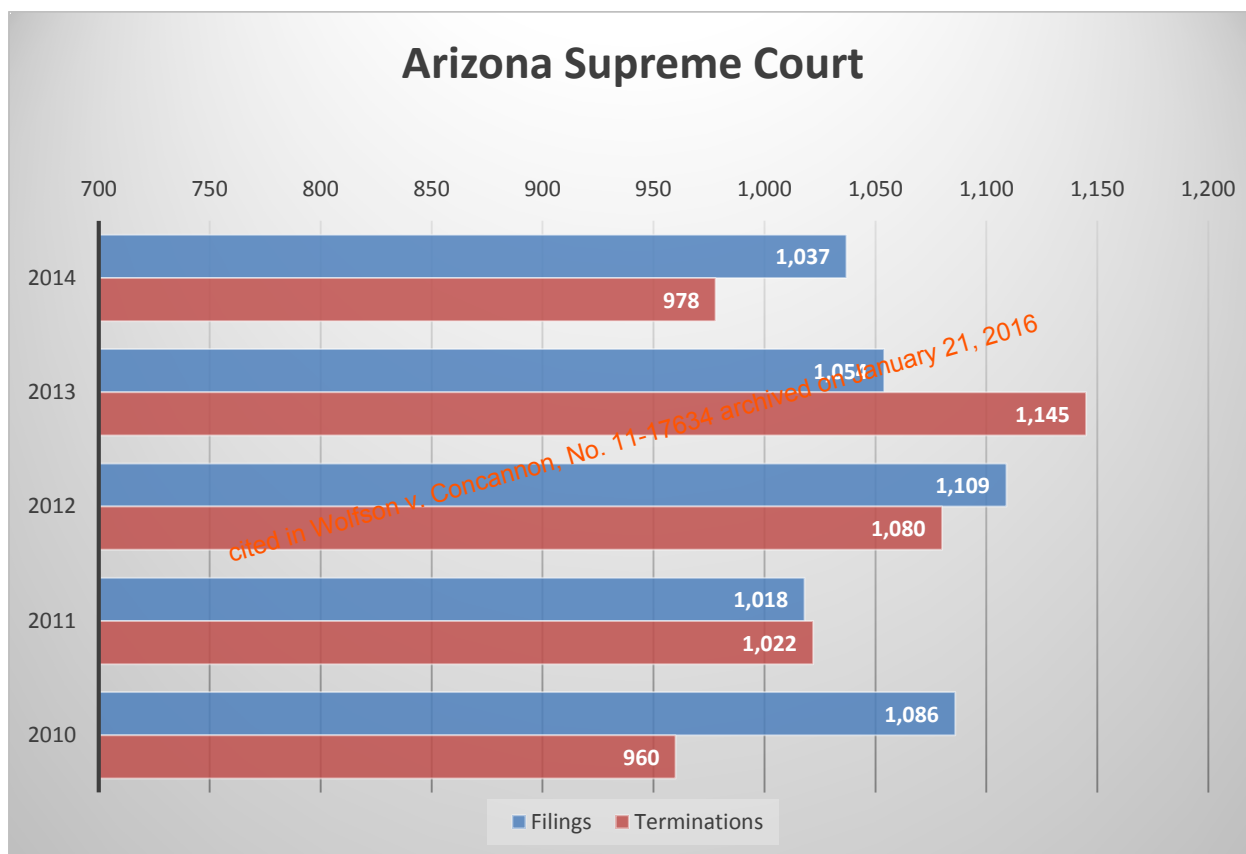
LIMITED JURISDICTION CASE FILINGS		
COUNTY	JUSTICE	MUNICIPAL
APACHE	7,737	1,413
COCHISE	40,354	4,100
COCONINO	23,446	19,768
GILA	10,048	21,031
GRAHAM	4,163	2,740
GREENLEE	3,589	645
LA PAZ	11,098	1,634
MARICOPA	315,070	743,807
MOHAVE	33,796	17,098
NAVAJO	29,847	11,040
PIMA	148,029	280,364
PINAL	46,061	25,441
SANTA CRUZ	9,737	9,080
YAVAPAI	32,864	29,808
YUMA	17,013	20,279
TOTAL	732,852	1,188,248

- Cases filed include original filings and transfers in.
- General Jurisdiction cases are counted by defendant.
- Limited Jurisdiction cases are counted by charge when filed by citation and by defendant when filed by long-form complaint.

ANNUAL CASE ACTIVITY SUMMARIES, FY 2013 – FY 2014

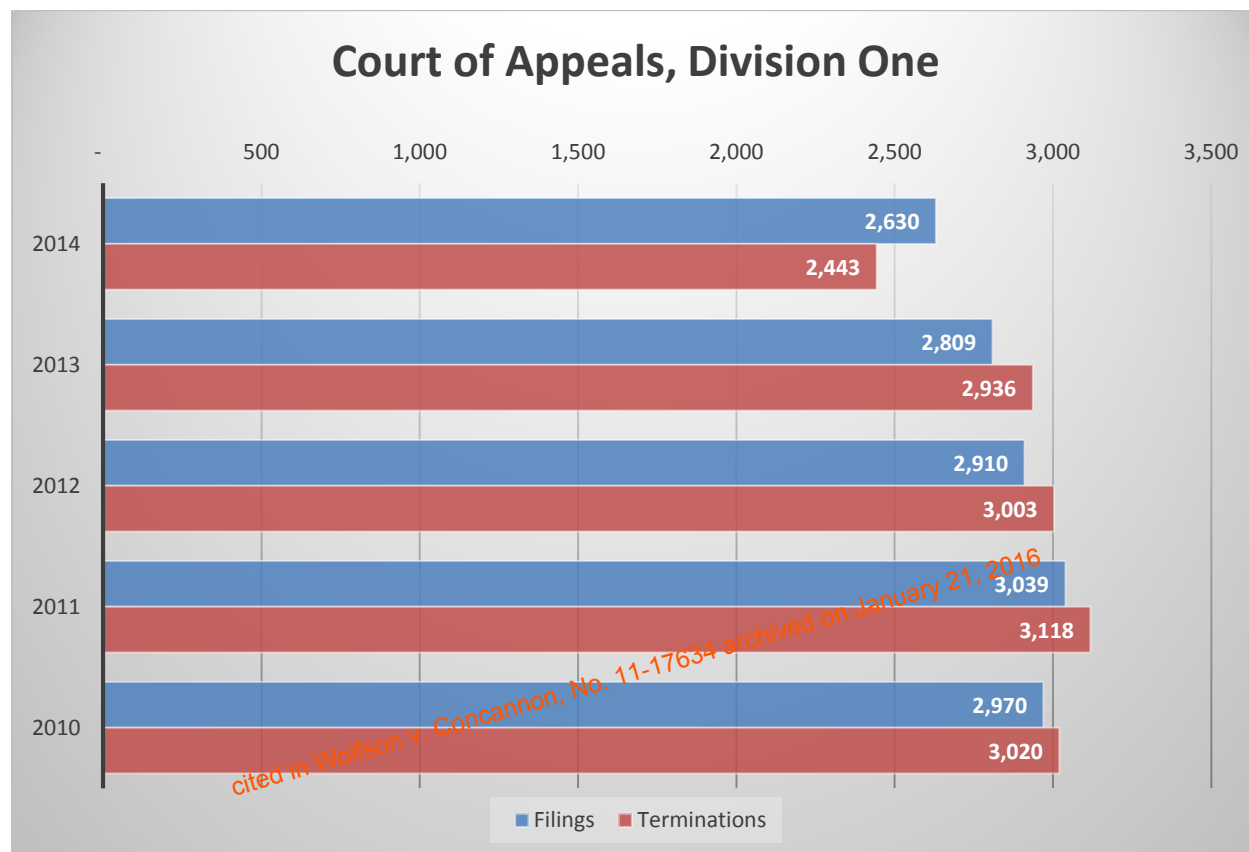
ARIZONA SUPREME COURT

- ❖ Supreme Court case filings decreased 1.6% from FY 2013 to FY 2014.
- ❖ Cases terminated by the court in FY 2014 decreased 14.6% over case terminations in FY 2013.
- ❖ The difference between filings and terminations resulted in a pending caseload increase of 18.6%. There were 334 pending cases on July 1, 2013, compared to 396 pending cases on June 30, 2014.



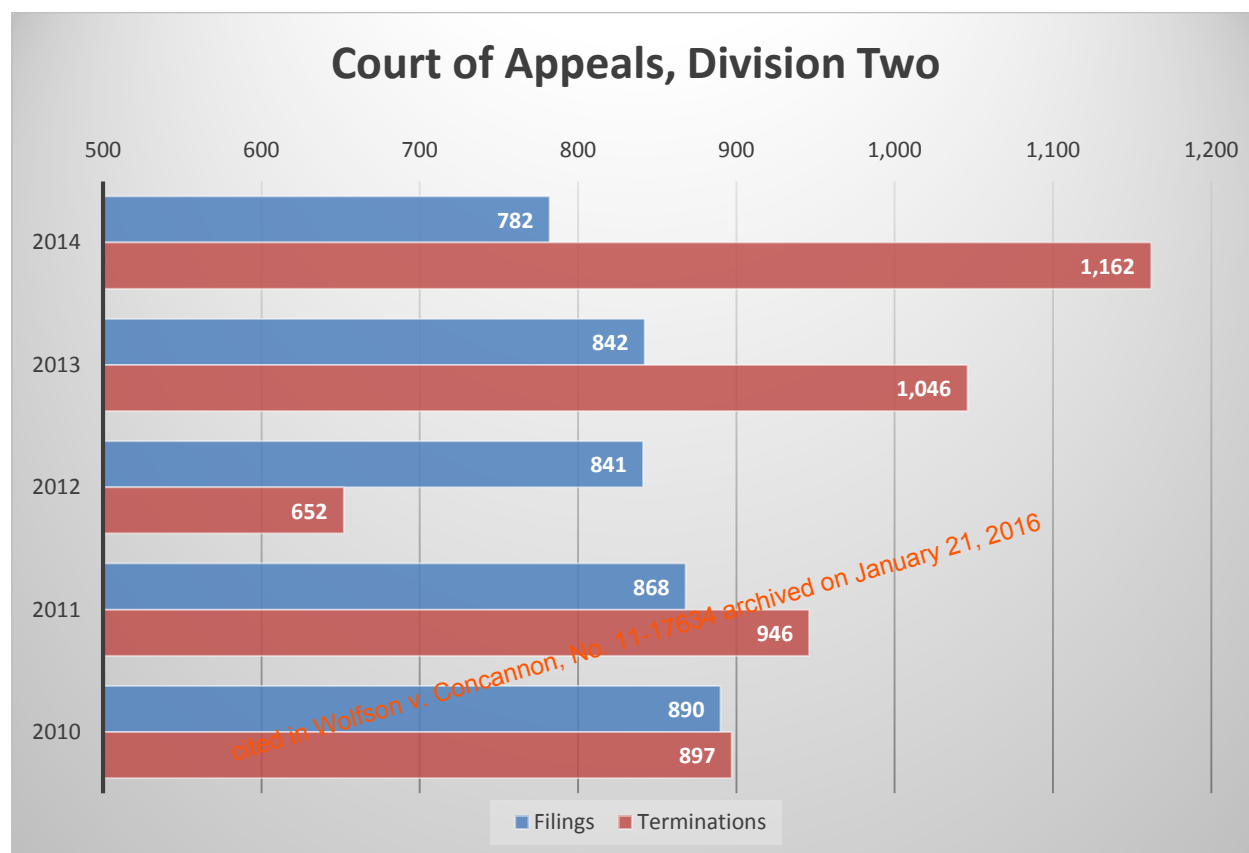
COURT OF APPEALS, DIVISION ONE

- ❖ Total filings during FY 2014 represented a 6.4% decrease from FY 2013.
- ❖ Case terminations decreased by 16.8% in FY 2014.
- ❖ Pending caseload increased by 2.8%, from 2,051 on July 1, 2013 to 2,108 on June 30, 2014.



COURT OF APPEALS, DIVISION TWO

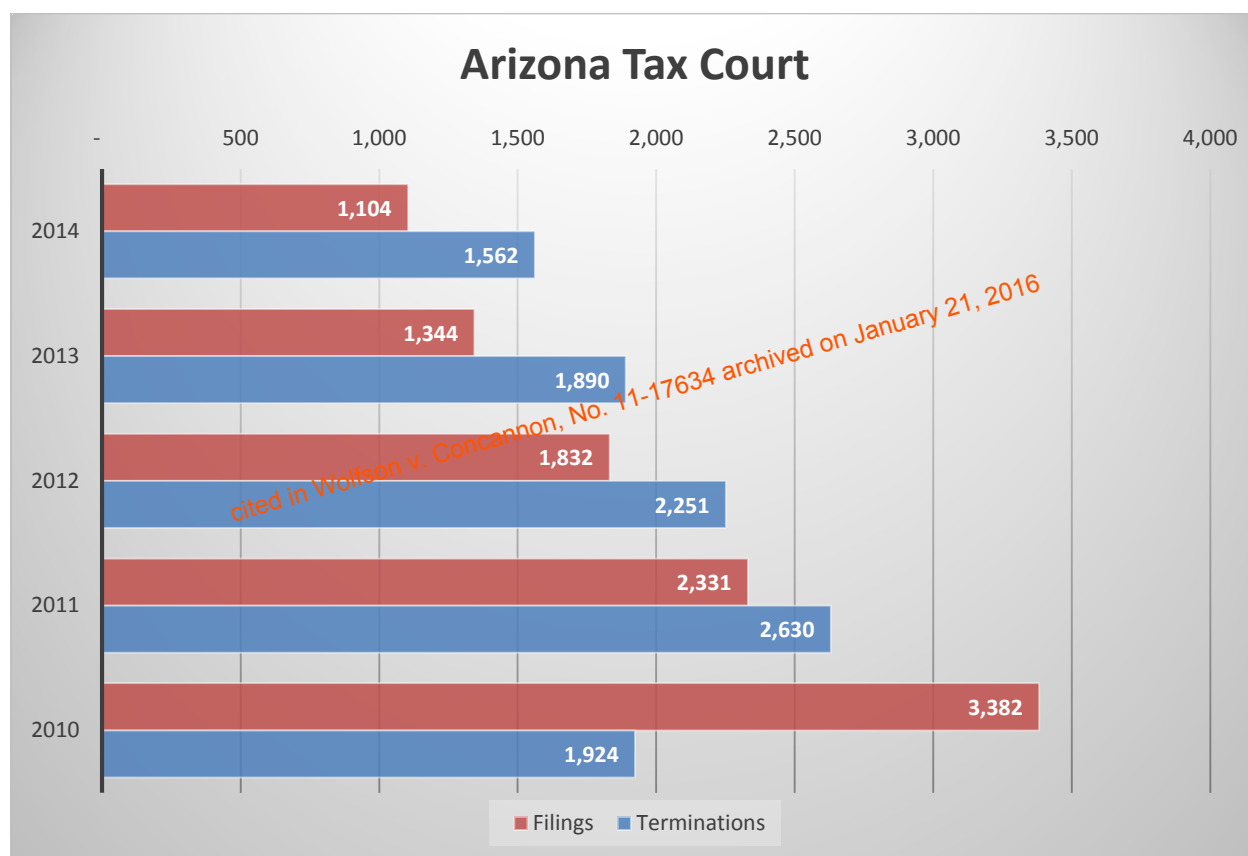
- ❖ Total filings decreased 7.1% from 842 in FY 2013 to 782 in FY 2014. Criminal filings, the largest category, comprising 30.7% of the filings decreased 4.0% from 250 in FY 2013 to 240 in FY 2014.
- ❖ Case terminations increased by 11.1% in FY 2014.
- ❖ Pending caseload decreased by 24.6%, from 870 on July 1, 2013 to 656 on June 30, 2014.



ARIZONA TAX COURT

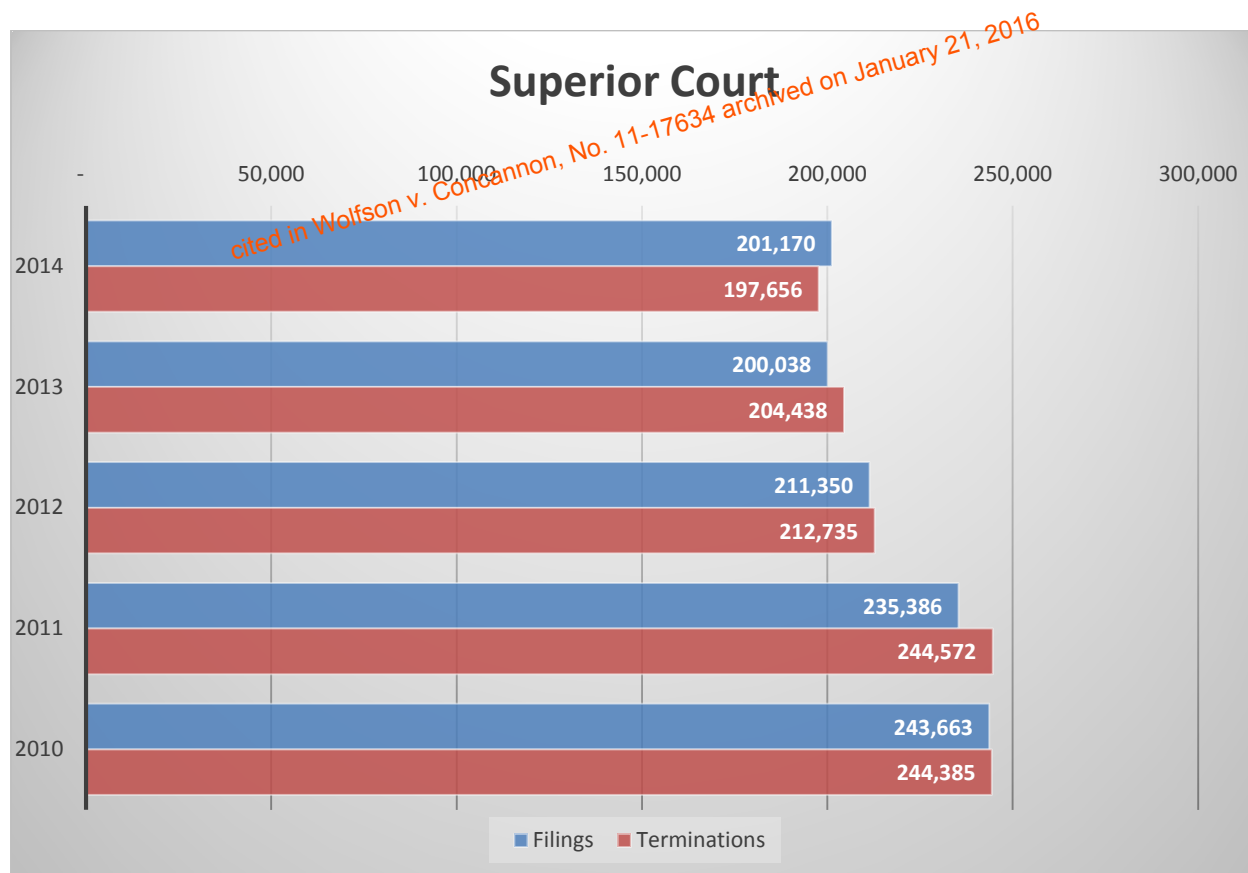
The Arizona Tax Court serves as the statewide venue for all civil actions involving a tax, impost or assessment.

- ❖ A total of 1,104 original cases were filed in the court during FY 2014, a decrease of 17.9% from the 1,344 cases filed in FY 2013.
- ❖ Of the 1,104 FY 2014 original cases filed, 922 were property tax actions, accounting for 83.5% of the total original filings.
- ❖ A total of 1,562 cases were terminated, 715 or 45.8% by judgment. Cases terminated by judgment decreased 16.1% from FY 2013.
- ❖ As of June 30, 2014, there were 786 cases pending in the tax court. Total cases pending decreased 34.2% from FY 2013.



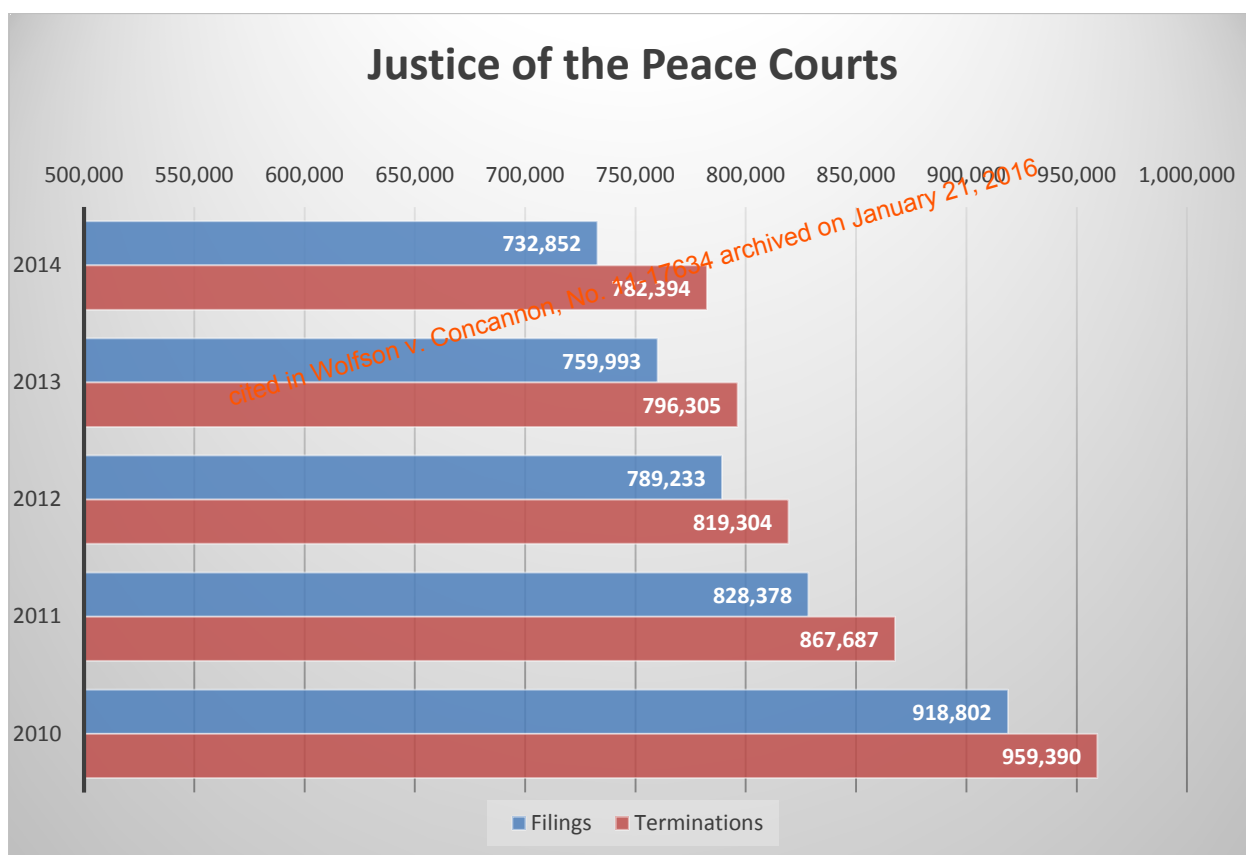
SUPERIOR COURT

- ❖ In FY 2014, total case filings increased by 0.6% from FY 2013.
- ❖ Total case terminations decreased by 3.3% during the same period.
- ❖ Criminal case filings increased 7.6% from 48,654 in FY 2013 to 52,363 in FY 2014. Criminal case terminations increased by 10.2% during the same period from 49,782 to 54,847.
- ❖ Domestic relations cases increased 3.0% from 49,860 in FY 2013 to 51,354 in FY 2014, and domestic relations case terminations increased 1.2% from 50,259 to 50,860. Domestic violence petition filings decreased 2.9% in Superior Court from 12,021 to 12,364 in FY 2014.
- ❖ Civil case filings decreased 5.6% from 62,770 in FY 2013 to 59,267 in FY 2014. During the same period, civil case terminations also decreased 11.8% from 65,148 to 57,431.
- ❖ There were 204,784 total cases pending on July 1, 2013, compared with 209,410 cases pending on June 30, 2014, an increase of 2.3%.
- ❖ Juvenile cases with direct filings to adult court decreased 22.2% from 257 in FY 2013 to 200 in FY 2014. Juvenile cases transferred to adult court decreased 14.3%, from 14 in FY 2013 to 12 in FY 2014. A total of 212 juvenile cases were either transferred or directly filed in adult court in FY 2014 compared to 271 in FY 2013, a decrease of 21.8%.



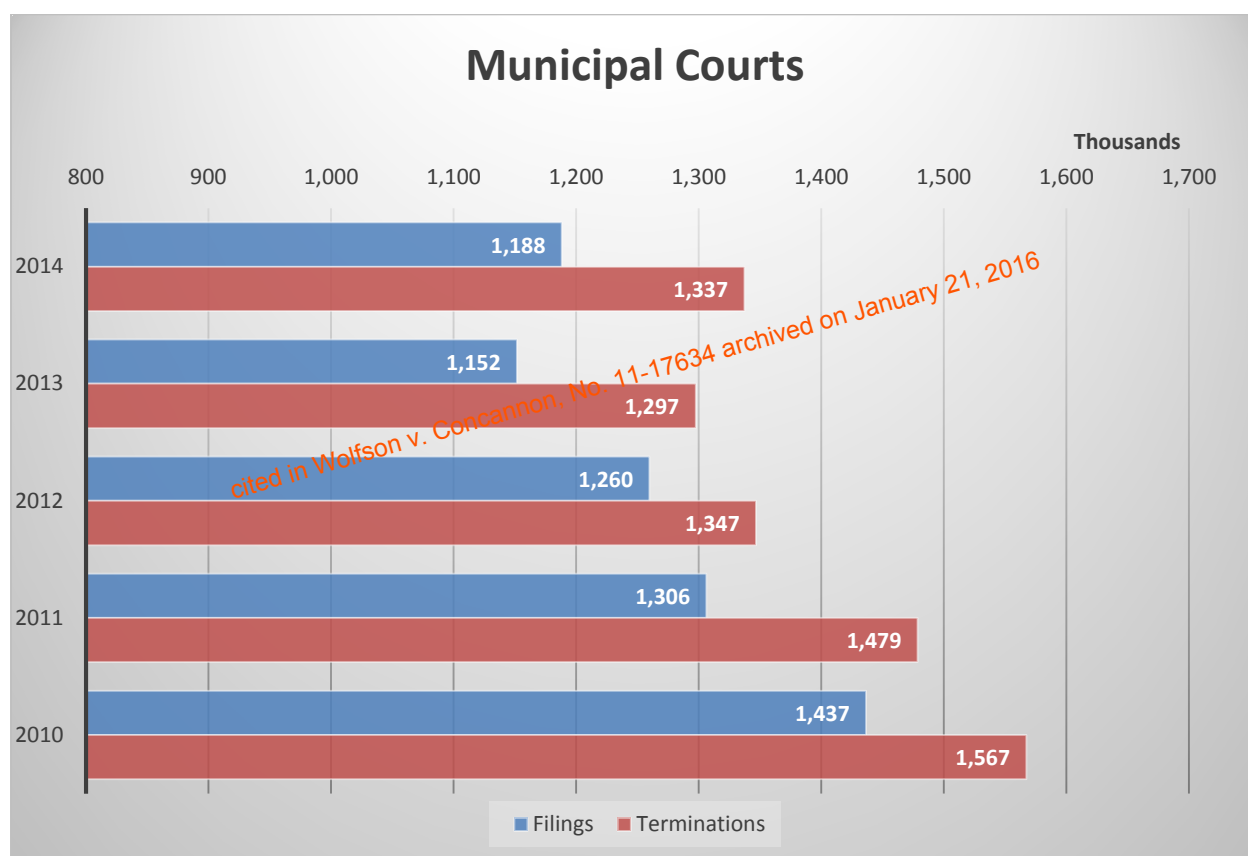
JUSTICE OF THE PEACE COURTS

- ❖ Total filings in Justice Courts decreased from 759,993 in FY 2013 to 732,852 in FY 2014, a decrease of 3.6%.
- ❖ During the same period, case terminations decreased 1.7% from 796,305 in FY 2013 to 782,394 in FY 2014.
- ❖ Criminal and civil traffic filings, which comprise almost two-thirds of all justice court filings, decreased 5.2% from 450,455 in FY 2013 to 427,148 in FY 2014.
- ❖ Criminal (misdemeanor and felony) case filings decreased 3.3% from 109,091 in FY 2013 to 105,543 in FY 2014. Criminal case terminations increased 1.4% from 115,627 in FY 2013 to 117,229 in FY 2014.
- ❖ Domestic Violence petition filings decreased 3.9% in justice courts, from 9,198 to 8,837. Petitions for Injunctions Against Harassment decreased 5.0% from 6,671 to 6,335.
- ❖ Total cases pending dropped by 5.4% from 615,281 on July 1, 2013 to 581,964 on June 30, 2014.



MUNICIPAL COURTS

- ❖ Case filings in FY 2014 increased 3.2% from FY 2013. Total case terminations increased 3.1% during the same period.
- ❖ Civil and criminal traffic filings, which comprise about three-fourths of all municipal court cases, increased 1.5%, from 846,377 in FY 2013 to 859,373 in FY 2014.
- ❖ Criminal misdemeanor case filings increased 7.9% from 211,174 in FY 2013 to 227,869 in FY 2014. Criminal misdemeanor case terminations increased 3.7% from 255,472 in FY 2013 to 264,874 in FY 2014.
- ❖ Domestic Violence petitions increased 2.5% from 12,927 in FY 2013 to 13,256 in FY 2014. Petitions for Injunctions against Harassment increased 1.6%, from 7,144 in FY 2013 to 7,256 in FY 2014.
- ❖ Total cases pending decreased 14.1%, from 713,520 on July 1, 2012 to 612,800 on June 30, 2014.



ADULT PROBATION

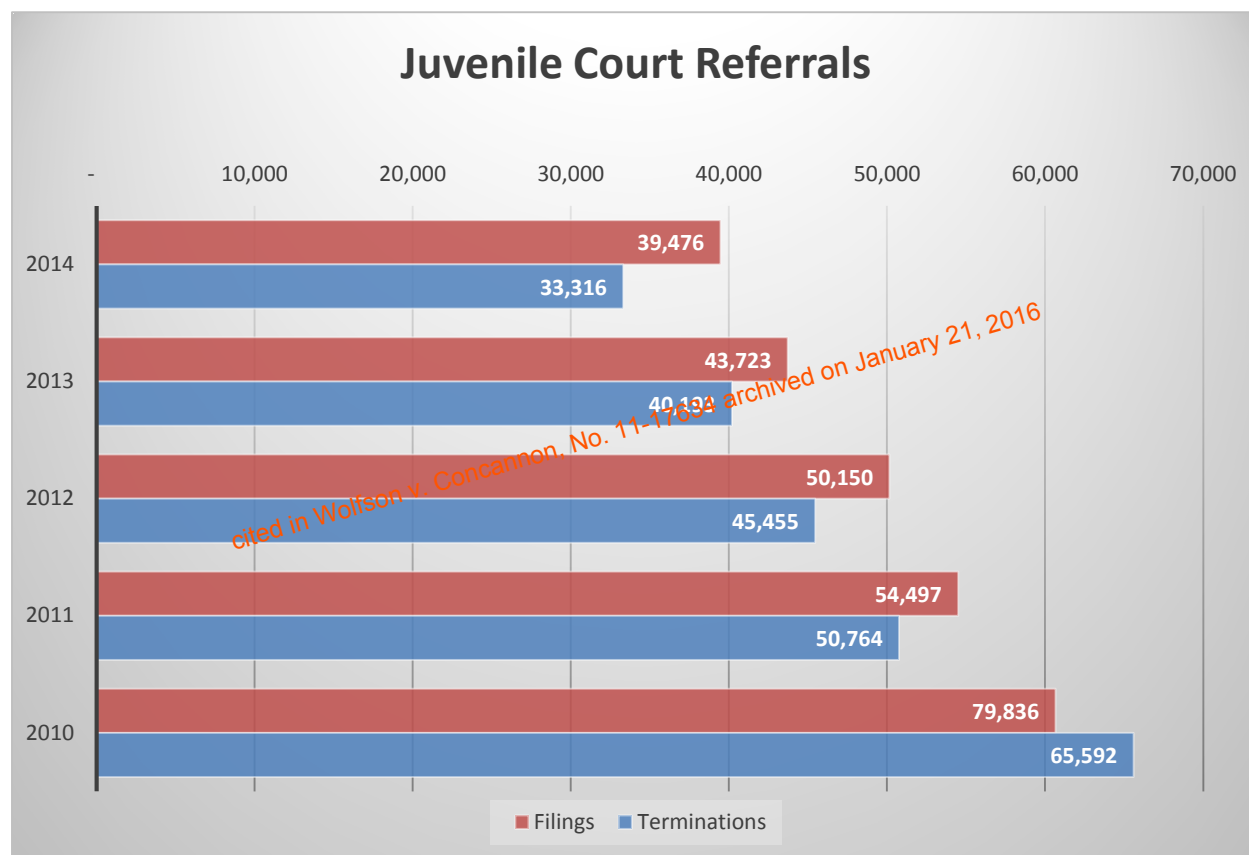
- ❖ The number of individuals under the jurisdiction of Arizona adult probation departments at the end of FY 2014 increased 0.9% from 78,499 on July 1, 2013 to 79,185 on June 30, 2014.
- ❖ Of the 79,185 individuals under the jurisdiction of adult probation, 41,614 were on standard probation (36,226 were under direct supervision in the state and 5,388 were under indirect supervision through interstate compact or long term residential treatment), 2,557 on intensive probation (2,373 were direct supervision and 184 were on indirect supervision), and 35,014 were on administrative supervision (unsupervised, report only, deported, etc.).

cited in Wolfson v. Concannon, No. 11-17634 archived on January 21, 2016

JUVENILE COURT / PROBATION

JUVENILE COURT REFERRALS

- ❖ There were 39,476 referrals to juvenile court in FY 2014, a 9.7% decrease compared to 43,723 in the previous year.
- ❖ 33,316 referrals were terminated in FY 2014, a 17.1% decrease compared to the 40,193 referrals terminated in FY 2013.



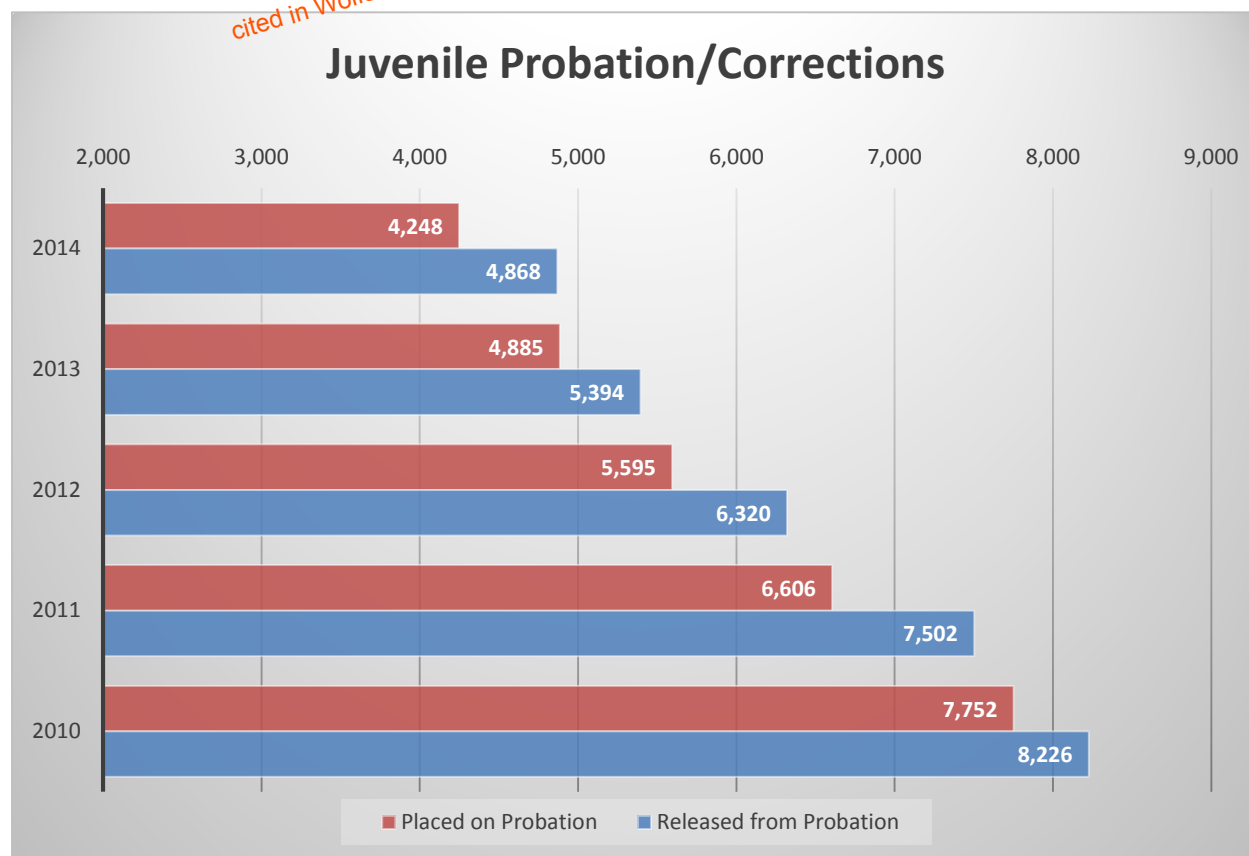
JUVENILE COURT PETITIONS

- ❖ A total of 14,953 petitions were filed in FY 2014, an 11.3% decrease from the 16,849 petitions filed in FY 2013.
- ❖ A total of 14,298 petitions were terminated in FY 2014, a 14.0% decrease from the 16,624 terminated in FY 2013.

JUVENILE PROBATION/CORRECTIONS

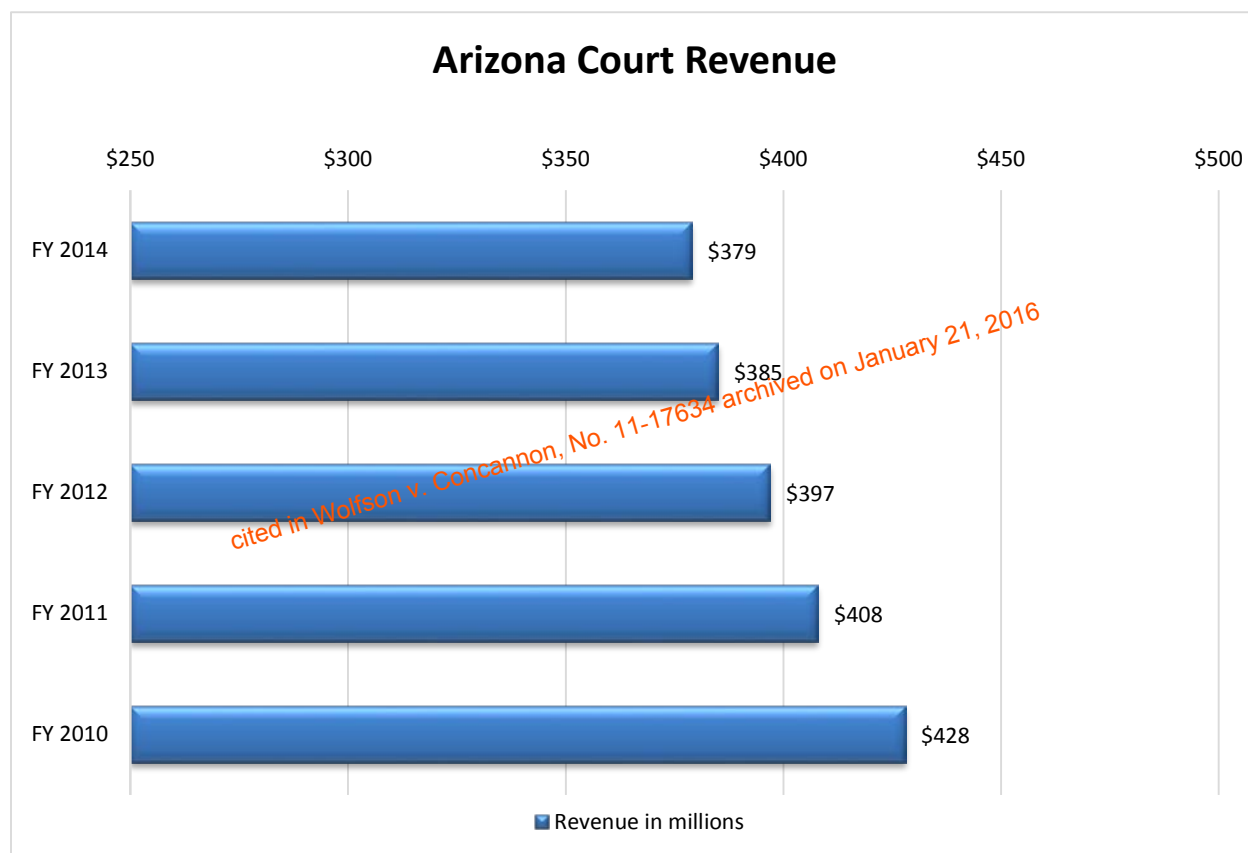
- ❖ The number of juveniles on probation at the end of FY 2014 decreased 12.8% from 4,853 on July 1, 2013 to 4,233 on June 30, 2014.
- ❖ A total of 4,248 adjudicated juveniles were placed on probation in FY 2014, a 13.0% decrease from the 4,885 youths placed on probation in FY 2013.
- ❖ 4,868 juveniles were released from probation, a decrease of 9.8% from the 5,394 terminated last year.
- ❖ 470 juveniles were committed to the Arizona Department of Juvenile Corrections during FY 2014, a decrease of 0.6% from the 473 committed last year.

cited in Wolfson v. Concannon, No. 11-17634 archived on January 21, 2016

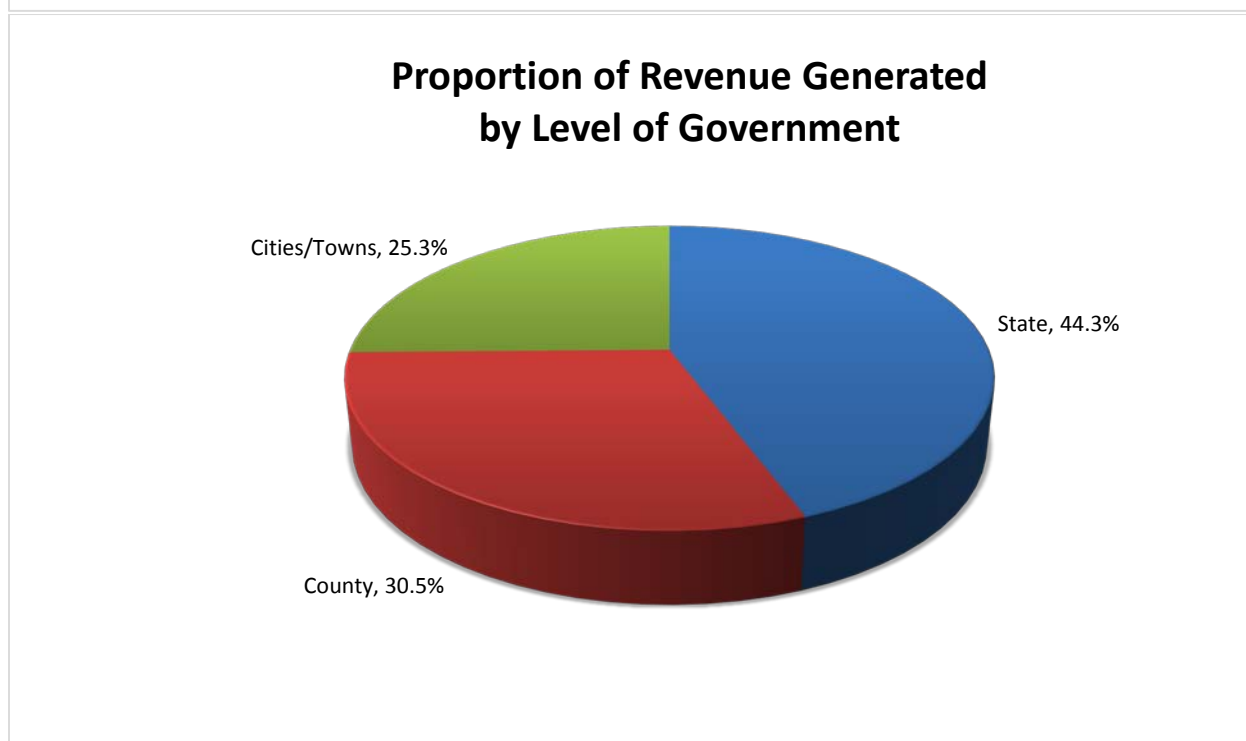
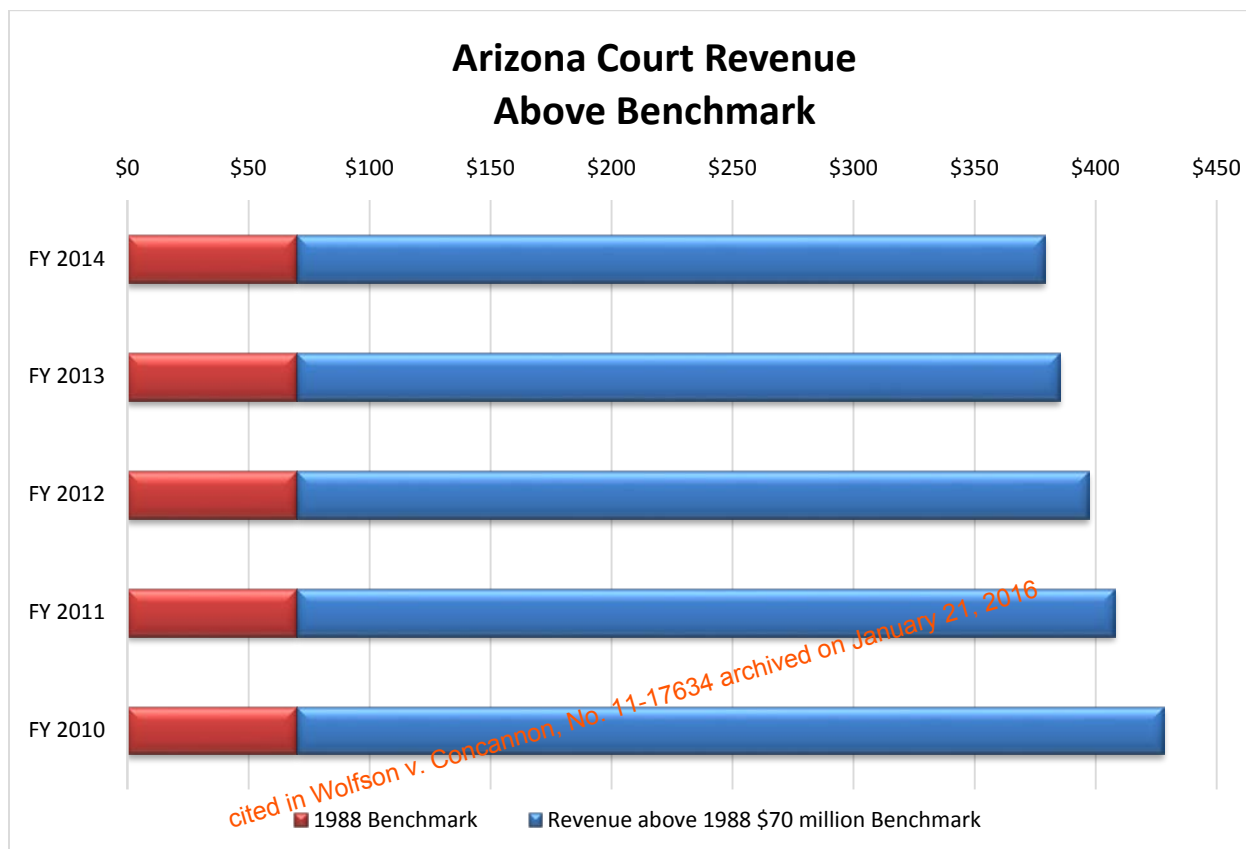


ANNUAL REVENUE SUMMARY

- ❖ Total statewide court revenue decreased 1.7% from \$385.4 million in FY 2013 to \$378.7 million in FY 2014. The decrease in revenue was driven by the overall decline in both criminal and civil traffic in the limited jurisdiction courts.



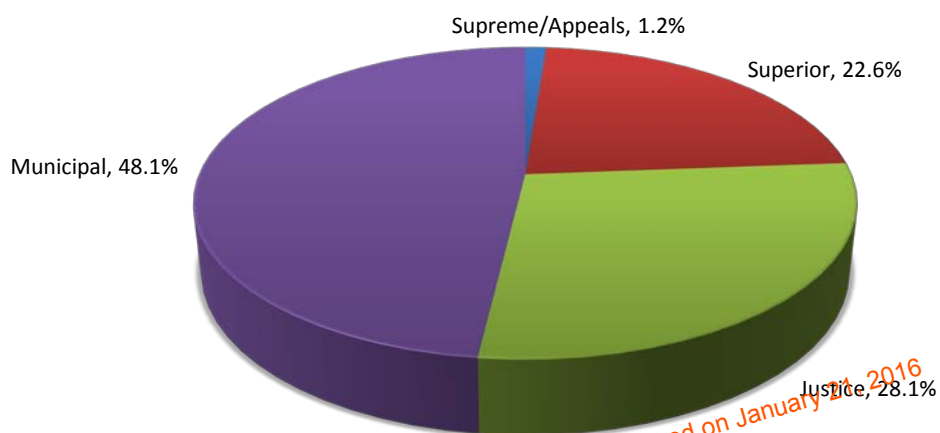
- ❖ The graph below represents the trend in increased court revenue above the \$70 million benchmark established in FY 1988. Since that time, courts have collected approximately \$4.437 billion in additional revenue.
- ❖ Of the total court system revenue, the state received 44.3 %, counties received 30.5% and cities and towns received 25.3%.



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- ❖ 48.1% of total court revenue was generated by municipal courts, 28.1% by justice courts, 22.6% by Superior Court and 1.2% by appellate courts.
- ❖ Total restitution payments for victims collected increased by 9.5% from \$17.8 million in FY 2013 to \$19.5 million in FY 2014.

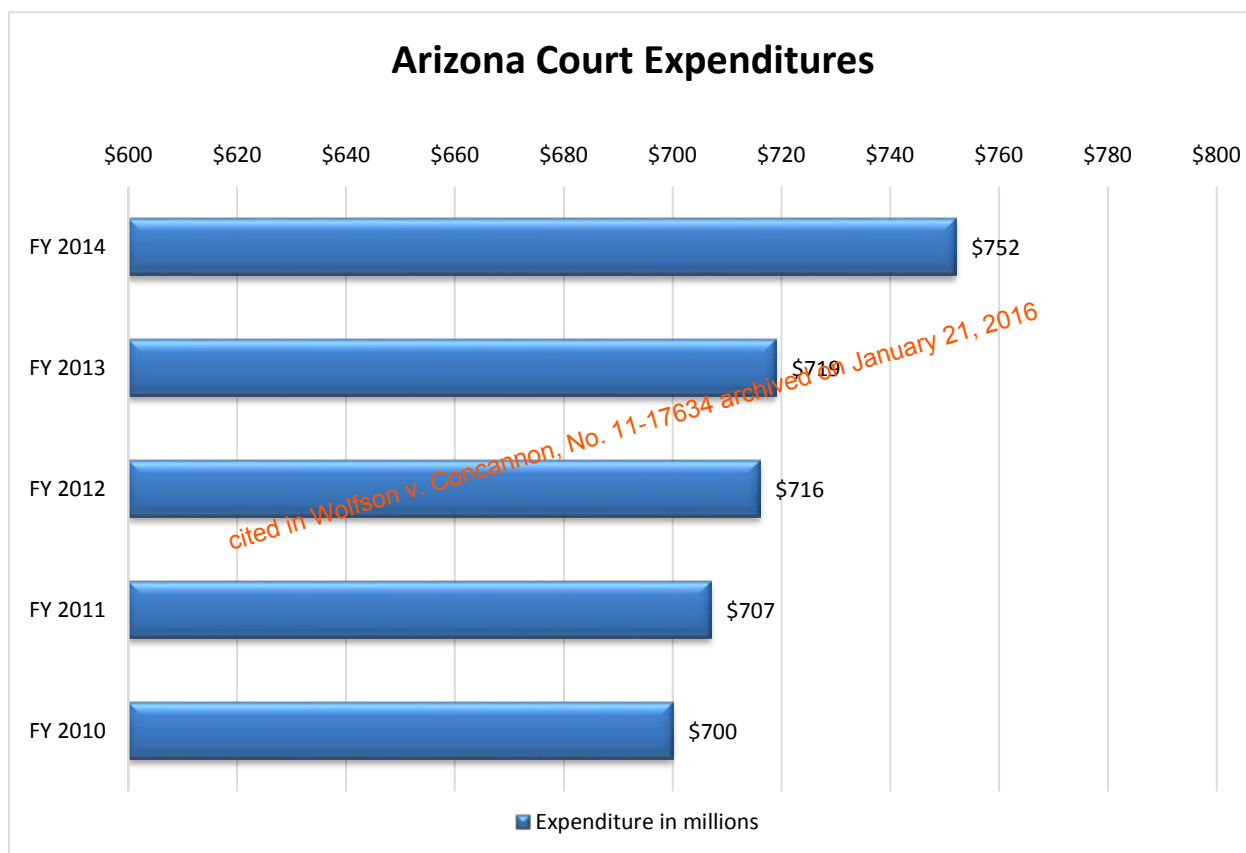
Proportion of Revenue Generated by Court Level



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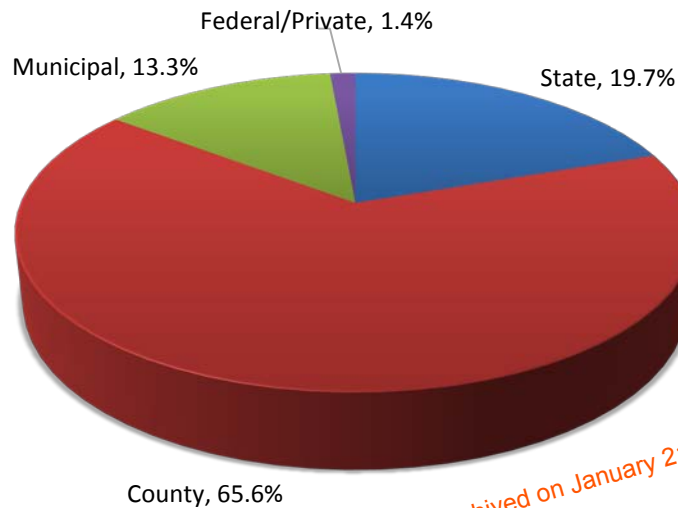
ANNUAL EXPENDITURE SUMMARY

- ❖ Total statewide court expenditures increased 4.6% from \$719.0 million in FY 2013 to \$752.4 million in FY 2014.



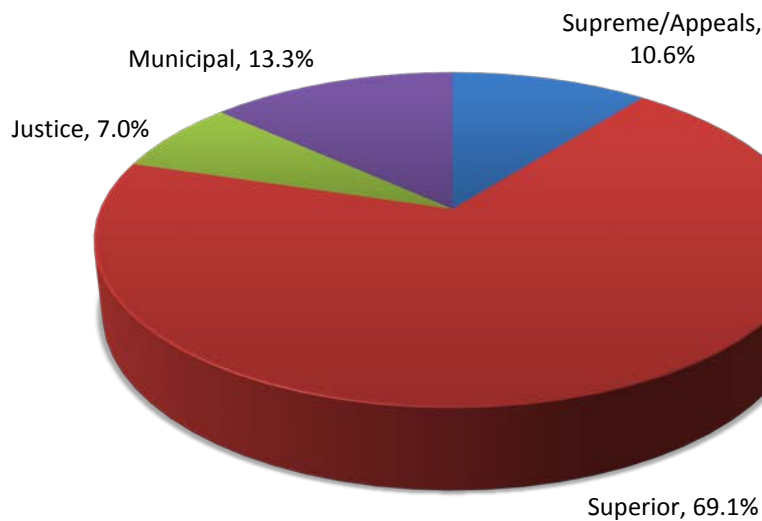
- ❖ 65.6% of the total funds spent by the court system were from the counties, 19.7% from the state, 13.3% from cities and towns, and 1.4% from federal and private sources.
- ❖ 69.1% of total court expenditures were in Superior Court (including probation), 13.3% in municipal courts, 10.6% at the appellate level and 7.0% in the justice courts.

Proportion of Expenditures by Government



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Proportion of Expenditures by Court Level



United States Court of Appeals for the Ninth Circuit

Office of the Clerk
95 Seventh Street
San Francisco, CA 94103

Information Regarding Judgment and Post-Judgment Proceedings**Judgment**

- This Court has filed and entered the attached judgment in your case. Fed. R. App. P. 36. Please note the filed date on the attached decision because all of the dates described below run from that date, not from the date you receive this notice.

Mandate (Fed. R. App. P. 41; 9th Cir. R. 41-1 & -2)

- The mandate will issue 7 days after the expiration of the time for filing a petition for rehearing or 7 days from the denial of a petition for rehearing, unless the Court directs otherwise. To file a motion to stay the mandate, file it electronically via the appellate ECF system or, if you are a pro se litigant or an attorney with an exemption from using appellate ECF, file one original motion on paper.

Petition for Panel Rehearing (Fed. R. App. P. 40; 9th Cir. R. 40-1)**Petition for Rehearing En Banc (Fed. R. App. P. 35; 9th Cir. R. 35-1 to -3)****(1) A. Purpose (Panel Rehearing):**

- A party should seek panel rehearing only if one or more of the following grounds exist:
 - ▶ A material point of fact or law was overlooked in the decision;
 - ▶ A change in the law occurred after the case was submitted which appears to have been overlooked by the panel; or
 - ▶ An apparent conflict with another decision of the Court was not addressed in the opinion.
- Do not file a petition for panel rehearing merely to reargue the case.

B. Purpose (Rehearing En Banc)

- A party should seek en banc rehearing only if one or more of the following grounds exist:

- ▶ Consideration by the full Court is necessary to secure or maintain uniformity of the Court's decisions; or
- ▶ The proceeding involves a question of exceptional importance; or
- ▶ The opinion directly conflicts with an existing opinion by another court of appeals or the Supreme Court and substantially affects a rule of national application in which there is an overriding need for national uniformity.

(2) Deadlines for Filing:

- A petition for rehearing may be filed within 14 days after entry of judgment. Fed. R. App. P. 40(a)(1).
- If the United States or an agency or officer thereof is a party in a civil case, the time for filing a petition for rehearing is 45 days after entry of judgment. Fed. R. App. P. 40(a)(1).
- If the mandate has issued, the petition for rehearing should be accompanied by a motion to recall the mandate.
- See Advisory Note to 9th Cir. R. 40-1 (petitions must be received on the due date).
- An order to publish a previously unpublished memorandum disposition extends the time to file a petition for rehearing to 14 days after the date of the order of publication or, in all civil cases in which the United States or an agency or officer thereof is a party, 45 days after the date of the order of publication. 9th Cir. R. 40-2.

(3) Statement of Counsel

- A petition should contain an introduction stating that, in counsel's judgment, one or more of the situations described in the "purpose" section above exist. The points to be raised must be stated clearly.

(4) Form & Number of Copies (9th Cir. R. 40-1; Fed. R. App. P. 32(c)(2))

- The petition shall not exceed 15 pages unless it complies with the alternative length limitations of 4,200 words or 390 lines of text.
- The petition must be accompanied by a copy of the panel's decision being challenged.
- An answer, when ordered by the Court, shall comply with the same length limitations as the petition.
- If a pro se litigant elects to file a form brief pursuant to Circuit Rule 28-1, a petition for panel rehearing or for rehearing en banc need not comply with Fed. R. App. P. 32.

- The petition or answer must be accompanied by a Certificate of Compliance found at Form 11, available on our website at www.ca9.uscourts.gov under *Forms*.
- You may file a petition electronically via the appellate ECF system. No paper copies are required unless the Court orders otherwise. If you are a pro se litigant or an attorney exempted from using the appellate ECF system, file one original petition on paper. No additional paper copies are required unless the Court orders otherwise.

Bill of Costs (Fed. R. App. P. 39, 9th Cir. R. 39-1)

- The Bill of Costs must be filed within 14 days after entry of judgment.
- See Form 10 for additional information, available on our website at www.ca9.uscourts.gov under *Forms*.

Attorneys Fees

- Ninth Circuit Rule 39-1 describes the content and due dates for attorneys fees applications.
- All relevant forms are available on our website at www.ca9.uscourts.gov under *Forms* or by telephoning (415) 355-7806.

Petition for a Writ of Certiorari

- Please refer to the Rules of the United States Supreme Court at www.supremecourt.gov

Counsel Listing in Published Opinions

- Please check counsel listing on the attached decision.
- If there are any errors in a published opinion, please send a letter **in writing within 10 days** to:
 - ▶ Thomson Reuters; 610 Opperman Drive; PO Box 64526; St. Paul, MN 55164-0526 (Attn: Jean Green, Senior Publications Coordinator);
 - ▶ and electronically file a copy of the letter via the appellate ECF system by using “File Correspondence to Court,” or if you are an attorney exempted from using the appellate ECF system, mail the Court one copy of the letter.

United States Court of Appeals for the Ninth Circuit

BILL OF COSTS

This form is available as a fillable version at:

<http://cdn.ca9.uscourts.gov/datastore/uploads/forms/Form%2010%20-%20Bill%20of%20Costs.pdf>.

Note: If you wish to file a bill of costs, it MUST be submitted on this form and filed, with the clerk, with proof of service, within 14 days of the date of entry of judgment, and in accordance with 9th Circuit Rule 39-1. A late bill of costs must be accompanied by a motion showing good cause. Please refer to FRAP 39, 28 U.S.C. § 1920, and 9th Circuit Rule 39-1 when preparing your bill of costs.

v. 9th Cir. No.

The Clerk is requested to tax the following costs against:

Cost Taxable under FRAP 39, 28 U.S.C. § 1920, 9th Cir. R. 39-1	REQUESTED <i>(Each Column Must Be Completed)</i>				ALLOWED <i>(To Be Completed by the Clerk)</i>			
	No. of Docs.	Pages per Doc.	Cost per Page*	TOTAL COST	No. of Docs.	Pages per Doc.	Cost per Page*	TOTAL COST
Excerpt of Record			\$	\$			\$	\$
Opening Brief			\$	\$			\$	\$
Answering Brief			\$	\$			\$	\$
Reply Brief			\$	\$			\$	\$
Other**			\$	\$			\$	\$
TOTAL:				\$	TOTAL: \$			

* *Costs per page:* May not exceed .10 or actual cost, whichever is less. 9th Circuit Rule 39-1.

** *Other:* Any other requests must be accompanied by a statement explaining why the item(s) should be taxed pursuant to 9th Circuit Rule 39-1. Additional items without such supporting statements will not be considered.

Attorneys' fees **cannot** be requested on this form.

Continue to next page

Form 10. Bill of Costs - Continued

I, , swear under penalty of perjury that the services for which costs are taxed were actually and necessarily performed, and that the requested costs were actually expended as listed.

Signature

("s/" plus attorney's name if submitted electronically)

Date

Name of Counsel:

Attorney for:

(To Be Completed by the Clerk)

Date

Costs are taxed in the amount of \$

Clerk of Court

By:

, Deputy Clerk