

# THE BIG GUNS: PART II

AN EXAMINATION OF CANONS 3 & 4 OF  
THE NEVADA CODE OF JUDICIAL ETHICS

Limited Jurisdiction Judges

2019 Summer Conference

Sparks, NV

## GOVERNING LAWS

- Justices of the Peace/Municipal Judges
  - Nevada Constitution; Article 6
  - NRS Chapter 4
  - NRS Chapter 5
  - Nevada Code of Judicial Conduct

# NEVADA CODE OF JUDICIAL CONDUCT

- Applicability: Judges and Judicial Candidates
- Judge = “anyone who is authorized to perform judicial functions, including an officer such as a magistrate, court commissioner, special master, or referee.”

## PREAMBLE TO NEVADA CODE OF JUDICIAL CONDUCT

[1] An independent, fair and impartial judiciary is indispensable to our system of justice....

[2] Judges should maintain the dignity of judicial office at all times, and avoid both impropriety and the appearance of impropriety in their professional and personal lives...

[3] The [Code] is not intended as an exhaustive guide for the conduct of judges and judicial candidates....

## WHO ENFORCES?

- Nevada Commission on Judicial Discipline
  - NRS Chapter 1
  - Procedural Rules
- Code not meant to give rise to liability or provide parties with collateral remedies.

# NCJC CANONS

- **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.
- **Canon 2:** A judge shall perform the duties of judicial office impartially, competently, and diligently.

## NCJC CANONS

- **Canon 3:** A judge shall conduct the judge's personal and extrajudicial activities to minimize the risk of conflict with the obligations of judicial office.
- **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.

## CANON 3

### **Rule 3.1 Extrajudicial Activities in General**

A judge may engage in extrajudicial activities....[h]owever” such activities shall not:

- (A) interfere with the proper performance of judicial duties;
- (B) lead to frequent disqualification of the judge;
- (C) that would appear to a reasonable person to undermine the judge’s independence, integrity, or impartiality;
- (D) that would appear to a reasonable person to be coercive; or
- (E) make use of court resources, with exceptions.



## CANON 3

### **Rule 3.2. Appearance before Governmental Bodies/Consultation with Government Officials**

No voluntary appearance at public hearing or consultation with executive or legislative body or official except:

- Matters concerning law, judicial system, administration of justice
- Knowledge/expertise acquired in judicial duties
- Acting pro se for judge's legal/economic interest/acting in fiduciary capacity

## CANON 3

### **Rule 3.3. Testifying as a Character Witness**

A judge shall not testify as character witness in any judicial/administrative/adjudicatory proceeding or vouch for character of a person, except per summons.

## CANON 3

### **Rule 3.4 Appointments to Governmental Positions**

A judge shall not accept any appointment to governmental committee, board, commission, or other position, except concerning law, legal system and the administration of justice.

## CANON 3

### **Rule 3.5 Use of Nonpublic Information**

A judge shall not intentionally disclose or use nonpublic information acquired in judicial capacity for any purpose outside of judicial duties.

## CANON 3

### **Rule 3.6 Affiliations with Discriminatory Organizations**

- Shall not hold membership in an organization that practices “invidious” discrimination on basis of race, sex, gender, religion, national origin, ethnicity or sexual orientation.
- Shall not use benefits or facilities of such organizations, if knowledge of practice of invidious discrimination.
  - Event exception.

## CANON 3

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

May participate in entities involved in law/legal system/administration of law; the above organizations including non-profit civic organizations. Activities include (with certain exceptions):

- Fundraising
- Soliciting members
- Speaking at event/receiving recognition
- Make recommendations to organization
- Serve as officer, director, trustee, nonlegal advisor

## CANON 3

### **Rule 3.8 Appointments to Fiduciary Positions**

May only act in fiduciary position for member of judge's family, subject to restrictions.

## CANON 3

### **Rule 3.9. Service as Arbitrator/Mediator**

Shall not act in such a capacity outside of official judicial duties except as expressly authorized by law.



## CANON 3

### **Rule 3.10 Practice of Law**

A judge shall not practice law.

# CANON 3

## **Rule 3.11 Financial, Business, or Remunerative Activities**

A judge may engage in certain financial activities including:

- Holding and managing investments for the judge and his family
- May only act as officer, director, manager, partner, advisor, or employee in businesses closely held by judge or family or a business primarily engaged in investment of the financial resources of the judge or members of the judge's family.
- These activities may not:
  - (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.

## CANON 3

### **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.”

## CANON 3

### **Rule 3.13. Acceptance and Reporting of Gifts, Loans, Bequests, Benefits, or Other Things of Value**

A judge may not accept any of the above “if acceptance is prohibited by law or would appear to a reasonable person to undermine the judge’s independence, integrity, or impartiality.”

Judges need not report the acceptance of certain items including (but not limited to):

- Items of limited intrinsic value
- Gifts, loans, bequests, etc. from friends, relatives and other persons whose appearance would require disqualification of the judge regardless of the gift.
- “Ordinary social hospitality”
- Judge must report acceptance of:
  - Gifts incident to a public testimonial
  - Invitations to certain events
  - Gifts, etc., from parties likely to come before the judge

## CANON 3

### **Rule 3.14 Reimbursement of Expenses and Waivers of Fees or Charges**

- Judge may accept reimbursement for costs, or waiver of fees, associated with judge's participation in permitted extrajudicial activities from sources other than employer.
- May, "if appropriate to occasion" accept reimbursement for costs for significant other but must report.
- Reimbursement must be for necessary costs which are actually incurred by the judge.

# CANON 3

## **Rule 3.15. Reporting Requirements**

A judge shall publicly report the amount or value of:

(A) (1) *compensation received for extrajudicial activities as permitted by Rule 3.12;*

(2) *gifts and other things of value as permitted by Rule 3.13(C), unless the value of such items, alone or in the aggregate with other items received from the same source in the same calendar year, does not exceed \$200; and*

(3) *reimbursement of expenses and waiver of fees or charges permitted by Rule 3.14(A), unless the amount of reimbursement or waiver, alone or in the aggregate with other reimbursements or waivers received from the same source in the same calendar year, does not exceed \$200.*

Report must include date, place, and nature of the activity for which compensation received; the description of any gift, loan, bequest, etc. accepted; the source of reimbursement of expenses or waiver of fees or charges.

Report must be made annually and is a public document.

## CANON 4

### **Rule 4.1 Political and Campaign Activities...in General**

Judge or judicial candidate may not:

- Engage in certain activities involving a political organization
- Publicly endorse or oppose a candidate for political office
- Use campaign contributions for private benefit
- Use court resources for a campaign for judicial office
- Make statements that are false or misleading, would affect the outcome or impair fairness of a pending court matter, make promises inconsistent with impartial performance of judicial office

## CANON 4

### **Rule 4.1 (continued)**

A judge may:

- Attend political gatherings, attend/purchase tickets for events sponsored by a political organization or a candidate for public office;
- Upon request, identify as a member of a political party;
- Be a member of, or make a contribution to a political organization;
- Make a contribution to a candidate for public office;
- Make a public declaration of candidacy;
- Make a public speech or appearance or speak on his or her own behalf;
- Appear in newspaper, television, or other media.





## CANON 4

### **Rule 4.2 Political and Campaign Activities of Judicial Candidates**

Judicial candidates must in part:

- Act in a manner consistent with the independent, integrity, and impartiality of the judiciary
- Comply with applicable election laws
- Review and approve all campaign statements and materials
- Comply with provisions related to campaign contributions

## CANON 4

### **Rule 4.3. Activities of Applicants for Appointive Judicial Office**

Applicant for appointive judicial office may:

- Communicate with the appointing authority;
- Seek endorsements from any person or entity other than a partisan political organization

## CANON 4

### **Rule 4.4 Campaign Committees**

- Judicial candidate may establish a campaign committee but is responsible for ensuring the committee complies with provisions of the Code.
- Judicial candidate may direct committee to solicit and accept campaign contributions reasonable under the circumstances in amounts permitted by law and in accordance with the Code.

## QUESTIONS?

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