



THE JUDGE'S FAMILY IN THE ABA MODEL CODE OF JUDICIAL CONDUCT (2007)

(Committee Report on Ethics and Conflicts of Interest Issues by Isabel Picó Vidal, Esq.)

First, O my son, you must fear God; for in fearing Him is wisdom, and being wise you shall err in nothing.

And second, consider who you are, seeking to know yourself, which knowledge is more difficult to acquire than you can imagine. Knowing yourself, you can never become puffed up like the frog that sought to make himself as big as the ox;...

Never be guided by arbitrary interpretations of the law which often find great favor with the ignorant who pretend to sagacity...

If you must bend the rod of justice, let it not be by the weight of a gift, but by that of mercy...

Let not your own passions blind you in cases concerning others, for the mistakes that you make can never be erased, except at the expense of your own good name and even your fortune.

Selection from the Counsels of Justice which Don Quixote gave to Sancho Panza. (1611)

I Introduction

In our system of government a judge shall adhere to the very highest standards of ethics both on and off the bench and act at all times in a manner that promotes public confidence in the independence, integrity and impartiality of the judiciary. Each state, commonwealth, or territory is entitled to prepare its own rules of judicial ethics according to the judicial culture and the needs of their jurisdiction. However, in the past most states have adopted codes of judicial conduct similar to the model prepared by the American Bar Association (ABA).

Last February the American Bar Association (ABA) approved a Revised Model Code of Judicial Conduct (2007) consisting of four Canons, numbered Rules, and Comments that generally follow and explain each rule.

Canons 1 and 2 state principles of judicial ethics and address solely the judges professional duties as a judge to avoid impropriety and its appearance, and to avoid abusing the prestige of judicial office.

Canon 3 and its Rules address specific types of personal conduct, including involvement in extrajudicial activities and in business or financial activities. Canon 4 addresses acceptable political conduct of judges and judicial candidates.

The new ABA Model Code refers directly or indirectly to the family of judges and to extrajudicial activities where the judge's activities usually intersect with family activities. Therefore these sections of the code are of special concern to us.

II The Concept of the Extended Family as Defined by the ABA Model Code

The traditional concept of the family which comprises spouses and off-springs gives way to the extended family concept which includes third degree relationships (great grandparents, grandparents, uncle, aunts, grandchildren etc.), a domestic partner or other relative person with whom the judge maintains a close familial relationship). The **Terminology** section provides the following definitions:



“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 the 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.

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

“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.

Spouses and family members are not legally subject to the codes of judicial conduct but their behavior can attract embarrassing public attention questioning the judge’s ethics. At the same time, members of the judge’s family feel great restrictions and pressures when the community expects that they comply with the principles of ethics applicable to the judiciary. Therefore, we need to know the rules and act prudently regarding these issues.

III ON THE BENCH

An independent judiciary requires that the judges decide cases according to the law and facts, without regard to inappropriate outside influences including family



influences and/or economic interests. Otherwise public confidence in the judiciary is eroded.

Rules 2.4 and 2.11 of the ABA Model Code deal with this issue and provide the mechanism of disqualification to avoid conflict of interest on the part of the judge:

- **Rule 2.4**

External Influences on Judicial Conduct

(A)...

(B) **A judge shall not permit family, social, political, financial, or other interest or relationships to influence the judge's judicial conduct or judgment.**

(C)...

- **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)...

(2) **The judge knows that the judge, the judge's spouse or domestic partner, or a person within the third degree of relationship to either of them, or the spouse or domestic partner of such a person is:**

(a) **a party to the proceeding, or an officer, director, general partner, managing member, or trustee of a party;**

(b) **acting as a lawyer in the proceeding;**

(c) **a person who has more than a de minimis interest that could be substantially affected by the proceeding; or**

(d) **likely to be a material witness in the proceeding.**

(3) **The judge knows that he or she, individually or as a fiduciary, or the judge's spouse, domestic partner, parent, or child, or any other member of the judge's family residing in the judge's household, has an economic interest in the subject matter in controversy or in a party to the proceeding.**

(4)...



(5)...

(6)...

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

IV OFF THE BENCH

There are always implications for the families of judges when personal and financial activities are regulated by a judicial code. In the new ABA Code of Judicial Conduct judges are encouraged to engage in appropriate law related and other extrajudicial activities in so far as participation in both type of activities help integrate judges into their communities and furthers public understanding and respect for the courts and the judicial system. Nonetheless, Canon 3 clearly states that the judge shall conduct personal and extrajudicial activities to minimize the risk of conflict with the obligations of judicial office. Regarding off the bench activities regulated by this code we present an overview or lists of prohibited and permitted activities according to the new ABA Model Code of Judicial Conduct.



**EXTRAJUDICIAL CONDUCT REGULATED
BY THE ABA MODEL CODE**

PROHIBITED CONDUCT

Extrajudicial activities prohibited by law, this Code or that interfere with the performance of the judge's judicial duties, that lead to frequent disqualification of the judge, that undermine the judge's independence, integrity and impartiality or engage in conduct that would appear to a reasonable person to be coercive.

To make use of court premises, staff, stationary, equipment or other resources except for activities that concern the law, the legal system or the administration of justice.

Rule 3.1

Membership in organizations that discriminate on the basis of race, sex, gender, religion, national origin, ethnicity or sexual orientation.

Rule 3.6

PERMITTED CONDUCT

Subject to Rule 3.1 appropriate extrajudicial activities both law-related and other educational, religious, charitable, fraternal, or civic activities sponsored by government or non-profit organizations even when activities do not involve the law.

Rule 3.7(A)

Judge's attendance at an event in a facility of an organization that discriminates when is an isolated event not reasonably perceive as an endorsement of discriminatory practices.

Rule 3.6

Participation in educational, religious, charitable, fraternal or civic organizations subject to requirements of Rule 3.1, including the following activities:

a) Assisting and planning related to fund-raising, management, and investment of its funds. **Rule 3.7(A)(1)**

b) Soliciting contributions but only from members of the judge's family and from judges over whom he or she does not



PROHIBITED CONDUCT

PERMITTED CONDUCT

exercise supervisory or appellate authority. **Rule 3.7 (A)(2)** Only if activity is related to the law, legal system, or the administration of justice, the judge can solicit membership for the organization. **Rule 3.7(A)(3)**

c) Appearing or speaking at, receiving an award or recognition, being featured on the program but if the event serves as fund-raising purposes the judge may participate only if the event concerns the law, the legal system, or the administration of justice. **Rule 3.7 (A)(4)**

d) Making recommendations to programs and activities of public and private organizations concerned with the law, the legal system, or the administration of justice. **Rule 3.7 (A)(5).**

e) Serving as an officer, director, trustee, or non legal advisor are permitted, unless it is likely that the organization will be engaged in proceedings that would ordinarily come before the judge or in any court subject to the appellate jurisdiction of the court of which the judge is a member. **Rule 3.7 (A) (6)(a)(b).**

To encourage lawyers to provide pro-bono publico legal services. **Rule 3.7(B)**

Serve as executor, administrator, trustee, guardian, attorney-in-fact except for the estate, trust or person of a member of the judge's family

Rule 3.8



PROHIBITED CONDUCT

Practice lawyer or serve as a family member's lawyer in any forum.

Rule 3.10

Spend so much time in business activities that it interferes with judicial duties.

To use official title or appear in judicial robes in business advertising.

To conduct business or financial affairs in such a way that disqualification is frequently required.

Rule 3.11

- Accept gifts, loans, bequests, benefits or other things of value if prohibited by law or if it undermines judge's independence, integrity or impartiality.

Rule 3.13(A)

PERMITTED CONDUCT

May act pro se, and without compensation to give legal advice and draft documents for a member of the judge's family.

Rule 3.10

Engage in financial activities including holding, managing investments of the judge, and members of the judge's family subject to requirements of this Code.

Rule 3.11

Accept compensation (honoraria, stipends, fees, wages, salaries and royalties) for extrajudicial activities (speaking, writing, teaching, ect.) unless when it undermines judge's independence, integrity or impartiality.

Rule 3.12

UNLESS PROHIBITED BY LAW MAY ACCEPT **WITHOUT REPORTING** THE FOLLOWING:

- Items of little intrinsic value (plaques, certificates, trophies, greetings cards).

Rule 3.13(B)(1)

- Gifts, loans, bequests, or other things of value from friends, relatives or other persons including lawyers, whose appearance or interest in a



PROHIBITED CONDUCT

PERMITTED CONDUCT

proceeding pending or impending before the judge would in any event require disqualification under Rule 2.11.

Rule 3.13(B)(2)

- Ordinary social hospitality. **Rule 3.13(B)(3)**
- Commercial or financial opportunities and benefits including special pricing and discounts and/or loans in the regular course of business when available on the same terms to persons who are not judges. **Rule 3.13(B)(4)**
- Rewards, prizes given to competitors, receive scholarships, fellowship, if they are open to persons who are not judges, based on the same criteria and terms. **Rule 3.13(B)(5)**
- Books, magazines, journal, audiovisual materials supplied by publishers on a complementary basis for official use. **Rule 3.13(B)(7)**
- Gifts, awards or benefits associated with business profession or separate activity of spouse, domestic partner, or family member of a judge residing in the judge's household but that incidentally benefits the judge. **Rule 3.13(B)(8).**

UNLESS PROHIBITED BY LAW OR THIS CODE MAY ACCEPT THE FOLLOWING AND **MUST REPORT**



PROHIBITED CONDUCT

PERMITTED CONDUCT

ITS ACCEPTANCE:

Gifts incidental to a public testimonial, invitation to the judge, spouse, domestic partner or guest to attend bar-related function or activity related to the law, legal system or administration of justice or an event associated with any of the judge's educational, religious, charitable or civic activities. **Rule 3.13(C)(1) (2).**

Gifts, benefits from party, or person including a lawyer who has come or is likely to come before the judge or whose interest have come or is likely to come before the judge. **Rule 3.13(C)(3)**

Unless prohibited by law or by Rules 3.1 or 3.13 may accept reimbursement of expenses and waives of fees or charges for judge's participation in extrajudicial activities or by the judge's spouse, domestic partner or guest when appropriate. Such acceptance shall be reported publicly within 30 days following the conclusion of the event. The Rules require posting of information related to gifts and reimbursements on appropriate Web-sites.

It should be noticed that Comment of Rule 3.13 of ABA Model Code mentions that even when the rule applies to acceptance of gifts by a judge, if a gift or 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 evade the rule and influence the judge indirectly. Therefore spouses and family members should be aware of this rule when accepting gifts or reimbursement for



travel costs when accompanying the judge in the above mentioned private activities. In addition, the Comment of Rule 3.13 of the ABA Model Code imposes an additional obligation to the judge: “A judge should, however, remind family and household members of the restrictions imposed upon judges, and urge them to take these restrictions into account when making decisions about accepting such gifts or benefits”.

As I said at the beginning, the ABA Model Code is premised upon the supposition that a uniform system of ethical principles should apply to all authorized to perform judicial functions. But the truth of the matter is that much of what judges and their families can ethically do in their extrajudicial activities varies according to the judicial culture and special needs of each state jurisdiction.

