



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

*Committee Report on Ethics and Conflicts of Interest Issues by JFI Ethics Chair Isabel Picó Vidal, Esq.*

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

*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.*

## **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).

In February 2007 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 judge's 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 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 conflicts 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 a judge's 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 types of activities help integrate judges into their communities and further 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. An overview or lists of prohibited and permitted activities according to the new ABA Model Code of Judicial Conduct is hereby presented.

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

<b>PROHIBITED CONDUCT</b>	<b>PERMITTED CONDUCT</b>
<p>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 engaging in conduct that would appear to a reasonable person to be coercive.</p> <p>Using court premises, staff, stationary, equipment or other resources except for activities that concern the law, the legal system or the administration of justice.</p> <p style="text-align: right;"><b>Rule 3.1</b></p>	<p>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.</p> <p style="text-align: right;"><b>Rule 3.7(A)</b></p>
<p>Membership in organizations that discriminate on the basis of race, sex, gender, religion, national origin, ethnicity or sexual orientation.</p> <p style="text-align: right;"><b>Rule 3.6</b></p>	<p>Judge's attendance at an event in a facility of an organization that discriminates when it is an isolated event not reasonably perceived as an endorsement of discriminatory practices.</p> <p style="text-align: right;"><b>Rule 3.6</b></p>
	<p>Participation in educational, religious, charitable, fraternal or civic organizations subject to requirements of Rule 3.1, including the following activities:</p> <p>a) Assisting and planning related to fund-raising, management, and investment of its funds. <b>Rule 3.7(A)(1)</b></p> <p>b) Soliciting contributions but only from members of the judge's family and from judges over whom he or she does not exercise supervisory or appellate authority. <b>Rule 3.7 (A)(2)</b> Only if activity is related to the law, legal system, or the administration of justice, the judge can solicit membership for the organization. <b>Rule 3.7(A)(3)</b></p>

	<p align="center"><b>PERMITTED CONDUCT</b> <small>continued</small></p> <p>c) Appearing, speaking, receiving an award or recognition, or being featured at a program. But if the event serves fund-raising purposes the judge may participate only if the event concerns the law, the legal system, or the administration of justice. <b>Rule 3.7 (A)(4)</b></p> <p>d) Making recommendations to programs and activities of public and private organizations concerned with the law, the legal system, or the administration of justice. <b>Rule 3.7 (A) (5).</b></p> <p>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. <b>Rule 3.7 (A) (6)(a)(b)</b></p> <p>Encouraging lawyers to provide pro-bono publico legal services. <b>Rule 3.7(B)</b></p>
<p align="center"><b>PROHIBITED CONDUCT</b> <small>continued</small></p> <p>Serving as executor, administrator, trustee, guardian, attorney-in-fact except for the estate, trust or person of a member of the judge's family</p> <p align="right"><b>Rule 3.8</b></p>	
<p>Practicing law or serving as a family member's lawyer in any forum.</p> <p align="right"><b>Rule 3.10</b></p>	<p>Acting pro se, and without compensation to give legal advise and draft documents for a member of the judge's family.</p> <p align="right"><b>Rule 3.10</b></p>
<p>Spending so much time in business activities that it interferes with judicial duties.</p>	<p>Engaging in financial activities including holding and/or managing investments of the judge and members of the judge's family subject to requirements</p>

<p><b>PROHIBITED CONDUCT</b> <small>continued</small> Using official title or appearing in judicial robes in business advertising.</p> <p>Conducting business or financial affairs in such a way that disqualification is frequently required.</p> <p style="text-align: right;"><b>Rule 3.11</b></p>	<p><b>PERMITTED CONDUCT</b> <small>continued</small> of this Code.</p> <p style="text-align: right;"><b>Rule 3.11</b></p>
	<p>Accepting compensation (honoraria, stipends, fees, wages, salaries and royalties) for extrajudicial activities (speaking, writing, teaching, etc...) unless when it undermines judge's independence, integrity or impartiality.</p> <p style="text-align: right;"><b>Rule 3.12</b></p>
<p>Accepting gifts, loans, bequests, benefits or other things of value if prohibited by law or if it undermines the judge's independence, integrity or impartiality.</p> <p style="text-align: right;"><b>Rule 3.13(A)</b></p>	<p>Unless prohibited by law accepting without reporting the following:</p> <ul style="list-style-type: none"> <li>• items of little intrinsic value (plaques, certificates, trophies, greetings cards). <b>Rule 3.13(B)(1)</b></li> <li>• Gifts, loans, bequests, 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 under Rule 2.11. <b>Rule 3.13(B)(2)</b></li> <li>• Ordinary social hospitality. <b>Rule 3.13(B)(3)</b></li> <li>• 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. <b>Rule 3.13(B)(4)</b></li> </ul>

**PERMITTED CONDUCT** *continued*

- Rewards, prizes given to competitors, scholarships, and fellowships if they are open to persons who are not judges, based on the same criteria and terms. **Rule 3.13(B)(5)**
- Books, magazines, journals, audiovisual materials supplied by publishers on a complementary basis for official use. **Rule 3.13(B)(7)**
- Gifts, awards, or benefits associated with a 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 accepting the following and reporting 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 a party or person, including a lawyer who has come or is likely to come before the judge, or whose interest has come or is likely to come before the judge. **Rule 3.13(C)(3)**



	<p style="text-align: center;"><b>PERMITTED CONDUCT</b> <small>continued</small></p> <p>Unless prohibited by law or by Rules 3.1 or 3.13 accepting reimbursement of expenses and waivers 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.</p>

It should be noticed that Comment of Rule 3.13 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 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 codes of judicial conduct reflecting the judicial culture and special needs of each state jurisdiction.

*Respectfully Submitted, Isabel Picó Vidal, Esq. (PR)*

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