



## FOURTEENTH BIENNIAL STATEWIDE JUDICIAL ETHICS CONFERENCE

“Judging the Judges”

Friday, December 3, 2021, 8:30 A.M. --- 4:30 P.M.

**Location: State Services Building**

1525 Sherman Street First Floor Conference Center, Denver, Colorado 80203

Program Chair:

Edwin L. Felter, Jr.,  
Senior Administrative Law Judge (OAC)

SPONSORED BY THE COLORADO OFFICE OF ADMINISTRATIVE COURTS  
(OAC), Matthew Azer, Chief Judge

(Accredited for 6 Hours General and 5.7 Concurrent Ethics CLE Credits)

If you have questions, call or email Ed Felter (303) 866-5676 – direct

Email address: [ed.felter@state.co.us](mailto:ed.felter@state.co.us)

## **AGENDA**

Biennial Judicial Ethics Conference for Administrative Law 2021: “Judging the Judges”

Friday, December 3, 2021

1525 Sherman Street, 1<sup>st</sup> Floor Conference Center

9:00 A.M. (Registration begins at 8:30 A.M.) –4:30 P.M.

9:00 A.M. – 9:15 A.M. Introduction

9:15 A.M. – 9:45 A.M. Keynote: The Honorable Mark Martin, former Chief Justice, North Carolina Supreme Court, Dean, Regent University School of Law

9:45 A.M. – 10:45 A.M. --. “Practical Judicial Ethics Dilemmas: The Lawyer’s Perspective” (Kevin Kuhn, Esq; Andrew Efaw, Esq., Anthony Barbe, Esq.)

10:45 A.M. –11:00 A.M. Break

11:00 AM – 12:00 PM “The Appearance of Impropriety: Off the Bench” (The Honorable Federico Alvarez, former Denver District Judge, former Vice Chair, Colorado Judicial Discipline Commission)

12:00 P.M. – 1:30 P.M. Lunch on Your Own

1:30 PM. –2:15 P.M. Judicial Ethics Update (The Honorable Eric Johnson, District Judge, Denver).

2:15 P.M. – 2:20 P.M. Judicial Disqualification (Ed Felter, Judge, OAC)

2:30 P.M. – 2:45 P.M. Break

2:45 P.M. – 3:45 P.M. “Judge and Lawyer Well-Being” Jon White, Esq., Inventory Counsel, Office of Attorney Regulation Counsel

3:45 P.M. – 4:15 P.M. Americans with Disabilities Act (ADA) --TBD

**Adjourn – 4:15 P.M.**

**[Accredited for 6 Hours Concurrent General and 5.7 Ethics CLE Credits]**

If you have Questions, call or email Ed Felter (303) 866-5676 – direct.

Email: [ed.felter@state.co](mailto:ed.felter@state.co).

## Agenda

**List of Attendees by Organization**

**Brief Biographies of Presenters, Moderators**

**Executive Order D-008-01 (May 29, 2001)**

**“Practical Judicial Ethics Dilemmas: The Lawyer’s Perspective” Kevin J. Kuhn, Esq.  
*et al.***

**[PowerPoint Presentation at Conference]**

**“The Appearance of Impropriety: Off the Bench”—The Honorable Federico C. Alvarez**

**“Judicial Ethics Update” – The Honorable Eric Johnson, District Judge (Denver)**

**“Judicial Disqualification” – Ed Felter, ALJ, OAC**

**“Judge and Lawyer Well-Being” –Jon White, Esq., Office of Attorney Regulation  
(OARC)**

# APPENDICES

## Appendix A [ABA Model Code of Judicial Conduct for State Administrative Law Judges (2018)]

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Appendix B [Colorado Judicial Ethics Advisory Board (CJEAB) Opinions]

Appendix C [Fall 2016 Judicial Ethics Update by OAC Law Jessica Crandall]

Appendix D [Overview of Colorado Judicial Discipline Mechanisms]

Appendix E [Articles and Other Resources]

Appendix F [Additional Judicial Ethics Updates]

Appendix G [Disqualification Updates]

### OAC Judicial Ethics Conference December 3, 2021, Attendees

#### Governor's Office

1. Kara Veitch, Counsel to the Governor, former Executive Director, DPA

#### Department of Personnel & Administration

#### Office of Administrative Courts (OAC)

1. Matthew Azer, Chief Judge
2. Peter Cannici
3. Gabriela Chavez
4. William Edie
5. Hollyce Farrell
6. Ed Felter
7. Glen Goldman
8. Keith Kirchubel
9. Richard Lamphere
10. Tanya Light
11. Elsa Martinez-Tenreiro
14. Keith Mottram
15. Timothy Nemecek
16. Michelle Norcross
17. Matthew Norwood
18. Cassandra Sidanycz
19. Patrick Spencer
20. Richard Walker.
21. Vicki Lovato

DOWC Pre-Hearing ALJs

1. Laura Broniak
2. David Gallivan
3. Susan D.S. Phillips
4. John Sandberg
5. Marcus Zarleno

Personnel Board ALJs and Board Members

1. Rick Dindinger,
2. Sue Tyburski
3. Keith Shandalow
4. Keely McCabe

Unemployment Insurance Hearing Officers

Gabriel Borges  
Rachele Dawson  
Carly Erickson  
Sarah French  
Rebecca Hoffman  
Cheyanne Kinghorn  
Sara Lewis  
Josie McSwain  
Darin Mullin  
Elizabeth Perkins  
JP Wells  
Ashleigh Hall  
\*Boe Nicholson

Public Utilities Commission ALJs

1. Harris Adams
2. Robert Garvey
3. Conor Farley
4. Steven Denman

Department of Human Services Office of Appeals

1. Mary McGhee

Denver Career Service Authority Hearing Officers

1. Bruce Plotkin

SSA Office of Dispute Resolutions (ODR) ALJs

1. Terry Hugar
2. Jennifer Simmons

Colorado Department of Public Safety

1. Kathy Sasak, Executive Director

Denver Board of Ethics

1. Ann Terry

Adult Parole Board ALJs

1. Tom Waters

Department of Revenue Hearing Officers

1. Bridgette Tomasetti \*\*\*\*
2. Mike Genoways
3. Michael Kennedy
4. Tom McEwen
5. Beth McKendree
6. Cleo Steele
7. Edward Tilbury
8. Dianne Demers
9. Mary Katy Maldonado
10. Eugene Tiell
11. Michael Lind
12. Patricia Stanton
13. Matt Berman
14. Stacie Harding
15. Allison Caldwell
16. Charlotte Veaux
17. Erin Beach
18. Julie Van Dyke

Industrial Claim Appeals Office

1. John Steninger
2. David Kroll
3. Lisa Klein
4. Kris Sanko
5. Brandee Falco

Department of Health Care Policy and Financing Office of Appeals

1. Christine Nierenz, Appeals Officer

Department of Public Health & Environment

1. Deborah Nelson
2. Ann Hause

U.S. OSHRC (formerly OSHA)

1. Patrick Augustine
1. Peggy Ball

COLORADO DEPARTMENT OF EDUCATION

1. Candace Hawkins
2. Jacqueline Esquibel
3. Tom Treinen

Denver Excises and Licenses

1. Suzanne Fasing
2. Martin McKinney
3. Kimberley Chandler
4. Kip Barrash
5. Samuel Macon Cowles
6. Aleene Ortiz-White
7. Tracey Robinson

Secretary of State Office

Jena Griswold

## **BIOGRAPHIES OF PRESENTERS**

**The Honorable Hon. Mark Martin** is Dean and Professor at Regent University School of Law. He previously served as Chief Justice of the North Carolina Supreme Court.

Mark Martin served on the state court bench for over 26 years. In 1999, at age 35, Martin was installed as the youngest justice in the history of the North Carolina Supreme Court. Martin served as Chief Justice of North Carolina from 2014-2019. In 1994 Martin was installed as the youngest judge in the history of the N.C. Court of Appeals, and in 1992 as the youngest superior court judge since the colonial era. He served on the adjunct faculties at Duke, North Carolina Central, and University of North Carolina law schools. Prior to his judicial service, Martin served as Legal Counsel to the Governor of North Carolina, associate at the McNair Law Firm (NKA Burr & Forman), and law clerk to the late United States Judge Clyde H. Hamilton.

Martin has held many national and state leadership roles. Martin currently serves as chair of the Thomsen Reuters National Judicial Council. He previously served as a member of the Committee on Federal-State Jurisdiction of the United States Judicial Conference. Martin also served as a member of the Board of Directors and as chair of the professionalism and competence of the bar committee of the Conference of Chief Justices. Martin is former chair of the Appellate Judges Education Institute Board of Directors. He also served as chair of the ABA Judicial Division and Appellate Judges' Conference. Martin is an elected member of the American Law Institute. At the state level, Martin chaired the Chief Justice's Commission on Professionalism, the North Carolina Equal Access to Justice Commission, and the Chief Justice's Commission on the Future of the NC Business Court.

Martin is the founder of Delphi Dispute Resolution (DDR), LLC, where he provides appellate consulting, expert witness, and mediation services.

In recognition of his extensive public service, Martin has received several national awards, including the 2019 ABA Robert Yegge Award and the 2011 National Center for State Courts Warren E. Burger Society Award. His awards at the state level include the Order of the Long Leaf Pine, the Judicial Excellence Award, and the N.C. Bar Association Liberty Bell Award.

Martin holds both an LL.M. in Judicial Process from the University of Virginia and a J.D. with honors from the University of North Carolina. He and his wife, Kim, reside in Kitty Hawk, North Carolina.



**Kevin J. Kuhn, Esq.** is partner at the law firm of Wheeler Trigg O'Donnell LLP where he has practiced since 2007. Prior to coming to Wheeler Trigg O'Donnell, he was a shareholder at Montgomery, Little, Soran, Murray & Kuhn, P.C., where he practiced for 25 years. Prior to that, he was an AF JAG prosecutor for four years.

B.A., University of Oklahoma (1974), and J.D., University of Oklahoma (1977).

After four years of active duty as an AF JAG, he continued his military service in the AF JAG Reserves for another 25 years, retiring with the rank of Colonel in 2006. As an AF JAG reserve lawyer, he taught nationally and overseas on trial advocacy and professional responsibility.

Trial lawyer with extensive trial experience. Has tried both civil and criminal matters. Has tried over 130 cases, including 75 jury trials and 55 bench trials.

Special expertise in professional negligence cases, medical and legal malpractice, catastrophic personal injury defense, products liability, government immunity issues, products liability, insurance coverage, and commercial litigation. Has also represented plaintiff interests in employment, insurance disputes, and personal injury cases.

Extensive state and federal litigation experience. Frequently travels to other states to try cases. Pro hac vice admissions in Arkansas, California, Florida, Georgia, Kansas, Mississippi, Missouri, Massachusetts, Missouri, New Mexico, North Carolina, Oregon, Tennessee, and Texas.

Frequent CLE speaker in Colorado on litigation and professional negligence issues. Member, Colorado Defense Lawyers Association. Former president of the Faculty of Federal Advocates, Aurora Bar Association, and Catholic Lawyers Guild. Inducted in 2003 to the prestigious, by invitation only, American College of Trial Lawyers. Former member of the Colorado Supreme Court Nominating Commission. Recognized as a *Colorado Super Lawyer* 2006-2014.

**Andrew Christopher Efaw, Esq.** is a trial-tested attorney with extensive experience. His national practice focuses on complex cases in federal and state courts throughout the country. Mr. Efaw handles a variety of intricate commercial and franchise cases, defends hospitals and doctors against medical malpractice claims, represents pharmaceutical and medical device companies against product liability claims, and has significant negotiation experience. Mr. Efaw brings a distinctive intellectual rigor to each case, has a record of entering cases and uncovering game-changing facts, and has represented clients in Alabama, Arkansas, California, Colorado, Florida, Georgia, Illinois, Massachusetts, Michigan, Minnesota, New York, New Mexico, Nevada, Pennsylvania, Texas, Utah, and Washington. Ace is a Colonel in U.S. Army Reserve and has twice deployed to combat zones. In 2004-2005, Ace served in Iraq, trying cases as the Senior Defense Counsel of Northern Iraq. Ace was a Military Judge from 2007-2013 and presided over cases in Alaska, Arizona, Colorado, California, Hawaii, Kentucky, New York, North Carolina, Texas, Washington, and

Germany. In 2012, he served as the Army judge for Afghanistan and Kuwait. Currently, Ace commands the 2d Legal Operations Detachment in New Orleans.

**Will Hauptman, Esq.**, University of Colorado Law School, J.D., 2017, Order of the Coif, *University of Colorado Law Review*, Vol. 88, Production Editor

University of Colorado, 2014, Economics & Political Science, *magna cum laude*, Phi Beta Kappa

### **GOVERNMENT SERVICE**

Law Clerk to The Honorable Brian D. Boatright of the Colorado Supreme Court

Intern to The Honorable Christine M. Arguello of the United States District Court, District of Colorado. Intern at the Colorado Department of Law (Attorney General), Criminal Justice Section

Intern to The Honorable Brian D. Boatright of the Colorado Supreme Court

Law Clerk at the United States Attorney's Office, District of Colorado

Assistant to the Rules, Policies, and Records Administrator, Colorado Department of Transportation

### **OTHER EXPERIENCE**

Dentons US LLP, Summer Associate

**Anthony Barbe, Esq.** defends lawyers and law firms in high-stakes professional liability matters nationwide. He represents clients across a range of practice areas, bringing a deep understanding of diverse law practices that inform the underlying malpractice claims. Recently, Anthony has achieved favorable results for clients in Colorado, California, Missouri, and Utah. He is listed in *The Best Lawyers in America* and *Colorado Super Lawyers Rising Stars*

### **HIGHLIGHTS**

- Defended lawyers in dozens of cases involving a wide variety of legal issues including franchise law, mergers and acquisitions, and IP litigation.
- Won a defense verdict for a national carrier in a bad faith jury trial in which the plaintiff claimed the insurer must pay

for a special run of bricks in order to fully repair the plaintiff's home. WTO also won the Tenth Circuit appeal.

- Won a defense verdict for a lawyer and law firm against malpractice claims arising out of a business transaction.
- Won a defense verdict for a national carrier in a negligent misrepresentation trial.
- Won summary judgment for a large regional law firm in a legal malpractice lawsuit.
- Won dismissal of claims and won attorney's fees and costs for a major national insurer in litigation following the 2012 Waldo Canyon wildfire.
- Won on bad faith claims for an insurer in the Waldo Canyon wildfire trial.

#### **PRACTICE AREAS**

- Legal Professional Liability
- Commercial Litigation
- Professional Liability
- Product Liability
- Franchise & Distribution

## **Executive Order D-008-01 (May 29, 2001)**

Justice System.

### **1. Purpose.**

A substantial number of Coloradoans depend on administrative adjudication to resolve their disputes in matters including, but not limited to, occupational licensing, workers' compensation, the operation of the state personnel system, and human services benefits.

Consistent management and accountability is required to ensure that Colorado's administrative justice system provides efficient and fair resolution of these matters. This order is designed to provide for the effective management of the State's administrative justice system, through preserving the decisional independence of administrative adjudicatory personnel while also effectively implementing the purposes of state agencies, regardless of whether administrative adjudicative personnel or functions are lodged in the Division of Administrative Hearings.

### **2. Standards of Professional Conduct.**

To ensure the decisional independence of administrative adjudicative personnel and to protect the rights of Colorado citizens, all administrative law judges shall adhere to the Colorado Code of Judicial Conduct. The Executive Director of the Department of Personnel shall establish and implement appropriate standards of conduct for hearing officers and any other executive branch official who exercises independent legal judgment in the conduct of quasi-judicial hearings to adjudicate justiciable interests between adverse parties. Officials of affected agencies shall cooperate with the Executive Director of the Department of Personnel to ensure that the standards of conduct are enforced with respect to both the administrative adjudicative personnel and personnel responsible for the development and implementation of substantive agency policies. The Executive Director of the Department of Personnel may require training for administrative adjudicatory personnel, so long as such training is provided at no cost to affected agencies. The Executive Director of the Department of Personnel shall report to the Governor regarding the condition of the State's administrative justice system, along with recommendations for improvement or reform, on or before July 1, 2002.

### **3. Intra-Governmental Coordination.**

By the authority vested in me by Article IV of the Colorado Constitution and that vested in the respective Executive Directors by § 24-1-107, C.R.S. and other applicable statutes, I hereby authorize and direct the following officials to coordinate their administrative law judges and associated support staff with the Executive Director of the Department of Personnel:

- The Executive Director of the Department of Labor and Employment and the Director of the Division of Workers' Compensation;
- The State Personnel Board;
- The Executive Director of the Department of Regulatory Agencies and the Public Utilities Commission; and
- The Executive Director of the Department of Corrections and the State Parole Board.

Such coordination may occur, within the scope of existing constitutional and statutory authority, through a written delegation, memorandum of understanding, or both, and may place budgetary, personnel, legal, and programmatic authority, as well as pertinent property, documents, and records, under the direction of the Executive Director of the Department of Personnel. All affected personnel shall retain all rights under the state personnel system and retirement benefits under the laws of this state, and their services shall be deemed to have been continuous.

The Executive Director of the Department of Personnel may also provide administrative law judges on a contractual basis to governmental entities other than those required to use services from the Division, or to obviate potential conflicts, on such terms and conditions as he or she may deem appropriate.

GIVEN under my hand and  
the Executive Seal of the  
State of Colorado 29  
Day of May 2001.

Governor Bill Owens

**Kevin Kuhn, Esq., Andrew Efaw, Esq. , Anthony Barbe, Esq. and Will Hauptman, Esq., will have a stimulating PowerPoint Presentation with movie clips.**

**No Advance Written Materials.**

## THE APPEARANCE OF IMPROPRIETY: OFF THE BENCH

Outline by Federico C. Alvarez, Esq., December 3, 2021

The high standards of your position require remarkable discipline and attentiveness. People respect you and like to be affiliated with you. But you live in a fishbowl so people can always observe and report you. Your job is lonely and could pay more but it is quite rewarding.

A. **Conduct Outside of the Courtroom** CJC Rule 1.1. *Compliance with the Law - (A) A judge shall comply with the law, including the Code of Judicial Conduct. (B) Conduct by a judge that violates a criminal law may, unless...minor, constitute a violation of the requirement that a judge must comply with the law. (C) Every judge...upon being convicted of a crime, except misdemeanor traffic offenses...not including the use of alcohol or drugs, shall notify the appropriate authority in writing...within ten days...*

1. C.J.E.A.B. Advisory Opinion 2014-01 - A judge's use of marijuana violates CJC Rule 1.1.

2. *In re Kamada*, 2020 CO 23 (Colo. 2020) District Judge (magistrate for 5 years, until 1-2019) resigned, and CO S Ct censured him. Judge pleaded guilty in federal court to obstructing a federal agency. Federal agents had asked Judge to sign a warrant and he recused as he knew the target. He then told a mutual friend to avoid the target. He had previously warned the friend to avoid the target. He texted details of a divorce case to friends; and that a party would be "free game tomorrow night."

3. *In re Timbreza*, 454 P.2d 217 (Colo. 2019) CO S Ct censured and suspended Judge 28 days upon guilty plea to DWAI and self-report. Judge drove into trees and bushes while avoiding a car.

B. CJC 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.***

1. *In Re Gunkel* (CO 2021) CO S Ct accepted part-time judge's stipulated retirement and censured her. On November 18, 2018, she pleaded guilty plea to DUI/careless driving, and got probation conditioned on use of an ignition interlock device to monitor her BAC. She had told officers that she was a judge and asked whether they could just take her home. On August 17, 2019, a Sheriff arrested the Judge in Kansas for DUI. She had no interlock device. She told him that she was a judge and asked if her spouse could retrieve her. During her cases, her Court took her off of DUI cases.

2. *In the Matter of Natalie T. Chase*, No. 21SA91 (CO 2021) District Judge stipulated to a censure and resigned. Judge used a racial slur in conversation with an African-American family court facilitator (on car trip to Pueblo); while on a break during court (still in a robe), stated she would boycott the Super Bowl in objection to the players kneeling during the national anthem (and that all lives matter); asked law clerk to do legal research on a personal family issue and to edit personal emails; had an employee drive her to the ER and wait for her, making him miss work; discussed

personal and family matters with staff and other office employees in an undignified or discourteous manner; and described a colleague to her law clerk with derogatory language.

3. *In re Kamada, supra; In re Timbreza, supra.*

4. *In re Booras*, No. 18SA83 (Colo. 2019) CO S Ct accepted Judge's resignation and censured her. Judge told (married) boyfriend of 10 years how the COA would rule on a case of interest to him, referred to her colleague drafting the opinion as the "little Mexican," and told him she would dissent. She had referred to her ex-husband's spouse as "the squaw." The boyfriend then disclosed these emails, which the CO S Ct found were not privileged and used them to sustain the discipline.

5. *In re Rand*, 332 P.3d 115 (Colo. 2014) Judge agreed to resign for (1) improper jokes with staff about an overweight collections officer, and about the large breasts of a party in court; (2) joking with a dancer on the jury about dancing during the break; (3) commenting to female attorneys who appeared in his court: one on her appearance, two about wearing pearl necklaces; (4) commenting to a former paralegal about his pending cases of her sister and her brother-in-law; (5) asked an applicant for a clerk job how she would react to a defendant who had speculated about the clerk's panties; (5) made ex parte phone calls to counsel advising that he would reject DUI plea bargains; and (6) stayed on the bench after court to give pep talks to defendants, including that an underage defendant fake drinking when pressured by peers to drink alcohol.

C. CJC 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.*

*In re Gunkel, supra.* Mentioning she was a judge when she got arrested; *In re Kamada, supra.* Judge researched state custodial records for an inquiring friend (and did not self-report this violation.)

D. CJC Rule 2.3 ... (B) *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.*

1. *In the Matter of Natalie T. Chase, supra.*

2. *People ex rel S.M.*, 2021 COA 64 (Colo.App. 2021) COA granted limited remand to appellants to raise their motion for relief in the trial court, to reverse the judgment terminating their parental rights due to the judge's prejudicial comments and the father's Hispanic heritage.

F.CJC Rule 2.8. *Decorum, Demeanor, and Communication with Jurors ... (B) A judge shall be patient, dignified, and courteous to...court staff...and others with whom the judge deals in an official capacity, ...*

1. *In the Matter of Natalie T. Chase, supra; In re Rand, supra.*

2. Anecdote - County Court Judge who commented on transgender person.



G. CJC Rule 2.9. *Ex Parte Communications* (A) A judge shall not initiate, permit, or consider *ex parte* communications...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... (C) 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.

1. *In re Kamada, supra*;
2. *In re Rand, supra*.

H. CJC Rule 2.10 *Prohibiting judicial statements on judicial information*. (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.

*In re Kamada, supra*.

I. CJC Rule 2.11 (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, ...

*In re Rand, supra*.

J. CJC Rule 3.1 A judge may engage in extrajudicial activities, except as prohibited by law\* or this Code. However,... a judge shall not: ... (C) participate in activities that would appear to a reasonable person to undermine the judge's independence,\* integrity,\* or impartiality; ...

*In re Booras, supra*.

K. CJC Rule 3.5 **Use of Nonpublic Information** Prohibits sharing nonjudicial 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.

*In re Kamada, supra*; *In re Booras, supra*.

#### L. Regulation of Magistrates

C.R.M. 5(h) subjects magistrates to the CO CJC and authorizes complaints of violations of it by attorney magistrates to be filed with the Office of Attorney Regulation Counsel, for proceedings under C.R.C.P. 242, et. seq. to determine violations and discipline, if any.

*People v. Gilbert*, 173 P.3d 1113 (Colo.O.P.D.J. 2007) – *ex parte* communication with party violated the then C.J.C. Canons: 1 & 2(A) - failure to promote public confidence; 3(A)(3) - undignified; 3(A)(4) – *ex parte* calls; 3(C)(1)(a) – failure to disqualify, warranting a public censure.

## **II. TIPS**

1. Understand that you work with supporting employees and friendships may be fleeting. Do not editorialize, and be discrete with comments, especially after a hearing.
2. Develop standard, neutral responses for both professionals and lay people.
3. Control your social settings, and your social media security and distribution.
4. Develop a rapport with a colleague or attorney for sensitive questions.
5. Uber and taxis are inexpensive. DUIs are a small but consistent problem.

## **Judicial Ethics Update**

The Honorable Eric M. Johnson,  
Colorado District Court, Denver

1. New amendments to the Colorado Code of Judicial Conduct Rules re: Workplace Harassment.
  - a. The Comment to Rule 1.2: Promoting Confidence in the Judiciary was amended to make explicit that harassment and other inappropriate workplace behavior eroded public confidence in the judiciary.
  - b. Rule 2.3: Bias, Prejudice, and Harassment was amended by the addition of a new paragraph making explicit that a judge shall not engage in retaliation for reporting of misconduct under this Code or other legal authority.
  - c. Rule 2.12 was amended to make clear that judges should be patient, dignified, respectful, and courteous; that we should not retaliate against those who report misconduct; and we should hold those we supervise to similar standards.
  - d. A Comment was added to Rule 2.15 indicating that “tak[ing] appropriate action” where there is “reliable evidence of misconduct” is required under the canons.
2. Hot topics in recusal:
  - a. Economic Interest. Some of our Brethren and Sistren in the Federal Courts have made news by hearing cases involving companies in which they or a family member owned stock.
    - i. Code of Jud. Conduct, Rule 2.11
    - ii. Definition of “Economic Interest” in Colorado
  - b. Misc recusal topics
    - i. Advisory opinion 2021-02: Recusal when a friend appears before the judge.
    - ii. The basics of recusal
3. The 1<sup>st</sup> Amendment and Being a Judge
  - a. Attending protests
  - b. Freedom of Speech
    - i. Social Media
    - ii. From the Bench
    - iii. Membership/participation in groups taking political positions
4. What they said that got them into trouble.

“Judicial Disqualification”

Ed Felter, ALJ,

**RECUSAL/DISQUALIFICATION  
OF THE JUDGE**

Edwin L. Felter, Jr.  
Senior ALJ/Adjunct Professor

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# RECUSAL

- \* In Colorado, recusal is governed by Rule 97, C.R.C.P.
- \* A motion to recuse is addressed to the merits judge, not the chief judge.
- \* Recusal is warranted where the judge is interested or prejudiced, or there is an appearance of bias.



## Is there a reasonable question as to impartiality?

- \* If so, recusal is required. See *Wood Bros. Homes v. City of Fort Collins*, 670 P. 2d 9 (Colo. App. 1983).
- \* A judge may recuse herself for undisclosed personal reasons. This must be weighed against the duty to sit – the obligation to handle one's fair share of the caseload.



# What is necessary for a lawyer to secure a recusal?

- \* An Affidavit alleging (evidentiary or basic) facts, not opinions or conclusions, supporting a reasonable inference of actual or apparent bias. See *Prefer v. PharmNetRx*, 18 P. 3d 844 (2000), *cert. dismissed*.



# In Colorado, How does the judge deal with the Affidavit?

- \* The facts alleged must be accepted as facially true even if the judge knows they are false. See *Wright v. District Court*, 731 P. 2d 661 (Colo. 1987). The underlying rationale of *Wright* is to prevent a swearing match between the judge and the affiant.
- \* If the allegations are false, the judge may be required to report the lawyer to Attorney Regulation Counsel. Rule 251.4, C.R.C.P





## What is the test for recusal?

- \* Would a reasonable person, knowing all the relevant facts, harbor doubts about the judge's impartiality. See *Switzer v. Berry*, 198 F. 3d 1255 (10<sup>th</sup> Cir. 2000). Allegations in the affidavit that "the judge hates my guts," or, "the judge has ruled against me in the last 40 cases" are insufficient.



# Would a Reasonable Person Question Judge's Impartiality

- \* Judge granted newspaper interviews saying she was skeptical of law enforcement unlike certain of her colleagues, whom she described as inclined to favor the government. HELD: Drawing such distinctions between her and colleagues might lead a reasonable person to question her impartiality. *Ligon v. City of New York*, 736 F.3d 118, 127 (2d Cir. 2013).



# **A judge is presumed to disregard the irrelevant and prejudicial**

- \* The defendant was convicted of causing a death while driving under the influence.
- \* The defendant appealed, maintaining that the presentation of several inadmissible exhibits, although rejected by the court, prejudiced his case, thus, requiring reversal.
- \* The Colorado Supreme Court determined that it is presumed that a trial judge disregards incompetent evidence and his/her judgment will not be disturbed unless it is clear that the outcome could not have been reached but for the incompetent evidence.
- \* See *People v. Macarenas*, 181 Colo. 268, 509 P.2d 303 (1973); *People v. Kriho*, 996 P.2d 158 (Colo. App. 1999).



**In Colorado, because the allegations in the affidavit must be accepted as facially true, does this mean a lawyer has a ticket to disqualify judges he/she doesn't like?**

\* No!



## Maybe and maybe not

- \* Under the Rules of Professional Conduct (RPC), a lawyer may not make false statements concerning the integrity of a judge, or statements with a reckless disregard as to the truth or falsity of the statements.



## 2 Cases –Food for Thought

- \* --the rationale that the ends justify the means has no place in the legal profession. *Matter of Kuzman*, 335 N.E. 2d 210 (Ind. 1975).
- \* --the words “I think it demonstrates your prejudice without a doubt” justified a holding in contempt. *Alexander v. Sharpe*, 245 A. 2d 279 (Me. 1968).



## ***Broderick's Case, 181 A. 2d 647 (N.H. 1962)***

- \* “The legal and ethical methods of ...protecting the interests of the client were the sole responsibility of the attorney.” The lawyer, however, “is not required to open the harbor of his eloquence as a port of refuge for pirates.”



## Steps to take when the motion is filed

- \* Suspend all proceedings until you rule upon the motion.
- \* If you grant the motion, notify the chief judge so she can re-assign the case.
- \* *See City of Trinidad v. District Court*, 196 Colo. 106, 581 P. 2d 304 (1978)





# **Criminal Law**

## **Sec. 16-6-201,**

### **C.R.S.**

\*Upon the filing of a motion [substitution of judges], all other proceedings in the case shall be suspended until a ruling on the motion is made.



# **Criminal Law Recusals**

Sec. 16-6-201, C.R.S., and Rules of Crim.P.21, provide that if the facts (evidentiary or basic) of two affidavits state grounds for disqualification, the judge must disqualify herself.



## **Criminal Law**

### **Sec. 16-6-201**

\*A motion on any ground must be verified and supported by two affidavits of at least two credible persons not related to the defendant.

[I like this. It should be required in civil cases as well].



# **The Criminal Law Process**

\* If the verified motion and supporting affidavits state facts showing grounds for disqualification, the judge must disqualify herself.



## **An Option**

- \* The judge may require a full evidentiary hearing on the evidentiary factual issues raised in the affidavits
- \* Requesting that another judge conduct the hearing and make findings of fact.



**The findings of fact  
of the other judge  
shall be included  
as part of the  
record**

*See People v. Julien*, 47 P.3d  
1194 (Colo. 2002)

This is a viable option in civil  
cases



## **What is the safeguard for an improper refusal to recuse?**

- \* Appeal if the movant wants to wait until the end? This is generally unsatisfactory.
- \* There must be an instant review mechanism.
- \* Rule 106, CRCP (in the nature of prohibition or mandamus)
- \* See *City of Trinidad v. District Court, supra.*



# Unless you are on the U.S. Supreme Court

- \* See “Recusal Refusal Redux,” *The ABA Journal E-Report*, March 31, 2006 [concerning Justice Scalia’s declining to recuse for the second time]. Justice Scalia invoked the “doctrine of necessity.”





# **The States That Have a System of Peremptory Challenges**

\*Currently, 19 states have a system of peremptory challenges, including California, Alaska and New Mexico.



# **Peremptory Challenges Raise the Question of Who Runs Disqualification**

- \* The Lawyers or the Judges
- \* In San Diego, the Prosecutor's Office has Exercised a Peremptory Challenge to an Undisputedly Excellent Judge for over a Year and Won't Say Why



# **Colorado Has the Best Alternative to Peremptory Challenges**

- \*A requirement that evidentiary allegations must be accepted as facially true
- \*A fast-track extraordinary writ avenue on denials.



# **What is the Deterrent for Erroneous Sworn Allegations?**

- \* Reason and Common Sense?
- \* What if the Merits Judge Denies the Motion?



# **It Makes No Sense for a Lawyer to Swear to False Bedrock Allegations**

\*It is said that if you shoot at the King, make sure you kill him. Otherwise, he'll be mad and come after you. --Doug Phillips.



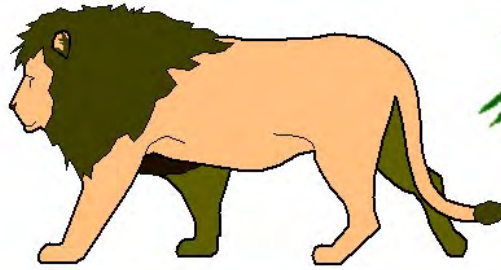
# The Little Thought Of Method

- \* If it disturbs the judge to accept the evidentiary allegations as true --
- \* She can voluntarily refer the matter to another judge for an evidentiary hearing



**GOOD LUCK!**

—Go get 'em.  
Judges.



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# “Judge and Lawyer Well Being”

Jon White, Esq. Office of Attorney Regulation (OARC

11/24/2021



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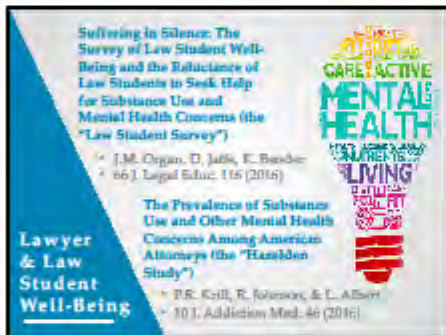
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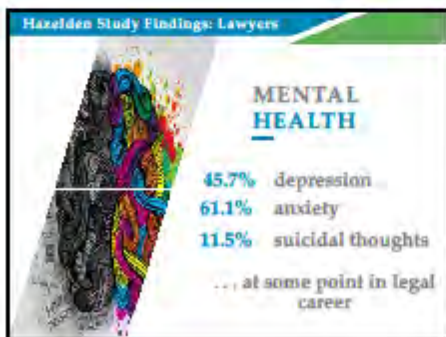
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**The Judge and  
Lawyer  
Well-Being  
Movement**

Jonathan White  
Professional Development  
Counsel & Inventory  
Counsel

Office of Attorney  
Regulation Counsel




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**Lawyer  
& Law  
Student  
Well-Being**

**Suffering in Silence: The Survey of Law Student Well-Being and the Reluctance of Law Students to Seek Help for Substance Use and Mental Health Concerns (the “Law Student Survey”)**

- J.M. Organ, D. Jaffe, K. Bender
- 66 J. Legal Educ. 116 (2016)

**The Prevalence of Substance Use and Other Mental Health Concerns Among American Attorneys (the “Hazelden Study”)**

- P.R. Krill, R. Johnson, & L. Alber
- 10 J. Addiction Med. 46 (2016)




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**Hazelden Study Findings: Lawyers**



**MENTAL  
HEALTH**

... at some point in legal  
career

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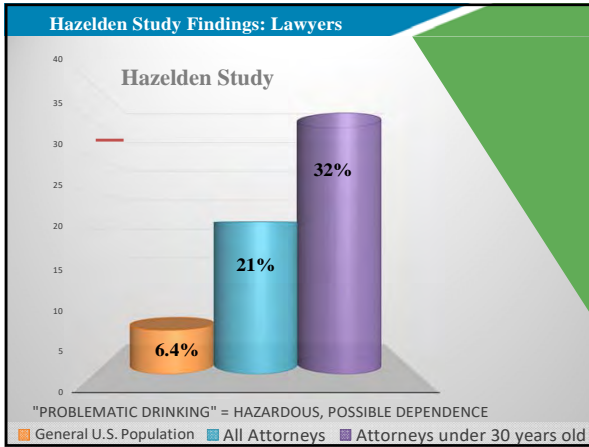
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45.7% depression  
61.1% anxiety  
11.5% suicidal thoughts




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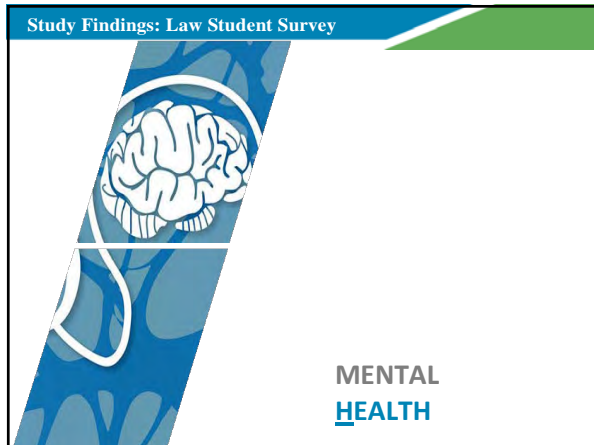
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- 17%** depression
- 14%** severe anxiety
- 23%** mild/moderate anxiety
- 6%** suicidal thoughts in last year

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## Harvard Law School Student Well-Being

- **November 2017**
- **886 respondents**
- **24.2% reported anxiety**
- **25% reported depression**  
The CDC reports 7.7% of people ages 20-39 suffer depression
- **20.5% at heightened suicide risk**
- **66% reported new mental health challenges in law school**
- **Survey conducted by law school student government. Survey prepared by Harvard's University Health Services and the Student Mental Health Association.**

Source: A. Chan, A. Lee, A. Savitt, *Wellness at the Law School: Promises to Keep and Miles to Go Before We Sleep*, HARV. CRIMSON, Mar. 28, 2018; J. Halper, *Law Student Leadership Plans Mental Health Initiatives*, HARV. CRIMSON, Oct. 19, 2017.

**2020: Stress and Resiliency in the U.S. Judiciary, David Swenson, Ph.D. L.P., et al., JOURNAL OF THE PROFESSIONAL LAWYER**

- 78.6% state court judges
- 10.1% local judges
- 8% administrative
- Remaining mix of federal, tribal, military




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**Sources of Stress**

- Impact of decisions (79.7%)
  - Heavy dockets (73.2%)
- Unprepared attorneys (67.6%)
- Self-represented litigants (62.5%)
  - Dealing with same parties repeatedly without addressing underlying issues (58.1%)
- Lack of public awareness of courts (55.5%)
- Long hours with no break (53.5%)
- Family law cases (50.3%)
  - Isolation (50.3%)
- Insufficient staff support (49.5%)
- Increased lawyer incivility & lack of professionalism (48.5%)




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**Reported Effects of Stress**

- Fatigue/low energy (38.8%)
- Sleep disturbance (36%)
- Poor concentration (32.3%)
- Worrying about cases after they are decided (30.8%)
  - Worrying over health (27.6%)
- Feelings of anxiety (23%)
- Lack of initiative (22.9%)
- Lack of time for family (22.3%)




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**Stress Management Techniques Commonly Used**

- Physical exercise (82.3%)
  - Reading (77.3%)
- Social support (76.6%)
- Diverse friends outside of the field of law (73.4%)
  - Hobbies (73%)
- Involving staff in planning and scheduling (71.4%)
- Adequate sleep (66.4%)
- Yoga/stretching (51.3%)
  - Faith (49.3%)
- Asking for peer support (36.8%)




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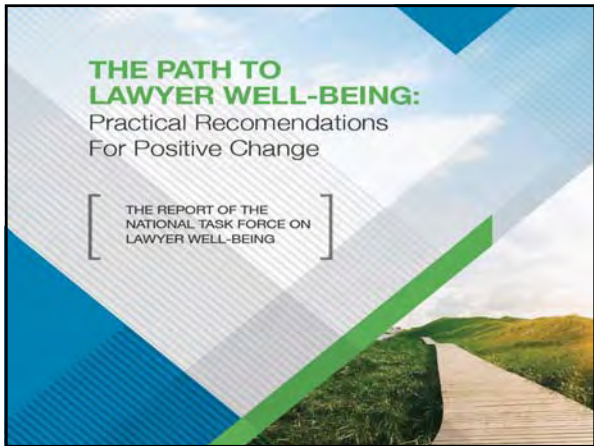
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**THE PATH TO LAWYER WELL-BEING:**  
Practical Recommendations For Positive Change

THE REPORT OF THE NATIONAL TASK FORCE ON LAWYER WELL-BEING




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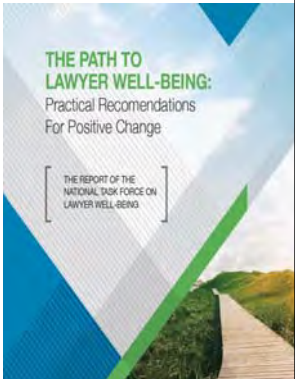
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**National Task Force Recommendations for Judges**

- Have the highest court in each state communicate that well-being is a priority
- Develop policies for judges dealing with impairment
- Reduce the stigma of mental health and substance use disorders
- Conduct judicial well-being surveys
  - Provide well-being programming for judges and their staff
- Encourage judges to monitor for impaired lawyers and make appropriate referrals




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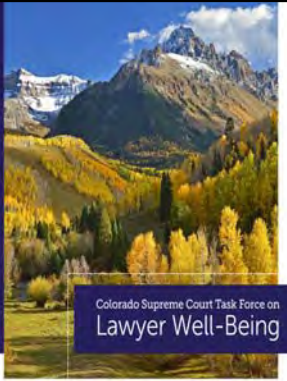
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**The Colorado Task Force on Lawyer Well-Being**

- Chair: Justice Monica Márquez
- Over 60 lawyers, judges, law students
- Recommendations: well-being recognition program for legal employers; promoting existing resources; improving well-being programs in the state's law schools; data gathering on utilization of resources; addressing incivility in the profession



Colorado Supreme Court Task Force on Lawyer Well-Being




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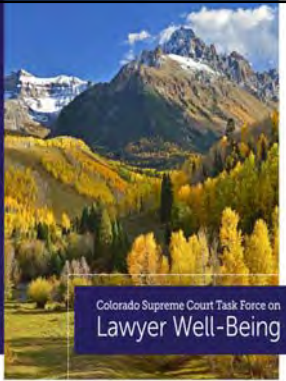
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**The Colorado Task Force on Lawyer Well-Being**

Judicial Working Group

- (1) Colorado Judicial Well-Being website launched: [judicialwellbeing.colorado.gov](http://judicialwellbeing.colorado.gov)
- (2) Encouraged creating a Judicial Well-Being Standing Committee
- (3) Supported a Judicial Diversity Outreach Program
- (4) Recommended advancing the Peak Performance, including the "Peer-to-Peer" Coaching Program
- (5) Emphasized awareness of everyday well-being issues for judicial officers



Colorado Supreme Court Task Force on Lawyer Well-Being




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Visit <https://www.courts.state.co.us/vaccine> or call 1-877-CO-VACCD (1-877-268-2928) for vaccine information.



Home Resources Hot Topics Get Connected! FAQs About Us/Contact Us

**Just Be: Yoga & Mindfulness for Colorado Judicial**

Simple, accessible, and supportive practices for meditation and mindfulness, specially crafted for judicial well-being.

[Read more](#)

**Welcome to the Colorado Judicial Well-Being Online Resource**

Serving in such a complex role can be challenging and isolating. The Judicial Well-Being site is designed to strengthen performance on the bench, enhance job satisfaction and work-life balance, and foster community within our profession.




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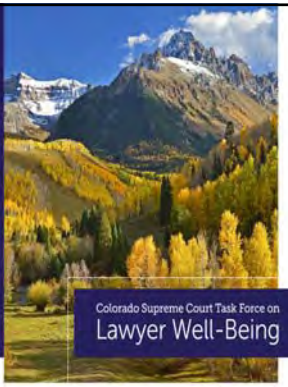
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**Judicial Working Group: Raising Awareness of Everyday Well-Being Issues**

- Promoting safety resources and practices
- Supporting surrounding high profile cases, retention
- Exploring on-site confidential counseling
- Normalizing well-being check-ins
- Adding more judicial roundtables
  - Bolstering the senior judge program
  - Training on well-being and handling vicarious trauma
- Reviewing data from a 2021 survey regarding judicial officers' experience with the judicial performance review process and exploring recommendations
- Helping judicial officers transition to new dockets or judicial leadership positions



Colorado Supreme Court Task Force on Lawyer Well-Being

Colorado Lawyer Well-Being

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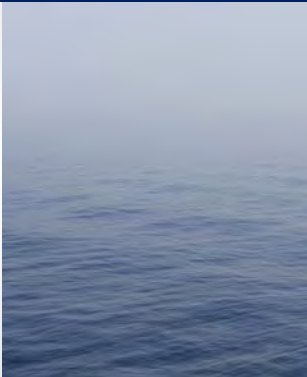
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**STAY GROUNDED, STAY SANE**

- Connect with other judges and non-lawyers
  - Volunteer
  - Be active
- Set boundaries
  - Take time for friends/family
- Plan and take time off
- Read a non-law book
  - Rest
- Find a way to shift your focus




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**CLOSING THOUGHT**

“Though our profession prioritizes individualism and self-sufficiency, we all contribute to, and are affected by, the collective legal culture. Whether that culture is toxic or sustaining is up to us. Our interdependence creates a joint responsibility for solutions.”

National Task Force on Lawyer Well-Being




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**RESOURCES**

Office of Attorney Regulation Counsel  
 > coloradosupremecourt.com  
 Colorado Lawyer Assistance Program (COLAP)  
 > coloradolap.org  
 Colorado Attorney Mentoring Program (CAMP)  
 > coloradomentoring.org Colorado Bar Association: cobar.org  
 > Law Practice Management  
 > Practice sections / committees  
 > Member benefits  
 Ethics Hotline  
 > 303-860-1115  
 Peer Professionalism Assistance Group  
 > cobar.org/ppa

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**Questions?**

j.white@csc.state.co.us  
 303.928.7919




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## **APPENDICES**

NOTE: The Colorado Code of Judicial Conduct (2010), Application Section I (B) defines a “judge” as follows: **“a member of the Administrative Law Judiciary”**

[The Colorado Code of Judicial Conduct is closely patterned after the American Bar Association Model Code of Judicial Conduct (2007)

### **Appendix A**

Code of Judicial Conduct  
for the Administrative Law Judiciary

#### **AMERICAN BAR ASSOCIATION**

A MODEL CODE OF JUDICIAL CONDUCT  
FOR STATE ADMINISTRATIVE LAW JUDGES (2018)  
Adopted by the ABA House of Delegates on August 7, 2018

**American Bar Association**

Most of the text herein is based on the 2007 American Bar Association Model Code of Judicial Conduct which was approved by the House of Delegates of the American Bar Association and represents the policy of the American Bar Association. Please bear in mind that modifications to address the functions of administrative law judges have not been approved by the House and, thus, are not yet the policy of the American Bar Association.

**Copyright 2018 American Bar Association**

## PREFACE

In 1989, following 12 years of effort, the Conference endorsed a Model Code for Federal Administrative Law Judges which was published by the ABA and has been circulated. Because of the widely differing systems of administrative adjudications at the state level, it was recognized that a separate Model Code for State Administrative Law Judges should be developed. The 1995 Model Code of Judicial Conduct for State Administrative Law Judges reflected the culmination of the efforts of the National Conference of the Administrative Law Judiciary (NCALJ), State Practices Committee (attached) chaired by Judge Edwin L. Felter, Jr., then Chief Administrative Law Judge of the Central Panel of the State of Colorado, and the NCALJ Committee on Ethics and Responsibility, chaired by Judge Ronnie Yoder (Federal), Judge Felter, Vice-Chair (State).

The 1995 Model Code was endorsed by the Executive Committee of the National Conference of Administrative Law Judges at the 1995 annual meeting in Chicago, Illinois. The conference approved the distribution of the code to state administrative law judges as a reference for them in considering their own conduct and for others in considering the Code of Judicial Conduct appropriately applicable to state administrative law judges. The Code was based upon the 1990 Model Code of Judicial Conduct of the American Bar Association (ABA) and the 1989 Model Code for Federal Administrative Law Judges, with modifications considered appropriate in adapting the Code for state administrative law judges. The 1995 Code assumed decisional independence by the covered administrative law judges and served as an aspirational code for hearing officers who are not guaranteed such decisional independence.

The first ABA Code was adopted in 1972 and amended in 1982 and 1984. Neither the model ABA code nor the Model Code for State Administrative Law Judges would apply to any judge unless adopted by the responsible adjudicatory agency. The 1990 ABA Code for the judicial branch was adapted and adopted by 47 states and the District of Columbia: Adoption and endorsement of the 1995 Model Code for State Administrative Law Judges by NCALJ did not make that Code applicable to any administrative law judge but was intended to reflect the considered judgment of the Conference on appropriate provisions in adapting the ABA Code for state administrative law judges.

As noted in the Preface of the Model Code for federal administrative law judges.

"The Code has not been adapted to apply to state administrative law judges and hearing officers, because of the wide variations in the nature of those positions. See ABA Informal Opinion 86-1522 dated December 24, 1986, holding that, if the applicability of the ABA Model Code to federal administrative law judges is assumed, then they are 'judges' within the meaning of the Code and that applicability of the Code to state administrative law judges 'depends upon the facts of the particular case.'"

Most states have adopted some version of the State Model Administrative Procedure Act, but administrative adjudications are conducted within agencies by a wide variety of hearing officers, including attorneys and non-attorneys, with a variety of titles and various degrees of decisional independence. In addition, twenty-five states, three cities and one county<sup>1</sup> have central panel systems where ALJs in central panels hold hearings for a variety of agencies.

In 2007, the ABA, after years of efforts, adopted a new Model Code of Judicial Conduct, which represented a significant change from the 1990 Code. The most important paradigm shift in the 2007 Code was that the Canons enunciated general principles, and each Canon is broken down into enforceable rules. The ABA House of Delegates resoundingly approved the 2007 Code, which has now been adopted (almost “lock, stock and barrel”) by more than a majority of states. The Application Section of the 2007 Model Code [I (A)] states that the code applies to all full-time judges. Section I (B) of the Application Section defines “judge” as including “member (s) of the administrative law judiciary.” Thirty-Three states have approved a revised Judicial Code for the judicial branch, based on the 2007 ABA Model Code and forty-seven states have initiated or completed review of their judicial codes in light of the 2007 ABA Model Code (Appendix A).

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<sup>1</sup> New York City; Washington, D.C; Chicago; and, Cook County, Illinois

## **AD HOC COMMITTEE TO REVISE AND UPDATE 1995 MODEL CODE OF JUDICIAL CONDUCT FOR STATE ADMINISTRATIVE LAW JUDGES**

In 2015, Julian Mann III [Chair, National Conference of the Administrative Law Judiciary (NCALJ), 2015/2016] constituted an Ad Hoc Committee to revise and update the 1995 Model Code of Judicial Conduct for State Administrative Law Judges.

The Ad Hoc Committee consists of:

- Lorraine Lee, Chief Administrative Law Judge, Washington State Office of Administrative Hearings (Member, NCALJ Executive Committee);
- John Allen, former Chief Administrative Law Judge, Cook County, Illinois (Member, NCALJ Executive Committee);
- Edwin L. Felter, Jr., Senior Administrative Law Judge, Colorado Office of Administrative Courts;
- Julian Mann III, Chief Administrative Law Judge, North Carolina / Chair of NCALJ (2015/2016), Ex-Officio;
- Amanda Banninga, Staff Director, NCALJ.

## AMERICAN BAR ASSOCIATION

### MODEL CODE OF JUDICIAL CONDUCT FOR STATE ADMINISTRATIVE LAW JUDGES

#### PREAMBLE

The Model Code of Judicial Conduct for State Administrative Law Judges (hereinafter "Model Code") is intended to establish basic ethical standards for administrative law judges or any other hearing officials, whatever their title, in any state. The Code is intended to govern the conduct of these administrative law judges (hereinafter "ALJs") and to provide guidance to assist administrative law judges in establishing and maintaining high standards of judicial and personal conduct. This Code is based upon the Model Code of Judicial Conduct as adopted by the ABA in 2007.

The text of the rules under the canons is intended to be authoritative and enforceable. The commentary, by explanation and example, provides guidance with respect to the purpose and meaning of the rules. 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 can result in disciplinary action. When should or should not is used, the text is 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 terms administrative law judge or judge are intended to include all hearing officers, referees, trial examiners or any other person holding office to whom the authority to conduct an administrative adjudication has been delegated by the agency or by the governmental entity, or by statute and who exercises independent and impartial judgment in conducting hearings and in issuing initial or final decisions containing findings of fact and conclusions of law in accordance with the applicable statutes or agency rules and without *ex parte* communication or instruction as proscribed in Canon Rule 2.9. Such decisions should be binding on all parties to the action, including the agency, unless modified or reversed by the agency as authorized by law. An administrative law judge should be removable for good cause.

The canons and rules thereunder are rules of reason. They should be applied consistently with constitutional requirements, statutes, administrative rules, and



decisional law and in the context of all relevant circumstances. The Code is to be construed so as not to impinge on the essential independence of judges in making judicial decisions.

The code is designed to provide guidance to an ALJ and to provide a structure for regulating conduct. However, it is not intended, 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 administrative law system. The Code 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.

## **CANON I**

*AN ADMINISTRATIVE LAW JUDGE SHALL UPHOLD AND PROMOTE THE INDEPENDENCE, INTEGRITY, AND IMPARTIALITY OF THE ADMINISTRATIVE LAW JUDICIARY AND AVOID THE APPEARANCE OF IMPROPRIETY.*

### **Rule 1.1: Compliance with the Law**

An ALJ shall comply with the law, including the Code of Conduct for Administrative Law Judges.

#### **Comment**

None.

### **Rule 1.2: Promoting Confidence in the Administrative Law Judiciary**

An ALJ shall act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the administrative law judiciary, and shall avoid impropriety and the appearance of impropriety.

#### **Comment**

*[1] An independent and honorable administrative law judiciary is indispensable to justice in our society. An ALJ should participate in establishing, maintaining, and enforcing high standards of conduct and shall personally observe those standards so that the integrity and independence of the administrative law judiciary is preserved. The provisions of this code shall be construed and applied to further that objective.*

*[2] Deference to the judgments and rulings in administrative proceedings depends upon public confidence in the integrity and independence of ALJs. The integrity and independence of ALJs depends in turn upon their acting without fear or favor. Although ALJs should be independent, they must comply with the law, including the provisions of this Code. Public confidence in the impartiality of the administrative law judiciary is maintained by the adherence of each ALJ to this responsibility. Conversely, violation of this code diminishes public confidence in the administrative law judiciary and thereby does injury to our system of government.*

### **Rule 1.3: Avoiding Abuse of Prestige of Judicial Office**

An administrative law judge shall not abuse the prestige of 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 an ALJ to use or attempt to use their position to gain personal advantage or deferential treatment of any kind. For example, an ALJ must not use judicial letterhead to gain an advantage in conducting their personal business.*

*[2] A judge may provide a reference or recommendation for an individual based upon the ALJ's personal knowledge, using official 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] Special considerations arise when ALJs write or contribute to publications of for-profit entities, whether related or unrelated to the law. An ALJ should not permit anyone associated with the publication of such materials to exploit the ALJ's office in a manner that violates this Rule or other applicable law. The ALJ should retain sufficient control over the advertising to avoid such exploitation.*

## **CANON 2**

*AN ADMINISTRATIVE LAW JUDGE SHALL PERFORM THE DUTIES OF OFFICE IMPARTIALLY, COMPETENTLY, AND DILIGENTLY.*

### **Rule 2.1: Giving Precedence to the Duties of Office**

The duties of office, as prescribed by law, shall take precedence over all of an ALJ's personal and extrajudicial activities.

#### **Comment**

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

*[2] Although it is not a duty of office unless prescribed by law, ALJs are encouraged to participate in activities that promote public understanding of and confidence in the administrative justice system.*

### **Rule 2.2: Impartiality and Fairness**

An ALJ shall uphold and apply the law and shall perform all duties of office fairly and impartially.

## Comment

*[1] To ensure impartiality and fairness to all parties, an ALJ must be objective and open-minded.*

*[2] Although each ALJ comes to the bench with a unique background and personal philosophy, a judge must interpret and apply the law without regard to whether the ALJ approves or disapproves of the law in question.*

*[3] When applying and interpreting the law, a judge sometimes may make good-faith errors of fact or law. Errors of this kind do not violate this Rule.*

*[4] It is not a violation of this Rule for an ALJ to make reasonable accommodations to ensure self-represented litigants are afforded the opportunity to have their matters fairly heard.*

## Rule 2.3: Bias, Prejudice and Harassment

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

(B) An ALJ shall not, in the performance of official duties, by words or conduct manifest bias or prejudice, or engage in 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 support staff, or others subject to the ALJ's direction and control to do so.

(C) An ALJ shall require lawyers in proceedings before the ALJ to refrain from manifesting bias or prejudice, or engaging in harassment, based on attributes or factors enumerated in (B) above, against parties, witnesses, lawyers, or others.

## Comment

*[1] An ALJ who manifests bias or prejudice impairs the fairness of proceedings and brings the administrative 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 on stereotypes; threatening; intimidating; or hostile acts; suggestions of connections between race, ethnicity, or nationality and crime; and irrelevant references to personal characteristics. Even facial expressions and body language can convey to parties and lawyers, the media, and others an appearance of bias or prejudice. An ALJ 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 the factors enumerated in (2) above.*

*[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.*

#### **Rule 2.4: External Influences on Judicial Conduct**

(A) An ALJ shall not be swayed by public clamor or fear of criticism.

(B) An ALJ shall not permit family, social, political, financial, or other interests or relationships to influence the ALJ's judicial conduct or judgment.

(C) An ALJ shall not convey or permit others to convey the impression that any person or organization is in a position to influence the ALJ.

#### **Comment**

*An independent administrative law judiciary requires that judges decide cases according to the law and facts, without regard to whether particular laws or litigants are popular or unpopular. Confidence in the administrative law judiciary is eroded if decision making is perceived to be subject to inappropriate outside influences.*

#### **Rule 2.5 Competence, Diligence, and Cooperation**

(A) An ALJ shall perform judicial and administrative duties competently and diligently.

(B) An ALJ shall cooperate with other ALJs, legal professionals and other officials in the administration of official business.

#### **Comment**

*[1] Competence in the performance of judicial duties requires the legal knowledge, skill, thoroughness, and preparation reasonably necessary to perform judicial responsibilities.*

*[2] An ALJ should seek the necessary docket time and resources to discharge all adjudicative and administrative responsibilities.*

*[3] Prompt disposition of the ALJ's business requires the ALJ to devote adequate time to judicial duties, to be punctual in attending hearings and expeditious in determining matters, and to take reasonable measures to ensure that staff, litigants, and their lawyers or lay representatives cooperate with the ALJ to that end.*

*[4] In disposing of matters promptly, an ALJ must demonstrate due regard for the rights of the parties to be heard and to have issues resolved without unnecessary cost or delay. An ALJ should monitor and supervise cases in ways that reduce or eliminate dilatory practices, avoidable delays, and unnecessary costs. Attention to prompt resolution of the ALJ's docket, and issuing decisions without undue delay, is critical to the effectiveness and efficiency of administrative justice organizations. To quote William Penn, "To delay Justice is Injustice."*

### **Rule 2.6: Ensuring the Right to Be Heard**

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

(B) An ALJ may encourage parties to a proceeding and their lawyers to settle matters in dispute but shall not act in a manner that coerces any party into settlement.

#### **Comment**

None.

### **Rule 2.7 Responsibility to Decide**

An ALJ shall hear and decide matters assigned to the ALJ, except where disqualification is required by Rule 2.11 or other law.

#### **Comment**

None.

### **Rule 2.8: Decorum and Demeanor**

(A) An ALJ shall require order and decorum in proceedings before the ALJ.

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

#### **Comment**

None.

### **Rule 2.9: Ex Parte Communications**

(A) An ALJ shall not initiate, permit, or consider ex parte communications, or consider other communications made to the ALJ outside the presence of the parties or their lawyers, concerning a pending or impending matter, including communications from an agency/litigant, 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 ALJ reasonably believes that no party will gain a procedural, substantive or tactical advantage as a result of the ex parte communication; and,

(b) the ALJ 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) An ALJ may obtain the written advice of a disinterested expert on the law applicable to a proceeding before the ALJ, if the ALJ gives advance notice to the parties of the person to be consulted and the subject matter of the advice to be solicited, and affords the parties a reasonable opportunity to object and respond to the notice and to the advice received.

(3) An ALJ may consult with staff and officials whose functions are to aid the ALJ in carrying out the ALJ's adjudicative responsibilities (this excludes agency personnel with regard to a pending or impending matter before the ALJ), or with other ALJs or Law Clerks under the direction and control of the ALJ, provided the ALJ makes reasonable efforts to avoid receiving factual information that is not part of the record, and does not abrogate the responsibility to personally decide the matter.

(4) An ALJ may, with the consent of the parties, confer separately with the parties and their lawyers in an effort to settle some issues pending before the ALJ.

(5) An ALJ may initiate, permit, or consider any ex parte communications when expressly authorized by law to do so.



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

(C) An ALJ shall not investigate facts in a matter independently, and shall consider only the evidence presented and any facts that may properly be subject to administrative notice. This prohibition includes independent internet research.

(D) An ALJ shall make reasonable efforts, including providing appropriate supervision, to ensure that this Rule is not violated by staff, law clerks, and others subject to the ALJ's direction and control.

### **Comment**

None.

### **Rule 2.10: Statements on Pending and Impending Cases**

(A) An ALJ 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 tribunal, or make any non-public statement that might substantially interfere with a fair hearing.

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

(C) An ALJ shall require staff and others subject to the ALJ's direction and control to refrain from making statements that the ALJ would be prohibited from making by paragraph (A) and (B).

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

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

### **Comment**

None.

### **Rule 2.11: Disqualification**

(A) An ALJ shall disqualify himself or herself in any proceeding in which the ALJ's impartiality might reasonably be questioned, including but not limited to the following circumstances:

- (1) The ALJ has a personal bias or prejudice concerning a party or party's lawyer, or personal knowledge of facts that are in dispute in the proceeding.
- (2) The ALJ knows that the ALJ, the ALJ'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 person is:
  - (a) a party to the proceeding, or an officer, director, general partner, major shareholder, 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 ALJ knows that they, individually or as a fiduciary, or the ALJ's spouse, domestic partner, parent or child, or any other member of the ALJ's family residing in the ALJ's household, has an economic interest in the subject matter in controversy or in a party to the proceeding.
- (4) The ALJ has made a public statement, other than in a tribunal proceeding, adjudicative decision, or adjudicative opinion, that commits or appears to commit the ALJ to reach a particular result or rule in a particular way in the proceeding or controversy.
- (5) The ALJ:
  - (a) served as a lawyer in the matter in controversy, or was associated with a lawyer who participated substantially as a lawyer in the matter during such association;

(b) served in government employment, and in such capacity participated personally and substantially as a lawyer or public official concerning the proceeding, or has publicly expressed an opinion concerning the merits of the particular matter in controversy;

(c) was a material witness concerning the matter; or

(d) previously presided as an ALJ or judge over the matter in another tribunal or court.

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

(C) An ALJ 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 ALJ's disqualification and may ask the parties and their lawyers to consider, outside the presence of the ALJ and staff, whether to waive disqualification. If, following the disclosure, the parties and lawyers agree, without participation by the ALJ or staff, that the ALJ should not be disqualified, the ALJ may participate in the proceeding. The agreement should be incorporated into the record of the proceeding.

#### **Comment**

None.

### **Rule 2.12: Supervisory Duties**

(A) An ALJ shall require staff and others subject to the ALJ's direction and control to act in a manner consistent with the ALJ's obligations under this Code.

(B) An ALJ with supervisory authority for the performance of other ALJs shall take reasonable measures to ensure that those ALJs properly discharge their adjudicative responsibilities, including the prompt disposition of matters before them.

#### **Comment**

*[1] A judge is responsible for their 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 their supervision administer their workloads promptly.*

*[3] A supervisory ALJ should not interfere with the decisional independence of other ALJs. Reasonable docket control, case assignments, logistical matters and other administrative concerns are appropriate; provided, that these are done in an impartial manner and in no way operate to favor any particular outcome in any case.*

### **Rule 2.13: Disability and Impairment**

An ALJ having a reasonable belief that the performance of a lawyer or another ALJ 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**

None.

### **Rule 2.14: Responding to Judicial and Lawyer Misconduct**

(A) An ALJ having knowledge that another ALJ has committed a violation of this Code that raises a substantial question regarding the ALJ's honesty, trustworthiness, or fitness as an ALJ in other respects shall inform the appropriate authority.

(B) An ALJ 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) An ALJ who receives information indicating a substantial likelihood that another ALJ has committed a violation of this Code shall take appropriate action.

(D) An ALJ who receives information indicating that a lawyer has committed a violation of the Rules of Professional Conduct shall take appropriate action.

**Comment**

None.

**Rule 2.15: Cooperation with Disciplinary Authorities**

(A) An ALJ shall cooperate and be candid and honest with judicial and lawyer disciplinary and other official investigatory agencies, in a manner consistent with judicial confidentiality provisions provided by law.

(B) An ALJ shall not retaliate, directly or indirectly, against a person known or suspected to have assisted or cooperated with an investigation of the ALJ or a lawyer.

**Comment**

*Cooperation with investigations and proceedings of judicial and lawyer disciplinary agencies, as required in paragraph (A), instills confidence in ALJs' commitment to the integrity of the administrative law adjudication system and the protection of the public.*

## CANON 3

*AN ADMINISTRATIVE LAW JUDGE SHALL CONDUCT PERSONAL AND EXTRA-JUDICIAL ACTIVITIES IN A MANNER THAT WILL MINIMIZE THE RISK OF CONFLICT WITH THE OBLIGATIONS OF THE ALJ'S OFFICE*

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

An ALJ may engage in extrajudicial activities, except as prohibited by law or this Code; however, when engaging in extrajudicial activities, an ALJ shall not:

- (A) Participate in activities that will interfere with the proper performance of the ALJ's judicial duties;
- (B) Participate in activities that will lead to frequent disqualification of the ALJ;
- (C) Participate in activities that would appear to a reasonable person to undermine the ALJ'S independence, integrity, or impartiality;
- (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 incidental use for activities that concern the law, the legal system, or the administration of justice, or unless such additional use is permitted by law.

### **Comment**

*The actions, participation or engagements that are prohibited under this Rule include any such activity within the realm and use of social media.*

### **Rule 3.2: Appearance before Governmental Agencies and Consultation with Government Officials**

An ALJ shall not appear voluntarily at a public hearing before, or otherwise consult with, 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 ALJ acquired knowledge or expertise in the course of the ALJ's official duties; or
- (C) When the ALJ is acting in a self-represented capacity involving the ALJ's legal or economic interests, or when the ALJ is acting in a fiduciary capacity.

### **Comment**

None.

**Rule 3.3: Testifying as a Character Witness**

An ALJ 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**

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

### **Rule 3.4: Appointment to Governmental Positions**

An ALJ shall not accept appointment to a governmental committee, board, commission, or other governmental position, unless such appointment does not conflict with the ALJ's official duties and there is no appearance of conflict, bias or prejudice concerning the ALJ's official position.

### **Comment**

None.

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

An ALJ shall not intentionally disclose or use nonpublic information acquired in an official capacity for any purpose unrelated to the ALJ's adjudicative duties.

### **Comment**

None.

### **Rule 3.6: Affiliation with Discriminatory Organizations**

(A) An ALJ shall not hold membership in any organization that practices discrimination on the basis of race, sex, gender, religion, national origin, ethnicity, or sexual orientation.

(B) An ALJ shall not use the benefits or facilities of an organization if the ALJ knows or should know that the organization practices invidious discrimination or one or more of the bases identified in paragraph (A). An ALJ's attendance at an event or facility of an organization that the ALJ is not permitted to join is not a violation of this Rule when the ALJ's attendance is an isolated event that could not reasonably be perceived as an endorsement of the organization's practices.

#### **Comment**

None.

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

(A) Subject to the requirements of Rule 3.1, an ALJ 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, 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 ALJ's family, or from ALJs over whom the ALJ 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 their 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 ALJ may participate only if the event concerns the law, the legal system, or the administration of justice.
- (5) making recommendations to such a public or private fund-granting organization or entity in connection with its programs and activities, but only if

the organization entity is concerned with the law, the legal system, or the administration of justice; and

- (6) serving as an officer, director, trustee, or non-legal 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 ALJ; or

(b) will frequently be engaged in adversary proceedings in the tribunal of which the ALJ is a member, or in any tribunal subject to the appellate jurisdiction of the tribunal of which the ALJ is a member.

(B) An ALJ may encourage lawyers to provide pro bono public legal services.

**Comment**

None.

**Rule 3.8: Appointments to Fiduciary Positions**

An ALJ acting in a fiduciary capacity shall be subject to the same restrictions on engaging in financial activities that apply to an ALJ personally.

**Comment**

None.

**Rule 3.9: Service as Arbitrator or Mediator**

(A) A full-time ALJ should not act as an arbitrator or a mediator or perform other judicial functions apart from the ALJ's official duties unless expressly authorized by law.

(B) A part time ALJ shall not act as an arbitrator or a mediator or perform other judicial functions apart from their official duties as a part-time ALJ if their impartiality might reasonably be questioned because of such work.

**Comment**

None.

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

If the law of the jurisdiction permits, an ALJ may have a non-conflicting practice of law (e.g., drafting wills) so long as the duties of the ALJ's office take precedence.

#### **Comment**

*[1] In some jurisdictions, the compensation for ALJs is so low that well qualified individuals would not serve unless the ALJ could maintain a non-conflicting practice of law.*

*[2] Certain local governments hire ALJs on a contract basis with the expectation and understanding that the ALJ shall maintain a separate source of income such that the attorney performing ALJ duties is expected to earn income to support themselves through legal work outside their duties as an ALJ, as long as that work does not conflict or appear to conflict with their work as an ALJ.*

*[3] Rule 3.10 is optional and may be unacceptable in some jurisdictions.*

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

(A) An ALJ may hold and manage investments of the ALJ and members of the ALJ's family.

(B) An ALJ shall not serve as an officer, director, manager, general partner, advisor, or employee of any business entity except that an ALJ may manage or participate in:

- (1) a business closely held by the ALJ or members of the ALJ's family; or
- (2) a business entity primarily engaged in investment of the financial resources of the ALJ or members of the ALJ's family.

(C) An ALJ 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 ALJ;
- (3) involve the ALJ in frequent transactions or continuing business relationships with lawyers or other persons likely to come before the tribunal on which the ALJ serves; or
- (4) result in violation of other provisions of this Code.

#### **Comment**

None.

### **Rule 3.12: Compensation for Extrajudicial Activities**

An ALJ 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 ALJ's independence, integrity, or impartiality.

#### **Comment**

None.

### **Rule 3.13: Acceptance of Gifts, Loans, Bequests, Benefits, or Other Things of Value**

(A) An ALJ 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 ALJ's independence, integrity, or impartiality.

(B) Unless otherwise prohibited by law or by paragraph (A), an ALJ 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 ALJ would in any event require disqualification of the ALJ 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 ALJs or 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 ALJs or judges;
- (6) scholarships, fellowships, and similar benefits or awards, if they are available to similarly situated persons who are not ALJs or judges, based upon the same terms and criteria;
- (7) books, magazines, journals, audiovisual materials, and other resource materials supplied by publishers on a complimentary basis for official use; or

(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 an ALJ residing in the ALJ's household, but that incidentally benefit the ALJ.

(C) Unless otherwise prohibited by law or by paragraph (A), an ALJ may accept the following items:

(1) gifts incidental to a public testimonial;

(2) invitations to the ALJ and the ALJ'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 the ALJ's educational, religious, charitable, fraternal or civic activities permitted by this Code, if the same invitation is offered to non-ALJs and non-judges who are engaged in similar ways in the activity as is the ALJ.

#### **Comment**

None

#### **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, an ALJ may accept reimbursement, if 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 ALJ's employing entity, if the expenses or charges are associated with the ALJ'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 ALJ and, when appropriate to the occasion, by the ALJ's spouse, domestic partner, or guest.

#### **Comment**

None

## CANON 4

*AN ADMINISTRATIVE LAW JUDGE SHALL NOT ENGAGE IN POLITICAL OR CAMPAIGN ACTIVITY THAT IS INCONSISTENT WITH THE INDEPENDENCE, INTEGRITY, OR IMPARTIALITY OF THE ADMINISTRATIVE LAW JUDICIARY*

### **Rule 4.1 Political and Campaign Activities of ALJs in General**

- (A) Except as permitted by law or by Rules 4.2 and 4.4, an ALJ shall not:
- (1) act as a leader in, or hold office in, a political organization;
  - (2) make speeches on behalf of a political organization;
  - (4) publicly endorse or oppose a candidate for any partisan public office;
  - (4) publicly identify himself or herself as a candidate of a political organization;
  - (5) seek, accept, or use endorsements from a political organization;
  - (6) knowingly, or with reckless disregard of the truth, make any false or misleading statement;
  - (7) make any statement that would reasonably be expected to affect the outcome or impair the fairness of a matter pending or impending in any tribunal;  
or
  - (8) in connection with cases, controversies, or issues that are likely to come before the tribunal, make pledges, promises, or commitments that are inconsistent with the impartial performance of the adjudicative duties of office.
- (B) An ALJ shall take reasonable measures to ensure that other persons do not undertake, on behalf of the ALJ, any activities prohibited under paragraph (A).

### **Comment**

*[1] Certain portions of this Rule may be too stringent in local jurisdictions where an ALJ is hired through contract; therefore, some provisions may be considered optional.*

### **Rule 4.2: Candidates for Appointive ALJ Positions**

A candidate for appointment to an ALJ position may:

- (A) Communicate with the appointing or confirming authority, including any selection, screening, or nominating commission or similar organization and



(B) Seek endorsements for the appointment from any person or organization other than a partisan political organization.

#### **Comment**

None.

#### **Rule 4.3: Activities of ALJs Who Become Candidates for Nonjudicial Office**

(A) Upon becoming a candidate for a non-judicial elective office, an ALJ shall resign from the ALJ office, unless permitted by law to continue to hold the ALJ office.

(B) Upon becoming a candidate for a non-judicial appointive office, an ALJ is not required to resign as an ALJ, provided that the ALJ complies with the other provisions of this Code.

#### **Comment**

None

### **EFFECTIVE DATE OF COMPLIANCE**

A person to whom this Code becomes applicable should arrange their affairs as soon as reasonably possible to comply with it.

## **Appendix B**

### COLORADO JUDICIAL ETHICS ADVISORY BOARD OPINIONS

2016 CJEAB  
Advisory  
Opinions

#### [2016-03](#)

A judge elected to sit on the Board of Trustees of Colorado PERA should abstain from participating as a panelist in PERA's administrative hearing process because such participation constitutes arbitration or another judicial function outside of a judge's official duties and violates the Code of Judicial Conduct.

#### [2016-02](#)

A judge may serve on the board of directors of the Joint Initiatives for Youth and Families of the Pikes Peak Region, even if the board engages in legislative advocacy benefitting children and families, provided that doing so would not lead to his frequent

disqualification or otherwise interfere with his ability to perform his judicial duties. The judge must ensure that his activities as a board member do not undermine his impartiality, give rise to the appearance of impropriety, or violate other provisions of the Code.

Because it is no longer applicable, C.J.E.A.B. Advisory Opinion 2007-07 is withdrawn.

[2016-01](#)

A judge who serves on the board of a non-law-related charitable organization may thank donors for their past financial contributions to the organization by telephone or in writing, provided that the judge does not directly or indirectly solicit future donations.

2014  
CEAB Advisory  
Opinions

[2014-01](#)

Because the use of marijuana is a federal crime, a judge's use of marijuana for any purpose is not a "minor" violation of criminal law and therefore violates Rule 1.1 of the Code of Judicial Conduct.

2013  
CJEAB Advisory  
Opinions

[2013-04](#)

A judge may not donate an item to be sold at a fundraising auction for a non-profit organization that would identify the judge by name and title, because doing so constitutes passive solicitation that is prohibited under Rule 3.7 of the Code.

[2013-03](#)

The judge is not disqualified from a C.R.C.P. 120 foreclosure proceeding or related declaratory judgment action based on his interest in the Public Employee Retirement Association (PERA), which holds investments in the foreclosing bank. The judge does not have an actual bias or prejudice regarding the parties, has at most a de minimis interest in the outcome of the proceedings through PERA, and does not have a disqualifying economic interest in the foreclosing bank or in the outcome of the litigation. To the extent his interest in PERA could give rise to an appearance of impropriety or impartiality, the rule of necessity would override any potential conflict and preclude his disqualification from either case.

[2013-02](#)

As part of their administrative duties, judicial officers may ethically select the attorneys who are eligible for appointment as counsel for

respondent parents in dependency and neglect proceedings and monitor appointed attorneys' performance, provided the exercise of those duties is impartial and based on merit.

[2013-01](#)

The judge may serve on the board of directors of the Colorado Organization for Victim Assistance, provided doing so would not lead to his frequent disqualification or otherwise interfere with his ability to perform his judicial duties. The judge must ensure that his activities as a board member do not undermine his impartiality, give rise to the appearance of impropriety, or violate other provisions of the Code.

2012  
CJEAB Advisory  
Opinions

[2012-07](#)

Both during the engagement and after the marriage, the judge, whose daughter is engaged to be married to a Deputy District Attorney: (1) must recuse from cases in which his future son-in-law enters an appearance or otherwise participates in the preparation or presentation of the case; (2) is not disqualified from all cases involving the District Attorney's office, provided his future son-in-law has no personal involvement with the case and has no supervisory authority over the attorneys involved in the case; and (3) may ethically serve as the weekly duty judge responsible for reviewing and approving arrest warrants, search warrants, and warrantless arrest affidavits, provided his future son-in-law is not the attorney responsible for preparing or reviewing warrants and affidavits submitted for the judge's approval.

[2012-06](#)

A judge who reports an attorney to Attorney Regulation Counsel but concludes that disqualification from the attorney's cases is not required has a duty to sit on the reported attorney's cases and must disclose the report to the parties and their counsel until the disciplinary proceeding stemming from the report has been closed.

[2012-05](#)

The judge may participate on the Child Welfare Executive Leadership Council, because it has some relationship to the law, the legal system, or the administration of justice. The judge may participate in any of the Council's activities, provided doing so would not undermine the judge's impartiality, give rise to the

appearance of impropriety, or violate other provisions of the Code. Having the judge's abstention from discussing or voting on prohibited topics noted in the minutes of any meeting is one acceptable means of reflecting limitations on the judge's role to avoid ethical concerns.

#### [2012-04](#)

A judge may purchase property that was the subject of a foreclosure proceeding in the judge's judicial district at a subsequent sale, provided the purchase does not result or appear to result from the exploitation of the judicial office or the use of information acquired by the judge in his or her judicial capacity, the judge does not receive preferential treatment in the sale based on his or her position or affiliation with any person or entity involved in the foreclosure proceedings, and the purchase does not undermine the judge's impartiality or give rise to the appearance of impropriety.

#### [2012-03](#)

A judge involved with a teen offender diversion program run by a law-related non-profit organization may be interviewed for a video concerning the program to be used in both informational and fund-raising situations, provided the judge does not directly solicit funds on behalf of the organization.

#### [2012-02](#)

A judge should recuse from all cases in which an attorney supervised by the judge's spouse enters an appearance.

#### [2012-01](#)

A judge serving as chairman of the board of a non-profit organization may not sign grant applications on behalf of the organization, regardless of whether the judge is identified as a judge in the application materials.

2011  
CJEAB Advisory  
Opinions

#### [2011-01](#)

Withdrawing Opinion 2004-01, the Board determines that a judge's report of attorney misconduct, without more, does not require the judge automatically to recuse from the reported attorney's cases. If the judge has a personal bias or prejudice against the attorney, or if

the judge's impartiality might reasonably be questioned if the judge did not recuse, the judge must recuse from the reported attorney's cases. If the judge determines that the judge must recuse, the judge's disqualification from the reported attorney's cases does not require the judge to recuse in pending or new cases filed generally by the attorney's law firm but that do not include an entry of appearance by the reported attorney.

2010 CJEAB  
Advisory  
Opinions

[2010-03](#)

The judges, who face active opposition to their retention, may speak publicly about: (1) the retention process and performance evaluation process; (2) the 35(c) proceedings in the Masters case and the Special Prosecutor's Report issued at the end of that proceeding; (3) the disciplinary process and stipulations signed by the judges regarding their conduct; and (4) the civil suit filed against them by Mr. Masters—provided that their statements are truthful, are consistent with Canon 1, and do not impact the fairness of the pending criminal investigation into the police lieutenant or any proceedings that may result from the ongoing investigation by the Attorney General's Office.

[2010-02](#)

The judge should not serve on an interagency oversight board which determines how to spend certain state funds where a new memorandum of understanding with the state on dispersal of the funds creates a financial incentive for the judge to reduce certain placements in his capacity as a judge in order to provide more funds for the oversight group. Service on the board would reflect adversely on the judge's impartiality and could create an appearance of impropriety, and thus he should resign.

[2010-01](#)

A judge may not request that CLE providers offer programs to judges on a discounted or no cost basis, and a committee on which judges serve may not make the request on behalf of its judge members. Judges should disclose the benefit of discounted or no cost programs if they are made available only to judges, but need not do so if the programs are available to similarly situated persons who are not judges.

2009 CJEAB  
Advisory  
Opinions

[2009-03](#)

Absent a change to the Canons, a judge may not serve on his city's bicycle advisory committee.

[2009-02](#)

A judge is not required to disqualify herself sua sponte from all criminal matters where the judge received a death threat from a former litigant who is being prosecuted by the DA's office for threatening the judge. The judge should, however, examine her own conscience and emotions for bias toward the DA's office or against defense counsel that might make sua sponte recusal appropriate.

[2009-01](#)

A judge may accept his long-time friend's invitation to the friend's birthday celebration, which will involve a trip out of state, and for which all expenses for all invitees will be covered by the friend. The judge is not required to report the trip.

2008 CJEAB  
Advisory  
Opinions

[2008-07](#)

A judge may approve a deferred-sentence agreement that requires a defendant to make a donation to a specific charity, as long as the charity specified in the agreement is neither chosen nor suggested by the court.

[2008-06](#)

Colorado judges may be members of the Colorado District Judges' Association and they may pay dues to the Association knowing that those dues will be used to hire a lobbyist to advance the member judges' interests as judges. Further, judges may solicit membership dues from other judges over whom they do not have supervisory or appellate authority.

[2008-05](#)

The judge asks whether there is active opposition to his retention and whether he may begin a campaign in support of his retention. A great deal of media attention to a judge's ruling, even if it is critical of the ruling, does not, in itself, constitute active opposition to the judge's retention. However, if there is an organized campaign in opposition to the judge's retention or if there are individual

comments opposed to the judge's retention that have been broadcast to a public audience, the judge may safely conclude that there is active opposition to the judge's retention. Here, the Board concludes that the numerous comments posted on the local newspaper's website recommending non-retention of the judge amount to active opposition. Nevertheless, the Board cautions the judge that even though he may, ethically, campaign for retention, he should begin a campaign with great care, bearing in mind that our system strongly disfavors judicial campaigns.

#### [2008-04](#)

Judges standing for retention may not appear on a television program in which a representative of the League of Women Voters would ask them questions to help provide viewers with more information about whether or not the judges should be retained. Viewers might reasonably expect that the judge was seeking an approval vote and might therefore understand that the judge is engaging in campaign activity.

#### [2008-03](#)

The judge may speak at a CLE which is, in effect, limited to only one component of the bar, provided that the judge satisfies certain conditions. In addition, the judge should consider with care the topic on which he presents, and should avoid presenting on a topic such as trial strategy, which could raise questions regarding the judge's impartiality.

#### [2008-02](#)

A judge may not attend or participate in a precinct caucus; however, a judge may vote in a primary election.

#### [2008-01](#)

A judge may, at his or her discretion, meet with a special interest group, but the judge is not required to do so. In assessing whether to grant a request for a meeting, judge should require the special interest group to submit a written request specifying the purpose of the meeting. If the purpose is not improper and the judge wishes to grant the request, he or she should send a written response laying out ground rules for the meeting. At the meeting itself, the judge should ensure that the group is not given any impression that it is in a special position to influence the judge, and the judge should not engage in any ex parte communications with the group regarding any pending or impending matters.

2007 CJEAB  
Advisory  
Opinions

[2007-11](#)

The judge may accept an appointment to the Colorado Child Support Commission. The work of this commission satisfies the direct nexus test and does not call into question the judge's impartiality, effectiveness, or independence.

[2007-10](#)

The requesting judge may serve on a "Justice Coordinating Committee" established by his Board of County Commissioners. The work of the JCC has a direct nexus to the law, the legal system, and the administration of justice. The purposes of the JCC are very general and it has no objective that seems likely to call into question the judge's impartiality, effectiveness, or independence. Thus, the concerns raised in 2005-04 by the judge's service on a municipal crime control and prevention commission are not implicated here. However, the requesting judge should reexamine the propriety of his continued service if the scope of work changes from that set forth in the JCC's bylaws, particularly as to objectives which could compromise the judge's neutrality.

[2007-09](#)

A judge whose spouse is elected to the City Council, which exercises supervisory responsibility over the Chief of Police and City Manager, is not required to disqualify himself in cases charged by the police department. He should, however, consider whether the facts and circumstances make disqualification appropriate in a particular case. The judge should disclose that his spouse is a member of the City Council in cases charged by the police department

[2007-08](#)

A judge may serve on two Colorado Bar Association task forces dedicated to Judicial Performance Commissions and the death penalty. He should, however, reassess the propriety of his involvement if the focus of the death penalty task force goes beyond merely recommending that the CBA take a position.

[2007-07](#)

A district court judge may not accept a voting or non-voting board position on a local community board that combines integrated services and legislative advocacy because such membership would involve legislative advocacy beyond matters to improve the law in



violation of Canon 7.

[2007-06](#)

A county court judge may not both sit as a district judge on an ongoing basis in criminal matters and appear as a lawyer in that district court in civil matters.

[2007-05](#)

A judge may not advertise her availability to perform wedding ceremonies and may not solicit business as a wedding officiant.

[2007-04](#)

A judge is not required to disqualify himself when his godchild's estranged father appears before him, but he should disclose the relationship to each party when his godchild's father appears in court.

[2007-03](#)

A judge may serve on a grant-making committee of a community foundation.

[2007-02](#)

A judge may serve on the board of directors of a public charter school in a neighboring judicial district.

[2007-01](#)

A judge who paid for the judge's adult daughter's legal representation in two criminal matters and was reimbursed by the daughter need not disqualify herself or himself on a sua sponte basis when the attorney who represented the judge's adult daughter appears before the judge. The judge should consult the judge's own conscience to determine whether disqualification is warranted if the judge maintains a disabling prejudice for or against the attorney. If the judge concludes that disqualification is unnecessary, disclosure of the daughter's representation still may be appropriate until the passage of time, the limited consequences of the prior matter and the nature of the judge's relationship with the attorney have made the prior representation irrelevant. In this case, the Board recommends that the judge issue a one-time disclosure letter to the district attorney's office, whose lawyers always would be opposing counsel in matters involving the private criminal

2006 CJEAB  
Advisory  
Opinions

defense attorney who represented the judge's daughter.

[2006-10](#)

Judges may attend the gubernatorial inauguration and related events.

[2006-09](#)

A full-time judge who will be retiring soon should refrain from setting or hearing private mediations until after he retires as a judge.

[2006-08](#)

The judge should not accept appointment to a blue ribbon panel of public and private leaders charged with "reducing the state's contribution and vulnerability to a changed climate" by developing a set of recommendations and policy proposals addressing how Colorado can mitigate and adapt to climate change. The judge's work on the panel would involve consulting with or providing recommendations to the legislative and executive branches on climate control issues, which are unconnected with the law, the legal system, the administration of justice, or the role of the judiciary, and thus are prohibited under Canon 4. In addition, the blue ribbon panel's focus on influencing legislation constitutes prohibited political activity within the meaning of Canon 7.

[2006-07](#)

A judge may make a monetary contribution to a group advocating for or against Amendment 40 so long as the group is not a partisan "political organization." Additionally, a judge may speak to civic groups about the measure and write editorials opposing or promoting it because such political activity implicates the law, the legal system, the administration of justice, and the role of the judiciary as an independent branch of government and thus is expressly permitted under Canons 4 and 7.

[2006-06](#)

The judge may serve on the board of an organization devoted to seeking funds to assist defendants in obtaining court-ordered substance abuse treatment, and he may make recommendations to a private foundation that it should fund programs to the same end, but it would be inappropriate for the judge to assist in determining which particular defendants receive the scholarship funds.

#### 2006-05

A judge should disqualify himself or herself sua sponte if an attorney or firm currently representing the judge, or representing the judge's adversary in a current matter, appears before the judge. A judge should also continue to disqualify himself or herself sua sponte for a reasonable period of time after the representation has ended, typically one year, when the judge's attorney, other members of that firm, the judge's adversary's attorneys, or members of that attorney's firm appear before the judge. After the expiration of a reasonable period of time, continued disqualification is not required, but may be appropriate under the facts and circumstances of the case in which the judge was represented. Here, although this reasonable period has lapsed, the judge should consider various objective and subjective factors in assessing whether continued disqualification is appropriate, and how the judge should respond to a motion to disqualify. However, the judge should continue to disclose the prior representation for an extended period, at least until the passage of time, the limited consequences of the prior matter, and the nature of his current relationship with his prior attorney have made the prior representation irrelevant.

#### 2006-04

To make clear that any contribution by a judge's spouse to a political candidate is not from the judge, that contribution should be made in the spouse's name alone from the spouse's separate bank account with no reference to the judge or his judicial position.

#### 2006-03

A judge may not testify as a character witness on a voluntary basis, but he is obligated to comply with a subpoena if one is issued. Where a judge has been asked to provide such testimony, the judge should consider whether the interests of justice require his or her testimony, and if not should then consider attempting to discourage the subpoenaing party or lawyer from requiring the testimony, because of the possibility that the testimony is being sought to trade on the judge's position. Whether the interests of justice require the testimony depends on three factors related to the specifics of the particular case in which the judge would be asked to testify.

#### 2006-02

A full-time judge may not participate in her local legal service's call-

a-lawyer program by providing pro bono advice to callers, anonymous or otherwise, because doing so would constitute the practice of law. Full-time judges are prohibited from engaging in the practice of law. The judge may, however, engage in activities intended to encourage attorneys to perform pro bono services or act in an advisory capacity to the legal services pro bono program.

[2006-01](#)

A judge may recommend a lawyer or lawyers to friends or family only in circumstances where the judge has a sufficiently close relationship with the requesting party that he would automatically recuse himself from the case due to the closeness of that relationship, regardless of whether the judge had been asked to make a recommendation.

2005 CJEAB  
Advisory  
Opinions

[2005-05](#)

A judge's spouse is not bound by the Code of Judicial Conduct and thus may freely pursue whatever elected office to which the spouse aspires. The judge, however, should refrain from attending all political events in support of the spouse's candidacy and must avoid activities that could be perceived as constituting an endorsement of the candidate or using the prestige of the judicial office to benefit the spouse. The judge may, however, allow the judge's photograph to be used in the spouse's campaign literature as long as the judge is not depicted as or identified as a judge.

[2005-04](#)

A judge should not serve on a governmental commission unless there is a close nexus between the work of the commission and the improvement of the law, legal system, or the administration of justice. The crime control commission at issue here lacks that nexus, making a judge's service on it inappropriate. The judge may, however, provide factual information to the commission to assist it in its policymaking efforts.

[2005-03](#)

A judge should not serve on the board of directors of his or her homeowners' association where the association is large and substantial, operates a sizeable budget and maintains significant cash reserves, and engaged in substantial business-type contacts that might lead to or involve litigation.

[2005-02](#)

A judge in a small, rural jurisdiction should disqualify himself from cases in which a partner or associate in his brother-in-law's firm acts as counsel.

[2005-01](#)

A judge need not recuse in every case involving a law enforcement agency for which the judge's spouse occasionally performs arson investigations.

2004 CJEAB  
Advisory  
Opinions

[2004-02](#)

A mentee judge may discuss pending or impending matters with his or her mentor judge but the mentee judge alone is responsible for making decisions on the matter.

[2004-01](#)

A judge's report of an attorney's misconduct in a case pending before the judge requires the judge to disqualify him or herself.

[Directive 94-01 AMENDED](#)

Related Documents and Forms: (all are in Adobe pdf format, you can [get the free Adobe Reader here](#))

## **APPENDIX C**

### **JUDICIAL ETHICS UPDATE (October 2018)**

**by Jessica Crandall, Law Clerk  
Colorado Office of Administrative Courts**

#### **1. Reports from Specific Geographical Areas**

##### **A. West Virginia**

**I.** The West Virginia Supreme Court of Appeals prohibited the West Virginia State Senate from impeaching Chief Justice Margaret Workman, reasoning in part that the Court possesses exclusive jurisdiction to sanction a judicial officer for a violation of the code of judicial conduct. The Court explained that only violations of the Code of Judicial Conduct found by the Court itself would provide a legitimate basis for an impeachment proceeding by the Legislature. (State of West Virginia ex rel. Workman, 2018 WL 4941057 (Oct. 11, 2018).)

**II.** After a two-day impeachment trial, the West Virginia Senate voted to censure rather than impeach Justice Beth Walker. Walker was one of four justices impeached by the House of Delegates based on allegations related to improper spending and court administration. The Senate found censure to be the most appropriate response because Justice Walker acknowledged the need for changed policies and practices in order to restore faith in the judiciary. Former justice Robin Davis, who retired after the impeachment articles were filed, has filed a federal lawsuit, asking that her own impeachment trial be stopped, alleging that her constitutional rights are being violated. (No citation provided.)

**III.** A federal jury convicted West Virginia Supreme Court of Appeals Justice Allen Loughrey on eleven charges: seven counts of wire fraud, two counts of making false statements to federal investigators, and one count each of mail fraud and witness tampering. The first ten counts related to the Justice's use of state vehicles and credit cards for personal use; the witness tampering count related to a conversation the Justice had with another state employee regarding renovations to the justice's office. The prosecution argued that Justice Loughrey displayed arrogance and an unbridled sense of entitlement upon his elevation to Chief Justice. Loughrey contended that he had no intent to commit fraud and the charges were motivated by personal and political animus against him. Oct. 12, 2018 (<http://wvmetronews.com/2018/10/12/jury-finds-loughry-guilty-on-11-counts-not-guilty-on-10-counts-hangs-on-1-count/>)

Rule mentioned:

***Rule 1.1: Compliance with the Law.*** (A) A judge shall comply with the law, including the Code of Judicial Conduct. (B) Conduct by a judge that violates a criminal law may, unless the violation is minor, constitute a violation of the requirement that the judge must comply with the law.

## **B. Cook County, IL**

**I.** A veteran Cook County criminal judge allegedly made disparaging comments about a female prosecutor and former law classmate, referring to her as a “bitch” and suggesting he had had sex with her, because he was upset when she refused to acknowledge him in the courtroom. He was reassigned to administrative duties. The Chief Judge then announced that all employees and judges in the court system would undergo sexual harassment training the following month.

Sept. 26, 2018 (<https://www.chicagotribune.com/news/watchdog/ct-met-cook-county-judge-araujo-reassigned-20180924-story.html>)

**II.** Cook County Circuit Court Judge Richard Schwind was sentencing a defendant in a misdemeanor battery case when he told the defendant that he should not have taken offense to being called the “n” word, and punched the name-caller, because the defendant “[was] never a slave.” The matter will be reviewed by the court system’s executive committee.

Sept. 28, 2018 (<https://www.wbez.org/shows/wbez-news/white-cook-county-judge-tells-black-defendant-you-were-never-a-slave/56832403-3305-488a-ac7d-90cd6115dc98>)

## **2. Social Media Issues**

**A.** The California Supreme Court adopted amendments to its code of judicial ethics related to the use of social media, establishing that the same canons that guide a judge’s approach to socialization in traditional forms of communication apply similarly to internet use and social media.

(<https://tinyurl.com/c3lrplt>)

**B.** The California Commission on Judicial Performance publicly censured a former commissioner and barred him from receiving any further assignment, appointment, or reference of work from any California state court. The commissioner used his Facebook account to post and re-post sentiments espousing animosity and/or hatred toward a wide variety of groups and entities, including anti-Muslim, anti-gay, and anti-California sentiment, and then represented to his presiding judge and the Commission that he had taken the posts down when he had not done so.

Aug. 22, 2018 ([https://cjp.ca.gov/wp-content/uploads/sites/40/2018/08/Gianquinto\\_DO\\_Censure\\_8-22-18.pdf](https://cjp.ca.gov/wp-content/uploads/sites/40/2018/08/Gianquinto_DO_Censure_8-22-18.pdf))

Rules mentioned:

**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.*

**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 . . . (C) participate in activities that would appear to a reasonable person to undermine the judge's independence, integrity, or impartiality.*

**C.** The Texas State Commission on Judicial Conduct publicly admonished a judge for using his Facebook account to advertise for donations for a school supply drive. The judge indicated that his staff generally handles his Facebook account and he is often unaware of what appears there on his behalf.

Oct. 3, 2018 (<https://tinyurl.com/ycm2gp77>)

Rule mentioned:

**Rule 3.7(A). Participation in Educational, Religious, Charitable, Fraternal, or Civic Organizations and Activities.**

*. . . 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: . . . (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. Precedence of Judicial Office**

**A.** An editorial in the San Antonio, Texas Express-News suggests that the lackadaisical work ethic of some judges would be grounds for dismissal in the private sector, particularly in regard to attendance. This same newspaper asked a County Court Administrative Judge about the frequent absences of two misdemeanor judges, and that administrative judge conducted his own informal survey. As a consequence, one judge retired; another showed marked improvement.

Sept. 29, 2018 ([https://www.lmtonline.com/opinion/editorials/article/Work-ethic-of-some-judges-raising-eyebrows-13267215.php?utm\\_campaign=hptexas](https://www.lmtonline.com/opinion/editorials/article/Work-ethic-of-some-judges-raising-eyebrows-13267215.php?utm_campaign=hptexas))

Rule mentioned:

**Rule 2.1. Giving Precedence to the Duties of Judicial Office.** *The duties of judicial office, as prescribed by law, shall take precedence over all of a judge's personal and extrajudicial activities.*



**B.** Former Judge John Contini agreed to be disbarred in exchange for the Florida Judicial Qualifications Commission dismissing formal charges that Contini frequently instructed his staff to create fictitious dockets of cases or hearings to create the impression he was present in the courthouse when he was not, in addition to other misconduct.

Oct. 17, 2018 (<https://www.sun-sentinel.com/local/broward/fl-ne-contini-disbarred-final-20181004-story.html>)

#### **4. Miscellaneous**

**A.** The New Jersey Supreme Court ordered Judge Deborah Gross-Quatrone to show cause why she should not be publicly sanctioned for surreptitiously recording three meetings with her assignment judge and others. The judge maintains that she was justified in her actions due to the need to protect herself from recurring workplace hostilities perpetrated by her assignment judge, and that her recordings were legal.

Oct. 4, 2018 (<https://tinyurl.com/y7s2qjkl>)

**B.** The Kentucky Judicial Conduct Commission suspended Judge Beth Maze with pay pending final adjudication of formal proceedings alleging that she issued orders to two hospitals for a drug screen for the benefit of her ex-husband after he was arrested for possession of a controlled substance, in addition to related misconduct.

Oct. 23, 2018 (<https://tinyurl.com/ybcu9fhd>)

## New post on **Judicial ethics and discipline**



by [graycynthia](#)

[More social media fails](#)

Accepting an agreement for discipline by consent, the South Carolina Supreme Court suspended a judge for 18 months without pay for soliciting funds for the Red Cross on his Facebook page, in addition to other misconduct. [In the Matter of Johns](#) (South Carolina Supreme Court October 13, 2021).

In September 2018, the judge posted on his Facebook page: “For my birthday this year, I’m asking for donations to American Red Cross. I’ve chosen this nonprofit because of food, water, and much more provided for those affected by Hurricane Florence in NC & SC.” In the introduction to his Facebook page, the

judge identified himself as a probate judge and stated that he managed the Oconee County Probate Court.

In 2016, the Court had suspended the judge for 6 months based on his social media posts commenting on a pending matter, endorsing a presidential candidate, and fundraising for a local church. *In re Johns*, 793 S.E.2d 296 (2016). The Court noted that, at the time of the previous sanction, the judge had removed any reference to himself as a judge from his Facebook page, stated that he was “deeply embarrassed,” and assured the Court that, in the future, on Facebook or any other social media, he would not refer “to anything involving his court,” make political posts, or post fundraising information. In the current case, the Court stated: “Despite these assurances, Respondent restored the reference in his Facebook profile identifying himself as a Probate Judge with the Oconee County Probate Court and again used social media for fundraising purposes. In light of Respondent’s prior misconduct, we find a substantial suspension from judicial duties is appropriate.”

\* \* \*

Based on the judge’s resignation and agreement to be disqualified from judicial service in the state, the Texas State Commission on Judicial Conduct agreed not to pursue further disciplinary proceedings against a former justice of the peace; in a notice of formal proceedings, the Commission had alleged that the judge, in addition to other misconduct, made Facebook posts or allowed posts to appear on her Facebook page that (a) promoted, advertised, and/or expressed her support for consumer products, businesses, and other commercial endeavors; (b) indicated her support for and association with law enforcement, the Blue Lives Matter movement, and the U.S. Border Patrol; (c) expressed her contempt or disdain for criminal defendants; (d) promoted fundraising efforts by civic, charitable, and educational organizations and made directed solicitations for personal and local causes; and (e) promoted the campaigns of several candidates for public office. [Fernandez, Voluntary agreement to resign from judicial office in lieu of disciplinary action](#) (Texas State Commission on Judicial Conduct October 22, 2021).

\* \* \*

The California Commission on Judicial Performance publicly admonished a judge for (1) participating in a Facebook group called “Recall George Gascón,” referring

to the county district attorney, and (2) posting tweets, re-tweeting content, and liking tweets by others that expressed partisan views on controversial issues, suggested bias against particular classes of people, and were “undignified and indecorous.” [\*In the Matter Concerning O’Gara, Decision and order imposing public admonishment\*](#) (California Commission on Judicial Performance September 14, 2021).

3 days after George Gascón was sworn in as the new District Attorney of Los Angeles County, the judge used his personal Facebook account to join a recently created Facebook group called “Recall George Gascón.” Subsequently, he posted comments that engaged with group members in response to other members’ posts and “liked” 2 comments by other group members.

Finding that the judge’s Facebook activity gave the appearance of bias against the District Attorney, the Commission concluded: “The judge was an active participant in a group with more than 16,000 members, formed to oppose an elected official, giving the appearance that he endorsed the group’s stated goals and activity. Judge O’Gara posted remarks expressing a partisan viewpoint, and ‘liked’ other users’ comments expressing similarly partisan viewpoints.” The Commission also found that because the judge heard cases prosecuted by the district attorney’s office while he participated in the group, the judge’s “Facebook activity constituted making public comments about pending or impending proceedings in a court.”

The judge maintained a public Twitter account, with the username @mjogara and the display name “Michael J. O’Gara.” The Commission’s decision includes screenshots of the judge’s tweets, re-tweets, and likes between 2014 and 2021. Some of the judge’s tweets or likes were in response to tweets by comedian John Cleese, comedian Jim Gaffigan, actor George Takei, and actor James Woods.

The Commission found that the judge’s Twitter activity gave the appearance of bias and that he “posted undignified, indecorous remarks in response to public figures, and appeared to espouse partisan and controversial viewpoints.” The Commission also found that the judge liked tweets by other users that “appeared to reflect strong political points of view and opinions on controversial issues” such as immigration, the death penalty, and police reform; suggested bias against people of Chinese descent, victims of sexual assault, Muslims, and immigrants; and “were seemingly critical of those exercising their First Amendment right to

protest, such as supporters of the Black Lives Matter movement” and participants in the Women’s March.

In his response to the Commission, the judge expressed contrition and acknowledged that his actions on social media were “inappropriate.” The judge has removed himself from the Facebook group and deleted the Twitter app from his phone and deactivated his account.

Rejecting the judge’s defense that he did not intend his social media activity to act as an endorsement of any specific partisan positions, the Commission stated that, “‘Likes’ are, on their face, indicia that a person likes content.” The Commission noted that, “Facebook is a forum with over one billion active monthly users” and that “Twitter is a forum with over three hundred million active monthly users, each of whom may, if they wish, screenshot or share content generated by another user.” By commenting on a Facebook post or tweeting or re-tweeting content, the Commission stated, the judge “effectively distributed material to an unlimited number of persons, over whose actions he had no control.” The Commission noted that the harm done by the judge’s social media activity was compounded because the judge’s followers “included the official account for the City of Glendale, at least one Los Angeles deputy district attorney, and multiple private attorneys.”

The Commission quoted the *California Judicial Conduct Handbook*:

*Public involvement on either side in ongoing debates about controversial social and political issues is improper. Such issues (e.g., abortion and same-sex marriage) are frequently the subject of public debate and litigation. A judge who is politically active may be perceived to have prejudged issues that may come before the courts. Public involvement politicizes the judicial institution, demeans the judiciary, and impairs judicial independence and impartiality.*

\* \* \*

A 2-part article analyzing the advisory opinions and discipline decisions on social media and judicial ethics was published in the spring and summer 2017 issues of the *Judicial Conduct Reporter*. [Part 1](#) was a general introduction to the topic and a discussion of issues related to judicial duties: “friending” attorneys, disqualification and disclosure, ex parte communications and independent investigations, and comments on pending cases. [Part 2](#) covered off-bench

conduct: conduct that undermines public confidence in the judiciary, commenting on issues, abusing the prestige of office, providing legal advice, disclosing non-public information, charitable activities, political activities, and campaign conduct. [Summaries of advisory opinions and cases up-dating](#) the 2-part article are available on the Center for Judicial Ethics website.

[graycynthia](#) | October 26, 2021 at 5:00 am | Categories: [Social media](#) | URL: <https://wp.me/p4GPcA-18z>

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## **APPENDIX D**

### **OVERVIEW OF DISCIPLINARY MECHANISMS FOR ADMINISTRATIVE LAW JUDGES AND OTHER JUDGES**

#### **The State Personnel System**

Members of the administrative judiciary are appointed to their positions under the State Personnel System. As classified state employees, they have a property right to their positions, which cannot be taken away without due process. Colo. Const. art. XII, Section 13(8). *Department of Institutions v. Kinchen*, 886 P.2d 700 (Colo. 1994).

According to our state constitution, "A person certified to any class or position in the personnel system may be dismissed, suspended, or otherwise disciplined by the appointing authority upon written findings of failure to comply with standards of efficient service or competence, or for willful misconduct, willful failure or inability to perform his duties, or final conviction of a felony or any other offense which involves moral turpitude . . . ." Colo. Const. art. XII, Section 13(8). Section 24-50-125(1), C.R.S.

A breach of the Colorado Code of Judicial Conduct most likely would constitute grounds for some type of disciplinary action because it clearly sets forth a set of standards for adjudicator conduct.

Under State Personnel Board rules, an appointing authority may take either corrective or disciplinary action against an employee for performance issues. State Personnel Board Rules R-6-5 through R-6-12, 4 CCR 801 (2008). Many appointing authorities also choose to utilize either verbal or written warnings prior to initiating corrective action. Board rules require the use of progressive discipline: corrective action must precede disciplinary action unless the behavior is "flagrant or serious." Board Rule R-6-2.

A corrective action is a written statement describing an area or areas that need improvement, the actions that must be taken to improve performance, and the time

period in which to make such improvements. It does not adversely affect pay, status, or tenure. Employees may grieve corrective actions to the Board, which has the power to grant or deny a discretionary hearing to review the grievance issue. Disciplinary action does adversely affect pay, status or tenure. Employees have a mandatory right to a hearing on an appeal of disciplinary action.

In disciplinary action matters, appointing authorities bear the burden of proof to show that the acts or omissions upon which discipline was based occurred, and that the action of the appointing authority was not arbitrary, capricious, or contrary to rule or law. Section 24-50-103(6), C.R.S. *Kinchen, supra*. In corrective action matters, the burden is on the employee to prove that the appointing authority's action was arbitrary, capricious, or contrary to rule or law.

In the event an administrative adjudicator were to seek review of either a corrective or disciplinary action, the matter would be referred out of the Division of Administrative Hearings to one of the contract ALJ's.

### **The Attorney Regulation System**

Municipal judges and licensed attorneys, who are not part of the state judicial system, are subject to discipline for wrongdoing by the Attorney Regulation System. On July 1, 1999, the Colorado Supreme Court implemented a new system of attorney discipline. Then Chief Justice Anthony Volland signed Rule Change #1998 (10) on June 30, 1998, and the Supreme Court enacted Rules 251 and 252, which replaced former Rule 241.

Formerly, complaints (requests for investigation) were filed with the Office of the Grievance Committee Counsel, which employed investigators who filed their reports of investigation with the Inquiry Panel of the Grievance Committee. If the Inquiry Panel determined that formal proceedings were warranted, it referred the matter to the Disciplinary Prosecutor for the filing of a formal complaint. If the Inquiry Panel issued a letter of admonition, the Respondent-Attorney could decline to accept it and demand a formal hearing before the Hearings Panel of the Grievance Committee. When a case was heard, three members of the Hearings Panel constituted a Hearings Committee. After hearing, the Hearings Committee made findings, conclusions and a recommendation of discipline (private censure, public censure, suspension, disbarment or diversion) to the Supreme Court. The process before the Court itself was basically an appellate process but the Court was free to alter the conclusions and recommended sanction. Final action was always by the Court.

Former U.S. Magistrate Richard Borchers characterizes the new system as "vertical," as opposed to the former "horizontal" system. The Office of Attorney Regulation Counsel has assumed the duties of the Disciplinary Prosecutor and the investigative duties formerly held by the Office of Grievance Committee Counsel. The Attorney Regulation Committee has replaced the Grievance Committee. Formal

complaints are now filed with the Presiding Disciplinary Judge, who enters final orders subject to appeal to the Supreme Court.

As provided in C.R.C.P. 251.5, discipline may be imposed on a lawyer/adjudicator, who is not under the jurisdiction of the Judicial Discipline Commission, for misconduct including violation of the Rules of Professional Conduct (for lawyers). Rule 251.5 further provides that the enumeration of acts and omissions constituting grounds for discipline is not exclusive, and other acts or omissions amounting to unprofessional conduct may constitute grounds for discipline. It is no leap at all to consider an adjudicator's violation of the Code of Judicial Conduct as unprofessional conduct. Because of this, the Presiding Disciplinary Judge is empowered to make determinations of whether or not a lawyer/adjudicator violated the Code of Judicial Conduct.

Two Colorado Supreme Court cases are illuminating on the attorney discipline mechanism's handling of judicial misconduct by part-time municipal judges. In *People v. Perrott*, 769 P. 2d 1075 (Colo. 1989), the Supreme Court disciplined a part-time Milliken municipal judge who represented the husband in a dissolution of marriage case and then heard a bench trial for his client when the wife filed domestic violence charges against the husband. The Court said:

Your testimony during the hearing indicates that you do not understand the appropriate role for a judicial officer...it is inappropriate for a judge to place the burden for disqualification on his clients or other persons. It is the role of the attorney-judge to promptly disclose conflicts of interest and to disqualify himself without suggestion from any party or person.

In the other case, a part-time municipal judge was suspended for purchasing crack cocaine. *People v. Stevens*, 866 P. 2d 1378 (Colo. 1994).

#### Judicial Discipline (State Courts, Denver, Municipalities)

The Colorado Judicial Discipline Commission has jurisdiction over justices and judges in the state judicial system. Non-lawyer judges, who are part of the state court system, are subject to the jurisdiction of the Commission. Magistrates are appointed and discharged by the chief judge of the judicial district with the concurrence of the chief justice. COLORADO RULES FOR MAGISTRATES, Rule 4 (c). Magistrates are under the jurisdiction the Colorado Code of Judicial Conduct. Complaints against magistrates are filed with the chief judge.

Denver County Court judges are not state judges. There is a Denver Judicial Discipline Commission, established by Section A13.8-5, CHARTER OF THE CITY & COUNTY OF DENVER.

Municipal courts are not part of the state court system. They are either creations of statute or home-rule charter. § 13-10-101 et seq., C.R.S; Art. XX, Section 6 (b),



COLORADO CONSTITUTION. Removal of municipal judges in statutory cities and towns requires action of the municipal governing body. Section 13-10-105, C.R.S. (2008).

### **State Judicial Discipline Commission**

Article VI, Section 23 (3) (a), COLORADO CONSTITUTION, provides for a commission on judicial discipline consisting of two judges of district courts and two judges of county courts, each selected by the supreme court; two citizens admitted to practice law in the courts of this state, neither of whom shall be a justice or a judge, who shall have practiced in this state for at least ten years and who shall be appointed by the governor, with the consent of the senate; and four citizens, none of whom shall be a justice or judge, active or retired, nor admitted to practice law in the courts of this state, who shall be appointed by the governor, with the consent of the senate.

Subsection (3) (d) provides that a justice or judge of any court of record in this state may be removed or disciplined for willful misconduct in office, willful or persistent failure to perform his duties, intemperance, or violation of any canon of the Colorado Code of Judicial Conduct, or he may be retired for disability interfering with the performance of his duties which is, or is likely to become, of a permanent character.

Subsection (3) (e) provides that the Commission may order informal remedial action or order a formal hearing to be held before it concerning removal, retirement, suspension, censure, reprimand or other discipline. After a formal hearing, the Commission may take informal remedial action, or it may recommend to the Supreme Court the removal, retirement, suspension, censure, reprimand, or discipline of the judge or justice.

Subsection (3) (f) provides that following receipt of the Commission's recommendation, the Supreme Court shall review the record and in its discretion may permit the introduction of additional evidence and shall order removal, retirement, suspension, censure, reprimand or discipline, or wholly reject the recommendation. Upon order of removal, the justice or judge shall be removed from office, his salary shall cease, and his office shall be deemed vacant. Upon an order for retirement, the judge shall be retired with the same rights and privileges as if he retired pursuant to statute, and his office shall be deemed vacant.

Supreme Court decisions concerning the discipline of judges within the state court system, although there is only one to date, will be highly relevant to the discipline of any government adjudicator. Other appellate decisions dealing with improper judicial conduct shed considerable light on the conduct expected of all adjudicators.

## **Denver Judicial Discipline Commission**

The Commission has the power to conduct investigations, hold hearings, and recommend to the Mayor removal or discipline of a Denver County judge.

Section A13.8-8, CHARTER OF THE CITY & COUNTY OF DENVER provides that a Denver County Judge may be disciplined for: (a) willful misconduct in office, including misconduct which, although not related to judicial duties, brings the judicial office into disrepute or is prejudicial to the administration of justice; (b) willful or persistent failure to perform judicial duties, including incompetent performance of judicial duties; (c) habitual intemperance, including extreme or immoderate personal conduct, recurring loss of temper or control, abuse of alcohol, or the use of illegal narcotic or dangerous drugs; and, (d) any conduct that constitutes a violation of any canon of the Colorado Code of Judicial Conduct.

In the mid-1980s, Denver County Judge Larry Lopez-Alexander was removed from office by Mayor Federico Pena.

## **Municipal Judges**

In statutory cities and towns, a municipal judge may be removed for cause if: (a) he is found guilty of a felony or any other crime involving moral turpitude; (b) he has a disability which interferes with the performance of his duties and which is likely to become of a permanent character; (c) he has willfully or persistently failed to perform his duties; (d) he is habitually intemperate; (e) the municipality required the judge, at the time of appointment, to be a resident, and he subsequently becomes a nonresident.

There is no statutory reference to any code of judicial conduct for municipal judges, however, the Colorado Code of Judicial Conduct is a compelling set of guidelines for the behavior of municipal judges. In home-rule cities, specific qualifications and tenure (including discipline and removal), are provided by charters or ordinances. See *People of the City of Thornton v. Horan*, 192 Colo. 144, 556 P. 2d 1217 (1976). Home-rule cities may have varying standards concerning discipline and removal of municipal judges. See *Artes-Roy v. City of Aspen*, 856 P. 2d 823 (Colo. 1993).

Municipal judges who are licensed attorneys are also subject to the Attorney Regulation System, which has demonstrated that it will refer to the Colorado Code of Judicial Conduct.

## **APPENDIX E**

### Articles and Other Resources

- See Felter, Edwin L., Jr., “Special Problems of State Administrative Law Judges,” 53 ADMIN. L. REV. 403 (2001) [Republished in 8-10 LAW AND JUSTICE 41 (2001-2003, United Lawyers Association, New Delhi, India], which, among other things, outlines various codes of judicial conduct applicable throughout the United States.
- See *also* Felter, Edwin L., Jr., “Accountability in the Administrative Law Judiciary: The Right and the Wrong Kind,” 86 DENV. U. L. REV. 157 (2008) [reprinted in 30 J. NAALJ 19 (2010)].
- COLORADO CODE OF JUDICIAL CONDUCT (2010). The CODE was made applicable to the Colorado Office of Administrative Courts, effective July 1, 2000, pursuant to § 24-30-1003 (4) (a), C.R.S. The states of Georgia and Minnesota, pursuant to statute, have also made the judicial branch code of conduct applicable to their central hearing agencies.
- BANGALORE PRINCIPLES OF JUDICIAL CONDUCT (International—Signed by the Chief Justices of 22 countries—available in PDF from Ed Felter).
- “The Death of Judicial Independence in Turkey: A Lesson for Others,” 38 J. NAALJ 34 (2018)—ONLINE at: <https://digitalcommons.pepperdine.edu/naalj/> , co-authored by Professor Oyku Didem Aydin, Professor of Constitutional Law at Hacettepe University Law School, Ankara, Turkey; and, Edwin L. Felter, Jr.

## APPENDIX F

### Additional Judicial Ethics Updates

#### Disqualification Following a Complaint or Lawsuit Against a Judge

- If a party files a lawsuit against a judge who is presiding over that party's case, the judge is not automatically required to disqualify herself. This general rule prohibits parties from engaging in "judge-shopping" and assumes that "judges are accustomed to ruling fairly in adverse situations and should not allow themselves to be manipulated or antagonized into recusal." *Indiana Advisory Opinion 3-07*. The rule also prevents parties from abusing the system and keeps judges mindful of limited judicial resources. *United States Advisory Opinion 103 (2002)*; *Illinois Advisory Opinion 95-5*.

- Additional Factors

While the filing of the complaint itself does not on its face require recusal, certain circumstances might require recusal. For example, if a judge suspects that the complaint has been filed as part of a sham or frivolous pleading, it is more likely than not that he/she would not be required to disqualify himself or herself. If, on the other hand, the judge feels that he or she may possess a personal bias in the proceedings that may affect his or her impartiality, recusal might be appropriate. Extrajudicial factors that may cause a reasonable person to question the impartiality of the judge may require recusal. Illinois, Arizona and North Dakota have issued a number of questions that judges may ask themselves in determining whether or not recusal is appropriate. For example:

Is the complaint non-frivolous?

Is the alleged bias based upon rulings in the present case or perceived attitude or is it based on specific facts and information?

Does the complaint cause any personal bias that might affect impartiality?

Has the alleged complaint been previously decided under statutes regarding removal of a judge for cause?

Would a reasonable person believe that any extrajudicial facts would bring the judge's impartiality into question?

Is the complaint general such that it could apply to any number of judges?

See generally, Illinois Advisory Opinion 95-5, Arizona Advisory Opinion 98-2, North Dakota Advisory Opinion 93-1.

- **Exceptions**

Under certain circumstances, recusal is mandatory. Most notably, when the commission bases formal charges on the complaint, the judge must disqualify himself or herself to avoid “the appearance of impropriety [and thereby] promote public confidence in the integrity and impartiality of the judiciary.” *New York Advisory Opinion 97-102*. Recusal may also be appropriate where an investigation has been launched. *United States Advisory Opinion 103* (2002). Finally, recusal is required where the Judge publicizes disdain for the complaint and the attorney who issued the complaint where the cumulative effect of the complaint, adverse relationship and affirmative publicity weigh in favor of questioning impartiality. *In re Schenck*, 870 P.2d 185 (Oregon 1994).

- **When a Family Member is Running for Political Office**

Judges are not permitted to publicly endorse a candidate running for public office, even if the candidate is related to a judge. See American Bar Association Model Code of Judicial Conduct, 2007 Comments. Thus, it is inappropriate for a judge to support a family member who is running for office with a public display of paraphernalia, by soliciting votes or funds, or by participating in “behind-the-scenes” activities such as stuffing envelopes or compiling voter/contribution lists. *California Advisory Opinion 49* (2000); *Maine Advisory Opinion 94-3*; *Ohio Advisory Opinion 2001-1*. Judges are not permitted to act as political advisors for a campaign. *Delaware Advisory Opinion 2008-1*; *New Hampshire Advisory Opinion 78-3*; *Application of Gaulkin*, 351 A.2d 740 (New Jersey 1976); *New York Advisory Opinion 92-129*.

#### Use of the Judge’s Home

There is an exception for a judge whose spouse is running for office where the two jointly own a home. The majority opinion is that the home may be used as campaign headquarters with the understanding that the judge may not participate in any campaign events held at the house or be associated with any activities hosted there in any way. *Florida Advisory Opinion 87-22*; *New York Advisory Opinion 06-147*; *Washington Advisory Opinion 86-8*; *U.S. Advisory Opinion 53* (1998). This includes prohibitions on greeting guests and mingling. *Florida Advisory Opinion 87-22*. It may be permissible, however, to have campaign signs on the front lawn. *Ohio Advisory Opinion 2000-1*.

- ***Campaign Literature***

It is also permissible for a judge's name to be mentioned in candidate literature as long as the judge's title is not published. See, for example, *Colorado Advisory Opinion 05-5*. When giving an interview on behalf of a candidate, the judge may limit the conversation to issues concerning marriage and family but may not allude to his/her position as a judge or campaign for the candidate by offering a political opinion. *Massachusetts Advisory Opinion 99-16*.

- **Events**

Judges may attend events on a spouse's behalf in certain states. Some states allow judges to attend all political events while other states prohibit participation in fundraisers. See *Kansas Advisory Opinion JE-62* (1996); *Washington Advisory Opinion 02-2*. Colorado prohibits judges from attending campaign kick-off events. *Colorado Advisory Opinion 05-5*. If in attendance, a judge should not mention his/her position as a judge and should not endorse the candidate. *Kansas Advisory Opinion JE-62* (1996); *Louisiana Advisory Opinion 52* (1981); *Texas Advisory Opinion 180* (1995).

- Community Events

Colorado prohibits judges from attending community functions that are held for the express purpose of supporting a candidate. *Colorado Advisory Opinion 05-5*. It may be permissible to attend a community event where the purpose is "civic, social religious, community, cultural, or recreational," as long as the judge does not mention his or her title or engage in campaigning. *Massachusetts Advisory Opinion 99-16*; *Vermont Advisory Opinion 2728-10* (2004); *Washington Advisory Opinion 02-2*.

- **Campaign Contributions**

Some states allow judges to contribute to a spouse's campaign where the state political contributions rule allows for judicial contributions. *Michigan Advisory Opinion JI-30* (1990). Other jurisdictions prohibit any contributions, particularly where rules prohibit any type of judicial political activity. *Delaware Advisory Opinion 2008-1*; *New York Advisory Opinion 00-75*. It is also important to note that campaigning spouses should not accept contributions from attorneys or litigants who will appear before the judge. If such contributions have been accepted, it may be necessary for the judge to recuse his or herself. *Delaware Advisory Opinion 2008-1*.

## **Confidentiality of Complaints**

Some states require that complainants and witnesses maintain confidentiality of a complaint where formal charges have not been filed. (South Dakota). In other states, only commission members and staff have to adhere to a policy of confidentiality. (Michigan; Tennessee).

- **Forced Silence**

There is a lack of consensus regarding whether or not it is constitutional to prohibit complainants and others from disclosing that a complaint has been filed. One court held that such a prohibition constitutes a violation of the First Amendment. Wanting to protect a judge's reputation and facilitate an effective investigation are not sufficient reasons to justify a prohibition. *Doe v. Judicial Qualifications Commission*, 748 F. Supp. 1520 (S.D. Florida 1990).

- **Limited Ban**

The Second Circuit, on the other hand, disagreed with the analysis the Southern District of Florida propounded. In the case of *Kamasinski v. Judicial Review Council*, the court held that limited bans on disclosure did not constitute a First Amendment violation. 44 F.3d 106 (2nd Cir. 1994). The court found that public disclosure might deter witnesses from testifying and might discourage incompetent judges from stepping down. It was noted, however, that bans could only be constitutional until the time that there was a finding of probable cause for judicial misconduct. Also, a ban on the substance of a complaint and/or witness's testimony is always unconstitutional.

## **Campaign Representations about Incumbency**

When running for office, former judges, judges running for judicial office in a different jurisdiction and temporary judges should not use language in campaign materials that suggest that he or she is an incumbent judge. *Florida Advisory Opinion 2008-10*. If a former judge is running for office, campaign materials must make clear that the judge is not currently a judge. See *Louisiana Advisory Opinion 104* (1993); *New Mexico Advisory Opinion 92-3*; *New York Advisory Opinion 97-72*. If a judge was appointed and is now running, he or she should use the word "retain" instead of "re-elect" in campaign materials. *Florida Advisory Opinion 02-7*. Wearing a robe in campaign photos may also be considered misleading. See *Florida Advisory Opinion 2008-10*; *Nevada Advisory Opinion JE08-006*; *New Mexico Advisory Opinion 92-3*.

- ***Derogatory Statements:***

A Mississippi court held that a judge's derogatory statements during a training conference were not protected by the First Amendment and were made while acting in judicial capacity. *Commission on Judicial Performance v. Boland*, 975 So.2d 882 (Mississippi 2008).

- ***Use of Profanity:***

A judge was publicly censured in Washington for use of profanity and verbal abuse at a drug court conference. The Commission found that the judge was not taking responsibility for his behavior and thus "threaten[ed] the integrity of [the] disciplinary process." *In re Wulle*, Stipulation, Agreement, and Order (December 7, 2007) ([www.cjc.state.wa.us/](http://www.cjc.state.wa.us/)).

- ***Over-indulgence in Alcohol:***

A judge over-indulged in alcohol at a Juvenile Justice Conference in Tennessee and was censured for inappropriate racial comments and sexual harassment. *Jackson*, Public Censure (May 24, 2007).

## **END MATERIALS**

**P.S. We hope you enjoyed the Conference. Please send feedback to ALJ Ed Felter—[ed.felter@state.co.us](mailto:ed.felter@state.co.us)**

**Thank you!**