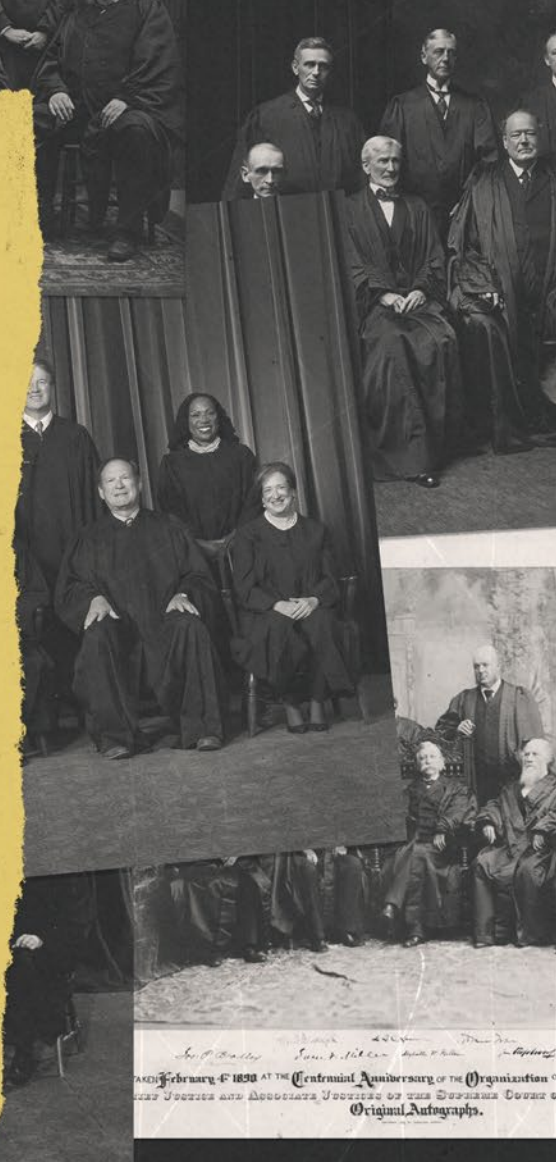


1 SEC. 2. CODE OF CONDUCT FOR THE SUPREME COURT OF  
2 THE UNITED STATES.

3 (a) IN GENERAL.—Chapter 16 of title 28, United  
4 States Code, is amended by adding at the end the fol-  
5 lowing:

6 "§ 365. Codes of conduct

7 "(a) JUSTICES.—Not later than 180 days after the  
8 date of enactment of this section the Supreme Court of  
the United States shall, by a majority of the Justices, give notice  
and opportunity for comment on



Handwritten signatures of Supreme Court Justices: Reed, Brennan, Warren, Burger, Blackmun, Powell, Stevens, O'Connor, Souter, Ginsburg, Breyer, Alito, Roberts, and Kagan. Below the signatures is the date: October 6, 1961 - October 3, 1962.

Original Autographs. AND February 4, 1898 AT THE Centennial Anniversary of the Organization of the Justices and Associate Justices of the Supreme Court of the United States.

# Model Code of Conduct for U.S. Supreme Court Justices

March 9, 2023



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AMERICAN  
DEMOCRACY

# Acknowledgements

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## Introduction

Members of the United States Supreme Court are among the most powerful government officials in the country. These nine individuals — who hold their positions for life — can overturn an act of Congress. Their opinions can reshape the American economy. Their decision-making can expand or restrict the rights of all Americans.

The power of the Court is enormous, and Supreme Court Justices wield it without the use of force, through “mere reason.” The Court’s authority is derived from the public’s trust that its decisions will be issued without fear or favor, and from the perception that its decision-making is grounded in law and the Constitution rather than in political ideology.

But while the rule of law and the legitimacy of the judiciary depend on the impartial administration of justice, few formal standards expressly define acceptable conduct by Supreme Court Justices.

Of all the country’s state and federal courts, only the Supreme Court lacks a code of conduct. Instead, existing rules found in the U.S. Code provide standards concerning financial disclosures and recusals. But this set of standards is limited. And compliance with them, along with all other decisions related to ethical conduct, is left to each Justice’s discretion.

Over the years, the absence of an explicit Supreme Court code of conduct has allowed multiple ethical lapses to occur without any repercussions, as well as the hardening of practices that elevate expedience over deliberate and transparent decision-making.<sup>1</sup> On several remarkable occasions, Justices have, intentionally or not, comported themselves in a manner that raised serious questions about their impartiality.

The situation has become untenable — for litigants, the Court, and our democracy. The Supreme Court should be subject to a code of conduct that addresses the unique circumstances arising in the course of service on the nation’s highest court, a code that gives the public a clear barometer of whether a Justice’s conduct is within ethical bounds.

The absence of a Supreme Court code of conduct has not gone unnoted. It has attracted widespread attention from a variety of key audiences, including Congress, the President’s Commission on the Supreme Court of the United States, the legal academy, and the public.<sup>2</sup>

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<sup>1</sup> “Ahead of House Hearing on SCOTUS Ethics, We Recount the Justices’ Many Ethical Lapses,” Fix the Court, March 2, 2022, <https://fixthecourt.com/2022/03/ahead-house-hearing-scotus-ethics-recount-justices-many-ethical-lapses/>.

<sup>2</sup> See, for example, Supreme Court Ethics, Recusal, and Transparency Act of 2023, H.R. \_\_\_\_, 118th Cong., (2023), <https://hankjohnson.house.gov/sites/evo-subsites/hankjohnson.house.gov/files/evo-media-document/scert23.pdf>; Presidential Commission on the Supreme Court of the United States, *Final Report* (December 2021), 216-226, <https://www.whitehouse.gov/wp-content/uploads/2021/12/SCOTUS-Report-Final-12.8.21-1.pdf>; Amanda Frost, “Judicial Ethics and Supreme Court Exceptionalism,” *Georgetown Journal of Legal*

Recently, the American Bar Association passed a resolution calling on the Supreme Court to adopt a binding code of ethics, and it urged other bar associations around the country to pass similar resolutions.<sup>3</sup>

Much discussion about the need for a Supreme Court code of conduct has focused on the “why” and “how”: Many persuasive arguments have outlined why a code is needed and how it should be implemented and enforced. By now, the need for a code has been established beyond doubt, even as debate continues over mechanisms for enforcement. But a lack of consensus on that point should not delay the implementation of a code of conduct that clearly sets forth a standard of expected conduct applicable to the Justices.

With the need established, this report seeks to move us closer to implementation, advancing the conversation by outlining the “what”: What should a code of conduct actually contain? What standard should the public expect of Supreme Court Justices?

We recognize that there are many ways to draft a robust set of ethical requirements for the Justices, and we agree that the public, policymakers, and the Supreme Court should consider and debate them. Our objective is to offer a proposal to further that discussion and for the Court to consider.

## Our Proposal

We began our effort with an analysis of the Code of Conduct for United States Judges, the ethical code applicable to federal court judges throughout the country.<sup>4</sup> This code serves as the logical foundation for an ethics code applicable to the Justices because many of the Code of Conduct’s fundamental principles, such as integrity and impartiality, are just as applicable to the Justices as to other judges.

Currently, the Supreme Court refers to the existing code as “consultative.”<sup>5</sup> We propose that it serve as the authoritative guidance for the conduct of the Justices. We also propose that it

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*Ethics*, 26 (2013): 443,

[https://digitalcommons.wcl.american.edu/cgi/viewcontent.cgi?article=2389&context=facsch\\_lawrev](https://digitalcommons.wcl.american.edu/cgi/viewcontent.cgi?article=2389&context=facsch_lawrev); Morning Consult and POLITICO National Tracking Poll, June 24-35, 2022, 2, <https://www.politico.com/f/?id=00000181-a5e0-df92-a1e7-e5fd9b340000> (70% of respondents strongly or somewhat support a binding code of ethics for the Supreme Court).

<sup>3</sup> “Resolution 400: ‘The ABA urges the Supreme Court to adopt a code of judicial ethics...’” American Bar Association House of Delegates, February 2023,

<https://www.americanbar.org/content/dam/aba/administrative/news/2023/mym-res/400.pdf>.

<sup>4</sup> “Code of Conduct for United States Judges,” Administrative Office of the Courts, *Guide to Judiciary Policy*, Vol. 2A, March 2019,

[https://www.uscourts.gov/sites/default/files/code\\_of\\_conduct\\_for\\_united\\_states\\_judges\\_effective\\_march\\_12\\_2019.pdf](https://www.uscourts.gov/sites/default/files/code_of_conduct_for_united_states_judges_effective_march_12_2019.pdf).

<sup>5</sup> Robert Barnes and Ann E. Marimow, “Supreme Court justices discussed, but did not agree on, code of conduct,” *Washington Post*, February 9, 2023, <https://www.washingtonpost.com/politics/2023/02/09/supreme-court-ethics-code/>.



be supplemented, as it is in our proposal, to suit their unique circumstances.

Applying the existing code to the Supreme Court is a commonsense starting point for ethics reform, but it is not enough. Supreme Court Justices are the highest profile judges in the country. Their decisions cannot be reviewed by other judges. They have nearly unfettered control over which cases they hear. Their conduct reflects not only on the Supreme Court but also on the judicial system as a whole. When the American public's confidence in the Supreme Court falls, trust in the lower courts falls as well.

Given these unique circumstances, we recommend expanding the existing code for Supreme Court Justices so it provides clear and more stringent guidelines for recusal, prohibitions against conduct that creates an appearance of partiality, rigorous obligations for disclosure, and standards for transparent decision-making.

### ***Recusal***

Our proposed code is based on the premise that a variety of circumstances may give rise to a Justice's disqualification, including financial entanglements of family members, prior government service relating to a case before the Court, and lobbying activity of would-be litigants relating to the Justices' confirmation. It would also require Justices to publish a written explanation for recusal decisions, which would help create more consistent and predictable disqualification decision-making across the federal judiciary.

The proposed code further stipulates that no Justice should sit on a case when their impartiality might reasonably be questioned, irrespective of the impact of their disqualification on the Court's ability to hear a case with a full bench.

### ***Prohibited Conduct***

In addition to the existing prohibition on a judge's participation in political activity, our proposed code of conduct calls for Justices to refrain from participating in activities that would cast doubt on their impartiality, including appearing before organizations with partisan or ideological agendas. It would also limit the Justices' participation in fundraising events, placing more restrictions on members of the Supreme Court than other federal judges. Finally, it would recognize that certain conduct by a spouse or other close family members of a Justice would require that Justice to recuse.

### ***Divestment and Other Disclosures***

Federal judges are encouraged to divest investment assets that would require their frequent recusal from cases. Given the breadth of the Supreme Court's jurisdiction, there is no easy

way to predict which investments could pose future conflicts. Therefore, this code would require Justices to place their assets in a blind trust to avoid the risk of financial conflicts. It would also include more stringent disclosure of income and gifts, creating rules on par with those for top officials in other branches of government.

### *Transparency*

We also propose a new canon of judicial conduct that would create a duty of transparency. Of course, we recognize the importance of the Justices' engaging in candid discussion on some of the most difficult constitutional questions of the day. However, the growing and apparently inconsistent use of emergency procedures and what has come to be known as the "shadow docket" cloak much of the Court's activity in secrecy.

The default position of the Court should be to provide clearly reasoned opinions — after all, as Bentham wrote, "publicity is the very soul of justice." At minimum, the Court has an obligation to explain its decision-making, the foundation of its constitutional duty, by minimizing the use of emergency rulings and providing more detailed explanations when it does issue an emergency order.

This proposed code would also require Justices to commit to making the Court's proceedings accessible to the public, and to refrain from participating in speaking engagements that are closed to the public or media.

These additional rules would undoubtedly place additional burdens on the Justices. They would prohibit some activities in which Justices have freely engaged and subject them to additional scrutiny. But this is an appropriate requirement for a lifetime position imbued with enormous power. As the code for lower federal court judges has long recognized, "a judge must expect to be the subject of constant public scrutiny and accept freely and willingly restrictions that might be viewed as burdensome by the ordinary citizen."<sup>6</sup> These words are even more deeply relevant to the role and privilege of sitting as a Supreme Court Justice.

### **A Note of Caution**

A code of conduct is not a panacea, but rather one of several necessary reforms. It is important to emphasize that Supreme Court ethics do not end with the Justices. Other entities involved in Supreme Court litigation or advocacy need additional ethics rules as well, to prevent them from exerting unofficial influence on the Supreme Court and the selection process. Opaque entities have created clandestine methods to influence the Court and judicial selection, and, to date, Congress has adopted no rule to shed light on these interests' activities or funding.

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<sup>6</sup> Code of Conduct for United States Judges, Canon 2A commentary, [see note 4].

Such ethics requirements must ensure that the very entities that have been the most transparent, by disqualifying themselves from activity before the Court, are not penalized relative to more secretive entities that continue to appear before the Court and engage in the judicial selection process. This concern should not stall implementation of this proposed code to the Justices. Rather, it should encourage continued analysis and proposals for additional needed reforms to ensure that conflicts of interest are not perpetuated through the actions of other entities. Another critical concern is enforcement: The code for lower court judges does not contain an express enforcement mechanism, and neither does this proposed Supreme Court code.

We believe a code has intrinsic value because it clarifies the bounds of acceptable conduct. Moreover, in cases of clearly egregious conduct, an established code of conduct could support Congress's impeachment power. Accordingly, a code should be implemented even as enforcement mechanisms are under discussion, and even as we encourage the Supreme Court to develop its own appropriate procedures for responding to violations of code.

## **Conclusion**

Supreme Court Justices occupy a unique and powerful space in our system of government. In return, they must — at minimum — hold themselves to the highest standards of conduct.

The model code we propose offers a solution by modifying the existing code that is applicable to all other federal judges to ensure that it addresses the unique role of the Justices of the Supreme Court.

We hope this inspires a robust conversation about how to fill the significant gap that currently exists and contributes to the imminent adoption of a binding code of conduct.



# **Model Code of Conduct for United States Supreme Court Justices**

## **Canon 1: A Justice Shall Uphold the Integrity and Independence of the Judiciary**

An independent and honorable judiciary is indispensable to justice in our society. A Supreme Court Justice shall maintain and enforce high standards of conduct and shall personally observe those standards so that the integrity and independence of the judiciary may be preserved. The provisions of this Code shall be construed and applied to further that objective.

### **COMMENTARY**

Deference to the judgments and rulings of the Supreme Court of the United States depends on public confidence in the integrity and independence of its Justices. As with other judges in the federal judiciary, the integrity and independence of Justices depend in turn on their acting without fear or favor. Although Justices should be independent, Justices also must comply with the law and shall comply with this Code. Adherence to this responsibility helps to maintain public confidence in the impartiality of the judiciary. Conversely, violation of this Code diminishes public confidence in the judiciary and injures our system of government under law.

Moreover, in light of the Supreme Court's unique role in the federal judiciary and constitutional structure, its Justices shall take special care to guard against even the appearance of partiality in the Court's rulings. Of particular note, a Justice and the Justice's close family members shall refrain from engaging in political or other activity that presents the appearance that the Justice cannot fairly and independently consider the merits of legal questions presented to the Court or that the Justice or their close family members are exploiting the judicial position. A justice should step aside from a case when these activities present the appearance of partiality as discussed in Canon 3C.

The Canons are rules of reason. They should be applied consistently with constitutional requirements, statutes, other court rules and decisional law, and in the context of all relevant circumstances. The Code is to be construed so it does not impinge on the essential independence of Justices in making judicial decisions. The Code is designed to provide guidance to both Justices and nominees for the Supreme Court of the United States.

Furthermore, the Code is not designed or intended as a basis for civil liability or criminal prosecution. Nor is the Code intended to be used for tactical advantage.

**Canon 2: A Justice Shall Avoid Impropriety  
and the Appearance of Impropriety in All Activities**

- A. *Respect for Law.* A Justice shall respect and comply with the law and shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the Court.
- B. *Outside Influence.* A Justice shall not allow family, social, political, financial, or other relationships to influence judicial conduct or judgment. A Justice shall neither lend the prestige of the judicial office to advance the private interests of the Justice or others nor convey or permit another person or entity to convey the impression that they are in a special position to influence the Justice.
- C. *Nondiscriminatory Membership.* A Justice shall not hold membership in any organization that practices invidious discrimination on the basis of race, sex, religion, or national origin.

**COMMENTARY**

**Canon 2A.** An appearance of impropriety occurs when reasonable minds, with knowledge of all the relevant circumstances disclosed by a reasonable inquiry, would conclude that the Justice's honesty, integrity, impartiality, temperament, or fitness to serve as a Justice is impaired. Public confidence in the judiciary is eroded by irresponsible or improper conduct by Justices, including harassment and other inappropriate workplace behavior. A Justice shall avoid all impropriety and appearance of impropriety. This prohibition applies to both professional and personal conduct. A Justice must expect to be the subject of constant public scrutiny and accept freely and willingly restrictions that might be viewed as burdensome by the ordinary citizen. Because it is not practicable to list all prohibited acts, the prohibition is necessarily cast in general terms that extend to conduct by Justices that is harmful although not specifically mentioned in the Code. Actual improprieties under this standard include violations of law, court rules, or other specific provisions of this Code.

**Canon 2B.** A Justice shall avoid lending the prestige of judicial office to advance the private interests of the Justice or others. For example, a Justice should not use the Justice's judicial position or title to gain advantage in litigation involving a friend or a member of the Justice's family. In contracts for publication of a Justice's writings, a Justice shall retain control over the advertising to avoid exploitation of the Justice's office.

A Justice should be sensitive to potential abuse of the prestige of office or the appearance of such potential.

**Canon 2C.** Membership of a Justice in an organization that practices invidious discrimination gives rise to perceptions that the Justice's impartiality is impaired. Canon 2C refers to the current practices of the organization. Whether an organization practices invidious discrimination is often a complex question to which Justices should be sensitive. The answer cannot be determined from a mere examination of an organization's current membership rolls, but rather depends on how the organization selects members as well as on other relevant factors, such as that the organization is dedicated to the preservation of religious, ethnic, or cultural values of legitimate common interest to its members, or that it is in fact and effect an intimate, purely private organization whose membership limitations could not be constitutionally prohibited. See *New York State Club Ass'n. Inc. v. City of New York*, 487 U.S. 1, 108 S. Ct. 2225, 101 L. Ed. 2d 1 (1988); *Board of Directors of Rotary International v. Rotary Club of Duarte*, 481 U.S. 537, 107 S. Ct. 1940, 95 L. Ed. 2d 474 (1987); *Roberts v. United States Jaycees*, 468 U.S. 609, 104 S. Ct. 3244, 82 L. Ed. 2d 462 (1984). Other relevant factors include the size and nature of the organization and the diversity of persons in the locale who might reasonably be considered potential members. Thus the mere absence of diverse membership does not by itself demonstrate a violation unless reasonable persons with knowledge of all the relevant circumstances would expect that the membership would be diverse in the absence of invidious discrimination. Absent such factors, an organization is generally said to discriminate invidiously if it arbitrarily excludes from membership on the basis of race, religion, sex, or national origin persons who would otherwise be admitted to membership.

Although Canon 2C relates only to membership in organizations that invidiously discriminate on the basis of race, sex, religion, or national origin, a Justice's membership in an organization that engages in any invidiously discriminatory membership practices prohibited by applicable law violates Canons 2 and 2A, and gives the appearance of impropriety. In addition, it would be a violation of Canons 2 and 2A for a Justice to arrange a meeting at a club that the Justice knows practices invidious discrimination on the basis of race, sex, religion, or national origin in its membership or other policies, or for the Justice to use such a club regularly. Moreover, public manifestation by a Justice of the Justice's knowing approval of invidious discrimination on any basis gives the appearance of impropriety under Canon 2, and diminishes public confidence in the integrity and impartiality of the judiciary, in violation of Canon 2A.

When a Justice determines that an organization to which the Justice belongs engages in invidious discrimination that would preclude membership under Canon 2C or under Canons 2 and 2A, the Justice is permitted, in lieu of resigning, to make immediate and continuous efforts to have the organization discontinue its invidiously discriminatory practices. If the organization fails to discontinue those practices as promptly as possible (and in all events within two years of the Justice's first learning of the practices), the Justice shall resign immediately from the organization.

**Canon 3: A Justice Shall Perform the Duties  
of the Office Fairly, Impartially, and Diligently**

The duties of judicial office take precedence over all other activities. A Justice shall perform those duties with respect for others, and shall not engage in behavior that is harassing, abusive, prejudiced, or biased. Justices shall adhere to the following standards:

**A.**     *Adjudicative Responsibilities.*

- (1) A Justice shall be faithful to, and maintain professional competence in, the law and shall not be swayed by partisan interests, public clamor, or fear of criticism.
- (2) A Justice shall hear and decide matters, unless disqualified, and shall maintain order and decorum in all judicial proceedings.
- (3) A Justice shall be patient, dignified, respectful, and courteous to litigants, lawyers, and others with whom the Justice deals in an official capacity. A Justice shall require similar conduct by those subject to the Justice's control, including lawyers to the extent consistent with their role in the adversary process.
- (4) A Justice shall accord to every person who has a legal interest in a proceeding, and that person's lawyer, the full right to be heard according to law. Except as authorized by law, a Justice shall not initiate, permit, or consider ex parte communications or consider other communications concerning a pending or impending matter that are made outside the presence of the parties or their lawyers. If a Justice receives an unauthorized ex parte communication bearing on the substance of a matter, the Justice shall promptly notify the parties of the subject matter of the communication and allow the parties an opportunity to respond, if requested.
- (5) A Justice shall not make public comment on the merits of a matter pending or impending in any court. A Justice shall require similar restraint by court personnel subject to the Justice's direction and control. The prohibition on public comment on the merits does not extend to public statements made in the course of the Justice's official duties, to explanations of court procedures, or to scholarly presentations made for purposes of legal education subject to the restrictions in Canon 4A.

**B.**     *Administrative Responsibilities.*

- (1) A Justice shall diligently discharge administrative responsibilities, maintain professional competence in judicial administration, and facilitate the

performance of the administrative responsibilities of other Justices and court personnel.

- (2) A Justice shall not direct court personnel to engage in conduct on the Justice's behalf or as the Justice's representative when that conduct would contravene the Code if undertaken by the Justice.
- (3) Whenever applicable a Justice shall exercise the power of appointment fairly and only on the basis of merit, avoiding unnecessary appointments, nepotism, and favoritism.
- (4) Justices shall practice civility by being patient, dignified, respectful, and courteous in dealings with Court personnel, including chambers staff. A Justice shall not engage in any form of harassment of court personnel. A Justice shall not retaliate against those who report misconduct. A Justice shall hold Court personnel under the Justice's direction to similar standards.
- (5) The Chief Justice shall take reasonable measures to ensure that Justices perform their duties timely and effectively.
- (6) A Justice shall take appropriate action upon receipt of reliable information indicating the likelihood that a Justice's conduct contravened this Code, that a judicial employee's conduct contravened the Code of Conduct for Judicial Employees, or that a lawyer violated applicable rules of professional conduct.

C. *Disqualification.*

- (1) A Justice shall disqualify himself or herself in a proceeding in which the Justice's impartiality might reasonably be questioned, including but not limited to instances in which
  - (a) the Justice has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding;
  - (b) the Justice served as a lawyer in the matter in controversy, or a lawyer with whom the Justice previously practiced law served during such association as a lawyer concerning the matter, or the Justice or lawyer has been a material witness;
  - (c) the Justice knows that the Justice, individually or as a fiduciary, or the Justice's spouse or minor child residing in the Justice's household, has a financial interest in the subject matter in controversy or in a party to the proceeding, or any other interest

that could be affected substantially by the outcome of the proceeding;

- (d) the Justice or the Justice's spouse, or a person related to either within the third degree of relationship, or the spouse of such a person is
  - (i) a party to the proceeding, or an officer, director, or trustee of a party;
  - (ii) acting as a lawyer in the proceeding;
  - (iii) known by the Justice to have an interest that could be substantially affected by the outcome of the proceeding; or
  - (iv) to the Justice's knowledge likely to be a material witness in the proceeding;
- (e) the Justice has served as a judge (in a previous judicial position), counsel, advisor, or material witness concerning the proceeding or has expressed an opinion concerning the merits of the particular case in controversy;
- (f) the Justice knows or should know that a party to the proceeding or an affiliate of a party to the proceeding supported or opposed the Justice's nomination, confirmation, or appointment to an extent that would cause a reasonable observer to doubt that the Justice could rule impartially in their case.
- (g) the Justice, a Justice's close family member, or a privately held entity owned by the Justice or a close family member received income or a gift from a party or an affiliate of a party during the preceding six years.

(2) A Justice shall not participate in a proceeding when the Justice's impartiality might reasonably be questioned as described in paragraph one of Canon 3C, regardless of the impact of the disqualification on the functioning of the Court.

(3) A Justice shall ascertain and keep informed about their personal and fiduciary interests and the personal and fiduciary interests of their spouse and minor children residing in their respective households.

(4) A Justice who learns of a condition that could reasonably require disqualification under this section shall immediately notify all parties to the proceeding.

(5) For the purposes of this section:

- (a) the degree of relationship is calculated according to the civil law system; the following relatives are within the third degree of relationship: parent, child, grandparent, grandchild, great-grandparent, great-grandchild, sister, brother, aunt, uncle, niece, and nephew; the listed relatives include whole and half-blood relatives and most step relatives;
- (b) “fiduciary” includes such relationships as executor, administrator, trustee, and guardian;
- (c) “financial interest” means ownership of a legal or equitable interest, however small, or a relationship as director, advisor, or other active participant in the affairs of a party, except that
  - (i) ownership in a mutual or common investment fund that holds securities is not a “financial interest” in such securities unless the Justice participates in the management of the fund;
  - (ii) an office in an educational, religious, charitable, fraternal, or civic organization is not a “financial interest” in securities held by the organization;
  - (iii) the proprietary interest of a policyholder in a mutual insurance company, or a depositor in a mutual savings association, or a similar proprietary interest, is a “financial interest” in the organization only if the outcome of the proceeding could substantially affect the value of the interest;
  - (iv) ownership of government securities is a “financial interest” in the issuer only if the outcome of the proceeding could substantially affect the value of the securities.
- (d) “proceeding” includes pretrial, trial, appellate review, or other stages of litigation.



- (6) Notwithstanding the preceding provisions of this Canon, if a Justice would be disqualified because of a financial interest in a party (other than an interest that could be substantially affected by the outcome), disqualification is not required if the Justice (or the Justice's spouse or minor child) divests the interest that provides the grounds for disqualification.
- (7) Justices should publish written justifications for decisions related to disqualification. The Court should respond to all good faith motions for disqualification with a written opinion.

### COMMENTARY

**Canon 3A(3).** The duty to hear all proceedings fairly and with patience is not inconsistent with the duty to dispose promptly of the business of the Court. Courts can be efficient and businesslike while being patient and deliberate.

The duty under Canon 2 to act in a manner that promotes public confidence in the integrity and impartiality of the judiciary applies to all the Justice's activities, including the discharge of the Justice's adjudicative and administrative responsibilities. The duty to be respectful includes the responsibility to avoid comment or behavior that could reasonably be interpreted as harassment, prejudice, or bias.

**Canon 3A(4).** The restriction on ex parte communications concerning a proceeding includes communications from lawyers, law teachers, and others who are not participants in the proceeding. A Justice may consult with other Justices or with court personnel whose function is to aid the Justice in carrying out adjudicative responsibilities. A Justice shall make reasonable efforts to ensure that law clerks and other court personnel comply with this provision.

**Canon 3A(5).** The admonition against public comment about the merits of a pending or impending matter continues until the appellate process is complete.

**Canon 3B(3).** A Justice's appointees include any individual or organization appointed by the Justice, whether or not acting as an individual Justice or as a member of the Court.

**Canon 3B(4).** A Justice shall neither engage in nor tolerate workplace conduct that is reasonably interpreted as harassment, abusive behavior, or retaliation for reporting such conduct. The duty to refrain from retaliation includes retaliation against former as well as current judiciary personnel.

Under this Canon, harassment encompasses a range of conduct having no legitimate role in the workplace, including harassment that constitutes discrimination on impermissible grounds

and other abusive, oppressive, or inappropriate conduct directed at judicial employees or others. See Rules for Judicial-Conduct and Judicial-Disability Proceedings, Rule 4(a)(2) (providing that “cognizable misconduct includes: (A) engaging in unwanted, offensive, or abusive sexual conduct, including sexual harassment or assault; (B) treating litigants, attorneys, judicial employees, or others in a demonstrably egregious and hostile manner; or (C) creating a hostile work environment for judicial employees”); and Rule 4(a)(3) (providing that “cognizable misconduct includes intentional discrimination on the basis of race, color, sex, gender, gender identity, pregnancy, sexual orientation, religion, national origin, age, or disability”).

**Canon 3B(6).** Public confidence in the integrity and impartiality of the judiciary is promoted when Justices take appropriate action based on reliable information of likely misconduct. Appropriate action depends on the circumstances, but the overarching goal of such action should be to prevent harm to those affected by the misconduct and to prevent recurrence. A Justice, in deciding what action is appropriate, may take into account any request for confidentiality made by a person complaining of or reporting misconduct. See Rules for Judicial-Conduct and Judicial-Disability Proceedings, Rule 4(a)(6) (providing that “cognizable misconduct includes failing to call to the attention of the Chief Justice any reliable information reasonably likely to constitute judicial misconduct or disability. A Justice who receives such reliable information shall respect a request for confidentiality but shall nonetheless disclose the information to the Chief Justice, who shall also treat the information as confidential. Certain reliable information may be protected from disclosure by statute or rule. A Justice’s assurance of confidentiality must yield when there is reliable information of misconduct or disability that threatens the safety or security of any person or that is serious or egregious such that it threatens the integrity and proper functioning of the judiciary. A person reporting information of misconduct or disability must be informed at the outset of a Justice’s responsibility to disclose such information to the Chief Justice. Reliable information reasonably likely to constitute judicial misconduct or disability related to the Chief Justice shall be called to the attention of the next most-senior Justice.”). Justices shall also consult the work product of the Federal Judiciary Workplace Conduct Working Group when determining the appropriate action to take in response to potential misconduct.

Appropriate action may include direct communication with the Justice or lawyer, other direct action if available, reporting the conduct to the appropriate authorities, or, when the Justice believes that a Justice’s or lawyer’s conduct is caused by drugs, alcohol, or a medical condition, making a confidential referral to an assistance program. Appropriate action may also include responding to a subpoena to testify or otherwise cooperating with or participating in judicial or lawyer disciplinary proceedings; a Justice shall be candid and honest with disciplinary authorities.

**Canon 3C.** Disqualification considerations applicable to a Justice’s spouse shall also be considered with respect to a person other than a spouse with whom the Justice maintains both a household and an intimate relationship.

**Canon 3C(1)(c).** In a criminal proceeding, a victim entitled to restitution is not, within the meaning of this Canon, a party to the proceeding or the subject matter in controversy. A Justice who has a financial interest in the victim of a crime is not required by Canon 3C(1)(c) to disqualify from the criminal proceeding, but the Justice must do so if the Justice's impartiality might reasonably be questioned under Canon 3C(1) or if the Justice has an interest that could be substantially affected by the outcome of the proceeding under Canon 3C(1)(d)(iii).

**Canon 3C(1)(d)(ii).** The fact that a lawyer in a proceeding is affiliated with a law firm with which a relative of the Justice is affiliated does not of itself disqualify the Justice. However, if the Justice's impartiality might reasonably be questioned under Canon 3C(1), or the relative is known by the Justice to have an interest in the law firm that could be substantially affected by the outcome of the proceeding under Canon 3C(1)(d)(iii), the Justice's disqualification is required.

**Canon 3C(1)(e).** While this may be a less common scenario for Justices, it is still important for them to disqualify themselves when their past experiences with a proceeding could suggest a bias or prejudice on their part. This includes private or government experience with a proceeding to reflect the importance of avoiding any appearance of partiality of a Justice.

**Canon 3C(1)(f).** An affiliate of a party to a proceeding includes any person or organization with a formal legal, financial, or other association to that party or any other relationship that would cause a reasonable observer to conclude that they share such an association.

The support that a party may have given a Justice could include: any lobbying contact; spending substantial funds in support of the nomination, confirmation, or appointment of the Justice; engaging in sustained public advocacy supporting a Justice; or any other behavior that would cause a reasonable observer to doubt that the Justice could rule impartially in the case. The analysis rests on a reasonableness standard because the impression of reasonable observers is what determines public trust and confidence in the Court.

**Canon 3C(1)(g).** This provision includes Justices and their close family members to avoid any situation where it could appear to a reasonable observer that a Justice's ruling would be influenced by a benefit received by a family member.

**Canon 3C(2).** Avoiding situations where a Justice's impartiality could reasonably be questioned is of greater importance than a Justice's duty to sit. While a tie or other delay in the clarification of a question of law is an important consideration, it does not justify participating in a decision in a situation that could make a Justice appear partial. Doing so would create a resolution tainted by the appearance of partiality and weaken the legitimacy of the Court.

#### **Canon 4: A Justice May Engage in Extrajudicial Activities that Are Consistent with the Obligations of Judicial Office**

A Justice may engage in extrajudicial activities, including law-related pursuits and civic, charitable, educational, religious, social, financial, fiduciary, and governmental activities, and may speak, write, lecture, and teach on both law-related and non-legal subjects. However, a Justice shall not participate in extrajudicial activities that detract from the dignity of the Justice's office, interfere with the performance of the Justice's official duties, reflect adversely on the Justice's impartiality, lead to frequent disqualification, or violate the limitations set forth below.

##### **A. *Law-Related Activities.***

- (1) *Speaking, Writing, and Teaching.* A Justice may speak, write, lecture, teach, and participate in other activities concerning the law, the legal system, and the administration of justice. However, a Justice shall not participate in activities sponsored by an organization or its affiliate that made any lobbying contact or spent substantial funds in support of the Justice's nomination, confirmation, or appointment. A Justice shall refrain from speaking to any organization if the policies or activities of the organization, or the nature of the Justice's participation in or association with the organization, would conflict with the Justice's obligation to refrain from activities that reflect adversely upon a Justice's independence, integrity, and impartiality. These organizations include those generally perceived to be partisan or ideologically oriented to an extent that casts doubt on a Justice's impartiality.
- (2) *Consultation.* A Justice may consult with or appear at a public hearing before an executive or legislative body or official:
  - (a) on matters concerning the law, the legal system, or the administration of justice;
  - (b) to the extent that it would generally be perceived that a Justice's judicial experience provides special expertise in the area; or
  - (c) when the Justice is acting pro se in a matter involving the Justice or the Justice's interest.
- (3) *Organizations.* A Justice may participate in and serve as a member, officer, director, trustee, or non-legal advisor of a nonprofit organization devoted to the law, the legal system, or the administration of justice, and may assist such an organization in the management and investment of funds. A Justice may make recommendations to public and private fund-granting agencies

about projects and programs concerning the law, the legal system, and the administration of justice. A Justice may not participate in activities or make recommendations that reflect adversely upon a Justice's independence, integrity, or impartiality.

(4) *Practice of Law.* A Justice shall not practice law and shall not serve as a family member's lawyer in any forum. A Justice may, however, act pro se and may, without compensation, give legal advice to and draft or review documents for a member of the Justice's family.

B. *Civic and Charitable Activities.* A Justice may participate in and serve as an officer, director, trustee, or non-legal advisor of a nonprofit civic, charitable, educational, religious, or social organization, subject to the following limitations:

(1) A Justice shall not serve if it is likely that the organization will either be engaged in proceedings that would ordinarily come before the Justice or be regularly engaged in adversary proceedings in any court.

(2) A Justice shall not give investment advice to such an organization but may serve on its board of directors or trustees even though it has the responsibility for approving investment decisions.

(3) A Justice may not participate in activities that reflect adversely upon a Justice's independence, integrity, and impartiality.

C. *Fundraising.* A Justice shall not personally participate in membership solicitation and shall not participate in an event in which the Justice's appearance would be used for membership solicitation or fundraising.

D. *Financial Activities.*

(1) A Justice and the Justice's close family may hold and manage investments, including real estate, and engage in other remunerative activity, but shall refrain from financial and business dealings that exploit the judicial position or involve them in frequent transactions or continuing business relationships with lawyers or other persons likely to come before the Court.

(2) A Justice may serve as an officer, director, active partner, manager, advisor, or employee of a business only if the business is closely held and controlled by members of the Justice's family. For this purpose, "members of the Justice's family" means persons related to the Justice or the Justice's spouse within the third degree of relationship as defined in Canon 3C(5)(a),

any other relative with whom the Justice or the Justice's spouse maintains a close familial relationship, and the spouse of any of the foregoing.

- (3) As soon as the Justice can do so without serious financial detriment, the Justice shall divest, or place in a blind trust, investments and other financial interests that might require frequent disqualification.
- (4) A Justice shall comply with the restrictions on acceptance of gifts and the prohibition on solicitation of gifts set forth in the Judicial Conference Gift Regulations. A Justice shall endeavor to prevent any member of the Justice's family residing in the household from soliciting or accepting a gift except to the extent that a Justice would be permitted to do so by the Judicial Conference Gift Regulations. A "member of the Justice's family" means any relative of a Justice by blood, adoption, or marriage, or any person treated by a Justice as a member of the Justice's family.
- (5) A Justice shall not disclose or use nonpublic information acquired in a judicial capacity for any purpose unrelated to the Justice's official duties.

E. *Fiduciary Activities.* A Justice may serve as the executor, administrator, trustee, guardian, or other fiduciary only for the estate, trust, or person of a member of the Justice's family as defined in Canon 4D(4). As a family fiduciary a Justice is subject to the following restrictions:

- (1) The Justice shall not serve if it is likely that as a fiduciary the Justice would be engaged in proceedings that would ordinarily come before the Court or if the estate, trust, or ward becomes involved in adversary proceedings in any federal court.
- (2) While acting as a fiduciary, a Justice is subject to the same restrictions on financial activities that apply to the Justice in a personal capacity.

F. *Governmental Appointments.* A Justice may accept appointment to a governmental committee, commission, or other position only if it is one that concerns the law, the legal system, or the administration of justice, or if appointment of a Justice is required by federal statute. A Justice should not, in any event, accept such an appointment if the Justice's governmental duties would tend to undermine the public confidence in the integrity, impartiality, or independence of the judiciary. A Justice may represent the Justice's country, state, or locality on ceremonial occasions or in connection with historical, educational, and cultural activities.

- G. *Chambers, Resources, and Staff.* A Justice shall not to any substantial degree use judicial chambers, resources, or staff to engage in extrajudicial activities permitted by this Canon.
- H. *Compensation, Reimbursement, and Financial Reporting.* A Justice or a Justice's spouse may accept compensation and reimbursement of expenses for the law-related and extrajudicial activities permitted by this Code if the source of the payments does not present the appearance of influencing the Justice in the Justice's judicial duties or otherwise present the appearance of impropriety, subject to the following restrictions:
- (1) Compensation shall not exceed a reasonable amount nor should it exceed what a person who is not a Justice would receive for the same activity.
  - (2) Expense reimbursement should be limited to the actual costs of travel, food, and lodging reasonably incurred by the Justice and, where appropriate to the occasion, by the Justice's spouse or relative. Any additional payment is compensation.
  - (3) Justices shall make comprehensive required financial disclosures, including disclosures of gifts and other things of value, in compliance with statutes and Judicial Conference regulations and directives applicable to Circuit Court Judges. In addition to standard financial disclosures, Justices shall report any travel or hospitality benefits or reimbursements they receive from any nongovernmental entity.

#### COMMENTARY

**Canon 4.** Complete separation of a Justice from extrajudicial activities is neither possible nor wise; a Justice should not become isolated from the society in which the Justice lives. As a judicial officer and a person specially learned in the law, a Justice is in a unique position to contribute to the law, the legal system, and the administration of justice, including revising substantive and procedural law and improving the criminal legal system. To the extent that the Justice's time permits and impartiality is not compromised, the Justice is encouraged to do so, either independently or through a bar association, judicial conference, or other organization dedicated to the law. Subject to the same limitations, Justices may also engage in a wide range of non-law-related activities.

Within the boundaries of applicable law (see, e.g., 18 U.S.C. § 953) a Justice may express opposition to the persecution of lawyers and judges anywhere in the world if the Justice has ascertained, after reasonable inquiry, that the persecution is occasioned by conflict between



the professional responsibilities of the persecuted judges or lawyers and the policies or practices of the relevant government.

A person other than a spouse with whom the Justice maintains both a household and an intimate relationship shall be considered a member of the Justice's family for purposes of legal assistance under Canon 4A(4) and family business activities under Canon 4D(2).

**Canon 4A.** Teaching and serving on the board of a law school are permissible, but in the case of a for-profit law school, board service is limited to a nongoverning advisory board.

Consistent with this Canon, a Justice may encourage lawyers to provide pro bono legal services.

**Canon 4A(4).** A Justice may act pro se in all legal matters, including matters involving litigation and matters involving appearances before or other dealings with governmental bodies. In so doing, a Justice must not abuse the prestige of office to advance the interests of the Justice or the Justice's family.

**Canon 4B.** The changing nature of some organizations and their exposure to litigation make it necessary for a Justice regularly to reexamine the activities of each organization with which the Justice is affiliated to determine if the Justice's continued association is appropriate.

**Canon 4C.** A Justice may attend fundraising events of law-related and other organizations although the Justice may not be a speaker, a guest of honor, or featured on the program of such an event.

**Canon 4D(1), (2), and (3).** Canon 3 requires disqualification of a Justice in any proceeding in which the Justice has a financial interest, however small. Canon 4D requires a Justice and their close family to refrain from engaging in business and from financial activities that might interfere with the impartial performance of the Justice's judicial duties. Canon 4H requires a Justice to report compensation received for activities outside the judicial office. A Justice has the rights of an ordinary citizen with respect to financial affairs, except for limitations required to safeguard the proper performance of the Justice's duties. A Justice's participation in a closely held family business, while generally permissible, may be prohibited if it takes so much time as to impinge upon the performance of the Justice's duties or involves misuse of judicial prestige, or if the business is likely to come before the Court. Owning and receiving income from investments do not as such affect the performance of a Justice's duties. Justices may avoid frequent disqualification by divesting assets likely to cause frequent disqualification or by placing them in a blind trust.

**Canon 4D(5).** The restriction on using nonpublic information is not intended to affect a Justice's ability to act on information as necessary to protect the health or safety of the Justice or a member of a Justice's family, court personnel, or other judicial officers if consistent with other provisions of this Code.

**Canon 4E.** Mere residence in the Justice's household does not by itself make a person a member of the Justice's family for purposes of this Canon. The person must be treated by the Justice as a member of the Justice's family.

The Applicable Date of Compliance provision of this Code addresses continued service as a fiduciary.

A Justice's obligation under this Code and the Justice's obligation as a fiduciary may come into conflict. For example, a Justice shall resign as a trustee if it would result in detriment to the trust to divest holdings whose retention would require frequent disqualification of the Justice in violation of Canon 4D(3).

**Canon 4F.** The appropriateness of accepting extrajudicial assignments must be assessed in light of the demands on judicial resources and the need to protect the courts from involvement in matters that may prove to be controversial. Justices should not accept governmental appointments that could interfere with the effectiveness and independence of the judiciary, interfere with the performance of the Justice's judicial responsibilities, or tend to undermine public confidence in the judiciary.

**Canon 4H.** A Justice is not required by this Code to disclose income, debts, reimbursements, or investments, except as provided in this Canon. However, Justices shall also hold themselves to the Ethics Reform Act of 1989 and implementing regulations promulgated by the Judicial Conference as applied to both Justices and Circuit Judges as stated in 4H(3). Also Justices shall report all travel or hospitality benefits or reimbursements associated with a nongovernment entity so that the public can understand and consider the value of the goods and services Justices receive from the groups who they speak to or otherwise work with.

### **Canon 5: A Justice Shall Refrain from Political Activity**

- A. *General Prohibitions.* A Justice shall not:
- (1) act as a leader or hold any office in a political organization;
  - (2) make speeches for or with a political organization, elected official, or candidate, or publicly endorse or oppose a candidate for public office; or
  - (3) solicit funds for, pay an assessment to, or make a contribution to a political organization or candidate, or attend or purchase a ticket for a dinner or other event sponsored by a political organization or candidate.
- B. *Resignation upon Candidacy.* A Justice shall resign from the Court if the Justice becomes a candidate in a primary or general election for any office.
- C. *Other Political Activity.* A Justice shall not engage in any other political activity. This provision does not prevent a Justice from engaging in activities permitted in Canon 4.

#### **COMMENTARY**

The term “political organization” refers to a political party, a group affiliated with a political party or candidate for public office, or an entity whose principal purpose is to advocate for or against political candidates or parties in connection with elections for public office.

## **Canon 6: A Justice Shall Promote Transparency**

Transparency in judicial decision-making is an important element of promoting public confidence in the impartiality of the judiciary. In order to promote transparency, Justices should

- A. provide reasoning for their decisions whenever possible by writing opinions or concurring in other Justices' written opinions;
- B. avoid deciding matters before a complete record is available whenever possible;
- C. continuously improve the accessibility of the Court's public proceedings; and
- D. refrain from giving speeches in private settings or to closed audiences where the contents are expected to remain confidential.

### **COMMENTARY**

**Canon 6A.** Access to rationales for Judicial decisions is essential to public trust and confidence in the Court. As a result, it is particularly important to provide judicial reasoning when the Court is reversing the findings of a lower court. One-sentence or otherwise insubstantial opinions from a Justice reversing a thoroughly explained lower court opinion impairs public trust and confidence in the judicial system as a whole.

**Canon 6D.** A member of the public should not need to be a member of any organization, or have special access to a Justice, in order to access the content of a Justice's speeches outside of the Court. This provision does not forbid Justices from giving speeches otherwise permitted by law or other provisions of this code, as long as the Justice promptly makes the contents of the speech generally available to the public.

### **Compliance with the Code of Conduct by Retired Justices**

Retired Justices shall continue to refrain from any behavior that would harm public trust and confidence in the Court. A Justice who is retired under 28 U.S.C. § 371(b) must continue to comply with all the provisions of this Code.

### **Applicable Date of Compliance**

Persons to whom this Code applies shall arrange their financial and fiduciary affairs as soon as reasonably possible to comply with it, and shall do so in any event within one year after appointment. If, however, the demands on the person's time and the possibility of conflicts of interest are not substantial, such a person may continue to act, without compensation, as an executor, administrator, trustee, or other fiduciary for the estate or person of one who is not a member of the person's family if terminating the relationship would unnecessarily jeopardize any substantial interest of the estate or person and if the Chief Justice, or in the case of the Chief Justice, the most senior Associate Justice, approves.

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