

**ADMINISTRATIVE ORDER NO. 10
VERMONT CODE OF JUDICIAL CONDUCT**

Vt. A.O. 10 PREAMBLE (2012)

PREAMBLE

[1] Our legal system is based on the principle that an independent, fair and competent judiciary will interpret and apply the laws that govern us. The role of the judiciary is central to American concepts of justice and the rule of law. Intrinsic to all sections of this Code are the precepts that judges, individually and collectively, must respect and honor the judicial office as a public trust and strive to enhance and maintain confidence in our legal system. The judge is an arbiter of facts or law for the resolution of disputes and a highly visible symbol of government under the rule of law.

[2] The Code of Judicial Conduct is intended to establish standards for ethical conduct of judges. It consists of broad statements called Canons, specific rules set forth in Sections under each Canon, a Terminology Section and an Application Section. The text of the Canons and the Sections, including the Terminology and Application Sections, is authoritative. The Reporter's Notes provide guidance with respect to the interpretation of the Canons and Sections. 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 intended as hortatory and as 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.

[3] The Canons and Sections are rules of reason. They should be applied consistent 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 as not to impinge on the essential independence of judges in making judicial decisions.

[4] The Code is designed to provide guidance to judges and candidates for judicial office and to provide a structure for regulating conduct through

disciplinary agencies. It 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.

[5] The text of the Canons and Sections is intended to govern conduct of judges and to be binding upon them. It is not intended, however, 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 judicial system.

[6] The Code of Judicial Conduct is not intended as an exhaustive guide for the conduct of judges. They should also be governed in their judicial and personal conduct by general ethical standards. The Code is intended, however, to state basic standards to govern the conduct of all judges and provide guidance to assist judges in establishing and maintaining high standards of judicial and personal conduct.

HISTORY: Adopted May 9, 1994.

TERMINOLOGY

Terms explained below are noted with an asterisk (*) in the Sections where they appear. In addition, the Sections where terms appear are referred to after the explanation of each term below.

[1] **"Appropriate authority"** denotes the authority with responsibility for initiation of disciplinary process with respect to the violation to be reported. See Sections 3D(1) and 3D(2).

[2] **"Candidate."** A candidate is a person seeking appointment, confirmation, retention, election, or reelection in or to any public office. A person becomes a candidate for appointment to, or confirmation or retention in, state judicial office when he or she applies to the Judicial Nominating Board or Joint Committee on Judicial Retention. A person becomes a candidate for appointment to any other state or federal public office when he

or she applies to the appropriate nominating or appointing authority, or when that authority announces that the person is under consideration or has been nominated for office. A person becomes a candidate for election or reelection as soon as he or she makes a public announcement of candidacy, files nomination papers, or authorizes solicitation or acceptance of contributions or support. See Preamble and Sections 5A, 5B, 5C and 5D.

[3] "**Continuing part-time judge.**" A continuing part-time judge is a judge who serves repeatedly on a part-time basis by election or under a continuing appointment. The term includes judges of probate and assistant judges. See Application Section B.

[4] "**Court personnel**" does not include the lawyers in a proceeding before a judge. See Sections 3B(7)(c) and 3B(9).

[5] "**De minimis**" denotes an insignificant interest that could not raise reasonable question as to a judge's impartiality. See Sections 3E(1)(c) and 3E(1)(d).

[6] "**Economic interest**" denotes ownership of a more than de minimis legal or equitable interest, or a relationship as officer, director, advisor or other active participant in the affairs of a party, except that:

(i) ownership of an interest in a mutual or common investment fund that holds securities is not an economic interest in such securities unless the judge participates in the management of the fund or a proceeding pending or impending before the judge could substantially affect the value of the interest;

(ii) service by a judge as an officer, director, advisor or other active participant in an educational, religious, charitable, fraternal or civic organization, or service by a judge's spouse, parent or child as an officer, director, advisor or other active participant in any organization does not create an economic interest in securities held by that organization;

(iii) a deposit in a financial institution, the proprietary interest of a policy holder in a mutual insurance company, of a depositor in a mutual savings association or of a member in a credit union, or a similar proprietary interest, is not an economic interest in the organization unless a proceeding pending or impending before the judge could substantially affect the value of the interest;

(iv) ownership of government securities is not an economic interest in the issuer unless a proceeding pending or impending before the judge could substantially affect the value of the securities. See Sections 3E(1)(c) and 3E(2);

(v) an interest that is excepted from statutory disqualification under 12 V.S.A. § 61 does not constitute an economic interest unless a proceeding pending or impending before the judge could substantially affect the value of the interest. See Sections 3E(1)(c) and 3E(3).

[7] "**Election.**" This term includes primary, general, and special elections. See Sections 5A(3), 5C, 5D.

[8] "**Fiduciary**" includes such relationships as executor, administrator, trustee, and guardian. See Sections 3E(2) and 4E.

[9] "**Fourth degree of relationship.**" following persons are relatives within the fourth degree of relationship: great-great grandparent, great-grandparent, grandparent, parent, great uncle, great aunt, uncle, aunt, brother, sister, first cousin, child, grandchild, great-grandchild, great-great grandchild, nephew, niece, great nephew, or great niece. See Section 3E(1)(d).

[10] "**Knowingly,**" "**knowledge,**" "**known**" or "**knows**" denotes actual knowledge of the fact in question. A person's knowledge may be inferred from circumstances. See Sections 3D, 3E(1), and 5A(3).

[11] "**Judge**" denotes anyone, whether or not a lawyer, who is an officer of the judicial system and who performs judicial functions, including an officer such as a magistrate, commissioner, traffic hearing officer, master, or referee.

[12] "**Law**" denotes court rules as well as statutes, administrative rules and regulations, constitutional provisions and decisional law. See Sections 2A, 3A, 3B(2), 3B(6), 4B, 4C, 4D(5), 4F, 4I, 5A(1), 5A(3), 5C(3) and 5D.

[13] "**Member of the candidate's family**" denotes a spouse, child, grandchild, parent, grandparent or other relative or person with whom the candidate maintains a close familial relationship. See Section 5B(2).

[14] **"Member of the judge's family"** denotes a spouse, child, grandchild, parent, grandparent, or other relative or person with whom the judge maintains a close familial relationship. See Sections 4D(3), 4E and 4G.

[15] **"Member of the judge's family residing in the judge's household"** denotes any relative of a judge by blood or marriage, or a person treated by a judge as a member of the judge's family, who resides in the judge's household. See Sections 3E(1) and 4D(5).

[16] **"Nonpublic information"** denotes information that, by law, is not available to the public. Nonpublic information may include but is not limited to: information that is sealed by statute or court order, impounded or communicated in camera; and information offered in grand jury proceedings, presentencing reports, juvenile cases or psychiatric reports. See Section 3B(11).

[17] **"Political organization"**. -- denotes a political party or other group, the principal purpose of which is to further the election or appointment of candidates to political office. See Sections 5A(1) and 5B(4).

[18] **"Pro tempore part-time judge."** A pro tempore part-time judge is a judge who serves or expects to serve once or only sporadically on a part-time basis under a separate appointment for each period of service or for each case heard. The term includes retired judges, acting judges, masters, and referees. See Application Section C.

[19] **"Require."** The rules prescribing that a judge "require" certain conduct of others are, like all of the rules in this Code, rules of reason. The use of the term "require" in that context means a judge is to exercise reasonable direction and control over the conduct of those persons subject to the judge's direction and control. See Sections 3B(3), 3B(4), 3B(5), 3B(6), 3B(9) and 3C(2).

HISTORY: Adopted May 9, 1994.

Vt. A.O. 10 Canon 1 (2012)

Canon 1

A Judge Shall Uphold the Integrity and Independence of the Judiciary

A. An independent and honorable judiciary is indispensable to justice in our society. A judge 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 judiciary will be preserved. The provisions of this Code are to be construed and applied to further that objective.

HISTORY: Adopted May 9, 1994.

Vt. A.O. 10 Canon 2 (2012)

A Judge Shall Avoid Impropriety and the Appearance of Impropriety in All of the Judge's Activities

A. A judge should 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 judiciary.

B. A judge shall not allow family, social, political or other relationships to influence the judge's judicial conduct or judgment. A judge shall not lend the prestige of judicial office to advance the private interests of the judge or others; nor shall a judge convey or permit others to convey the impressions that they are in a special position to influence the judge. A judge shall not testify voluntarily as a character witness.

C. A judge shall not hold membership in any organization that, in the selection of members, practices invidious discrimination on the basis of race, sex, sexual orientation, religion, or national origin. A judge who is a member of such an organization at the effective date of this Section C, or who learns at a later time that an organization of which the judge is a member practices such discrimination, may retain membership in the organization for a reasonable time not exceeding one year, but must resign if the organization does not discontinue its discriminatory practices within that time.

HISTORY: Adopted May 9, 1994.

Vt. A.O. 10 Canon 3 (2012)

A Judge Shall Perform the Duties of Judicial Office Impartially and Diligently

A. JUDICIAL DUTIES IN GENERAL. The judicial duties of a judge take precedence over all the judge's other activities. The judge's judicial duties include all the duties of the judge's office prescribed by law.* In the performance of these duties, the following standards apply.

B. ADJUDICATIVE RESPONSIBILITIES.

(1) A judge shall hear and decide matters assigned to the judge except those in which disqualification is required.

(2) A judge should be faithful to the law* and maintain professional competence in it. A judge shall not be swayed by partisan interests, public clamor or fear of criticism.

(3) A judge shall require* order and decorum in proceedings before the judge.

(4) A judge should be patient, dignified and courteous to litigants, jurors, witnesses, lawyers, and others with whom the judge deals in an official capacity, and shall require* similar conduct of lawyers, and of staff, court officials and others subject to the judge's direction and control.

(5) A judge shall perform judicial duties without bias or prejudice. A judge shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice, including but not limited to bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation or socioeconomic status, and shall not permit staff, court officials and others subject to the judge's direction and control to do so.

(6) A judge shall require* lawyers in proceedings before the judge to refrain from manifesting, by words or conduct, bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation or socioeconomic status, against parties, witnesses, counsel or others. This Section 3B(6) does not preclude legitimate advocacy when race, sex, religion, national origin, disability, age, sexual orientation or socioeconomic status, or other similar factors, are issues in the proceeding.

(7) A judge shall accord to every person who has a legal interest in a proceeding, or that person's lawyer, the right to be heard according to law.* A judge shall not initiate, permit, or consider ex parte communications, or

consider other communications made to the judge outside the presence of the parties concerning a pending or impending proceeding except that:

(a) Where circumstances require, ex parte communications for scheduling, administrative purposes or emergencies that do not deal with substantive matters or issues on the merits are authorized; provided:

(i) the judge reasonably believes that no party will gain a procedural or tactical advantage as a result of the ex parte communication, and

(ii) the judge makes provision promptly to notify all other parties of the substance of the ex parte communication and allows an opportunity to respond.

(b) A judge may obtain the advice of a disinterested expert on the law* applicable to a proceeding before the judge if the judge gives notice to the parties of the person consulted and the substance of the advice, and affords the parties reasonable opportunity to respond.

(c) A judge may consult with court personnel* whose function is to aid the judge in carrying out the judge's adjudicative responsibilities or with other judges.

(d) A judge may, with the consent of the parties, confer separately with the parties and their lawyers in an effort to mediate or settle matters pending before the judge.

(e) A judge may initiate or consider any ex parte communications when expressly authorized by law* to do so.

(8) A judge shall dispose of all judicial matters promptly, efficiently and fairly.

(9) A judge shall not, while a proceeding is pending or impending in any court, make any public comment that might reasonably be expected to affect its outcome or impair its fairness or make any nonpublic comment that might substantially interfere with a fair trial or hearing. The judge shall require* similar abstention on the part of court personnel* subject to the judge's direction and control. This Section does not prohibit judges from making public statements in the course of their official duties or from explaining for public information the procedures of the court. This Section

does not apply to proceedings in which the judge is a litigant in a personal capacity.

(10) A judge shall not commend or criticize jurors for their verdict other than in a court order or opinion in a proceeding, but may express appreciation to jurors for their service to the judicial system and the community.

(11) A judge shall not disclose or use, for any purpose unrelated to judicial duties, nonpublic information* acquired in a judicial capacity.

C. ADMINISTRATIVE RESPONSIBILITIES.

(1) A judge shall diligently discharge the judge's administrative responsibilities without bias or prejudice and maintain professional competence in judicial administration, and should cooperate with other judges and court officials in the administration of court business.

(2) A judge shall require* staff, court officials and other subject to the judge's direction and control to observe the standards of fidelity and diligence that apply to the judge and to refrain from manifesting bias or prejudice in the performance of their official duties.

(3) A judge with supervisory authority for the judicial performance of other judges shall take reasonable measures to assure the prompt disposition of matters before them and the proper performance of their other judicial responsibilities.

(4) A judge shall not make unnecessary appointments. A judge shall exercise the power of appointment impartially and on the basis of merit. A judge shall avoid nepotism and favoritism. A judge shall not approve compensation of appointees beyond the fair value of services rendered.

D. DISCIPLINARY RESPONSIBILITIES.

(1) A judge who receives information indicating a substantial likelihood that another judge has committed a violation of this Code should take appropriate action. A judge having knowledge* that another judge has committed a violation of this Code that raises a substantial question as to the other judge's fitness for office shall inform the appropriate authority.

(2) A judge who receives information indicating a substantial likelihood that a lawyer has committed a violation of the Vermont Code of Professional Responsibility should take appropriate action. A judge having knowledge* that a lawyer has committed a violation of the Vermont Code of Professional Responsibility that raises a substantial question as to the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects shall inform the appropriate authority.*

E. DISQUALIFICATION.

(1) A judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to instances where:

(a) the judge has a personal bias or prejudice concerning a party or a party's lawyer, or personal knowledge* of disputed evidentiary facts concerning the proceeding, or is to serve as factfinder in a case in which the judge has conferred ex parte with the parties in an unsuccessful effort to mediate or settle the matter pursuant to Section 3B(7)(d);

(b) the judge served as a lawyer in the matter in controversy, or a lawyer with whom the judge previously practiced law served during such association as a lawyer concerning the matter, or the judge has been a material witness concerning it;

(c) the judge knows* that the judge, individually or as a fiduciary, or the judge's spouse, parent or child wherever residing, or any other member of the judge's family residing in the judge's household,* has an economic interest* in the subject matter in controversy or in a party to the proceeding or has any other more than de minimis* interest that could be substantially affected by the proceeding;

(d) the judge or the judge's spouse, or a person within the fourth degree of relationship* to either of them, or the spouse of such a person:

(i) is a party to the proceeding, or an officer, director or trustee of a party;

(ii) is acting as a lawyer in the proceeding;

(iii) is known* by the judge to have a more than de minimis* interest that could be substantially affected by the proceeding;

(iv) is to the judge's knowledge* likely to be a material witness in the proceeding.

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

F. REMITTAL OF DISQUALIFICATION. A judge disqualified by the terms of Section 3E for any reason other than personal bias or prejudice concerning a party may disclose on the record the basis of the judge's disqualification and may advise the parties and their lawyers that they may consider, out of the presence of the judge, whether to waive disqualification. If, following disclosure, the parties and lawyers, without participation by the judge, all agree that the judge should not be disqualified, and the judge is then willing to participate, the judge may participate in the proceeding.

G. DISCLOSURE AND CONSENT. A judge shall disclose to the parties any fact or matter relevant to the question of impartiality that, in the judge's view, may require disqualification under Section 3E(1). Unless a party promptly moves to disqualify, the judge may continue to participate in the proceeding.

HISTORY: Adopted May 9, 1994; amended September 6, 2000, eff. December 31, 2000.

Vt. A.O. 10 Canon 4 (2012)

A Judge Shall So Conduct the Judge's Extra-Judicial Activities as to

Minimize the Risk of Conflict With Judicial Obligations

A. EXTRA-JUDICIAL ACTIVITIES IN GENERAL. A judge shall conduct all of the judge's extra-judicial activities so that they do not:

(1) cast reasonable doubt on the judge's capacity to act impartially as a judge;

(2) demean the judicial office; or

(3) interfere with the proper performance of judicial duties.

B. AVOCATIONAL ACTIVITIES. -- A judge may speak, write, lecture, teach and participate in other extra-judicial activities concerning the law, the legal system, the administration of justice and non-legal subjects, subject to the requirements of this Code.

C. GOVERNMENTAL, CIVIC OR CHARITABLE ACTIVITIES.

(1) A judge shall not appear at a public hearing before, or otherwise consult with, an executive or legislative body or official except on matters concerning the law,* the legal system or the administration of justice or except when acting pro se in a matter involving the judge or the judge's interests.

(2) A judge shall not accept appointment to a governmental committee or commission or other governmental position that is concerned with issues of fact or policy on matters other than the improvement of the law,* the legal system or the administration of justice. A judge may, however, represent a country, state or locality on ceremonial occasions or in connection with historical, educational or cultural activities.

(3) A judge may serve as an officer, director, trustee or nonlegal advisor of an organization or governmental agency devoted to the improvement of the law,* the legal system or the administration of justice or of an educational, religious, charitable, fraternal or civic organization not conducted for profit, subject to the following limitations and the other requirements of this Code.

(a) A judge shall not serve as an officer, director, trustee or nonlegal advisor if it is likely that the organization

(i) will be engaged in proceedings that would ordinarily come before the judge, or

(ii) will be engaged frequently in adversary proceedings in the court of which the judge is a member or in any court subject to the appellate jurisdiction of the court of which the judge is a member.

(b) A judge as an officer, director, trustee or nonlegal advisor, or as a member or otherwise:

(i) may assist such an organization in planning fund-raising and may participate in the management and investment of the organization's funds,

but shall not personally participate in the solicitation of funds or other fund-raising activities, except that a judge may solicit funds from other judges over whom the judge does not exercise supervisory or appellate authority;

(ii) may make recommendations to public and private fund-granting organizations on projects and programs concerning the law,* the legal system or the administration of justice;

(iii) shall not personally participate in membership solicitation if the solicitation might reasonably be perceived as coercive or, except as permitted in Section 4C(3)(b)(i), if the membership solicitation is essentially a fund-raising mechanism;

(iv) shall not use or permit the use of the prestige of judicial office for fund-raising or membership solicitation.

D. FINANCIAL ACTIVITIES.

(1) A judge shall not engage in financial and business dealings that:

(a) may reasonably be perceived to exploit the judge's judicial position,
or

(b) involve the judge in frequent transactions or continuing business relationships with those lawyers or other persons likely to come before the court on which the judge serves.

(2) A judge may, subject to the requirements of this Code, hold and manage investments of the judge and members of the judge's family*, including real estate, and engage in other remunerative activity.

(3) A judge shall not serve as an officer, director, manager, general partner, advisor or employee of any business entity except that a judge may, subject to the requirements of this Code, manage and participate in:

(a) a business closely held by the judge or members of the judge's family,* or

(b) a business entity primarily engaged in investment of the financial resources of the judge or members of the judge's family.

(4) A judge shall manage the judge's investments and other financial interests to minimize the number of cases in which the judge is disqualified.

As soon as the judge can do so without serious financial detriment, the judge shall relinquish investments and other financial interests that might require frequent disqualification.

(5) A judge shall not accept, and shall urge members of the judge's family residing in the judge's household* not to accept, a gift, bequest, favor or loan from anyone except for:

(a) a gift incident to a public testimonial, books, tapes and other resource materials supplied by publishers on a complimentary basis for official use, or an invitation to the judge and the judge's spouse or guest to attend a bar-related function or an activity devoted to the improvement of the law,* the legal system or the administration of justice;

(b) a gift, award or benefit incident to the business, profession or other separate activity of a spouse or other family member of a judge residing in the judge's household, including gifts, awards and benefits for the use of both the spouse or other family member and the judge (as spouse or family member), provided the gift, award or benefit could not reasonably be perceived as intended to influence the judge in the performance of judicial duties;

(c) ordinary social hospitality;

(d) a gift from a relative or friend, for a special occasion, such as wedding, anniversary or birthday, if the gift is fairly commensurate with the occasion and the relationship;

(e) a gift, bequest, favor or loan from a relative or close personal friend whose appearance or interest in a case would in any event require disqualification under Section 3E;

(f) a loan from a lending institution in its regular course of business on the same terms generally available to persons who are not judges;

(g) a scholarship or fellowship awarded on the same terms and based on the same criteria applied to other applicants; or

(h) any other gift, bequest, favor or loan, only if: the donor is not a party or other person who has come or is likely to come or whose interests have come or are likely to come before the judge; and, if its value exceeds \$

150.00, the judge reports it in the same manner as the judge reports compensation in Section 4H.

E. FIDUCIARY ACTIVITIES.

(1) A judge shall not serve as executor, administrator or other personal representative, trustee, guardian, attorney in fact or other fiduciary,* except for the estate, trust or person of a member of the judge's family,* and then only if such service will not interfere with the proper performance of judicial duties.

(2) A judge shall not serve as a fiduciary* if it is likely that the judge as a fiduciary will be engaged in proceedings that would ordinarily come before the judge, or if the estate, trust or ward becomes involved in adversary proceedings in the court on which the judge serves or one under its appellate jurisdiction.

(3) The same restrictions on financial activities that apply to a judge personally also apply to the judge while acting in a fiduciary* capacity.

F. SERVICE AS ARBITRATOR OR MEDIATOR. A judge shall not act as an arbitrator or mediator or otherwise perform judicial functions in a private capacity unless expressly authorized by law.*

G. PRACTICE OF LAW. A judge shall not practice law. Notwithstanding this prohibition, a judge may act pro se and may, without compensation, give legal advice to and draft or review documents for a member of the judge's family.*

H. COMPENSATION, REIMBURSEMENT AND REPORTING.

(1) **COMPENSATION AND REIMBURSEMENT.** A judge may receive compensation and reimbursement of expenses for the extra-judicial activities permitted by this Code, if the source of such payments does not give the appearance of influencing the judge's performance of judicial duties or otherwise give the appearance of impropriety.

(a) Compensation shall not exceed a reasonable amount nor shall it exceed what a person who is not a judge would receive for the same activity.

(b) Expense reimbursement shall be limited to the actual cost of travel, food and lodging reasonably incurred by the judge and, where appropriate to the occasion, by the judge's spouse or guest. Any payment in excess of such an amount is compensation.

(2) **PUBLIC REPORTS.** A judge shall report the date, place and nature of any activity for which the judge received compensation, and the name of the payor and the amount of compensation so received. Compensation or income of a spouse attributed to the judge by operation of a community property law is not extra-judicial compensation to the judge. This report shall be made in such a form as may, from time to time, be directed by appropriate order of the Supreme Court and shall be filed annually as a public document in the Office of the Court Administrator by January 31, for the previous calendar year:

I. Disclosure of a judge's income, debts, investments or other assets is required only to the extent provided in this Canon and in Sections 3E and 3F, or as otherwise required by law.*

HISTORY: Adopted May 9, 1994; amended September 6, 2000, eff. December 31, 2000

Vt. A.O. 10 Canon 5 (2012)

A Judge or Judicial Candidate Shall Refrain From Inappropriate Political Activity

A. POLITICAL CONDUCT OF INCUMBENT JUDGES.

(1) A judge shall not:

(a) act as a leader or hold an office in a political organization or take part in any political campaign;

(b) publicly endorse or publicly oppose a candidate for public office;

(c) make speeches on behalf of a political organization;

(d) participate in political caucuses or meetings;

(e) pay an assessment or make a contribution to a political party, organization, or candidate, or purchase tickets for political party dinners or other functions;

(f) solicit funds for a political party, organization, or candidate; or

(g) engage in any other political activity except as authorized under any other Section of this Code, or on behalf of measures to improve the law, the legal system, or the administration of justice.

(2) A judge who is a candidate for retention or confirmation in a state judicial office currently held, or for appointment to any other public office, shall also comply with the provisions of Section 5B.

(3) A judge shall resign from judicial office upon becoming a candidate for any elective office, except that

(a) a judge of probate or an assistant judge may be a candidate for reelection or may serve as town meeting moderator, and

(b) an assistant judge or a candidate for the office of assistant judge may also seek election to the office of probate judge, and a probate judge or a candidate for the office of probate judge may also seek election to the office of assistant judge, and in either case, if otherwise qualified and elected to both offices, may serve both as an assistant judge and as a probate judge,

provided that the judge or candidate complies with the provisions of Section 5C.

B. POLITICAL CONDUCT OF CANDIDATES FOR APPOINTMENT TO OR CONFIRMATION OR RETENTION IN PUBLIC OFFICE. A candidate for appointment to, or confirmation or retention in, state judicial office, or for appointment to any other public office,

(1) if an incumbent judge shall at all times comply with all provisions of these Canons except as expressly permitted in this Section B;

(2) if a candidate for initial appointment to state judicial office, shall maintain the dignity appropriate to judicial office and act in a manner consistent with the integrity and independence of the judiciary, and shall encourage members of the candidate's family to adhere to the same

standards of political conduct in support of the candidate as apply to the candidate;

(3) shall prohibit employees and officials who serve at the pleasure of the candidate, and shall discourage other employees and officials subject to the candidate's direction and control, from doing on the candidate's behalf what the candidate is prohibited from doing under the Sections of this Canon;

(4) shall not:

(a) if a candidate for state judicial office, make pledges or promises of judicial conduct other than the faithful and impartial performance of the duties of the office;

(b) if a candidate for state judicial office, make statements that commit or appear to commit the candidate with respect to cases, controversies, or issues that are likely to come before the court;

(c) knowingly misrepresent the identity, qualifications, present position, or other fact concerning the candidate or any other candidate;

(d) solicit or accept funds, personally or through a committee or otherwise, to support the candidacy;

(e) engage in any political activity to secure the appointment, except that such persons may:

(i) communicate personally or through a paid lobbyist or other representative with the Judicial Nominating Board, the office of the Governor, the Joint Committee on Judicial Retention, and members of the General Assembly, or any other nominating, appointing, or confirming authority;

(ii) seek support or endorsement for the appointment from individuals and organizations;

(iii) provide to those specified in Sections 5B(4)(e)(i) and (ii) information as to the candidate's qualifications for office; and

(iv) if not an incumbent judge, retain an office in a political party or organization, participate in political caucuses or meetings, and continue to pay ordinary assessments and make ordinary contributions to a political

party, organization, or candidate and purchase tickets for political party dinners or other functions.

(f) authorize or knowingly permit any other person to do for the candidate what the candidate is prohibited from doing under the Sections of this Canon;

(5) may respond to personal attacks or attacks on the candidate's record so long as the response does not violate Section 5B(4).

C. POLITICAL CONDUCT OF CANDIDATES FOR ELECTION AS JUDGE OF PROBATE OR ASSISTANT JUDGE.

(1) Except as provided in this Section C, a candidate for election or reelection as judge of probate or assistant judge shall comply with all applicable provisions of Sections 5A(1) and 5B.

(2) A candidate for election or reelection as judge of probate or assistant judge may, while a candidate,

(a) speak to gatherings on the candidate's own behalf;

(b) appear in newspaper, television and other media advertisements supporting the candidacy;

(c) distribute pamphlets and other promotional campaign literature supporting the candidacy; and

(d) publicly endorse or publicly oppose any candidate for the same office.

(3) A candidate for election or reelection as judge of probate or assistant judge shall not personally solicit or accept campaign contributions or personally solicit publicly stated support. A candidate may, however, establish committees of responsible persons to conduct campaigns for the candidate through media advertisements, brochures, mailings, candidate forums, and other means not prohibited by law. Such committees may solicit and accept campaign contributions not to exceed \$ 150.00 from any single source, manage the expenditure of funds for the candidate's campaign and obtain public statements of support for the candidacy. Such committees are not prohibited from soliciting and accepting reasonable campaign contributions and public support from lawyers. A candidate's committees

may solicit contributions and public support for the candidate's campaign no earlier than 90 days before a primary election and no later than 90 days after the last election in which the candidate participates during the election year. A candidate shall not use or permit the use of campaign contributions for the private benefit of the candidate or others.

D. **APPLICABILITY.** A successful candidate, whether or not an incumbent, or an unsuccessful candidate who is an incumbent, is subject to judicial discipline for conduct in the course of seeking appointment or election that violates the provisions of Sections 5A-C; an unsuccessful candidate who is a lawyer is subject to lawyer discipline for campaign conduct that violates the Vermont Code of Professional Responsibility. A lawyer who is a candidate for judicial office is subject to Disciplinary Rule 8-103 of the Vermont Code of Professional Responsibility.

HISTORY: Adopted May 9, 1994; amended December 21, 2011, eff. Feb. 20, 2012

Vt. A.O. 10 APPLICATION OF THE CODE OF JUDICIAL CONDUCT (2012)

APPLICATION OF THE CODE OF JUDICIAL CONDUCT

A. All judges shall comply with this Code except as provided below.

B. **CONTINUING PART-TIME JUDGE.** A continuing part-time judge*:

(1) is not required to comply

(a) except while serving as a judge, with Section 3B(9);

(b) at any time with Sections 4C(2), 4D(3), 4F, 4G, and 4H(2); and

(c) except while a candidate for election or re-election as a judge, with Sections 5A(1)(a)-(e) and 5B(4)(e).

(2) shall not act as a lawyer in any case in any unit of the division of the court in which the judge serves or in any unit in any division of the superior court in a proceeding in which the judge has served as a judge or in any other proceeding related thereto.

(3) shall not use any office, chambers, and hearing rooms provided to the judge for official duties to practice law.

C. **PRO TEMPORE PART-TIME JUDGE.** A pro tempore part-time judge*:

(1) is not required to comply

(a) except while serving as a judge, with Sections 2A, 2B, 3B(9) and 4C(1);

(b) at any time with Sections 2C, 4C(2), 4C(3)(a), 4C(3)(b), 4D(1)(b), 4D(3), 4D(4), 4D(5), 4E, 4F, 4G, 4H, 5A(1), 5A(3), and 5B(4)(e).

(2) should refrain from judicial service during the period of an extrajudicial appointment not sanctioned by Section 4C(2).

(3) shall not act as a lawyer in a proceeding in which he or she has served as a pro tempore part-time judge* or in any other proceeding related thereto.

D. **EFFECTIVE DATE; TIME FOR COMPLIANCE.** This Code takes effect on September 1, 1994. All persons to whom this Code is applicable on that date shall comply immediately with all provisions of this Code. All persons to whom this Code thereafter becomes applicable shall comply immediately with all provisions of this Code except Sections 4D(1), 4D(3), 4D(4), and 4E and shall comply with those Sections as soon as reasonably possible.

E. **TITLE.** This Code may be known and cited as the Vermont Code of Judicial Conduct.

HISTORY: Adopted May 9, 1994; amended September 6, 2000, eff. December 31, 2000; January 31, 2011, eff. January 31, 2011.