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**RULE PROPOSALS**

**LABOR AND WORKFORCE DEVELOPMENT  
DIVISION OF WORKERS' COMPENSATION**

*49 N.J.R. 2887(a)*

**Proposed Repeals:** *N.J.A.C. 12:235-10.1 through 10.12*

**Proposed Amendments:** *N.J.A.C. 12:235-10.13, 10.16, and 10.20*

**Proposed New Rule:** *N.J.A.C. 12:235-10 Appendix*

[Click here to view Interested Persons Statement](#)

**Conduct of Judges**

Authorized By: Aaron R. Fichtner, Ph.D, Acting Commissioner, Department of Labor and Workforce Development.

Authority: *N.J.S.A. 34:1-20, 34:1A-3(e), 34:1A-12(b), 34:1A-12(c), and 34:15-64.*

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Proposal Number: PRN 2017-226.

A **public hearing** on the proposed amendments, new rule, and repeals will be held on the following date at the following location:

Tuesday, October 3, 2017  
10:00 A.M. to 12:00 Noon  
New Jersey Department of Labor and Workforce Development  
John Fitch Plaza  
10th Floor, Large Conference Room  
Trenton, New Jersey

Please call the Office of Legal and Regulatory Services at (609) 292-2789 if you wish to be included on the list of speakers.

Submit written comments by November 4, 2017, to:

David Fish, Executive Director

Legal and Regulatory Services  
New Jersey Department of Labor and Workforce Development  
PO Box 110  
13th Floor  
Trenton, New Jersey 08625-0110  
Fax to: (609) 292-8246  
E-mail: david.fish@dol.nj.gov.

The agency proposal follows:

### Summary

The Department is proposing repeals, amendments, and a new rule, which would result in the adoption of a new Code of Conduct for Judges of Compensation (Code). The proposed adoption of a new Code is prompted by the Supreme Court of New Jersey (Supreme Court) having recently adopted a revised New Jersey Code of Judicial Conduct, effective September 1, 2016, which applies to judges who serve within the judicial branch of State government, as opposed to those, like Judges of Compensation, who serve within the executive branch of State government. The existing Code of Conduct for Judges of Compensation is reflected within the rules at *N.J.A.C. 12:235-10.1* through *10.12* and was modeled on the New Jersey Code of Judicial Conduct. Consequently, it only follows that with the recent revision of the New Jersey Code of Judicial Conduct, the Division of Workers' Compensation would want to update its Code of Conduct for Judges of Compensation so as to ensure that Judges of Compensation are held to the same exacting standards as are their counterparts in the Judiciary.

Thus, the Department is proposing the repeal of *N.J.A.C. 12:235-10.1* through *10.12* and its replacement with *N.J.A.C. 12:235-10* Appendix, which would contain a Code of Conduct for Judges of Compensation virtually identical to the recently revised New Jersey Code of Judicial Conduct. As to the nature of the revisions to the New Jersey Code of Judicial Conduct recently made by the Supreme Court, which are reflected in the proposed new Code of Conduct for Judges of Compensation, the December 12, 2014 letter from Deborah T. Poritz, Chief Justice (Ret.), Chair of the Ad Hoc Committee on the Code of Judicial Conduct to Chief Justice Stuart Rabner (available online: <http://www.judiciary.state.nj.us/reports2016/judicialconduct.pdf>) is instructive. In that document, the Committee Chair explained, for example, that in general, the Committee had sought more precisely to describe the conduct prohibited (or permitted) by the Rules, adding that language in the Code had been modified, not necessarily to conform to the language found in the American Bar Association (ABA) Model but, rather, to achieve the goals of clarity and specificity, for example, the phrase "in All Activities" at the end of Canon 2 was deleted as too vague. Also, the Chair explained that consistent with its goal of "certainty," it had unanimously recommended that the word "should" be changed to "shall" in every Canon and Rule where it previously existed, except in Canon 1 as is evident within the revised Code itself. According to the Chair, this recommendation had followed the approach implemented in the revision of the 1990 ABA Model Code and found in the current Model Code.

Specifically regarding format, the Chair stated the following:

The Committee members found that the disciplinary process had become more formal and public over the past several years and concluded, in that context, that the format of our Code could be confusing and that it is sometimes difficult to differentiate between general principles, rules (the violation of which can result in discipline), and interpretive comments. The Committee therefore determined that there is a need for greater specificity in respect of those actions requiring discipline but that aspirational goals found in our current Code should be retained. That approach continues to build on both the bedrock principles under which our current system has operated and the over 30 years of New Jersey precedent interpreting the Canons. Thus, as does the ABA Model Code, the Committee's proposal contains Canons that express general principles of conduct followed by rules that prescribe specific standards of conduct.

As to the amendments proposed within this rulemaking, most of those are technical in nature, either eliminating cross-references to the sections of *N.J.A.C. 12:235-10* that are proposed for repeal and replacing them with references to the Code of Conduct for Judges of Compensation, which would be appended to *N.J.A.C. 12:235-10*; or changing other cross-references throughout the subchapter to reflect recodifications resulting from the repeal of *N.J.A.C. 12:235-10.1* through *10.12*. In addition, the Department is proposing new *N.J.A.C. 12:235-10.13(a)4* (recodified as *N.J.A.C. 12:235-10.1(a)4*), which would include, as a cause for discipline or removal, failure to notify the Director when the judge has reason to believe that a medical report, medical bill for services, or medical finding has been altered, falsified, or withheld by a licensed physician, dentist, chiropractor, osteopath, optometrist, physical therapist, medical technician,

attorney, or a representative of an insurance carrier or self-insured. This workers' compensation-specific provision appears within the current rules at *N.J.A.C. 12:235-10.12*; however, there is no corresponding provision within the revised New Jersey Code of Judicial Conduct. Consequently, in order to preserve this important prescription for Judges of Compensation, the Department is proposing that it be added to the list of causes for discipline or removal at recodified *N.J.A.C. 12:235-10.1*.

Finally, due to the proposed repeal of *N.J.A.C. 12:235-10.1* through *10.12*, the Department is proposing that *N.J.A.C. 12:235-10.13* through *10.23* be recodified as *N.J.A.C. 12:235-10.1* through *10.11*.

As the Department has provided a 60-day comment period for this notice of proposal, this notice is excepted from the rulemaking calendar requirements, pursuant to *N.J.A.C. 1:30-3.3(a)5*.

### **Social Impact**

The proposed repeals, amendments, and new rule would have a positive social impact in that they would ensure that Judges of Compensation are held to the same high standard of conduct as are their counterparts in the Judiciary. The Division has always modeled its Code of Conduct for Judges of Compensation on the New Jersey Code of [page=2888] Judicial Conduct. As explained earlier, with the Supreme Court's recent revision of the New Jersey Code of Judicial Conduct, it only follows that the Division would revise its Code of Conduct for Judges of Compensation accordingly.

### **Economic Impact**

The proposed repeals, amendments, and new rule would have no economic impact in that they simply revise the Code of Conduct for Judges of Compensation, so as to ensure consistency with the New Jersey Code of Judicial Conduct.

### **Federal Standards Statement**

A Federal standards analysis is not required because the proposed repeals, amendments, and new rule are not subject to any Federal standards or requirements. Specifically, the subject matter of the proposed repeals, amendments, and new rule is governed by State law, *N.J.S.A. 34:15-1* et seq. (the Workers' Compensation Law).

### **Jobs Impact**

The proposed repeals, amendments, and new rule would have no impact on either the generation or loss of jobs.

### **Agriculture Industry Impact**

The proposed repeals, amendments, and new rule would have no impact on the agriculture industry.

### **Regulatory Flexibility Statement**

The proposed repeals, amendments, and new rule would impose no reporting, recordkeeping, or other compliance requirements on small businesses, as the term is defined in the Regulatory Flexibility Act, *N.J.S.A. 52:14B-16* et seq. Rather, the proposed repeals, amendments, and new rule would simply adopt a new Code of Conduct for Judges of Compensation, so as to ensure consistency with the recently revised New Jersey Code of Judicial Conduct.

### **Housing Affordability Impact Analysis**

The proposed repeals, amendments, and new rule would not evoke a change in the average costs associated with housing or have any effect on the affordability of housing. The basis for this finding is that the proposed repeals, amendments, and new rule pertain to the Code of Conduct for Judges of Compensation, and have nothing to do with housing.

### **Smart Growth Development Impact Analysis**

The proposed repeals, amendments, and new rule would not evoke a change in the housing production within Planning Areas 1 and 2, or within designated centers, under the State Development and Redevelopment Plan. The basis for this finding is that the proposed repeals, amendments, and new rule pertain to the Code of Conduct for Judges of Compensation, and have nothing to do with housing production.

**Full text** of the rules proposed for repeal may be found in the New Jersey Administrative Code at *N.J.A.C. 12:235-10.1* through *10.12*.

**Full text** of the proposed amendments and new rule follows (additions indicated with boldface **thus**; deletions indicated in brackets [thus]):

#### SUBCHAPTER 10. CONDUCT OF JUDGES

12:235-[10.13]**10.1** Causes for discipline or removal

(a) A judge may be disciplined for:

1. Violation of the [code of judicial conduct as set forth in *N.J.A.C. 12:235-10.1* through *10.12*] **Code of Conduct for Judges of Compensation;**

2. Willful misconduct including misconduct which, although not directly pertaining to judicial duties, brings the office into disrepute or is prejudicial to the administration of justice; [and/or]

3. Failure, neglect, or inability to perform judicial duties[.]; **or**

**4. Failure to notify the Director when the judge has reason to believe that a medical report, medical bill for services, or medical finding has been altered, falsified, or withheld by a licensed physician, dentist, chiropractor, osteopath, optometrist, physical therapist, medical technician, attorney, or a representative of an insurance carrier or self-insured.**

Recodify existing 10.14 and 10.15 as **10.2 and 10.3** (No change in text.)

12:235-[10.16]**10.4** Major discipline

Oral or written public reprimands, suspensions, and removal shall constitute major disciplinary actions. A judge is entitled to notice of major disciplinary charges and an opportunity to be heard pursuant to *N.J.A.C. 12:235-[10.21]***10.9**.

Recodify existing 10.17, 10.18, and 10.19 as **10.5, 10.6, and 10.7** (No change in text.)

12:235-[10.20]**10.8** Recommendations of the Commission

(a) Upon completion of the initial review, the Commission may take any of the following actions which may be accepted, rejected, or modified by the Director:

1.-3. (No change.)

4. Whenever the Commission concludes that the circumstances merit minor discipline, the Commission shall promptly file a copy of the recommendation, and the record of the Commission certified as such by its Chairperson, with the Director. If the Director agrees with the recommendation, the Director shall proceed in accordance with *N.J.A.C.*

*12:235-[10.15]***10.3**. If the Director disagrees with the recommendation, the Director may dismiss or refer the matter for major disciplinary charges in accordance with *N.J.A.C. 12:235-[10.16]***10.4**.

5. Whenever the Commission concludes, and only after an evidentiary review under *N.J.A.C. 12:235-[10.19]***10.7**, that the basis of the complaint or report merits disciplinary action greater than minor discipline and that formal charges should be instituted, the Commission shall promptly file a copy of the recommendation and the record of the Commission certified as such by its Chairperson with the Director. The Commission shall issue also without delay and serve upon the judge a notice advising him or her that it has filed such a recommendation with the Director.

Recodify existing 10.21, 10.22, and 10.23 as **10.9, 10.10, and 10.11** (No change in text.)

**APPENDIX****CODE OF CONDUCT FOR****JUDGES OF COMPENSATION****PREAMBLE**

The Code of Conduct for Judges of Compensation is intended to establish basic ethical conduct standards for judges of compensation. The Code is intended to govern the conduct of these judges of compensation and to provide guidance to assist judges in establishing and maintaining high standards of judicial and personal conduct. This Code is based upon the revised New Jersey Code of Judicial Conduct, adopted by the New Jersey Supreme Court to be effective September 1, 2016.

The text of the Canons is authoritative. The Commentary, by explanation and example, provides guidance with respect to the purpose and meaning of the Canons. The Commentary is not intended as a statement of additional rules. When the text uses "shall" or "shall not," it is intended to impose binding obligations the violation of which can result in disciplinary action. When "should" or "should not" is used, the text is a statement of what is or is not appropriate conduct, but not as a binding rule under which a judge may be disciplined. When "may" is used, it denotes permissible discretion or, depending on the context, it refers to action that is not covered by specific proscriptions.

The Canons are rules of reason. They should be applied consistent with constitutional requirements, statutes, administrative rules, and decisional law and in the context of all relevant circumstances. The Code is to be construed so as not to impinge on the essential independence of judges in making judicial decisions. The Code is designed to provide guidance to judges of compensation and to provide a structure for regulating conduct.

[page=2889] CANON 1

**AN INDEPENDENT AND IMPARTIAL JUDICIARY IS INDISPENSABLE TO JUSTICE. A JUDGE THEREFORE SHALL UPHOLD AND SHOULD PROMOTE THE INDEPENDENCE, INTEGRITY AND IMPARTIALITY OF THE JUDICIARY**

**RULE 1.1 Independence, Integrity and Impartiality of the Judiciary**

A judge shall participate in establishing, maintaining and enforcing, and shall personally observe, high standards of conduct so that the integrity, impartiality and independence of the judiciary is preserved. This Code shall be construed and applied to further these objectives.

**RULE 1.2 Compliance with the Law**

A judge shall respect and comply with the law.

**COMMENT:**

*Violations of this Code, or violations of law or N.J.A.C. 12:235 that reflect adversely on a judge's honesty, impartiality, temperament or fitness constitute a failure to respect and comply with the law.*

**CANON 2**

**A JUDGE SHALL AVOID IMPROPRIETY AND THE APPEARANCE OF IMPROPRIETY**

**RULE 2.1 Promoting Confidence in the Judiciary**

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

**COMMENT:**

*[1] Public confidence in the judiciary is eroded by irresponsible or improper conduct by judges. A judge must avoid all impropriety and appearance of impropriety and must expect to be the subject of constant public scrutiny. This principle applies to both the professional and personal conduct of a judge. A judge must therefore accept restrictions on personal conduct that might be viewed as burdensome by the ordinary citizen and should do so freely and willingly.*

*[2] Actual impropriety is conduct that reflects adversely on the honesty, impartiality, temperament or fitness to serve as a judge.*

*[3] With regard to the judicial conduct of a judge, an appearance of impropriety is created when a reasonable, fully informed person observing the judge's conduct would have doubts about the judge's impartiality.*

*With regard to the personal conduct of a judge, an appearance of impropriety is created when an individual who observes the judge's personal conduct has a reasonable basis to doubt the judge's integrity and impartiality.*

**RULE 2.2 External Influences on Judicial Conduct**

Judges shall decide cases according to the law and facts. Judges shall not permit family, social, political, financial or other relationships or interests to influence their judicial conduct or judgment.

**RULE 2.3 Avoiding Abuse of the Prestige of Judicial Office**

(A) A judge shall not lend the prestige of judicial office to advance the personal or economic interests of the judge or others, or allow others to do so.

(B) A judge shall not convey or permit others to convey the impression that any person or organization is in a position to influence the judge.

**COMMENT:**

*[1] It is improper for judges to use or attempt to use their position to gain personal advantage or deferential treatment of any kind. For example, it would be improper for a judge to allude to his or her judicial status to gain favorable treatment in encounters with others, such as persons in official positions and members of the public.*

*[2] The New Jersey Supreme Court has determined that in certain limited situations a judge may write a letter of recommendation for a current or former law clerk or intern on judicial letterhead; in all other situations, if a letter of recommendation is appropriate, it should be on the judge's personal stationery.*

*The situations in which the judge may use judicial letterhead for letters of recommendation for law clerks or interns are as follows: (a) when the letter is addressed to another state or federal government official (this would include letters regarding subsequent additional clerkships or internships); (b) when the letter is addressed to a law school, university, or college in connection with a possible teaching position for the law clerk or intern; and (c) when a potential employer requests a recommendation.*

*[3] Judges may participate in the process of judicial selection or judicial reappointment by cooperating with appointing authorities and screening committees, and by responding to inquiries from such entities concerning the professional qualifications of a person being considered for judicial office.*

**RULE 2.4 Testifying as a Character Witness**

A judge shall not testify as a character witness in a judicial, administrative, or other adjudicatory proceeding, or otherwise vouch for the character of a person in a legal proceeding.

**COMMENT:**

*The testimony of a judge as a character witness injects the prestige of the office into the proceeding in which the judge testifies and may be misunderstood to be an official testimonial. This rule, however, does not afford a judge a privilege against testifying as a witness as to evidentiary facts of which the judge has personal knowledge.*

**CANON 3**

**A JUDGE SHALL PERFORM THE DUTIES OF JUDICIAL OFFICE IMPARTIALLY AND DILIGENTLY**

**RULE 3.1           Precedence of Judicial Office**

The judicial duties of a judge shall take precedence over all other activities. Judicial duties include the duties of the office prescribed by law, this Code, *N.J.A.C. 12:235*, and administrative directive.

**RULE 3.2           Competence**

A judge shall maintain professional competence.

**COMMENT:**

*Competence in the performance of judicial duties requires the legal knowledge, skill, thoroughness, and preparation reasonably necessary to perform judges' responsibilities of judicial office.*

**RULE 3.3           Judicial Independence**

A judge shall be unswayed by partisan interest, public clamor or fear of criticism.

**COMMENT:**

*A judge shall decide cases without regard to whether particular laws or litigants are popular or unpopular with the public, the media, government officials, or the judge's friends or family. Confidence in the workers' compensation judiciary is eroded if judicial decision-making is perceived to be subject to outside influences.*

**RULE 3.4           Decorum**

A judge shall maintain order and decorum in judicial proceedings.

**RULE 3.5           Demeanor**

A judge shall be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers and others with whom the judge deals in an official capacity, and shall not permit lawyers, court officials, and others subject to the judge's direction and control to display impatience or discourtesy or to detract from the dignity of the court.

**RULE 3.6           Bias and Prejudice**

(A) A judge shall be impartial and shall not discriminate because of race, creed, color, sex, gender identity or expression, religion/religious practices or observances, national origin/nationality, ancestry, language, ethnicity, disability or perceived disability, atypical hereditary cellular or blood trait, genetic information, status as a veteran or disabled veteran of, or liability for service in, the Armed Forces of the United States, age, [page=2890] affectional or sexual orientation, marital status, civil union status, domestic partnership status, socioeconomic status or political affiliation.

(B) A judge shall require lawyers in proceedings before the judge to refrain from manifesting, by words or conduct, bias or prejudice on the bases specified in Rule 3.6(A), against parties, witnesses, counsel or others. This section does not preclude legitimate advocacy when the listed bases are issues in or relevant to the proceeding.

(C) A judge shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice, or engage in harassment, including but not limited to bias, prejudice or harassment on the bases specified in Rule 3.6(A), and shall not permit court staff, court officials or others subject to the judge's direction and control to do so. This section does not preclude reference to the listed bases when they are issues in or relevant to the proceeding.

**COMMENT:**

*[1] The prohibited bases in this rule are primarily drawn from the Law Against Discrimination, N.J.S.A. 10:5-1, et seq.*

*[2] Examples of manifestations of bias or prejudice include but are not limited to epithets, slurs, demeaning nicknames, negative stereotyping, attempted humor based on stereotypes, threatening, intimidating, or hostile acts, suggestions of connections between race, ethnicity, or nationality and crime and irrelevant references to personal characteristics. Even facial expressions and body language can convey to parties and lawyers in the proceeding, jurors, the media and others an appearance of bias or prejudice. A judge must avoid conduct that may reasonably be perceived as prejudiced or biased.*

*[3] Harassment is verbal or physical conduct that denigrates or shows hostility or aversion toward a person on prohibited bases listed in Rule 3.6(A).*

*[4] Sexual harassment includes but is not limited to sexual advances, requests for sexual favors and other verbal or physical conduct of a sexual nature that is unwelcome.*

**RULE 3.7            Ensuring the Right to Be Heard**

A judge shall accord to every person who is legally interested in a proceeding, or to that person's lawyer, the right to be heard according to law or court rule.

**COMMENT:**

*A judge may make reasonable accommodations to ensure pro se litigants the opportunity to have their matters fairly heard.*

**RULE 3.8            Ex Parte Communications**

Except as authorized by law or N.J.A.C. 12:235, a judge shall not initiate or consider *ex parte* or other communications concerning a pending or impending proceeding.

**COMMENT:**

*[1] This rule does not prohibit a judge from appointing an independent expert in accordance with the rules of court.*

*[2] The proscription against communications concerning a proceeding generally includes communications with or from lawyers and other persons who are participants in the proceeding. It does not preclude a judge from consulting with other judges on pending matters, provided that the judge avoids *ex parte* discussions of a case with judges who have previously been disqualified from hearing the matter and with judges who have appellate jurisdiction over the matter, or from consulting with court personnel whose function is to aid the judge in carrying out adjudicative responsibilities.*



*[3] In general, settlement discussions, discussions regarding scheduling and a judge's handling of emergent issues are not considered to constitute ex parte communications in violation of this rule.*

**RULE 3.9                   Diligence**

**A judge shall dispose promptly of the business of the court.**

**COMMENT:**

*Prompt disposition of the court's business requires judges to devote adequate time to their duties, to be punctual in attending court and expeditious in determining matters before the court, and to insist that court officials, litigants and lawyers cooperate to that end. In disposing of matters promptly, a judge must demonstrate due regard for the rights of the parties to be heard and to have issues resolved without unnecessary cost or delay.*

**RULE 3.10                 Judicial Statements on Pending and Impending Cases**

**A judge shall not publicly comment about a pending or impending proceeding in any court and shall not permit court personnel subject to the judge's direction and control to do so. This rule does not prohibit judges from making public statements in the course of their official duties or from explaining to the public the procedures of the court.**

**COMMENT:**

*[1] "Court personnel" does not include the lawyers in a proceeding before a judge. The conduct of lawyers is governed by RPC 3.6 of the Rules of Professional Conduct.*

*[2] This rule is not intended to prohibit a judge from discussing the facts and holdings, subject to the guidelines of the Advisory Committee on Extrajudicial Activities, in a matter that has been concluded.*

**Rule 3.11                 Broadcasting**

**A judge should permit broadcasting, televising, recording and the taking of photographs in the courtroom and areas immediately adjacent thereto during sessions of court and during recesses between sessions only in accordance with the guidelines promulgated by the Supreme Court and subject to the restrictions contained therein; except that where there is a conflict between the guidelines promulgated by the Supreme Court and the provisions of N.J.A.C. 12:235, the provisions of N.J.A.C. 12:235 shall govern.**

**RULE 3.12                 Judicial Administration**

**A judge shall diligently discharge the administrative responsibilities of the office without bias or prejudice, maintain professional competence in judicial administration, and facilitate the performance of the administrative responsibilities of other judges and court officials.**

**RULE 3.13                 Supervisory Duties**

**A judge shall require staff, court officials and others 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.**

**RULE 3.14                 Responding to Judicial and Lawyer Misconduct**

**A judge has the following disciplinary responsibilities:**

**(A) A judge who receives reliable 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.

(B) A judge who receives reliable information indicating a substantial likelihood that a lawyer has committed a violation of the Rules of Professional Conduct should take appropriate action. A judge having knowledge that a lawyer has committed a violation of the Rules of Professional Conduct 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.

(C) Acts of a judge in the discharge of disciplinary responsibilities under this rule shall be absolutely privileged.

**COMMENT:**

*Appropriate action includes notification to the Supervising Judge, Administrative Supervisory Judge, or Director/Chief Judge of Compensation.*

**RULE 3.15 Administrative Appointments**

(A) A judge shall not make unnecessary appointments and shall exercise the power of appointment only on the basis of merit, avoiding nepotism and favoritism.

(B) A judge shall not approve compensation of appointees beyond the fair value of services rendered.

[page=2891] **COMMENT:**

*Appointees of the judge include officials such as commissioners, receivers, guardians and personnel such as clerks and secretaries. Consent by the parties to an appointment or to the fixing of compensation does not relieve the judge of the obligation prescribed by this rule.*

**RULE 3.16 Disqualification**

(A) Judges shall hear and decide all assigned matters unless disqualification is required by this rule or other law.

(B) Judges shall disqualify themselves in proceedings in which their impartiality or the appearance of their impartiality might reasonably be questioned, including but not limited to the following:

(1) Personal bias, prejudice or knowledge. Judges shall disqualify themselves if they have a personal bias or prejudice toward a party or a party's lawyer or have personal knowledge of disputed evidentiary facts involved in the proceeding.

(2) Financial interest. Judges shall disqualify themselves if they individually or as a fiduciary have a financial interest in an enterprise related to the litigation. Subject to subparagraphs (i), (ii), (iii), and (iv) hereof, a financial interest means ownership of a legal or equitable interest, however small, or a relationship as director or advisor or other participation in the affairs of a party.

(a) Financial interest does not include:

(i) Ownership of an interest in securities held by a mutual fund or common investment fund, or ownership of securities held in managed funds, provided, in respect of managed funds, that no investment discretion has been retained by the judge or the judge's spouse, civil union partner, or domestic partner.

(ii) Ownership in securities held by an educational, religious, charitable, fraternal or civic organization in which the judge holds an office;

(iii) The proprietary interest of a policyholder in a mutual insurance company, of a depositor in a mutual savings association, or a similar proprietary interest unless there is a reasonable possibility that the value of the interest will be affected by the judge's decision;

(iv) Ownership of an interest in government securities unless there is a reasonable possibility that the value of the interest will be affected by the judge's decision.

**(3) Personal Relationships. Judges shall disqualify themselves if:**

(a) The judge or the judge's spouse, civil union partner, or domestic partner, or a first cousin or more closely related relative to either of them, or the spouse, civil union partner, or domestic partner of such relative, or to the judge's knowledge, a second cousin or related relative to either of them, as defined below, or the spouse, civil union partner, or domestic partner of such relative is a party to the proceeding or is likely to be called as a witness in the proceeding.

(b) The judge or the judge's spouse, civil union partner, or domestic partner, or a first cousin or more closely related relative to either of them, or the spouse, civil union partner, or domestic partner of such relative is a lawyer for a party.

(c) The judge or the judge's spouse, civil union partner, or domestic partner, or any member of the judge's family residing in the judge's household has an interest in the litigation, including among other things, a financial interest, as defined by Rule 3.15(B)(2), in an enterprise related to the litigation.

(d) The judge has a social relationship with a party or a lawyer for a party of a nature that would give rise to partiality or the appearance of partiality.

**(4) Prior Professional Relationships. Judges shall disqualify themselves based on their prior professional relationships as follows:**

(a) In proceedings in which the judge served as a lawyer in the matter in controversy or in which the judge has been a witness or may be called as a witness;

(b) In proceedings in which a party was a former private client for whose matter the judge had primary responsibility, disqualification is necessary for a period of seven years following the conclusion of that representation. However, disqualification for a period of time in excess of seven years from the conclusion of the representation may be required in certain circumstances. In making that determination, a judge should consider, among other relevant factors: 1) the scope of the representation, including but not limited to the cumulative number of matters handled by the judge, whether a continuous fiduciary relationship existed with the client over an extended period of time, and the length of time that has elapsed since the conclusion of that representation; 2) the duration of the representation; 3) the nature of the representation, including but not limited to the acrimonious nature of the underlying litigation and any information acquired about the client as a consequence of that representation that could cast doubt on the judge's impartiality; and 4) in respect of a corporate client, whether the principals of the entity are the same as existed during the representation.

For purposes of this rule, an insurance company that retained the judge to defend its insureds in tort actions shall not be considered a former client of the judge.

**(c) In proceedings in which a party is a governmental entity that previously employed the judge:**

(i) for a period of two years following judicial appointment if the judge was employed as a state government attorney, county prosecutor or assistant county prosecutor, provided, however, that prior employment as a state government attorney with broad supervisory authority shall not disqualify judges who had no actual involvement in the matter while in government service;

(ii) for a period of five years following judicial appointment if the judge represented a local government entity.

(d) In proceedings in which the judge's former law firm is involved, for a period of at least seven years following termination of the relationship or until all financial obligations of the law firm to the judge are satisfied, whichever is longer;

(e) In proceedings in which the judge's former law clerk is appearing or has signed papers, for a period of six months following termination of the clerkship.

(5) **Post-Retirement Employment.** Judges shall disqualify themselves if the judge has initiated contact about or discussed or negotiated his or her post-retirement employment with any party, attorney or law firm involved in any matter pending before the judge in which the judge is participating personally and substantially, regardless of whether or not the discussions or negotiations lead to employment of the judge by the party, attorney or law firm;

(6) Irrespective of the time periods specified in this rule, judges shall disqualify themselves whenever the nature of the relationship to a party or a lawyer, because of a continuing social relationship or otherwise, would give rise to partiality or the appearance of partiality.

(C) A disqualification required by this rule is not subject to the parties' waiver. The judge shall, however, disclose to the parties any circumstance not deemed by the judge to require disqualification but which might be regarded by the parties as affecting the judge's impartiality.

(D) A judge shall address disqualification or issues of recusal and disqualification promptly upon recognition of grounds which would give rise to partiality or the appearance of partiality.

(E) A judge shall not be automatically disqualified upon learning that a complaint has been filed against the judge with the Director/Chief Judge of Compensation, litigation naming the judge as a party, or any other complaint about the judge by a party. If, however, the judge concludes that there is a reasonable basis to question the court's impartiality, the judge may recuse himself or herself. A judge shall promptly disclose to the parties to the pending litigation that a complaint has been filed or made.

**COMMENT:**

*[1] Judges must be available to decide the matters that come before the court. Although there are times when disqualification is necessary to protect the rights of litigants and preserve public confidence in the independence, integrity and impartiality of the judiciary, unwarranted disqualification may bring public disfavor to the court and to the judge [page=2892] personally. The dignity of the court, the judge's respect for fulfillment of judicial duties, and a proper concern for the burdens that may be imposed upon the judge's colleagues require that a judge not use disqualification to avoid cases that present difficult, controversial or unpopular issues.*

*[2] In determining whether disqualification is necessary, the applicable standard is as follows: Would a reasonable, fully informed person have doubts about the judge's impartiality. DeNike v. Cupo, 196 N.J. 502.*

*[3] For purposes of this rule, as with New Jersey Court Rule 1:12-1, a "first cousin or more closely related relative" includes first cousin, aunt or uncle, niece or nephew, grandparent, grandchild, child, parent, or sibling.*

*A "second cousin or related relative" includes a second cousin, great aunt or uncle, first cousin once removed (e.g., a first cousin's child or a great aunt or uncle's child), great grandparent, or grandniece or grandnephew, or great grandchild.*

*Judges shall keep informed about their personal and fiduciary interests and make reasonable efforts to keep informed about the personal financial interests of their spouse, civil union partner, or domestic partner, and family members residing in the judge's household.*

*"Knowledge" means actual knowledge of the fact in question. However, knowledge may be inferred from the circumstances.*

*[4] The fact that a lawyer in a proceeding is affiliated with a law firm with which a lawyer- relative of the judge is affiliated does not itself disqualify the judge. If, however, the judge's impartiality might reasonably be questioned under paragraph (B), or the lawyer- relative is known by the judge to have an interest in the law firm that could be substantially affected by the proceeding under paragraph (B)(3)(c), the judge's disqualification is required.*

*In making such a determination, a judge should consider, among other relevant factors: (1) the degree of relationship between the judge and the relative affiliated with the firm (e.g., sister, nephew, nephew's spouse); (2) the closeness of the relationship between the judge and the relative; (3) whether the relative's affiliation with the firm was known to the judge without counsel making the court aware of such affiliation; (4) the size of the law firm the relative is affiliated with; (5) the relative's role in the law firm (e.g., owner or equity interest holder, associate, intern); (6) the relative's relationship, if any, to the lawyer in the proceeding; (7) whether the law firm represents a named party to the action as opposed to an entity proceeding (or seeking to proceed) as amicus curiae; (8) the timing of the law firm's commencement of participation in the proceeding; (9) whether the law firm is providing its services pro bono, if such an arrangement is known by the judge; and (10) the nature of the proceedings.*

*Note that this comment addresses only whether a lawyer-relative renders the judge disqualified from hearing all matters involving the law firm with which the relative is affiliated. Nothing in this comment should be read to permit a judge to hear proceedings in which a lawyer in the case is related (as first cousin or closer) to the judge or the judge's spouse, civil union partner or domestic partner.*

*[5] In evaluating whether a judge should be disqualified from proceedings in which a party was a former private client of the judge for a period of time in excess of seven years from the conclusion of the representation, judges should be guided by *DeNike v. Cupo*, 196 N.J. 502.*

*[6] A lawyer in a governmental agency does not necessarily have an association with other lawyers employed by that agency within the meaning of this rule; judges formerly employed by governmental agencies, however, should disqualify themselves in a proceeding if their impartiality might reasonably be questioned because of the association.*

*[7] A judge may not initiate contact about or discuss or negotiate his or her post-retirement employment with any party, attorney or law firm involved in any matter pending before the judge in which the judge is participating personally and substantially. A matter pending before the judge includes any matter or aspect of a matter which has not been completed, even if only the performance of a ministerial act remains outstanding, such as signing a consent order or a similar order. If the subject is raised in any fashion, the judge must put a halt to the discussion or negotiation at once, rebuff any offer, and disclose what occurred on the record in the presence of all parties and counsel. The judge, all parties and attorneys on the record should then evaluate objectively whether any further relief is needed.*

*A judge who engages in post-retirement employment negotiations or discussions while still on the bench with any party, attorney or law firm that does not have a matter pending before the judge, must do so in a way that minimizes the need for disqualification, does not interfere with the proper performance of the judge's judicial duties, and upholds the integrity of the courts. A judge should delay starting any such negotiations or discussions until shortly before his or her planned retirement, and should discuss post-retirement employment opportunities with the fewest possible number of prospective employers. A judge should also inform the Director/Chief Judge of Compensation about the post-retirement employment negotiations or discussions to the extent that such negotiations or discussions will interfere with the judge's regular assignments.*

*A judge should not initiate contact about or discuss or negotiate his or her post-retirement employment with a party, attorney or law firm that has in the past appeared before the judge until the passage of a reasonable interval of time, so that the judge's impartiality in the handling of the case cannot reasonably be questioned. What is reasonable depends on the circumstances. For instance, it may be that an uncontested matter resolved swiftly by entry of a default judgment; such a circumstance may not call for the passage of a lengthy intervening period of time. Prolonged or*

*particularly acrimonious litigation may caution in favor of a longer delay. Actions likely to result in continuing post-judgment matters would also warrant a lengthier intervening period of time.*

*[8] The rule of necessity may override the rule of disqualification. For example, a judge might be required to participate in judicial review of a judicial salary statute, or might be the only judge available in a matter requiring immediate judicial action, such as a hearing on probable cause or a temporary restraining order. In matters that require immediate action, the judge must disclose on the record the basis for possible disqualification and make reasonable efforts to transfer the matter to another judge as soon as practicable.*

*[9] The provision in Rule 3.16(C) is designed to avoid the possibility that a party or lawyer will feel coerced into consent.*

## **CANON 4**

### **A JUDGE MAY ENGAGE IN ACTIVITIES TO IMPROVE THE LAW, THE LEGAL SYSTEM AND THE ADMINISTRATION OF JUSTICE**

#### **RULE 4 Activities Related to the Judicial Function**

**A judge, subject to the proper performance of judicial duties, may engage in the following related activities if in doing so the judge does not cast doubt on the judge's capacity to decide impartially any issue that may come before the court and provided the judge is not compensated therefor:**

**(A) A judge may speak, write, lecture and participate in other activities concerning the law, the legal system and the administration of justice.**

**(B) A judge may teach concerning the law, the legal system and the administration of justice.**

**(C) A judge may serve as a member, officer or director of a nongovernmental organization devoted to the improvement of the law, the legal system, or the administration of justice, but may not assist the organization in raising funds or participate in their management and investment. A full-time judge may participate as a member of a local or state bar association, but may not serve as an officer or trustee, and may only serve on committees of the association subject to such conditions as determined by the Supreme Court.**

**(D) A judge may encourage lawyers to provide pro bono legal services.**

[page=2893] *COMMENT:*

*A judge is in a unique position to contribute to the improvement of the law, the legal system and the administration of justice, including revision of substantive and procedural law and improvement of the justice system. To the extent that time permits, a judge is encouraged to do so through a bar association, judicial conference, other organization dedicated to the improvement of the law or through an appropriate judicial official charged with administrative responsibility under N.J.A.C. 12:235*

*Nothing herein shall preclude a judge from serving as an officer of the Inns of Court.*

## **CANON 5**

### **A JUDGE SHALL SO CONDUCT THE JUDGE'S EXTRAJUDICIAL ACTIVITIES AS TO MINIMIZE THE RISK OF CONFLICT WITH JUDICIAL OBLIGATIONS**

#### **RULE 5.1 Extrajudicial Activities in General**

(A) Judges shall conduct their extrajudicial activities in a manner that would not cast reasonable doubt on the judge's capacity to act impartially as a judge, demean the judicial office, or interfere with the proper performance of judicial duties.

(B) A judge shall not:

(1) participate in activities that can be reasonably anticipated to lead to frequent disqualification;

(2) participate in activities that would appear to reasonable, fully informed persons to undermine the judge's independence, integrity or impartiality;

(3) make use of court premises, staff, stationery, equipment or other resources for extrajudicial activities, except for incidental use involving activities that concern the law, the legal system or the administration of justice, or unless such additional use is permitted by law, administrative directive or Division of Workers' Compensation policy. *De minimis* or other incidental personal use of judiciary equipment or facilities, such as telephones, computers, scanners, fax machines, and copiers, do not violate this rule.

(C) Upon notice to and approval by the Commissioner of the Department of Labor and Workforce Development, a judge may appear at a public hearing before an executive or legislative body or official on matters concerning the law, the legal system or the administration of justice.

(D) A judge may communicate with government officials on matters concerning the administration of justice within the judge's official responsibility.

(E) A judge may act pro se in a matter involving the judge's legal or economic interests, or when the judge is acting in a fiduciary capacity as permitted in Rule 5.8.

#### **RULE 5.2 Avocational Activities**

A judge may write, lecture, teach and speak on non-legal subjects, and engage in the arts, sports and other social and recreational activities provided these activities do not detract from the dignity of the judicial office or interfere with the performance of judicial duties.

#### **RULE 5.3 Affiliation with Discriminatory Organizations**

(A) A judge shall not hold membership in any organization that practices invidious discrimination on any of the bases prohibited by Rule 3.6(A)

(B) A judge shall not accept benefits from or use the facilities of an organization if the judge knows or should know that the organization practices invidious discrimination on any of the bases prohibited by Rule 3.6(A), or as otherwise proscribed by law.

#### **COMMENT:**

*[1] A judge's membership in an organization that practices invidious discrimination creates the perception that the judge's impartiality is impaired.*

*[2] An organization is generally said to discriminate invidiously if it arbitrarily excludes from membership, on the bases prohibited by Rule 3.6(A), persons who would otherwise be eligible for admission. Whether an organization practices invidious discrimination cannot be determined from an examination of an organization's current membership rolls, but rather depends on how the organization selects members, as well as other relevant factors, including but not limited to whether the organization is dedicated to religious, ethnic or cultural values of legitimate common interest to its members. Organizations dedicated to the preservation of religious, spiritual, charitable, civic or cultural values that do not stigmatize any excluded persons are not considered to discriminate invidiously.*

*[3] When a judge learns that an organization to which the judge belongs engages in invidious discrimination, the judge must resign immediately from the organization.*

**RULE 5.4 Participation in Educational, Religious, Charitable, Fraternal or Civic Organizations and Activities**

A judge may participate in civic and charitable activities that do not reflect adversely on the judge's impartiality or interfere with the performance of judicial duties. A judge may serve as an officer, director, trustee or non-legal advisor of an educational, religious, charitable, fraternal or civic organization whose purpose is not to advance the economic or political advantage of its members, subject to the following limitations:

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

(B) A judge shall not solicit funds for any educational, religious, charitable, fraternal or civic organization, or use or permit the use of the prestige of the judicial office for that purpose. A judge shall not be listed as an officer, director or trustee of such an organization in any letters or other documents used in such solicitations. A judge shall not be a speaker or the guest of honor at an organization's fundraising events, but may attend such events and contribute to such organizations.

(C) A judge shall not give investment advice to such an organization, nor may a judge serve on its board of directors or trustees if the board has the responsibility for approving investment decisions.

(D) A judge's name, but not a judge's position and title, may appear on the organization's letterhead and in literature regarding that organization.

**COMMENT:**

*[1] The changing nature of some organizations and their relationship to the law makes it necessary for judges to reexamine regularly the activities of each organization with which they are affiliated to determine whether the relationship should be continued.*

*[2] Judges shall inform organizations of the limitations associated with their participation in educational, religious, charitable, fraternal or civic organizations and activities. Specific prohibitions include identification of a judge's position and title on the letterhead of an organization, regardless of the intended use of that letterhead, and any involvement of a judge in the solicitation of funds for the organization.*

*[3] A judge's participation in an organization devoted to law-related activities is governed by Canon 4.*

**RULE 5.5 Financial, Business, or Remunerative Activities**

(A) Judges shall refrain from financial and business dealings that tend to reflect adversely on their impartiality, interfere with the proper performance of judicial duties, exploit the judicial position, or involve the judge in transactions with lawyers or persons likely to come before the court on which the judge serves.

(B) Judges may hold investments, including real estate, but shall not serve as an officer, director, manager, advisor or employee of any business, except upon notice to and approval by the Director/Chief Judge of Compensation.

(C) Judges should manage their investments and other financial interests to minimize the number of cases in which they are disqualified.



Neither a judge nor a member of the judge's family residing in the same household should accept a gift, bequest, favor or loan from anyone except as follows:

(A) A judge may accept a gift of nominal value incident to a public testimonial; books supplied by publishers on a complimentary basis for official use; or an invitation to the judge to attend a bar-related function or activity devoted to the improvement of the law, the legal system or the administration of justice, except as limited by Canon 6, Rule 6;

(B) A judge may accept gifts, loans, bequests, benefits or other things of value from persons whose appearance or interest in a proceeding pending or impending before the judge would in any event require disqualification of the judge under Rule 3.16, including Rule 3.16(B)(6), which requires disqualification of a judge when the nature of the judge's relationship to a party or an attorney would give rise to partiality or the appearance of partiality;

(C) A judge or a member of the judge's family residing in the same household may accept ordinary social hospitality; gifts, favors or commercial loans made in the regular course of business on the same terms available to the general public; or a scholarship or fellowship awarded on the same terms applied to other applicants;

(D) A judge or a member of the judge's family residing in the same household may accept any other gift, bequest, favor or loan only if the donor is not a party or other person whose interests have come or are likely to come before the judge.

(E) For the purposes of this rule, "member of the judge's family residing in the same household" means any relative of a judge by blood or marriage, civil union partner, domestic partner or a person treated by a judge as a member of the family, who resides in the same household as the judge.

#### **RULE 5.7            Disclosure of Information**

Information acquired by a judge in a judicial capacity shall not be used or disclosed by the judge in financial dealings or for any purpose not related to judicial duties.

#### **COMMENT:**

*[1] In the course of performing judicial duties, a judge may acquire information of commercial or other value that is unavailable to the public. Judges shall not reveal or use such information for personal gain or for any purpose unrelated to their judicial duties.*

*[2] This rule is not intended to affect a judge's ability to act on information as necessary to protect the health or safety of the judge or a member of a judge's family, court personnel or other judicial officers when consistent with other provisions of this Code.*

#### **RULE 5.8            Fiduciary Activities**

A judge shall not serve as an executor, administrator, trustee, guardian or other fiduciary, except for the estate, trust or person of a member of the judge's family, and then only when such service will not interfere with the proper performance of judicial duties. "Member of the judge's family" includes a spouse, civil union partner, domestic partner, child, grandchild, parent, grandparent or other relative or person with whom the judge maintains or maintained a familial relationship. As a family fiduciary a judge is subject to the following restrictions:

(A) The judge shall not serve as a fiduciary if that service is likely to result in litigation 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 under its appellate jurisdiction.

(B) While acting as a fiduciary for a member of the judge's family, a judge is subject to the same restrictions on financial activities that apply to the judge in a personal capacity.

(C) On becoming a judge, persons serving as fiduciaries shall comply with this rule as soon as reasonably practicable, upon notice to and approval by the Director/Chief Judge of Compensation.

**COMMENT:**

*When a judge who is a beneficiary of an estate serves as an executor or administrator as permitted by this rule and receives a fee solely for the purpose of reducing the tax liability of the estate, receipt of that fee does not constitute "compensation" under Canon 6.*

**RULE 5.9**            **Serving as Arbitrator or Mediator**

A judge shall not act as an arbitrator or mediator or perform other judicial functions apart from the judge's official duties unless expressly authorized by law.

**COMMENT:**

*This Rule does not prohibit a judge from participating in arbitration, mediation, or settlement conferences performed as part of assigned judicial duties. Rendering dispute resolution services apart from those duties is prohibited unless it is expressly authorized by law.*

**RULE 5.10**          **Practice of Law**

A judge shall not practice law, with or without compensation.

**RULE 5.11**          **Appointments to Governmental Positions**

A judge shall not accept appointment to a governmental committee, commission or other position except with prior approval of the Commissioner of the Department of Labor and Workforce Development.

**CANON 6**

**A JUDGE SHALL NOT RECEIVE COMPENSATION FOR QUASI-JUDICIAL AND EXTRAJUDICIAL ACTIVITIES**

**RULE 6**              **Compensation for Quasi-Judicial and Extrajudicial Activities**

(A) Except as otherwise provided in (B) below, a judge shall not receive compensation for quasi-judicial and extrajudicial activities permitted by this Code, but may receive reimbursement of actual expenses that the judge reasonably incurred for travel, food and lodging, provided that the source or amount of such reimbursement, or the location of the activity, does not give the appearance of influencing the judge in the exercise of judicial duties or otherwise create an appearance of impropriety.

(B) Upon notice to an approval by the Director, a judge may receive compensation for teaching at law schools or colleges, provided that the source of the payment does not give the appearance of impropriety.

**CANON 7**

**A JUDGE SHALL REFRAIN FROM POLITICAL ACTIVITY**

**RULE 7**              **Political Activity**

(A) A judge shall not engage in any political activity, including but not limited to:

(1) holding membership or office in a political organization;

- (2) making speeches for a political organization or candidate, or publicly endorsing a candidate for public office;
- (3) attending political functions that are likely to be considered as political in nature;
- (4) soliciting funds, paying an assessment, or making a contribution to a political organization or candidate, or purchasing tickets for political party dinners or other functions;

(B) A judge shall resign from office when the judge becomes a candidate for an elective public office or is nominated thereto.

**COMMENT:**

*The proscription against membership in a political organization does not prohibit a judge from registering with a political party to vote.*

**Applicability**

**Compliance with the Code of Conduct for Judges of Compensation**

All judges, including recalled judges, shall comply with this Code.