

JUDICIAL OFFICERS PARTICIPATION IN EXTRACURRICULAR ACTIVITIES

Amendments to Michigan Code of Judicial Conduct Canon 4

Issue

Should the Representative Assembly recommend that the Michigan Code of Judicial Conduct Canon 4 be amended to provide additional guidance to Michigan's judicial officers as to the parameters of participation in extrajudicial activities?

Proponent

The State Bar of Michigan Standing Committee on Judicial Ethics

Background

The current version of Michigan Code of Judicial Conduct Canon 4 has caused much confusion and controversy for judicial officers regarding the parameters of engagement in allowable civic activities. The current language of Canon 4 provides guidance for limited activities but does not provide direction as to activities that fall outside the specifically stated activities. This creates confusion for judicial officers and, further, when judicial officers contact the State Bar of Michigan's Ethics Helpline or the Michigan Judicial Tenure Commission regarding allowable extracurricular activities, it is extremely difficult to provide effective advice. Additionally, the Judicial Ethics Committee routinely receives inquiries from judges and quasi-judicial officers as to whether a specific activity is permitted under the Canon.

To provide clarity for judicial officers, the Standing Committee on Judicial Ethics, along with its liaison from the Judicial Tenure Commission, formed a subcommittee to revise Canon 4 using the ABA Model Code of Judicial Conduct as a foundation for the expanded language.

The Committee recommends merging current Canons 4(C) and (D) and expanding the section to address the most common inquiries judicial officers pose as to the types of activities in which judicial officers may engage, the parameters of their participation, when the judicial title may be used in connection with an event, organization, or entity, and the boundaries for when a judicial officer may act in a non-judicial position within an organization or entity.

The proposed amendments, included in Attachment A, provide much needed clarity to Michigan's judicial officers as to which activities are permitted within the language of the Michigan Code of Judicial Conduct.

Opposition

No opposition is known.

Prior Action by Representative Assembly

The following is a list of prior actions by the Representative Assembly regarding Canon 4:

- April 28, 1990: Adopted an amendment to delete the phrase “ ... or will be engaged frequently in adversary proceeding in any court.” from Canon 4(C)(a) of the Model Code.

Fiscal and Staffing Impact on State Bar of Michigan

None.

**STATE BAR OF MICHIGAN POSITION
By vote of the Representative Assembly on April 20, 2024**

Should the Representative Assembly recommend that the Michigan Code of Judicial Conduct Canon 4 be amended to provide additional guidance to Michigan’s judicial officers as to the parameters of participation in extrajudicial activities as provided in Attachment A?

- (a) Yes
- or
- (b) No

ATTACHMENT A – STRIKEOUT VERSION

CANON 4. A Judge May Engage in Extrajudicial Activities.

As a judicial officer and person specially learned in the law, 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 criminal and juvenile justice. To the extent that time permits, the judge is encouraged to do so, either independently or through a bar association, judicial conference, or other organization dedicated to the improvement of the law. A judge should regulate extrajudicial activities to minimize the risk of conflict with judicial duties. A judge may engage in the following activities:

(A) Law-Related Activities.

- (1) A judge may speak, write, lecture, teach, and participate in other activities concerning the law, the legal system, and the administration of justice.
- (2) A judge may appear at a public hearing before an executive or legislative body or official on matters concerning the law, the legal system, and the administration of justice, and may otherwise consult with such executive or legislative body or official on such matters.

If any of the permissible law-related activities in this subsection involve fundraising, a judge must adhere to the requirements in subsection (C).

- ~~(3) A judge may serve as a member, officer, or director of an organization or governmental agency devoted to the improvement of the law, the legal system, or the administration of justice. A judge may participate in the management and investment of such an organization's funds.~~
- ~~(4) A judge may make recommendations to public and private fund-granting agencies on projects and programs concerning the law, the legal system, and the administration of justice.~~

(B) Avocational Activities. A judge may write, lecture, teach, speak, and consult on nonlegal subjects, appear before public nonlegal bodies, and engage in the arts, sports, and other social and recreational activities, if such avocational activities do not detract from the dignity of the office or interfere with the performance of judicial duties.

~~(C) Civic and Charitable Activities. A judge may participate in civic and charitable activities that do not reflect adversely upon the judge's impartiality or interfere with the performance of judicial duties. A judge may serve and be listed as an officer, director, trustee, or nonlegal advisor of a bona fide educational, religious, charitable, fraternal, or civic organization. A judge should 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 adversary proceedings in any court.~~

(C) Fundraising-Other Activities. Subject to Canon 4(A)(1), a judge may participate in activities that do not reflect adversely on the judge's impartiality or interfere with the performance of judicial duties and may participate in not-for-profit activities that are sponsored by organizations or governmental entities by or on behalf of. A judge should not individually solicit funds for any educational, religious, charitable, fraternal, or civic organizations or any organization or governmental agency devoted to the improvement of the law, the legal system, or the administration of justice or use or permit the use of the prestige of the office for that purpose, including but not limited to the following:

- (1) assisting in planning that is related to fundraising, and participating in the management and investment of such an organization's or entity's funds;
- (2) individually soliciting, for personal or professional purpose, contributions and memberships for such an organization or entity, but only from members of the judge's family, or from judges over whom the judge does not exercise supervisory or appellate authority;
- (3) engaging in conversations with and advising fellow judges, lawyers, and law students for the listener's benefit regarding the practice of law, so long as the conversation or advice does not concern proceedings currently before the bench;
- (4) permitting the use of a judicial title in connection with an event, an organization, or an entity only if the event, organization, or entity concerns the law, the legal system, or the administration of justice;
- (5) appearing or speaking at an event when receiving an award or other recognition, but only if doing so does not violate subsection (C)(8) of this Canon, Canons 1, 2, or 3, or raise any disqualification reasons cited in MCR 2.003;
- (6) recommending to and requesting of such a public or private fund-granting organization or entity in connection with its programs and activities, but only if the recommendation or request for funding sought is concerned with the law, the legal system, or the administration of justice, provided that the judge does not use the prestige of their office to advance the recommendation or request and doing so does not adversely reflect upon the judge's impartiality;
- (7) subject to Canon 7 and MCR 2.003, serving as an officer, director, trustee, or nonlegal advisor of such an organization or entity, unless it is likely that the organization or entity:
 - (a) will be engaged in proceedings that would ordinarily come before the judge; or
 - (b) will frequently be engaged 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.
- (8) engaging in activities that are not prohibited by law, this Code, or that would not lead to frequent disqualification of the judge;

~~A judge may, however, serve as a member of an honorary committee or may join a general appeal on behalf of such an organization. A judge may speak or receive an award or other recognition in connection with an event of such an organization. A judge may allow his or her name or title to be used in advertising the judge's involvement in an event so long as the judge does not individually solicit funds.~~

~~(E)-(D)~~ Financial Activities.

- (1) A judge should refrain from financial and business dealings that tend to reflect adversely on the judge's impartiality or judicial office, interfere with the proper performance of judicial duties, exploit the judicial position, or involve the judge in frequent transactions with lawyers or persons likely to come before the court on which the judge serves.
- (2) Subject to the requirements of E(1), a judge may hold and manage investments, including real estate, and engage in other remunerative activity, but should not serve as director, officer, manager, advisor, or employee of any business. Provided, however, with respect to a judge holding office

and serving as an officer, director, manager, advisor, or employee of any business not prohibited heretofore by law or judicial canon, the effective date of the prohibition contained herein shall be the date of expiration of the judge's current judicial term of office.

- (3) A judge should manage investments and other financial interests to minimize the number of cases in which the judge is disqualified. As soon as it can be done without serious financial detriment, the judge should dispose of investments and other financial interests that require frequent disqualification.
- (4) Neither a judge nor a family member residing in the judge's household should accept a gift, bequest, favor, or loan from anyone except as follows:
 - (a) A judge may accept a gift or gifts not to exceed a total value of \$375, incident to a public testimonial; books supplied by publishers on a complimentary basis for official use; or an invitation to the judge and spouse to attend a bar-related function or activity devoted to the improvement of the law, the legal system, or the administration of justice.
 - (b) A judge or a family member residing in the judge's household may accept ordinary social hospitality; a gift, bequest, favor, or loan from a relative; a wedding or engagement gift; a loan from a lending institution in its regular course of business on the same terms generally available to persons who are not judges; or a scholarship or fellowship awarded on the same terms applied to other applicants.
 - (c) A judge or a family member residing in the judge's 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, and if the aggregate value of gifts received by a judge or family member residing in the judge's household from any source exceeds \$375, the judge reports it in the same manner as compensation is reported in Canon 6C. For purposes of reporting gifts under this subsection, any gift with a fair market value of \$150 or less need not be aggregated to determine if the \$375 reporting threshold has been met.
- (5) For the purposes of this section, "family member residing in the judge's household" means any relative of a judge by blood or marriage, or a person treated by a judge as a family member, who resides in the judge's household.
- (6) A judge is not required by this code to disclose income, debts, or investments, except as provided in this canon and Canons 3 and 6.
- (7) Information acquired by a judge in a judicial capacity should not be used or disclosed by the judge in financial dealings or for any other purpose not related to judicial duties.

~~(F)~~ (E) Fiduciary Activities. A judge should not serve as an executor, administrator, testamentary trustee, or guardian, except for the estate, testamentary trust, or person of a member of the judge's immediate family, and then only if such service will not interfere with the proper performance of judicial duties. As a family fiduciary, a judge is subject to the following restrictions:

- (1) A judge should not serve if it is likely that as such fiduciary the judge 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.
- (2) While acting as such fiduciary, a judge is subject to the same restrictions on financial activities that apply in the judge's personal capacity.

~~(G)~~ (F) Arbitration. A judge should not act as an arbitrator or mediator, except in the performance of judicial duties.

~~(H)~~ (G) Practice of Law. A judge should not practice law for compensation except as otherwise provided by law.

~~(I)~~ (H) Extra-judicial Appointments. A judge should not accept appointment to a governmental committee, commission, or other 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, however, may represent the country, state, or locality on ceremonial occasions or in connection with historical, educational, and cultural activities.