

# IDAHO JUDICIAL COUNCIL



*REPORT TO THE LEGISLATURE,  
GOVERNOR, AND SUPREME COURT*

**(YEAR 2020)**

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I.

**OVERVIEW OF SIGNIFICANT EVENTS OF 2020**

A. **Council Budget.** The Judicial Council accomplished all of its statutory duties without salaried employees, and with a budget of \$130,800.00. (See page 3)

B. **Judicial Vacancies.** There were three (3) judicial vacancies in the 2020 calendar year. (See page 8)

C. **Discipline.** In calendar year 2020, there were 71 complaints against Idaho judges. (See page 14)

D. **Ethics Opinions.** The Judicial Council provided 7 informal ethics opinions to judges. (See page 17)

**COUNCIL ACTIVITIES FOR 2020**

Total Number of Meetings	10
Number of Telephone Conference Call Meetings or Zoom (due to COVID Pandemic)	9
Number of Applicant Interviews	34
Number of Formal Adversarial Hearings	0
Number of Complaints	71

## II.

### **INTRODUCTION TO THE IDAHO JUDICIAL COUNCIL**

The concept of a Judicial Council, consisting of a small reform committee, was introduced at Massachusetts in 1919. The Massachusetts Judicature Commission was directed by the state legislature "to investigate the judicature of the commonwealth with a view to ascertaining whether any and what changes...would insure a more prompt, economical and just dispatch of judicial business." In 1929, a similar council was created, and was shortly thereafter allowed to lapse, in Idaho.

Idaho rejoined the reform movement and created the present Judicial Council, by enactment of Title I, Chapter 21, of the Idaho Code, in 1967. Drawing from the experiences of other states, the legislature provided in Idaho Code Section 1-2102 a broad range of functions.

Today the Judicial Council is charged to:

- (1) Conduct studies for the improvement of the administration of justice.
- (2) Make reports to the Supreme Court and Legislature at intervals of not more than two years.
- (3) Submit to the Governor the names of not less than two nor more than four qualified persons for each vacancy in the office of Justice of the Supreme Court, Judge of the Court of Appeals, or District Judge, one of whom shall be appointed by the Governor.
- (4) Recommend the removal, discipline and retirement of judicial officers (including members of the Industrial Commission).
- (5) Perform such other duties as might be assigned by law.

To better enable the Judicial Council to perform its functions effectively, and to enhance public confidence in the Council, the legislature created a geographically and politically balanced structure. Idaho Code Section 1-2101 provides as follows:

1-2101. Judicial council - Creation - Membership -Appointments - Vacancies. - (1) There is hereby created a judicial council which shall consist of seven (7) permanent members, and one (1) adjunct member. Three (3) permanent attorney members, one (1) of whom shall be a district judge, shall be appointed by the board of commissioners of the Idaho state bar with the consent of the senate. Three (3) permanent non-attorney members shall be appointed by the governor with the consent of the senate. If any of the above

appointments be made during a recess of the senate, they shall be subject to consent of the senate at its next session. The term of office for a permanent appointed member of the judicial council shall be six (6) years. Vacancies shall be filled for the unexpired term in like manner. Appointments shall be made with due consideration for area representation and not more than three of the permanent appointed members shall be from one (1) political party. The chief justice of the Supreme Court shall be the seventh member and chairman of the judicial council. No permanent member of the judicial council, except a judge or justice, may hold any other office or position of profit under the United States or the state. The judicial council shall act by concurrence of four (4) or more members and according to rules which it adopts.

(2) In addition to the permanent members of the judicial council, whenever there is an issue before the council which involves the removal, discipline or recommendation for retirement of a district court magistrate, the chief justice shall appoint an adjunct member of the judicial council, who shall be a district court magistrate. For all purposes for which the adjunct appointment is made, the adjunct member shall be a full voting member of the judicial council.

Today, the Judicial Council consists of the Chief Justice (non-partisan), a district judge (non-partisan), two lawyers (one Republican and one Democrat), a businessman (Republican), a businesswoman (Republican), a retired educator (Democrat), and the adjunct member is a magistrate judge (non-partisan).

Members of the Judicial Council serve without salaried compensation for their services. Members, other than judges, receive only a daily honorarium for each day the Council meets and reimbursement for their actual expenses, pursuant to Idaho Code Section 1-2104. The Judicial Council utilizes the services of a part-time Executive Director and a legal assistant.

Ordinarily, the Council meets approximately five or six times per year or, as needs arise. In an effort to operate within the Council's budgetary allowance, many matters are disposed of by telephone conference call or by mail and meetings scheduled in conjunction with interviews for judicial vacancies.

## **BIOGRAPHIES OF COUNCIL MEMBERS AND EXECUTIVE DIRECTOR**

### **JUDICIAL MEMBERS:**

CHIEF JUSTICE ROGER S. BURDICK, is the Ex-Officio Chairman of the Idaho Judicial Council. Justice Burdick received his Bachelors of Science degree in Finance from the University of Colorado in 1970 and graduated from the University of Idaho School of Law with a Juris Doctorate in 1974. From 1970 to 1971, he worked as a bank examiner with the Idaho Department of Finance. From 1974 to 1980, he worked with the law firm of Webb, Pike, Burton & Carlson in Twin Falls, Idaho, then as Deputy Prosecuting Attorney in Ada County, and finally as a partner with the law firm of Hart and Burdick, in Jerome, Idaho.

While with Hart and Burdick from 1976 to 1980, he served as a Public Defender in Camas, Lincoln, Jerome and Gooding Counties, as well as a general practice. In November 1980, he was elected as Prosecuting Attorney for Jerome County. From September 1981 to September 1993, he served as Magistrate Judge in Jerome County. During that time, he was appointed the first Magistrate member of the Idaho Judicial Council, President of Idaho Magistrate Association and Chairman of Juvenile Rules Committee, as well as numerous other committees.

In September 1993, he was appointed District Judge in Twin Falls County and has served on various Idaho Supreme Court advisory committees, including Chairman of I.A.R. 32 Rules Committee. He again served on the Idaho Judicial Council from 1995 to 2001 as the District Court member. He served as President of the District Judges Association from 2001 to 2003. In 2001, he was assigned to preside over the Snake River Basin Adjudication. In January 2001, he was appointed the Administrative Judge for the Fifth Judicial District.

In August, 2003 he was appointed to be the fifty-third Justice of the Idaho Supreme Court by Governor Dirk Kempthorne. He was retained by popular election in 2004 and won a state-wide contested election in 2010. He recently was retained by uncontested election in 2016. He now serves as chair of the Idaho Appellate Rules Committee. He has served as Co-Chair of the Appellate Time Standards Committee of the Conference of Chief Justices. He was appointed Vice Chief Justice of the Idaho Supreme Court in 2007. He served a term as Chief Justice from 2011 to 2015 and was reelected to that position by his peers for a four-year term starting in 2017.

HONORABLE JEFF BRUDIE graduated from the University of Idaho College Of Engineering in 1981 and from the College of Law in 1984. From 1984 to 1994 he was in private practice in Lewiston. From 1994 to 2001 he was employed by Regence BlueShield of Idaho (formerly Medical Service Bureau of Idaho) as Staff Attorney and subsequently Vice President and General Counsel.

In 2001, Judge Brudie was appointed by the Governor as a District Judge for the Second Judicial District, chambered in Lewiston, Idaho.

Judge Brudie served as Second Judicial District Administrative Judge, from 2009-2012 and again from 2015-2018. In 2017 he was elected President of the Idaho District Judges Association for a two-year term. Judge Brudie was appointed to serve as a member of the Judicial Council on March 7, 2018.

HONORABLE LAMONT BEREZ received his Bachelor's of Art degree from Andrews University in Michigan, and his Juris Doctor degree from the University of Virginia School of Law. From 2000-2001, he was in private practice in Boise, Idaho with the firm of Stoel Rives and in 2001 was employed with the Ada County Prosecutor's office where he handled everything from traffic tickets to homicide cases.

In 2008, Judge Berez was appointed Magistrate Judge in Ada County. He worked in Boise as a Juvenile Court Judge for 4 years before moving to Valley County in 2012. Judge Berez was appointed to serve as an adjunct member of the Idaho Judicial Council in December 2018.

#### PUBLIC MEMBERS:

J. PHILIP REBERGER, is a resident of Boise, Idaho. He graduated from Caldwell High School and the University of Idaho where he earned a Bachelors of Science in Business and received the President's Top Senior Award. He is currently a partner in one of Idaho's leading governmental affairs firms, Sullivan & Reberger. As a U.S. Navy Viet Nam veteran, he served on active duty as Staff Pilot to Admiral John McCain, Commander in Chief, Pacific. In 2002, he retired as a Captain, last serving as Chief of Staff to the Commander, Navy Reserve Security Group. Early in his career, he served on the executive staff of the Republican National Committee under the leadership of Former President George H. W. Bush and U.S. Senator Bob Dole. He served for twelve years as Chief of Staff to Idaho's U.S. Senator Steve Symms. He retired in 2003 as Idaho Governor Dirk Kempthorne's Chief of Staff, a position he held since 1992 when he joined Kempthorne to manage his successful campaign for election to the United States Senate. He is a former Presidential appointee to the USO World Board of Governors, a former Chairman of the Capital City Development Corporation and has served on various state and local government boards and commissions. Mr. Reberger has been a member of the Idaho Judicial Council since September 2003.

ELIZABETH CHAVEZ, has been a resident of Nez Perce County for fifty years and a graduate of Lewis Clark State College. She is married to Jerry Chavez and taught middle school in the Clarkston School District from 1970-2000. She is involved in her church and also several public service organizations including the Lewis Clark State College Foundation and Women's Basketball Scholarship Club, as well as a member of the Family Promise Board.

Mrs. Chavez served as a member of the Idaho Legislature/House of Representatives from 2006-2010. Mrs. Chavez served on the Agricultural Affairs Committee, the Education Committee,

and the Natural Resources Committee. Other committee work while in the Legislature included serving on the Middle School Task Force, the Teacher Evaluation Task Force, the Soil Conservation Interim Committee, and as a member of the House and Senate Sportsman's Caucus, and Idaho Preferred Advisory Board. Mrs. Chavez was also the recipient of the 2010 Patricia Kempthorne Award for work in substance abuse awareness.

Mrs. Chavez is an avid supporter of full funded accessible education at all levels, helping families and communities deal with mental illness in the same way we deal with physical illness, she supports groups and organizations which enable those with special needs, those living in poverty and older citizens to live independently or with assistance. Mrs. Chavez joined the Idaho Judicial Council as a member in October, 2012.

KATHY SIMPSON is a resident of Idaho Falls, Idaho. She grew up in Blackfoot, Idaho where her parents had a small family farm in Groveland. Following graduation from Blackfoot High School, she attended and received a Bachelor of Science degree from the College of Family, Consumer and Human Development at Utah State University in 1972.

Mrs. Simpson has pursued a career in business that includes 13 years in the financial services industry where she held such positions as commercial loan officer, operations manager, regional branch manager and marketing director. In 2012 she retired from the Idaho National Laboratory after 20 years where she managed various functions including electronic publications, the communications and public affairs division and management communications. She also served as the interior design lead for the office of campus development.

Mrs. Simpson has been active in community service over the years serving on the boards of the Blackfoot Chamber of Commerce and United Way. She has also supported fund raising for the Idaho Meth Project. Mrs. Simpson joined the Idaho Judicial Council as a member in July 2013.

#### ATTORNEY MEMBERS:

REED W. LARSEN, is a lawyer in private practice in Pocatello, Idaho and is a partner in the firm of Cooper & Larsen. He received his Bachelor of Arts degree from the Brigham Young University and his Juris Doctor degree from the University of Idaho in 1985. Mr. Larsen was born and raised in Burley, Idaho. Mr. Larsen served as the Idaho State Bar President in 2012 and as an Idaho State Bar Commissioner from 2009-2014. He has enjoyed horses and rodeo his whole life and is currently the Chairman of the Intermountain Professional Rodeo Association and participates in IMPRA rodeos as often as possible. Mr. Larsen joined the Idaho Judicial Council in July of 2015.



R. BRUCE OWENS is a lawyer in private practice in Hayden, Idaho. He is a partner in the firm Owens McCrea & Linscott. He received his Bachelor of Science degree from Brigham Young University and his Juris Doctor degree from Arizona State University, Tempe in 1972. Mr. Owens' current practice focuses on civil litigation involving medical negligence, premises liability, automobile negligence, insurance law and contracts/commercial litigation. Mr. Owens is married to Judith Owens and has six children. Before serving on the Idaho Judicial Council, Mr. Owens served as past President, Treasurer, Secretary and Director for the Idaho Trial Lawyers Association, a member of the Idaho Supreme Court Evidentiary Rules Advisory Committee, past President, Vice-President and Board Member for the Idaho Law Foundation. Mr. Owens is certified by the Idaho Trial Lawyers Association and the Idaho Bar Association as a Civil Trial Specialist. Mr. Owens joined the Idaho Judicial Council in July of 2017.

#### EXECUTIVE DIRECTOR:

DAVID W. CANTRILL, is an Idaho native and resides in Boise, Idaho. He was born and raised in Pocatello, Idaho. Mr. Cantrill graduated from Pocatello High School, received his Bachelor of Arts degree from Idaho State University in 1966 and received his Juris Doctorate in 1970 from the University of Idaho Law School. He was in the Army, including the reserves from 1963-1969. In 1970, Mr. Cantrill entered private practice in Boise concentrating in litigation. He has tried cases in five states and almost every county in the state of Idaho. Mr. Cantrill is a member of the Idaho State Bar, American Inns of Court, Defense Research Institute, Idaho Association of Defense Counsel and is a Fellow of the American College of Trial Lawyers. Mr. Cantrill joined the Idaho Judicial Council as its Executive Director in December of 2015.

### **III.**

#### **SELECTION OF JUDGES**

Justice is administered by people, not by systems. The quality of justice turns, in full measure, upon the competence, fairness, and diligence of the human beings selected as judges. Because the judicial system depends heavily on a quality judiciary, we need the best available method for judicial selection. While there is no perfect method, a broad national consensus suggests that the best judges are identified through a merit selection process. Merit selection envisions a commission, composed of judges, lawyers, and laymen, submitting nominations to the Governor for appointment. Idaho law provides such a process. Idaho Code Section 1-2102 provides that the Judicial Council shall:

Submit to the Governor the names of not less than two (2) nor more than four (4) qualified persons for each vacancy in the office of justice of the Supreme Court or district judge, one (1) of whom shall be appointed by the Governor.

This process is followed whenever new positions are created or vacancies occur prior to the expiration of a term. However, once selected, all Idaho judges are subject to a non-partisan competitive election or retention process.

### ***THE SELECTION PROCESS IN DETAIL***

The Idaho Judicial Council has a detailed and careful selection procedure. The Council uses a comprehensive application form to elicit detailed information concerning each applicant's professional background and achievements. During personal interviews, which are open to the public, partisan political questions are strictly avoided. Applicants are asked for their thoughtful comments on issues of substantive law and problems of judicial administration. A standard questionnaire is distributed throughout the judicial district or the state, depending on whether the vacancy is on the district bench, the Court of Appeals, or the Supreme Court, asking those members of the practicing bar and of the general public who know the applicant to evaluate the judicial candidate upon the standards recommended by the American Judicature Society. These standards include the following:

1. Integrity and moral courage.
2. Legal ability and experience.
3. Intelligence and wisdom.
4. Capacity to be fair-minded and deliberate.
5. Industriousness and promptness in performing duties.
6. Compatibility of personal habits and outside activities with judicial office.
7. Capacity to be courteous and considerate on the bench.

When all of this information has been received and digested, the Judicial Council analyzes each applicant's mental and physical fitness to perform the duties of judicial office, superior self-discipline, moral courage, sound judgment, ability to weigh impartially the views of others, ability to be decisive when required, capacity for logical reasoning, adequacy of educational background, and excellence of professional achievement. For trial court positions, the Judicial Council also considers knowledge of procedure and evidence and experience as an advocate. For appellate positions, the Council looks for clarity of written and spoken expression. The Council also obtains information from the State Tax Commission, the Idaho State Bar, a credit bureau, the Idaho Supreme Court and the Idaho Department of Law Enforcement in order to verify the integrity and background of each applicant.

The Judicial Council's process of judicial selection is now being emulated by several district magistrates commissions, the federal bench, and, has been the subject of inquiries from other states.

### ***NOMINATIONS BY THE JUDICIAL COUNCIL FOR 2020***

Judicial vacancies usually fill a large part of the Council's activities. There were three (3) vacancies in the 2020 calendar year.

***NOMINATIONS BY THE JUDICIAL COUNCIL FOR THE PAST FIVE YEARS***

The following table summarizes the screening process for judicial vacancies for the last five years (2020-2016).

<b>Vacancy</b>	<b>No. of Applicants</b>	<b>No. of Nominees</b>	<b>Individual Appointed</b>
	<b><u>2020</u></b>		
District Judge Sixth District Stephen Dunn	11	4	Javier L. Gabiola
District Judge First District New Position	8	3	Lamont C. Berecz
District Judge Fourth District Melissa N. Moody	15	4	Cynthia Yee-Wallace
	<b><u>2019</u></b>		
District Judge Fourth District Richard D. Greenwood	9	4	Patrick J. Miller
District Judge Third District	5	3	Andrea L. Courtney
District Judge Fourth District New Position	10	4	James S. Cawthon, Jr.
	<b><u>2018</u></b>		
District Judge Second District John S. Stegner	7	4	John C. Judge
Court of Appeals Judge Sergio A. Gutierrez	14	4	Amanda K. Brailsford
Supreme Court Justice Joel D. Horton	11	4	Gregory W. Moeller

<b>Vacancy</b>	<b>No. of Applicants</b>	<b>No. of Nominees</b>	<b>Individual Appointed</b>
District Judge Fifth District John K. Butler	7	4	Rosemary A. Emory
District Judge Seventh District Gregory W. Moeller	10	4	Steven W. Boyce
	<b><u>2017</u></b>		
District Judge Third District Juneal C. Kerrick	9	4	Gene A. Petty
District Judge Fourth District Patrick H. Owens	15	4	Peter G. Barton
District Judge Fifth District Michael R. Crabtree	6	2	Michael P. Tribe
District Judge Fifth District Robert J. Elgee	8	4	Ned C. Williamson
Court of Appeals Judge John M. Melason	11	4	Jessica M. Lorello
Supreme Court Justice Daniel T. Eismann	14 (2 withdrew)	4	G. Richard Bevan
District Judge Sixth District David C. Nye	10	4	Rudolph E. Carnaroli
District Judge Seventh District Alan C. Stephens	4	2	Stevan H. Thompson
District Judge Third District Thomas J. Ryan	10 (1 withdrew)	4	Thomas W. Whitney

<b>Vacancy</b>	<b>No. of Applicants</b>	<b>No. of Nominees</b>	<b>Individual Appointed</b>
District Judge Fifth District G. Richard Bevan	8	4	Benjamin J. Cluff
Supreme Court Justice Warren E. Jones	14	4	John R. Stegner
	<b><u>2016</u></b>		
District Judge Fourth District Timothy L. Hansen	10	4	Nancy A. Baskin

#### **IV.**

#### **DISCIPLINARY ACTIVITIES OF THE JUDICIAL COUNCIL**

Judges can and should meet rigorous standards of personal and professional conduct. The role of judicial conduct agencies throughout the country is to help enforce the standards of judicial conduct. These agencies, established by the fifty states and the District of Columbia, play a vital role in maintaining public confidence in the judiciary and preserving the integrity of the judicial process. As a forum for citizens with complaints against judges, the Idaho Judicial Council helps maintain the balance between judicial independence and public accountability. It also serves to improve and strengthen the judiciary by creating a greater awareness of proper judicial conduct on the part of judges themselves, both on and off the bench.

The Idaho Judicial Council generally acts only on verified complaints involving judicial misconduct and disability. Accordingly, it does not address complaints involving a judge's legal decisions or rulings unless there is an accompanying allegation of fraud, corrupt motive, or other misconduct.

Judicial misconduct, or the inability of a judge to perform judicial functions, represents a greater threat to the public interest than do personnel problems among public officers in general. Most elected officers are subject to the constitutional remedy of recall, but Article 6, Section 6, of the Idaho Constitution specifically exempts judicial officers. Experience in other states has shown that the alternative remedy of impeachment is ineffective except in cases of gross scandal. In any

event, as noted by the American Bar Association, the impeachment method can be activated only by preliminary proceedings that approach prejudging the case, and involve methods of determination that are easily politicized.

The problem is underscored by the special role that courts play in our system of government. The courts, in the last analysis, are the protectors of the individual rights which give our society its distinct character. Because the public quite understandably views justice as being no better than the person who dispenses it, the judge who misbehaves or who is unable to perform adequately brings discredit to the entire system. The fact that relatively few judges manifest such problems is small consolation to the public or to the other judges whose images are indirectly tarnished by the acts of a few.

Conversely, the clear need for effective judicial discipline must not obscure the equally important public interest in an independent judiciary. The judge who is different is not for that reason alone, unfit. Nor is a judge incompetent, merely because of the issuance of controversial decisions. The need for balance between judicial accountability and judicial independence puts a premium upon the fairness of disciplinary procedures.

### ***THE JUDICIAL DISCIPLINARY PROCESS IN IDAHO***

Idaho Code Section 1-1202 authorizes the Judicial Council to recommend the removal, discipline, and retirement of judicial officers. Section 1-2103, which prescribes the procedures by which this power shall be exercised, refers only to the removal, discipline, or retirement of district judges, court of appeals judges or justices of the Supreme Court. However, Idaho Code Section 1-2103A was added by the 1990 legislature and requires the Judicial Council to investigate and make recommendations to the Supreme Court on the discipline, removal, or retirement of magistrates. The statutory change was effective on July 1, 1990. It did not affect the magistrate selection process or the right of the district magistrate commission to remove a magistrate in the first eighteen (18) months after appointment. All judges are subject to the Idaho Code of Judicial Conduct promulgated by the Supreme Court.

Section 1-2103 provides that the Judicial Council may investigate a complaint against a judge or justice and may order a formal hearing before it, after such investigation has been conducted. A copy of the complaint form may be found in the Appendix. Following this hearing, the Council may recommend to the Supreme Court the removal, discipline, or retirement of the accused judge or justice. Final disciplinary authority rests with the Supreme Court. Section 1-2103 further provides that all papers filed with, and proceedings conducted before, the Judicial Council are confidential. These papers and proceedings do not lose their confidential nature unless or until the matter is forwarded to the Supreme Court upon recommendation of the Council. At that point, the proceedings become public.

The rules adopted by the Judicial Council pursuant to this statutory authority provide that when a complaint is received, the Council initially determines whether or not the complaint (a) states facts which constitute possible grounds for removal, discipline or retirement, and (b) is not obviously unfounded or frivolous. This is accomplished through an initial inquiry wherein the Executive Director informally obtains sufficient additional information to allow the Council to determine whether to proceed to a preliminary investigation. The judge is usually notified of the complaint at this stage of the proceedings. If the complaint passes these tests, then a preliminary investigation will be conducted, and the judge or justice involved must be formally notified. Ordinarily, this investigation is conducted by the Council's Executive Director. The judge or justice is invited to make such statements or submit such materials as may be helpful to the investigation.

When the preliminary investigation has been completed, the Judicial Council determines whether or not the investigation has disclosed sufficient cause to warrant further proceedings. If not, or if the investigation itself has resolved the alleged problem, then the complaint is dismissed with notice to the complainant and the judge or justice. However, if further proceedings are warranted, the judge or justice is then served notice of formal proceedings and given an opportunity to answer.

The hearing may be conducted by the Judicial Council itself, or it may request that the Supreme Court appoint a panel of three special masters to hear and take evidence in such a proceeding and report their findings to the Judicial Council. During the hearing, and at all other stages of the proceeding, the judge or justice is entitled to be represented by counsel. The rules governing evidence and the requirements of due process are observed during the hearing in the same manner as in a civil court case.

Following the hearing, or upon receiving the report of findings by the special masters, the Judicial Council determines whether good cause exists to recommend to the Supreme Court that the judge or justice be removed, disciplined or retired. If the decision is in the affirmative, the record of proceedings is transmitted to the Supreme Court together with the Judicial Council's recommendation. The Court may order the judge or justice removed from office, involuntarily retired from office, or disciplined. Pursuant to Section 1-2103 and the Judicial Council's rules, no judge or justice who is a member of the Council or Supreme Court may participate in any proceedings involving himself or herself, or any district judge in his or her own judicial district.

Two especially significant features of the foregoing process are the confidentiality of proceedings before the Judicial Council and the undertaking of a preliminary investigation prior to any formal hearing. The confidentiality provision serves two purposes: (1) the complainant is not deterred by fear of public embarrassment from bringing a personal grievance to the attention of the Judicial Council; and (2) the reputation of the judge or justice is protected during the period of time when the truth of the complaint is undetermined. Furthermore, confidentiality allows a judge or justice to recognize a mistake, if one has been committed, and rectify it to the satisfaction of the complainant before publicity "freezes" the case into an adversary mold. Similarly, the preliminary investigation provides a framework in which issues can be defined, and in many cases resolved, before formal proceedings are commenced.

In many cases, the Judicial Council finds that the judge or justice has not engaged in misconduct or failed to perform judicial duties. Even in such cases, the disciplinary process accomplishes a constructive purpose. As noted by the Texas Judicial Qualifications Commission, in its 1974 report:

"Many complainants do not understand law, how the courts operate, the jurisdiction of the judge, their right of appeal, and other aspects of the judicial system. They know only that they are unhappy with the system and want someone to hear their complaint. . . . The

tremendous caseload of the court and the demand upon the time of a judge . . . [do] not permit him to give these people the time they feel they deserve. To the individual, his case is the only one; to the judge it is one among hundreds of similar nature. By serving as an intermediary, taking remedial action when necessary, the Commission feels that it negates much of the animosity toward the judicial system, and provides the lay person a better understanding of the judiciary."

#### ***DISCIPLINARY ACTIVITIES BY THE JUDICIAL COUNCIL IN 2020***

In calendar year 2020, there were seventy-one (71) complaints or inquiries concerning Idaho judges. Those complaints were made against judges as follows:

<b>TYPE OF JUDGE</b>	<b>NO. OF COMPLAINTS **</b>
Idaho Magistrate Judges	45
Idaho District Judges	19
Idaho Appellate Judges	0
Idaho Supreme Court Justices	0
Retired/Senior Judges	12
Judges Not Identified or Other Entities Not Under Judicial Council Jurisdiction	13

\*\* Some complaints have more than one judge named.

Of the seventy-one (71) complaints received in 2020, twenty-eight (28) were not verified (not a sworn statement) as required by Idaho law. When a complaint is not verified, the Judicial Council contacts the complainant to explain the need for a sworn statement and offers to assist them in locating a notary public. Of the forty-three (43) verified complaints, thirty-two (32) complaints were dismissed after having been reviewed and discussed by the Judicial Council and a determination made that there was no factual basis for the complaint or the facts did not constitute a violation of the Code of Judicial Conduct. There were ten (10) initial inquiries conducted and one (1) preliminary investigation. An initial inquiry consists of obtaining more facts on the complaint and receiving a response from the judge and a review of court records/transcripts. A preliminary investigation is a full investigation, which includes at a minimum, interviewing of witnesses.



The Judicial Council took remedial action in three (3) initial inquiry cases pursuant to Judicial Council Rule 36(d)(3), which permits the Judicial Council to remedy issues with a judge without filing formal charges. In the first case, the judge failed to report vacation and leave time. The judge's personnel records were corrected by eliminating the days of vacation time from his file as well as the judge being admonished with a public reprimand. In the second case, the judge participated in an ex parte communication. The judge received an education order under Rule 36(d)(2). In the third case, the judge was acquainted with the parties in a case before him and his conduct was improper. The judge was admonished with a private reprimand.

In the case of the preliminary investigation, the Judicial Council took remedial action in one (1) case pursuant to Judicial Council Rule 36(d)(2), which permits the Judicial Council to remedy issues with a judge without filing formal charges. In this case, the judge lacked the ability to maintain proper conduct in his judicial capacity/office. The judge was issued a remedial reprimand and the matter is pending as of the date of this report.

There are three (3) pending discipline matters as of the date of this report.

The primary allegations contained in the complaints against judges were as follows:

<b>**NATURE OF COMPLAINT</b>	<b>OCCURRENCES</b>
Abuse of Power	2
Abuse of Vacation/Leave	1
Appearance of impropriety	1
Bias/Prejudice/Discrimination	8
Conduct prejudicial to administration of justice/Failure to perform duties/Legal Incompetence	2
Conflict of interest	0
Conspiracy/Fraud/Corruption	1
Erroneous decision/Error of Law	48
Ex Parte communication	2

<b>**NATURE OF COMPLAINT</b>	<b>OCCURRENCES</b>
Excessive or improper use of alcohol/drugs	1
Failure to disqualify	2
Failure to preform duties	1
Improper/Unreasonable delay	0
Improper conduct	5
Improper/excessive sentence	1
Improper campaign/Political activity	0
Lack of impartiality	3
Perjury	1
Rude and discourteous treatment/ Lack of judicial temperament	2
Residency	1
Violation of Salary Affidavit	3
Unknown or general dissatisfaction	15

\*\* Many complaints have more than one allegation made against the judge or judges.

In all cases, the judges against whom complaints had been filed were cooperative with the Judicial Council in performing its statutory duties.

## V.

### **ETHICS OPINIONS**

The Judicial Council encourages judges to solicit advice on ethics issues that arise. In 2020, the Judicial Council provided seven (7) informal ethics opinions to judges.

# APPENDIX A

## STATE OF IDAHO

IDAHO JUDICIAL COUNCIL

P.O. Box 1397

Boise, Idaho 83701

(208) 334-5213

Website: [www.judicialcouncil.idaho.gov](http://www.judicialcouncil.idaho.gov)

### COMPLAINT FORM

No. \_\_\_\_\_

This form is designed to provide the Judicial Council with information required to make an initial evaluation of your complaint, and to begin an investigation of the allegations you make. Please read the accompanying materials on the Judicial Council's function and procedures before you complete this form.

### PLEASE TYPE OR LEGIBLY PRINT ALL INFORMATION

Name: \_\_\_\_\_  
(Please type or print)

Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Telephone: Daytime ( ) \_\_\_\_\_ Evening ( ) \_\_\_\_\_

I have information of possible misconduct or disability on the part of

\_\_\_\_\_, of the \_\_\_\_\_ Court in  
(name of Judge or Industrial Commissioner)

\_\_\_\_\_, Idaho.  
(City) (County)

### STATEMENT OF FACTS

1. When and where did this happen?

Date(s): \_\_\_\_\_ Time: \_\_\_\_\_ Location: \_\_\_\_\_

2. If your information arises out of a court case, please answer these questions:

a) What is the name and number of the case?

Case Name: \_\_\_\_\_ Case No: \_\_\_\_\_

### COMPLAINT FORM - 1.

b) What kind of case is it?

☐ criminal      ☐ domestic relations      ☐ small claims      ☐ probate

☐ civil      ☐ juvenile      ☐ other (specify) \_\_\_\_\_

\_\_\_\_\_

c) What is your relationship to the case?

☐ plaintiff/petitioner      ☐ defendant/respondent

☐ attorney for \_\_\_\_\_

☐ witness for \_\_\_\_\_

☐ other (specify): \_\_\_\_\_

d) If you were represented by an attorney in this matter at the time of the conduct of the judge or industrial commissioner, please identify the attorney:

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Phone: (     ) \_\_\_\_\_

e) Identify any other attorney(s) who represented you or any person involved in the case:

Name of attorney: \_\_\_\_\_

Address: \_\_\_\_\_

Phone: (     ) \_\_\_\_\_

Represented: \_\_\_\_\_

f) If this complaint relates to a trial or other court proceeding, has it been or will it be appealed?

\_\_\_\_\_ Yes      \_\_\_\_\_ No      \_\_\_\_\_ Not applicable

3. List documents that help support your information that the judge or industrial commissioner has engaged in misconduct or has a disability, noting which ones you have attached:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

4. Identify, if you can, any other witnesses to the conduct of the judge or industrial commissioner:

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Phone: (     ) \_\_\_\_\_

**SUPPORTING FACTS:**

Please state specific facts to support your allegation(s) of judicial misconduct. Include all pertinent dates, and name(s) of persons present, if known. Attach any documents which may support your position. Attach additional sheets if the space provided below is not sufficient.

This image shows a full page of blank handwriting practice paper. It features multiple sets of horizontal lines, each set consisting of three lines: two outer blue lines and a central red line. These sets are repeated down the entire page to provide a guide for letter height and placement. The paper is otherwise completely blank, with no text or markings.

Signed: \_\_\_\_\_

Date: \_\_\_\_\_

## VERIFICATION

STATE OF \_\_\_\_\_ )  
 \_\_\_\_\_ ) ss.  
 County of \_\_\_\_\_ )

says: \_\_\_\_\_, being first duly sworn upon oath, deposes and

That he/she is the Complainant in the above matter, that he/she has read the foregoing Complaint, knows the contents thereof, and verily believes the facts therein stated to be true.

(Signature)

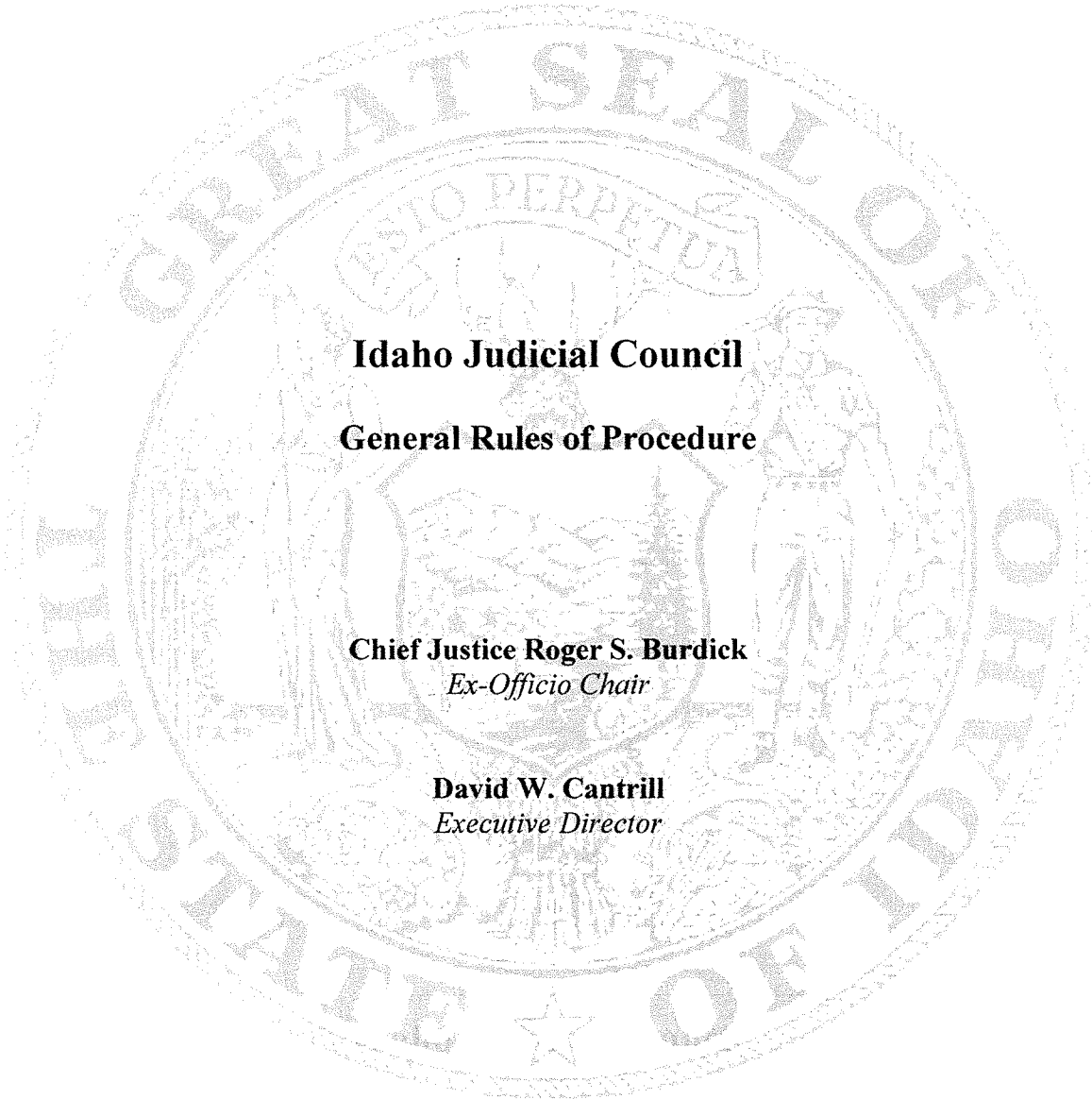
SUBSCRIBED AND SWORN TO Before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

Notary Public for \_\_\_\_\_  
Residing at \_\_\_\_\_  
Commission Expires: \_\_\_\_\_

Please return this completed form to:

David W. Cantrill  
Executive Director  
Idaho Judicial Council  
P.O. Box 1397  
Boise, Idaho 83701

# APPENDIX B



## **Idaho Judicial Council**

### **General Rules of Procedure**

**Chief Justice Roger S. Burdick**  
*Ex-Officio Chair*

**David W. Cantrill**  
*Executive Director*

#### ***Members:***

J. Philip Reberger • Elizabeth S. Chavez • Kathy Simpson • Reed W. Larsen  
R. Bruce Owens • Hon. Jeff Brudie • Hon. Lamont Berecz, *Adjunct Member*

P. O. Box 1397  
Boise, Idaho 83701-1397

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## PART A. GENERAL PROVISIONS

### Rule 1. Scope, Objective and Title

(a) **Scope.** The Idaho Judicial Council Rules of Procedure (the “Rules”) apply to all of the responsibilities and proceedings of the Idaho Judicial Council (the “Council”), as authorized by Idaho Code §1-2101, §1-2102, and §1-2103 pursuant to Article V, Section 28 of the Constitution of the State of Idaho. Final disposition of matters before the Idaho Judicial Council is subject to the original supervisory control of members of the judicial system by the Supreme Court pursuant to Article V, Section 2 of the Constitution of the State of Idaho.

(b) **Objective.** The Idaho Judicial Council shall administer the judicial vacancy, judicial discipline, and judicial incapacity system pursuant to the Idaho Judicial Council Rules of Procedure or other applicable rules.

(c) **Title.** These Rules shall be known and cited as the Idaho Judicial Council Rules of Procedure (I.J.C.R.P.).

### Rule 2. Definitions

In these rules, unless the context or subject matter otherwise requires:

(a) **“Accused Judge”** means any judicial candidate as defined in the Idaho Code of Judicial Conduct, or any judge against whom formal proceedings have been instituted pursuant to Rule 37.

(b) **“Applicant”** means any person who submits an application to fill a judicial vacancy for consideration by the Council, whether statutorily qualified or not.

(c) **“Candidate”** means any person who submits an application to fill a judicial vacancy for consideration by the Council and who meets all Idaho statutory qualifications for judicial candidacy. Alternatively, any person who seeks election as a judge or justice.

(d) **“Chair”** means the chair of the Council or the acting chair of the Council.

(e) **“Clear and convincing evidence”** means evidence indicating that the allegation or thing to be proved is highly probable or reasonably certain.

(f) **“Complaint”** means information in any form from any source received by the Council that alleges, or from which a reasonable inference can be drawn, that a judge may have committed misconduct or may have a disability that is adversely affecting the judge’s performance.

(g) **“Complainant”** means a person who files a complaint.

(h) **“Conduct prejudicial to the administration of justice that brings the judicial office into disrepute”** includes, without limitation, “a violation of the Idaho Code of Judicial Conduct.”

- (i) **“Council”** means the Idaho Judicial Council.
- (j) **“Custodian”** means the Executive Director of the Judicial Council.
- (k) **“Custodian Judge”** for the purposes of ICAR 32 means the Chief Justice, provided that the duties prescribed to the Custodian Judge in ICAR 32 shall be performed in accordance with Rule 32 herein.
- (l) **“Disability”** means a mental or physical condition, or mental and physical condition combined, that seriously interferes with a judge’s performance of duties.
- (m) **“Executive Director”** means the person appointed by the Council to serve as its executive director.
- (n) **“Hearing”** means a meeting of the Council or master convened for the purpose of taking evidence or considering legal arguments.
- (o) **“ICAR”** means Idaho Court Administrative Rules.
- (p) **“Judge”** means a Justice of the Supreme Court, a Court of Appeals judge, a judge of a district court, a magistrate judge, a *pro tempore* trial judge, a senior judge, a Plan B judge, or a member of the Industrial Commission.
- (q) **“Mail”** means first-class mail, personal delivery, or delivery by commercial mail service.
- (r) **“Master”** means special master appointed by the Supreme Court upon request of the Council.
- (s) **“Member”** means a member or special member of the Council.
- (t) **“Proceedings”** include a complaint, a response to a complaint, an investigation of a complaint, a meeting, a hearing, evidence in any form, any disciplinary disposition, or communication with respect thereto.
- (u) **“Presiding Master”** means the master so designated by the Supreme Court or, in the absence of such designation, the judge first named in the order appointing master.
- (v) **“Record”** specific to Rule 32 herein shall mean Court Record, Physical Record, or Electronic Record, as defined by ICAR 32.
- (w) **“Shall”** is mandatory and **“May”** is permissive.
- (x) **“Special Examiner”** means counsel designated by the Council to make a preliminary investigation, to gather evidence, and to present evidence before the Council, the master, or the Supreme Court with respect to charges against an accused judge.
- (y) **“Verified Petition for Review”** means a written declaration signed by the judge and verifying that the accused judge has personal knowledge of the facts stated to be true.

- (z) The masculine gender includes the feminine gender.

### **Rule 3. Organization and Administration**

(a) **Composition.** The Council shall consist of seven (7) permanent members as provided in Idaho Code §1-2101.

(b) **Officers.** The officers of the Council shall be:

(1) Chair. The Chair shall be the Chief Justice of the Supreme Court of the State of Idaho. (I.C. §1-2101). The Chair's duties, *inter alia*, shall be:

(i) to act as chair of all meetings of the Council;

(ii) to cause studies to be made and reports to be submitted as required by I.C. §1-2102; and

(iii) approve all honoraria and expenses of travel necessarily incurred by members of the Council in attending Council meetings and in the performance of official duties.

(2) Vice-Chair. The Vice-Chair shall be elected by the Council annually, on a calendar year basis, and shall act in the place of and perform the duties of the Chair in the Chair's absence.

(3) Secretary/Treasurer. The Secretary/Treasurer shall be elected by the Council, annually, on a calendar year basis, and shall attend all Council meetings and keep minutes thereof, communicate with Council members from time to time in accordance with these Rules and as the Chair may direct, assist in the formulation of the studies and reports required by I.C. §1-2102, and prepare such financial reports as directed by the Council.

(c) **Executive Director.** The Council shall appoint an executive director whose duties and responsibilities, subject to general oversight by the Council, shall be:

(1) To coordinate with candidates for judicial vacancy under the direction of the Council;

(2) To receive information, allegations, and complaints;

(3) To conduct an initial inquiry of complaints under Rule 36 and refer complaints to the Council for consideration;

(4) To conduct investigations;

(5) To recommend dispositions to the Council;

(6) To maintain Council records;

(7) To maintain statistics concerning the operation of the Council and make them available to the Council and to the Supreme Court;

(8) To prepare the Council's budget and administer its funds with oversight from the Secretary/Treasurer and the Chair;

(9) To prepare annual or bi-annual reports of the Council's activities for presentation to the Council, to the Supreme Court and the state legislature pursuant to I.C. §1-2102, and to the public at the discretion of the Council; and

(10) To perform such other duties as these Rules and the Council may require.

(d) **Adjunct Member.** At the request of the Executive Director, the Magistrate Association shall recommend two to three (2-3) magistrate judge candidates to serve as an adjunct member of the judicial council in addition to the permanent members of the judicial council. The Chief Justice shall appoint the adjunct member, who shall be a magistrate judge pursuant to I.C. §1-2101(2). For all purposes for which the adjunct appointment is made, the adjunct member shall be a full voting member of the judicial council consistent with I.C. § 1-2201(2) and shall serve for a term of six (6) years subject to reappointment by the Chief Justice.

(e) **Oath of Office.** Upon appointment by the Governor, or Idaho State Bar, and before entering upon the duties of the Judicial Council each member shall take and subscribe to an oath or affirmation to support the Constitution of the United States and the Constitution and laws of the State of Idaho, and to faithfully discharge all the duties of such office. Such oath shall be administered pursuant to I.C. §59-401 and §9-1401.

#### **Rule 4. Duties of Council**

The Judicial Council shall:

(a) Conduct studies for the improvement of the administration of justice;

(b) Make reports to the Supreme Court and Legislature at intervals of not more than two (2) years;

(c) Submit to the Governor the names of not less than two (2) nor more than four (4) qualified persons for each vacancy in the office of justice of the Supreme Court, Court of Appeals judge, or district judge, one (1) of whom shall be appointed by the Governor;

(d) Recommend the removal, discipline, and retirement of judicial officers; and

(e) Such other duties as may be assigned by law. (I.C. §1-2102).

### **Rule 5. Jurisdiction and Powers**

- (a) **Filing Date.** The Council has jurisdiction over an accused judge regarding allegations of misconduct or a disability and the application of dispositions thereto, based on events that occurred during the duration of the accused judge's judicial capacity.
- (b) **Continuing Jurisdiction.** The jurisdiction of the Council regarding a pending proceeding shall not automatically terminate upon the expiration of the accused judge's term of office or the accused judge's retirement or resignation. Such jurisdiction may continue until a disposition is determined.
- (c) **General Powers.** The Council shall have the authority and duty to commence investigations on its own motion on matters concerning alleged disability, judicial misconduct, criminal misconduct, or civil misconduct falling within the jurisdiction of the Council and to investigate and resolve complaints pursuant to §1-2103.
- (d) **Evidentiary Powers.** The Chief Justice, Secretary/Treasurer, special master, or any member may administer oaths and affirmations pursuant to §9-1401. The Council may compel by summons or subpoena the attendance and testimony of witnesses under oath, including the accused judge as a witness, and compel the production of documents, books, accounts, and other records or writings necessary or material to the inquiry pursuant to I.R.C.P. 4(a)(1) and 45(a)-(b) except that such summons or subpoena shall be issued under the hand of the Executive Director, or any master appointed to conduct a hearing, and shall have the force and effect of a subpoena issued by a court of competent jurisdiction.
- (e) **Administrative Powers.** The Council may adopt administrative policies, procedural rules, or forms for its internal operation or proceedings that do not conflict with the provisions of Idaho Statute or these Rules.
- (f) **Communications.** The Council may distribute information to the judiciary and the public concerning its authority, procedures, or practices.

### **Rule 6. Honoraria and Expenses**

Each member of the Council, except a judge or justice, shall receive an honorarium in such amount as may be set by Idaho statute for each day spent in actual attendance at meetings of the Council. Members of the Council shall be reimbursed for actual expenses necessarily incurred in attending meetings and in the performance of official duties. (I.C. §1-2104).

The Secretary is authorized to procure necessary supplies, stationery and postage, and copies of papers and documents for the Secretary's use, and use of the members of the Council, and to submit for approval by the Chair proper vouchers for payment thereof.

### **Rule 7. Meetings**

- (a) **Meeting Request and Notice.** Meetings of the Council shall be held at the call of the Chair or at the request of any two (2) members. The Secretary/Treasurer shall cause timely notice of a

meeting to be given in advance of the time designated for the meeting. The presence of any member at any meeting shall constitute that member's waiver of notice.

(b) **Meeting Minutes.** The Secretary/Treasurer or an assistant under the Secretary/Treasurer's direction shall maintain minutes of such meetings, and shall within ten (10) working days following each such meeting send to every member of the Council the proposed minutes of such meeting. If no written objection to such proposed minutes is received from any member of the Council within one (1) week from the date of such transmission, said proposed minutes shall be deemed approved. If any written objection is received, review of the proposed minutes shall be included on the agenda of the next duly-called meeting of the Council. Immediately following approval of the minutes of a meeting, the Chair or an assistant under the Chair's direction shall cause to be distributed to members of the Supreme Court and may cause to be made available to the general public said minutes; provided, however, that the copies of said minutes so distributed or made available shall reflect deletions of any material subject to a confidentiality requirement prescribed by law or by rules of the Council.

### **Rule 8. Types and Locations of Meetings**

The notice calling a meeting shall specify whether the meeting is by assembly of Judicial Council members or by telephone conference. All meetings by assembly of members shall be held at the conference room adjoining the chambers of the Chief Justice of the Supreme Court, unless another meeting location is designated in the notice. If the notice specifies a meeting by telephone conference, such meeting will be conducted by long distance conference call; provided, that no telephone conference shall be held if any member expresses a written or oral objection, and provided further that any telephone conference shall be terminated upon demand by any member for a secret ballot on a matter subject to vote.

### **Rule 9. Quorum**

The Council shall act by concurrence of four (4) or more members. (I.C. §1-2101)

### **Rule 10. Voting**

All voting shall be voice vote, provided that the vote on any particular issue, on request of any member, shall be by roll call or by secret ballot. The Chief Justice only votes to break a tie.

### **Rule 11. Committees**

Committees may be appointed to perform specified duties. The Chair shall appoint all committees unless otherwise provided in a motion or resolution authorizing a particular committee.

### **Rule 12. Assistants and Assistance**

The Council may employ such professionals, assistants, and clerical assistance as may be deemed necessary to perform the duties and responsibilities imposed by Idaho Code, Title 1, Chapter 21.

The Council may solicit the view and assistance of professionals and other groups and of the general public concerning qualifications of candidates to fill Supreme Court, Court of Appeals, or district court vacancies; and concerning the improvement of the science of jurisprudence, and of the administration of justice.

### **Rule 13. Conflicts**

(a) Members of the Council must police themselves against actual and potential conflicts of interest in the discharge of their prescribed duties. In circumstances involving an actual conflict of interest, the member must immediately discontinue any involvement in the matter including discussions of it with other members or staff. Further, a Council member shall not participate in any matter if a judge similarly situated would be required to disqualify himself or herself under the Idaho Code of Judicial Conduct.

(b) A Council member who has recused or disqualified himself or herself shall not have access to the investigative file, shall not receive any of the staff reports and must leave the meeting room while the Council discusses the matter in which that member has recused himself and may not participate in its consideration.

(c) Recusal requires that a Council member shall not

(1) Participate in deliberations

(2) Make recommendations

(3) Give advice

(4) Participate in any manner

(5) Or in any way assume responsibility for any aspect of the investigation or deliberative process.

### **Rule 14. Immunity**

When acting within the course and scope of their duties and without malice or criminal intent and without reckless, willful and wanton conduct as defined in I.C. §6-904(C), Council members, the Executive Director, master, special investigators, and staff members shall be immune from liability for any claim that arises out of the performance of those duties.

### **Rule 15. Standard of Proof**

The standard of proof in all proceedings shall be clear and convincing evidence except as to reasonable cause to proceed with investigation pursuant to Rule 36, which shall be at discretion of the Council.



### **Rule 16. Rules of Order**

All meetings of the Council and of its committees shall be conducted pursuant to these Rules and by procedure promulgated by the Chair and approved by the Council members pursuant to Rule 9.

### **Rule 17. Rules of Procedure and Evidence**

(a) The Council or master shall conduct the hearing of such matter as shall best arrive at the truth and any member or master may interrogate witnesses. The following enumerated rules of the Idaho Rules of Civil Procedure (IRCP), as adopted by the Supreme Court, effective November 1, 1958, or as the same have been, or may hereafter be amended, shall govern and may be used in all proceedings and hearings conducted under these Rules. Rules: 6(a), 6(e)(1), 15(b), 15(c), 15(d), 16(a), 16(b), 16(c), 16(d), 16(e), 16(f), 16(g), 16(h), 16(i), 16(k), 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 43(a), 43(b)(1), 43(b)(2), 43(b)(5), 43(d), 43(e), 43(f), 45(d), 45(e)(1), 45(e)(2), 61 and 80; provided, that if the accused judge shall be in default for failure to answer, depositions and discovery procedures may be taken and used without notice to the accused, or affidavits of witnesses may be introduced and used in evidence. The Secretary/Treasurer, the Chief Justice, or master, may administer oaths to witnesses.

(b) The Idaho Rules of Evidence (IRE), as adopted by the Supreme Court, effective July 1, 1985, or as the same have been, or may hereafter be amended, shall govern and may be used in all proceedings and hearings conducted under these rules.

(c) Notwithstanding the above, procedure may vary by stipulation of the parties and agreement of the Council or master where certain provisions would be impractical or unnecessary, or where alternate procedure may be more suitable to a particular proceeding. Procedural provisions not affecting the substantial rights of an accused judge shall not be grounds for invalidation of the proceedings.

(d) Witnesses subpoenaed by the Council or any member thereof or by a master shall be allowed such fees and traveling expenses as are allowed under I.R.C.P. 54(d)(1)(C)(3, 4, and 8), to be paid by the party in whose interest such witnesses are subpoenaed.

### **Rule 18. Amendments**

These rules may be amended or supplemented at any meeting by affirmative vote of not less than four (4) members of the Council.

### **Rule 19. Preservation, Destruction, or Disposition of Judicial Council Records**

(a) **General Standards.** Except as provided in (b) below, all records and documents of the Idaho Judicial Council shall be preserved by the Executive Director or Secretary of the Council indefinitely, either in the form of the original document or permanent copy.

(b) **Permissive Destruction of Judicial Vacancy Records.** The following records and documents may be destroyed one year after a vacancy is filled.

- (1) Public comments on applicants for judicial positions.
- (2) Attorney questionnaires on applicants for judicial positions.

**Rule 20. Intentionally Left Blank**

**Rule 21. Intentionally Left Blank**

**PART B. JUDICIAL VACANCY**

**Rule 22. Confidentiality and Disclosure  
in Relation to Candidates for Judicial Vacancies**

The deliberations of the Council relating to candidates, their names and their deemed qualifications shall be considered confidential and shall not be disclosed to anyone except the Governor. The names of the candidates may be disclosed when the deadline for submitting applications for the judicial vacancy in question has expired; the names of such candidates may be used in any questionnaire or investigation of their qualifications for judicial office; and the names of the candidates submitted to the Governor may be further released for publication by the Council in its discretion.

**Rule 23. Notice of Vacancy**

Upon receiving notice of a judicial vacancy, notice of the vacancy shall be sent to members of the Idaho State Bar and disseminated to the public. After the deadline for submission of applications has expired, the Executive Director shall review applicants for Idaho statutory compliance to determine which applicants shall be candidates. The Council shall conduct a background check into the qualifications of the candidates, which may include, but not be limited to its own records, criminal records check, bar disciplinary activities check, Magistrate Commission disciplinary activities check, State Tax Commission check, and credit bureau check. The Council may also solicit input from members of the public concerning each of the candidates.

**Rule 24. Attorney Questionnaires**

Following the expiration of the deadline for submission of applications, the Council shall mail or e-mail to all attorneys in the candidates' judicial districts if for a district position, and to all attorneys in the state for statewide judicial offices, a questionnaire on the qualifications of the candidates. After the results of the questionnaires are tabulated, the Council may disclose to each candidate, the results of the candidate's score. However, the results of the surveys shall not be disclosed to any other person or entity except the Governor. Any written comments shall be confidential and shall not be disclosed to the candidate or any other person except the Governor.

### **Rule 25. Interviews**

The Council shall interview candidates for the judicial position, which interviews shall be open to the public. Interviews will ordinarily be held in the judicial district for vacancies within that district, and in Boise, Idaho, for statewide judicial positions.

### **Rule 26. Judicial Qualifications and Rating of Judicial Candidates**

The qualifications of candidates selected by the Council to be considered for appointment to judicial office may be rated by the Council as follows:

- (a) Exceptionally well qualified,
- (b) Well qualified, and
- (c) Qualified.

Such ratings are confidential and may only be disclosed to the Governor.

### **Rule 27. Ex Parte Contact with Judicial Council Members**

The members of the Judicial Council should not engage in *ex parte* communications concerning any candidate for a judicial position. They should encourage all interested attorneys and members of the public to communicate with the Council in writing concerning the candidates about whom they have knowledge or information.

### **Rule 28. Intentionally Left Blank**

### **Rule 29. Limitation of Actions**

Every complaint against a judge permitted under these rules shall be considered provided a complaint is initiated within three (3) years after the date the conduct leading to the complaint arose or reasonably should have been discovered, whichever is later. This rule of limitation shall not apply to judicial misconduct which would constitute a crime under Idaho Law.

The time limit set forth in this rule shall not preclude the Council's consideration of previous allegations of misconduct or patterns of alleged misconduct under Rule 36 in weighing an appropriate remedy.

## **PART C. REMOVAL, DISCIPLINE OR RETIREMENT OF JUDGES**

### **Rule 30. Confidentiality of Proceedings**

All papers filed with and proceedings before the Council, or before the master appointed by the Supreme Court pursuant to Rule 31, shall be confidential unless and until a record is filed by the Council in the Supreme Court per ICAR 32(g) and Rule 32 herein. However, if allegations against

a judge are made public by the complainant, accused judge or third persons, the Judicial Council, and/or the accused judge may comment on the existence, nature, and status of any investigation and may correct any false or misleading information including false or misleading information on the actions taken by the Judicial Council.

### **Rule 31. Confidentiality of Judicial Performance Evaluations**

All records, documents and reports relating to judicial Performance Evaluations of an individual judge shall be considered confidential records of the Idaho Judicial Council pursuant to ICAR 32(g)(28), and shall not be disclosed by the judge or the Judicial Council to any third party nor shall such records be subject to any discovery methods. All judicial Performance Evaluations, records, documents and reports relating to an individual judge shall not be disclosed to the members of the Judicial Council by the Executive Director.

### **Rule 32. Privileged and Confidential Material and Public Disclosure**

#### **(a) Privilege.**

- (1) Pursuant to I.C. §1-2103, papers filed with the Council or the master, and testimony given before the Council or before the master, shall be privileged in any action, including any action for defamation; but
- (2) No other publication of such papers or proceedings shall be privileged in any action for defamation except that:
  - (i) Any Council record filed by the Council in the Supreme Court continues to be privileged but upon such filing loses its confidential character; and
  - (ii) A writing which was privileged prior to its filing with the Council or the master does not lose such privilege by such filing.

(b) **Confidentiality.** Unless otherwise permitted by these rules, or unless revealed in public documents or a public hearing, all proceedings before the Council and all information, communications, materials, papers, files, and transcripts, written or oral, received or developed by the Council in the course of its work, shall be confidential. No member of the Council or agent of the Council, Executive Director and staff, no attorney, and no testifying witness shall disclose such proceeding, information, communications, materials, papers, files, or transcripts, except in the course of official duty or as otherwise authorized by these rules. Any violation of the provision for confidentiality shall constitute an act of contempt and be punishable as such. Any violation by any person of the requirements of confidentiality shall be dealt with in accordance with these rules, and the Council may refer any violation to the appropriate tribunals, authorities, agencies, commissions, or bodies.

(c) **Oath of Witnesses.** Every witness in every proceeding under these rules shall be sworn to tell the truth and to not disclose the existence of the proceedings or the identity of the accused judge until and/or unless the proceeding is no longer confidential under these rules. The oath shall be in substantially this form:

*“Do you solemnly swear or affirm that you will testify to such matters and things inquired upon before the Judicial Council and that you will keep secret your testimony, the existence of these proceedings, and the accused judge’s identity and that you will testify to the truth, the whole truth, and nothing but the truth.”*

**(d) Exceptions to Confidentiality.**

(1) Violations of Law. The Council may refer potential violations of law by an accused judge or by any other individual or entity, or evidence thereof, to the appropriate authorities.

(2) Other Disclosure. The Council may disclose information to any committee, commission, agency, or body within or outside the State of Idaho empowered to investigate, regulate, or adjudicate matters incident to the legal profession.

(3) Public Request for Records.

(i) Upon public request for any record in the Judicial Council, the custodian shall notify the Secretary/Treasurer that a request for records has been made and the Secretary/Treasurer shall either issue timely notice of a meeting pursuant to Rule 7, or shall add the request for records to the agenda for the next scheduled meeting. Such determination shall be at the discretion of the custodian, provided that such meeting shall be held within a reasonable time.

(ii) The custodian shall respond within three (3) working days pursuant to ICAR 32(j), if a longer period of time is needed.

(iii) Determination as to the nature of disclosure, whether complete, redacted, or denied, shall be decided by the Council pursuant to Rule 9 and Rule 10, acting as custodian judge for the purposes of ICAR 32.

(iv) The custodian shall respond to the request for records in accordance with the determination of the Council.

(4) Summaries. In an annual report, the Council may publish summaries of proceedings which have resulted in disciplinary dispositions or sanctions.

(i) Detailed Summary. A detailed summary may include a brief statement of facts, references to the applicable canons and rules in the Idaho Code of Judicial Conduct and a description of the disciplinary measure.

(ii) Statistical Summary. A statistical summary may include a description of the number of complaints received or initiated, the disposition of complaints received or initiated, the source of the complaints received (e.g. “litigant,” “prisoner,” “employee,” etc), the nature of the allegations, the nature of the litigation (e.g. “criminal,” “small claims,” etc.), and such other non-identifying statistical information as the Council may elect.

### **Rule 33. Interested Party and Disqualification**

(a) A judge who is a member of the Council or of the Supreme Court shall not participate as such in any proceedings involving the judge's own removal, discipline or retirement.

(b) If a complaint is filed against a Supreme Court Justice, the Chief Justice shall not participate in deliberations of the Judicial Council pertaining to the complaint filed against the Justice of the Supreme Court, and the Chief Justice shall be disqualified from participating in deliberations of the Council pertaining to that complaint. The Vice-Chair of the Council shall preside over any such deliberations and shall preside over any procedures involved in the investigation or processing of that complaint.

(c) Any member of the Council may be disqualified upon challenge for cause by the accused judge. A challenge must be heard by the Council, and the Council may disqualify any member who by reason of actual or implied bias would, in the opinion of a majority of the members present, either be prevented from adjudicating the matter in a fair and impartial manner or, by reason of facts creating an appearance of impropriety, be prevented from adjudicating the matter in a manner consistent with maintenance of public confidence in the Council.

(d) No later than twenty-one (21) days prior to the commencement of a formal proceeding, the accused judge may exercise a single peremptory challenge to any Council member. The peremptory challenge must be filed in writing with the Chair of the Council. A formal hearing may proceed so long as at least four (4) members of the Council are present.

### **Rule 34. Appointment of Special Examiner**

The Council may appoint one or more special examiners to assist the Council (a) conducting a preliminary investigation of the complaint against an accused judge; (b) to gather evidence and to present evidence before the Council or the master with respect to the complaint against an accused judge.

### **Rule 35. Service of Documents Upon Accused Judge**

In proceedings for the discipline, removal, or retirement of an accused judge, including preliminary investigations therefor, service of any document required to be served upon an accused judge shall be made by personal service upon the accused judge, or by mailing a copy of such document to the judge at the judge's chambers or last known residence address, and by mailing a copy thereof to the accused judge's counsel of record, if such there be, unless the accused judge shall otherwise direct in writing filed with the Council.

### **Rule 36. Grounds for Discipline, Removal or Retirement; Initial Inquiry; Preliminary Investigation**

(a) **Initial Inquiry.** Upon receiving a verified complaint, or a complaint as defined in these Rules, alleging facts indicating that an accused judge is accused of a violation of the Idaho Code of Judicial Conduct, the Council, or its representative shall make an initial inquiry to determine whether the complaint is obviously unfounded, frivolous, or pertains to subject matter over which

the Council has no jurisdiction. In making the initial inquiry, the Council or its representative may obtain and consider any information it deems pertinent.

**(b) Preliminary Investigation.**

(1) If the Council concludes that the verified complaint, or a complaint as defined in these Rules, is not obviously unfounded or frivolous, and pertains to subject matter over which the Council has jurisdiction, the Council shall conduct a preliminary investigation, after first notifying the accused judge in writing as set forth below. In conducting the investigation, the Council may consider any information obtained during the course of the initial inquiry. The Council without receiving a verified statement may make such a preliminary investigation on its own motion and may, in such cases, conduct a preliminary investigation without an initial inquiry. If the Council determines that the physical or mental health of the accused judge is at issue, it may order physical and/or mental examinations of the accused judge by independent examiners. Service of such written notice shall be in accordance with Rule 35 and, shall include the following:

- (i) a specific statement of allegations being investigated or a copy of the verified complaint;
- (ii) the accused judge's opportunity to respond and/or retain counsel, including any deadlines for doing so;
- (iii) the accused judge's opportunity to meet with the Council;
- (iv) the complainant's name, unless the Council has good cause to withhold that information.

(2) Insufficient Probable Cause. If the preliminary investigation does not disclose probable cause to warrant further proceedings, the accused judge, complainant and other parties in the discretion of the Council shall be so notified.

(3) Sufficient Probable Cause. If the preliminary investigation does disclose probable cause to warrant further proceedings, the Council may, by affirmative vote of four (4) members:

- (i) Continue the case for further action, investigation, or review;
- (ii) Require a personal appearance of the accused judge before the Council for discussion and possible resolution;
- (iii) Institute a remedial measure and solicit the accused judge's acquiescence thereto pursuant to Paragraph (d) of this rule;
- (iv) Institute formal proceedings; or

(v) Take or direct such other action as the Council may determine will reasonably curtail or eliminate the conduct of the accused judge and uphold the dignity of the judiciary or protect the interests of the Idaho citizens which involves any matter within the jurisdiction of the Council.

(c) **Disciplinary Factors.** In evaluating the nature and extent of alleged judicial misconduct, the Council may consider one or more of the following non-exclusive factors:

(1) Nature of the Misconduct.

- (i) Whether the misconduct occurred in the accused judge's official capacity or private life;
- (ii) Whether the misconduct occurred in the courtroom or in the accused judge's administrative role;
- (iii) Whether the accused judge exploited judicial position to satisfy personal desires and/or interests;
- (iv) Whether the misconduct constituted a crime, particularly one of a type over which the accused judge's court has jurisdiction;
- (v) Whether the misconduct involved dishonest acts or moral turpitude;
- (vi) Whether the accused judge acted in bad faith, good faith, or negligently;
- (vii) Whether the accused judge's act was spontaneous, premeditated, or deliberate;
- (viii) Whether the accused judge was motivated by compassion for others or for personal profit, vindictiveness, ill-will, or other dishonest or selfish motives;
- (ix) Whether the conduct involved the appearance of impropriety or an actual impropriety;
- (x) Whether the misconduct affected or appeared to affect the administration of justice;
- (xi) Whether the misconduct undermined the ability of the justice system to discover the truth or to reach the most just result, or merely delayed the result;
- (xii) Whether the accused judge's conduct was contrary to a public policy to which the state has made a commitment;
- (xiii) Whether the misconduct involved the unequal application of justice on the basis of such considerations as race, color, ethnic background, gender, or religion; or
- (xiv) Whether the misconduct evidenced lack of independence or impartiality.



(2) Extent of the Misconduct.

- (i) Whether the misconduct was an isolated instance or part of a pattern or course of conduct;
- (ii) The actual harm or potential for harm to the court system, to litigants, and to the public's perception of the judicial system;
- (iii) The number of victims;
- (iv) The vulnerability of the victims; or
- (v) Whether there was indirect economic detriment to the public.

(3) Culpability.

- (i) Whether the accused judge was suffering from personal or emotional problems;
- (ii) Whether the accused judge was suffering from physical or mental disability;
- (iii) Whether the accused judge was impaired by alcoholism or drug abuse;
- (iv) Whether the accused judge's problems were due to stress;
- (v) Whether there was judicial precedent that the accused judge's conduct was unethical;
- (vi) Whether the accused judge asked for and complied with a judicial ethics advisory opinion; or
- (vii) Whether the accused judge ignored others' efforts to persuade the accused judge to change his or her behavior.

(4) Conduct in Response to the Commission's Inquiry.

- (i) Whether the accused judge acknowledged the misconduct, took responsibility, or showed remorse;
- (ii) Whether the accused judge made an effort to change his or her conduct;
- (iii) Whether the accused judge attempted to blame his or her conduct on others;
- (iv) Whether the accused judge failed to respond to the Council's inquiry;
- (v) Whether the accused judge advanced an unlikely defense;
- (vi) Whether the accused judge attempted to interfere with witnesses;

(vii) Whether the accused judge was candid or less than forthcoming with Council's Counsel or Council's Investigator;

(viii) Whether the accused judge presented false evidence or gave false testimony to Council's Counsel;

(ix) Whether the accused judge gave evasive testimony; or

(x) Whether the accused judge showed a contemptuous attitude toward Council proceedings.

(5) Record.

(i) The length of time the accused judge has served;

(ii) Whether the accused judge was experienced or should have been familiar with the high standards of judicial behavior;

(iii) Whether the accused judge had previous acts of misconduct;

(iv) The remoteness in time of any previous Council's action;

(v) The similarity between any previous conduct and the current conduct; or

(vi) Whether the accused judge complied with prior Council recommendations.

(6) Reputation.

(i) Positive contributions made by the accused judge to the court and community;

(ii) The accused judge's commitment to fairness and innovative procedural reform; or

(iii) The accused judge's ability to fairly, effectively, and efficiently run a court with a heavy caseload.

(7) Any other factor the Council may find determinative.

(d) **Remedial Measures Available to the Council.**

(1) Consideration of Settlement. An accused judge may present a settlement proposal to the Council, which may accept it, reject it, or propose an alternative. An accused judge who proposes or agrees to a settlement proposal waives any complaint that consideration of settlement compromises the Council or any of its members in any proceedings. Upon completion of the terms of any settlement, the case will be closed. Consideration of or discussions regarding settlement are subject to Idaho Rules of Evidence 408 and 507.

(2) Issuance of Education Order. Upon issuance of an education order, such order will be served upon the accused judge in accordance with Rule 35 and the accused judge will have seven (7) days from the date of service within which to reject the Council's education order in favor of formal proceedings. If the accused judge does not reject the education order within seven (7) days, the case will remain open until the Council receives written notice from the accused judge of compliance with the education order. If the Council does not receive written notice of the accused judge's compliance with the education order within the timeframe set forth in the Order, the Council will initiate formal proceedings against the accused judge.

(i) When an accused judge shows lack of knowledge in a particular area of the law, or lacks the ability to maintain proper judicial temperament, or for any other reason determined by the Council, the Council may order additional education or training.

(3) Issuance of Private Admonition. Upon issuance of a private admonition, such admonition will be served upon the accused judge in accordance with Rule 35 and the case closed.

(i) A private admonition is typically used for minor infractions committed by less experienced judges where the Council has determined that the public can be adequately protected without public disclosure of the misconduct. This sanction may be combined with any other remedy

(4) Issuance of Private Warning. Upon issuance of a private warning, such warning will be served upon the accused judge in accordance with Rule 35 and the case closed.

(i) A private warning is more serious than an admonition and is typically used for less serious infractions, especially when the accused judge has enough experience to have known the conduct is prohibited, and where the Council has determined that the public can be adequately protected without public disclosure of the misconduct. This sanction may be combined with any other remedy.

(5) Issuance of Private Reprimand. Upon issuance of a private reprimand, such reprimand will be served upon the accused judge in accordance with Rule 35 and the accused judge will have seven (7) days from the date of service within which to reject the Council's private reprimand in favor of formal proceedings. If the accused judge does not reject the private reprimand within seven (7) days, the private reprimand will be forwarded to the Supreme Court for permanent inclusion in the accused judge's employment file and the case closed.

(i) A private reprimand is more serious than a warning, and is typically used for infractions where the Council has determined that the public can be adequately protected without public disclosure of the misconduct, but a strong message needs to be sent to the accused judge that the conduct is prohibited.

- (6) Issue a public reprimand with the accused judge's consent. Such public reprimand may or may not include an education order and shall be in accordance with Rule 49(b)(1)-(4) herein;
  - (7) Maintenance of Records. Notwithstanding other provisions under these Rules, all records of investigations or other formal or informal actions of the Council with respect to an accused judge shall be kept permanently in the accused judge's Council file.
- (e) **Temporary Suspension.**
- (1) Incident to a preliminary investigation or a formal proceeding conducted pursuant to these rules, the Council may, upon its determination that the continued service of the accused judge is causing immediate and substantial public harm or harm to himself or others, and an erosion of public confidence to the orderly administration of justice, and the accused judge's conduct appears to be violative of the Idaho Code of Judicial Conduct or the Constitution of Idaho, petition the Supreme Court for temporary paid suspension of the accused judge. Such petition shall be presented to the Supreme Court upon a majority vote of the members of the Council, and shall include one of the following:
    - (i) A certified copy of a judgment finding the accused judge guilty of a felony or other serious crime;
    - (ii) An Affidavit authorized by the Council and signed by the Secretary or other authorized member that the accused judge has been convicted of or has pled guilty or no contest to a felony, or serious crime which shows conduct prejudicial to the administration of justice or brings judicial office into disrepute;
    - (iii) A court order or judgment declaring the accused judge to be incompetent or incapacitated; or
    - (iv) An Affidavit authorized by the Council and signed by the Secretary or other authorized member that immediate suspension of the accused judge is necessary pending disposition of:
      - 1) An investigation by the Council for an alleged violation of the Idaho Code of Judicial Conduct, Rules of Professional Conduct, or a violation of a court rule, statute or other law;
      - 2) A criminal complaint, information, or indictment that has been filed against the accused judge; or
      - 3) A determination of the present competency or capacity of the accused judge.
  - (2) A judge suspended under the provisions of this rule may only be reinstated by the Supreme Court, in its discretion, after receipt of an Affidavit of the Council demonstrating that:

- (i) If the suspension was for conviction of a crime, the underlying conviction has been reversed or dismissed and no further criminal or Council proceedings are pending against the accused judge;
  - (ii) If the suspension was imposed because of incompetency or incapacity, that such incapacity or incompetency no longer exists; and
  - (iii) That reinstatement of the accused judge will not result in a substantial loss of public confidence in the judiciary.
- (3) Reinstatement after a temporary suspension pursuant to Paragraph (e) of this rule shall not terminate any Council proceedings pending against the accused judge.
- (4) Upon notification to the Supreme Court by the Council that information regarding possible substance abuse warrants further review or investigation, an incumbent judge under investigation shall be placed on paid administrative leave pending completion of the investigation for a period not to exceed ninety (90) work days, unless otherwise ordered by the Supreme Court.

**(f) Interim Relief.**

- (1) The Council may, upon its determination that the continued service of an accused judge is causing immediate and substantial public harm and an erosion of public confidence to the orderly administration of justice, and the accused judge's conduct appears to be violative of the Idaho Code of Judicial Conduct or the Constitution of Idaho, petition the Supreme Court for interim relief, including but not limited to reassignment of the accused judge. Such petition shall be presented to the Supreme Court upon a majority vote of the members of the Council and shall include an Affidavit of the Council that immediate interim relief is necessary pending disposition of:
- (i) an investigation by the Council for an alleged violation of the Idaho Code of Judicial Conduct, Rules of Professional Conduct, or a violation of a court rule, statute or other law; or
  - (ii) a determination of the present competency or capacity of the accused judge.
- (2) Interim relief granted against an accused judge under the provisions of Paragraph (f) of this rule may only be vacated by the Supreme Court, in its discretion, after receipt of an Affidavit of the Council demonstrating that:
- (i) if interim relief was imposed pursuant to Subparagraph (f)(1)(i) of this rule, that vacating such interim relief previously ordered against the accused judge will not result in a substantial loss of public confidence in the judiciary; or
  - (ii) if interim relief was imposed pursuant to Subparagraph (f)(1)(ii) of this rule, that the incompetency or incapacity no longer exists.

- (3) Vacating an interim relief order pursuant to Paragraph (f) of this rule shall not terminate any Council proceedings pending against the accused judge.

**Rule 37. Notice of Formal Proceedings**

- (a) After the preliminary investigation has been completed, if the Council concludes that formal proceedings should be instituted, the Council shall without delay issue a written notice to the accused judge advising of the institution of formal proceedings to inquire into the charges against the accused judge. Such proceedings shall be entitled:

BEFORE THE JUDICIAL COUNCIL STATE OF IDAHO

Inquiry Concerning	)	No. _____
	)	
_____	)	NOTICE
(Name of Accused Judge)		

- (b) The notice shall specify the charges against the accused judge and the alleged facts upon which such charges are based, and shall advise the accused judge of the right to file a written answer to the charges within fourteen (14) days after service of the notice upon them.
- (c) The notice shall be served in accordance with Rule 35.

**Rule 38. Answer**

Within fourteen (14) days after service of the notice of formal proceedings, the accused judge may file with the Council an original and seven (7) legible copies of a verified answer.

**Rule 39. Setting for Hearing Before Council or Master**

- (a) Upon the filing of an answer or upon expiration of the time for its filing, the Council shall order a hearing to be held before it concerning the removal, discipline, or retirement of the accused judge, or the Council may request the Supreme Court to appoint a master to hear and take evidence in such proceeding and to report thereon to the Council. The Council shall set a time and place for hearing before itself or before the master and shall give written notice of such hearing in accordance with Rule 35.
- (b) In the event the accused judge and the special examiner agree to a stipulated set of facts, such stipulated facts may be presented to the Council in a written stipulation. The stipulation shall include:
- (1) A statement of the agreed facts, (which statement does not limit the Supreme Court);
  - (2) A statement that the Council may rely upon the agreed facts without the necessity of further proof;
  - (3) A waiver by the accused judge of the accused judge's right to a hearing; and

- (4) Whether a disposition hearing is requested, which hearing shall examine any mitigating or aggravating circumstances.

#### **Rule 40. Hearing**

- (a) At the time and place set for the hearing, the Council or the master, when the hearing is before a master, shall proceed with the hearing whether or not the accused judge has filed an answer or appears at the hearing. The special examiner shall present the case in support of the charges set forth in the notice of formal proceedings.
- (b) The failure of the accused judge to answer or to appear at the hearing shall not, standing alone, be taken as evidence of the truth of the facts alleged to constitute grounds for removal, discipline or retirement. The failure of the accused judge to testify in the accused judge's own behalf or to submit to a medical examination requested by the Council or by the master may be considered unless it appears that such failure was due to circumstances beyond the accused judge's control.
- (c) The proceedings at the hearing shall be reported by such method as the Council may prescribe.
- (d) If the hearing is before the Council, the Council shall appoint the Chief Justice, the District Judge member, or a retired or senior judge as the presiding judge for the hearing.

#### **Rule 41. Evidence**

At a hearing before the Council or master, the Idaho Rules of Evidence shall apply; provided, however, that the Council may review and consider previous proceedings against the accused judge.

#### **Rule 42. Procedural Rights of Accused Judge**

- (a) An accused judge shall have the right and reasonable opportunity to defend against the charges, to be represented by counsel and to examine and cross-examine witnesses. The accused judge shall also have the right to the issuance of subpoenas for attendance of witnesses to testify or to produce books, papers or other evidentiary matter not privileged or confidential.
- (b) When a transcript of the testimony has been prepared at the Council's expense, a copy thereof shall be available upon request for use by the accused judge and the accused judge's counsel in connection with the proceedings. The accused judge shall have the right to have a transcribed copy of all or any portion of the testimony in the proceedings at the expense of the accused judge.
- (c) If the accused judge is adjudged insane or incompetent, or if it appears to the Council at any time during the proceedings that the accused judge is not competent to act, the Council shall appoint a guardian ad litem unless the accused judge has a guardian who will represent the accused judge at the accused judge's expense. In the appointment of a guardian ad litem preference shall be given, whenever possible, to members of the accused judge's immediate family. The guardian or guardian ad litem may claim and exercise any right or privilege and make any defense for the

accused judge with the same force and effect as if claimed, exercised or made by the accused judge, if competent, and whenever these rules provide for serving or giving notice or sending any document to the accused judge such notice or document shall be served, given, or sent to the guardian or guardian ad litem.

#### **Rule 43. Amendments to Notice or Answer**

The master at any time prior to the filing of their report with the Council or the Council at any time prior to the filing of its determination with the Clerk of the Supreme Court, may allow or require amendments to the answer or other pleadings. The statement or charge may be amended to conform to proof or to set forth additional facts, whether occurring before or after the commencement of the hearing. In case such an amendment is made, the accused judge shall be given time in accordance with Rule 38 to answer the amendment and to prepare and present a defense against the matters charged thereby.

#### **Rule 44. Report of Master**

(a) After the conclusion of a hearing before a master, the master shall within 21 days prepare and transmit to the Council a report which shall contain a brief statement of the proceedings and findings of fact and conclusions of law with respect to the issues presented by the pleadings. When the findings and conclusions support removal, discipline, or retirement, the report shall be accompanied by an original and seven (7) copies of a transcript of the proceedings.

(b) Upon receiving the report of the master, the Council shall promptly mail a copy thereof to the special examiner and shall promptly serve a copy thereof upon the accused judge in accordance with Rule 35.

#### **Rule 45. Objections to Report of Master**

Within twenty-eight (28) days after service of the copy of the master's report upon the accused judge in accordance with Rule 35, the special examiner or the accused judge may file with the Council an original and seven (7) legible copies of a statement of objections to the report of the master, setting forth all objections and, when filed by the special examiner, a copy thereof shall be served upon the accused judge in accordance with Rule 35.

#### **Rule 46. Appearance Before Council**

If no statement of objections to the report of the master is filed within the time provided, the Council may adopt the findings and conclusions of the master without a hearing. If such statement is filed, or if the Council in the absence of such statement proposes to adopt findings or conclusions inconsistent with, or to reject any of the findings or conclusions of the master, the Council shall give the accused judge and the special examiner an opportunity to be heard orally before the Council, and written notice of the time and place of such hearing shall be served upon the accused judge at least fourteen (14) days prior thereto in accordance with Rule 35.



#### **Rule 47. Extension of Time**

The Chair of the Council may extend for periods not to exceed thirty (30) days in the aggregate the time for filing an answer, for commencement of a hearing before the Council, and for filing a statement of objections to the report of the master, and the presiding master may similarly extend the time for the commencement of a hearing before master.

#### **Rule 48. Hearing Additional Evidence**

(a) The Council may order a hearing in conformance with the provisions of Rule 39 through 48, inclusive, for the taking of additional evidence at any time while the cause is pending before it. The order shall state the time and place of hearing and the issues on which the evidence is to be taken. A copy of such order shall be served upon the accused judge at least ten (10) days prior to the date of hearing in accordance with Rule 35.

(b) In any case when a master has been appointed the hearing of additional evidence shall be before such master and the proceedings therein shall be in conformance with the provisions of Rules 39 through 48, inclusive.

#### **Rule 49. Council Vote and Determination**

(a) **Council Vote.** If the Council finds good cause, it shall recommend to the Supreme Court the removal, discipline or retirement of the accused judge. The affirmative vote of four (4) members of the Council shall be required for a recommendation of removal, discipline, or retirement of the accused judge or for dismissal of the proceedings.

(b) **Determination.** When a determination has been made that removal or retirement is required, all further proceedings will be in accordance with Rule 72 of the Idaho Court Administrative Rules.

#### **Rule 50. Record of Council Proceedings**

The Council shall preserve the record of all proceedings concerning an accused judge. The Council's determination shall be entered in its records and notice thereof shall be served upon the accused judge in accordance with Rule 35. In all proceedings resulting in a recommendation to the Supreme Court for removal, public discipline, or retirement to which the accused judge objects the Council shall prepare a transcript of the evidence and of all proceedings therein and shall make written findings of fact and conclusions of law of the master, with respect to the issues of fact and law in the proceedings.

All further proceedings in the Supreme Court shall be conducted pursuant to the rules of that Court.

#### **Rule 51. Rules of Order**

Robert's Rule of Order shall govern the procedures of all meetings of the Council and of its committees unless otherwise allowed by majority vote of the Council.

**Rules 52-54 Intentionally Left Blank**



# APPENDIX C

## IDAHO CODE OF JUDICIAL CONDUCT

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# **IDAHO CODE OF JUDICIAL CONDUCT**

## **PREAMBLE**

[1] An independent and impartial judiciary is indispensable to our system of justice. The legal system in the State of Idaho is based upon the principle that an independent, impartial, and competent judiciary, composed of men and women of integrity, will interpret and apply the law that governs our society. Thus, the judiciary plays a central role in preserving the principles of justice and the rule of law. Inherent in all the Rules contained in this Code are the precepts that judges, individually and collectively, must respect and honor the judicial office as a public trust and strive to maintain and enhance confidence in the legal system. The judge is an arbiter of facts and law for the resolution of disputes and a highly visible symbol of government under the rule of law.

[2] Judges should maintain the dignity of judicial office at all times, and avoid both impropriety and the appearance of impropriety in their professional and personal lives. They should at all times conduct themselves in a manner that ensures the greatest possible public confidence in their independence, impartiality, integrity, and competence.

[3] The Idaho Code of Judicial Conduct establishes standards for the ethical conduct of judges and judicial candidates. It is not intended as an exhaustive guide for the conduct of judges and judicial candidates, who are governed in their judicial and personal conduct by general ethical standards as well as by the Code. The Code is intended, however, to provide guidance and assist judges in maintaining the highest standards of judicial and personal conduct and to provide a basis for regulating their conduct through disciplinary agencies.

## **SCOPE**

[1] The Idaho Code of Judicial Conduct consists of Four Canons, numbered Rules under each Canon, and Comments that generally follow and explain each Rule. Scope and Terminology sections provide additional guidance in interpreting and applying the Code. An Application section establishes when the various Rules apply to a judge or judicial candidate.

[2] The Canons state overarching principles of judicial ethics that all judges must observe. Although a judge may be disciplined only for violating a Rule, the Canons provide important guidance in interpreting the Rules. Where a Rule contains a permissive term, such as “may” or “should,” the conduct being addressed is committed to the personal and professional discretion of the judge or candidate in question, and no disciplinary action should be taken for action or inaction within the bounds of such discretion.

[3] The Comments that accompany the Rules serve two functions. First, they provide guidance regarding the purpose, meaning, and proper application of the Rules. They contain explanatory material and, in some instances, provide examples of permitted or prohibited conduct. Comments neither add to nor subtract from the binding obligations

set forth in the Rules. Therefore, when a Comment contains the term “must,” it does not mean that the Comment itself is binding or enforceable; it signifies that the Rule in question, properly understood, is obligatory as to the conduct at issue.

[4] Second, the Comments identify behavioral goals for judges. To implement fully the principles of this Code as articulated in the Canons, judges should strive to exceed the standards of conduct established by the Rules, holding themselves to the highest ethical standards and seeking to achieve those goals, thereby enhancing the dignity of the judicial office.

[5] The Rules of the Idaho Code of Judicial Conduct are rules of reason that should be applied consistent with constitutional requirements, statutes, other court rules, and decisional law, and with due regard for all relevant circumstances. The Rules should not be interpreted to impinge upon the essential independence of judges in making judicial decisions.

[6] Although the black letter of the Rules is binding and enforceable, it is not contemplated that every transgression will result in the imposition of discipline. Whether discipline should be imposed should be determined through a reasonable and reasoned application of the Rules, and should depend upon factors such as the seriousness of the transgression, the facts and circumstances that existed at the time of the transgression, the extent of any pattern of improper activity, whether there have been previous violations, and the effect of the improper activity upon the judicial system or others.

[7] The Code is not designed or intended as a basis for civil or criminal liability. Neither is it intended to be the basis for litigants to seek collateral remedies against each other or to obtain tactical advantages in proceedings before a court.

## TERMINOLOGY

The first time any term listed below is used in a Rule in its defined sense, it is followed by an asterisk (\*).

**“Appropriate authority”** means the authority having responsibility for initiation of disciplinary proceedings in connection with the violation to be reported. See Rules 2.14 and 2.15.

**“Contribution”** means both financial and in-kind contributions, such as goods, professional or volunteer services, advertising, and other types of assistance, which, if obtained by the recipient otherwise, would require a financial expenditure. See Rules 2.11, 2.13, 3.7, 4.1, and 4.4.

**“De minimis,”** in the context of interests pertaining to disqualification of a judge, means an insignificant interest that could not raise a reasonable question regarding the judge’s impartiality. See Rule 2.11.

**“Domestic partner”** means a person with whom another person maintains a household and an intimate relationship, other than a person to whom he or she is legally married. See Rules 2.11, 2.13, 3.13, and 3.14.

**“Economic interest”** means ownership of more than a de minimis legal or equitable interest. Except for situations in which the judge participates in the management of such a legal or equitable interest, or the interest could be substantially affected by the outcome of a proceeding before a judge, it does not include:

- (1) an interest in the individual holdings within a mutual or common investment fund;
- (2) an interest in securities held by an educational, religious, charitable, fraternal, or civic organization in which the judge or the judge’s spouse, domestic partner, parent, or child serves as a director, an officer, an advisor, or other participant;
- (3) a deposit in a financial institution or deposits or proprietary interests the judge may maintain as a member of a mutual savings association or credit union, or similar proprietary interests; or
- (4) an interest in the issuer of government securities held by the judge.

See Rules 1.3 and 2.11.

**“Fiduciary”** includes relationships such as executor, administrator, trustee, or guardian. See Rules 2.11, 3.2, and 3.8.

**“Impartial,” “impartiality,”** and **“impartially”** mean absence of bias or prejudice in favor of, or against, particular parties or classes of parties. See Canons 1, 2, and 4, and Rules 1.2, 2.2, 2.10, 2.11, 2.13, 3.1, 3.12, 3.13, 4.1, and 4.2.

**“Impending matter”** is a matter that is imminent or expected to occur in the near future. See Rules 2.9, 2.10, 3.13, and 4.1.

**“Impropriety”** includes conduct that violates the law, or provisions of this Code, and conduct that undermines a judge’s independence, integrity, or impartiality. See Canon 1 and Rule 1.2.

**“Independence”** means a judge’s freedom from influence or controls other than those established by law. See Canons 1 and 4, and Rules 1.2, 3.1, 3.12, 3.13, and 4.2.

**“Integrity”** means probity, impartiality, honesty, uprightness, and soundness of character. See Canons 1 and 4, and Rules 1.2, 3.1, 3.12, 3.13, and 4.2.



**“Judicial candidate”** means any person, including a sitting judge, who is seeking selection for or retention in judicial office by election or appointment. A person becomes a candidate for judicial office as soon as he or she makes a public announcement of candidacy, declares or files as a candidate with the election or appointment authority, authorizes others to solicit or accept contributions or support on the judge’s behalf, or is nominated for election or appointment to office. See Rules 2.11, 4.1, 4.2, and 4.4.

**“Judicial duties”** means all the adjudicative, administrative, and supervisory duties of the judge’s office prescribed by law.

**“Knowingly,” “knowledge,” “known,” and “knows”** mean actual knowledge of the fact in question. A person’s knowledge may be inferred from circumstances. See Rules 2.11, 2.13, 2.15, 2.16, 3.6, and 4.1.

**“Law”** encompasses court rules, as well as statutes, constitutional provisions, and decisional law. See Rules 1.1, 2.1, 2.2, 2.6, 2.7, 2.9, 3.1, 3.4, 3.9, 3.12, 3.13, 3.14, 3.15, 4.1, 4.2, 4.4, and 4.5.

**“Member of the candidate’s family”** means a spouse, domestic partner, child, grandchild, parent, grandparent, or other relative or person with whom the candidate maintains a close familial relationship.

**“Member of the judge’s family”** means a spouse, domestic partner, child, grandchild, parent, grandparent, or other relative or person with whom the judge maintains a close familial relationship. See Rules 3.7, 3.8, 3.10, and 3.11.

**“Member of a judge’s family 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 member of the judge’s family, who resides in the judge’s household. See Rules 2.11 and 3.13.

**“Nonpublic information”** means information that is not available to the public. Nonpublic information may include, but is not limited to, information that is sealed by statute or court order or impounded or communicated in camera, and information offered in grand jury proceedings, presentencing reports, dependency cases, or psychiatric reports. See Rule 3.5.

**“Pending matter”** is a matter that has commenced. A matter continues to be pending through any appellate process until final disposition. See Rules 2.9, 2.10, 3.13, and 4.1.

**“Personally solicit”** means a direct request made by a judge or a judicial candidate for financial support or in-kind services, whether made by letter, telephone, or any other means of communication. See Rule 4.1.

**“Political organization”** means a political party or other group sponsored by or affiliated with a political party or candidate, the principal purpose of which is to further the election or appointment of candidates for political office. For purposes of this Code, the term does not include a judicial candidate’s campaign committee created as authorized by Rule 4.4. See Rules 4.1 and 4.2.

**“Public election”** includes primary and general elections, partisan elections, nonpartisan elections, and retention elections. See Rules 4.2 and 4.4.

**“Staffing”** means a regularly scheduled, informal conference not occurring in open court, the purpose of which is to permit the presiding judge and others, including counsel, to discuss a participant’s progress in a problem-solving court, treatment recommendations, or responses to participant compliance issues. See Rule 2.9(6).

**“Third degree of relationship”** includes the following persons: great-grandparent, grandparent, parent, uncle, aunt, brother, sister, child, grandchild, great-

grandchild, nephew, and niece. See “The Nolan Chart of Relationships and Degrees of Kindred.” See Rule 2.11.

## **APPLICATION**

This application section establishes when the various Rules apply to a Judge or judicial candidate:

### **A. APPLICABILITY OF THIS CODE**

1. The provisions of the Idaho Code of Judicial Conduct shall apply to all judges except as may be stated hereafter. A judge within the meaning of this Code, is an individual authorized to perform judicial functions which shall include:
  - a. Magistrate judges (Idaho Code section 1-101(4));
  - b. District judges (Idaho Code section 1-101(3));
  - c. Any judge of the Court of Appeals (Idaho Code section 1-101(2));
  - d. Any justice of the Supreme Court (Idaho Code section 1-101(1));
  - e. Persons designated as senior judges pursuant to Idaho Code sections 1-2005 or 1-2221;
  - f. Any individual serving pursuant to court appointment as a special master in a water adjudication proceeding.
2. Any person appointed by a court to serve as a master or special master or judge pro tempore, as defined by Section 12 of Article 5 of the Idaho Constitution and I.C.A.R. 4, in a case-specific capacity (other than in a water adjudication) shall, while so serving, comply with Canons 1 and 2.
3. Retired judges (Plan A Senior Judges and Plan B Senior Judges who have completed their five year commitment) and judges who have resigned, who are designated to act temporarily as judges should comply with all of the provisions of this Code, except Rules 3.4, 3.8, 3.9 and 3.11, during such temporary service.

### **COMMENT**

[1] The Rules in this Code have been formulated to address the ethical obligations of any person who serves a judicial function, and are premised upon the supposition that a uniform system of ethical principles apply to all those authorized to perform judicial functions.

[2] The determination of which category and, accordingly, which specific Rules apply to an individual judicial officer, depends upon the facts of the particular services.

[3] Any special master or judge pro tempore subject to this Code is not bound by the provisions of Idaho Code 59-502 requiring an oath that no decision has been pending for more than thirty days concerning payment of their salary (the thirty day rule).

## **B. TIME FOR COMPLIANCE**

1. A person to whom this Code becomes applicable shall begin complying immediately with its provisions, except that those judges to whom Rule 3.9 (Appointments to Fiduciary positions) and 3.11 (Financial, Business or Remunerative Activities) apply shall comply with those Rules as soon as is reasonably possible, but in no event later than one year after the Code becomes applicable to the judge.

## **COMMENT**

[1] If serving as a fiduciary when selected as a judge, a new judge may, notwithstanding the provisions in rule 3.8, continue to serve as a fiduciary, but only for that period of time necessary to avoid serious adverse consequences to the beneficiaries of the fiduciary relationship and in no event longer than one year. Similarly, if engaged at the time of judicial selection in a business activity, a new judge may, notwithstanding the prohibitions in Rule 3.11, continue in that activity for a reasonable period but in no event longer than one year.

## CANON 1

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

### **RULE 1.1**

#### ***Compliance with the Law***

**A judge shall comply with the law,\* including the Code of Judicial Conduct.**

### **RULE 1.2**

#### ***Promoting Confidence in the Judiciary***

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

### **COMMENT**

[1] Public confidence in the judiciary is eroded by improper conduct and conduct that creates the appearance of impropriety. This principle applies to both the professional and personal conduct of a judge.

[2] A judge should expect to be the subject of public scrutiny that might be viewed as burdensome if applied to other citizens and must accept the restrictions imposed by the Code.

[3] Conduct that compromises or appears to compromise the independence, integrity, and impartiality of a judge undermines public confidence in the judiciary. Because it is not practicable to list all such conduct, the Rule is necessarily cast in general terms.

[4] Judges should participate in activities that promote ethical conduct among judges and lawyers, support professionalism within the judiciary and the legal profession, and promote access to justice for all.

[5] Actual improprieties include violations of law, or provisions of this Code. The test for appearance of impropriety is whether the conduct would create in reasonable minds a perception that the judge violated this Code or engaged in other conduct that reflects adversely on the judge's honesty, impartiality, temperament, or fitness to serve as a judge.

[6] A judge should initiate and participate in community outreach activities for the purpose of promoting public understanding of and confidence in the administration of justice. In conducting such activities, the judge must act in a manner consistent with this Code.

### **RULE 1.3**

#### ***Avoiding Abuse of the Prestige of Judicial Office***

**A judge shall not abuse the prestige of judicial office to advance the personal or economic interests\* of the judge or others, or allow others to do so.**

#### **COMMENT**

[1] It is improper for a judge to use or attempt to use his or her position to gain personal advantage or deferential treatment of any kind for himself or herself or any other person. For example, it would be improper for a judge to allude to his or her judicial status to gain favorable treatment in encounters with traffic officials or to allude to such status in any other commercial, financial, business, social or other personal situation to gain personal advantage or potential deferential treatment of any kind.

[2] A judge shall not use judicial letterhead to gain an advantage or potential deferential treatment in conducting his or her personal business, including but not limited to financial matters, private business dealings, discharging parental responsibility, private disputes, political activities or charitable solicitations or endeavors. It is not an abuse of the prestige of the judicial office to write letters on judicial letterhead, on a de minimis basis, that are congratulatory in nature, letters of appreciation, letters of recognition or other laudatory letters written in connection with law-related activities, community outreach activities, civic activities, or educational activities so long as there is no reasonable likelihood that the use of the letterhead would be perceived as any attempt to exert pressure by reason of the judicial office or to gain any personal advantage or potential deferential treatment for the judge or others. Judges should be cautious in writing such letters for any person who regularly appears before the court, has a matter pending or impending before the court, political figures or other personnel such as law enforcement officers or attorneys who appear before the court.

[3] A judge may provide a reference or recommendation for an individual based upon the judge's personal knowledge. The judge may use official letterhead if the judge indicates that the reference is personal and if there is no likelihood that the use of the letterhead would reasonably be perceived as an attempt to exert pressure by reason of the judicial office.

[4] Judges may participate in the process of judicial selection 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.

[5] Special considerations arise when judges write or contribute to publications of for-profit entities, whether related or unrelated to the law. A judge should not permit anyone associated with the publication of such materials to exploit the judge's office in a manner that violates this Rule or other applicable law.



## CANON 2

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

### **RULE 2.1**

#### ***Giving Precedence to the Duties of Judicial Office***

**The duties of judicial office, as prescribed by law,\* shall take precedence over all of a judge's personal and extrajudicial activities.**

#### **COMMENT**

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

[2] Although it is not a duty of judicial office, unless prescribed by law, judges should participate in activities that promote public understanding of and confidence in the justice system.

### **RULE 2.2**

#### ***Impartiality***

**A judge shall uphold and apply the law,\* and shall perform all duties of judicial office impartially.\* A judge shall maintain professional competence in the performance of judicial duties\*.**

#### **COMMENT**

[1] To ensure impartiality to all parties, a judge must be objective.

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

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

[4] It is not a violation of this Rule for a judge to make reasonable accommodations to ensure self-represented litigants the opportunity to have their matters fairly heard. A judge's ability to make reasonable accommodations for self-represented litigants does not oblige a judge to overlook a self-represented litigant's violation of a clear order, to repeatedly excuse a self-represented litigant's failure to comply with



deadlines, or to allow a self-represented litigant to use the process to harass the other side.

## **RULE 2.3**

### ***Bias, Prejudice, and Harassment***

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

(B) 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 based upon race, sex, gender, religion, national origin, ethnicity, disability, age, sexual orientation, marital status, socioeconomic status, or political affiliation, against parties, witnesses, lawyers, or others, and shall not permit court staff, court officials, or others subject to the judge's direction and control to do so.

(C) A judge shall require lawyers in proceedings before the court to refrain from manifesting bias or prejudice, or engaging in harassment, based upon attributes including but not limited to race, sex, gender, religion, national origin, ethnicity, disability, age, sexual orientation, marital status, socioeconomic status, or political affiliation, against parties, witnesses, lawyers, or others.

(D) The restrictions of paragraphs (B) and (C) do not preclude judges or lawyers from making legitimate reference to the listed factors, or similar factors, when they are relevant to an issue in a proceeding.

## **COMMENT**

[1] A judge who manifests bias or prejudice in a proceeding impairs the fairness of the proceeding and brings the judiciary into disrepute.

[2] Examples of manifestations of bias or prejudice include but are not limited to epithets; slurs; demeaning nicknames; negative stereotyping; attempted humor based upon 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, as referred to in paragraphs (B) and (C), is verbal or physical conduct that denigrates or shows hostility or aversion toward a person on bases such as race, sex, gender, religion, national origin, ethnicity, disability, age, sexual orientation, marital status, socioeconomic status, or political affiliation.

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

## **RULE 2.4**

### ***External Influences on Judicial Conduct***

- (A) A judge shall not be swayed by public clamor or fear of criticism.
- (B) A judge shall not permit family, social, political, financial, or other interests or relationships to influence the judge's judicial conduct or judgment.
- (C) A judge shall not convey or permit others to convey the impression that any person or organization is in a position to improperly influence or coerce the judge.

## **COMMENT**

[1] An independent judiciary requires that judges decide cases according to the law and facts, 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 judiciary is eroded if judicial decision making is perceived to be subject to inappropriate outside influences.

## **RULE 2.5**

### ***Competence, Diligence, and Cooperation***

- (A) A judge shall perform judicial and administrative duties competently and diligently, and shall comply with all laws concerning timeliness of decisions and salary affidavits.
- (B) A judge shall cooperate with other judges and court officials in the administration of court business.

## **COMMENT**

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

[2] A judge should seek the necessary docket time, court staff, expertise, and resources to discharge all adjudicative and administrative responsibilities, and should ordinarily be present during regular business hours.

[3] Prompt disposition of the court's business requires a judge to devote adequate time to judicial duties, to be punctual in attending court and expeditious in determining matters under submission, and to take reasonable measures to ensure that court officials, litigants, and their lawyers cooperate with the judge to that end.

[4] In disposing of matters promptly and efficiently, a judge must demonstrate due regard for the rights of parties to be heard and to have issues resolved without

unnecessary cost or delay. A judge should monitor and supervise cases in ways that reduce or eliminate dilatory practices, avoidable delays, and unnecessary costs.

## **RULE 2.6**

### ***Ensuring the Right to Be Heard***

**(A) 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.\***

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

## **COMMENT**

[1] The right to be heard is an essential component of a fair and impartial system of justice. Substantive rights of litigants can be protected only if procedures protecting the right to be heard are observed.

[2] The judge plays an important role in overseeing the settlement of disputes, but should be careful that efforts to further settlement do not undermine any party's right to be heard according to law. The judge should keep in mind the effect that the judge's participation in settlement discussions may have, not only on the judge's own views of the case, but also on the perceptions of the lawyers and the parties if the case remains with the judge after settlement efforts are unsuccessful. Among the factors that a judge should consider when deciding upon an appropriate settlement practice for a case are (1) whether the parties have requested or voluntarily consented to a certain level of participation by the judge in settlement discussions, (2) whether the parties or their counsel are relatively sophisticated in legal matters, (3) whether the case will be tried by the judge or a jury, (4) whether the parties participate with their counsel in settlement discussions, (5) whether any parties are unrepresented by counsel, and (6) whether the matter is civil or criminal.

[3] Judges must be mindful of the effect settlement discussions can have, not only on their objectivity and impartiality, but also on the appearance of their objectivity and impartiality. Despite a judge's best efforts, there may be instances when information obtained during settlement discussions could influence a judge's decision making during trial, and, in such instances, the judge should consider whether disqualification may be appropriate. See Rule 2.11(A)(1).

## **RULE 2.7**

### ***Responsibility to Decide***

**A judge shall hear and decide matters assigned to the judge, except when disqualification is required by Rule 2.11 or other law.\***

## 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, judges must be available to decide matters that come before the courts. Unwarranted disqualification may bring public disfavor to the court and to the judge 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.

## RULE 2.8

### *Decorum, Demeanor, and Communication with Jurors*

- (A) A judge shall require order and decorum in proceedings before the court.
- (B) A judge shall be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, court staff, court officials, and others with whom the judge deals in an official capacity, and shall require similar conduct of lawyers, court staff, court officials, and others subject to the judge's direction and control.
- (C) A judge shall not commend or criticize jurors for their verdict other than in a court order or opinion in a proceeding.

## COMMENT

[1] The duty to hear all proceedings with patience and courtesy is not inconsistent with the duty imposed in Rule 2.5 to dispose promptly of the business of the court. Judges can be efficient and businesslike while being patient and deliberate.

[2] Commending or criticizing jurors for their verdict may imply a judicial expectation in future cases and may impair a juror's ability to be fair and impartial in a subsequent case.

[3] A judge who is not otherwise prohibited by law from doing so may meet with jurors who choose to remain after trial but should be careful not to discuss the merits of the case. Judges should be aware of the implications from *Gillingham Construction, Inc. v. Newby Wiggins Construction*, 142 Idaho 15, 121 P.3d 946 (2005), which prohibits certain communication with jurors by judges.

## RULE 2.9

### *Ex Parte Communications*

- (A) 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 or their lawyers, concerning a pending\* or impending matter,\* except as follows:**

- (1) When circumstances require it, ex parte communication for scheduling, administrative, or emergency purposes, which does not address substantive matters, is permitted, provided:**
  - (a) the judge reasonably believes that no party will gain a procedural, substantive, or tactical advantage as a result of the ex parte communication; and**
  - (b) the judge makes provision promptly to notify all other parties of the substance of the ex parte communication, and gives the parties an opportunity to respond.**
- (2) A judge may obtain the written advice of a disinterested expert on the law applicable to a proceeding before the judge, if the judge gives advance notice to the parties of the person to be consulted and the subject matter of the advice to be solicited, and affords the parties a reasonable opportunity to object and respond to the notice and to the advice received.**
- (3) A judge may consult with court staff and court officials whose functions are to aid the judge in carrying out the judge's adjudicative responsibilities, or with other judges, provided the judge makes reasonable efforts to avoid receiving factual information that is not part of the record, and does not abrogate the responsibility personally to decide the matter.**
- (4) A judge may, with the consent of the parties, confer separately with the parties and their lawyers in an effort to settle matters pending before the judge.**
- (5) During a scheduled court proceeding, including a staffing\*, conference, hearing, or trial, a judge may initiate, permit, or consider communications dealing with substantive matters or issues on the merits of the case in the absence of a party who had notice of the proceeding and did not appear.**
- (6) Communications during a staffing\* are not ex parte merely because a defendant, who is represented by counsel, is not permitted to attend the staffing\*.**
- (7) A judge may initiate, permit, or consider any ex parte communication when expressly authorized by law\* to do so.**
- (B) An electronic communication sent simultaneously to the judge and all parties or their respective lawyers is not an ex parte communication, nor is a written communication that is served substantially simultaneously upon the judge and all parties or their respective counsel prior to any staffing\*, hearing, trial, or other court proceeding at which the written communication may be relevant.**
- (C) If a judge receives an unauthorized ex parte or other prohibited communication bearing upon the substance of a matter, the judge shall promptly make provision to notify the parties of the substance of the communication and provide the parties with an opportunity to respond. If the communication was in writing, the judge shall promptly provide a copy to the parties.**

**(D) A judge shall not investigate facts in a matter independently, and shall consider only the evidence presented and any facts that may properly be judicially noticed.**

**(E) A judge shall make reasonable efforts, including providing appropriate supervision, to ensure that this Rule is not violated by court staff, court officials, and others subject to the judge's direction and control.**

## **COMMENT**

[1] To the extent reasonably possible, all parties or their lawyers shall be included in communications with a judge.

[2] Whenever the presence of a party or notice to a party is required by this Rule, it is the party's lawyer, or if the party is unrepresented, the party, who is to be present or to whom notice is to be given.

[3] The proscription against communications concerning a proceeding includes communications with lawyers, law professors, and other persons who are not participants in the proceeding, except to the limited extent permitted by this Rule.

[4] A judge may initiate, permit, or consider ex parte communications expressly authorized by law, such as when serving on therapeutic or problem-solving courts, mental health courts, or drug courts. In this capacity, judges may assume a more interactive role with parties, treatment providers, probation officers, social workers, and others.

[5] A judge may consult with other judges on pending matters, but must avoid 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.

[6] The prohibition against a judge investigating the facts in a matter extends to information available in all mediums, including electronic.

[7] A judge may consult ethics advisory committees, outside counsel, or legal experts concerning the judge's compliance with this Code. Such consultations are not subject to the restrictions of paragraph (A)(2).

## **RULE 2.10**

### ***Judicial Statements on Pending and Impending Cases***

**(A) A judge shall not make any public statement that might reasonably be expected to affect the outcome or impair the fairness of a matter pending\* or impending\* in any court, or make any nonpublic statement that might substantially interfere with a fair trial or hearing.**

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

**(C) A judge shall require court staff, court officials, and others subject to the judge's direction and control to refrain from making statements that the judge would be prohibited from making by paragraphs (A) and (B).**

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

**(E) A judge should refrain from responding directly to allegations through the media or elsewhere concerning the judge's conduct in any matter. Subject to the requirements of paragraph (A), a judge may respond personally or through the Administrative Office of the Courts to allegations concerning the judge's conduct in a matter by explaining the law, procedural rules, administration of justice or applicability of the Idaho Code of Judicial Conduct.**

## **COMMENT**

[1] This Rule's restrictions on judicial speech are essential to the maintenance of the independence, integrity, and impartiality of the judiciary.

[2] This Rule does not prohibit a judge from commenting on proceedings in which the judge is a litigant in a personal capacity, or represents a client as permitted by these Rules. In cases in which the judge is a litigant in an official capacity, such as a writ of mandamus, the judge must not comment publicly.

[3] A judge may comment on legal terms, statutory language, procedural rules and legal concepts if any allegation is made concerning the judge's official conduct. The judge would be well advised to issue any such comments through the Administrative Office of the Courts. Judges are cautioned, however, there should never be comments on the results of a case consistent with Rule 2.10(A)

## **RULE 2.11**

### ***Disqualification***

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

**(1) The judge has a personal bias or prejudice concerning a party or a party's lawyer, or personal knowledge\* of facts that are in dispute in the proceeding.**

**(2) The judge knows\* that the judge, the judge's spouse or domestic partner,\* or a person within the third degree of relationship\* to either of them, or the spouse or domestic partner of such a person is:**

**(a) a party to the proceeding, or an officer, director, general partner, managing member, or trustee of a party;**

**(b) acting as a lawyer in the proceeding;**

**(c) a person who has more than a de minimis\* interest that could be substantially affected by the proceeding; or**

**(d) likely to be a material witness in the proceeding.**

**(3) The judge knows that he or she, individually or as a fiduciary,\* or the judge’s spouse, domestic partner, parent, or child, 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 is a party to the proceeding.**

**(4) The judge, while a judge or a judicial candidate,\* has made a public statement, other than in a court proceeding, judicial decision, or opinion, that commits or appears to commit the judge to reach a particular result or rule in a particular way in the proceeding or controversy.**

**(5) The judge:**

**(a) served as a lawyer in the matter in controversy, or was associated with a lawyer who participated substantially as a lawyer in the matter during such association;**

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

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

**(d) previously presided as a judge over the matter in another court.**

**(B) 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 or domestic partner and minor children residing in the judge’s household.**

**(C) A judge subject to disqualification under this Rule, other than for bias or prejudice under paragraph (A)(1), may disclose on the record the basis of the judge’s disqualification and may ask the parties and their lawyers to consider, outside the presence of the judge and court personnel, whether to waive disqualification. If, following the disclosure, the parties and lawyers agree, without participation by the judge or court personnel, that the judge should not be disqualified, the judge may participate in the proceeding. The agreement shall be incorporated into the record of the proceeding.**

## **COMMENT**

[1] Under this Rule, a judge is disqualified whenever the judge’s impartiality might reasonably be questioned, regardless of whether any of the specific provisions of paragraphs (A)(1) through (5) apply. In many jurisdictions, the term “recusal” is used interchangeably with the term “disqualification.”

[2] A judge’s obligation not to hear or decide matters in which disqualification is required applies regardless of whether a motion to disqualify is filed.

[3] 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.

[4] The fact that a lawyer in a proceeding is affiliated with a law firm with which a relative of the judge is affiliated does not itself disqualify the judge. If, however, the judge's impartiality might reasonably be questioned under paragraph (A), or the relative is known by the judge to have an interest in the law firm that could be substantially affected by the proceeding under paragraph (A)(2)(c), the judge's disqualification is required.

[5] A judge should disclose on the record information that the judge believes the parties or their lawyers might reasonably consider relevant to a possible motion for disqualification, even if the judge believes there is no basis for disqualification.

[6] "Economic interest," as set forth in the Terminology section, means ownership of more than a de minimis legal or equitable interest. Except for situations in which a judge participates in the management of such a legal or equitable interest, or the interest could be substantially affected by the outcome of a proceeding before a judge, it does not include:

- (1) an interest in the individual holdings within a mutual or common investment fund;
- (2) an interest in securities held by an educational, religious, charitable, fraternal, or civic organization in which the judge or the judge's spouse, domestic partner, parent, or child serves as a director, officer, advisor, or other participant;
- (3) a deposit in a financial institution or deposits or proprietary interests the judge may maintain as a member of a mutual savings association or credit union, or similar proprietary interests; or
- (4) an interest in the issuer of government securities held by the judge.

## **RULE 2.12**

### ***Supervisory Duties***

**(A) A judge shall require\* court staff, court officials, and others subject to the judge's direction and control to act in a manner consistent with the judge's obligations under this Code.**

**(B) A judge with supervisory authority for the performance of other judges shall take reasonable measures to ensure that those judges properly discharge their judicial responsibilities, including the prompt disposition of matters before them.**

### **COMMENT**

[1] A judge is responsible for his or her own conduct and for the conduct of others, such as staff, when those persons are acting at the judge's direction or control. A judge may not direct court personnel to engage in conduct on the judge's behalf or as the judge's representative when such conduct would violate the Code if undertaken by the judge.

[2] Public confidence in the judicial system depends upon timely justice. To promote the efficient administration of justice, a judge with supervisory authority must take the steps needed to ensure that judges under his or her supervision administer their workloads promptly.

## **RULE 2.13**

### ***Administrative Appointments***

- (A) In making administrative appointments, a judge:
  - (1) shall exercise the power of appointment impartially\* and on the basis of merit; and
  - (2) shall avoid nepotism, favoritism, and unnecessary appointments.
- (B) A judge shall not appoint a lawyer to a position under circumstances where it could be reasonably interpreted to be quid pro quo for campaign contributions or other favors, unless:
  - (1) the position is substantially uncompensated;
  - (2) the lawyer has been selected in rotation from a list of qualified and available lawyers compiled without regard to their having made political contributions; or
  - (3) the judge or another presiding or administrative judge affirmatively finds that no other lawyer is willing, competent, and able to accept the position.
- (C) A judge shall not approve compensation of appointees beyond the fair value of services rendered.

### **COMMENT**

[1] Appointees of a judge include assigned counsel, officials such as referees, masters, judges pro tempore, special masters, receivers, and guardians, and personnel such as clerks, secretaries, and bailiffs. Consent by the parties to an appointment or an award of compensation does not relieve the judge of the obligation prescribed by paragraph (A).

[2] Unless otherwise defined by law, nepotism is the appointment or hiring of any relative within the third degree of relationship of either the judge or the judge's spouse or domestic partner, or the spouse or domestic partner of such relative.

## **RULE 2.14**

### ***Disability and Impairment***

A judge, having a reasonable belief that the performance of a lawyer or another judge is impaired by drugs or alcohol, or by a mental, emotional, or physical

**condition, shall take appropriate action, which may include a confidential referral to a lawyer or judicial assistance program.**

## **COMMENT**

[1] “Appropriate action” means action intended and reasonably likely to help the judge or lawyer in question address the problem and prevent harm to the justice system. Depending upon the circumstances, appropriate action may include but is not limited to speaking directly to the impaired person, notifying an individual with supervisory responsibility over the impaired person, or making a referral to an assistance program.

[2] Taking or initiating corrective action by way of referral to an assistance program may satisfy a judge’s responsibility under this Rule. Assistance programs have many approaches for offering help to impaired judges and lawyers, such as intervention, counseling, or referral to appropriate health care professionals. Depending upon the gravity of the conduct that has come to the judge’s attention, however, the judge may be required to take other action, such as reporting the impaired judge or lawyer to the appropriate authority, agency, or body. See Rule 2.15.

## **RULE 2.15**

### ***Responding to Judicial and Lawyer Misconduct***

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

**(B) A judge having knowledge that a lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial question regarding the lawyer’s honesty, trustworthiness, or fitness as a lawyer in other respects shall inform the appropriate authority.**

**(C) A judge who receives information indicating a substantial likelihood that another judge has committed a violation of this Code shall take appropriate action.**

**(D) A judge who receives information indicating a substantial likelihood that a lawyer has committed a violation of the Rules of Professional Conduct shall take appropriate action.**

## **COMMENT**

[1] Taking action to address known misconduct is a judge’s obligation. A reporting judge’s duty is fulfilled by reporting the alleged violation to that judge’s supervisory authority or the Idaho Judicial Council. Paragraphs (A) and (B) impose an obligation on the judge to report to the appropriate disciplinary authority the known misconduct of another judge or a lawyer that raises a substantial question regarding the honesty, trustworthiness, or fitness of that judge or lawyer. Ignoring or denying known misconduct among one’s judicial colleagues or members of the legal profession

undermines a judge's responsibility to participate in efforts to ensure public respect for the justice system. This Rule limits the reporting obligation to those offenses that an independent judiciary must vigorously endeavor to prevent.

[2] A judge who does not have actual knowledge that another judge or a lawyer may have committed misconduct, but receives information indicating a substantial likelihood of such misconduct, is required to take appropriate action under paragraphs (C) and (D). Appropriate action may include, but is not limited to, communicating directly with the judge who may have violated this Code, communicating with a supervising judge, or reporting the suspected violation to the appropriate authority or other agency or body. Similarly, actions to be taken in response to information indicating that a lawyer has committed a violation of the Rules of Professional Conduct may include but are not limited to communicating directly with the lawyer who may have committed the violation, or reporting the suspected violation to the appropriate authority or other agency or body.

## **RULE 2.16**

### ***Cooperation with Disciplinary Authorities***

**(A) A judge shall cooperate and be candid and honest with judicial and lawyer disciplinary agencies.**

**(B) A judge shall not retaliate, directly or indirectly, against a person known\* or suspected to have assisted or cooperated with an investigation of a judge or a lawyer.**

## **COMMENT**

[1] Cooperation with investigations and proceedings of judicial and lawyer discipline agencies, as required in paragraph (A), instills confidence in judges' commitment to the integrity of the judicial system and the protection of the public.

## CANON 3

**A JUDGE SHALL CONDUCT THE JUDGE’S PERSONAL AND EXTRAJUDICIAL ACTIVITIES TO MINIMIZE THE RISK OF CONFLICT WITH THE OBLIGATIONS OF JUDICIAL OFFICE.**

### **RULE 3.1**

#### ***Extrajudicial Activities in General***

**A judge may engage in extrajudicial activities, except as prohibited by law\* or this Code. However, when engaging in extrajudicial activities, a judge shall not:**

- (A) participate in activities that will interfere with the proper performance of the judge’s judicial duties;**
- (B) participate in activities that will lead to frequent disqualification of the judge;**
- (C) participate in activities that would appear to a reasonable person to undermine the judge’s independence,\* integrity,\* or impartiality;\***
- (D) engage in conduct that would appear to a reasonable person to be coercive; or**
- (E) make use of court premises, staff, stationery, equipment, or other resources, except for incidental use for activities that concern the law, the legal system, or the administration of justice, or unless such additional use is permitted by law.**

**Refusing or declining to participate in an extrajudicial activity does not call into question the judge’s integrity or impartiality.**

### **COMMENT**

[1] To the extent that time permits, and judicial independence and impartiality are not compromised, judges are encouraged to engage in appropriate extrajudicial activities. Judges are uniquely qualified to engage in extrajudicial activities that concern the law, the legal system, and the administration of justice, such as by speaking, writing, teaching, or participating in scholarly research projects. In addition, judges are permitted and encouraged to engage in educational, religious, charitable, fraternal or civic extrajudicial activities not conducted for profit, even when the activities do not involve the law. See Rule 3.7.

[2] Participation in both law-related and other extrajudicial activities helps integrate judges into their communities, and furthers public understanding of and respect for courts and the judicial system.

[3] Discriminatory actions and expressions of bias or prejudice by a judge, even outside the judge’s official or judicial actions, are likely to appear to a reasonable person to call into question the judge’s integrity and impartiality. For the same reason, a judge’s extrajudicial activities must not be conducted in connection or affiliation with an organization that practices invidious discrimination. See Rule 3.6.

[4] While engaged in permitted extrajudicial activities, judges must not coerce others or take action that would reasonably be perceived as coercive. For example,

depending upon the circumstances, a judge's solicitation of contributions or memberships for an organization, even as permitted by Rule 3.7(A), might create the risk that the person solicited would feel obligated to respond favorably, or would do so to curry favor with the judge.

[5] While judges are not prohibited from participating in online social networks, such as Facebook, Instagram, Snapchat, and the like, they should exercise restraint and caution in doing so. A judge should not identify himself as such, either by words or images, when engaging in commentary or interaction that is not in keeping with the limitations of this Code.

## **RULE 3.2**

### ***Appearances before Governmental Bodies and Consultation with Government Officials***

**A judge shall not appear voluntarily at a public hearing before, or otherwise consult with, an executive or a legislative body or official, except:**

- (A) in connection with matters concerning the law, the legal system, or the administration of justice;**
- (B) in connection with matters about which the judge acquired knowledge or expertise in the course of the judge's judicial duties; or**
- (C) when the judge is acting pro se in a matter involving the judge's legal or economic interests, or when the judge is acting in a fiduciary\* capacity.**

## **COMMENT**

[1] Judges possess special expertise in matters of law, the legal system, and the administration of justice, and may properly share that expertise with governmental bodies and executive or legislative branch officials.

[2] In appearing before governmental bodies or consulting with government officials, judges must be mindful that they remain subject to other provisions of this Code, such as Rule 1.3, prohibiting judges from using the prestige of office to advance their own or others' interests, Rule 2.10, governing public comment on pending and impending matters, and Rule 3.1(C), prohibiting judges from engaging in extrajudicial activities that would appear to a reasonable person to undermine the judge's independence, integrity, or impartiality.

[3] In general, it would be an unnecessary and unfair burden to prohibit judges from appearing before governmental bodies or consulting with government officials on matters that are likely to affect them as private citizens, such as zoning proposals affecting their real property. In engaging in such activities, however, judges must not refer to their judicial positions, and must otherwise exercise caution to avoid using the prestige of judicial office.

### **RULE 3.3**

#### ***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, except when duly summoned.**

#### **COMMENT**

[1] A judge who, without being subpoenaed, testifies as a character witness abuses the prestige of judicial office to advance the interests of another. See Rule 1.3. Except in unusual circumstances where the demands of justice require, a judge should discourage a party from requiring the judge to testify as a character witness.

### **RULE 3.4**

#### ***Appointments to Governmental Positions***

**A judge shall not accept appointment to a governmental committee, board, commission, or other governmental position, unless it is one that concerns the law, the legal system, or the administration of justice.**

#### **COMMENT**

[1] Rule 3.4 implicitly acknowledges the value of judges accepting appointments to entities that concern the law, the legal system, or the administration of justice. Even in such instances, however, a judge should assess the appropriateness of accepting an appointment, paying particular attention to the subject matter of the appointment and the availability and allocation of judicial resources, including the judge's time commitments, and giving due regard to the requirements of the independence and impartiality of the judiciary.

[2] A judge may represent his or her country, state, or locality on ceremonial occasions or in connection with historical, educational, or cultural activities. Such representation does not constitute acceptance of a government position.

[3] A retired judge is allowed to be engaged as a hearing officer for a governmental agency, and is also permitted to act as a judge on behalf of a tribe in Idaho.

### **RULE 3.5**

#### ***Use of Nonpublic Information***

**A judge shall not intentionally disclose or use nonpublic information\* acquired in a judicial capacity for any purpose unrelated to the judge's judicial duties.**

## 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. The judge must not reveal or use such information for personal gain or for any purpose unrelated to his or her judicial duties.

[2] This rule is not intended, however, 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 if consistent with other provisions of this Code.

## RULE 3.6

### *Affiliation with Discriminatory Organizations*

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

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

**(C) A judge's membership in a religious organization as a lawful exercise of the freedom of religion is not a violation of this Rule.**

## COMMENT

[1] A judge's public manifestation of approval of invidious discrimination on any basis gives rise to the appearance of impropriety and diminishes public confidence in the integrity and impartiality of the judiciary. 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 basis of race, sex, gender, religion, national origin, ethnicity, or sexual orientation persons who would otherwise be eligible for admission. Whether an organization practices invidious discrimination is a complex question to which judges should be attentive. The answer cannot be determined from a mere examination of an organization's current membership rolls but, rather, depends upon how the organization selects members, as well as other relevant factors, such as whether the organization is dedicated to the preservation of religious, ethnic, or cultural values of legitimate common interest to its members, or whether it is an intimate, purely private organization whose membership limitations could not constitutionally be prohibited.



[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.

[4] This Rule does not apply to national or state military service.

### **RULE 3.7**

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

(A) Subject to the requirements of Rule 3.1, a judge may participate in activities sponsored by organizations or governmental entities concerned with the law, the legal system, or the administration of justice, and those sponsored by or on behalf of educational, religious, charitable, fraternal, or civic organizations not conducted for profit, including but not limited to the following activities:

(1) assisting such an organization or entity in planning related to fund-raising, and participating in the management and investment of the organization's or entity's funds;

(2) soliciting\* contributions\* for such an organization or entity, but only from members of the judge's family,\* or from judges over whom the judge does not exercise supervisory or appellate authority;

(3) soliciting membership for such an organization or entity, even though the membership dues or fees generated may be used to support the objectives of the organization or entity, but only if the organization or entity is concerned with the law, the legal system, or the administration of justice;

(4) appearing or speaking at, receiving an award or other recognition at, being featured on the program of, and permitting his or her title to be used in connection with an event of such an organization or entity, but if the event serves a fund-raising purpose, the judge may participate only if the event concerns the law, the legal system, or the administration of justice;

(5) making recommendations to such a public or private fund-granting organization or entity in connection with its programs and activities, but only if the organization or entity is concerned with the law, the legal system, or the administration of justice; and

(6) 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.

**(B) A judge may encourage lawyers to provide *pro bono publico* legal services as long as the encouragement is not coercive in nature.**

## **COMMENT**

[1] The activities permitted by paragraph (A) generally include those sponsored by or undertaken on behalf of public or private not-for-profit educational institutions, and other not-for-profit organizations, including law-related, charitable, and other organizations.

[2] Even for law-related organizations, a judge should consider whether the membership and purposes of the organization, or the nature of the judge's participation in or association with the organization, would conflict with the judge's obligation to refrain from activities that reflect adversely upon a judge's independence, integrity, and impartiality.

[3] Mere attendance at an event, whether or not the event serves a fund-raising purpose, does not constitute a violation of paragraph 4(A). It is also generally permissible for a judge to serve as an usher or a food server or preparer, or to perform similar functions, at fund-raising events sponsored by educational, religious, charitable, fraternal, or civic organizations. Such activities are not solicitation and do not present an element of coercion or abuse the prestige of judicial office.

[4] Identification of a judge's position in educational, religious, charitable, fraternal, or civic organizations on letterhead used for fund-raising or membership solicitation does not violate this Rule. The letterhead may list the judge's title or judicial office if comparable designations are used for other persons.

[5] In addition to appointing lawyers to serve as counsel for indigent parties in individual cases, a judge may promote broader access to justice by encouraging lawyers to participate in *pro bono publico* legal services, if in doing so the judge does not employ coercion, or abuse the prestige of judicial office. Such encouragement may take many forms, including providing lists of available programs, training lawyers to do *pro bono publico* legal work, and participating in events recognizing lawyers who have done *pro bono publico* work.

## **RULE 3.8**

### ***Appointments to Fiduciary Positions***

**(A) A judge shall not accept appointment to serve in a fiduciary\* position, such as executor, administrator, trustee, guardian, attorney in fact, or other personal representative, 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.**

**(B) A judge shall not serve in a fiduciary position if the judge as fiduciary will likely 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.**

**(C) A judge acting in a fiduciary capacity shall be subject to the same restrictions on engaging in financial activities that apply to a judge personally.**

**(D) If a person who is serving in a fiduciary position becomes a judge, he or she must comply with this Rule as soon as reasonably practicable, but in no event later than one year after becoming a judge.**

#### **COMMENT**

[1] A judge should recognize that other restrictions imposed by this Code may conflict with a judge's obligations as a fiduciary; in such circumstances, a judge should resign as fiduciary. For example, serving as a fiduciary might require frequent disqualification of a judge under Rule 2.11 because a judge is deemed to have an economic interest in shares of stock held by a trust if the amount of stock held is more than *de minimis*.

### **RULE 3.9**

#### ***Service as Arbitrator or Mediator***

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

#### **COMMENT**

[1] This Rule does not prohibit a judge from participating in arbitration, mediation, or settlement conferences performed as part of regular judicial duties.

### **RULE 3.10**

#### ***Practice of Law***

**A judge shall not practice law. 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,\* but is prohibited from serving as the family member's lawyer in any forum.**

#### **COMMENT**

[1] A judge may act pro se in all legal matters, including matters involving litigation and matters involving appearances before or other dealings with governmental bodies. A judge must not use the prestige of office to advance the judge's personal or family interests. See Rule 1.3.

## **RULE 3.11**

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

- (A) A judge may hold and manage investments of the judge and members of the judge's family.\*
- (B) A judge shall not serve as an officer, director, manager, general partner, advisor, or employee of any business entity except that a judge may manage or participate in:
  - (1) a business closely held by the judge or members of the judge's family; or
  - (2) a business entity primarily engaged in investment of the financial resources of the judge or members of the judge's family.
- (C) A judge shall not engage in financial activities permitted under paragraphs (A) and (B) if they will:
  - (1) interfere with the proper performance of judicial duties;
  - (2) lead to frequent disqualification of the judge;
  - (3) involve the judge in frequent transactions or continuing business relationships with lawyers or other persons likely to come before the court on which the judge serves; or
  - (4) result in violation of other provisions of this Code.

## **COMMENT**

[1] Judges are generally permitted to engage in financial activities, including managing real estate and other investments for themselves or for members of their families. Participation in these activities, like participation in other extrajudicial activities, is subject to the requirements of this Code. For example, it would be improper for a judge to spend so much time on business activities that it interferes with the performance of judicial duties. See Rule 2.1. Similarly, it would be improper for a judge to use his or her official title or appear in judicial robes in business advertising, or to conduct his or her business or financial affairs in such a way that disqualification is frequently required. See Rules 1.3 and 2.11.

[2] As soon as practicable without serious financial detriment, the judge must divest himself or herself of investments and other financial interests that might require frequent disqualification or otherwise violate this Rule.

## **RULE 3.12**

### ***Compensation for Extrajudicial Activities***

**A judge may accept reasonable compensation for extrajudicial activities permitted by this Code or other law\* unless such acceptance would appear to a reasonable person to undermine the judge's independence,\* integrity,\* or impartiality.\***

## COMMENT

[1] A judge is permitted to accept honoraria, stipends, fees, wages, salaries, royalties, or other compensation for speaking, teaching, writing, and other extrajudicial activities, provided the compensation is reasonable and commensurate with the task performed. The judge should be mindful, however, that judicial duties must take precedence over other activities. See Rule 2.1.

## RULE 3.13

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

(A) A judge shall not accept any gifts, loans, bequests, benefits, or other things of value, if acceptance is prohibited by law\* or would appear to a reasonable person to undermine the judge's independence,\* integrity,\* or impartiality.\*

(B) Unless otherwise prohibited by law, or by paragraph (A), a judge may accept the following:

(1) items with little intrinsic value, such as plaques, certificates, trophies, and greeting cards;

(2) gifts, loans, bequests, benefits, or other things of value from friends, relatives, or other persons, including lawyers, whose appearance or interest in a proceeding pending\* or impending\* before the judge would in any event require disqualification of the judge under Rule 2.11;

(3) ordinary social hospitality;

(4) commercial or financial opportunities and benefits, including special pricing and discounts, and loans from lending institutions in their regular course of business, if the same opportunities and benefits or loans are made available on the same terms to similarly situated persons who are not judges;

(5) rewards and prizes given to competitors or participants in random drawings, contests, or other events that are open to persons who are not judges;

(6) scholarships, fellowships, and similar benefits or awards, if they are available to similarly situated persons who are not judges, based upon the same terms and criteria;

(7) books, magazines, journals, audiovisual materials, and other resource materials supplied by publishers on a complimentary basis for official use; or

(8) gifts, awards, or benefits associated with the business, profession, or other separate activity of a spouse, a domestic partner,\* or other family member of a judge residing in the judge's household,\* but that incidentally benefit the judge.

- (9) gifts incident to a public testimonial;**
- (10) invitations to the judge and the judge's spouse, domestic partner, or guest to attend without charge:**
  - (a) an event associated with a bar-related function or other activity relating to the law, the legal system, or the administration of justice; or**
  - (b) an event associated with any of the judge's educational, religious, charitable, fraternal or civic activities permitted by this Code, if the same invitation is offered to nonjudges who are engaged in similar ways in the activity as is the judge.**

## **COMMENT**

[1] Whenever a judge accepts a gift or other thing of value without paying fair market value, there is a risk that the benefit might be viewed as intended to influence the judge's decision in a case. Rule 3.13 imposes restrictions upon the acceptance of such benefits, according to the magnitude of the risk. Paragraph (B) identifies circumstances in which the risk that the acceptance would appear to undermine the judge's independence, integrity, or impartiality is low. As the value of the benefit or the likelihood that the source of the benefit will appear before the judge increases, the judge is prohibited under paragraph (A) from accepting the gift.

[2] Gift-giving between friends and relatives is a common occurrence, and ordinarily does not create an appearance of impropriety or cause reasonable persons to believe that the judge's independence, integrity, or impartiality has been compromised. In addition, when the appearance of friends or relatives in a case would require the judge's disqualification under Rule 2.11, there would be no opportunity for a gift to influence the judge's decision making. Paragraph (B)(2) places no restrictions upon the ability of a judge to accept gifts or other things of value from friends or relatives under these circumstances.

[3] Businesses and financial institutions frequently make available special pricing, discounts, and other benefits, either in connection with a temporary promotion or for preferred customers, based upon longevity of the relationship, volume of business transacted, and other factors. A judge may freely accept such benefits if they are available to the general public, or if the judge qualifies for the special price or discount according to the same criteria as are applied to persons who are not judges. As an example, loans provided at generally prevailing interest rates are not gifts, but a judge could not accept a loan from a financial institution at below-market interest rates unless the same rate was being made available to the general public for a certain period of time or only to borrowers with specified qualifications that the judge also possesses.

[4] Rule 3.13 applies only to acceptance of gifts or other things of value by a judge. Nonetheless, if a gift or other benefit is given to the judge's spouse, domestic partner, or member of the judge's family residing in the judge's household, it may be viewed as an attempt to evade Rule 3.13 and influence the judge indirectly. Where the gift or benefit is being made primarily to such other persons, and the judge is merely an incidental beneficiary, this concern is reduced. A judge should, however, remind family and household members of the restrictions imposed upon judges, and urge them to take

these restrictions into account when making decisions about accepting such gifts or benefits.

[5] Rule 3.13 does not apply to contributions to a judge's campaign for judicial office. Such contributions are governed by other Rules of this Code, including Rules 4.3 and 4.4.

## **RULE 3.14**

### ***Reimbursement of Expenses and Waivers of Fees or Charges***

**(A) Unless otherwise prohibited by Rules 3.1 and 3.13(A) or other law,\* a judge may accept reimbursement of necessary and reasonable expenses for travel, food, lodging, or other incidental expenses, or a waiver or partial waiver of fees or charges for registration, tuition, and similar items, from sources other than the judge's employing entity, if the expenses or charges are associated with the judge's participation in extrajudicial activities permitted by this Code.**

**(B) Reimbursement of expenses for necessary travel, food, lodging, or other incidental expenses shall be limited to the actual costs reasonably incurred by the judge and, when appropriate to the occasion, by the judge's spouse, domestic partner,\* or guest.**

## **COMMENT**

[1] Educational, civic, religious, fraternal, and charitable organizations often sponsor meetings, seminars, symposia, dinners, awards ceremonies, and similar events. Judges are encouraged to attend educational programs, as both teachers and participants, in law-related and academic disciplines, in furtherance of their duty to remain competent in the law. Participation in a variety of other extrajudicial activity is also permitted and encouraged by this Code.

[2] Not infrequently, sponsoring organizations invite certain judges to attend seminars or other events on a fee-waived or partial-fee-waived basis, and sometimes include reimbursement for necessary travel, food, lodging, or other incidental expenses. A judge's decision whether to accept reimbursement of expenses or a waiver or partial waiver of fees or charges in connection with these or other extrajudicial activities must be based upon an assessment of all the circumstances. The judge must undertake a reasonable inquiry to obtain the information necessary to make an informed judgment about whether acceptance would be consistent with the requirements of this Code.

[3] A judge must assure himself or herself that acceptance of reimbursement or fee waivers would not appear to a reasonable person to undermine the judge's independence, integrity, or impartiality. The factors that a judge should consider when deciding whether to accept reimbursement or a fee waiver for attendance at a particular activity include:

- (a) whether the sponsor is an accredited educational institution or bar association rather than a trade association or a for-profit entity;
- (b) whether the funding comes largely from numerous contributors rather than from a single entity and is earmarked for programs with specific content;
- (c) whether the content is related or unrelated to the subject matter of litigation pending or impending before the judge, or to matters that are likely to come before the judge;
- (d) whether the activity is primarily educational rather than recreational, and whether the costs of the event are reasonable and comparable to those associated with similar events sponsored by the judiciary, bar associations, or similar groups;
- (e) whether information concerning the activity and its funding sources is available upon inquiry;
- (f) whether the sponsor or source of funding is generally associated with particular parties or interests currently appearing or likely to appear in the judge's court, thus possibly requiring disqualification of the judge under Rule 2.11;
- (g) whether differing viewpoints are presented; and
- (h) whether a broad range of judicial and nonjudicial participants are invited, whether a large number of participants are invited, and whether the program is designed specifically for judges.



## CANON 4

A JUDGE OR CANDIDATE FOR JUDICIAL OFFICE SHALL NOT ENGAGE IN POLITICAL OR CAMPAIGN ACTIVITY THAT IS INCONSISTENT WITH THE INDEPENDENCE, INTEGRITY, OR IMPARTIALITY OF THE JUDICIARY.

### **RULE 4.1**

#### ***Political and Campaign Activities of Judges and Judicial Candidates in General***

(A) Except as permitted by law,\* or by Rules 4.2, 4.3, and 4.4, a judge or a judicial candidate\* shall not:

- (1) act as a leader in, or hold an office in, a political organization;\*
- (2) make speeches on behalf of a political organization;
- (3) publicly endorse or oppose a candidate for any public office;
- (4) solicit funds for, pay an assessment to, or make a contribution\* to a political organization or a candidate for public office;
- (5) attend political gatherings if by such attendance and actions the judge is endorsing or seeking the endorsement of a political organization. A judge may speak at political gatherings concerning matters of law, the legal system or the administration of justice.
- (6) publicly identify himself or herself as a candidate of a political organization;
- (7) seek, accept, or use endorsements from a political organization;
- (8) personally solicit\* or accept campaign contributions other than through a campaign committee authorized by Rule 4.4;
- (9) use or permit the use of campaign contributions for the private benefit of the judge, the candidate, or others;
- (10) use court staff, facilities, or other court resources in a campaign for judicial office;
- (11) knowingly,\* or with reckless disregard for the truth, make any false or misleading statement;
- (12) make any statement that would reasonably be expected to affect the outcome or impair the fairness of a matter pending\* or impending\* in any court; or
- (13) in connection with cases, controversies, or issues that are likely to come before the court, make pledges, promises, or commitments that are inconsistent with the impartial\* performance of the adjudicative duties of judicial office.

(B) A judge or judicial candidate shall take reasonable measures to ensure that other persons do not undertake, on behalf of the judge or judicial candidate, any activities prohibited under paragraph (A).

## **COMMENT**

### **GENERAL CONSIDERATIONS**

[1] Even when subject to public election, a judge plays a role different from that of a legislator or executive branch official. Rather than making decisions based upon the expressed views or preferences of the electorate, a judge makes decisions based upon the law and the facts of every case. Therefore, in furtherance of this interest, judges and judicial candidates must, to the greatest extent possible, be free and appear to be free from political influence and political pressure. This Canon imposes narrowly tailored restrictions upon the political and campaign activities of all judges and judicial candidates, taking into account the various methods of selecting judges.

[2] When a person becomes a judicial candidate, this Canon becomes applicable to his or her conduct.

### **PARTICIPATION IN POLITICAL ACTIVITIES**

[3] Public confidence in the independence and impartiality of the judiciary is eroded if judges or judicial candidates are perceived to be subject to political influence. Although judges and judicial candidates may register to vote as members of a political party, they are prohibited by paragraph (A)(1) from assuming leadership roles in political organizations.

[4] Paragraphs (A)(2) and (A)(3) prohibit judges and judicial candidates from making speeches on behalf of political organizations or publicly endorsing or opposing candidates for public office, respectively, to prevent them from abusing the prestige of judicial office to advance the interests of others. See Rule 1.3. These Rules do not prohibit candidates from campaigning on their own behalf, or from endorsing or opposing candidates for the same judicial office for which they are running. See Rules 4.2(B)(2) and 4.2(B)(3).

[5] Although members of the families of judges and judicial candidates are free to engage in their own political activity, including running for public office, there is no “family exception” to the prohibition in paragraph (A)(3) against a judge or candidate publicly endorsing candidates for public office. A judge or judicial candidate must not become involved in, or publicly associated with, a family member’s political activity or campaign for public office. To avoid public misunderstanding, judges and judicial candidates should take, and should urge members of their families to take, reasonable steps to avoid any implication that they endorse any family member’s candidacy or other political activity.

[6] Judges and judicial candidates retain the right to participate in the political process as voters in both primary and general elections. For purposes of this Canon, participation in a caucus-type election procedure does constitute public support for or endorsement of a political organization or candidate, and is prohibited by paragraphs (A)(2) or (A)(3).

## **STATEMENTS AND COMMENTS MADE DURING A CAMPAIGN FOR JUDICIAL OFFICE**

[7] Judicial candidates must be scrupulously fair and accurate in all statements made by them and by their campaign committees. Paragraph (A)(11) obligates candidates and their committees to refrain from making statements that are false or misleading, or that omit facts necessary to make the communication considered as a whole not materially misleading.

[8] Judicial candidates are sometimes the subject of false, misleading, or unfair allegations made by opposing candidates, third parties, or the media. For example, false or misleading statements might be made regarding the identity, present position, experience, qualifications, or judicial rulings of a candidate. In other situations, false or misleading allegations may be made that bear upon a candidate's integrity or fitness for judicial office. As long as the candidate does not violate paragraphs (A)(11), (A)(12), or (A)(13), the candidate may make a factually accurate public response. In addition, when an independent third party has made unwarranted attacks on a candidate's opponent, the candidate may disavow the attacks, and request the third party to cease and desist.

[9] Subject to paragraph (A)(12), a judicial candidate is permitted to respond directly to false, misleading, or unfair allegations made against him or her during a campaign, although it is preferable for someone else to respond if the allegations relate to a pending case.

[10] Paragraph (A)(12) prohibits judicial candidates from making comments that might impair the fairness of pending or impending judicial proceedings. This provision does not restrict arguments or statements to the court or jury by a lawyer who is a judicial candidate, or rulings, statements, or instructions by a judge that may appropriately affect the outcome of a matter.

## **PLEDGES, PROMISES, OR COMMITMENTS INCONSISTENT WITH IMPARTIAL PERFORMANCE OF THE ADJUDICATIVE DUTIES OF JUDICIAL OFFICE**

[11] The role of a judge is different from that of a legislator or executive branch official, even when the judge is subject to public election. Campaigns for judicial office must be conducted differently from campaigns for other offices. The narrowly drafted restrictions upon political and campaign activities of judicial candidates provided in Canon 4 allow candidates to conduct campaigns that provide voters with sufficient information to permit them to distinguish between candidates and make informed electoral choices.

[12] Paragraph (A)(13) makes applicable to both judges and judicial candidates the prohibition that applies to judges in Rule 2.10(B), relating to pledges, promises, or commitments that are inconsistent with the impartial performance of the adjudicative duties of judicial office.

[13] The making of a pledge, promise, or commitment is not dependent upon, or limited to, the use of any specific words or phrases; instead, the totality of the statement must be examined to determine if a reasonable person would believe that the candidate for judicial office has specifically undertaken to reach a particular result. Pledges, promises, or commitments must be contrasted with statements or announcements of personal views on legal, political, or other issues, which are not prohibited. When making such statements, a judge should acknowledge the overarching

judicial obligation to apply and uphold the law, without regard to his or her personal views.

[14] A judicial candidate may make campaign promises related to judicial organization, administration, and court management, such as a promise to dispose of a backlog of cases, start court sessions on time, or avoid favoritism in appointments and hiring. A candidate may also pledge to take action outside the courtroom, such as working toward an improved jury selection system, or advocating for more funds to improve the physical plant and amenities of the courthouse.

[15] Judicial candidates may receive questionnaires or requests for interviews from the media and from issue advocacy or other community organizations that seek to learn their views on disputed or controversial legal or political issues. Paragraph (A)(13) does not specifically address judicial responses to such inquiries. Depending upon the wording and format of such questionnaires, candidates' responses might be viewed as pledges, promises, or commitments to perform the adjudicative duties of office other than in an impartial way. To avoid violating paragraph (A)(13), therefore, candidates who respond to media and other inquiries should also give assurances that they will carry out their adjudicative duties faithfully and impartially if elected. Candidates who do not respond may state their reasons for not responding, such as the danger that answering might be perceived by a reasonable person as undermining a successful candidate's independence or impartiality, or that it might lead to frequent disqualification. See Rule 2.11.

## **RULE 4.2**

### ***Political and Campaign Activities of Judicial Candidates in Public Elections***

**(A) A judicial candidate\* in a public election\* shall:**

- (1) act at all times in a manner consistent with the independence,\* integrity,\* and impartiality\* of the judiciary;**
- (2) comply with all applicable election, election campaign, and election campaign fund-raising laws and regulations of this jurisdiction;**
- (3) review and approve the content of all campaign statements and materials produced by the candidate or his or her campaign committee, as authorized by Rule 4.4, before their dissemination; and**
- (4) take reasonable measures to ensure that other persons do not undertake on behalf of the candidate activities, other than those described in Rule 4.4, that the candidate is prohibited from doing by Rule 4.1.**

**(B) A judicial candidate in a public election may, unless prohibited by law,\* and not earlier than one (1) year before the first applicable public election:**

- (1) establish a campaign committee pursuant to the provisions of Rule 4.4;**
- (2) speak on behalf of his or her candidacy through any medium, including but not limited to advertisements, websites, or other campaign literature;**
- (3) publicly endorse or oppose candidates for the same judicial office for which he or she is running;**

## **COMMENT**

[1] Paragraph (B) permits judicial candidates in public elections to engage in some political and campaign activities otherwise prohibited by Rule 4.1.

[2] Despite paragraph (B), judicial candidates for public election remain subject to many of the provisions of Rule 4.1. For example, a candidate continues to be prohibited from soliciting funds for a political organization, knowingly making false or misleading statements during a campaign, or making certain promises, pledges, or commitments related to future adjudicative duties. See Rule 4.1(A), paragraphs (4), (11), and (13).

[3] For purposes of paragraph (B)(3), candidates are considered to be running for the same judicial office if they are competing for a single judgeship or if several judgeships on the same court are to be filled as a result of the election. In endorsing or opposing another candidate for a position on the same court, a judicial candidate must abide by the same rules governing campaign conduct and speech as apply to the candidate's own campaign.

[4] Although judicial candidates in nonpartisan public elections are prohibited from running on a ticket or slate associated with a political organization, they may group themselves into slates or other alliances to conduct their campaigns more effectively. Candidates who have grouped themselves together are considered to be running for the same judicial office if they satisfy the conditions described in Comment [4].

## **RULE 4.3**

### ***Activities of Candidates for Appointive Judicial Office***

**A candidate for appointment to judicial office may:**

**(A) communicate with the appointing or confirming authority, including any selection, screening, or nominating commission or similar agency; and**

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

## **COMMENT**

[1] When seeking support or endorsement, or when communicating directly with an appointing or confirming authority, a candidate for appointive judicial office

must not make any pledges, promises, or commitments that are inconsistent with the impartial performance of the adjudicative duties of the office. See Rule 4.1(A)(13).

[2] A candidate may not use a sitting judge as a reference on an application for a judgeship unless the applicant has received permission from the judge to do so.

## **RULE 4.4**

### ***Campaign Committees***

**(A) A judicial candidate\* subject to public election\* may establish a campaign committee to manage and conduct a campaign for the candidate, subject to the provisions of this Code. The candidate is responsible for ensuring that his or her campaign committee complies with applicable provisions of this Code and other applicable law.\***

**(B) A judicial candidate subject to public election shall direct his or her campaign committee;**

- (1) to solicit and accept only such campaign contributions\* as are allowed by law from any individual or from any entity or organization**
- (2) to comply with all applicable statutory requirements for disclosure and divestiture of campaign contributions.**

**(C) A judicial candidate shall direct his campaign committee and chairperson that he/she is not to be informed as to the names of contributors or the individual amounts contributed to his or her campaign.**

## **COMMENT**

[1] Judicial candidates are prohibited from personally soliciting campaign contributions or personally accepting campaign contributions. See Rule 4.1(A)(8). This Rule recognizes that judicial candidates must raise campaign funds to support their candidacies, and permits candidates, other than candidates for appointive judicial office, to establish campaign committees to solicit and accept reasonable financial contributions or in-kind contributions.

[2] Campaign committees may solicit and accept campaign contributions, manage the expenditure of campaign funds, and generally conduct campaigns. Candidates are responsible for compliance with the requirements of election law and other applicable law, and for the activities of their campaign committees.

[3] At the start of a campaign, the candidate must instruct the campaign committee to solicit or accept only such contributions that are in conformity with applicable law.

## **RULE 4.5**

### ***Activities of Judges Who Become Candidates for Nonjudicial Office***

**(A) Upon becoming a candidate for a nonjudicial elective office, a judge shall resign from judicial office.**

#### **COMMENT**

[1] In campaigns for nonjudicial elective public office, candidates may make pledges, promises, or commitments related to positions they would take and ways they would act if elected to office. Although appropriate in nonjudicial campaigns, this manner of campaigning is inconsistent with the role of a judge, who must remain fair and impartial to all who come before him or her. The potential for misuse of the judicial office, and the political promises that the judge would be compelled to make in the course of campaigning for nonjudicial elective office, together dictate that a judge who wishes to run for such an office must resign upon becoming a candidate.

[2] The “resign to run” rule set forth in paragraph (A) ensures that a judge cannot use the judicial office to promote his or her candidacy, and prevents post-campaign retaliation from the judge in the event the judge is defeated in the election. When a judge is seeking appointive nonjudicial office, however, the dangers are not sufficient to warrant imposing the “resign to run” rule.