

Frequently Asked Questions

Updated: September 19, 2016

NOTE: Judges should also review the Letter Opinions that are posted online. The FAQs do not answer questions that are the subjects of letter opinions.

Topics

Application of Code
Awards and Honors, see Events
Bar associations
Character Testimony
Conflict of Interest Law
Consultation with Judicial Colleagues
Court Resources, Use of
Disability
Disqualification
Educational Activities, see Teaching
Events, Speaking or Receiving Award at
Ex Parte Communications
Executor, see Fiduciary
Fiduciary
Fundraisers, Speaking or Receiving Award at
Fundraising
Gifts, Attorneys' Fees
Gifts, Related to Official Position or Action
Gifts, Unrelated to Official Position or Action
Gifts, Disclosure
Governmental Commissions or Boards
Honoraria
Impairment
Inadvertently Received Communication, see Ex Parte Communications
Judicial Applicant
Judicial Nominee
Judicial Statements on Pending or Impending Cases
Jurors
Letterhead
Misconduct, Responding to
Plea Discussions
Political Activity of Family Members
Power of Attorney, see Fiduciary
Practice of Law
Pro Bono, Encouragement of
Problem Solving Courts, see Specialty Courts
Real Estate Investments

Recommendations, Request to Judge
Recommendations, Request by Judge
Recusal, see Disqualification
Reimbursement of Expenses
References, see Recommendations
Retired Judge
Self-Represented Litigants
Settlement Discussions
Solicitation
Speaking at Event, see Event
Specialty Court
Teaching
Use of Court Resources

Note

Every provision of the Code of Judicial Conduct must be interpreted in light of the requirement that: **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.** (Canon 1) While Code prohibitions are absolute, a judge must interpret all permitted conduct in light of this requirement. The particular factual circumstances surrounding contemplated conduct may lead conduct otherwise permissible to be prohibited.

Below are brief answers to some frequently asked questions. The topics generally appear in the order in which they are addressed in the Code. Please make sure that you also review the CJE's Letter Opinions.

Application of Code:

1. I have applied for a position as a state court judge. Am I bound by the Code? No, a judicial applicant is bound only by any Executive Order issued by the Governor.
2. I have been nominated by the Governor but not yet confirmed. Am I bound by the Code? No, a judicial nominee is bound only by any Executive Order issued by the Governor.
3. I am a newly-appointed judge. How soon must I comply with the Code? A newly-appointed judge must comply with the Code, except for Rules 3.8 and 3.11(B), as soon as the judge takes the oath of judicial office. A newly-appointed judge must comply with Rules 3.8 and 3.11(B) as soon as reasonably possible and in any event within one year.
4. I am a retired judge. Am I bound by the Code? No. However, for six months, a retired judge must not enter an appearance or accept an appointment to represent a party, or perform dispute-resolution services in connection with a court-connected

program except on a pro bono basis. A retired judge who is eligible to perform judicial duties pursuant to G. L. c. 32, §§ 65E-65G must comply in full with the Code. See also CJE Letter Opinions 2016-03 and 2016-05.

Obligation to Comply with the State Conflict of Interest Law, c. 268A and c. 268B:

1. Am I obligated to comply with the State Conflict of Interest Law in addition to the Code of Judicial Conduct? Yes. A judge must also comply with the State conflict of interest law except in those few instances where provisions of this Code supersede provisions of G.L. c. 268A. See, e.g., Rules 3.1(e) and 3.13 (D) – (E). Where the Code is more restrictive than the State conflict of interest law, see, e.g. Rules 3.7 and 4.1, a judge must comply with the Code.
2. May I obtain advice concerning my obligations under c. 268A or c. 268B from the Committee on Judicial Ethics? The CJE will advise you as to the obligations of the Code of Judicial Conduct, including the exemptions the Code permits to particular restrictions otherwise imposed by G.L. c. 268A §§ 3 and 23(b)(2). Otherwise, a judge with questions about c. 268A or c. 268B must seek advice from the State Ethics Commission.

Abuse of the Prestige of Judicial Office:

1. May I use judicial letterhead in conducting my personal affairs? No. Rule 1.3 prohibits a judge from abusing the prestige of judicial office to advance the judge's personal or economic interests. Comment [1] states that a judge must not use judicial letterhead to gain an advantage in conducting personal business.
2. May I use judicial letterhead to write a letter of recommendation? It depends on the circumstances. Rule 1.3, Comment [2] explains that a judge may use official letterhead or court email and sign the recommendation using the judicial title if the judge's knowledge of the applicant's qualifications arises from observations made in the judge's judicial capacity. Otherwise, with the exception noted below for judicial applicants, a judge may not use official letterhead, court email, or the judicial title, but the judge may send a private letter stating the judge's personal recommendation. The judge may refer to the judge's judicial position and title in the body of a private letter only if it is relevant to some substantive aspect of the recommendation.

A judge may, however, use letterhead and the judicial title when writing a letter of recommendation concerning the professional qualifications of a person being considered for judicial office, even if the judge is relying on knowledge acquired in a non-judicial capacity; the reason is that a judge's special understanding of what is required to be a good member of the bench is relevant to the recommendation. See also *Recommendations*, below.

3. I have been invited to write a promotional "blurb" for the back cover of a book on a legal subject I am considered an expert in. May I do so? No. Endorsing the book might appear to be using the prestige of judicial office to advance the personal or economic interest of the author and publisher.

Recommendations and References, Request to Judge:

Law Clerks and Interns

1. May I write a letter of recommendation for a law clerk or legal intern on letterhead? Yes. Rule 1.3, Comment [2] explains that a judge may use official letterhead or court email and sign the recommendation using the judicial title if the judge's knowledge of the applicant's qualifications arises from observations made in the judge's judicial capacity.
2. May I use letterhead for a letter of recommendation for someone I don't know in my judicial capacity? No. Rule 1.3, Comment [2] explains that official letterhead, court email, or the judicial title must not be used when a judge's knowledge of the applicant does not arise from observations made in the judge's judicial capacity. A judge may, however, send a private letter stating a personal recommendation. A judge may refer to the judge's judicial position and title in the body of the private letter only if it is relevant to some substantive aspect of the recommendation.
3. May I call a lawyer to recommend that the lawyer hire my law clerk or intern? Ordinarily, such a call should not be made because it would reasonably be perceived as an attempt to exert pressure on the lawyer to hire the applicant.
4. If a lawyer calls me to discuss an applicant, may I speak with the lawyer? Yes. Receiving a phone call would not reasonably be perceived as an attempt to exert pressure on the lawyer to hire the applicant.

Recommendations for Judicial Applicants and Nominees

5. May I participate in the judicial selection process by making recommendations? Yes. Rule 1.3, Comment [3] explains that judges may participate in the process of judicial selection by cooperating with screening, nominating, appointing, and confirming authorities. A judge may make oral or written recommendations to and respond to inquiries from such entities concerning the professional qualifications of a person being considered for judicial office. Judges may use letterhead and the judicial title when making such recommendations, even if the judge is relying on knowledge acquired in a non-judicial capacity, as a judge's special understanding of what is required to be a good member of the bench is relevant to the recommendation.

6. Judges also may testify at confirmation hearings. Rule 3.3, Comment [2] clarifies that the prohibition on a judge's testifying as a character witness does not preclude a judge from voluntarily testifying or otherwise vouching for the qualifications, including the character, of an applicant or nominee for judicial or court-related office so long as the judge's observations are based on the judge's personal knowledge.

Bar Admission

7. A former legal intern is applying to the Bar of another state. That Bar requires character references, and she has asked me for one. May I provide one? Yes. Rule 3.3, Comment [3] clarifies that a judge may provide a character reference based on personal knowledge for an applicant to the Bar of any state.

Background Checks

8. A friend is applying to a government job that requires a background check. I received a call from the FBI. Am I allowed to respond? Yes. Rule 3.3, Comment [4] clarifies that a judge may respond based on personal knowledge to such an inquiry.

Persons Involved in Legal Proceedings

9. I am the presiding judge in a specialty court. A probationer has asked me to write a letter recommending him for a job skills program. May I do so? No. A judge may not write a voluntary character reference letter on behalf of a party involved in proceedings before the judge. This would amount to impermissible vouching for the character of a person in a legal proceeding. See Rule 3.3. As a practical matter, such a letter may be written by the Probation Officer supervising the probationer.

Recommendations and References, Request Made By Judge Applying for a Judicial Opening on Another Court:

1. I am applying for a judicial opening on another court. May I list as a reference on the application a lawyer who is presently appearing before me or who is reasonably likely to appear before me in the near future? No. A reasonable person may perceive the judge to be seeking a favor (a positive recommendation) in circumstances that may compromise the impartiality of the judge. Rule 1.2.
2. I am applying for a judicial opening on another court. The Judicial Nominating Commission has asked me to submit letters of recommendation from persons with knowledge of my abilities. May I request a letter of recommendation from a lawyer who is presently appearing before me or who is reasonably likely to appear before me in the near future? No. A reasonable person may perceive the judge to be seeking a favor (a

positive letter of recommendation) in circumstances that may compromise the impartiality of the judge. Rule 1.2.

3. I applied for a judicial vacancy on another court. I listed as a reference or requested a letter of recommendation from a lawyer whom I did not expect to appear before me in the near future. Now that lawyer has a case before me. Must I disqualify myself? It depends on the circumstances. A judge is always disqualified from a matter if the judge cannot satisfy both an objective and a subjective standard. The subjective standard requires disqualification if the judge concludes that he or she cannot be impartial. The objective standard requires disqualification whenever the judge's impartiality might reasonably be questioned by a fully-informed disinterested observer. If the judge's application remains active at the time of the lawyer's appearance, the objective standard ordinarily will not be satisfied, and the judge must disqualify himself or herself. If the judge's application no longer remains active, whether the judge must continue to disqualify himself or herself should be determined by considering all relevant factors, including but not limited to the length of time since the lawyer has served as a reference. Rule 2.11(A) and Comment [1]. Depending on the circumstances, disclosure on the record may suffice. Rule 2.11(C) and Comment [5].

Self-Represented Litigants:

1. What steps, if any, may I take to assist a self-represented litigant in a proceeding before me? Rule 2.6(A) provides that “[a] judge may make reasonable efforts, consistent with the law, to facilitate the ability of all litigants, including self-represented litigants, to be fairly heard.” Comment [1A] provides additional clarification. A judge may make reasonable accommodations that help self-represented litigants to understand the proceedings and applicable procedural requirements, secure legal assistance, and be heard according to law; however, the judge should be careful that accommodations do not give self-represented litigants an unfair advantage or create an appearance of judicial partiality. By way of illustration, Comment [1A] lists seven potential accommodations that a judge may make, in addition to any accommodations required by decisional or other law. These accommodations are to: (1) construe pleadings liberally; (2) provide brief information about the proceeding and evidentiary and foundational requirements; (3) ask neutral questions to elicit or clarify information; (4) modify the manner or order of taking evidence or hearing argument; (5) attempt to make legal concepts understandable; (6) explain the basis for a ruling; and (7) make referrals as appropriate to any resources available to assist the litigants.

Settlement or Resolution:

1. May I encourage the parties to resolve matters in dispute? Yes. Rule 2.6(B) states that a judge may encourage parties and their lawyers to resolve matters in dispute and, in accordance with applicable law, may participate in settlement discussions in civil proceedings and plea discussions in criminal proceedings, but

shall not act in a manner that coerces any party into settlement or resolution of a proceeding.

2. May I participate in settlement discussions in civil proceedings? Yes. Rule 2.6 permits judicial participation. Comment [2] provides cautionary advice and a list of seven factors a judge should consider when deciding upon an appropriate practice for a case. Rule 2.9(A)(4), which considers ex parte communications, states “a judge may, with the consent of the parties, confer separately with the parties and their lawyers in an effort to settle civil matters pending before the judge.”
3. May I participate in plea discussions in criminal proceedings? Yes. Rule 2.6(B) provides that a judge may do so in accordance with applicable law, which includes Mass. R. Crim. P. 12.

Speaking with Jurors after a Case:

1. May I thank jurors for their service? Yes. Rule 2.8(C) provides that a judge “may express appreciation to jurors for their service to the judicial system and the community.”
2. I know that the jury got it wrong. May I tell them so when I speak with them? No. Rule 2.8(C) states that “[a] judge shall not commend or criticize jurors for their verdict other than in a court order or opinion in a proceeding.”
3. Accepting a gift from a juror. See Gifts and Other Benefits, Related to Official Position or Action.

Ex Parte Communications in Specialty Courts:

1. I sit on a specialty court. (Note: The Terminology section defines a specialty court as a specifically designated court session that focuses on individuals with underlying medical, mental health, substance abuse, or other issues that contribute to the reasons such individuals are before the courts. The definition additionally notes that specialty court sessions integrate treatment and services with judicial case oversight and intensive court supervision. Examples include drug courts, mental health courts, veterans’ courts, and tenancy preservation programs.) Are there special rules concerning when I may engage in ex parte communications? Rule 2.9(A)(2) provides that a judge may engage in ex parte communications in specialty courts as authorized by law. The Terminology section defines “Law” to include court rules and standing orders issued by the Supreme Judicial Court, the Appeals Court, the Chief Justice of the Trial Court, or a Chief Justice of a Trial Court Department.

Inadvertently Received Communication:

1. A lawyer in a case copied me on an email meant for the client. I read this inadvertent communication, and realize it contains a discussion of trial strategy. What should I do? Rule 2.9(B) requires that if a judge inadvertently receives an unauthorized ex parte communication bearing on the substance of the matter, the judge must promptly notify the parties of the receipt and substance of the communication.

Consultation about a Case with my Colleagues:

1. I would like to consult with another judge who has handled a case involving a similar legal issue in the past. May I do so? Yes, with certain qualifications. Rule 2.9(A)(3) generally permits such consultation. However, a judge may not consult with a judge who has previously been disqualified from the matter, a judge who has a personal or financial interest that would preclude that judge from hearing the case, or a judge from a different department who may review the case.
2. May I consult with a law professor with expertise in the subject matter about a difficult case? No. Comment [3] to Rule 2.9 reminds judges that this consultation would violate Rule 2.9.

Teaching About a Pending Case:

1. I have been invited to speak about an issue in a case before me at a CLE program for lawyers. May I accept the invitation? No. Rule 2.10(F) prohibits a judge from speaking, writing, or teaching about issues in matters pending or impending before that judge.
2. I am a Superior Court judge and have been invited to participate in a CLE program about an issue relevant to a Superior Court case now on appeal to the Supreme Judicial Court. I was not involved in the case. May I participate? Yes, but Rule 2.10(F) cautions that you must take care that your comments do not impair public confidence in the independence, integrity, or impartiality of the judiciary.

Disqualification or Recusal:

1. I haven't seen or spoken with my nephew in many years. He is an officer of a corporation that is a party in a case pending before me. The attorneys in the case are not aware of this familial connection. I believe that I can be fair and impartial. Must I disclose the relationship and disqualify myself? Yes. A nephew is within the "third degree of relationship." See Rule 2.11(A)(2). Comment [2] provides that 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.

Rule 2.11(C) offers a basis for proceeding if the judge believes that he or she can be impartial (except where the disqualification is due to the judge's personal bias or prejudice). Under the provisions of Rule 2.11(C), the judge 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 and without participation by the judge and court personnel, whether to waive disqualification. If following a consultation that is free from coercion, express or implied, the parties and lawyers agree that the judge should not be disqualified, the judge may participate in the proceeding. The agreement must be incorporated into the record of the proceeding.
2. I am a new judge. My domestic partner is a venture capitalist with significant financial interests in a number of small Massachusetts companies. May I avoid learning about my partner's economic interests so that I don't run the risk of having to disqualify myself from hearing cases? No. Rule 2.11(B) requires a judge to make a reasonable effort to keep informed about the personal economic interests of the judge's spouse or domestic partner.
 3. A neighbor is a party in a case before me. Must I disqualify myself? The answer depends on the nature of the relationship. Comment [1] to Rule 2.11 cautions that social relationships may contribute to a reasonable belief that a judge cannot be impartial. Comment [5] states that "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."
 4. I denied a motion to disqualify, and one of the parties reacted by filing a complaint with the Commission on Judicial Conduct. Must I now disqualify myself? Probably not. Rule 2.11, Comment [6] explains that the filing of a judicial discipline complaint during the pendency of a matter does not necessarily require disqualification of the judge presiding over the matter. The judge's decision to disqualify in such circumstances must be resolved on a case-by-case basis.
 5. I have been a judge for ten years. For all these years, I have not heard cases involving attorneys from my former law firm. When I left the firm, I had two partners. Today, the firm has several additional partners and several associates. I know I can be impartial if I were to hear cases involving these new lawyers. May I hear the cases? A judge must satisfy both an objective and a subjective standard. Factors to consider when the judge applies the objective portion of the disqualification test include the length of the judge's association with the firm, the time that has passed since the association ended, any ongoing social relationship with the new lawyers, and the impact of frequent disqualification on the orderly flow of the court's business.
 6. I am a new judge. Previously, I served as a government lawyer in Massachusetts. I know I must comply with 2.11(A)(5)(b). Am I also required to comply with the provision in Rule 2.11(A)(5)(a) that disqualifies a judge who "was associated with a lawyer who participated substantially as a lawyer in the matter during such

association"? Rule 2.11(A)(5)(a) does not apply to other lawyers with whom you served in government employment. Rule 2.11(A)(5)(a) and (b) are derived in part from the Commentary to the 2003 Code that provided "a lawyer in a government agency does not ordinarily have an association with other lawyers employed by that agency."

Disability or Impairment, Responding to:

1. I sit in a small district court, and see many of the same lawyers on a regular basis. The performance of one of the lawyers has declined, and I have a reasonable belief that alcohol is to blame. Must I take action? Yes. Rule 2.14 requires 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, to take appropriate action. Appropriate action may take a range of forms, depending on the circumstances, and Comment [1] gives several examples.
2. I am presiding over a lengthy case. The performance of one of the lawyers has declined dramatically from a year ago, when I last saw that lawyer. I think the cause may be a mental or emotional condition. But the lawyer is, in my opinion, providing competent representation. Must I take action immediately? No. Rule 2.14, Comment [1] explains that if the lawyer is appearing before the judge, a judge may defer making a report until the matter has been concluded, but the report should be made as soon as practicable. However, Rule 2.14 compels immediate action when a lawyer is unable to provide competent representation to the lawyer's client.

Misconduct, Responding to:

1. A lawyer appearing before me committed a violation of the Rules of Professional Conduct that raises a substantial question regarding the lawyer's honesty. Will I satisfy my obligation if I speak privately to the lawyer's supervisor? No. Rule 2.15 requires that 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 shall inform the Office of Bar Counsel.
2. What if I only suspect that the lawyer has committed the violation of the Rules of Professional Conduct? Am I still required to inform the Office of Bar Counsel? No. Under these circumstances, Rule 2.15 requires the judge to take "appropriate action." Comment [2] describes a range of actions that may be appropriate, depending on the circumstances.

Use of Court Resources:

1. I am the secretary of the board of a local non-profit historical society. May I ask a court secretary to type the minutes of a meeting? No. Rule 3.1(E) is not

applicable because the work is not incidental to an activity that concerns the law, the legal system, or the administration of justice.

2. I have been invited to give a CLE lecture on national developments in search and seizure law. I will not be compensated. May I ask my law clerk to spend several hours one afternoon reviewing recent cases from other jurisdictions? Yes. Rule 3.1(E) permits a judge to make use of court premises, staff, stationery, equipment, or other resources that is reasonable in scope, not prohibited by law, and incidental to activities that concern the law, the legal system, or the administration of justice. Rule 3.1(E) applies only to law-related activities for which a judge is not compensated. The judge must, of course, also comply with any applicable court administrative policy concerning use of law clerks.
3. Each fall term, I teach an evening class on criminal procedure at a local law school. I am compensated for my role as an adjunct instructor. May I ask a law clerk to spend several hours one afternoon updating my course syllabus and accompanying packet of reading assignments to reflect recent court decisions? No. This request would violate Rule 1.3 because the judge would be using public resources to advance the judge's personal interests.

Appointments to Governmental Commissions:

1. I have been asked to serve on a governmental commission. May I do so? It depends. Rule 3.4 prohibits a judge from accepting 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. Even if the commission is concerned with the law, the legal system, or the administration of justice, further inquiry is necessary. When assessing the appropriateness of accepting an appointment, a judge must pay particular attention to the subject matter of the appointment and the availability and allocation of judicial resources, including the judge's time commitments. A judge must also give due regard to the importance of respecting the separation of powers, upholding the independence, integrity, and impartiality of the judiciary, and minimizing judicial disqualification.

Comment [1] to Rule 3.2, which is cross-referenced in Comment [1] to Rule 3.4, provides additional information concerning what types of subject matter may be appropriate. The types of topics appropriate for a judge to address include but are not limited to court facilities, funding, staffing, resources, and security; terms of employment, compensation, and other benefits of judges and court personnel; personal safety of judges and court personnel; court jurisdiction and procedures; the work of specialty courts; the admissibility or inadmissibility of evidence; judicial discretion in sentencing; funding for the legal representation of indigents; access to justice; and similar matters.

2. I have been invited to testify before a legislative committee about proposed legislation pertaining to specialty courts. May I do so? Yes. This subject would

fall within Rule 3.2, Comment [1]. If the subject matter is appropriate, a judge may propose or comment on new legislation or on amendments to existing law.

3. May I serve on a School Site Council at my child's school? No. A School Site Council (established pursuant to G.L. c. 71, § 59C) is a governmental body that is not concerned with the law, the legal system, or the administration of justice. As support for this conclusion, it is relevant that a School Site Council is charged with significant policy responsibilities, its meetings are subject to the open meeting law, and its members are subject to the state conflict of interest law (c. 268A).

Testifying as a Character Witness

See also Recommendations and References

1. I have been asked to prepare and sign an affidavit in support of a Motion for a New Trial that a former client is filing. The affidavit will include only factual, material information about which I have percipient knowledge. May I prepare and sign the affidavit? Yes. Appointment to judicial office does not prevent a judge from giving relevant factual testimony in a judicial proceeding when the judge is competent to do so.

A judge may sign this affidavit without violating the prohibition on voluntary proffers of character testimony in Rule 3.3 because the affidavit includes only factual, material information about which the judge has percipient knowledge.

Encouragement of Pro Bono Publico Services:

1. I plan to attend an upcoming bar association meeting. While I am there, may I encourage lawyers to provide pro bono legal services? Yes. Rule 3.7(B) permits a judge to encourage lawyers to provide pro bono services; however, Comment [6] cautions that a judge must be careful not to do so in a way that employs coercion or abuses the prestige of judicial office.
2. I would like to attend a bar event where lawyers who have done pro bono work will be recognized. May I? Yes. Comment [6] notes that one of the ways in which judges may encourage pro bono work is to participate in events that recognize lawyers who have done such work.

Participation in Law-Related Extra-Judicial Activities:

Preliminary Notes:

- A. Any grant of permission given by the Code in Rule 3.7 is “subject to the requirements of Rule 3.1.” In addition to prohibiting activities that would undermine the judge’s independence, integrity, or impartiality, Rule 3.1 requires that a judge shall not engage in conduct that would appear to a reasonable person

- to be coercive or participate in activities that are reasonably likely to interfere with the judge's judicial duties or to lead to recurrent disqualification.
- B. Rule 3.7 applies to activities of or sponsored by non-profit organizations that may or may not be law-related and to governmental entities concerned with the law, the legal system, or the administration of justice. Comments [1A] and [1B] provide guidance for evaluating the appropriateness of a judge's participating in any particular extrajudicial activity.
 - C. Also see CJE Letter Opinions 2016-02 and 2016-06.

Fundraising and Solicitation

1. I am a member of a bar association that intends to implement a fundraising campaign. May I participate in internal meetings about this campaign? Yes. Rule 3.7(A)(3) provides that a judge may participate in internal discussions related to fundraising.
2. May I solicit local lawyers for contributions? No. Rule 3.7(A)(4) prohibits a judge from soliciting for funds except from members of the judge's family or judges over whom the judge does not exercise supervisory or appellate authority.
3. May I encourage lawyers to join a law-related organization. Yes. Rule 3.7(A)(4) prohibits a judge from soliciting for members except from members of the judge's family or judges over whom the judge does not exercise supervisory or appellate authority. However, a judge's general suggestion or encouragement that lawyers join a bar association is not solicitation so long as a reasonable person would not feel obligated to respond favorably.
4. May my name and judicial title be listed on fundraising materials? Yes, if comparable designations are used for others. Although a judge may not solicit for funds, Rule 3.7, Comment [2] provides that a judge may be identified by name and title on fundraising materials so long as comparable designations are used for other persons.
5. May I accompany my child while she sells Girl Scout cookies? Yes. Rule 3.7(C) provides that "[a] judge may, as a parent or guardian, assist minor children in their fund-raising activities if the procedures employed are not coercive and the sums solicited are modest."
6. May I sell Girl Scout cookies at my courthouse? No. Comment [7] to Rule 3.7 explains that the word "assist" is intended to convey that a judge should not engage in direct solicitations on behalf of the child other than from members of the judge's family.

Speaking about the Administration of Justice:

1. I have been invited to speak about the administration of justice to a non-profit civic organization. The event is not a fundraiser, but will be sponsored by private corporations. May I accept? Yes. Rule 3.7(A)(6) generally permits speaking engagements at events sponsored by non-profit organizations. Comment [1B] states that a judge's speaking about the administration of justice will ordinarily be permitted even when "an event or program is held in space provided by a law firm or is financially supported or sponsored by one or more for-profit entities, such as law firms or legal vendors that do substantial business in the court on which the judge sits."

Serving as a Keynote or Featured Speaker:

1. I have been invited to be a keynote speaker at an annual meeting of a county bar association. The event is not a fundraiser, and will be held at a local hotel. May I accept this invitation? Yes. Rule 3.7(A)(6) provides for this sort of judicial participation.
2. Ticket sales for the event exceed projections, and the county bar association now thinks the revenues may exceed the costs. Does this make the event a fundraiser? No. Rule 3.7, Comment [3] explains that "a fundraising event is one for which the organizers' chief objectives include raising money to support the organization's activities beyond the event itself." Unless that is the case, an event is not a fundraising event, even if the revenues ultimately exceed the cost.
3. I have been invited to be a keynote speaker at the annual dinner of a county bar association. The event is a fundraiser and will be held at a local restaurant. May I accept this invitation? Yes. Rule 3.7(A)(6A) provides that a judge may serve as a keynote or featured speaker at a fundraising event if the event is sponsored by an organization concerned with the law, the legal system, or the administration of justice, *and* the organization promotes the general interests of the judicial branch of government or the legal profession, including enhancing the diversity and professionalism of the Bar. Comment [4] gives examples of the sorts of organizations covered by this provision, and specifically mentions general purpose and affinity bar associations.

Accepting Awards

1. I have been invited to accept an award at an annual meeting of a county bar association. The event is not a fundraiser, and will be held at a local hotel. May I accept this invitation? Yes. Rule 3.7(A)(6) provides for this sort of judicial participation.
2. I was mistaken. The event is a fundraiser. May I accept this invitation and receive the award? Yes. Rule 3.7(A)(6A) provides that a judge may accept an award at a fundraising event if the event is sponsored by an organization concerned with the law, the legal system, or the administration of justice, *and* the organization

promotes the general interests of the judicial branch of government or the legal profession, including enhancing the diversity and professionalism of the Bar. Comment [4] gives examples of the sorts of organizations covered by this provision, and specifically mentions general purpose and affinity bar associations.

Teaching

1. I have been invited to present at a non-profit educational conference about an area of law in which I have expertise. I have learned that several for-profit legal vendors are sponsors, and that these vendors will be offering products for sale in the registration area. May I attend and present? Yes. Rule 3.7, Comment [1A] clarifies that “[a]lthough activities permitted under this rule must be of or sponsored by an organization not conducted for profit, this requirement does not preclude the judge from participating in events of an organization that receives sponsorship or financial support from for-profit entities.”
2. I have been invited to teach a substantive law class at a law school. I have only a general knowledge of the subject area. To entice me to come, the law school has offered me a fee far in excess of that offered to lawyers who are experts in the field. The law school told me that it hopes that I will help its new graduates land clerkships in the judge’s court. May I accept the compensation offered? No. Rule 3.12 permits a judge to accept reasonable compensation for permitted extrajudicial activities. The compensation must be commensurate with the task performed and the judge’s qualifications for that task, and the judge must not appear to trade on the judicial position for personal advantage.

Fiduciary, Service as

1. I have been nominated for a judgeship. I have been serving as fiduciary for the estate of a deceased college friend since his death last year. I did not have a family-like relationship with this friend. May I continue to serve in this capacity? No. Rule 3.8 limits a judge’s appointment to serve in a fiduciary position to a member of the judge’s family (see definition in the Terminology section), and further provides that such service is permitted only if it will not interfere with the proper performance of judicial duties. Paragraph (D) provides that a judge must comply with this Rule as soon as reasonably possible and in any event within one year.
2. I have been nominated for a judgeship. I have been serving as executor for the estate of a deceased college friend since his death last year. I believe that I had a family-like relationship with this friend. How do I know? The CJE has found the following factors relevant to determining the existence of a close family-like relationship: (1) the length of the relationship, (2) the nature and degree of contact, (3) the sharing of special occasions (e.g., holidays, family events, vacations); (4) the commitment to assist with medical, legal, caretaking, and emotional needs, and

(5) your own assessment of the significance of the relationship in your life. See CJE Letter Opinion 2016-07.

3. My sibling has been diagnosed with a life-threatening disease. He would like to give me power of attorney. May I accept? Yes, you may accept a request that you accept power of attorney under the same circumstances as you may accept a request to serve as executor.

Practice of Law

1. My cousin, with whom I have a close, family-like relationship, has asked me to review the terms of a legal settlement. I will not be paid. May I do so? Yes. Rule 3.10(A) permits a judge, without compensation, to give legal advice to and draft or review documents for a family member, including a relative or person with whom the judge maintains a close family-like relationship.
2. My cousin has decided to challenge the terms of the settlement in further court proceedings. May I represent her? No. Rule 3.10(A) provides that a judge may not serve as a lawyer in any forum.
3. I am in the U.S. Army reserves. May I serve as a judge advocate general while I am on leave from my service as a Massachusetts judge? Yes. Rule 3.10(B) provides that “[a] judge may serve as a judge advocate general in the context of a judge's service in the United States Armed Forces, the reserve components of the United States Armed Forces, or the National Guard.”

Real Estate Investments

1. I have just been nominated for a judgeship. I own and manage a commercial office building that has twelve tenants. Among other things, I rent the offices, collect rent, arrange for repairs, and pay all bills. May I continue to do so as a judge? No. Rule 3.11 permits a judge to hold and manage investments, but not to manage a business. Comment [2] explains that “a judge must consider the difference between the permitted management of an investment and the prohibited management of a business,” and further states that “a judge who owns residential or commercial properties as investments may establish policy and participate in decisions regarding the purchase, sale, and use of land, but must leave the actual day-to-day management to others.” The more active, personal and time-consuming a financial pursuit becomes, the more business-like it becomes. The nature, extent, and complexity of the real estate holdings are relevant factors to consider.

Gifts and Other Benefits:

Preliminary Note: Acceptance of any gift or benefit is subject to the overarching requirements of Rule 3.13(A), which prohibits a judge from accepting any gift or benefit if acceptance is prohibited by law or would appear to a reasonable person to undermine the judge’s independence, integrity, or impartiality. “Law” is defined in the Terminology section, and Rule 1.1 further explains the relationship between c. 268A and the Code. A judge must comply with the State conflict of interest law except in those few instances where provisions of this Code supersede provisions of G.L. c. 268A. See, e.g., Rules 3.1(E) and 3.13 (D) – (E).

Gifts and Other Benefits, Unrelated to Official Position or Action

1. I received a 60th birthday gift of substantial value from a close personal friend. May I accept it? Yes. Must I disclose it? No. Rule 3.13(B) permits a judge to accept and not disclose gifts or benefits from close personal friends or relatives whose appearance or interest in a matter pending or impending before the judge would require the judge’s disqualification.
2. This is my first year as a judge. For many years, I have attended a holiday party hosted by my neighbor. Drinks and hors d’oeuvres are served. Neither my neighbor nor the usual guests have appeared before me in court. May I attend? Yes. Subject to the overarching requirements of Rule 3.13(A), Rule 3.13(B) permits a judge to accept and not disclose ordinary social hospitality.

Gifts and Other Benefits, Related to Official Position or Action

1. A county bar association plans to honor me at a reception and to give me a gift worth \$40. May I accept the gift? Yes. Must I disclose it? No. Paragraph 3.13(D) permits a judge to accept a gift, award, or other benefit incident to public recognition of the judge, provided the gift is not of substantial value (less than \$50).
2. What if I am presented with a gift certificate for \$100 to be used at an area store? Must I disclose it? Yes, Paragraph (E)(1) requires disclosure because the gift is of substantial value.
3. What if the gift is a clock that cost the bar association \$100 but is engraved with my name and an inscription? Must I still disclose it? No. Comment [13] explains that gifts that are inscribed or personalized may have little market value.
4. The bar association that plans to honor me has offered me a complimentary ticket for my spouse. Tickets to the event cost \$75. May I accept this ticket? Yes. Must I disclose it? Yes. Paragraph (E)(2) permits a judge to accept a gift of a complimentary invitation for a spouse or domestic partner, or other guests, to attend the event of a bar association or other non-profit concerned with the law,

the legal system, or the administration of justice where a judge is being honored, but disclosure is required.

5. I have been invited to attend without charge a dinner sponsored by a county bar association that will be held at a local restaurant. Tickets ordinarily cost \$100. May I accept the complimentary ticket? Yes. Must I disclose? No. Must I seek permission from the Chief Justice of my court? No. Paragraph (D)(2) provides that a judge may accept and not disclose an invitation to attend without charge a luncheon, dinner, reception, award ceremony, or similar event, held in Massachusetts, of a bar association or other non-profit organization concerned with the law, the legal system, or the administration of justice. Comment [14] explains that such invitations may be accepted without obtaining a determination by the Chief Justice of the court on which the judge sits that acceptance will serve a legitimate public purpose. The reason is that the judge's attendance is presumed to serve such a public purpose.

6. I have been offered free membership to a bar association. May I accept? Yes. Must I disclose? No. Paragraph (D)(3) provides that a judge may accept and not disclose discounted or free membership to a bar association or other non-profit organization concerned with the law, the legal system, or the administration of justice.

7. I have just completed a jury trial. A juror wrote me a note thanking me for the job I did presiding over what the juror described as a "tedious case." She included a gift of personalized stationary she made for me (from the juror's completed form, I recall that she is a graphic designer with a stationary business). May I keep the gift? No, you should either return the gift or offer to pay the fair market value of the gift. This gift was given to you because of your official position but not in "public recognition." Rule 3.13 does not allow a judge to accept a private gift from jurors, as doing so could appear to a reasonable person to undermine the integrity of the system.

Gifts or Benefits, Attorneys' Fees

1. The Commission on Judicial Conduct is investigating a complaint against me. One of my closest friends has offered to represent me free of charge. May I accept? Yes, but only if the lawyer is a solo practitioner or works at a firm where all of the lawyers are relatives or close personal friends. See 3.13(B)(2) and Comment [11].

2. The lawyer is a solo practitioner so I have accepted. Must I disclose the gift? No. See 3.13(B)(2) and Comment [11].

3. An excellent lawyer who specializes in attorney and judicial disciplinary cases offers to represent me as a discounted rate. The lawyer tells me that this rate reflects a standard discount she offers to lawyers facing proceedings before the

Board of Bar Overseers and to judges facing proceedings before the Commission on Judicial Conduct. May I accept? Yes, so long as the lawyer, the lawyer's firm, and their interests are not before the judge, have not come before the judge in the reasonably recent past, and are not likely to come before the judge in the reasonably near future. Must I disclose? Yes. See Rule 3.13, Comment [11].

Reimbursement of Expenses

1. I have been invited to present at an out-of-state educational conference for judges, and have been offered reimbursement of my expenses. May I be reimbursed? Yes, but only with permission from the Chief Justice of the court on which the judge sits. Where the invitation is connected to the judge's official position or official action and is not covered by Rule 3.13(D)(2) (which pertains to certain law-related events held in Massachusetts), Rule 3.14 requires the judge to notify the Chief Justice of the court on which the judge sits, and obtain a determination that acceptance of the reimbursement serves a legitimate public purpose and such purpose outweighs any non-work related benefit to the judge or to the person or organization providing the payment. Reimbursement is limited to necessary and reasonable expenses for travel, food, lodging, or other incidental expenses.

Political Activity of Member of a Judge's Family

1. My son wants to run for state representative from the town where I also live. Is he permitted to do so? Yes. Members of a judge's family are free to engage in their own political activity, including running for public office. However, Rule 4.1, Comment [4] emphasizes that a judge must not endorse, appear to endorse, appear to endorse, become involved in, or publicly associate with any family member's political activity or campaign for public office.

2. I sit in a courthouse that is outside of the district in which my son would represent, if elected. May I place a bumper sticker supporting him on my car? No. Rule 4.1, Comment [2] clarifies that a judge must not engage in any public display in support of a political candidate, including displaying a bumper sticker on an automobile the judge regularly uses.