

Committee on Judicial Ethics

FREQUENTLY ASKED QUESTIONS

Updated: October 12, 2021

The FAQs clarify Code provisions and include answers to requests for formal and informal advice that may be of interest and generally applicable to other judges.

Note: Every provision of the Code of Judicial Conduct is 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 convert otherwise permissible conduct into prohibited conduct. Whenever you are unsure about whether contemplated conduct is permissible under the Code, please contact the Committee on Judicial Ethics.

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Below are brief answers to some frequently asked questions.

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 in state court, accept an appointment to represent a party, or perform dispute-resolution services, including serving as a master, 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 Application (IB) and Comment [1]; Letter Opinions 2016-03 and 2016-05.
5. I am a retired judge. May I supervise lawyers appearing in state court during my first six months of retirement? It depends. The answer is "no," if your supervisory role in the case is such that you would enter an appearance were it not for the Code's prohibition.

Note: A retired judge returning to the practice of law must follow the Massachusetts Rules of Professional Conduct. A lawyer who is a retired or former judge shall not state or imply that the lawyer's former service as a judge enables the lawyer to improperly influence any person or entity, including a government agency or official, or to achieve results by means that violate the Massachusetts Rules of Professional Conduct or other law.

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. See Rule 1.1. 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. I have been invited to write a promotional "blurb" for the back cover of a book on a legal subject in which I am considered an expert. May I do so? No. Endorsing the book violates the Code's prohibition on abusing the prestige of judicial office to advance the personal or economic interest of another (here, the author and publisher). See Rule 1.3.

2. My college or law school wishes to include my photo, along with the photos of eleven other alumni, on a billboard that will be placed in subways and other public locations. Each of the alumni would be identified by name and occupation. The billboard will state: "These alumni stand with [name of school]." May I participate? No. This billboard is intended to market the school; its purpose is to enhance the school's reputation and attract students by highlighting that the school produces successful leaders. A billboard (or other means of communication, such as a video) may be a form of prohibited marketing even if it does not directly solicit for funds or students. Here, a judge's participation would violate Rule 1.3 of the Code of Judicial Conduct because the judge would be allowing the school to abuse the prestige of judicial office to promote the school to external audiences. "Abuse" does not require a judge to act with bad purpose or effect. A judge may not use the prestige of judicial office in any way that is incompatible with the judicial role. See also Letter Opinion 2017-02.

3. My college (or law school) alumni bulletin prints career updates. I was recently appointed as a judge, and the bulletin wishes to interview me for a full-page spread about my career path and accomplishments. Each issue of the alumni bulletin typically includes one or more similar profiles. See Rule 1.3.

A. May I participate? Yes. The primary purpose of this profile is to share with the alumni community the career paths and accomplishments of particular alumni who have achieved a high level of success in their chosen field of work. While alumni bulletins may be read by prospective students and others, the school is not featuring you as part of a marketing campaign intended to promote the school.

B. I am very pleased with the education I received at my school. In the interview, may I praise the classes I took, the mentoring I received, and the advice provided by the career services office? Yes. Judges are often asked and permitted to discuss their paths to success and to give credit where appropriate. As long as the judge does not allow another to abuse the prestige of judicial office to advance the interest of this third party, particularly in marketing materials, such an interview is permitted under the Code.

C. May I state that my school experience was so transformative that I hope others with similar career ambitions will attend the school? A judge should avoid statements that cross the line from informational to promotional.

4. My school wishes to conduct a video interview of me for its website. The subject will be the role of the judiciary and the importance of the rule of law. May I participate? Yes. Judges are encouraged to participate in outreach that helps to advance public understanding of the role of the judicial branch of government. Of course, here, as in all contexts, a judge must be mindful of the obligation to avoid statements that cross the line from informational to promotional. In general, statements intended to recruit future students or to solicit potential donors would be regarded as promotional.

5. My school wishes to conduct a video interview of me to post on the website of the undergraduate pre-law program. The subject will be my career and how I became a judge. May I participate? Yes, this interview is intended to educate existing students about prospective careers and potential career paths. Again, a judge should avoid statements that cross the line from informational to promotional.

6. My law school is celebrating a milestone anniversary and is hosting dinners in cities across the nation. I have been invited to be a keynote speaker to discuss the importance of an independent judiciary and equal justice under the law. May I accept? Yes, so long as the dinner is not a fundraising event as defined by the Code. The Code defines a fundraising event as one "for which the organizers' chief objectives include raising money support the organization's activities beyond the event itself." (If a judge is unsure whether an event is a fundraiser, the judge should make an inquiry to the organizers.) If the event is a fundraiser, the judge may attend, but may not be a keynote or featured speaker. See Rule 3.7(A)(6A). The judge should also keep in mind the prohibitions against a judge's solicitation for funds in Rule 3.7(A)(4).

Judicial Letterhead. See also Recommendations.

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.

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 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.
3. 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.

Person the Judge Knows in a Non-Judicial Capacity

4. A neighborhood teenager has been a regular babysitter for my young children. He is applying to college/law school and has asked me to write a letter or recommendation. May I do so? May I use judicial letterhead? You may write a letter of recommendation but may not use judicial letterhead or your judicial title because you know this person only in your non-judicial capacity. You may refer to your judicial position only if it is relevant to some substantive aspect of the recommendation. Rule 1.3, Comment [2].

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. May I participate in the judicial selection process by testifying at confirmation hearings? Yes. 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.

7. Is a notary public a court-related office under Rule 3.3? Yes.

Bar Applicants

8. 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.

Attorneys Seeking Reinstatement

9. A disbarred attorney has petitioned for reinstatement to the Massachusetts Bar. I am familiar with the many good works the attorney has been involved with during the period of discipline. May I testify voluntarily for the attorney at the reinstatement proceeding? No. A reinstatement proceeding is a formal judicial proceeding. See Rule 3.3 and Letter Opinion 2016-13.

Background Checks

10. 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

11. 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. See 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. See 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.

2. I am presiding over a complex and potentially viable case brought by self-represented litigant. The litigant would like to obtain counsel, and I believe that it would be beneficial to all concerned if the litigant had legal representation. May I personally

reach out to a legal services provider (organization, law firm, or individual lawyer) to request that they consider providing representation to the self-represented litigant? No. The Code does not permit a judge to personally solicit legal representation for a litigant. A request of this nature reasonably would be viewed as coercive, as the contacted provider may feel pressured to become involved in the case. It also would call the judge's impartiality into question by creating the impression that the provider is favored by the judge. However, a judge may refer the litigant to court resources that provide self-help support including information about obtaining counsel. The Court Service Centers (which are physically located in seven courthouse complexes and also provide services remotely) are particularly well-equipped to provide information and assistance to litigants who are seeking counsel.

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 about a difficult case with a law professor with expertise in the subject matter? No. Comment [3] to Rule 2.9 reminds judges that this consultation would violate Rule 2.9.

3. I often consulted with an experienced judge about challenging cases. That judge has now retired and is not on the recall list. That judge has no plans to practice law. May I continue to consult with that judge? No. That consultation would violate Rule 2.9.

Teaching About a Pending Case

1. I have been invited to speak about an issue in a case pending 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. The Code defines “economic interest” as “more than a de minimis legal or equitable interest.” How do I determine whether an investment is more than de minimis? An economic interest is an ownership interest in excess of one percent or with a fair market value above \$5000 unless otherwise specifically exempted. See Rule 2.11 and Letter Opinion 2017-05.

2. 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.

3. 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.

4. 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.

5. 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.”

6. I am a new judge. A member of the Governor's Council is a party (or representing a party) in a case assigned to me. Do I have a per se obligation to disqualify myself? No. A judge may hear the case so long as the judge is able to satisfy both the objective and subjective standard under Rule 2.11.

7. I am a new judge. A member of the Judicial Nominating Commission is a party in a case assigned to me. Do I have a per se obligation to disqualify myself? No. A judge may hear the case so long as the judge is able to satisfy both the objective and subjective standard under Rule 2.11.

8. 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.

9. 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? Rule 2.11 requires a judge to 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.

10. 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), which disqualifies a judge who "was associated with a lawyer who participated substantially as a lawyer in the matter during such association"? No. Rule 2.11(A)(5)(a) does not apply to other lawyers with whom you served in government employment.

11. I am a new judge. One of my former clients is a party in a case. May I hear the case? The judge should engage in an individualized, comprehensive analysis where a past attorney-client relationship is at issue. These factors include but are not limited to the nature, frequency, intensity, and duration of the prior representation and the length of time since the representation ended. Letter Op. 2018-04 includes a list of factors for the judge to consider in making this fact-intensive inquiry.

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 act? 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, Reporting and 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.
3. A self-represented litigant appearing before me committed an act that, if committed by a lawyer, I would be required to report to the Office of Bar Counsel. What action, if any, may I take? A judge may take appropriate action given the circumstances. Depending on the circumstances, appropriate action may include but is not limited to admonishing the litigant, sanctioning the litigant, or reporting the misconduct to an appropriate official (e.g., District Attorney, Massachusetts Department of Revenue, Internal Revenue Service).

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 for a non-profit continuing legal education provider. 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 non-profit 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.

2. 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.

3. 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.

4. 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). See Rule 3.4.

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 submitting relevant factual testimony in a judicial proceeding when the judge is competent to do so. The judge's action does not violate the prohibition against the practice of law in Rule 3.10.

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. Rule 3.7, 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 Note: 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.

1. 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. This section addresses law-related organizations, and the following section addresses non-law-related organizations.

Holding a Leadership Role in a Bar Association

2. I have been invited to become president of a county bar association. May I accept? Rule 3.7(A)(5) provides that a judge may serve as an officer, director, or trustee of a non-profit organization so long as it is not likely that the association will be engaged in proceedings that would ordinarily come before the judge or will frequently be engaged in adversary proceedings in the court of which the judge is a member. A judge must avoid participating in discussions and decisions concerning any policy areas that might erode public confidence in the independence, impartiality, or integrity of the judiciary. A judge must comply with the restrictions the Code places on a judge's involvement on solicitation for funds or members, as well as all other Code restrictions. See Letter Opinion 2017-03.

3. Bar association leaders have suggested that I run in a competitive election for an officer position. May I? No. A judge must not place himself or herself in a position where the judge must ask for votes or support from lawyers.

Participating in Fundraising and Solicitation Efforts

4. 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.

5. 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.

6. May I encourage lawyers to join a state or local bar 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.

7. May my name and judicial title be listed on fundraising materials? Although a judge may not solicit contributions, Comment [2] to Rule 3.7 provides that a judge may be identified by name and title as an organization's officer, director, trustee, non-legal advisor, or member on websites, emails, letterhead, and any other communication materials created and issued by others within the organization to solicit donations, so long as comparable designations are used for other persons. While it is preferable for judges not to be so identified, the Code recognizes that it would be burdensome for judges to monitor and direct the communications of organizations with which they are involved.

8. I am a member of a law-related organization that plans to establish a host committee for a fundraising event. May I be listed as a member of the host committee? No. Joining a host committee constitutes impermissible solicitation because the general purpose of a host committee is to encourage solicitation, whether directly or indirectly. It is not burdensome for a judge to decline to join a host committee being created for a particular fundraising event. See Rule 3.7(A)(4).

9. 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 fundraising activities if the procedures employed are not coercive and the sums solicited are modest.”

10. 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.

Fundraising Events, Attendance

11. May I purchase a ticket and attend an annual fundraising dinner for an organization that provides legal services to indigent litigants on a diverse set of issues? The Code generally permits a judge to attend such events. Legal services organizations support access to justice by assisting indigent people on a wide range of issues, and the Code encourages judges to participate in activities that promote access to all. See Rule 1.2, Comment [3]. Before attending the event of any law-related organization, a judge must undertake an individualized analysis to be sure that, in light of the judge's particular caseload and other judicial duties, his or her attendance satisfies the requirements of Rule 3.1 and Rule 3.7(A)(2). A judge must keep in mind that the timing of a judge's attendance at a fundraising event may lead to disqualification or disclosure obligations.

12. May I purchase a ticket and attend an annual fundraising dinner for GLAD (Legal Advocates and Defenders for the LGBTQ Community)? The Code generally permits a judge to attend such events. GLAD, like the NAACP Legal Defense Fund, MALDEF, and similar groups, is dedicated to obtaining and preserving equal rights and equal justice for members of groups that have historically been targeted for discrimination on a wide range of issues, and the Code encourages judges to engage in activities that promote the rule of law. See, e.g., Letter Opinion 2017-01. Before attending the event of any law-related organization, a judge must undertake an individualized analysis to be sure that, in light of the judge's particular caseload and other judicial duties, his or her attendance satisfies the requirements of Rule 3.1 and Rule 3.7(A)(2). A judge must keep in mind that the timing of a judge's attendance at a fundraising event may lead to disqualification or disclosure obligations.

Fundraising, Charitable Donations

Note: The considerations relevant to whether a judge may attend a fundraiser are also relevant to determining whether a judge may make a personal, charitable donation. A judge must keep in mind that the timing or size of a charitable donation may lead to disqualification or disclosure obligations.

13. May I make a charitable donation to an organization that provides legal services to indigent litigants on a diverse set of issues? Yes. Disclosure or disqualification is generally not required unless the timing or amount of the judge's contribution would lead a disinterested observer to question the judge's impartiality.

14. May I make a charitable donation to GLAD (Legal Advocates and Defenders for the LGBTQ Community)? Yes. If GLAD appears before the judge within a reasonable period of time following the donation, the judge must consider whether the timing and size of the donation would lead a disinterested observer to question the judge's impartiality. If GLAD is not a party or counsel but the case involves issues relevant to GLAD's work, the judge must consider whether the timing or amount of the judge's contribution would lead a disinterested observer to question the judge's impartiality.

Speaking about the Administration of Justice

15. I have been invited to speak about the administration of justice to a non-profit law-related 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

16. 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.

17. 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.

18. 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

19. 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.

20. 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.

Participation in Non-Law-Related Extra-Judicial Activities

Holding a Leadership Role

1. I have been invited to serve on the board of trustees of my child's independent school. May I accept? Yes. Rule 3.7(A)(5) provides that a judge may serve as a trustee of a non-profit organization so long as it is not likely that the association will be engaged in proceedings that would ordinarily come before the judge or will frequently be engaged in adversary proceedings in the court of which the judge is a member. You must comply with the restrictions the Code places on a judge's involvement on solicitation for funds or members. See Letter Opinion 2016-02.

2. I have been invited to serve on the board of directors of a social service agency. The agency provides a variety of services to both court-involved and non-court involved individuals in the area served by the court of which I am a member. May I accept? Service on a board of directors is not permissible if it gives rise to the need for recurrent disqualification. See Rule 3.1 (B). Disqualification is necessary when the judge would be in a position to refer a litigant to programs and services provided by an agency, and in other proceedings where the agency has involvement. See CJE Opinion 2006-7 (deciding, under analogous provisions of our prior Code, that a judge could not serve on the board of a health services organization that did business with the courts).

Participating in Fundraising and Solicitation Efforts

3. I am a member of a non-profit community orchestra 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.
4. 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.
5. May my name and judicial title be listed on fundraising materials? Although a judge may not solicit contributions, Comment [2] to Rule 3.7 provides that a judge may be identified by name and title as an organization's officer, director, trustee, non-legal advisor, or member on websites, emails, letterhead, and any other communication materials created and issued by others within the organization to solicit donations, so long as comparable designations are used for other persons. While it is preferable for judges not to be so identified, the Code recognizes that it would be burdensome for judges to monitor and direct the communications of organizations with which they are involved.
6. I am a member of a non-profit organization that plans to establish a host committee for a fundraising event. May I be listed as a member of the host committee? No. Joining a host committee constitutes impermissible solicitation under Rule 3.7(A)(4) because the general purpose of a host committee is to encourage solicitation, whether directly or indirectly. It is not burdensome for a judge to decline to join a host committee being created for a particular fundraising event.

Speaking about the Administration of Justice

7. 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."
8. In the remarks I have prepared to deliver, I would like to respond to statements made by public officials and others that appear to reflect misconceptions about the role of an independent judiciary in our system of government or manifest disrespect for the rule of law. May I do so? Yes. It is proper for a judge to dispel misconceptions about the role of an independent judiciary and to emphasize the importance of respect for the rule of law, so long as the judge's remarks preserve the dignity of judicial office, would not lead a reasonable person to question the judge's ability to impartially administer the law,

and avoid the implication the judge is influenced by, or appears to be influenced by, partisan or political interests. See Rules 1.2 and 4.1(B) and Letter Opinion 2017-01.

Serving as a Keynote or Featured Speaker

9. I have been invited to be a keynote speaker at an annual meeting of a non-law-related non-profit organization. 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.

10. Ticket sales for the event exceed projections, and the organization 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.

11. I have been invited to be a keynote speaker at the annual dinner of the organization. The event is a fundraiser and will be held at a local restaurant. May I accept this invitation? No. Rule 3.7(A)(6A) permits a judge to serve as a keynote or featured speaker at a fundraising event only of a general-purpose law-related organization.

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 Rule 3.8 and 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. See Rule 3.8.

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.”
4. I am a newly appointed judge. A former client's criminal case is scheduled for trial. Successor counsel has asked to meet with me to seek my advice concerning trial strategy. May I do so? No. Prior to assuming judicial office, a judge-nominee should anticipate a client's (and successor counsel's) future needs for information and assistance and meet them before assuming judicial office. Once a judge has assumed judicial office, any conversations with successor counsel will be limited to historical facts not readily apparent from the file and similar matters of clarification. Rules 1.2 and 3.10; Letter Opinion 2018-02.

Financial Activities, Managing Investments

1. I manage my significant financial investments, including reinvesting much of the income earned from these investments. I have just been nominated for a judgeship. May I continue to manage my investments? Yes. Rule 3.11 permits a judge to hold and manage investments of the judge and members of the judge's family. You must, however, divest yourself of investments that might require frequent disqualification, interfere with the proper performance of your judicial duties, involve you in business relationships with lawyers or others likely to come before the court on which you serve, or result in violation of other provisions of the Code.
2. 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.

Business Activity

1. I am a musician and joined a "business band" that intends to perform for a fee. I would not be paid a salary but would be paid a share of the proceeds from each gig. For tax purposes, I would be an independent contractor. May I participate under these terms? No, this band is a business entity and is distinguishable from a group of musicians who plays together for personal enjoyment and may occasionally perform for a fee. The prohibition on a judge's serving as an employee of any business entity includes serving as an independent contractor. See Rule 3.11 and Letter Opinion 2017-04.
2. What if I agreed to perform with the "business band" only as a volunteer? May I then participate? No. The Code prohibits a judge from being an active participant in any form of business organized for profit. See Rule 3.11 and Letter Opinion 2017-04.
3. My parents and siblings operate a retail business. I would like to be able to help out on occasional weekends by performing such backroom tasks as inventory control and packing orders for delivery. I would not be compensated. May I do so? No, the Code prohibits a judge from being an active participant in any form of business organized for profit. See Rule 3.11 and Letter Opinion 2018-01.

Compensation for Extrajudicial Activities

1. I am an amateur photographer. To date, my involvement has been entirely avocational; I take photos for my own enjoyment and sometimes give them as gifts to friends and family. I would like to have some of my photographs included in gallery exhibitions in which the items on display may be purchased for a fixed price, which is typically divided between the artist and the exhibitor. I would be identified by name but there would not be any reference to my judicial title. May I participate? Yes, so long as your participation does not become so extensive that you would be conducting a business as a sole proprietor. See Rule 3.12 and Letter Opinion 2016-04. You must report your earnings on the annual Public Report of Extra-Judicial Income promulgated by the Supreme Judicial Court. See 3.15.
2. I am a musician and play regularly in an informal band. Our band has performed without pay, but we have now been offered some paying gigs. The money paid would be divided equally among the musicians. May I participate? Yes, so long as your participation in the band does not become so extensive that you would be conducting a business. You must report your earnings on the annual Public Report of Extra-Judicial

Income promulgated by the Supreme Judicial Court. See Rule 3.12 and Letter Opinion 2016-04.

Teaching and Writing

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.

3. I have been invited to teach at a for-profit law school. I would be compensated at a level consistent with other adjunct faculty. May I accept? Yes, although a judge may not ordinarily be an employee or independent contractor of a business entity, there is an exception for writing and teaching for for-profit entities. See Rule 1.3, Comment [4] and Rule 3.7, Comment [5].

4. I have been working on a screenplay during non-working hours. May I share it with agents or otherwise attempt to sell it? Yes. Rule 1.3, Comment [4] acknowledges that a judge may 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 position.

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

3. 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).
4. 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.
5. 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.
6. 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.
7. 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.

8. 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.

9. 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 stationery 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

10. 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 the lawyers are relatives or close personal friends. See 3.13(B)(2) and Comment [11].

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

12. An excellent lawyer who specializes in attorney and judicial disciplinary cases offers to represent me before the Commission of Judicial Conduct at 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].

13. A lawyer has offered to represent me for a discounted fee before the Commission on Judicial Conduct. This lawyer is not a close personal friend, and this is not the lawyer's standard policy. May I accept? No. The judge may, however, seek a determination from the Supreme Judicial Court that such representation would serve the public interest. See Rule 3.13, Comment [11B]. See also SJC Standing Order Regarding Procedure for Judges Seeking a Determination Concerning Attorneys' Fees for Representation in a Matter Before the Commission on Judicial Conduct.

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, 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.

Political Activity, Public Display

1. I would like to attend a march supporting scientific research on climate change. Is that permissible under Rule 4.1? It depends. Rule 4.1 prohibits judges from participating in political activity that gives the impression of favoring the interests of a political organization or candidate. Factors relevant to determining whether participation is allowed include the identity of the organizers, the stated rationale for the event, and the manner in which the media describes the event. An event intended to "send a message" to a political party or particular politicians will violate the Code. See Letter Opinion 2016-10.

2. I would like to attend a protest against the policies of an elected official who has announced that she will not run for reelection. Is this prohibited under Rule 4.1? Yes. The restrictions in Rule 4.1 prohibit a judge from engaging in any public display in support of or opposition to an elected or appointed official that gives the impression of favoring the interests of a political organization or candidate.

3. May I attend the inauguration of my city's mayor as an invited guest? Yes, an inauguration is a ceremonial event that celebrates the peaceful transition of power in a nation governed by the rule of law. Attending an inauguration does not violate the prohibitions in Rule 4.1.
4. My town will be considering a non-partisan but contentious ballot question concerning a debt exclusion override to finance school construction at a non-partisan town election, where members of the Town Committee are also elected. May I post a sign supporting the ballot question? May I contribute funds to the campaign in support of the ballot question? May I speak out in favor? No. The prohibitions in Rule 4.1 also apply to non-partisan ballot questions.

Social Media

1. What limits, if any, does the Code of Judicial Conduct place on my using social media? The CJE has discussed permissible and impermissible uses of Facebook, LinkedIn, and Twitter, respectively, in Letter Opinions 2016-01, 2016-08, 2016-09, 2018-03, and 2021-01, which address the application of various Code provisions to the social media context. Please note that a judge may not be a Facebook friend or a LinkedIn contact with a lawyer who is reasonably likely to appear before the judge. Please also note that when a lawyer who was a former Facebook friend or LinkedIn connection appears before the judge, the judge should exercise his or her sound discretion based on all the facts to decide whether to disclose the existence of the former online relationship. (Letter Op. 2018-03, modifying Letter Op. 2016-01)

Casinos

1. May I spend an evening at a casino and gamble, so long as I behave responsibly? Yes. In 1972, the Supreme Judicial Court noted in dicta that "public gambling and being a judge are completely incompatible." *In re Desaulnier*, 360 Mass. 787 (1972). We no longer view that dictum as controlling in an era when Massachusetts has legalized gambling. As with any activity of a judge, you must behave with dignity and always be aware that your behavior may be subject to scrutiny by members of the public who may recognize you.
2. I sit in Springfield, just steps away from MGM Springfield, an entertainment complex that includes restaurants, shops, a movie theater, and bowling in addition to a casino. May I eat lunch at one of the restaurants on a working day? Yes, so long as you do so during the lunch hour.

Marijuana

1. May I purchase and use recreational marijuana in Massachusetts or any other state where it is legal? No. As a judge, you must comply with federal as well as state law.