

# 2007 ABA MODEL CODE vs. MINN. CODE OF JUDICIAL CONDUCT

## CANON 3

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

### RULE 3.1

#### *Extrajudicial Activities in General*

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

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

#### COMMENT

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

## CANON 4

A Judge Shall Conduct All Extra-Judicial Activities so as to Minimize the Risk of Conflict With Judicial Obligations

### A. Extra-Judicial Activities in General.

A judge shall conduct all extra-judicial activities so that they do not:

- (1) cast reasonable doubt on the judge's capacity to act impartially as a judge;
- (2) demean the judicial office; or
- (3) interfere with the proper performance of judicial duties.

## CANON 2

C. A judge shall not knowingly hold membership in any organization that practices unlawful discrimination.

## 2007 ABA MODEL CODE vs. MINN. CODE OF JUDICIAL CONDUCT

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

[3] Discriminatory actions and expressions of bias or prejudice by a judge, even outside the judge's official or judicial actions, are likely to appear to a reasonable person to call into question the judge's integrity and impartiality. Examples include jokes or other remarks that demean individuals based upon their race, sex, gender, religion, national origin, ethnicity, disability, age, sexual orientation, or socioeconomic status. For the same reason, a judge's extrajudicial activities must not be conducted in connection or affiliation with an organization that practices invidious discrimination. See Rule 3.6.

[4] While engaged in permitted extrajudicial activities, judges must not coerce others or take action that would reasonably be perceived as coercive. For example, depending upon the circumstances, a judge's solicitation of contributions or memberships for an organization, even as permitted by Rule 3.7(A), might create the risk that the person solicited would feel obligated to respond favorably, or would do so to curry favor with the judge.

### **RULE 3.2**

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

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

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

### **CANON 4**

#### **C. Governmental, Civic or Charitable Activities.**

- (1) A judge shall not appear at a public hearing before, or otherwise consult with, an executive or legislative body or official except on matters concerning the law, the legal system or the administration of justice or except when acting pro se in a matter involving the judge or the judge's interests.
- (2) A judge shall not accept appointment to a governmental committee or commission or other governmental position that is concerned with issues of fact or policy on matters other than the improvement of the law, the legal system or the administration of justice. A judge may, however, represent a country, state or locality on ceremonial occasions or in connection with historical, educational or cultural activities.

## 2007 ABA MODEL CODE vs. MINN. CODE OF JUDICIAL CONDUCT

### COMMENT

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

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

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

### RULE 3.3

#### *Testifying as a Character Witness*

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

### COMMENT

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

### CANON 2 B. (Partial)

... A judge shall not testify voluntarily as a character witness.

## 2007 ABA MODEL CODE vs. MINN. CODE OF JUDICIAL CONDUCT

### **RULE 3.4**

#### *Appointments to Governmental Positions*

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

#### **COMMENT**

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

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

### **RULE 3.5**

#### *Use of Nonpublic Information*

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

#### **COMMENT**

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

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

### **CANON 4 C.**

(2) A judge shall not accept appointment to a governmental committee or commission or other governmental position that is concerned with issues of fact or policy on matters other than the improvement of the law, the legal system or the administration of justice. A judge may, however, represent a country, state or locality on ceremonial occasions or in connection with historical, educational or cultural activities.

### **CANON 3 B.**

(12) A judge shall not disclose or use, for any purpose unrelated to judicial duties, nonpublic information acquired in a judicial capacity.

## 2007 ABA MODEL CODE vs. MINN. CODE OF JUDICIAL CONDUCT

### RULE 3.6

#### *Affiliation with Discriminatory Organizations*

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

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

#### COMMENT

[1] A judge's public manifestation of approval of ~~invidious~~ unlawful discrimination on any basis gives rise to the appearance of impropriety and diminishes public confidence in the integrity and impartiality of the judiciary. A judge's membership in an organization that practices ~~invidious~~ unlawful discrimination creates the perception that the judge's impartiality is impaired.

[2] An organization is generally said to discriminate ~~unlawfully invidiously~~ if it arbitrarily excludes from membership on the basis of race, sex, gender, religion, national origin, ethnicity, ~~or~~ sexual orientation, **or other classification protected by law**, persons who would otherwise be eligible for admission. Whether an organization practices ~~unlawful invidious~~ discrimination is a complex question to which judges should be attentive. The answer cannot be determined from a mere examination of an organization's current membership rolls, but rather, depends upon how the organization selects members, as well as other relevant factors, such as whether the organization is dedicated to the preservation of religious, ethnic, or cultural values of legitimate common interest to its members, or whether it is an intimate, purely private organization whose membership limitations could not constitutionally be prohibited.

### CANON 2 C .

A judge shall not knowingly hold membership in any organization that practices unlawful discrimination

## 2007 ABA MODEL CODE vs. MINN. CODE OF JUDICIAL CONDUCT

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

[4] A judge's membership in a religious organization as a lawful exercise of the freedom of religion is not a violation of this Rule.

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

### **RULE 3.7**

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

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

- (1) assisting such an organization or entity in planning related to fund-raising, and participating in the management and investment of the organization's or entity's funds;**
- (2) soliciting\* ~~contributions~~ funds and services\* for such an organization or entity, but only from members of the judge's family,\* or from judges over whom the judge does not exercise supervisory or appellate authority;**
- (3) soliciting membership for such an organization or entity, even though the membership dues or fees generated may be used to support the objectives of the organization or entity, but only if the organization or entity is concerned with the law, the legal system, or the administration of justice;**
- (4) appearing or speaking at, receiving an award or other recognition at, being featured on the program of, and permitting his or her title to be used in connection with an event of such an organization or entity, but if the event serves a fund-raising**

### **CANON 4 C.**

(3) A judge may participate in civic and charitable activities that do not reflect adversely upon the judge's impartiality or interfere with the performance of judicial duties. A judge may serve as an officer, director, trustee or non-legal advisor of an educational, religious, charitable, fraternal or civic organization not conducted for the economic or political advantage of its members, subject to the following limitations and the other requirements of this Code:

(a) A Judge shall not serve as an officer, director, trustee or non-legal advisor if it is likely that the organization:

(i) will be engaged in proceedings that would ordinarily come before the judge, or

(ii) will be engaged frequently in adversary proceedings in the court of which the judge is a member or in any court subject to the appellate jurisdiction of the court of which the judge is a member.

(b) A judge shall not solicit funds for any educational, religious, charitable, fraternal or civic organization, or use or permit the use of the prestige of judicial office for that purpose, but may be listed as an officer, director or trustee of such an organization. A Judge shall not be a speaker or the guest of honor at an organization's fund raising events, but may attend such events. A judge may participate in the management and investment of an organization's funds so long as it does not conflict with other provisions of the Code.

## 2007 ABA MODEL CODE vs. MINN. CODE OF JUDICIAL CONDUCT

purpose, the judge may participate only if the event concerns the law, the legal system, or the administration of justice;

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

(6) serving as an officer, director, trustee, or nonlegal advisor of such an organization or entity, unless it is likely that the organization or entity:

(a) will be engaged in proceedings that would ordinarily come before the judge; or

(b) will frequently be engaged in adversary proceedings in the court of which the judge is a member, or in any court subject to the appellate jurisdiction of the court of which the judge is a member.

(B) A judge may encourage lawyers to provide pro bono publico legal services.

### COMMENT

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

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

## 2007 ABA MODEL CODE vs. MINN. CODE OF JUDICIAL CONDUCT

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

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

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

[6] **A judge's membership in and execution of duties, including fund raising and grant making, in a religious organization as a lawful exercise of the freedom of religion is not a violation of this Rule.**

### RULE 3.8

#### *Appointments to Fiduciary Positions*

**(A) A judge shall not accept appointment to serve in a fiduciary\* position, such as executor, administrator, trustee, guardian, attorney in fact, or other personal representative, except for the estate, trust, or person of a member of the judge's family,\* and then only if such service will not interfere with the proper performance of judicial duties.**

**(B) A judge shall not serve in a fiduciary position if the judge as fiduciary will likely be engaged in proceedings that would ordinarily come before the judge, or if the estate, trust, or ward becomes involved in adversary proceedings in the court on which the judge serves, or one under its appellate jurisdiction.**

### CANON 4

#### **E. Fiduciary Activities.**

(1) A judge shall not serve as executor, administrator or other personal representative, trustee, guardian, conservator, attorney in fact or other fiduciary, except for the estate, trust, conservatorship or person of a family member, and then only if such service will not interfere with the proper performance of judicial duties.

(2) A judge shall not serve as fiduciary if it is likely that the judge as a fiduciary will be engaged in proceedings that would ordinarily come before the judge, or if the estate, trust, conservatorship or ward becomes involved in adversary proceedings in the court on which the judge serves or one under its



## 2007 ABA MODEL CODE vs. MINN. CODE OF JUDICIAL CONDUCT

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

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

### COMMENT

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

### RULE 3.9

#### *Service as Arbitrator or Mediator*

**A judge shall not act as an arbitrator or a mediator or otherwise perform other judicial functions in a private capacity ~~apart from the judge's official duties~~ unless expressly authorized by law.\* A retired judge may act as mediator or arbitrator if:**

**(A) The judge does not act as an arbitrator or mediator during the period of any judicial assignment;**

**(B) The judge is disqualified from mediation and arbitration in matters in which the judge served as judge, and is disqualified as judge from matters in which the judge acted as mediator or arbitrator, unless all parties to the proceeding consent after consultation with their attorneys; and**

**(C) Acting as arbitrator or mediator does not reflect adversely on the judge's impartiality.**

appellate jurisdiction.

(3) The same restrictions on financial activities that apply to a judge personally also apply to the judge while acting in a fiduciary capacity.

### CANON 4

#### **F. Service as Arbitrator or Mediator.**

A judge shall not act as an arbitrator or mediator or otherwise perform judicial functions in a private capacity unless expressly authorized by law. A retired judge may participate as mediator or arbitrator if:

(1) the judge does not participate during the period of any judicial assignment,

(2) the judge is disqualified from mediation and arbitration in matters in which the judge served as judge, and is disqualified as judge from matters in which the judge participated as mediator or arbitrator, unless all parties to the proceeding consent after consultation, and

(3) the participation does not reflect adversely on the judge's impartiality.

## 2007 ABA MODEL CODE vs. MINN. CODE OF JUDICIAL CONDUCT

### COMMENT

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

[2] **A retired judge may act as a mediator or arbitrator under the conditions set forth in the rule.**

### RULE 3.10

#### *Practice of Law*

**A judge shall not practice law. A judge may act pro se and may, without compensation, give legal advice to and draft or review documents for a member of the judge's family,\* but is prohibited from serving as the family member's lawyer in any forum.**

### COMMENT

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

### RULE 3.11

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

(A) **A judge may hold and manage investments of the judge and members of the judge's family.\***

(B) **A judge shall not serve as an officer, director, manager, general partner, advisor, or employee of any business entity except that a judge may manage or participate in:**

(1) **a business closely held by the judge or members of the judge's family; or**

(2) **a business entity primarily engaged in investment of the**

### CANON 4

#### **G. Practice of Law.**

A judge shall not practice law. Notwithstanding this prohibition, a judge may act pro se and may, without compensation, give legal advice to and draft or review documents for a member of the judge's family, but may not act as advocate or negotiator nor make an appearance as counsel for a member of the judge's family in a legal matter.

### CANON 4

#### **D. Financial Activities.**

(1) A judge shall not engage in financial and business dealings that:

(a) may reasonably be perceived to exploit the judge's judicial position, or

(b) involve the judge in frequent transactions or continuing business relationships with those lawyers or other persons likely to come before the court on which the judge serves.

## 2007 ABA MODEL CODE vs. MINN. CODE OF JUDICIAL CONDUCT

**financial resources of the judge or members of the judge's family.**

**(C) A judge shall not engage in financial activities permitted under paragraphs (A) and (B) if they will:**

- (1) interfere with the proper performance of judicial duties;**
- (2) lead to frequent disqualification of the judge;**
- (3) involve the judge in frequent transactions or continuing business relationships with lawyers or other persons likely to come before the court on which the judge serves; or**
- (4) result in violation of other provisions of this Code.**

(2) A judge may, subject to the requirements of this Code, hold and manage investments of the judge and members of the judge's family, including real estate, and engage in other remunerative activity.

(3) A judge shall not serve as an officer, director, manager, general partner, advisor or employee of any business entity.

(4) A judge shall manage the judge's investments and other financial interests to minimize the number of cases in which the judge is disqualified. As soon as the judge can do so without serious financial detriment, the judge shall divest himself or herself of investments and other financial interests that might require frequent disqualification.

### COMMENT

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

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

## 2007 ABA MODEL CODE vs. MINN. CODE OF JUDICIAL CONDUCT

### RULE 3.12

#### *Compensation for Extrajudicial Activities*

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

#### COMMENT

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

[2] Compensation derived from extrajudicial activities may be subject to public reporting. See Rule 3.15.

### RULE 3.13

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

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

**(B) Unless otherwise prohibited by law, or by paragraph (A), a judge may accept the following without publicly reporting such acceptance:**

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

**(2) gifts, loans, bequests, benefits, or other things of value from friends, relatives, or other persons, including lawyers, whose appearance or interest in a proceeding pending\* or**

### CANON 4

#### **H. Compensation, Reimbursement and Reporting.**

(1) A judge may receive compensation and reimbursement of expenses for the extra-judicial activities permitted by this Code, if the source of such payments does not give the appearance of influencing the judge's performance of judicial duties or otherwise give the appearance of impropriety.

a) Compensation shall not exceed a reasonable amount nor shall it exceed what a person who is not a judge would receive for the same activity.

#### **CANON 4 D.**

(5) A judge shall not accept, and shall urge members of the judge's family residing in the judge's household not to accept, a gift, bequest, favor or loan from anyone except for:

(a) a gift incident to a public testimonial, books, tapes and other resource materials supplied by publishers on a complimentary basis for official use; or an invitation to the judge and the judge's spouse or guest to attend a bar-related function or an activity devoted to the improvement of the law, the legal system or the administration of justice;

(b) a gift, award or benefit incident to the business, profession or other separate activity of a spouse or other family member of a judge residing in the judge's household, including gifts, awards and benefits for the use of both the spouse or other family member and the judge (as spouse or family member), provided the gift, award or

## 2007 ABA MODEL CODE vs. MINN. CODE OF JUDICIAL CONDUCT

**impending\* before the judge would in any event require disqualification of the judge under Rule 2.11;**

- (3) ordinary social hospitality;**
- (4) commercial or financial opportunities and benefits, including special pricing and discounts, and loans from lending institutions in their regular course of business, if the same opportunities and benefits or loans are made available on the same terms to similarly situated persons who are not judges;**
- (5) rewards and prizes given to competitors or participants in random drawings, contests, or other events that are open to persons who are not judges;**
- (6) scholarships, fellowships, and similar benefits or awards, if they are available to similarly situated persons who are not judges, based upon the same terms and criteria;**
- (7) gifts incident to a public testimonial; books, magazines, journals, audiovisual materials, and other resource materials supplied by publishers on a complimentary basis for official use; ~~or~~ an invitation to the judge and the judge's spouse, domestic partner, or guest to attend without charge, an event associated with a bar-related function or other activity relating to the law, the legal system or the administration of justice;**
- (8) an invitation to the judge and the judge's spouse, domestic partner, or guest to attend without charge an event associated with any of the judge's educational, religious, charitable fraternal or civic activities permitted by this Code, if the same invitation is offered to non-judges who are engaged in similar ways in the activity as is the judge;**
- (9) gifts, awards, or benefits associated with the business, profession, or other separate activity of a spouse, a domestic partner,\* or other family member of a judge residing in the judge's household,\* but that incidentally benefit the judge.**

benefit could not reasonably be perceived as intended to influence the judge in the performance of judicial duties;

- (c) ordinary social hospitality;
- (d) a gift for a special occasion from a relative or friend, if the gift is fairly commensurate with the occasion and the relationship;
- (e) a gift, bequest, favor or loan from a relative or close personal friend whose appearance or interest in a case would in any event require disqualification under Section 3D;
- (f) a loan from a lending institution in its regular course of business on the same terms generally available to persons who are not judges;
- (g) a scholarship or fellowship awarded on the same terms and based on the same criteria applied to other applicants; or
- (h) any other gift, bequest, favor or loan only if the donor is not a party or other person who has come or is likely to come or whose interests have come or are likely to come before the judge; and, if its value exceeds \$150, the judge reports it in the same manner as the judge reports compensation in Section 4H.

## 2007 ABA MODEL CODE vs. MINN. CODE OF JUDICIAL CONDUCT

(10) any other gift, bequest, favor or loan if the donor is not a party or other person who has, directly or indirectly, come or is likely to come before the judge; and, if its value exceeds \$150, the judge reports it in the same manner as the judge reports compensation in Rule 3.15

~~(C) — Unless otherwise prohibited by law or by paragraph (A), a judge may accept the following items, and must report such acceptance to the extent required by Rule 3.15:~~

~~(1) — gifts incident to a public testimonial;~~

~~(2) — invitations to the judge and the judge's spouse, domestic partner, or guest to attend without charge:~~

~~(a) — an event associated with a bar-related function or other activity relating to the law, the legal system, or the administration of justice; or~~

~~(b) — an event associated with any of the judge's educational, religious, charitable, fraternal or civic activities permitted by this Code, if the same invitation is offered to nonjudges who are engaged in similar ways in the activity as is the judge; and~~

~~(3) — gifts, loans, bequests, benefits, or other things of value, if the source is a party or other person, including a lawyer, who has come or is likely to come before the judge, or whose interests have come or are likely to come before the judge.~~

### Comment

[1] Whenever a judge accepts a gift or other thing of value without paying fair market value, there is a risk that the benefit might be viewed as intended to influence the judge's decision in a case. Rule 3.13 imposes restrictions upon the acceptance of such benefits, according to the magnitude of the risk. **Paragraph (A) prohibits acceptance where expressly prohibited by law or where the judge's independence,\* integrity,\* or impartiality would be compromised by acceptance.**

## 2007 ABA MODEL CODE vs. MINN. CODE OF JUDICIAL CONDUCT

Paragraph (B) identifies circumstances in which the risk that the acceptance would appear to undermine the judge's independence, integrity, or impartiality is low, and explicitly provides that such items need not be publicly reported **except as provided in paragraph 10 if the value exceeds \$150.00. ~~As the value of the benefit or the likelihood that the source of the benefit will appear before the judge increases, the judge is either prohibited under paragraph (A) from accepting the gift, or required under paragraph (C) to publicly report it.~~**

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

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

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

## 2007 ABA MODEL CODE vs. MINN. CODE OF JUDICIAL CONDUCT

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

### RULE 3.14

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

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

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

~~(C) A judge who accepts reimbursement of expenses or waivers or partial waivers of fees or charges on behalf of the judge or the judge's spouse, domestic partner, or guest shall publicly report such acceptance as required by Rule 3.15.~~

### COMMENT

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

[2] Not infrequently, sponsoring organizations invite certain judges to attend seminars or other events on a fee-waived or partial-fee-waived basis, and sometimes include reimbursement for necessary travel, food, lodging, or other incidental expenses. A judge's decision whether to accept reimbursement of expenses or a waiver

### CANON 4

#### H. Compensation, Reimbursement and Reporting.

(1) A judge may receive compensation and reimbursement of expenses for the extra-judicial activities permitted by this Code, if the source of such payments does not give the appearance of influencing the judge's performance of judicial duties or otherwise give the appearance of impropriety.

(a) Compensation shall not exceed a reasonable amount nor shall it exceed what a person who is not a judge would receive for the same activity.

(b) Expense reimbursement shall be limited to the actual cost of travel, food and lodging reasonably incurred by the judge and, where appropriate to the occasion, by the judge's spouse or guest. Any payment in excess of such an amount is compensation.

(2) A judge shall report the date, place, and nature of any activity for which the judge received compensation, and the name of the payor and the amount of compensation so received. Income from investments, whether in real or personal property and other sources where the judge does not render service in exchange for the income is not extra-judicial compensation to the judge. This report shall be made annually, on or before the first day of May each year, and be filed as a public document in the office of the State Court Administrator.



## 2007 ABA MODEL CODE vs. MINN. CODE OF JUDICIAL CONDUCT

or partial waiver of fees or charges in connection with these or other extrajudicial activities must be based upon an assessment of all the circumstances. The judge must undertake a reasonable inquiry to obtain the information necessary to make an informed judgment about whether acceptance would be consistent with the requirements of this Code.

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

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

### **RULE 3.15** ***Reporting Requirements***

### **CANON 4 H.**

- (2) A judge shall report the date, place, and nature of any activity for which

## 2007 ABA MODEL CODE vs. MINN. CODE OF JUDICIAL CONDUCT

(A) A judge shall publicly report the source and amount or value of:

(1) compensation received for extrajudicial activities as permitted by Rule 3.12;

(2) gifts and other things of value as permitted by Rule 3.13 (B)(10) ~~(C)~~, unless the value of such items, alone or in the aggregate with other items received from the same source in the same calendar year, does not exceed \$[insert amount]; and

~~(3) reimbursement of expenses and waiver of fees or charges permitted by Rule 3.14(A), unless the amount of reimbursement or waiver, alone or in the aggregate with other reimbursements or waivers received from the same source in the same calendar year, does not exceed \$[insert amount].~~

(B) When public reporting is required by paragraph (A), a judge shall report the date, place, and nature of the activity for which the judge received any compensation; and the description of any gift, loan, bequest, benefit, or other thing of value accepted; ~~and the source of reimbursement of expenses or waiver or partial waiver of fees or charges.~~

(C) The public report required by paragraph (A) shall be made at least annually, ~~except that for reimbursement of expenses and waiver or partial waiver of fees or charges, the report shall be made within thirty days following the conclusion of the event or program.~~

(D) Reports made in compliance with this Rule shall be filed as public documents in the office of the ~~clerk of the court on which the judge serves or other office designated by law,\*~~ and, when technically feasible, ~~posted by the court or office personnel on the court's website~~ State Court Administrator.

(E) Income from investments, including real or personal property, pension plans, deferred compensation plans, and other lawful sources where the judge does not render current or future service in exchange for the income is not extra-judicial compensation to the judge.

the judge received compensation, and the name of the payor and the amount of compensation so received. Income from investments, whether in real or personal property and other sources where the judge does not render service in exchange for the income is not extra-judicial compensation to the judge. This report shall be made annually, on or before the first day of May each year, and be filed as a public document in the office of the State Court Administrator.

### I. Disclosure.

Disclosure of a judge's income, debts, investments or other assets is required only to the extent provided in the Canon and in Sections 3D and 3E, or as otherwise required by law.