

**COMMISSION TO PROMOTE PUBLIC CONFIDENCE  
IN JUDICIAL ELECTIONS**

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**Appendix C**

**Proposed Changes to Part 100 of the  
Rules of the Chief Administrator of the Courts  
Governing Judicial Conduct**

# PROPOSED CHANGES TO PART 100 OF THE RULES OF THE CHIEF ADMINISTRATOR OF THE COURTS GOVERNING JUDICIAL CONDUCT

The Commission's recommended additions to the rules are indicated as underlined and italicized. Recommendations to delete language in the rules are bracketed and italicized.

**§100.0 TERMINOLOGY.** The following terms used in this Part are defined as follows:

\* \* \* \*

*“Impartiality” denotes absence of bias or prejudice in favor of, or against, particular parties or classes of parties, as well as maintaining an open mind in considering issues that may come before the judge.*

*An “Independent” judiciary is one free of inappropriate outside influences or control.*

*“Integrity” denotes probity, fairness, honesty, uprightness and soundness of character. “Integrity” also includes a firm adherence to this Code or its standard of values.*

\* \* \* \*

(Q) "Window Period" denotes a period beginning nine months before a primary election, judicial nominating convention, party caucus or other party meeting for nominating candidates for the elective judicial office for which a judge or non-judge is an announced candidate, or for which a committee or other organization has publicly solicited or supported the judge's or non-judge's candidacy, and ending, if the judge or non-judge is a candidate in the general election for that office, six months after the general election, or if he or she is not a candidate in the general election, six months after the date of the primary election, convention, caucus or meeting.

## **§100.1 A JUDGE SHALL UPHOLD THE INTEGRITY AND INDEPENDENCE OF THE JUDICIARY.**

An independent and honorable judiciary is indispensable to justice in our society. A judge should participate in establishing, maintaining and enforcing high standards of conduct, and shall personally observe those standards so that the integrity and independence of the judiciary will be preserved. The provisions of this Part 100 are to be construed and applied to further that objective.

### **Commentary:**

[1.1] Deference to the judgments and rulings of courts depends upon public confidence in the integrity and independence of judges. The integrity and independence of judges depends in turn upon their acting without fear or favor. *The term integrity as applied to the judiciary refers to judges known for their probity, fairness, honesty, uprightness, and soundness of character. An independent judiciary is one free of inappropriate outside influences or control.* Although judges should be independent, they must comply with the law, including the provisions of this Code. Public confidence in the impartiality of the judiciary is maintained by the adherence of each judge to this responsibility. Conversely, violation of this Code diminishes public confidence in the judiciary and thereby does injury to the system of government under law.

**§100.2 A JUDGE SHALL AVOID IMPROPRIETY AND THE APPEARANCE OF IMPROPRIETY IN ALL OF THE JUDGE’S ACTIVITIES.**

(A) A judge shall respect and comply with the law and shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

**Commentary:**

[2.1][2A] Public confidence in the judiciary is eroded by irresponsible or improper conduct by judges. A judge must avoid all impropriety and appearance of impropriety. A judge must expect to be the subject of constant public scrutiny. A judge must therefore accept restrictions on the judge’s conduct that might be viewed as burdensome by the ordinary citizen and should do so freely and willingly. Examples are the restrictions on judicial speech imposed by Rules 100.3(B)(8) and (9) that are indispensable to the maintenance of the integrity, impartiality, and independence of the judiciary.

**§100.3 A JUDGE SHALL PERFORM THE DUTIES OF JUDICIAL OFFICE IMPARTIALLY AND DILIGENTLY.**

(B) Adjudicative responsibilities.

\* \* \* \*

(8) A judge shall not make any public comment about a pending or impending proceeding in any court within the United States or its territories. The judge shall require similar abstention on the part of court personnel subject to the judge’s direction and control. This paragraph does not prohibit judges from making public statements in the course of their official duties or from explaining for public information the procedures of the court. This paragraph does not apply to proceedings in which the judge is a litigant in a personal capacity.

(9) A judge shall not:

(a) make pledges or promises of conduct in office that are inconsistent with the impartial performance of the adjudicative duties of the office;

(b) make statements that commit the judge with respect to cases, controversies or issues that are likely to come before the court.

\* \* \* \*

(E) Disqualification.

(1) A judge shall disqualify himself or herself in a proceeding in which the judge’s impartiality might reasonably be questioned, including but not limited to instances where:

- (a) (i) the judge has a personal bias or prejudice concerning a party or
- (ii) the judge has personal knowledge of disputed evidentiary facts concerning the proceeding;
- (b) the judge knows that
  - (i) the judge served as a lawyer in the matter in controversy, or
  - (ii) a lawyer with whom the judge previously practiced law served during such association as a lawyer concerning the matter, or
  - (iii) the judge has been a material witness concerning it;

- (c) the judge knows that he or she, individually or as a fiduciary, or the judge's spouse or minor child residing in the judge's household has an economic interest in the subject matter in controversy or in a party to the proceeding or has any other interest that could be substantially affected by the proceeding;
- (d) the judge knows that the judge or the judge's spouse, or a person known by the judge to be within the sixth degree of relationship to either of them, or the spouse of such a person:
  - (i) is a party to the proceeding;
  - (ii) is an officer, director or trustee of a party;
  - (iii) has an interest that could be substantially affected by the proceeding;
  - (iv) is likely to be a material witness in the proceeding;
- (e) the judge knows that the judge or the judge's spouse, or a person known by the judge to be within the fourth degree of relationship to either of them, or the spouse of such a person, is acting as a lawyer in the proceeding.
- (f) the judge, while a judge or while a candidate for judicial office, has made a public statement not in the judge's adjudicative capacity that commits the judge with respect to
  - (i) an issue in the proceeding; or
  - (ii) the controversy in the proceeding.

[(f)](g) Notwithstanding the provisions of subparagraphs (c) and (d) above, if a judge would be disqualified because of the appearance or discovery, after the matter was assigned to the judge, that the judge individually or as a fiduciary, the judge's spouse, or a minor child residing in his or her household has an economic interest in a party to the proceeding, disqualification is not required if the judge, spouse or minor child, as the case may be, divests himself or herself of the interest that provides the grounds for the disqualification.

(2) Upon application by a party or attorney for a party, a judge may disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned, where the judge has made statements that appear to commit the judge, under the same circumstances and with respect to the same matters, as set forth in the preceding subdivisions (E)(1)(f)(i) & (ii).

(3) Pursuant to 22 NYCRR 1200.45(e), immediately upon assignment of a matter to a judge, the parties and their counsel shall disclose any campaign contributions made to the judge. In the event that contributions in excess of \$500 have been made in the past five years to the judge's campaign by a party or counsel to the party, the judge shall disqualify himself or herself upon timely application made by a party who has made no contribution to the campaign. This subdivision shall not preclude disqualification based on Rule 100.3(E)(1) with respect to contributions less than \$500 in amount or made more than five years before the assignment of the matter to the judge.

[(2)](4) A judge shall keep informed about the judge's personal and fiduciary economic interests, and made a reasonable effort to keep informed about the personal economic interests of the judge's spouse and minor children residing in the judge's household.

**Commentary:**

[3.16][3B(8) and 3B(9)] The restrictions in paragraphs (B)(8) and (9), like all other provisions of this Code, are essential to the maintenance of integrity, impartiality, and independence of the judiciary. A pending proceeding is one that has begun but not yet reached its final disposition. An impending proceeding is one that is reasonably foreseeable but has not yet been commenced. The

requirement that judges abstain from public comment regarding a pending or impending proceeding continues during any appellate process and until final disposition. However, the New York State Advisory Committee on Judicial Ethics has opined that a judge within the confines of a college or university classroom, while teaching a regular class to students who are part of a regular course of study in criminal justice, may comment on a relevant case mentioned in published textual course materials that is pending outside of the Judge's general jurisdiction in another state (Op. 95-105). A judge also may participate as a panelist at a judicial seminar open only to judges and comment on "issues that are being discussed [that] may soon come before a judge" (Op. 01-41). There are of course many other educational fora in which comment on pending or impending cases by judges might be expected. While such comment may be appropriate in some limited instances, as non-public comment in nature and effect, judges contemplating participation as speakers in such venues would be best advised to consult with the Advisory Committee on Judicial Ethics (Unified Court System, 25 Beaver Street, NY, NY 10004) before engaging in such speaking activities. Having done so, the actions taken by a judge who follows the Committee's written advice "shall be presumed proper for the purposes of any subsequent investigation by the state commission on judicial conduct" (Judiciary Law, Sec. 212{l} {iv}). A judge should not be influenced by the potential for personal publicity when making decisions in pending cases. Release of decisions to the media or notifying the media that the decision is available before counsel for the parties have been notified may be embarrassing or prejudicial to the private rights of the litigants. Filing an opinion with the clerk's office does not constitute release of the decision to the media. [This Section does] Paragraphs (B)(8) and (9) do not prohibit a judge from commenting on proceedings in which the judge is a litigant in a personal capacity, but in cases such as a writ of mandamus where the judge is a litigant in an official capacity, the judge must not comment publicly. The conduct of lawyers relating to trial publicity is governed by DR 7-107 of the Code of Professional Responsibility.

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[3.28][3E(3)] Campaign contributions are an unavoidable aspect of our system of judicial elections. This subdivision acknowledges that fact, while requiring first, that full disclosure be made of any campaign contributions and secondly, requiring recusal in the event of campaign contributions in excess of a certain threshold. To avoid abuse of this section, it is intended that only the party that has not made a campaign contribution may make a disqualification application. Nothing in this rule speaks to the question of attribution of contributions by individual members of an entity, nor does the Rule prevent a party from bringing a disqualification motion for any other reason, including campaign activity by a lawyer or party on behalf of a judge as a judicial candidate.

#### **§100.5 A JUDGE OR CANDIDATE FOR ELECTIVE JUDICIAL OFFICE SHALL REFRAIN FROM INAPPROPRIATE POLITICAL ACTIVITY.**

(A) Incumbent judges and others running for public election to judicial office.

\* \* \* \*

(2) A judge or non-judge who is a candidate for public election to judicial office may participate in his or her own campaign for judicial office as provided in this section and may contribute to his or her own campaign as permitted under the Election Law. During the Window Period as defined in

subdivision (Q) of section 100.0 of this Part, a judge or non-judge who is a candidate for public election to judicial office, except as prohibited by law, may:

\* \* \* \*

- (v) purchase two tickets to, and attend, politically sponsored dinners and other functions, [*even where the cost of the ticket to such dinner or other function exceeds the proportionate cost of the dinner or function.*] provided that the cost of the ticket to such dinner or other function shall not exceed the proportionate cost of the dinner or function. The cost of the ticket shall be deemed to constitute the proportionate cost of the dinner or function if the cost of the ticket is \$125 or less. A candidate may not pay more than \$125 for a ticket unless he or she obtains a statement from the sponsor of the dinner or function that the amount paid represents the proportionate cost of the dinner or function.

\* \* \* \*

(4) A judge or a non-judge who is a candidate for public election to judicial office:

- (a) shall maintain the dignity appropriate to judicial office and act in a manner consistent with the impartiality, integrity and independence of the judiciary, and shall encourage members of the candidate's family to adhere to the same standards of political conduct in support of the candidate as apply to the candidate;

\* \* \* \*

(d) shall not:

- (i) make pledges or promises of conduct in office [*other than*] that are inconsistent with the [faithful and] impartial performance of the adjudicative duties of the office;
- (ii) make statements that commit [*or appear to commit*] the candidate with respect to cases, controversies or issues that are likely to come before the court; or

\* \* \* \*

(f) shall complete an educational program, either in person or by videotape or by internet correspondence course, developed or approved by the judicial campaign ethics and conduct resource center within 14 days after receiving the nomination or 90 days prior to receiving the nomination for judicial office. The date of nomination for candidates running in a primary election shall be the date upon which the candidate files a designating petition with the Board of Elections. This provision shall only apply to candidates seeking selection for or retention in public office by election for a full time judgeship in the Unified Court System.

#### **Commentary:**

[5.9][5A(4)(d)] Section 5A(4)(d) prohibits a candidate for judicial office from making statements that [*appear to*] commit the candidate regarding cases, controversies or issues likely to come before the court. As a corollary, a candidate should emphasize in any public statement the candidate's duty to uphold the law regardless of his or her personal views. See also Sections 3B(8) and (9), the general rules on public comment by judges. Section 5A(4)(d) does not prohibit a candidate from making pledges or promises respecting improvements in court administration. Nor does this Section prohibit an incumbent judge from making private statements to other judges or court personnel in the performance of judicial duties. This Section applies to any statement made in the process of securing judicial office, such as statements to commissions charged with judicial selection and tenure and legislative bodies confirming an appointment. See also DR 8-103(A) of the Code of Professional Responsibility.