

CONDUCTING SETTLEMENT CONFERENCES IN TAX CASES

February 4, 2011



Presented by Keith E. Russell, MAI
Maricopa County Assessor

Property Tax in Arizona

Territorial Days (Wild West)

1871 Territorial Legislature enacted revenue code:

- Sheriff acted as Assessor and Treasurer (most Counties)
- Self Reporting system – Property owner filled out an Affidavit of value for taxable property
- Penalty for understatement – Assessed could increase to five times normal
- Bounty Hunters – If your neighbor turned you in for underassessment the government would pay a bounty up to 50% of increase
- Neglected or refused to pay taxes on time – Sheriff could confiscate property and sell in 3 days



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Property Tax in Arizona

- The current system has its origins in 1980 and was an outgrowth of Prop 13 in California.
- Primary characteristics of currently system include two assessed values.
 1. **Full Cash Value (FCV)** reflects market conditions, but is intended to be slightly below market.
 2. **Limited Property Value (LPV)** is estimated via a formula developed by the legislature and does not increase as fast a FCV may.
- The calendar was modified in the mid 1990's for real property to extend beyond the current year.
- Because of the extended length of the calendar, a process to get new construction on the roll in a timely manner was incorporated.
- Property is classifies according to its usage. When the value is multiplied by its usage ratio it generates the total or net assessed value.



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Full Cash Value

Full Cash Value is synonymous with market value, the value may be equal to, or less than, the actual market value. The lower values are the result of adjusting for mass appraisal error, creative financing, personal property, and time on the market (Arizona Department of Revenue Guideline on 1993 Ratio Standards Addendum).

Full Cash Values are unlimited in potential changes since they fluctuate with the market. Full Cash Value is used to calculate the tax for such things as bond issues, budget overrides, and special districts.

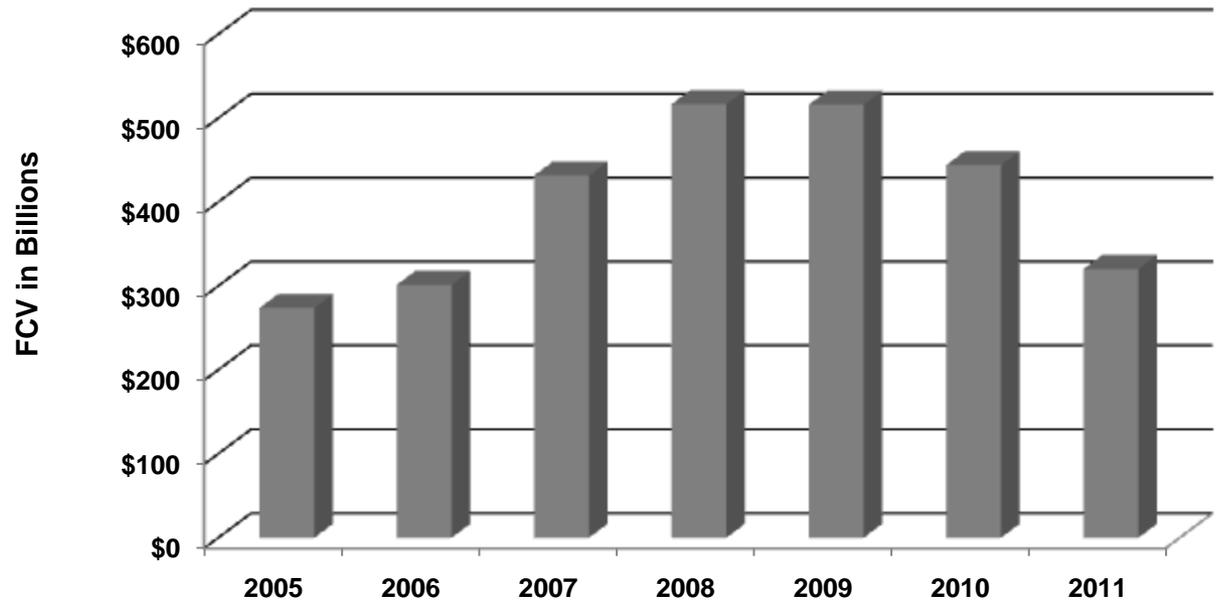
Full Cash Value is the assessment that gets appealed.



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Market Value

**Maricopa County
Full Cash Value (FCV)
Tax Year 2005 - 2011**



	2005	2006	2007	2008	2009	2010	2011
Maricopa	273.77	301.47	431.68	516.68	516.18	444.10	320.30



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Joke



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Limited Property Value

The Limited Property Value may increase in one of two ways: 1) Up to 10% of the previous year's value, or 2) 25% of the difference between the current year's Full Cash Value and previous year's Limited Property Value, whichever is greater. It can never exceed Full Cash Value.

There are a few exceptions to the calculation of Limited Property Value. It may increase faster for new construction, errors in previous years or a change in use. In these cases it is estimated to reflect similar properties with similar characteristics.



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Market Value

In general, the value standard in Arizona is full cash value, which is synonymous with market value.

The definition of full cash value can be found in A.R.S 42-11001(5) which states in part, that full cash value

“...for property tax purpose means the value determined as prescribed by statute. If no statutory method is prescribed, full cash value is synonymous with market value which means the estimate of value that is derived annually by using standard appraisal methods and techniques.”
(emphasis added).

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Market Value

Similarly, market value, as defined by the International Association of Assessing Officers is:

“...the most probable prices in cash that a property would bring in a competitive and open market, assuming that the buyer and seller are acting knowledgeably, sufficient time is allowed for the sale, and price is not affected by special influences.”

The legislature has also mandated that specific property types be appraised based upon statutorily prescribed methods. These property types include agricultural, certain shopping centers and golf courses, and most centrally valued properties.



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New Construction, Additions and Deletions

Property that changes due to new construction or deletions, or changes in use that occur after September 30 of the previous year may be added to the roll, up to and including September 30 of the valuation year. The assessor is required to notify the property owner of any change in the valuation on or before September 30.

Within 25 days of the assessor's notice, the property owner may appeal the valuation to the State Board of Equalization (SBOE). The SBOE are required to rule on these appeals by the third Friday in November. A further appeal to tax court must be filed within 60 days after the date of the decision.



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Legal Class Codes

The Legal Class is used to classify property based on use. If more than one use, multiple Legal Classes or "mixed ratio" will be applied. The Arizona State Legislature sets the percentage per Legal Class.

The three most used Legal Classes are:

Commercials – 20 % (2011 roll, Class 1)

Land – 16 % (Class 2)

Residential – 10 % (Class 3 and 4)

Class one – Commercial, Industrial, Utilities, Mines

Class two – Agricultural, Vacant Land

Class three – Residential Owner Occupied

Class four – Residential Rental

Class five – Railroad, Private Car, Airline Flight

Class six – Residential Historical Enterprise Zone

Class seven – Commercial Historical

Class eight – Residential/Commercial Historic

Class nine – Private improvements on public land



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2011 LEGAL CLASS SUMMARY

(Revised 11-29-10)

LEGAL CLASS	DATA ENTRY LEGAL CLASS	VALID PROPERTY TYPE	ASSMT RATIO	LEGAL CLASS CHARACTER	DESCRIPTION (SHORT)
1.1	0101	CVP	.20	A	PRODUCING MINES
1.2	0102	LAP / R&P	.20	P	STANDING TIMBER
1.3	0103	CVP	.20	B	GAS AND ELECTRIC
1.4	0104	CVP	.20	R	AIRPORT FUEL DELIVERY
1.5	0105	CVP	.20	Q	PRODUCING OIL AND GAS
1.6	0106	CVP	.20	T	WATER UTILITY COMPANIES
1.7	0107	CVP	.20	U	PIPELINES
1.8	0108	LAP / R&P	.20	V	SHOPPING CENTERS
1.9	0109	LAP / R&P	.20	W Exempt PP	GOLF COURSES
1.10	0110	LAP / R&P	.20	X Exempt PP	COMMERCIAL / MANUFACTURERS, ASSEMBLERS, FABRICATORS BOTH REAL AND PERSONAL PROPERTY
1.11	0111	CVP	.20	Y Exempt PP	TELECOMMUNICATIONS
1.12	0112	LAP / R ONLY	.20	C	COMMERCIAL / REAL AND IMPROVEMENTS NOT IN OTHER CLASSES
1.13	0113	LAP / P ONLY	.20	D	COMMERCIAL / PERSONAL PROPERTY NOT IN OTHER CLASSES
2R.D	02RD	LAP / R ONLY	.16	6	GOLF COURSES / REAL PROPERTY NOT IN CLASS 1.9
2P.D	02PD	LAP / P ONLY	.16	7	GOLF COURSES / PERSONAL PROPERTY NOT IN CLASS 1.9
2.R	02R	CVP/LAP / R ONLY	.16	E	AG/VACANT LAND/NON-PROFIT - REAL PROPERTY AND IMPROVEMENTS
2.P	02P	CVP/LAP / P ONLY	.16	S	AG/VACANT LAND/NON-PROFIT - PERSONAL PROPERTY
3	03	LAP / R&P	.10	F	OWNER OCCUPIED RESIDENTIAL
4	04	LAP / R&P	.10	G	RENTAL RESIDENTIAL
4.7	0407	LAP / R&P	.10	8	RESIDENTIAL COMMON AREAS VALUED PURSUANT TO ARS 42-13403
5	05	CVP	FCV & LPV .15	H FCV / LPV	RAILROADS
6.1	0601	LAP / R&P	.05	J	NON-COMMERCIAL HISTORIC
6.2	0602	LAP / R&P	.05	9	FOREIGN TRADE ZONES
6.3	0603	LAP / R&P	.05	+	MILITARY REUSE ZONES
6.4	0604	LAP / R&P	FCV .20 & LPV .05	& FCV / LPV	ENTERPRISE ZONES
6.5	0605	CVP / LAP / R&P	.05	*	ENVIRONMENTAL TECHNOLOGY
6.6	0606	LAP / R&P	.05	#	ENVIRONMENTAL REMEDIATION
6.7	0607	LAP / R&P	.05	?	HEALTHY FORESTS
6.8	0608	LAP / R&P	.05	%	BIODIESEL FUEL PRODUCTION
6.9	0609	LAP / R&P	.05	:	RENEWABLE ENERGY EQUIPMENT MANUFACTURING
7.B	07B	LAP / R&P	.20	K	COMMERCIAL HISTORIC BASE VALUE
7.H	07H	LAP / R&P	.01	L	COMMERCIAL HISTORIC RENOVATION VALUE
8.B	08B	LAP / R&P	.10	M	RESIDENTIAL /COMMERCIAL HISTORIC BASE VALUE
8.H	08H	LAP / R&P	.01	N	RESIDENTIAL/COMMERCIAL HISTORIC RENOVATION VALUE
9	09	LAP / R&P	.01	O	CERTAIN IMPROVEMENTS ON GOVERNMENT PROPERTY

NOTE: Per ARS 42-15007 assessed valuation of class 7B property is the percentage of value prescribed for class 1 property.

LEGEND: CVP = Centrally Valued Property
 LAP = Locally Assessed Property
 R = Real Property
 P = Personal Property
 PP = Personal Property
 FCV = Full Cash Value
 LPV = Limited Property Value

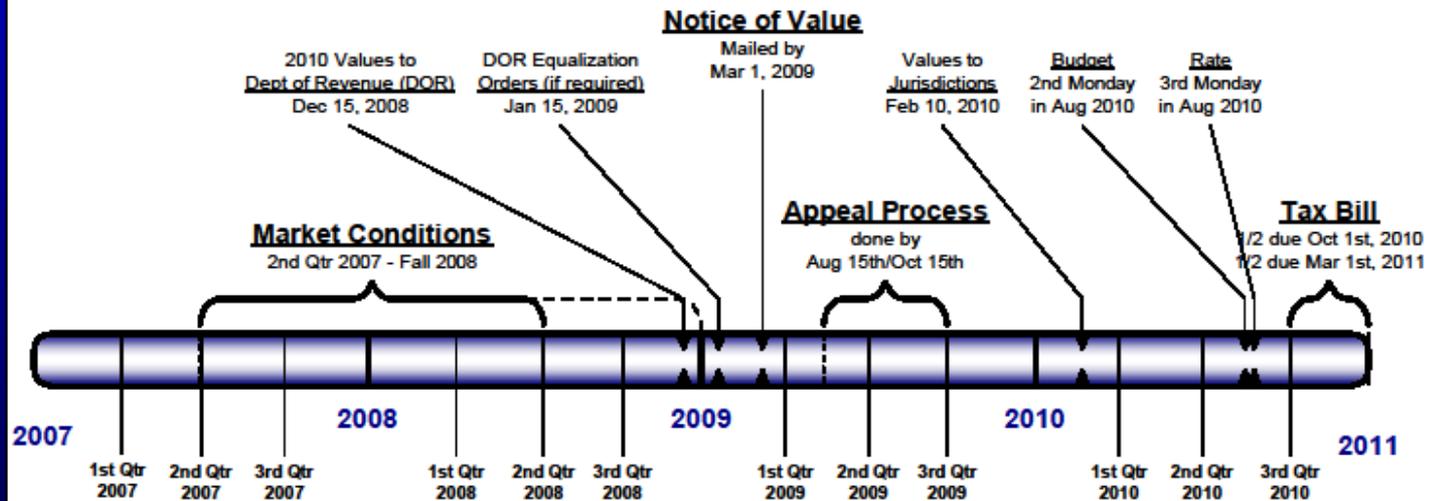


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Property Tax in Arizona



Maricopa County Assessor



2010 Tax Roll Timeline



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Valuation Methodology

Mass appraisal is the systematic appraisal of groups of properties as of a given date using standardized procedures and statistical testing.

In contrast single property appraisal or fee appraisal is the valuation of a particular property as of a given date.

The valuation steps in both approaches are similar but market analysis and quality controls are handled differently.

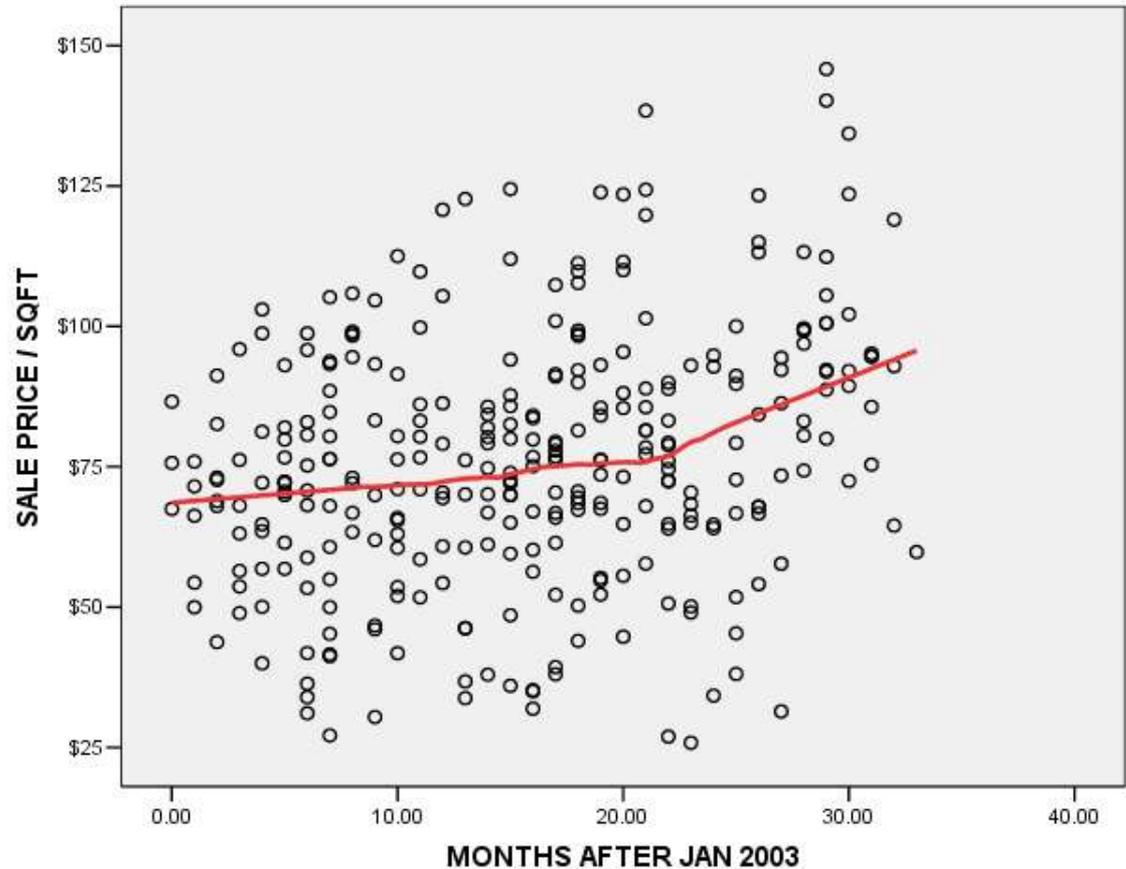
Most properties are valued for the Notice of Value by a mass appraisal system. However, when they are appealed a fee appraisal methodology is applied.



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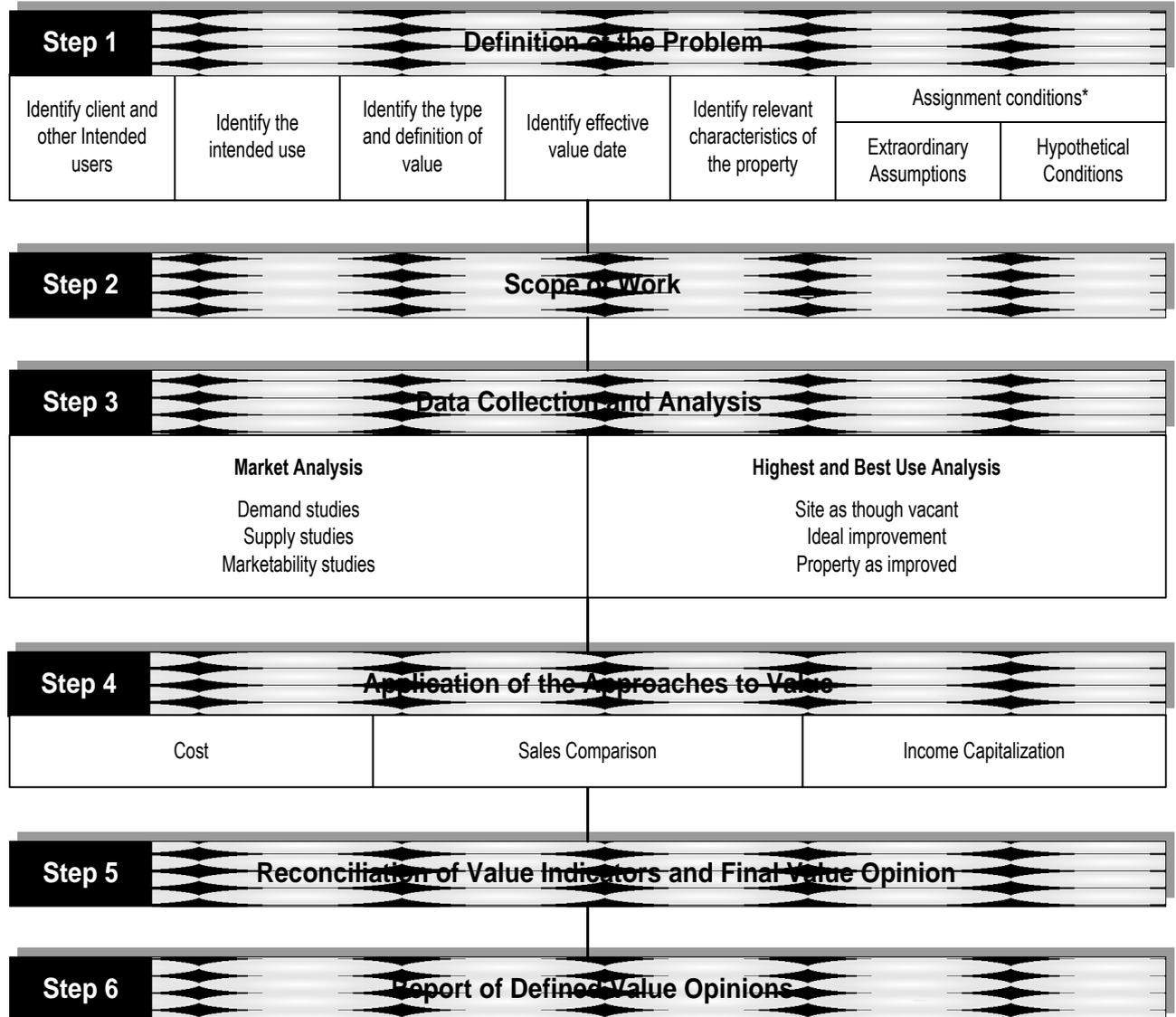
Valuation Methodology

INDUSTRIAL SALES



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Valuation Methodology



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Valuation Methodology

- Bundle of rights (total range of ownership interest)
- Fee Simple Value (total bundle/unencumbered)
- Each property unique
- One sale does not make a market
- Be careful about what is and what is not comparable
- Common sense:
 - Non-realty components
 - Rights conveyed
 - Financing
 - Conditions of Sale
 - Expenditures made immediately after purchase
 - Market Conditions
 - Physical Characteristics
 - Economic Characteristics



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Joke

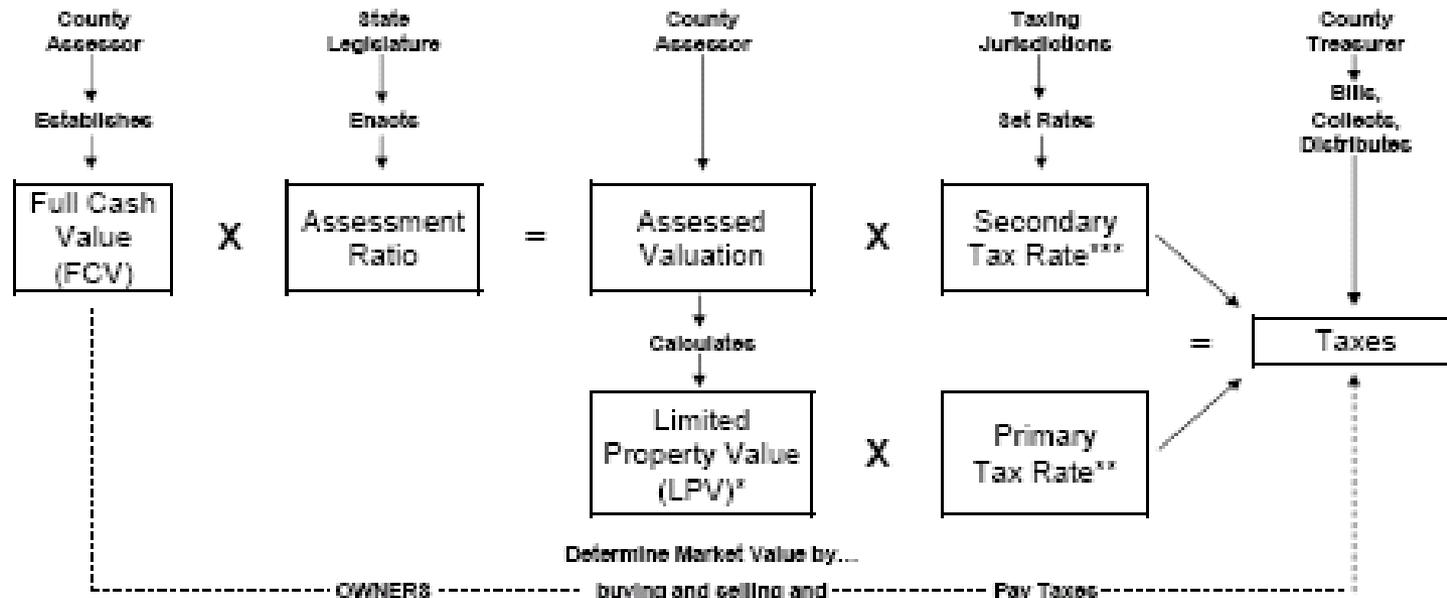
HAGAR THE HORRIBLE



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Tax Calculation

An Overview of Arizona's Property Tax System



*Limited Property Value

Calculated according to statutory formula and is designed to reduce the effect of inflation on property taxes. The LPV cannot exceed the FCV.

**Primary Tax Rate

Covers the basic expenses of government and schools. The greatest portion of your taxes are used here.

*** Secondary Tax Rate

Set by bond initiatives, fire, and special districts. Usually, taxpayers vote for these overrides & the rates are applied to FCV to determine taxes due.



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QUICK LINKS ...



*Parcel Search: (GO)

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[Advanced Search Options](#)

[*Market Overview](#)

[*Residential Similar Property Search](#)

No Parcel Number? Use [Advanced Search Options](#).

*(A parcel number is needed to use these Features)



- Assessor Biography
- About Us
- Office Locations
- Jobs
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- Redaction

Select a picture for your area of interest

Welcome!

Your hosts of the [2011 IAAO Conference on Assessment Administration](#).

[News/Press Release](#) page for important information from the Assessors office. This site is designed to serve the public with a variety of factual and information items. Please spend some time browsing the site to see all of the different pages available. We are committed to continuing to improve and upgrade this site. If you have comments or questions about the information which is available please contact the Maricopa County S.T.A.R. Center at 602-506-3406.

... a re-design of our website that will utilize Microsoft Silverlight scheduled for deployment in January 2011. This requires the one time install of [Microsoft Silverlight](#).

Thank you for visiting the Maricopa County Assessor's Office website. We are committed to continuing to improve and upgrade this site. If you have comments or questions about the information which is available please contact the Maricopa County S.T.A.R. Center at 602-506-3406.

The Maricopa County Assessor's Office



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Maricopa County

Treasurer's Office

Tax Bill	Tax Summary	Pay Online!	Valuations	Home
Address	Update Address	Activities	Tax Receipt	New Parcel

Tax Summary - Parcel 140-12-119 9

Total Due **\$814.59**

Click on the year to go to tax detail.

Click on the amount due for a tax stub printout.

Tax Year	Status	Assessed Tax	Tax Paid	Amount Due
2010	Open	\$1,629.18	\$814.59	\$814.59
2009	Paid	\$1,825.04	\$1,825.04	\$0.00
2008	Paid	\$1,620.54	\$1,620.54	\$0.00
2007	Paid	\$1,507.24	\$1,507.24	\$0.00
2006	Paid	\$1,342.52	\$1,342.52	\$0.00
2005	Paid	\$1,428.16	\$1,428.16	\$0.00
2004	Paid	\$1,491.32	\$1,491.32	\$0.00
2003	Paid	\$1,575.54	\$1,575.54	\$0.00
2002	Paid	\$1,519.88	\$1,519.88	\$0.00
2001	Paid	\$1,513.72	\$1,513.72	\$0.00
2000	Paid	\$1,442.00	\$1,442.00	\$0.00
1999	Paid	\$1,422.64	\$1,422.64	\$0.00



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Legal Description		
Section/Lot	Township/Block	Range/Tract
42		
THAYER PARK MANOR MCR 311-18		
Current Mailing Name & Address		
RUSSELL KEITH E/REBECCA C		
3535 E COVINA ST		
MESA AZ 852137044		

[Request Name/Mailing Address Changes](#)
 or call the Treasurer at (602)506-8511.
[Top](#)

2010 Primary (Limited) Assessed Values - Parcel 140-12-119			
Assessment Type	Limited Value	Assessment Ratio	Assessed Value
Land/Bldg/Improvements	\$227,500	10%	\$22,750
Primary Assessed Totals	\$227,500		\$22,750

2010 Primary (Limited) Tax Amounts					
Tax District	Phone	Rate/100	2010 Tax	2009 Tax	
County Primary Tax	602-506-8511	1.0508	\$239.06	\$253.28	
State Equalization Tax	602-506-8511	0.3564	\$81.08	\$84.51	
CITY OF MESA	480-644-2275	0.0000	\$0.00	\$0.00	
State Aid Credit			(\$303.98)	(\$326.92)	
Elderly Assistance			\$0.00	\$0.00	
School District					
Tax District	Phone	Rate/100	2010 Tax	2009 Tax	
MESA UNIFIED	480-472-0000	3.3901	\$771.24	\$863.47	
COMMUNITY COLLEGE DIST	480-731-8621	0.7926	\$180.32	\$185.22	
Primary Tax Totals					
		Rate/100	2010 Tax	2009 Tax	
		5.5899	\$967.72	\$1,059.56	



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2010 Secondary (Full Cash) Assessed Values - Parcel 140-12-119

Assessment Type	Full Cash Value	Assessment Ratio	Assessed Value
Land/Bldg/Improvements	\$227,500	10%	\$22,750
Secondary Assessed Totals	\$227,500		\$22,750

2010 Secondary (Full Cash) Tax Amounts

Tax District	Phone	Rate/100	2010 Tax	2009 Tax
Flood Control	602-506-1501	0.1489	\$33.88	\$41.94
Central Arizona Water Conservation	623-869-2333	0.1000	\$22.76	\$30.68
Fire	602-506-8511	0.0066	\$1.50	\$1.74
Library	602-652-3000	0.0412	\$9.38	\$10.84
Health Care	602-344-5978	0.1122	\$25.52	\$28.04

Overrides

Tax District	Phone	Rate/100	2010 Tax	2009 Tax
County Overrides	602-506-8511	0.0000	\$0.00	\$0.00
City Overrides	480-644-2275	0.0000	\$0.00	\$0.00
Unified School Overrides	480-472-0000	0.8334	\$189.60	\$230.86
Community College Overrides	480-731-8621	0.0000	\$0.00	\$0.00

Bonds

Tax District	Phone	Rate/100	2010 Tax	2009 Tax
County Bonds	602-506-8511	0.0000	\$0.00	\$0.00
City Bonds	480-644-2275	0.3454	\$78.58	\$91.33
Unified School A Bonds	480-472-0000	0.7431	\$169.06	\$204.23
Unified School B Bonds	480-472-0000	0.2565	\$58.35	\$38.17
Community College Bonds	480-731-8621	0.1802	\$40.99	\$49.03

Secondary Tax Totals

	Rate/100	2010 Tax	2009 Tax
	2.7675	\$629.62	\$726.86

[Top](#)



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Appeal Process

Three levels in the Appeal Process

First informal meeting with the Assessor
Must be completed by August 15th

Second State Board of Equalization
Must be completed by October 15th

Court, (Tax, Superior or Small Claims)
Must be filed by December 15th

Appeal Counts

2010 – 15,673
2009 – 19,794
2008 – 17,213
2007 – 13,251
2006 – 12,554
2005 – 9,948
2004 – 13,746



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Paying Taxes

Property values are established as of January 1 of each year, while the tax rates on those values are set on the third Monday in August of the following year.

The first installment on the tax bill is due on October 1 and is considered delinquent after November 1. (Taxpayers who miss the November 1 payment can pay the entire year's taxes without penalty or interest if paid by December 31).

Taxes of \$100 or less are due in full on October 1, delinquent November 1.

The second installment is due March 1 and is delinquent after May 1.



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Duties of Assessor

Locate, Identify and Value

42-13051. Duties of county assessor

A. Not later than December 15 of each year the county assessor shall identify by diligent inquiry and examination all real property in the county that is subject to taxation and that is not otherwise valued by the department as provided by law.

B. The assessor shall:

1. **Determine the names of all persons who own**, claim, possess or control the property, including properties subject to the government property lease excise tax pursuant to chapter 6, article 5 of this title.
2. **Determine the full cash value** of all such property as of January 1 of the next year by using the manuals furnished and procedures prescribed by the department.
3. List the property with the determined valuation for use on the tax roll and report to the department of education the determined valuations of properties that are subject to the government property lease excise tax pursuant to chapter 6, article 5 of this title.

C. **In identifying property** pursuant to this section, the assessor shall use aerial photography, applicable department of revenue records, building permits and other documentary sources and technology.



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Obligation to Public

Obligation to the public is to be both **Fair** and **Equitable**

Two publics to consider:

Individual property owner

Collective group of property owners

Obligation to individual owner is to make sure value is not too high. Obligation to collective group of property owners is to make sure value is not too low.

Consequence of values too high – unfair taxes

Consequence of value too low – unfair taxes for everyone else



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Assessor's Staffs Obligations

All meetings have internal parameters (generally value)

All settlements need to have some basis in market

Assessor staff is does not have to take abuse

Assessor staff is obligated to act professionally

Can not obligate office on policy matters

Must consider equity to similarly situated properties
(Equity in methodology not value)

Can always pick up the phone and review parameters with office

Obligation to confirm information/data

Board of Supervisor is final decision maker



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Personal Observations

Professionalism

Patience for facts to come out

Success does not always mean conclusion

I can not participate on a personal level often



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Oath of Office

- Truly and Fairly
- Without Favor or Partiality
- To the individual and the collective



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CLERK OF THE BOARD
HOLD FOR BASKET PICK UP

Unofficial
Document

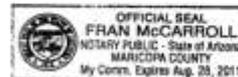
Oath of Office



STATE OF ARIZONA
COUNTY OF MARICOPA }

I, Keith Russell, do solemnly swear (or affirm) that I will support the Constitution of the United States and the Constitution and laws of the State of Arizona; that I will bear true faith and allegiance to the same, and defend them against all enemies, foreign and domestic; and that I will faithfully and impartially discharge the duties of the office of Maricopa County Assessor according to the best of my ability, so help me God (or so I do affirm), AND

I do solemnly swear (or affirm) that I will well and truly discharge the duties of Assessor of the County of Maricopa, and will, to the best of my knowledge and ability, truly and fairly determine the valuation, without favor or partiality, of all the taxable property in said county at its full cash value.



[Signature]
Signature

Subscribed and sworn before me this 26th day of December, 2008

[Signature]
Notary Public

August 28, 2011
My Commission Expires

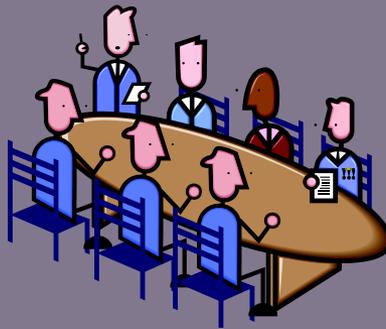
***Tax Settlement Conference Training
for Judges Pro Tempore
February 4, 2011***

***Legal Considerations
Ethical Considerations***

By Hon. Mark W. Armstrong

Other Types of ADR

Mediation, Arbitration, Special Masters



Preserving the Agreement

What happens if there is a dispute over the contents of a settlement agreement reached at a Settlement Conference?



Rule 80(d), Ariz. R. Civ. P.

Rule 80(d); details are important; conclusions may be significant: “(d) *Agreement or consent of counsel or parties.* No agreement or consent between parties or attorneys in any matter is binding if disputed, unless in is in writing, or made orally in open court, and entered in the minutes.”

Tax Court Website

[http://www.superiorcourt.maricopa.gov/
SuperiorCourt/TaxCourt/index.asp](http://www.superiorcourt.maricopa.gov/SuperiorCourt/TaxCourt/index.asp)

- Tax Court Decisions
- Rules of Practice for the Arizona Tax Court



ADR Website

<http://www.superiorcourt.maricopa.gov/superiorcourt/alternativedisputeresolution/adrprograms.asp>

- Rules 16g and 16.1, Ariz. R. Civ. P.
- Civil Settlement Conference Training Manual
- Notice of Settlement Conference
- Civil Settlement Conference Report
- Civil Settlement Conference Evaluation Form



Ethical Considerations

New Code of Judicial Conduct,
effective September 1, 2009



Code of Judicial Conduct

Canon 1. A judge shall uphold and promote the independence, integrity, and impartiality of the judiciary and shall avoid impropriety and the appearance of impropriety.

- Use of judicial title, letterhead and prestige—avoid appearance of advantage or pressure.

Code of Judicial Conduct

Canon 2. A judge shall perform the duties of judicial office impartially, competently, and diligently. Canon requires:

- Equal treatment.
- No bias, prejudice or harassment.
- Sexual harassment includes but is not limited to sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature that is unwelcome (Comment, Rule 2.3)

Canon 2 (cont.)

- Avoid ex parte communications, except . . . (*See* Rule 2.9).
- Maintain appropriate demeanor—be patient, dignified and courteous.
- Be diligent—60-day rule.
- Reporting misconduct—Rule 2.15.

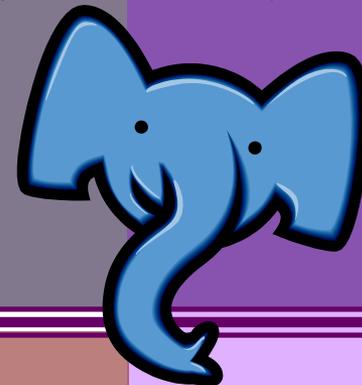
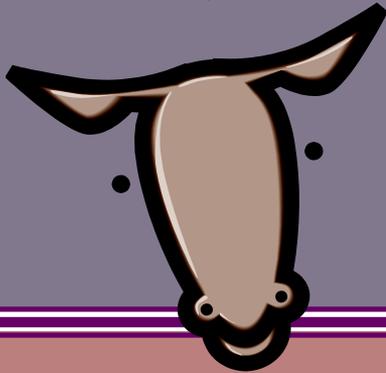
Code of Judicial Conduct

Canon 3. A judge shall conduct the judge's extrajudicial activities to minimize the risk of conflict with the obligations of the judicial office.



Code of Judicial Conduct

Canon 4. A judge or candidate for judicial office shall not engage in political or campaign activity that is inconsistent with the independence, integrity, or impartiality of the judiciary.



Code of Judicial Conduct

But see Application, Part D. Pro Tempore
Part-Time Judge.



Part D

- (1) A pro tempore part-time judge is not required to comply:**
 - (a) except while serving as a judge with Rules 1.2 (promoting confidence in the judiciary), 2.4 (external influences on judicial conduct), 2.10 (judicial statements on pending and impending cases), 3.2 (appearance before governmental bodies and consultation with government officials), 3.3 (acting as a character witness); or**
 - (b) at any time with Rules 3.4 (appointments to governmental positions), 3.7 (participation in educational, religious, charitable, fraternal, or civic organizations and activities), 3.8 appointments to fiduciary positions), 3.9 (service as arbitrator or mediator, 3.10 (practice of law), 3.11 (financial, business, or remunerative activities), 3.13 (acceptance and reporting of gifts, loans, bequests, benefits, or other things of value), 3.15 (reporting requirements), 4.1 (political and campaign activities of judges and judicial candidates in general), and 4.5 (activities of judges who become candidates for nonjudicial office).**

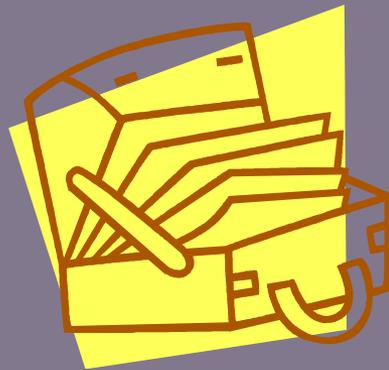
Part D

(3) A pro tempore part-time judge who serves once or only sporadically in a specialized division of a court or in a court without specialized divisions may appear as a lawyer in such specialized division or court during such service.

(4) A pro tempore part-time judge who serves repeatedly on a continuing scheduled basis in a specialized division of a court or in a court without specialized divisions shall not appear as a lawyer in such specialized division or court during such service.

The need is great.

See Supreme Court AO 2010-59



Questions



PROPERTY SUBJECT TO TAXATION IN ARIZONA

- ▶ All property in Arizona is subject to taxation unless it is expressly exempt under the United States Constitution or the Arizona Constitution. See Article 9, § 2(6) of the Arizona Constitution, and A.R.S. § 11002.

TYPES OF PROPERTY SUBJECT TO TAXATION

1. **REAL PROPERTY** -- Real property is generally described as all the tangible and intangible rights in land and improvements. Improvements generally constitute anything done to the land to make it more valuable, such as buildings, fixtures and fences erected on or affixed to the land.
2. **PERSONAL PROPERTY** -- Personal property includes property of every kind, both tangible and intangible, not included in the term real property.
3. **POSSESSORY INTERESTS** -- Under prior law, possessory interests were defined as possession of public property pursuant to an agreement with a governmental entity, except possession pursuant to and by virtue of ownership of a freehold interest in the land or ownership of the improvements or personal property. What were once considered possessory interests are now taxed under the government lease excise tax or not at all.
3. **IMPROVEMENTS ON POSSESSORY RIGHTS (IPR)** -- Improvements on Possessory Rights are improvements on land where the owner of the improvements is not the owner of the land.

TO WHOM PROPERTY IS TAXED

REAL PROPERTY

(a) “A tax that is levied on real or personal property is a lien on the property assessed.” A.R.S. § 42-17153.

(b) It is the property that owes the tax and not the owner. Peabody Coal Company v. Navajo County, 117 Ariz. 335, 338, 572 P.2d 797 (1977); see also Santos v. Simon, 60 Ariz. 426, 138 P.2d 896 (1943). “The owner of real property is not personally liable for real property taxes; such taxes represent a lien against the land itself and are not a personal obligation of the property owner.” Id.

(c) If the taxes are not timely the government will sell the tax lien on the property, or, if the lien is not sold, it will simply take the property.

(d) Despite the foregoing, only the owner of property can contest its valuation.

TO WHOM PROPERTY IS TAXED

- ▶ **PERSONAL PROPERTY** -- The tax on personal property is also assessed against the property.
- ▶ But, if the property cannot be sold to satisfy the tax lien, it constitutes a debt against the owner to whom the property is assessed and against his successors and assigns.
- ▶ An action may be brought by the County Attorney upon the request of the County Treasurer to recover the whole or any part of the tax from the owner. A.R.S. § 42-19117.

COMPUTATION OF PROPERTY TAX

- ▶ Three components make up a property owner's property tax bill in Arizona:
 - (1) the value of the property;
 - (2) the assessment ratio applied to the property (legal class); and
 - (3) the applicable tax rate.

In simplified form, property taxes are determined by the following formula:

$$\text{Value} \times \text{Assessment Ratio (classification)} \times \text{Tax Rate} = \text{Tax}$$

- ▶ Each tax bill has two parallel sets of calculations using this formula. One concerns the "primary" value (limited property value) and corresponding tax and the other concerns the "secondary" value (full cash value) and corresponding tax.

REAL PROPERTY VALUATION

Full Cash Value (Secondary Value)

- ▶ **FULL CASH VALUE** -- The vast majority of property tax appeals concern the proper determination of "full cash value." Full cash value "is that value determined as prescribed by statute. If no statutory method is prescribed, full cash value is synonymous with market value which means that estimate of value that is derived annually by the use of standard appraisal methods and techniques." A.R.S. § 42-11001(6).
- ▶ With the exception of certain special properties, such as agricultural property and golf courses, full cash value means "market value." The Arizona Supreme Court has further refined this definition as follows: "What a willing buyer will pay a willing seller in an arms'-length transaction in cash or its equivalent, neither party being under any undue influence and both parties being fully informed as to the circumstances surrounding the property." Golder v. Dept. of Revenue, 123 Ariz. 260, 599 P.2d 216 (1979).

REAL PROPERTY VALUATION

Limited Property Value (Primary)

- ▶ Limited property value—A.R.S. § 42–13301 *et seq.*
- ▶ LPV is the LPV of the preceding year plus the greater of either:
 - (1) 10% of that value; *or*
 - (2) 25% of the difference between the full cash value of the parcel in the current year and the LPV of the parcel in the preceding year.
- ▶ BUT, the current LPV can never exceed the current full cash value.

REAL PROPERTY VALUATION

- ▶ **CURRENT USAGE** -- In employing the standard appraisal methods and techniques, "current usage shall be included in the formula for reaching a determination of full cash value." A.R.S. § 42-11054(B).
- ▶ The requirement that "current usage" of the property be included in the full cash value formula was adopted to require the appraisal of property at fair market value considering the current usage to which it was being placed and not its "highest and best use." Burns v. Herberger, 17 Ariz. App. 462, 467, 498 P.2d 536, 541 (1972), rev'd on other grounds, Golder v. Department of Revenue, 123 Ariz. 260, 265, 599 P.2d 216, 221 (1979).

DATE OF VALUE FOR REAL PROPERTY TAXES

- ▶ Under Arizona's real property tax system, the date of valuation for a given tax year is January 1st of the preceding calendar year.
A.R.S. § 42-11001(18)
- ▶ For example, the date of value for a claim for the 2011 tax year would be January 1, 2010.

METHODS OF VALUATION

There are three standard appraisal methods and techniques which are commonly used in valuing most real property in Arizona:

- (1) the sales comparison (or “market”) approach;
- (2) the cost approach; and
- (3) the income approach.

The Sales Comparison Approach

- ▶ This approach is also commonly referred to as the "market" approach to value. This approach is the most useful and applicable approach when there are several properties that are similar and have recently sold in the same market area in which the subject property is located.
- ▶ To determine the appropriate market, an owner should investigate the following factors: (1) property type – residential, retail shopping center, apartment building; (2) property features – occupancy, customer base, quality of construction and design and amenities; (3) market area; (4) available substitute properties.

The Sales Comparison Approach

- ▶ **Adjustments to the Sales Price** – The sales price of each comparable sale should be of the real property only (land and improvements). The sales price may need to be adjusted if additional property (personal property) is sold. (Personal property is rarely identified accurately on the affidavit of value). In addition, the sales price must be converted to its value in terms of cash or its equivalent. The amount of the down payment as well as the interest rate and other financing features should be considered in determining what adjustments to make.

The Sales Comparison Approach

- ▶ **Sale of the Subject Property** – The best evidence of fair market value is the sale of the subject property. The price paid for property in a recent arms-length transaction is ordinarily the best evidence of its value. See Honeywell Information Systems v. Maricopa County, 118 Ariz. 171, 174, 575 P.2d 801, 804 (App. 1978); Maricopa Packing Company v. Shortridge, 176 F.2d 982, 984 (9th Cir. 1949).

The Cost Approach

- ▶ Basic to the cost approach is the principle of substitution. This principle provides that no prudent buyer would pay more for a property than the cost to acquire a similar site and construct improvements on it.
- ▶ There are various types of cost approaches to value. The counties generally use the "replacement cost new, less depreciation" technique as set forth in the Department of Revenue's cost manual. This approach involves first valuing the land under the market approach and then adding it to the value of the improvements located on that land. The improvements are valued on a "replacement cost new, less depreciation" basis. The depreciation component in this method generally accommodates only normal wear and tear on the improvements. It does not reflect deferred maintenance, functional obsolescence or economic obsolescence.

The Cost Approach

- ▶ Determining the value for property under the cost approach requires that the following steps be taken:
 - a. Estimating the value of the land as if vacant.
 - b. Estimating the replacement costs of all improvements.
 - c. Subtracting the total accrued depreciation, if any, from the replacement cost of the improvements which results in an estimate of the depreciated replacement cost of the improvements.
 - d. Adding the land value to the depreciated replacement cost of the improvements.

- ▶ The sum of these estimates represents a value indication of the subject property under the cost approach.

The Income Approach

- ▶ Income-producing property is generally worth no more than the value of the income it will produce. The income approach concerns estimating property value by measuring the worth of future income. Income-generating properties are generally purchased for their anticipated benefits in the form of annual cash flow and capital appreciation upon reversion after the investment holding period.
- ▶ There are several types of income approaches to value, such as the direct capitalization method, discounted cash flow, and various “residual” techniques, to name a few.

The Income Approach

- ▶ In all methods, it is crucial to determine the appropriate amount of income to be capitalized. The income to be considered in any income analysis should be that derived from the use of the property and not from the business occupying or otherwise using the property. Thus, income must be adjusted to remove any influence from non-real property sources.
- ▶ **Measuring Net Income** – The following basic formula is used in determining value under the income approach:

$$\underline{\text{Value}} = \text{Net Operating Income} \div \text{Capitalization Rate}$$

The Income Approach

- ▶ Generally, the assessor will begin with the potential gross rent and then allow for normal vacancy and collection factors. The potential gross income should then be further reduced by normal operating expenses that are necessary to sustain the income. The following are examples of some allowed and disallowed expenses according to the Department of Revenue's Assessment Procedures Manual:
- ▶ Fixed Expenses include: Property Insurance; License Fees Permit Fees
- ▶ Variable Expenses may include: Utilities; Management Fees; Payroll; Payroll Taxes; Security; Landscaping Supplies; Fees for Services; Maintenance and Repairs; Janitorial Services; Cost of Replacing Shortlived Items
- ▶ Disallowed Expenses: Mortgage Debt Service; Capital Improvements; Economic and Tax Depreciation; Property Taxes (these are built-into the cap rate)

The Income Approach

- ▶ **Determining a Capitalization Rate** – Capitalization rate is the ratio between the Net Operating Income produced by an asset and its capital cost.
- ▶ When adequate comparable sales and income data are available, the appraiser can calculate a capitalization rate.

$$\text{Capitalization Rate} = \text{Net Operating Income} \div \text{Sales Price}$$

- ▶ Consider an apartment complex that sold for \$4.5 million and had an annual income of \$500,000. The overall capitalization rate would be 11.1% (\$500,000 divided by \$4,500,000). Under this example, the investor expects to earn 11.1% of his original investment per year, over the life of his investment, which would include both the return on his investment and the return of his investment.
- ▶ In addition, because property taxes are not included as expenses in determining the income stream to be capitalized, the effective tax rate has to be added—into the overall capitalization rate.

RECONCILIATION METHODS OF VALUATION

- ▶ In reconciling the three approaches to value, each approach is reviewed as to the reliability of the data and process, and weight is given to each approach as it contributes to the final value indication.
- ▶ Vacant land lends itself to the market approach because there is usually no income attributable to the land and there are no improvements for application of the cost approach.
- ▶ Residences typically lend themselves well to both the market approach and the cost approach. Generally, when there are sufficient sales in the area, the market approach is superior. Again, however, this would depend largely on the quantity and quality of data available.
- ▶ For income-producing properties, generally the income approach to value is superior.
- ▶ Owner-occupied commercial properties, industrial plants and one-of-a-kind properties often lend themselves to utilization of the cost approach as there are few comparable sales and often the property produces no income per se, but the income approach may still be appropriate for such properties if market rent for the property involved can be determined.

CLASSIFICATION OF PROPERTY

- ▶ Property is generally classed according to its use. Classifications of property are set forth in A.R.S. § 42-12001, *et seq.*
- ▶ The “assessed value” of the property is determined by applying the assessment ratio to the full cash and limited property values. A.R.S. § 42-15010. Thus, the classification of a property can play a critical role in the tax levied on the property because the classification determines the assessment ratio applicable to the property.
- ▶ The assessment ratios applicable to each class are set forth in A.R.S. § 42-15001, *et seq.*

CLASSIFICATION OF PROPERTY

- ▶ **MIXED USE PROPERTIES** -- Some properties are used for more than one purpose, and are referred to as “mixed use” properties. The County Assessor typically classifies such property proportionately in the appropriate legal class for each use. Section 42-15010(B) provides:

If a parcel of property has more than one percentage applied to its full cash value under this section due to multiple uses, the Assessor shall apply the percentages to the limited property value of the parcel in the same proportion and in the same manner as to the parcel’s full cash value.

- ▶ The procedure for calculating the assessment ratio for mixed use parcels requires that the proportion of full cash value property devoted to each use in the parcel be used to compute the effective assessment ratio.

STATUTORILY-VALUED PROPERTIES

- ▶ There are a number of different types of properties that are valued pursuant to a statutory methodology. For these properties, valuation is determined by specific method defined by the statute, not a “standard appraisal method or technique.” A.R.S. § 42-11001(5).
- **AGRICULTURAL PROPERTY** – A.R.S. § 42-13101
- **SHOPPING CENTERS** –A.R.S. § 42-13201, *et seq.*
- **GOLF COURSES** – A.R.S. § 42-13151, *et seq.*

CENTRALLY-VALUED PROPERTIES

- ▶ Statutory formulas are also applied to centrally-valued properties such as mines, utilities, telecommunications companies, railroads, pipelines, airlines, oil and gas producing property.
- ▶ These properties are classified and valued pursuant to statute by the Department of Revenue. The Department values these properties independent of the local assessor and transmits the values to each assessor for assignment to a given roll.

The Tax Appeals Process

- ▶ A property owner may appeal the valuation and/or classification of his property via either an “administrative” or “judicial” appeal.
- ▶ If the owner initially elected to pursue an administrative appeal, the owner still has the option of filing a judicial appeal. A.R.S. § 42-16202.
- ▶ Alternatively, the owner may file the appeal directly in court.
- ▶ In addition, the taxpayer may elect to use simplified, small claims procedures in disputes concerning the valuation or classification of the property owner’s residence or where the full cash value of the property at issue does not exceed \$1,000,000.

ADMINISTRATIVE APPEALS OF REAL PROPERTY

- ▶ **Notice of Valuation** -- On or before March 1 of each year the Assessor is required to notify all owners of record, in writing, of a property's full cash and limited property values that the Assessor is going to use to assess the property. A.R.S. § 42-15101.
- ▶ Additionally, the notification shall include the classification assigned to the property, and the last date on which the owner may appeal from the valuation or classification of the property. A.R.S. § 42-15102

ADMINISTRATIVE APPEALS OF REAL PROPERTY

- ▶ **Designation of a Taxpayer Agent** -- The owner or controller of the property may designate an agent to act on the owner's behalf regarding the property valuation in front of the Assessor, ADOR, or the County/State Board of Equalization. A.R.S. § 42-16001.

ADMINISTRATIVE APPEALS OF REAL PROPERTY – ASSESSOR LEVEL

- ▶ Assessor Level Appeal – A.R.S. § 42-16051 *et seq.*
- ▶ To initiate an assessor level appeal, the taxpayer must file a “Petition for Review.” The petition should include the owner’s opinion of the property’s full cash value and “substantial information” that supports the owner’s position.
- ▶ For purposes of the assessor level appeal, “substantial information” can comprise of a valuation under one or more of the standard appraisal methods (income, market, and cost). If the income approach is used, three years income and expense information should be provided with the petition. If the market approach is used, at least one comparable property must be identified.

ADMINISTRATIVE APPEALS OF REAL PROPERTY – ASSESSOR LEVEL

- ▶ On filing the petition, the taxpayer can request a meeting with the assessor. If a meeting is requested, the assessor will set a meeting date, and the taxpayer has the opportunity at that meeting to provide additional information to the assessor for his use in consideration of the appeal.
- ▶ The assessor must consider and rule on each petition on or before August 15. If the assessor grants the relief requested, the taxpayer may not appeal the ruling. Further, if the assessor and the taxpayer reach a compromise position and settle the appeal, a written settlement agreement will be signed by the parties and both parties waive the right to appeal.
- ▶ If, however, the assessor denies any part of the relief requested the taxpayer may appeal the assessor's ruling, within 25 days of the date the decision is mailed, either to the appropriate Board of Equalization or to Court.

ADMINISTRATIVE APPEALS OF REAL PROPERTY – SBOE

- ▶ The taxpayer may appeal the assessor's ruling to the State Board of Equalization. A.R.S. § 42-16056(C).
- ▶ Hearings are conducted by hearing officers and occur in the County where the property is located. A.R.S. § 42-16157.
- ▶ A property owner that is not satisfied with the Department's determination of property value may appeal the Department's decision to the State Board of Equalization on or before October 1st or 15 days after the Department mails its decision, whichever is later.

ADMINISTRATIVE APPEALS OF REAL PROPERTY – SBOE

- ▶ Based upon evidence presented at the hearing, the Board may increase, decrease, or “no change” the Assessor’s (or Department’s) valuation of the property, and/or may change the property’s classification. When considering the petition, the Board shall review and consider all competent evidence relating to full cash value, including the valuation of similarly situated property.
- ▶ The Board shall conduct all hearings and issue its decision on all assessor level petitions on or before October 15.
- ▶ Cases involving the Department (centrally valued properties) shall be heard and decided on or before November 15. A.R.S. § 42-16165.

APPEALS TO SUPERIOR COURT OR ARIZONA TAX COURT

- ▶ Can appeal assessor's decision straight to Superior Court or Tax Court within 25 days of the assessor's decision in an assessor level appeal.
- ▶ Can appeal property's valuation or classification set by the Board to either Superior Court or the Arizona Tax Court within 60 days of the State Board's final decision. A.R.S. § 42-16203.
- ▶ Can appeal directly to Superior Court or Tax Court (skipping administrative appeals) by December 15th.

CLAIMS FOR ILLEGALLY COLLECTED TAXES

- ▶ A.R.S. § 42-11005 – Within one year after payment of the first installment of the tax, an action may be maintained to recover any illegally collected tax.
- ▶ For example, for the 2005 tax year, if the first property tax installment was paid on November 1, 2005, the illegally collected tax appeal must be filed on or before October 31, 2006. Claims for illegally collected taxes generally do not concern whether a property was properly valued or classified. Those actions are generally governed by the shorter deadlines outlined above. Cases involving illegally collected taxes may concern issues such as whether the government has discriminated against the taxpayer, or whether the property should be taxed at all. In these cases, the Rules of Civil Procedure govern the requirements for service of process and scheduling of trial

CORRECTION OF “PROPERTY TAX ERRORS”

- ▶ **Section 42-16251, *et seq.*** – Arizona Revised Statutes provides a mechanism to correct certain property tax errors outside of the normal administrative appeals process.
- ▶ The taxpayer must file a "notice of claim" if the taxpayer discovers the error and wants to obtain any relief, and the government files a "notice of error", if the County Assessor or the Department of Revenue determines that property has been improperly assessed as a result of a property tax error.
- ▶ The notice of claim and notice of error are filed administratively, and either may be appealed to the State Board of Equalization and later to the Arizona Tax Court.

PARTIES TO APPEAL IN COURT

- ▶ **Necessary Parties** -- an appeal must be brought in the name of the record owner of the property.
- ▶ Although contractually many leases provide that a tenant who is responsible for payment of property taxes may appeal the valuation of the property being leased, the appeal should be brought in the name of the record owner of the property.
- ▶ In an appeal by a property owner involving property that is valued and assessed by a county, the county is the appropriate defendant. If the appeal involves property that is valued by the Department, the both the Department and either the state or the county in which the property is located (whichever collects the tax) are the appropriate defendants. A.R.S. § 42-16208.

PAYMENT OF TAXES IS A PREREQUISITE

- ▶ **Payment of Taxes** -- Any taxes subject to the appeal that have been levied and assessed against property must be paid prior to the date the taxes become delinquent, otherwise, the Court will dismiss the appeal.

- ▶ Taxes are due in two installments:
 - (1) First half due October 1st of the calendar year (i.e. first half of 2011 taxes due October 1, 2011); First half is delinquent if not paid by November 1st.
 - (2) Second half due March 1st of the following year (i.e. second half of 2011 taxes due March 1, 2012); Second half is delinquent if not paid by May 1st.

SETTLEMENTS

- ▶ **Settlements** – Well over 90% of all property tax cases settle.
- ▶ In Maricopa County, the parties typically reach a proposed settlement that is subject to approval by the Board of Supervisors. At that time, the parties will file a notice of settlement with the Court.
- ▶ In Maricopa County, the County Assessor then typically prepares a "tax appeal settlement recommendation" ("TASR") and presents the reduction in value or change in classification to the County Board of Supervisors for formal approval of the settlement.
- ▶ Once the County Board of Supervisors approves the settlement, the parties prepare a stipulated judgment and present it to the court.

REFUNDS/CORRECTION OF TAX ROLL

- ▶ **Refunds** – Once a judgment is entered, either a refund will be granted, which will include interest at 10%, or the property owner will be able to pay property taxes based upon the values and classifications set forth in the judgment, should the judgment be signed prior to the date the taxes become delinquent.

“ROLL-OVER” STATUTE

- ▶ It is fairly common to have one case deal with multiple tax years on the same property. This creates opportunities to structure settlements differently for different years depending on the parties’ incentives.
- ▶ In addition (with some exceptions) if an appeal results in a reduction of the valuation or a change in the classification of property, the next year’s valuation or classification shall also be that lower valuation or classification. A.R.S. § 42-16002.
 - (This is referred to as a “roll-over”). The property owner can further appeal the roll-over the following year.

ATTORNEYS' FEES and EXPERT EXPENSES

- ▶ If a property owner prevails at trial (i.e. the Court does not uphold the Assessor's value), the property owner can recover:
 - (1) attorneys' fees (generally limited to \$175 an hour with a cap of \$30,000); plus
 - (2) expert witness expenses (limited to the rate at which the County paid its expert).

A.R.S. § 12-348

3. During this one-year period, the Presiding Judge of the Superior Court in Maricopa County by administrative order may extend the time to trial for extraordinary circumstances.
4. Not later than 14 days prior to expiration of the one-year period, the Presiding Judge of the Tax Court shall report to this Court whether further suspension of Rule 24 is requested, including reasons and statistics supporting the request.

Dated this 21st day of May, 2010.

REBECCA WHITE BERCH
Chief Justice

SUPREME COURT OF ARIZONA

In the Matter of)	Arizona Supreme Court
)	No. R-09-0007
PETITION TO ADOPT A NEW CODE)	
OF JUDICIAL CONDUCT)	
)	
)	
)	
)	
_____)	

ORDER

Rules of the Supreme Court
Rule 81. Arizona Code of Judicial Conduct

A petition having been filed proposing to adopt a new Code of Judicial Conduct, together with a motion for expedited consideration, and comments having been received, upon consideration,

IT IS ORDERED granting the motion for expedited consideration.

IT IS FURTHER ORDERED that Rule 81, Rules of the Supreme Court, be adopted as amended in accordance with the attachment hereto, effective September 1, 2009.

DATED this _____ day of June, 2009.

RUTH V. MCGREGOR
Chief Justice

TO:
Rule 28 Distribution

mwa
Supreme Court No. R-09-0007
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ATTACHMENT¹

¹ This attachment is a clean version of the new code and is intended to replace the current contents of Rule 81, Rules of the Supreme Court, in their entirety.

Rules of the Supreme Court

Rule 81. Arizona Code of Judicial Conduct

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Rule 1.1. Compliance with the Law
Rule 1.2. Promoting Confidence in the Judiciary
Rule 1.3. Avoiding Abuse of the Prestige of Judicial Office

Canon 2. A judge shall perform the duties of judicial office impartially, competently, and diligently.

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PREAMBLE

An independent, fair, and impartial judiciary is indispensable to our system of justice. The United States legal system is based upon the principle that an independent, impartial, and competent judiciary, composed of men and women of integrity, will interpret and apply the law that governs our society. Thus, the judiciary plays a central role in preserving the principles of justice and the rule of law. Inherent in all the rules contained in this code are the precepts that judges, individually and collectively, must respect and honor the judicial office as a public trust and strive to maintain and enhance confidence in the legal system.

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

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

SCOPE

This code consists of four canons, numbered rules under each canon, and comments that generally follow and explain each rule. Scope and terminology sections provide additional guidance in interpreting and applying the code. An application section establishes when the various rules apply to a judge or judicial candidate.

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

The comments that accompany the rules serve two functions. First, they provide guidance regarding the purpose, meaning, and proper application of the rules. They contain explanatory material and, in some instances, provide examples of permitted or prohibited conduct. Second, the comments identify aspirational goals for judges. To implement fully the principles of this code as articulated in the canons, judges should strive to exceed the standards of conduct established by the rules, holding themselves to the highest ethical standards and seeking to achieve those aspirational goals, thereby enhancing the dignity of the judicial office.

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

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

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

TERMINOLOGY

“Appropriate authority” means the authority having responsibility for initiation of disciplinary process in connection with the violation to be reported.

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

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

“Domestic partner” means a person with whom another person maintains a household and an intimate relationship, other than a person to whom he or she is legally married.

“Economic interest” means ownership of more than a de minimis legal or equitable interest and is further defined, for purposes of compliance with state law, in A.R.S. § 38-502(11). Except for situations in which the judge participates in the management of such a legal or equitable interest, or the interest could be substantially affected by the outcome of a proceeding before a judge, it does not include:

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

“Fiduciary” includes relationships such as executor, administrator, trustee, or guardian.

“Impartial,” “impartiality,” and **“impartially”** mean absence of bias or prejudice in favor of, or against, particular parties or classes of parties, as well as maintenance of an open mind in considering issues that may come before a judge.

“Impending matter” is a matter that is imminent or expected to occur in the near future.

“Impropriety” includes conduct that violates the law, court rules, or provisions of this Code, and conduct that undermines a judge’s independence, integrity, or impartiality.

“Independence” means a judge’s freedom from influence or controls other than those established by law.

“Integrity” means probity, fairness, honesty, uprightness, and soundness of character.

“Judge” means any person who is authorized to perform judicial functions within the Arizona judiciary, including a justice or judge of a court of record, a justice of the peace, magistrate, court commissioner, special master, hearing officer, referee, or pro tempore judge.

“Judicial candidate” means any person, including a sitting judge, who is seeking selection for or retention in judicial office by election or appointment. A person becomes a candidate for judicial office as soon as he or she makes a public announcement of candidacy, declares or files as a candidate with the election or appointment authority, authorizes or, where permitted, engages in solicitation or acceptance of contributions or support, or is nominated for election or appointment to office.

“Knowingly,” “knowledge,” “known,” and **“knows”** means actual knowledge of the fact in question. A person’s knowledge may be inferred from circumstances.

“**Law**” encompasses court rules as well as ordinances, regulations, statutes, constitutional provisions, and decisional law.

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

“**Member of a judge’s family residing in the judge’s household**” means any relative of a judge by blood or marriage, or a person treated by a judge as a member of the judge’s family, who resides in the judge’s household.

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

“**Pending matter**” is a matter that has commenced. A matter continues to be pending through any appellate process until final disposition.

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

“**Political organization**” means a political party or other group sponsored by or affiliated with a political party or candidate, the principal purpose of which is to further the election or appointment of candidates for political office. For purposes of this code, the term does not include a judicial candidate’s campaign committee created as authorized by Rule 4.3.

“**Public election**” includes primary and general elections, partisan elections, nonpartisan elections, recall elections, and retention elections.

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

APPLICATION

The Application section establishes when the various rules apply to a judge or judicial candidate.

PART A

Applicability of this Code.

- (1) The provisions of the code apply to all judges. Parts B through D of this section identify exemptions that apply to part-time judges.
- (2) The provisions of Canon 4 apply to judicial candidates.

Comment

1. The rules in this code have been formulated to address the ethical obligations of any person who serves a judicial function within the Arizona judicial branch, and are premised upon the supposition that

a uniform system of ethical principles should apply to all those authorized to perform judicial functions. The code does not apply to administrative law judges or administrative hearing officers in this state unless expressly made applicable by statute or by agency rules. Such officers are generally affiliated with the executive branch of government rather than the judicial branch and each agency should consider the unique characteristics of particular positions in adopting and adapting the code for administrative law judges or administrative hearing officers. See Arizona Judicial Ethics Advisory Committee, Opinion 92-03 (January 31, 1992).

2. The determination of which category of judicial service and, accordingly, which specific rules apply to an individual judicial officer, depends upon the nature of the particular judicial service.

3. Arizona has what are often called “problem-solving” courts, in which judges are authorized by court rules to act in nontraditional ways. For example, judges presiding in drug courts and monitoring the progress of participants in those courts’ programs may be authorized and even encouraged to communicate directly with social workers, probation officers, and others outside the context of their usual judicial role as independent decision makers on issues of fact and law. When local rules governing problem-solving courts, or protocols for problem-solving courts known and consented to by the participants, specifically authorize conduct not otherwise permitted under these rules, they take precedence over the provisions set forth in the code. Nevertheless, judges serving on “problem -solving” courts shall comply with this code except to the extent local rules or protocols provide and permit otherwise. See Rule 2.9, Comment 4.

PART B

Retired Judge Available for Assignment.

A retired judge available for assignment to judicial service need not comply with Rules 3.2 (appearances before governmental bodies and consultation with government officials), 3.3 (acting as a character witness), 3.4 (appointments to governmental positions), 3.7 (participation in educational, religious, charitable, fraternal, or civic organizations and activities), 3.8 (appointments to fiduciary positions), 3.9 (service as arbitrator or mediator), 3.10 (practice of law), 3.11 (financial, business or remunerative activities), 3.12 (compensation for extrajudicial activities), 3.13 (acceptance and reporting of gifts, loans, bequests, benefits, or other things of value), 3.14 (reimbursement of expenses and waivers of fees or charges), 3.15 (reporting requirements), and 4.1(A) (political and campaign activities of judges and judicial candidates in general).

PART C

Continuing or Periodic Part-Time Judge.

A judge who serves part-time on a continuing or periodic basis, but is permitted to devote time to another profession or occupation and whose compensation is less than that of a full-time judge, is not required to comply:

(1) except while serving as a judge with Rules 2.10(A) and (B) (judicial statements on pending and impending cases); or

(2) at any time with Rules 3.4 (appointments to governmental positions), 3.8 (appointments to fiduciary positions), 3.9 (service as arbitrator or mediator), 3.10 (practice of law), 3.11 (financial, business, or remunerative activities), 3.14 (reimbursement of expenses and waivers of fees or charges), 3.15 (reporting requirements), 4.1 (political and campaign activities of judges and judicial candidates in

general), 4.2 (political and campaign activities of judicial candidates in public elections), 4.3 (activities of candidates for appointive judicial office), 4.4 (campaign committees), and 4.5 (activities of judges who become candidates for nonjudicial office).

Additionally, such a judge shall not practice law in the specific court on which the judge serves or in any court subject to the appellate jurisdiction of the specific court on which the judge serves, and shall not act as a lawyer in a proceeding in which the judge has served as a judge or in any other proceeding related thereto.

Comment

When a person who has been a continuing part-time judge is no longer a continuing part-time judge, that person may act as a lawyer in a proceeding in which he or she has served as a judge or in any other proceeding related thereto only with the informed consent of all parties, and pursuant to any applicable Rules of Professional Conduct.

PART D

Pro Tempore Part-Time Judge.

A pro tempore part-time judge is a person appointed pursuant to Article 6, § 31 of the Arizona Constitution, or municipal charter or ordinance, who serves or expects to serve repeatedly on a less than full-time basis, but under a separate appointment by a presiding judge for each limited period of service or for each matter.

(1) A pro tempore part-time judge is not required to comply:

- (a) except while serving as a judge with Rules 1.2 (promoting confidence in the judiciary), 2.4 (external influences on judicial conduct), 2.10 (judicial statements on pending and impending cases), 3.2 (appearance before governmental bodies and consultation with government officials), 3.3 (acting as a character witness); or
- (b) at any time with Rules 3.4 (appointments to governmental positions), 3.7 (participation in educational, religious, charitable, fraternal, or civic organizations and activities), 3.8 (appointments to fiduciary positions), 3.9 (service as arbitrator or mediator), 3.10 (practice of law), 3.11 (financial, business, or remunerative activities), 3.13 (acceptance and reporting of gifts, loans, bequests, benefits, or other things of value), 3.15 (reporting requirements), 4.1 (political and campaign activities of judges and judicial candidates in general), and 4.5 (activities of judges who become candidates for nonjudicial office).

(2) A person who has been a pro tempore part-time judge shall not act as a lawyer in a proceeding in which the judge has served as a judge or in any other proceeding related thereto except as otherwise permitted by Rule 1.12(a) of the Arizona Rules of Professional Conduct.

(3) A pro tempore part-time judge who serves once or only sporadically in a specialized division of a court or in a court without specialized divisions may appear as a lawyer in such specialized division or court during such service.

(4) A pro tempore part-time judge who serves repeatedly on a continuing scheduled basis in a specialized division of a court or in a court without specialized divisions shall not appear as a lawyer in such specialized division or court during such service.

(5) A part-time pro tempore judge who is appointed to perform judicial functions of a nonappealable nature on a continuing scheduled basis shall not appear as a lawyer in other proceedings involving the function of the court in which the service was performed, but may appear as a lawyer in all other areas of practice before the court.

Comment

1. The restrictions of Part D apply to the members of a pro tempore part-time judge's law firm.

2. The purpose of Part D is to allow the greatest possible use of part-time pro tempore judges to augment judicial resources in order to reduce case backlogs and the time necessary to process cases to disposition while minimizing any potential for the appearance of impropriety.

3. The language of Part D is intended to allow, at a minimum, the following current practices:

(a) A lawyer sits as a part-time pro tempore judge for one family law trial and during this time appears in the family law divisions as a lawyer in other matters.

(b) A lawyer sits as a part-time pro tempore juvenile judge two or more half days a week on a continuing scheduled basis and during this time appears in court as a lawyer in all types of proceedings except for juvenile matters.

(c) A lawyer sits as a part-time pro tempore criminal judge in the after-hours and weekend initial appearance program and thereafter appears as a lawyer in the criminal divisions except that the lawyer does not appear in the initial appearance program on behalf of clients.

(d) A lawyer sits on a continuing scheduled basis as a part-time pro tempore judge in a satellite court in one community and otherwise appears in the main court located in a different community on all variety of matters, but does not appear in any proceeding in the satellite court.

(e) A lawyer sits on a continuing scheduled basis as a pro tempore part-time justice of the peace in one precinct and appears as a lawyer in a justice court in another precinct.

(f) A lawyer sits once or only sporadically as a pro tempore part-time magistrate in a municipal court and otherwise appears as a lawyer in the same court on all variety of matters.

(g) These comments replace Advisory Opinion 92-16 (issued December 8, 1992, and reissued March 8, 1993) dealing with ethical constraints on lawyers serving as pro tempore judges.

PART E

Time for Compliance by New Judges.

A person to whom this code becomes applicable shall comply immediately with its provisions, except that those judges to whom Rules 3.8 (appointments to fiduciary positions) and 3.11 (financial, business,

or remunerative activities) apply shall comply with those rules as soon as reasonably possible, but in no event later than one year after the code becomes applicable to the judge.

Comment

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

CANON 1

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

RULE 1.1. Compliance with the Law

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

Comment

For a discussion of the judge's obligation when applying and interpreting the law, see Rule 2.2 and the related comment.

RULE 1.2. Promoting Confidence in the Judiciary

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

Comment

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

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

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

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

5. Actual improprieties include violations of law, court rules, or provisions of this code. The test for appearance of impropriety is whether the conduct would create in reasonable minds a perception that the judge violated this code or engaged in other conduct that reflects adversely on the judge's honesty, impartiality, temperament, or fitness to serve as a judge. An appearance of impropriety does not exist merely because a judge has previously rendered a decision on a similar issue, has a general opinion about a legal matter that relates to the case before him or her, or may have personal views that are not in harmony with the views or objectives of either party. A judge's personal and family circumstances are generally not appropriate considerations on which to presume an appearance of impropriety.

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

RULE 1.3. Avoiding Abuse of the Prestige of Judicial Office

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

Comment

1. It is improper for a judge to use or attempt to use his or her position to gain personal advantage or deferential treatment of any kind. For example, it would be improper for a judge to allude to his or her judicial status to gain favorable treatment in encounters with traffic officials. Similarly, a judge must not use judicial letterhead to gain an advantage in conducting his or her personal business.

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

3. Judges may participate in the process of judicial selection by cooperating with appointing authorities and screening committees, by recommending qualified candidates for judicial office, and by responding to inquiries from and volunteering information to such entities concerning the professional qualifications of a person being considered for judicial office.

4. A judge who writes or contributes to publications of for-profit entities should not permit anyone associated with the publication of such materials to exploit the judge's office in a manner that violates this rule or other applicable law. In contracts for publication of a judge's writing, the judge should retain sufficient control over the advertising to avoid such exploitation.

CANON 2

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

RULE 2.1. Giving Precedence to Judicial Duties

The judicial duties of a judge take precedence over all of a judge's other activities.

Comment

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

2. Judicial duties are those prescribed by law. In addition, judges are encouraged to participate in activities that promote public understanding of and confidence in the justice system.

RULE 2.2. Impartiality and Fairness

A judge shall uphold and apply the law, and shall perform all duties of judicial office fairly and impartially.

Comment

1. To ensure impartiality and fairness to all parties, a judge must be objective and open-minded.

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

3. A good faith error of fact or law does not violate this rule. However, a pattern of legal error or an intentional disregard of the law may constitute misconduct.

4. It is not a violation of this rule for a judge to make reasonable accommodations to ensure self-represented litigants the opportunity to have their matters fairly heard.

RULE 2.3. Bias, Prejudice, and Harassment

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

(B) A judge shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice, or engage in harassment, including but not limited to bias, prejudice, or harassment based upon race, sex, gender, religion, national origin, ethnicity, disability, age, sexual orientation, marital status, socioeconomic status, or political affiliation, and shall not permit court staff, court officials, or others subject to the judge's direction and control to do so.

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

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

Comment

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

2. Examples of manifestations of bias or prejudice include but are not limited to epithets; slurs; demeaning nicknames; negative stereotyping; attempted humor based upon stereotypes; threatening, intimidating, or hostile acts; suggestions of connections between race, ethnicity, or nationality and crime; and irrelevant references to personal characteristics. Facial expressions and body language may convey to parties and lawyers in the proceeding, jurors, the media, and others an appearance of bias or prejudice. A judge must avoid conduct that may reasonably be perceived as prejudiced or biased.

3. Harassment, as referred to in paragraphs (B) and (C), is verbal or physical conduct that denigrates or shows hostility or aversion toward a person on bases such as race, sex, gender, religion, national origin, ethnicity, disability, age, sexual orientation, marital status, socioeconomic status, or political affiliation.

4. Sexual harassment includes but is not limited to sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature that is unwelcome. See Arizona Supreme Court Administrative Order 92-33 (Oct. 19, 1992), for the judiciary's sexual harassment policy.

RULE 2.4. External Influences on Judicial Conduct

(A) A judge shall not be swayed by partisan interests, public clamor, or fear of criticism.

(B) A judge shall not permit family, social, political, financial, or other interests or relationships to influence the judge's judicial conduct or judgment.

(C) A judge shall not convey or permit others to convey the impression that any person or organization is in a position to influence the judge.

Comment

An independent judiciary requires that judges decide cases according to the law and facts, without regard to whether particular laws or litigants are popular or unpopular with the public, the media, government officials, or the judge's friends or family. Confidence in the judiciary is eroded if judicial decision making is perceived to be subject to inappropriate outside influences.

RULE 2.5. Competence, Diligence, and Cooperation

(A) A judge shall perform judicial and administrative duties competently, diligently, and promptly.

(B) A judge shall reasonably cooperate with other judges and court officials in the administration of court business.

(C) A judge shall participate actively in judicial education programs and shall complete mandatory judicial education requirements.

Comment

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

2. A judge should seek the necessary docket time, court staff, expertise, and resources to discharge all adjudicative and administrative responsibilities.

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

4. In disposing of matters promptly and efficiently, a judge must demonstrate due regard for the rights of parties to be heard and to have issues resolved without unnecessary cost or delay. A judge should monitor and supervise cases in ways that reduce or eliminate dilatory practices, avoidable delays, and unnecessary costs.

5. Article 2, § 11 of the Arizona Constitution requires that "Justice in all cases shall be administered openly, and without unnecessary delay." Article 6, Section 21 provides that "Every matter submitted to a judge of the superior court for his decision shall be decided within sixty days from the submission thereof. The supreme court shall by rule provide for the speedy disposition of all matters not decided within such period." See Rule 91(e), Rules of the Supreme Court; A.R.S. § 12-128.01. In addition, A.R.S. § 11-424.02(A) prohibits a justice of the peace from receiving compensation if a cause "remains pending and undetermined for sixty days after it has been submitted for decision." These and other time requirements are discussed in depth in Arizona Judicial Ethics Advisory Committee, Advisory Opinion 06-02 (April 25, 2006).

RULE 2.6. Ensuring the Right to Be Heard

(A) A judge shall accord to every person who has a legal interest in a proceeding, or that person's lawyer, the right to be heard according to law.

(B) A judge may encourage parties to a proceeding and their lawyers to settle matters in dispute, but shall not coerce any party into settlement.

Comment

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

2. The judge plays an important role in overseeing the settlement of disputes, but should be careful that efforts to further settlement do not undermine any party's right to be heard according to law. The judge should keep in mind the effect that the judge's participation in settlement discussions may have, not only on the judge's own views of the case, but also on the perceptions of the lawyers and the parties if the case remains with the judge after settlement efforts are unsuccessful. Among the factors that a judge should consider when deciding upon an appropriate settlement practice for a case are (1) whether the parties have requested or voluntarily consented to a certain level of participation by the judge in

settlement discussions, (2) whether the parties and their counsel are relatively sophisticated in legal matters, (3) whether the case will be tried by the judge or a jury, or is on appellate review, (4) whether the parties participate with their counsel in settlement discussions, (5) whether any parties are unrepresented by counsel, (6) whether the matter is civil or criminal, and (7) whether the judge involved in the settlement discussions will also be involved in the decision on the merits.

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

RULE 2.7. Responsibility to Decide

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

Comment

1. Although there are times when disqualification is necessary to protect the rights of litigants and preserve public confidence in the independence, integrity, and impartiality of the judiciary, judges must be available to decide matters that come before the courts. Unwarranted disqualification may bring public disfavor to the court and to the judge personally. The dignity of the court, the judge's respect for fulfillment of judicial duties, and a proper concern for the burdens that may be imposed upon the judge's colleagues require that a judge not use disqualification to avoid cases that present difficult, controversial, or unpopular issues.

2. A judge is not ethically obligated to automatically recuse himself or herself from a case in which one of the litigants has filed a complaint against the judge with the Commission on Judicial Conduct. See Advisory Opinion 98-02.

RULE 2.8. Decorum, Demeanor, and Communication with Jurors

(A) A judge shall require order and decorum in proceedings before the court.

(B) A judge shall be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, court staff, court officials, and others with whom the judge deals in an official capacity, and shall require similar conduct of lawyers, court staff, court officials, and others subject to the judge's direction and control.

(C) A judge shall not commend or criticize jurors for their verdict other than in a court order or opinion in a proceeding, but may express appreciation to jurors for their service to the judicial system and the community.

Comment

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

2. Commending or criticizing jurors for their verdict may imply a judicial expectation in future cases and may impair a juror's ability to be fair and impartial in a subsequent case. There are several exceptions to this general rule, however, and with certain qualifications judges may speak to a discharged jury following the return of a verdict. See Arizona Judicial Ethics Advisory Committee Opinion 01-01 (reissued January 22, 2003). This rule does not preclude a judge from communicating with jurors personally, in writing, or through court personnel to obtain information for the purpose of improving the administration of justice.

RULE 2.9. Ex Parte Communication

(A) A judge shall not initiate, permit, or consider ex parte communications, or consider other communications made to the judge outside the presence of the parties or their lawyers, concerning a pending or impending matter, except as follows:

(1) When circumstances require it, ex parte communication for scheduling, administrative, or emergency purposes, which does not address substantive matters, is permitted, provided:

(a) the judge reasonably believes that no party will gain a procedural, substantive, or tactical advantage as a result of the ex parte communication; and

(b) the judge makes provision to promptly notify all other parties of the substance of the ex parte communication, and gives the parties an opportunity to respond.

(2) A judge may obtain the advice of a disinterested expert on the law applicable to a proceeding.

(3) A judge may consult with other judges, or with court personnel whose functions are to aid the judge in carrying out the judge's adjudicative responsibilities. If in doing so the judge acquires factual information that is not part of the record, the judge shall make provision promptly to notify the parties of the substance of the information and provide the parties with an opportunity to respond. The judge may not abrogate the responsibility personally to decide the matter.

(4) A judge may, with the consent of the parties, confer separately with the parties and their lawyers in an effort to settle matters pending before the judge.

(5) A judge may initiate, permit, or consider any ex parte communication when expressly authorized by law to do so.

(6) A judge may engage in ex parte communications when serving on problem-solving courts, if such communications are authorized by protocols known and consented to by the parties or by local rules.

(B) If a judge inadvertently receives an unauthorized ex parte communication bearing upon the substance of a matter, the judge shall make provision to promptly notify the parties of the substance of the communication and provide the parties with an opportunity to respond.

(C) Except as otherwise provided by law, a judge shall not investigate facts in a matter independently, and shall consider only the evidence presented and any facts that may properly be judicially noticed.

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

Comment

1. To the extent reasonably possible, all parties or their lawyers shall be included in communications with a judge. A judge may also direct judicial staff, without invoking the notice and disclosure provisions of this rule, to screen written ex parte communications and to take appropriate action consistent with this rule.

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

3. The proscription against communications concerning a proceeding includes communications with persons who are not participants in the proceeding, except to the limited extent permitted by this rule.

4. When serving on problem-solving courts, such as mental health courts or drug courts, judges may assume a more interactive role with parties, treatment providers, probation officers, social workers, and others. See Application, Part A, Comment 3.

5. A judge may consult with other judges on pending matters, but must avoid ex parte discussions of a case with judges who have previously been disqualified from hearing the matter, and with judges who have appellate jurisdiction over the matter.

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

7. A judge may consult ethics advisory committees, outside counsel, or legal experts concerning the judge's compliance with this code.

8. An appropriate and often desirable procedure for a court to obtain the advice of a disinterested expert on legal issues is to invite the expert to file a brief *amicus curiae*.

9. A judge may request a party to submit proposed findings of fact and conclusions of law, so long as the other parties are apprised of the request and are given an opportunity to respond to the proposed findings and conclusions.

10. If communication between the trial judge and the appellate court with respect to a proceeding is permitted, a copy of any written communication or the substance of any oral communication should be provided to all parties.

RULE 2.10. Judicial Statements on Pending and Impending Cases

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

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

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

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

(E) Subject to the requirements of paragraph (A), a judge may respond directly or through a third party to allegations in the media or elsewhere concerning the judge's conduct in a matter.

Comment

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

2. This rule does not prohibit a judge from commenting on proceedings in which the judge is a litigant in a personal capacity. In cases in which the judge is a litigant in an administrative capacity, the judge may comment publicly on the merits of the case. In cases in which the judge is a litigant in a nominal capacity, such as a special action, the judge must not comment publicly except as otherwise specifically permitted by this rule.

3. Depending upon the circumstances, the judge should consider whether it may be preferable for a third party, rather than the judge, to respond or issue statements in connection with allegations concerning the judge's conduct in a matter.

RULE 2.11. Disqualification

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

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

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

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

(b) acting as a lawyer in the proceeding;

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

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

(3) The judge knows that he or she, individually or as a fiduciary, or the judge's spouse, domestic partner, parent, or child, or any other member of the judge's family residing in the judge's household, has an economic interest, as defined by this code or Arizona law, in the subject matter in controversy or in a party to the proceeding.

(4) The judge knows or learns by means of a timely motion that a party, a party's lawyer, or the law firm of a party's lawyer has within the previous four years made aggregate contributions to the judge's campaign in an amount that is greater than the amounts permitted pursuant to A.R.S. § 16-905.

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

(6) The judge:

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

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

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

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

(B) A judge shall keep reasonably informed about the judge's personal and fiduciary economic interests, and make a reasonable effort to keep informed about the personal economic interests of the judge's spouse or domestic partner and minor children residing in the judge's household.

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

(D) Official communications received in the course of performing judicial functions as well as information gained through training programs and from experience do not in themselves create a basis for disqualification.

Comment

1. Under this rule, a judge is disqualified whenever the judge's impartiality might reasonably be questioned, regardless of whether any of the specific provisions of paragraphs (A)(1) through (5) apply.

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

3. The rule of necessity may override the rule of disqualification. For example, a judge might be required to participate in judicial review of a judicial salary statute or might be the only judge available in a matter requiring immediate judicial action, such as a hearing on probable cause or a temporary restraining order. In matters that require immediate action, the judge must disclose on the record the basis for possible disqualification and make reasonable efforts to transfer the matter to another judge as soon as practicable.

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

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

6. "Economic interest," as set forth in the Terminology section, means ownership of more than a de minimis legal or equitable interest and is further defined, for purposes of compliance with state law, in A.R.S. § 38-502(11). Except for situations in which a judge participates in the management of such a legal or equitable interest, or the interest could be substantially affected by the outcome of a proceeding before a judge, it does not include:

(a) an interest in the individual holdings within a mutual or common investment fund;

(b) an interest in securities held by an educational, religious, charitable, fraternal, or civic organization in which the judge or the judge's spouse, domestic partner, parent, or child serves as a director, officer, advisor, or other participant;

(c) a deposit in a financial institution or deposits or proprietary interests the judge may maintain as a member of a mutual savings association or credit union, or similar proprietary interests; or

(d) an interest in the issuer of government securities held by the judge.

7. A lawyer in a government agency does not ordinarily have an association with other lawyers employed by that agency within the meaning of Rule 2.11(A)(6)(a); a judge formerly employed by a government agency, however, should disqualify himself or herself in a proceeding if the judge's impartiality might reasonably be questioned because of such association.

Rule 2.12. Supervisory Duties

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

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

(C) A judge shall require staff, court officials, and others subject to the judge's direction and control to comply with the provisions of the Code of Conduct for Judicial Employees adopted by the supreme court.

Comment

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

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

Rule 2.13. Administrative Appointments

(A) In making administrative appointments, a judge:

- (1) shall exercise the power of appointment impartially and on the basis of merit; and
- (2) shall avoid nepotism, favoritism, and unnecessary appointments.

(B) A judge shall not approve compensation of appointees beyond the fair value of services rendered.

Comment

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

2. Unless otherwise defined by law, nepotism is the appointment or hiring of any relative within the third degree of relationship of either the judge or the judge's spouse or domestic partner, or the spouse or domestic partner of such relative. Arizona's antinepotism statute, which applies to judicial officers, is found in A.R.S. § 38-481.

RULE 2.14. Disability and Impairment

A judge having a reasonable belief that the performance of a lawyer or another judge is impaired by drugs or alcohol, or by a mental, emotional, or physical condition, shall take appropriate action, which may include a confidential referral to a lawyer or judicial assistance program.

Comment

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

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

RULE 2.15. Responding to Judicial and Lawyer Misconduct

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

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

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

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

(E) Acts of a judge in the discharge of disciplinary responsibilities required or permitted by Rule 2.15 are part of a judge’s judicial duties and shall be absolutely privileged, and no civil action predicated thereon may be instituted against the judge.

Comment

1. Taking action to address known misconduct is a judge’s obligation. Paragraphs (A) and (B) impose an obligation on the judge to report to the appropriate disciplinary authority the known misconduct of another judge or a lawyer that raises a substantial question regarding the honesty, trustworthiness, or fitness of that judge or lawyer. Ignoring or denying known misconduct among one’s judicial colleagues or members of the legal profession undermines a judge’s responsibility to participate in efforts to ensure public respect for the justice system. This rule limits the reporting obligation to those offenses that an independent judiciary must vigorously endeavor to prevent.

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

violation of the Rules of Professional Conduct may include but are not limited to communicating directly with the lawyer who may have committed the violation, or reporting the suspected violation to the appropriate authority or other agency or body.

RULE 2.16. Cooperation with Disciplinary Authorities

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

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

Comment

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

2. Judicial employees have a right to cooperate or communicate with the Commission on Judicial Conduct at any time, without fear of reprisal, for the purpose of discussing potential or actual judicial misconduct.

CANON 3

**A JUDGE SHALL CONDUCT THE JUDGE'S 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 or demean the judicial office;

(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 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.

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, marital status, political affiliation, 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.

5. The telecommunications policy of the Arizona judiciary, which defines the permissible uses of electronic equipment, is set forth in Part 1, Chapter 5, § 1-503 of the Arizona Code of Judicial Administration.

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 in a matter involving the judge's interests or when the judge is acting in a fiduciary capacity.

Comment

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

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

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

RULE 3.3. Acting 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

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

RULE 3.4. Appointments to Governmental Positions

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

Comment

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

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

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 to affect a judge's ability to act on information as necessary to protect the health or safety of any individual if consistent with other provisions of this code.

Rule 3.6. Affiliation with Discriminatory Organizations

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

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

(C) A judge's membership or participation in a religious organization as a lawful exercise of the freedom of religion, or a judge's membership or participation in an organization that engages in expressive activity from which the judge cannot be excluded consistent with the judge's lawful exercise of his or her freedom of expression or association, is not a violation of this rule.

Comment

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

2. An organization is generally said to discriminate invidiously if it arbitrarily excludes from membership on the basis of race, sex, gender, religion, national origin, ethnicity, or sexual orientation persons who would otherwise be eligible for admission. Whether an organization practices invidious discrimination is a complex question to which judges should be attentive. The answer cannot be determined from a mere examination of an organization's current membership rolls, but rather, depends upon how the organization selects members, as well as other relevant factors, such as whether the organization stigmatizes excluded persons as inferior and odious, whether it perpetuates and celebrates cultures, historical events, and ethnic or religious beliefs, identities, or traditions, or whether it is an intimate, purely private organization whose membership limitations could not constitutionally be prohibited.

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

4. This rule does not prohibit a judge's national or state military service.

RULE 3.7. Participation in Educational, Religious, Charitable, Fraternal, or Civic Organizations and Activities

(A) A judge may not directly solicit funds for an organization. However, 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, volunteering services or goods at fund-raising events, and participating in the management and investment of the organization's or entity's funds;

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

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

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

(5) making or soliciting recommendations to such a public or private fund-granting organization or entity 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 legal services.

(C) Subject to the preceding requirements, a judge may:

(1) Provide leadership in identifying and addressing issues involving equal access to the justice system; develop public education programs; engage in activities to promote the fair administration of justice; and convene or participate or assist in advisory committees and community collaborations devoted to the improvement of the law, the legal system, the provision of services, or the administration of justice.

(2) Endorse projects and programs directly related to the law, the legal system, the administration of justice, and the provision of services to those coming before the courts, and may actively support the need for funding of such projects and programs.

(3) Participate in programs concerning the law or which promote the administration of justice.

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. An organization concerned with the law, the legal system, and the administration of justice may include an accredited institution of legal education, whether for-profit or not-for-profit.

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

3. Mere attendance at an event, whether or not the event serves a fund-raising purpose, does not constitute participation in violation of paragraph (A)(4). 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 fundraising 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 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 legal work, and participating in events recognizing lawyers who have done pro bono work.

6. A judge may be an announced speaker at a fund-raising event benefitting indigent representation, scholarships for law students, or accredited institutions of legal education.

RULE 3.8. Appointments to Fiduciary Positions

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

(B) A judge shall not serve in a fiduciary position if the judge as fiduciary will likely be engaged in proceedings that would ordinarily come before the judge, or if the estate, trust, or ward becomes

involved in adversary proceedings in the court on which the judge serves, or one under its appellate jurisdiction.

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

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

Comment

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

RULE 3.9. Service as Arbitrator or Mediator

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

Comment

1. This rule does not prohibit a judge from participating in arbitration, mediation, or settlement conferences performed as part of 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. Retired, part-time, or pro tempore judges may be exempt from this section. See Application, Parts B, C(2) and D(2).

RULE 3.10. Practice of Law

A judge shall not practice law. A judge may represent himself or herself 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 as his or her own attorney 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.

2. Retired, part-time, or pro tempore judges may be exempt from this section. See Application, Parts B, C(1)(b) and D(1)(b).

3. Judges who are actively practicing law at the time of their election or appointment to the bench are encouraged to become familiar with ethical considerations immediately affecting the transition from lawyer to judge. Arizona Judicial Ethics Advisory Committee Opinion 00-07 (December 20, 2000).

4. This rule does not prohibit the practice of law pursuant to military service.

RULE 3.11. Financial, Business, or Remunerative Activities

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

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

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

(2) a business entity primarily engaged in investment of the financial resources of the judge or members of the judge's family.

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

(1) interfere with the proper performance of judicial duties;

(2) lead to frequent disqualification of the judge;

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

(4) result in violation of other provisions of this code.

Comment

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

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

3. A judge's uncompensated participation as an officer, director, or advisor of an organization concerned with the law, the legal system, or the administration of justice is not prohibited by this rule. See Rule 3.7, Comment 1.

4. To the extent permitted by Rule 1.3, a judge's participation as a teacher at an educational institution is not prohibited by this rule. See Rule 3.12, Comment 1.

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:

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

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

(3) ordinary social hospitality;

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

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

(6) scholarships, fellowships, and similar benefits or awards granted on the same terms and based on the same criteria applied to other applicants;

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

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

(9) gifts incident to a public testimonial;

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

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

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

(C) A judge shall report the acceptance of any gift, loan, bequest, or other thing of value as required by Rule 3.15.

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 prohibits the acceptance of such benefits except in circumstances where the risk of improper influence is low and subject to applicable financial disclosure requirements. See Rule 3.15.

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 but may require public reporting.

3. The receipt of ordinary social hospitality, commensurate with the occasion, is not likely to undermine the integrity of the judiciary. However, the receipt of other gifts and things of value from an attorney or party who has or is likely to come before the judge will be appropriate only in the rarest of circumstances.

4. 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.

5. 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 influence the judge indirectly. A judge should remind family and household members of the reporting requirements imposed upon judges by Rule 3.15 and urge them to take these restrictions into account when making decisions about accepting such gifts or benefits.

6. 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 4.2 and 4.3.

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 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 determine whether 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. Financial Reporting Requirements

(A) A judge shall file annually the financial disclosure statement required by A.R.S. § 38- 542 or other applicable law. The completion and filing of the annual financial disclosure statement fulfills the reporting requirements set forth in this code.

(B) Reports made in compliance with this rule shall be filed as public documents in the office designated by law.

Comment

1. The information required to be reported by Rules 3.12, 3.13, and 3.14 is a portion of the information that must be included on the annual financial disclosure statement mandated by A.R.S. § 38- 542 or other applicable law. A judge is obligated to disclose fully and accurately all information requested on the annual disclosure statement and does not fulfill the statutory obligation by reporting only the information required by Rules 3.12, 3.13, and 3.14. Applicable law requires sufficient disclosure of the financial interests of and gifts to a judge and members of his or her household to promote judicial accountability and integrity.

2. To avoid needless repetition of disclosure requirements, the Arizona judiciary deems compliance with the substantive legal requirement as sufficient to meet the ethical obligations of a judge and thus incorporates them in this code.

3. Reimbursement of expenses from a judge's employer need not be reported under Rule 3.14(C) or Rule 3.15.

Rule 3.16. Conducting Weddings

(A) The performance of wedding ceremonies by a judge is a discretionary function rather than a mandatory function of the court.

(B) A judge shall not interrupt or delay any regularly scheduled or pending court proceeding in order to perform a wedding ceremony.

(C) A judge shall not advertise his or her availability for performing wedding ceremonies.

(D) A judge shall not charge or accept a fee, honorarium, gratuity, or contribution for performing a wedding ceremony during court hours.

(E) A judge may charge a reasonable fee or honorarium to perform a wedding ceremony during non-court hours, whether the ceremony is performed in the court or away from the court.

CANON 4

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

RULE 4.1. Political and Campaign Activities of Judges and Judicial Candidates in General

(A) A judge or a judicial candidate shall not do any of the following:

(1) act as a leader in, or hold an office in, a political organization;

(2) make speeches on behalf of a political organization or another candidate for public office;

(3) publicly endorse or oppose another candidate for any public office;

(4) solicit funds for or pay an assessment to a political organization or candidate, make contributions to any candidate or political organization in excess of the amounts permitted by law, or make total contributions in excess of fifty percent of the cumulative total permitted by law. See, e.g., A.R.S. § 16-905.

(5) actively take part in any political campaign other than his or her own campaign for re-election or retention in office;

(6) personally solicit or accept campaign contributions other than through a campaign committee authorized by Rule 4.4;

(7) use or permit the use of campaign contributions for the private benefit of the judge, the candidate, or others, except as provided by law;

(8) use court staff, facilities, or other court resources in a campaign for judicial office;

(9) make any statement that would reasonably be expected to affect the outcome or impair the fairness of a matter pending or impending in any court; or

(10) in connection with cases, controversies, or issues that are likely to come before the court, make pledges, promises, or commitments that are inconsistent with the impartial performance of the adjudicative duties of judicial office.

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

(C) Except as prohibited by this code, a judge may:

(1) engage in activities, including political activities, to improve the law, the legal system and the administration of justice; and

(2) purchase tickets for political dinners or other similar functions, but attendance at any such functions shall be restricted so as not to constitute a public endorsement of a candidate or cause otherwise prohibited by these rules.

Comment

General Considerations

1. Even when subject to public election, a judge plays a role different from that of a legislator or executive branch official. Rather than making decisions based upon the expressed views or preferences of the electorate, a judge makes decisions based upon the law and the facts of every case. Therefore, in furtherance of this interest, judges and judicial candidates must, to the greatest extent possible, be free and appear to be free from political influence and political pressure.

2. When a person becomes a judicial candidate, this canon becomes applicable to his or her conduct. A successful judicial candidate is subject to discipline under the code for violation of any of the rules set forth in Canon 4, even if the candidate was not a judge during the period of candidacy. An unsuccessful judicial candidate who is a lawyer and violates this code may be subject to discipline under applicable court rules governing lawyers.

Participation in Political Activities

3. Public confidence in the independence and impartiality of the judiciary is eroded if judges or judicial candidates are perceived to be subject to political influence. Although judges and judicial candidates may register to vote as members of a political party, they are prohibited by paragraph (A)(1) from assuming leadership roles in political organizations. Examples of such leadership roles include precinct committeemen and delegates or alternates to political conventions. Such positions would be inconsistent with an independent and impartial judiciary.

4. Paragraphs (A)(2) and (A)(3) prohibit judges and judicial candidates from making speeches on behalf of political organizations or publicly endorsing or opposing candidates for public office, respectively, to prevent them from abusing the prestige of judicial office to advance the interests of others. Paragraph (A)(3) does not prohibit a judge or judicial candidate from making recommendations in complying with Rule 1.3 and the related comments. These rules do not prohibit candidates from campaigning on their own behalf or opposing candidates for the same judicial office for which they are running.

5. Paragraph (A)(3) does not prohibit a judge or judicial candidate from privately expressing his or her views on judicial candidates or other candidates for public office.

6. A candidate does not publicly endorse another candidate for public office by having that candidate's name on the same ticket.

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

8. Judges and judicial candidates retain the right to participate in the political process as voters in all elections. For purposes of this canon, participation in a caucus-type election procedure does not constitute public support for or endorsement of a political organization or candidate and is not prohibited by paragraphs (A)(2) or (A)(3).

Statements and Comments Made During a Campaign for Judicial Office

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

10. Paragraph (A)(9) prohibits judicial candidates from making comments that might impair the fairness of pending or impending judicial proceedings. This provision does not restrict arguments or statements to the court or jury by a lawyer who is a judicial candidate, or rulings, statements, or instructions by a judge that may appropriately affect the outcome of a matter.

11. Paragraph (A)(9) must be read in conjunction with Rule 2.10, which allows judges to make public statements in the course of their official duties.

Pledges, Promises, or Commitments Inconsistent with Impartial Performance of the Adjudicative Duties of Judicial Office

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

13. Paragraph (A)(10) makes applicable to both judges and judicial candidates the prohibition that applies to judges in Rule 2.10(B), relating to pledges, promises, or commitments that are inconsistent with the impartial performance of the adjudicative duties of judicial office.

14. The making of a pledge, promise, or commitment is not dependent upon, or limited to, the use of any specific words or phrases; instead, the totality of the statement must be examined to determine if a reasonable person would believe that the candidate for judicial office has specifically undertaken to reach a particular result. Pledges, promises, or commitments must be contrasted with statements or announcements of personal views on legal, political, or other issues, which are not prohibited. When making such statements, a judge should acknowledge the overarching judicial obligation to apply and uphold the law, without regard to his or her personal views.

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

16. Judicial candidates may receive questionnaires or requests for interviews from the media and from issue advocacy or other community organizations that seek to learn their views on disputed or controversial legal or political issues. Paragraph (A)(10) does not specifically address judicial responses to such inquiries. Depending upon the wording and format of such questionnaires, candidates' responses might be viewed as pledges, promises, or commitments to perform the adjudicative duties of office other than in an impartial way. To avoid violating paragraph (A)(10), therefore, candidates who respond to media and other inquiries should also give assurances that they will keep an open mind and will carry out their adjudicative duties faithfully and impartially if elected. Candidates who do not respond may state their reasons for not responding, such as the danger that answering might be perceived by a reasonable person as undermining a successful candidate's independence or impartiality, or that it might lead to frequent disqualification. See Rule 2.11.

RULE 4.2. Political and Campaign Activities of Judicial Candidates

(A) A judicial candidate shall:

(1) act at all times in a manner consistent with the independence, integrity, and impartiality of the judiciary;

(2) comply with all applicable election, election campaign, and election campaign fund-raising laws and regulations;

(3) review and approve the content of all campaign statements and materials produced by the candidate or his or her campaign committee, as authorized by Rule 4.4, before their dissemination; and

(4) take reasonable measures to ensure that other persons do not undertake on behalf of the candidate activities other than those described in Rule 4.4 that the candidate is prohibited from doing by Rule 4.1.

Rule 4.3. Campaign Standards and Communications

During the course of any campaign for nomination or election to judicial office, a judicial candidate, by means of campaign materials, including sample ballots, advertisements in the media, electronic communications, or a speech, press release, or any other public communication, shall not knowingly or with reckless disregard do any of the following:

(A) Post, publish, broadcast, transmit, circulate, or distribute information concerning the judicial candidate or an opponent that would be deceiving or misleading to a reasonable person;

(B) Manifest bias or prejudice toward an opponent that would be prohibited in the performance of judicial duties under Rule 2.3(B), which prohibition does not preclude a judicial candidate from making legitimate reference to the listed factors when they are relevant to the qualifications for judicial office;

(C) Use the title of an office not currently held by a judicial candidate in a manner that implies that the judicial candidate currently holds that office;

(D) Use the term “judge” when the judicial candidate is not a judge unless that term appears after or below the name of the judicial candidate and is accompanied by the words “elect” or “vote,” in prominent lettering, before the judicial candidate’s name or the word “for,” in prominent lettering, between the name of the judicial candidate and the term “judge”;

(E) Use the term “re-elect” when the judicial candidate has never been elected at a general or special election to the office for which he or she is a judicial candidate;

(F) Misrepresent the identity, qualifications, present position, or any other fact about the judicial candidate or an opponent;

(G) Make a false or misleading statement concerning the formal education or training completed or attempted by a judicial candidate; a degree, diploma, certificate, scholarship, grant, award, prize, or honor received, earned, or held by a judicial candidate; or the period of time during which a judicial candidate attended any school, technical program, college, or other educational institution;

(H) Make a false or misleading statement concerning the professional, occupational, or vocational licenses held by a judicial candidate, or the candidate’s employment history and descriptions of work-related titles or positions;

(I) Make a false or misleading statement about an opponent’s personal background or history;

(J) Falsely identify the source of a statement, issue statements under the name of another person without authorization, or falsely state the endorsement of or opposition to a judicial candidate by a person, organization, political party, or publication.

Comment

1. A judicial candidate must be scrupulously accurate, fair, and honest in all statements made by the candidate and his or her campaign committee. This rule obligates the candidate and the committee to refrain from making statements that are false or misleading or that omit facts necessary to avoid misleading voters.

2. A sitting judge, who is a judicial candidate for an office other than the court on which he or she currently serves, violates Rule 4.3(C) if he or she used the title “judge” without identifying the court on which the judge currently serves.

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

RULE 4.4. Campaign Committees

(A) A judicial candidate subject to public election may establish a campaign committee to manage and conduct a campaign for the candidate, subject to the provisions of this code. The candidate is responsible for ensuring that his or her campaign committee complies with applicable provisions of this code and other applicable law. See generally A.R.S. § 16-901 *et seq.*

(B) A judicial candidate subject to public election shall direct his or her campaign committee to solicit and accept only such campaign contributions as are permissible by law and to comply with all applicable statutory requirements for disclosure and divestiture of campaign contributions.

Comment

1. Judicial candidates are prohibited from personally soliciting campaign contributions or personally accepting campaign contributions. See Rule 4.1(A)(6). This rule recognizes that in many jurisdictions, judicial candidates must raise campaign funds to support their candidacies, and permits candidates, other than candidates for appointive judicial office, to establish campaign committees to solicit and accept lawful financial contributions or in-kind contributions.

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

3. During the campaign, the candidate and his or her campaign committee should consider whether a contribution may affect the independence, integrity, and impartiality of the judge. The judicial candidate and his or her campaign committee should be aware that contributions could create grounds for disqualification if the candidate is elected to judicial office. See Rule 2.11.

Rule 4.5. Activities of Judges Who Become Candidates for Nonjudicial Office

(A) Upon becoming a candidate for a nonjudicial elective office other than as a candidate to a constitutional convention, a judge shall resign from judicial office.

(B) Upon becoming a candidate for a nonjudicial appointive office, a judge is not required to resign from judicial office, provided that the judge complies with the other provisions of this code.

Comment

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

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