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Judicial Ethics in Utah

*Steve Averett**

I. INTRODUCTION

Utah judges are required to comply with ethical standards found in Utah's Code of Judicial Conduct. The purpose of this article is to summarize Utah's Code of Judicial Conduct and provide annotations of interpretive caselaw from the Utah Supreme Court and Utah Court of Appeals. This article will examine the role of the judiciary, impropriety, impartiality, extra-judicial activity, political activity, and the applicability of Utah's Code of Judicial Conduct.

II. CANON 1 – ROLE OF THE JUDICIARY

Canon 1 of Utah's Code of Judicial Conduct states that “[a] judge shall uphold the integrity and independence of the judiciary.”¹ Also, a judge should help establish, maintain, and enforce, and s/he must personally observe “high standards of conduct so that the integrity and independence of the judiciary will be preserved.”²

III. CANON 2 – IMPROPRIETY

Canon 2 of Utah's Code of Judicial Conduct says, “[a] judge shall avoid impropriety and the appearance of impropriety in all activities.”³ Judges are to comply with the law and act in a way that will promote public confidence in the “integrity and impartiality of the judiciary.”⁴ A judge must not to allow family, social, or other relationships to influence actions or decisions.⁵ A judge is not to lend the prestige of the judicial office to advance other people's private interests or “convey the impression” that other people are “in a special position to influence the

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1. UTAH CODE JUD. CONDUCT Canon 1 (2003).
2. *Id.*
3. *Id.* Canon 2.
4. *Id.* Canon 2(A).
5. *Id.* Canon 2(B).

judge.”⁶ A judge is not to “testify voluntarily as a character witness but may provide honest references in the regular course of business or social life.”⁷ With the exception of religious organizations, a judge is not to belong to an organization that practices “invidious discrimination on the basis of race, sex, religion, or national origin.”⁸

IV. CANON 3 – IMPARTIALITY

Canon 3 of Utah’s Code of Judicial Conduct says, “[a] judge shall perform the duties of the office impartially and diligently.”⁹ Judicial duties of a full-time judge must “take precedence over all of the judge’s other activities.”¹⁰

Judges have “adjudicative responsibilities”¹¹ outlined by the following list:

(1) Unless the judge is disqualified or the case is transferred, the judge is to hear and decide all assigned matters.¹²

(2) A judge must “apply the law and maintain professional competence.”¹³ A judge is “not to be swayed by partisan interests, public clamor, or the fear of criticism.”¹⁴

(3) A judge should maintain order and decorum in proceedings.¹⁵

(4) A judge must be patient, dignified, and courteous, and is to require similar conduct of lawyers and others who are subject to judicial direction and control.¹⁶

6. *Id.*

7. *Id.*

8. *Id.*

9. *Id.* Canon 3. Canon 3 formerly stated that judges should “prohibit broadcasting, televising, recording, or taking photographs in the courtroom . . .” *In re* Modification of Canon 3 A(7) of the Utah Code of Jud. Conduct, 628 P.2d 1292, 1292 n.1 (Utah 1981). The canon was later modified to permit taking certain still photographs. *In re* Modification of Canon 3 A(7) of the Utah Code of Jud. Conduct, 628 P.2d 1292, 1294 (Utah 1981). Later, a one-year experiment was authorized to allow televising, broadcasting, and recording of proceedings in the Utah Supreme Court. *In re* Soc’y of Prof’l Journalists, Sigma Delta Chi, Utah Chapter, 727 P.2d 198 (Utah 1986), *one-year extension granted*, 745 P.2d 460 (Utah 1987), *amended by*, *In re* KSL TV (Channel 5), 816 P.2d 1222 (Utah 1991), *superseded by*, *In re* Guidelines for Experimental Use of Cameras in Utah Sup. Ct., 911 P.2d 978 (Utah 1995) (allowing media coverage on a continuing basis at the Utah Supreme Court, subject to certain limitations) and *superseded by*, *In re* Guidelines for Experimental Use of Cameras in Utah Sup. Ct., 911 P.2d 979 (Utah 1995) (allowing media coverage on a continuing basis at the Utah Court of Appeals, subject to certain limitations). The Utah Code of Judicial Conduct no longer requires judges to prohibit media coverage.

10. UTAH CODE JUD. CONDUCT Canon 3(A).

11. *Id.* Canon 3(B).

12. *Id.* Canon 3(B)(1). In *Hi-Country Estates Homeowners Ass’n v. Bagley & Co.*, 996 P.2d 534, 538 (Utah 2000), the court ruled that a judge was required to rule on a pending motion and to retain a case until the case was properly reassigned.

13. UTAH CODE JUD. CONDUCT Canon 3(B)(2).

14. *Id.*

15. *Id.* Canon 3(B)(3).

(5) A judge is to “perform judicial duties without bias or prejudice” and refrain from demonstrating bias or prejudice through words or conduct.¹⁷ A judge is to use “all reasonable efforts” to make sure that staff and others avoid bias or prejudice.¹⁸

(6) A judge is to require lawyers to avoid bias or prejudice in court proceedings.¹⁹

(7) A judge must accord every legally interested person and the person’s lawyer a “full right to be heard according to law.”²⁰ A judge is to discourage *ex parte* communications.²¹ However, a judge may talk to the parties and their lawyers separately to discuss mediation or settlement.²²

(8) A judge is to “dispose of all judicial matters promptly, efficiently, and fairly.”²³ For example, trial court judges are to “decide all matters submitted for final determination within two months” unless the delay is caused by circumstances that are not within the judge’s control.²⁴

(9) In regard to a pending proceeding, other than one in which the judge is a litigant in a personal capacity, a judge is not to make a public comment that might affect the proceeding’s outcome or otherwise impair fairness.²⁵ A judge must also to avoid nonpublic comments that might “substantially interfere with a fair trial or hearing.”²⁶ Similar abstention is to be required of court personnel under the judge’s direction and control.²⁷ A judge is free to make public statements in the course of official duties and to explain the procedures of the court.²⁸

16. *Id.* Canon 3(B)(4).

17. *Id.* Canon 3(B)(5). The following are some of the categories for which bias and prejudice are prohibited: race, sex, religion, national origin, disability, age, sexual orientation, and socioeconomic status. *Id.*

18. *Id.*

19. *Id.* Canon 3(B)(6).

20. *Id.* Canon 3(B)(7).

21. *Id.* In *In re Young*, 984 P.2d 997, 1005-06, 1008 (Utah 1999), a judge was publicly reprimanded for making *ex parte* communications with an attorney concerning a pending case.

22. UTAH CODE JUD. CONDUCT Canon 3(B)(7).

23. *Id.* Canon 3(B)(8).

24. UTAH CODE ANN. § 78-7-25(1) (2002).

25. UTAH CODE JUD. CONDUCT Canon 3(B)(9). In *In re McCully*, 942 P.2d 327 (Utah 1997), a juvenile judge was publicly reprimanded for making a public comment that might affect the outcome of a proceeding. She had “prepared and allowed a litigant to submit an affidavit containing not only facts regarding the operation of the juvenile courts, but also her opinion as to the ultimate issue before the court in which the affidavit was submitted.” *Id.* at 334.

26. UTAH CODE JUD. CONDUCT Canon 3(B)(9). In *In re Young*, 984 P.2d 997, 1004, 1008 (Utah 1999), a judge was publicly reprimanded for making nonpublic statements about a pending case that “might substantially interfere” with the proceeding. The judge had talked about his inclination to award attorney fees. *Id.* at 1005-06.

27. UTAH CODE JUD. CONDUCT Canon 3(B)(9).

28. *Id.*

(10) A judge must not commend or criticize jurors for their verdict other than in a court order or opinion, but may express appreciation for their service to the judicial system and community.²⁹

(11) A judge must not “disclose or use, for purposes unrelated to judicial duties,” information obtained “in a judicial capacity that is not available to the public.”³⁰

In addition to his many adjudicative responsibilities, a judge also has certain “administrative responsibilities”, including the following:³¹

(1) A judge is required to diligently perform the judge’s administrative duties “without bias or prejudice, maintain professional competence in judicial administration, and cooperate with other judges and court officials in the administration of court business.”³²

(2) “A judge should require staff members, court officials, and others subject to judicial direction and control” to follow the same standards of fidelity and diligence as the judge and to avoid bias or prejudice in performing their official duties.³³

(3) A judge who has supervisory authority over other judges should take “reasonable measures” to ensure that they dispose of matters promptly and that they properly perform their other judicial responsibilities.³⁴

(4) A judge must not make unnecessary appointments. He must use the power of appointment impartially, based on merit, avoiding nepotism and favoritism.³⁵ A judge is not to approve compensation of appointees beyond what is the fair value of the services that are given.³⁶

A judge should “take or initiate appropriate disciplinary measures against a judge or lawyer for unprofessional conduct of which the judge may become aware” unless it is information obtained under policies of the Judicial Performance Evaluation Program.³⁷

29. *Id.* Canon 3(B)(10). In December 1999, a Utah judge was criticized for violating this ethical prohibition. Stephen Hunt, *Judge Raps Jury for Its Verdict: Acquittal Leaves Young ‘Personally Disappointed’*, SALT LAKE TRIB., Dec. 5, 1999, at C-1. The judge had reportedly told the jury, “This was a pretty clear case . . . I don’t know how you came out with this result, and this is one of the very few times I’ve criticized a jury . . .” *Id.*

30. UTAH CODE JUD. CONDUCT Canon 3(B)(11).

31. *Id.* Canon 3(C).

32. *Id.* Canon 3(C)(1).

33. *Id.* Canon 3(C)(2).

34. *Id.* Canon 3(C)(3).

35. *Id.* Canon 3(C)(4).

36. *Id.*

37. *Id.* Canon 3(D). In *R & R Energies v. Mother Earth Industries, Inc.*, 936 P.2d 1068, 1082 n.1 (Utah 1997) (Zimmerman, J., concurring), a Utah Supreme Court Justice recognized that a judge has a duty, under Canon 3(D), to initiate disciplinary action against a lawyer for unprofessional conduct; the judge then referred the plaintiff’s attorney to Bar Disciplinary Counsel.

A judge is to “enter a disqualification in a proceeding in which the judge’s impartiality might reasonably be questioned”³⁸ A judge’s impartiality might be questioned in a number of situations. For example, a judge may be disqualified if s/he has personal bias for or against a party or attorney, strong personal bias about an issue in the case, or “personal

38. UTAH CODE JUD. CONDUCT Canon 3(E)(1) (2003). A number of cases have dealt with recusal and disqualification of judges. In *State v. West*, 34 P.3d 234 (Utah Ct. App. 2001), the court directed a judge to reconsider an affidavit of bias regarding possible disqualification of another judge and to consider the possibility that the trial “judge’s impartiality might reasonably be questioned” even if no actual bias was shown. In *In re Young*, 984 P.2d 997, 1006-08 (Utah 1999), the court found disqualification unnecessary. The judge had merely expressed anger toward one of the parties. *Id.* at 1005. In *State ex rel. M.L.*, 965 P.2d 551, 556-57 (Utah Ct. App. 1998), the court found it unnecessary for a judge to recuse himself in a termination of parental rights case. The court said that Rule 63(b) of the Utah Rules of Civil Procedure sets forth the procedures for alleging judicial bias, but nothing indicated that the judge acted improperly or with actual bias. *Id.* In *Gardner v. Madsen*, 949 P.2d 785 (Utah Ct. App. 1997), the court found that a judge did not have to recuse himself. The judge’s nephew had, three years earlier, served as an incorporator and board member for the plaintiff’s corporation. *Id.* at 785, 787, 791. The court said that, even if he was still a shareholder in the company, it appeared that he stood to gain nothing from the court case. *Id.* at 785, 791. In *V-1 Oil Co. v. Department of Environmental Quality*, 939 P.2d 1192 (Utah 1997), the court said that recusal of an administrative adjudicator was not necessary, even though the adjudicator also served as a part-time staff attorney with the same administrative agency, because his work as a staff attorney was adequately segregated from his adjudicatory responsibilities. In *State v. Ontiveros*, 835 P.2d 201 (Utah Ct. App. 1992), recusal was unnecessary where a trial judge had recently granted an early release of the defendant (on an unrelated conviction) just prior to a manslaughter that was committed by the same defendant. The court said that in a criminal case the trial judge’s failure to recuse himself was not reversible error because no substantial rights of the defendant were affected (i.e., there was no reasonable likelihood of a more favorable result since the conviction was determined by a jury and no actual bias was shown on the part of the judge.) In *Regional Sales Agency, Inc. v. Reichert*, 830 P.2d 252 (Utah 1992), the court disqualified a court of appeals judge who was related by marriage to two members of the law firm that represented one of the parties (one was the judge’s father-in-law and the other was the judge’s brother-in-law). (The Regional Sales case was later distinguished by *In re Inquiry Concerning a Judge*, 81 P.3d 758 (Utah 2003), which said that a Utah Supreme Court justice was not disqualified from ruling on a judicial conduct case regarding a trial judge, even though the justice had a son-in-law who was a partner at the law firm that would be representing the trial judge; the Court said that there was no reason to question his impartiality.) In *State v. Petersen*, 810 P.2d 421, 427-28 (Utah 1991), the court noted that an appearance of bias could have been avoided by recusal in a case in which a sentencing judge had previously prosecuted the defendant. The defendant’s convictions were reversed and charges dismissed without prejudice, for other reasons (i.e., delay in bringing the case to trial). *Id.* at 427-28. In *State v. Gardner*, 789 P.2d 273, 278 (Utah 1989), it was alleged that the trial judge should have recused himself. The judge had worked at the courthouse where the criminal defendant had shot and killed an attorney during an escape attempt. *Id.* at 278. The court said that if a reasonable person would doubt the judge’s impartiality he should have recused himself. *Id.* However, in the absence of a showing of actual prejudice to the defendant, any error was harmless. *Id.* In *Madsen v. Prudential Federal Savings & Loan Ass’n*, 767 P.2d 538, 544, 547 (Utah 1988), the Utah Supreme Court overturned an order which had disqualified another judge, following trial, saying that: (1) the motion to disqualify was not timely, (2) remarks made by the judge did not sufficiently show prejudice, and (3) the judge did not have a financial interest in the outcome of the case. The court said that, in order to be timely, a motion to disqualify (under Rule 63(b) of the Utah Rules of Civil Procedure) must be filed at the first opportunity after learning of the facts supporting a disqualification and as soon as practicable. *Id.* at 543-44. In *State v. Neeley*, 748 P.2d 1091, 1093-95 (Utah 1988), a trial judge was not required to recuse himself since he determined that he had no actual bias against the criminal defendant merely by being involved in the prosecution of the case twenty years earlier.

knowledge of disputed evidentiary facts concerning the proceeding.”³⁹ A judge may also be disqualified where s/he has served as an attorney in the matter, has practiced law with a lawyer who served in the matter during the time of their association, or the judge or lawyer served as a material witness concerning the matter.⁴⁰ Furthermore, a judge may be disqualified where the judge knows that s/he or a member of his/her family has an economic interest in a party or in the subject matter of the controversy or has more than a “de minimis interest that could be substantially affected by the proceeding.”⁴¹ A judge may also be disqualified in situations in which the “judge, the judge’s spouse, or a person within the third degree of relationship to either of them, or the spouse of such a person” is a party; officer, director, or trustee of a party; a lawyer in the proceeding; a person with more than a “de minimis interest that could be substantially affected by the proceeding”; or is likely to be a material witness in the proceeding.⁴²

A judge is to “keep informed about the judge’s personal and fiduciary economic interests, and should make a reasonable effort to keep informed about the personal economic interests of the judge’s spouse and minor children residing in the judge’s household.”⁴³

If a judge is disqualified, the judge may tell the parties and their lawyers the reason for the disqualification and ask them to consider, out of the presence of the judge, whether to waive the disqualification.⁴⁴ If all of the parties and attorneys agree to waive the disqualification, the

39. UTAH CODE JUD. CONDUCT Canon 3(E)(1)(a). A number of cases have considered bias and personal knowledge of judges. In *Campbell, Maack & Sessions v. Debry*, 38 P.3d 984, 992-93 (Utah Ct. App. 2001), the court found no reversible bias or prejudice when a judge’s comments (during the proceeding) did not indicate any extra-judicial prejudice and where the party alleging prejudice failed to file a supporting affidavit. In *In re Young*, 984 P.2d 997, 1007 (Utah 1999), the court said that bias or prejudice usually needs to come from an “extrajudicial source, not from occurrences in the proceedings before the judge.” In *In re Affidavit of Bias*, 947 P.2d 1152, 1153 (Utah 1997), the court held that an allegation of bias could be made, even after the supreme court opinion had been issued, because the party alleging bias didn’t know of a potential conflict of interest until that time. One of the justices who had sat on the case had been a member of the opposing party’s firm thirteen years earlier. *Id.* at 1156. However, the court concluded that an inference of bias could not reasonably be raised. *Id.* at 1157. In *Kleinert v. Kimball Elevator Co.*, 905 P.2d 297 (Utah Ct. App. 1995), the court said that an allegation that a judge was biased could not be brought up for the first time on appeal. In *Sukin v. Sukin*, 842 P.2d 922, 926-27 (Utah Ct. App. 1992), the court also refused to address the issue of bias or prejudice when it was raised for the first time on appeal. In *Madsen v. Prudential Federal Savings & Loan Ass’n*, 767 P.2d 538, 545 (Utah 1988), the court found that a judge had no personal knowledge of disputed evidentiary facts in a case involving profits made by a savings and loan company on its budget payment accounts.

40. UTAH CODE JUD. CONDUCT Canon 3(E)(1)(b).

41. *Id.* Canon 3(E)(1)(c).

42. *Id.* Canon 3(E)(1)(d).

43. *Id.* Canon 3(E)(2).

44. *Id.* Canon 3(F).

judge may participate in the proceeding.⁴⁵ The agreement to waive the judge's disqualification is to be entered on the record, or if written, filed in the court file.⁴⁶

V. CANON 4 – EXTRA-JUDICIAL ACTIVITIES

Canon 4 of Utah's Code of Judicial Conduct states, "[a] judge shall so conduct the judge's extrajudicial activities as to minimize the risk of conflict with judicial obligations."⁴⁷ "A judge shall conduct the judge's extra-judicial activities so that they do not: (1) cast reasonable doubt on the judge's capacity to act impartially as a judge; (2) demean the judicial office; (3) interfere with the proper performance of judicial duties; or (4) exploit the judge's judicial position."⁴⁸ A judge is allowed to speak and write about "the law, the legal system, the administration of justice and non-legal topics"⁴⁹

A judge is limited in regard to the judge's governmental, civic, or charitable activities.⁵⁰ A judge is not to consult with "an executive or legislative body or official except on matters concerning the law, the legal system, or the administration of justice, or except when acting pro se in a matter involving the judge or the judge's interests."⁵¹ In addition, a judge must not use his/her position as a judge to influence legislative or executive bodies or officials to further his/her own interests.⁵² A judge is not to accept an "appointment to a governmental committee or commission or other governmental position that is concerned with issues of fact or policy on matters other than the improvement of the law, the legal system or the administration of justice."⁵³ "A judge may, however, represent a country, state or locality on ceremonial occasions or in connection with historical, educational or cultural activities."⁵⁴

Although limited in regard to governmental, civic, or charitable activities a judge may serve as an "officer, director, trustee or non-legal advisor of an organization or governmental agency, which may include a constitutional revision commission, devoted to the improvement of the law, the legal system or the administration of justice, or of an educational, religious, charitable, fraternal or civic organization not

45. *Id.*

46. *Id.*

47. *Id.* Canon 4.

48. *Id.* Canon 4(A).

49. *Id.* Canon 4(B).

50. *Id.* Canon 4(C).

51. *Id.* Canon 4(C)(1)(a).

52. *Id.* Canon 4(C)(1)(b).

53. *Id.* Canon 4(C)(2).

54. *Id.*

conducted for profit.”⁵⁵ However, there are some limitations.⁵⁶ A judge is not to “serve as an officer, director, trustee or non-legal advisor if it is likely that the organization will be frequently engaged in adversary proceedings before any court.”⁵⁷ A judge, as an officer, director, trustee, non-legal advisor, member or otherwise is permitted to assist an organization in planning fund-raising activities and is allowed to “participate in the management and investment of the organization’s funds, but shall not personally participate in the solicitation of funds or other fund-raising activities, except that a judge may solicit funds from other judges.”⁵⁸ The judge is also allowed to make recommendations to public and private fund-granting organizations on projects and programs concerning the law, the legal system or the administration of justice.⁵⁹ In this capacity, a judge may not “personally participate in membership solicitation if the solicitation might reasonably be perceived as coercive or if the membership solicitation is essentially a fund-raising mechanism,” except as otherwise permitted by the Code of Judicial Conduct.⁶⁰ The judge is not to “use or permit the use of the prestige of the judicial office for fund-raising or membership solicitation.”⁶¹ Furthermore, a judge is not to “be a speaker or the guest of honor at an organization’s fund raising events, but may attend such events.”⁶²

In addition to being limited in governmental, civic, and charitable activities, a judge is limited in regard to his/her financial activities.⁶³ A judge must not engage in financial and business dealings that “(a) may reasonably be perceived to exploit the judge’s judicial position; or (b) involve the judge in frequent transactions or continuing business relationships with those lawyers or other persons likely to come before the court on which the judge serves.”⁶⁴ However, a judge is permitted to “hold and manage investments of the judge and members of the judge’s family, including real estate, and engage in other remunerative activity.”⁶⁵ The judge must manage such investments and financial interest in a way that will “minimize the number of cases in which [s/he]

55. *Id.* Canon 4(C)(3).

56. *Id.* Canon 4(C)(3)(a)-(b).

57. *Id.* Canon 4(C)(3)(a).

58. *Id.* Canon 4(C)(3)(b)(i).

59. *Id.* Canon 4(C)(3)(b)(ii).

60. *Id.* Canon 4(C)(3)(b)(iii).

61. *Id.* Canon 4(C)(3)(b)(iv).

62. *Id.* Canon 4(C)(3)(b)(v).

63. *Id.* Canon 4(D).

64. *Id.* Canon 4(D)(1).

65. *Id.* Canon 4(D)(2).

is disqualified.”⁶⁶ As soon as possible, but without causing serious financial detriment, the judge is to “divest those investments and other financial interests that might require frequent disqualification.”⁶⁷

A judge is also restricted from accepting gifts, bequests, favors and loans. Neither he nor those living in his/her household should accept gifts, bequests, favors, or loans except gifts incident to public testimonials; complimentary books, tapes, and other resource materials from publishers; invitations to bar-related functions or activities devoted to improving the law, the legal system, or the administration of justice; gifts, awards, or benefits incident to non-judicial business of a part-time judge or family members (so long as the gift “could not reasonably be perceived as intending to influence the judge in the performance of judicial duties”); “ordinary social hospitality”; reasonable gifts from relatives or friends for special occasions; gifts, bequests, favors, or loans from people whose cases the judge would be disqualified from hearing anyway; loans from lending institutions in the regular course of business on the same terms as available to other applicants; and scholarships or fellowships awarded on the same terms and criteria as other applicants.⁶⁸

A judge is limited in fiduciary activities, as well.⁶⁹ A judge must not serve as an executor, administrator or other personal representative, trustee, guardian, attorney in fact or other fiduciary, except in regard to the judge’s family members where it will not interfere with the proper performance of judicial duties.⁷⁰ A judge is not to serve as a fiduciary if it is likely that the judge will become involved 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.”⁷¹ The judge is not permitted to engage in financial activities as a fiduciary that the judge would be prohibited from engaging in personally.⁷²

There are a few additional capacities which judges are required to avoid. First, a judge is not to serve as an arbitrator or mediator “or otherwise perform judicial functions in a private capacity unless expressly authorized by law.”⁷³ Second, a judge is not to practice law,

66. *Id.* Canon 4(D)(4).

67. *Id.*

68. *Id.* Canon 4(D)(5).

69. *Id.* Canon 4(E).

70. *Id.* Canon 4(E)(1).

71. *Id.* Canon 4(E)(2).

72. *Id.* Canon 4(E)(3).

73. *Id.* Canon 4(F).

unless it is pro se or uncompensated legal advice or document preparation for family members.⁷⁴

A judge is allowed to receive compensation for the expenses of extra-judicial activities, if the source of payment does not “give the appearance of influencing the judge’s performance of judicial duties or otherwise give the appearance of impropriety.”⁷⁵ Compensation must be reasonable.⁷⁶ Expense reimbursement should be limited to “the actual cost of travel, food and lodging reasonably incurred by the judge and, where appropriate to the occasion, by the judge’s spouse or guest.”⁷⁷ A judge should not receive compensation for performing a marriage ceremony that is performed “at the court during regular court hours.”⁷⁸ “A judge may receive compensation for performing a marriage ceremony during non-court hours.”⁷⁹

VI. CANON 5 – POLITICAL ACTIVITY

According to Canon 5 of Utah’s Code of Judicial Conduct, “[a] judge shall refrain from political activity inappropriate to the judicial office.”⁸⁰

A candidate for selection by a judicial nominating commission must not get involved in political activities that would “jeopardize the confidence of the public or of governmental officials in the political impartiality of the judicial branch of government.”⁸¹ Furthermore, a candidate must not (1) misrepresent the candidate’s identity or qualifications, (2) make promises other than to perform judicial duties, or (3) seek support because of political party affiliation.⁸²

A judge or candidate for judicial office, who has been confirmed by the senate, must not (1) act as a leader or hold office in a political organization, (2) “make speeches for a political organization or candidate or publicly endorse a candidate,” (3) solicit funds or give money to a political organization or candidate or attend political gatherings, or (4) “take a public position on a non-partisan political issue which would jeopardize the confidence of the public in the impartiality of the judicial system.”⁸³

74. *Id.* Canon 4(G).

75. *Id.* Canon 4(H)(1).

76. *Id.* Canon 4(H)(1)(a).

77. *Id.* Canon 4(H)(1)(b).

78. *Id.* Canon 4(H)(1)(c).

79. *Id.*

80. *Id.* Canon 5.

81. *Id.* Canon 5(A).

82. *Id.* Canon 5(A)(1)-(3).

83. *Id.* Canon 5(B).

A judge, who has “drawn active public opposition” in a retention election or reappointment process “may operate a campaign for office.”⁸⁴ In that campaign, the judge is prohibited from making promises other than to faithfully and impartially perform his/her duties.⁸⁵ The judge cannot misrepresent his or her qualifications.⁸⁶ Campaign funds are only to be solicited through a committee, with excess funds being paid to the Utah Bar Foundation.⁸⁷

As part of his campaign, the judge may speak to public gatherings on his/her behalf.⁸⁸ The judge may respond to personal attacks or attacks on his/her record.⁸⁹ Up until 180 days after the general election, the judge must disclose (to the parties) any party or attorney, who appears in a case, who has paid \$50 or more to the judge’s campaign committee.⁹⁰

Judges and judicial candidates are to:

[M]aintain the dignity appropriate to judicial office and act in a manner consistent with the integrity and independence of the judiciary, and should encourage members of the judge’s or candidate’s family to adhere to the same standards of political conduct in support of the judge or candidate as apply to the judge or candidate.”⁹¹

Judges and judicial candidates “should discourage employees or officials subject to the judge’s or candidate’s direction and control from doing on the judge’s or candidate’s behalf what the judge or candidate is prohibited from doing”⁹² Except as allowed in regard to solicitation of funds in opposed retention elections, a judge or judicial candidate is not to “request nor encourage, and should not knowingly permit, any other person to do for the judge or candidate what the judge or candidate is prohibited from doing”⁹³

A judge is required to resign from office if the judge becomes a candidate for a non-judicial office, other than to serve as a delegate in a state constitutional convention.⁹⁴ Also, “an unsuccessful candidate for judicial office is subject to lawyer discipline for violations of this Canon”⁹⁵ This means that if a lawyer improperly engages in

84. *Id.* Canon 5(C).

85. *Id.* Canon 5(C)(1).

86. *Id.*

87. *Id.* Canon 5(C)(2).

88. *Id.* Canon 5(C)(3).

89. *Id.* Canon 5(C)(4).

90. *Id.* Canon 5(C)(5).

91. *Id.* Canon 5(D)(1).

92. *Id.* Canon 5(D)(2).

93. *Id.* Canon 5(D)(3).

94. *Id.* Canon 5(E).

95. *Id.* Canon 5(F).

political activity while being considered for a judicial vacancy, s/he is subject to discipline under Rule 8.2 of the Rules of Professional Conduct.⁹⁶

VII. APPLICABILITY

Utah's Code of Judicial Conduct applies differently to certain types of judges. Court commissioners must follow Utah's Code of Judicial Conduct, just like other full-time judges.⁹⁷ Active senior judges need to comply with all canons, except 4(F) (prohibitions against serving as an arbitrator or mediator).⁹⁸ Senior judges⁹⁹ do not need to comply with Utah's Code of Judicial Conduct.¹⁰⁰

A part-time justice court judge is not allowed to "practice law in the court on which the judge serves or in any court subject to the appellate jurisdiction of that court, or act as a lawyer in a proceeding in which the judge has served as a judge or in any other proceeding related thereto."¹⁰¹ They are not required to comply with Canons 4(C)(1)(a) (prohibitions against appearing at public hearings), 4(C)(2) (prohibitions against serving on governmental committees), 4(E) (limitations on fiduciary activities), and 4(G) (prohibitions against practicing law).¹⁰²

A judge pro tempore is to comply with Canons 1 (requirement to uphold the integrity and independence of the judiciary), 2(A) (requirement of respecting and complying with the law and promoting public confidence in the judiciary), 3(B) (requirements in regard to adjudicative responsibilities), 3(E) (requirements for disqualification), and 3(F) (requirements in regard to remittal of disqualification).¹⁰³ A small claims judge pro tempore is not to practice law in the same small claims division where the judge serves.¹⁰⁴

96. *Id.*

97. *Id.* Applicability (C).

98. *Id.* Applicability (D).

99. A senior judge is one who, having been retained in their last election, retired "upon reaching the mandatory retirement age" or retired due to a disability, "demonstrate[s] appropriate ability and character," is admitted to practice law in Utah (but does not practice law), and who is "eligible to receive compensation under the Judges' Retirement Act." UTAH CODE JUD. ADMIN. R. 11-201.

100. UTAH CODE JUD. CONDUCT Applicability (E).

101. *Id.* Applicability (A)(2).

102. *Id.* Applicability (A)(1).

103. *Id.* Applicability (B)(1).

104. *Id.* Applicability (B)(2).

VIII. CONCLUSION

Utah's Code of Judicial Conduct provides the requirements that judges need to follow in order to administer justice fairly and without the appearance of impropriety. They need to avoid inappropriate conduct, bias, and certain types of political and extra-judicial activities. If judges do these things they will encourage respect from litigants as well as acceptance of judgments.