

Beyond Chambers

What Every Lawyer Should Know About Interacting
With Judges Outside the Courtroom



It is not uncommon for lawyers to find themselves in social settings with judges.

Whether at a bar association event or a cocktail party, it's important for lawyers, particularly young lawyers new to the profession, to understand what they can or cannot do when interacting with judges outside of the courtroom.

The purpose of this document is to provide ethical guidance, as outlined by The Canons of Judicial Conduct for the Commonwealth of Virginia, for day-to-day interactions with judges. This document is not intended to be a substitute for a thorough review of The Canons in their entirety. Rather, it highlights certain canons, in pertinent part, that may be implicated by social interaction with judges.



In Virginia, ethical conduct for judges is governed by The Canons of Judicial Conduct for the Commonwealth of Virginia (the “Judicial Canons”).

The Judicial Canons are not only relevant to judges and litigators, but they also impact lawyers who provide legal services to a judge.

The Judicial Canons provide guidance and assist judges in maintaining the highest standards of judicial conduct. They provide a basis for regulating judicial conduct and promote an independent and fair judiciary. Most lawyers think the Judicial Canons are only relevant to judges and/or litigators, but the Judicial Canons actually impact lawyers who provide legal services to a judge (e.g., real estate transactions); own assets jointly with a judge; participate in any type of substantial financial activities with a judge; interact with a judge in matters related to the improvement of the legal system or administration of justice (e.g., bar association or non-profit); or have a social relationship with a judge.



Who is a “Judge”?

*Section III. Canons of Judicial
Conduct for the Commonwealth of
Virginia Preamble*

The Judicial Canons apply to all active Justices of the Supreme Court of Virginia, Judges of the Court of Appeals of Virginia, Circuit Courts, General District Courts, and Juvenile and Domestic Relations District Courts, and Members of the State Corporation Commission and Virginia Workers' Compensation Commission. The Judicial Canons also apply (with specific exceptions) to retired Justices, Judges and Members eligible for recall to judicial service, substitute judges, special justices and (while so acting) judges *pro tempore*.

While the Judicial Canons do not apply to federal judges, similar principles do apply. Lawyers appearing before Article III judges should familiarize themselves with the Code of Conduct for United States Judges, available at <http://www.uscourts.gov/judges-judgeships/code-conduct-united-states-judges>. Lawyers appearing before Executive Branch administrative law judges should seek out policies and procedures of the specific court.

The Judicial Canons do not apply to magistrates. Magistrates are governed by the Canons of Conduct for Virginia Magistrates.



Integrity and Independence of the Judiciary

Canon 1 of Judicial Conduct for the Commonwealth of Virginia

Canon 1

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

Public confidence is maintained by judges' adherence to this responsibility, and it is correspondingly diminished by any violation of the Judicial Canons. Public acceptance of judicial decision-making, even when adverse, depends on a perception and a reality that the judge is fair and follows the law. Any time when a judge fails to observe this criterion or when lawyers place a judge in a position where others may perceive a dereliction of a judge's independence and integrity, the rule of law suffers. See Commentary, Canon 1.

Deference to court rulings and judgments depends on public confidence in the integrity and independence of judges.



Avoiding Impropriety and the Appearance of Impropriety

*Canon 2 of Judicial Conduct for the
Commonwealth of Virginia*

Canon 2(a)

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

The test for appearance of impropriety is whether the conduct would create in reasonable minds a perception that the judge's ability to carry out judicial responsibilities with integrity and impartiality is impaired. Commentary, Canon 2(a).

Canon 2(b)

A judge shall not allow family, social, political or other relationships to influence the judge's judicial conduct or judgment. A judge shall not lend the prestige of judicial office to advance the private interests of the judge or others; nor shall a judge convey or permit others to convey the impression that they are in a special position to influence the judge. A judge shall not testify as a character witness.

A judge must avoid lending the prestige of judicial office for the advancement of the private interests of others. Commentary, Canon 2(b).

Canon 2(c)

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

Judges may not maintain membership in a private social organization nor regularly use a private social organization that practices invidious discrimination on the basis of race, sex, religion, or national origin. Commentary, Canon 2C. It is inappropriate for a lawyer to invite a judge to maintain membership in any such social organization or club. *Id.*

Fraternal organizations devoted to charitable work with religious focus and not providing business or professional opportunities to members, and which are dedicated to the preservation of religious and cultural values of legitimate common interest to members are not considered to be organizations practicing invidious discrimination. *Id.*

Generally, soliciting a judge for membership in an organization is permissible only if the organization or entity is concerned with the law, the legal system, or the administration of justice. *Id.*

A Special Note on Letters of Recommendation

A judge may write letters of recommendations in certain circumstances (e.g., for a law clerk). However, a lawyer should not ask a judge for a letter of recommendation absent a personal relationship, because it could be misconstrued as the judge lending the prestige of his or her office to the private benefit of another. See Canon 2(b). Simply appearing before a judge for a case or two does not give rise to such a personal relationship.



Responsibilities to the Judicial Office

*Canon 3 of Judicial Conduct for the
Commonwealth of Virginia*

Canon 3

A judge shall perform the duties of judicial office impartially and diligently.

Canon 3 addresses (1) order, decorum and civility; (2) patience, dignity and courtesy; and (3) bias and prejudice. The duties of a judge take precedence over a judge's other activities. Canon 3(a).

Most relevant to a lawyer's interactions with judges is bias and prejudice, particularly ex parte communications.

An ex parte communication occurs when there is oral or written communication with a judge for which one or more parties did not have notice and/or an opportunity to appear and participate. Judges avoid attempted ex parte communications by having their secretary or law clerk(s) screen their calls and mail. Some judges also restrict access to their chambers.

Lawyers can avoid putting judges in awkward situations and avoid improper ex parte communications by engaging, or obtaining the appropriate consent, of all parties when communicating with the court; consulting with the judge's law clerks; alerting clients and/or witnesses who may try to contact the judge to avoid improper ex parte communication; and understanding what ex parte communications (e.g., scheduling matters) are permissible under the Canons and Rules of Professional Conduct. See *Canon 3(b)(7)*.



Extra-Judicial Activities

*Canon 4 of Judicial Conduct for the
Commonwealth of Virginia*

Canon 4

A judge may engage in extra-judicial activities designed to improve the law, the legal system, and the administration of justice, and shall conduct any such extra-judicial activities in a manner that minimizes the risk of conflict with judicial obligations.

Fundraising and soliciting membership are two important areas implicated by Canon 4. A judge may, within limits, participate in fundraising by planning and soliciting funds from other judges over whom he or she does not exercise appellate or supervisory authority. Otherwise, a judge may not personally solicit funds or use or permit the use of his or her judicial office for fundraising. Similarly, a judge may attend a fundraising event, but may not do so as the speaker or guest of honor.

A judge cannot engage in extra-judicial activities that cast reasonable doubt on his or her capacity to act impartially, demean the judicial office, or interfere with the proper performance of his or her judicial duties. Canon 4(a).