

**Garden State CLE presents:**

# **A Bad Day in Black Robes**



## **Lesson Plan**

# Part I

## The Revised New Jersey Code of Judicial Conduct

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# **1. Introduction: The Social Contract**

**The people of New Jersey will voluntarily comply with the judgments and orders of the Courts provided that these judgments and orders are:**

- 1. Based only upon established law and relevant evidence; and**
- 2. The judgments and orders are determined following the opportunity for both parties to have a full and fair opportunity for the Court to impartially consider the merits of their respective arguments.**

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**Both the revised Code of Judicial Conduct and the public process of New Jersey judicial discipline have one purpose only: to maintain the public's confidence in the social contract.**

## **2. Structure and Organization of the Revised Code**

The revised Code was developed by the **Ad Hoc Committee on the Code of Judicial Conduct**, chaired by Chief Justice Poritz (ret).

The committee was first selected and convened in 2007 by the Supreme Court. Its charge was to review the **Code of Judicial Conduct** in light of the revised **Model Code of Judicial Conduct** adopted by the American Bar Association at its mid-year meeting in February 2007.

As adopted, the revised Code, effective September 1, 2016, has a strategic, tactical and practical structure. In general, the revised Code seeks to accomplish the following:

## **Strategic**

- 1. Modernize and update the often vague language in the previous Canons. Note that the revised Code now uses the word "shall" throughout in place of the word "should" in the previous iterations of the Code.;**
- 2. Incorporate, where appropriate, past decisional law of the Supreme Court (The Revised Code does not overrule or dispense with any previous decisional law.);**

## **Tactical**

**3. Provide internal Rules that will supplement and serve as guidance as to how the individual Canons should be interpreted;**

## **Practical**

**4. Provide committee comments to the Rules that are to be deemed a part of both the Canons and the associated Rules. The committee comments are intended to provide practical advice to members of the judiciary on how to resolve ethical issues in conformity with the Canons and their associated Rules.**

# Part II - Video Examples of Code Violations



# 1. Maintaining the Social Contract



**The unwritten rules affecting lawyers  
and judges.**

## 2. When Judges Provoke Contempt



# Contempt of Court

## **1:10-1. Summary Contempt in Presence of Court**

**A judge conducting a judicial proceeding may adjudicate contempt summarily without an order to show cause if:**

- **(a) the conduct has obstructed, or if continued would obstruct, the proceeding;**
- **(b) the conduct occurred in the actual presence of the judge, and was actually seen or heard by the judge;**
- **(c) the character of the conduct or its continuation after an appropriate warning unmistakably demonstrates its willfulness;**
- **(d) immediate adjudication is necessary to permit the proceeding to continue in an orderly and proper manner; and**
- **(e) the judge has afforded the alleged contemnor an immediate opportunity to respond.**

**Includes right to bail**

**Automatic Stay for 5 days for appeal**

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**a.) Contempt in the face of the Court.**

**Rule 1:10-1 is a vital function of the Court. It must be invoked when the Court must take immediate action to maintain control and/or vindicate the Court's authority in the face of an open and blatant challenge.**

**b.) Usually, judicial discipline results in cases where:**

- 1. Judges do not follow the due process procedures;**
- 2. Judges are baited by litigants into over-reacting;**
- 3. Judges allow frustration to ignite anger.**

**c.) There are special rules for the jailing of attorneys for contempt:**

**This extraordinary power, then, should be exercised sparingly and only in the rarest of circumstances. When an attorney's conduct in the actual presence of the court has the capacity to undermine the court's authority and to interfere with or obstruct the orderly administration of justice, there can be no alternative but that a trial court assume responsibility to maintain order in the courtroom. In re Daniels, 118 NJ 51, 61 (1990).**

### 3. Imposing Sanctions for Contempt



# **Canon 2**

## **A JUDGE SHALL AVOID IMPROPRIETY AND THE APPEARANCE OF IMPROPRIETY**

### **RULE 2.1**

**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 irresponsible or improper conduct by judges. A judge must avoid all impropriety and appearance of impropriety and must expect to be the subject of constant public scrutiny. This principle applies to both the professional and personal conduct of a judge. A judge must therefore accept restrictions on personal conduct that might be viewed as burdensome by the ordinary citizen and should do so freely and willingly.**

**[2] Actual impropriety is conduct that reflects adversely on the honesty, impartiality, temperament or fitness to serve as a judge.**

## 4. Intemperate Conduct



## **CANON 3**

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

### **RULE 3.5 Demeanor**

**A judge shall be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers and others with whom the judge deals in an official capacity, and shall not permit lawyers, court officials, and others subject to the judge's direction and control to display impatience or discourtesy or to detract from the dignity of the court.**

## 5. Decorum, order and austerity



## **RULE 2.2**

### **External Influences on Judicial Conduct.**

**Judges shall decide cases according to the law and facts. Judges shall not permit family, social, political, financial or other relationships or interests to influence their judicial conduct or judgment.**

## **6. Violating the Social Contract**



# **Canon 1**

**AN INDEPENDENT AND IMPARTIAL JUDICIARY IS INDISPENSABLE TO JUSTICE. A JUDGE THEREFORE SHALL UPHOLD AND SHOULD PROMOTE THE INDEPENDENCE, INTEGRITY AND IMPARTIALITY OF THE JUDICIARY.**

## **Rule 1.1 Independence, Integrity and Impartiality of the Judiciary.**

**A judge shall participate in establishing, maintaining and enforcing, and shall personally observe, high standards of conduct so that the integrity, impartiality and independence of the judiciary is preserved. This Code shall be construed and applied to further these objectives.**

## **RULE 1.2 Compliance with the Law.**

**A judge shall respect and comply with the law.**

### **COMMENT**

**Violations of this Code, or violations of law or court rules that reflect adversely on a judge's honesty, impartiality, temperament or fitness constitute a failure to respect and comply with the law.**

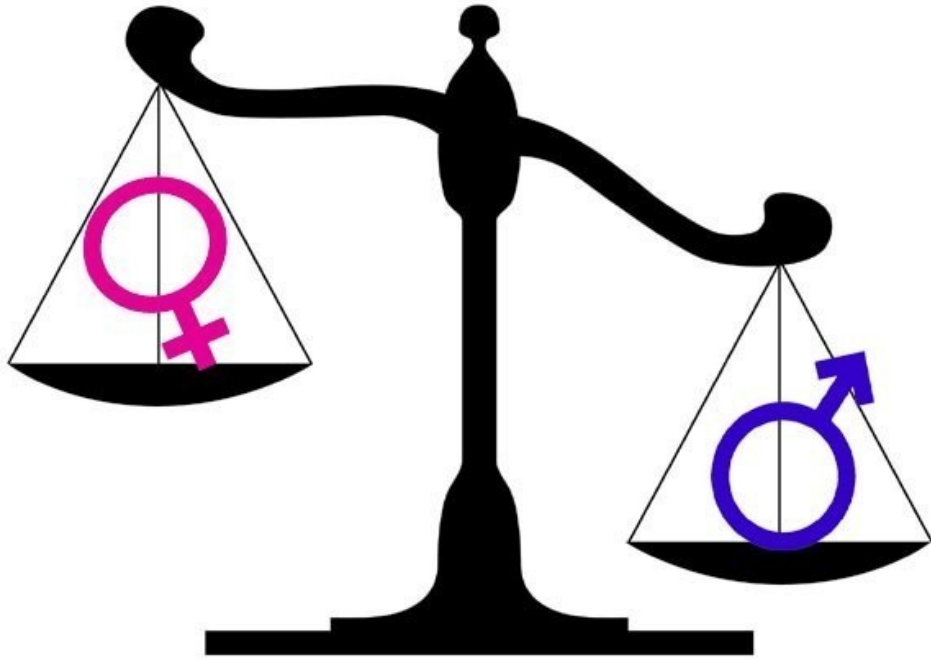
## **RULE 3.12 Communication with Jurors**

**(A) A judge shall not commend or criticize jurors for their verdict other than in a court order or opinion in a proceeding.**

**(B) Following the verdict, a judge may express appreciation to jurors for their service to the judicial system and the community in open court and in the presence of counsel or the parties. A judge may not have post-verdict discussions with jurors, unless those discussions are part of a hearing ordered on good cause shown pursuant to Rule 1:16.**

**In re Mathesius, 188 NJ 496 (2006) (30-day suspension)**

## 7. Demonstrating Bias



## **RULE 3.6(C) Bias and Prejudice**

**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 on the bases specified in Rule 3.6(A), and shall not permit court staff, court officials or others subject to the judge's direction and control to do so. This section does not preclude reference to the listed bases when they are issues in or relevant to the proceeding.**

## **Comment [2]**

**Examples of manifestations of bias or prejudice include but are not limited to epithets, slurs, demeaning nicknames, negative stereotyping, attempted humor based on stereotypes, threatening, intimidating, or hostile acts, suggestions of connections between race, ethnicity, or nationality and crime and irrelevant references to personal characteristics. Even facial expressions and body language can 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.**

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**In re Convery, 201 NJ 411 (2010) (Reprimand).**

## **8. Special Position of Influence**



## **RULE 2.3 Avoiding Abuse of the Prestige of Judicial Office**

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

**(B) 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**

**[ 1] It is improper for judges to use or attempt to use their 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 others, such as persons in official positions and members of the public.**

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**See also:**

**RPC 3.5(a) - Impartiality and Decorum of the Tribunal**

**A lawyer shall not seek to influence a judge, juror, prospective juror or other official by means prohibited by law.**

**In re Muller, 208 NJ 435 (2011) (Reprimand)**

**In re Rivera-Soto, 192 NJ 109 (2007) (Censure)**

**In re Baptista, 205 NJ 306 (2011) (Reprimand)**

## **9. Open challenges to judicial authority - Judge Baiting.**



## **RULE 3.4 Decorum**

**A judge shall maintain order and decorum in judicial proceedings.**

**This role is a demanding one for any trial judge, and it is not trite to observe that what distinguishes our legal system from all others is our unflinching insistence on the dignity of the American courtroom as the ultimate repository of our liberties. Hence, we are satisfied that the judge's non-delegable duty to "impose the indispensable standards of dignity and austeri-ty upon all those who participate in a criminal trial," In re Daniels, 118 NJ 51,54 (1990).**

## 10. Professionalism in advocacy



## **RULE 3.7 Ensuring the Right to Be Heard**

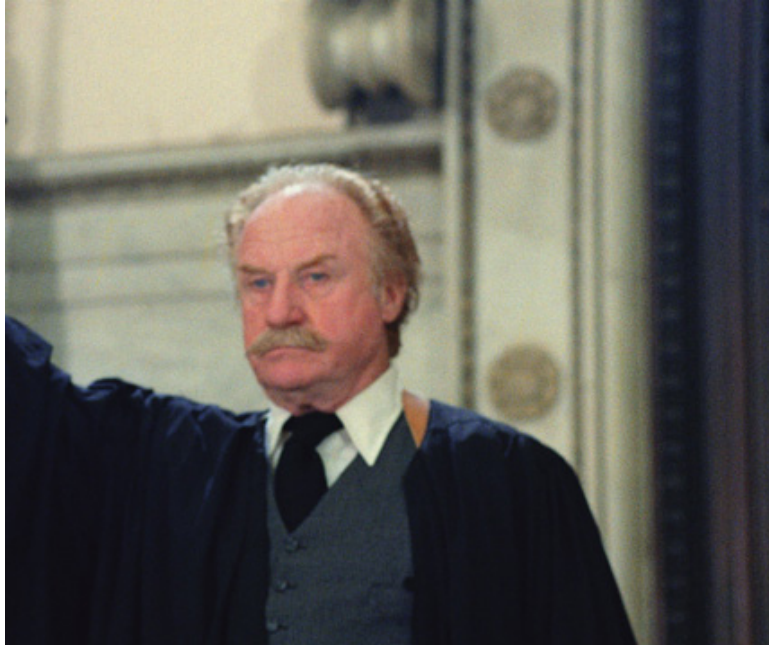
**A judge shall accord to every person who is legally interested in a proceeding, or to that person's lawyer, the right to be heard according to law or court rule.**

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## **RULE 3.6(B) Bias and Prejudice**

**A judge shall require lawyers in proceedings before the judge to refrain from manifesting, by words or conduct, bias or prejudice on the bases specified in Rule 3.6(A), against parties, witnesses, counsel or others. This section does not preclude legitimate advocacy when the listed bases are issues in or relevant to the proceeding.**

## 11. Order in the Court



## **RULE 3.9 Diligence**

**A judge shall dispose promptly of the business of the court.**

**12. And now (because you have been so well-behaved)....a special treat!**

