

CHAPTER 1

OVERVIEW & ETHICAL CONSIDERATIONS

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OVERVIEW

Definitions

The phrases "make a record", "made a record" and "making a record" refer to the process of using one or more of the means specified by Ind. Trial Rule 74 and Ind. Crim. R. 5 in order to preserve: (1) statements and objections, and arguments of counsel; (2) verbal expressions and verbal testimony of the judge, the witnesses, the parties, the jurors, and any members of the public that may occur during any proceeding, hearing, bench trial, or jury trial.

The word "record" refers to the result obtained after the process of "making a record" has been completed. The meaning of the word will vary depending upon the means of preservation used by the court reporter. The method could be handwritten longhand notes, handwritten shorthand notes, stenographic paper notes, stenographic computer disks, an audio electronic recording tape or digital recording to computer hard drive or compact disk.

The phrases "audio electronic tape recording(s)", "audio recordings", "electronic tape" and "electronic tape recording(s)" refer to "electronic . . . device" language of T.R. 74 and the "electronic recording" and "recording device" language of Crim. R. 5.

A "transcript" refers to a typed document intended to constitute the transcription of the record of a particular proceeding, bench trial or jury trial conducted in either a civil or criminal case.

A transcript is in the form specified by App. R. 27 - 30. A transcript is filed with the clerk of the court as required by T.R. 74, Crim. R. 5, and App. R. 11. The language of the Notice of Appeal determines the content of a transcript.

The phrase "Record on Appeal" refers to the definition found in App. R. 2.

History Of Reporting And Development Of Reporting Systems

Early History

Reporting has been traced back more than 2,000 years. From notes found on the margins of Ancient Greek and Egyptian manuscripts, we know that it was practiced as early as the Fourth Century B.C. Marcus Tullius Tiro, a freedman of Ancient Rome, developed a system with which he recorded the speeches of the great orator Cicero. Tironian, as his system became known, was learned by the emperor Augustus, who later

taught it to his grandchildren. It was also used by other writers in recording speeches in the Roman Senate.

The story of reporting as it exists today begins with the 16th Century. The first system of reporting approaching fully phonetic writing was devised by Timothy Bright, who in the year 1588 published a treatise on shorthand dedicated to Queen Elizabeth I. Shorthand characters were then used for more than a century by ministers and scholars to write their sermons and letters, and even used in diaries, because some believed it afforded more privacy than longhand. Samuel Pepys' diary, the first entry of which was made in 1660, and the last in 1669, was written in shorthand to attain secrecy.

The year 1750 saw the publication of the system of Thomas Gurney, the first official reporter of parliamentary debates in Great Britain - a post that was held by members of his family down to recent times. About 1786 the system of Taylor became immensely popular. Before he became a famous author, Charles Dickens, practiced as a parliamentary reporter and used the Taylor system. His struggles in acquiring speed, as described in "David Copperfield," continue even today in modern reporting as a paramount labor, together with the acquisition of accuracy.

Shorthand

Modern shorthand began with the introduction of Pitman shorthand in 1837, followed some fifty years later by Gregg shorthand. These are known as manual systems, that is, written with pen or pencil using graphic symbols to represent phonetic speech. The Century system of shorthand also continues in existence, as a manual system, but with characters different from Gregg. In 1913, a method was introduced for the writing of shorthand by machine, known as machine shorthand, stenotype or touch shorthand. In this method a touch of keys in various combinations produces phrases, as a touch of piano keys produces chords.

In addition to manual shorthand and stenotype, there are five other methods for producing a transcript in use today. "Audio recordings" preserve court proceedings by recording participants' voices over microphones onto tapes, either reel-to-reel or cassette. Both single and multi-track machines are used. A "stenomask" reporter uses a single-track audio recording machine and repeats the words spoken in the courtroom into a microphone encased in a soundproof mask much like a simultaneous interpreter or language reporter in court. The Gemelli voice-writing technique is an adaptation of the stenomask. A multi-track recording machine is used to record both the reporter's whispers (there is no mask) and the voices of the participants.

The two remaining methods are the most recent developments in reporting. A "video record" of court proceedings can be made by electronically recording on to videotape the participants' voices and images. It is most often used in taking depositions and not for the production of a written transcript. Videotaped depositions are sometimes taken in evidence at trial upon qualification. "Computer Aided Transcription (CAT)" uses a modified stenotype machine which electronically records the symbols on a

magnetic disc. The disc is inserted into a computer, which produces an on-screen draft for editing by the reporter. The computer-printer then prints a transcript from the edited disc material. The CAT system promotes speed in transcript production. It enables, for example, the speedy preparation of "same day transcripts" during the course of litigation for a multitude of purposes. More and more court reporters in the State of Indiana are being trained in, and utilize, the CAT system. Success using either of these systems requires two (2) skills: speedy and accurate disc production and accurate on-screen editing of disc material.

In the article "Technology and Access to the Courts" appearing in the summer, 1994 issue of Court Review," American Judges Association; Roger Miller, President of the Nation Court Reporters Association states:

"Many important by-products have appeared with CAT: keyword indexing, rapid or instant building, and interfacing the digital record with computer systems."

"But the unique capability of CAT is production of the real time record. Real time is translation in its purest form, defined as the conversion of the spoken word simultaneously into printed format. Never before have we been able to convert the spoken word to the written word almost simultaneously. This represents a magnificent achievement in verbatim reporting."

"In the late 1970s, the first practical system for real time translation appeared in the marketplace. And by 1981, it was sophisticated enough to be used for real time closed-captioning."

The caseload of the majority of courts in Indiana is increasing drastically each year. Just as our court system is changing to keep up with times and demand, so must the professions that serve.

There is an increased burden on court reporters to produce more transcriptions in less time. If an efficient court system is to be maintained, it must remain staffed with skilled personnel and up-to-date equipment. Alexander B. Aikman, Senior Staff Attorney, N.C.S.C., in his article, "Measuring Court Reporter Income and Productivity," supports the importance of skilled court personnel and their burdensome task:

"No other person in the courtroom must concentrate on and follow the proceedings to the same degree."

Preparation For A Career As A Court Reporter

The court reporter must possess three distinct skills: (1) an accurate typing speed in an electronic environment, (2) language interpretation/translation skills and (3) basic familiarity with court processes and procedures. The court reporter is usually hired on

the strength of demonstrated abilities in these areas and educational credentials. A person preparing for this demanding career will need both specialized training and a good general education.

Attaining adequate skill in reporting by shorthand or stenotype involves an estimated 24 months of study and practice, an extremely demanding and expensive process. Court reporters who have mastered the shorthand and stenotype speed necessary for verbatim reporting are in great demand in the free-lance field.

Some judges, who work within limited budgets, may expect the court reporters to perform a variety of other general duties. The judge may rely heavily upon the electronic recording method of court reporting. The judge might utilize a typist, who might not have undergone a strenuous formal educational process.

A high school diploma is a required minimum educational background. An associate college degree coupled with some law related experience is desirable. The person seeking a position should take training relating to basic courtroom procedure, legal terminology and pleadings. An extensive vocabulary, a good understanding of English grammar, punctuation, and technical terminology are desirable

Continuing professional education, whether formalized or self-developed, is an essential ingredient for the continuing betterment of the justice system and the professional and personal attributes of the court reporter.

Ethics And Professionalism

Court reporters look to Indiana's Code of Judicial Conduct for guidance and decorum and performance, both in and out of the courtroom. That Code, found in the Indiana Court Rules, is binding on judges and contains several sections, which are specifically directed to court reporters and other court personnel. Other canons therein, though not directly applicable to the judge's staff, serve as guidelines for addressing situations where political, personal and business involvements might conflict with professional responsibility. The court reporter must always be cognizant of the overriding requirements of propriety of action, impartiality of treatment, and balance in approach.

The court reporter is a public servant. See I.C. 35-41-1-24. The court reporter must follow the court rules, case law, and statutes, as they apply to an officer of the court. The court reporter is responsible to the judge for production of records and transcripts, and for related department.

Upon the acceptance of an appointment as a court reporter, the court reporter should be aware that there are certain specific rules of conduct unique to this position. The best source of knowledge relating to specific rules of conduct is the judge.

Code of Judicial Conduct – Selected Provisions

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...”

The preamble establishes the philosophical tone for judicial and staff conduct, and the relationship between judge and staff relative thereto. It promotes the independence and separateness of the judicial branch of government as the essential for propriety of life and action, and requires the continuing goal of high standards of conduct for this entire branch of government, judges and staff alike.

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.

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.

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.

Canon 2

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

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.

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. 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.

[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.

Rule 2.4: External Influences on Judicial Conduct

(A) A judge shall not be swayed by 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

[1] 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 cooperate with other judges and court officials in the administration of court business.

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.

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 act in a manner that coerces any party into settlement.

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.

Rule 2.9: *Ex Parte Communications*

- (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 promptly to 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 written advice of a disinterested expert on the law applicable to a proceeding before the judge, if the judge gives advance notice to the parties of the person to be consulted and the subject matter of the advice to be solicited, and affords the parties a reasonable opportunity to object and respond to the notice and to the advice received.
 - (3) A judge may consult with court staff and court officials whose functions are to aid the judge in carrying out the judge's adjudicative responsibilities, or with other judges, provided the judge makes reasonable efforts to avoid receiving factual information that is not part of the record, and does 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.

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

(C) 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.

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.

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.

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: Hiring and Administrative Appointments

- (A) In hiring court employees and 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) [Reserved]
- (C) A judge shall not approve compensation of appointee beyond the fair value of services rendered.

Comment

[1] “Appointees of a judge” includes but is not limited to assigned counsel, officials such as referees, commissioners, special masters, receivers, special advocates, and guardians, and personnel such as clerks, secretaries, and bailiffs.

[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.

[3] A judge should consult the staff of the Indiana Commission on Judicial Qualifications or its advisory opinions to determine whether hiring or appointing a relative as defined by Comment [2] may be justifiable under the circumstances.

[4] Consent by the parties to an appointment or an award of compensation does not relieve the judge of the obligation prescribed by paragraphs (A) and (C).

Canon 3

A judge shall conduct the judge’s personal and 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;
- (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 incidental use or for activities that concern the law, the legal system, or the administration of justice.

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, 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.

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.

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 is dedicated to the preservation of religious, ethnic, or cultural values of legitimate common interest to its members, 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] A judge's membership in a religious organization as a lawful exercise of the freedom of religion is not a violation of this Rule.

[5] This Rule does not apply to national or state military service.

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) Except as permitted by law, or by Rules 4.1(B), 4.1(C), 4.2, 4.3, and 4.4, a judge or a judicial candidate shall not:

- (1) act as a leader in or hold an office in a political organization;
- (2) make speeches on behalf of a political organization;
- (3) publicly endorse or oppose a candidate for any public office;
- (4) solicit funds for, pay an assessment to, or make a contribution to a political organization or a candidate for public office;
- (5) attend or purchase tickets for dinners or other events sponsored by a political organization or a candidate for public office;
- (6) publicly identify himself or herself as a member or candidate of a political organization;
- (7) seek, accept, or use endorsements from a political organization;
- (8) personally solicit or accept campaign contributions other than through a campaign committee authorized by Rule 4.4;
- (9) use or permit the use of campaign contributions for the private benefit of the judge, the candidate, or others;
- (10) use court staff, facilities, or other court resources in a campaign for judicial office or for any political purpose;
- (11) knowingly, or with reckless disregard for the truth, make any false or misleading statement;

- (12) 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
- (13) 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) A judge in an office filled by partisan election, a judicial candidate seeking that office, and a judicial officer serving for a judge in office filled by partisan election may at any time:
- (1) identify himself or herself as a member of a political party;
 - (2) voluntarily contribute to and attend meetings of political organizations; and
 - (3) attend dinners and other events sponsored by political organizations and may purchase a ticket for such an event and a ticket for a guest.
- (D) A judge in an office filled by nonpartisan election other than a retention election, a judicial candidate seeking that office, and a judicial officer serving for a judge in an office filled by nonpartisan election may at any time attend dinners and other events sponsored by political organizations and may purchase a ticket for such an event and a ticket for a guest.

Rule 4.2: Political and Campaign Activities of Judicial Candidates in Public Elections

- (A) A judicial candidate* in a partisan, nonpartisan, or retention public election* 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;
 - (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; and
 - (5) notify the Indiana Commission on Judicial Qualifications in writing, within one week after becoming a candidate, of the office sought and of the candidate's address and telephone number.
- (B) A candidate for partisan elective judicial office may, in addition to those activities permitted at any time under Rule 4.1(C) and unless prohibited by law,* and not earlier than one (1) year before the primary or general election in which the candidate is running:
- (1) establish a campaign committee and accept campaign contributions pursuant to the provisions of Rule 4.4;
 - (2) speak on behalf of his or her candidacy through any medium, including but not limited to advertisements, websites, or other campaign literature;

- (3) publicly endorse and contribute to candidates for election to public office running in the same election cycle;
 - (4) attend dinners, fundraisers, or other events for candidates for public office running in the same election cycle and purchase a ticket for such an event and a ticket for a guest;
 - (5) seek, accept, or use endorsements from any person or organization, including a political organization; and
 - (6) identify himself or herself as a candidate of a political organization.
- (C) A candidate for nonpartisan elective judicial office may, in addition to those activities permitted at any time under Rule 4.1(B) and unless prohibited by law, and not earlier than one (1) year before the primary or general election in which the candidate is running:
- (1) establish a campaign committee and accept campaign contributions pursuant to the provisions of Rule 4.4;
 - (2) speak on behalf of his or her candidacy through any medium, including but not limited to advertisements, websites, or other campaign literature;
 - (3) publicly endorse, contribute to, and attend functions for other candidates running for the same judicial office for which he or she is running; and
 - (4) seek, accept, and use endorsements from any appropriate person or organization other than a political organization.
- (D) A candidate for retention to judicial office whose candidacy has drawn active opposition may campaign in response and may:
- (1) establish a campaign committee and accept campaign contributions pursuant to the provisions of Rule 4.4;
 - (2) speak on behalf of his or her candidacy through any medium, including but not limited to advertisements, websites, or other campaign literature; and
 - (3) seek, accept, and use endorsements from any appropriate person or organization other than a political organization.

Rule 4.3: Activities of Candidates for Appointive Judicial Office

A candidate for appointment to judicial office may:

- (A) communicate with the appointing or confirming authority, including any selection, screening, or nominating commission or similar agency;
- (B) seek endorsements for the appointment from any person or organization other than a partisan political organization; and
- (C) otherwise engage only in those political activities permissible at any time under Rule 4.1 for judges holding the type of judicial office sought.

Rule 4.4: Campaign Committees

(A) A judicial candidate* subject to partisan or nonpartisan election*, and a candidate for retention who has met active opposition, 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.*

- (B) A judicial candidate shall direct his or her campaign committee:
- (1) to solicit and accept only such campaign contributions* as are reasonable;
 - (2) not to solicit or accept contributions for a candidate's current campaign more than one (1) year before the applicable primary election, caucus, or general or retention election, nor more than ninety (90) days after the last election in which the candidate participated; and
 - (3) to comply with all applicable statutory requirements for disclosure and divestiture of campaign contributions.

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

- (A) Upon becoming a candidate for a nonjudicial elective office, a judge shall resign from judicial office, unless permitted by law* to continue to hold 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.

Rule 4.6: Political Activities of Nonjudicial Court Employees

- (A) An appointed judge in an office filled by retention election must require nonjudicial court employees to abide by the same standards of political conduct which bind the judge.
- (B) A judge in an office filled by partisan or nonpartisan election must not permit nonjudicial court employees to run for or hold nonjudicial partisan elective office or to hold office in a political party's central committee.

Comment

- [1] Limitations on political activities by court employees are necessary to protect the public's confidence in the independence and impartiality of the judicial system.
- [2] Unlike appointed judges subject to retention, judges in partisan and nonpartisan elective office are not required to hold their employees to the same limitations on political conduct which apply to the judges.
- [3] The standards for employees of retention judges set out in Rule 4.6(A) are those which apply to the judges when they are not running in an election.
- [4] Unlike nonjudicial court employees, court employees who perform judicial functions are bound directly by the Code of Judicial Conduct unless exempted under the Application Section.

The Canons establish reasonable control over the conduct of the judge and the court reporter during both work hours and following work. Consideration must always be given to the obligation to respect and comply with the law, the maintenance of confidentiality, propriety, and impartiality.

Rule 2.3 requires a judge and court staff and others under the judge's direction and control perform their duties without bias or prejudice. Rule 2.12 clearly establishes the tone of relationship between judge and court reporter because it mandates the judge to require court staff and others subject to the judge's direction and control to act in a manner consistent with the judge's obligations under the Code of Judicial Conduct.

A court reporter must maintain an operational balance between interests that may conflict and compete. The court reporter is required to provide equal and fair service to lawyers, litigants, and members of the public. The court reporter is prohibited from engaging in conduct that might be perceived as providing an unfair advantage to any interest. An ethical duty of diligence is created and imposed upon the court reporter.

Rule 2.8 addresses the personal attributes of character and demeanor required of those in the judicial system. The behavior expected of the court reporter both while making a record in court, and while dealing with attorneys, members of the media, or members of the public outside of court are also addressed. Patience, dignity and courtesy should be endorsed as high standards of conduct in the judicial system.

As outlined in Rule 2.9, a judge has an obligation not to engage in *ex parte* communications regarding pending cases. Exceptions are provided for emergencies, administrative or scheduling purposes. The judge may communicate with the staff, including the court reporter. The line between an administrative purpose or a scheduling purpose and an improper *ex parte* communication may be narrow. Caution should be used in all communications concerning a pending matter because a communication posed under the guise of a scheduling or other administrative question may, in fact, be a disguised effort at an *ex parte* communication.

See Pro-Lam, Inc. v. B & R Enterprises, 651 N.E.2d 1153 (Ind. Ct. App. 1995) where an out-of-state attorney asked a court reporter if it was proper to file an appearance and a motion for an extension of time that was not in proper form. The court reporter told the attorney to file the documents. The attorney attempted to utilize the discussion with the court reporter as an excuse to obtain relief from a default judgment. The Court of Appeals admonished the out-of-state attorney.

The court reporter should consider these canons when engaging in communications with attorneys. The court reporter must refrain from expressing opinions regarding the performance of counsel and must refrain from expressing legal advice.

Several cases discuss the requirements pertaining to *ex parte* communications.

- Matter of Guardianship of Garrard, 624 N.E.2d 68 (Ind. Ct. App. 1993).
The judge *ex parte* discussed a submitted written child custody report with its therapist author; held: a new trial was required.
- Mahrtdt v. State, 629 N.E.2d 244 (Ind. Ct. App. 1994).

The judge placed an *ex parte* telephone call to Sheriff to reschedule examination of breath machine used to measure quantity of alcohol in a person's blood; judge promptly informed State and defendant of information received during the call. Held: call was "administrative" and was "not improper".

- Bell v. State, 655 N.E.2d 129 (Ind. Ct. App. 1995).

The judge placed *ex parte* telephone call to Sheriff; held: improper contact occurred because judge did not disclose fact of call or contents of call to defendant and judge did not allege that purpose of call was for administrative or scheduling purposes.

- Matter of Johnson, 658 N.E.2d 589 (Ind. 1995).

The judge and court reporter engaged in *ex parte* communications regarding rescheduling of a trial with a deputy prosecutor without consulting defense counsel; defense counsel was given 2 days advance notice of trial. Held: a public reprimand was issued. The test is: "whether an objective person, knowledgeable of all the circumstances, would have a reasonable basis for questioning a judge's impartiality". See Bell, *supra* at 655 N.E.2d 132.

- In Re Kern, 774 N.E.2d 878 (Ind. 2002).

Judge found to have considered improper *ex parte* communication from a litigant when court staff assisted step-parent to prepare an affidavit which led to the issuance of an *ex parte* custody order that did not comply with the requirements of TR 65(B)(1) against the mother.

Cases from other jurisdictions also illustrate the problems created by *ex parte* communications that occur through court staff. See:

- Mallory v Hartsfield, Almand & Grisham, LLP, 86 S.W.3d 863 (Arkansas 2002).

Telephone communication occurred between litigant counsel and the judge's law clerk concerning an issue ruled upon by the judge that prompted a change in the ruling and a motion seeking recusal of the judge.

- Kamelgard v American College of Surgeons, 895 N.E.2d 997 (Ill. App. 2008).

Trial judge engaged in *ex parte* communication by requesting her law clerk to call the College's attorney to obtain disputed documents for an unannounced *in camera* review by the court. After review the court entered an order without further notice or hearing.

Rule 2.10 regulates statements by the judge concerning pending and impending cases. Similarly, the court reporter may not make a public comment about a pending matter, even during the appeal process, if that comment might reasonably be expected to affect outcome or impair fairness. The court reporter must be vigilant when dealing with members of the media. This rule should be read in connection with others relating to after-hours private comments and confidentiality requirements. The court reporter may not always be able to discern the impact that a seemingly innocent remark might have on the perception of a fair trial. Given the overriding requirements of propriety and fairness, silence outside of the courtroom will afford the best protection.

Rule 3.1 encourages judges to participate in appropriate extrajudicial activities. See Comment 1. A court reporter may participate in activities that tend to promote, nurture, encourage, teach, help, and guide other court reporters. This Handbook would not exist without the efforts of many court reporters who, in the spirit of this rule, shared their experiences for the purpose of benefiting other court reporters.

Rule 3.5 regulates the actions of a judge concerning use of nonpublic information. The court reporter must not take advantage of nonpublic information gleaned during the course of official duties either for direct personal benefit or for indirect personal benefit by aiding another. This rule should be read in connection with others relating to after-hours private comments and confidentiality requirements. After-hours disclosure of confidential material is prohibited.

Canon 4 regulates the election activities of judicial candidates and imposes upon the judge an obligation to be sure that court staff do not act in a manner that the judge may not. See Rules 4.1(B), 4.2(A) and 4.6.

Special Requirements

Private Communications

The court reporter, privy to the judge's verbal legal reasoning off the record as a part of the decision-making process, must keep such information in the strictest confidence.

Media

If the court reporter is assigned to handle the dissemination of information to news media, the court reporter must relate only what the record reveals without interpretation, personal comment, or related comment. The optimum practice is to invite media representatives to inspect the record and make their own discernment. In the event that the record has been ordered sealed by the judge, the court reporter must not reveal the contents of the record. See Chapter 2.

Record Maintenance and Safekeeping

The court reporter has the responsibility for the maintenance and safekeeping of the record and exhibits. Exhibits or tapes should not leave the custody and control of the court reporter and should not be removed from the court facility, except for an emergency or upon authorization of the judge. It is acceptable practice to allow litigants, represented or pro se, counsel, members of the press and members of the public, to listen to the tapes in accordance with procedures designed to guarantee the integrity of the record. The court reporter must exercise diligence at all times to maintain and protect the genuineness of the tapes against either potential tampering or loss.

During the course of a trial, exhibits are treated differently. See Chapter 2, Section: The Court Reporter and the Right of Public and Press to Access Public Records,

subsection Public Access to Records. After the conclusion of the trial or proceeding, members of the public and the press may view the exhibits unless the judge has issued an order that prevents access. During the trial, counsel and parties may examine the exhibits. The court reporter is required to be personally present during any exhibit examination and must exercise diligence at all times to maintain and protect the genuineness of the exhibits against potential removal, tampering, alteration, damage, or loss.

Necessity of a Notice of Appeal

The court reporter should not undertake the preparation of a transcript unless the court reporter has received a timely and proper notice of appeal, a written order from counsel during trial, or an order from the judge.

Preparation of Transcript

The court reporter who makes the record of a trial or proceeding is generally responsible for the preparation of the transcript of that trial. Reasons of style and interpretation dictate that this practice results in a more complete and accurate record.

Both T. R. 74 and Crim. R. 5 authorize a judge to use "other" persons to prepare a transcript from a trial or. Other persons may be utilized to type a transcript in compliance with orders from the Indiana Supreme Court and to avoid a possible contempt sanction. See Matter of Hatfield, 607 N.E.2d 384 (Ind. 1993). In the event that a person (other than the reporter who made the record of the trial or proceeding) types the transcript, the person who types the transcript signs a Reporter's Certificate that the transcript is complete and accurate.

Examination of the NORMAL CERTIFICATION REPORTER'S CERTIFICATE form in the Appendix reveals that the word "true" is omitted from the NORMAL CERTIFICATION REPORTER'S CERTIFICATE in the event that a person other than the court reporter types the transcript from an audio tape(s). In other words, the assumption behind the NORMAL CERTIFICATION REPORTER'S CERTIFICATE is that the court reporter, who attended and witnessed the trial or proceeding and who made the record, also prepared the transcript. This revision contains a form certification for a typist preparing the transcript and a form certification for a typist and court reporter preparing the transcript.

Procedure in the Event of an Ethical Violation

If an inadvertent ex parte communication is made by the court reporter, it should be remedied by prompt disclosure to all parties, after immediate consultation with the judge. If an ex parte communication is solicited from the court reporter, the court reporter must refuse to respond and immediately notify the judge.

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