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**SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR THE COUNTY OF KING**

<p>In re the Matter of</p> <p>THE SHARON M. HAROLD IRREVOCABLE TRUST DATED NOVEMBER 12, 2004,</p> <p style="text-align: right;">a Trust.</p>	<p>Case No. 22-4-08326-1 KNT</p> <p>SUPPLEMENTAL BRIEF RE: THE INTERSECTION OF THE FIRST, FOURTH AND FOURTEENTH AMENDMENTS IN SUPPORT OF VERIFIED JOINT OBJECTION (DKT 28)</p>
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Respondents Charles A. Harold, Jr., John J. Harold, Angel Harold, Amy Jane Small and Josette Ramirez herein incorporate by reference all prior submissions to this Court in the captioned matter and all prior submissions in the case entitled, *Harold v. Paice*, Case No. 23-2-03980-7 as if fully set forth herein. Each and every allegation, argument, exhibit and objection previously submitted by Respondents is reiterated and realleged with the same force and effect as if fully stated in this document, the Supplemental Brief re: the Intersection of the First, Fourth and Fourteenth Amendments in Support of the Verified Joint Objection (Dkt 28) as follows:

I. INTRODUCTION

The TEDRA and VAPO courts have forced Respondents and Grantor to remain in an intimate and financially abusive relationship with Grantor's grandson-in-law the Trustee who is also Respondents nephew-in-law.

1 By the time trial starts in January 2025, the case will have lingered over three
2 years.

3 The Courts forced this unwated association by failing to rule sua sponte on the
4 overwhelming evidence that "Trustee" Paice's petition is a false equivalent, that he has
5 violated dozens of Probate Codes and engaged in "nefarious" activity. The evidence
6 relied upon in the case is in fact "Trustee's" own evidence submitted in his TEDRA
7 petition, Objection to the VAPO petition, an more recently in the ex parte
8 communication with the Court in the Revision matter.

9 Respondents and Grantor want to disassociate from their intimate association
10 with "trustee" under their absolute First Amendment right.

11 II. CONSTITUTIONAL VIOLATIONS

12 **1) First Amendment Right of Disassociation:** By not ruling sua sponte and
13 allowing the Trustee to continue litigating using the grantor's money, the court is
14 effectively forcing the Respondents and Grantor into an intimate association from which
15 they explicitly wish to disassociate. This compelled association violates their First
16 Amendment rights of free disassociation, which is a core component of free speech
17 protections.

18 **2) The Fourteenth Amendment, Full Faith & Credit, Due Process & Equal**
19 **Protection:**

20 The court's actions, including issuing a temporary VAPO then denying the
21 permanent VAPO using the same facts, dismissing the Revision hearing on
22 administrative procedural grounds have hindered Respondents, who live in 4 different
23 states, access to grieve the government thus denying the Grantor and Respondents due
24 process and equal protection and the full faith and credit of their respective states of
25 residence. This further underscores the unreasonable nature of Trust assets seizure for
26 attorney fees.

27 **3) The Fourth Amendment Violation:** The trustee has encumbered the trust
28 with over \$260,000 in attorney fees, of which approximately \$120,000 (that we know of)

1 has been paid directly to the law firm Lane Powell, despite the grantor's repeated written
2 requests to freely disassociate from the trustee and to provide her matching trust funds
3 to hire competent legal counsel to represent defeat her "nefarious" "Trustee"

4 This unique situation raises significant constitutional concerns, particularly
5 regarding the Fourth Amendment's protection against unreasonable seizures.

6 **a) Unconstitutional Government Action:** The court, judges, and
7 commissioners involved in this case are officers of the government. By allowing and
8 facilitating the trustee's access to and use of the grantor's trust funds, they are effectively
9 participating in the seizure of these funds without due process or statutory authority.
10 This transforms what might otherwise be seen as a private matter into state action,
11 bringing it within the purview of the Fourth Amendment.

12 To prevent Grantor and Respondents from freely disassociating from "Trustee"
13 to stop his financial reign of terror, the government must;

14 1) Use strict scrutiny to evaluate the constitutionality of a law or ruling that
15 infringes upon fundamental rights of Respondents.

16 2) The Court must have a compelling government interest demonstrating that
17 the law or policy serves a compelling state interest. This means the interest
18 must be crucial or necessary, not just preferred or important.

19 3) The Court must narrowly tailor the law or policy to achieve that compelling
20 government interest. It should not be overly broad or fail to address essential
21 aspects of the interest.

22 Commissioner Judson, denying Grantor the permanent VAPO because that
23 ruling was consistent with his first ruling in the TEDRA to send it trial, is not a compelling
24 government interest and in fact is a violation of not only the 1st Amendment but the 14th
25 Amendment provisions of due process and equal protection. The fact that Commissioner
26 Filer, who sat completely independent on the VAPO bench when she heard that matter
27 and held there was reasonable cause to believe Trustee engaged in financial elderly
28 abuse, a crime, adds additional on constitutional complexity.

b) Unreasonable Seizure: The seizure of the grantor's trust funds is unreasonable for several reasons:

1) It contradicts the express intent of the grantor as stated in the trust document.

2) It violates the California Probate Code, which requires enforcing Settlor's express intent as stated in the Trust instrument and the interpretation of other trust language in a way that enforces the settlor's intent.

3) It disregards the grantor's repeated requests to stop the expenditure of her funds and remove the trustee.

5) It ignores the grantor's First Amendment right to freedom of association (and disassociation).

6) Lane Powell has encumbered the trust with over \$260,000 in attorney fees against the principal of the trust which is not permitted in per *DiMaria v. Bank of California*, 237 Cal.App.2d 254 (1965) which stated creditors cannot reach the trust principal of Trust assets unless they can show the beneficiary's income is sufficient for reasonable needs, as specified in the trust terms. The court ruled that allowing unlimited claims against the trust corpus would effectively destroy the irrevocable nature of the trust. Creditors can only reach trust assets required to be paid to the beneficiary under the trust terms.

4) Parallel to Traditional Fourth Amendment Cases: While this case doesn't involve a physical search or seizure by law enforcement, the principle remains the same. The government (through the court system) is facilitating the taking of the grantor's property (trust funds) against her will, in contradiction to established law and the trust's stated purpose, without a compelling government interest to do so.

III. ANALOGIES

1) Forced Intimate Association: The court forcing the grantor to maintain an unwanted association with her trustee grandson is akin to compelling a person to remain in an abusive domestic relationship. Just as the VAPO law provides protection

orders for victims of physical or emotional domestic abuse, it should similarly protect the Grantor's and Respondent's rights to disassociate from a trustee who has breached and abused fiduciary duties toward Respondents and Grantor.

2) Financial Captivity: The trustee's control over the grantor's funds, with the court's approval, is analogous to financial abuse in domestic situations. The grantor is essentially held captive in a financial relationship against her will, unable to access her own matching financial resources to defend herself.

3) Peace Officers Breaking Laws: A trustee intentionally violating their fiduciary duty is like a peace officer breaking the very laws they are sworn to uphold. It undermines the trust and integrity of the entire system.

4) Parent Child Duty: A trustee who intentionally fails in their duty to protect a vulnerable adult Grantor is akin to a parent who fails to provide palliative care for their disabled infant child.

IV. LEGAL PRINCIPLES

1) Fiduciary Duty: The "Trustee's" actions clearly violate the fiduciary duty owed to the Grantor and Respondents. As outlined in Hart v. Goadby, 72 Misc. 232, 129 N.Y.S. 892 (Sup. Ct. 1911), trustees have a duty to act in the best interests of the beneficiaries, which "Trustee" is clearly not doing in this case.

2) Statute of Limitations: California Code of Civil Procedure § 343 provides a four-year statute of limitations for breach of trust claims when no written account or report is provided. The trustee's retroactive filing after 12 years clearly exceeds this limitation and evokes § 343.

3) Current TERDA Litigation is Moot:

California Probate Code § 16442 states;

"The provisions in this article for liability of a trustee for breach of trust do not prevent resort to any other remedy available under the statutory or common law."

No matter what the TERDA Court rules, the "Trustee" is still liable for damages especially since Respondents to date have filed no claim against Trustee.

1 **4) Conditional Distributions:** California Probate Code § 16004.5 (a) states:

2 A trustee may not require a beneficiary to relieve the trustee of liability
3 as a condition for making a distribution or payment to, or for the benefit
4 of, the beneficiary, if the distribution or payment is required by the trust
 instrument.”

5 It is the Trustee’s prime duty to “provide for Grantor” and by using trust funds to
6 pay his attorney to obtain a release first from beneficiaries and then TEDRA Court,
7 Trustee is constructively diminishing the principal of the Trust intended for future
8 distributions to the Grantor and beneficiaries, thereby constructively and conditionally
9 withholding “a [future] distribution or payment to, or for the benefit of, the beneficiary, if
10 the distribution or payment is required by the trust instrument.” Monthly living
11 expenses to the Grantor and distribution to beneficiaries of the balance of the Trust to
12 beneficiaries after Grantor passes are requirements of the Trust instrument.

13 **V. WHY ARE WERE HERE? ASK TRUSTEE’S WIFE**

14 The Court may recall the sworn declaration by Harmony Harold, half- sister or
15 Respondents and half-aunt to “Trustee” wife Briana Harold wherein Briana told
16 Harmony;

17 “My daughter just died, and they’re checking out my fucking house? I
18 will tie up every penny of that trust and no one will get anything.”
 (Exhibit A)

19 **VI. CONCLUSION**

20 The present TEDRA case presents a unique intersection of Fourth, First, and
21 Fourteenth Amendment rights in the context of trust law. The actions of the trustee,
22 enabled and facilitated by the court system, amount to an unreasonable seizure of the
23 grantor's trust funds, a violation of her right to free disassociation, and a denial of
24 equal protection under the law.

25 The combination of these constitutional violations creates a situation where the
26 grantor is essentially held captive in a financial relationship against her will, while the
27 very judicial officers meant to protect her rights are themselves violating ethical
28

standards by failing to recuse themselves, placing their personal interest above those of Grantor and Respondents.

VII. REQUESTS FOR SUA SPONTE RELIEF

1. Immediate removal of David Allen Paice as Trustee.
2. Appointment of a temporary trustee.
3. An Order of a forensic accounting of the Trust, paid for by the Trustee David Allen Paice and Lane Powell.
4. A Surcharge against Lane Powell and David Allen Paice to restore the Trust to its pre-TEDRA case assets of approximately \$708,000.
5. End the TEDRA and VAPO matters immediately because 3 years of litigation is in direct conflict with the spirit of RCW 11.96A.010 - Legislative Intent

Respectfully submitted,

DATED: July 11, 2024

s/Charles A. Harold, Jr.

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DATED: July 11, 2024

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DATED: July 11, 2024

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10 We certify that this memorandum contains 1,782
11 words, in compliance with the Local Civil Rules.
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CERTIFICATE OF SERVICE

I am and was at the time of service of these papers herein, over the age of eighteen (18) years.

On July 11, 2024, I caused the following documents: **SUPPLEMENTAL BRIEF RE: THE INTERSECTION OF THE FIRST, FOURTH AND FOURTEENTH AMENDMENTS IN SUPPORT OF VERIFIED JOINT OBJECTION (DKT 28)** to be electronically served on the interested parties in this action as follows:

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10 via the electronic filing system maintained by the Clerk's Office at the above-captioned
11 court or by email if they were not registered to receive electronic service via the Clerk's
12 Office.

13 I certify under penalty of perjury under the laws of the State of Washington that
14 the foregoing is true and correct.

15 Dated July 11, 2024, at Apache Junction, Arizona.

16
17
18 s/Charles A. Harold, Jr.
19 Charles A. Harold, Jr

EXHIBIT A.

SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR THE COUNTY OF KING

CHARLES A. HAROLD, JR., on behalf of
Vulnerable Adult SHARON M. HAROLD,

Petitioner,

vs.

DAVID ALLEN PAICE,

Respondent.

Case No. 23-2-03980-7 KNT

**DECLARATION OF HARMONY R.
HAROLD IN SUPPORT OF
PETITIONER’S REPLY BRIEF**

I, Harmony R. Harold, declare as follows:

1. I am Petitioner’s half-sister as well as Respondent David’s aunt by marriage. Respondent’s wife, Briana Paice is my niece, the daughter of my half-sister Jeni (Harold) Sawyer. I have personal knowledge of the facts set forth herein. I make this declaration in support of the Petitioner’s Reply Brief.

2. I, along with Petitioner and my other brothers and sisters, attended the funeral for Respondent David’s daughter, Katherine (“Kate”) Paice on March 10, 2018.

3. There were a lot of family members at Respondent David and Briana’s house immediately after the funeral, mostly my brothers and sisters and their families. We were all commiserating about Kate’s loss.

4. After the services and family visits were over and all the guests left, I stayed at Respondent David's house to help and show support for Respondent David, Briana and their daughter Ellie.

5. Two days after Kate's funeral, Brieana told me that someone in our family was questioning how she could afford that house on her and her Respondent David's salaries. That was the first time the family member saw the house.

6. Briana was pretty upset about this, and she said to me, "My daughter just died, and they're checking out my fucking house? I will tie up every penny of that trust and no one will get anything."

7. I took that to mean that Brieana was referring to the Sharon Harold trust. That is the only trust I know of, the money David manages for Sharon. I don't know of any other trusts.

8. Most people at Briana's house that day were her aunts and uncles, all beneficiaries of the trust Respondent David manages for Sharon.

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct to the best of my knowledge.

Executed this 11th day of April, 2023 at Portland, Oregon.

HARMONY R. HAROLD

APPENDIX

State of California

CODE OF CIVIL PROCEDURE

Section 343

343. An action for relief not hereinbefore provided for must be commenced within four years after the cause of action shall have accrued.

(Enacted 1872.)

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

RULE 2.1. Giving Precedence to the Duties of Judicial Office

The duties of judicial office, as prescribed by law,* shall take precedence over all of a judge's personal and extrajudicial activities.

Comments

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

[2] Although it is not a duty of judicial office unless prescribed by law, judges are encouraged to participate in activities that promote public understanding of and confidence in the justice system.

RULE 2.2. Impartiality and Fairness

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

Comments

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

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

[3] When applying and interpreting the law, a judge sometimes may make good-faith errors of fact or law. Errors of this kind do not violate this Rule.

[4] At times, judges have before them unrepresented litigants whose lack of knowledge about the law and about judicial procedures and requirements may inhibit their ability to be heard effectively. A judge's obligation under Rule 2.2 to remain fair and impartial and to uphold and apply the law does not preclude the judge from making reasonable accommodations to ensure an unrepresented litigant's right to be heard, so long as those accommodations do not give the unrepresented litigant an unfair advantage. This rule does not require a judge to make any particular accommodation.

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, 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, against parties, witnesses, lawyers, or others.

(D) The restrictions of paragraphs (B) and (C) do not preclude judges or lawyers from making reference to factors that are relevant to an issue in a proceeding.

Comments

[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, gender identity, gender expression, 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.

[5] "Bias or prejudice" does not include references to or distinctions based upon race, color, sex, religion, national origin, disability, age, marital status, changes in marital status, pregnancy, parenthood, sexual orientation, or social or economic status when these factors are legitimately relevant to the advocacy or decision of the proceeding, or, with regard to administrative matters, when these factors are legitimately relevant to the issues involved.

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 authorize others to convey the impression that any person or organization is in a position to influence the judge.

Comments

[1] Judges shall 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.

RULE 2.5. Competence, Diligence, and Cooperation

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

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

Comments

[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] In accordance with GR 29, 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) Consistent with controlling court rules, a judge may encourage parties to a proceeding and their lawyers to settle matters in dispute but should not act in a manner that coerces any party into settlement.

Comments

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

[2] The judge plays an important role in overseeing the settlement of disputes, but should be careful that efforts to further settlement do not undermine any party's right to be heard according to law. The judge should keep in mind the effect that the judge's participation in settlement discussions may have, not only on the judge's own views of the case, but also on the perceptions of the lawyers and the parties if the case remains with the judge after settlement efforts are unsuccessful. Among the factors that a judge should consider when deciding upon an appropriate settlement practice for a case are (1) whether the parties have requested or voluntarily consented to a certain level of participation by the judge in settlement discussions, (2) whether the parties and their counsel are relatively sophisticated in legal matters, (3) whether the case will be tried by the judge or a jury, (4) whether the parties participate with their counsel in settlement discussions, (5) whether any parties are unrepresented by counsel, and (6) whether the matter is civil or criminal.

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

[4] Judges should endeavor to ensure unrepresented litigants have a fair opportunity to participate in proceedings. While not required, judges may find the following nonexhaustive list of steps consistent with these principles and helpful in facilitating the right of unrepresented litigants to be heard:

1. Identifying and providing resource information to assist unrepresented litigants. Judges should endeavor to identify resources early in the case so as to reduce the potential for delay.
2. Informing litigants with limited-English-proficiency of available interpreter services.
3. Providing brief information about the proceeding and evidentiary and foundational requirements.
4. Using available courtroom technology to assist unrepresented individuals to access and understand the proceedings (e.g., remote appearances, use of video displays to share court rules, statutes, and exhibits).
5. Asking neutral questions to elicit or clarify information.
6. Attempting to make legal concepts understandable by minimizing use of legal jargon.
7. Starting the hearing with a quick summary of the case history of the issues that will be addressed.
8. Explaining at the beginning of the hearing that you may be asking questions and that this will not indicate any view on your part. It will merely mean that you need to get the information to decide the case.
9. Working through issues one by one and moving clearly back and forth between the two sides during the exploration of each issue.
10. Inviting questions about what has occurred or is to occur.
11. Permitting narrative testimony.
12. Allowing parties to adopt their written statements and pleadings as their sworn testimony. This provision would not limit opportunities for cross-examination or be permitted in a manner that would prejudice the other party in the presentation of their case.
13. Asking questions to establish the foundation of evidence, when uncertain.
14. Clarifying with the parties whether they have presented all of their evidence and explaining that no additional testimony or evidence will be permitted once the evidentiary portion of the case is completed.
15. Prior to announcing the decision of the court, reminding the parties that they have presented all of their evidence, that they will be given an opportunity to ask questions once the court has issued its ruling, and that they should not interrupt the court.
16. If unable to do what a litigant asks because of neutrality concerns, explaining the reasons in those terms.
17. Announcing the decision, if possible, from the bench, taking the opportunity to encourage litigants to explain any problems they might have complying.
18. Explaining the decision and acknowledging the positions and strengths of both sides.
19. Making sure, by questioning, that the litigants understand the decision and what is expected of them, while making sure that they know you expect compliance with the ultimate decision.
20. Where relevant, informing the litigants of what will be happening next in the case and what is expected of them.
21. Making sure, if practicable, that the decision is given in written or printed form to the litigants.
22. Informing the parties of resources that are available to assist with drafting documents, as well as compliance or enforcement of the order. Examples include but are not limited to courthouse facilitator programs, advocates, lists of treatment providers, and child support enforcement.
23. Thanking the parties for their participation and acknowledging their efforts.

RULE 2.7. Responsibility to Decide

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

Comment

[1] Judges must be available to decide the matters that come before the court. Although there are times when disqualification is necessary to protect the rights of litigants and preserve public confidence in the independence, integrity, and impartiality of the judiciary, judges must be

available to decide matters that come before the courts. Unwarranted disqualification may bring public disfavor to the court and to the judge personally. The dignity of the court, the judge's respect for fulfillment of judicial duties, and a proper concern for the burdens that may be imposed upon the judge's colleagues require that a judge not use disqualification or recusal to avoid cases that present difficult, controversial, or unpopular issues.

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.

Comments

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

[2] Commending or criticizing jurors for their verdict may imply a judicial expectation in future cases and may impair a juror's ability to be fair and impartial in a subsequent case.

[3] A judge who is not otherwise prohibited by law from doing so may meet with jurors who choose to remain after trial but should be careful not to discuss the merits of the case.

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,* before that judge's court except as follows:

(1) When circumstances require it, ex parte communication for scheduling, administrative, or emergency purposes, which does not address substantive matters, or ex parte communication pursuant to a written policy or rule for a mental health court, drug court, or other therapeutic court, 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 affords the parties a reasonable opportunity to object and respond 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 pending or impending before that judge, and shall consider only the evidence presented and any facts that may properly be judicially noticed, unless expressly authorized by law.

(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.

Comments

[1] To the extent reasonably possible, all parties or their lawyers shall be included in communications with a judge.

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

[3] The proscription against communications concerning a proceeding includes communications with lawyers, law teachers, and other persons who are not participants in the proceeding, except to the limited extent permitted by this Rule.

[4] A judge may initiate, permit, or consider ex parte communications expressly authorized by law, such as when serving on therapeutic or problem-solving courts, mental health courts, or drug courts. In this capacity, judges may assume a more interactive role with parties, treatment providers, probation officers, social workers, and others.

[5] A judge may consult on pending matters with other judges, or with retired judges who no longer practice law and are enrolled in a formal judicial mentoring program (such as the Washington Superior Court Judges' Association Mentor Judge Program). Such consultations must avoid ex parte discussions of a case with judges who have previously been disqualified from hearing the matter, and with judges or retired judges who have appellate jurisdiction over the matter.

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

[7] A judge may consult ethics advisory committees, outside counsel, or legal experts concerning the judge's compliance with this Code. Such consultations are not subject to the restrictions of paragraph (A)(2).

RULE 2.10. Judicial Statements on Pending and Impending Cases

(A) A judge shall not make any public statement that would 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 would reasonably be expected to 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.

Comments

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

[2] This Rule does not prohibit a judge from commenting on proceedings in which the judge is a litigant in a personal capacity. In cases in which the judge is a litigant in an official capacity, such as a writ of mandamus, the judge must not comment publicly.

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

[4] A judge should use caution in discussing the rationale for a decision and limit such discussion to what is already public record or controlling law.

RULE 2.11. Disqualification

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

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

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

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

(b) acting as a lawyer in the proceeding;

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

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

(3) The judge knows that they, individually or as a fiduciary,* or the judge's spouse, domestic partner, parent, or child, or any other member of the judge's family residing in the judge's household,* have an economic interest* in the subject matter in controversy or in a party to the proceeding.

(4) [Reserved.]

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

(6) The judge:

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

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

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

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

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

(C) A judge disqualified by the terms of Rule 2.11(A)(2) or Rule 2.11(A)(3) may, instead of withdrawing from the proceeding, disclose on the record the basis of the disqualification. If, based on such disclosure, the parties and lawyers, independently of the judge's participation, all agree in writing or on the record that the judge's relationship is immaterial or that the judge's economic interest is de minimis, the judge is no longer disqualified, and may participate in the proceeding. When a party is not immediately available, the judge may proceed on the assurance of the lawyer that the party's consent will be subsequently given.

(D) A judge may self-disqualify if the judge learns by means of a timely motion by a party that an adverse party has provided financial support for any of the judge's judicial election campaigns within the last six years in an amount that causes the judge to conclude that their impartiality might reasonably be questioned. In making this determination the judge should consider:

(1) the total amount of financial support provided by the party relative to the total amount of the financial support for the judge's election,

(2) the timing between the financial support and the pendency of the matter, and

(3) any additional circumstances pertaining to disqualification.

Comments

[1] Under this Rule, a judge is disqualified whenever the judge's impartiality might reasonably be questioned, regardless of whether any of the specific provisions of paragraphs (A)(1) through (5) apply. In many jurisdictions in Washington, the term "recusal" is used interchangeably with the term "disqualification."

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

[3] The rule of necessity may override the rule of disqualification. For example, a judge might be required to participate in judicial review of a judicial salary statute, or might be the only

judge available in a matter requiring immediate judicial action, such as a hearing on probable cause or a temporary restraining order. In matters that require immediate action, the judge must disclose on the record the basis for possible disqualification and make reasonable efforts to transfer the matter to another judge as soon as practicable.

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

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

[6] "Economic interest," as set forth in the Terminology section, means ownership of more than a de minimis legal or equitable interest. Except for situations in which a judge participates in the management of such a legal or equitable interest, or the interest could be substantially affected by the outcome of a proceeding before a judge, it does not include:

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

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

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

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

[7] [Reserved.]

[8] [Reserved.]

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 with fidelity and in a diligent 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.

Comments

[1] A judge is responsible for their 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 their supervision administer their workloads promptly.

RULE 2.13. Administrative Appointments

(A) In making administrative appointments, a judge:

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

(B) A judge shall not appoint a lawyer to a position under circumstances where it would be reasonably to be interpreted to be quid pro quo for campaign contributions or other favors, unless:

- (1) the position is substantially uncompensated;
- (2) the lawyer has been selected in rotation from a list of qualified and available lawyers compiled without regard to their having made political contributions; or
- (3) the judge or another presiding or administrative judge affirmatively finds that no other lawyer is willing, competent, and able to accept the position.

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

Comments

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

[2] Unless otherwise defined by law, nepotism is the appointment or hiring of any relative within the third degree of relationship of either the judge or the judge's spouse or domestic partner, or the spouse or domestic partner of such relative.

RULE 2.14. Disability and Impairment

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

Comments

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

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

RULE 2.15. Responding to Judicial and Lawyer Misconduct

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

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

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

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

Comments

[1] Judges are not required to report the misconduct of other judges or lawyers. Self-regulation of the legal and judicial professions, however, creates an aspiration that judicial officers report misconduct to the appropriate disciplinary authority when they know of a serious violation of the Code of Judicial Conduct or the Rules of Professional Conduct. An apparently isolated violation may indicate a pattern of misconduct that only a disciplinary violation can uncover. Reporting a violation is especially important where the victim is unlikely to discover the offense.

[2] While judges are not obliged to report every violation of the Code of Judicial Conduct or the Rules of Professional Conduct, the failure to report may undermine the public confidence in legal profession and the judiciary. A measure of judgment is, therefore, required in deciding whether to report a violation. The term "substantial" refers to the seriousness of the possible offense and not the quantum of evidence of which the judge is aware. A report should be made when a judge or lawyer's conduct raises a serious question as to the honesty, trustworthiness, or fitness as a judge or lawyer.

[3] Appropriate action under sections (C) and (D) may include communicating directly with the judge, or lawyer who may have violated the Code of Judicial Conduct or the Rules of Professional Conduct, communicating with a supervising judge or reporting the suspected violation to the appropriate authority or other authority or other agency or body.

[4] Information about a judge's or lawyer's conduct may be received by a judge in the course of that judge's participation in an approved lawyers or judges assistance program. In that circumstance there is no requirement or aspiration of reporting (APR 19(b) and DRJ 14(e)).

RULE 2.16. Cooperation with Disciplinary Authorities

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

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

Comment

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

[Adopted effective January 1, 2011; Amended effective September 1, 2013; September 1, 2022; January 1, 2023; August 8, 2023.]

State of California

PROBATE CODE

Section 16004.5

16004.5. (a) A trustee may not require a beneficiary to relieve the trustee of liability as a condition for making a distribution or payment to, or for the benefit of, the beneficiary, if the distribution or payment is required by the trust instrument.

(b) This section may not be construed as affecting the trustee's right to:

(1) Maintain a reserve for reasonably anticipated expenses, including, but not limited to, taxes, debts, trustee and accounting fees, and costs and expenses of administration.

(2) Seek a voluntary release or discharge of a trustee's liability from the beneficiary.

(3) Require indemnification against a claim by a person or entity, other than a beneficiary referred to in subdivision (a), which may reasonably arise as a result of the distribution.

(4) Withhold any portion of an otherwise required distribution that is reasonably in dispute.

(5) Seek court or beneficiary approval of an accounting of trust activities.

(Added by Stats. 2003, Ch. 585, Sec. 1. Effective January 1, 2004.)

State of California

PROBATE CODE

Section 16442

16442. The provisions in this article for liability of a trustee for breach of trust do not prevent resort to any other remedy available under the statutory or common law.

(Enacted by Stats. 1990, Ch. 79.)

RCW 11.96A.020 General power of courts—Intent—Plenary power of the court. (1) It is the intent of the legislature that the courts shall have full and ample power and authority under this title to administer and settle:

(a) All matters concerning the estates and assets of incapacitated, missing, and deceased persons, including matters involving nonprobate assets and powers of attorney, in accordance with this title; and

(b) All trusts and trust matters.

(2) If this title should in any case or under any circumstance be inapplicable, insufficient, or doubtful with reference to the administration and settlement of the matters listed in subsection (1) of this section, the court nevertheless has full power and authority to proceed with such administration and settlement in any manner and way that to the court seems right and proper, all to the end that the matters be expeditiously administered and settled by the court. [1999 c 42 § 103.]