

THE SUPREME COURT OF MINNESOTA
RESEARCH AND PLANNING
STATE COURT ADMINISTRATION
120 MINNESOTA JUDICIAL CENTER
25 CONSTITUTION AVENUE
ST. PAUL, MINNESOTA 55155

Michael B. Johnson
Staff Attorney

(612) 297-7584
Facsimile (612) 296-6609

June 29, 1994

Mr. Frederick Grittner
Clerk of the Appellate Courts
245 Minnesota Judicial Center
25 Constitution Avenue
St. Paul, MN 55155

OFFICE OF
APPELLATE COURTS

JUN 29 1994

FILED

Dear Mr. Grittner:

Enclosed for filing please find the Final Report of the Minnesota Supreme Court Advisory Committee to Review the American Bar Association Model Code of Judicial Conduct and the Rules of the Minnesota Board on Judicial Standards, in the following formats and quantities:

- One unbound original;
- Eleven bound copies; and
- One electronic copy on computer diskette.

The final report has three pieces, the main body of the report, proposed amendments to the Minnesota Code of Judicial Conduct in side-by-side comparison to the ABA Model Code, and proposed amendments to the Rules of the Board on Judicial Standards. The electronic version of the side-by-side comparison is set forth in two separate files on the enclosed diskette ("MNABACOM.1TB" and "MNABACOM.2TB"), and the main body of the report and the proposed rule amendments are each in a separate file ("FINALREP.629" and "FINALRUL.694"¹, respectively).

The Committee discovered that the side-by-side comparison was not suitable for publication in most legal periodicals and newsletters. For the convenience of the Court, the

¹The table of rules appears at the end of this electronic file.

Mr. Frederick Grittner
June 29, 1994
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enclosed diskette also contains a copy of the proposed changes to the Minnesota Code of Judicial Conduct without the side-by-side comparison to the ABA Model Code. This file ("MNPROP.694") also contains a slightly larger font that is easier to read, and is 34 pages in length.

The enclosed report is being circulated directly to all state court judges and to all individuals who have expressed an interest in the Committee's work. A copy is also being forwarded to the state bar association.

Please do not hesitate to contact me if Committee members or staff can be of any further assistance. A full set of committee minutes is available as well as any materials cited in the Report.

Sincerely yours,

A handwritten signature in cursive script that reads "Michael B. Johnson". The signature is written in dark ink and is positioned above the printed name.

Michael B. Johnson

enc.

FINAL REPORT

**ADVISORY COMMITTEE TO REVIEW THE
AMERICAN BAR ASSOCIATION MODEL CODE OF
JUDICIAL CONDUCT AND THE RULES OF THE
MINNESOTA BOARD ON JUDICIAL STANDARDS**

June 29, 1994

Honorable Thomas R. Butler, Chair

Richard Beens
Jerry Blackwell
Harriette Burkhalter
Honorable Paulette Flynn
Gene Halverson
Joseph Kingman
Honorable Roberta Levy

Honorable Stephen Muehlberg
Vivian Jenkins Nelson
Kathleen Newman
Honorable Edward Parker
Lawrence Redmond
Jacqueline Regis
Robert Terry

DePaul Willette
Ex Officio Member

Michael B. Johnson
Committee Staff

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ACKNOWLEDGMENTS

The Minnesota Supreme Court Advisory Committee to Review the American Bar Association Model Code of Judicial Conduct and the Rules of the Minnesota Board on Judicial Standards (the Committee) would like to thank each person who contributed to the efforts of the Committee and participated in the discussion of the many issues encountered along the way. The Committee is particularly grateful to the American Bar Association's Standing Committee on Professional Discipline, Ethics, and Professional Responsibility for preparing the Model Code of Judicial Conduct and for its continuing efforts in conjunction with the Standing Committee on Judicial Selection, Tenure and Compensation regarding preparation of Model Rules for Judicial Disciplinary Enforcement. The work of these committees has reduced an otherwise arduous task into a manageable one.

The Committee would like to thank the citizens and lawyers who attended the Committee's meetings and the public hearing, in particular the representatives of WATCH, for providing comments and the public's perspective. The Committee would also like to acknowledge the information and studies provided by the American Judicature Society's Center for Judicial Conduct Organizations, which provided a national perspective. The Committee also thanks Tom Vasaly, staff attorney for the Lawyers Professional Responsibility Board, for his research and comments regarding campaign conduct, and the members of the Board on Judicial Standards for providing their comments on both the ABA Model Code and the Rules of the Board on Judicial Standards.

The Committee gratefully acknowledges the dedicated support provided by DePaul Willette, Executive Secretary of the Board on Judicial Standards, and Michael Johnson, staff attorney, State Court Administrator's Research & Planning Office. The Committee also acknowledges the additional assistance provided by members of the Research & Planning Office, including director Janet Marshall, staff attorneys Julie Stenberg and Michael Dees, and administrative assistants Ruth Emerson and Janet Hamida, and Ted Cadwell, former law clerk to the Honorable A.M. Keith, Chief Justice, Minnesota Supreme Court.

Honorable Thomas R. Butler
Chair, Minnesota Supreme Court Advisory
Committee to Review the American Bar
Association Model Code of Judicial Conduct and
the Rules of the Minnesota Board on Judicial
Standards
June 29, 1994

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FINAL REPORT

ADVISORY COMMITTEE TO REVIEW THE AMERICAN BAR ASSOCIATION MODEL CODE OF JUDICIAL CONDUCT AND THE RULES OF THE MINNESOTA BOARD ON JUDICIAL STANDARDS

Committee Background

The Committee was established by the Minnesota Supreme Court on March 16, 1993, to review and evaluate the 1990 American Bar Association Model Code of Judicial Conduct ("1990 ABA Model Code") and the Rules of the Minnesota Board on Judicial Standards. The Committee has been chaired by the Honorable Thomas R. Butler, of the Freeborn County District Court, and includes five judges, five lawyers and five nonlawyer citizens of the state of Minnesota. Assistance has been provided by the Executive Secretary of the Board on Judicial Standards and the staff of the State Court Administrator's Research & Planning Office.

The Committee was given fourteen months to complete its review and evaluation. The Committee has met and deliberated on a monthly basis, and reviewed numerous drafts. The Committee reviewed the 1990 ABA Model Code and the extent to which it has been adopted in other jurisdictions. The Committee also considered the structure and procedure of judicial disciplinary boards or commissions in other jurisdictions and the most recent draft of Model rules being considered by the American Bar Association. Finally, the Committee has considered comments made by citizens, lawyers and judges who have attended Committee meetings, the public hearing, and/or provided written materials.

Report Format, Distribution and Discussion

Attached to this report are two sets of proposals, each of which is presented in the same manner as most legislative proposals, with new language indicated by underline and deletions by ~~strikeout~~. One set is 24 pages long and contains proposed changes to the Rules of the Board on Judicial Standards. The other set is 51 pages long and contains proposed changes to the Minnesota Code of Judicial Conduct displayed in a side-by-side comparison with the 1990 ABA Model Code. The Committee discovered that the side-by-side format is unsuitable for publication in most legal periodicals and newsletters. Thus, for the convenience of the Supreme Court, the electronic copy of the report and its accompanying proposals being filed with the Supreme Court also includes a copy of the Committee's proposed changes to the Minnesota Code of Judicial Conduct without the side-by-side comparison to the 1990 ABA Model Code.

Commentary is included throughout the 1990 ABA Model Code, and the proposed changes to the Minnesota Code of Judicial Conduct follow this format. Aside from the comments set forth in this report, advisory committee comments have not been incorporated into the proposed changes to the Rules of the Board on Judicial Standards because the Committee felt that such comments were neither helpful nor necessary.

This report and its accompanying proposals are being circulated directly to all state court judges and to all individuals who expressed an interest in the Committee's work by attending any Committee meeting or hearing, providing written information or making a request for information. A discussion draft of this report and accompanying proposals was also distributed in this manner and was the subject of a public hearing held in early June, 1994. The availability of the discussion drafts and the time and location of the public hearing were also advertised in various legal publications and by notice circulated directly to the media. Eleven citizens testified at the public hearing, and the committee received written comments from several judges. The Committee also received comments from judges and lawyers throughout its deliberations, and several lawyers attended Committee meetings and discussed their issues with the Committee. Representatives of the citizen group known as WATCH attended all of the Committee's meetings and also contributed to the discussions that took place.

Specific Recommendations--Code of Judicial Conduct

The 1990 ABA Model Code replaces a 1972 version upon which most state codes, including Minnesota's, are based. Major structural improvements in the 1990 ABA Model Code include a preamble explaining general principles and objectives, a terminology section which is cross referenced with Code sections in which the terms are used, and extensive use of commentary to provide examples and guidance to judges.¹ Many of the clarifications, additions, and modifications in the 1990 ABA Model Code that are recommended by the Committee for adoption are set forth below, followed by a parenthetical reference to the section and page of the accompanying set of proposals:

- Clarification of a judge's ability to provide references or letters of recommendation (*Section 2B Commentary*, p. 8);

¹For a more thorough discussion, see Dilweg, *New Rules to Live By, How the New Model Code of Judicial Conduct May Affect You*, Judges Journal (Winter 1991) p. 9; Dilweg, *Balancing Right From Wrong, What the New ABA Code of Judicial Conduct Says*, Judges Journal (Spring 1991) p. 26.

- Clarifies that judges may not hold memberships in certain organizations that practice invidious discrimination² on the basis of race, sex, religion or national origin (*Section 2C* and Commentary, pp. 8-9);
- Clarifies that judicial duties must be performed without bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation or socioeconomic status against witnesses, parties, counsel or others, and that judges must require that lawyers, staff, court officers and others subject to the judges control not engage in biased or prejudicial conduct (*Minn. Section 3A(5),(6); ABA Section 3B(5)(6)*, pp. 11-12);
- Codification of commonly accepted exceptions to prohibition against ex parte communications, including communications regarding administrative or scheduling matters that do not involve substantive issues, as long as all parties are notified of the substance and given an opportunity to respond. Mediation or settlement discussions that have prior consent of all parties are also permitted³ (*Minn. Section 3A(7); ABA Section 3B(7)*, p 12);
- New requirement that judges shall not commend or criticize jurors other than in a court order or opinion, except that jurors may be thanked for their service (*Minn. Section 3A(9); ABA Section 3B(10)*, p. 15);

²The Committee rejected the argument that section 2C would prohibit membership in a religious organization that restricts clergy or governing boards to one gender. Guidance as to what constitutes invidious discrimination is provided by case law. As stated in the Commentary to Section 2C:

Whether an organization practices invidious discrimination is often a complex question to which judges should be sensitive. The answer cannot be determined from a mere examination of an organization's current membership rolls but rather depends on the history of the organization's selection of members and other relevant factors, such as that the organization is dedicated to the preservation of religious, ethnic or cultural values of legitimate common interest to its members, or that it is in fact and effect an intimate, purely private organization whose membership limitations could not be constitutionally prohibited. Absent such factors, an organization is generally said to discriminate invidiously if it arbitrarily excludes from membership on the basis of race, religion, sex or national origin persons who would otherwise be admitted to membership. See *New York State Club Ass'n. Inc. v. City of New York*, 108 S. Ct. 2225, 101 L. Ed. 2d 1 (1988); *Board of Directors of Rotary International v. Rotary Club of Duarte*, 481 U.S. 537, 107 S. Ct. 1940 (1987), 95 L. Ed. 2d 474; *Roberts v. United States Jaycees*, 468 U.S. 609, 104 S. Ct. 3244, 82 L. Ed. 2d 462 (1984).

³The Commentary states that a judge must not independently investigate facts in a case and must consider only the evidence presented. The Committee rejected a suggestion that this section be modified to permit independent investigation in conciliation court matters. The Committee felt that independent investigations should only be undertaken with the prior consent of all parties, regardless of whether the matter is in conciliation court or district court. See Also Minn. Stat. § 609.515(1)(b) (1992) (misdemeanor for judicial or hearing officer to intentionally obtain or receive and use information relating to [the hearing] contrary to the regular course of the proceeding).

- Clarification of disqualification, disclosure and remittal, including:
 - expanded definition of a judge's family to include persons with whom the judge maintains a close familial relationship, including a significant other⁴;
 - nonautomatic disqualification for de minimus financial interest that would not affect impartiality; and
 - requirement that remittal agreement simply be made part of the record rather than reduced to writing and signed by parties (*Minn. Sections 3D, 3F; ABA Sections 3E, 3F and Commentary*, pp. 18-22);
- New prohibition against unofficial use or disclosure of nonpublic information acquired in a judicial capacity (*Minn. Section 3A(11); ABA Section 3B(11)*, p 16);
- Combination of previous Canons 4, 5 and 6 into one Canon dealing with all extra-judicial activities (*Canon 4*, pp. 23-38);
- Clarification of appropriate government, civic, and charitable activities, including permitting participation in fund-raising activities that do not involve direct solicitation, and membership solicitation that is not coercive or essentially a fund raising mechanism (*Section 4C(3) and Commentary*, pp. 25-28);
- Clarification permitting judges, subject to other requirements of the code, to hold and manage investments of the judge and the judge's family (*Section 4D(2),(4)*, pp 29-30);
- Clarifies acceptance of gifts⁵, bequests, favors and loans, and raises the minimum dollar value of reportable items to \$150; includes permission to accept:
 - gifts to judge's family that may be jointly used by judge and family when it could not reasonably be perceived as intended to influence judge,
 - gifts incident to testimonials;
 - ordinary social hospitality;

⁴The Committee has used the term "significant other" whenever the term "spouse" appears in order to fully acknowledge same sex and other intimate relationships. The Committee rejected a suggestion that a separate definition is necessary for "significant other," which is included within the definition of "a member of the judge's family." (See Terminology Section, p. 4.)

⁵1994 Minn. Laws c. 377, § 5 (codified as Minn. Stat. 10A.071), prohibits most gifts from a lobbyist or principal to an "official." "Official" is defined to include judges of the workers compensation court of appeals (Minn. Stat. § 10A.01, subd. 18(k) (1992)), who are also subject to the Code of Judicial Conduct. Minn. Stat. § 175A.01, subd. 4 (1992). District, appellate and supreme court judges and justices are not included within the definition of "official." The intent of the drafters was to exclude all judges who are subject to the Code of Judicial Conduct, and a legislative clarification excluding workers compensation judges is expected. Telephone interview with Peter Watson, Senate Counsel, June 6, 1994.

- gifts for weddings and other special occasions from relatives or friends as long as it is commensurate with the occasion; and
 - loans, scholarships and fellowships on the same terms generally available to non-judges or other applicants (*Section 4D(5) and Commentary*, pp. 30-33);
- Clarifies that judge may serve as fiduciary for estate, trust or person of a member of judge's family if service will not interfere with judicial duties and estate or trust will not likely be involved in adversary proceedings before the court on which the judge serves or one under its appellate jurisdiction (*Section 4E and Commentary*, pp. 33-34);
 - Creates exception to prohibition against judges practicing law that allows judges to, without compensation, give legal advice to, and draft or review legal documents for, a member of the judge's family, but may not act as advocate or negotiator or make an appearance as counsel (*Section 4G and Commentary*, p. 35);
 - Adds new requirement that retired judges who intend to serve in a part-time judicial capacity may not practice law while available for judicial assignment but may serve as arbitrator or mediator (*Section 4F, and Commentary to Section 4G*, pp. 34-35);
 - Adds new exception authorizing candidates for judicial office to respond to false information and personal attacks or attacks on the candidate's record (*Section 5A(3)(e); Commentary to Section 5A(1)*, pp. 42, 39);
 - Replaces previous blanket prohibition against announcing views on disputed legal or political issues with prohibition against making statements that commit or appear to commit the candidate with respect to cases, controversies or issues that are likely to come before the court⁶ (*Section 5A(3)(d)(i),(ii) and Commentary*, pp. 41-42);

⁶Code provisions identical to the present Minnesota provision have been successfully challenged in three of four cases as unconstitutionally vague and overbroad. See *American Civil Liberties Union, Inc. v. The Florida Bar*, 744 F.Supp. 1094 ((N.D. Fla. 1990); *J.C.J.D. v. R.J.C.R.*, 803 S.W.2d 953 (Ky. 1991); *Stetton v. Disciplinary Bd. of S.Ct. of Pa.*, 944 F.2d 137 (3rd Cir. 1991); *Beshear v. Butt*, 773 F.Supp. 1229 (E.D. Ark. 1991) *reversed on procedural grounds* 966 F.2d 1458. Although one case upheld the provision, the court was forced to adopt a narrow construction (*Stetton, supra*), and in another case in which the narrow construction was expressly stated in the code, the provision was again struck down as unconstitutionally vague and overbroad. *Buckley v. Illinois Judicial Inquiry Board*, No. 92-3279 (7th Cir. 1993). Moreover, the ABA version has survived such a constitutional challenge. *Ackerson v. Kentucky Jud. Ret. & Removal Com'n*, 776 F.Supp. 309 (W.D.Ky. 1991). The Committee felt that the present Minnesota provision would clearly be challenged, and that the expense involved could be spared by adopted a less restrictive approach.

The committee also recognized that disciplinary proceedings under the ABA provision might be more difficult. The Committee felt, however, that the ABA provision strikes an appropriate balance between the difficulty of proceeding and the public's need for knowledge, and that a debate during a campaign regarding the propriety of candidates announcing their views may have greater public benefit than a disciplinary proceeding held long after the campaign has faded from the public eye. Campaign violations in non-judicial elections are invoked more often in finger

(...continued)

- Regulates all candidates for appointment to judicial office and judges seeking appointment to other governmental office by:
 - prohibiting solicitation or acceptance of funds, personally or by committee, to support the candidate;
 - permitting contact with appointing authorities and committees;
 - permitting the seeking of endorsements from organizations that regularly make recommendations for appointments to the office; and
 - permitting only non-judge candidates to retain office in a political organization, attend political gatherings, and pay ordinary assessments and contributions to a political organization (*Section 5B and Commentary*, pp. 42-43);

- Clarifies that all candidates for public judicial election may speak to gatherings on their own behalf, appear in media advertisements supporting their own candidacy, and distribute promotional campaign literature supporting their own candidacy (*Section 5C(1)*, pp. 43-44);

- Establishes a new, one year limit for solicitation of contributions and public support prior to a judicial election (*Section 5C(2)*, pp. 44-45); and

- Clarifies application of Code to referees and judicial officers and requires a new judge to comply immediately with all provisions except 4D(2), 4D(3) and 4E, which relate to certain fiduciary and business activities and which must be complied with as soon as reasonably possible but in any event within one year (*Application Section and Commentary*, pp. 47-51).

- All of the above additions, clarifications and modifications are recommended for adoption by the Committee. Some clarifications, additions and modifications in the 1990 ABA Model Code were not adopted, and the Committee recommends that additional changes be made, including (section and page references are to the accompanying set of proposals):

- Retention of requirement that judges shall take or initiate "appropriate disciplinary measures" against a judge or lawyer for unprofessional conduct of which the judge "becomes aware" (*Minn. Section 3C(1)*, p. 17). 1990 ABA Model Code mandates reporting of violations that raise a "substantial question" as to another judge's "fitness for office," when the judge has "actual knowledge" of such violations, and allows discretion to choose appropriate action when there is a "substantial likelihood" that less serious violations have occurred (*ABA Section 3D(1)*, p. 17);

⁶(...continued)

pointing during the campaign than in litigation following the campaign. The Committee also felt that Minnesota could benefit from the experience of other states that have already adopted the ABA provision.

- Retention of limitations on use of cameras in the courtroom, for which there is no counterpart in the 1990 or 1972 ABA Model Codes (*formerly Minn. Canon 3A(7), now Minn. Section 3A(10)*, pp. 15-16);
- Omits commentary purporting to authorize a judge to solicit for funds or memberships other judges over whom a judge has no supervisory or appellate authority or persons unlikely to appear before the court on which the judge serves (*ABA Section 4C Commentary*, p. 27);
- Omits commentary purporting to authorize a judge who is an officer of an organization to have the judge's judicial designation appear on the organization's letterhead or to have the judge's signature appear on a general membership solicitation mailing (*ABA Section 4C Commentary*, p. 27);
- Maintains blanket prohibition precluding judges from serving as an officer, director, manager, general partner, advisor or employee of any business entity (*previously Minn. Section 4C(2)*, p. 29, *now Minn. Section 4D(3)*, p. 30). The 1990 ABA Model code permits such service for a business closely held by the judge or members of the judge's family or engaged primarily in investment of financial resources of the judge or the judge's family⁷ (*ABA Section 4D(3)*, p. 30);
- Adds new exception permitting retired judges to serve as arbitrators or mediators (*Minn. Section 4F*, pp. 34-35);
- Clarifies that judge may not act as advocate or legal negotiator or appear as counsel for member of judge's family (*Minn. Section 4G*, p. 35). This requirement is only a commentary in the 1990 ABA Model Code (*ABA Section 4G Commentary*, p. 35); and
- Omits language that would permit judges in the same election to run joint campaigns, but permits endorsement of a group of judges by a group of lawyers (*Minn. Section 5A(1) Commentary*, pp. 39-40; *ABA Section 5C(1)(b)(iv)*, p. 44).

Specific Recommendations--Rules of Board on Judicial Standards

The Rules of the Minnesota Board on Judicial Standards provide the procedures for processing alleged violations of the code of judicial conduct. The Committee's proposed changes to the rules include simplified terminology, significantly increased public disclosure, and improvements in the discovery and hearing process which reduce delay and preserve the due process rights of judges.

⁷In rejecting the ABA approach, the Committee reasoned that the job of judging is more rigorous now than twenty years ago, corporate responsibilities may interfere with judicial duties, and that it is not unreasonable to require divestiture of corporate positions as part of the price for becoming a judge.

Terminology. The Committee found existing terminology to be confusing and cumbersome. In the Definitions section of the rules, the term "information" includes any communication in which someone "complains" about a judge's conduct, the term "complaint" is reserved for "information" upon which the board finds sufficient cause to proceed, and a "formal statement of complaint" is a complaint upon which the board has determined to conduct a formal hearing. The Committee proposes that the term "complaint" be used in its generic sense, and that a "statement of charges" and "formal complaint" be used to denote the sufficient cause finding and formal hearing aspects.

Public Disclosure. Under present Rule 5(a)(1), Board procedures are confidential unless the Board files a formal complaint with the Supreme Court. The formal complaint is accessible to the public upon filing, and is followed by a public hearing before a referee appointed by the Supreme Court. The matter is ultimately decided by the Supreme Court based on the findings of the referee and the recommendations of the Board.

Cases may also be resolved by stipulation, reprimand or warning prior to the filing of formal charges with the Supreme Court. Stipulated resolutions may either require or involve public disclosure. Discipline greater than a reprimand or warning must be submitted to and approved by the Supreme Court under the formal, public procedure described above. The Board negotiates public disclosure as part of any other stipulated reprimands and warnings. Other reprimands or warnings are not disclosed to the public, and the person making the complaint is merely advised that appropriate action has been taken. Finally, if the matter is dismissed by the Board, the matter is not disclosed to the public, and the person making the complaint is given a brief, categorical explanation, such as there was insufficient cause or that discipline is not a substitute for an appeal of a trial court decision.

Additional public disclosure provisions also exist. Under present Rule 5(b), if a matter becomes public through independent sources or through waiver of confidentiality by the judge, the board may confirm the pendency of the investigation, clarify board procedures, explain a judge's right to fair hearing, and state that the judge denies the allegation. In addition, present Rule 5(c) provides that any disciplinary action may be disseminated by agreement of the judge to any state or federal agency seeking material in connection with the selection or appointment of judges or assignment of a retired judge to judicial duties (*Proposed Rule 5(e)*, p. 8).

In practice, complaints received by the Board rarely result in formal charges filed with the Supreme Court. A high percentage of complaints are dismissed, and a relatively low number are handled by private warning. The table below illustrates the types of dispositions made by the Board in 1993.

COMPLAINTS DISPOSED BY BOARD ON JUDICIAL STANDARDS--1993 ⁸			
DISMISSALS		INFORMAL ADJUSTMENTS	
Within discretion of judge ⁹	70	Admonition	2
Frivolous, no grounds	19	Personal appearance	3
No misconduct; no violation	16	Conditions imposed	3
Insufficient evidence	9	Instructions for change	13
Corrective action by judge	5	Reprimand	5
Lack of jurisdiction	3	Visit by board delegation	2
Unsubstantiated after investigation	2	Warning	1
No issue left to resolve	1		
TOTAL	125	TOTAL	29

Early on in its deliberations, the Committee unanimously agreed that the present rules do not provide adequate disclosure of information to a person who has filed a complaint with the Board. When a private reprimand or warning has been given, or other conditions have been imposed on a judge as a result of the complaint, the complainant is merely informed that appropriate action has been taken. Such a response does little to promote public confidence in the process. At least a categorical explanation is given to the complainant when the complaint is dismissed, although the rule only specifies that the complainant be notified of the dismissal. Thus, the Committee recommends that the person making the complaint be given a brief explanation of any dismissal and be notified of any warning or certain conditions imposed on the judge's conduct (*Proposed Rule 5(a)(1)*, p. 7; *Proposed Rule 6(e)(1)*, p. 9).

⁸Board on Judicial Standards Annual Report 1993, pp. 7-8 (copies available from Board or Clerk of the Appellate Courts, Minnesota Judicial Center, St. Paul). In contrast, in 1993 the trial courts of this state made 1,843,511 dispositions, and 1,205,489 involved no court or judge activity, 614,645 required some court activity, 20,396 involved court trials and 2,981 involved jury trials. (Source: State Court Administration Research & Planning Office.) Thus, complaints were filed with the Board in less than one tenth of one percent of the matters disposed by the trial courts in 1993.

⁹In almost half of the complaints, the complainant is dissatisfied with the judge's decision. The Board does not have the authority to reverse or modify a decision. This can only be accomplished through the normal appellate process. Several witnesses who testified at the public hearing commented that an appeal is not a realistic option for economically disadvantaged persons, and it was suggested that the Board be given broader powers to resolve this dilemma. Such a drastic change would likely require a constitutional amendment. See Minn. Const. Art. III, § 1 (separation of powers of government).

The Committee also unanimously agreed that the process should remain confidential through the investigative stage. This protects the innocent judge from the impact of frivolous complaints in the same manner as a grand jury is utilized in criminal cases. When charges are publicly filed against public officials, they generally receive much greater publicity than when they are dismissed, and the damage may be irreversible. This approach also protects the integrity of the system.

The Committee debated at great length whether private reprimands, warnings, admonitions or other conditions imposed upon a judge should be disclosed to the public. Factors supporting public disclosure included: judges are elected officials and increased public information is healthy; private discipline is disclosed to the appointing authority (the governor) and should also be made available to the electorate; it is disingenuous for the Board to find no sufficient cause to file formal charges and at the same time issue a private reprimand to a judge; and discretionary disclosure places the Board in the position of protecting the good old boy network.¹⁰ Factors supporting confidentiality included: public disclosure of all private warnings and conditions could make the Board less effective in correcting conduct of judges, in particular medical problems such as alcoholism or mental illness; reducing confidentiality also reduces the Board's ability to negotiate stipulations and may result in more formal charges and increased costs; warnings of possible violations should not result in public disclosure unless the warning is not heeded; the public should have some expectation that the Board will do what is right as there are citizen members included on the Board; and judges should be given some opportunity to correct relatively minor problems. The Committee ultimately determined, and now recommends, that:

- All reprimands issued by the Board shall be disclosed to the public and the person making the complaint, and the judge shall be given an opportunity to comment on the reprimand or demand a formal hearing prior to issuance of the reprimand (*Proposed Rule 5(a)(2)*, p. 7; *Proposed Rule 6(d)(1)(ii)*, p. 9);
- Private warnings or conditions may be imposed on a judge in the absence of a finding of sufficient cause to proceed only if the underlying conduct is not part of a pattern involving the same or similar conduct¹¹ (*Proposed Rule 6(f)*, p. 10);

¹⁰The Committee was also aware of the degree of public access to disciplinary processes applicable to other public employees. See, e.g. Minn. Stat. § 13.43 (1992) (public employees in the executive branch); Rules of Public Access to Records of the Judicial Branch, Rule 5, subds. 1, 2 (employees in the judicial branch, excluding judges).

¹¹Although the Committee considered a one-strike policy for private discipline, reducing such a policy to writing proved problematic. For example, should the one strike apply to all types of conduct or only to the same or similar conduct? Should there be a time limit, and if so, what should that limit be, and should it be different for certain types of violations? The Committee felt more comfortable attempting to articulate the important factor (i.e. avoiding repeated private discipline for the same or similar conduct) rather than a general policy.

- Private warnings and conditions imposed upon a judge shall be disclosed to the complainant, excluding the details of, but not the existence of, medical treatment conditions (*Proposed Rule 5(a)(1)*, p. 7); and
- Warnings and conditions may be disclosed to the public by agreement of the judge involved in a contested election (*Proposed Rule 5(e)*, p. 8).

A minority of the Committee felt that any warning or condition imposed upon a judge by the Board should be disclosed to the public because judges are elected officials and the electorate must be informed about the individuals running for judicial office. A majority of the Committee felt that the increased public disclosure proposed by the Committee is both significant and practical. A limited ability to issue confidential warnings and conditions is necessary to preserve some negotiating room for the Board to resolve matters without incurring the significant expenses associated with adversarial hearings. The practical reality is that most complaints involving inappropriate behavior are resolved by stipulation and that public disclosure is one of the components the Board requires in such stipulations. Judges are also more likely to heed the warnings and abide by conditions if some element of privacy is maintained, particularly when the problem is personal, such as medical or emotional conditions. The limitation on private warnings insures that instances involving the same or similar conduct will not be swept under a rug of private warnings. Moreover, the complainant is not prohibited from further disclosing the results communicated by the Board. Finally, a judge involved in a contested election can be challenged to consent to release of any confidential information or risk the appearance that the candidate has something to hide.

The Committee also unanimously rejected the suggestions that public disclosure of any Board disciplinary action should include the votes of individual Board members and that such disclosures should be made immediately following the Board's action. The latter part of the suggestion arose from the perception that the three most recent disclosures by the Board appear to have been calculated to limit the amount of media coverage and/or audience attention. Board members on the committee indicated that the disclosures were not intentionally timed, that almost without exception Board decisions were unanimous, and that disclosure of individual votes may affect the voting. The Committee does, however, recommend that the Board indicate in its public disclosures whether the Board action was unanimous.

The Committee also unanimously recommends the following additional disclosure provisions:

- If an inquiry was initiated as a result of notoriety or because of conduct that is a matter of public record, information concerning lack of cause to proceed may be released by the board (*Proposed Rule 5(d)(2)*, p. 7);
- Warnings and conditions may be disclosed at discretion of Board to a chief justice, chief judge or district administrator of the district in which the judge sits for purposes of

monitoring future conduct of the judge and assistance to the judge in modifying the judge's conduct (*Proposed Rule 5(a)(3)*, p. 7); and

- The Board may disclose information as it deems appropriate to any agency or person if the Board determines that such disclosure is necessary to protect the public or the administration of justice (*Proposed Rule 5(d)(3)*, p. 7).

With respect to other jurisdictions, the American Judicature Society Center for Judicial Conduct Organizations indicates that confidentiality ceases: upon filing of formal charges by the state judicial conduct commission or board in 28 states (including Minnesota); upon filing recommendations for discipline with a higher body in 16 states; and upon issuance of an order imposing discipline in 7 states.¹² Only a few states require public disclosure of warnings, admonitions or other conditions that have been imposed in lieu of a formal, public proceeding.¹³ Thus, the Committee's proposal provides significantly greater public disclosure of the judicial disciplinary process than is currently provided in the vast majority of states.¹⁴

Discovery. The Committee's proposal also includes new limitations on discovery. Under the current Rules, the investigative efforts of the Board are hampered by the absence of authority to obtain documents and other evidence by subpoena. Although a judge is required to cooperate with the Board and may be disciplined for failure to cooperate or for making a intentional misrepresentation of a material fact (existing Rule 2(e)(1)), this potentially permits the destruction or alteration of documentary evidence. The Committee also recognizes that there is a legitimate concern that a Board or its executive secretary can cause harm by overly zealous or abusive use of subpoena power. Thus, the Committee proposes a new provision providing that:

upon resolution of the board, the executive secretary may make application for the issuance of a subpoena compelling any person, including a judge, to attend

¹²Telephone interview with Cynthia Gray, Director, American Judicature Society Center for Judicial Conduct Organizations (May 18, 1994); Rosenbaum, *Practices and Procedures of State Judicial Conduct Organizations*, Appendix A, Table 3 (1990 American Judicature Society, Chicago, IL).

¹³*Matter of rules 7 & 9 of the rules of Procedure of the Arkansas Judicial Discipline and Disability Commission*, 790 S.W.2d 143 (Ark. 1990) (repealing private reprimands and requiring that anytime commission decides on action short of filing formal charges, its letter to judge containing admonition or suggested adjustment shall be accessible to public and letter must contain all material facts including any conditions imposed on the judge); Washington State Constitution, art. IV, § 31 (investigation and initial proceedings are confidential; upon finding of probable cause that judge violated rule of judicial conduct, records of the initial proceedings that provide basis for finding must be made public) (in place since 1989, see Thirteenth Annual Report of the State of Washington Commission on Judicial Conduct, p. 6 (1993) (copy on file at State Court Administration Research & Planning Office, St. Paul)).

¹⁴The Committee's recommended approach is also in line with similar boards governing other professions. See, e.g., Minn. Stat. § 147.01, subd. 4(b) (1992) (medical practices board; discipline imposed by either contested case or stipulation is public data).

and give testimony, and to produce documents, books, accounts and other records. Such subpoena shall issue upon a showing that the information sought appears reasonably calculated to lead to the discovery of admissible evidence. (*Proposed Rule 2(d)(2)(i)*, pp. 4-5).

The Committee's proposal continues the existing rule that subpoenas are issued by the District Court of Ramsey County (*Proposed Rule 2(d)(4)*, p. 5). Following the appointment of a factfinding panel, however, the Committee proposes that the factfinding panel has jurisdiction over all motions relating to enforcement of subpoenas. A provision has also been added that preserves the confidentiality of the judge during the investigative stage if applications are made to the court (*Proposed Rule 2(d)(5)*, p. 5). This parallels the process utilized in lawyer disciplinary proceedings.¹⁵

Under existing Rule 9(b)(3), the judge and the Board are entitled to discovery "to the extent available in civil or criminal proceedings, whichever is broader." Depositions under the civil rules are practically unlimited, and the Committee proposes that depositions be permitted only for good cause shown when a witness is living outside the state or is physically unable to attend the hearing (*Proposed Rule 2(d)(1)*, p. 4). The committee recognizes the potential for abuse of depositions as experienced by other states, the increased delay and cost for both the judge and the disciplinary body, and that depositions revictimize the witnesses and make them more reluctant to participate.¹⁶ The Committee felt that interrogatories are inappropriate for the same reasons (*see Proposed Rule 9(h)*, p. 14).

The Committee's proposal clarifies and continues other mutual discovery rights of the judge and the Board, including exchange of:

- names and addresses of witnesses to be called at the hearing and persons known to have knowledge of relevant facts;
- witness statements and summaries of interviews with witnesses who will be called at the hearing;
- non-privileged evidence relevant to the Formal Complaint; and
- documents to be presented at the hearing (*See Proposed Rule 9(a), (b)*, p. 13).

¹⁵Rules on Lawyers Professional Responsibility 9(d), 14(b), (c).

¹⁶An ABA subcommittee is working on a draft of model rules on judicial disciplinary procedures which provided the basis for many of this Committee's recommendations regarding discovery. Although the current ABA draft includes the wide open use of depositions as in civil cases, that aspect of the draft has been strongly criticized by disciplinary counsel for the reasons cited by this Committee. See Association of Judicial Disciplinary Counsel Newsletter, Sept. 1993, pp. 11-12 (copy on file at State Court Administration Research & Planning Office, St. Paul); Report and Recommendation to ABA House of Delegates to Adopt proposed Model Rules for Judicial Disciplinary Enforcement, Minority Report to Proposed Model Rule 22 (Nov. 19, 1993) (copy on file at State Court Administration Research & Planning Office, St. Paul).

The Committee's proposal also clarifies that the Board has the duty to provide the judge with exculpatory evidence, and that both the judge and the Board have a continuing duty to supplement information required to be exchanged (*See Proposed Rule 9(c), (d)*, p. 13).

Amending Charges. The Committee's proposal also removes the limitation that only technical amendments may be made to the formal statement of complaint after commencement of the hearing and preserves the requirement that such amendments may only be made if the judge is given adequate time to prepare (*Proposed Rule 10(d)*, p. 15). The typical situation involves receipt of evidence of additional occurrences of the violations alleged in the complaint. The Committee felt that the Board should be able to add these additional elements as long as the judge is given adequate time to prepare.

Model Rules of Disciplinary Procedure. A subcommittee of the American Bar Association is working on a draft of model rules for judicial disciplinary enforcement which includes a two-tiered approach, wherein the disciplinary board or commission is comprised of separate investigative and factfinding components.¹⁷ The Committee is opposed to such an approach because it significantly increases the costs without necessarily ensuring more due process.¹⁸ The committee does, however, recommend that the factfinder appointed by the Supreme Court be a three member panel that includes one lay person (*Proposed Rule 10(a)*, p. 14). The Committee felt that this would increase public understanding and awareness of the process and would not present any practical problems.

The Committee also considered whether it is necessary to refer a matter, after a factfinder has made a decision, back to the Board for review and recommendation rather than forwarding the factfinder's decision directly to the Supreme Court for review. The Board, as part of the executive branch of government, is subject to the state Administrative Procedures Act.¹⁹ Applicable case law imposes an obligation on the Board to review the record of the factfinder.²⁰ Although a collegial discussion is not required, Board members must read the record and take official action at a meeting.²¹ The Committee agreed that this process is unduly cumbersome and time consuming, and recommends that legislative changes be obtained that

¹⁷See footnote 6, above.

¹⁸Only nine states have a two tiered system: Alabama, Delaware, Illinois, New Jersey, Ohio, Oklahoma, Pennsylvania, West Virginia, and Wisconsin. Telephone interview with Cynthia Gray, Director, American Judicature Society Center for Judicial Conduct Organizations (May 18, 1994); Rosenbaum, *Practices and Procedures of State Judicial Conduct Organizations*, xi (1990 American Judicature Society, Chicago, IL).

¹⁹Minn. Stat. §§ 14.001-14.69 (1992) (agencies directly in the legislative or judicial branches are excluded from the scope of the act under section 14.03, subd. 1); see also Minn. Stat. § 490.16, subds. 1, 2, 3 (1992) (requiring that discipline imposed be based on a "recommendation" by the Board).

²⁰*Application of Lecy*, 403 N.W.2d 894 (Minn. 1981); *Mampel v. Eastern Heights State Bank of St. Paul*, 254 N.W.2d 375 (Minn. 1977).

²¹*Lecy*, *supra*, f.n. 10.

would permit the factfinder's decision to go directly to the Supreme Court for review.²² The Board can submit its recommendations for discipline to the Court in its brief (*See Proposed Rule 13(c)*, p. 17).

The Committee also received a suggestion that judges be precluded from serving on the Board of Judicial Standards because judges always support their colleagues. The composition of the Board is controlled by statute,²³ and the Committee felt that this issue was outside the scope of its assignment. Moreover, the experience of citizen Committee members who have served on the Board was the opposite; judges on the Board were often the most critical members of the Board when it came to evaluating the conduct of another judge.

Miscellaneous Housekeeping Changes. The Committee's proposal also includes numerous housekeeping changes, including deletion of references to the tax court as redundant to statutes (*Proposed Rule 2(b)*, p. 4), relocation of privilege provisions (*Proposed Rule 3*, p. 5), relocation and simplification of interim suspension provisions (*Proposed Rule 14*, pp. 10-11, and 18), and addition of expungment provisions (*Proposed Rule 17*, pp. 19-20).

RESPECTFULLY SUBMITTED,

MINNESOTA SUPREME COURT
ADVISORY COMMITTEE TO REVIEW
THE AMERICAN BAR ASSOCIATION
MODEL CODE OF JUDICIAL CONDUCT
AND THE RULES OF THE MINNESOTA
BOARD ON JUDICIAL STANDARDS

²²This is the procedure followed in lawyer disciplinary proceedings. Rules on Lawyers Professional Responsibility, Rule 14(c).

²³Minn. Stat. § 490.15 (1992).

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PREAMBLE

Our legal system is based on the principle that an independent, fair and competent judiciary will interpret and apply the laws that govern us. The role of the judiciary is central to American concepts of justice and the rule of law. Intrinsic to all sections of this Code are the precepts that judges, individually and collectively, must respect and honor the judicial office as a public trust and strive to enhance and maintain confidence in our legal system. The judge is an arbiter of facts and law for the resolution of disputes and a highly visible symbol of government under the rule of law.

The Code of Judicial Conduct is intended to establish standards for ethical conduct of judges. It consists of broad statements called Canons, specific rules set forth in Sections under each Canon, a Terminology Section, an Application Section and Commentary. The text of the Canons and the Sections, including the Terminology and Application Sections, is authoritative. The Commentary, by explanation and example, provides guidance with respect to the purpose and meaning of the Canons and Sections. The Commentary is not intended as a statement of additional rules.

When the text uses "shall" or "shall not," it is intended to impose binding obligations the violation of which can result in disciplinary action. When "should" or "should not" is used, the text is intended as hortatory and as a statement of what is or is not appropriate conduct but not as a binding rule under which a judge may be disciplined. When "may" is used, it denotes permissible discretion or, depending on the context, it refers to action that is not covered by specific proscriptions.

The Canons and Sections are rules of reason. They should be applied consistent with constitutional requirements, statutes, other court rules and decisional law and in the context of all relevant circumstances. The Code is to be construed so as not to impinge on the essential independence of judges in making judicial decisions.

The Code is designed to provide guidance to judges and candidates for judicial office and to provide a structure for regulating conduct through disciplinary agencies. It is not designed or intended as a basis for civil liability or criminal prosecution. Furthermore, the purpose of the Code would be subverted if the Code were invoked by lawyers for mere tactical advantage in a proceeding.

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ABA MODEL CODE

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The text of the Canons and Sections is intended to govern conduct of judges and to be binding upon them. It is not intended, however, that every transgression will result in disciplinary action. Whether disciplinary action is appropriate, and the degree of discipline to be imposed, should be determined through a reasonable and reasoned application of the text and should depend on such factors as the seriousness of the transgression, whether there is a pattern of improper activity and the effect of the improper activity on others or on the judicial system.

The Code of Judicial Conduct is not intended as exhaustive guide for the conduct of judges. They should also be governed in their judicial and personal conduct by general ethical standards. The Code is intended, however, to state basic standards which should govern the conduct of all judges and to provide guidance to assist judges in establishing and maintaining high standards of judicial and personal conduct.

TERMINOLOGY

Terms explained below, with the exception of "judge," are noted with as asterisk () in the Sections where they appear. In addition, the Sections where terms appear are referred to after the explanation of each term below.*

"Appropriate authority" denotes the authority with responsibility for initiation of disciplinary process with respect to the violation to be reported. See Section 3D(1) and 3D(2).

"Candidate." A candidate is a person seeking selection for or retention in judicial office by election or appointment. A person becomes a candidate for judicial office as soon as he or she makes a public announcement of candidacy, declares or files as a candidate with the election or appointment authority, or authorizes solicitation or acceptance of contributions or support. The term "candidate" has the same meaning when applied to a judge seeking election or appointment to non-judicial office. See Preamble and Sections 5A, 5B, 5C and 5E.

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"Continuing part-time judge." A continuing part-time judge is a judge who serves repeatedly on a part-time basis by election or under a

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"Court personnel" does not include the lawyers in a proceeding before a judge. See Section 3B(7)(c) and 3B(9).

"De minimis" denotes an insignificant interest that could not raise reasonable question as to a judge's impartiality. See Sections 3E(1)(c) and 3E(1)(d).

"Economic interest" denotes ownership of a more than de minimis legal or equitable interest, or a relationship as officer, director, advisor or other active participant in the affairs of a party, except that:

(i) ownership of an interest in a mutual or common investment fund that holds securities is not an economic interest in such securities unless the judge participates in the management of the fund or a proceeding pending or impending before the judge could substantially affect the value of the interest;

(ii) service by a judge as an officer, director, advisor or other active participant in an educational, religious, charitable, fraternal or civic organization, or service by a judge's spouse, parent or child as an officer, director, advisor or other active participant in any organization does not create an economic interest in securities held by that organization;

(iii) a deposit in a financial institution, the proprietary interest of a policy holder in a mutual insurance company, of a depositor in a mutual savings association or of a member in a credit union, or a similar proprietary interest, is not an economic interest in the organization unless a proceeding pending or impending before the judge could substantially affect the value of the interest;

(iv) ownership of government securities is not an economic interest in the issuer unless a proceeding pending or impending before the judge could substantially affect the value of the securities.

continuing appointment, including a retired judge subject to recall who is permitted to practice law. See Application Section C.

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See Sections 3E(1)(c) and 3E(2).

"Fiduciary" includes such relationships as executor, administrator, conservator, trustee, and guardian. See Sections 3E(2) and 4E.

"Judge" denotes anyone, whether or not a lawyer, who is an officer of a judicial system and who performs judicial functions, including an officer such as a referee, special master or magistrate. See Application Section.

"Knowingly," "knowledge," "known" or "knows" denotes actual knowledge of the fact in question. A person's knowledge may be inferred from circumstances. See Sections 3D, 3E(1), and 5A(3).

"Law" denotes court rules as well as statutes, constitutional provisions and decisional law. See Sections 2A, 3A, 3B(2), 3B(6), 4B, 4C, 4D(5), 4F, 4I, 5A(2), 5A(3), 5B(2), 5C(1), 5C(3) and 5D.

"Member of the candidate's family" denotes a spouse, significant other, child, grandchild, parent, grandparent or other relative or person with whom the candidate maintains a close familial relationship. See Section 5A(3)(a).

"Member of the judge's family" denotes a spouse, significant other, child, grandchild, parent, grandparent, or other relative or person with whom the judge maintains a close familial relationship. See Section 4D(3), 4E and 4G.

"Member of the judge's family residing in the judge's household" denotes any relative of a judge by blood or marriage, or a person treated by a judge as a member of the judge's family, who resides in the judge's household. See Sections 3E(1) and 4D(5).

"Nonpublic information" denotes information that, by law, is not available to the public. Nonpublic information may include but is not limited to: information that is sealed by statute or court order, impounded or communicated in camera; and information offered in grand jury proceedings, pre-sentencing reports, dependency cases or psychiatric reports. See Section 3B(11).

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~~who serves or expects to serve repeatedly on a part-time basis, and shall include conciliation court referees appointed pursuant to law (see 1993 Minnesota Laws, Chapter 321, Section 4 (codified as Minnesota Statutes, section 493A.03, subdivision 1) and special masters. See Application Section D.~~

~~"Political organization" denotes a political party or other group, the principal purpose of which is to further the election or appointment of candidates to political office. See Sections 5A(1), 5B(2) and 5C(1).~~

~~"Public election." This term includes primary and general elections; it includes partisan elections, nonpartisan elections and retention elections. See Section 5C.~~

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"Political organization" denotes a political party or other group, the principal purpose of which is to further the election or appointment of candidates to political office. See Sections 5A(1), 5B(2) and 5C(1).

"Pro tempore part-time judge." A pro tempore part-time judge is a judge who serves or expects to serve once or only sporadically on a part-time basis under a separate appointment for each period of service or for each case heard. See Application Section E.

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CANON 1

A Judge ~~Should~~ Shall Uphold the Integrity and Independence of the Judiciary

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

Commentary:

Deference to the judgments and rulings of courts depends upon public confidence in the integrity and independence of judges. The integrity and independence of judges depends in turn upon their acting without fear or favor. Although judges should be independent, they must comply with the law, including the provisions of this Code. Public confidence in the impartiality of the judiciary is maintained by the adherence of each judge to this responsibility. Conversely, violation of this Code diminishes public confidence in the judiciary and thereby does injury to the system of government under law.

CANON 2

A Judge ~~Should~~ Shall Avoid Impropriety and the Appearance of Impropriety In ~~All of the Judge's~~ Activities

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

See Terminology, "law."

Commentary:

Public confidence in the judiciary is eroded by irresponsible or improper conduct by judges. A judge must avoid all impropriety and appearance of impropriety. A judge must expect to be the subject of constant public scrutiny. A judge must therefore accept restrictions on the judge's conduct

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that might be viewed as burdensome by the ordinary citizen and should do so freely and willingly.

The prohibition against behaving with impropriety or the appearance of impropriety applies to both the professional and personal conduct of a judge. Because it is not practicable to list all prohibited acts, the proscription is necessarily cast in general terms that extend to conduct by judges that is harmful although not specifically mentioned in the Code. Actual improprieties under this standard include violations of law, court rules or other specific provisions of this Code. The test for the appearance of impropriety is whether a person aware of the facts might reasonably entertain a doubt that the judge would be able to act with integrity, impartiality, and competence.

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

Commentary:

Maintaining the prestige of judicial office is essential to a system of government in which the judiciary functions independently of the executive and legislative branches. Respect for the judicial office facilitates the orderly conduct of legitimate judicial functions. Judges should distinguish between proper and improper use of the prestige of office in all of their activities. For example, it would be improper for a judge to allude to his or her judgeship to gain a personal advantage such as deferential treatment when stopped by a police officer for a traffic offense. Similarly, judicial letterhead must not be used for conducting a judge's personal business.

A judge must avoid lending the prestige of judicial office for the advancement of the private interests of others. For example, a judge must not use the judge's judicial position to gain advantage in a civil suit involving a member of the judge's family. In contracts for publication of a judge's writings, a judge should retain control over the advertising to avoid exploitation of the judge's office. As to the acceptance of awards, see

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See also Commentary under Section 2C.

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

Commentary:

Maintaining the prestige of judicial office is essential to a system of government in which the judiciary functions independently of the executive and legislative branches. Respect for the judicial office facilitates the orderly conduct of legitimate judicial functions. Judges should distinguish between proper and improper use of the prestige of office in all of their activities. For example, it would be improper for a judge to allude to his or her judgeship to gain a personal advantage such as deferential treatment when stopped by a police officer for a traffic offense. Similarly, judicial letterhead must not be used for conducting a judge's personal business.

A judge must avoid lending the prestige of judicial office for the advancement of the private interests of others. For example, a judge must not use the judge's judicial position to gain advantage in a civil suit involving a member of the judge's family. In contracts for publication of a judge's writings, a judge should retain control over the advertising to avoid exploitation of the judge's office. As to the acceptance of awards, see

Underline = additions; strikethrough = deletions.

Section 4D(5)(a) and Commentary.

Although a judge should be sensitive to possible abuse of the prestige of office, a judge may, based on the judge's personal knowledge, serve as a reference or provide a letter of recommendation. However, a judge must not initiate the communication of information to a sentencing judge or a probation or corrections officer but may provide to such persons information for the record in response to a formal request.

Judges may participate in the process of judicial selection by cooperating with appointing authorities and screening committees seeking names for consideration, and by responding to official inquiries concerning a person being considered for a judgeship. See also Canon 5 regarding use of a judge's name in political activities.

A judge must not testify voluntarily as a character witness because to do so may lend the prestige of the judicial office in support of the party for whom the judge testifies. Moreover, when a judge testifies as a witness, a lawyer who regularly appears before the judge may be placed in the awkward position of cross-examining the judge. A judge may, however, testify when properly subpoenaed.

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

Commentary:

Membership of a judge in an organization that practices invidious discrimination gives rise to perceptions that the judge's impartiality is impaired. Whether an organization practices invidious discrimination is often a complex question to which judges should be sensitive. The answer cannot be determined from a mere examination of an organization's current membership rolls but rather depends on the history of the organization's selection of members and other relevant factors, such as that the organization is dedicated to the preservation of religious, ethnic or cultural values of legitimate common interest to its members, or that it is in fact and effect an intimate, purely private organization whose membership limitations could not be constitutionally prohibited. Absent such factors, an

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

Commentary:

Membership of a judge in an organization that practices invidious discrimination gives rise to perceptions that the judge's impartiality is impaired. Whether an organization practices invidious discrimination is often a complex question to which judges should be sensitive. The answer cannot be determined from a mere examination of an organization's current membership rolls but rather depends on the history of the organization's selection of members and other relevant factors, such as that the organization is dedicated to the preservation of religious, ethnic or cultural values of legitimate common interest to its members, or that it is in fact and effect an intimate, purely private organization whose membership limitations could not be constitutionally prohibited. Absent such factors, an

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organization is generally said to discriminate invidiously if it arbitrarily excludes from membership on the basis of race, religion, sex or national origin persons who would otherwise be admitted to membership. See *New York State Club Ass'n. Inc. v. City of New York*, 108 S. Ct. 2225, 101 L. Ed. 2d 1 (1988); *Board of Directors of Rotary International v. Rotary Club of Duarte*, 481 U.S. 537, 107 S. Ct. 1940 (1987), 95 L. Ed. 2d 474; *Roberts v. United States Jaycees*, 468 U.S. 609, 104 S. Ct. 3244, 82 L. Ed. 2d 462 (1984).

Although Section 2C relates only to membership in organizations that invidiously discriminate on the basis of race, sex, religion or national origin, a judge's membership in an organization that engages in any discriminatory membership practices prohibited by law (see, e.g., *Minnesota Human Rights Act*, Minn. Stat. chapter 363) also violates Canon 2 and Section 2A and gives the appearance of impropriety. In addition, it would be a violation of Canon 2 and Section 2A for a judge to arrange a meeting at a club that the judge knows practices invidious discrimination on the basis of race, sex, religion or national origin in its membership or other policies, or for the judge to regularly use such a club. Moreover, public manifestation by a judge of the judge's knowing approval of invidious discrimination on any basis gives the appearance of impropriety under Canon 2 and diminishes public confidence in the integrity and impartiality of the judiciary, in violation of Section 2A.

When a person who is a judge on the date this Code becomes effective [in the jurisdiction in which the person is a judge]¹ learns that an organization to which the judge belongs engages in invidious discrimination that would preclude membership under Section 2C or under Canon 2 and Section 2A, the judge is permitted, in lieu of resigning, to make immediate efforts to have the organization discontinue its invidiously discriminatory practices, but is required to suspend participation in any other activities of the organization. If the organization fails to discontinue its invidiously discriminatory practices as promptly as possible (and in all events within a year of the judge's first learning of the practices), the judge is required to resign immediately from the organization.

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¹The language within the brackets should be deleted when the jurisdiction adopts this provision.

Underline = additions; ~~strikeout~~ = deletions.

CANON 3

A Judge ~~Should~~ Shall Perform the Duties of the Office Impartially and Diligently

The judicial duties of a judge take precedence over all other activities. Judicial duties include all the duties of the judge's office prescribed by law.* In the performance of these duties, the following standards apply:

A. Adjudicative Responsibilities.

~~(1) A judge shall hear and decide promptly, efficiently, and fairly matters assigned to the judge except those in which disqualification is required.~~

Commentary:

Minnesota statutes require that all questions of fact and law, and all motions and matters submitted to a judge for a decision in trial and appellate matters, shall be disposed of and the decision filed with the court administrator within 90 days, with certain limited exceptions. M.S. §546.27 subd. 1. This 90 day rule is an outside limit; cases should be decided before the 90 days expire, whenever possible. Failure to abide by the statutory 90 day rule may constitute grounds for disciplinary action.

In disposing of matters promptly, efficiently and fairly, a judge must demonstrate due regard for the rights of the parties to be heard and to have issues resolved without unnecessary cost or delay. Containing costs while preserving fundamental rights of parties also protects the interests of witnesses and the general public. A judge should monitor and supervise cases so as to reduce or eliminate dilatory practices, avoidable delays and unnecessary costs. A judge should encourage and seek to facilitate settlement, but parties should not feel coerced into surrendering the right to have their controversy resolved by the courts.

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 insist that court officials, litigants and their lawyers cooperate with the judge to that end.

CANON 3

A Judge Shall Perform the Duties of Judicial Office Impartially and Diligently

A. Judicial Duties in General. The judicial duties of a judge take precedence over all the judge's other activities. The judge's judicial duties include all the duties of the judge's office prescribed by law*. In the performance of these duties, the following standards apply.

B. Adjudicative Responsibilities.

(1) A judge shall hear and decide matters assigned to the judge except those in which disqualification is required.

[See section 3B(8)]

Underline = additions; ~~strikeout~~ = deletions.

(~~12~~) A judge ~~should~~ shall be faithful to the law* and maintain professional competence in it. He or she ~~should~~ shall be unswayed by partisan interests, public clamor, or fear of criticism.

(~~23~~) A judge ~~should~~ shall ~~maintain~~ require* order and decorum in all proceedings ~~before the judge~~.

(~~34~~) A judge ~~should~~ shall be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, and others dealt with in an official capacity, and ~~should~~ shall require* similar conduct of lawyers, and of staff, court officials, and others subject to the judge's action and control.

See Terminology, "law".

See Terminology, "require".

Commentary:

The duty to hear all proceedings fairly and with patience is not inconsistent with the duty to dispose promptly of the business of the court. Judges can be efficient and businesslike while being patient and deliberate.

(5) A judge shall perform judicial duties without bias or prejudice. A judge shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice, including but not limited to bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation or socioeconomic status, and shall not permit staff, court officials and others subject to the judge's direction and control to do so.

Commentary:

A judge must refrain from speech, gestures or other conduct that could reasonably be perceived as sexual harassment and must require the same standard of conduct of others subject to the judge's direction and control.

A judge who manifests bias on any basis in a proceeding impairs the fairness of the proceeding and brings the judiciary into disrepute. Facial expression and body language, in addition to oral communication, can give to parties or lawyers in the proceeding, jurors, the media and others an appearance of judicial bias. A judge must be alert to avoid behavior that may be perceived as prejudicial.

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(6) A judge shall require* lawyers in proceedings before the judge to refrain from manifesting, by words or conduct, bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation or socioeconomic status, against parties, witnesses, counsel or others. This Section 3A(6) does not preclude legitimate advocacy when race, sex, religion, national origin, disability, age, sexual orientation or socioeconomic status, or other similar factors, are issues in the proceeding.

~~(4) A judge should~~ shall accord to every person who ~~is legally interested~~ has a legal interest in a proceeding, or ~~the~~ that person's lawyer, ~~full~~ the right to be heard according to law*. ~~and except as authorized by law, neither~~ 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~~ concerning a pending or impending proceeding, except that:

(a) Where circumstances require, ex parte communications for scheduling, administrative purposes or emergencies that do not deal with substantive matters or issues on the merits are authorized; provided:

(i) the judge reasonably believes that no party will gain a procedural or tactical advantage as a result of the ex parte communication, and

(ii) the judge makes provision promptly to notify all other parties of the substance of the ex parte communication and allows an opportunity to respond.

(b) A judge may obtain the advice of a disinterested expert on the law* applicable to a proceeding before the judge if the judge gives notice to the parties of the person consulted and the substance of the advice, and affords the parties reasonable opportunity to respond.

(c) A judge may consult with court personnel* whose function is to aid the judge in carrying out the judge's adjudicative responsibilities or with other judges.

(d) A judge may, with the consent of the parties, confer separately with the parties and their lawyers in an effort to mediate or settle matters pending before the judge.

(e) A judge may initiate or consider any ex parte communications when

(6) A judge shall require* lawyers in proceedings before the judge to refrain from manifesting, by words or conduct, bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation or socioeconomic status, against parties, witnesses, counsel or others. This Section 3B(6) does not preclude legitimate advocacy when race, sex, religion, national origin, disability, age, sexual orientation or socioeconomic status, or other similar factors, are issues in the proceeding.

(7) 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*. 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 concerning a pending or impending proceeding except that:

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expressly authorized by law* to do so.

See Terminology, "require".

See Terminology, "law".

See Terminology, "court personnel".

Commentary:

The proscription against communications concerning a proceeding includes communications from lawyers, law teachers, and other persons who are not participants in the proceeding, except to the limited extent permitted.

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

Whenever presence of a party or notice to a party is required by Section 3A(7), 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.

An appropriate and often desirable procedure for a court to obtain the advice of a disinterested expert on legal issues is to invite the expert to file a brief amicus curiae.

Certain ex parte communication is approved by Section 3B(7) to facilitate scheduling and other administrative purposes and to accommodate emergencies. In general, however, a judge must discourage ex parte communication and allow it only if all the criteria stated in Section 3B(7) are clearly met. A judge must disclose to all parties all ex parte communications described in Sections 3A(7)(a) and 3A(7)(b) regarding a proceeding pending or impending before the judge.

A judge must not independently investigate facts in a case and must consider only the evidence presented.

A judge may request a party to submit proposed findings of fact and conclusions of law, so long as the other parties are apprised of the request and are given an opportunity to respond to the proposed findings and conclusions.

A judge must make reasonable efforts, including the provision of appropriate supervision, to ensure that Section 3A(7) is not violated through law clerks or

expressly authorized by law* to do so.

See Terminology, "require".

See Terminology, "law".

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A judge must make reasonable efforts, including the provision of appropriate supervision, to ensure that Section 3B(7) is not violated through law clerks or

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other personnel on the judge's staff.

If communication between the trial judge and the appellate court with respect to a proceeding is permitted, a copy of any written communication or the substance of any oral communication should be provided to all parties.

(5) A judge should dispose promptly of the business of the court.

[See Section 3A(1)]

(68) A judge ~~should~~ shall abstain from public comment about a pending or impending proceeding in any court, and ~~should~~ shall require* similar abstention on the part of court personnel* subject to the judge's direction and control. This subsection does not prohibit judges from making public statements in the course of their official duties or from explaining for public information the procedures of the court. This Section does not apply to proceedings in which the judge is a litigant in a personal capacity.

See Terminology, "require".

See Terminology, "court personnel".

other personnel on the judge's staff.

If communication between the trial judge and the appellate court with respect to a proceeding is permitted, a copy of any written communication or the substance of any oral communication should be provided to all parties.

(8) A judge shall dispose of all judicial matters promptly, efficiently and fairly.

Commentary:

In disposing of matters promptly, efficiently and fairly, a judge must demonstrate due regard for the rights of the parties to be heard and to have issues resolved without unnecessary cost or delay. Containing costs while preserving fundamental rights of parties also protects the interests of witnesses and the general public. A judge should monitor and supervise cases so as to reduce or eliminate dilatory practices, avoidable delays and unnecessary costs. A judge should encourage and seek to facilitate settlement, but parties should not feel coerced into surrendering the right to have their controversy resolved by the courts.

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 insist that court officials, litigants and their lawyers cooperate with the judge to that end.

(9) A judge shall not, while a proceeding is pending or impending in any court, make any public comment that might reasonably be expected to affect its outcome or impair its fairness or make any nonpublic comment that might substantially interfere with a fair trial or hearing. The judge shall require* similar abstention on the part of court personnel* subject to the judge's direction and control. This Section does not prohibit judges from making public statements in the course of their official duties or from explaining for public information the procedures of the court. This Section does not apply to proceedings in which the judge is a litigant in a personal capacity.

See Terminology, "require".

See Terminology, "court personnel".

Underline = additions; ~~strikeout~~ = deletions.

Commentary:

The requirement that judges abstain from public comment regarding a pending or impending proceeding continues during any appellate process and until final disposition. This Section does not prohibit a judge from commenting on proceedings in which the judge is a litigant in a personal capacity, but in cases such as a writ of mandamus where the judge is a litigant in an official capacity, the judge must not comment publicly. The conduct of lawyers relating to trial publicity is governed by Rule 3.b of the Minnesota Rules of Professional Conduct.

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

Commentary:

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.

(7)10) Except in the Supreme Court and the Court of Appeals, a judge ~~should~~ shall prohibit broadcasting, televising, recording, or taking photographs in the courtroom and areas immediately adjacent thereto during sessions of court or recess between sessions. A judge may, however, authorize:

(a) the use of electronic or photographic means for the presentation of evidence, for the perpetuation of a record, or for other purposes of judicial administration;

(b) the broadcasting, televising, recording, or photographing of investitive, ceremonial, or naturalization proceedings;

(c) the photographic or electronic recording and reproduction of appropriate court proceedings under the following conditions:

(i) the means of recording will not distract participants or impair the dignity

Commentary:

The requirement that judges abstain from public comment regarding a pending or impending proceeding continues during any appellate process and until final disposition. This Section does not prohibit a judge from commenting on proceedings in which the judge is a litigant in a personal capacity, but in cases such as a writ of mandamus where the judge is a litigant in an official capacity, the judge must not comment publicly. The conduct of lawyers relating to trial publicity is governed by [Rule 3.6 of the ABA Model Rules of Professional Conduct]. (Each jurisdiction should substitute an appropriate reference to its rule.)

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

Commentary:

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.

[No ABA counterpart]

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of the proceedings;

(ii) the parties have consented, and the consent to be depicted or recorded has been obtained from each witness appearing in the recording and reproduction;

(iii) the reproduction will not be exhibited until after the proceeding has been concluded and all direct appeals have been exhausted; and

(iv) the reproduction will be exhibited only for instructional purposes in educational institutions.

[NOTE: The series of Supreme Court orders modifying Canon 3A(7) for experimental audio and video coverage are not included in this comparison. The Advisory Committee does not recommend any changes to such orders except insofar as necessary to comport with the renumbering of Canon 3A(7) as Section 3A(10)]

~~(11) A judge shall not disclose or use, for any purpose unrelated to judicial duties, nonpublic information* acquired in a judicial capacity.~~

(11) A judge shall not disclose or use, for any purpose unrelated to judicial duties, nonpublic information* acquired in a judicial capacity.

B. Administrative Responsibilities.

(1) A judge ~~should~~ shall diligently discharge ~~all the judge's~~ administrative responsibilities ~~without bias or prejudice and maintain professional competence in judicial administration, and facilitate the performance of the administrative responsibilities of other judges and court officials. and should cooperate with other judges and court officials in the administration of court business.~~

(2) A judge ~~should~~ shall require* ~~judicial staff, and court officials and others~~ subject to the judge's direction and control to observe the standards of fidelity and diligence that apply to the judge, ~~and to refrain from manifesting bias or prejudice in the performance of their official duties.~~

(3) A judge ~~should take or initiate appropriate disciplinary measures against a judge or lawyer for unprofessional conduct of which the judge may become aware.~~

C. Administrative Responsibilities.

(1) A judge shall diligently discharge the judge's administrative responsibilities without bias or prejudice and maintain professional competence in judicial administration, and should cooperate with other judges and court officials in the administration of court business.

(2) A judge shall require* staff, court officials and others subject to the judge's direction and control to observe the standards of fidelity and diligence that apply to the judge and to refrain from manifesting bias or prejudice in the performance of their official duties.

Underline = additions; ~~strikeout~~ = deletions.

(3) A judge with supervisory authority for the judicial performance of other judges shall take reasonable measures to assure the prompt disposition of matters before them and the proper performance of their other judicial responsibilities. [See also Canon 3C, below]

(4) A judge ~~should~~ shall not make unnecessary appointments of personnel. A judge ~~should~~ shall exercise the power of appointment impartially and only on the basis of merit, avoiding nepotism and favoritism. A judge ~~should~~ shall not approve compensation of appointees beyond the fair value of services rendered.

See Terminology, "nonpublic information."

See Terminology, "require."

Commentary:

Appointees of a judge include neutral experts, assigned counsel, officials such as referees, commissioners, special masters, receivers, conservators, and guardians and personnel such as clerks, secretaries, court reporters and bailiffs. Consent by the parties to an appointment or an award of compensation does not relieve the judge of the obligation prescribed by Section 3B(4).

C. Disciplinary Responsibilities.

(1) A judge ~~should~~ shall take or initiate appropriate disciplinary measures against a judge or lawyer for unprofessional conduct of which the judge may become aware.

Commentary:

Appropriate action may include direct communication with the judge or lawyer who has committed the violation, other direct action if available, and reporting the violation to the appropriate authority* or other agency or body.

(3) A judge with supervisory authority for the judicial performance of other judges shall take reasonable measures to assure the prompt disposition of matters before them and the proper performance of their other judicial responsibilities. [See also Canon 3D, below]

(4) A judge shall not make unnecessary appointments. A judge shall exercise the power of appointment impartially and on the basis of merit. A judge shall avoid nepotism and favoritism. A judge shall not approve compensation of appointees beyond the fair value of services rendered.

See Terminology, "nonpublic information."

See Terminology, "require."

Commentary:

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 Section 3C(4).

D. Disciplinary Responsibilities.

(1) A judge who receives information indicating a substantial likelihood that another judge has committed a violation of this Code should take appropriate action. A judge having knowledge* that another judge has committed a violation of this Code that raises a substantial question as to the other judge's fitness for office shall inform the appropriate authority*.

(2) A judge who receives information indicating a substantial likelihood that a lawyer has committed a violation of the Rules of Professional Conduct [substitute correct title if the applicable rules of lawyer conduct have a different title] should take appropriate action. A judge having knowledge* that a lawyer has committed a violation of the Rules of Professional Conduct [substitute correct title if the applicable rules of lawyer conduct have a different title] that raises a substantial question as to the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects shall inform the appropriate authority.

Underline = additions; ~~strikeout~~ = deletions.

(2) Acts of a judge, in the discharge of disciplinary responsibilities, required or permitted by Section 3C(1) are part of the judge's judicial duties.

(3) Acts of a judge, in the discharge of disciplinary responsibilities, required or permitted by Sections 3D(1) and 3D(2) are part of a judge's judicial duties and shall be absolutely privileged, and no civil action predicated thereon may be instituted against the judge.

*See Terminology, "knowingly," "knowledge," "known" and "knows."
See terminology, "appropriate authority."*

Commentary:

Appropriate action may include direct communication with the judge or lawyer who has committed the violation, other direct action if available, and reporting the violation to the appropriate authority or other agency or body.

~~D~~. Disqualification.

(1) A judge ~~should~~ shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to instances where:

Commentary:

Under this rule, a judge is disqualified whenever the judge's impartiality might reasonably be questioned, regardless whether any of the specific rules in Section 3(D)(1) apply. For example, if a judge were in the process of negotiating for employment with a law firm, the judge would be disqualified from any matters in which that law firm appeared, unless the disqualification was waived by the parties after disclosure by the judge.

A judge should disclose on the record information that the judge believes the parties or their lawyers might consider relevant to the question of disqualification, even if the judge believes there is no real basis for disqualification.

By decisional law, 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 the latter case, the

E. Disqualification.

(1) A judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to instances where:

Commentary:

Under this rule, a judge is disqualified whenever the judge's impartiality might reasonably be questioned, regardless whether any of the specific rules in Section 3E(1) apply. For example, if a judge were in the process of negotiating for employment with a law firm, the judge would be disqualified from any matters in which that law firm appeared, unless the disqualification was waived by the parties after disclosure by the judge.

A judge should disclose on the record information that the judge believes the parties or their lawyers might consider relevant to the question of disqualification, even if the judge believes there is no real basis for disqualification.

By decisional law, 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 the latter case, the

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judge must disclose on the record the basis for possible disqualification and use reasonable efforts to transfer the matter to another judge as soon as practicable.

(a) the judge has a personal bias or prejudice concerning a party; ~~or a party's lawyer,~~ or personal knowledge* of disputed evidentiary facts concerning the proceeding;

See Terminology, "knowingly," "knowledge," "known" and "knows."

Commentary:

Personal relationships of a judge with lawyers appearing in any matter, such as a former partner, close personal friend, or other relationship which may give the appearance of impropriety, conflict of interest, or favoritism shall be disclosed to all parties at the commencement of any proceeding. While such relationships do not require automatic disqualification, disclosure is required.

(b) the judge served as lawyer in the matter in controversy, or a lawyer with whom the judge previously practiced law served during such association as a lawyer concerning the matter, or the judge or such lawyer has been a material witness concerning it;

Commentary:

A lawyer in a government agency does not ordinarily have an association with other lawyers employed by that agency within the meaning of Section 3D(1)(b); a judge formerly employed by a government agency, however, should disqualify himself or herself in a proceeding if the judge's impartiality might reasonably be questioned because of such association.

(c) the judge knows* that he or she, individually or as a fiduciary, or the judge's spouse, ~~significant other, parent, or minor child~~ wherever residing, or any other member of the judge's family residing in the judge's household*, has ~~a financial~~ an economic interest in the subject matter in controversy or in a party to the proceeding, or ~~has~~ has any other ~~more than de minimis*~~ more than de minimis* interest that could be substantially affected by ~~the outcome of the~~ the proceeding.

judge must disclose on the record the basis for possible disqualification and use reasonable efforts to transfer the matter to another judge as soon as practicable.

(a) the judge has a personal bias or prejudice concerning a party or a party's lawyer, or personal knowledge* of disputed evidentiary facts concerning the proceeding;

(a) the judge has a personal bias or prejudice concerning a party or a party's lawyer, or personal knowledge of disputed evidentiary facts concerning the proceeding;*

(b) the judge served as a lawyer in the matter in controversy, or a lawyer with whom the judge previously practiced law served during such association as a lawyer concerning the matter, or the judge has been a material witness concerning it;

(b) the judge served as a lawyer in the matter in controversy, or a lawyer with whom the judge previously practiced law served during such association as a lawyer concerning the matter, or the judge has been a material witness concerning it;

See Terminology, "knowingly," "knowledge," "known" and "knows."

Commentary:

A lawyer in a government agency does not ordinarily have an association with other lawyers employed by that agency within the meaning of Section 3E(1)(b); a judge formerly employed by a government agency, however, should disqualify himself or herself in a proceeding if the judge's impartiality might reasonably be questioned because of such association.

(c) the judge knows* that he or she, individually or as a fiduciary, or the judge's spouse, parent or child wherever residing, or any other member of the judge's family residing in the judge's household*, has an economic interest* in the subject matter in controversy or in a party to the proceeding or has any other more than de minimis* interest that could be substantially affected by the proceeding;

Underline = additions; ~~strikeout~~ = deletions.

(d) the judge or the judge's spouse; ~~or significant other~~ or a person within the third degree of relationship* to ~~any either~~ of them, or the spouse of such a person:

(i) is a party to the proceeding, or an officer, director, or trustee of a party;

(ii) is acting as a lawyer in the proceeding;

(iii) is known* by the judge to have ~~an a more than de minimis*~~ interest that could be substantially affected by the ~~outcome of the~~ proceeding;

(iv) is to the judge's knowledge* likely to be a material witness in the proceeding.

See Terminology, "knowingly," "knowledge," "known" and "knows."

See Terminology, "economic interest."

See Terminology, "de minimis."

See Terminology, "member of the judge's family residing in the judge's household."

See Terminology, "third degree of relationship."

Commentary:

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 of itself disqualify the judge. Under appropriate circumstances, the fact that "the judge's impartiality might reasonably be questioned" under Section 3D(1), or that the relative is known by the judge to have an interest in the law firm that could be "substantially affected by the outcome of the proceeding" under Section 3D(1)(d)(iii) may require the judge's disqualification. In most cases, the fact that a judge's spouse is a firm partner requires the judge's disqualification.

(2) A judge ~~should~~ ~~shall become~~ ~~keep~~ informed about the judge's personal and fiduciary* ~~financial~~ ~~economic~~ interests,* and make a reasonable effort to ~~be keep~~ informed about the personal ~~financial~~ ~~economic~~ interests of the judge's spouse, ~~significant other~~, and minor children, ~~wherever residing~~, in the judge's household.

See Terminology, "fiduciary."

See Terminology, "economic interest[s]."

(d) the judge or the judge's spouse, or a person within the third degree of relationship* to either of them, or the spouse of such a person:

(i) is a party to the proceeding, or an officer, director, or trustee of a party;

(ii) is acting as a lawyer in the proceeding;

(iii) is known* by the judge to have a more than de minimis* interest that could be substantially affected by the proceeding;

(iv) is to the judge's knowledge* likely to be a material witness in the proceeding.

See Terminology, "knowingly," "knowledge," "known" and "knows."

See Terminology, "economic interest."

See Terminology, "de minimis."

See Terminology, "member of the judge's family residing in the judge's household."

See Terminology, "third degree of relationship."

Commentary:

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 of itself disqualify the judge. Under appropriate circumstances, the fact that "the judge's impartiality might reasonably be questioned" under Section 3E(1), or that the relative is known by the judge to have an interest in the law firm that could be "substantially affected by the outcome of the proceeding" under Section 3E(1)(d)(iii) may require the judge's disqualification.

(2) 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 and minor children residing in the judge's household.

See Terminology, "fiduciary."

See Terminology, "economic interest[s]."

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~~(3) For the purposes of this section:~~

[No ABA counterpart]

~~(a) the degree of relationship is calculated according to the civil law system;~~

[See Terminology section, above]

~~(b) "fiduciary" includes such relationships as executor, administrator, trustee, and guardian;~~

[See Terminology section, above]

~~(c) "financial interest" means ownership of a legal or equitable interest, however small, or a relationship as director, advisor, or other active participant in the affairs of a party, except that:~~

~~(i) ownership in a mutual or common investment fund that holds securities is not a "financial interest" in such securities unless the judge participates in the management of the fund;~~

~~(ii) an office in an educational, religious, charitable, fraternal, or civic organization is not a "financial interest" in securities held by the organization;~~

~~(iii) the proprietary interest of a policy holder in a mutual insurance company, of a depositor in a mutual savings association, or a similar proprietary interest, is a "financial interest" in the organization only if the outcome of the proceeding could substantially affect the value of the interest;~~

~~(iv) ownership of government securities is a "financial interest" in the issuer only if the outcome of the proceeding could substantially affect the value of the securities.~~

DE. Remittal of Disqualification. A judge disqualified by the terms of Canon 3C(1)(c) or Canon 3C(1)(d) ~~Section 3D may, instead of withdrawing from the proceeding, disclose on the record the basis of the judge's disqualification, and may ask the parties and their lawyers to consider, out of the presence of the judge, whether to waive disqualification. If, based on such disclosure, the parties and lawyers, independently of the judge's participation, all agree in writing that the judge's relationship is immaterial or that the financial interest is insubstantial, the judge is no longer disqualified, and~~ If following disclosure of any basis for disqualification other than personal bias or prejudice concerning a party, the parties and lawyers, without participation by the judge, all agree that the judge should not be disqualified, and the judge is then willing to participate, the judge

F. Remittal of Disqualification. A judge disqualified by the terms of Section 3E may disclose on the record the basis of the judge's disqualification and may ask the parties and their lawyers to consider, out of the presence of the judge, whether to waive disqualification. If following disclosure of any basis for disqualification other than personal bias or prejudice concerning a party, the parties and lawyers, without participation by the judge, all agree that the judge should not be disqualified, and the judge is then willing to participate, the judge may participate in the proceeding. The agreement shall be incorporated in the record of the proceeding.

Underline = additions; ~~strikeout~~ = deletions.

may participate in the proceedings. The agreement, ~~signed by all parties and lawyers~~, shall be incorporated in the record of the proceeding.

Commentary:

A remittal procedure provides the parties an opportunity to proceed without delay if they wish to waive the disqualification. To assure that consideration of the question of remittal is made independently of the judge, a judge must not solicit, seek or hear comment on possible remittal or waiver of the disqualification unless the lawyers jointly propose remittal after consultation as provided in the rule. A party may act through counsel if counsel represents on the record that the party has been consulted and consents. As a practical matter, a judge may wish to have all parties and their lawyers sign the remittal agreement.

Commentary:

A remittal procedure provides the parties an opportunity to proceed without delay if they wish to waive the disqualification. To assure that consideration of the question of remittal is made independently of the judge, a judge must not solicit, seek or hear comment on possible remittal or waiver of the disqualification unless the lawyers jointly propose remittal after consultation as provided in the rule. A party may act through counsel if counsel represents on the record that the party has been consulted and consents. As a practical matter, a judge may wish to have all parties and their lawyers sign the remittal agreement.

CANON 4

~~A Judge May Engage in Activities to Improve the Law, the Legal System, Judicial Administration, and the Administration of Justice~~

A judge, subject to the proper performance of judicial duties, may engage in the following quasi-judicial activities, if doing so does not cast doubt on the judge's capacity to decide impartially any issue that may come before the judge:

~~A. A judge may speak, write, lecture, teach, and participate in other activities concerning the law, the legal system, judicial administration, and the administration of justice.~~

[See Canon 4B, below]

~~B. A judge may appear at a public hearing before an executive or legislative body or official on matters concerning the law, the legal system, judicial administration, and the administration of justice, and may otherwise consult with an executive or legislative body or official, but only on matters concerning the administration of justice or judicial administration.~~

[See Canon 4C(1), below]

Underline = additions; ~~strikeout~~ = deletions.

~~C. A judge may serve as a member, officer, or director of an organization or governmental agency devoted to the improvement of the law, the legal system, judicial administration, or the administration of justice. A judge may assist such an organization in raising funds and may participate in their management and investment, but should not personally participate in public fund-raising activities. A judge may make recommendations to public and private fund-granting agencies on projects and programs concerning the law, the legal system, judicial administration, and the administration of justice.~~

[See Canon 4C(2), below]

CANON 54

A Judge ~~Should~~ Shall Regulate ~~Conduct~~ All Extra-Judicial Activities ~~so as~~ to Minimize the Risk of Conflict With Judicial ~~Duties~~ Obligations

A. Extra-judicial Activities in General. A judge shall conduct all extra-judicial activities so that they do not:

- ~~(1) cast reasonable doubt on the judge's capacity to act impartially as a judge;~~
- ~~(2) demean the judicial office; or~~
- ~~(3) interfere with the proper performance of judicial duties.~~

Commentary:

Complete separation of a judge from extra-judicial activities is neither possible nor wise; a judge should not become isolated from the community in which the judge lives.

Expressions of bias or prejudice by a judge, even outside judicial activities, may cast reasonable doubt on the judge's capacity to act impartially. Expressions which may do so include jokes or other remarks demeaning individuals on the basis of their race, sex, religion, national origin, disability, age, sexual orientation or socioeconomic status. See Section 2C and accompanying Commentary.

~~A.B. Avocational Activities.~~ A judge may write, lecture, teach, and speak

CANON 4

A Judge Shall So Conduct the Judge's Extra-Judicial Activities as to Minimize the Risk of Conflict With Judicial Obligations

A. Extra-judicial Activities in General. A judge shall conduct all of the judge's extra-judicial activities so that they do not:

- (1) cast reasonable doubt on the judge's capacity to act impartially as a judge;
- (2) demean the judicial office; or
- (3) interfere with the proper performance of judicial duties.

Commentary:

Complete separation of a judge from extra-judicial activities is neither possible nor wise; a judge should not become isolated from the community in which the judge lives.

Expressions of bias or prejudice by a judge, even outside the judge's judicial activities, may cast reasonable doubt on the judge's capacity to act impartially as a judge. Expressions which may do so include jokes or other remarks demeaning individuals on the basis of their race, sex, religion, national origin, disability, age, sexual orientation or socioeconomic status. See Section 2C and accompanying Commentary.

B. Avocational Activities. A judge may speak, write, lecture, teach and

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~~on non-legal subjects, and engage participate in other extra-judicial activities concerning the law*, the legal system, the administration of justice and non-legal subjects, including the arts, sports, and other social and recreational activities, if such avocational activities do not detract from the dignity of the office or interfere with the performance of judicial duties subject to the requirements of this Code.~~

See Terminology, "law."

Commentary:

~~As a judicial officer and person specially learned in the law, a judge is in a unique position to contribute to the improvement of the law, the legal system, and the administration of justice, including revision of substantive and procedural law and improvement of criminal and juvenile justice. To the extent that time permits, a judge is encouraged to do so, either independently or through a bar association, judicial conference or other organization dedicated to the improvement of the law. Judges may participate in efforts to promote the fair administration of justice, the independence of the judiciary and the integrity of the legal profession and may express opposition to the persecution of lawyers and judges in other countries because of their professional activities.~~

~~In this and other Sections of Canon 4, the phrase "subject to the requirements of this Code" is used, notably in connection with a judge's governmental, civic or charitable activities. This phrase is included to remind judges that the use of permissive language in various Sections of the Code does not relieve a judge from the other requirements of the Code that apply to the specific conduct.~~

C. Governmental, Civic or Charitable Activities.

~~(1) A judge shall not appear at a public hearing before, or otherwise consult with, an executive or legislative body or official except on matters concerning the law*, the legal system or the administration of justice or except when acting pro se in a matter involving the judge or the judge's interests.~~

See Terminology, "law."

participate in other extra-judicial activities concerning the law*, the legal system, the administration of justice and non-legal subjects, subject to the requirements of this Code.

See Terminology, "law."

Commentary:

As a judicial officer and person specially learned in the law, a judge is in a unique position to contribute to the improvement of the law, the legal system, and the administration of justice, including revision of substantive and procedural law and improvement of criminal and juvenile justice. To the extent that time permits, a judge is encouraged to do so, either independently or through a bar association, judicial conference or other organization dedicated to the improvement of the law. Judges may participate in efforts to promote the fair administration of justice, the independence of the judiciary and the integrity of the legal profession and may express opposition to the persecution of lawyers and judges in other countries because of their professional activities.

In this and other Sections of Canon 4, the phrase "subject to the requirements of this Code" is used, notably in connection with a judge's governmental, civic or charitable activities. This phrase is included to remind judges that the use of permissive language in various Sections of the Code does not relieve a judge from the other requirements of the Code that apply to the specific conduct.

C. Governmental, Civic or Charitable Activities.

(1) A judge shall not appear at a public hearing before, or otherwise consult with, an executive or legislative body or official except on matters concerning the law*, the legal system or the administration of justice or except when acting pro se in a matter involving the judge or the judge's interests.

See Terminology, "law."

Underline = additions; strikethrough = deletions.

Commentary:

See Section 2B regarding the obligation to avoid improper influence.

(2) A judge shall not accept appointment to a governmental committee or commission or other governmental position that is concerned with issues of fact or policy on matters other than the improvement of the law*, the legal system or the administration of justice. A judge may, however, represent a country, state or locality on ceremonial occasions or in connection with historical, educational or cultural activities.

See Terminology, "law."

Commentary:

Section 4C(2) prohibits a judge from accepting any governmental position except one relating to the law, legal system or administration of justice as authorized by Section 4C(3). The appropriateness of accepting extra-judicial assignments must be assessed in light of the demands on judicial resources created by crowded dockets and the need to protect the courts from involvement in extra-judicial matters that may prove to be controversial. Judges should not accept governmental appointments that are likely to interfere with the effectiveness and independence of the judiciary.

Section 4C(2) does not govern a judge's service in a nongovernmental position. See Section 4C(3) permitting service by a judge with organizations devoted to the improvement of the law, the legal system or the administration of justice and with educational, religious, charitable, fraternal or civic organizations not conducted for profit. For example, service on the board of a public educational institution, unless it were a law school, would be prohibited under Section 4C(2), but service on the board of a public law school or any private educational institution would generally be permitted under Section 4C(3).

B.(3) Civic and Charitable Activities. A judge may participate in civic and charitable activities that do not reflect adversely upon the judge's impartiality or interfere with the performance of judicial duties. A judge may serve as an officer, director, trustee, or non-legal advisor of an educational, religious, charitable, fraternal, or civic organization not conducted for the economic or political advantage of its members, subject to the following limitations and the other requirements of this code:

Commentary:

See Section 2B regarding the obligation to avoid improper influence.

(2) A judge shall not accept appointment to a governmental committee or commission or other governmental position that is concerned with issues of fact or policy on matters other than the improvement of the law*, the legal system or the administration of justice. A judge may, however, represent a country, state or locality on ceremonial occasions or in connection with historical, educational or cultural activities.

See Terminology, "law."

Commentary:

Section 4C(2) prohibits a judge from accepting any governmental position except one relating to the law, legal system or administration of justice as authorized by Section 4C(3). The appropriateness of accepting extra-judicial assignments must be assessed in light of the demands on judicial resources created by crowded dockets and the need to protect the courts from involvement in extra-judicial matters that may prove to be controversial. Judges should not accept governmental appointments that are likely to interfere with the effectiveness and independence of the judiciary.

Section 4C(2) does not govern a judge's service in a nongovernmental position. See Section 4C(3) permitting service by a judge with organizations devoted to the improvement of the law, the legal system or the administration of justice and with educational, religious, charitable, fraternal or civic organizations not conducted for profit. For example, service on the board of a public educational institution, unless it were a law school, would be prohibited under Section 4C(2), but service on the board of a public law school or any private educational institution would generally be permitted under Section 4C(3).

(3) A judge may serve as an officer, director, trustee or non-legal advisor of an organization or governmental agency devoted to the improvement of the law*, the legal system or the administration of justice or of an educational, religious, charitable, fraternal or civic organization not conducted for profit, subject to the following limitations and the other requirements of this Code.

Underline = additions; ~~strikeout~~ = deletions.

Commentary:

Section 4C(3) does not apply to a judge's service in a governmental position unconnected with the improvement of the law, the legal system or the administration of justice; see Section 4C(2).

See Commentary to Section 4B regarding use of the phrase "subject to the following limitations and the other requirements of this Code." As an example of the meaning of the phrase, a judge permitted by Section 4C(3) to serve on the board of a fraternal institution may be prohibited from such service by Sections 2C or 4A if the institution practices invidious discrimination or if service on the board otherwise casts reasonable doubt on the judge's capacity to act impartially as a judge.

Service by a judge on behalf of a civic or charitable organization may be governed by other provisions of Canon 4 in addition to Section 4C. For example, a judge is prohibited by Section 4G from serving as a legal advisor to a civic or charitable organization.

(a) A judge shall not serve as an officer, director, trustee, or non-legal advisor if it is likely that the organization:

- (i) will be engaged in proceedings that would ordinarily come before the judge, or
- (ii) will be regularly engaged frequently in adversary proceedings in any the court of which the judge is a member or in any court subject to the appellate jurisdiction of the court of which the judge is a member.

Commentary:

The changing nature of some organizations and of their relationship to the law makes it necessary for a judge regularly to reexamine the activities of each organization with which the judge is affiliated to determine if it is proper for the judge to continue the affiliation. For example, in many jurisdictions charitable hospitals are now more frequently in court than in the past. Similarly, the boards of some legal aid organizations now make policy decisions that may have political significance or imply commitment to causes that may come before the courts for adjudication.

See Terminology, "law."

Commentary:

Section 4C(3) does not apply to a judge's service in a governmental position unconnected with the improvement of the law, the legal system or the administration of justice; see Section 4C(2).

See Commentary to Section 4B regarding use of the phrase "subject to the following limitations and the other requirements of this Code." As an example of the meaning of the phrase, a judge permitted by Section 4C(3) to serve on the board of a fraternal institution may be prohibited from such service by Sections 2C or 4A if the institution practices invidious discrimination or if service on the board otherwise casts reasonable doubt on the judge's capacity to act impartially as a judge.

Service by a judge on behalf of a civic or charitable organization may be governed by other provisions of Canon 4 in addition to Section 4C. For example, a judge is prohibited by Section 4G from serving as a legal advisor to a civic or charitable organization.

(a) A judge shall not serve as an officer, director, trustee or non-legal advisor if it is likely that the organization:

- (i) will be engaged in proceedings that would ordinarily come before the judge, or*
- (ii) will be engaged frequently in adversary proceedings in the court of which the judge is a member or in any court subject to the appellate jurisdiction of the court of which the judge is a member.*

Commentary:

The changing nature of some organizations and of their relationship to the law makes it necessary for a judge regularly to reexamine the activities of each organization with which the judge is affiliated to determine if it is proper for the judge to continue the affiliation. For example, in many jurisdictions charitable hospitals are now more frequently in court than in the past. Similarly, the boards of some legal aid organizations now make policy decisions that may have political significance or imply commitment to causes that may come before the courts for adjudication.

Underline = additions; ~~strikeout~~ = deletions.

(b) A judge ~~should~~ shall not solicit funds for any educational, religious, charitable, fraternal, or civic organization, or use or permit the use of the prestige of judicial office for that purpose, but may be listed as an officer, director, or trustee of such an organization. A judge ~~should~~ shall not be a speaker or the guest of honor at an organization's fund raising events, but may attend such events. A judge may participate in the management and investment of an organization's funds so long as it does not conflict with other provisions of the code.

Commentary:

A judge may solicit membership or endorse or encourage membership efforts for an organization devoted to the improvement of the law, the legal system or the administration of justice or a nonprofit educational, religious, charitable, fraternal or civic organization as long as the solicitation cannot reasonably be perceived as coercive and is not essentially a fund-raising mechanism. Solicitation of funds for an organization and solicitation of memberships similarly involve the danger that the person solicited will feel obligated to respond favorably to the solicitor if the solicitor is in a position of influence or control.

Use of an organization letterhead for fund-raising or membership solicitation does not violate Section 4C(3)(b) provided the letterhead lists only the judge's name and office or other position in the organization. In addition, a judge must also make reasonable efforts to ensure that the judge's staff, court officials and others subject to the judge's direction and control do not solicit funds on the judge's behalf for any purpose, charitable

(b) A judge as an officer, director, trustee or non-legal advisor, or as a member or otherwise:

(i) may assist such an organization in planning fund-raising and may participate in the management and investment of the organization's funds, but shall not personally participate in the solicitation of funds or other fund-raising activities, except that a judge may solicit funds from other judges over whom the judge does not exercise supervisory or appellate authority;

(ii) may make recommendations to public and private fund-granting organizations on projects and programs concerning the law*, the legal system or the administration of justice;

(iii) shall not personally participate in membership solicitation if the solicitation might reasonably be perceived as coercive or, except as permitted in Section 4C(3)(b)(i), if the membership solicitation is essentially a fund-raising mechanism;

(iv) shall not use or permit the use of the prestige of judicial office for fund-raising or membership solicitation.

See Terminology, "law."

Commentary:

A judge may solicit membership or endorse or encourage membership efforts for an organization devoted to the improvement of the law, the legal system or the administration of justice or a nonprofit educational, religious, charitable, fraternal or civic organization as long as the solicitation cannot reasonably be perceived as coercive and is not essentially a fund-raising mechanism. Solicitation of funds for an organization and solicitation of memberships similarly involve the danger that the person solicited will feel obligated to respond favorably to the solicitor if the solicitor is in a position of influence or control. A judge must not engage in direct, individual solicitation of funds or memberships in person, in writing or by telephone except in the following cases: 1) a judge may solicit for funds or memberships other judges over whom the judge does not exercise supervisory or appellate authority, 2) a judge may solicit other persons for membership in the organizations described above if neither those persons nor persons with whom they are affiliated are likely ever to appear before the court on which the judge serves and 3) a judge who is an officer of such

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or otherwise.

an organization may send a general membership solicitation mailing over the judge's signature.

Use of an organization letterhead for fund-raising or membership solicitation does not violate Section 4C(3)(b) provided the letterhead lists only the judge's name and office or other position in the organization, and, if comparable designations are listed for other persons, the judge's judicial designation. In addition, a judge must also make reasonable efforts to ensure that the judge's staff, court officials and others subject to the judge's direction and control do not solicit funds on the judge's behalf for any purpose, charitable or otherwise.

A judge must not be a speaker or guest of honor at an organization's fund-raising event, but mere attendance at such an event is permissible if otherwise consistent with this Code.

~~(3) A judge should not give investment advice to such an organization, but may serve on its board of directors or trustees even though it has the responsibility for approving investment decisions.~~

[No ABA counterpart]

C.D. Financial Activities.

~~(1) A judge should refrain from financial and business dealings that tend to reflect adversely on the judge's impartiality, interfere with the proper performance of judicial duties, exploit the judicial position, or involve the judge in frequent transactions with lawyers or persons likely to come before the court on which the judge serves.~~

~~(1) A judge shall not engage in financial and business dealings that:~~

~~(a) may reasonably be perceived to exploit the judge's judicial position, or~~

~~(b) involve the judge in frequent transactions or continuing business relationships with those lawyers or other persons likely to come before the court on which the judge serves.~~

Commentary:

The Time for Compliance provision of this Code (Application, Section F) postpones the time for compliance with certain provisions of this Section in some cases.

D. Financial Activities.

(1) A judge shall not engage in financial and business dealings that:

(a) may reasonably be perceived to exploit the judge's judicial position, or

(b) involve the judge in frequent transactions or continuing business relationships with those lawyers or other persons likely to come before the court on which the judge serves.

Commentary:

The Time for Compliance provision of this Code (Application, Section F) postpones the time for compliance with certain provisions of this Section in some cases.

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When a judge acquires in a judicial capacity information, such as material contained in filings with the court, that is not yet generally known, the judge must not use the information for private gain. See Section 2B; see also Section 3B(11).

A judge must avoid financial and business dealings that involve the judge in frequent transactions or continuing business relationships with persons likely to come either before the judge personally or before other judges on the judge's court. In addition, a judge should discourage members of the judge's family from engaging in dealings that would reasonably appear to exploit the judge's judicial position. This rule is necessary to avoid creating an appearance of exploitation of office or favoritism and to minimize the potential for disqualification. With respect to affiliation of relatives of judge with law firms appearing before the judge, see Commentary to Section 3E(1) relating to disqualification.

Participation by a judge in financial and business dealings is subject to the general prohibitions in Section 4A against activities that tend to reflect adversely on impartiality, demean the judicial office, or interfere with the proper performance of judicial duties. Such participation is also subject to the general prohibition in Canon 2 against activities involving impropriety or the appearance of impropriety and the prohibition in Section 2B against the misuse of the prestige of judicial office. In addition, a judge must maintain high standards of conduct in all of the judge's activities, as set forth in Canon 1. See Commentary for Section 4B regarding use of the phrase "subject to the requirements of this Code."

~~(2) Subject to the requirements of subsection (1), a judge may hold and manage investments, including real estate, and engage in other remunerative activity, but should not serve as an officer, director, manager, advisor, or employee of any business.~~

(2) A judge may, subject to the requirements of this Code, hold and manage investments of the judge and members of the judge's family*, including real estate, and engage in other remunerative activity.

See Terminology, "member[s] of the judge's family."

Commentary:

This Section provides that, subject to the requirements of this Code, a judge

When a judge acquires in a judicial capacity information, such as material contained in filings with the court, that is not yet generally known, the judge must not use the information for private gain. See Section 2B; see also Section 3B(11).

A judge must avoid financial and business dealings that involve the judge in frequent transactions or continuing business relationships with persons likely to come either before the judge personally or before other judges on the judge's court. In addition, a judge should discourage members of the judge's family from engaging in dealings that would reasonably appear to exploit the judge's judicial position. This rule is necessary to avoid creating an appearance of exploitation of office or favoritism and to minimize the potential for disqualification. With respect to affiliation of relatives of judge with law firms appearing before the judge, see Commentary to Section 3E(1) relating to disqualification.

Participation by a judge in financial and business dealings is subject to the general prohibitions in Section 4A against activities that tend to reflect adversely on impartiality, demean the judicial office, or interfere with the proper performance of judicial duties. Such participation is also subject to the general prohibition in Canon 2 against activities involving impropriety or the appearance of impropriety and the prohibition in Section 2B against the misuse of the prestige of judicial office. In addition, a judge must maintain high standards of conduct in all of the judge's activities, as set forth in Canon 1. See Commentary for Section 4B regarding use of the phrase "subject to the requirements of this Code."

(2) A judge may, subject to the requirements of this Code, hold and manage investments of the judge and members of the judge's family*, including real estate, and engage in other remunerative activity.

See Terminology, "member[s] of the judge's family."

Commentary:

This Section provides that, subject to the requirements of this Code, a judge

Underline = additions; ~~strikeout~~ = deletions.

may hold and manage investments owned solely by the judge, investments owned solely by a member or members of the judge's family, and investments owned jointly by the judge and members of the judge's family.

(3) A judge shall not serve as an officer, director, manager, general partner, advisor or employee of any business entity.

(34) A judge ~~should~~ shall manage ~~his or her~~ the judge's investments and other financial interests to minimize the number of cases in which the judge is disqualified. As soon as ~~one~~ the judge can do so without serious financial detriment, a the judge ~~should~~ shall ~~become~~ divested ~~himself or herself~~ of investments and other financial interests that might require frequent disqualification.

~~(4) Neither a judge nor a family member residing in the same household should accept a gift, bequest, favor, or loan from anyone except as follows:~~

(5) A judge shall not accept, and shall urge members of the judge's family

may hold and manage investments owned solely by the judge, investments owned solely by a member or members of the judge's family, and investments owned jointly by the judge and members of the judge's family.

(3) A judge shall not serve as an officer, director, manager, general partner, advisor or employee of any business entity except that a judge may, subject to the requirements of this Code, manage and participate in:

(a) a business closely held by the judge or members of the judge's family*, or

(b) a business entity primarily engaged in investment of the financial resources of the judge or members of the judge's family.

See Terminology, "member[s] of the judge's family."

Commentary:

Subject to the requirements of this Code, a judge may participate in a business that is closely held either by the judge alone, by members of the judge's family, or by the judge and members of the judge's family.

Although participation by a judge in a closely-held family business might otherwise be permitted by Section 4D(3), a judge may be prohibited from participation by other provisions of this Code when, for example, the business entity frequently appears before the judge's court or the participation requires significant time away from judicial duties. Similarly, a judge must avoid participating in a closely-held family business if the judge's participation would involve misuse of the prestige of judicial office.

(4) A judge shall manage the judge's investments and other financial interests to minimize the number of cases in which the judge is disqualified. As soon as the judge can do so without serious financial detriment, the judge shall divest himself or herself of investments and other financial interests that might require frequent disqualification.

(5) A judge shall not accept, and shall urge members of the judge's family

Underline = additions; ~~strikeout~~ = deletions.

~~residing in the judge's household* not to accept, a gift, bequest, favor or loan from anyone except for:~~

See Terminology, "member of the judge's family residing in the judge's household."

Commentary:

Section 4D(5) does not apply to contributions to a judge's campaign for judicial office, a matter governed by Canon 5.

Because a gift, bequest, favor or loan to a member of the judge's family residing in the judge's household might be viewed as intended to influence the judge, a judge must inform those family members of the relevant ethical constraints upon the judge in this regard and discourage those family members from violating them. A judge cannot, however, reasonably be expected to know or control all of the financial or business activities of all family members residing in the judge's household.

~~(a) a judge may accept a gift incident to a public testimonial to the judge, books, tapes and other resource materials supplied by publishers on a complimentary basis for official use; or an invitation to the judge and the judge's spouse or guest to attend a bar-related function or an activity devoted to the improvement of the law*, the legal system, judicial administration, or the administration of justice;~~

See Terminology, "law."

Commentary:

Acceptance of an invitation to a law-related function is governed by Section 4D(5)(a); acceptance of an invitation paid for by an individual lawyer or group of lawyers is governed by Section 4D(5)(h).

A judge may accept a public testimonial or a gift incident thereto only if the donor organization is not an organization whose members comprise or frequently represent the same side in litigation, and the testimonial and gift are otherwise in compliance with other provisions of this Code. See Sections 4A(1) and 2B.

~~(b) a judge or a family member residing in the same household may accept~~

residing in the judge's household* not to accept, a gift, bequest, favor or loan from anyone except for:

See Terminology, "member of the judge's family residing in the judge's household."

Commentary:

Section 4D(5) does not apply to contributions to a judge's campaign for judicial office, a matter governed by Canon 5.

Because a gift, bequest, favor or loan to a member of the judge's family residing in the judge's household might be viewed as intended to influence the judge, a judge must inform those family members of the relevant ethical constraints upon the judge in this regard and discourage those family members from violating them. A judge cannot, however, reasonably be expected to know or control all of the financial or business activities of all family members residing in the judge's household.

(a) a gift incident to a public testimonial, books, tapes and other resource materials supplied by publishers on a complimentary basis for official use, or an invitation to the judge and the judge's spouse or guest to attend a bar-related function or an activity devoted to the improvement of the law*, the legal system or the administration of justice;

See Terminology, "law."

Commentary:

Acceptance of an invitation to a law-related function is governed by Section 4D(5)(a); acceptance of an invitation paid for by an individual lawyer or group of lawyers is governed by Section 4D(5)(h).

A judge may accept a public testimonial or a gift incident thereto only if the donor organization is not an organization whose members comprise or frequently represent the same side in litigation, and the testimonial and gift are otherwise in compliance with other provisions of this Code. See Sections 4A(1) and 2B.

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~~ordinary social hospitality; a gift, bequest, favor, or loan from a relative; a wedding or engagement gift; a loan from a lending institution in its regular course of business on the same terms generally available to persons who are not judges; or a scholarship or fellowship awarded on the same terms applied to other applicants;~~

(b) a gift, award or benefit incident to the business, profession or other separate activity of a spouse or other family member of a judge residing in the judge's household, including gifts, awards and benefits for the use of both the spouse or other family member and the judge (as spouse or family member), provided the gift, award or benefit could not reasonably be perceived as intended to influence the judge in the performance of judicial duties;

(c) ordinary social hospitality;

(d) a gift for a special occasion from a relative or friend, if the gift is fairly commensurate with the occasion and the relationship;

Commentary:

A gift to a judge, or to a member of the judge's family living in the judge's household, that is excessive in value raises questions about the judge's impartiality and the integrity of the judicial office and might require disqualification of the judge where disqualification would not otherwise be required. See, however, Section 4D(5)(e).

(e) a gift, bequest, favor or loan from a relative or close personal friend whose appearance or interest in a case would in any event require disqualification under Section 3E;

(f) a loan from a lending institution in its regular course of business on the same terms generally available to persons who are not judges;

(g) a scholarship or fellowship awarded on the same terms and based on the same criteria applied to other applicants; or

(h) a judge or a family member residing in the same household may accept any other gift, bequest, favor, or loan only if: the donor is not a party or other person who has come or is likely to come or whose interests have come

(b) a gift, award or benefit incident to the business, profession or other separate activity of a spouse or other family member of a judge residing in the judge's household, including gifts, awards and benefits for the use of both the spouse or other family member and the judge (as spouse or family member), provided the gift, award or benefit could not reasonably be perceived as intended to influence the judge in the performance of judicial duties;

(c) ordinary social hospitality;

(d) a gift from a relative or friend, for a special occasion, such as a wedding, anniversary or birthday, if the gift is fairly commensurate with the occasion and the relationship;

Commentary:

A gift to a judge, or to a member of the judge's family living in the judge's household, that is excessive in value raises questions about the judge's impartiality and the integrity of the judicial office and might require disqualification of the judge where disqualification would not otherwise be required. See, however, Section 4D(5)(e).

(e) a gift, bequest, favor or loan from a relative or close personal friend whose appearance or interest in a case would in any event require disqualification under Section 3E;

(f) a loan from a lending institution in its regular course of business on the same terms generally available to persons who are not judges;

(g) a scholarship or fellowship awarded on the same terms and based on the same criteria applied to other applicants; or

(h) any other gift, bequest, favor or loan, only if: the donor is not a party or other person who has come or is likely to come or whose interests have come or are likely to come before the judge; and, if its value exceeds

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or are likely to come before the judge; and, if its value exceeds ~~\$100~~\$150, the judge reports it in the same manner as ~~he or she~~ the judge reports compensation in ~~Canon 6C~~Section 4H.

Commentary:

Section 4D(5)(h) prohibits judges from accepting gifts, favors, bequests or loans from lawyers or their firms if they have come or are likely to come before the judge; it also prohibits gifts, favors, bequests or loans from clients of lawyers or their firms when the clients' interests have come or are likely to come before the judge.

(5) For the purposes of this section "family member residing in the same household" means ~~any relatives of a judge by blood or marriage, or a person treated by a judge as a member of the family, who resides in the judge's household.~~

[See Terminology section, above]

(6) A judge is not required by this Code to disclose his or her income, debts, or investments, except as provided in this Canon and Canons 3 and 6.

[See Section 4I, below]

(7) Information acquired by a judge in a judicial capacity should not be used or disclosed by the judge in financial dealings or for any other purpose not related to the judicial duties.

[See Section 3B(12), above]

~~D~~E. Fiduciary Activities.

(1) A judge ~~should~~ shall not serve as ~~the~~ executor, administrator or ~~other personal representative, trustee, guardian, conservator, attorney in fact or other fiduciary, except for the estate, trust, conservatorship or person of a family member, and then only if such service will not interfere with the proper performance of judicial duties. "Family member" includes a spouse, child, grandchild, parent, grandparent, or other relative or person with whom the judge maintains a close familial relationship. As a family fiduciary a judge is subject to the following restrictions:~~

\$150.00, the judge reports it in the same manner as the judge reports compensation in Section 4H.

Commentary:

Section 4D(5)(h) prohibits judges from accepting gifts, favors, bequests or loans from lawyers or their firms if they have come or are likely to come before the judge; it also prohibits gifts, favors, bequests or loans from clients of lawyers or their firms when the clients' interests have come or are likely to come before the judge.

E. Fiduciary Activities.

(1) A judge shall not serve as executor, administrator or other personal representative, trustee, guardian, attorney in fact or other fiduciary*, except for the estate, trust, or person of a member of the judge's family*, and then only if such service will not interfere with the proper performance of judicial duties.

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(~~1~~2) A judge ~~should~~ shall not serve as fiduciary* if it is likely that ~~the judge~~ the judge will be engaged in proceedings that would ordinarily come before the judge, or if the estate, trust, ~~conservatorship~~ or ward becomes involved in adversary proceedings in the court on which the judge serves or one under its appellate jurisdiction.

~~(2) While acting as a fiduciary a judge is subject to the same restrictions on financial activities that apply to the judge in a personal capacity.~~

~~(3) The same restrictions on financial activities that apply to a judge personally also apply to the judge while acting in a fiduciary* capacity.~~

See Terminology, "fiduciary."

See Terminology, "member of the judge's family."

Commentary:

The Time for Compliance provision of this Code (Application, Section F) postpones the time for compliance with certain provisions of this Section in some cases.

The restrictions imposed by this Canon may conflict with the judge's obligation as a fiduciary. For example, a judge should resign as trustee if detriment to the trust would result from divestiture of holdings the retention of which would place the judge in violation of Section 4D(4).

~~**E. Arbitration.** A judge should not act as an arbitrator or mediator.~~

F. Service as Arbitrator or Mediator. A judge shall not act as an arbitrator or mediator or otherwise perform judicial functions in a private capacity unless expressly authorized by law*. A periodic part-time judge* may participate as mediator or arbitrator if:

(1) ~~the judge does not participate during the period or any judicial assignment,~~

(2) ~~the judge is disqualified from mediation and arbitration in matters in which the judge served as judge, and is disqualified as judge from matters in which the judge participated as mediator or arbitrator, unless all parties to the proceeding consent after consultation, and~~

(2) A judge shall not serve as fiduciary* if it is likely that the judge as a fiduciary will be engaged in proceedings that would ordinarily come before the judge, or if the estate, trust, or ward becomes involved in adversary proceedings in the court on which the judge serves or one under its appellate jurisdiction.

(3) The same restrictions on financial activities that apply to a judge personally also apply to the judge while acting in a fiduciary* capacity.

See Terminology, "fiduciary."

See Terminology, "member of the judge's family."

Commentary:

The Time for Compliance provision of this Code (Application, Section F) postpones the time for compliance with certain provisions of this Section in some cases.

The restrictions imposed by this Canon may conflict with the judge's obligation as a fiduciary. For example, a judge should resign as trustee if detriment to the trust would result from divestiture of holdings the retention of which would place the judge in violation of Section 4D(4).

F. Service as Arbitrator or Mediator. A judge shall not act as an arbitrator or mediator or otherwise perform judicial functions in a private capacity unless expressly authorized by law*.

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(3) the participation does not reflect adversely on the part-time judge's impartiality."

See Terminology, "law."

Commentary:

Section 4F does not prohibit a judge from participating in arbitration, mediation or settlement conferences performed as part of judicial duties.

FG. Practice of Law. A judge ~~should~~ shall not practice law. Notwithstanding this prohibition, a judge may act pro se and may, without compensation, give legal advice to and draft or review documents for a member of the judge's family*, but may not act as advocate or negotiator nor make an appearance as counsel for a member of the judge's family in a legal matter.

See Terminology, "member of the judge's family."

Commentary:

This prohibition refers to the practice of law in a representative capacity and not in a pro se capacity. A judge may act for himself or herself in all legal matters, including matters involving litigation and matters involving appearances before or other dealings with legislative and other governmental bodies. However, in so doing, a judge must not abuse the prestige of office to advance the interests of the judge or the judge's family. See Section 2(B).

The Code allows a judge to give legal advice to and draft legal documents for members of the judge's family, so long as the judge receives no compensation. A judge must not, however, act as an advocate or negotiator for a member of the judge's family in a legal matter.

A retired judge who serves or intends to serve in a part-time capacity shall not practice law while available for judicial assignment, but may serve as an arbitrator or mediator as provided in Section 4F. A roster of retired judges available for assignment is maintained by the Supreme Court.

G. Extra-Judicial Appointments. ~~A judge should not accept appointment to a governmental committee, commission, or other position that is~~

See Terminology, "law."

Commentary:

Section 4F does not prohibit a judge from participating in arbitration, mediation or settlement conferences performed as part of judicial duties.

G. Practice of Law. A judge shall not practice law. Notwithstanding this prohibition, a judge may act pro se and may, without compensation, give legal advice to and draft or review documents for a member of the judge's family*.

See Terminology, "member of the judge's family."

Commentary:

This prohibition refers to the practice of law in a representative capacity and not in a pro se capacity. A judge may act for himself or herself in all legal matters, including matters involving litigation and matters involving appearances before or other dealings with legislative and other governmental bodies. However, in so doing, a judge must not abuse the prestige of office to advance the interests of the judge or the judge's family. See Section 2(B).

The Code allows a judge to give legal advice to and draft legal documents for members of the judge's family, so long as the judge receives no compensation. A judge must not, however, act as an advocate or negotiator for a member of the judge's family in a legal matter.

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~~concerned with issues of fact or policy on matters other than the improvement of the law, the legal system, judicial administration, or the administration of justice. A judge, however, may represent the judge's country, state, or locality on ceremonial occasions or in connection with historical, educational, and cultural activities.~~

[See Canon 4C(2) above]

CANON 6

Canon 6, new in the 1972 Code, reflected concerns about conflicts of interest and appearances of impropriety arising from compensation for off-the-bench activities. Since 1972, however, reporting requirements that are much more comprehensive with respect to what must be reported and with whom reports must be filed have been adopted by many jurisdictions. The Committee believes that although reports of compensation for extra-judicial activities should be required, reporting requirements preferably should be developed to suit the respective jurisdictions, not simply adopted as set forth in a national model code of judicial conduct. Because of the Committee's concern that deletion of this Canon might lead to the misconception that reporting compensation for extra-judicial activities is no longer important, the substance of Canon 6 is carried forward as Section 4H in this Code for adoption in those jurisdictions that do not have other reporting requirements. In jurisdictions that have separately established reporting requirements, Section 4H(2) (Public Reporting) may be deleted and the caption for Section 4H modified appropriately.

H. Compensation, Reimbursement and Reporting.

~~A Judge Should Regularly File Reports of Compensation Received for Quasi-Judicial and Extra-Judicial Activities~~

~~(1) Compensation and Reimbursement. A judge may receive compensation and reimbursement of expenses for the quasi-judicial and extra-judicial activities permitted by this Code, if the source of such payments does not give the appearance of influencing the judge's performance of in judicial duties or otherwise give the appearance of impropriety, subject to the following restrictions:~~

~~**A. Compensation.** (a) Compensation should shall not exceed a reasonable amount nor should shall it exceed what a person who is not a judge would~~

H. Compensation, Reimbursement and Reporting.

(1) **Compensation and Reimbursement.** A judge may receive compensation and reimbursement of expenses for the extra-judicial activities permitted by this Code, if the source of such payments does not give the appearance of influencing the judge's performance of judicial duties or otherwise give the appearance of impropriety.

(a) Compensation shall not exceed a reasonable amount nor shall it exceed what a person who is not a judge would receive for the same activity.

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receive for the same activity.

~~B. Expense Reimbursement.~~ (b) Expense reimbursement ~~should~~ shall be limited to the actual cost of travel, food, and lodging reasonably incurred by the judge and, where appropriate to the occasion, by the judge's spouse or ~~guest~~. Any payment in excess of such an amount is compensation.

~~C. Public Reports.~~ (2) ~~Public Reports.~~ A judge ~~should~~ shall report the date, place, and nature of any activity for which the judge received compensation, and the name of the payor and the amount of compensation so received. Income from investments, whether in real or personal property and other sources where the judge does not render service in exchange for the income is not extra-judicial compensation to the judge. This report ~~should~~ shall be made annually, on or before the first day of May each year, and should be filed as a public document in the office of the State Court Administrator. ~~Canon 6C shall become effective on May 1, 1975.~~

See Terminology, "law."

Commentary:

See Section 4D(5) regarding reporting of gifts, bequests and loans.

The Code does not prohibit a judge from accepting honoraria or speaking fees provided that the compensation is reasonable and commensurate with the task performed. A judge should ensure, however, that no conflicts are created by the arrangement. A judge must not appear to trade on the judicial position for personal advantage. Nor should a judge spend significant time away from court duties to meet speaking or writing commitments for compensation. In addition, the source of the payment must not raise any question of undue influence or the judge's ability or willingness to be impartial.

I. ~~Disclosure of a judge's income, debts, investments or other assets is required only to the extent provided in this Canon and in Sections 3E and 3E, or as otherwise required by law*.~~

See Terminology, "law."

Commentary:

(b) Expense reimbursement shall be limited to the actual cost of travel, food and lodging reasonably incurred by the judge and, where appropriate to the occasion, by the judge's spouse or guest. Any payment in excess of such an amount is compensation.

(2) Public Reports. A judge shall report the date, place and nature of any activity for which the judge received compensation, and the name of the payor and the amount of compensation so received. Compensation or income of a spouse attributed to the judge by operation of a community property law is not extra-judicial compensation to the judge. The judge's report shall be made at least annually and shall be filed as a public document in the office of the clerk of the court on which the judge serves or other office designated by law*.

See Terminology, "law."

Commentary:

See Section 4D(5) regarding reporting of gifts, bequests and loans.

The Code does not prohibit a judge from accepting honoraria or speaking fees provided that the compensation is reasonable and commensurate with the task performed. A judge should ensure, however, that no conflicts are created by the arrangement. A judge must not appear to trade on the judicial position for personal advantage. Nor should a judge spend significant time away from court duties to meet speaking or writing commitments for compensation. In addition, the source of the payment must not raise any question of undue influence or the judge's ability or willingness to be impartial.

I. Disclosure of a judge's income, debts, investments or other assets is required only to the extent provided in this Canon and in Sections 3E and 3F, or as otherwise required by law*.

See Terminology, "law."

Commentary:

Underline = additions; strikethrough = deletions.

Section 3E requires a judge to disqualify himself or herself in any proceeding in which the judge has an economic interest. See "economic interest" as explained in the Terminology Section. Section 4H requires a judge to report all compensation the judge received for activities outside judicial office. A judge has the rights of any other citizen, including the right to privacy of the judge's financial affairs, except to the extent that limitations established by law are required to safeguard the proper performance of the judge's duties.

Section 3E requires a judge to disqualify himself or herself in any proceeding in which the judge has an economic interest. See "economic interest" as explained in the Terminology Section. Section 4D requires a judge to refrain from engaging in business and from financial activities that might interfere with the impartial performance of judicial duties; Section 4H requires a judge to report all compensation the judge received for activities outside judicial office. A judge has the rights of any other citizen, including the right to privacy of the judge's financial affairs, except to the extent that limitations established by law are required to safeguard the proper performance of the judge's duties.

CANON 75

A Judge or Judicial Candidate ~~Should~~ Shall Refrain From Inappropriate Political Activity ~~Inappropriate to Judicial Office~~

CANON 5

A Judge or Judicial Candidate Shall Refrain From Inappropriate Political Activity

Introductory Note to Canon 5: There is wide variation in the methods of judicial selection used, both among jurisdictions and within the jurisdictions themselves. In a given state, judges may be selected by one method initially, retained by a different method, and selected by still another method to fill interim vacancies.

According to figures compiled in 1987 by the National Center for State Courts, 32 states and the District of Columbia use a merit selection method (in which an executive such as a governor appoints a judge from a group of nominees selected by a judicial nominating commission) to select judges in the state either initially or to fill an interim vacancy. Of those 33 jurisdictions, a merit selection method is used in 18 jurisdictions to choose judges of courts of last resort, in 13 jurisdictions to choose judges of intermediate appellate courts, in 12 jurisdictions to choose judges of general jurisdiction courts and in 5 jurisdictions to choose judges of limited jurisdiction courts.

Methods of judicial selection other than merit selection include nonpartisan election (10 states use it for initial selection at all court levels, another 10 states use it for initial selection for at least one court level) and partisan election (8 states use it for initial selection at all court levels, another 7 states use it for initial selection for at least one level). In a small minority of the states, judicial selection methods include executive or legislative

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appointment (without nomination of a group of potential appointees by a judicial nominating commission) and court selection. In addition, the federal judicial system utilizes an executive appointment method. See State Court Organization 1987 (National Center for State Courts, 1988).

A. ~~Political Conduct in General:~~ All Judges and Candidates.

(1) ~~A~~ Except as authorized in Sections 5B (2) and 5C(1), a judge or a candidate for election to judicial office ~~should~~ shall not:

- (a) act as a leader or hold any office in a political organization;
- (b) ~~make speeches for a political organization or candidate or publicly endorse~~ or publicly oppose another a candidate for public office;
- (c) ~~make speeches on behalf of a political organization*;~~
- (d) attend political gatherings; or
- (~~e~~) solicit funds for, or pay an assessment to or make a contribution to a political organization or candidate, attend political gatherings, or purchase tickets for political party dinners, or other functions, except as authorized in subsection A(2).

See Terminology, "candidate."

See Terminology, "political organization."

Commentary:

A judge or candidate for judicial office retains the right to participate in the political process as a voter.

Where false information concerning a judicial candidate is made public, a judge or another judicial candidate having knowledge of the facts is not prohibited by Section 5A(1) from making the facts public.

Section 5A(1)(a) does not prohibit a candidate for elective judicial office from retaining during candidacy a public office such as county prosecutor, which is not "an office in a political organization."

A. All Judges and Candidates

(1) Except as authorized in Sections 5B(2), 5C(1) and 5C(3), a judge or a candidate* for election or appointment to judicial office shall not:

- (a) act as a leader or hold an office in a political organization;
- (b) publicly endorse or publicly oppose another candidate for public office;
- (c) make speeches on behalf of a political organization*;
- (d) attend political gatherings; or
- (e) solicit funds for, pay an assessment to or make a contribution to a political organization or candidate, or purchase tickets for political party dinners or other functions.

See Terminology, "candidate."

See Terminology, "political organization."

Commentary:

A judge or candidate for judicial office retains the right to participate in the political process as a voter.

Where false information concerning a judicial candidate is made public, a judge or another judicial candidate having knowledge of the facts is not prohibited by Section 5A(1) from making the facts public.

Section 5A(1)(a) does not prohibit a candidate for elective judicial office from retaining during candidacy a public office such as county prosecutor, which is not "an office in a political organization."

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~~Section 5A(1)(b) does not prohibit a judge or judicial candidate from privately expressing his or her views on judicial candidates or other candidates for public office. A judge may respond to official inquiries concerning a person being considered for a judgeship. See Section 2B and Commentary.~~

~~A candidate does not publicly endorse another candidate for public office by having that candidate's name on the same ticket. Committees of lawyers commonly endorse groups of judges, and this is not prohibited.~~

~~(2) A judge holding an office filled by public election between competing candidates, or a candidate for such office, may accept invitations to attend and speak on his or her own behalf at other than partisan political gatherings during the year in which the judge is a candidate for election or reelection.~~

[See Canon 5C(1)(a),(b), below]

(32) A judge ~~should~~ shall resign the judicial office on becoming a candidate* either in a party primary or in a general election for a non-judicial office, except that a the judge may continue to hold judicial office while being a candidate for election to or serving as a delegate in a state constitutional convention, if the judge is otherwise permitted by law* to do so.

See Terminology, "candidate."

See Terminology, "law."

~~(4) A judge should not engage in any other political activity except on behalf of measures to improve the law, the legal system, judicial administration, or the administration of justice.~~

[See Section 5D, below]

~~B. Campaign Conduct.~~

~~(13) A candidate*, including an incumbent judge, for a judicial office that is filled either by public election between competing candidates or on the basis of a merit system election:~~

(a) ~~should~~ shall maintain the dignity appropriate to judicial office and act in

Section 5A(1)(b) does not prohibit a judge or judicial candidate from privately expressing his or her views on judicial candidates or other candidates for public office.

A candidate does not publicly endorse another candidate for public office by having that candidate's name on the same ticket.

(2) A judge shall resign from judicial office upon becoming a candidate* for a non-judicial office either in a primary or in a general election except that the judge may continue to hold judicial office while being a candidate for election to or serving as a delegate in a state constitutional convention if the judge is otherwise permitted by law* to do so.

See Terminology, "candidate."

See Terminology, "law."

(3) A candidate* for a judicial office:

(a) shall maintain the dignity appropriate to judicial office and act in a

Underline = additions; ~~strikeout~~ = deletions.

~~a manner consistent with the integrity and independence of the judiciary, and should~~ shall encourage family members to adhere to the same standards of political conduct ~~that in support of the candidate as~~ apply to the judge candidate;

See Terminology, "member of the candidate's family."

Commentary:

Although a judicial candidate must encourage members of his or her family to adhere to the same standards of political conduct in support of the candidate that apply to the candidate, family members are free to participate in other political activity.

~~(b) should prohibit public officials or employees subject to the candidate's direction or control from doing for the candidate what he or she is prohibited from doing under this Canon, and except to the extent authorized under subsection B(2), or B(3), the candidate should not allow any other person to do for the candidate what he or she is prohibited from doing under this Canon;~~ shall prohibit employees who serve at the pleasure of the candidate*, and shall discourage other employees and officials subject to the candidate's direction and control from doing on the candidate's behalf what the candidate is prohibited from doing under the Sections of this Canon;

~~(c) except to the extent permitted by Section 5C(2), shall not authorize or knowingly* permit any other person to do for the candidate* what the candidate is prohibited from doing under the Sections of this Canon;~~

~~(cd) should~~ shall not:

~~(i) make pledges or promises of conduct in office other than the faithful and impartial performance of the duties of the office; announce his or her views on disputed legal or political issues; or misrepresent his or her identity, qualifications, present position, or other fact.~~

~~(ii) make statements that commit or appear to commit the candidate with respect to cases, controversies or issues that are likely to come before the court; or~~

~~(iii) knowingly* misrepresent the identity, qualifications, present position or other fact concerning the candidate or an opponent;~~

manner consistent with the integrity and independence of the judiciary, and shall encourage members of the candidate's family* to adhere to the same standards of political conduct in support of the candidate as apply to the candidate;

See Terminology, "member of the candidate's family."

Commentary:

Although a judicial candidate must encourage members of his or her family to adhere to the same standards of political conduct in support of the candidate that apply to the candidate, family members are free to participate in other political activity.

(b) shall prohibit employees who serve at the pleasure of the candidate*, and shall discourage other employees and officials subject to the candidate's direction and control from doing on the candidate's behalf what the candidate is prohibited from doing under the Sections of this Canon;

(c) except to the extent permitted by Section 5C(2), shall not authorize or knowingly* permit any other person to do for the candidate* what the candidate is prohibited from doing under the Sections of this Canon;

(d) shall not:

(i) make pledges or promises of conduct in office other than the faithful and impartial performance of the duties of the office;

(ii) make statements that commit or appear to commit the candidate with respect to cases, controversies or issues that are likely to come before the court; or

(iii) knowingly* misrepresent the identity, qualifications, present position or other fact concerning the candidate or an opponent;

Underline = additions; ~~strikeout~~ = deletions.

See Terminology, "candidate."

See Terminology, "knowingly."

Commentary:

Section 5A(3)(d) prohibits a candidate for judicial office from making statements that appear to commit the candidate regarding cases, controversies or issues likely to come before the court. As a corollary, a candidate should emphasize in any public statement the candidate's duty to uphold the law regardless of his or her personal views. See also Section 3B(9), the general rule on public comment by judges. Section 5A(3)(d) does not prohibit a candidate from making pledges or promises respecting improvements in court administration. Nor does this Section prohibit an incumbent judge from making private statements to other judges or court personnel in the performance of judicial duties. This Section applies to any statement made in the process of securing judicial office, such as statements to commissions charged with judicial selection. See also Rule 8.2 of the ABA Model Rules of Professional Conduct.

(e) may respond to personal attacks or attacks on the candidate's record as long as the response does not violate Section 5A(3)(d).

B. Candidates Seeking Appointment to Judicial or Other Governmental Office.

(1) A candidate* for appointment to judicial office or a judge seeking appointment to other governmental office shall not solicit or accept funds, personally or through a committee or otherwise, to support his or her candidacy.

(2) A candidate* for appointment to a judicial office or a judge seeking appointment to other governmental office shall not engage in any political activity to secure the appointment except that:

(a) such person may:

(i) communicate with the appointing authority, including any selection or nominating commission or other agency designated to screen candidates;

See Terminology, "candidate."

See Terminology, "knowingly."

Commentary:

Section 5A(3)(d) prohibits a candidate for judicial office from making statements that appear to commit the candidate regarding cases, controversies or issues likely to come before the court. As a corollary, a candidate should emphasize in any public statement the candidate's duty to uphold the law regardless of his or her personal views. See also Section 3B(9), the general rule on public comment by judges. Section 5A(3)(d) does not prohibit a candidate from making pledges or promises respecting improvements in court administration. Nor does this Section prohibit an incumbent judge from making private statements to other judges or court personnel in the performance of judicial duties. This Section applies to any statement made in the process of securing judicial office, such as statements to commissions charged with judicial selection and tenure and legislative bodies confirming appointment. See also Rule 8.2 of the ABA Model Rules of Professional Conduct.

(e) may respond to personal attacks or attacks on the candidate's record as long as the response does not violate Section 5A(3)(d).

B. Candidates Seeking Appointment to Judicial or Other Governmental Office.

(1) A candidate for appointment to judicial office or a judge seeking other governmental office shall not solicit or accept funds, personally or through a committee or otherwise, to support his or her candidacy.*

(2) A candidate for appointment to a judicial office or a judge seeking other governmental office shall not engage in any political activity to secure the appointment except that:*

(a) such person may:

(i) communicate with the appointing authority, including any selection or nominating commission or other agency designated to screen candidates;

Underline = additions; ~~strikeout~~ = deletions.

(ii) seek support or endorsement for the appointment from organizations that regularly make recommendations for reappointment or appointment to the office, and from individuals to the extent requested or required by those specified in Section 5B(2)(a); and

(iii) provide to those specified in Sections 5B(2)(a)(i) and 5B(2)(a)(ii) information as to his or her qualifications for the office;

(b) A non-judge candidate* for appointment to judicial office may, in addition, unless otherwise prohibited by law*:

(i) retain an office in a political organization*;

(ii) attend political gatherings, and

(iii) continue to pay ordinary assessments and ordinary contributions to a political organization or candidate and purchase tickets for political party dinners or other functions.

See Terminology, "candidate."

See Terminology, "law."

See Terminology, "political organization."

Commentary:

Section 5B(2) provides a limited exception to the restrictions imposed by Section 5A(1) and 5D. Under Section 5B(2), candidates seeking reappointment to the same judicial office or appointment to another judicial office or other governmental office may apply for the appointment and seek appropriate support.

Although under Section 5B(2) non-judge candidates seeking appointment to judicial office are permitted during candidacy to retain office in a political organization, attend political gatherings and pay ordinary dues and assessments, they remain subject to other provisions of this Code during candidacy. See Sections 5B(1), 5B(2)(a), 5E and Application Section.

C. Judges and Candidates Subject to Public Election.

(1) A judge or a candidate* subject to public election* may, except as prohibited by law*, when a candidate for public election:

(ii) seek support or endorsement for the appointment from organizations that regularly make recommendations for reappointment or appointment to the office, and from individuals to the extent requested or required by those specified in Section 5B(2)(a); and

(iii) provide to those specified in Sections 5B(2)(a)(i) and 5B(2)(a)(ii) information as to his or her qualifications for the office;

(b) A non-judge candidate* for appointment to judicial office may, in addition, unless otherwise prohibited by law*:

(i) retain an office in a political organization*;

(ii) attend political gatherings, and

(iii) continue to pay ordinary assessments and ordinary contributions to a political organization or candidate and purchase tickets for political party dinners or other functions.

See Terminology, "candidate."

See Terminology, "law."

See Terminology, "political organization."

Commentary:

Section 5B(2) provides a limited exception to the restrictions imposed by Section 5A(1) and 5D. Under Section 5B(2), candidates seeking reappointment to the same judicial office or appointment to another judicial office or other governmental office may apply for the appointment and seek appropriate support.

Although under Section 5B(2) non-judge candidates seeking appointment to judicial office are permitted during candidacy to retain office in a political organization, attend political gatherings and pay ordinary dues and assessments, they remain subject to other provisions of this Code during candidacy. See Sections 5B(1), 5B(2)(a), 5E and Application Section.

C. Judges and Candidates Subject to Public Election.

(1) A judge or a candidate* subject to public election* may, except as prohibited by law*:

Underline = additions; ~~strikeout~~ = deletions.

~~(a) speak to gatherings on his or her own behalf;~~

~~(b) appear in newspaper, television and other media advertisements supporting his or her candidacy; and~~

~~(c) distribute pamphlets and other promotional campaign literature supporting his or her candidacy.~~

See Terminology, "candidate."

See Terminology, "public election."

See Terminology, "law."

~~(2) A candidate, including an incumbent judge, for a judicial office that is filled by public election between competing candidates should not solicit or accept campaign funds, or solicit publicly stated support, but may establish committees of responsible persons to secure and manage the expenditure of funds for the campaign and to obtain public statements of support. Such committees are not prohibited from soliciting campaign contributions and public support from lawyers. A candidate should not use or permit the use of campaign contributions for private benefit. A candidate* shall not~~

(a) at any time:

(i) purchase tickets for and attend political gatherings;

(ii) identify himself or herself as a member of a political party*; and

(iii) contribute to a political organization*;

(b) when a candidate for election:

(i) speak to gatherings on his or her own behalf;

(ii) appear in newspaper, television and other media advertisements supporting his or her candidacy;

(iii) distribute pamphlets and other promotional campaign literature supporting his or her candidacy; and

(iv) publicly endorse or publicly oppose other candidates for the same judicial office in a public election in which the judge or judicial candidate is running.

See Terminology, "candidate."

See Terminology, "public election."

See Terminology, "law."

See Terminology, "political organization."

Commentary:

Section 5C(1) permits judges subject to election at any time to be involved in limited political activity, Section 5D, applicable solely to incumbent judges, would otherwise bar this activity.

(2) A candidate* shall not personally solicit or accept campaign contributions or solicit publicly stated support. A candidate may, however, establish committees of responsible persons to conduct campaigns for the candidate through media advertisements, brochures, mailings, candidate forums and other means not prohibited by law. Such committees may solicit and accept reasonable campaign contributions, manage the expenditure of funds for the candidate's campaign and obtain public statements of support for his or her candidacy. Such committees are not

Underline = additions; ~~strikeout~~ = deletions.

~~personally solicit or accept campaign contributions or solicit publicly stated support. A candidate may, however, establish committees to conduct campaigns for the candidate through media advertisements, brochures, mailings, candidate forums and other means not prohibited by law. Such committees may solicit and accept campaign contributions, manage the expenditure of funds for the candidate's campaign and obtain public statements of support for his or her candidacy. Such committees are not prohibited from soliciting and accepting campaign contributions and public support from lawyers. Such committees should not disclose to the candidate the identity of campaign contributors. A candidate's committees may solicit contributions and public support for the candidate's campaign no earlier than one year before an election and no later than 90 days after the last election in which the candidate participates during the election year. A candidate shall not use or permit the use of campaign contributions for the private benefit of the candidate or others.~~

See Terminology, "candidate."

Commentary:

~~Section 5C(2) permits a candidate, other than a candidate for appointment, to establish campaign committees to solicit and accept public support and reasonable financial contributions. Campaign contributions of which a judge has knowledge, made by lawyers or others who appear before the judge, may be relevant to disqualification under Section 3E. A candidate's committees have a duty not to disclose to the candidate the identity of campaign contributors.~~

~~Campaign committees established under Section 5C(2) should manage campaign finances responsibly, avoiding deficits that might necessitate post-election fund-raising, to the extent possible.~~

~~Section 5C(2) does not prohibit a candidate from initiating an evaluation by a judicial selection commission or bar association, or, subject to the requirements of this Code, from responding to a request for information from any organization.~~

~~(3) An incumbent judge who is a candidate for retention in or re-election to office without a competing candidate, and whose candidacy has drawn active opposition, may campaign in response thereto and may obtain~~

prohibited from soliciting and accepting reasonable campaign contributions and public support from lawyers. A candidate's committees may solicit contributions and public support for the candidate's campaign no earlier than [one year] before an election and no later than [90] days after the last election in which the candidate participates during the election year. A candidate shall not use or permit the use of campaign contributions for the private benefit of the candidate or others.

See Terminology, "candidate."

Commentary:

Section 5C(2) permits a candidate, other than a candidate for appointment, to establish campaign committees to solicit and accept public support and reasonable financial contributions. At the start of the campaign, the candidate must instruct his or her campaign committees to solicit or accept only contributions that are reasonable under the circumstances. Though not prohibited, campaign contributions of which a judge has knowledge, made by lawyers or others who appear before the judge, may be relevant to disqualification under Section 3E.

Campaign committees established under Section 5C(2) should manage campaign finances responsibly, avoiding deficits that might necessitate post-election fund-raising, to the extent possible.

Section 5C(2) does not prohibit a candidate from initiating an evaluation by a judicial selection commission or bar association, or, subject to the requirements of this Code, from responding to a request for information from any organization.

Underline = additions; ~~strikeout~~ = deletions.

~~publicly stated support and campaign funds in the manner provided in subsection B(2).~~

[See Section 5A(3)(c), above]

D. Incumbent Judges. A judge shall not engage in any political activity except (i) as authorized under any other Section of this Code, (ii) on behalf of measures to improve the law*, the legal system or the administration of justice, or (iii) as expressly authorized by law.

See Terminology, "law."

Commentary:

Neither Section 5D nor any other section of this Code prohibits a judge in the exercise of administrative functions from engaging in planning and other official activities with members of the executive and legislative branches of government. With respect to a judge's activity on behalf of measures to improve the law, the legal system and the administration of justice, see Commentary to Section 4B and Section 4C(1) and its Commentary.

E. Applicability. Canon 5 generally applies to all incumbent judges and judicial candidates*. A successful candidate, whether or not an incumbent, is subject to judicial discipline for his or her campaign conduct; an unsuccessful candidate who is a lawyer is subject to lawyer discipline for his or her campaign conduct. A lawyer who is a candidate for judicial office is subject to Rule 8.2 of the Minnesota Rules of Professional Conduct.

(3) Except as prohibited by law*, a candidate* for judicial office in a public election* may permit the candidate's name: (a) to be listed on election materials along with the names of other candidates for elective public office, and (b) to appear in promotions of the ticket.

See Terminology, "candidate."

See Terminology, "law."

See Terminology, "public election."

Commentary:

Section 5C(3) provides a limited exception to the restrictions imposed by Section 5A(1).

D. Incumbent Judges. A judge shall not engage in any political activity except (i) as authorized under any other Section of this Code, (ii) on behalf of measures to improve the law*, the legal system or the administration of justice, or (iii) as expressly authorized by law.

See Terminology, "law."

Commentary:

Neither Section 5D nor any other section of this Code prohibits a judge in the exercise of administrative functions from engaging in planning and other official activities with members of the executive and legislative branches of government. With respect to a judge's activity on behalf of measures to improve the law, the legal system and the administration of justice, see Commentary to Section 4B and Section 4C(1) and its Commentary.

E. Applicability. Canon 5 generally applies to all incumbent judges and judicial candidates*. A successful candidate, whether or not an incumbent, is subject to judicial discipline for his or her campaign conduct; an unsuccessful candidate who is a lawyer is subject to lawyer discipline for his or her campaign conduct. A lawyer who is a candidate for judicial office is subject to [Rule 8.2(b) of the ABA Model Rules of Professional Conduct]. (An adopting jurisdiction should substitute a reference to its

Underline = additions; strikethrough = deletions.

See Terminology, "candidate."

COMPLIANCE WITH APPLICATION OF THE CODE OF JUDICIAL CONDUCT

A. Full Time Judges. Anyone, whether or not a lawyer, who is an officer of a judicial system performing judicial functions, including an officer such as a full time referee in bankruptcy, special master, court commissioner, or magistrate, is a judge for the purpose within the meaning of this Code. All judges should shall comply with this Code except as provided below.

Commentary:

The categories of judicial service in other than a full-time capacity are necessarily defined in general terms because of the widely varying forms of judicial service. For the purposes of this Section, as long as a retired judge is subject to assignment the judge is considered to "perform judicial functions." The determination of which category and, accordingly, which specific Code provisions apply to an individual judicial officer, depend upon the facts of the particular judicial service.

~~**A. Part-Time Judge.** A part-time judge is a judge who serves on a continuing or periodic basis, but is permitted by law to devote time to some other profession or occupation and whose compensation for that reason is less than that of a full-time judge. A part-time judge:~~

~~(1) is not required to comply with Canon 5C(2), D, E, F, and G, and~~

applicable rule.)

See Terminology, "candidate."

APPLICATION OF THE CODE OF JUDICIAL CONDUCT

A. Anyone, whether or not a lawyer, who is an officer of a judicial system¹ and who performs judicial functions, including an officer such as a magistrate, court commissioner, special master or referee, is a judge within the meaning of this Code. All judges shall comply with this Code except as provided below.

¹Applicability of this Code to administrative law judges should be determined by each adopting jurisdiction. Administrative law judges generally are affiliated with the executive branch of government rather than the judicial branch and each adopting jurisdiction should consider the unique characteristics of particular administrative law judge positions in adopting and adapting the Code for administrative law judges. See, e.g., Model Code of Judicial Conduct for Federal Administrative Law Judges, endorsed by the National Conference of Administrative Law Judges in February 1989.

Commentary:

The four categories of judicial service in other than a full-time capacity are necessarily defined in general terms because of the widely varying forms of judicial service. For the purposes of this Section, as long as a retired judge is subject to recall the judge is considered to "perform judicial functions." The determination of which category and, accordingly, which specific Code provisions apply to an individual judicial officer, depend upon the facts of the particular judicial service.

Underline = additions; ~~strikeout~~ = deletions.

~~Canon 6C;~~

~~(2) should not practice law in the court on which the judge serves or in any court subject to the appellate jurisdiction of that court or act as a lawyer in a proceeding in which the judge has served or in any other proceeding related thereto.~~

[See Application Section, part C, below]

B. Retired Judge. ~~A retired judge who receives the same compensation as a full-time judge on the court from which the judge retired and is eligible for recall to judicial service should comply with all the provisions of this Code except Canon 5G, but should refrain from judicial service during the period of an extra-judicial appointment not sanctioned by Canon 5G. All other retired judges eligible for recall to judicial service should comply with the provisions of this Code governing part-time judges. A retired judge who by law is not permitted to practice law is not required to comply:~~

~~(1) except while serving as a judge, with Section 4E; and~~

~~(2) at any time with Section 4E.~~

B. Retired Judge Subject to Recall. A retired judge subject to recall who by law is not permitted to practice law is not required to comply:

(1) except while serving as a judge, with Section 4E; and

(2) at any time with Section 4E.

C. Continuing Part-time Judge. A continuing part-time judge*:

(1) is not required to comply

(a) except while serving as a judge, with Section 3B(9); and

(b) at any time with Sections 4C(2), 4D(3), 4E(1), 4F, 4G, 4H, 5A(1), 5B(2) and 5D.

(2) shall not practice law in the court on which the judge serves or in any court subject to the appellate jurisdiction of the court on which the judge serves, and shall not act as a lawyer in a proceeding in which the judge has served as a judge or in any other proceeding related thereto.

See Terminology, "continuing part-time judge."

Commentary:

Underline = additions; ~~strikeout~~ = deletions.

When a person who has been a continuing part-time judge is no longer a continuing part-time judge, including a retired judge no longer subject to recall, that person may act as a lawyer in a proceeding in which he or she has served as a judge or in any other proceeding related thereto only with the express consent of all parties pursuant to [Rule 1.12(a) of the ABA Model Rules of Professional Conduct]. (An adopting jurisdiction should substitute a reference to its applicable rule).

C. Periodic Part-time Judge. A periodic part-time judge*:

(1) is not required to comply

(a) except while serving as a judge, with Section 3A(9);

(b) at any time, with Sections 4C(2), 4C(3)(a), 4D(1)(b), 4D(3), 4D(4), 4D(5), 4E, 4F, 4G, 4H, 5A(1), 5B(2) and 5D.

(2) shall not practice law in the division of the court on which the judge serves and shall not act as a lawyer in a proceeding in which the judge has served as a judge or in any other proceeding related thereto.

See Terminology, "periodic part-time judge."

Commentary:

When a person who has been a periodic part-time judge is no longer a periodic part-time judge (no longer accepts appointments), that person may act as a lawyer in a proceeding in which he or she has served as a judge or in any other proceeding related thereto only with the express consent of all parties pursuant to Rule 1.12(a) of the Minnesota Rules of Professional Conduct]. Application Section, part C is intended to encompass conciliation court referees appointed pursuant to law (see 1993 Minn. Laws, chapter 321, Section 4; codified as Minnesota Statutes, section 491A.03, subdivision 1) and special masters.

D. Periodic Part-time Judge. A periodic part-time judge*:

(1) is not required to comply

(a) except while serving as a judge, with Section 3B(9);

(b) at any time, with Sections 4C(2), 4C(3)(a), 4D(1)(b), 4D(3), 4D(4), 4D(5), 4E, 4F, 4G, 4H, 5A(1), 5B(2) and 5D.

(2) shall not practice law in the court on which the judge serves or in any court subject to the appellate jurisdiction of the court on which the judge serves, and shall not act as a lawyer in a proceeding in which the judge has served as a judge or in any other proceeding related thereto.

See Terminology, "periodic part-time judge."

Commentary:

When a person who has been a periodic part-time judge is no longer a periodic part-time judge (no longer accepts appointments), that person may act as a lawyer in a proceeding in which he or she has served as a judge or in any other proceeding related thereto only with the express consent of all parties pursuant to [Rule 1.12(a) of the ABA Model Rules of Professional Conduct]. (An adopting jurisdiction should substitute a reference to its applicable rule).

E. Pro Tempore Part-time Judge. A pro tempore part-time judge*:

~~Underline~~ = additions; ~~strikeout~~ = deletions.

(1) is not required to comply

(a) except while serving as a judge, with Sections 2A, 2B, 3B(9) and 4C(1);

(b) at any time with Sections 2C, 4C(2), 4C(3)(a), 4C(3)(b), 4D(1)(b), 4D(3), 4D(4), 4D(5), 4E, 4F, 4G, 4H, 5A(1), 5A(2), 5B(2) and 5D.

(2) A person who has been a pro tempore part-time judge* shall not act as a lawyer in a proceeding in which the judge has served as a judge or in any other proceeding related thereto except as otherwise permitted by [Rule 1.12(a) of the ABA Model Rules of Professional Conduct]. (An adopting jurisdiction should substitute a reference to its applicable rule.)

~~EFFECTIVE DATE OF COMPLIANCE~~

~~A person to whom this Code becomes applicable should arrange his or her affairs as soon as reasonably possible to comply with it. If, however, the demands on time and the possibility of conflicts of interest are not substantial, a person who holds judicial office on the date this Code becomes effective may:~~

~~(a) continue to act as an officer, director, or non-legal advisor of a family business;~~

~~(b) continue to act as an executor, administrator, trustee, or other fiduciary for the estate or person of one who is not a family member.~~

~~**D. Time for Compliance.** A person to whom this Code becomes applicable shall comply immediately with all provisions of this Code except Sections 4D(2), 4D(3) and 4E and shall comply with these Sections as soon as reasonably possible and shall do so in any event within the period of one year.~~

Commentary:

If serving as a fiduciary when selected as judge, a new judge may, notwithstanding the prohibitions in Section 4E, continue to serve as fiduciary but only for that period of time necessary to avoid serious adverse consequences to the beneficiary of the fiduciary relationship and in no event

F. Time for Compliance. A person to whom this Code becomes applicable shall comply immediately with all provisions of this Code except Sections 4D(2), 4D(3) and 4E and shall comply with these Sections as soon as reasonably possible and shall do so in any event within the period of one year.

See Terminology, "pro tempore part-time judge."

Commentary:

If serving as a fiduciary when selected as judge, a new judge may, notwithstanding the prohibitions in Section 4E, continue to serve as fiduciary but only for that period of time necessary to avoid serious adverse consequences to the beneficiary of the fiduciary relationship and in no event

Underline = additions; ~~strikeout~~ = deletions.

longer than one year. Similarly, if engaged at the time of judicial selection in a business activity, a new judge may, notwithstanding the prohibitions in Section 4D(3), continue in that activity for a reasonable period but in no event longer than one year.

longer than one year. Similarly, if engaged at the time of judicial selection in a business activity, a new judge may, notwithstanding the prohibitions in Section 4D(3), continue in that activity for a reasonable period but in no event longer than one year.

PROPOSED AMENDMENTS TO RULES OF BOARD ON JUDICIAL STANDARDS

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PROPOSED AMENDMENTS TO RULES OF BOARD ON JUDICIAL STANDARDS

DEFINITIONS

"Information Complaint" is any communication, oral or written, made by judges, lawyers, court personnel or any member of the general public regarding the conduct of a judge.

"Evaluation" is a prompt and discreet inquiry by the executive secretary into the facts and circumstances of any ~~information complaint~~ which alleges conduct listed in Rule 4(a).

"Investigation" is a full inquiry by the executive secretary, with the authorization of the board, into the facts and circumstances of any complaint which alleges conduct listed in Rule 4(a) filed with the executive secretary.

"Complaint" is information upon which the board finds sufficient cause to believe that a judge has engaged in conduct listed in Rule 4(a).

"Judge" is any judge, judicial officer, referee or other hearing officer employed in the judicial branch of the state of Minnesota, any judge of the Minnesota Tax Court or any judge of the Workers' Compensation Court of Appeals.

"Formal Statement of Charges" is information in a complaint upon which the board has determined there is sufficient cause to proceed. *See Rule 7(a).*

"Formal Statement of Complaint" is information in a ~~Formal Statement of Complaint~~ upon which the board has determined to conduct a formal hearing. *See Rule 8(b).*

RULE 1. ORGANIZATION OF BOARD

(a) Appointment of Members. The Board on Judicial Standards shall consist of one judge of Court of Appeals, ~~one three~~ judges of district court, ~~one judge of municipal court, one judge of county court,~~ two lawyers who have practiced law in the state for ten years, and four resident citizens of Minnesota who are not judges, retired judges, or lawyers. ~~Effective July 1, 1980, (The executive secretary, who shall be an attorney licensed to practice law in Minnesota, with a minimum of fifteen years experience in the practice of law, including any service as a judge,~~ shall be appointed by the board. All members shall be appointed by the governor with the advice and consent of the senate ~~except that senate confirmation shall not be required for judicial members.~~ Minn. St. § 490.15.

(b) Term of Office.

(1) The term of each member shall be four years.

(2) No member shall serve more than two full four-year terms or their equivalent, not to exceed eight years.

(c) Vacancy.

(1) A vacancy on the board shall be deemed to occur:

(i) When a member retires from the board; or

(ii) When a judge who is a member of the board ceases to hold the judicial office held at the time of selection; or

(iii) When a lawyer ceases to be in good standing to practice law in the courts of this state or is appointed or elected to a judicial office; or

(iv) When a lay member becomes a lawyer; or

(v) When a member is no longer a resident citizen.

(2) Vacancies shall be filled by selection of a successor in the same manner as required for the selection of the predecessor in office. A member selected to fill a vacancy shall hold office for the unexpired term of the predecessor. All vacancies on the board shall be filled within 90 days after the vacancy occurs.

(3) Members of the board may retire therefrom by submitting their resignation to the board, which shall certify the vacancy to the governor.

(d) Duties and Responsibilities of Executive Secretary. The executive secretary shall have duties and responsibilities prescribed by the board, including the authority to:

(1) Receive ~~information~~ complaints and allegations as to misconduct or disability;

(2) Make preliminary evaluations;

(3) Conduct investigations of complaints as directed by the board;

(4) Recommend dispositions;

(5) Maintain the board's records;

(6) Maintain statistics concerning the operation of the board and make them available to the board, and to the Supreme Court;

(7) Prepare the board's budget for approval by the board, and administer its funds;

(8) Employ and supervise other members of the board's staff;

(9) Prepare an annual report of the board's activities for presentation to the board, to the Supreme Court, and to the public;

(10) Employ, with the approval of the board, special counsel, private investigators, or other experts as necessary to investigate and process matters before the board and before the Supreme Court. The use of the attorney general's staff prosecutors or law enforcement officers for this purpose shall not be allowed.

(e) Quorum and Chairperson.

(1) A quorum for the transaction of business by the board shall be six members of the board.

(2) The board shall elect from its members a chairperson and vice-chairperson, each of whom shall serve a term of two years. The vice-chairperson shall act as chairperson in the absence of the chairperson.

(f) Meetings of the Board. Meetings of the board shall be held at the call of the chairperson, the vice-chairperson, the executive secretary, or the written request of three members of the board.

(g) Annual Report. At least once a year the board shall prepare a report summarizing its activities during the preceding year. One copy of this report shall be filed with the Supreme Court.

(h) Expenses of the Board and Staff.

(1) The expenses of the board shall be paid from appropriations of funds to the Board on Judicial Standards.

(2) Members of the board shall be compensated for their services as provided by law.

(3) In addition to the executive secretary, the board may appoint other employees to perform such duties as it shall direct, subject to the availability of funds under its budget.

RULE 2. JURISDICTION AND POWERS OF BOARD

(a) Powers in General. The board shall have the power to receive complaints information, investigate, conduct hearings, and make recommendations to the Supreme Court concerning:

(1) Allegations of judicial misconduct;

- (2) Allegations of physical or mental disability of judges;
- (3) Matters of voluntary retirement for disability; and
- (4) Review of a judge's compliance with Minn. St. § 546.27.

~~(b) **Persons Subject to Discipline.** Anyone exercising judicial powers and performing judicial functions within the judicial branch, including judges assigned to administrative duties, shall be subject to judicial discipline and disability retirement under these rules. Judges of the Minnesota Tax Court are likewise subject to judicial discipline and disability retirement under these rules.~~

~~(c) **Jurisdiction Over Sitting Full-Time and Periodic Part-Time Judges.** The board shall have jurisdiction over the conduct of all persons subject to discipline under section (b), including all sitting full and part-time judges. This jurisdiction shall include conduct that occurred prior to a judge assuming judicial office. In cases of sitting full-time judges, including retired judges subject to assignment, this jurisdiction shall be exclusive. In cases of sitting periodic part-time judges, including referees of conciliation court, the board shall have exclusive jurisdiction in matters involving conduct occurring in a judicial capacity. The Lawyers Professional Responsibility Board may also exercise jurisdiction to consider whether discipline as a lawyer is warranted in matters involving conduct of a part-time judge not occurring in a judicial capacity, including conduct occurring prior to the assumption of judicial office.~~

~~(d) **Jurisdiction Over Former Judge.** The Lawyers Professional Responsibility Board shall have jurisdiction over a lawyer who is no longer a judge with reference to allegedly unethical conduct that occurred during or prior to the time when the lawyer held judicial office, provided such conduct has not been the subject of judicial disciplinary proceedings as to which a final determination has been made by the Supreme Court.~~

~~(e) **Subpoena and Depositions** discovery.~~

~~(1) **Depositions Limited.** Depositions shall not be allowed, provided that, for good cause shown, a deposition may be taken of a witness living outside the state or physically unable to attend the hearing.~~

~~(2) **Subpoenas for Investigation.** During the evaluation and investigative stage of a proceeding, prior to a finding of sufficient cause to proceed pursuant to Rule 6(e), and subject to the limitations of Rule 2(d)(1):~~

~~(i) Upon resolution of the board, the executive secretary may make application for the issuance of a subpoena compelling any person, including a judge, to attend and give testimony, and to produce documents, books, accounts and other records. Such subpoena shall issue upon a showing that the information sought appears reasonably calculated to lead to the discovery of admissible evidence.~~

(ii) Failure or refusal of a judge who is the subject of information to cooperate or the intentional misrepresentation of a material fact by the judge shall constitute conduct prejudicial to the administration of justice and may be sufficient cause for the board to proceed under Rule 2(ed)(2).

(23) Subpoenas for Hearing. At all other stages of the proceeding following a finding of sufficient cause to proceed pursuant to Rule 6(ed), and subject to the limitations of Rule 2(d)(1), both the board and the judge being investigated shall be entitled to compel, by subpoena, attendance and testimony of witnesses, including the judge as a witness, and the inspection of documents, books, accounts and other records.

(34) Issuing Subpoenas. The power to enforce process may be delegated by the Supreme Court. The District Court of Ramsey County shall issue subpoenas.

(5) Motions. Prior to the appointment of a factfinding panel pursuant to Rule 10(a), the District Court of Ramsey County shall have jurisdiction over motions arising from Rule 2(ed) requests. Following the appointment of a factfinding panel, the presider of the factfinding panel before whom the matter is pending shall have jurisdiction over motions arising from Rule 2(d) requests and shall have all the powers of a district court judge. Any resulting decision or order of the presider of the factfinding panel or the District Court of Ramsey County may not be appealed before entry of the final order in the disciplinary proceeding. The judge shall be denominated by number or randomly selected initials in any District Court proceedings.

(f) Rules of Procedure and Forms. The board shall have the authority to submit rules of procedure for the approval of the Supreme Court, and to develop appropriate forms for its proceedings.

(gf) Impeachment. Nothing in these rules shall affect the impeachment of judges under the Minnesota Constitution, Art. 8.

RULE 3. IMMUNITY; PRIVILEGE

Information submitted to the board or its staff and testimony given in the proceedings under these rules shall be absolutely privileged, and no civil action predicated thereon may be instituted against the complainant or witness, or their counsel. Members of the board, referees, board counsel, and staff shall be absolutely immune from suit for all conduct in the course of their official duties.

RULE 4. GROUNDS FOR DISCIPLINE

(a) Grounds for Discipline Shall Include:

(1) Conviction of a crime punishable as a felony under state or federal law or any crime involving moral turpitude;

(2) A persistent failure to perform judicial duties;

(3) Incompetence in the performance of judicial duties;

(4) Habitual intemperance;

(5) Conduct prejudicial to the administration of justice that brings the judicial office into disrepute, including, but not limited to, discrimination against or harassment of persons on the basis of race, color, creed, religion, national origin, sex, marital status, sexual preference, disability or age.

(6) Conduct that constitutes a violation of the code of judicial conduct or professional responsibility.

(b) Disposition of Criminal Charges. A conviction, acquittal or other disposition of any criminal charge filed against a judge shall not preclude action by the board with respect to the conduct upon which the charge was based.

(c) Proceedings Not Substitute for Appeal. In the absence of fraud, corrupt motive, or bad faith, the board shall not take action against a judge for making findings of fact, reaching a legal conclusion, or applying the law as understood by the judge. Claims of error shall be left to the appellate process.

RULE 5. CONFIDENTIALITY

(a) Before Formal Statement of Complaint and Response.

~~(1) Except as otherwise provided in this rule, a~~All proceedings shall be confidential until the Formal ~~Statement~~ of Complaint and Response, ~~if any~~, have been filed with the Supreme Court pursuant to Rule 89.

(2) The board shall establish procedures for enforcing the confidentiality provided by this rule.

~~(3) A judge under investigation may waive confidentiality at any time during the proceedings. [Moved to Rule 5(f)]~~

~~(1) Upon determination that there is insufficient cause to proceed, the complainant, if any, shall be promptly notified and given a brief explanation of the board's action. The complainant shall also be promptly notified of any disposition pursuant to Rule 6(f)(1) or (2).~~

(2) If the board takes action as may be authorized pursuant to Rule 6(d)(1)(ii) or Rule 7, without proceeding to any action which may be authorized by Rule 8, such action shall be a matter of public record.

(3) Any action taken by the board pursuant to Rule 6(f) may be disclosed to the chief justice, chief judge and/or district administrator of the judicial district in which the judge sits. Such disclosure is at the discretion of the board and shall be for the purpose of monitoring future conduct of the judge and for assistance to the judge in modifying the judge's conduct. To the extent that any information is disclosed by the board pursuant to this provision, the chief justice, chief judge and/or district administrator shall maintain the confidentiality of the information in accordance with Rule 5.

(b) After Formal Complaint and Response. Upon the filing of the Formal Complaint and written response, if any, with the Supreme Court, the files of the board, other than the Formal Complaint and the written response thereto, shall remain confidential unless and until any documents, statements, depositions, or other evidence in the files of the board are introduced or used in a public hearing as provided in Rule 10.

(c) Work Product. The work product of the executive secretary and board counsel, and the records of the board's deliberations, shall not be disclosed.

(bd) Public Statements by Board.

(1) In any case in which the subject matter becomes public through independent sources or through a waiver of confidentiality by the judge, the board may issue statements as it deems appropriate in order to confirm the pendency of the investigation, to clarify the procedural aspects of the disciplinary proceedings, to explain the right of the judge to a fair hearing without prejudice, and to state that the judge denies the allegations. The statement shall be first submitted to the judge involved for comments and criticisms prior to its release, but the board in its discretion may release the statement as originally prepared.

(2) If the inquiry was initiated as a result of notoriety or because of conduct that is a matter of public record, information concerning the lack of cause to proceed may be released by the board.

(3) The board may make such disclosures as it deems appropriate whenever the board has determined that there is a need to notify another person or agency in order to protect the public or the administration of justice.

(ce) Disclosure for Judicial Selection, Appointment, Election or Assignment. When any state or federal agency seeks material in connection with the selection or appointment of judges or the assignment of a retired judge to judicial duties, the board may release information from its files only (1) if the judge in question agrees to such dissemination and (2) if the file reflects some action of the board pursuant to Rule 6(d), 6(gf)(1) or (2), or Rule 78. If the board action

was taken on or after [the effective date of these amendments to the rules], such information may also be released if a judge is involved in a contested election, subject to the same restrictions.

(f) **Waiver of Confidentiality.** A judge under investigation may waive confidentiality at any time during the proceedings.

RULE 6. PROCEDURE PRIOR TO SUFFICIENT CAUSE DETERMINATION

(a) Initiation of Procedure. An inquiry may be initiated as follows:

(1) An inquiry relating to conduct of a judge may be initiated upon a complaint any reasonable information.

(2) The board may on its own motion make an inquiry into the conduct or physical or mental condition of a judge.

(3) Upon request of the chief justice of the Supreme Court, the board shall make an inquiry into the conduct or physical or mental condition of a judge.

~~(b) **Absolute Privilege.** Information or related testimony submitted to the board or its staff shall be absolutely privileged, and no civil action predicated on the information may be instituted against the informant or witness, or their counsel. [Moved to Rule 3]~~

(c) Preliminary Evaluation, Screening and Complaint.

~~(1) Upon receipt of a complaint information as to conduct that might constitute grounds for discipline, the executive secretary shall conduct a prompt, discreet and confidential evaluation.~~

~~(2) The results of all evaluations shall be routinely submitted to the board. If the board determines that there exists sufficient cause to believe that a judge has engaged in conduct listed in Rule 4(a), it may authorize an investigation by filing the information as a complaint with the executive secretary.~~

(dc) Investigation; Discretionary Notice.

~~(1) Upon review of the preliminary evaluation, or on its own motion, the board may, by resolution, authorize an investigation.~~

~~(12) Notice that an investigation complaint has been authorized filed may be given to the judge whose conduct or physical or mental condition is being investigated named in the complaint.~~

~~(2) No action shall be taken on any complaint in which the judge is not notified within 90 days after the filing of such complaint and if not notified the complaint may not be used against the judge.~~

(ed) Sufficient Cause Determination.

~~(1) The board shall promptly consider the results of the an investigation conducted by the executive secretary. If the board determines that there is sufficient cause to proceed, it shall either:~~

~~(i) comply with Rule 78; or~~

~~(ii) issue a public reprimand. Prior to the issuance of a public reprimand pursuant to this Rule 6(d)(1)(ii), the judge shall be served with a copy of the proposed reprimand and a notice setting forth the time within which these rules require the judge to either submit comments and criticisms or to demand a formal hearing as provided in Rule 8. Within 20 days of service of the proposed reprimand, the board shall be served with either a written demand for a formal hearing as provided in Rule 8, or the written comments and criticisms of the judge regarding the proposed reprimand. If a timely demand for a formal hearing is made, the board shall comply with Rule 8. If no timely demand for a hearing is made, the board may consider the comments and criticisms, if any, but may in its discretion release the reprimand as originally prepared.~~

~~(2) A finding of sufficient cause shall require the concurrence of a majority of the full board.~~

(fe) Insufficient Cause to Proceed.

~~(1) Upon determination that there is insufficient cause to proceed, the board shall promptly comply with Rule 5(a)(2) informant, if any, shall be notified. If informed of the proceeding, the judge shall also be promptly notified of its termination, and the file shall be closed.~~

~~(2) A closed file may not be referred to by the board in subsequent proceedings unless the board has proceeded according to Rule 6(d) or (gf), or Rule 87.~~

~~(3) If the inquiry was initiated as a result of notoriety or because of conduct that is a matter of public record, information concerning the lack of cause to proceed may be released by the board. [Moved to Rule 5(d)(ii)]~~

(gf) Dispositions in Lieu of Further Proceedings. Even though the board does not find sufficient cause to proceed pursuant to Rule 7 with a formal hearing, it may make any of the following dispositions, unless the underlying conduct is part of a pattern involving the same or similar conduct:

(1) The board may issue a private reprimand.

(2) The board may warn by informal adjustment dispose of a complaint by:

(i) Informing or admonishing the judge that the conduct is or may be cause for discipline;

(2) The board may impose reasonable conditions on a judge's conduct.

(ii3) The board may directing professional counseling or medical treatment, psychiatric counseling, psychological counseling, chemical dependency treatment or counseling, or other forms of assistance for the judge; or

(iii) Imposing conditions on a judge's conduct.

(hg) Objection to Dispositions. Any judge objecting to disposition of a complaint pursuant to Rule 6(gf) may demand a full hearing before a factfinder as provided in Rule 89.

(h) Representation by Counsel. A judge may be represented by counsel, at the judge's expense, at any stage of the proceedings under these rules.

~~RULE 7. INTERIM SANCTIONS~~

(a) Mandatory Suspension. The Supreme Court shall, without the necessity of board action, suspend a judge with pay upon the filing of an indictment or complaint charging the judge with a crime punishable as a felony under state or federal law. The Supreme Court may suspend the pay of such judge upon a conviction of a crime punishable as a felony under state or federal law or any other crime involving moral turpitude. If the conviction is reversed, suspension terminates and the judge shall be paid the salary for the period of suspension.

(b) Permissive Suspension. The Supreme Court may, on its own motion or upon recommendation of the board, suspend a judge with pay.

(1) Upon the filing of misdemeanor or gross misdemeanor charges against the judge if it adversely affects the judge's ability to perform the duties of the office.

(2) Upon the claim by the judge that a physical or mental disability prevent the judge from assisting in the preparation of a defense in a proceeding under these rules. Once an interim

suspension has been imposed, there shall be a determination of whether in fact there is such a disability. If there is a finding of no disability, the disciplinary proceeding shall continue.

~~(3) Upon the recommendation to the Supreme Court by the Board of Judicial Standards for removal or retirement.~~

~~(4) Upon a finding by the board or the factfinder that a judge has a physical or mental disability that seriously interferes with the performance of judicial duties.~~

~~(5) In any other proceeding under these rules.~~

~~(c) **Review of Permissive Suspension.** Any judge suspended under section (b) of this rule shall be given a prompt hearing and determination by the Supreme Court upon application for review of the interim suspension order.~~

~~**(d) Other Interim Suspension.**~~

~~(1) Interim suspension, with pay, pending final decision as to ultimate discipline, may be ordered by the Supreme Court in any proceeding under these rules.~~

~~(2) Upon a determination by the board of a judge's incompetence, there shall be an immediate interim suspension, with pay, pending a final disposition by the Supreme Court.~~

~~(e) **Disability Suspension.** A judge who claims that a physical or mental disability prevents the judge from assisting in the preparation of a defense in a proceeding under these rules shall be placed on interim suspension, with pay. Once an interim suspension has been imposed, there shall be a determination of whether in fact there is such a disability. If there is such a disability, the judge shall be retired. If there is a finding of no disability, the disciplinary proceeding shall continue. [Moved to Rule 14]~~

RULE 87. PROCEDURE WHERE SUFFICIENT CAUSE FOUND

(a) Formal Statement of Charges.

~~(1) After a finding of sufficient cause to proceed, the executive secretary shall prepare a Formal Statement of Charges against the judge setting forth the factual allegations and the time within which these rules require the judge to serve a written response and the alleged facts forming its basis shall be prepared by the executive secretary. Where more than one act of misconduct is alleged, each shall be clearly set forth.~~

~~(2) The judge shall be served promptly with a copy of the Formal Statement of Charges. Service shall be accomplished in accordance with the Rules of Civil Procedure.~~

~~(3) The documents served under section (2) shall require the judge shall serve a written response on the board to respond to the Formal Statement of Charges in writing within 20 days of service of the Statement of Charges. A personal appearance before the board shall be permitted in lieu of or in addition to a written response. In the event that the judge elects to appear personally, a verbatim record of the proceedings shall be made the statement shall be recorded.~~

(b) Termination after Response. The board may terminate the proceeding and dismiss the Formal Statement of Charges following the response by the judge, or at any time thereafter, and shall in that event comply with Rule 5(a)(2) and give notice to each informant and to the judge that it has found insufficient cause to proceed.

(c) Quorum. If the board elects to proceed as authorized in Rule 8, such action must be by concurrence of a majority of the full board.

RULE 98. FORMAL STATEMENT OF COMPLAINT AND NOTICE

(a) Formal Statement of Complaint.

~~(1) Promptly following the board's determination pursuant to Rule 7(c), or when required pursuant to Rule 6(d)(1)(ii) or Rule 16(a), the board shall issue prepare and sign a Formal Statement of Complaint setting forth the charges against the judge, the factual allegations, and the time within which these rules require the judge to serve a written response. Where more than one act of misconduct is alleged, each shall be clearly set forth.~~

~~(2) The judge shall be served promptly with a copy of the Formal Statement of Complaint. Service shall be accomplished in accordance with the Rules of Civil Procedure in effect at the time of the service.~~

~~(3) The judge shall serve a written response on the board respond to the Formal Statement of Complaint in writing within 20 days of service of the Formal Complaint. The executive secretary, upon receiving the written response of the judge, or if none has been received, within 25 days of service of the Formal Statement of Complaint, shall file the Formal Statement of Complaint and the any written response, if any, thereto with the Supreme Court.~~

~~(3) The files of the board, other than the Formal Statement of Complaint and the written response thereto, shall remain confidential unless and until any documents, statements, depositions, or other evidence in the files of the board are introduced or used in a public hearing as provided in Rule 10. [Moved to Rule 5(b)]~~

(b) Notice of Hearing.

(1) Upon the filing of Formal Statement of Complaint and Response, if any, with the Supreme Court, the board shall schedule a public hearing. The date shall be selected to afford the judge ample time to prepare for the hearing, but shall not be later than 90 days ~~than after the filing of the Formal Complaint with the Supreme Court the time limits set under section (a)(2) of this rule.~~ The judge and all counsel shall be notified of the time and place of the hearing.

(2) In extraordinary circumstances, the board shall have the authority to extend the hearing date as it deems proper.

(3) ~~The judge and the board shall be entitled to discovery to the extent available in civil or criminal proceedings, whichever is broader.~~

RULE 9. DISCOVERY

~~(a) **Witnesses; Depositions.** Within 20 days after the service of a response, or after the expiration of the time for service of a response, whichever occurs first, counsel for the board and the judge shall exchange the names and addresses of all persons known to have knowledge of the relevant facts. The presider of the factfinding panel shall set a date for the exchange of the names and addresses of all witnesses the parties intend to call at the hearing. Subpoenas and depositions shall be governed by Rule 2(d).~~

~~(b) **Other Evidence.** Counsel for the board and the judge shall exchange:~~

~~(1) non-privileged evidence relevant to the Formal Complaint, documents to be presented at the hearing, witness statements and summaries of interviews with witnesses who will be called at the hearing; and~~

~~(2) other material only upon good cause shown to the presider of the factfinding panel.~~

~~(c) **Exculpatory Evidence.** Counsel for the board shall provide the judge with exculpatory evidence relevant to the Formal Complaint.~~

~~(d) **Duty of Supplementation.** Both the board and the judge have a continuing duty to supplement information required to be exchanged under this rule.~~

~~(e) **Completion of Discovery.** All discovery must be completed within 60 days of the service of the response or the expiration of the time for service of the response, whichever occurs first.~~

~~(f) **Failure to Disclose.** The presider of the factfinding panel may preclude either party from calling a witness at the hearing if the party has not provided the opposing party with the witness' name and address, any statements taken from the witness or summaries of any interviews with the witness.~~

~~(g) **Resolution of Disputes.** Disputes concerning discovery shall be determined by the presider of the factfinding panel before whom the matter is pending. The decisions of the presider of the factfinding panel may not be appealed before entry of the final order in the disciplinary proceeding.~~

~~(h) **Civil Rules Not Applicable.** Proceedings under these rules are not subject to the Minnesota Rules of Civil Procedure regarding discovery except Rules 26.03, 30.02-.07, 32.04-.05, and 37.04~~

RULE 10. FORMAL HEARING

(a) Factfinder.

~~(1) The formal hearing shall be a public hearing and conducted before a three-member panel, acting as a factfinder, which may be a referee or three-member referee panel; Members of the factfinding panel shall be appointed by the Chief Justice of the Supreme Court.~~

~~(2) The Supreme Court shall appoint a factfinder to conduct such hearings within 10 days of the filing of the Formal Statement of Complaint with the Supreme Court. One member of the factfinding panel who is either a judge or a lawyer shall be designated as the presider by the Chief Justice of the Supreme Court.~~

~~(3) Whenever possible, referees two members of the factfinding panel appointed by the Supreme Court to preside at a hearing shall be retired judges, in good standing, but in any event, referees shall be either judges or lawyers, and one member of the factfinding panel shall be a citizen who is not a judge, retired judge or lawyer.~~

(b) Rules of Evidence and Due Process. In the hearing, all testimony shall be under oath, the Minnesota Rules of Evidence shall apply, and the judge shall be accorded due process of law.

(c) Presentation: Burden of Proof; Cross-Examination; Recording.

(1) An attorney or attorneys of the board's staff, or special counsel retained for the purpose, shall present the matter to the factfinder.

(2) The board has the burden of proving by clear and convincing evidence the facts justifying action.

(3) The judge shall be permitted to adduce evidence and produce and cross-examine witnesses, subject to the Minnesota Rules of Evidence.

(4) Every formal hearing conducted under these rules shall be recorded verbatim.

(d) ~~Amendments~~ Allegations. By leave of the ~~presider of the factfinding panel~~ for good cause shown, or by consent of the judge, the Formal Statement of Complaint may be amended after commencement of the hearing only if the amendment is technical in nature and the judge and the judge's counsel are given adequate time to prepare a response.

RULE 11. PROCEDURE FOLLOWING FORMAL HEARING

(a) Submission by Factfinder. The factfinder shall submit its findings and recommendations, along with the record and transcript of testimony, to the board for review. The same materials shall also be provided to the judge under investigation.

(b) Objections to Findings. Counsel for the judge and board may submit written objections to the findings and recommendations.

(c) Review by the Board. The findings and recommendations and the hearing record shall be promptly reviewed by the board. The board may substitute its judgment for that of the factfinder.

(d) ~~Recommended Discipline~~ Disciplinary Sanctions. Based on clear and convincing evidence in the hearing record, ~~the board's decision shall include~~ make a recommendation to the Supreme Court of any of the following sanctions:

- (1) Removal;
- (2) Retirement;
- (3) Imposing discipline as an attorney;
- (4) Imposing limitations or conditions on the performance of judicial duties;
- (5) Reprimand or censure;
- (6) Imposing a civil penalty;
- (7) ~~Suspension with or without pay;~~
- (8) Any combination of the above sanctions.

(ce) ~~Quorum; Dissent; Dismissal Recommended Discipline.~~

(1) A recommendation for discipline shall be reported to the Court only if concurred in by a majority of ~~all members of the full board.~~

(2) If a majority of the members of the board fail to concur in a recommendation for discipline, the matter shall be dismissed.

(3) Any dissenting opinion shall be transmitted to the Supreme Court with the majority decision.

RULE 12. COSTS

(a) Witness Fees.

(1) All witnesses shall receive fees and expenses to the same extent allowable in an ordinary civil action.

(2) Expenses of witnesses shall be borne by the party calling them, unless:

(i) Physical or mental disability of the judge is in issue, in which case the board shall reimburse the judge for the reasonable expenses of the witnesses whose testimony is related to the disability; or

(ii) The judge is exonerated of the charges, in which case the Supreme Court may determine that the imposition of costs and expert witness fees would work a financial hardship or injustice and shall then order that those fees be reimbursed.

(b) Transcript Cost. A transcript of all proceedings shall be provided to the judge without cost.

(c) Other Costs. All other costs of these proceedings shall be at public expense.

RULE 13. SUPREME COURT REVIEW

(a) Filing and Service. The board shall, at the time it files its record, findings, and recommendations with the Court, serve copies upon the respondent judge. Proof of service shall also be filed with the Court.

(b) Prompt Consideration. Upon the filing of a recommendation for discipline or disability retirement, the Court shall promptly docket the matter for expedited consideration.

(c) **Briefs.** The board shall, and the judge may, shall file briefs with the Court in accordance with the requirements of Rule 128 of the Rules of Civil Appellate Procedure.

(d) Additional Findings and Filings; Supplemental Record.

(1) If the Court desires an expansion of the record or additional findings with respect either to the recommendation for discipline or to the sanction to be imposed, it shall remand the matter to the board with appropriate directions, retaining jurisdiction, and shall hold the matter pending receipt of the board's filing of the additional record.

(2) The Court may order additional filings or oral argument as to specified issues or the entire matter.

(3) The Court without remand and prior to the imposition of discipline may accept or solicit supplementary filings with respect to medical or other information, provided that the parties have notice and an opportunity to be heard.

(e) Delay for Further Proceedings. The Court, on receipt of notice of an additional proceeding before the board involving the same judge, may delay its decision and hold the matter pending the board's termination of this additional proceeding. In the event that additional recommendations for discipline of the judge are filed, the Court may impose a single sanction covering all recommendations.

(f) Decision. The Court shall review the record of the proceedings on the law and the facts and shall file a written opinion and judgment directing such disciplinary action as it finds just and proper, accepting, rejecting, or modifying in whole or in part, the recommendations of the board.

(g) Consideration of Lawyer Discipline. When the Board on Judicial Standards recommends the removal of a judge, the Supreme Court shall promptly notify the judge and the Lawyers Professional Responsibility Board and give them an opportunity to be heard in the Supreme Court on the issue of lawyer discipline.

(h) Charge Against Supreme Court Justice. When any Formal Complaint charge has been filed against a member of the Supreme Court, the review under Rule 13 charge shall be heard and submitted to a panel consisting of the Chief Judge of the Court of Appeals or designee and six others chosen at random from among the judges of the Court of Appeals by the Chief Justice Judge or designee.

(i) Motion for Rehearing. In its decision, the Supreme Court may direct that no motion for rehearing will be entertained, in which event its decision shall be final upon filing. If the Court does not so direct and the respondent wishes to file a motion for rehearing, a motion for rehearing shall be presented within 15 days after filing of the decision.

RULE 14. INTERIM SUSPENSION

(a) Pending Criminal Prosecution. The Supreme Court shall, without the necessity of board action, suspend a judge with pay upon the filing of an indictment or complaint charging the judge with a crime punishable as a felony under state or federal law. The Supreme Court may suspend the pay of such judge upon a conviction of a crime punishable as a felony under state or federal law or any other crime involving moral turpitude. If the conviction is reversed, suspension terminates and the judge shall be paid the salary for the period of suspension.

(b) Pending Final Decision. Interim suspension, with pay, pending final decision as to ultimate discipline, may be ordered by the Supreme Court in any proceeding under these rules.

(c) Review of Permissive Suspension. Any judge suspended under section (b) of this rule shall be given a prompt hearing and determination by the Supreme Court upon application for review of the interim suspension order.

(d) Incompetency Suspension. Upon a determination by the board of a judge's incompetence, there shall be an immediate interim suspension, with pay, pending a final disposition by the Supreme Court.

(e) Disability Suspension. A judge who claims that a physical or mental disability prevents the judge from assisting in the preparation of a defense in a proceeding under these rules shall be placed on interim suspension, with pay. Once an interim suspension has been imposed, there shall be a determination of whether in fact there is such a disability. If there is such a disability, the judge shall be retired. If there is a finding of no disability, the disciplinary proceeding shall continue.

RULE 154. SPECIAL PROVISIONS FOR CASES INVOLVING MENTAL OR PHYSICAL DISABILITY

(a) Procedure. In carrying out its responsibilities regarding physical or mental disabilities, the board shall follow the same procedures that it employs with respect to discipline for misconduct.

(b) Representation by Counsel. If the judge in a matter relating to physical or mental disability is not represented by counsel, the board or, if a factfinding panel has been appointed, the presider of the factfinding panel, shall appoint an attorney to represent the judge at public expense.

(c) Medical Privilege.

(1) If the complaint involves the physical or mental condition of the judge, a denial of the alleged condition shall constitute a waiver of medical privilege, and the judge shall be required to produce the judge's medical records.

(2) If medical privilege is waived, the judge is deemed to have consented to a physical or mental examination by a qualified medical practitioner designated by the board. The report of the medical practitioner shall be furnished to the board and the judge.

RULE 165. INVOLUNTARY RETIREMENT

(a) Procedure. A judge who refuses to retire voluntarily may be involuntarily retired by the Supreme Court. ~~If attempts to convince a judge to retire voluntarily fail, then the board shall proceed as provided in Rules 8, 9, 10 and 11. The Supreme Court shall then proceed as provided in Rule 13 to file a formal complaint, hold a public hearing, make findings of fact, and present recommendations to the Supreme Court.~~

(b) Effect of Involuntary Retirement. A judge who is involuntarily retired shall be ineligible to perform judicial duties pending further order of the Court and may, upon order of the Court, be transferred to inactive status or indefinitely suspended from practicing law in the jurisdiction.

RULE 17 EXPUNGEMENT

The executive secretary shall expunge records relating to dismissed complaints as follows:

(a) Dismissals. All records or evidence of a complaint found without sufficient cause shall be destroyed three years after the complaint is received by the board or the board authorizes an investigation, whichever occurs first, except in the event of a new complaint involving the same judge within the three years which event shall renew the three year period.

(b) Case Files on Deceased Judges. All case files on deceased judges shall be destroyed.

(c) Exceptions. Upon application by the executive secretary to the chairperson for good cause shown and with notice and opportunity to be heard to the judge, records which would otherwise be expunged under this rule may be retained for such additional time as the chairperson may deem appropriate.

RULE 186. AMENDMENT OF RULES

As procedural and other experience may require or suggest, the board may petition the Supreme Court for further rules of implementation or for necessary amendments to these rules.

PROPOSED CHANGES TO THE MINNESOTA CODE OF JUDICIAL CONDUCT

PREAMBLE

Our legal system is based on the principle that an independent, fair and competent judiciary will interpret and apply the laws that govern us. The role of the judiciary is central to American concepts of justice and the rule of law. Intrinsic to all sections of this Code are the precepts that judges, individually and collectively, must respect and honor the judicial office as a public trust and strive to enhance and maintain confidence in our legal system. The judge is an arbiter of facts and law for the resolution of disputes and a highly visible symbol of government under the rule of law.

The Code of Judicial Conduct is intended to establish standards for ethical conduct of judges. It consists of broad statements called Canons, specific rules set forth in Sections under each Canon, a Terminology Section, an Application Section and Commentary. The text of the Canons and the Sections, including the Terminology and Application Sections, is authoritative. The Commentary, by explanation and example, provides guidance with respect to the purpose and meaning of the Canons and Sections. The Commentary is not intended as a statement of additional rules.

When the text uses "shall" or "shall not," it is intended to impose binding obligations the violation of which can result in disciplinary action. When "should" or "should not" is used, the text is intended as hortatory and as a statement of what is or is not appropriate conduct but not as a binding rule under which a judge may be disciplined. When "may" is used, it denotes permissible discretion or, depending on the context, it refers to action that is not covered by specific proscriptions.

The Canons and Sections are rules of reason. They should be applied consistent with constitutional requirements, statutes, other court rules and decisional law and in the context of all relevant circumstances. The Code is to be construed so as not to impinge on the essential independence of judges in making judicial decisions.

The Code is designed to provide guidance to judges and candidates for judicial office and to provide a structure for regulating conduct through disciplinary agencies. It is not designed or intended as a basis for civil liability or criminal prosecution. Furthermore, the purpose of the Code would be subverted if the Code were invoked by lawyers for mere tactical advantage in a proceeding.

The text of the Canons and Sections is intended to govern conduct of judges and to be binding upon them. It is not intended, however, that every transgression will result in disciplinary action. Whether disciplinary action is appropriate, and the degree of discipline to be imposed, should be determined through a reasonable and reasoned application of the text and should depend on such factors as the seriousness of the transgression, whether there is a pattern

of improper activity and the effect of the improper activity on others or on the judicial system.

The Code of Judicial Conduct is not intended as exhaustive guide for the conduct of judges. They should also be governed in their judicial and personal conduct by general ethical standards. The Code is intended, however, to state basic standards which should govern the conduct of all judges and to provide guidance to assist judges in establishing and maintaining high standards of judicial and personal conduct.

TERMINOLOGY

Terms explained below, with the exception of "judge," are noted with an asterisk () in the Sections where they appear. In addition, the Sections where terms appear are referred to after the explanation of each term below.*

"Appropriate authority" denotes the authority with responsibility for initiation of disciplinary process with respect to the violation to be reported. See Section 3D(1) and 3D(2).

"Candidate." A candidate is a person seeking selection for or retention in judicial office by election or appointment. A person becomes a candidate for judicial office as soon as he or she makes a public announcement of candidacy, declares or files as a candidate with the election or appointment authority, or authorizes solicitation or acceptance of contributions or support. The term "candidate" has the same meaning when applied to a judge seeking election or appointment to non-judicial office. See Preamble and Sections 5A, 5B, 5C and 5E.

"Court personnel" does not include the lawyers in a proceeding before a judge. See Section 3B(7)(c) and 3B(9).

"De minimis" denotes an insignificant interest that could not raise reasonable question as to a judge's impartiality. See Sections 3E(1)(c) and 3E(1)(d).

"Economic interest" denotes ownership of a more than de minimis legal or equitable interest, or a relationship as officer, director, advisor or other active participant in the affairs of a party, except that:

(i) ownership of an interest in a mutual or common investment fund that holds securities is not an economic interest in such securities unless the judge participates in the management of the fund or a proceeding pending or impending before the judge could substantially affect the value of the interest;

(ii) service by a judge as an officer, director, advisor or other active participant in an educational, religious, charitable, fraternal or civic organization, or service by a judge's spouse, parent or child as an officer, director, advisor or other active participant in any organization does not create an economic interest in securities

held by that organization;

(iii) a deposit in a financial institution, the proprietary interest of a policy holder in a mutual insurance company, of a depositor in a mutual savings association or of a member in a credit union, or a similar proprietary interest, is not an economic interest in the organization unless a proceeding pending or impending before the judge could substantially affect the value of the interest;

(iv) ownership of government securities is not an economic interest in the issuer unless a proceeding pending or impending before the judge could substantially affect the value of the securities.

See Sections 3E(1)(c) and 3E(2).

"Fiduciary" includes such relationships as executor, administrator, conservator, trustee, and guardian. See Sections 3E(2) and 4E.

"Judge" denotes anyone, whether or not a lawyer, who is an officer of a judicial system and who performs judicial functions, including an officer such as a referee, special master or magistrate. See Application Section.

"Knowingly," "knowledge," "known" or "knows" denotes actual knowledge of the fact in question. A person's knowledge may be inferred from circumstances. See Sections 3D, 3E(1), and 5A(3).

"Law" denotes court rules as well as statutes, constitutional provisions and decisional law. See Sections 2A, 3A, 3B(2), 3B(6), 4B, 4C, 4D(5), 4F, 4I, 5A(2), 5A(3), 5B(2), 5C(1), 5C(3) and 5D.

"Member of the candidate's family" denotes a spouse, significant other, child, grandchild, parent, grandparent or other relative or person with whom the candidate maintains a close familial relationship. See Section 5A(3)(a).

"Member of the judge's family" denotes a spouse, significant other, child, grandchild, parent, grandparent, or other relative or person with whom the judge maintains a close familial relationship. See Section 4D(3), 4E and 4G.

"Member of the judge's family residing in the judge's household" denotes any relative of a judge by blood or marriage, or a person treated by a judge as a member of the judge's family, who resides in the judge's household. See Sections 3E(1) and 4D(5).

"Nonpublic information" denotes information that, by law, is not available to the public. Nonpublic information may include but is not limited to: information that is sealed by statute or court order, impounded or communicated in camera; and information offered in grand jury

proceedings, pre-sentencing reports, dependency cases or psychiatric reports. See Section 3B(11).

"Periodic part-time judge." A periodic part-time judge is a judge who serves or expects to serve repeatedly on a part-time basis, and shall include conciliation court referees appointed pursuant to law (see 1993 Minnesota Laws, Chapter 321, Section 4 (codified as Minnesota Statutes, section 493A.03, subdivision 1) and special masters. See Application Section D.

"Political organization" denotes a political party or other group, the principal purpose of which is to further the election or appointment of candidates to political office. See Sections 5A(1), 5B(2) and 5C(1).

"Public election." This term includes primary and general elections; it includes partisan elections, nonpartisan elections and retention elections. See Section 5C.

"Require." The rules prescribing that a judge "require" certain conduct of others are, like all of the rules in this Code, rules of reason. The use of the term "require" in that context means a judge is to exercise reasonable direction and control over the conduct of those persons subject to the judge's direction and control. See Section 3B(3), 3B(4), 3B(6), 3B(9) and 3C(2).

"Third degree of relationship." The following persons are relatives within the third degree of relationship: great-grandparent, grandparent, parent, uncle, aunt, brother, sister, child, grandchild, great-grandchild, nephew or niece. See Section 3E(1)(d).

CANON 1

A Judge ~~Should~~ Shall Uphold the Integrity and Independence of the Judiciary

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

Commentary:

Deference to the judgments and rulings of courts depends upon public confidence in the integrity and independence of judges. The integrity and independence of judges depends in turn upon their acting without fear or favor. Although judges should be independent, they must comply with the law, including the provisions of this Code. Public confidence in the impartiality of the judiciary is maintained by the adherence of each judge to this responsibility. Conversely, violation of this Code diminishes public confidence in the judiciary and thereby does injury to the system of government under law.

CANON 2

A Judge ~~Should~~ Shall Avoid Impropriety and the Appearance of Impropriety In All of the Judge's Activities

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

See Terminology, "law."

Commentary:

Public confidence in the judiciary is eroded by irresponsible or improper conduct by judges. A judge must avoid all impropriety and appearance of impropriety. A judge must expect to be the subject of constant public scrutiny. A judge must therefore accept restrictions on the judge's conduct that might be viewed as burdensome by the ordinary citizen and should do so freely and willingly.

The prohibition against behaving with impropriety or the appearance of impropriety applies to both the professional and personal conduct of a judge. Because it is not practicable to list all prohibited acts, the proscription is necessarily cast in general terms that extend to conduct by judges that is harmful although not specifically mentioned in the Code. Actual improprieties under this standard include violations of law, court rules or other specific provisions of this Code. The test for the appearance of impropriety is whether a person aware of the facts might reasonably entertain a doubt that the judge would be able to act with integrity, impartiality, and competence.

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

Commentary:

Maintaining the prestige of judicial office is essential to a system of government in which the judiciary functions independently of the executive and legislative branches. Respect for the judicial office facilitates the orderly conduct of legitimate judicial functions. Judges should distinguish between proper and improper use of the prestige of office in all of their activities. For example, it would be improper for a judge to allude to his or her judgeship to gain a personal advantage such as deferential treatment when stopped by a police officer for a traffic offense. Similarly, judicial letterhead must not be used for conducting a judge's personal business.

A judge must avoid lending the prestige of judicial office for the advancement of

the private interests of others. For example, a judge must not use the judge's judicial position to gain advantage in a civil suit involving a member of the judge's family. In contracts for publication of a judge's writings, a judge should retain control over the advertising to avoid exploitation of the judge's office. As to the acceptance of awards, see Section 4D(5)(a) and Commentary.

Although a judge should be sensitive to possible abuse of the prestige of office, a judge may, based on the judge's personal knowledge, serve as a reference or provide a letter of recommendation. However, a judge must not initiate the communication of information to a sentencing judge or a probation or corrections officer but may provide to such persons information for the record in response to a formal request.

Judges may participate in the process of judicial selection by cooperating with appointing authorities and screening committees seeking names for consideration, and by responding to official inquiries concerning a person being considered for a judgeship. See also Canon 5 regarding use of a judge's name in political activities.

A judge must not testify voluntarily as a character witness because to do so may lend the prestige of the judicial office in support of the party for whom the judge testifies. Moreover, when a judge testifies as a witness, a lawyer who regularly appears before the judge may be placed in the awkward position of cross-examining the judge. A judge may, however, testify when properly subpoenaed.

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

Commentary:

Membership of a judge in an organization that practices invidious discrimination gives rise to perceptions that the judge's impartiality is impaired. Whether an organization practices invidious discrimination is often a complex question to which judges should be sensitive. The answer cannot be determined from a mere examination of an organization's current membership rolls but rather depends on the history of the organization's selection of members and other relevant factors, such as that the organization is dedicated to the preservation of religious, ethnic or cultural values of legitimate common interest to its members, or that it is in fact and effect an intimate, purely private organization whose membership limitations could not be constitutionally prohibited. Absent such factors, an organization is generally said to discriminate invidiously if it arbitrarily excludes from membership on the basis of race, religion, sex or national origin persons who would otherwise be admitted to membership. See *New York State Club Ass'n. Inc. v. City of New York*, 108 S. Ct. 2225, 101 L. Ed. 2d 1 (1988); *Board of Directors of Rotary International v. Rotary Club of Duarte*, 481 U.S. 537, 107 S. Ct. 1940 (1987), 95 L. Ed. 2d 474; *Roberts v. United States Jaycees*, 468 U.S. 609, 104 S. Ct. 3244, 82 L. Ed. 2d 462 (1984).

Although Section 2C relates only to membership in organizations that invidiously discriminate on the basis of race, sex, religion or national origin, a judge's membership

in an organization that engages in any discriminatory membership practices prohibited by law (see, e.g., Minnesota Human Rights Act, Minn. Stat. chapter 363) also violates Canon 2 and Section 2A and gives the appearance of impropriety. In addition, it would be a violation of Canon 2 and Section 2A for a judge to arrange a meeting at a club that the judge knows practices invidious discrimination on the basis of race, sex, religion or national origin in its membership or other policies, or for the judge to regularly use such a club. Moreover, public manifestation by a judge of the judge's knowing approval of invidious discrimination on any basis gives the appearance of impropriety under Canon 2 and diminishes public confidence in the integrity and impartiality of the judiciary, in violation of Section 2A.

When a person who is a judge on the date this Code becomes effective [in the jurisdiction in which the person is a judge]¹ learns that an organization to which the judge belongs engages in invidious discrimination that would preclude membership under Section 2C or under Canon 2 and Section 2A, the judge is permitted, in lieu of resigning, to make immediate efforts to have the organization discontinue its invidiously discriminatory practices, but is required to suspend participation in any other activities of the organization. If the organization fails to discontinue its invidiously discriminatory practices as promptly as possible (and in all events within a year of the judge's first learning of the practices), the judge is required to resign immediately from the organization.

CANON 3

A Judge ~~Should~~ Shall Perform the Duties of the Office Impartially and Diligently

The judicial duties of a judge take precedence over all other activities. Judicial duties include all the duties of the judge's office prescribed by law.* In the performance of these duties, the following standards apply:

A. Adjudicative Responsibilities.

(1) A judge shall hear and decide promptly, efficiently, and fairly matters assigned to the judge except those in which disqualification is required.

Commentary:

Minnesota statutes require that all questions of fact and law, and all motions and matters submitted to a judge for a decision in trial and appellate matters, shall be disposed of and the decision filed with the court administrator within 90 days, with certain limited exceptions. M.S. §546.27 subd. 1. This 90 day rule is an outside limit; cases should be decided before the 90 days expire, whenever possible. Failure to abide by the statutory 90 day rule may constitute grounds for disciplinary action.

In disposing of matters promptly, efficiently and fairly, a judge must demonstrate

due regard for the rights of the parties to be heard and to have issues resolved without unnecessary cost or delay. Containing costs while preserving fundamental rights of parties also protects the interests of witnesses and the general public. A judge should monitor and supervise cases so as to reduce or eliminate dilatory practices, avoidable delays and unnecessary costs. A judge should encourage and seek to facilitate settlement, but parties should not feel coerced into surrendering the right to have their controversy resolved by the courts.

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 insist that court officials, litigants and their lawyers cooperate with the judge to that end.

(42) A judge ~~should~~ shall be faithful to the law* and maintain professional competence in it. He or she ~~should~~ shall be unswayed by partisan interests, public clamor, or fear of criticism.

(23) A judge ~~should~~ shall ~~maintain~~ require* order and decorum in all proceedings before the judge.

(34) A judge ~~should~~ shall be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, and others dealt with in an official capacity, and ~~should~~ shall require* similar conduct of lawyers, and of staff, court officials, and others subject to the judge's action and control.

See Terminology, "law".

See Terminology, "require".

Commentary:

The duty to hear all proceedings fairly and with patience is not inconsistent with the duty to dispose promptly of the business of the court. Judges can be efficient and businesslike while being patient and deliberate.

(5) A judge shall perform judicial duties without bias or prejudice. A judge shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice, including but not limited to bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation or socioeconomic status, and shall not permit staff, court officials and others subject to the judge's direction and control to do so.

Commentary:

A judge must refrain from speech, gestures or other conduct that could reasonably be perceived as sexual harassment and must require the same standard of conduct of others subject to the judge's direction and control.

A judge who manifests bias on any basis in a proceeding impairs the fairness of the proceeding and brings the judiciary into disrepute. Facial expression and body language, in addition to oral communication, can give to parties or lawyers in the proceeding, jurors, the media and others an appearance of judicial bias. A judge must be alert to avoid behavior that may be perceived as prejudicial.

(6) A judge shall require* lawyers in proceedings before the judge to refrain from manifesting, by words or conduct, bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation or socioeconomic status, against parties, witnesses, counsel or others. This Section 3A(6) does not preclude legitimate advocacy when race, sex, religion, national origin, disability, age, sexual orientation or socioeconomic status, or other similar factors, are issues in the proceeding.

(47) A judge ~~should~~ shall accord to every person who is legally interested ~~has a legal interest~~ in a proceeding, or ~~the~~ that person's lawyer, ~~full~~ the right to be heard according to law*. ~~and except as authorized by law, neither~~ 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 concerning a pending or impending proceeding, except that:

(a) Where circumstances require, ex parte communications for scheduling, administrative purposes or emergencies that do not deal with substantive matters or issues on the merits are authorized; provided:

(i) the judge reasonably believes that no party will gain a procedural or tactical advantage as a result of the ex parte communication, and

(ii) the judge makes provision promptly to notify all other parties of the substance of the ex parte communication and allows an opportunity to respond.

(b) A judge may obtain the advice of a disinterested expert on the law* applicable to a proceeding before the judge if the judge gives notice to the parties of the person consulted and the substance of the advice, and affords the parties reasonable opportunity to respond.

(c) A judge may consult with court personnel* whose function is to aid the judge in carrying out the judge's adjudicative responsibilities or with other judges.

(d) A judge may, with the consent of the parties, confer separately with the parties and their lawyers in an effort to mediate or settle matters pending before the judge.

(e) A judge may initiate or consider any ex parte communications when expressly authorized by law* to do so.

See Terminology, "require".

See Terminology, "law".

See Terminology, "court personnel".

Commentary:

The proscription against communications concerning a proceeding includes communications from lawyers, law teachers, and other persons who are not participants in the proceeding, except to the limited extent permitted.

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

Whenever presence of a party or notice to a party is required by Section 3A(7), 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.

An appropriate and often desirable procedure for a court to obtain the advice of a disinterested expert on legal issues is to invite the expert to file a brief amicus curiae.

Certain ex parte communication is approved by Section 3B(7) to facilitate scheduling and other administrative purposes and to accommodate emergencies. In general, however, a judge must discourage ex parte communication and allow it only if **all the criteria stated in Section 3B(7) are clearly met.** A judge must disclose to all parties all ex parte communications described in Sections 3A(7)(a) and 3A(7)(b) regarding a proceeding pending or impending before the judge.

A judge must not independently investigate facts in a case and must consider only the evidence presented.

A judge may request a party to submit proposed findings of fact and conclusions of law, so long as the other parties are apprised of the request and are given an opportunity to respond to the proposed findings and conclusions.

A judge must make reasonable efforts, including the provision of appropriate supervision, to ensure that Section 3A(7) is not violated through law clerks or other personnel on the judge's staff.

If communication between the trial judge and the appellate court with respect to a proceeding is permitted, a copy of any written communication or the substance of any oral communication should be provided to all parties.

(5) A judge ~~should~~ dispose promptly of the business of the court.

(68) A judge ~~should~~ shall abstain from public comment about a pending or impending proceeding in any court, and ~~should~~ shall require* similar abstention on the part of court personnel* subject to the judge's direction and control. This subsection does not prohibit judges from making public statements in the course of their official duties or from explaining for public information the procedures of the court. This Section does not apply to proceedings in which the judge is a litigant in a personal capacity.

See Terminology, "require".
See Terminology, "court personnel".

Commentary:

The requirement that judges abstain from public comment regarding a pending or impending proceeding continues during any appellate process and until final disposition. This Section does not prohibit a judge from commenting on proceedings in which the judge is a litigant in a personal capacity, but in cases such as a writ of mandamus where the judge is a litigant in an official capacity, the judge must not comment publicly. The conduct of lawyers relating to trial publicity is governed by Rule 3.b of the Minnesota Rules of Professional Conduct.

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

Commentary:

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.

(710) Except in the Supreme Court and the Court of Appeals, a judge ~~should~~ shall prohibit broadcasting, televising, recording, or taking photographs in the courtroom and areas immediately adjacent thereto during sessions of court or recess between sessions. A judge may, however, authorize:

(a) the use of electronic or photographic means for the presentation of evidence, for the perpetuation of a record, or for other purposes of judicial administration;

(b) the broadcasting, televising, recording, or photographing of investitive, ceremonial, or naturalization proceedings;

(c) the photographic or electronic recording and reproduction of appropriate court proceedings under the following conditions:

(i) the means of recording will not distract participants or impair the dignity of the proceedings;

(ii) the parties have consented, and the consent to be depicted or recorded has been obtained from each witness appearing in the recording and reproduction;

(iii) the reproduction will not be exhibited until after the proceeding has been concluded and all direct appeals have been exhausted; and

(iv) the reproduction will be exhibited only for instructional purposes in educational institutions.

[NOTE: The series of Supreme Court orders modifying Canon 3A(7) for experimental audio and video coverage are not included in this comparison. The Advisory Committee does not recommend any changes to such orders except insofar as necessary to comport with the renumbering of Canon 3A(7) as Section 3A(10)]

(11) A judge shall not disclose or use, for any purpose unrelated to judicial duties, nonpublic information* acquired in a judicial capacity.

B. Administrative Responsibilities.

~~(1) A judge should~~ shall diligently discharge ~~all the judge's~~ administrative responsibilities without bias or prejudice and maintain professional competence in judicial administration, ~~and facilitate the performance of the administrative responsibilities of other judges and court officials.~~ and should cooperate with other judges and court officials in the administration of court business.

~~(2) A judge should~~ shall require* ~~judicial staff, and court officials and others~~ subject to the judge's direction and control to observe the standards of fidelity and diligence that apply to the judge-, and to refrain from manifesting bias or prejudice in the performance of their official duties.

~~(3) A judge should take or initiate appropriate disciplinary measures against a judge or lawyer for unprofessional conduct of which the judge may become aware.~~

(3) A judge with supervisory authority for the judicial performance of other judges shall take reasonable measures to assure the prompt disposition of matters before them and the proper performance of their other judicial responsibilities. [See also Canon 3C, below]

~~(4) A judge should~~ shall not make unnecessary appointments of personnel. A judge ~~should~~ shall exercise the power of appointment impartially and only on the basis of merit, avoiding nepotism and favoritism. A judge ~~should~~ shall not approve compensation of appointees beyond the fair value of services rendered.

See Terminology, "nonpublic information."

See Terminology, "require."

Commentary:

Appointees of a judge include neutral experts, assigned counsel, officials such as referees, commissioners, special masters, receivers, conservators, and guardians and personnel such as clerks, secretaries, court reporters and bailiffs. Consent by the parties to an appointment or an award of compensation does not relieve the judge of the obligation prescribed by Section 3B(4).

C. Disciplinary Responsibilities.

(1) A judge ~~should~~ shall take or initiate appropriate disciplinary measures against a judge or lawyer for unprofessional conduct of which the judge may become aware.

Commentary:

Appropriate action may include direct communication with the judge or lawyer who has committed the violation, other direct action if available, and reporting the violation to the appropriate authority* or other agency or body.

(2) Acts of a judge, in the discharge of disciplinary responsibilities, required or permitted by Section 3C(1) are part of the judge's judicial duties.

D. Disqualification.

(1) A judge ~~should~~ shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to instances where:

Commentary:

Under this rule, a judge is disqualified whenever the judge's impartiality might reasonably be questioned, regardless whether any of the specific rules in Section 3(D)(1) apply. For example, if a judge were in the process of negotiating for employment with a law firm, the judge would be disqualified from any matters in which that law firm appeared, unless the disqualification was waived by the parties after disclosure by the judge.

A judge should disclose on the record information that the judge believes the parties or their lawyers might consider relevant to the question of disqualification, even if the judge believes there is no real basis for disqualification.

By decisional law, 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 the latter case, the judge must disclose on the record the basis for possible disqualification and use reasonable efforts to transfer the matter to another judge as soon as practicable.

(a) the judge has a personal bias or prejudice concerning a party; or a party's lawyer, or personal knowledge* of disputed evidentiary facts concerning the proceeding;

See Terminology, "knowingly," knowledge," "known" and "knows."

Commentary:

Personal relationships of a judge with lawyers appearing in any matter, such as a former

partner, close personal friend, or other relationship which may give the appearance of impropriety, conflict of interest, or favoritism shall be disclosed to all parties at the commencement of any proceeding. While such relationships do not require automatic disqualification, disclosure is required.

(b) the judge served as lawyer in the matter in controversy, or a lawyer with whom the judge previously practiced law served during such association as a lawyer concerning the matter, or the judge or such lawyer has been a material witness concerning it;

Commentary:

A lawyer in a government agency does not ordinarily have an association with other lawyers employed by that agency within the meaning of Section 3D(1)(b); a judge formerly employed by a government agency, however, should disqualify himself or herself in a proceeding if the judge's impartiality might reasonably be questioned because of such association.

(c) the judge knows* that he or she, individually or as a fiduciary, or the judge's spouse, significant other, parent, or ~~minor~~ child wherever residing, or any other member of the judge's family residing in the judge's household*, has ~~a financial~~ an economic interest in the subject matter in controversy or in a party to the proceeding, or has any other more than de minimis* interest that could be substantially affected by ~~the outcome of the proceeding.~~

(d) the judge or the judge's spouse, or significant other or a person within the third degree of relationship* to any either of them, or the spouse of such a person:

(i) is a party to the proceeding, or an officer, director, or trustee of a party;

(ii) is acting as a lawyer in the proceeding;

(iii) is known* by the judge to have ~~an~~ a more than de minimus* interest that could be substantially affected by ~~the outcome of the proceeding;~~

(iv) is to the judge's knowledge* likely to be a material witness in the proceeding.

See Terminology, "knowingly," "knowledge," "known" and "knows."

See Terminology, "economic interest."

See Terminology, "de minimis."

See Terminology, "member of the judge's family residing in the judge's household."

See Terminology, "third degree of relationship."

Commentary:

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 of itself disqualify the judge. Under appropriate circumstances, the fact that "the judge's impartiality might reasonably be questioned" under

Section 3D(1), or that the relative is known by the judge to have an interest in the law firm that could be "substantially affected by the outcome of the proceeding" under Section 3D(1)(d)(iii) may require the judge's disqualification. In most cases, the fact that a judge's spouse is a firm partner requires the judge's disqualification.

(2) A judge ~~should~~ shall ~~become~~ keep informed about the judge's personal and fiduciary* ~~financial~~ economic interests,* and make a reasonable effort to ~~be~~ keep informed about the personal ~~financial~~ economic interests of the judge's spouse, significant other, and minor children, wherever residing, ~~in the judge's household~~.

See Terminology, "fiduciary."

See Terminology, "economic interest[s]."

(3) ~~For the purposes of this section:~~

~~(a) the degree of relationship is calculated according to the civil law system;~~

~~(b) "fiduciary" includes such relationships as executor, administrator, trustee, and guardian;~~

~~(c) "financial interest" means ownership of a legal or equitable interest, however small, or a relationship as director, advisor, or other active participant in the affairs of a party, except that:~~

~~(i) ownership in a mutual or common investment fund that holds securities is not a "financial interest" in such securities unless the judge participates in the management of the fund;~~

~~(ii) an office in an educational, religious, charitable, fraternal, or civic organization is not a "financial interest" in securities held by the organization;~~

~~(iii) the proprietary interest of a policy holder in a mutual insurance company, of a depositor in a mutual savings association, or a similar proprietary interest, is a "financial interest" in the organization only if the outcome of the proceeding could substantially affect the value of the interest;~~

~~(iv) ownership of government securities is a "financial interest" in the issuer only if the outcome of the proceeding could substantially affect the value of the securities.~~

DE. Remittal of Disqualification. A judge disqualified by the terms of ~~Canon 3C(1)(e) or Canon 3C(1)(d)~~ Section 3D may, instead of withdrawing from the proceeding, disclose on the record the basis of the judge's disqualification, and may ask the parties and their lawyers to consider, out of the presence of the judge, whether to waive disqualification. If, based on such disclosure, the parties and lawyers, independently of the judge's participation, all agree in writing that the judge's relationship is immaterial or that the financial interest is insubstantial, the judge ~~is no longer disqualified, and~~ If following disclosure of any basis for disqualification other than personal bias or prejudice concerning a party, the parties and lawyers, without participation by

the judge, all agree that the judge should not be disqualified, and the judge is then willing to participate, the judge may participate in the proceedings. The agreement, signed by all parties and lawyers, shall be incorporated in the record of the proceeding.

Commentary:

A remittal procedure provides the parties an opportunity to proceed without delay if they wish to waive the disqualification. To assure that consideration of the question of remittal is made independently of the judge, a judge must not solicit, seek or hear comment on possible remittal or waiver of the disqualification unless the lawyers jointly propose remittal after consultation as provided in the rule. A party may act through counsel if counsel represents on the record that the party has been consulted and consents. As a practical matter, a judge may wish to have all parties and their lawyers sign the remittal agreement.

CANON 4

A Judge May Engage in Activities to Improve the Law, the Legal System, Judicial Administration, and the Administration of Justice

~~A judge, subject to the proper performance of judicial duties, may engage in the following quasi-judicial activities, if doing so does not cast doubt on the judge's capacity to decide impartially any issue that may come before the judge:~~

~~A. A judge may speak, write, lecture, teach, and participate in other activities concerning the law, the legal system, judicial administration, and the administration of justice.~~

~~B. A judge may appear at a public hearing before an executive or legislative body or official on matters concerning the law, the legal system, judicial administration, and the administration of justice, and may otherwise consult with an executive or legislative body or official, but only on matters concerning the administration of justice or judicial administration.~~

~~C. A judge may serve as a member, officer, or director of an organization or governmental agency devoted to the improvement of the law, the legal system, judicial administration, or the administration of justice. A judge may assist such an organization in raising funds and may participate in their management and investment, but should not personally participate in public fund-raising activities. A judge may make recommendations to public and private fund-granting agencies on projects and programs concerning the law, the legal system, judicial administration, and the administration of justice.~~

CANON 54

A Judge Should Shall Regulate Conduct All Extra-Judicial

**Activities so as to Minimize the Risk of Conflict
With Judicial Duties Obligations**

A. Extra-judicial Activities in General. A judge shall conduct all extra-judicial activities so that they do not:

- (1) cast reasonable doubt on the judge's capacity to act impartially as a judge;
- (2) demean the judicial office; or
- (3) interfere with the proper performance of judicial duties.

Commentary:

Complete separation of a judge from extra-judicial activities is neither possible nor wise; a judge should not become isolated from the community in which the judge lives.

Expressions of bias or prejudice by a judge, even outside judicial activities, may cast reasonable doubt on the judge's capacity to act impartially. Expressions which may do so include jokes or other remarks demeaning individuals on the basis of their race, sex, religion, national origin, disability, age, sexual orientation or socioeconomic status. See Section 2C and accompanying Commentary.

A.B. Avocational Activities. A judge may write, lecture, teach, and speak on non-legal subjects, and engage-participate in other extra-judicial activities concerning the law*, the legal system, the administration of justice and non-legal subjects, including the arts, sports, and other social and recreational activities, if such avocational activities do not detract from the dignity of the office or interfere with the performance of judicial duties subject to the requirements of this Code.

See Terminology, "law."

Commentary:

As a judicial officer and person specially learned in the law, a judge is in a unique position to contribute to the improvement of the law, the legal system, and the administration of justice, including revision of substantive and procedural law and improvement of criminal and juvenile justice. To the extent that time permits, a judge is encouraged to do so, either independently or through a bar association, judicial conference or other organization dedicated to the improvement of the law. Judges may participate in efforts to promote the fair administration of justice, the independence of the judiciary and the integrity of the legal profession and may express opposition to the persecution of lawyers and judges in other countries because of their professional activities.

In this and other Sections of Canon 4, the phrase "subject to the requirements of this Code" is used, notably in connection with a judge's governmental, civic or charitable activities.

This phrase is included to remind judges that the use of permissive language in various Sections of the Code does not relieve a judge from the other requirements of the Code that apply to the specific conduct.

C. Governmental, Civic or Charitable Activities.

(1) A judge shall not appear at a public hearing before, or otherwise consult with, an executive or legislative body or official except on matters concerning the law*, the legal system or the administration of justice or except when acting pro se in a matter involving the judge or the judge's interests.

See Terminology, "law."

Commentary:

See Section 2B regarding the obligation to avoid improper influence.

(2) A judge shall not accept appointment to a governmental committee or commission or other governmental position that is concerned with issues of fact or policy on matters other than the improvement of the law*, the legal system or the administration of justice. A judge may, however, represent a country, state or locality on ceremonial occasions or in connection with historical, educational or cultural activities.

See Terminology, "law."

Commentary:

Section 4C(2) prohibits a judge from accepting any governmental position except one relating to the law, legal system or administration of justice as authorized by Section 4C(3). The appropriateness of accepting extra-judicial assignments must be assessed in light of the demands on judicial resources created by crowded dockets and the need to protect the courts from involvement in extra-judicial matters that may prove to be controversial. Judges should not accept governmental appointments that are likely to interfere with the effectiveness and independence of the judiciary.

Section 4C(2) does not govern a judge's service in a nongovernmental position. See Section 4C(3) permitting service by a judge with organizations devoted to the improvement of the law, the legal system or the administration of justice and with educational, religious, charitable, fraternal or civic organizations not conducted for profit. For example, service on the board of a public educational institution, unless it were a law school, would be prohibited under Section 4C(2), but service on the board of a public law school or any private educational institution would generally be permitted under Section 4C(3).

B.(3) Civic and Charitable Activities. A judge may participate in civic and charitable activities that do not reflect adversely upon the judge's impartiality or interfere with the performance of judicial duties. A judge may serve as an officer, director, trustee, or non-legal

advisor of an educational, religious, charitable, fraternal, or civic organization not conducted for the economic or political advantage of its members, subject to the following limitations and the other requirements of this code:

Commentary:

Section 4C(3) does not apply to a judge's service in a governmental position unconnected with the improvement of the law, the legal system or the administration of justice; see Section 4C(2).

See Commentary to Section 4B regarding use of the phrase "subject to the following limitations and the other requirements of this Code." As an example of the meaning of the phrase, a judge permitted by Section 4C(3) to serve on the board of a fraternal institution may be prohibited from such service by Sections 2C or 4A if the institution practices invidious discrimination or if service on the board otherwise casts reasonable doubt on the judge's capacity to act impartially as a judge.

Service by a judge on behalf of a civic or charitable organization may be governed by other provisions of Canon 4 in addition to Section 4C. For example, a judge is prohibited by Section 4G from serving as a legal advisor to a civic or charitable organization.

(a) A judge shall not serve as an officer, director, trustee, or non-legal advisor if it is likely that the organization:

(i) will be engaged in proceedings that would ordinarily come before the judge, or

(ii) will be regularly engaged frequently in adversary proceedings in any the court of which the judge is a member or in any court subject to the appellate jurisdiction of the court of which the judge is a member.

Commentary:

The changing nature of some organizations and of their relationship to the law makes it necessary for a judge regularly to reexamine the activities of each organization with which the judge is affiliated to determine if it is proper for the judge to continue the affiliation. For example, in many jurisdictions charitable hospitals are now more frequently in court than in the past. Similarly, the boards of some legal aid organizations now make policy decisions that may have political significance or imply commitment to causes that may come before the courts for adjudication.

(b) A judge ~~should~~ shall not solicit funds for any educational, religious, charitable, fraternal, or civic organization, or use or permit the use of the prestige of judicial office for that purpose, but may be listed as an officer, director, or trustee of such an organization. A judge ~~should~~ shall not be a speaker or the guest of honor at an organization's fund raising events, but may attend such events. A judge may participate in the management and investment of an organization's funds so long as it does not conflict with other provisions of the code.

Commentary:

A judge may solicit membership or endorse or encourage membership efforts for an organization devoted to the improvement of the law, the legal system or the administration of justice or a nonprofit educational, religious, charitable, fraternal or civic organization as long as the solicitation cannot reasonably be perceived as coercive and is not essentially a fund-raising mechanism. Solicitation of funds for an organization and solicitation of memberships similarly involve the danger that the person solicited will feel obligated to respond favorably to the solicitor if the solicitor is in a position of influence or control.

Use of an organization letterhead for fund-raising or membership solicitation does not violate Section 4C(3)(b) provided the letterhead lists only the judge's name and office or other position in the organization. In addition, a judge must also make reasonable efforts to ensure that the judge's staff, court officials and others subject to the judge's direction and control do not solicit funds on the judge's behalf for any purpose, charitable or otherwise.

~~(3) A judge should not give investment advice to such an organization, but may serve on its board of directors or trustees even though it has the responsibility for approving investment decisions.~~

C.D. Financial Activities.

~~(1) A judge should refrain from financial and business dealings that tend to reflect adversely on the judge's impartiality, interfere with the proper performance of judicial duties, exploit the judicial position, or involve the judge in frequent transactions with lawyers or persons likely to come before the court on which the judge serves.~~

(1) A judge shall not engage in financial and business dealings that:

(a) may reasonably be perceived to exploit the judge's judicial position, or

(b) involve the judge in frequent transactions or continuing business relationships with those lawyers or other persons likely to come before the court on which the judge serves.

Commentary:

The Time for Compliance provision of this Code (Application, Section F) postpones the time for compliance with certain provisions of this Section in some cases.

When a judge acquires in a judicial capacity information, such as material contained in filings with the court, that is not yet generally known, the judge must not use the information for private gain. See Section 2B; see also Section 3B(11).

A judge must avoid financial and business dealings that involve the judge in frequent transactions or continuing business relationships with persons likely to come either before the judge personally or before other judges on the judge's court. In addition, a judge should

discourage members of the judge's family from engaging in dealings that would reasonably appear to exploit the judge's judicial position. This rule is necessary to avoid creating an appearance of exploitation of office or favoritism and to minimize the potential for disqualification. With respect to affiliation of relatives of judge with law firms appearing before the judge, see Commentary to Section 3E(1) relating to disqualification.

Participation by a judge in financial and business dealings is subject to the general prohibitions in Section 4A against activities that tend to reflect adversely on impartiality, demean the judicial office, or interfere with the proper performance of judicial duties. Such participation is also subject to the general prohibition in Canon 2 against activities involving impropriety or the appearance of impropriety and the prohibition in Section 2B against the misuse of the prestige of judicial office. In addition, a judge must maintain high standards of conduct in all of the judge's activities, as set forth in Canon 1. See Commentary for Section 4B regarding use of the phrase "subject to the requirements of this Code."

~~(2) Subject to the requirements of subsection (1), a judge may hold and manage investments, including real estate, and engage in other remunerative activity, but should not serve as an officer, director, manager, advisor, or employee of any business.~~

(2) A judge may, subject to the requirements of this Code, hold and manage investments of the judge and members of the judge's family*, including real estate, and engage in other remunerative activity.

See Terminology, "member[s] of the judge's family."

Commentary:

This Section provides that, subject to the requirements of this Code, a judge may hold and manage investments owned solely by the judge, investments owned solely by a member or members of the judge's family, and investments owned jointly by the judge and members of the judge's family.

(3) A judge shall not serve as an officer, director, manager, general partner, advisor or employee of any business entity.

~~(34) A judge should~~ shall manage ~~his or her~~ the judge's investments and other financial interests to minimize the number of cases in which the judge is disqualified. As soon as ~~one~~ the judge can do so without serious financial detriment, a ~~the judge should~~ shall ~~become~~ be divested ~~himself or herself~~ of investments and other financial interests that might require frequent disqualification.

~~(4) Neither a judge nor a family member residing in the same household should accept a gift, bequest, favor, or loan from anyone except as follows:~~

(5) A judge shall not accept, and shall urge members of the judge's family residing in the judge's household* not to accept, a gift, bequest, favor or loan from anyone except for:

See Terminology, "member of the judge's family residing in the judge's household."

Commentary:

Section 4D(5) does not apply to contributions to a judge's campaign for judicial office, a matter governed by Canon 5.

Because a gift, bequest, favor or loan to a member of the judge's family residing in the judge's household might be viewed as intended to influence the judge, a judge must inform those family members of the relevant ethical constraints upon the judge in this regard and discourage those family members from violating them. A judge cannot, however, reasonably be expected to know or control all of the financial or business activities of all family members residing in the judge's household.

(a) ~~a judge may accept a gift incident to a public testimonial to the judge; books, tapes and other resource materials supplied by publishers on a complimentary basis for official use; or an invitation to the judge and the judge's spouse or guest to attend a bar-related function or an activity devoted to the improvement of the law*, the legal system, judicial administration, or the administration of justice;~~

See Terminology, "law."

Commentary:

Acceptance of an invitation to a law-related function is governed by Section 4D(5)(a); acceptance of an invitation paid for by an individual lawyer or group of lawyers is governed by Section 4D(5)(h).

A judge may accept a public testimonial or a gift incident thereto only if the donor organization is not an organization whose members comprise or frequently represent the same side in litigation, and the testimonial and gift are otherwise in compliance with other provisions of this Code. See Sections 4A(1) and 2B.

~~(b) a judge or a family member residing in the same household may accept ordinary social hospitality; a gift, bequest, favor, or loan from a relative; a wedding or engagement gift; a loan from a lending institution in its regular course of business on the same terms generally available to persons who are not judges; or a scholarship or fellowship awarded on the same terms applied to other applicants;~~

(b) a gift, award or benefit incident to the business, profession or other separate activity of a spouse or other family member of a judge residing in the judge's household, including gifts, awards and benefits for the use of both the spouse or other family member and the judge (as spouse or family member), provided the gift, award or benefit could not reasonably be perceived as intended to influence the judge in the performance of judicial duties;

(c) ordinary social hospitality;

(d) a gift for a special occasion from a relative or friend, if the gift is fairly commensurate with the occasion and the relationship;

Commentary:

A gift to a judge, or to a member of the judge's family living in the judge's household, that is excessive in value raises questions about the judge's impartiality and the integrity of the judicial office and might require disqualification of the judge where disqualification would not otherwise be required. See, however, Section 4D(5)(e).

(e) a gift, bequest, favor or loan from a relative or close personal friend whose appearance or interest in a case would in any event require disqualification under Section 3E;

(f) a loan from a lending institution in its regular course of business on the same terms generally available to persons who are not judges;

(g) a scholarship or fellowship awarded on the same terms and based on the same criteria applied to other applicants; or

(eh) a judge or a family member residing in the same household may accept any other gift, bequest, favor, or loan only if: the donor is not a party or other person who has come or is likely to come or whose interests have come or are likely to come before the judge; and, if its value exceeds \$100\$150, the judge reports it in the same manner as he or she the judge reports compensation in Canon 6CSection 4H.

Commentary:

Section 4D(5)(h) prohibits judges from accepting gifts, favors, bequests or loans from lawyers or their firms if they have come or are likely to come before the judge; it also prohibits gifts, favors, bequests or loans from clients of lawyers or their firms when the clients' interests have come or are likely to come before the judge.

(5) For the purposes of this section "family member residing in the same household" means any relatives of a judge by blood or marriage, or a person treated by a judge as a member of the family, who resides in the judge's household.

(6) A judge is not required by this Code to disclose his or her income, debts, or investments, except as provided in this Canon and Canons 3 and 6.

(7) Information acquired by a judge in a judicial capacity should not be used or disclosed by the judge in financial dealings or for any other purpose not related to the judicial duties.

DE. Fiduciary Activities.

(1) A judge should shall not serve as the executor, administrator or other personal representative, trustee, guardian, conservator, attorney in fact or other fiduciary, except for the estate, trust, conservatorship or person of a family member, and then only if such service will not interfere with the proper performance of judicial duties. "Family member" includes a spouse, child, grandchild, parent, grandparent, or other relative or person with whom the judge maintains a close familial relationship. As a family fiduciary a judge is subject to the following restrictions:

(12) A judge should shall not serve as fiduciary* if it is likely that the judge as a fiduciary the judge will be engaged in proceedings that would ordinarily come before the judge, or if the estate, trust, conservatorship or ward becomes involved in adversary proceedings in the court on which the judge serves or one under its appellate jurisdiction.

(2) While acting as a fiduciary a judge is subject to the same restrictions on financial activities that apply to the judge in a personal capacity.

(3) The same restrictions on financial activities that apply to a judge personally also apply to the judge while acting in a fiduciary* capacity.

See Terminology, "fiduciary."

See Terminology, "member of the judge's family."

Commentary:

The Time for Compliance provision of this Code (Application, Section F) postpones the time for compliance with certain provisions of this Section in some cases.

The restrictions imposed by this Canon may conflict with the judge's obligation as a fiduciary. For example, a judge should resign as trustee if detriment to the trust would result from divestiture of holdings the retention of which would place the judge in violation of Section 4D(4).

~~E. Arbitration.~~ A judge should not act as an arbitrator or mediator.

F. Service as Arbitrator or Mediator. A judge shall not act as an arbitrator or mediator or otherwise perform judicial functions in a private capacity unless expressly authorized by law*. A periodic part-time judge* may participate as mediator or arbitrator if:

(1) the judge does not participate during the period or any judicial assignment,

(2) the judge is disqualified from mediation and arbitration in matters in which the judge served as judge, and is disqualified as judge from matters in which the judge participated as mediator or arbitrator, unless all parties to the proceeding consent after consultation, and

(3) the participation does not reflect adversely on the part-time judge's impartiality."

See Terminology, "law."

Commentary:

Section 4F does not prohibit a judge from participating in arbitration, mediation or settlement conferences performed as part of judicial duties.

FG. Practice of Law. A judge should shall not practice law. Notwithstanding this prohibition, a judge may act pro se and may, without compensation, give legal advice to and draft or review documents for a member of the judge's family*, but may not act as advocate or negotiator nor make an appearance as counsel for a member of the judge's family in a legal matter.

See Terminology, "member of the judge's family."

Commentary:

This prohibition refers to the practice of law in a representative capacity and not in a pro se capacity. A judge may act for himself or herself in all legal matters, including matters involving litigation and matters involving appearances before or other dealings with legislative and other governmental bodies. However, in so doing, a judge must not abuse the prestige of office to advance the interests of the judge or the judge's family. See Section 2(B).

The Code allows a judge to give legal advice to and draft legal documents for members of the judge's family, so long as the judge receives no compensation. A judge must not, however, act as an advocate or negotiator for a member of the judge's family in a legal matter.

A retired judge who serves or intends to serve in a part-time capacity shall not practice law while available for judicial assignment, but may serve as an arbitrator or mediator as provided in Section 4F. A roster of retired judges available for assignment is maintained by the Supreme Court.

G. Extra-Judicial Appointments. A judge should not accept appointment to a governmental committee, commission, or other position that is concerned with issues of fact or policy on matters other than the improvement of the law, the legal system, judicial administration, or the administration of justice. A judge, however, may represent the judge's country, state, or locality on ceremonial occasions or in connection with historical, educational, and cultural activities.

CANON 6

H. Compensation, Reimbursement and Reporting.

A Judge Should Regularly File Reports of Compensation Received
for Quasi-Judicial and Extra-Judicial Activities

(1) Compensation and Reimbursement. A judge may receive compensation and reimbursement of expenses for the ~~quasi-judicial~~ and extra-judicial activities permitted by this Code, if the source of such payments does not give the appearance of influencing the judge's performance of ~~in~~ judicial duties or otherwise give the appearance of impropriety, ~~subject to the following restrictions:~~

~~A. Compensation.~~ (a) Compensation ~~should~~ shall not exceed a reasonable amount nor ~~should~~ shall it exceed what a person who is not a judge would receive for the same activity.

~~B. Expense Reimbursement.~~ (b) Expense reimbursement ~~should~~ shall be limited to the actual cost of travel, food, and lodging reasonably incurred by the judge and, where appropriate to the occasion, by the judge's spouse or guest. Any payment in excess of such an amount is compensation.

~~C. Public Reports.~~ (2) Public Reports. A judge ~~should~~ shall report the date, place, and nature of any activity for which the judge received compensation, and the name of the payor and the amount of compensation so received. Income from investments, whether in real or personal property and other sources where the judge does not render service in exchange for the income is not extra-judicial compensation to the judge. This report ~~should~~ shall be made annually, on or before the first day of May each year, and should be filed as a public document in the office of the State Court Administrator. ~~Canon 6C shall become effective on May 1, 1975.~~

See Terminology, "law."

Commentary:

See Section 4D(5) regarding reporting of gifts, bequests and loans.

The Code does not prohibit a judge from accepting honoraria or speaking fees provided that the compensation is reasonable and commensurate with the task performed. A judge should ensure, however, that no conflicts are created by the arrangement. A judge must not appear to trade on the judicial position for personal advantage. Nor should a judge spend significant time away from court duties to meet speaking or writing commitments for compensation. In addition, the source of the payment must not raise any question of undue influence or the judge's ability or willingness to be impartial.

I. Disclosure of a judge's income, debts, investments or other assets is required only to the extent provided in this Canon and in Sections 3E and 3F, or as otherwise required by law*.

See Terminology, "law."

Commentary:

Section 3E requires a judge to disqualify himself or herself in any proceeding in which the judge has an economic interest. See "economic interest" as explained in the Terminology Section. Section 4H requires a judge to report all compensation the judge received for

activities outside judicial office. A judge has the rights of any other citizen, including the right to privacy of the judge's financial affairs, except to the extent that limitations established by law are required to safeguard the proper performance of the judge's duties.

CANON 75

A Judge or Judicial Candidate ~~Should~~ Shall Refrain From Inappropriate Political Activity ~~Inappropriate to Judicial Office~~

A. ~~Political Conduct in General.~~ All Judges and Candidates.

(1) A ~~Except as authorized in Sections 5B (2) and 5C(1), a judge or a candidate for election to judicial office should~~ shall not:

(a) act as a leader or hold any office in a political organization;

(b) ~~make speeches for a political organization or candidate or publicly endorse or publicly oppose another~~ a candidate for public office;

(c) make speeches on behalf of a political organization*;

(d) attend political gatherings; or

(~~e~~) solicit funds for, or pay an assessment to or make a contribution to a political organization or candidate, attend political gatherings, or purchase tickets for political party dinners, or other functions, except as authorized in subsection A(2).

See Terminology, "candidate."

See Terminology, "political organization."

Commentary:

A judge or candidate for judicial office retains the right to participate in the political process as a voter.

Where false information concerning a judicial candidate is made public, a judge or another judicial candidate having knowledge of the facts is not prohibited by Section 5A(1) from making the facts public.

Section 5A(1)(a) does not prohibit a candidate for elective judicial office from retaining during candidacy a public office such as county prosecutor, which is not "an office in a political organization."

Section 5A(1)(b) does not prohibit a judge or judicial candidate from privately expressing his or her views on judicial candidates or other candidates for public office. A judge may respond to official inquiries concerning a person being considered for a judgeship. See Section 2B and Commentary.

A candidate does not publicly endorse another candidate for public office by having that candidate's name on the same ticket. Committees of lawyers commonly endorse groups of judges, and this is not prohibited.

~~(2) A judge holding an office filled by public election between competing candidates, or a candidate for such office, may accept invitations to attend and speak on his or her own behalf at other than partisan political gatherings during the year in which the judge is a candidate for election or reelection.~~

(32) A judge ~~should~~ shall resign the judicial office on becoming a candidate* either in a party primary or in a general election for a non-judicial office, except that the judge may continue to hold judicial office while being a candidate for election to or serving as a delegate in a state constitutional convention, if the judge is otherwise permitted by law* to do so.

See Terminology, "candidate."

See Terminology, "law."

~~(4) A judge should not engage in any other political activity except on behalf of measures to improve the law, the legal system, judicial administration, or the administration of justice.~~

B. Campaign Conduct.

(43) A candidate*, ~~including an incumbent judge, for a judicial office that is filled either by public election between competing candidates or on the basis of a merit system election:~~

(a) ~~should~~ shall maintain the dignity appropriate to judicial office and act in a manner consistent with the integrity and independence of the judiciary, and ~~should~~ shall encourage family members to adhere to the same standards of political conduct that in support of the candidate as apply to the judge candidate;

See Terminology, "member of the candidate's family."

Commentary:

Although a judicial candidate must encourage members of his or her family to adhere to the same standards of political conduct in support of the candidate that apply to the candidate, family members are free to participate in other political activity.

~~(b) should prohibit public officials or employees subject to the candidate's direction or control from doing for the candidate what he or she is prohibited from doing under this Canon; and except to the extent authorized under subsection B(2), or B(3), the candidate should not~~

~~allow any other person to do for the candidate what he or she is prohibited from doing under this Canon; shall prohibit employees who serve at the pleasure of the candidate*, and shall discourage other employees and officials subject to the candidate's direction and control from doing on the candidate's behalf what the candidate is prohibited from doing under the Sections of this Canon;~~

(c) except to the extent permitted by Section 5C(2), shall not authorize or knowingly* permit any other person to do for the candidate* what the candidate is prohibited from doing under the Sections of this Canon;

(ed) should shall not;

(i) make pledges or promises of conduct in office other than the faithful and impartial performance of the duties of the office; announce his or her views on disputed legal or political issues; or misrepresent his or her identity, qualifications, present position, or other fact.

(ii) make statements that commit or appear to commit the candidate with respect to cases, controversies or issues that are likely to come before the court; or

(iii) knowingly* misrepresent the identity, qualifications, present position or other fact concerning the candidate or an opponent;

See Terminology, "candidate."

See Terminology, "knowingly."

Commentary:

Section 5A(3)(d) prohibits a candidate for judicial office from making statements that appear to commit the candidate regarding cases, controversies or issues likely to come before the court. As a corollary, a candidate should emphasize in any public statement the candidate's duty to uphold the law regardless of his or her personal views. See also Section 3B(9), the general rule on public comment by judges. Section 5A(3)(d) does not prohibit a candidate from making pledges or promises respecting improvements in court administration. Nor does this Section prohibit an incumbent judge from making private statements to other judges or court personnel in the performance of judicial duties. This Section applies to any statement made in the process of securing judicial office, such as statements to commissions charged with judicial selection. See also Rule 8.2 of the ABA Model Rules of Professional Conduct.

(e) may respond to personal attacks or attacks on the candidate's record as long as the response does not violate Section 5A(3)(d).

B. Candidates Seeking Appointment to Judicial or Other Governmental Office.

(1) A candidate* for appointment to judicial office or a judge seeking appointment to other governmental office shall not solicit or accept funds, personally or through a committee or

otherwise, to support his or her candidacy.

(2) A candidate* for appointment to a judicial office or a judge seeking appointment to other governmental office shall not engage in any political activity to secure the appointment except that:

(a) such person may:

(i) communicate with the appointing authority, including any selection or nominating commission or other agency designated to screen candidates;

(ii) seek support or endorsement for the appointment from organizations that regularly make recommendations for reappointment or appointment to the office, and from individuals to the extent requested or required by those specified in Section 5B(2)(a); and

(iii) provide to those specified in Sections 5B(2)(a)(i) and 5B(2)(a)(ii) information as to his or her qualifications for the office;

(b) A non-judge candidate* for appointment to judicial office may, in addition, unless otherwise prohibited by law*:

(i) retain an office in a political organization*,

(ii) attend political gatherings, and

(iii) continue to pay ordinary assessments and ordinary contributions to a political organization or candidate and purchase tickets for political party dinners or other functions.

See Terminology, "candidate."

See Terminology, "law."

See Terminology, "political organization."

Commentary:

Section 5B(2) provides a limited exception to the restrictions imposed by Section 5A(1) and 5D. Under Section 5B(2), candidates seeking reappointment to the same judicial office or appointment to another judicial office or other governmental office may apply for the appointment and seek appropriate support.

Although under Section 5B(2) non-judge candidates seeking appointment to judicial office are permitted during candidacy to retain office in a political organization, attend political gatherings and pay ordinary dues and assessments, they remain subject to other provisions of this Code during candidacy. See Sections 5B(1), 5B(2)(a), 5E and Application Section.

C. Judges and Candidates Subject to Public Election.

(1) A judge or a candidate* subject to public election* may, except as prohibited by law*, when a candidate for public election:

(a) speak to gatherings on his or her own behalf;

(b) appear in newspaper, television and other media advertisements supporting his or her candidacy; and

(c) distribute pamphlets and other promotional campaign literature supporting his or her candidacy.

See Terminology, "candidate."

See Terminology, "public election."

See Terminology, "law."

(2) A candidate, including an incumbent judge, for a judicial office that is filled by public election between competing candidates should not solicit or accept campaign funds, or solicit publicly stated support, but may establish committees of responsible persons to secure and manage the expenditure of funds for the campaign and to obtain public statements of support. Such committees are not prohibited from soliciting campaign contributions and public support from lawyers. A candidate should not use or permit the use of campaign contributions for private benefit. A candidate* shall not personally solicit or accept campaign contributions or solicit publicly stated support. A candidate may, however, establish committees to conduct campaigns for the candidate through media advertisements, brochures, mailings, candidate forums and other means not prohibited by law. Such committees may solicit and accept campaign contributions, manage the expenditure of funds for the candidate's campaign and obtain public statements of support for his or her candidacy. Such committees are not prohibited from soliciting and accepting campaign contributions and public support from lawyers. Such committees should not disclose to the candidate the identity of campaign contributors. A candidate's committees may solicit contributions and public support for the candidate's campaign no earlier than one year before an election and no later than 90 days after the last election in which the candidate participates during the election year. A candidate shall not use or permit the use of campaign contributions for the private benefit of the candidate or others.

See Terminology, "candidate."

Commentary:

Section 5C(2) permits a candidate, other than a candidate for appointment, to establish campaign committees to solicit and accept public support and reasonable financial contributions. Campaign contributions of which a judge has knowledge, made by lawyers or others who appear before the judge, may be relevant to disqualification under Section 3E. A candidate's committees have a duty not to disclose to the candidate the identity of campaign contributors.

Campaign committees established under Section 5C(2) should manage campaign finances responsibly, avoiding deficits that might necessitate post-election fund-raising, to the extent possible.

Section 5C(2) does not prohibit a candidate from initiating an evaluation by a judicial selection commission or bar association, or, subject to the requirements of this Code, from responding to a request for information from any organization.

(3) ~~An incumbent judge who is a candidate for retention in or re-election to office without a competing candidate, and whose candidacy has drawn active opposition, may campaign in response thereto and may obtain publicly stated support and campaign funds in the manner provided in subsection B(2).~~

D. Incumbent Judges. A judge shall not engage in any political activity except (i) as authorized under any other Section of this Code, (ii) on behalf of measures to improve the law*, the legal system or the administration of justice, or (iii) as expressly authorized by law.

See Terminology, "law."

Commentary:

Neither Section 5D nor any other section of this Code prohibits a judge in the exercise of administrative functions from engaging in planning and other official activities with members of the executive and legislative branches of government. With respect to a judge's activity on behalf of measures to improve the law, the legal system and the administration of justice, see Commentary to Section 4B and Section 4C(1) and its Commentary.

E. Applicability. Canon 5 generally applies to all incumbent judges and judicial candidates*. A successful candidate, whether or not an incumbent, is subject to judicial discipline for his or her campaign conduct; an unsuccessful candidate who is a lawyer is subject to lawyer discipline for his or her campaign conduct. A lawyer who is a candidate for judicial office is subject to Rule 8.2 of the Minnesota Rules of Professional Conduct.

See Terminology, "candidate."

COMPLIANCE WITH APPLICATION OF THE CODE OF JUDICIAL CONDUCT

A. Full Time Judges. Anyone, whether or not a lawyer, who is an officer of a judicial system performing judicial functions, including an officer such as a full time referee in bankruptcy, special master, court commissioner, or magistrate, is a judge for the purpose within the meaning of this Code. All judges should shall comply with this Code except as provided

below.

Commentary:

The categories of judicial service in other than a full-time capacity are necessarily defined in general terms because of the widely varying forms of judicial service. For the purposes of this Section, as long as a retired judge is subject to assignment the judge is considered to "perform judicial functions." The determination of which category and, accordingly, which specific Code provisions apply to an individual judicial officer, depend upon the facts of the particular judicial service.

~~**A. Part-Time Judge.** A part time judge is a judge who serves on a continuing or periodic basis, but is permitted by law to devote time to some other profession or occupation and whose compensation for that reason is less than that of a full time judge. A part time judge:~~

~~(1) is not required to comply with Canon 5C(2), D, E, F, and G, and Canon 6C;~~

~~(2) should not practice law in the court on which the judge serves or in any court subject to the appellate jurisdiction of that court or act as a lawyer in a proceeding in which the judge has served or in any other proceeding related thereto.~~

~~**B. Retired Judge.** A retired judge who receives the same compensation as a full time judge on the court from which the judge retired and is eligible for recall to judicial service should comply with all the provisions of this Code except Canon 5G, but should refrain from judicial service during the period of an extra judicial appointment not sanctioned by Canon 5G. All other retired judges eligible for recall to judicial service should comply with the provisions of this Code governing part time judges. A retired judge who by law is not permitted to practice law is not required to comply:~~

~~(1) except while serving as a judge, with Section 4F; and~~

~~(2) at any time with Section 4E.~~

~~**C. Periodic Part-time Judge.** A periodic part-time judge*:~~

~~(1) is not required to comply~~

~~(a) except while serving as a judge, with Section 3A(9);~~

~~(b) at any time, with Sections 4C(2), 4C(3)(a), 4D(1)(b), 4D(3), 4D(4), 4D(5), 4E, 4F, 4G, 4H, 5A(1), 5B(2) and 5D.~~

~~(2) shall not practice law in the division of the court on which the judge serves and shall not act as a lawyer in a proceeding in which the judge has served as a judge or in any other proceeding related thereto.~~

See Terminology, "periodic part-time judge."

Commentary:

When a person who has been a periodic part-time judge is no longer a periodic part-time judge (no longer accepts appointments), that person may act as a lawyer in a proceeding in which he or she has served as a judge or in any other proceeding related thereto only with the express consent of all parties pursuant to Rule 1.12(a) of the Minnesota Rules of Professional Conduct]. Application Section, part C is intended to encompass conciliation court referees appointed pursuant to law (see 1993 Minn. Laws, chapter 321, Section 4; codified as Minnesota Statutes, section 491A.03, subdivision 1) and special masters.

EFFECTIVE DATE OF COMPLIANCE

~~A person to whom this Code becomes applicable should arrange his or her affairs as soon as reasonably possible to comply with it. If, however, the demands on time and the possibility of conflicts of interest are not substantial, a person who holds judicial office on the date this Code becomes effective may:~~

~~(a) continue to act as an officer, director, or non-legal advisor of a family business;~~

~~(b) continue to act as an executor, administrator, trustee, or other fiduciary for the estate or person of one who is not a family member.~~

D. Time for Compliance. A person to whom this Code becomes applicable shall comply immediately with all provisions of this Code except Sections 4D(2), 4D(3) and 4E and shall comply with these Sections as soon as reasonably possible and shall do so in any event within the period of one year.

Commentary:

If serving as a fiduciary when selected as judge, a new judge may, notwithstanding the prohibitions in Section 4E, continue to serve as fiduciary but only for that period of time necessary to avoid serious adverse consequences to the beneficiary of the fiduciary relationship and in no event longer than one year. Similarly, if engaged at the time of judicial selection in a business activity, a new judge may, notwithstanding the prohibitions in Section 4D(3), continue in that activity for a reasonable period but in no event longer than one year.