

ARIZONA
CODE OF JUDICIAL
CONDUCT
1993

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ARIZONA CODE OF JUDICIAL CONDUCT–1993

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Note

The table of contents, index and page numbers used in this version of the code are for convenience in studying this document and are not part of the code.

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 an 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

The following terms have specific meanings within the context of this code. The sections where the 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* Sections 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, authorizes circulation of a nominating petition, 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, and 5C.

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

"Financial interest" means ownership of a legal or equitable interest of substance 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 a financial 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 a financial 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 a financial 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 a financial 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) and definition of "interest of substance."

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

"Impartiality" or "impartial" denotes absence of bias or prejudice in favor of, or against, particular parties or classes of parties, as well as maintaining an open mind in considering issues that may come before the judge. *See* Sections 2A, 3B(10), 3E(1), 4C(4), 5B(1)(a) and 5B(1)(d)(i).

"Interest of substance" denotes any financial interest in a closely held corporation or business and, in the case of a publicly held corporation, denotes a legal or equitable interest, the value of which is likely to be increased or decreased to any material extent by the outcome of the litigation. *See* definition of "financial interest."

"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(4), and 5B(2).

"Member of the candidate's family" denotes a spouse, child, grandchild, parent, grandparent or other relative or person with whom the candidate maintains a close familial relationship. *See* Section 5B(1)(a).

"Member of the judge's family" denotes a spouse, child, grandchild, parent, grandparent, or other relative or person with whom the judge maintains a close familial relationship. *See* Sections 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)(c) 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, presentencing reports, dependency cases or psychiatric reports. *See* Section 3B(11).

"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* Section 5A(1).

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

"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* Sections 3B(3), 3B(4), 3B(5), 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 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 shall personally observe those standards so that the integrity and independence of the judiciary will be preserved. The provisions of this code are to 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. A judiciary of integrity is one in which judges are known for their probity, fairness, honesty, uprightness, and soundness of character. An independent judiciary is one free of inappropriate outside influences. Although judges should be independent, they must comply with the law and 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.

A judicial decision or administrative act later determined to be incorrect as a matter of law or as an abuse of discretion is not a violation of this code unless done repeatedly or intentionally. The basic function of an independent and honorable judiciary is to maintain the utmost integrity in decision-making, and this code should be read and interpreted with that function in mind.

CANON 2

A JUDGE SHALL AVOID IMPROPRIETY AND THE APPEARANCE OF IMPROPRIETY IN ALL OF THE JUDGE'S ACTIVITIES

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

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. Examples are the restrictions on judicial speech imposed by Sections 3B(9) and (10) that are indispensable to the maintenance of the integrity, impartiality, and independence of the judiciary.

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 appearance of impropriety is whether the conduct would create in reasonable minds a perception that the judge's ability to carry out judicial responsibilities with integrity, impartiality and competence is impaired.

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 or use his or her judicial position to gain a personal advantage such as deferential treatment when stopped by a police officer for a traffic offense. Similarly, judicial letterhead or any stationery identifying the judge as such 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. A recommendation, written or otherwise, should not be made if the person who is the subject of the letter is or is likely to be a litigant in a contested proceeding before the judge's court. *See* Arizona Judicial Ethics Advisory Committee, Opinion 92-06 (April 17, 1992) (letter for friend; letter for applicant to government position; use of official stationery).

Judges may participate in the process of judicial selection by serving on and cooperating with screening and appointing committees seeking names for consideration, by responding to official inquiries concerning a person being considered for a judgeship, and by providing oral or written recommendations, whether solicited or not, concerning judicial applicants. *See also* Canon 5 regarding use of a judge's name in political activities; Arizona Judicial Ethics Advisory Committee, Advisory Opinion 87-01 (May 4, 1987) (letter to governor or nominating commission).

A judge must not testify voluntarily as a character witness in an adjudicatory proceeding 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 summoned. Except in unusual circumstances where the demands of justice require, a judge should discourage a party from requiring the judge to testify as a character witness. Adjudicatory proceedings include not only proceedings before courts but also before administrative agencies, including disciplinary bodies.

A judge also must not initiate communications with a sentencing judge or a probation or corrections officer. However, a judge may provide to such persons information for the record in response to a formal request.

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. Section 2C refers to the current practices of the organization. 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 how the organization selects members

and other relevant factors, such as whether the organization is dedicated to the preservation of religious, ethnic or cultural values of legitimate common interest to its members, or whether it is 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*, for example, *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 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 such invidious discrimination, 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.

A judge is required to resign from any organization which engages in invidious discrimination upon the inception of his or her service as a judge.

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.

(2) A judge shall be faithful to the law and maintain professional competence in it. A judge shall not be swayed by partisan interests, public clamor or fear of criticism.

(3) A judge shall require order and decorum in proceedings before the judge.

(4) A judge shall be patient, dignified and courteous to litigants, jurors, witnesses, lawyers and others with whom the judge deals in an official capacity, and shall require similar conduct of lawyers, and of staff, court officials and others subject to the judge's direction and control.

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 must perform judicial duties impartially and fairly. 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 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:

(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.

(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.

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 3B(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 3B(7)(a) and 3B(7)(b) regarding a proceeding pending or impending before the judge.

Except as provided by law, 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 3B(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.

(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. Article 2, § 11 of the Arizona Constitution requires that "justice in all cases shall be administered openly, and without

unnecessary delay." Article 6, § 21 provides that "Every matter submitted to a judge of the superior court for his decision shall be decided within sixty days from the date of submission thereof. The Supreme Court shall by rule provide for the speedy disposition of all matters not decided within such period." See Rule 91(e), Rules of the Supreme Court; A.R.S. § 12-128.01. In addition, A.R.S. § 11-424.02(A) prohibits a justice of the peace from receiving compensation if a cause "remains pending and undetermined for sixty days after it has been submitted for decision."

For a definition of "judge," see Application of the Code of Judicial Conduct, Section A.

(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 non-public 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.

(10) A judge shall not, with respect to cases, controversies or issues that are likely to come before the court, make pledges, promises or commitments that are inconsistent with the impartial performance of the adjudicative duties of the office.

Commentary:

The restrictions on judicial speech in Sections 3B(9) and (10) are essential to the maintenance of the integrity, impartiality, and independence of the judiciary. A pending proceeding is one that has begun but not yet reached final disposition. An impending proceeding is one that is anticipated but not yet begun. The requirement that judges abstain from public comment regarding a pending or impending proceeding continues during any appellate process and until final disposition. Sections 3B(9) and (10) do 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 ER 3.6 of the Arizona rules of Professional Conduct.

(11) 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. There are several exceptions to this general rule, however, and with certain qualifications judges may speak to a discharged jury following the return of a verdict. *See* Arizona Judicial Ethics Advisory Committee, Opinion 01-01 (reissued January 22, 2003).

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

(13) A judge shall participate actively in judicial education programs and shall complete mandatory judicial education requirements.

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.

(3) A judge with supervisory responsibility 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.

(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.

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). Arizona's anti-nepotism statute, which clearly applies to judges, is found in A.R.S. § 38-481.

(5) A judge shall require staff, court officials and others subject to the judge's direction and control to comply with the provisions of the code of conduct adopted for judicial employees by the supreme court.

Commentary:

In 1996, the Supreme Court adopted a Code of Conduct for Judicial Employees and made it applicable to all judicial employees throughout the state. Administrative Order 96-27 (July 3, 1996). The court's order states that the employee code "shall complement or replace where inconsistent, ethical standards for court employees stated in the Code of Judicial Conduct." "In addition, the preamble to the employee code states that "[i]t is intended to complement the Code of Judicial Conduct that governs the conduct of judges and should be interpreted in a manner consistent with that code." Although judges clearly have a duty under Canon 3C to assure that their employees and others under their control maintain the highest standards of fidelity and diligence, they also have a duty to assure that judicial employees comply with the provisions of the code applicable to them.

D. Disciplinary Responsibilities.

(1) A judge who has knowledge or who receives reliable information that another judge has committed a violation of this code shall take or initiate appropriate action. A judge who has knowledge or who receives reliable information that another judge has committed a violation of this code that raises a substantial question as to the judge's honesty, trustworthiness or fitness as a judge in other respects 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 should take appropriate action. A judge having knowledge that a lawyer has committed a violation of the Rules of Professional Conduct 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.

(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.

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. See Arizona Judicial Ethics Advisory Committee, Opinion 03-03 (reissued November 7, 2003) (guidelines for reporting judicial misconduct).

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 of 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. In addition, disqualification may be required if the proceeding involves an issue or subject on which the judge previously has announced his or her view. *See* Commentary to Canon 5B(1)(d).

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 judge who receives a judicial conduct complaint from a litigant appearing in the judge's court is not automatically disqualified from hearing the case. "The test is whether an objective, disinterested, fully informed observer would reasonably question the impartiality of the judge." Arizona Judicial Ethics Advisory Committee, Opinion 98-02 (March 24, 1998) (disqualification considerations when complaints are filed against judges and practical guidelines for determining when to disqualify).

(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 within the preceding seven (7) years served during such association as a lawyer concerning the matter, or the judge 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 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.

Commentary to 1999 Amendment:

The rule in effect prior to the 1999 amendment to Section 3E(1)(b) required automatic disqualification without time limitation of not only any judge who served as a lawyer in the matter in controversy, but also any judge who was previously associated with a lawyer or firm of lawyers who had served during such association as a lawyer concerning the matter. While this rule functioned effectively in the great majority of cases, in cases of extraordinary duration such a rule did not promote the public interest because it required disqualification of duly appointed judges and justices long after any conflict, potential for conflict or appearance of conflict had dissipated. Judges ordinarily discontinue recusal on grounds of their prior association with a firm within one to five years after their appointment to the bench, when they determine that their impartiality can no longer be questioned. The 1999 amendment to Section 3E(1)(b) permits a judge to participate in a case in which a lawyer associated with him or her was involved as counsel, so long as the association was concluded more than 7 years prior to such participation. The public interest in the impartiality of judges is safeguarded because the amendment does not alter the requirement of disqualification if the judge himself or herself worked on the matter, or was a party to any discussions regarding it, or obtained special knowledge about it, Section 3E(1)(a) or (b), or where due to factors personal to that judge his or her impartiality might reasonably be questioned, Section 3E(1).

(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 a financial interest in the subject matter in controversy or in a party to the proceeding or any other interest that could be substantially affected by the proceeding;

(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 an 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.

Commentary:

This section of the code is similar to A.R.S. § 12-409 and Rule 42(f)(2)(A) of the Arizona Rules of Civil Procedure which require mandatory disqualification for the reasons stated.

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.

For an interpretation of the provision concerning financial disqualification, see *Arizona Public Service v. Long*, 160 Ariz. 429, 439-441 (1989) (appendix).

(e) the judge, while a judge or a candidate for judicial office, has made a public statement that commits, or appears to commit, the judge with respect to:

(i) an issue in the proceedings; or

(ii) the controversy in the proceedings.

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

F. Remittal of Disqualification. A judge disqualified by the terms of Section 3E may, instead of withdrawing from the proceeding, disclose on the record the basis of the disqualification. If the parties and their lawyers after such disclosure and an opportunity to confer outside of the presence of the judge, all agree in writing or on the record that the judge should not be disqualified, and the judge is then willing to participate, the judge may participate in the proceedings. The agreement should be incorporated in the record of the proceeding.

Commentary:

This procedure is designed to minimize the chance that a party or lawyer will feel coerced into an agreement. When a party is not immediately available, the judge without violating this section may proceed on the written assurance that the party's consent will be subsequently filed.

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 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 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.

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 or judicial 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.

Commentary:

See Canon 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.

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 non-governmental 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 a member, officer, or director of an organization or governmental agency devoted to the improvement of the law, the legal system, 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 except that a judge may be an announced speaker at a fund-raising event benefitting indigent representation or public institutions of legal education. A judge may make recommendations to public and private fund-granting agencies on projects and programs concerning the law, the legal system, and the administration of justice.

(4) 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 the judge's 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:

(a) A judge should not serve if it is likely that the organization will be engaged in proceedings that would ordinarily come before the judge or will be regularly engaged in adversary proceedings in any court.

(b) A judge should not solicit funds for any educational, religious, charitable, fraternal, or civic organization, or use or permit the use of the prestige of office for that purpose, but a judge may be listed as an officer, director, or trustee of such an organization, so long as the listing is not used for fund-raising purposes. Except as permitted by paragraph C(3) above, a judge should not be a speaker or the guest of honor at an organization's fund-raising events, but may attend such events.

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

Commentary

The changing nature of some civic and charitable 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 to continue his or her relationship with it. For example, in many jurisdictions, charitable hospitals are in court now more frequently than in the past. Similarly, the boards of some organizations now make policy decisions that may have political significance or imply commitment to causes that may come before the courts for adjudication.

Judges receive many requests to participate in fund-raising activities for civic and charitable organizations. Judges may participate in some of these activities but are urged to examine each request in light of this canon. *See Arizona Judicial Ethics Advisory Committee, Opinion 00-06 (December 18, 2000).*

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.

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.

(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.

Commentary:

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 or misuse of court facilities or staff.

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

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;

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 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 the statutory minimum for financial disclosure, 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. Financial disclosure requirements can be found in A.R.S. § 38-542A.

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.

(2) A judge shall not serve as a 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.

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.

Commentary:

Section 4F does not prohibit a judge from participating in arbitration, mediation or settlement conferences performed as part of judicial duties. Depending on the circumstances, retired, part-time or pro tempore judges may be exempt from this section. *See* Application of the Code of Judicial Conduct, Sections B, C(1)(b) and D(1)(b).

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.

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.

Judges who are actively practicing law at the time of their election or appointment to the bench are encouraged to become familiar with ethical

considerations immediately affecting the transition from lawyer to a judge. Arizona Judicial Ethics Advisory Committee, Opinion 00-07 (December 20, 2000).

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.

(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 compensation for extra-judicial activities as required by law.

Commentary:

See Section 4D(5) regarding reporting of gifts, bequests and loans and A.R.S. § 38-542A.

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.

Commentary:

Section 3E requires a judge to disqualify himself or herself in any proceeding in which the judge has a financial interest. See "financial 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.

J. Wedding Ceremonies.

(1) The performance of wedding ceremonies by a judge is a discretionary function rather than a mandatory function of the court.

(2) A judge shall not interrupt or delay any regularly scheduled or pending court proceeding in order to perform a wedding ceremony.

(3) A judge shall not advertise his or her availability for performing wedding ceremonies.

(4) A judge shall not charge or accept a fee, honorarium, gratuity or contribution for performing a wedding ceremony during court hours.

(5) A judge may charge a reasonable fee or honorarium to perform a wedding ceremony during non-court hours, whether the ceremony is performed in the court or away from the court.

Commentary:

This section also applies to a judge's staff. *See* Canon 3C(2).

CANON 5

A JUDGE OR JUDICIAL CANDIDATE SHALL REFRAIN FROM INAPPROPRIATE POLITICAL ACTIVITY.

A. Political Conduct in General

(1) A judge or a candidate for election to judicial office 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 a candidate for public office;

(c) solicit funds for or pay an assessment to a political organization or candidate, or make contributions to a political party or organization or to a non-judicial candidate in excess of a combined total of Two Hundred Fifty Dollars per year; or

(d) actively take part in any political campaign other than his or her own election, reelection or retention in office.

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

Section 5A(1)(c) sets a limit on the combined total contributions to political parties and candidates. The \$250.00 limit was adopted by the Arizona Supreme Court in 1985. State law on campaign contributions is found in A.R.S. § 16-905. For an interpretation of combined contributions, see Arizona Judicial Ethics Advisory Committee, Advisory Opinion 76-01, Issue 1 (January 6, 1976).

A judge is entitled to entertain his or her personal views on political questions. The judge is not required to surrender his or her rights or opinions as a citizen, but

should avoid political activity which may give rise to a suspicion of political bias or impropriety. The term political activity should not be construed so narrowly as to prevent private comment.

Nothing in this canon prohibits a judge from speaking to a political organization. See Canon 4B.

(2) A judge or a non-judge who is a candidate for judicial office may speak to political gatherings on his or her own behalf.

(3) A judge may purchase tickets for political dinners or other similar functions but attendance at any such functions shall be restricted so as not to constitute a public endorsement of a candidate or cause otherwise prohibited by these canons.

(4) 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.

(5) Except as otherwise permitted in this code, a judge shall not engage in any other political activity except on behalf of measures to improve the law, the legal system, or the administration of justice.

B. Judicial Campaign Conduct.

(1) 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 selection system or retention election:

(a) shall maintain the dignity appropriate to judicial office and act in a manner consistent with the impartiality, 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;

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 and officials 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) 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) with respect to cases, controversies, or issues that are likely to come before the court, make pledges, promises or commitments that are inconsistent with the impartial performance of the adjudicative duties of the office; or

(ii) knowingly misrepresent the identity, qualifications, present position or other fact concerning the candidate or an opponent.

Commentary:

Section 5B(1)(d) prohibits a candidate for judicial office from making statements that 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* Sections 3B(9) and (10), the general rule on public comment by judges. Section 5B(1)(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* E.R. 8.2 of the Arizona Rules of Professional Conduct.

Regardless of the manner in which the judge was selected or elected, disqualification or other remedial action may be required of any judge in cases that involve an issue about which the judge previously announced his or her views even if such action is otherwise appropriate under the code. Therefore, judges should take this into consideration before announcing their views on disputed political or legal issues.

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

(2) A candidate, including an incumbent judge, for a judicial office, whether by a contested election or seeking the retention of the office according to law, shall comply with the Arizona statutes relating to the financial aspects of the candidacy. All candidates should refrain from personally soliciting campaign contributions. They should refer prospective contributors to the candidate's campaign committee.

(3) An incumbent judge who is a candidate for retention in or reelection to office may campaign for retention in or reelection to office; may obtain publicly stated support; and in the manner provided in subsection B(2) may obtain campaign funds.

Commentary:

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

C. 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 ER 8.2(b) of the Arizona Rules of Professional Conduct.

APPLICATION OF THE CODE OF JUDICIAL CONDUCT

A. Judge. 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 justice of the peace, magistrate, court commissioner, special master, hearing officer or referee, is a judge within the meaning of this code. All judges shall comply with this code except as provided below.

Commentary:

For the purposes of this section, as long as a retired judge is available for assignment the judge is considered to "perform judicial functions."

The code is not applicable to administrative law judges or administrative hearing officers in this state unless expressly adopted by statute or by agency rules. Such officers are generally affiliated with the executive branch of government rather than the judicial branch and each agency should consider the unique characteristics of particular positions in adopting and adapting the code for administrative law judges or administrative hearing officers. *See* Opinion 92-03, Arizona Judicial Ethics Advisory Committee (January 31, 1992).

B. Retired Judge Available for Assignment. A retired judge available for assignment to judicial service and during such service is not required to comply with Sections 4C(2), 4D(2), 4D(3), 4E, 4F, 4G, 4H and 4I.

C. Part-time Judge. A part-time judge is a person 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.

(1) A part-time judge 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(4)(a), 4D(1)(b), 4D(3), 4D(4), 4D(5), 4E, 4F, 4G, 4H, and 5A(1).

(2) A part-time judge 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.

Commentary:

When a person who has been a part-time judge is no longer a 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 ER 1.12(a) of the Arizona Rules of Professional Conduct.

D. Pro Tempore Part-time Judge. A pro tempore part-time judge is a person appointed pursuant to Article 6, Section 31 of the Arizona Constitution, A.R.S. § 22-122, or municipal charter or ordinance, who serves on less than a full-time basis under a separate appointment by a presiding judge for each period of less than full-time service or for each case heard.

(1) A pro tempore part-time judge 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(4), 4D(1)(b), 4D(3), 4D(4), 4D(5), 4E, 4F, 4G, 4H, and 5A(1)

(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 Arizona Rules of Professional Conduct.

(3) A pro tempore part-time judge who serves once or only sporadically in a specialized division of a court or in a court without specialized divisions may appear as a lawyer in such specialized division or court during such service.

(4) A pro tempore part-time judge who serves repeatedly on a continuing scheduled basis in a specialized division of a court or in a court without specialized divisions shall not appear as a lawyer in such specialized division or court during such service.

(5) A part-time pro tempore judge who is appointed to perform judicial functions of a non-appealable nature on a continuing scheduled basis shall not appear as a lawyer in other proceedings involving the function of the court in which the service was performed, but may appear as a lawyer in all other areas of practice before the court.

Commentary:

The restrictions of Section D apply to the members of a pro tempore part-time judge's law firm.

The purpose of Section D is to allow the greatest possible use of part-time pro tempore judges to augment judicial resources in order to reduce case backlogs and the time necessary to process cases to disposition while minimizing any potential for the appearance of impropriety.

The language of Section D is intended to allow, at a minimum, the following current practices.

1. A lawyer sits as a part-time pro tempore judge for one domestic relations trial and during this time appears in the domestic relations divisions as a lawyer in other matters.

2. A lawyer sits as a part-time pro tempore juvenile judge two or more half days a week on a continuing scheduled basis and during this time appears in court as a lawyer in all types of proceedings except for juvenile matters.

3. A lawyer sits as a part-time pro tempore criminal judge in the after-hours and weekend initial appearance program and thereafter appears as a lawyer in the criminal divisions except that the lawyer does not appear in the initial appearance program on behalf of clients.

4. A lawyer sits on a continuing scheduled basis as a part-time pro tempore judge in Payson and otherwise appears in the court in Globe on all variety of matters, but does not appear in any proceeding in Payson.

5. A lawyer sits on a continuing scheduled basis as a pro tempore part-time justice of the peace in one precinct and appears as a lawyer in a justice court in another precinct.

6. A lawyer sits once or only sporadically as a pro tempore part-time magistrate in a municipal court and otherwise appears as a lawyer in the same court on all variety of matters.

Under paragraph E, full-time pro tempore judges are precluded from practicing law during their service.

Judicial Ethics Advisory Committee Opinion 92-16 (issued December 8, 1992, and reissued March 8, 1993), dealing with ethical constraints on lawyers serving as pro tempore judges, was disapproved by the Arizona Supreme Court on May 20, 1993. In its place, the Supreme Court approved the exceptions described in Sections D(3) and (4) and the last two examples in this commentary.

E. Pro Tempore Full-Time Judge. A pro tempore full-time judge is a person appointed pursuant to A.R.S. § 12-144 who serves full-time for the full six months allowed by statute. A pro tempore full-time judge:

(1) is subject to all the provisions of this code;

(2) may not engage in the practice of law during such full-time service.

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.

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.

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