

Indiana Rules of Court Code of Judicial Conduct

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Including Amendments passed through December 2001

Rule

[Preamble](#)

[Terminology](#)

Canon

[1 A Judge Shall Uphold the Integrity and Independence of the Judiciary](#)

[2 A Judge Shall Avoid Impropriety and the Appearance of Impropriety in All the Judge's Activities](#)

[3 A Judge Shall Perform the Duties of Judicial Office Impartially and Diligently](#)

[4 A Judge Shall so Conduct the Judge's Extra-Judicial Activities as to Minimize the Risk of Conflict With Judicial Obligations](#)

[5 A Judge Or Judicial Candidate Shall Refrain From Inappropriate Political Activity](#)

APPLICATION OF THE 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 the 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 Applications 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, the effect of the improper activity on others or on the judicial system, and whether the transgression results from the judge's reasonable participation as a spouse, parent or child in activities with other members of the judge's family.

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

Terms explained below are noted with an asterisk (*) in the Sections where they appear.

"Appropriate authority" denotes the authority with responsibility for initiation of disciplinary process with respect to the violation to be reported.

"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.

"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 continuing appointment.

"Court personnel" does not include the lawyers in a proceeding before a judge.

"De minimis" denotes an insignificant interest that could not raise reasonable question as to a judge's impartiality.

"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 or 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.

"Fiduciary" includes such relationships as executor, administrator, trustee, and guardian.

"Knowingly," "knowledge," "known" or "knows" denotes actual knowledge of the fact in question. A person's knowledge may be inferred from circumstances.

"Law" denotes court rules as well as statutes, constitutional provisions and decisional law.

"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.

"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.

"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, or is impounded or communicated in camera; and information offered in grand jury proceedings, presentencing reports, juvenile cases or psychiatric reports.

"Periodic part time judge." A periodic part-time judge is a judge who serves or expects to serve repeatedly on a part-time basis but under a separate appointment for each limited period of service or for each matter.

"Political organization" denotes a political party or organization, the principal purpose of which is to further the election or appointment of candidates to political office. "Political organization" does not refer to a candidate's committee.

"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.

"Public election." This term includes primary and general elections; it includes partisan elections and nonpartisan elections, but does not refer to retention elections.

"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.

"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.

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 in order to preserve the integrity and independence of the judiciary. 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. 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.

Adopted effective March 1, 1993.

CANON 2. A Judge Shall Avoid Impropriety and the Appearance of Impropriety in All 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 erode 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 if applied to the ordinary citizen.

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 dishonorable or 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 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 his or her judgeship to gain a personal advantage such as deferential treatment when stopped by a police officer for a traffic offense. Similarly, official court stationery 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 judge must not initiate the communication of information to a sentencing judge, but may provide information for the record in response to a formal request.

Judges may participate in the process of judicial selection by communicating with appointing authorities and screening committees seeking names for consideration. 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 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.

- 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 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*, 148 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 the law of the jurisdiction 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 judge 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. 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.

- D. A judge may properly lend the prestige of the judge's office to advance the public interest in the administration of justice.

Commentary

Lending the prestige of the judicial office to advance the public interest in the administration of justice in a free society may be done appropriately without the appearance of impropriety. The public has an interest in hearing the ideas of its judiciary within the public forum on matters concerning the administration of justice. Within the limits on judicial conduct set forth within these Canons, a judge may exercise the constitutional right of free speech and association on such matters.

Adopted effective March 1, 1993.

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.*
- 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 based upon race, gender, religion, national origin, disability, sexual orientation, age, socioeconomic status, or similar factors, and shall not permit staff, court officials and others subject to the judge's direction and control to do so.

Commentary

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 communications, 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 refrain from speech, gestures or other conduct that could reasonably be perceived as sexual harassment and shall require the same standard of conduct of others subject to the judge's direction and control.
- (7) 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, personal characteristics or status, against parties, witnesses, counsel, or others. This Section 3B(7) does not preclude legitimate advocacy when race, sex, religion, national origin, personal characteristics or status, or other similar factors are issues in the proceeding.
- (8) 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 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 * and others 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. Nothing herein is intended to prohibit a judge from consulting with the Indiana Judicial Center or from participating in continuing legal education.

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

Whenever the presence of a party or notice to a party is required by Section 3D(8), 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(8) 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 the criteria stated in Section 3B(8)

are clearly met. A judge must disclose to all parties all ex parte communications described in Sections 3B(8)(a) and 3B(8)(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 must make reasonable efforts, including the provision of appropriate supervision, to ensure that Section 3B(8) is not violated through law clerks or other personnel on the judge's staff.

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

Commentary

In disposing of matters fairly, promptly, and efficiently, 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 assist that court officials, litigants and their lawyers cooperate with the judge to that end.

(10) 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 purposes the procedures of the court. This Section does not apply to proceedings in which the judge is a litigant in a personal capacity.

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.

(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.

(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 should prohibit broadcasting, televising, recording, or taking photographs in the courtroom and areas immediately adjacent thereto during sessions of court or recesses between sessions, except that a judge may 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 being 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.

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 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.
- (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).

D. Disciplinary Responsibilities.

- (1) A judge who receives credible information indicating a substantial likelihood that another judge or a candidate for judicial office has committed a violation of this Code should take appropriate action. A judge having knowledge * that another judge or judicial candidate has committed a violation of this Code that raises a substantial question as to that person's fitness for office shall inform the appropriate authority *.
- (2) A judge who receives credible information indicating a substantial likelihood that a lawyer has committed a violation of the Rules of Professional Conduct should take appropriate action. 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.

The provisions of this Section do not require the reporting of information received while acting on behalf of an Impaired Judges Program or Lawyers Assistance program approved by the Supreme Court.

E. Disqualification.

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.

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 not 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.

- (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:
 - (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;

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 person 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 interest which is more than de minimis * that could be substantially affected by the proceeding; or
- (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, or a person residing in the judge's household:
 - (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; or
 - (iv) is to the judge's knowledge * likely to be a material witness in the proceeding.

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 the 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)(c) 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 of any person residing in the judge's household.

Adopted effective March 1, 1993.

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 Sections 2C and 3B(5) 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 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 personal interests.

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 except with prior approval of the Indiana Supreme Court. 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) with prior approval of the Court. 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.

- (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.

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 and 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.

- (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 equivalent 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, programs and the provision of services;
 - (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; and
(iv) shall not use or permit the use of the prestige of judicial office for fund-raising or membership solicitation.

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. This Canon is not intended to prohibit judges, as parents, from participating in their children's educational or organizational fundraising activities if the procedures employed are not coercive and the sums nominal

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 funds or memberships from other judges over whom he 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 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 the mere attendance at such an event is permissible if otherwise consistent with this Code.

D. Financial Activities.

- (1) A judge shall not engage in financial or business dealings that:
 - (a) may reasonably be perceived to exploit the judge's judicial position;
 - (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; or
 - (c) tend to reflect adversely on impartiality or interfere with the proper performance of judicial duties.

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 of private gain. See Section 2B; see also Section 3B(12).

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 the affiliation of relatives of the judge with law firms appearing before the judge, see Commentary to Section 3E(1)(d) 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, demand 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 the use of the phrase "subject to the requirements of this Code."

- (2) A judge may, subject to the requirements of Section 4D(1) of this Code, hold the manage investments, including real estate, and engage in other remunerative activity including the operation of a business.

Commentary

Subject to the requirements of this Code, a judge may participate in a business. Although participation by a judge in a business might otherwise be permitted by Section 4D(2), 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 business if the judge's participation would involve misuse of the prestige of judicial office.

- (3) 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.
- (4) A judge shall not accept, and shall urge persons residing in the judge's household, not to accept, a gift, bequest, favor or loan from anyone except for:

Commentary

Section 4D(4) 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 person residing in the judge's household might be viewed as intended to influence the judge, a judge must inform those persons 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 persons 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(4)(a).

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 person residing in the judge's household, including gifts, awards and benefits for the use of both the spouse or other person and the judge, 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 person 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(4)(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 3;
- (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 applicant; 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 \$150.00, the judge reports it in the same manner as the judge reports compensation in Section 4H.

Commentary

When Section 4D(4)(h) applies, it prohibits judges from accepting those gifts, favors, bequests or loans from lawyers or litigants whose 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.
- (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 court on which the judge serves, 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 the judge's 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 assistance to and draft or review documents for a member to 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 matter 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 interest of the judge or the judge's family. See Section 2(B).

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 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. The judge's report shall be made at least annually and shall be filed as a public document in the office designated by law.*

Commentary

See Section 4D(4) 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 the 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 of 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, 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 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.

Adopted effective March 1, 1993.

CANON 5. A Judge Or Judicial Candidate Shall Refrain From Inappropriate Political Activity

A. All Judges and Candidates.

- (1) Except as authorized in Sections 5B(2), 5C(1) and 5C(3) and 5D, a judge or a candidate * for election or appointment to judicial office or retention in 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 a gathering of a political organization;
- (e) solicit funds for, pay an assessment, slating fee or other mandatory political payment to, or make a contribution to, a political organization or candidate, or purchase tickets for political party dinners or other functions; or
- (f) permit the judge's employees and officials subject to the judge's direction and control to be candidates for or hold positions as officers of a political party's central committee or to be candidates for or hold non-judicial partisan elective offices.

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.

- (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, or in a political party convention, except that the judge may continue to hold judicial office while being a candidate for election to or serving as a delegate in a constitutional convention if the judge is otherwise permitted by law * to do so.
- (3) A candidate *, including an incumbent judge, for a judicial office:
 - (a) shall maintain the dignity appropriate to judicial office and act in a 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;

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) 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;

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(10), 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.

(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).

(4) Within one (1) week of publicly announcing candidacy for election or appointment to judicial office, of declaring or filing as a candidate with the election or appointment authority, or of authorizing the solicitation or acceptance of contributions or support, whichever occurs first, a judge, lawyer, or, where applicable, non-lawyer qualified to hold a judicial office, must notify the Indiana Commission on Judicial Qualifications in writing of the fact of the candidacy, of the office sought, and of the candidate's address or telephone number.

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 judicial office, or a judge seeking other governmental office, shall not engage in any political activity to secure the appointment except that:
 - (a) such persons 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)(i) and 5B(2)(ii) information as to his or her qualifications for the office.

Commentary

Section 5B(2) provides a limited exception to the restrictions imposed by Sections 5A(1) and 5E. 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.

- (b) a non-judge candidate * for appointment to judicial office may not:
 - (i) retain an office in a political organization *;
 - (ii) attend a gathering of a political organization;
 - (iii) pay assessments, make contributions to a political organization or candidate, or purchase tickets for political party dinners or other functions.

C. Judges and Candidates Subject to Public Election.

- (1) A judge or a candidate * subject to public election, except as prohibited by law *, may at any time:
 - (a) attend a gathering of a political organization * and purchase a ticket for the gathering for the judge and the judge's guest;
 - (b) identify himself or herself as a member of a political party;
 - (c) voluntarily contribute to a political organization *;
 - (d) speak to gatherings on his or her own behalf;
 - (e) appear in newspaper, television and other media advertisements supporting his or her candidacy;

- (f) distribute pamphlets and other promotional campaign literature supporting his or her candidacy; and
- (g) publicly endorse and attend gatherings for other candidates in the same public election in which the judge or judicial candidate is running and may purchase tickets for the judge and the judge's guest for the purpose of attending the gathering.

Commentary

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

- (2) A candidate * shall not personally solicit or accept campaign contributions or personally solicit publicly stated support. A candidate may, however, establish committees or 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 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 (1) year before an election and no later than ninety (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.

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.

- (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.

Commentary

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

Section 5C(3) authorizes candidates for judicial office in a public election to participate in public promotions of the party ticket, such as: handing out campaign materials at a fair booth, riding on a float in a parade, or campaigning door-to-door with other candidates.

- D. An incumbent judge who is a candidate for retention 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 Section 5C. A judge not subject to public election shall otherwise observe the prohibitions against political activity in Section 5A and shall require the judge's employees and officials subject to the judge's direction and control to conform to the same restrictions on political activities.

- E. **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.

Commentary

Neither Section 5E nor any other section of the 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.

Generally, participation in public relations activities or public events is not considered political activity, such as: speaking to a service club or other recognized non-partisan organization on topics relating to measures to improve the law, the legal system or the administration of justice; making presentations or giving awards to individuals or organizations; or, riding in parades or taking part in ceremonies with public officials.

- F. **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 the provisions of the Rules of Professional Conduct.

Adopted effective March 1, 1993; amended Dec. 5, 1994, effective Feb. 1, 1995; amended Dec. 15, 1995 effective Feb. 1, 1996.

CANONS 6, 7. Vacated

Vacated effective March 1, 1993.

APPLICATION OF THE CODE OF JUDICIAL CONDUCT

- A. 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 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.

Commentary

As to the obligations pertaining to political activity imposed by Canon 5, a full-time judicial officer who is appointed by or serves in the stead of an elected judge is treated as an elected judge, and a full-time judicial officer who is appointed by or serves in the stead of a retention judge is treated as a retention judge.

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. The determination of which category and, accordingly, which specific Code provisions apply to an individual judicial officer, depends upon the facts of the particular judicial service.

- B. A senior judge is a periodic part-time judge. See Application Section D.
- 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(10); and
 - (b) at any time with Sections 4C(2), 4E(1), 4F, 4G, and 4H. A continuing part-time judge shall comply with the provisions of Canon 5 with which the appointing judge must comply. Elected continuing part-time judges are bound by Canon 5 in the same manner as are elected full-time judges.
 - (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.

Commentary

When a person who has been a continuing part-time judge is no longer a continuing part-time judge, 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 expression consent of all parties pursuant to Rule 1.12 of the Rules of Professional Conduct.

- 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(10);
 - (b) at any time, with Sections 4C(2), 4C(3)(a), 4D(1)(b), 4D(3), 4D(4), 4E, 4F, 4G, 4H, 5A(1), 5B(2) and 5E.
 - (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.

Commentary

When a person who has been a periodic part-time judge no longer accepts appointments as a part-time judge, 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 of the Rules of Professional Conduct.

- E. **Pro Tempore Part-Time Judge.** A pro tempore part-time judge:
- (1) is not required to comply
 - (a) except while serving as a judge, with Sections 2A, 2B, 3B(10) 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), 4E, 4F, 4G, 4H, 5A(1), 5A(2), 5B(2) and 5E.
 - (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 of the Rules of Professional Conduct.
- 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) 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 not permitted under the Code, a new judge may, notwithstanding the prohibitions in Section 4D(1), continue in that activity for a reasonable period, but in no event longer than one year.