

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

OFFICE OF
APPELLATE COURTS

APR 7 1995

FILED

Michael B. Johnson
Staff Attorney

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

April 7, 1995

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

RE: C4-85-697; REQUEST TO PARTICIPATE IN HEARING/SUPPLEMENTAL REPORT

Dear Mr. Grittner:

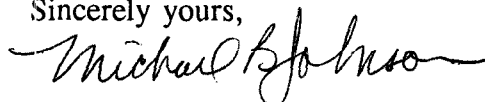
Enclosed for filing please find the Second Supplemental Report/Request to Participate in the Hearing by the Minnesota Supreme Court Advisory Committee to Review the American Bar Association Model Code of Judicial Conduct and the Rules of the Minnesota Board on Judicial Standards, in the following formats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

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

The supplemental report/request for hearing has only three pages, and its purpose is to correct inadvertent errors in the committee's final report. As indicated in the enclosure, the Advisory Committee is requesting that two members be permitted to participate in the April 12, 1995, hearing.

The enclosed computer diskette also contains updated versions of the Advisory Committee's proposal without the side-by-side comparison with the ABA Model Code. The updates include all technical corrections in the enclosed report.

Sincerely yours,



Michael B. Johnson (#142931)

enc.

STATE OF MINNESOTA

IN SUPREME COURT

C4-85-697

In re: Hearing to Consider Proposed
Amendments to the Code of Judicial Conduct
and the Rules of the Minnesota Board on
Judicial Standards

**SECOND SUPPLEMENTAL REPORT
OF THE
ADVISORY COMMITTEE TO REVIEW THE
AMERICAN BAR ASSOCIATION MODEL CODE OF
JUDICIAL CONDUCT AND THE RULES OF THE
MINNESOTA BOARD ON JUDICIAL STANDARDS
AND
REQUEST TO PARTICIPATE IN HEARING**

INTRODUCTION AND REQUEST TO PARTICIPATE IN HEARING

The purpose of this Second Supplemental Report is to correct additional cross references and inadvertent errors in the Advisory Committee's June 29, 1994, Final Report. These technical changes are listed below. In addition, the Advisory Committee proposes to have the following individuals address the Court at the April 12, 1995, hearing:

Hon. Thomas R. Butler, Chair of the
Advisory Committee and member
of the Board on Judicial Standards

Introduction and Presentation of
Advisory Committee Proposal

Lawrence M. Redmond, Advisory Committee
member

Perspective of nonlawyer citizen on
Advisory Committee's
Proposals

TECHNICAL CHANGES TO PROPOSED CODE OF JUDICIAL CONDUCT

(NOTE: The Advisory Committee's Final Report included a separate attachment setting forth proposed changes to the Minnesota Code of Judicial Conduct in a side-by-side comparison to the ABA Model Code; all page references are to the side-by-side comparison filed by the Committee.)

Terminology Section, "appropriate authority" (page 2)

Replace references to sections 3D(1) and 3D(2) with a reference to section 3C(1).

Terminology Section, "court personnel" (page 3)

Replace references to sections 3B(7)(c) and 3B(9) with references to sections 3A(7)(c) and 3A(9).

Terminology Section, "De minimus" (page 3)

Replace references to sections 3E(1)(c) and 3E(1)(d) with references to sections 3D(1)(c) and 3D(1)(d).

Terminology Section, "Economic interest" (pages 3 and 4)

Replace references to sections 3E(1)(c) and 3E(2) with references to sections 3D(1)(c) and 3D(2)

Terminology Section, "Knowingly" (page 4)

Replace the references to sections 3D and 3E(1) with a reference to section 3D(1).

Terminology Section, "Law" (page 4)

Replace references to sections 3A, 3B(2) and 3B(6) with references to sections 3, 3A(2) and 3A(7).

Terminology Section, "Member of the judge' family residing in the judge's household" (page 4)

Replace reference to section 3E(1) with a reference to section 3D(1).

Terminology Section, "Nonpublic information" (page 4)

Replace reference to section 3B(11) with a reference to section 3A(11).

Terminology Section, "Require" (page 5)

Replace references to sections 3B(3), 3B(4), 3B(6), 3B(9) and 3C(2) with references to sections 3A(3), 3A(4), 3A(6), 3A(9) and 3B(2).

Terminology Section, "Third degree of relationship" (page 5)

Replace reference to section 3E(1)(d) with a reference to section 3D(1)(d).

Section 2A (page 6):

Replace phrase "at all times act in a manner" with "at all times act in a manner".

Section 2C Commentary (pages 8-9)

Complete and correct citations to *New York State Club Ass'n v. City of New York* ["487 U.S. 1, 108 S.Ct. 2225, 101 L.Ed.2d 1 (1988)"] and *Board of Directors of Rotary International v. Rotary Club of Duarte* [481 U.S. 537, 107 S.Ct. 1940, 95 L.Ed.2d 474 (1987)"].

Section 3D(1)(c) (page 19)

Add an asterisk "*" after the phrase "economic interest".

Section 4C(3) (page 25)

Replace lower case letter "c" with capital letter "C" in the word "code".

Section 4D(5)(e) (page 32)

Replace reference to section 3E with a reference to section 3D.

Section 4E (page 33)

Replace reference to section 3B(12) in parenthetical immediately preceding this section with reference to section 3B(11).

Section 4F(1) (page 34)

Replace "or" with "of".

Section 5A(1) (page 39)

Add an asterisk "*" after the word "candidate".

Section 5A(1)(e) (page 39)

Delete the phrase "attend political gatherings,".

CROSS REFERENCE TABLE ATTACHED

Attached to this report for the benefit of the Court, the public, the bench and the practicing bar, is a table of cross references from the provisions of the current Minnesota Code of Judicial Conduct to the provisions as proposed by the Advisory Committee.

ELECTRONIC COPY OF AMENDED PROPOSALS

Updated, electronic copies of the Advisory Committees amended proposals, without the side-by-side comparison with the American Bar Association's 1990 Model Code, will be provided to Mr. Grittner.

Dated: April 7, 1995

RESPECTFULLY SUBMITTED,

HON. THOMAS A. BUTLER, CHAIR,
MINNESOTA SUPREME COURT
ADVISORY COMMITTEE TO REVIEW
THE AMERICAN BAR ASSOCIATION
MODEL CODE OF JUDICIAL CONDUCT
AND THE RULES OF THE MINNESOTA
BOARD ON JUDICIAL STANDARDS

CROSS REFERENCE TABLE

4/7/95

FROM: CURRENT MINNESOTA CODE OF JUDICIAL CONDUCT

TO: PROPOSED MINNESOTA CODE OF JUDICIAL CONDUCT

CURRENT MN CODE		PROPOSED MN CODE	Comments
Canon & Subject		Canon/Section	
1	Uphold integrity and independence of judiciary.	1.	
2	Avoid impropriety and appearance of impropriety.	2.	
2A	Comply with the law.	2A.	Proposal adds § 2C prohibiting membership in discriminatory organizations.
2B	Improper influences and use of prestige of office.	2B.	
3	Impartiality and diligence.	3.	
3 (1st ¶)	Judicial duties have precedence.	3. (1st ¶)	
3A(1)	Faithful to, and competence in, the law.	3A(2),(11)	Proposal prohibits use or disclosure of nonpublic information for purposes unrelated to judicial duties.
3A(2)	Maintain order and decorum.	3A(3)	
3A(3)	Courteous conduct.	3A(4),(5),(6),(9)	Proposal prohibits acting with bias or prejudice and commending or criticizing jurors for their verdict.
3A(4)	Litigants right to be heard; ex parte communications.	3A(7)	Proposal codifies common types of permitted ex parte communications .
3A(5)	Promptly dispose of court business.	3A(1)	Proposal adds "fairly" and "efficiently".
3A(6)	Public comment on pending case.	3A(6)	
3A(7)	Cameras in the courts.	3A(10)	No changes.

CURRENT MN CODE		PROPOSED MN CODE	Comments
Canon & Subject	Canon/Section		
3B(1)	Diligently discharge administrative duties.	3B(1)	Proposal adds bias and prejudice prohibitions and cooperation requirement.
3B(2)	Require others to diligently discharge administrative.	3B(2), (3)	Proposal adds bias and prejudice prohibitions and requires judges with supervisory authority to take reasonable measures to assure other judges are diligent and appropriate.
3B(3)	Reporting unprofessional conduct of lawyers and judges.	3C(1), (2)	
3B(4)	Making appointments of court personnel.	3B(4)	Proposal adds impartiality requirement.
3C(1)(a)	Disqualification for bias or prejudice.	3D(1)(a)	
3C(1)(b)	Disqualification for prior service as lawyer.	3D(1)(b)	
3C(1)(c)	Disqualification for economic interest of judge or judge's family.	3D(1)(c)	Proposal adds "significant other" and prohibits "de minimus" interests.
3C(1)(d)	Disqualification for personal interest or participation by judge or judge's family.	3D(1)(d)	Proposal adds "significant other" and prohibits "de minimus" interests.
3C(2)	Stay informed of family personal and economic interests.	3D(2)	Proposal adds "significant other".
3C(3)(a)	Degree of relationship (for 3C(1)(d)) calculated according to civil law.	Terminology section, "third degree of relationship"	Proposal codifies the calculation.
3C(3)(b)	"Fiduciary" defined.	Terminology section	Proposal adds "conservator".
3C(3)(c)	"Financial interest" defined.	Terminology section, "Economic interest"	Proposal excludes "de minimus" interests.

CURRENT MN CODE		PROPOSED MN CODE	Comments
Canon & Subject	Canon/Section		
3D	Remittal of disqualification.	3E	Proposal deletes requirement that parties sign agreement to proceed after placing agreement on the record.
4 (1st ¶)	Quasi-judicial activities must not cast doubt on judge's impartiality.	4A(1)	
4A	Activities to improve the law, legal system and administration of justice.	4B	
4B	Appearance before governmental entities.	4C(1)	
4C	Member, officer or director for organizations and government agencies devoted to improvement of the law, legal system or administration of justice; fund raising.	4C(2) (government positions); 4C(3)(a),(b) (civic organizations and fund raising)	Proposal prohibits governmental positions that concern fact or policy matters other than improvement of law, legal system and administration of justice; permits representation of government for ceremonial, historical cultural and educational activities.
5A	Avocational activities that do not detract from dignity of office or interfere with duties.	4A(1),(3), 4B	
5B	Civic and charitable activities that do not affect impartiality or detract from duties; officer director, etc. of educational, religious, or fraternal organization not conducted for economic or political advantage of members.	4A(1),(3), 4C(3)	
5B(1)	Cannot serve organization regularly engaged in adversary proceedings in any court.	4C(3)(a)	Proposal prohibits services for organization frequently engaged in proceedings before court on which judge sits or one subject to its appellate jurisdiction.
5B(2)	No personal solicitation of funds or use of prestige of office for same.	4C(3)(b)	

CURRENT MN CODE	PROPOSED MN CODE	Comments
Canon & Subject	Canon/Section	
5B(3) Cannot advise organization on investment of funds but may serve as officer or director, including approval of investments.	4C(3)(b)	Proposal allows judge to participate in management and investment of organization's funds if no conflict with other Code provisions.
5C(1) No financial or business dealings that affect impartiality, interfere with duties, exploit judicial position, or involve frequent transactions with persons likely to come before court on which judge serves.	4A(1),(3), 4D(1)	
5C(2) Conditionally hold and manage investments and engage in remunerative activity, but not serve as officer, director, manager, advisor or employee of business entity.	4D(2),(3)	
5C(3) Manage own investments and interests to minimize disqualifications.	4D(4)	
5C(4) Judge and Judge's family residing in same house may not accept gifts unless authorized.	4D(5)	Proposal requires judge to "urge" family members not to accept inappropriate gifts; permits gifts to family members if not reasonably perceived as intended to influence judge.
5C(4)(a) May accept public testimonial gifts, complimentary resource materials by publishers and invitations to bar related functions and other activities to improve law, legal system or administration of justice.	4D(5)(a)	Proposal adds "guest" after "spouse".

CURRENT MN CODE	PROPOSED MN CODE	Comments
Canon & Subject	Canon/Section	
5C(4)(b) May accept ordinary social hospitality, gift from relative, wedding or engagement gift, loan from bank on same terms as public, scholarship on same terms as others.	4D(5)(c),(d), (e), (f),(g)	Proposal requires that special occasion gift from relative or friend must be commensurate with occasion and relationship or from a person whose appearance in a case would require disqualification in any event.
5C(4)(c) May accept other gift if donor has not, or is not likely to, come before court, and judge reports gifts exceeding \$100 under Canon 6C.	4D(5)(h), 4D(5)(b)	Proposal requires reporting gifts exceeding \$150.
5C(5) Defines "family member residing in same household."	Terminology section, "Member of judge's family residing in the judge's household."	Proposal adds "Significant other."
5C(6) Judge not required to disclose income, debts or investments except as required in Code.	4I.	Proposal adds "assets."
5C(7) Information acquired in judicial capacity not to be disclosed or used in financial dealings or for any purpose not related to judicial duties.	3A(11)	Proposal limits prohibition to nonpublic information.
5D (1st ¶) May not serve as executor , administrator, trustee, guardian or other fiduciary <u>except for</u> estate, trust or person of family member; defines "family members."	4E(1), Terminology section, "Member of judge's family."	Proposal adds "Personal representative," "Conservator," and "Attorney in fact."
5D(1) May not serve as fiduciary if likely that judge or estate, etc. would be engaged in proceedings that would come before the judge or judge's court or one subject to its appellate jurisdiction.	4E(2)	Proposal adds "Conservatorship."

CURRENT MN CODE		PROPOSED MN CODE	Comments
Canon & Subject		Canon/Section	
5D(2)	Restrictions on judge's financial activities also apply to judge acting as fiduciary.	4E(3)	
5E	May not act as arbitrator or mediator.	4F	Proposal clarifies that "periodic part time judge" (e.g., retired judge eligible for assignment, see terminology section) is permitted to act as arbitrator or mediator when not actually serving as a judge and would be disqualified from mediation and arbitration in matters in which the judge served as a judge.
5F	May not practice law.	4G	Proposal clarifies that judge may act "pro se" and permits judge to advise and draft documents for family members, without compensation, but may not advocate or negotiate for family members.
5G	May not serve on government agency that is concerned with issues of fact or policy on matters other than law, legal system or administration of justice, but may represent government on ceremonial occasions.	4C(2)	
6 (1st ¶)	May receive compensation and reimbursement of expenses for extra-judicial activities permitted by the Code, if source of payment does not appear to influence duties or give appearance of impropriety.	4H(1)	
6A	Compensation not to exceed reasonable amount that would be paid to non-judge for same activity.	4H(1)(a)	

CURRENT MN CODE		PROPOSED MN CODE	Comments
Canon & Subject		Canon/Section	
6B	Expense reimbursement limited to actual cost incurred; excess is compensation.	4H(1)(b)	
6C	Must annually report compensation to state court administration; report is accessible to public.	4H(2)	
7	Refrain from political activity inappropriate from judicial office.	5, 5B, 5E	Proposal adds new sections relating to judges and candidates seeking appointment to judicial office (5B) and jurisdiction of Board on Judicial Standards and Lawyer's Professional Responsibility Board (5E).
7A(1)	Judge or candidate may not lead or hold office in, make speeches on behalf of, solicit funds for, or make contributions to, political organizations; may not attend political gatherings or publicly endorse other candidates.	5A(1), Terminology section, "Candidate" and "Political organization."	Proposal also prohibits publicly opposing other candidates and defines "candidate" and "political organization."
7A(2)	Judge or candidate subject to public election may accept invitation to speak on own behalf at other than partisan political gatherings.	5C(1)	Proposal clarifies that judge or candidate may appear in media advertisements supporting own candidacy, and distribute own campaign literature.
7A(3)	Judge must resign on becoming candidate in party primary or general election for non-judicial office except constitutional convention delegate.	5A(2)	
7A(4)	Judge may not engage in other political activity except measures to improve law, legal system or administration of justice.	5D	

CURRENT MN CODE	PROPOSED MN CODE	Comments
Canon & Subject	Canon/Section	
7B(1)(a) Candidate must maintain dignity of judicial office and encourage family members to do same.	5A(3)(a)	Proposal adds that candidate must act in manner consistent with integrity and independence of judiciary.
7B(1)(b) Candidate must prohibit officials and employees under their direction or control from doing what candidate is prohibited from doing, and must not "allow" other persons to do the same, except as authorized by the Code.	5A(3)(b),(c)	Proposal requires candidate to prohibit such actions only for employees "serving at pleasure of" candidate, and for all others, candidate must not "authorize" or "knowingly permit" such conduct.
7B(1)(c) Candidate must not make pledges or promises other than faithful performance of duties, announce views on disputed legal or political issues, or make misrepresentations.	5A(3)(d),(e)	Proposal replaces "announcing views" with making statements that commit or appear to commit candidate with respect to cases, controversies or issues that are likely to come before the court, prohibits "knowingly" making misrepresentations, and allows response to attacks on candidates record.
7B(2) Solicitation of funds and publicly stated support for election must be performed by committees, not candidate; no use of campaign funds for private benefit.	5C(2)	Proposal prohibits solicitation of funds and support earlier than one year before election later than 90 days after election; committees "should not" disclose identity of contributors to candidate.

CURRENT MN CODE	PROPOSED MN CODE	Comments
Canon & Subject	Canon/Section	
7B(3) Unopposed judge candidate may respond to active opposition, including committee fund raising and support.	5A(3)(e), 5D	
Compliance section (1st ¶) Defines "judge."	Application section A; Terminology section "Judge."	
Compliance section A Defines "part time judge"	Terminology section "Periodic part time judge."	Proposal clarifies that conciliation court referees are included.
Compliance section A(1) Part time judge not required to comply with 5C(2) (not serve as officer, director, etc. for business entity), 5D (fiduciary activity limits), 5E (not serve as arbitrator or mediator), 5F (not practice law), 5G (governmental appointment limits) and 6C (reporting extra-judicial compensation).	Application section C(1)	Proposal requires compliance with 3A(9) (commending or criticizing jurors) while serving as judge, renumbers other exclusions, and excludes compliance with 4D(1)(b) (limit business dealings with others likely to come before court), 4D(5) (no gifts), 5A(1) and 5B(2) (no political conduct) and 5D (managing investments to minimize disqualifications).
Compliance section A(2) Part time judge not to practice law in court on which judge serves or any court subject to appellate jurisdiction of that court, and not to act as lawyer in proceeding in which judge has served.	Application section C(2)	Proposal prohibits practice of law in "division of court" on which judge serves, and prohibits acting as lawyer in proceeding in which judge has served.

CURRENT MN CODE	PROPOSED MN CODE	Comments
Canon & Subject	Canon/Section	
<p>Compliance section B</p> <p>Retired judge who receives same compensation as full time judge on court from which judge retired must comply with Code except Canon 5G (governmental appointments), but must not serve as judge during period of governmental appointment; all other retired judges subject to recall comply with "part time judge" requirements.</p>	<p>Application section B</p>	
<p>Effective Date of Compliance Section</p> <p>Requires compliance as soon as reasonably possible, and that if demands on time and possibility of conflicts of interest are not substantial, may continue to act as officer, director etc. of business entity and as fiduciary for estate or person of one who is not a family member.</p>	<p>Application section D</p>	<p>Proposal requires immediate compliance with all provisions except 4D(2) (hold and manage investments), 4D(3) (not serve as officer, director, etc. of business entity) and 4E (limited fiduciary activity), but must comply with exceptions as soon as reasonably possible and in any event within one year.</p>