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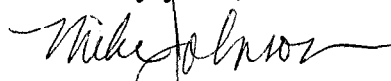
Mr. Frederick Grittner  
Clerk of the Appellate Courts  
245 Minnesota Judicial Center  
25 Constitution Avenue  
St. Paul, MN 55155

Dear Mr. Grittner:

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

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

Sincerely yours,

  
Michael B. Johnson

enc.

STATE OF MINNESOTA

IN SUPREME COURT

C4-85-697

OFFICE OF  
APPELLATE COURTS

NOV 30 1995

**SPECIAL REPORT  
OF THE**

**FILED**

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

**COMMENTARY TO THE  
MINNESOTA CODE OF JUDICIAL CONDUCT**

November 22, 1995

Honorable Thomas R. Butler, Chair

Richard Beens  
Jerry Blackwell  
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## PREFACE

This report explains certain provisions of the Code of Judicial Conduct adopted by the Minnesota Supreme Court effective January 1, 1996. These comments represent the views of the Advisory Committee only and should not be viewed as official interpretations of the Minnesota Supreme Court. The Advisory Committee hopes that this report will provide guidance with respect to the purpose and meaning of the Code of Judicial Conduct.

Among the changes proposed by the Advisory Committee, but not adopted by the Court, was the addition of a terminology section defining certain terms used in the Code. The Advisory Committee felt that it would be useful to preserve its attempt to define certain terms, and these definitions are set forth at the beginning of the comments to each Canon in which the terms are used. The definitions include a reference to specific Sections within each Canon in which the terms are used. For example, the term "law" denotes court rules as well as statutes, constitutional provisions and decisional law. See Sections 2A, 3A(2), 3A(7), 4B, 4C, 4D(5), 4F, 4I, 5A(2), 5B(1) and 5C.

The Advisory Committee gratefully acknowledges the efforts of the American Bar Association in developing the 1990 Model Code of Judicial Conduct. Interpretations of the Model Code as adopted in other jurisdictions may also provide guidance with respect to the purpose and meaning of the Minnesota Code of Judicial Conduct.

### COMMENTS - CANON 1

**Section 1A.** 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.

### COMMENTS - CANON 2

**Section 2A.** Public confidence in the judiciary is eroded by irresponsible or improper conduct by judges. A judge must avoid all impropriety and appearance of impropriety. A judge must expect to be the subject of constant public scrutiny. A judge must therefore accept restrictions on the judge's conduct that might be viewed as burdensome by the ordinary citizen and should do so freely and willingly.

The prohibition against behaving with impropriety or the appearance of impropriety applies to both the professional and personal conduct of a judge. Because it is not practicable to list all prohibited acts, the proscription is necessarily cast in general terms that extend to conduct by judges that is harmful although not specifically mentioned in the Code. Actual

improprieties under this standard include violations of law, court rules or other specific provisions of this Code. The test for the appearance of impropriety is whether a person aware of the facts might reasonably entertain a doubt that the judge would be able to act with integrity, impartiality, and competence.

**Section 2B.** Maintaining the prestige of judicial office is essential to a system of government in which the judiciary functions independently of the executive and legislative branches. Respect for the judicial office facilitates the orderly conduct of legitimate judicial functions. Judges should distinguish between proper and improper use of the prestige of office in all of their activities. For example, it would be improper for a judge to allude to his or her judgeship to gain a personal advantage such as deferential treatment when stopped by a police officer for a traffic offense. Similarly, judicial letterhead must not be used for conducting a judge's personal business.

A judge must avoid lending the prestige of judicial office for the advancement of the private interests of others. For example, a judge must not use the judge's judicial position to gain advantage in a civil suit involving a member of the judge's family. In contracts for publication of a judge's writings, a judge should retain control over the advertising to avoid exploitation of the judge's office. As to the acceptance of awards, see Section 4D(5)(a) and Commentary.

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

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

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

### COMMENTS - CANON 3

**Terminology:** "Court personnel" does not include the lawyers in a proceeding before a judge. See Section 3A(5), 3A(7)(c) and 3A(8).

**Terminology:** "Economic interest" denotes ownership of a legal or equitable interest,

or a relationship as officer, director, advisor or other active participant in the affairs of a party, except that:

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

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

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

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

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

**Terminology: "Fiduciary"** includes such relationships as executor, administrator, conservator, trustee, and guardian. See Sections 3D(1)(c), 3D(2) and 4E.

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

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

**Terminology: "Require."** The rules prescribing that a judge "require" certain conduct of others are, like all of the rules in this Code, rules of reason. The use of the term "require" in that context means a judge is to exercise reasonable direction and control over the conduct of those persons subject to the judge's direction and control. See Section 3A(3), 3A(4), 3A(6),

3A(8) and 3B(2).

**Terminology: "Third degree of relationship."** The following persons are relatives within the third degree of relationship: great-grandparent, grandparent, parent, uncle, aunt, brother, sister, child, grandchild, great-grandchild, nephew or niece. See Section 3D(1)(d).

**Section 3A(1).** Minnesota Statutes require that all questions of fact and law, and all motions and matters submitted to the district court and court of appeals shall be disposed of and the decision filed within 90 days, with certain limited exceptions. M.S. §§ 546.27 subd. 1; 480A.08, subd. 3. This 90 day rule is an outside limit; cases should be decided before the 90 days expire, whenever possible. Failure to abide by the statutory 90 day rule may constitute grounds for disciplinary action.

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

Prompt disposition of the court's business requires a judge to devote adequate time to judicial duties, to be punctual in attending court and expeditious in determining matters under submission, and to insist that court officials, litigants and their lawyers cooperate with the judge to that end.

**Section 3A(4).** 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.

**Section 3A(5).** A judge must refrain from speech, gestures or other conduct that could reasonably be perceived as sexual harassment and must require the same standard of conduct of others subject to the judge's direction and control.

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

**Section 3A(7).** The proscription against *ex parte* communications concerning a proceeding includes communications from lawyers, law teachers, and other persons who are not participants in the proceeding, except to the limited extent permitted.

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

Whenever presence of a party or notice to a party is required by Section 3A(7), it is the party's lawyer, or if the party is unrepresented the party, who is to be present or to whom notice is to be given.

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

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

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

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

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

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

**Section 3A(8).** The requirement that judges abstain from public comment regarding a pending or impending proceeding continues during any appellate process and until final disposition. This Section does not prohibit a judge from commenting on proceedings in which the judge is a litigant in a personal capacity, but in cases such as a writ of mandamus where the judge is a litigant in an official capacity, the judge must not comment publicly. The conduct of lawyers relating to trial publicity is governed by Rule 3.b of the Minnesota Rules of Professional Conduct.

**Section 3A(9).** 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.

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

**Section 3C(1).** 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 disciplinary authority or other agency or body.

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

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

By decisional law, the rule of necessity may override the rule of disqualification. For example, a judge might be required to participate in judicial review of a judicial salary statute, or might be the only judge available in a matter requiring immediate judicial action, such as a hearing on probable cause or a temporary restraining order. In the latter case, the judge must disclose on the record the basis for possible disqualification and use reasonable efforts to transfer the matter to another judge as soon as practicable.

**Section 3D(1)(a).** Personal relationships of a judge with lawyers appearing in any matter, such as a former partner, close personal friend, or other relationship which may give the appearance of impropriety, conflict of interest, or favoritism shall be disclosed to all parties at the commencement of any proceeding. While such relationships do not require automatic disqualification, disclosure is required.

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

**Section 3D(1)(d).** The fact that a lawyer in a proceeding is affiliated with a law firm with which a relative of the judge is affiliated does not of itself disqualify the judge. Under appropriate circumstances, the fact that "the judge's impartiality might reasonably be questioned" under Section 3D(1), or that the relative is known by the judge to have an interest in the law firm that could be "substantially affected by the outcome of the proceeding" under Section



3D(1)(d)(iii) may require the judge's disqualification. In most cases, the fact that a judge's spouse is a firm partner requires the judge's disqualification.

**Section 3E.** A remittal procedure provides the parties an opportunity to proceed without delay if they wish to waive the disqualification. To assure that consideration of the question of remittal is made independently of the judge, a judge must not solicit, seek or hear comment on possible remittal or waiver of the disqualification unless the lawyers jointly propose remittal after consultation as provided in the rule. A party may act through counsel if counsel represents on the record that the party has been consulted and consents. As a practical matter, a judge may wish to have all parties and their lawyers sign the remittal agreement.

#### COMMENTS - CANON 4

**Terminology: "Fiduciary"** includes such relationships as executor, administrator, conservator, trustee, and guardian. See Sections 3D(1)(c), 3D(2) and 4E.

**Terminology: "Family"** denotes a spouse, significant other, child, grandchild, parent, grandparent, or other relative or person with whom the specified individual maintains a close familial relationship. See Sections 4D(2), 4E, 4G and 5A(3)(a).

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

**Section 4A.** Complete separation of a judge from extra-judicial activities is neither possible nor wise. A judge should not become isolated from the community in which the judge lives.

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

**Section 4B.** 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.

**Section 4C(1).** See Section 2B regarding the obligation to avoid improper influence.

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

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

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

See Commentary to Section 4B regarding use of the phrase "subject to the following limitations and the other requirements of this Code." As an example of the meaning of the phrase, a judge permitted by Section 4C(3) to serve on the board of a fraternal institution may be prohibited from such service by Sections 2C or 4A if the institution practices unlawful 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.

**Section 4C(3)(a).** 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.

**Section 4C(3)(b).** A judge may solicit membership or endorse or encourage membership efforts for an organization devoted to the improvement of the law, the legal system or the administration of justice or a nonprofit educational, religious, charitable, fraternal or civic organization as long as the solicitation cannot reasonably be perceived as coercive and is not essentially a fund-raising mechanism. Solicitation of funds for an organization and solicitation of memberships similarly involve the danger that the person solicited will feel obligated to respond favorably to the solicitor if the solicitor is in a position of influence or control.

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

**Section 4D(1).** The Time for Compliance provision of this Code (Application, Section D) postpones the time for compliance with certain provisions of this Section in some cases.

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

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

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

**Section 4D(2).** This Section provides that, subject to the requirements of this Code, a judge may hold and manage investments owned solely by the judge, investments owned solely

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

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

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

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

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

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

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

**Section 4E.** The Time for Compliance provision of this Code (Application, Section D) 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).

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

**Section 4G.** This prohibition refers to the practice of law in a representative capacity

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

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

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

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

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

**Section 4I.** Section 3D requires a judge to disqualify himself or herself in any proceeding in which the judge has an economic interest. 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.

## COMMENTS - CANON 5

**Terminology: "Candidate"** is a person seeking selection for or retention in judicial office by election. 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 authority, or authorizes solicitation or acceptance of contributions or support. The term "candidate" has the same meaning when applied to a judge seeking election to non-judicial office. See Sections 5A, 5B and 5D.

**Terminology: "Election"** includes primary and general elections; it includes partisan elections, nonpartisan elections and retention elections. See Section 5.

**Terminology: "Family"** denotes a spouse, significant other, child, grandchild, parent, grandparent, or other relative or person with whom the specified individual maintains a close familial relationship. See Sections 4D(2), 4E, 4G and 5A(3)(a).

**Terminology: "Political organization"** denotes a political party or other group, the principal purpose of which is to further the election or appointment of candidates to political office. See Section 5A(1).

**Section 5A(1).** A judge or candidate for judicial office retains the right to participate in the political process as a voter.

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

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

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

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

**Section 5A(3)(a).** 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.

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

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

Section 5B(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.

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

### COMMENTS - APPLICATION SECTION

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

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

**Application Section D.** If serving as a fiduciary when selected as judge, a new judge may, notwithstanding the prohibitions in Section 4E, continue to serve as fiduciary but only for that period of time necessary to avoid serious adverse consequences to the beneficiary of the fiduciary relationship and in no event longer than one year. Similarly, if engaged at the time of judicial selection in a business activity, a new judge may, notwithstanding the prohibitions in Section 4D(3), continue in that activity for a reasonable period but in no event longer than one year.

Dated: November 22, 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