STATE OF MINNESOTA

IN SUPREME COURT

C4-85-697

ORDER FOR HEARING TO CONSIDER PROPOSED AMENDMENTS TO THE MINNESOTA CODE OF JUDICIAL CONDUCT

IT IS HEREBY ORDERED that a hearing be held before this Court in Courtroom 300 of the Minnesota Supreme Court, Minnesota Judicial Center, on February 27, 2008, at 2:00 p.m., to consider the recommendations of the Ad Hoc Advisory Committee to review The Minnesota Code of Judicial Conduct to amend the code. A copy of the committee's report, including the proposed amendments, is annexed to this order.

IT IS FURTHER ORDERED that:

1. All persons, including members of the Bench and Bar, desiring to present written statements concerning the subject matter of this hearing, but who do not wish to make an oral presentation at the hearing, shall file 12 copies of such statement with Frederick Grittner, Clerk of the Appellate Courts, 305 Judicial Center, 25 Dr. Rev. Martin Luther King Jr. Boulevard, St. Paul, Minnesota 55155, on or before February 15, 2008, and
2. All persons desiring to make an oral presentation at the hearing shall file 12 copies of the material to be so presented with the Clerk of the Appellate Courts together with 12 copies of a request to make an oral presentation. Such statements and requests shall be filed on or before February 15, 2008.

Dated: December 17th, 2007

BY THE COURT:

Russell A. Anderson
Chief Justice

OFFICE OF
APPELLATE COURTS

DEC 18 2007

FILED

REPORT OF THE AD HOC ADVISORY COMMITTEE TO REVIEW THE MINNESOTA CODE OF JUDICIAL CONDUCT

C4-85-697

October 31, 2007

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COMMITTEE BACKGROUND

The Committee was established by the Minnesota Supreme Court on January 23, 2007, to study the need for and advisability of further amendments to Canon 5 and other provisions of the Minnesota Code of Judicial Conduct, with consideration of changes that may be included in the new model code considered by the American Bar Association House of Delegates in February 2007.

The Committee was given until September 1, 2007 to file a report. The reporting date was extended by the Court to October 15, 2007. The full Committee met a total of seven times between June and September 2007. The Committee reviewed the previous work of earlier Minnesota Advisory Committees on Judicial Conduct in 2004, 2005, and 2006, the U.S. Supreme Court decision in *Republican Party of Minnesota v. White*, 536 U.S. 765 (2002), the Eighth Circuit Court of Appeals decision on remand in *White*, 416 F. 3rd 738 (8th Cir. 2005) ("*White II")* and the amendments to the Minnesota Code of Judicial Conduct adopted by the Minnesota Supreme Court in 2004 and 2006.

The Committee received extensive information about the 2007 ABA Model Code of Judicial Conduct and the extensive hearing and commentary process which the American Bar Association employed prior to adopting the 2007 ABA Model Code of Judicial Conduct in February 2007. The Committee carefully considered the provisions of the 2007 Model Code. The Committee formed subcommittees to review each of the four canons of the Model Code to determine whether the Model Code should be adopted in Minnesota and, if so, whether the Model Code should be modified because of circumstances unique to Minnesota. The subcommittees met a total of nine times to consider the application of the 2007 ABA Model Code to Minnesota practices, procedures and prior law.

The Committee scheduled a hearing for public comment on its recommendations and gave notice of that hearing to a variety of public and professional organizations with an interest in judicial ethics. The notice was also published on the Minnesota Judicial Branch web site. The Committee received two written comments and public testimony from two attorneys at an October 17, 2007 public hearing. The public comments were considered and incorporated, as appropriate, in the Committee recommendations.

COMMITTEE RECOMMENDATION

In the interest of developing a uniform body of interpretation on issues concerning judicial ethics and a clear statement of enforceable standards, the Committee recommends the adoption of the 2007 ABA Model Code of Judicial Conduct as modified to reflect Minnesota's practices, procedures and circumstances.

RECOMMENDATIONS - REVISIONS TO THE 2007 ABA MODEL CODE OF JUDICIAL CONDUCT FOR ADOPTION IN MINNESOTA

BACKGROUND

The following text is a summary of the changes recommended by the Committee to the 2007 ABA Model Code of Judicial Conduct for adoption in Minnesota. The 2007 ABA Model Code consists of four Canons, numbered Rules under each Canon, and Comments that follow and explain each Rule. Scope and Terminology sections provide additional guidance in interpreting and applying the Code. An Application Section establishes when the various Rules apply to a judge or judicial candidate. This report discusses the rationale for the changes to the 2007 ABA Model Code (hereinafter "Model Code") proposed for Minnesota by Model Code section. Following the summary is a legislative text of the proposed Minnesota Code of Judicial Conduct, showing the changes made to the Model Code. New language is indicated by underline and deletions by ~~strikeout~~. The report also includes a side-by-side comparison of the proposed Minnesota Code of Judicial Conduct and the current Minnesota Code of Judicial Conduct.

I. TERMINOLOGY

The Committee recommends several amendments to the Terminology Section of the Model Code. These include a change in the definition of "contribution" to conform to state campaign finance law, replacement of the term "domestic partner" throughout the Model Code with specific language indicating coverage in appropriate Model Code sections including the definition of "economic interest", the addition of a definition of "leader in a political organization" to provide clarity, and removal of the types of elections inapplicable in Minnesota from the definition of "public election." Each of the first three changes is discussed more fully below.

Contribution

The Model Code definition of contribution includes "in-kind contributions, such as goods, professional or volunteer services, advertising, and other types of assistance, which if obtained by the recipient otherwise, would require a financial expenditure." The Committee noted that Minn. Stat. § 10A. 01, governing political campaign financing excludes from the definition of contribution "services provided without compensation by an individual volunteering personal time on behalf of a candidate, … or the publishing or broadcasting of news items or editorial comments by the news media." The Committee recommends conforming the Code definition to that provision.

Domestic partner

The Committee discussed several alternatives to the definition of "domestic partner" in connection with situations in which a judge could reasonably be expected to recuse himself or herself from a case and other situations where a personal relationship affects a judge's conduct. Concerned about the definition of "domestic partner" being underinclusive in scope, the

Committee believes that a member of the judge's household as well as a person with whom a judge has an intimate relationship should be covered by these rules. Rather than propose a single definition, the Committee suggests deleting the definition and inserting phrases descriptive of covered relationships in specific Rules. As a result of this recommendation, language descriptive of covered relationships has been added to the definition of "Economic Interest," Rules 2.11, 2.13, 3.7, 3.8, 3.10, 3.11, 3.13, 3.14, and where necessary applicable comments.

Leader in a political organization

The Committee discussed the need for clarity in the definition of "leader in a political organization." Public comment raised questions about whether the definition was sufficiently inclusive. Disciplinary cases from other jurisdictions where judges or judicial candidates were disciplined for political leadership were examined and resulted in the proposed definition. [1]

In order to provide guidance and forestall due process challenges, the Committee recommends the following definition.

<u>"Leader in a political organization" is one who holds an elective, representative, or appointed position in a political organization."</u>

Changes to Rule 4.1A(1) were necessitated as a result of this definition.

II. APPLICATION

The Committee reviewed the Model Code Application Section for conformance to the structure and terminology used in Minnesota to designate the several types of positions in the judicial and executive branches of state government to which the Code of Judicial Conduct would apply. Those positions, with applicable statutory references, have been identified in the Application Section I(B) and Comment 1 to that section. The references in Comment 1 provide the statutory references to the executive branch judges to be covered by the proposed Minnesota Code.

The Committee recommends changes to Application Section III to conform to current Minnesota law which does not provide for part-time elected judges. Further changes to Section III recognize the current Minnesota Code of Judicial Conduct provisions which allow part time service of appointed Child Support Magistrates and Referees who may practice law in a division of the court other than the one in which they serve. The same limitation on practice of law in the division of the court in which a periodic part-time judge serves is also incorporated into Application Section IV(B).

[1] See *In re Blauvelt*, 801 P.2d 235 (Wash. 1990) A judge serving as a delegate to a political party's county convention is a "leader" within the meaning of the Code prohibition. *Mississippi Jud. Performance Comm'n v. Peyton*, 555 So. 2d 1036 (Miss. 1990) A justice court judge was censured for continuing to serve on the county executive committee of the Democratic Party after his election to the bench. See also *In re Katic*, 549 N.E. 2d 1039 (Ind. 1990) A judge was suspended for playing an active leadership role in Democratic Party politics. *In re Maney*, 70 N.Y. 2d 27, 510 N.E. 2d 313 (1987) A judge was removed for openly engaging in long-term struggle for control of Democratic Party leadership.

III. CANON 1

The Committee reviewed Canon 1 of the Model Code and recommends adoption without changes.

IV. CANON 2

The Committee reviewed Canon 2 of the Model Code and recommends adoption without changes except for the deletion of Model Code Rules 2.11(A)(4) and 2.13(B). The Committee considered the primary stricture of impartiality in each Rule to be binding on the judge and adheres to the presumption that a judge would follow the Canon until the contrary is proven.

The Committee also recommends the retention of the current Minnesota Code of Judicial Conduct Canon 5(B)(2) provision requiring a judicial candidate to take reasonable measures to ensure that the campaign committee does not disclose to the candidate names and responses of those solicited for campaign contributions (which appears in Rule 4.4(B)(4) of the Proposed Minnesota Code. Rules 2.11(A)(4) and 2.13(B) are unnecessary.

Rule 2.11 is the first of several Rules in which the Committee has inserted descriptive phrases identifying additional relationships in which a judge should disqualify himself or herself from consideration of matters. See discussion of "domestic partner" definition above.

V. CANON 3

The Committee reviewed Canon 3. As noted in the discussion of Terminology above, Rules 3.7, 3.8, 3.10, 3.11, 3.13, 3.14 require the insertion of phrases descriptive of relationships included within the coverage of the rule because the underinclusiveness of the domestic partner definition. Those changes are recommended by the committee and are not discussed further in this section. In addition the Committee recommends adoption of the Rules and Comments with the following additional changes which are specifically discussed below.

Rule 3.6

Rule 3.6 prohibits a judge's affiliation with certain discriminatory organizations. The Model Code provides a list of specific types of discriminatory conduct which are prohibited and uses "invidious discrimination" as the standard. The current Minnesota Code of Judicial Conduct provision on this subject was amended in 2005 by the Minnesota Supreme Court after petition and public hearing. Rather than listing various categories of discrimination as proposed by the Model Code, Minnesota adopted a prohibition against "unlawful discrimination." The Committee recommends retention of the Minnesota language in this regard as a more flexible and inclusive standard. The proposed Minnesota Rule and the corresponding Comment have been adapted to incorporate the current Minnesota Code language on this issue.

Rule 3.7

Rule 3.7 concerns participation in Educational, Religious, Charitable, Fraternal, or Civic Organizations and Activities. The Committee recommends changing Model Code Rule 3.7(A)(2), deleting ~~contribution~~ and inserting funds and services. The Committee proposed change to the Minn. Stat. §10A.01 campaign finance definition of "contribution" does not fit this section. The Committee recommends the substitution of the terms "funds and services" in keeping with the intent of the Model Code's original definition of contribution.

In keeping with the broader participation in the community for judges envisioned by the Model Code, the Committee further recommends a change to Rule 3.7(A)(5) to permit judges who are participating in educational, religious, charitable, fraternal or civic organizations not conducted for profit, to make recommendations to the organization concerning its fund granting activities. This would permit such activities on behalf of such organizations which are not limited to concern with the law, the legal system or the administration of justice.

The committee further recommends adding Comment 6 recognizing fund raising and grant making on behalf of a religious organization is a lawful exercise of religious freedom.

Rule 3.9

The Committee recommends a modification to the Model Code language of Rule 3.9 to clarify that actively serving judges should not serve as arbitrators or mediators in a private capacity.

The Committee found no problem with the current Minnesota provisions regarding retired judges servicing as mediators and arbitrators. The Committee recommends incorporating current well-established Minnesota provisions regarding retired judges servicing as a mediator or arbitrator into the Model Code.

Rule 3.13

Rule 3.13 concerns acceptance and reporting of gifts, loans, bequests, and other things of value. The Model Code proposed public reporting of all transactions where a judge receives a public testimonial, free invitations for self, a spouse and/or guest to bar-related functions or other activities relating to the law, the legal system, or the administration of justice; or an event associated with any of the judge's educational, religious, charitable, fraternal or civil activities permitted by the Code if the same invitation is offered to nonjudges under the same conditions and circumstances. Minnesota does not currently require public reporting of these activities. The Committee found no problems with the current Minnesota provisions. The Committee recommends adopting the Model Code provision with deletion of the public reporting requirements of Rule 3.13(c) except gifts valued in excess of $150.00 and not otherwise described by the rules, which are covered by paragraph (10).

Rule 3.14

Rule 3.14 governs reimbursement of expenses and waivers of fees or charges. In accord with it findings and recommendations in Rule 3.13, the Committee found no problems with current Minnesota provisions regulating this area. The Committee recommends deletion of Model Rule 3.14(C) as unnecessary.

Rule 3.15

Rule 3.15 specifies the reporting requirements for extrajudicial compensation, gifts and other things of value. The Committee recommends the retention of the current Minnesota Code of Judicial Conduct reporting requirements with a clarification that income from retirement and deferred compensation plans need not be reported where the judge does not render current or future services in exchange for the income. The Model Code language has been modified to incorporate to the current Minnesota Code language including the current reporting deadline.

VI. CANON 4

The Committee and two subcommittees devoted several meetings to consideration of the possible implications of the U.S. Supreme Court decision in *White* and the Eighth Circuit Court of Appeals decision in *White II*. The Committee found very little elucidating case law to guide its considerations of issues raised in these cases.

The Committee reviewed the Model Code to determine what modifications are required by White II. The Committee determined that the Model Code provisions limiting participation in partisan political activities by judges and judicial candidates could be deemed to violate the free speech and association provisions of the First Amendment under the rational of *White II*.

Rule 4.1 sets forth those activities which are prohibited for a judge or judicial candidate *unless* those activities are specifically permitted by a later Rule or by other applicable law. Rule 4.2(A) requires certain activities on the part of judges participating in a public election, while Rule 4.2(B) permits (unless prohibited by law) certain activities by candidates for elective office. Rule 4.3 permits candidates for appointment to judicial office to engage in specific activities. Rule 4.4 concerns campaign committees. Rule 4.5 concerns judges who become candidates for nonjudicial office.

The Committee recommends the adoption of the Model Code with the following exceptions.

Rule 4.1

The Committee recommends deleting the reference to "hold office in" a political organization in Rule 4.1(A)(1) because office holding is now included in the definition of "leader in a political organization."

The Committee recommends that Rule 4.1(A)4 retain the prohibition against a judge or judicial candidate soliciting funds for a political organization or candidate for public office. The rationale is that restriction legitimately preserves the impartiality of the judicial office and provides protection from abuse of the judicial office in fund raising activities on behalf of a party or a candidate. The Committee is concerned about the sustainability of prohibitions on candidate engagement in the endorsement process under *White II* and therefore recommends limitation or deletion of prohibitions closely tied to the political endorsement process.

The Committee anticipates that candidates may be required to appear at political caucuses and conventions and may be asked to pay an assessment or make a donation to participate, as are others in attendance. As long as candidates may seek, accept or use endorsements, the Committee considered barriers which precluded candidates from participation an impermissible restriction better addressed through contribution limits in paragraph 4.1(A)(4)(b). The Committee therefore recommends the deletion of the prohibition against the payment of an assessment from Rule 4.1(A)(4)(a).

The Committee recommends limiting contributions by a judge or judicial candidate to a political organization or a candidate to public office to the amount permitted by current Minnesota law for any individual candidate in Rule 4.1(A)(4)(b). Imposing a limit avoids the perception or the reality that a judge or judicial candidate is, by such a donation, buying an endorsement.

The Committee believes that the originally numbered Rules 4.1(A)(5), (6), and (7) are not sustainable under the rationale of *White II* and recommends that they be deleted.

The Committee has renumbered the Code Rules sequentially.

The Committee discussed the impact on the efficiency of the judiciary where judges are continuously campaigning throughout their terms of office. The Committee considered the two year campaign period a reasonable time limitation and therefore recommends proscription of those activities beyond the two year period provided for in Rule 4.2B. [Renumbered provision Rule 4.1A(5).]

The Committee discussed the 2006 amendments to the Minnesota Code of Judicial Conduct which modified rules restricting personal solicitation of campaign contributions by judges in response to *White II*. The Committee determined that recommending a more restrictive regulation of solicitation was likely not sustainable under *White II*. The Committee recommends incorporating the 2006 solicitation provision in Rule 4.2 as a permissible campaign activity within limitations and referenced that permission/limitation in Rule 4.1(A)(8) [Renumbered here as Rule 4.1(A)(6)].

Since other provisions of state law and Judicial Branch Personnel Policies restrict the use of court personnel, facilities and resources in political campaign activity, the Committee recommends adopting those restrictions rather than imposing the absolute prohibition of the Model Code in Rule 4.1(A)(10)[Renumbered here as Rule 4.1(A)(8)].

Comment 3 to Rule 4.1 has been amended to clarify that participation by a judge or judicial candidate in a political caucus does not violate Rule 4.1(A)(1-3). Representational positions would be inconsistent in the Committee's view with an independent and impartial judiciary and the comment reflects that view.

The numerical references throughout Canon 4 and in the comments have been conformed to the Committee recommendations.

Rule 4.2

The Committee recommends adoption of Rule 4.2 of the Model Code with the following changes.

Rule 4.2(A) has been amended by striking the various types of pubic elections as unnecessary.

The current Minnesota Code limitation requiring a judge or judicial candidate to take reasonable measures to shield him or herself from knowing the identity of those who contribute or refuse to contribute to a candidate's campaign committee has been added to Rule 4.2(A) as a new paragraph (5).

Rule 4.2(B) provides for a period of two years prior to the first applicable primary electi0n for the candidate to engage in specified campaign activities. The committee discussed various time frames with a goal that judges should not be engaged perpetually in campaign activities during the term of office. The committee further recognized that a level playing field in terms of campaign restrictions is desirable for all candidates for judicial office. Two years appears to be reasonable.

Model Rule 4.2 permits certain political activities only during an election campaign, such as attendance at and purchase of tickets to political dinners and events, seeking and using endorsements. Because of the *White II* decision these have been modified and moved to Rule 4.1 or deleted altogether.

The 2006 amendments to the Minnesota Code of Judicial Conduct provision dealing with solicitation of campaign contributions have been incorporated as Rule 4.2(B)(7) for the reasons stated in the discussion of Rule 4.1.

The Comments have been amended to conform to the Rule changes.

Rule 4.3

This Rule governs activities of candidates for appointive judicial office. Because of *White II*, the Committee recommended deletion from Rule 4.3(B) of the prohibition of endorsements from partisan political organizations and replacing that provision with one which relies on the appointing authority or the nominating commission to set rules for the process.

Rule 4.4

This Rule governs the campaign committee of a judicial candidate. The Committee has recommended several changes to the Model Code provision. The Committee recommends insertion of a $2000 limit on campaign contributions from any individual or organization in an election year and $500 in a non election year. This is the maximum amount specified currently under state law for the governor/and lieutenant governor. The Committee also recommends deletion of the reference to "reasonable" campaign contributions as unnecessary with the imposition of aggregate campaign contribution limits.

As stated above the Committee is recommending a period of two year before the applicable primary election and 90 days following the last election in which the candidate participated for soliciting and accepting campaign contributions as a reasonable period of time for campaign fund solicitation. The goal of the recommendation is to allow judges to direct time to the duties of the office rather than engage in perpetual fund raising by limiting fund raising to a reasonable period of time. The second goal is to provide a level playing field for all candidates for the judicial office by imposing the same time limitation on the incumbent and the challengers.

The proposed amendment to Rule 4.4(B)(3) recognizes that Minnesota campaign finance law already imposes reporting requirements on candidates for judicial office and requires judicial candidates to comply with those requirements.

The proposed addition of Rule 4.4(B)(4) imposes the current Minnesota Code of Judicial Conduct nondisclosure requirement on the campaign committee.

Rule 4.5

The Committee recommends adding a comment which provides the Minnesota legal framework for resignation upon becoming a candidate for a nonjudicial office. See Comment 3.

COMMITTEE RECOMMENDATION

After considerable deliberation, the Ad Hoc Advisory Committee to Review the Minnesota Code of Judicial Conduct recommends the adoption of the attached 2007 ABA Model Code of Judicial Conduct with revisions specifically addressing policies, practices and procedures in Minnesota.

Respectfully submitted,

E. Thomas Sullivan
Chair

PROPOSED MINN. CODE OF JUDICIAL CONDUCT vs. CURRENT MINN. CODE OF JUDICIAL CONDUCT

2007 ABA Model Code of Judicial Conduct with Proposed Minnesota Revisions

PREAMBLE

An independent, fair and impartial judiciary is indispensable to our system of justice. The United States legal system is based upon the principle that an independent, impartial, and competent judiciary, composed of men and women of integrity, will interpret and apply the law that governs our society. Thus, the judiciary plays a central role in preserving the principles of justice and the rule of law. Inherent in all the Rules contained in this Code are the precepts that judges, individually and collectively, must respect and honor the judicial office as a public trust and strive to maintain and enhance confidence in the legal system.

Judges should maintain the dignity of judicial office at all times, and avoid both impropriety and the appearance of impropriety in their professional and personal lives. They should aspire at all times to conduct that ensures the greatest possible public confidence in their independence, impartiality, integrity, and competence.

The Code of Judicial Conduct establishes standards for the ethical conduct of judges and judicial candidates. It is not intended as an exhaustive guide for the conduct of judges and judicial candidates, who are governed in their judicial and personal conduct by general ethical standards as well as by the Code. The Code is intended, however, to provide guidance and assist judges in maintaining the highest standards of judicial and personal conduct, and to provide a basis for regulating their conduct through disciplinary agencies.

SCOPE

The Code of Judicial Conduct consists of four Canons, numbered Rules under each Canon, and Comments that generally follow and explain each Rule. Scope and Terminology sections provide additional guidance in interpreting and applying the Code. An Application section establishes when the various Rules apply to a judge or judicial candidate.

The Canons state overarching principles of judicial ethics that all judges must observe. Although a judge may be disciplined only for violating a Rule, the Canons provide important guidance in interpreting the Rules. Where a Rule contains a permissive term, such as "may" or "should," the conduct being addressed is committed to the personal and professional discretion of the judge or candidate in question, and no disciplinary action should be taken for action or inaction within the bounds of such discretion discretion.

Minn. Code of Judicial Conduct (June 2007)

PREAMBLE

The role of the judiciary is central to American concepts of justice and the rule of law. This Code of Judicial Conduct establishes standards for the ethical conduct of judges to reflect the responsibilities of the judicial office as a public trust and to promote confidence in our legal system. The Code and its individual Canons are designed to provide guidance to judges and candidates for judicial office and to provide a framework for the regulation of conduct through the Board on Judicial Standards. At the same time, the text embodies standards of judicial and personal conduct intended to be binding on judges and candidates for judicial office. (Effective January 1, 1996.)

CANON 1 -- A Judge Shall Uphold the Integrity and Independence of the Judiciary

CANON 2 -- A Judge Shall Avoid Impropriety and the Appearance of Impropriety in All of the Judge's Activities

[No comparable provision in Current Minnesota Code.]

The Comments that accompany the Rules serve two functions. First, they provide guidance regarding the purpose, meaning, and proper application of the Rules. They contain explanatory material and, in some instances, provide examples of permitted or prohibited conduct. Comments neither add to nor subtract from the binding obligations set forth in the Rules. Therefore, when a Comment contains the term "must," it does not mean that the Comment itself is binding or enforceable; it signifies that the Rule in question, properly understood, is obligatory as to the conduct at issue.

Second, the Comments identify aspirational goals for judges. To implement fully the principles of this Code as articulated in the Canons, judges should strive to exceed the standards of conduct established by the Rules, holding themselves to the highest ethical standards and seeking to achieve those aspirational goals, thereby enhancing the dignity of the judicial office.

The Rules of the Code of Judicial Conduct are rules of reason that should be applied consistent with constitutional requirements, statutes, other court rules, and decisional law, and with due regard for all relevant circumstances. The Rules should not be interpreted to impinge upon the essential independence of judges in making judicial decisions.

Although the black letter of the Rules is binding and enforceable, it is not contemplated that every transgression will result in imposition of discipline. Whether discipline should be imposed should be determined through a reasonable and reasoned application of the Rule(s), and should depend upon factors such as the seriousness of the transgression, the facts and circumstances that existed at the time of the transgression, the extent of any pattern of improper activity, whether there have been previous violations, and the effect of the improper activity upon the judicial system or others.

The Code is not designed or intended as a basis for civil or criminal liability. Neither is it intended to be the basis for litigants to seek collateral remedies against each other or to obtain tactical advantages in proceedings before a court.

TERMINOLOGY

[The Minnesota Code does not have a Terminology section. Where terms are expressly defined in the current Minnesota Code, they are set out below opposite comparable Model Code definition.]

The first time any term listed below is used in a Rule in its defined sense, it is followed by an asterisk (*).

"Aggregate," in relation to contributions for a candidate, means not only contributions in cash or in kind made directly to a candidate's campaign committee, but also all contributions made indirectly with the understanding that they will be used to support the election of a candidate or to oppose the election of the candidate's opponent. See Rules 4.4.

"Appropriate authority" means the authority having responsibility for initiation of disciplinary process in connection with the violation to be reported. See Rules 2.14 and 2.15.

"Contribution" means ~~both financial and in-kind contributions, such as goods, professional or volunteer services, advertising, and other types of assistance, which, if obtained by the recipient otherwise, would require a financial expenditure~~ money, a negotiable instrument, or a donation in kind that is given to a political committee, political fund, principal campaign committee, or party unit as defined in Minn. Stat. 10A.01. "Contribution" includes a loan or advance of credit to a political committee, political fund, principal campaign committee, or party unit, if the loan or advance credit is: (1) forgiven; or (2) repaid by an individual or an association other than the political committee, political fund, principal campaign committee, or party unit to which the loan or advance of credit was made. If an advance of credit or a loan is forgiven or repaid as provided in this paragraph, it is a contribution in the year in which the loan or advance of credit was made. "Contribution" does not include services provided without compensation by an individual volunteering personal time on behalf of a candidate, ballot question, political committee, political fund, principal campaign committee, or party unit, or the publishing or broadcasting of news items or editorial comments by the news media. See Rules ~~2.11, 2.13, 3.7,~~ 4.1, and 4.4.

"De minimis," in the context of interests pertaining to disqualification of a judge, means an insignificant interest that could not raise a reasonable question regarding the judge's impartiality. See Rule 2.11.

~~**"Domestic partner**" means a person with whom another person maintains a household and an intimate relationship, other than a person to whom he or she is legally married. See Rules 2.11, 2.13, 3.13, and 3.14.~~

"Economic interest" means ownership of more than a de minimis legal or equitable interest. Except for situations in which the judge participates in the management of such a legal or equitable interest, or the interest could be substantially affected by the outcome of a proceeding before a judge, it does not include:

(1) an interest in the individual holdings within a mutual or common investment fund;
(2) an interest in securities held by an educational, religious, charitable, fraternal, or civic organization in which the judge or the judge's spouse, ~~domestic partner,~~ parent, ~~or~~ child, a person with whom the judge has an intimate relationship, or a member of the judge's household serves as a director, an officer, an advisor, or other participant;
(3) a deposit in a financial institution or deposits or proprietary interests the judge may maintain as a member of a mutual savings association or credit union, or similar proprietary interests; or
(4) an interest in the issuer of government securities held by the judge.
See Rules 1.3 and 2.11.

"Fiduciary" includes relationships such as executor, administrator, trustee, or guardian. See Rules 2.11, 3.2, and 3.8.

"Impartial," "impartiality," and **"impartially"** mean absence of bias or prejudice in favor of, or against, particular parties or classes of parties, as well as maintenance of an open mind in considering issues that may come before a judge. See Canons 1, 2, and 4, and Rules 1.2, 2.2, 2.10, 2.11, 2.13, 3.1, 3.12, 3.13, 4.1, and 4.2.

"Impending matter" is a matter that is imminent or expected to occur in the near future. See Rules 2.9, 2.10, 3.13, and 4.1.

"Impropriety" includes conduct that violates the law, court rules, or provisions of this Code, and conduct that undermines a judge's independence, integrity, or impartiality. See Canon 1 and Rule 1.2.

"Independence" means a judge's freedom from influence or controls other than those established by law. See Canons 1 and 4, and Rules 1.2, 3.1, 3.12, 3.13, and 4.2.

"Integrity" means probity, fairness, honesty, uprightness, and soundness of character. See Canon 1 and Rule 1.2.

"Judicial candidate" means any person, including a sitting judge, who is seeking selection for 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,

CANON 3 F. Impartiality.

"Impartiality" or "impartial" denotes absence of bias or prejudice in favor of, or against, particular parties or classes of parties, as well as maintaining an open mind in considering issues that may come before the judge.

CANON 5 F. Candidate.

"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

declares or files as a candidate with the election or appointment authority, authorizes or, where permitted, engages in solicitation or acceptance of contributions or support, or is nominated for election or appointment to office. See Rules 2.11, 4.1, 4.2, and 4.4.

"Knowingly," "knowledge," "known," and **"knows"** mean actual knowledge of the fact in question. A person's knowledge may be inferred from circumstances. See Rules 2.11, ~~2.13,~~ 2.15, 2.16, 3.6, and 4.1.

"Law" encompasses court rules as well as statutes, constitutional provisions, and decisional law. See Rules 1.1, 2.1, 2.2, 2.6, 2.7, 2.9, 3.1, 3.4, 3.9, 3.12, 3.13, 3.14, ~~3.15,~~ 4.1, 4.2, 4.4, and 4.5.

"Leader in a political organization" is one who holds an elective, representative, or appointed position in a political organization. ~~not amounting to a formal political office.~~ See Rule 4.1.

"Member of the candidate's family" means a spouse, ~~domestic partner~~, child, grandchild, parent, grandparent, or other relative or person with whom the candidate maintains a close familial relationship.

"Member of the judge's family" means a spouse, ~~domestic partner~~, child, grandchild, parent, grandparent, or other relative or person with whom the judge maintains a close familial relationship. See Rules 3.7, 3.8, 3.10, and 3.11.

"Member of a judge's family residing in the judge's household" means 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 Rules 2.11 and 3.13.

"Nonpublic information" means information that 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 impounded or communicated in camera, and information offered in grand jury proceedings, presentencing reports, dependency cases, or psychiatric reports. See Rule 3.5.

"Pending matter" is a matter that has commenced. A matter continues to be pending through any appellate process until final disposition. See Rules 2.9, 2.10, 3.13, and 4.1.

"Personally solicit" means a direct request made by a judge or a judicial candidate for financial support or in-kind services, whether made by letter, telephone, or any other means of communication. See Rule 4.1, 4.2 and 4.4.

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 nonjudicial office.

"Political organization" means a political party or other group sponsored by or affiliated with a political party or candidate, the principal purpose of which is to further the election or appointment of candidates for political office. For purposes of this Code, the term does not include a judicial candidate's campaign committee created as authorized by Rule 4.4. See Rules 4.1 and 4.2.

"Public election" includes primary and general elections~~, partisan elections, nonpartisan elections, and retention elections~~. See Rules 4.2 and 4.4.

"Third degree of relationship" includes the following persons: great-grandparent, grandparent, parent, uncle, aunt, brother, sister, child, grandchild, great-grandchild, nephew, and niece. See Rule 2.11.

Application

The Application section establishes when the various Rules apply to a judge or judicial candidate.

I. APPLICABILITY OF THIS CODE

(A) The provisions of the Code apply to all full-time judges. Parts II through V of this section identify those provisions that apply to four distinct categories of part-time judges. The four categories of judicial service in other than a full-time capacity are necessarily defined in general terms because of the widely varying forms of judicial service. Canon 4 applies to judicial candidates.

(B) A judge, within the meaning of this Code, is anyone who is ~~authorized~~ employed by the judicial or executive branches of state government to perform judicial functions, including an officer such as a ~~justice of the peace,~~ magistrate under Minn. Stat. 484.702, court commissioner under Minn. Stat. 489.01, ~~special master,~~ referee, judicial officer under Minn. Stat. 487.08, or member of the administrative law judiciary.

Comment

[1] The Rules in this Code have been formulated to address the ethical obligations of any person who serves a judicial function, and are premised upon the supposition that a uniform system of ethical principles should apply to all those authorized to perform judicial functions. By statute the Legislature has applied the

APPLICATION OF THE CODE OF JUDICIAL CONDUCT

A. Full-Time Judges.

Anyone, whether or not a lawyer, who is an officer of a judicial system performing judicial functions, including an officer such as a full-time referee, special master or magistrate, is a judge within the meaning of this Code. All judges shall comply with this Code except as provided below.

Code of Judicial Conduct to Tax Court Judges (Minn. Stat. 271.01, subdivision 1), the Worker's Compensation Court of Appeals (Minn. Stat. 175A.01, subdivision 4), and the judges in the Office of Administrative Hearings (Minn. Stat. 14.48, subdivisions 2 and 3(d)).

[2] The determination of which category and, accordingly, which specific Rules apply to an individual judicial officer, depends upon the facts of the particular judicial service.

[3] In recent years many jurisdictions have created what are often called "problem solving" courts, in which judges are authorized by court rules to act in nontraditional ways. For example, judges presiding in drug courts and monitoring the progress of participants in those courts' programs may be authorized and even encouraged to communicate directly with social workers, probation officers, and others outside the context of their usual judicial role as independent decision makers on issues of fact and law. When local rules specifically authorize conduct not otherwise permitted under these Rules, they take precedence over the provisions set forth in the Code. Nevertheless, judges serving on "problem solving" courts shall comply with this Code except to the extent local rules provide and permit otherwise.

II. RETIRED JUDGE SUBJECT TO RECALL

A retired judge subject to recall for service, who by law is not permitted to practice law, is not required to comply:

(A) with Rule 3.9 (Service as Arbitrator or Mediator), except while serving as a judge; or

(B) at any time with Rule 3.8 (Appointments to Fiduciary Positions).

Comment

[1] For the purposes of this section, as long as a retired judge is subject to being recalled for service, the judge is considered to "perform judicial functions."

B. Retired Judge.

A retired judge who by law is not permitted to practice law is not required to comply:

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

(2) at any time with Section 4E.

III. CONTINUING PART-TIME JUDGE

A judge who serves repeatedly on a part-time basis ~~by election or~~ under a continuing appointment, ~~including a retired judge subject to recall who is permitted to practice law ("continuing part-time judge"),~~

C. Part-Time Judge.

A part-time judge:

(A) is not required to comply:

(1) with Rules 2.10(A) and 2.10(B) (Judicial Statements on Pending and Impending Cases), except while serving as a judge; or

(2) at any time with Rules 3.4 (Appointments to Governmental Positions), 3.8 (Appointments to Fiduciary Positions), 3.9 (Service as Arbitrator or Mediator), 3.10 (Practice of Law), 3.11 (Financial, Business, or Remunerative Activities), 3.14 (Reimbursement of Expenses and Waivers of Fees or Charges), 3.15 (Reporting Requirements), 4.1 (Political and Campaign Activities of Judges and Judicial Candidates in General), 4.2 (Political and Campaign Activities of Judicial Candidates in Public Elections), 4.3 (Activities of Candidates for Appointive Judicial Office), 4.4 (Campaign Committees), and 4.5 (Activities of Judges Who Become Candidates for Nonjudicial Office); and

(B) shall not practice law in the <u>division of the court</u> 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.

Comment

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

(1) is not required to comply

(a) except while serving as a judge, with Section 3A(10);

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

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

IV. PERIODIC PART-TIME JUDGE

A periodic part-time 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,

(A) is not required to comply:

C. Part-Time Judge.

A part-time judge:

(1) is not required to comply

(1) with Rule 2.10 (Judicial Statements on Pending and Impending Cases), except while serving as a judge; or

(2) at any time with Rules 3.4 (Appointments to Governmental Positions), 3.7 (Participation in Educational, Religious, Charitable, Fraternal, or Civic Organizations and Activities), 3.8 (Appointments to Fiduciary Positions), 3.9 (Service as Arbitrator or Mediator), 3.10 (Practice of Law), 3.11 (Financial, Business, or Remunerative Activities), 3.13 (Acceptance and Reporting of Gifts, Loans, Bequests, Benefits, or Other Things of Value), 3.15 (Reporting Requirements), 4.1 (Political and Campaign Activities of Judges and Judicial Candidates in General), and 4.5 (Activities of Judges Who Become Candidates for Nonjudicial Office); and

(B) shall not practice law in <u>the division of the</u> 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.

(a) except while serving as a judge, with Section 3A(10);

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

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

V. PRO TEMPORE PART-TIME JUDGE

A pro tempore part-time 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 is not required to comply:

(A) except while serving as a judge, with Rules 1.2 (Promoting Confidence in the Judiciary), 2.4 (External Influences on Judicial Conduct), 2.10 (Judicial Statements on Pending and Impending Cases), or 3.2 (Appearances before Governmental Bodies and Consultation with Government Officials); or

(B) at any time with Rules 3.4 (Appointments to Governmental Positions), 3.6 (Affiliation with Discriminatory Organizations), 3.7 (Participation in Educational, Religious, Charitable, Fraternal, or Civic Organizations and Activities), 3.8 (Appointments to Fiduciary Positions), 3.9 (Service as Arbitrator or Mediator), 3.10 (Practice of Law), 3.11 (Financial, Business, or Remunerative Activities), 3.13 (Acceptance and

C. Part-Time Judge.

A part-time judge:

(1) is not required to comply

(a) except while serving as a judge, with Section 3A(10);

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

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

Reporting of Gifts, Loans, Bequests, Benefits, or Other Things of Value), 3.15 (Reporting Requirements), 4.1 (Political and Campaign Activities of Judges and Judicial Candidates in General), and 4.5 (Activities of Judges Who Become Candidates for Nonjudicial Office).

VI. TIME FOR COMPLIANCE

A person to whom this Code becomes applicable shall comply immediately with its provisions, except that those judges to whom Rules 3.8 (Appointments to Fiduciary Positions) and 3.11 (Financial, Business, or Remunerative Activities) apply shall comply with those Rules as soon as reasonably possible, but in no event later than one year after the Code becomes applicable to the judge.

Comment

[1] If serving as a fiduciary when selected as judge, a new judge may, notwithstanding the prohibitions in Rule 3.8, continue to serve as fiduciary, but only for that period of time necessary to avoid serious adverse consequences to the beneficiaries 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 Rule 3.11, continue in that activity for a reasonable period but in no event longer than one year.

CANON 1

A JUDGE SHALL UPHOLD AND PROMOTE THE INDEPENDENCE, INTEGRITY, AND IMPARTIALITY OF THE JUDICIARY, AND SHALL AVOID IMPROPRIETY AND THE APPEARANCE OF IMPROPRIETY.

D. Time for Compliance.

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

CANON 1

A Judge Shall Uphold the Integrity and Independence of the Judiciary

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 personally observe those standards in order to preserve the integrity and independence of the judiciary. The provisions of this Code should be construed and applied to further that objective.

CANON 2

A Judge Shall Avoid Impropriety and the Appearance of Impropriety in All of the Judge's Activities

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

PROPOSED MINN. CODE OF JUDICIAL CONDUCT vs. CURRENT MINN. CODE OF JUDICIAL CONDUCT

RULE 1.1
Compliance with the Law

A judge shall comply with the law,* including the Code of Judicial Conduct.

RULE 1.2
Promoting Confidence in the Judiciary

A judge shall act at all times in a manner that promotes public confidence in the independence,* integrity,* and impartiality* of the judiciary, and shall avoid impropriety and the appearance of impropriety.

Comment

[1] Public confidence in the judiciary is eroded by improper conduct and conduct that creates the appearance of impropriety. This principle applies to both the professional and personal conduct of a judge.

[2] A judge should expect to be the subject of public scrutiny that might be viewed as burdensome if applied to other citizens, and must accept the restrictions imposed by the Code.

[3] Conduct that compromises or appears to compromise the independence, integrity, and impartiality of a judge undermines public confidence in the judiciary. Because it is not practicable to list all such conduct, the Rule is necessarily cast in general terms.

[4] Judges should participate in activities that promote ethical conduct among judges and lawyers, support professionalism within the judiciary and the legal profession, and promote access to justice for all.

[5] Actual improprieties include violations of law, court rules or provisions of this Code. The test for appearance of impropriety is whether the conduct would create in reasonable minds a perception that the judge violated this Code or engaged in other conduct that reflects adversely on the judge's honesty, impartiality, temperament, or fitness to serve as a judge.

[6] A judge should initiate and participate in community outreach activities for the purpose of promoting public understanding of and confidence in the administration of justice. In conducting such activities, the judge must act in a manner consistent with this Code.

CANON 2 A. A judge shall respect and comply with the law and act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

CANON 2 A. A judge shall respect and comply with the law and act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

RULE 1.3
Avoiding Abuse of the Prestige of Judicial Office

A judge shall not abuse the prestige of judicial office to advance the personal or economic interests* of the judge or others, or allow others to do so.

Comment

[1] It is improper for a judge to use or attempt to use his or her position to gain personal advantage or deferential treatment of any kind. For example, it would be improper for a judge to allude to his or her judicial status to gain favorable treatment in encounters with traffic officials. Similarly, a judge must not use judicial letterhead to gain an advantage in conducting his or her personal business.

[2] A judge may provide a reference or recommendation for an individual based upon the judge's personal knowledge. The judge may use official letterhead if the judge indicates that the reference is personal and if there is no likelihood that the use of the letterhead would reasonably be perceived as an attempt to exert pressure by reason of the judicial office.

[3] Judges may participate in the process of judicial selection by cooperating with appointing authorities and screening committees, and by responding to inquiries from such entities concerning the professional qualifications of a person being considered for judicial office.

[4] Special considerations arise when judges write or contribute to publications of for-profit entities, whether related or unrelated to the law. A judge should not permit anyone associated with the publication of such materials to exploit the judge's office in a manner that violates this Rule or other applicable law. In contracts for publication of a judge's writing, the judge should retain sufficient control over the advertising to avoid such exploitation.

CANON 2 (B). A judge shall not allow family, social, political or other relationships to influence judicial conduct or judgment. A judge shall not lend the prestige of the 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.

CANON 2

A JUDGE SHALL PERFORM THE DUTIES OF JUDICIAL OFFICE IMPARTIALLY, COMPETENTLY, AND DILIGENTLY.

RULE 2.1
Giving Precedence to the Duties of Judicial Office

The duties of judicial office, as prescribed by law,* shall take precedence over all of a judge's personal and extrajudicial activities.

Comment

[1] To ensure that judges are available to fulfill their judicial duties, judges must conduct their personal and extrajudicial activities to minimize the risk of conflicts that would result in frequent disqualification. See Canon 3.

[2] Although it is not a duty of judicial office unless prescribed by law, judges are encouraged to participate in activities that promote public understanding of and confidence in the justice system.

RULE 2.2
Impartiality and Fairness

A judge shall uphold and apply the law,* and shall perform all duties of judicial office fairly and impartially.*
Comment

[1] To ensure impartiality and fairness to all parties, a judge must be objective and open-minded.

[2] Although each judge comes to the bench with a unique background and personal philosophy, a judge must interpret and apply the law without regard to whether the judge approves or disapproves of the law in question.

[3] When applying and interpreting the law, a judge sometimes may make good-faith errors of fact or law. Errors of this kind do not violate this Rule.

[4] It is not a violation of this Rule for a judge to make reasonable accommodations to ensure pro se litigants the opportunity to have their matters fairly heard.

CANON 3
A Judge Shall Perform the Duties of the Office Impartially and Diligently

CANON 3
A Judge Shall Perform the Duties of the Office Impartially and Diligently
The judicial duties of a judge take precedence over all other activities. Judicial duties include all the duties of the judge's office prescribed by law. In the performance of these duties, the following standards apply:

CANON 3 A

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

RULE 2.3
Bias, Prejudice, and Harassment

(A) A judge shall perform the duties of judicial office, including administrative duties, without bias or prejudice.

(B) A judge shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice, or engage in harassment, including but not limited to bias, prejudice, or harassment based upon race, sex, gender, religion, national origin, ethnicity, disability, age, sexual orientation, marital status, socioeconomic status, or political affiliation, and shall not permit court staff, court officials, or others subject to the judge's direction and control to do so.

(C) A judge shall require lawyers in proceedings before the court to refrain from manifesting bias or prejudice, or engaging in harassment, based upon attributes including but not limited to race, sex, gender, religion, national origin, ethnicity, disability, age, sexual orientation, marital status, socioeconomic status, or political affiliation, against parties, witnesses, lawyers, or others.

(D) The restrictions of paragraphs (B) and (C) do not preclude judges or lawyers from making legitimate reference to the listed factors, or similar factors, when they are relevant to an issue in a proceeding.

Comment

[1] A judge who manifests bias or prejudice in a proceeding impairs the fairness of the proceeding and brings the judiciary into disrepute.

[2] Examples of manifestations of bias or prejudice include but are not limited to epithets; slurs; demeaning nicknames; negative stereotyping; attempted humor based upon stereotypes; threatening, intimidating, or hostile acts; suggestions of connections between race, ethnicity, or nationality and crime; and irrelevant references to personal characteristics. Even facial expressions and body language can convey to parties and lawyers in the proceeding, jurors, the media, and others an appearance of bias or prejudice. A judge must avoid conduct that may reasonably be perceived as prejudiced or biased.

CANON 3 A.

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

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

CANON 2 C .

A judge shall not knowingly hold membership in any organization that practices unlawful discrimination. (7/1/05)

[3] Harassment, as referred to in paragraphs (B) and (C), is verbal or physical conduct that denigrates or shows hostility or aversion toward a person on bases such as race, sex, gender, religion, national origin, ethnicity, disability, age, sexual orientation, marital status, socioeconomic status, or political affiliation.

[4] Sexual harassment includes but is not limited to sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature that is unwelcome.

RULE 2.4
External Influences on Judicial Conduct

(A) A judge shall not be swayed by public clamor or fear of criticism.

(B) A judge shall not permit family, social, political, financial, or other interests or relationships to influence the judge's judicial conduct or judgment.

(C) A judge shall not convey or permit others to convey the impression that any person or organization is in a position to influence the judge.

Comment

[1] An independent judiciary requires that judges decide cases according to the law and facts, without regard to whether particular laws or litigants are popular or unpopular with the public, the media, government officials, or the judge's friends or family. Confidence in the judiciary is eroded if judicial decision making is perceived to be subject to inappropriate outside influences.

RULE 2.5
Competence, Diligence, and Cooperation

(A) A judge shall perform judicial and administrative duties, competently and diligently.

(B) A judge shall cooperate with other judges and court officials in the administration of court business.

CANON 3 B.

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

CANON 2 B.

A judge shall not allow family, social, political or other relationships to influence judicial conduct or judgment. A judge shall not lend the prestige of the 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.

CANON 3 A.
(1) A judge shall hear and decide promptly, efficiently and fairly 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. He or she shall be unswayed by partisan interests, public clamor or fear of criticism.

CANON 3 B.
(1) A judge shall diligently discharge the judge's administrative responsibilities without bias or prejudice and maintain professional

Comment

[1] Competence in the performance of judicial duties requires the legal knowledge, skill, thoroughness, and preparation reasonably necessary to perform a judge's responsibilities of judicial office.

[2] A judge should seek the necessary docket time, court staff, expertise, and resources to discharge all adjudicative and administrative responsibilities.

[3] 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 take reasonable measures to ensure that court officials, litigants, and their lawyers cooperate with the judge to that end.

[4] In disposing of matters promptly and efficiently, a judge must demonstrate due regard for the rights of parties to be heard and to have issues resolved without unnecessary cost or delay. A judge should monitor and supervise cases in ways that reduce or eliminate dilatory practices, avoidable delays, and unnecessary costs

RULE 2.6
Ensuring the Right to Be Heard

(A) 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.*

(B) A judge may encourage parties to a proceeding and their lawyers to settle matters in dispute but shall not act in a manner that coerces any party into settlement.

Comment

[1] The right to be heard is an essential component of a fair and impartial system of justice. Substantive rights of litigants can be protected only if procedures protecting the right to be heard are observed.

[2] The judge plays an important role in overseeing the settlement of disputes, but should be careful that efforts to further settlement do not undermine any party's right to be heard according to law. The judge should keep in mind the effect that the judge's participation in settlement discussions may have, not only on the judge's own views of the case, but also on the perceptions of the lawyers and the parties if the case remains

competence in judicial administration and shall cooperate with other judges and court officials in the administration of court business.

CANON 3 A.

(7) A judge shall accord to every person who has a legal interest in a proceeding, or person's lawyer, the right to be heard according to law…

* * *

(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.

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with the judge after settlement efforts are unsuccessful. Among the factors that a judge should consider when deciding upon an appropriate settlement practice for a case are (1) whether the parties have requested or voluntarily consented to a certain level of participation by the judge in settlement discussions, (2) whether the parties and their counsel are relatively sophisticated in legal matters, (3) whether the case will be tried by the judge or a jury, (4) whether the parties participate with their counsel in settlement discussions, (5) whether any parties are unrepresented by counsel, and (6) whether the matter is civil or criminal.

[3] Judges must be mindful of the effect settlement discussions can have, not only on their objectivity and impartiality, but also on the appearance of their objectivity and impartiality. Despite a judge's best efforts, there may be instances when information obtained during settlement discussions could influence a judge's decision making during trial, and, in such instances, the judge should consider whether disqualification may be appropriate. See Rule 2.11(A)(1).

RULE 2.7
Responsibility to Decide

A judge shall hear and decide matters assigned to the judge, except when disqualification is required by Rule 2.11 or other law.*

Comment

[1] Judges must be available to decide the matters that come before the court. Although there are times when disqualification is necessary to protect the rights of litigants and preserve public confidence in the independence, integrity, and impartiality of the judiciary, judges must be available to decide matters that come before the courts. Unwarranted disqualification may bring public disfavor to the court and to the judge personally. The dignity of the court, the judge's respect for fulfillment of judicial duties, and a proper concern for the burdens that may be imposed upon the judge's colleagues require that a judge not use disqualification to avoid cases that present difficult, controversial, or unpopular issues.

CANON 3 A.

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

RULE 2.8
Decorum, Demeanor, and Communication with Jurors

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

CANON 3 A.

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

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

(C) A judge shall not commend or criticize jurors for their verdict other than in a court order or opinion in a proceeding.

Comment

[1] The duty to hear all proceedings with patience and courtesy is not inconsistent with the duty imposed in Rule 2.5 to dispose promptly of the business of the court. Judges can be efficient and businesslike while being patient and deliberate.

[2] 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.

[3] A judge who is not otherwise prohibited by law from doing so may meet with jurors who choose to remain after trial but should be careful not to discuss the merits of the case.

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

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

RULE 2.9
Ex Parte Communications

(A) 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 or their lawyers, concerning a pending* or impending matter,* except as follows:

(1) When circumstances require it, ex parte communication for scheduling, administrative, or emergency purposes, which does not address substantive matters, is permitted, provided:

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

CANON 3 (A)

(7) A judge shall accord to every person who has a legal interest in a proceeding, or 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

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

(2) A judge may obtain the written advice of a disinterested expert on the law applicable to a proceeding before the judge, if the judge gives advance notice to the parties of the person to be consulted and the subject matter of the advice to be solicited, and affords the parties a reasonable opportunity to object and respond to the notice and to the advice received.

(3) A judge may consult with court staff and court officials whose functions are to aid the judge in carrying out the judge's adjudicative responsibilities, or with other judges, provided the judge makes reasonable efforts to avoid receiving factual information that is not part of the record, and does not abrogate the responsibility personally to decide the matter.

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

(5) A judge may initiate, permit, or consider any ex parte communication when expressly authorized by law* to do so.

(B) If a judge inadvertently receives an unauthorized ex parte communication bearing upon the substance of a matter, the judge shall make provision promptly to notify the parties of the substance of the communication and provide the parties with an opportunity to respond.

(C) A judge shall not investigate facts in a matter independently, and shall consider only the evidence presented and any facts that may properly be judicially noticed.

(D) A judge shall make reasonable efforts, including providing appropriate supervision, to ensure that this Rule is not violated by court staff, court officials, and others subject to the judge's direction and control.

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 other judges and with court personnel whose function is to aid the judge in carrying out the judge's adjudicative responsibilities.

(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.

[There is no provision comparable to (B)].

CANON 3 B.

(2) A judge shall require court personnel 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.

Comment

[1] To the extent reasonably possible, all parties or their lawyers shall be included in communications with a judge.
[2] Whenever the presence of a party or notice to a party is required by this Rule, 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.

[3] The proscription against communications concerning a proceeding includes communications with lawyers, law teachers, and other persons who are not participants in the proceeding, except to the limited extent permitted by this Rule.

[4] A judge may initiate, permit, or consider ex parte communications expressly authorized by law, such as when serving on therapeutic or problem-solving courts, mental health courts, or drug courts. In this capacity, judges may assume a more interactive role with parties, treatment providers, probation officers, social workers, and others.

[5] A judge may consult with other judges on pending matters, but must avoid ex parte discussions of a case with judges who have previously been disqualified from hearing the matter, and with judges who have appellate jurisdiction over the matter.

[6] The prohibition against a judge investigating the facts in a matter extends to information available in all mediums, including electronic.

[7] A judge may consult ethics advisory committees, outside counsel, or legal experts concerning the judge's compliance with this Code. Such consultations are not subject to the restrictions of paragraph (A)(2).

RULE 2.10
Judicial Statements on Pending and Impending Cases

(A) A judge shall not make any public statement that might reasonably be expected to affect the outcome or impair the fairness of a matter pending* or impending* in any court, or make any nonpublic statement that might substantially interfere with a fair trial or hearing.

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

CANON 3 A.
(8) 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 subsection does not prohibit judges from making public statements in the course of their official duties or from explaining for public informaiton the procedures of the court. This subsection does not apply to proceedings in which the judge is a litigant in a personal capacity.

(9) A judge shall not, with respect to cases, controversies or issues that are likely to come before the court, make pledges or promises that are

(C) A judge shall require court staff, court officials, and others subject to the judge's direction and control to refrain from making statements that the judge would be prohibited from making by paragraphs (A) and (B).

(D) Notwithstanding the restrictions in paragraph (A), a judge may make public statements in the course of official duties, may explain court procedures, and may comment on any proceeding in which the judge is a litigant in a personal capacity.

(E) Subject to the requirements of paragraph (A), a judge may respond directly or through a third party to allegations in the media or elsewhere concerning the judge's conduct in a matter.

Comment

[1] This Rule's restrictions on judicial speech are essential to the maintenance of the independence, integrity, and impartiality of the judiciary.

[2] This Rule does not prohibit a judge from commenting on proceedings in which the judge is a litigant in a personal capacity. In cases in which the judge is a litigant in an official capacity, such as a writ of mandamus, the judge must not comment publicly.

[3] Depending upon the circumstances, the judge should consider whether it may be preferable for a third party, rather than the judge, to respond or issue statements in connection with allegations concerning the judge's conduct in a matter.

RULE 2.11
Disqualification

(A) A judge shall disqualify himself or herself in any proceeding in which the judge's impartiality* might reasonably be questioned, including but not limited to the following circumstances:

(1) The judge has a personal bias or prejudice concerning a party or a party's lawyer, or personal knowledge* of facts that are in dispute in the proceeding.

(2) The judge knows* that the judge, the judge's spouse, <u>a person with whom the judge has an intimate relationship, a</u>

inconsistent with the impartial performance of the adjudicative duties of the office.

[There is no provision comparable to (E)].

CANON 3

D. Disqualification.

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

(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 lawyer in the matter in controversy, or a

member of the judge's household or a person within the third degree of relationship* to ~~either~~ any of them, or the spouse or person in an intimate relationship with ~~of~~ such a person is:

(a) a party to the proceeding, or an officer, director, general partner, managing member, or trustee of a party;

(b) acting as a lawyer in the proceeding;

(c) a person who has more than a de minimis* interest that could be substantially affected by the proceeding; or

(d) likely to be a material witness in the proceeding.

(3) The judge knows that he or she, individually or as a fiduciary,* or the judge's spouse, ~~domestic partner~~ parent, ~~or~~ child, or any other member of the judge's family residing in the judge's household,*or a person with whom the judge has an intimate relationship, has an economic interest* in the subject matter in controversy or in a party to the proceeding.

(4) ~~The judge knows or learns by means of a timely motion that a party, a party's lawyer, or the law firm of a party's lawyer has within the previous [insert number] year[s] made aggregate* contributions* to the judge's campaign in an amount that [is greater than $[insert amount] for an individual or $[insert amount] for an entity] [is reasonable and appropriate for an individual or an entity].~~

(5) The judge, while a judge or a judicial candidate,* has made a public statement, other than in a court proceeding, judicial decision, or opinion, that commits or appears to commit the judge to reach a particular result or rule in a particular way in the proceeding or controversy.

(6) The judge:

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

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

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

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

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

(iii) is known by the judge to have an interest that could be substantially affected by the proceeding;

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

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

(i) an issue in the proceeding; or

(ii) the controversy in the proceeding.

(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, significant other and minor children wherever residing.

substantially as a lawyer in the matter during such association;

(b) served in governmental employment, and in such capacity participated personally and substantially as a lawyer or public official concerning the proceeding, or has publicly expressed in such capacity an opinion concerning the merits of the particular matter in controversy;

(c) was a material witness concerning the matter; or

(d) previously presided as a judge over the matter in another court.

(B) 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, ~~domestic partner~~ a person with whom the judge has an intimate relationship and any person ~~a member of the judge's family~~ residing in the judge's household.

(C) A judge subject to disqualification under this Rule, other than for bias or prejudice under paragraph (A)(1), may disclose on the record the basis of the judge's disqualification and may ask the parties and their lawyers to consider, outside the presence of the judge and court personnel, whether to waive disqualification. If, following the disclosure, the parties and lawyers agree, without participation by the judge or court personnel, that the judge should not be disqualified, the judge may participate in the proceeding. The agreement shall be incorporated into the record of the proceeding.

Comment

[1] Under this Rule, a judge is disqualified whenever the judge's impartiality might reasonably be questioned, regardless of whether any of the specific provisions of paragraphs (A)(1) through (6) apply. In many jurisdictions, the term "recusal" is used interchangeably with the term "disqualification."

[2] A judge's obligation not to hear or decide matters in which disqualification is required applies regardless of whether a motion to disqualify is filed.

E. Remittal of Disqualification.

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

[3] 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 matters that require immediate action, the judge must disclose on the record the basis for possible disqualification and make reasonable efforts to transfer the matter to another judge as soon as practicable.

[4] 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 itself disqualify the judge. If, however, the judge's impartiality might reasonably be questioned under paragraph (A), or the relative is known by the judge to have an interest in the law firm that could be substantially affected by the proceeding under paragraph (A)(2)(c), the judge's disqualification is required.

[5] A judge should disclose on the record information that the judge believes the parties or their lawyers might reasonably consider relevant to a possible motion for disqualification, even if the judge believes there is no basis for disqualification.

[6] "Economic interest," as set forth in the Terminology section, means ownership of more than a de minimis legal or equitable interest. Except for situations in which a judge participates in the management of such a legal or equitable interest, or the interest could be substantially affected by the outcome of a proceeding before a judge, it does not include:

(1) an interest in the individual holdings within a mutual or common investment fund;
(2) an interest in securities held by an educational, religious, charitable, fraternal, or civic organization in which the judge or the judge's spouse, ~~domestic partner~~ parent, ~~or~~ child or a member of the judge's household, or a person with whom the judge has an intimate relationship serves as a director, officer, advisor, or other participant;
(3) a deposit in a financial institution or deposits or proprietary interests the judge may maintain as a member of a mutual savings association or credit union, or similar proprietary interests; or
(4) an interest in the issuer of government securities held by the judge.

RULE 2.12
Supervisory Duties

(A) A judge shall require court staff, court officials, and others subject to the judge's direction and control to act in a manner consistent with the judge's obligations under this Code.

(B) A judge with supervisory authority for the performance of other judges shall take reasonable measures to ensure that those judges properly discharge their judicial responsibilities, including the prompt disposition of matters before them.

Comment

[1] A judge is responsible for his or her own conduct and for the conduct of others, such as staff, when those persons are acting at the judge's direction or control. A judge may not direct court personnel to engage in conduct on the judge's behalf or as the judge's representative when such conduct would violate the Code if undertaken by the judge.

[2] Public confidence in the judicial system depends upon timely justice. To promote the efficient administration of justice, a judge with supervisory authority must take the steps needed to ensure that judges under his or her supervision administer their workloads promptly.

CANON 3 B.

(2) A judge shall require court personnel 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 responsibilites.

RULE 2.13
Administrative Appointments

(A) In making administrative appointments, a judge:

(1) shall exercise the power of appointment impartially* and on the basis of merit; and

(2) shall avoid nepotism, favoritism, and unnecessary appointments.

~~**(B) A judge shall not appoint a lawyer to a position if the judge either knows* that the lawyer, or the lawyer's spouse or domestic partner,* has contributed more than $[insert amount] within the prior [insert number] year[s] to the judge's election campaign, or learns of**~~

CANON 3 B.

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

~~**such a contribution* by means of a timely motion by a party or other person properly interested in the matter, unless:**~~

~~**(1) the position is substantially uncompensated;**~~

~~**(2) the lawyer has been selected in rotation from a list of qualified and available lawyers compiled without regard to their having made political contributions; or**~~

~~**(3) the judge or another presiding or administrative judge affirmatively finds that no other lawyer is willing, competent, and able to accept the position.**~~

(B) A judge shall not approve compensation of appointees beyond the fair value of services rendered.

Comment

[1] 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 paragraph (A).

[2] Unless otherwise defined by law, nepotism is the appointment or hiring of any relative within the third degree of relationship of ~~either~~ the judge~~, or~~ the judge's spouse, ~~or domestic partner~~, a person in an intimate relationship with the judge, a member of the judge's household or the spouse or ~~domestic partner~~ person in an intimate relationship ~~of~~ with such ~~relative~~ person.

~~[3] The rule against making administrative appointments of lawyers who have contributed in excess of a specified dollar amount to a judge's election campaign includes an exception for positions that are substantially uncompensated, such as those for which the lawyer's compensation is limited to reimbursement for out-of-pocket expenses.~~

RULE 2.14
Disability and Impairment

[No comparable provision.]

A judge having a reasonable belief that the performance of a lawyer or another judge is impaired by drugs or alcohol, or by a mental, emotional, or physical

condition, shall take appropriate action, which may include a confidential referral to a lawyer or judicial assistance program.

Comment

[1] "Appropriate action" means action intended and reasonably likely to help the judge or lawyer in question address the problem and prevent harm to the justice system. Depending upon the circumstances, appropriate action may include but is not limited to speaking directly to the impaired person, notifying an individual with supervisory responsibility over the impaired person, or making a referral to an assistance program.

[2] Taking or initiating corrective action by way of referral to an assistance program may satisfy a judge's responsibility under this Rule. Assistance programs have many approaches for offering help to impaired judges and lawyers, such as intervention, counseling, or referral to appropriate health care professionals. Depending upon the gravity of the conduct that has come to the judge's attention, however, the judge may be required to take other action, such as reporting the impaired judge or lawyer to the appropriate authority, agency, or body. See Rule 2.15.

RULE 2.15
Responding to Judicial and Lawyer Misconduct

(A) A judge having knowledge* that another judge has committed a violation of this Code that raises a substantial question regarding the judge's honesty, trustworthiness, or fitness as a judge in other respects shall inform the appropriate authority.*

(B) A judge having knowledge that a lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial question regarding the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects shall inform the appropriate authority.

(C) A judge who receives information indicating a substantial likelihood that another judge has committed a violation of this Code shall take appropriate action.

(D) A judge who receives information indicating a substantial likelihood that a lawyer has committed a violation of the Rules of Professional Conduct shall take appropriate action.

CANON 3

C. Disciplinary Responsibilities.

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

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

Comment

[1] Taking action to address known misconduct is a judge's obligation. Paragraphs (A) and (B) impose an obligation on the judge to report to the appropriate disciplinary authority the known misconduct of another judge or a lawyer that raises a substantial question regarding the honesty, trustworthiness, or fitness of that judge or lawyer. Ignoring or denying known misconduct among one's judicial colleagues or members of the legal profession undermines a judge's responsibility to participate in efforts to ensure public respect for the justice system. This Rule limits the reporting obligation to those offenses that an independent judiciary must vigorously endeavor to prevent.

[2] A judge who does not have actual knowledge that another judge or a lawyer may have committed misconduct, but receives information indicating a substantial likelihood of such misconduct, is required to take appropriate action under paragraphs (C) and (D). Appropriate action may include, but is not limited to, communicating directly with the judge who may have violated this Code, communicating with a supervising judge, or reporting the suspected violation to the appropriate authority or other agency or body. Similarly, actions to be taken in response to information indicating that a lawyer has committed a violation of the Rules of Professional Conduct may include but are not limited to communicating directly with the lawyer who may have committed the violation, or reporting the suspected violation to the appropriate authority or other agency or body.

RULE 2.16
Cooperation with Disciplinary Authorities

(A) A judge shall cooperate and be candid and honest with judicial and lawyer disciplinary agencies.

(B) A judge shall not retaliate, directly or indirectly, against a person known* or suspected to have assisted or cooperated with an investigation of a judge or a lawyer.

Comment

[1] Cooperation with investigations and proceedings of judicial and lawyer discipline agencies, as required in paragraph (A), instills confidence in judges' commitment to the integrity of the judicial system and the protection of the public.

CANON 2

A. A judge shall respect and comply with the law and act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.
[No provision comparable to (B).].

PROPOSED MINN. CODE OF JUDICIAL CONDUCT vs. CURRENT MINN. CODE OF JUDICIAL CONDUCT

CANON 3

A JUDGE SHALL CONDUCT THE JUDGE'S PERSONAL AND EXTRAJUDICIAL ACTIVITIES TO MINIMIZE THE RISK OF CONFLICT WITH THE OBLIGATIONS OF JUDICIAL OFFICE.

RULE 3.1
Extrajudicial Activities in General

A judge may engage in extrajudicial activities, except as prohibited by law* or this Code. However, when engaging in extrajudicial activities, a judge shall not:

(A) participate in activities that will interfere with the proper performance of the judge's judicial duties;

(B) participate in activities that will lead to frequent disqualification of the judge;

(C) participate in activities that would appear to a reasonable person to undermine the judge's independence,* integrity,* or impartiality;*

(D) engage in conduct that would appear to a reasonable person to be coercive; or

(E) make use of court premises, staff, stationery, equipment, or other resources, except for incidental use for activities that concern the law, the legal system, or the administration of justice, or unless such additional use is permitted by law.

Comment

[1] To the extent that time permits, and judicial independence and impartiality are not compromised, judges are encouraged to engage in appropriate extrajudicial activities. Judges are uniquely qualified to engage in extrajudicial activities that concern the law, the legal system, and the administration of justice, such as by speaking, writing, teaching, or participating in scholarly research projects. In addition, judges are permitted and encouraged to engage in educational, religious, charitable, fraternal or civic extrajudicial activities not conducted for profit, even when the activities do not involve the law. See Rule 3.7.

[2] Participation in both law-related and other extrajudicial activities helps integrate judges into their communities, and furthers public understanding of and

CANON 4

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

A. Extra-Judicial Activities in General.

A judge shall conduct all extra-judicial activities so that they do not:

(1) cast reasonable doubt on the judge's capacity to act impartially as a judge;

(2) demean the judicial office; or

(3) interfere with the proper performance of judicial duties.

CANON 2

C. A judge shall not knowingly hold membership in any organization that practices unlawful discrimination.

respect for courts and the judicial system.

[3] Discriminatory actions and expressions of bias or prejudice by a judge, even outside the judge's official or judicial actions, are likely to appear to a reasonable person to call into question the judge's integrity and impartiality. Examples include jokes or other remarks that demean individuals based upon their race, sex, gender, religion, national origin, ethnicity, disability, age, sexual orientation, or socioeconomic status. For the same reason, a judge's extrajudicial activities must not be conducted in connection or affiliation with an organization that practices invidious discrimination. See Rule 3.6.

[4] While engaged in permitted extrajudicial activities, judges must not coerce others or take action that would reasonably be perceived as coercive. For example, depending upon the circumstances, a judge's solicitation of contributions or memberships for an organization, even as permitted by Rule 3.7(A), might create the risk that the person solicited would feel obligated to respond favorably, or would do so to curry favor with the judge.

RULE 3.2
Appearances before Governmental Bodies and Consultation with Government Officials

A judge shall not appear voluntarily at a public hearing before, or otherwise consult with, an executive or a legislative body or official, except:

(A) in connection with matters concerning the law, the legal system, or the administration of justice;

(B) in connection with matters about which the judge acquired knowledge or expertise in the course of the judge's judicial duties; or

(C) when the judge is acting pro se in a matter involving the judge's legal or economic interests, or when the judge is acting in a fiduciary* capacity.

Comment

[1] Judges possess special expertise in matters of law, the legal system, and the administration of justice, and may properly share that expertise with governmental bodies and executive or legislative branch officials.

CANON 4

C. Governmental, Civic or Charitable Activities.

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

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

[2] In appearing before governmental bodies or consulting with government officials, judges must be mindful that they remain subject to other provisions of this Code, such as Rule 1.3, prohibiting judges from using the prestige of office to advance their own or others' interests, Rule 2.10, governing public comment on pending and impending matters, and Rule 3.1(C), prohibiting judges from engaging in extrajudicial activities that would appear to a reasonable person to undermine the judge's independence, integrity, or impartiality.

[3] In general, it would be an unnecessary and unfair burden to prohibit judges from appearing before governmental bodies or consulting with government officials on matters that are likely to affect them as private citizens, such as zoning proposals affecting their real property. In engaging in such activities, however, judges must not refer to their judicial positions, and must otherwise exercise caution to avoid using the prestige of judicial office.

RULE 3.3
Testifying as a Character Witness

A judge shall not testify as a character witness in a judicial, administrative, or other adjudicatory proceeding or otherwise vouch for the character of a person in a legal proceeding, except when duly summoned.

Comment

[1] A judge who, without being subpoenaed, testifies as a character witness abuses the prestige of judicial office to advance the interests of another. See Rule 1.3. 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.

RULE 3.4
Appointments to Governmental Positions

A judge shall not accept appointment to a governmental committee, board, commission, or other governmental position, unless it is one that concerns the law, the legal system, or the administration of justice.

Comment

[1] Rule 3.4 implicitly acknowledges the value of judges accepting appointments to entities that concern the law, the legal system, or the administration of justice. Even in such instances, however, a judge should assess the appropriateness of accepting an

CANON 2 B. (Partial)

… A judge shall not testify voluntarily as a character witness.

CANON 4 C.

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

appointment, paying particular attention to the subject matter of the appointment and the availability and allocation of judicial resources, including the judge's time commitments, and giving due regard to the requirements of the independence and impartiality of the judiciary.

[2] A judge may represent his or her country, state, or locality on ceremonial occasions or in connection with historical, educational, or cultural activities. Such representation does not constitute acceptance of a government position.

RULE 3.5
Use of Nonpublic Information

A judge shall not intentionally disclose or use nonpublic information* acquired in a judicial capacity for any purpose unrelated to the judge's judicial duties.

Comment

[1] In the course of performing judicial duties, a judge may acquire information of commercial or other value that is unavailable to the public. The judge must not reveal or use such information for personal gain or for any purpose unrelated to his or her judicial duties.

[2] This rule is not intended, however, to affect a judge's ability to act on information as necessary to protect the health or safety of the judge or a member of a judge's family, court personnel, or other judicial officers if consistent with other provisions of this Code.

RULE 3.6
Affiliation with Discriminatory Organizations

(A) A judge shall not knowingly hold membership in any organization that practices ~~invidious~~ unlawful discrimination. ~~on the basis of race, sex, gender, religion, national origin, ethnicity, or sexual orientation.~~

(B) A judge shall not use the benefits or facilities of an organization if the judge knows* or should know that the organization practices ~~invidious~~ unlawful discrimination ~~on one or more of the bases identified in paragraph (A)~~. A judge's attendance at an event in a facility of an organization that the judge is not permitted to join is not a violation of this Rule when the judge's attendance is an isolated event that could not

CANON 3 B.

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

CANON 2 C .

A judge shall not knowingly hold membership in any organization that practices unlawful discrimination

reasonably be perceived as an endorsement of the organization's practices.

Comment

[1] A judge's public manifestation of approval of ~~invidious~~ unlawful discrimination on any basis gives rise to the appearance of impropriety and diminishes public confidence in the integrity and impartiality of the judiciary. A judge's membership in an organization that practices ~~invidious~~ unlawful discrimination creates the perception that the judge's impartiality is impaired.

[2] An organization is generally said to discriminate unlawfully ~~invidiously~~ if it arbitrarily excludes from membership on the basis of race, sex, gender, religion, national origin, ethnicity, ~~or~~ sexual orientation, or other classification protected by law, persons who would otherwise be eligible for admission. Whether an organization practices unlawful ~~invidious~~ discrimination is a complex question to which judges should be attentive. The answer cannot be determined from a mere examination of an organization's current membership rolls, but rather, depends upon how the organization selects members, as well as other relevant factors, such as whether the organization is dedicated to the preservation of religious, ethnic, or cultural values of legitimate common interest to its members, or whether it is an intimate, purely private organization whose membership limitations could not constitutionally be prohibited.

[3] When a judge learns that an organization to which the judge belongs engages in unlawful ~~invidious~~ discrimination, the judge must resign immediately from the organization.

[4] A judge's membership in a religious organization as a lawful exercise of the freedom of religion is not a violation of this Rule.

[5] This Rule does not apply to national or state military service.

RULE 3.7
Participation in Educational, Religious, Charitable, Fraternal, or Civic Organizations and Activities

(A) Subject to the requirements of Rule 3.1, a judge may participate in activities sponsored by organizations or governmental entities concerned with the law, the legal system, or the administration of justice, and those sponsored by or on behalf of educational, religious, charitable,

CANON 4 C.

(3) A judge may participate in civic and charitable activities that do not reflect adversely upon the judge's impartiality or interfere with the performance of judicial duties. A judge may serve as an officer, director, trustee or non-legal advisor of an educational, religious, charitable, fraternal or civic organization not conducted for the economic or political advantage of

fraternal, or civic organizations not conducted for profit, including but not limited to the following activities:

(1) assisting such an organization or entity in planning related to fund-raising, and participating in the management and investment of the organization's or entity's funds;

(2) soliciting* ~~contributions~~ funds and services* for such an organization or entity, but only from members of the judge's family,* or from a person with whom the judge has an intimate relationship or a person residing in the judge's household, or from judges over whom the judge does not exercise supervisory or appellate authority;

(3) soliciting membership for such an organization or entity, even though the membership dues or fees generated may be used to support the objectives of the organization or entity, but only if the organization or entity is concerned with the law, the legal system, or the administration of justice;

(4) appearing or speaking at, receiving an award or other recognition at, being featured on the program of, and permitting his or her title to be used in connection with an event of such an organization or entity, but if the event serves a fund-raising purpose, the judge may participate only if the event concerns the law, the legal system, or the administration of justice;

(5) making recommendations to ~~such a public or private fund-granting~~ an organization or entity concerning ~~in connection with~~ its fund granting programs and activities~~, but only if the organization or entity is concerned with the law, the legal system, or the administration of justice~~; and

(6) serving as an officer, director, trustee, or nonlegal advisor of such an organization or entity, unless it is likely that the organization or entity:

(a) will be engaged in proceedings that would ordinarily come before the judge; or

(b) will frequently be engaged in adversary proceedings in the court of which the judge is a member,

its members, subject to the following limitations and the other requirements of this Code:

(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.

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

or in any court subject to the appellate jurisdiction of the court of which the judge is a member.

(B) A judge may encourage lawyers to provide pro bono publico legal services.

Comment

[1] The activities permitted by paragraph (A) generally include those sponsored by or undertaken on behalf of public or private not-for-profit educational institutions, and other not-for-profit organizations, including law-related, charitable, and other organizations.

[2] Even for law-related organizations, a judge should consider whether the membership and purposes of the organization, or the nature of the judge's participation in or association with the organization, would conflict with the judge's obligation to refrain from activities that reflect adversely upon a judge's independence, integrity, and impartiality.

[3] Mere attendance at an event, whether or not the event serves a fund-raising purpose, does not constitute a violation of paragraph 4(A). It is also generally permissible for a judge to serve as an usher or a food server or preparer, or to perform similar functions, at fund-raising events sponsored by educational, religious, charitable, fraternal, or civic organizations. Such activities are not solicitation and do not present an element of coercion or abuse the prestige of judicial office.

[4] Identification of a judge's position in educational, religious, charitable, fraternal, or civic organizations on letterhead used for fund-raising or membership solicitation does not violate this Rule. The letterhead may list the judge's title or judicial office if comparable designations are used for other persons.

[5] In addition to appointing lawyers to serve as counsel for indigent parties in individual cases, a judge may promote broader access to justice by encouraging lawyers to participate in pro bono publico legal services, if in doing so the judge does not employ coercion, or abuse the prestige of judicial office. Such encouragement may take many forms, including providing lists of available programs, training lawyers to do pro bono publico legal work, and participating in events recognizing lawyers who have done pro bono publico work.

[6] A judge's membership in and execution of duties, including fund raising and grant making, in a religious organization as a lawful exercise of the freedom of religion is not a violation of this Rule.

RULE 3.8
Appointments to Fiduciary Positions

(A) A judge shall not accept appointment to serve in a fiduciary* position, such as executor, administrator, trustee, guardian, attorney in fact, or other personal representative, except for the estate, trust, or person of a member of the judge's family,*<u>a person with whom the judge has an intimate relationship or a person residing in the judge's household</u> and then only if such service will not interfere with the proper performance of judicial duties.

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

(C) A judge acting in a fiduciary capacity shall be subject to the same restrictions on engaging in financial activities that apply to a judge personally.

(D) If a person who is serving in a fiduciary position becomes a judge, he or she must comply with this Rule as soon as reasonably practicable, but in no event later than [one year] after becoming a judge.

Comment

[1] A judge should recognize that other restrictions imposed by this Code may conflict with a judge's obligations as a fiduciary; in such circumstances, a judge should resign as fiduciary. For example, serving as a fiduciary might require frequent disqualification of a judge under Rule 2.11 because a judge is deemed to have an economic interest in shares of stock held by a trust if the amount of stock held is more than de minimis.

CANON 4

E. Fiduciary Activities.

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

(2) A judge shall not serve as fiduciary if it is likely that the judge as a fiduciary will be engaged in proceedings that would ordinarily come before the judge, or if the estate, trust, conservatorship 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.

RULE 3.9
Service as Arbitrator or Mediator

A judge shall not act as an arbitrator or a mediator or otherwise perform ~~other~~ judicial functions <u>in a private capacity</u> ~~apart from the judge's official duties~~ unless expressly authorized by law.* <u>A retired judge may act as mediator or arbitrator if</u>:

CANON 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. A retired judge may participate as mediator or arbitrator if:

(A) The judge does not act as an arbitrator or mediator during the period of any judicial assignment;

(B) The judge is disqualified from mediation and arbitration in matters in which the judge served as judge, and is disqualified as judge from matters in which the judge acted as mediator or arbitrator, unless all parties to the proceeding consent after consultation with their attorneys; and

(C) Acting as arbitrator or mediator does not reflect adversely on the judge's impartiality.

Comment

[1] This Rule does not prohibit a judge from participating in arbitration, mediation, or settlement conferences performed as part of assigned judicial duties. Rendering dispute resolution services apart from those duties, whether or not for economic gain, is prohibited unless it is expressly authorized by law.

[2] A retired judge may act as a mediator or arbitrator under the conditions set forth in the rule.

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

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

(3) the participation does not reflect adversely on the judge's impartiality.

RULE 3.10
Practice of Law

A judge shall not practice law. A judge may act pro se and may, without compensation, give legal advice to and draft or review documents for a member of the judge's family,* and for persons with whom the judge has an intimate relationship or who reside in the judge's household, but is prohibited from serving as the ~~family member's~~ lawyer for any such person in any forum.

Comment

[1] A judge may act pro se in all legal matters, including matters involving litigation and matters involving appearances before or other dealings with governmental bodies. A judge must not use the prestige of office to advance the judge's personal or family interests. See Rule 1.3.

CANON 4

G. Practice of Law.

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

PROPOSED MINN. CODE OF JUDICIAL CONDUCT vs. CURRENT MINN. CODE OF JUDICIAL CONDUCT

RULE 3.11
Financial, Business, or Remunerative Activities

(A) A judge may hold and manage investments of the judge and members of the judge's family and of persons with whom the judge has an intimate relationship or who reside in the judge's household.*

(B) A judge shall not serve as an officer, director, manager, general partner, advisor, or employee of any business entity except that a judge may manage or participate in:

(1) a business closely held by the judge or members of the judge's familyor by a person with whom the judge has an intimate relationship or who resides in the judge's household; or

(2) a business entity primarily engaged in investment of the financial resources of the judge or members of the judge's family, or by a person with whom the judge has an intimate relationship or who resides in the judge's household.

(C) A judge shall not engage in financial activities permitted under paragraphs (A) and (B) if they will:

(1) interfere with the proper performance of judicial duties;

(2) lead to frequent disqualification of the judge;

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

(4) result in violation of other provisions of this Code.

Comment

[1] Judges are generally permitted to engage in financial activities, including managing real estate and other investments for themselves or for members of their families and for those with whom they have intimate relationships or who reside in their households. Participation in these activities, like participation in other extrajudicial activities, is subject to the requirements of this Code. For example, it

CANON 4

D. Financial Activities.

(1) A judge shall not engage in financial and business dealings that:
(2)

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

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

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

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

(5) 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.

would be improper for a judge to spend so much time on business activities that it interferes with the performance of judicial duties. See Rule 2.1. Similarly, it would be improper for a judge to use his or her official title or appear in judicial robes in business advertising, or to conduct his or her business or financial affairs in such a way that disqualification is frequently required. See Rules 1.3 and 2.11.

[2] As soon as practicable without serious financial detriment, the judge must divest himself or herself of investments and other financial interests that might require frequent disqualification or otherwise violate this Rule.

RULE 3.12
Compensation for Extrajudicial Activities

A judge may accept reasonable compensation for extrajudicial activities permitted by this Code or other law* unless such acceptance would appear to a reasonable person to undermine the judge's independence,* integrity,* or impartiality.*

Comment

[1] A judge is permitted to accept honoraria, stipends, fees, wages, salaries, royalties, or other compensation for speaking, teaching, writing, and other extrajudicial activities, provided the compensation is reasonable and commensurate with the task performed. The judge should be mindful, however, that judicial duties must take precedence over other activities. See Rule 2.1.

[2] Compensation derived from extrajudicial activities may be subject to public reporting. See Rule 3.15.

RULE 3.13
Acceptance and Reporting of Gifts, Loans, Bequests, Benefits, or Other Things of Value

(A) A judge shall not accept any gifts, loans, bequests, benefits, or other things of value, if acceptance is prohibited by law* or would appear to a reasonable person to undermine the judge's independence,* integrity,* or impartiality.*

(B) Unless otherwise prohibited by law, or by paragraph (A), a judge may accept the following without publicly reporting such acceptance:

CANON 4

H. Compensation, Reimbursement and Reporting.

(1) 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.

CANON 4 D.

(5) A judge shall not accept, and shall urge members of the judge's family residing in the judge's household not to accept, a gift, bequest, favor or loan from anyone except for:

(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

(1) items with little intrinsic value, such as plaques, certificates, trophies, and greeting cards;

(2) gifts, loans, bequests, benefits, or other things of value from friends, relatives, or other persons, including lawyers, whose appearance or interest in a proceeding pending* or impending* before the judge would in any event require disqualification of the judge under Rule 2.11;

(3) ordinary social hospitality;

(4) commercial or financial opportunities and benefits, including special pricing and discounts, and loans from lending institutions in their regular course of business, if the same opportunities and benefits or loans are made available on the same terms to similarly situated persons who are not judges;

(5) rewards and prizes given to competitors or participants in random drawings, contests, or other events that are open to persons who are not judges;

(6) scholarships, fellowships, and similar benefits or awards, if they are available to similarly situated persons who are not judges, based upon the same terms and criteria;

(7) gifts incident to a public testimonial; books, magazines, journals, audiovisual materials, 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, ~~domestic partner~~ a person in an intimate relationship with the judge, a member of the judge's household, or guest to attend without charge, an event associated with a bar-related function or other activity relating to the law, the legal system or the administration of justice;

(8) an invitation to the judge and the judge's spouse, ~~domestic partner~~, person with whom the judge has an intimate relationship, or guest to attend without charge an event associated with any of the judge's educational, religious, charitable fraternal or civic activities permitted by this Code, if improvement of the law, the legal system or the administration of justice;

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

(c) ordinary social hospitality;

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

(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 3D;

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

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

(h) any other gift, bequest, favor or loan only if the donor is not a party or other person who has come or is likely to come or whose interests have come or are likely to come before the judge; and, if its value exceeds $150, the judge reports it in the same manner as the judge reports compensation in Section 4H.

the same invitation is offered to non-judges who are engaged in similar ways in the activity as is the judge;

(9) gifts, awards, or benefits associated with the business, profession, or other separate activity of a spouse, a ~~domestic partner,*~~ person with whom the judge has an intimate relationship, or other ~~family member of a judge~~ person residing in the judge's household,* but that incidentally benefit the judge.

(10) any other gift, bequest, favor or loan if the donor is not a party or other person who has, directly or indirectly, come or is likely to come before the judge; and, if its value exceeds $150, the judge reports it in the same manner as the judge reports compensation in Rule 3.15.

~~(C) Unless otherwise prohibited by law or by paragraph (A), a judge may accept the following items, and must report such acceptance to the extent required by Rule 3.15:~~

~~(1) gifts incident to a public testimonial;~~

~~(2) invitations to the judge and the judge's spouse, domestic partner, or guest to attend without charge:~~

~~(a) an event associated with a bar-related function or other activity relating to the law, the legal system, or the administration of justice; or~~

~~(b) an event associated with any of the judge's educational, religious, charitable, fraternal or civic activities permitted by this Code, if the same invitation is offered to nonjudges who are engaged in similar ways in the activity as is the judge; and~~

~~(3) gifts, loans, bequests, benefits, or other things of value, if the source is a party or other person, including a lawyer, who has come or is likely to come before the judge, or whose interests have come or are likely to come before the judge.~~

Comment

[1] Whenever a judge accepts a gift or other thing of value without paying fair market value, there is a risk that the benefit might be viewed as intended to influence the judge's decision in a case. Rule 3.13 imposes restrictions upon the acceptance of such benefits, according to the magnitude of the risk. Paragraph (A) prohibits acceptance where expressly prohibited by law or where the judge's independence,* integrity,* or impartiality would be compromised by acceptance. Paragraph (B) identifies circumstances in which the risk that the acceptance would appear to undermine the judge's independence, integrity, or impartiality is low, and explicitly provides that such items need not be publicly reported except as provided in paragraph 10 if the value exceeds $150.00. ~~As the value of the benefit or the likelihood that the source of the benefit will appear before the judge increases, the judge is either prohibited under paragraph (A) from accepting the gift, or required under paragraph (C) to publicly report it.~~

[2] Gift-giving between friends and relatives is a common occurrence, and ordinarily does not create an appearance of impropriety or cause reasonable persons to believe that the judge's independence, integrity, or impartiality has been compromised. In addition, when the appearance of friends or relatives in a case would require the judge's disqualification under Rule 2.11, there would be no opportunity for a gift to influence the judge's decision making. Paragraph (B)(2) places no restrictions upon the ability of a judge to accept gifts or other things of value from friends or relatives under these circumstances, and does not require public reporting.

[3] Businesses and financial institutions frequently make available special pricing, discounts, and other benefits, either in connection with a temporary promotion or for preferred customers, based upon longevity of the relationship, volume of business transacted, and other factors. A judge may freely accept such benefits if they are available to the general public, or if the judge qualifies for the special price or discount according to the same criteria as are applied to persons who are not judges. As an example, loans provided at generally prevailing interest rates are not gifts, but a judge could not accept a loan from a financial institution at below-market interest rates unless the same rate was being made available to the general public for a certain period of time or only to borrowers with specified qualifications that the judge also possesses.

[4] Rule 3.13 applies only to acceptance of gifts or other things of value by a judge. Nonetheless, if a gift or other benefit is given to the judge's spouse, ~~domestic partner~~ a person in an intimate relationship with the judge, or ~~member of the judge's family~~ person residing in the judge's household, it may be viewed as an attempt to evade Rule 3.13 and influence the judge indirectly. Where the gift or benefit is being made primarily to such other persons, and the judge is merely an incidental

beneficiary, this concern is reduced. A judge should, however, remind family, intimates and household members of the restrictions imposed upon judges, and urge them to take these restrictions into account when making decisions about accepting such gifts or benefits.

[5] Rule 3.13 does not apply to contributions to a judge's campaign for judicial office. Such contributions are governed by other Rules of this Code, including Rules ~~4.3~~ 4.1, 4.2, and 4.4.

RULE 3.14
Reimbursement of Expenses and Waivers of Fees or Charges

(A) Unless otherwise prohibited by Rules 3.1 and 3.13(A) or other law,* a judge may accept reimbursement of necessary and reasonable expenses for travel, food, lodging, or other incidental expenses, or a waiver or partial waiver of fees or charges for registration, tuition, and similar items, from sources other than the judge's employing entity, if the expenses or charges are associated with the judge's participation in extrajudicial activities permitted by this Code.

(B) Reimbursement of expenses for necessary travel, food, lodging, or other incidental expenses shall be limited to the actual costs reasonably incurred by the judge and, when appropriate to the occasion, by the judge's spouse, ~~domestic partner,*~~ person with whom the judge has an intimate relationship, or guest.

~~(C) A judge who accepts reimbursement of expenses or waivers or partial waivers of fees or charges on behalf of the judge or the judge's spouse, domestic partner, or guest shall publicly report such acceptance as required by Rule 3.15.~~

Comment

[1] Educational, civic, religious, fraternal, and charitable organizations often sponsor meetings, seminars, symposia, dinners, awards ceremonies, and similar events. Judges are encouraged to attend educational programs, as both teachers and participants, in law-related and academic disciplines, in furtherance of their duty to remain competent in the law. Participation in a variety of other extrajudicial activity is also permitted and encouraged by this Code.

CANON 4

H. Compensation, Reimbursement and Reporting.

(1) 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) 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. Income from investments, whether in real or personal property and other sources where the judge does not render service in exchange for the income is not extra-judicial compensation to the judge. This report shall be made annually, on or before the first day of May each year, and be filed as a public document in the office of the State Court Administrator.

[2] Not infrequently, sponsoring organizations invite certain judges to attend seminars or other events on a fee-waived or partial-fee-waived basis, and sometimes include reimbursement for necessary travel, food, lodging, or other incidental expenses. A judge's decision whether to accept reimbursement of expenses or a waiver or partial waiver of fees or charges in connection with these or other extrajudicial activities must be based upon an assessment of all the circumstances. The judge must undertake a reasonable inquiry to obtain the information necessary to make an informed judgment about whether acceptance would be consistent with the requirements of this Code.

[3] A judge must assure himself or herself that acceptance of reimbursement or fee waivers would not appear to a reasonable person to undermine the judge's independence, integrity, or impartiality. The factors that a judge should consider when deciding whether to accept reimbursement or a fee waiver for attendance at a particular activity include:

(a) whether the sponsor is an accredited educational institution or bar association rather than a trade association or a for-profit entity;
(b) whether the funding comes largely from numerous contributors rather than from a single entity and is earmarked for programs with specific content;

(c) whether the content is related or unrelated to the subject matter of litigation pending or impending before the judge, or to matters that are likely to come before the judge;
(d) whether the activity is primarily educational rather than recreational, and whether the costs of the event are reasonable and comparable to those associated with similar events sponsored by the judiciary, bar associations, or similar groups;
(e) whether information concerning the activity and its funding sources is available upon inquiry;
(f) whether the sponsor or source of funding is generally associated with particular parties or interests currently appearing or likely to appear in the judge's court, thus possibly requiring disqualification of the judge under Rule 2.11;
(g) whether differing viewpoints are presented; and
(h) whether a broad range of judicial and nonjudicial participants are invited, whether a large number of participants are invited, and whether the program is designed specifically for judges.

PROPOSED MINN. CODE OF JUDICIAL CONDUCT vs. CURRENT MINN. CODE OF JUDICIAL CONDUCT

RULE 3.15
Reporting Requirements

(A) A judge shall publicly report the amount or value of:

(1) compensation received for extrajudicial activities as permitted by Rule 3.12;

(2) gifts and other things of value as permitted by Rule 3.13 (B)(10) ~~(C), unless the value of such items, alone or in the aggregate with other items received from the same source in the same calendar year, does not exceed $[insert amount]; and~~

~~(3) reimbursement of expenses and waiver of fees or charges permitted by Rule 3.14(A), unless the amount of reimbursement or waiver, alone or in the aggregate with other reimbursements or waivers received from the same source in the same calendar year, does not exceed $[insert amount].~~

B) When public reporting is required by paragraph (A), a judge shall report the date, place, and nature of the activity for which the judge received any compensation; and the description of any gift, loan, bequest, benefit, or other thing of value accepted~~; and the source of reimbursement of expenses or waiver or partial waiver of fees or charges~~.

(C) The public report required by paragraph (A) shall be made ~~at least~~ annually~~, except that for reimbursement of expenses and waiver or partial waiver of fees or charges, the report shall be made within thirty days following the conclusion of the event or program~~.

(D) Reports made in compliance with this Rule shall be filed annually on or before the first day of May as public documents in the office of the ~~clerk of the court on which the judge serves or other office designated by law,* and, when technically feasible, posted by the court or office personnel on the court's website~~ State Court Administrator.

(E) Income from investments, including real or personal property, pension plans, deferred compensation plans, and other lawful sources where the judge does not render current or future service in exchange for the income is not extra-judicial compensation to the judge.

CANON 4 H.

(2) 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. Income from investments, whether in real or personal property and other sources where the judge does not render service in exchange for the income is not extra-judicial compensation to the judge. This report shall be made annually, on or before the first day of May each year, and be filed as a public document in the office of the State Court Administrator.

I. Disclosure.

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

PROPOSED MINN. CODE OF JUDICIAL CONDUCT vs. CURRENT MINN. CODE OF JUDICIAL CONDUCT

CANON 4

A JUDGE OR CANDIDATE FOR JUDICIAL OFFICE SHALL NOT ENGAGE IN POLITICAL OR CAMPAIGN ACTIVITY THAT IS INCONSISTENT WITH THE INDEPENDENCE, INTEGRITY, OR IMPARTIALITY OF THE JUDICIARY.

RULE 4.1
Political and Campaign Activities of Judges and Judicial Candidates in General

(A) Except as permitted by law,* or by Rules 4.2, 4.3, and 4.4, a judge or a judicial candidate* shall not:

(1) act as a leader * in~~, or hold an office in,~~ a political organization;*

(2) make speeches on behalf of a political organization;

(3) publicly endorse or oppose a candidate for any public office;

(4) (a) solicit funds for~~, pay an assessment to~~ a political organization or candidate for public office, or
(b) make a contribution* to a political organization or a candidate for public office in excess of state law for any individual candidate;

~~(5) attend or purchase tickets for dinners or other events sponsored by a political organization or a candidate for public office;~~

~~(6) publicly identify himself or herself as a candidate of a political organization;~~

~~(7) seek, accept, or use endorsements from a political organization;~~

(5) speak on behalf of his or her candidacy through any medium, including but not limited to advertisements, websites, or other campaign literature;

~~(8)~~(6) personally solicit* or accept campaign contributions

CANON 5

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

CANON 5

A. In General.

Each justice of the Supreme Court and each Court of Appeals and disctrict court judge is deemed to hold a separate nonpartisan office, Minn. Stat. 204B.06 subd 6.

(1) Except as authorized in Section 5B(1), a judge or a candidate for election to judicial office shall not:

(a) act as a leader or hold any office in a political organization;

(b) publicly endorse or, except for the judge or candidate's opponent, publicly oppose another candidate for public office;

(c) make speeches on behalf of a political organization; or

(d) solicit funds for or pay an assessment to or make a contribution to a political organization or candidate, or purchase tickets for political party dinners or other functions.

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

(3) A candidate for a judicial office, including an incumbent judge:

(a) shall maintain the dignity appropriate to judicial office and act in a manner consistent with the integrity and independence of the

other than ~~through a campaign committee~~ as authorized by Rules 4.2 and 4.4;

~~(9)~~(7) use or permit the use of campaign contributions for the private benefit of the judge, the candidate, or others;

~~(10)~~(8) use court staff, facilities, or other court resources in a campaign for judicial office in a manner prohibited by state law or Judicial Branch personnel policies;

~~(11)~~(9) knowingly,* or with reckless disregard for the truth, make any false or misleading statement;

~~(12)~~(10) make any statement that would reasonably be expected to affect the outcome or impair the fairness of a matter pending* or impending* in any court; or

~~(13)~~(11) in connection with cases, controversies, or issues that are likely to come before the court, make pledges, promises, or commitments that are inconsistent with the impartial* performance of the adjudicative duties of judicial office.

(B) A judge or judicial candidate shall take reasonable measures to ensure that other persons do not undertake, on behalf of the judge or judicial candidate, any activities prohibited under paragraph (A), except as permitted by Rule 4.4.

Comment

GENERAL CONSIDERATIONS

[1] Even when subject to public election, a judge plays a role different from that of a legislator or executive branch official. Rather than making decisions based upon the expressed views or preferences of the electorate, a judge makes decisions based upon the law and the facts of every case. Therefore, in furtherance of this interest, judges and judicial candidates must, to the greatest extent possible, be free and appear to be free from political influence and political pressure. This Canon imposes narrowly tailored restrictions upon the political and campaign activities of all judges and judicial candidates, taking into account the various methods of selecting judges.

[2] When a person becomes a judicial candidate, this Canon becomes applicable to his or her conduct.

judiciary, and shall encourage family members to adhere to the same standards of political conduct in support of the candidate as apply to the candidate;

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

(c) except to the extent permitted by Section 5B(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) with respect to cases, controversies or issues that are likely to come before the court, make pledges or promises that are inconsistent with the impartial performance of the adjudicative duties of the office; or knowingly, or with reckless disregard for the truth, misrepresent the identity, qualifications, expressed position or other fact concerning the candidate, or an opponent; or

(ii) by words or conduct manifest bias or prejudice inappropriate to judicial office.

(e) may respond to statements made during a campaign for judicial office within the limitations of Section 5A(3)(d).

PARTICIPATION IN POLITICAL ACTIVITIES

[3] Public confidence in the independence and impartiality of the judiciary is eroded if judges or judicial candidates are perceived to be subject to political influence. Although judges and judicial candidates may register to vote as members of a political party, they are prohibited by paragraph (A)(1) from assuming leadership roles in political organizations. Examples of such leadership roles include precinct or block captains and delegates or alternates to political conventions. Such positions would be inconsistent with an independent and impartial judiciary.

[4] Paragraphs (A)(2) and (A)(3) prohibit judges and judicial candidates from making speeches on behalf of political organizations or publicly endorsing or opposing candidates for public office, respectively, to prevent them from abusing the prestige of judicial office to advance the interests of others. See Rule 1.3. ~~These~~ This Rule~~s do not~~ prohibit~~s~~ candidates from campaigning on their own behalf, or from endorsing or opposing candidates for the same judicial office for which they are running~~, except as permitted by . See~~ Rules 4.2(B)(2) and 4.2(B)(3).

[5] Although members of the families of judges and judicial candidates are free to engage in their own political activity, including running for public office, there is no "family exception" to the prohibition in paragraph (A)(3) against a judge or candidate publicly endorsing candidates for public office. A judge or judicial candidate must not become involved in, or publicly associated with, a family member's political activity or campaign for public office. To avoid public misunderstanding, judges and judicial candidates should take, and should urge members of their families to take, reasonable steps to avoid any implication that they endorse any family member's candidacy or other political activity.

[6] Judges and judicial candidates retain the right to participate in the political process as voters in both primary and general elections. For purposes of this Canon, participation in a caucus-type election procedure does not constitute public support for or endorsement of a political organization or candidate, and is not prohibited by paragraphs (A)(2) or (A)(3).

STATEMENTS AND COMMENTS MADE DURING A CAMPAIGN FOR JUDICIAL OFFICE

[7] Judicial candidates must be scrupulously fair and accurate in all statements made by them and by their campaign committees. Paragraph (A)(~~11~~ 9) obligates candidates and their committees to refrain from making statements that are false or misleading, or that omit facts necessary to make the communication considered as a whole not materially misleading.

[8] Judicial candidates are sometimes the subject of false, misleading, or unfair allegations made by opposing candidates, third parties, or the media. For example, false or misleading statements might be made regarding the identity, present position, experience, qualifications, or judicial rulings of a candidate. In other situations, false or misleading allegations may be made that bear upon a candidate's integrity or fitness for judicial office. As long as the candidate does not violate paragraphs (A)(~~11~~ 9), (A)(~~12~~ 10), or (A)(~~13~~ 11), the candidate may make a factually accurate public response. In addition, when an independent third party has made unwarranted attacks on a candidate's opponent, the candidate may disavow the attacks, and request the third party to cease and desist.

[9] Subject to paragraph (A)(~~12~~ 10), a judicial candidate is permitted to respond directly to false, misleading, or unfair allegations made against him or her during a campaign, although it is preferable for someone else to respond if the allegations relate to a pending case.

[10] Paragraph (A)(~~12~~ 10) prohibits judicial candidates from making comments that might impair the fairness of pending or impending judicial proceedings. This provision does not restrict arguments or statements to the court or jury by a lawyer who is a judicial candidate, or rulings, statements, or instructions by a judge that may appropriately affect the outcome of a matter.

PLEDGES, PROMISES, OR COMMITMENTS INCONSISTENT WITH IMPARTIAL PERFORMANCE OF THE ADJUDICATIVE DUTIES OF JUDICIAL OFFICE

[11] The role of a judge is different from that of a legislator or executive branch official, even when the judge is subject to public election. Campaigns for judicial office must be conducted differently from campaigns for other offices. The narrowly drafted restrictions upon political and campaign activities of judicial candidates provided in Canon 4 allow candidates to conduct campaigns that provide voters with sufficient information to permit them to distinguish between candidates and make informed electoral choices.

[12] Paragraph (A)(~~13~~ 11) makes applicable to both judges and judicial candidates the prohibition that applies to judges in Rule 2.10(B), relating to pledges, promises, or commitments that are inconsistent with the impartial performance of the adjudicative duties of judicial office.

[13] The making of a pledge, promise, or commitment is not dependent upon, or limited to, the use of any specific words or phrases; instead, the totality of the statement must be examined to determine if a reasonable person would believe that the

candidate for judicial office has specifically undertaken to reach a particular result. Pledges, promises, or commitments must be contrasted with statements or announcements of personal views on legal, political, or other issues, which are not prohibited. When making such statements, a judge should acknowledge the overarching judicial obligation to apply and uphold the law, without regard to his or her personal views.

[14] A judicial candidate may make campaign promises related to judicial organization, administration, and court management, such as a promise to dispose of a backlog of cases, start court sessions on time, or avoid favoritism in appointments and hiring. A candidate may also pledge to take action outside the courtroom, such as working toward an improved jury selection system, or advocating for more funds to improve the physical plant and amenities of the courthouse.

[15] Judicial candidates may receive questionnaires or requests for interviews from the media and from issue advocacy or other community organizations that seek to learn their views on disputed or controversial legal or political issues. Paragraph (A)(~~13~~11) does not specifically address judicial responses to such inquiries. Depending upon the wording and format of such questionnaires, candidates' responses might be viewed as pledges, promises, or commitments to perform the adjudicative duties of office other than in an impartial way. To avoid violating paragraph (A)(~~13~~11), therefore, candidates who respond to media and other inquiries should also give assurances that they will keep an open mind and will carry out their adjudicative duties faithfully and impartially if elected. Candidates who do not respond may state their reasons for not responding, such as the danger that answering might be perceived by a reasonable person as undermining a successful candidate's independence or impartiality, or that it might lead to frequent disqualification. See Rule 2.11.

RULE 4.2
Political and Campaign Activities of Judicial Candidates in Public Elections

(A) A judicial candidate* in a partisan, nonpartisan, or retention public election* shall:

(1) act at all times in a manner consistent with the independence,* integrity,* and impartiality* of the judiciary;

(2) comply with all applicable election, election campaign, and election campaign fund-raising laws and regulations of this jurisdiction;

CANON 5

B. Judges and Candidates for Public Election.

(1) A judge or a candidate for election to judicial office may, except as prohibited by law,

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

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

(3) review and approve the content of all campaign statements and materials produced by the candidate or his or her campaign committee, as authorized by Rule 4.4, before their dissemination; and

(4) take reasonable measures to ensure that other persons do not undertake on behalf of the candidate activities, other than those described in Rule 4.4, that the candidate is prohibited from doing by Rule 4.1;

(5) take reasonable measures to ensure the candidate will not obtain any information identifying those who contribute or refuse to contribute to the candidate's campaign.

(B) A candidate for elective judicial office may, unless prohibited by law,* and not earlier than two years before the first applicable primary election~~, caucus, or general or retention election~~:

(1) establish a campaign committee pursuant to the provisions of Rule 4.4;

(2) speak on behalf of his or her candidacy through any medium, including but not limited to advertisements, websites, or other campaign literature;

(3) publicly endorse or oppose candidates for the same judicial office for which he or she is running;

(4) ~~attend or purchase tickets for dinners or other events sponsored by a political organization* or a candidate for public office;~~

(5) ~~seek, accept, or use endorsements from any person or organization other than a partisan political organization; and~~

(6) ~~contribute to a political organization or candidate for public office, but not more than $[insert amount] to any one organization or candidate.~~

(7) (a) make a general request for campaign contributions when speaking to an audience of 20 or more people; and

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

(2) A candidate shall not personally solicit campaign contributions except as expressly authorized herein, and shall not personally accept campaign contributions. A candidate may, however, establish committees to conduct campaigns for the candidate through media advertisements, brochures, mailings, candidate forums and other means not prohibited by law. Such committees may solicit and accept campaign contributions, manage the expenditure of funds for the candidate's campaign and obtain public statements of support for his or her candidacy. Such committees are not prohibited from soliciting and accepting campaign contributions and public support from lawyers. Such committees shall not disclose to the candidate the identity of campaign contributors nor shall the committee disclose to the candidate the identity of those who were solicited for contribution and refused such solicitation. A candidate may (a) make a general request for campaign contributions when speaking to an audience of 20 or more people; and (b) sign letters, for distribution by the candidate's campaign committee, soliciting campaign contributions, if the letters direct contributions to be sent to the address of the candidate's campaign committee and not that of the candidate. The candidate must take reasonable measures to ensure that the names and responses, or lack thereof, of those solicited will not be disclosed to the candidate, except that the candidate may be advised of aggregate contribution information in a manner that does not reveal the source(s) of the contributions. A candidate shall not use or permit the use of campaign contributions for the private benefit of the candidate or others.

(b) sign letters, for distribution by the candidate's campaign committee, soliciting campaign contributions, if the letters direct contributions to be sent to the address of the candidate's campaign committee and not that of the candidate.

~~**(C) A judicial candidate in a partisan public election may, unless prohibited by law, and not earlier than [insert amount of time] before the first applicable primary election, caucus, or general election:**~~

~~**(1) identify himself or herself as a candidate of a political organization; and**~~

~~**(2) seek, accept, and use endorsements of a political organization.**~~

Comment

[1] Paragraph~~s~~ (B) ~~and (C)~~ permit judicial candidates in public elections to engage in some political and campaign activities otherwise prohibited by Rule 4.1. Candidates may not engage in these activities earlier than two years before the first applicable electoral event, such as a caucus or a primary election. Paragraph B(1) relates to when a candidate may form a new campaign committee. Previously existing campaign committees for a judicial campaign may remain in existence consistent with state law.

[2] Despite paragraph~~s~~ (B) ~~and (C)~~, judicial candidates for public election remain subject to many of the provisions of Rule 4.1. For example, a candidate continues to be prohibited from soliciting funds for a political organization, knowingly making false or misleading statements during a campaign, or making certain promises, pledges, or commitments related to future adjudicative duties. See Rule 4.1(A), paragraphs (4), (~~11~~9), and (~~13~~11).

~~[3] In partisan public elections for judicial office, a candidate may be nominated by, affiliated with, or otherwise publicly identified or associated with a political organization, including a political party. This relationship may be maintained throughout the period of the public campaign, and may include use of political party or similar designations on campaign literature and on the ballot.~~

~~[4] In nonpartisan public elections or retention elections, paragraph (B) (5) prohibits a candidate from seeking, accepting, or using nominations or endorsements from a partisan political organization.~~

[5] Judicial candidates are permitted to attend or purchase tickets for dinners and other events sponsored by political organizations.

[6] For purposes of paragraph (B)(3), candidates are considered to be running for the same judicial office if they are competing for a single judgeship or if several judgeships on the same court are to be filled as a result of the election. In endorsing or opposing another candidate for a position on the same court, a judicial candidate must abide by the same rules governing campaign conduct and speech as apply to the candidate's own campaign.

[7] ~~Although~~ Judicial candidates ~~in nonpartisan public elections are prohibited from running on a ticket or slate associated with a political organization, they~~ may group themselves into slates or other alliances to conduct their campaigns more effectively. Candidates who have grouped themselves together are considered to be running for the same judicial office if they satisfy the conditions described in Comment [6].

RULE 4.3
Activities of Candidates for Appointive Judicial Office

[No comparable provision].

A candidate for appointment to judicial office may:

(A) communicate with the appointing or confirming authority, including any selection, screening, or nominating commission or similar agency; and

(B) seek <u>support for the appointment from organizations and from individuals to the extent requested, required, or permitted by the appointing authority or the nominating commission.</u> ~~endorsements for the appointment from any person or organization other than a partisan political organization.~~

Comment

[1] When seeking support or endorsement, or when communicating directly with an appointing or confirming authority, a candidate for appointive judicial office must not make any pledges, promises, or commitments that are inconsistent with the impartial performance of the adjudicative duties of the office. See Rule 4.1(A)(11).

RULE 4.4
Campaign Committees

(A) A judicial candidate* subject to public election* may establish a campaign committee to manage and conduct a campaign for the candidate, subject to the provisions of this Code. The candidate is responsible for ensuring that his or her campaign committee complies with applicable provisions of this Code and other applicable law.*

(B) A judicial candidate subject to public election shall direct his or her campaign committee:

(1) to solicit and accept only ~~such~~ campaign contributions* ~~as are reasonable, in any event~~ not to exceed, in the aggregate,* $2000 from any individual, ~~or $[insert amount] from any~~ entity or organization in an election year and $500 in a non-election year;

(2) not to solicit or accept contributions for a candidate's current campaign more than two years before the applicable primary election~~, caucus, or general or retention election~~, nor more than 90 days after the last election in which the candidate participated; ~~and~~

(3) to comply with all applicable statutory requirements for disclosure and divestiture of campaign contributions; ~~,~~ and ~~to file with [name of appropriate regulatory authority] a report stating the name, address, occupation, and employer of each person who has made campaign contributions to the committee in an aggregate value exceeding $[insert amount]. The report must be filed within [insert number] days following an election, or within such other period as is provided by law.~~

(4) not to disclose to the candidate the identity of campaign contributors nor to disclose to the candidate the identity of those who were solicited for contribution and refused such solicitation. The candidate may be advised of aggregate contribution information in a manner that does not reveal the source(s) of the contributions.

CANON 5 B.

(2) A candidate shall not personally solicit campaign contributions except as expressly authorized herein, and shall not personally accept campaign contributions. A candidate may, however, establish committees to conduct campaigns for the candidate through media advertisements, brochures, mailings, candidate forums and other means not prohibited by law. Such committees may solicit and accept campaign contributions, manage the expenditure of funds for the candidate's campaign and obtain public statements of support for his or her candidacy. Such committees are not prohibited from soliciting and accepting campaign contributions and public support from lawyers. Such committees shall not disclose to the candidate the identity of campaign contributors nor shall the committee disclose to the candidate the identity of those who were solicited for contribution and refused such solicitation. A candidate may (a) make a general request for campaign contributions when speaking to an audience of 20 or more people; and (b) sign letters, for distribution by the candidate's campaign committee, soliciting campaign contributions, if the letters direct contributions to be sent to the address of the candidate's campaign committee and not that of the candidate. The candidate must take reasonable measures to ensure that the names and responses, or lack thereof, of those solicited will not be disclosed to the candidate, except that the candidate may be advised of aggregate contribution information in a manner that does not reveal the source(s) of the contributions. A candidate shall not use or permit the use of campaign contributions for the private benefit of the candidate or others.

Comment

[1] Judicial candidates are prohibited from personally soliciting campaign contributions or personally accepting campaign contributions except by Rule 4.2(B)(7).. See Rule 4.1(A)(8). This Rule recognizes that ~~in many jurisdictions,~~ judicial candidates must raise campaign funds to support their candidacies, and permits candidates, other than candidates for appointive judicial office, to establish campaign committees to solicit and accept ~~reasonable financial contributions or in kind~~ contributions.

[2] Campaign committees may solicit and accept campaign contributions, manage the expenditure of campaign funds, and generally conduct campaigns. Candidates are responsible for compliance with the requirements of election law and other applicable law, and for the activities of their campaign committees.

[3] At the start of a campaign, the candidate must instruct the campaign committee to solicit or accept only such contributions as are ~~reasonable in amount~~, appropriate ~~under the circumstances, and~~ in conformity with applicable law. Although lawyers and others who might appear before a successful candidate for judicial office are permitted to make campaign contributions, the candidate should instruct his or her campaign committee to be especially cautious in connection with such contributions, so they do not create grounds for disqualification if the candidate is elected to judicial office. See Rule 2.11.

RULE 4.5
Activities of Judges Who Become Candidates for Nonjudicial Office

(A) Upon becoming a candidate for a nonjudicial elective office, a judge shall resign from judicial office, unless permitted by law* to continue to hold judicial office.

(B) Upon becoming a candidate for a nonjudicial appointive office, a judge is not required to resign from judicial office, provided that the judge complies with the other provisions of this Code.

Comment

[1] In campaigns for nonjudicial elective public office, candidates may make pledges, promises, or commitments related to positions they would take and ways they would act if elected to office. Although appropriate in nonjudicial campaigns, this manner of campaigning is inconsistent with the role of a judge, who must remain fair and impartial to all who come before him or her. The potential for misuse of the

CANON 5 A.

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

judicial office, and the political promises that the judge would be compelled to make in the course of campaigning for nonjudicial elective office, together dictate that a judge who wishes to run for such an office must resign upon becoming a candidate.

[2] The "resign to run" rule set forth in paragraph (A) ensures that a judge cannot use the judicial office to promote his or her candidacy, and prevents post-campaign retaliation from the judge in the event the judge is defeated in the election. When a judge is seeking appointive nonjudicial office, however, the dangers are not sufficient to warrant imposing the "resign to run" rule.

[3] Minnesota Constitution, Article VI, Section 6 prohibits a judge from holding any office under the United States except a commission in a reserve component of the military forces of the United States or any other office of the State of Minnesota and provides that the judge's term of office shall terminate at the time the judge files as a candidate for an elective office of the United States or for a nonjudicial office of the State of Minnesota.

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Honorable Russell A. Anderson

Chief Justice

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Re: Proposed Amendments to the Minnesota Code of Judicial Conduct

Justice Anderson,

I write to you as the President of the Minnesota District Judges Association to express the views of our Organization on the Report of the Ad Hoc Advisory Committee to Review the Minnesota Code of Judicial Conduct. Before I begin our comments, I wish to express the thanks of the members of our Association to Prof. Sullivan and the members of his Committee for the extensive and tireless work that they have expended in this effort. We are very grateful for their efforts.

We have a number of concerns with the proposals of the committee and with some aspects of the Code which they did not suggest amending.

First, we agree with the Rules of Professional Conduct Committee of the Minnesota State Bar Association that Section I, Applicability of this Code, should also apply to part or full time Judges, if any, employed by municipalities or other governmental entities to perform Criminal or Traffic adjudicatory functions. These officers, when they are hired, have the same relationship with the citizenry as judges and should be subject to the same rules.

We also agree with the Bar Committee, that the phrase added by the Committee to Part (B) of Section III, Continuing Part-Time Judge, namely "division of the court," is not a term of specific or uniform meaning throughout the state. If what is meant is Judicial District, this may be too broad in scope for Greater Minnesota, but likewise, restricting practice to simply counties, does not address the problem which is at issue; namely, a practicing lawyer who is also a part-time judge, appearing before his or her professional judicial colleagues. Perhaps the definition should be expanded to provide for a District-wide ban in the 2nd and 4th Judicial Districts and in any others having a District-wide regular judicial rotation and an

Assignment District or County ban only in those Greater Minnesota Districts which have less than full rotation.

Our next concern relates to Comment [2] to Rule 2.3. We are troubled by the over inclusiveness of this paragraph in that it seems to be directed more at the participant's impressions than at the judge's intentions. "Facial expressions and body language" are universally acknowledged and respected methods of Courtroom Control, especially at the trial level, and should not be specifically condemned as they seem to be in this comment. We do not mean to suggest that judges should not be subject to discipline for biased conduct, only that such conduct should be defined to include deliberate, discriminatory or harassing actions and not also include non-biased control efforts.

We also have concerns about the potential scope, impact, and applicability of Rule 2.5 and of its comments [2] and [3]. This is especially true in light of recent and traditional interpretations in this area by the Board of Judicial Standards. The issue for us here is not diligence; it is notice. The trial courts of Minnesota are no longer under the single handed, sometimes dictatorial, control of the local trial judges. With the advent, increasing competence, and broadened responsibilities of professional Court Managers, the responsibility for calendar maintenance, case flow processing and personnel selection, training and supervision are no longer directly, and largely not indirectly, the province of the judges. This is even more so now with the installation and pervasive character of the MINCIS Computer System used for case tracking. We do not dispute that judges should work cooperatively with Court Administration. But issues of docket size and time, number and skill level of court staff and the amount of resources available, especially for administrative functions, are now completely out of a trial judge's hands. The BJS has, on the other hand, taken a "buck stops here" approach, especially when it comes to timeliness of decision making. The Code must recognize and support the notion that when a trial judge hears a matter, much of the case's further processing is undertaken by others upon whom the judge must be allowed to rely. If a deadline is missed or an action is not taken through administrative error outside of the judge's knowledge, this is not an ethical violation by the judge. Simply put, there is not enough time, and there are, and would be, too many wasted resources, to require a judge to distrust both MINCIS and the District's staff and to require the maintenance of a separate and personal calendaring system in addition to the centralized MINCIS and often Outlook. Comments [2] and [3] should be changed to reflect and support this new reality.

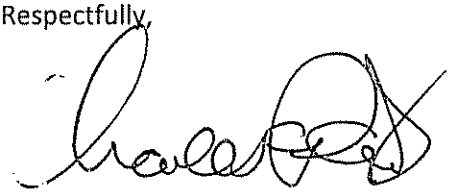
The area of ex parte communications has traditionally been a difficult one. This has become especially true with the decline of the "cover letter," and the advent of the FAX and e-mail. Subsection (B) to Rule 2.9 is at least confusing, and probably un-helpful, and it adds un-necessary effort in this reality. It is generally true, and should be the rule, that when a judge receives correspondence, paper or electronic, which is recognized by the judge or staff as ex parte, it is and should be noted as received, not reviewed, and returned to the sender with an admonishment against ex parte communications. This approach is both ethical and practical. The prohibitions of Sub-section (B) should only be applicable to communications which the judge actually reviews or the specific contents of which the judge knows of for some other reason. Only in such cases should the effort of notice and contents summarization be required.

While we note the protection of a judge's religious freedom in the "post-White" era, provided by the exception in Comment[6] to Rule 3.7, we are concerned that only religious organizations are singled out for exclusion from the general fund-raising ban. Fund raising for other Educational, Charitable, Fraternal or Civic Organizations could be equally ethical and consistent with Freedom of Association protections potentially implicated by White. Thus we remain in favor of the traditional complete ban on fund raising activities by judges.

Our final concern involves the interplay between the public speaking and fund raising scheme proposed by Rules 4.1 and 4.2. Initially, we strongly favor the idea that the affirmative campaigning and fund raising period should be time restricted. While two years may actually be too long, that is not our major concern. One of the most expressed fears of sitting Judges and Justices is that they will be the subject of a public effort or attack, sometimes from individuals but often by organizations, over a particular issue, usually as a result of a decision the judge has made. It is clearly true that the judge has no control over the timing of either the decision or of the attack. We, therefore, believe that the public identification and speaking rules in 4.1, (A), (5) and 4.2, (B), should not be applicable whenever a judge becomes the subject of a public scrutiny by third parties not in the formal judicial structure and not subject to the Code of Judicial Conduct, which clearly identifies him or her as an elected official, and which suggests or implies that his or her re-election or retention should be governed by the subject matter of the inquiry. In these cases, the judge should be able, within the confines of ethical comment, the mount a defense and to accumulate and expend funds if necessary to do so.

We greatly appreciate the opportunity to provide our views. It is not our intention to appear at the February 27th hearing unless it is the desire of the Court that we do so to explain our comments or for any other purpose.

Respectfully,



Hon. Charles A. Porter, Jr., President

Minnesota District Judges Association

MSBA

February 13, 2008

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RE: C4-85-697; Proposed Amendments to Minnesota Code of Judicial Conduct

Dear Mr. Grittner:

The Minnesota State Bar Association's Rules of Professional Conduct Committee (RPC Committee) met recently to discuss the report from the Ad Hoc Advisory Committee to Review the Minnesota Code of Judicial Conduct. On behalf of the RPC Committee I am writing to inform the Court that we support the report of the Ad Hoc Committee although we recommend a few minor changes. Our recommendations are as follows:

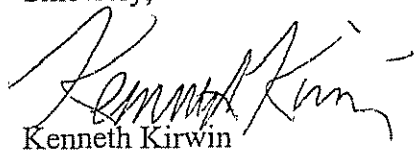
1) Rule 313(B)(10) (what judge may accept without publicly reporting) should be modified to specify "any other gift, bequest, favor or loan with a value not exceeding $150 if the donor is not a party or other person who has, directly or indirectly, come or is likely to come before the judge~~; and, if its value exceeds $150, the judge reports it in the same manner as the judge reports compensation in Rule 3.15~~." and Rule 315(A)(2) (reporting requirements) should be modified to specify "any gift, bequest, favor or loan with a value exceeding $150 from a donor who is not a party or other person who has, directly or indirectly, come or is likely to come before the judge ~~gifts and other things of value as otherwise permitted by Rule 313(B)(10) of a value in excess of $150~~." These modifications would remove the inconsistency between Rule 3.13(B)(10) and Rule 3.15(A)(2).

2) The following should be included in the Definitions: "**"Intimate relationship"** means a continuing relationship involving sexual relations as defined in Rule 1.8(j)(1) of the Minnesota Rules of Professional Conduct." "Intimate relationship" should be defined because the phrase is used in the "Economic interest" definition and in Rules 2.11(A)(2), (3), (B), cmt. [6], 2.13 cmt. [2], 3.7(A)(2), 3.8(A),

3.10, 3.11(A), (B)(1), (2), cmt. [1], 3.13(B)(7), (8), (9), cmt. [4], and 3.14(B).

3) Application section I(B) should be modified as follows: "A judge, within the meaning of this Code, is anyone who is employed by the judicial or executive branches of state government or local government to perform judicial functions, including an officer such as a magistrate under Minn. Stat. 484.702, court commissioner under Minn. Stat. 489.01, referee, judicial officer under Minn. Stat. 487.08, or member of the administrative law judiciary." Adding "or local government" is desirable to make the Code applicable to any officer who performs judicial functions in a code enforcement court established by a local government rather than by the state.

Sincerely,



Kenneth Kirwin
Member, MSBA Rules of Professional Conduct Committee

Comments by the American Judicature Society On the Recommendations of the Ad Hoc Advisory Committee to Review the Minnesota Model Code of Judicial Conduct

RULE 1.3

Avoiding Abuse of the Prestige of Judicial Office

A judge shall not ~~abuse~~ **lend** the prestige of judicial office to advance the personal or economic interests* of the judge or others, or allow others to do so.

COMMENT

[1] It is improper for a judge to use or attempt to use his or her position to gain personal advantage or deferential treatment of any kind. For example, it would be improper for a judge to allude to his or her judicial status to gain favorable treatment in encounters with traffic officials. Similarly, a judge must not use judicial letterhead ~~to gain an advantage~~ in conducting his or her personal business.

AJS explanatory note. Changing "lend" to "abuse" as the Ad Hoc Committee suggests (following the ABA model code) is a substantial change from the standards that have existed since 1972. Any use of the prestige of office to advance private interests should be prohibited even if it is not intended to cause harm that could be characterized as "abuse." Any lesser standard will encourage use of the judicial title and other accoutrements of office in inappropriate extra-judicial settings, diluting its value in the judicial setting. Similarly, courts have held that the use of judicial letterhead in personal matters inherently and inevitably creates the appearance of a misuse of the prestige of office and that principle should be reflected not rejected in the model code. The proposed changes add ambiguity to the code and, therefore, are not helpful to judges or the public. Any concern about the breadth of the restrictions is adequately addressed by the numerous exceptions created in the comments and elsewhere in the code.

RULE 2.10

* * *

~~**(E) Subject to the requirements of paragraph (A), a judge may respond directly or through a third party to allegations in the media or elsewhere concerning the judge's conduct in a matter.**~~

Comment

* * *

[3] By refraining from public comment, judges reassure the public that cases are being tried, not in the press, but in the public forum devoted to that purpose. This prohibition does not preclude a judge from responding to criticism by reiterating without elaboration what is set forth in the public record in a case, including pleadings, documentary evidence, and the transcript of proceedings held in open court.

AJS explanatory note: Allowing a judge to respond without limitation to allegations "in the media or elsewhere concerning the judge's conduct in a matter" will result in litigants having to read the paper or watch TV to find out the judge's thinking about their case. The administration of justice will be distorted and confidence in the courts undermined as the public see judges deciding cases in the media rather than the courtroom and watch the media manipulating the judiciary. The limits proposed by AJS protect the integrity of the judicial process while allowing for public education about the process

MINNESOTA BOARD ON JUDICIAL STANDARDS

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PERSONAL AND CONFIDENTIAL

VIA FIRST CLASS MAIL

February 13, 2008

Hon. Russell A. Anderson, Chief Justice
Associate Justices, Minnesota Supreme Court
25 Rev. Dr. Martin Luther King, Jr. Blvd.
424, 425 and 421 MN Judicial Center
St. Paul, MN 55155

Re: Report of the *Ad Hoc* Advisory Committee to Review the Minnesota Code of Judicial Conduct - Written Statement of the Board on Judicial Standards

Dear Chief Justice Anderson and Associate Justices:

Please permit this letter to serve as the Board's response to the court's order dated December 17, 2007, requesting public comment on the changes to the Minnesota Code of Judicial Conduct (Code) proposed by the *Ad Hoc* Advisory Committee to Review the Minnesota Code of Judicial Conduct (Committee) in a report dated October 31, 2007.

The Board has specifically asked me to convey its unanimous appreciation to the committee members for their dedication and outstanding effort. In the Board's view, the report generally advances the concern of our statewide community for the continued promotion of professional and ethical standards in the judiciary.

Application Section (pp. 6-10)

At Rule I.(B), the report departs from the Model Code by including not only judicial officers employed by the judicial branch of government, but also judicial officers employed by the executive branch. The Board is concerned that, due to the separation of powers principle, these judicial officers may not be legally subject to the Code unless the assumption of jurisdiction is preceded by consent from the executive branch or the appropriate laws are adopted by the legislature. As the proposed comment states, statutes already exist to apply the Code to tax court judges, the judges of the Worker's Compensation Court of Appeals and the Office of Administrative Hearings. However, no law subjects other executive branch employees performing judicial functions to the Code.

Fundraising Issues

The Board notes that the present rule, *Canon 4C(3)(b)*, prohibits judicial solicitation for any educational, religious, charitable, fraternal or civic organization and further prohibits solicitation that uses "prestige of judicial office."

The new Model Code would permit a judge or judicial officer to solicit funds from members of their family and household, as well as judges over whom no supervisory authority exists for organizations that concern themselves with the law, the legal system or the administration of justice, as well as for non-profit religious, charitable, fraternal, and civic organizations.

For those organizations that are concerned with the law, the legal system or the administration of justice, the new Model Code would permit judges and judicial officers to solicit memberships from anyone - including lawyers and court employees – even when such activity results in the generation of funds.

Pursuant to the new Model Code, judges and judicial officers are additionally permitted to use their title, speak and receive recognition at fundraising functions of organizations that concern the law, the legal system or the administration of justice.

The Committee's report adopts all of the changes proposed in the Model Code. In addition, the report proposes to create a class of persons from whom a judge or judicial officer may generally solicit by including "a person with whom the judge has an intimate relationship." Additionally, the report would permit fundraising for a "religious organization . . . as a lawful exercise of the freedom of religion." (See Committee's proposed Comment, *Canon 4C, Paragraph 6*)

The Board suggests that the expansion of fundraising as provided in the Model Code and the report be subjected to the Minnesota Supreme Court's strictest scrutiny.

The restrictions on fundraising exist to prevent lawyers, other judicial officers and members of the community from being subjected to the considerable power, pressure and influence a request to contribute has when it originates from a judge or judicial officer. The fundraising provisions also serve to protect judges and judicial officers from charges of lack of impartiality or conflict of interest. The Board and its staff frequently review complaints and informal contacts related to fundraising issues.

The Board believes that limited judicial activity in this area is most proper, given the power of the judicial office. Limits are the best way to reduce opportunities to complain that judges or judicial officers have been influenced by a decision to contribute, or not to contribute, to a cause. Court participants are subject to the perception that they or their opponent received special treatment because they supported or did not support a cause favored by the judge. These regulations are necessary to reduce opportunities to obtain knowledge of these essentially private preferences. Underlying the restrictions is the concept that the office and its power

cannot be appropriately used for personal reasons, since it was created by and for the public and not to provide to the office holder with opportunities to exert special influence.

In matters of fundraising, the judicial office cannot be separated from the individual who holds it. The power of the office is inextricably tied to all actions of the office holder in court, as well as all extrajudicial activities, regardless of the officer holder's intent. This perception does not change merely because the person solicited is a member of the judges' family or resides in the judge's household in some capacity, such as companion, tenant or service provider. Permitting the judge or judicial officer to solicit such persons could have the unwanted effect of further disseminating or publicizing the causes favored by the judge or judicial officer. Such awareness sets the stage for the appearance of impropriety, subjecting the judge or judicial officer to charges that he or she can be influenced by a contribution, or the failure to make a contribution, to a particular cause.

For the first time in its history, the Model Code, as well as the Committee report, suggests that these potential influences are not present when the fundraising activity relates to organizations that concern the law. The Board suggests that the power of the office does not disappear from extra-judicial activity merely because the organization concerns the law, the legal system or the administration of justice. Regardless of the nature of the organization, fundraising activities by judges and judicial officers create unwanted perceptions. Lawyers and their clients are especially subject to the pressures created by the judicial office for such causes, especially when the judge is or might soon be presiding in one or more of their cases.

The prohibited influence or pressure occurs regardless of the nature of the personal solicitation, including cases when a judge speaks or otherwise becomes the center of attention at a fundraising event. Activities of this kind too closely associate the judge or judicial officer with the fundraising activity. A similar problem arises with the use of judicial letterhead. [See Commentary to Rule 3.7, paragraphs 3 and 4.]

The exception created for religious organizations would, in addition to exacerbating these issues, subject judges and the courts to claims of discrimination from non-religious organizations that exist to promote what many might consider to be equally good causes.

Rather than "minimize the risk of conflict that would result in frequent disqualification" as provided in Rule 2.1, these fundraising activities would create additional reasons for court participants to perceive potential conflicts and reasons to disqualify. If a judge can solicit from other judges, family members and persons residing in the household and for causes relating to the law, the judge's preferences would soon become generally known. Litigants and lawyers who might be aware of these preferences could try to influence the court by contributing to what could become known as the judges' favorite cause. The judge's name might become

inextricably tied to the organization, causing the judge to lose control over the use of the name, possibly producing unforeseen and unintended consequences.

Lending the name (and or title) of a judicial office holder for fundraising purposes involves no real personal time or personal financial commitment on the part of the judge or judicial officer. Rather, such activity relies upon the prestige of the judicial office and fosters the public perception that contributing to a favored project or cause might positively influence the judge's opinion of a lawyer, a litigant or a case. Fundraising activity would adversely effect the public trust and confidence in the court and risk the perception that one who contributes to the judge's cause will be more likely to obtain a favorable ruling or decision.

Rule 3.15 Reporting Requirements

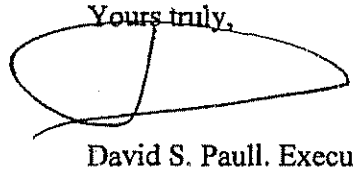
The previous rule required judges to report the names of the person or entities paying when reporting extra-judicial income. The Board believes that this requirement should be retained and adopted into the new rule. Disclosure of the identity of the paying person or entity would assist litigants, lawyers and the general public in identifying potential conflicts arising from the compensation producing activities of the judge or judicial officer. For the same reason, the Board recommends that judge and judicial officers be required to report the "source of reimbursement of expenses or waiver or partial waiver of fees or charges." These requirements were excluded by the committee report in the final draft of Rule 3.15(b).

Rule 4.1 Political and Campaign Activities

The Board notes that the committee report proposes several deviations from the Model Code and the court's order dated March 29, 2006. Included are provisions that (1) permit a judge or candidate to make a contribution to a political organization or candidate, (2) permit attendance at and the purchase of tickets for political events, (3) permit the use of political endorsements, (4) permit some limited use of court staff or facilities in the campaign. The Board submits that these activities should be carefully scrutinized for the reasons stated in the 2007 Model Code of Judicial Conduct.

Finally, the Board wishes me to express their thanks for the opportunity to contribute to this important process.

Yours truly,



David S. Paull. Executive Secretary, on behalf of the
Minnesota Board on Judicial Standards

January 14, 2008

Honorable Fredrick K. Grittner
Clerk of the Appellate Courts
305 Minnesota Judicial Center
25 Rev. Dr. Martin Luther King Jr. Blvd.
St. Paul, MN 55155

Re: *In the Matter of the Proposed Amendments to the Minnesota Code of Judicial Conduct*, Docket No. C4-85-697

Dear Clerk Grittner:

Pursuant to the Court's December 17, 2007 Order in the above-referenced matter, please accept for filing the following original and 11 copies of a written statement on the proposed amendments to the Minnesota Code of Judicial Conduct.

Further, while grateful for the opportunity that the Court has extended to me and others, I do not wish to make an oral presentation during the February 27, 2008 hearing.

Lastly, the comments I have made in the attached written statement are my personal views and do not necessarily represent the viewpoints of any other person.

Very truly yours,

Eric L. Lipman

Enclosure: (12)

STATE OF MINNESOTA
IN SUPREME COURT

In the Matter of the Proposed Amendments to the Minnesota Code of Judicial Conduct,
Docket No. C4-85-697

Written Statement of Eric L. Lipman

I would like to begin my statement by thanking the Court for its December 17, 2007 Order and the opportunity to provide comments upon the Ad Hoc Advisory Committee's Report.

As a member of the Bar, and as a state official who will be subject to any later amendments to the Code of Judicial Conduct,[1] I appreciate the chance to detail my own views in a written statement.

While grateful for this opportunity, I submit these comments with a good deal of anxiety and trepidation. As the Court – and everyone else – well knows, the Sullivan Committee drew together a panel of this state's best trained and most widely-respected lawyers. To file a critique against their work seems as if it could only come from a fevered man – if not a brazen and excessively prideful one.

I am not fevered; or particularly prideful; rather, my courage to say something on the Recommendations was fortified by a childhood memory. I remembered the Hans Christian Anderson tale of *The Emperor's New Clothes*.

As members of the Court will themselves recall, in the Anderson fable, the powerful and the credentialed had all gathered along the main street of the Capitol to herald the Emperor as he passed by wearing his new suit. Every courtier agreed, nodding to his neighbor, that the new clothes were a great innovation on the prior art – all except one; a small boy. While the boy was tiny in comparison to the others, and certainly did not share their standing at the royal court, he cried out nonetheless. And it

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[1] *See*, Minn. Stat. § 14.48 (3) (d) (2006).

was his cry that prompted both the rulers and the rabble to take a second, harder look at the new fashions.

This statement is my cry from the crowd: The Sullivan Committee, as expert as it is, has made a grievous error in its recommendations. The Committee proposes that the Court use its regulatory powers to proscribe the activities of candidates for "elective judicial office" to "not earlier than two years before the first applicable primary election...."[2] While such a restriction may be "reasonable" and convivial, as the Sullivan Committee concludes,[3] it is by no means "narrowly tailored," nor is it necessary to meet a "compelling governmental interest." For these reasons, it is certain to fail when it is later challenged in the federal courts. The proposed Canon 4 is an invitation to legal error.

1. Restrictions Upon Activities that Lie at the "Core of the First Amendment" Must Be Narrowly Tailored to Meet a Compelling Governmental Interest.

The analysis of the *en banc* panel of the U.S. Court of Appeals for the Eighth Circuit in *Republican Party of Minnesota v. White*, 416 F.3d 738 (8th Cir. 2005) is directly on point. The activities of candidates for judicial office may not be restricted by state government unless those restrictions are narrowly tailored to meet compelling governmental interests. As Judge Beam wrote regarding the "Partisan Clauses" of the predecessor Canon 5:

> Protection of political speech is the very stuff of the First Amendment. "'[I]t can hardly be doubted that the constitutional guarantee [of the freedom of speech] has its fullest and most urgent application precisely to the conduct of campaigns for political office.'" [*Buckley v. Valeo*, 424 U.S. 1, 15 (1976)] (quoting *Monitor Patriot Co. v. Roy*, 401 U.S. 265, 272 (1971)). That is because our constitutional form of government not only was borne of the great struggle to secure such freedoms as political speech, but also because such freedom helps assure the continuance of that constitutional government. "In a republic where the people are sovereign, the ability of the citizenry to make informed choices among candidates for office

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[2] *See, Report of the Ad Hoc Advisory Committee to Review the Minnesota Code of Judicial Conduct*, at 51-52 ("Report").

[3] *See, Report*, at 8 ("Report").

is essential, for the identities of those who are elected will inevitably shape the course that we follow as a nation." *Id.* at 14-15.

It cannot be disputed that Canon 5's restrictions on party identification, speech to political organizations, and solicitation of campaign funds directly limit judicial candidates' political speech. Its restrictions on attending political gatherings and seeking, accepting, or using a political organization's endorsement clearly limit a judicial candidate's right to associate with a group in the electorate that shares common political beliefs and aims.

....

Political speech–speech at the core of the First Amendment–is highly protected. Although not beyond restraint, strict scrutiny is applied to any regulation that would curtail it. [*McIntyre v. Ohio Elections Comm'n*, 514 U.S. 334, 347 (1995)]. The strict scrutiny test requires the state to show that the law that burdens the protected right advances a compelling state interest and is narrowly tailored to serve that interest. *Eu v. San Francisco County Democratic Cent. Comm.*, 489 U.S. 214, 222 (1989); *United States v. Playboy Entm't Group, Inc.*, 529 U.S. 803, 816 (2000) ("When the Government restricts speech, the Government bears the burden of proving the constitutionality of its actions."). Strict scrutiny is an exacting inquiry, such that "it is the rare case in which . . . a law survives strict scrutiny." *Burson v. Freeman*, 504 U.S. 191, 211 (1992).

Republican Party of Minnesota v. White, 416 F.3d 738, 748-49 (8th Cir. 2005) (emphasis added and footnote omitted).

2. The Sullivan Committee's "Reasonableness" Rationale Employs the Wrong Legal Standard and Invites Error.

Notwithstanding the Eighth Circuit's unambiguous holdings *in the context of the prior Canon's restrictions on campaigning and fundraising*, the Sullivan Committee asserts that a two-year interval at the end of a state court judge's six-year term is long enough for candidates to engage in

campaign activities;[4] such that professional discipline of any candidate who steps outside of this state-set boundary would be proper. Viewed alongside the *en banc* opinion in *White*, this is a bewildering claim.

Likewise troubling, the Committee does not appear to attempt to meet the required legal standard – namely, that the proposed restriction limiting the interval for campaigning "advances a compelling state interest and is narrowly tailored to serve that interest." Instead, the Committee is content that the proposed limits appear to be "reasonable."

Plainly, this is not enough. Because any restrictions in the Judicial Code on campaign activities will not be subject to a "reasonableness" or "rational basis" review by the federal courts, this Court should not use a reasonableness standard when deciding what ethical rules it will promulgate. Any new Canon that restricts campaign activities should be subjected to "strict scrutiny" standards in the first instance – before winning the vote of any Justice of this Court.[5]

3. A Second Set of Legal Errors, in the Revised Judicial Code, Could Have Profound Consequences for the Court and the State of Minnesota.

I raise these points because, in this circumstance, our past is prologue. In 1995, when revising the predecessor Canon 5, the Court

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[4] *See, id* ("[t]he Committee considered the two year campaign period a reasonable time limitation and therefore recommends proscription of those activities beyond the two year period provided for in Rule 4.2B").

[5] While it is a subsidiary point, I think there is also a strong argument that the Committee's proposed Canon 4 even fails a review on "reasonableness" grounds. As to the restrictions on candidate fundraising, for example, the Committee does not detail what governmental interest is advanced by prohibiting judicial campaign committees from soliciting funds 91 days following a general election that is not likewise present 89 days after the election. *Compare*, Proposed Canon 4.4 (B) (2). The choice of a 90-day cutoff on post-election fundraising appears to be grounded upon whim alone. Moreover, to the extent that this proposed rule increases the time pressure to complete fundraising activities, cabins a committee's efforts to retire campaign debt, and limits the ability of candidates to compete with wealthy, self-financed opponents, it heightens, rather than reduces, any anti-corruption concerns. For all of these reasons, not only is it unclear that the proposed rule advances any legitimate governmental interests, it quite likely undermines the anti-corruption interests that the government does possess.

regrettably declined to follow the advice and urgent warnings of the Board on Judicial Standards and the Office of Lawyers Professional Responsibility. Both of those panels warned that the "Announce Clause" of Canon 5 was unconstitutional.[6]

As the Court now knows, in 2002, the Announce Clause was struck down by the U.S. Supreme Court as violating the First Amendment. In 2006, a petition in the amount of $1,374,928.31 in attorneys fees and costs was approved in the *White* litigation under 42 U.S.C. § 1988.[7] And, as much the U.S. Supreme Court's 2002 decision may have been a blow to the pride we have in the Court's regulations, and our state, the 2006 fee award had a still sharper sting.

Thus, the regulatory dangers for the Court and our state are even greater today than they were in 1995. Following the *White* plaintiffs' recovery of more than a million dollars in attorneys fees and costs, Canon 4 as proposed by the Sullivan Committee would operate like a red rag to a bull. Another federal lawsuit is sure to follow; and this second set of civil rights claims would stampede at us more swiftly and more sure-footedly than the first. We simply cannot afford the kind of jolts to the Court, and to the public treasury, that the proposed Canon 4 would bring.

Conclusion

I suspect that it was not easy for the boy in the Hans Christian Anderson story to step from the crowd and to declare that the Emperor was not wearing clothes. But easy or not, the truth was plain enough to see.

Similarly today, if the Court, in its regulatory role, is to avoid the vulnerability and embarrassment of the fabled Emperor, the fabric of the proposed Canon 4 requires a much closer look.

E.L.L.

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[6] *See, Republican Party of Minnesota v. White, Brief for Petitioners Gregory F. Wersal, et al.*, at 31-32 (Jan. 7, 2002) (http://supreme.lp.findlaw.com/supreme_court/briefs/01-521/01-521.mer.wersal.pdf).

[7] See, *Republican Party of Minnesota v. White*, 456 F 3d 912, 922 (8th Cir. 2006).

GREGORY WERSAL
ATTORNEY AT LAW

2435 Cavell Ave North
Minneapolis, MN 55427
612-701-9623

February 11, 2008

Frederick Grittner
Clerk of Appellate Court
305 Judicial Center
25 Dr. Martin Luther King Jr. Blvd.
St. Paul, MN 55155

Re: Proposed Amendments to the Code of Judicial Conduct
Court File No. C4-85-697

Dear Mr. Grittner:

Attached are 14 copies of my comments concerning Proposed Amendments to the Code of Judicial Conduct. Please file the same. Also please treat this cover letter as part of my submission

The attached memorandum is what I had filed with the Court in March of 2006. At that time, I spelled out in detail many provisions of the Code of Judicial Conduct that were unconstitutional. None the less, all of those provisions were adopted by the Court and made part of the current Code of Judicial Conduct. As the new proposal will incorporate those same provisions, I again raise my objections and, rather than repeat myself, I have attached that submission.

The proposed changes do contain a new provisions that I will address forthwith in this cover letter:

1. The proposed Rule 4.1 and Rule 4.2(B)(7) permit a judicial candidate to personally solicit campaign funds from a audience of 20 or more people, but prohibits the solicitation of an audience of 19 people or less. In 2006, the proposed rule had a magic number of 25 people in the audience for permissible solicitation. At that time, I argued that the proposed rule was unconstitutional infringement of free speech. The Court later adopted the current rule Canon 5 B(2) making the magic number for permissible solicitation 20 people in the audience. The current rule and the proposed rule are unconstitutional for all of the reasons that I spelled out in the memorandum I submitted in 2006 and which is attached. But I will point out here that to justify a restriction on free speech, the state must have a compelling state interest and the restriction must be narrowly tailored to meet that compelling state interest. It is laughable to imagine that the state has an interest so compelling that it justifies limiting free speech when there are 19 people in an audience, but that interest is not compelling when there are 20 people in the audience. If, in fact, the same interest exists when there are 20 people in the audience, then the interest is obviously not compelling at all as the state has not seen the need to act.

2. The proposed Rule 4.2(B) prohibits a judicial candidate from beginning any campaign activities more than "two years before the first applicable primary election." What possible reason can there be for such a rule? Free speech does not have time limits. To justify a restriction on free speech, the state must have a compelling state interest and the restriction must be narrowly tailored to meet that compelling state interest. What possible interest does that state have if someone wants to begin his campaign for office more than two years prior to an election?

The proposed rule becomes even more ridiculous when you read Comment [1] to the

proposed rule. Comment [1] states:

> Paragraph B(1) relates to when a candidate may form a new campaign committee. Previously existing campaign committees for a judicial campaign may remain in existence consistent with state law.

The proposed rule apparently permits an incumbent judge to have a campaign committee that has an indefinite life, continuing from election cycle to election cycle. But a challenger is limited to establishing his campaign by the two year rule. This proposed rule does not stand the smell test, let alone strict scrutiny

3. Proposed Rule 4.4 (B)(1) limits the amount of money a judicial candidate can raise to $2000 in an election year and $500 in a non-election year This proposed rule is unconstitutional for several reasons. First, the conduct being proscribed is not ethical conduct at all. The sum $2000 in itself has no significance. It is a number that someone chose out of thin air. It has no basis in ethics. They could have just as easily chosen $2500 or $!999. The proposed rule is clearly trying to control campaign conduct, not ethical conduct. In the same way, to change the amount depending on whether it is an election year or a non-election year again shows that what the rule is trying to control is not ethical conduct, but campaign conduct. And that difference is important.

Frankly, I believe that all campaign contribution limits are unconstitutional. But for the purpose of this argument, I will agree that current case law would permit the Legislature, if it so chose, to adopt a statute that limited the amount of money that a judicial candidate could raise from an individual to $2000. The Minnesota Constitution specifically grants to the Legislature the power to control the manner of judicial elections. Minn. Const. Art. 6 Sec.7. The problem is that the Legislature has chosen not to create such limits. A bill to create limits on campaign contributions in judicial

elections was before the Legislature in 2007. It failed to pass.

Furthermore, the legislator who brought the bill told me he withdrew the bill at the request of the District Court Judges Association. And the lobbyist for the District Court Judges Association, while denying that the bill was withdrawn at their request, admitted that the bill was withdrawn with the association's approval. Either way, the judges association apparently did not see the necessity of a law restricting campaign donations in 2007.

The Minnesota Supreme Court should not adopt the proposed rule because the Minnesota Supreme Court is not the Legislature. This Court does not have the right to invade duties specifically delegated to the Legislature in the Minnesota Constitution. I have set this argument out in more detail in the attached Memorandum and will not repeat it here.

Secondly, this Court, if it adopts the rule, will place the state in the position of making an untenable argument in support of the rule when it is challenged. How will the state argue that this restriction on free speech is narrowly tailored to serving a compelling state interest.? After all, the state has survived many years without this restriction on free speech and the state can point to no corruption in the judiciary attributable to the lack of control over campaign contributions. Furthermore, it will be hard to argue that there is a compelling state interest when the Legislature had this very issue before them in 2007 and chose not to create such limitations by statute. And it will be hard to argue the potential abuse of campaign funds, when the code already requires that the candidate's campaign committee handle all the funds and prohibits the judicial candidate from knowing who actually gave money to his campaign or how much. (Adopting such a provision may also weaken any future argument by the state to justify

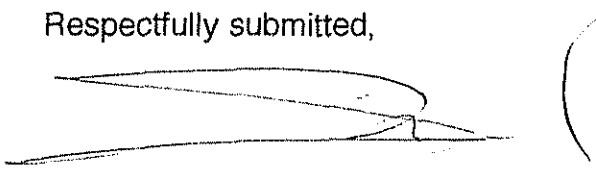
the current provision prohibiting the candidate from knowing who gave money or how much. Anyone wishing to attack the rule, will simply argue that the state has already determined that donations under a certain dollar value are not problematic, so how can knowledge of these donations be a problem.)

Finally, this Court should reflect that it is not just Greg Wersal who is raising the issue of whether rules contained in the Code of Judicial Conduct improperly invade the province of the Legislature. The Eighth Circuit Court of Appeals raised this same issue in the White case.

> Though the Minnesota constitution allows the legislature to provide for disciplining judges, and the state legislature has given the Minnesota Supreme Court the authority to censure or remove judges and to promulgate rules of *conduct for lawyers*, through Canon 5, and without apparent constitutional or statutory authority, the Minnesota Supreme Court has stepped into the legislative arena in an attempt to regulate the political climate of statewide elections, an authority seemingly granted only to the Minnesota legislature under its plenary powers. Minn. Const. Art. 6 Sec. 9; Minn. Stat. Sec. 490.16; Minn. Stat. Sec. 480.05. See Minn. Stat. Sec. 200.01 et seq. (emphasis in original)
> Republican Party of Minnesota v. White, 416 F. 3rd 738(8th Cir. (2005) Footnote 7.

In light of this warning by the Eighth Circuit Court of Appeals, the Minnesota Supreme Court should listen to the words of Justice Louis Brandis who, in describing the work of the U.S. Supreme Court said, **"The most important thing we do is not doing."**

Respectfully submitted,



Gregory Wersal

STATE OF MINNESOTA

IN SUPREME COURT

C4-85-697

In re Proposed Amendments to Canon 5 of the Code of Judicial Conduct

Submission of Gregory Wersal Attorney at Law

The Supreme Court Should Defer to the Legislature

The first issue this Court should consider is whether the Court has the constitutional authority to issue rules controlling aspects of judicial elections? And, even if the Court has the authority, whether the Court should defer to the Legislature?

The Minnesota Constitution states that judges "shall be elected by the voters from the area which they are to serve in the manner provided by law." Minn. Const. Art. 6 Sec. 7. As the Legislature creates and promulgates all law beyond the state constitution, this provision clearly states that it is the Legislature that is to determine the manner of judicial elections. No constitutional provision exists which gives the Minnesota Supreme Court a grant of power to determine the manner of judicial elections.

Similarly, pursuant to the Minnesota Constitution the qualifications and compensation of judges is placed in the hands of the Legislature. Minn. Const. Art. 6, Sec. 5. The number and boundaries of judicial districts is controlled by the Legislature. Minn. Const. Art. 6, Sec. 4. Even the jurisdiction of the courts can be controlled by the Legislature. Minn. Const. Art. 6, Secs. 1, 2, 3, 4, and 12. While the Constitution grants the Supreme Court the power to appoint at its pleasure a clerk, a reporter, a state law librarian (Minn. Const. Art. 6 Sec. 2), the Legislature controls the "qualifications, duties and compensation" of the clerks of district court. Minn. Const.

Art. 6, Sec. 13. In short, pursuant to the Minnesota Constitution, much of what the courts do, who they hire, their qualifications and duties, the jurisdictions, if not set out in the Constitution itself, is left to the discretion of the Legislature.

The Eight Circuit Court of Appeals stated in footnote 7 to the majority opinion that the Minnesota Legislature, not the Court, has the power to regulate judicial elections:

> Though the Minnesota constitution allows the legislature to provide for disciplining judges, and the state legislature has given the Minnesota Supreme Court the authority to censure or remove judges and to promulgate rules of *conduct for lawyers,* through Canon 5, and without apparent constitutional or statutory authority, the Minnesota Supreme Court has stepped into the legislative arena in an attempt to regulate the political climate of statewide elections, an authority seemingly granted only to the Minnesota legislature under its plenary powers. Minn. Const. Art. 6 Sec. 9; Minn. Stat. Sec. 490.16; Minn. Stat. Sec. 480.05. See Minn. Stat. Sec. 200.01 et seq. (emphasis in original)

In the past, in the federal litigation, the state argued that whether stated or not in the Minnesota Constitution, the Minnesota Supreme Court has the power to control what goes on in the courtrooms of this state. There are three problems with this argument. First, the Court can not violate the explicit provisions of the state constitution which states the "manner" of elections shall be determined by the Legislature. Second, the elections of judges do not occur in Minnesota courtrooms. It may be entirely appropriate for the Minnesota Supreme Court to create recusal rules, or rules allowing parties to strike a judge from a case, or other rules affecting impartiality or independence of judges that actually occur in the courtrooms of this state; that does not mean the Minnesota Supreme Court has the authority to create rules affecting the manner of the election of judges.

Finally, even if the Court has the authority to control judicial elections, it should defer to the Legislature. There is no way for the Court to avoid the appearance of impropriety when it creates rules limiting the campaign activities of judicial

challengers. The Minnesota Supreme Court has already suffered a terrible blow to its prestige in White. There will be more litigation. The White decision is not the end of litigation, it is the beginning. Other rules contained in Canon 5 will come under attack and some will assuredly fail to meet the constitutional test set out in White. The dissenting opinion to the Eight Circuit opinion states that the test created by the majority opinion means that many of the rules will fail the test. The more the Minnesota Supreme Court attempts to control the judicial election of this state, the more dispute it will bring on itself as those same rules are struck down by federal courts. If there is truly a compelling state interest in restricting free speech in judicial election, then let the Legislature declare that the interest exists and let the Legislature act upon it.

What follows is a review of the provisions of Canon 5. Many of these provisions are of doubtful constitutionality and will draw legal challenges in the future.

CANON 5A(1)

The changes proposed in Canon 5A(1) are adequate in themselves but not sufficient to solve he problem. Even after the proposed changes Canon 5A(1) will still restrict free speech and free associates in Canon 5A(1)(A), (b), (c) and (d) in ways that are susceptible to attack as unconstitutional under the First Amendment. For example, what compelling state interest would allow a prohibition on a judge to act as a leader or hold an office in a political organization, but allow the judge to do the same in any, and apparently all, other organizations? Or what compelling state interest could support the prohibition contained in Canon 5A(1)(c), prohibiting a judge from making speeches on behalf of a political organization, but allow the judge to make speeches on behalf of any other organization? The prohibitions are clearly unconstitutional after White.

CANON 5A(2)

Canon 5A(2) requires a judge to resign his office if he becomes a candidate for a non-judicial office. This is most likely unconstitutional under the First Amendment. There is no reasonable basis to say that merely becoming a candidate for a non-judicial office in any way creates an impact on a compelling state interest of impartiality or independence, even assuming those concepts are, in fact, compelling state interests. The compelling interest can not be that the judge, as a candidate for another office, will seek a political party endorsement, or raise money, or state his views on a legal or political issues. First of all, merely becoming a candidate does not mean the candidate will do any of those activities. Secondly, these are activities that judicial candidates can now engage in.

CANON 5 (3)(a)

Canon 5 (3)(a) which requires a judicial candidate to "encourage family members to adhere to the same standard of political conduct ... as apply to the candidate" is clearly an unconstitutional infringement of free speech and freedom of association under the First Amendment. Assuming that the Minnesota Supreme Court does have the legal authority to regulate judicial campaign conduct through attorney licenses, it is incomprehensible that the Court has the legal authority to regulate the conduct of spouses or other family members of the licensee, or that the licensee could possibly be ... and held accountable for the activities of a family member. Canon 5A (3)(a) should be eliminated.

CANON 5A (3)(c)

Canon 5A (3)(c) which states a candidate "shall not authorize or knowingly

permit any other person to do for the candidate what the candidate if prohibited from doing" is unconstitutional. While the word "authorize" language maybe be acceptable, the "knowingly permit" is too broad and too vague. What steps a candidate must take in an attempt to stop a third party's conduct is not clear. And if the third party's conduct is legal, it is doubtful that the candidate could stop the third party's conduct.

CANON 5A (3)(d)

Canon 5A (3)(d) contains two provisions that need scrutiny. The first is the "pledge and promise" clause, the second is the "misrepresentation" clause.

The "pledge and promise" clause as drafted is unconstitutional. The clause states that a candidate shall not "with respect to cases, controversies, or issues likely to come before the court, make pledges and promises that are inconsistent with the impartial performance of the adjudicative duties of the office." The first problem is that it is impossible to know which issues are likely to come before the court. And by what standard is this to be determined. (This issue came up in the oral argument before the U.S. Supreme Court in White.) Let us consider the issue of slavery. Most members of the legal community would say this is an issue well established and unlikely to come before the court. However, I recently heard an attorney argue that abortion is a type of slavery. Many more examples could easily be brought up.

The second problem is the phrase that prohibits pledges or promises that are "inconsistent with an impartial performance of adjudicative duties." I am unsure what this means or how it might be applied. Let me again give you some examples:

a) "I promise to uphold the constitution."

b) "I promise to uphold the constitutional right of privacy."

c) "I promise to uphold the constitutional right of a woman to have an abortion."

Which of these three promises is permissible and which is not, if any? And why?

Clearly, the courts have said that there is a constitutional right for a woman to have an abortion. For a judge to promise to uphold that right would simply be a statement "consistent with an impartial performance of his adjudicative duties" -- or wouldn't it? If the application of the rules is vague, it will have a chilling effect on otherwise permissible free speech, and will therefore be an unconstitutional infringement of free speech.

A related issue how the pledge and promise clause relates to the already declared unconstitutional clause prohibiting judicial candidates from stating their views on legal and political issues. If a judicial candidate can say that he agrees with the majority decision in Roe v. Wade - and after White such a statement is clearly permissible - what is to be gained by prohibiting the candidate from saying he promises to uphold the constitutional right of a woman to have an abortion as set out in Roe v. Wade? And how does it further any state interest?

While it might be possible to draft a pledge and promise clause that is constitutional, such as prohibiting a candidate from stating a promise as to which specific party would win in litigation currently pending before a court, the pledge and promise clause, as drafted, is unconstitutional.

Canon 5A (3)(d) also prohibits a candidate from "knowingly, or with reckless disregard for the truth, misrepresent the ..., qualifications, expressed position on either fact concerning the candidate or an opponent." I have had some experience with this provision in the past, when ethical complaints were filed against me by the Board on Judicial Standards based on a similar provision. (I eventually prevailed on all of these complaints.) The complaint filed against me stated I had misstated facts. I contested that all I had done was state my opinions about what a judge had said in a written opinion. In fact, what I said where the exact same criticisms that the minority opinion

had raised against the majority opinion in a case. Yet the Board on Judicial Standards filed a complaint saying I had misrepresented a fact. Unless this Court clearly defines the words "truth" and "opinion" so that the two are clear to all, and in every instance, then this provision will continue to have an unconstitutional chilling effect on constitutionally protected speech.

CANON 5B (1)

The change recommended to Canon 5B (1) is appropriate.

CANON 5B (2)

Canon 5B (2), as proposed, permits a candidate to make an oral solicitation of campaign funds to audiences of 25 or more people. This proposed provision is clearly unconstitutional.

First to limit free speech, there must be a compelling state interest. It is impossible to believe that the state has a compelling state interest that exists when there are 24 people in the room with the candidate, but not when there are 25. The idea approaches the ridiculous.

Secondly, the rule is predicated on the idea that asking for any money creates some impediment to the argued state interests of impartiality or independence. What about the candidate, who in an effort to eliminate any question of an impact on his impartiality, asks for only one dollar? Surely we can all agree that small amounts of money do not affect impartiality or independence.

Finally, the proposed rule is predicated in the idea that merely asking for money creates some impediment to the argued state interest of impartiality and independence. Remember, the rule specifically provides that the candidate's campaign committee must handle all contributions and that the candidate is not to

know who gave what, or if anything was given at all. As long as the candidate is separated from the actual giving, it is difficult to see how the asking, even one on one with another individual, has any impact on impartiality. The proposed rule is unconstitutional.

CANON 5G

Canon 5G continues to subject judges to discipline by the Board on Judicial Standards and lawyers to discipline by the Office of Lawyers Professional Responsibility. This bifurcated system is most likely unconstitutional violation of due process and equal protection of the law. From my personal experience, the Board on Judicial Standards and the Office of Lawyers Professional Responsibility frequently interpret and apply the provisions of Canon 5 differently. The actual complaint process, the rights of the accused, and the appeals process are different between the two state boards. Finally, the Board on Judicial Standards consists not only of individuals appointed by the Supreme Court, but also those appointed by the Governor. This fact creates a separation of powers issue. Unless the rules are applied uniformly, and by one body, these problems can not be over come. To create such a body will most likely require action by the Legislature. If the Legislature is to create such a body, then the Legislature might as well create the rules that body is to apply to judicial elections.

CANON 5 Must Reflect the Changed Realities

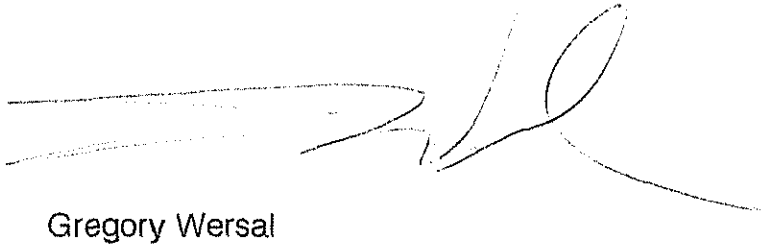
Canon 5 must reflect that White has changed the realities of judicial elections. Because candidates can now state their views on legal and political issues and because candidates can seek, use, and accept political party endorsements - the new reality is that political parties will have a major impact on judicial elections in the future.

Whatever rules are created, they must reflect this changed reality.

If incumbent judges are to have any chance at winning elections against a challenger endorsed by a political party, or even endorsed by a single issue interest group, the election rules must be crafted to allow for more freedom than exists in Canon 5. For example, the proposed change that would prohibit a candidate from soliciting money from groups of 24 or less, is sure to create an unfair playing field - one in which an unendorsed incumbent can not win. The political parties and the single issue groups will not be prevented from raising money for their endorsed candidates and they will do so with a vengeance. The candidate, prevented from soliciting groups of 24 or less, will be at a substantial disadvantage.

The solution is to be found in eliminating the limitations on the judicial candidates' free speech - not creating more limitations to free speech. The more limitations this Court tries to impose on the judicial candidate, the more powerful the political parties and single issue interest groups will become in judicial elections. This is the new reality.

Respectfully submitted,



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