

# **CODE OF JUDICIAL CONDUCT**

## **APPLICATION OF THE CODE OF JUDICIAL CONDUCT**

- A.** Parties Affected. Anyone, whether or not a lawyer, who is an officer of a judicial system and who performs judicial functions, including an officer such as a magistrate, court commissioner, special master or referee, is a judge within the meaning of this Code. All judges shall comply with this Code except as provided below.
- B.** Part-time Judge. A part time judge shall not be subject to the restrictions and limitations of Sections 4C, 4D(2), 4F, and 4G, except as regards practice in the court in which the part-time judge serves [prohibition on practice of law], and 4H(1).
- C.** Special Judge. A special judge shall not, except while serving as a judge, be subject to the restrictions and limitations of Sections 4A. A special judge shall not, at any time be subject to the restrictions and limitations of Sections, 4B, 4D, 4E, 4F, 4G, and 4H. A special judge, except while serving as a special judge or while a candidate for judicial office, shall not be subject to the restrictions of Canon 5.
- D.** Magistrates, court commissioners, special masters and referees shall not at any time be subject to the restrictions and limitations of Sections 4A, 4B, 4C(1), 4C(2), 4D, 4E, 4F, 4G, and 4H. Magistrates, court commissioners, special masters and referees, except while a candidate for judicial office, shall not be subject to the restrictions of Canon 5.
- E.** Time for Compliance. A person to whom this Code becomes applicable shall comply immediately with all provisions of this Code except Sections 4D(1), 4D(2) and 4E and shall comply with those Sections as soon as reasonably possible and shall do so in any event within the period of one year.
- F.** Effective Date. The separate provisions of this Code shall govern acts, events and conduct of those subject to those provisions from and after the effective date of the adoption of each such provision. Acts, events and conduct which occur prior to the adoption of each provision shall be governed by the provisions of the Code effective at the time of such acts, events and conduct.

## **PREAMBLE**

Our legal system is based on the principle that an independent, fair and competent judiciary will interpret and apply the laws that govern us. The role of the judiciary is central to American concepts of justice and the rule of law. Intrinsic to all sections of this Code are the precepts that judges, individually and collectively, must respect and honor the judicial office as a public trust and strive to enhance and maintain confidence in our legal system. The judge is an arbiter of facts and law for the resolution of disputes and a highly visible symbol of government under the rule of law.

The Code of Judicial Conduct is intended to establish standards for ethical conduct of judges. It consists of broad statements called Canons, specific rules set forth in Sections under each Canon, a Terminology Section, an Application Section and Commentary. The text of the Canons and the Sections, including the Terminology and Application Sections, is authoritative. The Commentary, by explanation and example, provides guidance with respect to the purpose and meaning of the Canons and Sections. The Commentary is not intended as a statement of additional rules. When the text uses "shall" or "shall not," it is intended to impose binding obligations the violation of which can result in disciplinary action. When "should" or "should not" is used, the text is intended as hortatory and as a statement of what is or is not appropriate conduct but not as a binding rule under which a judge may be disciplined. When "may" is used, it denotes permissible discretion or, depending on the context, it refers to action that is not covered by specific proscriptions. The Canons and Sections are rules of reason. They should be applied consistent with constitutional requirements, statutes, other court rules and decisional law and in the context of all relevant circumstances. The Code is to be construed so as not to impinge on the essential independence of judges in making judicial decisions.

The Code is designed to provide guidance to judges and candidates for judicial office and to provide a structure for regulating conduct through disciplinary agencies. It is not designed or intended as a basis for civil liability or criminal prosecution. Furthermore, the purpose of the Code would be subverted if the Code were invoked by lawyers for mere tactical advantage in a proceeding.

The text of the Canons and Sections is intended to govern conduct of judges and to be binding upon them. It is not intended, however, that every transgression will result in disciplinary action. Whether disciplinary action is appropriate, and the degree of discipline to be imposed, should be determined through a reasonable and reasoned application of the text and should depend on such factors as the seriousness of the transgression, whether there is a pattern of improper activity and the effect of the improper activity on others or on the judicial system.

The Code of Judicial Conduct is not intended as an exhaustive guide for the conduct of judges. They should also be governed in their judicial and personal conduct by general ethical standards. The Code is intended, however, to state basic standards which should govern the conduct of all judges and to provide guidance to assist judges in establishing and maintaining high standards of judicial and personal conduct.

## TERMINOLOGY

"Appropriate authority" denotes the authority with responsibility for initiation of disciplinary process with respect to the violation to be reported. See Sections 3D(1) and 3D(2).

"Candidate." A candidate is a person seeking selection for judicial office by election or appointment. Persons become candidates for judicial office as soon as they make public announcements of candidacy, declare or file as candidates with the election or appointment authority, or authorize solicitation or acceptance of contributions or support. The term "candidate" has the same meaning when applied to a judge seeking election or appointment to non-judicial office. See Preamble and Canon 5.

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

"De minimis" denotes an insignificant interest that could not raise reasonable question as to a judge's impartiality. See Sections 3E(1)(c) and 3E(1)(d).

"Economic interest" denotes ownership of a more than de minimis legal or equitable interest, or a relationship as officer, director, advisor or other active participant in the affairs of a party, except that:

- (i) ownership of an interest in a mutual or common investment fund that holds securities is not an economic interest in such securities unless the judge participates in the management of the fund or a proceeding pending or impending before the judge could substantially affect the value of the interest;
- (ii) service by a judge as an officer, director, advisor or other active participant in an educational, religious, charitable, fraternal or civic organization, or service by a judge's spouse, parent or child as an officer, director, advisor or other active participant in any organization does not create an economic interest in securities held by that organization;
- (iii) a deposit in a financial institution, the proprietary interest of a policy holder in a mutual insurance company, of a depositor in a mutual savings association or of a member in a credit union, or a similar proprietary interest, is not an economic interest in the organization unless a proceeding pending or impending before the judge could substantially affect the value of the interest;
- (iv) ownership of government securities is not an economic interest in the issuer unless a proceeding pending or impending before the judge could substantially affect the value of the securities. See Sections 3E(1)(c) and 3E(2).

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

"Independent persons, committees or organizations" shall mean an individual person or organization not required to report as affiliated with a campaign for judicial office. See Section 5F.

"Knowingly," "knowledge," "known" or "knows" denotes actual knowledge of the fact in question. A person's knowledge may be inferred from circumstances. See Sections 3D, 3E(1), and 5A(3).

"Law" denotes court rules as well as statutes, constitutional provisions and decisional law. See Sections 2A, 3A, 3B(2), 3B(7), 4B, 4C, 4F, 4I, 5A(2), 5A(3), 5B(2), 5C, 5D, and 5F.

"Major donor", for the purposes of Section 3E(2), shall be defined as follows:

- (a) If the donor is an individual, "donor" means that individual, the individual's spouse, or the individual's or the individual's spouse's child, mother, father, grandmother, grandfather, grandchild, employee and employee's spouse.
- (b) If the donor is an entity other than an individual, "donor" means the entity, its employees, officers, directors, shareholders, partners members, and contributors and the spouse of any of them.
- (c) A "major donor" is a donor who or which has, in the judge's most recent election campaign, made a contribution to the judge's campaign of (a) more than \$2,000 if the judge is a justice of the Supreme Court or judge of the Court of Appeals, or (b) more than \$1,000 if the judge is a judge of a court other than the Supreme Court or the Court of Appeals.
- (d) The term "contribution to the judge's campaign" shall be the total of all contributions to a judge's campaign and shall be deemed to include all contributions of every kind and type whatsoever, whether in the form of cash, goods, services, or other form of contribution, and whether donated directly to the judge's campaign or donated to any other person or entity for the purpose of supporting the judge's campaign and/or opposing the campaign of the judge's opponent(s). The term "contribution to a judge's campaign" shall also be deemed to include any publication, advertisement or other release of information, or payment therefor, other than a bona fide news item published by existing news media, which contains favorable information about the judge or which contains unfavorable information about the judge's opponent(s).

"Member of the candidate's family" denotes a spouse, child, grandchild, parent, grandparent, siblings, or other relative or person with whom the candidate maintains a close familial relationship. See Section 5A(3)(a).

"Member of the judge's family" denotes a spouse, child, grandchild, parent, grandparent, siblings, or other relative or person with whom the judge maintains a close familial relationship. See Sections 4D, 4E and 4G.

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

"Nonpublic information" denotes information that, by law, is not available to the public. Nonpublic information may include but is not limited to: information that is sealed by statute or court order, impounded or communicated in camera; and information offered in grand jury proceedings, presentencing reports, dependency cases or psychiatric reports. See Sections 3B(11) and 4D(4).

"Part-time judge" denotes a judge who serves for an extended, fixed term, but is allowed to practice law or any other profession or occupation. The term does not apply to magistrates, court commissioners, special masters or referees.

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

"Public election." This term includes primary and general elections; it includes partisan elections and nonpartisan elections. See Section 5C.

"Require." The rules prescribing that a judge "require" certain conduct of others are, like all of the rules in this Code, rules of reason. The use of the term "require" in that context means a judge is to exercise reasonable direction and control over the conduct of those persons subject to the judge's direction and control. See Sections 3B(3), 3B(4), 3B(5), 3B(6), 3B(9) and 3C(2).

"Special judge" denotes a judge, including a retired judge, other than one who is serving to fill the unexpired term of a regularly elected or appointed judge who has vacated the office, who serves by appointment for a limited period or in a particular matter due to the unwillingness or inability of a sitting judge to hear a case or attend court, or who is appointed on an emergency basis.

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

## CANON 1

### A Judge Shall Uphold the Integrity and Independence of the Judiciary

An independent and honorable judiciary is indispensable to justice in our society. A judge should participate in establishing, maintaining, and enforcing high standards of conduct, and shall personally observe those standards so that the integrity and independence of the judiciary will be preserved. The provisions of this Code should be construed and applied to further that objective.

## CANON 2

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

- A. A judge shall respect and comply with the law and shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.
- B. Judges shall not allow their family, social, or other relationships to influence the judges' judicial conduct or judgment. Judges shall not lend the prestige of their offices to advance the private interests of the judges or others; nor shall judges convey or permit others to convey the impression that they are in a special position to influence the judges. Judges shall not testify voluntarily as character witnesses.
- C. A judge shall not hold membership in any organization that practices invidious discrimination on the basis of race, gender, religion or national origin.

## CANON 3

### A Judge Shall Perform the Duties of Judicial Office Impartially and Diligently

- A. **Judicial Duties in General.** The judicial duties of judges take precedence over all their other activities. The judges' judicial duties include all the duties of their office prescribed by law. In the performance of these duties, the following standards apply:
- B. **Adjudicative Responsibilities.**
  - (1) A judge shall hear and decide all assigned matters within the judge's jurisdiction except those in which disqualification is required.
  - (2) A judge shall be faithful to the law and maintain professional competence in it. A judge shall not be swayed by partisan interests, public clamor, or fear of criticism.
  - (3) A judge shall require order and decorum in proceedings before the judge.
  - (4) Judges shall be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, and others with whom they deal in their official capacities, and shall require similar conduct of lawyers, and of their staffs, court officials, and others subject to their direction and control.
  - (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, gender, religion, national origin, disability, age, sexual orientation or socioeconomic status, and shall not permit staff, court officials and others subject to the judge's direction and control to do so. A judge shall refrain from speech, gestures or other conduct that could reasonably be perceived as sexual harassment and shall require the same standard of conduct of others subject to the judge's direction and control.
  - (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, gender, religion, national origin, disability, age, sexual orientation or socioeconomic status, against parties, witnesses, counsel or others. This Section 3B(6) does not preclude legitimate advocacy when race, gender, religion, national origin, disability, age, sexual orientation or socioeconomic status, or other similar factors, are issues in the proceeding.
  - (7) A judge shall accord to all who are legally interested in a proceeding, or their lawyers, the right to be heard according to law. A judge shall not initiate, permit, or consider ex parte communications, or consider other communications made to the judge outside the presence of the parties concerning a pending or impending proceeding except that:

- (a) where circumstances require, ex parte communications for scheduling, administrative purposes or emergencies that do not deal with substantive matters or issues on the merits are authorized: provided:
    - (i) the judge reasonably believes that no party will gain a procedural or tactical advantage as a result of the ex parte communication, and
    - (ii) the judge makes provision promptly to notify all other parties of the substance of the ex parte communication and allows an opportunity to respond.
  - (b) Judges may obtain the advice of a disinterested expert on the law applicable to a proceeding before them if the judges give notice to the parties of the person consulted and the substance of the advice, and afford the parties reasonable opportunity to respond.
  - (c) A judge may consult with court personnel whose function is to aid the judge in carrying out the judge's adjudicative responsibilities or with other judges.
  - (d) A judge may, with the consent of the parties, confer separately with the parties and their lawyers in an effort to mediate or settle matters pending before the judge.
  - (e) A judge may initiate or consider any ex parte communications when expressly authorized by law to do so.
- (8) A judge shall dispose of all judicial matters promptly, efficiently and fairly.
  - (9) A judge shall not, while a proceeding is pending or impending in any court, make any public comment that might reasonably be expected to affect its outcome or impair its fairness or make any nonpublic comment that might substantially interfere with a fair trial or hearing. The judge shall require similar abstention on the part of court personnel subject to the judge's direction and control. This Section does not prohibit judges from making public statements in the course of their official duties or from explaining for public information the procedures of the court. This Section does not apply to proceedings in which the judge is a litigant in a personal capacity.
  - (10) A judge shall not 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.
  - (11) A judge shall not disclose or use, for any purpose unrelated to judicial duties, nonpublic information acquired in a judicial capacity.
  - (12) Except as may be authorized by rule or order of the Supreme Court, a judge should prohibit broadcasting, televising, recording, or taking photographs in the courtroom and areas immediately adjacent thereto during sessions of court or recesses between sessions, except that a judge may authorize:
    - (a) the use of electronic or photographic means for the presentation of evidence, for the perpetuation of a record, or for other purposes of judicial administration;
    - (b) the broadcasting, televising, recording, or photographing of investitive, ceremonial, or naturalization proceedings;
    - (c) the photographic or electronic recording and reproduction of appropriate court proceedings under the following conditions:
      - (i) the means of recording will not distract participants or impair the dignity of the proceedings;
      - (ii) the parties have consented, and the consent to being depicted or recorded has been obtained from each witness appearing in the recording and reproduction;
      - (iii) the reproduction will not be exhibited until after the proceeding has been concluded and all direct appeals have been exhausted; and
      - (iv) the reproduction will be exhibited only for instructional purposes in educational institutions.

### **C. Administrative Responsibilities.**

- (1) A judge shall diligently discharge the judge's administrative responsibilities without bias or prejudice and maintain professional competence in judicial administration, and shall cooperate with other judges and court officials in the administration of court business.
- (2) A judge shall require staff, court officials and others subject to the judge's direction and control to observe the standards of fidelity and diligence that apply to the judge and to refrain from manifesting bias or prejudice in the performance of their official duties.
- (3) A judge with supervisory authority for the judicial performance of other judges shall take reasonable measures to assure the prompt disposition of matters before them and the proper performance of their other judicial responsibilities.
- (4) A judge shall not make unnecessary appointments. A judge shall exercise the power of appointment impartially and on the basis of merit. A judge shall avoid nepotism and favoritism. A judge shall not approve compensation of appointees beyond the fair value of services rendered.
- (5) A judge shall not appoint a major donor to the judge's election campaign to a position if the judge knows or

learns by means of a timely motion that the major donor has contributed to the judge's election campaign unless

- (a) the position is substantially uncompensated;
- (b) the person has been selected in rotation from a list of qualified and available persons compiled without regard to their having made political contributions; or
- (c) the judge or another presiding or administrative judge affirmatively finds that no other person is willing, competent and able to accept the position.

**D. Disciplinary Responsibilities.**

- (1) A judge who receives information indicating a substantial likelihood that another judge has committed a violation of this Code should take appropriate action. A judge having knowledge that another judge has committed a violation of this Code that raises a substantial question as to the other judge's fitness for office shall inform the appropriate authority.
- (2) A judge who receives information indicating a substantial likelihood that a lawyer has committed a violation of the Rules of Professional Conduct should take appropriate action. A judge having knowledge that a lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial question as to the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects shall inform the appropriate authority.
- (3) Acts of a judge, in the discharge of disciplinary responsibilities, required or permitted by Sections 3D(1) and 3D(2) are part of a judge's judicial duties and shall be absolutely privileged, and no civil action predicated thereon may be instituted against the judge.

**E. Disqualification.**

- (1) Judges should disqualify themselves in proceedings in which their impartiality might be questioned by a reasonable person knowing all the circumstances or for other grounds provided in the Code of Judicial Conduct or otherwise as provided by law, including but not limited to instances where:
  - (a) the judge has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding;
  - (b) the judge served as lawyer in the matter in controversy, or a lawyer with whom the judge previously practiced law served during such association as a lawyer concerning the matter, or the judge or such lawyer has been a material witness concerning it;
  - (c) the judge knows that the judge, individually or as a fiduciary, or the judge's spouse or member of the judge's family residing in the judge's household, has a financial interest in the subject matter in controversy or in a party to the proceeding, or any other interest that could be substantially affected by the outcome of the proceeding;
  - (d) the judge or the judge's spouse, or a person within the third degree of relationship to either of them, or the spouse of such a person:
    - (i) is a party to the proceeding, or an officer, director, or trustee of a party;
    - (ii) is acting as a lawyer in the proceeding;
    - (iii) is known by the judge to have an interest that could be substantially affected by the outcome of the proceeding;
    - (iv) is to the judge's knowledge likely to be a material witness in the proceeding;
- (2) Recusal of Judges from Lawsuits Involving Major Donors. A party may file a motion to recuse a judge based on the fact that an opposing party or counsel of record for that party is a major donor to the election campaign of such judge. Such motions will be filed, considered and subject to appellate review as provided for other motions for recusal.

**F. Remittal of Disqualification.**

A judge who may be disqualified by the terms of Section 3E may disclose on the record the basis of the judge's possible 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 proceeding. The agreement shall be incorporated in the record of the proceeding.

## CANON 4

### **A Judge Shall So Conduct the Judge's Extra-judicial Activities as to Minimize the Risk of Conflict with Judicial Obligations**

- A. Extra-judicial Activities in General.** A judge shall conduct all of the judge's extra-judicial activities so that they do not:
- (1) cast reasonable doubt on the judge's capacity to act impartially as a judge;
  - (2) demean the judicial office; or
  - (3) interfere with the proper performance of judicial duties.
- B. Avocational Activities.** A judge may speak, write, lecture, teach and participate in other extra-judicial activities concerning the law, the legal system, the administration of justice and non-legal subjects, subject to the requirements of this Code.
- C. Governmental, Civic or Charitable Activities.**
- (1) A judge shall not make an appearance before, or otherwise consult with, an executive or legislative body or official or a public hearing 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.
  - (3) A judge may serve as an officer, director, trustee or non-legal advisor of an organization or governmental agency devoted to the improvement of the law, the legal system or the administration of justice or of an educational, religious, charitable, fraternal or civic organization not conducted for profit, subject to the following limitations and the other requirements of this Code.
    - (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 as an officer, director, trustee or non-legal advisor, or as a member or otherwise:
      - (i) may assist such an organization in planning fund-raising and may participate in the management and investment of the organization's funds, but shall not personally participate in the solicitation of funds or other fund-raising activities, except that a judge may solicit funds from other judges over whom the judge does not exercise supervisory or appellate authority;
      - (ii) may make recommendations to public and private fund-granting organizations on projects and programs concerning the law, the legal system or the administration of justice;
      - (iii) shall not personally participate in membership solicitation if the solicitation might reasonably be perceived as coercive or, except as permitted in Section 4C(3)(b)(i), if the membership solicitation is essentially a fund-raising mechanism;
      - (iv) shall not use or permit the use of the prestige of judicial office for fund-raising or membership solicitation.
- D. Financial Activities.**
- (1) Judges should refrain from financial and business dealings that tend to reflect adversely on their impartiality, interfere with the proper performance of their judicial duties, exploit their judicial positions, or involve them in frequent transactions with lawyers or persons likely to come before the court on which the judges serve.
  - (2) Judges should manage their investments and other financial interests to minimize the number of cases in which they are disqualified. As soon as a judge can do so without serious financial detriment, the judge should divest himself or herself of investments and other financial interests that might require frequent disqualification.
  - (3) Neither judges nor members of their families residing in their households should accept a gift, bequest, favor, or loan from anyone reflecting the expectation of judicial favor.

- (4) Non-public information acquired by a judge in the judge's judicial capacity should not be used or disclosed by the judge in financial dealings or for any other purpose not related to the judge's judicial duties.

**E. Fiduciary Activities.**

- (1) A judge shall not serve as executor, administrator or other personal representative, trustee, guardian, attorney in fact or other fiduciary except for the estate, trust or person of a member of the judge's family, and then only if such service will not interfere with the proper performance of judicial duties.
- (2) A judge shall not serve as a fiduciary if it is likely that the judge as a fiduciary will be engaged in proceedings that would ordinarily come before the judge, or if the estate, trust or ward becomes involved in adversary proceedings in the court on which the judge serves or one under its appellate jurisdiction.
- (3) The same restrictions on financial activities that apply to a judge personally also apply to the judge while acting in a fiduciary capacity.

**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.

**G. Practice of Law.**

- (1) 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.
- (2) A judge must also make reasonable efforts to ensure that the judge's staff, court officials and others subject to the judge's direction and control do not practice law in a representative capacity. Notwithstanding this prohibition, staff, court officials and others subject to the judge's direction may act pro se, and those otherwise licensed to practice law may, without compensation, give legal advice to and draft or review documents for members of their families.

**H. Compensation, Reimbursement and Reporting.**

- (1) **Compensation and Reimbursement.** A judge may receive compensation and reimbursement of expenses for the extra-judicial activities permitted by this Code, if the source of such payments does not give the appearance of influencing the judge's performance of judicial duties or otherwise give the appearance of impropriety.
  - (a) Compensation shall not exceed a reasonable amount nor shall it exceed what a person who is not a judge would receive for the same activity.
  - (b) Expense reimbursement shall be limited to the actual cost of travel, food and lodging reasonably incurred by the judge and, where appropriate to the occasion, by the judge's spouse or guest. Any payment in excess of such an amount is compensation.
- (2) **Public Reports.** A judge shall comply with those provisions of law requiring the reporting of economic interest to the Mississippi Ethics Commission.

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

**CANON 5**

**A Judge or Judicial Candidate Shall Refrain From Inappropriate Political Activity**

**A.** All Judges and Candidates

- (1) Except as authorized in Sections 5B(2), 5C(1) and 5C(2), a judge or a candidate for election to judicial office shall not:
  - (a) act as a leader or hold an office in a political organization;
  - (b) make speeches for a political organization or candidate or publicly endorse a candidate for public office;
  - (c) solicit funds for or pay an assessment or make a contribution to a political organization or candidate, attend political gatherings, or purchase tickets for political party dinners, or other political functions.
- (2) A judge shall resign from judicial office upon becoming a candidate either in a party primary or in a general election for a non-judicial office, except that the judge may continue to hold judicial office while being a candidate for election to or serving as a delegate in a state constitutional convention if the judge is otherwise permitted by law to do so.

- (3)** A candidate for a judicial office:
- (a) shall maintain the dignity appropriate to judicial office and act in a manner consistent with the integrity and independence of the judiciary, and shall encourage members of the candidate's family to adhere to the same standards of political conduct in support of the candidate as apply to the candidate;
  - (b) shall prohibit employees and officials who serve at the pleasure of the candidate, and shall discourage other employees and officials subject to the candidate's direction and control, from doing on the candidate's behalf what the candidate is prohibited from doing under the Sections of this Canon;
  - (c) except to the extent permitted by Section 5C(2), shall not authorize or knowingly permit any other person to do for the candidate what the candidate is prohibited from doing under the Sections of this Canon;
  - (d) shall not:
    - (i) make pledges or promises of conduct in office other than the faithful and impartial performance of the duties of the office;
    - (ii) make statements that commit or appear to commit the candidate with respect to cases, controversies or issues that are likely to come before the court; or
    - (iii) knowingly misrepresent the identity, qualifications, present position or other fact concerning the candidate or an opponent;
  - (e) may respond to personal attacks or attacks on the candidate's record as long as the response does not violate Section 5A(3)(d).

**B.** Candidates Seeking Appointment to Judicial or Other Governmental Office.

- (1)** Candidates for appointment to judicial office or judges seeking other governmental office shall not solicit or accept funds, personally or through a committee or otherwise, to support their candidacies.
- (2)** A candidate for appointment to judicial office or a judge seeking other governmental office shall not engage in any political activity to secure the appointment except that:
  - (a) such persons may:
    - (i) communicate with the appointing authority, including any selection or nominating commission or other agency designated to screen candidates;
    - (ii) seek support or endorsement for the appointment from organizations that regularly make recommendations for reappointment or appointment to the office, and from individuals to the extent requested or required by those specified in Section 5B(2)(a); and
    - (iii) provide to those specified in Sections 5B(2)(a)(i) and 5B(2)(a)(ii) information as to the candidate's qualifications for the office;
  - (b) a non-judge candidate for appointment to judicial office may, in addition, unless otherwise prohibited by law:
    - (i) retain an office in a political organization,
    - (ii) attend political gatherings, and
    - (iii) continue to pay ordinary assessments and ordinary contributions to a political organization or candidate and purchase tickets for political party dinners or other political functions.

**C.** Judges and Candidates Subject to Public Election.

- (1)** Judges holding an office filled by public election between competing candidates, or candidates for such office, may, only insofar as permitted by law, attend political gatherings, speak to such gatherings in their own behalf while candidates for election or re-election, identify themselves as members of political parties, and contribute to political parties or organizations.
- (2)** A candidate shall not personally solicit or accept campaign contributions or personally solicit publicly stated support. A candidate may, however, establish committees of responsible persons to conduct campaigns for the candidate through media advertisements, brochures, mailings, candidate forums and other means not prohibited by law. Such committees may solicit and accept reasonable campaign contributions, manage the expenditure of funds for the candidate's campaign and obtain public statements of support for the candidacy. Such committees are not prohibited from soliciting and accepting reasonable campaign contributions and public support from lawyers. A candidate's committees shall not solicit or accept contributions and public support for the candidate's campaign earlier than 60 days before the qualifying deadline or later than 120 days after the last election in which the candidate participates during the election year. A candidate shall not use or permit the use of campaign contributions for the private benefit of the candidate or others.
- (3)** Candidates shall instruct their campaign committees at the start of the campaign not to accept campaign

contributions for any election that exceed those limitations placed on contributions by individuals, political action committees and corporations by law.

- (4) A candidate and the candidate's committee shall timely comply with all provisions of law requiring the disclosure and reporting of contributions, loans and extensions of credit.
- D. Incumbent Judges. A judge shall not engage in any political activity except as authorized under any other Section of this Code, on behalf of measures to improve the law, the legal system or the administration of justice, or as expressly authorized by law.
- E. Applicability. Canon 5 generally applies to all incumbent judges and judicial candidates. Successful candidates, whether or not incumbents, are subject to judicial discipline for their campaign conduct; unsuccessful candidates who are lawyers are subject to lawyer discipline for their campaign conduct. Lawyers who are candidates for judicial office are subject to Rule 8.2(b) of the Mississippi Rules of Professional Conduct. However, the provisions of Canon 5F below shall not apply to elections for the offices of justice court judge and municipal judge.
- F. Special Committee--Proceedings and Authority. In every year in which an election is held for Supreme Court, Court of Appeals, chancery court, circuit court or county court judge in this state and at such other times as the Supreme Court may deem appropriate, a Special Committee on Judicial Election Campaign Intervention ("Special Committee") shall be created whose responsibility shall be to issue advisory opinions and to deal expeditiously with allegations of ethical misconduct in campaigns for judicial office. The committee shall consist of five (5) members. The Chief Justice of the Supreme Court, the Governor, the Lieutenant Governor, the Speaker of the House of Representatives of the Mississippi Legislature and the chair of the Commission on Judicial Performance (Commission) shall each appoint one member. Those appointed by the Chief Justice, the Governor and the chair of the Commission shall be attorneys licensed to practice in the state. No person shall be appointed to serve as a member of a Special Committee for the year in which such person is a candidate for judicial office. Should the Chief Justice expect to be a candidate for judicial office during the year for which a Special Committee is to be appointed the Chief Justice shall declare such expectation, and in such event, the appointment which otherwise would have been made by the Chief Justice shall be made by the next senior justice of the Supreme Court not seeking judicial office in such year. Likewise, should the Governor, Lieutenant Governor, Speaker of the House of Representatives or chair of the Commission expect to seek judicial office during such year, that official shall declare such expectation, and the appointment which otherwise would have been made by such appointing authority shall be made, respectively: by the Lieutenant Governor if the Governor expects to seek such an office; by the President Pro Tem of the Senate if the Lieutenant Governor expects to seek such an office; by the Speaker Pro Tem of the House of Representatives if the Speaker expects to seek such an office; and by the vice-chair of the Commission if the chair expects to seek such an office. Any action taken by the Special Committee shall require a majority vote. Each Special Committee shall be appointed no later March 1 in the year of their service, and it shall continue in existence for ninety (90) days following such judicial elections or for so long thereafter as is necessary to consider matters submitted to it within such time. The Commission shall provide administrative support to the Special Committee. Should any appointing authority fail to make an appointment, three members shall constitute a sufficient number to conduct the business of the Special Committee. The objective of the Special Committee shall be to alleviate unethical and unfair campaign practices in judicial elections, and to that end, the Special Committee shall have the following authority:
- (1) Within ten (10) days of the effective date of this rule or within the ten (10) days after formally announcing and/or officially qualifying for election or re-election to any judicial office in this state, whichever is later, all candidates, including incumbent judges, shall forward written notice of such candidacy, together with an appropriate mailing address and telephone number, to the Commission. Upon receipt of such notice, the Special Committee shall, through the Commission, cause to be distributed to all such candidates by certified mail-return receipt requested copies of the following: Canon 5 of the Code of Judicial Conduct; summaries of any previous opinions issued by the Special Committee, Special Committees organized for prior elections, or the Supreme Court of Mississippi, which relate in any way to campaign conduct and practices; and a form acknowledgment, which each candidate shall promptly return to the Commission and therein certify that the candidate has read and understands the materials forwarded and agrees to be bound by such standards during the course of the campaign. A failure to comply with this section shall constitute a per se violation of this Section authorizing the Committee to immediately publicize such failure to all candidates in such race and to all appropriate media outlets. In the event of a question relating to conduct during a judicial campaign, judicial candidates, their campaign organizations, and all independent persons, committees and organizations are encouraged to seek an opinion from the Special Committee before such conduct occurs.

- (2) Opinions as to the propriety of any act or conduct by a judicial candidate, a candidate's campaign organization or an independent person, committee or organization conducting activities which impact on the election and as to the construction or application of Canon 5 may be provided by the Special Committee upon request from any judicial candidate, campaign organization or an independent person, committee or organization. If the Special Committee finds the question of limited significance, it may provide an informal opinion to the questioner. If, however, it finds the questions of sufficient general interest and importance, it may render a formal opinion, in which event it shall cause the opinion to be published in complete or synopsis form. Furthermore, the Special Committee may issue formal opinions on its own motion under such circumstances, as it finds appropriate. The Special Committee may decline to issue an opinion when a majority of the Special Committee members determine that it would be inadvisable to respond to the request and to have so confirmed in writing their reasoning to the person who requested the opinion. All formal opinions of the Special Committee shall be filed with the Supreme Court and shall be a matter of public record except for the names of the persons involved, which shall be excised. Both formal and informal opinions shall be advisory only; however, the Commission on Judicial Performance, the Supreme Court and all other regulatory and enforcement authorities shall consider reliance by a judicial candidate upon the Special Committee opinion in any disciplinary or enforcement proceeding.
- (3) Upon receipt of information facially indicating a violation by a judicial candidate of any provision of Canon 5 during the course of a campaign for judicial office, or indicating actions by an independent person, committee or organization which are contrary to the limitations placed upon candidates by Canon 5, the Commission staff shall immediately forward a copy of the same by e-mail or facsimile, if available, and U.S. mail to the Special Committee members and said Committee shall:
  - (a) seek, from the informing party and/or the subject of the information, such further information on the allegations as it deems necessary;
  - (b) conduct such additional investigation as the Committee may deem necessary;
  - (c) determine whether the allegations warrant speedy intervention and, if so, immediately issue a confidential cease-and-desist request to the candidate and/or organization or independent committee or organization believed to be engaging in unethical and/or unfair campaign practices. If the Committee determines that the unethical and/or unfair campaign practice is of a serious and damaging nature, the Committee may, in its discretion, disregard the issuance of a cease-and-desist request and immediately take action authorized by the provisions of paragraph (3)(d)(i) and (ii), hereafter described. If the allegations of the complaint do not warrant intervention, the Committee shall dismiss the same and so notify the complaining party.
  - (d) If a cease-and-desist request is disregarded or if the unethical or unfair campaign practices otherwise continue, the Committee is further authorized:
    - (i) to immediately release to all appropriate media outlets, as well as the reporting party and the person and/or organization against whom the information is submitted, a public statement setting out the violations believed to exist, or, in the case of independent persons, committees or organizations, the actions by an independent person, committee or organization which are contrary to the limitations placed upon candidates by Canon 5. In the event that the violations or actions have continued after the imposition of the cease and desist request, the media release shall also include a statement that the candidate and/or organization or independent person, committee or organization has failed to honor the cease-and-desist request, and
    - (ii) to refer the matter to the Commission on Judicial Performance or to any other appropriate regulatory or enforcement authority for such action as may be appropriate under the applicable rules.
- (4) All proceedings under this Rule shall be informal and non-adversarial, and the Special Committee shall act on all requests within ten (10) days of receipt, either in person, by facsimile, by U.S. mail, or by telephone. In any event, the Special Committee shall act as soon as possible taking into consideration the exigencies of the circumstances and, as to requests received during the last ten (10) days of the campaign, shall act within thirty-six (36) hours.
- (5) Except as herein specifically authorized, the proceedings of the Special Committee shall remain confidential, and in no event shall the Special Committee have the authority to institute disciplinary action against any candidate for judicial office, which power is specifically reserved to the Commission on Judicial Performance under applicable rules.
- (6) The Committee shall after conclusion of the election distribute to the Commission on Judicial Performance

- copies of all information and all proceedings relating thereto.
- (7) This Canon 5F shall apply to all candidates for judicial offices of the Supreme Court, Court of Appeals, chancery courts, circuit courts and county courts, be they incumbent judges or not, and to the families and campaign/solicitation committees of all such candidates. Persons who seek to have their name placed on the ballot as candidates for such judicial offices and the judicial candidates' election committee chairpersons, or the chairperson's designee, shall no later than 20 days after the qualifying date for candidates in the year in which they seek to run complete a two-hour course on campaign practices, finance, and ethics sponsored and approved by the Committee. Within ten days of completing the course, candidates shall certify to Committee that they have completed the course and understand fully the requirements of Mississippi law and the Code of Judicial Conduct concerning campaign practices for judicial office. Candidates without opposition are exempt from attending the course.