

APPENDIX
Rules Adopted
or Amended by
Per Curiam Orders

IN RE: AMENDMENT OF THE MODEL RULES OF
PROFESSIONAL CONDUCT

746 S.W.2d 380

Supreme Court of Arkansas
Opinion delivered March 14, 1988

PER CURIAM. By per curiam order dated December 14, 1987, we invited comments to a proposal by the Arkansas Bar Association to amend the Model Rules of Professional Conduct. No objections have been raised. Having considered the proposal on its merit, the same is hereby approved. Effective as of the date of this order Rule 1.6 of the Model Rules of Professional Conduct is hereby amended as follows:

1. The ninth paragraph of the Comment to Rule 1.6, the same being the first paragraph under the heading entitled "Disclosure Adverse to Client," is amended to read as follows:

The confidentiality rule is subject to limited exceptions. For instance, in becoming privy to information about a client, a lawyer may foresee that the client intends to commit a crime and may reveal that information to prevent the crime.

2. The thirteenth paragraph of the Comment to Rule 1.6, the same being the fifth paragraph under the heading entitled "Disclosure Adverse to Client," is amended to read as follows:

Third, the lawyer may learn that a client intends prospective conduct that is criminal. As stated in paragraph (b)(1), the lawyer has professional discretion to reveal information in order to prevent the crime which the lawyer reasonably believes is intended by the client. It is, of course, sometimes difficult for a lawyer to "know" when such a purpose will actually be carried out, for the client may have a change of mind.

3. The Code Comparison to Rule 1.6 is amended in its entirety to read as follows:

The general principle of confidentiality is enlarged, under Rule 1.6, in that the confidentiality requirement applies to all information about a client "relating to the

representation." Under the Code, DR 4-101, the requirement applies only to information governed by the attorney-client privilege and to information "gained in" the professional relationship that "the client has requested be held inviolate or the disclosure of which would be embarrassing or would be likely to be detrimental to the client." Rule 1.6 thus imposes confidentiality on information relating to the representation even if it is acquired before or after the relationship existed. It does not require the client to indicate information that is to be confidential, or permit the lawyer to speculate whether particular information might be embarrassing or detrimental. Furthermore, this definition avoids the constricted definition of "confidence" that appears in some decisions.

See Allegaert v. Perot, 434 F. Supp. 790 (S.D.N.Y. 1977); *Moritz v. Medical Protective Co.*, 428 F. Supp. 865 (W.D. Wis. 1977); *City of Wichita v. Chapman*, 521 P.2d 589 (Kan. 1974).

Rule 1.6(a) permits a lawyer to disclose information where impliedly authorized in order to carry out the representation. Under DR 4-101(B) and (C), a lawyer cannot disclose "confidences" unless the client first expressly consents after disclosure.

Rule 1.6(b)(1) is similar to DR 4-101(C)(3), which provides that a lawyer "may reveal the intention of his client to commit a crime and the information necessary to prevent the crime." This option exists regardless of the seriousness of the proposed crime.

With regard to Rule 1.6(b)(2), DR 4-101(C)(4) provides that a lawyer may reveal "confidences or secrets necessary to establish or collect his fee or to defend himself or his employers or associates against an accusation of wrongful conduct." Rule 1.6(b)(2) enlarges the exception to include disclosure of information relating to claims by the lawyer other than for his fee; for example, recovery of property from the client. It narrows the exception dealing with defense against claims of wrongful conduct to situations where the client's conduct was involved.

IT IS SO ORDERED.

RE: RULES AND REGULATIONS OF THE
ARKANSAS SUPREME COURT BOARD OF
CERTIFIED COURT REPORTERS

746 S.W.2d 62

Supreme Court of Arkansas
Opinion delivered March 14, 1988

PER CURIAM. The Rules and Regulations of the Arkansas Supreme Court Board of Certified Court Reporters are amended, effective this date, as follows:

Section 11 of the Regulations, adopted September 26, 1983, by per curiam is deleted.

Section 9 of the Rules, adopted by per curiam July 5, 1983, is amended to read:

After the effective date of this Rule, all transcripts taken in court proceedings, depositions, or before any grand jury will be accepted only if they are certified by a court reporter who holds a valid certificate under this Rule. Provided, however, that depositions taken outside this state for use in this state are acceptable if they comply with the Arkansas Rules of Civil Procedure.

IN RE: STATE BOARD OF LAW EXAMINERS

747 S.W.2d 121

Supreme Court of Arkansas
Delivered April 4, 1988

PER CURIAM. Under the current Rule II of the Rules Governing Admission to the Bar, the State Board of Law Examiners can only release the bar examination grades to unsuccessful applicants. For various reasons, grades should now

be released to successful applicants, as well as the unsuccessful ones. Therefore, we have deleted the word "unsuccessful" from the third paragraph of Rule II. Effective immediately, that paragraph of Rule II shall provide:

The activities, files and records of the Board shall be kept confidential, except for the public hearings required under these rules, the certification of names and addresses of applicants under Rule III of these rules and the furnishing of examination grades to applicants, unless it is necessary to divulge information for disbarment suit purposes on account of the furnishing of information by an applicant, or for release of statistical data, or in the defense of litigation brought against the secretary, the Board or members of the Board. Any information furnished to the secretary or the Board in response to a request by either the secretary or the Board in connection with any application, prior to any hearing under these rules, shall be kept confidential, unless the person furnishing that information waives its confidentiality.

IN RE: STATE BOARD OF LAW EXAMINERS

747 S.W.2d 121

Supreme Court of Arkansas
Delivered April 4, 1988

PER CURIAM. Rule VIII of the Rules Governing Admission to the Bar, which provides the subjects to be covered by the bar examination, now provides that federal civil procedure will not be covered under the subject of Practice, Procedure & Ethics. Effective immediately, we are changing the rule to allow the test on Practice, Procedure & Ethics to include federal civil procedure. That part of the rule is amended to provide:

Practice Procedure & Ethics

(This subject heading may include both state and federal trial and appellate practice and, where applicable, reme-

dies and choice of forum.)

IN THE MATTER OF THE RULES OF THE
SUPREME COURT AND THE COURT OF APPEALS

748 S.W.2d 141

Supreme Court of Arkansas
Opinion delivered April 18, 1988

PER CURIAM. Effective April 18, 1988, Rule 18(a) of the Rules of the Supreme Court and the Court of Appeals is amended to read as follows:

(a) Request Made in Time. — Where either side desires to make an oral argument in any case, counsel shall give the Court and opposing counsel written notice filed with the Clerk not more than five days after appellant's reply brief is filed or becomes due, whichever occurs first.

Counsel who have not requested oral argument are not required to appear at the argument but must, at least five days before the date the argument is to be heard, notify the Clerk that they do not intend to appear.

IN THE MATTER OF Wali MUHAMMED

748 S.W.2d 149

Supreme Court of Arkansas
Opinion delivered April 27, 1988

PER CURIAM. On the recommendation of the Committee on Professional Conduct the surrender of the license of Mr. Wali Muhammed to practice law in Arkansas is hereby accepted.

IT IS SO ORDERED.

GLAZE, J., not participating.

IN RE: RULE 20, RULES OF THE SUPREME COURT
AND THE COURT OF APPEALS—PETITIONS FOR
REHEARING

748 S.W.2d XLVII

Supreme Court of Arkansas
Opinion delivered May 2, 1988

PER CURIAM. Effective September 1, 1988, Rule 20 of the Rules of the Supreme Court and the Court of Appeals, governing petitions for rehearing, is amended by deleting subsection (e) and replacing it with the following:

(e) **Printed or Typewritten—Page Length.**—In all cases, both civil and criminal, the petition and supporting brief, if any, including the style of the case and the certificate of counsel, shall be either printed or typewritten. If printed, the petition and supporting argument shall not exceed ten pages and shall comply with the provisions of Rule 8(a). If typewritten, the petition and supporting argument shall not exceed ten letter size, double-spaced, typewritten pages and shall comply with the provisions of Rule 8(b), except that, if the petition and supporting argument are not more than two legal size, or three letter size, double-spaced, typewritten pages, they need not be bound as set forth in Rule 8(b).

IN RE: THE ARKANSAS CODE OF JUDICIAL
CONDUCT

749 S.W.2d LXV

Supreme Court of Arkansas
Opinion delivered June 6, 1988

PER CURIAM. By per curiam order of November 5, 1973, we declared that the Code of Judicial Conduct promulgated by the American Bar Association constituted proper standards for the

conduct of the judiciary in this state. Although subsequent cases have demonstrated that we regard the code as having been adopted as the law governing judicial conduct, *see, e.g., Jim Halsey Co. v. Bonar*, 284 Ark. 461, 683 S.W.2d 898 (1985); *Ford v. State*, 276 Ark. 98, 633 S.W.2d 3 (1982), and we have amended the code from time to time, we have not previously published it but have made reference to the American Bar Association code.

By this order, we publish the American Bar Association code, with our previous amendments, as the "Arkansas Code of Judicial Conduct." In addition to assimilating amendments previously adopted, *i.e., Re: Petition of Arkansas Bar Association for Modification of Code of Judicial Conduct Relating to Broadcasting & Photographing Court Proceedings*, 271 Ark. 358, 609 S.W.2d 28 (1980); *In Re: The Code of Judicial Conduct*, 274 Ark. 581, 627 S.W.2d 1 (1982); *In Re: Continuation of Modification of Code of Judicial Conduct*, 275 Ark. 495, 628 S.W.2d 573 (1982); *Re: Modification of the Code of Judicial Conduct Relating to Broadcasting & Photographing Court Proceedings*, 275 Ark. 495, 628 S.W.2d 573 (1982); and *In Re: Amendment to Code of Judicial Conduct*, 277 Ark. 519, 641 S.W.2d 2 (1982), we hereby amend Canon 7 B. (2) to require that solicitation of campaign funds by a judicial candidate's committee cease within forty-five days after the last election in which he participates during the election year.

For guidance in interpretation of the code, we also publish the commentary which accompanied the American Bar Association Code of Judicial Conduct.

ARKANSAS CODE OF JUDICIAL CONDUCT

CANON 1

A JUDGE SHOULD 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, and should himself observe, high standards of conduct so that the integrity and independence of the judiciary may be preserved. The provisions of this Code should be construed and applied to further that objective.

CANON 2**A JUDGE SHOULD AVOID IMPROPRIETY
AND THE APPEARANCE OF
IMPROPRIETY IN ALL HIS ACTIVITIES**

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

B. A judge should not allow his family, social, or other relationships to influence his judicial conduct or judgment. He should not lend the prestige of his office to advance the private interests of others; nor should he convey or permit others to convey the impression that they are in a special position to influence him. He should not testify voluntarily as a character witness.

Commentary

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

It is inappropriate for a judge to hold membership in any organization that practices invidious discrimination on the basis of race, sex, religion or national origin. Membership of a judge in an organization that practices invidious discrimination may give rise to perceptions by minorities, women, and others, that the judge's impartiality is impaired. Whether an organization practices invidious discrimination is often a complex question to which judges should be sensitive. The answer cannot be determined from a mere examination of an organization's current membership rolls but rather depends on the history of the organization's selection of members and other relevant factors. Ultimately, each judge must determine in the judge's own conscience whether an organization of which the judge is a member practices invidious discrimination.¹

The testimony of a judge as a character witness injects the prestige of his office into the proceeding in which he testifies and

¹ As amended August 8, 1984, American Bar Association House of Delegates, Chicago, Illinois, per Report 120.

may be misunderstood to be an official testimonial. This Canon, however, does not afford him a privilege against testifying in response to an official summons.

CANON 3

A JUDGE SHOULD PERFORM THE DUTIES OF HIS OFFICE IMPARTIALLY AND DILIGENTLY

The judicial duties of a judge take precedence over all his other activities. His judicial duties include all the duties of his office prescribed by law. In the performance of these duties, the following standards apply:

A. ADJUDICATIVE RESPONSIBILITIES

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

(2) A judge should maintain order and decorum in proceedings before him.

(3) A judge should be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, and others with whom he deals in his official capacity, and should require similar conduct of lawyers, and of his staff, court officials, and others subject to his direction and control.

Commentary

The duty to hear all proceedings fairly and with patience is not inconsistent with the duty to dispose promptly of the business of the court. Courts can be efficient and businesslike while being patient and deliberate.

(4) A judge should accord to every person who is legally interested in a proceeding, or his lawyer, full right to be heard according to law, and, except as authorized by law, neither initiate nor consider *ex parte* or other communications concerning a pending or impending proceeding. A judge, however, may obtain the advice of a disinterested expert on the law applicable to a proceeding before him if he gives notice to the parties of the person consulted and the substance of the advice, and affords the parties reasonable opportunity to respond.

Commentary

The proscription against communications concerning a proceeding includes communications from lawyers, law teachers, and other persons who are not participants in the proceeding, except to the limited extent permitted. It does not preclude a judge from consulting with other judges, or with court personnel whose function is to aid the judge in carrying out his adjudicative responsibilities.

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

(5) A judge should dispose promptly of the business of the court.

Commentary

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

(6) A judge should abstain from public comment about a pending or impending proceeding in any court, and should require similar abstention on the part of court personnel subject to his 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 information the procedures of the court.

Commentary

"Court personnel" does not include the lawyers in a proceeding before a judge. The conduct of lawyers is governed by DR 7-107 of the *Model Code of Professional Responsibility* and by Rule 3.6 of the *Model Rules of Professional Conduct*.

(7) A judge may authorize broadcasting, recording, or photographing in the courtroom and areas immediately adjacent thereto during sessions of court, recesses between sessions, and on other occasions, provided that:

(a) the participants will not be distracted nor will the dignity of the proceedings be impaired;

(b) an objection timely made by a party or attorney

shall preclude broadcasting, recording, or photographing of the proceedings; and, an objection timely made by a witness who has been informed of the right to refuse such exposure, shall preclude broadcasting, recording or photographing of that witness.

(c) the broadcasting, recording or photographing of any court proceeding will be in compliance with the rules adopted by the Arkansas Supreme Court;

(d) trials in juvenile court or concerning adoptions, guardianships and domestic relations shall not be subject to broadcasting, recording or photographing.

B. ADMINISTRATIVE RESPONSIBILITIES

(1) A judge should diligently discharge his administrative responsibilities, maintain professional competence in judicial administration, and facilitate the performance of the administrative responsibilities of other judges and court officials.

(2) A judge should require his staff and court officials subject to his direction and control to observe the standards of fidelity and diligence that apply to him.

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

Commentary

Disciplinary measures may include reporting a lawyer's misconduct to an appropriate disciplinary body.

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

Commentary

Appointees of the judge include officials such as referees, commissioners, special masters, receivers, 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 this subsection.

C. DISQUALIFICATION

(1) A judge should disqualify himself in a proceeding in which his impartiality might reasonably be questioned, including but not limited to instances where:

(a) he has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding;

(b) he served as lawyer in the matter in controversy, or a lawyer with whom he 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;

Commentary

A lawyer in a governmental agency does not necessarily have an association with other lawyers employed by that agency within the meaning of this subsection; a judge formerly employed by a governmental agency, however, should disqualify himself in a proceeding if his impartiality might reasonably be questioned because of such association.

(c) he knows that he, individually or as a fiduciary, or his spouse or minor child residing in his 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) he or his 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.

Commentary

The fact that a lawyer in a proceeding is affiliated with a law firm with which a lawyer-relative of the judge is affiliated does not of itself disqualify the judge. Under appropriate circumstances, the fact that "his impartiality might reasonably be questioned"

under Canon 3C(1), or that the lawyer-relative is known by the judge to have an interest in the law firm that could be “substantially affected by the outcome of the proceeding” under Canon 3C(1)(d)(iii) may require his disqualification.

(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) A judge should inform himself about his personal and fiduciary financial interests, and make a reasonable effort to inform himself about the personal financial interests of his spouse and minor children residing in his household.

(3) For the purposes of this section:

(a) the degree of relationship is calculated according to the civil law system;

Commentary

According to the civil law system, the third degree of relationship test would, for example, disqualify the judge if his or his spouse’s father, grandfather, uncle, brother, or niece’s husband were a party or lawyer in the proceeding, but would not disqualify him if a cousin were a party or lawyer in the proceeding.

(b) “fiduciary” includes such relationships as executor, administrator, trustee, and guardian;

(c) “financial interest” means ownership of a legal or equitable interest, however small, or a relationship as director, advisor, or other active participant in the affairs of a party, except that:

(i) ownership in a mutual or common investment fund that holds securities is not a “financial interest” in such securities unless the judge participates in the management of the fund;

(ii) an office in an educational, religious, charitable, fraternal, or civic organization is not a “financial inter-

est" in securities held by the organization;

(iii) the proprietary interest of a policy holder in a mutual insurance company, of a depositor in a mutual savings association, or a similar proprietary interest, is a "financial interest" in the organization only if the outcome of the proceeding could substantially affect the value of the interest;

(iv) ownership of government securities is a "financial interest" in the issuer only if the outcome of the proceeding could substantially affect the value of the securities.

D. REMITTAL OF DISQUALIFICATION

A judge disqualified by the terms of Canon 3C(1)(c) or Canon 3C(1)(d) may, instead of withdrawing from the proceeding, disclose on the record the basis of his disqualification. If, based on such disclosure, the parties and lawyers, independently of the judge's participation, all agree in writing that the judge's relationship is immaterial or that his financial interest is insubstantial, the judge is no longer disqualified, and may participate in the proceeding. The agreement, signed by all parties and lawyers, shall be incorporated in the record of the proceeding.

Commentary

This procedure is designed to minimize the chance that a party or lawyer will feel coerced into an agreement. When a party is not immediately available, the judge without violating this section may proceed on the written assurance of the lawyer that his party's consent will be subsequently filed.

CANON 4

A JUDGE MAY ENGAGE IN ACTIVITIES TO IMPROVE THE LAW, THE LEGAL SYSTEM, AND THE ADMINISTRATION OF JUSTICE

A judge, subject to the proper performance of his judicial duties, may engage in the following quasi-judicial activities, if in doing so he does not cast doubt on his capacity to decide impartially any issue that may come before him.

A. He may speak, write, lecture, teach, and participate in other activities concerning the law, the legal system, and the

administration of justice.

B. He may appear at a public hearing before an executive or legislative body or official on matters concerning the law, the legal system, and the administration of justice, and he may otherwise consult with an executive or legislative body or official, but only on matters concerning the administration of justice.

C. He may serve as a member, officer, or director of an organization or governmental agency devoted to the improvement of the law, the legal system, or the administration of justice. He may assist such an organization in raising funds and may participate in their management and investment, but should not personally participate in public fund-raising activities. He may make recommendations to public and private fund-granting agencies on projects and programs concerning the law, the legal system, and the administration of justice.

Commentary

As a judicial officer and person specially learned in the law, a judge is in a unique position to contribute to the improvement of the law, the legal system, and the administration of justice, including revision of substantive and procedural law and improvement of criminal and juvenile justice. To the extent that his time permits, he is encouraged to do so, either independently or through a bar association, judicial conference, or other organization dedicated to the improvement of the law.

Extra-judicial activities are governed by Canon 5.

CANON 5

**A JUDGE SHOULD REGULATE HIS
EXTRA-JUDICIAL ACTIVITIES TO MINIMIZE THE
RISK OF CONFLICT WITH HIS JUDICIAL DUTIES**

A. AVOCATIONAL ACTIVITIES

A judge may write, lecture, teach, and speak on non-legal subjects, and engage in the arts, sports, and other social and recreational activities, if such avocational activities do not detract from the dignity of his office or interfere with the performance of his judicial duties.

Commentary

Complete separation of a judge from extra-judicial activities

is neither possible nor wise; he should not become isolated from the society in which he lives.

B. CIVIC AND CHARITABLE ACTIVITIES

A judge may participate in civic and charitable activities that do not reflect adversely upon his impartiality or interfere with the performance of his 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 its members, subject to the following limitations:

(1) A judge should not serve if it is likely that the organization will be engaged in proceedings that would ordinarily come before him or will be regularly engaged in adversary proceedings in any court.

Commentary

The changing nature of some organizations and of their relationship to the law makes it necessary for a judge regularly to reexamine the activities of each organization with which he is affiliated to determine if it is proper for him to continue his relationship with it. For example, in many jurisdictions charitable hospitals are now more frequently in court than in the past. Similarly, the boards of some legal aid organizations now make policy decisions that may have political significance or imply commitment to causes that may come before the courts for adjudication.

(2) A judge should not solicit funds for any educational, religious, charitable, fraternal, or civic organization, or use or permit the use of the prestige of his office for that purpose, but he may be listed as an officer, director, or trustee of such an organization. He should not be a speaker or the guest of honor at an organization's fund-raising events, but he may attend such events.

(3) A judge should not give investment advice to such an organization, but he may serve on its board of directors or trustees even though it has the responsibility for approving investment decisions.

Commentary

A judge's participation in an organization devoted to quasi-

judicial activities is governed by Canon 4.

C. FINANCIAL ACTIVITIES

(1) A judge should refrain from financial and business dealings that tend to reflect adversely on his impartiality, interfere with the proper performance of his judicial duties, exploit his judicial position, or involve him in frequent transactions with lawyers or persons likely to come before the court on which he serves.

(2) Subject to the requirement of subsection (1), a judge may hold and manage investments, including real estate, and engage in other remunerative activity including the operation of a business.

Commentary

The Effective Date of Compliance provision of this Code qualifies this subsection with regard to a judge engaged in a family business at the time this Code becomes effective.

Canon 5 may cause temporary hardship in jurisdictions where judicial salaries are inadequate and judges are presently supplementing their income through commercial activities. The remedy, however, is to secure adequate judicial salaries.

*[Canon 5C(2) sets the minimum standard to which a full-time judge should adhere. Jurisdictions that do not provide adequate judicial salaries but are willing to allow full-time judges to supplement their incomes through commercial activities may adopt the following substitute until such time as adequate salaries are provided:

(2) Subject to the requirement of subsection (1), a judge may hold and manage investments, including real estate, and engage in other remunerative activity including the operation of a business.

Jurisdictions adopting the foregoing substitute may also wish to prohibit a judge from engaging in certain types of businesses such as that of banks, public utilities, insurance companies, and other businesses affected with a public interest.]

(3) A judge should manage his investments and other financial interests to minimize the number of cases in which he is disqualified. As soon as he can do so without serious financial detriment, he should divest himself of investments and other financial interests that might require frequent disqualification.

(4) Neither a judge nor a member of his family residing in his household should accept a gift, bequest, favor, or loan from anyone except as follows:

(a) a judge may accept a gift incident to public testimonial to him; books supplied by publishers on a complimentary basis for official use; or an invitation to the judge and his spouse to attend a bar-related function or activity devoted to the improvement of the law, the legal system, or the administration of justice;

(b) a judge or a member of his family residing in his household may accept ordinary social hospitality; a gift, bequest, favor, or loan from a relative; a wedding or engagement gift; a loan from a lending institution in its regular course of business on the same terms generally available to persons who are not judges; or a scholarship or fellowship awarded on the same terms applied to other applicants;

(c) a judge or a member of his family residing in his household may accept any other gift, bequest, favor, or loan only if the donor is not a party or other person whose interests have come or are likely to come before him, and, if its value exceeds \$100, the judge reports it in the same manner as he reports compensation in Canon 6C.

Commentary

This subsection does not apply to contributions to a judge's campaign for judicial office, a matter governed by Canon 7.

(5) For the purposes of this section "member of his family residing in his household" means any relative of a judge by blood or marriage, or a person treated by a judge as a member of his family, who resides in his household.

(6) A judge is not required by this Code to disclose his income, debts, or investments, except as provided in this Canon and Canons 3 and 6.

Commentary

Canon 3 requires a judge to disqualify himself in any proceeding in which he has a financial interest, however small; Canon 5 requires a judge to refrain from engaging in business and

from financial activities that might interfere with the impartial performance of his judicial duties; Canon 6 requires him to report all compensation he receives for activities outside his judicial office. A judge has the rights of an ordinary citizen, including the right to privacy of his financial affairs, except to the extent that limitations thereon are required to safeguard the proper performance of his duties. Owning and receiving income from investments do not as such affect the performance of a judge's duties.

(7) Information acquired by a judge in his judicial capacity should not be used or disclosed by him in financial dealings or for any other purpose not related to his judicial duties.

D. FIDUCIARY ACTIVITIES

A judge should not serve as the executor, administrator, trustee, guardian, or other fiduciary, except for the estate, trust, or person of a member of his family, and then only if such service will not interfere with the proper performance of his judicial duties. "Member of his family" includes a spouse, child, grandchild, parent, grandparent, or other relative or person with whom the judge maintains a close familial relationship. As a family fiduciary a judge is subject to the following restrictions:

(1) He should not serve if it is likely that as a fiduciary he will be engaged in proceedings that would ordinarily come before him, or if the estate, trust, or ward becomes involved in adversary proceedings in the court on which he serves or one under its appellate jurisdiction.

Commentary

The Effective Date of Compliance provision of this Code qualifies this subsection with regard to a judge who is an executor, administrator, trustee, or other fiduciary at the time this Code becomes effective.

(2) While acting as a fiduciary a judge is subject to the same restrictions on financial activities that apply to him in his personal capacity.

Commentary

A judge's obligation under this Canon and his obligation as a fiduciary may come into conflict. For example, a judge should resign as trustee if it would result in detriment to the trust to divest it of holdings whose retention would place the judge in

violation of Canon 5C(3).

E. ARBITRATION

A judge should not act as an arbitrator or mediator.

F. PRACTICE OF LAW

A judge should not practice law.

G. EXTRA-JUDICIAL APPOINTMENTS

A judge should not accept appointment to a governmental committee, commission, or other 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, however, may represent his country, state, or locality on ceremonial occasions or in connection with historical, educational, and cultural activities.

Commentary

Valuable services have been rendered in the past to the states and the nation by judges appointed by the executive to undertake important extra-judicial assignments. The appropriateness of conferring these assignments on judges must be reassessed, however, in light of the demands on judicial manpower created by today's crowded dockets and the need to protect the courts from involvement in extra-judicial matters that may prove to be controversial. Judges should not be expected or permitted to accept governmental appointments that could interfere with the effectiveness and independence of the judiciary.

CANON 6

A JUDGE SHOULD REGULARLY FILE REPORTS OF COMPENSATION RECEIVED FOR QUASI-JUDICIAL AND EXTRA-JUDICIAL ACTIVITIES

A judge may receive compensation and reimbursement of expenses for the quasi-judicial and extra-judicial activities permitted by this Code, if the source of such payments does not give the appearance of influencing the judge in his judicial duties or otherwise give the appearance of impropriety, subject to the following restrictions.

A. COMPENSATION

Compensation should not exceed a reasonable amount nor should it exceed what a person who is not a judge would receive for the same activity.

B. EXPENSE REIMBURSEMENT

Expense reimbursement should be limited to the actual cost of travel, food, and lodging reasonably incurred by the judge and, where appropriate to the occasion, by his spouse. Any payment in excess of such an amount is compensation.

C. PUBLIC REPORTS

A judge should report the date, place, and nature of any activity for which he received compensation, and the name of the payor and the amount of compensation so received. Compensation or income of a spouse attributed to the judge by operation of a community property law is not extra-judicial compensation to the judge. His report should be made at least annually and should be filed as a public document in the office of the clerk of the court on which he serves or other office designated by rule of court.

CANON 7

A JUDGE SHOULD REFRAIN FROM POLITICAL ACTIVITY INAPPROPRIATE TO HIS JUDICIAL OFFICE

A. POLITICAL CONDUCT IN GENERAL

(1) A judge or a candidate for election to judicial office should not:

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

(b) make speeches for a political organization or candidate or publicly endorse a candidate for public office;

Commentary

A candidate does not publicly endorse another candidate for public office by having his name on the same ticket.

(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 functions, except as authorized in subsec-

tion A(2).

(2) A judge holding an office filled by public election between competing candidates, or a candidate for such office, may, only insofar as permitted by law, attend political gatherings, speak to such gatherings on his own behalf when he is a candidate for election or re-election, identify himself as a member of a political party, and contribute to a political party or organization.

(3) A judge should resign his office when he becomes a candidate either in a party primary or in a general election for a non-judicial office, except that he may continue to hold his judicial office while being a candidate for election to or serving as a delegate in a state constitutional convention, if he is otherwise permitted by law to do so.

(4) A judge should not engage in any other political activity except on behalf of measures to improve the law, the legal system, or the administration of justice.

B. CAMPAIGN CONDUCT

(1) A candidate, including an incumbent judge, for a judicial office that is filled either by public election between competing candidates or on the basis of a merit system election:

(a) should maintain the dignity appropriate to judicial office, and should encourage members of his family to adhere to the same standards of political conduct that apply to him;

(b) should prohibit public officials or employees subject to his direction or control from doing for him what he is prohibited from doing under this Canon; and except to the extent authorized under subsection B(2) or B(3), he should not allow any other person to do for him what he is prohibited from doing under this Canon;

(c) should not make pledges or promises of conduct in office other than the faithful and impartial performance of the duties of the office; announce his views on disputed legal or political issues; or misrepresent his identity, qualifications, present position, or other fact.

(2) A candidate, including an incumbent judge, for a judicial office that is filled by public election between competing candidates should not himself solicit or accept campaign funds, or

solicit publicly stated support, but he may establish committees of responsible persons to secure and manage the expenditure of funds for his campaign and to obtain public statements of support for his candidacy. Such committees are not prohibited from soliciting campaign contributions and public support from lawyers. A candidate's committees may solicit funds for his campaign no earlier than 180 days before a primary election and no later than 45 days after the last election in which he participates during the election year. Should funds be received prior to the 180-day limitation or after the 45-day post-election limitation they should be returned to the contributor. If funds are received personally by a judicial candidate, he should promptly turn them over to his campaign committee. A candidate should not use or permit the use of campaign contributions for the private benefit of himself or members of his family.

Commentary

Unless the candidate is required by law to file a list of his campaign contributors, their names should not be revealed to the candidate.

[Each jurisdiction adopting this Code should prescribe a time limit on soliciting campaign funds that is appropriate to the elective process therein.]

(3) An incumbent judge who is a candidate for retention in or re-election to office without a competing candidate, and whose candidacy has drawn active opposition, may campaign in response thereto and may obtain publicly stated support and campaign funds in the manner provided in subsection B(2).

COMPLIANCE WITH THE CODE OF JUDICIAL CONDUCT

Anyone, whether or not a lawyer, who is an officer of a judicial system performing judicial functions, including an officer such as a referee in bankruptcy, special master, court commissioner, or magistrate, is a judge for the purpose of this Code. All judges should comply with this Code except as provided below.

A. PART-TIME JUDGE

A part-time judge is a judge who serves on a continuing or periodic basis, but is permitted by law to devote time to some other profession or occupation and whose compensation for that reason

is less than that of a full-time judge. A part-time judge:

(1) is not required to comply with Canon 5C(2), D, E, F, and G, and Canon 6C;

(2) should not practice in the court on which he or she serves or in any other court in the same county over which a part-time judge presides. He or she should not appear as counsel on appeal in any case which originates or arises in the court over which he or she presides.

B. JUDGE PRO TEMPORE

A judge *pro tempore* is a person who is appointed to act temporarily as a judge.

(1) While acting as such, a judge *pro tempore* is not required to comply with Canon 5C(2), (3), D, E, F, and G, and Canon 6C.

(2) A person who has been a judge *pro tempore* should not act as a lawyer in a proceeding in which he has served as a judge or in any other proceeding related thereto.

C. RETIRED JUDGE

A retired judge who receives the same compensation as a full-time judge on the court from which he retired and is eligible for recall to judicial service should comply with all the provisions of this Code except Canon 5G, but he should refrain from judicial service during the period of an extra-judicial appointment not sanctioned by Canon 5G. All other retired judges eligible for recall to judicial service should comply with the provisions of this Code governing part-time judges.

EFFECTIVE DATE OF COMPLIANCE

A person to whom this Code becomes applicable should arrange his affairs as soon as reasonably possible to comply with it. If, however, the demands on his time and the possibility of conflicts of interest are not substantial, a person who holds judicial office on the date this Code becomes effective may:

(a) continue to act as an officer, director, or non-legal advisor of a family business;

(b) continue to act as an executor, administrator, trustee, or other fiduciary for the estate or person of one who is not a member of his family.



Appointments to Committees

IN THE MATTER OF THE COMMITTEE ON THE
UNAUTHORIZED PRACTICE OF LAW

746 S.W.2d XLIII

Supreme Court of Arkansas
Delivered March 28, 1988

PER CURIAM. Ms. Carolyn Clegg, Magnolia, Arkansas, is hereby appointed to our Committee on the Unauthorized Practice of Law, replacing John R. Graves, Hope, Arkansas.

The court expresses its gratitude to John R. Graves, for his faithful service as a member of this Committee.

IN RE: ARKANSAS SUPREME COURT BOARD OF
CERTIFIED COURT REPORTER EXAMINERS

746 S.W.2d XLVI

Supreme Court of Arkansas
Delivered April 4, 1988

PER CURIAM. The Honorable John Cole, Malvern, Arkansas, The Honorable Jim Hannah, Searcy, Arkansas, and Ms. Maria Lafferty, Pine Bluff, Arkansas, are appointed to the Board effective July 8, 1988. Each appointment, is for a three-year term expiring July 8, 1991.

The Court expresses its gratitude to The Honorable Gayle Ford, Mena, Arkansas, The Honorable Jerry Mazzanti, Lake Village, Arkansas, and Allen Hill, Esq., Searcy, Arkansas for their faithful service on the Board.

IN THE MATTER OF THE BOARD OF LAW
EXAMINERS

746 S.W.2d XLIV

Supreme Court of Arkansas
Delivered April 4, 1988

PER CURIAM. W. Frank Morledge, Forrest City, Arkansas, James R. Wallace, Little Rock, Arkansas, A. Watson Bell, Searcy, Arkansas, E. Lamar Pettus, Fayetteville, Arkansas, and Dennis L. Shackelford, El Dorado, Arkansas are hereby appointed to the Arkansas State Board of Law Examiners for a term ending September 30, 1991.

The Court expresses its gratitude to E. Lamar Pettus, Fayetteville, Arkansas for accepting reappointment to the Board and to Garland Ridenour, Helena, Arkansas, Ronald May, Little Rock, Arkansas, Jim McLarty, Newport, Arkansas, and Robert S. Hargraves, Hot Springs, Arkansas for their faithful service on the Board.

IN THE MATTER OF THE SUPREME COURT
COMMITTEE ON PROFESSIONAL CONDUCT

746 S.W.2d XLV

Supreme Court of Arkansas
Delivered April 4, 1988

PER CURIAM. Sue Winter, Little Rock, Arkansas is appointed to the Supreme Court on Professional Conduct. Her appointment is for a four-year term expiring January 1, 1992.

The Court expresses its gratitude to Ms. Susan Miller for her faithful service on the Board.

IN THE MATTER OF THE MODEL CRIMINAL JURY
INSTRUCTION COMMITTEE

Supreme Court of Arkansas
Opinion delivered April 18, 1988

PER CURIAM. John C. Calhoun, Esq., of Little Rock is hereby appointed Chairman in place of Wayne Matthews, Esq., of Pine Bluff.

The Court expresses its gratitude to Mr. Matthews for his faithful service as Chairman.