

AJS Proposals to Amend the 1990 ABA Model Code of Judicial Conduct

Submitted to the ABA Joint Commission to Evaluate
the Model Code of Judicial Conduct
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**CANON 1: A JUDGE SHALL UPHOLD THE INTEGRITY, IMPARTIALITY, AND
INDEPENDENCE OF THE JUDICIARY**

**CANON 2: A JUDGE SHALL AVOID IMPROPRIETY AND THE APPEARANCE OF
IMPROPRIETY IN
ALL OF THE JUDGE'S ACTIVITIES**

A. A judge shall respect and comply with the law and shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary. A judge shall not at any time engage in conduct that reflects adversely on the judge's honesty, impartiality, temperament, or fitness to serve as a judge.

Commentary:

The prohibition against behaving with impropriety or the appearance of impropriety applies to both the professional and personal conduct of a judge. Because it is not practicable to list all prohibited acts, the proscription is necessarily cast in general terms that extend to conduct by judges that is harmful although not specifically mentioned in the Code. Actual improprieties under this standard include violations of law, court rules or other specific provisions of this Code. The test for appearance of impropriety is whether the conduct would create in reasonable minds a perception that the judge violated this code or engaged in conduct that reflects adversely on the judge's honesty, impartiality, temperament, or fitness to serve as a judge.

[AJS maintains that a judge's responsibility to avoid the appearance of impropriety should remain a mandatory obligation both to set the highest standard for judges seeking guidance from the code for prospective conduct and to establish an enforceable disciplinary rule. Judicial discipline cases applying the appearance of impropriety standard are discussed in the article "Canons 1 and 2" in the fall 2003 issue of the Judicial Conduct Reporter published by the Center for Judicial Ethics.]

B. A judge shall not allow family, social, political or other relationships to influence the judge's judicial conduct or judgment. A judge shall not lend the prestige of judicial office to advance the private interests of the judge or others; nor shall a judge convey or permit others to convey the impression that they are in a special position to

influence the judge. A judge shall not testify voluntarily as a character witness in adjudicative proceedings including disciplinary matters nor communicate character information to a sentencing judge or a probation or corrections officer but may provide to such persons other information for the record in response to a formal request.

Commentary:

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Although a judge should be sensitive to possible abuse of the prestige of office, a judge may, based on the judge's personal knowledge, serve as a reference or provide a letter of recommendation for a person seeking employment, admission to an educational institute or the bar, or in similar situations. A judge may use official or chambers stationery when writing a letter of recommendation for someone the judge knows in an official capacity such as, for example, a current or former staff member but should not use official or chambers stationery if the basis for the reference is unrelated to the judge's office such as, for example, a neighbor or personal friend.

CANON 3: A JUDGE SHALL PERFORM THE DUTIES OF JUDICIAL OFFICE
IMPARTIALLY AND DILIGENTLY

B. Adjudicative Responsibilities.

(1) A judge shall hear and decide matters assigned to the judge except those in which the judge's impartiality might reasonably be questioned under Canon 3E. .

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

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

(4) A judge shall be patient, dignified and courteous to litigants, jurors, witnesses, lawyers, court staff, other judges, and others with whom the judge deals in an official capacity, and shall require similar conduct of lawyers, and of staff, court officials and others subject to the judge's 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, sex, religion, national origin, disability, age, sexual orientation, marital status, parenthood, language, ethnicity, or socioeconomic status, and shall not permit staff, court officials and others subject to the judge's direction and control to do so.

Commentary:

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

Examples of manifestations of bias include but are not limited to epithets, slurs, demeaning nicknames, negative stereotyping, attempted humor based on stereotypes, threatening, intimidating or hostile acts, suggesting a connection between race or nationality and crime, irrelevant references to personal characteristics, and insensitive statements about crimes against women. This rules does not preclude legitimate references to those factors when relevant to an issue in a proceeding.

(6) A judge shall require lawyers in proceedings before the judge to refrain from

manifesting, by words or conduct, bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation, or socioeconomic status, marital status, parenthood, language, or ethnicity against parties, witnesses, counsel or others. This Section 3B(6) does not preclude legitimate advocacy when race, sex, religion, national origin, disability, age, sexual orientation or socioeconomic status, or other similar factors, are issues in the proceeding.

(7) A judge shall not engage in sexual harassment and shall require the same standard of conduct of others subject to the judge's direction and control.

Commentary:

“Sexual harassment” includes but is not limited to sexual advances, requests for sexual favors, comments about physical attributes, repeated and unwanted attempts at a romantic relationship, sexual gestures, offensive or suggestive remarks, sexually explicit questions, improper touching, lewd and vulgar language, suggestive or explicit pictures or images, and other verbal or physical conduct of a sexual nature that is unwelcome, regardless of gender.

[The California Supreme Court recently amended its code of judicial conduct based on the conclusion of its Advisory Committee that the reference to sexual harassment in the commentary was not sufficiently explicit and the prohibition should “be strengthened by replacing the language in the Commentary and adding specific language to the Canon itself.” The number of cases across the country in which judges have been disciplined for sexual harassment supports that conclusion.]

8) 'A judge shall not initiate, permit, or consider ex parte communications 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) A judge may consult with other judges or with court personnel whose function is to aid the judge in carrying out the judge's adjudicative responsibilities as long as the person consulted does not have a disqualifying interest in the proceeding or **is not in a subordinate or appellate court that may hear the matter** and the judge does not abrogate the responsibility to personally decide the case and takes all reasonable steps to avoid

receiving factual information that is not part of the record.

(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.

Commentary:

An “ex parte communication” is any communication (including independent investigations of the facts and communications not on the merits) without notice to or participation by all parties or lawyers for all other parties between a judge (or by court staff on behalf of a judge) and any other person regardless whether that person is a participant in the proceeding.

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

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

An ex parte communication with other judges and court personnel is not appropriate under Canon 3B(8)(c) if the judge knows the other judge or member of court staff has a disqualifying interest in the proceeding. Similarly, a judge should not consult with a member of [a subordinate or appellate court that may hear the matter](#). The exception for consultation with court personnel is not intended to authorize ex parte consultation with court staff whose function is to provide evidence or act as an advocate in a proceeding.

Even when an ex parte request is authorized by law, a judge should scrupulously examine the facts and the principles of law upon which it is based, granting the request only when fully satisfied that the law permits it.

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

Although certain ex parte communications are allowed to facilitate scheduling and other administrative purposes and to accommodate emergencies, in general, a judge must discourage ex parte communication and allow it only if all the criteria stated in Section 3B(7) are clearly met.

If communication between the trial judge and the appellate court with respect to a

proceeding is permitted, a copy of any written communication or the substance of any oral communication should be provided to all parties.

(9) If a judge inadvertently receives an unauthorized ex parte communication, the judge shall disclose the communication on the record and give the parties a reasonable opportunity to respond.

[The need for clarification of the ex parte communication provision is suggested by the revisions made by the states in adopting the rule as described in the article “Ex Parte Communications” in the fall 2003 issue of the Judicial Conduct Reporter.]

(10) A judge shall not, while a proceeding is pending or impending in any court, make any public comment except in the course of official duties, to explain the procedures of the court for public information, or as part of a legal education program. A judge shall require similar abstention on the part of court personnel subject to the judge’s direction and control. A judge shall not discuss the rationale for a decision outside the record unless the judge is repeating what was already made part of the public record.

Commentary:

The requirement that judges abstain from public comment regarding a pending or impending proceeding continues during any appellate process and until final disposition. This Section does not prohibit a judge from commenting on proceedings in which the judge is a litigant in a personal capacity, but in cases such as a writ of mandamus where the judge is a litigant in an official capacity, the judge must not comment publicly. By refraining from public comment, judges reassure the public that cases are being tried, not in the press, but in the public forum devoted to that purpose. This prohibition does not preclude a judge from making a public comment reiterating without elaboration what is set forth in the public record in a case, including pleadings, documentary evidence, and the transcript of proceedings held in open court. Speaking to a journalist is public comment even where it is agreed that the statements are “off the record.” Even in legal education programs and materials, a judge should not discuss a pending case in which the judge is personally participating or has participated.

A proceeding remains pending during any appellate process and until final disposition. This prohibition applies even if a case is not currently pending before a judge. A proceeding is “impending” where there is reason to believe a case may be filed, for example, if a crime is being investigated but no charges have been brought, if someone has been arrested but not yet charged, or if legislation has been passed that will probably be challenged in the courts.

[The difficulty of assessing the effect of a judge’s public comment may subject the current model version of the prohibition on commenting on pending cases to a constitutional challenge on vagueness grounds. The AJS proposals clarify the prohibition

while narrowing it to allow comment during educational presentations. The proposed new commentary also emphasizes the importance of the prohibition in ensuring public confidence in judicial decisions. The revisions adopted by the states in the prohibition are discussed in the article “Commenting on Pending Cases” in the fall 2003 issue of the Judicial Conduct Reporter.]

C. Administrative Responsibilities.

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(4) A judge shall not make unnecessary appointments. A judge shall exercise the power of appointment impartially, on the basis of merit, and without favoritism based on family, social, political, or other relationships. A judge shall not engage in nepotism and shall comply with any relevant anti-nepotism statute. A judge shall not approve compensation of appointees beyond the fair value of services rendered.

Commentary:

This rule applies to the appointment, hiring, or voting for the appointment or hiring of a member of the judge’s staff, the staff of court of which the judge is a member, or an appointee in a judicial proceeding. The prohibition on nepotism applies to any relative within the degree of relationship established by statute or rule or, in the absence of a definition under state law, to a an individual who is a relative within the third degree of relationship of either the judge or the judge’s spouse or the spouse of such a person.

Appointees of a judge include assigned counsel, officials such as referees, commissioners, special masters, receivers and guardians and personnel such as clerks, secretaries and bailiffs. Consent by the parties to an appointment or an award of compensation does not relieve the judge of the obligation to only approve compensation that matches the fair value of services rendered..

D. Disciplinary Responsibilities.

(1) A judge who has knowledge or reliable information indicating a likelihood that another judge has committed a violation of this Code shall take appropriate action. A judge having knowledge or reliable information that another judge has committed a violation of this Code that raises a substantial question as to the other judge’s integrity, temperament, diligence, or fitness for office shall inform the appropriate authority.

[The necessity for clarifying and strengthening a judge’s disciplinary responsibilities is described in the article “Disciplinary Responsibilities” in the fall 2003 issue of the Judicial Conduct Reporter.]

(2) A judge who has knowledge or reliable information indicating a likelihood

that a lawyer has committed a violation of the Rules of Professional Conduct shall take appropriate action. A judge having knowledge or reliable information 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) A judge who has reliable information that the performance of a lawyer or of another judge may be impaired by drugs, alcohol, or other mental, emotional, or physical condition shall take appropriate action, which may include a confidential referral to an appropriate lawyer or judicial assistance program.”

(4) A judge, including a respondent judge, shall cooperate and be candid with the judicial conduct commission or attorney disciplinary board and shall not intentionally misrepresent a material fact or engage in willful concealment during disciplinary proceedings.

[Failure to cooperate with the judicial conduct commission and even misrepresentations during disciplinary proceedings frequently form the basis for discipline and is often a factor in removal decisions. Some cases are discussed in the article “The Importance of a Judge’s Conduct During Judicial Discipline Proceedings” in the fall 2002 issue of the Judicial Conduct Reporter.]

E. Disqualification.

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

* * *

(c) within the preceding three years, the judge was associated in the private practice of law with any law firm or lawyer currently representing any party in the controversy or represented any party to the controversy while the judge was an attorney engaged in the private practice of law.

(d) the judge while serving in governmental employment participated as counsel, advisor, or material witness concerning the proceeding.

(e) the judge presided as a judge before whom the proceeding was tried or heard in a lower court.

* * *

(3) Unless the rule of necessity applies, a judge who is disqualified from a case shall take no further judicial action except whatever ministerial actions are necessary to remove the case from the judge's docket and shall not communicate about the case with the succeeding judge. Appellate court judges who are disqualified shall take steps to ensure that he or she does not receive the briefs, draft opinions, and other materials distributed to the other judges and shall not participate in or be present for any discussion of the case.

CANON 4: A JUDGE SHALL SO CONDUCT THE JUDGE'S EXTRA-JUDICIAL
ACTIVITIES AS TO MINIMIZE THE RISK OF CONFLICT WITH JUDICIAL
OBLIGATIONS

B. A judge shall not use court staff, resources, stationery, equipment, or premises for personal, business, family, or political activities except for incidental or de minimis use or relating to matters concerning the law, the legal system, or the administration of justice.

[Canon 4D of the Code of Conduct for U.S. Judges provides that a “judge should not use to any substantial degree judicial chambers, resources, or staff to engage in [extra-judicial activities to improve the law, the legal system, and the administration of justice”]. Canon 5H provides that a “judge should not use judicial chambers, resources, or staff to engage in [avocational activities, civic and charitable activities, financial activities, and extra-judicial appointments] except for uses that are de minimis.” These restrictions are discussed in U.S. Advisory Opinion 79 and U.S. Advisory Opinion 80.]

C. Governmental, Civic or Charitable Activities.

* * *

(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.

Commentary:

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

Canon 4A(1) and Canon 4C(2) read in conjunction require a judge to gather sufficient information to determine whether the work of a particular government commission concerns “the improvement of the law, the legal system, or administration of justice” and

whether the judge’s participation on the commission would “cast reasonable doubt” on a judge’s capacity to act impartially.

To come within the exception for improvement of the law, the legal system, or the administration of justice, the government commission must have a direct connection with how the court system meets its statutory and constitutional responsibilities, in other words, how the courts go about their business, and the commission should relate to matters a judge, by virtue of judicial experience, is uniquely qualified to address. Commissions designed to improve the operation of another branch of government, for example, law enforcement or prison reform, do not fall within the exception. Moreover, membership by a judge on a commission may create the appearance that the judge could not act impartially if the commission does not have a diverse membership that represents more than one point of view or the commission advocates the rights of specific types of participants in the justice system. Even if a judge may not be a member of a commission, a judge may educate and assist the commission by offering the judge’s expertise on the law, the legal system, or administration of justice.

[The proposed clarifications are based on the numerous advisory opinions that address the propriety of a judge’s involvement on government commissions on such issues as domestic violence, substance abuse, protection of children, juvenile justice, victim services, and anti-crime initiatives as discussed in the paper “Ethics and Judges’ Evolving Roles Off the Bench: Serving on Governmental Commissions” by Cynthia Gray published by AJS in 2002.]

(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, community, or civic organization not conducted for profit, subject to the following limitations and the other requirements of this Code.

* * *

(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,

(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 the solicitation of funds and in-kind donations or other fund-raising activities, including being a speaker, guest of honor, or other featured participant at an organization’s fund-raising event, except that a judge may solicit funds from other judges over whom the judge does not exercise supervisory or appellate authority and from relatives or close personal friends whose appearance or

interest in a case would in any event require disqualification under Section 3E;

(iviii) 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;

(v) shall not solicit attorneys to participate in specific pro bono programs or to accept particular cases but may encourage attorneys to participate generally in pro bono efforts, including referring to a list of pro bono programs.

vi) shall not use or permit the use of the prestige of judicial office for fund-raising or membership solicitation.

(vii) shall inform all organizations in which the judge is involved of the limitations on the judge's participation in fund-raising and the use of the judge's name, require those organizations to comply with Canon 4C(3)(b), and review and approve the content of materials used in fund-raising that include the judge's name.

Commentary:

Solicitation of funds for an organization and solicitation of memberships involve the danger that the person solicited will feel obligated to respond favorably to the solicitor if the solicitor is in a position of influence or control. A judge must not engage in direct, individual solicitation of funds or memberships in person, in writing or by telephone except in the following cases: 1) a judge may solicit for funds or memberships other judges over whom the judge does not exercise supervisory or appellate authority, 2) a judge may solicit other persons for membership in the organizations described above if neither those persons nor persons with whom they are affiliated are likely ever to appear before the court on which the judge serves and 3) a judge who is an officer of such an organization may send a general membership solicitation mailing over the judge's signature.

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

Mere attendance at a fund-raising event is permissible if otherwise consistent with this Code. A judge may donate to an organization's fund-raising activity and participate in de minimis fund-raising activities so long as a judge is careful to avoid using the prestige of the office in the activity. For example, a judge may purchase goods and services that are being sold as a fund-raising effort, purchase admission to a fund-raising event, and participate as a worker or performer as long as the judge's name is not used in promoting the event, the judge's title is not identified at the event, and the judge's role is no more active nor visible than that of other participants.

A judge should not require a defendant to contribute to a charity as part of a sentence even if no specific charity is identified and even if the defendant has agreed to the requirement as part of a plea bargain.

A judge should not serve as an honorary member of a committee where the sole purpose is to allow honorary committee member's names to be used on an invitation to solicit participation in a fund-raising event. A judge should not allow his or her title to be used in an image campaign for a charitable organization.

[Most of the clarifications suggested by AJS for this Canon are based on changes made by states in adopting the model code as discussed in the article "Charitable Fund-raising" in the fall 2003 issue of the Judicial Conduct Reporter. AJS's proposal regarding judges' encouraging attorneys to participate in pro bono activities is based on Alaska Advisory Opinion 04-1. The issue of requiring contributions as part of sentencing was discussed in the article "Charitable Contributions as Part of a Sentence" in the winter 2000 issue of the Judicial Conduct Reporter. In early 2004, the Virginia Supreme Court amended Canon 2B of the state's code of judicial conduct to add the following comment: "In a criminal case, a judge may not approve a plea agreement or disposition that requires or permits the defendant to make a charitable contribution or donation, or any other monetary payment other than a statutorily authorized fine or restitution or payment in satisfaction of an injury pursuant to Code § 19.2-151, as a condition of a suspended sentence or the reduction or dismissal of charges."]

D. Financial Activities.

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

(c) ordinary social hospitality;

Commentary:

“Ordinary social hospitality” is that type of social event or other gift that is so common among people in the judge's community that no reasonable person would believe that the donor was intending to or would obtain any advantage. Relevant considerations include the cost of the event or gift, whether the benefits conferred are greater in value than that traditionally furnished at similar events sponsored by bar associations or similar groups, whether the benefits are greater in value than that which the judge customarily provides the judge's own guests, whether the benefits conferred are usually exchanged only between friends or relatives, whether there is a history or expectation of reciprocal social hospitality between the judge and the donor, whether the event is a traditional occasion for social hospitality, and whether the benefits received must be reported to any governmental entity.

[This definition of “ordinary social hospitality” is based on the definition developed by the Committee on Judicial Ethics of the California Judges Association in California Advisory Opinion 43 (1994).]

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(3), a judge or a candidate for election or appointment to judicial office shall not:

- (a) act as a leader or hold an office in a political organization [FNa2];
- (b) publicly endorse or publicly oppose another candidate for public office;
- (c) make speeches on behalf of a political organization;
- (d) attend political gatherings;
- (e) solicit funds for, pay an assessment to or make a contribution to a political organization or candidate, or purchase tickets for political party dinners or other functions; or
- (c) be involved in a family member's political activity and should require family members to take reasonable steps to avoid any suggestion that the judge endorses the family member's political activity.

(2) A judge shall resign from judicial office upon becoming a candidate for a non-judicial office either in a primary or in a general election, 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. On assuming a judicial position, a judge shall resign any elective public office or office in a political organization then held.

(3) A candidate for a judicial office:

- (a) should maintain the dignity appropriate to judicial office and act in a manner consistent with the impartiality, integrity and independence of the judiciary,
- (b) 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;

Commentary:

Although a judicial candidate must encourage members of his or her family to adhere to the same standards of political conduct in support of the candidate that apply to the candidate, family members are free to participate in other political activity including running for office and campaigning for other candidates as long as the judge is kept separate from those activities.

- (c) 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;
- (d) 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;

- (e) shall not in statements to the electorate or the appointing authority :
 - (i) with respect to cases, controversies, or issues that are likely to come before the court, make pledges, ~~or~~ promises or commitments of conduct in office other than that are inconsistent with the faithful and impartial* performance of the adjudicative duties of the office; or
 - (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

(f) may respond to personal attacks or attacks on the candidate's record as long as the response does not violate Section 5A(3)(d).

(g) shall be responsible for reviewing and approving the content of his or her statements, advertisements, and other campaign materials and those of his or her campaign committee. Failure to do so will not be a defense to a complaint for violation of this Canon.

Commentary:

As a corollary, a candidate should emphasize in any public statement the candidate's duty to uphold the law regardless of his or her personal views. See also Section 3B(9), the general rule on public comment by judges. Section 5A(3)(d) does not prohibit a candidate from making pledges or promises respecting improvements in court administration. Nor does this Section prohibit an incumbent judge from making private statements to other judges or court personnel in the performance of judicial duties. This Section applies to any statement made in the process of securing judicial office, such as statements to commissions charged with judicial selection and tenure and legislative bodies confirming appointment. See also Rule 8.2 of the ABA Model Rules of Professional Conduct.

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C. Judges and Candidates Subject to Public Election.

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(3) The campaign committee for a judge or judicial candidate shall comply with laws regarding divesting unused campaign funds or, even in the absence of a statutory requirement, shall divest any unused campaign funds by pro rata refund to campaign contributors not later than six months after any judicial election in which a judge or judicial candidate participated as a contestant.

[Rules on disposition of unexpended campaign funds established by discipline decisions, advisory opinions, and codes of conduct in several states are discussed in the article “Disposition of Unexpended Judicial Campaign Funds” in the summer 2001 issue of the Judicial Conduct Reporter.]

TERMINOLOGY

“Spouse” includes a domestic partner or other person with whom an individual maintains a shared household and conjugal relations.