ANALYSIS OF THE DRAFT CODE OF JUDICIAL CONDUCT FOR THE KINGDOM OF CAMBODIA

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Analysis of the Draft Code of Judicial Conduct for the Kingdom of Cambodia*

I. Introduction

The American Bar Association’s Asia Law Initiative (ABA-Asia) and its partner in Cambodia, the East West Management Institute, would like to thank the experts who provided their comments on the draft of the Kingdom of Cambodia Judicial Code of Conduct (hereinafter, “Code”) on a pro bono and volunteer basis. The assessors of the Code represent Australia, Cambodia, China, Japan, the Netherlands, Taiwan, and the United States. The roster of diverse experts includes judges, attorneys, court officers, legal professors, and representatives of commissions on judicial conduct, judicial associations, and judicature societies. This assessment highlights both specific comments made by these experts as well as general critiques and considerations.

This report analyzes the draft Cambodian Code of Judicial Conduct. It aspires to share with the members of the Cambodian judiciary and drafters of the Code critiques made by our roster of international experts. It includes comments and critiques that are more particular and targeted in nature, but also global and structural comments and critiques as well. Since the assessors reviewed an English translation of the Code, some comments may be the result of subtle language variations that occurred during translation, and thus, may not reflect actual weaknesses in the Code. Translation was routinely cited as a potential source of a lack of clarity in the Code’s language.

The assessors praised the spirit of the Code and the work invested in its completion. Collectively, the assessors stressed the importance of commencing the project at hand - agreeing that preparation of the Code demonstrates a commitment to reform embodied by the Code itself, but also to the overall development of a fair and impartial judicial system. While each assessor provided a range of comments on potential improvements, there was near universal concurrence that implementing the Code would be a positive step towards achieving the goals of judicial integrity and independence. This assessment should be examined with this in mind.

A. Assessment Guidelines

ABA-Asia provided the assessors with guidelines to inform their analysis. The guidelines explained that the objective of the drafters was to create a document that not only meets international standards, but one that also reflects local norms and that can be implemented in Cambodia. The guidelines posed the following questions:

Does the Code conform to international standards as set forth in the Bangalore Principles of Judicial Conduct1

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1 In 2003, the United Nations Commission on Human Rights (UNHCR) brought the Bangalore Principle of Judicial Conducts to the attention of member states, relevant United Nations organs, and intergovernmental and non-governmental organizations, urging their adoption as universal standards for judicial conduct. The principles are included in this report.
• Are there key provisions regarding judicial conduct that are not already included or that require further emphasis?

• Do the behavioral guidelines provide sufficient information to the institutions charged with enforcing the Code?

• Should sanctions be more specifically addressed within the Code or in separate legislation?

• Can the Code be implemented as currently written?

B. Overview

The Kingdom of Cambodia Judicial Draft Code of Conduct bodes well as a step towards an independent, competent, and ethical judiciary. A comprehensive and respected judicial Code of conduct is the foundation of a just and effective judiciary, and Cambodia’s drafts of the Code signal a good faith effort in achieving just that. The Code is generally in conformance with the internationally accepted core values of the adopted in the Bangalore Principles of Judicial Conduct (hereinafter “Bangalore Principles”), which were evidently used as a template and point of reference during preparation and drafting of the Code. Given the Bangalore Principles’ current status as the preeminent international instrument relating to judicial conduct, it is not surprising that several of the recommendations for the Code centered on deviations from the Bangalore Principles. Although every country holds the authority to manufacture a judicial Code of conduct for its national judiciary, the Bangalore Principles provide a truly international model, which should be consulted when drafting a judicial Code of conduct/ethics. In order to maximize the quality of the Code and bring it closer to commonly accepted international standards, it is highly recommended that the drafters consider the recommendations contained in this report before submission of a final draft.

II. Conformance with the Bangalore Principles

While the overall tenor and spirit of the Code mirrored that of the Bangalore Principles, the “Objectives” section of the Code was dissimilar. The Code cites the following as its central objectives: “[T]his Code of ethics is intended to reinforce dignity and independency of all judges and prosecutors in performing their judicial and prosecutorial work as well as in adhering to appropriate behaviors outside the court.” The Code’s objectives were commonly viewed as too limited and too narrow. The drafters should instead consider language closer to the Bangalore Principles’ stated objectives, which hold that, “[T]he following principles are designed to provide guidance to judges and to afford the judiciary a framework for regulating judicial conduct. They are also intended to assist members of the executive and the legislature, and lawyers and the public in general, to better

2 Two drafts of the Code were released, with the ABA receiving the second version on October 27, 2005. The second draft did not have much substantive differences with the first, but revised the structure and organization of the Code. Code references contained herein refer to the draft of October 2005.

3 On October 31, 2005 in Vienna, Austria, the United Nations Office on Drugs and Crime (UNODC) convened a meeting attended by a number of judges from all over the world, known as the “Judicial Integrity Group,” whom will draft a UN Principles on Judicial Integrity, not unlike the Bangalore Principles. To learn more, see “Chief Justices, at UNODC Gathering, Urge United Nations to Adopt Standards on Ethical Conduct by Judges,” available at http://www.unis.unvienna.org/unis/pressrels/2005/uniscp525.html.

4 Article 1 – Objective, Paragraph 1
understand and support judges.” The language of the latter was considered more supportive of both judges in particular and the judiciary at large; and more comprehensive because it explicitly proclaims the independence of the judiciary from the two other branches of government.

The Code effectively encompasses five of the six values emphasized in the Bangalore Principles \((\text{independence, impartiality, integrity, propriety, equality and competency, and diligence})\), but lacks in its treatment and articulation of the Integrity principle. It essentially reduces the six Code values of the Bangalore Principles into five: independence, impartiality, honesty, dignity, and diligence. Although the Code includes discussion of integrity in provisions addressing dignity and honesty,\(^6\) commentators found that the latter two values lack the international spirit embodied in integrity. Thus, the drafters should consider revising the language in the integrity section and draft an individual section explicitly committed to this value in order to affirm its importance in establishing an independent and just judiciary.

In line with the Bangalore Principles, the Code begins with independence\(^7\) as its first principle. However, the Code’s articulation of independence speaks more about judicial impartiality rather than institutional independence.\(^8\) Article 2 of the Code states, “[A] judge should decide cases independently and without influence such as persuasion, pressure, intimidation or interference” – language that mandates the impartial decision-making of a judge, rather than the judicial branch’s separation from the executive and legislative branches. There is no mention of the latter in any of the Chapter’s five principles – and it is highly suggested that the drafters include such a provision in Chapter II. The more conventional and internationally adopted construction of independence is the judiciary’s independence from other branches of government, or the separation of powers model articulated in the Bangalore Principles.

One recommendation is to refer to the International Bar Association’s Minimum Standards of Judicial Independence (hereinafter “IBA Minimum Standards”),\(^9\) which outline different areas of judicial independence; namely personal independence and substantive independence.\(^10\) Personal independence relates to logistical items, including salaries, appointment and promotion, pensions, transfer, and disciplinary actions to be controlled by the judiciary itself, so as to limit external influence. Substantive independence, on the other hand, refers to the importance of isolating judicial determinations from either executive, legislative, or special interest influence, so that the judge resolves a decision independently and exclusively through legal means. Moreover, a judge’s autonomy over an assigned case without infringement from one’s colleagues is encompassed by internal independence (which is functionally similar to judicial impartiality). Finally, institutional (or

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\(^5\) There is no individual section for integrity.

\(^6\) Chapters III and IV, respectively

\(^7\) Chapter II – Independent Principle

\(^8\) Chapter III – Impartial Principle

\(^9\) Particularly Section A, Article 1 and 2, the latter holding: “[T]he Judiciary as a whole should enjoy autonomy and collective independence vis-à-vis the Executive.”

\(^10\) IBA Minimum Standards, Section A, Article 1 - a) Individual judges should enjoy personal independence and substantive independence; b) Personal independence means that the terms and conditions of judicial service are adequately secured so as to ensure that individual judges are not subject to executive control; and c) Substantive independence means that in the discharge of his judicial function a judge is subject to nothing but the law and the commands of his conscience.
collective) independence is the judiciary’s sovereignty as a whole vis-a-vis the executive and legislative branches infringing on the judiciary’s specialized role in government.\textsuperscript{11}

Principle 1.4 of the Bangalore Principles addresses an aspect of judicial independence that is often overlooked – a judge’s independence from senior judges, who generally handle powers of promotion and allocation of assignments. More senior judges can potentially leverage their authority to unethically influence new judges to rule in their favor. This principle is closer to a judge’s impartiality, which again is the focus of the Code’s independence section. Instead of conflating independence with impartiality, the Code should revise its section on independence to accord with the Bangalore Principles and the IBA Minimum Standards by distinguishing judicial independence from judicial impartiality.

Moreover, the principle of independence also complicates the practicality of a single Code for both judges and prosecutors. Judges must perform independently and not be influenced by their fellow judges, while prosecutors must work together. Prosecutors may work individually, but are under the control and supervision of their superiors and chief prosecutors. With that in mind, it would be helpful to either differentiate between the roles of judges versus prosecutors in the Code or to consider drafting separate Codes of conduct for each. It is likely that the drafters’ ambition in covering both judges and prosecutors under one Code complicated its ability to substantively align with the Bangalore Principles (which exclusively covers judges) in many areas, such as independence.

The Code combines two Bangalore Principle values, impartiality and equality into its second fundamental principle, the “Impartial Principle.”\textsuperscript{12} Although this principle does not expressly mention equality, the proscription against judicial and prosecutorial decisions based on race, gender, religion and other bases for discrimination are set forth. One possible alternative is to separate equality from impartiality in the Code. This proposed organization - with equality as a stand alone principle - would align with the framework of the Bangalore Principles and further emphasize the importance of equality. The Code needs an articulated standard addressing equality and equal opportunity for all prospective judges and prosecutors in Cambodia, regardless of race, ethnicity, religion, or gender.

Also recommended is the inclusion of a Code preamble before the first chapter (“Objective and Structure”), summarizing both the spirit of the Code’s objectives in toto and the expectations of judges and prosecutors in Cambodia. In addition, this recommended preamble should state its objective of preserving the trust and confidence of Cambodia’s citizens in its judiciary. An introduction that combines the language on structure with language on objectives would strengthen the Code, especially given that the first chapter is titled “Objectives and Structure,” but makes absolutely no mention of the latter. In addition, to the drafters may wish to add a provision similar to principle 6.1 of the Bangalore Principles (“The duties of a judge/prosecutor shall take precedence over all other professional activities.”) at the beginning of the Code. Such a provision explicitly communicates that the role as judge/prosecutor must be taken very seriously, and is given priority over all other engagements.

\textsuperscript{11} Or, the “separation of powers model.”

\textsuperscript{12} Chapter III
The organization and structure of the Code was commonly questioned. Several experts stated that the Code’s organization made it unclear, unnecessarily redundant, and incomplete in several areas. For example, a number of the Bangalore Principles of conduct (called “applications”) related to integrity, propriety, and equality are included in the Code under “impartiality,” as discussed above. In several instances there is confusing duplication and inconsistency. To cite another example, a judge’s conduct vis-à-vis family and society is discussed in both “independence” and “impartiality.” A judge’s financial and commercial activities are also mentioned in several sections of the Code, and could be consolidated to appear in the same section. Furthermore, certain provisions in the Code, since they are drafted to apply broadly to functions of both judges and prosecutors, are likely to create difficulties for those to whom the Code applies and for those authorized to administer it. Some of the provisions of the Code closely resemble provisions set forth in the Bangalore Principles even though the latter applies exclusively to judges. One expert recommended that the “honesty” section of the Code be changed to “Communication with Judicial Officials and Staff,” and placed in the “dignity” section because the content substantively fits more with the latter. When discussing organization of the Code, commentators again recommended that the drafters of the Code reevaluate having a single Code that functionally applies to both judges and prosecutors in favor of either differentiating between the roles of judges versus prosecutors or considering drafting separate codes for each.. Although the professions are separate and distinct, but superficially may share the same general purpose and philosophy of administering justice, they must be distinguished for purposes of professional ethics and responsibility.

Finally, there are occasional passages in the draft Code that, if the translations are accurate, unnecessarily denigrate and downplay its importance and the seriousness with which it should be taken. For example, the third paragraph under Chapter 1, Article I of the Code states, “[T]his Code of ethics is merely supplementary to existing law.” Although a Code of ethics or professional responsibility does not have the force of law passed by a legislative body and endorsed by the executive, such Codes are critical instruments for providing guidance and instruction regarding the personal behavior and conduct of the professionals to whom they apply. The use of the adjective “merely” belittles the importance of the Code, and “supplementary” minimizes not only its importance, but also its ability to be respected as a stand-alone legal Code. In order to establish a tenor of, and maximize, the Code’s legal authority, this section should be omitted and replaced with more assertive language. The Code’s objective is to make sure both judges and prosecutors follow its dictates, thus it is essential to adopt language that pronounces its unfettered authority if it is to be taken seriously. Furthermore, if the Code is to supplement other Codes or laws, there should be explicit mention of these documents in the Code.

13 Chapter III
14 Chapter II
15 Chapter III
16 Articles 14 and 27
17 The Bangalore Principles applies strictly to judges, and its drafting was conducted with only judges in mind. The Code uses the Bangalore Principles as a its template and inspiration, but applies to prosecutors as well as judges, thus creating a structural disconnect with the Bangalore Principles. This disconnect creates many problems because the language and structure of the Bangalore Principles are not meant to apply to prosecutors, but judges alone.
18 Chapter IV
19 Chapter V – Dignified Principle
20 This is most evident in Chapters II, III, IV, and V of the Code.
III. Recommended Provisions

Although the Code’s comprehensiveness and treatment of most items related to judicial conduct is strong overall, there are various additions and elaborations or revisions of existing provisions that the drafters may wish to consider.

First, consideration should be given to the inclusion of a provision requiring the judge to abide by the law - not just adjudicating cases but in all of the judge’s activities. In many states, rogue judges often believe themselves to be above the law simply because they execute it, and corruption is all too frequent. Such a provision comports with the general tenor of the Code and provides a link with both Cambodia’s Constitution and criminal law. Moreover, inclusion of a provision that echoes a judge’s and prosecutor’s duty to follow the supreme laws of the land, not only administer them, will in turn increase the authority of the Code. Judges and prosecutors are, after all, citizens and subject to the same laws as the remainder of the citizenry.

If Cambodia does not yet have a judges association, adoption of Bangalore Principle 4.13 and Article 9 of the United Nations Basic Principles on the Independence of the Judiciary (hereinafter “UN Principles”) should be considered. Both provisions not only allow judges to form or join such associations, but effectively encourage their growth, while the latter principle also expressly promotes their career development.

In addition to representing the interests of judges, such associations have played roles in public education regarding the workings of the judicial system as well as its constraints, often providing brochures in lay language to increase access for all. This is another mechanism to help increase the public understanding necessary to build trust and transparency, and to nourish the relationship between judges and judicial personnel from different parts of the country. Furthermore, the aspiration that judges receive adequate staff and materials as well as a reasonable workload is a necessary element of an effective and respected judiciary. However, this needs to be addressed by the legislature and executive. A judicial conduct Code deals with the obligation of judges, not others. The intent here seems to be to draw attention to the difficulty of judges in effectuating a professional judiciary without sufficient resources. This would be an appropriate issue for a judge’s association – as well as bar associations – to address and advocate.

Article 9 of the Code properly prohibits ex parte judicial communications. The drafters may want to consider an additional provision that requires a judge to disclose improper ex parte communications to all parties. Moreover, Article 3 of the Code, which states that a judge shall, “[D]ismiss the attempt to submit or request, which is not primary statement or evidence during the case proceeding of a party or party’s representative,” is unclear. If this portion of Article 3 (“Irregular attempts which influence judges and prosecutors”) is intended to cover improper ex parte communications, it should be combined with Article 9 (“Investigation or examination of case and communication with party of the case”). If this provision is designed to deal with other misconduct

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21. “A judge may form or join associations of judges or participate in other organizations representing the interests of judges.”
22. “Judges shall be free to form and join associations of judges or other organizations to represent their interests, to promote their professional training and to protect their judicial independence.”
23. Chapter III – Impartial Principle
24. Chapter II – Independent Principle
(such as attempted bribes or other attacks on the independence of a judge) it should be clarified so that its meaning is more apparent. Provisions should target improper behavior directly and explicitly, so that both judges and prosecutors are fully aware of the provision’s intent. Although the broad prohibitions characteristic of much of the Code are common in similar legal instruments, they should be coupled with more narrow provisions that specifically address targeted behavior. This will make the Code easier to follow and more complete.

IV. Enforcement Institutions and Sanctions

The drafters of the Code must resolve which institution will administer and sanction violations of the Code, so that it is enforceable, respected and followed by judges and prosecutors. A Code of conduct, such as this Code, establishes a floor that a judge (or prosecutor) cannot traverse, or else be subject to sanctions; while a Code of ethics, which are generally designed not to punish but promote better performance, act as an infinite ceiling (because ethical aspirations are not enforced, but encouraged). Nevertheless, in order for the Code to be followed by its targeted subjects, it must be enforced effectively by a visible, centralized, and responsive entity. Identifying and establishing such an entity must take place in concert with the Code’s drafting. Therefore, the final version of the Code should expressly address this void.

It is difficult to assess how effective this Code will be if adopted without information as to how it fits into constitutional, statutory, and other regulatory provisions regarding the judiciary. There is no provision in the Code specifying as to how violations of these principles will be handled. Effective measures must be adopted to ensure compliance, whether they are created and administered by statute or some other disciplinary mechanism. If an administrative body that handles violations exists, the Code should provide a description of its process and function. However, if such a body does not currently exist, the Code should also spell this out and outline a plan/strategy for commissioning one. Are judges to be sanctioned only for misconduct according to what is spelled out in the Code? Will a violation of a provision in another body of law, in the absence of attached directions or additional legislation, provide additional grounds for discipline? Is the Code to serve as a template for best practices for judges and prosecutors, or will it mandate behavior? The drafters must provide answers for these questions in the Code. Furthermore, it is suggested that the Cambodian judiciary should be self-governing and self-monitoring, and that the entity in question should be comprised of members of the judicial branch who govern and discipline themselves. The Code also fails to state what might constitute the range of “disciplinary punishment.” It may be helpful for judges if the Code were to state this range, from suspension from office for a day to termination of office or whatever the range may be. The drafters must elaborate on these matters in order to establish the enforcement arm of the Code.

A centralized sanctioning body should be commissioned to handle violations of the Code. The decentralization (which is assumed because of the lack of discussion) of a sanctioning authority in the Code poses several problems. Moreover, the Code provides that judges and prosecutors who believe that efforts have been made to manipulate the judicial process must seek authorization from Supreme Court before they can proceed with a formal complaint. There are two significant problems with this approach. First, it imposes a considerable burden on the Supreme Court president to review and determine whether to approve all prospective disciplinary proceedings at all levels of courts in the country. Second, it also endows the Supreme Court president with an exclusive jurisdiction over the discipline of parties and counsel for the entire country; a single
individual with unfettered authority is undemocratic, and in opposition with the spirit of both the Code and the Bangalore Principles. Civil law systems in some countries provide that the president or chairman of the court should determine whether the imposition of sanctions is appropriate, or not. Others leave it to the discretion of the individual judge. Both options include a safety valve whereby those who are sanctioned have limited rights of approval, either to the court president where individual judges have the authority or to the president or chairman of the next higher court where the lower court president has the authority. Either option is preferable to the mechanism set forth in the Code.

V. Recommendations for the Draft Code

A. General Commentary on Performance of Duties

The Code sanctions against independent investigation or examination of case facts personally and outside of the court (by judges and prosecutors alike). In many civil law countries, however, prosecutors and parties in civil proceedings routinely present their charges and claims with defendant and witness statements, police records, or other documental evidence, to the court when a trial initiates. Thus, the provision not only runs counter the civil law tradition, but is also unrealistic because judges will inevitably have access to both the facts and evidence well before the cross-examination phase.

Judges should be encouraged to speak freely in court, rather than being closely monitored as the Code suggests. As a general matter, the ability to speak freely should be tempered by matters relating to an impending case; for instance, there are prohibitions on a judge from making a public comment about a pending proceeding in any court in the United States, which is interpreted more broadly than merely prohibiting comment on the ultimate decision of the judge in question. Article 15 of the Code states that judges should avoid making public statements that relate to their decisions or judgment. The drafters may want to consider a more broadly worded prohibition to ensure that judges do not comment upon any aspect of any pending or impending matter, which is somewhat touched upon in Article 9.

Article 29, relating to diligence reads, “[J]udge and prosecutor shall ensure that they perform their work diligently, try to implement judicial work quickly and perfectly, keep and improve their knowledge and skills necessarily to accomplish judicial work qualitatively and perfectly.” It cannot be expected of a judge or prosecutor to work “perfectly,” which is stated twice in the provision. Such an unrealistic standard only sets judges and prosecutors up for failure. Therefore, the drafters should highly consider replacing “perfectly” with a more practical standard such as “effectively” or “to the best of their ability,” for example. Alternatively, a provision encouraging the “effective administration of justice” would work well in this instance.

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25 Chapter III, Article 9 – Judge and prosecutor shall not conduct investigation or examination of fact of the case alone and personally in and outside the court.
26 Chapter III
27 Chapter VI
B. Race & Gender Issues

Chapter III, Article 7, on Impartiality, holds that: “[J]udge and prosecutor shall not have partiality in making decisions by having prejudice against race, color, sex, religion, disability, age, family situation, and economic and social situation.” Discrimination against a party on these grounds is categorically barred by the Code. The drafters may wish to expand this provision by including language that encourages the recruitment of historically marginalized racial or ethnic groups in Cambodia.

C. Separate Codes of Conduct for Judges and Prosecutors

Cambodia is a civil law country, and the organization of its judicial structure follows the framework of that tradition. From a common law perspective, it is not recommended for a code of conduct to include both judges and prosecutors. Criminal prosecutors function as public officials who work closely with police, investigative judges, and other criminal justice system officials to take legal proceedings against individuals or other legal entities. Civil law prosecutors are also public officials who either look to defend the interests of the State against individuals or other legal entities who seek redress from it, or to pursue the interests of the state when it seeks redress from the actions of individuals or other legal entities. Civil law systems may also find the same principles apply. In contrast, judges (excluding investigative judges) are not in the business of defending or pursuing the interest of the State. Their role is to evaluate claims about violations of established law; to review the relevant evidence that supports/opposes such claims; to determine whether there has been a violation of the law, and if a violation is found, to decide whether it merits punishment under the law. Although an agent of the government, a judge’s duty is to function neutrally and objectively in the sole interest of justice. Based on these distinctions between judges and prosecutors, the drafters may wish to consider separate codes for each profession.

D. Conflicts of Interest

Article 2 of the Code, which articulates the Independence Principle, compels judges to evaluate: “[W]ithout being subjected to such influences as persuasion, pressure, intimidation or interference from any person or people or reasons whether directly or indirectly.” The language of the provision is too vague and impractical, given that judges are regularly influenced and persuaded by peers and other judges. More exact language, like “inappropriate influences,” should replace “influences” to establish less grey area for judges who may read the Code more literally. Furthermore, it is essential for the language of the Code to specifically articulate improper behavior so that it easier to observe. Although judges must be independent in their own thinking about a question of law, several experts cited that it is both common practice and natural that a judge, on his/her own volition, ask another for advice or an opinion about an issue. No code should proscribe what has evolved into customary practice, and accordingly, the Code should be realistic in limiting legitimate practices that have become part and parcel of being a judge.

28 Paragraph three of the Article.
29 Chapter II
30 Paragraph One
Chapter III of the Code addresses the close personal relationships of a judge and prosecutor. The rigid language of the provision raises some concerns, such as the practical impact it would have on efficiency; particularly in smaller, more tight-knit communities. The provision was likely drafted with a city in mind, where the likelihood of a close personal relationship between a judge/prosecutor and an involved party is rare. However, the court would be seriously handicapped if a judge or prosecutor had to be removed every time he/she knew an involved party. Thus, a higher threshold and more defined standard should be articulated. In addition, this section’s handling of equality (or an equal right to justice for aggrieved parties) is somewhat confusing when read with the language of impartiality.

The “Honesty” section of the Code integrated much of the language, tenor and spirit of the Bangalore Principles. This section appears to be directed at real and perceived corruption in Cambodia, carried out mainly through “gifts.” One recommendation is for this section of the Code to be revised and made more explicit to more effectively target corruption. For comparative purposes, the Judicial Code of Ethics for the Republic of Azerbaijan states: “A judge or prosecutor shall not accept a gift, award, service, or benefit in connection with a case under his/her consideration.” Furthermore, the drafters of the Code should consider substituting the “little value” standard with a specific market value standard in Cambodia’s monetary exchange denomination. In the United States judicial acceptance of gifts is highly restricted. In those circumstances where gifts may be accepted, the aggregate market value may not exceed $50 per gift and the total value of gifts accepted in a 12-month period shall not exceed $100 (in aggregate). Use of a monetary standard simplifies the issues and leaves no room for creative interpretation and analysis.

Article 17 (“withdrawal by judges and prosecutors”) of the draft provides that a judge should withdraw from a case if he/she has reasonable grounds to believe that he/she could not decide the case impartially. While this is a laudable provision, the standards in many jurisdictions in the United States is that a judge should disqualify himself when his impartiality could reasonably be questioned, even if the judge believes that he could decide the case fairly. This latter standard preserves not only impartiality in fact, but also the appearance of impartiality. To be sure that the public perception of fairness is upheld the drafters could consider a provision that a judge should disqualify himself/herself in a proceeding in which his/her impartiality might reasonably be questioned, not just when the judge believes he or she cannot be impartial.

As mentioned in Footnote 2 above, the ABA received two versions of the Code. While the primary differences in the two drafts were in internal structure and organization of the Code, commentators noted a few items of change in the two drafts that merit discussing.

The political participation and activity of a judge and prosecutor is a crucial issue. The current draft Code appropriately revises the overly rigid treatment of political participation/activity of judges and prosecutors that was apparent in the earlier draft. For example, Article 4 (“Political Activities”) of the current draft states generally and succinctly that, “[J]udges and prosecutor shall be

31 Article 10 – “Relationship between profession, society, and family.”
32 Chapter IV, “Honest Principle”
33 Chapter III – Impartial Principle
34 Article 17: Withdrawal by judges and prosecutors – If judge and prosecutor have reasonable grounds that they could not decide impartially, they shall withdraw themselves from the hearing based on procedural Code.
neutral in political activities,” while an earlier draft categorically barred political activity and participation of any kind, including the right to vote. While it is necessary to limit a judge’s participation in political activities in order to ensure judicial independence from both the legislative and the executive branch, proscribing political participation and activity of any kind infringes on the rights and freedoms of a judge. The drafters were cognizant of this when producing the current draft of the Code, as evidenced by Article 4.

The earlier draft of the Code also categorically barred judges and prosecutors from pursuing other work and business opportunities for the acquisition of profit or benefits. Such a rigid provision is more fitting for countries where judges and prosecutors are handsomely or at least adequately remunerated, but unrealistic for states where judges and prosecutors are underpaid. Oftentimes, inadequately remunerated judges and prosecutors rely on supplementary work, such as teaching, publishing books and articles, honoraria and the like, to make ends meet. Therefore, it is extremely encouraging that the drafters revised the Code (Article 13, “Legal Work”), which now reads, “[J]udge and prosecutor may fulfill their personal legal work such as writing books and other works to be sold.”

In addition, the drafters should not overlook the value of having judges speak at professional and educational functions, which would benefit society at large and the legal profession in particular. Article 16 (“Legal Education”) of the Code recognizes this value, and reads, “[B]ased on legal knowledge and experiences in judicial and prosecutorial affairs, judge and prosecutor may contribute in legal education provision to both public and legal professionals. This means judge and prosecutor may: 1) participate in providing legal trainings such as writing, remarks making, or legal education; 2) participate as members of legal and judicial reform commission.”

Moreover, the economic situation in Cambodia should also be taken in consideration, and additional special cases or exceptions should be explored in the interest of not only judges and prosecutors, but also the overall administration of the courts. If the objective of the relevant provisions in the Code is to combat bribery, then it should directly address this activity. However, judges and prosecutors who seek out legitimate work should not be punished, particularly if that work bolsters the prestige of and confidence in the court system. Again, many codes of judicial conduct do not make absolute prohibitions against additional work, primarily because judges’ salaries are often abysmal.

Relating to public perception, governments contend that if judges are paid too well, an appearance of impropriety will be created. Thus, judges should live simply and economically, and be barred form additional opportunities for income. The alternative is to rely instead on the requirements that judicial duties take precedence over all others, as outlined in Bangalore Principle 6.1; or that all activities are subject to the general requirement of avoiding impropriety and appearance of impropriety; or that such activities do not detract from dignity or interfere with judicial duties (Bangalore Principle 4.1 and 4.11.4). Despite the provisions noted above that properly address this issue in the current draft Code, drafters may want to consider amending the Code to include additional legitimate exceptions. Moreover, the Code might take a more positive approach here where exceptions are permitted. Because judges are inadequately paid, some claim that as a result, judges in these countries may be more susceptible to corruption. In turn, Cambodia should

35 Chapter III – Impartial Principle
consider raising judicial salaries, or encourage judges to partake in additional work opportunities for supplementary pay.\(^{36}\)

Finally, the earlier version of the Code stated that a judge is not allowed to reveal his or her financial circumstances to the public, but was duly revised in the current draft into a more lenient provision.\(^{37}\) This provision is likely addressing scenarios where a judge could not be impartial if he or she were handling a case involving an individual that had given the judge a loan, or other compensation. While a judge should be prohibited from handling the case of someone who has loaned him/her money, or anything else of value, judges ought to be able to obtain loans from banks or others on the same terms as any other citizen would. To forbid judges from revealing their financial circumstances to others creates an unfair and unnecessary dilemma for the judge: either to do without a much-needed loan (given low salaries), or to jeopardize losing one’s position. This tension can easily be reconciled with more careful and articulated language.

## E. Inclusion of Other Court Professionals and Officials

As discussed previously, the drafters should reconsider having a single code for both judges and prosecutors. Individual codes should be drafted for judges and prosecutors because a single code cannot reasonably address the unique and specialized functions of each position.

The drafters of the Bangalore Principles met in Colombo, Sri Lanka in 2003 to discuss drafting a code of conduct for judicial staff and other court personnel. One approach to make this Code applicable to other court professionals is to add a provision that extends the expectations and duties of the Code to them.

In regards to the “Impartiality” section of the Code (Chapter III), the drafters should consider a provision disallowing partiality on behalf of judges’ and prosecutors’ staff. Moreover, Article 32\(^{38}\) of the Code requires judges to assure that their staffs do their work diligently. The Code should also require judges to ensure that their staff is patient, dignified, and courteous to people they engage and work with (like judges are required to be), and furthermore, that staff cannot comment on pending or impending matters before the court.\(^{39}\) In addition, the drafters should also consider extending Article 20’s restrictions on the acceptance of gifts by judges to court staff and prosecutors as well.

Confidentiality is an item that deserves more attention in the Code.\(^{40}\) Although the Bangalore Principles do not list confidentiality as one of its fundamental principles, it is an important element of any judicial conduct. If a judge (or prosecutor) discloses confidential information it will bring

\(^{36}\) Considering this work does not compromise their focus on judicial work.

\(^{37}\) Chapter V, Article 27 – “Financial benefit” – Judge and prosecutor shall not complain about their own financial difficulty to their clients.

\(^{38}\) Article 32: Monitoring of judicial and prosecutorial staff under supervision – Recently, judge and prosecutor perform judicial work as well as some administrative work. Therefore, some work should be done by court staff under the guidance and the monitoring of judge and prosecutor. This means that judge and prosecutor shall monitor those judicial and prosecutorial staffs to do their responsible work diligently.

\(^{39}\) Perhaps a provision similar to Article 15: Speaking in public place by judge and prosecutor as individual, or amending that Article to also including other judicial staff and personnel.

\(^{40}\) Chapter IV, Article 19
about significant problems to the judiciary as a whole and undermine public confidence. One judge's mistake harms the reputation of the bench collectively.

**F. Public Perception**

Much of the legitimacy of any judicial system stems from the public's perception of the overall fairness of the system, and the appearance of legitimacy and just administration. Maintaining high ethical standards among judges is central to the public's confidence in the judicial system. The Code contains a number of provisions focused on the propriety of judicial behavior. However, in addition to the Code's explicit bar of impropriety, it should also prohibit acts that have the “appearance of impropriety.”

The Code guarantees both judges and prosecutors the personal right and freedom to entertain themselves as would any other citizen. However, this liberty has a direct impact on the public perception of not only judges and prosecutors themselves, but also the institutions they represent. Judges and prosecutors, but particularly the former, effectively have confined liberties to entertainment because part and parcel of their position is to nurture public confidence in themselves and the court system at large. Thus, judges and prosecutors must be prudent when selecting how to entertain themselves and carry out their social lives. This responsibility is more pronounced in countries with more traditional cultural norms, and countries with less-established judiciaries where confidence in the judiciary is yet to be established. In addition, some judge's spouses and families should also be cautious with their social lives.

Judges and prosecutors personal relationships must likewise not infringe on the neutral administration of justice. The Code appropriately addresses this matter with express language, circumscribing activity that may compromise judicial objectivity. Consequently, judges and prosecutors professional relationships must not interfere with their ability to neutrally perform their work. This responsibility is more acute given the overarching responsibility of maintaining the reputation and image of the judiciary. When it comes to whom a judge or a prosecutor shall, or shall not, keep as a friendship, the thin line between public interest and personal privacy is blurred. Therefore, it is commonplace for both judges and prosecutors, particularly in nations where corruption is rampant, to forgo innocent relationships because they may be interpreted incorrectly by the public. This is especially relevant to relationships with political elements and/or organizations.

**VI. Conclusion**

The draft Code in and of itself must be considered a significant achievement for the Cambodian judiciary. This assessment offers some suggestions for addressing areas of the Code where improvement and revision will provide a more comprehensive and complete Code. Nevertheless, this assessment and similar efforts aimed at improving not only the Code, but the Cambodian judiciary at large, demonstrates Cambodia’s deep commitment to establishing an ethical, independent, transparent, and democratic judiciary.

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41 See in particular, Chapters III, IV, and V
42 Article 6: Judge and prosecutor have rights to lead their lives and use their rights and freedoms as other citizens do. However, judges and prosecutors shall weight balance of legal demand of relationship between individual and society and degree of harm of the relationship that may irregularly influence to their behavior and judgment.
Appendix A

Biographical Statements of Experts Assessing the Draft Law
Biographical Statements of Experts Assessing the Draft Law

Mr. Michael H. Barr is a practicing attorney Sonnenschein Nath & Rosenthal LLP in New York.

Ms. Cathleen Cenci has been an attorney for the New York State Commission on Judicial Conduct for over 20 years and has served as Chief Attorney of the Albany office since 2003. In her work with the Commission on Judicial Conduct, she has designed and conducted hundreds of investigations and prosecuted hundreds of cases in which the respondent judges were publicly disciplined.

The Honorable Yu-Li Chen has been a judge in the Shih-Lin District Court in Taiwan since 1999 and serves on the International Affairs Committee of the Judges Association of Taiwan. Judge Chen earned a Bachelor of Law degree from National Taiwan University and an L.L.M from University College in London.

The Honorable Chun-Li Hung graduated from College of Law, Taiwan Tunghai University in 1990. She then served as a visiting scholar at the Université Paris I between 1993 and 1994. Two years later in 1996, she was appointed to the court, where she acts as Chief of International Affairs (French Group) of the Judges Association of the Republic of China (ROC), Taiwan, and is also a member of the International Association of Judges.

Mr. Shigeji Ishiguro is a practicing attorney and partner at the Oguri and Ishiguro law firm in Ohsu, Japan.

Mr. Scott Keith is the Executive Director of the Arizona Commission on Judicial Conduct. He received his law degree from the University of Utah and a Master's in Public Administration from the University of Colorado at Denver. He has worked in the field of judicial ethics for 20 years, having served in executive positions in the state court systems in both Colorado and Arizona. Mr. Keith also serves as an emeritus member of the board of directors of the Association of Judicial Disciplinary Council.

The Honorable Auen Kunkeau is a sitting judge for the Supreme Court of Thailand.
**The Honorable Robin Millhouse** was admitted to legal practice in South Australia in 1951, and became a member of the South Australian Parliament in 1955. He served as Attorney-General, Minister of Community Welfare, Minister of Aboriginal Affairs and Minister of Labour between 1968 and 1970, and became Queen's Counsel in 1979. Judge Millhouse resigned from Parliament in 1982 on appointment as a judge of the Supreme Court of South Australia, and retired as senior puisne judge of the Court in December 1999. Judge Millhouse became Chief Justice of Kiribati in January 2000, where he is still serving.

**The Honorable Juanita Rice** serves as a District Court Judge in the 18th judicial district in Colorado. She lived and worked with judges in Kampot, Cambodia for two years, working on regional and national trainings of court personnel.

**The Honorable Marshall J. Snider** is an arbitrator and mediator in Denver, Colorado. In 2005 he retired after 22 years as an administrative law judge in Colorado’s Office of Administrative Courts. From 1998 to 2005 he was chief judge and deputy chief judge in that office. Before becoming an administrative law judge he practiced law, specializing in commercial and bankruptcy litigation. He was an assistant attorney general in Colorado’s Attorney General’s Office for six years, in charge of the consumer protection unit of that office and later supervising the attorneys representing Colorado’s professional, occupational and financial licensing and regulatory agencies. Judge Snider teaches mediation and alternative dispute resolution courses at the National Judicial College and at the University of Denver’s University College. He has written and lectured extensively on trial practice, administrative law, judicial ethics, workers’ compensation and alternative dispute resolution.

**The Honorable Gradus Vrieze** is the President of the court of first instance at Zutphen in the Netherlands. He is a member of the Board of the Netherlands Association for the Judiciary and Vice-President of the International Association of Judges. Judge Vrieze taught a course on ethics in the Czech Republic in 1996 and has participated in judicial reform projects in the Czech Republic, Moldova, and Turkey.

**The Honorable Clifford J. Wallace** is a former member of the American Bar Association, the California and San Diego County Bar Associations, and various professional associations, and served on many committees. Sworn in as a United States District Judge for the Southern District of California in October 1970; Judge Wallace was elevated to the United States Court of Appeals for the Ninth Circuit in July 1972, and became Chief Judge of the Ninth Circuit in February 1991. Judge Wallace stepped down as Chief Judge and assumed senior status with the court in April 1996. Among other things, Judge Wallace has consulted with over 40 judiciaries worldwide, helped develop concept for the Conference of Chief Justices of Asia and the Pacific, and since then has served as a resource person and presenter.
The Honorable Judge Thomas A. Wallitsch is currently a member of the Pennsylvania Judicial Conduct Board and co-chair of the Education Committee, for the Pennsylvania Conference of State and Trial Judges in addition to his position as Chair of the Pennsylvania Supreme Court Appellate Rules Committee. Judge Wallitsch recently served as Resident Liaison for Judicial Development for ABA-CEELI’s office in Rabat, Morocco.

The Honorable Marcia K. Walsh has served on the 16th Judicial Circuit Court of Missouri in the Kansas City Municipal Division for the last twenty-two years. Judge Walsh has often worked with the ABA’s Central and East European Law Initiative Committee, providing concept papers on a variety of topics and analyzing draft Codes from several different countries. On two prior occasions in this capacity, she evaluated draft Codes of Judicial Conduct.

Mr. Markus Zimmer is the clerk of court and district court administrator of the United States District Court for the District of Utah and has served as a consultant and faculty member for the CEELI Institute in the Czech Republic. Mr. Zimmer has also served as a legal specialist for judicial administration and judicial ethics reform projects, authoring assessment reports and articles, and analyzing draft Codes and laws in Eastern Europe, Central Asia, The Middle East, and Africa.
Appendix B

The Bangalore Principles of Judicial Conduct
THE BANGALORE PRINCIPLES OF JUDICIAL CONDUCT

2002

(The Bangalore Draft Code of Judicial Conduct 2001 adopted by the Judicial Group on Strengthening Judicial Integrity, as revised at the Round Table Meeting of Chief Justices held at the Peace Palace, The Hague, November 25-26, 2002)

Preamble

WHEREAS the Universal Declaration of Human Rights recognizes as fundamental the principle that everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of rights and obligations and of any criminal charge.

WHEREAS the International Covenant on Civil and Political Rights guarantees that all persons shall be equal before the courts, and that in the determination of any criminal charge or of rights and obligations in a suit at law, everyone shall be entitled, without undue delay, to a fair and public hearing by a competent, independent and impartial tribunal established by law.

WHEREAS the foregoing fundamental principles and rights are also recognized or reflected in regional human rights instruments, in domestic constitutional, statutory and common law, and in judicial conventions and traditions.

WHEREAS the importance of a competent, independent and impartial judiciary to the protection of human rights is given emphasis by the fact that the implementation of all the other rights ultimately depends upon the proper administration of justice.

WHEREAS a competent, independent and impartial judiciary is likewise essential if the courts are to fulfil their role in upholding constitutionalism and the rule of law.

WHEREAS public confidence in the judicial system and in the moral authority and integrity of the judiciary is of the utmost importance in a modern democratic society.

WHEREAS it is essential that judges, individually and collectively, respect and honour judicial office as a public trust and strive to enhance and maintain confidence in the judicial system.

WHEREAS the primary responsibility for the promotion and maintenance of high standards of judicial conduct lies with the judiciary in each country.

AND WHEREAS the United Nations Basic Principles on the Independence of the Judiciary are designed to secure and promote the independence of the judiciary, and are addressed primarily to States.

THE FOLLOWING PRINCIPLES are intended to establish standards for ethical conduct of judges. They are designed to provide guidance to judges and to afford the judiciary a framework for regulating judicial conduct. They are also intended to assist members of the executive and the legislature, and lawyers and the public in general, to better understand and support the judiciary. These principles presuppose that judges are accountable for their conduct to appropriate institutions.
established to maintain judicial standards, which are themselves independent and impartial, and are intended to supplement and not to derogate from existing rules of law and conduct which bind the judge.

Value 1:

INDEPENDENCE

Principle:

Judicial independence is a pre-requisite to the rule of law and a fundamental guarantee of a fair trial. A judge shall therefore uphold and exemplify judicial independence in both its individual and institutional aspects.

Application:

1.1 A judge shall exercise the judicial function independently on the basis of the judge's assessment of the facts and in accordance with a conscientious understanding of the law, free of any extraneous influences, inducements, pressures, threats or interference, direct or indirect, from any quarter or for any reason.

1.2 A judge shall be independent in relation to society in general and in relation to the particular parties to a dispute which the judge has to adjudicate.

1.3 A judge shall not only be free from inappropriate connections with, and influence by, the executive and legislative branches of government, but must also appear to a reasonable observer to be free therefrom.

1.4 In performing judicial duties, a judge shall be independent of judicial colleagues in respect of decisions which the judge is obliged to make independently.

1.5 A judge shall encourage and uphold safeguards for the discharge of judicial duties in order to maintain and enhance the institutional and operational independence of the judiciary.

1.6 A judge shall exhibit and promote high standards of judicial conduct in order to reinforce public confidence in the judiciary which is fundamental to the maintenance of judicial independence.

Value 2:

IMPARTIALITY

Principle:

Impartiality is essential to the proper discharge of the judicial office. It applies not only to the decision itself but also to the process by which the decision is made.

Application:

2.1 A judge shall perform his or her judicial duties without favour, bias or prejudice.
2.2 A judge shall ensure that his or her conduct, both in and out of court, maintains and enhances the confidence of the public, the legal profession and litigants in the impartiality of the judge and of the judiciary.

2.3 A judge shall, so far as is reasonable, so conduct himself or herself as to minimise the occasions on which it will be necessary for the judge to be disqualified from hearing or deciding cases.

2.4 A judge shall not knowingly, while a proceeding is before, or could come before, the judge, make any comment that might reasonably be expected to affect the outcome of such proceeding or impair the manifest fairness of the process. Nor shall the judge make any comment in public or otherwise that might affect the fair trial of any person or issue.

2.5 A judge shall disqualify himself or herself from participating in any proceedings in which the judge is unable to decide the matter impartially or in which it may appear to a reasonable observer that the judge is unable to decide the matter impartially. Such proceedings include, but are not limited to, instances where

2.5.1 the judge has actual bias or prejudice concerning a party or personal knowledge of disputed evidentiary facts concerning the proceedings;

2.5.2 the judge previously served as a lawyer or was a material witness in the matter in controversy; or

2.5.3 the judge, or a member of the judge's family, has an economic interest in the outcome of the matter in controversy:

Provided that disqualification of a judge shall not be required if no other tribunal can be constituted to deal with the case or, because of urgent circumstances, failure to act could lead to a serious miscarriage of justice.

Value 3:

INTEGRITY

Principle:

Integrity is essential to the proper discharge of the judicial office.

Application:

3.1 A judge shall ensure that his or her conduct is above reproach in the view of a reasonable observer.

3.2 The behaviour and conduct of a judge must reaffirm the people's faith in the integrity of the judiciary. Justice must not merely be done but must also be seen to be done.
Value 4:

PROPRIETY

Principle:

Propriety, and the appearance of propriety, are essential to the performance of all of the activities of a judge.

Application:

4.1 A judge shall avoid impropriety and the appearance of impropriety in all of the judge's activities.

4.2 As a subject of constant public scrutiny, a judge must accept personal restrictions that might be viewed as burdensome by the ordinary citizen and should do so freely and willingly. In particular, a judge shall conduct himself or herself in a way that is consistent with the dignity of the judicial office.

4.3 A judge shall, in his or her personal relations with individual members of the legal profession who practise regularly in the judge's court, avoid situations which might reasonably give rise to the suspicion or appearance of favouritism or partiality.

4.4 A judge shall not participate in the determination of a case in which any member of the judge's family represents a litigant or is associated in any manner with the case.

4.5 A judge shall not allow the use of the judge's residence by a member of the legal profession to receive clients or other members of the legal profession.

4.6 A judge, like any other citizen, is entitled to freedom of expression, belief, association and assembly, but in exercising such rights, a judge shall always conduct himself or herself in such a manner as to preserve the dignity of the judicial office and the impartiality and independence of the judiciary.

4.7 A judge shall inform himself or herself about the judge's personal and fiduciary financial interests and shall make reasonable efforts to be informed about the financial interests of members of the judge's family.

4.8 A judge shall not allow the judge's family, social or other relationships improperly to influence the judge's judicial conduct and judgment as a judge.

4.9 A judge shall not use or lend the prestige of the judicial office to advance the private interests of the judge, a member of the judge's family or of anyone else, nor shall a judge convey or permit others to convey the impression that anyone is in a special position improperly to influence the judge in the performance of judicial duties.

4.10 Confidential information acquired by a judge in the judge's judicial capacity shall not be used or disclosed by the judge for any other purpose not related to the judge's judicial duties.

4.11 Subject to the proper performance of judicial duties, a judge may:
4.11.1 write, lecture, teach and participate in activities concerning the law, the legal system, the administration of justice or related matters;

4.11.2 appear at a public hearing before an official body concerned with matters relating to the law, the legal system, the administration of justice or related matters;

4.11.3 serve as a member of an official body, or other government commission, committee or advisory body, if such membership is not inconsistent with the perceived impartiality and political neutrality of a judge; or

4.11.4 engage in other activities if such activities do not detract from the dignity of the judicial office or otherwise interfere with the performance of judicial duties.

4.12 A judge shall not practise law whilst the holder of judicial office.

4.13 A judge may form or join associations of judges or participate in other organisations representing the interests of judges.

4.14 A judge and members of the judge's family, shall neither ask for, nor accept, any gift, bequest, loan or favour in relation to anything done or to be done or omitted to be done by the judge in connection with the performance of judicial duties.

4.15 A judge shall not knowingly permit court staff or others subject to the judge's influence, direction or authority, to ask for, or accept, any gift, bequest, loan or favour in relation to anything done or to be done or omitted to be done in connection with his or her duties or functions.

4.16 Subject to law and to any legal requirements of public disclosure, a judge may receive a token gift, award or benefit as appropriate to the occasion on which it is made provided that such gift, award or benefit might not reasonably be perceived as intended to influence the judge in the performance of judicial duties or otherwise give rise to an appearance of partiality.

Value 5:

**EQUALITY**

Principle:

Ensuring equality of treatment to all before the courts is essential to the due performance of the judicial office.

Application:

5.1 A judge shall be aware of, and understand, diversity in society and differences arising from various sources, including but not limited to race, colour, sex, religion, national origin, caste, disability, age, marital status, sexual orientation, social and economic status and other like causes ("irrelevant grounds").

5.2 A judge shall not, in the performance of judicial duties, by words or conduct, manifest bias or prejudice towards any person or group on irrelevant grounds.
5.3 A judge shall carry out judicial duties with appropriate consideration for all persons, such as the parties, witnesses, lawyers, court staff and judicial colleagues, without differentiation on any irrelevant ground, immaterial to the proper performance of such duties.

5.4 A judge shall not knowingly permit court staff or others subject to the judge's influence, direction or control to differentiate between persons concerned, in a matter before the judge, on any irrelevant ground.

5.5 A judge shall require lawyers in proceedings before the court to refrain from manifesting, by words or conduct, bias or prejudice based on irrelevant grounds, except such as are legally relevant to an issue in proceedings and may be the subject of legitimate advocacy.

Value 6:

COMPETENCE AND DILIGENCE

Principle:

Competence and diligence are prerequisites to the due performance of judicial office.

Application:

6.1 The judicial duties of a judge take precedence over all other activities.

6.2 A judge shall devote the judge's professional activity to judicial duties, which include not only the performance of judicial functions and responsibilities in court and the making of decisions, but also other tasks relevant to the judicial office or the court's operations.

6.3 A judge shall take reasonable steps to maintain and enhance the judge's knowledge, skills and personal qualities necessary for the proper performance of judicial duties, taking advantage for this purpose of the training and other facilities which should be made available, under judicial control, to judges.

6.4 A judge shall keep himself or herself informed about relevant developments of international law, including international conventions and other instruments establishing human rights norms.

6.5 A judge shall perform all judicial duties, including the delivery of reserved decisions, efficiently, fairly and with reasonable promptness.

6.6 A judge shall maintain order and decorum in all proceedings before the court and be patient, dignified and courteous in relation to litigants, jurors, witnesses, lawyers and others with whom the judge deals in an official capacity. The judge shall require similar conduct of legal representatives, court staff and others subject to the judge's influence, direction or control.

6.7 A judge shall not engage in conduct incompatible with the diligent discharge of judicial duties.
IMPLEMENTATION

By reason of the nature of judicial office, effective measures shall be adopted by national judiciaries to provide mechanisms to implement these principles if such mechanisms are not already in existence in their jurisdictions.

DEFINITIONS

In this statement of principles, unless the context otherwise permits or requires, the following meanings shall be attributed to the words used:

"Court staff" includes the personal staff of the judge including law clerks. "Judge" means any person exercising judicial power, however designated.

"Judge's family" includes a judge's spouse, son, daughter, son-in-law, daughter-in-law, and any other close relative or person who is a companion or employee of the judge and who lives in the judge's household.

"Judge's spouse" includes a domestic partner of the judge or any other person of either sex in a close personal relationship with the judge.

Explanatory Note

1. At its first meeting held in Vienna in April 2000 on the invitation of the United Nations Centre for International Crime Prevention, and in conjunction with the 10th United Nations Congress on the Prevention of Crime and the Treatment of Offenders, the Judicial Group on Strengthening Judicial Integrity (comprising Chief Justice Latifur Rahman of Bangladesh, Chief Justice Y. Bhaskar Rao of Karnataka State in India, Justice Govind Bahadur Shrestha of Nepal, Chief Justice M.L. Uwais of Nigeria, Deputy President Pius Langa of the Constitutional Court of South Africa, Chief Justice F.L. Nyalali of Tanzania, and Justice B.J. Odoki of Uganda, meeting under the chairmanship of Judge Christopher Weeramantry, Vice-President of the International Court of Justice, with Justice Michael Kirby of the High Court of Australia as Rapporteur, and with the participation of Dato' Param Cumaraswamy, UN Special Rapporteur on the Independence of Judges and Lawyers) recognized the need for a Code against which the conduct of judicial officers may be measured. Accordingly, the Judicial Group requested that Codes of judicial conduct which had been adopted in some jurisdictions be analyzed, and a report be prepared by the Co-ordinator of the Judicial Integrity Programme, Dr Nihal Jayawickrama, concerning:

   a. the core considerations which recur in such Codes; and

   b. the optional or additional considerations which occur in some, but not all, such Codes and which may or may not be suitable for adoption in particular countries.

2. In preparing a draft Code of judicial conduct in accordance with the directions set out above, reference was made to several existing Codes and international instruments including, in particular, the following:

(b) Declaration of Principles of Judicial Independence issued by the Chief Justices of the Australian States and Territories, April 1997.

(c) Code of Conduct for the Judges of the Supreme Court of Bangladesh, prescribed by the Supreme Judicial Council in the exercise of power under Article 96(4)(a) of the Constitution of the People's Republic of Bangladesh, May 2000.

(d) Ethical Principles for Judges, drafted with the cooperation of the Canadian Judges Conference and endorsed by the Canadian Judicial Council, 1998.


(g) Restatement of Values of Judicial Life adopted by the Chief Justices Conference of India, 1999.

(h) The Iowa Code of Judicial Conduct.


(j) The Judges' Code of Ethics of Malaysia, prescribed by the Yang di-Pertuan Agong on the recommendation of the Chief Justice, the President of the Court of Appeal and the Chief Judges of the High Courts, in the exercise of powers conferred by Article 125(3A) of the Federal Constitution of Malaysia, 1994.

(k) The Code of Conduct for Magistrates in Namibia.

(l) Rules Governing Judicial Conduct, New York State, USA.


(n) Code of Conduct to be observed by Judges of the Supreme Court and of the High Courts of Pakistan.


(p) The Canons of Judicial Ethics of the Philippines, proposed by the Philippines Bar Association, approved by the Judges of First Instance of Manila, and adopted for the guidance of and observance by the judges under the administrative supervision of the Supreme Court, including municipal judges and city judges.


(r) Guidelines for Judges of South Africa, issued by the Chief Justice, the President of the Constitutional Court, and the Presidents of High Courts, the Labour Appeal Court, and the Land Claims Court, March 2000.

(t) The Texas Code of Judicial Conduct


(ee) The Latimer House Guidelines for the Commonwealth on good practice governing relations between the Executive, Parliament and the Judiciary in the promotion of good governance, the rule of law and human rights to ensure the effective implementation of the Harare Principles, 1998.


3. At its second meeting held in Bangalore in February 2001, the Judicial Group (comprising Chief Justice Mainur Reza Chowdhury of Bangladesh, Justice Claire I.'Heureux Dube of Canada, Chief Justice P.V. Reddi of Karnatak State in India, Chief Justice Keshav Prasad Upadhyay of Nepal, Chief Justice M.L. Uwais of Nigeria, Deputy Chief Justice Pius Langa of
South Africa, Chief Justice S.N. Silva of Sri Lanka, Chief Justice B.A. Samatta of Tanzania, and Chief Justice B.J. Odoki of Uganda, meeting under the chairmanship of Judge Weeramantry, with Justice Kirby as Rapporteur, and with the participation of the UN Special Rapporteur and Justice P.N. Bhagwati, Chairman of the UN Human Rights Committee, representing the UN High Commissioner for Human Rights) proceeding by way of examination of the draft placed before it, identified the core values, formulated the relevant principles, and agreed on the Bangalore Draft Code of Judicial Conduct. The Judicial Group recognized, however, that since the Bangalore Draft had been developed by judges drawn principally from common law countries, it was essential that it be scrutinized by judges of other legal traditions to enable it to assume the status of a duly authenticated international Code of judicial conduct.

4. The Bangalore Draft was widely disseminated among judges of both common law and civil law systems and discussed at several judicial conferences. In June 2002, it was reviewed by the Working Party of the Consultative Council of European Judges (CCJE-GT), comprising Vice-President Gerhard Reissner of the Austrian Association of Judges, Judge Robert Fremr of the High Court in the Czech Republic, President Alain Lacabarats of the Cour d'Appel de Paris in France, Judge Otto Mallmann of the Federal Administrative Court of Germany, Magistrate Raffaele Sabato of Italy, Judge Virgilijus of the Lithuanian Court of Appeal, Premier Conseiller Jean-Claude Wiwinius of the Cour d'Appel of Luxembourg, Juge Conseiller Orlando Afonso of the Court of Appeal of Portugal, Justice Dusan Ogrizek of the Supreme Court of Slovenia, President Johan Hirschfeldt of the Svea Court of Appeal in Sweden, and Lord Justice Mance of the United Kingdom. On the initiative of the American Bar Association, the Bangalore Draft was translated into the national languages, and reviewed by judges, of the Central and Eastern European countries; in particular, of Bosnia-Herzegovina, Bulgaria, Croatia, Kosovo, Romania, Serbia and Slovakia.

5. The Bangalore Draft was revised in the light of the comments received from CCJE-GT and others referred to above; Opinion no.1 (2001) of CCJE on standards concerning the independence of the judiciary; the draft Opinion of CCJE on the principles and rules governing judges' professional conduct, in particular ethics, incompatible behaviour and impartiality; and by reference to more recent Codes of judicial conduct including the Guide to Judicial Conduct published by the Council of Chief Justices of Australia in June 2002, the Model Rules of Conduct for Judges of the Baltic States, the Code of Judicial Ethics for Judges of the People's Republic of China, and the Code of Judicial Ethics of the Macedonian Judges Association.

6. The revised Bangalore Draft was placed before a Round-Table Meeting of Chief Justices (or their representatives) from the civil law system, held in the Peace Palace in The Hague, Netherlands, in November 2002, with Judge Weeramantry presiding. Those participating were Judge Vladimir de Freitas of the Federal Court of Appeal of Brazil, Chief Justice Iva Brozova of the Supreme Court of the Czech Republic, Chief Justice Mohammad Fathy Naguib of the Supreme Constitutional Court of Egypt (assisted by Justice Dr Adel Omar Sherif), Conseillere Christine Chanet of the Cour de Cassation of France, President Genaro David Gongora Pimentel of the Suprema Corte de Justicia de la Nacion of Mexico,
President Mario Mangaze of the Supreme Court of Mozambique, President Pim Haak of the Hoge Raad der Nederlanden, Justice Trond Dolva of the Supreme Court of Norway, and Chief Justice Hilario Davide of the Supreme Court of the Philippines (assisted by Justice Reynato S. Puno). Also participating in one session were the following Judges of the International Court of Justice: Judge Raymond Ranjeva (Madagascar), Judge Geza Herczegh (Hungary), Judge Carl-August Fleischhauer (Germany), Judge Abdul G. Koroma (Sierra Leone), Judge Rosalyn Higgins (United Kingdom), Judge Francisco Rezek (Brazil), Judge Nabil Elaraby (Egypt), and Ad-Hoc Judge Thomas Frank (USA). The UN Special Rapporteur was in attendance. The Bangalore Principles of Judicial Conduct was the product of this meeting.
Appendix C

ABA Model Code of Judicial Conduct
ABA Model Code of Judicial Conduct


On September 23, 2003, American Bar Association President Dennis W. Archer, Jr., announced the appointment of a Joint Commission to Evaluate the Model Code of Judicial Conduct.

Nothing contained in this book is to be considered as the rendering of legal advice for specific cases, and readers are responsible for obtaining such advice from their own legal counsel.

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The Code of Judicial Conduct was adopted by the House of Delegates of the American Bar Association on August 16, 1972. The Code replaced the Canons of Judicial Ethics, which had been formulated almost 50 years earlier. Although two amendments to the Code have been adopted since 1972, the Code has not been reviewed comprehensively until now.

A survey conducted by the American Bar Association Standing Committee on Ethics and Professional Responsibility in 1986 led to the conclusion that in general the Code had served its purposes well, but that a comprehensive review of the Code was desirable. This review, with an initial grant from the Josephson Institute for the Advancement of Ethics, was funded by the American Bar Association and the State Justice Institute. The Model Code of Judicial Conduct (August 1990) was prepared by the Standing Committee on Ethics and Professional Responsibility and a Subcommittee comprised of several members and former members of the Ethics Committee and several members of the judiciary, with the assistance of a reporter, a research attorney, an advisor and liaisons from other ABA groups and interested organizations.

In the revision process, the Association sought and considered the views of members of the judiciary, the bar and the general public. In the judgment of the Association, this Code, consisting of statements of norms denominated Canons, specific Sections and Commentary, states appropriate ethical obligations of judges.

The general format of the 1972 Code is retained. A Preamble and a Terminology section are added in this revision. An Application Section follows the Canons. An Appendix contains an example of a rule to establish a judicial ethics committee. Its purpose is to assist jurisdictions in establishing judicial ethics advisory committees where none exists, which the Association believes are essential to the proper administration of a Code of judicial ethics. The Appendix is not, however, intended to be adopted by jurisdictions as part of the Code.
PREAMBLE - TERMINOLOGY

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. See ABA Standards Relating to Judicial Discipline and Disability Retirement.*

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.
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Terms explained below are noted with an asterisk (*) in the Sections where they appear. In addition, the Sections where terms appear are referred to after the explanation of each term below.

"Aggregate" in relation to contributions for a candidate under Sections 3E(1)(e) and 5C(3) and (4) denotes not only contributions in cash or in kind made directly to a candidate's committee or treasurer, but also, except in retention elections, all contributions made indirectly with the understanding that they will be used to support the election of the candidate or to oppose the election of the candidate's opponent. See Sections 3E(1)(e), 5C(3) and 5C(4).

"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 or retention in judicial office by election or appointment. A person becomes a candidate for judicial office as soon as he or she makes a public announcement of candidacy, declares or files as a candidate with the election or appointment authority, or authorizes 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 Sections 5A, 5B, 5C and 5E.

"Continuing part-time judge." A continuing part-time judge is a judge who serves repeatedly on a part-time basis by election or under a continuing appointment, including a retired judge subject to recall who is permitted to practice law. See Application Section C.

"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(2) and 4E.

"Impartiality" or "impartial" denotes absence of bias or prejudice in favor of, or against, particular parties or classes of parties, as well as maintaining an open mind in considering issues that may come before the judge. See Sections 2A, 3B(10), 3E(1), 5A(3)(a) and 5A(3)(d)(i).

"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(6), 4B, 4C, 4D(5), 4F, 4I, 5A(2), 5A(3), 5B(2), 5C(1), 5C(3) and 5D.

"Member of the candidate’s family" denotes a spouse, child, grandchild, parent, grandparent 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, or other relative or person with whom the judge maintains a close familial relationship. See Sections 4D(3), 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(5).

"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 Section 3B(12).

"Periodic part-time judge." A periodic part-time judge is a judge who serves or expects to serve repeatedly on a part-time basis but under a separate appointment for each limited period of service or for each matter. See Application Section D.

"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), 5B(2) and 5C(1).

"Pro tempore part-time judge." A pro tempore part-time judge is a judge who serves or expects to serve once or only sporadically on a part-time basis under a separate appointment for each period of service or for each case heard. See Application Section E.

"Public election." This term includes primary and general elections; it includes partisan elections, nonpartisan elections and retention 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).

"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).

*Judicial disciplinary procedures adopted in the jurisdictions should comport with the requirements of due process. The ABA Standards Relating to Judicial Discipline and Disability Retirement are cited as an example of how these due process requirements may be satisfied.
CANON 1
A JUDGE SHALL UPHOLD THE INTEGRITY AND INDEPENDENCE OF THE JUDICIARY

A. 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 are to be construed and applied to further that objective.

Commentary:

Deference to the judgments and rulings of courts depends upon public confidence in the integrity and independence of judges. The integrity and independence of judges depends in turn upon their acting without fear or favor. A judiciary of integrity is one in which judges are known for their probity, fairness, honesty, uprightness, and soundness of character. An independent judiciary is one free of inappropriate outside influences. Although judges should be independent, they must comply with the law, including the provisions of this Code. Public confidence in the impartiality of the judiciary is maintained by the adherence of each judge to this responsibility. Conversely, violation of this Code diminishes public confidence in the judiciary and thereby does injury to the system of government under law.
CANON 2

A JUDGE SHALL AVOID IMPROPIETY AND THE APPEARANCE OF IMPROPIETY 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.

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. A judge must expect to be the subject of constant public scrutiny. A judge must therefore accept restrictions on the judge’s conduct that might be viewed as burdensome by the ordinary citizen and should do so freely and willingly. Examples are the restrictions on judicial speech imposed by Sections 3(B)(9) and (10) that are indispensable to the maintenance of the integrity, impartiality, and independence of the judiciary.

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’s ability to carry out judicial responsibilities with integrity, impartiality and competence is impaired. See also Commentary under Section 2C.

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.

Commentary:

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

A judge must avoid lending the prestige of judicial office for the advancement of the private interests of others. For example, a judge must not use the judge’s judicial position to gain advantage in a civil suit involving a member of the judge’s family. In contracts for publication of a judge’s writings, a judge should retain control over the advertising to avoid exploitation of the judge’s office. As to the acceptance of awards, see Section 4D(5)(a) and Commentary.
Although a judge should be sensitive to possible abuse of the prestige of office, a judge may, based on the judge’s personal knowledge, serve as a reference or provide a letter of recommendation. However, a judge must not initiate the communication of information to a sentencing judge or a probation or corrections officer but may provide to such persons information for the record in response to a formal request.

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

A judge must not testify voluntarily as a character witness because to do so may lend the prestige of the judicial office in support of the party for whom the judge testifies. Moreover, when a judge testifies as a witness, a lawyer who regularly appears before the judge may be placed in the awkward position of cross-examining the judge. A judge may, however, testify when properly summoned. Except in unusual circumstances where the demands of justice require, a judge should discourage a party from requiring the judge to testify as a character witness.

C. A judge shall not hold membership in any organization that practices invidious discrimination on the basis of race, sex, religion or national origin.

Commentary:

Membership of a judge in an organization that practices invidious discrimination gives rise to perceptions that the judge’s impartiality is impaired. Section 2C refers to the current practices of the organization. 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 how the organization selects members and other relevant factors, such as that the organization is dedicated to the preservation of religious, ethnic or cultural values of legitimate common interest to its members, or that it is in fact and effect an intimate, purely private organization whose membership limitations could not be constitutionally prohibited. Absent such factors, an organization is generally said to discriminate invidiously if it arbitrarily excludes from membership on the basis of race, religion, sex or national origin persons who would otherwise be admitted to membership. See New York State Club Ass’n, Inc. v. City of New York, 108 S. Ct. 2225, 101 L. Ed. 2d 1 (1988); Board of Directors of Rotary International v. Rotary Club of Duarte, 481 U.S. 537, 107 S. Ct. 1940 (1987), 95 L. Ed. 2d 474; Roberts v. United States Jaycees, 468 U.S. 609, 104 S. Ct. 3244, 82 L. Ed. 2d 462 (1984).

Although Section 2C relates only to membership in organizations that invidiously discriminate on the basis of race, sex, religion or national origin, a judge’s membership in an organization that engages in any discriminatory membership practices prohibited by the law of the jurisdiction also violates Canon 2 and Section 2A and gives the appearance of impropriety. In addition, it would be a violation of Canon 2 and Section 2A for a judge to arrange a meeting at a club that the judge knows practices invidious discrimination on the basis of race, sex, religion or national origin in its membership or other policies, or for the judge to regularly use such a club. Moreover, public manifestation by a judge of the judge’s knowing approval of invidious discrimination on any basis gives the appearance of impropriety under Canon 2 and diminishes public confidence in the integrity and impartiality of the judiciary, in violation of Section 2A.
When a person who is a judge on the date this Code becomes effective [in the jurisdiction in which the person is a judge]¹ learns that an organization to which the judge belongs engages in invidious discrimination that would preclude membership under Section 2C or under Canon 2 and Section 2A, the judge is permitted, in lieu of resigning, to make immediate efforts to have the organization discontinue its invidiously discriminatory practices, but is required to suspend participation in any other activities of the organization. If the organization fails to discontinue its invidiously discriminatory practices as promptly as possible (and in all events within a year of the judge’s first learning of the practices), the judge is required to resign immediately from the organization.

¹ The language within the brackets should be deleted when the jurisdiction adopts this provision.

**CANON 3**

**A JUDGE SHALL PERFORM THE DUTIES OF JUDICIAL OFFICE IMPARTIALLY AND DILIGENTLY**

A. Judicial Duties in General. The judicial duties of a judge take precedence over all the judge’s other activities. The judge’s judicial duties include all the duties of the judge’s office prescribed by law*. In the performance of these duties, the following standards apply.

B. Adjudicative Responsibilities.

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

(2) A judge shall be faithful to the law* and maintain professional competence in it. 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) A judge shall be patient, dignified and courteous to litigants, jurors, witnesses, lawyers 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.

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. Judges can be efficient and businesslike while being patient and deliberate.

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

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

A judge 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.

(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, 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 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*. 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) A judge may obtain the advice of a disinterested expert on the law* applicable to a proceeding before the judge if the judge gives notice to the parties of the person consulted and the substance of the advice, and affords the parties reasonable opportunity to respond.

(c) A judge may consult with 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.
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.

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

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

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

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

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

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

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

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

(8) A judge shall dispose of all judicial matters promptly, efficiently and fairly.

Commentary:

In disposing of matters promptly, efficiently and fairly, a judge must demonstrate due regard for the rights of the parties to be heard and to have issues resolved without unnecessary cost or delay. Containing costs while preserving fundamental rights of parties also protects the interests of witnesses and the general public. A judge should monitor and supervise cases so as to reduce or eliminate dilatory practices, avoidable delays and unnecessary costs. A judge should encourage and seek to facilitate settlement, but parties should not feel coerced into surrendering the right to have their controversy resolved by the courts.
Prompt disposition of the court’s business requires a judge to devote adequate time to judicial duties, to be punctual in attending court and expeditious in determining matters under submission, and to insist that court officials, litigants and their lawyers cooperate with the judge to that end.

(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, with respect to cases, controversies or issues that are likely to come before the court, make pledges, promises or commitments that are inconsistent with the impartial* performance of the adjudicative duties of the office.

Commentary:

Sections 3B(9) and (10) restrictions on judicial speech are essential to the maintenance of the integrity, impartiality, and independence of the judiciary. A pending proceeding is one that has begun but not yet reached final disposition. An impending proceeding is one that is anticipated but not yet begun. The requirement that judges abstain from public comment regarding a pending or impending proceeding continues during any appellate process and until final disposition. Sections 3B(9) and (10) do not prohibit a judge from commenting on proceedings in which the judge is a litigant in a personal capacity, but in cases such as a writ of mandamus where the judge is a litigant in an official capacity, the judge must not comment publicly. The conduct of lawyers relating to trial publicity is governed by [Rule 3.6 of the ABA Model Rules of Professional Conduct]. (Each jurisdiction should substitute an appropriate reference to its rule.)

(11) 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.

Commentary:

Commending or criticizing jurors for their verdict may imply a judicial expectation in future cases and may impair a juror’s ability to be fair and impartial in a subsequent case.

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

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 should 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.

Commentary:

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

(5) A judge shall not appoint a lawyer to a position if the judge either knows that the lawyer has contributed more than $[ ] within the prior [ ] years to the judge’s election campaign, or learns of such a contribution by means of a timely motion by a party or other person properly interested in the matter, unless

(a) the position is substantially uncompensated;

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

(c) the judge or another presiding or administrative judge affirmatively finds that no other lawyer 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 [substitute correct title if the applicable rules of lawyer conduct have a different title] 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.

Commentary:

Appropriate action may include direct communication with the judge or lawyer who has committed the violation, other direct action if available, and reporting the violation to the appropriate authority or other agency or body.

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:

Commentary:

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

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

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

(a) the judge has a personal bias or prejudice concerning a party or a party’s lawyer, or personal knowledge of disputed evidentiary facts concerning the proceeding;

(b) the judge served as a 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 has been a material witness concerning it;

Commentary:

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

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

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

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

(f) the judge, while a judge or a candidate* for judicial office, has made a public statement that commits, or appears to commit, the judge with respect to

(i) an issue in the proceeding; or

(ii) the controversy in the proceeding.

Commentary:

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

(2) A judge shall keep informed about the judge's personal and fiduciary* economic interests*, and make a reasonable effort to keep informed about the personal economic interests of the judge's spouse and minor children residing in the judge's household.

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

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

2 Amended August 10, 1999, American Bar Association House of Delegates, Atlanta, Georgia, per Report 123.

3 This provision is meant to be applicable wherever judges are subject to public election; specific amount and time limitations, to be determined based on circumstances within the jurisdiction, should be inserted in the brackets.

4 This provision is meant to be applicable wherever judges are subject to public election. Jurisdictions that adopt specific dollar limits on contributions in section 5(C)(3) should adopt the same limits in section 3(E)(1)(e). Where specific dollar amounts determined by local circumstances are not used, the "reasonable and appropriate" language should be used.
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.

Commentary:

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

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

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.

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 time permits, a judge is encouraged to do so, either independently or through a bar association, judicial conference or other organization dedicated to the improvement of the law. Judges may participate in efforts to promote the fair administration of justice, the independence of the judiciary and the integrity of the legal profession and may express opposition to the persecution of lawyers and judges in other countries because of their professional activities.

In this and other Sections of Canon 4, the phrase "subject to the requirements of this Code" is used, notably in connection with a judge’s governmental, civic or charitable activities. This phrase is included to remind judges that the use of permissive language in various Sections of the Code does not relieve a judge from the other requirements of the Code that apply to the specific conduct.

C. Governmental, Civic or Charitable Activities.

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

Commentary:

See Section 2B regarding the obligation to avoid improper influence.

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

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

(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.

Commentary:

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

See Commentary to Section 4B regarding use of the phrase "subject to the following limitations and the other requirements of this Code." As an example of the meaning of the phrase, a judge permitted by Section 4C(3) to serve on the board of a fraternal institution may be prohibited from such service by Sections 2C or 4A if the institution practices invidious discrimination or if service on the board otherwise casts reasonable doubt on the judge’s capacity to act impartially as a judge.
Service by a judge on behalf of a civic or charitable organization may be governed by other provisions of Canon 4 in addition to Section 4C. For example, a judge is prohibited by Section 4G from serving as a legal advisor to a civic or charitable organization.

(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.

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 the judge is affiliated to determine if it is proper for the judge to continue the affiliation. For example, in many jurisdictions charitable hospitals are now more frequently in court than in the past. Similarly, the boards of some legal aid organizations now make policy decisions that may have political significance or imply commitment to causes that may come before the courts for adjudication.

(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.

Commentary:

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

* The phrase "concerning the law" is intended to mean a broad category that may include many different aspects of the law, such as law enforcement, judicial administration, and the like.
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.

A judge must not be a speaker or guest of honor at an organization’s fund-raising event, but mere attendance at such an event is permissible if otherwise consistent with this Code.

D. Financial Activities.

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

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

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

Commentary:

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

When a judge acquires in a judicial capacity information, such as material contained in filings with the court, that is not yet generally known, the judge must not use the information for private gain. See Section 2B; see also Section 3B(12).

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

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

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

Commentary:

This Section provides that, subject to the requirements of this Code, a judge may hold and manage investments owned solely by the judge, investments owned solely by a member or members of the judge’s family, and investments owned jointly by the judge and members of the judge’s family.

(3) A judge shall not serve as an officer, director, manager, general partner, advisor or employee of any business entity except that a judge may, subject to the requirements of this Code, manage and participate in:

(a) a business closely held by the judge or members of the judge’s family,* or

(b) a business entity primarily engaged in investment of the financial resources of the judge or members of the judge's family.*

Commentary:

Subject to the requirements of this Code, a judge may participate in a business that is closely held either by the judge alone, by members of the judge’s family, or by the judge and members of the judge's family.

Although participation by a judge in a closely-held family business might otherwise be permitted by Section 4D(3), a judge may be prohibited from participation by other provisions of this Code when, for example, the business entity frequently appears before the judge’s court or the participation requires significant time away from judicial duties. Similarly, a judge must avoid participating in a closely-held family business if the judge’s participation would involve misuse of the prestige of judicial office.

(4) A judge shall manage the judge’s investments and other financial interests to minimize the number of cases in which the judge is disqualified. As soon as the judge can do so without serious financial detriment, the judge shall divest himself or herself of investments and other financial interests that might require frequent disqualification.

(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:

Commentary:

Section 4D(5) does not apply to contributions to a judge’s campaign for judicial office, a matter governed by Canon 5.
Because a gift, bequest, favor or loan to a member of the judge’s family residing in the judge’s household might be viewed as intended to influence the judge, a judge must inform the family members of the relevant ethical constraints upon the judge in this regard and discourage those family members from violating them. A judge cannot, however, reasonably be expected to know or control all of the financial or business activities of all family members residing in the judge’s household.

(a) a gift incident to a public testimonial, books, tapes and other resource materials supplied by publishers on a complimentary basis for official use, or an invitation to the judge and the judge’s spouse or guest to attend a bar-related function or an activity devoted to the improvement of the law,* the legal system or the administration of justice;

Commentary:

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

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

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

(c) ordinary social hospitality;

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

Commentary:

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

(e) a gift, bequest, favor or loan from a relative or close personal friend whose appearance or interest in a case would in any event require disqualification under Section 3E;

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

(g) a scholarship or fellowship awarded on the same terms and based on the same criteria applied to other applicants; or
(h) any other gift, bequest, favor or loan, only if: the donor is not a party or other person who has come or is likely to come or whose interests have come or are likely to come before the judge; and, if its value exceeds $150.00, the judge reports it in the same manner as the judge reports compensation in Section 4H.

Commentary:

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

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.

Commentary:

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

The restrictions imposed by this Canon may conflict with the judge’s obligation as a fiduciary. For example, a judge should resign as trustee if detriment to the trust would result from divestiture of holdings the retention of which would place the judge in violation of Section 4D(4).

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.*

Commentary:

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

G. Practice of Law. A judge shall not practice law. Notwithstanding this prohibition, a judge may act pro se and may, without compensation, give legal advice to and draft or review documents for a member of the judge’s family.*
Commentary:

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

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

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Canon 6, new in the 1972 Code, reflected concerns about conflicts of interest and appearances of impropriety arising from compensation for off-the-bench activities. Since 1972, however, reporting requirements that are much more comprehensive with respect to what must be reported and with whom reports must be filed have been adopted by many jurisdictions. The Committee believes that although reports of compensation for extra-judicial activities should be required, reporting requirements preferably should be developed to suit the respective jurisdictions, not simply adopted as set forth in a national model Code of judicial conduct. Because of the Committee’s concern that deletion of this Canon might lead to the misconception that reporting compensation for extra-judicial activities is no longer important, the substance of Canon 6 is carried forward as Section 4H in this Code for adoption in those jurisdictions that do not have other reporting requirements. In jurisdictions that have separately established reporting requirements, Section 4H(2) (Public Reporting) may be deleted and the caption for Section 4H modified appropriately.

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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 report the date, place and nature of any activity for which the judge received compensation, and the name of the payor and the amount of compensation so received. 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. The judge’s report shall be made at least annually and shall be filed as a public document in the office of the clerk of the court on which the judge serves or other office designated by law.*
Commentary:

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

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

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.*

Commentary:

Section 3E requires a judge to disqualify himself or herself in any proceeding in which the judge has an economic interest. See "economic interest" as explained in the Terminology Section. Section 4D requires a judge to refrain from engaging in business and from financial activities that might interfere with the impartial performance of judicial duties; Section 4H requires a judge to report all compensation the judge received for activities outside judicial office. A judge has the rights of any other citizen, including the right to privacy of the judge’s financial affairs, except to the extent that limitations established by law are required to safeguard the proper performance of the judge’s duties.
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(5), 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,*
(b) publicly endorse or publicly oppose another candidate for public office;
(c) make speeches on behalf of a political organization;
(d) attend political gatherings; or
(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.

Commentary:

A judge or candidate for judicial office retains the right to participate in the political process as a voter.

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

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

Section 5A(1)(b) does not prohibit a judge or judicial candidate from privately expressing his or her views on judicial candidates or other candidates for public office.

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

(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.

(3) A candidate* for a judicial office:

(a) shall maintain the dignity appropriate to judicial office and act in a manner consistent with the impartiality,* 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;

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.

(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) with respect to cases, controversies, or issues that are likely to come before the court, make pledges, promises or commitments that are inconsistent with the impartial* performance of the adjudicative duties of the office; or

(ii) knowingly* misrepresent the identity, qualifications, present position or other fact concerning the candidate or an opponent;

Commentary:

Section 5A(3)(d) prohibits a candidate for judicial office from making statements that commit the candidate regarding cases, controversies or issues likely to come before the court. 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) and (10), 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.

(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.

(i) A candidate* for appointment to judicial office or a judge seeking other governmental office shall not solicit or accept funds, personally or through a committee or otherwise, to support his or her candidacy.
(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 his or her 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 functions.

Commentary:

Section 5B(2) provides a limited exception to the restrictions imposed by Sections 5A(1) and 5D. Under Section 5B(2), candidates seeking reappointment to the same judicial office or appointment to another judicial office or other governmental office may apply for the appointment and seek appropriate support.

Although under Section 5B(2) non-judge candidates seeking appointment to judicial office are permitted during candidacy to retain office in a political organization, attend political gatherings and pay ordinary dues and assessments, they remain subject to other provisions of this Code during candidacy. See Sections 5B(1), 5B(2)(a), 5E and Application Section.

C. Judges and Candidates Subject to Public Election.

(1) A judge or a candidate* subject to public election* may, except as prohibited by law*:

(a) at any time

(i) purchase tickets for and attend political gatherings;

(ii) identify himself or herself as a member of a political party; and

(iii) contribute to a political organization*;

(b) when a candidate for election
(i) speak to gatherings on his or her own behalf;

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

(iii) distribute pamphlets and other promotional campaign literature supporting his or her candidacy; and

(iv) publicly endorse or publicly oppose other candidates for the same judicial office in a public election in which the judge or judicial candidate is running.

Commentary:

Section 5C(1) permits judges subject to election at any time to be involved in limited political activity. Section 5D, applicable solely to incumbent judges, would otherwise bar this activity.

(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 his or her candidacy. Such committees are not prohibited from soliciting and accepting reasonable campaign contributions and public support from lawyers. A candidate’s committees may solicit contributions and public support for the candidate’s campaign no earlier than [one year] before an election and no later than [90] 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.

Commentary:

There is legitimate concern about a judge’s impartiality when parties whose interests may come before a judge, or the lawyer who represent such parties, are known to have made contributions to the election campaigns of judicial candidates. This is among the reasons that merit selection of judges is a preferable manner in which to select the judiciary. Notwithstanding that preference, Section 5C(2) recognizes that in many jurisdictions judicial candidates must raise funds to support their candidacies for election to judicial office. It therefore permits a candidate, other than a candidate for appointment, to establish campaign committees to solicit and accept public support and reasonable financial contributions. In order to guard against the possibility that conflicts of interest will arise, the candidate must instruct his or her campaign committees at the start of the campaign to solicit or accept only contributions that are reasonable and appropriate under the circumstances. Though not prohibited, campaign contributions of which a judge has knowledge, made by lawyers or others who appear before the judge, may, by virtue of their size or source, raise questions about a judge’s impartiality and be cause for disqualification as provided under Section 3E.

Campaign committees established under Section 5C(2) should manage campaign finances responsibly, avoiding deficits that might necessitate post-election fund-raising, to the extent possible.
Such committees must at all times comply with applicable statutory provisions governing their conduct.

Section 5C(2) does not prohibit a candidate from initiating an evaluation by a judicial selection commission or bar association, or, subject to the requirements of this Code, from responding to a request for information from any organization.

(3) A candidate shall instruct his or her campaign committee(s) at the start of the campaign not to accept campaign contributions for any election that exceed, in the aggregate*, [$ ] from an individual or [$ ] from an entity. This limitation is in addition to the limitations provided in Section 5C(2).7

(4) In addition to complying with all applicable statutory requirements for disclosure of campaign contributions, campaign committees established by a candidate shall file with [ ] a report stating the name, address, occupation and employer of each person who has made campaign contributions to the committee whose value in the aggregate* exceed [$ ].9 The report must be filed within [ ] days following the election.

(5) Except as prohibited by law*, a candidate* for judicial office in a public election* may permit the candidate’s name: (a) to be listed on election materials along with the names of other candidates for elective public office, and (b) to appear in promotions of the ticket.

Commentary:

Section 5C(5) provides a limited exception to the restrictions imposed by Section 5A(1).

D. Incumbent Judges. A judge shall not engage in any political activity except (i) as authorized under any other Section of this Code, (ii) on behalf of measures to improve the law*, the legal system or the administration of justice, or (iii) as expressly authorized by law.

Commentary:

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

E. Applicability. Canon 5 generally applies to all incumbent judges and judicial candidates*. A successful candidate, whether or not an incumbent, is subject to judicial discipline for his or her campaign conduct; an unsuccessful candidate who is a lawyer is subject to lawyer discipline for his or her campaign conduct. A lawyer who is a candidate for judicial office is subject to [Rule 8.2(b) of the ABA Model Rules of Professional Conduct]. (An adopting jurisdiction should substitute a reference to its applicable rule.)

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5 Introductory Note to Canon 5: There is wide variation in the methods of judicial selection used, both among jurisdictions and within the jurisdictions themselves. In a given state, judges may be
selected by one method initially, retained by a different method, and selected by still another method to fill interim vacancies.

According to figures compiled in 1987 by the National Center for State Courts, 32 states and the District of Columbia use a merit selection method (in which an executive such as a governor appoints a judge from a group of nominees selected by a judicial nominating commission) to select judges in the state either initially or to fill an interim vacancy. Of those 33 jurisdictions, a merit selection method is used in 18 jurisdictions to choose judges of courts of last resort, in 13 jurisdictions to choose judges of intermediate appellate courts, in 12 jurisdictions to choose judges of general jurisdiction courts and in 5 jurisdictions to choose judges of limited jurisdiction courts.

Methods of judicial selection other than merit selection include nonpartisan election (10 states use it for initial selection at all court levels, another 10 states use it for initial selection for at least one court level) and partisan election (8 states use it for initial selection at all court levels, another 7 states use it for initial selection for at least one level). In a small minority of the states, judicial selection methods include executive or legislative appointment (without nomination of a group of potential appointees by a judicial nominating commission) and court selection. In addition, the federal judicial system utilizes an executive appointment method. See State Court Organization 1987 (National Center for State Courts, 1988).


7 Jurisdictions wishing to adopt campaign contribution limits that are lower than generally applicable campaign finance regulations provide should adopt this provision, inserting appropriate dollar amounts where brackets appear.

8 Each jurisdiction should identify an appropriate depository for the information required under this provision, giving consideration to the public's need for convenient and timely access to the information. Electronic filing is to be preferred.

9 Jurisdictions wishing to adopt campaign contribution disclosure levels lower than those set in generally applicable campaign finance regulations should adopt this provision, inserting appropriate dollar amounts where brackets appear.

10 A time period chosen by the adopting jurisdiction should appear in the bracketed space.
APPLICATION OF THE CODE OF JUDICIAL CONDUCT

A. 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.

Commentary:

The four categories of judicial service in other than a full-time capacity are necessarily defined in general terms because of the widely varying forms of judicial service. For the purposes of this Section, as long as a retired judge is subject to recall the judge is considered to "perform judicial functions." The determination of which category and, accordingly, which specific Code provisions apply to an individual judicial officer, depend upon the facts of the particular judicial service.

B. Retired Judge Subject to Recall. A retired judge subject to recall who by law is not permitted to practice law is not required to comply:

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

(2) at any time with Section 4E.

C. Continuing Part-time Judge. A continuing part-time judge:

(1) is not required to comply

(a) except while serving as a judge, with Section 3B(9); and

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

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

Commentary:

When a person who has been a continuing part-time judge is no longer a continuing part-time judge, including a retired judge no longer subject to recall, that person may act as a lawyer in a proceeding in which he or she has served as a judge or in any other proceeding related thereto only with the express consent of all parties pursuant to [Rule 1.12(a) of the ABA Model Rules of Professional Conduct]. (An adopting jurisdiction should substitute a reference to its applicable rule).

D. Periodic Part-time Judge. A periodic part-time judge:

(1) is not required to comply

(a) except while serving as a judge, with Section 3B(9);
(b) at any time, with Sections 4C(2), 4C(3)(a), 4D(1)(b), 4D(3), 4D(4), 4D(5), 4E, 4F, 4G, 4H, 5A(1), 5B(2) and 5D.

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

Commentary:

When a person who has been a periodic part-time judge is no longer a periodic part-time judge (no longer accepts appointments), that person may act as a lawyer in a proceeding in which he or she has served as a judge or in any other proceeding related thereto only with the express consent of all parties pursuant to [Rule 1.12(a) of the ABA Model Rules of Professional Conduct]. (An adopting jurisdiction should substitute a reference to its applicable rule).

E. Pro Tempore Part-time Judge. A pro tempore part-time judge*:

(1) is not required to comply

(a) except while serving as a judge, with Sections 2A, 2B, 3B(9) and 4C(1);

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

(2) A person who has been a pro tempore part-time judge* shall not act as a lawyer in a proceeding in which the judge has served as a judge or in any other proceeding related thereto except as otherwise permitted by [Rule 1.12(a) of the ABA Model Rules of Professional Conduct]. (An adopting jurisdiction should substitute a reference to its applicable rule.)

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

Commentary:

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

Because of the need to encourage the establishment of judicial ethics committees in jurisdictions that do not have such committees either as free-standing entities or in combination with lawyer ethics committees, the following Appendix is provided. It is offered not as a model but simply as an example of provisions that a jurisdiction might adopt.
Applicability of this Code to administrative law judges should be determined by each adopting jurisdiction. Administrative law judges generally are affiliated with the executive branch of government rather than the judicial branch and each adopting jurisdiction should consider the unique characteristics of particular administrative law judge positions in adopting and adapting the Code for administrative law judges. See, e.g., Model Code of Judicial Conduct for Federal Administrative Law Judges, endorsed by the National Conference of Administrative Law Judges in February 1989.
Appendix D

Beijing Statement on the Principles of the Judiciary
INTRODUCTION

Every two years since 1985, a conference of Supreme Court Chief Justices from the Asia Pacific region has been held in cooperation with the Judicial Section of LAWASIA, the Law Association for Asia and the Pacific. Since its inception, the conference has served as a useful forum for sharing information and discussing issues of mutual concern among the Chief Justices of the region.

At the 6th Conference of Chief Justices, held in Beijing in August 1997, 20 Chief Justices first adopted a joint Statement of Principles of the Independence of the Judiciary. This Statement was further refined during the 7th Conference of Chief Justices, held in Manila in August 1997. It has now been signed by 32 Chief Justices throughout the Asia Pacific region.
FOREWORD

The Beijing Statement of Principles of the Independence of the Judiciary finds its origins in 1982 in a statement of principles formulated by the Law Association for Asia and the Pacific (LAWASIA) Human Rights Standing Committee and a small number of Chief Justices and other Judges at a meeting in Tokyo (“the Tokyo Principles”). The decision to formulate the current Statement was made at the 4th Conference of Chief Justices of Asia and the Pacific in Perth, Western Australia in 1991. The Secretary of the LAWASIA Judicial Section, The Honourable Justice R D Nicholson, and I undertook the drafting of the Statement, a first draft of which was presented to the 5th Conference in Colombo, Sri Lanka, in 1993. In light of comments received at that conference and subsequently, and following further consideration at the conference in Beijing in August 1995, the Statement of Principles was adopted by the Chief Justices from 20 countries in the Asia Pacific. A revised version of the Statement as it is presented here was adopted in its final form at the 7th Conference of the Chief Justices in Manila in August 1997. The Statement has now been signed and subscribed to by 32 countries in the Asia Pacific region.

The Statement is a tribute to the determination of all signatories to leave aside differences in both legal and social traditions to formulate a single Statement on the Independence of the Judiciary.

*The Honourable David K Malcolm*
Chairman, Judicial Section, LAWASIA
Chief Justice of Western Australia
In every region of the globe, countries are wrestling with the complex challenges of legal and judicial reform, including the key question of developing and refining the role and functions of the judiciary. In this regard, the coming together of 32 Supreme Court Chief Justices from throughout the Asia Pacific region to issue a joint statement on the independence of the judiciary represents a significant step forward in addressing a crucial worldwide issue.

The Asia Foundation’s role in this effort dates back to 1984, when The Asia Foundation’s Senior Advisor for Judicial Administration and Judicial Systems, Judge J Clifford Wallace of the US Ninth Circuit Court of Appeals, recommended the establishment of a Conference of Chief Justices of Asia to provide a forum for interaction and cross-fertilization on important common issues. At the request of The Asia Foundation, the Judicial Section of LAWASIA agreed to be a co-sponsor. The first conference was held in Malaysia, in August 1985, and conferences (later adding the Pacific nations) have been held every two years since, most recently in the Philippines in 1997. As the conference series has developed, it has become increasingly more effective both in its information-sharing role and in taking on important issues affecting legal development and reform in the region, as exemplified in the Chief Justices’ joint statement.

The Asia Pacific Chief Justices conference is now self-supporting, but The Asia Foundation is proud to have provided the necessary funding during its formative years to help the conference become established as an important regional forum. And we are extremely pleased now to have arranged for the printing of this important document.

William P Fuller
President, The Asia Foundation
PREAMBLE TO STATEMENT OF PRINCIPLES OF THE INDEPENDENCE OF
THE JUDICIARY

Beijing, 19 August 1995

Whereas the Charter of the United Nations the peoples of the world affirm, inter alia, their
determination to establish conditions under which justice can be maintained to achieve international
cooperation in promoting and encouraging respect for human rights and fundamental freedoms
without any discrimination;

Whereas the Universal Declaration of Human Rights enshrines in particular the principles of equality
before the law, of the presumption of innocence and of the right to a fair and public hearing by a
competent, independent and impartial tribunal established by the law;

Whereas the International Covenant on Economic, Social and Cultural Rights and the International Covenant
on Civil and Political Rights both guarantee the exercise of those rights, and in addition the Covenant on
Civil and Political Rights further guarantees the right to be tried without undue delay;

Whereas the organisation and administration of justice in every country should be inspired by those
principles, and efforts should be undertaken to translate them fully into reality;

Whereas rules concerning the exercise of judicial office should aim at enabling judges to act in
accordance with those principles;

Whereas the 6th United Nations Congress on the Prevention of Crime and the Treatment of
Offenders, by its resolution 16, called upon the Committee on Crime Prevention and Control to
include among its priorities the elaboration of guidelines relating to the independence of judges and
the selection, professional training and status of judges and prosecutors;

Whereas the 7th United Nations Congress on the Prevention of Crime and the Treatment of
Offenders, at its meeting in Milan, Italy, from 26 August to 6 September 1985, adopted the Basic
Principles on the Independence of the Judiciary by consensus;

Whereas the 7th United Nations Congress on the Prevention of Crime and the Treatment of
Offenders recommended the Basic Principles on the Independence of the Judiciary for national, regional and
interregional action and implementation, taking into account the political, economic, social and
cultural circumstances and traditions of each country;

Whereas on 17-18 July 1982 the LAWASIA Human Rights Standing Committee met in Tokyo,
Japan and in consultation with members of the judiciary formulated a Statement of Principles on the
Independence of the Judiciary in the LAWASIA Region (“the Tokyo Principles”) in the context of the history
and culture of the region;

Whereas the 5th Conference of Chief Justices of Asia and the Pacific at Colombo, Sri Lanka on 13-
15 September 1993 recognised that it was desirable to revise the Tokyo Principles in the light of
subsequent developments with a view to adopting a clear statement of principles of the
independence of the judiciary, and considered a first draft of a Revised Statement of Principles on the Independence of the Judiciary and requested the Acting Chairman of the Judicial Section of LAWASIA to prepare a second draft of the Revised Statement taking into account the views expressed at the 5th Conference of the Chief Justices and comments and suggestions to be made by the Chief Justices or their representatives; and

Noting that the 6th Conference of Chief Justices of Asia and the Pacific was held in Beijing in conjunction with the 14th LAWASIA Biennial, the primary object of which is:

“To promote the administration of justice, the protection of human rights and the maintenance of the rule of law within the region.”

The 6th Conference of the Chief Justices of Asia and the Pacific:

Adopts the Statement of Principles on the Independence of the Judiciary contained in the annex to this resolution to be known as the Beijing Statement of Principles on the Independence of the Judiciary in the LAWASIA Region.
Beijing Statement of Principles of the
Independence of the Judiciary in the LAWASIA Region

(As Amended at Manila, 28 August 1997)

INDEPENDENCE OF THE JUDICIARY

1. The Judiciary is an institution of the highest value in every society.

2. The Universal Declaration of Human Rights (Art. 10) and the International Covenant on Civil and Political Rights (Art. 14(1)) proclaim that everyone should be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. An independent judiciary is indispensable to the implementation of this right.

3. Independence of the Judiciary requires that;

a) The judiciary shall decide matters before it in accordance with its impartial assessment of the facts and its understanding of the law without improper influences, direct or indirect, from any source; and

b) The judiciary has jurisdiction, directly or by way of review, over all issues of a justiciable nature.

4. The maintenance of the independence of the judiciary is essential to the attainment of its objectives and the proper performance of its functions in a free society observing the rule of law. It is essential that such independence be guaranteed by the State and enshrined in the Constitution or the law.

5. It is the duty of the judiciary to respect and observe the proper objectives and functions of the other institutions of government. It is the duty of those institutions to respect and observe the proper objectives and functions of the judiciary.

6. In the decision-making process, any hierarchical organisation of the judiciary and any difference in grade or rank shall in no way interfere with the duty of the judge exercising jurisdiction individually or judges acting collectively to pronounce judgement in accordance with Article 3 (a). The judiciary, on its part, individually and collectively, shall exercise its functions in accordance with the Constitution and the law.

7. Judges shall uphold the integrity and independence of the judiciary by avoiding impropriety and the appearance of impropriety in all their activities.

8. To the extent consistent with their duties as members of the judiciary, judges, like other citizens, are entitled to freedom of expression, belief, association and assembly.
9. Judges shall be free, subject to any applicable law, to form and join an association of judges to represent their interests and promote their professional training and to take such other action to protect their independence as may be appropriate.

OBJECTIVES OF THE JUDICIARY

10. The objectives and functions of the judiciary include the following:

a) To ensure that all persons are able to live securely under the rule of law;

b) To promote, within the proper limits of the judicial function, the observance and the attainment of human rights; and

c) To administer the law impartially among person and between persons and the State.

APPOINTMENT OF JUDGES

11. To enable the judiciary to achieve its objectives and perform its functions, it is essential that judges be chosen on the basis of proven competence, integrity and independence.

12. The mode of appointment of judges must be such as will ensure the appointment of persons who are best qualified for judicial office. It must provide safeguards against improper influences being taken into account so that only persons of competence, integrity and independence are appointed.

13. In the selection of judges there must no discrimination against a person on the basis of race, colour, gender, religion, political or other opinion, national or social origin, marital status, sexual orientation, property, birth or status, except that a requirement that a candidate for judicial office must be a national of the country concerned shall not be considered discriminatory.

14. The structure of the legal profession, and the sources from which judges are drawn within the legal profession, differ in different societies. In some societies, the judiciary is a career service; in others, judges are chosen from the practising profession. Therefore, it is accepted that in different societies, different procedures and safeguards may be adopted to ensure the proper appointment of judges.

15. In some societies, the appointment of judges, by, with the consent of, or after consultation with a Judicial Services Commission has been seen as a means of ensuring that those chosen judges are appropriate for the purpose. Where a Judicial Services Commission is adopted, it should include representatives the higher Judiciary and the independent legal profession as a means of ensuring that judicial competence, integrity and independence are maintained.

16. In the absence of a Judicial Services Commission, the procedures for appointment of judges should be clearly defined and formalised and information about them should be available to the public.
17. Promotion of judges must be based on an objective assessment of factors such as competence, integrity, independence and experience.

**TENURE**

18. Judges must have security of tenure.

19. It is recognised that, in some countries, the tenure of judges is subject to confirmation from time to time by vote of the people or other formal procedures.

20. However, it is recommended that all judges exercising the same jurisdiction be appointed for a period to expire upon the attainment of a particular age.

21. A judge's tenure must not be altered to the disadvantage of the judge during his or her term of office.

22. Judges should be subject to removal from office only for proved incapacity, conviction of a crime, or conduct that makes the judge unfit to be a judge.

23. It is recognised that, by reason of differences in history and culture, the procedures adopted for the removal of judges may differ in different societies. Removal by parliamentary procedures has traditionally been adopted in some societies. In other societies, that procedure is unsuitable; it is not appropriate for dealing with some grounds for removal; it is rarely, if ever, used; and it use other than for the most serious of reasons is apt to lead to misuse.

24. Where parliamentary procedures or procedures for the removal of a judge by vote of the people do not apply, procedures for the removal of judges must be under the control of the judiciary.

25. Where parliamentary procedures of procedures for the removal of a judge by vote of the people do not apply and it is proposed to take steps to secure the removal of a judge, there should, in the first instance, be an examination of the reasons suggested for the removal, for the purpose of determining whether formal proceedings should be commenced only if the preliminary examination indicates that there are adequate reasons for taking them.

26. In any event, the judge who is sought to be removed must have the right to a fair hearing.

27. All disciplinary, suspension or removal proceedings must be determined in accordance with established standards of judicial conduct.

28. Judgements in disciplinary proceedings, whether held in camera or in public, should be published.

29. The abolition of the court of which a judge is a member must not be accepted as a reason or an occasion for the removal of a judge. Where a court is abolished or restructured, all existing members of the court must be reappointed to its replacement or appointed to another judicial office of
equivalent status and tenure. Members of the court for whom no alternative position can be found must be fully compensated.

30. Judges must not be transferred by the Executive from one jurisdiction or function to another without their consent, but when a transfer is in pursuance of a uniform policy formulated by the Executive after due consultation with the judiciary, such consent shall not be unreasonably withheld by an individual judge.

JUDICIAL CONDITIONS

31. Judges must receive adequate remuneration and be given appropriate terms and conditions of service. The remuneration and conditions of service of judges should not be altered to their disadvantage during their term of office, except as part of a uniform public economic measure to which the judges of a relevant court, or a majority of them, have agreed.

32. Without prejudice to any disciplinary procedure or to any right of appeal or to compensation from the State in accordance with national law, judges should enjoy personal immunity from civil suits for monetary damages for improper acts or omissions in the exercise of their judicial functions.

JURISDICTION

33. The judiciary must have jurisdiction over all issues of a justiciable nature and exclusive authority to decide whether an issue submitted for its decision is within its competence as defined by law.

34. The jurisdiction of the highest court in a society should not be limited or restricted without the consent of the members of the court.

JUDICIAL ADMINISTRATION

35. The assignment of cases to judges is a matter of judicial administration over which ultimate control must belong to the chief judicial officer of the relevant court.

36. The principal responsibility for court administration, including appointment, supervision and disciplinary control of administrative personnel and support staff must vest in the judiciary, or in a body in which the judiciary is represented and has an effective role.

37. The budget of the courts should be prepared by the courts or a competent authority in collaboration with the courts having regard to the needs of the independence of the judiciary and its administration. The amount allotted should be sufficient to enable each court to function without an excessive workload.
RELATIONSHIP WITH THE EXECUTIVE

38. Executive powers which may affect judges in their office, their remuneration or conditions or their resources, must not be used so as to threaten or bring pressure upon a particular judge or judges.

39. Inducements or benefits should not be offered to or accepted by judges if they affect, or might affect, the performance of their judicial functions.

40. The Executive authorities must at all times ensure the security and physical protection of judges and their families.

RESOURCES

41. It is essential that judges be provided with the resources necessary to enable them to perform their functions.

42. Where economic constraints make it difficult to allocate to the court system facilities and resources which judges consider adequate to enable them to perform their functions, the essential maintenance of the rule of law and the protection of human rights nevertheless require that the needs of the judiciary and the court system be accorded a high level of priority in the allocation of resources.

EMERGENCY

43. Some derogations from independence of the judiciary may be permitted in times of grave public emergency which threaten the life of the society but only for the period of time strictly required by the exigencies of the situation and under conditions prescribed by law, only to the extent strictly consistent with internationally recognised minimum standards and subject to review by the courts. In such times of emergency, the State shall endeavour to provide that civilians charged with criminal offences of any kind shall be tried by ordinary civilian courts and detention of person administratively without charge shall be subject to review by courts of other independent authority by way of habeus corpus or similar procedures.

44. The jurisdiction of military tribunals must be confined to military offences. There must always be a right of appeal from such tribunals to a legally qualified appellate court of tribunals to a legally qualified appellate court or tribunal or other remedy by way of an application for annulment.
APPENDIX D—BEIJING STATEMENT OF PRINCIPLES OF THE INDEPENDENCE OF THE JUDICIARY

It is the conclusion of the Chief Justices and other judges of Asia and Pacific listed below that these represent the minimum standards necessary to be observed in order to maintain the independence and effective functioning of the judiciary.

SIGNATORIES AT BEIJING, 19 AUGUST 1995

The Hon Sir Gerard Brennan AC KBE
Chief Justice of Australia

The Hon Mr Justice A. T. M. Afzal
Chief Justice of Bangladesh

HE Mr Wang Jingrong
Vice-President, Supreme People’s Court of the People’s Republic of China
(Representing HE President Ren Jianxin, President of the Supreme People’s Court)

The Hon Sir Ti Liang Yang
Chief Justice of Hong Kong, SAR

The Hon Shri Justice S. C. Agrawal
Justice of the Supreme Court of India
(Representing The Hon Mr Justice A. M. Ahmadi, Chief Justice of India)

The Hon Justice S. H. Soerjono
Chief Justice of Indonesia

The Hon Yun Kwan
Chief Justice of the Republic of Korea

The Hon D. Dembereltseren
Chief Justice of Mongolia

The Hon U Aung Toe
Chief Justice of the Supreme Court of The Union of Myanmar (Burma)

The Rt Hon Mr Justice Biswanath Upadhyaya
Chief Justice of Nepal

Monsieur Le Premier Président Olivier Aimot
Premier Président of the Court of Appeal of New Caledonia

The Rt Hon Sir Thomas Eichelbaum GBE
Chief Justice of New Zealand

The Hon Mr Justice Sajjad Ali Shah
Chief Justice of Pakistan
The Hon Sir Arnold K. Amet
Chief Justice of Papua New Guinea

The Hon Andres R. Narvasa
Chief Justice of the Philippines

The Hon Justice Yong Pung How
Chief Justice of Singapore

The Hon Mr Justice P. R. P. Perera
Justice of the Supreme Court of Sri Lanka
(Representing The Hon Mr Justice G. P. S. De Silva, Chief Justice of Sri Lanka)

The Hon Charles Vaudin D’Imecourt
Chief Justice of Vanuatu

The Hon Mr Justice Pham Hung
Chief Justice of Vietnam

Tiavaasue Falefatu Maka Sapolu
Chief Justice of Western Samoa

SUBSEQUENT SIGNATORIES:

The Hon Sir Timoci Tuivaga
Chief Justice of Fiji

The Hon Kim Yong Joon
President of the Constitutional Court of Korea

The Hon Tun Dato Sri Mohd Eusoff b. Chin
Chief Justice of Malaysia

The Hon Justice V Allear
Chief Justice of the Republic of the Seychelles

The Hon Sir John Muria
Chief Justice of the Solomon Islands

The Hon Nigel Hampton
Chief Justice of Tonga
SIGNATORIES AT MANILA, 28 AUGUST 1997:
The Hon Richard Brunt Lussick
Chief Justice of the Republic of Kiribati

The Hon Daniel Cadra
Chief Justice of the High Court
(Representing the Hon Allan Fields Chief Justice of the Marshall Islands)

Chief Justice Sir Gaven Donne
Chief Justice of Nauru and Tuvalu

Chief Justice Vyacheslav M. Lebedev
Chief Justice of the Supreme Court Russian Federation

SUBSEQUENT SIGNATORIES:

The Hon Toru Miyoshi
Chief Justice of Japan
(Subject to reservation in attached Statement, as regards Article 9.)

The Hon Justice Sadka Mokkamakkul
President of the Supreme Court of Thailand
Supreme Court of Japan, Tokyo

THE OPINION OF THE CHIEF JUSTICE OF JAPAN
Concerning “Beijing Statement of Principles of the Independence of the Judiciary in the LAWASIA Region”

The independence in exercising the judicial function is firmly guaranteed to all the judges in Japan by the Constitution along with their compensation and status. This constitutional guarantee turns it unnecessary for the judges to make efforts to improve their working and economic conditions unlike workers in other professions, standing on an equal footing with their employers, who need to demand improvement against them. There are, therefore, no rights for the judges to form or join a labour union.

On the other hand, regarding the question of whether or not the judges are able to “form and join an association of judges to represent their interests and promote their professional training and to take such other action to protect their independence as may be appropriate” other than a labour union, it is understood as follows. The judges are especially required to be politically neutral to perform their duties, and it is also demanded that not only trial and judgement should be fair but also attitudes of judges must be relied on to be fair by the general public. Because of these conditions, the judges are not permitted to form or join an association that takes on a political coloration and arouses people’s suspicion about fairness. And it may cause danger of raising a doubt about political neutrality that the judges, who are firmly guaranteed their status and independence as mentioned before and enjoy their, so to speak, special status, “form and join an association of judges to represent their interests and promote their professional training and to take such other action to protect their independence as may be appropriate.” To take into consideration the abovementioned factors, it is understood that there are some cases where those actions are deemed undesirable.

On the basis of the understanding that Article 9 of the Statement is not contrary to the law and system that are mentioned above, I express my agreement to “BEIJING STATEMENT OF PRINCIPLES OF THE INDEPENDENCE OF THE JUDICIARY IN THE LAWASIA REGION.”
ABOUT LAWASIA

LAWASIA is a professional association of representatives of Bar Councils and law associations, individual lawyers, law firms, and corporations principally from the Asia Pacific region. LAWASIA facilitates its members’ participation in the fastest growing economic region in the world.

The Association provides an invaluable opportunity for lawyers to come together to exchange ideas and information on regional issues and to establish a network of working relationships in the dynamic Asia Pacific region.

LAWASIA’s primary objective is to foster professional and business relationships between lawyers, businesses and government representatives in the region.

It also promotes the rule of law in a diverse range of political, cultural, social and economic contexts throughout the region.

ABOUT THE ASIA FOUNDATION

The Asia Foundation is a private, nongovernment organisation dedicated to supporting programs that contribute to a peaceful, prosperous, and open Asia Pacific community. Drawing on four decades of experience in Asia, the Foundation collaborates with partners from the public and private sectors in the region to support through grants and other programs the development of institutions, leadership, and policy in four broad program areas: governance and law; economic reform and development; women’s political participation; and regional relations.

With a network of 13 offices throughout Asia, an office in Washington DC and headquarters in San Francisco, the Foundation funds programs in these areas at both a country and regional level.

The Asia Foundation is funded by contributions from corporations, foundations, individuals, governmental organisations in the US and Asian, and an annual appropriation from the US Congress.
Appendix E

Draft Code of Judicial Conduct
for the Kingdom of Cambodia
Chapter I
Objective and Structure

Article 1- Objective
This Code of Ethics is intended to reinforce dignity and independency of all judges and prosecutors in performing their judicial and prosecutorial work as well as in adhering to appropriate behaviors outside the court.

This Code of Ethics is merely supplementary to existing law and other existing instructions for judge and prosecutor with the purpose to improve public confidence on judicial system and protect reputation of judges and prosecutor.

Chapter II
Independent Principle

Article 2-Principle
Judge and prosecutor shall fulfill their duty independently with basis of evaluation of fact and legal knowledge without being subjected to such influences as persuasion, pressure, intimidation or interference from any person or people or reasons whether directly or indirectly in order to be perceived as an individual with just manner, and having clear reasons to make judgment.

Judge and prosecutor shall dismiss any irregular attempts that manipulate their judgments.

Article 3-Irregular attempts which influence judges and prosecutors
Judge and prosecutor shall dismiss the attempt to submit or request, which is not primary statement or evidence during the case proceeding of a party or party's representative. If the judge and prosecutor cannot dismiss the attempts, they shall request permission from the President of the Court to take measures according to the law.

Article 4-Political Activities
Judge and prosecutor shall be neutral in political activities.

Article 5-Membership of some government’s commission
Judge and prosecutor may participate in providing conception about judicial administration and improvement of law by utilizing legal knowledge and their judicial and prosecutorial experiences. In this sense, for the public interest, judge and prosecutor may participate in some commissions of the government to the extent of activities necessarily related to the discussion about law, reform of judicial system, and promotion of legal reform.
Article 6-Relationship between individual and society
Judge and prosecutor have rights to lead their lives and use their rights and freedoms as other citizens do. However, judges and prosecutors shall weigh balance of legal demand of relationship between individual and society and degree of harm of the relationship that may irregularly influence to their behavior and judgment.

Chapter III
Impartial Principle

Article 7-Principle
Judge and prosecutor shall maintain their behavior in and outside the court to ensure protection, maintaining, and promotion of trust from public, legal professionals, and disputed party in a manner of impartiality of judge and prosecutor.

Judge and prosecutor shall not participate in public discussion related to issues inside the court because it may affect the trust on impartiality of judges and prosecutors.

Judge and prosecutor shall not have partiality in making decision by having prejudice against race, color, sex, religion, disability, age, family situation, and economic and social situation.

Article 8- Behavior and hearing
Judge and prosecutor shall:
• Demonstrate firm punctuality, patience, politeness, and compassion while performing judicial and prosecutorial work.
• Not comment on something unnecessary and unreasonable in the court of law.
• Always maintain just manner and avoid any confrontation or act that may cause suspicious of impartiality.

Article 9-Investigation or examination of case and communication with party of the case
According to the principle, judge and prosecutor shall not communicate with any party during the case proceeding with the absence of another party except for that it is allowed by the law or with consent of another party. Judge and prosecutor shall not conduct investigation or examination of fact of the case alone and personally in and outside the court.

Article 10-Relationship between profession, society, and family
While performing the work, judge and prosecutor may meet and discuss with legal professional. Judge and prosecutor may also participate in social work with members from other sector providing legal service such as lawyers…etc

Judge and prosecutor shall not hear any case in which lawyers have close personal relationship with them.
Article 11-Commercial activities
Judge and prosecutor shall not perform any other work and business in order to acquire profit or benefit except for salary and remuneration in the court because those activities may cause disruption to appropriate performance and efficiency of the work or cause perception that judges and prosecutor use their position to make business and relationship with other commercial individual which may have cases at the court.

Article 12- Social and humanitarian activities:
Judge and prosecutor are encouraged to participate in related social humanitarian and educational activities as private citizens but they shall avoid any activity that reflects their bias or affects their judicial and prosecutorial work fulfillment, and shall not use judicial position prestige to get benefits for any organization or particular group.

Article 13: Legal work
Judge and prosecutor shall not provide legal service. If necessary, they may be able to provide it but they shall not get paid from the legal work they have done.

Judge and prosecutor may fulfill their personal legal work such as writing books and other works to be sold.

Article 14: Financial benefits
Judge and prosecutor shall not have financial benefits or any other benefits directly or indirectly from the cases they handle.

Judge and prosecutor shall be aware of their own financial and their family members' financial benefit information in order that it is easy to identify the cases that they have to withdraw themselves from the trial.

Article 15: Speaking in public place by judge and prosecutor as individual
The speech of judge and prosecutor on legal issues may have tremendous value to encourage the public awareness on judicial system and legal development. But, judge and prosecutor shall be cautious their individual public speech may reflect the whole judicial vision and their judicial position. Therefore, judge and prosecutor shall be careful when they make the public statement individually. Especially, judge and prosecutor shall absolutely avoid making statement that:

1. relates to political provocation
2. relates to political party
3. leads to conflict or censure of judicial staff who have opposite vision
4. reflects the perception that causes bias or prejudice of the cases they handle or will handle.
5. relates to their decision or judgment

Article 16: Legal education
Based on legal knowledge and experiences in judicial and prosecutorial affairs, judge and prosecutor may contribute in legal education provision to both public and legal professionals. This means judge and prosecutor may:

1. participate in providing legal trainings such as writing, remarks making, or legal
education.
2. participate as members of legal and judicial reform commission.

Article 17: Withdrawal by judges and prosecutors
If judge and prosecutor have reasonable grounds that they could not decide impartially, they shall withdraw themselves from the hearing based on procedure Code.

Chapter IV
Honest Principle

Article 18-Principle
An honest person is the one who is loyal and does not commit corruption. Basic principles of the Code of ethic that an honest person shall follow are not changed though s/he is in the court or outside the court. It is the quality of honesty that could make judge and prosecutor maintain independency and impartiality both internal and external aspects. Therefore, judge and prosecutor shall be an honest person and shall not use and let anybody use their judicial position prestige in order to obtain their personal benefit.

Article 19: Confidential information
The confidential information that judge and prosecutor are aware of shall not be used for any activities that do not relate to judicial and prosecutorial affairs.

Article 20: Acceptance of gift (present)
Judge and prosecutor shall clearly separate gift that is given individually from close friends or relatives and the gift that is given to them officially. The problems will not exist if judge and prosecutor accept the gift individually and the gift is in little value, and that it is not relevant to their judicial position.

Judge and prosecutor shall not use their position to get gift, party, loan, or for any satisfaction. But judge and prosecutor may get the gift by making remark, hosting foreign guests, or participating in other events, if they think that it is not a big one and is acceptable.

Article 21: Behavior and document certifications
Judge and prosecutor shall not certify letter of certification or documents for their friends or relatives by using their names, position, and title.

Article 22: Use of judicial position
Judge and prosecutor shall not use their names, position, and title to get people to please them or get people paid special attention or to seek for benefits. Judge and prosecutor shall avoid using their judicial name, position, and title in doing private certificate that relating to individual affair of judge and prosecutor such as buying the house, car,.....etc. Judge and prosecutor shall be cautious in providing name card in any events that relate particularly in lucky draw or to get award and so on.
Article 23: Communication with judicial officials and staff
Judge and prosecutor shall communicate with officials and staff under their supervision politely and decency. Judge and prosecutor shall be tolerant by not expressing their unhappy or unsatisfied attitude toward anybody, but by just expressing that those actions are not acceptable.

Chapter V
Dignified Principle

Article 24-Principle
Judge and prosecutor shall remember that they are under the observation of the publics permanently. Therefore, judge and prosecutor shall accept some freedom and personal willingness reductions to enable the people to see their value.

Article 25-Going to night club, entertainment club, gambling or membership of entertainment activities
Outside the court, judge and prosecutor may use their personal rights and freedom for any entertainment as other people may. But, judge and prosecutor shall be precautious that though the entertainment activities are legal, traditional, and beneficial to the society, they sometimes affect the dignity of judge and prosecutor for instance: like wearing very modern cloth or participating in the game show in TV and so on. Judges and prosecutor should also avoid entertainment place that has insufficient dignity.

Article 26-Public participation
Judge and prosecutor may participate with the publics outside the court in order to contribute to the society and may do activities such as comment on the non-legal topics and demonstrate the activities related to history, education, culture, music, sports, or other similar societal activities.

Article 27-Financial benefit
Judge and prosecutor shall not complain about their own financial difficulty to their clients.

Article 28-Former judges and prosecutors
Former judge and prosecutor may use their rights and freedom to lead their live as other citizens do. But, former judge and prosecutor shall not speak or carry out any activity that could be seen that it is being done in the name of the court or in association with the judicial power.

Chapter VI
Diligent Principle

Article 29-Principle
Judge and prosecutor shall ensure that they perform their work diligently, try to implement judicial work quickly and perfectly, keep and improve their knowledge and skills necessarily to accomplish judicial and prosecutorial work qualitatively and perfectly.
Judge and prosecutor shall not do the work that is incompatible with diligent judicial and prosecutorial work responsibility.

**Article 30**-Basic priority or reasoning decision

The fundamental or reasoning decision preparation is the difficult process and uses a lot of time. This means that the judge and prosecutor should have enough time to research, discuss, and write that basic or reasoning decision. But, judge and prosecutor shall not prolong the time until the justice is gone.

**Article 31**-Prioritized work

Judicial and prosecutorial work of judge and prosecutor are more prioritized than other works. Judge and prosecutor shall guarantee that other works that are to be completed outside court such as being the member of any commission or board shall not disrupt the effectiveness of their judicial and prosecutorial work. At the same time, judge and prosecutor who are assigned to be responsible for administrative or other work in addition to judicial and prosecutorial work shall be given sufficient time to let those judge and prosecutor complete their work diligently.

**Article 32**-Monitoring of judicial and prosecutorial staff under supervision

Recently, judge and prosecutor perform judicial work as well as some administrative work. Therefore, some work should be done by court staff under the guidance and the monitoring of judge and prosecutor. This means that judge and prosecutor shall monitor those judicial and prosecutorial staffs to do their responsible work diligently.

**Article 33**-Personal activities and recognition

The diligent work accomplishment ability of judge and prosecutor depends on the scope of work, sufficient support staff, adequate work materials and time. Therefore, judge and prosecutor should have gotten adequate support staff, sufficient work materials and time in fulfilling judicial and prosecutorial work without affecting their personal time and materials.

This Code of Ethics was adopted by Supreme Council of Magistracy on

Date................................2005