

Canon 1 and Comment
National Council of Juvenile and Family Court Judges
Judges David B. Mitchell and James Ray
May 19, 2004

In response to an increasing demand to provide judicial leadership to improve the legal system and the administration of justice relating to juvenile and family court issues in their communities, states and the nation, the membership of the National Council of Juvenile and Family Court Judges (NCJFCJ) offers for the Commission's consideration the NCJFCJ Recommendations for Modification of the ABA Canons of Judicial Ethics (the "NCJFCJ Canons"), as endorsed by NCJFCJ's membership.

The NCJFCJ Canons are the result of an initiative in response to the Chief Justices' 2000 Resolution encouraging judges to become involved in their communities to improve the quality of justice. In NCJFCJ's view, its Canons are positive in nature and will enable judges to act in leadership roles without fear of disciplinary proceedings.

NCJFCJ urges the Commission to consider the increasing demand for judicial leadership, participation and coordination in addressing social problems that are presented in the courts, the judiciary is going to face a new cultural reality. The model of detached magistrates is no longer be the preferred model in the trial courts, and trial judges need to become more adept at managing social problems and coordinating social services to address those problems. In addition, more judiciary resources are going to have to be committed to supervising and providing social services—a fact that has large implications for the ability of judges to handle their more traditional work in the more traditional hands-off manner.

NCJFCJ suggests that the Commission modify Canon 1 as follows. (Additions underlined and italicized; deletions struck through).

"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~~shall 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."

NCJFCJ suggests inclusion of the following additional Comment for Canon 1. (Additions underlined.)

“The language *should* was changed to *shall* to explicitly mandate an element of leadership within judicial conduct matters. Its use here is intended to introduce a broader concept of judicial leadership in the interests of society within the following Canons, as well as the need for all judges to be actively involved in shaping and applying the Canons to their respective roles.”

Canon 2 and Comment
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NCJFCJ suggests that the Commission modify Canon 2 as follows. (Additions underlined and italicized; deletions struck through).

“CANON 2

- 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 and the judicial system.
- B A judge shall not allow family, social, political or other relationships to ~~influence the judge’s judicial conduct or judgment~~ affect the judge’s objectivity. 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.”

NCJFCJ suggests inclusion of the following additional Comment for Canon 2. (Additions underlined.)

“Canon 2(A): Not only is it necessary that judges be held to this standard, but all participants in the judicial system are held to this standard. The judiciary is to act impartially (for example, see Canon 3(b)(5)).”

Canon 3 C and Comment
Administrative Responsibilities.
National Council of Juvenile and Family Court Judges
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NCJFCJ suggests that the Commission modify Canon 3C as follows to include a new paragraph 6. (Additions underlined and italicized; deletions struck through).

“CANON 3C Administrative Responsibilities

6 A judge should seek the necessary time, staff, expertise and resources to discharge all judicial and administrative responsibilities.”

NCJFCJ suggests inclusion of the following additional Comment for Canon 3C(6). (Additions underlined.)

“Canon 3(C)(6): This new sub-section sets forth the express need for time, staff expertise, and resources to perform the necessary administrative functions. It gives juvenile and family court judges a defense if the budget is not adequate to perform judicial functions.”

**Canon 3 – New Section D and Comment
Civic Responsibilities
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NCJFCJ suggests that the Commission add a new Canon 3D to address a judge’s civic responsibilities. This addition would result in a re-numbering of the remaining sections of Canon 3. (Additions underlined and italicized; deletions struck through).

“D Civic Responsibilities

1 Subject to the requirements of this Code, a Judge should provide leadership in:

a identifying and resolving issues of access to justice;

b developing public legal education programs;

c engaging in community outreach activities to promote the fair administration of justice;

d convening, participating or assisting in advisory committees and community collaboratives devoted to the improvement of the law, the legal system, the provision of services and/or the administration of justice

2 A judge may publicly or individually endorse project goals concerning the law, the legal system, the provision of services or the administration of justice, in principle, and actively support the need for funding of such an organization or governmental agency. “

NCJFCJ suggests inclusion of the following additional Comment for new Canon 3D. (Additions underlined.)

“Canon 3(D)(1): As a result of the evolving interpretation of the judicial canons and the increased demands and encouragement on the judiciary to provide leadership in their communities (local, state and nationwide), this Canon was created to encourage judges to provide leadership in exercising their civic responsibilities and to validate their efforts.

Canon 3(D)(2): This Canon permits judges to endorse, consistent with other provisions of the canons, the need for funding without personally participating. The public has an interest in hearing the ideas of its judiciary within the public forum on matters concerning the administration of justice. Consistent with these provisions, a judge may exercise the constitutional right of free speech and association on such matters.”

**Canon 3 – Renumbered Section F(1)(a) and Comment
Disqualification
National Council of Juvenile and Family Court Judges
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NCJFCJ suggests that the Commission modify Canon 3 provisions regarding disqualification as follows. (Additions underlined and italicized; deletions struck through).

“F Disqualification

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

a The judge has a personal bias or prejudice concerning a party or a party’s lawyer, or personal knowledge* of disputed evidentiary facts concerning the proceeding. *Official communications received in the course of performing a judicial responsibility and knowledge acquired by training programs or from experience not do create per se a basis for disqualification.”*

NCJFCJ suggests inclusion of the following additional Comment for renumbered Canon 3F(1)(a). (Additions underlined.)

“Canon 3(F)(1)(a): The inclusion of this language is intended to encourage judges to obtain additional knowledge in the course of performing a judicial responsibility (i.e.—training, expertise) to assist in administering justice.”

**Canon 4C(1) and Comment
Governmental, Civic or Charitable Activities**

**National Council of Juvenile and Family Court Judges
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NCJFCJ suggests that the Commission modify Canon 4C(1) as follows. (Additions underlined and italicized; deletions struck through).

“CANON 4 C Governmental, Civic or Charitable Activities

1 A judge shall not appear at a public hearing before, or otherwise consult with, an executive or legislative body or official except on matters concerning the law*, *the provision of services*, 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.”

NCJFCJ suggests inclusion of the following additional Comment for Canon 4C to address its recommended revision of Canon 4C(1). (Additions underlined.)

“Canon 4(C)(1): The phrase “provision of services” means the services necessary to properly fulfill the court’s legal responsibilities. The need for such services and a judge’s ability to exert leadership in support of their position by public agencies is particularly acute within most juvenile and family court jurisdictions.”

**Canon 4C(3) and Comment
Governmental, Civic or Charitable Activities
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NCJFCJ suggests that the Commission modify Canon 4C(3) as follows. (Additions underlined and italicized; deletions struck through).

“CANON 4 C Governmental, Civic or Charitable Activities

3 A judge may serve as an officer, director, trustee or non-legal advisor of an organization or governmental agency devoted to *or assisting in* the improvement of the law*, *the provision of services*, 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.”

NCJFCJ suggests inclusion of the following additional Comment for Canon 4C to address its recommended revision of Canon 4C(1). (Additions underlined.)

“Canon 4(C)(3): See above commentary. This sentence is revised to clarify that a judge may assist such an organization or agency in the above manner, and participate in management and investment, but not personally solicit funds for such programs.”

**Canon 4C(3)(b)(ii) and Comment
Governmental, Civic or Charitable Activities
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NCJFCJ suggests that the Commission modify Canon 4C(3)(b)(ii) as follows. (Additions underlined and italicized; deletions struck through).

“CANON 4 C Governmental, Civic or Charitable Activities

b A judge as an officer, director, trustee or non-legal advisor, or as a member or otherwise;

ii may make recommendations to public and private fund-granting organizations on projects and programs concerning the law*, *the provision of services*, the legal system or the administration of justice;”

NCJFCJ suggests inclusion of the following additional Comment for Canon 4C to address its recommended revision of Canon 4C(1). (Additions underlined.)

“Canon 4(C)(3)(b)(ii): By adding “provision of services” here and elsewhere in the Canons, the judge of such courts requiring such services is assured that judicial leadership on their behalf is according to the provisions of Canon 4 as revised.”