

THE DELAWARE JUDGES' CODE OF JUDICIAL CONDUCT

Canon

1. A judge should uphold the integrity and independence of the judiciary.
2. A judge should avoid impropriety and the appearance of impropriety in all activities.
3. A judge should perform the duties of the office impartially and diligently.
4. A judge may engage in activities to improve the law, the legal system, and the administration of justice.
5. A judge should regulate extra-judicial activities to minimize the risk of conflict with judicial duties.
6. A judge should regularly file reports of compensation received for law-related and extra-judicial activities.
7. A judge should refrain from political activity inappropriate to the judge's judicial office.

Compliance with the Code of Judicial Conduct.

Editor's notes - Some case annotations appearing herein were decided prior to the January 1, 1994 adoption of the Delaware Judges' Code of Judicial Conduct. Such annotations have been retained under pertinent Canons where it was thought that they would be of value in interpreting the present version.

Canon 1

A judge should 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 should personally observe those standards, so that the integrity and independence of the judiciary may be preserved. The provisions of this Code should be construed and applied to further that objective.

COMMENT

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. Although judges should be independent, they should comply with the law, as well as 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.

The Canons are rules of reason. They should be applied consistently 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 nominees for judicial office. The Code may also provide standards of conduct for application in proceedings pursuant to Article IV, Section 37 of the Delaware Constitution although it is not intended that disciplinary action would be appropriate for every violation of its provisions. Whether disciplinary action is appropriate, and the degree of discipline to be imposed, should

be determined through a reasonable application of the text and should depend on such factors as the seriousness of the violation, the intent of the judge, whether there is a pattern of improper activity, and the effect of the improper activity on others or on the judicial system. Many of the proscriptions in the Code are necessarily cast in general terms, and it is not suggested that disciplinary action is appropriate where reasonable judges might be uncertain as to whether or not the conduct is proscribed. Furthermore, the Code is not designed or intended as a basis for civil liability or criminal prosecution. Finally, the purpose of the Code would be subverted if the Code were invoked by lawyers for mere tactical advantage in a proceeding.

Canon 2

A judge should avoid impropriety and the appearance of impropriety in all activities.

A. A judge should respect and comply with the law and should 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 that might be viewed as burdensome by the ordinary citizen and should do so freely and willingly.

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 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, with knowledge of all the relevant circumstances that a reasonable inquiry would disclose, a perception that the judge's ability to carry out judicial responsibilities with integrity, impartiality and competence is impaired. A judge does not violate this Code merely because a personal or judicial decision of the judge may be erroneous.

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

The testimony of a judge as a character witness injects the prestige of the judicial office into the proceeding in which the judge testifies and may be misunderstood to be an official testimonial. This Canon, however, does not afford the judge a privilege against testifying in response to an official summons. 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.

A judge should avoid lending the prestige of judicial office for the advancement of the private interests of the judge or others. For example, a judge should not use the judge's judicial position to gain advantage in litigation involving a friend or 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.

Although a judge should be sensitive to possible abuse of the prestige of the office, a judge may, based on the judge's personal knowledge, serve as a reference or provide a letter of recommendation. Except in

the course of the judge's official duties, a judge should not initiate a communication of information to a sentencing judge or a probation or corrections officer but may provide to such persons information in response to a formal request.

A judge 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.

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

COMMENT

Membership of a judge in an organization that practices invidious discrimination gives rise to perceptions that the judge's impartiality is impaired. Canon 2C refers to the current practices of the organization. Whether an organization practices invidious discrimination is often a complex question to which a judge 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. See *New York State Club Ass'n, Inc. v. City of New York*, 487 U.S. 1, 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, 95 L. Ed. 2d 474 (1987); *Roberts v. United States Jaycees*, 468 U.S. 609, 104 S. Ct. 3244, 82 L. Ed. 2d 462 (1984). Other relevant factors include the size and nature of the organization and the diversity of persons in the locale who might reasonably be considered potential members. Thus the mere absence of diverse membership does not by itself demonstrate a violation unless reasonable persons with knowledge of all the relevant circumstances would expect that the membership would be diverse in the absence of invidious discrimination. 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.

Although Canon 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 invidiously discriminatory membership practices prohibited by applicable law violates Canons 2 and 2A and gives the appearance of impropriety. In addition, it would be a violation of Canons 2 and 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 use such a club regularly. 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 Canon 2A.

When a judge determines that an organization to which the judge belongs engages in invidious discrimination that would preclude membership under Canon 2C or under Canons 2 and 2A, the judge is permitted, in lieu of resigning, to make immediate and continuous efforts to have the organization discontinue its invidiously discriminatory practices. If the organization fails to discontinue its invidiously discriminatory practices as promptly as possible (and in all events within two years of the judge's first learning of the practices), the judge should resign immediately from the organization.

Canon 3

A judge should perform the duties of the office impartially and diligently.

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

A. Adjudicative Responsibilities.

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

(2) A judge should hear and decide matters assigned, unless disqualified, and should maintain order and decorum in all judicial proceedings.

(3) A judge should be patient, dignified, respectful and courteous to litigants, jurors, witnesses, lawyers, and others with whom the judge deals in an official capacity, and should require similar conduct of the judge's staff, court officials, and others subject to the judge's direction and control, including lawyers to the extent consistent with their role in the adversary process.

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

The duty under Canon 2 to act in a manner that promotes public confidence in the integrity and impartiality of the judiciary applies to all the judge's activities including the discharge of the judge's adjudicative and administrative responsibilities. For example, the duty to be respectful of others includes the responsibility to avoid comment or behavior that can reasonably be interpreted as manifesting prejudice or bias towards another on the basis of personal characteristics like race, sex, religion, national origin, disability, age, sexual orientation, or socioeconomic status.

In court proceedings, judges or former judges participating as litigants or counsel should not be called by their current or former titles or treated with greater familiarity or deference than other participants.

(4) A judge should accord to every person who is legally interested in a proceeding, or to the person's lawyer, full right to be heard according to law, and, except as authorized by law, neither initiate nor consider *ex parte* or other communications concerning a pending or impending proceeding. A judge, however, may obtain the advice of a disinterested expert on the law applicable to a proceeding before 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. A judge may, with consent of the parties, confer separately with the parties and their counsel in an effort to mediate or settle pending matters.

The proscription against communications concerning a proceeding includes communications from lawyers, law teachers, and other persons who are not participants in the proceeding, except to the limited extent permitted. It does not preclude considering and ruling upon emergency applications where circumstances require. It does not preclude a judge from consulting with other judges, or with court personnel whose function is to aid the judge in carrying out adjudicative responsibilities. It is not intended to preclude communications between a judge and lawyers, or parties if unrepresented by counsel, concerning matters which are purely procedural, such as those which pertain to scheduling, and which in no way bear on the merits of the proceeding. However, such communications should, as soon as practicable, be fully disclosed by the judge to all lawyers, or parties if unrepresented by counsel, involved in the proceeding. A judge should

make reasonable efforts to ensure that this provision is not violated through law clerks or other staff personnel.

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*.

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

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. 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 be 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 the judge's 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.

(6) A judge should abstain from public comment on the merits of a pending or impending proceeding in any court, and should require similar abstention on the part of personnel subject to the judge's direction and control. This proscription does not extend to public statements made in the course of the judge's official duties, to the explanation of court procedures, or to a scholarly presentation made for purposes of legal education.

The admonition against public comment about the merits of a pending or impending action continues until completion of the appellate process. If the public comment involves a case from the judge's own court, particular care should be taken that the comment does not denigrate public confidence in the integrity and impartiality of the judiciary in violation of Canon 2A. This provision does not restrict comments about proceedings in which the judge is a litigant in a personal capacity, but in mandamus proceedings when the judge is a litigant in an official capacity, the judge should not comment beyond the record.

"Court personnel" does not include the lawyers in a proceeding before a judge. The conduct of lawyers is governed by the Rules of Professional Responsibility.

(7) A judge should prohibit broadcasting, televising, recording, or taking photographs in the courtroom and areas immediately adjacent thereto during sessions of court or recesses between sessions, except as authorized by a court rule or administrative directive which has been either promulgated or approved by the Delaware Supreme Court.

Temperate conduct of judicial proceedings is essential to the fair administration of justice. The recording and reproduction of a proceeding should not distort or dramatize the proceeding.

B. Administrative Responsibilities.

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

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

(3) A judge should initiate appropriate action when the judge becomes aware of reliable evidence indicating the likelihood of unprofessional conduct by a judge or lawyer.

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 authorities.

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

Appointees of the judge include officials such as referees, commissioners, special masters, receivers, guardians and personnel such as clerks, secretaries, and bailiffs. Consent by the parties to an appointment or an award of compensation does not relieve the judge of the obligation prescribed by this subsection.

C. Disqualification.

(1) A judge should disqualify himself 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 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 or such lawyer has been a material witness concerning it, or the judge was associated in the practice of law within the preceding year with a law firm or lawyer acting as counsel in the proceeding;

(c) The judge knows that, individually or as a fiduciary, the judge or the judge's spouse or minor child residing in the judge's household, has a financial interest in the subject matter in controversy or in a party to the proceeding, or any other interest that could be substantially affected by the outcome of the proceeding;

(d) The judge or the judge's spouse, or a person within the third degree of relationship to either of them, or the spouse of such a person:

(i) Is a party to the proceeding, or an officer, director, or trustee of a party;

(ii) Is acting as a lawyer in the proceeding;

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

(iii) Is known by the judge to have an interest that could be substantially affected by the outcome of the proceeding;

(iv) Is to the judge's knowledge likely to be a material witness in the proceedings.

(e) The judge has served in governmental employment and in such capacity participated as counsel, advisor, or material witness concerning the proceeding or has expressed an opinion concerning the merits of the particular case in controversy.

(2) A judge should keep informed about the judge's personal and fiduciary financial interests, and make a reasonable effort to keep informed about the personal financial interests of the judge's spouse and minor

children residing in the judge's household.

(3) For the purposes of this section:

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

This Canon would, for example, disqualify the judge if the parents, grandparents, uncle or aunt, brother or sister, or nieces or nephews of the judge or judge's spouse, or the spouse of any of the foregoing were a party or lawyer in the proceeding, but would not disqualify the judge if a cousin were a party or lawyer in the proceeding.

(b) "Fiduciary" includes such relationships as executor, administrator, trustee and guardian;

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

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

(ii) an office in an educational, religious, charitable, fraternal, or civic organization is not a "financial interest" in securities held by the organization;

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

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

D. Remittal of Disqualification. A judge disqualified by the terms of Canon 3C, except a disqualification by the terms of Canon 3C(1)(a) or Canon 3C(1)(b), may, instead of withdrawing from the proceeding, disclose on the record the basis of the judge's disqualification. If the parties and their lawyers, after such disclosure and an opportunity to confer outside of the presence of the judge, all agree in writing or on the record 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.

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

Factors for disqualification not exclusive. - The "not limited to" language of subsection C suggests that this rule is inclusive, i.e., the designated instances prompting disqualification do not exhaust all situations in which a judge's impartiality might be questioned. *Los v. Los*, Del. Supr. 595 A.2d 381 (1991).

Undue impatience, irritation or sarcasm must be avoided by a Delaware judge, especially when a party is acting as his own counsel. *Wright v. State*, Del. Supr. 405 A.2d 685 (1979).

Trial judge has a duty to avoid any language or any conduct which would lead the jury to suspect that the judge is favorable to one party to the trial. *Wright v. State*, Del. Supr. 405 A.2d 685 (1979).

No error will be attributed to trial judge's controlled response to what he views as a breach of required professional etiquette. *Dutton v. State*, Del. Supr. 452 A.2d 127 (1982).

Personal bias or prejudice. - When faced with a claim of personal bias or prejudice under subsection C(1) the judge must, as a matter of subjective belief, be satisfied that he can proceed to hear the cause free

of bias or prejudice concerning that party; and if the judge believes that he has no bias, situations may arise where, actual bias aside, there is the appearance of bias sufficient to cause doubt as to the judge's impartiality. *Los v. Los*, Del. Supr. 595 A.2d 381 (1991).

To be disqualified, the alleged bias or prejudice of the judge must stem from an extrajudicial source, and result in an opinion on the merits on some basis other than what the judge learned from his participation in the case. *Los v. Los*, Del. Supr. 595 A.2d 381 (1991).

Disqualification due to personal bias or prejudice is required when the impartiality of the judge might reasonably be questioned. *In re Wittrock*, Del. Supr. 649 A.2d 1053 (1994).

Participation in prior trial. - Bias is not created merely because the trial judge has learned facts or made adverse rulings during the course of a trial, thus judge's participation in prior proceedings involving defendant do not per se disqualify his participation in subsequent, unrelated proceedings. *Weber v. State*, Del. Supr. 547 A.2d 948 (1988); *Los v. Los*, Del. Supr. 595 A.2d 381 (1991).

Personal bias - or prejudice. - To insure against personal bias, or the appearance of bias, under subsection C of this rule: first, the judge must, as a matter of subjective belief, be satisfied that the judge is free of bias or prejudice concerning the plaintiff; second, the court must ensure that there is not an objective appearance of bias that is sufficient to cast doubt upon the court's impartiality. *Alston v. Minner*, Del. Super. Ct. - A.2d - (Oct. 19, 2001).

Under subdivision C(1) of this rule, the trial judge was not biased against defendant for simply ruling against defendant on a motion to suppress. *Baxter v. State*, Del. Supr. 788 A.2d 130 (2002).

Favoritism toward family. - A justice of the peace was guilty of wilful misconduct by acts of favoritism toward his son appearing before the judge as a defendant on a charge of driving while intoxicated. *In re Rowe*, Del. Jud. 566 A.2d 1001 (1989).

Ordering police to use force on arrestee. - A justice of the peace was guilty of wilful misconduct by ordering a police officer to use force to remove money from an arrestee in order to pay a fine believed to be due in another Justice of the Peace Court. *In re Hopkins*, Del. Supr. 566 A.2d 1011 (1989).

Previous contact between the judge and a party, in the same or a different judicial proceeding, does not require automatic disqualification. *Los v. Los*, Del. Supr. 595 A.2d 381 (1991); *In re Wittrock*, Del. Supr. 649 A.2d 1053 (1994).

Judge a defendant in federal suit by plaintiff. - Judge was not required to recuse himself because of plaintiff's federal suit against him. *Los v. Los*, Del. Supr. 595 A.2d 381 (1991).

Judge who made jewelry purchases from a defendant at the courthouse while court was in session violated Canon 1. Allowing other court personnel to make purchases from the defendant at the same time was a supervisory error in violation of subsection B(2). *In re Barrett*, Del. Supr. 593 A.2d 529 (1991).

Canon 4

A judge may engage in activities to improve the law, the legal system, and the administration of justice.

A judge, subject to the proper performance of judicial duties, may engage in the following law-related activities if in doing so the judge does not cast reasonable doubt on the capacity to decide impartially any issue that may come before the judge:

A. A judge may speak, write, lecture, teach, and participate in other activities concerning the law, the legal system, and the administration of justice (including projects directed to the drafting of legislation).

B. A judge may appear at a public hearing before or otherwise consult with an

executive or legislative body or official on matters concerning the law, the legal system, and the administration of justice to the extent that it would generally be perceived that a judge's experience provides special expertise in the area. A judge acting pro se may also appear before or consult with such officials or bodies in a matter involving the judge or the judge's interest.

C. A judge may serve as a member, officer, or director of an organization or governmental agency devoted to the improvement of the law, the legal system, or the administration of justice. A judge may assist such an organization in planning fund-raising activities and may participate in the management and investment of funds, but, except as provided herein, should not personally participate in fund-raising activities. A judge may make recommendations to public and private fund-granting agencies on projects and programs concerning the law, the legal system, and the administration of justice. A judge may solicit funds from other judges over whom the judge does not exercise supervisory or appellate authority. A judge shall not personally participate in membership solicitation if the solicitation might reasonably be perceived as coercive or is essentially a fund-raising mechanism.

COMMENT

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 the judge's time permits, the 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.

Service on the board of a public, as well as private, law school is permissible.

A judge may attend fund-raising activities of a law-related organization although the judge may not be a speaker, guest of honor, or featured on the program of such an event.

Canon 5

A judge should regulate extra-judicial activities to minimize the risk of conflict with judicial duties.

A. Avocational Activities. A judge may write, lecture, teach, and speak on non-legal subjects, and engage in the arts, sports, and other social and recreational activities, if such avocational activities do not detract from the dignity of the judge's office or interfere with the performance of the judge's 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 society in which the judge lives.

B. Civic and Charitable Activities. A judge may participate in civic and charitable activities that do not reflect adversely upon the judge's impartiality or interfere with the performance of judicial duties. A judge may serve as an officer, director, trustee, or non-legal advisor of an educational, religious, charitable, fraternal, or civic organization not conducted for the economic or political advantage of its members, subject to the

following limitations:

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

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

(2) A judge should not solicit funds for any educational, religious, charitable, fraternal, or civic organization, or use or permit the use of the prestige of the judicial office for that purpose, but the judge may be listed as an officer, director, or trustee of such an organization. A judge should not personally participate in membership solicitation if the solicitation might reasonably be perceived as coercive or is essentially a fund-raising mechanism.

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

A judge's participation in an organization devoted to quasi-judicial activities is governed by Canon 4. A judge may attend fund-raising activities of the organization although the judge may not be a speaker, a guest of honor, or featured on the program of such an event. Use of an organization's letterhead for fund-raising or membership solicitation does not violate Canons 5B(2) and (3) provided the letterhead lists only the judge's name and position in the organization, and, if comparable designations are listed for other persons, the judge's judicial designation.

C. Financial Activities.

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

(2) Subject to the requirements of subsection (1), a judge may hold and manage investments, including real estate and engage in other remunerative activity, but should not serve as an officer, director, partner, manager, advisor, or employee of any business other than a business closely held and controlled by members of the judge's family. For this purpose, "members of the judge's family" means persons related to the judge or the judge's spouse within the third degree of relationship calculated according to the civil law

system, any other relatives with whom the judge or the judge's spouse maintains a close familial relationship, and the spouse of any of the foregoing.

A judge's participation in a closely held family business may be prohibited if it takes too much time or involves misuse of or is demeaning to the judicial office or if the business is likely to come before the judge's court.

(3) A judge should manage 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 should divest himself or herself of investments and other financial interests that might require frequent disqualification.

A judge has the rights of an ordinary citizen with respect to financial affairs, except to the extent that limitations thereon are required to safeguard the proper performance of the judge's duties. Owning and receiving income from investments do not as such affect the performance of a judge's duties.

(4) Neither a judge nor a member of the judge's family residing in the judge's household should solicit or accept a gift, bequest, favor, or loan from anyone except for:

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

(b) a 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;

(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 that the judge take no official action with respect to the case;

(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:

(i) the donor has not sought and is not seeking to do business with the court or other entity served by the judge; or

(ii) the donor is not a party or other person who has come or is likely to come before the judge or whose interests may be substantially affected by the performance or nonperformance of his or her official duties.

Reimbursement or direct payment of travel expenses may be a gift and, if so, its acceptance is governed by Canons 5C(4) and (5). A judge or employee may receive as a gift travel expense reimbursement including the cost of transportation, lodging, and meals, for the judge and a guest incident to the judge's attendance at a bar-related function or at an activity devoted to the improvement of the law, the legal system, or the administration of justice.

(5) For the purposes of this section, "member of the judge's family residing in the judge's household" means 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.

(6) A judge is not required by this Code to make financial disclosures except as provided in this Canon and Canons 3 and 6.

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

D. Fiduciary Activities. A judge should not serve as the executor, administrator, trustee, guardian or other fiduciary, except for the estate, trust, or person of a member of the judge's family, and then only if such service will not interfere with the proper performance of judicial duties. "Member of the judge's family" includes a spouse, child, grandchild, parent, grandparent, or other relative by blood, adoption, or marriage or person with whom the judge maintains a close familial relationship.

Mere residence in the household of a judge is insufficient for a person to be considered a member of the judge's family for the purposes of this Canon. The person must be treated by the judge as a member of the judge's family.

As a family fiduciary a judge is subject to the following restrictions:

(1) The judge should not serve if it is likely that as a fiduciary the judge 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.

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

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

A judge's obligation under this Canon and the judge's obligation as a fiduciary may come into conflict. For example, a judge should resign as trustee if it would result in detriment to the trust to divest it of holdings whose retention would place the judge in violation of Canon 5C(3).

E. Arbitration. A judge should not act as an arbitrator or mediator, or otherwise perform judicial functions in a private capacity unless expressly authorized by law.

F. Practice of Law. A judge should 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.

G. Extra-judicial Appointments. A judge should not accept appointment to a governmental committee, commission, or other position that is concerned with issues of fact or policy on matters other than the improvement of the law, the legal system, or the administration of justice. A judge, however, may represent the judge's country, state, or locality on ceremonial occasions or in connection with historical, educational, and cultural activities.

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

H. Chambers, Resources, and Staff. A judge should not use judicial chambers, resources, or staff to engage in activities permitted by this Canon, except for uses that are *de minimis*.

I. Marriage Ceremonies. A judge should not solicit or accept a fee, reimbursement of expenses, or a gift for solemnizing a marriage, except that a judge may accept a non-monetary gift, if the gift is fairly commensurate with the occasion and the judge's relationship with the persons involved.

Canon 6

A judge should regularly file reports of compensation received for law-related and extra-judicial activities.

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

A. Compensation. Compensation should not exceed a reasonable amount nor should it exceed what a person who is not a judge would receive for the same activity. Compensation means payment to a judge by another for services rendered but does not include moneys received by a judge from his investments or for services to a family business permitted under Canon 5C(2).

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

C. Public Reports. A judge should make financial disclosures as required by the Supreme Court.

Canon 7

A judge should refrain from political activity inappropriate to the judge's judicial office.

A. A judge should not:

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

(2) Make speeches for a political organization or candidate or publicly endorse or oppose a candidate for public office;

(3) Directly or indirectly solicit funds for or pay an assessment or make a contribution to a political organization or candidate, attend political gatherings, or purchase tickets for political party dinners, or other functions.

B. A judge should resign the judicial office when the judge becomes a candidate either in a party primary or in a general election for a nonjudicial office, except that the judge may continue to hold judicial office while being a candidate for election to or serving as a

delegate in a state constitutional convention, if the judge is otherwise permitted by law to do so.

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

COMMENT

Political contributions by the judge's spouse must result from the independent choice of the spouse and checks by which such contributions are made shall not include the name of the judge.

A person becomes a candidate as soon as he or she makes a public announcement of candidacy, declares or files as a candidate with the election authority, or authorizes solicitation or acceptance of contributions or support.

Constitutionality. - The resign-to-run rule is not unconstitutional because the state has legitimate interests in: (a) preventing abuse of the judicial office by a judge-candidate during the course of the campaign; (b) preventing abuse of the judicial office by judges who had lost their electoral bids and returned to the bench; and (c) eliminating even the appearance of impropriety by judges both during and after the campaign. In re Buckson, Del. Supr. 610 A.2d 203 (1992).

Although there may be less intrusive means available to achieve the state's interest in preventing post-campaign abuse, under the "reasonable necessity" standard of review the state was not required to employ the least intrusive means available. In re Buckson, Del. Supr. 610 A.2d 203 (1992).

The phrase "political gathering" in subdivision A(3) of this Canon is not unconstitutionally vague. In re Buckson, Del. Supr. 610 A.2d 203 (1992).

Attending political gatherings. - Attending regional caucuses to advance one's candidacy clearly falls within the proscriptions of subdivision A(3). In re Buckson, Del. Supr. 610 A.2d 203 (1992).

Candidate distinguished from prospective candidate. - Respondent's political activity was in violation of subsection C and subdivision A(3), where it went beyond that of a prospective candidate conducting preliminary surveys of financial and voter support. He had publicly announced his candidacy and was actively engaged in political activity. In re Buckson, Del. Supr. 610 A.2d 203 (1992).

Compliance with the Code of Judicial Conduct.

A. All judges, including justices of the peace and court commissioners, should comply with this Code.

B. 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 5E; and

(2) at any time with Section 5D.

C. The effective date for compliance with this Code is January 1, 1994.