

# 2005 ANNUAL REPORT

## I. INTRODUCTION

The Arkansas Judicial Discipline Commission receives and investigates complaints about the possible misconduct or disability of Arkansas judges. Like other judicial conduct organizations nationwide, the Commission's purpose is to help enforce high standards of judicial conduct on and off the bench, and thereby preserve both the integrity of judges and public confidence in the courts. Although judges must be free to act in good faith without concern or fear that their decisions will subject them to disciplinary investigation, they must also be held accountable for judicial misconduct. In performing its function, the Commission strives to maintain the necessary balance between judicial independence and public accountability. A brief history concerning the creation of the Judicial Discipline and Disability Commission is available from the Commission.

## II. AUTHORITY AND JURISDICTION

The Commission's jurisdiction extends to about 400 judges, including the justices of the Supreme Court, judges of the Court of Appeals, circuit court judges, and full and part-time judges of the district courts, city courts, and police courts, as well as retired judges who serve as reserve judges. Also included are those officers of the judicial system performing judicial functions, such as referee, special master, court commissioner and magistrate whether full-time or part-time.

The Commission has no authority to act as an appellate court. It cannot review, reverse or vacate a judge's decision. Thus, the Commission does not investigate claims that a judge should have, for example, been more lenient or more severe in sentencing, admitted or excluded certain evidence, made a larger or smaller award of damages or child support, or believed a different witness. The Commission also lacks the authority to order a judge to step down from hearing a particular case. The filing of a request for an investigation of the judge's conduct does not by itself entitle a complainant to a different judge. Where appropriate, the Commission or its staff refers inquires to another agency or suggests that legal counsel may be consulted about the possibility of appellate or other remedy.

The types of allegations that may be investigated by the Commission include *ex parte* (one-sided) communications on the merits of a pending case, clear conflicts of interest, rude or intimidating courtroom demeanor, serious neglect of duties, racist or sexist remarks, prohibited political or campaign conduct, bias or favoritism, gross abuse of political power, the receipt of gifts from those who appear before the court, and other misconduct both on and off the bench.

The standards of judicial behavior under which allegations are tested come primarily from the Arkansas Code of Judicial Conduct. The grounds for discipline are those established in

part (b) of Arkansas Constitution Amendment 66. And those established by ACT 637 OF 1989, (A.C.A. 16-10-410).

The statutory basis for removal of a judge includes willful violation of the Code of Judicial Conduct or Professional Responsibility, a willful or persistent failure to perform official duties, habitual intemperance due to alcohol or drug use that interferes with the proper performance of judicial duties, conviction of a felony, conviction of a criminal act that reflects adversely on the judge's honesty, trustworthiness or fitness as a judge in other respects, or the commission of conduct involving dishonesty, fraud, deceit, misrepresentation, or that is prejudicial to the administration of justice.

In addition to its misconduct jurisdiction, the Commission may investigate whether a judge has a mental or physical disability that prevents the proper performance of judicial duties.

The Arkansas Code of Judicial Conduct, in effect on July 4, 1993, as amended through December 20, 2001, is at appendix A. The constitutional, statutory, and administrative rule provisions governing the current judicial disciplinary system in Arkansas are at appendices B, C, and D. Appendix E sets forth the guidelines for Commission members and staff as well as the operating policies.

### **III. PROCEDURE**

Initial substantive contacts with the Commission come by telephone, correspondence or a personal visit to the office. The Executive Director is authorized to screen the inquiries and dismiss those that do not raise issues within the Commission's jurisdiction.

When after initial investigation and an inquiry it appears that there is sufficient cause to proceed, the complainant is asked to file a sworn complaint. If a sworn complaint is not received, the inquiry is regarded as closed, unless the Executive Director determines that the matter nevertheless warrants Commission attention. A complaint may also be triggered by an anonymous contact, a media report, or a referral from another agency. The Commission does not accept oral complaints. If an individual comes to the Commission offices and needs assistance to file a complaint, appropriate assistance will be provided. The Commission reviews all the closed inquiries to insure that they have been properly handled by the staff.

During the initial investigation when the Executive Director believes there is sufficient cause to proceed to a probable cause determination, the Executive Director may request a sworn complaint from the complaining party or prepare a statement of allegations. The sworn complaint or statement of allegations is then served upon the judge.

The Executive Director prepares an evaluation report (usually written) on each allegation, which generally includes a review of the information and documents submitted by the complainant. Additional information may be gathered at this stage through a phone call or letters to the complainant or the attorney. The judge generally is asked at this early stage for an informal preliminary response. Except for unusual circumstances, a judge must be notified of a complaint within 90 days of the Commission's receipt of a complaint. Legislation enacted in 1993 also permits the Commission to request the appropriate prosecuting attorney to grant immunity from the criminal prosecution to a reluctant witness appearing before the Commission.

After reviewing this evaluation report the Commission decides whether to dismiss or further investigate the matter by proceeding to a probable cause hearing.

Most dismissals by the Executive Director at this stage occur for one of the following reasons: (1) the complaint is obviously frivolous or unfounded, or proves so after preliminary inquiry; (2) it represents only an effort by a disappointed litigant to secure review of a judge's decision; (3) it is based on a misunderstanding of judicial proceedings, the proper role of the court, or the extent of a judge's discretion; (4) the Commission has no jurisdiction (e.g., complaints against attorneys, other court personnel, federal judicial officers); or (5) it clearly presents no claim of possible judicial misconduct under the applicable status and rules. Complaints may also be dismissed on preliminary evaluation because in the judgment of the Commission: (1) there is little likelihood of obtaining reliable evidence to support the allegation; (2) the alleged misconduct would constitute, at most, a single and very minor violation; (3) the judge already took corrective action on what was at most a minor violation; or (4) the alleged conduct is not prohibited by the Code of Judicial Conduct or other applicable law or rule.

When a complaint proceeds to further investigation, the judge is notified and allowed to submit relevant material to the Executive Director. On occasions, notice may be delayed so that court proceedings may be monitored or certain evidence obtained. During the investigation the judge may be asked to meet with the Commission's Executive Director or investigator, and sometimes to appear informally before the full Commission. The judge may be represented by counsel during the investigation.

Investigations typically include interviews with complainants, attorneys, or other witnesses, and examination of relevant transcripts and other documents. A sample of transcripts of certain types of proceedings may be ordered for review. Court reporters, court employees, and attorneys have voluntarily complied with Commission requests for information and documents related to matter under investigation. The Commission and the judge under investigation have the power to subpoena witnesses and records. An investigation sometimes uncovers matters in addition to the initial complaint and may be expanded accordingly.

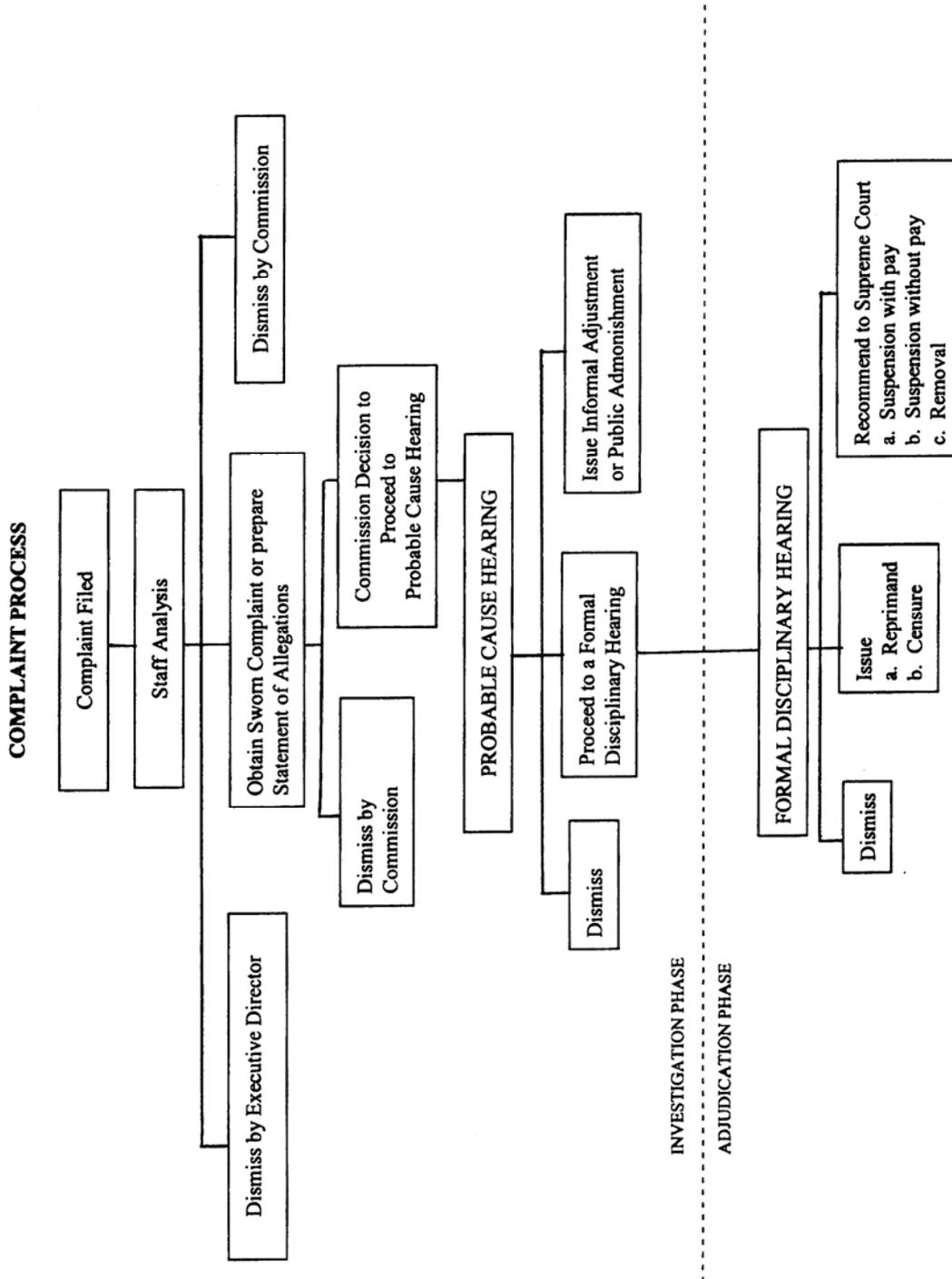
Upon concluding the preliminary investigation, the Commission may dismiss the allegations. Alternatively, the Commission may find that there is sufficient cause to proceed further to a probable cause hearing. The judge is then formally notified of the substance of the allegations and given an opportunity to respond both in writing and at a formal appearance before the Commission.

After considering the judge's response and other evidence, the Commission may find no misconduct and dismiss the allegation. If the Commission finds misconduct of a relatively minor nature, it may dispose of the matter with a public admonition or informal adjustment such as direct professional counseling or assistance for the judge, or impose conditions on the judge's future conduct. However, if at this point the Commission finds there is probable cause that the judge has engaged in misconduct warranting a formal disciplinary procedure or has a permanent disability substantially affecting the performance of judicial duties, then it causes a formal statement of charges to be served on the judge. At this point the investigative portion of the complaint is completed.

In a formal disciplinary hearing before the Commission, the proceedings are open to the public and the rules of evidence apply. The Commission bears the burden of proving its allegations by clear and convincing evidence. The Commission and judge have full discovery in accordance with the Rules of Civil Procedure. A hearing is conducted before a fact finder which may be the entire Commission or a three-member panel. The Commission may order the case to be dismissed. In the alternative it may reprimand or censure the judge or recommend to the Supreme Court that the judge be suspended with or without pay or removed from office. If the Commission makes a finding of physical or mental disability, it may recommend to the Supreme Court that the judge be granted leave with pay or retired. The Commission and the judge file briefs with the Supreme Court. The court may order additional information, filings or oral argument.

The Supreme Court, when considering removal of a judge, also determines whether discipline as a lawyer is warranted. Based upon a review of the entire record, the Supreme Court files a written opinion and judgment directing such disciplinary action as it finds just and proper.

By legislative enactment, a judge who is removed for misconduct cannot be appointed or elected thereafter to serve as a judge.



#### **IV. CONFIDENTIALITY**

All investigatory records, files, reports of the Commission and proceedings before the Commission are confidential unless the judge, in writing, waives confidentiality or one of the narrow statutory exceptions allows the Commission to make a limited disclosure. Any action taken by the Commission, such as dismissal of a complaint, admonition or other sanction of a judge or the filing of formal charges against a judge, becomes public information. Legislation enacted in 1993 added to the limited exception. It provides that where the Commission reasonably believes there has been a violation of the rules of professional conduct of attorneys that matter may be released to the Professional Conduct Committee for their review; and where the Judicial Discipline and Disability Commission reasonably believes that there may have been a violation of criminal law, the Commission records reflecting such action shall be released to the appropriate prosecuting attorney.

The Commission endeavors to assure that its investigations are conducted as confidentially as possible. Complainants and others who provide information during an investigation may request that their identity not be disclosed to the judge. That request normally may not be granted as it would be inconsistent with fairness to the judge and others. Confidentiality is important not only to protect the judges from unfounded charges and complaints from possible retaliation, but also to protect the integrity of the investigation.

#### **V. MEMBERS**

The Judicial Discipline and Disability Commission is comprised of nine members who are residents of Arkansas. The three judicial members are appointed by the Supreme Court. The three lawyer members are licensed to practice in Arkansas, and are appointed one by the Attorney General, one by the President of the Senate, and one by the Speaker of the House. The three public members, who are neither lawyers nor judges, are appointed by the Governor. Alternate members are also selected for each member. With the exception of the initial appointees, each member and alternate serves a six year term, and is eligible to a full second term.

The following served as members of the Commission in 2005: Judge Leon Jamison, Judge William Storey, Judge Chris E Williams, Michael R. Gott, John Everett, Derrick Smith, Reg D. Hamman, Bill Fly, Arby L. Smith, Jr., Laurie Bridewell and Dr. Prince “Ed” Claybrook.

The following served as alternative members of the Commission in 2005: Judge Olly Neal, Judge David Laser, Judge Stephen Routon, Judy S. Henry, Robert Hardin, Victoria Morris, Ray Nelson, Sherry Wortsmith, Mary Bassett, James Gregory Clark and Wesley Vaughn,

## STAFF

The Commission appoints an attorney to serve as Executive Director. The Executive Director is responsible for hiring and supervising the staff and any special assistants, carrying out the Commission's directions and policies, and acting as Chief Administrator. The agency employs six (6) full time employees, an Executive Director, Deputy Executive Director, Fiscal Manager, Investigator, Paralegal/Legal Assistant, and Legal/Administrative Secretary. James A. Badami has served as Executive Director since September, 1989. Frank (Jay) Wills, III, is the Deputy Executive Director, Lance A. Womack, Investigator, Elanore L. Davis, Fiscal Manager, Pat Sherrill, Paralegal, and LaWanda Collins is the Commission's Legal/Administrative Secretary.



### EXECUTIVE DIRECTOR

**JAMES A. BADAMI** - has served as the first Executive Director of the Arkansas Judicial Discipline and Disability Commission since September of 1989. He graduated from Fordham College with a bachelor's degree in 1961, and Fordham's Law School with a Juris Doctorate in 1964. He retired as a Colonel after more than twenty years as a lawyer for the United States Army, including serving as an appellate judge for two years. His military awards include the Legion of Merit and the Bronze Star. He is a member of the Arkansas, Federal and American Bar Associations. In the Federal Bar Association, Mr. Badami served as Chair of the Lawyers in Uniform Committee, and was an advisor to the Professional Ethics Committee. He is a former chair of the American Bar Association's Committee on Judicial Performance and Conduct, and was secretary of the American Bar Association's Judicial Image Evaluation Task Force. He is a member of the Board of Directors of the Association of Judicial Disciplinary Council. Mr. Badami has served as a member of the Parish Council at Christ the King Catholic Church, a former President of the South Little Rock Rotary, and was a member of the Florence Crittenton Services Board of Directors. He is a committee member and merit badge counselor for Boy Scout Troop 29 as well as a member of Board of Directors of the Saint Thomas More Society

## VI. COMMISSION ACTIVITIES

The Judicial Discipline and Disability Commission meets generally on the third Friday of every other month. In 2005, the Commission met four times to conduct its business.

In 2005 the Commission received 295 complaints. That was a slight increase over the average of 288 complaints filed per year for the previous five years.

At the request of the Arkansas Supreme Court, in the Spring of 2005, the Arkansas Bar Association established a Task Force to review the procedure rules of the Judicial Discipline and Disability Commission. On September 28, 2005, Mr. Badami and Commission Chair, Mike Gott made a presentation to the Task Force concerning the history, operation and procedures of the Commission. The Task Force asked that after their membership has had an opportunity to review the Commission's procedure that members of the Commission would be asked to reappear and make suggestions to the Task Force.

In April 2005, Mr. Badami established the Internal Review Study. The Study was designed to improve the operations of the Commission. It would also review the policies and procedures of both the Commission and the Judicial Ethics Advisory Committee.

In June 2005, the Commission announced that it had censured former Circuit Judge Fred D. Davis, III of Pine Bluff, Arkansas. The Commission found that Judge Davis is not qualified to seek or hold judicial office in the future. The Judicial Discipline and Disability Commission filed its Final Decision and Order with the Arkansas Supreme Court on June 10, 2005. The underlying facts concerning this case were that on October 30, 2002, Judge Davis purchased a new 2002 Chevrolet Avalanche truck. Judge Davis owed approximately \$1,795.28 in sales tax on that purchase, which would have been due and payable when he registered the vehicle. Judge Davis did not register the vehicle nor pay the state tax due until June 21, 2004, after being cited for failure to register vehicle, misuse of dealer license plate and driving while intoxicated, first offense, on June 10, 2004.

Three members of the Commission filed a Dissenting Opinion. The dissent argued that since Judge Davis retired from the judiciary prior to the Commission holding its Formal Disciplinary Hearing, he was no longer a member of the judiciary. As a result, the Judicial Discipline and Disability Commission no longer had jurisdiction in the matter and was unable to take any action in this matter.

Also in June 2005, *Norwood v. Dickey, et al.*, \_\_\_ F.3d \_\_\_ (8<sup>th</sup> Cir.) (No. 04-3120, June 1, 2005), the Eighth Circuit Court of Appeals unanimously upheld District Judge James Moody's order dismissing Norwood's 42 USC 1983 complaint on *Younger* abstention grounds. Norwood claimed that the Arkansas Supreme Court's confidentiality rule (Rule 7) which applies to Judicial Discipline and Disability Commission investigations violated his First Amendment right of free speech. Both the district court and the Eighth Circuit held that Norwood had an opportunity to raise his claim during the state proceedings under Commission Rule 12 F, but that he failed to do so. Therefore, under the abstention doctrine announced in *Younger v. Harris*, 401

U.S. 37 (1971), the federal courts should abstain from deciding this issue. Although the district court had also held that, even if abstention was not warranted the confidentiality rule was constitutional, the Eighth Circuit declined to decide that issue given the dismissal under *Younger*. Assistant Attorney General Joe Cordi handled this appeal for all defendants.

In September 2005, Judge Leon Jamison was unanimously voted to become the Commission's Vice Chairman.

## VII. BUDGET

The Judicial Discipline and Disability Commission was appropriated \$540,658.00 for fiscal year 2005 (July 1, 2004 through June 30, 2005). Due to state revenue shortfalls, this appropriation was reduced by \$66,443.00. Of the \$540,658.00 appropriated for fiscal year 2005, \$102,164.06 was unused and returned to the state. The appropriation for fiscal year 2006 (July 1, 2005 through June 30, 2006) is \$559,736.00. In order to better reflect the actual expenses for the Commission in the calendar year 2005, the following display is presented.

### 2005 ANNUAL EXPENDITURES

#### REGULAR SALARIES

1.	Staff Salaries	\$287,794.59
2.	Extra Help	\$0.00
3.	Personnel Benefits	\$78,044.11

#### MAINTENANCE & OPERATIONS

1.	Commission Members' Expenses	\$ 3,946.68
2.	Supplies & Materials	\$ 5,649.89
3.	Telephone Equipment & Charges	\$ 9,139.96
4.	American Judicature Society Membership	\$ 1,500.00
5.	Rental of Office Equipment	\$ 3,698.12
6.	Rental of Office Space	\$31,874.32
7.	Postage	\$ 2,400.00
8.	Printing (includes copies)	\$ 1,105.18
9.	Professional Association Dues & Memberships	\$ 1,120.83
10.	Subscriptions to Periodicals & Book Purchases	\$ 2,787.91
11.	Miscellaneous Expenses	\$ 4,066.56
12.	Job Announcements & Educational Mail-outs	\$ 0.00
13.	Investigative Operating Expenses	\$ 0.00
14.	Legal Miscellaneous Fees	\$ 1,117.66
15.	Ethics Advisory Committee Expenses	\$ 0.00
16.	Renovation Expense	\$ 3,061.00

#### CONFERENCE FEES & TRAVEL

1.	Travel Expenses & Registration Fees	\$ 5,629.43
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## PROFESSIONAL FEES & SERVICES

1.	Contractual Investigative Fees	\$	0.00
2.	Court Reporting Services	\$	3,728.25
3.	Computer Consulting Service	\$	900.00
4.	Miscellaneous Professional Services	\$	1,465.04
5.	Subpoena Service	\$	0.00
6.	Witness Fees & Mileage Reimbursement	\$	1,010.42

## CAPITAL OUTLAY

1.	Purchase of Office Equipment	\$	0.00
2.	Purchase of Office Furniture	\$	0.00

## DATA PROCESSING

1.	Service/Support Department of Computer Services	\$	367.50
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## MILEAGE EXPENSES

1.	Investigator	\$	459.52
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## VIII. COMPLAINTS, DISPOSITIONS & WORKLOAD DATA

During the calendar year 2005, the Commission received 295 complaints and disposed of 314 complaints. The following tables show statistical data on the complaints processed in 2005.

**TABLE 1**

**Source of Complaints**  
**2005**

<b>Anonymous</b>	<b>21</b>
<b>Commission=s Motion</b>	<b>3</b>
<b>Lawyers</b>	<b>15</b>
<b>Litigants</b>	<b>208</b>
<b>Judge/Court Personnel</b>	<b>1</b>
<b>Non-litigating Individual</b>	<b>14</b>
<b>Non-litigating Family Member</b>	<b>31</b>
<b>Public Official</b>	<b>2</b>

*This table reflects a breakdown of the source of the complaints. Clearly litigants are the most frequent party to initiate a complaint.*

**TABLE 2**

**Complaints Filed Against Judges - By Courts**  
**2005**

Supreme Court	1
Court of Appeals	4
Circuit Court	200
District	77
County	0
City	1
Federal	6
Unknown	0
Other	6

This table displays the number of complaints filed against the different types of judges. Circuit court judges are the most frequently complained of judge.

### **TABLE 3**

#### **Nature of Litigation Giving Rise to Complaints** **2005**

<b>Criminal</b>	<b>120</b>
<b>Domestic Relations:</b> Includes divorce, custody, support & related contempt and post-divorce matters	<b>71</b>
<b>General Civil</b>	<b>53</b>
<b>Juvenile</b>	<b>7</b>
<b>Mental Illness</b>	<b>0</b>
<b>Probate</b>	<b>14</b>
<b>Small Claims</b>	<b>6</b>
<b>Traffic 8</b>	
<b>Non-litigation</b>	<b>16</b>

This table shows the types of litigation that gave rise to the complaints. Criminal cases and domestic relations cases (which include divorce, custody, support and related contempt and post-divorce matters) are the types of litigation giving rise to approximately two-thirds of the complaints.

**TABLE 4**  
**Type of Allegations (Subject Matter) Filed in 2005**

<b>Abuse of Judicial Power</b> (Includes a knowing or persistent disregard of clear law or fundamental rights)	<b>115</b>
<b>Conflict of Interest/Failure to Disqualify</b>	<b>72</b>
<b>Corruption/Fraud</b>	<b>5</b>
<b>Delay - Includes delay in scheduling or deciding a matter</b>	<b>41</b>
<b>Ex-parte (one-sided) Communication</b>	<b>33</b>
<b>Failure to Perform Duties of Office</b>	<b>6</b>
<b>Improper Election Campaign Conduction/Political Conduct</b>	<b>0</b>
<b>Improper Influence</b>	<b>13</b>
<b>Inappropriate Public Comment</b>	<b>6</b>
<b>Injudicious Temperament</b> (Includes impatient, rude, or intimidating conduct)	<b>59</b>
<b>Legal Error/Improper Procedure</b> (Includes dissatisfaction with court procedures or filings on evidence, criminal sentences, custody, etc.)	<b>85</b>
<b>Misconduct (off the bench)</b> (Includes prohibited charitable, business, personal and political conduct)	<b>6</b>
<b>Nepotism</b>	<b>0</b>
<b>Partiality, Bias, or Prejudice</b> (Includes individual and class bias)	<b>89</b>
<b>Physical or Mental Disability</b>	<b>0</b>
<b>Procedural or Administrative Irregularity</b>	<b>94</b>
<b>Sexual Misconduct</b>	<b>0</b>
<b>Use of intoxicating beverages or dangerous drugs</b> (In such a way as to interfere with proper performance of judicial duties.)	<b>0</b>

The most common allegation was abuse of judicial power (which includes a clear or knowing or persistent disregard of clear law or fundamental rights). The second most common allegation was procedural or administrative irregularity followed by partiality, bias, or prejudice (individual or class bias)

## **TABLE 5**

### **2005 Docket**

A.	Matters pending on January 1, 2005	115
	Complaints received during 2004	295
	Total complaints	410
B.	Disposition of complaints:	
	Complaints dismissed	312
	Informal Adjustment	0
	Private reprimands	0
	Public Admonitions	0
	Public reprimands/censure	1
	Judicial resignation or retirement during Commission investigation	1
	Suspension from office with pay	0
	Recommendation to Supreme Court for:	
	1) Suspension for misconduct	0
	2) Removal for misconduct	0
	3) Suspension for disability	0
	4) Removal for disability	0
	<b>TOTAL DISPOSITIONS</b>	<b>314</b>
C.	Miscellaneous	
	Appearances by a judge	4
	Appearance by an attorney representing a judge	3
	Formal statement of charges served on a judge	1
	Probable cause hearings	1
	Referral to Supreme Court for interim suspension of a judge	0
	Supreme Court granting interim suspension of a judge	0

This table displays the 2005 docket of the Commission. In 2005 the Commission received 295 complaints and disposed of 312 complaints. This disposition included:

- § Issuance of 1 public censure in two (2) complaints
- § One retirement from office with the judge agreeing to never serve again in the Arkansas judiciary

As of December 31, 2005 there were 79 open and pending matters before the Commission.

## **IX. JUDICIAL ETHICS ADVISORY COMMITTEE**

The Judicial Ethics Advisory Committee was established on July 1, 1991.

The Committee, created by the Judicial Discipline and Disability Commission, issues advisory opinions to judges and publicly declared candidates for judicial office as to how a future course of conduct comports with the Code of Judicial Conduct. In 2005, the members of the Committee were retired Municipal Court Judge Edwin B. Alderson, Jr. of El Dorado, Professor Howard W. Brill of the University of Arkansas Law School in Fayetteville, and retired Pulaski County Circuit Court Judge David B. Bogard.

Professor Brill serves as Chair of the Judicial Ethics Advisory Committee. In 2005, the Committee issued seven (7) advisory opinions.

The procedural rules for the Judicial Ethics Advisory Committee are at Appendix F. Requests for an advisory opinion may be sent to the Judicial Discipline and Disability Commission at 323 Center Street, Suite 1060, Tower Building, Little Rock, Arkansas 72201. The request may relate only to prospective conduct and should contain a statement of the facts pertaining to the intended conduct and the results of personal research on the issues. The opinions are advisory only and are not binding on the Judicial Discipline and Disability Commission or the Supreme Court. However, where a judge follows the written advisory opinion, that is evidence of good faith compliance with the Code of Judicial Conduct. Copies of opinions are published in professional journals and made available to the general public. Summaries of the advisory opinion since 1991 in a topical index are at Appendix G.

## APPENDIX A

IN RE ARKANSAS CODE OF JUDICIAL CONDUCT, 313 Ark. Appx. 737 (July 5, 1993)

IN THE MATTER OF THE ARKANSAS CODE OF JUDICIAL CONDUCT  
(as amended)

Supreme Court of Arkansas  
Delivered July 5, 1993

PER CURIAM.

We adopt, effective this date, the revised Arkansas Code of Judicial Conduct which is published herewith and we simultaneously repeal the existing Arkansas Code of Judicial Conduct.

On June 28, 1991, the Arkansas Bar Association Committee on the Model Code of Judicial Conduct petitioned this Court to adopt its proposed Arkansas Code of Judicial Conduct which amends our present Code of Judicial Conduct. We published notice that the proposed Code had been filed by Per Curiam Order dated July 8, 1991, and we solicited comment from the bench and bar.

On November 16, 1992, we published notice that we had revised the Arkansas Bar Association's proposed Code, and we solicited comment again from the bench and bar.

On February 1, 1993, we published the specific revisions we had made to the proposed Code presented to us by the Arkansas Bar Association Committee.

We note one change in the Code published this date from that made available for comment on November 16, 1992. We have deleted proposed Canon 3B(7)(d) and relettered the one successive subparagraph. The deleted paragraph reads:

(d) A judge may, with the consent of all parties and their lawyers, confer separately with the parties and their lawyers in an effort to mediate or settle matters pending before the judge.

Comments received on the proposed subparagraph raised the specter that a judge's participation in settlement conferences may erode the perception of judicial impartiality, should the matter not be settled but go to trial. We urge the Arkansas Bar Association Committee on the Model Code of Judicial Conduct to give his one subparagraph additional consideration in light of the comments received.

## **PREAMBLE**

Our legal system is based on the principal 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 texts 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 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 liberty 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 a disciplinary action. Whether disciplinary action is appropriate, and the degree of discipline to be imposed, should be determined through 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.

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.

## TERMINOLOGY

“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 of 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 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 or 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 interest in a financial institution, the proprietary interests 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 should 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.

“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 Sections 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).

“Non public information” denotes information that, by law, is not available to the public. Non public 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, pre-sentencing reports, dependency cases or psychiatric reports. See Section 3B(1).

“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 group, other than a political party, a purpose of which is to participate in the political process. See Sections 5A(1), 5B(2) and 5C(1).

"Political party " has the same meaning as provided in Ark. Code Ann. § 7-1-101 (16) (A), that is, "any group of voters which at the last-preceding general election polled for its candidate for Governor in the state or nominees for presidential electors at least three percent (3%) of the entire vote cast for the office." In the case of a newly organized political party, the term "political party " shall mean a party that satisfies the requirements contained in Ark. Code Ann. § 7-3-108 (b).

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

“Public election.” This term includes primary and general elections; it includes partisan elections, non-partisan elections and retention elections. See Section 5C.

“Require.” The rules prescribing that a judge “require” certain conduct of others are, like all of the rule 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(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).

## **CANON 1**

### **A JUDGE SHALL UPHOLD THE INTEGRITY AND INDEPENDENCE OF THE JUDICIARY**

An independent and honorable judiciary is indispensable to justice in our society. A judge should participate in establishing, maintaining and enforcing high standards of conduct, and shall personally observe those standards so that the integrity and independence of the judiciary will be preserved. 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. Although judges shall be independent, they must comply with the law, including the provisions of the Code. Public confidence in the impartiality of the judiciary is maintained by the adherence of each judge to his 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 IMPROPRIETY AND THE APPEARANCE OF IMPROPRIETY IN ALL OF THE JUDGE'S ACTIVITIES.**

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

#### **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.

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 the standard shall 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 interest 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 political 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 differential treatment when stopped by a police officer for a traffic offense. Similarly, judicial letterhead must not be used to gain any personal advantage or to effect an economic advantage. Letters of recommendation may be written on judicial stationery based on personal knowledge of the applicant, but not merely for the purpose of lending the prestige of the judicial office to the applicant.

A judge must avoid lending the prestige of the 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 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. The judge may, however, testify when properly summoned. Except in unusual circumstances when 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 judge should be sensitive. The answer cannot be determined from a mere examination of an organization current membership rolls but rather depends on how the organization selects members and other relevant factors. An organization is generally said to be 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 Section 2C relates only to a 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 state law also violates Canon 2 and Section 2A and gives the appearance of an 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 of 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.

A judge may ordinarily be a member of an organization which is in fact and effect an intimate, purely private organization whose membership limitations could not be constitutionally prohibited, even though that organization is a single sex or single race organization. Likewise, a judge may ordinarily be a member of an organization which is dedicated to the preservation of religious, ethnic or cultural values of legitimate common interest to the members, even though in fact its membership is limited. Similarly, a judge may have or retain membership with a university related or other living group, even though its membership is single sex. However, public approval of, or participation in, any discrimination that gives the appearance of impropriety and diminishes public confidence in the integrity and impartiality of the judiciary violates this Code. For example, an organization that conducts lobbying or advocacy on behalf of its members may raise such concerns. Ultimately, each judge may determine in the judge's own conscious whether participation in such an organization violates Canon 2 and Section 2A.

When a person who is a judge on the date this Code becomes effective 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.

### **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 precedent over all of the judge's other activities. The judge's judicial duties include all of 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 matter 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 interest, 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 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 with 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, or national origin, 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 dispute. Facial expressions and body language, in addition to oral communication, can give the 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, or national origin, or other similar factors, against parties, witnesses, counsel, or others. This Section 3B(6) does not preclude legitimate advocacy when race, sex, religion or national origin, 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 initiate or consider an 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 on the proceeding, except to the limited extent permitted.

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

Whenever presence of a party or notice to a party is required by Section 3B(7), it is the parties' 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 of the criteria stated in Section 3B (7) are clearly met. The judge must disclose to all parties all *ex parte* communications described in Section 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 the parties to submit proposed findings of fact and conclusions of law, so long as the other parties are apprised of the request and given an opportunity to respond to the proposed findings and conclusions.

A judge must make reasonable efforts, including the provisions 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 rights 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 non-public comment that might 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 or 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.

**Commentary:**

The requirement that judges abstain from public comment regarding a pending or impending proceeding continues during any appellate process and until final disposition. This Section does not prohibit a judge from commenting on proceedings in which the judge is a litigant in a personal capacity, but in cases such as a writ of mandamus where the judge is a litigant in an official capacity, the judge must not comment publicly. The conduct of lawyers relating to trial publicity is governed by Rule 3.6 of the Arkansas Rules of Professional Conduct.

(10) 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.

(11) A judge shall not disclose or use, for any purpose unrelated to judicial duties, non-public 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 a 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 should exercise his power of appointment only on the basis of merit, avoiding nepotism and favoritism. No judge shall employ a spouse or other relative unless it has been affirmatively demonstrated to the Arkansas Judicial Discipline and Disability Commission that it is impossible for the judge to hire any other qualified person to fill the position. A judge shall not approve compensation of appointees beyond the fair value of services rendered. (Amended by the per curiam November 19, 1990, effective July 1, 1991.)

**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. Nepotism is the appointing of relatives within the third degree of relationship by affinity or consanguinity. The relationship is determined as of the time of appointment. 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).

*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 either communicate directly with respect to the violation with the judge who has committed the violation or report the violation to the Judicial Discipline and Disability Commission.

(2) A judge who receives information indicating a substantial likelihood that a lawyer has committed a violation of the Rules of Professional Conduct should take appropriate action. A judge having knowledge that a lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial question as to the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects shall either communicate directly with respect to the violation with the lawyer who has committed the violation or report the violation to the Arkansas Supreme Court Committee on Professional Responsibility.

(3) Acts of a judge, in the discharge of disciplinary responsibilities, required or permitted by Section 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 the 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 the process 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 the 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 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 the 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 be reasonably 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 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 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;

**Commentary:**

The fact that a lawyer in the 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(i), or that the relative is known by the judge to have an interest in the law firm that could be "substantially affected by 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 interest, 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 of 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

#### **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 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 of 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 or other similar factors. See Section 2C and accompanying Commentary.

B. *Avocation Activities.* A judge may speak, write, lecture, teach on 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 a 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 the 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 public hearing before, or otherwise consulting with, an executive or legislative body or official except on matters concerning the law, the legal system of the administration of justice.

**Commentary:**

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

(2) A judge shall not accept appointment to governmental committee or commission or other governmental position that is concerned with issues of fact or policy or matters other than the improvement of the law, the legal system of 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 the 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 services in a non-governmental 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, or 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 the profit, subject to the following limitations and the other requirements of the 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 could 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 or which the judge is a member.

**Commentary:**

The changing nature of some organizations and of their relationships 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 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 organizations 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 of the solicitation might reasonably be perceived as the 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 non-profit 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 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 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 effort 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 a 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 D) 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(11).

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 in the judge’s court. In addition, the 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 of favoritism and to minimize the potential for disqualification. With respect to affiliation of relatives of judges 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 the 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 the 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 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 partners, 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 in 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 the 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 interest 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 in other financial interest 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 a judge, a judge must inform those 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 of all family members residing in the judge's household.

(a) a gift incident to a public household, books, tapes, and other resource materials supplied by a publishers on a complimentary basis for official use, or an invitation to the judge and the judge's spouse to attend a bar-related function or an activity related to the improvement of the law, the legal system of 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 compromise or frequently represent the same side in litigation, and the testimonial and gift are otherwise in compliance with the other provisions of this Code. See Sections 4A(1) 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 or 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 all 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 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 a service will not interfere with the proper performance of judicial duties.

(2) A judge shall not serve as 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 a judge while acting in a fiduciary capacity.

**Commentary:**

The Time for Compliance provision of this Code (Application, Section D) 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 the 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 as law or appear as counsel in any court within this state. 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 under the Arkansas Constitution, Article 7, §24 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 other dealings with legislative and other governmental bodies. However, in so doing, a judge must not abuse the prestige of office to advance the interest 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.

H. *Compensation, Reimbursement and Reporting.*

(1) *Compensation and Reimbursement.* A judge may receive compensation and reimbursement 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.

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 Supreme Court.

**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.

Compensation for purposes of public reporting includes compensation received for quasi-judicial and extra-judicial activities permitted by the Code, including compensation received for speaking, writing, lecturing, teaching, and similar activities. As has been the recognized interpretation given this Code for twenty-six years, compensation for purposes of public reporting does not include income from investments or from business activities as permitted by Canon 4(D)(2) and 4(D)(3).

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" explained in the Terminology Section. Section 4D requires a judge to refrain from engaging in business for financial activities that might interfere with the impartial performance of judicial duties; Section H 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 Section 5B(2), 5C(1) and 5C(3), a judge or a candidate for election or appointment to judicial office shall not:

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

(b) publicly endorse or publicly oppose another candidate for public office;

- (c) make speeches on behalf of a political organization or a political party;
- (d) directly or indirectly seek or use endorsements from a political party;
- (e) solicit funds for, pay an assessment to or make a contribution to a political party or candidate; or
- (f) publicly identify his or her current political party affiliation or lend one's name to a political party.

**Commentary:**

A judge or candidate for judicial office retains the right to participate in the political process as a voter. As an individual, a judge is entitled to his or her personal view on political questions and to rights and opinions as a citizen. However, as a member of Arkansas non-partisan judiciary, a judge and judicial candidate must avoid any conduct which associates him or her with a political party.

As Arkansas maintains a partisan primary election process, this provision ensures that a judge or candidate may ask for a ballot in a party's primary or declare a party affiliation for voting purposes without violating ethical standards.

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 or a political party."

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. Former judges and retired judges are encouraged to not publicly endorse or publicly oppose a candidate for any public office with the use of their former title.

A candidate does not publicly endorse another candidate for public office by having that judicial candidate's name on the same ballot of a political party primary in the section of the ballot designated as a nonpartisan judicial candidate.

Restricting candidates for judicial office from publicly identifying their affiliation in a political party and seeking or using a political party endorsement is necessary for an independent and impartial judiciary and in preserving public confidence in that independence and impartiality.

Judicial elections are nonpartisan and show that judges are impartial and independent. Such elections and those seeking judicial office should do nothing which would create the appearance of any lack of impartiality or independence on the part of the candidate and the Arkansas Judiciary.

(2) A judge shall resign from judicial office upon becoming a candidate for a non-judicial office either in a primary or 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 judicial office:

(a) shall maintain the dignity appropriate to judicial office and act in a manner consistent with the 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 the 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) make pledges or promises of conduct in office other than the faithful and impartial performance of the duties of the office;

(ii) make statements that commit or appear to commit the candidate with respect to cases, controversies or issues that are likely to come before the court; or

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

## **Commentary:**

Section 5A(3)(d) prohibits a candidate for judicial office from making statements that appear to 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), 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 statement 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 Arkansas Rules of Professional Conduct.

(e) may respond to personal 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.*

(1) 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 of 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 or a political party,

(ii) attend gatherings of a political organization or a political parties,  
and

(iii) continue to pay ordinary assessments and ordinary contributions  
to a political organization or a political party or candidate and  
purchase tickets for a 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 or a political party, attend gatherings of political parties and political organizations and pay ordinary dues and assessments, they remain subject to other provisions of this Code during candidacy. See Sections 5A(1), 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 gatherings of a political  
organization or a political party;

(ii) contribute to a political organization;

(iii) privately identify himself or herself as affiliated with a political  
party.

(b) when a candidate for election

(i) speak to gatherings on his or her own behalf and may speak at  
gatherings of political organizations or political parties where all  
opposing judicial candidates for the same office have the opportunity  
to speak;

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

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

**Commentary:**

Section 5(C)(1)(b)(iii) allows a judicial candidate to ask an individual to place a sign supporting the candidate in his or her yard.

(2) A candidate shall not personally solicit or accept campaign contributions. 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 other than from political parties 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 committee may solicit contributions and public support for the candidate's campaign no earlier than 180 days before an election and no later than 45 days after the last contested election in which the candidate participates during the election year. Funds received prior to the 180 day limitation or after the 45 day limitation shall be returned to the contributor. If funds are received personally by a judicial candidate, the candidate shall promptly turn them over to the campaign committee. A candidate shall not use or permit the use of campaign contributions for private benefit of the candidate or others. Any campaign funds surplus shall be returned to the contributors or turned over to the State Treasurer as provided by law.

**Commentary:**

Section 5(C)(2) permits a candidate, other than a candidate for appointment, to establish campaign committees to solicit and accept public support and reasonable financial contributions. At the start of the campaign, the candidate must instruct his or her campaign committees to solicit or accept only contributions that are permitted by law and reasonable 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 be relevant to disqualification under Section 3E.

Campaign committees established under Section 5(C)(2) should manage campaign finances responsibly, avoiding deficits that might necessitate post-election fund raising, to the extent possible.

Section 5(C)(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 for judicial office in a public election may not directly or indirectly solicit or promote the candidate's name to appear in promotions on a political party's ticket or materials paid for by a political party. Except as prohibited by law, a candidate's name, picture or other identifying information may be listed in election material sponsored by a political organization.

**Commentary:**

Election material published by a political organization, such as the League of Women Voters or a bar association, is unobjectionable.

D. *Incumbent judges.* A judge shall not engage in any political activity except (i) as authorized under any 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 5(D) nor any other Section of the Code prohibits a judge in the exercise of administrative functions from engaging in planning and other financial 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 4(C)(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 Arkansas Rules of Professional Conduct.

## **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 three 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. *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, and 4H.

(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 Arkansas Rules of Professional Conduct.

C. *Pro Tempore Part-time Judge or Periodic Part-time Judge.*

A pro tempore part-time judge or periodic 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 or periodic 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 in Rule 1.12(a) of the Arkansas Rules of Professional Conduct.

**Commentary:**

A full time governmental official who has judicial powers which are exercised infrequently, such as a county judge, is a pro tempore part-time judge.

D. *Time for Compliance.* A person to whom this Code becomes applicable shall comply immediately with all provisions of this Code except Sections 4(D)(2), 4(D)(3) and 4(E) 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 of Sections 4(D)(3) continue in that activity for a reasonable period, but in no event longer than one year.

## APPENDIX B

### AMENDMENT 66. JUDICIAL DISCIPLINE AND DISABILITY COMMISSION

(a) COMMISSION: Under the judicial power of the State, a Judicial Discipline and Disability Commission is established and shall be comprised of nine persons: three justices or judges appointed by the Supreme Court; three licensed attorneys in good standing who are not justices or judges, one appointed by the Attorney General, one by the President of the Senate, and one by the Speaker of the House; and three members appointed by the Governor. The members appointed by the Governor shall not be justices or judges, retired justices or judges, or attorneys. Alternate members shall be selected and vacancies filled in the same manner.

(b) DISCIPLINE, SUSPENSION, LEAVE AND REMOVAL: The Commission may initiate, and shall receive and investigate, complaints concerning misconduct of all justices and judges, and requests and suggestions of involuntary disability retirement. Any judge or justice may voluntarily request that the Commission recommend suspension because of pending disciplinary action or leave because of mental or physical disability. Grounds for sanctions imposed by the Commission or recommendations made by the Commission shall be violations of the professional and ethical standards governing judicial officers, conviction of a felony, or physical or mental disability that prevents the proper performance of judicial duties. Grounds for suspension, leave, or removal from office shall be determined by legislative enactment.

(c) DISCIPLINE: If after notice and hearing, the Commission by majority vote of the membership determines that grounds exist for the discipline of a judge or justice, it may reprimand or censure the judge or justice, who may appeal to the Supreme Court. The Commission may, if it determines that grounds exist, after notice and hearing, and by majority vote of the membership, recommend to the Supreme Court that a judge or justice be suspended, with or without pay or be removed, and the Supreme Court, en banc, may take such action. Under this amendment, a judge who also has executive or legislative responsibilities shall be suspended or removed only from judicial duties. In any hearing involving a Supreme Court justice, all Supreme Court justices shall be disqualified from participation.

(d) LEAVE AND RETIREMENT: If, after notice and hearing, the Commission by majority vote of the membership determines that a judge or justice is unable because of physical or mental disability to perform the duties of office, the justice may recommend to the Supreme Court that the judge or justice be granted leave, with pay, or be retired, and the Supreme Court, in banc, may take such action. A judge or justice retired by the Supreme Court shall be considered to have retired voluntarily as provided by law.

(e) VACANCIES: Vacancies created by suspension, the granting of leave or the removing of a judge or justice, or vacancies created by disqualification of justices, shall be filled as provided by law.

(f) RULES: The Supreme Court shall make procedural rules implementing this amendment and setting the length of terms on the Commission.

(g) CUMULATIVE NATURE: This amendment is alternative to, and cumulative with, impeachment and address authorized by this Constitution.

## APPENDIX C

### LEGISLATION CONCERNING JUDICIAL DISCIPLINE AND DISABILITY COMMISSION

#### SECTION:

16-10-401. Definitions

16-10-402. Creation

16-10-403. Director - Staff

16-10-404. Duties - Records

16-10-405. Rules

16-10-406. Immunity from suit.

#### SECTION:

16-10-407. Leave

16-10-408. Suspension and pay

16-10-409. Mandatory suspension

16-10-410. Removal from office.

16-10-411. Vacancy.

#### *16-10-401. Definitions.*

The word “judge” in this sub-chapter means anyone, whether or not a lawyer, who is an officer of the judicial system performing judicial functions, including an officer such as a referee, special master, court commissioner, or a magistrate, whether full-time or part-time.

#### *16-10-402. Creation.*

(a) There is hereby established a committee to be known as the Arkansas Judicial Discipline and Disability Commission, hereinafter referred to as the “Commission”, consisting of nine (9) members, each of whom shall be residents of Arkansas, and shall be appointed as follows:

(1) Three (3) members shall be judges or the Arkansas Court of Appeals, Circuit Court, Chancery Court, or Municipal Court as appointed by the Arkansas Supreme Court;

(2) Three (3) members shall be lawyers admitted to practice in Arkansas who are not judges or former or retired judges, one (1) of whom shall be appointed by the Attorney General, one (1) by the President of the Senate, and one (1) by the Speaker of the House; and

(3) Three (3) members, who are neither lawyers, judges, or former or retired judges appointed by the Governor.

(b) (1) A Commission member may serve for a term of six (6) years and shall be eligible for reappointment to a second full term.

(2) A member appointed to a term of less than six (6) years or to fill an unexpired term may be reappointed for two (2) full terms.

(3) The appointing authority for each category of Commission membership shall also appoint an alternate member for each regular member appointed. An alternate member shall be appointed for a term of six (6) years and may be reappointed for a second term. An alternate member appointed to fill an unexpired term shall be eligible for an appointment for two (2) full terms.

(c) If a Commission member or an alternate Commission member moves out of the jurisdiction, ceases to be eligible for appointment to represent the category for which he was appointed, or becomes unable to serve for any reason, a vacancy shall occur. An appointment to fill a vacancy for the duration of this unexpired term shall be made by the appropriate appointing authority, effective no later than sixty (60) days from the occurrence of vacancy. If a vacancy is not filled in accordance with this paragraph, the Chief Justice of the Supreme Court shall, within ten (10) days thereafter, appoint, from the category to be represented, a member who shall serve for the duration of the unexpired term.

(d) Commission members shall serve without pay, but shall be entitled to maximum per diem expenses as authorized by the General Assembly for each day attending meetings of the Commission or in attending to official business as authorized by the Commission, and in addition thereto, shall be entitled to mileage for official travel in attending Commission meetings or other official business of the Commission, at the rate provided by law or state travel regulations for reimbursement to state employees for official state travel.

#### *16-10-403. Director - Staff*

(a) The Commission shall employ a director and such additional professional and clerical staff as may be authorized, from time to time, by appropriation passed by the General Assembly.

(b) Effective July the 1, 1994, the Director of the Judicial Discipline and Disability Commission shall be an attorney licensed to practice in the state of Arkansas.

(c) The director shall not engage in the practice of law nor serve in a judicial capacity during his or her employment.

#### *16-10-404. Duties - Records.*

(a) The Commission shall initiate or shall receive information, conduct investigations and hearings, and make recommendations to the Arkansas Supreme Court concerning:

- (1) Allegations of judicial misconduct;
- (2) Allegations of physical or mental disability of judges requiring leave or involuntary retirement; and
- (3) Matters of voluntary retirement or leave for disability.

(b) (1) Investigatory records, files, and reports of the Commission are confidential, and no disclosure of information, written, recorded, or oral, received or developed by the Commission in the course of an investigation related to alleged misconduct or disability of a judge shall be made except as follows:

(A) Upon waiver in writing by the judge at any stage of the proceedings;

(B) Upon inquiry by an appointing authority or by a state or federal agency conducting investigations on behalf of such authority in connection with the selection or appointment of judges;

(C) In cases in which the subject matter or the fact of the filing of charges has become public, if deemed appropriate by the Commission, it may issue a statement in order to confirm the pendency of the investigation, to clarify the procedural aspects of the proceedings, to explain the right of the judge to a fair hearing, and to state that the judge denies the allegation;

(D) Upon inquiry in connection with the assignment or recall of a retired judge to judicial duties, by or on behalf of the assigning authority; or

(E) Upon the Commission's taking final action with respect to a complaint about a judge, notice of the final action shall become public information;

(F) Where the circumstances necessitating the initiation of a inquiry include notoriety, or where the conduct in question is a matter of public record, information concerning the lack of cause to proceed shall be released by the Commission.

(G) If, during the course of or after an investigation or hearing, the Commission reasonably believes that there may have been a violation of any rules of personal conduct of attorneys at law, the Commission may release such information to any committee, commission, agency, or body within or outside the state empowered to investigate, regulate, or adjudicate matters incident to the legal profession; or

(H) If, during the course of or after an investigation or hearing, the Commission reasonably believes that there may have been a violation of criminal law, the Commission shall release such information to the appropriate prosecuting attorney.

(2) All proceedings held prior to a determination of probable cause and the filing of formal charges shall be confidential. Any hearings scheduled after the filing of formal charges shall be

open to the press and to the public, except that, following the completion of the introduction of all evidence, the Commission may convene to executive session for the purpose of deliberating its final conclusions and recommendations, provided, that, upon completion of the executive session, the final action of the Commission shall be announced in an open and public session.

(3) The Commission is authorized to request the appropriate prosecuting authorities to seek to obtain immunity from criminal prosecution for a reluctant witness using the procedure outlined in 16-43-602 et seq.

*16-10-405. Rules.*

The Arkansas Supreme Court shall adopt rules with regard to all matters of Commission operations and all disciplinary and disability proceedings and promulgate rules of procedure.

*16-10-406. Immunity from Suit.*

Members of the Commission, referees, Commission counsel and staff shall be absolutely immune from suit for all conduct in the course of their official duties.

*16-10-407. Leave.*

Grounds for leave consist of a temporary physical or mental incapacity which impairs the ability of the judge to substantially perform the duties of his or her judicial office and which exist or is likely to exist for a period of one (1) or less. Leave cannot be granted to exceed one (1) year.

*16-10-408. Suspension with pay.*

A judge may be suspended by the Supreme Court with pay:

(1) While an indictment or information charging him or her in any court in the United States with a crime punishable as a felony under the laws of Arkansas or the United States is pending;

(2) While a recommendation to the Supreme Court by the Commission for his or removal, or involuntary disability retirement is pending;

(3) When articles of impeachment have been voted by the House of Representatives.

*16-10-409. Mandatory suspension.*

A judge shall be suspended from office with pay by the Supreme Court when in any court in the United States he pleads guilty or no contest to, or is found guilty of an offense punishable as a felony under the laws of Arkansas or the United States, or of any offense that involves moral turpitude. If his conviction becomes final, he may be removed from office pursuant to 16-10-410. If his conviction is reversed and he is cleared of the charge, by order of the court, whether without further trial or after further trial and a finding of not guilty, his suspension terminates. Nothing in this Section shall prevent the Commission from determining that a judge be disciplined or removed according to 16-10-410.

*16-10-410. Removal from office.*

(a) The grounds for removal conferred by this sub-chapter shall be both alternative and cumulative to the power of impeachment provided by the constitution and removal otherwise provided by law.

(b) A judge may be removed from office on any of the following grounds:

(1) Conviction of any offense punishable as a felony under the laws of Arkansas or the United States;

(2) Conviction of a criminal act that reflects adversely on the judge's honesty, trustworthiness, or fitness as a judge in other respects;

(3) The commission of conduct involving dishonesty, fraud, deceit, or misrepresentation;

(4) The commission of conduct that is prejudicial to the administration of justice;

(5) Willful violation of the Code of Judicial Conduct or Professional Responsibility;

(6) Willful and persistent failure to perform the duties of office;

(7) Habitual intemperance in the use of alcohol or other drugs.

(c) In considering recommending removal the Commission may consider the frequency of the offense, the motivation of the conduct, length of time since the conduct in question, and similar factors.

(d) Any judge removed from office pursuant to this sub-chapter cannot be appointed or elected to serve as a judge.

*16-10-411. Vacancy.*

The granting of leave, suspension, with or without pay, removal or involuntary disability retirement pursuant to this sub-chapter shall create a vacancy in the judicial office.

## APPENDIX D

### IN THE MATTER OF PROCEDURE OF THE ARKANSAS DISCIPLINE AND DISABILITY COMMISSION

Supreme Court of Arkansas  
Delivered May 8, 1989 and  
amended on May 14, 1990, July 16, 1990, March 16, 1992, July 6, 1992 and July 12, 1993

PER CURIAM: In the General Election held November 8, 1988, the people of Arkansas adopted Ark. Const. Amend. 66, which created the Arkansas Judicial Discipline and Disability Commission. The General Assembly adopted Act 637 of 1988, expanding upon the provisions of the amendment and stating, as permitted by the amendment, the grounds for suspension and removal of judges. Sub-section (f) of the amendment provides: "Rules: The Supreme Court shall make procedural rules implementing this amendment and setting the length of terms on the Commission." The following rules for the Commission are hereby promulgated.

#### RULE I. ORGANIZATION OF COMMISSION

- A. Composition of Commission: In accordance with Ark. Const. Amend. 66 and Act 637 of 1989, the Commission on Judicial Discipline and Disability shall have nine members who shall be residents of Arkansas. Three members shall be justices or judges appointed by the Supreme Court (judicial members); three shall be lawyers admitted to practice in this state who are not justices or judges by the Speaker of the House of Representatives (lawyer members); and three members who are neither lawyers nor sitting or retired justices or judges shall be appointed by the Governor (public members).
- B. Meetings. The Commission shall hold an organization meeting immediately upon establishment and biannually hereafter, shall meet at least monthly at announced dates and places, except when there is no business to be conducted. Meetings shall be called by the chairman or upon written request of three members of the Commission.
- C. Terms of Commission Members and Alternates: With the exception of the initial appointees, whose initial terms shall be made so that reappointments and later appointments are to be staggered, Commission members and alternates shall serve for terms of six (6) years and shall be eligible for reappointment to second full terms. (Initial appointees shall be eligible for second terms of six (6) years.) At its organization meeting, the members of the Commission shall draw for lengths of initial terms so that one member in each group of members, judicial, lawyer and public, shall have four (4) year initial term. One member in each group shall have a five (5) year term and one member in each group shall have a six (6) year term. After the terms of the initial appointees have been established, slips of paper, each with the name of an alternate shall be placed in a container. Each member shall draw

one of the slips of paper, and the alternate whose name is thus drawn shall have the same length of term as the member who drew his or her name.

- D. Officers. At the organization meeting the members of the Commission shall elect one among them to serve as chairman and another to serve as vice chairman. The vice chairman shall perform the duties of the chairman whenever he is absent or unable to act.
- E. Quorum. Voting requirements. Five members of the Commission shall constitute a quorum for the transaction of business. A finding of probable cause shall require the concurrence of a majority of the members present.

An alternative member shall serve in the place of the member of the same category whenever such member is disqualified and upon the call of, or on behalf of, the chairman. An alternate member who is present at a Commission meeting but who has not been called to serve may neither be included in a quorum count nor vote on any matter being considered at such meeting. Whenever an alternate member is called to serve in the place of a member of the Commission, an announcement with respect thereto shall be made at the commencement of the meeting.

A recommendation that discipline be imposed shall require the concurrence of a majority of the members of the Commission.

## RULE 2. POWERS AND DUTIES OF THE COMMISSION

- A. Rules and Forms. The Commission may recommend to the Supreme Court adoption or amendment of rules with regard to all disciplinary and disability proceedings, promulgate additional rules of procedure not inconsistent with these rules and require the use of appropriate forms.
- B. Annual Report. The Commission shall have prepared an annual report of its activities for presentation to the Supreme Court and the public at the end of each calendar year.

## RULE 3. FINANCIAL ARRANGEMENTS FOR COMMISSION:

- A. Compensation Proscribed. The Commission members shall serve without compensation for their services.
- B. Expenses Allowed. The Commission members shall be reimbursed for expenses necessarily incurred in the performance of their duties.
- C. Authorization for Payments. Expenses of the Commission as provided in Section 2(d) of Act 637 of 1989, shall be authorized to be paid in accordance with the approved Commission budget.

RULE 4. COMMISSION OFFICE:

The Commission shall establish a permanent office in a building open to the public. The office shall be open and staffed at announced hours.

RULE 5. DUTIES OF THE DIRECTOR:

The Commission shall prescribe the duties and responsibilities of the director which shall include the authority to:

- (1) Consider information from any source and receive allegations and complaints;
- (2) Make preliminary evaluations;
- (3) Screen complaints;
- (4) Conduct investigations;
- (5) Maintain and preserve the Commission's records, including all complaints, files and written disposition;
- (6) Maintain statistics concerning the operation of the Commission and make them available to the Commission and to the Supreme Court;
- (7) Prepare the Commission's budget for its approval and administer its funds;
- (8) Employ and supervise other members of the Commission's staff;
- (9) Prepare an annual report of the Commission's activity; and
- (10) Employ with the approval of the Commission, special counsel, private investigators or other experts as necessary to investigate and process matters before the Commission and before the Supreme Court.

RULE 6. JURISDICTION:

- A. Judge in Office. The authority of the Commission extends to judges and justices in office, and the term "judge" includes anyone, whether or not a lawyer, who is an officer of the judicial system performing judicial functions, including an officer such as a referee, special master, court commissioner, magistrate, whether full-time or part-time. Allegations regarding conduct of a judge or justice occurring prior to or during service in judicial office,

including the service of a retired judge who has been recalled, are within the jurisdiction of the Commission and shall be considered by it.

- B. Former Judge. Conduct of a former judge which has been adjudicated by a final decision reached by the Commission shall not become the subject of disciplinary proceedings before the Supreme Court Committee on Professional Conduct.

#### RULE 7. DISCLOSURE:

- A. Any action taken by the Commission after investigation of a judge shall be communicated to the judge by letter which shall become public information. If the allegations leading to the investigation have proven to be groundless, the letter to the judge shall so state. [See Rule 8.B. and Rule 9.E.(1)]. If the Commission decides not to proceed to formal charges but to admonish the judge, to recommend a change in conduct, or to impose conditions on future conduct, such as obtaining treatment or counseling, the letter shall set forth the facts leading to the admonition or required adjustment.
- B. If the Commission finds it necessary to file formal charges against a judge and to proceed to a hearing, the charges and the hearing shall be open to the public as shall the records of formal proceedings. The Commission may, however, conduct its deliberations in executive session which shall not be open to the public. Any decision reached by the Commission in such an executive session shall be announced in a session open to the public.
- C. Investigatory records, files, and reports of the Commission shall be confidential, and no disclosure of information written, recorded, or oral, received or developed by the Commission in the course of an investigation related to alleged misconduct or disability of a judge, shall be made except as stated in B. above or as follows:
  - (1) Upon waiver in writing by the judge under consideration at any stage of the proceedings;
  - (2) Upon inquiry by an appointing authority or by a state or federal agency conducting investigations on behalf of such authority in connection with the selection or appointment of judges;
  - (3) In cases in which the subject matter or the fact of the filing of charges has become public, if deemed appropriate by the Commission, it may issue a statement in order to confirm the pendency of investigation, to clarify the procedural aspects of the proceedings, to explain the right of the judge to a fair hearing, and to state that the judge denies the allegation;
  - (4) Upon inquiry in connection with the assignment or recall of a retired judge to judicial duties, or on behalf of the assigning authority;
  - (5) Where the circumstances necessitating the initiation of an inquiry include notoriety, or where the conduct in question is a matter of public record,

information concerning the lack of cause to proceed shall be released by the Commission;

- (6) If during the course of or after an investigation of hearing the Commission reasonably believes that there may have been a violation of any rules of professional conduct of attorneys at law, the Commission may release such information to any committee, commission, agency or body within or outside of the state empowered to investigate, regulate and adjudicate matters incident to the legal proceedings; or
- (7) If during the course of or after an investigation of hearing, the Commission reasonably believes that there may have been a violation of criminal law, the Commission shall release such information to the appropriate prosecuting attorney.

D. It shall be the duty of the Commission and its staff to inform every person who appears before the Commission or who obtains information about the Commission's work of the confidentiality requirements of this rule.

- E. Any person who violates the confidentiality requirements of this rule shall be subject to punishment for contempt of the Arkansas Supreme Court.

#### RULE 8. PROCEDURES OF COMMISSION REGARDING CONDUCT OF A JUDGE

- A. **Initiation of Inquiry.** In accordance with these rules, any information submitted by a complainant or otherwise brought to the attention of the Commission stating facts that, if true, would be grounds for discipline shall initiate an inquiry relating to the conduct of the judge. The Commission on its own motion may make inquiry with respect to the conduct of a judge.
- B. **Screening.** Upon receipt of a complaint or other information as to conduct that might constitute grounds for discipline of a judge, the executive officer shall make a prompt, discreet and confidential investigation and evaluation. Under guidelines approved by the Commission and in light of initial investigation and evaluation, the executive officer shall determine whether there exists significant cause to proceed to a probable cause determination.  
The executive director shall dismiss all complaints for which sufficient cause to proceed is not found. A report as to matters so dismissed shall be furnished to the Commission at its next meeting. The complaint, if any, and the judge, if he has been given notice thereof, shall be informed in writing of the dismissal.
- C. **Optional Notice to the Judge.** Notice to the judge that complaint has been received or an inquiry undertaken may be given at any time.

- D. **Mandatory Notice to the Judge.** Except upon good cause shown and with the approval of the Commission, no action other than dismissal of the complaint shall be taken as to any complaint about which the judge is not notified within ninety (90) days of the receipt of such complaint.
- E. **Sworn Complaint or Statement in Lieu of Complaint.** If, after an initial investigation and evaluation, it appears that there is sufficient cause to proceed, the complainant, if any, shall be asked to file a detailed, signed, sworn complaint against the judge. The sworn complaint shall state the names and addresses of the complainant and the judge, the facts constituting the alleged misconduct, and so far as is known, whether the same or a similar complaint by the complainant against the judge has ever been made to and considered by the Commission. Immediately upon receipt of the sworn complaint, the executive officer shall make a written acknowledgment thereof to the complainant.

When a sworn complaint is not obtained a clear statement of the allegations against the judge and the alleged facts forming their basis shall be prepared by the executive officer.

When more than one act of misconduct is alleged each should be clearly set forth in the sworn complaint or in the statement in lieu of complaint, as the case may be.

- F. **Commencement of the Case.** Upon receipt of each sworn complaint or the preparation of a statement in lieu thereof, a file shall be opened by the Commission office.
- G. **Required Notice.** The judge shall immediately be served with a copy of the sworn complaint or statement of allegations.
- H. **Answer.** Within twenty (20) days after the service upon him of the sworn complaint or statement, the judge shall file a written answer with the executive officer. The answer may include a description of circumstance of a mitigating nature bearing on the charge. A personal appearance before the Commission shall be permitted in lieu of, or in addition to a written response. If the judge elects to appear personally his statement shall be recorded verbatim.
- I. **Review Prior to Probable Cause Determination.** Upon receipt and review of the judge's answer, the Commission may terminate the proceedings and dismiss the complaint and, in that event, shall give notice to the judge and each complainant that it has found insufficient cause to proceed.
- J. **Amending Allegations.** Amendment of the allegations regarding the misconduct of a judge, whether presented to the Commission in a sworn complaint or in a statement in lieu thereof, shall be permitted prior to a finding of probable cause, provided that notice thereof and an opportunity further to respond within ten (10) days is given to the judge.
- K. **Right to Counsel.** The judge shall be entitled to counsel of his own choice.

- L. Subpoenas and Summonses. The Commission has the authority to issue summonses for any person(s) and subpoenas for any witness(es), including the judge concerned, and for the production of papers, books, accounts, documents, records, or any evidence and testimony relevant to an investigation or proceeding. Such process shall be issued by and under the seal of the Commission and be signed by the chairman, vice chairman or the executive director. The summonses or subpoenas shall be served in any manner provided by the Arkansas Rules of Civil Procedure for service of process. Upon receiving notice from the Commission of the pendency of a proceeding, the judge concerned should be entitled to compel by subpoena issued in the same manner, the attendance and testimony of witnesses, and the production of papers, books, accounts, documents and testimony relevant to the investigation of the proceeding. The Commission shall provide for its use a seal of such design as it may deem appropriate. The Circuit Court of Pulaski County shall have the power to enforce the process.
  
- M. The Commission is authorized to request the appropriate prosecuting authorities to seek to obtain immunity from criminal prosecution for a reluctant witness, using the procedure outlined in A.C.A. Section 16-43-601, et seq.

#### RULE 9. PROBABLE CAUSE.

- A. Establishment of grounds of discipline. The grounds for discipline are those established in part (b) of Ark. Const. Amend. 66 and those established by Act 637 of 1989.
  
- B. Distinguished from Appeal. In the absence of fraud, corrupt motive or bad faith, the Commission shall not take action against a judge for making findings of fact, reaching a legal conclusion or applying the law as he understands it. Claims of error shall be considered only in appeals from court proceedings.
  
- C. Probable Cause Determination. The Commission shall promptly schedule and hold a formal meeting at which the strict rules of evidence need not be observed. A complete verbatim record shall be made. All witnesses shall be duly sworn. A complainant and the judge against whom he has complained shall have the right to be present, with their attorneys, if any, except during Commission deliberations.
  
- D. Findings and Report. The Commission shall prepare a written report containing its findings of fact and its conclusions on each issue presented and shall file its report with the executive officer.
  
- E. Disposition. In its report the Commission shall dispose of the case in one of the following ways:
  - (1) If it finds that there has been no misconduct, the director shall be instructed to send the judge and each complainant notice of dismissal.

- (2) If it finds, by concurrence of a majority of members present, that there has been conduct that is or might become cause for discipline but for which an admonition or informal adjustment is appropriate it may so inform or admonish the judge, direct professional treatment, counseling or assistance for the judge, or impose conditions on the judge's future conduct.
- (3) If it finds, by concurrence of a majority of members present, that there is probable cause to believe that there has been misconduct of a nature requiring a formal disciplinary proceeding, the director shall cause the judge to be served with the report, the formal statement of the charges, the record of the probable cause determination, and all documents upon which the determination was based. The service upon the judge constitutes notice that he must respond within twenty (20) days.

#### RULE 10. INTERIM SANCTIONS.

- A. **Suspension with Pay.** In instances of the (1) filing of an indictment or information charging a judge with a felony under state or federal law, or (2) the filing of a misdemeanor charge against a judge or justice where his ability to perform the duties of his office is adversely affected, the Commission shall convene within ten (10) days for the purpose of considering a recommendation to the Supreme Court that the judge or justice be temporarily suspended with pay pending to the outcome of any disciplinary determination.
- B. **Effect on Commission Action.** A temporary suspension with pay as an interim sanction shall not preclude action by the Commission with respect to the conduct that was the basis for the felony or misdemeanor charge, nor shall the disposition of the charge in any manner preclude such action.

#### RULE 11. FORMAL DISCIPLINARY HEARING

- A. **Scheduling.** The Commission shall, upon receipt of the judge's response or upon expiration of the time to answer, schedule a public hearing not less than thirty (30) nor more than forty-five (45) days thereafter, unless continued for good cause shown. The judge and all counsel shall be notified promptly of the date, time, and period of the hearing.
- B. **Discovery.** The judge and the Commission shall be entitled to discovery in accordance with the Arkansas Rules of Civil Procedure.
- C. **Fact Finder.** The formal hearing shall be conducted before a fact finder which may be the entire Commission or a three-member panel thereof appointed by the Commission chairman.
- D. **Conduct of Hearing.** The Arkansas Rules of Evidence apply and all testimony shall be under oath. Commission attorneys, or special counsel retained for the purpose, shall present the case to the fact finder. The judge whose conduct is in question shall be permitted to

adduce evidence and cross examine witnesses. Facts justifying action shall be established by clear and convincing evidence. The proceedings shall be recorded verbatim.

E. Amendment of Allegations. By leave of the Commission or by consent of the judge, the formal charges may be amended after commencement of the public hearing only if the amendment is technical in nature and if the judge and his counsel are given adequate time to prepare a response.

F. Determination. The fact finder other than the entire Commission shall, within sixty (60) days after the hearing, submit its findings and recommendation, together with the record and transcript of the proceedings, to the Commission for review and shall contemporaneously serve them upon the judge.

The judge or Commission counsel, may submit written objections to the findings and recommendations.

The findings, conclusions and accompanying materials, together with the objections, if any, shall be promptly reviewed by the Commission.

The Commission may make independent findings of fact from the record or, if the entire Commission served as fact finder, it shall prepare its findings and recommendations.

G. Commission Decision. The recommendation for discipline shall be concurred in by a majority of all members of the Commission and may include one or more of the following:

- (1) A recommendation to the Supreme Court that the judge be removed from office;
- (2) A recommendation to the Supreme Court that the judge be suspended, with or without pay;
- (3) Upon a finding of physical or mental disability, a recommendation to the Supreme Court that the judge be granted leave with pay.
- (4) Upon a finding of physical or mental disability a recommendation to the Supreme Court that the judge be retired and considered eligible for his retirement benefits, pursuant to Arkansas Code Annotated 24-8-217 (1987);
- (5) Reprimand or censure;

H. Dissent. If a member or members of the Commission dissent from a recommendation as to discipline, a minority recommendation shall be transmitted with the majority recommendation to the Supreme Court.

I. No Disciplinary Recommendation. If a majority of the members of the Commission recommend no discipline the case shall be dismissed.

- J. Opinion to be Filed. The final decision in any case which has been the subject of a formal disciplinary hearing shall be in writing and shall be filed with the Clerk of Arkansas Supreme Court, along with any dissenting or concurring opinion by any Commission member. The opinion or opinions in any case shall be filed within seven days of rendition.
- K. Witness Fees. All witnesses shall receive fees and expenses in the amount allowed by rule or statute for witnesses in civil cases. Expenses of witnesses shall be borne by the party calling them.

## RULE 12. SUPREME COURT REVIEW.

- A. Filing and Service. The Commission shall file its report, record, findings, and recommendations to the Supreme Court and shall serve copies thereof upon the judge no later than thirty (30) days after the report of the fact finder is submitted. On application by the Commission, the court may direct the withholding of the recommendation regarding discipline depending the determination of other specified matters.
- B. Prompt Court Consideration. The Clerk of the Supreme Court shall docket any Commission matter for expedited consideration.
- C. Brief and Supplementary Filings. The Commission and the judge shall file with the Supreme Court briefs in accordance with court rules within twenty (20) days of filing and service of the Commission report. No responsive briefs shall be filed unless requested by the court. If the court desires an expansion of the record or additional findings, either with respect to the recommendation for discipline or sanction to be imposed, it shall remand the case to the Commission for the appropriate directions, retaining jurisdiction, and shall withhold action pending receipt of the additional filing.

The Supreme Court may order additional filings or oral argument as to the entire case or specified issues. The Supreme Court may accept or solicit supplementary filings with respect to the medical or other information without remand and prior to an imposition of discipline provided that the parties have notice and an opportunity to be heard thereon.

- D. Scope of Discipline. The Supreme Court, when considering removal of a judge, shall determine whether discipline as a lawyer also is warranted. If removal is deemed appropriate, the court shall notify the judge, the Commission and the Supreme Court Committee on Professional Conduct and give each an opportunity to be heard on the issue of the imposition of lawyer discipline.
- E. Decision. Based upon review of the entire record the Supreme Court shall find a written opinion and judgement directing such disciplinary action as it finds just and proper. It may accept, reject, or modify in whole or in part, the findings and recommendation of the Commission. In the event that more than one recommendation for discipline for the judge is

filed, the court may render a single decision or impose a single sanction with respect to all recommendations. The court may direct that no motion for rehearing will be entertained, in which even its decision shall be final upon filing. If the court does not so direct, the respondent may file a motion for rehearing within fifteen (15) days of the filing of the decision.

- F. Certiorari. The Supreme Court may bring up for review any action taken upon any complaint filed with the Commission and may also bring up for review a case in which the Commission has failed to act.

### RULE 13. CASES INVOLVING ALLEGATIONS OF MENTAL AND PHYSICAL DISABILITY

- A. Procedure. In considering allegations of mental and physical disability, the Commission shall, insofar as applicable and except as provided in paragraph B., follow procedure established by these rules:

- B. Special Provisions.

- (1) If a complaint or statement of allegation involves the mental or physical health of a judge, a denial of the alleged disability or condition shall constitute a waiver of medical privilege and the judge shall be required to produce his medical records.
- (2) In the event of a waiver of medical privilege, the judge shall be deemed to have consented to an examination by a qualified medical practitioner designated by the Commission.
- (3) The Commission shall bear the costs of the proceedings, including the costs of a physical or mental examination ordered by it.

### RULE 14. INVOLUNTARY RETIREMENT.

A judge who is advised to retire voluntarily and who refuses may be retired involuntarily by the Supreme Court following the filing of a formal complaint, a public hearing thereon before the Commission, and a report containing a finding that he is physically or mentally disabled, and recommendation to the court that such action be taken.

## APPENDIX E

### GUIDELINES AND OPERATING POLICIES FOR COMMISSION MEMBERS, ALTERNATES, AND STAFF

#### A. Recusal

1. A Commission member, alternate member, or staff member, shall recuse if: (a) he or she does not think he or she is able to act fairly or impartially in a matter; (b) a judge would be disqualified in a court pursuant to Canon 3C of the Arkansas Code of Judicial Conduct; or (c) a matter involves a judge whom the member has publicly supported or opposed in a judicial campaign within five years of the date of the proceedings before the Judicial Discipline and Disability Commission (public support includes campaign contributions which must be disclosed under state law).
2. An objection to participation in a discussion of the Commission by a Commission member or alternate on the grounds of lack of impartiality or disability shall be brought to the attention of the Commission unless the member or alternate member voluntarily recuses the matter shall be decided by a majority of the remaining members or alternates.
3. In other circumstances, the member is expected to participate.
4. The minutes of Commission meetings shall record the names of any Commission member or alternate not voting on a matter by reasons of recusal.
5. Over the years it has become noted that members of the Commission recuse from resolving complaints before the Commission when they are associated with that complaint. The Commission members decided that as a matter of policy, anytime a voting member of the Commission is involved in a complaint that individual will be considered as having automatically announced their recusal from consideration of that complaint.

(Sub paragraph A.5 was adopted in 2003).

#### B. Public and Media Contacts

For purposes of these guidelines, “contacts” include correspondence, telephone calls, and face-to-face meetings or encounters.

1. The Chair or an acting Chair are the individuals authorized to speak for the Commission. Other Commission members, alternates, staff and attorneys for the Commission may be authorized by the Commission to speak for the Commission on particular issues or occasions. Those speaking for the Commission are subject to the confidentiality provisions of Section 2(g) of Act 637 of 1989, and rules promulgated by the Supreme Court.

2. If a Commission member, alternate, or staff member is contacted by the media or the public, about a new, pending or closed matter that has not been the subject of a Commission press release, such individuals shall not discuss the matter (except to inform the media or public that matters are confidential pursuant to statute and Commission rules). The individual may inform the Executive Director of such contact and may refer the medial representative or public to the Executive Director. Subject to the confidentiality requirements of Section 2(g), Act 637 of 1989 and rules promulgated by the Supreme Court, the executive director or other authorized person may discuss the matter considered by the Commission.
3. If a Commission member, alternate, or staff member is contacted by the media representative or member of the public about a matter that has been the subject of a Commission press release, such individual may read the content of the press release to the media representative or member of the public or refer the representative to the Chair, acting Chair or Executive Director.
4. If a Commission member, alternate, or staff member is contacted about general, non-confidential matters, e.g., its purpose, history, procedure, or composition, such individual may respond to the extent of the individual's knowledge or refer the inquirer to the Executive Director.
5. The Executive Director shall make available to all members and alternate members copies of all Commission press releases.

C. **Complainant and Judicial Officer Contacts**

1. A Commission member or alternate who becomes aware, either from information disclosed to such individual in person or by reason of having learned from news media or otherwise that causes such individual reason to believe a judicial officer may be guilty of conduct which, if found to be true, would require action by the Commission, shall communicate that information to the Executive Director for handling as provided by the Per Curiam Order.
2. If a Commission member, alternate or staff member is contacted about a new or pending matter by a judicial officer, a judicial officer's attorney, or other agent, or a judicial officer's family or friends, the Commission member, alternate, or staff member shall not discuss the matter unless the Commission has given appropriate authorization.
3. If a Commission member, alternate or a staff member is contacted by a complainant about a new, pending, or closed matter, such individual shall refer the complainant to the Executive Director. Correspondence from complainants about Commission business shall be referred to the Executive Director for acknowledgment and disposition.
4. If a Commission member or alternate receives a complaint (written or oral) about a Commission staff member other than the Executive Director, the member or alternate shall refer it either to the Executive Director or to the Commission Chair or acting Chair. If a

Commission member or alternate receives a complaint about the Executive Director the member or alternate shall refer it to the Chair or acting Chair.

5. A complaint against a Commission member or alternate shall be brought to the attention of the Commission.

**D. Confidentiality**

1. Confidentiality shall be maintained with regard to all new, pending, and closed matters in accordance with applicable legal requirements.
2. Commission members and alternates shall ensure that all confidential documents in their possession are secured. When the members or alternates are notified in writing that documents in selected matters may be discarded, those who choose to discard such documents shall ensure that they are destroyed, those who choose to retain such documents shall continue to ensure that they are secured.
3. Confidential documents in possession of members or alternates are the property of the Commission. Confidential documents in possession of members or alternates whose term has expired or who has become disabled or died, shall be returned to the Commission.

**E. Campaigns for Judicial Office and Other Standards**

1. A Commission member, alternate and staff member should refrain from (a) active participation in all campaigns for judicial office, (b) contribution in money or property to a campaign for judicial office; or (c) public endorsement of any candidate for judicial office.
2. To the extent appropriate, Commission members, alternates and staff members should adhere to the Code of Judicial Conduct.
3. The restrictions of this Section E do not apply to a Commission member who is seeking judicial office.

**F. Operating Policies**

1. Issuance of Subpoenas.

The following procedural rule is promulgated pursuant to Rule 2A of the Procedural rules of the Arkansas Judicial Discipline and Disability Commission.

The Commission staff will develop appropriate subpoena forms. Blank copies of these forms will be available to a judge or a judge's attorney.

A judge or the judge's attorney seeking a subpoena pursuant to Rule 8L of the Procedural Rules of the Arkansas Judicial Discipline and Disability Commission shall submit a written request for issuance to the Commission. The request shall be in the form of (1) the information necessary to fill in the blank portions of a subpoena form; or (2) a subpoena form completely prepared other than the appropriate signature and Commission seal; or (3) a completed subpoena request form obtained from the Commission office.

Upon receipt of a request with the needed information, the Commission staff will, if necessary, fill in the blank portions of a subpoena form, have the subpoena signed by an authorized person, and affix the Commission seal to the subpoena. The subpoena will then be returned to the requesting party.

A copy of the subpoena forms and the subpoena request form are available upon request.

(Adopted April 17, 1992)

2. Violations of the Rule of Confidentiality.

If the Commission believes that any person has violated the confidentiality provisions of Rule 7, after being informed of the confidentiality requirements by the Commission or its staff, such persons shall be given written notification of the Commission's belief that they may have violated the Supreme Court's rules of confidentiality. Such notification shall include (a) what notice the individual was given or the rules, (b) a summary of the facts surrounding the alleged breach, and (c) a request for a written response within thirty days from the individual.

The Commission will then consider the available evidence including the written response, if any, and make findings (a) if the individual was given notice of the rules of confidentiality and (b) if there was a disclosure in violation of the confidentiality provisions.

After making such findings the Commission will then determine whether the violation is of such a magnitude as requiring forwarding of the matter to the Supreme Court for their consideration, or if the violation is of such a minor matter that no further action is necessary or appropriate.

If the Commission has reason to believe a violation of the rules of confidentiality has occurred and that further action is appropriate, a petition will be filed with the Supreme Court asking for the appointment of a fact finding special master. Such special master will be asked to look into the matter and make appropriate findings and recommendations to the Supreme Court.

(Adopted July 1994)

3. Obtaining a Sworn Complaint or Preparing a Statement of Allegations.

The Commission, pursuant to paragraph 8B of the Commission Procedural Rules, developed guidelines for the Executive Director to obtain a sworn complaint or prepare a statement of allegations during an investigation.

If during the initial investigation and evaluation, the Executive Director believes there exists sufficient cause to proceed to a probable cause determination, the Executive Director may ask the complainant, if any, to file a detailed signed sworn complaint against the judge.

If a sworn complaint is not obtained, a clear statement of allegations against the judge and the alleged facts forming their basis may be prepared by the Executive Director.

The sworn complaint or the statement of allegations will then be served on the judge. After the service upon the judge of the sworn complaint or statement of allegations the judge will then have twenty days to file a written answer with the Executive Director pursuant to paragraph 8H of the Commission's Procedural Rules.

The matter will then be brought before the Commission to determine if the complaint should be dismissed or if the Commission should proceed to a probable cause hearing.

The prior procedure in processing complaints had the Commission members consider if a sworn complaint should be requested or a statement of allegations prepared and then one of those served on the respondent judge.

Rather than a complaint going before the Commission members to determine if a sworn complaint should be requested or a statement of allegations prepared, the Executive Director now makes that determination. The complaint filed would still go before the Commission members later for a determination to proceed to a probable cause hearing or to dismiss the complaint.

(Adopted May 1995)

4. Timely Submission of Documents for a Probable Cause Hearing

For inclusion in letters notifying a judge of a probable cause hearing before the Judicial Discipline and Disability Commission.

Any submission of material for consideration by the Commission members prior to the hearing or any application to the Commission affecting the conduct of the scheduling hearing (including requests for a continuance) requiring a ruling by the Commission or its Chair shall be served on the Commission's Executive Director at least ten (10) days prior to the date of the hearing. Additionally, please note that legible copies of documents, writings or exhibits which you intend to offer at the hearing, and are not included within the complaint, statement of allegations or your response thereto, must be provided to the Commission's Executive Director not later than four (4) days prior to the scheduled hearing date. Submissions, applications or other documents filed later will be considered out of time and may not be accepted.

The same policy is applicable to and will be included in letters notifying a judge of a formal disciplinary hearing before the Commission.

(Adopted July 1999)

## APPENDIX F

### PROCEDURAL RULES FOR THE ARKANSAS JUDICIAL ETHICS ADVISORY COMMITTEE

1. Pursuant to Section 5 of Act 791 of 1991, a Judicial Ethics Advisory Committee is hereby created to give advisory opinions to elected officials, judicial officers, and candidates for judicial office seeking opinions concerning the compliance of an intended, future course of conduct with the Arkansas Code of Judicial Conduct. The Committee, appointed by the Judicial Discipline and Disability Commission, shall consist of no more than two retired justices or judges and one attorney who is a member of the Arkansas bar and has never been a publicly elected judicial officer. Committee members may be reappointed and shall serve for three year terms from date of appointment except that to achieve staggered terms, the first two appointed retired judges shall draw for which one shall serve for three years and which one shall serve for one year. The first appointed attorney shall serve for a two-year term. Vacancies on the Committee for an unexpired term shall be filled for the remainder of the term. No member shall serve simultaneously on the Judicial Ethics Advisory Committee and the Judicial Discipline and Disability Commission. Members of the Committee shall be reimbursed their actual and necessary expenses incurred in the discharge of their official duties by the Judicial Discipline and Disability Commission. A Chair shall be elected by the Committee members. The Committee may promulgate additional rules of procedure not inconsistent with these rules.
2. A request for a judicial ethics advisory opinion shall be directed to the Executive Director of the Judicial Discipline and Disability Commission, who shall forward the request to the committee. Requests will be accepted only from elected officials, judicial officials (justices of judges) and publicly declared candidates for judicial office.
3. Requests for judicial ethics advisory opinions shall relate to prospective conduct only and shall contain a complete statement of all facts pertaining to the intended conduct together with a clear, concise question of judicial ethics. The identity of the individual whose proposed conduct is the subject of the request, shall be disclosed to the Committee. The requesting individual shall include with the request a concise memorandum setting forth his or her own research and conclusions concerning the question and the statement that the matter is not the subject of a pending disciplinary proceeding. Requests will not be accepted or referred for opinion unless accompanied by this memorandum.

By memorandum dated March 2, 1996, the Judicial Ethics Advisory Committee has requested the Executive Director to assist in the enforcement of the last two (2) sentences of this rule.

4. Advisory opinions shall set forth the facts upon which the opinion is based. Advisory opinions shall address only whether an intended, future course of conduct violates that Arkansas Code of Judicial Conduct and shall provide an interpretation of this Code with regard to the factual situation presented. The opinions shall not address issues of law nor shall it address the ethical propriety of past or present conduct. The identity of the

requesting person shall be disclosed in the opinion. If the individual facts and circumstances provided are insufficient in detail to enable the Committee to render an advisory opinion, the Committee shall request supplementary information from the requesting individual to enable it to render such opinion. If such supplementary information is still insufficient or is not provided, the Committee shall so state and shall not render an advisory opinion based upon what it considers to be insufficient detail. The Committee may respond to requests for an advisory opinion by referring the requesting individual to a prior opinion and by so doing need not publish a new advisory opinion. Two members of the Committee shall constitute a quorum for the transaction of any Committee business, including the issuance of any advisory opinion, whether in a meeting or by conference call, or by circulated writing.

5. The Executive Director of the Judicial Discipline and Disability Commission shall provide a copy of each advisory opinion to the requesting party, the Chief Justice of the Supreme Court, the Judicial Discipline and Disability Commission, the Supreme Court library, the two law school libraries and the American Judicature Society. The Executive Director of the Judicial Discipline and Disability Commission shall keep the original opinion in a permanent file. Copies of the opinions will also be published in a publication generally available to judicial officials, such as the Supreme Court advance sheets.
6. All opinions shall be advisory in nature only. No opinions shall be binding on the Judicial Discipline and Disability Commission or the Supreme Court in the exercise of their judicial discipline responsibilities. However, compliance by the requesting individual with a written advisory opinion of the Committee is evidence of a good faith effort to comply with the Arkansas Code of Judicial Conduct. An opinion given to a requesting individual in an oral conversation is not binding on the Committee or evidence of a good faith effort to comply with the Arkansas Code of Judicial Conduct.

## APPENDIX G

### JUDICIAL ETHICS ADVISORY COMMITTEE SUMMARIES OF ADVISORY OPINIONS AND TOPICAL INDEX

This appendix contains summaries of the advisory opinions issued by the Arkansas Ethics Advisory Committee from requests for opinions received since July 1, 1991. Copies of the full opinions are available upon request from the Judicial Ethics Advisory Committee, 323 Center Street, Tower Building - Suite #1060, Little Rock, AR 72201. Copies are also available at the Supreme Court Library and the law school libraries in Fayetteville and Little Rock and are included in the Law Office Information System Case Base for Arkansas. This may also be accessed on the Judicial Ethics Advisory Committee's web page located at: [www.state.ar.us/jeac](http://www.state.ar.us/jeac).

#### **Advisory Opinions #91-01, 91-02, and 91-03**

The first three requests for advisory opinions received by the Judicial Ethics Advisory Committee evolved around the issue of nepotism. In each case the requesting judge asked if the continued employment of his spouse or relative under the unique circumstances of each employment situation was a violation of Canon 3B(4) of the Code of Judicial Conduct. In each of these instances, the request did not meet a threshold requirement to go before the Judicial Ethics Advisory Committee. That threshold requirement is that the request for an advisory opinion relate to prospective conduct only.

#### **Advisory Opinion #91-04 - (November 22, 1991)**

The Arkansas Judicial Ethics Advisory Committee issued an advisory opinion stating that a judge may serve on a bank's advisory board, that the judge's ownership of approximately 2% of the voting stock of the bank constitutes a financial interest that requires disqualification in all cases in which the bank is a party, and that the judge should consider divesting the stock and resigning from the board if frequent disqualification is required. The Committee also advised that the judge must disqualify himself from cases filed or tried by his brother-in-law, the city attorney, and must not issue warrants at the request of his brother, the deputy prosecuting attorney. The Committee also advised that the judge is not precluded from appointing his wife as an unpaid deputy clerk, but that it would be better not to do so, although she could still occasionally do general secretarial or administrative work. The Committee stated that if the judge still considers appointing his wife as a clerk, he should do so only if she is qualified, the position is a deputy position, the position is temporary and part time, the appointment is on a volunteer and philanthropic basis with no perceived present or future financial benefits (either direct or fringe) to the relative or the judge, and the volunteer service provided by a relative is not considered with respect to increases in the judge's salary. In response to a question about what financial reports judges must file, the Committee stated that the request was not made in accordance with Procedural Rule 3 because it was not accompanied by a concise memorandum setting forth the judge's own research and conclusion.

### **Advisory Opinion #91-05 - (November 19, 1991)**

The Arkansas Judicial Ethics Advisory Committee issued an advisory opinion stating that a judge may not solicit funds in person, by telephone, or by letter from individuals or corporations to support a reception to be held following a continuing legal education seminar sponsored by the Arkansas Association of Women Lawyers nor may the judge solicit funds on personal stationery from her residence, but the judge may suggest to the organization the names of potential donors and participate in the planning of fund-raising, and non-judicial members or employees of the organization may contact donors if they are careful not to suggest that they are acting on behalf of or with the knowledge of the judge. The Committee noted that Canon 4C implies that a judge may personally participate in “private” fund-raising, but stated that private fund-raising should be interpreted as limited to narrow situations involving, for example, fund-raising among relatives and other judges.

### **Advisory Opinion #91-06 - (January 8, 1992)**

The Arkansas Judicial Ethics Advisory Committee issued an advisory opinion stating that (1) because a press release issued by a judge prior to his request for an ethical opinion is a past event, the propriety of the press release falls as a matter for the Judicial Discipline and Disability Commission, not the Committee, (2) because motions for recusal based on the press release made in two pending cases were properly within the jurisdiction of the chancery court and appellate review is available, the Committee could not address the issue of recusal in these cases, and (3) because the matter of future disqualification based on the press release is an issue of law that should be resolved in an advisory setting, the Committee would not address that issue. In the press release, the judge had criticized a consent decree signed by a United States judge resolving a voting rights act to judicial districts, announced his intentions to run for reelection in 1992, in the newly created sub-district, and commented on race relations in the judicial district. The motions to recuse in two pending cases were brought by the plaintiff in the federal suit, his law partner who had represented him in the federal action, and the Jefferson County Child Support Enforcement Unit. One member of the three member Committee dissented from the advisory opinion, stating that he did not find any evidence of bias, prejudice, or judicial impropriety in the press release.

### **Advisory Opinion #91-07 - (January 14, 1992)**

The Arkansas Judicial Ethics Advisory Committee issued an advisory opinion stating that under the presently applicable Arkansas Code of Judicial Conduct the judge is not specifically prohibited from serving on a bank’s board of directors, but noting that membership on a bank’s board is specifically prohibited by the proposed Arkansas Code of Judicial Conduct now pending before the Arkansas Supreme Court.

**Advisory Opinion #92-01 - (March 5, 1992)**

In response to a request for an advisory opinion the Arkansas Judicial Ethics Advisory Committee stated that it did not have authority to respond to a judge's request for an opinion regarding a pending motion for recusal.

**Advisory Opinion #92-02 - (April 3, 1992)**

In an advisory opinion, the Arkansas Judicial Ethics Advisory Committee stated that a judge may not speak at a dinner sponsored by a college to try to develop ways to persuade more young people to attend the college where the ticket sales receipts will be used in part to fund workshops for future training sessions for the same purpose, and to pay other speakers for future events sponsored by the college.

**Advisory Opinion #92-03 - (June 5, 1992)**

In response to a request, the Arkansas Judicial Ethics Advisory Committee stated that a judge is disqualified from cases involving lawyers who practice with a lawyer the judge has hired to defend the judge in another case. Nothing that it had reconsidered its earlier decision not to give advice regarding disqualification issues, the Committee concluded that it should answer the ethical problem that runs concurrent with the legal problem in the disqualification questions. One member dissented from the Committee's decision to address disqualification issues.

**Advisory Opinion #92-04 - (July 28, 1992)**

In an advisory opinion, the Arkansas Judicial Ethics Advisory Committee stated that a judge may serve as a referee or official at junior and senior high school football games in the area in which the judge resides and accept less than \$50 per game as compensation.

**Advisory Opinion #92-05 - (November 19, 1992)**

In an advisory opinion of the Arkansas Judicial Ethics Advisory Committee stated that Arkansas judge who hold offices filled by election may purchase tickets to and attend the inaugural ball for Bill Clinton regardless whether the ball is considered a celebration or a political gathering and regardless whether the admission charge is used to defray the costs of the event, is given to a charitable organization, or is used to support Democratic Party activities.

**Advisory Opinion #92-06 - (December 17, 1992)**

In an advisory opinion, the Arkansas Judicial Ethics Advisory Committee stated that, where a judge's sibling is an attorney employed in the litigation division of the state attorney general's

office, the judge may sit in cases that involve the office of the attorney general, except those in which the sibling will appear or record as attorney or assist in anyway in the preparation or trial. However, the Committee advised that it may be a wise course for the judge to always disclose the relationship on the record and invite the parties and attorneys to offer any additional facts that could possibly require disqualification.

**Advisory Opinion #93-01 - (March 24, 1993)**

In an advisory opinion, the Arkansas Judicial Ethics Advisory Committee stated that a judge may not serve on an advisory group for a state hospital program that provides intensive care for persons who have been excused from criminal conduct by reason of mental incapacity.

**Advisory Opinion #93-02 - (April 6, 1993)**

In an advisory opinion, the Arkansas Judicial Ethics Advisory Committee stated that a part-time municipal judge may not represent an individual in a domestic relations matter when the adverse spouse of that individual has an outstanding fine balance owed the municipal court over which the judge presides and may not represent a client such as a bank in a debt collection action against an individual who has an outstanding fine balance with the municipal court.

**Advisory Opinion #93-03 - (April 8, 1993)**

In an advisory opinion, the Arkansas Judicial Ethics Advisory Committee stated that a judge may not participate in a fund raiser by managing or playing on a softball team that would play against teams of the executive and legislative branches of state government where the judge's participation would be highly publicized and spectators would support their favorite teams or players by agreeing to contribute money to the charitable organizations.

**Advisory Opinion #93-04 - (August 23, 1993)**

In an advisory opinion, the Arkansas Judicial Ethics Advisory Committee stated that it would be a violation of the Code for a judicial campaign surplus fund to exist. The questions asked; "can a campaign committee for a judge maintain a surplus that does not exceed the yearly salary of the judge;" and "can a campaign committee dispose of existing surplus funds, or must it distribute funds to contributors or to the State Treasurer per the new code." Canon 5C(2) of the 1993 Code of Judicial Conduct provides in part: "Any campaign funds surplus shall be returned to the contributors or turned over to the State Treasurer by law." The opinion states, "Canon 5C(2) is short, concise unambiguous and without vague or conflicting terms. Furthermore, there are no exceptions, exclusions or limitations of any descriptions to its mandated message that it is a violation of the Code for a judicial campaign surplus fund to exist."

### **Advisory Opinion #93-05 - (September 28, 1993)**

In an advisory opinion the Arkansas Judicial Ethics Advisory Committee stated that a judge may serve on a board of directors of Associated Marine Institutes, a non-profit organization that has a contract with the State of Arkansas to operate a residential program for juveniles who have been designated serious offenders.

### **Advisory Opinion #93-06 - (October 1, 1993)**

In an advisory opinion, the Arkansas Judicial Ethics Advisory Committee stated that a band of which a judge is a member may play at a fund-raising radio broadcast performance for a public radio station where neither the judge's name nor position will be mentioned and no person being solicited would even know that the judge is performing.

### **Advisory Opinion #93-07 - (January 3, 1994)**

Clarifying its advisory opinion 93-04 the Arkansas Judicial Ethics Advisory Committee stated that the requirement in Canon 5C(2) of the Arkansas Code of Judicial Conduct, effective July 5, 1993, a judge must return any campaign fund surplus to the contributor or turn it over to the state treasurer applies to any and all campaign surplus funds, without exception or exclusion, including the time of its accumulation or variance with legislative acts or other rule of law. Advisory opinion 93-07 had advised that a judge's campaign committee may not maintain a surplus to be used as a filing fee in the next election. The Committee noted that the question whether a legislative enactment can overrule a Canon or a Canon override a legislative enactment was a question of law upon which it could not comment.

### **Advisory Opinion #94-01 - (February 19, 1994)**

In an advisory opinion, the Arkansas Judicial Ethics Advisory Committee stated that a judge may take a public stand in favor or, opposed to, or indifferent to an upcoming bond election in which county voters will decide whether to increase the sales tax to pay for a new courthouse and jail and the judge may be a member of a committee formed to promote passage of the sales tax, although there are limits on the judge's involvement in fund-raising.

### **Advisory Opinion #94-02 - (February 16, 1994)**

In an advisory opinion, the Arkansas Judicial Ethics Advisory Committee stated that a judge should disqualify himself or herself in all cases in which an attorney opposing the judge for reelection appears.

**Advisory Opinion #94-03 - (March 8, 1994)**

In an advisory opinion, the Arkansas Judicial Ethics Advisory Committee stated that a judge may not be a speaker at a banquet sponsored by a church where a portion of the proceeds from ticket sales that exceeds the cost of the banquet will go to the church's scholarship fund.

**Advisory Opinion #94-04 - (March 8, 1994)**

In an advisory opinion, the Arkansas Judicial Ethics Advisory Committee stated that a judge may take a public stand on a proposed constitutional amendment that would make judicial elections non-partisan and would impose limits on judicial terms.

**Advisory Opinion #94-05 - (April 7, 1994)**

In an advisory opinion, the Arkansas Judicial Ethics Advisory Committee stated that where an attorney appearing before a judge is an announced candidate for the position of the judge, the judge must recuse even if no one before the court objects.

**Advisory Opinion #94-06 - (May 3, 1994)**

In an advisory opinion, the Arkansas Judicial Ethics Advisory Committee stated that a retired judge, who receives retirement pay, may participate in the campaign of a candidate who is running for judge to the same extent and with the same limitations as any other attorney regardless of whether the retired judge is subject to recall to services.

**Advisory Opinion #94-07 - (August 24, 1994)**

In an advisory opinion, the Arkansas Judicial Ethics Advisory Committee stated that a judge need not disqualify from cases in which an assistant prosecutor who has announced her intention to run against the judge appears where the judge hears all of the juvenile delinquency cases for two counties and special judges may not be feasible or appropriate for juvenile matters, particularly those that extend over months of years. The Committee noted that the attorney had been hired on a part-time contract basis by the prosecutor to handle felonies and some misdemeanors and typically appeared before the judge in 10-20 cases a week and that none of the other assistant prosecutors typically represented the government in delinquency proceedings. The Committee noted that there may be some specific cases where the judge must disqualify, for example, cases in which the campaign might be relevant; the parties object; or the judge's own subjective evaluation of the situation requires recusal.

**Advisory Opinion #94-08 - (September 12, 1994)**

In an advisory opinion, the Arkansas Judicial Ethics Advisory Committee stated that a judge is not disqualified from a case in which a subsidiary of AT&T is a party by the fact that the judge is the executor and one of the three beneficiaries of an estate that holds approximately 1,000 shares of an equity income fund about 18% of which is invested in AT&T. The issue before the court was whether a city had appropriately levied a franchise tax or fee. Noting that AT&T has one billion, three hundred million outstanding shares, the Committee concluded that a judge's relatively small share of the fund's relatively small investing in one of the world's largest corporations was a de minimis interest that did not require disqualification.

**Advisory Opinion #94-09 - (January 20, 1995)**

In an advisory opinion, the Arkansas Judicial Ethics Advisory Committee stated that a judge may not serve on the ad hoc fund-raising committee of a local boy/girl's club where the fund-raising will involve lobbying government officials.

**Advisory Opinion #95-01 - (February 14, 1995)**

In an advisory opinion, the Arkansas Judicial Ethics Advisory Committee stated that judges may write letters of recommendation but must do so on personal stationery and that judges may permit their names to be used as references and may respond to an inquiry using judicial letterhead.

**Advisory Opinion #95-02 - (March 30, 1995)**

In an advisory opinion, the Arkansas Judicial Ethics Advisory Committee stated that a judge is not required to recuse from cases involving an attorney who shares office space with the judge's sibling-in-law where the two attorneys' practice are separate and they are not partners in a firm.

**Advisory Opinion #95-03 - (March 16, 1995)**

In an advisory opinion, the Arkansas Judicial Ethics Advisory Committee stated that a judge may serve on the advisory committee of a public technical college where the committee recommends changes in the college curriculum, assists in planning, supports the program at the local level, and offers suggestions to the college authority, and where political activity is not anticipated.

### **Advisory Opinion #95-04 - (August 24, 1995)**

In an advisory opinion, the Arkansas Judicial Ethics Advisory Committee stated that the Code of Judicial Conduct provides that judicial candidates shall not personally solicit or accept campaign contributions or personally solicit publicly stated support. The opinion goes on to note specific acts that may or may not be done by the candidate or the candidate's campaign committee. (1) A judicial candidate may not personally ask a supporter for a contribution, for permission to put the supporter's name in an advertisement, or for permission to place a sign on the supporter's property. (2) At any time, a candidate may send a letter, either by bulk mail or individually addressed, to all of the attorneys in the state or the district or to other members of the electorate with information about the candidate's background, reasons for seeking office, and plans for office and that ask for advice, support, and his or her vote. A candidate may make similar requests by telephone or in person. (3) A candidate, as long as he or she does not take the initiative and seek publicly stated support, may respond to a supporter's offer of such support, for example, by telling the supporter to contact the campaign committee; giving the name of the supporter to the committee; giving the supporter a bumper sticker; asking if the supporter would be willing to have his or her name appear in an advertisement; asking the supporter to put in a good word for the candidate with friends; asking if the supporter would be willing to have a campaign sign in his yard and erecting the sign. (4) A candidate may personally contact important individuals to ask for their private support (for example, asking them to send post cards to friends encouraging support of the candidate). (5) A candidate or potential candidate may personally contact potential supporters to ask them to serve on a campaign committee, which can be formed at any time.

Noting that a candidate has an obligation to ensure that the candidate's campaign committee understands the restrictions on judicial campaigns, the committee advised that it is the campaign committee, not the candidate, that (1) solicits funds, (2) obtains permission for names of supporters to go into advertisements, (3) requests landowners to allow signs to be placed on their property, (4) seeks other forms of publicly stated support, (5) solicits volunteers to make phone calls, (6) solicits signatures to be placed on widely distributed post cards, (7) seeks public support from organizations, local bar associations, or well known individuals or public figures. The advisory committee noted that a campaign committee can solicit funds and publicly stated support no earlier than 180 days before a preliminary election and no later than 45 days after the last contested election in which the candidate appears, and that funds received outside that period are to be returned to the contributor. The committee also noted that a candidate could not use or permit the use of campaign contributions for the private benefit of the candidate or others and that any surplus must be returned to the contributors or turned over to the state treasurer.

The committee also advised that independent, individual supporters may take action in support of a candidate at any time, but that a candidate could not stand by and do nothing if an independent supporter were placing a misleading advertisement.

### **Advisory Opinion #95-05 - (September 29, 1995)**

In an advisory opinion, the Arkansas Judicial Ethics Advisory Committee stated that the Code of Judicial Conduct provides that judges are in a unique position to contribute to the improvement of the legal system and may lecture on matters concerning the legal system. The

opinion goes on to note that such teaching may be done as time permits and as long as it does not interfere with the performance of judicial duties.

**Advisory Opinion #95-06 - (November 14, 1995)**

In an advisory opinion, the Arkansas Judicial Ethics Advisory Committee stated that a judge is not disqualified from cases involving a deputy prosecuting attorney who is the uncle of the judge's part-time secretary.

**Advisory Opinion #96-01 - (April 8, 1996)**

In an advisory opinion, the Arkansas Judicial Ethics Advisory Committee stated that a judge may serve on a policy and planning board, required by the Department of Human Services, that will determine the services needed for delinquents, families in need of services and at-risk juveniles, will determine what organizations will provide the services, and will establish the amount of money to be awarded.

**Advisory Opinion #96-02 - (March 11, 1996)**

In an advisory opinion, the Arkansas Judicial Ethics Advisory Committee stated that a candidate for judicial office who is unopposed in the primary election may solicit contributions for 45 days after the filing deadline for party candidates of the filing deadline for independent candidates, whichever is later.

**Advisory Opinion #96-03 - (April 8, 1996)**

In an advisory opinion, the Arkansas Judicial Ethics Advisory Committee stated that a judge may permit an artist to use the judge's likeness in a commissioned painting by a local artist that will be based on Rembrandt's painting "The Night Watch" with the faces of people depicted in Rembrandt's painting replaced by those of local citizens where the judge's name will not appear, there will be no identification of the judge or of the other faces, the judge will not be paid, and the judge is not paying to be included.

**Advisory Opinion #96-04 - (April 8, 1996)**

In an advisory opinion, the Arkansas Judicial Ethics Advisory Committee stated that the judge may be one of the authors of a book that is intended to provide practical guidance for Arkansas lawyers and solicit attorneys to work on the project where the contract requires the publisher to adhere to ethical standards in using the judge's name and qualifications in marketing the book and permits the judge to give speeches, participate in conferences, and publish on the subject of the work, although the contract bars the judge from writing or assisting in another project that may injure, hamper, or adversely affect sales.

### **Advisory Opinion #96-05 - (June 25, 1996)**

In an advisory opinion, the Arkansas Judicial Ethics Advisory Committee stated that a Deputy Prosecuting Attorney who had been nominated for a Circuit/Chancery/Juvenile judgeship (the position was unopposed) from the same district could continue in the present position as Deputy Prosecutor until the swearing in of the judge without violating the Code of Judicial Conduct.

### **Advisory Opinion #96-06 - (July 17, 1996)**

In an advisory opinion, the Arkansas Judicial Ethics Advisory Committee stated that the committee should not address such matters as the recusal of a trial judge with regard to a pending motion, as they are “issues of law” to be resolved in an advisory setting rather than by an advisory committee.

### **Advisory Opinion #96-07 - (September 4, 1996)**

In an advisory opinion, the Arkansas Judicial Ethics Advisory Committee was asked whether there would be a conflict of interest and the necessity for disqualification when a judge hired a certified court reporter who was married to an attorney who practices before this court. The opinion of the committee was that disqualification was not required. In each instance in which the spouse of the court reporter is the attorney of record, the judge should disclose on the record the relationship between the court reporter and the attorney. The obligation then shifts to the opposing party to make any motions deemed necessary.

### **Advisory Opinion #96-08 - (December 3, 1996)**

In an advisory opinion, the Arkansas Judicial Ethics Advisory Committee stated that an associate justice of the Supreme Court may hire a relative (second cousin) of the Chief Justice who was graduating from law school to be a law clerk of any associate justice of the Supreme Court or a judge of the Court of Appeals. It was held that assuming the hiring is based solely on merit and done wholly independently of the Chief Justice, such an employment would not violate the nepotism provisions of the Code of Judicial Conduct.

### **Advisory Opinion #96-09 - (February 19, 1997)**

In an advisory opinion, the Arkansas Judicial Ethics Advisory Committee addressed the ethical considerations surrounding the financial issues of a judge as he was leaving his law firm to assume judicial office. It was stated that after selection and prior to assuming the position as full-time judge, the attorney may continue to practice law. The attorney may be compensated according to a partnership or employment agreement.

The terms of a law partnership agreement may provide for compensation to the attorney regardless of when the work was performed. In the committee's opinion, a distinction must be drawn between work performed in the firm before the judge departs and work performed by members of the firm after departure. The departing attorney may receive compensation for work performed by anyone in the firm prior to the departure. However, no compensation may be paid to the judge for work performed after the judge's departure from the firm.

The opinion also addresses the question of whether a judge may receive "client attraction funds" from the former firm if the judge makes a referral to the firm. The opinion states that once an attorney becomes a judge, he or she should never make a referral to any attorney.

#### **Advisory Opinion #96-10 - (December 13, 1996)**

In an advisory opinion, the Arkansas Judicial Ethics Advisory Committee stated that a judge elect, who was presently serving as a member of a state commission, could not continue to serve as a member of that commission while he was also serving as a judge. The primary purpose of the commission was to set policy and budget for the operations of that commission. It would be a violation of the Code of Judicial Conduct even though the commission is a governmental committee concerned with issues of fact or policy on matters not related to the administration of justice or the legal system. The Code prohibits a judge from being a member of such a commission while serving as a judge.

#### **Advisory Opinion #97-01 - (April 16, 1997)**

In an advisory opinion, the Arkansas Judicial Ethics Advisory Committee stated that it would not be improper for an associate justice of the Supreme Court of Arkansas to write a recommendation for a prospective candidate for a federal judicial appointment and not wait to respond to an official inquiry concerning the person being considered. The recommendation could be written assuming that the judge had adequate knowledge of the character and capabilities of the subject individual and was satisfied there was no undue intent to capitalize on the prestige of the judicial office.

#### **Advisory Opinion #97-02 - (April 25, 1997)**

In an advisory opinion, the Arkansas Judicial Ethics Advisory Committee stated that a judge randomly giving away balloons to children imprinted with "Happy Daze" and the judge's name during a hometown festival would not be in violation of the Code of Judicial Conduct. It was stated that the judge's campaign for election was in a previous year, and that there would be no overt political conduct and that there would be no solicitation of voting. The committee assumed the judge would purchase the balloons with her personal funds, and the balloons would simply be small gifts to the children. The committee considered the proposed conduct to be appropriate as the judge interacts with and relates to the community in which she lives and to be in keeping with the letter and spirit of the Arkansas Code of Judicial Conduct.

### **Advisory Opinion #97-03 - (May 6, 1997)**

In an advisory opinion, the Arkansas Judicial Ethics Advisory Committee was asked if disqualification was necessary when a judge sold his personal law office property to a deputy prosecuting attorney, and also rents office space to that deputy prosecuting attorney, and when the same deputy prosecuting attorney practices in his court. The opinion states that reasonable individuals within and without the legal community might question the impartiality of a judge who has an on-going financial relationship as landlord of one of the attorneys. The judge should minimize the potential appearance of favoritism and avoid creating an appearance of exploitation of office. The alternative is the disclosure of the relationship and the reason for the disqualification. If there is an agreement of all the parties that the judge should not be disqualified, this should then be incorporated into the record.

### **Advisory Opinion #97-04 - (June 13, 1997)**

In an advisory opinion, the Arkansas Judicial Ethics Advisory Committee was asked if a municipal judge, who is a “part-time” city court judge and has a private law practice, would be prohibited from representing the city in which he lives in a civil matter in any court, could he represent the city in a municipal court in the same county, or could he represent the city in circuit court where all of the judges are “full-time”. The opinion states in matters affecting the image and integrity of the judiciary, judges should be very sensitive, and if deciding a close case, to err on the side of caution. In practicing law extra care and effort must be made so as not to create the appearance of impropriety. It is the opinion of the Committee that the judge, representing the city that he serves as a municipal judge, could create a question concerning his ability to carry out his judicial responsibilities with integrity, impartiality and competence. The Committee concluded that it would be inappropriate for a municipal judge to represent the city that he serves in any cases regardless of the forum. The judge’s law practice should be as far removed as possible from his court and the city that he serves. The public is not expected to understand the fine points of jurisdictional issues and would tend to look at the judge as both the attorney and the judge for the city.

### **Advisory Opinion #97-05 - (January 5, 1998)**

In an advisory opinion, the Arkansas Judicial Ethics Advisory Committee addressed the concern of individuals appearing before a judge, who owns and rents property under a partnership to attorneys who practice in his court. A judge who is one of three partners in a general partnership that owns an office building is disqualified from cases in which one of the attorneys is a tenant in the building even if one of the other partners manages the building, the judge had no direct dealings with the tenants, and the attorney is only one of many tenants. If there is an agreement of all of the parties that the judge should not be disqualified, this should then be incorporated into the record. An alternative is that the judge may make a full disclosure of the relationship.

### **Advisory Opinion #97-06 - (January 6, 1998)**

In an advisory opinion, the Arkansas Judicial Ethics Advisory Committee was asked if a judge should recuse from a specific circuit court case because of bias. Canon 3(E) provides that judges are presumed to be impartial. The party seeking disqualification bears a substantial burden to overcome that presumption. A mere allegation that a judge's conduct has the appearance of impropriety is not sufficient. Bias is a subjective matter which is confined to the conscience of the judge. Accordingly, a judge who has declined to recuse from a case is not disqualified from other cases involving the same defendant if the judge has no bias against the defendant.

### **Advisory Opinion #98-01 - (March 31, 1998)**

In an advisory opinion, the Arkansas Judicial Ethics Advisory Committee was asked if judicial candidate would be in violation of the Code of Judicial Conduct by making pledges in specific campaign promises with respect to changing or improving court administration should he be elected. It was the opinion of the Committee that the candidate may announce that he or she will require that plea agreement forms used throughout a district be uniform and consistent, but may not state the specific terms the candidate would consider incorporating into the plea agreement. A judicial candidate may make general statements about the candidate's ideas concerning rehabilitation and the importance of education, public service, counseling, and strict rules of conduct with regard to persons on probation.

### **Advisory Opinion # 98-02 - (April 30, 1998)**

In an advisory opinion, the Arkansas Judicial Ethics Advisory Committee was asked if it is proper for a municipal judge with jurisdiction over cases wherein the State (as represented by the prosecuting attorney) regularly appears to represent defendants in other municipal or circuit courts where the same prosecuting attorney also represents the State. The opinion found that it would be improper for a municipal judge to represent criminal defendants in other municipal or circuit courts where the same prosecuting attorney also represents the State.

### **Advisory Opinion # 98-03 - (May 20, 1998)**

In an advisory opinion, the Arkansas Judicial Ethics Advisory Committee was asked whether a part-time municipal court judge in Pulaski County should terminate his current representation of clients with criminal cases pending in the Pulaski County circuit courts. The Judicial Ethics Advisory Committee was of the opinion that continuing part-time judges may complete representation of criminal defendants in pending matters in which the prosecutor is the prosecutor who appears before the judge but should decline such representation in the future.

#### **Advisory Opinion # 98-04 - (September 4, 1998)**

In an advisory opinion, the Arkansas Judicial Ethics Advisory Committee was asked by a chancery court judge if he should continue to disqualify himself from hearing cases in his court when the attorney of record is his first cousin, or hearing those cases only after all of the parties involve sign a written waiver of disclosure.

The Judicial Ethics Advisory Committee was of the opinion that the judge must continue to recuse. The judge is disqualified from cases in which the judge's first cousin participates because under Arkansas law first cousins are within the third degree of relationship and the judge's impartiality might reasonably be questioned.

#### **Advisory Opinion # 98-05 - (December 4, 1998)**

In an advisory opinion, the Arkansas Judicial Ethics Advisory Committee was asked if there was any ethical impropriety by a judge in his presiding over cases in which one of the litigants is represented by an attorney for whom his spouse, who is self-employed, performs part-time accounting services.

The Judicial Ethics Advisory Committee was of the opinion that a judge is not disqualified from a case involving an attorney for whom the judge's spouse performs accounting services if the spouse has no involvement with the firm's clients or the case and has only limited contact with the firm in general.

#### **Advisory Opinion # 98-06 - (December 16, 1998)**

In an advisory opinion, the Arkansas Judicial Ethics Advisory Committee was asked if an appellate judge may sit on a jury. It was further asked whether an appellate judge would be required to disqualify himself from all cases appealed from the jury panel.

The Judicial Ethics Advisory Committee was of the opinion that there would be no limitation of the judge serving as a judge serving as a juror. However, disqualification matters are left to the discretion of the judge.

#### **Advisory Opinion # 98-07 - (February 9, 1999)**

In an advisory opinion, the Arkansas Judicial Ethics Advisory Committee was asked by a mayor, if it would be appropriate for a newly elected part-time judge to hear cases presented by the assistant district attorney. The city attorney pays this judge when he is practicing in his attorney capacity a monthly retainer fee for helping him (the city attorney) with his private practice in representing other public entities, counties, cities, and their subdivisions. The city attorney and the judge also share office space, personnel and equipment.

The Judicial Ethics Advisory Committee was of the opinion that to hear such cases would be a violation of Canon 3E. The violation would continue even if the city attorney discontinued paying the monthly retainer fee to the judge, and they maintained their office sharing relationships.

**Advisory Opinion # 99-01 - (March 15, 1999)**

In an advisory opinion, the Arkansas Judicial Ethics Advisory Committee was asked by a municipal judge if there was any ethical impropriety in his representing a client (former husband) who had been the complaining witness against his former wife in a harassing communications criminal case. The municipal judge presided in that case. The client (former husband) now wants sole custody as opposed to the court awarded joint custody. The former wife wants the municipal judge to be disqualified from representing the former husband in the change of custody case.

The Arkansas Judicial Ethics Advisory Committee declined to advise a part-time judge whether he may represent a client in connection with the motion for a change of custody in a divorce proceeding after presiding in a criminal case filed by the client against his ex-wife where the representation had already occurred and a motion for disqualification was pending in the chancery court.

**Advisory Opinion # 99-02 - (April 9, 1999)**

In an advisory opinion, the Arkansas Judicial Ethics Advisory Committee was asked if an individual may, as a private attorney, serve as civil attorney for Garland County, and at the same time serve as the Garland County Municipal Judge.

The Arkansas Judicial Ethics Advisory Committee stated that a municipal judge should not serve as a civil attorney for the county in which the judge presides. Holding such dual roles in the same county is both unwise and imprudent.

**Advisory Opinion # 99-03 - (March 25, 1999)**

In an advisory opinion, the Arkansas Judicial Ethics Advisory Committee was asked if there would be a violation of the Code of Judicial Conduct by employing a secretary that the judge and the part-time city attorney had jointly employed prior to one (1) of the individuals becoming a judge. The secretary would be hired for typing purposes only, and paid directly and individually by both persons. The Arkansas Judicial Ethics Advisory Committee stated that a judge may employ the secretary of a former law partner on a contractual basis so long as the judge has severed all financial ties with his former partner.

The second question relates to the part-time judge and the part-time city attorney being independently retained and independently paid by a mutual former client. The Judicial Ethics Advisory Committee state that as a “continuing part-time judge” as defined in the Code of Judicial Conduct he may engage in the practice of law so long as: his judicial duties take precedence over

all his other activities (Canon 3A); his practice does not cause reasonable doubt on his capacity to act impartially as a judge, demean the judicial office he holds, interfere with the proper performance of his judicial duties (Canon 4A); he avoids impropriety and the appearance of impropriety (Canon 2), and otherwise does not violate the Code.

**Advisory Opinion # 99-04 - (April 20, 1999)**

In an advisory opinion, the Arkansas Judicial Ethics Advisory Committee was asked if there would be a violation of the Code of Judicial Conduct by a full-time judge being offered and accepting free memberships in the American Trial Lawyers Association, and in the Arkansas Trial Lawyers Association.

The Committee stated that a judge may not accept complimentary membership in the American Trial Lawyers Association or the Arkansas Trial Lawyers Association.

Membership in professional organizations which are dedicated to promoting the interest of either the plaintiffs' bar or the defendants' bar and its clientele gives an appearance of impropriety by calling into question the judge's ability to preside in certain cases with unquestionable impartiality.

**Advisory Opinion # 99-05 - (May 7, 1999)**

In an advisory opinion, the Arkansas Judicial Ethics Advisory Committee was asked if there would be a violation of the Code of Judicial Conduct if a judge selected the wife of his first cousin to be municipal court clerk.

The Committee stated that the commentary to that Canon states: "... Nepotism is the appointing of relatives within the third degree of relationship by affinity or consanguinity...". The terminology definition section does not include first cousins within the third degree of relationship. Therefore, the judge may consider and select the spouse of his first cousin.

**Advisory Opinion # 99-06 - (May 11, 1999)**

In an advisory opinion, the Arkansas Judicial Ethics Advisory Committee was asked if it was permissible to participate as a guest of the Roscoe Pound Foundation, an educational forum for state court judges to be held in San Francisco, California.

The Committee is of the opinion that there is no violation of the Code of Judicial Conduct by attendance at a forum or symposium of a professional association as it is not the equivalent of a membership. The Committee does not believe that it would be inappropriate for a judge to participate in the forum.

### **Advisory Opinion # 99-07 - (July 6, 1999)**

In an advisory opinion, the Arkansas Judicial Ethics Advisory Committee advised judges to avoid membership in organizations which are dedicated to promoting and furthering the interest of either the plaintiffs' bar or the defendants' bar and its clientele. The Committee further expressed the belief that such memberships call into question the judge's ability to preside in certain cases with the unquestioned impartiality envisioned by Canons 2A and 4A of the Code of Judicial Conduct.

The Committee examined the literature, both print and electronic, of the American Trial Lawyers Association (ATLA) and the Arkansas Trial Lawyers Association. That examination revealed that these organizations of attorneys have a consistent position on the plaintiffs' side in personal injury matters.

Certainly judges are permitted to attend ATLA meetings and forums to speak at ATLA programs, to receive ATLA mailings, to receive ATLA materials, and to prepare materials for ATLA publications. But to be a member, whether or not the judge pays dues, whether or not the membership is described as honorary, identifies the judge as generally supportive of the positions taken by that part of the bar. Likewise, continuation of membership after assuming a full-time judicial role does not, in the Committee's opinion, promote public confidence in the impartiality of the judiciary. Canon 2A (1).

However, it is the responsibility of the judge to make the determination whether membership in an organization calls into question the judge's ability to preside with unquestioned impartiality.

### **Advisory Opinion # 99-08 - (October 5, 1999)**

In an advisory opinion, the Arkansas Judicial Ethics Advisory Committee was asked by an Arkansas Court of Appeals judge if it would be appropriate to send a letter to specific patrons announcing his election plans.

The Committee is of the opinion that there was no violation of the Code of Judicial Conduct by the judge sending his submitted election letter with the appropriate changes to his letterhead.

### **Advisory Opinion # 2000-01 - (January 24, 2000)**

In an advisory opinion, the Arkansas Judicial Ethics Advisory Committee was asked by the law firm of Watkins and Scott, PLLC, if it was appropriate for members of the law firm to continue to sit as special judge in the Rogers Municipal Court after they hired an associate who is the wife of the deputy prosecuting attorney in the Rogers Municipal Court. The law firm provides an attorney who sits at least once a month as special judge in the Rogers Municipal Court, where the associate's husband works. The law firm has no financial interest in the outcome of the court cases upon

which they preside. Because of the relationship between their associate and the court's deputy prosecuting attorney, should the law firm members continue with this practice.

The Committee is of the opinion that under the facts presented, there is no violation of the Code of Judicial Conduct. Under the Arkansas Code of Judicial Conduct the attorneys serves as "pro tempore part-time judge". The commentary to the Code does not require automatic recusal of the judge merely because a relative of the judge is a member of a law firm appearing before the judge. The Committee, therefore, concludes that a disqualification is not required when a member of the law firm is married to the deputy prosecuting attorney appearing before the judge.

The Committee notes as in Arkansas Judicial Ethics Advisory Committee Opinion 96-07 the underlying issue in Canon 3(E) is whether the impartiality of the judge might reasonably be questioned. The commentary to Canon 3(E)(1) states that "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." The Committee recommends that there be disclosure on the record, that a member of the law firm is married to the prosecuting attorney appearing in court. The responsibility then shifts to the defense attorney to request a recusal.

#### **Advisory Opinion # 2000-02 - (May 10, 2000)**

In an advisory opinion, the Arkansas Judicial Ethics Advisory Committee was asked to issue an advisory opinion on an Arkansas Supreme Court Justice. He requested an opinion concerning when and how a member of the Arkansas Supreme Court may comment on a criminal case in federal district court in Arkansas when the media has widely reported on testimony concerning the action or inaction of members of the Supreme Court.

The opinion states that a judicial statement concerning events in dispute might be expected to affect the outcome or impair the fairness of the proceeding, which is expressly prohibited by the express language of the Code of Judicial Conduct. Judicial comment on pending criminal matters, no matter how presented does not promote public confidence in the impartiality of the judiciary. The opinion goes on to state that comments are not appropriate even after the trial court proceedings are concluded. If appeals from convictions are pending, comment might impair the fairness, or the perception of fairness of the proceedings.

The opinion also acknowledges the frustration of judges when compelled to remain silent when inaccurate and unfounded statements are made. The opinion notes that the conclusion reached permits misstatements to be made, and implications to be drawn and widely reported and accepted or believed by the public, without any possibility of timely response or correction. Any other citizen can stand up and say, "Let me tell the people of Arkansas my side of the story." But a judge is not any other citizen. A judge must uphold the integrity of the judiciary, avoid all appearance of impropriety, and expect to be the subject of constant public scrutiny.

**Advisory Opinion # 2000-03 - (May 15, 2000)**

In an advisory opinion, the Arkansas Judicial Ethics Advisory Committee was asked by a municipal court judge if a judge could write a letter to a sentencing court judge at the request of a defendant, the defendant's attorney, or someone on his or her behalf.

The Committee was of an opinion that the judge should not write such letters as per Canon 2(b) of the Arkansas Code of Judicial Conduct. Any such letter does lend the prestige of judicial office to advance the private interest of others, and therefore, a judge should not write such letters.

**Advisory Opinion # 2000-04 - (June 5, 2000)**

In an advisory opinion, the Arkansas Judicial Ethics Advisory Committee was asked by a Chancery/Probate judge whether he might serve on the board of directors of a local country club. The board has oversight of membership, facilities, and general operations of a golf course and club house.

The Committee is of the opinion that there is no apparent violation of Canon 2C of the Code of Judicial Conduct and that the judge may serve in this capacity. Canon 2C provides that a judge shall not hold membership in any organization that practices invidious discrimination on the basis of race, sex, religion, or national origin. The Committee cautions the judge that discrimination in any organization takes subtle forms. Occasionally reviewing organizational policies and practices was encouraged.

**Advisory Opinion # 2000-05 - (June 27, 2000)**

Request for opinion was withdrawn.

**Advisory Opinion #2000-06 - (June 29, 2000)**

In an advisory opinion, the Arkansas Judicial Ethics Advisory Committee was asked by circuit judge whether he might teach evening courses at Arkansas State University at Beebe, and if he could be compensated for teaching as an adjunct professor.

In a previous opinion, Number 95-05, the Committee approved such teaching at a private institution of higher education and stated the Code of Judicial Conduct does not require that teaching at universities be treated differently.

In regard to the question of being compensated for teaching as an adjunct professor with reference to Article 7, Section 18 of the Arkansas Constitution, Ark. Code. Ann. §19-4-1604 and §21-1-401, and Arkansas Attorney General 92-050, the Committee stated their authority is limited to providing interpretations of the Code of Judicial Conduct. The Committee further stated they

cannot interpret legislation, particularly 1999 acts that may regulate employment by state agencies. Those interpretive matters belong to the courts or to the Attorney General.

#### **Advisory Opinion #2000-07- (July 7, 2000)**

In an advisory opinion, the Arkansas Judicial Ethics Advisory Committee was asked by a municipal court judge whether a judge who has been subpoenaed to testify as a character witness may, if given the opportunity, submit an affidavit in lieu of live testimony.

The Committee noted the applicability of Canon 2B which states in part that “[A] judge shall not testify voluntarily as a character witness.” The commentary to Canon 2B makes it clear that while judges may be called on to testify in the interest of justice, a judge should discourage a party from requiring the judge to testify as a character witness.

The judge’s letter did not specify matters concerning the case or the mechanics of the affidavit, i.e., who was to prepare it or whether it was to be in question and answer form, etc. If it is contemplated that the judge is simply to compose a verified statement relative to the character or reputation of the litigant, it would be, the Ethics Advisory Committee believes, be little different from the judge writing a letter of recommendation and could impinge on the constraints of Canon 2B, notwithstanding the subpoena. In the absence of exceptional circumstances the Committee believes the preferred course in conformity with Canon 2B where a judge is compelled to testify as a character witness is for such testimony to be given verbally in the presence of the jury or fact finder.

#### **Advisory Opinion #2000-08- (August 8, 2000)**

In an advisory opinion, the Arkansas Judicial Ethics Advisory Committee was asked by a municipal court judge if he would be in violation of Canon 2 by continuing to use a jail that fails to meet jail standards. The Attorney General’s office is preparing to file suit against the county to shut the jail down.

In fashioning a response the Committee noted the applicability of Canon 3A(2) which states in part that “A judge shall be faithful to the law and maintain professional competence in it. A judge shall not be swayed by partisan interest, public clamor or fear of criticism.” The Committee further noted that its opinion was also based on distinguishing between a violation of the code of judicial conduct and legal error.

The advisory opinion went on to state that the Code of Judicial Conduct does not require that a judge have universal knowledge of all things that affect the sentencing process. However, if the judge in his or her carefully considered judgment, without being influenced by partisan interest, public clamor or fear of criticism, determines that the conditions of the jail are so unsatisfactory as to be illegal or unconscionable the judge may use alternative methods of sentencing so long as those alternative methods comply with the law.

### **Advisory Opinion #2000-09- (October 3, 2000)**

In an advisory opinion, the Arkansas Judicial Ethics Advisory Committee was asked by three (3) judges (1 Chancellor, 2 Circuit/Chancery), whether a judge may release information concerning an investigation into allegations of professional misconduct by an attorney. A written request for the information was received from an attorney representing beneficiaries in a contested will dispute. The information sought included documents, correspondence, and exhibits of any kind involved in the judicial investigation concerning the allegations.

The opinion notes that judges are under an ethical obligation to take appropriate action after receipt of information indicating the likelihood that an attorney has violated the Rules of Professional Conduct. Pursuant to that obligation, a judge may gather information relevant to the possible professional misconduct. That information is absolutely privileged and the Code of Judicial Conduct does not permit disclosure of the materials gathered upon the request of an interested party. However, judges are permitted to provide all of the relevant information to the Supreme Court Committee on Professional Conduct. The opinion also points out that the Ethics Advisory Committee has no authority to interpret the Arkansas Freedom of Information Act or other statutes.

### **Advisory Opinion #2000-10 (November 16, 2000)**

In an advisory opinion, the Arkansas Judicial Ethics Advisory Committee was asked whether it is permissible for a judge to accept a gift of a judicial robe from a bar association of which that judge is a member on the occasion of his or her investiture as a judge. Additionally, Judge Fleming questioned whether restrictions would apply in the event of progressive reelections to the same judgeship and to different judgeships.

The opinion states that the practice of presenting judicial robes dates back some half a century to a time when judges in this state began wearing robes. The Committee does not find anything in the Arkansas Code of Judicial Conduct on which this tradition infringes, nor do any of the advisory opinions from other states criticize the practice. In the Committee's opinion, the acceptance of a robe from a bar association by a newly appointed or elected judge does not encroach on judicial ethics.

Additionally, the Committee stated that while they see no particular ethical restraints arising from this practice in the event of progressive reelections to the same or to different judgeships, it would seem that at some point, practicality, if not ethical considerations, would mitigate against repeated robe giving.

### **Advisory Opinion #2000-11 (January 18, 2001)**

In an advisory opinion, the Arkansas Judicial Ethics Advisory Committee was asked whether a candidate in a run-off election for municipal judge would have a conflict of interest by being both a city prosecutor and municipal judge.

The opinion states that neither Arkansas law, nor the Code of Judicial Conduct prohibits a person who practices law as an assistant city attorney from one city from being a part-time municipal judge in another city. That person, however, should be very sensitive to the fact that conflicts can and will occur, and should be mindful of numerous provisions of the Code that would be applicable. The Committee emphasized that a continuing part-time municipal judge must make the judicial office first in service and priority.

### **Advisory Opinion #2000-12 (January 5, 2001)**

Request for opinion was withdrawn.

### **Advisory Opinion #2000-13 (January 24, 2001)**

In an advisory opinion, the Arkansas Judicial Ethics Advisory Committee was asked whether it was advisable for a judge's wife to take a job which would require her to solicit business for her employer from various businesses in the area of the judge's jurisdiction. The wife's solicitations would be under the name of her employer, which provides accounting and bookkeeping services, as well as advice regarding worker's compensation insurance and employer/employee relations, taxes and other business related matters. Such advice would not be provided by the judge's wife, but through her employer, a Florida corporation.

The opinion states that the Committee saw no immediate problem in the activities described, whether there are potential conflicts between the work the judge's wife is considering and the judge's judicial duties would depend on circumstances not available to the Committee at present. Problems could conceivably arise involving an appearance of partiality and conflicts of interest. If, for example, a business solicited by the judge's wife were an expectant or inchoate litigant, or, due to the nature of its enterprise, were frequently involved in cases heard by the judge, then the judge's impartiality may be reasonably questioned.

### **Advisory Opinion #2001-01 (March 19, 2001)**

In an advisory opinion, the Arkansas Judicial Ethics Advisory Committee was asked whether it is advisable for a judge to serve on the Board of Advisors for Legal Assistants at nearby community college. The position is unpaid and does not involve the rendering of any legal opinions, however, as a board member, the judge would assist in the selection of curriculum and course material, as well as teaching staff.

The opinion states that the Committee sees no immediate problem in the activities the judge described. The Committee understands that the College is a State institution, but are of opinion that the judge's service on the board as described in the request for opinion will not violate the Code of Judicial Conduct so long as the judge conducts this and all extra-judicial activities so that they do not: (1) cause reasonable doubt on the judge's capacity to act impartially as a judge; (2) demean the judge's judicial office; or (3) interfere with the proper performance of the judge's judicial duties. (Canon 4 A).

#### **Advisory Opinion #2001-02 (April 5, 2001)**

In an advisory opinion, the Arkansas Judicial Ethics Advisory Committee was asked for an opinion concerning the permissibility of membership/recognition as a judicial fellow with the Trial Lawyers of America, and whether such membership/recognition would be considered as a gift.

The opinion cited two (2) previous opinions (99-04 and 99-07), and concluded that a full-time judge could not be a member of ATLA or any other organization that outwardly favors one side or consistently takes one side in legal issues. To do so would violate the prohibition against the "appearance of impropriety" contained in Canon 2 and might raise doubt on the judge's ability to decide impartially as required by Canon 4. The prohibition applies regardless of whether membership dues are required.

Additionally, the Committee emphasized that any judge may receive free publications from ATLA, may accept complimentary registration at ATLA conventions, and may speak at ATLA programs, but public and ongoing identification as a member, fellow, or supporter, no matter what phrase is used, is inappropriate.

#### **Advisory Opinion #2001-03 (July 16, 2001)**

In an advisory opinion, the Arkansas Judicial Ethics Advisory Committee was asked by a judge acting in his capacity as President of the Arkansas Municipal Judges Council, Inc., whether it is permissible for council representatives to communicate with the Legislative, Supreme Court and Arkansas Bar Association committee members working to restructure the Arkansas court system under Amendment 80.

Assuming that the communications with the committees relate to the implementation of Amendment 80 as it pertains to municipal courts and judges, in the opinion of the advisory board, such contacts, direct or in writing would come within the purview of Canon 4 of the Arkansas Code of Judicial Conduct; and, therefore, be permissible.

Inquiry was also made regarding the use of a municipal court judge's official letterhead stationery when communicating with the restructuring committee. The advisory board could conceive of no reason why such a method would be inappropriate.

### **Advisory Opinion #2001-04 (August 16, 2001)**

In an advisory opinion, the Arkansas Judicial Ethics Advisory Committee was asked whether a judge who has conducted a trial and convicted a defendant of certain charges can testify against that same defendant in a subsequent perjury trial concerning the defendant's testimony in the first trial

The opinion states that the only provision in the Arkansas Code of Judicial Conduct that deals directly with a judge testifying in court is Canon 2 B which states in part that "A judge shall not testify voluntarily as a character witness." Canon 2 A provides that "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."

The opinion also stated that if subpoenaed to testify before another court, the judge should simply abide by the law and by the Arkansas Code of Judicial Conduct.

### **Advisory Opinion #2001-05 (August 30, 2001)**

In an advisory opinion, the Arkansas Judicial Ethics Advisory Committee was asked whether, in light of the constitutional changes to Arkansas judicial elections, there should be a temporary suspension of the enforcement of the 180-day fund raising limit in Canon 5C(2) of the Code of Judicial Conduct until the Supreme Court has the opportunity to consider appropriate revisions to that Canon.

The opinion states that Canon 5C(2) prohibits fundraising by the committee of a candidate prior to 180 days before a primary election. With the new amendment and implementing statutes, the general elections for judges have been moved from November to May. However, the Arkansas Supreme Court has not changed the language of the Code of Judicial Conduct.

The opinion further stated that the intent of the Code provision was to place limits on the length of judicial campaigns, and that intent applies also to non-partisan elections.

The Committee stated that they have no authority to rewrite the Code or to temporarily suspend its operation, however, they noted that the Court has in the past made quick changes in the Code, and can certainly do so in this instance if it wishes. Examples given were the Per Curiam of November 19, 1990, 303 Ark. 755 (nepotism), and the Per Curiam of May 30, 1995, 320 Ark. 715 (judicial stationery).

It was the opinion of the Committee that Canon 5C(2) is applicable and, therefore, fund raising may not begin until 180 days prior to the May 2002 election.  
Advisory Opinion 2002-1 (February 21, 2002)

A judicial candidate may participate in a fund-raising telethon for the United Negro College Fund even though that activity would be prohibited for a judge.

In an advisory opinion, the Arkansas Judicial Ethics Advisory Committee was asked whether a candidate for Circuit Judge could sit as a Star Panelist at the United Negro College Fund Annual Telethon (UNCF). The UNCF telethon requires each panelist to call upon its friends and associates and ask that they make a pledge or donation to the UNCF. It is not a political event and the judge would not be identified as a candidate for Circuit Judge, and there would be no solicitation of voting by the UNCF.

The opinion states that the judge would not be prohibited under the Code from participating in the event. The fund-raising activities the judge described are expressly disallowed under Canon 4C3(b)(iv); however, Canon 4 applies to judges rather than judicial candidates. Judicial candidates are covered under Canon 5, which contains no similar restriction.

### **Advisory Opinion 2002-2 (February 21, 2002)**

A judicial candidate may ask people individually to sign the candidate's petition to be placed on the ballot.

In an advisory opinion, the Arkansas Judicial Ethics Advisory Committee was asked whether it would violate Canon 5 of the Arkansas Code of Judicial Conduct for a judge to personally solicit signatures of registered voters on the Independent Candidate (or Non-Partisan Judicial Candidate) Petition for the district position of Circuit Judge.

The opinion states that Canon 5C2 states: "(2) A candidate shall not personally solicit or accept campaign contributions or personally solicit publicly stated support". The judge asking persons on an individual basis and not as a group such as a social gathering, assembly, club or any other organization, whether organized formally or otherwise, to sign the petition does not constitute soliciting publicly stated support. The key is approaching people on an individual basis to ask them to sign the petition. (Reference was made to Advisory Opinion # 95-04.)

### **Advisory Opinion 2002-3 (February 21, 2002)**

A judicial candidate who has served for six years as a part-time city judge may refer to himself or herself in campaign materials as "judge" even though a statute does not allow the use of "judge" on the ballot unless the person is currently serving in a judicial position to which the person has been elected.

In an advisory opinion, the Arkansas Judicial Ethics Advisory Committee was asked by four (4) judicial candidates whether a judicial candidate for Circuit Judge may describe himself in his campaign materials, advertisements and public statements as "Judge", when he has served for the past six years as a part time city judge. The position of city judge is an appointive, rather than elective position.

The opinion states that the Code of Judicial Conduct views a city judge as a continuing part-time judge who is required to comply with most provisions of the Code. The Code bars a judicial

candidate from knowingly misrepresenting "the identity, qualifications, present position or other facts concerning the candidate or an opponent." Regardless of whether the candidate is appointed or elected, full time or part time, he is a judge. Accordingly, the Committee concluded that the Code does not bar him from describing himself as a "City Judge" or a "Judge" in the campaign. The term does not misrepresent his present position. It does not suggest he is an incumbent; it does not urge his re-election.

The opinion further stated that the Committee is aware of Ark. Code Ann. 7-7-305 which states that a person may use the prefix "Judge" in an election for a judgeship only if the person is currently serving in a judicial position to which the person has been elected. However, that statute prescribes the name that will be used on the election ballot. The statute does not purport to control campaign advertising by judicial candidates.

The Committee understood the potential elective disadvantage to other judicial candidates who may have been judges in the past, perhaps even to elective positions. But because they are not presently serving as a judge, the Code bars them from calling themselves "Judge." However, the Code permits them to list their prior positions and their qualifications.

The Committee stated that the Supreme Court could amend the language of the Code or the comments to it. Likewise, the Supreme Court could provide consistency by amending the Code provisions on campaign advertising to correspond to the statute on ballot names. But it has not yet done so. The Committee concluded that under the language of the Code it is not misleading for a city judge to describe himself or herself as "Judge" in his campaign advertising.

#### **Advisory Opinion 2002-4 (March 14, 2002)**

A temporary part-time judge may not preside over criminal cases brought by the office of the prosecuting attorney while also representing defendants in other courts in the same county even if the temporary part-time judge is sitting because the full-time judge is suspended pending the outcome of a criminal case against the judge.

In an advisory opinion, the Arkansas Judicial Ethics Advisory Committee was asked by a Special Judge whether he and other attorneys serving as part-time judges in the absence of a judge who had voluntarily recused from hearing cases because of pending felony charges against him would have a conflict based on Judicial Ethics Advisory Opinion No.98-02.

The opinion states that while the Committee recognizes the exigency of the circumstances outlined in the judge's letter, they find nothing in the Code of Judicial Conduct or relevant case law distinguishing continuing part-time judges from part-time judges serving temporarily, albeit indefinitely. Nor do they believe the appearance of impropriety may be cured by waiver.

The Committee referred to Advisory Opinion No. 98-02 which notes that the concurrent practice of law and judicial service are prohibited under Canon 4G, but that exception is made for continuing part-time judges under Section B of the Application section of the Code. The Committee pointed out that while the Code stops short of an outright ban on the practice of law by

part-time judges, clearly restraint and caution are called for. In that context, the Committee cited Canon 2 and concluded:

[A]n individual who accepts the position of a continuing part-time judge places the judicial office first in service and priority, and certain restrictions must follow. It is, the Committee believes, self evident that a municipal judge who is engaged in an adversarial role opposing a prosecuting attorney in a criminal case brought by the State and who presides over proceedings involving that same prosecuting attorney is in an untenable position, however principled that individual may be. Acting as both judge and jury, the municipal judge has significant discretion in dealing with the prosecuting attorney. To oppose that same attorney in another matter creates an appearance of impropriety. The Committee concludes, as have a majority of other jurisdictions, that license must yield to ethic, where, in the perception of reasonable minds, the ability of municipal judges to carry out their responsibilities with integrity, competence and impartiality could be impaired. It follows that the initial responsibility rests on the municipal judge to decline the personal representation of a criminal defendant in any circuit within which the prosecuting attorney has jurisdiction.

#### **Advisory Opinion 2002-5 (May 23, 2002)**

The district judges council should not endorse a law enforcement program of the state highway and transportation department designed to detect violators of child passenger and seat belt laws.

In an advisory opinion, the Arkansas Judicial Ethics Advisory Committee was asked by a judge, in his capacity as President of the Arkansas District Judges Council, their opinion concerning the Council's endorsement of the Arkansas State Highway and Transportation Department's 'Click It or Ticket' program. The judge was unsure whether the Arkansas District Judges Council's endorsement by letter, with use of judicial letterhead and Arkansas District Judges Council letterhead, of this program would appear inappropriate or suggestive of bias on seatbelt violations. The judge stated that the district judges would certainly be hearing cases involving charges of seatbelt violations, while at the same time, it is the judge's opinion that this program is a very admirable one in that it promotes safety and education of the public.

The opinion stated that members of the Arkansas District Judges Council would be acting as judges of most all the charges brought under this program, and if the Council endorsed it, the member judges would certainly have to recuse since there would be the appearance of bias or prejudice. The Committee's answer was that an endorsement of this or any other law enforcement program, however worthy of support, by the Arkansas District Judges Council, Inc., or any individual judge would be in violation of the Arkansas Code of Judicial Conduct, Canons 1, 2, 3 and 4.

### **Advisory Opinion 2002-6 (June 26, 2002)**

A judge's spouse may work as a volunteer or paid employee in a political campaign but should make all efforts to avoid any suggestion or hint that the judge supports a candidate.

In an advisory opinion, the Arkansas Judicial Ethics Advisory Committee was asked whether a judge's spouse may work either as a paid employee or volunteer in the political campaign of a candidate seeking election to a statewide office.

The opinion states that the Code of Judicial Conduct places clear restrictions on a judge. A judge may not publicly endorse or publicly oppose a candidate seeking election to office. Canon 5 (A) (1). A judge may not identify himself as a member of a political party. Canon 5 (F). In addition, the judge must encourage members of the candidate's family to adhere to the same standards of political conduct. Canon 5 (A) (3). The context of that language suggests that in the course of judicial campaigns, the candidate must encourage his relatives to behave in the same fashion.

The Committee further stated that the issue here is whether the Code bars a spouse from participating in a non-judicial political campaign. We note that the Commentary to the Code states that family members are free to participate in other political activity. Further it is questionable whether authority exists to bar relatives, who do not serve as public servants, from political life.

The Committee concludes that the spouse of a judge is free to participate in other political campaigns. The participation may be on a paid or on a voluntary basis. However, the spouse should make all efforts to avoid any suggestion or hint that the judge is supportive of a candidate.

### **Advisory Opinion 2002-7 (September 3, 2002)**

Two judges who are exchanging positions within a circuit may transfer all cases between divisions as a matter of judicial ethics, but the issue is essentially a matter of judicial administration.

In an advisory opinion, the Arkansas Judicial Ethics Advisory Committee was asked whether ethical improprieties might arise from a proposed reassignment of cases in Divisions IV and V of the 19<sup>th</sup> Judicial Circuit West of Benton County, Arkansas. The judge specifically asked if he and another judge, who joined him in requesting the opinion, could ethically direct the circuit clerk to effectuate the transfer of cases once the two judges exchange positions on January 1, 2003.

The opinion stated that the proposal seems compatible with Administrative Order No. 14 of the Arkansas Supreme Court, which reads in part:

The creation of divisions shall in no way limit the powers and duties of the judges as circuit judges. Judges shall not be assigned exclusively to a particular division so as to preclude them from hearing other cases which may come before them.

The Committee stated that they saw nothing in the proposed reassignment of cases which, in the opinion of the committee, would impinge on the Code of Judicial Conduct. However, the issue is, the committee believes, essentially a matter of judicial administration rather than judicial ethics and would, therefore, exceed the purview of the committee.

#### **Advisory Opinion 2002-8 (January 29, 2003)**

Request for opinion was withdrawn.

#### **Advisory Opinion 2002-9 (January 28, 2003)**

The Arkansas Judicial Ethics Advisory Committee was asked for an advisory opinion by a part-time judge serving temporarily, but for an indefinite time. This judge asked if he was required, in his law practice, to refrain from appearing on behalf of defendants in criminal trials opposing prosecuting attorneys who represent the State in other proceedings presided over by the same judge.

The opinion held the judge was in the same position as a continuing part-time. Therefore, he could not, in his private law practice, represent criminal defendants opposing prosecuting attorneys who represent the State in other proceedings in which he presides.

#### **Advisory Opinion 2003-01 (June 17, 2003)**

The Arkansas Judicial Ethics Advisory Committee was asked by a district judge for an opinion concerning actions of the city attorney involving a defendant charged with DWI second offense who tested at .24 BAC. The judge stated in his request that he believed that the city attorney planned to refuse to put on the State Trooper, or any other witnesses because he does not want the defendant to lose his CDL license.

The judge asked:

- (1) Must he report the city attorney's actions to the Professional Conduct Committee?

Response:

Canon 3(D)(2) provides that a judge who receives information indicating a substantial likelihood that a lawyer has committed a violation of the Rules of Professional Conduct should take appropriate action. Further a judge having knowledge that a lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial question of the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects shall either communicate directly with respect to the violation with the lawyer who has committed the violation or report the violation to the Arkansas Supreme Court Committee on Professional Conduct. A judge should make this decision on his or her own based on the aforementioned rules. It is not within the scope of the

Committee's duties to make the decision for the judge.

- (2) Must he actually start the case so that when the city rests, he must enter A finding of not guilty, or can he call the case and review the city attorney's previous court statement that he is going to rest without any testimony so that the defendant can be tried at a later date?

Response:

Canon 3 (B)(8) requires a judge to dispose of all matters promptly, efficiently and fairly. Again, it is not within the scope of the Committee's duties to advise the judge on how to proceed in a particular case.

- (3) If he is required to report the city attorney's actions, can he continue to hear cases presented by the City of Waldron city prosecutor?

Response:

Canon 3 (E)(1)(a) provides that a judge should disqualify himself in a proceeding in which the judge's impartiality might reasonably be questioned including instances where the judge has a personal bias concerning a party's attorney.

- (4) If he cannot hear cases presented by the City of Waldron city prosecutor, can he appoint someone to take his place, or must he withdraw from all cases presented by this attorney which will be a burden to the City of Waldron.

Response:

The judge's withdrawal is covered in the Committee's response to question 3. The appointing of a special prosecutor is beyond the authority of the Committee, as the Arkansas Code of Judicial Conduct does not cover it. However, if the law allows such an appointment, then that is to be considered.

### **Advisory Opinion 2003-02 (May 6, 2003)**

The Arkansas Judicial Ethics Advisory Committee was asked by a circuit judge for an opinion as to whether the judge could serve on the Arkansas Commission on Child Abuse, Rape and Domestic Violence and possibly chair the Commission without being in violation of the Arkansas Code of Judicial Conduct. The opinion states that while the judge may not serve as Commission chair, with a number of limitations, the judge may serve as a member of the Commission.

The opinion notes that Arkansas Code Annotated 20-82-201 created the Commission. The mere fact that legislation provides for judges to be on certain governmental entities does not in itself preclude an independent evaluation based on ethical standards.

Canon 4(C)(2) provides in part: “(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.” (*Emphasis supplied*) If this governmental Commission does not meet this strict standard, the judge should not accept appointment. Arkansas Code Annotated 20-82-206 sets forth twelve enumerated areas that are the responsibility and authority of this Commission.

A judge may be a member of a commission which has a broader scope if the judge limits his or her participation only to the matters concerned with the improvement of the law, the legal system or the administration of justice. As a general proposition, we believe this Commission is concerned with the administration of justice and the legal system, and that a judge may serve on the Commission in a partial capacity. However, certain proposed functions or tasks of the Commission present particular dangers that appear to violate provisions of the Code of Judicial Conduct.

These functions or tasks that appear to conflict with the Code are:

- (1) Administering and disbursing funds through the Children’s Justice Act and grants. Participation in this area will of necessity cause the judge to deal with individuals or agencies that may appear in court and would cast reasonable doubt on the judge’s capacity to act impartially. Canon 4(A)(1)
- (2) Receiving and expending grants and donations for the purposes under the act. A judge should not be involved in any way in fund-raising. Canon 4(D)
- (3) Coordinated investigation and service delivery to child victims of severe maltreatment. It could result in a conflict of interest and the judge could possibly be dealing with persons who could likely appear in court. Canon 4(B)
- (4) Reviewing instances of child deaths. A strong general consensus of advisory opinions in this area is to the effect that a judge may not participate on a commission that conducts fatality reviews.
- (5) Support, coordination and technical assistance to providers of services for victims. See comments in Number 3 above.
- (6) Advise the Governor. This could create a problem of separation of powers. Canon 4(C)(1)
- (7) Contract and be contracted with. To negotiate or otherwise deal in contract matters could create a conflict of interest, would demean the judicial office and improperly use the prestige of judicial office.

A portion of the Comments under Canon 4(C)(2) is quoted as follows: “*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.”* If the judge’s service on this Commission will not violate the spirit of this Comment and other relevant provisions of the Code, the Judicial Ethics Advisory Committee is not prepared to opine that service will necessarily be in violation of the Code of Judicial Conduct. It is the opinion of the Advisory Committee that the judge should not serve as chair of the Child Abuse, Rape and Domestic Abuse Commission.

**Advisory Opinion 2003-03 (May 12, 2003)**

The Arkansas Judicial Ethics Advisory Committee was asked by a circuit court judge for an opinion whether a circuit judge, in the capacity of an administrative judge, may appoint a part-time district judge to perform judicial duties at the county jail.

The Committee noted that the judge would function in a capacity similar to a magistrate; that is, reviewing probable cause affidavits, issuing search warrants and arrest warrants, conducting bail bond hearings, appointing the Public Defender, and similar tasks. For these services the judge would be compensated by the county, over and above the compensation received for serving as the district judge.

The Committee stated that the Arkansas Code of Judicial Conduct permits a continuing part-time judge (such as a district judge) to engage in the private practice of law, to own and operate a business, to be a director of a bank, to be compensated for speeches or books, and to participate in similar activities. Canon 4(D).

The Committee found nothing in the Code of Judicial Conduct that bars a district judge from accepting additional judicial responsibilities and from being compensated for them. The narrow conclusion is that the Code of Judicial Conduct does not prohibit extra compensation, nor does it provide a basis to demand or require such compensation.

**Advisory Opinion 2003-04 (December 16, 2003)**

The Arkansas Judicial Ethics Advisory Committee was asked by the chairman of the Judicial Council Legislative Committee, for an opinion as to whether providing dinner for members of the House and Senate Judiciary Committee for the purpose of meeting the Judicial Council’s president elect and to discuss issues affecting the judicial system is permissible. The dinner would be held at a Little Rock restaurant, at the Council’s expense.

The Committee noted that Canon 4(B) provides that a judge may participate in extra-judicial activities concerning the legal system and the administration of justice, subject to the requirements of the Code.

The Committee also noted that Canon 4(C)(1) further provides that a judge shall not appear before a legislative body or official *except* on matters concerning the law, the legal system or the administration of justice.

It was the opinion of the Committee that the hosting of a dinner for the House and Senate members for the purposes stated does not violate Canon 4. Under the Commentary to Canon 4B it is pointed out that a judge is in a unique position to contribute to the improvement of the legal system and is encouraged to do so, either independently or through an organization such as the Judicial Council. The hosting of a dinner with the legislators whereby matters pertaining to the judicial system may be informally discussed is in the interest of the administration of justice and is permissible under the Code of Judicial Conduct.

In a separate opinion one member believes such meetings should be open to the public and not a private dinner.

#### **Advisory Opinion 2004-01 (March 3, 2004)**

Funds from a private foundation may be paid to assist indigent drug court participants in obtaining necessary testing and treatment services. However, the Code of Judicial Conduct prohibits the lending of a judge's name or official capacity to fundraising activities. The Code does not prohibit the proposed name of the foundation, "Washington/Madison Counties Drug Court Foundation". In this instance, a judge of the Washington and Madison County Drug Court should recuse if there is litigation involving the Foundation.

#### **Advisory Opinion 2004-02 (April 1, 2004)**

The Arkansas Judicial Ethics Advisory Committee stated that it does not have the authority to provide an advisory opinion in regard to the conduct of someone other than the requesting party.

#### **Advisory Opinion 2004-03 (May 5, 2004)**

A judge may serve as officer, director, or trustee of charitable organizations. However, the judge may not personally participate in the solicitation of funds or other fund raising activities. A judge must not engage in direct, individual solicitation of funds. That the person from whom the judge would be soliciting funds is not an attorney and lives outside the state is of no consequence.

#### **Advisory Opinion 2004-04 (May 27, 2004)**

The Arkansas Judicial Ethics Advisory Committee was asked for an opinion as to whether a judge could serve on the Sex Offenders Assessment Committee. The Committee is established under Arkansas Code Annotated 12-12-911 et. seq. It is charged with promulgating guidelines

and procedures for disclosure of relevant information and the extent of the information to be disclosed including the level of the offender's dangerousness and the offender's pattern of offending behavior. The Assessment Committee will also develop an evaluation protocol for preparing reports to assist courts in making determinations against an offender and even setting qualifications for the examination themselves.

Although work by such an assessment committee such as this one could result in the improvement of the administration of justice, permitted by Canon 4(C)(2), other factors must be weighed. The guidelines and procedures of this committee and their application in individual cases certainly have the potential of being challenged in court and therefore restricted by Canon 4(A) which then may interfere with the performance of judicial duties. Another issue of concern is the sometimes elusive "appearance of impropriety" in Canon 2. To the Judicial Ethics Advisory Committee, the Sex Offenders Assessment Committee is just a bit too close to the law enforcement and prosecutorial side of the adversarial system. This area of interpretation of the Code is often a difficult judgment call.

The Committee stated that the judge should not serve on the Sex Offenders Assessment Committee. Although a judge's insight on matters addressed by the committee would be very valuable, there are other ways for the committee to obtain the views of the judiciary.

#### **Advisory Opinion 2004-05 (June 8, 2004)**

The Arkansas Judicial Ethics Advisory Committee was asked by a circuit court judge for an opinion as to whether the judge could serve as trustee of a life insurance trust. The trust, which was established by a long-time friend, asks that the judge serve without compensation and be limited to overseeing compliance with statutes and regulations. The judge is not asked to give investment advice and the counsel for the trust would handle all legal matters.

The Committee stated that the Arkansas Code of Judicial Conduct is clear and unambiguous: "A judge shall not serve as trustee..., except for the estate, trust or person of the judge's family...." Canon 4(E)(1). The Code does not allow exceptions regardless of what may appear to be appropriate circumstances.

The Committee has no authority to rewrite the Code or to suspend its operations. Furthermore, the Committee lacks any basis or power to grant any waivers from the prohibitions of the Code.

#### **Advisory Opinion 2004-06 (August 23, 2004)**

The Arkansas Judicial Ethics Advisory Committee was asked by a circuit court judge for an opinion as to whether it is appropriate to sign an affidavit that will be used in a lawsuit. The affidavit concerns actions that took place while the judge was an attorney representing clients in a fraud case.

The judge can sign such an affidavit without being in violation of the Arkansas Code of Judicial Conduct. Canon 2(B) provides that “A judge shall not lend the prestige of judicial office to advance the private interest of the judge or others; A judge shall not testify voluntarily as a character witness.” However, nothing in the Canon addresses a judge testifying as to nothing but facts.

The giving of an affidavit to assist a former client appears to be perfectly acceptable. This question has been discussed in other states with the majority finding that such affidavits do not violate the Canons.

#### **Advisory Opinion 2004-07 (January 18, 2005)**

The Arkansas Judicial Ethics Advisory Committee was asked by a part-time district court judge for an opinion as to whether her continued employment with Legal Aid of Arkansas, after taking the district court bench in January 2005, would present a conflict of interest with regards to clients she represents in Circuit and Federal Courts.

The Committee noted that conflict of interest questions except with regard to a specific fact situation that involves prospective conduct cannot be answered.

It is the opinion of the Committee that the judge’s employment with Legal Aid of Arkansas does not constitute a violation of the Code of Judicial Conduct. However, the judge should be constantly aware of the potential for conflicts of interest or the appearance of impropriety.

The Committee also stated that the appearance of any employee of the Legal Aid office before her in the District Court should cause the judge’s disqualification under Canon 3 (E)(1) because impartiality might reasonably be questioned. The Committee cites Canon 2 as stating that a judge should avoid impropriety and the appearance of impropriety in all of the judge’s activities. Employees of the Legal Aid office should 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.

#### **Advisory Opinion 2005-01 (April 29, 2005)**

The Arkansas Judicial Ethics Advisory Committee issued an advisory opinion to a district court judge. The judge requested an opinion as to whether he may write a letter of recommendation on behalf of a life-long friend who will soon be sentenced in United States District Court on a felony tax matter. He also requested an opinion as to what constitutes a formal request.

The Committee stated that there is a significant difference between a judge’s letter on judicial stationery recommending an individual for admission to a law school or for a position with a law firm, and a letter to a sentencing judge. The Committee noted that writing the letter of recommendation to the sentencing judge would be in violation of Canon 2(B). The Committee

also stated that such a letter has the appearance of lending the prestige of judicial office to advance the personal interest of a single individual.

It was the opinion of the Committee that a “formal request” means a request from the court, the United States Attorney, or a governmental agency involved in the criminal matter. A request from the individual or his attorney is not a formal request.

#### **Advisory Opinion 2005-02 (May 12, 2005)**

The Arkansas Judicial Ethics Advisory Committee issued an advisory opinion to an attorney who was being considered for a judicial appointment by the Governor. The attorney requested an opinion as to whether it would be a conflict of interest to continue participating in financial matters, including maintaining certain financial arrangements with his office that necessitate his continued obligation on long term notes and the acceptance of fees received by the firm after he becomes a judge but for work already performed in his law office. He also requested an opinion as to whether he may continue the employment of his current legal secretary out of his current law office to handle his personal business matters after he is appointed.

The Committee stated that Canon 4(G) prohibits practicing law and Canon 2 prohibits any appearance of impropriety that would include the acceptance of fees, other than what he earned while with the firm, once he has assumed the bench.

It was the opinion of the Committee that maintaining ties with the firm in the form of a financial relationship and the maintaining of an office at the firm for his own personal business would also not be permissible.

#### **Advisory Opinion 2005-03 (June 3, 2005)**

The Arkansas Judicial Ethics Advisory Committee issued an advisory opinion to a city court judge. The judge requested an opinion as to whether his service as a part-time city attorney and as a part-time deputy prosecuting attorney would conflict with his service as a continuing part-time city court judge.

It was the opinion of the Committee that the judge’s service as city attorney, would not violate the Code of Judicial Conduct. It is also the opinion of the Committee that, the judge’s service as deputy prosecuting attorney would be in violation of the Code.

#### **Advisory Opinion 2005-04 (May 24, 2005)**

The Arkansas Judicial Ethics Advisory Committee issued an advisory opinion to a district court judge. The judge requested an opinion as to whether it would be permissible for him to handle

felony criminal matters out of his private practice. The judge also requested an opinion as to whether he may sit as special judge in other district and circuit courts.

It is the opinion of the Committee that a part-time judge may not represent any criminal defendants in the same circuit.

**Advisory Opinion 2005-05 (NO OPINION ISSUED)**

No opinion was issued. The judge withdrew the request for an opinion.

**Advisory Opinion 2005-06 (December 7, 2005)**

The Arkansas Judicial Ethics Advisory Committee issued an advisory opinion to a retired circuit court judge. The judge requested an opinion as to whether placing a photo of himself, wearing a court robe, on the jacket cover of the book he is writing entitled, "Fifty Years as a Judge and Counting", would be a violation of judicial ethics.

It is the opinion of the Committee that placing the robed photograph on the jacket cover of the book would not violate any provision of the Code.

**Advisory Opinion 2005-07 (December 7, 2005)**

The Arkansas Judicial Ethics Advisory Committee issued an advisory opinion to a circuit court judge. The judge requested an opinion as to whether it would be permissible for trial court assistants (case coordinators) to be involved in fundraising activities associated with an event honoring their employer, a circuit judge scheduled to retire in January of 2006. He stated that the judicial office will not be utilized in the promotion of the event. The judge requested permission to use the honored judge's name in the program, which would be disbursed prior to the retirement of the honored judge. He also requested an opinion on whether elected circuit judges may attend the event.

The Committee stated that trial court assistants for circuit judge should take special precautions to avoid any suggestion that the court or court officials are promoting the event.

The Committee noted that according to Canon 4(C)(3) of the Arkansas Code of Judicial Conduct, a judge may not participate in the fund raising activities of a charitable or educational organization, and may not be the guest of honor at the organization's fund raising event. However, the Committee finds nothing in the Code that bars a retired judge from being the speaker or guest of honor at such an event. The Committee also noted that the commentary to Canon 4(C)(3) states that a sitting judge may purchase tickets and attend such an event, but may not be a speaker at the fundraising event.

It is the opinion of the Committee that a sitting judge may not be a “roaster” (guest of honor) at a fund raising event. The Committee also concludes that it would be improper to include the names of sitting circuit judges in the program. Such an indication would lend the support of the judicial office to the fund raising activities of a private group.

#### **Advisory Opinion 2005-08 (January 30, 2006)**

The Arkansas Judicial Ethics Advisory Committee issued an advisory opinion to a publicly announced candidate for circuit judge. He requested an opinion as to whether a judicial candidate who is not currently on the bench but has served as judge may refer to himself or herself as “judge” in a campaign logo, on signs, or in other campaign material. The Committee noted that Canon 5(3)(d)(iii) provides that a candidate for judicial office shall not “knowingly misrepresent the identity, qualifications, present position or other fact concerning the candidate or an opponent;.”

It is the opinion of the Committee that use of the term “judge” in his campaign material would misrepresent his present position and would be in violation of the Code of Judicial Conduct.

#### **Advisory Opinion 2006-01 (February 16, 2006)**

The Arkansas Judicial Ethics Advisory Committee issued an advisory opinion to a district judge. The judge requested an opinion as to whether the Arkansas District Judges Council (ADJC), a non-profit corporation, may make a direct or indirect political contribution from its treasury to an incumbent or a non-incumbent candidate to the Arkansas legislature. He stated that the operational funds for the Council are based on annual dues of the member district judges. He also stated that, in most instances, the dues are paid either directly or indirectly by the governmental entity that employ the judges.

The Committee stated the Arkansas Code of Judicial Conduct in Canon 5A(1)(e) prohibits a judge from making a contribution to a candidate for office. Canon 5A(1)(b) likewise bars a judge from publicly endorsing or opposing a candidate for political office.

It is the opinion of the Committee that the policy reasons that support these restrictions apply in like fashion to an organization of judges. Prohibited conduct cannot be legitimized by indirect collective activity. The Committee concluded that the ADJC cannot make direct or indirect political contributions to candidates to the Arkansas legislature.

## **TOPICAL INDEX**

The following is a listing of the Advisory Opinions of the Arkansas Judicial Ethics Advisory Committee by categories. Each category lists opinions by number with a brief synopsis.

### **ADMINISTRATIVE ISSUES**

Advisory Opinion 02-07 (two judges exchanging positions within circuit)

### **ADVISORY COMMITTEE'S DUTIES-SCOPE OF**

Advisory Opinion 96-06 (pending motion for recusal)

Advisory Opinion 03-01 (reporting possible attorney misconduct)

Advisory Opinion 03-01 (pending procedural matters)

### **APPOINTMENT/REFERRALS**

Advisory Opinion 03-03 (circuit court judge appointing part-time district court judge to perform duties at county jail)

### **BAR ASSOCIATION ACTIVITIES – JUDGE'S ASSOCIATION**

Advisory Opinion 06-01 The Arkansas Judicial Council should not make contributions to a candidate for political office

### **CAMPAIGN ACTIVITIES**

Advisory Opinion 02-02 (judicial candidate asking people individually to sign petition)

Advisory Opinion 06-01 The Arkansas Judicial Council should not make contributions to a candidate for political office

## **CAMPAIGN CONDUCT, SPEECH AND FINANCE**

<u>Advisory Opinion 98-01</u>	(announcements about plea agreements; general statements about rehabilitation, etc.)
<u>Advisory Opinion 99-08</u>	(explanatory letter to voters)
<u>Advisory Opinion 01-05</u>	(provision of the Code of Judicial Conduct prohibiting judicial campaigns fund-raising prior to 180 days before a primary election applies even though a recent constitutional amendment moved the general judicial election from November to May)
<u>Advisory Opinion 02-03</u>	(judicial candidate who has served for six years as part-time city judge referring to self in campaign materials as “judge”)
<u>Advisory Opinion 05-08</u>	A former judge may not refer to himself or herself as “judge” in a campaign logo or sign or other campaign material
<u>Advisory Opinion 06-01</u>	The Arkansas Judicial Council should not make contributions to a candidate for political office

## **CIVIC AND CHARITABLE ACTIVITIES; BAR ASSOCIATION ACTIVITIES**

<u>Advisory Opinion 91-05</u>	(fund-raising)
Advisory Opinion 92-02	(speaking at a dinner)
Advisory Opinion 92-04	(football referee)
Advisory Opinion 93-01	(advisory group for state hospital program that provides intensive care for persons who have been excused from criminal conduct by reason of mental incapacity)
Advisory Opinion 93-03	(softball fund-raiser)
Advisory Opinion 93-05	(board of directors of non-profit organization that has contract with state)

Advisory Opinion 93-06	(playing in band at fund-raiser)
Advisory Opinion 94-03	(speaking at banquet)
Advisory Opinion 94-09	(fund-raising committee for local boys/girls' club)
Advisory Opinion 95-03	(advisory committee of public college)
Advisory Opinion 96-01	(policy and planning board for Department of Human Services)
Advisory Opinion 96-10	(judge-elect serving on parks and tourism commission)
Advisory Opinion 97-02	(distributing balloons at Toad Suck Daze)
Advisory Opinion 99-04	(membership in ATLA)
Advisory Opinion 99-07	(membership in ATLA)
Advisory Opinion 01-01	(serving on board of advisors for legal assistants at a state community college)

**COMMUNITY ACTIVITIES**

<u>Advisory Opinion 97-02</u>	(distributing balloons at Toad Suck Daze - a community fair)
<u>Advisory Opinion 02-01</u>	(judicial candidate participating in fund-raising telethon for not-for-profit organization)
<u>Advisory Opinion 02-05</u>	(district judges council endorsing state law enforcement program designed to detect violation of child passenger and seat belt laws)

## **COMMUNITY ACTIVITIES-GOVERNMENT COMMISSIONS**

<u>Advisory Opinion 96-01</u>	(policy and planning board for Department of Human Services)
<u>Advisory Opinion 96-10</u>	(judge-elect serving on parks and tourism commission)
<u>Advisory Opinion 03-02</u>	(state commission on child abuse, rape and domestic violence)
<u>Advisory Opinion 04-04</u>	(Sex Offenders Assessment Committee)

## **COMMUNITY ACTIVITIES - LEGISLATION**

<u>Advisory Opinion 02-05</u>	(district judges council endorsing state law enforcement program designed to detect violation of child passenger and seat belt laws)
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## **COMMUNITY ACTIVITIES-OTHER INVOLVEMENT IN FUNDRAISING**

<u>Advisory Opinion 91-05</u>	(fund-raising)
<u>Advisory Opinion 92-02</u>	(speaking at a dinner)
<u>Advisory Opinion 93-03</u>	(softball fund-raiser)
<u>Advisory Opinion 93-06</u>	(playing in band at fund-raiser)
<u>Advisory Opinion 94-03</u>	(speaking at banquet)
<u>Advisory Opinion 94-09</u>	(fund-raising committee for local boys/girls' club)
<u>Advisory Opinion 02-01</u>	(judicial candidate participating in fund-raising telethon for not-for-profit organization)
<u>Advisory Opinion 04-03</u>	(soliciting pledges from non-attorneys out of state, Members of Kiwanis)

Advisory Opinion 05-07

A retired judge may be the subject of a “roast” that is a fundraiser. But a sitting judge may not be a “roaster” even if judge’s name is not listed on the program. Nothing should suggest that the court or court officials are promoting the event.

## **COMMUNITY ACTIVITIES-INVOLVEMENT IN FUNDRAISING EVENT**

Advisory Opinion 05-07

A retired judge may be the subject of a “roast” that is a fundraiser. But a sitting judge may not be a “roaster” even if judge’s name is not listed on the program. Nothing should suggest that the court or court officials are promoting the event.

## **COURT FUNDING**

Advisory Opinion 04-01

(drug court foundation)

## **DISCIPLINARY RESPONSIBILITIES**

Advisory Opinion 00-09

(responding to request from attorney for information gathered in investigation of allegations of professional misconduct)

## **DISQUALIFICATION**

Advisory Opinion 91-06

(press release about redistricting decision)

Advisory Opinion 92-01

(committee authority to respond to request regarding pending motion for recusal)

Advisory Opinion 92-03

(professional relationship with attorney)

Advisory Opinion 92-06

(judge’s sibling is an attorney employed in the litigation division of the state attorney general’s office)

Advisory Opinion 94-02

(election opponent is attorney)

<u>Advisory Opinion 94-05</u>	(election opponent is attorney)
<u>Advisory Opinion 94-07</u> <u>Advisory Opinion 94-08</u>	(election opponent is attorney) (de minimis interest)
<u>Advisory Opinion 95-02</u>	(attorney shares office space with judge's siblings)
<u>Advisory Opinion 95-06</u>	(attorney is uncle of judge's secretary)
<u>Advisory Opinion 96-06</u>	(pending motion for recusal)
<u>Advisory Opinion 96-07</u>	(attorney is judge's court reporter's spouse)
<u>Advisory Opinion 97-03</u>	(attorney rents office space from the judge)
<u>Advisory Opinion 97-05</u>	(judge in a partnership that rents office space to attorneys who practice in his court)
<u>Advisory Opinion 97-06</u>	(judge asserts he has no bias against defendant)
<u>Advisory Opinion 98-04</u>	(client's attorney is judge's first cousin)
<u>Advisory Opinion 98-07</u>	(cases involving assistance of attorney who shares office space with part-time judge and who assists the judge for fee)
<u>Advisory Opinion 00-01</u>	(special judge presiding when employee's spouse is assistant prosecuting attorney in the same court)
<u>Advisory Opinion 03-01</u>	(reporting possible attorney misconduct)
<u>Advisory Opinion 04-01</u>	(judge a member of foundation that is a litigant)

## **DISQUALIFICATION - FAMILY RELATIONSHIP**

<u>Advisory Opinion 98-04</u>	(first cousin)
<u>Advisory Opinion 98-05</u>	(attorney for whom the judge's spouse performs accounting duties)

## **DISQUALIFICATION - PART-TIME JUDGE**

<u>Advisory Opinion 00-01</u>	(deputy prosecuting attorney is married to member of judge's firm)
<u>Advisory Opinion 02-04</u>	(temporary part-time judge presiding over criminal cases brought by office of prosecuting attorney while also representing defendants in other courts in same county)
<u>Advisory Opinion 04-07</u>	(managing attorney of legal aid office)
<u>Advisory Opinion 05-03</u>	Part-time city court judge may serve as a city attorney in another city but may not serve as a county attorney for the county in which the city is located

## **EX-PARTE COMMUNICATIONS, CASE MANAGEMENT, APPOINTMENTS, NEPOTISM AND STAFF ISSUES**

<u>Advisory Opinion 96-08</u>	(hiring chief justice's second cousin)
<u>Advisory Opinion 02-09</u>	(out of court contact with victims of domestic violence)

## **FAMILY ISSUES - POLITICAL ACTIVITY**

<u>Advisory Opinion 02-06</u>	(working in political campaign)
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## **FORMER JUDGE**

<u>Advisory Opinion 05-08</u>	A former judge may not refer to himself or herself as "judge" in a campaign logo or sign or other campaign material
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## **FUDICIARY ACTIVITIES**

Advisory Opinion 04-05

(judge may not be a trustee of a life insurance trust)

## **GIFTS, ORDINARY SOCIAL HOSPITALITY, HONORARIUM**

Advisory Opinion 00-10

(robe from bar association)

## **HIRING; FAVORITISM; NEPOTISM**

Advisory Opinion 96-08

(hiring chief justice's second cousin)

Advisory Opinion 99-03

(employing secretary of former partner)

Advisory Opinion 99-05

(cousin as court clerk)

## **LETTER TO SENTENCING JUDGE; PARDON OR PAROLE BOARD**

Advisory Opinion 00-03

(writing letter to sentencing judge)

## **LETTER TO SENTENCING JUDGE**

Advisory Opinion 00-03

(writing letter to sentencing judge)

Advisory Opinion 05-01

May not write letter on behalf of a life long friend to a sentencing judge

## **LETTERS OF RECOMMENDATION ; ACTING AS A REFERENCE**

Advisory Opinion 97-01

(letter of recommendation for prospective federal judicial candidate)

Advisory Opinion 00-03

(letter of recommendation for a defendant to a sentencing judge)

Advisory Opinion 04-01

(judge may not lend name to fundraising effort for drug court)

## **MISCELLANEOUS**

Advisory Opinion 99-01

(declining to issue opinions re representation by part-time judge)

Advisory Opinion 00-13

(judge's spouse to take a job that would require her to solicit business for her employer from other businesses in are where judge has jurisdiction)

Advisory Opinion 01-03

(use of judicial letterhead by a municipal judge to correspond with supreme court, bar association and general assembly regarding implementation of a constitutional amendment as it pertains to municipal courts and judges)

Advisory Opinion 05-02

Financial arrangement with former law firm

Advisory Opinion 05-06

A retired judge may be pictured in a robe on the jacket of a book he or she authored on being a judge

## **NEW JUDGES**

Advisory Opinion 05-02

Financial arrangement with former law firm

## **PART-TIME AND TEMPORARY JUDGES - PRACTICE OF LAW**

Advisory Opinion 93-02

(part-time judge representing an individual where the opposing party owes an outstanding fine in the judge's court)

Advisory Opinion 97-04

(part-time judge representing city in which judge sits)

Advisory Opinion 98-02

(representation of criminal defendant)

Advisory Opinion 98-03

(representation of criminal defendant)

Advisory Opinion 99-02

(serving as attorney for county)

<u>Advisory Opinion 02-09</u>	(judge, in his private law practice, representing criminal defendants opposing prosecuting attorneys who represent the State in other proceedings in which he presides)
<u>Advisory Opinion 04-07</u>	(managing attorney of legal aid office)
<u>Advisory Opinion 05-03</u>	Part-time city court judge may serve as a city attorney in another city but may not serve as a county attorney for the county in which the city is located
<u>Advisory Opinion 05-04</u>	Part-time district court judge may not represent criminal defendants on felony charges in the county's circuit courts

**PERSONAL FINANCES, THE PRACTICE OF LAW, AND PART-TIME JUDGES**

<u>Advisory Opinion 91-04-02</u>	(service on bank's board of directors)
<u>Advisory Opinion 91-04-04</u>	(service on bank's board of directors)
<u>Advisory Opinion 96-09</u>	(practicing law after being selected for the bench; payment for work done before going on bench)
<u>Advisory Opinion 05-03</u>	Part-time city court judge may serve as a city attorney in another city but may not serve as a county attorney for the county in which the city is located

**PERSONAL CONDUCT; ASSOCIATION; SPEAKING, WRITING AND TEACHING**

<u>Advisory Opinion 91-06</u>	(press release about redistricting decision)
<u>Advisory Opinion 93-07</u>	(surplus campaign funds)
<u>Advisory Opinion 94-01</u>	(public stand on bond issue regarding new courthouse and jail)
<u>Advisory Opinion 94-04</u>	(public stand on proposed constitutional amendment)

<u>Advisory Opinion 95-01</u>	(letters of recommendation)
<u>Advisory Opinion 95-05</u>	(teaching course of paralegals)
<u>Advisory Opinion 96-03</u>	(likeness being used in painting)
<u>Advisory Opinion 96-04</u>	(authoring book)
<u>Advisory Opinion 97-01</u>	(letter of recommendation for prospective federal judicial candidate)
<u>Advisory Opinion 98-06</u>	(serving on jury)
<u>Advisory Opinion 99-06</u>	(participating in forum of Roscoe Pound Foundation)
<u>Advisory Opinion 00-02</u>	(responding to media reports critical of court based on testimony from completed federal trial)
<u>Advisory Opinion 00-04</u>	(board of country club)
<u>Advisory Opinion 00-06</u>	(teaching evening courses at state university and receive compensation)
<u>Advisory Opinion 01-01</u>	(serving on the board of directors for legal assistants at a state community college)
<u>Advisory Opinion 01-02</u>	(judge may not be a judicial member fellow, or supporter of the Association of Trial Lawyers of America (ATLA), but may receive free ATLA publications, accept complimentary registration at ATLA conventions, and speak at ATLA programs)
<u>Advisory Opinion 05-06</u>	A retired judge may be pictured in a robe on the jacket of a book he or she authored on being a judge

**POLITICAL ACTIVITY- NOT RELATED TO JUDGE'S OWN POLITICAL CAMPAIGN**

<u>Advisory Opinion 92-05</u>	(judge may attend inaugural ball for president)
<u>Advisory Opinion 94-01</u>	(public stand on bond issue regarding new courthouse and jail)
<u>Advisory Opinion 94-04</u>	(public stand on proposed constitutional amendment)
<u>Advisory Opinion 94-06</u>	(retired judge participating in political campaign)
<u>Advisory Opinion 01-03</u>	(use of judicial letterhead by a municipal judge to correspond with supreme court, bar association and general assembly regarding implementation of a constitutional amendment as it pertains to municipal courts and judges)
<u>Advisory Opinion 03-04</u>	(judicial council hosting dinner for legislators)
<u>Advisory Opinion 06-01</u>	The Arkansas Judicial Council should not make contributions to a candidate for political office

**POLITICS, ELECTIONS, AND CAMPAIGN FINANCE**

<u>Advisory Opinion 93-04</u>	(surplus campaign funds)
<u>Advisory Opinion 95-04</u>	(campaign conduct by candidate and committee)
<u>Advisory Opinion 96-02</u>	(time limits on soliciting campaign contributions for candidate unopposed in primary and general election)
<u>Advisory Opinion 01-05</u>	(provision of the Code of Judicial Conduct

prohibiting judicial campaigns fund-raising prior to 180 days before a primary election applies even though a recent constitutional amendment moved the general judicial election from November to May)

Advisory Opinion 06-01

The Arkansas Judicial Council should not make contributions to a candidate for political office

### **RECOMMENDATIONS-ACTING AS A WITNESS**

Advisory Opinion 04-06

(affidavit about actions when an attorney representing a former client)

Advisory Opinion 05-01

May not write letter on behalf of a life long friend to a sentencing judge

### **RETIRED JUDGES**

Advisory Opinion 05-06

A retired judge may be pictured in a robe on the jacket of a book he or she authored on being a judge

Advisory Opinion 05-07

A retired judge may be the subject of a “roast” that is a fundraiser. But a sitting judge may not be a “roaster” even if judge’s name is not listed on the program. Nothing should suggest that the court or court officials are promoting the event.

### **SENTENCING**

Advisory Opinion 00-08

(sentencing to jail where conditions are illegal or unconscionable)

### **SOCIAL EVENTS**

Advisory Opinion 05-07

A retired judge may be the subject of a “roast” that is a fundraiser. But a sitting judge may not be a “roaster” even if judge’s name is not listed on the program. Nothing should suggest that the court or court officials are promoting the event.

## **SPECIALITY BAR ASSOCIATIONS**

Advisory Opinion 99-04

(complimentary membership in trial lawyers association)

Advisory Opinion 99-07

(membership in ATLA)

Advisory Opinion 01-02

(judge may not be a judicial member fellow, or supporter of the Association of Trial Lawyers of America (ATLA), but may receive free ATLA publications, accept complimentary registration at ATLA conventions, and speak at ATLA programs)

## **STAFF- CHARITABLE ACTIVITIES**

Advisory Opinion 05-07

A retired judge may be the subject of a “roast” that is a fund-raiser for the Northeast Arkansas Legal Support Professionals, but a sitting judge may not be a “roaster” even if the amount of money raised may be barely above expenses and the names of sitting judges should not be included in the program. The association may promote the event and the fund raising, but those members who are trial court assistants for judges should take special precaution to avoid any suggestion that the court or court officials are promoting the event.

## **TESTIFYING AS A WITNESS**

Advisory Opinion 00-07

(submitting affidavit in lieu of live testimony)

Advisory Opinion 01-04

(judge subpoenaed to testify in a perjury trial about the defendant’s testimony in a criminal trial over which the judge presided should abide by the law and the Code of Judicial Conduct)

## **TRANSITION TO BENCH**

Advisory Opinion 96-05

(deputy prosecuting attorney continuing to serve until he or she takes office)

Advisory Opinion 96-09

(practicing law after being selected for the bench; payment for work done before going on bench)

Advisory Opinion 96-10

(judge-elect serving on parks and tourism commission)

Advisory Opinion 00-11

(municipal judge-elect serving as city prosecutor)

Advisory Opinion 05-02

Financial arrangement with former law firm