STATE OF ARKANSAS

Judicial Discipline and Disability Commission

Judicial Ethics Advisory Committee

2012

ANNUAL REPORTS

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FROM THE CHAIR

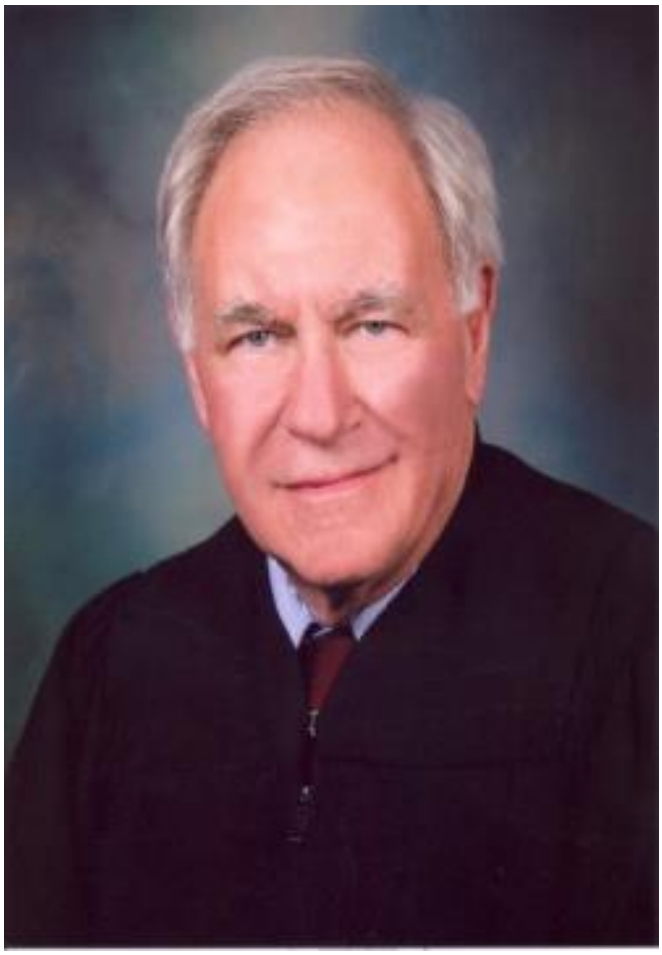
The Judicial Discipline and Disability Commission continued its function of receiving and investigating complaints concerning the ethical conduct or disability of judges. This was done while maintaining the necessary balance between judicial independence and public accountability. Judges must be free to act in good faith without concern or fear that their decisions will subject them to disciplinary investigation. At the same time, they are held accountable for their ethical conduct both in and out of the courthouse.

The annual report will assist the public and the judiciary in understanding the ethical standards for proper judicial conduct by providing a clear explanation of the operation of the Commission and setting out the number and nature of complaints the Commission has considered in the past year. An analysis of the data for 2012 show that the vast majority of Arkansas judges seek to, and do, comply with the Code of Judicial Conduct.

Arkansans can take pride in our judges, the judicial system and the high ethical standards which have become its tradition.

Judge William Storey, Chairman

Arkansas Judicial Discipline and Disability Commission



CHAIRMAN (2011-2012)
JUDGE WILLIAM STOREY
Fayetteville, Arkansas

WILLIAM A. STOREY - (JUDGE MEMBER-CHAIR July 1, 2011-June 30, 2012) has been a Circuit Judge in the Fourth Judicial Circuit since 1991. He was a Circuit/Chancery Judge in the Fourth Judicial Circuit, Judicial Division from 1989 - 1991. Judge Storey is a 1965 graduate of the University of Arkansas at Fayetteville with a B.A. in history and government. He received his law degree from the University of Arkansas Law School in Fayetteville in 1968. Judge Storey practiced general law in Fayetteville from 1968 until 1989, when he began his judgeship as Circuit/Chancery Judge. He served on the Administrative Board of the Central United Methodist Church, on the Salvation Army Advisory Board, as Chair of the Washington County Election Commission, and a member of the Arkansas Judicial Council Board of Directors. Judge Storey was also a lecturer at the University of Arkansas Law School. He is a member of the Washington County Bar Association, where he served as President in 1977, the Arkansas Bar Association and the American Board of Trial Advocates. Judge Storey was appointed to the Judicial Discipline and Disability Commission by the Arkansas Supreme Court in May, 2000.

REV. MAXINE ALLEN - (PUBLIC ALTERNATE MEMBER) is the first African American woman to be Ordained Elder in The United Methodist Church in Arkansas. The daughter of Charles and Ruby Wilkerson, she attended and graduated from Little Rock public schools. Allen holds a degree in Philosophy and Religion from Philander Smith College, Little Rock, Arkansas; and a Master of Divinity Degree from Interdenominational Theological Center's Gammon Seminary (UM), Atlanta, Georgia. Currently she serves as the Director of the Wesley Foundation at UALR and Minister of Ethnic Ministries for The Arkansas Conference of The United Methodist Church. She has served as a pastor, a teacher of religion, a mentor of young clergy, and participated in mission trips to Haiti, Jamaica, the Democratic Republic of the Congo and Russia. She has two adult children and a granddaughter. She is an advocate for educational opportunity for all, women's and children's issues, and has served on the Minority Teacher Recruitment Council as an appointee of Governor Huckabee, Rev. Allen was appointed to the Judicial Discipline and Disability Commission in 2007 by Governor Mike Beebe.

H. WILLIAM ALLEN - (ATTORNEY MEMBER) is an attorney in Little Rock and owner of Allen Law Firm, P.C. He attended Brinkley, Arkansas public schools before earning a B.A. degree in 1966 from Rhodes College in Memphis, Tennessee. He obtained his J.D. from Washington University in St. Louis, Missouri in 1969. He served as an Assistant U.S. Attorney in Chicago before returning to Arkansas to practice law in 1971. He has served as president of the Pulaski County Bar Association and has received its Outstanding Lawyer Award (1985) and its Pro Bono Lawyer of the Year Award.(2006). He has been chair of both the Arkansas and American Bar Association Committees on Ethics, and served on the Board of Governors of the American Bar Association, chairing its Finance Committee in 2005-2006. He is a former member of the board of the American Judicature Society. He was the Eighth Circuit member of the American Bar's Standing Committee on the Federal Judiciary (1995-2001), President of the American Bar Foundation (1988-90) and Vice-President and member of the board of Central Arkansas Legal Services (1995-2000). He is an Elder at Second Presbyterian Church in Little Rock and former Vice-President and member of the board of Wildwood Center for the Performing Arts. Mr. Allen was appointed to the Commission in 2007 by Lieutenant Governor Bill Halter.

MARY H. BASSETT – (PUBLIC ALTERNATE MEMBER) is Co-Owner and Executive Broker of Bassett Mix and Associates, Inc. Real Estate Company in Fayetteville. She has been licensed as a realtor since 1984. From February 2004 until March 2005, she has served as a chairman of the Arkansas Real Estate Commission. Mary was appointed to two 3 year terms and as a member of the Association of Real Estate License Law Officials (ARELLO) was elected vice-chairman of the Commission Training Board. She has served in numerous real estate related positions including past President and Realtor of the Year for the Fayetteville Board of Realtors, chairman of Risk Reduction Committee for AR Realtors Assoc. (ARA), ARA Director-at-Large, ARA Education Committee, ARA Professional Standards Committee, ARA Nominating Committee, taught statewide education seminars on real estate ethics as sponsored by ARA, and was chosen six times to represent the State of Arkansas in development and item writing of the Arkansas and National Real Estate exams thru ASI and Promissor. Realtor designations that Mary holds are Certified Residential Specialist (CRS), Graduate of the Realtor Institute (GRI), and ARA Life Member Multi-Million Dollar Club. Mary is married to Hank Broyles and has two children, John Bassett and Jennifer Bassett-Stumaugh.

ROGER CARTER – (PUBLIC MEMBER) is a native of Ozark, Arkansas and has lived in Hot Springs since 1966. He served in the U.S. Navy during the Korean War. He then graduated from the University of Arkansas, Fayetteville, with a B.S. degree. He worked as Staff Assistant to Harry L. Oswald, Arkansas State Electric Cooperatives, and in 1973 purchased Aluminum Arts of Arkansas. Although semi-retired, he is still active in the Company. He is president of the Shepherd Center of Hot Springs and on the board of the Salvation Army. He is Vice-Chairman of Community Counseling Services; a member and past President of Oaklawn Rotary; an active member of Chamber of Commerce Ambassadors, and last year was nominated for Man of the Year. Mr. Carter and his wife, Jeanie, are members of St. Luke's Episcopal Church, Hot Springs, Arkansas, where he twice served on the Vestry.

CHARLES F. (CHUCK) DEARMAN, JR. – (PUBLIC MEMBER) is a lifelong resident of Monticello, Arkansas. He is married to the former Cindy Eubanks of Monticello and has two children, Haley a graduate of UA Fayetteville and Chad a junior at UA Fayetteville. Mr. Dearman is a 4th generation owner of Stephenson-Dearman Funeral Home, Inc. of Monticello. He is a member of National Funeral Directors Assoc., Past President of the Arkansas Funeral Directors Assoc., Past President of the Southeast Arkansas Funeral Directors Assoc. He is also a commercial real estate developer. Mr. Dearman is a member of Selected Funeral & Life Insurance Company Board of Directors located in Hot Springs, is a past member of the Monticello School Board and has served on the Monticello School Board for 12 years (two terms as President), He is a member of First United Methodist Church of Monticello, having served as Administrative Board Member and Chairman of Pastor Parish Relations Committee, Mr. Dearman is a former member of Monticello/Drew County Chamber of Commerce Board of Directors and a former President of the Drew County United Way, He currently serves as a member of Union Bank Board of Directors. Chuck Dearman was appointed to the Judicial Discipline and Disability Commission by Governor Mike Beebe in 2007. Mr. Dearman received his undergraduate BS degree in Accounting from the University of Arkansas at Monticello and received his MBA in Accounting from Louisiana Tech University.

JOHN C. EVERETT - (ATTORNEY MEMBER-VICE CHAIR) is an attorney living in Fayetteville, Arkansas. He graduated from Arkansas Polytechnic College in Russellville, Arkansas with a B.A. degree in political science and economics. He received his Juris Doctorate from the University of Arkansas in 1970. He is a member of the Washington County Bar Association, the American Board of Trial Advocates, where he has previously served on the National Board of Directors, and is a Fellow in the American College of Trial Lawyers. He was on active duty in the United States Navy from 1970 through 1974 as a member of the Judge Advocate General Corps. He was a member of the Prairie Grove School Board for approximately eight (8) years and is a member of First Presbyterian Church of Prairie Grove, Arkansas. He was appointed to the Judicial Discipline and Disability Commission in August 2000 by Lieutenant Governor Winthrop P. Rockefeller. Mr. Everett was reappointed to the Commission in 2007 by Speaker of the House Benny Petrus replacing Attorney Michael Gott.

DON E. GLOVER - (JUDGE ALTERNATE MEMBER) - is a native of Dermott, Arkansas where he currently resides. He attended AM&N College, now UAPB in Pine Bluff, Arkansas. He has served 2 years in the Peace Corp. in Venezuela, South America and is a veteran of the Vietnam War. He received his law degree from Howard University School of Law in Washington, D.C. He is a member of the Arkansas and Louisiana Bars. He was engaged in private practice for many years and served as Dermott Municipal Judge for 6 years before he was elected to the bench as circuit judge in the 10 Judicial District in 1993. He and his wife Dorothy, are the parents of Dorcedar, a graduate of the University of Arkansas at Fayetteville and Doven, a junior, at the University of Arkansas at Fayetteville.

REGINALD DUANE HAMMAN (PUBLIC MEMBER) - is a graduate of the University of the Oklahoma. He is a deacon and Sunday School teacher at Park Hill Baptist Church. Mr. Hamman is currently a member of the Board of Directors of Family Council. In 1990 he served as Metro Chairman for the Christian Business Men's Committee. From 1966 to 1970 he served in the United States Air Force as a cartographer with a top secret clearance. During 1987-1988, he was employed by Worldwide Pictures, the Billy Graham Film Ministry. He also served as Vice President, DAD, the Family Shepherd. Mr. Hamman was appointed to the Judicial Discipline and Disability Commission in December 1997 by Governor Mike Huckabee, and was reappointed in June 2000 for a second term. Mr. Hamman and his wife Glenda have two sons, Kevin of Little Rock and Kyle and his wife Shannon of Chicago. Mr. Hamman was reappointed to the Commission by Governor Mike Huckabee in 2006.

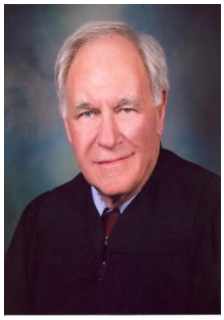
JUDY SIMMONS HENRY – (ATTORNEY ALTERNATE MEMBER) is a partner with the law firm of Wright, Lindsey & Jennings LLP where she chairs the business litigation practice. She was born in Texarkana, Arkansas. She has a B.S.E. from the University of Central Arkansas and an M.E. from the University of Arkansas. Mrs. Henry also received her J.D. from the University of Arkansas in 1984. She was an intern for U.S. Senator David Pryor, Washington, D.C., and a law clerk for U.S. Bankruptcy Court for the Eastern and Western Districts of Arkansas, Judge James G. Mixon. Her affiliations include the American Bar Association (Business Law Section), Arkansas Bar Association (Debtor-Creditor Rights Committee, Chair 2002-2003; Business Law Committee, Chair 2005); Pulaski County Bar Association, Debtor-Creditor Bar Association of Central Arkansas (Vice President/President-Elect 1990, President 1991) . She is also an NFLPA certified contract advisor representing eligible collegiate football players. Ms. Henry serves as faculty member of Arkansas Professional Practicum 2005-2006. She has served as a Special Justice to Arkansas Supreme Court. Ms. Henry is a member of the Baptist Health Board of Trustees, former board member of The Children's Museum of Arkansas, active in Volunteers in Public schools and former member of Arkansas Children's Hospital Committee for the Future. She is author of the publication, Recovery of Creditors' Costs From the Bankruptcy Estate: Reasonable, Necessary, and...Uncertain?; editor/writer, Debtor-Creditor Bar Association of Central Arkansas Newsletter from 1985 - 1999; contributing editor, Arkansas Bankruptcy handbook; co-author, "Don't Let Your Bankruptcy Cases Bankrupt You–Keep on Top of Bankruptcy Cases," The Community Connection, Arkansas Community Bankers Association. Ms. Henry was appointed to this Commission by Attorney General Mark Pryor in 2001. Honors include The Best Lawyers in America (2005 -2010); Outstanding Lawyer in America (2003-2005); recognized as Arkansas Best of CLE by the Arkansas Bar Association (1998-2008); recognized as Super Lawyer for Southern Region of the United States in field of business litigation and recognized as one of the Top 50 lawyers in Arkansas for 2006; and Chambers USA, 2009 and 2010.

JERRY LARKOWSKI – (ATTORNEY ALTERNATE MEMBER) is a native of Chicago, Illinois, and he has lived in Arkansas since 1976. Jerry attended Catholic High School for Boys in Little Rock. In 1984, he graduated *magna cum laude*, ranked 6th in his class, out of 188 students. Jerry earned a B.A. in history at Hendrix College in Conway in 1988, including some study overseas at the University of London, Birkbeck College. He then attended the UALR School of Law and earned his J.D. in May 1991. While at the law school, he tutored elementary students from the Granite Mountain projects at the Watershed Program on Wednesday nights. This work earned him the 1989 Governor's Volunteer Excellence Award from then-Governor Bill Clinton. Since receiving his law license in August of 1991, Jerry served Pulaski County as a deputy prosecutor for four years. Jerry started his own practice fifteen years ago and has sat as a special judge in eight of the circuit and district courts in Pulaski County. Following the problems with elections in Pulaski County during 2002, he was appointed to the Pulaski County Election Commission in 2003, where he served as its Chairman for 2 1/2 years. Jerry was elected president of the Arkansas Association of Criminal Defense Lawyers in 2002, the third-largest statewide bar association. He is a tenured delegate for the Arkansas Bar Association and is also a member of the Pulaski County Bar Association. Since 2003, Jerry has been a volunteer in cub scouting, currently leading Pack 7 as cub master. Jerry lives with his two sons in the Pleasant Hill / Hall High area.

DAVID N. LASER – (JUDGE ALTERNATE MEMBER) lives in Jonesboro, and is a circuit Judge for Division 9, 2nd Judicial Circuit. The Arkansas Supreme Court appointed him to the Judicial Discipline and Disability Commission in December 2002 to complete the term of Judge John Plegge, who retired December 31, 2002. Judge Laser received his B.A. and J.D. degrees from the University of Arkansas at Fayetteville. He practiced law with W. K. Grubbs, Sr., in Eudora, Arkansas, and with Bon McCourtney & Associates in Jonesboro before joining the firm of Frierson, Walker, Snellgrove and Laser where he practiced from 1968 until elected judge in 1998. He is a member of the Arlap Commission and served on the Jonesboro School Board. Judge Laser is a member of the American Bar Association, past delegate to the Arkansas Bar Association, and served as President of the Craighead County Bar Association and of the Arkansas Chapter of the American Board of Trial Advocates.

STEPHEN ROUTON – (JUDGE ALTERNATE MEMBER) has served as the St. Francis County District Court Judge in Forrest City since 1991. He earned a B.A. degree in 1976 from Hendrix College. He attended University of Arkansas Fayetteville School of Law, graduated and was admitted to the Arkansas Bar in 1979. Judge Routon has been in private law practice in Forrest City since 1979 and has two sons, Stephen, age 21 and David, age 18. Judge Routon was appointed to the Commission by the Arkansas Supreme Court in 2002 to fill the unexpired term of alternate member Judge Leon Jamison.

DERRICK W. SMITH (ATTORNEY MEMBER) is an attorney in Little Rock, Arkansas. A native of Marianna, Arkansas, he received his B.A. degree in 1997 from Hendrix College in Conway, Arkansas. Mr. Smith received his Juris Doctorate with honors from the University of Arkansas at Little Rock William H. Bowen School of Law in 2000 where he served as Assistant Executive Editor of the Law Journal and President of the Student Bar Association. After serving as a law clerk for the Honorable Olly Neal of the Arkansas Court of Appeals, Mr. Smith joined the law firm of Mitchell, Williams, Selig, Gates & Woodyard, P.L.L.C. He is a member of St. Mark Baptist Church and serves on the boards of Youth Home, Inc. and 100 Black Men of Greater Little Rock. He is also vice chairperson of the Hendrix College Alumni Association Board of Governors and Secretary/Treasurer of the Young Lawyers Section of the Arkansas Bar Association.



WILLIAM A. STOREY - (JUDGE MEMBER-CHAIR as of July 1, 2011) has been a Circuit Judge in the Fourth Judicial Circuit since 1991. He was a Circuit/Chancery Judge in the Fourth Judicial Circuit, Judicial Division from 1989 - 1991. Judge Storey is a 1965 graduate of the University of Arkansas at Fayetteville with a B.A. in history and government. He received his law degree from the University of Arkansas Law School in Fayetteville in 1968. Judge Storey practiced general law in Fayetteville from 1968 until 1989, when he began his judgeship as Circuit/Chancery Judge. He served on the Administrative Board of the Central United Methodist Church, on the Salvation Army Advisory Board, as Chair of the Washington County Election Commission, and a member of the Arkansas Judicial Council Board of Directors. Judge Storey was also a lecturer at the University of Arkansas Law School. He is a member of the Washington County Bar Association, where he served as President in 1977, the Arkansas Bar Association and the American Board of Trial Advocates. Judge Storey was appointed to the Judicial Discipline and Disability Commission by the Arkansas Supreme Court in May, 2000.

DR. CHERYL FELDER-STUART - (PUBLIC ALTERNATE MEMBER), is an Arkansas Gold Star Mom graduated salutatorian of her high school class where she and two of her cousins integrated the public schools in Okolona, AR, she received her BS Degree from Arkansas Baptist College, MSE Degree from Ouachita Baptist University and her PhD in Public Administration from Century University. A licensed Social Worker she is retired for the State of Arkansas Department of Human Services, and currently serves as Founder and CEO of the CPT Arthur "BO" Felder Service Center as an advocate for soldiers and dependents counseling in separation, grief, death and dying. She was appointed as a chartered member of the Arkansas Early Childhood Commission by Governor Clinton July, 1989 appointed for a second term which expired in 1995 by Governor Tucker, the past President of the Arkansas Human Services Employees Association, and past president of miller/Lafayette county NAACP Branch." Currently she serves as the president of the Lafayette-Miller District Women's Auxiliary, on the Lafayette County Library Board, Director of the Youth Department of the Arkansas Congress of Christian Education, the Director of the Young Adult Division of the National Congress of Christian Education and as the President of her Alumnae Chapter of Delta Sigma Theta Sorority, Inc. She spends most of her time writing and designing workshops modules, teaching in the USA, Germany and the Dominican of the Republic. She has been resented in Who's Who in the National Baptist Convention USA, INC, received a Honorary Doctorate of Humane Letters, the 2005 Harriett Tubman Award, 2010 outstanding Community Award and the 2011 Arkansas Council of Deliberation Gold Eagle. A mother, grandmother, member of the St. James Baptist Church and the order of Eastern Star.

REX M. TERRY- (ATTORNEY ALTERNATE MEMBER) - Rex Terry is a member of Hardin, Jesson & Terry, PLC, in Fort Smith. He is engaged in general practice, including commercial, transportation, and oil and gas litigation, transactional and probate matters. He graduated with a BA degree in History from Ouachita University in 1973, and earned his Juris Doctor degree from the University of Arkansas, Fayetteville, in 1976, where he was Editor-in-Chief of the Arkansas Law Review. He is a Fellow of the Arkansas Bar Foundation, a member of the Sebastian County, Arkansas, and American Bar Associations, and a Fellow of the American College of Trial Lawyers. He has served as a Special Justice on the Arkansas Supreme Court, and as member and chair of its continuing Legal Education Board. Active in the community, Terry has served on the Board of Directors of the Western Arkansas Counseling and Guidance Center, Advisory Board of Sparks Regional Medical Center, and as a member of the Fort Smith Civil Service Commission. He has served as a member of the Sebastian County Board of Election Commissioners, and is currently a Commissioner of the Fort Smith Housing Authority. He is a member of St. John's Episcopal Church. He was appointed to the Judicial Discipline and Disability Commission by Lieutenant Governor Mark Darr.

JOYCE WILLIAMS WARREN (JUDGE MEMBER) Joyce Elise Williams Warren is the first black person ever elected to a state level trial court judgeship in the State of Arkansas. She currently serves as 10th Division Circuit Judge for the 6th Judicial District, which comprises Pulaski and Perry Counties, Arkansas, where she presides over juvenile and domestic relations cases. Educational preparation for Judge Warren's career was attained at the University of Arkansas at Little Rock where Judge Warren received a B.A. In Sociology and Anthropology. She was the first black female graduate of the University of Arkansas at Little Rock School of Law, completing her Juris Doctor Degree in 1976. She has done graduate work at the Summer College for Juvenile and Family Court Judges at the University of Nevada at Reno. In 2002, Judge Warren earned a Diploma of Judicial Skills through the American Academy of Judicial Education. The Arkansas Supreme Court appointed Judge Warren to a six year term as an alternate member of the Arkansas Judicial Discipline and Disability Commission in June of 2006. She is a member of the American, National, Arkansas and Pulaski County Bar Associations; the National Council of Juvenile and Family Court Judges; the National Association of Women Judges; the Arkansas Judicial Council; the Arkansas Association of Women Lawyers; and the W. Harold Flowers Law Society. She is married to James M. Warren, Executive Director for Support Services at the Pulaski County Special School District. They have three adult sons.

CHRIS E WILLIAMS - (JUDGE MEMBER) lives in Malvern and was a Municipal Court Judge for the City of Malvern from1992 through December 31, 2002. In 2002, Judge Williams was elected to become Circuit Judge of the 7th Judicial District, Division I, beginning January 2003, and was also appointed by the Arkansas Supreme Court to the Arkansas Court Automation Project Committee. Judge Williams received his B.A. degree from Henderson State University and J.D. degree from the University of Arkansas at Fayetteville. He had a law practice in Malvern from 1981 to 1992. He is past President of the American Judges Association and a member of the American Bar Association, American Trial Lawyers Association, Arkansas Bar Association, and the Arkansas Trial Lawyers Association. He is a member of the First United Methodist Church where he is the Chair of the Administrative Board. He has served in the past as Chair of the Board of Trustees and the Pastor Parish Committee. He is a member of the Gideons and Lion’s Club. Judge Williams served as Juvenile Referee from 1982-

1986, City Councilman from 1984-1986 and City Attorney from 1986-1992. The Arkansas Supreme Court appointed Judge Williams to the Judicial Discipline and Disability Commission in May 2001 was elected Chairman of the Commission in 2012.

As of July 1, 2012

KIRK JOHNSON (JUDGE MEMBER—VICE CHAIRMAN) - is Circuit Judge for Division Three of the Eighth Judicial Circuit, South, comprised of Miller and Lafayette Counties in Southwest Arkansas. He is licensed member of the bar for the State of Arkansas and formerly licensed in the State of Texas. He graduated from the University of Arkansas at Fayetteville in 1971 with a bachelor's degree in Business Administration and from the University of Arkansas School of Law in Fayetteville in 1974 with a Juris Doctor degree. He is the former President of the Texarkana Bar Association. Judge Johnson was Deputy Prosecuting Attorney for Miller County from 1977-1982. He served as Prosecuting Attorney for the Eight Judicial District from 1983-1986 which was comprised of Miller, Lafayette, Nevada and Hempstead Counties. He served as District Judge for Texarkana, Arkansas and Miller County, Arkansas from 1991-2002. He was elected to the Board of Directors for the District Judges Association and served as Secretary, Treasurer and later as 1st Vice President. He currently serves as the Chairman of the Alternate Dispute Resolution Committee for the Arkansas Judicial Council and was appointed by the Arkansas Supreme Court to the 2005 Committee for the revision of the Arkansas Model Criminal Jury Instructions and reappointed in 2009. He was appointed by Governor Mike Huckabee to serve on the Arkansas Crime Laboratory Board in 1998 thru 2005. His private practice has included the general practice of law but has also served in the capacity of counsel for both Plaintiffs and Defendants in multi-party litigation. Judge Johnson has presided over a number of nationwide class actions cases since taking the Circuit Court bench in 2003. Judge Johnson is currently serving on the Judicial Disciplinary Committee since his appointment in 2012.Judge Johnson was elected Vice-Chair of the Judicial Discipline and Disability Commission in July 2013.

TOM FOWLER (ATTORNEY MEMBER)

SAM SEAMANS – (PUBLIC MEMBER) The Rt. Rev. Sam Seamans is a retired Police Officer of 25 years, and is also a Bishop in the Reformed Episcopal Church, and he serves as the Rector of St. Thomas Anglican Church in Mountain Home, AR. Originally from Louisiana, Sam earned his bachelor's degree in Liberal Arts from the University of Southwestern Louisiana in 1990. While in college he worked for the USL University Police Department and attended Police Academy in 1986. After graduation he moved to Mountain Home where he continued his law enforcement career, retiring as a Lieutenant in 2011. He now serves the MHPD part time in the Code Enforcement Division.

While working in full-time law enforcement, Sam was active in ministry and was ordained a deacon in the Episcopal Diocese of Arkansas in 2001. During that formation period he earned a Master of Ministry degree from Trinity Theological Seminary in Newburgh, IN. He was ordained an Anglican priest in 2005 and was elected and consecrated as a bishop in 2009. He currently serves as Vice President of the Board of Foreign Missions in the Reformed Episcopal Church, and also sits on the Board of the Anglican School of Ministry, an Anglican seminary in Little Rock, AR. Sam is also an Emergency Medical Technician, a licensed Private Pilot, and a long distance cyclist. He is active in fund raising for Special Olympics Arkansas through the Torch Run and Polar Plunge drives. He is married to a native of the Czech Republic who is a Physical Therapist, and they have two children.

CINDY THYER - (JUDGE ALTERNATE MEMBER) Judge Cindy Thyer received a Bachelor's degree in Business Administration from the University of Arkansas at Little Rock in 1992 and received her Juris Doctorate from the University of Arkansas at Fayetteville in 1995. After practicing law in a general practice focusing on domestic relations litigation, Judge Thyer was appointed circuit judge by Governor Mike Huckabee in 2005 and again by Governor Mike Beebe in 2007. She was elected to her first judicial term in 2008. She has been active in the Arkansas Bar Association for many years by serving in the House of Delegates and on the Board of Governors, and by serving as Chair of the Young Lawyers Section and Chair of the Board of Governors. She has also been an active member of the Association's Legislation Committee and the Arkansas Supreme Court's Jury Instruction Committee. She is also a member of the American Law Institute and presently serves on the board of the Arkansas Bar Foundation. Presently, she is a member of the Arkansas Judicial Council's drug court and trial committees and enjoys her time on the bench hearing primarily criminal, civil and dependency-neglect cases.

BLAKE HENDRIX - (ATTORNEY ALTERNATE MEMBER) J. Blake Hendrix was born in Memphis and raised in Little Rock, where he graduated from Catholic High School for Boys. After attending the University of Texas at Austin and the University of Arkansas at Fayetteville, he received his law degree from the University of Arkansas in 1986. He then served as an Assistant Arkansas Attorney General and, for the past twenty-two years, has devoted his practice to criminal defense, specializing in complex criminal litigation, including white-collar and death penalty defense. In 2012, the Arkansas Speaker of the House appointed Mr. Hendrix to the Arkansas Judicial Discipline and Disability Commission. His awards include membership in The National Trial Lawyers Top 100 Trial Lawyers, nomination to the list of Best Lawyers in America&61666; in criminal defense each year since 2006, and Best Lawyers? ?2013 Little Rock White-Collar Lawyer of the Year.? Education J.D, University of Arkansas School of Law, Fayetteville, 1986 B.A., University of Arkansas at Fayetteville, 1983 Bar Admissions Arkansas, Federal District Courts of Arkansas, Eighth Circuit Court of Appeals Memberships and Activities Arkansas Bar Association - Criminal Law Section (past Chair), Editorial Board for Handbooks, Time Standards Task Force; Arkansas Association of Criminal Defense Lawyers - past Vice-President and Editor-in-Chief; Criminal Justice Act Panel (past national representative); National Association of Criminal Defense Lawyers; Arkansas Judicial Discipline and Disability Commission.

Arkansas Judicial Discipline and Disability Commission's

Executive Director

David A. Stewart

David A. Stewart joined the Commission on July 1, 2007. Mr. Stewart was a District Judge for the City of Little Rock from February 1994 until July 2007. He was appointed by the Governor to create a court system targeted at environmental issues. He was elected as District Judge to the Environmental Division in 1994 and re-elected in 1998 and 2004. Mr. Stewart received both his Bachelor of Business Administration degree and his Juris Doctorate from the University of Arkansas at Fayetteville. He has served as a member of the Board of Directors of the Pulaski County Bar Association, past President of the Arkansas City Attorney's Association and past President of the Arkansas District Judges Council. He is a member of the Arkansas Bar Association, Pulaski County Bar Association, American Bar Association, and Association of Judicial Disciplinary Counsel.

ANNUAL REPORTS
2012

I. INTRODUCTION

The Arkansas Judicial Discipline Commission receives and investigates complaints regarding 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.

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 special 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

On June 1, 2008, the Commission adopted New Rules of Procedure, Guidelines and Operating Policies for complaints filed.
http://www.arkansas.gov/jddc/pdf/rules_060108.pdf

All complaints shall bear the name of the complainant, unless anonymous or based upon media reports. If the complaint is anonymous or based upon a media report, it shall be signed by the Executive Director, but not sworn. If the Executive Director, an individual staff member,
Commissioner member or Alternate files, solicits, or initiates a complaint, he or she shall sign the sworn complaint.

All contacts with potential witnesses shall be in accordance with these Rules.

During initial screening of complaint, the Executive Director shall dismiss all complaints that are clearly outside of the Commission's jurisdiction. A report as to matters so dismissed shall be furnished to the Commission at its next meeting. The complainant, if any, and the judge shall be informed in writing of the dismissal.

All complaints not summarily dismissed by the Executive Director shall then be presented to an Investigation Panel. The Investigation Panel shall dismiss all complaints for which sufficient cause to proceed is not found by that Panel. If the complaint is not dismissed, the Panel shall then direct the staff to make a prompt, discreet, and confidential investigation. In no instance may the staff undertake any investigation or make any contact with anyone other than the complainant and the judge unless authorized to do so by the Investigation Panel.

Upon completion, the Panel shall review the findings from the investigation. The Panel 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 complainant and the judge shall be informed in writing of the dismissal.

If a complaint, or any portion of it, is not dismissed by the Investigation Panel following the discreet and confidential investigation, then the Panel shall notify the judge in writing immediately of those portions of the complaint that the Panel has concluded warrant further examination and attention. The judge shall receive the complaint, or any portion of the complaint that is not dismissed, along with any information prepared by or for the Panel or staff to enable the judge to adequately respond to the issues in the complaint. The judge shall be invited to respond to each of the issues from the complaint that the Panel has identified as possible violations of the Arkansas Code of Judicial Conduct.

The time for the judge to respond shall be within 30 days unless shortened or enlarged by the Investigation Panel for good cause.

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.

If the Commission finds it necessary to file a formal statement of allegations against a judge and to proceed to a hearing, the statement of allegations 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.

The Commission shall dispose of cases in one of the following ways:

(1) If it finds that there has been no misconduct, the complaint shall be dismissed and the Director shall send the judge and each complainant notice of dismissal;

(2) If it finds that there has been conduct that is cause for discipline but for which an admonishment 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; and

(3) If it finds there has been conduct that is cause for formal discipline, it shall be imposed as set forth in Rule 9. J. J. *Commission Decision – Formal Discipline.* The recommendation for formal 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/her retirement benefits, pursuant to Ark. Code Ann. § 248217 (1987);

(5) Reprimand or censure. K. *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.

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 the Arkansas Supreme Court, along with any dissenting or concurring opinion by any Commission member. The opinion or opinions in any case must be filed within seven (7) days of rendition.

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.

IV. CONFIDENTIALITY

All 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 7 course of an investigation relating to alleged misconduct or disability of a judge, shall be made except as stated above or as follows:

(1) Upon waiver in writing by the judge under consideration at the formal statement of allegations 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 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 allegations;

(4) Upon inquiry in connection with the assignment or recall of a retired judge to judicial duties, by 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 or 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 the State empowered to investigate, regulate or adjudicate matters incident to the legal profession; or

(7) 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.

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.

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

V. MEMBERS

The Judicial Discipline and Disability Commission is comprised of nine members and nine alternate members who are residents of Arkansas. The judicial members and alternate judicial members are appointed by the Supreme Court. The attorney members and alternate attorney members are licensed to practice in Arkansas, and are appointed by the Attorney General, the President of the Senate, and the Speaker of the House. The public members and alternate public members, who are neither attorneys nor judges, are appointed by the Governor of Arkansas. Each member and alternate member serve a six year term, and may be reappointed for a second term six year term.

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 Commission employs six (6) full time employees:

David A. Stewart	Executive Director
David Sachar	Deputy Executive Director
Elanore L. Davis	Fiscal Manager
Lance A. Womack	Investigator
Pat Sherrill	Paralegal
LaWanda Collins	Legal Assistant

VI. COMMISSION ACTIVITIES

The Judicial Discipline and Disability Commission generally meets on the third Friday of every other month at 10:00am. Commission meetings are held at 323 Center Street, 10th Floor conference room in Little Rock, Arkansas.

In 2012 the Commission received 257 complaints and sanctioned seven Arkansas judges:

2012

JUDGE	DISPOSITION DATE	DISPOSITION
Ken Harper	**10/25/2012**	**Letter of Resignation**
Sam Pope	**10/04/2012**	**Order of Suspension**
Larry Hayes	**09/26/2012**	**Letter of Retirement**
Ken Harper	**09/20/2012**	**Formal Statement of Charges**
Sam Pope	**09/07/2012**	**Letter of Suspension without Pay**
Brad Karren	**04/27/2012**	**Letter of Reprimand**
Edwin Keaton	**04/27/2012**	**Letter of Censure**

VII. BUDGET

The Judicial Discipline and Disability Commission was appropriated $665,816 for fiscal year 2012 (July 1, 2011 through June 30, 2012).

ANNUAL EXPENDITURES

Fiscal Years		2012
Regular Salaries	$	359,594
Personal Services Matching		100,085
Maintenance and General Operations:		
Operating Expense		85,267
Conference and Travel Expense		8,125
Professional Services Fees		84,665
Data Processing Services		0
Mileage and other expense for Investigator		28,080
TOTAL AMOUNT APPROPRIATED	$	665,816

VIII.COMPLAINTS, DISPOSITIONS AND WORKLOAD DATA

The Judicial Discipline & Disability Commission received 248 complaints and disposed of 257 complaints during 2012. The following information shows statistical data on the complaints processed in 2012.

Source of Complaints

Anonymous	15
Commission Motion	5
Attorneys	6
Litigants	189
Judge/Court Personnel	6
Non-litigating Individual	12
Non-litigating Family	18
Public Official	6

Complaints Filed by Court

Supreme Court	1
Court of Appeals	1
Circuit Court	180
District	70
County	0
City	0
Federal	2
Unknown	0
Other	3

Nature of Litigation

Criminal	104
Domestic Relations	59
General Civil	26
Juvenile	6
Mental Illness	0
Probate	13
Small Claims	7
Traffic	21
Non-litigation	21

Subject Matter of Allegations

Abuse of power	167
Conflict of Interest	39
Corruption/Fraud	3
Delay	46
One-sided Communication	31
Failure to Perform Duties of Office	5
Improper Election/Political Conduct	11
Improper Influence	3
Inappropriate Public Comment	1
Injudicious Temperament	62
Legal Error	36
Off the Bench Misconduct	4
Nepotism	0
Partiality/Bias/Prejudice	91
Physical/Mental Disability	3
Procedural/Administrative Irregularity	78
Sexual Misconduct	0
Use of Intoxicating Beverages Or Drugs	2
Other	0

Miscellaneous

Appearances by a judge	0
Appearances by judge's attorney	0
Probable cause determination or Formal Statement of Charges	1
Formal disciplinary hearings	0
Supreme Court Referral for Interim Suspension	0
Supreme Court granting interim Suspension of a judge	0

2012 DOCKET

A.	Complaints received during 2012	257
B.	Matters Pending December 31, 2011	32
	Total Complaints	289

C.	Disposition of Complaints:	
	Complaints dismissed	236
	Informal adjustments	0
	Public admonitions	0
	Public reprimands/censure	2
	Judicial resignation/retirement during investigation	1
	Suspension from office with pay	1
	Recommendation to Supreme Court for:	
	Suspension for misconduct	0
	Removal for misconduct	0
	Suspension for disability	0
	Removal for disability	0
	Total Dispositions	239

There were 50 open and pending matters before the Commission as of December 31, 2012.

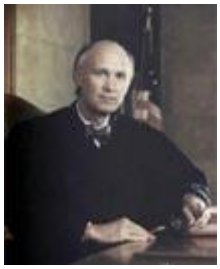
IX. JUDICIAL ETHICS ADVISORY COMMITTEE

The Judicial Ethics Advisory Committee was established on July 1, 1991. The Committee was created by the Judicial Discipline and Disability Commission. It 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 2012, 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 Judge John Cole of Sheridan, Arkansas. Professor Brill serves as Chair of the Judicial Ethics Advisory Committee. In 2012, the Committee issued no 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.

Arkansas Judicial Ethics Advisory Committee

Members who served in 2012



JUDGE EDWIN ALDERSON (JEAC MEMBER) - Judge Alderson is a graduate of the University of the South in Sewanee, Tennessee, and the University of Arkansas School of Law. He was Union County Municipal Judge in El Dorado from 1972 through 1991, and served as Special Chief Justice of the Arkansas Supreme Court in 1991. Judge Alderson is a lifetime member of the Arkansas District Judges Council, and a member of the Union County, Arkansas and the American Bar Associations. He is a Chairman of the Board of First Financial Bank and IDX, Inc. He is Executive Vice President, founder and part owner of Noalmark Broadcasting Corporation. He is a member of the First Baptist Church of El Dorado and teaches Sunday School in the Fellowship Bible Class. He is a former President and now a Director of El Dorado Fifty for the Future, Inc. He is a former member of the State Board of Law Examiners, the State Board of Education, the Arkansas Judicial Discipline and Disability Commission and Charter Member and past President of the Statewide Health Coordinating Council. Judge Alderson has served in leadership positions with the United Way of Union County, the South Arkansas Regional Health Center, the South Arkansas Symphony, El Dorado Chamber of Commerce, and the Red Cross of Union County. He is a Director of Jet Asphalt and Rock Company, Inc., First Financial Bank, IDX, Inc., and Noalmark Broadcasting Corporation. Judge Alderson has served as a member of the Arkansas Judicial Ethics Advisory Committee since its formation in July 1, 1991.

JUDGE JOHN COLE (JEAC MEMBER) – Judge Cole was licensed to practice law in 1967. He was elected Sheridan Municipal Judge in 1970; Prosecuting Attorney of the 7th Judicial District and took office January 1, 1975; Judge Cole was elected Circuit Judge of the 7th Judicial District and took office January 1, 1979; He retired after 24 years on December 31,2002. He was chairman of the Arkansas Sentencing Commission. President of the Arkansas Judicial Council. Now practicing a little law, accepting assignments by the Supreme Court, a Board member of Malvern National Bank, and Chairman of the Board of Trustees of Ouchita Technical College. Judge Cole lives in Sheridan with his wife Mary. The couple has two sons.

PROFESSOR HOWARD BRILL - (JEAC MEMBER) Professor Brill received his B.A. from Duke University and his Juris Doctorate from the University of Florida. He was editor and chief of the University of Florida Law Review, and holds the Order of the Coif. In 1979 he received his L.L.M. from the University of Arkansas. He served in the Peace Corps in Sokoto, Nigeria for two years. He served as a law clerk to Judge Robert T. Mann, District Court of Appeals, Florida, from 1970 through 1971. He began teaching at the University of Arkansas Law School in 1975, and became a full professor in 1982. He currently serves as the Vincent Foster Professor of Legal Ethics and Professional Responsibility. He has also published extensively from books, **Arkansas and Professional and Judicial Ethics** (6th Edition, 2003 M &M Press) to articles such as “The Arkansas Code of Judicial Conduct”, 35 Ark. L. Rev. 722-728 (1981). Professor Brill was awarded the Burlington Northern Award for Outstanding Teacher at the University of Arkansas in May, 1993. He was also Outstanding Teacher in 1977, was a Law Faculty nominee for Outstanding Teaching Award at the University of Arkansas in 1987 and 1992, and was awarded the distinguished title of **Professor of the Year** in 1992, 1991, 1987, and 1980. He was a member of the Governor’s Ethics Task Force 1993-1995, and the Governor’s Code of Ethics Commission 1987 to 1988. As a member of the Arkansas Bar Association, he served in leadership positions on the Civil Procedure Committee, the Professional Ethics and Grievance Committee, Special Committee for the Study of the Model Rules of Professional Conduct, Arkansas Bar Association Advisory Opinions, and the Joint Committee for the Study of the Model Rules of Judicial Conduct. Other activities and community service include coaching soccer and youth basketball, being a Sunday School teacher and a member of the Rotary Club of Fayetteville. He has served on the Fayetteville Schools Committee, and the Fayetteville Civil Service Commission. Professor Brill was appointed to the Judicial Ethics Advisory Committee in 1991, and has served as the Committee’s Chairman since 1992.

APPENDIX A

IN RE ARKANSAS CODE OF JUDICIAL CONDUCT, 313 Ark. Appx. 737 (July 23, 2009)
IN THE MATTER OF THE ARKANSAS CODE OF JUDICIAL CONDUCT
(as amended)

Supreme Court of Arkansas
Delivered July 23, 2009
PER CURIAM.

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A JUDGE SHALL UPHOLD AND PROMOTE THE INDEPENDENCE, INTEGRITY, AND IMPARTIALITY OF THE JUDICIARY, AND SHALL AVOID IMPROPRIETY AND THE APPEARANCE OF IMPROPRIETY.

RULE 1.1 Compliance with the Law
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RULE 4.5 Activities of Judges Who Become Candidates for Nonjudicial Office

PREAMBLE

[1] An independent, fair and impartial judiciary is indispensable to our system of justice. The United States legal system is based upon the principle that an independent, impartial, and competent judiciary, composed of men and women of integrity, will interpret and apply the law that governs our society. Thus, the judiciary plays a central role in preserving the principles of justice and the rule of law. Inherent in all the Rules contained in this Code are the precepts that judges, individually and collectively, must respect and honor the judicial office as a public trust and strive to maintain and enhance confidence in the legal system.

[2] Judges should maintain the dignity of judicial office at all times, and avoid both impropriety and the appearance of impropriety in their professional and personal lives. They should aspire at all times to conduct that ensures the greatest possible public confidence in their independence, impartiality, integrity, and competence.

[3] The Arkansas Code of Judicial Conduct establishes standards for the ethical conduct of judges and judicial candidates. It is not intended as an exhaustive guide for the conduct of judges and judicial candidates, who are governed in their judicial and personal conduct by general ethical standards as well as by the Code. The Code is intended, however, to provide guidance and assist judges in maintaining the

highest standards of judicial and personal conduct, and to provide a basis for regulating their conduct through disciplinary agencies.

SCOPE

[1] The Arkansas Code of Judicial Conduct consists of four Canons, numbered Rules under each Canon, and Comments that generally follow and explain each Rule. Scope and Terminology sections provide additional guidance in interpreting and applying the Code. An Application section establishes when the various Rules apply to a judge or judicial candidate.

[2] The Canons state overarching principles of judicial ethics that all judges must observe. Although a judge may be disciplined only for violating a Rule, the Canons provide important guidance in interpreting the Rules. Where a Rule contains a permissive term, such as "may" or "should," the conduct being addressed is committed to the personal and professional discretion of the judge or candidate in question, and no disciplinary action should be taken for action or inaction within the bounds of such discretion.

[3] The Comments that accompany the Rules serve two functions. First, they provide guidance regarding the purpose, meaning, and proper application of the Rules. They contain explanatory material and, in some instances, provide examples of permitted or prohibited conduct. Comments neither add to nor subtract from the binding obligations set forth in the Rules. Therefore, when a Comment contains the term "must," it does not mean that the Comment itself is binding or enforceable; it signifies that the Rule in question, properly understood, is obligatory as to the conduct at issue.

[4] Second, the Comments identify aspirational goals for judges. To implement fully the principles of this Code as articulated in the Canons, judges should strive to exceed the standards of conduct established by the Rules, holding themselves to the highest ethical standards and seeking to achieve those aspirational goals, thereby enhancing the dignity of the judicial office.

[5] The Rules of the Arkansas Code of Judicial Conduct are rules of reason that should be applied consistent with constitutional requirements, statutes, other court rules, and decisional law, and with due regard for all relevant circumstances. The Rules should not be interpreted to impinge upon the essential independence of judges in making judicial decisions.

[6] Although the black letter of the Rules is binding and enforceable, it is not contemplated that every transgression will result in the imposition of discipline. Whether discipline should be imposed should be determined through a reasonable and reasoned application of the Rules, and should depend upon factors such as the seriousness of the transgression, the facts and circumstances that existed at the time of the transgression, the extent of any pattern of improper activity, whether there have been previous violations, and the effect of the improper activity upon the judicial system or others.

[7] The Code is not designed or intended as a basis for civil or criminal liability. Neither is it intended to be the basis for litigants to seek collateral remedies against each other or to obtain tactical advantages in proceedings before a court.

TERMINOLOGY

"Aggregate," in relation to contributions for a candidate, means not only contributions in cash or in kind made directly to a candidate's campaign committee, but also all contributions made indirectly with the understanding that they will be used to support the election of a candidate or to oppose the election of the candidate's opponent. See Rules 2.11 and 4.4.

“Appropriate authority” means the authority having responsibility for initiation of disciplinary process in connection with the violation to be reported. See Rules 2.14 and 2.15.

“Contribution” means both financial and in-kind contributions, such as goods, professional or volunteer services, advertising, and other types of assistance, which, if obtained by the recipient otherwise, would require a financial expenditure. See Rules 2.11, 2.13, 3.7, 4.1, and 4.4.

“De minimis,” in the context of interests pertaining to disqualification of a judge, means an insignificant interest that could not raise a reasonable question regarding the judge’s impartiality. See Rule 2.11.

“Domestic partner” means a person with whom another person maintains a household and an intimate relationship, other than a person to whom he or she is legally married. See Rules 2.11, 2.13, 3.13, and 3.14.

“Economic interest” means ownership of more than a de minimis legal or equitable interest. Except for situations in which the judge participates in the management of such a legal or equitable interest, or the interest could be substantially affected by the outcome of a proceeding before a judge, it does not include:

(1) an interest in the individual holdings within a mutual or common investment fund;
(2) an interest in securities held by an educational, religious, charitable, fraternal, or civic organization in which the judge or the judge’s spouse, domestic partner, parent, or child serves as a director, an officer, an advisor, or other participant;
(3) a deposit in a financial institution or deposits or proprietary interests the judge may maintain as a member of a mutual savings association or credit union, or similar proprietary interests; or
(4) an interest in the issuer of government securities held by the judge.

See Rules 1.3 and 2.11.

“Fiduciary” includes relationships such as executor, administrator, trustee, or guardian. See Rules 2.11, 3.2, and 3.8.

“Impartial,” “impartiality,” and “impartially” mean absence of bias or prejudice in favor of, or against, particular parties or classes of parties, as well as maintenance of an open mind in considering issues that may come before a judge. See Canons 1, 2, and 4, and Rules 1.2, 2.2, 2.10, 2.11, 2.13, 3.1, 3.12, 3.13, 4.1, and 4.2.

“Impending matter” is a matter that is imminent or expected to occur in the near future. See Rules 2.9, 2.10, 3.13, and 4.1.

“Impropriety” includes conduct that violates the law, court rules, or provisions of this Code, and conduct that undermines a judge’s independence, integrity, or impartiality. See Canon 1 and Rule 1.2.

“Independence” means a judge’s freedom from influence or controls other than those established by law. See Canons 1 and 4, and Rules 1.2, 3.1, 3.12, 3.13, and 4.2.

“Integrity” means probity, fairness, honesty, uprightness, and soundness of character. See Canon 1 and Rule 1.2.

“Judicial candidate” means any person, including a sitting judge, who is 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, authorizes or, where permitted, engages in solicitation or acceptance of contributions or support, or is nominated for election or appointment to office. See Rules 2.11, 4.1, 4.2, and 4.4.

"Knowingly," "knowledge," "known," and "knows" mean actual knowledge of the fact in question. A person's knowledge may be inferred from circumstances. See Rules 2.11, 2.13, 2.15, 2.16, 3.6, and 4.1.

"Law" encompasses court rules as well as statutes, constitutional provisions, and decisional law. See Rules 1.1, 2.1, 2.2, 2.6, 2.7, 2.9, 3.1, 3.4, 3.9, 3.12, 3.13, 3.14, 3.15, 4.1, 4.2, 4.4, and 4.5.

"Member of the candidate's family" means a spouse, domestic partner, child, grandchild, parent, grandparent, or other relative or person with whom the candidate maintains a close familial relationship.

"Member of the judge's family" means a spouse, domestic partner, child, grandchild, parent, grandparent, or other relative or person with whom the judge maintains a close familial relationship. See Rules 3.7, 3.8, 3.10, and 3.11.

"Member of a judge's family residing in the judge's household" means any relative of a judge by blood or marriage, or a person treated by a judge as a member of the judge's family, who resides in the judge's household. See Rules 2.11 and 3.13.

"Nonpublic information" means information that is not available to the public. Nonpublic information may include, but is not limited to, information that is sealed by statute or court order or impounded or communicated in camera, and information offered in grand jury proceedings, presentencing reports, dependency cases, or psychiatric reports. See Rule 3.5.

"Pending matter" is a matter that has commenced. A matter continues to be pending through any appellate process until final disposition. See Rules 2.9, 2.10, 3.13, and 4.1.

"Personally solicit" means a direct request made by a judge or a judicial candidate for financial support or in-kind services, whether made by letter, telephone, or any other means of communication. See Rule 4.1.

"Political organization" means a political party or other group sponsored by or affiliated with a political party or candidate, the principal purpose of which is to further the election or appointment of candidates for political office. For purposes of this Code, the term does not include a judicial candidate's campaign committee created as authorized by Rule 4.4. See Rules 4.1 and 4.2.

"Public election" includes primary and general elections. See Rules 4.2 and 4.4.

"Third degree of relationship" includes the following persons: great-grandparent, grandparent, parent, uncle, aunt, brother, sister, child, grandchild, great-grandchild, nephew, and niece. See Rule 2.11.

COMMENT

[1] Regarding the term "judicial candidate," in Arkansas, there are no retention elections, and selection by appointment arises in limited situations, such as to fill a newly created judgeship or a vacancy.

APPLICATION

The Application section establishes when the various Rules apply to a judge or judicial candidate.

I. APPLICABILITY OF THIS CODE

(A) The provisions of the Code apply to all full-time judges. Parts II through V of this section identify those provisions that apply to four distinct categories of part-time judges. The four categories of judicial service in other than a full-time capacity are necessarily defined in general terms because of the widely varying forms of judicial service. Canon 4 applies to judicial candidates.

(B) A judge, within the meaning of this Code, is anyone who is authorized to perform judicial functions, including an officer such as a, magistrate, special master, referee, or member of the administrative law judiciary.

COMMENT

[1] The Rules in this Code have been formulated to address the ethical obligations of any person who serves a judicial function, and are premised upon the supposition that a uniform system of ethical principles should apply to all those authorized to perform judicial functions.

[2] The determination of which category and, accordingly, which specific Rules apply to an individual judicial officer, depends upon the facts of the particular judicial service.

[3] In recent years many jurisdictions have created what are often called "problem solving" courts, in which judges are authorized by court rules to act in nontraditional ways. For example, judges presiding in drug courts and monitoring the progress of participants in those courts' programs may be authorized and even encouraged to communicate directly with social workers, probation officers, and others outside the context of their usual judicial role as independent decision makers on issues of fact and law.

II. [Reserved]

III. CONTINUING PART-TIME JUDGE

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 ("continuing part-time judge"),

(A) is not required to comply:

(1) with Rules 2.10(A) and 2.10(B) (Judicial Statements on Pending and Impending Cases), except while serving as a judge; or

(2) at any time with Rules 3.4 (Appointments to Governmental Positions), 3.8 (Appointments to Fiduciary Positions), 3.9 (Service as Arbitrator or Mediator), 3.10 (Practice of Law), 3.11 (Financial, Business, or Remunerative Activities), 3.14 (Reimbursement of Expenses and Waivers of Fees or Charges), 3.15 (Reporting Requirements); and

(B) shall not practice law in the court on which the judge serves, shall not appear in any criminal matter in the county in 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.

COMMENT

[1] 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 informed consent of all parties, and pursuant to any applicable Arkansas Rules of Professional Conduct.

[2A] Paragraph (B) does not, as a general rule, prohibit a continuing part-time judge from practicing law. However the position of a judge in presiding over a criminal matter and then appearing as a criminal defense attorney in a court of general jurisdiction and opposing that same prosecutor creates an appearance of impropriety, even when the proceedings are separate. Accordingly, continuing part time judges are prohibited from appearing in any criminal matter in the county where the judge serves, regardless of how the criminal matter arises.

[3A] Because the position of the judge is paramount to the judge's private law practice, the judge should be particularly sensitive to conflicts that may arise when the judge presides over matters involving particular attorneys and then, in his or her private law practice, appears in adversary proceedings in a court of general jurisdiction opposing the same attorneys who appear before the judge. Opposing counsel may be hampered in vigorous advocacy against an attorney who wears judicial robes and presides over cases involving that counsel. The primacy of judicial service and the obligation to avoid even the appearance of impropriety mandate caution in accepting civil cases in disputed matters.

IV. PERIODIC PART-TIME JUDGE

A periodic part-time 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, (A) is not required to comply:

(1) with Rule 2.10 (Judicial Statements on Pending and Impending Cases), except while serving as a judge; or

(2) at any time with Rules 3.4 (Appointments to Governmental Positions), 3.7 (Participation in Educational, Religious, Charitable, Fraternal, or Civic Organizations and Activities), 3.8 (Appointments to Fiduciary Positions), 3.9 (Service as Arbitrator or Mediator), 3.10 (Practice of Law), 3.11 (Financial, Business, or Remunerative Activities), 3.13 (Acceptance and Reporting of Gifts, Loans, Bequests, Benefits, or Other Things of Value), 3.15 (Reporting Requirements), 4.1 (Political and Campaign Activities of Judges and Judicial Candidates in General), and 4.5 (Activities of Judges Who Become Candidates for Nonjudicial Office); and

(B) 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.

V. PRO TEMPORE PART-TIME JUDGE

A pro tempore part-time judge who serves or expects to serve once or only sporadically on a part-time basis under a separate appointment for each period of service or for each case heard is not required to comply:

(A) except while serving as a judge, with Rules 1.2 (Promoting Confidence in the Judiciary), 2.4 (External Influences on Judicial Conduct), 2.10 (Judicial Statements on Pending and Impending Cases), or 3.2 (Appearances before Governmental Bodies and Consultation with Government Officials); or

(B) at any time with Rules 3.4 (Appointments to Governmental Positions), 3.6 (Affiliation with Discriminatory Organizations), 3.7 (Participation in Educational, Religious, Charitable, Fraternal, or Civic Organizations and Activities), 3.8 (Appointments to Fiduciary Positions), 3.9 (Service as Arbitrator or Mediator), 3.10 (Practice of Law), 3.11 (Financial, Business, or Remunerative Activities), 3.13 (Acceptance and Reporting of Gifts, Loans, Bequests, Benefits, or Other Things of Value), 3.15 (Reporting Requirements), 4.1 (Political and Campaign Activities of Judges and Judicial Candidates in General), and 4.5 (Activities of Judges Who Become Candidates for Nonjudicial Office).

VI. TIME FOR COMPLIANCE

A person to whom this Code becomes applicable shall comply immediately with its provisions, except that those judges to whom Rules 3.8 (Appointments to Fiduciary Positions) and 3.11 (Financial, Business, or Remunerative Activities) apply shall comply with those Rules as soon as reasonably possible, but in no event later than one year after the Code becomes applicable to the judge.

COMMENT

[1] If serving as a fiduciary when selected as judge, a new judge may, notwithstanding the prohibitions in Rule 3.8, continue to serve as fiduciary, but only for that period of time necessary to avoid serious adverse consequences to the beneficiaries of the fiduciary relationship and in no event longer than one year. Similarly, if engaged at the time of judicial selection in a business activity, a new judge may, notwithstanding the prohibitions in Rule 3.11, continue in that activity for a reasonable period but in no event longer than one year.

CANON 1

A JUDGE SHALL UPHOLD AND PROMOTE THE INDEPENDENCE, INTEGRITY, AND IMPARTIALITY OF THE JUDICIARY, AND SHALL AVOID IMPROPRIETY AND THE APPEARANCE OF IMPROPRIETY.

RULE 1.1 Compliance with the Law

A judge shall comply with the law, including the Arkansas Code of Judicial Conduct.

RULE 1.2 Promoting Confidence in the Judiciary

A judge shall act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary, and shall avoid impropriety and the appearance of impropriety.

COMMENT

[1] Public confidence in the judiciary is eroded by improper conduct and conduct that creates the appearance of impropriety. This principle applies to both the professional and personal conduct of a judge.
[2] A judge should expect to be the subject of public scrutiny that might be viewed as burdensome if applied to other citizens, and must accept the restrictions imposed by the Code.
[3] Conduct that compromises or appears to compromise the independence, integrity, and impartiality of a judge undermines public confidence in the judiciary. Because it is not practicable to list all such conduct, the Rule is necessarily cast in general terms.
[4] Judges should participate in activities that promote ethical conduct among judges and lawyers, support professionalism within the judiciary and the legal profession, and promote access to justice for all.

[5] Actual improprieties include violations of law, court rules or provisions of this Code. The test for appearance of impropriety is whether the conduct would create in reasonable minds a perception that the judge violated this Code or engaged in other conduct that reflects adversely on the judge's honesty, impartiality, temperament, or fitness to serve as a judge.
[6] A judge should initiate and participate in community outreach activities for the purpose of promoting public understanding of and confidence in the administration of justice. In conducting such activities, the judge must act in a manner consistent with this Code.

RULE 1.3 Avoiding Abuse of the Prestige of Judicial Office
A judge shall not abuse the prestige of judicial office to advance the personal or economic interests of the judge or others, or allow others to do so.

COMMENT

[1] It is improper for a judge to use or attempt to use his or her position to gain personal advantage or deferential treatment of any kind. For example, it would be improper for a judge to allude to his or her judicial status to gain favorable treatment in encounters with traffic officials. Similarly, a judge must not use judicial letterhead to gain an advantage in conducting his or her personal business.
[2] A judge may provide a reference or recommendation for an individual based upon the judge's personal knowledge. The judge may use official letterhead if the judge indicates that the reference is personal and if there is no likelihood that the use of the letterhead would reasonably be perceived as an attempt to exert pressure by reason of the judicial office.
[3] Judges may participate in the process of judicial selection by cooperating with appointing authorities and screening committees, and by responding to inquiries from such entities concerning the professional qualifications of a person being considered for judicial office.
[4] Special considerations arise when judges write or contribute to publications of for-profit entities, whether related or unrelated to the law. A judge should not permit anyone associated with the publication of such materials to exploit the judge's office in a manner that violates this Rule or other applicable law. In contracts for publication of a judge's writing, the judge should retain sufficient control over the advertising to avoid such exploitation.

CANON 2

A JUDGE SHALL PERFORM THE DUTIES OF JUDICIAL OFFICE IMPARTIALLY, COMPETENTLY, AND DILIGENTLY.

RULE 2.1 Giving Precedence to the Duties of Judicial Office
The duties of judicial office, as prescribed by law, shall take precedence over all of a judge's personal and extrajudicial activities.

COMMENT

[1] To ensure that judges are available to fulfill their judicial duties, judges must conduct their personal and extrajudicial activities to minimize the risk of conflicts that would result in frequent disqualification. See Canon 3.

[2] Although it is not a duty of judicial office unless prescribed by law, judges are encouraged to participate in activities that promote public understanding of and confidence in the justice system.

RULE 2.2 Impartiality and Fairness

A judge shall uphold and apply the law, and shall perform all duties of judicial office fairly and impartially.

COMMENT

[1] To ensure impartiality and fairness to all parties, a judge must be objective and open-minded.
[2] Although each judge comes to the bench with a unique background and personal philosophy, a judge must interpret and apply the law without regard to whether the judge approves or disapproves of the law in question.
[3] When applying and interpreting the law, a judge sometimes may make good-faith errors of fact or law. Errors of this kind do not violate this Rule.
[4] It is not a violation of this Rule for a judge to make reasonable accommodations to ensure pro se litigants the opportunity to have their matters fairly heard.
RULE 2.3 Bias, Prejudice, and Harassment
(A) A judge shall perform the duties of judicial office, including administrative duties, without bias or prejudice.
(B) A judge shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice, or engage in harassment, and shall not permit court staff, court officials, or others subject to the judge's direction and control to do so.
(C) A judge shall require lawyers in proceedings before the court to refrain from manifesting bias or prejudice, or engaging in harassment, against parties, witnesses, lawyers, or others.
(D) The restrictions of paragraphs (B) and (C) do not preclude judges or lawyers from making legitimate reference to personal characteristics when they are relevant to an issue in a proceeding.

COMMENT

[1] A judge who manifests bias or prejudice in a proceeding impairs the fairness of the proceeding and brings the judiciary into disrepute.
[2] Examples of manifestations of bias or prejudice include but are not limited to epithets; slurs; demeaning nicknames; negative stereotyping; attempted humor based upon stereotypes; threatening, intimidating, or hostile acts; suggestions of connections between race, ethnicity, or nationality and crime; and irrelevant references to personal characteristics. Even facial expressions and body language can convey to parties and lawyers in the proceeding, jurors, the media, and others an appearance of bias or prejudice. A judge must avoid conduct that may reasonably be perceived as prejudiced or biased.
[3] Harassment, as referred to in paragraphs (B) and (C), is verbal or physical conduct that denigrates or shows hostility or aversion toward a person on the basis of personal characteristics.
[4] Sexual harassment includes but is not limited to sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature that is unwelcome.

RULE 2.4 External Influences on Judicial Conduct (A) A judge shall not be swayed by public clamor or fear of criticism.

(B) A judge shall not permit family, social, political, financial, or other interests or relationships to influence the judge's judicial conduct or judgment.
(C) A judge shall not convey or permit others to convey the impression that any person or organization is in a position to influence the judge.

COMMENT

[1] An independent judiciary requires that judges decide cases according to the law and facts, without regard to whether particular laws or litigants are popular or unpopular with the public, the media,

government officials, or the judge's friends or family. Confidence in the judiciary is eroded if judicial decision making is perceived to be subject to inappropriate outside influences.

RULE 2.5 Competence, Diligence, and Cooperation

(A) A judge shall perform judicial and administrative duties, competently and diligently.
(B) A judge shall cooperate with other judges and court officials in the administration of court business.

COMMENT

[1] Competence in the performance of judicial duties requires the legal knowledge, skill, thoroughness, and preparation reasonably necessary to perform a judge's responsibilities of judicial office.
[2] A judge should seek the necessary docket time, court staff, expertise, and resources to discharge all adjudicative and administrative responsibilities. [3] 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 take reasonable measures to ensure that court officials, litigants, and their lawyers cooperate with the judge to that end.
[4] In disposing of matters promptly and efficiently, a judge must demonstrate due regard for the rights of parties to be heard and to have issues resolved without unnecessary cost or delay. A judge should monitor and supervise cases in ways that reduce or eliminate dilatory practices, avoidable delays, and unnecessary costs.

RULE 2.6 Ensuring the Right to Be Heard

(A) 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.
(B) A judge may encourage parties to a proceeding and their lawyers to settle matters in dispute but shall not act in a manner that coerces any party into settlement.

COMMENT

[1] The right to be heard is an essential component of a fair and impartial system of justice. Substantive rights of litigants can be protected only if procedures protecting the right to be heard are observed.
[2] The judge plays an important role in overseeing the settlement of disputes, but should be careful that efforts to further settlement do not undermine any party's right to be heard according to law. The judge should keep in mind the effect that the judge's participation in settlement discussions may have, not only on the judge's own views of the case, but also on the perceptions of the lawyers and the parties if the case remains with the judge after settlement efforts are unsuccessful. Among the factors that a judge should consider when deciding upon an appropriate settlement practice for a case are (1) whether the parties have requested or voluntarily consented to a certain level of participation by the judge in settlement discussions, (2) whether the parties and their counsel are relatively sophisticated in legal matters, (3) whether the case will be tried by the judge or a jury, (4) whether the parties participate with their counsel in settlement discussions, (5) whether any parties are unrepresented by counsel, and (6) whether the matter is civil or criminal.
[3] Judges must be mindful of the effect settlement discussions can have, not only on their objectivity and impartiality, but also on the appearance of their objectivity and impartiality. Despite a judge's best efforts, there may be instances when information obtained during settlement discussions could influence a judge's decision making during trial, and, in such instances, the judge should consider whether disqualification may be appropriate. See Rule 2.11(A)(1).

RULE 2.7 Responsibility to Decide

A judge shall hear and decide matters assigned to the judge, except when disqualification is required by Rule 2.11 or other law.

COMMENT

[1] Judges must be available to decide the matters that come before the court. Although there are times when disqualification is necessary to protect the rights of litigants and preserve public confidence in the independence, integrity, and impartiality of the judiciary, judges must be available to decide matters that come before the courts. Unwarranted disqualification may bring public disfavor to the court and to the judge personally. The dignity of the court, the judge's respect for fulfillment of judicial duties, and a proper concern for the burdens that may be imposed upon the judge's colleagues require that a judge not use disqualification to avoid cases that present difficult, controversial, or unpopular issues.

RULE 2.8 Decorum, Demeanor, and Communication with Jurors

(A) A judge shall require order and decorum in proceedings before the court.
(B) A judge shall be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, court staff, court officials, and others with whom the judge deals in an official capacity, and shall require similar conduct of lawyers, court staff, court officials, and others subject to the judge's direction and control.
(C) A judge shall not commend or criticize jurors for their verdict other than in a court order or opinion in a proceeding.

COMMENT

[1] The duty to hear all proceedings with patience and courtesy is not inconsistent with the duty imposed in Rule 2.5 to dispose promptly of the business of the court. Judges can be efficient and businesslike while being patient and deliberate.
[2] 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.
[3] A judge who is not otherwise prohibited by law from doing so may meet with jurors who choose to remain after trial but should be careful not to discuss the merits of the case.

RULE 2.9 Ex Parte Communications

(A) 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 or their lawyers, concerning a pending or impending matter, except as follows:
(1) When circumstances require it, ex parte communication for scheduling, administrative, or emergency purposes, which does not address substantive matters, is permitted, provided:
(a) the judge reasonably believes that no party will gain a procedural, substantive, or tactical advantage as a result of the ex parte communication; and (b) the judge makes provision promptly to notify all other parties of the substance of the ex parte communication, and gives the parties an opportunity to respond.
(2) A judge may obtain the written advice of a disinterested expert on the law applicable to a proceeding before the judge, if the judge gives advance notice to the parties of the person to be consulted and the subject matter of the advice to be solicited, and affords the parties a reasonable opportunity to object and respond to the notice and to the advice received.
(3) A judge may consult with court staff and court officials whose functions are to aid the judge in carrying out the judge's adjudicative responsibilities, or with other judges, provided the judge makes reasonable

efforts to avoid receiving factual information that is not part of the record, and does not abrogate the responsibility personally to decide the matter.

(4) [Reserved]

(5) A judge may initiate, permit, or consider any ex parte communication when expressly authorized by law to do so.

(B) If a judge inadvertently receives an unauthorized ex parte communication bearing upon the substance of a matter, the judge shall make provision promptly to notify the parties of the substance of the communication and provide the parties with an opportunity to respond.
(C) A judge shall not investigate facts in a matter independently, and shall consider only the evidence presented and any facts that may properly be judicially noticed.
(D) A judge shall make reasonable efforts, including providing appropriate supervision, to ensure that this Rule is not violated by court staff, court officials, and others subject to the judge's direction and control.

COMMENT

[1] To the extent reasonably possible, all parties or their lawyers shall be included in communications with a judge.
[2] Whenever the presence of a party or notice to a party is required by this Rule, it is the party's lawyer, or if the party is unrepresented, the party, who is to be present or to whom notice is to be given.
[3] The proscription against communications concerning a proceeding includes communications with lawyers, law teachers, and other persons who are not participants in the proceeding, except to the limited extent permitted by this Rule.
[4] A judge may initiate, permit, or consider ex parte communications expressly authorized by law, such as when serving on therapeutic or problem-solving courts, mental health courts, or drug courts. In this capacity, judges may assume a more interactive role with parties, treatment providers, probation officers, social workers, and others.
[5] A judge may consult with other judges on pending matters, but must avoid ex parte discussions of a case with judges who have previously been disqualified from hearing the matter, and with judges who have appellate jurisdiction over the matter.
[6] The prohibition against a judge investigating the facts in a matter extends to information available in all mediums, including electronic.
[7] A judge may consult ethics advisory committees, outside counsel, or legal experts concerning the judge's compliance with this Code. Such consultations are not subject to the restrictions of paragraph (A)(2).

RULE 2.10 Judicial Statements on Pending and Impending Cases

(A) A judge shall not make any public statement that might reasonably be expected to affect the outcome or impair the fairness of a matter pending or impending in any court, or make any nonpublic statement that might substantially interfere with a fair trial or hearing.
(B) A judge shall not, in connection with cases, controversies, or issues that are likely to come before the court, make pledges, promises, or commitments that are inconsistent with the impartial performance of the adjudicative duties of judicial office.
(C) A judge shall require court staff, court officials, and others subject to the judge's direction and control to refrain from making statements that the judge would be prohibited from making by paragraphs (A) and (B).

(D) Notwithstanding the restrictions in paragraph (A), a judge may make public statements in the course of official duties, may explain court procedures, and may comment on any proceeding in which the judge is a litigant in a personal capacity.
(E) Subject to the requirements of paragraph (A), a judge may respond directly or through a third party to allegations in the media or elsewhere concerning the judge's conduct in a matter.

COMMENT

[1] This Rule's restrictions on judicial speech are essential to the maintenance of the independence, integrity, and impartiality of the judiciary.
[2] This Rule does not prohibit a judge from commenting on proceedings in which the judge is a litigant in a personal capacity. In cases in which the judge is a litigant in an official capacity, such as a writ of mandamus, the judge must not comment publicly.
[3] Depending upon the circumstances, the judge should consider whether it may be preferable for a third party, rather than the judge, to respond or issue statements in connection with allegations concerning the judge's conduct in a matter.

RULE 2.11 Disqualification

(A) A judge shall disqualify himself or herself in any proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to the following circumstances:
(1) The judge has a personal bias or prejudice concerning a party or a party's lawyer, or personal knowledge of facts that are in dispute in the proceeding.

(2) The judge knows that the judge, the judge's spouse or domestic partner, or a person within the third degree of relationship to either of them, or the spouse or domestic partner of such a person is:
(a) a party to the proceeding, or an officer, director, general partner, managing member, or trustee of a party; b) acting as a lawyer in the proceeding; (c) a person who has more than a de minimis interest that could be substantially affected by the proceeding; or (d) likely to be a material witness in the proceeding.

(3) The judge knows that he or she, individually or as a fiduciary, or the judge's spouse, domestic partner, parent, or child, 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.

(4) [Reserved]

(5) The judge, while a judge or a judicial candidate, has made a public statement, other than in a court proceeding, judicial decision, or opinion, that commits or appears to commit the judge to reach a particular result or rule in a particular way in the proceeding or controversy.

(6) The judge: (a) served as a lawyer in the matter in controversy, or was associated with a lawyer who participated substantially as a lawyer in the matter during such association; (b) served in governmental employment, and in such capacity participated personally and substantially as a lawyer or public official concerning the proceeding, or has publicly expressed in such capacity an opinion concerning the merits of the particular matter in controversy; (c) was a material witness concerning the matter; or (d) previously presided as a judge over the matter in another court.
(B) A judge shall keep informed about the judge's personal and fiduciary economic interests, and make a reasonable effort to keep informed about the personal economic interests of the judge's spouse or domestic partner and minor children residing in the judge's household.

(C) A judge subject to disqualification under this Rule, other than for bias or prejudice under paragraph (A)(1), may disclose on the record the basis of the judge's disqualification and may ask the parties and their lawyers to consider, outside the presence of the judge and court personnel, whether to waive disqualification. If, following the disclosure, the parties and lawyers agree, without participation by the judge or court personnel, that the judge should not be disqualified, the judge may participate in the proceeding. The agreement shall be incorporated into the record of the proceeding.

COMMENT

[1] Under this Rule, a judge is disqualified whenever the judge's impartiality might reasonably be questioned, regardless of whether any of the specific provisions of paragraphs (A)(1) through (6) apply. In many jurisdictions, the term "recusal" is used interchangeably with the term "disqualification."
[2] A judge's obligation not to hear or decide matters in which disqualification is required applies regardless of whether a motion to disqualify is filed.
[3] The rule of necessity may override the rule of disqualification. For example, a judge might be required to participate in judicial review of a judicial salary statute, or might be the only judge available in a matter requiring immediate judicial action, such as a hearing on probable cause or a temporary restraining order. In matters that require immediate action, the judge must disclose on the record the basis for possible disqualification and make reasonable efforts to transfer the matter to another judge as soon as practicable.
[4] The fact that a lawyer in a proceeding is affiliated with a law firm with which a relative of the judge is affiliated does not itself disqualify the judge. If, however, the judge's impartiality might reasonably be questioned under paragraph (A), or the relative is known by the judge to have an interest in the law firm that could be substantially affected by the proceeding under paragraph (A)(2)(c), the judge's disqualification is required.
[4A] The fact that a lawyer in a proceeding, or a litigant, contributed to the judge's campaign, or publicly supported the judge in his or her election does not of itself disqualify the judge. However, the size of contributions , the degree of involvement in the campaign, the timing of the campaign and the proceeding, the issues involved in the proceeding, and other factors known to the judge may raise questions as to the judge's impartiality under paragraph (A).
[5] A judge should disclose on the record information that the judge believes the parties or their lawyers might reasonably consider relevant to a possible motion for disqualification, even if the judge believes there is no basis for disqualification.
[6] "Economic interest," as set forth in the Terminology section, means ownership of more than a de minimis legal or equitable interest. Except for situations in which a judge participates in the management of such a legal or equitable interest, or the interest could be substantially affected by the outcome of a proceeding before a judge, it does not include:
(1) an interest in the individual holdings within a mutual or common investment fund;
(2) an interest in securities held by an educational, religious, charitable, fraternal, or civic organization in which the judge or the judge's spouse, domestic partner, parent, or child serves as a director, officer, advisor, or other participant;

(3) a deposit in a financial institution or deposits or proprietary interests the judge may maintain as a member of a mutual savings association or credit union, or similar proprietary interests; or (4) an interest in the issuer of government securities held by the judge.

RULE 2.12 Supervisory Duties

(A) A judge shall require court staff, court officials, and others subject to the judge's direction and control to act in a manner consistent with the judge's obligations under this Code.

(B) A judge with supervisory authority for the performance of other judges shall take reasonable measures to ensure that those judges properly discharge their judicial responsibilities, including the prompt disposition of matters before them.

COMMENT

[1] A judge is responsible for his or her own conduct and for the conduct of others, such as staff, when those persons are acting at the judge's direction or control. A judge may not direct court personnel to engage in conduct on the judge's behalf or as the judge's representative when such conduct would violate the Code if undertaken by the judge.
[2] Public confidence in the judicial system depends upon timely justice. To promote the efficient administration of justice, a judge with supervisory authority must take the steps needed to ensure that judges under his or her supervision administer their workloads promptly.
RULE 2.13 Administrative Appointments (A) In making administrative appointments, a judge:
(1) shall exercise the power of appointment impartially and on the basis of merit; and
(2) shall avoid nepotism, favoritism, and unnecessary appointments.
(B) [Reserved]
(C) A judge shall not approve compensation of appointees beyond the fair value of services rendered.
(D) 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.

COMMENT

[1] Appointees of a judge include assigned counsel, officials such as referees, commissioners, special masters, receivers, and guardians, and personnel such as clerks, secretaries, and bailiffs. Consent by the parties to an appointment or an award of compensation does not relieve the judge of the obligation prescribed by paragraph (A).
[2] Unless otherwise defined by law, nepotism is the appointment or hiring of any relative within the third degree of relationship of either the judge or the judge's spouse or domestic partner, or the spouse or domestic partner of such relative.
[3][Reserved]

RULE 2.14 Disability and Impairment

A judge having a reasonable belief that the performance of a lawyer or another judge is impaired by drugs or alcohol, or by a mental, emotional, or physical condition, shall take appropriate action, which may include a confidential referral to a lawyer or judicial assistance program.

COMMENT

[1] "Appropriate action" means action intended and reasonably likely to help the judge or lawyer in question address the problem and prevent harm to the justice system. Depending upon the circumstances, appropriate action may include but is not limited to speaking directly to the impaired person, notifying an individual with supervisory responsibility over the impaired person, or making a referral to an assistance program.
[2] Taking or initiating corrective action by way of referral to an assistance program may satisfy a judge's responsibility under this Rule. Assistance programs have many approaches for offering help to impaired judges and lawyers, such as intervention, counseling, or referral to appropriate health care professionals. Depending upon the gravity of the conduct that has come to the judge's attention, however, the judge may

be required to take other action, such as reporting the impaired judge or lawyer to the appropriate authority, agency, or body. See Rule 2.15.
[3A] Judges may exercise discretion in referring a lawyer or another judge to the Arkansas Judges and Lawyers Assistance Program. See Rule 2.15.

RULE 2.15 Responding to Judicial and Lawyer Misconduct

(A) A judge having knowledge that another judge has committed a violation of this Code that raises a substantial question regarding the judge's honesty, trustworthiness, or fitness as a judge in other respects shall inform the appropriate authority.
(B) A judge having knowledge that a lawyer has committed a violation of the Arkansas Rules of Professional Conduct that raises a substantial question regarding the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects shall inform the appropriate authority.
(C) A judge who receives information indicating a substantial likelihood that another judge has committed a violation of this Code shall take appropriate action.
(D) A judge who receives information indicating a substantial likelihood that a lawyer has committed a violation of the Arkansas Rules of Professional Conduct shall take appropriate action.

COMMENT

[1] Taking action to address known misconduct is a judge's obligation. Paragraphs (A) and (B) impose an obligation on the judge to report to the appropriate disciplinary authority the known misconduct of another judge or a lawyer that raises a substantial question regarding the honesty, trustworthiness, or fitness of that judge or lawyer. Ignoring or denying known misconduct among one's judicial colleagues or members of the legal profession undermines a judge's responsibility to participate in efforts to ensure public respect for the justice system. This Rule limits the reporting obligation to those offenses that an independent judiciary must vigorously endeavor to prevent.
[2] A judge who does not have actual knowledge that another judge or a lawyer may have committed misconduct, but receives information indicating a substantial likelihood of such misconduct, is required to take appropriate action under paragraphs (C) and (D). Appropriate action may include, but is not limited to, communicating directly with the judge who may have violated this Code, communicating with a supervising judge, or reporting the suspected violation to the appropriate authority or other agency or body. Similarly, actions to be taken in response to information indicating that a lawyer has committed a violation of the Arkansas Rules of Professional Conduct may include but are not limited to communicating directly with the lawyer who may have committed the violation, or reporting the suspected violation to the appropriate authority or other agency or body.
[3A] This rule does not apply to a member of the Lawyer Assistance Committee of the Arkansas Judges and Lawyers Assistance Program (ArJLAP) or a volunteer acting pursuant to the Rules regarding information received in one's capacity as a Committee member or volunteer, acting in good faith, unless it appears to the member or volunteer that the lawyer or judge in question, after entry into the ArJLAP, is failing to desist from said violation, or is failing to cooperate with a program of assistance to which said lawyer or judge has agreed, or is engaged in the sale of a controlled substance or theft of property constituting a felony under Arkansas law, or the equivalent thereof if the offense is not within the State's jurisdiction.
[4A] Except as provided by this Code or the Rules of ArJLAP, no information received, gathered, or maintained by the Committee, its members or volunteers, or by an employee of the ArJLAP in connection with the work of the Committee may be disclosed to any person nor be subject to discovery or subpoena in any administrative or judicial proceeding, except upon the express written release of the subject lawyer or judge. However, the Committee may refer any lawyer or judge to a professional assistance entity, and may, in good faith, communicate information to the entity in connection with the referral. If information obtained

by a member of the Committee, a volunteer, or an employee of the ArJLAP gives rise to reasonable suspicion of a direct threat to the health or safety of the subject lawyer, judge or other person, then the obligation of confidentiality shall not apply, and the Committee member, volunteer, or ArJLAP employee may make such communications as are necessary for the purpose of avoiding or preventing said threat.

RULE 2.16 Cooperation with Disciplinary Authorities

(A) A judge shall cooperate and be candid and honest with judicial and lawyer disciplinary agencies.
(B) A judge shall not retaliate, directly or indirectly, against a person known or suspected to have assisted or cooperated with an investigation of a judge or a lawyer.
COMMENT
[1] Cooperation with investigations and proceedings of judicial and lawyer discipline agencies, as required in paragraph (A), instills confidence in judges' commitment to the integrity of the judicial system and the protection of the public.

CANON 3

A JUDGE SHALL CONDUCT THE JUDGE'S PERSONAL AND EXTRAJUDICIAL ACTIVITIES TO MINIMIZE THE RISK OF CONFLICT WITH THE OBLIGATIONS OF JUDICIAL OFFICE.

RULE 3.1 Extrajudicial Activities in General

A judge may engage in extrajudicial activities, except as prohibited by law or this Code. However, when engaging in extrajudicial activities, a judge shall not:
(A) participate in activities that will interfere with the proper performance of the judge's judicial duties; (B) participate in activities that will lead to frequent disqualification of the judge; (C) participate in activities that would appear to a reasonable person to undermine the judge's independence, integrity, or impartiality; (D) engage in conduct that would appear to a reasonable person to be coercive; or (E) make use of court premises, staff, stationery, equipment, or other resources, except for incidental use for activities that concern the law, the legal system, or the administration of justice, or unless such additional use is permitted by law.

COMMENT

[1] To the extent that time permits, and judicial independence and impartiality are not compromised, judges are encouraged to engage in appropriate extrajudicial activities. Judges are uniquely qualified to engage in extrajudicial activities that concern the law, the legal system, and the administration of justice, such as by speaking, writing, teaching, or participating in scholarly research projects. In addition, judges are permitted and encouraged to engage in educational, religious, charitable, fraternal or civic extrajudicial activities not conducted for profit, even when the activities do not involve the law. See Rule 3.7.
[2] Participation in both law-related and other extrajudicial activities helps integrate judges into their communities, and furthers public understanding of and respect for courts and the judicial system.
[3] Discriminatory actions and expressions of bias or prejudice by a judge, even outside the judge's official or judicial actions, are likely to appear to a reasonable person to call into question the judge's integrity and impartiality. Examples include jokes or other remarks that demean individuals based upon their personal characteristics. For the same reason, a judge's extrajudicial activities must not be conducted in connection or affiliation with an organization that practices invidious discrimination. See Rule 3.6.
[4] While engaged in permitted extrajudicial activities, judges must not coerce others or take action that would reasonably be perceived as coercive. For example, depending upon the circumstances, a judge's solicitation of contributions or memberships for an organization, even as permitted by Rule 3.7(A), might

create the risk that the person solicited would feel obligated to respond favorably, or would do so to curry favor with the judge.
[5A] Before speaking or writing about social or political issues, judges should consider the impact of their statements. Comments may suggest that the judge lacks impartiality. See Rule 1.2. They may create the impression that a judge has or manifests bias or prejudice toward individuals with contrary social or political views. See Rule 2.3. Public comments may require the judge to disqualify himself or herself when litigation involving those issues comes before the judge. See Rule 2.11. When making such statements, a judge should acknowledge the overarching judicial obligation to apply and uphold the law, without regard to his or her personal views.

RULE 3.2 Appearances before Governmental Bodies and Consultation with Government Officials

A judge shall not appear voluntarily at a public hearing before, or otherwise consult with, an executive or a legislative body or official, except: (A) in connection with matters concerning the law, the legal system, or the administration of justice; (B) in connection with matters about which the judge acquired knowledge or expertise in the course of the judge's judicial duties; or (C) when the judge is acting pro se in a matter involving the judge's legal or economic interests, or when the judge is acting in a fiduciary capacity.
COMMENT [1] Judges possess special expertise in matters of law, the legal system, and the administration of justice, and may properly share that expertise with governmental bodies and executive or legislative branch officials.
[2] In appearing before governmental bodies or consulting with government officials, judges must be mindful that they remain subject to other provisions of this Code, such as Rule 1.3, prohibiting judges from using the prestige of office to advance their own or others' interests, Rule 2.10, governing public comment on pending and impending matters, and Rule 3.1(C), prohibiting judges from engaging in extrajudicial activities that would appear to a reasonable person to undermine the judge's independence, integrity, or impartiality.
[3] In general, it would be an unnecessary and unfair burden to prohibit judges from appearing before governmental bodies or consulting with government officials on matters that are likely to affect them as private citizens, such as zoning proposals affecting their real property. In engaging in such activities, however, judges must not refer to their judicial positions, and must otherwise exercise caution to avoid using the prestige of judicial office.

RULE 3.3 Testifying as a Character Witness

A judge shall not testify as a character witness in a judicial, administrative, or other adjudicatory proceeding or otherwise vouch for the character of a person in a legal proceeding, except when duly summoned.

COMMENT

[1] A judge who, without being subpoenaed, testifies as a character witness abuses the prestige of judicial office to advance the interests of another. See Rule 1.3. Except in unusual circumstances where the demands of justice require, a judge should discourage a party from requiring the judge to testify as a character witness.

RULE 3.4 Appointments to Governmental Positions

A judge shall not accept appointment to a governmental committee, board, commission, or other governmental position, unless it is one that concerns the law, the legal system, or the administration of justice.

COMMENT

[1] Rule 3.4 implicitly acknowledges the value of judges accepting appointments to entities that concern the law, the legal system, or the administration of justice. Even in such instances, however, a judge should assess the appropriateness of accepting an appointment, paying particular attention to the subject matter of the appointment and the availability and allocation of judicial resources, including the judge's time commitments, and giving due regard to the requirements of the independence and impartiality of the judiciary.
[2] A judge may represent his or her country, state, or locality on ceremonial occasions or in connection with historical, educational, or cultural activities. Such representation does not constitute acceptance of a government position.
RULE 3.5 Use of Nonpublic Information
A judge shall not intentionally disclose or use nonpublic information acquired in a judicial capacity for any purpose unrelated to the judge's judicial duties.

COMMENT

[1] In the course of performing judicial duties, a judge may acquire information of commercial or other value that is unavailable to the public. The judge must not reveal or use such information for personal gain or for any purpose unrelated to his or her judicial duties.
[2] This rule is not intended, however, to affect a judge's ability to act on information as necessary to protect the health or safety of the judge or a member of a judge's family, court personnel, or other judicial officers if consistent with other provisions of this Code.

RULE 3.6 Affiliation with Discriminatory Organizations

(A) A judge shall not hold membership in any organization that practices invidious discrimination.
(B) A judge shall not use the benefits or facilities of an organization if the judge knows or should know that the organization practices invidious discrimination. A judge's attendance at an event in a facility of an organization that the judge is not permitted to join is not a violation of this Rule when the judge's attendance is an isolated event that could not reasonably be perceived as an endorsement of the organization's practices.

COMMENT

[1] A judge's public manifestation of approval of invidious discrimination gives rise to the appearance of impropriety and diminishes public confidence in the integrity and impartiality of the judiciary. A judge's membership in an organization that practices invidious discrimination creates the perception that the judge's impartiality is impaired. [2] Invidious discrimination will generally be demonstrated if an organizations's exclusionary membership practices are arbitrary, irrational, or the result of hostility or animus toward an identifiable group. Whether an organization practices invidious discrimination is a complex question to which judges should be attentive. The answer cannot be determined from a mere examination of an organization's current membership rolls, but rather, depends upon how the organization selects members, as well as other relevant factors, such as whether the organization is dedicated to the preservation of religious, ethnic, or cultural values of legitimate common interest to its members, or whether it is an intimate, purely private organization whose membership limitations could not constitutionally be prohibited.
[2A] 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 its 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 must determine in the judge's own conscience whether participation in such an organization violates Rule 3.6.
[3] When a judge learns that an organization to which the judge belongs engages in invidious discrimination, the judge must resign immediately from the organization.
[4] A judge's membership in a religious organization as a lawful exercise of the freedom of religion is not a violation of this Rule.
[5] This Rule does not apply to national or state military service.

RULE 3.7 Participation in Educational, Religious, Charitable, Fraternal, or Civic Organizations and Activities

(A) Subject to the requirements of Rule 3.1, a judge may participate in activities sponsored by organizations or governmental entities concerned with the law, the legal system, or the administration of justice, and those sponsored by or on behalf of educational, religious, charitable, fraternal, or civic organizations not conducted for profit, including but not limited to the following activities: (1) assisting such an organization or entity in planning related to fund-raising, and participating in the management and investment of the organization's or entity's funds; (2) soliciting contributions for such an organization or entity, but only from members of the judge's family, or from judges over whom the judge does not exercise supervisory or appellate authority; (3) soliciting membership for such an organization or entity, even though the membership dues or fees generated may be used to support the objectives of the organization or entity, as long as the solicitation cannot reasonably be perceived as coercive; (4) appearing or speaking at, receiving an award or other recognition at, being featured on the program of, and permitting his or her title to be used in connection with an event of such an organization or entity, but if the event serves a fund-raising purpose, the judge may participate only if the event concerns the law, the legal system, or the administration of justice; (5) making recommendations to such a public or private fund-granting organization or entity in connection with its programs and activities, but only if the organization or entity is concerned with the law, the legal system, or the administration of justice; and (6) serving as an officer, director, trustee, or nonlegal advisor of such an organization or entity, unless it is likely that the organization or entity: (a) will be engaged in proceedings that would ordinarily come before the judge; or (b) will frequently be engaged in adversary proceedings in the court of which the judge is a member, or in any court subject to the appellate jurisdiction of the court of which the judge is a member.
(B) A judge may encourage lawyers to provide pro bono publico legal services.

COMMENT

[1] The activities permitted by paragraph (A) generally include those sponsored by or undertaken on behalf of public or private not-for-profit educational institutions, and other not-for-profit organizations, including law-related, charitable, and other organizations.
[2] Even for law-related organizations, a judge should consider whether the membership and purposes of the organization, or the nature of the judge's participation in or association with the organization, would conflict with the judge's obligation to refrain from activities that reflect adversely upon a judge's independence, integrity, and impartiality.
[3] Mere attendance at an event, whether or not the event serves a fund-raising purpose, does not constitute a violation of paragraph 4(A). It is also generally permissible for a judge to serve as an usher or a food

server or preparer, or to perform similar functions, at fund-raising events sponsored by educational, religious, charitable, fraternal, or civic organizations. Such activities are not solicitation and do not present an element of coercion or abuse the prestige of judicial office. [4] Identification of a judge's position in educational, religious, charitable, fraternal, or civic organizations on letterhead used for fund-raising or membership solicitation does not violate this Rule. The letterhead may list the judge's title or judicial office if comparable designations are used for other persons.
[5] In addition to appointing lawyers to serve as counsel for indigent parties in individual cases, a judge may promote broader access to justice by encouraging lawyers to participate in pro bono publico legal services, if in doing so the judge does not employ coercion, or abuse the prestige of judicial office. Such encouragement may take many forms, including providing lists of available programs, training lawyers to do pro bono publico legal work, and participating in events recognizing lawyers who have done pro bono publico work.

RULE 3.8 Appointments to Fiduciary Positions

(A) A judge shall not accept appointment to serve in a fiduciary position, such as executor, administrator, trustee, guardian, attorney in fact, or other personal representative, except for the estate, trust, or person of a member of the judge's family, and then only if such service will not interfere with the proper performance of judicial duties.
(B) A judge shall not serve in a fiduciary position if the judge as fiduciary will likely 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.
(C) A judge acting in a fiduciary capacity shall be subject to the same restrictions on engaging in financial activities that apply to a judge personally.
(D) If a person who is serving in a fiduciary position becomes a judge, he or she must comply with this Rule as soon as reasonably practicable, but in no event later than one year after becoming a judge.

COMMENT

[1] A judge should recognize that other restrictions imposed by this Code may conflict with a judge's obligations as a fiduciary; in such circumstances, a judge should resign as fiduciary. For example, serving as a fiduciary might require frequent disqualification of a judge under Rule 2.11 because a judge is deemed to have an economic interest in shares of stock held by a trust if the amount of stock held is more than de minimis.

RULE 3.9 Service as Arbitrator or Mediator

A judge shall not act as an arbitrator or a mediator or perform other judicial functions apart from the judge's official duties unless expressly authorized by law.

COMMENT

[1] This Rule does not prohibit a judge from participating in arbitration, mediation, or settlement conferences performed as part of assigned judicial duties. Rendering dispute resolution services apart from those duties, whether or not for economic gain, is prohibited unless it is expressly authorized by law.

RULE 3.10 Practice of Law

A judge shall not practice law. 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, but is prohibited from serving as the family member's lawyer in any forum.

COMMENT

[1] A judge may act pro se in all legal matters, including matters involving litigation and matters involving appearances before or other dealings with governmental bodies. A judge must not use the prestige of office to advance the judge's personal or family interests. See Rule 1.3.

RULE 3.11 Financial, Business, or Remunerative Activities

(A) A judge may hold and manage investments of the judge and members of the judge's family.
(B) A judge shall not serve as an officer, director, manager, general partner, advisor, or employee of any business entity except that a judge may manage or participate in: (1) a business closely held by the judge or members of the judge's family; or (2) a business entity primarily engaged in investment of the financial resources of the judge or members of the judge's family.
(C) A judge shall not engage in financial activities permitted under paragraphs (A) and (B) if they will: (1) interfere with the proper performance of judicial duties; (2) lead to frequent disqualification of the judge; (3) involve the judge in frequent transactions or continuing business relationships with lawyers or other persons likely to come before the court on which the judge serves; or (4) result in violation of other provisions of this Code.

COMMENT

[1] Judges are generally permitted to engage in financial activities, including managing real estate and other investments for themselves or for members of their families. Participation in these activities, like participation in other extrajudicial activities, is subject to the requirements of this Code. For example, it would be improper for a judge to spend so much time on business activities that it interferes with the performance of judicial duties. See Rule 2.1. Similarly, it would be improper for a judge to use his or her official title or appear in judicial robes in business advertising, or to conduct his or her business or financial affairs in such a way that disqualification is frequently required. See Rules 1.3 and 2.11. [2] As soon as practicable without serious financial detriment, the judge must divest himself or herself of investments and other financial interests that might require frequent disqualification or otherwise violate this Rule.

RULE 3.12 Compensation for Extrajudicial Activities

A judge may accept reasonable compensation for extrajudicial activities permitted by this Code or other law unless such acceptance would appear to a reasonable person to undermine the judge's independence, integrity, or impartiality.

COMMENT

[1] A judge is permitted to accept honoraria, stipends, fees, wages, salaries, royalties, or other compensation for speaking, teaching, writing, and other extrajudicial activities, provided the compensation is reasonable and commensurate with the task performed. The judge should be mindful, however, that judicial duties must take precedence over other activities. See Rule 2.1.
[2] Compensation derived from extrajudicial activities may be subject to public reporting. See Rule 3.15.

RULE 3.13 Acceptance and Reporting of Gifts, Loans, Bequests, Benefits, or Other Things of Value (A) A judge shall not accept any gifts, loans, bequests, benefits, or other things of value, if acceptance is prohibited by law or would appear to a reasonable person to undermine the judge's independence, integrity, or impartiality.

(B) Unless otherwise prohibited by law, or by paragraph (A), a judge may accept the following without publicly reporting such acceptance: (1) items with little intrinsic value, such as plaques, certificates, trophies, and greeting cards; (2) gifts, loans, bequests, benefits, or other things of value from friends, relatives, or other persons, including lawyers, whose appearance or interest in a proceeding pending or impending before the judge would in any event require disqualification of the judge under Rule 2.11; (3) ordinary social hospitality; (4) commercial or financial opportunities and benefits, including special pricing and discounts, and loans from lending institutions in their regular course of business, if the same opportunities and benefits or loans are made available on the same terms to similarly situated persons who are not judges; (5) rewards and prizes given to competitors or participants in random drawings, contests, or other events that are open to persons who are not judges; (6) scholarships, fellowships, and similar benefits or awards, if they are available to similarly situated persons who are not judges, based upon the same terms and criteria; (7) books, magazines, journals, audiovisual materials, and other resource materials supplied by publishers on a complimentary basis for official use; or

(8) gifts, awards, or benefits associated with the business, profession, or other separate activity of a spouse, a domestic partner, or other family member of a judge residing in the judge's household, but that incidentally benefit the judge.

(C) Unless otherwise prohibited by law or by paragraph (A), a judge may accept the following items, and must report such acceptance to the extent required by Rule 3.15: (1) gifts incident to a public testimonial; (2) invitations to the judge and the judge's spouse, domestic partner, or guest to attend without charge: (a) an event associated with a bar-related function or other activity relating to the law, the legal system, or the administration of justice; or (b) an event associated with any of the judge's educational, religious, charitable, fraternal or civic activities permitted by this Code, if the same invitation is offered to nonjudges who are engaged in similar ways in the activity as is the judge; and (3) gifts, loans, bequests, benefits, or other things of value, if the source is a party or other person, including a lawyer, who has come or is likely to come before the judge, or whose interests have come or are likely to come before the judge.

COMMENT

[1] Whenever a judge accepts a gift or other thing of value without paying fair market value, there is a risk that the benefit might be viewed as intended to influence the judge's decision in a case. Rule 3.13 imposes restrictions upon the acceptance of such benefits, according to the magnitude of the risk. Paragraph (B) identifies circumstances in which the risk that the acceptance would appear to undermine the judge's independence, integrity, or impartiality is low, and explicitly provides that such items need not be publicly reported. As the value of the benefit or the likelihood that the source of the benefit will appear before the judge increases, the judge is either prohibited under paragraph (A) from accepting the gift, or required under paragraph (C) to publicly report it.

[2] Gift-giving between friends and relatives is a common occurrence, and ordinarily does not create an appearance of impropriety or cause reasonable persons to believe that the judge's independence, integrity, or impartiality has been compromised. In addition, when the appearance of friends or relatives in a case would require the judge's disqualification under Rule 2.11, there would be no opportunity for a gift to influence the judge's decision making. Paragraph (B)(2) places no restrictions upon the ability of a

judge to accept gifts or other things of value from friends or relatives under these circumstances, and does not require public reporting.
[3] Businesses and financial institutions frequently make available special pricing, discounts, and other benefits, either in connection with a temporary promotion or for preferred customers, based upon longevity of the relationship, volume of business transacted, and other factors. A judge may freely accept such benefits if they are available to the general public, or if the judge qualifies for the special price or discount according to the same criteria as are applied to persons who are not judges. As an example, loans provided at generally prevailing interest rates are not gifts, but a judge could not accept a loan from a financial institution at below-market interest rates unless the same rate was being made available to the general public for a certain period of time or only to borrowers with specified qualifications that the judge also possesses.
[4] Rule 3.13 applies only to acceptance of gifts or other things of value by a judge. Nonetheless, if a gift or other benefit is given to the judge's spouse, domestic partner, or member of the judge's family residing in the judge's household, it may be viewed as an attempt to evade Rule 3.13 and influence the judge indirectly. Where the gift or benefit is being made primarily to such other persons, and the judge is merely an incidental beneficiary, this concern is reduced. A judge should, however, remind family and household members of the restrictions imposed upon judges, and urge them to take these restrictions into account when making decisions about accepting such gifts or benefits.
[5] Rule 3.13 does not apply to contributions to a judge's campaign for judicial office. Such contributions are governed by other Rules of this Code, including Rules 4.3 and 4.4.

RULE 3.14 Reimbursement of Expenses and Waivers of Fees or Charges

(A) Unless otherwise prohibited by Rules 3.1 and 3.13(A) or other law, a judge may accept reimbursement of necessary and reasonable expenses for travel, food, lodging, or other incidental expenses, or a waiver or partial waiver of fees or charges for registration, tuition, and similar items, from sources other than the judge's employing entity, if the expenses or charges are associated with the judge's participation in extrajudicial activities permitted by this Code. (B) Reimbursement of expenses for necessary travel, food, lodging, or other incidental expenses shall be limited to the actual costs reasonably incurred by the judge and, when appropriate to the occasion, by the judge's spouse, domestic partner, or guest. (C) A judge who accepts reimbursement of expenses or waivers or partial waivers of fees or charges on behalf of the judge or the judge's spouse, domestic partner, or guest shall publicly report such acceptance as required by Rule 3.15.

COMMENT

[1] Educational, civic, religious, fraternal, and charitable organizations often sponsor meetings, seminars, symposia, dinners, awards ceremonies, and similar events. Judges are encouraged to attend educational programs, as both teachers and participants, in law-related and academic disciplines, in furtherance of their duty to remain competent in the law. Participation in a variety of other extrajudicial activity is also permitted and encouraged by this Code. [2] Not infrequently, sponsoring organizations invite certain judges to attend seminars or other events on a fee-waived or partial-fee-waived basis, and sometimes include reimbursement for necessary travel, food, lodging, or other incidental expenses. A judge's decision whether to accept reimbursement of expenses or a waiver or partial waiver of fees or charges in connection with these or other extrajudicial activities must be based upon an assessment of all the circumstances. The judge must undertake a reasonable inquiry to obtain the information necessary to make an informed judgment about whether acceptance would be consistent with the requirements of this Code.
[3] A judge must assure himself or herself that acceptance of reimbursement or fee waivers would not appear to a reasonable person to undermine the judge's independence, integrity, or impartiality. The factors that a judge should consider when deciding whether to accept reimbursement or a fee waiver for attendance

at a particular activity include: (a) whether the sponsor is an accredited educational institution or bar association rather than a trade association or a for-profit entity; (b) whether the funding comes largely from numerous contributors rather than from a single entity and is earmarked for programs with specific content; (c) whether the content is related or unrelated to the subject matter of litigation pending or impending before the judge, or to matters that are likely to come before the judge; (d) whether the activity is primarily educational rather than recreational, and whether the costs of the event are reasonable and comparable to those associated with similar events sponsored by the judiciary, bar associations, or similar groups; (e) whether information concerning the activity and its funding sources is available upon inquiry; (f) whether the sponsor or source of funding is generally associated with particular parties or interests currently appearing or likely to appear in the judge's court, thus possibly requiring disqualification of the judge under Rule 2.11; (g) whether differing viewpoints are presented; and (h) whether a broad range of judicial and nonjudicial participants are invited, whether a large number of participants are invited, and whether the program is designed specifically for judges.
[4A] Reimbursement of expenses from governmental entities need not be reported under Rule 3.14 [C] or Rule 3.15.
RULE 3.15 Reporting Requirements (A) A judge shall publicly report the amount or value of: (1) compensation received for extrajudicial activities as permitted by Rule 3.12; (2) gifts and other things of value as permitted by Rule 3.13(C), and (3) reimbursement of expenses and waiver of fees or charges as permitted by Rule 3.14(A).
(B) The scope of reporting, the time for reporting, the manner of reporting, and other issues shall be as determined by state law.

CANON 4

A JUDGE OR CANDIDATE FOR JUDICIAL OFFICE SHALL NOT ENGAGE IN POLITICAL OR CAMPAIGN ACTIVITY THAT IS INCONSISTENT WITH THE INDEPENDENCE, INTEGRITY, OR IMPARTIALITY OF THE JUDICIARY.

RULE 4.1 Political and Campaign Activities of Judges and Judicial Candidates in General (A) Except as permitted by law, or by Rules 4.2, 4.3, and 4.4, a judge or a judicial candidate shall not: (1) act as a leader in, or hold an office in, a political organization; (2) make speeches on behalf of a political organization; (3) publicly endorse or oppose a candidate for any public office; (4) solicit funds for, pay an assessment to, or make a contribution to a political organization or a candidate for public office; (5) [Reserved] (6) publicly identify himself or herself as a candidate of a political organization; (7) seek, accept, or use endorsements from a political organization; (8) personally solicit or accept campaign contributions other than through a campaign committee authorized by Rule 4.4; (9) use or permit the use of campaign contributions for the private benefit of the judge, the candidate, or others; (10) use court staff, facilities, or other court resources in a campaign for judicial office; (11) knowingly, or with reckless disregard for the truth, make any false or misleading statement; (12) make any statement that would reasonably be expected to affect the outcome or impair the fairness of a matter pending or impending in any court; or (13) in connection with cases, controversies, or issues that are likely to come before the court, make pledges, promises, or commitments that are inconsistent with the impartial performance of the adjudicative duties of judicial office. (B) A judge or judicial candidate shall take reasonable measures to ensure that other persons do not undertake, on behalf of the judge or judicial candidate, any activities prohibited under paragraph (A).

COMMENT GENERAL CONSIDERATIONS

[1] Even when subject to public election, a judge plays a role different from that of a legislator or executive branch official. Rather than making decisions based upon the expressed views or preferences of the electorate, a judge makes decisions based upon the law and the facts of every case. Therefore, in

furtherance of this interest, judges and judicial candidates must, to the greatest extent possible, be free and appear to be free from political influence and political pressure. This Canon imposes narrowly tailored restrictions upon the political and campaign activities of all judges and judicial candidates, taking into account the various methods of selecting judges.
[2] When a person becomes a judicial candidate, this Canon becomes applicable to his or her conduct.

PARTICIPATION IN POLITICAL ACTIVITIES

[3] Public confidence in the independence and impartiality of the judiciary is eroded if judges or judicial candidates are perceived to be subject to political influence. Although judges and judicial candidates may register to vote as members of a political party, they are prohibited by paragraph (A)(1) from assuming leadership roles in political organizations.
[4] Paragraphs (A)(2) and (A)(3) prohibit judges and judicial candidates from making speeches on behalf of political organizations or publicly endorsing or opposing candidates for public office, respectively, to prevent them from abusing the prestige of judicial office to advance the interests of others. See Rule 1.3. These Rules do not prohibit candidates from campaigning on their own behalf, or from endorsing or opposing candidates for the same judicial office for which they are running. See Rules 4.2(B)(2) and 4.2(B)(3).
[5] Although members of the families of judges and judicial candidates are free to engage in their own political activity, including running for public office, there is no "family exception" to the prohibition in paragraph (A)(3) against a judge or candidate publicly endorsing candidates for public office. A judge or judicial candidate must not become involved in, or publicly associated with, a family member's political activity or campaign for public office.
[6] Judges and judicial candidates retain the right to participate in the political process as voters in both primary and general elections. Judges are permitted to request a ballot in a party's primary without violating this Code.
[6A] Judges are permitted to attend or purchase tickets for dinners or other events sponsored by a political organization.

STATEMENTS AND COMMENTS MADE DURING A CAMPAIGN FOR JUDICIAL OFFICE

[7] Judicial candidates must be scrupulously fair and accurate in all statements made by them and by their campaign committees. Paragraph (A)(11) obligates candidates and their committees to refrain from making statements that are false or misleading, or that omit facts necessary to make the communication considered as a whole not materially misleading.
[8] Judicial candidates are sometimes the subject of false, misleading, or unfair allegations made by opposing candidates, third parties, or the media. For example, false or misleading statements might be made regarding the identity, present position, experience, qualifications, or judicial rulings of a candidate. In other situations, false or misleading allegations may be made that bear upon a candidate's integrity or fitness for judicial office. As long as the candidate does not violate paragraphs (A)(11), (A)(12), or (A)(13), the candidate may make a factually accurate public response. In addition, when an independent third party has made unwarranted attacks on a candidate's opponent, the candidate may disavow the attacks, and request the third party to cease and desist.
[9] Subject to paragraph (A)(12), a judicial candidate is permitted to respond directly to false, misleading, or unfair allegations made against him or her during a campaign, although it is preferable for someone else to respond if the allegations relate to a pending case.
[10] Paragraph (A)(12) prohibits judicial candidates from making comments that might impair the fairness of pending or impending judicial proceedings. This provision does not restrict arguments or statements to the court or jury by a lawyer who is a judicial candidate, or rulings, statements, or instructions by a judge that may appropriately affect the outcome of a matter.

PLEDGES, PROMISES, OR COMMITMENTS INCONSISTENT WITH IMPARTIAL PERFORMANCE OF THE ADJUDICATIVE DUTIES OF JUDICIAL OFFICE

[11] The role of a judge is different from that of a legislator or executive branch official, even when the judge is subject to public election. Campaigns for judicial office must be conducted differently from campaigns for other offices. The narrowly drafted restrictions upon political and campaign activities of judicial candidates provided in Canon 4 allow candidates to conduct campaigns that provide voters with sufficient information to permit them to distinguish between candidates and make informed electoral choices.
[12] Paragraph (A)(13) makes applicable to both judges and judicial candidates the prohibition that applies to judges in Rule 2.10(B), relating to pledges, promises, or commitments that are inconsistent with the impartial performance of the adjudicative duties of judicial office.
[13] The making of a pledge, promise, or commitment is not dependent upon, or limited to, the use of any specific words or phrases; instead, the totality of the statement must be examined to determine if a reasonable person would believe that the candidate for judicial office has specifically undertaken to reach a particular result.
[13A] Before speaking or announcing personal views on social or political topics in a judicial campaign, candidates should consider the impact of their statements. Such statements may suggest that the judge lacks impartiality. See Rule 1.2. They may create the impression that a judge has or manifests bias or prejudice toward individuals with contrary social or political views. See Rule 2.3. Public comments may require the judge to disqualify himself or herself when litigation involving those issues come before the judge. See Rule 2.11. When making such statements, a judge should acknowledge the overarching judicial obligation to apply and uphold the law, without regard to his or her personal views. [14] A judicial candidate may make campaign promises related to judicial organization, administration, and court management, such as a promise to dispose of a backlog of cases, start court sessions on time, or avoid favoritism in appointments and hiring. A candidate may also pledge to take action outside the courtroom, such as working toward an improved jury selection system, or advocating for more funds to improve the physical plant and amenities of the courthouse. [15] Judicial candidates may receive questionnaires or requests for interviews from the media and from issue advocacy or other community organizations that seek to learn their views on disputed or controversial legal or political issues. Paragraph (A)(13) does not specifically address judicial responses to such inquiries. Depending upon the wording and format of such questionnaires, candidates' responses might be viewed as pledges, promises, or commitments to perform the adjudicative duties of office other than in an impartial way. To avoid violating paragraph (A)(13), therefore, candidates who respond to media and other inquiries should also give assurances that they will keep an open mind and will carry out their adjudicative duties faithfully and impartially if elected. Candidates who do not respond may state their reasons for not responding, such as the danger that answering might be perceived by a reasonable person as undermining a successful candidate's independence or impartiality, or that it might lead to frequent disqualification. See Rule 2.11.

RULE 4.2 Political and Campaign Activities of Judicial Candidates in Public Elections

(A) A judicial candidate in a public election shall: (1) act at all times in a manner consistent with the independence, integrity, and impartiality of the judiciary; (2) comply with all applicable election, election campaign, and election campaign fund-raising laws and regulations of this jurisdiction; (3) review and approve the content of all campaign statements and materials produced by the candidate or his or her campaign committee, as authorized by Rule 4.4, before their dissemination; and (4) take reasonable measures to ensure that other persons do not undertake on behalf of the candidate activities, other than those described in Rule 4.4, that the candidate is prohibited from doing by Rule 4.1.
(B) A judicial candidate in a public election may, unless prohibited by law, and not earlier than 365 days before the first applicable election:

(1) establish a campaign committee pursuant to the provisions of Rule 4.4; (2) speak on behalf of his or her candidacy through any medium, including but not limited to advertisements, websites, or other campaign literature; (3)[Reserved] (4) attend or purchase tickets for dinners or other events sponsored by a political organization; (5) seek, accept, or use endorsements from any person or organization other than a partisan political organization; and (6)[Reserved].
(C)[Reserved].

COMMENT

[1] Paragraph (B) permits judicial candidates in public elections to engage in some political and campaign activities otherwise prohibited by Rule 4.1. Candidates may not engage in these activities earlier than 365 days before the first applicable election. See definition of "judicial candidate," which provides that 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 authority, or authorizes or engages in solicitation or acceptance of contributions or support. This rule does not prohibit private conversations with potential supporters by a potential candidate as part of an effort to "test the waters" for a future candidacy. It does prohibit establishing a campaign committee earlier than 365 days before the election date.
[2] Despite paragraph (B), judicial candidates for public election remain subject to many of the provisions of Rule 4.1. For example, a candidate continues to be prohibited from soliciting funds for a political organization, knowingly making false or misleading statements during a campaign, or making certain promises, pledges, or commitments related to future adjudicative duties. See Rule 4.1(A), paragraphs (4), (11), and (13).
[3][Reserved]
[4] In nonpartisan elections, paragraph (B)(5) prohibits a candidate from seeking, accepting, or using nominations or endorsements from a partisan political organization. [5] Subject to the 365 day limitation, judicial candidates are permitted to attend or purchase tickets for dinners and other events sponsored by political organizations. (Cf. Rule 4.1, Comment 6A, Judges are permitted to attend or purchase tickets for dinners or other events sponsored by a political organization.)
[6][Reserved]
[7][Reserved]

RULE 4.3 Activities of Candidates for Appointive Judicial Office A candidate for appointment to judicial office may: (A) communicate with the appointing or confirming authority, including any selection, screening, or nominating commission or similar agency; and (B) seek endorsements for the appointment from any person or organization other than a partisan political organization.

COMMENT

[1] When seeking support or endorsement, or when communicating directly with an appointing or confirming authority, a candidate for appointive judicial office must not make any pledges, promises, or commitments that are inconsistent with the impartial performance of the adjudicative duties of the office. See Rule 4.1(A)(13).

RULE 4.4 Campaign Committees (A) A judicial candidate subject to public election may establish a campaign committee to manage and conduct a campaign for the candidate, subject to the provisions of this Code. The candidate is responsible for ensuring that his or her campaign committee complies with applicable provisions of this Code and other applicable law.
(B) A judicial candidate subject to public election shall direct his or her campaign committee: (1) to solicit and accept only such campaign contributions as are permitted by state law.

(2) not to solicit or accept contributions for a candidate's current campaign more than 180 days before the applicable election, nor more than 45 days after the last election in which the candidate participated; and
(3) to comply with all applicable statutory requirements for disclosure and divestiture of campaign contributions.
(C) Any campaign fund surplus shall be returned to the contributors or turned over to the State Treasurer as provided by law.

COMMENT

[1] Judicial candidates are prohibited from personally soliciting campaign contributions or personally accepting campaign contributions. See Rule 4.1(A)(8). This Rule recognizes that in many jurisdictions, judicial candidates must raise campaign funds to support their candidacies, and permits candidates, other than candidates for appointive judicial office, to establish campaign committees to solicit and accept reasonable financial contributions or in-kind contributions.
[2] Campaign committees may solicit and accept campaign contributions, manage the expenditure of campaign funds, and generally conduct campaigns. Candidates are responsible for compliance with the requirements of election law and other applicable law, and for the activities of their campaign committees.
[2A] The forty-five day post-election restriction applies both to contested and non-contested elections. Once a candidate's campaign has ended, the candidate should only raise funds for 45 more days. For example, if three candidates participate in a judicial election, the candidate who is eliminated may raise funds for only an additional 45 days. However, the two remaining candidates may continue to raise funds through the runoff election and 45 days thereafter.
[3] At the start of a campaign, the candidate must instruct the campaign committee to solicit or accept only such contributions as are reasonable in amount, appropriate under the circumstances, and in conformity with applicable law.
[3A] To reduce potential disqualification and to avoid the appearance of impropriety, judicial candidates should, as much as possible, not be aware of those who have contributed to the campaign.

RULE 4.5 Activities of Judges Who Become Candidates for Nonjudicial Office (A) Upon becoming a candidate for a nonjudicial elective office, a judge shall resign from judicial office, unless permitted by law to continue to hold judicial office. (B) Upon becoming a candidate for a nonjudicial appointive office, a judge is not required to resign from judicial office, provided that the judge complies with the other provisions of this Code.

COMMENT

[1] In campaigns for nonjudicial elective public office, candidates may make pledges, promises, or commitments related to positions they would take and ways they would act if elected to office. Although appropriate in nonjudicial campaigns, this manner of campaigning is inconsistent with the role of a judge, who must remain fair and impartial to all who come before him or her. The potential for misuse of the judicial office, and the political promises that the judge would be compelled to make in the course of campaigning for nonjudicial elective office, together dictate that a judge who wishes to
run for such an office must resign upon becoming a candidate. [2] The "resign to run" rule set forth in paragraph (A) ensures that a judge cannot use the judicial office to promote his or her candidacy, and prevents post-campaign retaliation from the judge in the event the judge is defeated in the election. When a judge is seeking appointive nonjudicial office, however, the dangers are not sufficient to warrant imposing the "resign to run" rule.

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 of 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: SECTION:
16-10-401. Definitions 16-10-407. Leave
16-10-402. Creation
16-10-408. Suspension and pay
16-10-403. Director - Staff
16-10-409. Mandatory suspension
16-10-404. Duties - Records
16-10-410. Removal from office.
16-10-405. Rules
16-10-411. Vacancy.
16-10-406. Immunity from suit.

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 of 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 honestly, 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 March 13, 2008

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 or 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.

Amendment 66 was amended in 2008 to adopted New Rules of Procedure, Guidelines and Operating Policies for complaints filed.

RULES OF PROCEDURE OF THE ARKANSAS JUDICIAL DISCIPLINE AND DISABILITY COMMISSION

Rule 1. 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, one appointed by the Attorney General, one by the President of the Senate, and one 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 thereafter, and 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 Chair or upon the 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 a 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 the 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 chair and another to serve as vice-chair. The vice-chair shall perform the duties of the chair 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. Any alternate member may serve in the place of any member of the same category whenever such member is disqualified or unable to serve and upon the call of, or on behalf of, the chair. 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.

F. *Investigation Panels and Hearing Panels.* The initial review and investigation of complaints shall be conducted by and at the direction of an Investigation Panel, which shall act only by majority vote of the Panel. At the regular organization meetings of the Commission, the chair shall appoint from the nine Commission members and nine Alternates no fewer than three Investigation Panels of three members, each consisting of one judicial member, one lawyer member, and one public member. Thus constituted, these Investigation Panels shall conduct and direct the initial review and investigation of complaints without the knowledge or involvement of the Commission whose members shall serve as the Hearing Panel and conduct the formal proceedings to inquire into charges against a judge. Complaints shall be allocated among the Investigation Panels in rotation. No Commission member or Alternate shall serve on a Hearing Panel involving any matter considered by an Investigation Panel of which he or she was a member.

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.

5B. *Expenses Allowed*. The Commission members shall be reimbursed for expenses necessarily incurred in the performance of their duties.

C. *Authorization for Payments*. Expenses or 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 Commissions records, including all complaints, files and written dispositions;
(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 activities; 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

The Commission shall administer the judicial discipline and disability system, and perform such duties as are required to enforce these rules. The Commission shall have jurisdiction over any “judge” regarding allegations of misconduct or disability, pursuant to the limitations set forth below.

A. *Establishment of Grounds for 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 or she understands it. Claims of error shall be considered only in appeals from court proceedings.

C. *Judge in Office.* As used in this section, "judge" is anyone, whether or not a lawyer, who is an officer of the judicial system and who is eligible to perform judicial functions, including a justice, magistrate, court commissioner, special master, referee, whether fulltime or part time.

The Commission shall have jurisdiction over allegations of misconduct occurring prior to or during service as a judge, and regarding issues of disability during service as a judge.

D. *Former Judge.* The Commission has continuing jurisdiction over any former judge regarding allegations of misconduct occurring before or during service as a judge, provided that a complaint is received within one year of the person's last service as a judge unless the person has actively concealed material facts giving rise to the complaint.

E. *Overlapping Jurisdiction*. Nothing in these rules, or in the provisions regarding jurisdiction of the Commission, shall be construed as limiting in any way the jurisdiction of the Arkansas 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.

B. If the Commission finds it necessary to file a formal statement of allegations against a judge and to proceed to a hearing, the statement of allegations 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 7course of an investigation relating to alleged misconduct or disability of a judge, shall be made except as stated in A. and B. above or as follows:

(1) Upon waiver in writing by the judge under consideration at the formal statement of allegations 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 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 allegations;

(4) Upon inquiry in connection with the assignment or recall of a retired judge to judicial duties, by 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 or 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 the State empowered to investigate, regulate or adjudicate matters incident to the legal profession; or

(7) 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.

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 knowingly 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 [2].

A. *Initiation of Inquiry*. In accordance with these rules, any sworn or verified complaint brought to the attention of the Commission stating facts that, if true, would be grounds for discipline, shall be good cause to initiate an inquiry relating to the conduct of a judge. The Commission on its own motion may make inquiry with respect to the conduct of a judge. All complaints shall bear the name of the complainant, unless anonymous or based upon media reports. If the complaint is anonymous or based upon a media report, it shall be signed by the Executive Director, but not sworn. If the Executive Director, an individual staff member, Commissioner member or Alternate files, solicits, or initiates a complaint, he or she shall sign the sworn complaint. All contacts with potential witnesses shall be in accordance with these Rules.

B. *Screening*. The Executive Director shall dismiss all complaints that are clearly outside of the Commission's jurisdiction. A report as to matters so dismissed shall be furnished to the Commission at its next meeting. The complainant, if any, and the judge shall be informed in writing of the dismissal.

C. *Investigation of Complaints.* All complaints not summarily dismissed by the Executive Director shall then be presented to an Investigation Panel. The Investigation Panel shall dismiss all complaints for which sufficient cause to proceed is not found by that Panel. If the complaint is not dismissed, the Panel shall then direct the staff to make a prompt, discreet, and confidential investigation. In no instance may the staff undertake any investigation or make any contact with anyone other than the complainant and the judge unless authorized to

do so by the Investigation Panel. Upon completion, the Panel shall review the findings from the investigation. The Panel 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 complainant and the judge shall be informed in writing of the dismissal.

D. *Mandatory Notice to the Judge.* If a complaint, or any portion of it, is not dismissed by the Investigation Panel following the discreet and confidential investigation, then the Panel shall notify the judge in writing immediately of those portions of the complaint that the Panel has concluded warrant further examination and attention. The judge shall receive the complaint, or any portion of the complaint that is not dismissed, along with any information prepared by or for the Panel or staff to enable the judge to adequately respond to the issues in the complaint. The judge shall be invited to respond to each of the issues from the complaint that the Panel has identified as possible violations of the Arkansas Code of Judicial Conduct. The time for the judge to respond shall be within 30 days unless shortened or enlarged by the Investigation Panel for good cause.

E. Dismissal or Formal Statement of Allegations. The Investigation Panel may dismiss the complaint with notice to the complainant and the judge, or it may direct a formal statement of allegations citing specific provisions of the Code of Judicial Conduct alleged to have been violated and the specific facts offered in support the alleged violation(s) be prepared and served on the responding judge along with all materials prepared by the Panel or staff. Service may be by any means provided for service of process in the Arkansas Rules of Civil Procedure.

F. *Answer.* The judge shall file a written answer with the Executive Director within thirty (30) days after the service upon him/her of the statement of allegations, unless such time is enlarged by the Executive Director. The answer may include a description of circumstances of a mitigating nature bearing on the charge.

Rule 9. Hearing on formal statement of allegations [3].

A. *Hearing***.** The hearing on a formal statement of allegations prepared against a judge shall be before a Hearing Panel comprised of a full nine member Commission on which no member of the Investigation Panel which considered the initial complaint may serve. This same nine member Hearing Panel shall be the only panel to hear the particular allegations, whether the hearing is recessed, continued, or requires more than one day.

B. *Scheduling.* The Commission shall, upon the receipt of the judge's response or upon expiration of the time to answer, schedule a public hearing to commence within 90 days thereafter, unless continued for good cause shown. The judge and all counsel shall be notified promptly of the date, time and place of the hearing.

C. *Discovery.* The respondent judge and the Commission shall be entitled to discovery in accordance with the Arkansas Rules of Civil Procedure. Both the Commission and the respondent judge shall have the authority to issue summonses for any persons and subpoenas for any witnesses, and for the production of papers, books, accounts, documents, records, or other evidence and testimony relevant to an investigation or proceeding. The summonses or subpoenas shall be served in any manner provided by the Arkansas Rules of

Civil Procedure for service of process. Any fees or expenses incurred for issuing or service of subpoenas or summonses shall be borne by the requesting party. The Circuit Court of Pulaski County shall have the power to enforce process.

D. *Right to Counsel.* The judge shall be entitled to counsel of his/her own choice at his or her own expense.

E. *Conduct of Hearing.* The Arkansas Rules of Evidence shall 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.

F. *Immunity from Prosecution.* The Commission and the judge are authorized to request from the appropriate prosecuting authorities immunity from criminal prosecution for a reluctant witness, using the procedure outlined in Ark. Code Ann. § 1643601, et seq. 10

G. *Public Hearing.* The hearing shall be open to the public and recorded by a certified court reporter.

H. *Determination.* The Commission shall, within sixty (60) days after the hearing, submit its finding and recommendations, together with the record and transcript of the proceedings. Both the decision of the Commission and a copy of the record shall be served upon the judge.

I. *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 complaint shall be dismissed and the Director shall send the judge and each complainant notice of dismissal; (2) If it finds that there has been conduct that is cause for discipline but for which an admonishment 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; and (3) If it finds there has been conduct that is cause for formal discipline, it shall be imposed as set forth in Rule 9. J.

J. *Commission Decision – Formal Discipline.* The recommendation for formal 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/her retirement benefits, pursuant to Ark. Code Ann. § 248217 (1987); (5) Reprimand or censure.

K. *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.

L. *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 the Arkansas Supreme Court, along with any dissenting or concurring opinion by any Commission member. The opinion or opinions in any case must be filed within seven (7) days of rendition.

M. *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 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 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. *Ex parte* communications

Commission Members and Alternates shall not communicate ex parte with the Executive Director or the staff of the Commission, or the respondent judicial officer, his or her family, friends, representatives, or counsel regarding a pending or impending investigation or disciplinary matter except as explicitly provided for by law or Rules of the Commission, or for scheduling, administrative purposes, or emergencies that do not deal with substantive matters or issues on the merits. A violation of this rule may be cause for removal of any member or Alternate from a panel before which a matter is pending.

Rule 12. Supreme Court review.

A. *Filing and Service*. The Commission shall file its report, record, findings, and recommendations with 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 a recommendation regarding discipline pending 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 the 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 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 a review of the entire record the Supreme Court shall file a written opinion and judgment 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 event 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 cost 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.

Rule 15. Complaints shall be adjudicated or dismissed within 18 months.

A sworn complaint shall be dismissed if not disposed of as provided in these Rules within 18 months from receipt of the complaint by the Commission. The following periods are excluded in computing the time for disposition:
A. All periods of delay granted at the request of the judge from and to a date certain.
B. All periods of suspension under Rule 10.
C. All periods of time in which the judge has concealed or conspired to conceal facts that would be evidence or could lead to evidence of any violation of the code of judicial conduct.
The dismissal of a complaint under this or any Rule of the Commission shall be an absolute bar to any subsequent filing of the complaint or any complaint that could have been joined with the complaint dismissed.

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, no 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 compliant 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)

5. Procedural Rules and Burden of Proof for Preliminary and Probable Cause Hearings
The Arkansas Rules of Civil Procedure shall not apply to any Commission hearing held prior to the Commission deciding to proceed to a Formal Disciplinary Hearing. A preponderance of the evidence shall be the standard burden of proof at Preliminary and Probable Cause Hearings. (Adopted September 2006)

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 and at http://www.arkansas.gov/jeac/summaries.html

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 if 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 subdistrict, 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 fundraising 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 fulltime 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 fulltime 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 impartiality 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 2002-02 (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 2002-03 (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 2002-04 (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 2002-05 (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 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 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 2002-07 (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 19th 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 ellusive "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)

In an advisory opinion, the Arkansas Judicial Ethics Advisory Committee was asked whether the Arkansas District Judges Council could make a direct or indirect political contribution from its treasury to an incumbent or a non-incumbent candidate to the Arkansas legislature.
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 legitimatized by indirect collective activity.

Advisory Opinion 2006-02 (May 18, 2006)

The Arkansas Judicial Ethics Advisory Committee was asked whether it would be permissible, pursuant to the decision in Republican Party of Minnesota vs. White, for a judge to support candidates for political office. The Committee examined Canon 5(A)(1)(b), which states that a judge shall not…."publicly endorse or publicly oppose another candidate for public office." The Committee respectfully decline to engage in constitutional interpretations. The Committee concluded that it is not their role to hold that a provision of the Code of Judicial Conduct is unconstitutional. That task rests with the judiciary.

Advisory Opinion 2006-03 (June 13, 2006)

The Arkansas Judicial Ethics Advisory Committee was asked if a judge may, as an elected judicial officer, post a political advertisement in the form of a sign in a lot co-owned by the judge and spouse. The spouse has given consent to post the campaign sign. The Committee stated that the Code of Judicial Conduct places clear restrictions on a judge. For instance Canon 5(A)(1), which states that, “a judge shall not publicly endorse or publicly oppose another candidate for public office.” In addition Canon 5 (A)(3) states that a judge must encourage members of his family to adhere to the same standard of political conduct.
It was the opinion of the Committee that it would be improper to display a campaign sign on property owned by the judge and his spouse, as it could be construed as a political endorsement.

Advisory Opinion 2006-04 (October 27, 2006)

The Arkansas Judicial Ethics Advisory Committee was asked if a judicial candidate who is not an incumbent judge may be pictured in a judge's robe or seated at the judge's bench in campaign materials. The Committee noted that Canon 5A(3)(d) 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 was the opinion of the Committee that a judicial candidate who is not an incumbent judge should not be pictured in a judge's robe or seated at a judge's bench in campaign materials. Such material would misrepresent his or her "present position."

Advisory Opinion #2007-01- (April 3, 2007)

The Arkansas Judicial Ethics Advisory Committee was asked if it would be permissible to serve on the University of Arkansas at Fort Smith Board of Visitors committee. The committee is an advisory body that exists to support the University and that members of the committee are not concerned with issues of fact or policy. The committee serves to communicate the perceived needs of the community to the office of the school's chancellor. The Judicial Ethics Advisory Committee stated that Canon 4(C)(2) of the Arkansas Code of Judicial Conduct says that a judge "shall not accept appointments to a governmental committee or other governmental position that is concerned with issues of fact or policy," with the exception of matters of law or the judicial system. However, the committee notes that Canon 4(C)(3) permits a judge to serve as a trustee or advisor of an educational organization not conducted for profit. The Committee concluded that the role of a member of the Board of Visitors is "more educational than governmental"

Advisory Opinion #2007-02- (April 18, 2007)

The Arkansas Judicial Ethics Advisory Committee was asked by a judicial candidate whether it would be permissible to send a campaign contribution to the Campaign of Senator Mark Pryor. The judicial candidate had agreed prior to announcing her candidacy to be a co-host of the Senator Mark Pryor campaign. Co-hosts were asked to contribute $1000.00. The Judicial Ethics Advisory Committee stated that Canon 5 of the Arkansas Code of Judicial Conduct states that a judge or judicial candidate shall refrain from inappropriate political activity. Section 5A(1)(b) states all judges and candidates for election or appointment for judicial office shall not publicly endorse or publicly oppose a candidate for any public office. Finally, Section 5A(1)(e) states a judge or judicial candidate should not solicit funds for, pay an assessment to or make a contribution to a political party or candidate. The Committee concluded that based upon restrictions in the Code of Judicial Conduct, the judicial candidate may not honor the campaign promise made prior to announcing her candidacy for a judicial position.

Advisory Opinion 2007-03 (October 18, 2007)

A judge may not support candidates for political office.

Advisory Opinion 2008-01 (February 28, 2008)

The Judicial Ethics Advisory Committee cannot opine whether or not a judicial candidate may serve as city attorney for one city and district judge for another. However, a judicial candidate is required to resign from judicial office while running for an elective office of city attorney.

Advisory Opinion 2008-02 (March 12, 2008)

A circuit judge must resign if he or she becomes a candidate for county judge.

Advisory Opinion 2008-04 (August 6, 2008)

A judge is not prohibited from entering into an agreement for legal services. However, Canon 3(A) states that “the judicial duties of a judge take precedence over all judge’s other activities.” The Committee believes an agreement that would result in excessive recusal would therefore be inappropriate.

Advisory Opinion 2008-05 (August 28, 2008)

A judge may not issue a press announcement or distribute cards until 365 days before election.

Advisory Opinion 2008-07 (August 26, 2008)

A judge is required to recuse whenever his son appears in front of him, or by written materials, if his impartiality might reasonably be questioned.

Advisory Opinion 2008-08 (December 17, 2008)

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Advisory Opinion 2009-02 (January 16, 2009)

A judge engaging in permissive activities must be diligent not to violate any other provisions of the Code of Judicial Conduct.

Advisory Opinion 2009-03 (June 22, 2009)

A judicial candidate may purchase a ticket to and attend an event of a political organization if the event does not occur more than 365 days before election.

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NO ADVISORY OPINIONS ISSUED IN 2011

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Advisory Opinion 02-09	(out of court contact with victims of domestic violence)

FAMILY ISSUES - POLITICAL ACTIVITY

Advisory Opinion 02-06	(working in political campaign)
Advisory Opinion 06-03	A judge may not allow a political advertisement to be displayed on property owned by the judge and his wife

FORMER JUDGE

Advisory Opinion 05-08	A former judge may not refer to himself or

	herself as “judge” in a campaign logo or sign or other campaign material
Advisory Opinion 06-04	A judicial candidate who is a former judge may not be pictured in a judge’s robe or be seated at a judge’s bench in campaign material

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
Advisory Opinion 08-01	(cannot opine whether or not a judicial candidate may serve as city attorney for one city and district judge for another. However, a judicial candidate is required to resign from judicial office while running for an elective office of city attorney)

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)
Advisory Opinion 02-09	(judge, in his private law practice, representing criminal defendants opposing prosecuting attorneys who represent the State in other proceedings in which he presides)
Advisory Opinion 04-07	(managing attorney of legal aid office)
Advisory Opinion 05-03	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
Advisory Opinion 05-04	Part-time district court judge may not represent criminal defendants on felony

	charges in the county's circuit courts
Advisory Opinion 08-04	A judge is not prohibited from entering into an agreement for legal services. However, Canon 3(A) states that "the judicial duties of a judge take precedence over all judge's other activities." The Committee believes an agreement that would result in excessive recusal would therefore be inappropriate

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

Advisory Opinion 91-04-02	(service on bank's board of directors)
Advisory Opinion 91-04-04	(service on bank's board of directors)
Advisory Opinion 96-09	(practicing law afer being selected for the bench; payment for work done before going on bench)
Advisory Opinion 05-03	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

Advisory Opinion 91-06	(press release about redistricting decision)
Advisory Opinion 93-07	(surplus campaign funds)
Advisory Opinion 94-01	(public stand on bond issue regarding new courthouse and jail)
Advisory Opinion 94-04	(public stand on proposed constitutional amendment)
Advisory Opinion 95-01	(letters of recommendation)
Advisory Opinion 95-05	(teaching course of paralegals)
Advisory Opinion 96-03	(likeness being used in painting)
Advisory Opinion 96-04	(authoring book)
Advisory Opinion 97-01	(letter of recommendation for prospective federal judicial candidate)
Advisory Opinion 98-06	(serving on jury)
Advisory Opinion 99-06	(participating in forum of Roscoe Pound Foundation)
Advisory Opinion 00-02	(responding to media reports critical of court based on testimony from completed federal trial)
Advisory Opinion 00-04	(board of country club)
Advisory Opinion 00-06	(teaching evening courses at state university and receive compensation)
Advisory Opinion 01-01	(serving on the board of directors for legal assistants at a state community college)
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)
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

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

Advisory Opinion 92-05	(judge may attend inaugural ball for president)
Advisory Opinion 94-01	(public stand on bond issue regarding new courthouse and jail)
Advisory Opinion 94-04	(public stand on proposed constitutional amendment)
Advisory Opinion 94-06	(retired judge participating in political campaign)
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 03-04	(judicial council hosting dinner for legislators)
Advisory Opinion 06-01	The Arkansas Judicial Council should not make contributions to a candidate for political office
Advisory Opinion 06-03	A judge may not allow a political advertisement to be displayed on property owned by the judge and his wife
Advisory Opinion 07-02	A judicial candidate may not honor a commitment made before becoming a judicial candidate to chair a fundraising event for a non-judicial candidate

POLITICS, ELECTIONS, AND CAMPAIGN FINANCE

Advisory Opinion 93-04	(surplus campaign funds)
Advisory Opinion 95-04	(campaign conduct by candidate and committee)
Advisory Opinion 96-02	(time limits on soliciting campaign contributions for candidate unopposed in primary and general election)
Advisory Opinion 01-05	(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
Advisory Opinion 06-04	A judicial candidate who is a former judge may not be pictured in a judge's robe or be seated at a judge's bench in campaign material

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.

Advisory Opinion 09-02	Permissive activities must not violate Code of Judicial Conduct

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

Advisory Opinion 08-01	(cannot opine whether or not a judicial candidate may serve as city attorney for one city and district judge for another. However, a judicial candidate is required to resign from judicial office while running for an elective office of city attorney)
Advisory Opinion 08-05	A judge may not issue a press announcement or distribute cards until 365 days before election