
**Final Report and Recommendations
of the Supreme Court's
Task Force on the Code of Judicial Conduct**

January 2005

In memory of

The Honorable Mack Kidd
(1941-2005)

Justice Kidd set the standard for public service.

I. INTRODUCTION

This report is the result of the second study the Texas Code of Judicial Conduct since the ground-breaking opinion in *Republican Party of Minnesota v. White*, 122 S.Ct. 2528 (2002) (holding that a Minnesota prohibition against judicial candidates from announcing their views on disputed legal and political issues was an unconstitutional restriction on free speech). Immediately after the *White* opinion issued, the Supreme Court of Texas appointed an advisory committee to advise the Court about its impact on the Texas code. *Order - Appointment of a Committee to Make Recommendations Concerning Portions of the Code of Judicial Conduct*, Misc. Docket No. 02-9026 (July 24, 2002). Based on the Committee's recommendations, and aware of an impending general election, the Court quickly, but carefully, amended certain provisions of the Code of Judicial Conduct to cure any obviously unconstitutional provisions. *Order - Approval of Amendments to the Texas Code of Judicial Conduct*, Misc. Docket No. 02-9167 (August 22, 2002). However, at that time, the Court noted its desire to "continue to examine the extent to which these or additional changes to the Texas Code of Judicial Conduct are required" and advised the Bar that it would "announce the formation of a committee to examine all provisions of the Texas Code of Judicial Conduct." *Id.*

True to its word, the Court created the Task Force of the Code of Judicial Conduct "to review [the Texas Code of Judicial Conduct] to ensure that the integrity and independence of our judiciary is preserved." *Order Creating Task Force on Code of Judicial Conduct*, Misc. Docket No. 03-9148 (August 29, 2003). The Task Force's charge was not limited to issues raised by the *White* decision. Rather, the Court asked the Task Force to "make recommendations to th[e] Court for revisions required by law, to make suggestions on improving the effectiveness of existing cannons, and to suggest other modifications consistent with the Code's broad purpose of upholding the integrity, independence and competence of the judiciary." *Id.* This broad charge commenced the first thorough review of the Code since 1994.

II. MEMBERS AND ACKNOWLEDGMENTS

The Court appointed Charles L. Babcock of Houston as chairperson of the Task Force, and (now) Chief Justice Wallace B. Jefferson as the Court's liaison. The members of the Task Force were:

Appellate Judges

Judge Mike Keasler
Chief Justice Alma Lopez
Justice Brian Quinn
Justice Douglas Lang
Justice Mack Kidd
Justice Kem Frost

Judge S. Grant Dorfman
Judge Sid Harle
Judge Ben Woodward

County Judges

Judge Jan Roden
Judge Rudolfo Gonzalez
Judge Margaret Keliher

District Judges

Judge Abe Lopez
Judge Levi Benton
Judge Menton Murray
Judge Lamar McCorkle

Justice Court Judges

Judge Marcia Weiner

Municipal Court Judges

Judge Monica Gonzalez

Academic Members

Prof. Douglas Laycock
Prof. Elaine Carlson
Dean John B. Attanasio
Dean Walter B. Huffman
Dean James Alfini

Attorney Members

Jim George
Guy V. Harrison
Wayne Fisher
George McWilliams
Roberto L. Ramirez
Sharon Calloway

Public Members

George Edwards
Scott Mann

In addition, the Task Force's work was greatly enhanced by the invaluable contributions of advisory member Seana Willing, the executive director of the State Commission on Judicial Conduct.

To comply with the Court's charge, each Canon was studied by subcommittees who formulated recommendations on possible revisions to the language of the Code and presented those recommendations to the full Task Force for discussion and adoption. The subcommittee members were:

<i>Preamble/ Canon 1</i>	Dean James Alfini, chair, Judge Lamar McCorkle, George McWilliams, and George Edwards
<i>Canon 2</i>	Professor Elaine A. Carlson, chair, Guy V. Harrison, Justice Alma Lopez, Judge Levi Benton, and Judge Rudolfo Gonzalez
<i>Canon 3</i>	Judge Kem Thompson Frost, chair, Sharon E. Calloway, Judge Sid Harle, and Dean Walter B. Huffman
<i>Canon 4</i>	Professor Doug Laycock, chair, Justice Mack Kidd, Wayne Fisher, Scott Mann, Judge Jane Roden, and Roberto L. Ramirez
<i>Canon 5</i>	Jim George, chair, Dean John B. Attanasio, Justice Douglas Lang, Justice Mack Kidd, Judge Menton Murray, and Judge S. Grant Dorfman
<i>Canon 6</i>	Judge Ben Woodward, chair, Justice Brian Quinn, Judge Monica Gonzalez, Judge Margaret Keliher, Judge Abe Lopez, and Judge Marcia Weiner

Each subcommittee was also responsible for reviewing the provisions of Canon 8 and recommending any changes that related to their particular canon. The members reviewed the case law and codes from across the county, the American Bar Association's Model Code of Conduct, reports from the Joint Commission to Evaluate the Model Code of Judicial Conduct, and countless other sources.

The subcommittee reports and recommendations were thoroughly studied, vigorously debated, and thoughtfully voted on during the five meetings of the full Task Force. Each of these meetings was open to the public and transcribed. The Task Force hopes that this final report is not the end of this important and worthy project. Given the important constitutional rights the Code may implicate, the Task Force urges the Court to hold formal public hearings to further develop a factual record on which the Court can ultimately

base a finding of a compelling state interest that justifies some of the recommended regulations. To aide in this process and the continuing study of the Task Force’s work, the Task Force attaches the subcommittee reports and the meeting transcriptions as appendices to this final report.

III. REPORT & RECOMMENDATIONS

Canon 1 & Preamble

The Task Force recommends adding the word “impartial” to the preamble and Canon 1 to underscore the compelling state interest of judicial impartiality.

Canon 2

Canon 2.B: The Task Force recommends amending Canon 2.B to expressly prohibit a judge from testifying as an expert witness. This is not a change in law; a judicial ethics opinion already prohibits such testimony.

Canon 2.C: The Task Force recommends that the governing criterion in Canon 2.C be “invidious” rather than “illegal” discrimination. Invidious discrimination arguably is broader than discrimination that is unlawful under federal or state law. An invidious discrimination is an arbitrary one made on an illegitimate or offensive basis. Membership discrimination is invidious if the reasons for the restrictions fail to reflect legitimate, generally accepted values.

Canon 3

Canon 3.B.(6): The Task Force recommends adding a “savings clause” of sorts to the prohibition in Canon 3.B.(6) against judges’ manifesting bias or prejudice “by words or conduct.” According to official comments in some Judicial Conduct Codes, the purpose of Canon 3.B.(6) is to ensure that a judge refrains from speech, gestures, or other conduct that manifests bias or prejudice and that the judge requires the same standard of behavior of court staff subject to the judge’s control. However, a judge, quite legitimately, could make an inquiry or comment relating to socioeconomic status, race, religion, national origin, etc. in a case in which those matters were in issue. Under the current rules, that inquiry or comment could be misconstrued or mischaracterized as some manifestation of bias or prejudice.

The idea of a “savings clause” came from Canon 3.B.(7), which mandates that judges require lawyers to refrain from manifestation of bias or prejudice. The last sentence in Canon 3.B.(7) exempts “legitimate advocacy” when race, sex, religion, national origin, disability, age, sexual orientation, or socioeconomic status is an issue in the proceeding.

If a lawyer can offer “legitimate advocacy” on a point, then a judge should be allowed legitimate

consideration and inquiry of the same matter, even if the lawyer’s argument in the proceeding is ultimately rejected. Therefore, it seems logical to extend the “legitimate advocacy” exception in Canon 3.B.(7) to “legitimate inquiry or analysis” in Canon 3.B.(6). A few other states already have done so. *See e.g.*, VA. CANONS OF JUDICIAL CONDUCT, Canon 3.B.(6); FLA. CODE OF JUDICIAL CONDUCT, Canon 3.B.(5).

Canon 3.B.(10): The Task Force recommends a provision to address a judge’s participation in educational programs and scholarly studies. The Task Force recognized that, as a matter of policy, it would seem appropriate to encourage judges to take part in these activities and for the Code to expressly recognize and acknowledge that, in doing so, judges do not tread on any ethical rules. This change is intended merely to reflect current practice, provide assurance and comfort to judges, and clarify that judges may take part in educational programs and scholarly studies and, in that context, discuss issues that might come before them, as long as their comments do not indicate how the judge might rule in a given case.

Moreover, the provision is narrowly tailored to ensure that it is only a recognition of a judge’s ability to participate in these activities within the boundaries of Canon 3.B.(10). Each subsection address a different category of activities¹ and is qualified by the prefatory statement that makes participation contingent on the activity not interfering with a fair hearing in any pending case.

The Task Force also recommends that Canon 3.B.(10) be amended to clarify that the prohibition against public comment about pending matters continues during any appellate process and until final disposition.

Canon 3.B.(11): The Task Force recommends amending Canon 3.B.(11) to more accurately reflect the current practice in many appellate courts of revealing “votes” and “positions taken” in written orders and other official rulings and notifications, as well as through opinions and judgments.

Canon 3.D: The Task Force recommends that the Code, similar to the Texas Disciplinary Rules of Professional Conduct, specifically reference a judge’s duty to report another judge’s or attorney’s impairment.

The Task Force also recommends changing the term “appropriate action” to “appropriate corrective action” and clarifying what this term means. This definition was gleaned from several sources, including the codes of California, Maryland, and New York, as well as preliminary drafts of the ABA Joint Commission to Evaluate the Model Code of Judicial Conduct.

The Task Force also recommends adding a provision to Canon 3.D that requires a judge who is charged with crimes (or convicted of certain crimes) in the United States to notify the Judicial Conduct Commission. The idea is to require the judge to report factual information relating to the charge (*e.g.*, cause number, where the charge is pending, etc.) but not require the judge to address the charge.

¹ Subsection [i] reflects the current provision in Canon 3.B.(10). Subsection [ii] is primarily aimed at public comments by a judge to non-lawyer audiences. Subsection [iii] is aimed primarily at comments by judges in professional settings, such as during continuing legal education programs and in law review articles. Subsection [iv] addresses a judge’s participation in studies and service projects aimed at improving the law or the legal system.

Canon 4

Canon 4.B & 4.C: The Task Force recommends separating section B, on activities to improve the law, from section C, on other activities. No substantive change is intended; the changes are meant only to match the actual content of 4.B with its title. The word “avocational” is taken from the Model Rules (although that word has been dropped from the current draft revisions), and from earlier versions of the Texas Rules.

Canon 4.C: The Task Force recommends clarifying in Canon 4.C that the rules applicable to judges who are officers, directors, trustees, or advisors of charitable organizations also apply to judges who are simply members of charitable organizations. The restrictions on these activities have to do with fundraising, managing investments, and participating in organizations that are frequent litigants. These activities raise the same issues whether the judge is a member or an officer.

The Task Force also recommends requiring a judge to resign from charitable organizations that are frequently involved in litigation. The existing rule says a judge “should” not serve “if it is likely” that the organization will be a frequent litigant. The predictive element in “if it is likely” requires that this rule remain a “should.” But if it becomes clear that the organization is in fact a frequent litigant, then the judge “shall” resign. This is not a hypothetical concern; lots of perfectly legitimate, non-profit, public-interest organizations file a lot of lawsuits to advance their vision of the public good.

New Canon 4.D: The Task Force recommends consolidating the rules on fundraising by judges in a new section D. Fundraising provisions are currently divided between 4.B., on activities to improve the law, and 4.C., on other activities. The two fundraising provisions are worded somewhat differently, for reasons that are not apparent, and the result is ambiguity. This proposed rule is more detailed than the current Texas rules and is taken largely from the Model Rule. The Task Force’s goal was principally clarifying, but there are some changes of substance:

4.D.(1)(a): The proposed ban on personal solicitation of funds is explicit in existing 4.C.(2) for charitable organizations, and is probably included in existing 4.B.(2) on law reform organizations, although the existing language is less than perfectly clear.

4.D.(1)(b): The proposed ban on using the judge’s name or prestige for fundraising purposes is a specification in this context of Canon 2’s general prohibition on lending the prestige of judicial office to private interests. The Model Rules make it explicit with respect to fundraising, and the Task Force recommends following that example here.

4.D.(1)(c): The proposed ban on soliciting memberships for fundraising purposes or where the solicitation might be coercive is probably implicit in Canon 2; the Task Force recommends following the Model Rules and make it explicit.

4.D.(2)(a): The proposed exception permitting solicitation from other judges over whom the soliciting judge exercises neither supervisory nor appellate authority would be a substantive change in Texas. It is borrowed from the Model Rules. These solicitations seem not to raise the issues posed by

solicitations to attorneys or members of the public. In the extraordinarily rare case where the solicited judge had personal litigation pending in the soliciting judge's court, the Task Force assumes the more general language of Canon 2 would cover it.

4.D.(2)(b): This proposal is substantive and important. The current 4.C.(2) allows a judge to be a speaker or guest of honor at a charity's fundraising events. The Task Force recommends limiting this to organizations to improve the law. A private school, or church, or other charity, hosting a fundraising dinner in honor of a judge, and inviting all the lawyers in town to attend and contribute, seems clearly to violate the rule against lending the prestige of the judicial office to a private cause, and many of the lawyers invited would experience the invitation as coercive. But these practices have become common under the existing rule. The same practice for a law-reform organization raises many of the same issues, but there is a closer connection between the work of a judge and the work of a law-reform organization. There may be reasons for a law-reform organization to honor a judge independent of simply exploiting his office; such non-exploitative reasons may arise for other charities in which a judge has been active, but they will arise far less often.

4.D.(2)(c): The existing Texas rule permits a judge to be listed as a director and the like. The additional detail about how a judge may be listed on letterhead and other materials clarifies issues that have arisen in other states and follows the better decisions in those other states.

4.D.(3): This exception for campaign and officeholder funds is the existing Texas rule, moved from the old 4.D.(1) (now 4.E.(1)).

Old Canon 4.D, now Proposed Canon 4.E.(2): The Task Force recommends prohibiting full-time judges from serving as an officer, director, or manager of a business, except for family businesses. The proposal creates a transitional rule for judges who have relied on the existing rule, which permits businesses with up to ten owners outside the judge's family. Texas is an outlier in permitting a judge to actively participate in a non-family business. Other states tend to distinguish between passive investments and active participation in a business. The arguments that active participation in a business is especially hazardous run along the following lines:

- Businesses need licenses and permits. They tend to get involved in litigation. There are cases of judges actively prosecuting the business's interests before administrative agencies.
- Businesses engage in frequent transactions, and many of those transactions may be with lawyers, litigants, or potential litigants.
- Active participation consumes the judge's time and distracts the judge's attention.
- There is a greater risk of exploiting the judicial office, or of appearing to. No matter how scrupulous the judge, there is the risk that some customers will patronize the judge's business in hopes of currying favor with the judge.
- A business can be affected by litigation to which other businesses are parties.
- The precedential effect of other litigation applies equally to a concentrated investment in a single business, even if the judge does not actively participate. The risk of customers hoping to curry favor applies to a concentrated passive investment if the judge's ownership is publicly known. The rest of the concerns listed apply only to active participation.

See generally Jeffrey M. Shaman, Steven Lubet, & James J. Alfini, *Judicial Conduct and Ethics* (3d ed 2000)

& 2001 Supp.). Family-owned businesses raise all the same problems, however the Task Force recommends permitting family businesses as a concession to family realities; the family-owned business may find it difficult to replace a key family member, or the family-owned business may be so important to the judge that the judge has to retain some voice in its management.

Old Canon 4.D.(4), now proposed Canon 4.E.(4): The Task Force recommends rearranging these subsections so that existing (4)(c) is last because it contains a reference to “any other gift” etc.

Old Canon 4.F, now Proposed Canon 4.G: The Task Force recommends adding “to the extent permitted by law” to the end of existing 4.F. (now proposed 4.G.). This addition is intended to reference existing provisions, in Canon 3.B.(8)(b), and in the procedural rules, that prohibit a judge from mediating a case and then sitting as the judge if mediation fails, as well as any other law, including case law, that may exist on excessive pressure to settle.

Canon 5

Canon 5.(1): After much debate and careful analysis of the *White* decision, the Task Force cannot recommend eliminating the restrictions on political activity contained in Canon 5. The Task Force recognizes the state’s compelling interest in having a judiciary that is fair, independent, and impartial. Thus, the Task Force recommends making little substantive revisions to Canon 5. Instead, the Task Force recommends revising Canon 5 to contain an introductory section—taken in part from the Comment to Canon 5 in the August 2002 revisions to the Code—that is not mandatory but is an admonishment to judges and judicial candidates that sets out core values that the Court hopes judges and judicial candidates will voluntarily seek to achieve. This self-regulation is necessary so that the candidate is able to fulfill his or her duties once in office. The Task Force does not intend for this aspirational provision to form the basis of any disciplinary proceeding against a judge or judicial candidate.

Old Canon 5.(1), now Proposed Canon 5.(2): The Task Force recommends replacing the word “recklessly” in old Canon 5.(1), now proposed Canon 5.(2), with a definition—“with serious doubts about the truth”—so that the mental state of one making a false statement is defined in the same way courts have defined “actual malice” in the cases that have followed *New York Times v. Sullivan*, 84 S.Ct. 710 (1964).

Old Canon 5.(2), now proposed Canon 5.(3): The Task Force recommends adding an introductory phrase to the political activity provision in old Canon 5.(2), now proposed Canon 5.(3), to clarify the compelling state interest in prohibiting such endorsements. There is substantial justification for this limitation; judicial candidates should not be intimidated or forced to make political contributions and endorse candidates as a means of keeping their job, particularly where these same public officials frequently appear before the judge or their work product and policies are challenged in the judge’s courtroom. Moreover, such endorsements would violate Canon 2.B, which prohibits a judge from using the prestige of judicial office to advance the private interest of others.

Old Canon 5.(3), now Proposed Canon 5.(4): The Task Force recommends deleting the word “contested” in Canon 5.(4). The same ill exists whether the election is contested and often times a candidate will not know whether an election will be contested until after he or she becomes a candidate.

Canon 6

Canon 6.A.(2) & 6.D.: The Task Force recommends adding “associate judge” to the list of the persons who must comply with the Code of Judicial Conduct. Since the Code was adopted, the Legislature has changed the designation of many judges from “master” to “associate judge.”

Canon 6.C.(2): The Task Force recommends expressly prohibiting justices of the peace and municipal judges from commenting on the merits of “impending,” as well as pending, judicial proceedings. These judges are not subject to Canon 3.B.(8), pertaining to *ex parte* communications (“...concerning the merits of a pending or impending judicial proceeding...”). Instead Canon 6.C.(2) contains an *ex parte* communication rule for justices of the peace and municipal judges.

Canon 6.D.(2): The Task Force recommends amending the directive in Canon 6.D.(2) from “should” to “shall” to help curb abuses of this section. For example, in at least one instance, all masters of a particular jurisdiction were retained in a case, resulting in the recusal of all the judges in that jurisdiction from that case.

Canon 8 Definitions

Impartiality: The Task Force recommends adding a definition of “impartiality” to Canon 8 to provide necessary specificity and to facilitate the interpretation of Canon 2. In *White*, the United States Supreme Court observed that neither the Minnesota code nor the ABA Model Code specifically defined impartiality and that a clear definition was desirable. Indeed, history appears to show that the Texas Code would be well served by including a definition. Filings by the Texas State Commission on Judicial Conduct reveal that over the years 2002, 2003, and 2003, at least forty seven specific cases of judicial misconduct found violations of Canon 2.A. At least nine of these cases involved questions of impartiality of the judge. In drafting a definition of “impartiality,” the Task Force relied on the definition proposed by the ABA Model Code Working Group that “tracks the analysis of impartiality in the majority opinion of *White*” and “is narrowly tailored yet encompasses the general concepts of judicial impartiality that are vital to the maintenance of an independent judiciary.” See August 2003 Proposed Amendments to the ABA Model Code of Judicial Conduct.

Impending: The Task Force recommends adding a definition of “impending” to Canon 8's. This definition is intended to be more narrow than the proposal from the Supreme Court’s Judicial Speech Advisory Committee, see Second Report of the Judicial Speech Advisory Committee, dated August 19, 2002, at 3, in that a proceeding is impending under subsection (iii) only if the judge knows that a specific event has occurred that is highly likely to lead to litigation *and* the parties (or class of parties) are identifiable.

Non-public: The Task Force recommends adding a definition of “non-public” to Canon 8. The Task Force relied on various sources in drafting this definition, including Texas Rule of Judicial Administration 12 and the definitions in other states’ codes of conduct. Moreover, the Task Force intends, through this definition, to make the non-disclosure provision in Canon 3.B.(11) applicable to multi-district litigation panels.

Final Recommendations

PREAMBLE

Our legal system is based on the principle that an independent, fair, impartial and competent judiciary will interpret and apply the laws that govern us. The role of the judiciary is central to American concepts of justice and the rule of law. Intrinsic to all sections of this Code of Judicial Conduct are the precepts that judges, individually and collectively, must respect and honor the judicial office as a public trust and strive to enhance and maintain confidence in our legal system. The judge is an arbiter of facts and law for the resolution of disputes and a highly visible symbol of government under the rule of law.

Public confidence in the judiciary is eroded by improper conduct by judges. A judge should avoid all impropriety and appearance of impropriety, and should expect to be the subject of public scrutiny. The public should expect, and a judge should therefore accept, certain restrictions on the judge's conduct that might be viewed as burdensome by the ordinary citizen and should do so freely and willingly.

The Code of Judicial Conduct is not intended as an exhaustive guide for the conduct of judges. They should also be governed in their judicial and personal conduct by general ethical standards. The Code is intended, however, to state basic standards which should govern the conduct of all judges and to provide guidance to assist judges in establishing and maintaining high standards of judicial and personal conduct.

CANON 1

Canon 1: Upholding the Integrity, Impartiality and Independence of the Judiciary

An independent and honorable judiciary is indispensable to justice in our society. A judge should participate in establishing, maintaining and enforcing high standards of conduct, and should personally observe those standards so that the integrity, impartiality and independence of the judiciary is preserved. The provisions of this Code are to be construed and applied to further that objective.

CANON 2

Canon 2. Avoiding Impropriety and the Appearance of Impropriety in All of the Judge's Activities

- A. A judge shall comply with the law and should act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.
- B. A judge shall not allow any relationship to influence judicial conduct or judgment. A judge shall not lend the prestige of judicial office to advance the private interests of the judge or others; nor shall a judge convey or permit others to convey the impression that they are in a special position to influence the judge. A judge shall not testify voluntarily as a character witness or as an expert witness in a civil, criminal, or administrative proceeding.
- C. A judge shall not knowingly hold membership in any organization that practices invidious discrimination on the basis of race, sex, religion or national origin ~~prohibited by law.~~

CANON 3

Canon 3. Performing the Duties of Judicial Office Impartially and Diligently

A. Judicial Duties in General.

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

B. Adjudicative Responsibilities.

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

(2) A judge should be faithful to the law and shall maintain professional competence in it. A judge shall not be swayed by partisan interests, public clamor, or fear of criticism.

(3) A judge shall require order and decorum in proceedings before the judge.

(4) A judge shall be patient, dignified and courteous to litigants, jurors, witnesses, lawyers and others with whom the judge deals in an official capacity, and should require similar conduct of lawyers, and of staff, court officials and others subject to the judge's direction and control.

(5) A judge shall perform judicial duties without bias or prejudice.

(6) A judge shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice, including but not limited to bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation or socioeconomic status, and shall not knowingly permit staff, court officials and others subject to the judge's direction and control to do so. This requirement does not preclude proper judicial inquiry or consideration when race, sex, religion, national origin, disability, age, sexual orientation or socioeconomic status, or similar factors, are issues in the proceeding.

(7) A judge shall require lawyers in proceedings before the court to refrain from manifesting, by words or conduct, bias or prejudice based on race, sex, religion, national origin, disability, age, sexual orientation or socioeconomic status against parties, witnesses, counsel or others. This requirement does not preclude legitimate advocacy when any of these factors is an issue in the proceeding.

(8) A judge shall accord to every person who has a legal interest in a proceeding, or that person's lawyer, the right to be heard according to law. A judge shall not initiate, permit, or consider ex parte communications or other communications made to the judge outside the presence of the parties between the judge and a party, an attorney, a guardian or attorney ad litem, an alternative dispute resolution neutral, or any other court appointee concerning the merits of a pending or impending judicial proceeding. A judge shall require compliance with this subsection by court personnel subject to the judge's direction and control.

This subsection does not prohibit:

(a) communications concerning uncontested administrative or uncontested procedural matters;

(b) conferring separately with the parties and/or their lawyers in an effort to mediate or settle matters, provided, however, that the judge shall first give notice to all parties and not thereafter hear any contested matters between the parties except with the consent of all parties;

(c) obtaining the advice of a disinterested expert on the law applicable to a proceeding before the judge if the judge gives notice to the parties of the person consulted and the substance of the advice, and affords the parties reasonable opportunity to respond;

(d) consulting with other judges or with court personnel;

(e) considering an ex parte communication expressly authorized by law.

(9) A judge should dispose of all judicial matters promptly, efficiently and fairly.

(10) A judge shall abstain from public comment about a pending or impending proceeding which may come before the judge's court in a manner which suggests to a reasonable person the judge's probable decision on any particular case. This prohibition applies to any candidate for judicial office, with respect to judicial proceedings pending or impending in the court on which the candidate would serve if elected. A judge shall require similar abstention on the part of court personnel subject to the judge's direction and control. This section does not prohibit judges from making public statements in the course of their official duties or from explaining for public information the procedures of the court. This section does not apply to proceedings in which the judge or judicial candidate is a litigant in a personal capacity. The requirement to abstain from public comment about a pending proceeding continues during any appellate process and until final disposition. This section does not prohibit judges or judicial candidates from participating in the following activities, providing such participation does not interfere with a fair hearing in a case:

(a) making public statements in the course of their official duties or explaining for public information the procedures of the court; or

(b) publicly discussing, acknowledging, and/or explaining, orally or in writing, the administration of justice, legal systems, recognized legal principles and theories, and/or issues and holdings contained in case law; or

(c) identifying or discussing previously decided cases or issues pending in appellate courts in legal education programs and materials, scholarly articles, or other similar writings; or

(d) participating in scholarly studies, such as those conducted by the American Law Institute, or serving on an advisory committee, such as the Supreme Court Advisory Committee, where the purpose of any such study or service is to analyze current law or procedure and make recommendations for changes or developments in the law.

(11) A judge shall not disclose or use, for any purpose unrelated to judicial duties, nonpublic information acquired in a judicial capacity. The discussions, votes, positions taken, and writings of appellate judges and court personnel about causes are confidences of the court and shall be revealed only through a court's judgment, a court's order, a written opinion, or other official ruling or notification, or in accordance with Supreme Court guidelines for a court approved history project.

C. Administrative Responsibilities.

(1) A judge should diligently and promptly discharge the judge's administrative responsibilities without bias or prejudice and maintain professional competence in judicial administration, and should cooperate with other judges and court officials in the administration of court business.

(2) A judge should require staff, court officials and others subject to the judge's direction and control to observe the standards of fidelity and diligence that apply to the judge and to refrain from manifesting bias or prejudice in the performance of their official duties.

(3) A judge with supervisory authority for the judicial performance of other judges should take reasonable measures to assure the prompt disposition of matters before them and the proper performance of their other judicial responsibilities.

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

(5) A judge shall not fail to comply with Rule 12 of the Rules of Judicial Administration, knowing that the failure to comply is in violation of the rule.

D. Disciplinary Responsibilities.

(1) A judge who receives information clearly establishing that another judge has committed a violation of this Code should take appropriate action. A judge having knowledge that another judge has committed a violation of this Code or is impaired by mental illness or by chemical dependency on alcohol or drugs so as to raise a substantial question as to the other judge's fitness for office shall inform the State Commission on Judicial Conduct or take other appropriate corrective action. If the corrective action proves ineffective, a judge shall report the violation or impairment to the State Commission on Judicial Conduct.

(2) A judge who receives information clearly establishing that a lawyer has committed a violation of the Texas Disciplinary Rules of Professional Conduct should take appropriate action. A judge having knowledge that a lawyer has committed a violation of the Texas Disciplinary Rules of Professional Conduct or is impaired by mental illness or by chemical dependency on alcohol or drugs so as to raise a substantial question about the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects shall inform the Office of the Chief Disciplinary Counsel of the State Bar of Texas or take other appropriate corrective action. If the corrective action proves ineffective, a judge shall report the violation or impairment to the Office of the Chief Disciplinary Counsel.

(3) “Other appropriate corrective action” may include: direct communication with the judge or lawyer who is impaired or has committed the violation(s); or referral of the judge or lawyer to a substance abuse treatment agency or peer assistance/counseling programs, such as Amicus Curiae or Texas Lawyers’ Assistance Program.

(4) A judge who is charged by complaint, information, or indictment or convicted of a felony or misdemeanor crime in the United States, other than a violation of a traffic law, shall promptly and in writing report that fact to the State Commission on Judicial Conduct. This provision does not require the judge to address any such charges, but only to provide notice of the cause number and the court in which the charge is pending.

CANON 4

Canon 4. Conducting the Judge’s Extra-Judicial Activities to Minimize the Risk of Conflict With Judicial Obligations.

A. Extra-Judicial Activities in General. A judge shall conduct all of the judge’s extra-judicial activities so that they do not:

- (1) cast reasonable doubt on the judge’s capacity to act impartially as a judge; or
- (2) interfere with the proper performance of judicial duties.

B. Activities to Improve the Law. A judge may:

(1) speak, write, lecture, teach, and participate in extra-judicial activities concerning the law, the legal system, and the administration of justice ~~and non-legal subjects~~, subject to the requirements of this Code; and,

(2) serve as a member, officer, or director of an organization or governmental agency devoted to the improvement of the law, the legal system, or the administration of justice. A judge may assist such an organization in raising funds, subject to Section 4.D., and may participate in their management and investment, but should not personally participate in public fund raising activities. He or she may make recommendations to public and private fund-granting agencies on projects and programs concerning the law, the legal system, and the administration of justice.

C. Civic, or Charitable, or Avocational Activities. A judge may participate in civic and charitable activities, and may speak, write, lecture, teach, and participate in other extra-judicial activities on non-legal subjects, so long as none of these activities that do not reflect adversely upon the judge’s impartiality or interfere with the performance of judicial duties. A judge may serve as ~~an~~ a member, officer, director, trustee, or non-legal advisor of an educational, religious, charitable, fraternal, or civic organization not conducted for the profit of its members, subject to section 4.D. and subject to the following limitations:

(1) A judge should not serve if it is likely that the organization will be engaged in proceedings that would ordinarily come before the judge or will be regularly or frequently engaged in adversary proceedings in any court. A judge who did not anticipate that the organization would be frequently or regularly engaged in such proceedings shall resign from the organization if it becomes clear that the organization will be

regularly or frequently engaged in adversary proceedings in any court.

~~(2) A judge shall not solicit funds for any educational, religious, charitable, fraternal or civic organization, but may be listed as an officer, director, delegate, or trustee of such an organization, and may be a speaker or a guest of honor at an organization's fund-raising events. (3) A judge should not give investment advice to such an organization, but may serve on its board of directors or trustees even though it has the responsibility for approving investment decisions.~~

D. Solicitation of Funds

(1) Except as provided in paragraphs (2) and (3) of this section, a judge shall not:

- (a) personally solicit funds or in-kind donations, or
- (b) use or authorize the use of the judge's name or the prestige of judicial office for fundraising or membership solicitation, or
- (c) personally solicit memberships if recruiting new members is primarily a fundraising mechanism or if the solicitation might reasonably be perceived as coercive.

(2) Notwithstanding paragraph (1) of this section, a judge may:

(a) personally solicit funds from other judges over whom the judge does not exercise supervisory or appellate authority,

(b) be a speaker or guest of honor at fundraising events for an organization devoted to the improvement of the law, the legal system, or the administration of justice, and

(c) be listed on an organization's letterhead, website, and similar materials as an officer, director, delegate, or trustee of an educational, religious, charitable, fraternal, or civic organization not conducted for the profit of its members, provided that the judge's name shall not be listed more prominently than the names of other persons holding the same or comparable positions in the organization, and provided further that neither the judge's title nor occupation shall be listed unless the occupations of other persons holding the same or comparable positions are listed with equal prominence.

(3) This Canon does not prohibit either a judge or candidate from soliciting funds for appropriate campaign or officeholder expenses as permitted by state law.

D E. Financial Activities.

~~(1) A judge shall refrain from financial and business dealings that tend to reflect adversely on the judge's impartiality, interfere with the proper performance of the judicial duties, exploit his or her judicial position, or involve the judge in frequent transactions with lawyers or persons likely to come before the court on which the judge serves. This limitation does not prohibit either a judge or candidate from soliciting funds for appropriate campaign or officeholder expenses as permitted by state law.~~

(2) Subject to the requirements of subsection (1), a judge may hold and manage investments, including real estate, and engage in other remunerative activity including the operation of a business. A judge shall

not be an officer, director or manager of a publicly owned business. For purposes of this Canon, a “publicly owned business” is a business having one or more ~~than ten~~ owners who are not related to the judge by consanguinity or affinity within the third degree of relationship. A judge who serves as an officer, director, or manager of a privately held business with up to ten owners from outside the judge’s family, permitted by earlier versions of this Canon, should resign that position as soon as may be reasonably possible without imposing undue hardship on the business.

(3) A judge should manage any investments and other economic interests to minimize the number of cases in which the judge is disqualified. As soon as the judge can do so without serious financial detriment, the judge should divest himself or herself of investments and other economic interests that might require frequent disqualification. A judge shall be informed about the judge’s personal and fiduciary economic interests, and make a reasonable effort to be informed about the personal economic interests of any family member residing in the judge’s household.

(4) Neither a judge nor a family member residing in the judge’s household shall accept a gift, bequest, favor, or loan from anyone except as follows:

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

(b) a judge or a family member residing in the judge’s household may accept ordinary social hospitality; a gift, bequest, favor, or loan from a relative; a gift from a friend for a special occasion such as a wedding, engagement, anniversary, or birthday, if the gift is fairly commensurate with the occasion and the relationship; a loan from a lending institution in its regular course of business on the same terms generally available to persons who are not judges; or a scholarship or fellowship awarded on the same terms applied to other applicants;

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

(d) a judge or a family member residing in the judge’s household may accept any other gift, bequest, favor, or loan only if the donor is not a party or person whose interests have come or are likely to come before the judge. †

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

E. F. **Fiduciary Activities.**

(1) A judge shall not serve as executor, administrator, or other personal representative, trustee, guardian, attorney in fact, or other fiduciary, except for the estate, trust, or person of a member of the judge's family, and then only if such service will not interfere with the proper performance of judicial duties.

(2) A judge shall not serve as a fiduciary if it is likely that the judge as a fiduciary will be engaged in proceedings that would ordinarily come before the judge, or if the estate, trust, or ward becomes involved in adversary proceedings in the court on which the judge serves or one under its appellate jurisdiction.

(3) The same restrictions on financial activities that apply to a judge personally also apply to the judge while acting in a fiduciary capacity.

F. G. Service as Arbitrator or Mediator. An active full-time judge shall not act as an arbitrator or mediator for compensation outside the judicial system, but a judge may encourage settlement in the performance of official duties to the extent permitted by law.

G. H. Practice of Law. A judge shall not practice law except as permitted by statute or this Code. Notwithstanding this prohibition, a judge may act pro se and may, without compensation, give legal advice to and draft or review documents for a member of the judge's family.

H. I. Extra-Judicial Appointments.

Except as otherwise provided by constitution and statute, a judge should not accept appointment to a governmental committee, commission, or other position that is concerned with issues of fact or policy on matters other than the improvement of the law, the legal system, or the administration of justice. A judge, however, may represent his or her country, state, or locality on ceremonial occasions or in connection with historical, educational, and cultural activities.

F. J. Compensation, Reimbursement and Reporting.

(1) Compensation and Reimbursement. A judge may receive compensation and reimbursement of expenses for the extra-judicial activities permitted by this Code, if the source of such payments does not give the appearance of influencing the judge's performance of judicial duties or otherwise give the appearance of impropriety.

(a) Compensation shall not exceed a reasonable amount nor shall it exceed what a person who is not a judge would receive for the same activity.

(b) Expense reimbursement shall be limited to the actual cost of travel, food, and lodging reasonably incurred by the judge and, where appropriate to the occasion, by the judge's family. Any payment in excess of such an amount is compensation.

(2) Public Reports. A judge shall file financial and other reports as required by law.

CANON 5

Canon 5. Refraining From Inappropriate Political Activity.

(1) The judicial branch of government cannot serve its function if judges are not both independent and impartial. To that end:

(a) A judge or judicial candidate should maintain the dignity appropriate to judicial office and conduct a judicial campaign consistent with the impartiality, integrity and independence of the judiciary. A statement or action by a person, while a judge or a candidate for judicial office, whether or not prohibited by this Canon, may cause a judge's impartiality to be reasonably questioned in the context of a particular case and may result in recusal.

(2) A judge or judicial candidate shall not:

(i) make pledges or promises of conduct in office regarding pending or impending cases, specific classes of cases, specific classes of litigants, or specific propositions of law that would suggest to a reasonable person that the judge is predisposed to a probable decision in cases within the scope of the pledge or promise;

(ii) knowingly, or with actual serious doubts about the truth of what is said, recklessly misrepresent the identity, qualifications, present position, or other fact concerning the candidate or an opponent; or

(iii) make a statement that would violate Canon 3.B.(10).

(23) In order for a judge or judicial candidate to both appear to be and, in fact, be independent of political influence, a judge or judicial candidate shall not endorse another candidate for any public office and shall not authorize the public use of his or her name to be used in a manner where it reasonably appears that the judge has endorse endorsing another candidate for any public office, except that either may indicate support for a political party. A judge or judicial candidate may attend political events and express his or her views on political matters in accord with this Canon, Canon 2 and Canon 3.B.(10).

(34) A judge shall resign from judicial office upon becoming a candidate in an a-contested election for a non-judicial office either in a primary, or in a general or in a special election. A judge may continue to hold judicial office while being a candidate for election to or serving as a delegate in a state constitutional convention or while being a candidate for election to any judicial office.

(45) A judge or judicial candidate subject to the Judicial Campaign Fairness Act, Tex. Elec. Code § 253.151, *et. seq.* (the "Act"), shall not knowingly commit an act for which he or she knows the Act imposes a penalty. Contributions returned in accordance with Sections 253.155(e), 253.157(b) or 253.160(b) of the Act are not a violation of this paragraph.

COMMENT

A statement made during a campaign for judicial office, whether or not prohibited by this Canon, may cause a judge's impartiality to be reasonably questioned in the context of a particular case and may result in recusal.

CANON 6

Canon 6. Compliance With the Code of Judicial Conduct

A. The following persons shall comply with all provisions of this Code:

(1) An active, full-time justice or judge of one of the following courts:

- (a) the Supreme Court,
- (b) the Court of Criminal Appeals,
- (c) courts of appeals,
- (d) district courts,
- (e) criminal district courts, and
- (f) statutory county courts.

(2) A full-time commissioner, associate judge, master, magistrate, or referee of a court listed in (1) above.

B. A County Judge who performs judicial functions shall comply with all provisions of this Code except the judge is not required to comply:

(1) when engaged in duties which relate to the judge's role in the administration of the county;

(2) with Canons ~~4.DE~~(2), ~~4.DE~~(3), or ~~4.HI~~;

(3) with Canon ~~4.GH~~, except practicing law in the court on which he or she serves or in any court subject to the appellate jurisdiction of the county court, or acting as a lawyer in a proceeding in which he or she has served as a judge or in any proceeding related thereto.

(4) with Canon ~~5.(4)~~(3).

C. Justices of the Peace and Municipal Court Judges.

(1) A justice of the peace or municipal court judge shall comply with all provisions of this Code, except the judge is not required to comply:

(a) with Canon 3.B.(8) pertaining to *ex parte* communications; in lieu thereof a justice of the peace or municipal court judge shall comply with Canon 6.C.(2) below;

(b) with Canons ~~4.DE~~(2), ~~4.DE~~(3), ~~4.EF~~, or ~~4.HI~~;

(c) with Canon ~~4.FG~~, unless the court on which the judge serves may have jurisdiction of the matter or parties involved in the arbitration or mediation; or

(d) if an attorney, with Canon ~~4.GH~~, except practicing law in the court on which he or she serves,

or acting as a lawyer in a proceeding in which he or she has served as a judge or in any proceeding related thereto.

(e) with Canon 5.~~(4)~~(3).

(2) A justice of the peace or a municipal court judge, except as authorized by law, shall not directly or indirectly initiate, permit, nor consider ex parte or other communications concerning the merits of a pending or impending judicial proceeding. This subsection does not prohibit communications concerning:

(a) uncontested administrative matters,

(b) uncontested procedural matters,

(c) magistrate duties and functions,

(d) determining where jurisdiction of an impending claim or dispute may lie,

(e) determining whether a claim or dispute might more appropriately be resolved in some other judicial or non-judicial forum,

(f) mitigating circumstances following a plea of nolo contendere or guilty for a fine-only offense,
or

(g) any other matters where ex parte communications are contemplated or authorized by law.

D. A Part-time commissioner, associate judge, master, magistrate, or referee of a court listed in Canon 6.A.(1) above:

(1) shall comply with all provisions of this Code, except he or she is not required to comply with Canons 4.~~DE~~.(2), 4.~~EF~~, 4.~~FG~~, 4.~~GH~~ or 4.~~HI~~, and

(2) ~~should~~ shall not practice law in the court which he or she serves or in any court subject to the appellate jurisdiction of the court which he or she serves, or act as a lawyer in a proceeding in which he or she has served as a commissioner, master, magistrate, or referee, or in any other proceeding related thereto.

E. A Judge Pro Tempore, while acting as such:

(1) shall comply with all provisions of this Code applicable to the court on which he or she is serving, except he or she is not required to comply with Canons 4.~~DE~~.(2), 4.~~DE~~.(3), 4.~~EF~~, 4.~~FG~~, 4.~~GH~~ or 4.~~HI~~, and

(2) after serving as a judge pro tempore, should not act as a lawyer in a proceeding in which he or she has served as a judge or in any other proceeding related thereto.

F. A Senior Judge, or a former appellate or district judge, or a retired or former statutory county court judge who has consented to be subject to assignment as a judicial officer:

(1) shall comply with all the provisions of this Code except he or she is not required to comply with Canon 4.~~DE~~.(2), 4.~~EF~~, 4.~~FG~~, 4.~~GH~~ or 4.~~HI~~, but

(2) should refrain from judicial service during the period of an extra-judicial appointment not permitted by Canon 4.~~HI~~.

G. Candidates for Judicial Office.

(1) Any person seeking elective judicial office listed in Canon 6.A.(1) shall be subject to the same standards of Canon 5 that are required of members of the judiciary.

(2) Any judge who violates this Code shall be subject to sanctions by the State Commission on Judicial Conduct.

(3) Any lawyer who is a candidate seeking judicial office who violates Canon 5 or other relevant provisions of this Code is subject to disciplinary action by the State Bar of Texas.

(4) The conduct of any other candidate for elective judicial office, not subject to paragraphs (2) and (3) of this section, who violates Canon 5 or other relevant provisions of the Code is subject to review by the Secretary of State, the Attorney General, or the local District Attorney for appropriate action.

H. Attorneys.

Any lawyer who contributes to the violation of Canons 3.B.(7), 3.B.(10), 4.~~DE~~.(4), 5, or 6.C.(2), or other relevant provisions of this Code, is subject to disciplinary action by the State Bar of Texas.

[No recommendations to Canon 7]

CANON 8

Canon 8. Construction and Terminology of the Code

B. Terminology.

19. “Impartiality” denotes absence of bias or prejudice in favor of, or against, particular parties or classes of parties, as well as maintaining an open mind in considering issues that may come before the

judge.

20. A proceeding is “impending” if:

(i) it is pending in a court or administrative agency whose decisions are subject to review by de novo review, original proceeding, or appeal, in the judge’s court; or

(ii) the judge has actual knowledge, through press reports or otherwise, that an identifiable party has specific plans to file a proceeding, in the judge’s court or in a court or agency described in subparagraph (i); or

(iii) the judge has actual knowledge, through press reports or otherwise, that a specific event has occurred that is highly likely to lead to litigation between identifiable parties in the judge’s court or in a court or agency described in subparagraph (I).

21. “Nonpublic” means:

(i) With respect to confidences of the court, any written or oral communication with one or more judges or court personnel that relates to any confidences of the court or any individual judge’s or multi-member panel’s decision-making process in any case, including discussions, votes, positions taken, drafts of opinions, or other writings, except the court’s official decision.

(ii) With respect to other information or documents of the court, any information or document that, by law, is not available to the public.