

IN THE SUPREME COURT OF FLORIDA

**IN RE: PETITION OF
THE JUDICIAL ETHICS
ADVISORY COMMITTEE**

Case _____

_____ /

Pursuant to its enabling order, the Judicial Ethics Advisory Committee (hereinafter referred to as the “Committee”) respectfully requests this court to consider and adopt certain amendments to Florida’s Code of Judicial Conduct. See In re Code of Judicial Conduct, 698 So. 2d 834 (Fla. 1997) (“...[T]he Committee may from time to time submit to the Supreme Court formal proposals and recommendations relating to the Code of Judicial Conduct.”)

CANON 4

1. **Canon 4** - The Committee recognizes that it is important for members of the judiciary to participate in activities that improve the law, the legal system, and the administration of justice. While most judicial officers meet those challenges, some judges are unclear as to what they may ethically take part in.

The Canon 4 of the current Code of Judicial Conduct recognizes that judicial officers may engage in the above stated activities. However, the

Canon is deficient because it fails to actively encourage such involvement. The Canon, as currently written is passive. It fails to encourage judicial officers to improve upon the system they serve.

Accordingly, the Committee respectfully requests that the Canon 4's deficiency be remedied through adoption of the following proposed amendment:

Canon 4

A Judge May is Encouraged to Engage in Activities to Improve the Law, the Legal System, and the Administration of Justice

The texts of Canons to the Code of Judicial Conduct are authoritative. See Preamble, Code of Judicial Conduct. Accordingly, implementation of the amendment would actively encourage judicial participation in activities that improve the law, the legal system, and the administration of justice, rather than passively acknowledging a right to participate in those activities.

2. **Canon 4B and Commentary 4B** - The Committee also requests adoption of a following proposed amendment to Canon 4B of the Code of Judicial Conduct:

B. A judge may is encouraged to speak, write, lecture, teach and participate in other quasi-judicial activities concerning the law, the legal system, and the administration of justice, including the role of the judiciary as an independent branch

within our system of government, subject to the requirements of this Code.

If adopted, the amendment would actively encourage judges to communicate to others about matters concerning the law, the legal system, and the administration of justice. The amendment also expressly provides that it is appropriate for judges to converse with others regarding the role of the judiciary as an independent branch within our system of government.

The Committee also proposes that the Commentary to Canon 4B be amended in order to explain and elaborate upon the proposed amendment to Canon 4B. The Preamble to the Code of Judicial Conduct describes the purpose of the Commentary and provides:

The Commentary, by explanation and example, provides guidance with respect to the purpose and meaning of the Canons and Sections. The Commentary is not intended as a statement of additional rules.

The proposed amendment to Commentary 4B explains that the purpose of the amendment is, "...to encourage judges to engage in activities to improve the law, the legal system, and the administration of justice." The proposed amendment sets forth specific examples in which a judge may improve upon the law, the legal system, and the administration of justice.

The proposed amendment provides:

As a judicial officer and person specially learned in the law, a judge is in a unique position to contribute to the improvement

of the law, the legal system, and the administration of justice, including, but not limited to the revision of substantive and procedural law, the ~~and~~ improvement of civil, criminal, domestic relations, probate and juvenile justice, and the role of the judiciary as an independent branch of government.

Most notably, the proposed amendment to Commentary 4B recognizes that it is appropriate for judges to support pro bono legal services, because such support is viewed as an activity relating to the improvement of the administration of justice. The proposed amendment to Commentary 4B also describes examples in which support may ethically be rendered, and provides as follows:

Support of pro bono legal services by members of the bench is an activity that relates to improvement of the administration of justice. Accordingly, subject to the requirements contained in the Code, a judge may engage in activities intended to encourage attorneys to perform pro bono services, including, but not limited to: participating in events to recognize attorneys who do pro bono work, establishing general procedural or scheduling accommodations for pro bono attorneys as feasible, and acting in an advisory capacity to pro bono programs.

This proposed amendment codifies the Committee's long time acceptance of the necessity of pro bono legal services within our system of justice, as well as the role of the judiciary in supporting such services, "subject to the requirements of [the] Code." Code of Judicial Conduct, Canon 4B. However, in proposing this amendment, the Committee desires to make it clear that not all activities in support of pro bono legal services

are ethically permissible. For example, a judge is ethically prohibited from raising funds for organizations that perform pro bono legal services or from acting as the exclusive legal trainer for attorneys in such organizations.

The last proposed amendment to Commentary 4B, again encourages judges to participate in the improvement of the judiciary and the manner in which it is perceived by others, and also improves upon the current syntax of the Commentary. The proposed changes are reflected as follows:

Judges are encouraged to ~~may~~ participate in efforts to promote the fair administration of justice, the independence of the judiciary and the integrity of the legal profession which may include the expression of ~~and may express~~ opposition to the persecution of lawyers and judges in other countries ~~because of their professional activities.~~

For the reasons and rationale set forth above, the Committee respectfully requests the adoption of the proposed amendments to Canon 4B and its Commentary.

3. **Canon 4D** - The Committee requests adoption of a following proposed amendment to Canon 4D of the Code of Judicial Conduct:

D. A judge ~~may~~ is encouraged to serve as a member, officer, director, trustee or non-legal advisor of an organization or governmental agency devoted to the improvement of the law, the legal system, the judicial branch, or the administration

of justice, subject to the following limitations and the other requirements of this Code.

Once again, adoption of this amendment would actively encourage judges, rather than merely passively recognizing their entitlement, to serve as members, officers, directors, trustees or non-legal advisors for organizations or governmental agencies devoted to the improvement of the law, the legal system, or the administration of justice. The proposed amendment also encourages judges to serve in an organization or governmental agency devoted to the judicial branch.

CANON 5

1. **Canon 5B and Commentary 5A** – The proposed amendment to Canon 5B is designed to encourage judges to engage in extrajudicial activities concerning non-legal subjects, provided that there is compliance with other provisions in the Code. The proposed amendment provides:

B. Avocational Activities. A judge ~~may~~ is encouraged to speak, write, lecture, teach and participate in other extrajudicial activities concerning non-legal subjects, subject to the requirements of this Code

The Committee understands that an effective judge is one that not only is well versed in the law, but one who stays in touch with his or her community on non-legal matters. The proposed amendment to 5B actively

encourages judges to participate in those non-legal subjects, rather than merely advising them that the Code passively authorizes that option.

The Commentary to Canon 5A also reflects the understanding that a judge should be involved in his or her community. It provides, in pertinent part, “Complete separation of a judge from extra-judicial activities is neither possible nor wise; a judge should not become isolated from the community in which the judge lives.” In order to encourage judicial involvement in community related/non-legal activities, the Committee recommends adoption of the following language to the Commentary to Canon 5A:

Complete separation of a judge from extra-judicial activities is neither possible nor wise; a judge should not become isolated from the community in which the judge lives. For that reason, judges are encouraged to participate in extra judicial community activities.

2. **Canon 5C (2)** - The proposed amendment to Canon 5B (2) would authorize a judge to accept appointment to a governmental committee or commission or other governmental position that is concerned with issues of fact or policy on matters pertaining to the improvement of the judicial branch. The current Canon 5C (2) does not include “the judicial branch” as an option. The proposed amendment to Canon 5C (2) follows:

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, the judicial branch,

or the administration of justice. A judge may, however, represent a country, state or locality on ceremonial occasions or in connection with historical, educational or cultural activities.

3. **Commentary 5C(3)** – The Committee recommends the amendment to Commentary 5C(3) of the Code of Judicial Conduct. The amendment improves upon the current syntax of the Commentary, as follows:

Service by a judge on behalf of a civic or charitable organization may be governed by other provisions of Canon 5 in addition to Section 5C. For example, ~~a judge is prohibited by Section 5G~~ Section 5G prohibits a judge from serving as a legal advisor to a civic or charitable organization.

For the reasons contained herein, the Committee recommends adoption of the proposed amendment to Commentary 5C(3).

4. **Commentary 5C(3)(a)** – The Committee recommends the amendment to Commentary 5C(3)(a) of the Code of Judicial Conduct. The amendment improves upon the current syntax of the Commentary, as follows:

The changing nature of some organizations and of their relationship to the law makes it necessary for a judge ~~regularly~~ to regularly reexamine the activities of each organization with which the judge is affiliated in order to determine if it is proper for the judge to continue the affiliation. For example, in many

jurisdictions charitable hospitals are now more frequently in court than in the past.

For the reasons contained herein, the Committee recommends adoption of the proposed amendment to Commentary 5C(3)(a).

WHEREFORE the Judicial Ethics Advisory Committee respectfully requests this court to consider and adopt the amendments proposed in this petition.

DATED this ____ day of January, 2002.

Respectfully submitted,

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Appendix A

PROPOSED AMENDMENT TO CANON 4

Proposed Changes

Reason for Changes

Canon 4

A Judge May is Encouraged to Engage in Activities to Improve the Law, the Legal System, and the Administration of Justice

This change improves Canon 4, because it authoritatively and expressly *encourages* a judge to actively undertake efforts to improve the law, the legal system, and the administration of justice, rather than merely advising the judge that the Code passively affords that option.

A. A judge shall conduct all of the judge's quasi-judicial activities so that they do not:

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

B. A judge ~~may~~ is encouraged to speak, write, lecture, teach and participate in other quasi-judicial activities concerning the law, the legal system, and the administration of justice, including the role of the judiciary as an independent branch within our system of government, subject to the requirements of this Code.

This change actively *encourages* a judge to constructively communicate with others regarding the law, the legal system, and the administration of justice, rather than merely advising a judge that the Code passively authorizes that option. Additionally, the change notes that it is ethically appropriate for the judge to communicate to others the role of an independent judiciary in our government.

C. A judge shall not appear at a public hearing before, or otherwise

consult with, an executive or legislative body or official except on matters concerning the law, the legal system or the administration of justice or except when acting pro se in a matter involving the judge or the judge's interests.

D. A judge ~~may~~ is encouraged to serve as a member, officer, director, trustee or non-legal advisor of an organization or governmental agency devoted to the improvement of the law, the legal system, the judicial branch, or the administration of justice, subject to the following limitations and the other requirements of this Code.

(1) A judge shall not serve as an officer, director, trustee or non-legal advisor if it is likely that the organization

(a) will be engaged in proceedings that would ordinarily come before the judge, or

(b) will be engaged frequently in adversary proceedings in the court of which the judge is a member or in any court subject to the appellate jurisdiction of the court of which the judge is a member.

This change actively *encourages* a judge to serve as a member, officer, director, trustee or non-legal advisor of an organization or governmental agency devoted to the improvement of the law, the legal system, or the administration of justice, subject to limitations that follow in the Code. The change also adds that a judge is encouraged to service in an organization or governmental agency devoted to the judicial branch.

(2) A judge as an officer, director, trustee or non-legal advisor, or as a member or otherwise:

(a) may assist such an organization in planning fund-raising and may participate in the management and investment of the organization's funds, but shall not personally participate in the solicitation of funds or other fund-raising activities, except that a judge may solicit funds from other judges over whom the judge does not exercise supervisory or appellate authority;

(b) may make recommendations to public and private fund-granting organizations on projects and programs concerning the law, the legal system or the administration of justice;

(c) shall not personally participate in membership solicitation if the solicitation might reasonably be perceived as coercive or, except as

permitted in Section 4D(2)(a), if the membership solicitation is essentially a fund-raising mechanism;

(d) shall not use or permit the use of the prestige of judicial office for fund-raising or membership solicitation.

COMMENTARY

Canon 4A. A judge is encouraged to participate in activities designed to improve the law, the legal system, and the administration of justice. In doing so, however, it must be understood that expressions of bias or prejudice by a judge, even outside the judge's judicial activities, may cast reasonable doubt on the judge's capacity to act impartially as a judge. Expressions which may do so include jokes or other remarks demeaning individuals on the basis of their race, sex, religion, national origin, disability, age, sexual orientation or socioeconomic status. See Section 2C and accompanying Commentary.

Canon 4B. This canon is clarified in order to encourage judges to engage in activities to improve the law, the legal system, and the administration

These changes clarify Canon 4 by making it clear that the Code actively

of justice. As a judicial officer and person specially learned in the law, a judge is in a unique position to contribute to the improvement of the law, the legal system, and the administration of justice, including, but not limited to the revision of substantive and procedural law, the ~~and~~ improvement of civil, criminal, domestic relations, probate and juvenile justice, and the role of the judiciary as an independent branch of government. To the extent that time permits, a judge is encouraged to do so, either independently or through a bar association, judicial conference or other organization dedicated to the improvement of the law. Support of pro bono legal services by members of the bench is an activity that relates to improvement of the administration of justice. Accordingly, a judge may engage in activities intended to encourage attorneys to perform pro bono services, including, but not limited to: participating in events to recognize attorneys who do pro bono work, establishing general procedural or scheduling accommodations for pro bono attorneys as feasible, and acting in an advisory capacity to pro bono programs. Judges are encouraged to ~~may~~ participate in efforts to promote the fair administration of justice, the independence of the judiciary and the integrity of the legal profession which may include the expression of ~~and may express~~ opposition to the persecution of lawyers and judges in

encourages each judge to engage in activities that improve the law the legal system, and the administration of justice. The changes add that such activities are not limited to improvements in civil, domestic relations, and probate law, as well as improving the role of the judiciary as an independent branch of government.

The Judicial Ethics Advisory Committee has long recognized the importance of pro bono legal services. This change codifies that recognition, and expressly declares that pro bono legal services relate to the improvement of the administration of justice. Further, this change provides a judge with examples of the type of permissible activities a judge may engage in when supporting pro bono legal services.

This change improves upon the

other countries ~~because of their~~
~~professional activities.~~

syntax.

The phrase "subject to the requirements of this Code" is included to remind judges that the use of permissive language in various Sections of the Code does not relieve a judge from the other requirements of the Code that apply to the specific conduct.

Canon 4C. See Section 2B regarding the obligation to avoid improper influence.

Canon 4D(1). The changing nature of some organizations and of their relationship to the law makes it necessary for a judge regularly to reexamine the activities of each organization with which the judge is affiliated to determine if it is proper for the judge to continue the affiliation. For example, the boards of some legal aid organizations now make policy decisions that may have political significance or imply commitment to causes that may come before the courts for adjudication.

Canon 4D(2). A judge may solicit membership or endorse or encourage membership efforts for an organization devoted to the improvement of the law, the legal system or the administration of justice as long as the solicitation cannot reasonably be perceived as

coercive and is not essentially a fund-raising mechanism. Solicitation of funds for an organization and solicitation of memberships similarly involve the danger that the person solicited will feel obligated to respond favorably to the solicitor if the solicitor is in a position of influence or control. A judge must not engage in direct, individual solicitation of funds or memberships in person, in writing or by telephone except in the following cases: 1) a judge may solicit for funds or memberships other judges over whom the judge does not exercise supervisory or appellate authority, 2) a judge may solicit other persons for membership in the organizations described above if neither those persons nor persons with whom they are affiliated are likely ever to appear before the court on which the judge serves and 3) a judge who is an officer of such an organization may send a general membership solicitation mailing over the judge's signature.

Use of an organization letterhead for fund-raising or membership solicitation does not violate Section 4D(2) provided the letterhead lists only the judge's name and office or other position in the organization, and, if comparable designations are listed for other persons, the judge's judicial designation. In addition, a judge must also make reasonable efforts to ensure that the judge's staff,

court officials and others subject to the judge's direction and control do not solicit funds on the judge's behalf for any purpose, charitable or otherwise.

A judge must not be a speaker or guest of honor at an organization's fund-raising event, but mere attendance at such an event is permissible if otherwise consistent with this Code.

Appendix B
PROPOSED AMENDMENT TO CANON 5

Proposed Changes

Reasons for Changes

Canon 5

***A Judge Shall Regulate
Extrajudicial Activities to
Minimize the Risk of Conflict With
Judicial Duties***

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

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

B. Avocational Activities. A judge ~~may~~ is encouraged to speak, write, lecture, teach and participate in other extrajudicial activities concerning non-legal subjects, subject to the requirements of this Code.

This change actively *encourages* a judge to communicate with others regarding non-legal matters, rather than merely advising a judge that the Code passively authorizes that option.

C. Governmental, Civic or

Charitable Activities.

(1) A judge shall not appear at a public hearing before, or otherwise consult with, an executive or legislative body or official except on matters concerning the law, the legal system or the administration of justice or except when acting pro se in a matter involving the judge or the judge's interests.

(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, the judicial branch, or the administration of justice. A judge may, however, represent a country, state or locality on ceremonial occasions or in connection with historical, educational or cultural activities.

(3) A judge may serve as an officer, director, trustee or non-legal advisor of an educational, religious, charitable, fraternal, sororal or civic organization not conducted for profit, subject to the following limitations and the other requirements of this

This change would authorize a judge to accept appointment to a governmental committee or commission or other governmental position that is concerned with issues of fact or policy on matters pertaining to the improvement of the judicial branch.

Code.

(a) A judge shall not serve as an officer, director, trustee or non-legal advisor if it is likely that the organization

(i) will be engaged in proceedings that would ordinarily come before the judge, or

(ii) will be engaged frequently in adversary proceedings in the court of which the judge is a member or in any court subject to the appellate jurisdiction of the court of which the judge is a member.

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

(i) may assist such an organization in

planning fund-raising and may participate in the management and investment of the organization's funds, but shall not personally participate in the solicitation of funds or other fund-raising activities, except that a judge may solicit funds from other judges over whom the judge does not exercise supervisory or appellate authority;

(ii) shall not personally participate in membership solicitation if the solicitation might reasonably be perceived as coercive or, except as permitted in Section 5C(3)(b)(i), if the membership solicitation is essentially a fund-raising

mechanism;

(iii) shall not use or permit the use of the prestige of judicial office for fund-raising or membership solicitation.

D. Financial Activities.

(1) A judge shall not engage in financial and business dealings that

(a) may reasonably be perceived to exploit the judge's judicial position, or

(b) involve the judge in frequent transactions or continuing business relationships with those lawyers or other persons likely to come before the court on which the judge serves.

(2) A judge may, subject to the requirements of this Code, hold and manage investments of the judge and members of the judge's family, including real estate, and engage in other remunerative activity.

(3) A judge shall not serve as an officer, director, manager, general partner, advisor or

employee of any business entity except that a judge may, subject to the requirements of this Code, manage and participate in:

(a) a business closely held by the judge or members of the judge's family, or

(b) a business entity primarily engaged in investment of the financial resources of the judge or members of the judge's family.

(4) A judge shall manage the judge's investments and other financial interests to minimize the number of cases in which the judge is disqualified. As soon as the judge can do so without serious financial detriment, the judge shall divest himself or herself of investments and other financial interests that might require frequent disqualification.

(5) A judge shall not accept, and shall urge members of the judge's family residing in the judge's household not to accept, a gift, bequest, favor or loan from anyone except for:

(a) a gift incident to a

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

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

(c) ordinary social

hospitality;

(d) a gift from a relative or friend, for a special occasion, such as a wedding, anniversary or birthday, if the gift is fairly commensurate with the occasion and the relationship;

(e) a gift, bequest, favor or loan from a relative or close personal friend whose appearance or interest in a case would in any event require disqualification under Canon 3E;

(f) a loan from a lending institution in its regular course of business on the same terms generally available to persons who are not judges;

(g) a scholarship or fellowship awarded on the same terms and based on the same criteria applied to other applicants; or

(h) any other gift, bequest, favor or loan, only if: the donor is not a party or other person who has come or is

likely to come or whose interests have come or are likely to come before the judge; and, if its value exceeds \$100.00, the judge reports it in the same manner as the judge reports compensation in Section 6B.

E. Fiduciary Activities.

(1) A judge shall not serve as executor, administrator or other personal representative, trustee, guardian, attorney in fact or other fiduciary, except for the estate, trust or person of a member of the judge's family, and then only if such 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. Service as Arbitrator or Mediator. A judge shall not act as an arbitrator or mediator or otherwise perform judicial functions in a private capacity unless expressly authorized by law or Court rule. A judge may, however, take the necessary educational and training courses required to be a qualified and certified arbitrator or mediator, and may fulfill the requirements of observing and conducting actual arbitration or mediation proceedings as part of the certification process, provided such program does not, in any way, interfere with the performance of the judge's judicial duties.

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

COMMENTARY

Canon 5A. Complete separation of a judge from extra-judicial activities is neither possible nor wise; a judge should not become isolated from the community in which the judge lives. For that reason, judges are

This change actively *encourages* a judge to participate in extra-judicial

encouraged to participate in extra-judicial community activities.

community activities.

Expressions of bias or prejudice by a judge, even outside the judge's judicial activities, may cast reasonable doubt on the judge's capacity to act impartially as a judge. Expressions which may do so include jokes or other remarks demeaning individuals on the basis of their race, sex, religion, national origin, disability, age, sexual orientation or socioeconomic status. See Section 2C and accompanying Commentary.

Canon 5B. In this and other Sections of Canon 5, the phrase "subject to the requirements of this Code" is used, notably in connection with a judge's governmental, civic or charitable activities. This phrase is included to remind judges that the use of permissive language in various Sections of the Code does not relieve a judge from the other requirements of the Code that apply to the specific conduct.

Canon 5C(1). See Section 2B regarding the obligation to avoid improper influence.

Canon 5C(2). Section 5C(2) prohibits a judge from accepting any governmental position except one relating to the law, legal system or administration of justice as authorized by Section 4D. 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.

Section 5C(2) does not govern a judge's service in a nongovernmental position. See Section 5C(3) permitting service by a judge with educational, religious, charitable, fraternal, sororal or civic organizations not conducted for profit. For example, service on the board of a public educational institution, unless it were a law school, would be prohibited under Section 5C(2), but service on the board of a public law school or any private educational institution would generally be permitted under Section 5C(3).

Canon 5C(3). Section 5C(3) does not apply to a judge's service in a governmental position unconnected with the improvement of the law, the legal system or the administration of justice; see Section 5C(2).

See Commentary to Section 5B regarding use of the phrase "subject to the following limitations and the

other requirements of this Code." As an example of the meaning of the phrase, a judge permitted by Section 5C(3) to serve on the board of a fraternal institution may be prohibited from such service by Sections 2C or 5A if the institution practices invidious discrimination or if service on the board otherwise casts reasonable doubt on the judge's capacity to act impartially as a judge.

Service by a judge on behalf of a civic or charitable organization may be governed by other provisions of Canon 5 in addition to Section 5C. For example, ~~a judge is prohibited by Section 5G~~ Section 5G prohibits a judge from serving as a legal advisor to a civic or charitable organization.

This change improves upon the syntax.

Canon 5C(3)(a). The changing nature of some organizations and of their relationship to the law makes it necessary for a judge ~~regularly~~ regularly to reexamine the activities of each organization with which the judge is affiliated in order to determine if it is proper for the judge to continue the affiliation. For example, in many jurisdictions charitable hospitals are now more frequently in court than in the past.

This change improves upon the syntax.

Canon 5C(3)(b). A judge may solicit membership or endorse or encourage membership efforts for a nonprofit educational, religious,

charitable, fraternal, sororal or civic organization as long as the solicitation cannot reasonably be perceived as coercive and is not essentially a fund-raising mechanism. Solicitation of funds for an organization and solicitation of memberships similarly involve the danger that the person solicited will feel obligated to respond favorably to the solicitor if the solicitor is in a position of influence or control. A judge must not engage in direct, individual solicitation of funds or memberships in person, in writing or by telephone except in the following cases: 1) a judge may solicit for funds or memberships other judges over whom the judge does not exercise supervisory or appellate authority, 2) a judge may solicit other persons for membership in the organizations described above if neither those persons nor persons with whom they are affiliated are likely ever to appear before the court on which the judge serves and 3) a judge who is an officer of such an organization may send a general membership solicitation mailing over the judge's signature.

Use of an organization letterhead for fund-raising or membership solicitation does not violate Section 5C(3)(b) provided the letterhead lists only the judge's name and office or other position in the organization, and, if comparable designations are listed for other persons, the judge's

judicial designation. In addition, a judge must also make reasonable efforts to ensure that the judge's staff, court officials and others subject to the judge's direction and control do not solicit funds on the judge's behalf for any purpose, charitable or otherwise.

A judge must not be a speaker or guest of honor at an organization's fund-raising event, but mere attendance at such an event is permissible if otherwise consistent with this Code.

Canon 5D(1). When a judge acquires in a judicial capacity information, such as material contained in filings with the court, that is not yet generally known, the judge must not use the information for private gain. See Section 2B; see also Section 3B(11).

A judge must avoid financial and business dealings that involve the judge in frequent transactions or continuing business relationships with persons likely to come either before the judge personally or before other judges on the judge's court. In addition, a judge should discourage members of the judge's family from engaging in dealings that would reasonably appear to exploit the judge's judicial position. This rule is necessary to avoid creating an appearance of exploitation of office or favoritism and to minimize the

potential for disqualification. With respect to affiliation of relatives of the judge with law firms appearing before the judge, see Commentary to Section 3E(1) relating to disqualification.

Participation by a judge in financial and business dealings is subject to the general prohibitions in Section 5A against activities that tend to reflect adversely on impartiality, demean the judicial office, or interfere with the proper performance of judicial duties. Such participation is also subject to the general prohibition in Canon 2 against activities involving impropriety or the appearance of impropriety and the prohibition in Section 2B against the misuse of the prestige of judicial office. In addition, a judge must maintain high standards of conduct in all of the judge's activities, as set forth in Canon 1. See Commentary for Section 5B regarding use of the phrase "subject to the requirements of this Code."

Canon 5D(2). This Section provides that, subject to the requirements of this Code, a judge may hold and manage investments owned solely by the judge, investments owned solely by a member or members of the judge's family, and investments owned jointly by the judge and members of the judge's family.

Canon 5D(3). Subject to the requirements of this Code, a judge may participate in a business that is closely held either by the judge alone, by members of the judge's family, or by the judge and members of the judge's family.

Although participation by a judge in a closely-held family business might otherwise be permitted by Section 5D(3), a judge may be prohibited from participation by other provisions of this Code when, for example, the business entity frequently appears before the judge's court or the participation requires significant time away from judicial duties. Similarly, a judge must avoid participating in a closely-held family business if the judge's participation would involve misuse of the prestige of judicial office.

Canon 5D(5). Section 5D(5) does not apply to contributions to a judge's campaign for judicial office, a matter governed by Canon 7.

Because a gift, bequest, favor or loan to a member of the judge's family residing in the judge's household might be viewed as intended to influence the judge, a judge must inform those family members of the relevant ethical constraints upon the judge in this regard and discourage those family members from violating them. A judge cannot, however, reasonably be expected to know or

control all of the financial or business activities of all family members residing in the judge's household.

Canon 5D(5)(a). Acceptance of an invitation to a law-related function is governed by Section 5D(5)(a); acceptance of an invitation paid for by an individual lawyer or group of lawyers is governed by Section 5D(5)(h).

A judge may accept a public testimonial or a gift incident thereto only if the donor organization is not an organization whose members comprise or frequently represent the same side in litigation, and the testimonial and gift are otherwise in compliance with other provisions of this Code. See Sections 5A(1) and 2B.

Canon 5D(5)(d). A gift to a judge, or to a member of the judge's family living in the judge's household, that is excessive in value raises questions about the judge's impartiality and the integrity of the judicial office and might require disqualification of the judge where disqualification would not otherwise be required. See, however, Section 5D(5)(e).

Canon 5D(5)(h). Section 5D(5)(h) prohibits judges from accepting gifts, favors, bequests or loans from lawyers or their firms if they have come or are likely to come before the

judge; it also prohibits gifts, favors, bequests or loans from clients of lawyers or their firms when the clients' interests have come or are likely to come before the judge.

Canon 5E(3). The restrictions imposed by this Canon may conflict with the judge's obligation as a fiduciary. For example, a judge should resign as trustee if detriment to the trust would result from divestiture of holdings the retention of which would place the judge in violation of Section 5D(4).

Canon 5F. Section 5F does not prohibit a judge from participating in arbitration, mediation or settlement conferences performed as part of judicial duties. An active judge may take the necessary education and training programs to be certified or qualified as a mediator or arbitrator, but this shall not be a part of the judge's judicial duties. While such a course will allow a judge to have a better understanding of the arbitration and mediation process, the certification and qualification of a judge as a mediator or arbitrator is primarily for the judge's personal benefit. While actually participating in the mediation and arbitration training activities, care must be taken in the selection of both cases and locations so as to guarantee that there is no interference or conflict between the training and the judge's judicial responsibilities. Indeed, the training

should be conducted in such a manner as to avoid the involvement of persons likely to appear before the judge in legal proceedings.

Canon 5G. This prohibition refers to the practice of law in a representative capacity and not in a pro se capacity. A judge may act for himself or herself in all legal matters, including matters involving litigation and matters involving appearances before or other dealings with legislative and other governmental bodies. However, in so doing, a judge must not abuse the prestige of office to advance the interests of the judge or the judge's family. See Section 2B.

The Code allows a judge to give legal advice to and draft legal documents for members of the judge's family, so long as the judge receives no compensation. A judge must not, however, act as an advocate or negotiator for a member of the judge's family in a legal matter.