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## Georgia Code of Judicial Conduct

### Preamble

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

The Code of Judicial Conduct is intended to establish standards for ethical conduct of judges. It consists of broad statements called Canons, specific rules set forth in Sections under each Canon, a Terminology Section, an Application Section and Commentary. The text of the Canons and the Sections, including the Terminology and Application Sections, is authoritative. The Commentary, by explanation and example, provides guidance with respect to the purpose and meaning of the Canons and Sections. The Commentary is not intended as a statement of additional rules.

When the text uses "shall" or "shall not," it is intended to impose binding obligations the violation of which can result in disciplinary action. When "should" or "should not" is used, the text is intended as advisory and as a statement of what is or is not appropriate conduct, but not as a binding rule under which a judge may be disciplined. When "may" is used, it denotes permissible discretion or, depending on the context, it refers to action that is not covered by specific proscriptions.

The Canons and Sections are rules of reason. They should be applied consistent with constitutional requirements, statutes, other court rules and decisional law, as well as in the context of all relevant circumstances. The Code is to be construed so as not to impinge on the essential independence of judges in making judicial decisions.

The Code is designed to provide guidance to judges and candidates for judicial office and to provide a structure for regulating conduct through disciplinary agencies. It is not designed for nor intended as a basis for civil liability or criminal prosecution. Furthermore, the purpose of the Code would be subverted if the Code were invoked by lawyers for mere tactical advantage in a proceeding.

The text of the Canons and Sections is intended to govern conduct of judges and to be binding upon them. It is not intended, however, that every transgression will result in disciplinary action. Whether disciplinary action is appropriate, and the degree of discipline to be imposed, should be determined through a reasonable and reasoned application of the text and should depend on such factors as the seriousness of the transgression, whether there is a pattern of improper activity, and the effect of the improper activity on others or on the judicial system.

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

## Terminology

Terms explained below are noted with an asterisk(\*) in the Sections where they appear. In addition, the Sections where terms appear are referred to after the explanation of each term below.

**"Appropriate authority"** denotes the authority with responsibility for initiation of disciplinary process with respect to the violation to be reported. See Sections 3D(1) and 3D(2).

**"Candidate."** A candidate is a person seeking selection for or retention in judicial office by election or appointment. A person becomes a candidate for judicial office as soon as he or she appoints and/or forms a campaign committee, makes a public announcement of candidacy, declares or files as a candidate with the election or appointment authority, or authorizes solicitation or acceptance of contributions or support. The term "candidate" has the same meaning when applied to a judge seeking election or appointment to non-judicial office. See Preamble and Sections 7A(1), 7A(2), 7B(1), 7B(2) and 7C.

**"Comment"** in connection with a case refers to evaluative statements judging the professional wisdom of specific lawyering tactics or the legal correctness of particular court decisions. In contrast, it does not mean the giving of generally informative explanations to describe litigation factors including: the prima facie legal elements of case types pending before the courts, legal concepts such as burden of proof and duty of persuasion or principles such as innocent until proven guilty and knowing waiver of constitutional rights, variable realities illustrated by hypothetical factual patterns of aggravating or mitigating conduct, procedural phases of unfolding lawsuits, the social policy goals behind the law subject to application in various cases, as well as competing theories about what the law should be. See Section 3B(9).

**"Court personnel"** does not include the lawyers in a proceeding before a judge. See Sections 3B(7)(c) and 3B(9).

**"De minimis"** denotes an insignificant interest that could not raise reasonable question as to a judge's impartiality. See Section 3E(1)(c).

**"Economic interest"** denotes ownership of a more than de minimis legal or equitable interest, or a relationship as officer, director, advisor or other active participant in the affairs of a party, except that:

(i) ownership of an interest in a mutual or common investment fund that holds securities is not an economic interest in such securities unless the judge participates in the management of the fund or a proceeding pending or impending before the judge could substantially affect the value of the interest;

(ii) service by a judge as an officer, director, advisor or other active participant in an educational, religious, charitable, fraternal or civic organization, or service by a judge's spouse, parent or child as an officer, director, advisor or other active participant in any organization does not create an economic interest in securities held by that organization;

(iii) a deposit in a financial institution, the proprietary interest of a policy holder in a mutual insurance company, of a depositor in a mutual savings association, is not an economic interest in the organization unless a proceeding pending or impending before the judge could substantially affect the value of the interest;

(iv) ownership of government securities is not an economic interest in the issuer unless a proceeding pending or impending before the judge could substantially affect the value of the securities. See Section 3E(2).

**"Fiduciary"** includes such relationships as executor, administrator, trustee, and guardian. See Sections 3E(2) and 5D.

**"Invidious discrimination"** is any action by an organization that characterizes some immutable individual trait such as a person's race, gender or national origin, as well as religion, as odious or as signifying inferiority, which therefore is used to justify arbitrary

exclusion of persons possessing those traits from membership, position or participation in the organization. See Section 2C.

**"Knowingly," "knowledge," "known" or "knows"** denotes actual knowledge of the fact in question. A person's knowledge may be inferred from circumstances. See Sections 3D(1), 3D(2) and 3E(1).

**"Law"** denotes court rules as well as statutes, constitutional provisions and decisional law. See Sections 2A, 3A, 3B(2), 3B(7), 4A, 4B, 4C, 5C(4), 5F and 5G.

**"Member of the judge's family residing in the judge's household"** denotes any relative of a judge by blood or marriage, or a person treated by a judge as a member of the judge's family, who resides in the judge's household. See Sections 3E(1)(c) and 5C(4).

**"Non-public information"** denotes information that, by law, is not available to the public. Non-public information may include but is not limited to: information that is sealed by statute or court order, impounded or communicated in camera; and information offered in grand jury proceedings, pre-sentencing reports, dependency cases or psychiatric reports. See Section 3B(11).

**"Political organization"** denotes a political party or other group, the principal purpose of which is to further the election or appointment of candidates to political office. See Section 7A(1).

**"Public election."** This term includes primary and general elections; it includes partisan elections, nonpartisan elections and may include (as context demands) retention elections. See Sections 7A(1), 7A(2), 7B(1) and 7B(2).

**"Require."** The rules prescribing that a judge "require" certain conduct of others are, like all of the rules in this Code, rules of reason. The use of the term "require" in that context means a judge is to exercise reasonable direction and control over the conduct of those persons subject to the judge's direction and control. See Sections 3B(3), 3B(4), 3B(6), 3B(9) and 3C(2).

**"Third degree of relationship."** The following persons are relatives within the third degree of relationship: great-grandparent, grandparent, parent, uncle, aunt, brother, sister, child, grandchild, great-grandchild, nephew or niece. See Section 3E(1)(c).

## **CANON 1**

### **Judges Shall Uphold the Integrity and Independence of the Judiciary.**

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

*Commentary:* Deference to the judgments and rulings of courts depends upon public confidence in the integrity and independence of judges. The integrity and independence of judges depends in turn upon their acting without fear or favor. Although judges should be independent, they must comply with the law, including the provisions of this Code. Public confidence in the impartiality of the judiciary is maintained by the adherence of each judge to this responsibility. Conversely, violation of this Code diminishes public confidence in the judiciary and thereby does injury to the system of government under law.

## **CANON 2**

### **Judges Shall Avoid Impropriety and the Appearance of Impropriety in All Their Activities.**

A. Judges shall respect and comply with the law\* and shall act at all times in a manner that

promotes public confidence in the integrity and impartiality of the judiciary.

*Commentary:* Public confidence in the judiciary is eroded by irresponsible or improper conduct of judges. Judges must avoid all impropriety and appearance of impropriety. Judges must expect to be the subject of constant public scrutiny. Judges must therefore accept restrictions on their conduct that might be viewed as burdensome by the ordinary citizen, and they should do so freely and willingly.

The prohibition against behaving with impropriety or the appearance of impropriety applies to both the professional and personal conduct of a judge. Because it is not practicable to list all prohibited acts, the proscription is necessarily cast in general terms that extend to conduct by judges that is harmful although not specifically mentioned in the Code. Actual improprieties under this standard include violations of law, court rules, or other specific provisions of this Code. The test for appearance of impropriety is whether the conduct would create in reasonable minds a perception that the judge's ability to carry out judicial responsibilities with integrity, impartiality and competence is impaired.

*See also, Commentary under Section 2C.*

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

*Commentary:* Maintaining the prestige of judicial office is essential to a system of government in which the judiciary functions independently of the executive and legislative branches. Respect for the judicial office facilitates the orderly conduct of legitimate judicial functions. Judges should distinguish between proper and improper use of the prestige of office in all of their activities. For example, it would be improper for a judge to allude to his or her judgeship to gain a personal advantage such as deferential treatment when stopped by a police officer for a traffic offense. Similarly, judicial letterhead must not be used for conducting a judge's personal business.

A judge must avoid lending the prestige of judicial office for the advancement of the private interests of others. For example, a judge must not use the judge's position to gain advantage in a civil suit involving a member of the judge's family. In contracts for publication of a judge's writings, a judge should retain control over the advertising to avoid exploitation of the judge's office. As to the acceptance of awards, see Section 5C(4)(a) and Commentary.

Although a judge should be sensitive to possible abuse of the prestige of office, a judge may, based on the judge's personal knowledge, serve as a reference or provide a letter of recommendation. However, a judge must not initiate the communication of information to a sentencing judge or probation or corrections officer, but may provide to such person information for the record in response to a formal request.

Judges may participate in the process of judicial selection by cooperating with appointing authorities and screening committees seeking names for consideration, and by responding to official inquiries concerning a person being considered for a judgeship. *See also* Canon 7, regarding use of a judge's name in political activities.

A judge must not testify voluntarily as a character witness, because to do so may lend the prestige of the judicial office in support of a party for whom the judge testifies. Moreover, when a judge testifies as a witness, a lawyer who regularly appears before the judge may be placed in the awkward position of cross-examining the judge. A judge may, however, testify when properly summoned. Except in unusual circumstances where the demands of justice require, a judge should discourage a party from requiring the judge to testify as a character witness.

C. Judges shall not hold membership in any organization that practices invidious discrimination\*.

*Commentary:* Membership by a judge in an organization that practices invidious

discrimination may give rise to perceptions that the judge's impartiality is impaired. Section 2C refers to the current practices of the organization. Whether an organization practices invidious discrimination is often a complex question to which judges should be sensitive. The answer cannot be determined from a mere examination of an organization's current membership rolls, but rather depends on how the organization selects members and other relevant factors, such as whether the organization is dedicated to the preservation of religious, ethnic, or cultural values of legitimate common interest to its members, or whether it is in fact and effect an intimate, purely private organization whose membership limitations could not be constitutionally prohibited. Absent such factors, an organization is generally said to discriminate invidiously if it arbitrarily excludes from membership on the basis of race, religion, sex or national origin persons who would otherwise be admitted to membership. See *New York State Club Ass'n. Inc. v. City of New York*, 108 S. Ct. 2225, 101 L.Ed. 2d 1 (1988); *Board of Directors of Rotary International v. Rotary Club of Duarte*, 481 U.S. 537, 107 S.Ct. 1940, 95 L.Ed. 2d. 474 (1987); *Roberts v. United States Jaycees*, 468 U.S. 609, 104 S.Ct. 3244, 82 L.Ed. 2d. 462 (1984). Ultimately, each judge must determine in the judge's own conscience whether an organization of which the judge is a member practices invidious discrimination.

### **CANON 3**

#### **Judges Shall Perform the Duties of Judicial Office Impartially and Diligently.**

A. Judicial Duties in General. The judicial duties of judges take precedence over all their other activities. Their judicial duties include all the duties of their office prescribed by law\*. In the performance of these duties, the following standards apply:

B. Adjudicative Responsibilities.

(1) Judges shall hear and decide matters assigned to them, except those in which they are disqualified.

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

(3) Judges shall require\* order and decorum in proceedings over which they preside.

(4) Judges shall be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, and others with whom they deal in their official capacity, and shall require\* similar conduct of lawyers, and of staff, court officials, and others subject to their direction and control.

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

(5) Judges shall perform judicial duties without bias or prejudice. Judges 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 permit staff, court officials and others subject to judicial direction and control to do so.

*Commentary:* Judges must refrain from speech, gestures or other conduct that could reasonably be perceived as sexual harassment and must require the same standard of conduct of others subject to their direction and control.

Judges must perform judicial duties impartially and fairly. Judges who manifest bias on any basis in a proceeding impair the fairness of the proceeding and bring the judiciary into disrepute. Facial expression, body language, in addition to oral communication, can give to parties or lawyers in the proceeding, jurors, the media and others an appearance of judicial bias. Judges must be alert to avoid behavior that may be perceived as prejudicial.

(6) Judges shall require\* lawyers in proceedings before the court to refrain from manifesting, by words and conduct, bias or prejudice based upon race, sex, religion,

national origin, disability, age, sexual orientation or socioeconomic status, against parties, witnesses, counsel or others. This Section, 3B(6), does not preclude legitimate advocacy when race, sex, religion, national origin, disability, age, sexual orientation or socioeconomic status, or other similar factors, are issues in the proceeding.

(7) Judges 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\*. Judges shall not initiate or consider ex parte communications, or consider other communications made to them outside the presence of the parties concerning a pending or impending proceeding, except that:

(a) where circumstances require, ex parte communications for scheduling, administrative purposes or emergencies that do not deal with substantive matters or issues on the merits are authorized; provided:

(i) the judge reasonably believes that no party will gain a procedural or tactical advantage as a result of the ex parte communication, and

(ii) the judge makes provision promptly to notify all other parties of the substance of the ex parte communication and allows an opportunity to respond.

(b) Judges may obtain the advice of a disinterested expert on the law\* applicable to a proceeding before the court, if they give notice to the parties of the person consulted and the substance of the advice, and afford the parties reasonable opportunity to respond.

(c) Judges may consult with court personnel\* whose function is to aid them in carrying out their adjudicative responsibilities, or with other judges.

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

(e) Judges may initiate or consider any ex parte communications when expressly authorized by law\* to do so.

*Commentary:* The proscription against communications concerning a proceeding includes communications from lawyers, law teachers, and other persons who are not participants in the proceeding, except to the limited extent permitted.

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

Whenever presence of a party or notice to a party is required by Section 3B(7), it is the party's lawyer, or if the party is unrepresented, the party, who is to be present or to whom notice is given.

An appropriate and often desirable procedure for a court to obtain the advice of a disinterested expert on legal issues is to invite the expert to file a brief *amicus curiae*.

Certain ex parte communication is approved by Section 3B(7) to facilitate scheduling and other administrative purposes and to accommodate emergencies. In general, however, judges must discourage ex parte communication and allow it only if all the criteria stated in Section 3B(7) are clearly met. Judges must disclose to all parties all ex parte communications described in Section 3B(7)(a) and 3B(7)(b) regarding a proceeding pending or impending before them.

Judges must not independently investigate facts in a case and must consider only the evidence presented.

Judges may request a party to submit proposed findings of fact and conclusions of law, so long as the other parties are apprised of the request and are given an opportunity to respond to the proposed findings and conclusions.

Judges must make reasonable efforts, including the provision of appropriate supervision, to ensure that Section 3B(7) is not violated through law clerks or other personnel on their staff.

If communication between the trial judge and the appellate court with respect to a proceeding is permitted, a copy of any written communication or the substance of any oral communication should be provided to all parties.

(8) Judges shall dispose of all judicial matters fairly, promptly, and efficiently.

*Commentary:* In disposing of matters promptly, efficiently and fairly, judges must demonstrate due regard for the rights of the parties to be heard and to have issues resolved without unnecessary cost or delay. Containing costs while preserving fundamental rights of parties also protects the interests of witnesses and the general public. Judges should monitor and supervise cases so as to reduce or eliminate dilatory practices, avoidable delays and unnecessary costs. Judges should encourage and seek to facilitate settlement, but parties should not feel coerced into surrendering the right to have their controversy resolved by courts.

The obligation of a judge to dispose of matters promptly and efficiently must not take precedence over the judge's obligation to dispose of matters fairly and with patience.

*Commentary:* Prompt disposition of the court's business requires judges to devote adequate time to their duties, to be punctual in attending court and expeditious in determining matters under submission, and to insist that court officials, litigants and their lawyers cooperate with them to that end.

(9) Judges shall not, while a proceeding is pending or impending in any court, make any public comment\* that might reasonably be expected to affect its outcome or impair its fairness or make any non-public comment that might substantially interfere with a fair trial or hearing. Judges shall require\* similar abstention on the part of court personnel\* subject to their direction and control. This subsection does not prohibit judges from making public statements in the course of their official duties or from explaining for public information the procedures of the court. This Section does not apply to proceedings in which the judge is a litigant in a personal capacity.

*Commentary:* The requirement that judges abstain from public comment regarding a pending or impending proceeding continues during any appellate process and until final disposition. This Section does not prohibit judges from commenting on proceedings in which the judge is a litigant in a personal capacity, but in cases such as a writ of mandamus where a judge is a litigant in an official capacity, the judge must not comment publicly.

(10) Judges shall not commend or criticize jurors for their verdict other than in a court order or opinion in a proceeding, but may express appreciation to jurors for their service to the judicial system and the community.

*Commentary:* Commending or criticizing jurors for their verdict may imply a judicial expectation in future cases and may impair a juror's ability to be fair and impartial.

(11) Judges shall not disclose or use, for any purpose unrelated to judicial duties, non-public information\* acquired in a judicial capacity.

#### C. Administrative Responsibilities.

(1) Judges shall diligently discharge their administrative responsibilities without bias or prejudice, maintain professional competence in judicial administration, and should cooperate with other judges and court officials in the administration of court business.

(2) Judges shall require\* their staffs, court officials and others subject to their direction and control to observe the standards of fidelity and diligence that apply to the judges and to refrain from manifesting bias or prejudice in the performance of their official duties.

(3) Judges with supervisory authority for 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) Judges shall not make unnecessary appointments. Judges shall exercise the power of appointment impartially and on the basis of merit. Judges shall avoid nepotism and

favoritism. Judges shall not approve compensation of appointees beyond the fair value of services rendered.

*Commentary:* Appointees of judges include assigned counsel, officials such as referees, commissioners, special masters, receivers, guardians and personnel such as clerks, secretaries, and bailiffs. Consent by the parties to an appointment or an award of compensation does not relieve the judge of the obligation prescribed by Section 3C(4).

#### D. Disciplinary Responsibilities

(1) Judges who receive information indicating a substantial likelihood that another judge has committed a violation of this Code should take appropriate action. Judges having knowledge\* that another judge has committed a violation of this Code that raises a substantial question as to the other judge's fitness for office shall inform the appropriate authority\*.

(2) Judges who receive information indicating a substantial likelihood that a lawyer has committed a violation of the Standards of Conduct of the State Bar of Georgia should take appropriate action. Judges having knowledge\* that a lawyer has committed a violation of the Standards of Conduct of the State Bar of Georgia that raises a substantial question as to the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects shall inform the appropriate authority\*.

(3) Acts of judges, in the discharge of disciplinary responsibilities, required or permitted by Sections 3D(1) and 3D(2) are part of their judicial duties and shall be absolutely privileged, and no civil action predicated thereon may be instituted against these judges.

*Commentary:* Appropriate action may include direct communication with the judge or lawyer who has committed the violation, or other direct action if available, and reporting the violation to the appropriate authority or other agency or body.

Section 3D(1) requires judges to inform the Judicial Qualifications Commission of any other judge's violation of the Code of Judicial Conduct, if the violation raises a substantial question of fitness for office and if the violation is actually known to the reporting judge.

Section 3D(2) also requires judges to report to the State Bar of Georgia any violation by a lawyer of the Standards of Conduct, if the violation raises a substantial question of the lawyer's fitness as a lawyer and, again, if the violation is actually known to the reporting judge.

#### E. Disqualification.

(1) Judges shall disqualify themselves in any proceeding in which their impartiality might reasonably be questioned, including but not limited to instances where:

*Commentary:* Under this rule, judges are subject to disqualification whenever their impartiality might reasonably be questioned, regardless of whether any of the specific rules in Section 3E(1) apply. For example, if a judge were in the process of negotiating for employment with a law firm, the judge would be disqualified from any matters in which that firm appeared, unless the disqualification was waived by the parties after disclosure by the judge.

Judges should disclose on the record information that the court believes the parties or their lawyers might consider relevant to the question of disqualification, even if they believe there is no legal basis for disqualification.

The rule of necessity may override the rule of disqualification. For example, a judge might be required to participate in judicial review of a judicial salary statute, or might be the only judge available in a matter requiring immediate judicial action, such as a hearing on probable cause or a temporary restraining order. In the latter case, the judge must disclose on the record the basis for possible disqualification and use reasonable efforts to transfer the matter to another judge as soon as possible.

(a) the judge has a personal bias or prejudice concerning a party or a party's lawyer, or personal knowledge\* of disputed evidentiary facts concerning the proceeding;

(b) the judge served as a lawyer in the matter in controversy, or a lawyer with whom the judge previously practiced law served during such association as a lawyer concerning the matter, or the judge has been a material witness concerning it;

*Commentary:* A lawyer in a government agency does not ordinarily have an association with other lawyers employed by that agency within the meaning of Section 3E(1)(b); judges formerly employed by a governmental agency, however, should disqualify themselves in a proceeding if their impartiality might reasonably be questioned because of such association.

(c) the judge or the judge's spouse, or a person within the third degree of relationship\* to either of them, or the spouse of such a person, or any other member of the judge's family residing in the judge's household\*:

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

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

(iii) is known\* by the judge to have a more than de minimis\* interest that could be substantially affected by the proceeding;

(iv) is to the judge's knowledge\* likely to be a material witness in the proceeding.

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

(2) Judges shall keep informed about their personal and fiduciary\* economic interests\*, and make a reasonable effort to keep informed about the personal financial interests of their spouses and minor children residing in their households.

#### F. Remittal of Disqualification.

Judges disqualified by the terms of Section 3E may disclose on the record the basis of their disqualification and may ask the parties and their lawyers to consider, out of the presence of the judge, whether to waive disqualification. If following disclosure of any basis for disqualification other than personal bias or prejudice concerning a party, the parties and lawyers, without participation by the judge, all agree that the judge should not be disqualified, and the judge is then willing to participate, the judge may participate in the proceeding. The agreement shall be incorporated in the record of the proceeding.

*Commentary:* A remittal procedure provides the parties an opportunity to proceed without delay if they wish to waive the disqualification. To assure that consideration of the question of remittal is made independently to the court, judges must not solicit, seek or hear comment on possible remittal or waiver of the disqualification, unless the lawyers jointly propose remittal after consultation as provided in Section 3F. A party may act through counsel, if counsel represents on the record that the party has been consulted and consents. As a practical matter, judges may wish to have all parties and their lawyers sign a remittal agreement.

### CANON 4

#### Judges May Engage in Activities to Improve the Law, the Legal System, and the Administration of Justice.

Judges, subject to the proper performance of their judicial duties, may not engage in the following quasi-judicial activities, if in so doing they cast doubt on their capacity to decide impartially any issue that may come before them:

A. Judges may speak, write, lecture, teach, and participate in other activities concerning the law\*, the legal system, and the administration of justice.

B. Judges may appear at public hearings before an executive or legislative body or official on matters concerning the law\*, the legal system, and the administration of justice, and they may otherwise consult with an executive or legislative body or official, but only on matters concerning the administration of justice.

C. Judges may serve as members, officers, or directors of an organization or governmental agency devoted to the improvement of the law\*, the legal system, or the administration of justice. They may assist such organizations in raising funds and may participate in their management and investment, but should not personally participate in public fund raising activities. They 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.

*Commentary:* As a judicial officer and person specially learned in the law, a judge is in a unique position to contribute to the improvement of the law, the legal system, and the administration of justice, including revision of substantive and procedural law and improvement of criminal and juvenile justice. To the extent that time permits, judges are encouraged to do so, either independently or through a bar association, judicial conference, or other organization dedicated to the improvement of the law.

Non quasi-judicial, or non law-related, extra-judicial activities are governed by Canon 5.

## **CANON 5**

### **Judges Shall Regulate Their Extra-Judicial Activities to Minimize the Risk of Conflict with Their Judicial Duties.**

A. Avocational Activities. Judges may not engage in such avocational activities as detract from the dignity of their office or interfere with the performance of their judicial duties.

*Commentary:* Complete separation of judges from extra-judicial activities is neither possible nor wise; they should not become isolated from the society in which they live.

B. Civic and Charitable Activities. Judges may not participate in civic and charitable activities that reflect adversely upon their impartiality or interfere with the performance of their judicial duties. Judges may serve as officers, directors, trustees, or non-legal advisors of educational, religious, charitable, fraternal, or civic organizations not conducted for the economic or political advantage of their members, subject to the following limitations:

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

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

(2) Judges shall not solicit funds for any educational, religious, charitable, fraternal, or civic organization, or use or permit the use of the prestige of their office for that purpose, but they may be listed as officers, directors, or trustees of such organizations. A judge should not be a speaker or the guest of honor at an organization's fund-raising event, but may attend such events.

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

*Commentary:* A judge's participation in an organization devoted to quasi-judicial, or law-related, extra-judicial activities is governed by Canon 4.

### C. Financial Activities.

(1) Judges should refrain from financial and business dealings with lawyers, litigants, and others that tend to reflect adversely on their impartiality, interfere with the proper performance of their judicial duties, or exploit their judicial positions.

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

(3) Judges should manage their investments and other financial interests to minimize the number of cases in which they are disqualified. As soon as they can do so without serious financial detriment they should divest themselves of investments and other financial interests that might require frequent disqualification.

(4) Neither judges nor members of their families residing in their households\* should accept a substantial gift, bequest, favor, or loan from anyone except as follows:

(a) judges may accept gifts incident to a public testimonial to them; books supplied by publishers on a complimentary basis for official use; or invitations to judges and their spouses to attend bar-related functions or activities devoted to the improvement of the law\*, the legal system, or the administration of justice;

(b) judges or members of their families residing in their households may accept ordinary social hospitality; a gift, bequest, favor, or loan from a relative; a wedding or engagement gift; 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) judges or members of their families residing in their households may accept any other gift, bequest, favor, or loan only if the donor is not a party or other person whose interests have come or are likely to come before them, and if its value exceeds \$100, the judges report it in the same manner as they report compensation in Canon 6C.

*Commentary:* This subsection does not apply to contributions to a judge's campaign for judicial office, a matter governed by Canon 7.

(5) Judges are not required by this Code to disclose their income, debts, or investments, except as provided in this Canon and Canons 3 and 6.

*Commentary:* Canon 3 requires judges to disqualify themselves in any proceeding in which they have a financial interest; Canon 5 requires judges to refrain from financial activities that might interfere with the impartial performance of their judicial duties; Canon 6 requires them to report all compensation they receive for activities involving personal services outside their judicial office. Judges have the rights of an ordinary citizen, including the right to privacy in their financial affairs, except to the extent that limitations thereon are required to safeguard the proper performance of their duties. Owning and receiving income from investments do not as such affect the performance of a judge's duties.

(6) Information acquired by judges in their judicial capacity should not be used or disclosed by them in financial dealings or for any other purpose not related to their judicial duties.

D. Fiduciary\* Activities. Judges should not serve as executors, administrators, trustees, guardians, or other fiduciaries, except for the estates, trusts, or persons of members of their families and then only if such service will not interfere with the proper performance of their judicial duties. "Member of their families" includes a spouse, child, grandchild, parent, grandparent, or other relative or person with whom the judge maintains a close familial relationship. As family fiduciaries, judges are subject to the following restrictions:

(1) They should not serve if it is likely that as fiduciaries, they will be engaged in proceedings that would ordinarily come before them, or if the estates, trusts, or wards become involved in adversary proceedings in the court on which they serve or one under its appellate jurisdiction.

(2) While acting as fiduciaries, judges are subject to the same restrictions on financial

activities that apply to them in their personal capacities.

*Commentary:* Judges' obligations under this Canon and their obligations as fiduciaries may come into conflict. For example, a judge should resign as trustee if it would result in detriment to the trust to divest it of holdings whose retention would place the judge in violation of Canon 5C(3).

E. Arbitration. Judges shall not act as arbitrators or mediators for compensation. This prohibition does not apply to senior judges who serve as judges.

F. Practice of Law. Judges shall not practice law, unless allowed by law\*.

G. Extra-judicial Appointments. A judge should not accept appointment to a governmental committee, commission, or other position that is concerned with issues of fact or policy on matters other than the improvement of the law\*, the legal system, or the administration of justice, if acceptance of such appointment might reasonably cast doubt upon the judge's impartiality or demean the judge's office.

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

## **CANON 6**

### **Judges Should Regularly File Reports of Compensation Received for Quasi-Judicial and Extra-Judicial Activities.**

Judges may not receive compensation and reimbursement of expenses for the quasi-judicial and extra-judicial activities permitted by this Code, if the source of such payments gives the appearance of influencing the judge in his judicial duties or otherwise gives the appearance of impropriety. Such compensation is subject to the following restrictions:

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

B. Expense Reimbursement. Expense reimbursement should be limited to the actual cost of travel, food, and lodging and other necessary expense reasonably incurred by the judge and, where appropriate to the occasion, by their spouses. Any payment in excess of such an amount is compensation.

C. Reports. Except as hereinafter provided to the contrary, full-time judges should report the dates, places, and nature of any activities involving personal services for which they received compensation, and the name of the payor and the amount of compensation so received. Compensation or income of a spouse attributed to the judge by operation of a community property law is not extra-judicial compensation to the judge. Judges' reports for each calendar year should be filed between January first and April fifteenth of the following year in the office of the Clerk of the Supreme Court of Georgia. A copy of a judge's federal income tax return shall be considered a sufficient compliance with this paragraph. Such report or tax return shall be filed under seal and shall be available for inspection only by the Justices of the Supreme Court of Georgia and the members of the Judicial Qualifications Commission.

## **CANON 7**

### **Judges Shall Refrain from Political Activity Inappropriate to Their Judicial Office.**

A. Political Conduct in General.

(1) Candidates\*, including an incumbent judge, for any judicial office that is filled by public election\* between competing candidates:

(a) shall prohibit officials or employees subject to their direction or control from doing for them what they are prohibited from doing under this Canon and shall not allow any other person to do for them what they are prohibited from doing under this Canon;

(b) shall not make statements that commit the candidate with respect to issues likely to come before the court;

*Commentary:* This Canon does not prohibit a judge or a candidate from publicly stating his or her personal views on disputed issues, see Republican Party V. White, 536 U.S. 765 (2002). To ensure that voters understand a judge's duty to uphold the constitution and laws of Georgia where the law differs from his or her personal belief, however, judges and candidates are encouraged to emphasize in any public statement their duty to uphold the law regardless of their personal views.

(c) shall not use or participate in the publication of a false statement of fact concerning themselves or their candidacies, or concerning any opposing candidate or candidacy, with knowledge of the statement's falsity or with reckless disregard for the statement's truth or falsity;

*Commentary:* The determination of whether a candidate knows of falsity or recklessly disregards the truth or falsity of his or her public communication is an objective one, from the viewpoint of a "reasonable attorney", using the standard of "objective malice".

See In re Chmura, 608 N.W. 2d 31 (Mich. 2000)

(d) shall be responsible for the content of any statement or advertisement published or communicated in any medium by a campaign committee if the candidate knew or recklessly disregarded the content of said statement or advertisement prior to its release;

(e) and except where a statement or advertisement is published or communicated by a third party, shall be responsible for reviewing and approving the content of his or her statements and advertisements, and those of his or her campaign committee. Failure to do so will not be a defense to a complaint for violation of this Canon.

### **Application of the Code of Judicial Conduct**

Anyone, whether or not a lawyer, who is an officer of a judicial system performing judicial functions, including an officer such as an administrative law judge of an executive branch agency or of the Board of Workers Compensation, an associate judge, special master, or magistrate, or any person who is a candidate for any such office is a judge for the purpose of this Code. All judges shall comply with this Code except as provided below.

A. Part-time Judges. A part-time judge is a judge who serves on a continuing or periodic basis, but is permitted by law to devote time to some other profession or occupation and whose compensation for that reason is less than that of a full-time judge. Part-time judges:

(1) are not required to comply with Canon 5D [fiduciary activities], 5E [arbitration], 5F [practice of law], and 5G [extra-judicial appointments], and are not required to comply with Canon 6C [annual financial reporting].

(2) should not practice law in the court on which they serve, or in any court subject to the appellate jurisdiction of the court on which they serve, or act as lawyers in proceedings in which they have served as judges or in any other proceeding related thereto.

B. Judge Pro Tempore. A judge pro tempore is a person who is appointed to act temporarily as a judge.

(1) While acting as such, a judge pro tempore is not required to comply with Canon 5C(3) [financial activities], 5D [fiduciary activities], 5E [arbitration and mediation], 5F [practice of law], and 5G [extra judicial appointments], and Canon 6C [annual financial reporting].

(2) Persons who have been judges pro tempore should not act as lawyers in proceedings in which they have served as judges or in other proceedings related thereto.

C. Time for Compliance. A person to whom this Code becomes applicable shall comply immediately with all provisions of this Code except Sections 5C(1), 5C(2), 5C(3) [personal and family financial activities] and 5D [fiduciary activities], and shall comply with these Sections as soon as reasonably possible and shall do so in any event within the period of one year.

*Commentary:* If serving as a fiduciary when selected as judge, a new judge may, notwithstanding the prohibitions in Section 5D, continue to serve, but only for that period of time necessary to avoid serious adverse consequences to the beneficiary of the fiduciary relationship, and in no event longer than one year. Similarly, if engaged at the time of judicial selection in a business activity, a new judge may, notwithstanding the prohibitions in Section 5C(1), 5C(2) and 5C(3), continue in that activity for a reasonable period, but in no event longer than one year.

D. In addition to the foregoing, the Commission shall have continuing jurisdiction over individuals to whom this Code is applicable regarding allegations of misconduct occurring during such individual's service as an officer of a judicial system if a complaint is filed no later than one (1) year following service of such judicial officer.

#### **Effective Date of Code**

This Code shall become effective January 1, 1998.

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