

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

JOHN SIEFERT,

Plaintiff,

V.

Case No. 08-C-0126-C

JAMES C. ALEXANDER,  
LARRY BUSSAN,  
GINGER ALDEN,  
DONALD LEO BACH,  
JENNIFER MORALES,  
JOHN R. DAWSON,  
DAVID A. HANSHER,  
GREGORY A. PETERSON,  
WILLIAM VANDER LOOP,  
MICHAEL R. MILLER,  
JAMES M. HANEY,

Defendants.

## SECOND AFFIDAVIT OF JAMES C. ALEXANDER

STATE OF WISCONSIN )  
 ) ss.  
COUNTY OF DANE )

JAMES C. ALEXANDER, being first duly sworn, on oath deposes and states that:

1. Wisconsin Supreme Court Rule 60.05 (See attached exhibit P), limits a Wisconsin judge's extra-judicial obligations, and, in particular, prohibits extra-judicial activities that cast reasonable doubt on the judge's capacity to act impartially as judge. SCR. 60.05(1)(a).

2. The rule specifically prohibits a full-time judge from appearing at a public hearing in matters other than those related to the law, the legal system or the administration of justice or when acting *pro se* in a matter involving the judge or the judge's interests. SCR 60.05(3)(a). However, the rule permits a judge to "serve as an officer, director, trustee, or nonlegal advisor of a "nonprofit, educational, religious, charitable, fraternal, sororal, or civil organization . . ." subject to limitations. SCR 60.05(3)(c).

3. SCR 60.03(2) provides that a judge may not allow social, political, or other relationships to influence the judge's judicial conduct or judgment, nor lend the prestige of the judicial office to advance the private interests of others, or permit the impression by others that they are in a special position to influence the judge.

4. The "Comment" to SCR 60.03(1) provides that " . . . a judge must accept restrictions on the judge's conduct that might be viewed as burdensome by the ordinary citizen and should do so freely and willingly."

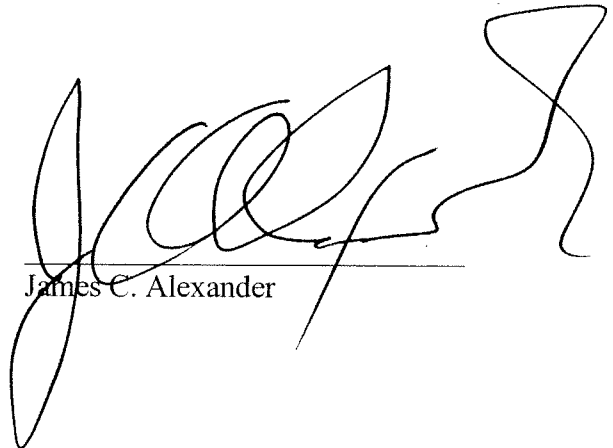
5. These code provisions taken as a whole operate to prohibit a Wisconsin judge from belonging to such organizations as Mothers Against Drunk Driving, pro victim /witness domestic violence organizations, Sierra Club or other advocacy organizations that are dedicated to a particular legal philosophy or position that could have an adverse impact on the public's perception of the judge's impartiality.

6. The Judicial Conduct Advisory Committee has held that a reserve judge is prohibited from serving as president of a civic organization whose mission is, in substantial part, to advocate social goals through litigation and legislative action (Opinion 00-5, 1/8/2002, attached as Exhibit Q).

7. I believe that Judicial Commission's position is consistent with advisory opinions on the federal judicial codes of conduct (See attached Exhibit R, advisory opinion no. 93, rev'd 1/16/1998).

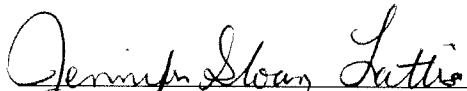
8. Named defendants Alden, Bach, Dawson, Hansher, Peterson, Vander Loop, Miller, and Haney are members of the Wisconsin Judicial Commission See Wis. Stat. § 757.83. Defendant Jennifer Morales has resigned from the Commission and there remains a vacancy.

9. Named defendant Bussan is the administrative assistant for the Wisconsin Judicial Commission.



James C. Alexander

Subscribed and sworn to before me  
this 14 day of October, 2008.

  
Notary Public, State of Wisconsin  
My commission permanent

1026

1027 05-06 Wis. Stats.

## CODE OF JUDICIAL CONDUCT

SCR 60.01

## CHAPTER SCR 60

## CODE OF JUDICIAL CONDUCT

SCR 60	Preamble
SCR 60.01	Definitions.
SCR 60.02	A judge shall uphold the integrity and independence of the judiciary.
SCR 60.03	A judge shall avoid impropriety and the appearance of impropriety in all of the judge's activities.
SCR 60.04	A judge shall perform the duties of judicial office impartially and diligently.

SCR 60.05	A judge shall so conduct the judge's extra-judicial activities as to minimize the risk of conflict with judicial obligations.
SCR 60.06	A judge or judicial candidate shall refrain from inappropriate political activity.
SCR 60.07	Applicability.
APPENDIX	

**Judicial Council Committee's Note, 1979:** The following rules, called the code of judicial conduct, govern the members of the Wisconsin judiciary. These rules were originally adopted by the supreme court on November 14, 1967, effective January 1, 1968. They were amended on June 28, 1974; December 23, 1977; March 16, 1978; March 28, 1978; and November 20, 1979. The rules were originally numbered standards 1 to 16 and rules 1 to 17. They have been clarified and numbered SCR 60.001 to 60.19 for uniformity and convenience.

**Note:** SCR Chapter 60 was amended January 16, 1985; April 29, 1985; November 17, 1994. SCR Chapter 60 was repealed and recreated July 1, 1996, amended 12-20-96, eff. January 1, 1997 and modified July 7, 1997; amended April 6, 2001; November 14, 2001; April 1, 2002; January 1, 2005.

**SCR 60 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 provisions 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 rules of the Code of Judicial Conduct are authoritative. The Commentary, has three varying functions: 1) to elaborate a standard in the rules; 2) to set forth policy bases for the rules; or 3) by explanation and example, to provide guidance with respect to the purpose and meaning of the rules. The Commentary is not intended as a statement of additional rules.

When the text of a rule uses "shall," "shall not" or "may not," it is intended to impose binding obligations the violation of which can result in disciplinary action. For a judge's conduct to constitute a violation of a rule, the judge must have known or reasonably should have known the facts giving rise to the violation.

The use of "should" or "should not" in the rules is intended to encourage or discourage specific conduct 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 provisions of the Code of Judicial Conduct are rules of reason. They should be applied consistent with constitutional requirements, statutes, other court rules and decisional law and in the context of all relevant circumstances. The Code is to be construed so as not to impinge on the essential independence of judges in making judicial decisions.

The Code is designed to provide guidance to judges and candidates for judicial office and to provide a structure for regulating conduct through disciplinary agencies. It is not designed or intended as a basis for civil liability or criminal prosecution. Furthermore, the purpose of the Code would be subverted if the Code were invoked by lawyers or litigants for mere tactical advantage in a proceeding.

The provisions of the Code are 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. See ABA Standards Relating to Judicial Discipline and Disability Retirement.

Because it is not possible to address every conceivable conduct of a judge that might erode public confidence in the integrity, independence and impartiality of the judiciary, some of the binding rules of the Code are cast in general terms setting forth the principles their specific provisions are intended to foster. See, for example, SCR 60.02, 60.03 (1) and 60.05 (1) and accompanying Comments. Those rules provide a touchstone against which judicial conduct, actual or contemplated, is to be measured. Care must be taken that the Code's necessarily general rules do not constitute a trap for the unwary judge or a weapon to be wielded unscrupulously against a judge.

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.

**SCR 60.01 Definitions.** In this chapter:

(1) "Appropriate authority" means the chief judge of an offending judge's district, the director of state courts, the judicial commission, and the office of lawyer regulation.

(2) "Candidate" means a person seeking selection for or retention of a judicial office by means of election or appointment who 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.

(3) "Court personnel" means staff, court officials and others subject to the judge's direction and control, including judicial assistants, reporters, law clerks, and bailiffs. "Court personnel" does not include the lawyers in a judicial proceeding.

(4) "*De minimis*" means an insignificant interest that does not raise reasonable question as to a judge's impartiality or use of the prestige of the office.

(5) "Economic interest" means 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 none of the following is an economic interest:

(a) Ownership of an interest in a mutual or common investment fund that holds securities, unless the judge participates in the management of the fund or unless a proceeding pending or impending before the judge could substantially affect the value of the interest.

(b) 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 or child as an officer, director, advisor or other active participant in any organization.

(c) A deposit in a financial institution, the proprietary interest of a policyholder in a mutual insurance company, of a depositor in a mutual savings association or of a member in a credit union, or a sim-



ilar proprietary interest, unless a proceeding pending or impending before the judge could substantially affect the value of the interest.

(d) Ownership of government securities, unless a proceeding pending or impending before the judge could substantially affect the value of the securities.

(6) "Fiduciary" means a personal representative, trustee, attorney-in-fact, conservator or guardian.

(7) "Gift" means the payment or receipt of anything of value without valuable consideration.

(7m) "Impartiality" means the absence of bias or prejudice in favor of, or against, particular parties, or classes of parties, as well as maintaining an open mind in considering issues that may come before the judge.

(8) "Judge" means a justice of the supreme court, a judge of the court of appeals, a judge of the circuit court, a reserve judge, a municipal judge, a court commissioner, and anyone, whether or not a lawyer, who is an officer of the judicial system and who performs judicial functions.

(8m) "Judge-elect" means a person who has been elected or appointed to judicial office but has not yet taken office.

(9) "Knowingly" or "knowledge" means actual knowledge of the fact in question, which may be inferred from the circumstances.

(10) "Law" means court rules, statutes, constitutional provisions and legal conclusions in published court decisions.

(11) "Member of the judge's family" means the judge's spouse, child, grandchild, parent, grandparent and any other relative or person with whom the judge maintains a close familial relationship.

(12) "Member of the judge's family residing in the judge's household" means a relative of the judge by blood or marriage or a person treated by the judge as a member of the judge's family who resides in the judge's household.

(13) "Nonpublic information" means information that, by law, is not available to the public, including information that is sealed by statute or court order, impounded or communicated in camera, offered in grand jury proceedings or contained in presentencing reports, dependency case reports or psychiatric reports.

(14) "Part-time municipal judge" or "part-time court commissioner" means a judge or court commissioner who serves repeatedly on a part-time basis by election or under a continuing appointment.

(15) "Require" means the exercise of reasonable direction and control over the conduct of those persons subject to the directions and control.

(16) "Third degree of kinship" means a person who is related as a great-grandparent, grandparent, parent, uncle, aunt, brother, sister, child, grandchild, great-grandchild, nephew or niece.

History: Sup. Ct. Order No. 95-05, 202 Wis. 2d xvii (1997); Sup. Ct. Order No. 01-12, 2001 WI 120, 247 Wis. 2d xiii; Sup. Ct. Order No. 00-07, 2004 WI 134, 274 Wis. 2d xvii.

**SCR 60.02 A judge shall uphold the integrity and independence of the judiciary.** An independent and honorable judiciary is indispensable to justice in our society. A judge should participate in establishing, maintaining and enforcing high standards of conduct and shall personally observe those standards so that the integrity and independence of the judiciary will be preserved. This chapter applies to every aspect of judicial behavior except purely legal decisions. Legal decisions made in the course of judicial duty on the record are subject solely to judicial review.

**Comment:** Deference to the judgments and rulings of courts depends upon public confidence in the integrity and independence of the judges. The integrity and independence of judges depend 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 chapter. Public confidence in the impartiality of the judiciary is maintained by the adherence of each judge to this responsibility. Conversely, violation of this chapter diminishes public confidence in the judiciary and thereby does injury to the system of government under law.

The role of the judicial conduct organization like the Wisconsin Judicial Commission is not that of an appellate court. Wis. Admin. Code Sec. JC 3.06 (May 1979) states as follows: "Commission not to act as appellate court. The commission may not function as an appellate court to review the decisions of a court or judge or to exercise superintending or administrative control over determinations of courts or

judges." It is important to remember this concept as one interprets this chapter, particularly in light of the practice of some groups or individuals to encourage dissatisfied litigants to file simultaneous appeals and judicial conduct complaints.

History: Sup. Ct. Order No. 95-05, 202 Wis. 2d xvii (1997), modified 210 Wis. 2d xvii (1998).

**SCR 60.03 A judge shall avoid impropriety and the appearance of impropriety in all of the judge's activities.**

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

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

The prohibition against behaving with impropriety or the appearance of impropriety applies to both the professional and personal conduct of a judge. Because it is not practicable to list all prohibited acts, the proscription is necessarily cast in general terms that extend to conduct by judges that is harmful although not specifically mentioned in the chapter. Actual improprieties under this standard include violations of law, court rules or other specific provisions of this chapter. 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.

Restrictions on the personal conduct of judges cannot, however, be so onerous as to deprive them of fundamental freedoms enjoyed by other citizens. Care must be taken to achieve a balance between the need to maintain the integrity and dignity of the judiciary and the right of judges to conduct their personal lives in accordance with the dictates of their individual consciences.

In striking this balance the following factors should be considered:

- (a) the degree to which the personal conduct is public or private;
- (b) the degree to which the personal conduct is a protected individual right;
- (c) the potential for the personal conduct to directly harm or offend others;
- (d) the degree to which the personal conduct is indicative of bias or prejudice on the part of the judge;
- (e) the degree to which the personal conduct is indicative of the judge's lack of respect for the public or the judicial/legal system.

See also Comment to sub. (3).

(2) A judge may not allow family, social, political or other relationships to influence the judge's judicial conduct or judgment. A judge may not lend the prestige of judicial office to advance the private interests of the judge or of others or convey or permit others to convey the impression that they are in a special position to influence the judge. A judge may not testify voluntarily as a character witness.

**Comment:** 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 judicial position to gain advantage in a civil suit involving a member of the judge's family. As to the acceptance of awards, see SCR 60.05 (4) (e) 1.

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. Such a letter should not be written if the person who is the subject of the letter is or is likely to be a litigant engaged in a contested proceeding before the court. However, a judge must not initiate the communication of information to a sentencing judge or a probation or corrections officer but may provide to such persons information for the record in response to a formal request.

Judges may participate in the process of judicial selection by cooperating with appointing authorities and screening committees seeking names for consideration and by responding to official inquiries concerning a person being considered for a judgeship.

A judge must not testify voluntarily as a character witness because to do so may lend the prestige of the judicial office in support of the party for whom the judge testifies. Moreover, when a judge testifies as a witness, a lawyer who regularly appears before the judge may be placed in the awkward position of cross-examining the judge. 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.

(3) A judge may not hold membership in any organization that practices invidious discrimination on the basis of race, gender, religion or national origin.

**Comment:** Membership in an organization that practices invidious discrimination gives rise to perceptions that the judge's impartiality is impaired. 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 that the organization is dedicated to the preservation of religious, ethnic or cultural values of legitimate common interest to its members or that it is in fact and effect an intimate, purely private organization whose membership limitations could not be constitutionally prohibited.

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Whether an organization, club or group is "private" depends on a review of the following factors: 1) size; 2) purpose; 3) policies; 4) selectivity in membership; 5) congeniality; and 6) whether others are excluded from critical aspects of the relationship. An organization that is not "private" 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 (1987), 95 L. Ed. 2d 474; *Roberts v. United States Jaycees*, 468 U.S. 609 (1984). Organizations dedicated to the preservation of religious, fraternal, sororal, spiritual, charitable, civic or cultural values which do not stigmatize any excluded persons as inferior and therefore unworthy of membership are not considered to discriminate invidiously.

Public manifestation by a judge of the judge's knowing approval of invidious discrimination on any basis gives the appearance of impropriety and diminishes public confidence in the integrity and impartiality of the judiciary.

When a judge has reason to believe that an organization to which the judge belongs engages in invidious discrimination that would preclude membership under sub. (3) or under SCR 60.03, the judge may, in lieu of resigning, make immediate efforts to have the organization discontinue its invidiously discriminatory practices but must suspend participation in any other activities of the organization. If the organization fails to discontinue its invidiously discriminatory practices as promptly as possible, the judge must resign from the organization.

**History:** Sup. Ct. Order No. 95-05, 202 Wis. 2d xvii (1997).

**Revisor's Note:** A judge's threats against the chief judge in an attempt to pressure the chief judge to decide an administrative dispute on the basis of political considerations and family relationships, rather than the merits, were, in effect, attempts to induce the chief judge to violate sub. (2). *Wisconsin Judicial Commission v. Crawford*, 2001 WI 96, 245 Wis. 2d 373, 629 N.W.2d 1.

**SCR 60.04 A judge shall perform the duties of judicial office impartially and diligently.** The judicial duties of a judge take precedence over all the judge's other activities. The judge's judicial duties include all the duties of the judge's office prescribed by law.

(1) In the performance of the duties under this section, the following apply to adjudicative responsibilities:

(a) A judge shall hear and decide matters assigned to the judge, except those in which recusal is required under sub. (4) or disqualification is required under section 757.19 of the statutes and except when judge substitution is requested and granted.

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

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

(d) A judge shall be patient, dignified and courteous to litigants, jurors, witnesses, lawyers and others with whom the judge deals in an official capacity and shall require similar conduct of lawyers, staff, court officials and others subject to the judge's direction and control. During trials and hearings, a judge shall act so that the judge's attitude, manner or tone toward counsel or witnesses does not prevent the proper presentation of the cause or the ascertainment of the truth. A judge may properly intervene if the judge considers it necessary to clarify a point or expedite the proceedings.

**Comment:** 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 businesslike while being patient and deliberate.

In respect to sub. (c), by order of June 4, 1996, the Supreme Court adopted Standards of Courtesy and Decorum for the Courts of Wisconsin, chapter 62 of the Supreme Court Rules.

(e) A judge shall perform judicial duties without bias or prejudice. A judge may not, in the performance of judicial duties, by words or conduct, manifest bias or prejudice, including bias or prejudice based upon race, gender, religion, national origin, disability, age, sexual orientation or socioeconomic status, and may not knowingly permit staff, court officials and others subject to the judge's direction and control to do so.

**Comment:** A judge must refrain from speech, gestures or other conduct that could reasonably be perceived as sexual harassment and must require the same standard of conduct of others subject to the judge's direction and control.

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

(f) A judge shall require lawyers in proceedings before the judge to refrain from manifesting, by words or conduct, bias or prejudice based upon race, gender, religion, national origin, disability, age, sexual orientation or socioeconomic status against parties, witnesses, counsel or others. This subsection does not

preclude legitimate advocacy when race, gender, religion, national origin, disability, age, sexual orientation or socioeconomic status or other similar factors are issues in the proceeding.

(g) A judge shall accord to every person who has a legal interest in a proceeding, or to that person's lawyer, the right to be heard according to law. A judge may not initiate, permit, engage in or consider ex parte communications concerning a pending or impending action or proceeding except that:

1. A judge may initiate, permit, engage in or consider ex parte communications for scheduling, administrative purposes or emergencies that do not deal with substantive matters or issues on the merits if all of the following conditions are met:

a. The judge reasonably believes that no party will gain a procedural or tactical advantage as a result of the ex parte communication.

b. When the ex parte communication may affect the substance of the action or proceeding, the judge promptly notifies all of the other parties of the substance of the ex parte communication and allows each party an opportunity to respond.

2. A judge may obtain the advice of a disinterested expert on the law applicable to a proceeding before the judge if the judge gives notice to the parties of the person consulted and the substance of the advice and affords the parties reasonable opportunity to respond.

3. A judge may consult with other judges or with court personnel whose function is to aid the judge in carrying out the judge's adjudicative responsibilities.

4. A judge may, with the consent of the parties, confer separately with the parties and their lawyers in an effort to settle matters pending before the judge.

5. A judge may initiate, permit, engage in or consider ex parte communications when expressly authorized by law.

**Comment:** 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 SCR 60.04 (1) (g), it is the party's lawyer, or if the party is unrepresented, the party, who is to be present or to whom notice is to be given.

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 SCR 60.04 (1) (g) to facilitate scheduling and other administrative purposes and to accommodate emergencies. In general, however, a judge must discourage ex parte communication and allow it only if all the criteria stated in SCR 60.04 (1) (g) are clearly met. A judge must disclose to all parties all ex parte communications described in SCR 60.04 (1) (g) 1 and 2 regarding a proceeding pending or impending before the judge.

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

A judge may request 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.

A judge should not accept trial briefs that are not exchanged with adversary parties unless all parties agree otherwise in advance of submission of the briefs.

A judge must make reasonable efforts, including the provision of appropriate supervision, to ensure that SCR 60.04 (1) (g) is not violated through law clerks or other personnel on the judge's staff.

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

The prohibition of a lawyer's ex parte communication with a judge and others is set forth in SCR 20:3.5.

(h) A judge shall dispose of all judicial matters promptly, efficiently and fairly.

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

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

(j) A judge may not, while a proceeding is pending or impending in any court, make any public comment that may reasonably be expected to affect the outcome or impair the fairness of the proceeding. The judge shall require court personnel subject to the



judge's direction and control to similarly abstain from comment. This subsection does not prohibit a judge from making public statements in the course of his or her official duties or from explaining for public information the procedures of the court. This paragraph does not apply to proceedings in which the judge is a litigant in a personal capacity.

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

(k) A judge may 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.

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

(m) A judge may not disclose or use, for any purpose unrelated to judicial duties, nonpublic information acquired in a judicial capacity.

(o) A judge shall cooperate with other judges as members of a common judicial system to promote the satisfactory administration of justice.

(2) In the performance of the duties under this section, the following apply to administrative responsibilities:

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

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

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

**Comment:** Appointees of a judge include assigned counsel, officials such as referees, commissioners, special masters, receivers and guardians, and personnel such as clerks, judicial assistants and bailiffs. Consent by the parties to an appointment or an award of compensation does not relieve the judge of the obligation prescribed by SCR 60.04 (2) (c).

(3) In the performance of the duties under this section the following apply to disciplinary responsibilities:

(a) A judge who receives information indicating a substantial likelihood that another judge has committed a violation of this chapter should take appropriate action. A judge having personal knowledge that another judge has committed a violation of this chapter that raises a substantial question as to the other judge's fitness for office shall inform the appropriate authority.

(b) A judge who receives information indicating a substantial likelihood that a lawyer has committed a violation of the rules of professional conduct for attorneys should take appropriate action. A judge having personal knowledge that a lawyer has committed a violation of the rules of professional conduct for attorneys 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. This paragraph does not require a judge to report conduct disclosed through a judge's participation in a group to assist ill or disabled judges or lawyers when such information is acquired in the course of assisting an ill or disabled judge or lawyer.

(c) Acts of a judge, in the discharge of disciplinary responsibilities, required or permitted under par. (a) or (b) are part of a judge's judicial duties and shall be absolutely privileged and no civil action predicated on those acts may be instituted against the judge.

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

(4) Except as provided in sub. (6) for waiver, a judge shall recuse himself or herself in a proceeding when the facts and circumstances the judge knows or reasonably should know establish one of the following or when reasonable, well-informed persons knowledgeable about judicial ethics standards and the justice system and aware of the facts and circumstances the judge knows or reasonably should know would reasonably question the judge's ability to be impartial:

**Comment:** Under this rule, a judge must recuse himself or herself whenever the facts and circumstances the judge knows or reasonably should know raise reasonable question of the judge's ability to act impartially, regardless of whether any of the specific rules in SCR 60.04 (4) applies. For example, if a judge were in the process of negotiating for employment with a law firm, the judge would be required to recuse himself or herself from any matters in which that law firm appeared, unless the recusal was waived by the parties after disclosure by the judge.

Section 757.19 of the statutes sets forth the circumstances under which a judge is required by law to disqualify himself or herself from any civil or criminal action or proceeding and establishes the procedures for disqualification and waiver.

A judge should disclose on the record information that the judge believes the parties or their lawyers might consider relevant to the question of recusal, even if the judge believes there is no real basis for recusal.

By decisional law, the rule of necessity may override the rule of recusal. 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 temporary restraining order. In the latter case, the judge must disclose on the record the basis for possible recusal and use reasonable efforts to transfer the matter to another judge as soon as practicable.

(a) The judge has a personal bias or prejudice concerning a party or a party's lawyer or personal knowledge of disputed evidentiary facts concerning the proceeding.

**Comment:** As a general matter, for recusal to be required under this provision, the personal bias or prejudice for or against a party or the personal knowledge of disputed facts must come from an extrajudicial source. A bias or prejudice requiring recusal most often arises from a prior personal relationship but may arise from strong personal feelings about the alleged conduct of a party. If a judge's personal bias or prejudice concerning a party's lawyer is of such a degree as to be likely to transfer to the party, the judge's recusal is required under this provision.

(b) The judge of an appellate court previously handled the action or proceeding as judge of another court.

(c) 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 the matter.

**Comment:** A lawyer in a government agency does not ordinarily have an association with other lawyers employed by that agency within the meaning of SCR 60.04 (4) (d); a judge formerly employed by a government agency, however, should recuse himself or herself in a proceeding if the judge's impartiality reasonably may be questioned because of such association.

(d) The judge knows that he or she, individually or as a fiduciary, or the judge's spouse or minor child wherever residing, or any other member of the judge's family residing in the judge's household has an economic interest in the subject matter in controversy or in a party to the proceeding or has any other more than *de minimis* interest that could be substantially affected by the proceeding.

**Comment:** A financial interest requiring recusal does not occur solely because the judge is a member of a political or taxing body that is a party or is a ratepayer to a party. The test then remains whether the judge's interest as a taxpayer or ratepayer could be substantially affected by the outcome.

(e) The judge or the judge's spouse, or a person within the third degree of kinship to either of them, or the spouse of such a person meets one of the following criteria:

1. Is a party to the proceeding or an officer, director or trustee of a party.

2. Is acting as a lawyer in the proceeding.

3. Is known by the judge to have a more than *de minimis* interest that could be substantially affected by the proceeding.

4. Is to the judge's knowledge likely to be a material witness in the proceeding.

(f) The judge, while a judge or a candidate for judicial office, has made a public statement that commits, or appears to commit, the judge with respect to any of the following:

1. An issue in the proceeding.

2. The controversy in the proceeding.

**Comment:** 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 require the judge's recusal. Under appropriate circumstances, the fact that the judge's impartiality may reasonably be questioned or that the relative is known by the judge to have an interest in the

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## SCR 60.05

law firm that could be "substantially affected by the outcome of the proceeding" may require the judge's recusal.

Recusal is not required under this provision if the judge determines on the record that a subpoena purporting to make his or her relative a witness is false, sham or frivolous.

(5) A judge shall keep informed of the judge's own personal and fiduciary economic interests and make a reasonable effort to keep informed of the personal economic interests of the judge's spouse and minor children residing in the judge's household, having due regard for the confidentiality of the spouse's business.

(6) A judge required to recuse himself or herself under sub. (4) may disclose on the record the basis of the judge's recusal and may ask the parties and their lawyers to consider, out of the presence of the judge, whether to waive recusal. If, following disclosure of any basis for recusal 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 required to recuse himself or herself 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.

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

**History:** Sup. Ct. Order No. 95-05, 202 Wis. 2d xvii (1997), modified 210 Wis. 2d xvii (1998); Sup. Ct. Order No. 00-07, 2004 WI 134, 274 Wis. 2d xvii.

**SCR 60.05 A judge shall so conduct the judge's extra-judicial activities as to minimize the risk of conflict with judicial obligations. (1) EXTRA-JUDICIAL ACTIVITIES IN GENERAL.** A judge shall conduct all of the judge's extra-judicial activities so that they do none of the following:

- (a) Cast reasonable doubt on the judge's capacity to act impartially as a judge.
- (b) Demean the judicial office.
- (c) Interfere with the proper performance of judicial duties.

**Comment:** 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.

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. See SCR 60.03 (1) and (3).

(2) **AVOCATIONAL ACTIVITIES.** A judge may speak, write, lecture, teach and participate in other extra-judicial activities concerning the law, the legal system, the administration of justice and nonlegal subjects, subject to the requirements of this chapter.

**Comment:** 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, a judge is encouraged to do so, either independently or through a bar association, judicial conference or other organization dedicated to the improvement of the law. Judges may participate in efforts to promote the fair administration of justice, the independence of the judiciary and the integrity of the legal profession and may express opposition to the persecution of lawyers and judges in other countries because of their professional activities.

In this and other subsections of SCR 60.05, the phrase "subject to the requirements of this chapter" 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 provisions of the chapter does not relieve a judge from the other requirements of the chapter that apply to the specific conduct.

(3) **GOVERNMENTAL, CIVIC OR CHARITABLE ACTIVITIES.** (a) A judge may 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.

**Comment:** See SCR 60.03 (2) regarding the obligation to avoid improper influence.

As provided in SCR 60.07 (2), sub. (3) (a) does not apply to a judge serving on a part-time basis.

(b) A judge may not accept appointment to a governmental committee or commission or other governmental position that is concerned with issues of fact or policy on matters other than the

improvement of the law, the legal system or the administration of justice. A judge may represent a country, state or locality on ceremonial occasions or in connection with historical, educational or cultural activities and may serve on a governmental or private committee, commission or board concerned with historical, educational or cultural activities. A judge may serve in any branch of military reserves and be called to duty in the active military.

**Comment:** A judge is prohibited from accepting any governmental position except one relating to the law, legal system or administration of justice as authorized by par. (c). 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.

This provision does not govern a judge's service in a non-governmental position. See par. (c) permitting service by a judge with organizations devoted to the improvement of the law, the legal system or the administration of justice and with educational, religious, charitable, fraternal or civic organizations not conducted for profit. For example, service on the board of a public educational institution, unless it were a law school, would be prohibited, but service on the board of a public law school or any private educational institution would generally be permitted under par. (c).

As provided in SCR 60.07 (2), sub. (3) (b) does not apply to a judge serving on a part-time basis.

(c) A judge may serve as an officer, director, trustee or non-legal advisor of an organization or governmental agency devoted to the improvement of the law, the legal system or the administration of justice or of a nonprofit educational, religious, charitable, fraternal, sororal or civic organization, subject to the following limitations and the other requirements of this chapter:

**Comment:** This provision 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 par. (b).

See Comment to SCR 60.05 (2) regarding use of the phrase "subject to the following limitations and the other requirements of this chapter." As an example of the meaning of the phrase, a judge permitted by this provision to serve on the board of a fraternal institution may be prohibited from such service by SCR 60.03 (1) or (3) or 60.05 (1) 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 SCR 60.05 in addition to sub. (3). For example, a judge is prohibited by sub. (7) from serving as a legal advisor to a civic or charitable organization.

1. A judge may not serve as an officer, director, trustee or non-legal advisor if it is likely that the organization will do any of the following:

a. Engage in proceedings that would ordinarily come before the judge.

b. Engage 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.

**Comment:** The changing nature of some organizations and of their relationship to the law makes it necessary for a judge to regularly re-examine 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, 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.

As provided in SCR 60.07 (2), par. (c) 1. b. does not apply to a judge serving on a part-time basis.

2. A judge, in any capacity:

a. May assist the organization in planning fund-raising activities and may participate in the management and investment of the organization's funds but may 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;

**Comment:** As provided in SCR 60.07 (2), par. (c) 2. a. does not apply to a judge serving on a part-time basis.

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. May not personally participate in membership solicitation if the solicitation reasonably may be perceived as coercive or, except as permitted in subd. 2 a, if the membership solicitation is essentially a fund-raising mechanism; and

**Comment:** As provided in SCR 60.07 (2), par. (c) 2. c. does not apply to a judge serving on a part-time basis.



d. May not use or permit the use of the prestige of judicial office for fund raising or membership solicitation.

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

SCR 60.05 should not be read as proscribing participation in *de minimis* fund-raising activities so long as a judge is careful to avoid using the prestige of the office in the activity. Thus, e.g., a judge may pass the collection basket during services at church, may ask friends and neighbors to buy tickets to a pancake breakfast for a local neighborhood center and may cook the pancakes at the event but may not personally ask attorneys and others who are likely to appear before the judge to buy tickets to it. Similarly, SCR 60.05 should not be read to prohibit judges from soliciting memberships for religious purposes, but judges must nevertheless avoid using the prestige of the office for the purpose of such solicitation.

Use of an organization letterhead for fund raising or membership solicitation does not violate subd. 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 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 may be a speaker or guest of honor at an organization's fund-raising event provided there is no advertising of the judge as speaker or guest of honor in order to encourage people to attend and make contributions and provided that any contributions at the event are made prior to the judge's speech or presentation as guest of honor. A judge's attendance at such event is permissible if otherwise consistent with this chapter.

**(4) FINANCIAL ACTIVITIES.** (a) 1. A judge may not engage in financial or business dealings that could meet any of the following conditions:

a. Reasonably be perceived to exploit the judge's judicial position.

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.

**Comment:** As provided in SCR 60.07 (2), sub. (4) (a) 1. b. does not apply to a judge serving on a part-time basis.

2. A judge shall comply with sub. (4) (a) 1 as soon as reasonably possible and, in any event, within one year of the applicability of this chapter to the judge.

**Comment:** 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 SCR 60.03 (2) and 60.04 (1) (m).

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 recusal or disqualification. With respect to affiliation of relatives of a judge with law firms appearing before the judge, see Comment to SCR 60.04 (4) relating to recusal.

Participation by a judge in financial and business dealings is subject to the general prohibitions in SCR 60.05 (1) 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 SCR 60.03 against activities involving impropriety or the appearance of impropriety and the prohibition in SCR 60.03 (2) 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 SCR 60.02. See Comment to SCR 60.05 (2) regarding use of the phrase "subject to the requirements of this chapter."

If engaged in a financial or business activity at the time this chapter becomes applicable to the judge, a judge may continue to do so for a reasonable period not to exceed one year.

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

**Comment:** Subject to the requirements of this chapter, 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.

As provided in SCR 60.07 (2), sub. (4) (b) does not apply to a judge serving on a part-time basis.

(c) 1. Except as provided in par. 2., a judge may serve as an officer, director, manager, general partner, advisor or employee of a business entity if that service does not conflict with the judge's judicial duties, create the appearance of impropriety, or otherwise violate any provision of this chapter.

2. A judge may not serve as an officer, director, manager, general partner, advisor or employee of any business entity affected with a public interest, including a financial institution, insurance company, and public utility, and may not participate in or permit the judge's name to be used in connection with any business venture or commercial advertising that indicates the judge's title or affiliation with the judiciary or otherwise lends the power or prestige of office to promote a business or commercial venture.

**Comment:** A judge may participate in a business not affected with a public interest if that participation does not conflict with the judge's judicial duties, create the appearance of impropriety, or violate any other provision of this Code. For example, a judge may be prohibited from participation if the business entity frequently appears before a court in the jurisdiction in which the judge serves or the participation requires significant time away from judicial duties. Similarly, a judge must avoid participation if the judge's participation would involve misuse of the prestige of office.

As provided in SCR 60.07 (2), sub. (4) (c) does not apply to a judge serving on a part-time basis.

(d) A judge shall manage the judge's investments and other financial interests so as to minimize the number of cases in which the judge's recusal or disqualification is required. 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.

**Comment:** As provided in SCR 60.07 (2), sub. (4) (d) does not apply to a judge serving on a part-time basis.

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

**Comment:** Sub. (4) (e) does not apply to contributions to a judge's campaign for judicial office.

Because a gift, 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.

As provided in SCR 60.07 (2), sub. (4) (e) does not apply to a judge serving on a part-time basis.

1. 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.

**Comment:** Acceptance of an invitation to a law-related function is governed by sub. (4) (e) 1; acceptance of an invitation paid for by an individual lawyer or group of lawyers is governed by sub. (4) (e) 8.

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 chapter. See SCR 60.05 (1) (a) and 60.03 (2).

2. 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, provided the gift, award or benefit could not reasonably be perceived as intended to influence the judge in the performance of judicial duties.

3. Ordinary social hospitality.

4. A gift from a relative.

5. A gift from a friend for a special occasion, such as a wedding, anniversary or birthday, if the gift is fairly commensurate with the occasion and the relationship.

**Comment:** 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 recusal or disqualification of the judge where recusal or disqualification would not otherwise be required. See, however, par. (e) 5.

6. Anything of value if the activity or occasion for which it is given is unrelated to the judge's use of the state's time, facilities,



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services or supplies not generally available to all citizens of this state and the judge can show by clear and convincing evidence that it was unrelated to and did not arise from the judge's holding or having held a public office.

7. A gift, favor or loan from a relative or close personal friend whose appearance or interest in a case would in any event require recusal under SCR 60.04 (4).

8. A loan from a lending institution in its regular course of business on the same terms generally available to persons who are not judges.

9. A scholarship or fellowship awarded on the same terms and based on the same criteria applied to other applicants.

10. Any other gift, 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.

**Comment:** Unless authorized by other provisions of sub. (4) (e), sub. (4) (e) 10 prohibits judges from accepting gifts, favors or loans from lawyers or their firms if they have come or are likely to come before the judge; it also prohibits gifts, favors or loans from clients of lawyers or their firms when the clients' interests have come or are likely to come before the judge. See sec. 19.43 *et seq.*, Stats.

(5) **FIDUCIARY ACTIVITIES.** (a) A judge may 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 his or her judicial duties.

(b) A judge may 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.

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

(d) A judge shall comply with pars. (a) and (b) as soon as reasonably possible and, in any event, within one year of the applicability of this chapter to the judge.

**Comment:** A judge who is a fiduciary at the time this chapter becomes effective for the estate or person of one who is not a member of the judge's family may continue to act as such if the demands on his or her time and the possibility of a conflict of interest are not substantial and for the period of time necessary to avoid serious adverse consequences to the beneficiary of the fiduciary relationship but in no event longer than one year.

The restrictions imposed by SCR 60.05 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 sub. (4) (d).

As provided in SCR 60.07 (2), sub. (5) does not apply to a judge serving on a part-time basis.

(6) **SERVICE AS ARBITRATOR OR MEDIATOR.** A judge may not act as an arbitrator or mediator or otherwise perform judicial functions in a private capacity unless expressly authorized by law.

**Comment:** Paragraph (6) does not prohibit a judge from participating in arbitration, mediation or settlement conference performed as part of judicial duties.

As provided in SCR 60.07 (2), sub. (6) does not apply to a judge serving on a part-time basis.

(7) **PRACTICE OF LAW.** A judge may 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 and represent without compensation the estate of a person with whom the judge maintains a close familial relationship so long as the estate remains uncontested.

**Comment:** 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 judge's family. See SCR 60.03 (2).

The chapter 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 for a member of the judge's family in a legal matter.

The restraint against a judge giving advice to parties in matters before the judge does not prohibit a judge from advising such parties to obtain lawyers or medical treatment and from advising such parties on similar matters unrelated to the merits of the matter before the judge.

As provided in SCR 60.07 (2), sub. (7) does not apply to a judge serving on a part-time basis.

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

1. Compensation may not exceed a reasonable amount nor may the compensation exceed what a person who is not a judge would receive for the same activity.

2. Expense reimbursement shall be limited to the actual cost of travel, food and lodging reasonably incurred by the judge and, where appropriate to the occasion, by the judge's spouse or guest. Any payment in excess of that amount is compensation.

(b) **Financial reports.** Except as provided in SCR 60.07, a judge shall file with the ethics board a timely financial report as required by section 19.43 of the statutes. The report shall also be filed by commissioners of the supreme court, staff attorneys of the court of appeals, and the director of state courts.

**Comment:** The chapter does not prohibit a judge from accepting honoraria or speaking fees provided that the compensation is reasonable and commensurate with the task performed. A judge should ensure, however, that no conflicts are created by the arrangement. A judge must not appear to trade on the judicial position for personal advantage. Nor should a judge spend significant time away from court duties to meet speaking or writing commitments for compensation. In addition, the source of the payment must not raise any question of undue influence or the judge's ability or willingness to be impartial.

See SCR 60.05 (4) (e) and sec. 19.56, Stats., regarding reporting of gifts and loans.

As provided in SCR 60.07 (2), sub. (8) does not apply to a judge serving on a part-time basis. Sub. (8) does not apply to a supplemental court commissioner authorized under SCR 75.02 (3) who has performed fewer than 40 hours of circuit court commissioner duties in the preceding calendar year.

**History:** Sup. Ct. Order No. 95-05, 202 Wis. 2d xvii (1997), modified 210 Wis. 2d xvii (1998); Sup. Ct. Order No. 00-12, 2001 WI 34, 242 Wis. 2d xiii, Sup. Ct. Order No. 01-12A, 2002 WI 8, 249 Wis. 2d xiii.

## SCR 60.06 A judge or judicial candidate shall refrain from inappropriate political activity.

**Note:** Because the Wisconsin judiciary is elective and nonpartisan, rules governing a judge's political and campaign activity that may be appropriate in other jurisdictions may not be responsive to the political and campaign realities in this state. Accordingly, in order that due consideration be given to the preparation and promulgation of such rules, the Supreme Court will appoint a committee composed of judges, lawyers, and public members to consult persons and entities experienced in the matter of judicial ethics as it pertains to political and campaign activity and draft for the court's consideration a comprehensive set of ethical rules in this area. After the committee files its recommendations with the court, the court will invite comment and hold a public hearing on the proposal.

Pending submission of that committee's report, the public hearing and the court's action in the matter, the court promulgates the following provisions from the Supreme Court Rules—1994.

(1g) **TERMINOLOGY.** In this section, "judge" has the meaning given in SCR 60.01 (8), except that in subs. (1r), (2), and (4), "judge" does not include a court commissioner or a municipal judge who did not devote 40 or more hours to the performance of his or her official duties in the preceding calendar year.

(1m) **CANDIDATE FOR OFFICE.** A judge shall not become a candidate for a federal, state or local nonjudicial elective office without first resigning his or her judgeship. A judge's eligibility to serve may be governed by other rules or constitutional provisions.

**Comment:** Article VII, section 10 (1) of the Wisconsin Constitution provides, "No justice of the supreme court or judge of any court of record shall hold any other office of public trust, except a judicial office, during the term for which elected." See *Wagner v. Milwaukee County Election Comm'n*, 2003 WI 103, 263 Wis. 2d 709, 666 N.W.2d 816.

(2) **PARTY MEMBERSHIP AND ACTIVITIES.** (a) Individuals who seek election or appointment to the judiciary may have aligned themselves with a particular political party and may have engaged in partisan political activities. Wisconsin adheres to the concept of a nonpartisan judiciary. A candidate for judicial office shall not appeal to partisanship and shall avoid partisan activity in the spirit of a nonpartisan judiciary.

(b) No judge or candidate for judicial office or judge-elect may do any of the following:

1. Be a member of any political party.



2. Participate in the affairs, caucuses, promotions, platforms, endorsements, conventions, or activities of a political party or of a candidate for partisan office.

3. Make or solicit financial or other contributions in support of a political party's causes or candidates.

4. Publicly endorse or speak on behalf of its candidates or platforms.

(c) A partisan political office holder who is seeking election or appointment to judicial office or who is a judge-elect may continue to engage in partisan political activities required by his or her present position.

(d) 1. Paragraph (b) does not prohibit a judge, candidate for judicial office or judge-elect from attending, as a member of the public, a public event sponsored by a political party or candidate for partisan office, or by the campaign committee for such a candidate.

2. If attendance at an event described in subd. 1. requires the purchase of a ticket or otherwise requires the payment of money, the amount paid by the judge, candidate for judicial office, or judge-elect shall not exceed an amount necessary to defray the sponsor's cost of the event reasonably allocable to the judge's, candidate's, or judge-elect's attendance.

(e) Nothing in this subsection shall be deemed to prohibit a judge, judge-elect, or candidate for judicial office, whether standing for election or seeking an appointment, from appearing at partisan political gatherings to promote his or her own candidacy.

**Comment:** The rule prohibits political party membership and activities by judges, nonincumbent candidates for judicial office, and judges-elect. When one becomes a candidate for judicial office is determined by the terms of SCR 60.01 (2) which defines "candidate" as "a person seeking selection for or retention of a judicial office by means of election or appointment who 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." The rule prohibits judicial candidates and judges-elect as well as judges from making or soliciting contributions to the party or its candidates and from publicly endorsing or speaking on behalf of partisan candidates or platforms. Although the rule contemplates the continuance of nonpartisanship on the part of Wisconsin judges and those seeking judicial office, judges are not expected to lead lives of seclusion. As members of the public and as public officeholders, judges may attend public events, even those sponsored by political parties or candidates, so long as the attendance does not constitute the kind of partisan activity prohibited by this rule. The judge, judicial candidate or judge-elect is responsible for so conducting himself or herself that her or his presence at the sponsored event is not made to appear as an endorsement or other prohibited political activity. The judge, judicial candidate, or judge-elect should also exercise care that the price of his or her ticket to any such event does not include a prohibited political contribution.

(3) **CAMPAIGN CONDUCT AND RHETORIC.** (a) *In general.* While holding the office of judge or while a candidate for judicial office or a judge-elect, every judge, candidate for judicial office, or judge-elect should maintain, in campaign conduct, the dignity appropriate to judicial office and the integrity and independence of the judiciary. A judge, candidate for judicial office, or judge-elect should not manifest bias or prejudice inappropriate to the judicial office. Every judge, candidate for judicial office, or judge-elect should always bear in mind the need for scrupulous adherence to the rules of fair play while engaged in a campaign for judicial office.

**Comment:** This subsection is new. It states a rule generally applicable to judges, candidates for judicial office, and judges-elect.

(b) *Promises and commitments.* A judge, judge-elect, or candidate for judicial office shall not make or permit or authorize others to make on his or her behalf, with respect to cases, controversies, or issues that are likely to come before the court, pledges, promises, or commitments that are inconsistent with the impartial performance of the adjudicative duties of the office.

**Comment:** This section prohibits a candidate for judicial office from making statements that commit the candidate regarding cases, controversies or issues likely to come before the court. A judge or candidate for judicial office may not, while a proceeding is pending or impending in the court to which selection is sought, make any public comment that may reasonably be viewed as committing the judge, judge-elect or candidate to a particular case outcome. As a corollary, a candidate should emphasize in any public statement the candidate's duty to uphold the law regardless of his or her personal views. This section does not prohibit a candidate from making pledges or promises respecting improvements in court administration. Nor does this section prohibit an incumbent judge from making private statements to other judges or court personnel in the performance of judicial duties. This section applies to any statement made in the process of securing judicial office, such as statements to commissions charged with judicial selection.

(c) *Misrepresentations.* A candidate for a judicial office shall not knowingly or with reckless disregard for the statement's truth or falsity misrepresent the identity, qualifications, present position, or other fact concerning the candidate or an opponent. A candidate for judicial office should not knowingly make representations that, although true, are misleading, or knowingly make statements that are likely to confuse the public with respect to the proper role of judges and lawyers in the American adversary system.

**Comment:** This subsection is new. The first paragraph is based on the August 2003 amendments to the ABA model code of conduct.

The second paragraph is aspirational. Thus, "should" is used rather than "shall." The remaining standards are mandatory and prohibit candidates from knowingly or with reckless disregard for the truth making various specific types of misrepresentations. Candidates are not responsible for misrepresentations or misleading statements made by third parties not subject to the control of the candidate, e.g., through independent expenditures by interest groups.

(4) **SOLICITATION AND ACCEPTANCE OF CAMPAIGN CONTRIBUTIONS.** A judge, candidate for judicial office, or judge-elect shall not personally solicit or accept campaign contributions. A candidate may, however, establish a committee to solicit and accept lawful campaign contributions. The committee is not prohibited from soliciting and accepting lawful campaign contributions from lawyers. A judge or candidate for judicial office or judge-elect may serve on the committee but should avoid direct involvement with the committee's fundraising efforts. A judge or candidate for judicial office or judge-elect may appear at his or her own fundraising events. When the committee solicits or accepts a contribution, a judge or candidate for judicial office should also be mindful of the requirements of SCR 60.03 and 60.04 (4).

**Comment:** A judge should avoid having his or her name listed on another's fundraising solicitation even when the listing is accompanied with a disclaimer that the name is not listed for fundraising purposes.

Acknowledgement by a judge or candidate for judicial office of a contribution in a courtesy thank you letter is not prohibited.

(5) **SOLICITATION AND ACCEPTANCE OF ENDORSEMENTS.** A judge or candidate for judicial office may solicit or accept endorsements supporting his or her election or appointment personally or through his or her committee. A judge, candidate for judicial office, or his or her committee is not prohibited from soliciting and accepting endorsements from lawyers and others. A judge or candidate for judicial office shall not knowingly personally solicit or accept endorsements from parties who have a case pending before the court to which election or appointment is sought. Nevertheless, a judge or judicial candidate may personally solicit or accept endorsements from the types of organizations that ordinarily make recommendations for selection to the office. In soliciting or accepting an endorsement, a judge or candidate for judicial office should be mindful of the requirements of SCR 60.03 and 60.04 (4).

**Comment:** This subsection is new. In light of the restrictions on campaign rhetoric under SCR 60.06 (3), the receiving of endorsements is an important method of informing the electorate of broad-based and presumably informed support for a particular candidacy. As with the solicitation and acceptance of campaign contributions, knowing solicitation and acceptance of endorsements from current litigants are prohibited. Candidates for judicial office may solicit and accept endorsements from entities that regularly endorse candidates, such as newspapers and trade organizations. Neither culling nor cross-checking of names on mailing lists or dockets is required.

**History:** Sup. Ct. Order No. 95-05, 202 Wis. 2d xvii (1997), modified 210 Wis. 2d xvii (1998); Sup. Ct. Order No. 00-07, 2004 WI 134, 274 Wis. 2d xvii.

**Revisor's Note:** Minnesota's code of judicial conduct prohibiting judicial candidates from expressing their views on disputed legal and political issues violates the 1st Amendment right of free speech. *Republican Party of Minnesota v. White*, 536 U.S. 765, 153 L. Ed. 2d 694 (2002).

**SCR 60.07 Applicability.** (1) **GENERAL.** Subject to sub. (2), all judges shall comply with this chapter. Candidates for judicial office and judges-elect shall comply with SCR 60.06.

(2) **PART-TIME JUDICIAL SERVICE.** A judge who serves on a part-time basis, including a reserve judge, a part-time municipal judge and a part-time court commissioner, is not required to comply with the following: SCR 60.05 (3) (a), (b), (c) 1b., 2. a, and c., (4) (a) 1. b., (b) (c), (d) and (e), (5), (6), (7) and (8).

**Comment:** Candidates for judicial office and judges-elect are subject to the requirements of SCR 60.06.

**History:** Sup. Ct. Order No. 95-05, 202 Wis. 2d xvii (1997), modified 210 Wis. 2d xvii (1998); Sup. Ct. Order No. 00-12, 2001 WI 34, 242 Wis. 2d xiii; Sup. Ct. Order No. 00-07, 2004 WI 134, 274 Wis. 2d xvii.

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Supreme Court of Wisconsin  
Judicial Conduct Advisory Committee  
Date Issued: January 8, 2002

**OPINION 00-5**

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### **ISSUE**

May a reserve judge serve as president of a civic, non-profit organization, a substantial part of whose mission is to advocate social goals through litigation and legislative action?

### **ANSWER**

No.

### **FACTS**

A reserve judge wishes to be a candidate for president of a civic, non-profit organization. The organization is a local branch of a national organization which advocates certain social goals, and actively pursues them using a variety of means, including public protest and civil disobedience, legislative change, and litigation on both national and local levels. Legal assistance is provided to local branches by the national organization. Officers of the organization may serve as spokespersons in seeking to advance the organization's interests. The president of the local branch serves a two-year term, is elected by local members, and receives no compensation. The reserve judge acknowledges that recusal would be necessary in any case involving the civic organization. Reserve judges do not have to accept assignments, and there are other reserve or other judges available to handle such litigation.

### **DISCUSSION**

The Committee concludes that the issue presented involves provisions of SCR 60.03(2), 60.04(4), 60.05(1), 60.05(3), and 60.07.

#### ***A. SCR 60.07***

Pursuant to SCR 60.07(2), reserve judges are not required to comply with SCR 60.05(3)(c)1.b., 2.a., and 2.c. These exemptions allow reserve judges to participate in some activities regarding service for private organizations to a greater degree than full-time judges. Examples of such service permitted by a reserve judge, but not by a full-time judge, include personal solicitation of funds for and membership in an organization. However, pursuant to SCR 60.07(1), all judges must comply with the remainder of the code. Therefore, reserve judges are still subject to SCR 60.03, 60.05(3)(c)1.a. and 60.05(3)(c)2.d.



***B. SCR 60.03(2)***

Reserve judges are not exempt from SCR 60.03, which states:

A judge shall avoid impropriety and the appearance of impropriety in all of the judge's activities.

In addition, SCR 60.03(2) states:

A judge may not lend the prestige of judicial office to advance the private interests of the judge or of others . . .

To satisfy this provision of the Code while serving as president of a civic organization, a judge must not be identified as a judge when speaking for the organization. This may be difficult, particularly in public appearances, since the news media often identify the occupation of newsworthy individuals. The president of an active, advocacy-oriented civic organization is frequently in the public eye, often by design. For example, it is likely that the organization's president would be expected to lead any campaign on issues of concern to the organization. Further, individuals within the organization could inadvertently use the judge's title in discussing or publicizing the work of their organization's leader. Such use of a judge's title in connection with his or her work in this civic organization could constitute using the prestige of judicial office to advance the interests of the organization, which is prohibited by SCR 60.03. The committee concludes that such a violation is highly probable in this case.

***C. SCR 60.05***

Reserve judges are not exempt from all the provisions of SCR 60.05. That section is entitled: "A judge shall so conduct the judge's extra-judicial activities as to minimize the risk of conflict with judicial obligations."

SCR 60.05(3)(c) permits all judges, not just reserve judges, to serve as an officer of a civic organization, "subject to the following limitations and the other requirements of this chapter." Limitations within SCR 60.05(3)(c)2.d are applicable to all judges. As stated above, reserve judges are not specifically exempt from this provision and must comply with it as well. SCR 60.05(3)(c)2.d. states: a judge "may not use or permit the use of the prestige of judicial office for fundraising or membership solicitation." The comments to that section make clear that:

A judge may be a speaker or guest of honor at an organization's fundraising event provided there is no advertising of the judge as speaker or guest of honor in order to encourage people to attend and make contributions and provided that any contributions at the event are made prior to the judge's speech or presentation as guest of honor.

And,

Use of an organization letterhead for fund-raising or membership solicitation does not violate subd. 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.

We conclude the following by comparing these permissive and restrictive sections of the Code. A reserve judge may serve as president of a civic, nonprofit organization and may participate in its fund-raising and membership solicitation, subject to some limitations. When engaged in these activities, the reserve judge may not lend the prestige of judicial office to the activities. Given the public nature of the role of president of this organization and the fact that fundraising and membership solicitation are frequently an important part of the role of president, it is unlikely that a reserve judge could avoid lending the prestige of office to such activities. In sum, we conclude there would be a significant likelihood of violation of SCR 60.05(3)(c)2.d.

***D. SCR 60.04(4) and 60.05(1)(a) and (c)***

Reserve judges are subject to SCR 60.04(4), and 60.05(1)(a) and (c). These provisions of the Code involve the issues of impartiality and the proper performance of judicial duties.

SCR 60.04(4) provides for mandatory recusal or waiver in a proceeding where the judge is an officer or director of an organization which is a party to the litigation and

. . . when reasonable, well-informed persons knowledgeable about judicial ethics standards and the justice system and aware of the facts and circumstances the judge knows or reasonably should know would reasonably question the judge's ability to be impartial.

SCR 60.05(1)(a) provides that:

A judge shall conduct all of the judge's extra-judicial activities so that they do none of the following:

(a) Cast reasonable doubt on the judge's capacity to act impartially as a judge.

. . . .

(c) Interfere with the proper performance of judicial duties.

These provisions of SCR 60.05 are mandatory and not waivable by the litigants.

The reserve judge acknowledges that recusal is required whenever the organization is a party to the litigation. However, that does not end the inquiry. SCR 60.04(4) and 60.05(1)(a) and (c) may also be contravened when the organization is not a litigant in the case. The civic organization at issue advocates specific social goals, is frequently involved as a litigant, and frequently pursues legislative changes. In addition, the organization is very public in its activities. The president is inevitably identified with these goals and often serves as their advocate. Therefore, the judge could not be reasonably perceived as impartial in cases in which the organization is a litigant. The judge could also be perceived as not impartial in cases in



which the social goals of the organization are in dispute or substantially a part of the litigation. Taken together, these provisions require that a judge exercise recusal whenever the organization is a litigant and whenever the organization's social goals are a significant issue in a case. A reserve judge serving as president of the organization in question would have much greater difficulty identifying in a timely manner what cases would require recusal. Given this difficulty, a reserve judge could discover the need for recusal only after the litigation was in progress. This could interfere with the proper performance of judicial duties by creating costly delays. The judge must take care to exercise recusal, obtain appropriately available waivers, and avoid delays, or risk contravening the Code.

### **CONCLUSION**

The Committee concludes that a reserve judge may not serve as president of a civic, non-profit organization, a substantial part of whose mission is to advocate social goals through litigation and legislative action. It appears likely that the prestige of judicial office would be used (even if inadvertently) to advance the interests of the organization, particularly in the areas of advocacy and fund-raising. Further, service as the organization's president could compromise the perception that the judge is impartial, and has some potential to interfere with the proper performance of judicial duties.

### **APPLICABILITY**

This opinion is advisory only, is based on the specific facts and questions submitted by the petitioner to the Judicial Conduct Advisory Committee, and is limited to questions arising under the Supreme Court Rules, Chapter 60--Code of Judicial Conduct. This opinion is not binding upon the Wisconsin Judicial Commission or the Supreme Court in the exercise of their judicial discipline responsibilities. This opinion does not purport to address provisions of the Code of Ethics for Public Officials and Employees, subchapter III of Ch. 19 of the statutes.

I hereby certify that this is Formal Opinion No. 00-5 issued by the Judicial Conduct Advisory Committee for the State of Wisconsin this \_\_\_\_\_ day of January, 2002.

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Thomas H. Barland  
Chair

COMMITTEE ON CODES OF CONDUCT  
ADVISORY OPINION NO. 93Extrajudicial Activities Under Canons 4 and 5.

The Committee regularly is asked to give ethical advice regarding a judge's involvement in extrajudicial activities. In giving such advice, it is often important to determine whether the extrajudicial activity at issue is governed by Canon 5, which sets forth rules of general applicability for extrajudicial activity, or whether it falls within a subset of extrajudicial activity specifically directed at efforts "to improve the law, the legal system, and the administration of justice," which may in some situations receive more lenient consideration pursuant to Canon 4. There is, of course, considerable overlap between Canon 4 and Canon 5 (compare Canons 4A, 4B and 4C with Canons 5A, 5B and 5G) and many of the provisions in Canon 5 pertain to all extrajudicial activities, whether or not law-related. See, e.g., Canons 5C, 5D, 5E and 5F. Nevertheless, there are important differences in treatment depending on whether the extrajudicial activity is regarded as law-related or non-law-related.

While the Code permits judicial participation in Canon 5 activities, judicial participation in Canon 4 activities is actively encouraged. See Commentary to Canon 4. Accordingly, a judge will be given greater latitude when participating in extrajudicial activities expressly covered by Canon 4. A distinction between legal and non-legal extrajudicial activity also is found within Canon 5G, which prohibits a judge, unless required by an Act of Congress, from accepting appointment to a governmental position concerned with issues of fact or policy on matters other than the improvement of the law, the legal system, or the administration of justice. Thus, a judge may serve on the board of a private or public law school, see Commentary to Canon 4C, but may not serve on a state board responsible for operating a public university, see Advisory Opinion No. 44. Moreover, Canon 4C permits a judge slightly greater latitude to participate in fundraising for good causes related to the law. Advisory Opinion No. 89. Finally, a judge permissibly may use judicial resources to engage in Canon 4 activities so long as such use is not substantial, Canon 4D, while only a de minimis use of judicial resources is permissible for Canon 5 activities, Canon 5H. See Advisory Opinion Nos. 79, 80. This advisory opinion is intended to explain the principles by which the Committee determines whether extrajudicial activity is governed by Canon 4 or Canon 5, and to clarify our precedents on this issue.<sup>(1)</sup>

Not every activity that involves the law or the legal system is considered a Canon 4 activity. Law is, after all, a tool by which many Canon 5 social, charitable and civic organizations seek to advance a variety of policy objectives. We have concluded, for example, that an organization lobbying for legislation to implement a particular policy pertaining to drug and alcohol abuse is not dedicated toward improving the law. Similarly, we have advised that judicial participation in policy oriented organizations, such as B'nai B'rith, NAACP and the Sierra Club that may engage in litigation in furtherance of stated policy goals, is to be evaluated under Canon 5. Advisory Opinion No. 40. In addition, judicial participation in a private dispute resolution enterprise that focuses primarily on settling specific disputes rather than advancing the general cause of dispute resolution through arbitration is governed by Canon 5, and is therefore prohibited. Rather, to qualify as a Canon 4 activity, the activity must be directed toward the objective of improving the law, qua law, or improving the legal system or administration of justice, and not merely utilizing the law or the legal system as a means to achieve an underlying social, political, or civic objective.

A judge's participation in Canon 4 activities is encouraged because "[a]s a judicial officer and

person specially learned in the law, a judge is in an unique position to contribute" to such endeavors. Commentary to Canon 4. We traditionally have defined activities to improve the law, the legal system and the administration of justice narrowly.

Two formulations emerge from our prior advice. First, we have described the phrase "improve the law" as "being limited to the kinds of matters a judge, by virtue of [the judge's] judicial experience, is uniquely qualified to address." If a judge's participation is sought for some reason other than his or her judicial expertise, the activity is less likely to be a Canon 4 activity. For example, we have advised that service on a Senate Ethics Advisory Panel was not an activity designed to improve the law, where the judge's participation was sought primarily because of his previous experience as a state senator.

Consistent with this emphasis upon whether a judge brings a special expertise to the activity, Canon 4B provides that a judge may appear before or consult with an executive or legislative body or official only to the extent that it would generally be perceived that a judge's judicial experience provides special expertise in the area at issue. Under that canon, we have advised that legislative appearances by a judge are permissible only where "the subject matter reasonably may be considered to merit the attention and comment of a judge as a judge, and not merely as an individual." Advisory Opinion No. 50 (suggesting that a judge should not testify before a legislative committee on social legislation). A similar inquiry inheres in Canons 4C and 5G.

Second, we look to see if the beneficiary of the activity is the law or legal system itself. A Canon 4 activity, in other words, is one that serves the interests generally of those who use the legal system, rather than the interests of any specific constituency, or enhances the prestige, efficiency or function of the legal system itself. The clearest examples of Canon 4 activities are those addressing the legal process. Thus, we have concluded that Canon 4 governs judicial participation in such activities as an educational videotape to improve the quality of court reporters; a not-for-profit organization to promote the concept of the resolution of disputes through arbitration; an organization that researches and provides information on the juvenile justice system; an organization sponsoring informative programs on trial practice; and an organization to eliminate gender bias in the judiciary. Whether an activity benefits a specific constituency or the legal system as a whole will sometimes be a close question that should be answered by evaluating how closely related the substance of the activity is to the core mission of the court of delivering unbiased, effective justice to all.

Although such matters as "the administration of the business of the courts, the delivery of legal services, the preparation of codifications of judicial decisions, etc." are the clearest examples of activities to improve the law, Canon 4 applies to a broader range of activities. The Commentary to Canon 4 defines the improvement of the law, the legal system, and the administration of justice as including "revision of substantive and procedural law and improvement of criminal and juvenile justice." Therefore, activities directed toward substantive legal issues, where the purpose is to benefit the law and legal system itself rather than to benefit any particular cause or group, may be Canon 4 activities. We have concluded, for example, that activities of the National Conference of Commissioners on Uniform State Laws, whose purpose is to promote uniformity in the law across jurisdictions, and the American Law Institute, whose purpose is to distill, rationalize and restate the law, are covered by Canon 4. Similarly, the Working Group on Detention of the United Nations Human Rights Commission, which reports to the United Nations on compliance with the Universal Declaration of Human Rights, was determined to be an organization devoted to the improvement of the law, the legal system or the administration of justice. However, judicial participation in



organizations such as the Sierra Club, which advocate particular causes rather than the general improvement of the law, is analyzed under Canon 5. See Advisory Opinion No. 40.

Additionally, a judge may teach and write on substantive legal issues. Judicial scholarship is particularly encouraged by Canon 4. See Canon 4A. The evolution and exposition of the law is at the core of a judge's role. Judges, therefore, have the ability to make a unique contribution to academic activities such as teaching and scholarly writing, which similarly serve to advance the law. See Advisory Opinion No. 55 (referring to Thode, Reporter's Notes to Code of Judicial Conduct 74 (ABA 1973)) ("[A] judge may write or lecture on a legal issue, analyzing the present law and its history, its virtues and its shortcomings; [the judge] may commend the present law or propose legal reform . . .").

In addition to Canons 4 and 5, a judge's extrajudicial activity will often implicate other canons as well. Sometimes our analysis of such activity has included an explicit consideration of the other canons, although on other occasions we have referred to such other canons only implicitly, integrating the concepts there expressed into Canons 4 and 5. The most important restrictions contained in other canons to consider when evaluating extrajudicial activity are Canon 1's mandate that a judge uphold the independence of the judiciary; Canon 2's prohibition against impropriety and the appearance of impropriety in all activities; and Canon 7's restrictions on political activity.

Canon 1 provides that a judge should uphold the integrity and independence of the judiciary. Under this directive, a federal judge's extrajudicial participation in an activity directed toward improving the law nonetheless may be impermissible to the extent that it enmeshes the judge in, or subordinates the judge to, the operation of a state or local government. We have advised, for example, that it would be inappropriate under Canon 5G for a judge to serve on a state law reform agency created by the state legislature and given quasi-legislative responsibilities, even though the goal of the agency was the improvement of state law. We noted that "a federal judge should not sit as a member of an official state body charged with quasi-legislative responsibilities." Although we did not explicitly discuss Canon 1 in this opinion, but rather focused on Canon 5G, clearly Canon 1's prescription for an independent federal judiciary was at the core of the advice given. Other times in considering a judge's extrajudicial activity, we have invoked Canon 1 explicitly. For example, we expressly relied on Canon 1 in advising that a judge may not serve on a state board of law examiners, an arm of the state supreme court. Similarly, we invoked Canon 1 in concluding that a judge may not serve, by appointment by state supreme court, upon a state supreme court commission on racial and ethnic bias in the state court system. Although in both cases we observed that such extrajudicial activity was law-related, it was prohibited because it could compromise the independence of the federal judiciary. We observed that federal courts occasionally are required to consider decisions of the state supreme court, and thus a federal judge should not sit on a committee of the state court.

A judge's participation in an extrajudicial activity designed to improve the law also may be inappropriate under Canon 2. Canon 2 provides that a judge should avoid impropriety and the appearance of impropriety in all activities. We have advised, therefore, that although open member bar associations are Canon 4 activities in which a judge may serve as a member or officer, see Advisory Opinion Nos. 85 and 34, a judge may not run for a contested position in a bar association because of the unseemliness and potential for creating an appearance of impropriety of a federal judge seeking votes. Similarly, Canon 2A's provision that a judge should act at all times in a manner that promotes public confidence in the impartiality of the judiciary may preclude a judge's participation in law-related activities or organizations concerning highly controversial subjects. Thus, while a judge may remain a member of a bar association which takes controversial positions on policy issues so long

as the judge abstains from participating in the debate or vote on such matters in a manner in which the public may effectively become aware of the judge's abstention, see Advisory Opinion Nos. 82 and 34, we have advised that a judge may not serve as the chair of a section of the American Bar Association that concentrates its efforts on many of the most controversial political issues of the day. See Advisory Opinion No. 82 (regarding organizations in general, "[i]f the judge believes that his or her personal, direct advocacy to the public of the policy positions advanced by the organization might reasonably be seen as impairing the judge's capacity to decide impartially any issue that may come before the judge, and the affiliation may reasonably be seen as indirect advocacy of those policy positions, the judge should not be a member of the organization"). On the other hand, we have advised that membership in a United Nations human rights group is permissible, as the group only rarely, if ever, became involved in matters so controversial that a judge's involvement could jeopardize his or her effectiveness as a judge at home. Further, Canon 2B's restrictions against lending the prestige of the judicial office to advance the private interests of others also applies to Canon 4 activities. Advisory Opinion No. 89. We have advised, for example, that a bankruptcy judge should not serve on the board of an organization designed to certify individual lawyers as bankruptcy specialists because it would violate Canon 2's prohibition against lending the prestige of the judicial position to a private interest.

Finally, we note that Canon 7 states that a judge should not engage in political activity. Although the political prohibitions in Canons 7A and 7B are absolute, the catch-all prohibition in Canon 7C against "other political activity" contains a qualification that Canon 7C "should not prevent a judge from engaging in the activities described in Canon 4." However, for a judge to engage in law-related activity under Canon 4, where the activity is political in nature, is fraught with risks. Thus, before deciding to engage in law-related activity with political overtones, a judge should consider whether the express or implied values of other canons will be contravened. For example, we have advised that a judge should not serve on an official state committee formed to select state trial and appellate court judges. Although such activity is law-related, and thus is to be evaluated under Canons 4 and 7C, it might compromise the judge's independence and therefore violate Canon 1. A judge who wishes to participate in law-related activity that is politically oriented should be sensitive to the nature and tone of the activity, and should not be drawn into the activity in a way that would contravene Canon 2's goals of propriety and impartiality in the judiciary or Canon 7A and 7B's prohibition of certain activity pertaining to political organizations and candidates or pertaining to the judge becoming a candidate for office. Further, because of the ethical risks associated with any politically-oriented activity, we construe Canon 4 activities in this context narrowly, restricting them to those activities that are most directly related to the law and legal process.

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1. For consideration of the predicate question of whether the activity is extrajudicial, rather than judicial, see Canon 4 generally, Advisory Opinion No. 79 and Section 4 of the Compendium of Selected Opinions (1997).