The Arkansas Code of Judicial Conduct

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INTRODUCTION

In 1973, soon after its adoption by the American Bar Association,¹ the Arkansas Supreme Court² adopted the Code of Judicial Conduct.³ The Code has not been generally available in Arkansas. An easily accessible version of the Code is needed in view of the expansion of the judiciary, the original Arkansas options,⁴ the broadcasting revision,⁵ a 1982 modification in the judicial campaign requirements,⁶ and a developing body of case law on the disqualification of judges under the Code.

For the Arkansas version that appears in this issue of the Law Review, I have omitted from the official ABA version the financial interests section that was rejected by the Arkansas Supreme Court and inserted the 1980 and 1982 amendments. To improve readability, I have removed the Commentary⁷ that is interspersed in the text of the Code and set it out as footnote material.

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1. For the background to the adoption of the Code by the American Bar Association, see Armstrong, The Code of Judicial Conduct, 26 Sw. L. J. 708 (1972). The fourteen member committee that drafted the Code included the late Edward L. Wright of Little Rock and Dr. Robert A. Leflar of the University of Arkansas.

2. The interest of the Arkansas Supreme Court in judicial ethics is not recent. In 1962, an Associate Justice of the Supreme Court requested an advisory opinion as to the necessity for automatically disqualifying himself from every case in which a member of his former law firm appeared before the court. American Bar Association Informal Decision 594, October 22, 1962.


4. See note 17 to Canon 5(C)(2) infra.

5. Petition of Arkansas Bar Association, Per Curiam Order of December 8, 1980, 271 Ark. 358, 609 S.W.2d 28; Per Curiam Order of the Arkansas Supreme Court, March 8, 1982, — Ark. —, — S.W.2d —.


7. The Court has referred to the Commentary in several cases: e.g., Edmonson v. Farris, 263 Ark. 505, S.W.2d 617 (1978); Farley v. Jester, 257 Ark. 686, 520 S.W.2d 200 (1975).
In its order, the Supreme Court did not officially adopt the Code and supersede the prior Canons of Judicial Ethics. Instead, it declared that the Code constituted "proper standards for the Judiciary of this State." Since the Arkansas Constitution gives power to the General Assembly to discipline judges through the impeachment process, one judge dissented, wondering whether the Code was to be a guide to judicial conduct or a rule. Despite that concern, and despite occasional mistaken references to the prior Canons of Judicial Ethics, the Arkansas Supreme Court has treated the Code as a binding rule. Similarly, the Court, in its adoption of the Code, did not specifically supersede statutes governing judicial conduct, although its power to do so seems clear. The subsequent cases have applied the Code rather than the relevant statutes still on the books. In at

8. The Canons of Judicial Ethics are printed at 6 Ark. L. Rev. 412-17 (1952).
10. 255 Ark. at 1075 (Byrd, J., dissenting).
12. See Farley v. Jester, 257 Ark. 686, 694, 520 S.W.2d 200, 204 (1975) ("the Code of Judicial Court . . . adopted by this court. . . .") (emphasis added). The Preface to the Code indicates that it was to be more than merely guideline. "In the judgment of the Association this Code, consisting of statements of norms denominated canons, the accompanying text setting forth specific rules, and the commentary, states the standards that judges should observe. The canons and text establish mandatory standards unless otherwise indicated."
14. The separation of powers doctrine is enshrined in the Arkansas Constitution, Ark. Const. art. 4, § 2, preventing the legislative or executive branch from exercising power over the judiciary. In addition, the supreme court has a general superintending control over all inferior courts. Ark. Const., art. 7, § 4. Therefore, except for the constitutionally authorized legislative power of impeachment, Ark. Const., art. 15, § 1, discipline of judges involving less than removal from office should rest with the Supreme Court. See the authorities in Comment, Removal and Discipline of Judges in Arkansas, 32 Ark. L. Rev. 545, 552 n.56 & 559 n.88 (1978). See generally, Cameron, The Inherent Power of a State's Highest Court to Discipline the Judiciary, 54 Chi.-Kent L. Rev. 45 (1977).
15. Braswell v. Gehl, 263 Ark. 706, 567 S.W.2d 113 (1978). Some cases, however, decided since the adoption of the Code have ignored the Code provision on disqualification and looked only to the statute. See Mears v. Hall, 263 Ark. 827, 579
least one instance, the statute appears stricter than the Code.\(^1^6\)

By its terms, the Code applies to appellate and trial court judges, to full-time judges, as well as to part-time judges, special judges and retired judges in some aspects.\(^1^7\) It governs conduct of the judge on and off the bench, in his professional and personal affairs. The Code requires financial reporting, mandatory disqualification in some instances and limited political activity.\(^1^8\) The Code does not provide any guidelines or procedures for action against judges, nor does it suggest or prescribe sanctions. The existing statutory mechanism for discipline of judges is of limited utility.\(^1^9\)

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16. ARK. STAT. ANN. § 22-113 (Repl. 1962), implementing ARK. CONST. art. 7, § 20, disqualifies a judge who is related within the fourth degree of consanguinity. In contrast, the Code disqualifies a judge related within the third degree of consanguinity. See Canon (3)(c)(1)(d), infra.


18. The financial disclosure requirement is stricter for federal judges than for state judges. See 28 U.S.C. App. § 301; Deplantier v. United States, 606 F.2d 654 (5th Cir. 1979) (constitutionality of statute affirmed, as substantially furthering important governmental interests).

The decisions from the Arkansas Supreme Court primarily involve the necessity for disqualification under Canon 3 of the Code. The judge is to avoid not only all impropriety, but also any appearance of impropriety.\(^{20}\) Court proceedings must not only appear to be fair and impartial for the litigants, but must maintain public confidence in the judiciary.\(^{21}\)

Even absent a motion or an objection by a party, a judge who falls within the scope of Canon 3(C) is to disqualify himself.\(^{22}\) The court is to take the initiative if the litigant or his attorney does not. If the objection is not raised at the trial court level, it may be raised initially on appeal, even \textit{sua sponte}.\(^{23}\) Canon 3(C) applies to both criminal and civil cases, and is applicable at the arraignment stage of a criminal proceeding.\(^{24}\) Canon 3(D) provides an alternative to disqualification if the parties agree independently in writing to the judge's continuation in the litigation.\(^{25}\)

\(^{20}\) Farley \textit{v.} Jester, 257 Ark. 686, 520 S.W.2d 200 (1975).
\(^{21}\) Oliver \textit{v.} State, 268 Ark. 579, 594 S.W.2d 261 (Ark. App. 1980).
\(^{22}\) Jordan \textit{v.} State, 274 Ark. 572, 626 S.W.2d 947 (1982) (not improper for judge to preside over criminal case when, as prosecuting attorney, he had actively prosecuted the defendant in three prior felony convictions; Brasswell \textit{v.} Gehl, 263 Ark. 706, 567 S.W.2d 113 (1978) (judge was the father-in-law of an attorney); Edmonson \textit{v.} Farris, 263 Ark. 505, 565 S.W.2d 617 (1978) (judge was the father of an attorney).
\(^{23}\) Adams \textit{v.} State, 269 Ark. 548, 601 S.W.2d 881 (1980) (judge was the uncle of the prosecuting attorney).
\(^{24}\) Id.
\(^{25}\) Id.; Edmonson \textit{v.} Farris, 263 Ark. 505, 565 S.W.2d 617 (1978).
CANON 1

A JUDGE SHOULD 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, and should himself observe, high standards of conduct so that the integrity and independence of the judiciary may be preserved. The provisions of this Code should be construed and applied to further that objective.
A JUDGE SHOULD AVOID IMPROPRIETY AND THE APPEARANCE OF IMPROPRIETY IN ALL HIS ACTIVITIES

A. A judge should respect and comply with the law and should conduct himself at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

B. A judge should not allow his family, social, or other relationships to influence his judicial conduct or judgment. He should not lend the prestige of his office to advance the private interests of others; nor should he convey or permit others to convey the impression that they are in a special position to influence him. He should not testify voluntarily as a character witness.¹

¹ Author's Note: Unless otherwise indicated, these footnotes are the Commentary that accompanies the American Bar Association's version of the Code of Judicial Conduct.

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

The testimony of a judge as a character witness injects the prestige of his office into the proceeding in which he testifies and may be misunderstood to be an official testimonial. This Canon, however, does not afford him a privilege against testifying in response to an official summons.
A JUDGE SHOULD PERFORM THE DUTIES OF HIS OFFICE IMPARTIALLY AND DILIGENTLY

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

A. Adjudicative Responsibilities

(1) A judge should be faithful to the law and maintain professional competence in it. He should be unswayed by partisan interests, public clamor, or fear of criticism.

(2) A judge should maintain order and decorum in proceedings before him.

(3) A judge should be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, and others with whom he deals in his official capacity, and should require similar conduct of lawyers, and of his staff, court officials, and others subject to his direction and control.²

(4) A judge should accord to every person who is legally interested in a proceeding, or his lawyer, full right to be heard according to law, and, except as authorized by law, neither initiate nor consider ex parte or other communications concerning a pending or impending proceeding. A judge, however, may obtain the advice of a disinterested expert on the law applicable to a proceeding before him if he gives notice to the parties of the person consulted and the substance of the advice, and affords the parties reasonable opportunity to

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² 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. Courts can be efficient and business-like while being patient and deliberate.
respond.3

(5) A judge should dispose promptly of the business of court.4

(6) A judge should abstain from public comment about a pending or impending proceeding in any court, and should require similar abstention on the part of court personnel subject to his direction and control. This subsection does not prohibit judges from making public statements in the course of their official duties or from explaining for public information the procedures of the court.5

(7) A judge may authorize broadcasting, recording, or photographing in the courtroom and areas immediately adjacent thereto during sessions of court, recesses between sessions, and on other occasions, provided that:

(a) the participants will not be distracted nor will the dignity of the proceedings be impaired;

(b) an objection timely made by a party or attorney shall preclude broadcasting, recording, or photographing of the proceedings; and, an objection timely made by a witness who has been informed of the right to refuse such exposure, shall

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3. 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. It does not preclude a judge from consulting with his judges, or with court personnel whose function is to aid the judge in carrying out his adjudicative responsibilities.

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

4. Prompt disposition of the court's business requires a judge to devote adequate time to his 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 him to that end.

5. Author's Note: “Court personnel” does not include the lawyers in a proceeding before a judge. The conduct of lawyers is governed by DR7-107 of the Code of Professional Responsibility. See Robinson, The Arkansas Code of Professional Responsibility, 33 Ark. L. Rev. 605 (1980).
preclude broadcasting, recording or photographing of that witness.
(c) the broadcasting, recording or photographing of any court proceeding will be in compliance with the rules adopted by the Arkansas Supreme Court;
(d) trials in juvenile court or concerning adoptions, guardianships and domestic relations shall not be subject to broadcasting, recording or photographing.6

B. Administrative Responsibilities
(1) A judge should diligently discharge his administrative responsibilities, maintain professional competence in judicial administration, and facilitate the performance of the adminis-

6. Author's Note: The rule allowing broadcasting of courtroom proceedings was adopted as an experiment for 1981, Petition of Arkansas Bar Association, 271 Ark. 358, 609 S.W.2d 28 (1980), and slightly modified after committee review. Per Curiam Order of the Supreme Court, March 8, 1982, — Ark. —, — S.W.2d —. The per curiam orders promulgated guidelines and created a committee to monitor and review the experiment. The prior language in the Code was:
A judge should prohibit broadcasting, televising, recording, or taking photographs in the courtroom and areas immediately adjacent thereto during sessions of court or recesses between sessions, except that a judge may authorize:
(a) the use of electronic or photographic means for the perpetuation of a record, or for other purposes of judicial administration;
(b) the broadcasting, televising, recording, or photographing of investitive, ceremonial, or naturalization proceedings;
(c) the photographic or electronic recordings and reproduction of appropriate court proceedings under the following conditions:
   (i) the means of recording will not distract participants or impair the dignity of the proceedings;
   (ii) the parties have consented, and the consent to being depicted or recorded has been obtained from each witness appearing in the recording and reproduction;
   (iii) the reproduction will not be exhibited until after the proceeding has been concluded and all direct appeals have been exhausted; and
   (iv) the reproduction will be exhibited only for instructional purposes in educational institutions.
Commentary: Temperate conduct of judicial proceedings is essential to the fair administration of justice. The recording and reproduction of a proceeding should not distort or dramatize the proceeding.
trative responsibilities of other judges and court officials.

(2) A judge should require his staff and court officials subject to his direction and control to observe the standards of fidelity and diligence that apply to him.

(3) A judge should take or initiate appropriate disciplinary measures against a judge or lawyer for unprofessional conduct of which the judge may become aware.7

(4) A judge should not make unnecessary appointments. He should exercise his power of appointment only on the basis of merit, avoiding nepotism and favoritism. He should not approve compensation of appointees beyond the fair value of services rendered.8

C. Disqualification

(1) A judge should disqualify himself in a proceeding in which his impartiality might reasonably be questioned, including but not limited to instances where:

(a) he has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding;

(b) he served as lawyer in the matter in controversy, or a lawyer with whom he previously practiced law served during such association as a lawyer concerning the matter, or the judge or such lawyer has been a material witness concerning it;9

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7. Disciplinary measures may include reporting a lawyer's misconduct to an appropriate disciplinary body.

8. Appointees of the judge include officials such as referees, commissioners, special masters, receivers, guardians and personnel such as clerks, secretaries, and bailiffs. Consent by the parties to an appointment or an award of compensation does not relieve the judge of the obligation prescribed by this subsection.

9. A lawyer in a governmental agency does not necessarily have an association with other lawyers employed by that agency within the meaning of this subsection; a judge formerly employed by a governmental agency, however, should disqualify him-
(c) he knows that he, individually or as a fiduciary, or his spouse or minor child residing in his household, has a financial interest in the subject matter in controversy or in a party to the proceeding, or any other interest that could be substantially affected by the outcome of the proceeding:

(d) he or his spouse, or a person within the third degree or relationship to either of them, or the spouse of such a person:
   (i) is a party to the proceeding, or an officer, director, or trustee of a party;
   (ii) is acting as a lawyer in the proceeding;
   (iii) is known by the judge to have an interest that could be substantially affected by the outcome of the proceeding;
   (iv) is to the judge’s knowledge likely to be a material witness in the proceeding;

(2) A judge should inform himself about his personal and fiduciary financial interests, and make a reasonable effort to inform himself about the personal financial interests of his spouse and minor children residing in his household.

(3) For the purposes of this section:
   (a) the degree of relationship is calculated according to the civil law system;
   (b) “fiduciary” includes such relationships
as executor, administrator, trustee, and guardian;

(c) "financial interest" means ownership of a legal or equitable interest, however small, or a relationship as director, advisor, or other active participant in the affairs of a party, except that:

(i) ownership in a mutual or common investment fund that holds securities is not a "financial interest" in such securities unless the judge participates in the management of the fund;

(ii) an office in an educational, religious, charitable, fraternal, or civic organization is not a "financial interest" in securities held by the organization;

(iii) the proprietary interest of a policy holder in a mutual insurance company, of a depositor in a mutual savings association, or a similar proprietary interest, is a "financial interest" in the organization only if the outcome of the proceeding could substantially affect the value of the interest;

(iv) ownership of government securities is a "financial interest" in the issuer only if the outcome of the proceeding could substantially affect the value of the securities.

D. Remittal of Disqualification.
A judge disqualified by the terms of Canon 3C(1)(c) or Canon 3C(1)(d) may, instead of withdrawing from the proceeding, disclose on the record the basis of his disqualification. If, based on
such disclosure, the parties and lawyers, independently of the judge's participation, all agree in writing that the judge's relationship is immaterial or that his financial interest is insubstantial, the judge is no longer disqualified, and may participate in the proceeding. The agreement, signed by all parties and lawyers, shall be incorporated in the record of the proceeding.\textsuperscript{12}

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\textsuperscript{12} This procedure is designed to minimize the chance that a party or lawyer will feel coerced into an agreement. When a party is not immediately available, the judge without violating this section may proceed on the written assurance of the lawyer that his party's consent will be subsequently filed.
\end{flushleft}
A judge, subject to the proper performance of his judicial duties, may engage in the following quasi-judicial activities, if in doing so he does not cast doubt on his capacity to decide impartially any issue that may come before him:

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

B. He may appear at a public hearing before an executive or legislative body or official on matters concerning the law, the legal system, and the administration of justice, and he may otherwise consult with an executive or legislative body or official, but only on matters concerning the administration of justice.

C. He may serve as a member, officer, or director of an organization or governmental agency devoted to the improvement of the law, the legal system, or the administration of justice. He may assist such an organization in raising funds and may participate in their management and investment, but should not personally participate in public fund raising activities. He may make recommendations to public and private fund-granting agencies on projects and programs concerning the law, the legal system, and the administration of justice. 13

13. 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 his time permits, he is encouraged to do so, either independently or through a bar association, judicial conference, or other organization dedicated to the improvement of the law. Extra-judicial activities are governed by Canon 5.
CANON 5
A JUDGE SHOULD REGULATE HIS EXTRA-JUDICIAL ACTIVITIES TO MINIMIZE THE RISK OF CONFLICT WITH HIS JUDICIAL DUTIES

A. Avocational Activities. A judge may write, lecture, teach, and speak on non-legal subjects, and engage in the arts, sports, and other social and recreational activities, if such avocational activities do not detract from the dignity of his office or interfere with the performance of his judicial duties.14

B. Civic and Charitable Activities. A judge may participate in civic and charitable activities that do not reflect adversely upon his impartiality or interfere with the performance of his judicial duties. A judge may serve as an officer, director, trustee, or non-legal advisor of an educational, religious, charitable, fraternal, or civic organization not conducted for the economic or political advantage of its members, subject to the following limitations:

(1) A judge should not serve if it is likely that the organization will be engaged in proceedings that would ordinarily come before him or will be regularly engaged in adversary proceedings in any court.15

(2) A judge should not solicit funds for any educational, religious, charitable, fraternal, or civic organization, or use or permit the use of the prestige of his office for that purpose, but he may be listed as an officer, director, or trustee of such an organization. He should

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14. Complete separation of a judge from extra-judicial activities is neither possible nor wise; he should not become isolated from the society in which he lives.

15. The changing nature of some organizations and of their relationship to the law makes it necessary for a judge regularly to reexamine the activities of each organization with which he is affiliated to determine if it is proper for him to continue his relationship with it. For example, in many jurisdictions charitable hospitals are now more frequently in court than in the past. Similarly, the boards of some legal aid organizations now make policy decisions that may have political significance or imply commitment to causes that may come before the courts for adjudication.
(3) A judge should not give investment advice to such an organization, but he may serve on its board of directors or trustees even though it has the responsibility for approving investment decisions.\(^{16}\)

C. Financial Activities.

(1) A judge should refrain from financial and business dealings that tend to reflect adversely on his impartiality, interfere with the proper performance of his judicial duties, exploit his judicial position, or involve him in frequent transactions with lawyers or persons likely to come before the court on which he serves.

(2) Subject to the requirement of subsection (1), a judge may hold and manage investments, including real estate, and engage in other remunerative activity including the operation of a business.\(^ {17}\)

(3) A judge should manage his investments and other financial interests to minimize the number of cases in which he is disqualified. As soon as he can do so without serious financial detriment, he should divest himself

\(^{16}\) A judge's participation in an organization devoted to quasi-judicial activities is governed by Canon 4.

\(^{17}\) Author's Note: The American Bar Association offered an option to the states. The version adopted by Arkansas was for jurisdictions “that do not provide adequate judicial salaries but are willing to allow full-time judges to supplement their incomes through commercial activities . . . until such time as adequate salaries are provided. . . .”

The ABA further suggested that such jurisdictions might also “wish to prohibit a judge from engaging in certain types of businesses such as that of banks, public utilities, insurance companies, and other businesses affected with a public interest.” The Arkansas Supreme Court did not adopt any regulation or rule along those lines. The suggested language for jurisdictions with adequate judicial salaries is: “Subject to the requirements of subsection (1), a judge may hold and manage investments, including real estate, and engage in other remunerative activity, but should not serve as an officer, director, manager, advisor, or employee of any business.”
of investments and other financial interests that might require frequent disqualification.

(4) Neither a judge nor a member of his family residing in his household should accept a gift, bequest, favor, or loan from anyone except as follows:

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

(b) a judge or a member of his family residing in his household may accept ordinary social hospitality; a gift, bequest, favor, or loan from a relative; a wedding or engagement gift; a loan from a lending institution in its regular course of business on the same terms generally available to persons who are not judges; or a scholarship or fellowship awarded on the same terms applied to other applicants;

(c) a judge or a member of his family residing in his household may accept any other gift, bequest, favor, or loan only if the donor is not a party or other person whose interests have come or are likely to come before him, and, if its value exceeds $100, the judge reports it in the same manner as he reports compensation in Canon 6C.18

(5) For the purposes of this section “member of his family residing in his household” means any relative of a judge by blood or marriage,

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18. This subsection does not apply to contributions to a judge’s campaign for judicial office, a matter governed by Canon 7.
or a person treated by a judge as a member of his family, who resides in his household.

(6) A judge is not required by this Code to disclose his income, debts, or investments, except as provided in this Canon and Canons 3 and 6.19

(7) Information acquired by a judge in his judicial capacity should not be used or disclosed by him in financial dealings or for any other purpose not related to his judicial duties.

D. Fiduciary Activities. A judge should not serve as the executor, administrator, trustee, guardian, or other fiduciary, except for the estate, trust, or person of a member of his family, and then only if such service will not interfere with the proper performance of his judicial duties. “Member of his family” includes a spouse, child, grandchild, parent, grandparent, or other relative or person with whom the judge maintains a close familial relationship. As a family fiduciary a judge is subject to the following restrictions:

(1) He should not serve if it is likely that as a fiduciary he will be engaged in proceedings that would ordinarily come before him, or if the estate, trust, or ward becomes involved in adversary proceedings in the court on which he serves or one under its appellate jurisdiction.20

(2) While acting as a fiduciary a judge is subject

19. Canon 3 requires a judge to disqualify himself in any proceeding in which he has a financial interest, however small; Canon 5 requires a judge to refrain from engaging in business and from financial activities that might interfere with the impartial performance of his judicial duties; Canon 6 requires him to report all compensation he receives for activities outside his judicial office. A judge has the rights of an ordinary citizen, including the right to privacy of his financial affairs, except to the extent that limitations thereon are required to safeguard the proper performance of his duties. Owning and receiving income from investments do not as such affect the performance of a judge’s duties.

20. The Effective Date of Compliance provision of this Code qualifies this subsection with regard to a judge who is an executor, administrator, trustee, or other fiduciary at the time this Code becomes effective.
to the same restrictions on financial activities that apply to him in his personal capacity.\textsuperscript{21}

E. Arbitration. A judge should not act as an arbitrator or mediator.

F. Practice of Law. A judge should not practice law.

G. Extra-judicial Appointments. A judge should not accept appointment to a governmental committee, commission, or other position that is concerned with issues of fact or policy on matters other than the improvement of the law, the legal system, or the administration of justice. A judge, however, may represent his country, state, or locality on ceremonial occasions or in connection with historical, educational, and cultural activities.\textsuperscript{22}

\textsuperscript{21} A judge's obligation under this Canon and his obligation as a fiduciary may come into conflict. For example, a judge should resign as trustee if it would result in detriment to the trust to divest it of holdings whose retention would place the judge in violation of Canon 5C(3).

\textsuperscript{22} Valuable services have been rendered in the past to the states and the nation by judges appointed by the executive to undertake important extra-judicial assignments. The appropriateness of conferring these assignments on judges must be reassessed, however, in light of the demands on judicial manpower created by today's crowded dockets and the need to protect the courts from involvement in extra-judicial matters that may prove to be controversial. Judges should not be expected or permitted to accept governmental appointments that could interfere with the effectiveness and independence of the judiciary.
A JUDGE SHOULD REGULARLY FILE REPORTS OF COMPENSATION RECEIVED FOR QUASI-JUDICIAL AND EXTRA-JUDICIAL ACTIVITIES

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

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

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

C. Public Reports. A judge should report the date, place, and nature of any activity for which he received compensation, and the name of the payor and the amount of compensation so received. Compensation or income of a spouse attributed to the judge by operation of a community property law is not extra-judicial compensation to the judge. His report should be made at least annually and should be filed as a public document in the office of the clerk of the court on which he serves or other office designated by rule of court.23

23. Author’s Note: The Supreme Court directed that the annual reports be filed during June with the Clerk of the Supreme Court. Per Curiam Order of November 5, 1973, 255 Ark. 1075, 493 S.W.2d 422 (Appendix).
A JUDGE SHOULD REFRAIN FROM
POLITICAL ACTIVITY
INAPPROPRIATE TO HIS
JUDICIAL OFFICE

A. Political Conduct in General.
(1) A judge or a candidate for election to judicial office should not:
   (a) act as a leader or hold any office in a political organization;
   (b) make speeches for a political organization or candidate or publicly endorse a candidate for public office;²⁴
   (c) solicit funds for or pay an assessment or make a contribution to a political organization or candidate, attend political gatherings, or purchase tickets for political party dinners, or other functions, except as authorized in subsection A(2);

(2) A judge holding an office filled by public election between competing candidates, or a candidate for such office, may, only insofar as permitted by law, attend political gatherings, speak to such gatherings on his own behalf when he is a candidate for election or re-election, identify himself as a member of a political party and contribute to a political party or organization.

(3) A judge should resign his office when he becomes a candidate either in a party primary or in a general election for a non-judicial office, except that he may continue to hold his judicial office while being a candidate for election to or serving as a delegate in a state constitutional convention, if he is otherwise permitted by law to do so.

²⁴ A candidate does not publicly endorse another candidate for public office by having his name on the same ticket.
A judge should not engage in any other political activity except on behalf of measures to improve the law, the legal system, or the administration of justice.

B. Campaign Conduct

(1) A candidate, including an incumbent judge, for a judicial office that is filled either by public election between competing candidates or on the basis of a merit system election:

(a) should maintain the dignity appropriate to judicial office, and should encourage members of his family to adhere to the same standards of political conduct that apply to him;

(b) should prohibit public officials or employees subject to his direction or control from doing for him what he is prohibited from doing under this Canon; and except to the extent authorized under subsection B(2) or B(3), he should not allow any other person to do for him what he is prohibited from doing under this Canon;

(c) should not make pledges or promises of conduct in office other than the faithful and impartial performance of the duties of the office; announce his views on disputed legal or political issues; or misrepresent his identity, qualifications, present position, or other fact.

(2) A candidate, including an incumbent judge, for a judicial office that is filled by public election between competing candidates should not himself solicit or accept campaign funds, or solicit publicly stated support, but he may establish committees of responsible persons to secure and manage the expenditure of funds for his campaign and to obtain public statements of support for his candidacy. Such committees are not prohibited from soliciting
campaign contributions and public support from lawyers. A candidate's committees may solicit funds for his campaign no earlier than [180] days before a primary election and no later than [180] days after the last election in which he participates during the election year. A candidate should not use or permit the use of campaign contributions for the private benefit of himself or members of his family.\(^{25}\)

(3) An incumbent judge who is a candidate for retention in or re-election to office without a competing candidate, and whose candidacy has drawn active opposition, may campaign in response thereto and may obtain publicly stated support and campaign funds in the manner provided in subsection B(2).

\(^{25}\) Unless the candidate is required by law to file a list of his campaign contributors, their names should not be revealed to the candidate.

Author's Note: Recognizing that no definite time limit had been originally to govern committee solicitation of funds for a judicial candidate, the Court adopted the 180-day limitation. Funds received prior to the 180-day period should be returned to the contributor. Funds received personally by a judicial candidate are to be promptly turned over to the committee. Per Curiam Order of the Arkansas Supreme Court, January 18, 1982, 274 Ark. 581, — S.W.2d —.
COMPLIANCE WITH THE CODE OF JUDICIAL CONDUCT

Anyone, whether or not a lawyer, who is an officer of a judicial system performing judicial functions, including an officer such as a referee in bankruptcy, special master, court commissioner, or magistrate, is a judge for the purpose of this Code. All judges should comply with this Code except as provided below.

A. Part-time Judge. A part-time judge is a judge who serves on a continuing or periodic basis, but is permitted by law to devote time to some other profession or occupation and whose compensation for that reason is less than that of a full-time judge. A part-time judge:
   (1) is not required to comply with Canon 5C(2), D, E, F, and G, and Canon 6C;
   (2) should not practice law in the court on which he serves or in any court subject to the appellate jurisdiction of the court on which he serves, or act as a lawyer in a proceeding in which he has served as a judge or in any other proceeding related thereto.

B. Judge Pro Tempore. A judge pro tempore is a person who is appointed to act temporarily as a judge.
   (1) While acting as such, a judge pro tempore is not required to comply with Canon 5C(2),(3),D, E, F, and G, and Canon 6C.
   (2) A person who has been a judge pro tempore should not act as a lawyer in a proceeding in which he has served as a judge or in any other proceeding related thereto.

C. Retired Judge. A retired judge who receives the same compensation as a full-time judge on the court from which he retired and is eligible for recall to judicial service should comply with all the provisions of this Code except Canon 5G, but he should refrain from judicial service during the period of an extra-judicial appointment not sanctioned by Canon 5G. All other retired judges
eligible for recall to judicial service should comply with the provisions of this Code governing part-time judges.
EFFECTIVE DATE OF COMPLIANCE

A person to whom this Code becomes applicable should arrange his affairs as soon as possible to comply with it. If, however, the demands on his time and the possibility of conflicts of interest are not substantial, a person who holds judicial office on the date of this Code becomes effective may:

(a) continue to act as an officer, director, or non-legal advisor of a family business;

(b) continue to act as an executor, administrator, trustee, or other fiduciary for the estate or person of one who is not a member of his family.