

FILED

Serial: 94835

IN THE SUPREME COURT OF MISSISSIPPI

APR 04 2002

OFFICE OF THE CLERK
SUPREME COURT
COURT OF APPEALS

*IN THE MATTER OF THE MISSISSIPPI CODE OF
JUDICIAL CONDUCT*

NO. 89-R-99013-SCT

and

*IN THE MATTER OF THE MISSISSIPPI
RULES OF CIVIL PROCEDURE*

NO. 89-R-99001-SCT

and

*IN THE MATTER OF THE UNIFORM RULES OF
CIRCUIT AND COUNTY COURT PRACTICE*

NO. 89-R-99025-SCT

and

*IN THE MATTER OF THE UNIFORM CHANCERY
COURT RULES*

NO. 89-R-99006-SCT

and

*IN THE MATTER OF THE MISSISSIPPI RULES
OF APPELLATE PROCEDURE*

NO. 89-R-99027-SCT

and

*IN THE MATTER OF THE RULES OF THE
MISSISSIPPI COMMISSION ON JUDICIAL
PERFORMANCE*

NO. 89-R-99014-SCT

ORDER

These matters have come before the Court en banc on the Court's own motion for adoption of a revised Code of Judicial Conduct and for amendment of associated procedural rules, specifically the Mississippi Rules of Civil Procedure, the Uniform Rules of Circuit and County Court Practice, the Uniform Chancery Court Rules, and the Mississippi Rules of Appellate Procedure, and, on petition of the Commission on Judicial Performance, the Rules of the Mississippi Commission on Judicial Performance. On October 25, 2001, the draft of

the proposed revised Mississippi Code of Judicial Conduct was published and comments and other suggestions were solicited from the public, the Mississippi judiciary, the Mississippi Bar, other bar organizations, and members of the bar. Comments and suggestions were received after the closure of the period for public comment and were fully considered by the Court for revision and adoption. Thereafter, by order issued on February 8, 2002, the proposed Mississippi Code of Judicial Conduct, with revisions and the proposed amendments of the associated procedural rules, were disseminated to the Conference of Circuit Court Judges, the Conference of Chancery Court Judges and the Conference of County Court Judges for review and further comments and suggestions. Further comments and suggestions were thereafter received and these also have been fully considered by the Court.

The Court now finds that the adoption of this revised Mississippi Code of Judicial Conduct, the repeal of the existing Code of Judicial Conduct, and the adoption of the specified amendments to the procedural rules will promote the fair and efficient administration of justice.

IT IS THEREFORE ORDERED as follows:

1. The Mississippi Code of Judicial Conduct as set forth in Exhibit “A” hereto is hereby adopted, replacing the existing Code of Judicial Conduct, which is hereby repealed as of the entry of this order;
2. The Mississippi Rules of Civil Procedure are hereby amended by the addition of Rule 16A as set forth in Exhibit “B” hereto;
3. The Uniform Rules of Circuit and County Court Practice are hereby amended by the addition of Rule 1.15 as set forth in Exhibit “C” hereto;

3. The Uniform Rules of Circuit and County Court Practice are hereby amended by the addition of Rule 1.15 as set forth in Exhibit "C" hereto;

4. The Uniform Chancery Court Rules are hereby amended by the addition of Rule 1.11 as also set forth in Exhibit "C" hereto;

5. The Mississippi Rules of Appellate Procedure are hereby amended by the addition of Rule 48B as set forth in Exhibit "D" hereto, and

6. The Petition of the Mississippi Commission on Judicial Performance is granted, and Rule 6A of the Rules of the Mississippi Commission on Judicial Performance is hereby amended as set forth in Exhibit "E" hereto.

IT IS FURTHER ORDERED that the Clerk of this Court shall spread this order upon the minutes of the Court and shall forward a true certified copy hereof to West Publishing Company for publication in the next edition of the *Mississippi Rules of Court* and in the *Southern Reporter, Second Series, (Mississippi Edition)*.

SO ORDERED, this the 4th day of April, 2002.



EDWIN LLOYD PITTMAN, CHIEF
JUSTICE, FOR THE COURT

PITTMAN, C.J., SMITH, P.J., AND WALLER, COBB AND CARLSON, JJ. CONCUR
IN THE ORDER.

MCRAE, P.J. DISSENTS WITH SEPARATE STATEMENT TO FOLLOW.

DIAZ, J. CONCURS IN PART AND DISSENTS IN PART WITH SEPARATE
STATEMENT JOINED BY GRAVES, J.

EASLEY, J., DISSENTS.

GRAVES, J. CONCURS IN PART AND DISSENTS IN PART WITH SEPARATE STATEMENT JOINED BY DIAZ, J.

EXHIBIT "A" TO ORDER

CODE OF JUDICIAL CONDUCT Adopted by the Mississippi Supreme Court April 4, 2002

PREAMBLE

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

The Code of Judicial Conduct is intended to establish standards for ethical conduct of judges. It consists of broad statements called Canons, specific rules set forth in Sections under each Canon, a Terminology Section, an Application Section and Commentary. The text of the Canons and the Sections, including the Terminology and Application Sections, is authoritative. The Commentary, by explanation and example, provides guidance with respect to the purpose and meaning of the Canons and Sections. The Commentary is not intended as a statement of additional rules. When the text uses "shall" or "shall not," it is intended to impose binding obligations the violation of which can result in disciplinary action. When "should" or "should not" is used, the text is intended as hortatory and as a statement of what is or is not appropriate conduct but not as a binding rule under which a judge may be disciplined. When "may" is used, it denotes permissible discretion or, depending on the context, it refers to action that is not covered by specific proscriptions. The Canons and Sections are rules of reason. They should be applied consistent with constitutional requirements, statutes, other court rules and decisional law 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 for mere tactical advantage in a proceeding.

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

pattern of improper activity and the effect of the improper activity on others or on the judicial system.

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

TERMINOLOGY

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

"Candidate." A candidate is a person seeking selection for judicial office by election or appointment. Persons become candidates for judicial office as soon as they make public announcements of candidacy, declare or file as candidates with the election or appointment authority, or authorize solicitation or acceptance of contributions or support. The term "candidate" has the same meaning when applied to a judge seeking election or appointment to non-judicial office. See Preamble and Canon 5.

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

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

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

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

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

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

(iv) ownership of government securities is not an economic interest in the issuer unless a proceeding pending or impending before the judge could substantially affect the value of the securities. See Sections 3E(1)(c) and 3E(2).

"Fiduciary" includes such relationships as executor, administrator, trustee, and guardian. See Sections 3E(3) and 4E.

"Independent persons, committees or organizations" shall mean an individual person or organization not required to report as affiliated with a campaign for judicial office. See Section 5F.

"Knowingly," "knowledge," "known" or "knows" denotes actual knowledge of the fact in question. A person's knowledge may be inferred from circumstances. See Sections 3D, 3E(1), and 5A(3).

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

"Major donor", for the purposes of Section 3E(2), shall be defined as follows:

(a) If the donor is an individual, "donor" means that individual, the individual's spouse, or the individual's or the individual's spouse's child, mother, father, grandmother, grandfather, grandchild, employee and employee's spouse.

(b) If the donor is an entity other than an individual, "donor" means the entity, its employees, officers, directors, shareholders, partners members, and contributors and the spouse of any of them.

(c) A "major donor" is a donor who or which has, in the judge's most recent election campaign, made a contribution to the judge's campaign of (a) more than \$2,000 if the judge is a justice of the Supreme Court or judge of the Court of Appeals, or (b) more than \$1,000 if the judge is a judge of a court other than the Supreme Court or the Court of Appeals.

(d) The term "contribution to the judge's campaign" shall be the total of all contributions to a judge's campaign and shall be deemed to include all contributions of every kind and type whatsoever, whether in the form of cash,

goods, services, or other form of contribution, and whether donated directly to the judge's campaign or donated to any other person or entity for the purpose of supporting the judge's campaign and/or opposing the campaign of the judge's opponent(s). The term "contribution to a judge's campaign" shall also be deemed to include any publication, advertisement or other release of information, or payment therefor, other than a bona fide news item published by existing news media, which contains favorable information about the judge or which contains unfavorable information about the judge's opponent(s).

"Member of the candidate's family" denotes a spouse, child, grandchild, parent, grandparent, siblings, or other relative or person with whom the candidate maintains a close familial relationship. See Section 5A(3)(a).

"Member of the judge's family" denotes a spouse, child, grandchild, parent, grandparent, siblings, or other relative or person with whom the judge maintains a close familial relationship. See Sections 4D, 4E and 4G.

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

"Nonpublic information" denotes information that, by law, is not available to the public. Nonpublic information may include but is not limited to: information that is sealed by statute or court order, impounded or communicated in camera; and information offered in grand jury proceedings, presentencing reports, dependency cases or psychiatric reports. See Sections 3B(11) and 4D(4).

"Part-time judge" denotes a judge who serves for an extended, fixed term, but is allowed to practice law or any other profession or occupation. The term does not apply to magistrates, court commissioners, special masters or referees.

"Political organization" denotes a political party or other group, the principal purpose of which is to further the election or appointment of candidates to political office. See Sections 5A(1).

"Public election." This term includes primary and general elections; it includes partisan elections and nonpartisan elections. See Section 5C.

"Require." The rules prescribing that a judge "require" certain conduct of others are, like all of the rules in this Code, rules of reason. The use of the term "require" in that context means a judge is to exercise reasonable direction and control over the conduct of those persons subject to the judge's direction and control. See Sections 3B(3), 3B(4), 3B(5), 3B(6), 3B(9) and 3C(2).

"Special judge" denotes a judge, including a retired judge, other than one who is serving to fill the unexpired term of a regularly elected or appointed judge who has vacated the office, who serves by appointment for a limited period or in a particular matter due to the unwillingness or inability of a sitting judge to hear a case or attend court, or who is appointed on an emergency basis.

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

Commentary

In defining "members of the candidate's family" and "members of the judge's family" siblings of the candidate and judge are included. The phrase "major donor" is also included. Likewise, no reference is made to retention elections. In these respects, this section differs from the ABA Model Code of Judicial Conduct.

The ABA Model Code defines "continuing part-time judge," "periodic part-time judge," and "pro tempore part-time judge." Also, in the Application Section, the ABA model refers to "retired judge subject to recall." In the adaption of the model for Mississippi application, these are reduced to "part-time judge," and "special judge," which covers non-standard positions subject to special treatment. See Application Section.

CANON 1

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. The provisions of this Code should be construed and applied to further that objective.

Commentary

Deference to the judgments and rulings of courts depends upon public confidence in the integrity and independence of judges. The integrity and independence of judges depends in turn upon their acting without fear or favor. Although judges should be independent, they must comply with the law, including the provisions of this Code. Public confidence in the impartiality of the judiciary is maintained by the adherence of each judge

to this responsibility. Conversely, violation of this Code diminishes public confidence in the judiciary and thereby does injury to the system of government under law.

CANON 2

A Judge Shall Avoid Impropriety and the Appearance of Impropriety in All Activities

A. 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.

Commentary

Public confidence in the judiciary is eroded by irresponsible or improper conduct by 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 Code. Actual improprieties under this standard include violations of law, court rules or other specific provisions of this Code. The test for appearance of impropriety is whether, based on the conduct, the judge's impartiality might be questioned by a reasonable person knowing all the circumstances.

See also Commentary under Section 2C.

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

Commentary

Maintaining the prestige of judicial office is essential to a system of government in which the judiciary functions independently of the executive and legislative branches. Respect for the judicial office facilitates the orderly conduct of legitimate judicial functions. Judges should distinguish between proper and improper use of the prestige of

office in all of their activities. For example, it would be improper for judges to allude to their judgeships 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. In contracts for publication of a judge's writings, a judge should retain control over the advertising to avoid exploitation of the judge's office.

Although a judge should be sensitive to possible abuse of the prestige of office, a judge may, based on the judge's personal knowledge, serve as a reference or provide a letter of recommendation. However, a judge must not initiate the communication of information to a sentencing judge or 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. See also Canon 5 regarding use of a judge's name in political activities.

A judge must not testify voluntarily as a character witness because to do so may lend the prestige of the judicial office in support of 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.

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

Commentary

Membership of a judge in an organization that practices invidious discrimination gives rise to perceptions that the judge's impartiality is impaired. Section 2C refers to the current practices of the organization. Whether an organization practices invidious discrimination is often a complex question to which judges should be sensitive. The answer cannot be determined from a mere examination of an organization's current membership rolls but rather depends on how the organization selects members and other relevant factors, such as 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. Absent such factors, an organization is generally said to discriminate invidiously if it arbitrarily excludes from membership on the basis of race, religion, gender or national origin persons who would otherwise be admitted to membership. See New York State Club Ass'n. v. City of New York, ___ U.S. ___, 108 S.Ct. 2225, 101 L.Ed.2d 1 (1988); Board of Directors of Rotary International v. Rotary Club of Duarte, 481 U.S. 537, 107 S.Ct. 1940, 95 L.Ed.2d 474 (1987); Roberts v. United States Jaycees, 468 U.S. 609, 104 S.Ct. 3244, 82 L.Ed.2d 462 (1984).

Although Section 2C relates only to membership in organizations that invidiously discriminate on the basis of race, gender, religion or national origin, a judge's membership in an organization that engages in any discriminatory membership practices prohibited by the law of the jurisdiction also violates Canon 2 and Section 2A and gives the appearance of impropriety. In addition, it would be a violation of Canon 2 and Section 2A for a judge to arrange a meeting at a club that the judge knows practices invidious discrimination on the basis of race, gender, religion or national origin in its membership or other policies, or for the judge to regularly use such a club. Moreover, public manifestation by a judge of the judge's knowing approval of invidious discrimination on any basis gives the appearance of impropriety under Canon 2 and diminishes public confidence in the integrity and impartiality of the judiciary, in violation of Section 2A.

When a person who is a judge on the date this Code becomes effective learns that an organization to which the judge belongs engages in invidious discrimination that would preclude membership under Section 2C or under Canon 2 and Section 2A, the judge is permitted, in lieu of resigning, to make immediate efforts to have the organization discontinue its invidiously discriminatory practices, but is required to suspend participation in any other activities of the organization. If the organization fails to discontinue its invidiously discriminatory practices as promptly as possible (and in all events within a year of the judge's first learning of the practices), the judge is required to resign immediately from the organization.

CANON 3

A Judge Shall Perform the Duties of Judicial Office Impartially and Diligently

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

B. Adjudicative Responsibilities.

(1) A judge shall hear and decide all assigned matters within the judge's jurisdiction except those in which disqualification is required.

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

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

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

Commentary

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

(5) A judge shall perform judicial duties without bias or prejudice. A judge shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice, including but not limited to bias or prejudice based upon race, sex, gender, religion, national origin, disability, age, sexual orientation or socioeconomic status, and shall not permit staff, court officials and others subject to the judge's direction and control to do so. A judge shall refrain from speech, gestures or other conduct that could reasonably be perceived as sexual harassment and shall require the same standard of conduct of others subject to the judge's direction and control.

Commentary

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 proceeding, jurors, the media and others an appearance of judicial bias. A judge must be alert to avoid behavior that may be perceived as prejudicial.

(6) 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 Section 3B(6) 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.

(7) A judge shall accord to all who are legally interested in a proceeding, or their lawyers, the right to be heard according to law. A judge shall not initiate, permit, or consider ex parte communications, or consider other communications made to the judge outside the presence of the parties concerning a pending or impending proceeding except that:

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

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

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

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

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

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

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

Commentary

The proscription against communications concerning a proceeding includes communications from lawyers, law teachers, and other persons who are not participants in the proceeding, except to the limited extent permitted. To the extent reasonably possible, all parties or their lawyers shall be included in communications with a judge.

Whenever presence of a party or notice to a party is required by Section 3B(7), it is the party's lawyer, or if the party is unrepresented, the party, who is to be present or to whom notice is 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 Section 3B(7) 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 Section 3B(7) are clearly met. A judge must disclose to all parties all ex parte communications described in Sections 3B(7)(a) and 3B(7)(b) 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 apprized of the request and are given an opportunity to respond to the proposed findings and conclusions.

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

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

Commentary

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.

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

Commentary

The requirement that judges abstain from public comment regarding a pending or impending proceeding continues during any appellate process and until final disposition. This Section does not prohibit 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. The conduct of lawyers relating to trial publicity is governed by Rule 3.6 of the Rules of Professional Conduct.

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

Commentary

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

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

(12) Except as may be authorized by rule or order of the Supreme Court, 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 presentation of evidence, 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 recording 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

The ABA Model Code does not address broadcasting, televising, recording or photographing in the courtroom. This provision is taken from the Section 3A(7) of the prior Mississippi Code of Judicial Conduct.

C. Administrative Responsibilities.

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

(2) 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.

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

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

Commentary

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

(5) A judge shall not appoint a major donor to the judge's election campaign to a position if the judge knows or learns by means of a timely motion that the major donor has contributed to the judge's election campaign unless

(a) the position is substantially uncompensated;

(b) the person has been selected in rotation from a list of qualified and available persons compiled without regard to their having made political contributions; or

(c) the judge or another presiding or administrative judge affirmatively finds that no other person is willing, competent and able to accept the position.

D. Disciplinary Responsibilities.

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

(2) A judge who receives information indicating a substantial likelihood that a lawyer has committed a violation of the Rules of Professional Conduct should take appropriate action. A judge having knowledge that a lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial question as to the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects shall inform the appropriate authority.

(3) Acts of a judge, in the discharge of disciplinary responsibilities, required or permitted by Sections 3D(1) and 3D(2) are part of a judge's judicial duties and shall be

absolutely privileged, and no civil action predicated thereon may be instituted against the judge.

Commentary

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 the appropriate authority or other agency or body.

E. Disqualification.

(1) Judges should disqualify themselves in proceedings in which their impartiality might be questioned by a reasonable person knowing all the circumstances or for other grounds provided in the Code of Judicial Conduct or otherwise as provided by law, including but not limited to instances where:

Commentary

Under this rule, a judge should disqualify himself or herself whenever the judge's impartiality might be questioned by a reasonable person knowing all the circumstances, regardless whether any of the specific rules in Section 3E(1) apply.

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

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

For procedures concerning motions for recusal and review by the Supreme Court of denial of motions for recusal as to trial court judges, see M.R.C.P. 16A, URCCC 1.15, Unif. Chanc. R. 1.11, and M.R.A.P. 48B. For procedures concerning motions for recusal of judges of the Court of Appeals or Supreme Court justices, see M.R.A.P. 27(a).

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

(b) the judge served as 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 or such lawyer has been a material witness concerning it;

Commentary

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

(c) the judge knows that the judge, individually or as a fiduciary, or the judge's spouse or member of the judge's family residing in the judge's 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) the judge or the judge's spouse, or a person within the third degree of relationship to either of them, or the spouse of such a person:

(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;

Commentary

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

(2) Recusal of Judges from Lawsuits Involving Major Donors. A party may file a motion to recuse a judge based on the fact that an opposing party or counsel of record for that party is a major donor to the election campaign of such judge. Such motions will be filed, considered and subject to appellate review as provided for other motions for recusal.

Commentary

Section 3E(2) recognizes that political donations may but do not necessarily raise concerns about a judge's impartiality. The filing, consideration and appellate review of motions for recusal based on such donations are subject to rules governing all recusal motions. For procedures concerning motions for recusal and review by the Supreme Court of denial of motions for recusal as to trial court judges, see M.R.C.P. 16A, URCCC 1.15, Unif. Chanc. R. 1.11, and M.R.A.P. 48B. For procedures concerning motions for recusal of judges of the Court of Appeals or Supreme Court justices, see M.R.A.P. 27(a). This provision does not appear in the ABA Model Code of Judicial Conduct; however, see Section 3E(1)(e) of the ABA model.

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

Commentary

A remittal procedure provides the parties an opportunity to proceed without delay if they wish to waive the possible disqualification. To assure that consideration of the question of remittal is made independently of the judge, a judge must not solicit, seek or hear comment on the remittal or waiver of the possible disqualification unless the lawyers jointly propose remittal 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 remittal agreement.

CANON 4

A Judge Shall So Conduct the Judge's Extra-judicial Activities as to

Minimize the Risk of Conflict with Judicial Obligations

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

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

Commentary

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. Expressions which may do so include jokes or other remarks demeaning individuals on the basis of their race, gender, religion, national origin, disability, age, sexual orientation or socioeconomic status. See Section 2C and accompanying Commentary.

B. 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 non-legal subjects, subject to the requirements of this Code.

Commentary

As a judicial officer and person specially learned in the law, a judge is in a unique position to contribute to the improvement of the law, the legal system, and the administration of justice, including revision of substantive and procedural law and improvement of criminal and juvenile justice. To the extent that time permits, 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 Sections of Canon 4, the phrase "subject to the requirements of this Code" is used, notably in connection with a judge's governmental, civic or charitable activities. This phrase is included to remind judges that the use of permissive language in

various Sections of the Code does not relieve a judge from the other requirements of the Code that apply to the specific conduct.

C. Governmental, Civic or Charitable Activities.

(1) A judge shall not make an appearance before, or otherwise consult with, an executive or legislative body or official or a public hearing 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.

Commentary

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

(2) A judge shall not accept appointment to a governmental committee or commission or other governmental position that is concerned with issues of fact or policy on matters other than the improvement of the law, the legal system or the administration of justice. A judge may, however, represent a country, state or locality on ceremonial occasions or in connection with historical, educational or cultural activities.

Commentary

Section 4C(2) prohibits a judge from accepting any governmental position except one relating to the improvement of the law, legal system or administration of justice as authorized by Section 4C(3). The appropriateness of accepting extra-judicial assignments must be assessed in light of the demands on judicial resources created by crowded dockets and the need to protect the courts from involvement in extra-judicial matters that may prove to be controversial. Judges should not accept governmental appointments that are likely to interfere with the effectiveness and independence of the judiciary.

Section 4C(2) does not govern a judge's service in a non-governmental position. See Section 4C(3) 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 under Section 4C(2), but service on the board of a public law school or any private educational institution would generally be permitted under Section 4C(3).

(3) 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 an educational, religious, charitable,

fraternal or civic organization not conducted for profit, subject to the following limitations and the other requirements of this Code.

Commentary

Section 4C(3) does not apply to a judge's service in a governmental position unconnected with the improvement of the law, the legal system or the administration of justice. See Section 4C(2).

See Commentary to Section 4B regarding use of the phrase "subject to the following limitations and the other requirements of this Code." As an example of the meaning of the phrase, a judge permitted by Section 4C(3) to serve on the board of a fraternal institution may be prohibited from such service by Sections 2C or 4A if the institution practices invidious discrimination or if service on the board otherwise casts reasonable doubt on the judge's capacity to act impartially as a judge.

Service by a judge on behalf of a civic or charitable organization may be governed by other provisions of Canon 4 in addition to Section 4C. For example, a judge is prohibited by Section 4G from serving as a legal advisor to a civic or charitable organization.

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

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

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

Commentary

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

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

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

(ii) 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;

(iii) shall not personally participate in membership solicitation if the solicitation might reasonably be perceived as coercive or, except as permitted in Section 4C(3)(b)(i), if the membership solicitation is essentially a fund-raising mechanism;

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

Commentary

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.

Use of an organization letterhead for fund-raising or membership solicitation does not violate Section 4C(3)(b) provided the letterhead lists only the judge's name and office or other position in the organization, and, if comparable designations are listed for other persons, the judge's judicial designation. In addition, a judge must also make reasonable efforts to ensure that the judge's staff, court officials and others subject to the judge's direction and control do not solicit funds on the judge's behalf for any purpose, charitable or otherwise.

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

D. Financial Activities.

(1) Judges should refrain from financial and business dealings that tend to reflect adversely on their impartiality, interfere with the proper performance of their judicial duties, exploit their judicial positions, or involve them in frequent transactions with lawyers or persons likely to come before the court on which the judges serve.

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

(3) Neither judges nor members of their families residing in their households should accept a gift, bequest, favor, or loan from anyone reflecting the expectation of judicial favor.

(4) Non-public information acquired by a judge in the judge's judicial capacity should not be used or disclosed by the judge in financial dealings or for any other purpose not related to the judge's judicial duties.

Commentary

The prohibition of Section 4D(3), limiting gifts which judges and their families may accept, does not prohibit gifts incident to public testimonials to the judges, books supplied by publishers on a complimentary basis for official use, and invitations to judges and their spouses to attend bar-related functions or activities devoted to the improvements of the law, the legal system or the administration of justice. Judges and their families residing in their households may accept ordinary social hospitality, gifts, bequests, favors and loans from relatives, wedding and engagement gifts, loans from lending institutions in their regular course of business on the same terms generally available to persons who are

not judges, and scholarships and fellowships awarded on the same terms applied to other applicants. Judges and members of their families residing in their households may accept any other gifts, bequests, favors and loans only if the donor is not a party or likely to come before them, and the gifts are reported as may be required by law. Gifts, bequests, favors and loans are to be reported as may be required by the Ethics in Government statutes. See Miss. Code Ann. § 25-4-27. Section 4D differs from the provisions of the ABA model and retains in large part the provisions of the Mississippi Code of Judicial Conduct as it existed prior to the current revision. Although this section does not prohibit holding specific extra-judicial positions or engaging in other specific business activities, it does require that judges refrain from business activities which might reflect adversely on their impartiality and that they manage their business activities so as to minimize the need for recusal. Regarding recusals and disqualification, see Section 3E.

E. Fiduciary Activities.

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

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

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

Commentary

The Time for Compliance provision of this Code (Application, Section E) postpones the time for compliance with certain provisions of this Section in some cases.

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

F. Service as Arbitrator or Mediator. A judge shall not act as an arbitrator or mediator or otherwise perform judicial functions in a private capacity unless expressly authorized by law.

Commentary

Section 4F does not prohibit a judge from participating in arbitration, mediation or settlement conferences performed as part of judicial duties.

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

Commentary

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

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

H. Compensation, Reimbursement and Reporting.

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

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

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

(2) Public Reports. A judge shall comply with those provisions of law requiring the reporting of economic interest to the Mississippi Ethics Commission.

Commentary

See Commentary to Section 4D(4) regarding reporting of gifts, bequests and loans. See also Miss. Code Ann. §§ 25-4-25 through 29 regarding the filing of statements of economic interest with the Mississippi Ethics Commission. The ABA model suggests that since Canon 6 in the 1972 model code was drafted, reporting requirements in most jurisdictions have become much more comprehensive, and that canons regulating reporting of income should be tailored to the requirements of individual jurisdictions. Subsection 4H 2), therefore, simply requires compliance with the statutory provisions for reporting to the Ethics Commission.

The Code 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.

I. Disclosure of a judge's income, debts, investments or other assets is required only to the extent provided in this Canon and in Sections 3E and 3F, or as otherwise required by law.

Commentary

Section 3E requires judges to disqualify themselves in any proceedings in which they have economic interests. See "economic interest" as explained in the Terminology Section. Section 4D requires judges to refrain from engaging in business and from financial activities that might interfere with the impartial performance of judicial duties; Section 4H requires judges to report compensation they received for activities outside judicial office. Judges have the rights of any other citizens, including the right to privacy of the judges' financial affairs, except to the extent that limitations established by law are required to safeguard the proper performance of the judges' duties.

CANON 5

A Judge or Judicial Candidate Shall Refrain From Inappropriate Political Activity

A. All Judges and Candidates

(1) Except as authorized in Sections 5B(2), 5C(1) and 5C(2), a judge or a candidate for election to judicial office shall not:

(a) act as a leader or hold an office in a political organization;

(b) make speeches for a political organization or candidate or publicly endorse a candidate for public office;

(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 political functions.

Commentary

A judge or candidate for judicial office retains the right to participate in the political process as a voter.

Where false information concerning a judicial candidate is made public, a judge or another judicial candidate having knowledge of the facts is not prohibited by Section 5A(1) from making the facts public.

Section 5A(1)(a) does not prohibit a candidate for elective judicial office from retaining during candidacy a public office such as county prosecutor, which is not "an office in a political organization."

Section 5A(1)(b) does not prohibit judges or judicial candidate from privately expressing their views on judicial candidates or other candidates for public office.

A candidate does not publicly endorse another candidate for public office by having that candidate's name on the same ticket. However, Sections 23-15-973 et seq., Miss. Code Ann. (1972) impose restrictions on candidates and political organizations to assure the non-partisan quality of judicial elections for Supreme Court, Court of Appeals, Chancery Court, Circuit Court and County Court justices and judges.

(2) A judge shall resign from judicial office upon becoming a candidate either in a party primary or in a general election for a non-judicial office, except that the judge may continue to hold judicial office while being a candidate for election to or serving as a delegate in a state constitutional convention if the judge is otherwise permitted by law to do so.

(3) A candidate for a judicial office:

(a) shall maintain the dignity appropriate to judicial office and act in a manner consistent with the integrity and independence of the judiciary, and shall encourage members of the candidate's family to

adhere to the same standards of political conduct in support of the candidate as apply to the candidate;

Commentary

Although judicial candidates must encourage members of their families to adhere to the same standards of political conduct in support of the candidates that apply to the candidates, family members are free to participate in other political activity. Family members are not prohibited by this subsection from serving on the candidates' campaign committees and otherwise actively involving themselves in the campaigns.

(b) shall prohibit employees and officials who serve at the pleasure of the candidate, and shall discourage other employees and officials subject to the candidate's direction and control, from doing on the candidate's behalf what the candidate is prohibited from doing under the Sections of this Canon;

(c) except to the extent permitted by Section 5C(2), shall not authorize or knowingly permit any other person to do for the candidate what the candidate is prohibited from doing under the Sections of this Canon;

(d) shall not:

(i) make pledges or promises of conduct in office other than the faithful and impartial performance of the duties of the office;

(ii) make statements that commit or appear to commit the candidate with respect to cases, controversies or issues that are likely to come before the court; or

(iii) knowingly misrepresent the identity, qualifications, present position or other fact concerning the candidate or an opponent;

Commentary

Section 5A(3)(d) prohibits a candidate for judicial office from making statements that appear to commit the candidate regarding cases, controversies or issues likely to come before the court. As a corollary, a candidate should emphasize in any public statement the candidate's duty to uphold the law regardless of the candidate's personal views. See also Section 3B(9), the general rule on public comment by judges. Section 5A(3)(d) 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 and tenure and legislative bodies confirming appointment. See also Rule 8.2 of the Mississippi Rules of Professional Conduct. Phrases such as “tough on crime,” “soft on crime,” “pro-business,” “anti-business,” “pro-life,” “pro-choice,” or in any similar characterizations suggest fixed views on issues which may come before the courts, when applied to the candidate or an opponent, and may be taken as prohibited by Section 5A(3)(d.)

(e) may respond to personal attacks or attacks on the candidate's record as long as the response does not violate Section 5A(3)(d).

B. Candidates Seeking Appointment to Judicial or Other Governmental Office.

(1) Candidates for appointment to judicial office or judges seeking other governmental office shall not solicit or accept funds, personally or through a committee or otherwise, to support their candidacies.

(2) A candidate for appointment to judicial office or a judge seeking other governmental office shall not engage in any political activity to secure the appointment except that:

(a) such persons may:

(i) communicate with the appointing authority, including any selection or nominating commission or other agency designated to screen candidates;

(ii) seek support or endorsement for the appointment from organizations that regularly make recommendations for reappointment or appointment to the office, and from individuals to the extent requested or required by those specified in Section 5B(2)(a); and

(iii) provide to those specified in Sections 5B(2)(a)(i) and 5B(2)(a)(ii) information as to the candidate's qualifications for the office;

(b) a non-judge candidate for appointment to judicial office may, in addition, unless otherwise prohibited by law:

- (i) retain an office in a political organization,**
- (ii) attend political gatherings, and**
- (iii) continue to pay ordinary assessments and ordinary contributions to a political organization or candidate and purchase tickets for political party dinners or other political functions.**

Commentary

Section 5B(2) provides a limited exception to the restrictions imposed by Sections 5A(1) and 5D. Under Section 5B(2), candidates seeking reappointment to the same judicial office or appointment to another judicial office or other governmental office may apply for the appointment and seek appropriate support.

Although under Section 5B(2) non-judge candidates seeking appointment to judicial office are permitted during candidacy to retain office in a political organization, attend political gatherings and pay ordinary dues and assessments, they remain subject to other provisions of this Code during candidacy. See Sections 5B(1), 5B(2)(a), 5E and Application Section.

C. Judges and Candidates Subject to Public Election.

(1) Judges holding an office filled by public election between competing candidates, or candidates for such office, may, only insofar as permitted by law, attend political gatherings, speak to such gatherings in their own behalf while candidates for election or re-election, identify themselves as members of political parties, and contribute to political parties or organizations.

Commentary

Section 5C recognizes the distinction between appropriate political activities by judges and candidates subject to non-partisan election and those subject to partisan elections. The language of Section 5C differs from that of corresponding provisions in the ABA Model Code, Sections C(1)(a)(ii) and (iii), in recognition of Mississippi's non-partisan elections for certain positions. Furthermore, Section 23-15-973 et seq., Miss. Code Ann. (1972) imposes restrictions on candidates and political organizations to assure the non-partisan quality of judicial elections for Supreme Court, Court of Appeals, Chancery Court, Circuit Court and County Court justices and judges. Section 5C(1) permits judges subject to election at any time to be involved in limited political activity. Section 5D, applicable solely to incumbent judges, would otherwise bar this activity. Section

5C(1)(b)(iv) of the ABA Model Code has not been incorporated. Attending or speaking at a political party gathering in the judge's own behalf while a candidate does not constitute alignments or affiliation with the party sponsoring the gathering.

(2) A candidate shall not personally solicit or accept campaign contributions or personally solicit publicly stated support. A candidate may, however, establish committees of responsible persons to conduct campaigns for the candidate through media advertisements, brochures, mailings, candidate forums and other means not prohibited by law. Such committees may solicit and accept reasonable campaign contributions, manage the expenditure of funds for the candidate's campaign and obtain public statements of support for the candidacy. Such committees are not prohibited from soliciting and accepting reasonable campaign contributions and public support from lawyers. A candidate's committees shall not solicit or accept contributions and public support for the candidate's campaign earlier than 60 days before the qualifying deadline or later than 120 days after the last election in which the candidate participates during the election year. A candidate shall not use or permit the use of campaign contributions for the private benefit of the candidate or others.

Commentary

There is legitimate concern about a judge's impartiality when parties whose interests may come before a judge, or the lawyers who represent such parties, are known to have made contributions to the election campaigns of judicial candidates. Section 5C(2) recognizes that in many jurisdictions judicial candidates must raise funds to support their candidacies for election to judicial office. It therefore permits a candidate, other than a candidate for appointment, to establish campaign committees to solicit and accept public support and financial contributions. Though not prohibited, campaign contributions of which a judge has knowledge, made by lawyers or others who appear before the judge, may, by virtue of their size or source, raise questions about a judge's impartiality and be cause for disqualification as provided under Section 3E.

Campaign committees established under Section 5C(2) should manage campaign finances responsibly, avoiding deficits that might necessitate post-election fund-raising, to the extent possible. Such committees must at all times comply with applicable statutory provisions governing their conduct.

Section 5C(2) does not prohibit a candidate from initiating an evaluation by a judicial selection commission or bar association, or, subject to the requirements of this Code, from responding to a request for information from any organization.

(3) Candidates shall instruct their campaign committees at the start of the campaign not to accept campaign contributions for any election that exceed those

limitations placed on contributions by individuals, political action committees and corporations by law.

Commentary

The ABA Model Code of Judicial Conduct is drafted for the insertion of specific limits on contributions for judicial campaigns. As adopted for Mississippi, this section simply makes references to limits established by the Legislature by statutes which limit contributions to \$5,000 in appellate court races, to \$2,500 in chancery, circuit or county court races, and generally limits corporate contributions to \$1,000. See Miss. Code Ann. § 23-15-1021 (2000 Supp.) (judicial races) and Miss. Code Ann. § 97-13-15 (1999 Supp.) (corporate contributions.)

(4) A candidate and the candidate’s committee shall timely comply with all provisions of law requiring the disclosure and reporting of contributions, loans and extensions of credit.

Commentary

Section 5C(4) of the ABA Model Code of Judicial Conduct which makes special provision for reporting campaign contributions is replaced by the foregoing Section 5C(4) which requires compliance with all provisions of law. See Miss. Code Ann. §§ 23-15-805 and 23-15-1023 (2000 Supp.)

The ABA Model Code includes a Section 5C(5) which approves, under some circumstances, a judicial candidate’s name being listed on election materials along with the names of other candidates. This has not been incorporated in the revision of the Mississippi canons.

D. Incumbent Judges. A judge shall not engage in any political activity except as authorized under any other Section of this Code, on behalf of measures to improve the law, the legal system or the administration of justice, or as expressly authorized by law.

Commentary

Neither Section 5D nor any other section of the Code prohibits a judge in the exercise of administrative functions from engaging in planning and other official activities with members of the executive and legislative branches of government. With respect to a judge’s activity on behalf of measures to improve the law, the legal system and the administration of justice, see Commentary to Section 4B and Section 4C(1) and its Commentary.

Sections 5A through 5D limit the participation of judges and candidates in political activities. Section 5D expressly prohibits judges from engaging “in any political activity”

not expressly authorized by the Code of Judicial Conduct or by law. These provisions do not prohibit voting in party primaries and general elections, which is not “political activity” as the phrase is used in Canon 5. The statute governing non-partisan judicial elections, while prohibiting candidates for judicial offices covered by the statute from campaigning or qualifying for the offices based on party affiliation, does not preclude the candidates from voting in party primaries. Miss. Code Ann. § 23-25-973 (Supp. 2000.)

E. Applicability. Canon 5 generally applies to all incumbent judges and judicial candidates. Successful candidates, whether or not incumbents, are subject to judicial discipline for their campaign conduct; unsuccessful candidates who are lawyers are subject to lawyer discipline for their campaign conduct. Lawyers who are candidates for judicial office are subject to Rule 8.2(b) of the Mississippi Rules of Professional Conduct. However, the provisions of Canon 5F below shall not apply to elections for the offices of justice court judge and municipal judge.

F. Special Committee--Proceedings and Authority. In every year in which an election is held for Supreme Court, Court of Appeals, chancery court, circuit court or county court judge in this state and at such other times as the Supreme Court may deem appropriate, a Special Committee on Judicial Election Campaign Intervention ("Special Committee") shall be created whose responsibility shall be to issue advisory opinions and to deal expeditiously with allegations of ethical misconduct in campaigns for judicial office. The committee shall consist of five (5) members. The Chief Justice of the Supreme Court, the Governor, the Lieutenant Governor, the Speaker of the House of Representatives of the Mississippi Legislature and the chair of the Commission on Judicial Performance (Commission) shall each appoint one member. Those appointed by the Chief Justice, the Governor and the chair of the Commission shall be attorneys licensed to practice in the state. No person shall be appointed to serve as a member of a Special Committee for the year in which such person is a candidate for judicial office. Should the Chief Justice expect to be a candidate for judicial office during the year for which a Special Committee is to be appointed the Chief Justice shall declare such expectation, and in such event, the appointment which otherwise would have been made by the Chief Justice shall be made by the next senior justice of the Supreme Court not seeking judicial office in such year. Likewise, should the Governor, Lieutenant Governor, Speaker of the House of Representatives or chair of the Commission expect to seek judicial office during such year, that official shall declare such expectation, and the appointment which otherwise would have been made by such appointing authority shall be made, respectively: by the Lieutenant Governor if the Governor expects to seek such an office; by the President Pro Tem of the Senate if the Lieutenant Governor expects to seek such an office; by the Speaker Pro Tem of the House of Representatives if the Speaker expects to seek such an office; and by the vice-chair of the Commission if the chair expects to seek such an office. Any action taken by the Special Committee shall require a majority vote. Each Special Committee shall be appointed no later March 1 in the year of their service, and it shall continue in existence for ninety (90)

days following such judicial elections or for so long thereafter as is necessary to consider matters submitted to it within such time. The Commission shall provide administrative support to the Special Committee. Should any appointing authority fail to make an appointment, three members shall constitute a sufficient number to conduct the business of the Special Committee. The objective of the Special Committee shall be to alleviate unethical and unfair campaign practices in judicial elections, and to that end, the Special Committee shall have the following authority:

(1) Within ten (10) days of the effective date of this rule or within the ten (10) days after formally announcing and/or officially qualifying for election or re-election to any judicial office in this state, whichever is later, all candidates, including incumbent judges, shall forward written notice of such candidacy, together with an appropriate mailing address and telephone number, to the Commission. Upon receipt of such notice, the Special Committee shall, through the Commission, cause to be distributed to all such candidates by certified mail-return receipt requested copies of the following: Canon 5 of the Code of Judicial Conduct; summaries of any previous opinions issued by the Special Committee, Special Committees organized for prior elections, or the Supreme Court of Mississippi, which relate in any way to campaign conduct and practices; and a form acknowledgment, which each candidate shall promptly return to the Commission and therein certify that the candidate has read and understands the materials forwarded and agrees to be bound by such standards during the course of the campaign. A failure to comply with this section shall constitute a per se violation of this Section authorizing the Committee to immediately publicize such failure to all candidates in such race and to all appropriate media outlets. In the event of a question relating to conduct during a judicial campaign, judicial candidates, their campaign organizations, and all independent persons, committees and organizations are encouraged to seek an opinion from the Special Committee before such conduct occurs.

(2) Opinions as to the propriety of any act or conduct by a judicial candidate, a candidate's campaign organization or an independent person, committee or organization conducting activities which impact on the election and as to the construction or application of Canon 5 may be provided by the Special Committee upon request from any judicial candidate, campaign organization or an independent person, committee or organization. If the Special Committee finds the question of limited significance, it may provide an informal opinion to the questioner. If, however, it finds the questions of sufficient general interest and importance, it may render a formal opinion, in which event it shall cause the opinion to be published in complete or synopsis form. Furthermore, the Special Committee may issue formal opinions on its own motion under such circumstances, as it finds appropriate. The Special Committee may decline to issue an opinion when a majority of the Special Committee members determine that it would be inadvisable to respond to the request and to have so confirmed in writing their reasoning to the person who requested the opinion. All formal opinions of the Special Committee shall be filed with the Supreme Court and

shall be a matter of public record except for the names of the persons involved, which shall be excised. Both formal and informal opinions shall be advisory only; however, the Commission on Judicial Performance, the Supreme Court and all other regulatory and enforcement authorities shall consider reliance by a judicial candidate upon the Special Committee opinion in any disciplinary or enforcement proceeding.

(3) Upon receipt of information facially indicating a violation by a judicial candidate of any provision of Canon 5 during the course of a campaign for judicial office, or indicating actions by an independent person, committee or organization which are contrary to the limitations placed upon candidates by Canon 5, the Commission staff shall immediately forward a copy of the same by e-mail or facsimile, if available, and U.S. mail to the Special Committee members and said Committee shall:

(a) seek, from the informing party and/or the subject of the information, such further information on the allegations as it deems necessary;

(b) conduct such additional investigation as the Committee may deem necessary;

(c) determine whether the allegations warrant speedy intervention and, if so, immediately issue a confidential cease-and-desist request to the candidate and/or organization or independent committee or organization believed to be engaging in unethical and/or unfair campaign practices. If the Committee determines that the unethical and/or unfair campaign practice is of a serious and damaging nature, the Committee may, in its discretion, disregard the issuance of a cease-and-desist request and immediately take action authorized by the provisions of paragraph (3)(d)(i) and (ii), hereafter described. If the allegations of the complaint do not warrant intervention, the Committee shall dismiss the same and so notify the complaining party.

(d) If a cease-and-desist request is disregarded or if the unethical or unfair campaign practices otherwise continue, the Committee is further authorized:

(i) to immediately release to all appropriate media outlets, as well as the reporting party and the person and/or organization against whom the information is submitted, a public statement setting out the violations believed to exist, or, in the case of independent persons, committees or organizations, the actions by an independent person, committee or organization which are contrary to the

limitations placed upon candidates by Canon 5. In the event that the violations or actions have continued after the imposition of the cease and desist request, the media release shall also include a statement that the candidate and/or organization or independent person, committee or organization has failed to honor the cease-and-desist request, and

(ii) to refer the matter to the Commission on Judicial Performance or to any other appropriate regulatory or enforcement authority for such action as may be appropriate under the applicable rules.

(4) All proceedings under this Rule shall be informal and non-adversarial, and the Special Committee shall act on all requests within ten (10) days of receipt, either in person, by facsimile, by U.S. mail, or by telephone. In any event, the Special Committee shall act as soon as possible taking into consideration the exigencies of the circumstances and, as to requests received during the last ten (10) days of the campaign, shall act within thirty-six (36) hours.

(5) Except as herein specifically authorized, the proceedings of the Special Committee shall remain confidential, and in no event shall the Special Committee have the authority to institute disciplinary action against any candidate for judicial office, which power is specifically reserved to the Commission on Judicial Performance under applicable rules.

(6) The Committee shall after conclusion of the election distribute to the Commission on Judicial Performance copies of all information and all proceedings relating thereto.

(7) This Canon 5F shall apply to all candidates for judicial offices of the Supreme Court, Court of Appeals, chancery courts, circuit courts and county courts, be they incumbent judges or not, and to the families and campaign/solicitation committees of all such candidates. Persons who seek to have their name placed on the ballot as candidates for such judicial offices and the judicial candidates' election committee chairpersons, or the chairperson's designee, shall no later than 20 days after the qualifying date for candidates in the year in which they seek to run complete a two-hour course on campaign practices, finance, and ethics sponsored and approved by the Committee. Within ten days of completing the course, candidates shall certify to Committee that they have completed the course and understand fully the requirements of Mississippi law and the Code of Judicial Conduct concerning campaign practices for judicial office. Candidates without opposition are exempt from attending the course.

Commentary

This Section 5F does not appear in the ABA Model Code and was added with the adoption of this Section 5. Similar provisions have been adopted for South Dakota and Georgia. See South Dakota Rules of Commission on Judicial Qualifications, Rule IV and Rules of Georgia Judicial Qualification Commission, Rule 27. In Weaver v. Bonner, 114 F. Supp. 2d 1337 (N.D. Ga. 2000), a constitutional challenge to the Georgia rule was rejected, the court saying the government may “participate in the marketplace of ideas” and “contribute its own views to those of the other speakers. Weaver at 1345, quoting Muir v. Ala. Educ. Television Comm’n, 688 F. 2d 1033, 1037 (5th Cir. 1982). In Weaver, the court also specifically found the procedures adequate to satisfy due process requirement.

Provision is made for the Special Committee to issue opinions to judicial candidates. Ordinarily, absent extraordinary circumstances or statutory authority to the contrary, when a judge or candidate, relying on the opinion of the Special Committee, acts in accordance with the opinion and the opinion is based on a full disclosure of facts and circumstances, the judge or candidate will not be subject to disciplinary or enforcement action or liability.

APPLICATION OF THE CODE OF JUDICIAL CONDUCT

A. Parties Affected. Anyone, whether or not a lawyer, who is an officer of a judicial system and who performs judicial functions, including an officer such as a magistrate, court commissioner, special master or referee, is a judge within the meaning of this Code. All judges shall comply with this Code except as provided below.

B. Part-time Judge. A part time judge shall not be subject to the restrictions and limitations of Sections 4C, 4D(2), 4F, and 4G, except as regards practice in the court in which the part-time judge serves [prohibition on practice of law], and 4H(1).

C. Special Judge. A special judge shall not, except while serving as a judge, be subject to the restrictions and limitations of Sections 4A. A special judge shall not, at any time be subject to the restrictions and limitations of Sections, 4B, 4D, 4E, 4F, 4G, and 4H. A special judge, except while serving as a special judge or while a candidate for judicial office, shall not be subject to the restrictions of Canon 5.

D. Magistrates, court commissioners, special masters and referees shall not at any time be subject to the restrictions and limitations of Sections 4A, 4B, 4C(1), 4C(2) 4D, 4E, 4F, 4G, and 4H. Magistrates, court commissioners, special masters and referees, except while a candidate for judicial office, shall not be subject to the restrictions of Canon 5.

E. Time for Compliance. A person to whom this Code becomes applicable shall comply immediately with all provisions of this Code except Sections 4D(1), 4D(2) and 4E and shall comply with those Sections as soon as reasonably possible and shall do so in any event within the period of one year.

F. Effective Date. The separate provisions of this Code shall govern acts, events and conduct of those subject to those provisions from and after the effective date of the adoption of each such provision. Acts, events and conduct which occur prior to the adoption of each provision shall be governed by the provisions of the Code effective at the time of such acts, events and conduct.

Commentary

The ABA Model Code of Judicial Conduct provides for several non-standard categories of judges who perform duties on a limited basis, which differ from those recognized for Mississippi by this Applications Section. If serving as a fiduciary when selected as judge, a new judge may, notwithstanding the prohibitions in Section 4E, continue to serve as a fiduciary but only for that period of time necessary to avoid serious adverse consequences to the beneficiary of the fiduciary relationship and in no event longer than one year. Similarly, if engaged at the time of judicial selection in a business activity, a new judge may, notwithstanding the prohibitions in Section 4D(2), continue in that activity for a reasonable period but in no event longer than one year.

EXHIBIT “B” TO ORDER

AMENDMENT TO MISSISSIPPI RULES OF CIVIL PROCEDURE

RULE 16A. MOTIONS FOR RECUSAL OF JUDGES

Motions seeking the recusal of judges shall be timely filed with the trial judge and shall be governed by procedures set forth in the Uniform Rules of Circuit and County Court Practice and the Uniform Rules of Chancery Court Practice.

[Adopted, April 4, 2002.]

Comment

Motions for recusal should be timely filed and should not be used for purposes of delay. Specific procedures for presentation and consideration of motions seeking the recusal of judges are set forth in URCCC 1.15 and Unif. Chanc. R. 1.11. See also, M.R.A.P. 48B concerning review of the trial judges’ denial of motions to recuse under M.R.A.P. 21.

[Adopted, April 4, 2002.]

EXHIBIT “C” TO ORDER

**RULE 1.15 TO THE UNIFORM RULES OF CIRCUIT AND COUNTY COURT
PRACTICE
AND
RULE 1.11 OF
UNIFORM CHANCERY COURT RULES**

UNIFORM RULES OF CIRCUIT AND COUNTY COURT PRACTICE

RULE 1.15 MOTIONS FOR RECUSAL OF JUDGES

Any party may move for the recusal of a judge of the circuit or county court if it appears that the judge’s impartiality might be questioned by a reasonable person knowing all the circumstances, or for other grounds provided in the Code of Judicial Conduct or otherwise as provided by law. A motion seeking recusal shall be filed with an affidavit of the party or the party’s attorney setting forth the factual basis underlying the asserted grounds for recusal and declaring that the motion is filed in good faith and that the affiant truly believes the facts underlying the grounds stated to be true. Such motion shall, in the first instance, be filed with the judge who is the subject of the motion within 30 days following notification to the parties of the name of the judge assigned to the case; or, if it is based upon facts which could not reasonably have been known to the filing party within such time, it shall be filed within 30 days after the filing party could reasonably discover the facts underlying the grounds asserted. The subject judge shall consider and rule on the motion within 30 days of the filing of the motion, with hearing if necessary. If a hearing is held, it shall be on the record in open court. The denial of a motion to recuse is subject to review by the Supreme Court on motion of the party filing the motion as provided in M.R.A.P. 48B.

[Adopted April 4, 2002.]

RULES OF UNIFORM CHANCERY COURT RULES

RULE 1.11 MOTIONS FOR RECUSAL OF JUDGES

Any party may move for the recusal of a judge of the chancery court if it appears that the judge’s impartiality might be questioned by a reasonable person knowing all the circumstances, or for other grounds provided in the Code of Judicial Conduct or otherwise as provided by law. A motion seeking recusal shall be filed with an affidavit of the party or the

party's attorney setting forth the factual basis underlying the asserted grounds for recusal and declaring that the motion is filed in good faith and that the affiant truly believes the facts underlying the grounds stated to be true. Such motion shall, in the first instance, be filed with the judge who is the subject of the motion within 30 days following notification to the parties of the name of the judge assigned to the case; or, if it is based upon facts which could not reasonably have been known to the filing party within such time, it shall be filed within 30 days after the filing party could reasonably discover the facts underlying the grounds asserted. The subject judge shall consider and rule on the motion within 30 days of the filing of the motion, with hearing if necessary. If a hearing is held, it shall be on the record in open court. The denial of a motion to recuse is subject to review by the Supreme Court on motion of the party filing the motion as provided in M.R.A.P. 48B.

[Adopted April 4, 2002.]

EXHIBIT “D” TO ORDER

AMENDMENT TO MISSISSIPPI RULES OF APPELLATE PROCEDURE

RULE 48B. PROCEEDINGS ON MOTION FOR DISQUALIFICATION OF TRIAL JUDGE.

If a judge of the circuit, chancery or county court shall deny a motion seeking the trial judge’s recusal, or if within 30 days following the filing of the motion for recusal the judge has not ruled, the filing party may within 14 days following the judge’s ruling, or 14 days following the expiration of the 30 days allowed for ruling, seek review of the judge’s action by the Supreme Court. A true copy of any order entered by the subject judge on the question of recusal and transcript of any hearing thereon shall be submitted with the petition in the Supreme Court. The Supreme Court will not order recusal unless the decision of the trial judge is found to be an abuse of discretion. Otherwise, procedure in the Supreme Court shall be in accordance with M.R.A.P. 21. Appointment of another judge to hear the case shall be made as otherwise provided by law.

[Adopted April 4, 2002.]

EXHIBIT ‘E’ TO ORDER

AMENDMENT TO RULE 6A TO THE RULES OF THE MISSISSIPPI COMMISSION ON JUDICIAL PERFORMANCE

RULE 6. PROBABLE CAUSE

A. Grounds for Discipline and Retirement. The grounds for discipline and retirement, as prescribed by the Constitution, are:

(1) Actual conviction of a felony in a court other than a court of the State of Mississippi¹;

(2) Willful misconduct in office;

(3) Willful and persistent failure to perform his duties;

(4) Habitual intemperance in the use of alcohol or other drugs;

(5) Conduct prejudicial to the administration of justice which brings the judicial office into disrepute;

(6) Physical or mental disability seriously interfering with the performance of his duties, which disability is or is likely to become of a permanent character;

~~In addition, the Commission may consider:~~

~~(7) (1) Any willful violation of law constituting a serious misdemeanor or felony;~~

~~(8) (2) Any violation of the code of judicial conduct as adopted by the Mississippi Conference of Judges or by the Mississippi Justice Court Officers Association; and~~

~~(9) (3) Any violation of the rules of professional conduct code of professional responsibility as adopted by the Supreme Court.~~

B. Disposition. The Commission shall dispose of the case in one (1) of the following ways:

¹Under Section 175, Mississippi Constitution of 1890, and Section 25-5-1, Mississippi Code of 1972, public officers convicted of a crime in this state shall be removed from office. Section 25-5-1 was amended in 1979 to provide for removal upon conviction of certain crimes in federal courts and the courts of other states as well as in state courts.

(1) If it finds that there has been no misconduct, the case shall be dismissed.

(2) If it finds that there has been misconduct for which a private admonishment constitutes adequate discipline, it shall issue the admonishment. The complainant shall be notified that the matter has been resolved. The Commission shall notify the Chief Justice of the Supreme Court of its action.

(3) The Commission may enter into a memorandum of understanding with the judge concerning his future conduct or submission to professional treatment or counseling.

(4) If it is determined that probable cause exists to require a formal hearing, it shall so notify the judge by service of a notice and a formal complaint.

C. Formal Complaint. The formal complaint shall be entitled "BEFORE THE MISSISSIPPI COMMISSION ON JUDICIAL PERFORMANCE, INQUIRY CONCERNING A JUDGE, NO. ____." The formal complaint shall identify any complainant and shall specify in ordinary and concise language the charges against the judge. The notice shall advise the judge of his right to file a written, sworn answer to the charges against him within thirty (30) days after service of the notice upon him. The notice and formal complaint shall be served upon the judge by personal service by a member of the Commission, the executive director, or by any adult person designated by the Commission, or by certified or registered mail addressed to the judge at his last known residence of record.

D. Answer. Within thirty (30) days after service of the notice and the formal complaint, the judge may file with the Commission a sworn answer or motions. The formal complaint and answer shall constitute the pleadings. Thereafter, no further motions or pleadings may be filed unless the Commission shall first grant leave.

[Amended effective June 29, 1995; amended April 4, 2002.]

IN THE SUPREME COURT OF MISSISSIPPI

DIAZ, JUSTICE, DISSENTING IN PART:

I concur in the adoption of the Revised Code of Judicial Conduct. An independent, fair and competent judiciary is fundamental to the rule of law and serves as the cornerstone of our system of government. The Code of Judicial Conduct fosters public confidence in our judicial process. Therefore, I concur in the adoption of the Revised Code of Judicial Conduct. However, I do not join in the adoption of Canon 3E(2) and the definition of "Major Donor" in the terminology section of the Revised Code. Rather than solving any problems, these additional sections only serve to emphasize problems that can be adequately resolved through other canons.

First, I oppose the definition of "Major Donor" because it is excessively broad. Second, I oppose Section 3E(2) because of the widespread and unforeseeable consequences that this section, coupled with the definition of "Major Donor" will have on litigation and trials across this State.

An intellectually honest definition of major donor would only include the individual who donates. The definition as adopted is unreasonably broad. An individual donor does not necessarily have control or influence over his or her family members, employees or spouses of employees as these persons are individuals who have their own rights. As to the inclusion of employees of major donors and spouses of employees of major donors, those individuals who are employed in larger companies can be so removed from the major donor that it is unrealistic to believe that the major donor may have any control or influence over the employee or the employee's spouse.

Furthermore, to define an entity major donor to include the employees, shareholders, partner members, and the spouses of any of these individuals who belong to these entities is also unrealistic. The number of people to be included as major donors, due to the larger size of many of our clubs,

organizations, or companies is overreaching. The amount of donations from such entities could easily reach the major donor amount, whether thousands of individuals who belong to the entity donate small amounts or whether the larger portion of those donations pooled from members are only due to a few individuals within the entity, while others do not donate anything and have little or no regard for political influence.

Further, the adopted amount that makes an individual or entity a major donor (\$2000 for appellate court candidates and \$1000 for other state court candidates) interferes with Miss. Code Ann. § 23-15-2-1021. This statute allows each *individual* to contribute up to \$5000 for appellate court candidates and \$2500 for other state court candidates.

Section 3E(2) of the revised Code of Judicial Conduct should likewise be removed. This addition to the code invites attorneys to overuse the motion for recusal. This unnecessary addition to the Code only encourages attorneys to file an excessive number of motions for recusal. If the attorney does not file a motion for recusal, whenever the client later discovers that the opposing parties' employer contributed to the judges campaign, the client may bring a malpractice claim or perhaps a claim for ineffective assistance of counsel. With the addition of section 3E(2) and the definition of "Major Donor", we are opening the door to an increased amount of litigation and creating another means to further delay the judicial process. The adoption of this section encourages attorney's to move for recusal for tactical purposes or to merely protect themselves whenever it is discovered that a party opponent, although far removed from the source of the donation, nevertheless, has some connection to the source.

Under the adopted definition, it may not always be apparent that an opposing party has some connection to a major donor. In fact, with the inclusion of employees, the employee who is a party to a lawsuit may on many occasions be unaware that his or her employer is a major donor. In this

respect, the relevancy of including employees of major donors can be quite illogical with regard to the issues of impartiality or favoritism. Additionally, problems are presented for attorneys who must decide when a party should be included under the definition of major donor. Do temporary employees count?

The inclusion of goods and services to the definition of major donor leads to the difficulty of determining when those goods and services fall under the major donor status. What kinds of goods and services count towards contributions? How are these goods and services measured in terms of their monetary value so that an attorney or a judge can determine whether an individual or entity is a major donor?

The issue of when a judge should be recused is adequately addressed under the existing Canons. The Conferences of Chancery and Circuit Court Judges takes the same position with regard objecting to the overly broad definition of Major Donor and that definition's effect on the recusal of judges in Mississippi. These unnecessary additions only result in unforeseen complications such as increased delays in trials across the state, increased pending appeals on motions for recusals, and stays of trial court proceedings. Furthermore, the additions only serve to cause the public additional reason to question their confidence in the judicial system in Mississippi. For these reasons, Canon 3 Section E(2) should be removed from the Code and the definition should be either revised or deleted.

I am in full support of and concur in all other sections of the Revised Code of Judicial Conduct.

GRAVES, J., JOINS THIS OPINION.

IN THE SUPREME COURT OF MISSISSIPPI

GRAVES, JUSTICE, DISSENTING IN PART:

I am compelled to voice my profound opposition to the Amendment to Canon 3 which reads as follows:

"Recusal of Judges from Lawsuits Involving Major Donors. A party may file a motion to recuse a judge based on the fact that an opposing party or counsel of record for that party is a major donor to the election campaign of such judge. Such motions will be filed, considered and subject to appellate review as provided for other motions for recusal."

Such a rule is infeasible, unfair and unnecessary. While I deeply respect and admire the kind of leadership which led to the current changes to the Code of Judicial Conduct, my opposition to the above referenced change has existed for several years. As a member of the American Bar Association (ABA) National Conference of State Trial Judges, I strongly opposed this measure prior to its adoption as a part of the ABA's Model Code of Judicial Conduct in 1999. There are some forty-two (42) states which elect judges. Interestingly, not a single state has seen fit to adopt the ABA's Model Rule regarding recusal based on campaign contributions.

Alabama adopted legislation, effective 1996, granting parties the right to require recusal when the judges or justices assigned to the cases have received significant campaign contributions from opposing parties or their lawyers. No other state has adopted any such legislation. No other Supreme Court has adopted a rule such as the one adopted herein by the Majority.

This provision will only serve as an invitation to inject politics into a system which should be, as much as is possible, free from politics. Advocates, in their ethical zeal to represent a client, may feel compelled to file recusal motions in an effort to shop for judges. It does not enhance the perception that there is a fair and independent judiciary when parties are encouraged to file motions for recusals wherein they allege that the Judge might be biased. The mere existence of such a rule lends credence to the perception that the judiciary is inclined to partiality based on campaign contributions. In light of that perception, it is understandable that both the Conference of Chancery Judges and the Conference of Circuit Judges oppose this Amendment. The Magnolia Bar Association submitted a very cogent analysis which delineated its well-reasoned opposition to this amendment. Nevertheless, the Majority chose to adopt this Amendment.

Numerous problems, motions, and appeals will surely be generated by the application of this new Amendment. Justice Diaz ably sets out some of those problems in his dissent, with which I concur. Therefore, I will try not to be redundant. However, this rule is simply unfair inasmuch it imposes a "limitation" on contributions which is different from and lower than the one already imposed by the legislature. In fact, the Legislature adopted Mississippi Code § 23-15-1021 in 1999. Hence, the legislative branch of government has recently, comprehensively, and appropriately addressed the issue of judicial campaign contributions. It is unfair and unnecessary for this Court to adopt an Amendment which undermines and arguably conflicts with a piece of recent legislation. Therefore, I respectfully dissent to the adoption of Amendment 3E (2).