



MATERIALS

JUDICIAL SELECTION, ETHICS, AND DISCIPLINE

**Belgorod, Russia
November 16-18, 1998**

NATIONAL JUDICIAL COLLEGE

**with the participation of
Russia Collegia on Judicial Qualifications**

_____ **Sponsored by United States Agency for International Development (USAID)** _____

PN-ACD-885

SUPREME COLLEGIA ON JUDICIAL QUALIFICATIONS WORKSHOP

JUDICIAL SELECTION, ETHICS, AND DISCIPLINE

**RUSSIAN-AMERICAN JUDICIAL PARTNERSHIP
(RAJP)**

**Belgorod, Russia
November 16 - November 18, 1998**

Sponsored by USAID

**Day 1
Monday, November 16
JUDICIAL SELECTION**

- 8 30 - 9 00 Registration
- 9 00 - 10 00 **Welcomes and Opening Remarks**
Judge Anatoly Zherebtsov, Chair of the Supreme Collegia on Judicial Qualification
Judge Betty Barteau, Chief of Party, RAJP
Evgeny Savchenko, Governor of Belgorod Oblast
Judge Ivan Zazdravnykh, Chair of Belgorod Oblast Court
Judge Antonina Koptseva, Chair of Belgorod Oblast Commercial Court
- 10 00 - 11 30 **Objectives of Selection Methods**
Presentation by the Honorable Sam J Ervin, III, Circuit Judge of the Court of Appeals for the Fourth Circuit
This presentation will address the methods of selecting judges in the US
- 11 30 - 11 45 Coffee Break
- 11 45 - 13 00 **State Systems for the Selection of Judges**
Presentation by Marla Greenstem, Executive Director of the Alaska Commission of Judicial Conduct
This session will focus on regional systems for the selection of judges in the United States
- 13 00 - 14 00 Lunch
- 14 00 - 15 30 **Selection of Judges in the Russian Federation**
Presentation by Judge Valentin Kuznetsov, Supreme Court of the Russian Federation
This presentation will address the judicial selection process in the RF

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- 15 30 - 16 00 Coffee Break
- 16 00 - 17 00 **Selection of Judges in the Subjects of the Russian Federation**
Presentation by Judge Galina Fedorenko, Deputy Chair of the Yaroslavy Oblast Court and Member of the Supreme Judicial Qualification Collegia of the Russian Federation
- 17 00 - 18 00 **Panel Discussion led by V Robert Payant, President Emeritus of the National Judicial College** Participants will explore the attributes of the highly effective judge and discuss the application process
- 18 00 Adjourn

Day 2
Tuesday, November 17
JUDICIAL ETHICS

- 9 00 - 10 30 **Ethical Training in the Profession the Special Challenge of the Judiciary**
Presentation by V Robert Payant, President Emeritus of the National Judicial College
 This session will focus on the development of the US Code of Judicial Ethics
 The presenter will also discuss standards of behavior, advisory opinions, and the dissemination of information
- 10 30 - 10 45 Coffee Break
- 10 45 - 12 00 **Judicial Conduct**
Presentation by the Honorable Michael Hogan, Chief Judge of the United States Federal District Court, Portland, Oregon
 This presentation will focus on judicial conduct on and off the bench Issues related to judicial temperament, physical and mental concerns, and conflict of interest will be covered Non-judicial activities of judges, e g , membership in political parties, judicial associations, and the ethical and professional scope of such activities will also be discussed
- 12 00 - 13 00 Lunch
- 13 00 - 14 30 **Judicial Ethics in the Russian Federation**
Presentation by Judge Natalya Senatorova, Chair of the Commercial Court of the Republic of Khakasia and Valentin Eremenko, Judge of the Belgorod Oblast and Chair of the Judicial Qualification Collegia of the Belgorod Oblast
 This presentation will address the regulation of judicial conduct, the types of cases, and the main ethical issues in the Russian Federation
- 14 30 - 14 45 Coffee Break

14 45 - 17 00 **Panel Discussion**
Participants will discuss hypothetical situations to gain a better understanding a judicial ethics. Small groups will develop responses to the hypothetical situations presented and report back to the full group.

17 00 Adjourn

Day 3
Wednesday, November 18
JUDICIAL DISCIPLINE

9 00 - 10 30 **Types of Disciplinary Procedure**
Presentation by the Honorable Sam J. Ervin, III, Circuit Judge of the Court of Appeals for the Fourth Circuit
This session will focus on the types of procedure for disciplining judges, including a discussion of sanctions and enforcement. Issues related to confidentiality, informal resolution, and the dissemination of decisions will also be addressed.

10 30 - 10 45 Coffee Break

10 45 - 12 00 **State Disciplinary Mechanisms**
Presentation by Marla Greenstem, Executive Director of the Alaska Commission of Judicial Conduct
This presentation will address issues related to state judicial discipline commissions, confidentiality, and criminal convictions.

12 00 - 13 00 Lunch

13 00 - 14 30 **Judicial Discipline in the Russian Federation**
Presentation by Judge Victor Terekhina, Chair of the Penzenskovo Oblast Court and Member of the Supreme Judicial Qualification Collegia of the Russian Federation
This session will focus on judicial discipline and enforcement in the Russian Federation.

14 30 - 14 45 Coffee Break

14 45 - 16 00 **Panel Discussion: Judicial Discipline**

16 00 **Closing Remarks**

JUDGE BETTY BARTEAU

After receiving a law degree from Indiana University School of Law - Indianapolis, Judge Barteau was in private practice for 10 years. During this time she also served as a deputy prosecutor, a defense attorney, county attorney and as a city court judge. She was elected to the Marion Superior Court in Indianapolis, Indiana in 1974 where she served for 16 years. In 1991 she joined the Indiana Court of Appeals, leaving that court in 1998 to become the Chief of the Russian American Judicial Partnership, a USAID funded project of the National Judicial College and Chemonics International based in Moscow, Russia. This project is providing and developing judicial education and training for the Commercial and General Jurisdiction courts of Russia, as well as working with the courts in the development of technical support systems and legal publications.

Judge Barteau received her LLM in the Judicial Process from the University of Virginia School of Law in 1994. She is past president of the Association of Family and Conciliation Courts and was a founding member of the National Association of Women Judges. She has received many awards including being named Indiana Women of the Year in 1978 for her contribution in furthering equality for women in the business and professional fields.

Judge Barteau is a 1975 graduate of the National Judicial College, has been on the faculty since 1978, and was the 1993 recipient of the Griswold Award for Excellence in Teaching. She was a charter member of the NJC Faculty Council and served as its chair for the year 1990.

JUDGE V ROBERT PAYANT, PRESIDENT EMERITUS

Judge Payant became NJC's seventh dean and chief executive officer on July 1, 1990, and in 1994 was named president. He served twenty years as a Michigan trial judge, a circuit court judge from January 1978 to December 31, 1982, a district court judge (1969-77), and a probate and juvenile court judge (1963-68). Earlier, he was in the private practice of law and was the city attorney of Iron Mountain, Michigan. Judge Payant earned his B.A. from Marquette University and his J.D. from Marquette University Law School. He has lectured at numerous state and regional seminars throughout the United States and overseas. Judge Payant has been a faculty member at the National Judicial College since 1973 and was associate dean from January 1983 until July 1985. From 1985 until 1988 he was Michigan's state court administrator.

DAVID M VAUGHN

Mr. Vaughn currently serves as Deputy Chief of Party in Moscow for the Russian-American Judicial Partnership project with is assisting the judicial leadership of Russia to implement judicial reforms. Prior to this assignment, he served in Almaty, Kazakhstan, as a volunteer liaison for the American Bar Association Central and East European Law Initiative, where he ran two fully-staffed field offices and was responsible for a variety of legal reform programs aimed at judges and lawyers. While in Kazakhstan, he also worked closely with the Parliament on improving the quality of legislation. David Vaughn obtained a B.A. in Russian language and an M.A. in political science from the University of Vermont in Burlington, and a J.D. concentrating in international law for the American University in Washington, D.C. He received Russian language training at the Pushkin Institute of the Russian Language in Moscow and the University of Khar'kov in Ukraine. He has over six years experience in international, constitutional, and criminal law, and has a background in international affairs and human rights issues.

SAMUEL JAMES ERVIN, III

EARLY YEARS. Born in Morganton, Burke County, March 2, 1926, to Samuel James and Margaret Bruce (Bell) Ervin, Jr

EDUCATION: Morganton Public Schools, Morganton High School, 1943, Davidson College, 1948, B S , Harvard Law School, 1951, LL B

PROFESSIONAL BACKGROUND: Appointed to U S Court of Appeals for the Fourth Circuit on May 23, 1980, became Chief Judge on February 14, 1989 and continued in that capacity until February 15, 1996, resumed status as Active Circuit Judge on that date, Judge, N C Superior Court, 25th District, 1967-80, legal practice, 1952-67, Solicitor, Burke County Criminal Court, 1954-56

POLITICAL ACTIVITIES· Member, N C House of Representatives, 1965-67

MILITARY SERVICE: Served, U S Army, 1944-46, 1951-52 (1st Lieutenant), Infantry, Judge Advocate General's Corps Served, N C Army National Guard, 1955-69 (Colonel)

HONORS: Young Man of the Year and Distinguished Service Award, Morganton Chamber of Commerce, 1954

RELIGIOUS ACTIVITIES Member, First Presbyterian Church, Elder; Deacon, Sunday School teacher

FAMILY: Married, Elisabeth Crawford, October 25, 1952
Children Samuel James, IV, Elisabeth Fore, Robert Crawford and Margaret Bell

HONORABLE MICHAEL R. HOGAN
Chief United States District Judge
District of Oregon
211 East 7th Street
Eugene, Oregon 97401
(541) 465-6773

Judge Hogan was born in Oregon City, Oregon, on September 24, 1946. He graduated from Myrtle Point Union High School in 1964, received a Bachelor of Arts degree from the University of Oregon Honors College in 1968, and a Doctorate of Jurisprudence degree from the Georgetown University Law Center in 1971.

Judge Hogan was admitted to the Oregon State Bar, the United States District Court for the District of Oregon, and the Court of Appeals for the Ninth Circuit in 1971.

After graduating from law school, Judge Hogan served as a law clerk to then Chief Judge Robert C. Belloni of the United States District Court for the District of Oregon. He next was employed as a trial associate for the law firm Miller, Anderson, Nash, Yerke and Wiener in Portland, Oregon.

Judge Hogan was appointed part-time Magistrate and part-time Bankruptcy Judge in 1973 and full-time United States Magistrate Judge in 1979. He was appointed to the position of United States District Judge by President Bush in 1991. Judge Hogan assumed the responsibilities of Chief Judge for the District of Oregon in 1995.

Judge Hogan is currently a member of the American Bar Association, the Oregon State Bar Association, the Lane County Bar Association, the Federal Judges Association, the Roland K. Rodman Inn of Court, and is a senior fellow of the American Leadership Forum. He served as the national president of the United States Magistrate Judges Association from 1980 to 1981, and the chairman of the Board of Visitors for the University of Oregon School of Law from 1993 to 1996. Other professional involvements include committees for the Judicial Conference of the United States, the Administrative Office of the United States Courts, Oregon Federal/State Judicial Council, the Ninth Circuit Judicial Conference, the Federal Judicial Center, the National Institute of Trial Advocacy, the National Judicial College, and the Federal Bar Association.

He is well known for bringing "*the gentle touch*" to successful settlement.

conferences in civil cases, receiving the Individual Award for Leadership in the Promotion of Dispute Resolution from the Center for Dispute Resolution of the Willamette University College of Law in 1988 Judge Hogan is the author of 'Judicial Settlement Conferences Empowering the Parties to Decide Through Negotiations' in the summer issue of the WILLAMETTE LAW REVIEW in 1991 Other publications include "Drawing the Line on Civil Rights Fees" published in the American Bar Association publication of THE BRIEF in the winter of 1988

Judge Hogan's community activities include Campus Life of Eugene, Western Conservative Baptist Seminary, Rotary, Alvord-Taylor Houses, Student Leadership Forum, Calvary Baptist Church, community prayer breakfasts, high school and college commencement speaker, and other association guest speaker

Judge Hogan is happily married and has three charming children

MARLA N GREENSTEIN

EDUCATION

Loyola University School of Law, Chicago, Illinois, J D received June 1982

International Graduate Summer School, Exeter College, University of Oxford, England
Certificate received August 1978, Studies in Modern British Political Theory

Georgetown University, Washington, D C , A B received May 1979
Majors in American Government and Philosophy

LEGAL EXPERIENCE

February 1989 to present ALASKA COMMISSION ON JUDICIAL CONDUCT, Anchorage, Alaska
Position *Executive Director*

Nature of work Chief administrative officer and attorney for the commission Investigate, screen, and review allegations of ethical misconduct against state court judges Prepare and present the commission's annual operating budget Present the commission's budget and legislation to the state legislature Employ and supervise commission staff and special counsel Maintain statistics concerning the commission's complaint processing Recommend disciplinary action to the commission and assist in improving commission procedures and policies Develop and conduct educational programs for judges and court personnel Assist Court Rules Committees as requested Liaison to the community and respond to all media inquiries

December 1985 to September 1989 ALASKA JUDICIAL COUNCIL, Anchorage, Alaska
Position *Senior Staff Attorney, Staff Attorney*

Nature of work Research planning and implementation relating to administration of justice issues and judicial evaluation, drafting procedures and recommendations legal research and writing, grant writing, legislative testimony, staff to committees, public speaking

August 1982 to November 1985 AMERICAN JUDICATURE SOCIETY, Chicago, Illinois
Position *Senior Staff Attorney, Staff Attorney*

Nature of work Program development and implementation, drafting of model procedures, provisions and forms, legal research and writing, public speaking, legislative testimony, grant writing All work related to administration of justice issues concentrating on judicial evaluation, selection, and discipline

October 1985 COMMITTEE ON COURTS AND JUSTICE, Chicago, Illinois

Position *Consultant*

Nature of work Informational assistance to lobby for merit selection of judges in Illinois

May 1981 to August 1982 AMERICAN JUDICATURE SOCIETY, Chicago, Illinois

Position *Research Assistant*

Nature of work Writing for the Judicial Discipline and Disability Digest and legal research relating to judicial ethics

January 1981 to May 1981 THE LAKE MICHIGAN FEDERATION, Chicago, Illinois
Position *Research Assistant*
Nature of work Legal research on environmental issues

Spring of 1976 and Fall of 1977 U S HOUSE OF REPRESENTATIVES OFFICE OF
CONGRESSMAN SIDNEY R YATES, Washington, D C Position *Congressional Intern*
Nature of work Legislative research and constituent casework

PROFESSIONAL ACTIVITIES

1990, '92, '94, '96, '98 NATIONAL COLLEGE ON JUDICIAL CONDUCT AND
ETHICS, Faculty member

1992-1996 PACIFIC JUDICIAL COUNCIL CONFERENCE (1992 Agana, Guam/1996
Saipan) developed and presented first judicial ethics program for the
judicial officers of the U S Trust Territories Presented follow-up program in 1996 with a program tailored to
particular ethical concerns of small communities with conflicting cultural demands

1991 to present AMERICAN JUDICATURE SOCIETY BOARD OF DIRECTORS (1991-
92, 1993-5, 1995-97, 1997- present Executive Committee

1989 to present ASSOCIATION OF JUDICIAL DISCIPLINARY COUNSEL (August 1991
reelected to 3 year term as member of Board of Directors, reelected 1994, serving as Secretary
1994 - present)

1989 ALASKA SUPREME COURT MEDIATION TASK FORCE

1982 to present AMERICAN BAR ASSOCIATION Committees Gavel Awards Screening
and Standing Committees (1982-91, 92-present), Judicial Administration Division Lawyers
Conference Committee on Judicial Performance and Conduct (Co-Chair 1991-95),
Secretary/Vice-Chair (1994), Chair-Elect Lawyers Conference (1995-96), Chair Lawyers
Conference (1996-97), Delegate to Judicial Division Council (1997-present)

BAR ADMISSIONS

State of Illinois (Nov 1982), U S District Court for the Northern District of Illinois (Dec
1982), U S Court of Appeals for the Seventh Circuit (Jan 1983), State of Alaska (Aug 1997)

COMMUNITY SERVICE

November 1987 to present Congregation Beth Shalom Anchorage, Alaska, Member Board of
Trustees and various offices, religious school teacher

October 1987 to present Georgetown Alumni Admissions Program, Washington, D C
Interview and evaluate student applicants for admission

July 1986 to June 1988 Conflict Resolution Center, Anchorage, Alaska, Member Board of
Directors

RECOGNITION AND HONORS

1987 to present Who's Who in American Law

1990 to present Who's Who Emerging Leaders

1978 Elected member of Pi Sigma Alpha
National political science honor

LEGAL PUBLICATIONS

Massachusetts School of Law The Long Term View, Judicial Discipline in Alaska Summer 1997

American Bar Association, Judicial Administration Division, Lawyers' Letter, " New Book Examines Judicial Conduct and Ethics A Review of Shaman, Lubet, and Alfini's Judicial Conduct and Ethics (Michie Company, 1990) " December 1990

Alaska Judicial Council News Cameras in the Alaska Courts Assessing the Impact January 1988

American Bar Association We the People Community Forums on the Constitution, "Should Judges be Subject to Recall?" April 1987

American Judicature Society Model Judicial Selection Provisions 1985

American Judicature Society Handbook for Judicial Nominating Commissioners January 1984 (updated 1985)

Lake Michigan Federation Lake Michigan Papers, "Attacking Sources of Nonpoint Pollution in the Rivers of Southwestern Michigan An Environmentalist's Guide to Legal Remedies " June 1981



PERCY R. LUNEY JR. *President*

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JUSTICE TOM C. CLARK 1899 1977

Chair of the Founders

JUSTICE FLORENCE K. MURRAY

Chair Emerita

WALTER H. BECKHAM, JR. ESQ

Chair Emeritus

JUDGE B. B. SCHRAUB

Chair Emeritus

JUDICIAL SELECTION AND JUDICIAL DISCIPLINE IN THE UNITED STATES FEDERAL COURT SYSTEM

Objective

- * the participants will have an understanding of the selection discipline methods in the United States Federal Court system as well as reasons for the creation of these rules

The participants will study the following

- I WHAT ARE OBJECTIVES OF THE FEDERAL JUDICIAL METHOD?
- II HOW FEDERAL JUDGES ARE SELECTED?
- III JUDICIAL DISCIPLINE ON THE FEDERAL BENCH

BEST AVAILABLE COPY

JUDICIAL SELECTION AND JUDICIAL DISCIPLINE IN THE UNITED STATES FEDERAL COURT SYSTEM

Judicial Conduct and Qualifications Seminar Oryol, Russia Nov 9-12, 1998

Honorable Sam J Ervin III
United States Court of Appeals for the Fourth Circuit

I Objectives of the Federal Judicial Method

A Introduction The Federal Judiciary, Past and Present

- 1 In the Judiciary Act of 1789, the Congress authorized 19 federal judgeships - six seats on the U S Supreme Court and 13 district judgeships
- 2 Today, over 800 judges serve in the federal judiciary, and the significance of the judiciary in the political, economic, and cultural life of the United States has expanded far beyond the limited role our forefathers envisioned

B Judicial Independence

- 1 Judicial independence is a fundamental tenet of the U S legal system, and a necessary precursor to the rule of law
- 2 Judicial independence is preserved by, *inter alia* fixed tenure, fixed and adequate compensation, minimum qualifications, and limited civil immunity (Note that in many U S states, judges lack permanent tenure and serve at the will of the electorate)
 - a Fixed Tenure
 - (1) Since 1789, federal judges in the U S have had life tenure (Art III, Sec 1 of the Constitution provides that federal judges shall "hold their Offices during good Behavior") The exception to this rule is an Article I judge (whom the executive may remove for cause)
 - (2) Drafters of the U S Constitution felt particularly aggrieved by the frequency with which the Crown removed colonial judges

at its pleasure, therefore, the "good behavior" standard was adopted to shield federal judges from political pressure and the threat of removal for an unpopular decision

- (3) Life tenure also guarantees that no transient political philosophy will come to dominate the courts. Under a life tenure scheme, the composition of the political branches changes far more frequently than that of the federal bench, reducing the opportunity for politicians to "pack" the courts.
- (4) (Parenthetically, life tenure sometimes creates appellate courts whose members have sharply divergent political and philosophical outlooks, decreasing the likelihood of unanimity in appellate rulings.)

b Fixed and Adequate Compensation

- (1) In the U S legal system, judicial compensation is fixed by statute, to prevent the legislature or the executive from rewarding or punishing federal judges by manipulating judicial salaries.
- (2) Salaries are set at levels sufficient to allow judges to live in reasonable comfort without resort to inappropriate sources of outside income, and sufficient to insulate judges from the temptation of bribery or kickbacks.
- (3) Legal commentators also recommend that salaries be sufficient to attract high-caliber candidates from the more lucrative private sector, and to preserve the institutional prestige of a federal judicial appointment.

c Educational Requirements

- (1) Minimal requirements for education and professional accomplishment are needed to assure that judges are adequately prepared for their role and have garnered the respect of their peers.
 - (a) In the U S, federal judges must be members of the bar in good standing.
 - (b) The American Bar Association also issues an

independent rating of a candidate's qualification for the federal bench

- (2) Stringent qualification standards may result in a high level of moral integrity and professional accomplishment on the bench, but to assure a broader political legitimacy, the judiciary must in some sense be representative of the population as a whole
 - (a) For example, in the U S , women and minorities have historically faced barriers to legal education, professional advancement, and political access As a consequence, the federal bench is predominantly white, male, and upper middle-class
 - (b) In response, some commentators suggest that judicial recruitment be conducted with an eye toward increasing the presence of under-represented groups on the federal bench, to better reflect America's cultural pluralism

d Limited Protection from Civil Liability

- (1) U S judges are immune from civil lawsuits concerning their judicial rulings or official conduct in office This protection is deemed necessary to preserve judicial independence, and to avoid the inefficiency that would result if judges were forced to devote time and energy to defending such lawsuits
- (2) Federal judges are liable for civil penalties for extra-judicial misconduct (e g , penalties arising from traffic tickets or underpayment of income tax)
- (3) Likewise, federal judges remain subject to criminal liability, although --importantly-- the Constitution does not indicate whether pre-impeachment criminal prosecutions of federal judges are permissible

3 Judicial independence requires that the judiciary be the final interpreter of the law

- a In the U S , the separation of powers theory dictates that neither the executive nor the legislature may alter a court's decision in a given case

- b The doctrine of judicial review also gives our federal courts the ability to override unconstitutional legislative acts, but this power is not a prerequisite for an independent judiciary the English legal system maintains its independence without the power of judicial review

C Judicial Integrity

- 1 Judicial independence is not the only Constitutional value in our legal system, the framers also sought to preserve judicial integrity and accountability by subjecting federal judges to the possibility of impeachment and criminal liability
- 2 The values of judicial independence and judicial integrity may conflict, as illustrated by the debate concerning appropriate mechanisms for judicial self discipline
 - a To the extent that Article III judges are empowered to discipline one another outside the ordinary process of appellate review, individual judges may find their autonomy and impartiality compromised
 - b Indeed, some commentators suggest that judicial self-regulation leads to harassment or intimidation of non-conformist judges
- 3 The overwhelming importance that we place on judicial autonomy dictates that, in our system, the Supreme Court --which must retain maximal judicial independence--may not be subjected to the discipline of the lower federal courts, the legislature, or the executive

II **How Federal Judges are Selected**

A Choosing Candidates

- 1 Prior to the Carter administration (1980s), lower federal court nominations were routine and relatively apolitical, the executive branch deferred many nomination decisions to senators
- 2 - Increasingly, both the executive and legislative branches of government have come to view appointments to the federal bench as domestic policy-making opportunities
- 3 With the advent of greater national media coverage of the legal system (e g , Court TV, CSPAN) , and the widespread dissemination of higher court decisions on the Internet, politicians and the public have become more attuned

to the politics of judicial nominations. The nomination of judges who are perceived as strongly ideological now attracts media and interest group attention, a groundswell of negative publicity can sink a nomination.

B Candidate Pool

- 1 In civil law countries, judges are selected from among those who have chosen judicial administration as a career path distinct from law practice.
- 2 In the U S , judges are drawn directly from the bar, and most candidates are successful practicing attorneys or legal academics.
- 3 Judicial appointments are invariably influenced by the political process, and appointees most often reflect the political ideology of (and usually belong to the same political party as) the appointing President.

C Nomination and Confirmation Process

- 1 Candidates for the federal bench are identified by the President, by the Attorney General, by U S senators from the state where the vacancy has occurred, or by local party leaders or judges who wish to advance a particular candidate.
- 2 Once identified, the candidate will be thoroughly screened.
 - a His or her background will be investigated by the Justice Department and the FBI.
 - b Candidate qualifications will be examined by the American Bar Association (which issues its own recommendation), and by the Senate Judiciary Committee.
 - c The candidate's oral testimony before the Judiciary Committee may significantly influence the outcome of the Committee vote.
- 3 Once a candidate is voted out of the Judiciary Committee, confirmation requires a vote of the full Senate.
- 4 Senators play a particularly prominent role in the selection of federal district court judges.
 - a A tradition of "Senatorial courtesy" permits Senators from the state in question to advance their own nominees first.

- b The opposition of a home-state senator may prevent a candidate from ever receiving a hearing before the Judiciary Committee

D Confirmation Statistics

- 1 The percentage of nominees confirmed to the federal bench rarely falls below 70% for any given administration, although research suggests that the confirmation rate for the federal bench is slowly decreasing with time
- 2 Delays in confirmation have also increased, to the point where the average time between referral to the Senate Judiciary Committee and confirmation now approaches two months
- 3 These trends reflect the increased politicization and public participation in the nomination process

III Judicial Discipline on the Federal Bench

A Purpose

- 1 Our Federal system of judicial conduct regulation serves a dual purpose
 - a To provide behavioral mandates and guidelines for proper judicial conduct
 - b To identify, correct, or punish specific actions that contaminate the judicial process
 - (1) Federal judges are subject to formal codes of conduct and statutory restrictions on their behavior
 - (2) Members of the federal bench also act privately, outside the bounds of any formal system of conduct regulation, to correct the lapses of fellow judges and to urge remedial action when necessary
 - (3) Federal judges may be disciplined by a supervisory judicial body, but they may only be removed by the Congress, following a lengthy process of impeachment and conviction

B Formal Constraints

- 1 Formal constraints on judicial behavior include
 - a Statutes that apply to many or most federal employees (e.g., prohibitions against bribes, nepotism, or certain types of outside employment, mandatory financial disclosure requirements),
 - b Art II, Sec 4 of the U S Constitution, subjecting federal judges to removal from office if they are impeached and convicted by the legislature of "high crimes and misdemeanors,"
 - c The "judicial disqualification statute," 28 U S C Sec 455, which requires judges to
 - (1) At their own discretion, disqualify themselves "in any proceeding in which [their] impartiality might be questioned,"
 - (2) Automatically disqualify themselves under certain circumstances (e.g., personal knowledge concerning the facts, prior familiarity with the issues, or financial interests in the outcome),
 - d The Canon of Judicial Ethics, which includes requirements that judges maintain political neutrality and avoid conflicts of interest,
 - e The advisory Code of Conduct adopted by the U S Judicial Conference, whose Code of Conduct Committee renders non-binding ethics opinions, and
 - f The enforcement mechanism of the statutory circuit judicial councils

C Informal Constraints

- 1 Privately, judges have always regulated the conduct of their peers on the bench
- 2 Judges counsel and advise their peers in cases of health or substance-related impairment, and admonish one another over inattention to duties

D Mechanisms of Judicial Discipline

1 Impeachment

- a Until 1980, the Constitutional process of impeachment was essentially the only formal means of disciplining the federal judiciary, apart from the criminal law
- b Although the Constitution makes no express reference to the removal of judges, in the U S we have historically treated Article III judges as "civil officers" subject to impeachment under Article II
- c The Constitution and historical precedent distinguish between criminal matters and impeachable offenses
 - (1) Impeachable offenses, as defined by the deliberately vague phrase "high crimes and misdemeanors," are inherently political
 - (a) The label "impeachable offense" is generally reserved for grave abuses of the public trust, thus the legislature is free to determine whether common crimes (e g , tax evasion) constitute grounds for impeachment
 - (b) Conversely, impeachable offenses need not amount to criminal behavior
 - (2) Sanctions (upon impeachment and conviction by the legislature) are limited to removal from office and disqualification to hold future federal government office
 - (3) It is interesting to note that impeachment does not preclude federal judges from holding government positions chosen by *state* electorates For example, a federal judge who has been impeached, convicted, and removed by the Senate currently serves as a member of the U S House of Representatives

2 Judicial Self-Discipline

- a Under the "good behavior" appointment standard of Article II and the "necessary and proper" clause of the Constitution, Congress has now found authority to create a process of judicial self-discipline for misconduct apart from "high crimes and misdemeanors "

- b In 1980, Congress passed the Judicial Councils Reform and Judicial Conduct and Disability Act, establishing a formal disciplinary process for judicial misconduct that does not warrant impeachment. The statute vests enforcement authority in the judiciary
 - (1) Academics continue to debate whether this statutory system of judicial self-discipline functions effectively
 - (2) There is also debate regarding the constitutionality of a Congressional role in disciplining federal judges, namely
 - (a) To what extent does the Constitution permit Congress to discipline judges through sanctions other than removal?
 - (b) May Congress delegate disciplinary functions to the judicial branch itself?
 - (c) May Congress vote to suspend judges, if the Constitution forbids legislative adjudication?

3 Complaints to the Circuit Judicial Councils

- a Under the Judicial Councils Act, anyone alleging that a federal judge (other than a Supreme Court Justice) has engaged in misconduct covered by the statute may file a complaint with the clerk of court in the judge's circuit
- b The statute also permits the chief judge of the circuit to initiate a complaint *sua sponte*
- c Statutory Grounds for Complaint
 - (1) 28 U.S.C. Sec 372(c) authorizes a judicial process for handling complaints about judges who have "engaged in conduct prejudicial to the effective and expeditious administration of the courts "
 - (2) Examples of cases within the statute
 - (a) A judge who uses his or her office to obtain special treatment for a party,

- (b) A judge who habitually fails to decide matters in a timely fashion, or
 - (c) A judge whose repeated actions demonstrate a personal bias against a group or class
- (3) The statute does *not* cover an allegation that a judge has made "wrong" decisions in a particular case
- (a) A complaint regarding biased treatment or an improper ruling in a given case *does not provide grounds for relief under the statute*, but rather should be raised on appeal
 - (b) Under the statute, a complaint may be dismissed if it is "directly related to the merits of a decision or procedural ruling "

d Mental or Physical Disability

- (1) The Judicial Councils statute also authorizes judicial councils to hear complaints about judges who are "unable to discharge all the duties of office by reason of mental or physical disability "
- (2) A judge is mentally or physically disabled if he or she
- (a) Is unable to comprehend the nature of the proceedings over which he or she presides,
 - (b) Is unable to understand the principles of law involved, or
 - (c) Is unable to remember testimony and argument sufficiently well to render fair judgments in the matters before him or her
- (3) The statute does not define or limit the conditions that might produce disability Possibly disabling conditions would include
- (a) A stroke that produces cognitive impairment,

- (b) A dementing illness (e g , Alzheimers),
 - (c) Drug or alcohol dependency
- (4) The disability that is the subject of the complaint may be temporary or permanent

e Complaint Process

- (1) The clerk will send copies of the complaint to the chief judge and to the judge who is the subject of the complaint (Complaints against the chief judge are sent to the next most senior circuit judge in regular service)
- (2) The chief judge will review the complaint and dispose of it in one of the following ways
 - (a) The chief judge may dismiss frivolous claims and those that are not properly raised under the statute
 - (b) Alternatively, the chief may conduct a limited, informal inquiry for the purpose of determining
 - i) Whether the complaint should be concluded because appropriate corrective action has been taken, or
 - ii) Whether further investigation is warranted
 - a) In the latter case, the statute authorizes appointment of a special committee, comprising the chief judge of the circuit and equal numbers of circuit and district judges
 - b) This committee will conduct the investigation, make findings, and file a report with the circuit judicial council
 - (c) Judicial Council Disposition
 - i) Upon receipt of the report, the judicial council may take any of the following actions

- a) Dismiss or conclude the complaint
 - b) Order corrective action (e g , censure, reprimand, request for voluntary retirement, or certification of disability so that an additional judge may be appointed)
 - c) If the alleged misconduct constitutes grounds for impeachment, the judicial council must certify this determination to the Judicial Conference of the United States
- (d) Judicial Conference Disposition
- i) If the Judicial Conference determines that impeachment is warranted, the Conference must transmit this determination and a record of the proceedings to the U S House of Representatives
 - ii) Under a 1988 amendment to the Judicial Councils statute, the Judicial Conference is also empowered to forward an impeachment finding without formal complaint or certification if a judge has been convicted of a felony and no procedural prospect remains for overturning the conviction
 - iii) No judicial body may remove an Article III judge
 - a) The Constitution mandates that federal judges may only be removed following impeachment by the legislature
 - b) Councils may order the removal of federal bankruptcy and magistrate judges, who are appointed to specified terms

f Confidentiality

- (1) Throughout the complaint process, files and information regarding the matter are treated as confidential
- (2) The fact of the complaint and the text of the dispositive order become public only upon final disposition

g Rights of the Accused Judge

- (1) At each phase of the process, a judge who is the subject of a complaint has the right - and may be required- to make a written response to the allegations
- (2) The accused judge also has the right to appeal the decisions of the judicial council

h Disposition of Complaints

- (1) The Judicial Councils statute also requires an annual reporting of the disposition of complaints
 - (a) In 1996 (latest figures available?), 588 complaints were concluded
 - (b) Chief judges concluded 335 of the 588, dismissing all but 6 (which were withdrawn prior to dismissal)
 - (c) Two hundred thirty three complaints were referred to judicial councils, all of these cases were dismissed
 - i) Russell Wheeler, Deputy Director of the Federal Judicial Center, notes that most cases dismissed were either frivolous or involved the merits of a judicial decision
 - ii) Wheeler also reports that an "exhaustive" FJC study concludes that chief judges resolve most complaints effectively and confidentially



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Chair Emeritus

STATE SYSTEMS FOR SELECTION OF JUDGES

Objective

after completing this section the participants will understand criteria used and commission procedure in the selection of judges in the various states of the USA

The participants will study the following materials

I. HANDBOOK FOR JUDICIAL NOMINATING COMMISSIONERS CHAPTER 3
“EVALUATIVE CRITERIA”

II APPENDIX TO CHAPTER 3 “SELECTION CONSIDERATIONS”

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BEST AVAILABLE COPY

Handbook for Judicial Nominating Commissioners

by Maria N. Greenstein
with a Foreword by Cyrus R. Vance

American Judicature Society
Chicago

Handbook for Judicial Nominating Commissioners

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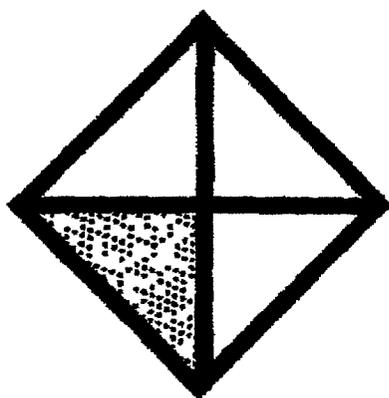
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Evaluative Criteria¹

Establishing Criteria

As part of the organizational meeting, commissioners will find it helpful to identify the evaluative criteria to be used in the selection process. The criteria needed for a particular judicial position depend on the role the judge will play. By examining the core criteria which relate to the work of every judge, and adding criteria for different judicial roles, a commissioner will be able to determine the qualities to be sought in a judicial nominee.

The following examination of evaluative criteria is based on state constitutional and statutory requirements for judicial office, literature on judicial selection and the judicial process, and literature on judicial performance evaluation. Before beginning the selection process, commissioners should become familiar with the minimum legal qualifications for the judicial vacancy in question. Qualifications relating to age, citizenship, residency or a license to practice law often appear in state constitutions or statutes. Other sources for judicial evaluation include reports by the media, court observers and bar associations.

The appendix to this chapter contains suggested measures, in question form, for each criterion. Each question has been designed to highlight particular aspects of an applicant's background. By considering each of the questions, a commissioner should gain insight into whether any given applicant will make a good judge.

A judicial nominating commissioner will find it helpful to use flexible, subjective criteria when screening and evaluating candidates for judicial office. Below is a list of

14 suggested criteria for judicial selection

Roles and Their Criteria

Qualities for all judges

- suitable age
- good health
- impartiality
- industry
- integrity
- professional skills
- community contacts
- social awareness

Additional qualities for appellate judges:

- collegiality
- writing ability

Additional qualities for trial judges:

- decisiveness
- judicial temperament
- speaking ability

Additional qualities for supervisory judges:

- administrative ability
- interpersonal skills

Qualities for All Judges

Suitable Age A candidate for judicial office should be old enough to have legal experience but not too old to possess the level of energy demanded by a judicial position. Any age limitations will depend on individual circumstances such as: health, energy, vitality and mandatory retirement requirements. Since a line must be drawn somewhere, however, there is ample justification for a maximum age of 60 if the candidate would be a first time judge and an age of 64 for promotion to a higher court. The public is entitled to the appointment of persons who are able to render long and vigorous service as part of the judiciary. A maximum age is also consistent with the policy behind mandatory retirement plans now existing in 39 states and requiring judges to retire from the bench at ages ranging from 70 to 75. The age of appointment should be sufficiently low to avoid a judge's mandatory retirement just as the judge has reached peak effectiveness.

Good Health The demands of judicial office require a high level of performance and, consequently, applicants should be physically and mentally healthy. Good physical

health requires judges to be free of debilitating ailments, injuries and diseases. Good mental health requires an individual to have a sound, alert mind and a high degree of emotional stability. An applicant's health should not interfere with judicial duties or adversely affect the ability to function as a fair and impartial judge

Impartiality A good judge should possess the ability to treat cases objectively regardless of the identity of the parties or the subject matter of the controversy. The judge will be required to consider the facts before the court neutrally and with an open mind. A judge will be asked to ignore personal predilections and "disengage himself so far as possible, of every influence that is personal or that comes from the particular situation which is presented to him, and base his judicial decision on elements of an objective nature"²

An applicant who is an attorney, must be able to make the transition from a trained advocate to an independent fact-finder and evaluator. He or she must be capable of putting aside a tendency to pick sides and be able to analyze the facts of any given controversy objectively.

Finally, a judge should carry an impression of fairness to the parties to a controversy, to the attorneys and to other judges. Actors in that judge's court should feel confident

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Finally, a judge should carry an impression of fairness to the parties to a controversy, to the attorneys and to other judges. Actors in that judge's court should feel confident that their side will be afforded fair and independent consideration.

Industry The demands of rising caseloads and backlogged calendars have accentuated the importance of selecting industrious judges. If, in the past, it was ever valid to consider a judgeship a form of sinecure for lawyers who were ready to work less, that assumption is no longer valid today.³ The impact of caseload pressures on the core requirement of judicial industriousness applies with equal strength to both trial and appellate courts.

The quality of industry incorporates several types of work habits. Dedication is one aspect of industry and includes a willingness to devote sufficient, or even extra, time to complete tasks. Industry also demands diligence, involving steady and constant application to the task at hand.⁴ Punctuality is also required. A judge should be prompt and prepared. To retain public confidence in the administration of justice, a judge must be in the habit of opening court on time. Another aspect of industry is decisiveness, which is of particular importance to trial judges. To keep cases moving, a judge must be willing and able to reach decisions with confidence and without hesitation. Finally, an industrious judge is a good administrator, knowing how to manage time and ensure that any judicial staff work at peak efficiency.

Integrity The responsibility of judges for making decisions that affect lives and fortunes requires the selection of men and women of unquestioned integrity. At a minimum, integrity means intellectual honesty, moral vigor and professional uprightness. It also requires a sense of honor, trustworthiness and absolute sincerity and reliability. A judge with integrity is unwaveringly ethical. Ethical conduct by judges requires, at a minimum, commitment and adherence to the law, the Code of Judicial Conduct and the Code of Professional Responsibility.

Professional Skills All judges are expected to be well-versed in fundamental legal areas. Even judges who are assigned to courts where they will have only one type of case must be prepared to hear a variety of issues covering procedure, evidence and constitutional law as well as the substantive areas of their court's jurisdiction.

Neither graduation from law school nor the fulfillment of a minimum requirement of years admitted to practice is sufficient to acquire the professional skills needed for judicial office. Both the length and type of legal experience should be taken into account. As a general rule, about 10 years of litigation experience would indicate a familiarity with court procedures and legal subjects.

Legal analytic ability is equally valuable. Ideally, a judicial candidate should possess intelligence, a capacity for abstract thought and intellectual curiosity.

The quality of clarity of thought and expression means lucidity in reasoning, a sense of order or arrangement. The model judge must know instinctively the difference between that which is important and that which is merely interesting. He must know well the material fallacies of reasoning and avoid them.⁵

Judges are often asked to become experts in different areas of the law with each assignment. Effective judges can adapt to a variety of assignments. Thus a qualified judicial candidate must be able to achieve a level of expertise in one area and yet freely move into another when a new assignment creates such a demand.

Community Contacts Judges are in a position to enhance the public's view of the court. It is desirable for judges to act as a court liaison to the community. When judges publish articles, teach, and participate in community activities, they benefit both the court and the public. In particular, participation in community activities can enable judges to be more sensitive to the problems and concerns of attorneys practicing before them as well as those of the parties to a dispute. In addition, the community is likely to become more sensitive to the pressures of the court and in turn more supportive of the needs of the court. Judges, in short, should maintain an awareness of their public role.

A judge should strive to make the court as visible to the public as is consistent with the privacy needed for meditative, studious, and deliberate decision making. The only business of a court is public business. Therefore, he should initiate and accept procedures which will make the court system and its judges accountable to the people for the public funds utilized and for the public power conferred upon the courts and judges.⁶

Social Awareness "The great tides and currents which engulf the rest of men do not turn aside in their course and pass the judges by," said Justice Cardozo in his lectures on *The Nature of the Judicial Process*.⁷ Judicial decisions, even when they only attempt to resolve the rights of the immediate parties, must sometimes delve into the realm of social or public policy. Thus, it is useful for judges to have some familiarity with and sensitivity to the range of social issues which often confront the courts.

At the same time, however, judges must be aware of and sensitive to the uses and limitations of the law as a tool for correcting social problems. Assuredly, not every case

requires changes in legal doctrine or a refashioning of principles to meet some perceived need of public policy. The law must have a degree of stability and predictability from past through future generations. Yet, a judge should have an interest in improving the law and its service to people. Improving the law will induce a willingness, when circumstances require, to permit changes in legal doctrine, bringing the law into conformity with changed social conditions and evolving concepts of social justice.

Additional Qualities for Appellate Judges

Unlike trial court judges, appellate judges are all professional writers. An appellate judge must write his or her opinions and do so in isolation from the lawyers, jurors, witnesses and litigants normally encountered by trial judges. However no matter how isolated the appellate judge may be when actually writing an opinion, appellate judges must have the ability to work with their colleagues in the process of collective decision-making.

Collegiality. The collective decision making aspect of an appellate judge's role requires loyalty to the appellate court. Appellate judges are engaged in an attempt to express the law. This common purpose demands loyalty to the court as both an institution and a collection of diverse individuals.

Collegiality requires judges to understand and respect their colleagues' differing views. Personality disputes should be minimized and the art of compromise developed. As a part of the art of compromise, a judge must be capable of both giving and receiving criticism.

A good appellate judge recognizes that he is part of a greater whole which is itself part of a process. Thus, he cares about the quality of all decisions rendered by his court, not simply his own opinions. To that end, he is skilled in the art of compromise—he makes, and takes, suggestions, but he never compromises his principles. He reviews his colleagues' opinions as carefully as he can and when, ultimately he disagrees, he expresses that disagreement. He circulates all of his opinions, including his dissents, as promptly as possible, because he knows that there is no excuse for unnecessary judicial delay.⁸

Writing Ability. Since appellate judges spend a major part of their time writing opinions, it is crucial that they be able to produce lucid and understandable opinions. The organization of an opinion will persuade its readers through its logic and internal coherence. As one prominent professor noted:

The quality of a judge's opinion has a good deal to do with whether he is a good judge. If his opinions are disorganized, or illiterate, or marred by fallacies of logic, or lengthened by wordy irrelevance, he is not good at performing one of an appellate judge's major jobs. Mere avoidance of these vices, though, does not alone make one a good judge. Quality in opinions and, by the same token, quality in that aspect of judicial performance, depends ultimately upon the soundness of reasoning and decision contained in the opinion.⁹

Additional Qualities for Trial Judges

Trial judges must be capable of dealing with a wide range of actors in their courtroom. Not only must a trial judge respond to attorneys and their clients but they must also

react to witnesses and be able to instruct jurors on the law.

Decisiveness A trial judge must be capable of making quick decisions under pressure. Often a trial judge will be required to rule on objections as soon as they are raised. Motions, too, will require prompt decisions if cases are to progress. A trial judge must be able to keep cases moving and be willing and able to reach decisions. He or she must be able to quickly assimilate law and facts and to respond to issues raised by counsel with confidence and without hesitation. The judge must be willing to make hard decisions and be able to rule with firmness.

Judicial Temperament. The judge's job includes contact with lawyers, members of the public and court employees and requires an inordinate amount of an elusive quality called judicial temperament. Judicial temperament encompasses a variety of noble qualities. One of these qualities is dignity. To be dignified a judge must possess "quiet, tactful ways, and calm yet firm assurance."¹⁰ Dignity allows a judge to carry authority and inspire respect for the court. Judicial temperament also requires sensitivity and understanding. An understanding judge is sensitive to the feelings of those before the court, recognizing that each and every case is important to all the participants. Finally, a candidate is not temperamentally suited for the bench unless he or she possesses great patience. Patience is simply the ability to be even-tempered and to exercise restraint.

Speaking Ability A trial judge should speak effectively in order to be understood by those appearing before the bench as well as by visitors in the courtroom. More importantly, any defendant appearing before a judge without counsel must understand the judge's questions relating to issues such as whether the defendant is eligible for court-appointed counsel. Finally, communication skills are essential for a close working relationship with a jury. The judge must give the jury an understanding of its role and instruct the jurors on the law using plain English.

Additional Qualities for Supervisory Judges

Many judges have responsibilities apart from adjudication. Some fill special positions such as presiding or chief judges that require advanced supervisory skills. As an administrator, a judge should be able to delegate responsibility and use the time and talents of his or her staff wisely. In addition, a judge acting in a supervisory capacity will need certain interpersonal skills.

Administrative Ability Where a judge has administrative responsibilities, he or she will need to be a good organizer. Organization skills include an ability to delegate certain administrative responsibilities and to use a staff wisely. Administrative ability includes keeping files and papers well-organized and keeping abreast of office activities.

Interpersonal Skills As a supervisor, a judge should also possess certain interpersonal skills. When supervising an administrative staff or other judges, a judge should have the ability to motivate others. A good supervisor should review the work of a staff and keep the staff informed of its level of performance. When overseeing other judges a supervisory judge should be skilled at mediation. For example, when judges have

differing views on court administration the supervising judge may need to encourage compromise

Conclusion

By adopting concisely defined criteria for judicial selection, a nominating commission will be equipped to effectively screen and evaluate candidates for judicial office. When these criteria and suggested measures for evaluation have been adopted in advance, many of the frustrations and apprehensions of commissioners will be eliminated. Commissioners equipped with a solid idea of what they should look for in any given applicant will be secure in their final recommendations to the appointing authority. A commission that has defined its standards for evaluating judicial candidates will gain confidence that it has chosen those best qualified to hold judicial office.

1 This chapter is, in large part, an abstract of a report of the special AJS Committee on Qualifications Guidelines for Judicial Candidates.

2 B. Cardozo, *THE NATURE OF THE JUDICIAL PROCESS* 121 (1921) (The Storrs Lectures at Yale University).

3 E. Devitt, *Ten Commandments for the New Judge*, 47 A.B.A.J. 1175, 1176 (1961) reprinted in 65 A.B.A.J. 574, 575 (1979).

4 American Bar Association, *GUIDELINES FOR JUDICIAL SELECTION* (1981) (unpublished draft).

5 R. Akisert, *What Makes a Good Judge?* (pt. 1), 14 IJA Rep. 1, 2 (Winter 1982).

6 N. Heffeman, *What Makes a Good Judge?* (pt. 2), 14 IJA Rep. 4, 5 (Spring 1982).

7 Cardozo, *supra* note 2, at 168.

8 S. Roberts, *What Makes a Good Judge?* (pt. 2), 14 IJA Rep. 4, 8 (Spring 1982).

9 R. Leflar, *What Makes a Good Judge?* (pt. 2), 14 IJA Rep. 4, 9 (Spring 1982).

10 B. Shientag, *THE PERSONALITY OF THE JUDGE* 42 (1974) (Benjamin N. Cardozo Lectures, Association of the Bar of the City of New York).

APPENDIX. Selection Considerations.

Suitable Age

Suggested Measures Answers to the following questions should be helpful in evaluating whether or not an individual is an appropriate age for judicial selection

- 1 How old is the individual?
- 2 What if any, minimum age limitations are listed in the state's constitution and statutes for this judicial office?
- 3 What is the state's mandatory retirement age?
- 4 For what period of time if at all, is a judge allowed to serve beyond the mandatory retirement age?
- 5 What is the term of office for which this person is being considered?
- 6 Will this individual be able to complete his/her term of office before the mandatory retirement age?
- 7 Will this person's age interfere with the effective discharge of judicial duties?
- 8 Will this person's age allow him/her to give reasonably long and vigorous service to the bench?

Good Health

Suggested Measures The following questions may be useful to ask individuals their doctors and acquaintances to help determine if the candidate has sufficiently good physical and mental health for service on the bench

- 1 Has this person seen a doctor within the past year?
- 2 Has the doctor filed a medical report on this person?
- 3 What is the doctor's professional opinion regarding the state of the individual's health?
- 4 Will this person's physical health interfere with the performance of judicial duties?
- 5 Does this person have any habits which would impair his/her ability to perform judicial functions?
- 6 Has this person had a serious illness within the past five years? If so, are there any continuing side effects from this illness? What are they? Would they interfere with the performance of judicial duties?
- 7 Has this person ever been hospitalized or substantially incapacitated for more than ten days within the past five years due to illness or injury? If so are there any continuing side effects from this hospitalization? What are they? Would they interfere with the performance of judicial duties?
- 8 Does this person suffer from any physical handicaps that could impair his/her effectiveness on the bench?
- 9 Has this person ever been treated for alcoholism? If so when was the treatment sought and will this person and his/her physician certify the alcohol problem is controlled?
- 10 Has this person ever been under psychiatric or psychological care? If so what was the problem? Would the problem interfere with his/her effectiveness on the bench? Does the problem still exist?

Impartiality

Suggested Measures In determining whether someone is or can be impartial as a judge it may be helpful to seek answers to the following questions. Since there are many imponderables involved in judging the ability to be impartial, a number of questions are suggested.

- 1 Can this person listen to the arguments of all parties before making up his/her mind completely on the determination of legal issues?
- 2 Is this person willing to limit activities and relationships that will tend to interfere with his/her usefulness as a judge?
- 3 Does this person possess the equanimity to avoid undue influence on his/her decisions through flattery or adverse comments and criticism?
- 4 Is it likely this person will be influenced by demands of particular groups or organizations or desire for personal popularity or notoriety?
- 5 Can this person set aside party preference and be free from political ties which may bias his/her decisions?
- 6 Will this person's rulings be free from racial bias? religious bias? ethnic bias? bias based on sex? bias based on social status of the parties? bias based on the economic status of the parties?
- 7 Will this person be free from predispositions in criminal cases? in suits for money damages? in domestic relations cases? in class action suits? for or against corporate defendants?
- 8 Will this person show favoritism for or against any attorneys?
- 9 Is this person able to refuse presents or favors from lawyers or litigants?

Industry

Suggested Measures Answers to the following questions should be helpful in determining whether or not the individual being evaluated is industrious

- 1 Is this person an earnest worker?
- 2 Is this person willing to devote time beyond the normal length of a working day to get his/her job done?
- 3 What have this person's working hours been like in the past? Would they be likely to change?
- 4 To what extent does this person balance doing his/her own work with delegating to others?
- 5 Does this individual insure steady progress on assignments given to him/her?
- 6 Does this individual have a reputation for completing assignments on time?
- 7 Is this individual usually well-prepared?
- 8 Is this individual usually thorough in his/her work?
- 9 Does this individual have a habit of keeping appointments and arriving on time?

Additional questions for applicants presently sitting on the bench

- 10 Does this person begin court promptly?
- 11 Does this person issue timely rulings and judgments?

Integrity

Suggested Measures It is possible to suggest a number of questions which if answered could be useful in determining whether or not a person has integrity. However, it should be understood that integrity is an intensely personal quality and often its presence or absence is not easily discerned by others. Therefore, these questions are offered as guidelines only, with the caveat that many may be difficult to answer.

- 1 Does this person have a reputation for cutting corners?
- 2 Does this person have a reputation for refusing to deal openly and fairly with adversary counsel or other attorneys?
- 3 Has this person been found by a court to file misleading documents or papers?
- 4 Have any complaints been filed against this person with any disciplinary body? If so, what was the nature of those complaints? Have any of those complaints resulted in discipline or sanctions? If this person has been disciplined, how long ago did the discipline proceeding take place?
- 5 Does this person pay his/her debts and discharge his/her obligations promptly?
- 6 Has this person ever been held in contempt for deliberately misquoting the law?
- 7 Does this person have a reputation for misrepresenting facts or evidence?
- 8 Has this person ever been arrested for any violation of any law? If so, were any charges ever brought? What was the result?
- 9 Has this person been involved as plaintiff or defendant in any legal proceedings involving moral turpitude, dishonesty or unethical conduct on the part of this person?
- 10 Has this person regularly filed federal (and where applicable state and local) income tax returns?
- 11 Has this person made any false or misleading representations on his/her applicant questionnaire?
- 12 What is this person's reputation in the community for integrity and respect for the law?

Professional Skills

Suggested Measures The following questions should provide insight into a candidate's professional skills

- 1 Before what courts is this person admitted to practice law? What were the dates of this person's admission to these courts?
- 2 Before what administrative bodies is this person admitted to practice? What were the dates of this person's admission to such bodies?
- 3 Is this person actively engaged in the practice of law?
- 4 If this person is not now actively engaged in the practice of law, was he/she ever so engaged? For how long and during what period of time?
- 5 What has been the general nature of this person's legal practice? Has he/she specialized in any areas? What are the areas of specialization?
- 6 Has this person regularly appeared in court as part of his/her legal practice? If so how many cases has this person tried to conclusion as a trial lawyer? Generally what types of cases were they?
- 7 How many appeals has this person argued? Generally, what were some of the issues on appeal?
- 8 How many cases has this person handled before administrative agencies? What did some of the proceedings involve?
- 9 How extensively has this person been involved in depositions, motions, and other activities related to discovery?
- 10 Has this person published any legal books or articles?
- 11 Has this person ever taught any law school courses? What were they?
- 12 Has this person ever taught any continuing legal education courses? What were they?
- 13 Has this person ever clerked for a judge?
- 14 Does this person show an understanding of legal issues in writings and arguments?
- 15 Is this person generally well educated and informed in fields other than law?
- 16 Does this person possess a general working knowledge of the substantive law in the fields which are likely to be encountered on the bench?
- 17 Is this person well versed in the procedural and evidentiary law of the jurisdiction?
- 18 Is this person generally familiar with current legal trends and new developments in

statutory and case law?

19 Has this person attended any continuing legal education courses or seminars in the past five years? What were the subjects? How many hours of course work did he/she complete?

Additional questions for applicants presently sitting on the bench

20 Are this person's decisions well reasoned and well thought out?

21 Does this person show an understanding of legal issues in rulings and decisions?

22 Does this person ask relevant perceptive questions about matters before his/her court?

Community Contacts

Suggested Measures The strictures of the Code of Judicial Conduct may make it somewhat difficult to evaluate an individual's ability to limit outside activities while still maintaining community contacts that are beneficial to the court and the community. The following questions may be useful to help indicate whether the person has the interest, desire and ability to engage in limited but appropriate community activities.

- 1 Has this individual ever spent any time as a lecturer or teacher in a law school? In any other institution? How much time?
- 2 Is this individual willing to serve as a lecturer or teacher in a law school in the future? In another educational institution?
- 3 Has this individual participated as an instructor in any continuing legal education courses?
- 4 Is this individual willing to devote some time to serving as an instructor of continuing legal education courses?
- 5 Has this individual ever participated as a guest lecturer at any law schools?
- 6 Does this individual belong to any bar associations or professional organizations? Which ones?
- 7 Is this individual active in any committee work for any bar associations or professional organizations?
- 8 Is this individual willing to spend some time speaking to bar associations or professional organizations?
- 9 Is this individual involved in any civic or charitable activities? What are they? What is the extent of his/her involvement?
- 10 Does this individual have any cultural interests or activities?
- 11 What are this individual's hobbies or outside interests?

Social Awareness

Suggested Measures Social awareness is perhaps the most difficult quality of all to identify. Although it is possible to evaluate an individual's background and actions, social awareness is almost closer to a jurisprudential philosophy than a personality trait. Therefore, the following questions are suggested only as guidelines. In forming a judgment, these suggestions should not be considered as conclusive proof or evidence of a candidate's social awareness.

- 1 Does this person appear to have a strong sense of social and moral responsibility?
- 2 Has this person ever engaged in any pro bono legal work? What was it?
- 3 Has this person exhibited any knowledge or perspective and understanding about legal history and philosophy?
- 4 Has this person demonstrated an ability to balance competing interests of stare decisis (adherence to precedent) and social change?

Collegiality

Suggested Measures Collegiality is an especially difficult quality to measure. It may not easily be observed in the workstyles of lawyers or trial judges who are candidates for the appellate bench and it is even hard to measure in sitting appellate judges. However, when a judge does not work well collegially, the lack of collegiality is probably conspicuous by its absence. Thus, many of the questions that may be useful in helping to measure collegiality focus as much on personal lifestyle as on the way an individual has conducted his or her professional career. Nevertheless, the ability to function smoothly in a collegial court is an essential quality for appellate judges, and the following questions may be useful in judging its presence or absence.

- 1 Does this person tend to monopolize conversations?
- 2 Can this person be persuaded to change his/her mind?
- 3 Does this person respond well to criticism?
- 4 Is this person perceived as unreasonably rigid in his/her views?
- 5 Can this person constructively criticize others?
- 6 How long has this person been employed at his/her current place of business? How long was he/she employed at his/her previous place of business?
- 7 Does this person indicate loyalty to his/her current or former employer?
- 8 How does this person perceive his/her fellow workers and subordinates? How do his/her fellow workers and subordinates perceive him/her?

Writing Ability

Suggested Measures Writing ability is likely to be revealed over an individual's entire career. Like most skills, when honed by frequent use and practice, it tends to improve over time. Thus, there should be ample evidence of the writing ability of a judge or judicial candidate. In evaluating this evidence, the following questions should prove useful.

1. Can this person claim sole or primary authorship of any briefs? How many? Are they clear and understandable?
2. Can this person claim sole or primary authorship of any law review articles? How many? Are they clear and understandable?
3. Can this person claim sole or primary authorship of any continuing legal education or bar journal articles? How many? Are they clear and understandable?
4. Has this person done any nonlegal writing? What has he/she written? Is it clear and understandable?
5. Does this person indicate a good command of English grammar?
6. Does this person indicate a good style of composition in his/her writing?
7. Can this person meet writing deadlines?

Additional question for applicants presently sitting on the bench

8. Has this person written any judicial opinions? How many? Are they clear and understandable?

Decisiveness

Suggested Measures A judge's ability to be decisive is one of the harder qualities to test. Some find the judicial decision making role to be very compatible with their personalities. The following questions may be helpful in indicating the presence or absence of decisiveness.

- 1 Can this person make up his/her mind?
- 2 Does this person have the conviction to stand by his/her decisions?
- 3 Can this person be firm in conducting court proceedings?

Additional questions for applicants presently sitting on the bench

- 4 Is this person able to keep the caseload moving?
- 5 Is this person firm in conducting court proceedings?

Judicial Temperament

Suggested Measures Since judicial temperament is, in reality, a broad category consisting of a number of personal virtues, a variety of questions can be used to determine how well a person rates with respect to this quality

- 1 Is he/she a good listener?
- 2 Does this person have a reputation for losing his/her temper?
- 3 Is this person courteous in his/her dealings with others?
- 4 Has this person ever been held in contempt of court? If so what were the circumstances?
- 5 Does this person often speak in an intimidating manner?
- 6 Is this person tactful and diplomatic?
- 7 Does this person put others at ease?
- 8 Has this person been flexible in dealing with different people in different situations?
- 9 Does this person get along with partners?
- 10 Does this person treat subordinates with respect?
- 11 Does this person exercise tolerance and self restraint?

Additional questions for applicants presently sitting on the bench

- 12 Does this person pay attention to the arguments of counsel and testimony of witnesses?
- 13 Does this person avoid sensationalism in court?
- 14 Does this person have a reputation for being coercive in conducting court?
- 15 Was this person ever rebuked by an appellate court for lack of judicial temperament?

Speaking Ability

Suggested Measures The practice of law is a career which requires the ability to communicate through speaking. Whether a lawyer tries cases, argues appeals, or negotiates corporate deals, he/she must be able to persuade others through his/her speaking skills. Thus the lawyer's entire career should help provide clues about his/her oral communications skills. In addition, the following questions may be helpful to ask to indicate how effectively the applicant communicates through speaking:

1. If the individual was invited for an interview, did he/she give convincing, well-spoken responses to questions? Could he/she explain legal concepts clearly to any non-lawyers involved in evaluation?
2. Has this person taught any classes? How was he/she received?
3. Has this person given any speeches? How were they received?
4. What is this person's reputation for effective speaking among his/her colleagues?
5. What is this person's reputation for effective speaking among judges he/she has appeared before?
6. Does this candidate have a fluency with and command of the English language in his/her speaking?
7. Has this person demonstrated talent in communicating technical and complex legal matters to clients?

Administrative Ability

Suggested Measures Administrative skills can be demonstrated in a variety of ways. The following questions may be helpful in indicating whether an individual has administrative ability.

- 1 Does this person approach problems in a logical and well-organized manner?
- 2 Does this person manage his/her time effectively?
- 3 Has this person shown an ability to delegate assignments? Is he/she a good judge of what to delegate? Is he/she a good judge of the people to whom assignments should be delegated?
- 4 Can this person keep his/her files and papers well-organized? Can he/she locate documents when he/she needs them?

Additional questions for applicants presently sitting on the bench

- 5 Does this person make appropriate use of time in a courtroom?
- 6 Can this person move his/her docket effectively?

Interpersonal Skills

Suggested Measures The following questions may help to indicate whether an individual possesses those interpersonal skills necessary to be a good supervisor

- 1** Is this person an effective supervisor? Does this person train his/her staff? Does this person review the work of his/her staff? Does this person keep his/her staff informed about its level of performance?
- 2** Does this person appear able to motivate others?
- 3** Has this person taken responsibility for errors and oversights committed by the staff he/she supervises?
- 4** Is this person skilled at mediation? Can he/she persuade people to compromise?
- 5** Has this person acted in a supervisory or leadership capacity within a law firm?
- 6** Has this person demonstrated leadership ability when chairing any committees?
- 7** Has this person had to mediate among differing demands when in a leadership position?



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ETHICAL TRAINING IN THE PROFESSION:

THE SPECIAL CHALLENGE OF THE JUDICIARY

Objective

to learn about the development of rules of judicial ethics in the USA and the methods of ethics training which are used at NJC

The participants will study the following

I WHAT ARE THE RULES OF JUDICIAL ETHICS (YESTERDAY AND TODAY)

II ETHICS FOR LAWYERS, ETHICS FOR JUDGES

III ETHICS TRAINING AT NJC

ETHICAL TRAINING IN THE PROFESSION: THE SPECIAL CHALLENGE OF THE JUDICIARY

V Robert Payant, President Emeritus
The National Judicial College

Ethics for lawyers and ethics for judges have the same ultimate goal ensuring the personal and professional activities of lawyers and judges are governed in a manner which achieves justice and the appearance of justice in legal proceedings. However, the rules governing the two professions, the enforcement mechanisms and the methods of training vary substantially.

While most judges come from the ranks of the practicing bar, a substantial number do not. While some lawyers work in the public sector, most are in private practice dependent on fees from clients. Judges, on the other hand, are governmental employees, work for the society at large and are paid a salary. The institutions which educate people to be lawyers and which, in many instances, provide for the continuing education of lawyers, are generally not the institutions that have been created to provide training for judges.

Because of its unique mission, structure, and participant body, a brief history of judicial ethics in the United States and the role of The National Judicial College (NJC) in teaching ethics to judges may be helpful.

JUDICIAL ETHICS, YESTERDAY AND TODAY

The formal treatment of rules of judicial ethics as separate from the canons governing the professional conduct of lawyers had its origin in 1924. A committee to study judicial ethics was appointed in 1922 by the American Bar Association (ABA). Chaired by Chief Justice William Howard Taft, the committee's recommendations were presented at the forty-seventh annual meeting of the ABA in Philadelphia in 1924.

Styled the "Canons of Judicial Ethics," thirty-six separate canons were proposed and adopted. The Canons were prefaced by quotations from

Deuteronomy, the Magna Carta, and Bacon's essay "Of Judicature" and expressed both general principles of good conduct and some very specific rules. For example, Canon 5, *Essential Conduct*, tells a judge that "he should be temperate, attentive, patient, impartial and since he is to administer the law and apply it to the facts he should be studious of the principles of the law and diligent in endeavoring to ascertain the facts "

These 1924 canons have been characterized by John F. Sutton, Jr., in "A Comparison of the Code of Professional Responsibility with the Code of Judicial Conduct" in the 1972 *Utah Law Review*, as "a curious mixture of generalized, hortatory admonitions and specific rules of standards for proscribed conduct "

Besides admonishments to "exhibit an industry and application commensurate with the duties imposed upon him" (Canon 5), Canon 10 uses a word currently in vogue to regulate a judge's temperament. Headed "Courtesy and Civility," the Canon dictates that "he should be courteous to counsel, especially to those who are young and inexperienced, and also to all others appearing in the court "

These were the ethical standards in effect when NJC began. With little mechanism in place for enforcement other than impeachment proceedings, the teaching of ethics used the canons and the advisory opinions issued by the Committee on Professional Ethics and Grievances of the American Bar Association for many years. The committee issued advisory opinions on both the Judicial Canons and the Canons of Professional Ethics governing lawyers and these were included in the ethics classes at NJC.

The 1924 Canons were superseded in 1972 with the adoption by the American Bar Association of the "Model Code of Judicial Conduct." Composed of seven canons, this new effort contained most of the topics covered in the earlier version, and continued to blend general standards and specific rules. However, most of the new standards were to be mandatory and enforceable.

Combined with the state-by-state adoption of judicial discipline bodies which could impose or recommend sanctions against errant judges, the training of judges became more than an academic exercise

By 1981 all fifty states and the District of Columbia had established judicial discipline bodies which could investigate, prosecute, and, to some degree, impose sanctions. Judges found to have violated the ethical standards faced penalties ranging from verbal (sometimes private) admonishment to removal from office.

Following the quick adoption of the 1972 code by a number of states, The National Judicial College in 1973 published its first textbook on judicial ethics. Designed to be used as a text for courses and also as a reference book in chambers, the text was revised for a second edition in 1975, followed by a third edition in 1982. Several reprints were made thereafter with little change in the text.

In 1986, a survey conducted by the ABA Standing Committee on Ethics and Professional Responsibility found that a comprehensive review of the 1972 code was desirable. With grants from the Josephson Institute for the Advancement of Ethics and from the State Justice Institute, the Model Code of Judicial Conduct (1990) was prepared by the Standing Committee with substantial input from the judiciary, the bar and the general public.

Reduced to five canons, the new Model Code adds some significant sections regarding *ex parte* matters and clarifies, in the commentary, some matters involving political activities of judges. The 1990 Code imposes mandatory standards by use of the word "shall" in the text of the canons and "must" in the commentary while those matters that are aspirational rather than mandatory use "should" and "may" in the text and commentary respectively.

More than twenty states have now adopted the 1990 Model Code, some with rather substantial changes from the original.

ETHICS FOR LAWYERS, ETHICS FOR JUDGES

In 1998 as in 1965, judges come to the bench with widely varying experiences and training. Nearly 10,000 of the approximately 30,000 state judges take on their judicial responsibilities with no training in the law whatsoever, let alone in the ethical standards that govern judges. While these judges and magistrates are in courts of special or limited jurisdiction, many of them determine significant legal matters, some conducting trials by jury. These judges, in traffic and misdemeanor courts, are the image of justice observed by far more people than those appearing in felony and appellate courts.

Even those judges who are trained in the law and who may have appeared in courts many times have generally had little real knowledge about the code of judicial conduct until they actually become judges.

These judges quickly discover that they face ethical issues which impact

- 1 their behavior on and off the bench,
- 2 the behavior of their families,
- 3 their responsibilities regarding the conduct of the court staff, the lawyers who appear in their courts and,
- 4 ultimately, the impact of their behavior (or perceived behavior) on the very essence of the justice system in a democracy - the integrity of judges and their independence in decision making.

ETHICS TRAINING AT NJC

Ethics training at NJC is included in four separate tracks.

General Courses

The general courses at NJC are designed for new judges in general jurisdiction courts (three weeks) and in special courts (two weeks), new non-law-trained judges in special courts (two weeks), and new administrative law judges.

in both state and federal agencies (two weeks) In recent years, the College has also offered a two week course for new judges of appellate courts

Ethics classes follow the general NJC formula using a variety of adult education techniques including some lectures, role-playing, stop-action video vignettes, and hypothetical cases These cases are usually based on actual adjudicated cases decided by the courts or judicial discipline bodies The illustrations cover a broad range of issues - issues involving judicial bias and abusive bench behavior

The racial and gender task forces which have now been conducted in a majority of states are replete with shocking evidence on the part of judges While the percentage of judges who exhibit such behavior appears small, the devastating effect on the perception of the courts is immense - especially among women and minorities

In addition to the high ethical standards required of judges in their private and public lives, they have been charged with responsibilities concerning the behavior of others in the justice system These issues are part of the "role of the judge" portion of the general courses which deals with the responsibilities of judges as adjudicators, administrators, change-makers (politicians), and moral symbols These classes and group discussions look especially at the administrative and disciplinary responsibilities of judges

Canon 3C in its four subsections requires judges to administer the courts without bias or prejudice and to require staff and court officials, subject to the judges' direction to observe the same standards of fidelity, diligence and impartiality required of the judge

Canon 3B(6) establishes the duty of judges to require lawyers to refrain from manifesting bias or prejudice and Canon 3D requires a judge to report to the appropriate discipline bodies, violations by lawyers of the Rules of Professional Conduct

This same Canon places a duty on judges that is even more onerous but more important - the duty of taking action against another judge if there is significant information that the other judge has violated the Code

These Canons form a significant part of the discussions dealing with a judge's role

While the state court systems vary regarding the methods of selecting court employees and the authority of judges regarding court employment matters, the public perception of the courts is formed as much by the behavior and attitudes of court employees and lawyers as is the behavior of the judge. Despite variances in the systems, the group discussions at NJC dealing with the judicial responsibilities are designed so judges focus on the wide breadth of their duties which go beyond the adjudication function.

NJC is currently developing a special course dealing with the management responsibilities of presiding judges. While dealing primarily with responsibilities in resource management, computerization of courts and personnel matters, the course will also deal with the issue of discipline of judges and the responsibility of presiding or chief judges concerning the behavior of their associates on the bench.

Special Courses in Ethics

Since 1992, NJC has annually conducted an in-depth course entitled *Ethics for Judges*. This two and one-half day course is designed as a study of the ethical codes, but more significantly, helps judges take a leadership position in their home states in improving the ethical level of their court system.

State court administrators and chief justices often request judges to attend the College's special ethics course with the expectation that the judges on their return will be instructors in state judicial education programs.

Touching upon both personal and professional ethics, the course requires all participants to develop action plans to be implemented in their home courts. Each participant decides on the significant aspects of ethical behavior that his or her plan will address and determines the procedures that will be taken to implement the plan.

Six months following the conclusion of the course, the College contacts the participants to review what successes or failures the judges have had in carrying out their action plans.

More teaching tools for use at NJC and by the state judicial education programs served by the College are planned. The "Ethical Election of Judges" manual and the video and training manual on judicial discipline procedure will add to College programs.

RULES OF CIVILITY

V Robert Payant, President Ementus
The National Judicial College

In addition to canons of ethics which establish certain rules of behavior, a number of courts have established rules which have been called "Rules of Civility." While not having the authority of the Code of Judicial Conduct and subjecting those who violate the code to discipline and sanctions, the Rules of Civility, if followed, improve the image of judges and the court system.

The judges of the Seventh U S Court of appeals have promulgated a set of rules for the judges in their dealings with lawyers and litigants.

ОБЯЗАННОСТИ СУДА ПО ОТНОШЕНИЮ К АДВОКАТАМ

[Courts' Duties to Lawyers]

1. Мы будем вести себя вежливо, любезно и корректно по отношению к адвокатам, сторонам, свидетелям. Мы будем держать под контролем процесс судопроизводства исходя из того, что на судью возложены обязанности и полномочия по обеспечению корректного проведения всего судебного процесса.

2 Мы не будем пользоваться враждебно настроенной, оскорбительной или унижительной риторикой в судебных заключениях, либо при письменной или устной коммуникации с адвокатами, сторонами и свидетелями.

3. Мы будем пунктуально открывать все слушания, заседания и совещания, в случае задержки и по мере возможности мы предварительно сообщим об этом адвокатам.

4 При созыве всех слушаний, заседаний и совещаний мы будем принимать во внимание временные графики адвокатов, сторон и свидетелей.

Courts' Duties to Lawyers

- 1. We will be courteous, respectful, and civil to lawyers, parties, and witnesses. We will maintain control of the proceedings, recognizing that judges have both the obligation and the authority to insure that all litigation proceedings are conducted in a civil manner.**
- 2. We will not employ hostile, demeaning, or humiliating words in opinions or in written or oral communications with lawyers, parties, or witnesses.**
- 3. We will be punctual in convening all hearings, meetings, and conferences; if delayed, we will notify counsel, if possible.**
- 4. In scheduling all hearings, meetings and conferences we will be considerate of time schedules of lawyers, parties, and witnesses.**

5 Мы будем делать все, в пределах разумного, чтобы оперативно выносить решения по всем представленным на наше рассмотрение вопросам.

6. Мы подвергнем все спорные вопросы тщательному, объективному и взвешенному анализу.

7. В своем стремлении оперативно разрешить спор мы будем учитывать и ограничения по времени и давлению, которое оказывают на юрисконсультов, требования судопроизводства.

8. Мы признаем тот факт, что право и долг адвоката полностью и надлежащим образом представить дело в суде, в то время, как тяжущаяся сторона имеет право на беспристрастное и справедливое слушание ее дела. С учетом временных рамок, мы позволим адвокату изложить надлежащие доводы также, как и представить полное и точное досье дела.

5. We will make all reasonable efforts to decide promptly all matters presented to us for decision.

6. We will give the issues in controversy deliberate, impartial, and studied analysis and consideration.

7. While endeavoring to resolve disputes efficiently, we will be considerate of the time constraints and pressures imposed on lawyers by the exigencies of litigation practice.

8. We recognize that a lawyer has a right and a duty to present a cause fully and properly, and that a litigant has a right to a fair and impartial hearing. Within the practical limits of time, we will allow lawyers to present proper arguments and to make a complete and accurate record.

9. Мы не будем судить ни о безупречности, ни о профессионализме любого из адвокатов по тем клиентам, которых он представляет или по тем делам, которые он ведет.

10. Мы сделаем все возможное для того, чтобы гарантировать корректное поведение судебного персонала по отношению к юрисконсультам, сторонам и свидетелям.

11. Мы не будем внедрять процедуры, излишне усугубляющие расходы на судопроизводство.

12. Мы будем обращать внимание юрисконсультов на попавшее в наше поле зрения некорректное поведение

9. We will not impugn the integrity or professionalism of any lawyer on the basis of the clients whom or the causes which a lawyer represents.

10. We will do our best to insure that court personnel act civilly toward lawyers, parties, and witnesses.

11. We will not adopt procedures that needlessly increase litigation expense.

12. We will bring to lawyers' attention uncivil conduct which we observe.



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THE UNITED STATES JUDICIAL CODE OF ETHICS

Objective

to give the participants a better understanding of the purposes of development and application of the United States Judicial Code of Ethics

The participants will study the following

I ROLE OF THE FEDERAL JUDICIARY

II DERIVATION OF THE MODERN CODE OF CONDUCT FOR FEDERAL JUDGES THE CODE OF CONDUCT FOR UNITED STATES JUDGES

III. CANON 1 "A JUDGE SHOULD UPHOLD THE INTEGRITY AND INDEPENDENCE OF THE JUDICIARY"

IV. CANON 2 "A JUDGE SHOULD AVOID IMPROPRIETY AND THE APPEARANCE OF IMPROPRIETY IN ALL OF THE JUDGE'S ACTIVITIES"

V CANON 3 "A JUDGE SHOULD PERFORM THE DUTIES OF THE OFFICE IMPARTIALLY AND DILIGENTLY"

VI CANON 4 "A JUDGE MAY ENGAGE IN ACTIVITIES TO IMPROVE THE LAW, LEGAL SYSTEM AND THE ADMINISTRATION OF JUSTICE"

VII CANON 5 "A JUDGE SHOULD REGULATE EXTRA-JUDICIAL ACTIVITIES TO MINIMIZE THE RISK OF CONFLICT WITH JUDICIAL DUTIES"

VIII CANON 6 "A JUDGE SHOULD REGULARLY FILE REPORTS OF COMPENSATION RECEIVED FOR LAW-RELATED AND EXTRA-JUDICIAL ACTIVITIES"

IX CANON 7 "A JUDGE SHOULD REFRAIN FROM POLITICAL ACTIVITY"

X. ETHICS REFORM ACT OF 1989

DRAFT -- OCTOBER 8, 1998

**RUSSIAN ETHICS SEMINAR NOVEMBER 1998
OUTLINE OF PRESENTATION
JUDGE A. RAYMOND RANDOLPH**

I. ROLE OF THE FEDERAL JUDICIARY

**A. INDEPENDENCE OF THE JUDICIARY UNDER THE
UNITED STATES CONSTITUTION**

B. IMPORTANCE OF AN INDEPENDENT JUDICIARY

**C. NEED FOR JUDGES TO ADHERE TO ETHICAL
STANDARDS**

**II. DERIVATION OF THE MODERN CODE OF CONDUCT
FOR FEDERAL JUDGES**

**A. EARLY HISTORY -- BIBLICAL, MAGNA CARTA,
FIRST CONGRESS OF THE UNITED STATES**

B. THE DEVELOPMENT OF A MODEL CODE

**1. AMERICAN FONDNESS FOR CODES OF
CONDUCT IN THE 1920'S -- BOY SCOUT CODE, ICE CREAM
MANUFACTURERS' CODE, ETC.**

**– WHAT IS A CODE OF "ETHICS" AS
DISTINGUISHED FROM A CODE OF LEGAL REQUIREMENTS?**

– "OBEDIENCE TO THE UNENFORCEABLE"

2. BLACK SOX SCANDAL OF 1919 & JUDGE

**LANDIS OF U.S. DISTRICT COURT -- FIRST COMMISSIONER OF
BASEBALL -- AMERICAN BAR ASSOCIATION CENSURE OF
LANDIS**

**3. RESULTING ABA MODEL CODE 1924 --
EXAMPLE OF CANON 21 "IDIOSYNCRASIES AND
INCONSISTENCIES" -- 50 YEAR HISTORY**

**4. 1969 SUPREME COURT NOMINATION OF
CLEMENT HAYNSWORTH AND THE ABA MODEL CODE OF
1972**

**5. ADOPTED AS MODIFIED BY UNITED STATES
JUDICIAL CONFERENCE IN 1973**

II. THE CODE OF CONDUCT FOR UNITED STATES

JUDGES -- OVERVIEW

A. THE CODE DEALS WITH JUDGES' PUBLIC AND PRIVATE LIVES.

- **THERE ARE SEVERAL PROVISIONS THAT HAVE OVERTONES UNIQUE TO FEDERAL JUDGES AND THE UNITED STATES CONSTITUTION -- SEPARATION OF POWERS, FEDERALISM, DUE PROCESS.**
- **VERY FEW ABSOLUTE RULES, AND MUCH OF WHAT I BELIEVE IS A TRUE ETHICS CODE.**

B. SEVEN CANONS -- CONSIDER THEM ON BASIS OF HYPOTHETICALS. SOME ARE DRAWN FROM MATTERS BEFORE THE COMMITTEE ON CODES OF CONDUCT OF THE FEDERAL JUDICIARY WHILE I SERVED AS CHAIRMAN.

1. ROLE OF THE CODES OF CONDUCT COMMITTEE -- COMPOSITION, JURISDICTION, FUNCTIONS.

III. CANON 1: "A JUDGE SHOULD UPHOLD THE INTEGRITY AND INDEPENDENCE OF THE JUDICIARY."

HYPOTHETICAL. THE FBI DIRECTOR CALLS A JUDGE AND ASKS HIM TO SERVE ON THE FBI'S DNA ADVISORY COMMITTEE. MAY THE JUDGE ACCEPT THE APPOINTMENT?

HYPOTHETICAL. A JUDGE IS ASKED TO PARTICIPATE IN A TRAINING PROGRAM TO TEACH LAW ENFORCEMENT OFFICERS TO BE BETTER WITNESSES IN COURT. MAY THE JUDGE DO SO?

HYPOTHETICAL. A JUDGE RECEIVES CREDIBLE EVIDENCE THAT ONE OF HIS COLLEAGUES IS SITTING ON CASES IN WHICH THE COLLEAGUE HAS A FINANCIAL INTEREST. WHAT SHOULD THE JUDGE DO WITH THE INFORMATION?

IV. CANON 2: "A JUDGE SHOULD AVOID IMPROPRIETY AND THE APPEARANCE OF IMPROPRIETY IN ALL OF THE

JUDGE'S ACTIVITIES.

HYPOTHETICAL: JUDGE SMITH'S FORMER LAW FIRM HAS INVITED HER TO COME BY FOR LUNCH AND TALK ABOUT HER EXPERIENCE ON THE BENCH WITH SOME OF THE SUMMER ASSOCIATES. IS THIS ALLOWED?

HYPOTHETICAL. AFTER YEARS OF SITTING ON THE BENCH, JUDGE BROWN DECIDES TO GET IN SHAPE HE JOINS A KARATE SCHOOL AND AFTER MUCH EFFORT, BECOMES QUITE PROFICIENT IN THE MARTIAL ARTS. THE KARATE SCHOOL NOW WANTS TO USE HIS PHOTOGRAPH IN ITS ADVERTISEMENTS. ANY PROBLEM? DOES IT MATTER THAT THE ADS WILL NOT IDENTIFY HIM?

A CANON 2B. "A JUDGE SHOULD NOT LEND THE PRESTIGE OF HIS OR HER OFFICE TO ADVANCE THE PRIVATE INTERESTS OF OTHERS."

THE DUTY TO AVOID IMPROPRIETY APPLIES TO THE

JUDGE'S PROFESSIONAL AND PERSONAL ACTIVITIES.

B. OTHER SUBJECTS CONSIDERED UNDER CANON

2:

- **A JUDGE'S MEMBERSHIP IN CLUBS THAT HAVE, OR ARE PERCEIVED TO HAVE, EXCLUSIONARY POLICIES**
- **WRITING LETTERS OF RECOMMENDATION FOR DEPARTING LAW CLERKS**
- **RECOMMENDING CANDIDATES FOR JUDICIAL OFFICE**
- **PARTICIPATING IN TESTIMONIALS**
- **ACTING AS A CHARACTER REFERENCE**

V. CANON 3: "A JUDGE SHOULD PERFORM THE DUTIES OF THE OFFICE IMPARTIALLY AND DILIGENTLY."

- **THIS GENERAL LANGUAGE IS FOLLOWED BY FOUR SUBSECTIONS. THE MOST FREQUENTLY**

INVOKED IS SUBSECTION C.

A. 1974 CONGRESSIONAL STATUTE -- 28 U.S.C. § 455.

**B. CANON 3C -- MODERN U.S. NOTION OF JUDICIAL
DISQUALIFICATION. MANDATORY LANGUAGE.**

**HYPOTHETICAL. JUDGE BECOMES TRUSTEE OF
ESTATE OF HIS BROTHER AND ESTATE HOLDS STOCK.**

- **CANON 3C(1)(c). FINANCIAL INTEREST IN A PARTY.**

WHAT IS A FINANCIAL INTEREST?

- **CANON 3C(3)(c) — LEGAL OR EQUITABLE**

INTEREST "HOWEVER SMALL"

- **APPLIES TO JUDGE'S SPOUSE. CANON 3C(1)(c).**

- **DUTY OF JUDGE TO KEEP FAMILIAR WITH STOCK
HOLDINGS. CANON 3C(2).**

- **PARTIES TO CASE CANNOT WAIVE JUDGE'S
DISQUALIFICATION. SEE CANON 3D — DOES NOT
APPLY TO DISQUALIFICATION BASED ON CANON**

3C(1)(a) -- (e).

HYPOTHETICAL. JUDGE SMITH HAS BEEN ASSIGNED TO SIT ON A CLASS ACTION AGAINST A MAJOR CREDIT CARD COMPANY. THE CLASS CONSISTS OF CREDIT CARD HOLDERS THE CLAIM IS THAT THE COMPANY OVERBILLED THEM. ASSUME THAT JUDGE SMITH HOLDS NEITHER THIS PARTICULAR CREDIT CARD NOR STOCK IN THE COMPANY ASSUME ALSO THAT HIS WIFE DOES NOT HOLD ANY STOCK AND ALSO DOES NOT HAVE THIS PARTICULAR CREDIT CARD. IS IT NEVERTHELESS POSSIBLE THAT JUDGE SMITH STILL HAS A DISQUALIFYING INTEREST?

HYPOTHETICAL. CITY RAISES PRICE OF SUBWAY FARE AND IS CHALLENGED IN COURT. JUDGE RIDES THE SUBWAY DAILY. CAN THE JUDGE SIT ON THE CASE? WHAT IF ALL JUDGES RIDE THE SUBWAY?

HYPOTHETICAL. RELATIONSHIPS OF JUDGE -- JUDGE'S

DAUGHTER WORKS IN PROSECUTOR'S OFFICE; JUDGE'S WIFE
WORKS IN LAW FIRM; JUDGE'S SON WORKS FOR
CORPORATION RECUSAL OBLIGATIONS?

**HYPOTHETICAL. CANON 3B(4) — NEPOTISM. JUDGE
INQUIRED — HAD CHILD WITH WOMEN NOT MARRIED /
WANTS TO HIRE AS SECRETARY. ANY ETHICAL PROBLEM?**

**V. CANON 4: “A JUDGE MAY ENGAGE IN ACTIVITIES TO
IMPROVE THE LAW, LEGAL SYSTEM, AND THE
ADMINISTRATION OF JUSTICE.”**

**A CONDUCT OTHER THAN DECIDING CASES
COVERED.**

**B NEED TO DETERMINE WHAT IS AND WHAT IS
NOT A LAW-RELATED ACTIVITY.**

**HYPOTHETICAL. JUDGE JONES HAS BEEN INVITED TO
BE THE GUEST OF HONOR AT A \$500-A-PLATE DINNER FOR
WHAT HE CONSIDERS TO BE A VERY WORTHY NON-PROFIT**

ORGANIZATION. IN FACT, HE IS TO BE THE HONORED GUEST BECAUSE HE HAS DEVOTED SO MUCH OF HIS TIME TO THIS ORGANIZATION. HE HAS BEEN ASKED TO GIVE AN ACCEPTANCE SPEECH. CAN JUDGE JONES ACCEPT THE INVITATION?

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COURTROOM DEMEANOR

Rude and abusive behavior.

Canon 3A(3) of the 1972 American Bar Association Model Code of Judicial Conduct requires judges to be "patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, and others with whom" they deal in their official capacity.¹ Impatient and impolite behavior on the bench generates a large proportion of the complaints about judges filed with judicial conduct organizations. Except for extreme examples, a judge is unlikely to be publicly punished for one display of temper. But judicial conduct organizations do respond privately to isolated incidents. For example, in 1991, the Alaska Commission on Judicial Conduct informally sanctioned six judges through private reprimands and admonishments, and cautionary letters for

¹ Unless otherwise indicated, references to canons are to the 1972 American Bar Association Model Code of Judicial Conduct.

courtroom demeanor problems, including directly criticizing jurors for their work as jurors, abusing the contempt power, using abusive and profane language, and making derogatory and racially oriented comments from the bench. Alaska Commission on Judicial Conduct 1991 Annual Report at Appendix G. And a series of single incidents can add up to a pattern of conduct that requires public sanction and possibly removal.

Although the variety of ways in which judges can behave intemperately are, of course, almost infinite, there are several types of misconduct that appear in many cases: disparaging victims and witnesses and implying lack of belief in a witness's testimony, making sarcastic and belittling remarks to attorneys, threatening to use the contempt power, and misusing the contempt power. The following illustrations of typical demeanor problems that violate the Code of Judicial Conduct are from three cases in which judges were removed or suspended.

Kloepfer v. Commission on Judicial Performance, 782 P.2d 239 (Cal. 1989)

The Supreme Court of California removed from office a judge who displayed a lack of judicial temperament.

1) The judge had stated to a court reporter before a courtroom full of people, "I'll keep the record in my courtroom," after the reporter had asked a defendant "Excuse me. Is that a yes?" when the defendant had nodded her head.

2) After a defense attorney asked for a continuance, the judge had asked in an angry and insulting tone, "Isn't it true you are psychologically afraid to take a case to trial?"

3) After an inexperienced lay witness tried to explain her answer to a question, the judge had stated, in an angry and intimidating tone, "We have rules in terms of how we proceed here. And you have to understand them. And I don't want to have to re-explain them and have objections. . . . First rule is you keep your mouth shut."

4) In cross-examining a defense witness, the judge had not limited himself to questions directed to eliciting clarifying testimony, had told the witness his testimony did

not make sense, and had engaged in argumentative dialogue with the witness.

5) The judge had twice held one defendant in contempt for attempting to say something to the court, sentencing him to two days in jail each time, had lectured the defendant in an insulting manner about his appearance, and had acted in an intimidating manner toward defense counsel.

6) The judge had stated to an inexperienced lay witness who had begun to answer a question after an objection had been made, "when someone makes an objection, they are talking to me, not you. If you interrupt again, . . . you can be punished with a fine or jail. Keep your mouth shut. It is not directed to you. If there is an objection, it is directed to me. I am the Judge here. You are not.. I have to rule on the objection without flak coming from the side."

7) When a defendant failed to reply to a question from the judge, the judge had stated, "Either he does understand or he doesn't, and if he sits there and looks like a bump on a log and has no ability to respond to me that he understands intelligently what is being interpreted to him in Spanish, I have no confidence that he will follow the directions of the court, and therefore I will cage him, in effect, in jail and bring him back manacled and he will appear when I order him to appear."

8) When a defendant whispered to his attorney that he did not understand what the judge was telling him, the judge had stated, "I am talking to you, sir, and when I talk to you I expect you to pay attention with me and not start a conversation with your attorney. Do that again sir, I am going to hold you in contempt of court and jail you."

9) The judge had summarily adjudicated a defendant in contempt when he asked "how come" after the judge rebuffed his request to say something

10) The judge had found a spectator in contempt and ordered her to serve six hours in jail without making any inquiry to confirm the inference he drew when she swore after tripping over her son's feet.

12) The judge stated in two separate incidents, to two deputy district attorneys, in a courtroom full of people, that he was appalled that the interests of the People of the State of California rested in their hands.

In the Matter of Breitenbach, 482 N.W.2d 52 (Wis. 1992)

The Wisconsin Supreme Court suspended for two years a judge who displayed lack of judicial temperament.

1) During a trial, the judge had become visibly angry and upset and loudly, intemperately, and repeatedly interrupted the prosecutor's attempt to make an offer of proof, threatened to hold him in contempt for persisting in his efforts to do so, and characterized part of the offer of proof as "stupid . . . [plain] stupid."

2) During a motion hearing, the judge had become, visibly angry, loud, and intemperate toward the assistant district attorney, repeatedly ordered him to bring the district attorney before him, threatened the assistant with contempt, and held him in contempt for not bringing in the district attorney.

-3)- During a hearing, the judge had stated "You know, sometimes attorneys make their clients in a worse mess. You do what you have to do "

4) During a trial, in the presence of the jury, the judge had conducted a lengthy examination of the defendant and impeached him with a prior inconsistent statement that had not been explored by the prosecutor or the defendant's counsel.

5) During a jury trial, the judge had conducted a lengthy examination of the defendant, in a manner that gave the appearance of disbelief and disdain toward the responses, and suggested that the defendant and an accomplice were affiliated with a gang, which had not been raised by the prosecutor or the defendant's attorney.

6) During a jury trial, while the jury was being brought in, the judge had become angry and upset, yelled at the prosecutor to sit down and be quiet, and after the jury was released, yelled at the prosecutor to leave the courtroom or he would go to jail, and ordered an assistant district attorney who was present to report the prosecutor to the attorney discipline board.

7) During a jury trial, in the presence of the jury, the judge had stated to the assistant district attorney, "Asking [the witness] many absurd questions is not going to get to the truth of the matter," had been loud, intemperate, impatient, and rude to the prosecutor, and had prevented him from making a record in support of the state's position.

8) In three additional criminal matters, the judge had been intemperate and discourteous in his remarks to the assistant district attorneys and prevented them from making a record in support of the state's position.

In re Elliston, 789 S W.2d 469 (Mo. 1990)

The Supreme Court of Missouri suspended for fifteen days a judge who lacked the judicial temperament.

1) The judge had yelled at an attorney and described the attorney's work as sloppy.

2) The judge had insisted that a trial go forward even though counsel had earlier informed the judge that his client would be entering a guilty plea.

3) The judge had denied a glass of water to an attorney who was having difficulties speaking, saying it was against court rules to have liquid in the courtroom.

4) The judge had denied attorneys access to a pretrial order on file and insisted that they pay for a copy;

5) The judge, in a "rude and demeaning" tone, in front

of the attorney's clients and other court personnel, had informed an attorney that he was wasting the court's time by putting on evidence in support of a recommendation and said to the same attorney "[i]f you think I'm going to make a commitment to you before I've heard all of the evidence, you're sadly mistaken!"

Judicial Bias.

Canon 3B(5) of the 1990 ABA Model Code of Judicial Conduct provides that:

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, 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.

The same prohibition was implied in the 1972 Model Code requirement that judges be dignified and courteous, and judges have been disciplined under the 1972 standard for biased conduct and statements. A small sample follows.

Kennick v. Commission on Judicial Performance, 787 P.2d 591 (Cal. 1990)

The Supreme Court of California removed from office a judge who, among other misconduct, addressed women he knew principally or solely in connection with his judicial duties as "sweetie," "sweetheart," or "baby," in and about the courthouse, during business hours.

Re: Carr, 593 So. 2d 1044 (Fla. 1992)

Following the recommendation of the Florida Judicial Qualifications Commission based on a stipulation between the Commission and the judge, the Florida Supreme Court publicly reprimanded a judge who stated at a hearing in his courtroom, "Now, you can throw your Italian temper around in the bars but you don't throw them around in my courtroom. . . . I'm just as Irish as you are Dago." The judge apologized for his statements.

The Supreme Court of California removed a judge from office for making racial and sexual comments that he claimed were in jest, among other misconduct.

1) On pronouncing judgment on a male of Mexican extraction on a charge of beating his wife, the judge had stated that although such behavior might be tolerated in Africa or Mexico, it would not be tolerated in America.

2) During jury voir dire in a criminal case, the judge had questioned a Japanese venireman about inflation and then commented that he did not know why he was speaking to a Japanese juror about inflation because "what do fishheads and rice cost?"

3) During another jury voir dire in a criminal case, the judge had asked a black woman on the panel who had said she worked as a grocery clerk if she knew the price of watermelon.

4) In a colleague's chambers, the judge had responded to the news that a black district attorney's wife had had a miscarriage by saying, in essence, "Oh good, one less minority."

5) Finally, at a Christmas party attended by most of the court personnel, the judge had asked a female Jewish district attorney whether "with all the inbreeding your people do, aren't you afraid that they will produce a race of idiots," or words to that effect.

Judges often get in trouble when they decide to preach to the litigants or to express their opinions on subjects not relevant to the immediate case. Such pontification often leads to insensitive comments, invidious comparisons, and reliance on stereotyped notions of classes of people. The judges in the cases summarized below probably would not have gotten into trouble if they had simply decided the cases before them.

Inquiry Concern a Judge re. Marko, 595 So. 2d 46
(Fla. 1992)

Approving a stipulation between the Florida Judicial Qualifications Commission and a judge, the Supreme Court of Florida publicly reprimanded a judge who had stated during a dissolution of marriage hearing to the wife "go out and get another guy . . . the single bars are full of them . . . there are all kinds of bimbos in those places, and there are all kinds of guys running around in open shirts with eagles on their chests. There are great guys out there . . . you

go find a brain surgeon." In the stipulation, the judge had apologized.

Complaint Against Coady, No. B-35-92001, Order (Nebraska Supreme Court March 27, 1992)

Pursuant to the Report and Recommendations of the Nebraska Commission on Judicial Qualifications and the consent filed by the judge, the Nebraska Supreme Court suspended, for one month without pay, a judge who had stated in open court in contempt proceedings involving failure to pay child support, while encouraging the litigant to keep his job, "sometimes you just have to eat crap, whether you like it or not, because you're in such a situation that if somebody insults you, you just have to go on and do it and take it. You know, black people have done it for years and you are at the place where I suppose that you can be treated like a nigger, and you just have to take it just like the black people have had to." The court also ordered the judge to complete a seminar on sensitivity to racial bias.

In the Matter of Esworthy, Determination (New York Commission on Judicial Conduct June 21, 1990), accepted, 568 N.E.2d 1195 (N.Y. 1991)

The New York Commission on Judicial Conduct determined that removal was the appropriate sanction for a family court judge who, among other things, in two cases, made comments about the racial composition of the state prisons. In one case, he stated:

The next time you come back to this court, the closest place I'll be shipping you is Buffalo, New York or down city, and maybe you'll get some experience like you had in Florida with all those spics and blacks that you didn't like, that you were scared of. You understand? Because detention in those bigger areas is not just all white detention.

He made similar remarks in the second case.

Judge Kenny, Order (New Jersey Supreme Court April 23, 1991)

The New Jersey Supreme Court terminated the recall of a retired superior court judge after the judge publicly humiliated in open court the plaintiff in a small claims case in which the plaintiff had claimed that a check cashing agency had not given her the correct amount when she cashed her welfare check. The judge lectured the litigant because she was an unwed mother on welfare, which was not relevant to the legal proceedings.

J: Do you have a husband?

P: No, I don't. I'm on welfare.

J: Have you ever had a husband?

P: No, never did.

J: Of course, that's all wrong, having children out-

of-wedlock. Other people have to support them.
Why can't you work?
P: That's irrelevant
J: It's not relevant, but I'm asking you about it.
Why? People are being inundated, taking care of
all these children out-of-wedlock. Money doesn't
come out of the sky, does it? . . . Most of all,
you're destined to go to jail somewhere along the
line. If you took a census of state prisons,
you'd find that three-quarters are born out-of-
wedlock . . . It's not right having children out-
of-wedlock and someone supporting them and sup-
porting you. Why shouldn't you be working?
You're an able-bodied woman, aren't you?

Judges must also be cautious about trying to be humorous on the bench. The California Commission on Judicial Performance has observed that, although a judge may use humor to alleviate tension or tedium in a lengthy proceeding, the appropriate use of judicial humor requires self-control on the part of the judge.

In court or in chambers, a seemingly innocuous joke by the judge may assume disproportionate significance in the eyes of parties, counsel, jurors, or others. Moreover, a captive attorney audience may feel compelled to laugh rather than risk an objection.

* * *

Ill-conceived humor may adversely impact a judge's ability to command respect and the public's perception of the judiciary at large. The risk that humor will trigger unfortunate repercussions escalates if it is pegged to any handicap or personal trait (race, gender, age, religion, national origin, ethnic background, and so on). It is axiomatic that judges should refrain from humor or observations that could be construed as impugning persons with that trait or handicap. Off-color jokes and those involving profanity also fall in this high-risk category.

1988 Annual Report at 19 (California Commission on Judicial Performance).

That a judge was merely joking is not a defense to a charge of judicial misconduct. In the case summarized above, Judge Gonzales defended his ethnic and sexual remarks by saying they were made in jest (although it is difficult to believe that anyone

would joke about miscarriages and wife-beating even apart from the racial insensitivity shown). The court rejected that attempt, stating,

subjective intent is not at issue. As a judge he is charged with the obligation to conduct himself at all times in a manner that promotes public confidence and esteem for the judiciary. Particular friends or associates may assure themselves that the judge's ethnic remarks are made in jest, but such facially blatant ethnic slurs . . . are apt to offend minority members . . . and may be construed by the public at large as highly demeaning to minorities.

657 P.2d 382.

Bias in the Courtroom.

Canon 3B(6) of the 1990 ABA Model Code states:

A judge shall require lawyers in proceedings before the judge to refrain from manifesting, by words or conduct, bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation or socioeconomic status, against parties, witnesses, counsel or others. This Section 3B(6) does not preclude legitimate advocacy when race, sex, religion, national origin, disability, age, sexual orientation or socioeconomic status, or other similar factors, are issues in the proceeding.

Several recent newspaper reports indicate that judges are beginning to hold lawyers to high standards of courtroom conduct. A New York supreme court judge fined a male lawyer \$500 and ordered him to pay \$500 in attorneys fees for belittling a female attorney during a deposition. Among other comments, he had said to the attorney "I don't have to talk to you, little lady," "What do you know, young girl?", "Be quite, little girl," and "Tell that little mouse over there to pipe down." (After the male lawyer apologized, his sanction was lowered to \$1.00.)

A similar incident has also been reported from Florida. There, a male lawyer said in court to a female prosecutor "I take

my orders from the bench, not you, little lady," and was found in contempt of court when he refused to apologize. "I meant every word I said," the attorney said, "for her to be insulted and for us to be here in this position now is absolutely stupid." The judge placed the male attorney on probation for 6 months, ordered him to do 50 hours of community service, and fined him.

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DISQUALIFICATION

I. The general standard. In addition to enumerating specific circumstances or relationships that require disqualification, Canon 3C(1) of the American Bar Association 1972 Model Code of Judicial Conduct creates a general requirement for disqualification whenever a judge's "impartiality might reasonably be questioned" ¹ Under this "catch-all" provision, the judge should make a two-part inquiry. The first test is a subjective, "internal test of freedom from disabling prejudice," in which a judge consults his or her emotions and conscience. Lena v. Commonwealth, 340 N.E.2d 884 (Mass. 1976). The second test is objective: whether an objective, disinterested person knowing all the circumstances would reasonably question the judge's impartiality, even where there was no actual impropriety but only

¹ Unless otherwise indicated, references to canons are to the 1972 American Bar Association Model Code of Judicial Conduct.

an appearance of impropriety See, e.g., PepsiCo, Inc. v. McMillen, 764 F 2d 458 (7th Cir. 1985).

II. Personal bias or knowledge. Under Canon 3D(1)(a), disqualification is required if a judge "has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding, . . ."

A. Personal bias and prejudice. To be disqualifying, bias or prejudice must be concerning a party; a judge's values, philosophy, or "fixed beliefs about constitutional principles and many other facets of the law" are not considered personal biases or prejudices that require disqualification. E.W. Thode, Reporter's Notes to Code of Judicial Conduct, at 61 (1973). In addition, to be disqualifying, bias or prejudice must be personal, that is, arising from an extra-judicial source and resulting in an opinion on the merits based on something other than what the judge has learned from participating in the case. United States v. Grinnell Corp., 384 U.S. 563, 583 (1966).

United States v. Barry, 961 F.2d 260 (D.C. Cir. 1992)

Affirming the re-sentencing of the defendant and the denial of his motion for disqualification, the United States Court of Appeals for the District of Columbia Circuit held that the judge was not disqualified from re-sentencing the defendant on the basis of the judge's discussion of the merits of the case while it was pending on appeal after the first sentencing. In a public speech at Harvard Law School after sentencing the defendant the first time, the judge had remarked that he had never seen a stronger government case, that some jurors had their own agendas and would not convict under any circumstances, that some jurors were determined to acquit regardless of the facts, and that some jurors did not tell the truth during jury selection when questioned about possible bias. The court held that remarks reflecting even strong views about a defendant will not call for a judge's recusal so long as those views are based on the judge's own observations during the performance of judicial duties.

1. Judge as "adversary" of a party. Generally, disqualification is not required by a collateral lawsuit between a judge and a party because permitting wholesale disqualification in that situation would allow litigants to choose their judge by filing lawsuits against all judges not to their liking. See, e.g., Commonwealth v. Leventhal, 307 N.E.2d 839, 841 (Mass. 1974). Cf., People v. Lowenstein, 325 N.W.2d 462 (Mich. 1982) (disqualification required where party filed suit against the judge before the suit in which the judge was presiding was filed and where the judge while a prosecutor had prosecuted the party.)

2. Social relationship. Whether a judge is required to disqualify when a friend appears as a party or attorney in a suit depends on how close and how personal the relationship is; the two-part test is whether the judge feels capable of disregarding the relationship and whether others can reasonably be expected to believe that the judge will disregard the relationship. United States v. Murphy, 768 F.2d 1518, 1537 (7th Cir. 1985), cert. denied, 475 U.S. 1012 (1986). The judge must consider whether an astute observer in either the legal or lay culture "would conclude that the relation between judge and lawyer (a) is very much out of the ordinary course, and (b) presents a potential for actual impropriety if the worst implications are realized." Id. In Murphy, finding that the trial judge should have disqualified himself, the Court of Appeals for the 7th Circuit held that:

an objective observer reasonably would doubt the ability of a judge to act with utter disinterest and aloofness when he was such a close friend of the prosecutor that the families of both were just about to take a joint vacation. A social

relation of this sort implies extensive personal contacts between judge and prosecutor, perhaps a special willingness of the judge to accept and rely on the prosecutor's representations.

3. **Animosity toward a party's attorney.** Under the 1972 ABA Model Code, prejudice against an attorney is not sufficient to disqualify a judge unless the bias "is of such a degree as to adversely affect the interest of the client" Martinez v. Carmona, 624 P.2d 54, 59 (N.M. Ct. App. 1980). Canon 3E(1)(a) of the 1990 ABA Model Code added personal bias or prejudice concerning a party's lawyer to the list of disqualifying circumstances after the drafting committee became "aware of instances in which individual judges had demonstrated a profound prejudice against certain lawyers, and found that prejudice to be sufficiently detrimental to the judge's appearance of impartiality as to be grounds for disqualification." Lisa L. Milord, The Development of the ABA Judicial Code at 27 (1992).

4. **Participant in judge's election campaign.** A judge may sit on a case in which a campaign contributor is a party or attorney or otherwise involved. See, e.g., Nathanson v. Korvick, 577 So 2d 943, 944 (Fla. 1991). However, commentary to Canon 5C(2) of the 1990 Model Code states that "campaign contributions of which a judge has knowledge, made by lawyers or others who appear before the judge, may be relevant to disqualification under Section 3E." Moreover, a judge is disqualified from cases in which a party or attorney was more than simply a contributor, for example, if a party or attorney was a member of the judge's

ampaign committee See, e.g., MacKenzie v. Super Kids Bargain Store, Inc., 565 So. 2d 1332, 1338 n.5 (Fla. 1990).

B. **Personal knowledge.** As with allegations of personal bias and prejudice, the personal knowledge requiring recusal is knowledge from extra-judicial sources as opposed to what a judge learns from participating in a case. A judge does not have "personal knowledge" about a case as a result of 1) ruling on issues earlier in the same case; 2) adjudicating the case of related parties to the same underlying transaction as the pending case; or 3) participating in an earlier trial of the same party whether or not based on the same transaction as the pending charge. See Jones v. State, 416 N.E.2d 880 (Ind. Ct. App. 1981).

III. Relationships.

A. **Professional relationships.** Under Canon 3C(1)(b), a judge is disqualified if the judge "served as lawyer in the matter in controversy, or a lawyer with whom he [or she] 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 ; . . ."

1. **Prior service as a lawyer in the matter.** Active participation in the same case as counsel of record or representation at an earlier stage in the proceedings may require disqualification. Note that a chief prosecutor may be considered "of counsel" in all cases or matters pending in his or her jurisdiction, from the investigatory stages of preparatory matters to and including the pendency of the case. King v. State, 271 S.E.2d 630, 633-34 (Ga. 1980).

A judge should disqualify himself or herself where a party before the judge is a former client if the representation was

within the past two years and that, if the representation was more than two years ago, the judge should make full disclosure on the record and should disqualify himself or herself if any party objects unless the judge believes the objection to be frivolous, in bad faith, or wholly without merit. Advisory Opinion No: 92-01 (New York Advisory Committee on Judicial Ethics May 7, 1992). Disqualification may also be required if the judge's representation of a party was many years earlier but involved a related or similar matter concerned the same subject or arose from the same facts.

Sharp v. Howard County, 607 A.2d 545 (Md. 1992)

Ordering that the circuit court judgment be vacated, the Court of Appeals of Maryland held that the circuit court judge should have recused himself from a zoning case involving a private airstrip where, seventeen years earlier, the judge while an attorney had drafted the restrictive covenants creating the airstrip. The court stated that, when an attorney has given legal advice or performed legal work in a non-adversarial setting, recusal is required if the underlying purpose of the prior representation was to achieve the goal that is at issue in a later proceeding before the same attorney as judge.

2. Prior association with a lawyer serving in the matter. Under Canon 3C(1)(b), when the judge's former law firm or a lawyer with whom the judge had a professional relationship appears before the judge, the judge is disqualified if the lawyer represented the party on the same matter now before the judge while the judge was associated with that lawyer, even if the judge had not been involved.

Where a judge was previously employed by a government agency and lawyers currently employed by that agency appear before the judge, the judge is not automatically disqualified, a "lawyer in a governmental agency does not necessarily have an association with other lawyers employed by that agency," but "a judge formerly employed by a governmental agency . . . should disqualify

himself [or herself] in a proceeding if his [or her] impartiality might reasonably be questioned because of such association " Commentary to Canon 3C(1)(b), 1972 ABA Model Code.

Disqualification is not automatically required under Canon 3C(1)(b) when the matter before the judge in which a member of the judge's former firm appears was not handled by the firm while the judge was associated with it. However, to avoid the appearance of partiality, some states require judges to routinely disqualify themselves for a specified length of time from hearing any matters involving their former law office even if the particular matter was not pending before the judge left the firm. See, e.g., Illinois Supreme Court Rule 63(C)(1)(c) (requiring recusal for three years).

B. Family relationships. Canon 3C(1)(d) suggests judicial disqualification when the judge, 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; or (iv) is to the judge's knowledge likely to be a material witness in the proceeding."

Parents, grandparents, grandchildren, uncles, aunts, brothers, sisters, nieces, nephews, sons, and daughters are within the third degree of relationship. Commentary to Canon 3C(3)(a), 1972 ABA Model Code.

IV. Financial, economic, or other interests. Canon 3C(1) requires disqualification 1) where a judge or relative within the third degree has a financial interest a) in the subject matter in controversy or b) in a party to the proceeding, regardless whether the outcome of the proceeding would have any effect on the interest (Canon 3C(1)(c)) and 2) where the judge or relative within the third degree has any other interest if that interest could be substantially affected by the outcome of the proceeding. Canon 3C(1)(c).

To be disqualifying, a judge's financial interest must be direct, real, and certain, not conditional or remote. Nueces County Drainage & Conservation District No. 2 v. Bevely, 519 S.W.2d 938 (Tex. Ct. App. 1975). However, disqualification may be required for less direct, real, and certain interests under the "any other interest" clause of Canon 3C(1)(c).

In re: Zoarski, Memorandum of Decision (Connecticut Judicial Review Council April 17, 1991)

The Connecticut Judicial Review Council publicly censured a superior court judge who had failed to disqualify himself in a case that involved a request to subdivide a residential piece of property into two lots where the town involved in the case had an "existing streets" regulation that was very similar to the existing streets regulation that the judge was challenging in another town in connection with a request to subdivide a piece of property he and his wife owned.

The 1972 ABA Model Code defines "financial interest" as "ownership of a legal or equitable interest, however small" Canon 3C(3)(c) (emphasis added). However, the 1990 ABA Model Code uses the term "economic interest," and the reference to "any other interest" was deleted; economic interest was considered "more inclusive" than "financial interest." Lisa L. Milord, The Development of the ABA Judicial Code at 10 (1992). Furthermore, under the 1990 ABA Model Code, not every economic interest "however small" is disqualifying, but only an economic interest that is "more than de minimus;" the ABA believed that "a judge's merely having a de minimus legal or equitable interest in a proceeding does not give rise to reasonable question as to the judge's impartiality." Id.

A judge has a responsibility to inform himself or herself about any personal and fiduciary financial interests, and make a reasonable effort to be informed about the personal financial interests of the judge's spouse and minor children residing in the judge's household. Canon 3C(2). A judge does not have the same responsibility to inform himself or herself about any interests of relatives other than his or her spouse and minor children but is disqualified from hearing a case only if the judge knows that the relative has an interest that could be substantially affected by the outcome of the case.

If an attorney in the case is affiliated with a law firm in which the judge or the judge's spouse has a relative (within the third degree of relationship) or such a relative's spouse who is a partner, there is case law holding that the relative has an interest that "could be substantially affected by the outcome of the proceeding," and the judge is disqualified even if the relative is not involved in the case. Potashnick v. Port City Construction Co., 609 F.2d 1101, 1114 (5th Cir. 1980); Regional Sales Agency, Inc. v. Reichert, 830 P.2d 252 (Utah 1992). Note, however, that commentary in both the 1972 and the 1990 ABA model codes states that a lawyer's affiliation with a law firm with which a relative of the judge is also affiliated does not of itself disqualify the judge.

V. Waiver of Disqualification: Canon 3E.

Under the 1972 Code, the parties cannot waive disqualification arising because the judge has a personal bias concerning a party or personal knowledge concerning the evidence (under Canon

3C(1)(a)) or because the judge served as a lawyer in the matter or a lawyer with whom the judge previously practiced law served as a lawyer in the matter during the association or because the judge or former associate has been a material witness (under Canon 3C(1)(b)). Under the 1972 Code, the parties can waive disqualification arising because of a financial interest (under Canon 3C(1)(c)) or because of family involvement in the proceedings (under Canon 3C(1)(d)). Under the 1990 ABA Model Code, the parties can waive disqualification based on prior service as a lawyer, prior association with a lawyer appearing in the matter, or an economic interest, the only grounds that cannot be waived under the 1990 ABA Model Code are personal bias or prejudice. Canon 3F, 1990 ABA Model Code

In circumstances where disqualification can be waived, under the 1972 Model Code, the judge can preside only if he or she first discloses the basis for the disqualification on the record to the attorneys and parties, and Canon 3D requires all parties and attorneys agree in writing that the financial interest or family involvement is immaterial -- and the judge cannot ask for a waiver or in any other way participate in the waiver after disclosure. However, some cases have held that disqualification can be waived by implication without a written agreement if, after disclosure by the judge, none of the parties object to the judge presiding. See, e.g., Citizens First National Bank v. Hoyt, 297 N.W.2d 329 (Iowa 1980).

The 1990 ABA Model Code eases the requirements for waiver. Under the 1990 Model Code, a judge may ask the parties to con-

--- consider waiving disqualification, although their consideration of that request must be "out of the presence of the judge" and a judge "must not solicit, seek or hear comment on possible remittal or waiver of the disqualification unless the lawyers jointly propose remittal after consultation" Canon 3F and Commentary to Canon 3F, 1990 ABA Model Code. In addition, under the 1990 ABA Model Code, the waiver of disqualification need not be in writing, although it must be on the record and the Commentary states that "[a]s a practical matter, a judge may wish to have all parties and their lawyers sign the remittal agreement. Commentary to Canon 3F, 1990 ABA Model Code.

VI. The Rule of Necessity.

Where there is no other court to hear a case, the rule of necessity provides that a court may preside even if the members of the court have a disqualifying financial interest. For example, because it was the only court authorized to hear the case, the Supreme Court of Oregon recently heard challenges to the state Public Employees' Retirement System, even though as members of the system, each justice had a financial interest in the outcome. Hughes v. Oregon, Nos. SC S38544, SC S38549, SC S38701, and SC S38700, Opinion (Oregon Supreme Court August 6, 1992). See also United States v. Will, 449 U.S. 200 (1980).

**Committee on Judicial Ethics
of the
California Judges Association**

RULES AND PROCEDURES

(Adopted June 30, 1984)

(Amended 9/14/86, 11/15/86, 9/25/88, 4/3/90, 8/25/90)

I. INTRODUCTION

A Standing Committee of the CJA

The Committee on Judicial Ethics exists pursuant to the authority of CJA By-Laws, Article VII, Section 4. The President of the Association is directed to appoint a committee of fifteen members, at least ten members must concur in rendering any opinion, report or recommendation.

These Rules and Procedures are adopted pursuant to By-Law, Article VII, Section 11 for governance of the Committee.

B Committee Purpose

The Committee is charged with construction of the Code of Judicial Conduct on the request of any judge, justice, commissioner, referee, or aspirant to judicial office, the interpretation of, and proposed amendments to that Code. Further, the Committee may be directed by the CJA Executive Board to study and report on any concern relating to judicial ethics.

II. COMMITTEE PROCEDURES

A Informal Responses

An inquiry which appears to be resolved by an existing opinion or Canon may be handled (1) by the vice-chairperson of the committee or (2) any member in consultation with the vice-chairperson, by telephone or letter of response, with a copy of an existing opinion when appropriate. Upon consultation with the vice-chairperson, members should cite the suggested canon(s) relayed to the caller. This shall be deemed an "informal response."

The vice-chairperson shall thereafter report, at the next meeting of the Committee, on the subject of all inquiries and responses. Three members of the Committee may cause an inquiry to be resubmitted for further study and response.

The inquiring judge should be advised that if the resolution is not readily apparent, the Committee invites a written inquiry for further study. Such a request should set forth all relevant facts of the ethical concern, together with the research already undertaken. In case of an urgent request, the chairperson may conduct a tele-

phone poll of members to obtain a tentative response prior to written inquiry, and prior to further study. Upon receipt of such a written inquiry, or on the initiative of the chairperson of the Committee, the chairperson shall assign a committee member or members to complete further research and to formulate a proposed response.

The proposed response shall be discussed at the next meeting of the Committee. Upon approval, the chairperson or a designated member will convey the "Informal Response" to the inquiring judge. (See Attachment A.)

The Committee shall decide if an "Informal Response" is sufficient, or if the question has significance as to require a "Formal Opinion" of the Committee.

B Formal Opinions

If it is decided that there is need for a Formal Opinion of the Committee, an inquiry shall be assigned by the chairperson for study and formulation of a proposed response. The assigned member shall then prepare a draft response for consideration of the Committee at the next meeting giving due regard to brevity and economy of thought, and following the format of Attachment B.

After deliberation, at least ten members of the Committee may adopt an opinion. The opinion shall be limited to the facts presented by the inquiry. Further, the opinion shall state that it is so limited, and is advisory only. Any member of the Committee may submit a minority opinion to be circulated and published in the same manner as the majority opinion of the Committee. The names and signatures of each Committee member subscribing to any opinion shall be set forth at the conclusion of the opinion.

C Reports

The chairperson of the Committee shall designate the procedure and format for a response on any matter referred from the Executive Board.

III. RULES AND COMMITTEE POLICY

A Confidentiality

No opinion, report or recommendation, nor the minutes of the Committee shall name any judge whose conduct has been the subject of an inquiry. Neither shall any member reveal the identity of such a judge, nor inquiring judge, except under compulsion of law.

B Non-involvement in Disciplinary Proceedings or Litigation

The Committee will not render an opinion or informal response when a matter of inquiry is the subject of investigation with the Commission on Judicial Performance, or is the subject of pending litigation. It will be the responsibility of the member of the committee preparing a tentative or informal response to attempt to determine

that the inquiry is not the subject of such investigation or litigation. The Committee may depart from this policy at the request of the Executive Board. The Committee may in its discretion decline to respond to any inquiry where the Committee determines that a response would be inappropriate

C Solicitation of Information

In order that the responses, opinions and reports of the Committee may be well-informed, the Committee or any member may seek information or advice from the inquiring judge or any other source that might contribute to the deliberations of the Committee. The Committee and each member shall use discretion in such consultation, however, so as not to violate the integrity of Committee deliberations, and maintain anonymity of the inquiring judge

D Meetings of the Committee

So long as inquiries or other business of the Committee remain unresolved, the Committee shall meet at the call of the chairperson. The Committee year coincides with the Annual Meetings of CJA, and every effort shall be made to conclude the business of the Committee on an annual basis

E Publication of Opinions

All existing opinions of the Committee shall be distributed by CJA to new members of the Association. All new formal opinions shall be distributed by CJA to all members annually

The Committee shall file each new opinion with the Executive Director of the Association and send its opinion to the inquiring judge. Further, the Committee shall publish an annual report entitled "Ethics Update" to summarize the formal opinions and informal responses of the Committee. The Ethics Update shall be distributed by CJA to all members of the Association.

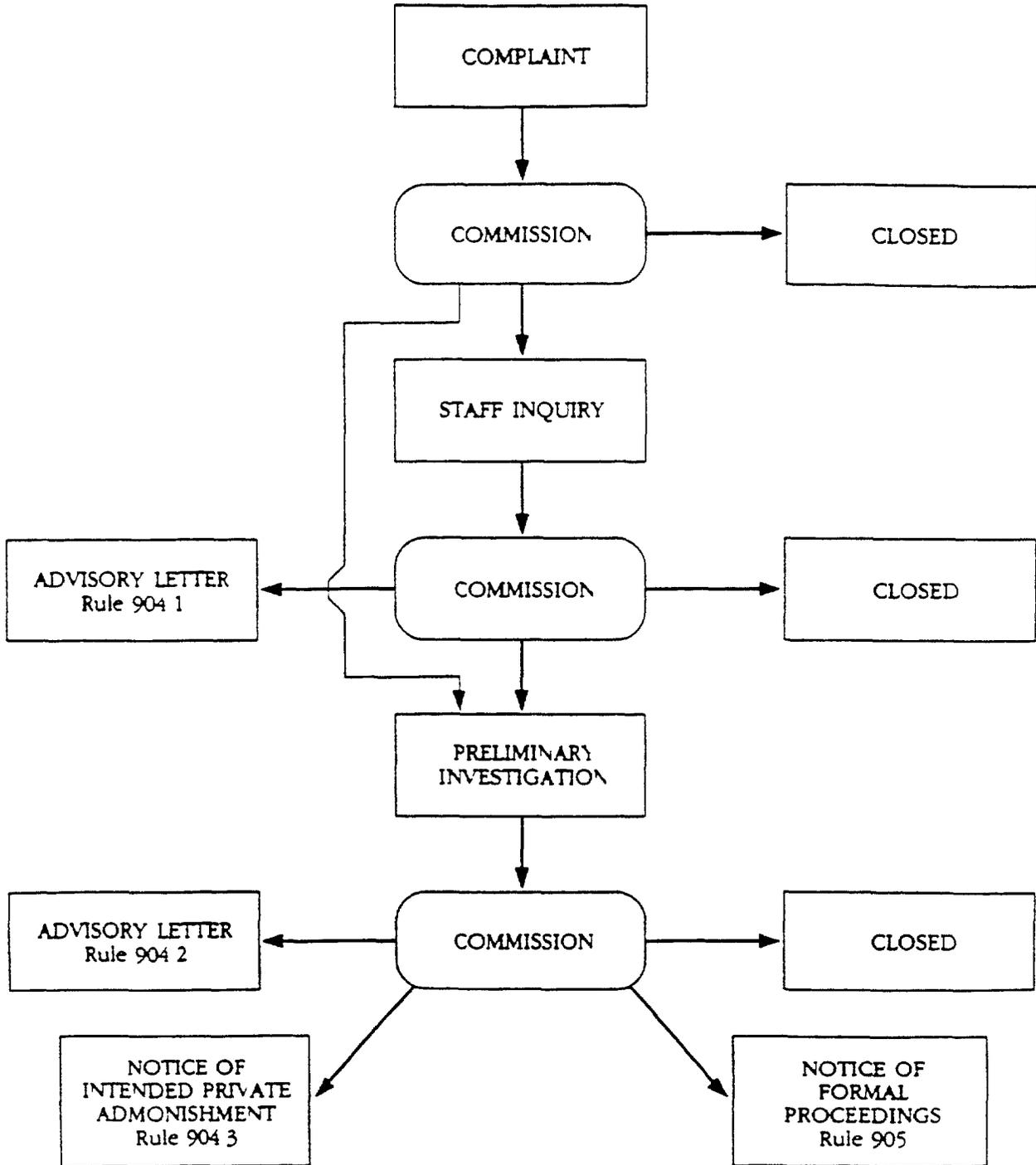
A copy of any formal opinion shall be sent to a member of the Association on request. An opinion, response or Ethics Update may be sent to a non-member at the request of the President of the Association, or the Executive Director, after consultation with the chairperson of the Committee

The Committee shall periodically review opinions to determine if any are obsolete

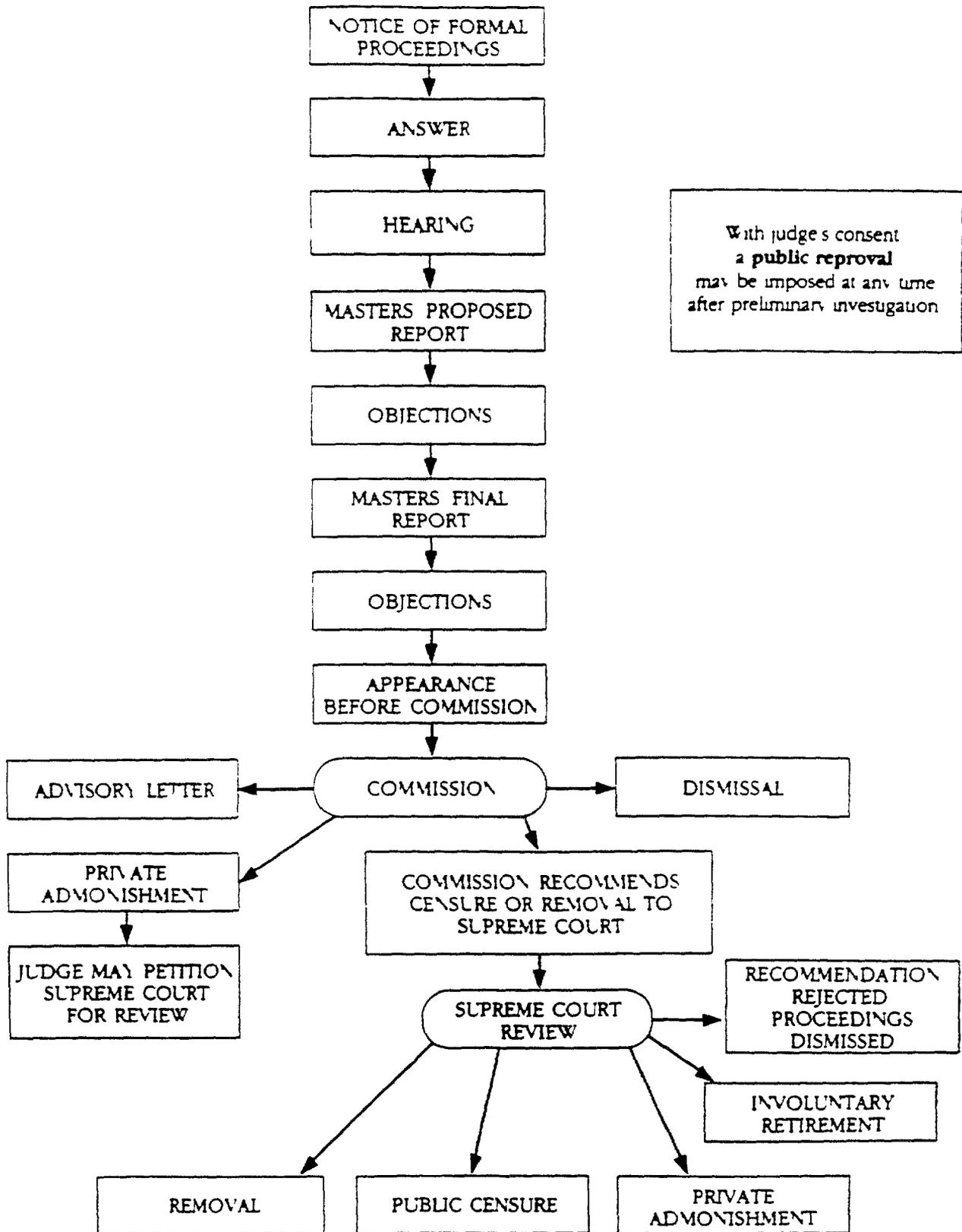
IV These rules and procedures may be amended by a majority vote of those present at any Ethics Committee meeting

COMMISSION PROCEDURES

First Steps



Formal Proceedings



*ADOPTED
by the Decision
of the Council of Judges
of the Russian Federation
on October 21, 1993*

JUDGE'S CODE OF HONOR OF THE RUSSIAN FEDERATION

This Code shall establish the rules of a judge's conduct in his professional and extra-office activities, binding every judge in the Russian Federation, unrelated to his position, as well as retired judges who retain the title of judge and membership in the judicial community

Article 1. General requirements established for judges

1 In his activity, a judge shall be obliged to be guided by the Constitution as well as other legislative acts which are in force in the Russian Federation, by generally accepted ethical standards and rules of conduct, to support the assertion of public confidence in fairness, impartiality, and independence of the judiciary

2 For a judge, performance of duties related to administration of justice should take precedence over any other occupations

3 A judge should avoid anything that could diminish the authority of the judicial power. A judge has no right to cause damage to the prestige of his profession in favor of his personal interests or interests of other persons

4 In any situation, a judge should maintain personal dignity, care about his honor, avoid anything that could harm his reputation or cast a doubt on his impartiality and independence in administration of justice

Article 2. Rules of judge's carrying out professional activities

1 A judge is obliged to be impartial, not allowing for influencing his professional activities by anyone, including his relatives, friends, or acquaintances

2 When deciding on a case, a judge should be free of adherence to any of the parties, of influence exerted by public opinion, of any fears of being criticized for his performance

3 A judge is obliged to maintain his qualification on a high level necessary for proper execution of his duties in administration of justice

4 A judge should be patient, polite, tactful, and respectful to parties in a trial and other persons he communicates with in the course of execution of his professional duties. A judge should require the same from court staff members

5 A judge is obliged to observe professional secrecy as to information obtained in the course of execution of his duties

A judge has no right to speak or comment in public or appear in the media in relation to cases being handled by the court until rulings on such cases have come into legal force. A judge has no right to question in public and beyond the limits of his professional duties court rulings which have come into legal force or any actions taken by his colleagues

6 A judge should respect and understand the media's desire to cover court activities, and provide them with necessary assistance if this does not interfere with conducting a trial or may be used for exerting influence on court

7 A judge should faithfully perform his professional duties and take all necessary measures for consideration of cases and materials on time

Article 3. Judge's extra-office activities

1 No extra-office judge's activities should cause any doubts as to his impartiality, fairness, or integrity

2 A judge has the right to be engaged in any activities as long as this does not contradict the requirements of the RF Law *On the Status of Judges in the RF* and of this Code

3 A judge may be engaged in any social activities as long as they do not cause harm to the authority of the judiciary or a judge's proper execution of his professional duties

4 A judge may participate in public meetings or otherwise contact legislative or executive bodies or their officials in connection with matters related to the law, legal system, or administration of justice, unless such contacts are conducive to exertion of influence upon a judge concerning execution of his professional duties or cause doubts in his impartiality

5 No judge can belong to political parties or movements, support them financially or in any other way, or express in public his political views, participate in any processions or demonstrations of political nature, or in any other political actions

6 A judge should avoid any personal contacts which can harm his reputation or affect his honor and dignity

7 A judge should refrain from any financial or business connections which can infringe upon his impartiality or hinder his proper execution of professional duties

Article 4. Judge's responsibility for non-observance of this Code

1 A judge shall be responsible for committing a malfeasance or other wrong in accordance with current legislation provided the established guarantees of his immunity are observed

2 Violations of the requirements established by this Code shall be considered by qualification collegia of judges, which shall take into account all the circumstances of a wrong committed, its gravity, and harm inflicted to the authority of the judicial power

3 A judge's powers may be terminated by a qualification collegium for committing a wrong which disgraces his honor and dignity or diminishes the authority of the judicial power following the procedure established by the RF *Law On the Status of Judges in the Russian Federation*

Note. A wrong which disgraces honor and dignity of a judge means an act or omission to act which, while not being criminal, is not compatible by its nature with the high title of judge

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ЧАСТЬ I ПРОФЕССИОНАЛЬНЫЙ КОДЕКС АМЕРИКАНСКОГО СУДЬИ

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