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MATERIALS

JUDICIAL SELECTION, ETHICS, AND DISCIPLINE

**Irkutsk, Russia
June 29 – July 3, 1999**

NATIONAL JUDICIAL COLLEGE

**with the participation of
Supreme Collegia on Judicial Qualifications of the RF**

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

1999

**SUPREME COLLEGIA ON JUDICIAL QUALIFICATIONS WORKSHOP
JUDICIAL SELECTION, ETHICS, AND DISCIPLINE
RUSSIAN-AMERICAN JUDICIAL PARTNERSHIP
(RAJP)**

**Irkutsk, Russia
June 29- July 3, 1999**

Sponsored by USAID

DAY 1

Tuesday, June 29

- 7 00 - 13 00 Arrival in Irkutsk and Registration
- 13 00 - 14 00 Lunch
- 15 00 Tour
- 18 00 - 19 00 Dinner

DAY 2

Wednesday, June 30

- 8 00 - 8 45 Breakfast
- 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
Boris Govorn, Governor of Irkutsk Region
Victor Valuev, Chairman of Irkutsk Regional Court
Victor Yudin, Chairman of Irkutsk Commercial Court

JUDICIAL SELECTION

- 10 00 - 10 45 **Justice Vyacheslav Lebedev, Chairman of the Supreme Court of the Russian
Federation**
The presentation will focus on increasing the role of a judge in the society as a
required condition for strengthening judiciary
- 10 45 - 11 30 **Presentation by Judge Betty Barteau, Chief of Party, RAJP**
This presentation will address the structure of the United States judicial system and
judicial conduct organizations
- 11 30 - 11 45 Coffee Break
- 11 45 - 12 30 **Justice V F Yakovlev, Chairman of the Supreme Commercial Court of
the RF**
This presentation will focus on the role of the qualification collegia in the
process of forming judicial corps for commercial courts

- 12 30 - 13 30 **Objectives of Federal Selection Methods**
Presentation by Judge Henry Politz, Professor at Louisiana State University Law Center, Member of the Judicial Conference
This session will focus on the selection of federal judges in the United States
- 13 30 - 14 30 Lunch
- 14 30 - 15 15 **State Selection Methods**
Presentation by Judge John Baker, Indiana Court of Appeals
This session will focus on regional systems for the selection of judges in the United States
- 15 15 - 15 45 **Selection of Judges in the Russian Federation**
Presentation by Judge Galina Fedorenko, Deputy Chair of the Yaroslavsky Oblast Court and Member of the Supreme Judicial Qualifications Collegia of the Russian Federation
This presentation will address the judicial selection process in the Russian Federation
- 15 45 - 16 15 **Selection of Judges in Regions of the Russian Federation**
Vasili Pronnikov, Chairman of Omsk Regional Court
Victor Vereshak, Chairman of the Commercial Court of Sakhalin Region
This presentation will focus on the process of selection of judges in different regions of the Russian Federation
- 16 15 - 16 30 Coffee break
- 16 30 - 17 00 **Presentation by V T Kalyagin, Deputy of the State Duma, Member of the Committee on Legal Reform**
Presentation on the status of the draft laws “On the Bodies of Judiciary”, “On Courts of General Jurisdiction”, Criminal Procedural Code, Civil Procedural Code and others
- 17 00 - 17 30 **Justice Yury Sidorenko, Chairman of the Council of Judges**
The presentation will focus on the joint work of the Council of Judges and Qualifying Collegia in the regions of the Russian Federation
- 17 30 - 18 00 **Presentation by V A Kalanda, Head of the Department for regional personnel policy and state service of personnel management under the President of the Russian Federation**
This presentation will address the problems of selection of personnel and suggestions on speeding up documentation process on the stage prior to the President’s approval of a candidate
- 18 00 Adjourn
- 19 00 Dinner

DAY 3
Thursday, July 1

8 00 - 8 45 Breakfast

JUDICIAL ETHICS

- 9 00 - 10 00 **Development of the United States Judicial Code of Ethics**
Presentation by the Judge Gerald Cohn
This session will focus on the development of the US Code of Judicial Ethics. The presenter will also discuss standards of behaviour, advisory opinions, and the dissemination of information.
- 10 00 - 10 45 **Judicial Ethics in the Russian Federation**
Presentation by N. Senatorova, Member of the CJQ
This presentation will address the regulation of judicial conduct, types of cases and the main ethical issues in the Russian Federation.
- 10 45 - 11 00 Coffee break
- 11 00 - 11 45 **Judicial Conduct**
Presentation by Judge Gerald Cohn
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.
- 11 45 - 12 05 **Presentation by Victor Yelizarov, Chairman of the Federal Commercial Court of Far-Eastern Region**
- 12 05 - 12 25 **Presentation by Victor Pashkov, Chairman of the Altai regional court**
The presentations will address issues related to judicial ethics and "Code of Honor".
- 12 25 - 13 00 **Presentation by N. Yershov, President of the Russian Law Academy**
The presentation will focus on training of judges, advanced training and retraining.
- 13 00 - 14 00 Lunch
- 14 00 - 14 30 **Presentation by N. A. Petukhov, Chairman of the military panel of the Supreme Court of the Russian Federation**
The presentation will focus on the role of qualifying collegia in the selecting judges for military courts and their impeachment.
- 14 30 - 15 15 **V. S. Chernyavskiy, General Director of the Judicial Department under the Supreme Court of the RF**
Presentation on the role of Judicial Department.

- 15 15 - 15 30 **A A Slotyuk, Head of the Financial Division of the Judicial Department**
- 15 30 - 15 45 Coffee break
- 15 45 - 16 00 **Presentation by A K Simonov, President of the Glasnost Fund under the President of RF**
This presentation will address sociological research “Mass Media and Judiciary in Russia”
- 16 00 - 16 15 **V N Rudnev, Editor in chief of the magazine “Rossnuskaya Yustisiya” (“Russian Justice”)**
The presentation will address problems and approaches to the issue of judges’ participation in mass media activities
- 16 15 - 17 00 **Presentation by T N Kharitonov, Head of Personnel Department of Supreme Court of the Russian Federation**
Presentation on judicial selection and most common mistakes made while processing documents

Exchange of opinions

- 17 00 - 17 15 V Belyaev, Chairman of Tyumen Regional Court
- 17 15 - 17 30 B Belyi, Chairman of the Qualifying Collegia of Yamalo-Nenetsk Autonomous region
- 17 30 - 17 45 N Serov, Chairman of the Commercial Court of Khabarovsk Region
- 17 45 - 18 00 T Komogortseva, Chair of the Qualifying Collegia of Amursky Region
- 18 00 Adjourn
- 19 00 Dinner

**DAY 4
Friday, July 2**

- 8 00 - 8 45 Breakfast

JUDICIAL DISCIPLINE

- 9 00 - 10 00 **Types of Disciplinary Procedure**
Presentation by Judge Henry Politz, Professor at Louisiana State University Law Center, Member of the Judicial Conference
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 00 - 10 45 **Presentation by V Borisenko, Chairman of the Military Court of Baltics Navy, Member of the CJO**

The presentation will focus on judicial discipline in the Russian Federation, issues related to impeachment and filing of criminal cases in accordance with the Law “On the Status of Judges in the Russian Federation”

10 45 - 11 00 Coffee Break

11 00 - 11 45 **State Disciplinary Mechanisms**

Presentation by Judge John Baker, Indiana Court of Appeals

This presentation will address issues related to state judicial discipline commissions, confidentiality, and criminal convictions

11 45 - 12 05 **V Litvinsky, Chairman of the Novosibirsk Regional Court**

12 05 - 12 25 **N Dorokhina, Chair of the Qualifying Collegia of Irkutsk region**

12 25 - 13 00 **A Dementiev, Head of the Secretariat of the Supreme Court of the RF**

13 00 - 14 00 Lunch

14 00 - 15 30 **Working Groups (6 groups)**

15 30 - 16 00 **Group Reports**

16 00 - 16 45 **Questions and Answers on all the Topics Discussed at the Worksop**

16 45 - 17 00 **Closing remarks**

17 00 - 17 15 Coffee break

17 15 - 17 45 **Certificates**

Judge Betty Barteau, COP RAJP

17 45 - 18 00 **Closing the workshop**

18 00 - 19 00 Free time

19 00 - 22 00 **Dinner and Reception**

JUDGE BETTY BARTEAU, Chief of Party, Russian-American Judicial Partnership

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 HENRY A. POLITZ, United States Circuit Judge for the Fifth Circuit Court of Appeals

Judge Henry A. Politz received his JD at Louisiana State University Law School in 1959. He was named Outstanding Young Lawyer in Louisiana in 1971.

Judge Politz practiced law with Booth, Lockard, Jack, Pleasant & LeSage, Shreveport, Louisiana, from February 1959 until his appointment as a judge of the United States Court of Appeals for the Fifth Circuit in July 1979. He served as Chief Judge of the Fifth Circuit from January 1992 through January 1999.

Judge Politz served seven years on the Committee on Professional Responsibility (attorneys ethics and discipline) of the Louisiana Supreme Court, and two years as a member of the Louisiana Judiciary Commission (judge ethics and discipline) before appointment to the federal court. He served six years on the Committee on Codes of Conduct of the Judicial Conference of the United States, the national ethics committee for all federal judicial officers and employees. He is a visiting professor at Louisiana State University Law Center. He also served two years on the Judicial Conference Committee to Review Circuit Council Conduct and Disability Orders, the committee charged with reviewing disciplinary actions taken by Circuit Judicial Councils in judicial misconduct matters. Judge Politz is a member of the Judicial Conference of the United States, the governing body of the federal court system (1992-99) and its Executive Committee (1996-99).

DAVID M VAUGHN, Deputy Chief of Party

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, her 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 from 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



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

SECTION 1

OVERVIEW OF THE UNITED STATES JUDICIARY

Presentation by
Honourable Judge Betty Barteau,
Russian-American Judicial Partnership

Objective

To give a better understanding of US judiciary

The participants will study the following

A U S JUDICIARY

B PICTURES

Overview of the United States Judiciary

The Constitution of the United States establishes three branches of government: the Legislative, the Executive, and the Judicial. Under the Constitution, each branch exercises functions both independent and dependent of the other branches. For example, the Judiciary alone may determine the constitutionality of acts of Congress, but is subject to Congress' power governing financial and certain administrative matters. Also, if the Judiciary's needs new buildings and facilities, they are subject to control of a federal agency named the General Services Administration, which is an agency of the Executive branch. Significantly, the Judiciary is neither subject to the complete control of the other branches, nor able to function completely independent of them.

There are two kinds of courts in the United States: federal and state. [Focus on federal court system - Most state systems parallel federal system - Exception NY] Federal courts are established by the US government under Article III of the Constitution. There are fewer than 1,500 federal court judges and magistrates, and about one million cases are brought each year in federal courts. Of the one million cases, half are bankruptcy filings and one-tenth are minor criminal cases. State courts

are established by a state, or by a county or city within the state. There are almost 30,000 state court judges, and the number of state court cases exceeds 27 million each year, not including traffic and parking violations. The cases individual citizens are most likely to be involved in--such as robberies, traffic violations, broken contracts, and family disputes--are usually tried in state courts.

There are three types of federal courts: district courts, courts of appeals, and the Supreme Court. Article III of the Constitution calls for a Supreme Court and whatever other federal courts Congress considers necessary.

Congress has divided the country geographically into 94 federal judicial districts, each with its own U.S. district court. The district courts are the federal trial courts, where cases are tried, witnesses testify, and juries serve. There are also first instance specialized courts, such as the Tax Court, the Court of International Trade, and the Court of Federal Claims.

Congress has grouped the districts into 12 regional circuits (plus a 13th "federal" circuit covering the entire country), each with a court of appeals. The Court of Appeals for the Federal Circuit exercises over

appeals from the specialized courts in the fields of international trade, intellectual property, government contracts, claims against the government, and veteran affairs. If you lose a trial in a district court, you can appeal the case to the court of appeals, which will review the case to see if the district court judge applied the law correctly. The map shows the geographical boundaries of circuits (11 numbered circuits and the District of Columbia Circuit). The courts of appeals also review cases decided by some federal agencies, such as the National Labor Relations Board.

The U.S. Supreme Court in Washington, D.C., is the most famous federal court. Cases from the court of appeals in each circuit and from the state supreme courts can be appealed to the Supreme Court, but the Supreme Court does not have to hear the cases that are brought to it and, in fact, agrees to hear only a very small percentage of the cases it is asked to review.

Justices of the Supreme Court, and judges of circuit courts of appeals and the district courts are appointed by the President of the United States and confirmed by the Senate (the upper chamber of Congress). Article III of the Constitution, provides that such judges “hold their offices

during good behavior,” which means, as a practical matter, that they hold lifetime tenured unless impeached Also, by this same Constitutional Article, these judges (who are referred to as Article III judges), may not have their salaries reduced

Congress has also established the bankruptcy courts as a division of the district courts and magistrate judges as assistant or associate judges in district courts Magistrates get the district judges' cases ready for trial and conduct trials in some criminal cases and in civil cases when both parties agree to a hearing before a magistrate The judges of these courts are appointed by Article III judges for a fixed term, and are not appointed by the President

Because Congress has the power to establish the lower federal courts, Congress has extensive legislative control over their administration Congress requires annual reporting by the judiciary, and has instituted administrative, educational and policy-making structures within the judiciary [AO - administrative, FJC - educational, Judicial Conference - policies and procedures]

These administrative, educational and policy-making structures serve the Judiciary and the other branches of by providing a mechanism through which a dialog and interaction between the judiciary and other branches of government may be conducted. For example, within the administrative structure of the judiciary is an office for legislative liaison. This office works with the offices of congressional members to remain informed about legislative measures that could impact the judiciary.

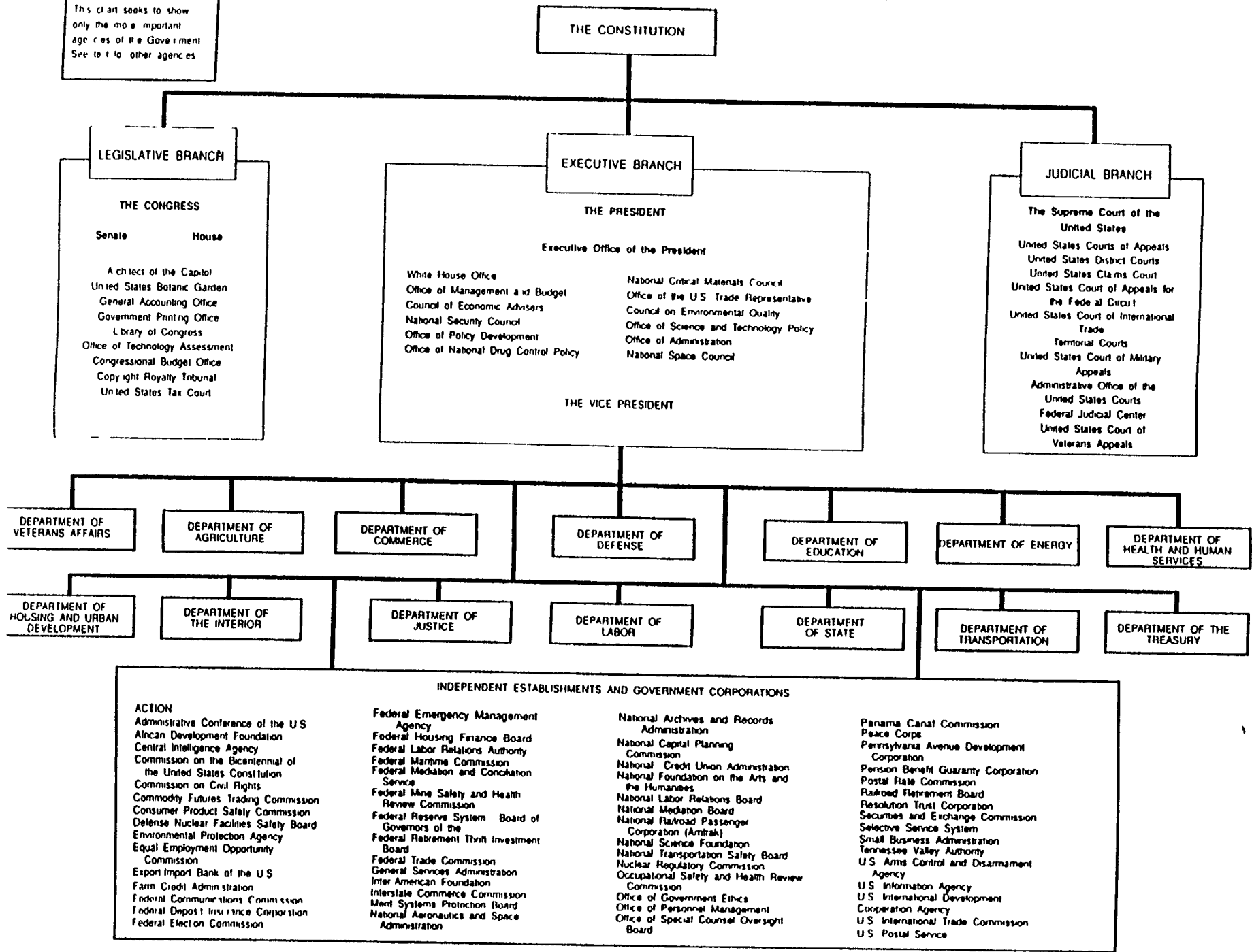
[Jurisdiction] Federal courts don't have the same broad jurisdiction that state courts have. Federal court jurisdiction is limited to the kinds of cases listed in the Constitution (Article 111, Section 2). Usually, federal courts only hear cases involving the Constitution, laws passed by Congress, cases in which the United States is a party, cases involving foreign diplomats, and some special kinds of cases, such as incidents at sea and bankruptcy cases. Also, federal courts hear cases that are based on state laws but that involve parties from different states.

Federal courts consider both civil and criminal cases. The defendant found guilty in a criminal case and the losing party in a civil case both have the right to appeal their case to the court of appeals.

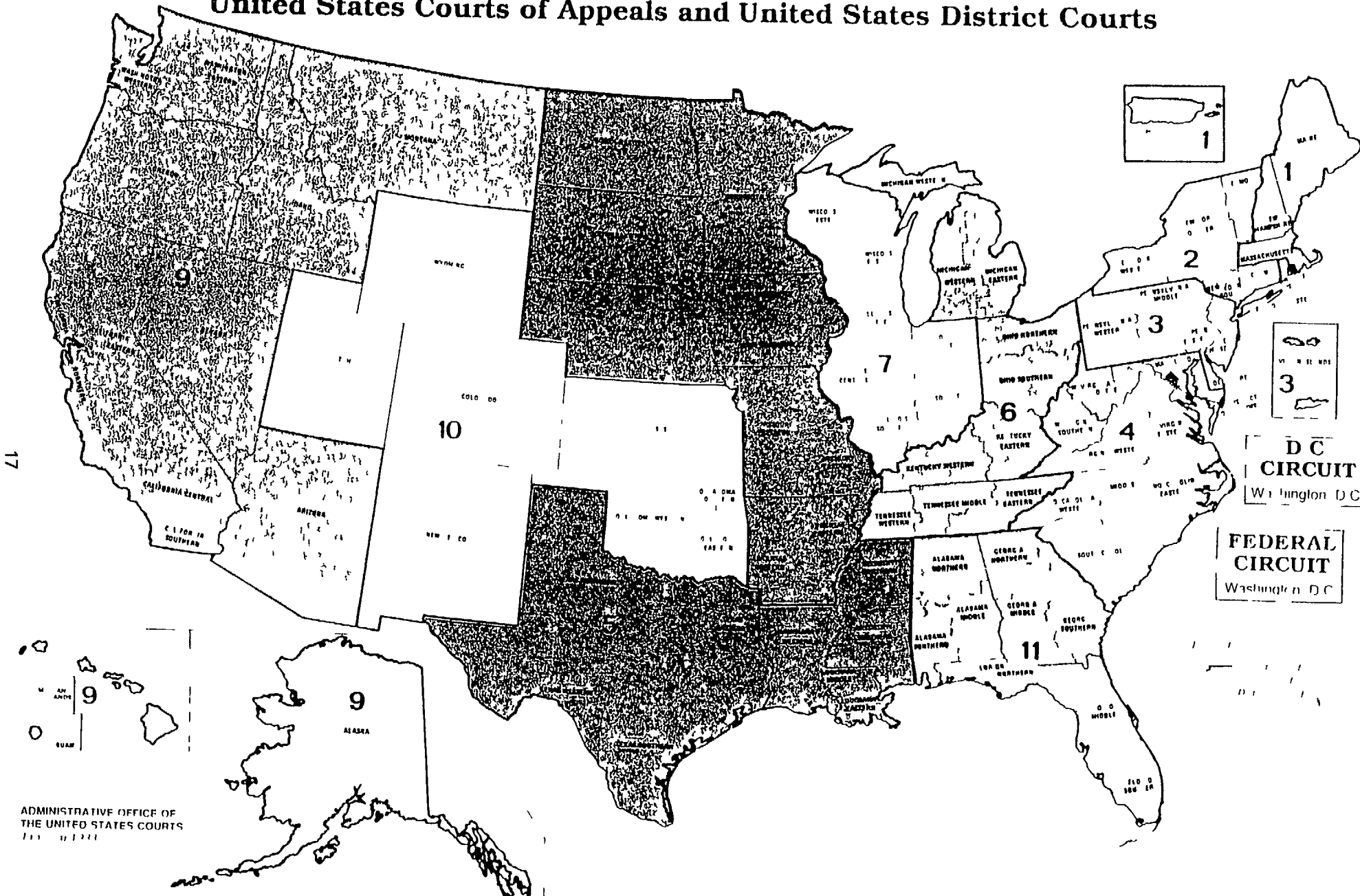
THE GOVERNMENT OF THE UNITED STATES

THE GOVERNMENT OF THE UNITED STATES

This chart seeks to show only the most important agencies of the Government. See text for other agencies.



Geographical Boundaries of United States Courts of Appeals and United States District Courts

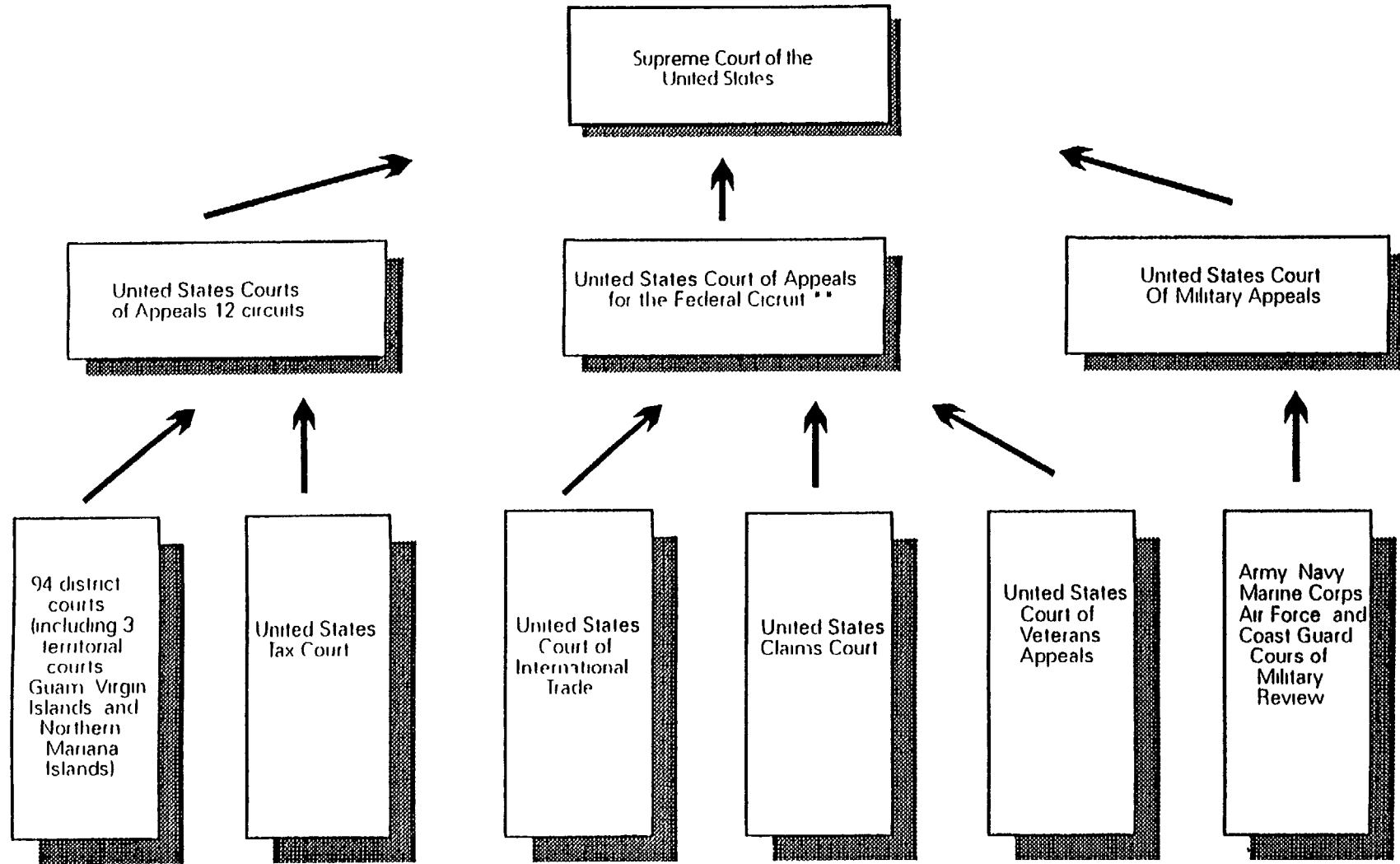


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ADMINISTRATIVE OFFICE OF
THE UNITED STATES COURTS
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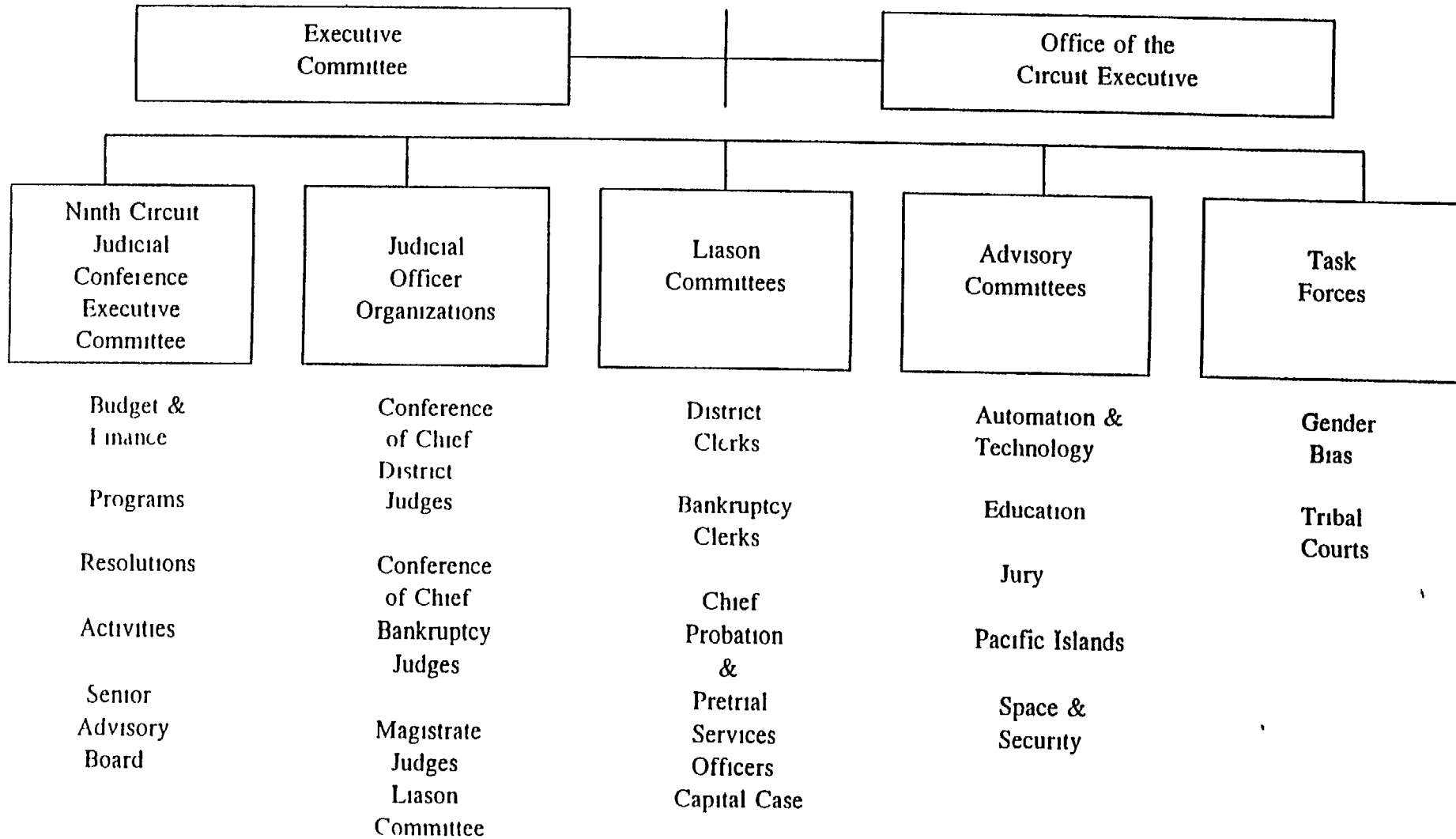
NUMBER AND COMPOSITION OF CIRCUIT SET FORTH BY 28 U.S.C. § 41

THE UNITED STATES COURT SYSTEM

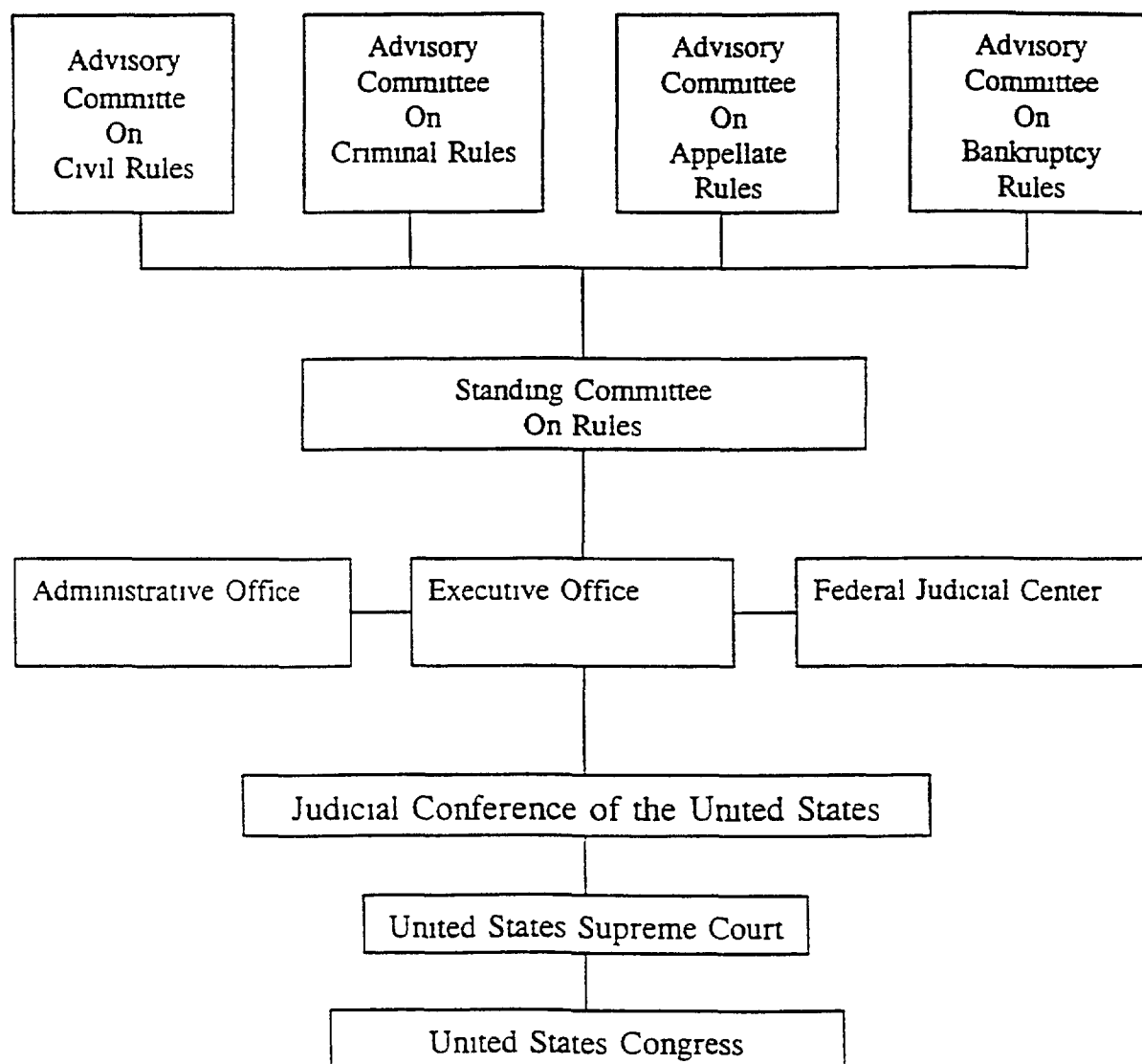


* The 12 regional courts of appeals also receive cases from a number of federal agencies
 ** The Court of Appeals for the Federal Circuit also receives cases from the International Trade Commission the Merit Systems Protection Board the Patent and Trademark Office and the Board of Contract Appeals

**Judicial Council
of the
Ninth Circuit**



Creation of Federal Rules of Procedure



**Judicial Conference
Of The United States**

Chief Justice of the
United States Supreme Court

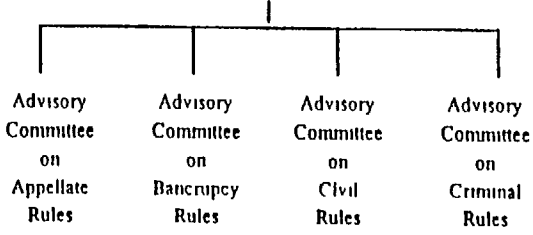
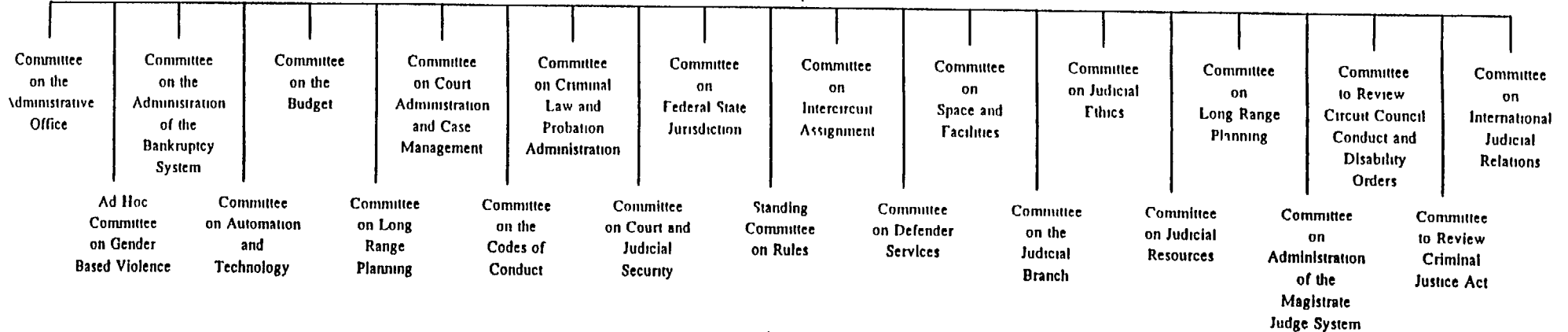
Chief Judges of the 13
Courts of Appeal One District Court
Judge From Each
Circuit Chief Judge
of the Court
of International Trade

Administrative
Office

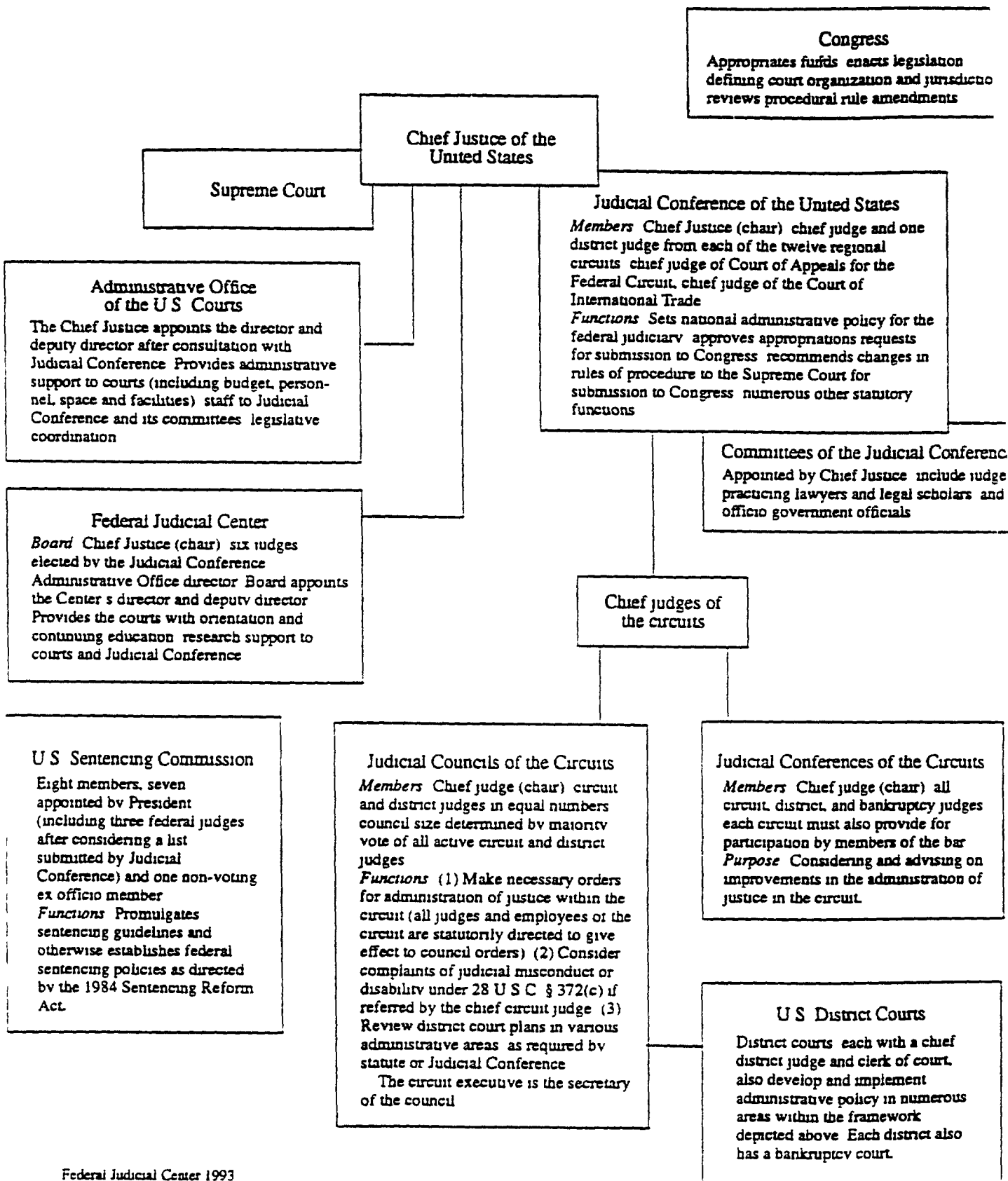
Executive
Committee

Federal
Judicial Center

21



Federal Judicial Administration





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Chai Emeritus

SECTION 2

JUDICIAL SELECTION AND JUDICIAL DISCIPLINE

IN THE UNITED STATES FEDERAL COURT SYSTEM

Presentation by

Honorable Henry A. Politz

United States Circuit Judge for the Fifth Circuit Court of Appeals

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
- IV ATTACHMENT JUDICIAL COMPLAINTS FILED, CONCLUDED, AND PENDING

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

Honorable Henry A. Politz
United States Circuit Judge for the Fifth Circuit Court of Appeals

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 B 6 seats on the U S Supreme Court and 13 district judgeships
- 2 Today, over 800 judges serve in the federal judiciary (9 Supreme Court, 179 circuit, 632 district), 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) Federal judges have life tenure (Art III, Sec 1, of the Constitution provides that federal judges shall "hold their Offices during good Behavior") The exceptions to this rule are an Article I judge, whom the executive may remove for cause, and magistrate and bankruptcy judges
- (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 the 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 status, 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
Certain outside income is forbidden
- (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) Federal judges must be members of the bar in good standing
 - (b) The American Bar Association issues an independent rating of a candidate's qualification for the federal bench This includes a review of a candidate's law school record and work experience
- (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, women and minorities historically have 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
 - (c) Presidents Carter and Clinton have made progress in changing the composition of the bench to reflect our diversity

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 B importantly B the Constitution does not indicate whether pre-impeachment criminal prosecutions of federal judges are permissible. Nonetheless, two federal judges have been charged and convicted.

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

- a In the United States, the separation of powers theory dictates that neither the executive nor the legislature may alter a court's decision in a given case. They may, however, subsequently change the law.
- 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 to an independent judiciary. In the English legal system, 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.
 - c Indeed, some commentators suggest that judicial self-regulation leads to harassment or intimidation of non-conformist judges. That is not the majority view, however.
- 3 The overwhelming importance that we place on judicial autonomy dictates that, in our system, the Supreme Court B which must retain maximal judicial independence B may not be subjected to the discipline of the lower federal courts, the legislature, or the executive except for the impeachment process.

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
- 4 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 candidates 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 United States, judges are drawn directly from the bar, and most candidates are successful practicing attorneys or legal academicians
- 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

B 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
 - d The candidate's oral testimony before the Judiciary Committee may significantly influence the outcome of the Committee vote
- 3 Once a candidate is approved by 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. Their role is slightly lessened for circuit court appointments which cover several states
 - 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

C 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 also have increased, to the point where the average time between referral to the Senate Judiciary Committee and confirmation now approaches six months
- 3 These trends reflect the increased politicization and public participation in the nomination process

E The Role of Interest Groups in the Confirmation Process Does the United States Really Go Through a Process of Electing a Supreme Court Justice?

F Recent Examples of Highly Politicized Confirmation Processes

- 1 1986 — appointment of Justice Rehnquist to be Chief Justice
- 2 1997 — failed confirmation of Robert Bork
- 3 1991 — nomination/confirmation of Justice Clarence Thomas

G Appointment Processes for Non-Article III Federal Judges (Magistrate Judges and Bankruptcy Judges)

- 1 Magistrate judges serve in the district court, handling matters assigned by statute and by delegation from the district judges, and by consent of the parties, such as pretrial conferences, case status hearings, and preliminary appearances in criminal cases. If parties consent, magistrate judges are empowered to handle all aspects of civil cases. Appeals of their decisions go both to the district court judges and to the courts of appeals.
- 2 Magistrate judges are appointed to eight-year terms by a majority vote of the district judges. The appointee must have been a member of the bar in good standing for at least five years with recognized competence, commitment to equal justice, good character, and an absence of ethical conflicts. A merit selection panel recommends nominees to the court.
- 3 Bankruptcy judges form a unit of the district court but are appointed by the respective courts of appeals for the circuits where they will serve. They handle the dissolution and liquidation and reorganization of debt (personal, business, and agricultural) and their terms are for 14 years. Appeals from their decisions go to

- the district court judges, then to the courts of appeals
- 4 Bankruptcy judges, in order to qualify for appointment, must have been engaged in the practice of law for at least five years Merit Selection Panels make recommendations to the circuit councils, which then recommend several qualified candidates to the court of appeals Candidates must be persons whose character, experience, ability, and commitment to equal justice under the law qualify them for appointment

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, typically the circuit's judicial council, but they may only be removed by the Congress following a careful 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 ' 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
- 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
- 3 Informal action has been and remains the judiciary's most common response to episodes of judicial misconduct. Informal techniques include identifying the problem to the judge on a confidential basis, counseling, advising, talking through the issue without publicity and without compromising the judge's ability to continue functioning as a judge. Outcomes are reportedly almost always successful, and no complaint has been filed

Example Report of an anonymous letter complaining about a judge's harsh demeanor on the bench. The chief judge simply gave a copy of the letter to the judge. A few days later, the judge accused of being unduly harsh and impatient telephoned the chief judge to say he appreciated knowing of the complaint and had discussed the matter with his family who confirmed that he had been very difficult to live with of late. The judge assured the chief judge he would make special efforts in the future to correct his behavior.

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 United States 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 impeachment 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 was impeached, convicted, and removed by the Senate currently serves as a member of the U.S. House of Representatives
- d During the 1980s, three Article III judges were impeached for offenses allegedly committed while in office, the first such prosecutions in our history (Judges Hastings, Claiborne, and Nixon)

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. The overwhelming majority view is one of approval
 - (2) The debate continues 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?

2 Complaints to the Circuit Judicial Councils

- a Under the Judicial Conduct and Disability 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 circuit

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 ' 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,

(c) a judge whose repeated actions demonstrate a personal bias against a group or class,

(d) a judge who sleeps or appears drunk on the bench,

(e) a judge who excessively abuses lawyers, parties, or witnesses,

(f) a judge who routinely makes inappropriate remarks,

(g) a judge who engages in extracurricular misconduct such as sexually harassing staff or others, dating a juror, consorting with a party to a case (such as a criminal defendant), drinking excessively, or driving under the influence of alcohol

(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"

4 Mental or physical disability

(1) The discipline 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 and usually does dismiss frivolous claims and those that are not properly raised under the statute
 - (b) For others, the chief judge 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 must conduct an investigation, make findings, and file a report with the circuit judicial council
- (c) Circuit Judicial Council disposition
 - i) Upon receipt of the report, the judicial council may take any of the following actions
 - a) take additional evidence,
 - b) dismiss or conclude the complaint,
 - c) order corrective action, such as censure, reprimand, request for voluntary retirement,

or certification of disability so that an additional judge may be appointed,

- d) if the alleged misconduct constitutes grounds for impeachment, the judicial council must certify that determination to the Judicial Conference of the United States

(d) Judicial Conference disposition

- 1) If the Judicial Conference determines that impeachment is warranted, the Conference must transmit that 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 B and may be required B to make a written response to the allegations
- (2) The accused judge also has the right to appeal the decisions of the judicial council to the Judicial Conference

h Disposition of Complaints

The number of judicial complaints filed in 1997 totaled

679, a 28% increase of the 529 filed in 1996. Filings increased to 1051 in 1998, an increase of 54% over 1997, and an increase of nearly 100% over 1996. The dismissals by chief circuit judges increased from 361 in 1996 to 742 in 1998, an increase of 105%. Actions by Circuit Judicial Councils were 249 in 1996 and 260 in 1998, a modest increase of 4%. Over 80% of the complaints dismissed by the several chief judges without the appointment of a special investigatory committee were found to be directly related to the merits of judicial rulings by the subject judge. Table 12 attached hereto sets out these statistics in more detail.

Table 12
Judicial Complaints Filed, Concluded, and Pending

	1996	1997	1998
Filed	529	679	1,051
Concluded	610	486	1,002
1 By Chief Judges	361	273	742
Dismissed	351	266	734
Corrective Action Taken	3	2	3
Withdrawn	7	5	5
2 By Judicial Councils	249	213	260
After Review of Chief Judge=s Dismissal ¹			
Dismissed	248	212	256
Action Taken	-	-	-
Referred to Judicial Conference	-	-	-
After Report by Investigative Committee			
Dismissed	1	-	2
Action Taken	-	1	2
Referred to Judicial Conference	-	-	-
Pending	21	214	263

¹On petition for review of a chief judge=s dismissal of a complaint



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JUDGE B. B. SCHRACB

Chair Emeritus

SECTION 3

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”

III APPLICATION FOR THE INDIANA COURT OF APPEALS

Handbook for Judicial Nominating Commissioners

**by Marla N. Greenstein
with a Foreword by Cyrus R. Vance**

**American Judicature Society
Chicago**

Handbook for Judicial Nominating Commissioners

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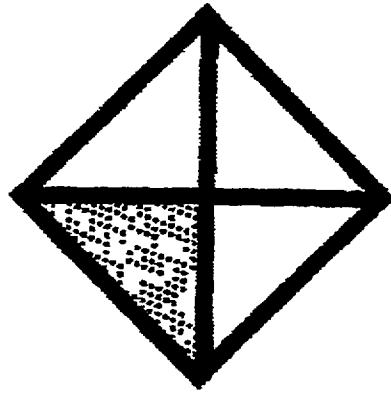
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Evaluative Criteria¹

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 80 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

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

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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 smecure 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 unswervingly 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. Aldisert, *What Makes a Good Judge?* (pt. 1), 14 *IJA Rep.* 1, 2 (Winter 1982).

6 N. Heffernan, *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 states constitution and statutes for this judicial office?
- 3 What is the states 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 persons age interfere with the effective discharge of judicial duties?
- 8 Will this persons 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?

INDIANA JUDICIAL NOMINATING COMMISSION

APPLICATION

FOR THE

INDIANA COURT OF APPEALS

- I Please provide your
- A Full legal name and any former names
 - B Addresses and telephone numbers (home and office)
 - C Date and place of birth
 - D Social Security number
 - E Marital status
 - F Spouse's and children's names, if applicable, and their birth dates and places

II Please attach your recent photograph to the front of each copy of your application

- III A In what county of Indiana are you domiciled and for how long?
- B When were you admitted to the Indiana Bar?
 - C What is your attorney number?

IV A Please list all colleges and universities you have attended other than law schools. Please attach transcripts from each

<u>School</u>	<u>Dates Enrolled</u>	<u>Degree or Certificate</u>
---------------	-----------------------	------------------------------

B Please list law schools and post-J D programs attended. Please attach transcripts from each

<u>School</u>	<u>Dates Enrolled</u>	<u>Degree and</u>
---------------	-----------------------	-------------------

Class Rank

C Please describe any academic honors, awards, and scholarships you have received and when

V A Please provide your employment history since graduation from college, including titles or positions, locations, and dates

B If applicable, describe the nature and extent of your practice of law, present and former, and indicate the names of your partners, associates, or employers Please include a description of the extent of your jury experience, if any

C If applicable, describe the nature and extent of your judicial experience Please include a description of your experience presiding over jury trials, if any

VI A Please list by caption, cause number, and filing date up to five of your trial or appellate briefs and/or written judicial opinions

B Please list up to five legislative drafts or court rules written by you Please refer to them by official citation, if applicable, by date, and by subject matter

C Please list up to five of your contributions to legal journals or other legal publications Please give titles, official citations, and a brief description of the subject matter

D Please submit copies of any four of the entries listed

E. Please describe the nature and extent of any pro bono work you have undertaken in your career

F Please indicate the five most significant legal matters entrusted to you whether as a judge or lawyer and why you believe them to be so

G Please provide the names, addresses, and telephone numbers of three attorneys who have been your professional adversaries in your

practice or who have litigated substantial cases
in your court and who would be in positions to
comment on your qualifications for this judicial
position

VII A Please describe any efforts, achievements,
or contributions on your part, including written
work or speeches, made toward the
improvement of the legal system and the
administration of justice

B Please describe any efforts, achievements,
or contributions on your part, including
written work or speeches, concerning public affairs
and contemporary problems

C Please list any memberships and offices you
have held in civic or charitable organizations,
including brief descriptions of the purposes of the
organizations and of your involvement

D Please list any memberships and offices you
have held in professional organizations, as well
as brief descriptions of the purposes of the organizations and
of your involvement

E Please list any memberships you hold in
social clubs or organizations. If any of these
restricts its membership on the basis of race,
sex, religion, or national origin, please
indicate

F Have you had any teaching experience in the
law? If so, give the names of the institutions
or programs, your titles, and the dates

G Please describe your hobbies and other
leisure activities

VIII A Please provide names, addresses, and
telephone numbers of three professional
references

B Please provide names, addresses, and
telephone numbers of three personal references

C Please list any lawsuits or legal
proceedings, including bankruptcies and
dissolutions, in any jurisdiction, to which you have
been a party. Please provide dates, docket
numbers, names of other parties, and, if

needed, a brief explanation

D Have you ever been arrested or cited for any violation of the law other than for routine traffic violations? If so, please provide dates, jurisdictions, and a brief explanation of the arrest and its resolution

E Are you now, or have you ever been a member of the Bar of any other state? If so, when and where?

F Have you ever been disciplined in any way, formally or informally, by the Indiana Supreme Court Disciplinary Commission, by the Indiana Commission on Judicial Qualifications, or by similar committees in other jurisdictions? If so, please explain

G Have you filed all federal, state, and city tax returns which are now due, and are all payments current? If answer is no, please explain

IX A Please attach a copy of a statement from your physician describing your general physical condition

B Do you have any physical limitations which require accomodation? If so, please specify

C Have you ever been diagnosed as having an emotional or mental condition or illness, or have you undergone treatment for an addiction to drugs or alcohol? If yes, please provide pertinent dates and names of your doctors

APPLICANT'S SIGNATURE

WAIVER AND STATEMENT OF CONSENT

The undersigned applicant hereby waives the benefits of any statute, rule, regulation, or doctrine of the common law prescribing confidentiality or privacy of records. The reach of this waiver extends to the records of any administrative, disciplinary, or governmental agency or committee, including but not limited to the Indiana Commission on Judicial Qualifications, the Indiana Supreme Court Disciplinary Commission, the Board of Law Examiners, and any similar agencies of other jurisdictions. The undersigned further authorizes and requests every person, firm, company, corporation, governmental agency, court, association, or institution having control of any documents, records, or other information pertaining to the undersigned, to furnish to the Judicial Nominating Commission or its agents any such information, including documents, records, disciplinary complaints, formal or informal, pending or closed, or any other pertinent data, and to permit the Judicial Nominating Commission or any of its members, agents or representatives to inspect and make copies of such documents, records, or other information. The undersigned specifically authorizes the release of any state or federal tax information. The undersigned does hereby release and discharge the Judicial Nominating Commission, its individual members as now or hereafter constituted, their employees, agents, and representatives, the Indiana State Police, the Indiana Department of Revenue and any other agency or person

or their agents or representatives providing information from any and all liability of every nature and kind arising out of the furnishing and use of information concerning the applicant

The undersigned agrees and understands that the Indiana Judicial Nominating Commission or its agents or employees may interview or otherwise consult members of the legal, judicial, and general community concerning the professional competence and integrity of the candidate, that the names of all candidates will be publicly disclosed prior to their evaluation by the Judicial Nominating Commission, that a credit investigation may be made, that an investigation by a law-enforcement agency may be requested by the Commission, and that this application and information will be publicly disclosed if the applicant is included in the first group of candidates after evaluation, as described in IC 33-2 1-4-7(d)

The undersigned hereby affirms that, if certified by the Judicial Nominating Commission to the Governor and thereafter appointed to the judicial office, the candidate will accept said appointment

DATE

APPLICANT'S SIGNATURE

SUITABLE AGE

1 HOW OLD IS CANDIDATE?

2 MINIMUM AGE LIMITATIONS?

3 MANDATORY RETIREMENT AGE?

4 WILL CANDIDATE'S AGE INTERFERE WITH JUDICIAL DUTIES?

5 WILL AGE ALLOW REASONABLY LONG TERM OF SERVICE?

HEALTH

1. MEDICAL REPORT NOT MORE THAN ONE YEAR OLD?

2. SERIOUS ILLNESS WITHIN PAST 5 YEARS?

3. ANY PHYSICAL HANDICAPS WHICH WOULD IMPACT THE EFFECTIVENESS AS A JUDGE?

4. HAS PERSON EVER BEEN TREATED FOR ALCOHOLISM?

5. HAS PERSON EVER BEEN UNDER PSYCHIATRIC CARE?

IMPARTIALITY

- 1 DOES CANDIDATE HAVE AN OPEN MIND?
- 2 WILL CANDIDATE LIMIT ACTIVITIES / RELATIONSHIPS THAT INTERFERE WITH POSITION?
- 3 CAN CANDIDATE AVOID RUNDUE INFLUENCE AND FAORITISM?
- 4 WILL CANDIDATE BE FREE FROM POLITICAL TIES & PARTY PREFERENCE?
- 5 BIAS FREE? RACIAL - ETHNIC - RELIGIOUS - SOCIAL
- 6 WILL CANDIDATE REFUSE PRESENTS OR FAVOURS?

INDUSTRY

- 1 IS CANDIDATE A HARD WORKER?

- 2 WHAT HAS BEEN CANDIDATES WORKING HOURS IN THE PAST?

- 3 DOES CANDIDATE HAVE A REPUTATION FOR COMPLETING WORK ASSIGNMENTS ON TIME?

- 4 IS CANDIDATE USUALLY WELL PREPARED & PROMPT?

INTEGRITY

- 1 WHAT IS THIS PERSONS REPUTATION IN COMMUNITY & IN PROFESSION?

- 2 HAVE ANY DISCIPLINARY COMPLAITS BEEN FILED AGAINST THE CANDIDATE?

- 3 ANY ARRESTS?

- 4 DEFENDANT IN ANY LAWSUITS INVOLVING DISHONESTY OR UNETHICAL CONDUCT?

- 5 REGULATING FILED TAX RETURNS?

- 6 DID APPLICANT MAKE ANY FALSE OR MISLEADING STATEMENTS ON QUESTIONNAIRE?

PROFESSIONAL SKILLS

1. EDUCATION

2. AREAS OF LEGAL PRACTICE

A) ADMIN BODIES

B) COURTS OF LAW

C) APPEALS

3. HAS CANDIDATE TAUGHT LAW?

4. ANY BOOKS OR ARTICLES PUBLISHED?

5. GENERALLY WELL EDUCATED IN FIELD OTHER THAN LAW?

6. FAMILIAR WITH CURRENT LEGAL TRENDS & DEVELOPMENT?

COMMUNITY CONTACTS

1. MEMBER OF ANY BAR OR PROFESSIONAL ORGANIZATIONS?

- 2 INVOLVED IN ANY CIVIC OR CHARITABLE MATTERS?

- 3 ANY CULTURAL INTERESTS OR ACTIVITIES?

4. HOBBIES OR OUTSIDE INTERESTS?



PERCY R. LUNNEY JR., *President*

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JUSTICE TOM C. CLARK 1899 1977

Chair of the Founders

JUSTICE FLORENCE K. MURRAY

Chas. Emerita

WALTER H. BECKHAM, JR. ESQ.

Chair Emeritus

JUDGE B. B. SCHRAUB

Chas. Emeritus

SECTION 4 DEVELOPMENT OF THE UNITED STATES JUDICIAL CODE OF ETHICS

Presentation by Honorable Judge Gerald Cohn

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
- XI REGULATION OF THE JUDICIAL CONFERENCE OF THE UNITED STATES ESTABLISHING STANDARDS AND PROCEDURES FOR THE APPOINTMENT AND REAPPOINTMENT OF UNITED STATE MAGISTRATE JUDGES



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Chas. Emeritus

SECTION 5

JUDICIAL CONDUCT

Presentation by
Honorable Judge Gerald Cohn

Objective

to give the participants a better understanding of judicial conduct on and off bench

The participants will study the following

ARTICLES FROM JUDICIAL CONDUCT REPORTER OF AMERICAN
JUDICATURE SOCIETY



To promote
the effective
administration
of justice

JUDICIAL CONDUCT REPORTER

A publication of the American Judicature Society
Vol 20, Nos 2-3 Summer-Fall 1998

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JAN 19 1999

JUDGE BARKER'S CHAMBERS
INDIANAPOLIS, INDIANA

Judge Removed for Anti-Prosecution Bias

Accepting the determination of the State Commission on Judicial Conduct, the New York Court of Appeals removed a judge from office for a pattern of knowing disregard of the law, intemperate, disparaging name-calling, and insensitive remarks. *In the Matter of Duckman* 699 N.E.2d 872 (1998)

Judge Duckman had first come to

the attention of the public—nationwide—when a woman was murdered by a man who had made bail on charges of stalking the victim when the judge reduced the bail over the prosecutor's objection. There was a "firestorm" of criticism of the judge by public officials and others. However, the Commission did not file charges based on the judge's bail deci-

sion but on allegations of wilful disregard of the law, intemperate demeanor abuse of power and an anti-prosecution bias.

The misconduct

The court held that the evidence established that the judge willfully disregarded the law in disposing of crimi-

(continued on page 2)

Disqualification of Commission Members

by Cynthia Gray

Most judicial conduct commissions have rules that specify when a commission member may not participate in the commission's consideration of a complaint against a judge. The most common rule provides that a member may not participate as a member in proceedings involving any charge against himself or herself.

In addition, some states have more general rules that require a member to disqualify if, for example, he or she cannot impartially consider the charges against a judge (Washington) or if a judge would be disqualified from a court proceeding under analogous circumstances (Arkansas, Hawaii, Louisiana, New Mexico, Okla-

homa, South Dakota, Vermont, West Virginia, Wisconsin). Some rules give specific examples of circumstances under which a commission member's impartiality might reasonably be questioned.

For example, some states require disqualification if the member

- is the complainant (Maryland, Pennsylvania),
- has personal knowledge or information of disputed evidentiary matters relating to the complaint (Connecticut, Mississippi, Pennsylvania, Washington),
- will be a material witness (Alaska, Pennsylvania, Washington),
- is involved in the case that is the

subject of the complaint (Pennsylvania),

- has a direct personal or financial interest in the matter (Connecticut), or

- is involved in the charge (Alabama, South Carolina, Virginia)

Other grounds for disqualification apply if the judge who is the subject of the complaint

- was publicly supported or opposed by the member in a judicial campaign in the last five years (Arkansas),
- is a judge of a court within the member's judicial district (Mississippi, Oklahoma), or
- lives in the member's county

(continued on page 4)

Judge Removed for Anti-Prosecution Bias *(continued from page 1)*

nal charges in 16 cases 13 dismissals for facial insufficiency, one dismissal purportedly in the interests of justice, and two adjournments in contemplation of dismissal The judge dismissed the cases without notice or an opportunity for the prosecution to be heard, without allowing an opportunity to re-draft charges, without requiring written motions, and, in the case of the adjournments in contemplation of dismissal, without the consent of the prosecutor

The court stated that, in the overwhelming number of the cases, it was "clear that the judge dismissed accusatory instruments for facial insufficiency because the prosecutor refused to agree to the [judge's] requests for an [adjournment in contemplation of dismissal] or to offer a plea to a violation," and that, in others, the judge simply "believed that the cases should not be prosecuted "

For example, in one case, the defendant was charged with assault and harassment based on allegations in the accusatory instrument that the defendant "struck [the victim] with closed fist in the face, causing swelling and bruising to the face and to suffer substantial pain and to be alarmed " The judge argued that the prosecutor did not allege facts to make out an assault, described the alleged punch in the face as a "push," and stated that a "push is not an assault It's harassment " After the defendant pleaded guilty to harassment, Judge Duckman asked defense counsel whether he wanted to dismiss the assault charge Before dismissing the misdemeanor assault charge for facial insufficiency, the judge rejected as a conclusion the prosecutor's argument that the victim received swelling and bruising to the face and suffered pain Judge Duckman explained to the Commission that there were times where [he] did

things in the interests of justice, using the guise of facial insufficiency" to dispose of a case when he "thought it was right to do it "

The court noted that what was "significant was both that [the judge] dismissed these cases in knowing disregard of requirements of the law , and the abusive, intemperate behavior he manifested in dismissing those cases, at times not permitting the attorney to make a record of an objection either to the disposition or in response to the accusations " The court found that "the Commission documented instances of the [judge's] inappropriate behavior in his dealings with persons appearing before him, demonstrating impatience and intolerance, even at times ordering prosecutors who disagreed with him out of the courtroom " The court noted that Judge Duckman "subjected prosecutors to harsh, personal criticisms when they would not accept his view as to the 'worth' of a case " The judge had admitted to the Commission that he "chastised prosecutors for their bail recommendations because he did not want to be criticized for setting low bail " The judge's lectures to the prosecutors about the unfair actions of "your society" or "your government" at times elicited laughter or applause in the courtroom

Judge Duckman conceded that on several occasions he made derisive remarks in open court, referring to prosecutors' allegiance to their office policies, calling them "good little soldiers," "good little soldier boys," "mannequins," and "puppets," or commenting that they were "earning another stripe on the arm" or "notch on the belt" every time they put someone in jail In open court, he called them nicknames, such as "Princess " or "Princess Nancy," "Mr Nuisance," and "Marshal Dillon" or "the

Marshal " The lawyers testified they felt belittled, degraded, and demeaned by the sarcasm and ridicule

Furthermore, the judge told one female prosecutor that she was "too sexy" to wear flat shoes and that she had "nice legs " He told a second female prosecutor that she looked better in short skirts In a case involving two African-American women, the judge explained that a dismissal in contemplation of dismissal was appropriate because "[a]t the risk of sounding racist and sexist, [the case] is really just two women, and you know sometimes certain things are just cultural "

The sanction

Rejecting the judge's argument that he should not be removed because he felt no bias and was not motivated by animosity or self-interest, the court stated that the perception of impartiality is as important as actual impartiality The judge argued he should not be removed because the number of abuses should not be viewed in isolation from his otherwise unblemished performance in a high-stress, high-volume court However, the court noted that it had resisted any "numerical yardstick" for determining unfitness but relied on the nature of the wrongdoing as well as the numbers to determine the appropriate sanction

The court questioned the veracity of the judge's argument that many other judges engaged in similar misconduct The court concluded that, in any event, such evidence would be irrelevant because "[e]ach judge is personally obligated to act in accordance with the law and the standards of judicial conduct " The court also stated that judges are not, "in the interest of alleviating regrettable court congestion—or indeed, even in the interest of empathy for defendants—free to ignore the law in order to weed out cases

they personally feel are unworthy of prosecution or clogging the system ”

Finally, the court rejected the judge’s contention that his harsh treatment of young prosecutors was simply a consequence of his efforts to educate them to be more just. The court adopted the Commission’s statement that “[t]eaching need not involve angry screaming and humiliating invective and is not effective when the lesson is that a judge may abandon the law and abuse judicial authority ”

The court stated that of “significant concern and—particularly relevant to the question of appropriate sanction”—was the judge’s refusal, to acknowledge the impropriety of his behavior in wrongfully dismissing cases. The court noted that the judge believed dispositions made in contravention of statutory requirements “are permissible if they serve his definition of justice or conserve court resources by removing unworthy cases from an overburdened calendar.” The court also noted that, with regard to several instances of clearly intemperate behavior, the judge refused to admit that his comments were inappropriate, for example, his asking a prosecutor whether he got his law license “on the back of an orange juice carton ”

The court also noted the numerous instances when the chiefs of two district attorneys office spoke with the judge about his demeaning treatment of prosecutors and that, although, the judge sometimes acknowledged the inappropriateness of what he had done and said he would try to calm down, the misconduct continued. The court stated that this evidence suggested that “the confirmed findings of improper conduct are not isolated, acontextual, subjective instances” and supported the inference that the judge lacked “the insight and self-control to make fundamental changes in his attitude or judicial temperament ”

The court concluded that removal

was the appropriate sanction in light of the substantial record of the judge’s “intentional disregard of the requirements of the law in order to achieve a personal sense of justice in particular cases before him, coupled with the substantial record of improper courtroom conduct and unresponsiveness to concerns flagged for him ”

Dissents

Two judges dissented. One dissent argued that “[b]y accepting without qualification the harsh sanction of removal for Judge Duckman’s indiscretions, the majority has sent a message that the State’s judicial disciplinary procedures are susceptible to manipulation by public officials and that Judges whose rulings displease those public officials may find themselves singled out for exceptional, and possibly ruinous, scrutiny ” The dissent noted the governor’s highly publicized ultimatum that the Commission remove the judge or the governor would begin impeachment proceedings

The first dissent did not dispute that some of the judge’s behavior constituted misconduct that should be sanctioned. However, the dissent characterized the misconduct as petty offenses and noted that “few Judges who have handled tens of thousands of cases—and sometimes as many as 100 to 299 a day—could withstand the kind of intense spotlight that has been aimed at [Judge Duckman’s] record ” The dissent also noted that none of the 16 dismissed prosecutions “were deemed sufficiently important or meritorious to warrant an appeal, and none of the 19 incidents of intemperance were deemed sufficiently serious to warrant a disciplinary complaint ” Moreover, the dissent concluded that “to the extent that [the judge] demonstrated intolerance or intemperance, he did not do so out of malevolent or venal motives, rather, his actions were

clearly motivated by compassion ” Finally, the dissent implied that the judge had been “removed at least in part because of his interest in protecting individual defendants’ rights, noting the Commission’s emphasis on his purportedly anti-prosecution bias

A second dissent emphasized that “the ultimate sanction here is disproportionate to the nature, number and gravity of the proven and acknowledged judicial misdeeds, misspeaks and mishaps ” The dissent also warned that the “conduct of Judges and the culture of the operation and decision-making in trial courts will be necessarily and materially altered and affected by today’s decision

The majority of the court did note that the Commission investigation had been “triggered, not by appeals or complaints of wronged litigants or lawyers, but by a firestorm of public criticism generated by a separate tragedy, as to which, in the end, the [judge’s] rulings were found to be a proper exercise of judicial discretion, not a basis for discipline ” The court also acknowledged that it was concerned about a threat to the independence of the judiciary posed by unwarranted criticism or the targeting of judges. However, the court concluded that, “[p]lainly, wrongdoing in connection with initiating an investigation could not insulate an unfit Judge ”

The court held that, in this case, removal, rather than censure, did not imperil the independence of the judiciary because, on the merits of the case, the judiciary, the bar, and the public are “better served when an established course of misconduct is appropriately redressed and an unfit incumbent is removed from the bench ”

Disqualification of Commission Members *(continued from page 1)*

(Mississippi)

Family relationships may also require disqualification. For example, in some states, rules require disqualification if a relative of the member

- is the judge who is the subject of the complaint (West Virginia),
- is the complainant (Connecticut, Mississippi, Pennsylvania, Rhode Island),
- is a witness (Connecticut),
- has direct personal knowledge of disputed evidentiary matters (Connecticut), or
- has a financial interest in any events relating to the matter, individually or as a fiduciary (Pennsylvania, Washington)

Other relationships may also require disqualification. For example, disqualification is required in some states

- if the member's business associate has direct personal knowledge of disputed evidentiary matters (Connecticut),
- if a close personal associate of the member is the subject of the complaint (Colorado), or
- if the member has a business, personal, or financial relationship with the complainant, witness, or judge (Connecticut)

Disqualification rules for judge and lawyer-members

Some disqualification rules apply only to the judge-members of the commission. For example, disqualification may be required if the judge-member

- served as a judge in a matter relating to the complaint (Washington),
- exercises supervisory authority over the judge who is the subject of the complaint (West Virginia),
- sits as a judge in the same judicial district as the respondent-judge (Colorado, Idaho, Iowa, Ne-

vada), or

- was the subject of a complaint previously made by the same complainant (Connecticut)

Some of the disqualification rules affect only the lawyer-members of a commission. For example, disqualification may be appropriate if the lawyer-member

- has been retained by the judge who is the subject of the complaint (Alaska),
- has counseled the judge in any matter within two years (Alaska),
- served as a lawyer in connection with any events relating to the matter that is the subject of the complaint (Pennsylvania),
- practiced law with a lawyer who served during such association as a lawyer concerning the matter or who has been a material witness concerning it (Pennsylvania), or
- has a present or past association with the lawyer who is representing a party (Washington)


Similarly, a lawyer-member may be required to disqualify if he or she

- personally appears before the judge (New Hampshire, Vermont),
- has reason to believe that he or she will appear before the judge (New Hampshire),
- has any matter involving the judge against whom the complaint has been made (Connecticut), or
- practices as an attorney (Colorado) or maintains an office for the practice of law (Oklahoma) in the judicial district in which the judge sits

In several states, if a lawyer-member is appearing before a judge who is the subject of a complaint or investigation by the commission, the lawyer-member must refrain from voting on any action regarding the judge (Penn-

sylvania, Washington). However, in Pennsylvania, the lawyer-member is allowed to participate in discussions regarding the complaint without voting because he or she may have pertinent information concerning the judge under scrutiny. Moreover, if the commission files formal charges against the judge, the lawyer-member must ask the judge to recuse from the case, and, if the judge refuses, the member cannot participate in the hearing and decision on the charges (Pennsylvania, Washington).

Disqualification procedures

In many states, the commission determines whether recusal of a commission member is warranted if a member's impartiality is challenged. In Florida, however, a member is disqualified if the judge files an affidavit stating facts and reasons supporting the judge's belief that he or she "will not receive a fair hearing on the charges because of the prejudice of one or more members" and supported by the affidavits of at least two reputable citizens of the state who are not related to the judge or the judge's attorney. In Washington, a judge "may file a peremptory challenge against one member of the commission" within seven days of notice of a fact-finding hearing. Similarly, before the Nevada Commission on Judicial Discipline, counsel appointed to present evidence in support of the formal charges and counsel for the respondent-judge may each exercise a single peremptory challenge. 

Federal Judge Disciplined for Abusive Conduct

Affirming an order of the Judicial Council of the Court of the Appeals for the 5th Circuit, the United States Judicial Conference Committee to Review Circuit Council Conduct and Disability Orders concluded that a district court judge had engaged in a continuing pattern of arbitrary and abusive conduct that had brought disrepute on, and discord within, the federal judiciary. *In re Complaints of Judicial Misconduct or Disability (McBryde)*, No 98-372-001 (September 18, 1998). The committee (1) publicly reprimanded the judge, (2) ordered that no new cases be assigned to him for one year, and (3) ordered that the judge not participate in pending and new cases in which certain attorneys were involved.

The committee first concluded that the standard for review under the Judicial Councils Reform and Judicial Conduct and Disability Act is "substantial deference." "Substantial deference" means that the committee would "accord the degree of deference it deems proper given the underpinning of the particular factual determination." As an example, the committee noted that "a factual determination based on live testimony or on inferences deriving from the circuit council's first hand knowledge of local personalities or circumstances may be accorded greater deference than a factual determination based solely on written materials equally available to the committee." The committee also concluded that it would accord substantial deference to the judicial council's remedies.

Rejecting the judge's argument that review should be de novo, the committee stated that a de novo standard would undercut some of the reasons the act primarily conferred disciplin-

ary authority upon local judges. De novo review, the committee reasoned, would not "take any account of the familiarity of the judicial council with the personalities and circumstances surrounding the allegations against the disciplined judge."

The judicial council had found that Judge McBryde's "intemperate, abusive and intimidating treatment of lawyers, fellow judges, and others has detrimentally affected the effective administration of justice and the business of the court in the Northern District of Texas." The council had found that the judge had "abused judicial power, imposed unwarranted sanctions on lawyers, and repeatedly and unjustifiably attacked individual lawyers, groups of lawyers, and court personnel." The council had found that the judge's pattern of behavior had had a negative and chilling impact on the Fort Worth legal community and had, among other things, prevented lawyers and parties from conducting judicial proceedings in a manner consistent with the norms and aspirations of the system and was harmful to the reputation of the courts.

The committee rejected the judge's argument that all of the conduct for which he was to be sanctioned was directly related to the merits of a decision or procedural ruling. The committee stated that, "[a]lthough a judge indeed may not be sanctioned out of disagreement with the merits of rulings, a judge certainly may be sanctioned for a consistent pattern of abuse of lawyers appearing before him," and the "fact that the abuse is largely evidenced by the judge's rulings, statements, and conduct on the bench does not shield the abuse from investigation under the Act."

However, the committee deferred to the judicial council's decision to

keep private a detailed report that described the specific incidents underlying the reprimand. The council had decided not to release the report to protect the privacy of witnesses whose testimony and experiences were summarized in the report. The committee stated that "where sanctions are based upon [a broad pattern of conduct that manifested itself in many specific incidents], a judicial council may provide the public a short general description of the pattern of conduct rather than a litany of all the specific underlying details."

Pursuant to its policy not to consider challenges to the constitutionality of the Judicial Conduct and Disability Act, the committee refused to address the judge's argument that the order directing that no new cases be assigned to him for one year was an unconstitutional interference with the powers and prerogatives of a federal judge. Although concluding that the suspension of case assignments should not have been imposed as a punitive measure because the public reprimand was a sufficient punishment, the committee affirmed the suspension as a remedial measure to ameliorate the judge's behavior in the future. Noting that Judge McBryde had not given any indication that he accepted he had a problem, the committee stated that a "lightening of his case load will permit him to engage in 'self-appraisal' and 'deep reflection.'" The committee did direct that the new cases could be assigned if the judge showed that he had made substantial progress toward improving his conduct.

The committee also affirmed the judicial council's order that the judge was recused from certain cases. The committee stated there was plenty of

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Federal Judge Reprimanded for Misrepresentations

Adopting the findings and recommendations of a special investigative committee, the Judicial Council of the United States Court of Appeals for the 9th Circuit reprimanded Judge James Ware who, in numerous speeches and interviews, had publicly misrepresented himself as the James Ware whose younger brother Virgil was shot and killed by white youths in 1963 while both were riding a bicycle in Birmingham, Alabama *In re Charge of Judicial Misconduct (Ware)*, No 97-80629, Order and Memorandum (August 7, 1998)

The judge first told the story of Virgil Ware in a public speech in 1973, before he became a judge. After describing Virgil Ware's death, he concluded with the statement that "this James Ware stands with you today committed to civil rights." The statement was ambiguous and given for dramatic effect, but the committee found the judge realized it could have given the erroneous impression that the speaker was the James Ware who was on the bicycle in 1963 when his brother was killed

Judge Ware became a federal judge for the Northern District of California in 1990. When asked by a reporter in 1994 to repeat the Virgil Ware story, the judge told the story in the first person, misrepresenting himself as the James Ware on the bicycle in 1963 to be consistent with earlier speeches that he had given. Further, at a conference of federal judges and lawyers in 1996, the judge also gave a dramatic first person description of the murder of Virgil Ware as seen through the eyes of his brother James Ware. The committee found that the event was "vividly remembered by those in attendance and left no doubt with the audience that Judge Ware was describing himself as the James Ware on the

bicycle." After that presentation, the judge was asked to repeat the story and did so. The judge explained to the committee that "he used the story to convey his strong feelings about the struggle of the Civil Rights Movement," but that "he was aware at all times that he was misrepresenting his relationship to the events in Birmingham."

After the judge was nominated to the U.S. Court of Appeals for the 9th Circuit, a federal judge in Alabama learned of Judge Ware's misrepresentations through stories carried in the Birmingham paper and, after some miscommunication, concluded that Judge Ware was denying that he made any misrepresentations. He then informed the chief judge of Judge Ware's district. A second judge informed a member of the Senate Judiciary Committee. When Judge Ware was confronted, he admitted his misrepresentations and withdrew his nomination

Judge Ware also went to Alabama to apologize to the Ware family, who accepted the apology. The James Ware who was the brother of Virgil Ware on the bicycle the day Virgil Ware was killed told the committee that he believed that "Judge Ware's apologies were sincere" and "Judge Ware had not deliberately set out from the beginning to misrepresent his identity." However, the committee noted that

"the Ware family remains understandably saddened that Judge Ware did not put an early end to the misunderstandings he had fostered."

The committee found that the misrepresentations not only reflected negatively on Judge Ware's integrity but also quite possibly had had a regrettable effect on public confidence in the judiciary. The committee noted the acute pain inflicted on the Birmingham Ware family by the judge's public exploitation of their very private grief. The committee concluded that, because of the very public nature of the original tragedy and the misrepresentations, as well as their discovery, it was important that discipline of the judge be public and a part of the historical record

However, the committee stated that it found no indication that the conduct, all of which occurred off the bench, had any effect on the judge's otherwise highly regarded abilities as a judge, and, therefore, did not recommend reducing or withdrawing the judge's caseload. Stating that the record did not indicate impeachable conduct, the committee noted that making false statements even in public is not criminal activity. The judge did not reap material reward from his misstatements, and the judge made no statement to any government agency that he was the James Ware who was riding the bicycle in 1963.

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New York, Michigan Judges Removed for Patterns of Misrepresentation

A judge's failure to be truthful is often cited as an aggravating factor justifying a harsher sanction in judicial discipline cases. For example, in *In the Matter of Collazo*, 691 N E 2d 1021 (1998), the New York Court of Appeals held that a ribald note and indelicate suggestion made by a judge about a female intern although deserving of some sanction, would not warrant removal standing alone. But the court held that the judge's pattern of evasive, deceitful, and outright untruthful behavior evidenced a lack of fitness to hold judicial office and removed him.

During the Commission investigation, the judge, under oath had denied that he ever suggested that the intern disrobe despite the contrary testimony of two other persons, and advanced varying versions of the circumstances surrounding the note that were at odds with the testimony of the court attorney to whom he had passed the note.

Moreover, two months after giving testimony in the Commission investigation while under consideration for an appointment to a vacancy on another court, the judge responded "no" to a question on a questionnaire from the governor's judicial screening committee that asked, 'Have you ever been the subject of any inquiry or investigation by a federal, state or local agency (other than for routine background investigations for employment purposes)?' When counsel for the screening committee asked the judge whether there were any complaints or other problems with the Commission, the judge said "no." In subsequent testimony in the Commission's investigation, the judge falsely said that the committee's counsel had never asked

him whether he had any disciplinary complaints before the Commission.

Michigan

In a recent decision, the Michigan Supreme Court removed a judge from office for deceitful, inappropriate, and disrespectful conduct during judicial discipline proceedings without considering whether the judge had committed the misconduct that prompted the investigation by the Judicial Tenure Commission. *In re Ferrara*, 584 N W 2d 922 (1998). The court also noted that the judge had made public misrepresentations at a press conference. The court held that conduct that misleads, misrepresents, and deceives with respect to evidence and facts in legal proceedings so seriously undermines the public trust in the judicial system and is "so fundamentally contrary to judicial temperament and obligation as to require the most severe form of discipline—removal."

The investigation of the judge began when a Detroit newspaper published an article entitled "Recordings indicate judge slurred Jews, blacks and others." The article reported that in seven conversations with her ex-husband, the judge, who is white, used the word "nigger" or variations and also made other racial and ethnic slurs. The statements were recorded by the judge's ex-husband in an attempt to gain ammunition for their hostile custody battle over their sons.

The court did not address the Commission findings that the slurs made by the judge in the conversations with her ex-husband constituted judicial misconduct or determine whether the Commission properly admitted the tapes in light of the federal wiretapping act. The court did state that

"whatever the [judge's] right to her own private opinion, a person harboring and communicating such revolting views is unworthy of holding the privileges and responsibilities of public office' and 'the mean-spirited, crude, and biased nature and tone of the statements were inexcusable and unacceptable from a judge."

What the court did find was that the judge's behavior from the time the newspapers made the contents of the tapes public, through the Commission hearing, and up to her appeal hearing, revealed that the judge had 'neither the temperament judgment nor character to be a member of the judiciary.'

First, at a press conference after the newspaper article was published the judge had publicly stated the tapes were "fake" when, in fact she knew she had made the statements and had filed a \$100,000,000 lawsuit against her ex-husband based on his taping her. The court noted that the judge never showed that she understood "the damage to the judiciary that occurs when a judge offers as fact public statements that are not reasonably supported, researched, investigated or believed to be true."

The court also found that the judge displayed a disregard for the truth and lack of candor when, during the discipline hearing and before the court she refused to directly answer questions regarding whether she uttered the racist statements on the tapes. Moreover the court noted that the tapes were authenticated and declared unaltered by two experts (one of the Commission's choosing and the other of the judge's) that the Commission found the voice on the tapes to be hers and that several of the witnesses for the judge

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Judge Censured for Commenting on Pending Cases, Other Misconduct

Agreeing with the recommendation of the Commission on Judicial Performance, the California Supreme Court publicly censured a judge for (1) publicly commenting on cases pending on appeal from his decisions, (2) attempting to influence the outcome of a civil action against an attorney, and (3) inducing a criminal defendant and his counsel to waive the time limit for sentencing without disclosing the purpose for the delay *Broadman v Commission on Judicial Performance*, 959 P2d 715 (1998)

Public comment

Judge Broadman had imposed “no pregnancy” probation conditions in two cases. While those cases were pending on appeal, the judge had publicly commented on the “no pregnancy” conditions in interviews with *Time* and *West Magazine*. One of the interviews was given after he had received a Commission letter reminding him that public comment on pending cases was improper, prompted by earlier interviews. Judge Broadman had given to several newspapers and television shows regarding one of the cases. A provision in the California code prohibits a judge from making ‘public comment about a pending or impending proceeding in any court. The judge conceded that he had violated the code prohibition on making comments on pending cases.

However, Judge Broadman insisted that he had a First Amendment right to make public comments on pending cases unless those comments posed a substantial likelihood of material prejudice to a fair trial. The judge argued that the ‘substantial likelihood of material prejudice to a fair trial’

standard for lawyers commenting on cases established by the U S Supreme Court in *Gentile v State Bar of Nevada*, 501 U S 1030 (1991), should be applied to judges. However, the court rejected the judge’s argument, noting the different roles judges and attorneys play in the judicial process.

The court stated that “the public does not expect a high degree of neutrality or objectivity when lawyers comment on pending cases, nor does the public expect all attorneys to assess the merits of pending cases in the same way.” Judges, by contrast, the court reasoned, “cannot be advocates for the interests of any parties, they must be, and be perceived to be, neutral arbiters of both fact and law who apply the law uniformly and consistently.” Noting that judges’ “public comments will be received by the public as more authoritative than those of lawyers,” the court concluded that “inappropriate public comment by judges poses a much greater threat to the fairness of judicial proceedings than improper comment by lawyers.” The court held that the “substantial likelihood of material prejudice” standard did not afford sufficient “protection to the state’s interest in both the fact and the appearance of judicial impartiality and integrity.”

Instead, the court applied a test that balances the interest of the judge, as a citizen, in commenting upon matters of public concern and the interest of the state, as an employer, in promoting the efficiency of the public services it performs through its employees. That test had been established by the Supreme Court in *Pickering v Board of Education*, 391 U S 563 (1968), for evaluating a state’s authority generally to regulate public speech by pub-

lic employees. The court concluded that the “state’s interests in protecting the integrity of the judiciary and in maintaining public confidence in the judiciary are at least as strong as its interest in promoting the efficiency of public services generally.”

The court noted that public comments by judges on pending or impending matters were restricted because such comments “may give the appearance that the judge has prejudged the merits of the controversy, has become an advocate for the interests of one of the parties, or has resorted to extrajudicial means to defend the judge’s own rulings.” The court also stated that the restriction prohibiting public comments by a judge on matters pending before another judge “prevents a judge from exerting, or appearing to exert, pressure on another judge to decide a matter in a particular way.” The court concluded that the general interest of judges in making public comments on court proceedings is outweighed by the interest of the judicial system in maintaining impartiality. The court also concluded that “[b]y making public comments in an attempt to justify and defend his decisions while those decisions were pending on appeal, [Judge Broadman] adopted the role of an advocate.”

The court also held that the canon was narrowly drawn because it applied only to proceedings that are pending or impending, not those that have become final, and exempted public statements by judges in the course of their official duties or to explain for public information the procedures of the court. Rejecting the judge’s claim that he was left to guess how public a public comment had to be to violate

the canon, the court stated that a comment is public "if it is open or available to all, that is, accessible to everybody" and the words "public comment" "gave the judge fair notice that [the canon] referred to comments disseminated to the community"

Attempting to influence a case

Before Judge Broadman had become a judge he had developed a relationship of "intense antagonism" with an attorney named Kralowec, and after Judge Broadman became a judge, Kralowec represented one of the judge's former clients in a legal malpractice action against the judge. Kralowec himself was the defendant in a malpractice action in which an attorney named Anton represented the plaintiff, who faulted Kralowec for not disqualifying Judge Broadman from the underlying action.

During the trial, at the judge's request, Anton met with Judge Broadman in the judge's chambers, and the judge offered to testify on behalf of Anton's client. The judge called both the court clerk's office and the bar association, identified himself as Judge Broadman, and requested information Anton wanted. During the punitive damages portion of the trial, the judge briefly sat in the audience in the courtroom when Kralowec was testifying. The jurors, some of whom knew Broadman was a judge, noted


and discussed his visit. When a court employee asked the judge why he had come to Kralowec's trial, the judge replied that he was just being an asshole.

The court held that the judge's actions were motivated by a desire to bring about a result harmful to Kralowec because of personal animosity. The court rejected the judge's contention that he had a duty to visit the courtroom in which Kralowec was testifying to take active steps to prevent or discourage perjury, stating that that was pure speculation on the judge's part. The court held that the judge's conduct "would appear to an objective observer to be prejudicial to the public esteem for the judicial office."

Inducing waiver

The court held that there was clear and convincing evidence that Judge Broadman used deception when he obtained a waiver of the time for sentencing in a criminal case by concealing material information. (By statute, a criminal defendant in California has a right to be sentenced within 20 days of a guilty verdict.) At a sentencing hearing, the judge had asked the defense counsel and the defendant to waive time for sentencing because he had "some questions" that he wanted the attorneys to research. When neither attorney indicated a problem, the judge set the sentencing for two months in the future. When the de-

fense counsel inquired about the need for two months, the judge replied "trust me." Only after obtaining a waiver from defense counsel and the defendant did the judge disclose that he wanted the attorneys to research whether he could order prison authorities to withhold medical treatment from an HIV-positive inmate, such as the defendant. Defense counsel then strenuously objected, stating that his client was entitled to medical treatment, adding "That's not right. And I didn't understand it. I certainly had no understanding of what was going on here when you made the request for the time waiver because you didn't tell me what it was about. And I certainly can't join in the entry of a waiver once I know the reason for it. It wasn't a knowing waiver."


The court stated that defense counsel's vigorous disagreement with the continuance immediately after the judge revealed the real reason for the waiver demonstrated that the judge had "tricked" counsel into agreeing to the continuance. The court quoted the Commission's statement that, "Judges have a special responsibility to deal honestly and forthrightly with all who appear before them and when a judge displays a lack of integrity, confidence in the entire judiciary is weakened." 

Federal Judge Disciplined for Abusive Conduct *(continued from page 5)*

evidence to support the council's implicit conclusion that there was a significant risk that Judge McBryde "might attempt to retaliate in some fashion against witnesses who had testified against him or at least that witnesses reasonably perceived such a risk." The committee concluded that the judicial council had "a strong interest in protecting the integrity and effectiveness of its investigation,

which could be seriously hampered if witnesses believed they would be left unprotected against such retaliation."

The committee rejected the judge's argument that the council did not have the authority to order the recusal of a judge from any case because that is a judicial power that can only be exercised by the court of appeals. The committee concluded that the matter of case assignments was an adminis-

trative one, not a decision on the application of the disqualification rules to particular cases that injects the judicial council into judicial rulings. Finally, the committee concluded that it was for the judicial council to determine how to balance concerns that the order would allow the affected attorneys to judge-shop against the need to protect witnesses against feared retaliation. 

Judicial Campaign Spending Caps Held Unconstitutional

Affirming the preliminary injunction entered by the United States District Court for the Northern District of Ohio, the Court of Appeals for the 6th Circuit held that the district court did not abuse its discretion (1) in granting a preliminary injunction enjoining the enforcement of spending caps for judicial candidates in Ohio, and (2) in denying a preliminary injunction enjoining enforcement of a provision that prohibited judicial candidates from using funds raised in previous campaigns for non-judicial offices *Suster v Marshall*, 149 F3d 523 (1998) (After the suit had been filed the Ohio Supreme Court amended the code so that the spending caps were population-based. The court remanded the case for consideration of the canon as amended.)


The defendants had argued that the United States Supreme Court case (*Buckley v Valeo*, 424 U.S. 1 (1976)) banning spending caps in elections did not apply to judicial elections. Rejecting that argument, the court stated

that, given the fundamental nature of the right to political speech, *Buckley* and its progeny apply regardless of the position sought, and any spending restriction in any electoral campaign process is subject to exacting scrutiny.

Noting that restrictions on the content of judicial campaign speech had been upheld to limit bias and the appearance of corruption, the court concluded the infringement on the quantity of speech imposed by the spending caps could not be justified. The court stated that the prevention of corruption was the only interest to which it would give credence and noted that all the evidence appeared to suggest that the problem of corruption had resulted from campaign contributions, not expenditures. Noting that poll results indicated that voters wanted more information, not less, the court stated that unlimited campaign expenditures may, in fact, promote and establish an electorate that is informed and well-aware and also help minimize some forms of corruption.

The court stated that the defendants

had shown no link between a spending limit on a candidate's own money and helping ensure the independence of the judiciary, noting that allowing a candidate to spend his or her own money without any restriction would assure that the candidate is beholden to no one. Moreover, the court concluded that even assuming that unlimited campaign expenditures were tied to corruption and some form of quid pro quo, restricting campaign contributions and/or mandating disqualification were less restrictive means of redressing that problem.

However, the court found that the Ohio code's prohibition on using funds from campaigns for non-judicial office in subsequent judicial campaigns prevented judicial candidates from using funds that may be "ideas-bought" funds or funds that came attached to a candidate's agreement to advance or take on some political issues or cause. The court concluded that the state's interest in preventing such corruption or perceived corruption was compelling. 


Judges Removed for Patterns of Misrepresentation (continued from page 7)

testified it was her voice. The court concluded that her unsupportable denials and inconsistent statements to the Commission, the court, the media, and the public, were "clear evidence of her inability to be forthright, to avoid appearances of impropriety, and to fulfill the ethical obligations of judicial officer."

Moreover, the judge had fabricated a letter that she attempted to introduce in the Commission hearing through her witness. The letter, stating that the judge was not racist, purported to have been written by the witness, an African American, to a newspaper when the controversy first erupted. In fact,

the judge had written the letter for the witness after the hearing had begun. The Commission found that the judge had attempted to mislead the Commission or "at least create a false impression, with respect to the time, motivation, and scrivener of the letter." The court concluded that the judge's failure to divulge the source and circumstances surrounding the letter constituted an obstruction of justice and lack of candor with the Commission.

The court also adopted the Commission's findings that the judge's conduct throughout the formal hearing was "inappropriate, unprofessional, and demonstrated a lack of re-

spect for the judicial discipline proceedings." Noting the incidents were too numerous to recount, the court gave as examples the judge's interruptions of opposing counsel and the master, her snide side comments, and the half-truths and misleading statements in her testimony. The court also concluded that the judge's testimony was so unnecessarily vague that it hindered the proceedings and significantly interfered with the administration of justice. For example, the judge could not remember taped statements that were played for her six days earlier and refused to divulge her phone number. 

Judges and Jurors

by Cynthia Gray

Meetings with Jurors

The Georgia Judicial Qualifications Commission recently issued an advisory opinion stating that a judge may not meet privately with jurors following the return of a verdict. *Georgia Advisory Opinion 231* (1998). The Commission noted the Georgia code provision (based on Canon 3B(10) of the ABA 1990 model code) stating

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

The Commission also quoted the commentary to that provision, which states

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

The Commission recognized that a trial judge in private meetings with jurors may only be expressing appreciation to the jurors for their service. However, the Commission emphasized that, when a judge meets with jurors behind closed doors, neither the litigants, their lawyers, nor the public can ever know with certainty whether the judge is going beyond simply thanking jurors for their service to inappropriately comment on the jury's verdict. The Commission noted three Georgia decisions discouraging court communications with juries other than in open court. *See e.g. Hanifa v State* (Georgia 1998) (judge should not meet privately with jury during state's closing argument), *Bowden v State*, 415 S E 2d 527 (Georgia Court of Appeals 1992) (juror orientation should not be conducted behind

closed doors), and *Forehand v State*, 373 S E 2d 382 (Georgia Court of Appeals 1988) (trial court should answer jury's questions after dismissal in open court rather than the jury room)

The Commission emphasized that it was not presuming "that any judge has engaged or intends to engage in improper communications with jurors after a case is over." However, the Commission concluded that

the far better practice is for all communications between judges and juries to occur in open court rather than in the jury room. Such a practice will do much to instill public confidence in the openness and fairness of all judicial proceedings in this State and is strongly recommended to the careful consideration of all trial judges

Thank you letters

As long as the judge complies with certain conditions, a judge may write letters to jurors thanking them for their service. *See Alabama Advisory Opinion 95-552, Florida Advisory Opinion 85-17, New York Advisory Opinion 95-53, Texas Advisory Opinion 69* (1983), *West Virginia Advisory Opinion* (February 7, 1997). However, the letters should not

- praise or criticize the jurors for their verdict (*New York Advisory Opinion 95-53*),
- mention any trial, verdict, or issues (*West Virginia Advisory Opinion* (February 7, 1997), *Florida Advisory Opinion 85-17*), or
- solicit comments on the jury's decision or deliberations (*West Virginia Advisory Opinion* (February 7, 1997))

The letters may solicit comments and suggestions regarding the improvement of the justice system. *Florida*

Advisory Opinion 85-17. The letter should not be sent until the end of the term during which the jurors serve (*West Virginia Advisory Opinion* (February 7, 1997)) or until after the trial has been concluded. *Florida Advisory Opinion 85-17*

The Alabama Judicial Qualifications Commission has advised that judge may send thank you letters only

- to jurors who participated in proceedings over which the judge presided (*Alabama Advisory Opinion 95-552*), and
- at the judge's own expense without the use of court stationery stamps, or personnel (*Alabama Advisory Opinion 95-552*) except where such letters are either authorized by court rule or expressly permitted by the presiding circuit judge (*Alabama Advisory Opinion 82-126*)

The Commission has also stated that thank you letters to jury venire members could be sent from all judges in a circuit at court expense if the letters

- are approved by court rule
- are signed by all of the circuit judges, and
- accurately reflect the participation of the jurors and the signatory judges in the judicial process

Alabama Advisory Opinion 83-178
Alabama Advisory Opinion 95-552

Similarly, the Texas Committee on Judicial Ethics has approved the practice of judges who are part of a central jury system sending a form letter at court expense expressing their appreciation to those persons who reported for jury duty, including those not selected as jurors. The committee imposed the following conditions

(continued on page 16)

Judges' Participation in Bar Association Activities

by Cynthia Gray

Commentary to Canon 4B encourages judges to participate in activities of bar associations and other groups that are dedicated to the improvement of the legal system. The Rhode Island Supreme Court has explained that

avoiding intellectual exchange among lawyers and academics may lead the judge to a form of mental asphyxiation that will diminish his or her effectiveness. A judge should not be isolated from the current of ideas abroad in his or her profession or those that may be contributed by related disciplines.

Thus, overturning an opinion issued by the Advisory Committee on the Code of Judicial Conduct, the court stated that a judge could attend the annual dinner dance of the state trial lawyers association. (The court noted that, although the association was initially formed by attorneys who generally represented plaintiffs, its membership was open to all lawyers interested in litigation.)

Similarly the California Committee on Judicial Ethics encouraged judges to participate in the activities of state and local bar associations and their sections, business trial lawyer associations, family lawyer groups, inns of court, and similar organizations. *California Advisory Opinion 47* (1997). Moreover, the committee stated that judges' "participation in the educational activities of such groups is particularly desirable." According to the committee, at such events a judge may discuss legal issues, ideas, and philosophies.

Moreover, a judge may attend functions sponsored by a law-related organization as a guest of the organization. One of the gifts Canon 4D(5) expressly permits a judge to accept is

"an invitation to the judge and the judge's spouse to attend a bar-related function or an activity devoted to the improvement of the law, the legal system or the administration of justice." In concluding that judges may accept free dinner/dance invitations from bar associations, the Maryland Judicial Ethics Committee stated that, when the bar association extends the invitation, "no individual lawyer or group of lawyers within the bar association could be seeking to achieve any special favor or position with the judge." *Maryland Advisory Opinion 91* (1981). The committee concluded that "interaction between the judiciary and bar associations is to be encouraged and that is the obvious reason that such invitations traditionally have been extended for many years."

Other examples

- A judge may attend on a complimentary basis a breakfast, luncheon, dinner, or seminar sponsored by a local, state, or national bar association. *Washington Advisory Opinion 91-27*
- A judge may accept free memberships and lunches from local bar associations. *Florida Advisory Opinion 84-4*
- A judge and the judge's spouse may attend a bar association function such as a dinner when the expenses will be paid by the bar association. *Washington Advisory Opinion 91-8*
- A judge may attend a "changing of the guard" dinner given by the criminal law division of the county bar association to welcome new county prosecutors and new public defenders. *New Jersey Informal Advisory Opinion 31-93*

- A judge may attend a party for the outgoing president of a general organization of the trial bar. *New Jersey Informal Advisory Opinion 64-90*
- A judge may attend the annual dinner dance of the state trial lawyers association as a guest of the association. (*In re Petition of Wiley*, 671 A 2d 308 (1996))
- A judge may attend as a guest a retreat sponsored by the bench and bar committee of the bar association. (*Georgia Advisory Opinion 50* (1982))

However, these committees caution that, when attending these events, a judge

- should take care that a broad range of the bar participates in the event. (*Georgia Advisory Opinion 50* (1982)),
- should avoid situations where lawyers may attempt to have an ex parte communication to influence the judge on a pending case. (*In re Petition of Wiley*, 671 A 2d 308 (1996), *California Advisory Opinion 47* (1997)), and
- should not discuss specific cases even if the case is pending before another judge. (*California Advisory Opinion 47* (1997))

Moreover, according to the Wisconsin Judicial Conduct Advisory Committee, if an event is excessive, for example, a cruise meeting, a judge should not accept an invitation from a bar association to attend as a guest of the association. *Wisconsin Advisory Opinion 98-10R*. However the New York committee stated that a judge may attend a function of the bar association as a guest of the association even if the function is expensive. *New York Advisory Opinion 87-15(a)*

Specialty Bar Associations

Judges are advised to exercise more caution in participating in specialty bar associations

The Advisory Committee on Judicial Conduct of the District of Columbia Courts defined specialty bar associations as “associations of lawyers who, in the main, represent a particular class of clients (e.g., plaintiffs or defendants) or engage in a specialized practice (e.g., communications) or reflect a particular group of lawyers (e.g., legal services, women, racial minorities)” *D.C. Advisory Opinion 4* (1994). The committee distinguished specialty bar associations from “associations, such as the unified District of Columbia Bar or a profession-wide private bar association, whose members reflect all, or many different, segments of the bar and represent all sides of various issues confronting the profession.” The California advisory committee used the term “partisan” lawyer organizations and defined such

organizations as intended to promote the interests of a limited segment of the bar, such as district attorneys or public defender organizations, plaintiff or defense-oriented bar associations, and similar organizations. *California Advisory Opinion 47* (1997)

The Wisconsin committee distinguished between bar associations “made up of lawyers who appear against each other” and “associations of lawyers who are so specialized that they always represent the same interest, such as plaintiffs’ or insurance defense lawyers. However, the committee explained that a section of the bar such as family law does not present problems for a judge because, even though a specialized association, it “is made up of lawyers who appear against each other.” *Wisconsin Advisory Opinion 98-10R*

In general, a judge may not accept a complimentary membership or pay dues in a specialty bar association

See, e.g., *Georgia Advisory Opinion 98* (1987), *Kentucky Advisory Opinion JE 91* (1998), *Louisiana Advisory Committee 91* (1991), *South Carolina Advisory Opinion 27-1998*. The South Carolina Advisory Committee on Standards of Judicial Conduct explained that a judge could not be a member of the South Carolina Trial Lawyers Association because

[1]intended or unintended influence in support of a particular organization by virtue of a judge’s membership in that organization could create a perception of bias by that judge towards the particular organization and its members as well as lending the prestige of the judiciary to advance the private interest of that organization

The committee did state that judges may participate in the group’s activities and receive its educational materials

The D.C. committee concluded that a judge may attend a function sponsored by a specialty bar association provided

- the association is not currently engaged as a body in litigation before the judge, and
- “the judge’s attendance would not create in the public’s mind a reasonably held perception that the judge is promoting the public policy goals of the regularly advanced litigative positions of the host organization.”

The committee continued that a judge’s attendance posed an increased risk of apparent impropriety

- if the sponsoring organization pays for the judge’s attendance,
- if the organization limits the audience to its membership and does not allow presentation of competing viewpoints,
- the more oriented the organization is to particular issues or to the interests of a certain class of clients, or
- if the organization has taken a public stance on issues in a case

of substantial importance before the court on which the judge sits. The committee also suggested that judges consider whether the organization is private or governmental and, if private, whether for-profit or non-profit, “keeping in mind that a non-profit, as well as for-profit organization can be financed by special interests that may dictate the agenda.”

The California advisory committee stated that a judge may participate as a speaker or in other capacities in educational programs for a partisan lawyer organization if the judge

- maintains a neutral position,
- is equally available to groups representing opposing viewpoints, and
- is particularly careful not to permit the group to advertise the event in a manner that makes it appear that the judge promotes the goals of the organization.

California Advisory Opinion 47 (1997). Moreover, the committee cautioned

- A judge should avoid regularly attending a partisan organization’s meetings or should also regularly attend meetings of an organization espousing opposing views
- A judge should not display in chambers periodicals published by a partisan lawyer organization or should also display the periodicals of organizations espousing opposing views
- A judge should not accept honors from such organizations, such as judge of the year awards
- A judge should not participate in the activities of any organization that as a body is or may be involved in litigation before the court of which the judge is a member or that publicly promotes highly controversial positions
- A judge may participate in enter-

tainment programs of specialty groups but should be alert to the danger of appearing to endorse what may be critical and tasteless portions of the program

The Tennessee Judicial Ethics Committee stated that a judge should not attend a defense lawyers' association meeting or convention if the judge's registration, lodging, and travel would be paid by the association *Tennessee Advisory Opinion 96-4* The committee did conclude that if the judge made a presentation at the conference, the association could reimburse the judge for reasonable expenses Similarly, the Wisconsin committee advised that a judge and the judge's spouse may not accept an invitation from a bar association to attend a dinner or other function as a guest of

the association if the organization's members frequently represent the same side in litigation *Wisconsin Advisory Opinion 98-10*

The Arizona Judicial Ethics Advisory Committee permitted judges to attend a holiday reception given by an association of lawyers who represent defendants in tort cases as long as the event was not inappropriately extravagant *Arizona Advisory Opinion 95-13* The event was described as "honoring Arizona judges" and did not single out any one judge as a guest of honor or speaker The committee concluded

[A] reasonable and objective observer would not believe that this association of lawyers has a special advantage in court, or that the judge favored the association, merely because the judge consumed cock-

tails and appetizers Moreover any hint of impropriety is greatly diluted—if not negated—by the fact that many law firms and special interest lawyer groups sponsor similar receptions

The committee reasoned that the "informal exchanges that such functions allow may help reduce tensions between the bench and bar and alleviate some of the isolation from former colleagues that judges experience upon their elevation to the bench"

A judge may participate in a bar organization that promotes the interests of particular racial, ethnic, or gender groups, as long as it does not restrict membership to a particular race, ethnic group, or gender *California Advisory Opinion 47 (1997)*

Appellate Judge Reprimanded for Critical Comments Made in Oral Argument

Pursuant to the recommendation of the Commission on Judicial Conduct, the Massachusetts Supreme Court publicly reprimanded an appellate court judge for statements he made, during an oral argument, that were critical of a union, its president, and the president's family *In the Matter of Brown*, 691 N E 2d 573 (1998) The court also ordered that the judge be recused from future cases involving the union, its president, or any member of the president's immediate family

During oral argument in an appeal from a decision dismissing a suit against the National Association of Government Employees alleging that it had breached its duty of fair representation, Judge Brown made a series of comments to counsel for the Labor Relations Commission, criticizing the

union, its president Kenneth Lyons, and members of Lyons' family The judge stated, among other things, that "[t]his is a [] union gone amok," that "people in the courthouse here who pay their dues get absolutely nothing," and that "[t]hey [NAGE] don't represent anybody, as far as I can see They just take the money and keep on stepping and buying more condos and have more expense accounts and have fancy banquets" The judge also stated that Lyons "had his whole family on the NAGE payroll," and that "Mr Lyons and all his family are making \$200,000 a year, plus they have cars and expense accounts,"

The court characterized the judge's comments as expressing an apparently "strong animus" against the union and its leadership and "accusing them of a general and persistent neglect of

their obligations to the membership and of self-dealing that is disgraceful if not criminal" The court found that such accusations went far beyond any comment appropriate to the particular dispute, even though, if the suit were valid, it might stand as an example of the general situation the judge described The court also found that the comments were "intemperate, excessive, unjustified by anything properly before the court, and, gratuitously insulting of persons directly and indirectly implicated in the case at bar"

The court found that the judge violated both Canon 2A of the Massachusetts Code of Judicial Conduct, which provides that a "judge should respect and comply with the law and should conduct himself at all times in a manner that promotes public confidence in the integrity and impartiality of the ju-

dictary,” and Canon 3A(3), which provides that a “judge should be patient, dignified and courteous to litigants, jurors, witnesses, lawyers, and others with whom he deals in his official capacity”

The judge had argued that he had been entirely impartial and fair in the case, and several of the other judges on the appeals court, including those who were on the panel in the case, testified that integrity and impartiality characterize Judge Brown’s work, not only in that appeal, but in general. The Labor Relations Commission’s judgment favorable to NAGE had been unanimously affirmed by the panel on which the judge was a member.

However, noting that Canon 2A and Canon 3A(3) address matters of appearance, the court concluded that it was “quite possible for a judge to uphold the highest standards of integrity and impartiality and yet violate these canons.”

~~The court rejected the judge’s argument that the requirement that a judge be patient, dignified, and courteous applies only to comments made about the parties and attorneys before a judge, and not about non-parties such as Lyons or his family. The court stated that a judge is required to be patient and dignified generally, “regardless of the context or content of the judge’s speech,” and to show courtesy to all with whom the judge deals in an official capacity. Judge Brown admitted that his comments were directed to the lawyer for the Labor Relations Commission, who was before the court, and the court noted that any discourtesy or impatience in the judge’s statements had implications for those in the courtroom, and that the judge spoke insultingly of persons directly affected by the outcome of the matter. The court found that the spirit and purpose of the requirement that a judge be patient, courteous, and dignified “would hardly be served by~~

holding that a judge may act in an undignified manner while on the bench so long as he chooses to berate persons not present before him.”

The court also rejected the judge’s claim that, if a judge’s statements are based on experience in a prior case or on judicial materials, they cannot be the basis of a disciplinary proceeding. The court found that, for purposes of the requirement that a judge be patient, dignified, and courteous, “the foundation of a judge’s comments are largely irrelevant.” The court also noted that nothing in previous cases supported Judge Brown’s assertions about the union.

The court also rejected the judge’s argument that the requirement that a judge be patient, courteous, and dignified should only be applied to behavior that is so discourteous it raises sufficient doubts about a judge’s impartiality to require recusal. The court held that impatience, a lack of dignity, or discourtesy may not show bias or prejudice sufficient to demand recusal, but still indicate a violation of Canon 3A(3).

The judge also argued that his conduct was excused by his position as an appellate judge, claiming that the unique dynamics of the appellate process compel an appellate judge to question litigants closely and to press for the validity of the presented arguments. Rejecting that argument, the court stated that although there are differences between trial and appellate proceedings, they did not excuse the judge’s comments. The court stated that, in many respects, “a trial judge labors in more difficult circumstances, seeking to control parties, witnesses and advocates, all of whom may have an interest in improperly swaying the minds of the jury.” The court stated that an “appellate judge operates in a cooler atmosphere and has less excuse for the occasional display of temper.” Although stating that

an appellate judge in oral argument may probe counsel’s arguments for weaknesses, the court concluded that by no stretch could the judge’s remarks be seen as serving that function. Moreover, the court stated that “the appearance of impartiality and courtesy are as important in appellate judging as at trial.”

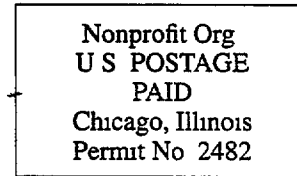
The court concluded that the rigor judges are required to exhibit in their work “does not diminish the importance or scope of Canons 2A and 3A(3), which safeguard the public’s confidence in the judiciary’s impartiality without which a judge’s search for the truth and justice would be futile.” The court explained:

An impartial manner, courtesy, and dignity are the outward sign of that fairness and impartiality we ask our fellow citizens often in the most trying of circumstances to believe we in fact possess. Surely it is arrogance for us to say to them that we may not seem impartial but we know we are and so they must submit. Precisely because the public cannot witness but instead must trust what happens when a judge retires to the privacy of his chambers, the judiciary must behave with circumspection when in the public eye.

[P]atience and courtesy are required of a judge toward those he deals with in his official capacity for the additional reason that a judge in that official capacity is granted the power to command silence and respect in his presence. It is not punishable to interrupt or show disrespect to a legislator, the Governor, or even the President. But this unusual deference is granted the judge only to allow him to do his work. When a judge berates or acts discourteously to those before him—even if he cannot affect their interests as litigants—he abuses his power and humiliates those who are forbidden to speak back. Of course there are times when a judge must and should admonish and express harsh judgment to those before him but they must be limited to the necessities of the occasion, being neither gratuitous nor irrelevant to it.



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JUDICIAL CONDUCT REPORTER

0092
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Chief Judge
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Judges and Jurors *(continued from page 11)*

- the letter should be a genuine expression of appreciation,
- the letter should be routinely mailed when the panel is discharged,
- the privilege of signing the letter should be rotated regularly among the judges, and
- the letterhead should contain the names of all the judges and the district and county clerks


Texas Advisory Opinion 63 (1983) However, the committee warned that the ' timing of the letter should not arouse a reasonable belief that the judges are using the power or prestige of their judicial position to promote their candidacy'” Apparently, out of similar concerns, the committee ad-

vised that individual judges may send out thank you letters to former jurors only

- on a routine basis, and
- immediately after the service has been rendered

Texas Advisory Opinion 69 (1983)

The Michigan State Bar Committee on Professional and Judicial Ethics has stated that a judge may not use the identity, addresses, or other information about jurors disclosed in their questionnaires or during the jury selection process to conduct a personal election mailing *Michigan Advisory Opinion 11-104* (1995) The inquiring judge, who was running for re-election, wanted to solicit support from persons who had served as jurors

in the judge's court, but the committee stated that sending a letter using information from court records would violate the rule against a judge using information acquired in a judicial capacity for any purpose not related to judicial duties *But see Alabama Advisory Opinion 88-330* (judge who is a candidate for judicial office may solicit support from persons who previously served as jurors in cases in which the judge presided in a carefully worded letter prepared at the judge's expense, on his/her personal time away from the courthouse, and without using state personnel or equipment) 



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JUDGE B. B. SCHRAUB

Chair Emeritus

SECTION 6

STATE DISCIPLINARY MECHANISM

Presentation by
Honorable Judge John Baker,
Indiana Court Of Appeals

Objective

to give the participants a better understanding of state disciplinary mechanism

The participants will study the following

**ARTICLES FROM HANDBOOK FOR MEMBERS OF JUDICIAL CONDUCT
COMMISSION**

Handbook for Members of Judicial Conduct Commissions

Cynthia Gray

American Judicature Society



**How Judicial Conduct
Commissions Work**

**Ethical Standards for
Judges**



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Founded in 1913, the American Judicature Society is an independent, nonprofit organization supported by a national membership of judges, lawyers, and other members of the public. Through research, educational programs, and publications, AJS addresses concerns related to ethics in the courts, judicial selection, the jury, court administration, and public understanding of the justice system.

How Judicial Conduct Commissions Work



How Judicial Conduct Commissions Work

Each of the 50 states and the District of Columbia has established a judicial conduct organization charged with investigating complaints against judicial officers

- ◆ In most states the judicial conduct organization has been established by a provision in the state constitution
- ◆ In some states, the judicial conduct organization has been established by a court rule
- ◆ In some states the judicial conduct organization has been established by statute

Depending on the state, the judicial conduct organization may be called a commission, board, council, court or committee and described by terms such as inquiry, discipline, qualifications, disability, performance, review, tenure, retirement, removal, responsibility, standards, advisory, fitness, investigation, or supervisory

This discussion of how commissions work will use the general term "judicial conduct commission" to describe all 51 organizations. Note that, although all the commissions have some features in common, each is different and the following description unavoidably depends on generalizations that do not necessarily apply to every state.

Judicial conduct commissions have jurisdiction over (in other words, authority to investigate) supreme court justices, trial and appellate judges and other judicial officers, such as, depending on the state court structure: court commissioners, referees, magistrates, masters, part-time judges, retired judges subject to

recall or available for assignment, and temporary judges. In some states, the judicial conduct commissions also have jurisdiction over employees of the state court system and administrative law judges. Depending on the state, the conduct commission is either an independent state agency or part of the judicial branch.

Membership

Judicial conduct commission membership ranges from 28 members (Ohio) to 5 (Montana) (See Appendix C). Most states have some members that are judges, some that are lawyers, and some that are neither judges nor attorneys (called public members, lay members, or citizen members).

- ◆ All commissions have public members, in seven states, a majority of the members are neither lawyers nor judges
- ◆ All commissions have attorney members, except the West Virginia Judicial Investigation Commission and Judicial Hearing Board
- ◆ All commissions have judge members except the Hawaii Commission on Judicial Conduct and the New Jersey Advisory Committee on Judicial Conduct (The New Jersey Committee has members who are retired judges.)
- ◆ In some states, the types of judges to be appointed are designated (for example, the Arizona Commission on Judicial Conduct has two court of appeals judges, two superior court judges, one justice of the peace and one municipal court judge, in addition to two attorney members and three public members)

In 10 states, all members are chosen by the supreme court. In most other states, the public members are appointed by the governor, the attorney members are appointed by the state bar and the judge members are appointed by the supreme court, in some states, the legislature must approve appointments. Other appointing authorities involved in some states include judges' groups and legislators.

- ◆ In some states, each member has an alternate who is appointed in the same manner as the member and who sits if the member is disqualified or unable to serve on a case.
- ◆ In some states, if a member is disqualified or unavailable, the authority who appointed that member appoints a temporary alternate.
- ◆ In some states, there is no provision made for alternates.

Commission members elect a chair and vice chair. The chair presides over meetings and performs other duties as delegated by the commission such as consulting with staff on urgent matters that arise between meetings and dealing with the budget. The vice chair presides when the chair cannot.

The purpose of judicial conduct commissions

Most simply put, judicial conduct commissions have been established

- to investigate complaints about judges' conduct,
- to determine whether a judge has committed misconduct or is disabled,

- to assist judges who have committed minor ethical violations to change their behavior,
- to impose or recommend discipline if appropriate against a judge who violates ethical standards, and
- when necessary, to secure the removal of a judge from office.

In addition, some commissions issue advisory opinions, make recommendations for appointments to judicial vacancies, or review judges' applications for disability retirement.

More generally, the purpose of judicial conduct commissions is to maintain and restore public confidence in the integrity, independence, and impartiality of judges and the judicial system by

- enforcing rigorous standards of judicial conduct on and off the bench,
- assisting the judiciary in maintaining the necessary balance between independence and accountability,
- reassuring the public that the judiciary neither permits nor condones misconduct,
- providing a forum for citizens' complaints against judges,
- creating a greater public awareness of what constitutes proper and improper judicial conduct, and
- protecting judges from false, unfounded, and inaccurate accusations that can damage their reputations.

How the judicial discipline process begins

In most instances, judicial discipline proceedings are initiated by a written complaint.

filed with the commission. Some states require that a complaint be in writing, under oath, and notarized or verified. Many states have complaint forms that individuals are encouraged to use. All complaints are acknowledged by the commission. In addition, most commissions can initiate inquiries based on information from any source, including anonymous complainants, news reports, referrals from other agencies (such as the office of court administrator or the attorney discipline agency), or information received during an investigation of another matter.

Most complaints about judicial conduct come from litigants (in other words, criminal defendants or parties to a civil case). For example, in 1997, 81% of the complaints filed with the California Commission on Judicial Performance came from a litigant or the family or friend of a litigant. Other complainants include attorneys, other judges, and court staff.

In the complaint, the complainant describes the facts and states how the complainant believes the judge has committed misconduct. For example, the complaint form for the Kansas Commission on Judicial Qualifications asks the complainant to

Please state all specific facts and circumstances which you believe constitute judicial misconduct or disability. Include any details: names, dates, places, addresses, and telephone numbers which will assist the commission in its evaluation and investigation of this complaint. Also include any documents, letters, or other materials related to the complaint. Identify the names and addresses of any witnesses.

If the complaint arises out of a case, complaint forms also ask for information about the case, such as the name and number, the type of case, the complainant's relationship to the case

(for example, plaintiff, defendant, attorney for a party, or witness) and whether the case is still pending. If the complaint is vague, the commission may ask the complainant for more specific detail or additional documentation.

Jurisdiction—What commissions can and cannot do

Individuals

Commissions sometimes receive complaints about individuals over whom they have no jurisdiction, for example, attorneys, law enforcement officers, or federal judges. Those complaints are either dismissed or not docketed, with an appropriate referral when possible, for example, to the attorney discipline agency.

Matters

Most complaints filed with judicial conduct commissions—generally more than 90% each year—are dismissed. Some of these are dismissed because they do not allege a violation of the code of judicial conduct, for example, litigants sometimes complain that a judge did not respond to phone calls or letters because they do not understand that a judge is required to ignore such *ex parte* communications.

Moreover, many complaints are dismissed every year as beyond the jurisdiction of the commission because, in effect, they are asking the commission to act as an appellate court and review the merits of a judge's decision, claiming that the judge made an incorrect finding of fact, misapplied the law, or abused his or her discretion. These complaints are frequently filed by disappointed litigants,

particularly in emotionally-charged litigation such as divorce or custody cases, contested probate cases or criminal trials. Examples of typical complaints that are dismissed by commissions as outside their authority include complaints that a judge

- improperly admitted or excluded certain evidence,
- believed perjured testimony,
- was too hard or too soft in sentencing,
- set bond too high or too low,
- should have made a larger or smaller award of child support, or
- awarded custody of a child to the wrong person

Making an error, however, is not unethical judicial conduct in most cases, it simply reflects the fallibility of judges, and judicial conduct commissions were not established to punish such mistakes. Correcting errors is the role of the appellate courts, not the judicial conduct commissions. Disappointed litigants are not allowed to circumvent the appellate process established in the constitution by filing a complaint with the commission as a substitute for appeal.

Finally, the power of conduct commissions is limited to protect the independence of the judiciary: a judge must feel free to make a decision that may prove to be unpopular with the public or cause the losing party to become hostile without fearing that he or she will be disciplined by the commission.

In addition, commissions do not have the authority to

- provide individual legal assistance,
- intervene in litigation on behalf of a party

- interfere in pending litigation,
- order a judge to step down from a particular case, or
- order anyone released from jail

Distinguishing between legal error and judicial misconduct

Although review of a judge's decision is left to the appellate court in most cases, occasionally, a conduct commission may review a judge's actions to determine if the decision or exercise of discretion (such as determining sentence or bail) was motivated by an improper motive (such as bias or revenge), the legal error was egregious, or there was a pattern or practice of legal error.

To determine whether a decision was made in bad faith, in other words, committed for any purpose other than the faithful performance of judicial duties, commissions ask

- Was the decision based on a demonstrated bias or prejudice?
- Was the purpose of the action to teach someone a lesson or send someone a message extraneous to the enforcement of the law?
- Did the judge display intemperate conduct?
- Did the judge's rulings evidence a consistent pattern of abuse of lawyers and/or others appearing before the judge?
- Did the judge have a conflict of interest?
- Did the judge abuse the judicial power?
- Did the judge abandon his or her role as a neutral and detached magistrate?
- Was there fraud?
- Did the judge have a corrupt motive?

To determine whether a legal error or abuse of discretion was egregious enough to constitute misconduct commissions ask

- Was the decision contrary to clear and determined law about which there is no confusion or unsettled question?
- Did the judge flagrantly disregard important procedural requirements?
- Did the judge deny fundamental rights for example, a criminal defendant's constitutional right to counsel?
- Were the parties denied a full and fair hearing?
- Did the judge abdicate the duty to exercise judgement?
- Did the judge demonstrate a lack of understanding of the law?
- Did the judge demonstrate an unwillingness to apply the law?

To illustrate.

Ordinarily, a complaint about a judge's refusal to release a defendant on bail or about the amount of bail set would be dismissed by a judicial conduct commission as a complaint about the exercise of judicial discretion, not misconduct. However, sanctionable misconduct has been found

- when a judge refused to release a defendant on bail because the judge had been required to get out of bed to conduct the arraignment (New York)
- when a judge set unusually high bail for four black defendants after learning that a large number of black voters in Boston had voted for his brother's opponent in the gubernatorial primary (Massachusetts)

Ordinarily, a complaint about a judge's sentence would be dismissed by a judicial conduct commission as a complaint about the exercise of judicial discretion, not misconduct. However, sanctionable misconduct has been found

- when a judge imposed a higher than usual sentence on her former supervisor in order to retaliate for being fired (New York)
- when a judge reduced the minimum fine for those wishing to plead guilty to traffic citations to \$1 to send a message to the county commissioners who had informed judges that they were falling behind "current revenue estimates" (Texas)
- when a judge had a policy for sentencing persons convicted of DUI that allowed for no exceptions (California)

Ordinarily, a complaint about a judge's issuance of a warrant would be dismissed by a judicial conduct commission as a complaint about the exercise of judicial discretion, not misconduct. However, sanctionable misconduct has been found

- when a judge issued warrants for the arrest of the chief of police motivated by personal bias and animosity (Texas)
- when a judge issued a bench warrant against a process server who had served a summons and complaint on the judge who had been named as a defendant in a civil action (South Carolina)

Ordinarily, a judge's decision to hold someone in contempt of court would be dismissed by a judicial conduct commission as raising a question for appeal. However, sanctionable misconduct has been found

- when an experienced judge did not strictly adhere to proper procedures for holding someone in contempt and ignored binding precedent reversing his contempt rulings (Nevada)
- when a judge had a woman arrested for failing to appear for jury duty and confined her for approximately 40 days without holding a hearing at which she could be confronted with an accusation of contempt without determining that she was in contempt, and without imposing a sentence (Kansas)
- when a judge held a litigant in direct contempt for personal criticism of the judge voiced in the hallway of the courthouse (Texas)
- when a judge held a defendant in contempt to teach him a lesson after he mailed a check for \$11 in payment of a parking fine with a note reading, "You people are crazy I hope you choke on it" (New Jersey)

Ordinarily a judge's decisions are not subject to review by the conduct commission. However, sanctionable misconduct or incompetence has been found

- when a judge made a number of rulings that were so far contrary to established law as to demonstrate a lack of understanding of the law or an unwillingness to apply it (Missouri)
- when the judge's rulings, statements, and conduct on the bench evidenced habitual abuse of counsel and others (U.S. Judicial Conference Committee)
- when a judge entered a judgment in a case without holding a trial or administering an oath to the witnesses, without

any evidence supporting his judgment, and knowing that the defendant had no legal obligation to pay the amount claimed and the decision was contrary to law (New York)

Investigation of judicial conduct complaints

If a complaint does state facts that, if true and not otherwise explained, would be misconduct (in other words, within the commission's jurisdiction), the commission begins an investigation.

- ◆ In some states, commission staff can begin an investigation without authorization by the commission.
- ◆ In other states, staff must wait until the commission reviews the complaint and authorizes an investigation.

An investigation typically involves interviewing personally or over the telephone, the complainant, attorneys, court reporters, court employees, other witnesses, and lawyers who practice before the judge. Relevant transcripts and other documents are also examined. Sometimes the judge's courtroom is monitored or a sample of transcripts is reviewed. Some commissions occasionally request investigative assistance from agencies such as the state police, district attorney's office, or other law enforcement agencies. An investigation sometimes uncovers matters in addition to the initial complaint and may be expanded to include those matters.

During the investigation, the judge is advised by letter about the allegations of the complaint, and the judge is given the opportunity to present information and explain the

actions under investigation to the commission in writing and/or, in some states, in person. The judge may be represented by counsel.

Confidentiality during an investigation

During an investigation, in all states commission proceedings are confidential, and the commission cannot confirm or deny that a complaint has been filed against a judge or that the commission is investigating the judge. The complainant and anyone contacted by the commission during its investigation are also prohibited from revealing that a complaint has been filed or that there is an investigation, although they cannot be prohibited from discussing the facts underlying a complaint. (For example, a complainant may say to a newspaper "Judge Smith called me a name, but cannot say, "I filed a complaint with the commission after Judge Smith called me a name and they are investigating the matter.") In some states, any person violating confidentiality is subject to contempt proceedings.

Confidentiality is intended

- to encourage complainants and witnesses to come forward without fear that the judge will retaliate,
- to encourage complainants and witnesses to come forward without fear that the media or others will pursue them
- to prevent unscrupulous complainants from engaging in a campaign of harassment that may overburden the commission, threaten to intimidate judges, and detract from the state's ability to attract qualified judges.

- to allow commissions to encourage infirm or incompetent judges to resign before charges become public, and
- to protect a judge's reputation from allegations that may prove to be baseless.

There are several common exceptions to the confidentiality requirement. In many, but not all, states

- The judge may waive confidentiality
- If the public has learned of the judge's conduct independent of the commission investigation, the commission may confirm there is an investigation, clarify how commission proceedings work, explain the right of the judge to a fair hearing, or state that the judge denies the allegations.

After the investigation

After considering the judge's response and other evidence gathered during the investigation, the commission may

- dismiss the complaint if the facts discovered during the investigation do not support a showing that the judge committed misconduct warranting public discipline
- file a formal statement of charges, or
- in some states, dispose of the matter with a private sanction or informal resolution.

The code of judicial conduct notes that, "It is not intended that every transaction will result in disciplinary action."

Private and informal dispositions

Many judicial conduct organizations have the authority to resolve complaints through

private, informal means (Not all commissions have this authority) These resolutions are variously called dismissals with caution, concern, or warning, letters of admonition, advisory letters, private reprimands, private admonitions, adjustments, informal dispositions or deferred discipline agreements

Informal dispositions are used if

- the misconduct is a single, isolated mistake that is not likely to be repeated
- the misconduct is relatively minor,
- the judge has acknowledged the mistake and agrees to take steps to improve such as counseling or treatment,
- the judge has not previously been disciplined for the same conduct, and
- the judge has not recently been disciplined for other misconduct

A minor violation is one that

- did not involve the misappropriation of funds
- did not result in substantial prejudice to a litigant or other person,
- did not involve dishonesty, deceit, fraud or misrepresentation,
- did not constitute a crime that adversely reflects on the judge's honesty, trustworthiness or fitness or
- was not an actual impropriety but created the appearance of impropriety

In an informal disposition, the commission

- reminds the judge of ethical responsibilities
- gives authoritative advice
- expresses disapproval of the behavior,

- suggests that other actions would have been a more appropriate response to a particular situation,
- cautions the judge not to engage in specific behavior in the future,
- warns that further complaints may lead to more serious consequences or
- recommends that the judge change specific behaviors or obtain counseling or education

Sometimes the informal disposition is done by letter and sometimes in a face-to-face meeting with the judge, either by the entire commission when the judge attends a meeting or by a delegation of one or more commission members who personally visit the judge to talk about the commission's concerns. Informal dispositions can usually be used in subsequent proceedings to increase the level of sanction particularly if the judge repeats the conduct about which he or she was cautioned.

Some commissions can also agree with the judge at this stage to defer or suspend the proceedings if the judge agrees to undergo treatment (for example, for alcoholism), participate in education programs, or take other corrective action. The commission then monitors the judge's compliance with the agreement, reopening the discipline proceeding if the judge fails to complete the recommended program.

Although informal dispositions and private sanctions are confidential, some commissions include in their annual reports brief descriptions of private sanctions without revealing the judge's name, to give guidance to the judiciary and to explain to the public the remedial work done by the commission.

Formal proceedings

A commission files a formal statement of charges (known as a formal complaint in some states) if it finds that there is probable cause that the judge has engaged in misconduct warranting public discipline. "Probable cause" means there are reasonable grounds for believing that the judge has violated the code of judicial conduct. According to *Black's Law Dictionary*, reasonable grounds are a set of probabilities grounded in the factual and practical considerations that govern the decisions of reasonable and prudent persons and is more than mere suspicion but less than the quantum of evidence required" for a finding of misconduct.

- ◆ In some states, the decision whether to file formal charges is made by the entire commission.
- ◆ In the five states with a two-panel system, the decision whether to file formal charges is made by an investigative panel comprised of a subset of the entire commission and the charges are filed with the hearing panel comprised of the remaining members of the commission. See description at page 18.
- ◆ In the eight states with a two-tiered system, the decision whether to file formal charges is made by the first tier and the charges are filed with a completely separate organization. See description at page 18.

The statement of formal charges describes the facts underlying the specific charges against the judge in plain and concise language. There may be more than one incident of misconduct alleged in a single statement of charges, each incident or type of misconduct is called a "count." The statement of charges

also identifies the provisions of the code of judicial conduct alleged to have been violated any relevant statutes, and court rules.

The charges are served on (in other words, delivered to, usually by mail) the judge, and the judge has an opportunity to answer. In his or her answer, the judge (often referred to as the "respondent") either admits or denies the facts and conclusions alleged in the complaint, the judge can admit some facts and conclusions and deny others.

After the judge's answer is filed, there is discovery.

- ◆ In some states, there is the same discovery as in civil cases—each side answers interrogatories (written questions), supplies all documents requested, and deposes witnesses (in other words asks oral questions under oath and with a verbatim record made).
- ◆ In other states, discovery is more limited, for example, the commission and the judge may only be required to exchange the names, addresses, and statements of all witnesses they intend to call at the hearing, non-privileged evidence related to the charges, and documents to be presented at the hearing.

Confidentiality after formal charges are filed

- ◆ In 33 states, after formal charges are filed, confidentiality ceases and the formal charges, the judge's answer, and subsequent proceedings, including the hearing and the commission's decision, are public.
- ◆ In 2 states, confidentiality ceases when the fact-finding hearing begins.

- ◆ In 13 states, judicial discipline proceedings remain confidential through the hearing and confidentiality ceases only if the commission files a recommendation for public discipline with the supreme court.
- ◆ In two states (Delaware and Hawaii), judicial discipline proceedings remain confidential unless and until the supreme court orders that the judge be publicly disciplined

See Appendix D

Disposition pursuant to consent or stipulation

At any stage in the proceedings, a judge may agree with the commission to admit he or she committed misconduct in exchange for a stated sanction. As part of an agreement, the judge consents to the sanction, admits the truth of the charges, and waives a public hearing. If the charges are serious enough, the agreement may be that the judge will resign and agree never to serve as a judge again in return for the commission taking no further action against the judge. In some states supreme court approval of an agreement in a judicial discipline case is required. In other states as part of the agreement, a judge may waive review by the supreme court.

The hearing

After the judge's answer is filed, the case is set for a hearing which is public in 35 states

- ◆ In some states the hearing is held before the entire commission

- ◆ In some states, the hearing is held before a special master or masters who are not members of the commission
- ◆ In some states, the hearing is held before a panel consisting of less than all the members of the commission
- ◆ In the five states with two-panel systems, the hearing is held before the hearing panel of the commission, which is a subset of commission members that does not include any members that were on the investigative panel that voted to file the formal charges against the judge. See description at page 18
- ◆ In the eight states with two-tiered systems, the hearing is held before a separate adjudicative body. See description at page 18

The hearing is conducted like a civil trial following, with some exceptions, the rules of evidence and civil procedure. The judge is entitled to be represented by an attorney. Counsel for the commission and the judge or the judge's counsel make opening statements. Counsel for the commission calls witnesses, asks them questions, and presents other evidence such as documents and transcripts. The judge or the judge's attorney may cross-examine the witnesses. The judge is then given an opportunity to testify, call witnesses, and offer evidence. Counsel for the commission and the judge or the judge's attorney make closing arguments. The proceedings are recorded on tape or by a court reporter.

Burden of proof

- ◆ In most states, judicial misconduct must be proven by **clear and convincing evidence**, which is a lower burden of proof than the

beyond a reasonable doubt standard required to convict someone of a crime

- ◆ In some states misconduct must be proven by a **preponderance of the evidence**, which requires less convincing proof than the clear and convincing standard

Clear and convincing evidence

The clear and convincing evidence standard means that the evidence must be of such convincing force that it demonstrates in contrast to the opposing evidence, a high probability that the facts for which it is offered as proof are true. In other words, a high probability that the judge has committed acts that constitute misconduct. To be clear and convincing

- Evidence must be cogent, strong, definite, weighty, and direct
- The witnesses must be found to be credible
- The facts to which they testify must be distinctly remembered
- The details narrated must be exact and in due order

However the clear and convincing standard does **not** require

- Evidence that is uncontradicted, unanswerable, or conclusive
- Evidence that eliminates all possible conclusions except one
- Resolution of every reasonable doubt in the judge's favor
- Acceptance of any theory in the judge's favor that is consistent with the evidence
- Acceptance of all facts in the judge's favor if they are reasonably supported

Preponderance of the evidence

"Preponderance of the evidence" means the greater weight of the evidence. In judicial discipline proceedings, this means that the existence of a fact indicating that the judge committed judicial misconduct is more probable than its nonexistence.

Grounds for discipline

- ◆ In some states, a **violation of the code of judicial conduct alone** is sufficient grounds for judicial discipline (although not all minor violations result in public sanction)
- ◆ In other states, proof of **willful misconduct or conduct prejudicial to the administration of justice that brings the judicial office into disrepute** is also necessary, although whether a judge violated the code is the first step in determining whether he or she committed willful misconduct or prejudicial conduct.

Other grounds for judicial discipline include

- persistent failure to perform the duties of the office,
- habitual intemperance
- conviction of a felony, or
- a physical or mental disability that seriously interferes with the performance of judicial duties and that is or may become permanent

Willful misconduct

A judge commits willful misconduct if the judge

- intentionally violates the code of judicial conduct,

- while acting in a judicial capacity, in other words, while performing an adjudicative or administrative function generally associated with the position of judge, and
- in bad faith

An act is committed in bad faith if

- the act was within the judge's lawful power but was committed for any purpose other than the faithful performance of judicial duties or
- the act was beyond the judge's lawful power and the judge knew that the act was beyond the judge's lawful power, or
- the act was beyond the judge's lawful power and the judge consciously disregarded the limits of the judge's authority by failing or refusing to take reasonably available steps or make a good faith effort to determine the extent of his or her authority

Conduct prejudicial to the administration of justice

Conduct prejudicial to the administration of justice that brings the judicial office into disrepute is less serious than willful misconduct. A judge commits conduct prejudicial to the administration of justice if the judge either

- commits willful misconduct while acting in other than a judicial capacity, or
- violates the code of judicial conduct while acting in a judicial capacity but without bad faith

The requirement that the conduct bring the judicial office into disrepute does not require notoriety, but only that the conduct be dam-

aging to the esteem for the judiciary held by members of the public who observed the conduct

The decision

After the hearing, the members of the commission vote on whether the evidence supports the allegations in the complaint. In most states, a decision that a judge committed misconduct requires the concurrence of a majority of the members of the commission.

The commission's decision includes findings of fact (for example, whether, as alleged, the judge called a court reporter "baby" when they passed each other in the courthouse hallway) and conclusions of law (for example, whether calling a court reporter "baby" is judicial misconduct). In the findings, the commission resolves questions of facts and describes why it reached a conclusion (for example, the commission may state that it is accepting the testimony of the court reporter over the judge because the court reporter reported the incident immediately after it happened and the judge was evasive during his testimony). If the hearing was not held before the entire commission, the fact-finding panel or special master or masters submits a report with findings of fact to the entire commission, which can accept or reject it, in whole or in part.

If some members do not agree with the majority of the commission, they can file a dissenting opinion. The dissent can be about whether the judge has committed misconduct and/or what the sanction can be.

The sanction

Following are sanctions that may be imposed in judicial discipline cases, but not all are available in every state

- ◆ Reprimand
- ◆ Admonishment
- ◆ Censure
- ◆ Fine
- ◆ Cease and desist order
- ◆ Suspension without pay
- ◆ Payment of the costs of proceedings
- ◆ Involuntary retirement
- ◆ Removal
- ◆ Discipline as a lawyer
- ◆ Imposition of conditions (such as counseling or education)

Aggravating and mitigating circumstances

To determine the appropriate sanction commissions and courts consider

- The extent of the misconduct
 - Whether the misconduct is an isolated instance or a pattern of conduct
 - Whether the judge committed multiple offenses
- The nature of the misconduct
 - Whether the misconduct occurred in the judge's official capacity or in the judge's private life
 - Whether the misconduct occurred in or out of the courtroom
 - Whether the judge exploited the judicial position to satisfy personal desires

- Whether the misconduct involved criminal or dishonest acts
- The judge's conduct in response to the commission's inquiry and disciplinary proceedings
 - Whether the judge showed remorse and made an effort to change his or her conduct
 - Whether the judge was candid and cooperated with the commission
- The judge's discipline record and reputation
- The effect the misconduct had upon the integrity of and respect for the judiciary

Those factors suggest that the following are **mitigating circumstances**, in other words, a less severe sanction may be appropriate if one or more are present in a case

- The misconduct
 - was an isolated instance
 - involved only one offense
 - occurred in the judge's private life
 - occurred outside the courtroom
 - affected few persons
 - did not involve misuse of the judicial power to satisfy the judge's personal desires
 - did not involve criminal or dishonest acts
- The judge
 - responded candidly, cooperatively, and in good faith to the commission's inquiry and disciplinary proceedings
 - acknowledged the misconduct
 - showed remorse
 - improved his or her conduct

- agreed to appropriate remedial acts such as education or treatment
- The judge
 - was relatively new to the bench did not have a prior disciplinary record
 - has made positive contributions to the courts and the community
 - is generally well regarded among the bench bar and court staff as hard working and thoughtful

The following are **aggravating circumstances**, in other words, a more severe sanction may be appropriate if one or more are present in a case

- The misconduct
 - constituted a pattern of violations
 - involved multiple offenses
 - occurred in the courtroom
 - occurred in the judge's official capacity
 - harmed many persons and/or the persons harmed were vulnerable
 - involved misuse of the judicial power to satisfy the judge's personal desires
 - involved criminal violations, dishonesty or moral turpitude
- The judge
 - intentionally failed to comply with rules or orders of the commission and/or submitted false evidence, made false statements or engaged in other deceptive practices during the disciplinary process
 - refused to acknowledge the wrongful nature of his or her conduct

- did not show remorse
- had not changed his or her conduct
- The judge
 - was an experienced judge who should have known better
 - had a prior disciplinary record (particularly if it involved similar misconduct)

Interim suspension

- ◆ In many states, a judge may be suspended **with** pay if the judge is charged with a felony, pending the outcome of the criminal case
 - ◆ In other states, a judge may be suspended **with** pay if the commission recommends to the supreme court that a judge be removed or retired, pending final action by the supreme court
 - ◆ In some states a judge may be suspended **with** pay if the commission petitions the supreme court for suspension and demonstrates that the continued service of the judge is causing immediate and substantial public harm
- In most states a judge is suspended **without** pay if he or she pleads guilty to or is found guilty of a felony or other serious crime, pending the outcome of any appeal. If the conviction is reversed on appeal, the suspension is lifted. If a judge's conviction of a felony or other serious crime is affirmed on appeal
- ◆ In some states, the judge is automatically removed from office

- ◆ In some states, action by the commission and/or the supreme court is necessary to remove the judge from office

Review

- ◆ In some states, the commission's decision that a judge committed misconduct and should be sanctioned is final, but the judge can ask the supreme court to review a decision and overturn it
- ◆ In some states, the commission's decision that a judge committed misconduct and should be sanctioned is only a recommendation that the supreme court must consider, and it only becomes effective if adopted by the court
- ◆ In some states, sanctions such as reprimands or censures can be imposed by the commission itself subject to review, but removal and suspension can only be imposed by the supreme court

The supreme court reviews

- the commission's findings of fact to see if they are supported by the evidence,
- its conclusions of law to see if they are correct, and
- its sanction decision or recommendation to see if it is justified

The court may

- adopt the commission's findings, conclusions, and sanction
- reject them,
- adopt some and reject others and
- adopt the findings and conclusions but impose a different sanction

The supreme court engages in an independent review of the record to determine if the commission's factual findings are supported by the evidence, although the court is not bound by the commission's findings, it will usually defer to the factual findings of whoever—the commission, master, or panel—had an opportunity to evaluate the credibility of witnesses at the hearing. The court accords less deference in reviewing the commission's conclusions of law and recommendations as to sanction, although in some states special weight is given to commission conclusions because of the commission's expertise in judicial discipline. In some states, the supreme court applies a *de novo* review standard (in other words, as if the commission had not already rendered a decision), although even then deference is given to the findings of the person or persons in the best position to judge the credibility of witnesses.

Immunity and privilege

In most states, members of judicial conduct commissions and commission staff are absolutely immune from suit for all conduct in the course of their official duties, in other words, if they are sued for any act taken as a member or employee of the commission, the suit will be dismissed.

Moreover, in most states, complaints or statements made to the commission during an investigation or proceeding by complainants, witnesses and other participants are privileged, in other words, if the participant is sued based on the statement (for example, for defamation of character) the suit will be dismissed.

Bifurcated systems—two tiers and two panels

Judges frequently argue that the judicial discipline systems in most states violate their constitutional due process rights because the commission both investigates and prosecutes complaints and makes the decisions—the commission, they claim, is acting as both prosecutor and jury. Their argument is that it is unfair for a commission that has decided to file formal charges to also decide whether the charges were proven, in effect, reviewing whether its original decision was correct. They are also concerned that evidence gathered during the investigative phase that is not admitted at the hearing phase (because it violates one of the rules of evidence, for example) will nonetheless taint the members' view of the judge. That argument has been rejected by every state supreme court that has considered it because the decisions of the commission are reviewed by the supreme court.

However, although bifurcation or separation of the prosecutorial and adjudicative roles is not required by the constitution, some states have adopted it as a matter of policy. Those states fall into two categories: the eight traditional two-tier states and the five states that have recently adopted a two-panel system.

Traditional two-tier states

There are eight two-tier states—Alabama, Delaware, Illinois, Ohio, Oklahoma, Pennsylvania, West Virginia, and Wisconsin. In those states, complaints against judges are investigated by one body (usually referred to as the first tier), which decides whether to file formal charges; the formal charges are heard and

decided by a second body that has a different name, different membership, different offices, and different staff (usually referred to as the second tier). In all states but Illinois and Oklahoma, the decision by the second tier may be reviewed by the supreme court. The exact procedures vary considerably from state-to-state among those eight states. For example, in Alabama, the nine-member Judicial Inquiry Commission investigates complaints and files charges that are heard and decided by the nine-member Court of the Judiciary. Decisions of the Court may be appealed to the Alabama Supreme Court.

Two-panel states

Florida, Kansas, South Carolina, Tennessee, and Wyoming have bifurcated commission functions so that investigative and adjudicative roles are handled by different panels with separate counsel. The use of two panels is based on the *American Bar Association Model Rules for Judicial Disciplinary Enforcement* (1994), although no state has adopted the precise structure suggested by the *Model Rules*. This "two-panel" structure differs from that of the traditional two-tier structure because different panels of commission members rotate between the two roles, although no member who sits on an investigative panel that decides to file formal charges against a judge may subsequently sit on the adjudicative panel that holds the hearing and makes a decision on the charges. The decision of the hearing panel is reviewed by the supreme court.

Ethical guidelines for commission members

To satisfy the public that the judicial discipline system is effective and to assure the judiciary that the system is fair, commission members themselves recognize that they hold positions of public trust and avoid any conduct that would erode confidence in the commission. The rules of the South Dakota Judicial Qualifications Commission emphasize that a commission member shall carry out the duties of a commission member impartially, discreetly, and objectively.”

A few conduct commissions have adopted ethical guidelines for their members. (Those from Pennsylvania and Washington are the most comprehensive.) Rules include

- A requirement that members maintain confidentiality and instruct their staff about the requirement of confidentiality (Arkansas, Washington)
- A prohibition on a member discussing a pending matter ex parte with the judge, the judge's attorney, the judge's family or friends, the complainant, or any witness (Arkansas, South Carolina, Texas, Washington)
- A prohibition on a member communicating with the press regarding commission business (Alaska, Arkansas, Washington)
- A prohibition on a member publicly commenting on the qualifications of any sitting judge (Alaska)
- A prohibition on a member testifying voluntarily as a character witness in a commission proceeding (Washington)

- A prohibition on a member representing a judge in a matter before the commission during the member's term or within two years after the member's term has expired (Alaska, Washington)
- A requirement that a member be present for at least 80% of the scheduled meetings and not miss three consecutive meetings without appropriate reason (Pennsylvania, Washington)
- A requirement that a member vote in favor of or in opposition to each motion brought to a vote during a meeting, unless grounds exist for the member's recusal (Pennsylvania, Washington)

Some rules govern a commission member's **political activities**. Under the rules in some states, a commission member **shall not**

- participate in any judicial campaign, although a judge-member may campaign for judicial office (Arkansas, Washington),
- endorse or contribute to campaigns for judicial office or judicial appointment (Arkansas, Washington),
- participate in an organization's process of endorsing or rating judicial candidates (Arkansas, Washington)
- make reference to the member's affiliation with the commission or act in any way that may suggest that the commission supports a candidate for non-judicial office (Pennsylvania, Washington), or
- run for office for two years (Mississippi)

Other rules deal with members' **financial dealings**. Under these rules, a commission member **should**

- refrain from financial and business dealings that directly or indirectly reflect adversely on the member's impartiality interfere with the proper performance of commission duties, or exploit the person's position as a commission member (Pennsylvania, Washington),
- use or disclose information acquired while serving as a commission member in financial dealings or for any other purpose not related to the member's duties (Pennsylvania), or
- financially profit as a result of any confidential information submitted to the commission (Pennsylvania)

Disqualification of commission members

Most judicial conduct commissions have rules that specify when a commission member may not participate in the commission's consideration of a complaint against a judge. The most common rule provides that a member may not participate as a member in proceedings involving any charge against himself or herself.

In addition, some states have more general rules that require a member to disqualify if, for example, he or she cannot impartially consider the charges against a judge (Washington) or if a judge would be disqualified from a court proceeding under analogous circumstances (Arkansas, Hawaii, Louisiana, New Mexico, Oklahoma, South Dakota, Vermont, West Virginia, Wisconsin, Wyoming). Some rules give specific examples of circumstances under which a commission member's impartiality might reasonably be questioned.

For example, some states require disqualification if the member

- is the complainant (Maryland, Pennsylvania),
- has personal knowledge or information of disputed evidentiary matters relating to the complaint (Connecticut, Mississippi, Pennsylvania, Washington),
- will be a material witness (Alaska, Pennsylvania, Washington),
- is involved in a case that is a subject of the charges (Pennsylvania),
- has a direct personal or financial interest in the matter (Connecticut), or
- is involved in the charge (Alabama, South Carolina, Virginia)

Other grounds for disqualification apply if the judge who is the subject of the complaint

- is a judge of a court within the member's judicial district (Mississippi, Oklahoma), or
- lives in the member's county (Mississippi)

Involvement in a judicial campaign may also result in disqualification. In some states, a member is disqualified if the member

- publicly supported or opposed the judge who is the subject of a complaint in a judicial campaign in the last five years (Arkansas),
- while serving on the commission, made a financial contribution to the campaign of the judge who is the subject of a complaint (Wisconsin),
- while serving on the commission, made a financial contribution to the campaign of an opponent of the judge who is the subject of a complaint (Wisconsin),

- while serving on the commission, signed or circulated nomination papers for the judge who is the subject of a complaint (Wisconsin),
- while serving on the commission, signed or circulated nomination papers for a campaign opponent of the judge who is the subject of a complaint (Wisconsin),
- while serving on the commission, solicited campaign contributions for the judge who is the subject of a complaint (Wisconsin),
- while serving on the commission, solicited campaign contributions for a campaign opponent of the judge who is the subject of a complaint (Wisconsin), or
- while serving on the commission, openly endorsed or opposed the judge who is the subject of a complaint (Wisconsin)

Family relationships may also require disqualification. For example, in some states rules require disqualification if a relative of the member

- is the judge who is the subject of the complaint (West Virginia),
- is the complainant (Connecticut, Mississippi, Pennsylvania, Rhode Island),
- is a witness (Connecticut),
- has direct personal knowledge of disputed evidentiary matters (Connecticut), or
- has a financial interest in any events relating to the matter, individually or as a fiduciary (Pennsylvania, Washington)

Other relationships may also require disqualification. For example, disqualification is required in some states

- if a business associate of the member has direct personal knowledge of disputed evidentiary matters (Connecticut),
- if a close personal associate of the member is the subject of the complaint (Colorado), or
- if the member has a business, personal or financial relationship with the complainant, witness, or judge (Connecticut)

Rules for judge members

Some disqualification rules apply only to the judge-members of the commission. For example, disqualification may be required if the judge-member

- served as a judge in a matter relating to the complaint (Washington),
- exercises supervisory authority over the judge who is the subject of the complaint (West Virginia),
- sits as a judge in the same judicial district as the respondent-judge (Colorado, Idaho, Iowa, Nevada, Oklahoma), or
- was the subject of a complaint previously made by the same complainant (Connecticut)

Rules for attorney members

Some of the disqualification rules affect only the lawyer-members of a commission. For example, disqualification may be appropriate if the lawyer-member

- has been retained by the judge who is the subject of the complaint (Alaska),
- has counseled the judge in any matter within two years (Alaska),

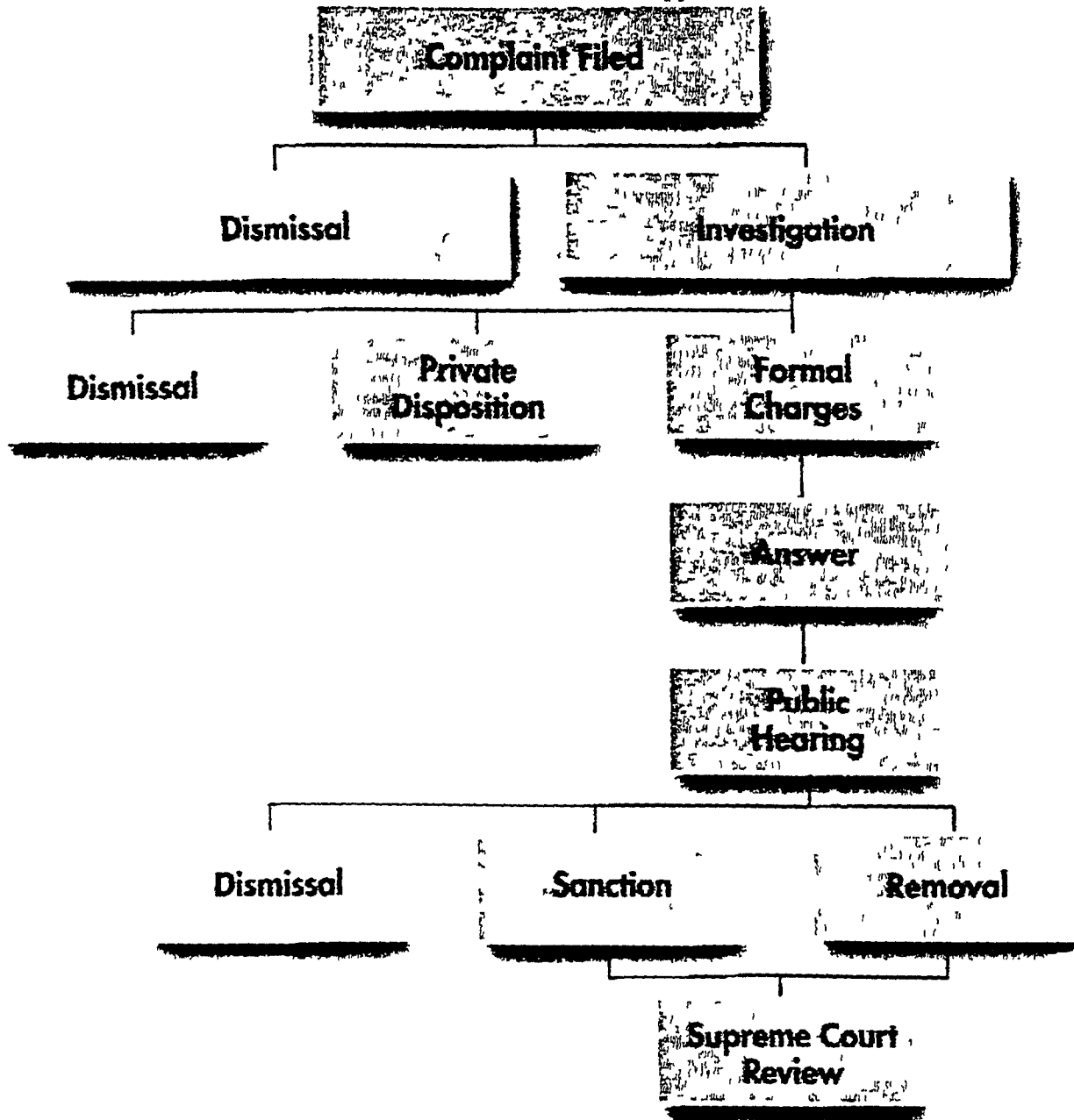
- personally appears before the judge (New Hampshire, Vermont),
- has reason to believe that he or she will appear before the judge (New Hampshire),
- practices as an attorney (Colorado) or maintains an office for the practice of law (Oklahoma) in the judicial district in which the judge sits
- served as a lawyer in connection with any events relating to the matter that is the subject of the complaint (Pennsylvania),
- practiced law with a lawyer who served during such association as a lawyer concerning the matter or who has been a material witness concerning it (Pennsylvania),
- has a present or past association with the lawyer who is representing a party (Washington), or
- is an attorney in a matter involving the judge against whom a complaint has been made (Connecticut)

In Pennsylvania if a lawyer-member is appearing in a case before a judge who is the subject of a complaint or investigation by the commission, the lawyer-member must refrain from voting on any action regarding the judge although the lawyer-member is allowed to participate in discussions regarding the complaint because he or she may have pertinent information concerning the judge. If the commission files formal charges against the judge, the lawyer-member must ask the judge to recuse from the case, and, if the judge refuses, the member cannot participate in the hearing and decision on the charges (Pennsylvania)

Procedures

In many states, if a judge challenges a member's impartiality, the commission determines whether recusal of the member is warranted. In Florida, however, a member is disqualified if the judge files an affidavit stating facts and reasons supporting the judge's belief that he or she "will not receive a fair hearing on the charges because of the prejudice of one or more members" and supported by the affidavits of at least two reputable citizens of the state who are not related to the judge or the judge's attorney. In Washington a judge "may file a peremptory challenge against one member of the commission" within seven days of notice of a fact-finding hearing. Similarly in Nevada, a judge or the counsel appointed to present charges against the judge "may exercise a single peremptory challenge

Appendix A: How Judicial Conduct Commissions Work



Appendix C: Commission Membership

Two-tier commissions are marked with an *

State/Commission	Total members	Membership composition	Selection method	Term (years)	Establishment
Alabama*					
Judicial Inquiry Commission	9	4 judges 2 attorneys 3 public members	1 appellate judge app'd by supreme court 2 circuit judges app'd by circuit judges ass'n 1 district judge app'd by lieutenant governor subject to senate confirmation App'd by state bar App'd by governor subject to senate confirmation	4	1973 by constitution
Court of the Judiciary	9	4 judges 2 attorneys 3 public members	1 appellate judge selected by supreme court 2 circuit judges selected by circuit judges ass'n 1 district judge selected by district judges ass'n Selected by state bar 2 app'd by governor subject to senate confirmation 1 app'd by lieutenant governor, subject to senate confirmation	No provision	
Alaska					
Commission on Judicial Conduct	9	3 judges 3 attorneys 3 public members	Elected by state court judges App'd by governor (upon recommendation by state bar) w/ approval of legislature App'd by governor w/ approval of legislature	4	1968 by constitution
Arizona					
Commission on Judicial Conduct	11	6 judges 2 attorneys 3 public members	App'd by supreme court App'd by state bar App'd by governor	6	1970 by constitution

State/Commission	Total members	Membership composition	Selection method	Term (years)	Establishment
Arkansas					
Judicial Discipline and Disability Commission	9	3 judges 3 attorneys 3 public members	App'd by supreme court 1 app'd by att y general 1 app'd by president of senate 1 app'd by speaker of house App'd by governor	6	1983 by constitution
California					
Commission on Judicial Performance	11	3 judges 2 attorneys 6 public members	App'd by supreme court App'd by governor 2 app'd by governor 2 app'd by speaker of assembly 2 app'd by state senate committee on rules	2	1960 by constitution
Colorado					
Commission on Judicial Discipline	10	4 judges 2 attorneys 4 public members	App'd by supreme court App'd by governor w/consent of senate App'd by governor w/consent of senate	4	1967 by constitution
Connecticut					
Judicial Review Council	12	3 judges 3 attorneys 6 public members	App'd by governor from list of 6 judges selected by members of the superior court, with approval of general assembly App'd by governor with approval of general assembly App'd by governor with approval of general assembly	4	1977 by statute

State/Commission	Total members	Membership composition	Selection method	Term (years)	Establishment
Delaware Preliminary Investigator Committee	3	5 attorneys 3 public members	Apprd by chief justice w/ approval of court	3	1970 by constitution
Board of Examining Officers	1 or more	Active or retired judge(s)	Apprd by Court on the Judiciary	Ad hoc	
Court on the Judiciary	7	7 judges	By virtue of office held 1- chief justice 4- associate justices 1- chancellor 1- president judge, superior court	Equal to	
District of Columbia Commission on Judicial Disabilities and Tenure	7	1 judge 4 attorneys 2 public members	Apprd by chief judge of U.S. District Court for DC 2 apprd by DC bar 1 apprd by mayor of DC 1 apprd by President of the U.S. 1 apprd by mayor of DC 1 apprd by city council of DC	President's appointee receives a 5 yr term all other members receive 6 yr terms	1970 by statute
Florida Judicial Qualifications Commission	15	6 judges 4 attorneys 5 public members	2 circuit court judges selected by circuit court judges 2 district court of appeals judges selected by district court of appeals judges 2 county court judges selected by county court judges Apprd by governing bod. of state bar Apprd by governor	6	1966 by constitution
The commission chair appoints members to the investigative panel or hearing panel. The investigative panel will have 4 judges, 2 attorneys and 3 public members. The hearing panel will have 2 judge members, 2 attorney members and 2 public members.					
Georgia Judicial Qualifications Commission	7	2 judges 3 attorneys 2 public members	Selected by supreme court Elected by board of governors of state bar Apprd by governor	4	1972 by constitution

State/Commission	Total members	Membership composition	Selection method	Term (years)	Establishment
Hawaii Commission on Judicial Conduct	7	3 attorneys 4 public members	All members app'd by supreme court	3	1978 by constitution
Idaho Judicial Council	7	2 judges 2 attorneys 3 public members	1 chief justice by virtue of office 1 app'd by state bar with consent of senate App'd by state bar with consent of senate App'd by governor with consent of senate	6	1967 by statute
Illinois* Judicial Inquiry Board	9	2 judges 3 attorneys 4 public members	App'd by supreme court App'd by governor App'd by gov. mor	4	1971 by constitution
Illinois Courts Commission	7	5 judges 2 non judges	3 selected by supreme court 2 selected by appellate court App'd by governor	No provision	
Indiana Commission on Judicial Qualifications	7	1 judge 3 attorneys 3 public members	Chief justice by virtue of office Elected by those admitted to the practice of law App'd by governor	3	1970 by constitution
Iowa Commission on Judicial Qualifications	7	1 judge 2 attorneys 4 public members	App'd by chief justice App'd by chief justice App'd by governor w/approval of senate	6	1973 by statute
Kansas Commission on Judicial Qualifications	14	6 active or retired judges 4 attorneys 4 public members	All members app'd by supreme court	4	1974 by court rule

The Commission is divided into 2 panels that meet in alternating months

State/Commission	Total members	Membership composition	Selection method	Term (years)	Establishment
Kentucky Judicial Retirement and Removal Commission	6	3 judges 1 attorney 2 public members	1 court of appeals judge elected by court of appeals judges 1 circuit court judge elected by circuit court judges 1 district court judge elected by district court judges App'd by state bar App'd by governor from the two political parties having largest number of registered voters in the state	4	1976 by constitution
Louisiana Judiciary Commission	9	3 judges 3 attorneys 3 public members	App'd by supreme court App'd by conference of court of appeals judges App'd by district judges association	4	1968 by constitution
Maine Committee on Judicial Responsibility and Disability	7	2 judges 2 attorneys 3 public members	App'd by supreme judicial court App'd by supreme judicial court on governor's recommendation App'd by supreme judicial court on governor's recommendation	6	1978 by court rule
Maryland Commission on Judicial Disabilities	11	3 judges 3 attorneys 5 public member	All members appointed by governor	4	1966 by constitution
Massachusetts Commission on Judicial Conduct	9	3 judges 3 attorneys 3 public members	App'd by supreme judicial court App'd by chief adm. justice of the trial court App'd by governor	6	1978 by statute

State/Commission	Total members	Membership composition	Selection method	Term (years)	Establishment
Michigan Judicial Tenure Commission	9	5 judges 2 attorneys 2 public members	1 elected by appellate judges 1 elected by circuit judges 1 elected by probate judges 1 elected by judges of courts of limited jurisdiction 1 elected by state bar Elected by members of state bar App'd by governor	3	1968 by constitution
Minnesota Board on Judicial Standards	10	4 judges 2 attorneys 1 public members	App'd by governor App'd by governor w/consent of senate App'd by governor w/consent of senate	4	1971 by statute
Mississippi Commission on Judicial Performance	7	4 judges 1 attorney 2 public members	1 app'd by conference of circuit court judges 1 app'd by conference of chancery court judges 1 app'd by conference of county court judges 1 app'd by justice court officers association App'd by governing board of state bar App'd by chief justice of supreme court	6	1979 by constitution
Missouri Commission on Retirement Removal and Discipline	6	2 judges 2 attorneys 2 public members	1 selected by court of appeals judges 1 selected by circuit court judges App'd by governing board of state bar App'd by governor	6	1972 by constitution
Montana Judicial Standards Commission	5	2 judges 1 attorney 2 public members	Elected by district court judges App'd by supreme court App'd by governor	4	1972 by statute
Nebraska Commission on Judicial Qualifications	10	4 judges 3 attorneys 3 public members	1 chief justice by virtue of office held 3 app'd by chief justice App'd by executive council of state bar App'd by governor	4	1966 by statute

State/Commission	Total members	Membership composition	Selection method	Term (years)	Establishment
Nevada					
Commission on Judicial Discipline	7	2 judges 2 attorneys 3 public members	App'd by supreme court App'd by state bar App'd by governor	4	1976 by constitution
New Hampshire					
Committee on Judicial Conduct	11	4 active or retired judges 2 attorneys 5 public members	All members appointed by supreme court	4	1977 by court rule
New Jersey					
Advisory Committee on Judicial Conduct	9	"At least" 2 retired judges "No fewer than" 3 attorneys "Not more than" 4 public members	All members appointed by supreme court	3	1974 by court rule
New Mexico					
Judicial Standards Commission	9	2 judges 2 attorneys 5 public members	App'd by supreme court App'd by board of commissioners of state bar App'd by governor	4 4	1967 by constitution
New York					
State Commission on Judicial Conduct	11	4 judges 1 attorney 2 public members 4 additional members who are not judges or retired judges	1 app'd by governor 3 app'd by chief judge of the court of appeals App'd by governor App'd by governor 1 appointed by temporary president of senate 1 appointed by minority leader of senate 1 appointed by speaker of assembly 1 appointed by minority leader of assembly	4	1977 by constitution
North Carolina					
Judicial Standards Commission	7	3 judges 2 attorneys 2 public members	App'd by chief justice Elected by state bar council App'd by governor	6	1973 by statute

State/Commission	Total members	Membership composition	Selection method	Term (years)	Establishment
North Dakota Commission on Judicial Conduct	7	2 judges 1 attorney 4 public members	1 appt'd by district judges as in 1 appt'd by county court judges as in Appt'd by executive committee of state bar Appt'd by governor	3	1975 by statute
Ohio Board of Commissioners on Grievances and Discipline	28	7 judges 17 attorneys 4 public members	Appt'd by supreme court	3	1965 by statute
Commission of Judges	5	5 judges	Appt'd by supreme court	Ad hoc	
Oklahoma* Council on Judicial Complaints	4	2 attorneys 1 public member	Speaker of house state bar president and president pro tempore of senate each at point one member	5	1974 by statute
Court on the Judiciary— Trial Division	9	8 judges 1 attorney	The 8 district judges senior in service under 60 years Selected by executive council of the state bar	3'	
Court on the Judiciary— Appellate Division	9	8 judges 1 attorney	2 selected by supreme court 1 selected by court of criminal appeals The 5 district judges senior in service under 65 years Selected by state bar	3	
Oregon Commission on Judicial Fitness and Disability	9	3 judges 3 attorneys 3 public members	Appt'd by supreme court Appt'd by board of governors of state bar Appt'd by governor	4	1967 by statute

State/Commission	Total members	Membership composition	Selection method	Term (years)	Establishment
Pennsylvania*					
Judicial Conduct Board	12	3 judges 3 attorneys 6 public members	2 app'd by supreme court, 1 app'd by governor 1 app'd by supreme court 2 app'd by governor 3 app'd by supreme court 3 app'd by governor	4	1968 by constitution
Court of Judicial Discipline	8	4 judges 2 attorneys 2 public members	3 app'd by supreme court, 1 app'd by governor App'd by governor 1 app'd by supreme court 1 app'd by governor		
Rhode Island					
Commission on Judicial Tenure and Discipline	13	4 judges	App'd by supreme court	3	1974 by statute
		3 attorneys	App'd by governor from state bar list w/consent of senate		
		3 public members 3 legislators	App'd by governor w/consent of senate 1 app'd by senate majority leader 2 app'd by speaker of house		
South Carolina					
Board of Commissioners on Judicial Standards	19	14 judges 3 attorneys 2 public members	All members appointed by supreme court	4	1976 by court rule

The chair divides members of the board other than the chair, vice chair and public members, into 3 panels of 5 members specifically 3 members who are judges from the circuit court, judges from the family court or masters in equity, 1 member who is a judge from the magistrate, municipal or probate courts, and 1 attorney member. Each panel is assigned to serve as an investigative panel or a hearing panel by the chair. If the panel is assigned to serve as an investigative panel, the chair will add either the chair or the vice chair and one public member to the panel.

State/Commission	Total members	Membership composition	Selection method	Term (years)	Establishment
South Dakota Commission on Judicial Qualifications	7	2 judges 3 attorneys 2 public members	1 elected by judicial conference App'd by state bar president App'd by governor	4	1972 by statute
Tennessee Court of the Judiciary	15	9 judges 3 attorneys 3 public members	App'd by supreme court App'd by board of governors of bar association 1 app'd by speaker of senate 1 app'd by speaker of house 1 app'd by governor	4	1979 by statute
Texas Commission on Judicial Conduct	11	5 judges 2 attorneys 4 public members	App'd by supreme court with consent of senate Selected by state bar with consent of senate Selected by governor with consent of senate	6	1965 by constitution
Utah Judicial Conduct Commission	10	1 judge 3 bar commissioners 2 public members 2 representatives 2 senators	Selected by judicial conduct commission App'd by bar board of commissioners App'd by governor App'd by speaker of house App'd by president of senate	2 4 2 2 2	1968 by statute
Vermont Judicial Conduct Board	7	2 judges 2 attorneys 3 public members	All members appointed by supreme court	3	1978 by court rule
Virginia Judicial Inquiry and Review Commission	7	3 judges 2 attorneys 2 public members	All members elected by general assembly	4	1971 by statute

State/Commission	Total members	Membership composition	Selection method	Term (years)	Establishment
Washington Commission on Judicial Conduct	11	3 judges 2 attorneys 6 public members	1 elected by & from court of appeals 1 elected by & from superior court 1 elected by & from district court Selected by state bar App'd by governor	4	1989 by constitution
West Virginia* Judicial Investigation Commission	9	6 judges 3 public members	All members app'd by supreme court	3	1976 by court rule
Judicial Hearing Board	9	6 judges 3 public members	All members app'd by supreme court	3	
Wisconsin Judicial Commission	9	2 judges 2 attorneys 5 public members	App'd by supreme court App'd by supreme court App'd by governor w/consent of senate	3	1978 by statute
Judicial Conduct and Disability Panel Alternatively hearing may be held before a court of appeals judge and jury	3	3 judges	Selected by chief judge of court of appeals	Ad hoc	
Wyoming Judicial Supervisory Commission	12	3 judges 3 attorneys 6 public members	Elected by district judges App'd by state bar App'd by governor w/consent of senate	3	1973 by constitution

The presiding commissioner will divide the commission into investigatory panels of 3 members and adjudicatory panels of 4 members, both investigatory and adjudicatory panels will include lawyer members judge members and public members.

Appendix D: When Confidentiality Ceases

Commission files formal charges against the judge (post-investigation)	The start of the fact-finding hearing	Commission files recommendation for discipline with the state's supreme court (post-hearing)	Public discipline is ordered by supreme court
Alabama	Oregon	Colorado	Delaware
Alaska	Texas	Idaho	D C ⁶
Arizona		Iowa	Hawaii
Arkansas ¹		Louisiana	
California		Maine ⁴	
Connecticut		Mississippi	
Florida		Missouri	
Georgia		New Mexico	
Illinois		New York	
Indiana		South Dakota	
Kansas		Utah ⁵	
Kentucky		Virginia	
Maryland		Wyoming	
Massachusetts ²			
Michigan			
Minnesota			
Montana			
Nebraska			
Nevada			
New Hampshire			
New Jersey			
North Carolina			
North Dakota			
Ohio			
Oklahoma			
Pennsylvania			
Rhode Island			
South Carolina ³			
Tennessee			
Vermont			
Washington			
West Virginia			
Wisconsin			

1 Arkansas Any action taken by the Judicial Discipline and Disability Commission such as dismissal of a complaint, admonition or other sanction or the filing of formal charges against a judge, becomes public information

2 Massachusetts Proceedings may remain confidential if the judge, the Commission on Judicial Conduct, and the complainant, if any, all concur

3 South Carolina Formal charges and any answer become public 30 days after the answer is filed and all subsequent records and proceedings are open to the public

4 Maine The judge or the Committee on Judicial Responsibility and Disability, after allowing the judge to comment may determine the hearing should be public

5 Utah Once the Judicial Conduct Commission enters an order and the matter is brought to the supreme court confidentiality ceases except in special circumstances

6 D C Confidentiality ceases on the filing of a notice of appeal of a decision of the Commission on Judicial Disabilities and Tenure with the D C Court of Appeals



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Chair of the Founders

JUSTICE FLORENCE K. MURRAY

Chair Emerita

WALTER H. BECKHAM, JR. ESQ.

Chair Emeritus

JUDGE B. B. SCHRAUB

Chair Emeritus

SECTION 7

ETHICS HYPOTHETICAL

ETHICS HYPOTHETICAL

СУДЕЙСКАЯ ЭТИКА
ПРАКТИЧЕСКИЕ ПРИМЕРЫ

Ethics Hypothetical # 1

Judge A has been involved in a highly publicized trial. Each day as he leaves the court, he is surrounded with media pressing him to answer questions.

1. Each day he holds a mini-press conference on the court house steps explaining his rulings of that day. Problem?
2. Each day he refuses to meet with the media but issues a press release concerning the days activities. Problem?
3. Each day he refuses to allow the media in the court room or within 50 feet of the court house door saying publicity will injure the rights of the parties to the litigation. Problem?

Judge's Code of Honor Article 2 Section 5 & 6

Пример № 1 Предположим

Судья А участвует в широко известном процессе. Каждый раз, когда он выходит из зала суда, его "атакуют" представители прессы, задавая массу вопросов. Если

1. Каждый день он проводит мини пресс-конференцию у входа в здание суда, давая объяснения по своему заседанию в этот день. Какова проблема?
2. Каждый день он отказывается встречаться с представителями прессы, но сам выпускает пресс-релиз по каждому заседанию. Проблема?
3. Каждый день он запрещает репортерам как входить в зал судебных заседаний, так и приближаться к зданию суда ближе чем на 50 футов, мотивируя это тем, что публичность процесса нарушает права сторон, участвующих в тяжбе. Проблема?

Кодекс чести судьи Статья 2, разделы 5 и 6

Ethics Hypothetical # 2

Judge B has been on the bench for a long time and has been a good judge. However, in the last few years it has become well known to the lawyers in the community that if they want a reasoned ruling from him, they must see him before noon as he drinks his lunch each day. Other judges are aware of this and note that his cases are not being disposed of as timely as they should be, placing a heavier burden on them. One litigant who saw Judge B intoxicated in court has threatened to go to the press if Judge B is not reprimanded or removed.

- 1 What should the lawyers do?
 - 2 What should the other judges do?
 - 3 If you are the chief judge, would you handle this within the court or file a complaint with the Collegia?
-

Пример № 2 Предположим

Судья Б уже давно работает в суде и считается хорошим судьей. Тем не менее, за последние несколько лет местные юристы привыкли к тому, что если они хотят, чтобы он вынес обоснованное решение по делу, они должны успеть поговорить с ним до полудня, поскольку он склонен к принятию алкоголя за обедом. Другие судьи тоже знают об этом и замечают, что он не успевает рассматривать дела вовремя и, таким образом, на их плечи ложится дополнительная нагрузка. Один из участников судебного разбирательства видел судью Б в состоянии алкогольного опьянения в зале суда и угрожает сообщить об этом прессе, если в отношении судьи не будут применены соответствующие дисциплинарные взыскания.

- 1 Как следует поступить юристам?
- 2 Что следует предпринять другим судьям?
- 3 Если бы Вы были Главным судьей, что бы Вы предпочли разобраться с этим делом внутри суда или подать жалобу в судейскую коллегию?

Ethics Hypothetical # 3

Judge C works long hours, disposes of money cases, but has a sharp tongue on the bench. He calls the women attorneys “little girl” and directs ethnic slurs toward litigants and attorneys alike. He often refers to other judges’ decisions as “creative decision making without basis in law or in fact.” And that is the kindest thing that he says.

Other judges are aware of his attitude but hesitate to say anything because of the number of cases he hears.

- 1 Should anything be done here?
- 2 What sections of the Code of Honor are involved?
- 3 How should the situation be handled?
- 4 Is training needed with regard to judge’s attitudes concerning racial? Religious and ethnic fairness?

Judge’s Code of Honor Article 1 Section 4 Article 2 Section 1

Пример № 3 Предположим

Судья В много работает, рассматривает финансовые споры. Но отличается “острым языком”. Он может назвать женщину адвоката “девочкой”, а также частенько позволяет незтичные высказывания этнического характера по отношению к сторонам и их адвокатам. Он часто может назвать решения своих коллег-судей “творчеством, не основанном ни на законе, ни на фактах”. И это еще самое мягкое из его высказываний.

Другие судьи знают о его отношении, но избегают высказываться по этому поводу, зная, как много дел он ведет.

- 1 Нужно ли что-либо предпринять в данном случае?
- 2 Какие разделы Кодекса чести применимы здесь?
- 3 Как можно исправить ситуацию?
- 4 Необходимо ли судьям обучение относительно их расовой, религиозной и этнической терпимости?

Кодекс чести судьи Статья 1, раздел 4 Статья 2, раздел 1

Ethics Hypothetical # 4

Judge D , a criminal court judge, has a good reputation as a learned and fair judge. For years he has been known to give harsh sentences and to have little sympathy toward defendants appearing in court. However in recent years other judges have seen him in public and on holiday with persons known to be highly placed in the criminal element of the community. He has purchased a new and very expensive automobile and has announced plans to take an expensive vacation.

- 1 Do the other judges have any responsibility to report this?
- 2 If so - how do they do it and what is their authority?
- 3 If not - why?
- 4 Should the chief judge confront Judge D. And demand information on the source of funds for these purchases?

Judge's Code of Honor Article 1, Section 4 Article 3 Section 6

Пример № 4 Предположим

Судья Г работает в уголовном суде, имеет репутацию знающего и справедливого судьи. В течение многих лет он известен строгостью своих решений и не отличается проявлением сочувствия по отношению к обвиняемым. Тем не менее, в последние годы другие судьи неоднократно видели его в публичных местах и на отдыхе в компании людей, которые известны как местные криминальные авторитеты. Недавно он купил новый и очень дорогой автомобиль и, кроме того, объявил о своих планах на дорогостоящий отпуск.

- 1 Обязаны ли другие судьи заявить об этом факте?
- 2 Если да - каким образом и каковы их полномочия при этом?
- 3 Если нет - почему?
- 4 Должен ли главный судья поговорить с судьей Г и потребовать информацию об источниках средств для сделанных покупок?

Кодекс чести судьи Статья 1, раздел 4 Статья 3, раздел 6

Ethics Hypothetical # 5

1 Judge E was an influential member of the controlling political party when he was appointed to the bench 5 years ago. He has personally withdrawn from party membership. His wife has stepped into the position he vacated, speaks often regarding political issues and candidates and financially supports the party. Is this a problem?

2 Judge E attends political gatherings, carefully announcing that he is there only as the husband of his wife. Is this OK? Why?

3 Mrs. E has started a new business where she provides political campaign literature and often states in transactions, "My husband will be glad to hear you placed this order." Problem?

Judge's Code of Honor Article 3 Section 5,7

Пример № 5 Предположим

1 Когда 5 лет назад судья Д был назначен на свою должность, он был влиятельным членом руководящей политической партии. Он вышел из партии, но его место заняла его жена, которая теперь часто выступает по разным политическим и партийным вопросам и предоставляет партии финансовую поддержку. Является ли это проблемой?

2 Судья Д посещает политические собрания, при этом всегда указывая на то, что он присутствует там только в качестве мужа своей жены. Есть ли здесь проблема? Почему?

3 Госпожа Д занялась новым бизнесом - она организует поставки литературы для проведения политических кампаний и частенько заявляет при заключении сделок "Мой муж будет рад узнать, что вы сделали этот заказ". Какова проблема?

Кодекс чести судьи Статья 3, раздел 5, 7

Ethics Hypothetical # 6

Judge F owns and operates a small farm on which he and his family raise chickens and sell eggs and chickens. The judge writes a letter to all of the restaurants and hotels in his city encouraging them to buy his products and uses business stationery and signs the letters "Judge E."

Is this a violation of the Code of Honor? What if he simply signs as "Mr. F"? Can a judge be an entrepreneur? If yes, what restrictions are there on his business practices? Is his wife restricted in any way if she is in business because of her relationship to the judge?

Judge's Code of Honor Article 3 Section 1 & 2 & 7

Пример № 6 Предположим

Судья Е имеет небольшую ферму, где он и его жена занимаются разведением кур и продажей цыплят и яиц. Судья написал и разослал письма во все рестораны и гостиницы города, рекламируя покупать его продукты и птицу, но для этого он использовал канцелярские принадлежности из суда и кроме того, подписывал письма как "судья Е".

Является ли это нарушением Кодекса чести? А что если бы он подписался просто как "господин Е"? Может ли судья быть предпринимателем? Если да - какие могут быть ограничения? Есть ли ограничения на предпринимательскую деятельность его жены?

Кодекс чести судьи Статья 3, разделы 1, 2 и 7

Ethics Hypothetical # 7

Judge G is asked by a local college to teach a course in business management. The work will pay him 700 rubles per month. The class is to be taught from 8-10 o'clock a.m. three days per week. If the judge accepts this teaching assignment, what arrangements must he make regarding the lost time from court?

- Work later in the day?
- Pay a colleague to take the extra cases?
- Would the judge be able to accept the teaching assignment if he received no pay?
- The college faculty decides to organize an association to gain better salaries and working conditions. May Judge G. Take an active role in the association?

Judge's Code of Honor, Article 1, 2, 3, Sections 2, 4, 7

Пример № 7 Предположим

Судью Ж Попросили прочитать курс лекций по управлению бизнесом в местном колледже. Эта работа будет оплачена в размере 700 рублей. Занятия будут проводиться с 8-10 часов утра три дня в неделю. В случае если судья согласится проводить эти занятия, что она должна предпринять для компенсации потерянного рабочего времени?

- работать дополнительные часы в эти дни
- заплатить кому-либо из коллег, чтобы он взял на себя дополнительные дела?
- может ли судья согласиться на преподавание, если оно не будет оплачено?
- преподаватели колледжа решили организовать ассоциацию с целью улучшения условий работы и повышения заработной платы. Может ли судья Ж. Принимать активное участие в работе этой ассоциации?

Кодекс чести судьи Статьи 1, 2, 3, разделы 2, 4, 7

Ethics Hypothetical # 8

Judge H is accused in court of being biased against a defendant in a court case. The defendant Mr. Ivanov demands that the judge step aside and calls the judge a bigot. The judge offers to go outside the courtroom to “settle the matter”, when cooler-heads prevail and the judge is convinced that he should not get into a fist fight.

Mr. Ivanov complains to the Collegia on Judicial Qualifications. Should judge H be brought before the Collegia? If yes - what should be done with him?

Can the Collegia accept the complaints of citizens? What if a complaint is filed and it appears to be without merit, should the complaining party be notified?

What should be done if the complaining party reports the matter to a newspaper accusing the Collegia of protecting a corrupt judge?

Judge’s Code of Honor Article 4 Sections 1 & 2

Пример № 8 Предположим

Во время судебного разбирательства судью З обвиняют в предвзятом отношении к обвиняемому. Обвиняемый г-н И называет судью расистом и требует, чтобы тот был отстранен от дела. Судья в ответ на это предлагает покинуть зал суда, чтобы “разобраться”, но в конце концов разум берет верх над чувствами, и судья успокаивается, понимая, что ему не следует вступать в драку.

Г-н И подает жалобу в Судейскую квалификационную коллегию. Может ли коллегия привлечь судью З к ответственности? Если да - какие меры применимы к нему?

Вправе ли коллегия принимать жалобы от граждан? Если жалоба подана и принята коллегией, но при рассмотрении оказывается, что для нее нет оснований, нужно ли уведомлять об этом подателя жалобы?

Что делать, если податель жалобы после этого напишет в газету, обвиняя коллегия в том, что она защищает коррумпированного судью?

Кодекс чести судьи Статья 4, разделы 1 и 2

Ethics Hypothetical # 9

Judge I is presented with a very difficult case. She has a brother who is a very distinguished professor of law. She asks him for his opinion on the case and also to draft a suggested opinion in the matter.

She does not disclose to the parties that she has discussed the matter and that the opinion she issued is mostly completely the work of her brother.

Should the judge be disciplined? Under what circumstances can a judge seek the opinions of others? Would your opinion change if the judge has told the parties about her consultation with her brother and they were agreeable to her receiving the brother's opinion?

Judge's Code of Honor, Article 2 Section 1

Пример № 9 Предположим

Судья И рассматривает очень трудное дело. У нее есть брат - известный профессор права. Судья просит его высказаться по этому делу, а также написать проект решения по делу.

При этом судья не открыла сторонам тот факт, что она обсуждала дело со своим братом и что подписанное ею решение почти полностью написано ее братом.

Каковы требования к дисциплине судьи в данном случае? При каких обстоятельствах судья имеет право спрашивать мнение других людей? Что бы Вы сказали, если бы судья сообщила сторонам о том, что она консультировалась с братом, и стороны не возражали против этого?

Кодекс чести судьи. Статья 2, раздел 1

Ethics Hypothetical # 10

Judge J is trying a very difficult criminal case involving a man charged with murdering a child. The local newspaper writes an article claiming that certain rulings by the judge favor “setting a murder free”. The newspaper offers judge J the opportunity to write a response if he wishes to do so. The newspaper also urges its readers to contact the judge to urge him to find the defendant guilty.

- May the judge respond to the newspaper article?
- May the judge write an article since the case is no longer before him, but is being decided in an appellate court?
- May the judge ask a colleague on the local lawyers association to write a letter to the newspaper supporting the judge in making his judgment?
- If the family of the murdered victim demands in a letter to the Collegia that judge J be punished, how should the Collegia proceed?

Judge’s Code of Honor, Article 2 Section 2

Пример № 10 Предположим:

Судья К рассматривает очень сложное уголовное дело по обвинению некоего мужчины в убийстве ребенка. В местной газете публикуется статья, в которой утверждается, что некоторые решения судьи по делу были в пользу освобождения преступника. Газета предлагает судье К написать ответ в газету, если он пожелает. Газета также призывает читателей обратиться к судье с просьбой признать обвиняемого виновным.

- Может ли судья написать ответ в газету?
- Может ли судья К написать статью в газету, если он уже закончил рассмотрение дела, но оно находится на рассмотрении в апелляционном суде?
- Может ли судья попросить одного из своих коллег из местной ассоциации юристов написать письмо в газету в поддержку вынесенного им решения?
- Если семья жертвы убийства пишет письмо в коллегии и требует, чтобы судья К был наказан, каковы действия коллегии?

Кодекс чести судьи. Статья 2, раздел 2

Ethics Hypothetical # 11

Judge K has a clerk working in her court who is a notorious gossip. It comes to the judge's attention that the clerk has disclosed some information to others that is to be held confidential until the case is actually heard. Judge K knows that this is not the first time the clerk had made such disclosures.

- What is the judge's obligation regarding the clerk's behavior?
- What if the clerk points out that she was selected by the chief judge and that judge K has no authority over her?
- What if a lawyer whose case was damaged because the clerk disclosed the information complains to the Collegia - does it have any authority over the clerk?

Judicial Code of Honor, Article 11 Section 4

Пример № 11 Предположим

У судьи Л есть помощник - судебный секретарь, которая всем известна как распространительница сплетен. Однажды судья замечает, что судебный секретарь сообщила другим информацию, которая должна оставаться конфиденциальной до слушания дела. Судья Л знает, что подобное уже случилось ранее.

- Каковы обязанности судьи в отношении поведения секретаря?
- Что, если эта секретарь заявит, что она назначена на свою должность главным судьей и поэтому судья Л не имеет полномочий по отношению к ней?
- Что если в коллегия поступит жалоба от юриста, делу которого был нанесен ущерб из-за того что секретарь раскрыла конфиденциальную информацию? Может ли коллегия принять меры по отношению к этому секретарю?

Кодекс чести судьи статья 11 раздел 4

Ethics Hypothetical # 12

Judge L issues an opinion in a complicated case in which the press is very interested. A reporter calls the judge and asks for his explanation of the opinion.

- May the judge speak with the reporter? Should the judge simply say “my opinion speaks for itself”?
- What if Judge L declares that he will see that the reporter is fired if he persists in writing critical remarks about the judge’s poor explanations of his decisions?
- What if the reporter complains to the Collegia? Is this punishable?
- Does a citizen have the right to complain to the Collegia and must the Collegia consider the complaint?

Judicial Code of Honor Article 2, Section 6

Пример № 12 Предположим

Судья М выносит решение по сложному делу, которым очень интересуется пресса. Судья звонит репортеру и просит его объяснить его решение.

- Вправе ли судья говорить с репортером? Должен ли он просто сказать “Мое решение говорит само за себя”?
- Что произойдет, если судья М объявит, что потребует увольнения репортера, если тот будет продолжать писать критические заметки по поводу того, что судья не дал подробных объяснений своего решения?
- Что, если репортер обратится с жалобой в коллегия? Наказуемо ли это?
- Имеет ли гражданин право жаловаться в коллегия, и должна ли коллегия рассматривать подобные жалобы?

Кодекс чести судьи Статья 2, раздел 6

Ethics Hypothetical # 13

Judge M is very concerned about abused women and is asked to participate in a group called “Mothers against Domestic Violence” The group adopts a resolution declaring that judges should take more seriously charges of violence against women and that men convicted of such a crime should be given the maximum possible sentence

- May the judge participate as a member of such a group? Serve as an officer? Must the judge disqualify herself from having cases of domestic violence?
- “Mothers against Domestic Violence” decides to raise money to maintain a “safe house” for abused mothers May Judge M ask some wealthy friends to contribute to the project?
- May the judge contact candidates for election to the Duma (legislature) to seek support for changes in the law regarding domestic violence? Can judge M Raise funds to support friendly candidates?

Judge’s Code of Honor Article 3, Section 4 & 6

Пример № 13 Предположим

Судья Н проявляет большую заботу о женщинах, подвергающихся насилию Ее просят стать членом местного общества “Матери против насилия в семье” Это общество принимает постановление, призывающее судей более серьезно рассматривать дела о насилии по отношению к женщинам, а также применять максимально строгое наказание к мужчинам, обвиняемым в подобных преступлениях

- Имеет ли право судья быть членом такого общества? Либо быть его сотрудником? Должна ли судья в таком случае отстраниться от дел по применению насилия в семье
- Допустим, это общество решает собрать деньги для содержания “надежного дома-убежища” для женщин, подвергшихся насилию Может ли судья Н просить своих состоятельных друзей вложить деньги в проект?
- Может ли судья обратиться к кандидатам в депутаты думы (или другого законодательного органа) с просьбой о поддержке изменений законодательства, касающегося случаев насилия в семье Может ли судья Н использовать финансовые средства для поддержки дружественных ему кандидатов?

Кодекс чести судьи Статья 3, раздел 4 и 6

Ethics Hypothetical # 14

Judge N is the presiding judge of a large city court and is suspected of having an affair with a young clerk. The judge and the clerk appear to spend a good deal of time together in the judge's private office. This information is known to other judges in the court as well as being a topic of gossip to other court employees.

- What obligation do other judges have in this matter? Discuss the matter with judge N? Bring the matter to the Collegia?
- When accused of using his authority as a judge to get the young woman to permit improper behavior, the judge denies under oath that he has such a relationship but finally admits the matter when more evidence is found. What should the Collegia do regarding the public scandal? The false swearing under oath?
- If the young clerk agrees to tell the story to the press, are there any restrictions that the court may impose and threaten to terminate her employment?

Judicial Code of Honor Article 3, Section 6

Пример 14 Предположим

Судья О является председателем городского суда. Его подозревают в том, что у него роман с молодой секретаршей этого же суда, так как они проводят очень много времени вместе в личном кабинете судьи. Эта информация известна другим судьям и является постоянным предметом обсуждения среди сотрудников суда.

- Каковы обязанности его коллег судей в данном случае? Должны ли они обсудить это с судьей О? Либо вынести это на обсуждение коллегии?
- Допустим, судью обвиняют в том, что он использовал свои должностные полномочия с тем, чтобы склонить молодую женщину к непристойному поведению. Вначале он под присягой отрицает свои отношения с ней, а затем при предъявлении ему дополнительных доказательств все-таки признается в этом. Что должна предпринять коллегия относительно возникшего публичного скандала? И относительно дачи ложных показаний под присягой?
- Если эта секретарша соглашается рассказать свою историю прессе, может ли суд наложить на это какие-либо ограничения либо угрожать уволить ее с работы?

Кодекс чести судьи Статья 3, раздел 6

Ethics Hypothetical # 15

Judge O is a distinguished judge who comes from a family of lawyers and judges. His oldest son is a lawyer in a major law firm while his brother is a judge on the appellate court in his region.

- Can the son practice before Judge O if he discloses to all parties the relationship and agrees to step aside if any party wishes? Can other lawyers in the son's law firm practice before Judge O?
- Can the brother as an appellate judge sit on a three judge panel to review Judge O's cases?
- What about the situation where the judge is in a small community and he is the only judge - can the son or his partners practice before the judge because it would delay cases and add to expense to require a visiting judge to hear the cases?
- If Judge O contacts the local Collegia to seek an opinion on whether his son can practice and the chairperson of the Collegia agrees, can the Collegia later consider a complaint made by a litigant who loses a case to a party represented by the judge's son?

Judge's Code of Honor Article 2 Section 1 Article 3 Section 6

Пример № 15 Предположим

Все члены семьи уважаемого судьи П - юристы и судьи. Его старший сын работает юристом в крупной юридической фирме, а брат - судьей в апелляционном суде этого же региона.

- Может ли сын участвовать в делах, которые слушает его отец - судья П, если он уведомит об этом все стороны и даст согласие не участвовать в рассмотрении дела, если какая-либо из сторон потребует этого. Могут ли другие юристы из фирмы сына участвовать в разбирательствах по делам, слушаемым его отцом?
- Может ли его брат входить в качестве апелляционного судьи в судейский состав (из трех человек) по делу, рассматриваемому судьей П?
- Или, допустим, судья является единственным судьей в маленьком городке. Могут ли его сын или его партнеры участвовать в делах, рассматриваемых этим судьей, с тем, чтобы избежать затягивания судебных разбирательств и дополнительных расходов на приглашение постороннего судьи из другого города?
- Допустим, судья П обращается в коллегия с просьбой принять решение о том, может ли его сын вести практику, и получает согласие председателя коллегии. Может ли коллегия позже рассматривать жалобу, поданную стороной, которая проиграла стороне, адвокатом которой был сын судьи?

Кодекс чести судьи Статья 2, раздел 1 Статья 3, раздел 6



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SECTION 8

ADDITIONAL MATERIALS

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Paper Presented at
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Judicial Conduct and Ethics Curriculum
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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."

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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.

Gonzalez v. Commission on Judicial Performance, 657 P.2d 372
(Cal. 1983)

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-

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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-

sider 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 inquires 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.

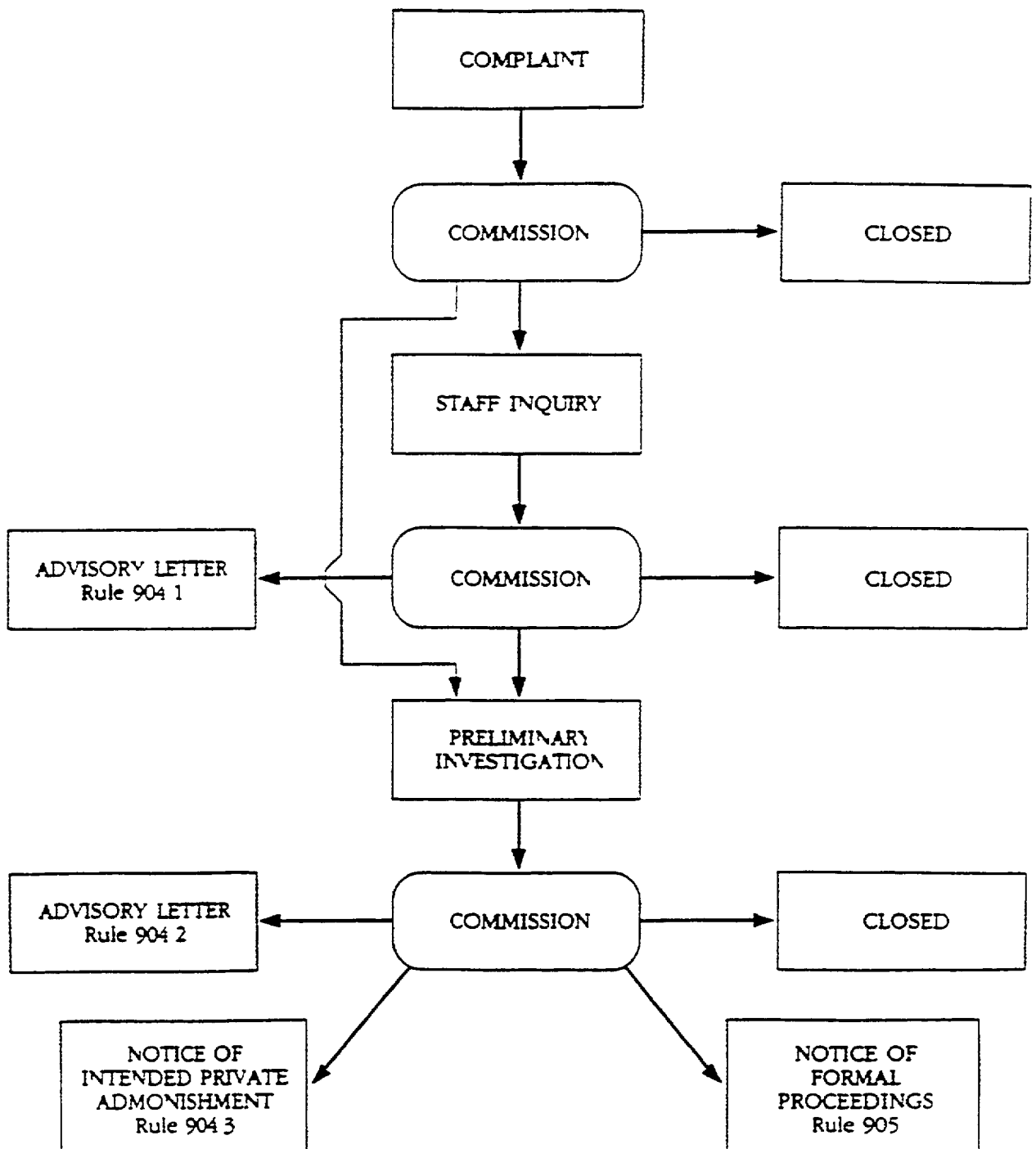
A copy of any formal opinion shall be sent to a member of the Association on request. An opinion, response or Ethics Update may be sent to a non-member at the request of the President of the Association, or the Executive Director, after consultation with the chairperson of the Committee

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

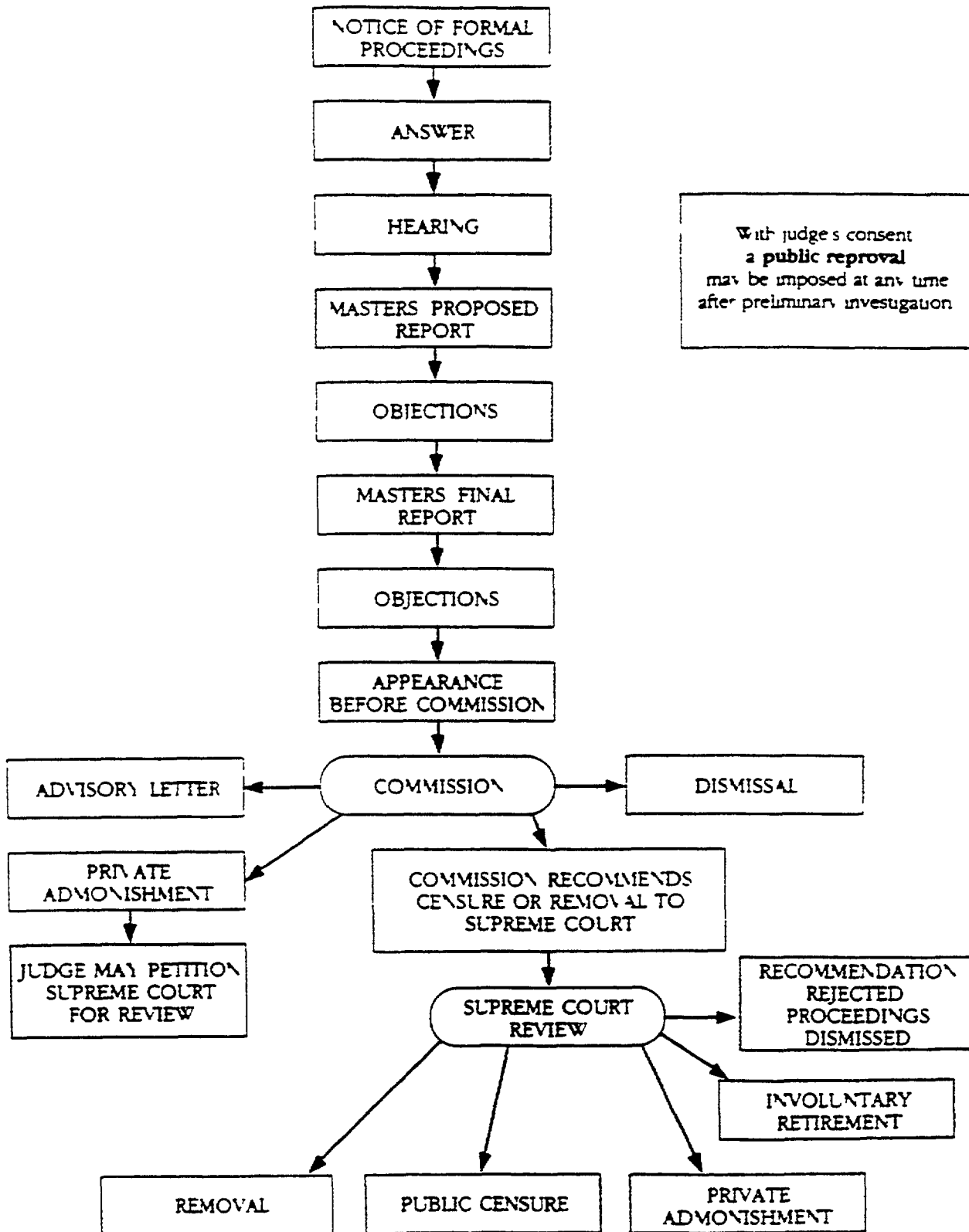
IV These rules and procedures may be amended by a majority vote of those present at any Ethics Committee meeting.

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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Draft of the Federal Law
“On the Judiciary Bodies of the Russian Federation”

Section 1

- Chapter 1 Judiciary and the judiciary bodies
- Chapter 2 The All Russia Congress of the Judges
- Chapter 3 The Council of the Judges
- Chapter 4 Congresses conferences, meetings of the judges and the councils of the judges

Section 2

- Chapter 5 Authority of the Collegia on judicial qualifications
- Chapter 6 Qualification chapter reference of the judges
- Chapter 7 Promotion in the Collegia on judicial qualifications

Section 3

- Chapter 8 Functioning support of the judiciary bodies
- Chapter 9 Final provisions

Section 1

Chapter 1 Judiciary and the Judiciary Bodies

Article 1 Judiciary

Judiciary in the Russian Federation shall be composed of the judges of the federal and other courts of the Russian Federation, having the authority to deliver justice and to carry out their responsibilities on the professional basis in compliance with the Constitution of the Russian Federation, the laws of the RF, and in cases, stipulated by them, the laws of the constituent parts of the Russian Federation

Article 2 Judge as a member of the judiciary

- 1 Belonging of the judge to the judiciary shall arise from providing a judge with the judiciary authority and it shall not require any additional confirmation
- 2 The judges shall act as a member of the judiciary and maintain this position until the suspension of his authority on the basis stipulated in the sub-paragraphs 3,6,7,8,9 and 11 of the paragraph 1 of the Article 14 of the Law of the RF “On the Status of the Judges in the Russian Federation”
- 3 3 The resigned judges shall maintain his belonging to the judiciary and shall have the right with his own consent to participate in the work of the judiciary bodies

Article 3 The Judiciary Bodies

- 1 The judiciary bodies shall be established according with the present federal law to reflect the judges’ interest as the agents of the judicial power
- 2 The judiciary bodies shall be
 - 1)the All-Russia Congress of the Judges,
 - 2) other congresses, conferences and meetings of the judges,

- 3) the Council of the Judges of the Russian Federation and other councils of the judges,
- 4) Supreme Collegia on Judicial Qualifications and other Collegia on judicial qualifications

Article 4 The main tasks of the judiciary bodies

The main tasks of the judiciary bodies shall be

- 1) protection of the rights and legitimate interests of the judges,
- 2) consolidation of the legitimacy in the work of the courts and judges and confirmation of the authority of the judiciary,
- 3) providing with the observance by the judges in their professional activities and personal behavior of the requirements asserted to the judges by the law of the Russian Federation and by the Code of the Judge's Honor of the Russian Federation
- 4) Participation in the organizational, personnel and resources provision of the judicial activities,
- 5) Assistance in improvement of the judicial system and legal proceedings

Article 5 The principles of the organization and functioning of the judiciary bodies

- 1 The judiciary bodies shall perform their work jointly, openly, while invariably abiding by the principle of the judges' independence and the non-interference with the judicial activity
- 2 The councils of the judges and the Collegia on judicial qualifications shall be established on the principles of election, replaceability and accountability before the bodies which elected them. The accountability of the Collegia on judicial qualifications shall not disseminate on the making decisions and conclusions on the specific materials

Article 6 The establishment of the elective bodies of the judiciary

- 1 The Council of the Judges of the Russian Federation shall be elected by the All-Russia Congress of the Judges from the candidates promoted by the congresses (conferences) and meetings of the judges
The number of the staff-members of the Council of the Judges of the Russian Federation shall be established by the All-Russia Congress of the Judges taking into account the necessity of representation there the judges of general jurisdiction, arbitration and military courts
- 2 The Supreme Collegia on Judicial Qualifications of the Russian Federation shall be elected by the secret voting of the All-Russia Congress of the Judges from the number of candidates presented by the Council of the Judges of the Russian Federation taking into account the opinion of other councils of judges

The Supreme Collegia on Judicial Qualifications of the Russian Federation shall consist of 23 judges (11 judges from the general jurisdiction courts, 7 judges from the arbitration courts and 5 judges from the military courts) taking into account the necessity of representation there the judges of the courts of all levels

- 3 The presidium of the Council of the Judges of the Russian Federation shall be elected by the Council of Judges from its members so that there shall be

represented the judges of the general jurisdiction, arbitration and military courts. The chairman of the Council of the Judges and his assistant chairmen shall be a part of the presidium according to their positions.

- 4 The presidium of the Supreme Collegia on Judicial Qualifications of the Russian Federation shall be elected by the Supreme Collegia from its members. The chairman and the assistant chairmen of the Supreme Collegia shall be a part of the presidium according to their positions.
 - 5 Other councils of the judges shall be elected by the congresses and meetings of the judges, and their number and the order of election shall be determined by the congresses and meetings of the judges in compliance with their regulations.
 - 6 Other Collegia on judicial qualifications shall be elected by the secret voting of the congress of the judges, the All-Russia Congress of the Judges of the RF and the Supreme Commercial Court of the Russian Federation.
 - 7 The All-Russia Congress of the Judges, congresses, meetings of the judges shall have the right to elect corresponding Collegia on judicial qualifications, if not less than 2/3 of the total number of the delegates of the All-Russia Congress of the Judges or the judges composing those congresses and meetings are present.
 - 8 The number of the judges of the higher courts in the Collegia on judicial qualifications (except for the Supreme Collegia on Judicial Qualifications and the Collegia on judicial qualifications of the Supreme Court of the Russian Federation and the Supreme Commercial Court of the Russian Federation) consisting of the judges from the courts of different levels of the total number of the members of these Collegia.
- Persons, not being the judges, and also the chairmen and the assistant chairmen of the courts, except for the chairmen and the assistant chairmen of the district courts and the courts of the military garrisons and formations shall not be elected to be the members of the Collegia on judicial qualifications. The Chairman of the Supreme Court of the Russian Federation, the Chairman of the Supreme Commercial Court of the Russian Federation and their assistant chairmen shall not be elected to be the members of the Supreme Collegia on Judicial Qualifications of the Russian Federation.
- 9 The judges shall not be elected to the council of the judges and to the collegia on judicial qualifications of the same level simultaneously, and also be a member of the Collegia on judicial qualifications of the different levels.
 - 10 The judges shall be considered to be elected to the Collegia on judicial qualifications if he received more than a half of the votes of the judges (the delegates of the All-Russia Congress of the Judges), participated in the voting process, according to the results of the secret voting. When the number of the candidates having received more than a half of the votes exceed the set number of staff-members of the Collegia on judicial qualifications and there is no decision about increasing the number of staff-members of this Collegia, the persons having received Collegia, the persons having received relatively large number of the votes shall be considered to be elected.
 - 11 When a member leaves the Council of the Judges of the Russian Federation, the congress (conference) or meeting of the judges of the Supreme Court of the Russian Federation or the Supreme Commercial

Court of the Russian Federation shall have the right to delegate another representative to the Council with the further approval of this candidacy by the Council

Election of the members of the Supreme Collegia on Judicial Qualifications of the Russian Federation in place of those who have left shall be conducted by the All-Russia Congress of the Judges, and in the interim between the congresses – by the Council of the Judges of the Russian Federation

Election of the members of other Collegia on judicial qualifications in place of those who have left shall be conducted by the corresponding congresses, conferences and meetings of the judges of the Supreme Court of the Russian Federation and of the Supreme Commercial Court of the Russian Federation, and in the interim between the congresses and conferences – by the councils of the judges

Article 7 General authority of the judiciary bodies

1 The judiciary bodies shall

1) discuss the issues involved in the judicial practice and in improving legislation,

2) carry out a public expert examination of the draft laws and of the other normative acts concerned with the arrangement of the judicial system, legal proceedings, the activity of the courts and with the judges' status,

3) examine the vital problems involved in the work of the courts, in their organizational, personnel and resources provision and social status within the framework of their authority,

4) address to the Supreme Court of the Russian Federation and to the Supreme Commercial Court of the Russian Federation as to the subjects of legislative initiative with the matters of their jurisdiction and with the suggestions about submission of the draft laws to the State Duma of the Federal Assembly of the Russian Federation,

5) represent the judges' interests in the state bodies and in public associations,

6) decide the matters about the raise of judicial qualifications and about the exchange of the positive work experience,

7) discuss other matters about the functioning of the judicial system

2 The present Federal Law shall define the authority of the different judiciary bodies apart from the general authority stipulated in the first paragraph of the present article

Article 8 The term of authority of the elective bodies of the judiciary

1 The Council of the Judges of the Russian Federation and the Supreme Collegia on Judicial Qualifications of the Russian Federation, other councils of the judges and the collegia on judicial qualifications shall be elected the 4 year term

After the expiration of this term the authority of the elective bodies of the judiciary shall be maintained until the regularly scheduled All-Russia Congress of the Judges, other congresses and meetings, having the authority to elect those bodies, will be carried out

2 The cessation of the authority of the elective bodies before the term shall not be allowed, except for the cases when such decision is made by the Judges or by not less than 2/3 of the judges, composing the congress and the meeting of the judges having elected those bodies

Article 9 The Regulations of the judiciary body

The Regulations of the judiciary body, establishing the order of work, realization of its authority and control over the performance of its decisions, shall be adopted by the judiciary body itself taking into account the recommendations of the Council of the Judges of the Russian Federation and of the Supreme Collegia on Judicial Qualifications of the Russian Federation

Article 10 Inquiries of the judiciary bodies and the terms of their consideration

- 1 The councils of the judges and the Collegia on judicial qualifications shall have the right to inquire and receive corresponding information and documents which are necessary for their work
- 2 The inquiries of the judiciary bodies, their decisions and also their addresses to the state bodies, to the public associations and to the officials shall be considered within a month

Article 11 Mutual information in the judiciary bodies

- 1 The councils of the judges and the Collegia on judicial qualifications shall periodically exchange the mutual information about their work
- 2 The Council of the Judges of the Russian Federation and the Supreme Collegia on Judicial Qualifications of the Russian Federation and their presidiums shall send the necessary information about their work correspondingly to the councils of the judges and to the Collegia on judicial qualifications
- 3 The councils of the judges and the Collegia on judicial qualifications shall inform about their work the Council of the Judges of the Russian Federation and the Supreme Collegia on judicial Qualifications of the Russian Federation correspondingly

Article 12 The press of the judiciary bodies

The judiciary bodies shall have the right to be the founders of the periodicals and shall have the right to go in for editorial business

Chapter 2

The All-Russia Congress of the Judges

Article 13 The All-Russia Congress of the Judges as the highest body of the judiciary

- 1 The All-Russia Congress of the Judges shall be the highest body of the judiciary representing the interests of all the judiciary
- 2 The All-Russia Congress of the Judges shall be called once in 4 years

Article 14 The order of convening of the All-Russia Congress of the Judges

- 1 The All-Russian Congress of the Judges shall be called upon the decision of the Council of the Judges of the Russian Federation, which shall be made not later than four months before the holding of the congress
- 2 By the decision of the Council of the Judges of the Russian Federation or by the requirement of not less than 1/5 of the general number of the judges, composing the judiciary, the special All-Russian Congress of the

- Judges shall be called and conducted within three months after the Council of the Judges has made a decision or the requirement went into its Presidium
- 3 The of representation on the All-Russian Congress of the Judges and the order of election of its delegates shall be set by the Council of the Judges of the Russian Federation

Article 15 The authority of the All-Russian Congress of the Judges

- 1 The All-Russian Congress of the Judges shall
 - 1) elect the Council of the Judges of the Russian Federation, the Supreme Collegia on Judicial Qualifications of the Russian Federation and listen to their reports,
 - 2) give consent or refuse to reduce the budget allocated for the financing of the courts during the current financial year or being a subject to allocation for the next financial year,
 - 3) listen to the report of the General Director of the Judicial Department of the Supreme Court of the Russian Federation about the organizational, personnel and resources provision of the judicial activities
- 2 The All-Russian Congress of the Judges shall have the rights to consider matters being under the jurisdiction of other judiciary bodies, except for the taking the oath of the judges and matters being under the jurisdiction of the Collegia on judicial qualifications

Chapter 3
The Council of the Judges of the Russian Federation

Article 16 The Council of the Judges of the Russian Federation as the body of the judiciary

The Council of the Judges of the Russian Federation shall be the highest elective body of the judiciary, being accountable only to the All-Russian Congress of the Judges

Article 17 The authority of the Council of the Judges of the Russian Federation

- 1 The Council of the Judges of the Russian Federation shall
 - 1) call upon the All-Russian Congress of the Judges, approve the standard of representation on the Congress and the order of election of the delegates,
 - 2) give consent for the appointment or exemption of the General Director of the Judicial Department of the Supreme Court of the Russian Federation and listen to his reports on organizational, personnel and resources provision of the judicial activities,
 - 3) elect the new members to the Supreme Collegia on Judicial Qualifications of the Russian Federation in place of those who has left, but not more than 1/3 of its members,
 - 4) study, summarize and disseminate the experience of work of the judiciary bodies, develop recommendations on improvement of their activity

2 The Council of the Judges of the Russian Federation together with the Supreme Court of the Russian Federation, with the Supreme Commercial Court of the Russian Federation and with the Judicial Department of the Supreme Court of the Russian Federation shall develop and put forward to the government of the Russian Federation the suggestions about the draft of the federal budget in the part touching upon the financing of the general jurisdiction and arbitration courts. If there are any disagreement, the government of the Russian Federation shall attach the suggestions of the Council of the Judges of the Russian Federation together with its conclusion to the draft of the federal budget.

The representatives of the Council of the Judges of the Russian Federation shall have the right to participate in the discussion of the draft of the federal budget in the Federal Assembly of the Russian Federation.

The Council of the Judges of the Russian Federation shall give its consent or refuse to reduce the budget allocated for the financing of the courts during the current financial year or being a subject to allocation for the next financial year.

3 The Council of the Judges of the Russian Federation and other judiciary bodies shall realize the direct connections with the judiciary bodies, with the professional associations of the judges of other countries, with the international law organizations and with the mass media within their jurisdiction.

Article 18 The organization of the work of the Council of the Judges of the Russian Federation

1 The Council of the Judges of the Russian Federation shall be called upon out of necessity, but not less than twice a year.

2 The section of the general jurisdiction, arbitration and military courts shall be organized in the Council of the Judges of the Russian Federation. The work of the Council of the Judges shall be carried out in these sections and on the plenary session of the all members of the Council.

3 For the purposes of realization of its authority the Council of the Judges of the Russian Federation shall organize permanent and temporary commissions, in which the non-member of the Council judges and other persons may participate.

Article 19 The presidium of the Council of the Judges of the Russian Federation

1 The presidium of the Council of the Judges of the Russian Federation shall be the working body of the Council of the Judges, accountable to it, and shall be established for the purposes of the efficient collective decision of the questions determined by the Regulations of the Council of the Judges.

2 The sessions of the presidium of the Council of the Judges of the Russian Federation shall be held out of necessity, but not less than four times a year.

Article 20 The Chairman of the Council of the Judges of the Russian Federation and his assistant chairmen

- 1 The Chairman of the Council of the Judges of the Russian Federation and his assistant chairmen (one judge at a time from the general jurisdiction, arbitration and military courts) shall be elected by the Council of the Judges and shall be accountable to it. The assistant chairmen at the same time shall be the chairmen of the corresponding sections of the Council of the Judges.
- 2 The Chairman of the Council of the Judges shall call upon the Council of the Judges and its presidium and shall supervise their work according to the Regulations of the Council of the Judges.
- 3 The Chairman of the Council of the Judges of the Russian Federation shall represent the Council of the Judges in all the state power bodies and in the bodies of local self-government, in the public associations, in the external relations and in the mass media.
- 4 At the assignment of the Chairman of the Council of the Judges his authority shall be fulfilled by one of his assistant chairmen.

Chapter 4

Congresses, conferences, meetings and councils of the judges

Article 21 Congresses of the judges

- 1 The congresses of the judges shall be
 - 1) for the judges of the general jurisdiction courts— the general meeting of the judges of such courts, jurisdiction of which lies within the territory of the corresponding constituent part of the Russian Federation, including the district court judges and the magistrates as well as the judges and the magistrates as well as the judges of the higher courts, except for the Supreme Court of the Russian Federation. The district court judges and the magistrates in the autonomous circuit, which lack the courts of these autonomous circuits being established there, shall participate in the congress of the judges of the large administrative division of the Russian Federation or region, where this autonomous circuit belongs to,
 - 2) for the judges of the arbitration courts – the general meeting of the judges of the federal arbitration courts of the circuits and the arbitration courts of the constituent parts of the Russian Federation. The judges of two or more arbitration courts shall have the right to conduct the general meeting of these arbitration courts,
 - 3) for the judges of the military courts the general of the judges of the military court of the circuit, navy, group of troops and military courts of the garrisons and formations, functioning in the military circuit, navy and group of troops.
- 3 The congresses of the judges shall be held once in two years.

Article 22 Conferences of the judges

The conferences of the judges shall be the meetings of the judges, representing the corresponding courts, which shall be called in the interim between the congresses of the judges according to the standards, established by the councils of the judges.

Article 23 Meetings of the judges

The meetings of the judges, having authority to elect the councils of the judges and the Collegia on judicial qualifications, shall be called in the Supreme Court of the Russian Federation and in the Supreme Commercial Court of the Russian Federation out of necessity, but not less than twice a year

Article 24 The authority of the congresses, conferences and meetings of the judges

- 1 The congresses and meetings of the judges along with the common authority of the judiciary bodies shall
 - 1) elect the councils of the judges and the Collegia on judicial qualifications accountable to them,
 - 2) make suggestions about suspension or cessation of the authority and about the resignation of the judges to the Collegia on judicial qualifications,
 - 3) address to the corresponding bodies and to the officials with the suggestions about the appointment, of the judges for the position of the Chairmen or the assistant chairmen of the courts,
 - 4) examine other matters concerned with the functioning of the courts and internal relations in the judiciary
- 2 The meetings of the judges of the Supreme Court of the Russian Federation and of the Supreme Commercial Court of the Russian Federation shall also take the oath of the judges appointed for the first time
- 3 The conferences of the judges shall have the same authority as the congresses of the judges, except for the election of the new personnel of the councils of the judges and of the Collegia on judicial qualifications and listening to their reports

The conference of the judges shall have the right to elect individual members of the council of the judges and of the Collegia on judicial qualifications instead of those who has left
- 4 The congresses and conferences of the judges of the general jurisdiction courts (except for the military courts) shall listen to the reports of the chiefs of the sections of the Judicial Department of the Supreme Court of the Russian Federation in the constituent parts of the Russian Federation

Article 25 Councils of the judges

- 1 The councils of the judges shall be the elective bodies of the judiciary, elected by the congresses and meetings of the judges in the number and the order established by the congress, meeting of the judges
- 2 The members of the council of the judges shall elect the chairman and the assistant chairmen from its members and set the range of their authority

Article 26 The authority of the councils of the judges

- 1 The councils of the judges shall
 - 1) in the interim between the congresses and meetings of the judges consider all the matters being under the jurisdiction of the congresses

- and meetings of the judges, except for the election of the Collegia on judicial qualifications and listening to their reports, -
- 2) call upon the congresses, conferences and meetings of the judges, establish the standards of representation on the conference of the judges,
 - 3) elect the members of the Collegia on judicial qualifications instead of those who has left, but not more than 1/3 of the personnel,
 - 4) make suggestions to the corresponding state bodies about the organizational, personnel and resources provision of the judicial activity, including the suggestions about the size of the courts' personnel,
 - 5) make suggestions within their authority about improving of the legal, financial and social provision of the judges and the courts' personnel, about protection for the judges and for their families, protection of their property and about other matters or realization of the rights of the judges guaranteed by the Constitution of the Russian Federation, the Federal Constitutional Law "On Judicial System of the Russian Federation" and the Law of the Russian Federation "On the Status of the Judges in the Russian Federation",
 - 6) work with the veterans of the judicial system
- 2 The councils of the judges (except for the council of the judges of the Supreme Court of the Russian Federation and the councils of the judges of the arbitration and military courts) shall give their consent for the appointment or exemption of the chief of the section of the Judicial Department of the Supreme Court of the Russian Federation in the constituent part of the Russian Federation and listen to his reports on the work of the section
 - 3 The councils of the judges (except for the councils of the judges of the Supreme Court of the Russian Federation and of the Supreme Commercial Court of the Russian Federation) shall also take the oath of the judges appointed for the first time

Section 2

Chapter 5 The authority of the Collegia on judicial qualifications

Article 27 The authority of the Supreme Collegia on Judicial Qualifications of the Russian Federation

1 The Supreme Collegia on Judicial Qualifications of the Russian Federation shall examine all the matters being under its jurisdiction according to the Law of the Russian Federation "On the States of the Judges in the Russian Federation" and to the present Law

2 The Supreme Collegia on Judicial Qualifications shall

- 1) examine presentations about the appointment of the chairmen, the assistant chairmen, the chairmen of the judicial collegia of the federal courts (except for the Supreme Court of the Russian Federation, the Supreme Commercial Court of the Russian Federation and the district courts) and give to the Charman of the Supreme Court of the Russian

Federation and to the Chairman of the Supreme Commercial Court of the Russian Federation correspondingly its conclusions,

- 2) suspend or cease the authority or the resignation of the chairmen, the assistant chairmen and the chairmen of the judicial collegia of the federal courts (except for the courts indicated in the sub-paragraph 1 of the paragraph 2 of the present article), and also the members of the Council of the Judges of the Russian Federation and the Supreme Collegia on Judicial Qualifications of the Russian Federation, the chairmen of other councils of the judges and the members of the Collegia on judicial qualifications on the basis stipulated in the sub-paragraph 2 of the paragraph 1 of the article 13 and in the sub-paragraph 9 of the paragraph 1 of the article 14 of the Law of the Russian Federation "On the Status of the Judges in the Russian Federation" Suspension or cessation of the authority or resignation of 4 these persons on other basis stipulated in the law shall be carried out by the corresponding Collegia on judicial qualifications,
- 3) conduct the qualification chapter reference of the judges indicated in the sub-paragraph 2 of the paragraph 2 of the present article according to the presentations of the Chairman of the Supreme Court of the Russian Federation and of the Chairman of the Supreme Commercial Court of the Russian Federation correspondingly,
- 4) examine in the order, set by the present Federal Law, the presentations of the Attorney General of the Russian Federation or of the person, performing his duties, about the consent for bringing a law suit on the judges, indicated in the sub-paragraph 2 of the paragraph 2 of the present article, for bringing them to the criminal responsibility, for sentencing or arrest, about the revision of the decisions of other Collegia on judicial qualifications, which were made on the basis of the presentations of other judges, examine the presentations of the Chairman of the Supreme Court of the Russian Federation and of the Chairman of the Supreme Commercial Court of the Russian Federation about the revision of the decisions made by other Collegia on judicial qualifications, which have refused to suspend or cease or resign the judges, and as a result of this revision the Supreme Collegia on Judicial Qualifications shall
 - leave the decision of the Collegia on judicial qualifications unchanged,
 - abolish the decision and return the materials for a repeat consideration,
 - abolish the decision or make a new decision,
 - change the decision,
- 5) give conclusions on the matters of presentation of the judges, indicated in the sub-paragraph 2 of the paragraph 2 of the present article, to the state awards or to the conferring the honorary titles of the Russian Federation, taking into account the opinions of the councils of the judges and of the Collegia on judicial qualifications,

- 6) make decisions on the matters, being under jurisdiction of other Collegia on judicial qualifications, if there is no chance to settle them in those Collegia on judicial qualifications,
 - 7) give the judges the corresponding qualification classes,
 - 8) for the purposes of providing help and developing the practice of application of the legislation, touching upon the activity of the Collegia on judicial qualifications, become familiar with the reports of other Collegia, listen to the performed of the Collegia on the performed work and give recommendations for the improvement of the work of the Collegia, the work experience of other Collegia, organize training for the members of the Collegia on judicial qualifications,
 - 9) give clarifications on the matters, being under their jurisdiction,
 - 10) carry out other authority according to the Law of the Russian Federation "On the Status of the Judges in the Russian Federation" and to the present Federal Law
- 4 The Supreme Collegia on Judicial Qualifications of the Russian Federation shall consist of the independent sections, composed of the judges of the general jurisdiction, arbitration and military courts, which examine the matters stipulated in the sub-paragraphs 1,3,7 of the paragraph 2 of the present article and in the paragraph 4 of the article 37 of the present Federal Law

Other authority of the Supreme Collegia on Judicial Qualifications shall be carried out during its plenary session

Article 28 The authority of the presidium of the Supreme Collegia on Judicial Qualifications of the Russian Federation

The presidium of the Supreme Collegia on Judicial Qualifications of the Russian Federation shall be the working body of this Collegia, accountable to it and organized for the operative collective decision of the matters concerned with the organization of the work of the Supreme Collegia on Judicial Qualifications

Article 29 The authority of the Collegia on judicial qualifications of the Supreme Court of the Russian Federation and of the Supreme Commercial Court of the Russian Federation

The Collegia on judicial qualifications of the Supreme Court of the Russian Federation and of the Supreme Commercial Court of the Russian Federation shall

- 1) give conclusions about the appointment of the Chairman of the Supreme Court of the Russian Federation and the Chairman of the Supreme Commercial Court of the Russian Federation,
- 2) approve the represented by the Chairman of the Supreme Court of the Russian Federation and by the Chairman of the Supreme Commercial Court of the Russian Federation members of the examinational commissions taking the qualification exam of the candidates on the positions of the judges of these courts
- 3) Submit to the Chairmen of these courts the conclusions about the possibility of appointment of the candidates for the positions of the assistant chairmen, the chairmen of the judicial collegia and the judges of the Supreme Court of the Russian Federation and of the Supreme Commercial Court of the Russian Federation,

- 4) Carry out the qualification certification of the judges of these courts,
- 5) Give conclusions to the Chairmen of the Supreme Court of the Russian Federation and of the Supreme Commercial Court of the Russian Federation about the possibility of bringing in the resigned judges of these courts to the realization of justice,
- 6) suspend or cease the authority and the resignation of the Chairmen, of the assistant chairmen, of the chairmen of the judicial collegia and other judges of these courts on the basis and in the way stipulated in the Law of the Russian Federation "On Status of the Judges in the Russian Federation" and the present Federal Law,
- 7) examine the presentations of the Attorney General of the Russian Federation or of the person performing his duties about giving the consent for bringing in a lawsuit, for bringing to the criminal responsibility, for sentencing or arrest of the judges of these courts,
- 8) give conclusion about the matters of presentation of the judges of the Supreme Court of the Russian Federation and the Supreme Commercial Court of the Russian Federation to the state awards and to the conferring the honorable titles of the Russian Federation,
- 9) give the judges of these courts the corresponding qualification classes,
- 10) fulfill other authority according to the Law of the Russian Federation " On the Status of the Judges in the Russian Federation and to the present Federal Law

Article 30 The authority of other Collegia on judicial qualifications

- 1 Other Collegia on judicial qualifications shall
 - 1) approve the represented by the chairman of the corresponding court members of the examinalational commissions taking the qualifications exam for the position of a judge,
 - 2) examine the applications of the persons aspiring the corresponding position of a judge and taking into account the results of the qualifications examination give conclusions about recommendation of this person for the position of a judge or about refusal in such recommendation, present to the chairmen of the corresponding courts the conclusions about each of the recommended candidates for the position of a judge,
 - 3) carry out the qualification certification of the judges, except for the indicated in the sub-paragraphs 1 and 2 of the paragraph 1 of the article 36 of the present Federal Law,
 - 4) give conclusions to the chairmen of the higher courts about the possibility of appointment of the judges for the positions of the chairmen and the assistant chairmen of the district courts,
 - 5) give conclusions to the chairmen of the higher courts about the possibility of bringing in the judges, being in resignation, to the realization of justice,
 - 6) examine the presentations of the council of the judges, of the chairman of the corresponding or higher court about bringing in a judge to the responsibility for the action disgracing the honour and dignity of a judge or diminishing the prestige of the judiciary, for the violation of the requirements of the Code of Honour of a Judge of the Russian Federation, or examine this matter at their own initiative,

- 7) suspend or cease the authority or resignation of the judges on the basis and in order stipulated in the Law of the Russian Federation "On the Status of the Judges in the Russian Federation" and in the present Federal Law,
 - 8) examine the presentations of the Attorney General of the Russian Federation or of the person, performing his duties, about giving the consent for bringing in a lawsuit, for bringing in to the criminal responsibility, for sentencing or arrest of the judges,
 - 9) consider the complaints, statements and reports of the citizens or other persons on the matters being under their jurisdiction,
 - 10) give conclusions about the matters of presentation of the judges to the state awards and to the conferring the honorable titles of the Russian Federation,
 - 11) give to the judges the corresponding qualification classes,
 - 12) fulfill other authority according to the Law of the Russian Federation "On the Status of the Judges in the Russian Federation" and to the present Federal Law
- 2 This authority of the Collegia on judicial qualifications shall be disseminated among all the judges, except for those indicated in the sub-paragraph 2 of the paragraph 2 of the article 27 and in the article 29 of the present Federal Law

Article 31 The decision and conclusion of the Collegia on judicial qualifications

- 1 On the matters, considered within the framework of its authority, the Collegia on judicial qualifications shall make a decision or give a conclusion
- 2 The decision of the Collegia on judicial qualifications shall be made on the matters, stipulated in the sub-paragraphs 2,4,6,7 of the paragraph 2 of the article 27, in the paragraphs 2,6,7,9 of the article 29, in the sub-paragraphs 1,,6,7,8,11 of the paragraph 1 of the article 30 of the present Federal Law, and shall be obligatory for the judges concerned in it, and for the administrators of the courts and other officious
- 3 The conclusion of the Collegia on judicial qualifications shall be given on the matters, stipulated in the sub-paragraphs 1,3,5 of the paragraph 2 of the article 27, in the paragraphs 1,3,4,5,8 of the article 29, in the sub-paragraphs 2,3,4,5,10 of the paragraph 1 of the article 30 of the present Federal Law

The conclusions of the Collegia on judicial qualifications, except for the conclusion about the refusal in recommendation for the position of a judge or about the refusal in recommendation for the corresponding position shall have the nature of recommendation

- 4 The decision and the conclusion of the Collegia on judicial qualification shall be motivated

Article 32 The decision made in the case of the disgracing judge's action

The Collegia on judicial qualifications shall have a right on the basis of the materials about the action of a judge, disgracing the honour and dignity of a judge or diminishing the prestige of the judiciary to make one of the following decisions

- 1) to confine to a discussion, warning the family that other activities (inactivity), disgracing the honour and dignity of a judge or diminishing the prestige of the judiciary, shall be impermissible,
- 2) to cease the authority of a judge or his resignation depriving him of his qualification class,
- 3) to stop action against the judge, because of absence in his activities or inactivity any signs of a faulty act,
- 4) to return the represented materials for the additional verification

Article 33 Revision of the decisions and conclusions according to the new circumstances

- 1 The Collegia on judicial qualifications shall have a right to review the previous decision or conclusion according to the new circumstances
- 2 The petition about the revision of the decision or conclusion according to the new circumstances shall be submitted to the Collegia on judicial qualifications by the judge or by the candidate for the position of a judge, with regard to whom the decision was made or the conclusion was given, and also by the official on whose presentation the decision was made by the Collegia on judicial qualifications
- 3 The reason for the revision of the decision or of the conclusion according to the new circumstances shall be such circumstances, which were unknown to the Collegia on judicial qualifications, and along with the previously established circumstances or by themselves shall be considered as the reason for making a new decision
- 4 The revision of the decision or of the conclusion according to the new circumstances shall not be limited in terms

**Chapter 6
Qualification certification of the judges**

Article 34 The concept of the qualification certification of the judges

- 1 The qualification certification of the judges shall be the evaluation by the Collegia on judicial qualifications of the level of the judge's professional knowledge and the ability to apply them in the process of realization of justice, of the professional qualities of a judge and his conformity with the requirements stipulated by the Constitution of the Russian Federation, by the Law of the Russian Federation "On the Status of the Judges in the Russian Federation" and by the Code of Honor of a Judge of the Russian Federation, as for the chairman and the assistant chairman of the court — the ability to perform the duties, assigned to them in compliance to their position
- 2 The qualification class shall be awarded taking into account the position of a judge, his working experience as a judge and his professional preparation

Article 35 The reasons for conducting a qualification certification of the judges

- 1 The qualification certification shall be conducted at the application of a judge or on the corresponding court representing a judge

- 1) for the appointment to the higher court,
 - 2) for the appointment without limitation of the term of the authority for a certain term,
 - 3) for the appointment to the position of a chairman, assistant chairman of a court, a chairman of the judicial collegia of the corresponding court,
 - 4) for the conferring a qualification class
- 2 The qualification certification shall be also conducted at the presentation of a magistrate to the election for another term

Article 36 The order of conducting of the qualification certification of the judges

- 1 The qualification certification shall be conducted
 - 1) by the Supreme Collegia on judicial qualifications — with regard to the chairmen, the assistant chairmen, the chairmen of the judicial collegia of the federal court, except for the courts indicated in the subparagraph 1 of the paragraph 2 of the article 27 of the present Federal Law,
 - 2) by the Collegia on judicial qualifications of the Supreme Court of the Russian Federation and of the Supreme Commercial Court of the Russian Federation — with regard to the Chairmen, the assistant Chairmen, the chairmen of the judicial collegia and other judges of these courts,
 - 3) by other Collegia on judicial qualifications – with regard to the chairmen, the assistant chairmen of the district courts and other judges, except for those indicated in the sub-paragraphs 1 and 2 of this paragraph
- 2 The date of the conducting of the qualification certification shall be set by the chairman of the Collegia on judicial qualifications, and the judge with regard to whom the qualification certification and conducted shall be informed about it in time
- 3 The judge, appointed for this position at the first time and having no qualification class, shall be presented to the qualification certification within the first six months of work
- 4 The next qualification certification because of the conferring the qualification class shall be conducted on presentation of the chairman of the corresponding court or at the application of a judge not later than two months after the expiration of the judge's term in the previously conferred qualification class
- 5 If the Collegia on judicial qualifications decides to leave the judge in the previously conferred qualification class, the repeat qualification certification shall be conducted not earlier than in a year since the date of adoption of this decision
- 6 Early qualification certification because of conferring a higher qualification class to a judge shall be conducted on the presentation of the chairman of the corresponding or higher court and not earlier than after the expiration of a half of the judge's term in the previously conferred

qualification class. The presentation shall be motivated and confirmed by the corresponding documents.

The negative decision of the Collegia on judicial qualifications about the early conferring of a higher qualification class to a judge shall not influence on the terms of conferring the next qualification class to him.

- 7 In case of negative conclusion of the Collegia on judicial qualifications about the possibility of appointment of a person for the position of a judge of a higher court, and also about the appointment of a judge for the position of a chairman, the assistant chairman or the chairman of the judicial collegia, the repeat consideration of this matters shall be possibly conducted not less than a year after the conclusion was given.
- 8 The judge, with regard to whom the qualification certification is conducted, shall have the right to become familiar with the documents presented on him.
- 9 The chairman of the corresponding court shall make a character reference of a judge being a subject to the qualification certification, reflecting the evaluation of his professional activities as a judge, his professional and moral qualities, and also the other documents, according to which the corresponding conclusions may be given, shall be presented.
- 10 The judge, with regard to whom the qualification certification is conducted, shall have the right to be present at the process of qualification certification. The qualification certification shall be conducted in the absence of a judge because of the petition of this judge or because of his failure to appear at the session of the Collegia on judicial qualifications without legitimate reasons for that.
- 11 The chairman of the court, who has made the presentation, the chairman of the council of the judges or his representative, and other persons at the discretion of the Collegia on judicial qualifications shall participate in the session of the Collegia on judicial qualifications conducting the qualification certification of the judges.
- 12 In the case of the agreement of the chairman of the court with the affirmative conclusion of the Collegia on judicial qualifications about the recommendation of the person for the corresponding position of a judge, and also in the case of the repeat admission of the affirmative conclusion, the chairman of the corresponding court shall within three weeks after the date the conclusion was received introduce the candidacy for consideration in the established order.
- 13 After the appointment of a judge for another position of a judge in another court his previous authority shall be ceased, except for the cases when it is necessary to finish the consideration of a case with the participation of this judge.

Article 37 The qualification classes of the judges

- 1 For the judges of the Russian Federation shall be established the highest, the first, the second, the third, the fourth and the fifth qualification classes.
- 2 According to the results of the qualification characters reference shall be conferred.

- 1) the first and the second qualification classes—to the Chairmen, the assistant Chairmen and other judges of the Supreme Court of the Russian Federation and of the Supreme Commercial Court of the Russian Federation,
- 2) the first, the second and the third qualification classes – to the chairmen, the assistant chairmen and other judges of the Supreme courts and arbitration courts of the republics, of the courts of the large administrative divisions, of the regions and corresponding general jurisdiction courts, of the circuit and other arbitration courts, of the military courts of the circuits, navy and group of troops,
- 3) the second, the third, the fourth and the fifth qualification classes – and to the chairmen, the assistant chairmen and to the judges of the district courts, to the chairmen, the assistant chairmen and to the judges of the military courts of the garrisons and formations,
- 4) the third, the fourth and the fifth qualification classes – to the magistrates

3 The term of the tenure of the judge in the qualification class shall be

- 1) in the fifth qualification class – 2years,
- 2) in the fourth qualification class –3years,
- 3) in the third qualification class – 4years,
- 4) in the second qualification class – 5 years

The term of the tenure in the first qualification class shall not be set

4 The qualification classes shall be conferred

- by other Collegia on judicial qualifications – from the fifth to the second inclusively – on the presentation of the chairmen of the courts, named in the sub-paragraph 2 of the paragraph 2 of the article 27 of the present Federal Law,
- by the Collegia on judicial qualifications of the Supreme Court of the Russian Federation and of the Supreme Commercial Court of the Russian Federation – from the fifth to the first class inclusively – on the presentation of the Chairmen of these courts,
- by the Supreme Collegia on Judicial Qualifications of the Russian Federation – to the highest inclusively – on the presentation of the Chairman of the Supreme Court of the Russian Federation and of the Chairman of the Supreme Commercial Court of the Russian Federation correspondingly

The obligatory requirement for conferring the highest qualification class shall be the working experience in the judicial profession for not less than 15 years and judge's tenure in the first qualification class for not less than 5 years

5 The judge, being in resignation, shall maintain for life the qualification class conferred to him

Deprivation of the judges of their qualification classes shall be allowed only in the case of suspension of their authority on the basis, stipulated in the sub-paragraphs 3,6,7,8, and 9 of the paragraph 1 of the article 14 of the Law of the Russian Federation “On the Status of the Judges in the Russian Federation”, and also in the case of suspension of resignation of the judge if he doesn’t any more meet the requirements asserted to the judges by this Law

Chapter 7

The promotion in the Collegia on judicial qualifications

Article 38 The order of examination of the submitted materials by the Collegia on judicial qualifications

- 1 The preparation of the session of the Collegia on judicial qualifications shall be carried out by the chairman of the Collegia on judicial qualifications, or by the assistant chairman, who shall set time and place of conducting the session, and also the circle of people to be invited for the session. The invited people shall be notified about the time and place of conducting of the session in time
- 2 The judge, which regard to whom this or that matter is decided, except for the consideration of the presentation about the consent for bringing in a law suit, shall have the right to become familiar with the materials, being available in the Collegia on judicial qualifications, to have a possibility to submit his objections and comments
- 3 The judge and other people shall be notified about the time of conducting a session of the Collegia on judicial qualifications in a period of time needed for appearance at the session of the Collegia
- 4 When a person, being properly notified about the time of conducting of the session, fails to appear, the Collegia on judicial qualifications shall have the right to consider the matter in his absence. If this person didn’t ask to transfer the time of consideration or didn’t notify the Collegia on judicial qualifications about the impossibility of his participation in the session because of a legitimate reason or deviating from the appearance at the session of the Collegia on judicial qualifications
- 5 The member of the Collegia on judicial qualifications with its consent shall have the right not to participate in the consideration of the specific materials, and in the case of his participation he shall not have the right to abstain from voting
- 6 The supervisors of the courts, of the Judicial Department of the Supreme Court of the Russian Federation and its bodies, of the councils of the judges, of other Collegia on judicial qualifications or their representatives shall have the right to participate in the work of the Collegia on judicial qualifications and express their opinion on the matter being discussed

Article 39 Particular of consideration of the presentations about the judge’s disgracing act

- 1 The presentation of the chairman of the corresponding court or the appeal of the corresponding court or the appeal of a judiciary body about the suspension of the judge’s authority because of his act, disgracing the honor and dignity of a judge or diminishing the prestige of the judiciary, and also about the violation by the judge of the Code of Honor of a Judge of the

Russian Federation shall be considered by the Collegia on judicial qualifications in the case of the existence in the submitted materials the information, confirming the indicated circumstances, and the facts, characterizing the judge

The Collegia on judicial qualifications shall have the right within the framework of its rights and authority to conduct the additional verification of the submitted materials, to require the additional documents and to listen to the explanations of the corresponding of the judge's disgracing act

- 2 The materials submitted to the Collegia on judicial qualifications shall be considered in the case of presence in them of the definitely expressed opinion about the necessity of bringing the judge to the responsibility stipulated by the present Federal Law
- 3 The Collegia on judicial qualifications shall not be tied by the opinion, expressed in the presentation, and may make a decision about bringing the judge to other responsibility, stipulated by the present Federal Law, or about excusing him from the responsibility
- 4 The verification of the validity of the information, contained in the complaints or reports of the citizens about the judge's act, disagreeing the honor and dignity of a judge or diminishing the prestige of the judiciary, shall be carried out by those chairmen of the courts or by the judiciary bodies, including the Collegia on judicial qualifications, to whom the indicated complaints, statements and reports addressed
- 5 If the question is put in the way of suspension of the judge's authority because of the judge's act, disgracing the honor and dignity of a judge or diminishing the prestige of the judiciary, or if the facts about the judge's disgracing act exist and require the additional verification, the consideration of the judge's application about the suspension of his authority on another basis shall be paused until the consideration of the nature of the first question

Article 40 Admission the decisions and giving the conclusions by the Collegia on judicial qualifications

- 1 The Collegia on judicial qualifications shall have the right to make decisions and to give conclusions when the majority of the members of the Collegia is present

The decision or the conclusion shall be considered to be admitted, if the majority of the members of the Collegia on judicial qualifications, participated in the voting process, voted for it

The decision about the suspension or cessation of the judge's authority or about the suspicion of his resignation shall be considered to be admitted if not less than 2/3 of the members of the Collegia on judicial qualifications, participated in the voting process, voted for it

- 2 The voting and the admission of the decision or of the conclusion shall be conducted in the absence of the judge, with regard to whom the matter is being considered, and also in the absence of the invited and other people. A member of the Collegia on judicial qualifications shall express his own opinion in the written form, which shall be attached to the decision or to the conclusion

- 3 The decision and the conclusion of the Collegia on judicial qualifications shall be signed by the presiding person and by the secretary of the Collegia (section) In the absence of the secretary of the collegia (section) his duties shall be temporarily assigned to one of the members of the collegia (section) at the decision of the collegia (section)

Article 41 The minutes of the session of the collegia (section) on judicial qualifications

- 1 During the session of the Collegia (section) on judicial qualifications the separate mitts shall be done on every materials being considered, where necessary to reflect all the important information about the session The minutes shall be signed by the presiding person and by the secretary of the collegia (section) not later than 3 days after the session
- 2 The person, with regard to whom the material was considered, and the person, submitted the presentation, shall have the right to become familiar with the minutes of the session of the collegia (section) on judicial qualifications within three days after its signing and to submit their comments about the minutes The presiding person shall certify the correctness of these comments or reject them by his resolution
- 3 The Secretary of the Supreme Collegia on Judicial Qualifications shall be the staff - members of this collegia, the secretaries of the Collegia on judicial qualifications of the Supreme Court of the Russian Federation, of the Supreme Commercial Court of the Russian Federation and of other Collegia on judicial qualifications shall be the staff-members of the corresponding courts

Article 42 The terms for consideration of the materials by the Collegia on judicial qualifications

- 1 The materials submitted to the Collegia on judicial qualifications shall be considered by the Supreme Collegia on Judicial Qualifications not later than within three months, by other Collegia on judicial qualifications – not later than a month after the day they were submitted, not including the time during which the person, with regard to whom the matter is being decided, was absent because of the legitimate reason If necessary this term shall be prolonged by the chairman of the Supreme Collegia on Judicial Qualifications for not more than a month, and by the chairman of other Collegia on judicial qualifications for not more than 15 days
- 2 The presentation about giving the consent for bringing in a lawsuit against the judge shall be considered within 7 days submitted to the corresponding collegia on judicial qualifications

Article 43 Appeals of the decisions of the Collegia on judicial qualifications

- 1 The decisions of the Collegia on judicial qualifications on the matters of suspension or cessation of the judge's authority or resignation shall be appealed in the Supreme Collegia on Judicial Qualifications of the Russian Federation within 10 days after obtaining the copy of the decision

The decisions of the Supreme Collegia on Judicial Qualifications on the indicated matters shall be appealed in the Supreme Court of the Russian Federation in the same period of time

The addresses of the Attorney General of the Russian Federation or of the person, performing his duties, shall be also considered in such a way in the case of the refusal of the Collegia on judicial qualifications to give their consent for bringing in a lawsuit against a judge, for bringing him to the criminal responsibility, for sentencing or arrest of a judge, and also in the case of presentation of the Chairman of the Supreme Court of the Russian Federation and of the Chairman of the Supreme Commercial Court of the Russian Federation about the revision of the decisions of the Collegia on judicial qualifications, refusing the suspension of the judge's authority

- 2 Other decision of the Collegia on judicial qualifications and also their conclusions shall be appealed only on the basis of violation of the procedure of their announcement
- 3 The decision and the conclusion shall become effective after their announcement

Section 3

Chapter 8 Provision of the activity of the judiciary bodies

Article 44 Organizational and personnel provision of the judiciary bodies

- 1 The organizational and personnel provision of the judiciary bodies shall be carried out by the Judicial Department of the Supreme Court of the Russian Federation, and by the bodies and arbitration courts being a part of its system
- 2 The Council of the Judges of the Russian Federation and the Supreme Collegia on Judicial qualifications of the Russian Federation shall provide the methodical assistance in the work of the corresponding judiciary bodies
- 3 In the Council of the Judges of the Russian Federation and in the Supreme Collegia on Judicial Qualifications of the Russian Federation shall function under supervision of their chairmen the apparatus, consisting of the necessary number of the experts and personnel using the funds, allocated by the Judicial Department of the Supreme Court of the Russian Federation and by the Supreme Commercial Court of the Russian Federation
- 4 The members of the Collegia on judicial qualifications at their primary job shall receive the official certificate signed by the chairman of the corresponding court The members of the Supreme Collegia on Judicial Qualifications of the Russian Federation shall receive the official certificates signed correspondingly by the Chairman of the Supreme Court of the Russian Federation and by the Chairman of the Supreme Commercial Court of Russian Federation

Article 45 Financial and materially - technical provision of the activity of the judiciary bodies

- 1 The creation of the proper conditions for the activity of the judiciary bodies and also the responsibility for their materially – technical and financial provision shall be assigned
 - 1) with regard to the bodies of the association of the judges of the Supreme Court of the Russian Federation and of the Supreme Commercial Court of the Russian Federation – to the apparatus of this courts,
 - 2) with regard to the bodies of the association of the judges of the general jurisdiction courts – to the Judicial Department of the Supreme Court of the Russian Federation and the bodies, being a part of its system,
 - 3) with regard to the bodies of the association of the judges of the arbitration courts – to the apparatus of the corresponding arbitration courts

2 The provision of the activity of the All-Russia Congress of the Judges, of the Council of the Judges of the Russian Federation and its presidium, of the Supreme Collegia on Judicial Qualifications of the Russian Federation and its presidium shall be assigned to the Judicial Department of the Supreme Court of the Russian Federation and to the Supreme Commercial Court of the Russian Federation

Chapter 9

Final provision

Article 46 The order of putting into effect of the present Federal Law

- 1 The present Federal Law shall be put into effect after the date of its official publication
- 2 The Law of the Russian Federation “On the Status of the Judges in the Russian Federation” shall be used in the part, not contradicting with the present Federal Law
- 3 The Provision “On Collegia on judicial qualifications”, the Provision “On Qualification certification of the judges” and the Resolution of the Supreme Council of the Russian Federation № 4960 –1 from May 13, 1993 “On confirmation of the Provision on Collegia on judicial qualifications and of the Provision on qualification certification of the judges shall be declared to have last its power

President of the Russian Federation

B N Yeltsyn