

## CHAPTER 5

### JUDGES

#### ARTICLE 2

### NEBRASKA CODE OF JUDICIAL CONDUCT (Effective through December 31, 2010)

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#### **Preface.**

At its August 1990 annual meeting, the American Bar Association House of Delegates adopted the ABA Model Code of Judicial Conduct (1990), culminating several years of work by various ABA committees. The Nebraska Supreme Court assigned the task of reviewing the ABA Model Code to the Nebraska Judicial Ethics Advisory Committee. This Nebraska Code of Judicial Conduct (1992) is the result of the committee's work. The advisory committee suggested a number of modifications to the ABA Model Code. The reader must be aware that this Nebraska Code of Judicial Conduct (1992) and the ABA Model Code of Judicial Conduct (1990) are not fully interchangeable.

Adopted by order of the Nebraska Supreme Court on May 28, 1992, effective September 1, 1992. Renumbered and codified as Nebraska Code of Judicial Conduct §§ 5-201 to 5-205, effective July 18, 2008.

#### **Preamble.**

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

This Code is intended to establish standards for ethical conduct of judges of this state. It consists of broad statements called Canons, specific rules set forth in Sections under each Canon, a Terminology Section, an Application Section, and Comments. The text of the Canons and the Sections, including the Terminology and Application Sections, is authoritative. The Comments, by explanation and example, provide guidance with respect to the purpose and meaning of the Canons and Sections. The Comments are not intended as a statement of additional rules. When the text uses "shall" or "shall not," it is intended to impose binding obligations, the violation of which can result in disciplinary action. When "should" or "should not" is used, the text is intended as hortatory and as a statement of what is or is not appropriate conduct, but not as a binding rule under which a judge may be disciplined. When "may" is used, it denotes permissible discretion or, depending on the context, it refers to action that is not covered under specific proscriptions.

The Canons and Sections are rules of reason. They should be applied consistent with constitutional requirements, statutes, other court rules, and decisional law and in the context of all relevant circumstances. The Code is to be construed so as to not impinge on the essential independence of judges in making judicial decisions.

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

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

## **Terminology.**

*Terms explained below are noted with asterisk\* in the sections where they appear. In addition, the sections where terms appear are referred to after the explanation of each term below.*

### **APPROPRIATE AUTHORITY**

The Nebraska Commission on Judicial Qualifications and the Nebraska Supreme Court Counsel for Discipline. See sections 3D(1) and 3D(2).

Amended July 13, 2005, effective September 1, 2005.

### **CANDIDATE**

A person seeking selection for or retention in judicial office. A person becomes a candidate for judicial office as soon as he or she makes a public announcement of candidacy, declares or files as a candidate with the secretary of state, or authorizes solicitation or acceptance of contributions or support. The term "candidate" has the same meaning when applied to a judge seeking election or appointment to non-judicial office. See preamble and sections 5A, 5B, 5C, and 5E.

### **COURT PERSONNEL**

Does not include the lawyers in a proceeding before a judge. See sections 3B(7)(c) and 3B(9).

## DE MINIMIS

An insignificant interest that could not raise reasonable question as to a judge's impartiality. See sections 3E(1)(c) and 3E(1)(d).

## ECONOMIC INTEREST

Ownership of a legal or equitable interest, however small, or a relationship as officer, director, advisor, or other active participant in the affairs of a party, except that:

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

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

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

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

## FIDUCIARY

Includes such relationships as personal representative, conservator, attorney in fact, trustee, and guardian. See sections 3E(2) and 4E.

## FOURTH DEGREE OF RELATIONSHIP

The following persons are relatives within the fourth degree of relationship: great-great-grandparent, great-uncle or great-aunt, brother, sister, great-great-grandchild, grandnephew or grandniece, or first cousin. See section 3E(1)(d).

## IMPARTIALITY

AImpartiality@ or Aimpartial@ denotes the condition of being without bias or prejudice in favor of, or against, particular parties or classes of parties, or their representatives, and of maintaining an open mind in considering issues that may come before the judge. See Canon 1, comment; Canon 2, section A and comment; Canon 2, section C and comment; Canon 3, section E(1) and comment; Canon 3, section E(1)(b) comment; Canon 4, section D(1) comment; and Canon 4, section D5(d) comment.

Adopted September 20, 2006.

## INDEPENDENCE

AIndependence@ denotes a judge's freedom from influence, guidance, or controls other than those established by law. See Canon 1 and comment; Canon 4, section B comment; Canon 4, section C(2) comment; and Canon 5, section A3(a).

Adopted September 20, 2006.

## **INTEGRITY**

Integrity denotes probity, fairness, honesty, uprightness, and soundness of character. See Canon 1 and comment; Canon 2, section A and comment; Canon 2, section C comment; Canon 4, section B comment; Canon 4, section D(5)(d); and Canon 5A(3).

Adopted September 20, 2006.

## **JUDGE**

Persons subject to this Code as defined in the application section herein.

## **KNOWINGLY, KNOWLEDGE, KNOWN, or KNOWS**

Actual knowledge of the fact in question. A person's knowledge may be inferred from circumstances. See sections 3D, 3E(1), and 5A(3).

## **LAW**

All court rules adopted by the Nebraska Supreme Court, including the Workplace Harassment Policy and Drug-Free Workplace Policy, as well as statutes, constitutional provisions, and decisional law. See sections 2A, 3A, 3B(2), 3B(7), 4B, 4C, 4D(5), 4F, 4K, 5A(2), 5B(2), 5C(1), and 5D.

Amended Feb. 10, 1999; amended September 20, 2006.

## **MEMBER OF THE CANDIDATE'S FAMILY**

A spouse, child, grandchild, parent, grandparent, or other relative or person with whom the candidate maintains a close familial relationship. See section 5A(3)(a).

## **MEMBER OF THE JUDGE'S FAMILY**

A spouse, child, grandchild, parent, grandparent, or other relative or person with whom the judge maintains a close familial relationship. See sections 4D(3), 4E, and 4G.

#### MEMBER OF THE JUDGE'S FAMILY RESIDING IN THE JUDGE'S HOUSEHOLD

Any relative of a judge by blood or marriage, or a person treated by a judge as a member of the judge's family, who resides in the judge's household. See sections 3E(1) and 4D(5).

#### NONPUBLIC INFORMATION

Information that, by law, is not available to the public. Nonpublic information may include, but is not limited to, information that is sealed by statute or court order, impounded or communicated in camera; and information offered in grand jury proceedings, presentence reports, and statutorily confidential information in other cases. See section 3B(11).

#### PART-TIME JUDGE

A periodic part-time judge is a judge who serves on a continuing or part-time basis but is permitted by law to devote time to some other profession or occupation and whose compensation for that reason is less than that of a full-time judge. See application section A.

#### POLITICAL ORGANIZATION

A political party or other group, the principal purpose of which is to further the election or appointment of candidates to political office. See sections 5A(1), 5B(2), and 5C(1).

#### REQUIRE

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

### **§ 5-201. Canon 1. A judge shall uphold the integrity and independence of the judiciary.**

(A) An independent and honorable judiciary is indispensable to justice in our society. A judge should participate in establishing, maintaining, and enforcing high standards of conduct and shall personally observe those standards so that the integrity and independence of the judiciary will be preserved. The provisions of this Code shall be construed and applied to further that objective.

#### COMMENT

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

### **§ 5-202. Canon 2. A judge shall avoid impropriety and the appearance of impropriety in all of the judge's activities.**

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

#### COMMENT

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

The prohibition against behaving with impropriety or the appearance of impropriety applies to both the professional and personal conduct of a judge. Because it is not practicable to list all prohibited acts, the proscription is necessarily cast in general terms that extend to conduct by judges that is harmful although not specifically mentioned in the Code. Actual improprieties under this standard include violations of law, court rules, or other specific provisions in this Code. The test for appearance of impropriety is whether the conduct would create in reasonable minds a perception that the judge's ability to carry out judicial responsibilities with integrity and impartiality is impaired.

At least six factors should be considered in evaluating the appearance of impropriety involved in any activity: (1) The public or private nature of the act when done; (2) the extent to which the conduct is protected as an individual right; (3) the degree of discretion exercised by the judge; (4) whether the conduct is harmful or offensive to others; (5) the degree of respect or lack of respect for the public or individual members of the public that the conduct demonstrates; and (6) the degree to which the conduct is indicative of bias, prejudice, or improper influence.

See, also, comment under section 2C.

(B) A judge shall not allow family, social, political, or other relationships to influence the judge's judicial conduct or judgment. A judge shall not lend the prestige of judicial office to advance the private interests of the judge or others; nor shall a judge convey or permit others to convey the impression that they are in a special position to influence the judge. A judge shall not testify voluntarily as a character witness.

#### COMMENT

Maintaining the prestige of judicial office is essential to a system of government in which the judiciary functions independently of the executive and legislative branches. Respect for the judicial office facilitates the orderly conduct of legitimate judicial functions. Judges should distinguish between proper and improper use of the prestige of office in all of their activities. For example, it would be improper for a judge to allude to his or her judgeship to gain a personal advantage such as deferential treatment when stopped by a police officer for a traffic offense. Similarly, judicial letterhead must not be used for conducting a judge's personal business.

A judge must avoid lending the prestige of judicial office for the advancement of the private interests of others. For example, a judge must not use the judge's judicial position to gain advantage in a civil suit involving a member of the judge's family. In contracts for publication of a judge's writings, a judge should retain control over the advertising as to that article to avoid exploitation of the judge's office. As to the acceptance of awards, see section 4D(5)(a) and comment.

Although a judge should be sensitive to possible abuse of the prestige of office, a judge may, based on the judge's personal knowledge, serve as a reference or provide a letter of recommendation. However, a judge must not initiate the communication of information to a sentencing judge or a probation or corrections officer but may provide to such persons information for the record in response to a formal request or to correct errors in the report whether requested to do so or not.

Judges may participate in the process of judicial selection by cooperating with appointing authorities and screening committees seeking names for consideration, and by responding to official inquiries concerning a person being considered for a judgeship. See, also, Canon 5 regarding use of a judge's name in political activities.

A judge must not testify voluntarily as a character witness because to do so may lend the prestige of the judicial office in support of the party for whom the judge testified. Moreover, when a judge testifies as a witness, a lawyer who regularly appears before the judge may be placed in the awkward position of cross-examining the judge. A judge may, however, testify when properly subpoenaed. Except in unusual circumstances where the demands of justice require, a judge should discourage a party from requiring the judge to testify as a character witness.

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

#### COMMENT

Membership of a judge in an organization that practices invidious discrimination gives rise to perceptions that the judge's impartiality is impaired. Section 2C refers to the current practices of the organization. Whether an organization practices invidious discrimination is often a complex question to which judges should be sensitive. The answer cannot be determined from a mere examination of an organization's current membership rolls, but, rather, depends on how the organization selects members and other relevant factors, such as that the organization is dedicated to the preservation of religious, ethnic, or cultural values of legitimate common interest to its members, or that it is in fact and effect an intimate, purely private organization whose membership limitations could not be constitutionally prohibited. Absent such factors, an organization is generally said to discriminate invidiously if it arbitrarily excludes from membership on the basis of race, religion, sex, or national origin persons who would otherwise be admitted to membership. See *New York State Club Assn. Inc. v. New York City*, 487 U.S. 1, 108 S. Ct. 2225, 101 L. Ed. 2d 1 (1988); *Board of Directors of Rotary International v. Rotary Club of Duarte*, 481 U.S. 537, 107 S. Ct. 1940, 95 L. Ed. 2d 474 (1987); *Roberts v. United States Jaycees*, 468 U.S. 609, 104 S. Ct. 3244, 82 L. Ed. 2d 462 (1984).

Although section 2C relates only to membership in organizations that invidiously discriminate on the basis of race, sex, religion, or national origin, a judge's membership in an organization that engages in any discriminatory membership practices prohibited by the law of the

jurisdiction also violates Canon 2 and section 2A and gives the appearance of impropriety. In addition, it would be a violation of Canon 2 and section 2A for a judge to arrange a meeting at a club that the judge knows practices invidious discrimination on the basis of race, sex, religion, or national origin in its membership or other policies, or for the judge regularly to use such a club. Moreover, public manifestation by a judge of the judge's knowing approval of invidious discrimination on any basis gives the appearance of impropriety under Canon 2 and diminishes public confidence in the integrity and impartiality of the judiciary, in violation of section 2A.

When a person who is a judge on the date this Code becomes effective learns that an organization to which the judge belongs engages in invidious discrimination that would preclude membership under section 2C or under Canon 2 and section 2A, the judge is permitted, in lieu of resigning, to make immediate efforts to have the organization discontinue its invidiously discriminatory practices, but is required to suspend participation in any other activities of the organization. If the organization fails to discontinue its invidiously discriminatory practices as promptly as possible (and in all events, within 1 year after the judge first learns of the practices), the judge is required to resign immediately from the organization.

A person who is not a judge on the date this Code becomes effective and who thereafter becomes a candidate for judicial office is considered to be on notice of the requirements of this Code upon becoming a candidate for judicial office. Such a person would be required, before becoming a judge, to resign from any organizations that practice invidious discrimination.

### **§ 5-203. Canon 3. A judge shall perform the duties of judicial office impartially and diligently.**

(A) **Judicial Duties in General.** The judicial duties of a judge take precedence over all the judge's other activities. The judge's judicial duties include all the duties of the judge's office prescribed by law\*. In the performance of these duties, the following standards apply:

(B) **Adjudicative Responsibilities.**

(1) A judge shall hear and decide matters assigned to the judge except those in which disqualification is required.

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

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

(4) A judge shall be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, and others with whom the judge deals in an official capacity, and shall require similar conduct of lawyers and of staff, court officials, and others subject to the judge's direction and control.

**COMMENT**

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

(5) A judge shall perform judicial duties without bias or prejudice. A judge shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice, including but not limited to bias or prejudice based upon race, sex, 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.

**COMMENT**

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

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

(6) A judge shall require\* lawyers in proceedings before the judge to refrain from manifesting, by words or conduct, bias or prejudice against parties, witnesses, counsel, or others based upon race, sex, religion, national origin, disability, age, sexual orientation, or socioeconomic status. This section 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.

(7) A judge shall accord to every person who has a legal interest in a proceeding, or that person's lawyer, the right to be heard according to law\*. A judge shall not initiate, permit, or consider ex parte communications or consider other communications made to the judge outside the presence of the parties concerning a pending or impending proceeding except that:

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

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

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

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

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

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

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

#### COMMENT

The proscription against communications concerning a proceeding includes communications from lawyers, law teachers, and other persons who are not participants in the proceeding, except to the limited extent permitted.

To the extent reasonably possible, all parties or their lawyers shall be included in communications with a judge.

Whenever presence of a party or notice to a party is required by section 3B(7), it is the party's lawyer, or, if the party is unrepresented, the party, who is to be present or to whom notice is to be given.

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

Certain ex parte communication is approved by section 3B(7) to facilitate scheduling and other administrative purposes and to accommodate emergencies. In general, however, a judge must discourage ex parte communication and allow it only if all the criteria stated in section 3B(7) are clearly met. A judge must disclose to all parties all ex parte communications described in sections 3B(7)(a) and 3B(7)(b) regarding a proceeding pending or impending before the judge.

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

A judge may request a party to submit proposed findings of fact and conclusions of law so long as the other parties are apprised of the request and are given an opportunity to respond to the proposed findings and conclusions.

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

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

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

COMMENT

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

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

NOTE: THE NEBRASKA SUPREME COURT HAS ADOPTED CASE PROCESSING GUIDELINES AND HAS ADOPTED A RULE CONCERNING THE REPORTING OF CASES UNDER SUBMISSION.

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

COMMENT

The requirement that judges abstain from public comment regarding a pending or impending proceeding continues during any appellate process and until final disposition. This section does not prohibit a judge from commenting on proceedings in which the judge is a litigant in a personal capacity, but in cases such as a writ of mandamus where the judge is a litigant in an official capacity, the judge must not comment publicly. The conduct of lawyers relating to trial publicity is governed by § 3-503.6 of the Nebraska Rules of Professional Conduct and other law\*.

Amended July 13, 2005, effective September 1, 2005.

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

COMMENT

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

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

(C) Administrative Responsibilities.

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

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

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

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

COMMENT

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

(D) Disciplinary Responsibilities.

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

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

Amended July 13, 2005, effective September 1, 2005.

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

(4) Members of the Nebraska Judicial Ethics Committee are excepted from section 3(D)(1) concerning information obtained from judges seeking an advisory opinion.

COMMENT

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

(E) Disqualification.

(1) A judge shall not participate in any proceeding in which the judge's impartiality reasonably might be questioned, including but not limited to instances where:

COMMENT

Under this rule, a judge is disqualified whenever the judge's impartiality reasonably might be questioned, regardless whether any of the specific rules in section 3E(1) apply. For example, if a judge were in the process of negotiating for employment with a law firm, the judge would be disqualified from any matters in which that law firm appeared, unless the disqualification was waived by the parties after disclosure by the judge.

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

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

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

#### COMMENT

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

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

(d) The judge or the judge's spouse, or a person within the fourth 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 a more than de minimis\* interest that could be affected substantially by the proceeding;

(iv) is to the judge's knowledge\* likely to be a material witness in the proceeding.

(e) Any other instance where law\* requires disqualification.

#### COMMENT

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

(2) A judge shall keep informed about the judge's personal and fiduciary\* economic interests,\* and should make a reasonable effort to keep informed about the personal economic interests of the judge's spouse and minor children residing in the judge's household.

(3) A judge shall disclose on the record information that the judge believes the parties or their lawyers reasonably might consider relevant to the question of the judge's disqualification, even if the judge believes there is no real basis for disqualification.

(F) Remittal of Disqualification.

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

COMMENT

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

**§ 5-204. Canon 4. A judge shall so conduct all extrajudicial activities as to minimize the risk of conflict with judicial obligations.**

(A) Extrajudicial Activities in General.

A judge shall conduct all of the judge's extrajudicial activities so that they do not:

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

COMMENT

Complete separation of a judge from extrajudicial activities is neither possible nor wise. Judges should not become isolated from their community.

Expressions of bias or prejudice by a judge, even outside the judge's judicial activities, may cast reasonable doubt on the judge's capacity to act impartially as a judge. Expressions which may do so include jokes or other remarks demeaning individuals on the basis of their race, sex, religion, national origin, disability, age, sexual orientation, or socioeconomic status. See section 2C and accompanying comments.

(B) Avocational Activities.

A judge may speak, write, lecture, teach, and participate in other extrajudicial activities concerning the law,\* the legal system, the administration of justice, and nonlegal subjects, subject to the requirements of this Code.

COMMENT

As a judicial officer and person specially learned in the law, a judge is in a unique position to contribute to the improvement of the law, the legal system, and the administration of justice, including revision of substantive and procedural law and improvement of criminal and juvenile justice. To the extent that time permits, a judge is encouraged to do so, either independently or through a bar association, judicial conference, or other organization dedicated to the improvement of the law. Judges may participate in efforts to promote the fair administration of justice, the independence of the judiciary, and the integrity of the legal profession and may express opposition to the persecution of lawyers and judges in other countries because of their professional activities.

In this and other sections of Canon 4, the phrase "subject to the requirements of this Code" is used, notably in connection with a judge's governmental, civic, or charitable activities. This phrase is included to remind judges that the use of permissive language in various sections of the Code does not relieve a judge from the other requirements of the Code that apply to the specific conduct.

(C) Governmental, Civic, or Charitable Activities.

(1) A judge shall not appear at a public hearing before, or otherwise consult with, an executive or legislative body or official except on matters concerning the law,\* the legal system, or the administration of justice or except when acting pro se in a matter involving the judge or the judge's interests.

COMMENT

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

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

COMMENT

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

Section 4C(2) does not govern a judge's service in a nongovernmental position. See section 4C(3) permitting service by a judge with organizations devoted to the improvement of the law, the legal system, or the administration of justice and with educational, religious, charitable, fraternal, or civic organizations not conducted for profit. For example, service on the board of a public educational institution, unless it were a law school, would be prohibited under section 4C(2), but service on a public law school or any private educational institution would generally be permitted under section 4C(3).

(3) A judge may serve as an officer, director, trustee, or nonlegal advisor of an organization or governmental agency devoted to the improvement of the law,\* the legal system, or the administration of justice or of an educational, religious, charitable, fraternal, or civic organization not conducted for profit, subject to the following limitations and the other requirements of this Code.

COMMENT

This section does not allow judges to be members of or to hold office in political organizations. See Terminology, "political organization." Canon 5 governs judges' political activities.

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

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

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

(a) A judge shall not serve as an officer, director, trustee, or nonlegal advisor if it is likely that the organization will be engaged frequently in adversary proceedings in the court of which the judge is a member or in any court subject to the appellate jurisdiction of the court of which the judge is a member.

COMMENT

The changing nature of some organizations and of their relationship to the law makes it necessary for a judge regularly to reexamine the activities of each organization with which the judge is affiliated to determine if it is proper for the judge to continue the affiliation. For example, in many jurisdictions charitable hospitals are now more frequently in court than in the past. Similarly, the boards of some legal aid organizations now make policy decisions that may have political significance or imply commitment to causes that may come before the courts for adjudication.

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

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

(ii) may make recommendations to public and private fund-granting organizations on projects and programs concerning the law,\* the legal system, or the administration of justice;

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

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

#### COMMENT

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

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

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

#### (D) Financial Activities.

(1) A judge shall not engage in financial and business dealings that

(a) reasonably may be perceived to exploit the judge's judicial position, or

(b) involve the judge in frequent transactions or continuing business relationships with those lawyers or other persons likely to come before the court on which the judge serves.

#### COMMENT

The time for compliance provision in this Code (application section C) postpones the time for compliance with certain provisions of this section in some cases.

When a judge acquires in a judicial capacity information, such as material contained in filings with the court, that is not yet generally known, the judge must not use the information for private gain. See section 2B; see, also, section 3B(11).

A judge must avoid financial and business dealings that involve the judge in frequent transactions or continuing business relationships with persons likely to come either before the judge personally or before other judges of the judge's court. In addition, a judge should discourage members of the judge's family from engaging in dealings that would reasonably appear to exploit the judge's judicial position. This rule is

necessary to avoid creating an appearance of exploitation of office or favoritism and to minimize the potential for disqualification. With respect to affiliation of relatives of a judge with law firms appearing before the judge, see comments to section 3E(1) relating to disqualification.

Participation by a judge in financial and business dealings is subject to the general prohibitions in section 4A against activities that tend to reflect adversely on impartiality, demean the judicial office, or interfere with the proper performance of judicial duties. Such participation is also subject to the general prohibition in Canon 2 against activities involving impropriety or the appearance of impropriety and the prohibition in section 2B against the misuse of the prestige of judicial office. In addition, a judge must maintain high standards of conduct in all of the judge's activities, as set forth in Canon 1. See comments for section 4B regarding use of the phrase "subject to the requirements of this Code."

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

COMMENT

This section provides that, subject to the requirements of this Code, a judge may hold and manage investments owned solely by the judge, investments owned solely by a member or members of the judge's family, and investments owned jointly by the judge and members of the judge's family.

(3) A judge shall not serve as an officer, director, manager, general partner, advisor, or employee of any business entity except that a judge may, subject to the requirements of this Code, manage and participate in:

(a) a business closely held by the judge or members of the judge's family, or

(b) a business entity primarily engaged in investments of the financial resources of the judge or members of the judge's family.

COMMENT

Subject to the requirements of this Code, a judge may participate in a business that is closely held either by the judge alone, by members of the judge's family, or by the judge and members of the judge's family.

Although participation by a judge in a closely held family business might otherwise be permitted by section 4D(3), a judge may be prohibited from participation by other provisions of this Code, when, for example, the business entity frequently appears before the judge's court or the participation requires significant time away from judicial duties. Similarly, a judge must avoid participating in a closely held family business if the judge's participation would involve misuse of the prestige of judicial office.

(4) A judge shall manage the judge's investments and other financial interests to minimize the number of cases in which the judge is disqualified. As soon as the judge can do so without serious financial detriment, the judge shall dispose of investments and other financial interests that might require frequent disqualification.

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

COMMENT

Contributions to a judge's retention campaign, if permitted, are governed by Canon 5, not by section 4D(5).

Because a gift, bequest, favor, or loan to a member of the judge's family residing in the judge's household might be viewed as intended to influence the judge, a judge must inform those family members of the relevant ethical constraints upon the judge in this regard and discourage those family members from violating them. A judge cannot, however, reasonably be expected to know or control all of the financial or business activities of all family members residing in the judge's household.

(a) A gift incident to a public testimonial, books, tapes and other resource materials supplied by publishers on a complimentary basis for official use, or an invitation to the judge and the judge's spouse or guest to attend a bar-related function or an activity devoted to the improvement of the law,\* the legal system, or the administration of justice;

COMMENT

Acceptance of an invitation to a law-related function is governed by section 4D(5)(a); acceptance of an invitation paid for by an individual lawyer or group of lawyers is governed by section 4D(5)(h).

A judge may accept a public testimonial or a gift incident thereto only if the donor organization is not an organization whose members comprise or frequently represent the same side in litigation, and the testimonial and gift are otherwise in compliance with other provisions of this Code. See sections 4A(1) and 2B.

(b) A gift, award, or benefit incident to the business, profession, or other separate activity of a spouse or other family member of a judge residing in the judge's household, including gifts, awards, and benefits for the use of both the spouse or other family member and the judge (as spouse or family member), provided the gift, award, or benefit reasonably could not be perceived as intended to influence the judge in the performance of judicial duties;

(c) Ordinary social hospitality;

(d) A gift from a relative or friend, for a special occasion such as a wedding, anniversary, or birthday, if the gift is fairly commensurate with the occasion and the relationship;

COMMENT

A gift to a judge, or to a member of the judge's family living in the judge's household, that is excessive in value raises questions about the judge's impartiality and the integrity of the judicial office and might require disqualification of the judge where disqualification would not otherwise be required. See, however, section 4D(e).

(e) A gift, bequest, favor, or loan from a relative or close personal friend whose appearance or interest in a case would in any event require disqualification under section 3E;

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

(g) A scholarship or fellowship awarded on the same terms and based on the same criteria applied to other applicants; or

(h) Any other gift, bequest, favor, or loan, only if: the donor is not a party or other person who has come or is likely to come or whose interests have come or are likely to come before the judge; and, if the value of the gift, bequest, or favor exceeds \$100.00, or if the value of the loan exceeds \$1,000.00, the judge reports it in the same manner as the judge reports compensation as required in section 4J. All loans that create actual conflicts of interest shall be reported in the same manner as compensation under section 4J.

COMMENT

Section 4D(5)(h) prohibits judges from accepting gifts, favors, bequests, or loans from lawyers or their firms if they have come or are likely to come before the judge. It also prohibits gifts, favors, bequests, or loans from clients of lawyers or their firms when the clients' interests have come or are likely to come before the judge.

(E) Fiduciary Activities.

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

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

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

COMMENT

The time for compliance provision of this Code (application section C) postpones the time for compliance with certain provisions of this section in some cases.

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

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

COMMENT

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

(G) Practice of Law. A judge shall not practice law. A judge who acts pro se is not considered to be practicing law.

COMMENT

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

(H) Reimbursement or waiver of charges for travel-related expenses of the judge or the judge's spouse or guest.

(1) Unless otherwise prohibited by law,\* a judge may accept reimbursement of, or a waiver of, charges from sources other than the judge's employing entity for necessary travel, food, and lodging expenses associated with the judge's participation in extrajudicial activities permitted by this Code, but only if such acceptance does not cast reasonable doubt on the judge's ability to act with independence, integrity, or impartiality.

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

COMMENT

[1] Judges are encouraged to participate in educational programs in law-related and academic disciplines, in furtherance of their duty to remain competent in the law. Attendance at educational activities where the expenses are paid for by persons or entities other than the judge, however, must be evaluated by the judge to determine whether attendance is consistent with the requirements of this Code.

[2] A judge's decision whether to accept the gift of expenses or a waiver of fees in attending an educational activity should be based on an assessment of all of the circumstances, and the judge must undertake a reasonable inquiry to obtain the information necessary to make an informed judgment. The judge should, for example, consider whether the sponsor or the funding source of the educational activity is currently appearing or likely to appear before the judge in a matter, thus possibly requiring disqualification of the judge. See section 3E.

[3] A judge also should not attend educational activities sponsored by organizations with which the judge may not properly be associated, such as organizations that practice invidious discrimination; to do so would violate section 2A if the judge's attendance might be perceived as manifesting approval of the organization's policies.

[4] The factors that a judge should consider when deciding whether to attend a particular educational activity on an expenses-paid basis include:

[a] whether the sponsor is an accredited educational institution or bar association rather than a for-profit entity or trade association;

[b] whether the funding comes largely from numerous contributors rather than from a single entity and is earmarked for programs with specific content;

[c] whether the content is unrelated to the subject matter of litigation before the judge or is related to matters that are, or are likely to come, before the judge;

[d] whether the activity is primarily educational rather than recreational, and whether the costs of the event are reasonable and comparable to those associated with similar events sponsored by the judiciary, bar associations, or similar groups;

[e] whether information concerning the activity and its funding sources are available upon inquiry;

[f][1] whether the sponsor or the source of funding are generally associated with particular parties or interests likely to appear in the judge's court;

[2] whether contributors to seminar funding control the curriculum, faculty, or invitation list.

[g] whether differing viewpoints are presented; and

[h] the number of participants, whether a broad range of judicial and nonjudicial participants are invited, and whether the program is designed specifically for judges.

In addition, the judge should determine whether attendance may create a conflict of interest, may result in disqualification or recusal in matters coming before the judge, may give rise to a judge's independence being questioned, or may interfere with the judge's performance of his or her judicial duties.

[5] In addition to disclosure required by section 4J, a judge must take reasonable steps to ensure that information concerning the judge's participation in educational activities and other events, as well as reasonable information regarding the nature and circumstances of such events, is made available to the public. A judge should therefore promptly and publicly disclose participation in extrajudicial events at which the expenses are paid by persons or entities other than the judge.

#### (I) Compensation for extrajudicial activities.

(1) A judge may accept compensation for extrajudicial activities permitted by this Code, unless such acceptance casts reasonable doubt on the judge's capacity to act with independence, integrity, or impartiality.

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

#### COMMENT

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

#### (J) Reporting of compensation, reimbursement of expenses, and waiver of charges.

A judge shall report the date, place, and nature of any activity for which the judge received compensation, reimbursement of expenses, or waiver of charges; the name of the payor or waiver; and the amount of compensation, reimbursement of expenses, or waiver of charges so received. The judge's report shall be made annually, and shall be filed as a public document in the office of the Clerk of the Supreme Court on forms furnished by that court.

#### COMMENT

By reporting and publicly disclosing their compensation, reimbursement of expenses, or waiver of charges for extrajudicial activities, judges promote transparency and public confidence in the integrity, impartiality, and independence of the judiciary.

(K) Disclosure of a judge's income, debts, investments or other assets is required to the extent provided in this canon, in sections 3E and 3F, by the disclosure form provided pursuant to section 4J, or as otherwise required by law.\*

COMMENT

Under section 3E, a judge is not permitted to participate in any proceeding in which the judge has an economic interest. See "economic interest" as explained in the terminology section. Section 4D requires a judge to refrain from engaging in business and from financial activities that might interfere with the impartial performance of judicial duties. Section 4J requires a judge to report all compensation the judge received for activities outside judicial office. A judge has the rights of any other citizen, including the right to privacy of the judge's financial affairs, except to the extent that limitations established by law are required to safeguard the proper performance of the judge's duties.

Canon 4D(5)(h), 4H, 4I, 4J, and 4K amended September 20, 2006.

**§ 5-205. Canon 5. A judge or judicial candidate shall refrain from inappropriate political activity.**

(A) Standards of Political Conduct in General for All Judges and Candidates.

(1) Except as authorized in sections 5B(2) and 5C(1), a judge or a candidate\* for retention in or appointment to judicial office shall not:

(a) Act as a leader or hold an office or membership in a political organization\*;

(b) Publicly endorse or publicly oppose another candidate for public office;

(c) Make speeches on behalf of a political organization;

(d) Attend political gatherings; or

(e) Solicit funds for, pay an assessment to, or make a contribution to a political organization or candidate, or purchase tickets for political party dinners or other functions.

COMMENT

A judge or candidate for judicial office retains the right to participate in the political process as a voter. Registering to vote with a party designation does not constitute membership in a political organization.

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

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

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

Postelection parties held for the purpose of raising political funds are political gatherings for the purposes of section 5A(1)(d).

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

(3) A candidate for a judicial office:

(a) Shall maintain the dignity appropriate to judicial office and act in a manner consistent with the integrity and independence of the judiciary, and shall encourage members of the candidate's family\* to adhere to the same standards of political conduct in support of the candidate as apply to the candidate;

COMMENT

Although a judicial candidate must encourage members of his or her family to adhere to the same standards of political conduct in support of the candidate that apply to the candidate, family members are free to participate in other political activity.

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

(c) Except to the extent permitted by section 5C(2), shall not authorize or knowingly\* permit any other person to do for the candidate what the candidate is prohibited from doing under the sections of this canon;

(d) Shall not:

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

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

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

COMMENT

Section 5A(3)(d) prohibits a candidate for judicial office from making statements that appear to commit the candidate regarding cases, controversies, or issues likely to come before the court. As a corollary, a candidate should emphasize in any public statement the candidate's duty to uphold the law regardless of the candidate's personal views. See, also, section 3B(9), the general rule on public comment by judges. Section 5A(3)(d) does not prohibit a candidate from making pledges or promises respecting improvements in court administration. Nor does this section prohibit an incumbent judge from making private statements to other judges or court personnel in the performance of judicial duties. This section applies to any statement to commissions charged with judicial selection. See, also, applicable rules of the Nebraska Rules of Professional Conduct.

Amended July 13, 2005, effective September 1, 2005.

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

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

(1) A candidate\* for appointment to judicial office or a judge seeking other governmental office shall not solicit or accept funds, personally or through a committee or otherwise, to support his or her candidacy.

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

(a) Such persons may:

(i) except as prohibited by law, communicate with the appointing authority, including any nominating commission;

(ii) seek support or endorsement for the appointment from organizations that regularly make recommendations for appointment to the office, and from individuals to the extent requested or required by those specified in section 5B(2)(a), and to the extent not prohibited by law;

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

(b) A nonjudge candidate for appointment to judicial office may, in addition, unless otherwise prohibited by law:

(i) retain an office and membership in a political organization,\*

(ii) attend political gatherings, and

(iii) continue to pay ordinary assessments and ordinary contributions to a political organization or candidate and purchase tickets for political party dinners or other functions.

COMMENT

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

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

(C) Judges Subject to Retention Election.

(1) A judge or a candidate\* subject to retention election may, except as prohibited by law,\* when the judge's candidacy has drawn active opposition:

(a) purchase tickets for and attend political gatherings;

(b) contribute to a political organization\*;

(c) speak to gatherings on his or her own behalf;

(d) appear in newspaper, television, and other media advertisements supporting his or her candidacy; and

(e) distribute pamphlets and other promotional campaign literature supporting his or her candidacy.

COMMENT

Section 5C(1) permits judges subject to retention election with active opposition to be involved in limited political activity. Section 5D, applicable solely to incumbent judges, would otherwise bar this activity.

(2) A judicial candidate for retention election whose candidacy has drawn active opposition shall not personally solicit or accept campaign contributions or personally solicit publicly stated support. A judicial candidate for retention election whose candidacy has drawn active opposition may, however, establish committees of responsible persons to conduct campaigns for the candidate through media advertisements, brochures, mailings, candidate forums, and other means not prohibited by law. Such committees may solicit and accept reasonable campaign contributions, manage the expenditure of funds for the candidate's campaign, and obtain public statements of support for his or her candidacy. Such committees are not prohibited from

soliciting and accepting reasonable campaign contributions and public support from lawyers. A candidate's committees may solicit contributions and public support for the candidate's campaign no earlier than six months before an election and no later than 30 days after the last election in which the candidate participates during the election year. A candidate shall not use or permit the use of campaign contributions for the private benefit of the candidate or others.

COMMENT

Section 5C(2) permits a candidate, other than a candidate for appointment, to establish campaign committees to solicit and accept public support and reasonable financial contributions. At the start of the campaign, the candidate must instruct his or her campaign committees to solicit or accept only contributions that are reasonable under the circumstances. Though not prohibited, 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.

Campaign committees established under section 5C(2) should manage campaign finances responsibly, avoiding deficits that might necessitate postelection fundraising, to the extent possible.

Unless the candidate is required by law to file a list of campaign contributors, the contributors' names should not be revealed to the candidate.

(D) Permissible Political Activity for Incumbent Judges.

A judge shall not engage in any political activity except

- (1) as authorized under any other section of this Code;
- (2) on behalf of measures to improve the law,\* the legal system, or the administration of justice; or
- (3) as expressly authorized by law.

COMMENT

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

(E) Applicability.

Canon 5 generally applies to all incumbent judges and judicial candidates.\* A successful candidate, whether or not an incumbent, is subject to judicial discipline for the candidate's campaign conduct. An unsuccessful candidate who is a lawyer is subject to lawyer discipline for the candidate's campaign conduct. A lawyer who is a candidate for judicial office is subject to the Nebraska Rules of Professional Conduct §§ 3-501.0 to 3-508.5.

**Application of the Nebraska Code of Judicial Conduct**

All judges appointed pursuant to Neb. Const. art. V, § 21, acting judges of the Workers' Compensation Court, clerk magistrates, child support referees, and referees in civil and disciplinary cases shall comply with this Code except as provided below. In addition, candidates for appointment to judicial office shall comply with sections 5A, 5B, and 5C.

(A) Part-Time Judges.\*

- (1) Is not required to comply with sections 4C(2), 4D(3), 4D(4), 4E, 4F, 4G, 4J, or 4K; and,

(2) Shall not practice law in the court on which the part-time judge serves or in any court subject to the appellate jurisdiction of the court on which the part-time judge serves, or act as a lawyer in a proceeding in which the part-time judge has served or in any related proceedings.

(3) Part-time child support referees shall not practice law in the court upon which they serve, but may practice law in any other court in matters not related to any proceedings in which they have served as child support referees.

(4) Referees, appointed pursuant to Neb. Rev. Stat. § 25-1129 et seq. or for disciplinary proceedings, while acting as such, are not required to comply with sections 4C(2), 4D(3), 4D(4), 4E, 4F, 4G, 4J, or 4K. Persons who have served as such a referee shall not act as lawyers in any proceeding in which they have served as referees or in any related proceedings.

(B) Retired Judges.

(1) A retired judge who does not file with the Nebraska Supreme Court a statement of consent to be recalled for temporary judicial service or who is ineligible for judicial service need not comply with this Code, except as specifically provided.

A retired judge who consents to be recalled for temporary judicial service shall comply with this Code. However, such judge is not required to comply with sections 4C(2), 4E, 4F, 4H, 4J, or 4K. A retired judge who is subject to recall shall not practice law and shall refrain from accepting assignment in any case in which the retired judge's financial or business dealings, investments, or other extrajudicial activities might be directly or indirectly affected.

(2) A retired judge shall not act as a lawyer in any proceeding in which the retired judge has served as a judge or in any other proceeding related thereto.

(3) A retired judge is a person who has terminated full-time judicial service upon reaching retirement age or has been retired for disability.

(C) Time for Compliance.

A person to whom this Code becomes applicable shall comply immediately with all provisions of this Code except sections 4D(2), 4D(3), and 4E and shall comply with these sections as soon as reasonably possible and shall do so in any event within the period of 1 year after assuming office.

This section amended June 21, 1995; section A(1), A(4) and B(1) amended September 20, 2006.

## **Appendix A. Judicial Ethics Committee.**

(A) The Nebraska Supreme Court shall appoint a Judicial Ethics Committee consisting of seven members. Two members shall be appointed from each of the county and district courts and one from the Court of Appeals. The remaining members shall be judges appointed from any affected courts, but not from the Nebraska Supreme Court. The Supreme Court shall designate one of the members as chair and one member as vice chair who may serve in the event of disqualification or unavailability of the chair. When the committee is first appointed, all members shall commence their service forthwith and serve until December 31, 1992, and thereafter one of such members shall be designated to serve for a term of 1 year expiring December 31, 1993, and in like manner, one for a term of 2 years, one for a term of 3 years, one for a term of 4 years, one for a term of 5 years, one for a term of 6 years, and one for a term of 7 years, and thereafter all regular terms shall be 7 years. No member of the committee shall serve consecutive 7-year terms, but may, however, be reappointed to membership on the committee after a lapse of 1 year.

Section A revised October 1992.

(B) The Judicial Ethics Committee so established shall have authority to:

(1) By the concurrence of a majority of its members, express its opinion on proper judicial conduct with respect to the provisions of this Code, either on its own initiative, at the request of a judge or candidate for judicial office, at the request of the Director of Nebraska Judicial Branch Education or the Nebraska Judicial Branch Education Advisory Committee, or at the request of a court or the Nebraska Commission on Judicial Qualifications, provided that an opinion may not be issued on a matter that is pending before a court or before the commission except on request of the court or commission;

(2) Make recommendations to the Nebraska Supreme Court for amendment of this Code; and

(3) Adopt rules relating to the procedures to be used in expressing opinions, including rules to assure a timely response to inquiries.

Section B(1) amended September 20, 2006.

(C) A judge or candidate for judicial office as defined in the terminology section of this Code who has requested and relied upon an opinion may offer the opinion in a disciplinary proceeding based on conduct conforming to that opinion.

(D) An opinion issued pursuant to this rule shall be filed with the State Court Administrator. Such an opinion is confidential and not public information unless the Nebraska Supreme Court otherwise directs. However, the State Court Administrator shall cause an edited version of each opinion to be prepared, in which the identity and geographic location of the person who has requested the opinion, the specific court involved, and the identity of other individuals, organizations, or groups mentioned in the opinion are not disclosed. Opinions so edited shall be published periodically in the manner the Supreme Court deems proper.

**Appendix B. Case Progression Standards.**

Trial or hearing on the merits of a case should be within the following time limits from date of filing:

(A) District court.

Appeals	.....	3 months
Criminal Cases	.....	6 months
Domestic Relations Cases	.....	9 months
Civil Cases--Nonjury	.....	1 year
Civil Cases--Jury	.....	18 months

(B) County court.

Misdemeanor and Traffic Offenses—Nonjury	.....	60 days
Misdemeanor and Traffic Offenses—Jury	.....	6 months
Civil Cases	.....	6 months
Preliminary Hearings	.....	As soon as possible but no more than 30 days

Final disposition of probate cases should be within 1 year from filing except when a federal estate tax return is required, and, in that event, 18 months.

A longer interval may be approved where deemed necessary because of extraordinary eventualities, such as exceptionally complicated discovery, stabilization of injury in personal injury cases, or settlement of financial affairs in complex cases.

(C) Juvenile court.

(1) Notwithstanding any federal or state law providing for a longer period, the juvenile shall not be held in detention for more than 48 hours without a probable cause hearing being conducted by the appropriate judicial authority.

(2) Adjudication hearings in dependent/neglect cases under Neb. Rev. Stat. § 43-247(3)(a) should be held within 90 days of filing of the petition, except in cases with exceptional complications, in which cases adjudication should be held in 180 days. Adjudication hearings in law violation cases should be held within 180 days of filing of the petition.

(3) A disposition hearing should be held within 60 days from the date of the adjudication hearing, unless good cause is shown.

(4) Review hearings for children in out-of-home placements should be held, on the record, every 6 months.

Amended October 29, 1997.

(D) Case progression reports; matters under advisement.

On the last day of the month, each judge shall file a report form with the State Court Administrator which sets forth:

(1) Whether any matter has been under advisement for more than 90 days.

(2) If so, the title and number of the case, the nature of the matter for decision, the date it was taken under advisement, and the reason it has not been decided.

A matter is taken under advisement on the date all evidence has been received, or if there is no evidence, the date the legal issue has been heard by the judge. Time for filing briefs is not considered.

# Report of Cases Under Advisement

TO: Nebraska Supreme Court  
Administrative Office of Courts/Probation

FROM: \_\_\_\_\_

County Judge

Juvenile Judge

MONTH  
ENDING: \_\_\_\_\_

\_\_\_\_\_ I have no matters which have been under advisement for more than 90 days.

\_\_\_\_\_ I have \_\_\_\_\_ matter(s) which has/have been under advisement for more than 90 days (do not include cases in which a presentence investigation has been requested but has not been received by the court; do not include cases in which a bench warrant has been issued). Provide case description below. (To report more than one case, attach additional form(s).)

Case Title: \_\_\_\_\_

Case Number: \_\_\_\_\_

Location of Hearing: \_\_\_\_\_

Date Taken Under Advisement: \_\_\_\_\_

Describe the nature of the matter for decision and the reason it has not been decided:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(Use the reverse side of this form or an additional page if needed.)

Dated this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

Signature

**Please submit reports no later than the 5th of each month to:  
Administrative Office of Courts/Probation, P.O. Box 98910, Lincoln, NE 68509-8910**

# Report of Cases Under Advisement

TO: Nebraska Supreme Court  
Administrative Office of Courts/Probation

FROM: \_\_\_\_\_  
District Judge

MONTH \_\_\_\_\_  
ENDING: \_\_\_\_\_

\_\_\_\_\_ I have no matters which have been under advisement for more than 90 days.

\_\_\_\_\_ I have \_\_\_\_\_ matter(s) which has/have been under advisement for more than 90 days (do not include cases in which a presentence investigation has been requested but has not been received by the court; do not include cases in which a bench warrant has been issued). Provide case description below. (To report more than one case, attach additional form.)

\_\_\_\_\_ I have \_\_\_\_\_ appeal(s) from the county court under advisement (do not include appeals in which the transcript and/or bill of exceptions have not been filed). Provide case description below. (To report more than one case, attach additional form(s).)

Case Title: \_\_\_\_\_

Case Number: \_\_\_\_\_

Location of Hearing: \_\_\_\_\_

Date Taken Under Advisement: \_\_\_\_\_, or

Date Appeal Filed: \_\_\_\_\_

Describe the nature of the matter for decision and the reason it has not been decided:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(Use the reverse side of this form or an additional page if needed.)

Dated this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_. \_\_\_\_\_  
Signature

**Please submit reports no later than the 5th of each month to:  
Administrative Office of Courts/Probation, P.O. Box 98910, Lincoln, NE 68509-8910**

# Report of Cases Under Advisement

TO: Nebraska Supreme Court  
Administrative Office of Courts/Probation

FROM: \_\_\_\_\_  
Workers' Compensation Judge

MONTH  
ENDING: \_\_\_\_\_

\_\_\_\_\_ I have no matters which have been under advisement for more than 90 days.

\_\_\_\_\_ I have \_\_\_\_\_ matter(s) which has/have been under advisement for more than 90 days.  
Provide case description below. (To report more than one case, attach additional form.)

Case Title: \_\_\_\_\_

Case Number: \_\_\_\_\_

Location of Hearing: \_\_\_\_\_

Date Taken Under Advisement: \_\_\_\_\_,

Describe the nature of the matter for decision and the reason it has not been decided:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(Use the reverse side of this form or an additional page if needed.)

Dated this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_. \_\_\_\_\_

Signature

**Please submit reports no later than the 5th of each month to:  
Administrative Office of Courts/Probation, P.O. Box 98910, Lincoln, NE 68509-8910**

## **Appendix C. Judicial financial interest statement.**

### **(A) General information.**

The Code of Judicial Conduct as adopted by the Nebraska Supreme Court provides in part that:

A judge shall regularly file reports of compensation received for any extrajudicial activity for which the judge received compensation. A judge shall also regularly file reports of personal holdings and of gifts, bequests, favors, and loans received of such a nature that the judge's impartiality might reasonably be challenged.

All Nebraska judges are required to file this statement in the office of the Clerk of the Supreme Court at the address on the front of this form. The report must be filed no later than May 1 of each year. Except as otherwise provided by the rules of the Supreme Court or this form, all questions regarding filing shall be governed by the canons of the Nebraska Code of Judicial Conduct as adopted by the Supreme Court.

This statement must include all financial interests held at any time during the calendar year, and may not be limited to interests held at the end of the year.

### **(B) Definitions.**

#### **COMPENSATION**

Any money or thing of value received, or to be received as a claim on future services, whether in the form of a fee, salary, expense, allowance, forbearance, forgiveness, interest, dividend, royalty, rent, capital gain, or any other form of recompense then constituting income under the Internal Revenue Code. The income must, however, be for services and does not include income, interest, or dividends received by reason of investment. Expense reimbursement exceeding actual cost is compensation.

#### **GIFT**

A payment, subscription, advance, forbearance, rendering or deposit of money, services, or anything of value, unless consideration of equal or greater value is given therefor. Gift shall not include a commercially reasonable loan made in the ordinary course of business, or a gift received from a member of the judge's immediate family or a relative or close personal friend whose appearance or interest in a case would in any event require disqualification.

#### **MEMBER OF THE JUDGE'S FAMILY RESIDING IN THE JUDGE'S HOUSEHOLD**

Any relative of a judge by blood or marriage, or a person treated by a judge as a member of the judge's family, who resides in the judge's household.



**JUDICIAL FINANCIAL INTEREST STATEMENT**

**ITEM 3 - Real Property of the Filer in Nebraska:**

List all the real property in your name or in which you have a direct ownership interest. Real estate valued at less than \$1,000 and your personal residence need not be reported. The description used must be sufficient to identify the location of the property. You do not need to use the legal description, although that may be used.

Location of Property	Nature of Property (i.e., agricultural, commercial, residential-rental)

**ITEM 4 - Sources of Bequests, Gifts, or Favors of a Value Greater Than \$100 Received and the Circumstances of Each Gift Except Gifts from Relatives:**

Name of Donor	Address of Donor	Occupation or Nature of Business of Donor

Circumstances of each bequest, gift, or favor or the occasion for which the gift or favor was given:

--

**JUDICIAL FINANCIAL INTEREST STATEMENT**

**ITEM 5 - Other Financial Interests and Property Held During the Period of the Statement:**

You need report only items which have a fair market value of \$1,000 or more.

A. List the names and addresses of the institutions in which you had checking and savings accounts and certificates of deposit.

Financial Institution	Address

B. List the name of the issuers of all stocks, bonds, and government securities that you own.

C. Describe other property owned or held for the production of income not otherwise disclosed in this statement. Include leaseholds and other interests in real estate, promissory notes and other obligations owned to you, beneficial interests in trusts and estates, cash value life insurance, IRAs, deferred income and retirement plans. Do not include household goods, personal automobiles, and other intangible personal property unless such property was held primarily for sale or exchange.

**JUDICIAL FINANCIAL INTEREST STATEMENT**

**ITEM 6**

**A. Creditors to Whom \$1,000 or Greater Was Owed or Guaranteed by You or a Member of Your Family Residing in Your Household:**

Accounts payable, debts arising out of retail installment transactions or from loans made by financial institutions in the ordinary course of business. Loans from a relative and land contracts that have been recorded with the county clerk or register of deeds need not be reported.

Name	Address

**B. Creditors Whose Loans of Any Amount Create Actual Conflicts of Interest.**

Describe the circumstances of each such loan and its amount.

Name and Address	Circumstances and Amount

**ITEM 7 - County or Other Non-state Funding Sources Providing Education, Travel, or Other Benefits to You or on Your Behalf:**

Name of Funding Source	Type or Purpose of Funding

**ITEM 8 - Signature of Judge and Date**

Date \_\_\_\_\_ Name \_\_\_\_\_

Please attach a sheet of paper if you need more space for any item.