



TEXAS JUDICIAL ETHICS OPINIONS

1975 to Present

Editor's Note: The General Counsel of the Office of Court Administration has used footnotes designated by asterisks to refer to current code provisions. Other footnotes are those of the Committee. The Subject Index is composed by the General Counsel of OCA and is not an official index.

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NEPOTISM
Opinion No. 1 (1975)

QUESTION: Would the appointment to represent indigent defendants by a district judge of his grandnephew, related to the judge in the fourth degree of consanguinity, constitute nepotism in violation of Canon 3, Section B(4)* of the Code of Judicial Conduct?

ANSWER: It is the opinion of the Committee that the appointment of a grandnephew, related to the district judge in the fourth degree of consanguinity, would not be nepotism in violation of Canon 3, Section B(4) of the Code of Judicial Conduct. [NOTE: The Texas Atty. Gen. has ruled that "a district judge may not appoint his grandnephew to represent an indigent defendant if the appointed counsel is to be compensated in any manner from public funds." In the opinion (LA No. 11), Atty. Gen. John Hill determined that the grandnephew was related in the third degree of consanguinity and thus the appointment is proscribed by the terms of Article 5996a, V.T.C.S. The Ethics Committee opinion was delivered in the May meeting. The Committee, in its July meeting, voted not to reconsider its opinion.]

* *Now see Canon 3C(4).*

POLITICAL ACTIVITY
Opinion No. 2 (1975)

QUESTION: May a Texas judge privately introduce candidates for judicial office to his friends and recommend that such friends vote for such candidates?

ANSWER: It is the opinion of the Committee on Judicial Ethics that a Texas judge would not violate the Code of Judicial Conduct by privately introducing candidates for judicial office to his friends and recommending that such friends vote for such candidates.

JUDGE AS TRUSTEE
Opinion No. 3 (1975)

QUESTION: Does a district judge violate the Code of Judicial Conduct if he serves as trustee, without pay, of a charitable trust or foundation which qualifies as a charitable trust or foundation under the U.S. Internal Revenue Code?

ANSWER: It is the opinion of the Committee that a Texas district judge may serve as a trustee, without pay, of a charitable trust or charitable foundation under the provisions of Canon 5, Section B* of the Code of Judicial Conduct and would not violate any other provisions of the Code by such service so long as such service does not detract from the dignity of his office or interfere with the performance of his judicial duties.

* *Now see Canon 4C.*

POLITICAL CONTRIBUTIONS

Opinion No. 4 (1975)

QUESTION: Would a Texas judge violate the Code of Judicial Conduct by making a contribution to the Democratic party?

ANSWER: It is the opinion of the Committee on Judicial Ethics that Canon 7A(2)* permits a Texas judge to make a contribution to the Democratic party.

**Now see Canon 5.*

WIFE AS BENEFICIARY OF TRUST

Opinion No. 5 (1975)

QUESTION: If a judge's wife is a beneficiary of a trust, managed by others, containing a portfolio of various stocks, real estate interests and other assets, should the judge report the names of the corporations, businesses, or other financial undertakings, the stocks or interests in which constitute part of the assets of the trust, as corporations, businesses, or other financial undertakings in which he has an interest in order to comply with Canon 6C(c)* of the Code of Judicial Conduct?

ANSWER: The Committee is of the opinion that the judge should determine all of the assets of the trust and list them in compliance with Canon 6C(c)* of the Code of Judicial Conduct.

**Now see Canon 4D.*

ATTORNEY AS TRUSTEE

Opinion No. 6 (1975)

QUESTION: Should a judge recuse in a case in which one of the attorneys is presently serving as trustee, with discretionary powers, of a trust in which the judge's wife is a beneficiary?

ANSWER: It is the opinion of the Committee that the judge should recuse because "his impartiality might reasonably be questioned" in compliance with Canon 3C(1)* of the Code of Judicial Conduct.

**Now see Rules 18a and 18b, Texas Rules of Civil Procedure.*

LAWYER IN FIRM OF TRUSTEE

Opinion No. 7 (1975)*

QUESTION: Should a judge recuse in a case in which one of the lawyers is a member of the same firm as a lawyer who is a trustee, with discretionary powers, of a trust in which the judge's wife is a beneficiary?

ANSWER: It is the opinion of the Committee that the judge is not required to recuse unless he knows that his impartiality is likely to be questioned.

**Now see Rules 18a and 18b, Texas Rules of Civil Procedure.*

RENT HOUSE AS FINANCIAL UNDERTAKING

Opinion No. 8 (1975)

QUESTION: Is a rent house owned by a judge and his wife a "financial undertaking" within the meaning of Canon 6C(c)* of the Code of Judicial Conduct?

ANSWER: It is the opinion of the Committee that a rent house owned by a judge and his wife is a "financial undertaking" within the meaning of Canon 6C(c)* of the Code of Judicial Conduct.

**Now see Canon 4D.*

PART-TIME COUNTY JUDGE

Opinion No. 9 (1975)

QUESTION: Where a court county at law judge is appointed by the commissioners court of his county with the distinct understanding and agreement that, because of the light docket of the county court at law and the fact that all of the judicial business of that court can be accomplished in approximately one-half of the working hours of the judge, the county court at law position is to be considered a part-time position and insofar as the commissioners court is concerned, the county court at law judge would be permitted to continue his law practice so long as it did not interfere with his judicial duties as judge of the county court at law, is such county court at law judge prohibited from practicing law by Canon 5F* of the Code of Judicial Conduct?

ANSWER: The Committee is of the opinion that Canon 5F* of the Code of Judicial Conduct clearly prohibits such county court at law judge from practicing law regardless of any agreement with his commissioners court at the time of his appointment.

**Now see Canon 4G.*

FUND RAISING

Opinion No. 10 (1976)

The National Conference of Metropolitan Judges (composed of trial judges from jurisdictions whose populations exceed 650,000) will hold its annual meeting in Dallas during 1976 and contributions of approximately \$20,000 must be obtained to finance the conference.

QUESTION: Since the National Conference of Metropolitan Judges is a professional organization, are we (the local judges participating therein) limited in any manner in soliciting funds? Are there any guidelines under Canon 5B of the Code of Judicial Conduct?

ANSWER: Canon 4C* permits a judge to "serve as a member, officer, or director" of an organization, such as the National Conference of Metropolitan Courts. It also provides that a judge may "assist such an organization in raising funds...but (he) should not personally participate in public fund-raising activities." However, Canon 5B(2)** manifests the clear prohibition that "A judge should not solicit funds..." as well as the further prohibition that he should not "use or permit the use of the prestige of his office for that purpose...." The intent of the canons, therefore, forbids the solicitation of funds by judges, or the use of the prestige of judicial office for solicitation of funds.

*Now see Canon 4B.

** Now see Canon 4C.

SELLING TICKETS

Opinion No. 11 (1976)

QUESTION: Is the selling of tickets for various fund-raising activities prohibited by Canon 5B(2)* ("A Judge should not solicit funds for any educational, religious, charitable. . .")?

ANSWER: Canon 5B(2),* forbidding the solicitation of funds or the use of the prestige of his office for that purpose, includes "the selling of tickets for various fund-raising activities" and the answer to the question is in the affirmative.

*Now see Canon 4C(2).

RECUSAL BY JUDGE

Opinion No. 12 (1976)

QUESTION: A lawyer who is now a district judge borrowed money from A, executing his promissory note payable over a period of four years; prior to maturity, A was shot and killed by B who was found to be mentally incompetent to stand trial and was committed to a mental hospital; the lawyer, now the district judge, paid A's widow the loan balance but made another loan from her which has since been repaid. B has now been returned to the court for trial. Is the district judge disqualified to preside at any judicial proceedings involving B?

ANSWER: The Code of Judicial Conduct does not contain a specific answer to the question presented. A judge should bear in mind the provisions of Canon 3C(1)* and should recuse himself from any pending matter if he knows or has reason to believe that "his impartiality might reasonably be questioned."

*Now see Rules 18a and 18b, Texas Rules of Civil Procedure.

POLITICAL ACTIVITIES

Opinion No. 13 (1976)

QUESTION: May a district judge introduce a candidate for the state Legislature to his personal friends and recommend that such friends vote for such candidate?

ANSWER: The Committee on Judicial Ethics is of the opinion that the question should be answered in the affirmative. In Opinion Number 2 this Committee held that a Texas judge would not violate the Code of Judicial Conduct by privately introducing candidates for judicial office to his friends and recommending that such friends vote for such candidates. The Committee now reaffirms that opinion and extends its scope so that henceforth it will be applicable to all candidates for public office.

POLITICAL ACTIVITY

Opinion No. 14 (1976)

QUESTION: Whether or not a district judge is in violation of the Code of Judicial Conduct by meeting with and privately discussing political issues and political campaign strategy with a candidate for elective public office other than his own.

ANSWER: It is the opinion of the Committee on Judicial Ethics that the conduct inquired about in the question amounts to "other political activity" contrary to Canon 7A(4). The essence of Canon 7 is to prevent judges from engaging in political activity other than that which is necessary and appropriate for their own election.

**Now see Canon 5*

RETIRED JUDGE

Opinion No. 15 (1976)

QUESTION: Question concerning the applicability of the Code of Judicial Conduct to retired judges who are eligible for recall to judicial service and to retired judges who are not subject to recall.

ANSWER: A retired judge who is eligible for recall to judicial service should refrain from judicial service during the period of an extra-judicial appointment not sanctioned by Canon 5G.* A retired judge who is not subject to recall for judicial service is excused from compliance with Canon 5G.* [NOTE: Canon 5G* provides: Extra-judicial Appointments. A judge should not accept appointment to a governmental committee, commission, or other position that is concerned with issues of fact or policy on matters other than the improvement of the law, the legal system, or the administration of justice.]

**Now see Canon 4H.*

TV AUCTIONEER
Opinion No. 16 (1976)

QUESTION: Would it be unethical for a judge to participate as a "celebrity auctioneer" on a television "telethon auction" to raise funds for a non-profit public educational television station where all he does is describe the article to be sold and asks that bids be telephoned to the TV station personnel?

ANSWER: Such activity upon the part of a judge would be a violation of Canon 5B(2)* of the Code of Judicial Conduct in that it would amount to the solicitation of funds in a manner prohibited by such canon.

**Now see Canon 4C(2).*

SERVICE, BAR GRIEVANCE COMMITTEE
Opinion No. 17 (1976)

QUESTION: May a member of the State Bar Grievance Committee continue to serve in such a capacity after his election and qualification as a judge of a court of record?

ANSWER: Such activity upon the part of a judge of a court of record would be contrary to the proscriptions found in Canon 5G* of the Code of Judicial Conduct. The Committee is of the opinion that the resignation of the lawyer from such Bar Committee before accepting his judicial post would be appropriate.

**Now see Canon 4H.*

POLITICAL ACTIVITY
Opinion No. 18 (1976)

QUESTION: May an incumbent judge in a multi-court county (who is a candidate for reelection or election to a higher court and who is opposed by a lawyer, incumbent judge, or judge of an inferior court) preside over or participate in the weekly juror qualification process (while he is an official candidate) without violating the letter or the spirit of Canon 7* of the Code of Judicial Conduct?

ANSWER: The question is answered in the affirmative. Standing alone, the mere appearance and participation in such process by such a judge does not violate either the letter or the spirit of Canon 7* of the Code of Judicial Conduct. While performing such judicial functions, such judge should refrain from conduct which might tend to arouse reasonable belief that he is using such functions to promote his own candidacy.

**Now see Canon 5.*

TV IN COURTROOM
Opinion No. 19 (1977)

QUESTION: Does a trial judge violate Code of Judicial Conduct, Canon 3A(7)*:

1. By permitting newsmen to film, photograph, record or broadcast all or any of the trial proceedings from a vantage point inside the courtroom?
2. By permitting newsmen to film or photograph all or any part of trial proceedings through the glass panels in the doors without actually entering the courtroom?
3. Is the answer the same if the parties, attorneys, and witnesses agree to the filming, photographing, broadcasting or recording?

ANSWER: We answered each of the three questions in the affirmative for the reasons now to be stated.

Each of the questions is prefaced with "permission" having been given by the judge for such conduct. The canon does not speak to "permission"; rather, it speaks clearly but negatively; the judge should prohibit all broadcasting except upon the occasions specified in the canon, none of which are material here.

The most recent authoritative expression of opinion in this area of the law is that found in Nebraska Press Association v. Stuart, 427 U.S. 539, 49 L.Ed.2d 683, 96 S.Ct. 2791 (1976), and the opinion should be studied carefully before taking any action which might be considered as a prior restraint upon the freedom of the press.

On the other hand, the opinion in Bird v. State, 527 S.W.2d 891, 895-896 (Tex. Crim. App. 1975), is directly in point and should govern judges in Texas conducting criminal trials subject to review by that Court. This latter opinion is particularly helpful since it is the only judicial construction of the particular canon under consideration known to the Committee.

The Committee on Judicial Ethics declines to answer questions propounded seeking advice as to steps to be taken against a person who may violate any rules regulating the conduct of spectators at a trial of a case. Such questions relate to the duties and responsibilities of members of the judiciary and do not come within the scope of the authority of this Committee.

*Now see Rule 18c, *Texas Rules of Civil Procedure*.

JUDGE ON CRIMINAL JUSTICE ADVISORY BOARD
Opinion No. 20 (1977)

QUESTION: May a judge of a court of record serve as a member of a Criminal Justice Advisory Board which supervises applications for LEAA and juvenile justice funds?

ANSWER: The Committee is unanimous in its opinion that such activity is a proper one for a judge to engage in, subject, however, to the preliminary language found in Canon 4 of the Code of Judicial Conduct.

PART-TIME JUDGE
Opinion No. 21 (1977)

QUESTION: What criteria determines whether a judge is a part-time judge under the provisions of Compliance Section,* paragraph B, Code of Judicial Conduct (Feb. 18, 1977)?

ANSWER: Essentially, the determination of whether a judge is a "part-time judge," as defined in the cited paragraph of the Code, is a factual determination and must be made upon a case by case basis.

Without intending to lay down any hard and fast rules governing every situation, the Committee is of the opinion that one would be considered a part-time judge if two conditions are met:

1. The statute creating the court does not specifically prohibit the judge thereof from devoting time to some other profession or occupation; and,

2. The agency making the appointment of the judge to such court (ordinarily the commissioners court), at or about the time of the appointment, acknowledges that the compensation of such judge is less than that of a full-time judge.

*Now see Canon 6.

PUBLIC SERVICE TV
Opinion No. 22 (1977)

QUESTION: May a district judge act as a moderator for a short (five-minute) bi-weekly television program designed to educate the public on the duties and functions of courts and related agencies dealing with the administration of justice?

ANSWER: Such activity is authorized by the provisions of Canon 4A.* Before engaging in such activity, however, the judge should familiarize himself with the provisions of Canon 2A, the preamble to Canon 4, and Canon 7A.** Conduct in violation of either of the latter provisions of the Code is not authorized by the broad language found in Canon 4A.*

* Now see Canon 4B.

** Now see Canon 5(1).

JUDGE IN ABSTRACT BUSINESS

Opinion No. 23 (1977)

QUESTION: May a district judge become a part owner (with no more than three co-owners, one of which is a local attorney) of a title insurance business?

ANSWER: The Committee is of the opinion that such ownership and participation in a title insurance business would be in violation of Canon 5C(1)*:

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

This opinion is confined to the specific facts set forth herein.

* *Now see Canon 4D.*

ATTENDANCE AT MEETING TO HONOR JUDGE

Opinion No. 24 (1977)

QUESTION: Does a judge violate any of the canons of the Code of Judicial Conduct by attending a public meeting of an organization composed largely of local citizens of a particular religious faith at which time such organization will bestow upon the judge an award of honor? The organization specifically states in its invitation "that funds will not be solicited during this event."

ANSWER: No. Attendance upon such an event, even though a minimum couvert is required for attendance, does not violate Canon 5B(2)* of the Code of Judicial Conduct.

* *Now see Canon 4C(2)*

SOLICITATION OF FUNDS

Opinion No. 25 (1977)

QUESTION: A development council formed to assist in the funding of a new parochial school has invited a judge to join the council which is "designed to lend prestige to the development program and to provide individual and collective advice and guidance" to the leadership of the entity. The invitation recites that the "insight, counsel and prestige [of the judge] in the community will be very helpful." It has been made known to the Committee that the judge will not be required to take part in any fund-raising program "other than to allow the use of his name as a member of the group seeking to raise funds." Is it a violation of the Code of Judicial Conduct for a judge to accept membership in such council?

ANSWER: Yes. Participation in such an activity would be in violation of Canon 5B(2)* of the Code of Judicial Conduct.

* *Now see Canon 4C.*

MEMBERSHIP IN BAR CORPORATION
Opinion No. 26 (1977)

QUESTION: May a judge serve upon the Board of Directors of Advocacy, Inc.?

BACKGROUND INFORMATION: The Committee considered the following facts which were furnished in connection with this inquiry: The Congress adopted "Developmental Disabilities Bill of Rights and Assistance Act" (P.L. 94-103), some of the pertinent provisions of which now appear in 42 U.S.C.A. subsec. 6012. The Governor designated the State Bar of Texas to act as the planning agent. The State Bar ordered the creation of Advocacy, Inc., as the vehicle whereby its delegated duties would be accomplished. It reserved the right to appoint six of an eleven-member board of directors of the corporation. The Board will set broad policies only and will have no operating functions.

ANSWER: Based upon the limited information available, the Committee is of the opinion that membership upon the Board of Directors of Advocacy, Inc., would not be in contravention of any of the canons of Judicial Conduct, provided such membership poses no conflict with judicial duties and responsibilities.

OWNERSHIP OF AT&T SHARES
Opinion No. 27 (1977)

QUESTION: Should a judge recuse or disqualify himself in a case involving Southwestern Bell Telephone Company when he owns shares of stock in American Telephone & Telegraph Company?

ASSUMED FACTS: In preparing our answer we have assumed that AT&T has more than six hundred million shares of stock outstanding in the hands of nearly three million stockholders; that the judge owned less than ten shares having a gross market value of approximately \$500 and an annual dividend payment of less than \$35. We have further assumed that AT&T owns all or substantially all of the capital stock of Southwestern Bell.

ANSWER: Your Committee does not have authority to pass upon the question of whether or not the judge is disqualified. The Constitution (Art. 5, Sec. 11) and the statute (Art. 15, V.A.C.S.) speak to the disqualification of a judge. The determination of disqualification is a judicial function. See authorities collated in the concurring opinion in City of Pasadena v. State, 428 S.W.2d 388, 400 (Tex. Civ. App.--Houston [1st Dist.] 1967), reversed on other grounds, 332 S.W.2d 325 (Tex. 1969). See also, 25 A.L.R. 3d 1331, 1339. We decline to pass upon whether a judge, under these enactments, must note his disqualification to participate in the case.

On the other hand, whether or not a judge should recuse himself from a pending litigation presents a question within the authority of this Committee since it is germane to Canon 3C(1)(c)* and 3C(3)(b)*. The Committee is of the opinion that neither of the cited sections of Canon 3C*

requires the judge to recuse himself from participation in a case involving Southwestern Bell Telephone Company. His financial interest, as defined in Canon 3C(3)(b),* could not be substantially affected by the outcome of the proceedings, as provided in Canon 3C(1)(c).*

**Now see Rules 18a and 18b, Texas Rules of Civil Procedure.*

COMMISSION ON STATUS OF WOMEN

Opinion No. 28 (1978)

QUESTION: May a judge continue to serve upon the Texas Commission on the Status of Women without violating the Code of Judicial Conduct?

ASSUMED FACTS: The Commission was created by Executive Order D.B. No. 32, dated August 11, 1977, with the duties and authorities of the members defined in Section II of the order. These duties are broadly defined and intended to develop recommendations for policies and programs which will achieve equal opportunity for women throughout the state.

ANSWER: Based upon the information available, the Commission is of the opinion that membership upon the Texas Commission on the Status of Women would not be in contravention of any of the canons of Judicial Conduct, provided such service poses no conflict with judicial duties or responsibilities.

JUDGE'S SON AS MEMBER OF FIRM

Opinion No. 29 (1978)

QUESTION: Does a judge violate the Code of Judicial Conduct in participating in the trial of a case when one of the lawyers is a member of a firm in which his child is also a partner?

ANSWER: Subject to the opening words in Canon 3C(1),* "A judge should disqualify himself in a proceeding in which his impartiality might reasonably be questioned, including, but not limited to, instances where: [followed by three subdivisions]," the Committee is of the unanimous opinion that the question should be answered in the negative.

Canon 3C(1),* and subdivisions (a), (b), and (c) thereof were lifted word for word from the Canons of Judicial Ethics adopted by the American Bar Association in 1982. We are of the opinion that it is significant that ABA Canon 3C(1)* contains a fourth subdivision which is not to be found in our canons, reading as follows:

"(d) he or his spouse, or a person within the third degree of relationship to either of them, or the spouse of such person:

* * *

(ii) is acting as a lawyer in the proceeding."

Professor E. Wayne Thode, reporter for the ABA committee which formulated the ABA canons, comments on subdivision (d) of the ABA canon, supra, in "Reporter's Notes to Code of Judicial Conduct" (ABA, 1973), p. 15:

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

The Committee adopts Professor Thode's analysis as applicable to the Texas Code of Judicial Conduct.

**Now see Rules 18a and 18b, Texas Rules of Civil Procedure.*

APPOINTMENT OF BAILIFF

Opinion No. 30 (1978)

QUESTION: Does a judge violate Canon 3B(4)* by the appointment of his bailiff as investigator to make social studies in adoption cases when: such appointment is made with the consent of all counsel in the case and only in contested matters; and where the prior results were found to be excellent, the task performed diligently, and economically?

ANSWER: Upon the basis of recited facts, it is the unanimous opinion of the Committee that such action is not violative of the cited provision of the Code of Judicial Conduct.

**Now see Canon 3C.*

BAR ACTIVITIES

Opinion No. 31 (1978)

QUESTION: May a judge subject to the Code of Judicial Conduct properly sign a letter endorsing a candidate for elective office in the State Bar of Texas when such letter is addressed to members of the State Bar generally; or such letter is addressed to judges only?

ANSWER: The members of the Committee are seriously divided as to an answer applicable to both facets of the question. A majority of the Committee is of the opinion that since the amendment of Canon 7* permits a judge to participate in political activities generally, participation in State Bar election activities is not forbidden. However, the same majority considers such conduct undesirable since such an endorsement might be construed as the lending of the prestige of judicial office to advance the private interests of others in violation of Canon 2B.

**Now see Canon 5.*

RETIRED JUDGE: EXTRA-JUDICIAL SERVICE

Opinion No. 32 (1978)

QUESTION: There being two types of retired judges mentioned in subdivision D of the Compliance Section* of the Code of Judicial Conduct (those eligible for recall to judicial service and those not eligible), what difference, if any, is there in the applicability of the exemptions mentioned in the subdivision to the two classes of retired judges?

ANSWER: A retired judge eligible for recall to judicial service must, in the language of subdivision D of the Compliance Section, "refrain from judicial service during the period of an extra-judicial appointment not sanctioned by Canon 5G."** There is no such restraint upon a retired judge not eligible for recall to judicial service. Otherwise, there is no difference in the applicability of the exemption provisions to the two classes of retired judges mentioned in the Compliance Section.

* *Now see Canon 6.*

** *Now see Canon 4H.*

RETIRED JUDGE: FINANCIAL ACTIVITIES

Opinion No. 33 (1978)

QUESTION: After August 31, 1978, active judges subject to the provisions of the Code of Judicial Conduct may not serve as officers or directors of a publicly owned business, defined in Canon 5C(2)* as one having "more than ten owners." Does a retired judge violate any of the canons of the Code of Judicial Conduct by serving as an officer or director of such a publicly owned business after August 31, 1978?

ANSWER: No. Although there are two types of retired judges mentioned in subdivision D of the Compliance Section** of the Code (those eligible for recall to judicial service and those who are not eligible for recall), both classes of retired judges are exempt from the provisions of Canon 5C(2)* of the Code.

* *Now see Canon 4D(2).*

** *Now see Canon 6.*

POLITICAL ACTIVITY

Opinion No. 34 (1978)

QUESTION: The defeated candidate in a primary election for the office of district judge (where one of the candidates was a constitutional county judge and the other a private attorney) has sought a determination of the Committee as to whether certain advertisements of the winning candidate amounted to a violation of Canon 7* of the Code of Judicial Conduct.

ANSWER: The Committee declines to pass upon the questions of fact for lack of jurisdiction over the parties (neither of whom were at the time subject to the Code of Judicial Conduct) or the subject

matter of the inquiry. The Committee acts only as an advisory peer group in determining the application of the Code of Judicial Conduct to undisputed factual situations.

**Now see Canon 5.*

RECUSAL -- OWNERSHIP OF STOCK Opinion No. 35 (1978)

FACTUAL ASSUMPTION: A district judge owns a small number of shares of stock in a large international oil company which is frequently a party to litigation in the district courts of his county.

QUESTION: Is the district judge required to note his disqualification or to recuse himself in all litigation involving such corporation?

ANSWER: As we held in Opinion Number 27 (October 17, 1977), this Committee does not have authority to pass upon the question of whether or not a judge is disqualified. The Constitution (Art. 5, Sec. 11) and the statute (Art. 15, V.A.C.S.) speak to the disqualification of a judge. The determination of disqualification is a judicial function.

However, whether a judge should recuse himself from pending litigation presents a question within the authority of this Committee since it is germane to Canon 3C(3)(b)* of the Code of Judicial Conduct. Moreover, under Canon 2A, a judge "should conduct himself at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary."

The Committee is of the opinion that such judge should recuse himself from participating in litigation in cases involving corporations in which he owns stock, regardless of the number of shares owned.

**Now see Rules 18a and 18b, Texas Rules of Civil Procedure.*

DIVESTITURE OF STOCK OWNERSHIP Opinion No. 36 (1978)

(Submitted contingently upon an affirmative answer to the question set out in Opinion No. 35.)

QUESTION: What action, if any, under the Code of Judicial Conduct, should such district judge take to remove the cause of such disqualification of recusation?

ANSWER: Canon 5C(3)* is explicit and mandatory. It requires that a judge manage his financial interests so as "to minimize the number of cases in which he is disqualified." Divestiture of investments resulting in frequent disqualifications must be accomplished "(a)s soon as he can do so without serious financial detriment."

Divestiture is mandatory; but the Committee is unwilling to set a specific time period within which such divestiture must be accomplished. The question posed must be answered by the individual judge bearing in mind the admonitions of Canon 3: "The judicial duties of a judge

take precedence over all his other activities. His judicial duties include all the duties of his office prescribed by law."

This requires that a judge be in position to dispose of all cases which reach his docket; and, if his financial affairs frequently prevent his acting on all such matters, he should consider becoming either an investor or a judge, but not a continuation of both activities.

**Now see Canon 4D(3).*

DIRECTOR - MUTUAL ASSOCIATION **Opinion No. 37 (1978)**

QUESTION: May a judge continue to serve as a director of a mutual savings and loan association, incorporated under prior laws of this State, wherein the depositors own, ratably, all of the reserve funds and assets of the association?

ANSWER: It is the opinion of the Committee that such an entity falls within the definition of a "publicly owned business" as set out in the Canon 5C(2)* of the Code of Judicial Conduct and continued service as a director would be in violation of such canon.

**Now see Canon 4D(2).*

ADVISORY DIRECTOR **Opinion No. 38 (1978)**

QUESTION: Assuming that a judge may not continue to serve as a director of a mutual savings and loan association, as mentioned in Opinion Number 37 this date released, may such judge serve as an "advisory" director thereof?

ANSWER: In the opinion of the Committee, there are at least two reasons why such service is impermissible under the Code of Judicial Conduct; (a) since he may not serve as a director under Opinion Number 37, supra, he should not be permitted to do indirectly that which he cannot do directly; and (b) such service would be in contravention of Canon 2B of the Code of Judicial Conduct in that it might be construed as lending the prestige of his office to advance the private interests of others.

ATTENDANCE AT LAWYERS' PARTY **Opinion No. 39 (1978)**

QUESTION: Does a judge subject to the Code of Judicial Conduct violate Canon 2B and/or 5C(4)* by accepting an invitation from a firm of attorneys to be entertained with lodging, food and drinks for two nights and three days at a lake lodge? The outing is referred to as the firm's annual "Judicial Conference."

ANSWER: The Committee assumes that the name of the conference was chosen in jest or inadvertently; and, upon such assumption, gives an affirmative answer to the question as presented. Such answer, however, is confined to the precise factual situation presented.

The Committee is of the opinion that when one assumes judicial office he does not forfeit his right to associate with his friends and acquaintances nor is he condemned to live the life of a hermit. In fact, such a regime would, in the view of the Committee, lessen the effectiveness of the judicial officer.

While a judge should so conduct his impersonal affairs as to avoid all impropriety and appearance of impropriety, he is not precluded from accepting the hospitality of his friends, attending social activities of bar associations, groups of lawyers, or other citizens.

He should not allow such social relationships to influence his judicial conduct or judgments, nor should he permit others to convey the impression that they are in a special position to influence him.

**Now see Canon 4D(4).*

POLITICAL PARTY CONTRIBUTIONS

Opinion No. 40 (1979)

QUESTION: Does a judge subject to the Code of Judicial Conduct promulgated by the Supreme Court of Texas violate such Code by making periodic and regular financial contributions to a political party?

ANSWER: The Committee, by unanimous vote, answers the foregoing question in the negative. Since the amendment of Canon 7* of the Code of Judicial Conduct, on February 18, 1977, such a contribution does not constitute an ethical violation of the Code.

Whether a judge makes a contribution or refrains therefrom is a purely personal determination and presents a question not within the jurisdiction of this Committee.

**Now see Canon 5.*

PARTICIPATION IN FUND-RAISING ACTIVITIES

Opinion No. 41 (1979)

QUESTION:: May a judge subject to the provisions of the Code of Judicial Conduct appear as an operatic singer at fund-raising activities of religious or charitable organizations?

ANSWER: The Committee is of the opinion that such activity would be in violation of Canon 5B(2).* While a judicial officer may not be a speaker or guest of honor at such an event, he may attend such events.

**Now see Canon 4C(2).*

COUNTY COURT JUDGE AS CORPORATE DIRECTOR

Opinion No. 42 (1979)

QUESTION: May a lawyer who has for many years been a director of a bank and of a savings and loan association continue acting as director of the corporate entities after his appointment and qualification as a judge of a newly created county court at law?

ANSWER: The Committee is of the opinion that continued service as a director after qualification as a judge would be in violation of Canon 5C(2)* of the Code of Judicial Conduct. The fact that one person owns more than 95 percent of the stock of one entity is immaterial since there are more than ten other "owners" of stock in the corporate entity.

*Now see Canon 4D(2).

JUDGE AS DIRECTOR OF CREDIT UNION

Opinion No. 43 (1979)

QUESTION:: Is it a violation of Canon 5C(2)* of the Code of Judicial Conduct for a county-level judge to serve as an uncompensated member of the board of directors of a county employees' credit union operating under Tex. Rev. Civ. Stat. Ann. art. 2461 - 1.01, et seq. (Supp. 1978-79)?

ANSWER: Assuming that there are more than ten members of the credit union, the Committee is of the opinion that such continued service would be in violation of the cited canon. See Opinion Number 37.

* Now see Canon 4D(2).

FREE PASSES

Opinion No. 44 (1979)

QUESTION:: Can a judge who is subject to the Code of Judicial Conduct accept free passes to movies, football games, college plays, etc.?

ANSWER: Canon 5C(4)(c)* of the Code of Judicial Conduct controls the answer to the question. If the gift is from an entity whose interest has not come and is not likely to come before the judge, and if it is clearly understood by all parties that such is not an effort to curry favor, such gift may be accepted by the judge.

If any gift has a potential value in the aggregate of more than \$100, it must be reported as required under the provisions of Canon 6C.**

*Now see Canon 4D(4)(c).

DISCIPLINARY ACTION AGAINST LAWYER
Opinion No. 45 (1979)

QUESTION:: Does a judge subject to the Code of Judicial Conduct have an obligation to initiate disciplinary measures against a lawyer when he becomes aware that such lawyer has been guilty of unprofessional conduct or has presented false information to the court in order to obtain the entry of a judgment?

ANSWER: Under Disciplinary Rules promulgated by the Supreme Court of Texas, "A lawyer shall not engage in conduct that is prejudicial to the administration of justice." DR 1-102(5).

Canon 3B(3)* of the Code of Judicial Conduct reads: "A judge should take or initiate appropriate disciplinary measures against a lawyer for unprofessional conduct of which the judge may become aware."

The Committee is of the opinion that the knowing presentation of false information to a court in order to obtain the entry of a judgment is unprofessional conduct as defined in DR 1-102(5) and that when the judge becomes aware thereof, it becomes his duty to "initiate appropriate disciplinary measures" against such lawyer.

**Now see Canon 3D(2).*

RETIRED JUDGE: PRACTICE OF LAW -- ADMINISTRATIVE TRIBUNAL
Opinion No. 46 (1979)

QUESTION:: May a retired judge who is eligible for recall to judicial service practice law by appearing before an administrative tribunal which restricts appearances on behalf of others to licensed attorneys?

ANSWER: Yes. While Canon 5F* forbids a judge in active service practicing law, such provision is inapplicable to a retired judge under Compliance Section D.** We express no opinion on the applicability of Tex. Rev. Civ. Stat. Ann. art. 6228b, subsec. 7 (Supp. 1978-79) to such practice.

**Now see Canon 4G.*

*** Now see Canon 6(F)*

JUDGE AS PROBATE COUNSEL FOR FAMILY MEMBER
Opinion No. 47 (1979)

QUESTION:: May a judge subject to the Code of Judicial Conduct appear as counsel in the probate of the will of a member of his family as that term is used in Canon 5D*?

ANSWER: No. The practice of law is forbidden by Canon 5F.** While a judge is permitted to engage in certain fiduciary activities under Canon 5D,* appearance as counsel is impermissible under the Code. Incidental counseling with immediate members of the family is not considered by the Committee to constitute the practice of law.

** Now see Canon 4E.*

*** Now see Canon 4G.*

LAWYERS' CONTRIBUTIONS TO JUDICIAL CAMPAIGN
Opinion No. 48 (1979)

QUESTION: Does a candidate for judicial office violate the Code of Judicial Conduct by accepting, through his campaign treasurer, contributions from lawyers who might be expected to appear before him if the candidate is elected to judicial office?

ANSWER: Although there is no mention of this subject in the Code of Judicial Conduct,* the Committee, after careful consideration of all of the factors involved in the question, is of the unanimous opinion that such contributions proffered by lawyers without hope of reward and accepted in the same spirit, do not violate either the letter or the spirit of the statutes, the Code of Professional Responsibility, or the Code of Judicial Conduct.

**Now see Canons 4D(1), 5, and 6G.*

ATTORNEY REFERRAL FEE
Opinion No. 49 (1980)

QUESTION:: Is a judge subject to the Judicial Code of Conduct entitled to a referral fee under the following facts: 1) prior to his appointment as judge, he represented a client in a workman's compensation case and in a third party action; 2) also prior to his appointment, the judge referred such cases to another lawyer and at that time a referral agreement between them was made; 3) the litigation in both cases has now been completed resulting in an award of more than \$1 million; 4) the attorney to whom the cases were referred reportedly has refused to pay the judge any referral fee?

ANSWER: The referral of cases by a judge prior to taking office does not constitute the practice of law and referral fees may be accepted without violation of either Article 319, Texas Revised Civil Statutes or the Code of Judicial Conduct.

**POLITICAL PARTY--SUPPORT FOR CANDIDATE FOR EXECUTIVE
COMMITTEE**
Opinion No. 50 (1980)

QUESTION: Is a judge subject to the Code of Judicial Conduct in violation of the Code if he supports a candidate for the office of executive chairman of a political party?

ANSWER: The Code of Judicial Conduct as amended February 18, 1977, does not specifically prohibit a judge from supporting a candidate for the office of executive chairman of his party; however, the Code in Canon 2A* expressly states: "He (a judge) should not lend the prestige of his office to advance the private interests of others..." The Code in Canon 1 provides: "A judge should participate in establishing, maintaining, and enforcing, and should himself observe, high standards of conduct so that the integrity and independence of the judiciary may be preserved."** The Committee is of the further opinion that supporting a candidate for executive chairman of a political party is within the discretion of a judge provided the nature and type of support does not contravene Canon 1 and Canon 2A of the Code of Judicial Conduct.

*Now see Canon 2B.

** Now also see Canon 5.

OFFICER, AD HOC POLITICAL COMMITTEE **Opinion No. 51 (1980)**

QUESTION: Would I, as a district judge, be in violation of Canon 7* by accepting a position as treasurer of an ad hoc political organization, which confines itself to a "get out the vote" program for all Democratic candidates?

ANSWER: Canon 7* is limited to "any candidate for a judicial office." Since you are not a candidate for reelection, the restraints imposed by that canon are not applicable to you at this time. Therefore, the mere acceptance by you of the office of treasurer of the organization described in your question would not be in violation of Canon 7.*

However, your acts and activities after you have accepted the office of treasurer may cause you to be in violation of Canon 5B(2),** which, in relevant part, provides: "A judge should not solicit funds for any...political...organization, or use or permit the use of his office for that purpose, but he may be listed as an officer...of such an organization."

The question asked by you does not set forth the manner in which the ad hoc political organization intends to "get out the vote." The majority of the Committee is of the opinion that if the nature of the activities of such political organization is to use your name or title in the literature sent out in the solicitation of funds, such activities would be in violation of Canon 5B(2).** The majority of the Committee is of the further opinion that there would not be a violation of Canon 5B(2)** if you merely accepted the office of treasurer and performed the usual duties of such an office, and your name or title as "Judge" did not appear in the literature or other means of solicitation of money. Other members of the Committee are of the opinion that the office of the treasurer of any organization, by its very nature, involves soliciting of funds and since a treasurer is so integrally related to soliciting of funds, the acceptance of that office by a judge subject to the Code of Judicial Conduct would be in violation of Canon 5B(2).**

*Now see Canon 5.

** Now see Canon 4G(2).

SERVICE ON MHMR BOARD
Opinion No. 52 (1980)

QUESTION: May a judge serve on the Board of a Mental Health Mental Retardation Center (MHMR)?

ANSWER: Canon 5G* of the Code of Judicial Conduct states as follows: "A judge should not accept appointment to a governmental committee, commission, or other position that is concerned with issues of fact or policy on matters other than the improvement of the law, the legal system, or the administration of justice," and Canon 5B(1)** states: "A judge should not serve if it is likely that the organization will be engaged in proceedings that would ordinarily come before him [or her] or will be regularly [or frequently] engaged in adversary proceedings in any court."

The Committee is not wholly aware of all the duties and responsibilities of the office, however, it is of the opinion that if such duties and responsibilities of the office do not contravene Canon 5G* or Canon 5B(1)**, it would not be unethical to serve on the Mental Health Mental Retardation Board.

* *Now see Canon 4H.*

** *Now see Canon 4C(1).*

ENDORSEMENT OF CANDIDATE
Opinion No. 53A (1980)

QUESTION: May a judge endorse a specific candidate or candidates?

ANSWER: The Code of Judicial Conduct as amended February 19, 1980, does not specifically prohibit a judge from supporting a candidate or candidates, however, the Code in Canon 2B expressly states: "He (a judge) should not lend the prestige of his office to advance the private interests of others...." The Code in Canon 1 provides: "A judge should participate in establishing, maintaining, and enforcing, and should himself observe, high standards of conduct so that the integrity and independence of the judiciary may be preserved."

The Code further states in Canon 2A: "A judge...should conduct himself at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary."

The Committee is of the opinion that endorsing a candidate or candidates is within the discretion of a judge provided the nature and type of endorsement does not contravene Canon 1, Canon 2A and Canon 2B of the Code of Judicial Conduct.*

**Now also see Canon 5(3).*

ENDORSEMENT OF POLITICAL PARTY
Opinion No. 53B (1980)

QUESTION: May a judge endorse a specific party?

ANSWER: The Committee assumes that the question is referring to a political party as distinguished from a specific person. Canon 5B(2) states*: "A judge should not solicit funds for any... political...organization, or use or permit the use of the prestige of his office for that purpose, but he may be listed as an officer, director, delegate or trustee of such an organization."

The Committee is of the opinion that since Canon 5B(2)* permits a judge to be an officer, director, delegate or trustee of a political party, that the endorsing of such political party is within the discretion of a judge and does not violate Canon 5B(2)* of the Code of Judicial Conduct.

**Now see Canon 5 (3).*

DELEGATE TO PARTY CONVENTION **Opinion No. 53C (1980)**

QUESTION: May a judge engage in precinct, county and state party conventions as a delegate?

ANSWER: Canon 5B(2)* states:

A judge should not solicit funds for any educational, religious, charitable, fraternal, political, or civic organization, or use or permit the use of the prestige of his office for that purpose, but he may be listed as an officer, director, delegate, or trustee of such an organization. He should not be a speaker or the guest of honor at an organization's fund-raising event, but he may attend such events.

The Committee is of the opinion that Canon 5B(2)* permits a judge to be a delegate at precinct, county, and state party conventions.

**Now see Canon 5(3).*

JUDGE AS TRUSTEE **Opinion No. 54 (1981)**

QUESTION: May a judge serve as a trustee on a trust which involves oil and gas properties only where such properties are all located outside the elected district of such judge with one minor exception?

ANSWER: No. Section 5D* of the Code of Judicial Conduct states as follows: "A judge should not serve as the executor, administrator, trustee, guardian or other fiduciary...." The Code is quite explicit and since the only exception stated therein pertains to members of a judge's family, which situation is not involved in this question, the Committee is of the opinion that to act as a trustee under the circumstances described would violate Section 5D* of the Code of Judicial Conduct.

**Now see Canon 4E.*

FUND-RAISING EVENTS

Opinion No. 55 (1981)

QUESTION: May a judge periodically have fund-raising benefits to pay for (1) campaign costs, (2) living expenses or (3) office expenses?

ANSWER: (1) Campaign Costs: Canon 7* of the Code of Judicial Conduct, which pertains to the political activities of a judge, does not specifically address itself to fund-raising matters to cover campaign expenses; therefore, the Committee is of the opinion that it is not unethical to have fund-raising benefits to raise funds to pay for campaign expenses provided the nature and type of benefit does not, in any manner, compromise the judge in his integrity, his independence in judicial affairs, nor give the appearance of impropriety.

(2) Living Expenses: The Committee is of the opinion that fund-raising benefits to pay the living expenses of a judge would be unethical. Canon 5C(1)* of the Code of Judicial Conduct would appear to prohibit such fund-raising events as it states:

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

In addition to the above, to permit such fund-raising events would seem to defeat the purpose and spirit of the Code of Judicial Conduct.

(3) Office Expenses and Overhead: The Committee is of the opinion that fund-raising benefits for the purpose of raising funds to cover the office expense or office overhead of a judge would be unethical for the same reasons he should not have such benefits to pay for his living expenses.

*Now see *Canons 5 and 4b(1)*.

OFF-YEAR FUND-RAISING EVENTS

Opinion No. 56 (1981)

QUESTION: Does the Code of Judicial Conduct prohibit a judge from having a fund-raising benefit in a year when he is not up for election?

ANSWER: The Committee is of the opinion that the Code of Judicial Conduct does not prohibit non-election year fund-raising activity provided the purpose of such fund-raising does not contravene other provisions of the Code.

MEMBERSHIP, ADVISORY BOARD NON-PROFIT CORPORATION

Opinion No. 57 (1981)

QUESTION: May a judge serve as an advisory board member to a private non-profit corporation whose purpose is to operate a home to house and offer counseling to battered wives?

The Judicial Ethics Committee is informed that the jurisdiction of the court of the judge is limited to misdemeanor cases, that the judge's name will not be used on any corporate stationery, that the judge will act only as an advisor to the corporate board and will not participate in corporate decisions or day-to-day operations of the corporation, and that the judge has never had an assault case involving an assault by a husband on his wife in his court.

ANSWER: Canon 5* of the Code of Judicial Conduct, as amended February 19, 1980, states that a judge should regulate his extra-judicial activities to minimize the risk of conflict with his judicial duties. Canon 5B* sets forth the limitations on extra-judicial civic and charitable activities of a judge, as follows:

Canon 5B*

"Civic and Charitable Activities: A judge may participate in civic and charitable activities that do not reflect adversely upon his [or her] impartiality or interfere with the performance of his [or her] judicial duties. A judge may serve as an officer, director, trustee, or non-legal advisor of an educational, religious, charitable, fraternal, or civic organization not conducted for the economic or political advantage of its members, subject to the following limitations:(1) A judge should not serve if it is likely that the organization will be engaged in proceedings that would ordinarily come before him [or her] or will be regularly [or frequently] engaged in adversary proceedings in any court.(2) A judge should not solicit funds for any educational, religious, charitable, fraternal, political, or civic organization, or use or permit the use of the prestige of his [or her] office for that purpose, but may be listed as an officer, director, delegate, or trustee of such an organization. [A judge] should not be a speaker or the guest of honor at an organization's fund-raising events, but he may attend such events.(3) A judge should not give investment advice to such an organization, but may serve on its board of directors or trustees even though it has the responsibility for approving investment decisions."

The Committee is of the opinion that a judge may serve as an advisory member to a private non-profit corporation whose purpose is to operate a home to house and offer counseling to battered wives provided his activities do not contravene the provisions of Canon 5B* of the Code of Judicial Conduct.

*Now see Canon 4C.

SOLICITATION OF FUNDS: TEXAS CENTER FOR JUDICIARY
Opinion No. 58 (1982)

QUESTION: Does a judge subject to the Code of Judicial Conduct of the State of Texas violate the letter or spirit of the Code when, as an authorized representative of the Texas Center for the Judiciary, Inc., he or she solicits contributions for the benefit of the Center from charitable and educational foundations and other donors who would not ordinarily come before the court?

ANSWER: The Committee is of the opinion that such conduct would not violate the letter or spirit of the Code of Judicial Conduct. Participation in worthwhile organizations that depend upon fund-raising for support is a continuing dilemma for judges. While a judge may serve in a leadership capacity in such an organization, Canon 5B(2)* of the Code of Judicial Conduct prohibits any type of participation, or lending the prestige of judicial office, in soliciting funds no matter how worthy the purpose.

An exception to such activity is wisely provided in Canon 4,** when the purpose of an organization is "devoted to the improvement of the law, the legal system, or the administration of justice." The Texas Center for the Judiciary, Inc., clearly qualifies under such exception. Canon 4C** provides that the judge "may make recommendations to public and private fund-granting* agencies on projects and programs concerning the law, the legal system, and the administration of justice."

Canon 4C** also provides that a judge "may assist such an organization in raising funds and may participate in their management and investment, but should not personally participate in public fund-raising activities." It is the interpretation of the Committee that "public fund-raising activities" are those activities aimed at the general public or a large segment thereof. A more narrow interpretation would render the language "assist such an organization in raising funds" meaningless.

The Committee is of the opinion that Canon 4 permits a judge to present the purposes and financial requirements of the Texas Center for the Judiciary, Inc., to one or more of the prospective donors referred to in the question. Such a presentation must be in harmony with the spirit of the Code of Judicial Conduct particularly Canons 1 and 2. The Committee recommends that the judge making such a presentation clearly state that such presentation is made as an authorized representative of the organization and not for the judge personally.

*Now see Canon 4C(2).

** Now see Canon 4B(2).

CHAIRMAN, FUND-RAISING EVENTS FOR ANOTHER
Opinion No. 59 (1982)

QUESTION: May a judge act as a co-chairman of a fund-raising event for another person seeking public office?

ANSWER: No. Canon 5B(2)* states in pertinent part as follows: "A judge should not solicit funds for any...political... organization, or use or permit the use of the prestige of his [or her] office

for that purpose...." The Committee is of the opinion that Canon 5B(2)* prohibits a judge from acting as a co-chairman of a political fund-raising event for another person.

**Now see Canon 5 (3).*

SUPPORTIVE COMMENTS AT FUND-RAISINGEVENTS FOR ANOTHER Opinion No. 60 (1982)

QUESTION: May a judge sit at the head table and make supportive comments in behalf of another person seeking public office at a fund-raising event for the other person?

ANSWER: The Committee is of the opinion that sitting at the head table and saying supportive comments about a third person at a fund-raising event for that person would be using the prestige of the judge and his office to benefit the third person. Such conduct would be in contravention of Canon 5B(2)* and is prohibited.

**Now see Canon 5(3).*

BANK DIRECTOR OF HOLDING COMPANY BANK Opinion No. 61 (1982)

QUESTION: May a judge serve as a director of a bank where the board of the bank consists of 10 directors, where one of the directors is the representative of a holding company which owns all of the stock of the bank?

ANSWER: The Committee is of the opinion that for a judge to serve as a bank director under such circumstances would be contrary to the purposes of Canons 5C(1)* and 5C(2),* as well as Canon 2. A judge should regulate his extra-judicial activities to minimize the risk of conflict with his judicial duties and he should avoid impropriety and the appearance of impropriety in all his activities. The fact that a holding company is the sole owner of the bank should not permit a judge to do indirectly that which he could not do directly.

**Now see Canon 4D.*

CONSULTANT FOR NON-PROFIT HOUSING Opinion No. 62 (1982)

QUESTION: May a district judge serve as a consultant for a private non-profit corporation engaged in the construction and development of a housing project for the elderly?

FACTS: The Judicial Ethics Committee is informed on the following facts pertinent to the question. The project is financed by a loan from the Department of Housing and Urban Development under Section 202 of the Housing Act of 1959. The judge served in a similar consulting capacity on numerous projects before assuming the bench. He would be compensated

on a fee basis by the private non-profit corporation that employs him. The fee is based upon a formula established by HUD and based upon the loan authority for the project. As a consultant he would give advice on the determination and selection of the project site and on various other matters related to the project, confer with representatives of the various entities involved in the project and assist in the establishment of sound business practices for the project. He would not perform any legal work. The legal work would be performed by an attorney outside his district who does not appear regularly before him. The corporation he would be assisting also does not appear regularly in his court. The work would require an average of 10 hours per month for 15 to 18 months and could be done before or after normal working hours. The judge would not be engaged in arbitration or mediation, nor would he participate in hearings or testimony before governmental bodies.

ANSWER: The Committee is of the opinion that service as a consultant under the facts stated does not violate the Code of Judicial Conduct.

The resolution of the question is controlled by Canon 5 of the Code. Canon 5C(2)* permits a judge to "engage in other remunerative activity including the operation of a business." That permission is conditioned upon compliance with Canon 5C(1),** which states:

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

Canons 5E*** and 5F**** which bar a judge from acting as an arbitrator or mediator or from practicing law, are also restrictions on the activity in question.

Under the facts stated none of the conditions or limitations in Canon 5 are violated; however, a judge should at all times keep in mind that it is his duty to uphold the integrity and independence of the judiciary and avoid impropriety and the appearance of impropriety in all his activities. Thus, the judge should carefully monitor his activities and immediately terminate his service as a consultant if he perceives a violation of the Code.

* *Now see Canon 4D(2).*

** *Now see Canon 4D(1).*

*** *Now see Canon 4F.*

**** *Now see Canon 4G.*

JUDGE AS COLUMNIST

Opinion No. 63 (1982)

QUESTION: May a judge write a weekly column concerning legal matters for publication in a newspaper?

ANSWER: Canon 4A* of the Code of Judicial Conduct states as follows: "[A Judge] may speak, write, lecture, teach, and participate in other activities concerning the law, the legal system and the administration of justice." The Committee is of the opinion that the Code of Judicial Conduct encourages judges to write articles concerning the improvement of the law, the legal system and

the administration of justice, provided that in doing so he does not cast doubt on his capacity to act impartially on any matter that may come before him.

The Committee is of the further opinion that a judge should not answer inquiries from the public on any matter in the field of law, other than in those areas specifically enumerated above.

** Now see Canon 4B(1).*

SUPPORT OF BOND ELECTION

Opinion No. 64 (1982)

QUESTION: May a judge actively support a bond election to raise funds to develop a city water project?

ANSWER: No, for several reasons. First, a judge should regulate his outside activities to minimize the risk of conflict with his judicial duties. Elections often are contested, and to actively engage in a bond election could interfere with the judicial responsibility of the judge.

Secondly, a judge should refrain from using the prestige of his office to help a political organization to raise funds. Canon 5*, Code of Judicial Conduct.

Thirdly, a judge should uphold the integrity and independence of the judiciary. Involvement in an election, other than his own, by a judge tends to raise questions of why he is involved and casts doubts on his capacity to decide impartially an issue that may come before him.

A majority of the Committee is of the opinion that to actively participate in such an election would violate the Code of Judicial Conduct.

**Now see Canons 4C and 5.*

SERVICE ON STATE AGENCY BOARD

Opinion No. 65 (1983)

QUESTION: May a judge serve as member of a board of a State agency created by the Legislature, which appointment requires appointment by the Governor and confirmation by the Senate, where the responsibilities are non-judicial and there is no compensation except reimbursement for expenses?

ANSWER: Canon 5G* of the Code of Judicial Conduct states as follows:

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

The Committee is of the opinion that a judge may not accept an appointment to a state board concerned with non-judicial matters, unless the function of that board is limited to historical, educational, or cultural activities. The Committee is of the further opinion that a judge should

regulate his extra-judicial activities to minimize the risk of conflict with his judicial duties, keeping in mind that an independent judiciary is indispensable to justice in our society.

The Committee notes that the stated question raises the issue of separation of powers which deserves consideration, but such issue is not within the scope of the Committee's function.

** Now see Canon 4H.*

INSTRUCTION OF LAW OFFICERS ON CROSS-EXAMINATION

Opinion No. 66 (1983)

QUESTION: May a judge participate with law enforcement officers in the development and preparation of a program designed to inform law enforcement officers concerning possible pitfalls during cross-examination? The program would be sold to law enforcement agencies, but the title of "Judge" would not be used in connection with the program.

ANSWER: Several sections of the Code of Judicial Conduct speak to the problem. Canon 4A* states: "[A judge] may speak, write, lecture, teach, and participate in other activities concerning law, the legal system, and the administration of justice."

Canon 5C(1)** states: "A judge should refrain from financial and business dealings that tend to reflect adversely on his [or her] impartiality, interfere with the proper performance of [the] judicial duties, exploit his [or her] judicial position, or involve [the judge] in frequent transactions with lawyers or persons likely to come before the court on which he [or she] serves."

Canon 6*** states: "A judge may receive compensation and reimbursement of expenses for the quasi-judicial and extra-judicial activities permitted by the Code, if the source of such payments does not give the appearance of...impropriety."

The Committee is of the opinion that the Code of Judicial Conduct encourages a judge to write, lecture and teach on matters concerning law, the legal system, and the administration of justice. However, the program described in the question has the appearance of advocating particular results in certain kinds of cases and, as such, reflects adversely on the judge's appearance of impartiality.

** Now see Canon 4B.*

*** Now see Canon 4D.*

**** Now see Canon 4I.*

USE OF LETTERHEAD FOR FRATERNITY SOLICITATION

Opinion No. 67 (1983)

QUESTION: May a judge use his official letterhead (or a reproduction of that letterhead) to invite members of a fraternal organization, who live in the jurisdiction of his local organization but have their membership elsewhere, to transfer their membership to the local organization?

ANSWER: Canon 2B of the Code of Judicial Conduct impart states: "... (A judge) should not lend the prestige of his [or her] office to advance the private interests...of others..."The use of his official

letterhead by a judge to invite or solicit transfer of membership in a fraternal organization appears to lend the prestige of the judge's office to assist his fraternity and is violative of Canon 2B.

LETTER OF APPRECIATION TO JURORS
Opinion No. 68 (1983)

QUESTION: Would judges who participate in a central jury system violate the Code of Judicial Conduct by sending a form letter expressing their appreciation to those persons who reported for jury duty, including those not selected as jurors? The letterhead would contain all the names of the judges in the system and the names of the District and County clerks. Costs would be borne by the county.

ANSWER: Your Ethics Committee is of the opinion that if the contents of the letter is a genuine expression of appreciation, the letter is mailed routinely when the panel is discharged, and the signatory privileges are rotated regularly, that such a letter would be appropriate.

Canon 3A(3)* requires a judge to be courteous to jurors. Canon 2 requires that a judge avoid impropriety and the appearance of impropriety in all of his activities, and Canon 7A** requires that any candidate for judicial office, including an incumbent judge, should refrain from conduct which might tend to arouse reasonable belief that he is using the power or prestige of his judicial position to promote his own candidacy. If the content and timing of mailing the letter of appreciation meet the criteria of these three canons the letter would be appropriate.

The Committee sees no impropriety in the county bearing the costs of such a letter, if the costs do not become prohibitive. Consideration might be given to attaching such a letter to each panel member's check when mailed.

*Now see Canon 3B (4).

** Now see Canon 5.

LETTER OF APPRECIATION TO JURORS
Opinion No. 69 (1983)

QUESTION: May a judge ethically write letters of appreciation to persons who have served as jurors in his court?

ANSWER: Yes. However, the Committee is of the opinion that the judge should avoid the appearance of impropriety in selecting the content of the letter. The judge should also mail the letter immediately after the service has been rendered on a routine basis. See Canons 2, 3A(3)* and 7A.**The Committee is aware that judges throughout the State are continually making speeches wherein they are stressing the importance of the jury system and urging that all persons report when summoned for jury duty. Thus, for a judge to say "thank you," to those who have given of themselves and their time by serving as jurors, appears to be logical and appropriate.

*Now see Canon 3B (4).

** Now see Canon 5.

JUDGE AS BANK ORGANIZER; SPOUSE AS CORPORATE DIRECTOR

Opinion No. 70 (1983)

QUESTION: 1. Would a judge be in violation of any section of the Code of Judicial Conduct by serving as an organizer of a new bank?

2. Would a judge be in violation of the Code of Judicial Conduct if the judge's spouse serves as a director on the board of a publicly owned corporation?

(In each of the above situations, neither the judge nor spouse would trade on or emphasize the fact of the judge's position as a judicial officer.)

ANSWER TO QUESTION 1: The Committee is of the opinion that the Code of Judicial Conduct does not specifically prohibit a judge from serving as an organizer of a new bank. Canon 5C(2)* permits a judge to hold and manage investments and engage in other remunerative activities, including the operation of a business.

When making such an investment, however, the judge must comply with paragraph C(1) of Canon 5**, which requires a judge to refrain from financial or business dealings that tend to reflect adversely on his impartiality, interfere with the proper performance of his judicial duties, exploit his judicial position or involve him in frequent transactions with lawyers or other persons likely to come before the court on which he serves. In his business dealings, the judge must also comply with Canon 5C(3)** which requires him to divest himself of interests that might require frequent disqualification (see Canon 3C**** and Canon 2B, which prohibits him from lending the prestige of his office to advance the private interest of others.)

Subject to the stated conditions, the investment in question is permissible under the Code.

ANSWER TO QUESTION 2: The Committee is of the opinion that the Code of Judicial Conduct does not prohibit a judge's spouse from serving as a director on the board of a publicly owned corporation. The Committee suggests, however, that a wife should serve under her own name. The judge is disqualified in any proceeding involving the company. (Canon 3C(1)(c))****(Adopted by the Committee, one judge dissenting, one judge dissenting on the answer to Question 1, and one judge not participating.)

* *Now see Canon 4D (2).*

** *Now see Canon 4D(1).*

*** *Now see Canon 4D(3).*

**** *Now see Texas Rules of Civil Procedure 18a and 18b.*

SERVICE ON STATE SCHOOL REVIEW BOARD

Opinion No. 71 (1983)

QUESTION: May a judge serve on the Institutional Review Board of the Mexia State School?

FACTS: The Mexia State School is a state eleemosynary institution. Tex. Rev. Civ. Stat. Art 3263c (Vernon 1968). The Institutional Review Board, appointed by the superintendent of the school, is responsible generally for reviewing and overseeing research at the school.

ANSWER: The committee is of the opinion that service on the Mexia State School Institutional Review Board would violate the Code of Judicial Conduct. Canon 5G* restricts a judge's service on governmental boards by providing that a judge should not accept appointment to a governmental committee, commission or other position that is concerned with issues of fact or policy on matters other than the improvement of the law, the legal system, or the administration of justice.

* *Now see Canon 4H.*

ADVERTISING AND CHARGING FOR MARRIAGE SERVICES

Opinion No. 72

QUESTION: 1) Can a judge place an advertisement in the personals section of the newspaper classified ads to inform the public that he will perform marriages? The ad would read either "Weddings by Judge - home phone number," or "Weddings Performed - home phone number."

2) Can a judge charge a fee to perform a wedding? Does the location of the wedding matter as to where there can be a fee, i.e., in chambers vs. a house call or other private place?

ANSWER: The Committee is of the opinion that a judge who advertises the performance of weddings and charges fees for weddings violates the Code of Judicial Conduct. Section 1.83 of the Family Code (Vernon Supp. 1982) authorizes a judge to perform weddings. To advertise and charge fees for a service the judge can perform only because of judicial office violates Canon 5C(1)* which requires a judge to refrain from financial dealings that exploit his judicial position.

* *Now see Canon 4D(1).*

ENDORSEMENT OF POLITICAL CANDIDATE

Opinion No. 73 (1984)

QUESTION: Does a judge subject to the Code of Judicial Conduct violate the Code by publicly endorsing a candidate for public office?

ANSWER: The Committee is of the opinion that such action would violate the Code of Judicial Conduct. The heading under Canon 7* states that a judge should refrain from political activity inappropriate to his judicial office. Paragraph A of Canon 7 states: "Political Conduct in General. Any candidate for judicial office, including an incumbent judge, and others acting on his behalf, should refrain from all conduct which might tend to arouse reasonable belief that he is using the power or prestige of his judicial position to promote his own candidacy."

The essence of Canon 7A is that a judge should not use the prestige of his office to advance his own private interests. It naturally follows that if he cannot use his power or prestige to help his own candidacy, he should not do this for others.

Canon 2B is similar to 7A in that it prohibits a judge from lending the prestige of his office to advance the private interest of others.

Further, Canon 1 directs a judge to maintain the independence of the judiciary, and Canon 2A requires a judge to act in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

It is difficult for a judge to realistically separate the prestige of his office from his personal affairs. Thus, the Committee is of the opinion that the public endorsement of another person's candidacy, of necessity involves the use of the prestige of the judge and the prestige of his office. Additionally, a judge's involvement in another person's political race places the judge in a partisan posture and gives the public cause to question the judge's independence. Thus, the described activity violates the Code of Judicial Conduct.

(Adopted by the Committee on Judicial Ethics the 9th day of March, 1984, one member dissenting.)

**Now see Canon 5.*

SERVICE ON BAR DISCIPLINARY COMMITTEE Opinion No. 74 (1984)

QUESTION: Does a judge violate the Code of Judicial Conduct by serving on the Disciplinary Review Committee of the State Bar of Texas?

ANSWER: The Committee is of the opinion that such service does not violate the Code of Judicial Conduct, so long as it does not conflict with or affect the performance of judicial duties. Canon 4A* permits a judge to participate in activities concerning the law, the legal system and the administration of Justice. Service on the Disciplinary Review Committee, which oversees and hears appeals from local grievance committees, is clearly an activity that concerns the legal system. The Committee is aware that Canon 5G** prohibits service on most governmental committees and commissions. However, that Canon contains an exception for the activities listed in Canon 4A.*

(Approved by the Committee on Judicial Ethics the 20th day of September, 1984, one judge dissenting.)

**Now see Canon 4B.*

***Now see Canon 4H.*

TELEVISIONING OF VOIR DIRE EXAMINATION Opinion No. 75 (1984)

FACTS: The television program "20/20" wants to film the voir dire examination of a jury panel in a criminal case. The film will be used in a "20/20" program to educate and inform the public

on the voir dire procedure. The defendant has consented to the filming, which will be done in an unobtrusive manner that does not detract from the dignity of the proceedings. The film will not be exhibited until after the trial is over.

QUESTION: Does a judge violate the Code of Judicial Conduct by permitting the described filming?

ANSWER: The Committee is of the opinion that the trial judge would violate Canon 3A(7)* by permitting the described activity. That Canon prohibits filming or recording in a courtroom and areas adjacent thereto during sessions of court or recesses between sessions. Although various exceptions are permitted, the described activity does not fit within the exceptions because there is no assurance that the display of the film will be delayed until all direct appeals have been exhausted (Canon 3A(7)(c)(iii)).*

Also, the use of the film in a commercial television program that is displayed to the general public does not satisfy the requirement that "the reproduction will be exhibited only for instructional purposes in educational institutions" (Canon 3A(7)(c)(iv)).*

(Unanimously adopted by the Committee on Judicial Ethics the 6th day of August, 1984.)

*Now see *Texas Rule of Civil Procedure 18c*.

JUDGE AS DRAFTER OF LEGISLATION

Opinion No. 76 (1985)

QUESTION: May a judge draft or originate legislation dealing with substantive law?

ANSWER: The Committee's answer to the question is "yes." Canon 4 of the Code of Judicial Conduct permits a judge to engage in activities to improve the law, the legal system and the administration of justice. Specifically, under paragraph B of Canon 4, a judge may engage in such activities as appearing at a public hearing before an executive or legislative body. Also the judge may consult with executive or legislative officials on matters concerning the administration of justice. The Committee considers the foregoing language to encompass the drafting or origination of legislation dealing with substantive law.

JUDGE AS TRUSTEE OF CHARITABLE TRUST

Opinion No. 77 (1985)

QUESTION: Would a judge violate the Code of Judicial Conduct if he acts as the sole trustee of a charitable trust created by an individual contributor who is not a member of his family?

ANSWER: Canon 5D* provides that a judge should not serve as trustee or other fiduciary except for one or more members of his family. Although Canon 5B** does permit a judge to serve on

the board of directors or trustees of an organization, that type of service is not involved in this question. The Committee is of the opinion that for a judge to act as a trustee under the circumstances stated by this question would be a violation of Canon 5D.*

**Now see Canon 4E.*

*** Now see Canon 4C.*

REMOVAL OF RETAINED ATTORNEY

Opinion No. 78 (1985)

QUESTION: Under the Code of Judicial Conduct, does a judge have the authority, in a criminal case, to remove a retained attorney for ineffective assistance of counsel?

ANSWER: No. The Committee is of the opinion that the action or removal of an attorney by a judge is a matter of law, not a question of ethics. Although the Code of Judicial Conduct, Canon 3B(3)* provides that "a judge should take or initiate appropriate disciplinary measures against a lawyer for unprofessional conduct of which the judge may become aware," it does not authorize a judge to remove or take disciplinary action. The intent of Canon 3B(3)* is to advise a judge that it is unethical for a judge not to fulfill the responsibilities that the law places upon him; in this instance, to initiate appropriate action when he becomes aware of unprofessional conduct by a lawyer. See Guillory v. State, 557 S.W.2d 118, 121 (Tex. Crim. App. 1977) for types of appropriate action a judge may initiate.

**Now see Canon 3D(2).*

APPOINTMENT OF MASTER

Opinion No. 79 (1985)

QUESTION: May a judge appoint an attorney as a master, pursuant to Art. 1918B, V.A.C.S., or Rule 171, Tex. R. Civ. P., where that attorney appears in the judge's court on a regular basis in other unrelated matters?

ANSWER: The Committee is of the opinion that this is a question of law as distinguished from a question of ethics. Whether an attorney is qualified to be appointed a master is a matter of law. The only foreseeable ethical consideration would be if a judge knowingly appointed a master who was not qualified or made an appointment in disregard of Canon 3B(4).* Your Committee respectfully declines to assume that a judge would knowingly not follow the law by appointing a master who is not qualified.

Your Committee also points out that its function is limited to issuing opinions on ethical matters, not matters of law. Therefore, your Committee respectfully declines to give an opinion on the legal question you have posed.

**Now see Canon 3C(4).*

MASTER'S SERVICE ON CITY BOARD
Opinion No. 80 (1985)

QUESTION: May a person who has been appointed as a Master of a District Court continue to serve as a member of a city planning and zoning board?

ANSWER: Although a Master of a Court is not a judge, the compliance section * of the Code of Judicial Conduct makes a master or a referee, who are permanently appointed by a district judge, subject to compliance with the provisions of the Code.

Canon 5G,** concerning extra-judicial appointments, states "A judge should not accept appointments to a governmental committee, commission, or other position that is concerned with issues of fact or policy on matters other than the improvement of the Law, the Legal system or the Administration of Justice."

The Committee is of the opinion that serving on a city planning and zoning board, by a permanently appointed master, does not fall within any of the exceptions enumerated in Canon 5G and is prohibited by the Code of Judicial Conduct.

*Now see Canon 6.

**Now see Canon 4H

TITLE COMPANY, SERVICE ON BOARD
Opinion No. 81 (1985)

QUESTION: May a judge serve as chairman of the board of a title company, a private corporation?

ANSWER: The Code of Judicial Conduct does not specifically prohibit a judge from serving as chairman of the board of a title company which is a private corporation. It does set forth guidelines that a judge should observe:

(1) A judge should conduct himself at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary. (Canon 2A).

(2) A judge should not lend the prestige of his office to advance the private interests of others; nor should he convey or permit others to convey the impression that they are in a special position to influence him. (Canon 2B).

(3) A judge should regulate his extra-judicial activities to minimize the risk of conflict with his judicial activities (Canon 5)*, and manage his investments and other financial interests to minimize the number of cases in which he is disqualified. (Canon 5C(3))**. See Canon 3C*** for judicial disqualifications.

The Committee assumes that the judge would not permit his title to be used upon the company stationery or any other printed material of the title company.

If there is no conflict with the canons set out above, the Judicial Ethics Committee perceives no violation of the Code of Judicial Conduct.

**Now see Canon 4*

*** Now see Canon 4b(3).*

**** Now see Texas Rules of Civil Procedure 18a and b.*

SUPPORT OF COUNTY BOND ELECTION Opinion No. 82 (1986)

QUESTION: May judges support a county bond election, designated a "law and order election," to fund an expanded and improved jail facility, a new county criminal courts building, and renovation and improvement of civil district and family courts facilities?

ANSWER: Yes, with certain limitations. Canon 4 of the Code of Judicial Conduct permits a judge to engage in activities to improve the law, the legal system, and the administration of justice. However, Canon 4 also sets forth certain limitations, "subject to the proper performance of his judicial duties, [a judge] may engage in [such duties], if in doing so he does not cast doubt on his capacity to decide impartially any issue that may come before him."

A possible second limitation may occur if the "law and order" bond issue is not segregated from other issues which do not pertain to law improvement, the legal system and the administration of justice. In our Opinion No. 64, this committee was of the opinion that it would be unethical for a judge to actively support a bond election to raise funds to develop a city water project. If the "law and order" bond issue is submitted with other issues and not segregated, ethical considerations may become involved. See Canon 5*.

A possible third limitation may occur depending upon what the judges mean by "support" the bond election. To support a bond issue connotes much more than a mere endorsement. Canon 1 states, "A judge should uphold the integrity and independence of the judiciary." Canon 2 states, "A judge should avoid impropriety and the appearance of impropriety." Canon 7** states, "A judge should refrain from political activity inappropriate to [the Judiciary]." Your Committee is of the opinion that proper facilities and equipment for courts and jails are essential to the legal system and the proper administration of justice. Subject to the limitations set forth above, a majority of the committee is of the opinion that it would not be unethical to support a bond issue for those purposes enumerated in the posed question.

**Now see Canons 4C and 5.*

*** Now see Canon 5.*

APPOINTMENT OF COUNSEL Opinion No. 83 (1986)

QUESTION: Would a judge violate the Code of Judicial Conduct by appointing an attorney to represent indigent, if the attorney is an employee of a law firm consisting of the judge's father, brother, and the attorney receiving the appointments? All fees paid to the attorney for the judicial appointments would benefit the law firm.

ANSWER: Canon 3B(4)* states in pertinent part as follows: "[A judge shall] exercise his [or her] power of appointment only on the basis of merit, avoiding nepotism and favoritism. [A judge shall] not approve compensation of appointees beyond the fair value of services rendered." Although the appointment of a father's or brother's employee would not be nepotism, such action would indirectly accomplish that which cannot be done directly. It violates the spirit of Canon 3B(4)* and could be considered favoritism.

Canon 2 states that a judge should avoid impropriety and the appearance of impropriety in all of his activities.

Your committee is of the opinion that judicial appointments made under the factual situation posed would violate the Code of Judicial Conduct.

* *Now see Canon 3C(4).*

TRUSTEE FOR FORMER LAW ASSOCIATE Opinion No. 84 (1986)

QUESTION: Prior to becoming a district judge, an attorney served as a trustee for many years in a trust created by a law associate for the benefit of the law associate's wife's grandchildren. May the judge ethically continue to serve as a trustee after he has taken his oath of office?

ANSWER: No. Canon 5D* of the Code of Judicial Conduct states, "A judge should not serve as...[A] trustee...except for the...trust of a member of his [or her] family; and then only if service will not interfere with the proper performance of [judicial] duties."

Although the judge and the beneficiaries of the trust obviously enjoy a warm and cordial relationship, the beneficiaries are not members of the judge's family. Canon 5D* is quite clear, and to continue as trustee would be a violation of the Code of Judicial Conduct, Canon 5D*.

* *Now see Canon 4E.*

TRUSTEE OF CHARITABLE EDUCATION TRUST Opinion No. 85 (1986)

QUESTION: May a judge serve on a charitable educational trust (consisting of 5 trustees) created for the sole purpose of funding student summer educational internships to study in a specific United States Congressman's District office during the summer. The trust will bear the name of a former Congressman of the district who is now deceased. The trustees will not be involved in fund-raising and their names will not be used in solicitation attempts.

ANSWER: Canon 5* admonishes judges to regulate their extra-judicial activities to minimize the risk of conflict with their judicial duties. However, Canon 5B expressly states that judges may serve as trustees of an educational or charitable organization not conducted for economic or political advantage of its members, subject to the following limitations enumerated in Canons 5B(1), B(2), and B(3). Judges should not serve: (1) if the organization would regularly appear in any court in adversary proceedings; and (2) they should not solicit funds, or use or permit the use of the prestige of their offices for that purpose, or be a speaker or guest of honor at an organization's fund-raising events; and (3) they may not give investment advice to such organization even though they may serve on a board which is responsible for approving investment decisions.

Subject to the limitations set forth in Canons 5B(1), B(2), and B(3), the Committee is of the opinion that it would not be a violation of the Code of Judicial Conduct to serve as a trustee in the described organization.

**Now see Canon 4.*

ADVISOR TO PUBLIC TASK FORCE Opinion No. 86 (1986)

QUESTION: May judges serve in an advisory capacity to a public board or task force, where in all probability they will later preside over cases arising out of the crisis or problem for which the board or task force was created to solve?

ANSWER: Judges should regulate their activities to minimize the risk of conflict with the proper performance of their judicial duties. Canon 4 applies this admonition to judges' activities to improve the law, the legal system, and the administration of justice. Canons 5A, 5B, and 5D apply this same admonition to judges' extra-judicial activities. Canon 3 states, "The judicial duties of a judge take precedence over all his other activities."

A majority of the Committee is of the opinion that it would be a violation of the Code of Judicial Conduct for judges knowingly to agree to serve on or to continue to serve on such a board or task force, if in serving, a conflict with the proper performance of their judicial duties probably would arise or does arise. One judge dissented.

RETIRED JUDGE ON LAW FIRM'S LETTERHEAD Opinion No. 87 (1986)

QUESTION: May retired or former judges, who have elected to accept judicial assignments under former Art. 200a, Sec. 5a, V.T.C.S. (Now Art. 200a-1, Sec. 4.014(3), V.T.C.S.) ethically permit the use of their names on a law firm's stationery without the phrase "of counsel" or a similar phrase?

ANSWER: The question submitted requires a legal construction of Sec. 44.005, of Title 110B, Public Retirement Systems, which is entitled "Ineligibility to Practice Law."* Your Judicial

Ethics Committee is not authorized to give legal opinions. However, the Committee would observe that if a construction of Sec. 44.005 should hold that retired or former judges, who have elected to subject themselves to judicial assignment, are ineligible to practice law; then, to permit the use of their names on a law firm's stationery without proper qualifying language would be a violation of the Code of Judicial Conduct, Canon 2A. The essence of Canon 2A is that a judge should respect and comply with the law, thereby avoiding improprieties and the appearance of improprieties.

** Now see Texas Government Code Section 74.0551.*

CONDITIONS OF PROBATION Opinion No. 88 (1987)

QUESTION: Would a trial judge violate Canon 3A(1) or Canon 2A if he imposed as a term of felony probation, that a defendant remain in his home during certain hours and monitored compliance through electronic means?

ANSWER: The question posed requires a legal construction of a statute fixing the range of punishment for specific crimes. The function of the Judicial Ethics Committee is to write opinions construing the Code of Judicial Conduct as applied to given fact situations. The Committee does not give legal opinions. Because the submitted question requires a legal interpretation of a criminal statute prior to reaching any ethical considerations, the Committee respectfully declines to answer the question.

DIRECTOR OF BANK Opinion No. 89 (1987)

QUESTION: May an attorney who has been elected as judge of a county court at law ethically continue to be a director of a bank which has one stockholder, which stockholder is a publicly held corporation? If not, can he be an advisory director?

ANSWER: The Committee is of the opinion that he cannot ethically be a director or advisory director. As stated in our Opinion 61, for a judge to continue as a director of a bank would be contrary to the purposes of Canons 5C(1)* and 5C(2), as well as Canon 2.

In our Opinion 38, the Committee was of the opinion that to accept the position of advisory director of a bank would permit a judge to do indirectly that which he cannot do directly. This same principle applies when the sole stockholder of the bank is a public corporation. Canon 5C(2)* prohibits a judge from being an officer, director or manager of a "publicly owned business." It then defines a "publicly owned business" as "a business having ten or more owners." In the present case there is only one stockholder owner which is a publicly held corporation. Ordinarily, since there is only one owner of the bank, there would not be a violation of Canon 5C(2)* for a judge to be an advisory director of the bank, however, since the sole

owner of the bank is a publicly held corporation, there appears to be more than ten actual owners of the corporation and the bank.

A judge should neither lend the prestige of his office to advance the private interest of others (Canon 2B), nor engage in business dealings that tend to exploit his judicial position (Canon 5C(1))* , and should manage his financial interests to minimize the number of cases in which he is disqualified. (Canon 5C(3))* .

* *Now see Canon 4D.*

GOOD FAITH INTERPRETATION OF LAW Opinion No. 90 (1987)

QUESTION: Is a judge's good faith but incorrect interpretation of the law a violation of either Canon 2A ("A judge should respect and comply with the law and should at all times conduct himself [or herself]...in a manner that promotes public confidence in the integrity and impartiality of the judiciary") or Canon 3A(1)* ("A judge should be faithful to the law and maintain professional competence in it")?

PREFACE: The Committee has been advised by the judge who submitted this question that he has received a public reprimand from the State Commission on Judicial Conduct for violations of Canon 2A and 3A(1)* because:

a. that in a number of criminal cases presided over by..., the judge ordered a sentence to begin at a time earlier than the date on which the sentence was pronounced...in at least one instance, the sentence was ordered to begin even prior to the time the offense was committed.

ANSWER: The function of the Judicial Ethics Committee is to write advisory opinions in answer to questions involving potential violations of the Code of Judicial Conduct. Where a ruling on the actions of the judge has been rendered by the State Commission on Judicial Conduct, the Committee considers the request for an advisory opinion to be untimely and beyond the scope of the function of the committee.

The Committee observes that the issue of the judge's "good faith" appears to have been considered and resolved by the Commission on Judicial Conduct.

The Committee respectfully declines to write an opinion on the posed question.

* *Now see Canon 3B(2).*

ADVISORY DIRECTOR FOR POLITICAL SUBDIVISION Opinion No. 91 (1987)

QUESTION: May a judge serve as an advisory director on the board of a political subdivision not located within the primary jurisdiction of the judge's court?

The following information has been furnished to the Committee. The judge would act in a non-legal capacity, receive a nominal fee to cover expenses, and attend meetings after normal working hours. There appears to be little likelihood that the political subdivision or its directors

would have business-related activities in the county in which the judge was elected or appear in the judge's court.

ANSWER: The Committee is not aware of the nature of the political subdivision referred to in the posed question; however, since a political subdivision is involved, Canon 5G* is applicable. Canon 5G* states:

"A judge should not accept appointment to a governmental committee, commission, or other position that is concerned with issues of fact or policy on matters other than the improvement of the law, the legal system, or the administration of justice."

Based on the facts submitted to the Committee, unless the political subdivision board's responsibilities are limited to the improvement of the law, the legal system, or the administration of justice, the Committee is of the opinion that to accept such appointment would be a violation of Canon 5G.*

* *Now see Canon 4H.*

PART-TIME JUDGE--ENDORSEMENT OF CANDIDATES **Opinion No. 92 (1987)**

QUESTION: May a part-time municipal judge publicly endorse judicial or non-judicial candidates for political office?

ANSWER: Canon 2B of the Code of Judicial Conduct states that a judge should not lend the prestige of his or her office to advance the private interest of others. The Committee is of the opinion that the public endorsement of another person's candidacy necessarily involves the use of the prestige of the judge and of his other office.

Canon 8A,* as amended in 1987, provides that judges of municipal courts shall comply with the Code, and Canon 8B(1)** does not exempt part-time judges from Canon 2. The Committee is of the opinion that a part-time municipal judge would violate the Code of Judicial Conduct by publicly endorsing a candidate for public office.

* *Now see Canon 6C.*

** *Now see Canon 6D.*

ELECTIVE OFFICE IN VOLUNTEER FIRE DEPARTMENT **Opinion No. 93 (1987)**

QUESTION: May a judge hold the elective office of Fire Chief of a volunteer fire department during his elected term as a judge?

ANSWER: Whether the judge may hold two elective offices simultaneously requires a legal opinion. The function of the Judicial Ethics Committee is to write advisory opinions involving potential violations of the Code of Judicial Conduct.

The Committee respectfully declines to answer the question, and suggests that the judge obtain a legal opinion from the office of the Attorney General or other appropriate official.

**DIRECTOR OF BANK
Opinion No. 94 (1987)**

QUESTION: May a justice of the peace ethically obtain loans from a bank where he is an advisory director?

ANSWER: In Judicial Ethics Committee Opinions 37, 38, 42, 61, and 89 the Committee has stated that in its opinion a judge may not ethically serve as a director or advisory director of a bank or savings and loan association. Canon 8A* of the Judicial Code of Conduct requires compliance with the Code by justices of the peace. Canon 9** provides that a person should arrange his or her affairs as soon as possible to comply with the provisions of the Code.

The question of whether an advisory director of a bank may obtain loans from that bank requires a legal opinion. The function of the Judicial Ethics Committee is to write advisory opinions involving potential violations of the Code of Judicial Conduct, and not to give legal opinions. The Committee respectfully declines to answer the question.

* *Now see Canon 6C.*

** *Now see Canon 7.*

**RESPONSE TO NEWS MEDIA INQUIRIES
Opinion No. 95 (1987)**

QUESTION: May a justice of the peace respond to news media inquiries concerning inquest proceedings prior to a final ruling on the death certificate?

ANSWER: Canon 3A(8)* states, "A judge shall abstain from public comment about a pending or impending proceeding in any court...." Canon 3A(8)* does permit a judge to explain court procedure.

The Committee is of the opinion that a news media inquiry about the court's procedure may be answered. However, the committee is of the opinion that it would be unethical to discuss the facts or other aspects of the case with the news media during the investigation, or while the matter is pending in his court or any other court.

**Now see Canon 3B(10).*

RAISING CAMPAIGN FUNDS BY DIRECT MAIL

Opinion No. 96 (1987)

QUESTION: Will the Judicial Ethics Committee advise a justice of the peace whether it is ethical to raise campaign funds by direct mail to his constituents?

ANSWER: Whether the raising of campaign funds, either before or after election, by direct mail is lawful or unlawful requires a legal opinion. Giving legal opinions is beyond the scope of the function of the Judicial Ethics Committee. The Committee would note that if such procedure was unlawful, it obviously would be unethical. Canon 5C(1)* sets forth guidelines for a judge's financial and business dealings.

**Now see Canon 4D.*

COMMENT ON PROCEEDINGS BEFORE COMMISSION ON JUDICIAL CONDUCT

Opinion No. 97 (1987)

QUESTION: Will the Judicial Ethics Committee write an opinion on the specified conduct of a judge, as to whether such conduct is a violation of the Code of Judicial Conduct, where a formal complaint for the same conduct has been filed with the State Commission on Judicial Conduct, and the disposition of the complaint is pending?

ANSWER: No. The State Commission on Judicial Conduct is a constitutionally created commission, Tex. Const. Art. 5 Sec. 1-a, which is required to make disposition of complaints filed against judges. Your committee considers such a complaint to represent pending or impending litigation because certain dispositions of complaints by the commission are subject to judicial review. See, Tex. Const. Art. 5 Sec. 1-a(6)A, C (eff. Jan. 1, 1985).

The Judicial Ethics Committee is a nine judge committee created by the bylaws of the Judicial Section of the State Bar of Texas. As a committee, and individually, our conduct is subject to the provisions of the Code of Judicial Conduct. Canon 3A(6)* states, "A judge should abstain from public comment about a pending or impending proceeding in any court...."

The Committee respectfully declines to make, knowingly, public comment on a pending or impending proceeding before the Commission on Judicial Conduct which may require judicial review.

** Now see Canon 3B(10).*

RETIRED JUDGE--TRUSTEE IN FORECLOSURE

Opinion No. 98 (1987)

QUESTION: Does a Senior District Judge violate any ethics by serving as a substitute trustee in non-judicial foreclosure proceedings?

ANSWER: No, although the judge would of course be disqualified from any subsequent litigation involving such sale.

A trustee is normally considered to be a fiduciary because of the duty owed to those whom he serves, and Canon 5D* does provide that a judge should not serve as a fiduciary with certain specified exceptions. But, Canon 8D** exempts a retired judge from the provisions of Canon 5D.*

* *Now see Canon 4E.*

** *Now see Canon 6.*

FORMER JUDGE--SERVICE AS ARBITRATOR OR MEDIATOR **Opinion No. 99 (1987)**

QUESTION: May a former District judge, who has qualified to accept judicial assignments, act as an arbitrator or mediator when not on a judicial assignment?

ANSWER: The Code of Judicial Conduct does not mention former district judges, but Tex. Rev. Civ. Stat. Ann. Art. 200a-1, Sec. 4.014(B) (Vernon 1987), places former judges in the same category as retired judges, when discussing "judges subject to assignment." Since the nature of the judicial assignments and duties are identical, your committee, for the purpose of this opinion, will consider a former judge in the same category as a "retired judge subject to recall" under the code.

Canon 5E* states that a judge should not act as an arbitrator or mediator. However, Canon 8D** states that Canon 5E* is not applicable to retired judges, provided the judge should refrain from judicial service during the period of an extra-judicial appointment not sanctioned by Canon 5G.*** Subject to the limitations in Canons 8D** and 5G,*** your committee is of the opinion that a former judge may act as an arbitrator or mediator when not on a judicial assignment.

* *Now see Canon 4F.*

** *Now see Canon 6F.*

*** *Now see Canon 4H.*

JOINT POLITICAL ACTIVITY BY TWO JUDGES **Opinion No. 100 (1987)**

QUESTIONS: (1) May two or more judges running for judicial office at the same time jointly sponsor or have some politically active group sponsor for them a joint fund raising event?

(2) May two or more judges running for judicial office at the same time jointly advertise or have some politically active group jointly advertise for them by any news media?

ANSWER: A majority of the committee is of the opinion that such joint activity by each of the judges would be a violation of Canon 2* that prohibits a judge from lending the prestige of his

office to advance the private interests of others, even though the other person is a judge or group of judges.

The Code of Judicial Conduct does not prohibit a judge from identifying himself or herself as a member of a political party, or from contributing to a political party, or from speaking to such gatherings on his or her own behalf.

** Now see Canon 5.*

GRIEF COUNSELLING **Opinion No. 101 (1987)**

QUESTION: Would it be a violation of the Code of Judicial Conduct for a judge to work in conjunction with a professional therapist in group counselling of persons who have sustained grievous losses in their lives?

ANSWER: The committee has been informed that the classes are scheduled at such times as to not interfere with the judge's judicial duties and that the judge will be paid a stipend of \$200 monthly, apparently to cover the cost of required insurance.

Canon 5A permits a judge to speak and teach on non-legal subjects in his or her avocational activities provided those activities do not detract from the dignity of his or her office or interfere with the performance of his or her judicial duties. Subject to the limitations set out in Canon 5A,* the committee is of the opinion that it would not be a violation of the Code of Judicial Conduct for a judge to work with the described group counselling classes.

**Now see Canon 4A and B.*

"DISTRICT JUDGE RETIRED" ON LETTERHEAD **Opinion No. 102 (1987)**

QUESTION: May a retired judge, who has elected to return to the practice of law rather than being subject to recall, ethically have a phrase such as "District Judge Retired" printed on his letterhead, professional cards, telephone listings or office door?

ANSWER: Canon 2B admonishes a judge "not [to] lend the prestige of his or her office to advance the private interests of himself or herself...." Canon 2B is applicable to retired judges who have elected to return to the active practice of law.

The committee is of the opinion that after a retired judge has initially sent out his or her announcement of retirement and of returning to the active practice of law, to use the prestige of his or her former judgeship to advance the private interest of his or her law practice would violate Canon 2B.

SERVICE ON GOVERNMENTAL BOARD **Opinion No. 103 (1987)**

QUESTION: Would it be a violation of the Code of Judicial Conduct for a judge of a statutory county court at law to serve on the board of trustees of the Texas Association of Counties Health Insurance Trust?

ANSWER: The committee is informed that the TAC Insurance Trust is the vehicle through which the Texas Association of Counties affords its members group health insurance. The TAC trust board's responsibilities include: acquisition of insurance, collection of premiums, development of policy for that trust, preparation of contracts with (1) insurance companies, (2) participating members, (3) leases, and (4) other contracts necessary to proper administration of the trust. Board members serve without compensation. Service is voluntary.

Whether county employees have a group health program is determined by the Commissioners Court of each county. This is a governmental decision and the fact that a group of counties associate themselves into a common health program does not alter the nature of the decision. This is so because it is only the respective Commissioners Courts that decide whether to join a specific health program.

The committee is of the opinion that the TAC insurance trust is governmental in nature with each county delegating its authority to the trust board.

Canon 5G* admonishes a judge not to accept an extra-judicial appointment to a governmental committee, commission, or other position that is concerned with issues of fact or policy on matters other than the improvement of the law, the legal system, or the administration of justice.

The health insurance trust is involved with issues of fact and policy on matters not concerning the improvement of law, the legal system, or the administration of justice. The committee is of the opinion that if a judge serves as a trustee on the TAC insurance trust, he or she would violate Canon 5G.*

**Now see Canon 4H.*

PREPARATION OF PLEADINGS

Opinion No. 104 (1987)

QUESTION: May a judge who handles a mental illness docket ethically prepare applications and other legal pleadings for persons who desire to commit someone to a mental hospital?

ANSWER: No, for several reasons. Canon 3A(5)* prohibits a judge from directly or indirectly initiating, permitting, or considering ex parte communications concerning the merits of a pending or impending legal proceeding. Canon 2B admonishes a judge from lending the prestige of his office to advance the private interests of others. The giving of advice and preparation of legal instruments to be filed in court is considered practicing law, which is prohibited by Canon 5F** of the Code of Judicial Conduct. Finally, for a judge to prepare legal instruments to be filed in that judge's own court poses a conflict of interest and would violate the intent and purpose of the Code.

**Now see Canon 3B(8).*

*** Now see Canon 4G.*

COLLECTION OF COURT FEES

Opinion No. 105 (1987)

QUESTION: May a County Court at Law Judge participate in the collection of court fees and other fees owed to the County Clerk's Office by writing letters to or personally contacting the persons who owe the fees?

ANSWER: No. A judge should uphold the integrity and independence of the judiciary (Canon 1), and should avoid impropriety and the appearance of impropriety in all his activities (Canon 2). The collecting of the past due debts of the County by a judge constitutes the practice of law. A judge should not practice law (Canon 5F)* and should not have ex parte communications concerning the merits of impending litigation. [Canon 3A(5)].**

The collecting of past due debts of a county is the duty of an authorized agency, i.e. County Attorney, District Attorney, or retained private practicing attorney.

**Now see Canon 4G.*

*** Now see Canon 3B(8).*

APPLICABILITY TO EMPLOYEE OF JUDGE

Opinion No. 106 (1987)

QUESTION: Is a person who is an employee of a judge or a group of judges subject to the provisions of the Code of Judicial Conduct?

ANSWER: Canon 3B(2)* states, "A judge should require his or her staff and court officials subject to the judge's direction and control to observe the standards of this code."

The committee is informed that the person is hired by a group of judges and appears to be under the direction and control of the judge(s). Under such circumstances, it is the duty of the judge(s) who employ that person to see that the employee complies with the provisions of the code.

The code makes no provisions for the sanctions against the employee for non-compliance with the code, but it does provide sanctions against the judge(s) in the event of non-compliance by the judge(s) in not requiring personnel under the direction and control of the judge(s) to adhere to the provisions of the code.

**Now see Canons 3B(4),(6),(8), and (10) and 3C(2).*

SALE OF REPORT ON DOCKET BY CLERK

Opinion No. 107 (1987)

QUESTION: Is it a violation of the Code of Judicial Conduct for a docket assignment clerk, an employee of a judge or judges, to sell subscriptions to attorneys and others, a report which the

clerk compiles advising his or her subscribers of the disposition of and other docket information concerning completed jury trials?

ANSWER: The committee is advised that the docket assignment clerk in his or her discretion determines (1) the order of assignment of cases for jury trial; (2) the judge or court to whom a case is assigned or not assigned; and (3) whether, after a case is assigned, a formal written motion and hearing for continuance are required or whether the clerk will grant an "informal" continuance.

The committee is further informed that the funds received from the subscriptions are retained by the clerk.

Canon 2 requires that a judge should avoid impropriety and the appearance of impropriety. The committee observes no patent impropriety but respectfully suggests that the combination of the delegated authority to the clerk and the sale of the subscriptions by the clerk invites violation of the code.

CAVEAT: Any sanctions imposed for violations of the Code of Judicial Conduct are imposed against the judge(s), not the clerk.

PROPERTY OWNERS CORPORATION Opinion No. 108 (1987)

QUESTION: May a judge ethically serve as an officer or director of a non-profit corporation which collects maintenance fees from subdivision property owners and uses the money to maintain roads and parks in the subdivision? The corporation is controlled by subdivision property owners, and the subdivision is not located within the geographical area assigned to the court over which the judge presides.

ANSWER: The answer to the question is determined by whether the corporation is a "publicly owned business" or a "civic organization." Canon 5B(2)* prohibits a judge from being "an officer, director or manager of a publicly owned business." Canon 5B** permits a judge to serve "as an officer, director, trustee or non-legal advisor of a ... civic organization not conducted for the economic or political advantage of its members, subject to" the limitations set forth in Canon 5B(1), (2), and (3).**

The committee is divided five to four on the proper classification to be given to the corporation, but the majority of the members of the committee are the opinion that the corporation is a publicly owned business. Thus, if a judge serves as an officer or director of the publicly owned corporation, it would be a violation of Canon 5B(2).*

*Now see Canon 4D(2).

** Now see Canon 4.

STEERING COMMITTEE FOR CONSTITUTIONAL AMENDMENT Opinion 109 (1987)

QUESTION: May a judge serve on a steering committee for an organization whose purpose is to effectuate the passage of a constitutional amendment giving certain rights to victims of crime?

ANSWER: Canon 4 of the Code of Judicial Conduct permits a judge to engage in activities to improve the law, the legal system, and the administration of justice provided that in doing so the judge does not cast doubt on his or her capacity to decide impartially any issue that may come before the court.

Canon 4C* permits a judge to serve as a member, officer, or director of an organization or governmental agency devoted to the same purposes stated in Canon 4.

A majority of the ethics committee is of the opinion that the purpose of the described steering committee is the improvement of the law, and that, subject to the limitations state in Canon 4, it would not be a violation of the Code of Judicial Conduct for the judge to serve as a member of the steering committee.

**Now see Canon 4B.*

COURT PERSONNEL -- FUND RAISING

Opinion No. 110 (1988)

QUESTION: Is there a violation of the Code of Judicial Conduct if the court personnel in a judge's office solicit funds for charitable organizations, churches, or civic projects?

ANSWER: Canon 5B(2)* prohibits a judge from engaging in such activities or from using or permitting the use of the prestige of his or her office for such activities.

Canon 3B(2)** requires that a judge should require his or her staff and court officials subject to the judge's direction and control to observe the standards of the code of judicial conduct.

The purpose of Canon 3B(2)** is not to infringe upon the rights or liberties of court personnel but to assist the judge in: (1) upholding the integrity and independence of the judiciary, and (2) to avoid impropriety by the personnel under the judge's direction and control.

The committee perceives no violation of the Code of Judicial Conduct by court personnel engaging in the described activities so long as: (1) the judge's prestige or the prestige of the court is not being used to solicit funds, (2) the solicitation of funds does not interfere or conflict, in any manner, with the official duties of the court or the person doing the solicitation, and (3) there is no impropriety or appearance of impropriety in the manner of solicitation and in being a representative for the organization for which the solicitation is being done.

**Now see Canon 4C(2).*

*** This Canon has been amended.*

COURT PERSONNEL -- SALES FOR CHARITY

Opinion No. 111 (1988)

QUESTION: Is there a violation of the Code of Judicial Conduct for the court personnel of a judge's office to sell Girl Scout cookies or other items to benefit community, school, civic, or community organizations?

ANSWER: This committee's answer in our opinion No. 110 is applicable to the posed question. Subject to the limitations set forth in that opinion, the committee perceives no violation of the Code of Judicial Conduct in the described activities.

COURT PERSONNEL -- SERVICE ON CHARITABLE BOARD OF DIRECTORS
Opinion No. 112 (1988)

QUESTION: Is it a violation of the Code of Judicial Conduct for court personnel in a judge's office to be a director on a Girl Scout council board? Duties would include giving budget and investment advice.

ANSWER: Canon 5B(3)* prohibits a judge from giving investment advice to such organizations. Canon 3B(2)** requires court personnel under the direction and control of the judge to observe the standards of the code of judicial conduct.

For the reasons stated in this committee's Opinion No. 110, we perceive no violation of the Code of Judicial Conduct in the described activity provided the limitations set forth in that opinion are followed.

* *Now see Canon 4C(3).*

** *This Canon has been amended.*

COUNTY JUDGE -- SERVICE IN ORGANIZATIONS
Opinion No. 113 (1988)

QUESTION: Would it be a violation of the Code of Judicial Conduct for a constitutional county judge to serve as a director or member of the following type organizations?

1. A metropolitan transportation organization that reviews and develops transportation needs for the county and cities in the county in which the judge is the county judge. Service is voluntary.
2. A tax increment financing district that oversees the development of public work projects and contracts for such projects in a city in the judge's county. Service is voluntary.
3. A regional planning commission, established by state law, for the development of cooperation between cities, counties, and other governmental entities in the region. Further, to discourage duplication of service in the region. Service and governmental membership is voluntary.

ANSWER: The Code of Judicial Conduct, as amended December 16, 1987, recognized the fact that constitutional county judges have a dual status: (1) their administrative capacity as head of their county governments, and (2) their judiciary capacity as judges of their constitutional county courts. Thus, where Canon 5G* prohibits most judges from accepting appointments to most

governmental committees or commissions, Canon 8C(1)** provides an exception that permits constitutional county judges who perform judicial functions the right to engage in duties which relate to the judge's role in the administration of county affairs, regardless of other Code restrictions. In addition, the Code in Canon 8C(2)** makes Canon 5G* not applicable to constitutional county judges.

The committee is of the opinion that a constitutional county judge may be a member or director of the three described organizations, and that such activity is not a violation of the Code of Judicial Conduct provided compliance with other provisions of the Code are met, i.e. (1) such activities do not interfere with his or her judicial duties [Canon 5B];*** (2) investment advice is not given to the organization by the judge [Canon 5B3];**** (3) the organization does not engage in proceedings that would ordinarily come before the judge, in his judicial capacity, or will be regularly or frequently engaged in adversary proceedings in any court [Canon 5(B)].*****

*Now see Canon 4H

**Now see Canon 6B

***Now see Canon 4A(2)

****Now see Canon 4C(3).

*****Now see Canon 4C(1).

COUNTY JUDGE -- SERVICE ON ECONOMIC DEVELOPMENT CORPORATION BOARD

Opinion No. 114 (1988)

QUESTION: Would it be a violation of the Code of Judicial Conduct for a constitutional county judge to be an ex officio member of a private non-profit corporation created for the purpose of increasing economic development in the judge's county. The corporation solicits funds to sustain its operational costs.

ANSWER: The corporation appears to be engaged in a function that is highly beneficial to a county. A county judge, in his administrative capacity as titular head of the county commissioners court, has a duty to encourage projects which are beneficial to his or her county. Canon 8C(1)* of the Code permits a county judge to engage in such activities so long as they relate to the administration of the county.

The committee is of the opinion that it would not be a violation of the Code of Judicial Conduct for the judge to be a member provided the judge does not personally solicit funds (Canon 4C),** or lend the prestige of his office for that purpose, and further provided no other canons of the Code are violated.

* Now see Canon 6B.

** Now see Canon 4B.

COUNTY JUDGE -- SERVING ON DRUG ABUSE BOARD
Opinion No. 115 (1988)

QUESTION: May a constitutional county judge ethically serve as a co-chairman of a committee created for the purpose of eliminating drug abuse in his or her county? The committee would solicit funds for the purpose of educating the public, offering rewards, compiling statistics, and seeking necessary legislation.

ANSWER: As a titular head of county government, a county judge should encourage the formation of such described organizations. Canon 8C(1)* permits the judge's participation in such programs so long as they relate to his or her duties in the administration of the county. However, the code imposes other restrictions which might make it impractical for a judge to participate in the organization=s activities. For instance, (1) a judge should not personally solicit funds (Canon 4(C));** (2) a judge should not give investment advice (Canon 5B(3));*** (3) such activities do not interfere with his or her judicial duties (Canon 5B(1));**** (4) the organization does not engage in proceedings that would ordinarily come before the judge in his judicial capacity, or will be regularly or frequently engaged in adversary proceedings in any court (Canon 5B(1));***** (5) service on the committee would not detract from public confidence in the integrity and impartiality of the judiciary (Canon 2A); (6) the judge would be unswayed by partisan interest, public clamor, or fear of criticism (Canon 3A(1));***** (7) such service does not cast doubt on the judge's capacity to decide any issue that may come before his or her court (Canon 4A); and (8) the judge does not try drug or drug related cases.

The committee is of the opinion that Canon 8C(1)* permits a judge to ethically serve as a co-chairman of such described committee, provided he or she adheres to those provisions of the code enumerated above.

* *Now see Canon 6B.*

** *Now see Canons 4B(2) and 4C(2).*

*** *Now see Canon 4C(3).*

**** *Now see Canon 4A.*

***** *Now see Canon 4C(1).*

***** *Now see Canon 3B(2).*

ESTABLISHMENT OF DOMESTIC RELATIONS OFFICE
Opinion No. 116 (1988)

QUESTION: May a trial court judge adopt local rules to provide for an "Office of the Guardian Ad Litem" and appoint an attorney to that office who shall have the responsibility, in accordance with orders in all domestic relations cases involving child support orders, to collect and distribute all support payments, maintain necessary records for the court, and file motions for contempt where payments are not promptly made, and in return for such services receive a small monthly service charge out of court-ordered child support payments in order to finance this office?

ANSWER: The proposal is to create a self-supporting plan whereby a representative of the court will take the necessary steps to insure prompt payment of child support in accordance with court orders. The procedure would insure against a former spouse becoming delinquent for many months before this was ever brought to the attention of the court.

The proposed procedure does not result in a violation of the Code of Judicial Conduct. A trial judge has a legitimate interest in seeing that the best interest of a child is protected by prompt payment of support orders. The order creating the position of guardian ad litem would not result in the judge lending the prestige of his office to advance the private interest of others in violation of Canon 2B and would not constitute the practice of law in violation of Canon 5F.* The judge should not engage in ex parte communications with the guardian ad litem as to the merits of the motions for contempt or other proceedings pending in the court in violation of Canon 3A(5).**

Although Tex. R. Civ. P. 173 authorizes the appointment of a guardian ad litem and the allowance of a reasonable fee for his services, this opinion does not pass upon the legality of the proposal for an office of the guardian ad litem, but only the ethical considerations.

* *Now see Canon 4G.*

** *Now see Canon 3B (8).*

CANDIDATE -- REPUDIATE ILLEGAL VOTE Opinion No. 117 (1988)

QUESTION: Must a candidate for judicial office repudiate a vote or votes shown by uncontroverted evidence to be illegal?

ANSWER: Whether a vote is illegal is a question of law to be decided by the proper forum, not the judicial ethics committee.

The committee finds nothing in the Code of Judicial Conduct that requires a candidate in a judicial race to publicly repudiate a vote either before or after a legal determination of the validity of the vote.

DESIGNATION OF SAFETY DRIVING COURSE Opinion No. 118 (1988)

QUESTION: Where a defendant elects to take a safety driving course in lieu of other penalty, may the judge designate a specific agency and course that the defendant attend?

ANSWER: Assuming that there is more than one agency offering a safety driving course, the committee is of the opinion that the judge may not designate a specific agency because Canon 2B prohibits a judge from lending the prestige of his or her office to advance the private interests of others.

SERVICE ON COUNCIL OF GOVERNMENTS Opinion No. 119 (1988)

QUESTION: May a statutory county court at law judge ethically serve on a regional "Council of Governments" which administers federal programs and grants for various county entities?

ANSWER: No. The various functions of the council and the name of the council itself indicate that the council is governmental in nature.

A statutory county court at law judge must comply with Canon 5G* of the Code of Judicial Conduct which prohibits such judge from accepting an appointment to a governmental committee, commission, or other position that is concerned with issues of fact or policy matters other than the improvement of law, the legal system, or the administration of justice.

* *Now see Canon 4H.*

MEDIATION TO EXPEDITE SETTLEMENT

Opinion No. 120 (1988)

QUESTION: Is it ethical for a district judge to mediate civil cases in order to expedite the settlement process?

ANSWER: The committee is of the opinion that a district judge may not mediate civil cases. Canon 3A(5)* states "A judge...shall not directly or indirectly initiate, permit, nor consider ex parte or other communications concerning the merits of a pending or impending judicial proceeding." (Emphasis added.) Furthermore, Canon 5E** of the Code of Judicial Conduct states, "A judge should not act as an arbitrator or mediator." Canon 8*** makes Canon 5E** applicable to district judges. However, Canon 8*** also lists other classifications of judges who are exempt from compliance with 5E.**

**Now see Canon 3B(8).*

** *Now see Canon 4F.*

*** *Now see Canon 6A.*

CONDUCT SETTLEMENT CONFERENCES

Opinion No. 121 (1988)

QUESTION: May a district judge conduct settlement conferences for suits filed (1) in his court or (2) in another judge's court, where he only conveys settlement offers and asks question? In the conference he sets no values, gives no opinions, and discloses no confidential information.

ANSWER: Although judges should encourage settlement negotiations, the described procedure appears to make the judge a mediator. Canon 5E* of the Code Of Judicial Conduct prohibits a judge from being a mediator. Also, Canon 3A(5)** states, "A judge...shall not directly or indirectly initiate, permit, nor consider ex parte or other communications concerning the merits of a pending or impending judicial proceeding."

The committee is of the opinion that the use of the settlement procedure outlined above by a district judge would be a violation of Canons 5E* and 3A(5)** of the code. Whether the litigation is filed in the judge's court or any other court makes no difference. The committee notes that Canon 5E* is not applicable to all classifications of judges. See, Canon 8.***

**Now see Canon 4F.*

*** Now see Canon 3B(8).*

**** Now see Canon 6A.*

SERVICE ON JOB TRAINING AGENCY BOARD Opinion No. 122 (1988)

QUESTION: Would it be a violation of Canon 5G of the Code of Judicial Conduct for a County Court at Law Judge to serve as a member of the board of directors of a private agency which is established to oversee the operations of job-training, remedial education, summer youth employment programs, on-the-job training programs, etc., under a federal job training program?

PREFACE: The committee is advised that the board of directors decides which local agencies receive funding and in what amounts. The board of directors also has oversight and reporting duties and further generally designs and implement programs to insure that the money is spent wisely and effectively.

ANSWER: From the information furnished to the committee, the agency is a private, non-profit organization. Even though the agency implements programs funded by the federal government, the agency is not a governmental committee or commission; and therefore, the committee perceives no violation of Canon 5G* of the Code of Judicial Conduct in serving on the board of directors of such agency. See, limitations set out in judicial ethics opinion No. 85.

** Now see Canon 4H.*

SENIOR JUDGE'S WIFE ON PAC Opinion No. 123 (1988)

QUESTION: If a senior judge's wife becomes a member of a political action committee for a group of hospitals, does this in any manner constitute a violation of the Code of Judicial Conduct?

ANSWER: The code does not in any manner attempt to regulate the activities of a judge's spouse. Canon 2B does prohibit a judge from (1) allowing family members to influence his judicial conduct or judgment (2) allowing others to use the prestige of his office (in this case his title) to advance their private interests, and (3) allowing others to convey the impression that they are in a special position to influence the judge.

Canon 2A admonishes judges to conduct themselves in a manner to promote public confidence, and Canon 3A(2)* admonishes judges to be unswayed by partisan interests.

The committee perceives no violation of the code if the senior judge's wife accepts the described appointment. However, if the judge perceives, in the acceptance of assignments, any impropriety or appearance of impropriety as a result of his or her spouse's appointments, refusal to accept such assignment or recusal after accepting the assignments would not be inappropriate.

** Now see Canon 3B(2).*

FORMER JUDGE AS AN ARBITRATOR
Opinion No. 124 (1988)

QUESTION: Would a former district judge, who has consented to be subject to assignment, violate the code of judicial conduct by acting as an arbitrator or mediator?

ANSWER: Canon 5E* of the Code of Judicial Conduct Act states "A judge should not act as an arbitrator or mediator." However, a former district judge who has complied with the Court Administration Act, Art. 74.054(3) is placed by Canon 8G** of the code in the same category as a senior judge. Canon 8G(1)** states, "[A former district judge]... is not required to comply with Canon 5E@,* but Canon 8G(2)** qualifies this exception by stating "[A former district judge]... should refrain from judicial service during the period of extra-judicial appointment permitted by Canon 5G."***

The committee is of the opinion that a former district judge who has qualified under Art. 74.054(3) may act as an arbitrator or mediator provided the judge refrains from performing judicial service during the period of an extra-judicial appointment.

*Now see Canon 4F.

**Now see Canon 6F.

*** Now see Canon 4H.

**SELECTIVE SERVICE REGISTRATION AS CONDITION FOR SUSPENDED
SENTENCE**
Opinion No. 125 (1988)

QUESTION: May a judge ethically require proof of registration with the United States Department of Selective Service by eligible young men as a condition for the judge giving consideration to a suspended sentence or deferred adjudication as provided by Art. 45.54, Texas Code of Criminal Procedure?

ANSWER: The posed question requires a legal opinion. The function of the judicial ethics committee is to write opinions construing the Code of Judicial Conduct. The giving of legal opinions is beyond the scope of authority given to the committee.

The committee respectfully declines to answer the question and suggests that it be submitted to the office of the Attorney General or other appropriate officers authorized to give legal opinions.

LETTER TO COLLECT COURT FEES
Opinion No. 126 (1989)*

QUESTION: If a parent incurs fees charged by a Juvenile Board's Court Services Department for receiving and disbursing child support or for social studies, and if the applicable statute provides that payment of such fees may be enforced in district court, may a District Judge sign a letter to such parent, or authorize a letter from the court to such parent, to collect such fees?

ANSWER: There are no specific Code of Judicial Conduct provisions that guide a judge in avoiding conflicts between adjudicative and administrative responsibilities, but the Committee is of the opinion that a judge should not personally participate in attempting to collect such fees. If a judge may be required to preside at a hearing concerning the payment of fees, a judge should not write a letter for the purpose of collecting those fees. Such a letter would give the appearance of being inconsistent with the Canon 3A(4)* provision that a judge shall afford to every party the full right to be heard according to law, and the Canon 3A(5)* provision that a judge shall not initiate or permit ex parte communications concerning an impending proceeding.

The committee is also of the opinion that such letters should not appear to be from the "court", that is, from the judicial entity of which the judge is the principal officer. As the authority to determine disputed law and fact issues concerning the fees is actually delegated by law to that entity, it should not send collection letters.

**Now see Canon 3B(8).*

PREPARATION OF APPLICATION TO COMMIT PERSON TO MENTAL HOSPITAL

Opinion No. 127 (1989)

QUESTION: Is there a conflict between Opinion 104 and Section 36 of the Mental Health Code (Art. 5547-36)?

ANSWER: No. Opinion 104 states that a judge should not "prepare applications and other legal pleadings for persons who desire to commit someone to a mental hospital." The statute provides that a motion for an order of protective custody may be filed "on the court's own motion." (Emphasis supplied.)

The "court" is the judicial agency created by law for the purpose of hearing and determining issues of law and fact and authorized to exercise that power according to prescribed rules. The "judge" is the principal officer of that entity. An attempt by the judge to assist an interested person in preparing an application or pleading would conflict with the statutory duty of the judge to make for the court the judicial decision whether to initiate protective custody proceedings without an application. Such assistance would be inconsistent with the provisions of Canon 3A(4)* that a judge must accord to every legally interested person the right to be heard, of Canon 3A(5)* that a judge must not permit ex parte communications, and of Canon 5F** that a judge may not practice law.

The judge who submitted this question also inquired whether a judge who makes an Art. 5537-36 decision to initiate a protective custody proceeding should recuse himself from making the protective custody determination under the statute. The recusal provisions that were stated in Canon 3C of the Code of Judicial Conduct are now covered by the Texas Rules of Civil Procedure. The Committee concludes that a decision on recusal is an adjudicative responsibility of the judge and that the Committee should no longer undertake to answer questions concerning recusal.

The committee also concludes that it would not be appropriate for the Committee to respond to a question concerning the meaning of the Art. 5537-36 words "on the court's own motion," because that is a question of law that must be resolved by each judge who encounters it.

* *Now see Canon 3B(8).*

** *Now see Canon 4G.*

LETTERHEAD OF FORMER JUDGE
Opinion No. 128 (1989)

QUESTION: May a former district judge use the following stationery letterhead for official correspondence while on assignment?

John Doe, District Judge
Formerly, Nine Hundred Ninety-ninth Judicial District
Post Office Box xxxx
xxxx, Texas (zip code)
(telephone)

ANSWER: No. The Committee is of the opinion that the letterhead may be misleading because the word "Formerly" modifies the word "District" and not the word "Judge". The Canon 3B* provision that a judge should not use the prestige of his office includes the requirement that a judge should not use the prestige of his former office. The Committee believes that a judge should avoid any statement about his judicial status that could be ambiguous.

The Committee is also of the opinion that in official correspondence a former district judge may be identified as a former district judge or as a former judge of a court that is correctly identified.

**The committee corrected this reference in Opinion 155 to be Canon 2B.*

OWNERSHIP IN PROFESSIONAL CORPORATION
Opinion No. 129 (1989)

QUESTION: If a lawyer owns and practices law in a professional corporation and then becomes a judge, may the judge continue to own, and may the judge receive a salary from, the corporation while pending matters are being completed by other lawyers?

ANSWER: No. Canon 5F* provides that a judge should not practice law, and the Committee is of the opinion that a judge should not own or receive a salary from an existing corporation whose only purpose is the practice of law.

The liquidation of the assets of a law practice professional corporation is governed by the Canon 5C(3)** provision that a judge's financial interests that might require frequent disqualification should be disposed of as soon as the judge can do so without serious financial detriment.

* *Now see Canon 4G.*

** *Now see Canon 4D(3).*

ENDORSEMENT OF POLITICAL CANDIDATES

Opinion No. 130 (1989)

QUESTION: A judge brings to the attention of this Committee the Texas Attorney General's March 10, 1989 Opinion LO-89-21 which states that Canons 2 and 7 do not prohibit a judge from endorsing a candidate, and the judge submits this question: May a judge endorse a candidate for public office?

ANSWER: No. The Judicial Ethics Committee concludes again that a judge's public endorsement of a candidate for public office violates the Code of Judicial Conduct because such an endorsement tends to diminish public confidence in the independence and impartiality of the judiciary and may give the appearance of involvement in partisan interests and of judicial concern about public clamor or criticism, and because such an endorsement of necessity involves the use of the prestige of the judge and the prestige of his office. See Canons 1, 2A, 2B, and 3A(1), and Judicial Ethics Committee Opinions No. 73, 92, and 100.

The Committee has considered the Attorney General's Opinion and the provisions of the amended Code adopted in 1987, and the Committee is not persuaded by the Attorney General's conclusion that, in the Canon 2B provision that a judge should not lend the prestige of office to advance the private interests of others, the words "private interests" do not include candidacy.

The committee reaffirms its Opinion No. 73, and, by a unanimous vote, respectfully recommends that the Supreme Court of Texas amend Canon 7* of the Texas Code of Judicial Conduct by adding to Canon 7* the following provisions from proposed Canon 5A of the May 1, 1989 Draft Revisions to the American Bar Association Code of Judicial Conduct: "A judge or a candidate for election or appointment to judicial office shall not make speeches for a political organization or candidate or publicly endorse a candidate for public office." [Proposed ABA Canon 5A(1)(b)] "A judge holding an office filled by public election between competing candidates, or a candidate for such office, may, only insofar as permitted by law, attend political gatherings, speak to such gatherings on his or her own behalf when a candidate for election, identify himself or herself as a member of a political party, and contribute to a political party or organization." [Proposed ABA Canon 5A(3)]

*Now see Canon 5.

SERVICE ON COMMITTEE TO RESTORE COURTHOUSE

Opinion No. 131 (1989)

QUESTION: May judges serve on, and allow their names to appear on the letterheads of, steering and coordinating committees to consider funding and organizing a project to restore their courthouse dome, and a project committee to consider the design and appropriateness of the restoration?

ANSWER: The Committee concludes that a judge may serve on and advise such committees but may not allow their names to appear on letterhead used for fund raising.

As proper facilities for courts are essential to the legal system and to the proper administration of justice (see Committee Opinion 82), this courthouse dome project is within the provisions of Canon 4C*, which reads as follows:

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

As stated in Committee Opinion 58, a judge may serve in a leadership capacity in a Canon 4C* organization, but Canon 5B(2)** prohibits any type of participation in, or lending the prestige of judicial office to, public fund raising activities.

The Canon 4C* exceptions to the Canon 5B(2)** prohibition against participating in fund raising are limited to advice to legal system and administration of justice organizations and to recommendations to fund-raising agencies and similar donors. See Opinion 58. This construction of Canon 4C* gives effect to the principles of Canon 1 and Canon 2B that a judge should not lend the prestige of judicial office, or permit others to curry favor or to give the impression that they can influence the judge.

* *Now see Canon 4B.* ** *Now see Canon 4C(2).*

PART-TIME JUDGE REPRESENTATION OF CLIENTS

Opinion No. 132 (1989)

FACTS ASSUMED: In the county in question municipal court judges act as magistrate in most criminal cases in which defendants are arrested. Those judges consider affidavits for, and they issue, both search and arrest warrants. They also arraign defendants, and they set bonds.

QUESTION 1: May a relief judge for a municipal court represent, or practice law with a lawyer who represents, a defendant in a county court or district court case in which a magistrate who is another judge of the same municipal court took some action?

QUESTION 2: May such a part-time judge represent, or practice law with a lawyer who represents, an accused in a criminal case that has not been considered by another municipal court judge?

QUESTION 3: May a municipal court judge continue to serve in that position if the judge's lawyer spouse represents defendants mentioned in Questions 1 and 2?

ANSWER: The answer to Question 1 is No. The provision of Canon 8D(1)(d)* that a municipal court judge may practice law except in the court on which the judge serves or "in a proceeding in which he or she has served as a judge or in any proceeding related thereto," does not expressly prohibit a municipal court judge from representing clients in criminal cases which other judges of the same court have considered. However, the Committee concludes that such representation would be inconsistent with Canon 5C(1),** which provides that a judge should refrain from

financial and business dealings that (1) tend to reflect adversely on the judge's impartiality, (2) interfere with the proper performance of judicial duties, (3) exploit his or her judicial position, or (4) involve the judge in frequent transactions with lawyers or person likely to come before the court on which he or she serves.

The Committee believes that in this context the words "financial and business dealings" include the practice of law. A part-time municipal court judge would at least give the appearance of disregarding all four parts of Canon 5C(1)** if the judge's law practice includes clients whose cases were considered by other judges on the same court.

In response to Question 2 the Committee concludes that the Code of Judicial Conduct does not prohibit a part-time municipal court judge from representing an accused in a criminal case if such representation does not violate Canon 5C(1).**

The answers to Question 3 correspond to the answers to Questions 1 and 2. The judge's financial interest in the income from the spouse's representation of clients who appear before other judges of the same court would be inconsistent with the provisions of Canon 5C(1).** The judge would not necessarily violate that Canon if the judge's spouse represents defendants whose cases are not considered by other municipal court magistrates.

* *Now see Canon 6C.*

** *Now see Canon 4D.*

MEETING WITH COUNTY COMMISSIONERS CONCERNING COUNTY'S CASES

Opinion No. 133 (1990)

FACTS ASSUMED: A Commissioners Court developed a concern about a judge's impartiality in eminent domain cases and about behavior of the judge "which may indicate a prejudice" against the County. Two members of the Commissioners Court requested a meeting with the judge to make the judge aware of this concern before public Commissioners Court discussion or action. No pending or future case would be discussed.

QUESTION: Should a judge meet with County Commissioners to discuss previous decisions in cases in which the County was a party?

ANSWER: No. The Committee concludes that such a meeting would be inconsistent with the following provisions of the Code of Judicial Conduct:

The Canon 1 provision that an independent judiciary is indispensable to justice in our society.

The Canon 2A provision that a judge should promote public confidence in the integrity and impartiality of the judiciary. The Committee believes that the proposed private meeting, between a judge and the principal officers of one party to a series of lawsuits, would tend to impair public confidence in the impartiality of the judiciary.

The Canon 2B provision that a judge should not convey or permit others to convey the impression that they are in a special position to influence the judge.

The Canon 3A(1)* provision that a judge should be unswayed by partisan interests, public clamor, or fear of criticism.

The Canon 3A(5)** provision that a judge shall not directly or indirectly permit private communications concerning the merits of a pending proceeding. The Committee believes that

under the circumstances stated a meeting to discuss previous decisions in eminent domain cases would give the appearance of being a meeting concerning decisions in pending or future eminent domain cases.

Although the Supreme Court has abrogated the Code of Judicial Conduct provision [Canon 3A(8)]*** that a judge shall abstain from public comment about a pending or impending proceeding in any court, the members of this Committee agree that such comments are unethical. By attending such a meeting about previous decisions a judge would give the appearance of accepting an invitation to comment on impending decisions in similar cases.

The Canon 7(2)**** provision that a judge shall not make pledges or promises regarding judicial duties other than the faithful and impartial performance to the duties of office. The Committee believes that by attending such a meeting a judge would give the appearance of accepting an invitation to give assurance concerning decisions in pending and future eminent domain cases.

* *Now see Canon 3B(2).*

** *Now see Canon 3B(8).*

*** *Now see Canon 3B(10).*

**** *Now see Canon 5(2).*

MEETING WITH NEWSPAPER'S EDITORIAL BOARD

Opinion No. 134 (1989)

FACTS ASSUMED: In one of the large Texas cities, which is served primarily by one major daily newspaper, that newspaper periodically files suits in the courts of the county, and two such suits are pending in the court of the judge in question.

QUESTION: Would the judge violate any provision of the Code of Judicial Conduct by participating in an interview with the newspaper editorial board to provide information on which the newspaper will base an endorsement to be published before the election at which the judge seeks reelection?

ANSWER: No. The Code of Judicial Conduct does not prohibit a judge from meeting with, and responding to questions from a newspaper's editorial board. The possibility that the judge may decide to recuse himself in a case or cases involving the newspaper should not prevent the judge from attending such an interview.

USE OF WORDS "REELECT" AND "KEEP" IN CAMPAIGN MATERIAL

Opinion No. 135 (1990)

QUESTION: May a judge, who sought reelection and was defeated, use the words "reelect" or "keep" on campaign material in a subsequent campaign, against an incumbent, for election to another court?

ANSWER: No. The Committee concludes that the use of such words in campaign material would violate the Canon 7(2)* provision that any statement of a judicial candidate's record should be such as can withstand the closest scrutiny as to accuracy, candor, and fairness.

* *Now see Canon 5.*

CAMPAIGN BUMPER STICKERS ON JUDGES' VEHICLES

Opinion No. 136 (1990)

QUESTION: May a judge display on the judge's vehicle a bumper sticker supporting a political candidate?

ANSWER: No. For the reasons stated in Opinion No. 130 a judge's public endorsement of a candidate for public office violates the Code of Judicial Conduct.

After Opinion 130 was issued, the Texas Supreme Court amended Canon 7(3)* so that it now expressly prohibits the public use of a judge's name endorsing another candidate. The Committee concludes that a judge displaying such a bumper sticker would also violate at least the spirit of this new Canon 7(3)* provision, because a judge cannot realistically separate the prestige of judicial office from the judge's personal affairs. See Opinion No. 73.

* *Now see Canon 5(3).*

USE OF JUDICIAL LETTERHEAD

Opinion No. 137 (1990)

DEFINITION: In this opinion "judicial letterhead" means letterhead that shows a judge's title, position, and official address and is suitable for official judicial correspondence.

QUESTION 1: May a judge use judicial letterhead, or letterhead that simply shows the title "Judge", for personal business and social correspondence?

ANSWER: Yes. The Code of Judicial Conduct does not prohibit the use of judicial letterhead, or letterhead that shows the title "Judge", for personal matters. However, a judge should avoid any appearance of impropriety (Canon 2), or of conflict with the judge's judicial duties (Canon 5),* that might result from such use of such letterhead, including the following:

- a. letterhead use that would give the appearance of using the prestige of the judge's office to advance the private interests of the judge or others, or would reflect on the independence, integrity, or impartiality of the judiciary (Canons 1 and 2);
- b. letterhead use that would appear to exploit the judge's position or would require frequent disqualification (Canon 5C);* or
- c. using letterhead as a part of any conduct that violates another provision of the Code.

QUESTION 2: May a judge place a small picture of the judge on judicial letterhead purchased with personal funds?

ANSWER: While placing a picture of the judge on the judge's official letterhead would not violate any specific provision of the Code of Judicial Conduct, the Committee believes that the use of a picture of the judge on judicial letterhead would be undignified. See Canon 3A(3).** Such a picture could also place an unusual and unnecessary emphasis on the appearance and personality of the judge, which could tend to obscure the basic principle that the administration of justice should be an impersonal, predictable, and consistent process, based on the application of established rules of law to the facts of each case, and not on the individual judge presiding in each case.

QUESTION 3: May a judge use judicial letterhead to solicit contributions or other support in the judge's campaign for reelection or for election to another office?

ANSWER: No. Canon 5C(1)*** provides that a judge's financial activities must not reflect adversely on the judge's impartiality, interfere with the proper performance of judicial duties, exploit the judge's judicial position, or involve the judge in frequent transactions with lawyers or persons likely to be in court. On December 19, 1989 the Texas Supreme Court amended Canon 5C(1)*** by adding thereto a sentence providing that this "limitation" on financial activities does not prohibit a judge from soliciting campaign contributions. (Emphasis added.)

The Committee concludes that this amendment manifests the Supreme Court's intent to provide that campaign solicitations are subject to the same Canon 5C(1)*** rules that govern a judge's other financial activities. Therefore, in soliciting campaign contributions, a judge must avoid activities that reflect adversely on the judge's impartiality, interfere with the proper performance of judicial duties, exploit the judge's judicial position, or involve the judge in frequent transactions with lawyers or persons likely to be in court.+

The Committee believes that the use of judicial letterhead to solicit campaign contributions or other campaign support would violate Canon 5C(1)*** as amended. Of course a judge's campaign literature should state the judge's present title and position, but the use of official judicial letterhead for campaign purposes could give the appearance that a judge candidate is attempting to exploit the judge's judicial position.

QUESTION 4. May a judge who is chairman of the local Bar Association membership committee use judicial letterhead for a letter from the judge asking lawyers to join the Bar Association?

ANSWER: Yes. To a limited extent Canon 4C**** condones the use of judicial prestige for the improvement of the law, the legal system, or the administration of justice, and it permits a judge to serve as a member, officer, or director of an organization devoted to those purposes. However, the Code does not permit a judge to use the prestige of judicial office by participating personally in fund raising activities for such an organization, and use of judicial letterhead for that purpose would be improper.

+Committee Footnote: Judges should not assume that the Supreme Court intended the other meaning that could be given this amendment: that a judges may solicit a campaign contribution

even if the solicitation reflects adversely on the judge's impartiality, interferes with the proper performance of judicial duties, exploits the judge's judicial position, and involves the judge in frequent transactions with lawyers or persons likely to be in court.

* *Now see Canon 4.*

** *Now see Canon 3B(4).*

*** *Now see Canon 4D.*

**** *Now see Canon 4B.*

APPOINTMENT TO GOVERNMENTAL COMMITTEE **Opinion No. 138 (1991)**

FACTS ASSUMED: The statutory duties of the Local Government Records Committee are to review and approve the State Library and Archives Commission's schedules and rules for the retention and care of local records, and to advise that Commission on all matters concerning the management and preservation of such records. Government Code Section 441.162 provides that the person who is appointed chairman of the Committee must be an active or retired district judge.

QUESTION: Would an active judge, or a retired district judge subject to assignment, violate Canon 5G* of the Code of Judicial Conduct by serving on the Local Government Records Committee?

ANSWER: No. The Committee concludes that service on this Committee would not violate the provision of Canon 5G that a judge should not accept appointment to a governmental committee that is concerned with issues of fact or policy other than the improvement of the law, the legal system, or the administration of justice.

The statute referred to in the question manifests a legislative intent to coordinate the record keeping responsibilities of the three branches of government, and the Committee concludes that a judge's participation in that statutory arrangement would serve a proper judicial purpose.

* *Now see Canon 4H.*

JUDGE AS AN EXPERT WITNESS **Opinion No. 139 (1991)**

QUESTION: May a judge testify as an expert witness in a lawsuit in which the defendant is a lawyer who is accused of malpractice that allegedly occurred during a previous trial at which the proposed judge witness was the presiding judge?

ANSWER: Not voluntarily. A judge may testify as an expert witness in such a proceeding only if the judge is subpoenaed as a witness and required to testify, but a judge should not testify voluntarily and should discourage a party from requiring the judge to testify as an expert witness.+

The Committee concludes that a judge should not cooperate with a party in becoming an expert witness in such a case, because that would create the appearance of using the prestige of judicial office for the benefit of the party for whom the judge testifies and could also create the appearance of compromising the independence of the judge, by placing the judge on one side of an adversarial proceeding between lawyers who may often appear before the judge.

A judge should not, under any circumstances, accept compensation for testifying.

+ Committee Footnote: Compare Joachim v. Chambers, 815 S.W.2d 234 (Tex. 1991), holding that under these circumstances a trial judge abused his discretion in refusing to order a party not to call the proposed judge witness.

ACCEPTANCE BY COURT STAFF OF FAVORS Opinion No. 140 (1991)

QUESTION 1: May a district judge allow a court administrator to participate in a group weekend trip that is sponsored, organized, and paid for by an attorney who practices before the judge?

ANSWER: No. Canon 5C(4)(c)* provides that a judge should not accept favors from a person whose interests have come or are likely to come before the judge. Canon 3B(2)** provides that a judge should require the judge's staff to observe the standards of the Code of Judicial Conduct. The Committee concludes that the trip inquired about would be inconsistent with these provisions.

QUESTION 2: May a district judge allow a court administrator to participate in such a trip if the court administrator pays all expenses involved?

ANSWER: The Committee concludes that a judge may allow such participation if the arrangements, social activities, and other circumstances do not reflect on the independence or impartiality of the court or its staff, or create the appearance of impropriety.

* *Now see Canon 4D(4)(c).*

** *Now see Canon 3C(2).*

SERVICE ON DOWNTOWN DEVELOPMENT COMMITTEE Opinion No. 141 (1991)

QUESTION: May a judge be the chairman of and serve on a committee to encourage and expand the economic development and historical restoration of a downtown area in which the judge owns real property? The committee will solicit funds from private businesses and individuals and from the city to fund the project.

ANSWER: No. Canon 2B provides that a judge should not permit the use of the prestige of judicial office for the private interests of the judge or others. Canon 5C(1)* provides that a judge should refrain from financial and business dealings that tend to exploit the judge's judicial position.

The Committee concludes that the judge's participation, as chairman of the committee or as a member, in sponsoring a project that may benefit the judge and that depends upon fund raising would create the appearance of using the prestige of judicial office for the benefit of the owners of the downtown property, including the judge. That activity could also give the appearance of compromising the independence of the judge by permitting a contributor to attempt to curry favor

with the judge or to convey the impression that the contributor is in a special position to influence the judge.

** Now see Canon 4D(1).*

JUSTICE OF THE PEACE IN BAIL BOND BUSINESS

Opinion No. 142 (1991)

QUESTION: May a newly elected Justice of the Peace who has had a bail bond license for several years continue his bail bond business if his son manages the business and does not make bond for accused persons who come before the Justice of the Peace.

ANSWER: No. Canon 5C(1)* provides that a judge should refrain from financial dealings that tend to reflect adversely on the judge's impartiality, interfere with the proper performance of judicial duties, exploit his or her judicial position, or involve the judge in frequent transactions with lawyers or persons likely to come before the court on which the judge serves. The Committee concludes that continuing a bail bond business under the circumstances stated in the question would be inconsistent with these provisions of Canon 5C(1).*

The Committee does note that Canon 8D(1)(b)** provides that the requirement of Canon 5C(3),*** that a judge should divest financial interests that require frequent disqualification, does not apply to Justices of the Peace. However, the Committee believes that Canon 5C(1),* which does apply, controls this question. Canon 9,**** which is also applicable, provides that a person to whom the Code becomes applicable should arrange his or her affairs as soon as reasonably possible to comply with it.

** Now see Canon 4D(1).*

*** Now see Canon 6C(1)(b).*

**** Now see Canon 4D(3).*

***** Now see Canon 7.*

SERVICE BY JUSTICE OF THE PEACE ON SCHOOL BOARD

Opinion No. 143

QUESTION: May a person serving as Justice of the Peace also serve as a school board trustee?

ANSWER: Such service would not violate the Code of Judicial Conduct, but this Committee is not authorized to consider the question of law presented by the question.

Canon 8D(1)(b)* provides that a Justice of the Peace is not required to comply with the provision of Canon 5G** that a judge should not accept appointment to a governmental committee that is concerned with issues of fact or policy other than the improvement of the law, the legal system, or the administration of justice. This Committee has considered only the ethical issue presented

under these Code provisions, and respectfully declines to consider or decide any issue of law that may be presented by the question.

* *Now see Canon 6C(1)(b).*

** *Now see Canon 4H.*

SERVICE ON BOARD OF ONE HOSPITAL DIVISION OF A NONPROFIT CORPORATION
Opinion No. 144

FACTS ASSUMED: A nonprofit corporation operates three hospitals that are not separately incorporated, but each hospital is a corporate division with a board of trustees to which the corporate board delegates extensive responsibility.

QUESTION: May a judge serve on the board of trustees of one of the hospital divisions of such a nonprofit corporation?

ANSWER: Yes, subject to certain limitations provided by Canon 5B,* as stated in the following paragraph. Subject to those conditions, a judge may serve as a trustee of a charitable organization not conducted for the economic or political advantage of its members.

Canon 5B* provides that a judge should not serve if the organization will be engaged in proceedings that would ordinarily come before the judge or will be regularly engaged in adversary proceedings in any court. Also, a judge should not solicit funds or permit the use of the judge's name in fund raising, and a judge should not give investment advice to such an organization.

* *Now see Canon 4C.*

POLITICAL ACTIVITY OF JUDGE'S STAFF
Opinion No. 145 (1992)

QUESTION: Should a judge permit members of the judge's office staff to participate in political activities such as publicly supporting a candidate for election, acting as a campaign manager, and fund raising?

ANSWER: No. Canon 7(3)* provides that a judge shall not authorize the public use of the judge's name to endorse another candidate for any public office. The reasons for that rule are stated in the first paragraph of the answer in Opinion 130. Canon 3B(2)** provides that a judge should require the judge's staff, as well other court officials subject to the judge's direction and control, to observe the standards of the Code.

The Committee concludes that such political activity by a member of a judge's office staff would imply, or would be likely to give the appearance of, the judge's support for the candidate.

RELATED QUESTIONS:

The inquiring judge also asks whether a judge should permit a staff member to contribute money to a candidate. The Committee concludes that to permit such a contribution would be

appropriate only under the circumstances that would allow the judge to contribute, that is, when the judge is satisfied that neither the contribution nor the public record thereof will receive public attention before the election.

The inquiring judge also mentions the uncertain nature of a "judge's direction and control" over a county employee on the judge's office or court staff. The Committee does not reach the issue of how that direction and control should be exercised, because it involves questions of law and because it arises in so many different situations and circumstances that it cannot be addressed in general terms.

Therefore, this opinion is limited to the conclusion that for a judge to permit or to condone such political activity by a staff member would be inconsistent with the ethical standards of the Code of Judicial Conduct.

* *Now see Canon 5(3).*

** *Now see Canon 3C(2).*

EXTRAJUDICIAL RECOMMENDATIONS TO BOARD OF PARDONS AND PAROLES

Opinion No. 146 (1992)

QUESTION: Should a judge who has no professional connection with a criminal case make a recommendation to the Board of Pardons and Paroles concerning parole of the defendant?

ANSWER: No. Canon 2B provides that a judge should not use or permit the use of judicial prestige for the benefit of the judge or others. The Committee concludes that if the judge has no professional connection to the case, such a recommendation by a judge would be, or at least would give the appearance of being, an attempt to use Judicial prestige for the benefit of another. This would be true even if the judge has some personal basis for the recommendation, because there is no realistic way to separate the prestige of the judge's office from the judge's personal affairs. Compare Opinion 73.

PARTICIPATION IN PLAN TO ENCOURAGE JURORS TO DONATE JURY PAY

Opinion No. 147 (1992)

QUESTION: Should a judge participate in a plan to advise jurors that they may make a voluntary donation of their jury pay to a "Children's Protective Services Fund?"

ANSWER: No. Canon 5B(2)* provides that a judge shall not solicit funds for any educational, religious, charitable, fraternal, political, or civic organization. Canon 4C** provides that a Judge should not personally participate in public fund raising activities for an organization devoted to the improvement of the law, the legal system, or the administration of justice. Opinions 10, 58, 131, and 137 (Question 4) construe this Canon 4C** provision.

There is another consideration if the court on which the judge serves has jurisdiction in cases involving the protection of children. Canon 2A provides that a judge should promote public confidence in the impartiality of the judiciary. The Committee concludes that a judge's

participation in raising money for the protection of children would create the appearance of partiality in cases involving accusations of abuse of, or failure to protect, children. (Compare Opinion 126.)

The Committee concludes that a judge should not participate in advising jurors that they may donate their jury pay to any cause.

* *Now see Canon 4C(2).*

** *Now see Canon 4B(2).*

**SERVICE ON BOTH COUNTY JUVENILE BOARD AND TEXAS JUVENILE
PROBATION COMMISSION
Opinion No. 148 (1992)**

FACTS ASSUMED: A district judge is the judge of a court designated as a juvenile court and serves on the County Juvenile Board, which has the statutory duty and authority to employ juvenile probation department staff members, designate the titles of employees, and set their salaries. The same judge also serves on the Texas Juvenile Probation commission, which has the statutory duty and authority to allocate and distribute to juvenile boards the funds appropriated by the Legislature and to give technical assistance and training to juvenile boards and juvenile probation departments. A pertinent statute provides that two members of the Commission shall be district judges who are judges of juvenile courts.

QUESTION: When acting as a member of the Commission should the judge vote on questions which affect funding for the juvenile probation department supervised by the Juvenile Board on which the judge serves and on questions concerning funding formula and guidelines that apply to all juvenile boards?

ANSWER: Yes. Canon 3B(1)* provides that a judge should diligently discharge all administrative responsibilities. The statutory arrangement manifests a legislative intent to coordinate the Commission's work with that of local juvenile boards, as well as a legislative assumption that the arrangement itself does not create a conflict of interest.

However, this Committee observes that there may be circumstances under which such a judge may decide that it would be appropriate in order to avoid the appearance of partiality for the judge to abstain from voting on a specific matter that would have an apparent and substantially greater impact on the judge's own probation department than on other departments generally.

* *Now see Canon 3C(1).*

**SERVICE AS JUSTICE OF THE PEACE IN ONE COUNTY AND AS RESERVE
DEPUTY SHERIFF IN ANOTHER
Opinion No. 149 (1992)**

QUESTION: Should a Justice of the Peace serve as a Reserve Deputy Sheriff in another County?

ANSWER: No. The Committee concludes that service by a Justice of the Peace as a law enforcement officer would be inconsistent with the provisions of Canons 1 and 2 concerning the impartiality and independence of the judicial.

JUDGE AS MEMBER OF HOST COMMITTEE FOR FUND RAISING EVENT
Opinion No. 150 (1992)

QUESTION: Should a judge permit the judge's name to be included in a list of the members of the "Host Committee" on an invitation to a fund raising event?

ANSWER: No. Canon 5B(2)* provides that a judge shall not solicit funds for any educational, religious, charitable, fraternal, political, or civic organization.+ Canon 10** provides that the word "shall" when used in the Code means compulsion. The Committee concludes that if a judge should agree to be listed as a host on an invitation to a fund raising event, that would constitute soliciting funds for the cause benefited by the event and, therefore, would violate Canon 5B(2).**

Canon 2B is also relevant. It provides that a judge should not lend the prestige of judicial office to advance the interests of others. Such use of a judge's name would use, or at least would give the appearance of using, judicial prestige for fund raising even if the invitation does not identify the host judge as a judge, because a judge cannot realistically separate the prestige of judicial office from the judge's personal affairs. (Compare Opinions 73 and 136.)

Canon 2B also provides that a judge should not permit others to convey the impression that they are in a special position to influence the judge. By hosting a Fund raising event a judge would create an opportunity for a litigant to attempt to curry favor by contributing generously, and then to convey such an impression.

The applicable principles are also addressed in Opinions 11 (1976), 16 (1977), 41 (1979), 61 (1980), 59 and 60 (1982), and 131 (1989). The same rules apply to judges' personal participation in public fund raising activities for organizations devoted to the improvement of the law, the legal system, or the administration of justice. Canon 4C.***

+Committee Footnote: As the Canon 5B(2) distinction between soliciting funds, and being a speaker or guest of honor at such an event, is quite specific, the Committee does not reach or consider the rationale for that distinction.

* *Now see Canon 4C(2).*

** *Now see Canon 8B(1).*

*** *Now see Canon 4B(2).*

JUDGE AS TRUSTEE OF FAMILY TRUST AND AS BUSINESS PARTNER OF
AUNT AND COUSINS
Opinion No. 151 (1993)

QUESTION: May a judge handle her family's business interests, some of which are held in trust and in partnerships with an aunt and several cousins?

ANSWER: Yes. Canon 5C(1), (2), and (3)* allow this activity if the business is not a publicly owned business, does not require the judge's frequent disqualification from cases, does not reflect adversely on the judge's impartiality, does not interfere with the proper performance of judicial duties, does not exploit her judicial position, and does not involve the judge in frequent transactions with lawyers or others likely to come before the judge's court. The affirmative answer to this question assumes that none of these conditions will occur.

Further, a judge may serve as a fiducial for a member of her own family, if such service will not interfere with the proper performance of judicial duties. This affirmative answer is subject to the conditions stated in Canon 5D,** i.e., the judge should not serve if her fiduciary duties will engage her in proceedings that "that would ordinarily come before the judge, or if the estate, trust, or ward would become involved in adversary proceedings in [her] court or one under its appellate jurisdiction."

* *Now see Canon 4D(1), (2), and (3).*

** *Now see Canon 4E.*

JUDGE AS TRUSTEE OF NONPROFIT CEMETERY TRUST ASSOCIATION Opinion No. 152 (1993)

QUESTION: May a judge serve as trustee for a Cemetery Trust Association that is non-profit, meets once a year to approve investments made, and to advise on future investments?

ANSWER: A judge may serve, but should not approve investments made or advise on future investments. Canon 5B(3)* provides that a judge should not give investment advice to such an organization, but may serve on its board of directors or trustees even though it has the responsibility for approving investment decisions. The same canon provides that a judge may serve as an officer, director, trustee, or nonlegal advisor of an organization not conducted for the economic or political advantage of its members, subject to the following limitations:

1. A judge should not serve if it is likely the organization will be engaged in proceedings that would come before her or would be regularly or frequently engaged in adversary proceedings in any court.

2. A judge shall not solicit funds for such organization but may be listed as a trustee and may be a speaker or guest of honor at an organization's fund raising events.

3. A judge should not give investment advice to such an organization. Canon 5B** provides that a judge may participate in civic and charitable activities that do not reflect adversely upon her impartiality or interfere with the performance of judicial duties, and Canon 2B provides that a judge should not lend the prestige of her office to advance the private interests of herself or others. Subject to these conditions, such service is allowed under the code. See Judicial Ethics Opinions Nos. 57, 70, and 144.

* *Now see Canon 4C(3).*

** *Now see Canon 4C.*

JUDGE AS LESSOR OF LAW OFFICE TO ATTORNEYS PRACTICING IN HER COURT

Opinion No. 153 (1993)

QUESTION: May a judge lease her former law office, of which she is the sole owner, directly to attorneys who will be practicing in her court?

ANSWERS: No. Canon 5C(1)* provides that a judge should refrain from business dealings that tend to reflect adversely on the judge's impartiality, interfere with the proper performance of judicial duties, exploit her judicial position, or involve the judge in frequent transactions with lawyers or persons likely to come before her court. The committee believes that such a relationship constitutes a business dealing that falls within this prohibition. Because the judge's ownership interest is large, the relationship may create the appearance of impropriety.

Canon 5C(3)** provides that a judge should manage her investments and other financial interest to minimize the number of cases in which she is disqualified. As soon as the judge can do so without serious financial detriment, she should divest herself of investments and other financial interests that might require frequent disqualification. See Judicial Ethics Opinion No. 129.

* *Now see Canon 4D(1).*

** *Now see Canon 4D(3).*

EX PARTE COMMUNICATIONS FROM LITIGANTS

Opinion No. 154 (1993)

QUESTION: What is a judge's ethical obligation upon receiving from a litigant a letter which attempts to communicate privately to the judge information concerning a case that is or has been pending?

ANSWER: Canon 3A(5)* provides that a judge shall not permit or consider improper ex parte or other private communication concerning the merits of a pending or impending judicial proceeding. (Canon 10** provides that the word "shall" when used in the Code means compulsion.) Judges may comply with Canon 3A(5)* by doing the following: 1) Preserve the original letter by delivering it to the court clerk to be file marked and kept in the clerk's file. 2) Send a copy of the letter to all opposing counsel and pro se litigants. 3) Read the letter to determine if it is proper or improper; if improper, the judge should send a letter to the communicant, with a copy of the judge's letter to all opposing counsel and pro se litigants, stating that the letter was an improper ex parte communication, that such communication should cease, that the judge will take no action whatsoever in response to the letter, and that a copy of the letter has been sent to all opposing counsel and pro se litigants.

Canon 3A(4)* provides that a judge shall accord to every person who is legally interested in a proceeding the right to be heard according to law. Consideration of an ex parte communication would be inconsistent with Canon 3A(4),* because it would not accord to other parties fair notice of the content of the communication, and it would not accord to other parties an opportunity to respond.

Canon 3*** provides that the judicial duties of a judge take precedence over all the judge's other activities. A judge's consideration of a controversy that is not brought before the court in the manner provided by law would be inconsistent with the judicial duty to determine "cases" and "controversies" (Art. 3, Constitution of the United States). A judge has no authority or jurisdiction to consider, or to take any action concerning, out-of-court controversies. A judge's consideration of a controversy that is not properly before the court could give the appearance of inappropriate action under color of judicial authority, which would tend to diminish public confidence in the independence and impartiality of the judiciary, rather than promote it as Canon 1 and Canon 2 require a judge to do.

Finally, a judge should try to minimize the number of cases in which the judge is disqualified. If a judge permits a communication to the judge concerning any matter that may be the subject of a judicial proceeding, that could necessitate disqualification or recusal.

* *Now see Canon 3B(8).*

** *Now see Canon 8B(1).*

*** *Now see Canon 3A.*

ACTIVITIES OF RETIRED JUDGES

Opinion No. 155 (1993)

QUESTION 1: May a retired judge who is subject to assignment do the following things?

- a. Lawyer Activities: (1) appear in court as a lawyer; (2) practice law without appearing in court; (3) use judicial title; (4) be "of counsel" to a business.
- b. Other Than in Law Practice, Use Former Judicial Title in Directories, on Stationery or Business Cards: (1) for judicial purposes; (2) for business and social purposes.
- c. Political Activities: (1) publicly endorse another candidate for office; (2) work on a political campaign.
- d. Raise Money for Charities.
- e. Activities Governed by Law: (1) perform weddings; (2) administer oaths; (3) disregard financial disclosure requirements.

ANSWERS TO QUESTION 1: (Retired Judges Subject to Assignment):

a. Lawyer Activities

(1) Appear in Court As a Lawyer. No ethical question is presented, because under Government Code Section 74.055 every judge who is eligible for assignment has certified the judge's willingness not to appear and plead as an attorney in court.

(2) Practice Law Without Appearing in Court. Yes, but subject to the provisions of Canons 2, 2B, 5,* and 5C (1) and (6).** Canon 8G*** says that a retired judge subject to assignment is not required to comply with the Canon 5F**** provision that a judge should not practice law (with exceptions that do not apply). However, the principles stated in the headings of Canons 2 and 5,* and the specific provisions of Canon 2B and Canon 5C (1) and (6),** do apply to retired judges subject to assignment.

A retired judge subject to assignment should avoid the appearance of impropriety (Canon 2), and should minimize the risk of conflict with judicial duties (Canon 6). A judge should not use the prestige of judicial office to advance private interests. Canon 2B and Canon 5C(1)** provide that a judge should refrain from financial and business dealings that (a) tend to reflect adversely

on the judge's impartiality, (b) interfere with the proper performance of judicial duties, (c) exploit the judge's judicial position, or (d) involve the judge in frequent transactions with lawyers or persons likely to come before the court on which he or she serves. The words "financial and business dealings" include the practice of law. Opinion 132. Canon 5C(6)** provides that a judge should not use or disclose for any nonjudicial purpose any information that the judge acquires in a judicial capacity. These provisions impose on a retired judge who is subject to assignment the duty to observe rather strict limitations in any law practice in which the judge engages. Paragraph (3) discusses one example.

(3) Use Judicial Title in Law Practice. No. The use of the title "Judge" or "Justice" on letterhead, in directories, or in any other public way would at least give the appearance of using judicial prestige for private advantage and of exploiting the judge's judicial position. See Opinion 102, which concluded that a retired judge would violate Canon 2B by using the prestige of the judge's former title to advance the private interest of a law practice. (That judge was not subject to assignment, but at that time the same Code provisions applied to all retired judges.) See also Opinions 67 and 128. (In Op. 128 the reference to Canon 3B should say 2B).

(4) Be "Of Counsel" To a Business. Yes, subject to the limitations stated above in sections (1), (2), and (3). The Committee notes that Opinion 87 is no longer useful. The statute headed "Ineligibility to Practice Law", which was cited in Opinion 87, has been repealed.

b. Other than in Law Practice, Use Former Judicial Title in Directories, on Stationery or Business Cards.

(1) For Judicial Purposes. Yes. In official judicial correspondence and cards, and in law directories, a retired judge subject to assignment may be identified as a retired judge or justice. Opinion 128.

(2) For Business and Social Purposes. Yes, but subject to the pertinent provisions of Canons 2B and 5C(1).** For personal business and social correspondence and cards, and in business and social directories, the Code of Judicial Conduct does not prohibit the use of the title "Judge" or "Justice". However, Canon 2B provides that a judge should not use judicial prestige for private advantage, and Canon 5C(1)** provides that a judge should refrain from financial and business dealings that tend to exploit the judge's judicial position. A judge should avoid any use of judicial title that would give the appearance of using the prestige of judicial office for private advantage, or of exploiting the judge's position. See Opinion 137, Question 1.

c. Political Activities.

(1) Publicly Endorse, or Work on Campaign for, Another Candidate for Office. No. Canon 7(3),***** which applies to retired judges subject to assignment, provides that a judge shall not authorize the public use of the judge's name to endorse another candidate for any public office. Such a judge's endorsement of another candidate, or participation in another's campaign, would be inconsistent with the principles stated by Opinions 145, 136, 130, 100, 92, and 73.

(2) Work on a Political Campaign for a Party or Issue. Only to the extent permitted by Canon 7(3),***** which provides that a judge may indicate support for a political party, attend political events, and express the judge's personal views on political matters. Other Code provisions preclude campaign work other than that expressly permitted by Canon 7(3).***** A judge should promote public confidence in the impartiality of the judiciary (Canon 2A), and should be and appear to be (Canon 2) unswayed by partisan interests or public clamor. Canon 3A(1).***** A judge may not serve as an officer, director, trustee, or advisor of an organization if it is conducted for the political advantage of its members. Canon 5B.* A judge should not use or appear to use judicial prestige for the benefit of others. Canon 2B.

d. Raising Money for Charities. No. Canon 5B(2),***** which applies to retired judges subject to assignment, provides that a judge shall not solicit funds for any charitable organization. See Opinions 150, 131, 110, 60, 59, 51, 41, 25, 16, 11, and 10.

e. Activities Governed by Law

- (1) Perform Weddings;
- (2) Administer Oaths;
- (3) Disregard Financial Disclosure Requirements.

As these activities are governed by rules of law, it would not be appropriate for this Committee to undertake advisory opinions concerning them, either as to retired judges who are subject to assignment or as to those who are not. See Opinion 127, last paragraph.

QUESTION 2: May a retired judge who is not subject to assignment do the things listed in question 1?

ANSWER TO QUESTION 2: (Retired Judges Not Subject to Assignment):

As Canon 8,** headed "Compliance with the Code of Judicial Conduct" now imposes no specific responsibilities on retired judges not subject to assignment, the Code does not prohibit such judges from engaging in any of the activities listed under Question 1. Opinions 15 and 32 no longer apply to retired judges not subject to assignment, because when those opinions were issued the Code compliance provisions imposed substantially the same requirements on retired judges who were not subject to assignment and on those who were.

The right of retired judges to practice law is a law issue on which the Committee expressed no opinion, but the Committee does note that the statutory prohibition against appearing and pleading as an attorney does not apply to judges who do not choose to be subject to assignment. The Committee also notes again that the Legislature repealed the "Ineligibility to Practice Law" statute cited in Opinion 87.

+Committee Footnote: A February 10, 1988 Supreme Court Order deleted from Canon 5B(2) the word "political", thereby resolving the previous conflict between Canon 5B (a judge may not be an officer of an organization conducted for political advantage) and Canon 5B(2) (a judge may be an officer of a political organization)....

* *Now see Canon 4.*

** *Now see Canon 4D.*

*** *Now see Canon 6F.*

**** *Now see Canon 4G.*

***** *Now see Canon 5(3).*

***** *Now see Canon 3B(2).*

***** *Now see Canon 4C(2).*

COUNTY JUDGE'S ADMINISTRATIVE ROLE

Opinion No. 156 (1993)

QUESTION: May a constitutional county judge accept a seven day expense paid trip to a foreign country to tour the facilities and meet representatives of a corporation that is building a large industrial facility in his county?

FACTS: In addition to judicial responsibilities, the county judge is the presiding officer of the commissioners court and his duties include representing the county at ceremonial functions and promoting economic development. The corporation is requesting a tax abatement from the county. The judge's judicial responsibilities include presiding in cases of probate, juvenile delinquency, misdemeanors, and civil dispute, none of which presently involve the interests of the corporation hosting the trip.

ANSWER: Yes. Canon 8A(4)* defines "County Judge" to mean the judge of the county court created in each county by article V, section 15 of the Texas Constitution. Canon 8C(1)** provides, "A county judge who performs judicial functions shall comply with all provisions of this code except he or she is not required to comply: (1) when engaged in duties which relate to the judge's role in the administration of the county" Traveling to meet with agents of a corporation building a large industrial complex and seeking tax abatement in his county are duties that relate to the judge's role in the administration of the county. Consequently, in performing those duties, the county judge is not required to comply with the code. The county judge should be alert to the fact that future cases may come before him in his judicial function in which the corporation may be a party or its interests may be affected. If that happens, the judge should comply with Canon 2, which requires that a judge act so as to promote public confidence in the integrity and impartiality of the judiciary, not allow social or other relationships to influence his judicial conduct or judgment, and not lend the prestige of his office to advance the private interests of others nor permit others to convey the impression that they are in a special position to influence him. The judge should also comply with Canon 3A(1),*** which provides that a judge should be unswayed by partisan interests, public clamor, or fear of criticism; 3A(5)**** prohibiting ex parte communication concerning the merits of a pending or impending judicial proceeding; and 3A(9),***** providing that a judge shall perform judicial duties without bias or prejudice.

Whether the judge should recuse or disqualify himself in such cases is governed not by the Code of Judicial Conduct but by Texas Rules of Civil Procedure 18a and 18b. Consequently, the committee expresses no opinion on that subject.

* *Now see Canon 8B(17).*

** *Now see Canon 6B (1).*

*** *Now see Canon 3B(2).*

**** *Now see Canon 3B(8).*

***** *Now see Canon 3B(5).*

PARTICIPATION IN POLITICAL FUND RAISING EVENT

Opinion No. 157 (1993)

QUESTION 1: Can a Justice of the Peace, County Court at Law Judge or District Judge join in raising funds for a political party by participating in a car wash at a function sponsored by that political party? The names of the judges are not advertised with relation to the event. However, the judges are present and actively participate in the car wash.

ANSWER: Canon 7(3)* specifically provides that a judge or judicial candidate may attend political events, and may indicate support for a political party. This provision of the code applies

to a Justice of the Peace, County Court at Law Judge or District Judge. Given the conditions stated, it would appear that the question should be answered "Yes".

** Now see Canon 5(3).*

QUESTION 2: Can a Justice of the Peace, County Court at Law Judge or District Judge be the chairman of a committee within a political party that will be responsible for holding fund raising events to obtain money for a donation to a particular charitable organization within their community? The decision as to which charitable organization will receive the funds will be made by a committee which does not include any judges. It is contemplated that the judge will chair the committee which decides on the fund raising events and help organize those events.

ANSWER: The answer to Question Two is "No". With respect to County Court at Law and District Judges, this activity would be prohibited by Canon 5B(2)* which provides that a judge shall not solicit funds for any educational, religious, charitable, fraternal or civic organization. Even though under the proposed arrangement a judge would not participate in the selection of the particular charitable organization to receive the funds, the judge would, nevertheless, be lending the prestige of his office to the solicitation and giving the impression that contributors might obtain special favor with him.

With respect to a Justice of the Peace, Canon 5B(2)* is made inapplicable by the specific provisions of Canon 8D.** However, other canons which do apply to Justices of the Peace, and all other judges, appear to prohibit a justice's participation in the activity described. For instance, Canon 4C*** provides that a judge should not personally participate in public fund raising activities even for an organization devoted to the improvement of the law, the legal system or the administration of justice. Canon 5C(1)**** provides that a judge should refrain from financial and business dealings that tend to reflect adversely on the judge's impartiality, exploit his or her judicial position or involve the judge in frequent transactions with lawyers or persons likely to come before the Court. Canon 2B provides that a judge should not lend the prestige of his or her office to advance the private interests of himself, herself or others nor convey nor permit others to convey the impression they are in a special position to influence him or her. Consequently, the committee concludes that the question should be answered "No" for Justices of the Peace, too.

Previous ethics opinions have discouraged such activities in any similar contexts. See Opinions 10, 11, 16, 25, 41, 51, 59, 60, 67, 110, 131, 147 and 150.

** Now see Canon 4C(2).*

*** Now see Canon 6C.*

**** Now see Canon 4B.*

***** Now see Canon 4D.*

PRINCIPLES AND PRACTICES OF ORGANIZATIONS

Opinion No. 158 (1993)

QUESTION NO. 1: Can a judge serve as a District Chairman or District Commissioner of a local Boy Scouts of America organization which denies homosexuals and persons without religious principles from serving as leaders?

QUESTION NO. 2: Can a judge be a member of the Knights of Columbus organization whose principles are against abortion?

ANSWER: Yes to both Question 1 and Question 2. Canon 5B* clearly allows for a judge to be a District Chairman or District Commissioner in an organization such as the Boy Scouts of America or a member of religious, charitable and fraternal organizations such as the Knights of Columbus. Such leadership or membership is subject to the prohibition against soliciting funds found in Canon 5B (2),* giving investment advice in Canon 5B (3).*

With respect to serving as a District Chairman or District Commissioner in the Boy Scouts of America, the judge should be aware of Canon 5B (1)* which states: "A judge should not serve if it is likely that the organization will be engaged in proceedings that would ordinarily come before him or her or will be regularly or frequently engaged in adversary proceedings in any court." An organization as large as the Boy Scouts of America may be involved in adversary proceedings anywhere throughout the country. The determination of whether the Boy Scouts of America will be "regularly" or "frequently" engaged in adversary proceedings must be made by the individual judge.

Both questions go further inasmuch as it is the principles and practices of the respective organizations which cause the judge to question the propriety of his involvement either as a District Chairman or District Commissioner of a local Boy Scouts of America organization or as a member of the Knights of Columbus. The respective principles and practices in and of themselves do not prohibit a judge from serving as a leader or being member. However, in light of the controversy surrounding these issues the judge should consider Canon 2A before deciding how involved to become with any organization. Canon 2A provides that a judge should conduct himself or herself at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary. Most organizations have principles and policies with which others disagree. For example, Canon 7(3)** allows a judge to support a political party, attend political events, and in accordance with Canons 7** and 3A(8),*** express views on political matters. Such associations are allowed even though political parties express, in their platforms and elsewhere, their views on the same and similar subjects. A judge's membership does not necessarily diminish the public's confidence in the character of the judiciary.

* *Now see Canon 4C.*

** *Now see Canon 7.*

*** *Now see Canon 3B(10).*

USE OF "JUDGE" BY SITTING JUDGE RUNNING FOR NON-JUDICIAL OFFICE Opinion No. 159 (1993)

QUESTION NO. 1: May a sitting judge who runs for a non-judicial political office use the title "Judge" as part of political advertising; e.g., "Elect Judge to Congress"?

QUESTION NO. 2: May a sitting judge who runs for a nonjudicial political office use the title "Judge" in the name of the campaign committee?

ANSWER: No, a sitting judge may not use the title "Judge" as part of his or her advertising for nonjudicial office nor may he or she use the title "Judge" in the name of the campaign committee.

Canon 2B provides that a judge should not lend the prestige of his or her office to advance the judge's private interest. The use of the term "Judge" in the campaign material would give the appearance of using the prestige of judicial office for the private gain of the candidate. See Opinion 137, Question No. 3, where the use of judicial letterhead for campaign purpose for election to another office was prohibited as giving the appearance the candidate was attempting to exploit his judicial position.+

QUESTION (3): May a sitting judge describe in his or her political literature for a nonjudicial office his or her past experience as a judge, and use the word "Judge" in that connection?

ANSWER: Yes, a judge may describe in his or her political literature for a nonjudicial office his or her experience as a judge. In such a situation, the judge must be cautious not to give undue emphasis to his or her present position so as to give the impression he or she is attempting to exploit his or her judicial office. See Opinion 137, Question No. 3.

+ It is significant to note that the 1972 and the 1990 revision of the ABA Model Code of Judicial Conduct requires that a judge running for nonjudicial office resign his or her judicial office. According to the American Judicature Society, it is thought this is the rule adopted in all states except Texas. The clear theme throughout the country in cases concerning this subject is that a person who identifies himself or herself as "Judge" in a political campaign for nonjudicial office is using the prestige of judicial office for personal gain.*

* *Now see Canon 5.*

USE OF COURT STAFF AND RESOURCES FOR STATE BAR COMMITTEE WORK

Opinion No. 160 (1993)

QUESTION: May a judge who serves as chairman of a State Bar committee use court staff, equipment, postage, and long distance telephone service to conduct the business of the committee without violating the Code of Judicial Conduct?

ANSWER: Yes. Although Canon 5G* prohibits a judge from serving on most governmental committees and commissions, an exception exists pursuant to Canon 4A* and 4B* for participation in activities concerning the law, the legal system, and the administration of justice, all of which this Committee perceives to be appropriate judicial activities in the interest of the State and for its benefit. Being permitted to participate in such activities necessarily implies a judge does not violate the Code by using resources available to him to conduct the business of a State Bar committee that promotes the improvement of the law, the legal system, or the administration of justice. This Committee notes, however, that the use of any such resources in a manner that would cause a judge to violate the Code would itself also be a violation of the Code. For example, Canon 3 prescribes that judicial duties take precedence over all other activities. If by using court resources for the business of a State Bar committee a judge is unable to use the same resources to discharge his judicial duties, the use of the resources would be improper. Also, Canon 2A dictates that a judge

comply with the law. If a judge were to use court resources in a manner that would cause the judge to violate the law, use of the resources would also violate the Code.

** Now see Canon 4H.*

SERVE PRO BONO AS MEDIATOR

Opinion No. 161 (1993)

QUESTION: May a trial judge appoint another sitting judge to serve pro bono as a mediator of a dispute that is the subject of a pending case?

ANSWER: No, because, for the following reasons, it would be inappropriate for the appointed active judge to serve as a mediator:

1. Mediation is not a judicial activity. A court's referral of a dispute to a mediator initiates a statutory, nonjudicial dispute resolution procedure that is an alternative to and outside of the judicial system. The applicable statute only authorizes a judge to refer the dispute to a "non-judicial" forum. Civ. Prac. & Rem. Code, Sec. 154.021(a)(3). Diverting a pending civil dispute to a nonjudicial forum is analogous to diverting a defendant from criminal prosecution to nonjudicial drug or mental health treatment, outside of the criminal justice system. The purpose of such procedures is to move disputes out of the court system so that courts can devote their limited resources to due process litigation of cases that must be tried. The Code of Judicial Conduct recognizes this principle by locating its mediation provision in Canon 5,* concerning extra-judicial activities.

2. Judges should not be mediators in a private capacity.

a. Texas Canon 5E,** which prohibits an active full-time judge from acting as a mediator for compensation outside the judicial system but permits a judge to encourage settlement in the performance of official duties, should be construed to have the meaning stated by the corresponding ABA Code provision, which provides that a judge shall not act as a mediator in a private capacity. ABA Canon 4F. Texas Canon 5E** does not permit a judge to be a mediator without compensation outside the judicial system. A judge's statutory duty to encourage parties to attempt out of court procedures to resolve a dispute does not imply authority to act as a statutory mediator.

b. Texas Canon 3A(5)(b),*** concerning one of a judge's "Duties of Office", permits a judge to try to settle a case by conferring separately with the parties, but such an attempt to settle a case in court does not constitute mediation pursuant to the statutory plan.

3. Mediation confidentiality conflicts with judicial duty. Canon 3A(5)(b)*** states the only exception to the principle that a judge should not participate in secret proceedings concerning any pending case, and it has a proviso that such ex parte communications in effect terminate the judge's judicial authority in the case. The Committee concludes that, except when using this limited procedure in Canon 3A(5)(b)*** subject to the proviso, active judges should not be mediators, because a mediator's duty not to disclose confidential information (Civ. Prac. & Rem. Code, Sec. 154.053) may conflict with a judge's duty to disclose certain types of information (such as criminal conduct or a lawyer's unprofessional conduct). Another problem is that being a mediator could involve a judge in litigation under related Sec. 154.073 to resolve a conflict between mediation confidentiality and other law requiring the judge to disclose information.

4. Judge mediation would impair confidence in judiciary. Widespread judge participation in negotiating and deal making for the purpose of avoiding the judicial system would diminish public confidence in the independence, integrity, and impartiality of the judiciary. A judge should refrain from activities that involve the judge in frequent nonjudicial transactions with lawyers likely to come before the court. Advisory opinions and private conversations with parties and lawyers are essential to mediation; but advisory opinions are not consistent with the constitutional duty of the judicial branch to decide "cases" and "controversies", and ex parte conferences are not consistent with due process or with the adversary.

* *Now see Canon 4.*

* * *Now see Canon 4F.*

*** *Now see Canon 3B(8)(b).*

GUEST OF HONOR AND FUND RAISING FOR A POLITICAL PARTY Opinion No. 162 (1993)

QUESTION: May a judge be a guest of honor at a fund raising event for a political party?

ANSWER: Yes. Canon 7(3)* states that a judge may indicate support for a political party and attend a political event. Canon 5C(4)(a)** allows a judge to accept a gift incident to a public testimonial and by implication endorses public testimonials to judges.

Canon 5(B)2*** at one time prohibited judges from soliciting funds for any educational, religious, charitable, *political*, fraternal, or civic organization. The Canon also prohibited judges from speaking or being guests of honor at such an organization's fund raising events. The word "political" was removed from this section of the canon by the Supreme Court February 10, 1988 (published S.W.2d Vol. 743-744, page XXIX). The Committee believes this change was to allow judges to be speakers or guests of honor at "political" fund raising events. The Canon later was amended by the Supreme Court, effective December 19, 1989, to allow judges to be speakers or guests of honor at educational, religious, charitable, fraternal or civic organizations while continuing the prohibition against fund raising for such organizations (published S.W.2d Vol. 779-780, page XXX).

It should be noted that Canon 5B(2) found on page 125 of the 1990 edition of the Texas Judicial Service Handbook erroneously includes the word "political," which was deleted by the Supreme Court in 1988.

* *Now see Canon 5(3).*

** *Now see Canon 4D(4)(a).*

*** *Now see Canon 4C(2).*

PUBLIC SUPPORT FOR BOND ISSUE TO BUILD CRIMINAL JUSTICE CENTER Opinion No. 163 (1993)

QUESTION: May a judge actively support and campaign for voter approval of a bond issue to build a criminal justice center by speaking at civic clubs, writing letters, and preparing documentary material in support of the bond issue?

ANSWER: Yes, with certain limitations. Canon 3 provides that judicial duties of a judge shall take precedence over all other activities. Thus, judicial duties should take precedence over campaigning for a bond issue to build a new criminal justice center.

Other limitations are set out in Opinion No. 82 (1986). Because the question in Opinion 82 is so similar to the question asked in this opinion, the Committee reiterates the answer it gave in Opinion 82.

USE OF TITLE "JUDGE" BY MUNICIPAL COURT JUDGE RUNNING FOR

JUSTICE OF THE PEACE

Opinion No. 164 (1993)

QUESTIONS: 1. May a municipal court judge running for Justice of the Peace use the title "Judge" in campaign literature, campaign stationery, and press releases?

2. May a municipal court judge running for Justice of the Peace use a photograph of herself wearing a judicial robe in campaign literature and newspaper articles?

ANSWER: Yes to both questions.

In Opinion 137 (1990), the committee stated in answer to question 3 that "a judge's campaign literature should state the judge's present title and position" The committee also stated that the judge should not use "judicial letterhead" to solicit contributions or other support for the judge's campaign. The term "judicial letterhead" was defined in that opinion as "letterhead that shows a judge's title, position, and official address and is suitable for official judicial correspondence." Thus, the committee concludes that while the municipal court judge may use the title "Judge" in campaign literature, stationery, and press releases, she should not use "judicial letterhead" as defined in Opinion 137 for those purposes.

In Opinion 159 (1993), the committee stated in answering questions 1 and 2 that a judge running for *non-judicial political office* should not use the title "Judge" in political advertising or in the name of a campaign committee. The committee believes that a different result is proper when a judge is running for a judicial office. In that case, the committee believes that it is permitted to use the title "Judge" in political advertising, in the name of the campaign committee, in campaign literature, in campaign stationery, in campaign press releases, and in newspaper articles. In addition, a judge may describe in her political literature her experience as a judge, see Opinion 159, question 3.

FUND-RAISING FOR ORGANIZATIONS

Opinion No. 165 (1993)

QUESTIONS: 1. After March 1, 1994, may a full-time Municipal Judge who is a member of a non-profit organization for religious purposes speak to churches for the purpose of raising funds when such judge is not introduced as a judge? If not, may he do so outside his territorial limits?

2. May a judge participate in fund-raising activities of a civic organization in which he is a mere participant of selling items bought by the organization?

ANSWER: 1. No. After March 1, 1994, Canon 5 controlling the Judge's extra-judicial activities will be re-designated Canon 4. Specifically, Canon 5B(2), which addresses this question, remains unchanged as it is re-designated Canon 4C(2) after March 1, 1994. It will continue to provide that a judge shall not solicit funds for any religious, educational, charitable, fraternal or civic organization. While the Canon distinguishes between soliciting funds (prohibited), and being a speaker or guest of honor at fund-raising events (allowed), the Committee does not reach or consider the rationale for that distinction inasmuch as the question specifically addresses speaking "for the purpose of raising funds" and is, therefore, a prohibited solicitation.

Additionally, Canon 2B provides that a judge should not lend the prestige of judicial office to advance the interest of others. The fact that the speaker is not introduced as a judge does not remove the prohibition because a judge cannot realistically separate the prestige of judicial office from the judge's personal affairs. (Compare Opinions 73, 136 and 150).

Finally, the activity in question is prohibited, even outside the judge's territorial limits, because there is no exception in Canon 4C(2) based on territorial limits.

2. No. In addition to being a prohibited solicitation as addressed above, the judge's participation would violate Canon 2B by lending the prestige of judicial office to advance the interests of others and would create an opportunity for someone to convey the impression that they are in a special position to influence the judge by making generous purchases from him. The fact that the judge would be a "mere participant", or one of many selling the items, would not remove the prohibition under the Canons. See Opinions 10, 11, 16, 25, 59, 131, 150 and 155.

MASTER APPEARING AS LAWYER IN COURT WHICH HE SERVES

Opinion No. 166 (1993)

QUESTION: May a master appointed to conduct probable cause hearings in mental commitment cases on an "as needed" basis appear as an attorney on unrelated matters in the probate court for which he serves as a master?

ANSWER: No. Canon 6D(2) specifically suggests that a part-time master of a probate court should not practice law in the court which he serves as long as his appointment is in effect. Although the master would conduct the probable cause hearings only on an "as needed" basis, he is considered a part-time master for purposes of Canon 6D(2) because Canon 8B(18) defines "part-time" to include service on a periodic basis.

See Opinion Number 79 (1985) for related issue. All references herein are to the Texas Code of Judicial Conduct, effective March 1, 1994.

SERVICE ON MUNICIPAL COMMISSION ON DISABILITIES

Opinion No. 167 (1993)

QUESTION: May a judge accept appointment to a city commission on disabilities whose purposes are to advise and make recommendations to the mayor, city council, and city department directors regarding the needs, rights and privileges of people with disabilities? The commission's duties shall include, but not be limited to, developing programs to provide employment opportunities for people with disabilities; to address accessibility issues; to address issues of

alcoholism and drug abuse; to take advantage of all federal, state, and local funding opportunities; and to insure adequate housing for people with disabilities.

ANSWER: No. Canon 5G provides that a judge should not accept appointment to a governmental commission concerned with issues of fact or policy on matters other than the improvement of the law, the legal system, or the administration of justice. This governmental commission is not concerned with the improvement of the law, the legal system, or the administration of justice. The committee concludes that service on the commission is therefore prohibited by Canon 5G. See also Canon 4H of the new code of judicial conduct, effective March 1, 1994, which is the same as Canon 5G now in effect.

FACULTY EVALUATIONS IN CAMPAIGN ADVERTISEMENTS Opinion No. 168 (1994)

FACTS ASSUMED: A municipal judge, who is also a candidate for a county-level judgeship, currently serves as a faculty member for the Texas Municipal Courts Education Center (TMCEC) and as a Discussion Leader for a course at the National Judicial College (NJC). Both the TMCEC and the NJC provide faculty evaluation forms where judges (whose identities are completely confidential) make comments about the judge.

QUESTION: May the judge use the comments from the faculty evaluation form in his campaign advertising, e.g., comments such as "as asset to the judiciary", "knowledgeable", "a commonsense judge"? The comments would be used in the context of "this is what other judges from around the state think about Judge X". No comment would be attributed to any particular judge, since the identity of the judge making the comment is unknown.

Would Judge X be permitted to state "this is what lawyers from around the state say about Judge X" if Judge X can ascertain that the judge making the comment was a lawyer?

ANSWER: No. Even though the anonymity of the quotes would remove this question from the specific application of Canon 5(3), prohibiting a judge from authorizing the public use of his or her name endorsing another candidate for any public office, this type of advertising would nevertheless imply that other judges were endorsing this candidate. Such an implication would violate Canon 2(A) by causing the public to question the integrity and impartiality of the judiciary. Furthermore, the candidate would be causing the judges who made the evaluations to lend the prestige of judicial office to advance his private interests in violation of Canon 2(B).

Additionally, this type of campaign advertising referring to lawyers is questionable. Text, out of context, is pretext. The quotations in question were made about a faculty/discussion leader. To lift them from that context and apply them in a political campaign would be a misleading use of these speaker evaluations. The judges and/or lawyers who filled out the evaluations may or may not be supportive of the candidate. Canon 2 states that a judge should avoid impropriety and the appearance of impropriety in all the judge's activities. The Committee believes that the unauthorized use of these evaluation quotes would violate the trust in which they were given and should not be used.

CAMPAIGN STATEMENT THAT OPPONENT "REMOVED" FROM OFFICE
Opinion No. 169 (1994)

QUESTION: Would a candidate for judicial office violate the Canons of Judicial Conduct by stating that his or her opponent had been "removed" as a District Judge when, in fact, the opponent had not been removed but had been defeated for reelection?

ANSWER: Yes. The word "removed" could refer to the voters having previously voted for the candidate's opponent and therefore the candidate has lost his or her bench. However, Canon 5(2)(ii) states that a judge or judicial candidate shall not "knowingly misrepresent the identity, qualifications, present position or other fact concerning the candidate or an opponent".

The term "removed" suggests that a statutory or administrative process was used to expel a judge for misconduct or other matters that would make him or her unfit to serve. Although the voters are, in effect, "removing" an office holder by voting for the non-incumbent, this is a process of the electorate and does not state a reason for defeat. To suggest that a defeated judge was "removed" from office would be misleading and violate Canon 5(2)(ii).

Additionally, judges and judicial candidates should engage in the highest form of campaigning to reflect their understanding of the dignity and important public trust of the office they are seeking. To suggest, by the use of words that could be misleading or taken out of context, that a defeated judge was removed for misconduct defeats not only the Canon, but also the spirit of the office.

CAMPAIGNING FOR OTHER CANDIDATES
Opinion No. 170 (1994)

QUESTIONS: 1. May a judge of a district, county or J.P. court running for reelection or candidate for any such office hand out campaign material for candidates of one's own political party along with one's material and recommend to people that they vote for these candidates?

2. May a judge of a district, county, or J.P. court running for reelection or candidate for any such office hand out campaign material for candidates of one's own political party along with one's material without making any endorsement but with the request that the voters consider these other candidates?

3. May a judge of a district, county, or J.P. court running for reelection or candidate for any such office hand out a campaign piece produced and paid for by one's own political party that contains an advertisement for such judge along with advertisements for the other candidates?

4. For any of the activities described above which are determined to violate the new code, would it be permissible for one's spouse to engage in such action?

ANSWERS: It is the opinion of the Committee that the first three questions are prohibited by Canon 5(3) of the Code of Judicial Conduct which provides in the first sentence, "A judge or judicial candidate shall not authorize the public use of his own name endorsing another candidate for public office except that either may indicate support for a political party."

Public activity by handing out campaign material for another candidate by a judge or candidate for judge as set out in Questions 1 through 3 would be a public endorsement. Articulating a "recommendation" as set out in Question 1 or by asking "consideration" as set out in Question 2 would merely be another form of public endorsement.

Question 3, although it does not involve articulating support for another, still involves an overt act of personally handing out campaign material for another candidate and would be a public endorsement.

Opinion No. 100 concluded that joint campaign activity by two judge candidates would violate the Canon 2 prohibition against lending the prestige of judicial office to advance the "private interests" include candidacy. See also Opinions No. 73, 92, 136, and 145.

Question 4 involves the conduct of a spouse of a judge. The Code does not attempt to regulate the activities of a judge's spouse so this conduct would not be prohibited.

JUDGE AS FACILITATOR OR MODERATOR

Opinion No. 171 (1994)

QUESTION: May a judge facilitate or moderate a discussion between two factions of a community dispute (developer vs. environmentalist)?

The focus of the discussion is to find ways to improve communication in order to avoid conflicts that ultimately would require legislative or judicial determination. There would be no compensation for the judge.

ANSWER: No. The activity described is that of a mediator. Opinion 161 discusses the judge's role as mediator and clearly states that mediation is not a judicial activity. (See Opinion 161 for further discussion of judges and mediators.)

RECUSAL OF MUNICIPAL JUDGE

Opinion No. 172 (1994)

QUESTION: Should the judge of a municipal court recuse himself from presiding over the trial of cases of a Defendant who has civil actions pending against the judge in state and federal courts?

FACTS: The question is submitted by an attorney in private practice who also serves as a part-time municipal court judge. In the municipal court over which he presides, there are a number of pending complaints against an individual who has named the judge as a party, along with a number of others, in state and federal lawsuits. There is some indication that the judge may have been added as a party defendant in the civil actions to secure his recusal from the municipal court cases.

ANSWER: Since this is a recusal question, there is a threshold issue which the Committee must address. Since the adoption of Tex. R. Civ. P. 18a and 18b and the companion Tex. R. App. P. 15 and 15a, the Committee has not responded to questions regarding recusal. See Opinion No. 127 (1989). The facts presented by this inquiry, though, require that a limited exception to this rule be established. The judge presides over a municipal court, and it appears that no statute or rule of court specifically applies to recusal. For instance, Tex. R. Civ. P. 2 provides that the rules govern procedure "in the justice, county, and district courts of the State of Texas in all actions of civil nature, with such exceptions as may be hereafter stated." The judge in question presides over a municipal court, and the question submitted does not involve actions of a civil nature but rather actions of a criminal nature. There appears to be no provision of the Code of Criminal Procedure directly governing this matter. Tex. Code Crim. P. Ann. art. 30.01 deals with disqualification but

does not appear to apply to this case. It seems that the specific question regarding recusal is not governed by any statute or rule of court. Since the reason for the Ethics Committee's reluctance to deliver opinions on recusal issues does not exist in this case, we conclude that we should proceed to render an opinion.

Canon 2A provides that a judge should act in a way that promotes public confidence in the integrity and impartiality of the judiciary. Canon 2B provides that a judge should not allow "family, social, or other relationships to influence his or her judicial conduct or judgment." While not directly governing the issue, the spirit of Rule 18b(2), which provides that a judge shall recuse himself in any proceeding in which his impartiality might reasonably be questioned, has applicability here. Consequently, it is the conclusion of the Committee that the judge should recuse himself. Procedural mechanisms which might effectively deal with the problem of a party making a practice of naming a judge and his successors as party defendants for the sole purpose of securing a recusal are beyond the scope of this Committee's authority.

EX PARTE COMMUNICATIONS TO MUNICIPAL COURT JUDGE; MUNICIPAL COURT JUDGE ACTING AS CITY ATTORNEY FOR THE SAME MUNICIPALITY; MUNICIPAL COURT JUDGE AS A PRACTICING ATTORNEY

Opinion No. 173 (1994)

QUESTIONS: 1. What is a municipal court judge's ethical obligation upon receiving ex parte phone communications from a criminal defendant concerning a pending case?

2. May a municipal court judge simultaneously serve as city attorney for the same city?

3. May a municipal court judge who is a practicing attorney preside in a case when one of his clients is a party?

ANSWER: Judicial Ethics Opinion 154 (1993) discusses a judge's obligation when receiving ex parte communications in writing. The general considerations discussed there also apply here. It should be noted that Canon 3A(4) and (5) discussed in Opinion 154 have been amended by the new Code effective March 1, 1994. Comparable provisions are now found in Canon 3B(8) of the present Code; however, it should also be noted that Canon 3B(8) does not apply to justice and municipal court judges. See Canon 6C(1)(a). Instead, Canon 6C(2) of the present Code applies to municipal and justice court judges.

Canon 6C(2) provides that a justice or municipal court judge should not consider ex parte communications concerning the merits of a pending judicial proceeding, unless authorized by law or by one of the seven listed exceptions to the rule. Thus, justice and municipal court judges may comply with Canon 6C(2) by doing the following: 1. Upon receiving an ex parte phone call, the judge should inform the caller that ex parte communication is prohibited unless it falls within one of the exceptions of Canon 6C(2). The judge should then converse with the caller in order to determine if the call is a proper ex parte communication allowed by Canon 6C(2) or an improper ex parte communication. If improper, the judge should inform the caller that the communication is improper, that such communication should cease, that the judge will take no action whatsoever in response to the call, and that no improper communication should take place in the future. The call should then be ended.

Regarding Question No. 2, a municipal court judge should not simultaneously serve as an attorney for the same city. Such action compromises the independence of the judiciary. It violates numerous code provisions including, at least, the following: 1) Canon 1, which requires a judge

to uphold the integrity and independence of the judiciary, 2) Canon 2A, which requires a judge to act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary, 3) Canon 2B, which provides that a judge should not allow any relationship to influence judicial conduct or judgment nor shall a judge convey or permit others to convey the impression that they are in a special position to influence the judge, 4) Canon 3A, which requires that a judge's judicial duties take precedence over all the judge's other activities, 5) Canon 3B(2), which provides that a judge shall not be swayed by partisan interest, public clamor or fear of criticism, 6) Canon 3B(5), which requires that a judge perform judicial duties without bias, 7) Canon 4D(1), which requires that a judge refrain from financial and business dealings that tend to reflect adversely on the judge's impartiality, interfere with the proper performance of judicial duties, exploit his or her judicial position, or involve the judge in frequent transactions with persons likely to come before the court on which the judge serves, 8) Canon 4I, which provides that a judge may receive compensation if the source of such payments does not give the appearance of influencing the judge's performance of judicial duties or otherwise give the appearance of impropriety, 9) Canon 5(1), which provides that a judge shall not make statements that indicate an opinion on any issue that may be subject to judicial interpretation by the office which he holds.

Regarding Question 3, a municipal court judge who is a practicing attorney should not preside in a case in which one of his clients is a party. Doing so would violate all of the Canons listed in the previous paragraph. In such a case, the judge should recuse himself. See Judicial Ethics Opinion 172 for further guidance.

**PASSING OUT BUSINESS CARDS OF THE HARRIS COUNTY CRIMINAL
LAWYERS ASSOCIATION
Opinion No. 174 (1994)**

QUESTION: Does the Code allow a judge to give to unrepresented criminal defendants business cards of the Harris County Criminal Lawyers Association?

ANSWER: The Harris County Criminal Lawyers Association is a private and voluntary organization of criminal defense attorneys. The organization has asked district and county court judges to provide unrepresented defendants with a business card urging the defendant to call the association for referral to a lawyer among its members.

Canon 2B states that a judge should not lend the prestige of judicial office to advance the private interests of others, nor shall a judge convey or permit others to convey the impression that they are in a special position to influence the judge. The Committee concludes that by presenting the association's business card, the judge would be advancing the private interests of the association and its members, in violation of Canon 2B.

**PROBATE COURT INVESTIGATOR SERVING SIMULTANEOUSLY AS MASTER
IN THE SAME COURT
Opinion No. 175 (1994)**

QUESTIONS: 1. May a probate judge appoint a person to serve simultaneously in the same court as both a master under Section 574.0085 of the Health and Safety Code and as a probate court investigator under Section 25.0025 of the Government Code?

2. May a person appointed to be a probate court master simultaneously serve in the same court as a court investigator?

FACT ASSUMED: The person serving as statutory probate court investigator would file applications for guardianship for indigent incapacitated persons.

ANSWER TO QUESTIONS: 1. The Committee has previously declined to answer a question concerning who a judge may appoint as a master because that is a question of law as distinguished from a question of ethics. See Opinion No. 79 (1985). Whether a person is qualified to be appointed a master is a question of law. As we stated in Opinion No. 79, the only foreseeable ethical consideration would be if a judge knowingly appointed a person who was not qualified or made an appointment in disregard of Canon 3C(4). Because the Committee assumes the judge would only appoint a qualified person and would follow the requirements of Canon 3C(4), the Committee declines to answer the question for the same reasons it declined to answer a similar question in Opinion No. 79.

2. No. In Opinion No. 104 (1987) and again in Opinion No. 127 (1989), the Committee concluded that a judge should not prepare pleadings to begin the process of civil commitment for mentally ill persons. The Committee adheres to those conclusions and concludes that a master should not do so for the same reasons stated in Opinions 104 and 127.

Even if the master does not prepare applications for guardianship or other pleadings, the Committee concludes that he should not simultaneously serve in the same court as an investigator. In Opinion No. 166 (1993), the Committee concluded that a master conducting probable cause hearings and mental commitment cases should not appear as an attorney on unrelated matters in the same court he serves as a master. Opinion No. 166 was based on Canon 6D, which provides that a part-time master should not "practice law" in the court in which he or she serves. Although the duties of a court investigator may not include practicing law and may therefore not be expressly prohibited by Canon 6D(2), such simultaneous service would contravene other code provisions. These include, at least, the following: 1) Canon 1, which requires a judge to uphold the integrity and independence of the judiciary, 2) Canon 2(A), which requires a judge to act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary, 3) Canon 2B, which provides that a judge should not allow any relationship to influence judicial conduct or judgment nor shall a judge convey or permit others to convey the impression that they are in a special position to influence the judge, 4) Canon 3A, which requires that a judge's judicial duty takes precedence over all the judge's other activities, 5) Canon 3B(2), which provides that a judge shall not be swayed by partisan interests, public clamor or fear of criticism, 6) Canon 3B(5), which requires that a judge perform judicial duties without bias, 7) Canon 4D(1), which requires that a judge refrain from financial and business dealings that tend to reflect adversely on the judge's impartiality, interfere with the proper performance of judicial duties, exploit his or her judicial position, or involve the judge in frequent transactions with persons likely to come before the court on which the judge serves, 8) Canon 4I, which provides that a judge may receive compensation if the source of such payments does not give the appearance of influencing the judge's performance of judicial duties or otherwise give the appearance of impropriety, and 9) Canon 5(1), which provides that a judge shall not make statements that indicate an opinion on any issue that may be subject to judicial interpretation by the office which he holds. The Committee concludes that serving simultaneously as a master and court investigator would be likely to cause a conflict with all of these provisions.

In Opinion No. 173 (1994), the Committee cited all these provisions in concluding that a municipal court judge should not simultaneously serve as city attorney for the same city. The Committee believes that the same conflicts are inherent when a probate court master serves simultaneously as the court's investigator.

**APPLICABILITY OF LIMITATIONS ON JUDICIAL FUNDRAISING IN NEW
CANON 5, EFFECTIVE JANUARY 1, 1995, TO CANDIDATES IN THE 1994
GENERAL ELECTION
Opinion No. 176 (1995)**

QUESTION: May a judge or judicial candidate in the 1994 general election solicit and accept contributions later than 120 days after the general election?

ANSWER: Yes. On January 1, 1995, a new version of Canon 5 of the Code of Judicial Conduct takes effect that imposes time limits on fundraising by judges and judicial candidates. The relevant parts provide:

(4) In addition to any other restrictions imposed by law a judge or judicial candidate shall not either personally or through others solicit or accept contributions:

(i) earlier than 210 days before the filing deadline for the office sought by the judge or

(ii) later than 120 days after the general election in which the judge or judicial candidate seeks office.

(5) The requirements of (4) above shall not apply to political contributions solicited or accepted solely for one or more of the purposes set forth in Tex. Elec. Code Sec. 253.035(i).

The question is whether section (4) applies to the 1994 election, so that the 120 days begins to run on November 9, 1994, the day after the general election. The Committee concludes that it does not.

The Supreme Court adopted the order establishing the new Canon 5 on September 21, 1994, but did not make it effective until January 1, 1995. The Committee concludes that if the Supreme Court intended for the new limitation to apply to judges and candidates in the 1994 election, it would have made the new Canon 5 effective on or before November 9, 1994. Because it did not do so, we conclude that the new Canon 5 imposes no limitations on fundraising by judges and judicial candidates in the 1994 general election.

**DOLLAR LIMITS ON FUNDRAISING BY JUDGES
Opinion No. 177 (1995)**

QUESTION: Is there a dollar limit on the amount of money a judge who was elected in 1994 and who will not stand for reelection until 1998 may raise after January 1, 1995?

ANSWER: No. The Code of Judicial Conduct contains no provisions on this subject.

**MAINTAINING A PART-TIME OFFICE AT A LAW SCHOOL OF
A STATE UNIVERSITY
Opinion No. 178 (1995)**

QUESTIONS: 1. May a judge of a court of appeals maintain a part-time office at a state law school where a portion of his judicial duties would be performed? The office would be provided without charge, and the judge would be an occasional guest lecturer at the law school.

2. If the judge may maintain such an office, would he be required to disqualify or recuse himself from any appeal involving the university?

3. Does the Code require that a judge perform judicial duties exclusively at the place where the court of appeals sits?

ANSWERS TO QUESTIONS: 1. Yes, subject to certain qualifications.¹ Canon 4D(4)(c) provides that a judge shall not accept a gift from anyone and lists certain exceptions. The pertinent exception provides that a judge may accept "any other gift," which means a gift not specifically prohibited in the Code, "only if the donor is not a party or person whose interests have come or are likely to come before the judge;" If the university's interests have not come and are not likely to come before the judge, the judge could accept the gift of a free part-time office without violating that provision. If, on the other hand, the university has interests that have come or are likely to come before the judge, the judge should not accept the gift of a free office.

Canon 3B(11) provides, "The discussions, votes, positions taken, and writings of appellate judges and court personnel about causes are confidences of the court and shall be revealed only through a court's judgment, a written opinion, or in accordance with Supreme Court guidelines for a court approved history project." Performing an appellate judge's duties outside of the court's offices creates a risk that confidences of the court will be lost. The affirmative answer to this question assumes that the judge could conduct his research, writing, and oral communications at the part-time office in a way that would preserve the confidences of the court. If that is not the case, the judge should not perform judicial duties in such a location.

2. Questions of disqualification and recusal are not governed by the Code of Judicial Conduct. They are controlled by Tex. R. Civ. P. 18b and Tex. R. App. P. 15a. The Judicial Ethics Committee does not issue advisory opinions on questions of law.

3. The Code does not mention this issue, but Canon 2A provides that a judge shall comply with the law. Therefore, the judge is required to comply with any statute on this subject.

¹ One member of the Judicial Ethics Committee dissents.

**FORMER LAW OFFICE RENTED TO LAWYERS WHO PRACTICE BEFORE
JUDGE
Opinion No. 179 (1995)**

QUESTION: Does a violation of the Code of Judicial Conduct occur if a judge's former law office now owned by a trust created to benefit judge's minor children is rented to lawyers who practice in judge's court?

FACTS: Judge owned office building where he practiced law. One year, prior to filing to run for his present position, the judge conveyed ownership of the building to a trust established to benefit the judge's minor children. Judge's brother is trustee. Since the judge assumed the bench (approximately 1-1/2 years after conveying the building to the trust), the trustee has made all decisions concerning management of the trust assets with no input from the judge. The portion of the building which is judge's former law office is now rented to lawyers who practice in judge's court.

FACTS ASSUMED: Judge's children are receiving a direct benefit from the rental of the building by lawyers. Lawyers are not paying greater than market value for the office space.

ANSWER: Yes.¹ This question is not governed by Opinion 153 nor is it a violation of Canon 4D(1) (2) or (3) because this is not a financial or business dealing of the judge. It is not an economic interest of the judge since he is not an officer, advisor or other active participant in the affairs of the trust. See Canon 8B(5).

The Code does not govern the conduct of judge's family members under the circumstances presented here, assuming the law office is being rented for fair market value. Canon 4D(4) (d) specifically allows the judge's children to receive a benefit provided the benefit could not reasonably be perceived as intended to influence the judge in the performance of judicial duties.

Canon 2A provides that a judge "should act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary." Canon 2B requires that a judge not allow any relationship to influence his judicial conduct or judgment or permit others to convey the impression that they are in a special position to influence the judge.

Although the judge has made all efforts to remove himself from the management, control or involvement in the operation of the trust, the fact remains that his children are directly benefitting from the rents paid by lawyers who regularly appear before the judge. Because the judge has a statutory duty to support his minor children, any support the children receive from the trust provides an indirect benefit to the judge. He has a conflict between his desire to be removed and detached from the operations of the trust, but is required by Canon 4 D(3) to "... make a reasonable effort to be informed about the personal economic interest of any family member residing in the judge's household."

It is the Committee's opinion that the judge cannot allow lawyers to appear in his court when those lawyers are renting his former law office from a trust established to benefit his minor children who are living in the judge's household. If this relationship continues, public confidence in the integrity and impartiality of the judiciary would be diminished, and the public would have the impression that some lawyers are in a special position to influence the judge.

¹ One Committee member dissents.

JUDGE'S SPOUSE A CANDIDATE FOR ELECTIVE OFFICE

Opinion No. 180 (1995)

QUESTION: May a judge whose spouse is a candidate for elective office:

- 1) Allow the judge's name and title to be used in press releases or campaign literature identifying the candidate as the judge's spouse?
- 2) Attend campaign functions with the candidate?

- 3) Be introduced by name and title as the candidate's spouse?
- 4) Speak at public gatherings generally in support of the spouse's candidacy?

ANSWERS: 1) No. Canon 2B provides that a judge should not lend the prestige of judicial office to advance the private interests of the judge or others. Additionally, the use of the judge's name and title in campaign literature could be perceived as a public endorsement of another candidate for public office in direct violation of Canon 5(3).

2) Yes. A judge may attend political events so long as any views expressed by the judge comport with the applicable canons. Canon 5(3).

3) No. Identifying the judge by title would lend the prestige of judicial office to advance the private interests of another. Canon 2B.

4) No. The judge's public support of the spouse's candidacy would violate Canon 2B and Canon 5(3). See opinions No. 60, 73, 130.

EFFECTIVE DATE OF FUNDRAISING LIMITATIONS

Opinion No. 181 (1995)

QUESTION: May a judge elected in 1994 and who does not plan to seek judicial office in 1996 have a fundraising event in November 1995?

ANSWER: No. In Opinion 176, the Committee concluded that section 4(ii) of new Canon 5, the 120 day post-election fundraising deadline, did not apply to judges and candidates in the 1994 elections because it did not take effect until January 1, 1995. To have applied the new Canon to 1994 candidates would have required that the deadline period begin to run on November 9, 1994, which was before the new Canon took effect. There is no such problem, however, in applying section 4(i), the 210 day pre-election fundraising deadline, to candidates in the 1994 election, as well as to all other judges and candidates.

Section 4(i) provides a date when persons expecting to be candidates in the 1996 election may begin to raise funds. It allows fundraising after that date only by persons who, in good faith, expect to be candidates for judicial office in the 1996 election, and allows only such persons to begin raising funds 210 days before the filing deadline for the office to be sought in the 1996 election.

Because the judge who posed this question does not plan to seek office in 1996, she may not have a fundraising event on November 11, 1995. We further conclude, however, that the judge in question, like all candidates in the 1994 general election, may raise funds until the 210th day before the filing deadline for the 1996 elections. See Opinion 176.

BENEFITTING RELATIVE WITH POWER OF APPOINTMENT

Opinion No. 182 (1995)

QUESTION: The Texas Human Resources Code provides that the county judge and the district judges in the county shall comprise the county juvenile board. The Code requires the board to appoint an advisory council consisting of not more than nine citizens. By practice, the board has allowed each board [member] to appoint one member of the council. May a district judge, sitting as a member of the county juvenile board, appoint his brother-in-law to the county juvenile advisory council?

ANSWER: No. Canon 3C(4) provides that, "A judge shall exercise the power of appointment impartially and on the basis of merit. A judge shall avoid nepotism and favoritism." In Opinion No. 83 (1986), we found the canon prevented a judge from appointing the lawyer-employee of his father and brother to represent the indigent. Although Opinion No. 83 is primarily concerned with the extent to which the lawyer's compensation would benefit the father and brother, and thereby accomplish indirectly that which cannot be done directly, it is not based solely on the pecuniary benefits that would accrue to the judge's relatives. Opinion No. 83 is equally concerned with the appearance of impropriety and perception of favoritism inherent in the arrangement, which concerns, together with nepotism, are more obviously present in the instant case.

Although we do not render legal opinions, and therefore do not decide whether Section 573.041 of the Texas Government Code answers the question posed, we note that a brother-in-law is within the degree of affinity commonly addressed by nepotism statutes. See Tex. Gov't. Code Ann. 573.041, .002, .024 (Vernon 1994). Thus, by appointing his brother-in-law, the judge would engage in nepotism. Because Canon 3C(4) proscribes nepotism, the judge may not appoint his brother-in-law to serve on the advisory council. Additionally, such an appointment would run afoul of Canon 2B's requirement that a judge not allow any relationship to influence judicial conduct or judgment and of Canon 2A's requirement that a judge act in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

EX PARTE HEARING CONCERNING HIRING OF EXPERTS TO ASSIST INDIGENT CRIMINAL DEFENDANTS

Opinion No. 183 (1995)

QUESTION: May a judge ethically conduct an ex parte hearing with appointed defense counsel representing an indigent client on the subject of expert witnesses?

BACKGROUND: A defendant is charged with capital murder, and the state is seeking the death penalty. Appointed counsel seeks judicial authorization to employ experts for assistance, but does not want the prosecutor to know the relief requested, the reasons urged in support of the motion, or the relief granted.

ANSWER: Yes. Canon 3B(8) generally prohibits ex parte communications concerning the merits of a pending or impending judicial proceeding, but it does not prohibit ex parte communications expressly authorized by law. See Canon 3B(8)(e). At least 10 states have judicially allowed ex parte hearings on such requests. *State of Louisiana v. Touchet*, 642 So. 2d. 1213, 1218 (La. 1994). At least two have held that such ex parte hearings are required by the United States Constitution. *State v. Touchet*, supra; *State of North Carolina v. Ballard*, 428 S.E. 2d 178, 183, (N.C. 1993). In *Ballard*, the court limited the requirement to psychiatric experts, but in *Touchet*, the rule was extended to hearings to authorize funds for experts to examine physical evidence gathered by the state. See also *Ake v. Oklahoma*, 105 S.Ct. 1087, 1096 (1985) (referring to ex parte hearing).

The Committee concludes that a judge would not violate Canon 3B(8) by conducting such an ex parte hearing, assuming the judge believed that it was expressly authorized by law.

The Committee on Judicial Ethics expresses no opinion on questions of law; therefore, it expresses no opinion on the issue of whether an ex parte hearing is constitutionally required in any

particular case. The cases above are mentioned only to demonstrate that a judge could reasonably conclude that the ex parte communication was expressly authorized by law so as to fall within the exception provided by Canon 3B(8)(e).

POLITICAL ADVERTISING: ENDORSEMENTS, STAND ON ABORTION

Opinion No. 184 (1995)

QUESTION 1: May a judicial candidate ethically list in political advertising the endorsement of special interests groups with an obvious political agenda, such as Texans Against Drunk Driving, Texans for Tort Reform, Texas Prosecutors Association, Texas Peace Officers Association, Texans for Law Enforcement, Pro-Life Texans, or Texans for Choice?

ANSWER: Yes, a judicial candidate may list endorsing groups.

Canon 5 speaks to political activity and states:

1. A judge or judicial candidate shall not make statements that indicate an opinion on any issue that may be subject to judicial interpretation by the office which is being sought or held.

2. A judge or judicial candidate shall not make pledges or promises of conduct in office other than faithful and impartial performance of judicial duties.

It is obvious that the endorsing organizations have made strong political statements. The judge or candidate by listing the organizations has made no statement indicating an opinion on an area subject to judicial interpretation. The only statement the candidate is making is that these groups endorse him/her.

QUESTION 2: May a judicial candidate advertise or state a position on abortion, i.e. "I am the pro-choice/pro-life candidate"?

ANSWER: No, a judicial candidate may not make a statement on abortion.

A judge or candidate may not make a statement declaring that he/she is pro-life or pro-choice, based on Canon 5 paraphrased above. The judge or candidate is clearly making a statement that indicates an opinion on an issue possibly subject to judicial interpretation. Further, there is a strong implication of a promise of particular conduct in office other than the faithful performance of official duties.

PUBLIC SUPPORT FOR ANTI-CRIME LUNCHEON

Opinion No. 185 (1996)

BACKGROUND: A luncheon is being held as part of a "Walk Out on Crime" weekend sponsored by the Citizens Crime Commission of Tarrant County. The speaker will be a nationally recognized expert on domestic terrorism and workplace violence. He will provide an overview of current activities in American cities and their implications for Tarrant County. The luncheon is one of many events of the weekend.

QUESTION: May a judge be on the host committee, attend the event, promote it within the community, and have her name on the invitation?

ANSWER: Yes. Canon 4 provides that a judge may participate in activities concerning the law, the legal system, and the administration of justice so long as such participation does not cast doubt on her capacity to decide any issue that may come before the court.

It appears from the description of the luncheon that the focus of the Citizens Crime Commission is to explain problems that are facing the legal system and suggest possible solutions. The judge may be on the host committee, attend the luncheon, and allow her name on the invitation.

In promoting the luncheon, the judge should not lend the prestige of her office to advance the private interests of any vendors or others associated with the event as prohibited by Canon 2.

See also Opinions 82 and 163.

APPLICABILITY OF CODE TO RETIRED JUDGE NOT SUBJECT TO ASSIGNMENT

Opinion No. 186 (1996)

QUESTION 1: Does the Code of Judicial Conduct apply to a former judge who is now retired and has not elected to take judicial assignments?

ANSWER 1: No. Canon 6F provides that "a Senior Judge, or a former district judge, or a retired or former statutory county court judge who has consented to be subject to assignment as a judicial officer" shall comply with all provisions of the Code, with minimal exceptions. However, compliance with the Code is not required for a former judge, now defined as a "Retired Judge" by Canon 8B(14), who has not consented to be subject to assignment pursuant to Tex. Gov't. Code Ann. 75.001 (Vernon Supp. 1996).

QUESTION 2: Does the Code of Judicial Conduct prohibit a former judge who is now retired and has not elected to take judicial assignments from writing to Texas district and appellate judges requesting their contribution to a fund to be used to seek an increase in judicial pay?

ANSWER 2: No. Given the resolution to Question No. 1 above, the current Code of Judicial Conduct does not prohibit a former judge who is now retired and has not elected to take judicial assignments from writing to Texas district and appellate judges requesting their contribution to a fund to be used to seek an increase in judicial salary.

MUNICIPAL JUDGE AS PART-TIME MASTER

Opinion No. 187 (1996)

QUESTION: May an associate municipal court judge serve as a part-time Special Master under the authority of Article 11.07 3(d), V.A.C.C.P.?

ANSWER: The Committee is of the opinion that this is a question of law not a question of ethics.

The Committee on Judicial Ethics writes advisory opinions interpreting the Code of Judicial Conduct. The Committee declines to answer the question and suggests the judge seek a legal opinion from the proper forum.

**NEWLY ELECTED DISTRICT JUDGE "WINDING DOWN" OBLIGATIONS AS EX
COUNTY JUDGE; DISTRICT JUDGE ON CRIMINAL JUSTICE POLICY
COMMITTEE**

Opinion No. 188 (1996)

QUESTION: (A) May a newly appointed district judge "wind down" his service on the North Central Texas Council of Governments by attending three meetings in his capacity as immediate past president? Similarly may he attend two meetings remaining during his term as the Texas representative on the board of the National Association of Regional Councils of Government?

(B) Additionally, this district judge asks if he can sit on the Criminal Justice Policy Committee of the local Council of Governments, a committee which deals exclusively with criminal justice and juvenile and juvenile justice policy issues.

ANSWER: (A) No. Canon 4H prohibits judges from accepting appointment to a governmental committee 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. There is no provision for "winding down" a previous appointment; if it is improper to accept such an appointment, it is improper to continue such an appointment after assuming the bench.

(B) Yes. Service on a local council of governments committee concerned exclusively with criminal justice and juvenile justice policy issues is permitted by the language of Canon 4H allowing judges to accept appointment to governmental committees concerned only with issues of fact or policy involving the improvement of the law, the legal system, or the administration of justice. However, service on such a committee must comply with Canon 4A's admonition that the activities not interfere with judge's proper performance of judicial duties and not cast reasonable doubt on his capacity to act impartially as a judge.

COUNTY JUDGE SERVING ON UNITED WAY BOARD OF DIRECTORS

Opinion No. 189 (1996)

QUESTION: May a constitutional county court judge who performs judicial functions serve on the board of directors of a local United Way charitable organization, provided that the board does not participate in fund raising and only sets policy?

ANSWER: Yes. A county judge who performs judicial functions is subject to the provisions of the Code of Judicial Conduct under Canon 6(B), subject to exceptions not relevant to this inquiry. Canon 4(C) of the Code authorizes a judge to serve as a director of a charitable organization, provided that he or she does not personally solicit funds and provided that service on the board will not otherwise interfere with the performance of his or her judicial duties.

**PART-TIME ASSOCIATE JUDGES AND PARTNERS PROHIBITED FROM
PRACTICING IN COURT WHERE ASSOCIATE JUDGE APPOINTED**

Opinion No. 190 (1996)

QUESTION: May the partners or associate attorneys of a part-time associate judge practice in the court of the district judge where the associate judge is appointed to serve?

ANSWER: No, they may not. Canon 6D(2) states that a part-time commissioner, master, magistrate, or referee should not practice law in the court in which he or she serves. Canon 2B provides that a judge shall not permit others to convey the impression that they are in a special position to influence the judge. In this situation, partners or associates of the part-time associate judge would be in a position to convey this impression.

APPELLATE JUDGE WRITING ARTICLE DISCUSSING PRIOR DECISION
Opinion No. 191 (1996)

QUESTION: May a judge on the Court of Criminal Appeals or the Supreme Court write a newspaper article in the form of an opinion/editorial piece discussing his/her stated position on a case that has been finally resolved by the Court?

ANSWER: No. Canon 3(B) prohibits a judge from discussing a matter which may show his/her probable decision in a matter. Even though a matter has already been decided, it can be revisited and the opinion/editorial would be talking about more than just particular procedures of the court, which is what this Canon allows. More importantly, this would be a direct violation of Canon 3(B)11 where a judge is not allowed to talk about "discussions, ..., positions taken," and/or "writings of appellate judges..." as these "shall be revealed only through a court's judgment, a written opinion or in accordance with Supreme Court guidelines...."

JUDGE'S LETTER INCLUDED IN FOR-PROFIT PUBLICATION
Opinion No. 192 (1996)

QUESTION: A "for-profit" publisher of an excellent booklet dealing with substance abuse has asked a judge to write a letter on the judge's letterhead dealing with substance abuse to be included in the publication. The judge and law enforcement will be given free copies for distribution. May the judge write such a letter to be included in the booklet?

ANSWER: Yes, the judge may write a letter to be included in the booklet so long as the judge's letter cannot be interpreted as an endorsement of the booklet and the letter does not impact the appearance of impartiality on the part of the judge in the trial of related matters. Canon 2B specifically states that a judge should not lend the prestige of judicial office to advance the private interests of others. Further, Canon 4 permits a judge to engage in activities to improve the law, the legal system, and the administration of justice; provided that in doing so, the judge's activities must not cast doubt on the judge's capacity to decide impartially any issue that may come before the Court.

J.P. CANDIDATE REQUIRED TO COMPLY WITH CODE J.P. CANDIDATE MAY NOT ADVERTISE "J.P. WEDDINGS" FORMER J.P. ADVERTISING "J.P. WEDDINGS"
Opinion No. 193 (1996)

QUESTION 1: May a former Justice of the Peace advertise "Justice of the Peace Weddings?"

ANSWER 1: The Committee on Judicial Ethics declines to answer this question. Such question concerns legal, rather than ethical, matters and does not come within the scope of the authority of this Committee. We act only as an advisory peer group in determining the application of the Code of Judicial Conduct to undisputed factual situations; we do not address legal questions.

QUESTION 2: Must a candidate for Justice of the Peace comply with the provisions of the Code of Judicial Conduct?

ANSWER 2: Yes. Canon 6G(4) states that the conduct of "any other candidate for elective judicial office. . .who violates Canon 5 or other relevant provisions of the Code is subject to review by the Secretary of State, the Attorney General, or the local District Attorney for appropriate action." As contemplated by the Code, "any other candidate for elective judicial office" includes a candidate for Justice of the Peace.

QUESTION 3: Is it a violation of the Code of Judicial Conduct for a candidate for Justice of the Peace who is a former Justice of the Peace to imply in his political advertising that he is a current Justice of the Peace?

ANSWER 3: Yes. Canon 5(2)(ii) provides that a judge or judicial candidate shall not "knowingly or recklessly misrepresent the identity, qualifications, present position, or other fact concerning the candidate or an opponent."

QUESTION 4: Is it a violation of the Code of Judicial Conduct for a Justice of the Peace or candidate for Justice of the Peace to advertise "Justice of the Peace Weddings" in the telephone directory?

ANSWER 4: Yes. As noted in the answer to Question No. 2, a candidate for Justice of the Peace is subject to the Code of Judicial Conduct. In Opinion No. 72, we determined that a "judge who advertises for performance of weddings and charges fees for weddings violates the Code of Judicial Conduct." Such conduct violates Canon 4D(1), which provides, "A judge shall refrain from financial and business dealings that. . .exploit his or her judicial position. . . ."

ACCEPTANCE OF HOLIDAY GIFTS BY JUDGE AND STAFF

Opinion No. 194 (1996)

QUESTION: Is it a violation of Canon 4(d)(4) of the Texas Code of Judicial Conduct for a judge, court coordinator, court reporter (and clerks and bailiffs) to:

1. accept holiday or seasonal gifts (assuming such to be commensurate with the occasion);
- or
2. attend holiday or seasonal law firm parties?

ANSWER 1: Yes. A judge may only accept a gift from a friend for a special occasion and then only if the gift is fairly commensurate with the occasion and the relationship. Canon 4D(4)(b). A Judge may accept any other gift only if the donor is not a party or person whose interests have come or are likely to come before the judge. Canon 4D(4)(c). Opinion No. 44.

The Committee concludes that a holiday or seasonal gift from a lawyer or law firm where a lawyer is not a friend is prohibited. Where a friendship exists, the gift must be commensurate with the occasion and the judge must be mindful of Canon 2A and should act in a manner that promotes public confidence in the integrity and impartiality of the judiciary. A judge should not convey or permit others to convey the impression that they are in a special position to influence the judge. Canon 2B. Opinion No. 39.

ANSWER 2: No. A judge may attend holiday or seasonal law firm parties if the party is open to people other than judges and court personnel. Rule 4D(4)(b) and Opinion No. 39 permits a judge to accept ordinary social hospitality. The judge should act in a manner that promotes public confidence in the integrity and impartiality of the judiciary and should not convey or permit others to convey the impression that they are in a special position to influence the judge. Canon 2(A) and (B).

The answers above apply equally to the judge's staff, court officials and others subject to the judge's direction and control. Canon 3C(2) provides a judge should 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. See Canon 3B(2) Code of Judicial Conduct, September 1, 1974, through December 31, 1993, and Opinions 110, 112 and 140 applying Code to court personnel.

POLITICAL ADVERTISING USING "JUDGE" WHEN NOT CURRENTLY HOLDING JUDICIAL OFFICE

Opinion No. 195 (1996)

QUESTION 1: Can an individual who resigned from a County Court at Law bench to run for a District Court bench, and who is currently practicing law as a civil defense attorney, use the title "Judge" in political advertisements without running afoul of Canon 5?

QUESTION 2: Can an individual who resigned from a County Court at Law bench to run for a District Court bench, and who is currently practicing law as a civil defense attorney, use election materials from previous campaigns for her county bench races that say only "Vote for Judge _____"?

ANSWER: No to both questions. Canon 5(2)(ii) provides that a judge or candidate for judicial office shall not knowingly misrepresent, among other things, the present position of the candidate. A judicial candidate who is not currently an active judge and who does not currently hold a judicial office cannot therefore use the title "Judge" in any political advertisements or campaign literature, and to do so would violate Canon 5(2)(ii).

FUND RAISING PROHIBITED BY JUDGES FOR NATIONAL CENTER FOR STATE COURTS

Opinion No. 196 (1996)

QUESTION: May a judge who is director of the National Center for State Courts (a nonprofit organization serving the needs of justice in state courts) sign a letter soliciting funds for the organization mailed to lawyers who appear in front of him?

If not, may a judge solicit funds for the National Center for State Courts from lawyers who are only licensed in other states and who practice in firms with no offices in Texas?

ANSWER: No. It is a violation of Canon 4C(2) of the Texas Code of Judicial Conduct for a judge to sign a letter soliciting funds for any educational, religious, charitable, fraternal or civic organization. The National Center for State Courts is among the organizations included in this prohibition.

No. The Judicial Ethics Committee is of the opinion that the Texas Code of Judicial Conduct applies to the activities of the Texas judiciary both in and out of this state.

Historically, the code has encouraged the Texas judge to participate as an officer, director, delegate, or trustee of educational, religious, charitable, fraternal, and civic organizations. At the same time, it has prohibited a judge for engaging in the direct solicitation of funds for such organizations¹, including political parties², and from being a speaker or guest of honor at such an organization's fund raising event³. At one time the Committee interpreted then Canon 4C as permitting a judge to participate in "private" fund raising activities⁴.

The Committee is of the opinion that Canon 4C(2) permitting a judge to be listed as an officer, director, delegate, or trustee on the letterhead of a corporation, implicitly allows the use of such stationary for fund raising purposes. Judges should be encouraged to participate in professional and community activities to the maximum extent permitted by the Canons.

The question presented here serves to further emphasize the conundrum faced by members of the judiciary in attempting to further the development and efficiency of the justice system without bursting the bubble in which they must exist. In the instant situation, the placing of the judge's name on the letterhead or referring to the judge as one of the supporters of the National Center, would send enough of a message without it being a direct solicitation. Signing the solicitation letter would be prohibited.

¹ See Opinion 10 (1976 prohibiting a judge from soliciting funds for the National Conference of Metropolitan Judges, Citing then Canon 5B(2).

² See Opinion 154 (1993) prohibiting a judge from chairing a political fund raising committee.

³ See Opinion 41 (1979) prohibiting a judge from being a singer, speaker, or guest of honor at a fund raising event.

⁴ See Opinion 58 (1982) permitting fund raising for the Texas Center for the Judiciary, Inc.

COURT COORDINATOR COLLECTING FEES AS NOTARY PUBLIC

Opinion No. 197 (1996)

QUESTION: May a court coordinator who has qualified as a notary public at her own expense, not reimbursable, notarize papers for the public at a fee as long as the instrument notarized does not pertain to any case in her court?

ANSWER: No. Although the activity is an accommodation, once a fee is charged, a business activity is being conducted out of the judge's office and is a violation of Canon 2, Section B.

A much better practice would be for the county to pay for the cost of qualifying the staff member as a notary and notarization be done at no charge.

JUDGE AS SUBJECT OF A ROAST AT A FUND RAISER

Opinion No. 198 (1996)

QUESTION: Can a sitting state district judge be the subject of a local League of Women Voters annual fund raising "roast" of an elected official?

ANSWER: No. Under Canon 1, a judge should maintain the high standards and integrity of the office, which could be undermined by being the subject of a "roast." Under Canon 4C, a judge should not participate in public fund raising activities. Although under Canon 5B(2) a judge may be a speaker or a guest of honor, the conflict with other Canons would require a "no" answer to this question.

FUND RAISING BY JUDGES FOR TEXAS CENTER FOR THE JUDICIARY, INC.

Opinion No. 199 (1996)

QUESTION 1: May a judge solicit contributions to the Texas Center for the Judiciary, a not for profit organization dedicated to the education of judges, from individuals, businesses or foundations promoting judicial education or similar endeavors?

ANSWER 1: No. In 1982 we issued Opinion No. 52 holding that a judge may solicit funds for the Texas Center for the Judiciary from foundations and other donors not likely to come before the court without violating the letter or the spirit of the Code of Judicial Conduct. Since that time the letter of the code has changed; Canon 4C(2) now squarely prohibits a judge from soliciting funds for any educational, religious, charitable, fraternal or civic organization without excepting organizations devoted to the improvement of the law. No longer is there any language that could justify a distinction between public fund raising and solicitations directed to private foundations. While it might seem appropriate for a judge to be able to solicit funds for an organization that promotes judicial education, the Code as presently drafted does not permit any direct fund raising by Texas judges, as we noted recently in Opinion No. 196 concerning solicitation of funds for the National Center for State Courts.

QUESTION 2: May a judge introduce the executive director of the Texas Center for the Judiciary to foundations, businesses, or individuals expressing an interest in supporting the Center?

ANSWER 2: Yes. As we noted in Opinion No. 196, Canon 4C(2) permits judges to be listed as an officer, director or trustee of a civic or charitable organization, and implicitly allows stationary bearing their names in such positions to be used for fund raising purposes, so long as the judge does not sign the solicitation letter. Allowing a judge to make an introduction of the executive director to a potential donor serves a similar function: it informs the donor that the judge is associated with and sponsors the Texas Center for the Judiciary. The judge must not participate in or be present during the executive director's fund raising efforts as this would constitute direct solicitation.

QUESTION 3: May the executive director of the Texas Center for the Judiciary solicit contributions or sponsorships from vendors of legal materials, such as West Publishing?

ANSWER 3: Because the Code of Judicial Conduct only governs the activities of judges, the Committee expresses no opinion regarding the actions of the executive director of the Texas Center for the Judiciary. The solicitation efforts of the Center directly reflect upon judges, but the executive director's activities are subject to review by the organization's board of directors and not this Committee.

MASTER MAY NOT PRACTICE IN COURT SERVED

Opinion No. 200 (1996)

QUESTION: May a master who is appointed by the county judge but serves at the will of the probate judge and hears mental health proceedings in the absence of the probate judge, practice in that probate court? The Mental Health and Retardation Code statute authorizing the appointment of the master (' 74.0085) specifically states that the master shall comply with the Code of Judicial Conduct in the same manner as the county judge.

ANSWER: No. Since the master is actually sitting for the probate judge, Canon 6B(3) clearly states that such person may not practice law in the court in which he or she serves.

RAISING MONEY FOR TEXAS ASSOCIATION OF DISTRICT JUDGES

Opinion No. 201 (1996)

QUESTION 1: May a committee of the Texas Association of District Judges send a letter to the members of the association or those eligible for membership in the association soliciting \$100.00? The funds would be spent to hire a lobbyist to assist the efforts of the association before the Legislature.

QUESTION 2: May a committee of the Texas Association of District Judges send a letter explaining the aims of various groups that are forming to raise money to assist the judiciary in explaining their desires to the Legislature?

QUESTION 3: May a committee of the Texas Association of District Judges send a letter accompanying correspondence from another group formed to raise money to assist the judiciary in explaining their desires to the Legislature?

ANSWER 1: Yes. Canon 4C(2) prohibits a judge from soliciting funds for any "education, religious, charitable, fraternal or civic organization." It is the opinion of the Committee that the Code of Judicial Conduct does not prohibit such activity so long as the letter is restricted to members of the Texas Association of District Judges or those eligible for membership in the association.

ANSWER 2: No. Such implicit recognition of the "various groups" would "lend the prestige of judicial office to advance the private interests" of the groups, in violation of Canon 2B.

ANSWER 3: No. Given the resolution to Question No. 2, any letter accompanying the correspondence of another group would violate both the letter and spirit of the Code of Judicial Conduct.

PART-TIME MUNICIPAL JUDGE ON ZONING BOARD

Opinion No. 202 (1996)

QUESTION: May a home rule city Municipal Court Relief judge, appointed by the city council, also serve on the City's Zoning Board of Adjustment, a wholly voluntary and uncompensated position also appointed by the city council?

ANSWER: Yes. Canon 6C(1)(b) exempts Municipal Court judges from the requirements of Canon 4H.

Canon 4H provides that a judge should not accept appointment to a governmental committee, commission or other position that is concerned with issues of fact or policy on matters other than the improvement of the law, the legal system, or the administration of justice.

JUDGE'S ENDORSEMENT OF LAWYER REFERRAL SERVICE

Opinion No. 203 (1996)

QUESTION 1: May a judge permit brochures in her courtroom and other public areas in the courthouse that announce the availability of a county bar sponsored lawyer referral service? The referral service is a non-profit organization open to all qualified lawyers and complies with American Bar Association guidelines, State Bar guidelines, and state statutory requirements. The referral service in question screens questions to determine if legal representation is needed, informs callers if they qualify for pro bono legal services, makes a referral to the next name on a rotating list of attorneys who have agreed to provide an initial consultation for a nominal fee in their given areas of expertise, and maintains a list of attorneys available to provide legal services at a reduced fee in certain legal matters.

ANSWER 1: Yes. Canon 4-B permits a judge to participate in extra-judicial activities concerning the law, the legal system, and the administration of justice. Access to our courts is usually not meaningful without the assistance of lawyers. Many members of the public do not know how to find a lawyer, especially one they can afford. A judge who advertises the existence of a lawyer referral service is promoting meaningful access to our legal system for all persons, regardless of their economic condition.

Even though the lawyers selected through this referral program will charge a fee to their clients, the judge is not promoting the individual lawyer but is assisting the public to locate a lawyer who professes familiarity with the legal issues, maintains malpractice insurance and agrees to charge only a modest consultation fee, and perhaps a reduced fee to clients of modest means. By informing the public of this bar sponsored service, the judge is improving the administration of justice, as permitted under the Code, not misusing the influence of her office.

QUESTION 2: May a judge appear in a televised public service announcement and recommend that unrepresented parties contact the county bar sponsored lawyer referral service to find a lawyer before going to court?

ANSWER 2: Yes. Canon 4B would allow the judge to inform the public that it is wise to have legal representation in court. Because the judge is not recommending any individual lawyer, but a lawyer referral service that is open to all lawyers who maintain malpractice insurance, announce

their areas of expertise, and agree to a nominal consultation fee, the judge is not lending the influence of her office to specific lawyers but is using the influence of her office to advise the public of the desirability of obtaining a lawyer before appearing in court and informing those without other resources of one service that might help them find appropriate legal representation. Because a lawyer selected through such a referral service is never identified there is no danger that lawyers on such a list would be in a position to influence the judge who endorses the lawyer referral service.

SITTING JUDGE EMPLOYED AS TV JUDGE Ethics Opinion 204 (1997)

QUESTION NO. 1: May an active, sitting judge accept employment to appear in a television program portraying a judge presiding over simulated court proceedings based on actual trials? Program credits would indicate that the judge is presently a member of the Texas judiciary.

QUESTION NO. 2: May an active trial judge accept employment to consult with the producers of such a television proceeding, sharing his experiences with the producers and writers of such program and advise them as to proper court decorum and procedures?

ANSWER: No, to both questions, but only because the judge is being paid. Canon 1 of the Code of Judicial Conduct calls upon the judiciary to maintain high standards of conduct. Canon 4D(1) states that a judge shall refrain from exploiting his or her judicial position. Both activities in Questions No. 1 and No. 2 would exploit a judge's position for financial gain.

The subject activity is not prohibited if the judge is not paid so long as all other portions of the Code are followed, i.e. does not demean the judiciary, etc. Canon 4(B) specifically allows the judge to participate in activities concerning the law, the legal system, and the administration of justice.

JUDGES DONATIONS TO FUND RAISING AUCTIONS Opinion No. 205 (1997)

QUESTION NO. 1: May judges participate in county bar association fund raiser "auctions" by donating such items as dinners with the judge or golfing rounds with the judge, to be awarded to the highest bidder?

ANSWER: No. This conduct would violate Canon 2B. A fund raiser auctioning dinner or golf with a judge would lend the prestige of judicial office to advance the private interests of others. It would also convey or permit others to convey the impression that they are in a special position to influence the judge.

A judge is allowed to participate in civic and charitable activities if those activities do not reflect adversely upon the judge's impartiality or interfere with the performance of judicial duties. Canon 4C. A judge is prohibited by Canon 4C(2) from soliciting funds for any educational, religious, charitable, financial or civic organization. See Opinion 165.

QUESTION NO. 2: May judges participate in political party fund raiser "auctions" by donating items to be auctioned off where the proceeds benefit the sponsoring political party?

ANSWER: No. The conduct would violate Canon 2B as stated in the answer to Question 1 because this would lend the prestige of judicial office to advance the private interests of the judge or others. It would also convey or let others convey the impression they are in a special position to influence the judge. Participation in "political party fund raiser auctions" where the prestige of the judicial office is not used is permissible. Where the items donated are attributable to a judge such as dinner or golf with a judge, a violation of Canon 2B would occur.

A judge may indicate support for a political party and attend political events. Canon 5(3). Canon 4C(2) prohibits solicitation of funds only for education, religious, charitable, fraternal or civic organizations. Under a previous codification of this section, political solicitation was also prohibited. This change appears to allow political solicitations. See Opinion 162. A judge may participate in political party fund raisers but the level of participation is limited by Canon 2B.

JUDICIAL REFERRALS **Revised Ethics Opinion No. 206 (1997)**

To address its backlog of criminal cases, the county initiated a program to require first time family violence offenders to attend a course in family counseling. If the defendant completes the course, criminal charges are dismissed; if the defendant does not cooperate or does not complete the course of counseling, the agency notifies the court and the cause is set for trial. The defendant pays the cost of the counseling.

QUESTION: May a judge in this county order the defendant to attend counseling at only one agency or business, or to select between two or three specified agencies or businesses without violating the Code of Judicial Conduct?

ANSWER: Yes, so long as the selection process encourages referrals to qualified programs that advance the county's objective of reducing family violence. Canon 2B admonishes the judge not to influence the selection process to advance the private interests of any provider.

JUDGE WRITING "CHARACTER AFFIDAVIT" **Opinion No. 207 (1997)**

QUESTION: May a Judge file a Character Affidavit on behalf of a person seeking a pardon from the President of the United States?

ANSWER: No. This would be a violation of Canon 2B, where A judge shall not testify voluntarily as a character witness.

JUSTICE OF THE PEACE SERVING AS CASA VOLUNTEER **Opinion No. 208 (1997)**

QUESTION: Can a justice of the peace serve as a Court appointed special advocate (CASA volunteer) in the county in which he or she serves as a justice of the peace or in other counties?

BACKGROUND INFORMATION: The CASA program consists of community citizens trained and appointed by district judges to serve as volunteers to advocate for the best interests of children who are involved in the court system due to abuse, neglect or abandonment, and to aid in reducing the time spent by these children in foster care. According to the Texas CASA, Inc. Annual Report - FY96, there are currently 44 CASA programs covering 85 counties in Texas, serving approximately 6,537 children. CASA volunteers serve without compensation.

ANSWER: Yes, to both parts of the question. Canon 6(C) provides that a justice of the peace shall comply with all provisions of the Code of Judicial Conduct, except that he or she is not required to comply with several specified provisions, such as Canon 4(F) (acting as an arbitrator or mediator) or Canon 4(G) (practicing law, if an attorney). It would appear that serving as a court appointed special advocate for a child in court proceeding would be similar in nature to these non-prohibited activities, and it is the opinion of the ethics committee that a justice of the peace would therefore not be in violation of the Code of Judicial Conduct by serving as a CASA volunteer, provided further that he or she complies with Canon 3A (requiring that the judicial duties of a judge take precedence over the judge's other activities).

JUDGE'S RESPONSE TO NEGATIVE PUBLICITY **Opinion No. 209 (1997)**

QUESTION: May a senior judge who presided in a massive tort litigation action respond publicly, while the case is still pending, to unfair criticism of his actions in the case, including allegations of bias because of personal ties to the attorney for the plaintiffs and suggestions that the judge's political interests favor plaintiffs who mostly reside in the judge's county? This judge feels the need to defend his reputation now against these false accusations even though the matter is still pending because of fears the litigation may not be concluded during his lifetime.

ANSWER: No. A senior judge who has consented to accept judicial assignment is required to comply with the Code of Judicial Conduct. See Canon 6F(1) (with exceptions not relevant to this inquiry.) Canon 3B(10) requires a judge to refrain from public comment about a pending or impending proceeding which may come before the judge. This canon bars public commentary by the judge except for judicial statements explaining the procedures of the court. It is the Committee's opinion that the senior judge's wish to respond publicly to unfair criticism of his actions in a pending matter goes beyond explaining to the public the court's procedures, and this violates Canon 3B(10). To engage in an editorial debate with his critics about the merits or motivations of his decision not to recuse himself or his ability to be impartial would place the judge in the position of taking sides outside the courtroom for or against parties urging certain positions inside the courtroom. That is to say that the judge's editorial efforts to defend his impartiality could unwittingly cast further doubt on his impartiality. Canon 4A(1) requires that the judge's extra-judicial activities not cast reasonable doubt on the judge's capacity to act impartially as a judge.

In Opinion No. 95 (1987) the Committee stated that it would be unethical for a judge to discuss the facts "or other aspects of the case" with the news media while a matter is pending in that judge's court or any other court. In Opinion No. 191 (1996) the Committee determined that Canon 3(B) prohibits an appellate judge from discussing in a newspaper article or editorial that judge's stated position on matters already decided by the court because they may come up again. A judge's editorial comment on pending matters, even in defense of his reputation, is likewise

prohibited. We are sympathetic with the judge's desire to refute unfair or false criticism of his actions, but any response to critics of the judge's actions or motives places that judge in a potentially adversarial position that may cast doubt on his impartiality in the matter. When the judge no longer consents to accept judicial assignment and is no longer governed by the Code, he may respond publicly to his critics.

JUDICIAL ACCEPTANCE OF REFERRAL FEES

Opinion No. 210 (1997)

QUESTION: May a judge who is asked by former clients and friends to recommend a realtor accept a referral fee from the realtor? The recommended realtor is not a lawyer but is the largest firm in the county.

ANSWER: No, a judge may not accept a referral fee. Canon 4 begins by admonishing a judge to conduct all of his extra-judicial activities so that they do not cast reasonable doubt on a judge's capacity to act impartially. Canon 4(D) goes on to require that a judge refrain from business dealings that exploit his or her judicial position or involve the judge in frequent transactions with persons likely to come before the judge's Court.

In the facts presented, it seems that the appearance of impropriety is present, i.e., judges receiving money for referring business would not be seen as appropriate by the general public. There is a strong potential for the judge's position to be exploited. Additionally, since the real estate firm is the largest in the county, there is a potential for the real estate firm to come before the judge, additionally violating Canon 4.

J.P. RUNNING COLLECTION AGENCY

Opinion No. 211 (1997)

QUESTION: May a Justice of the Peace make telephone calls and send letters to debtors on behalf of a collection agency? The judge's communications would not mention her judicial status, she would do the work at home and not at the court offices, and any suits to collect the debts would be heard by a different judge.

ANSWER: No. Such activity would violate Canon 4D(1), which provides that "A judge shall refrain from financial and business dealings that tend to reflect adversely on the judge's impartiality, interfere with the proper performance of judicial duties, exploit his or her judicial position, or involve the judge in frequent transactions with lawyers or persons likely to come before the court on which the judge serves."

Canon 2B also contains this general prohibition: "A judge shall not lend the prestige of judicial office to advance the private interests of the judge or other." Direct debt collection activities by the judge would inevitably cause some litigants and others in the community to question her impartiality in debt collection cases, or to perceive that she is exploiting her office or lending its prestige to the private interests of the collection agency and the creditors it represents.

For similar reasons, previous opinions have forbidden judges to own an interest in a title insurance company (Opinion 23), to serve as directors of banks or related corporate entities (Opinions 37, 38, 42, 61, and 89), or to serve on a downtown development committee (Opinion 141).

JUDICIAL CAMPAIGN STATEMENTS

Opinion No. 212 (1998)

FACTS: During a political campaign in a judicial election, a candidate produced a campaign brochure including the following material:

1. statements that the candidate should receive a vote because he or she would "get tough with criminals" or was "tough on crime";
2. a statement that the candidate should receive a vote because he or she was "an experienced prosecutor for judge";
3. a statement that the candidate would be a "conservative judge";
4. a statement criticizing the incumbent's previous decisions, for example, "Judge X was wrong in giving probation to a convicted drug dealer.";
5. a photograph of the candidate with a recognized office-holder who has not endorsed the candidate in the race.

QUESTION: Does the inclusion of these matters in campaign literature violate the Code of Judicial Conduct?

OPINION: Political campaigns by judges and judicial candidates are governed by Canon 5 of the Code of Judicial Conduct. A judge and judicial candidate may not make statements that indicate an opinion on any issue that may be subject to judicial interpretation, except that discussion of judicial philosophy is appropriate if conducted in a manner which does not suggest to a reasonable person a probable decision on any particular case, Canon 5(1). A judge or judicial candidate may not make pledges or promises of conduct in office other than the fair and impartial performance of the duties, Canon 5(2)(i), and may not knowingly misrepresent the identity, qualifications, present position, or other fact concerning the candidate or an opponent, Canon 5(2)(ii). A judge or judicial candidate should also act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary, Canon 2 A.

The statements contained in 1. ("tough on crime") would not violate Canons 5(2)(i) and 2A. The pledges to be tough with criminals and tough on crime are of such an amorphous nature that they do not define any specific conduct and, therefore, are not violative of Canon 5(2)(i). The Committee also believes the amorphous nature of these phrases prevents them from indicating an opinion on an issue subject to judicial interpretation as proscribed in Canon 2A.

Statement 2 ("experienced prosecutor") does not violate the Code, assuming that it is a true statement. An accurate discussion of qualifications is permissible, including prior positions held, even though some person reading the statement might conclude that a judge or judicial candidate who had been a prosecutor would be more likely to rule a particular way in certain types of cases.

Statement 3 ("conservative judge") does not violate the Code. Stating that one will be a conservative judge is a statement of judicial philosophy. While it may appear to convey some meaning, the meaning is so complex that it certainly does not suggest a probable decision in any particular type of case.

The fourth statement ("criticizing decision of the incumbent") violates Canons 5(1) and 2A. A statement that criticizes an earlier decision is a violation if the candidate goes beyond a statement of judicial philosophy and implies to a reasonable person that he or she would reach a different decision in a similar type of case.

The fifth inquiry, concerning the use of a photograph in political material of a person or officeholder who has not endorsed the judge or candidate, would be a violation of Canon 5(2)(ii) of the Code. The use of the photograph clearly implies permission or an endorsement. If that permission or endorsement does not exist, the photograph is a misrepresentation of a fact concerning the candidate and clearly a violation.

**MULTIPLE CANDIDATES ENDORSED OR ADVERTISED IN SINGLE
PUBLICATION
Opinion No. 213 (1998)**

FACTS: A political party, a Political Action Committee (PAC), a specialty bar association, and/or an individual endorse several candidates in one publication.

QUESTION: May a judge or judicial candidate contribute toward the publication of the advertisement?

ANSWER: Political Party, Yes. A judge and a judicial candidate may contribute to a political party. If the political party uses that contribution to pay for campaign publicity and decides to include only candidates who helped pay for the advertisement, this does not violate the Judicial Code.

ANSWER: PAC, Yes. Unless the judge or judicial candidate participates in the selection of candidates promoted by the PAC, the Code of Judicial Conduct does not prohibit the judge or judicial candidate from contributing to the PAC. The Committee would draw attention to Texas Election Code Section 253.1611 which severely limits contributions by a judge or judicial candidate to a PAC.

ANSWER: Specialty Bar, Yes. Unless the judge or judicial candidate participates in the specialty bar's selection of candidates, the Code of Judicial Conduct does not prohibit the judge or judicial candidate from contributing to the specialty bar to promote the publication of the advertisement.

ANSWER: Individual, Yes. Unless the judge or judicial candidate participates in the individual's selection of candidates the Code does not prohibit a judge or judicial candidate from contributing to the publication.

QUESTION: May two or more judges conduct a joint campaign that includes a mailed brochure and a newspaper ad? The judges invite only certain other judges to participate. The campaign is funded totally by the participating judges' campaigns. All funds are given to the political party, which actually pays the campaign expenditures. Is such a campaign permissible under the Judicial Code of Conduct?

ANSWER: No. Since the judicial candidates selected the candidates with whom they advertised, it is the opinion of the committee that this constitutes an endorsement prohibited by Canon 5(3) and 2(b). Additionally, it constitutes a joint campaign as prohibited in Opinion 100. In responding to these inquiries the Committee referred to Canons 2(b) and 5, and Committee Opinions Nos. 100, 170 and 180. Canon 2(b) provides that a judge shall not lend the prestige of office to anyone's

private interest. Canon 5(3) provides that a judge or judicial candidate shall not publicly endorse another candidate for public office. Committee Opinion No. 100 prohibits joint campaigns by judges; Opinion No. 170 prohibits a judge handing out material that advertises candidates other than the judge; Opinion No. 180 prohibits a judge from using the judge's name to promote a spouse's candidacy. (It should be noted that Texas Election Code Section 253.1611 sets limits on political contributions by a judge or judicial candidate.)

To avoid the appearance of impropriety, judges should request that in any multiple candidate material a prominent disclaimer be included that states that the inclusion of any judge or judicial candidate does not constitute an endorsement by that judge or judicial candidate of any other candidate. Any contribution permitted by this opinion that is intended as a subterfuge for joint campaigning forbidden by Opinion No. 100, constitutes an endorsement that would violate Canon 5(3).

SUPPORT FOR ORGANIZATION SEEKING CJAD FUNDING

Opinion No. 214 (1997)

QUESTION: May a judge write a letter of support for a non-profit organization pertaining to the organization's seeking CJAD funding if the letter deals only with the judge's knowledge of the services the organization provides in the community and does not itself solicit funds?

ANSWER: Yes. Canon 4(C)(2) states that a judge "shall not solicit funds for any educational, religious, charitable, fraternal or civic organization..." If the letter were restricted to a recitation of the services the organization provides in the community, based on the judge's knowledge, and does not solicit funds, there would be no violation even if the net effect of the letter would be to make more likely the organization's receiving the funds, if the other requirements of Canon 4 were met. In this context, a judge could very well be in a unique position to provide such information.

QUESTION: May a judge serve as a member of an advisory board of an organization which is partly funded by government and partly by private funding?

ANSWER: Yes. Canon 4(C)(2) states that a judge "may be listed as an officer, director, delegate or trustee of (any educational, religious, charitable, fraternal, or civic organization)."

GIFTS TO JUDGES FOR CATASTROPHIC LOSS

Opinion No. 215 (1997)

QUESTION 1: May a judge or a judge's family, who has suffered a catastrophic loss, accept gifts of money from individuals who work in the courthouse or practice in the judge's court?

ANSWER: Yes and no. Canon 4D(4)(c) clearly states neither a judge nor his family may accept gifts from anyone whose interests have come or are likely to come before the judge. Therefore, a judge may not accept gifts from lawyers or parties who have come or might come before the court.

The Canon 4D(4)(c) also states that a judge or his family may accept gifts from individuals whose interests have not come and are not likely to come before the Court. It would seem, then, that the judge and family could accept gifts from non-lawyer friends and acquaintances who happen to work in the courthouse but have no interest that has or might come before the Court.

QUESTION 2: May a judge accept gifts he would otherwise be prohibited from receiving if they are placed in a blind trust?

ANSWER: No. The prohibition against accepting gifts is clear. A judge may not accept gifts from ANY persons whose interests have or may come before the court, whatever the form!

LAWYER HOSPITALITY

Opinion No. 216 (1997)

QUESTION: Would it be proper for a judge who is hearing a case out of county to stay in the lake house of a lawyer who often appears in his court? The lawyer has no connection with the out of county case. Would it make any difference if the county paid the attorney the same rate that would be paid if the judge stayed in a motel?

ANSWER: No, a judge may accept gifts or hospitality only under very limited circumstances as described in Proposed Opinion No. 215. This use of the lake home is specifically disallowed in Canon 4D(4)(c), i.e., a judge may not accept the gift from a person whose interests have come or are likely to come before the judge.

If the county pays for the judge's stay, the judge could avoid ethical violation, but only if the payment is commensurate with the market value of the accommodations and the rental is done regularly and not just to the judge.

JUDICIAL CODE APPLIES TO JUDGES UNDER SUSPENSION

Opinion No. 217

QUESTION NO. 1: May a judge who is currently under suspension by the Commission on Judicial Conduct and receiving judicial pay receive compensation for services as a mediator?

ANSWER: It is the belief of the committee that since the judge is receiving judicial pay although suspended by the Judicial Commission, he is required to comply with the Code of Judicial Conduct. It is clear from Advisory Opinion 161 that a judge is prohibited from serving as a mediator.

QUESTION NO 2: If a judge cannot be paid, may he ask the parties to make a donation to the Children's Assessment Center?

ANSWER: This portion of the question is moot as a judge may not mediate. (In the interest of clarity, the committee would offer the opinion that the request of a donation to a charity is fund raising and clearly prohibited by Canon 4C(2).

COUNTY JUDGE AS PRACTICING PSYCHOLOGIST
Opinion No. 218 (1998)

FACTS: Prior to assuming the bench, a constitutional county court judge (who is also a licensed mental health professional) maintained a private clinical practice which included preparation of court-ordered social studies in adoption and child custody proceedings.

QUESTION: May a constitutional county court judge who is also a licensed mental health professional provide clinical and technical (but not legal) consultation to other licensed mental health professionals who are involved in the preparation of court ordered social studies? The consultations would only be given under the following conditions:

1. the judge is not involved in the interview process, investigation or other information gathering activity required in conducting the studies;
2. the judge would only consult with other licensed mental health professionals, and he would not be involved in frequent transactions with lawyers or other persons likely to come before the court on which the judge serves;
3. the judge will not voluntarily testify as an expert witness while continuing to serve on the bench;
4. the fact that the judge was consulted in preparation of a social study report may be noted in the report by listing his name and professional credentials (absent his judicial title); however, a disclaimer will be given and no representation will be made that the judge holds a particular opinion or makes a specific recommendation regarding disposition of the case under study; and
5. the judge would be compensated on a fee basis by the mental health professional who employs him.

ANSWER: No. The purpose of a court-ordered social study is to provide evidentiary support for a determination of the best interests of a child in a custody or adoption proceeding, and it is ordered specifically prepared for use of a court in making that determination. Recognition of the contribution of the county judge in preparation of a social study would tend to lend the prestige of his judicial office to advance the private interests of others in violation of Canon 2(B).

This activity could also exploit the judge's judicial position, and by making him a potential witness in all cases in which he serves as a recognized consultant in preparation of a social study, it could involve the judge in frequent transactions with lawyers or persons likely to come before the court on which the judge serves, in violation of Canon 4(D)(1).

Canon 2(A) requires a judge to act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary, and the judge should restrict his private clinical practice to non-court related activities while serving as a county judge.

CHARITABLE GIFT IN LIEU OF EXPENSE OF FUND-RAISING PARTY
Opinion No. 219 (1997)

QUESTION: A judge proposes to invite supporters to a "non-event" fund raiser. Instead of paying for a fund-raising event, the judge announces that he will contribute existing campaign funds to a local charity serving inner city youth. The invitation explains that no funds raised by the solicitation letter would go to the charity. Does the proposal violate the Code of Judicial Conduct?

ANSWER: No, this approach to fund-raising does not contravene Canon 4C(2)'s prohibition against fund-raising for charitable organizations. The Judge is clearly not going to use any of the funds being solicited for that charity. The Committee is of the opinion that the charity should not be named.

JUDGE AS CHARITY WAITER
Opinion No. 220 (1997)

QUESTION: Is it an ethical violation for a Judge to participate as a "celebrity server" for a fund raising dinner for Court Appointed Child Advocates (CASA). CASA is a nonprofit organization. The judges' names will be used in the publicity for this event. The judges will not participate in any actual fund raising. The judge's only job will be to serve dessert to the amusement of the guests.

ANSWER: No, the proposed activity is not a violation of the fund raising prohibition found in Canon 4C(2). The judge's participation is analogous to being a guest speaker at a fund raiser that is specifically allowed in Canon 4C (2).

CONSTITUTIONAL COUNTY JUDGE AS SALES AGENT
Opinion No. 221 (1998)

QUESTION: May a Constitutional County Judge become an independent agent in order to sell products and/or services for a communications company and receive commission?

ANSWER: No. Even though a judge may attempt to separate two careers, when a judge is an independent agent selling products or services for a communications company he may lend the prestige of his office to that position and thereby advance the private interest of himself or his company in violation of Canons 2B and 4D(1).

Furthermore, these activities could interfere with the judge's proper performance of judicial duties in violation of Canons 2A, 3A and 4A(2) in that his acts may not promote public confidence in the judiciary and his selling duties may take precedence over judicial duties or interfere with the proper performance of judicial duties.

LETTERS OF RECOMMENDATION
Opinion No. 222 (1998)

QUESTION: May a judge write a letter of recommendation for (1) a secretary in the office; (2) a prosecutor who is applying for a position with a law firm; (3) a fellow judge, who has made application for another judicial position?

ANSWER: Yes. Such letters may be written. The applicable section of the Code of Judicial Conduct is 2B, which states that a judge should not lend the prestige of judicial office to advance the private interests of the judge or others. The commentary to Canon 2B of the ABA 1990 Model Code provides:

Although a judge should be sensitive to possible abuse of the prestige of office, a judge may provide a letter of recommendation based on the judge's personal knowledge. A judge also may permit the use of the judge's name as a reference, and respond to a request for a personal recommendation when solicited by a selection authority such as a prospective employer, judicial selection committee or law school admissions office. A judge may also provide information in response to a request from a sentencing judge or probation or corrections officer. The Committee is of the opinion that so long as letters are based on the judge's own personal knowledge and are written to a specific person the letters may be written. It is not appropriate for a judge to write a "to whom it may concern" letter because of the lack of knowledge by the judge as to its specific use.

**MASTER ON LEAVE REQUIRED TO COMPLY WITH CODE
Opinion No. 223 (1998)**

QUESTION: An Associate Judge (Master) appointed by a District Judge is seriously considering running for district judge. She wishes to take leave from her current position beginning on the date she files as a candidate. While on leave she will not act in any judicial capacity nor will she receive pay or benefits. She would like to continue coverage for county group health insurance, the cost of which would be borne completely by her. She may have accrued vacation and sick leave which would be reinstated if and when she returns to her job as Associate Judge. While she is on leave without pay:

- 1 . Is she prohibited from working for pay in a job unrelated to the law?
2. Is there any kind of law-related work for pay which she cannot perform? If so, what?
3. Can she practice law or act as a mediator? Can she associate with a law firm whose lawyers appear in court or accept court ordered mediations?

ANSWER: A full-time district court master must comply with all provisions of the Code of Judicial Conduct whether on leave or not. A leave of absence is not a complete separation from employment; it connotes a continuity of employment status. As a result, the master on leave cannot take any employment prohibited by Canon 4.

**J.P. AND CONSTABLES ASSOCIATION ENDORSING POLITICAL CANDIDATE
Opinion No. 224 (1998)**

QUESTION: May a Justice of the Peace and Constables Association endorse candidates for political office?

ANSWER: No. Canon 5 states, in part, that a judge shall not authorize the public use of his or her name endorsing another candidate for any public office. Judges as a group cannot do what judges individually cannot do even if the group consists of some non-judicial members.

JUDICIAL NEUTRALITY PROHIBITS J.P. "WAR ON HOT CHECKS"

Opinion No. 225 (1998)

QUESTION NO. 1: May a county-wide decal issued as a part of a "declared war on hot checks" that includes the names of the district attorney, sheriff and constable and contains a generic warning against passing hot checks also include the justice of the peace's name?

ANSWER: No. Canon 3A provides that a judge must act at all times in a manner that promotes impartiality of the judiciary. If a justice of the peace allows his or her name to appear on a decal, along with the names of the prosecutor and law enforcement officials, the clear implication is that the judge is acting in conjunction with these entities to prevent and prosecute issuance of hot checks. This violates Canon 3A by implying that the judge is partial to law enforcement, the judge will assume the accused is guilty, and that the judge is indeed assisting law enforcement in hot check prosecution efforts. Thus, a judge should not permit use of his or her name in a general law enforcement program.

QUESTION NO. 2: Justices of the peace across Texas "in reality . . . conduct an executive branch prosecutorial function in hot check cases." The victim files the complaint and all relevant evidence in the justice of the peace office, the J.P. office then investigates and prosecutes the case by interviewing potential witnesses and contacting the accused "to pay restitution . . ." Is this appropriate judicial conduct?

ANSWER: Canon 1 of the Code of Judicial Conduct states that a judge should observe standards to preserve the independence of the judiciary. When Canon 1 speaks of independence, it refers to the judicial branch of government that must remain separate from the other two branches under Article II, Sec. 1, of the Texas Constitution. The executive branch includes prosecutors, sheriffs and constables; therefore, a judge cannot at any time act as a prosecutor in any capacity.

If the inquiring justice of the peace, or any judge, is prosecuting cases within its jurisdiction, especially contacting the accused for guilty plea arrangements, then the judge is absolutely, unequivocally, and indefensibly violating both the Code of Judicial Conduct and the Texas Constitution. Further activity in this vein must immediately cease.

JUDGE AS ATTORNEY FOR SELF, SPOUSE AND/OR CORPORATION

Opinion No. 226 (1998)

QUESTION: A judge is sued individually, along with her spouse and a corporation that the judge and her spouse solely own. May the judge represent herself, her spouse and/or the corporation in the suit as attorney of record?

ANSWER: Yes and No. A judge may always represent herself in a legal action. Whether she is permitted to represent her spouse or the corporation depends on the type of judge being sued. Canon 4G and Canon 6 must be looked at together for the answer. Canon 4G provides that a judge may not practice law but may represent herself and, without compensation, give legal advice to and draft or review documents for a member of the judge's family. Judges required to comply with

Canon 4G (appellate judges at all levels, district and county court at law judges) may not represent their spouse or the corporation.

With minor exceptions, Canon 4G does not apply to a County Judge, a J.P. or a municipal judge. The Code of Judicial Conduct does not prohibit these judges from representing their spouse, and the corporation and themselves.

JUDGE OR JUDICIAL CANDIDATE OWNED BUSINESS

Opinion No. 227 (1999)

A candidate for judicial office owns, with his spouse, the only abstract title insurance company in the county.

QUESTION 1: Is this business relationship permissible under the code for a judicial candidate? For a sitting judge?

ANSWER 1: Yes, as to the candidate and no as to the sitting judge.

The Code's only requirement of a judicial candidate is that the candidate refrain from inappropriate political activity as described in Canon 5. See Canon 6 for list of those covered by the Code.

It is the belief of the committee that a sitting judge is not permitted to maintain these business interests due to the provisions of Canon 4. While Canon 4(D)(2) does allow a judge to operate a business, not publicly held, this provision is subject to 4(D)(1). Canon 4(D)(1) requires a judge to refrain from financial and business dealings which tend to reflect adversely on the judge's impartiality, interfere with the proper performance of judicial duties, exploit his or her judicial position, or involve the judge in frequent transactions with lawyers or persons likely to come before the court on which the judge serves. The nature of this business, coupled with the fact it is the only abstract title company in the county, and the court is one of general jurisdiction, make such a conflict inevitable. See Opinion 23.

QUESTION 2: Assuming a candidate who owns an abstract title insurance company or whose wife owns such business is elected, would the judge or the spouse be obligated to divest themselves of these business interests?

ANSWER 2: Yes, under the reasoning in the answer to Question 1, the elected judge should divest himself of the business in a reasonable fashion. Canon 7 requires that a person to whom the code becomes applicable, should arrange his or her affairs as soon as reasonable to comply with the code.

In the event that the spouse of a sitting judge owns an abstract business, the judge must recuse himself in any case involving a lawyer or other person who does business with the judge's spouse. It is the duty of the judge to be informed about the economic interests of any family member residing in the judge's household. If the spouse's interest causes frequent disqualification, then Canon 4D(3) requires a judge to divest himself of economic interests as soon as the judge can do so without serious financial detriment.

QUESTION 3: May a sitting judge acquire an interest in a private mortgage company?

ANSWER 3: Yes, so long as the requirements of Canon 4(D) are followed. The ownership, whether as an active participant or an investor only, must not be in a company that is "publicly owned" (i.e. has more than 10 unrelated owners), must not exploit the judge's position or involve the judge in frequent transactions with persons likely to come before the court. The Canon requires that a judge's investments should be managed so as to minimize the number of cases in which the judge is disqualified.

QUESTION 4: May a judge who owns a corporation which operates a title company located outside the judge's district, lease the company to a private company?

ANSWER 4: Yes, with the same restrictions as enumerated in answer (3) above. See Opinion 179.

QUESTION 5: Could potential violations in any of the above situations be remedied by a blind trust?

ANSWER 5: No. A blind trust operates by investing a judge's assets without the judge having any knowledge of where his/her assets are invested. The blind trust is not an effective tool for shielding the judge from knowledge of his investments when the judge's asset is a company doing business such as the abstract and title company described here.

The committee would comment that it is difficult to answer these inquiries in the abstract. Each situation would depend upon its own circumstances, the types of cases a judge hears, and the effect of the ownership interests on those who appear before the judge, both in reality and in perception. The committee cautions any judge or candidate to evaluate each such situation very carefully. Besides the above referenced Canons, each such situation should be judged with Canons 1 and 2 in mind.

**JUSTICE OF THE PEACE AS BOARD MEMBER OF WATER SUPPLY
CORPORATION
Opinion No. 228 (1998)**

QUESTION: May a justice of the peace serve as a member of the board of directors of a water supply corporation if the customers are located in the justice's precinct?

ANSWER: No. For a justice of the peace to serve as a director under such circumstances would be a violation of Canon 4D(1). This provides that "a judge shall refrain from financial and business dealings that tend to reflect adversely on the judge's impartiality, interfere with the proper performance of the judicial duties, exploit his or her judicial position, or involve the judge in frequent transactions with lawyers or persons likely to come before the court on which the judge serves." A director of a corporation occupies a position of a fiduciary toward the corporation for its shareholders. A justice of the peace accepting such director's position could be involved in financial and business dealings which would tend to reflect adversely on his impartiality as a judge, and he could be involved in frequent transactions with persons that would likely be before him in court.

For a justice of the peace to so serve as director would also be violative of Canon 4A(1), which provides that "a judge shall conduct all of the judge's extra-judicial activities so that they do not cast reasonable doubt on the judge's capacity to act impartially as a judge."

It should be noted that Canon 4D(2) does not apply here because the judge asking the question is a justice of the peace. See Canon 6C(1)(b).

JUDGE MAY NOT SOLICIT FUNDS FOR BANQUET

Opinion No. 229 (1998)

QUESTION: May a municipal judge serve as the Director of the County Crime Commission? The position receives a \$500 per month salary if the Commission has the funds. In those months that there are no funds the Director is expected to donate his time. The major duty is to organize and collect funds for an annual banquet. The banquet is held to recognize area law enforcement personnel.

ANSWER: No. Canon 4C(2) states that, "A judge shall not solicit funds for any educational, religious, charitable, fraternal or civic organization.. ." Although municipal court judges and justices of the peace are exempted from portions of Canon 4, they are not exempted from 4C(2).

JUDGE AS ASSISTANT TO COUNTY PARTY CHAIR FOR APPOINTMENTS

Opinion No. 230 (1998)

QUESTION: May a judge serve as Special Assistant to the County Party Chair responsible for Appointments? The position would require the judge to communicate the process of applying for various county, city and state governmental appointments as well as communicating what appointment positions are available.

ANSWER: No. A judge may not act in this capacity due to the public nature of the position. It places the judge in the position of a de facto political power broker. This is a violation of Canon 2 which states that a judge should not lend the prestige of judicial office to advance the private interests of other; nor shall a judge permit others to convey the impression that they are in a special position to influence the judge.

JUDGE ON THANK YOU PAGE IN POLITICAL PARTY STATE CONVENTION FOR CONTRIBUTION

Opinion No. 231 (1998)

QUESTION: May a judge be publicly thanked in a political party state convention program for contributing to the cost of a dinner provided to young people who served as pages and sergeants-at-arms at the state convention?

ANSWER: Yes. Canon 5 states, in part, that a judge may indicate support for a political party. The presence of a judge's name on a list of contributors to a dinner sponsored by a political party is permitted by the Canons.

APPOINTED JUDGE LISTED AS "JUDGE" IN CAMPAIGN MATERIAL

Opinion No. 232 (1998)

QUESTION: May any of the following individuals refer to themselves as "judge" in campaign material (including public forums) when running for elected judicial office-- family law associate judge, criminal law magistrate, juvenile referee, jail magistrate, Title IV master?

ANSWER: The Code does not dictate whether such individuals are considered "judges". Reference to appropriate statutes or constitutional provisions may be required to make that determination. The Committee notes, however, that Canon 5(2)(ii) provides that a judicial candidate shall not knowingly or recklessly misrepresent the candidate's identity, qualifications, or present position.

SITTING JUDGE COMPLETING MEDIATION TRAINING

Opinion No. 233 (1998)

QUESTION: May a sitting judge, as part of a mediation training program, (1) observe three mediation sessions conducted by other persons serving as mediators, and (2) conduct two pro bono mediations, so long as the mediations would not be in connection with any case pending in the judge's court and the judge would receive no compensation for her services?

ANSWER: Yes. A sitting judge may observe mediation sessions conducted by another mediator and may, without compensation, serve as a mediator. Canon 4.F provides: "An active full-time judge shall not act as an arbitrator or mediator for compensation outside the judicial system, but a judge may encourage settlement in the performance of official duties." Canon 3B.(8)(b) concerning ex-parte communications does not prohibit a judge from "conferring separately with the parties and/or their lawyers in an effort to mediate or settle matters, provided, however, that the judge shall first give notice to all parties and not thereafter hear any contested matters between the parties except with the consent of all parties."

Since Opinion No. 161 in 1993 first addressed the propriety of a judge serving as a mediator, alternative dispute resolution procedures have become more favored as a state policy in numerous legislative enactments, more favored by judges because of their effectiveness in disposing of disputes at every level, more favored by state agencies which now build ADR procedures into many of their rules, and more favored by individuals who include ADR procedures in their agreements and rely on them to resolve more and more of their disagreements. In light of this growing reliance on ADR procedures as an adjunct to traditional forms of adjudication, and in light of the favorable experience of many judges in encouraging and participating in alternative dispute resolution procedures, we withdraw in its entirety our former Opinion 161 and find in the Code no prohibition against an active judge serving as a mediator or arbitrator without compensation so long as the judge follows the guidelines of Canon 3B.(8)(b).

There is no prohibition against an active judge serving as a mediator or arbitrator without compensation so long as the judge follows the guidelines of Canon 3B.(8)(b) and that such a mediation or arbitration does not interfere with the prompt and efficient management of that judge's own court docket.

COURT ADMINISTRATOR CAMPAIGNING FOR CANDIDATE OF HER CHOICE

Opinion No. 234 (1998)

QUESTION: May a court administrator for a judge campaign for political candidates and support referendum issues during non-court hours, when she is away from the courthouse and on her own personal time?

ANSWER: Yes. Canon 5's prohibition of "inappropriate political activity" applies only to judges and judicial candidates, not to court personnel. Canon 6 does not list court administrators or staff as persons subject to the Code. Although an earlier version of Canon 3C.(2) required court staff to observe "the standards of this Code," since March 1994 Canon 3C.(2) has required judges, as part of their administrative responsibilities, to ensure only that members of their staff observe "the standards of fidelity and diligence" that judges must observe. Canon 3 also instructs judges to ensure that staff and court officials observe other code provisions not at issue in this opinion. See Canon 3B.(4), 3B.(6), 3B.(8), and 3B.(10).

The code does not prohibit political activities by the administrator, provided that she engages in them away from the courthouse, during non-court hours, on her own time, without giving the impression that she speaks for the judge. The administrator must remember that the judge for whom she works cannot lend the prestige of his office to advance the political interests of others [Canon 2B.], indicate his opinions on issues likely to come before his court [Canon 5(1)], or endorse candidates for public office [Canon 5(3)]. The administrator must scrupulously avoid suggesting in any way that the judge personally approves of the candidates she endorses or the positions she takes on the issues. She must also schedule her political activities so that they do not interfere with her official duties. Canon 4A.(2).

JUDGE AND POLITICAL ACTIVITIES

Opinion No. 235 (1998)

FACTS: A person serving as President of a County Women's Political Caucus and who also serves as the Mayor's appointee and Chair of the Mayor's Commission on the Status of Women will soon be appointed as a part-time Master over the Mental Health cases for a County Court at Law and a Probate Court for the county where she resides. It is anticipated that the Master will preside over hearings two or three days a month.

QUESTION: Is it a violation of the Code of Judicial Conduct for a Master over mental health cases in a statutory county court to 1) remain as president of a county women's political caucus; and/or 2) remain as Chair of the Mayor's Commission on the Status of Women?

ANSWER: No, as to both positions. Under Canon 6D.(1), a part-time master of a statutory county court is required to comply with all provisions of the Code of Judicial Conduct except, among others, Canon 4H. This exception would permit a part-time master to serve as an appointee to a commission even if it is concerned with issues of fact or policy on matters other than improvement of the law, the legal system or the administration of justice.

There is no direct prohibition in the Code of Judicial Conduct regarding service as president of an organization such as a county woman's political caucus, as long as the master does not authorize the public use of her name endorsing another candidate for any public office under Canon

5(3) or solicit funds under Canon 4C.(2). Additionally, the master must conduct her extrajudicial activities so they do not cast reasonable doubt on her ability to act impartially as a master or interfere with the proper performance of her judicial duties under Canon 4A.(1) and (2).

JUDGE COMPENSATED FOR PERFORMING A MARRIAGE CEREMONY

Opinion No. 236 (1998)

QUESTION NO. 1: May a judge receive a fee for performing a marriage ceremony during regular office hours?

QUESTION NO. 2: May a judge charge for weddings, after hours, away from the courthouse?

ANSWER TO BOTH QUESTIONS:

Yes, within reason. Canon 4D.(1) states, in part:

A judge shall refrain from financial and business dealings that . . .
exploit
his or her judicial position.

This provision ensures that a judge does not take advantage of his or her judicial office with regard to financial issues.

The Committee considered whether a judge may charge a fee for performing a wedding in Judicial Ethics Op. No. 72. In that opinion, the Committee decided that charging a fee for a wedding would exploit the judge's judicial position in contravention of Canon 5(1) (later renumbered as Canon 4D.(1), with no change in language).

Giving further consideration to the issue, the Committee now withdraws that part of Op. 72 concerning fees. Relevant to our decision is DM-397, issued May 31, 1996. Although the Attorney General's opinion interpreted the law, and although finding conduct legal does not necessarily mean that conduct is also ethical, several holdings in the opinion inform our decision on the ethics questions presently raised.

In DM-397, the Attorney General considered whether a judge could perform marriages, at the office or elsewhere, and whether the judge could charge and keep any fees assessed for this service. Initially, the Family Code authorizes certain state judges to perform marriage ceremonies, thereby denominating performance of a wedding ceremony as a proper judicial function. Next, acceptance of a fee for performing this discretionary judicial function is proper under Section 154.005 of the Local Government Code and JM-22. Last, a fee paid to a judge for performing an official function does not fall within the definition of "honorarium" Thus, a judge authorized to perform a marriage ceremony may collect and retain a fee for performing a marriage ceremony.

With regard to use of the judge's office or court personnel, the Attorney General noted that marriage performance is an officially sanctioned judicial function. As such, weddings may be performed at the judge's office during business hours, and clerks may assist. A Judge must take care, however, that use of public resources be reasonable in relation to the function being carried out: each judge has many mandatory duties to perform in addition to the discretionary authority to conduct marriages.

We find this logic persuasive with regard to Canon 4D.(1)'s admonishment that judges not exploit their judicial positions. As long as the fees are reasonable and conducting ceremonies during business hours does not unreasonably interfere with required judicial duties, then no ethics violation arises. Judges should not, however, take advantage of their official position to conduct

such services, or such activity will constitute exploitation of judicial position and a violation of Canon 4 D.(1).

JUDGE IN FUND RAISING EVENT
Opinion No. 237 (1999)

QUESTION: Judges are invited to participate in a sports event with members of a bar association. The event is a fund raiser for scholarships given by the bar association. The Judge's participation is the main attraction used in selling tickets to the event. May Judges participate in such an event?

ANSWER: Yes. The competing issues are found in Canon 4C. (2) which prohibits judicial fund raising but allows a judge to be a speaker or guest of honor at a fund raising event. It is clear that the judge cannot fund raise directly. The issue becomes difficult when others are selling tickets (fund-raising) based on judges participation. It is the committee's opinion that in this instance the participation of the judge is similar to serving as a guest of honor and is therefore not violative of the code.

JUDGE AS FUND RAISER FOR TEXAS CENTER FOR THE JUDICIARY, INC.
Opinion No. 238 (1999)

QUESTION: May a judge solicit contributions to the Texas Center for the Judiciary, Inc., a not-for-profit organization dedicated to the education and service of Texas judges, from individuals, businesses, foundations, and other organizations? These contributions would be used to promote judicial education and to improve the resources and services provided by the Texas Center for the Judiciary, Inc. to the judiciary.

ANSWER: Yes. This is the third opinion on this subject. In Op. No. 58 (1982), this Committee considered then Canon 4C as an exception to the absolute prohibition against judicial fund raising found in then Canon 5B(2), and

determined that a judge could solicit contributions for the Texas Center for the Judiciary from charitable and educational foundations and other donors who would not ordinarily come before the court.

In 1994, the language found in former Canon 4C as dropped from the Code. Therefore, in 1996, we issued Op. 199, which held that a judge could no longer solicit funds for the Texas Center for the Judiciary and similar organizations. See Op. 196 (1996).

Effective January 1, 1998, the Supreme Court amended the Code to readopt the language of former Canon 4C, now designated as Canon 4B(2), which provides:

"A judge may assist such an organization [devoted to the improvement of the law, the legal system or the administration of justice] in raising funds and may participate in their management and investment, but should not personally participate in public fund raising activities."

Because this language was readopted into the Code, we now follow the reasoning set forth in Op. No. 58 (1982) to hold that once again a judge may assist in raising funds for one of the organizations described in Canon 4B(2), specifically in this case the Texas Center for the Judiciary, Inc. However, Canon 4B(2) prohibits the judge from public fund raising activities. This restricts the manner in which the judge may assist with fund raising, and we adopt the limits set forth in Op. 58:

1. a judge may solicit contributions only from charitable and educational foundations and other donors who would not ordinarily come before the court;
2. the organization for which funds are sought must be one which is devoted to the improvement of the law, the legal system, or the administration of justice;
3. any solicitation by the judge should be made as an authorized representation of the organization and not as a personal solicitation; and finally,
4. any judge assisting a Canon 4B(2) organization must strictly comply with the admonition found in Canon 1 to preserve the integrity and independence of the judiciary and the prohibition in Canon 2B against:
 - a. lending the prestige of office to advance the interests of others, or
 - b. conveying the impression that any donor would be in a position to influence the judge.

MAY A JUDGE LEASE TO ATTORNEYS?

Opinion No. 239 (1999)

QUESTION: At the time a judicial candidate was elected to office, she owned an office building with her sister. The sister is an attorney and the office building space is leased to attorneys. May the judge-elect, once she takes office, continue her ownership in the building? If not, may she be a guarantor on a note securing a mortgage held by the judge's sister on the building that will continue to be leased to attorneys?

ANSWER: The applicable Code provisions are Canon 4D(1) and (2). Canon 4D(1) states:

"A judge shall refrain from financial and business dealings that tend to reflect adversely on the judge's impartiality, interfere with the proper performance of the judicial duties, exploit his or her judicial position, or involve the judge in frequent transactions with lawyers or persons likely to come before the court on which the judge serves."

Canon 4D(2) states: "Subject to the requirements of subsection (1), a judge may hold and manage investments, including real estate, and engage in other remunerative activity including the operation of a business."

Consistent with these provisions, the Judge would not violate the Code of Judicial Conduct if she recused herself from cases in her court in which the attorneys who lease space in her building appear. Similarly, if the Judge chose to guarantee the note held by her sister, the Judge should still recuse herself from cases in her court in which the attorneys who lease space in her building appear.

A problem could arise, however, in a smaller county in which the judge may be the only judge in the county. In that situation, recusal may be impractical and the judge would be required to

either divest herself of the property interest or lease the property only to persons who are not likely to come before the court.

**JUDGE ON BOARD OF NON-PROFIT CORPORATION WHICH TRAINS
VOLUNTEERS AND PAID STAFF TO BE APPOINTED BY THE JUDGE TO SERVE
AS GUARDIANS OF INCAPACITATED PERSONS**

Opinion No. 240 (1999)

QUESTION: May a judge serve as a member of a Board of Directors of a non-profit corporation which trains volunteers and employs professional staff to be appointed by the judge to serve as guardians of incapacitated or minor persons?

ANSWER: No. Canon 4 states that a judge "...shall conduct all of the judge's extra-judicial activities so that they (1) do not cast reasonable doubt on the judge's capacity to act impartially as a judge; or (2) interfere with the proper performance of judicial duties." The difficulty with the scenario presented is that the qualifications and competence of a guardian must be determined and approved by the judge. A judge cannot pass on the qualifications and competence of an individual trained by a corporation if the judge is a member of the board of that corporation without creating an appearance of impropriety regarding the judge's capacity to act impartially. A casual observer could well conclude that the judge would consider anyone trained by "his/her" corporation to be qualified and competent regardless of evidence to the contrary. It is the appearance of impropriety that must be avoided. It would make no difference if the judge were a voting or non-voting member of the board.

MAY A JUDGE REQUIRE DONATIONS TO SPECIFIC CHARITY?

Opinion No. 241 (1999)

FACTS: A trial judge requires defendants in certain cases to donate items (such as toys, clothing, diapers, and food) to specific charities or crime victim groups as a condition of community supervision. She also orders such charitable donations pursuant to plea bargains in which the defendant has agreed to make such donations, and grants dismissals when she knows the state has required the defendant to make donations as a condition of the dismissal. The charities vary each month.

QUESTION: Does the Code of Judicial Conduct permit a judge to order such charitable donations, on her own volition or as part of a plea bargain, or to grant a motion to dismiss knowing that the state has required the defendant to make a charitable donation?

ANSWER: The Code of Criminal Procedure and the case law govern the trial court's discretion to impose conditions of community supervision. See, e.g., Article 42.12, §§ 11(a) & (b), and annotations. These statutes are interpreted by the courts and not by the ethics committee. The committee answers questions of ethics and not questions of law. See Opinions 79 & 175.

The judge must not only act within the legal limits set by statutes and case law but also within the ethical standards set by the code of judicial conduct, which restrict a judges freedom to single out certain charities and private organizations for court-ordered benefits. Canon 2B forbids judges to lend the prestige of their judicial office to advance the private interests of others. In an

analogous situation, the committee has ruled in Opinion 118 that under Canon 2B when a defendant has elected to take a driver safety course in lieu of other penalty, the trial judge may not designate a specific agency if there is more than one qualified agency to choose from. Judicial power should not be used to force litigants to provide gifts or services to specified charities, or to other organizations; judges should not be choosing among competing charities.

**MUNICIPAL JUDGE SERVING AS CERTIFIED PEACE OFFICER, BAILIFF,
DEFENSE AND/OR PROSECUTING ATTORNEY
Opinion No. 242 (1999)**

QUESTION 1: Can a Municipal Court Judge be employed as a certified peace officer/bailiff?

ANSWER 1: No. A Municipal Court Judge may not be employed as a certified peace officer/bailiff. A Municipal Court Judge presides over criminal actions in which the State's primary witness is a certified peace officer. This would create an appearance of impropriety in violation of Canon 2A, which provides, "a judge shall comply with the law and act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary." Such conduct would also be in violation of Canon 4A(1), which provides that "a judge shall conduct all of the judge's extra-judicial activities so that they do not cast reasonable doubt on the judge's capacity to act impartially as a judge."

QUESTION 2: Can a peace officer serve as a Municipal Court Judge?

ANSWER 2: Yes, a certified peace officer may serve as a Municipal Court Judge only in the event he/she is totally on inactive status as a peace officer.

QUESTION 3: Can a lawyer serve both as a part-time Municipal Court Judge for one city and a part-time prosecutor for another?

ANSWER 3: Yes. Canon 6C(1)(d) allows a Municipal Court Judge to practice law if the judge is an attorney. Pursuant to this Canon, the judge would not be permitted to prosecute in the Court on which the judge serves, nor would he/she be permitted to prosecute, in any court, any case related to a matter heard as a judge.

QUESTION 4: Can a lawyer serve as a part-time Municipal Court Judge and continue his practice as a defense lawyer in the same area?

ANSWER 4: Yes. See answer to Question 3.

**JUSTICE OF THE PEACE AS SALES TAX COORDINATOR
Opinion No. 243 (1999)**

QUESTION: May a Justice of the Peace act as a Sales Tax Coordinator? The duties would include: 1) developing, coordinating and preparing sales tax forms; 2) assisting the city in meeting with any business to evaluate sales tax issues and negotiate with the local businesses the terms and conditions of sale tax sourcing; 3) issue sales tax reports on a monthly basis; 4) coordinate with

businesses the filing of necessary documents with the State; and 5) make recommendations to the city council about sales tax collections matters. The Justice of the Peace would not be acting in any capacity as a tax collector.

ANSWER: No. Such activity would violate Canon 3B which provides that , "A judge should not lend the prestige of judicial office to advance the private interest of the judge or others." Meeting with business people as Sales tax Coordinator would inevitably cause some business people, who are also litigants in the judge's court, to question the impartiality of the judge in cases involving that business person or to perceive that eh judge is lending the prestige of the judge's office to the private interest of the city.

Further, Canon 4D(1) says that, "A judge shall refrain from financial and business dealings that tend to reflect adversely on the judge's impartiality ...or involve the judge in frequent transaction with lawyers or persons likely to come before the court on which the judge serves." Since both the city and the business taxpayers are persons likely to come before the court on which the judge serves, it is best that the Justice of the Peace not also serve as the city's Sales Tax Coordinator.

JUDGES TO GIVE AWARD TO PRACTICING LAWYER

Opinion No. 244 (1999)

QUESTION: May a group of judges give an award to honor a deceased member of the Judiciary? The recipient would be an outstanding lawyer that practices before them and would be named on plaque on permanent display.

ANSWER: No. This would indicate that this lawyer held some special position with the local judiciary. Canon 2 requires that a judge should act at all times in a manner that promotes public confidence in the impartiality of the judiciary.

JUDGE ON BOARD OF NON-PROFIT CORPORATION

Opinion No. 245 (1999)

QUESTION: May a judge serve as director of a private, non-profit corporation supported by public and private funds. The purpose of the corporation is to provide necessities for CPS children. The judge would do no fund raising. The judge's name would appear on the letterhead as a director on a fund raising letter. Some of the children benefitting from the program could appear in the judge's court.

ANSWER: Yes. Canon 4C(2) specifically allows the judge's name to appear on the letterhead of the organization's fund raising letter. The committee sees no conflict with children who benefit from the organization appearing in the judge's court.

JUDGE SERVING AS VISITING JUDGE WHILE SERVING ON TEXAS BOARD OF CRIMINAL JUSTICE

Opinion No. 246 (1999)*

QUESTION: May a retired judge who is eligible for judicial service be appointed to hear civil and family cases while serving on the Texas Board of Criminal Justice?

ANSWER: No, The Code of Judicial Conduct (the Code) prohibits such activity. Service on the Board by a sitting or retired judge would violate Canon 4A and 4H* of the Code.

Canon 4A of the Code provides:

"A judge shall conduct all of the judge's extra-judicial activities so that they do not:
(1) cast reasonable doubt on the judge's capacity to act impartially as a judge; or
(2) interfere with the proper performance of judicial duties."

Canon 4H* of the Code provides in part:

"A judge should not accept appointment to a governmental committee, commission, or other position that is concerned with issues of fact or policy on matters other than the improvement of the law, the legal system or the administration of justice."

Canon 6F of the Code provides:

"A Senior Judge, or a former district judge or a retired or former statutory or county court judge who has consented to be subject to assignment as a judicial officer:
(1) shall comply with all the provisions of this Code except he or she is not required to comply with Canon 4D(2), 4E, 4F, 4G, or 4H*, but,
(2) should refrain from judicial service during the period of an extra-judicial appointment permitted by Canon 4H."*

The Texas Board of Criminal Justice governs the Texas Department of Criminal Justice, TEX GOV'T CODE 492.001 (1998). The duties of the Board include employment of the Executive Director of the Department, supervising the Executive Director, and approving the operating budget of the department, TEX. GOV'T CODE 492.013 (b), (c), (1998).

**Now see amended Canon 4H. The Supreme Court's comment to the amendment provides, "This change is to clarify that a judge may serve on the Texas Board of Criminal Justice."*

**RESPONSIBILITY OF JUDGE TO NOTIFY IMMIGRATION DEPARTMENT OF
UNDOCUMENTED ALIEN
Opinion No. 247 (1999)**

FACTS: A judge learns from the evidence during trial that a witness or party is an undocumented alien.

QUESTION: Does the code require the judge to report the individual to the Immigration and Naturalization Service? Does the code prevent the judge from making such a report?

ANSWER: No to both questions. Some statutes may require judges to report law violations to the proper authorities. This committee does not interpret statutes; it only issues opinions interpreting the Code of Judicial Conduct. Canon 3D specifies what judges must do when they learn that another *judge* has violated the code, or that a *lawyer* has violated the rules of professional conduct. But the code neither requires judges to report criminal violations by witnesses or parties nor prevents them from reporting violations. The committee therefore concludes that the judge's obligations are not governed by the code.

**MAY COURTS USE A LAW FIRM'S WEB SITE TO POST
COURT INFORMATION?**

Opinion No. 248 (1999)

FACTS: A law firm offers to let the local courts post their dockets, regularly updated by court personnel, on the firm's web site. In accessing the web site, users would be exposed briefly to the firm's advertisement.

QUESTION: Would this arrangement violate the code?

ANSWER: Yes. Court use of a law firm's web site would violate Canon 2B, which says: "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."

**MAY A JUDGE SERVE AS CHAIRPERSON OF FUND RAISING EVENT FOR NON-
PROFIT GROUP?**

Opinion No. 249 (1999)

QUESTION: May a Judge serve as the Chairperson of the annual fund raiser for a non-profit charity organization?

ANSWER: No, the Code does not permit a Judge to act as chairperson of a charities fund raising event. Canon 4C(2) prohibits fund raising by a judge but does allow a judge to be a speaker or guest of honor. In analyzing this activity it appears to the committee that a judge cannot act as chair because this position entails real duties (as compared with an honorary chair with no real duties) and is so inextricably intertwined with the fund raising as to constitute prohibited behavior.

**MAY A JUDGE OR JUDICIAL CANDIDATE ANSWER QUESTIONS REGARDING
PARTY'S PLATFORM?**

Opinion No. 250 (1999)

QUESTION: May a Judge or Judicial Candidate answer questions propounded by a political party regarding the judge/candidate's position regarding specific planks of the parties' platform?

ANSWER: No, Judges are prohibited under the code of judicial conduct from answering such questionnaires. Canon 5 (1) states "a judge or judicial candidate shall not make statements that indicate an opinion on any issue that may be subject to judicial interpretation by the office which is being sought or held... ." Additionally Canon 5 (2) (1) states a judge or judicial candidate shall not: "make pledges or promises of conduct in office regarding judicial duties other than the faithful and impartial performance of the duties of the office..."

In the event a judge answered such questions, in addition to violating the code of judicial conduct, the judge might be subject to being recused from any case dealing with the subject matter of the question.

JUDGE ON HONORARY COMMITTEE FOR CHARITY

Opinion No. 251 (1999)

QUESTION: May a Judge serve on the Honorary Committee for an annual Sickle Cell Association Fund Raiser?

ANSWER: Yes, so long as the judge does no actual fund raising. The answer is governed by Canon 4C (2) which states that a judge shall not solicit funds for charitable organizations but the judge's name may be listed as an officer, director, delegate or trustee of such an organization. It appears to this Committee that such activity is allowed so long as the judge does no actual fund raising. The committee believes that being listed as an Honorary Committee member is analogous to being listed as a speaker or guest of honor. See Opinions 237, 249.

MAY JUDGES SERVE ON THE HOST COMMITTEE FOR FUND RAISER FOR THEGUARDIAN AD LITEM TASK FORCE, INC.?

Opinion No. 252 (1999)

QUESTION: May a judge serve on the Host Committee of a Fund Raiser for the benefit of the Guardian Ad Litem Task Force, Inc., a non-profit corporation that provides training and organization for volunteer ad litem in the Family Courts? The judges would do no direct fund raising.

ANSWER: Yes, a judge may serve on the Host Committee. This activity is governed by Canon 4. Canon 4B (2) allows a judge to serve as a member, officer, or director of an organization devoted to the improvement of the law, the legal system or the administration of justice. A judge may assist such an organization in raising funds, but should not personally participate in public fund raising activities. Additionally Canon 4C(2) allows a judge to be a speaker or guest of honor at a charitable fund raiser. In light of both these sections of Canon 4, it is the opinion of the committee that such activity is permissible.

MAY A JUDGE APPEAR ON TELEVISION IN A PUBLIC SERVICE ANNOUNCEMENT FOR A NON-PROFIT ORGANIZATION ASKING FOR VOLUNTEERS?

Opinion No. 253 (1999)

QUESTION: May a judge appear on television in a Public Service Announcement for the Texas non-profit office of "Recording for the Blind and Dyslexic" asking people to volunteer their time as readers?

ANSWER: Yes the judge may make such announcement so long as the prestige of judicial office is not used. Canon 4 of the Code allows a judge to participate in civic and charitable activities that do not reflect adversely upon the judge's impartiality or interfere with the performance of judicial duties. It is the belief of the Committee that although the Judge may be identified as a judge it would be improper if he appeared in the announcement wearing his robe. The committee believes

wearing the judicial robe other than while performing official duties or during official ceremonies inappropriately lends the prestige of office to the activity in which the robe is worn.

JUDGES MAY SUPPORT CREATION OF THE JUDICIAL COMPENSATION COMMISSION

Opinion No. 254 (1999)

QUESTION: May judges publicly support new legislation creating a Judicial Compensation Commission? The Commission would set the salaries of Texas Judges.

ANSWER: Yes, judges may publicly support such legislation. Canon 4 allows judges to speak, write, lecture, teach and participate in extra-judicial activities concerning the law, the legal system and the administration of justice. For a judge to support such legislation comes within the activity allowed by this section of the Code.

MAY A LAWYER/JUDGE ACCEPT A REFERRAL FEE WHILE IN OFFICE?

Opinion No. 255 (2000)

QUESTION: Is a judge entitled to accept a referral fee under the following facts: A judge refers the case of a family member to an attorney who does not regularly appear before the judge. Neither the family member nor the referred attorney reside in the same jurisdiction as the judge. The referred case involves a specialty known as "fen-phen" litigation. The case has settled and the referred attorney seeks to pay a referral fee to the judge as a "forwarding attorney." May the judge accept the fee?

ANSWER: No. The Code of Judicial Conduct does not provide a direct answer to the question. Canon 4G does, however, state that: A judge shall not practice law except as permitted by statute or this Code. Notwithstanding this prohibition, a judge may act pro se and may, without compensation, give legal advice to and draft or review documents for a member of the judge's family.

Allowing a judge to receive compensation for referring a family member's case to an attorney would be inconsistent with the spirit of Canon 4G, which would disallow the judge from receiving compensation for actually working on that case.

Additionally, Canon 4D provides:

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

In Ethics Opinion No.210, this provision was applied to disallow a judge from accepting a referral fee for referring former clients to a realtor. The opinion noted that "[J]udges receiving money for referring business would not be seen as appropriate by the general public. There is a strong potential for the judge's position to be exploited."

That rationale seems to apply to the facts of this case too.

**VISITING JUDGE AS MEMBER OF NATIONAL COMMITTEE TO PREVENT
WRONGFUL EXECUTIONS**

Opinion No. 256 (2000)

QUESTION: May a visiting judge who is assigned only to the intermediate appellate courts accept an invitation to join the National Committee to Prevent Wrongful Executions?

The committee is part of the Constitution Project housed at Georgetown University Law Center. It describes itself as a bipartisan "blue ribbon" committee of former elected officials, judges, legal scholars, and journalists, including both supporters and opponents of capital punishment, which seeks to promote "greater fairness in the way the death penalty is administered." The members of the committee authorize the use of their names in connection with its work.

ANSWER: Yes. Canon 4 (B) allows a judge to serve as a member of an organization devoted to the improvement of the law, the legal system, or the administration of justice. As it describes itself, the National Committee to Prevent Wrongful Executions takes no position on the death penalty but seeks to educate the public and policy makers about ways to prevent "wrongful" executions and the need for certain constitutional protections when the death penalty is administered.

Furthermore, an active or visiting judge on the court of appeals could belong to this Committee without violating the mandate of Canon 5 (1) to make no statement that indicates an opinion on issues that may be subject to that judge's interpretation because intermediate appellate courts in Texas have no jurisdiction to hear death penalty cases.

**MAY A JUDGE'S STAFF ACCEPT PAYMENT FOR INFORMATION REGARDING
CASES IN JUDGE'S COURT?**

Opinion No. 257 (2000)

QUESTION: A commercial web site that publishes data about civil litigation has solicited information from a trial judge regarding cases decided in her court. The company has offered to pay \$7.50 for every jury verdict reported. The company requests the following data for each case: date, style, case number, court and name of judge. They also ask for a case description, identity of plaintiff's attorney and defendant's attorney, plaintiff's experts, defendant's experts, and "the verdict or settlement." The company suggests that the judge's court reporter be asked to fill out the form. May the judge or her staff supply information to this commercial data base? May they receive payment for doing so?

ANSWER: No to both questions. Canon 4(D)(1) says that a judge shall refrain from business dealings that exploit her judicial position. Here the judge would be exploiting her judicial position if she accepts pay for forwarding information regarding official court proceedings to a commercial enterprise.

Canon 2(B) says a judge shall not lend the prestige of judicial office to advance the private interests of the judge or others and shall not convey the impression that others are in a special position to influence the judge. Even if the judge did not accept payment for funneling "litigation

results" to the web site, the judge is using her office to advance the private interests of the commercial web site. Furthermore, serving as a conduit for information to one commercial web site but not others could foster the impression that one business is in a special position to influence the judge.

Finally, Canon 4(A)(2) directs a judge to conduct extra-judicial activities so that they do not interfere with the proper performance of judicial duties. By supplying the requested information on each case litigated in her court, or directing her court reporter to do so, the judge or her staff would be taking time away from their official duties to perform these non-judicial tasks for a commercial enterprise.

In reaching this answer we note that this commercial data base has not asserted that it is collecting data in an effort to improve the law, the legal system, or the administration of justice.

MAY JUDGE SEND LETTER TO BAR ASKING FOR VOLUNTEERS?

Opinion No. 258 (2000)

QUESTION: May a Board of Judges send out a letter with the signatures of all the judges to all members of the local bar association asking them to consider volunteering by donating time and services to the Volunteer Lawyer Project's pro bono legal clinic of Legal Services in order to supplement and /or expand the services of that organization?

ANSWER: Yes, the Board of Judges may send out such a letter. The proposed letter identifies the Volunteer Lawyer's Project as a joint undertaking of the Legal Services organization and the local and area bar associations, explaining that the project's aim is to insure the administration of justice to those served by the program. Canon 4C allows the use of judicial prestige in very limited circumstances for the improvement of the law, the legal system, or the administration of justice.

MAY A JUDGE SERVE AS A DELEGATE TO A PARTY CONVENTION OR SERVE ON A STATE PARTY EXECUTIVE COMMITTEE?

Opinion No. 259 (2000)

QUESTION: Do the Rules of Judicial Conduct allow judges to serve as delegates to a county, state or national party convention? Do the Rules of Judicial Conduct allow judges to serve on a state Republican/Democrat Executive Committee?

ANSWER: No, to both questions. Canon 4 provides in part as follows:

A. Extra-judicial Activities in General.

A judge shall conduct all of the judges extra-judicial activities so that they do not:

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

B. Avocational Activities.

A judge may speak, write, lecture, teach and participate in extra-judicial activities concerning the law, the legal system, the administration of justice and non-legal subjects, subject to the requirements of this Code.

Canon 5 provides in part:

- (1) A judge or judicial candidate shall not make statements that indicate an opinion on any issue that may be subject to judicial interpretation by the office which is being sought or held, except that the discussion of an individual's judicial philosophy is appropriate if conducted in a manner which does not suggest to a reasonable person a probable decision on any particular case.
- (2) A judge or judicial candidate shall not authorize the public use of his or her name endorsing another candidate for any public office...Service as a delegate to a political party convention would violate both Canons 4 and 5. Delegates not only may select candidates to other offices, but they also adopt the party or convention platform. The platform contains positions on numerous issues that come before judges of all courts, criminal, civil, and family.

Service as a member of a state party executive committee would also violate Canons 4 and 5. The political parties support candidates and positions on issues, which a judge cannot do.

Opinion 53C is hereby withdrawn.

MAY A JUDGE PRESIDE IN A CASE WHERE THE COUNTY JUDGE APPEARS AS AN ATTORNEY?

Opinion No. 260 (2000)

QUESTION: Is it appropriate under the Code of Judicial Conduct for a county court at law judge to preside over cases where the county judge appears as an attorney?

ANSWER: No, Canon 2(A) says that a judge shall comply with the law and should act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary. Furthermore, Canon 1 states that a judge should participate in establishing, maintaining and enforcing high standards of conduct, and should personally observe those standards so that the integrity and independence of the judiciary is preserved. A county court at law judge presiding over cases where the county judge acts as an attorney would violate these two canons. The county judge has administrative authority (i.e. budget approval, etc.) over all county departments and divisions, including the county courts at law. Canon 6B 3 authorizes the county judge to practice law in this court. The county court at law judge should be mindful of the appearance of impropriety. The practice of law by the county judge in this judicial forum may create the appearance of partiality and may call into question the integrity and independence of the judiciary.

MAY A BAIL BONDSMAN SERVE AS A MUNICIPAL JUDGE?

Opinion No. 261 (2000)

QUESTION: Can a city appoint a part-time bail bondsman as an alternate municipal court judge? The part time position does not receive a salary, but is paid a pro rata payment for the days worked. The alternate judge will not bail out any defendants with whom he has come in contact as a judge.

ANSWER: Yes, Canon 4 A states that a judge shall conduct all of the judge's extra-judicial activities so that they do not (1) cast reasonable doubt on the judge's capacity to act impartially as a judge; or (2) interfere with the proper performance of official duties.

Canon 4D(2) and 4D(3) which restrict activities of judges are not applicable to municipal judges. Canon 4I does apply to all judges and it states that,

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

Whether the municipal judge is an alternate judge or the chief judge is not material, neither is the method of compensation. When a person acts as a judge all other activities (including occupations) are considered "extra-judicial activities." The concern would be that the alternate judge, acting as a magistrate, might appear to set bonds in a way which would result in lower payments to his competitors and further, since the alternate judge is also a bail bondsman, defendants might use the alternate judge as a surety under the impression that they would get better treatment.

The bondsman can act as a municipal judge provided he disqualifies himself if: (i) he is hearing a matter involving a person for whom he has acted as surety or (ii) the compensation received from the extra-judicial activity of issuing bail bonds gives the appearance of influencing his performance or otherwise gives the appearance of impropriety.

IS IT APPROPRIATE FOR A JUDGE TO ATTEND A LAW FIRM FUNCTION ATTENDED BY CLIENTS, PROSPECTIVE CLIENTS AND/OR EMPLOYEE RECRUITS?

Opinion No. 262 (2000)

QUESTION: May a judge present a legal overview of a particular type case that is handled in the judge's court to an in-house law firm seminar attended by lawyers from the firm, its clients and prospective clients? Does it matter whether the law firm currently has a case pending?

QUESTION: May a judge attend a law firm function where only attorneys from that firm, invited clients, and legal recruits attend? May a judge participate in a law firm's attorney recruitment program?

ANSWER: No to both questions. Such activities would violate Canon 2 (B) which provides that "A judge should not lend the prestige of judicial office to advance the private interest of the judge or others; nor shall a judge nor permit others to convey the impression that they are in a special position to influence the judge."

By presenting a legal overview of a case to an in-house law firm seminar attended by lawyers from the firm, its clients and prospective clients, the judge would not only be lending the prestige of her judicial office to advance the interest of that law firm, the judge would also be indirectly allowing the law firm to convey the impression to its clients and prospective clients that the firm has a special position of influence with the judge. It does not matter whether the law firm currently has a case pending in the judge's court or not.

By attending the law firm's function where only attorneys from that firm, invited clients and legal recruits attend, the judge would be lending the prestige of his office to advance the interest of that law firm in its attorney recruiting efforts.

See also Opinion 194, Opinion No. 39 and Canon 4(D)(4)(b).

DOES THE CODE PERMIT EX PARTE COMMUNICATION BETWEEN AN APPELLATE JUDGE AND A TRIAL JUDGE?

Opinion No. 263

QUESTION: Does the Code of Judicial Conduct permit an ex parte communication between an appellate judge and a trial judge regarding a pending appeal from the trial judge's court?

ANSWER: No, such a communication is clearly prohibited by the Code of Judicial Conduct. The list of prohibited ex parte communications found in Canon 3 B. (8) is not an exclusive list of inappropriate ex parte communications by judges. Canon 3 requires that a judge perform his/her duties impartially and requires that every person who is legally interested in a proceeding the right to be heard. To allow a trial and appellate judge to communicate ex parte regarding an appeal from the trial judge's court would clearly violate these requirements. The consultation between judges that is permitted in Canon 3 are conversations between judges regarding the law and its application where neither judge has an interest in the out come of the litigation being discussed.

DOES THE CODE OF JUDICIAL CONDUCT PERMIT A JUDGE'S RELATIVE TO ACT AS A CASA VOLUNTEER?

Opinion No. 264 (2000)

Question A: Is it permissible for a judge to appoint a person within the third degree of consanguinity as a CASA volunteer in a case in the judge's court?

Answer A: No. It is not permissible for a judge to appoint a person within the third degree of consanguinity as a CASA volunteer in a contested case to be heard by the judge. Canon 2 requires a judge to avoid impropriety and the appearance of impropriety in all of the judge's activities. It is the responsibility of a CASA volunteer to advocate the position of a child in a lawsuit. It seems apparent that the judge's impartiality would be questioned if a close family member of the judge appeared in a contested matter before the judge.

Question B: Is it permissible for a judge's family member to serve as a CASA volunteer so long as the activity does not have a significant potential for requiring the volunteer to testify in court?

Answer B: Yes. As long as the judge's close relative is not testifying or in a position to have an ex parte communication with the judge about a specific case, it is appropriate.

MAY JUDGE PARTICIPATE ON A MEDIA RESPONSE TEAM?

Opinion No. 265 (2000)

QUESTION: May a judge participate on a media response team whose job it is to respond to negative or inaccurate media stories about the legal profession, the judiciary and the courts?

ANSWER: No. Canon 3B.(10) prohibits a judge from publically commenting on pending litigation. Participation in this group would inevitably entail comment about pending litigation. A judge cannot do something as part of a group which he/she cannot do as an individual

MAY THE SENTENCING JUDGE MAKE A RECOMMENDATION TO THE BOARD OF PARDONS AND PAROLES?

Opinion No. 266 (2000)

QUESTION: May a judge make a recommendation for commutation of sentence pursuant to the Rules of the Texas Board of Pardons and Paroles? In relevant part the Texas Administrative Code, [Title 37, Part 5, Chapter 143, Subchapter E, Rule 143.52 **Commutation of Sentence, Felony or Misdemeanor**], states that the board will consider recommending to the governor a commutation of sentence upon a request accompanied by the written recommendation of a majority of the trial officials. Trial officials are defined among others as the judge in the court of offense, conviction and release.

ANSWER: Yes, any recommendation made by the judge would be in his/her official capacity and therefore permissible. See Opinion 146 which by implication would allow this official activity.

MAY A JUDGE EMPLOY A CANDIDATE FOR JUDICIAL OFFICE?

Opinion No. 267 (2000)

QUESTION: May a sitting judge hire in a staff position a lawyer who is a candidate for judicial office?

ANSWER: No. The judge would violate Canon 2 A and B and Canon 5(3). Canon 2 A requires a judge to promote public confidence in the integrity and impartiality of the judiciary. Canon 2 B prohibits lending the prestige of judicial office to advance the private interest of others. Canon 5 (3) prohibits a judge from making a public endorsement of a candidate for public office.

A lawyer running for judicial office must comply with the Code of Judicial Conduct (RPC 8.02 (b) and Canon 6 (G) 1). While these rules set the standard for expected conduct of the sitting judge and the candidate, the rules do not alleviate the appearance to the public that the sitting judge holds the candidate in high esteem or the judge would not have hired the candidate. The judge should avoid the appearance of lending his/her endorsement to a political candidate.

The result would be different if a staff attorney for a judge became a candidate sometime after being hired.

**DOES THE CLOSE PROXIMITY OF COUNTY ATTORNEY'S OFFICE AND
JUDGE'S OFFICE GIVE AN APPEARANCE OF INSTITUTIONAL BIAS AND
PREJUDICE?**

Opinion No. 268 (2000)

QUESTION: In the portion of the courthouse where mental commitments are heard, the offices for the county attorney and the judge are right next door to each other and opposite the holding area for patients. There is no office provided for the attorneys for the proposed patients. Does this layout create an appearance of an institutional bias and prejudice in favor of the state?

ANSWER: No, although this is not an ideal office layout, it is understood that county commissioners are responsible for assigning office space in the courthouse and not judges. It is the position of the committee that reasonable people understand the practicalities of the often less than perfect office space allocated to government employees. Close proximity of the two offices alone does not create an appearance of institutional bias and prejudice.

**MUNICIPAL COURT JUDGE OR J.P. AS SCHOOL BOARD MEMBER OR HEAD
OF SCHOOL SECURITY**

Opinion No. 269 (2001)

Question 1: May a municipal court judge or justice of the peace serve as a school district board member, given the fact that such judge presides over cases involving students, employees and parents of students of that school district?

Answer 1: Yes, Canon 6C(1)(b) removes the restrictions set by Canon 4H which would prohibit a judge from serving on a school board. In serving on the school board, the judge should be mindful of the restrictions of Canon 4, A(1), A(2) and C(1). Section A(1) of Canon 4 requires a judge to conduct extra-judicial activities so they do not cast reasonable doubt on the judge's impartiality. Canon 4A(2) requires a judge to conduct all of the judge's extra-judicial activities so that they do not interfere with the proper performance of the judge's duties. Canon 4C(1) prohibits a judge from participating in civic activities if the organization is likely to be engaged in proceedings that would ordinarily come before the judge or will be regularly or frequently engaged in adversary proceedings in any court. See op. 143.

Question 2: Can a municipal court judge serve as head of security for the same school district?

No, a municipal court judge may not serve as head of security for the school district. The duty of the head of security would be to enforce the regulations passed by the school board for the safety and welfare of the students, employees and property of the district. V.T.C.A., Education Code Sec. 2(1).483. Since the judge has jurisdiction to hear alleged violations of those regulations, such employment would also violate Canons 2A and 4A(1).

**IS IT A VIOLATION OF THE JUDICIAL CANONS OF ETHICS FOR A JUDGE TO
SERVE ON THE JUDICIAL COUNCIL OF THE
CHILDREN'S ASSESSMENT CENTER?**

Opinion No. 270 (2001)

QUESTION: Is it a violation of the Judicial Canons of Ethics for a judge to serve on the judicial council of the Children's Assessment Center. The center is a public/private partnership whose mission is "to provide a professional, compassionate and coordinated approach to the treatment of sexually abused children and their families and to serve as an advocate for all children in our community." The center provides various services to such children such as: 1. videotaping a forensic interview with the child sexual abuse victim; 2. provide a sexual assault examination; 3. provide expert testimony in civil and criminal court; 4. provide advocacy for children as they make their way through the justice system. The purpose of the judicial council is to open a dialogue regarding mutual concerns about the sensitivity of child sex abuse cases.

ANSWER: Yes, it is a violation of the Judicial Canons of Ethics for a judge to serve on such a council. It is a judge's function to act impartially and to be seen as neutral. Canon 2 provides, "A judge...should act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary." Canon 2B provides, "A judge shall not allow any relationship to influence judicial conduct or judgment. A judge shall not lend the prestige of judicial office to advance the private interest of ...others; nor shall a judge convey or permit others to convey the impression that they are in a special position to influence the judge." For a judge to give advice to an organization whose mission is to advocate for witnesses/parties in law suits is a violation of this Canon.

Canon 4 which requires a judge to conduct extrajudicial activities so as not to interfere with judicial duties would be violated. Membership on this council would require frequent recusal in cases in which the members of the organization were testifying.

The committee has issued several opinions regarding similar organizations and has consistently found membership in such groups to be a violation of the Canons. See Opinions 66, 86, 133, 225 and 240.

**MAY A JUDGE BROKER THE SALE OF FINAL JUDGMENT, CASH STREAMS OR
ACCOUNTS RECEIVABLE?**

Opinion No. 271 (2001)

QUESTION: May a sitting district judge broker the purchase and sale of final judgments, cash streams or accounts receivable? None of the brokered transactions involve any pre-judgment

matters in any Texas court. The judgments could issue from any Texas court with the exception of the court over which the judge presides.

ANSWER: No. The Canons allow a judge to engage in financial and business matters with the limitation that such activity not exploit his or her judicial position or advance his private interest. The Committee believes that the nature of this business is such that it would be very difficult to conduct it without exploiting the judge's official position to advance the judge's private interests. Since the sale of judgments is inextricably intertwined with the judicial function there is at least an appearance of impropriety.

APPROPRIATE FOR JUDGE TO SEND CORRESPONDENCE STATING, "IF NO RESPONSE YOU WILL BE LISTED AS MY SUPPORTER"?

Opinion No. 272 (2001)

QUESTION: Is it a violation of the Canons of Judicial Conduct for a judge to send a letter to attorneys stating, "If I do not hear from you that you do not support me, I will list you on my campaign literature as a supporter"?

ANSWER: Yes, this would be a violation of the Canons of Judicial Conduct. Canon 5 (2) (ii) requires that a judge shall not knowingly or recklessly misrepresent the identity, qualification or other fact concerning the candidate. To assume that no response is an act of support violates this Canon. Also Canon 1 requiring a judge to uphold the integrity of the judiciary would be violated.

MAY A FULL-TIME FAMILY COURT ASSOCIATE JUDGE PRESIDE AS A MUNICIPAL JUDGE OR TEEN COURT JUDGE?

Opinion No. 273 (2001)

QUESTION: May a full-time associate judge hearing family law matters serve as municipal judge and supervise Teen Court for a municipality?

ANSWER: Yes. There is no violation of the Canons of Judicial Conduct for an associate judge to preside as a municipal judge or supervise "Teen Court." The Committee is not considering any question of law presented by this question.

IS IT A VIOLATION OF THE JUDICIAL CANONS OF ETHICS FOR A COUNTY JUDGE TO SERVE ON THE BOARD OF DIRECTORS OF A SHRINE TEMPLE?

Opinion No. 274 (2001)

QUESTION: Is it a violation of the Judicial Canons of Ethics for a county judge who has judicial responsibilities to serve on the board of directors of a Shrine Temple? The board has administrative functions over the temple. The judge would not be involved in fund raising or any activities that could be considered an embarrassment to the office of county judge.

ANSWER: No, it would not violate the Canons of Judicial Conduct for a county judge (with judicial responsibilities) to serve on the board of a shrine temple. Canon 4(c) provides that a judge

may participate in civic and charitable activities with certain restrictions. The service with the organizations must not reflect adversely upon the judge's impartiality or interfere with the performance of judicial duties. This Canon specifically authorizes a judge to serve on charitable or civic organizations boards: 1. so long as the organization is not likely to come before the judge in a judicial proceeding; 2. the judge does not solicit funds for the organization; or, 3. The judge does not give investment advice to the organization.

See Opinions 158, 189, 245, 249.

DISTRICT JUDGE AS UNIVERSITY REGENT
Opinion No. 275

QUESTION: May a district judge serve on the board of regents of a state university? The duties of the board are listed in Texas Education Code, Section 65.01 et. seq. ?

ANSWER: No, a district judge may not serve on the board of regents of a state university.

Canon 4H of the Code provides in part:

"A judge should not accept appointment to a governmental committee, commission or other position that is concerned with issues of fact or policy on matters other than the improvement of the law, the legal system or the administration of justice."

The Texas Education Code 65.16 and 65.31 lists the duties of the board to include the employment and supervision of the chief executive officer of the system, and the establishment of policies for the general management of the university system. These activities are exactly those prohibited by Canon 4H.

The judge should also be mindful of the restrictions of Canon 4A. This section of the Code provides in part that, "A judge shall conduct all of the judge's extra-judicial activities so that they do not... interfere with the proper performance of judicial duties." If the judge's judicial district includes one of the universities that she would be supervising she would be required to recuse herself in any case involving the university.

See also Opinion 246

JUDGE PRESENTING CLE AT PRIVATE LAW FIRM
Opinion No. 276 (2001)

QUESTION: May a judge speak at an in-house CLE event sponsored by a law firm? The audience will consist solely of employees of the law firm.

ANSWER: No. It is the belief of the committee that the presentation by the judge of a CLE program for a private law firm violates 2B of the Code of Judicial Conduct. Section 2B prohibits a judge from lending the prestige of judicial office to advance the private interests of others. It also prohibits the judge from allowing anyone to convey an impression that they are in a special position to influence the judge.

QUESTION: If the law firm allows any lawyer not affiliated with the firm who wishes to attend the CLE event to do so without charge, but does not publicize the event, change the answer?

ANSWER: No, the same reasoning as above applies. With no invitations the CLE remains private.

QUESTION: A judge is invited by a local bar association to speak at a CLE event sponsored by the bar association. Members can attend at a reduced price from non-members. The judge is not receiving any money from the entry fee. By speaking at an event whose entry fee schedule encourages membership in a bar association, is the judge promoting the private interests of that group?

ANSWER: A judge may speak at such an event. The event is open to all lawyers and therefore no one group of lawyers is benefitting from the event.

QUESTION: A judge is invited to speak at a CLE event sponsored by a law school. The law school hopes to make money for their scholarship fund by virtue of the quality speakers they have recruited for the event. The judge knows this. By speaking at such an event is the judge lending the prestige of office to the private interests of the law school?

ANSWER: The judge may speak at the law school event. Canon 4B allows a judge to speak and participate in activities concerning the law. Canon 4C.(2) allows a judge to be a speaker at an educational organization's fund raising event.

MAY A JUDGE SIGN AN AFFIDAVIT CERTIFYING AN ATTORNEYS LEGAL PROFICIENCY?

Opinion No. 277 (2001)

QUESTION: May a judge sign an affidavit attesting to the competency of an attorney who practices before the judge to be used in a grievance proceeding against the lawyer?

ANSWER: No. Canon 2B prohibits the lending of the prestige of judicial office to advance the private interests of another and convey to others the impression that the attorney is in a special position to influence the judge. In addition, a judge is specifically prohibited from voluntarily testifying as a character witness. The judge could testify at the grievance hearing if subpoenaed.

MAY A JUDGE ACCEPT AN HONORARIUM FROM THE JUSTICE DEPARTMENT FOR REVIEWING GRANT APPLICATIONS?

Opinion No. 278 (2001)

QUESTION: A judge has been asked by the Justice Department to review grant applications (VAWA, violence against women). The Justice Department indicated they use judges for this all the time and want to pay the judge an honorarium. May the judge take the honorarium?

ANSWER: No. Canon 4(B)(2) allows a judge to "make recommendations to public and private fund-granting agencies on projects and programs concerning the law, the legal system, and the administration of justice." Canon 4(D)(4) prohibits a judge from accepting a gift, bequest, favor, or loan unless it is from relative or friend on a special occasion, it is not excessive and the donor has no interest that might come before the Court and there is no reasonable perception of an intention to influence the judge. Penal Code Section 36.07 Acceptance of Honorarium states that a public servant commits an offense if he/she agrees to accept an honorarium in consideration for service that the public official would not have been requested to provide but for the public servant's official duties or position.

See Opinions 20, 86, 215.

JUDGE SERVING ON COMMUNITY ASSOCIATIONS

Opinion No. 279 (2001)

QUESTION: May a judge serve as an officer of a non-profit neighborhood association? The purpose of the organization is to promote the well-being of the neighborhood by representing the interest of its residents in matters of civic involvement, community interaction, security and physical improvements of its environment. Service would not involve fund raising. The organization has never been involved in litigation.

ANSWER: Yes. A judge is permitted to serve as an officer of a civic organization not conducted for profit provided the judge may not use the prestige of judicial office to advance the private interest of the organization. See Opinions 108, 144, 152.

QUESTION: May a judge serve on a homeowner's condominium board to help manage the building where the judge owns a condominium?

ANSWER: Yes. For the same reasons as above.

MAY A JUDGE SERVE IN THE DARE ORGANIZATION?

Opinion No. 280 (2001)

QUESTION: (1). May a judge serve as president of DARE (drug educational awareness organization)? (2). May the judge's name be used on the letterhead used in fund raising solicitation so long as the judge is not actively involved in the fund raising? (3). May a judge handling criminal cases serve as DARE president when some funds are used to help the local police department or make civic speeches describing how DARE helps local DARE officers?

ANSWER: No, to all the questions above. Service as a DARE official would reflect adversely on the judge's impartiality since part of the organizations purpose is to support the police and provide DARE officers with funds.

**MAY A JUDGE SERVE ON THE BOARD OF THE HOUSTON VOLUNTEER
LAWYERS PROGRAM?**

Opinion No. 281 (2001)

QUESTION: May a judge serve on the Board of the Houston Volunteer Lawyers Program, an organization whose staff and volunteer attorneys appear as advocates in the judge's court? May a judge serve on the Advisory Board in an ex officio advisory capacity, not involved in decision or policy making?

ANSWER: No, as to both questions. See Opinion 270. Service in any capacity in an organization whose staff appears in the judges court violates Canon 2. Canon 2 requires a judge to act at all times in a way that promotes the public confidence in the judge's impartiality. Canon 2 further prohibits lending the prestige of office to advance the private interest of others or to convey that others are in a special position to influence the judge.

**MAY A JUDGE PARTICIPATE IN A CONFERENCE HOSTED BY
THE TEXAS ASSOCIATION OF DOMESTIC RELATIONS OFFICERS?**

Opinion No. 282 (2001)

QUESTION: May a family court judge speak and/or participate in an annual conference hosted by the Texas Association of Domestic Relations Officers?

ANSWER: Yes, Canon 4 allows a judge to speak or participate in activities concerning the law, the legal system, and the administration of justice so long as such participation does not cast doubt on the judge's capacity to decide any issue that may come before the court or interfere with the proper performance of judicial duties.

**MAY AN APPELLATE COURT STAFF ATTORNEY PERFORM PRO BONO
APPELLATE WORK?**

Opinion No. 283 (2001)

QUESTION: May an attorney employed at a state intermediate appellate court perform pro bono work on a federal appeal when the issue appealed involves only a federal issue and no state, Texas or otherwise, has concurrent jurisdiction? May the same attorney perform pro bono work on an appeal in another state?

ANSWER: No, to both questions. Canon 3 B (6), (8), (10) and 3C (2) require that appellant court staff attorneys are subject to the same ethical standards as the judge for whom they work. Cannon 4G prohibits a judge from practicing law except as permitted by statute or this Code. Pro bono appellate work in a federal or sister-state requires the practice of law. No Code sections provide an exception to the prohibition against practicing law under the circumstances presented here.

**MAY A JUDGE'S SPOUSE HOST A FUND RAISER FOR A JUDICIAL CANDIDATE
IN THE JUDGE'S HOME?**

Opinion No. 284 (2001)

QUESTION: May a judge's spouse host a fund raiser for a judicial candidate in the judge's home?

ANSWER: No. A judge may not host, sponsor or give a fund raiser in the judge's home for a judicial candidate. Canon 5 (3) states that a judge shall not authorize the public use of his or her name endorsing another candidate for any public office. Canon 2 (B) prohibits lending the prestige of judicial office to others or to convey the impression that someone is in the special position to influence the judge. A fund raiser for a judicial candidate held in a judge's home violates all of these provisions.

While the Committee has long been cognizant of the independent nature of spouses of judicial members, the hosting of the event at the judge's residence crosses the line of permissible conduct. The public perception would be that the event is being sponsored by the judge.

It would be permissible for the spouse of the judge to sponsor the event at another location provided no reference to the judge is made or implied.

QUESTION: May a person who believes they may later be appointed to a judicial position sponsor a fund raiser for a judicial candidate?

ANSWER: Yes, such a person could sponsor a fund raiser for a judicial candidate. The Code of Judicial Conduct only applies to sitting judges or official judicial candidates.

See opinions 73, 130, 259

**MAY A JUDGE CONTACT THE DISTRICT ATTORNEY TO DISCUSS THE
CONDUCT OF AN ASSISTANT DISTRICT ATTORNEY APPEARING IN THE
JUDGE'S COURT?**

Opinion No. 285 (2001)

QUESTION: A judge is hearing a case in which an assistant district attorney is representing the state interests in a case involving Child Protective Services. Individual attorneys are representing the parents. May the judge hearing the case, after or during temporary hearings or after the final hearing contact the district attorney to advise him of the failure of the assistant district attorney to properly prepare or handle the court proceedings?

ANSWER: Yes, but only under limited circumstances. Canon 3B(8) provides that a judge shall not initiate or permit ex parte communications concerning the merits of a pending or impending judicial proceeding. Conversation between the Judge and the District Attorney is permitted if it is confined to conduct of the assistant district attorney. If the conversation involves specifics of a case it may only be done after the case is final.

SUMMER INTERNSHIP PROGRAM

Opinion No. 286 (2003)

QUESTION: May a judge receive the benefits of a law student serving as a summer judicial clerk/intern who receives a monetary stipend from money raised and distributed by a local bar association's foundation scholarship program funded by contributions from local law firms, businesses, private individuals and fundraisers sponsored by the bar association?

ANSWER: Yes, with certain qualifications regarding implementation of the program. Canon 4B provides considerable latitude to a judge regarding activities to improve the law. The Committee perceives this summer internship program to be primarily an educational endeavor which furthers the administration of justice, and should be permitted. However, the judge should avoid participating in any of the fundraising activities that might violate Canon 4C(2). Additionally, although the summer interns will not officially be employees of the judge to whom they are assigned, the Committee views them as court personnel who would be subject to all the provisions of the Code. Thus, the judge would be responsible for instructing the interns about their obligations and responsibilities under the Code.

AUTHORIZED COMMUNICATION WITH SURETY Opinion No. 287 (2003)

QUESTION: Is it considered an ex parte communication for a bail bondsperson to present an affidavit to surrender authorized by Sec. 17.19 of the Code of Criminal Procedure to a judge or magistrate in chambers or open court without the presence of the Principal/Defendant and/or his or her lawyer?

ANSWER: No. Canon 3B(8) generally prohibits ex parte communications concerning the merits of a pending or impending judicial proceeding, but it does not prohibit communications expressly authorized by law. See Canon 3B(8)(e) and Advisory Opinion No. 183 (1995). Art. 17.19 C.C.P. specifically authorizes and requires that a surety submit an affidavit to a judge or magistrate in order to relieve the surety of liability on a bond. That article also requires that the affidavit state that the surety gave notice to the defendant's attorney of his intention to surrender. Because the affidavit procedure is well-defined and specifically authorized by law, the presentment of the affidavit to the judge or magistrate would not violate the Code of Judicial Conduct.

LEGAL REPRESENTATION BY PART-TIME MUNICIPAL JUDGE Opinion No. 288 (2003)

QUESTION: May an associate (part-time) municipal judge of a city represent a police officer of that municipality in connection with a criminal investigation of an alleged conspiracy to violate civil rights of individuals by planting fake drugs on them?

ANSWER: No.

Canon 2A provides that "a judge . . . should act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary." Canon 4A provides that "a judge shall conduct all of the judge's extra-judicial activities so that they do not (1) cast reasonable doubt on the judge's capacity to act impartially as a judge" The representation set out above does not promote the integrity and independence of the judiciary, and it creates an appearance of impropriety.

The Committee is also of the opinion that the representation constitutes business dealings that "reflect adversely on the judge's impartiality, interfere with the proper performance of the judicial duties, exploit his or her judicial position, or involve the judge in frequent transactions with lawyers or persons likely to come before the court on which the judge serves," which is prohibited by Canon 4D(1). Defendants charged with criminal offenses in municipal court should be able to reasonably anticipate that when they appear before the court their case will be heard by an entirely

fair and unbiased judge. In the vast majority of municipal court cases, the municipality's main witness is often one of its police officers. A defendant who is aware of the fact that the judge hearing his case also privately represents police officers employed by that very same municipality could reasonably doubt that the judge was impartial when considering the testimony of any police officer and the weight to be given thereto.

A built-in dilemma exists in our justice system when a part-time judge also maintains a law practice. Under the Texas Disciplinary Rules of Professional Responsibility a lawyer has an obligation to zealously represent his client within the bounds of the law. When that lawyer also serves as a judge, however, his duty as a judge is to be impartial and to promote public confidence in the integrity and impartiality of the judiciary. The Committee stresses to all part-time judges to keep this conflict in mind when choosing to accept representation.

This answer is specific to the query and does not overrule Opinion No. 132 (1989).

REFERRAL TO PRIVATE LAW FIRM FOR PRO BONO REPRESENTATION Opinion No. 289 (2004)

QUESTION: May a Judge refer a criminal defendant to a private law firm if the criminal defendant does not qualify as an indigent for purposes of a court appointed attorney, and the law firm would provide legal representation without a fee? The law firm would be part of a short list which includes a law school criminal defense clinic. The lawyers would be qualified and meet the minimum requirements for appointment as required by the Fair Defense Act.

ANSWER: No.

Notwithstanding the fact that the representation would be pro bono, the Committee is of the opinion that the referral outlined in this question would constitute a recommendation of private counsel which is prohibited by Canon 2B which states, in part, "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." By recommending a specific lawyer or private firm, the judge would be indicating support for the services of a particular lawyer or firm over others.

However, the Committee emphasizes that this opinion should not be interpreted to prohibit judges or court personnel from referring persons in need of legal assistance to departments, agencies, organizations or law school clinics which provide pro bono legal services, lawyer referral services, or lists of attorneys willing to assist the public in various areas of legal expertise.

APPOINTMENT OF SPOUSE OF COURT PERSONNEL Opinion No. 290 (2004)

QUESTION: May a County Court at Law Judge, who is assigned all of the probate cases for the county, appoint the spouse of one of the two probate assistants in the Judge's office as an ad litem in guardianship and heirship cases? The spouse, who is an attorney and meets the requirements established by law to serve as an ad litem, would be one of approximately twenty qualified attorneys on the Judge's appointment list.

ANSWER: Yes, provided certain procedural safeguards are taken.

There is no express prohibition in the Code of Judicial Conduct that prevents the appointment of a qualified spouse of a court employee provided the appointment is made impartially and on the basis of merit. See Canon 3C(4).

However, the Committee expresses its concern that to avoid the appearance of impropriety, the court employee should not be involved in any aspect of the specific case to which his or her spouse is appointed and the judge should make full disclosure of the nature of the relationship to all parties. Furthermore, all court personnel should be cautioned about the danger of *ex parte* communications regarding those cases. See Canon 3B(8).

**LEGAL REPRESENTATION OF JUDGE OR COURT STAFF
BY COUNTY ATTORNEY
Opinion No. 291 (2005)**

QUESTION: Would it be a violation of the Code of Judicial Conduct for a judge or the Judge's staff to be represented by the County Attorney in court proceedings wherein the judge and/or the court staff have been sued in their official capacity, even though the judge presides over cases in which the County Attorney, or an Assistant County Attorney, represents the State in mental health and indigent guardianship matters, and the County in various areas of civil litigation involving its various departments, agencies, and programs?

ANSWER: No. The Committee expresses no opinion concerning the legality of any given type of legal representation. Legal representation by the County Attorney is established by the Constitution and laws of the State of Texas. Assuming that a given type of representation is authorized by law, and further that there are no other facts present which would otherwise require recusal or disqualification under Canon 3(B)(1), the Committee is of the opinion that the judge can be represented by the County Attorney and continue to preside over other matters in which the County Attorney is appearing as legal counsel.

**SOLICITATION OF WEDDING BUSINESS
Opinion No. 292 (2006)**

QUESTION: May a judge directly contact couples as they leave a county clerk's office with their marriage license for the purpose of soliciting a marriage ceremony for pay?

ANSWER: No.

Canon 2A states in part "A judge..... should act at all times in a manner that promotes public confidence in the integrity ...of the Judiciary." It is the belief of the Committee that a judge's active solicitation of wedding business in this manner does not promote public confidence in the judiciary.

The judge should also be mindful of the restrictions of Canons 2B and 4D. Canon 2B prohibits using the "prestige of judicial office to advance the private interests of the judge or others." Canon

4D requires judges to “refrain from financial and business dealings that tend to ...exploit his or her judicial position.” Solicitation of wedding business in this manner is a use of the prestige of judicial office to advance the judge’s private interests and constitutes financial and business dealings that exploit the judge’s judicial position.

Canon 4I (1) provides, “A judge may receive compensation...for the extra-judicial activities permitted by this Code, if the source of such payment does not...give the appearance of impropriety.” The committee believes that the acts described above give the appearance of impropriety.

JUDGE WINDING DOWN LEGAL PRACTICE

Opinion No. 293 (2007)

A practicing attorney has been appointed (or elected) as a judge, and has taken the constitutional Oath of Office.

QUESTION 1: May the judge appear on behalf of a client in a federal district court in another state for the limited purpose of representing the defendant in a sentencing hearing to be concluded shortly after the judge takes office?

ANSWER 1: No, Canon 4(G) provides as follows: “A judge shall not practice law except as permitted by statute or this Code.” No statute or provision of the Texas Code of Judicial Conduct would permit such a practice.

QUESTION 2: Can the judge continue to represent a client through mediation in a state court lawsuit in which liability is not contested and the only remaining issue is the dollar amount of settlement necessary to conclude the case?

ANSWER: No, for the same reason as set out above. Although mediation does not involve appearance before a court, representation of clients as described would involve the practice of law and would be prohibited by Canon 4(G).

QUESTION 3: Regarding the judge’s remaining civil and criminal cases, may the judge refer the cases to other attorneys and with the consent of clients, and if permissible under the law generally relating to referrals, collect referral fees?

ANSWER: Yes, so long as the referrals and agreements are otherwise permitted by law, the judge may receive referral fees after taking office for work performed and referrals made prior to taking office. Section 33.051 of the Government Code provides criminal penalties for referral of cases for a gift or fee after taking office.

The judge should be mindful, however, that the pendency of referred cases could lead to violations of other provisions of the Code. The judge should at all times be careful to act in a manner that promotes public confidence in the integrity and impartiality of the judiciary (Canon 2(A)). The judge should be most careful not to lend the prestige of judicial office to advance the private interests of others, including the attorneys and parties involved (Canon 2(B)). Finally Canon 4(D)

requires that the judge refrain from financial and business dealings that would involve the judge in frequent transactions with lawyers or persons likely to come before the court on which the judge serves. The judge should either recuse or make full disclosure in all cases involving attorneys with which the judge has pending referral transactions.

LOCAL ASSOCIATION JUDICIAL LIAISON PROGRAM
Opinion No. 294 (2009)

FACTS: A local trial lawyers association has established a judicial liaison program. Under the program, the association will have one of its members assigned to each civil court in the county to act as the association's liaison for that court. The duties of the liaison include:

1. Introducing himself or herself to the judge and court coordinator and providing personal contact information;
2. Learning the court's unique rules and procedures and acting as a resource for other association members;
3. Investigation of any complaint by the judge, court coordinator or court staff about any member of the association and investigation of any concern or issue that the association has about the court;
4. Endeavor to meet personally with the judge at least every 60 days;
5. Attend all association functions that the judge attends and personally invite the judge to the appropriate association functions; and
6. Update the Board of the association regarding the court.

The program specifically requires liaisons to act within the bounds of judicial ethics as prescribed by the Code of Judicial Conduct and to comply with all ethical guidelines regarding communications with the court.

QUESTION: May a judge participate in this program?

ANSWER: No. A judge's participation in the program as described is not permitted by the Code of Judicial Conduct.

Canon 2 A. provides that a judge "should act at all times in a manner that promotes public confidence in the integrity and impartiality (emphasis added) of the judiciary." Canon 2 B. provides that a judge shall not "convey or permit others to convey the impression that they are in a special position to influence the judge."

A judge's participation in the program would join the judge and a faction of the bar in such a close relationship that the judge could not avoid the public appearance that Canon 2 A. and Canon 2 B. expressly prohibit.

JUDGE’S SPOUSE AS CANDIDATE FOR JUDICIAL OFFICE
Opinion No. 295 (2009)

FACTS: A judge’s spouse is running for a judicial office.

QUESTIONS:

1. Can the judge appear in a family photo or image in the political advertising of the spouse and be identified in the photo caption by name, but not title, as the spouse of the candidate for office?
2. Can the judge be identified as the spouse of the candidate by name, but not title, in the biographical political advertising of the candidate?
3. If an inquiry is made to the candidate at a political event or interview as to who their spouse is, can the spouse be identified by name, but not title?
4. If an inquiry is made to the candidate at a political event or interview as to what their spouse's occupation is, can the occupation of the spouse who is a current judge be stated?

ANSWER:

The committee answers all of the questions in the affirmative.

DISCUSSION: In Opinion No. 180, the committee determined that a judge could not allow his name and title to be used in campaign materials and could not be introduced by name and title as the candidate’s spouse without violating Canon 2 B. That Canon provides in part that “A judge shall not lend the prestige of judicial office to advance the private interest of the judge or others....”

Canon 5 (2) further provides in part that “A judge ... shall not authorize the public use of his or her name endorsing another candidate for any public office....”

It is the committee’s opinion that the conduct that is the subject of this opinion is distinguishable from the conduct addressed in Opinion No. 180. By avoiding the use of the title of the judge, the judge avoids lending the prestige of office to his spouse and the conduct does not amount to an endorsement of the spouse.

This opinion is strictly limited to the questions stated. A judge who is the spouse of a candidate and who attends campaign events with the spouse should be ever vigilant to avoid placing himself in situations where his conduct could be construed as a public endorsement of his spouse.

PRACTICE OF LAW BY PART-TIME JUDGE
Opinion No. 296 (2013)

FACTS: An attorney has been appointed as a part-time family law associate judge by the district judge. The associate judge continues to represent family law clients before other district courts of that county and before courts in other surrounding counties.

QUESTIONS:

May a part-time family law associate judge, appointed by a court, represent family law clients before any of the other courts

1. in that county?
2. in surrounding counties?

ANSWER:

The committee answers Question 1 “No.”

The committee answers Question 2 with a qualified “No.”

DISCUSSION: A part-time associate judge appointed by a court is governed by the Code of Judicial Conduct. Canon 6D. As stated in Canon 6D(1) , certain portions of the Code of Judicial Conduct do not apply to part-time judges, including the prohibition set out in Canon 4G that a judge may not practice law. However, the following provisions of the Code do apply to a part-time judge, and are relevant to the stated inquiry:

- Canon 6D(2) states that a part-time judge “should not practice law in the court which he or she serves or in any court subject to the appellate jurisdiction of the court which he or she serves, or act as a lawyer in a proceeding in which he or she has served as a commissioner, master, magistrate, or referee, or in any other proceeding related thereto.”
- Canon 2A provides that “a judge . . . should act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.”
- Canon 2B provides that “[a] judge shall not lend the prestige of judicial office to advance the private interests of the judge....”
- Canon 4A provides that “a judge shall conduct all of the judge’s extra-judicial activities so that they do not (1) cast reasonable doubt on the judge’s capacity to act impartially as a judge....”
- Canon 4D(1) provides, “A judge shall refrain from financial and business dealings that tend to reflect adversely on the judge’s impartiality, interfere with the proper performance of the judicial duties, exploit his or her judicial position, or involve the judge in frequent transactions with lawyers or person likely to come before the court on which the judge serves....”

The committee believes that it is inconsistent with Canons 6D(2), 2A, 2B, 4A and 4D(1) for a part-time family law associate judge, appointed by a court, to represent clients before any court of the county in which he or she is appointed and before courts in the counties surrounding the county in which he or she is appointed, provided that those courts are “subject to the appellate jurisdiction of the court which he or she serves”. If a part-time judge chooses to practice before any other court, the judge must be aware of the obligations under the Code of Judicial Conduct, and practice consistent with these obligations, especially Canons 2A, 2B, 4A and 4D(1).

The roles of advocate and impartial judge are in opposition to each other, and a judge may not use the authority of judicial position to advance one’s private interests as an advocate. As stated in Opinion 288 (2003), A built-in dilemma exists in our justice system when a part-time judge also

maintains a law practice. Under the Texas Disciplinary Rules of Professional Responsibility a lawyer has an obligation to zealously represent his client within the bounds of the law. When that lawyer also serves as a judge, however, his [or her] duty as a judge is to be impartial and to promote public confidence in the integrity and impartiality of the judiciary. The Committee stresses to all part-time judges to keep this conflict in mind when choosing to accept representation.