

Misc. Docket No. 93- 0132

ORDER OF THE SUPREME COURT OF TEXAS
ADOPTING REVISIONS TO THE
CODE OF JUDICIAL CONDUCT

The Supreme Court of Texas hereby adopts the attached Code of Judicial Conduct, as revised, to become effective January 1, 1994.

The Court hereby requests its Task Force on Judicial Ethics to continue its review of Canon 5 regarding political activity and to obtain further input from the Judicial Section of the State Bar of Texas and other appropriate sources concerning this canon.

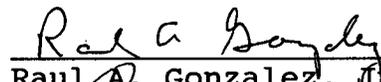
So as to provide a firm basis for continuing judicial education on newly consolidated Canons 1 - 4 and to allow maximum familiarity of the bench and bar with this comprehensive revision, the Clerk is directed to file an original of this Order with the Secretary of State forthwith, and to cause a copy of this Order to be mailed to each registered member of the State Bar of Texas by publication in the Texas Bar Journal.

The Clerk shall file an original of this Order in the minutes of the Court to be preserved as a permanent record of the Court.

In Chambers, this 30th day of June, 1993.



Thomas R. Phillips, Chief Justice



Raul A. Gonzalez, Justice



Jack Hightower, Justice



Nathan L. Hecht, Justice



Lloyd Doggett, Justice

John Cornyn

John Cornyn, Justice

Bob Gammage

Bob Gammage, Justice

Craig Enoch

Craig Enoch, Justice

Rose Spector

Rose Spector, Justice

TEXAS CODE OF JUDICIAL CONDUCT

PREAMBLE

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

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

CANON 1

UPHOLDING THE INTEGRITY AND INDEPENDENCE OF THE JUDICIARY

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

CANON 2

AVOIDING IMPROPRIETY AND THE APPEARANCE OF IMPROPRIETY IN ALL OF THE JUDGE'S ACTIVITIES

A. 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.

B. A judge shall not allow any relationship to influence judicial conduct or judgment. A judge should not lend the prestige of judicial office to advance the private interests of the judge or others; nor shall a judge convey or permit others to convey the impression that they are in a special position to influence the judge. A judge shall not testify voluntarily as a character witness.

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

CANON 3

PERFORMING THE DUTIES OF JUDICIAL OFFICE IMPARTIALLY AND DILIGENTLY

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

B. Adjudicative Responsibilities.

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

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

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

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

(5) A judge shall perform judicial duties without bias or prejudice.

(6) A judge shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice, including but not limited to bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation or socioeconomic status, and shall not knowingly permit staff, court officials and others subject to the judge's direction and control to do so.

(7) A judge shall require lawyers in proceedings before the court to refrain from manifesting, by words or conduct, bias or prejudice based on race, sex, religion, national origin, disability, age, sexual orientation or socioeconomic status against parties, witnesses, counsel or others. This requirement does not preclude legitimate advocacy when any of these factors is an issue in the proceeding.

(8) A judge shall accord to every person who has a legal interest in a proceeding, or that person's lawyer, the right to be heard according to law. A judge shall not initiate, permit, or consider *ex parte* communications or other communications made to the judge outside the presence of the parties between the judge and a party, an attorney, a guardian or attorney ad litem, an alternative dispute resolution neutral, or any other court appointee concerning the merits of a pending or impending judicial proceeding. A judge shall require compliance with this paragraph by court personnel subject to the judge's direction and control. This subsection does not prohibit:

(a) communications concerning uncontested administrative or uncontested procedural matters;

(b) 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;

(c) obtaining the advice of a disinterested expert on the law applicable to a proceeding before the judge if the judge gives notice to the parties of the person consulted and the substance of the advice, and affords the parties reasonable opportunity to respond;

(d) consulting with other judges or with court personnel;

(e) considering an *ex parte* communication expressly authorized by law.

(9) A judge should dispose of all judicial matters promptly, efficiently and fairly.

(10) A judge shall abstain from public comment about a pending or impending proceeding which may come before the judge's court in a manner which suggests to a reasonable person the judge's probable decision on any particular case. The judge shall require similar abstention on the part of court personnel subject to the judge's direction and control. This section does not prohibit judges from making public statements in the course of their official duties or from explaining for public information the procedures of the court. This section does not apply to proceedings in which the judge is a litigant in a personal capacity.

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

C. Administrative Responsibilities.

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

(2) A judge 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 and to refrain from manifesting bias or prejudice in the performance of their official duties.

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

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

D. Disciplinary Responsibilities.

(1) A judge who receives information clearly establishing that another judge has committed a violation of this Code should take appropriate action. A judge having knowledge that another judge has committed a violation of this Code that raises a substantial question as to the other judge's fitness for office shall inform the State Commission on Judicial Conduct or take other appropriate action.

(2) A judge who receives information clearly establishing that a lawyer has committed a violation of the Texas Disciplinary Rules of Professional Conduct should take appropriate action. A judge having knowledge that a lawyer has committed a violation of the Texas Disciplinary Rules of Professional Conduct that raises a substantial question as to the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects shall inform the Office of the General Counsel of the State Bar of Texas or take other appropriate action.

CANON 4

CONDUCTING THE JUDGE'S EXTRA-JUDICIAL ACTIVITIES TO MINIMIZE THE RISK OF CONFLICT WITH JUDICIAL OBLIGATIONS

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

- (1) cast reasonable doubt on the judge's capacity to act impartially as a judge; 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.

C. Civic or Charitable Activities. A judge may participate in civic and charitable activities that do not reflect adversely upon the judge's impartiality or interfere with the performance of 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 profit 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 the judge or will be regularly or frequently engaged in adversary proceedings in any court.

(2) A judge shall not solicit funds for any educational, religious, charitable, fraternal or civic organization, but may be listed as an officer, director, delegate, or trustee of such an organization, and may be a speaker or a guest of honor at an organization's fund raising 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.

D. Financial Activities.

(1) 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. This limitation does not prohibit either a judge or candidate from soliciting funds for appropriate campaign or officeholder expenses as permitted by state law.

(2) Subject to the requirements of paragraph (1) of this section, a judge may hold and manage investments, including real estate, and engage in other remunerative activity including the operation of a business. A judge shall not be an officer, director or manager of a publicly owned business. For purposes of this Canon, a "publicly owned business" is a business having more than ten owners who are not related to the judge by consanguinity or affinity within the third degree of relationship.

(3) A judge should manage any investments and other economic interests to minimize the number of cases in which the judge is disqualified. As soon as the judge can do so without serious financial detriment, the judge should divest himself or herself of investments and other economic interests that might require frequent disqualification. A judge shall be informed

about the judge's personal and fiduciary economic interests, and make a reasonable effort to be informed about the personal economic interests of any family member residing in the judge's household.

(4) Neither a judge nor a family member residing in the judge's household shall accept a gift, bequest, favor or loan from anyone except as follows:

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

(b) a judge or a family member residing in the judge's household may accept ordinary social hospitality; a gift, bequest, favor, or loan from a relative; a gift from a friend for a special occasion such as a wedding, engagement, anniversary, or birthday, if the gift is fairly commensurate with the occasion and the relationship; a loan from a lending institution in its regular course of business on the same terms generally available to persons who are not judges; or a scholarship or fellowship awarded on the same terms applied to other applicants;

(c) a judge or a family member residing in the judge's household may accept any other gift, bequest, favor, or loan only if the donor is not a party or person whose interests have come or are likely to come before the judge.

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

E. Fiduciary Activities.

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

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

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

F. Service as Arbitrator or Mediator. 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.

G. Practice of Law. 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.

H. 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. A judge, however, may represent his or her country, state, or locality on ceremonial occasions or in connection with historical, educational, and cultural activities.

I. Compensation, Reimbursement and Reporting.

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

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

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

(2) Public Reports. A judge shall file financial and other reports as required by law.

CANON 5

REFRAINING FROM INAPPROPRIATE POLITICAL ACTIVITY

(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 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 for judicial office shall not:

(i) make pledges or promises of conduct in office regarding judicial duties other than the faithful and impartial performance of the duties of the office, but may state a position regarding the conduct of administrative duties;

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

(3) A judge or judicial candidate shall not authorize the public use of his or her name endorsing another candidate for any public office, except that either may indicate support for a political party. A judge or judicial candidate may attend political events and express his or her views on political matters in accord with this Canon and Canon 3B(10).

CANON 6

COMPLIANCE WITH THE CODE OF JUDICIAL CONDUCT

A. The following persons shall comply with all provisions of this Code:

(1) An active, full-time justice or judge of one of the following courts:

(a) the Supreme Court,

- (b) the Court of Criminal Appeals,
- (c) courts of appeals,
- (d) district courts,
- (e) criminal district courts, and
- (f) statutory county courts.

(2) A full-time commissioner, master, magistrate, or referee of a court listed in Canon 6A(1) above.

B. A County Judge who performs judicial functions shall comply with all provisions of this Code except the judge is not required to comply:

- (1) when engaged in duties which relate to the judge's role in the administration of the county;
- (2) with Canons 4D(2), 4D(3), or 4H;
- (3) with Canon 4G, except practicing law in the court on which he or she serves or in any court subject to the appellate jurisdiction of the county court, or acting as a lawyer in a proceeding in which he or she has served as a judge or in any proceeding related thereto.

C. Justices of the Peace and Municipal Court Judges.

(1) A justice of the peace or municipal court judge shall comply with all provisions of this Code, except the judge is not required to comply:

- (a) with Canon 3B(8) pertaining to *ex parte* communications; in lieu thereof a justice of the peace or municipal court judge shall comply with Canon 6C(2) below;
- (b) with Canons 4D(2), 4D(3), 4E, or 4H;
- (c) with Canon 4F, unless the court on which the judge serves may have jurisdiction of the matter or parties involved in the arbitration or mediation; or
- (d) if an attorney, with Canon 4G, except practicing law in the court on which he or she serves, or acting as a lawyer in a proceeding in which he or she has served as a judge or in any proceeding related thereto.

(2) A justice of the peace or a municipal court judge, except as authorized by law, shall not directly or indirectly initiate, permit, nor consider *ex parte* or other communications concerning the merits of a pending judicial proceeding. This subsection does not prohibit communications concerning:

- (a) uncontested administrative matters,
- (b) uncontested procedural matters,
- (c) magistrate duties and functions,
- (d) determining where jurisdiction of an impending claim or dispute may lie,

(e) determining whether a claim or dispute might more appropriately be resolved in some other judicial or non-judicial forum,

(f) mitigating circumstances following a plea of nolo contendere or guilty for a fine-only offense, or

(g) any other matters where *ex parte* communications are contemplated or authorized by law.

D. A Part-time commissioner, master, magistrate, or referee of a court listed in Canon 6A(1) above:

(1) shall comply with all provisions of this Code, except he or she is not required to comply with Canons 4D(2), 4E, 4F, 4G or 4H, and

(2) 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.

E. A Judge Pro Tempore, while acting as such:

(1) shall comply with all provisions of this Code applicable to the court on which he or she is serving, except he or she is not required to comply with Canons 4D(2), 4D(3), 4E, 4F, 4G or 4H, and

(2) after serving as a judge pro tempore, should not act as a lawyer in a proceeding in which he or she has served as a judge or in any other proceeding related thereto.

F. 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:

(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.

G. Candidates for Judicial Office.

(1) Any person seeking elective judicial office listed in Canon 6A(1) shall be subject to the same standards of Canon 5 that are required of members of the judiciary.

(2) Any judge who violates this Code shall be subject to sanctions by the State Commission on Judicial Conduct.

(3) Any lawyer who is a candidate seeking judicial office who violates Canon 5 or other relevant provisions of this Code is subject to sanctions by the State Bar of Texas.

(4) The conduct of any other candidate for elective judicial office, not subject to paragraphs (2) and (3) of this section, 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 disciplinary action.

H. Attorneys.

Any lawyer who contributes to the violation of Canons 3B(7), 3B(10), 4D(4), 5, or 6C(2), or other relevant provisions of this Code, is subject to sanctions by the State Bar of Texas.

CANON 7

EFFECTIVE DATE OF COMPLIANCE

A person to whom this Code becomes applicable should arrange his or her affairs as soon as reasonably possible to comply with it.

CANON 8

CONSTRUCTION AND TERMINOLOGY OF THE CODE

A. CONSTRUCTION

The Code of Judicial Conduct is intended to establish basic standards for ethical conduct of judges. It consists of specific rules set forth in Sections under broad captions called Canons.

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

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

It is not intended, however, that every transgression will result in disciplinary action. Whether disciplinary action is appropriate, and the degree of discipline to be imposed, should be determined through a reasonable and reasoned application of the text and should depend on such factors as the seriousness of the transgression, whether there is a pattern of improper activity and the effect of the improper activity on others or on the judicial system.

B. TERMINOLOGY

1. "Shall" or "shall not," denotes binding obligations the violation of which can result in disciplinary action.

2. "Should" or "should not" relates to aspirational goals and as a statement of what is or is not appropriate conduct but not as a binding rule under which a judge may be disciplined.

3. "May" denotes permissible discretion or, depending on the context, refers to action that is not covered by specific proscriptions.

4. "De minimis" denotes an insignificant interest that could not raise reasonable question as to a judge's impartiality.

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

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

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

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

(iv) ownership of government securities is not an economic interest in the issuer unless a proceeding pending or impending before the judge could substantially affect the value of the securities.

6. "Fiduciary" includes such relationships as executor, administrator, trustee, and guardian.

7. "Invidious discrimination" cannot be determined from a mere examination of an organization's current membership rolls but rather depends upon how the organization selects members and other relevant factors, such as that the organization is dedicated to the preservation of religious, ethnic or cultural values of legitimate common interests to its members, or that it is in fact and effect an intimate, purely private organization whose membership limitations could not be constitutionally prohibited. Absent such factors, an organization is generally said to discriminate invidiously if it arbitrarily excludes from membership on the basis of race, religion, sex or national origin persons who would otherwise be admitted to membership.

8. "Knowingly," "knowledge," "known" or "knows" denotes actual knowledge of the fact in question. A person's knowledge may be inferred from circumstances.

9. "Law" denotes court rules as well as statutes, constitutional provisions and decisional law.

10. "Member of the judge's (or the candidate's) family" denotes a spouse, child, grandchild, parent, grandparent or other relative or person with whom the candidate maintains a close familial relationship.

11. "Family member residing in the judge's household" means any relative of a judge by blood or marriage, or a person treated by a judge as a member of the judge's family, who resides at the judge's household.

12. "Require." The rules prescribing that a judge "require" certain conduct of others are, like all of the rules in this Code, rules of reason. The use of the term "require" in that context means a judge is to exercise reasonable direction and control over the conduct of those persons subject to the judge's direction and control.

13. "Third degree of relationship." The following persons are relatives within the third degree of relationship: great-grandparent, grandparent, parent, uncle, aunt, brother, sister, child, grandchild, great-grandchild, nephew or niece.

14. "Retired Judge" means a person who receives from the Texas Judicial Retirement System, Plan One or Plan Two, an annuity based on service that was credited to the system. (Secs. 831.001 and 836.001, V.T.C.A. Government Code [Ch. 179, Sec. 1, 71st Legislature (1989)])

15. "Senior Judge" means a retired appellate or district judge who has consented to be subject to assignment pursuant to Section 75.001, Government Code. [Ch. 359, 69th Legislature, Reg. Session (1985)]

16. "Statutory County Court Judge" means the judge of a county court created by the legislature under Article V, Section 1, of the Texas Constitution, including county courts at law, statutory probate courts, county criminal courts, county criminal courts of appeals, and county civil courts at law. (Sec. 21.009, V.T.C.A. Government Code [Ch. 2, Sec. 16.01(18), 71st Legislature (1989)])

17. "County Judge" means the judge of the county court created in each county by Article V, Section 15, of the Texas Constitution. (Sec. 21.009, V.T.C.A. Government Code [Ch. 2, Sec. 16.01(18), 71st Legislature (1989)])

18. "Part-time" means service on a continuing or periodic basis, but with permission by law to devote time to some other profession or occupation and for which the compensation for that reason is less than that for full-time service.

19. "Judge Pro Tempore" means a person who is appointed to act temporarily as a judge.