

CODE OF JUDICIAL CONDUCT

21-00

Preamble.

An independent and honorable judiciary is indispensable to justice in our society. The provisions of this code should be construed and applied to further that objective.

21-100. A judge shall uphold the integrity and independence of the judiciary.

A judge shall observe high standards of conduct so that the integrity and independence of the judiciary may be preserved. A judge should also participate in establishing, maintaining and enforcing high standards of conduct.

ANNOTATIONS

Commentary. - Part of an appellate judge's duty to maintain high standards of conduct includes refraining from irrelevant, immaterial, undignified, intemperate or flippant criticism of:

- (a) established policy and rules of appellate courts with regard to the use of memorandum opinions and opinion publication;
- (b) attorneys, unless the conduct of the attorney is an issue in the case;
- (c) district courts, court of appeals and the supreme court.

In maintaining high standards an appellate judge shall refrain from:

- (a) ex parte single judge contact with lawyers or litigants about the case when the case is before an appellate court;
- (b) writing so-called "letter" or "correspondence" opinions containing irrelevant, immaterial, undignified, intemperate or flippant material;
- (c) suggesting or encouraging litigants to apply to the supreme court for writs.

Willful judicial misconduct. - The Canons of Judicial Ethics do not control the determination of the issue of willful judicial misconduct under the constitution. They only furnish some proof of what constitutes appropriate judicial conduct. In re Martinez, 99 N.M. 198, 656 P.2d 861 (1982).

Am. Jur. 2d, A.L.R. and C.J.S. references. - 46 Am. Jur. 2d Judges § 1 et seq.

48A C.J.S. Judges § 35 et seq.

21-200. A judge shall avoid impropriety and the appearance of impropriety in all his activities.

A. Respect for the law. A judge shall respect and comply with the law and shall conduct himself at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

B. Impartiality. A judge shall not allow his family, social or other relationships to influence his judicial conduct or judgment. He shall not lend the prestige of his office to advance the private interest of others; nor should he convey or permit others subject to his control to convey the impression that they are in a special position to influence him. He shall not testify voluntarily as a character witness.

ANNOTATIONS

Commentary. - Supreme court commentary to Canon 21-100 also applies to Paragraph A.

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

The testimony of a judge as a character witness injects the prestige of his office into the proceeding in which he testifies and may be misunderstood to be an official testimonial. This canon, however, does not afford him a privilege against testifying in response to an official summons.

Stringent code of conduct. - The conduct prescribed for judges and justices is more stringent than conduct generally imposed on other public officials. In re Romero, 100 N.M. 180, 668 P.2d 296 (1983).

Suspension resulting from willful violation. - Judge who willfully violated Code of Judicial Conduct in that he accepted favor from a person appearing before his court, thus giving rise to an appearance of impropriety, was suspended for 30 days without pay. In re Terry, 101 N.M. 360, 683 P.2d 42 (1984).

Delegation of duty. - A judge was suspended for having delegated the duty to perform marriages to municipal court clerk. In re Perea, 103 N.M. 617, 711 P.2d 894 (Ct. App. 1985).

Conflict of interest. - A municipal judge was in violation of this canon because he owned and directed a "driving while intoxicated school" while serving on the bench and sentencing people to attend said school; this conflict of interest reflected adversely on his impartiality as a member of the judiciary. *In re Rainaldi*, 104 N.M. 762, 727 P.2d 70 (1986).

Judge's relatives having ties to victim. - Recusal of a judge at a murder trial was not required where the judge's brother-in-law as the attorney representing the victim's family in a wrongful death action against defendant and the judge's son was employed as a law clerk by the district attorney. *State v. Fero*, 105 N.M. 339, 732 P.2d 866 (1987), *aff'd*, 107 N.M. 369, 758 P.2d 783 (1988).

Request for findings of fact and conclusions of law. - Because the court had decided in the state's favor, it was reasonable for the trial court to want to see requested findings of fact and conclusions of law from the plaintiff. Its request for those findings and conclusions did not show a bias or prejudice that would necessitate recusal, despite the defendants assertion of an apparent personal interest of the court in ensuring that the state submit its requested findings and conclusions. *State ex rel. Taxation & Revenue Dep't Motor Vehicle Div. v. Van Ruiten*, 107 N.M. 536, 760 P.2d 1302 (Ct. App. 1988).

Am. Jur. 2d, A.L.R. and C.J.S. references. - 46 Am. Jur. 2d Judges § 86.

Judge as witness in cause not on trial before him, 86 A.L.R.3d 633.

48A C.J.S. Judges §§ 36, 37, 59, 107 to 129.

21-300. A judge shall perform the duties of office impartially and diligently.

In the performance of judicial duties, a judge shall apply the following standards:

A. Adjudicative responsibilities.

(1) A judge shall be faithful to the law and maintain professional competence in it. A judge should be unswayed by partisan interests, public clamor or fear of criticism.

(2) A judge should maintain order and decorum in judicial proceedings.

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

(4) A judge shall accord to every person who is legally interested in a proceeding, or the person's lawyer, full right to be heard according to law. Except as authorized by law, a

judge shall neither initiate nor consider ex parte or other communications concerning a pending or impending proceeding. A judge may obtain the advice of a disinterested expert on the law applicable to a proceeding before the judge if the judge gives notice to the parties of the person consulted and the substance of the advice, and affords the parties reasonable opportunity to respond.

(5) A judge should dispose promptly of the business of the court.

(6) All cases decided by an opinion of an appellate court shall be by a collegial opinion. Before an opinion is placed in final form, the participating justices or judges shall attempt to reconcile any differences between them. Each justice or judge on each panel is charged with the duty of carefully reading and analyzing the pertinent submitted material on each case in which the justice or judge participates.

(7) A judge should abstain from public comment about a pending proceeding in any court, and should require similar abstention on the part of court personnel subject to the judge's direction and control. This subparagraph 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.

(8) A judge shall not permit media personnel and equipment in the courtroom except as may be permitted by rules approved by the supreme court.

B. Administrative responsibilities.

(1) A judge should diligently discharge the judge's administrative responsibilities, maintain professional competence in judicial administration and facilitate the performance of the administrative responsibilities of other judges and court officials.

(2) A judge shall inform and require the judge's staff and court officials subject to the judge's direction and control to observe the standards of confidentiality, fidelity and diligence that apply to the judge.

(3) A judge should take or initiate appropriate disciplinary measures against a judge or lawyer for unprofessional conduct of which the judge becomes aware. This requirement does not apply to any communication concerning alcohol or substance abuse by a judge or attorney that is:

(a) intended to be confidential;

(b) made for the purpose of reporting substance abuse or recommending, seeking or furthering the diagnosis, counseling or treatment of a judge or an attorney for alcohol or substance abuse; and

(c) made to, by or among members or representatives of a lawyers support group, Alcoholics Anonymous, Narcotics Anonymous or other support group recognized by the

Judicial Standards Commission or the Disciplinary Board. Recognition of any additional support group by the Judicial Standards Commission or Disciplinary Board shall be published in the Bar Bulletin.

This exception does not apply to information that is required by law to be reported or to disclosures or threats of future criminal acts or violations of these rules.

(4) In exercising power of appointment or approval of compensation therefor, a judge shall avoid nepotism and favoritism.

[As amended, effective March 1, 1991.]

ANNOTATIONS

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

Supreme court commentary to Canon 21-100 also applies to Paragraph A.

The proscription against communications concerning a proceeding includes communications from lawyers, law teachers and other persons who are not participants in the proceeding, except to the limited extent permitted. It does not preclude a judge from consulting with other judges, or with court personnel whose function is to aid the judge in carrying out his adjudicative responsibilities.

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

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

"Court personnel" does not include the lawyers in a proceeding before a judge. The conduct of lawyers is governed by Rule 16-306.

Disciplinary measures may include reporting a lawyer's misconduct to an appropriate disciplinary body.

Appointees of the judge include officials such as referees, commissioners, special masters, receivers, guardians and personnel such as clerks, secretaries and bailiffs. Consent by the parties to an appointment or an award of compensation does not relieve the judge of the obligation prescribed by this subsection.

Cross-references. - As to broadcasting, televising, photographing and recording of court proceedings, see Rule 23-107.

The 1991 amendment, effective March 1, 1991, made changes throughout the canon to render the language gender neutral and, in Paragraph B(3), added all of the language following the first sentence.

Delegation of duty. - A judge was suspended for having delegated the duty to perform marriages to municipal court clerk. In re Perea, 103 N.M. 617, 711 P.2d 894 (Ct. App. 1985).

Am. Jur. 2d, A.L.R. and C.J.S. references. - Abuse or misuse of contempt power as ground for removal or discipline of judge, 76 A.L.R.4th 982.

Disciplinary action against judge for engaging in ex parte communication with attorney, party, or witness, 82 A.L.R.4th 567.

Removal or discipline of state judge for neglect of, or failure to perform, judicial duties, 87 A.L.R.4th 727.

Disciplinary action against judge on ground of abusive or intemperate language or conduct toward attorneys, court personnel, or parties to or witnesses in actions, and the like, 89 A.L.R.4th 278.

21-400. Disqualification.

A judge is disqualified and shall recuse himself in any proceeding in which:

A. Personal bias, prejudice or knowledge. He has a personal bias or prejudice concerning a party or personal knowledge of disputed evidentiary facts concerning the proceeding;

B. Former service as lawyer or witness. He served as lawyer in the matter in controversy, or a lawyer with whom he previously practiced law served during such association as a lawyer concerning the matter, or the judge or such lawyer has been a witness concerning it;

C. Official capacity. He acted in his official capacity in any inferior court;

D. Family relationship. He or his spouse, or a person within the third degree, by blood, marriage or other relationship to either of them:

(1) is a party to the proceeding, or an officer, director or trustee of a party;

(2) is acting as a lawyer in the proceeding;

(3) is known by the judge to have an interest that could be substantially affected by the outcome of the proceeding;

(4) is to the judge's knowledge likely to be a material witness in the proceeding; or

E. Employee as a party. A party to the proceeding is an employee of the court whether assigned to the judge or otherwise.

ANNOTATIONS

Commentary. - A lawyer in a governmental agency does not necessarily have an association with other lawyers employed by that agency within the meaning of this subsection; a judge formerly employed by a governmental agency, however, should disqualify himself in a proceeding if his impartiality might reasonably be questioned because of such association.

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" 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 this canon may require his disqualification.

Stringent code of conduct. - The conduct prescribed for judges and justices is more stringent than conduct generally imposed on other public officials. *In re Romero*, 100 N.M. 180, 668 P.2d 296 (1983).

Expansion of constitutionally mandated instances of disqualification. - This canon sets up an objective standard geared to the appearance of justice, and, thus, expands the instances in which a judge should disqualify himself beyond those set out in N.M. Const., art. VI, § 18. *State ex rel. Bardacke v. Welsh*, 102 N.M. 592, 698 P.2d 462 (Ct. App. 1985).

Duty to exercise judicial function. - Except in those cases where a judge's impartiality might be reasonably questioned, he must exercise his judicial function. *Gerety v. Demers*, 92 N.M. 396, 589 P.2d 180 (1978).

Recusal rests within discretion of trial judge. *Demers v. Gerety*, 92 N.M. 749, 595 P.2d 387 (Ct. App.), *aff'd in part, rev'd on other grounds*, 92 N.M. 396, 589 P.2d 180 (1978); *Klindere v. Worley Mills, Inc.*, 96 N.M. 743, 634 P.2d 1295 (Ct. App. 1981).

This canon places disqualification within the conscience of the judge and within his discretion. *Martinez v. Carmona*, 95 N.M. 545, 624 P.2d 54 (Ct. App. 1980).

Judge has discretionary power to disqualify himself sua sponte whenever the existence of any semblance of judicial bias or impropriety in a proceeding in his court

comes to his attention. *Demers v. Gerety*, 92 N.M. 749, 595 P.2d 387 (Ct. App.), aff'd in part, rev'd on other grounds, 92 N.M. 396, 589 P.2d 180 (1978).

Statement of reasons for recusal not required. - When a recusal is challenged, and the challenge is denied, a district judge does not have a duty to state in the order of denial that he has valid reasons for recusing himself. *Gerety v. Demers*, 92 N.M. 396, 589 P.2d 180 (1978).

But compelling constitutional, statutory or ethical reason required. - Although the reasons for a judge to disqualify himself may be personal and he need not state them, nonetheless a judge has a duty to perform his judicial role, and he has no right to disqualify himself unless there is a compelling constitutional, statutory or ethical cause for so doing. *Gerety v. Demers*, 92 N.M. 396, 589 P.2d 180 (1978).

Grounds relied on by judge for disqualification must be adequate, because a judge has no right to disqualify himself in the absence of a valid reason. *Demers v. Gerety*, 92 N.M. 749, 595 P.2d 387 (Ct. App.), aff'd in part, rev'd on other grounds, 92 N.M. 369, 589 P.2d 180 (1978).

Suspicion of bias or prejudice is not enough to disqualify a judge. *Roybal v. Morris*, 100 N.M. 305, 669 P.2d 1100 (Ct. App. 1983).

And casual transaction not basis of disqualification. - A casual transaction between two people is not a negative confrontation, so as to amount to an appearance of bias requiring voluntary disqualification. *Lujan v. New Mexico State Police Bd.*, 100 N.M. 149, 667 P.2d 456 (1983).

Factual basis for doubting impartiality required. - To warrant disqualification under this canon there must be a reasonable factual basis for doubting the judge's impartiality. *United Nuclear Corp. v. General Atomic Co.*, 96 N.M. 155, 629 P.2d 231 (1980), appeal dismissed, 451 U.S. 901, 101 S. Ct. 1966, 68 L. Ed. 2d 289 (1981); *State ex rel. Bardacke v. Welsh*, 102 N.M. 592, 698 P.2d 462 (Ct. App. 1985).

Improper for trial judge to refuse defense counsel opportunity to establish record on defense counsel's objections to comments he claimed the trial judge had made during a recess. *State v. Martin*, 101 N.M. 595, 686 P.2d 937 (1984).

When judge believes he will be unable to remain impartial he should remove himself from the case in order to avoid any hint of impropriety. *Gerety v. Demers*, 92 N.M. 396, 589 P.2d 180 (1978).

Bias or prejudice as grounds for disqualification. - Bias or prejudice towards an attorney on each matter raised in the trial court is insufficient to disqualify a judge. This rule, however, is not absolute. If the bias and prejudice toward an attorney is of such a degree as to adversely affect the interest of the client, bias and prejudice toward an attorney is sufficient. *Martinez v. Carmona*, 95 N.M. 545, 624 P.2d 54 (Ct. App. 1980).

When a district judge believes that his impartiality might reasonably be questioned with reference to bias and prejudice concerning a party, he must not exercise his judicial function. *Martinez v. Carmona*, 95 N.M. 545, 624 P.2d 54 (Ct. App. 1980); *Klindera v. Worley Mills, Inc.*, 96 N.M. 743, 634 P.2d 1295 (Ct. App. 1981).

Review of decision not to recuse. - A decision contrary to recusal is reviewable on appeal only if it amounts to an abuse of sound judicial discretion. *Martinez v. Carmona*, 95 N.M. 545, 624 P.2d 54 (Ct. App. 1980).

Where a movant has failed to meet its burden of establishing that the judge has a personal or extrajudicial bias or prejudice against it, the judge's refusal to disqualify himself is proper. *United Nuclear Corp. v. General Atomic Co.*, 96 N.M. 155, 629 P.2d 231 (1980), appeal dismissed, 451 U.S. 901, 101 S. Ct. 1966, 68 L. Ed. 2d 289 (1981).

Other methods of disqualification. - The right of disqualification provided by 38-3-9 NMSA 1978 is not the exclusive method of disqualification. The guarantee of a fair and impartial tribunal, embodied in N.M. Const., art. VI, § 18, and this canon, and assured by the concept of due process, cannot be rendered meaningless by the limitations found in 38-3-9 and 38-3-10 NMSA 1978. However, though mere suspicion is a sufficient basis for disqualification under 38-3-9 NMSA 1978, the other methods require more. *United Nuclear Corp. v. General Atomic Co.*, 96 N.M. 155, 629 P.2d 231 (1980), appeal dismissed, 451 U.S. 901, 101 S. Ct. 1966, 68 L. Ed. 2d 289 (1981).

The constitutional right to disqualify a judge may be waived. *State v. Lucero*, 104 N.M. 587, 725 P.2d 266 (Ct. App. 1986).

Comment reflecting feelings about violent crimes after conviction obtained. - Comment reflecting judge's feelings about violent crimes once a conviction was obtained did not suggest that the judge had a personal bias or prejudice against defendant during trial. *State v. Swafford*, 109 N.M. 132, 782 P.2d 385 (Ct. App. 1989).

A claim of judicial bias cannot be based upon the imposition of the maximum legal sentence. *State v. Swafford*, 109 N.M. 132, 782 P.2d 385 (Ct. App. 1989).

Judge's refusal to accept a tendered plea agreement did not demonstrate judicial bias or prejudice, where, when the plea and disposition agreement was tendered, the judge reserved ruling on it until he could consider a presentence report, information on treatment programs, and written statements from the victim of the crime and her brother regarding their feelings and views on the proposed disposition. *State v. Swafford*, 109 N.M. 132, 782 P.2d 385 (Ct. App. 1989).

Law reviews. - For annual survey of New Mexico law relating to civil procedure, see 12 N.M.L. Rev. 97 (1982).

For annual survey of New Mexico law relating to civil procedure, see 13 N.M.L. Rev. 251 (1983).

Am. Jur. 2d, A.L.R. and C.J.S. references. - 46 Am. Jur. 2d Judges §§ 94 to 203.

Disqualifying relationship by affinity in case of judge or juror as affected by dissolution of marriage, 117 A.L.R. 800.

Reviewability of action of judge in disqualifying himself, 162 A.L.R. 654.

Relationship of judge to one who is party in an official or representative capacity as disqualification, 10 A.L.R.2d 1307.

Relationship to attorney in case as disqualifying judge, 50 A.L.R.2d 143.

Remarks or acts of trial judge criticizing, rebuking or punishing defense counsel in criminal case, as requiring reversal, 62 A.L.R.2d 166.

Prior representation or activity as attorney or counsel as disqualifying judge, 72 A.L.R.2d 443, 16 A.L.R.4th 550.

Prejudicial effect of trial judge's remark during civil jury trial disparaging the litigants, the witnesses or the subject matter of the litigation, 83 A.L.R.2d 1128.

Prejudicial effect of remarks of trial judge criticizing counsel in civil case, 94 A.L.R.2d 826.

Disqualification of judge for bias against counsel for litigant, 23 A.L.R.3d 1416.

Disqualification of judge by relative's ownership of stock in corporation which is party to action or proceeding, 25 A.L.R.3d 1331.

Prejudicial effect of trial judge's remarks, during criminal trial, disparaging accused, 34 A.L.R.3d 1313.

Disqualification of judge or one acting in judicial capacity to preside in a case in which he has a pecuniary interest in the fine, penalty or forfeiture imposed upon the defendant, 72 A.L.R.3d 375.

Membership in fraternal or social club or order affected by a case as ground for disqualification of judge, 75 A.L.R.3d 1021.

Validity, propriety, and effect of allowing or prohibiting media's broadcasting, recording, or photographing court proceedings, 14 A.L.R.4th 121.

Waiver or loss of right to disqualify judge by participation in proceedings - modern state civil cases, 24 A.L.R.4th 870.

Disqualification of judge because of assault or threat against him by party or person associated with party, 25 A.L.R.4th 923.

Judge's previous legal association with attorney connected to current case as warranting disqualification, 85 A.L.R.4th 700.

Disqualification of judge because of political association or relation to attorney in case, 65 A.L.R.4th 73.

Conduct or bias of law clerk or other judicial support personnel as warranting recusal of federal judge or magistrate, 65 A.L.R. Fed. 775.

48A C.J.S. Judges §§ 107 to 129.

21-500. A judge should regulate his activities to minimize the risk of conflict with his judicial duties.

A judge, subject to the proper performance of his judicial duties, may engage in the following activities, if in doing so he does not cast doubt on his capacity to decide impartially any issue that may come before him or detract from the dignity of his office:

A. Speeches, writings, and teaching. He may speak, write, lecture and teach;

B. Public hearings on judicial matters. He may appear at a public hearing before an executive or legislative body, and he may consult with an executive or legislative body or official, but only on matters concerning the administration of justice;

C. Civic and charitable activities. A judge may participate in civic and charitable activities that do not reflect adversely upon his impartiality or interfere with the performance of his judicial duties. A judge may serve as an officer, director, trustee or nonlegal 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 shall not serve if it is likely that the organization will be engaged in proceedings that would ordinarily come before him or will be regularly engaged in adversary proceedings in any court;

(2) a judge shall not use the prestige of his office to personally solicit funds for any organization.

D. Financial activities.

(1) A judge shall 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.

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

(3) Neither a judge nor a member of his family residing in his household should 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 him; books supplied by publishers on a complimentary basis for official use; or an invitation to the judge and his 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 member of his family residing in his household may accept ordinary social hospitality; a gift, bequest, favor or loan from a relative; a wedding or engagement gift, 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 member of his family residing in his household may accept any other gift, bequest, favor or loan only if the donor is not a party or other person whose interests have come or are likely to come before him.

(4) For the purposes of this section "member of his family residing in his household" means any relative of a judge by blood or marriage, or a person treated by a judge as a member of his family, who resides in his household.

(5) A judge is not required by this canon to disclose his income, debts or investments, except as otherwise provided in this code.

(6) A judge may receive compensation and reimbursement of expenses for the quasi-judicial and extrajudicial activities permitted by this code, if the source of such payments does not give the appearance of influencing the judge in his judicial duties or otherwise give the appearance of impropriety, provided no judge may ask for any remuneration for performing a marriage ceremony, but may receive an unsolicited gratuity for performing a marriage outside normal business hours.

E. Fiduciary activities. A judge shall not serve as the executor, administrator, trustee, guardian or other fiduciary, except for the estate, trust or person of a member of his family, and then only if such service will not interfere with the proper performance of his judicial duties. "Member of his family" includes a spouse, child, grandchild, parent, grandparent or other relative.

F. Arbitration. A judge shall not act as an arbitrator or mediator except in the performance of his judicial duties.

G. Practice of law. No full-time judge shall engage in the private practice of law. This prohibition does not apply to self-representation.

H. Services for committees and organizations. A judge shall not serve or perform any services for any committee, commission or organization that conflicts with his judicial duties.

I. Conflicting compensated activities. A judge shall not hold any other paid position, judicial or otherwise, which conflicts with the hours and duties the judge is required to perform for every judicial position. A judge shall devote the number of hours that is required by any judicial position held. In no event shall other paid employment or compensable activity hours be performed simultaneously. Effective January 1, 1987, no full-time municipal, magistrate, metropolitan, district or appellate judge may hold any other judicial position, elected or appointed.

[As amended, effective January 1, 1987, March 1, 1988 and October 1, 1989.]

ANNOTATIONS

Commentary. - Complete separation of a judge from extrajudicial activities is neither possible nor wise; he should not become isolated from the society in which he lives.

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

A judge's participation in an organization devoted to quasi-judicial activities is governed by Canon 21-400.

Paragraph D does not apply to contributions to a judge's campaign for judicial office, a matter governed by Canon 21-800.

Canon 21-400 requires a judge to disqualify himself in any proceeding in which he has a financial interest, however small; Canon 21-500 requires a judge to refrain from engaging in business and from financial activities that might interfere with the impartial performance of his judicial duties; Canon 21-600 requires him to report all compensation he receives for activities outside his judicial office. A judge has the rights of an ordinary citizen, including the right to privacy of his financial affairs, except to the extent that limitations thereon are required to safeguard the proper performance of his

duties. Owning and receiving income from lawful investments of any kind do not as such affect the performance of a judge's duties, and he is not required to report such ownership or the receipt from such investments of interest, dividends, rentals or other income therefrom, nor is he required to report the acquisition, purchase price, trade or sale price thereof, or the receipt of the sale price therefrom.

The effective date of compliance provision of this code qualifies Paragraph E with regard to a judge who is an executor, administrator, trustee or other fiduciary at the time this code becomes effective. See miscellaneous provisions in Canon 21-900.

A judge's obligation under this canon and his obligation as a fiduciary may come into conflict. For example, a judge should resign as trustee if it would result in detriment to the trust to divest it of holdings whose retention would place the judge in violation of Subparagraph (2) of Paragraph D.

Valuable services have been rendered in the past to the states and the nation by judges appointed by the executive to undertake important extrajudicial assignments. The appropriateness of conferring these assignments on judges must be reassessed, however, in light of the demands on judicial manpower created by today's crowded dockets and the need to protect the courts from involvement in extrajudicial matters that may prove to be controversial. Judges should not be expected or permitted to accept governmental appointments that could interfere with the effectiveness and independence of the judiciary.

The 1988 amendment, effective March 1, 1988, added the proviso at the end of Subparagraph D(6).

The 1989 amendment, effective on and after October 1, 1989, near the end of Subparagraph (6) of Paragraph D, deleted "or receive" following "no judge may ask for" and inserted "but may receive an unsolicited gratuity for performing a marriage outside normal business hours".

Financial activity posing conflict of interest. - A municipal judge was in violation of this canon because he owned and directed a "driving while intoxicated school" while serving on the bench and sentencing people to attend said school; this conflict in interest reflected adversely on his impartiality as a member of the judiciary. In re Rainaldi, 104 N.M. 762, 727 P.2d 70 (1986).

Pro se appearance as party defendant not violative of Paragraph F. - State court judge's pro se appearance as a party defendant in law suit pending before federal district court does not constitute practice of law in violation of Paragraph F (now see Paragraph G). United States v. Martinez, 101 N.M. 423, 684 P.2d 509 (1984).

Am. Jur. 2d, A.L.R. and C.J.S. references. - 46 Am. Jur. 2d Judges §§ 51 to 61.

Other public offices or employments within prohibitions as regards judicial officers of constitutional or statutory provisions against holding more than one office, 89 A.L.R. 1113.

What amounts to practice of law within contemplation of constitutional or statutory provision which makes such practice a condition of eligibility to a judicial office or forbids it by one holding judicial position, 106 A.L.R. 508.

Practice of law, propriety and permissibility of judge engaging in, 89 A.L.R.2d 886.

Validity and application of state statute prohibiting judge from practicing law, 17 A.L.R.4th 829.

48A C.J.S. Judges §§ 35 to 38.

21-600. A judge should regularly file reports of compensation received for quasi-judicial and extrajudicial activities.

A judge may receive compensation and reimbursement of expenses for the quasi-judicial and extrajudicial activities permitted by this code, if the source of such payments does not give the appearance of influencing the judge in his judicial duties or otherwise give the appearance of impropriety, subject to the following restrictions:

A. Compensation. Compensation is defined as being the consideration received for services rendered to a person, firm, corporation or association other than the State of New Mexico. It does not include income from interest, dividends, rents, royalties, working interests, proceeds of or profits from the sale or exchange of capital assets (as that term is defined by the Internal Revenue Code and regulations) or collection of fees earned or reimbursement of expenses incurred prior to judicial service. Compensation should not exceed a reasonable amount for an activity performed nor should it exceed what a person who is not a judge would receive for the same activity.

B. Expense reimbursement. Expense reimbursement should be limited to the actual cost of travel, food and lodging reasonably incurred by the judge and, where appropriate to the occasion, by his spouse. Any payment in excess of such an amount is compensation.

C. Public reports. A judge should report the date, place and nature of any activity for which he received compensation as defined in this canon and the name of the payor and the amount of compensation so received. Compensation or income of a spouse attributed to the judge by operation of a community property law is not extrajudicial compensation to the judge. His report should be made at least annually and should be filed as a public document in the office of the clerk of the supreme court. Such reports shall be filed on or before April 15 of each year covering the preceding calendar year, or the portion of the preceding calendar year during which this rule is in effect.

D. **MCLE compliance.** A judge shall include, as part of the report required in Paragraph C above, proof of his compliance with any continuing legal education required by court rule or law.

[As amended, effective January 1, 1987.]

ANNOTATIONS

Internal Revenue Code. - For the Internal Revenue Code, referred to in Paragraph A, see 26 U.S.C. § 1 et seq.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 46 Am. Jur. 2d Judges § 27.

48A C.J.S. Judges § 35.

21-700. A judge should refrain from political activity inappropriate to his judicial office.

A. **Political activity in general.** Judges who run for judicial office in partisan elections are obligated to participate as candidates for office the same as other publicly elected officials. Judges who run for retention election are now restricted in their political activity because they are no longer considered as partisan candidates. A judge who is either a candidate for election in a partisan election or retention in office in a nonpartisan election:

(1) should maintain the dignity appropriate to judicial office, and should encourage members of his or her family to adhere to the same standards of political conduct in support of the judge;

(2) should prohibit public officials or employees subject to the judge's direction or control from doing for the judge what he or she is prohibited from doing under this rule; and except to the extent authorized under subparagraph C(3) of this rule, the judge should not allow any other person to do for the judge what he or she is prohibited from doing under this rule;

(3) should not make pledges or promises of conduct in office other than the faithful and impartial performance of the duties of the office; announce how the judge would rule on any case or issue that might come before the judge; or misrepresent his or her identity, qualifications, present position or other fact.

B. **Partisan elections.** While judges who are required by law to run in a partisan election may participate in the political process, they may do so only in strict conformity with the provisions of the Code of Judicial Conduct regarding upholding the integrity and independence of the judiciary, avoiding impropriety, performing impartially and diligently and avoiding conflicts of interest.

C. Retention election. During the calendar year in which a judge is subject to retention or rejection in a nonpartisan election, the judge may engage in any campaign activity in connection with the judge's own candidacy, but with these restrictions:

(1) the judge may speak at public meetings;

(2) the judge may use advertising, provided that the advertising is within the bounds of proper judicial decorum and does not contain reference to his or her affiliation with a political party;

(3) a nonpartisan citizens' committee or committees advocating the judge's retention in office may be organized, either on their own initiative or by the judge. Any committee organized pursuant to this subparagraph may raise funds for the judge's campaign, but the judge should not solicit funds personally or accept any funds except those paid to the judge by a committee for the judge's campaign expenses. The judge should not be advised of the source of funds raised by the committees.

D. Nonjudicial offices. Notwithstanding other provisions of the Code of Judicial Conduct:

(1) no magistrate, probate or municipal judge may be nominated or elected to other than a judicial office. A magistrate, probate or municipal judge must, when filing a statement of candidacy for a nonjudicial office, take a leave of absence without pay pending the results of the nominating process or until after the primary. Once nominated or placed on the ballot for a nonjudicial office, the judge must resign judicial office immediately;

(2) no justice of the supreme court, judge of the court of appeals, judge of the district court or judge of a metropolitan court, while serving, shall be nominated, appointed or elected to any other office in this state except a judicial office.

E. Campaign advertising. A judge or candidate for judicial office shall not use or cause to be used any misleading campaign advertisement, whether oral or written.

F. Definition. For the purposes of this canon, a judge is any part-time, full-time, elected or appointed person serving in any judicial office in New Mexico.

[As amended, effective June 1, 1990; July 1, 1990.]

ANNOTATIONS

The 1990 amendment, effective on and after June 1, 1990, deleted the former first five sentences of Paragraph A, relating to constitutional provisions as to election of judges; substituted "While judges may participate" for "Therefore, judges may hereinafter participate" at the beginning of the present first sentence of Paragraph A; rewrote Paragraph B, limiting the former provisions, now in Subparagraph (1) to magistrate,

probate, or municipal judges, and added Subparagraph (2); and inserted "or candidate for judicial office" near the beginning of Paragraph C.

The second 1990 amendment, effective July 1, 1990, added Paragraphs A and C, redesignated former Paragraph A as Paragraph B, substituting "Partisan elections" for "Strict conformity" in the heading and inserting "who are required by law to run in a partisan election" near the beginning, and redesignated former Paragraphs B to D as Paragraphs D to F.

Office of district attorney is "quasi-judicial". - The office of district attorney is a "quasi-judicial" office rather than a judicial office for the purposes of this canon, and, therefore, a magistrate judge must take leave without pay upon filing as a candidate for that office. In re Amended Canon 7 of Code of Judicial Conduct, 101 N.M. 220, 680 P.2d 601 (1984).

Judge cannot simultaneously run for separate judicial positions. - Paragraph B indicates that a judge may be nominated or run for another judicial office without resigning. It does not, however, state that a judge may simultaneously run for separate judicial positions. 1990 Op. Att'y Gen. No. 90-04.

Law reviews. - For article, "Judges and Politics: Accountability and Independence in an Election Year," see 12 N.M.L. Rev. 873 (1982).

Am. Jur. 2d, A.L.R. and C.J.S. references. - 46 Am. Jur. 2d Judges § 61.

48A C.J.S. Judges § 37.

21-800. A judge shall refrain from campaign fundraising activity which has the appearance of impropriety.

A. Solicitation. A judge or candidate for judicial office shall not personally solicit funds for any political campaign for any nonjudicial candidate or other judicial candidate. A judge or candidate, in his own campaign, shall not personally solicit from a litigant in a case presently pending before him in court or from any attorney.

B. Unopposed campaign. A candidate for judicial office in a partisan election who has a campaign fund or any other mechanism for the collection and disbursement of campaign contributions, and for any reason, at any time, does not have an opponent, shall return all unused funds pro rata to the contributors within thirty (30) days of the time he determines he has no opponent. If for any reason the contribution cannot be refunded to the contributor it may be donated to a charitable organization.

C. Unused funds. A candidate for judicial office who is opposed in a partisan election or who is subject to retention in a nonpartisan election shall, after the election and all expenses have been paid, either donate unused funds to a charitable organization or return such unused funds pro rata to the contributors.

D. Litigant contributions. A judge shall not knowingly accept contributions from any person who is before him as a litigant or an attorney in a pending case.

E. Contributions with appearance of impropriety. Notwithstanding any of the above, a candidate for judicial office shall accept no contribution which would give the appearance of impropriety.

[As amended, effective June 1, 1990.]

ANNOTATIONS

The 1990 amendment, effective on and after June 1, 1990, added "or other judicial candidate" at the end of the first sentence in Paragraph A, inserted "in a partisan election" near the beginning of Paragraph B, and inserted "in a partisan election or who is subject to retention in a nonpartisan election" in Paragraph C.

21-900. Miscellaneous provisions.

A. Applicability. This Code of Judicial Conduct applies to all justices of the supreme court, judges of the court of appeals, district judges, probate judges, small claims court judges, magistrates and municipal judges.

B. Violations by incumbents. Violations hereof by incumbent judges shall be investigated, proceeded upon and disposed of by the Judicial Standards Commission in accordance with its obligations and rules of procedure, or by the supreme court under its power of superintending control. Failure to cooperate with the commission is a violation and may also be grounds for petitioning the supreme court for a contempt citation. A judge must comply with the discovery proceedings of the commission or the supreme court.

C. Violations by candidates. Violations hereof by candidates for judicial office who are not current members of the judiciary shall, in respect to persons who are members of the bar, be deemed to constitute violations of the Rules of Professional Conduct. Such violations shall be investigated, charged, prosecuted and disposition made thereof in the same manner as other violations of the Rules of Professional Conduct.

D. Effective date. The effective date of this Code of Judicial Conduct is January 1, 1974.

ANNOTATIONS

Cross-references. - For supreme court's power of superintending control over inferior courts, see N.M. Const., art. VI, § 3.

As to judicial standards commission, see N.M. Const., art. VI, § 32, and 34-10-1 to 34-10-4 NMSA 1978.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 48A C.J.S. Judges § 48.