

To: The Texas Supreme Court Rules Advisory Committee
From: Subcommittee on Legislative Mandates
Re: Amendment to the Code of Judicial Conduct

Background

The Texas Supreme Court has referred to the SCAC a proposed amendment to the Code of Judicial Conduct. The proposed amendment excepts County Judges from compliance with Canon 4F, which prohibits active, full- time judges from acting as an arbitrator or mediator for compensation. The proposed amendment would allow County Judges who perform judicial functions to conduct mediations and arbitrations for compensation, unless the court on which the judge serves has jurisdiction over the matter or the parties involved in the mediation or arbitration.

The SCAC voted to reject the proposed amendment. Should the Texas Supreme Court adopt it, the subcommittee proposes that the amendment track the current exception for municipal judges and justices of the peace, who have a similar exception in the current Code.

This memo sets forth the current versions of Canon 4F (prohibiting judges from conducting arbitrations and mediations for compensation), Canon 6 (governing the applicability of the Code to various judicial officers), and proposed language revising Canon 6B to incorporate the amendment.

I. Current Versions: Canon 4F and Canon 6B

Current Canon 4F 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 4F applies to a County Judge who performs judicial functions under Canon 6B. The current version of Canon 6B provides:

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.
- (4)with Canon (5) (3).

II. Proposed Amendment to Canon 6B

*Canon 4D (2) prohibits a judge from acting as an officer, director, or manager of a publicly owned business. Canon 4D (3) requires a judge "to divest himself or herself of investments and other economic interests that might require frequent disqualification." Canon 4H prohibits a judge from accepting "appointment to a governmental committee, commission, or other position that is concerned with issues of fact or policy matters other than improvement of the law, the legal system, or the administration of justice." Canon 4G prohibits the practice of law. Canon 5(3) requires a judge to resign from office upon becoming a candidate in a contested election for a non-judicial office.

The subcommittee proposes that Canon 6B be amended to include a new subsection (3):

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 4F, unless the court on which the judge serves may have jurisdiction of the matter or parties involved in the arbitration or mediation;*
- (4) 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.
- (5) with Canon 5(3).

The proposed language tracks the language in Canon 6C that excepts justices of the peace and municipal court judges from compliance with Canon 4F. The subcommittee recommends adding it as the third exception to correspond to the Canons in the order they are set forth in the Code.