

Memorandum



To: Supreme Court Advisory Committee

From: Judicial Administration Subcommittee

Date: June 14, 2023

Re: June 3, 2023 Referral Letter relating to HB 2384, Judicial Disclosures and Education

I. Matter Referred to Subcommittee

Judicial Disclosures and Education. HB 2384 imposes ballot application disclosure requirements on judicial candidates and education requirements on judges. Section 2 of the bill adds Government Code § 33.032 to make public any sanction the State Commission on Judicial Conduct issues against a judicial candidate for making false ballot application disclosures, along with related records. Section 3 adds Government Code § 39.003-.004 to provide for the suspension and removal of judges who do not comply with education requirement. The Committee should consider whether the Code of Judicial Conduct and the Procedural Rules for the Removal or Retirement of Judges should be changed or a comment added to reference or restate the statutes and draft any recommended amendments.¹

II. Relevant Materials

The following materials are attached to this memorandum: (1) the enrolled version of HB 2384, which was signed by Governor Greg Abbott on June 12, 2023; (2) the Code of Judicial Conduct; and (3) the Procedural Rules for the Removal or Retirement of Judges.

III. Subcommittee Recommendation

The Subcommittee recommends (1) revisions to Canons 3 and 5 of the Code of Judicial Conduct to reflect the statutory requirements addressed in the June 3, 2023 referral letter; and (2) further study of the Procedural Rules for the Removal or Retirement of Judges to determine what revisions are needed to provide procedures for the failure to comply with application-disclosure requirements and education requirements.

¹ HB 2384 imposes additional form- and rule-related requirements that will be addressed by entities other than the Supreme Court Advisory Committee. For example, Section 1 adds Election Code § 141.0311 to require judicial candidates to disclose specified information in their applications for a place on the ballot. The Texas Secretary of State will create the form application needed to satisfy these requirements. In addition, a portion of Section 3 of HB 2384 that is not addressed in the June 3, 2023 referral letter adds Government Code § 39.002 to require the adoption of rules regarding judicial education that HB 2384 mandates. The Supreme Court of Texas ("Court") will work with the Court of Criminal Appeals to develop those rules. Next, Section 8 of HB 2384 adds Government Code § 81.075 to require the imposition of a public sanction against a respondent attorney who knowingly makes a false declaration on an application for a place on the ballot as a judicial candidate. The Court will work with the Committee on Disciplinary Rules and Referenda to develop responsive amendments to the Texas Disciplinary Rules of Professional Conduct and/or the Texas Rules of Disciplinary Procedure. Finally, Section 9 of HB 2384 amends Government Code § 82.101 to address a specialty certification for attorneys in the practice area of judicial administration and requires the Court to adopt rules relating to that certification. The Court will work with the Texas Board of Legal Specialization to develop those rules.

IV. Discussion

A. Application Disclosure Requirements

HB 2384 supplements the Election Code's existing ballot-application requirements for "candidates for the following judicial offices: (1) chief justice or justice of the supreme court; (2) presiding judge or judge of the court of criminal appeals; (3) chief justice or justice of a court of appeals; (4) district judge, including a criminal district judge; and (5) judge of a statutory county court." HB 2384, Sec. 1 (providing Tex. Elec. Code § 141.0311(a)). Specifically, in addition to complying with other application requirements, these judicial candidates must (1) disclose specified sanctions and censures, (2) include statements describing aspects of their legal practice and professional courtroom experience for the preceding five years, (3) disclose certain criminal convictions, and—if a candidate for an appellate court "who does not hold or has not previously held a judicial office" in an appellate court—(4) a description of (a) "appellate court briefs the candidate has prepared and filed in the preceding five years; and" (b) "oral arguments the candidate has presented before any appellate court in the preceding five years." *Id.* (providing Tex. Elec. Code § 141.0311(b)–(c)).

HB 2384 also amends the Government Code § 33.032 by adding the following provision pertinent to the Subcommittee's assignment: "Any sanction the commission issues against a judge for knowingly making a false declaration on an application for a place on the ballot as a candidate for a judicial office described by Section 141.0311, Election Code, any withdrawal of such sanction, and all records and proceedings related to the sanction are a matter of public record." *Id.*, Sec. 2 (providing Tex. Gov't Code § 33.032(i)).

Canon 5 of the Code of Judicial Conduct addresses "inappropriate political activity" of judges and judicial candidates. New Government Code § 33.032(i) effectively treats as inappropriate political activity "knowingly making a false declaration on an application for a place on the ballot as a candidate for a judicial office described by Section 141.0311." *Id.* Thus, the following new subpart (5) of Canon 5 is recommended.

(5) A judicial candidate, including a judge seeking elective judicial office, shall not knowingly make a false declaration on a statutorily required application for a place on the ballot for any of the following offices: (a) chief justice or justice of the Supreme Court; (b) presiding judge or judge of the Court of Criminal Appeals; (c) chief justice or justice of a court of appeals; (d) district judge, including a criminal district judge; and (e) judge of a statutory county court.

The Subcommittee also recommends the adoption of the following comment, explaining the rule change, to direct judicial candidates to the statutory requirements relating to their applications for a place on the ballot.

Comment: Subpart (5) of Canon 5 is added to reflect new statutory requirements relating to applications for judicial office. See Tex. Elec. Code § 141.0311; Tex. Gov't Code § 33.032(i).

The Subcommittee recommends further discussion and research as to (1) whether additional amendments to the Code of Judicial Conduct are needed as a result of Section 2 of HB 2384; and (2) revisions to the Procedural Rules for the Removal or Retirement of Judges that may be needed to address the imposition of public sanctions or censure in relation to judicial candidates who knowingly make false declarations on ballot applications, as well as the "public record" associated with such sanctions or censure.

B. Judicial Education Requirements

HB 2384 adds Chapter 39 of the Government Code, which imposes new education requirements on “a person elected to or holding any of the following judicial offices: (1) chief justice or justice of the supreme court; (2) presiding judge or judge of the court of criminal appeals; (3) chief justice or justice of a court of appeals; (4) district judge, including a criminal district judge; and (5) judge of a statutory county court.” HB 2384, Sec. 3 (providing Tex. Gov’t Code §§ 39.001–39.004). Section 39.002 of the Government Code addresses the requirements in some detail and, as noted above, mandates the adoption of rules relating to the particular training and instruction that must be completed. *See id.* (providing Tex. Gov’t Code § 39.002).

Pertinent to the Subcommittee’s assignment are the following new provisions in HB 2384.

Sec. 39.003. SUSPENSION. The State Commission on Judicial Conduct shall issue an order suspending any judge who fails to meet the education requirements under Section 39.002 until the judge demonstrates compliance with the requirements.

Sec. 39.004. REMOVAL FROM OFFICE. (a) For purposes of Section 1-a, Article V, Texas Constitution, a judge who is noncompliant with the education requirements under Section 39.002 for more than one year has engaged in wilful *[sic]* or persistent conduct that is clearly inconsistent with the proper performance of a judge's duties sufficient to subject the judge to removal from office.

(b) The attorney general shall file a petition under Section 66.002, Civil Practice and Remedies Code, against a judge who is subject to removal as provided by Subsection (a) if presented with evidence by the State Commission on Judicial Conduct establishing probable grounds that the judge engaged in conduct described by Subsection (a).

Canon 3 of the Code of Judicial Conduct addresses “adjudicative responsibilities” and requires judges to “maintain professional competence” in the law. Tex. Code Jud. Conduct 3B(2). The judicial training and instruction mandated by HB 2384 appears intended, at least in part, to assist judges in maintaining professional competence in the law. Thus, the Subcommittee recommends the following amendment to Canon 3B.

B. Adjudicative Responsibilities.

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

(2) A judge should be faithful to the law and shall maintain professional competence in it, including by meeting all judicial-education requirements set forth in governing statutes or rules. 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

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The Subcommittee recommends further discussion and research as to (1) whether additional amendments to the Code of Judicial Conduct or comments thereto are needed to implement new Sections 39.003–.004 of the Government Code; and (2) revisions to the Procedural Rules for the Removal or Retirement of Judges that may be needed to implement these new statutory provisions.

ATTACHMENT 1

AN ACT

relating to court administration, including the knowledge, efficiency, training, and transparency requirements for candidates for or holders of judicial offices.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subchapter B, Chapter 141, Election Code, is amended by adding Section 141.0311 to read as follows:

Sec. 141.0311. ADDITIONAL REQUIREMENTS FOR APPLICATION FOR JUDICIAL OFFICE. (a) This section applies to candidates for the following judicial offices:

(1) chief justice or justice of the supreme court;

(2) presiding judge or judge of the court of criminal appeals;

(3) chief justice or justice of a court of appeals;

(4) district judge, including a criminal district judge; and

(5) judge of a statutory county court.

(b) In addition to other requirements under this code, a candidate's application for a place on the ballot must:

(1) include the candidate's state bar number for:

(A) this state; and

(B) any other state in which the candidate has been licensed to practice law;

(2) disclose any public:

1 (A) sanction or censure, as those terms are
2 defined by Section 33.001, Government Code, the State Commission on
3 Judicial Conduct or a review tribunal has issued against the
4 candidate;

5 (B) disciplinary sanction imposed on the
6 candidate by the state bar; and

7 (C) disciplinary sanction imposed on the
8 candidate by an entity in another state responsible for attorney
9 discipline in that state;

10 (3) include statements describing for the preceding
11 five years:

12 (A) the nature of the candidate's legal practice,
13 including any area of legal specialization; and

14 (B) the candidate's professional courtroom
15 experience; and

16 (4) disclose any final conviction of a Class A or Class
17 B misdemeanor in the 10 years preceding the date the person would
18 assume the judicial office for which the person is filing the
19 application.

20 (c) A candidate for a judicial office described by
21 Subdivision (a)(1), (2), or (3) who does not hold or has not
22 previously held a judicial office described by those subdivisions
23 must, in addition to the other requirements of this section and this
24 code, include in the application a description of:

25 (1) appellate court briefs the candidate has prepared
26 and filed in the preceding five years; and

27 (2) oral arguments the candidate has presented before

1 any appellate court in the preceding five years.

2 (d) Each officially prescribed form for an application
3 under this section must include a statement informing candidates
4 that knowingly providing false information on the application, in
5 addition to other penalties prescribed by law, constitutes
6 professional misconduct subject to public sanctions or censure by
7 the State Commission on Judicial Conduct or the state bar, as
8 applicable.

9 (e) The secretary of state shall prescribe the form and
10 content of the application materials under this section. The
11 secretary of state may consult with the Office of Court
12 Administration of the Texas Judicial System, the supreme court, and
13 the court of criminal appeals when prescribing the form and content
14 of application materials under this section.

15 SECTION 2. Section 33.032, Government Code, is amended by
16 adding Subsection (i) to read as follows:

17 (i) Any sanction the commission issues against a judge for
18 knowingly making a false declaration on an application for a place
19 on the ballot as a candidate for a judicial office described by
20 Section 141.0311, Election Code, any withdrawal of such sanction,
21 and all records and proceedings related to the sanction are a matter
22 of public record.

23 SECTION 3. Subtitle B, Title 2, Government Code, is amended
24 by adding Chapter 39 to read as follows:

25 CHAPTER 39. JUDICIAL EDUCATION REQUIREMENTS

26 Sec. 39.001. APPLICABILITY. This chapter applies to a
27 person elected to or holding any of the following judicial offices:

1 (1) chief justice or justice of the supreme court;

2 (2) presiding judge or judge of the court of criminal
3 appeals;

4 (3) chief justice or justice of a court of appeals;

5 (4) district judge, including a criminal district
6 judge; and

7 (5) judge of a statutory county court.

8 Sec. 39.002. JUDICIAL INSTRUCTION REQUIREMENTS. (a) The
9 supreme court, in consultation with the court of criminal appeals,
10 shall adopt rules on the judicial training a person must complete
11 not later than the first anniversary of the date the person assumes
12 a judicial office, subject to Subsection (b). The rules must
13 require the person to complete at least 30 hours of instruction.

14 (b) Subsection (a) does not apply to a person who has been
15 absent from judicial office for less than one year before assuming a
16 judicial office and who has previously completed the requirements
17 of Subsection (a).

18 (c) A judge must annually complete at least 16 hours of
19 instruction described by Subsection (a) after the first year of the
20 judge's term.

21 (d) The rules adopted under this section may provide for a
22 deferral or exemption for a person who is unable to timely complete
23 the training or instruction due to a medical or physical
24 disability.

25 (e) This section does not affect any funds appropriated to
26 or grants administered by the court of criminal appeals under
27 Chapter 56.

1 Sec. 39.003. SUSPENSION. The State Commission on Judicial
2 Conduct shall issue an order suspending any judge who fails to meet
3 the education requirements under Section 39.002 until the judge
4 demonstrates compliance with the requirements.

5 Sec. 39.004. REMOVAL FROM OFFICE. (a) For purposes of
6 Section 1-a, Article V, Texas Constitution, a judge who is
7 noncompliant with the education requirements under Section 39.002
8 for more than one year has engaged in wilful or persistent conduct
9 that is clearly inconsistent with the proper performance of a
10 judge's duties sufficient to subject the judge to removal from
11 office.

12 (b) The attorney general shall file a petition under Section
13 66.002, Civil Practice and Remedies Code, against a judge who is
14 subject to removal as provided by Subsection (a) if presented with
15 evidence by the State Commission on Judicial Conduct establishing
16 probable grounds that the judge engaged in conduct described by
17 Subsection (a).

18 SECTION 4. Section 72.024, Government Code, is amended by
19 adding Subsection (b-1) to read as follows:

20 (b-1) The director shall develop standards for identifying
21 courts that need additional assistance to promote the efficient
22 administration of justice.

23 SECTION 5. Section 72.082, Government Code, is amended to
24 read as follows:

25 Sec. 72.082. PERFORMANCE REPORT. The office shall annually
26 collect and publish a performance report of information regarding
27 the efficiency of the courts of this state. The report must include

1 disaggregated performance measures for each appellate court,
2 district court, statutory county court, statutory probate court,
3 and county court.

4 SECTION 6. Section 72.083, Government Code, is amended to
5 read as follows:

6 Sec. 72.083. TRIAL COURTS. (a) ~~[The office shall report~~
7 ~~the aggregate clearance rate of cases for the district courts.]~~ In
8 this section, "clearance rate" means the number of cases disposed
9 of by a court ~~[the district courts]~~ divided by the number of cases
10 added to the docket ~~[dockets]~~ of the court ~~[district courts]~~.

11 (b) The office shall annually report the following
12 performance measures for each district court, statutory county
13 court, statutory probate court, and county court:

14 (1) the court's clearance rate;

15 (2) the average time a case is before the court from
16 filing to disposition; and

17 (3) the age of the court's active pending caseload.

18 SECTION 7. Section 74.046, Government Code, is amended to
19 read as follows:

20 Sec. 74.046. DUTIES OF PRESIDING JUDGE. (a) A presiding
21 judge shall:

22 (1) ensure the promulgation of regional rules of
23 administration within policies and guidelines set by the supreme
24 court;

25 (2) advise local judges on case flow management and
26 auxiliary court services;

27 (3) recommend to the chief justice of the supreme

1 court any needs for judicial assignments from outside the region;

2 (4) recommend to the supreme court any changes in the
3 organization, jurisdiction, operation, or procedures of the region
4 necessary or desirable for the improvement of the administration of
5 justice;

6 (5) act for a local administrative judge when the
7 local administrative judge does not perform the duties required by
8 Subchapter D;

9 (6) implement and execute any rules adopted by the
10 supreme court under this chapter;

11 (7) provide the supreme court or the office of court
12 administration statistical information requested; and

13 (8) perform the duties assigned by the chief justice
14 of the supreme court.

15 (b) A presiding judge may appoint a judicial mentor or
16 arrange for additional administrative personnel to be assigned to a
17 court identified by the Office of Court Administration of the Texas
18 Judicial System as needing additional assistance under Section
19 72.024(b-1).

20 SECTION 8. Section 81.075, Government Code, is amended by
21 adding Subsection (f) to read as follows:

22 (f) If the panel of a district grievance committee finds an
23 attorney knowingly made a false declaration on an application for a
24 place on the ballot as a candidate for judicial office under Section
25 141.0311, Election Code, the committee shall impose a public
26 sanction against the respondent attorney.

27 SECTION 9. Chapter 82, Government Code, is amended by

adding Subchapter D to read as follows:

SUBCHAPTER D. SPECIALTY CERTIFICATIONS FOR ATTORNEYS

Sec. 82.101. SPECIALTY CERTIFICATION IN JUDICIAL ADMINISTRATION. (a) The supreme court shall adopt rules establishing a specialty certification for attorneys in the practice area of judicial administration.

(b) For purposes of establishing a specialty certification for attorneys in the practice area of judicial administration, the Texas Board of Legal Specialization shall make recommendations to the supreme court for the specialty certification and a proposed examination for obtaining the specialty certification.

(c) The Texas Board of Legal Specialization shall make the specialty certification for attorneys in judicial administration available to each judge of an appellate court, district court, statutory county court, statutory probate court, or county court performing judicial functions who is a licensed attorney and who meets the eligibility requirements established by the board.

(d) The supreme court by rule shall require an attorney who holds a specialty certification in judicial administration to annually complete 21 hours of continuing legal education to maintain the certification.

(e) A justice or judge who holds a specialty certification in judicial administration or another specialty certification may be entitled to additional compensation if the legislature makes a specific appropriation for that purpose.

SECTION 10. (a) As soon as practicable after the effective date of this Act, the Texas Supreme Court shall adopt the rules

1 necessary to implement Chapter 39, Government Code, as added by
2 this Act, and Subchapter D, Chapter 82, Government Code, as added by
3 this Act.

4 (b) As soon as practicable after the effective date of this
5 act, the Texas Judicial Council shall adopt the rules necessary for
6 the Office of Court Administration of the Texas Judicial System to
7 collect the information required under Sections 72.082 and 72.083,
8 Government Code, as amended by this Act.

9 (c) Section 141.0311, Election Code, as added by this Act,
10 applies only to an application for a place on the ballot filed for
11 an election ordered on or after the effective date of this Act. An
12 application for a place on the ballot filed for an election ordered
13 before the effective date of this Act is covered by the law in
14 effect on the date the application was filed, and the former law is
15 continued in effect for that purpose.

16 (d) The changes in law made by Chapter 39, Government Code,
17 as added by this Act, apply to all judges elected, appointed, or
18 holding office on or after the effective date of this Act.

19 SECTION 11. This Act takes effect September 1, 2023.

President of the Senate

Speaker of the House

I certify that H.B. No. 2384 was passed by the House on April 18, 2023, by the following vote: Yeas 146, Nays 2, 1 present, not voting.

Chief Clerk of the House

I certify that H.B. No. 2384 was passed by the Senate on May 17, 2023, by the following vote: Yeas 30, Nays 1.

Secretary of the Senate

APPROVED: _____

Date

Governor

ATTACHMENT 2

TEXAS CODE OF JUDICIAL CONDUCT

(As amended by the Supreme Court of Texas through July 10, 2019)

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

C. A judge shall not knowingly hold membership in any organization that practices discrimination prohibited by law.

COMMENT

Consistent with section 253.1612 of the Texas Election Code, the Code of Judicial Conduct does not prohibit a joint campaign activity conducted by two or more judicial candidates.

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 subsection 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. This prohibition applies to any candidate for judicial office, with respect to judicial proceedings pending or impending in the court on which the candidate would serve if elected. A 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 or judicial candidate 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 should 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.

(5) A judge shall not fail to comply with Rule 12 of the Rules of Judicial Administration, knowing that the failure to comply is in violation of the rule.

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. Activities to Improve the Law. A judge may:

- (1) 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; and,
- (2) 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.

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 subsection (1), 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. Except as otherwise provided by constitution and statute, 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.

COMMENT TO 2000 CHANGE

This change is to clarify that a judge may serve on the Texas Board of Criminal Justice.

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:

(i) make pledges or promises of conduct in office regarding pending or impending cases, specific classes of cases, specific classes of litigants, or specific propositions of law that would suggest to a reasonable person that the judge is predisposed to a probable decision in cases within the scope of the pledge;

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

(iii) make a statement that would violate Canon 3B(10).

(2) 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).

(3) A judge shall resign from judicial office upon becoming a candidate in a contested election for a non-judicial office either in a primary or in a general or in a special election. A judge may continue to hold judicial office while being a candidate for election to or serving as a delegate in a state constitutional convention or while being a candidate for election to any judicial office.

(4) A judge or judicial candidate subject to the Judicial Campaign Fairness Act, Tex. Elec. Code §253.151, *et seq.* (the "Act"), shall not knowingly commit an act for which he or she knows the Act imposes a penalty. Contributions returned in accordance with Sections 253.155(e), 253.157(b) or 253.160(b) of the Act are not a violation of this paragraph.

COMMENT

A statement made during a campaign for judicial office, whether or not prohibited by this Canon, may cause a judge's impartiality to be reasonably questioned in the context of a particular case and may result in recusal.

Consistent with section 253.1612 of the Texas Election Code, the Code of Judicial Conduct does not prohibit a joint campaign activity conducted by two or more judicial candidates.

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

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 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.

(e) with Canons 5(3).

(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. Any Senior Judge, or a former appellate or 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 disciplinary action 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 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 disciplinary action 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) "Knowingly," "knowledge," "known" or "knows" denotes actual knowledge of the fact in question. A person's knowledge may be inferred from circumstances.
- (8) "Law" denotes court rules as well as statutes, constitutional provisions and decisional law.
- (9) "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.
- (10) "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.
- (11) "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.
- (12) "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.
- (13) "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)])
- (14) "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)]
- (15) "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)])

(16) "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)])

(17) "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.

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

ATTACHMENT 3

PROCEDURAL RULES FOR THE REMOVAL OR RETIREMENT OF JUDGES

(Adopted and Promulgated Pursuant to Article V, Section 1-a(11), Texas Constitution)

RULE 1. DEFINITIONS

In these rules, unless the context or subject matter otherwise requires:

(a) "Commission" means the State Commission on Judicial Conduct.

(b) "Judge" means any Justice or Judge of the Appellate Courts and District and Criminal District Courts; any County Judge; any Judge of a County Court-at-Law, a Probate Court, or a Municipal Court; any Justice of the Peace; any Judge or presiding officer of any special court created by the Legislature; any retired judge or former judge who continues as a judicial officer subject to assignment to sit on any court of the state; and, any Master or Magistrate appointed to serve a trial court of this state.

(c) "Chairperson" includes the acting Chairperson of the Commission.

(d) "Special Master" means an individual appointed by the Supreme Court upon request of the Commission pursuant to Article V, Section 1-a, Paragraph (8) of the Texas Constitution.

(e) "Sanction" means any admonition, warning, reprimand, or requirement that the person obtain additional training or education, issued publicly or privately, by the Commission pursuant to the provisions of Article V, Section 1-a, Paragraph (8) of the Texas Constitution. A sanction is remedial in nature. It is issued prior to the institution of formal proceedings to deter similar misconduct by a judge or judges in the future, to promote proper administration of justice, and to reassure the public that the judicial system of this state neither permits nor condones misconduct.

(f) "Censure" means an order issued by the Commission pursuant to the provisions of Article V, Section 1-a, Paragraph (8) of the Texas Constitution or an order issued by a Review Tribunal pursuant to the provisions of Article V, Section 1-a, Paragraph (9) of the Texas Constitution. An order of censure is tantamount to denunciation of the offending conduct, and is more severe than the remedial sanctions issued prior to a formal hearing.

(g) "Special Court of Review" means a panel of three court of appeals justices selected by lot by the Chief Justice of the Supreme Court on petition, to review a censure or sanction issued by the Commission.

(h) "Review Tribunal" means a panel of seven court of appeals justices selected by lot by the Chief Justice of the Supreme Court to review the Commission's recommendation for the removal or retirement of a judge as provided in Article V, Section 1-a, Paragraph (9) of the Texas Constitution.

(i) "Formal Proceeding" means the proceedings ordered by the Commission concerning the possibility of public censure, removal, or retirement of a judge.

(j) "Examiner" means the person, including appropriate Commission staff or Special Counsel, appointed by the Commission to gather and present evidence before a special master, or the Commission, a Special Court of Review or a Review Tribunal.

(k) "Shall" is mandatory and "may" is permissive.

(l) "Mail" means First Class United States Mail.

(m) The masculine gender includes the feminine gender.

RULE 2. MAILING OF NOTICES AND OF OTHER MATTER

Whenever these rules provide for giving notice or sending any matter to a judge, the same shall, unless otherwise expressly provided by the rules or requested in writing by the judge, be sent to him by mail at his office or last known place of residence; provided, that when the judge has a guardian or guardian ad litem, the notice or matter shall be sent to the guardian or guardian ad litem by mail at his office or last known place of residence.

RULE 3. PRELIMINARY INVESTIGATION

(a) The Commission may, upon receipt of a verified statement, upon its own motion, or otherwise, make such preliminary investigation as is appropriate to the circumstances relating to an allegation or appearance of misconduct or disability of any judge to determine that such allegation or appearance is neither unfounded nor frivolous.

(b) If the preliminary investigation discloses that the allegation or appearance is unfounded or frivolous, the Commission shall terminate further proceedings.

RULE 4. FULL INVESTIGATION

(a) If the preliminary investigation discloses that the allegations or appearances are neither unfounded nor frivolous, or if sufficient cause exists to warrant full inquiry into the facts and circumstances indicating that a judge may be guilty of willful or persistent conduct which is clearly inconsistent with the proper performance of his duties or casts public discredit upon the judiciary or the administration of justice, or that he has a disability seriously interfering with the performance of his duties, which is, or is likely to become, permanent in nature, the Commission shall conduct a full investigation into the matter.

(b) The Commission shall inform the judge in writing that an investigation has commenced and of the nature of the matters being investigated.

(c) The Commission may request the judge's response in writing to the matters being investigated.

RULE 5. ISSUANCE, SERVICE, AND RETURN OF SUBPOENAS

(a) In conducting an investigation, formal proceedings, or proceedings before a Special Court of Review, the Chairperson or any member of the Commission, or a special master when a hearing is being conducted before a special master, or member of a Special Court of Review, may, on his own motion, or on request of appropriate Commission staff, the examiner, or the judge, issue a subpoena for attendance of any witness or witnesses who may be represented to reside within the State of Texas.

(b) The style of the subpoena shall be "The State of Texas". It shall state the style of the proceeding, that the proceeding is pending before the Commission, the time and place at which the witness is required to appear, and the person or official body at whose instance the witness is summoned. It shall be signed by the Chairperson or some other member of the Commission, or by the special master when a hearing is before the special master, and the date of its issuance shall be noted thereon. It shall be addressed to any peace officer of the State of Texas or to a person designated by the Chairperson to make service thereof.

(c) A subpoena may also command the person to whom it is directed to produce the books, papers, documents or tangible things designated therein.

(d) Subpoenas may be executed and returned at any time, and shall be served by delivering a copy of such subpoena to the witness; the person serving the subpoena shall make due return thereof, showing the time and manner of service, or service thereof may be accepted by any witness by a written memorandum, signed by such witness, attached to the subpoena.

RULE 6. INFORMAL APPEARANCE

(a) Before terminating an investigation, the Commission may offer a judge an opportunity to appear informally before the Commission.

(b) An informal appearance is confidential except that the judge may elect to have the appearance open to the public or to any person or persons designated by the judge. The right to an open appearance does not preclude placing of witnesses under the rule as provided by Rule 267 of the Texas Rules of Civil Procedure.

(c) No oral testimony other than the judge's shall be received during an informal appearance, although documentary evidence may be received. Testimony of the judge shall be under oath, and a recording of such testimony taken. A copy of such recording shall be furnished to the judge upon request.

(d) The judge may be represented by counsel at the informal appearance.

(e) Notice of the opportunity to appear informally before the Commission shall be given by mail at least ten (10) days prior to the date of the scheduled appearance.

RULE 7. COMMISSION VOTING

(a) A quorum shall consist of seven (7) members. Proceedings shall be by majority vote of those present, except that recommendations for retirement, censure, suspension or removal of any Judge shall be by affirmative vote of at least seven (7) members.

RULE 8. RESERVED FOR FUTURE PROMULGATION

RULE 9. REVIEW OF COMMISSION DECISION

(a) A judge who has received from the Commission a sanction in connection with a complaint filed subsequent to September 1, 1987, may file with the Chief Justice of the Supreme Court a written request for appointment of a Special Court of Review, not later than the 30th day after the date on which the Commission issued its sanction.

(b) Within 15 days after appointment of the Special Court of Review, the Commission shall furnish the petitioner and each justice on the Special Court of Review a charging document which shall include a copy of the sanction issued as well as any additional charges

to be considered in the de novo proceeding and the papers, documents, records, and evidence upon which the Commission based its decision. The sanction and other records filed with the Special Court of Review are public information upon filing with the Special Court of Review.

(c) Within 30 days after the date upon which the Commission files the charging document and related materials with the Special Court of Review, the Special Court of Review shall conduct a hearing. The Special Court of Review may, if good cause is shown, grant one or more continuances not to exceed a total of 60 days. The procedure for the hearing shall be governed by the rules of law, evidence, and procedure that apply to civil actions, except the judge is not entitled to trial by jury, and the Special Court of Review's decision shall not be appealable. The hearing shall be held at a location determined by the Special Court of Review, and shall be public.

(d) Decision by the Special Court of Review may include dismissal, affirmation of the Commission's decision, imposition of a lesser or greater sanction, or order to the Commission to file formal proceedings.

(e) The opinion by the Special Court of Review shall be published if, in the judgment of a majority of the justices participating in the decision, it is one that (1) establishes a new rule of ethics or law, alters or modifies an existing rule, or applies an existing rule to a novel fact situation likely to recur in future cases; (2) involves a legal or ethical issue of continuing public interest; (3) criticizes existing legal or ethical principles; or (4) resolves an apparent conflict of authority. A concurring or dissenting opinion may be published if, in the judgment of its author, it meets one of the above indicated criteria, but in such event the majority opinion shall be published as well.

RULE 10. FORMAL PROCEEDINGS

(a) NOTICE

(1) If after the investigation has been completed the Commission concludes that formal proceedings should be instituted, the matter shall be entered in a docket to be kept for that purpose and written notice of the institution of formal proceedings shall be issued to the judge without delay. Such proceedings shall be entitled:

"Before the State Commission on Judicial Conduct Inquiry Concerning a Judge, No. _____"

(2) The notice shall specify in ordinary and concise language the charges against the judge, and the alleged facts upon which such charges are based and the specific standards contended to have been violated, and shall advise the judge of his right to file a written answer to the charges against him within 15 days after service of the notice upon him.

(3) The notice shall be served by personal service of a copy thereof upon the judge by a member of the Commission or by some person designated by the Chairperson, and the person serving the notice shall promptly notify the Commission in writing of the date on which the same was served. If it appears to the Chairperson upon affidavit that, after reasonable effort during a period of 10 days, personal service could not be had, service may be made by mailing, by registered or certified mail, copies of the notice addressed to the judge at his chambers and at his last known residence, and the date of mailing shall be entered in the docket.

(b) ANSWER

Within 15 days after service of the notice of formal proceedings, the judge may file with the Commission an original answer, which shall be verified, and twelve legible copies thereof.

(c) SETTING DATE FOR HEARING AND REQUEST FOR APPOINTMENT OF A SPECIAL MASTER

(1) Upon the filing of an answer or upon expiration of the time for its filing, the Commission shall set a time and place for hearing before itself or before a special master and shall give notice of such hearing by mail to the judge at least 20 days prior to the date set.

(2) If the Commission directs that the hearing be before a special master, the Commission shall, when it sets a time and place for the hearing, transmit a written request to the Supreme Court to appoint a special master for such hearing, and the Supreme Court shall, within 10 days from receipt of such request, appoint an active or retired District Judge, a Judge of a Court of Civil Appeals, either active or retired, or a retired Justice of the Court of Criminal Appeals or Supreme Court to hear and take evidence in such matters.

(d) HEARING

(1) At the time and place set for hearing, the Commission, or the special master when the hearing is before a special master, shall proceed with the hearing as nearly as may be according to the rules of procedure governing the trial of civil causes in this State, subject to the provisions of Rule 5, whether or not the judge has filed an answer or appears at the hearing. The examiner or other authorized officer shall present the case in support of the charges in the notice of formal proceedings.

(2) The failure of the judge to answer or to appear at the hearing shall not, standing alone, be taken as evidence of the truth of the facts alleged to constitute grounds for removal or retirement. The failure of the judge to testify in his own behalf or his failure to submit to a medical examination requested by the Commission or the master may be considered, unless it appears that such failure was due to circumstances unrelated to the facts in issue at the hearing.

(3) The proceedings at the hearing shall be reported by a phonographic reporter or by some qualified person appointed by the Commission and taking the oath of an official court reporter.

(4) When the hearing is before the Commission, not less than seven members shall be present while the hearing is in active progress. The Chairperson, when present, the Vice-Chairperson in the absence of the Chairperson, or the member designated by the Chairperson in the absence of both, shall preside. Procedural and other interlocutory rulings shall be made by the person presiding and shall be taken as consented to by the other members unless one or more calls for a vote, in which latter event such rulings shall be made by a majority vote of those present.

(e) EVIDENCE

At a hearing before the Commission or a special master, legal evidence only shall be received as in the trial of civil cases, except upon consent evidenced by absence of objection, and oral evidence shall be taken only on oath or affirmation.

(f) AMENDMENTS TO NOTICE OR ANSWER

The special master, at any time prior to the conclusion of the hearing, or the Commission, at any time prior to its determination, may allow or require amendments to the notice of

formal proceedings and may allow amendments to the answer. The notice may be amended to conform to proof or to set forth additional facts, whether occurring before or after the commencement of the hearing. In case such an amendment is made, the judge shall be given reasonable time both to answer the amendment and to prepare and present his defense against the matters charged thereby.

(g) PROCEDURAL RIGHTS OF JUDGES

(1) In the proceedings for his removal or retirement a judge shall have the right to be confronted by his accusers, the right and reasonable opportunity to defend against the charges by the introduction of evidence, to be represented by counsel, and to examine and cross-examine witnesses. He shall also have the right to the issuance of subpoenas for attendance of witnesses to testify or produce books, papers and other evidentiary matter.

(2) When a transcript of the testimony has been prepared at the expense of the Commission, a copy thereof shall, upon request, be available for use by the judge and his counsel in connection with the proceedings, or the judge may arrange to procure a copy at his expense. The judge shall have the right, without any order or approval, to have all or any portion of the testimony in the proceedings transcribed at his expense.

(3) If the judge is adjudged insane or incompetent, or if it appears to the Commission at any time during the proceedings that he is not competent to act for himself, the Commission shall appoint a guardian ad litem unless the judge has a guardian who will represent him. In the appointment of a guardian ad litem, preference shall be given, so far as practicable, to members of the judge's immediate family. The guardian or guardian ad litem may claim and exercise any right and privilege and make any defense for the judge with the same force and effect as if claimed, exercised, or made by the judge, if competent.

(h) REPORT OF SPECIAL MASTER

(1) After the conclusion of the hearing before a special master, he shall promptly prepare and transmit to the Commission a report which shall contain a brief statement of the proceedings had and his findings of fact based on a preponderance of the evidence with respect to the issues presented by the notice of formal proceedings and the answer thereto, or if there be no answer, his findings of fact with respect to the allegations in the notice of formal proceedings. The report shall be accompanied by an original and two copies of a transcript of the proceedings before the special master.

(2) Upon receiving the report of the special master, the Commission shall promptly send a copy to the judge, and one copy of the transcript shall be retained for the judge's use.

(i) OBJECTIONS TO REPORT OF SPECIAL MASTER

Within 15 days after mailing of the copy of the special master's report to the judge, the examiner or the judge may file with the Commission an original and twelve legible copies of a statement of objections to the report of the special master, setting forth all objections to the report and all reasons in opposition to the findings as sufficient grounds for removal or retirement. A copy of any such statement filed by the examiner shall be sent to the judge.

(j) APPEARANCE BEFORE COMMISSION

If no statement of objections to the report of the special master is filed within the time provided, the findings of the special master may be deemed as agreed to, and the Commission may adopt them without a hearing. If a statement of objections is filed, or if the Commission

in the absence of such statement proposes to modify or reject the findings of the special master, the Commission shall give the judge and the examiner an opportunity to be heard orally before the Commission, and written notice of the time and place of such hearing shall be sent to the judge at least ten days prior thereto.

(k) EXTENSION OF TIME

The Chairperson of the Commission may extend for periods not to exceed 30 days in the aggregate the time for filing an answer, for the commencement of a hearing before the Commission, and for filing a statement of objections to the report of a special master, and a special master may similarly extend the time for the commencement of a hearing before him.

(l) HEARING ADDITIONAL EVIDENCE

(1) The Commission may order a hearing for the taking of additional evidence at any time while the matter is pending before it. The order shall set the time and place of hearing and shall indicate the matters on which the evidence is to be taken. A copy of such order shall be sent to the judge at least ten days prior to the date of the hearing.

(2) The hearing of additional evidence may be before the Commission itself or before the special master, as the Commission shall direct; and if before a special master, the proceedings shall be in conformance with the provisions of Rule 10(d) to 10(g) inclusive.

(m) COMMISSION RECOMMENDATION

If, after hearing, upon considering the record and report of the special master, the Commission finds good cause therefore, it shall recommend to the Review Tribunal the removal, or retirement, as the case may be; or in the alternative, the Commission may dismiss the case or publicly order a censure, reprimand, warning, or admonition.

RULE 11. REQUEST BY COMMISSION FOR APPOINTMENT OF REVIEW TRIBUNAL

Upon making a determination to recommend the removal or retirement of a judge, the Commission shall promptly file a copy of a request for appointment of a Review Tribunal with the clerk of the Supreme Court, and shall immediately send the judge notice of such filing.

RULE 12. REVIEW OF FORMAL PROCEEDINGS

(a) A recommendation of the Commission for the removal or retirement, of a judge shall be determined by a Review Tribunal of seven Justices selected from the Courts of Appeals. Members of the Review Tribunal shall be selected by lot by the Chief Justice of the Supreme Court from all Appeals Justices sitting at the time of selection. Each Court of Appeals shall designate one of its members for inclusion in the list from which the selection is made, except that no Justice who is a member of the Commission shall serve on the Review Tribunal. The Justice whose name is drawn first shall be chairperson of the Review Tribunal. The clerk of the Supreme Court will serve as the Review Tribunal's staff, and will notify the Commission when selection of the Review Tribunal is complete.

(b) After receipt of notice that the Review Tribunal has been constituted, the Commission shall promptly file a copy of its recommendation certified by the Chairperson or Secretary of the Commission, together with the transcript and the findings and conclusions, with the clerk

of the Supreme Court. The Commission shall immediately send the judge notice of such filing and a copy of the recommendation, findings and conclusions.

(c) A petition to reject the recommendation of the Commission for removal or retirement of a judge or justice may be filed with the clerk of the Supreme Court within thirty days after the filing with the clerk of the Supreme Court of a certified copy of the Commission's recommendation. The petition shall be verified, shall be based on the record, shall specify the grounds relied on and shall be accompanied by seven copies of petitioner's brief and proof of service of one copy of the petition and of the brief on the Chairperson of the Commission. Within twenty days after the filing of the petition and supporting brief, the Commission shall file seven copies of the Commission's brief, and shall serve a copy thereof on the judge.

(d) Failure to file a petition within the time provided may be deemed a consent to a determination on the merits based upon the record filed by the Commission.

(e) Rules 4 and 74, Texas Rules of Appellate Procedure, shall govern the form and contents of briefs except where express provision is made to the contrary or where the application of a particular rule would be clearly impracticable, inappropriate, or inconsistent.

(f) The Review Tribunal, may, in its discretion and for good cause shown, permit the introduction of additional evidence, and may direct that the same be introduced before the special master or the Commission and be filed as a part of the record in the Court.

(g) Oral argument on a petition of a judge to reject a recommendation of the Commission shall, upon receipt of the petition, be set on a date not less than thirty days nor more than forty days from the date of receipt thereof. The order and length of time of argument shall, if not otherwise ordered or permitted by the Review Tribunal, be governed by Rule 172, Texas Rules of Appellate Procedure.

(h) Within 90 days after the date on which the record is filed with the Review Tribunal, it shall order public censure, retirement, or removal, as it finds just and proper, or wholly reject the recommendation. The Review Tribunal, in an order for involuntary retirement for disability or an order for removal, may also prohibit such person from holding judicial office in the future.

(i) The opinion by the Review Tribunal shall be published if, in the judgment of a majority of the justices participating in the decision, it is one that (1) establishes a new rule of ethics or law, alters or modifies an existing rule, or applies an existing rule to a novel fact situation likely to recur in future cases; (2) involves a legal or ethical issue of continuing public interest; (3) criticizes existing legal or ethical principles; or (4) resolves an apparent conflict of authority. A concurring or dissenting opinion may be published if, in the judgment of its author, it meets one of the above indicated criteria, but in such event the majority opinion shall be published as well.

RULE 13. APPEAL TO SUPREME COURT

A judge may appeal a decision of the Review Tribunal to the Supreme Court under the substantial evidence rule.

RULE 14. MOTION FOR REHEARING

A motion for rehearing may not be filed as a matter of right. In entering its judgment the Supreme Court or Review Tribunal may direct that no motion for rehearing will be entertained, in which event the judgment will be final on the day and date of its entry. If the

Supreme Court or Review Tribunal does not so direct and the judge wishes to file a motion for rehearing, he shall present the motion together with a motion for leave to file the same to the clerk of the Supreme Court or Review Tribunal within fifteen days of the date of the judgment, and the clerk of the Supreme Court shall transmit it to the Supreme Court or Review Tribunal for such action as the appropriate body deems proper.

RULE 15. SUSPENSION OF A JUDGE

(a) Any judge may be suspended from office with or without pay by the Commission immediately upon being indicted by a state or federal grand jury for a felony offense or charged with a misdemeanor involving official misconduct. However, the suspended judge has the right to a post-suspension hearing to demonstrate that continued service would not jeopardize the interests of parties involved in court proceedings over which the judge would preside nor impair public confidence in the judiciary. A written request for a post-suspension hearing must be filed with the Commission within 30 days from receipt of the Order of Suspension. Within 30 days from the receipt of a request, a hearing will be scheduled before one or more members or the executive director of the Commission as designated by the Chairperson of the Commission. The person or persons designated will report findings and make recommendations, and within 60 days from the close of the hearing, the Commission shall notify the judge whether the suspension will be continued, terminated, or modified.

(b) Upon the filing with the Commission of a sworn complaint charging a person holding such office with willful or persistent violation of rules promulgated by the Supreme Court of Texas, incompetence in performing the duties of office, willful violation of the Code of Judicial Conduct, or willful and persistent conduct that is clearly inconsistent with the proper performance of his duties or casts public discredit upon the judiciary or the administration of justice, the Commission, after giving the person notice and an opportunity to appear and be heard before the Commission (under Rule 6), may recommend to the Supreme Court the suspension of such person from office.

(c) When the Commission or the Supreme Court orders the suspension of a judge or justice, with or without pay, the appropriate city, county, and/or state officials shall be notified of such suspension by certified copy of such order.

RULE 16. RECORD OF COMMISSION PROCEEDINGS

The Commission shall keep a record of all informal appearances and formal proceedings concerning a judge. In all proceedings resulting in a recommendation to the Review Tribunal for removal or retirement, the Commission shall prepare a transcript of the evidence and of all proceedings therein and shall make written findings of fact and conclusions of law with respect to the issues of fact and law in the proceeding.

RULE 17. CONFIDENTIALITY AND PRIVILEGE OF PROCEEDINGS

All papers filed with and proceedings before the Commission shall be confidential, and the filing of papers with, and the giving of testimony before the Commission shall be privileged; provided that:

- (a) The formal hearing, and all papers, records, documents, and other evidence introduced during the formal hearing shall be public.

(b) If the Commission issues a public sanction, all papers, documents, evidence, and records considered by the Commission or forwarded to the Commission by its staff and related to the sanction shall be public.

(c) The judge may elect to open the informal appearance hearing pursuant to Rule 6(b).

(d) Any hearings of the Special Court of Review shall be public and held at the location determined by the Special Court of Review. Any evidence introduced during a hearing, including papers, records, documents, and pleadings filed in the proceedings, is public.

RULE 18. *EX PARTE* CONTACTS BY MEMBERS OF THE COMMISSION

A Commissioner, except as authorized by law, shall not directly or indirectly initiate, permit, nor consider *ex parte* contacts with any judge who is the subject of an investigation being conducted by the Commission or involved in a proceeding before the Commission