MAINE CODE OF JUDICIAL CONDUCT

Promulgated

May 21, 1993

Effective

September 1, 1993

ADVISORY COMMITTEE'S NOTES

Introductory Advisory Committee's Note

Commentary

The Maine Code of Judicial Conduct is promulgated by the Supreme Judicial Court after the first comprehensive review of the original Code of Judicial Conduct since its adoption in 1974. The Code is a substantial revision of the 1974 Code, intended to incorporate the changes that the American Bar Association made in its 1972 Code of Judicial Conduct when it adopted the Model Code of Judicial Conduct (1990) and to make other changes deemed necessary in light of experience in Maine.

Review and revision of the Code of Judicial Conduct at this time reaffirms the commitment of the Maine Judiciary to the highest standards of judicial conduct. Compliance with those standards in Maine has been exemplary. Since 1985, an average of only 39 written complaints per year has been filed with the Committee on Judicial Responsibility and Disability. Since the establishment of the Committee in 1978, it has referred only

eight matters to the Court, which imposed discipline in seven of those matters. Nevertheless, it is important, not only to restate for Maine judges the scope and nature of their responsibilities, but to assure the public that the judges are subject to specific and nationally recognized standards of conduct and are accountable for compliance with those standards.

The revised Code is intended to assure that Maine judges continue to be governed by principles of conduct that are substantially uniform with those applicable in other jurisdictions. While much of the 1974 Code remains in effect, the revisions also clarify and expand many provisions in light of problems in application or changed conditions. The Code also follows the ABA model (and the pattern of virtually all other Maine rules of court) by eliminating all exclusively masculine pronouns and other gender references.

These Advisory Committee's Notes are intended to provide more specific guidance for the interpretation of the Code than has previously been available. A separate Advisory Committee's Note has been prepared for each canon or other separate part of the Code. The Notes to the Preamble and to each canon contain a "Commentary" section providing interpretive guidance and a "Textual Note" summarizing verbal and organizational changes. The Commentary sections contain appropriate references to the nonbinding "Commentary" that is interspersed with the text of ABA Model Code (1990), as well as to the explanatory notes of the ABA Standing Committee on Ethics and Professional Responsibility

contained in the "legislative draft format" of the Model Code in the Committee's Report to the House of Delegates, Appendix C (August 1990). The Notes also explain any unique Maine variations and refer, when appropriate, to prior judicial conduct decisions of the Supreme Judicial Court. In accordance with usual practice, the Advisory Committee's Notes will be considered as contemporaneous manifestations of intent that may serve as authoritative aids to interpretation. See 1 Field, McKusick & Wroth, Maine Civil Practice § 1.4 (2d edn. 1970).

The revised Code, like its predecessor, is adopted pursuant to the inherent power of the Supreme Judicial Court over the internal affairs of the Judicial Department, recognized by the Legislature in 4 M.R.S.A. § 9B. See Matter of Benoit, 487 A.2d 1158, 1170-71 (Me. 1985).

Textual Note

Maine's 1974 Code of Judicial Conduct was adopted by the Supreme Judicial Court effective April 1, 1974, on the recommendation of the Judicial Administration Section of the Maine State Bar Association. Order of Feb. 26, 1974, Me. Rptr., 313-319 A.2d XXXVII-XLV. The Code, based on the ABA's 1972 Code of Judicial Conduct, was published with notes reflecting variations from the ABA Code in 8 Me. Bar Bull., No.3, pp.1, 30-34 (1974). The Code has been amended only once since 1974. Effective August 15, 1990, Canon 8 was added to establish a detailed judicial financial disclosure requirement and minor

conforming changes were made in Canons 5 and 6. Me. Rptr., 576-588 A.2d LXVI, as amended Oct. 9, 1990, id. at LXXX.

As originally promulgated, the 1974 Code applied only to justices of the Supreme Judicial and Superior courts and judges of the District Court. By order effective July 1, 1978, the Code was made applicable to judges of the Administrative Court. Me. Rptr., 385-388 A.2d LIX. By order effective December 5, 1978 (unpublished), the Code was made applicable to Active Retired justices and judges. By order effective December 15, 1978, Canons 1, 2, and 3 were made applicable to judges of probate. Me. Rptr., 392-395 A.2d LVI. By order effective August 15, 1990, probate judges were made subject to Canons 4; 5A; 5B (first sentence); 5C(1), (3)-(6); 6; and 8 (except as provided in Canon 8E). Me. Rptr., 576-588 A.2d LXVI.

By order effective July 5, 1978, the Court established the Committee on Judicial Responsibility and Disability, charged with receiving "complaints concerning the performance or misconduct of any judge" and, after investigation, reporting to the Court, Code violations that are "of a serious nature so as to warrant formal disciplinary action." Me. Rptr., 385-388 A.2d LX, LXI. By order effective March 1, 1991, the Court directed that a five-member panel of the Advisory Committee on the Code of Judicial Conduct should act as a Judicial Ethics Committee to render advisory opinions on the interpretation of the Code. Me. Rptr., 576-588 A.2d CXXIX. Establishment of this panel was in accord with a recommendation of the ABA Standing Committee on Ethics and

Professional Responsibility that accompanied its recommendation of ABA Model Code (1990).

The revised Code retains the basic format and order of the 1974 Code, with broad "canons" elaborated by more specific "sections." A number of structural changes have been adopted from ABA Model Code (1990), however. Thus, a Preamble, stating general principles and objectives, has been added. To eliminate repetition and ambiguity, Canons 4, 5, and 6 of the 1974 Code have been consolidated as Canon 4, and former Canons 7 and 8 have been renumbered as Canons 5 and 6. Applicability, Compliance, and Definition sections based on the ABA model have been added. In a feature not found in the ABA Code, the canons have been grouped as Part I, and, for ease of reference, the general provisions are set forth as numbered sections in Part II of the Code.

Advisory Committee's Note to Preamble

Commentary

The Preamble states the purposes of the Code and the general substantive and interpretive principles that underlie it. Specifically, the Preamble makes clear that all parts of the Code are "authoritative," that is, set out rules that govern judicial conduct.

Those rules are mandatory when the word "shall" is used and aspirational when "should" is used. The 1974 Code used "should" throughout, but its provisions were characterized by the Supreme

Judicial Court as mandatory "minimum standards of conduct and propriety" in the first case to arise under the Code and have been so viewed in all subsequent cases. See Matter of Ross, 428 A.2d 858, 861 (Me. 1981); see, e.g., Matter of Kellam, 503 A.2d 1308, 1311 (Me. 1986) (canon "requires" certain conduct); Matter of Barrett, 512 A.2d 1030, 1033-34 (Me. 1986) (canon "directed [judge] in plain language" to take certain action); Matter of Benoit, 523 A.2d 1381, 1383 (Me. 1987) ("the plain proscription" of canon); see also ABA Code (1972), Introduction ("The canons and text establish mandatory standards unless otherwise indicated"); United States v. Anderson, 798 F.2d 919 (7th Cir., 1986) ("should" interpreted as mandatory in applying state Code of Judicial Conduct). The use of "shall" and "should" eliminates any confusion as to which provisions are mandatory and which are aspirational. See ABA Standing Committee, Report 5. Violation of mandatory rules by a judge may result in disciplinary action.

The Preamble makes clear that the Code is to be interpreted reasonably in accordance with other laws and in light of the circumstances and conditions in which judges must operate. The Preamble also sets out factors of seriousness, pattern, and effect that are to be weighed in determining whether discipline is appropriate and the sanction to be applied. These guidelines and factors should be viewed as giving definition to the requirement of paragraph 9(ii) of the Order Establishing the Committee on Judicial Responsibility and Disability, 385-388 A.2d LX, LXI, that a violation to be reported to the Court be "of a

serious nature so as to warrant formal disciplinary action."

Disciplinary decisions under the 1974 Code reflect the application of similar guidelines and factors and will continue to serve as authority. See, e.g., Matter of Benoit, 487 A.2d 1158, 1163-68 (Me. 1985) (unlawful use of bail and contempt power in civil cases and pre-trial detention of juvenile offender without counsel were "obviously and seriously wrong" under "reasonably prudent and competent judge" standard); Matter of Benoit, supra, 523 A.2d at 1383 ("difficult to conceive of a more egregious violation" of canon intended to protect individual rights and prevent public perception of unfairness than trial judge's publication of letters critical of appellate court pending final disposition of matters); compare Matter of Kellam, supra, 503 A.2d at 1311 (more than 40 incidents "reveal a pattern of discourtesy to laypersons of such consistency and duration as to present a serious violation" of the Code), with Matter of Hart, 577 A.2d 351, 355 (Me. 1990) (no discipline for alleged discourteous treatment of lawyer occurring as isolated incident in chambers with no loud or undignified language in course of judge's review of perceived attorney misconduct).

In Hart, supra, the Court asserted that disciplinary proceedings are appropriate "only in those instances of judicial misconduct that exceed in seriousness the mistakes and frailties of the ordinary judge." Nevertheless, the Court has proscribed "Lawless judicial conduct--the administration, in disregard of the law, of a personal brand of justice in which the judge

becomes a law unto himself" and has recognized that "To the end that a courtroom may truly be a temple of justice and not the personal domain of the man or woman who happens to be presiding, any differences in style [of judicial behavior] must always result in justice administered according to law and must be in accord with" the Code of Judicial Conduct. Matter of Ross, supra, 428 A.2d at 861. Departures from this standard are not justified by the admittedly difficult working conditions of the District Court, which "projects to the mass of our citizens their image of the administration of justice." Id. at 866. See also id. at 867; Matter of Kellam, supra, 503 A.2d at 1311; but see Matter of Hart, supra.

In assessing sanctions, the Court has repeatedly relied upon its statement in Matter of Ross, supra, 428 A.2d at 868-69, ordering a disciplinary suspension, that "Any sanction must be designed to preserve the integrity and independence of the judiciary and to restore and reaffirm the public confidence in the administration of justice. Any sanction must be designed to announce publicly our recognition that there has been misconduct; it must be sufficient to deter the individual being sanctioned from again engaging in such conduct and to prevent others from engaging in similar misconduct in the future." See, e.g., Matter of Kellam, supra, 503 A.2d at 1312 (censure, suspension, salary forfeiture); Matter of Barrett, supra, 512 A.2d at 1034 (reprimand); Matter of Benoit, supra, 523 A.2d at 1384 (censure, suspension, salary forfeiture, completion of Judicial Ethics

course).

The Preamble also makes clear that the Code is not intended to set standards for the civil or criminal liability of judges. Existing law will govern such issues. See Richards v. Ellis, 233 A.2d 37 (Me. 1967) (absolute immunity from civil liability for adjudicative acts); Forrester v. White, 484 U.S. 219 (1988) (judge may be liable under 42 U.S.C. § 1983 for acts in administrative capacity); Pulliam v. Allen, 466 U.S. 522 (1984) (judicial immunity does not bar injunctive relief or award of attorney's fees under 42 U.S.C. §§ 1983, 1988); but see United States v. Anderson, supra (in perjury prosecution of state judge, Code of Judicial Conduct held to have force of law); cf. Ferrell v. Cox, 617 A.2d 1003, 1007 (Me. 1992) (not error to allow inquiry concerning Canon 5C(4)(c) of 1974 Code directed to judge who was defendant in civil suit).

Textual Note

The Preamble is new. It is based on ABA Model Code (1990), Preamble, adapted for Maine, with certain further modifications in the interests of clarity and simplicity.

Advisory Committee's Note to Canon 1

Commentary

Canon 1 sets forth the substantive duty of each judge to observe "high standards of conduct . . . so that the integrity and independence of the judiciary will be maintained." The

latter purpose is also an interpretive principle to be observed in the construction and application of the Code. In addition, the Canon exhorts judges to "participate in establishing, maintaining, and enforcing" those standards. This provision is cast in aspirational rather than mandatory form because it is too general to admit of disciplinary enforcement.

The integrity and independence of judges is of fundamental importance, because public confidence in these attributes is essential to that "[d]eference to the judgments and rulings of courts" upon which "the system of government under law depends." Public confidence is maintained or diminished accordingly as judges observe or violate the Code. See ABA Model Code (1990), Commentary to Section 1A.

In a number of cases, the Supreme Judicial Court has held that the virtually identical provisions of Canon 1 of the 1974 Code were violated by conduct violative of one or more of the specific provisions of other canons. See, e.g., Matter of Ross, 428 A.2d 858, 867 (Me. 1981); Matter of Benoit, 523 A.2d 1381, 1382 (Me. 1987); Matter of Cox, 553 A.2d 1255, 1256, 1258 (Me. 1989). A direct violation of Canon 1 was found in Matter of Cox, 532 A.2d 1017 (Me. 1987) (angry conversation with police officer concerning traffic violation by judge's son).

Textual Note

Canon 1 is identical to ABA Model Code (1990), Canon 1 and Section 1A. The language of Canon 1 is also virtually identical

to the 1974 Maine Code. The only substantial changes are for the purpose of identifying those standards that are mandatory. Thus, the first "should" is retained in the second sentence, but "shall" has been substituted for the second "should." In the final sentence, "are to" has been used in lieu of "shall" or "should" because the sentence is a directive concerning interpretation, not conduct. See ABA Model Code (1990), Committee Note to Section 1A.

Advisory Committee's Note to Canon 2

Commentary

Canon 2 requires judges to serve the basic purpose of maintaining public confidence in the judiciary by avoiding impropriety and the appearance of impropriety in all of their activities, both professional and personal. Because of the inevitability of "constant public scrutiny," a judge must "accept restrictions on the judge's conduct that might be viewed as burdensome by the ordinary citizen and should do so freely and willingly." ABA Model Code (1990), Commentary to Section 2A.

Canon 2A makes clear that the obligation includes both the duty of respect for and compliance with law and the avoidance of "irresponsible and improper conduct . . . that is harmful though not specifically mentioned in the Code. Actual improprieties under this standard include violations of law, court rules, or other provisions of this Code. The test for appearance of impropriety is whether the conduct would create in reasonable

minds a perception that the judge's ability to carry out judicial responsibilities with integrity, impartiality and competence is impaired." Id.

In a number of cases, the Supreme Judicial Court has held that the virtually identical provisions of Canon 2A of the 1974 Code were violated by conduct that violated one or more of the specific provisions of other canons. See, e.g., Matter of Kellam, 503 A.2d 1308, 1310 (1986); Matter of Benoit, 523 A.2d 1381, 1382 (Me. 1987). In Matter of Cox, 553 A.2d 1255, 1256, 1258 (Me. 1989), the Court articulated the reasoning for this conclusion, noting that the purpose of former Canon 3A(1), (4), to assure "fairness in the administration of justice" was in furtherance of the goal of Canon 2 to sustain public confidence in the judiciary and holding that a trial judge's violation of former Canon 3A(1), (4), by direct participation in plea negotiations "strikes at the heart of the public's perception of impartiality." The Court has also found particular conduct to be in direct violation of Canon 2A. See Matter of Ross, 428 A.2d 858 (Me. 1981) (imposing sentence without hearing, seeking to influence a witness in judicial disciplinary hearing); Matter of Cox, 532 A.2d 1017 (Me. 1987) (angry conversation with police officer concerning traffic violation by judge's son was "appearance of impropriety").

Canon 2B forbids a number of specific actions that are in effect per se improprieties because they diminish the prestige of the judicial office so essential to the proper functioning of an

independent judiciary. Examples of improper activities offered in ABA Model Code (1990), Commentary to Section 2B, include alluding to judicial status in an effort to gain deferential treatment when stopped for a traffic offense, use of judicial letterhead for personal business, use of judicial status to gain advantage for a family member in a civil suit, and allowing exploitation of the judge's office in the advertising of published writings. Proper activities identified in the ABA Commentary include serving as a reference or writing a letter of recommendation based on personal knowledge, and supplying names and responding to official inquiries regarding judicial appointments. In particular, the ABA Commentary notes, it would be improper for a judge voluntarily to supply information to a probation officer or sentencing judge, and Canon 2B specifically forbids formal testimony as a character witness because of the impact of the office and the effect on lawyers involved. A judge may, however, engage in such activities when formally requested or summoned, though the judge should ordinarily discourage a party from summoning the judge as a character witness.

The Supreme Judicial Court found violations of the similar provisions of Canon 2B of the 1974 Code in two decided cases. Matter of Ross, supra, 428 A.2d at 864-65 (causing traffic infraction complaints against personal acquaintances to be filed); Matter of Cox, supra, 532 A.2d at 1019 (angry conversation with police officer concerning traffic violation by judge's son).

The prohibition of Canon 2C against membership in an organization that practices unlawful discrimination, like the comparable prohibition of ABA Model Code (1990), Section 2C, against "invidious" discrimination, is based on the premise that such membership "gives rise to perceptions that the judge's impartiality is impaired" when dealing with individuals from a class that has been discriminated against. Cf. ABA Model Code (1990), Commentary to Section 2C. Discrimination is "unlawful" for purposes of Canon 2C when it is of a type that is prohibited by applicable state or federal law. A judge may not belong to an organization that practices such discrimination whether or not the specific activities of that organization have been formally challenged or authoritatively determined to be unlawful.

An organization located in Maine is subject to the provisions of the Maine Human Rights Act, 5 M.R.S.A, §§ 4551 et seq. Under that Act, it is unlawful, with certain exceptions,

(1) For any employer to discriminate against an employee or an applicant for employment on the basis of race, color, sex, physical or mental disability, religion, age, ancestry or national origin, or for assertion of a worker's compensation claim or reporting or refusing to engage in unlawful acts, except when the characteristic is a bona fide occupational qualification,. 5 M.R.S.A. § 4572(1)(A).

(2) For a labor organization to discriminate against an applicant for membership or a member on the same grounds. Id. § 4572(1)(B).

(3) For any person to discriminate in the sale, rental, financing, or other provision of residential housing on the basis of race or color, sex, physical or mental disability, religion, ancestry or national origin, familial status, or to discriminate in renting against recipients of public assistance. Id. § 4582.

(4) For any person to discriminate in allowing access to places of public accommodation on the same grounds. Id. § 4592. A "place of public accommodation" is a place which offers goods, facilities or services to, or accepts patronage from, the general public, including golf and country clubs. Id. § 4553(8). (The United States Supreme Court has upheld against First Amendment and Equal Protection challenges the application of similar legislation in other jurisdictions to social and business organizations. See New York State Club Ass'n Inc., v. City of New York, 487 U.S. 1 (1988); Board of Directors of Rotary International v. Rotary Club of Duarte, 481 U.S. 537 (1987); Roberts v. United States Jaycees, 468 U.S. 609 (1984). In Maine Human Rights Commission v. Le Club Calumet, 609 A.2d 285 (Me. 1992), the Law Court held that a Franco-American social club did not discriminate under 5 M.R.S.A. § 4592 by excluding Franco-American women from membership and exclusive members' functions where the club's public functions were open to women and there was no showing that membership gave members any social or business advantage.

Note also that 17 M.R.S.A. § 1301-A prohibits any individual or entity holding a state or local liquor, food, or service license, or any corporation established or authorized to do business in Maine, from withholding membership, facilities, or services from any person on account of race, religion, or national origin, unless the organization is religious or ethnic in character. The Act was found constitutional as applied to an organization whose national organization restricted local membership to whites in B.P.O.E. Lodge No. 2043 of Brunswick v. Ingraham, 297 A.2d 607 (Me. 1972), stay granted 410 U.S. 903, appeal dismissed 411 U.S. 924, reh. denied 412 U.S. 913 (1973).)

(5) For any creditor to discriminate in extending credit on the basis of age, race, color, sex, marital status, ancestry, religion, or national origin. Id. § 4596.

(6) For any educational institution to discriminate in the provision of programs or admission on the basis of sex, physical or mental disability, or national origin or race. Id. § 4602.

Maine organizations may also be subject to the provisions of local ordinances that render various forms of discrimination unlawful.

Organizations located or active in another state may also be engaged in activities or practices that are "unlawful" under the anti-discrimination provisions of that state's law.

Organizations, whether located in Maine or another state, are also subject to such federal enactments as the basic Civil Rights Acts of 1870-1871, 42 U.S.C. § 1981 et seq.; the public accommodations provisions of the Civil Rights Act of 1964, 42 U.S.C. § 2000a; Title VI of the 1964 Civil Rights Act, 42 U.S.C. § 2000d, barring discrimination in programs or activities receiving federal financial assistance; Title IX of the 1972 Education Amendments Act, 20 U.S.C. § 1681, prohibiting sex discrimination in educational programs; Title VII of the 1964 Civil Rights Act, as amended, 42 U.S.C. § 2000e, barring employment discrimination; the Fair Housing Act of 1968, 42 U.S.C. § 3601 et seq.; and the Americans with Disabilities Act of 1990, 42 U.S.C. § 12101-122213.

Under 42 U.S.C. § 1983, a civil remedy is provided for deprivation of any Constitutional right, including that to equal protection, by any person acting under color of state law. Organizations have been found to be acting "under color of law" when relying on public financing or using public facilities, but it has been held that the mere fact of state licensing or regulation does not constitute "color of law." See Moose Lodge v. Irvis, 407 U.S. 163 (1972); 1 C. Antieau, Federal Civil Rights Acts--Civil Practice §§ 82-83, 85-87 (2d edn. 1980; Supp., G. Bair, 1992).

The other federal anti-discrimination legislation cited above generally bars discrimination on the basis of race, color, religion, or national origin. Title VII and the Fair Housing act

additionally bar discrimination on the basis of sex, and Title IX is confined to that ground. The Americans with Disabilities Act bars discrimination on the ground of physical or mental disability in employment, public services, and public accommodations and services provided by private entities. The federal legislation generally applies only to organizations whose activities affect interstate commerce or are conducted under color of state law or receive federal financial assistance. Many of the provisions contain express exceptions for private clubs or religious organizations. See, e.g., 20 U.S.C. § 1681; 42 U.S.C. § 2000a(e); id. § 3607; id. § 2000e(b); id. § 12187. The definition of "private" is generally cast in terms of selectivity of membership, control by the membership, and absence of general availability of facilities to the public. See 1 C. Antieau, supra, §§ 302-05, 336; 2 id. § 379.

The determination whether a particular exclusionary practice is "unlawful discrimination" must be made by the individual judge in the first instance. The question of what is "unlawful" will in many cases be clear in light of the purpose and history of the applicable law. In other cases, the question may turn on the interpretation of statutory language that has not previously been applied in similar circumstances. In such cases, the judge should analyze the statute and any applicable authority in light of the criteria of reasonableness and common sense set forth in the Preamble to the Code. A judge who remains in doubt may obtain an interpretive opinion from the Judicial Ethics

Committee, or may observe the familiar principle that if there is a question it should be resolved in favor of preserving the appearance of impartiality.

The second sentence of Canon 2C allows a judge to continue membership in a discriminatory organization for up to a year in order to give the organization the opportunity to change its ways. The period runs from the effective date of the Code or the date that a judge is sworn in, if the judge knows of the discrimination on that date. Otherwise, the year runs from the time at which the judge "learns" of the unlawful discrimination. Thus, a judge may in good faith be ignorant that an organization practices unlawful discrimination, either because the discriminatory practice is not reasonably evident or because it could reasonably be argued that the practice is not unlawful. In such a case, the judge is not in violation of the Code until a year from the time when the judge has actual knowledge either of the existence of the practice or of an authoritative determination that discrimination of the type practiced is unlawful.

Judges should also note that other provisions of the Code may apply to activities involving unlawful discrimination. For example, public manifestation of knowing approval of unlawfully discriminatory practices, as by scheduling a meeting at, or regularly using, a club that the judge knows practices unlawful discrimination, would violate Canon 2 and 2A. Such a practice would give the appearance of impropriety by diminishing public

confidence in the impartiality and integrity of the judiciary. Cf. ABA Model Code (1990), Commentary to Section 2C.

Textual Note

Canon 2 adopts ABA Model Code (1990), Canon 2 and Sections 2A-2C, with variations appropriate to Maine. The principal change from the 1974 Maine Code is the addition of Canon 2C. Canons 2A and 2B are identical to the provisions of ABA Model Code (1990), Sections 2A, 2B. There are no substantial changes from Canon 2A of the 1974 Maine Code. Canon 2B departs from Canon 2B of the 1974 Maine Code in adding political relationships to those by which a judge must not be influenced and in including the judge's own private interests among those which the judge may not seek to benefit through the prestige of the judicial office. See ABA Model Code (1990), Committee Note to Section 2B.

Canon 2C differs in a number of respects from ABA Model Code (1990), Section 2C. There is no comparable provision in ABA Code (1972) or the 1974 Maine Code, although similar language was added to the Commentary of ABA Code (1972), Canon 2, by action of the House of Delegates in 1984. In the interests of greater clarity and specificity, "unlawful discrimination" has been substituted for the words, "invidious discrimination on the basis of race, sex, religion or national origin," found in ABA Model Code (1990), Section 2C. The second sentence of Canon 2C incorporates in the Maine Code the substance of the final paragraph of the Commentary to ABA Model Code (1990), Section 2C.

Advisory Committee's Note to Canon 3

Commentary

Canon 3 governs judges in the performance of their official duties--whether in an adjudicative or administrative role. The Canon also sets forth a judge's responsibilities for the discipline of other judges and of lawyers and provides standards and procedures for judicial disqualification for interest.

Canon 3A emphasizes that the judge's official responsibilities have the first claim on the judge's time and supersede any personal or private interest.

Canon 3B covers a judge's adjudicative responsibilities. Canon 3B(1) is intended "to emphasize the judicial duty to sit and to minimize potential abuse of the disqualification alternative" by making clear "that only bona fide disqualification will remove the obligation to hear and decide a matter." ABA Model Code (1990), Committee Note to Section 3B(1). A judge who has self-disqualified under Canon 3E(1) without stating the grounds, as permitted by that subsection, would have to offer the basis for self-disqualification to show that the disqualification was "required" if a judicial conduct complaint were brought alleging a violation of Canon 3B(1). The provision also makes clear that a judge should not heed a motion for disqualification that is frivolous. See State v. Aubut, 261 A.2d 48, 51 (Me. 1970).

Canon 3B(2) requires a judge both to observe the law and to be professionally competent. In Matter of Ross, 428 A.2d 858

(Me. 1981), the Supreme Judicial Court found violations of the identical provision of Maine Code (1974), Canon 3A(1), when "the respondent willfully disregarded the requirements of the law" by imprisoning a defendant for nonpayment of a civil forfeiture. In the same case, the Court found additional violations of former Canon 3A(1) where the judge had caused traffic infraction complaints against personal acquaintances to be "filed," personally lecturing the defendants instead of trying them, and had continued two OUI cases against an individual for six months, one before sentencing, the other without hearing, then entered judgments of not guilty in both. The Court also cited the judge's oath under Article IX, § 1, of the Maine Constitution "to administer the law, not his personal philosophy." Id. at 865.

In Matter of Benoit, 487 A.2d 1158 (Me. 1985), the Court established the standard of the "reasonably prudent and competent judge." Conduct violates former Canon 3A(1) if such a judge "would consider that conduct obviously and seriously wrong in all the circumstances." Id. at 1163. Applying this standard, the Court found that incarceration and imposition of public service obligations in civil OUI cases and pretrial detention of an unrepresented juvenile without hearing were violations of the Canon because there was no legal authority or the actions were plainly contrary to existing law. Incarceration of a civil debtor for nonpayment under a payment order and denials of stays of sentence pending appeal were found to be errors of law but not Code violations, where the law was unclear or unsettled. Id. at

1164-70. See also Matter of Cox, 553 A.2d 1255 (Me. 1989) (judge's involvement in plea negotiations contrary to explicit provision of M.R. Cr. P. 11(e) violated former Canon 3A(1)).

Under Canon 3B(3), a judge is to "require" order and decorum in court. "Require" as used in this and following subsections is defined in Part II, Section 3 O, as stating "a rule of reason" that "a judge is to exercise reasonable direction and control over the conduct of . . . persons while they are subject to the judge's direction and control." The use of "while" in Part II, Section 3 O, as well as in Canon 3B(3) and other provisions, reflects the fact that many court personnel have functions outside the courtroom in which they are not accountable to either a resident or a sitting judge.

Canon 3B(4) sets a standard of patience, dignity, and courtesy in judicial proceedings that is intended to be consistent "with the duty to dispose promptly of the business of the court" under Canon 3B(8). The standard is also intended to make clear that a judge is to "refrain from speech, gestures or other conduct that could reasonably be perceived as sexual harassment and [should] require the same standard of conduct of others [while] subject to the judge's direction and control." ABA Model Code (1990), Commentary to Section 3B(4). The use of "should" in the second clause makes clear that a judge cannot be disciplined for failure to control the conduct of others in the court room over whom they may lack full supervisory authority.

In Matter of Kellam, 503 A.2d 1308 (Me. 1986), finding that a pattern of more than 40 separate instances of rude and discourteous behavior to lay persons in court warranted discipline, the Court declined to apply the "reasonably prudent and competent judge" standard of Matter of Benoit, supra, to the identical provisions of Maine Code (1974), Canon 3A(3). That standard, while appropriate for the evaluation of professional competence, was not required for review of "courtroom courtesy . . . a duty owed to the public." Instead the standard would be that of "the ordinary, reasonable person." Matter of Kellam, supra, at 1311. See also Matter of Ross, supra (discipline for "abusive, intemperate and vulgar language" directed at parties in court); Matter of Cox, 532 A.2d 1017 (Me. 1987) (discipline for "impatient, undignified, and discourteous" treatment of police officer in chambers); but see Matter of Hart, 577 A.2d 351 (Me. 1990) (no violation in single episode where judge in hearing with attorney, "while appearing at times strained, did not raise his voice or use undignified language").

Canons 3B(5) and (6) are intended "to emphasize the requirements of impartial decision-making and the appearance of fairness in the courtroom." ABA Model Code (1990), Committee Note to Sections 3B(5), (6). The Commentary to ABA Model Code (1990), Section 3B(5), emphasizes that the purpose is to assure impartiality and fairness in the performance of judicial duties. Manifestation of bias may impair "the fairness of the proceeding and bring "the judiciary into disrepute." A judge "must be alert

to avoid behavior that may be perceived as prejudicial." The provision includes "[f]acial expression and body language, in addition to oral communication," all of which can convey the appearance of bias "to parties or lawyers . . ., jurors, the media and others." Id. As in Canon 3B(4), the duty to control the conduct of others is aspirational, rather than mandatory

Canon 3B(6) is also aspirational in form. Judges "should require" lawyers to observe the standards imposed on judges and court personnel by Canon 3B(5). The provision is not mandatory, because judges have no line supervisory authority over lawyers and can control lawyers' behavior only through the drastic sanctions of contempt or professional discipline. This section imposes no obligation upon judges to intervene in the exercise of peremptory challenges in the ordinary case. The decisions of the United States Supreme Court in Georgia v. McCollum, ____ U.S. ____, 112 S.Ct. 2348 (1992); Edmonson v. Leesville Concrete Co., 500 U.S. ____, 111 S.Ct. 2077 (1991); and Batson v. Kentucky, 476 U.S. 79 (1986), prohibit discriminatory use of peremptory challenges to exclude jurors solely on account of their race. If the objecting party makes a prima facie showing that the challenge was based on race, the challenging party must offer a racially neutral explanation for the challenge. In light of the burdens placed upon the objecting party by these cases, the judge's only obligation is to follow the procedure there outlined. In the absence of objection, a peremptory challenge should be presumed to have been made without discriminatory

intent as an act of "legitimate advocacy" permitted by the second sentence of section (6), unless other circumstances, such as the lawyer's demeanor in the voir dire or the absence of any apparent tactical reason for the challenge, manifest actual bias or prejudice.

Canon 3B(7) requires judges to assure that all persons with standing who have followed appropriate procedural avenues are heard in a proceeding. The Supreme Judicial Court has found violations of the virtually identical provision of former Canon 3A(4) in a number of cases. See Matter of Ross, supra, 428 A.2d at 861-63 (increased penalty as punishment for contempt without hearing; imprisonment for contempt after telephone conversation in lieu of hearing); Matter of Kellam, supra, 503 A.2d at 1310-11 (inopportune recesses and interruptions of witnesses "interfered with litigants' rights to a full and fair hearing"); Matter of Cox, supra, 553 A.2d at 1257-58 (participation by judge in specific plea negotiations deprives both defendant and prosecutor of full hearing); but see Matter of Barrett, 512 A.2d 1030, 1032 n. 2 (Me. 1986) (trial court delay in rendering decision, which delayed or prevented appellate review, did not violate former Canon 3A(4)).

The bulk of Canon 3B(7) is devoted to the corollary to the right to full hearing that ex parte communications, whether from a party or someone outside the proceeding, are prohibited with certain specific exceptions. As the ABA Model Code (1990), Commentary to Section 3B(7), notes, "In general, however, a judge

must discourage ex parte communication and allow it only if all the criteria stated in Section 3B(7) are met." The judge's responsibility extends to making "reasonable efforts, including the provision of appropriate supervision, to ensure that Section 3B(7) is not violated through law clerks or other personnel on the judge's staff." Id. In Matter of Ross, supra, the Court found a violation of the ex parte hearing prohibition of former Canon 3A(4) when a judge caused a speeding complaint to be filed after a conversation with defendant's father, a personal acquaintance.

Canon 3B(7)(a) specifically describes particular non-substantive ex parte communications that are permitted for administrative or emergency purposes and the limits on them. Paragraph (b) permits consultation with experts on the applicable law, with appropriate notification to the parties and opportunity for them to respond. The Commentary to ABA Model Code (1990), Section 3B(7), suggests that a desirable means of securing such assistance is by requesting the filing of an amicus brief. The Commentary also makes clear that independent investigation must not extend to factual questions and that all communications under either paragraph (a) or (b) must be disclosed. Id. Paragraph (c) provides specific authorization for consultation with other judges, specially appointed individuals such as special masters, or court personnel. Ex parte communications with referees appointed under Rule 53 or court-appointed mediators should be confined to communications permitted under paragraph (a) in order

to assure the integrity of those processes.

Canon 3B(7)(d), providing that judges may engage in ex parte discussions for the purpose of mediation or settlement, reflects the growing emphasis on resolving disputes short of trial and approves active participation by a judge in such efforts within the context of a pending matter. Cf. discussion of Canons 3B(8) and 4F below. Because of the danger that ex parte contacts pursuant to this paragraph may be misunderstood, particularly by the parties, a judge should use extreme care to make certain that the parties' consent is based on full understanding of the nature and purpose of the process and the judge's role. The parties may condition their consent on the understanding that if the settlement or mediation efforts fail, the judge will not act in subsequent phases of the case.

Canon 3B(7)(e) permits such ex parte communications as motions for temporary restraining orders under M.R. Civ. P. 65 or ex parte attachments under M.R. Civ. P. 4A and 4B.

Canon 3B(8) is intended to assure that the interests in fairness, efficiency and economy are properly balanced." ABA Model Code (1990), Committee Note to Section 3B(8). In attaining the proper balance, "a judge must demonstrate due regard for the rights of the parties to be heard and to have issues resolved without unnecessary cost or delay. . . . A judge should encourage and seek to facilitate settlement, but parties should not feel coerced into surrendering the right to have their controversy resolved by the courts." ABA Model Code (1990),

Commentary to Section 3B(8). Promptness requires diligence, punctuality, and expeditiousness on the part of the judge and that the judge "insist that court officials, litigants and their lawyers cooperate with the judge to that end." Id. In Matter of Barrett, supra, 512 A.2d at 1034, the Court found violations of the virtually identical provisions of former Canon 3A(5), where a probate judge deliberately delayed decision in two contested matters "out of a belief that he knew best what would advance harmony among the litigating parties before his court," thus administering "his own personal brand of justice." In a third matter, a six-month delay without more, while not condoned by the Court, was held not to be a violation standing alone. Id.

Canon 3B(9) prohibits all public comment about pending or impending proceedings but makes no express provision concerning nonpublic comment. The difficulty of assessing the impact of public comment on an unknown audience justifies the absolute bar. The prohibition of nonpublic comment would set an unduly broad and vague standard for private speech. Note, however, that nonpublic communication substantially affecting fairness would violate other provisions of the Canons. See Canons 2A; 3B(4), (5), (7), (10), (11); 4A. The last sentence of subsection (9) permits a judge to comment on proceedings in which the judge is a litigant in a personal capacity. In cases such as a writ of mandamus where the judge is a litigant in an official capacity however, the judge must not comment publicly. In Matter of Benoit, 523 A.2d 1381, 1383 (Me. 1987), the Court found it

"difficult to conceive of a more egregious violation of the plain proscription of" the virtually identical provisions of former Canon 3A(6). A District Court judge had written letters to the editor critical of Superior Court decisions vacating sentences that he had handed down. The letters were published while the cases were pending before him for resentencing.

Canon 3B(10) is intended to protect jurors from improper influence by judges and "to preserve the appearance of fairness in judicial decision-making." ABA Model Code (1990), Committee Note to Section 3B(10). The provision reflects the concern, found also in ABA Standards of Juror Use and Management, Standard 18(a), that commendation or criticism "may imply a judicial expectation in future cases and may impair a juror's ability to be fair and impartial in a subsequent case." ABA Model Code (1990), Commentary to Section 3B(10) and Committee Note to Commentary.

Canon 3B(11) is intended "to protect against inappropriate use by judges of nonpublic information acquired in a judicial capacity." ABA Model Code (1990), Committee Note to Section 3B(11). "Nonpublic information" is defined in Part II, Section 3M, as "information that is made confidential or is impounded by law or court order."

Canon 3C covers a judge's administrative responsibilities. Canon 3C(1) is intended "to prohibit a judge from manifesting bias or prejudice in the performance of administrative duties and to encourage, rather than to require, the more practicable duty

of cooperation rather than facilitation" in dealings with other court personnel. ABA Model Code (1990), Committee Note to Section 3C(1). Thus, "should," rather than "shall," is used in the second sentence. See also Canons 2C; 3B(5), (6). Canon 3C(2) requires a judge to hold court personnel to the highest standards in performing their administrative duties and particularly to assure that they avoid bias and prejudice in their administrative actions. See ABA Model Code (1990), Committee Note to Section 3C(2). As to the use of "while," see discussion of Canon 3B(4) above. Canon 3C(3) establishes an obligation on the part of the Chief Justices of the Supreme Judicial and Superior courts and the Chief Judge of the District Court "to require the prompt disposition of court business" and the appropriate performance of other duties by the judges of their courts. See ABA Model Code (1990), Committee Note to Section 3C(3).

Canon 3C(4) is intended to permit "appointment of a person well acquainted with the judge who is not a close relative . . . if the appointment itself is necessary and the person objectively merits the appointment." ABA Model Code (1990), Committee Note to Section 3C(4). Appointments covered by this section include assignment of counsel, appointments of officers such as referees and masters, and employment of support personnel. Consent of the parties does not relieve a judge of the obligations of this section concerning either appointments or compensation. Id., Commentary to Section 3C(4).

Canon 3D covers a judge's responsibilities to the disciplinary systems governing other judges and lawyers. Canon 3D(1) establishes a two-tiered approach to judicial misconduct. If a judge "receives information that there is "a substantial likelihood" of a violation of the Code of Judicial Conduct, the subsection merely states that the judge "should take appropriate action," which could include direct communication with the other judge, referral to a substance abuse treatment agency, or filing a complaint with the Committee on Judicial Responsibility and Disability. See ABA Model Code (1990), Committee Note and Commentary to Section 3D. If, however, the judge has knowledge of a Code violation by another judge "that raises a substantial question as to the other judge's fitness for office," the judge is required to report the violation to the Committee or to "other appropriate authority," such as the Board of Overseers of the Bar if the conduct also violates the Maine Bar Rules.

The purpose of the two-tiered approach is to encourage remediation and rehabilitation by not requiring a formal disciplinary complaint in situations where the facts are uncertain or the violation is not serious. Where the violation is certain and substantial, however, a disciplinary complaint must be made. Thus, the second tier is not reached unless the judge has actual knowledge (see definition of "knowledge," Part II, Section 3J) of a violation, as opposed to "information" from other sources indicating that a violation is substantially likely.

Canon 3D(2) applies the same approach to lawyer misconduct. If the judge has information indicating that a violation of the Maine Bar Rules is substantially likely, the judge has the same range of options as with a fellow judge, as well as the further possibility of imposing sanctions in the proceeding. If the judge has actual knowledge of a Code violation "that raises a substantial question as to the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects" (the language of the mandatory reporting requirement of M. Bar R. 3.2(e)(1)), the judge must report the violation to the Board of Overseers of the Bar, or, if appropriate, the disciplinary authorities of another jurisdiction. The words "or take other appropriate action" make clear that the obligation to file a disciplinary complaint does not preclude the imposition of sanctions in the proceeding.

Canon 3D(3) makes provision for judicial immunity from civil actions predicated on the exercise of the obligation to report professional misconduct. This provision is declarative of existing substantive law. See, e.g., Forrester v. White, 484 U.S. 219 (1988) (absolute immunity for judicial acts, such as acting to disbar a lawyer for contempt, but not for administrative acts, such as firing a court employee); see also Richards v. Ellis, 233 A.2d 37 (Me. 1967). The provision is not intended to confer immunity from judicial discipline proceedings for improper conduct under proposed Canon 3D, however, even though such proceedings may be deemed "civil" in nature.

Canon 3E establishes specific standards and procedures for

disqualification in situations where a judge's impartiality is or may be in question. The Canon is meant to apply at any time during a proceeding when potential grounds for disqualification become apparent to the judge or to the parties or their lawyers. In the context of this Canon, "proceeding" means an adjudicative proceeding. Under Canon 3C, a judge is bound to carry out administrative duties without bias or prejudice, but no formal procedure for disqualification in administrative matters is required because those duties are ordinarily carried out in an informal and nonadversarial setting.

Canon 3E(1) provides for self-disqualification on the judge's own motion whenever a judge believes that he or she cannot act impartially. This is a purely subjective test which the judge should apply based on his or her own understanding of personal feelings or attitudes or factual matters involved in the proceeding. The Court found a violation of the predecessor of this section, former Canon 3C(1), when a judge, far from disqualifying himself, caused speeding complaints to be filed in cases involving personal acquaintances. Matter of Ross, supra, at 864-65. Under Canon 3E(1), the judge is not required to state on the record the reasons for self-disqualification. As noted above in discussion of Canon 3B(1), however, a judge who self-disqualifies might have to state the grounds in response to a judicial conduct complaint under that subsection.

Canon 3E(2) embodies an objective test. Regardless of the judge's own belief about his or her ability to act impartially,

if the judge's impartiality might reasonably be questioned by others, the judge may self-disqualify on her or his own motion and must disqualify himself or herself on a motion to recuse brought by one of the parties. When the judge self-disqualifies on the judge's own motion, the grounds need not be stated, except as noted above with regard to Canon 3B(1). The same standard applies to self-disqualification and to a motion to recuse, because the judge may take a different view of the appearance of partiality when it has been presented on motion and argued by counsel. The judge, of course, remains free to deny the motion if the moving party fails to establish a reasonable basis for questioning impartiality. See Estate of Tingley, 610 A.2d 266 (Me. 1992) (probate judge had broad discretion to refuse to disqualify himself where nephew was board member of creditor with claim against estate).

Canon 3E(2) sets forth specific instances where impartiality might be questioned. The list is not intended to be exclusive. As stated in the Commentary to the comparable provision of the ABA Model Code (1990), Section 3E(1), "Under this rule, a judge is disqualified whenever the judge's impartiality might reasonably be questioned, regardless whether any of the specific rules in Section 3E(1) apply. For example, if a judge were in the process of negotiating for employment with a law firm, the judge would be disqualified from any matters in which that law firm appeared. . . ."

Canon 3E(2)(a) requires disqualification on the basis of

bias, prejudice, or personal knowledge of disputed facts. Although the text only specifies bias or prejudice against a party or lawyer, other situations, such as a judge's prejudice against a witness in a non-jury trial or extreme prejudice on the issues, could require disqualification under the non-exclusive terms of Canon 3E(2). When a party to a pending proceeding sues or files a disciplinary complaint against the judge, paragraph (a) does not require disqualification if the circumstances indicate that the suit or complaint has been brought solely as a tactic to obtain the judge's disqualification. Note that "personal knowledge" as used in paragraph (a) is not intended to include the kind of generalized knowledge that is the basis of judicial notice.

Canon 3E(2)(b) requires disqualification when the judge or a previous associate has been involved as a lawyer, or the judge is a material witness. Canon 3E(2)(c) requires disqualification when the judge or a family member has "an economic interest" in the controversy, or in a party, or has "any other more than de minimis interest" that could be substantially affected. The phrase "de minimis" is the key to this standard, because "economic interest" is defined in Part II, section 3E, as "ownership of a more than de minimis legal or equitable interest," or an active role in the affairs of a party. "De minimis" is defined in Part II, section 3D, as "an interest too trivial to raise reasonable question as to a judge's impartiality." The standard is consistent with prior Maine case

law holding that a pecuniary interest must be "direct, definite and capable of demonstration; not remote, uncertain, unsubstantial, speculative, or theoretic." Hughes v. Black, 156 Me. 69, 75.

Canon 3E(2)(d) requires disqualification when the judge, a spouse, "a person within the third degree of relationship to either of them," or such a relation's spouse is a party, officer, or lawyer of a party, or, to the judge's knowledge, has "a more than de minimis interest that could be substantially affected by the proceeding, or is likely to be a material witness." The definition of "third degree of relationship" incorporates the civil law system and includes great-grandparents, great-grandchildren, nephews and nieces, but not first cousins. See Part II, Section 3P, and Advisory Committee's Note. By statute a relationship in the sixth degree according to the civil law, which includes second cousins, is a ground for disqualification for interest. 1 M.R.S.A. § 71(6). The third degree is retained in the Code, however, despite a dictum in Hughes v. Black, supra, 156 Me. at 77, finding the statute applicable. The purpose of the Code is to limit the number of unnecessary mandatory disqualifications. The Code like the statute does incorporate the concept of affinity as well as kinship. Of course, a judge having any kind of significant personal or economic connection with a relative beyond the third degree should self-disqualify under Canon 3E(1) or (2).

Under Canon 3E(3), a judge who does not self-disqualify

under Canon 3E(1) or (2) is required to disclose to the parties any factual connection to the proceeding that is relevant to a determination of impartiality. The purpose of the provision is to assure that parties trying to determine whether to seek recusal are aware of relevant information in more specific detail than is provided in the general judicial financial disclosures required under Canon 6. The relevance standard for disclosure is lower than that for disqualification or recusal. The test of relevance is that of M.R. Ev. 401: A fact that must be disclosed is one "having any tendency" to make the fact of impartiality "more probable or less probable than it would be without the" fact.

Canon 3E(4) sets forth a "rule of necessity" that may be a basis for a judge's refusal to disqualify himself or herself even in the specific circumstances set forth in Canon 3E(2). Examples include situations in which, "a judge might be required to participate in judicial review of a judicial salary statute, or might be the only judge available in a matter requiring immediate judicial action, such as a hearing on probable cause or a temporary restraining order." ABA Model Code (1990), Commentary to Section 3E(1). The rule adds the further requirement that disqualification would result in a failure of justice--that is, an inability of the parties to obtain any judicial determination of the issues which they have raised. If the rule of necessity is relied upon, the judge must disclose the grounds upon which disqualification might otherwise be appropriate and must step

down at the earliest opportunity. The possibility of a rule of necessity has been recognized by the Law Court. See Cunningham v. Long, 125 Me. 494, 497, 135 A. 198 (1926).

Textual Note

Canon 3 is based on ABA Model Code (1990), Canon 3 and Sections 3A-3F, with modifications appropriate for Maine. The new provisions make a number of changes in Canon 3 of the 1974 Maine Code.

Canon 3A is identical to ABA Model Code (1990), Section 3A, with a minor editorial change. It carries forward the unnumbered introductory paragraph of Maine Code (1974), Canon 3, redesignated as section A and entitled "Judicial Duties in General" for structural purposes, but with no substantial change. See ABA Model Code 1990, Committee Note to Section 3A.

Canon 3B is identical to ABA Model Code (1990), Section 3B, with minor variations noted below. Significant additions to its predecessor, Maine Code (1974), Canon 3A, are also noted. Canon 3B(1) is new. Canon 3B(2) carries forward Maine Code (1974), Canon 3A(1). In Canon 3B(3), carrying forward Maine Code (1974), Canon 3A(2), "require" has been substituted for "maintain" for greater clarity. See ABA Model Code (1990), Committee Note to Section 3B(3).

In Canon 3B(4), the ABA Model has been modified by retaining the word "while," found in the final phrase of Maine Code (1974), Canon 3A(3). This word did not appear in ABA Code (1972) but was

inserted in Canons 3A(3), (6), and B(2) of the 1974 Maine Code to indicate that at the time of promulgation of the Code some Maine judges had no continuing administrative control. See Maine Code (1974), Committee Notes to Canons 3(A)(3), (6); B(2), 8 Me. Bar Bull., No. 3, at 31. In the second clause, "should" has been substituted for "shall" found in ABA Model Code (1990), Section 3B(4).

Canons 3B(5) and (6) are new. Both subsections depart from ABA Model Code (1990), Section 3B, (5), (6), with the substitution of "should" for "shall" in the second clause of subsection (5) and in the first line of subsection (6).

Canon 3B(7), which adopts ABA Model Code (1990), Section 3B(7), with minor editorial changes, substantially tightens Maine Code (1974), Canon 3A(4). In the former Maine Code only ex parte communications "intended to influence [a judge's] judicial action" were prohibited, a departure from the stricter rule of ABA Code (1972), Canon 3A(4), embodied in Canon 3B(7). The Maine version was based on the view of the Maine Committee, 8 Me. Bar Bull., No. 3, at 31, "that the more restrictive provisions of the ABA Code were not practical in many areas of the state and that the principal concern in this jurisdiction is that type of ex parte communication described in the amendment"--a premise rendered invalid by advances in technology. Canon 3B(7) also makes certain changes in the prior language for clarity and adds language prohibiting a judge from initiating or considering ex parte communications and from considering other communications

not otherwise authorized, with certain exceptions. See ABA Model Code (1990), Committee Note to Section 3B(7). The exceptions, found in Canons 3B(7)(a)-(e), are new.

Paragraph (b) is a sentence from ABA Code (1972), Canon 3A(4), not found in the comparable provision of Maine Code (1974). Paragraph (d) was added to ABA Model Code (1990) by amendment in the House of Delegates. Paragraph (e) carries forward the sense of the phrase "except as authorized by law" in Maine Code (1974), Canon 3A(4).

Canon 3B(8) carries forward Maine Code (1974), Canon 3A(5), in revised form.

Canon 3B(9) retains the language of Maine Code (1974), Canon 3A(6), with the addition of the final sentence from ABA Model Code, Canon 3B(9). In other respects, the subsection differs significantly from the ABA model, which prohibits only "public comment that might reasonably be expected to affect" the outcome or fairness of a "pending or impending" proceeding but also prohibits "nonpublic comment that might substantially interfere with a fair trial or hearing."

Canons 3B(10) and (11) are new. The substance of Canon 3B(11) is similar to that of Maine Code (1974), Canon 5C(6), which is deleted.

Canon 3C is virtually identical to ABA Model Code (1990), Section 3C. It carries forward most of Maine Code (1974), Canon 3B, with revisions noted below. Canons 3C(1) and (2) carry forward Maine Code (1974), Canons 3B(1), (2), by adding

references to avoidance of bias and prejudice. Canon 3C(3) is new. Maine Code (1974), Canon 3B(3) is replaced by new Canon 3D. Canon 3C(4) carries forward Maine Code (1974), Canon 3B(4), with the addition of the express requirement of impartiality.

Canon 3D is new. It replaces and elaborates on Maine Code (1974), Canon 3B(3). The section is identical to ABA Model Code (1990), Section 3D, except that appropriate references to Maine disciplinary rules and authorities have been incorporated and the words "and may take other appropriate action" have been added at the end of Canon 3D(2).

Proposed Canon 3E combines provisions of ABA Model Code (1990), Section 3E, with provisions intended to clarify and develop the original intent of Maine Code (1974), Canon 3C.

Canon 3C of the 1974 Maine Code did not incorporate the detailed provisions of ABA Code (1972), Canon 3C, defining specific instances in which a judge should disqualify himself or herself because the judge's "impartiality might reasonably be questioned." The 1974 Maine Code incorporated the ABA standard without the specific instances and added a provision for self-disqualification when the judge "has reason to believe that" the judge "could not act with complete impartiality." Additionally, under Maine Code (1974), Canon 3C(2), the judge must "promptly inform the parties . . . concerning any matter which might reasonably cause" the judge's "impartiality to be questioned." The provisions of ABA Code (1972), Canon 3D, for disclosure followed by remittal of disqualification on agreement of the

parties were not adopted. The Maine provisions were intended to limit disqualification because substitute judges were deemed rarely readily available. Further proceedings upon disclosure or disqualification were the responsibility of counsel. See Maine Code (1974), Committee Note to Canon 3C, 8 Me. Bar Bull., No. 3, at 31.

Canon 3E(1) retains the test of Maine Code (1974), Canon 3C(1) for self-disqualification, with the addition of the final sentence. Canon 3E(2) carries forward the objective test of Maine Code (1974), Canon 3C(1), for either self-disqualification or disqualification on motion to recuse. The framework of self-disqualification and recusal is unique to Maine but paragraphs (a)-(e), new to Maine, are taken without change from ABA Model Code (1990), Section 3E(1), which was derived from ABA Code (1972), Canon 3C(1). The "de minimis" standard of paragraph (c) is substituted for the requirement of ABA Code (1972), Canons 3C(1)(c), (3)(c), that disqualification result from "ownership of a legal or equitable interest, however small."

Canon 3E(3) is unique to the Maine Code. It substitutes a requirement of disclosure of relevant information for the duty to inform the parties of a potentially disqualifying matter in Maine Code (1974), Canon 3C(2). Canon 3E(4), also unique to Maine, is adopted from ABA Model Code (1990), Commentary to Section 3E(1).

ABA Model Code (1990), Section 3E(2), requiring a judge to keep informed about the judge's own interests and to make a reasonable effort to keep informed about the interests of the

judge's spouse and minor children has not been adopted. The subsection is superfluous in light of the extensive disclosure requirements of proposed Canon 6.

ABA Model Code (1990), Section 3F, carrying forward the provisions of ABA Code (1972), Canon 3D, for remittal of disqualification, also has not been adopted. The parties should not be able to override the judge's considered determination that he or she cannot be impartial or that the appearance of impartiality could reasonably be questioned. Many of the concerns embraced in Section 3F are addressed in other ways by Canons 3E(3) and (4).

Advisory Committee's Note to Canon 4

Commentary

Canon 4 governs all activities of judges conducted in other than a judicial capacity, including personal and private activity. Additional specific provisions covering political activity are set forth in Canon 5. Everything that a judge does is, of course, subject to the overriding provisions of Canon 2A that a judge "respect and comply with the law and . . . act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary."

Canon 4A subjects all extrajudicial activities to three general prohibitions designed to protect the impartiality and dignity of the judicial office and the ability of judges to execute their judicial duties effectively. The purpose, however,

is to encourage appropriate extrajudicial activity, rather than to forbid all such activity. "Complete separation of a judge from extrajudicial activities is neither possible nor wise; a judge should not become isolated from the community in which the judge lives." ABA Model Code (1990), Commentary to Section 4A. Moreover, the Canon is intended to give the maximum scope to personal freedom that is consistent with its overriding purposes. Thus, in subsection (1), the phrase "reasonable doubt" is intended "to extend to judges reasonable freedom to engage in extrajudicial activities." The phrase "demean the judicial office" in subsection (2) connotes "injurious conduct, not merely undignified conduct, as the latter might in some cases not be proscribed." See ABA Model Code (1990), Committee Note to Section 4A.

In determining what private activity may invoke the prohibitions of Canon 4A, the provisions of Canons 2 and 3B and C may be relevant. Thus, as ABA Model Code (1990), Commentary to Section 4A, states, "Expressions of bias or prejudice by a judge, even outside the judge's judicial activities, may cast reasonable doubt on the judge's capacity to act impartially as a judge. Expressions which may do so include jokes or other remarks demeaning individuals on the basis of their race, sex, religion, national origin, disability, age, sexual orientation or socioeconomic status."

Canon 4B permits a judge to participate in a full range of both law-related and other "avocational" activities, "subject to

the requirements of this Code." Those requirements include the general standards of Canon 4A(1)-(3). The phrase, "subject to the requirements of this Code," is used here and elsewhere in Canon 4 in connection with extrajudicial activities "to remind judges that the use of permissive language in various Sections of the Code does not relieve a judge from other requirements of the Code that apply to specific conduct." ABA Model Code (1990), Commentary to Section 4B. Nevertheless, Canon 4B is intended to encourage judges to use their unique status and knowledge "to contribute to the improvement of the law, the legal system, and the administration of justice, including revision of substantive and procedural law and improvement of criminal and juvenile justice . . . either independently or through a bar association, judicial conference, or other organization dedicated to the improvement of the law," and including "efforts to promote the fair administration of justice, the independence of the judiciary and the integrity of the legal profession." Id. Compensation and expense reimbursement for activities permitted under Canon 4B may be provided, subject to the limitations of Canon 4H.

Canon 4C covers a judge's not-for-profit extrajudicial activities. Canon 4C(1) limits public appearances before governmental bodies or officers (other than courts) to law-related matters in which Canon 4B permits engagement or personal matters in which a judge may appear pro se. The latter exception could include expression of the judge's personal position on a political or social issue. All such pro se appearances must be

in connection with "activities . . . that are permitted elsewhere by this Code." ABA Model Code (1990), Committee Note to Section 4C(1). In any permitted appearance, a judge must observe the prohibitions of Canon 2B against improper influence. See ABA Model Code (1990), Commentary to Section 4C(1).

Canon 4C(2) limits service by judges in non-judicial governmental positions to those that are not prohibited by Article VI, Section 5, of the Maine Constitution and are not concerned with fact and policy issues in areas other than the law-related activities permitted by Canon 4B. The ceremonial positions permitted by the last sentence of the section do not involve fact or policy issues. Article VI, Section 5, provides that "No justice of the Supreme Judicial Court or any other court shall hold office under the United States or any other state, nor under this State, except as justice of the peace or as member of the Judicial Council." Presumably, an "office" is an elective or appointive position created by law at the national, state, or local level for which an oath is administered or a formal commission tendered. Judges may thus serve on less formally constituted public advisory or planning committees or other bodies that meet the other tests of the subsection, but in accepting such positions they should be mindful of the purposes of the provision to recognize "the demands on judicial resources created by crowded dockets and the need to protect the courts from involvement in extra-judicial matters that may prove to be controversial" and to prevent interference "with the

effectiveness and independence of the judiciary." ABA Model Code (1990), Commentary to Section 4C(2). Judicial service on governmental bodies with law-related purposes is further limited to those meeting the criteria of Canon 4C(3)(a) and is constrained by the provisions of Canon 4C(3)(b).

Canon 4C(3) permits and sets guidelines for service and membership by judges in law-related organizations or governmental agencies (not involving constitutionally prohibited offices) or other nonprofit organizations. Service with a nonprofit organization is permitted even if the organization serves the economic interests of its members. Thus, the subsection permits "legitimate service in nonprofit judicial organizations that may, for example, support increases in judicial compensation." ABA Model Code (1990), Committee Note to Section 4C(3). Note that positions held with a nonprofit enterprise must be reported in a judge's annual financial disclosure by virtue of a simultaneous change to Canon 6B(1)(h).

Activities under Canon 4C(3) are subject not only to the limitations prescribed in paragraphs (a) and (b) of the subsection, but to "the other requirements of this Code." See discussion under Canon 4B above. Thus, otherwise permissible service "on the board of a fraternal institution may be prohibited . . . by Sections 2C or 4A if the institution practices invidious discrimination or if service on the board otherwise casts reasonable doubt on the judge's capacity to act impartially as a judge." Similarly, Canon 4G would prohibit a

judge "from serving as a legal advisor to a civic or charitable organization." ABA Model Code (1990), Commentary to Section 4C(3).

Canon 4C(3)(a) prohibits service by a judge in a leadership or advisory role with an organization that is likely to come before the judge or frequently litigates in the judge's court or in a court subject to the appellate jurisdiction of the judge's court. The provision is necessary because of the increase in litigation by civic and charitable organizations. Since the Maine Superior and District courts are single courts of statewide jurisdiction, the effect of this provision is to bar service by a Superior or District court judge in any organization likely to litigate in the court of which the judge is a member, regardless of the county or district in which such litigation will occur. Judges must keep up to date on the activities of organizations to which they belong and be prepared to step down if the changing circumstances of an organization cause it to become involved in more frequent litigation. See ABA Model Code (1990), Commentary to Section 4C(3)(a).

Canon 4C(3)(b) establishes guidelines under which a judge as officer or member, "or otherwise," may be involved in the financial management, fund-raising, or membership solicitation activities of a nonprofit organization. The phrase "or otherwise" means that subparagraphs (b)(i)-(iii) apply in circumstances where the judge has no connection with the organization or agency except participation in a specific

activity or event.

Canon 4C(3)(b)(i) provides that a judge may participate in fund-raising planning and in investment decisions, because it is unrealistic to expect a trustee not to do so. See ABA Model Code (1990), Committee Note to Section 4C(3). Of course, in engaging in this and all other activity involving nonprofit organizations, a judge is subject to the general provisions of Canons 2A and 4A, as well as to the more specific prohibition of Canon 4D(1) against engaging in financial dealings that appear to exploit the judge's position or involve persons likely to come before the judge's court. A judge, on the other hand, may not actively and personally participate in most direct public or private fund-raising, because of "the danger that the person solicited will feel obligated to respond favorably to the solicitor if the solicitor is in a position of influence or control." ABA Model Code (1990), Commentary to Section 4C(3)(b). There is an express exception for solicitation of other judges not under the soliciting judge's authority, because there is "no danger of improper influence by the soliciting judge and because judicial organizations depend for their existence upon the solicitation of funds from their constituents." Id. Committee Note to Section 4C(3)(b).

Under Canon 4C(3)(b)(ii), a judge may endorse a grant application of an organization only if for an activity of the sort in which the judge may participate pursuant to Canon 4B.

Canon 4C(3)(b)(iii) prohibits the use of the prestige of

judicial office for either fundraising or membership solicitation. In general, membership solicitation activities are permitted so long as they are not in effect a form of fundraising prohibited by Canon 4C(b)(i) and are not a coercive use of the judicial office that violates subparagraph (iii). Thus, if fundraising is not the purpose, a judge may solicit non-judges for membership "if neither those persons nor persons affiliated with them are likely ever to appear before" the judge's court, and a judge who is an officer of a permitted organization "may send a general membership solicitation mailing over the judge's signature." ABA Model Code (1990), Commentary to Section 4C(b). Note also that "Use of an organization letterhead for fund-raising or membership solicitation does not violate Section 4C(3)(b) provided the letterhead lists only the judge's name and office or other position in the organization, and, if comparable designations are listed for other persons, the judge's judicial designation." Id. Subparagraph (iii) also requires a judge "to make reasonable efforts to ensure that the judge's staff, court officials and others subject to the judge's direction and control do not solicit funds on the judge's behalf for any purpose, charitable or otherwise." Id.

For guidance on a frequent question, Canon 4C(b)(3)(iii) also provides that a judge should not be speaker or guest of honor at a fundraising event of a nonprofit organization, whether or not the judge is an officer or member, though a judge may attend such an event. The provision is aspirational in form,

because a judge may not in every circumstance be able to ascertain the purpose of an event. If the judge knows that the primary purpose is fundraising or membership solicitation, however, the first sentence of subparagraph (iii) bars the appearance as a use of judicial prestige.

Canon 4D delineates the financial and business activities in which a judge may engage. Canon 4D(1) establishes a general prohibition against such activities that may exploit the judicial office or involve frequent or continuing relationships with lawyers and others who are likely to come before the judge or other judges on the judge's court. Consistent with the provisions of Canons 2B and 3E, "a judge should discourage members of the judge's family from engaging in dealings that would reasonably appear to exploit the judge's judicial position. This rule is necessary to avoid creating an appearance of exploitation of office or favoritism and to minimize the potential for disqualification." ABA Model Code 1990, Commentary to Section 4D(1). Note that a judge is required by Canon 6 to make annual disclosure of certain financial activities of family members. Business and financial activities in which a judge may engage are delineated in the remainder of Canon 4. All such activities are subject to the general and overriding prohibitions of Canons 1, 2, and 4A against activities that do not meet high standards of conduct, or involve impropriety or its appearance or the misuse of the office, or threaten the impartiality or dignity of the office or the performance of judicial duties. Id.

Canon 4D(2) permits a judge, subject to limits imposed by other Code provisions, to hold and manage personal and family investments, including real estate, whether solely or jointly owned. See ABA Model Code (1990), Commentary to Section 4D(2). Such activity may, by virtue of Canon 4D(3)(b), be conducted through "a business entity primarily engaged in investment" of the judge's financial resources. Unlike the comparable section of the ABA model, Maine Canon 4D(2) does not permit a judge to "engage in other remunerative activity." This omission is intended to make Canon 4D(2), like its predecessor, Maine Code (1974), Canon 5C(2), "considerably more restrictive concerning nonjudicial commercial activities" than the ABA model. Committee Note to Canon 5C(2), 8 Me. Bar Bull., No. 3, p. 1, 31 (1974). Thus, the only remunerative business and financial activities in which judges may engage are those specifically enumerated in Canons 4D(2)-(5) and 4E. The omission is not intended to preclude remuneration for noncommercial activity that is otherwise permitted, such as the activities covered in Canon 4B. See Canon 4H.

Canon 4D(3) prohibits general business activity in any capacity but allows judges to participate in personal and family businesses and investment activities, whether solely or jointly conducted. If the involvement of the judge in a business entity is for the purpose of holding or managing personal or family investments, the judge may serve in any normal role, such as officer, director, or managing or general partner. Canon

4D(3)(b); cf. Canon 4D(2), discussed above. Participation in personal and family businesses is allowed because of the difficulty in separating management of family investments, permitted by subsection (2), from limited personal and family business participation. It is important to note, however, that participation may be prohibited by Canon 4D(1) and other Code provisions, as "when for example, the business entity frequently appears before the judge's court or the participation requires significant time away from judicial duties. Similarly, a judge must avoid participating in a closely-held family business if the judge's participation would involve misuse of the prestige of judicial office." ABA Model Code (1990), Commentary to Section 4D(3).

Canon 4D(4) requires a judge to manage both personal and family investments and finances to minimize disqualification under Canon 3E. The subsection recognizes that a judge with fiduciary obligations permitted by proposed Canon 4E must respect those obligations in steps taken to comply with the general financial management regulations of the Code. See discussion of Canon 4E below.

Canon 4D(5) outlines the terms on which judges and family members may accept gifts, bequests, favors, and loans. The provisions concerning spouses and dependent children are intended "to deter, as much as reasonably possible, circumvention of the rule prohibiting gifts to judges through gifts to members of the judge's family." ABA Model Code (1990), Committee Note to

Commentary to Section 4D(5). Accordingly, "a judge must inform those family members of the relevant ethical constraints upon the judge in this regard and discourage those family members from violating them. A judge cannot, however, reasonably be expected to know or control all of the financial or business activities" of the affected family members. Id. Commentary to Section 4D(5). Note that a judge is required by Canon 6 to make annual disclosure of certain financial activities of family members. Note also that political campaign contributions to probate judges are covered by Canon 5C.

Canon 4D(5)(a), permitting gifts and other gratuitous benefits incident to professional activity, is limited by other Code provisions such as Canons 2B and 4A(1). Thus, "A judge may accept a public testimonial or a gift incident thereto only if the donor organization is not an organization whose members comprise or frequently represent the same side in litigation, and the testimonial and gift are otherwise in compliance with other provisions of this Code." ABA Model Code (1990), Commentary to Section 4D(5)(a). Note that if an invitation is paid for by an individual lawyer or group of lawyers, it is governed by Canon 4D(5)(h). Id.

Canons 4D(5)(b)-(e) govern gifts received as a result of the independent professional activities of family members and various forms of gifts or other benefits arising from social or personal connections. Such gifts must not only not be intended to influence the judge but must not be excessive in value. An

excessive gift "raises questions about the judge's impartiality and the integrity of the judicial office and might require disqualification of the judge where disqualification would not otherwise be required." ABA Model Code (1990), Commentary to Sections 4D(5)(b)-(d). Where disqualification of the judge would independently be required by Canon 3E in a case involving the donor or the donor's interest because of a personal relationship, Canon 4D(5)(e) permits gifts and other benefits without restriction because the donor is a person "who would not thereby gain improper influence in matters presided over by the judge." Id., Committee Note to Section 4D(5).

Canons 4D(5)(f) and (g) permit loans from institutional lenders, as well as scholarships and fellowships, provided that the lender or grantor shows no special consideration that might be construed as an effort to influence the judge. Under Canon 4D(5)(h), gifts and other benefits other than as specified in paragraphs (a)-(g) may be received so long as the person providing the benefit is not involved or likely to be involved in proceedings before the judge. The purpose of the provision is "to prohibit influence peddling in the guise of gifts, etc., to judges." ABA Model Code (1990), Committee Note to Section 4D(5). The provision prohibits acceptance of benefits from lawyers who have appeared or are likely to appear before the judge, as well as from clients of lawyers whose interests may come before the judge. See id., Commentary to Canon 4D(5)(h).

Many of the gifts and other benefits that may be received

pursuant to the exceptions in Canon 4D(5) must be reported on the annual financial disclosure report that each judge must file pursuant to Canon 6. Thus, Canon 4D(5)(h) expressly requires that gifts or other benefits received pursuant to it must be reported. Under Canon 6B(1)(c), "gifts, bequests, or favors" received by a judge pursuant to Canon 4D(5)(a), (c), (d), or (g) are exempt from reporting. Any other gifts, bequests, or favors, which include not only those received pursuant to Canon 4D(5)(h) but those received from a relative or close friend under paragraph (e), must be reported if their value exceeds $300. Canon 6B(1)(d) requires a judge to report any indebtedness to a single creditor exceeding $1,000, with the exception of loans from relatives, secured residential and consumer mortgages and loans made by institutional lenders in the regular course of business, and credit card or revolving charge accounts not in arrears. This requirement embraces not only loans pursuant to Canon 4D(5)(h), but loans from a non-relative under paragraph (e) and institutional loans other than those secured by residential or tangible personal property under paragraph (f). Under Canon 6B(2)(b), (c), a judge is also required to report, "to the extent known . . . or ascertainable by reasonable inquiry," information concerning gifts, bequests, favors, and loans nominally in the name of a spouse or dependent child that are received or owed jointly with the judge or otherwise attributable to the judge and that would be reportable under Canon 6B(1) if received or owed on the judge's own account.

Canon 4E governs a judge's activities as a fiduciary. Under Canon 4E(1) such activities are limited to service on behalf of family members. Other fiduciary activities are prohibited. Canon 4E(2) prohibits a judge from serving even in an otherwise permitted fiduciary capacity if it would involve proceedings that might come before the judge. Adversary proceedings before other judges do not require resignation but the judge is expressly prohibited from acting as counsel, despite the provision of Canon 4G permitting pro se appearance. Canon 4E(3) applies the limitations of Canon 4D on personal financial activity to the judge serving as a fiduciary. The Commentary to ABA Model Code (1990), Section 4E(3), notes that a judge should resign as trustee if the divestiture obligations of Canon 4D(4) would result in detriment to the trust. As noted above in connection with the latter provision, the judge must not violate any fiduciary obligation in taking steps to comply with Canon 4D(4).

Canon 4F prohibits a judge from serving as a private dispute resolver. It is important to note that Canon 4F "does not prohibit a judge from participation in arbitration, mediation or settlement conferences performed as part of judicial duties." ABA Model Code (1990), Commentary to Section 4F. See Canon 3B(7)(d) and Advisory Committee's Note.

Canon 4G prohibits judges from practicing law in a representative capacity. In a pro se capacity, a judge may act "in all legal matters, including matters involving litigation and matters involving appearances before or other dealings with

legislative and other governmental bodies," subject to the prohibition of abuse of judicial office in Canon 2B. In advising family members, a judge may not "act as an advocate or negotiator . . . in a legal matter." ABA Model Code (1990), Commentary to Section 4G.

Canon 4H permits a judge to receive compensation (including honoraria and speaking fees) and expense reimbursement for activities otherwise permitted under Canon 4, provided that any appearance of improper influence or other impropriety is rebutted by the fact "that the compensation is reasonable and commensurate with the task performed." In addition, "A judge should ensure . . . that no conflicts are created by the arrangement. A judge must not appear to trade on the judicial position for personal advantage. Nor should a judge spend significant time away from court duties to meet speaking or writing commitments for compensation . . . [and] the source of the payment must not raise any question of undue influence or the judge's ability or willingness to be impartial." ABA Model Code (1990), Commentary to Section 4H. All income, honoraria, and reimbursements received by a judge pursuant to Canon 4H must be reported in the judge's annual financial disclosure report as required by Canon 6B(1)(a), (b), (d).

Canon 4H(1) and (2) provide specific guidelines to assist compliance with the general standard of Canon 4H. If excess reimbursement is received, it must be considered an honorarium and so reported under Canon 6B(1)(b).

Textual Note

Canon 4 adopts ABA Model Code (1990), Canon 4 and Sections 4A-H, with a few variations noted below. The ABA model combines the provisions of Canons 4, 5, and 6 of ABA Code (1972) in new Canon 4 for simplicity and clarity. Maine Code (1974), Canons 4, 5, and 6, were identical in most respects to the comparable provisions of ABA Code (1972). The new Canon 4 embodies a number of changes in these former provisions.

The black letter text of Canon 4 is based on the more comprehensive text of Maine Code (1974), Canon 5, which embraces all extrajudicial activities. In the new Canon, "conduct" has been substituted for "regulate" and "obligations" has been substituted for "duties" to reflect the scope of the Canon more accurately. See ABA Model Code (1990), Committee Note to Canon 4. The introductory paragraph of Maine Code (1974), Canon 4, has been revised and designated Canon 4A. Subsections (1)-(3) are derived from former Maine Code (1974), Canons 4 and 5A and B. The term "quasi-judicial activities" used in former Canon 4 to describe law-related activities other than the judicial duties covered in Canon 3 is no longer used. Canon 4 covers all activities other than official duties under the label "extra-judicial activities," whether law-related or not. In subsection (1), the phrase "reasonable doubt" has been added to the language of the first paragraph of former Canon 4. In subsection (2), the phrase "demean the judicial office" has been substituted for "detract from the dignity of his office" in former Canon 5A.

Canon 4B is identical to ABA Model Code (1990), Section 4B. It is a general provision combining the language and purposes of Maine Code (1974), Canons 4A and 5A, which are deleted.

Canon 4C adopts ABA Model Code (1990), Section 4C, with modifications noted below. Canon 4C(1) contains the substance of Maine Code (1974), Canon 4B, recast in prohibitive form and revised to make the scope of permitted consultation identical to that allowed for appearance at public hearings.

Canon 4C(2) incorporates ABA Model Code (1990), Section 4C(2), with an added reference to Article VI, Section 5, of the Maine Constitution. The predecessor provision, ABA Code (1972), Canon 5G, was omitted from Maine Code (1974) as unnecessary in light of the Constitutional provision. See Maine Code (1974), Committee Note to Canon 5G, 8 Me. Bar Bull., No. 3, at 33.

Canon 4C(3) incorporates ABA Model Code (1990), Section 4C(3), with a change for consistency with Canon 4C(2). The provision carries forward the sense of Maine Code (1974), Canons 4C and 5B, with the addition of the reference to "governmental agency."

Canon 4C(3)(a) is identical to ABA Model Code (1990), Section 4C(3)(a), with the addition of the word "agency" for clarity. The provision is new to the Maine Code. It carries forward the substance of ABA Code (1972), Canon 5B(1), but makes the provision applicable to legal as well as civic and charitable organizations. ABA Code (1972), Canon 5B(1), was omitted from Maine Code (1974) "to permit a judge to serve educational, civic

and charitable organizations even though they may be regularly engaged in litigation." Maine Code (1974), Committee Note to Canon 5B(1), 8 Me. Bar Bull., No. 3, at 32.

Canon 4C(3)(b)(i) makes the less restrictive provisions of Maine Code (1974), Canon 4C, concerning financial activities for law-related organizations applicable to other charitable and civic organizations previously covered separately in Maine Code (1974), Canon 5B(1)(2). Maine Code (1974), Canon 5B(2), prohibiting a judge from giving investment advice while serving on the board of a charitable or civic organization, is accordingly deleted. "Planning fund-raising" is substituted for "raising funds" and the ABA model follows the lead of the 1974 Maine Code in substituting "other" for "public" as a modifier for "fund-raising," to prohibit "personal participation in either public or private fund-raising." ABA Model Code (1990), Committee Note to Section 4C(3)(b); Maine Code (1974), Committee Note to Canon 4C, 8 Me. Bar Bull., No. 3, at 31.

Canon 4C(3)(b)(ii) carries forward the final sentence of Maine Code (1974), Canon 4C, substituting "organizations" for "agencies," to provide "consistency of terminology." ABA Model Code (1990), Committee Note to Section 4C(3)(b).

ABA Model Code (1990), Section 4C(b)(3)(iii), prohibiting personal participation in membership solicitation that is coercive or a prohibited fund-raising mechanism has been omitted as superfluous.

The first sentence of Canon 4C(3)(b)(iii) adopts ABA Model Code (1990), Section 4C(3)(b)(iv), which carries forward language found in Maine Code (1974), Canon 5B(1). The second sentence of subparagraph (iii), in a departure from the ABA model, retains, with the addition of "primarily," the final sentence of Maine Code (1974), Canon 5B(1). The sentence was relegated to Commentary in the ABA model because it was deemed implicit in the prohibition against use of prestige. See ABA Model Code (1990), Committee Note to Commentary to Section 4C(3)(b).

Canon 4D adopts ABA Model Code (1990), Section 4D, with modifications noted below. Canon 4D(1) carries forward the substance of Maine Code (1974), Canon 5C(1), with the following verbal changes: "The term 'not engage in' was substituted for 'refrain from' as more precise. The phrases regarding impartiality and interference with judicial duties were deleted because these concepts are already included in new Section A of Canon 4. A reasonableness standard was added to clarify the scope of the prohibition against dealings that exploit judicial position. The words 'those' and 'other' were inserted to clarify that frequent transactions or continuing business relationships with all lawyers are not necessarily to be avoided but only those transactions or relationships with those lawyers likely to come before the judge's court. The rule was divided into subparts (a) and (b) for clarity in applying parts of the rule to various types of judicial officers." ABA Model Code (1990), Committee Note to Section 4D(1).

Canon 4D(2) incorporates ABA Model Code (1990), Section 4D(2), omitting the concluding phrase permitting a judge to "engage in other remunerative activity" in accord with Maine Code (1974), Section 5C(2). Canon 4D(3) carries forward Maine Code (1974), Canon 5C(2), adding "general partner" to the list of prohibited roles. Canon 4D(4) incorporates ABA Model Code (1990), Section 4D(4), which carries forward Maine Code (1974), Canon 5C(3), with no substantial changes. The new subsection adds language concerning fiduciary obligations and management of family interests to the ABA model.

Canon 4D(5) incorporates ABA Model Code (1990), Section 4D(5), covering gifts, bequests, favors, and loans, with minor changes. The subsection carries forward Maine Code (1974), Section 5C(4), with changes summarized as follows in ABA Model Code (1990), Committee Note to Section 4D(5):

> The rule was changed to permit family members as well as the judge to accept public testimonials, to permit the acceptance from publishers of tapes and other resource materials for official use in addition to books, to permit judges to accept certain invitations with a guest or a spouse, and to make clear that acceptance of an invitation to <u>any</u> bar-related function or to a non-bar related function devoted to the improvement of the law, the legal system, or the administration of justice is permissible. New Section 4D(5)(b) was added to address the propriety of gifts, awards or benefits incident to the separate activity of a spouse or

other member of a judge's family. The general rule was further revised to permit acceptance of certain gifts appropriate to the occasion and relationship and to permit gifts from persons who would not thereby gain improper influence in matters presided over by the judge because the relationship is such that disqualification would be mandated by Section 3E. . . .

The structure of [Section 4D(5)(h)] was revised to make it consistent grammatically with Sections 4D(5)(a) through (g). The phrase regarding persons who have come or are likely to come before the judge was added.

Maine Code, (1974), Canon 5C(5), is set forth below as Canon 6A(5).

Maine Code (1974), Canon 5C(6), has been deleted because its subject matter is covered by Canon 3B(11).

Canon 4E adopts ABA Model Code (1990), Section 4E, with modifications noted below. Canon 4E(1) changes Maine Code (1974), Canon 5D, which had departed from the negative phrasing of ABA Code (1972) "in order to make an affirmative statement of the fiduciary activities permitted." Committee Note to Canon 5D, 8 Me. Bar Bull. No. 3, at 33. There are no other substantial changes from Canon 5D except the addition of "personal representative" and "attorney in fact." Canon 4E(2) is similar to ABA Model Code (1990), Section 4E(2), but carries forward a variation between Maine Code (1974), Canon 5D(1), and ABA Code (1972), Canon 5D(1), permitting a judge to continue as fiduciary

if the estate is involved in adversary proceedings in any court and only prohibiting service as counsel. See Maine Code (1974), Committee Note to Canon 5D(1), 8 Me. Bar Bull., No. 3, at 33. Canon 4E(3) revises Maine Code (1974), Canon 5D(2) for stylistic reasons.

Canon 4F carries forward Maine Code (1974), Canon 5E, in revised form. The title was rephrased to describe the section more accurately. Language was added to cover additional types of private judicial functions.

Canon 4G carries forward Maine Code (1974), Canon 5F, with a revision permitting "types of advice that judges properly may and frequently do give their family members." ABA Model Code (1990), Committee Note to Section 4G.

The heading of Maine Code (1974), Canon 6, is deleted, because the substance of the Canon, as amended in 1990, now appears as Canon 4H, with minor changes to conform to the style and form of Canon 4. Canon 4H is similar to ABA Model Code (1990), Section 4H, with minor editorial changes and with subsection (2), Public Reports, deleted in light of the detailed reporting provisions of Maine Code (1974), Canon 8, adopted in 1990 and carried forward as Canon 6. Maine Code (1974), Canon 6C, as amended in 1990, is deleted as superfluous.

ABA Model Code (1990), Section 4I, has been incorporated as Canon 6A(5), with the consequent deletion of Maine Code (1974), Canon 5C(5).

Advisory Committee's Note to Canon 5

Commentary

Canon 5 sets standards of conduct for judges engaged in political activity and for candidates for judicial appointment or election, whether or not they are incumbent judges.

Canon 5A applies only to incumbent judges, setting standards for their political conduct in general, as well as their conduct when seeking reappointment, appointment, reelection, or election to any public office. Canon 5A(1) prohibits incumbent judges from engaging in political activity that involves organizational leadership, public appearances, or fundraising. Probate judges and candidates for that office are excepted from many of these limitations by Canon 5C and Part II, Section 1B(1)(b), in reflection of their part-time status and the political nature of the office.

The provisions of Canon 5A(1) do not prevent a judge from participating in the political process as a voter or from privately expressing views on candidates for public office. ABA Model Code (1990), Commentary to Section 5A(1). Thus, a judge may attend and vote at a town meeting but should refrain from public advocacy of candidates or measures there. The prohibition against attendance at "political gatherings" precludes attendance at party caucuses. In the case of either town meeting advocacy or caucus attendance, undue weight might be given to the judge's views. Canon 5A(1)(f) is not intended to prohibit "a judge in the exercise of administrative functions from engaging in

planning and other official activities with members of the executive and legislative branches of government." ABA Model Code (1990), Commentary to Section 5D. See Canons 4B, 4C(1), and Advisory Committee's Notes. A judge may also appear pro se before a body such as a local planning board to advance the judge's private interests. See Canon 4C(1).

Canons 5A(2) and (3) govern candidacy for appointive or elective office. A person becomes subject to the provisions governing candidacy at the times specified in the definition of "candidate," Part II, Section 3B. Canon 5A(2) makes clear that an incumbent judge seeking reappointment, or seeking appointment either to a different state or federal judgeship or to state or federal executive office, is subject to Canon 5B. In particular, the requirement of Canon 5B(1) that a candidate "act in a manner consistent with the integrity and independence of the judiciary" means that an incumbent judge is subject to the provisions of Canons 1, 2, and 3 requiring a judge to treat the responsibilities of the office as paramount and not to allow the quest for another office to influence the judge's conduct or judgment or become a distraction from judicial duties. Canons 4 and 6 also apply to incumbents. Under Canon 5A(3), an appointed judge who seeks election as judge of probate, or to any other office, must resign. "Elective office" is intended to include the office of Attorney General and other Constitutional offices filled by election in a joint convention of the Legislature. The exception for probate judges is necessary to allow incumbents to

run for reelection without disrupting the probate courts.

Canon 5B governs the political conduct of all candidates for appointment (and, by virtue of Canon 5A(2), reappointment) to judicial office. The purpose of Canon 5B(1) is to require all candidates for judicial appointment to adhere to the basic principles of Canons 1 and 2 requiring judges to display high standards of conduct to maintain the integrity and independence of the judiciary. (A judge who is a candidate is, of course, subject to the entire Code in activities related to the candidacy. See discussion of Canon 5A(2) above.) The purposes of Canon 5B(2) are to protect candidates from public or legislative pressure to make inappropriate commitments on issues as a condition of appointment and to provide sanctions for actual false statements in the appointment process. The Commentary to ABA Model Code (1990), Section 5A(3)(d), the comparable provision, states, that as a corollary to the prohibition against commitments, "a candidate should emphasize in any public statement the candidate's duty to uphold the law regardless of his or her personal views." Note that Canon 5B(2) "does not prohibit a candidate from making pledges or promises respecting improvements in court administration." Id. The provision also does not apply to private statements by judges to other judges or court personnel concerning judicial business, but it does apply "to any statement made in the process of securing judicial office, such as statements to commissions charged with judicial selection and tenure and legislative bodies confirming

appointment." Although there is no express provision governing actions by family members and employees, a judge is subject to a more general responsibility for assuring or encouraging conduct in accordance with the Code that would apply to at least some political activity. See Canons 2B, 3C(2), 4D(5).

Canon 5C applies to any candidate, whether an incumbent or not, for election or reelection as judge of probate--Maine's only elective judicial office. Canon 5C(1) subjects a candidate for election to the limits on general political conduct imposed on judges by Canon 5A(1), with certain specific exceptions contained in sections (2)-(4). The effect of the exceptions is to level the field in a contest between an incumbent and a non-judge. Candidates for election are also subject to the general restrictions imposed on candidates for appointment by proposed Canon 5B. The exceptions supplement the general exception of probate judges from restrictions on political activity by making clear that specific campaign activities are permitted for incumbents and challengers alike. Activities other than those permitted are forbidden as "other political activity" under Canon 5A(1)(f). Cf. ABA Model Code (1990), Commentary to Section 5C(1).

In soliciting and managing campaign funds, committees should be instructed "to solicit or accept only contributions that are reasonable under the circumstances" and should avoid "deficits that might necessitate post-election fund-raising to the extent possible." Id. Commentary to Section 5C(2). Canon 5C(3)

prohibits personal solicitation "of publicly stated support." This provision does not prevent a candidate from soliciting individual voters to secure their votes. The subsection also permits a campaign committee to solicit both "reasonable" contributions and public support from lawyers. Note that "campaign contributions of which a judge has knowledge, made by lawyers or others who appear before the judge, may be relevant to disqualification under Section 3E." Id. Canon 5C(4) is intended "to permit basic campaign publicity by judicial candidates in public elections." ABA Model Code (1990), Committee Note to Section 5C(3).

Canon 5D makes clear that violations of the Code are subject to discipline whether or not the candidate succeeds. A successful candidate and an unsuccessful incumbent are subject to discipline on complaint to the Committee on Judicial Responsibility and Disability. A lawyer candidate who is unsuccessful is subject to discipline on complaint to the Board of Overseers of the Bar. A simultaneous amendment is being proposed to add Rule 3.2(c)(3) to the Maine Bar Rules, providing that "A lawyer who is a candidate for appointment or election to judicial office shall comply with the applicable provisions of the Maine Code of Judicial Conduct."

Textual Note

Canon 5 departs significantly from ABA Model Code (1990), Canon 5 and Sections 5A-E, in order to reflect the actualities of

judicial appointment and election in Maine. The Canon also significantly changes the 1974 Maine Code by adding Canons 5A(2) and (3), B-D, regulating appointment and election.

The subject matter of Canon 5 was covered in Maine Code (1974), Canon 7. The Canon has been renumbered, because former Canons 5 and 6 have been consolidated in proposed Canon 4. See Advisory Committee's Note to that Canon. The black-letter text of the Canon has been revised in terms identical to ABA Model Code (1990), Canon 5, to reflect the fact that the Canon covers the conduct of candidates for appointment and election to judicial office, as well as judges.

The title and purpose of Canon 5A differ from those of ABA Model Code (1990), Section 5A, which applies to judges and to all candidates for appointment or election to judicial office. Canon 5A(1) is drawn from ABA Model Code (1990), Sections 5A(1) and 5D. The subsection carries forward Maine Code (1974), Canon 7A(1), with some rearrangement of the provisions and minor changes in language.

Maine Code (1974) did not adopt the further provisions of ABA Code (1972), Canon 7, covering judicial elections because the Code as adopted did not apply to elected judges of probate. See Maine Code (1974), Committee Note to Canon 7A, 8 Me. Bar Bull., No. 3, at 34. Accordingly, the remaining provisions of Canon 5 are new to Maine.

Canon 5A(2) is unique to the Maine Code.

Canon 5A(3), governing the conduct of judges seeking election or reelection to any office, is similar to ABA Model Code (1990), Section 5A(2), omitting the exception for election as a state constitutional convention delegate. That position is presumably an "office" from which a judge is barred under Article VI, Section 5, of the Maine Constitution. See Canon 4C(2) and Advisory Committee's Note. Cf. Opinion of the Justices, 132 Me. 491, 498-99, 167 Atl. 176 (1933).

Canon 5B(1) is derived from ABA Model Code (1990), Section 5A(3)(a), omitting a clause governing family members. Canon 5B(2) incorporates ABA Model Code (1990), Section 5A(3)(d).

Canon 5C(1) is unique to the Maine Code. The exceptions set forth in Canon 5C(2)-(4) are taken without substantial change from ABA Model Code (1990), Section 5C(1)(b).

Canon 5D incorporates the substance of ABA Model Code (1990), Section 5E, with changes to make clear that a candidate is subject to discipline only for conduct that violates the Code and to cover incumbent judges who are unsuccessful candidates

Advisory Committee's Note to Canon 6

Commentary

Canon 6 provides detailed procedures for annual financial disclosures by all Maine judges. Its purpose and operation are explained in detail in the Advisory Committee's Note to its original promulgation as former Canon 8, effective August 15, 1990. See Me. Rptr., 576-588 A.2d LXXIII.

The only substantial change from Maine Code (1974), Canon 8, is the amendment of Canon 6B(1)(h) to require a judge to report affiliations with nonprofit as well as business enterprises, in light of the provisions governing involvement in such activity found in Canon 4C.

In other changes, the phrase "for cause" has been expanded to "for good cause shown" in Canon 6A(4), making clear that the judge seeking an extension has the burdens of production and persuasion. A provision for notification to the Chief Justice of a judge's failure to file has been added to Canon 6D to permit the Chief Justice to take appropriate steps to cure the failure.

Textual Note

Canon 6 has no equivalent in ABA Model Code (1990). It carries forward Maine Code (1974), Canon 8, as adopted effective August 15, 1990, Me. Rptr., 576-588 A.2d LXVI, and amended effective October 9, 1990, id. at LXXX, with minor amendments to conform its provisions to the proposed Code. Maine Code (1974), Canon 8, is renumbered as Canon 6 to reflect the incorporation of former Canons 5 and 6 in Canon 4. In the preamble, cross-references to provisions covering judicial disqualification and extra-judicial activities are amended to reflect the revised numbering. Throughout Canon 6, the nomenclature for subdivisions of the Code is revised for consistency with other provisions.

Canon 6A(5) is added. The provision is similar to ABA Model Code (1990), Section 4I, and carries forward with necessary

changes Maine Code (1974), Canon 5C(5), as amended effective August 15, 1990.

Canon 6B(1)(a) and (b) have been amended by deleting language defining "income" and "honorarium." The identical language now appears in Part II, Sections 3H and I. In Canon 6B(1)(c) the cross-references to provisions covering gifts, bequests, and favors have been amended to reflect the revised numbering of the Code.

Canons 6A(4), 6B(1)(h), and 6D have been amended as indicated in the Commentary.

Advisory Committee's Note

to Part II, Section 1

Part II, Section 1, covering the Code's applicability, is drawn from ABA Model Code (1990), Application Section. The applicability of the 1974 Maine Code was spelled out in various orders of the Supreme Judicial Court cited in the Introductory Advisory Committee's Note.

Section 1A provides that all appointed full-time and active retired justices and judges of Maine's courts are fully subject to the Code. ABA Model Code (1990), Application Section B, would relieve "retired judges subject to recall who by law [are] not permitted to practice law" from Canons 4F, prohibiting service as a mediator (except while serving as a judge), and Canon 4E, limiting fiduciary activities. Although Maine's Active Retired Justices and Judges might fit within the ABA category, they have

been subject to the Code in its entirety since 1978 and will continue in that status. See Introductory Advisory Committee's Note.

Section 1A also provides that the elected part-time judges of the probate courts are subject to all provisions of the Code except those set forth in Section 1B(1). Section 1B(1) is based on ABA Model Code (1990), Application Section C, providing exceptions for "continuing part-time" judges. Heretofore, probate judges were subject only to Maine Code (1974), Canons 1-4; 5A; 5B (first sentence); 5C(1), (3)-(6), 6; and 8 (except as provided in Canon 8E). See Introductory Advisory Committee's Note.

Section 1B(1)(a) provides that a probate judge does not have to comply with Canon 3B(9), requiring abstention from public comment, or Canon 4C(1), prohibiting appearances before or consultation with legislative or executive bodies or officers, "except while serving as a judge, or as to matters pending in the judge's court." Section 1B(1)(b) excepts probate judges from compliance at any time with Canons 4D(3), prohibiting business activity; 4E(1), prohibiting fiduciary activity; 4F, prohibiting service as arbitrator or mediator; 4G, prohibiting the practice of law; 4H, limiting income, honoraria, and expense reimbursements; and 5A(1)(a)-(d) covering certain political activities of judges. In addition, Canons 5A(3) and 5C make special provisions for the political and electoral activities of probate judges, and Canon 6E excepts them from certain provisions

of the financial disclosure requirements.

The exemption of probate judges from Canon 5A(1)(a)-(d) recognizes both their part-time status and their need to engage in certain political activities consistent with the political nature of the office. Probate judges remain subject to Canons 5A(1)(e), prohibiting political fundraising, and 5A(1)(f), prohibiting "other political activity." The latter prohibition does not include legislative lobbying for private clients, which is permitted by the exemption from Canon 4C(1), so long as the judge does not act in a judicial capacity or concerning a matter pending in the judge's court. Of course, in all political and other extra-judicial activity, probate judges remain subject to the general prohibition of Canon 2B against use of the office to advance private interests and the injunction of Canon 4A to act in ways that do not cast doubt on impartiality or demean the office.

Section 1B(2), prohibiting probate judges from serving as lawyers in proceedings in which they have served as judges, or in related proceedings, is also based on ABA Model Code (1990), Application Section C. A former probate judge is barred from representation in such circumstances by M. Bar R. 3.4(g). Cf. Norton v. Inhabitants of Fayette, 134 Me. 468, 188 A. 281 (1936) (broad interpretation of statutory prohibition against municipal judge acting as counsel in case in judge's court). Of course, probate judges remain subject to statutory conflict of interest provisions. See 4 M.R.S.A. §§ 307, 309; Appeal of Clark, 119 Me.

150, 109 A. 752 (1920) (predecessor of 4 M.R.S.A. § 309 does not prohibit probate judge from drawing a will).

Section 1C is intended to make clear that newly appointed or elected judges are subject to the Code between the time of confirmation and the time of swearing in. This provision is subject to the exceptions for compliance set forth in Part II, Section 2.

Advisory Committee's Note

to Part II, Section 2

Part II, Section 2, sets September 1, 1993, as the effective date of the Code. The second sentence, covering time for compliance, is taken virtually verbatim from ABA Model Code (1990), Application Section F. Immediate compliance is required except for Canons 2C, requiring resignation from discriminatory organizations, and 4D(1), (3), and 4E, prohibiting nonfamily business and fiduciary activities. In the excepted instances compliance may be delayed for up to one year. See ABA Model Code (1990), Commentary and Committee Note to Application Section F.

Advisory Committee's Note

to Part II, Section 3

Part II, Section 3, contains definitions of 16 critical terms commonly used in the Code. The section has no equivalent in the 1974 Maine Code. The definitions are taken from the "Terminology" Section of ABA Model Code (1990) with variations

and additions, noted below, that reflect language and provisions of the Maine Code that differ from the ABA model.

The definition of "appropriate authority" in Section 3A includes both lawyer and judicial disciplinary agencies, whether in Maine or another jurisdiction.

The definition of "candidate" in Section 3B includes individuals seeking initial appointment or election as a judge, judges seeking reappointment or reelection as a judge, and judges seeking appointment or election to nonjudicial office. The language of the definition in ABA Model Code (1990), Terminology Section, has been changed to reflect the actualities of political activity in Maine. See Advisory Committee's Note to Canon 5.

The definition of "court personnel" in Section 3C makes clear that lawyers are not "court personnel" as that term is used in the Code, regardless of their traditional status and obligations as "officers of the court." Court officers and other support personnel are within the definition, however, even when technically employed by the county.

The definition of "de minimis" in Section 3D departs from that in ABA Model Code (1990), Terminology Section, with the substitution of "too trivial" for "insignificant." The change is for consistency with the definition of de minimis offenses in the Maine Criminal Code, 17-A M.R.S.A. § 12.

The definition of "economic interest" in Section 3E, taken without change from the definition in ABA Model Code (1990), Terminology Section, is a modification of the definition of

"financial interest" in ABA Code (1972), Section 3C(3)(c). That provision was not incorporated in Maine Code (1974), Section 3C. See Advisory Committee's Note to Section 3E.

The definition of "election" in Section 3F is adapted from the definition of "public election" in ABA Model Code (1990), Terminology Section, to reflect the operation of the Maine political system.

In the definition of "fiduciary" in Section 3G, the term "personal representative" has been added for consistency with the Maine Probate Code, 18-A M.R.S.A. § 1-201(13), (30). The definition is derived from ABA Code (1972), Section 3C(3)(b), not incorporated in Maine Code (1974), Section 3C. See Advisory Committee's Note to Section 3E.

The definitions of "honorarium" in Section 3H and "income" in Section 3I are taken from Maine Code (1974), Canon 8B(1)(a) and (b), added in 1990. They have been eliminated from those paragraphs, which are Canons 6B(1)(a) and (b) in the revised Code. For discussion of these definitions, see Advisory Committee's Note to August 15, 1990, promulgation of Canon 8B(1)(a) and (b), Me. Rptr., 576-588 A.2d LXXV-LXXVI.

In the definition of "law" in Section 3K, the phrase "administrative rules and regulations" has been added to the list of forms of law found in the definition in ABA Model Code (1990), Terminology Section.

In the definition of "nonpublic information" in Section 3M, the final sentence of the definition in ABA Model Code (1990),

Terminology Section, listing types of nonpublic information, has been eliminated in favor of a generic reference to information rendered unavailable "by law or court order."

In the definition of "political organization" in Section 3N, the word "public" was substituted for "political," modifying "office" at the end of the sentence in the definition in ABA Model Code (1990), Terminology Section.

The definition of "third degree of relationship" in Section 3P, taken without change from the definition in ABA Model Code (1990), Terminology Section, is derived from ABA Code (1972), Section 3C(3)(a), Commentary. That provision was not incorporated in Maine Code (1974), Section 3C. See Advisory Committee's Note to Section 3E.

Advisory Committee's Note

to Part II, Section 4

Part II, Section 4, of the proposed Code has no equivalent in ABA Model Code (1990) or Maine Code (1974). The section is added to establish a uniform designation for ease of reference. It is similar to provisions in other Maine rules of court. See, e.g., M.R. Civ. P. 85; M.R. Ev. 1102; M. Bar Adm. R. 16.