



Code of Judicial Conduct

**Rules of the Judicial
Qualifications Commission**

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Judicial Qualifications Commission

The Georgia Code of Judicial Conduct

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Judicial Qualifications Commission

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The Georgia Code of Judicial Conduct Preamble

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

Every judge should strive to maintain the dignity appropriate to the judicial office. The judge is an arbiter of facts and law for the resolution of disputes and a highly visible symbol of government under the rule of law. As a result, judges should be held to a higher standard, and should aspire to conduct themselves with the dignity accorded their esteemed position.

The Code of Judicial Conduct is intended to establish standards for ethical conduct of judges. It consists of broad statements called Canons, specific rules set forth in Sections under each Canon, a Terminology Section, an Application Section and Commentary. The text of the Canons and the Sections, including the Terminology and Application Sections, is authoritative. The Commentary, by explanation and example, provides guidance with respect to the purpose and meaning of the Canons and Sections. The Commentary is not intended as a statement of additional rules. When the text uses “shall” or “shall not,” it is intended to impose binding obligations the violation of which can result in disciplinary action. When “should” or “should not” is used, the text is intended as advisory and as a statement of what is or is not appropriate conduct, but not as a binding rule under which a judge may be disciplined. When “may” is used, it denotes permissible discretion or, depending on the context, it refers to action that is not covered by specific proscriptions.

The Canons and Sections are rules of reason. They should be applied consistent with constitutional requirements, statutes, other court rules and decisional law, as well as in the context of all relevant circumstances. The Code is to be construed so as not to impinge on the essential independence of judges in making judicial decisions, or on judges’ First Amendment rights of freedom of speech and association.

The Code is designed to provide guidance to judges and candidates for judicial office and to provide a structure for regulating conduct through disciplinary agencies. It is not designed for nor intended as a basis for civil liability or criminal prosecution. Furthermore, the purpose of the Code would be subverted if the Code were invoked by lawyers for mere tactical advantage in a proceeding.

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

The Code of Judicial Conduct is not intended as an exhaustive guide for the conduct of judges. They should also be governed in their judicial and personal conduct by general ethical standards. The mandatory provisions of the Canons and Sections describe the basic minimal ethical requirements of judicial conduct. Judges and candidates should strive to achieve the highest ethical standards, even if not required by this Code. As an example, a judge or candidate is permitted under Canon 7, Section B, to solicit campaign funds directly from potential donors. The Commentary, however, makes clear that the judge or candidate who wishes to exceed the minimal ethical requirements would choose to set up a campaign committee to raise and solicit contributions. The Code is intended to state only basic standards which should govern the conduct of all judges and to provide guidance to assist judges in establishing and maintaining high standards of judicial and personal conduct.

Terminology

Terms explained below are noted with an asterisk (*) in the Sections where they appear. In addition, the Sections where terms appear are referred to after the explanation of each term below.

“Appropriate Authority” denotes the authority with responsibility for initiation of disciplinary process with respect to the violation to be reported. See Sections 3D(1) and 3D(2).

“Candidate.” A candidate is a person seeking selection for or retention in judicial office by election or appointment. A person becomes a candidate for judicial office as soon as he or she appoints and/or forms a campaign committee, makes a public announcement of candidacy, declares or files as a candidate with the election or appointment authority, or authorizes solicitation or acceptance of contributions or support. The term “candidate” has the same meaning when applied to a judge seeking election or appointment to non-judicial office. See Preamble and Sections 7A(1), 7A(2), 7B(1), 7B(2) and 7C.

“Comment” in connection with a case refers to evaluative statements judging the professional wisdom of specific lawyering tactics or the legal correctness of particular court decisions. In contrast, it does not mean the giving of generally informative explanations to describe litigation factors including the prima facie legal elements of case types pending before the courts, legal concepts such as burden of proof and duty of persuasion or principles such as innocent until proven guilty and knowing waiver of constitutional rights, variable realities illustrated by hypothetical factual patterns of aggravating or mitigating conduct, procedural phases of unfolding lawsuits, the social policy goals behind the law subject to application in various cases, as well as competing theories about what the law should be. See Section 3B(9).

“Court personnel” does not include the lawyers in a proceeding before a judge. See Sections 3B(7)(c) and 3B(9).

“De minimis” denotes an insignificant interest that could not raise reasonable question as to a judge’s impartiality. See Section 3E(1)(c).

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

- (i) ownership of an interest in a mutual or common investment fund that holds securities is not an economic interest in such securities unless the judge participates in the management of the fund or a proceeding pending or impending before the judge could substantially affect the value of the interest;
- (ii) service by a judge as an officer, director, advisor or other active participant in an educational, religious, charitable, fraternal or civic organization, or service by a judge’s spouse, parent or child as an officer, director, advisor or other active participant in any organization does not create an economic interest in securities held by that organization;
- (iii) a deposit in a financial institution, the proprietary interest of a policy holder in a mutual insurance company, of a depositor in a mutual savings association, is not an economic interest in the organization unless a proceeding pending or impending before the judge could substantially

affect the value of the interest;

(iv) ownership of government securities is not an economic interest in the issuer unless a proceeding pending or impending before the judge could substantially affect the value of the securities. See Section 3E(2).

“Fiduciary” includes such relationships as executor, administrator, trustee, and guardian. See Sections 3E(2) and 5D.

“Invidious discrimination” is any action by an organization that characterizes some immutable individual trait such as a person’s race, gender or national origin, as well as religion, as odious or as signifying inferiority, which therefore is used to justify arbitrary exclusion of persons possessing those traits from membership, position or participation in the organization. See Section 2C.

“Knowingly”, “knowledge”, “known” or “knows” denotes actual knowledge of the fact in question. A person’s knowledge may be inferred from circumstances. See Sections 3D(1), 3D(2) and 3E(1).

“Law” denotes court rules as well as statutes, constitutional provisions and decisional law. See Sections 2A, 3A, 3B(2), 3B(7), 4A, 4B, 4C, 5C(4), 5F and 5G.

“Member of the judge’s family residing in the judge’s household” denotes any relative of the judge by blood or marriage, or a person treated by a judge as a member of the judge’s family, who resided in the judge’s household. See Sections 3E(1)(c) and 5C(4).

“Non-public information” denotes information that, by law, is not available to the public. Non-public information may include but is not limited to: information that is sealed by statute or court order, impounded or communicated in camera; and information offered in grand jury proceedings, pre-sentencing reports, dependency cases or psychiatric reports. See Section 3B(11).

“Political organization” denotes a political party or other group, the principal purpose of which is to further the election or appointment of candidates to political office. See Section 7A(1).

“Public election.” This term includes primary and general elections; it includes partisan elections, nonpartisan elections and may include (as context demands) retention elections. See Sections 7A(1), 7A(2), 7B(1), and 7B(2).

“Require.” The rules prescribing that a judge “require” certain conduct of others are, like all of the rules in this Code, rules of reason. The use of the term “require” in that context means a judge is to exercise reasonable direction and control over the conduct of those persons subject to the judge’s direction and control. See Sections 3B(3), 3B(4), 3B(6), 3B(9) and 3C(2).

“Third degree of relationship.” The following persons are relatives within the third degree of relationship: great-grandparent, grandparent, parent, uncle, aunt, brother, sister, child, grandchild, great-grandchild, nephew or niece. See Section 3E(1)(c).

Canon 1

Judges Shall Uphold the Integrity and Independence of the Judiciary.

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

Commentary: Deference to the judgments and rulings of courts depends upon public confidence in the integrity and independence of judges. The integrity and independence of judges depends in turn upon their acting without fear or favor. Although judges should be independent, they must comply with the law, including the provisions of this Code. Public confidence in the impartiality of the judiciary is maintained by the adherence of each judge to this responsibility. Conversely, violation of this Code diminishes public confidence in the judiciary and thereby does injury to the system of government under law.

Canon 2

Judges Shall Avoid Impropriety and the Appearance of Impropriety in All Their Activities.

A. Judges shall respect and comply with the law* and shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

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

The prohibition against behaving with impropriety or the appearance of impropriety applies to both the professional and personal conduct of a judge. Because it is not practicable to list all prohibited acts, the proscription is necessarily cast in general terms that extend to conduct by judges that is harmful although not specifically mentioned in the Code. Actual improprieties under this standard include violations of law, court rules, or other specific 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. See also, Commentary under Section 2C.

B. Judges shall not allow their family, social, political or other relationships to influence their judicial conduct or judgment. Judges shall not lend the prestige of judicial office to advance the private interests of the judge or others; nor should they convey or permit others to convey the impression that they are in a special position to influence them. Judges should not testify voluntarily as character witnesses.

Commentary: Maintaining the prestige of judicial office is essential to a system of government in which the judiciary functions independently of the executive and legislative branches. Respect for the judicial office facilitates the orderly conduct of legitimate judicial functions. Judges should distinguish between proper and improper use of the prestige of office in all of their activities. For example, it

would be improper for a judge to allude to his or her judgeship to gain a personal advantage such as deferential treatment when stopped by a police officer for a traffic offense. Similarly, judicial letterhead must not be used for conducting a judge's personal business.

A judge must avoid lending the prestige of judicial office for the advancement of the private interests of others. For example, a judge must not use the judge's position to gain advantage in a civil suit involving a member of the judge's family. In contracts for publication of a judge's writings, a judge should retain control over the advertising to avoid exploitation of the judge's office. As to the acceptance of awards. See Section 5C (4)(a) and Commentary.

Although a judge should be sensitive to possible abuse of the prestige of office, a judge may, based on the judge's personal knowledge, serve as a reference or provide a letter of recommendation. However, a judge must not initiate the communication of information to a sentencing judge or probation or corrections officer, but may provide to such person information for the record in response to a formal request.

Judges may participate in the process of judicial selection by cooperating with appointing authorities and screening committees seeking names for consideration, and by responding to official inquiries concerning a person being considered for a judgeship. See also Canon 7, regarding use of a judge's name in political activities.

A judge must not testify voluntarily as a character witness, because to do so may lend the prestige of the judicial office in support of a party for whom the judge testifies. Moreover, when a judge testifies as a witness, a lawyer who regularly appears before the judge may be placed in the awkward position of cross-examining the judge. A judge may, however, testify when properly summoned. Except in unusual circumstances where the demands of justice require, a judge should discourage a party from requiring the judge to testify as a character witness.

C. Judges shall not hold membership in any organization that practices invidious discrimination*.

Commentary: Membership by a judge in an organization that practices invidious discrimination may give rise to perceptions that the judge's impartiality is impaired. Section 2C refers to the current practices of the organization. Whether an organization practices invidious discrimination is often a complex question to which judges should be sensitive. The answer cannot be determined from a mere examination of an organization's current membership rolls, but rather depends on how the organization selects members and other relevant factors, such as whether the organization is dedicated to the preservation of religious, ethnic, or cultural values of legitimate common interest to its members, or whether it is in fact and effect an intimate, purely private organization whose membership limitations could not be constitutionally prohibited. Absent such factors, an organization is generally said to discriminate invidiously if it arbitrarily excludes from membership on the basis of race, religion, sex or national origin persons who would otherwise be admitted to membership. See *New York State Club Ass'n. Inc. v. City of New York*, 108 S. Ct. 2225, 101 L.Ed.2d1 (1988); *Board of Directors of Rotary International v. Rotary Club of Duarte*, 481 U. S. 537, 107 S. Ct. 1940, 95 L. Ed. 2d. 474 (1987);

Roberts v. United State Jaycees, 468 U. S. 609, 104 S. Ct. 3244, 82 L.Ed.2d.462 (1984). Ultimately, each judge must determine in the judge's own conscience whether an organization of which the judge is a member practices invidious discriminaton.

Canon 3

Judges Shall Perform the Duties of Their Office Impartially and Diligently

A. Judicial Duties in General.

The judicial duties of judges take precedence over all their other activities. Their judicial duties include all the duties of their offices prescribed by law*. In the performance of these duties, the following standards apply:

B. Adjudicative Responsibilities.

(1) Judges shall hear and decide matters assigned to them, except those in which they are disqualified.

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

(3) Judges shall require* order and decorum in proceedings over which they preside.

(4) Judges shall be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, and others with whom they deal in their official capacity, and shall require* similar conduct of lawyers, and of staffs, court officials, and others subject to their direction and control.

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

(5) Judges shall perform judicial duties without bias or prejudice. Judges shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice, including but not limited to bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation or socio-economic status, and shall not permit staff, court officials and others subject to judicial direction and control to do so.

Commentary: Judges must refrain from speech, gestures or other conduct that could reasonably be perceived as sexual harassment and must require the same standard of conduct of others subject to their direction and control.

Judges must perform judicial duties impartially and fairly. Judges who manifest bias on any basis in a proceeding impair the fairness of the proceeding and bring the judiciary into disrepute. Facial expression, body language, in addition to oral communication, can give to parties or lawyers in the proceeding, jurors, the media and others an appearance of judicial bias. Judges must be alert to avoid behavior that may be perceived as prejudicial.

(6) Judges shall require* lawyers in proceedings before the court to refrain from manifesting, by words and conduct, bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation or socio-economic status, against parties, witnesses, counsel or others. This Section, 3B(6), does not preclude legitimate advocacy when race, sex, religion, national origin, disability, age, sexual orientation or socio-economic status, or other similar factors, are issues in the proceeding.

(7) Judges shall accord to every person who has a legal interest in a proceeding, or that person's lawyer, the right to be heard according to law*. Judges shall not initiate or consider ex parte communications, or consider other communications made to them outside the presence of the parties concerning a pending or impending proceeding, except that:

(a) where circumstances require, ex parte communications for scheduling, where administrative purposes or emergencies that do not deal with substantive matters or issues on the merits are authorized; provided:

- (i) the judge reasonably believes that no party will gain a procedural or tactical advantage as a result of the ex parte communication, and
- (ii) the judge makes provision promptly to notify all other parties of the substance of the ex parte communication and allows an opportunity to respond.

(b) Judges may obtain the advice of a disinterested expert on the law* applicable to a proceeding before the court, if they give notice to the parties of the person consulted and the substance of the advice, and afford the parties reasonable opportunity to respond.

(c) Judges may consult with court personnel* whose function is to aid them in carrying out their adjudicative responsibilities, or with other judges.

(d) Judges may, with the consent of the parties, confer separately with the parties or their lawyers in an effort to mediate or settle matters before the court.

(e) Judges may initiate or consider any ex parte communications when expressly authorized by law* to do so.

Commentary: *The proscription against communications concerning a proceeding includes communications from lawyers, law teachers, and other persons who are not participants in the proceeding, except to the limited extent permitted.*

To the extent reasonably possible, all parties or their lawyers shall be included in communications with a judge.

Whenever presence of a party or notice to a party is required by Section 3B(7), it is the party's lawyer, or if they party is unrepresented, the party, who is to be present or to whom notice is given.

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

Certain ex parte communication is approved by Section 3B(7) to facilitate scheduling and other administrative purposes and to accommodate emergencies. In general, however, judges must discourage ex parte

communication and allow it only if all the criteria stated in Section 3B(7) are clearly met. Judges must disclose to all parties all ex parte communications described in Section 3B(7)(a) and 3B(7)(b) regarding a proceeding pending or impending before them.

Judges must not independently investigate facts in a case and must consider only the evidence presented.

Judges may request a party to submit proposed findings of fact and conclusions of law, so long as the other parties are apprised of the request and are given an opportunity to respond to the proposed findings and conclusions.

Judges must take reasonable efforts, including the provision of appropriate supervision, to ensure that Section 3B(7) is not violated through law clerks or other personnel on their staff.

If communication between the trial judge and the appellate court with respect to a proceeding is permitted, a copy of any written communication or the substance of any oral communication should be provided to all parties.

(8) Judges shall dispose of all judicial matters fairly, promptly, and efficiently.

Commentary: *In disposing of matters promptly, efficiently and fairly, judges must demonstrate due regard for the rights of the parties to be heard and to have issues resolved without unnecessary cost or delay. Containing costs while preserving fundamental rights of parties also protects the interests of witnesses and the general public. Judges should monitor and supervise cases so as to reduce or eliminate dilatory practices, avoidable delays and unnecessary costs. Judges should encourage and seek to facilitate settlement, but parties should not feel coerced into surrendering the right to have their controversy resolved by courts.*

(a) The obligation of a judge to dispose of matters promptly and efficiently must not take precedence over the judge's obligation to dispose of matters fairly and with patience.

Commentary: *Prompt disposition of the court's business requires judges to devote adequate time to their duties, to be punctual in attending court and expeditious in determining matters under submission, and to insist that court officials, litigants and their lawyers cooperate with them to that end.*

(9) Judges shall not, while a proceeding is pending or impending in any court, make any public comment* that might reasonably be expected to affect its outcome or impair its fairness or make any non-public comment that might substantially interfere with a fair trial or hearing. Judges shall require* similar abstention on the part of court personnel* subject to their direction and control. This subsection does not prohibit judges from making public statements in the course of their official duties or from explaining for public information the procedures of the court. This Section does not apply to proceedings in which the judge is a litigant in a personal capacity.

Commentary: The requirement that judges abstain from public comment regarding a pending or impending proceeding continues during any appellate process and until final disposition. This Section does not prohibit judges from commenting on proceedings in which the judge is a litigant in a personal capacity, but in cases such as a writ of mandamus where a judge is a litigant in an official capacity, the judge must not comment publicly.

(10) Judges shall not commend or criticize jurors for their verdict other than in a court order or opinion in a proceeding, but may express appreciation to jurors for their service to the judicial system and the community.

Commentary: Commending or criticizing jurors for their verdict may imply a judicial expectation in future cases and may impair a juror's ability to be fair and impartial.

(11) Judges shall not disclose or use, for any purpose unrelated to judicial duties, non-public information* acquired in a judicial capacity.

C. Administrative Responsibilities

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

(2) Judges shall require* their staffs, court officials and others subject to their direction and control to observe the standards of fidelity and diligence that apply to the judges and to refrain from manifesting bias or prejudice in the performance of their official duties.

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

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

Commentary: Appointees of judges include assigned counsel, officials such as referees, commissioners, special masters, receivers, guardians and personnel such as clerks, secretaries, and bailiffs. Consent by the parties to an appointment or an award of compensation does not relieve the judge of the obligation prescribed by Section 3C(4).

D. Disciplinary Responsibilities

(1) Judges who receive information indicating a substantial likelihood that another judge has committed a violation of this Code should take appropriate action. Judges having knowledge* that another judge has committed a violation of this Code that raises a substantial question as to

the other judge's fitness for office shall inform the appropriate authority*.

(2) Judges who receive information indicating a substantial likelihood that a lawyer has committed a violation of the Standards of Conduct of the State Bar of Georgia should take appropriate action. Judges having knowledge* that a lawyer has committed a violation of the Standards of Conduct of the State Bar of Georgia that raises a substantial question as to the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects shall inform the appropriate authority*.

(3) Acts of judges, in the discharge of disciplinary responsibilities, required or permitted by Sections 3D(1) and 3D(2) are part of their judicial duties and shall be absolutely privileged, and no civil action predicated thereon may be instituted against these judges.

Commentary: Appropriate action may include direct communication with the judge or lawyer who has committed the violation, or other direct action if available, and reporting the violation to the appropriate authority or other agency or body.

Section 3D(1) requires judges to inform the Judicial Qualifications Commission of any other judge's violation of the Code of Judicial Conduct, if the violation raises a substantial question of fitness for office and if the violation is actually known to the reporting judge.

Section 3D(2) also requires judges to report to the State Bar of Georgia any violation by a lawyer of the Standards of Conduct, if the violation raises a substantial question of the lawyer's fitness as a lawyer and, again, if the violation is actually known to the reporting judge.

E. Disqualification

(1) Judges shall disqualify themselves in any proceeding in which their impartiality might reasonably be questioned, including but not limited to instances where:

Commentary: Under this rule, judges are subject to disqualification whenever their impartiality might reasonably be questioned, regardless of 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 firm appeared, unless the disqualification was waived by the parties after disclosure by the judge.

Judges should disclose on the record information that the court believes the parties or their lawyers might consider relevant to the question of disqualification, even if they believe there is no legal basis for disqualification.

The rule of necessity may override the rule of disqualification. For example, 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. In the latter case, the judge must disclose on the record the basis for possible disqualification and use reasonable efforts to transfer the matter to another judge as soon as possible.

(a) the judge has a personal bias or prejudice concerning a party or a party's lawyer, or personal knowledge* of disputed evidentiary facts concerning the proceeding;

(b) the judge served as a lawyer in the matter of controversy, or a lawyer with whom the judge previously practiced law served during such association as a lawyer concerning the matter, or the judge has been a material witness concerning it;

Commentary: *A lawyer in a government agency does not ordinarily have an association with other lawyers employed by that agency within the meaning of Section 3E(1)(b); judges formerly employed by a governmental agency, however, should disqualify themselves in a proceeding if their impartiality might reasonably be questioned because of such association.*

(c) the judge or the judge's spouse, or a person within the third degree of relationship* to either of them, or the spouse of such a person, or any other member of the judge's family residing in the judge's household*:

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

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

(iii) is known* by the judge to have a more than de minimis* interest that could be substantially affected by the proceeding;

(iv) is to the judge's knowledge* likely to be a material witness in the proceeding.

Commentary: *The fact that a lawyer in a proceeding is affiliated with a law firm with which a relative of the judge is affiliated does not of itself disqualify the judge. Under appropriate circumstances, the fact that "the judge's impartiality might reasonably be questioned" under Section 3E(1), or that the relative is known by the judge to have an interest in the law firm that could be "substantially affected by the outcome of the proceeding" under Section 3E(1)(c)(iii) requires the judge's disqualification.*

(2) Judges shall keep informed about their personal and fiduciary* economic interests*, and make a reasonable effort to keep informed about the personal financial interests of their spouses and minor children residing in their households.

F. Remittal of Disqualification.

Judges disqualified by the terms of Section 3E may disclose on the record the basis of their disqualification and may ask the parties and their lawyers to consider, out of the presence of the judge, whether to waive disqualification. If following disclosure of any basis for disqualification other than personal bias or prejudice concerning a party, the parties and lawyers, without participation by the judge, all agree that the judge should not be disqualified, and the judge is then willing to participate, the judge may participate in the proceeding. The agreement shall be incorporated in the record of the proceeding.

Commentary: A remittal procedure provides the parties an opportunity to proceed without delay if they wish to waive the disqualification. To assure that consideration of the question of remittal is made independently to the court, judges must not solicit, seek or hear comment on possible remittal or waiver of the disqualification, unless the lawyers jointly propose remittal after consultation as provided in Section 3F. A party may act through counsel, if counsel represents on the record that the party has been consulted and consents. As a practical matter, judges may wish to have all parties and their lawyers sign a remittal agreement.

CANON 4

Judges May Engage in Activities to Improve the Law, the Legal System, and the Administration of Justice.

Judges, subject to the proper performance of their judicial duties, may not engage in the following quasi-judicial activities, if in so doing they cast doubt on their capacity to decide impartially any issue that may come before them;

A. Judges may speak, write, lecture, teach and participate in other activities concerning the law*, the legal system, and the administration of justice.

B. Judges may appear at public hearings before an executive or legislative body or official on matters concerning the law*, the legal system, and the administration of justice, and they may otherwise consult with an executive or legislative body or official, but only on matters concerning the administration of justice.

C. Judges may serve as members, officers, or directors of an organization or governmental agency devoted to the improvement of the law*, the legal system, or the administration of justice. They may assist such organizations in raising funds and may participate in their management and investment, but should not personally participate in public fund raising activities. They may make recommendations to public and private fund-granting agencies on projects and programs concerning the law, the legal system, and the administration of justice.

Commentary: As a judicial officer and person specially learned in the law, a judge is in a unique position 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. To the extent that time permits, judges are encouraged to do so, either independently or through a bar association, judicial conference, or other organization dedicated to the improvement of the law.

Non quasi-judicial, or non law-related, extra-judicial activities are governed by Canon 5.

CANON 5

Judges Shall Regulate Their Extra-Judicial Activities to Minimize the Risk of Conflict with Their Judicial Duties.

A. Avocational Activities.

Judges may not engage in such avocational activities as detract from the dignity of their office or interfere with the performance of their judicial duties.

Commentary: Complete separation of judges from extra-judicial activities is neither possible nor wise; they should not become isolated from the society in which they live.

B. Civic and Charitable Activities.

Judges may not participate in civic and charitable activities that reflect adversely upon their impartiality or interfere with the performance of their judicial duties. Judges may serve as officers, directors, trustees, or non-legal advisors of educational, religious, charitable, fraternal, or civic organizations not conducted for the economic or political advantage of

their members, subject to the following limitations:

(1) Judges shall not serve if it is likely that the organization will be engaged in proceedings that would ordinarily come before them or will be regularly engaged in adversary proceedings in any court.

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

(2) Judges shall not solicit funds for any educational, religious, charitable, fraternal or civic organization, or use or permit the use of the prestige of their office for that purpose, but they may be listed as officers, directors, or trustees of such organizations. A judge should not be a speaker or the guest of honor at any organization's fund raising event, but may attend such events.

(3) Judges shall not give investment advice to such an organization, but they may serve on its board of directors or trustees even though it has the responsibility for approving investment decisions.

Commentary: A judge's participation in an organization devoted to quasi-judicial, or law-related, extra-judicial activities is governed by Canon 4.

C. Financial Activities.

(1) Judges should refrain from financial and business dealings with lawyers, litigants, and others that tend to reflect adversely on their impartiality, interfere with the proper performance of their judicial duties, or exploit their judicial positions.

(2) Subject to the requirement of subsection (1), judges may hold and manage investments, including real estate and engage in other remunerative activity including the operation of a business.

(3) Judges should manage their investments and other financial interests to minimize the number of cases in which they are disqualified. As soon as they can do so without serious financial detriment they should divest themselves of investments and other financial interests that might require frequent disqualification.

(4) Neither judges nor members of their families residing in their households* should accept a substantial gift, bequest, favor or loan from anyone except as follows:

- (a) judges may accept gifts incident to a public testimonial to them; books supplied by publishers on a complimentary basis for official use;

or invitations to judges and their spouses to attend bar-related functions or activities devoted to the improvement of the law*, the legal system, or the administration of justice;

(b) judges or members of their families residing in their households may accept ordinary social hospitality; a gift, bequest, favor, or loan from a relative; a wedding or engagement gift; a loan from a lending institution in its regular course of business on the same terms generally available to persons who are not judges, or a scholarship or fellowship awarded on the same terms applied to other applicants.

(c) judges or members of their families residing in their households may accept any other gift, bequest, favor, or loan only if the donor is not a party or other person whose interests have come or are likely to come before them, and if its value exceeds \$100, the judges report it in the same manner as they report compensation in Canon 6C.

Commentary: This subsection does not apply to contributions to a judge's campaign for judicial office, a matter governed by Canon 7.

(5) Judges are not required by this Code to disclose their income, debts, or investments, except as provided in this Canon and Canons 3 and 6.

Commentary: Canon 3 requires judges to disqualify themselves in any proceeding in which they have a financial interest; Canon 5 requires judges to refrain from financial activities that might interfere with the impartial performance of their judicial duties; Canon 6 requires them to report all compensation they receive for activities involving personal services outside their judicial office. Judges have the rights of an ordinary citizen, including the right to privacy in their financial affairs, except to the extent that limitations thereon are required to safeguard the proper performance of their duties. Owning and receiving income from investments do not as such affect the performance of a judge's duties.

(6) Information acquired by judges in their judicial capacity should not be used or disclosed by them in financial dealings or for any purpose not related to their judicial duties.

D. Fiduciary* Activities.

Judges should not serve as executors, administrators, trustees, guardians, or other fiduciaries, except for the estates, trusts, or persons of members of their families and then only if such service will not interfere with the proper performance of their judicial duties. "Member of their families" include a spouse, child, grandchild, parent, grandparent, or other relative or person with whom the judge maintains a close familial relationship. As family fiduciaries, judges are subject to the following restrictions:

(1) They should not serve if it is likely that as fiduciaries, they will be engaged in proceedings that would ordinarily come before them, or if the estates, trusts, or wards become involved in adversary proceedings in the

court on which they serve or one under its appellate jurisdiction.

(2) While acting as fiduciaries, judges are subject to the same restrictions on financial activities that apply to them in their personal capacities.

Commentary: Judge's obligations under this Canon and their obligations as fiduciaries may come into conflict. For example, a judge should resign as trustee if it would result in detriment to the trust to divest it of holdings whose retention would place the judge in violation of Canon 5C(3).

E. Arbitration.

Judges shall not act as arbitrators or mediators for compensation. This prohibition does not apply to senior judges who serve as judges.

F. Practice of Law.

Judges shall not practice law, unless allowed by law*.

G. Extra-judicial Appointments.

A judge should not accept appointment to a governmental committee, commission, or other position that is concerned with issues of fact or policy on matters other than the improvement of the law*, the legal system, or the administration of justice, if acceptance of such appointment might reasonably cast doubt upon the judge's impartiality or demean the judge's office.

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

CANON 6

Judges Should Regularly File Reports of Compensation Received for Quasi-Judicial and Extra-Judicial Related Activities.

Judges may not receive compensation and reimbursement of expenses for the quasi-judicial and extra-judicial activities permitted by this Code, if the source of such payments gives the appearance of influencing the judge in his judicial duties or otherwise gives the appearance of impropriety. Such compensation is subject to the following restrictions:

A. Compensation.

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

B. Expense Reimbursement.

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

C. Reports.

Except as hereinafter provided to the contrary, full-time judges should report the dates, places, and nature of any activities involving personal services for which they received compensation, and the name of the payor and the amount of compensation so received. Compensation or income of a spouse attributed to the judge by operation of a community property law is not extra-judicial compensation to the judge. Judge's reports for each calendar year should be filed between January first and April fifteenth of the following year in the office of the Clerk of the Supreme Court of Georgia. A copy of a judge's federal income tax return shall be considered a sufficient compliance with this paragraph. Such report or tax return shall be filed under seal and shall be available for inspection only by the Justice of the Supreme Court of Georgia and the members of the Judicial Qualifications Commission.

CANON 7

Judges Shall Refrain from Political Activity Inappropriate to Their Judicial Office.

A. Political Conduct in General.

(1) A judge or a candidate* for public election* to judicial office shall not:

- (a) act or hold himself or herself out as a leader or hold any office in a political organization*;
- (b) make speeches for a political organization or candidate or publicly endorse a candidate for public office;

Commentary: A candidate does not publicly endorse another candidate for public office by having his name on the same ticket.

- (c) solicit funds for or pay an assessment or make a contribution to a

political organization, or purchase tickets for political party dinners, or other functions, except as authorized in subsection A(2).

(2) Judges holding an office filled by public election* between competing candidates*, or candidates for such office, may attend political gatherings and speak to such gatherings on their own behalf when they are candidates for election or re-election.

B. Campaign Conduct

(1) Candidates*, including an incumbent judge, for any judicial office that is filled by public election* between competing candidates:

(a) shall prohibit officials or employees subject to their direction or control from doing for them what they are prohibited from doing under this Canon and shall not allow any other person to do for them what they are prohibited from doing under this Canon;

(b) shall not make statements that commit the candidate with respect to issues likely to come before the court;

Commentary: This Canon does not prohibit a judge or a candidate from publicly stating his or her personal views on disputed issues, see Republican Party V. White, 536 U.S. 765 (2002). To ensure that voters understand a judge's duty to uphold the constitution and laws of Georgia where the law differs from his or her personal belief, however, judges and candidates are encouraged to emphasize in any public statement their duty to uphold the law regardless of their personal views.

(c) shall not use or participate in the publication of a false statement of fact concerning themselves or their candidacies, or concerning any opposing candidate or candidacy, with knowledge of the statement's falsity or with reckless disregard for the statement's truth or falsity;

Commentary: The determination of whether a candidate knows of falsity or recklessly disregards the truth or falsity of his or her public communication is an objective one, from the viewpoint of a "reasonable attorney", using the standard of "objective malice".

See In re Chmura, 608 N.W. 2d 31 (Mich. 2000)

(d) shall be responsible for the content of any statement or advertisement published or communicated in any medium by a campaign committee if the candidate knew of or recklessly disregarded the content of said statement or advertisement prior to its release;

(e) and except where a statement or advertisement is published or communicated by a third party, shall be responsible for reviewing and approving the content of his or her statements and advertisements, and those of his or her campaign committee. Failure to do so will not be a defense to a complaint for violation of this Canon.

(2) Candidates*, including an incumbent judge, for a judicial office that is filled by public election* between competing candidates, may personally solicit campaign contributions and publicly stated support. Candidates, including incumbent judges, should not use or permit the use of campaign contributions for the private benefit of themselves or members of their families.

Commentary: Although judges and judicial candidates are free to personally solicit campaign contributions and publicly stated support, see Weaver Bonner, 309 F 3d 1312 (11th Cir. 2002), they are encouraged to establish campaign committees of responsible persons to secure and manage the expenditure of funds for their campaigns and to obtain public statements of support of their candidacies. The use of campaign committees is encouraged because they may better maintain campaign decorum and reduce campaign activity that may cause requests for recusal or the appearance of partisanship with respect to issues or the parties which require recusal.

C. Applicability

(a) This Canon generally applies to all incumbent judges and judicial candidates*. A successful candidate, whether or not an incumbent, is subject to judicial discipline by the Judicial Qualifications Commission for his or her campaign conduct.

(b) A lawyer who is a candidate* for judicial office shall comply with all provisions of the Code of Judicial Conduct applicable to candidates* for judicial office. An unsuccessful lawyer candidate* is subject to discipline for campaign conduct by the State Bar of Georgia pursuant to applicable standards of the State Bar of Georgia, and the Judicial Qualifications Commission shall immediately report any such alleged conduct to the office of the General Counsel of the State Bar of Georgia for such action as may be appropriate under applicable bar rules.

(c) An unsuccessful non-lawyer candidate* is subject to discipline for campaign misconduct by the Judicial Qualifications Commission, and in addition to any other sanctions authorized by the Rules of the Judicial Qualifications Commission, the Commission, after full hearing, is authorized to recommend that such individual be barred from seeking any elective or appointive judicial office in this State for a period not to exceed 10 years.

Application of the Code of Judicial Conduct

Anyone, whether or not a lawyer, who is an officer of a judicial system performing judicial functions, including an officer such as an administrative law judge of an executive branch agency or of the Board of Worker's Compensation, an associate judge, special master, or magistrate, or any person who is a candidate for any such office is a judge for the purpose of this Code. All judges shall comply with this Code except as provided below.

A. Part-time judges.

A part-time judge is a judge who serves on a continuing or periodic basis, but is permitted by law to devote time to some other profession or occupation and whose compensation for that reason is less than that of a full-time judge. Part-time judges:

(1) are not required to comply with Canon 5D [fiduciary activities], 5E [arbitration], 5F [practice of law], and 5G [extra-judicial appointments], and are not required to comply with Canon 6C [annual financial reporting].

(2) should not practice law in the court on which they serve, or in any court subject to the appellate jurisdiction of the court on which they serve, or act as lawyers in proceedings in which they have served as judges or in any proceeding related thereto.

B. Judge Pro Tempore.

A judge pro tempore is a person who is appointed to act temporarily as a judge.

(1) While acting as such, a judge pro tempore is not required to comply with Canon 5C(3) [financial activities], 5D [fiduciary activities], 5E [arbitration and mediation], 5F [practice of law], and 5G [extra judicial appointments], and Canon 6C [annual financial reporting].

(2) Persons who have been judges pro tempore should not act as lawyers in proceedings in which they have served as judges or in other proceeding related thereto.

C. Time for Compliance.

A person to whom this Code becomes applicable shall comply immediately with all provisions of this Code except Sections 5C(1), 5C(2), 5C(3) [personal and family financial activities] and 5D [fiduciary activities], and shall comply with these Sections as soon as reasonably possible and shall do so in any event within the period of one year.

Commentary: If serving as a fiduciary when selected as judge, a new judge may, notwithstanding the prohibitions in Section 5D, continue to serve, but only for that period of time necessary to avoid serious adverse consequences to the beneficiary of the fiduciary relationship, and in no event longer than one year. Similarly, if engaged at the time of judicial selection in a business activity, a new judge may, notwithstanding the prohibitions in Section 5C(1), 5C(2), and 5C(3), continue in that activity for a reasonable period, but in no event longer than one year.

D. In addition to the foregoing, the Commission shall have continuing jurisdiction over individuals to whom this Code is applicable regarding allegations of misconduct occurring during such individual's service as an officer of a judicial system if a complaint is filed no later than one (1) year following service of such judicial officer.

**Effective
Date of Code**

This Code shall become effective January 7, 2004.

Rules of the Judicial Qualifications Commission

Definition of Sanctions

The Constitution of the State of Georgia of 1983 provides that "The Supreme Court shall adopt rules of implementation" for discipline, removal, and involuntary retirement of judges (OCGA Article VI, Section VII, Paragraph VII).

The following are rules adopted by the Supreme Court governing the functions of the Judicial Qualifications Commission:

The following working definition for disciplinary sanctions shall apply in all proceedings of the Commission, both formal and informal:

- (a) Admonition:** A private communication reminding a judge of ethical responsibilities and giving a gentle or friendly warning to avoid future misconduct or inappropriate practices. An admonition may be used to give authoritative advice and encouragement or to express disapproval of behavior that suggests the appearance of impropriety even though it meets minimum standards of judicial conduct.
- (b) Private Reprimand:** A private communication that declares a judge's conduct unacceptable under one of the grounds for judicial discipline but not so serious as to merit a public sanction.
- (c) Public Reprimand:** A public communication administered by a judicial officer which declares a judge's conduct unacceptable under one of the grounds for judicial discipline but not so serious as to warrant a censure.
- (d) Censure:** A public declaration by the Supreme Court that a judge is guilty of misconduct that does not require removal from office.
- (e) Suspension:** A decision by the Supreme Court to suspend a judge from office temporarily, with or without pay, for serious misconduct that merits more than a censure but less than removal. This sanction is flexible, and there are no restrictions on the length of a suspension.
- (f) Removal:** A decision by the Supreme court to remove a judge permanently from office for serious misconduct.
- (g) Retirement:** A decision by the Supreme Court to retire a judge for a disability that seriously interferes with the performance of judicial duties that is or is likely to become permanent.

Rule 1 Members and Their Terms

(a) The power to discipline, remove and cause involuntary retirement of judges is vested in the Judicial Qualifications Commission, which consists of seven members, as follows:

- (1)** Two judges of any court of record selected by the Supreme Court;
- (2)** Three members of the State Bar of Georgia, who have been active status members of the State Bar for at least ten years, and who shall be elected by

the Board of Governors of the State Bar; and

(3) Two citizens, neither of whom shall be members of the State Bar, who shall be appointed by the Governor (Article VI, Section VII, Paragraph VI, Constitution of Georgia of 1983).

(b) All members of the Commission shall serve for terms of four years each and until their successors are elected or appointed and are qualified. Whenever any member ceases to hold the office or to possess the qualifications which entitle the member to be appointed a member, the member's membership shall terminate, and the appointing authority shall select a successor for the unexpired term. No member of the Commission shall receive any compensation for services, but shall be allowed necessary expenses for travel, board and lodging incurred in the performance of Commission duties. No member of the Commission, except judges, shall hold any other public office or be eligible for appointment to a State judicial office while holding membership on the Commission. No member shall hold office in any political party or organization. No act of the Commission shall be valid unless concurred in by a majority of its membership.

(c) A vacancy shall occur when a Commission member becomes unable to continue service for any reason. An appointment to fill a vacancy for the duration of the unexpired term shall be made by the appropriate authority. If a vacancy is not filled at the end of sixty (60) days, the Commission shall appoint from the category to be represented a member who shall serve until such time as an appointment shall be made by the appropriate authority.

(d) A temporary vacancy shall occur when a Commission member becomes unable to attend a formal hearing for any reason. The Commission is authorized but not required to appoint a former member from the category to substitute at such formal hearing and subsequent action related to the hearing in lieu of such non-serving member.

Rule 2

Officers and Their Duties

(a) The Commission shall select from its members a Chairperson, a Vice Chairperson, and such other officers as the Commission may consider proper and helpful in carrying out its functions, who shall serve at the pleasure of the Commission. A member may be elected to more than one office.

(b) The Chairperson shall preside at all general meetings of the Commission as well as at formal hearings concerning the conduct or disability of a judge. If the Chairperson is not a lawyer, the Chairperson shall appoint a member of the Commission who is a lawyer to preside at any hearing held by the Commission. The Chairperson shall be responsible for the custody and safekeeping of all the records of the Commission, shall promptly furnish to members of the Commission copies of all complaints, notices, answers and other documents filed in connection with proceedings before the Commission, and shall perform such other duties as are indicated in these rules or as are customarily performed by a Chairperson. The Chairperson shall also annually make a report to the Supreme Court of the actions of the Commission, but shall not set forth therein

the name of or otherwise identify a judge with respect to matters which are confidential under the provisions of Rule 20.

(c) In the event the Chairperson is absent, or is otherwise unable to attend a meeting or to perform the duties of office at a particular time, those duties shall be performed by the Vice Chairperson, and in the absence of the Vice Chairperson, by a member of the Commission designated by those present.

(d) The Director or, if the Director is absent, such member of the Commission as the Chairperson shall designate, shall have the duty of recording in the minute book, as a permanent record of the Commission, the action of the Commission at each meeting.

(e) The Commission may, at its discretion, designate a Director who shall serve at the pleasure of the Commission and shall have such duties, powers and authority as may be, from time to time, fixed, determined or delegated by the Commission. The Director may be authorized by the Commission to issue subpoenas on its behalf.

(f) Notwithstanding the foregoing provisions, the Chairperson, with the concurrence of a majority of the Commission, may at any time designate any judicial member of the Commission to preside at any formal hearing held by the Commission. Any such designation shall be made by written order signed by the Chairperson or the Director.

Rule 3

Meetings

(a) The Chairperson may, and upon the request of three members shall, call a meeting of the Commission. The Chairperson shall give reasonable notice to each member by telephone or other means of the time and place of the meeting.

(b) Decisions by the Commission to conduct an investigation of a judge, order a judge to submit to a physical examination, proceed against a person for contempt for failing to respond to a subpoena of the Commission, issue a public statement, institute contempt proceedings against a person for violation of the confidentiality provisions of the rules, hold or not to hold a formal hearing, hear additional evidence, make a report to the Supreme Court recommending removal, other discipline or retirement of a judge, or deciding after a formal hearing not to make such a report, shall be made at a formal meeting of the Commission. Decisions with respect to other matters may be arrived at through communications between the members of the Commission, but a report of such action shall be made by the Chairperson at the next meeting of the Commission and entered in the minutes of that meeting.

(c) Four members of the Commission shall constitute a quorum for the transaction of business at any formal meeting or for the conduct of a formal hearing, and if a quorum is present at a meeting, the vote of a majority of those in attendance shall be considered the official action of the Commission, except that a vote of a majority of the members of the Commission shall be required for a recommendation of discipline to the Supreme Court.

Rule 4

Complaints – Investigations

(a) The Commission shall require that all complaints shall be made to it in writing and the Commission, when it considers it appropriate, may require that the same be verified. A complaint shall not be a prerequisite to action by the Commission, but the Commission may act on its own motion in those cases where the Commission considers it appropriate.

(b) Upon receiving a complaint or otherwise receiving information indicating that a judge may have been guilty of willful misconduct in office, or willful and persistent failure to perform the duties of a judge, or habitual intemperance, or conduct prejudicial to the administration of justice which brings the judicial office into disrepute, or that a judge may have a disability that seriously interferes with the performance of the judge's duties which is or is likely to become permanent, the Commission may make an initial inquiry of the judge for such written comments with respect to the matters involved as the judge may wish to make; and, with or without making such initial inquiry, and with or without notice or other information being given to the judge, as the Commission may consider best, the Commission may conduct an investigation of the conduct or condition of the judge for the purpose of determining whether formal proceedings should be instituted and a hearing held. However, prior to any determination that a formal hearing will be held, the judge shall be sent a copy of the complaint or a synopsis of the matters to be or which have been investigated and the judge shall thereafter be given reasonable opportunity to make such statement to the Commission as the judge considers desirable. Such statement may be made, as the judge may elect, personally or by counsel, verbally or in writing, and may or may not be under oath. In exercising this right, the judge shall not have the right to call witnesses nor to confront nor cross-examine the person making the complaint or any person interviewed by the Commission or its duly authorized representative. If, after being notified by the Commission, the judge does not respond within a reasonable time or within the time fixed by the Commission, the right to make such statement shall thereupon terminate. In making an investigation, the Commission may issue subpoenas for witnesses to appear before the Commission's representative for the purpose of making a sworn statement and may likewise issue subpoenas for the production of books, papers and other evidentiary matters which are pertinent to the inquiry.

(c) Whenever the Commission reaches the conclusion that a complaint fails to state, or the facts developed upon an initial inquiry to the judge or an investigation fail to show, any reason for the institution of disciplinary proceedings, the Commission shall so advise the complainant. The Commission shall also so notify the judge, except that with respect to complaints which are rejected because they fail to state any grounds for disciplinary proceedings, the Commission may, but is not required to, advise the judge thereof.

(d) After receipt of a complaint or of information indicating that a judge may have been guilty of conduct which might warrant discipline, or that a judge may be disabled, the Commission, before voting to hold a formal hearing, may delegate to one or more of its members the authority and responsibility to personally and confidentially confer with the judge subject to the inquiry, and

Rule 5
Institution
of Formal
Proceedings
- Notice -
Judge's
Answer

to make informal recommendations to the judge concerning the subject matter of the inquiry and a satisfactory disposition thereof; and if the judge agrees to the Commission's suggested disposition, the matter may be disposed of on the basis of the agreement reached. The Commission shall file a report of the disposition in the Supreme Court.

(e) The foregoing shall not be construed to mean that the Commission may not at any time entertain and act upon a proposal from a judge for disposition of any matter pending before the Commission concerning such a judge, provided that if such proposal is made after notice of formal hearing, and is found acceptable to the Commission, a report thereof shall be filed in the Supreme Court and such report shall not be considered confidential.

(f) At any time after receipt of a complaint or otherwise receiving information indicating that a judge may have been guilty of conduct which, while insufficient to warrant the institution of formal proceedings, nevertheless warrants sanctions, the Commission may informally: (i) admonish and/or reprimand a judge; (ii) direct professional counseling and assistance for a judge; (iii) impose conditions on a judge's future conduct or instruct a judge to make specific changes in particular matters of conduct; or (iv) adjust the complaint by any other appropriate means consistent with these rules.

(a) When after receiving a complaint or otherwise obtaining information concerning the conduct or physical or mental condition of a judge, the Commission has made such investigation of the complaint or information as the Commission considers needful and proper, and the judge has been given the opportunity to make a statement to the Commission as stated in Rule 4(b), the Commission concludes that a formal hearing should be held, the Commission shall issue, as promptly as possible, a written notice to the judge advising the judge of the institution of formal proceedings to inquire into the charges against the judge. The proceedings shall be entitled: "Before the Commission on Judicial Qualifications, Inquiry Concerning Judge _____."

(b) The notice shall specify the charges against the judge with sufficient fullness to enable the judge to understand the nature thereof and shall advise the judge of the right to file a written answer to the charges; and a copy of such notice shall be filed in the Supreme Court.

(c) Within thirty (30) days after service of the notice of formal proceedings, the judge shall file with the Commission an original and six (6) copies of a verified answer. The notice of formal proceedings and the answer shall constitute the pleadings. No further pleadings shall be filed, except by way of amendment as provided for in Rule 9.

Rule 6
Hearing Before
Commission or a
Special Master

Upon the filing of an answer or upon expiration of the time for its filing, the Commission shall promptly order a hearing to be held before it concerning the removal, other discipline or retirement of the judge, or the Commission may request the Supreme Court to appoint a Special Master to hear and take evidence in such matter and to report thereon to the Commission. The Commission shall set a time and place for the hearing, and shall give notice thereof to the judge at least twenty (20) days before the date thereof.

Rule 7
Conduct of
Hearing

(a) At the time and place set for the hearing, the Commission or the Special Master may proceed with the hearing whether or not the judge has filed an answer or appears at the hearing.

(b) The proceedings at the hearing shall be reported by a qualified reporter.

(c) At the hearing before the Commission or a Special Master appointed by the Supreme Court, legal evidence only shall be received, and oral evidence shall be taken on oath or affirmation.

(d) The Chairperson or presiding member of the Commission, if the hearing is held before the Commission, or the Special Master appointed to conduct the hearing, shall administer oaths or affirmations to witnesses, rule on the admissibility of evidence, and otherwise direct the manner or order of proceedings as a judge of a court of record.

(e) The Rules of Evidence applicable to civil cases shall apply at all hearings before the Commission or the Special Master, and the standard of proof shall be clear and convincing evidence. In all such hearings, the burden of proof shall be upon the counsel for the Commission.

Rule 8

Rights of Judge in Connection with Hearing

- (a) Within fifteen (15) days after such notice of formal hearing has been mailed to or otherwise served upon the judge, it shall be the duty of the Commission to furnish to the judge as of the time of such notice the names of all persons and their addresses who have been interviewed by the Commission or its representative in investigating the charges set out in the notice of a formal hearing, as well as a copy or transcript of all statements of testimony, whether signed or unsigned, of any person so interviewed in connection with such charges and copies of all documents, writings, papers, records or other evidentiary material relevant to such charges which have been obtained by the Commission or its representative and reviewed by the Commission.
- (b) If, after furnishing such information and prior to the date of the hearing, the Commission or its representative shall interview any other person or persons in connection with such charges, the Commission shall promptly inform the judge or the judge's counsel of the name and address of such other person or persons.
- (c) If a witness is discovered or interviewed or any documentary or other tangible evidence is discovered or comes into the possession of the Commission or its representative after the hearing has begun, the Commission shall promptly inform the judge or the judge's counsel of the name and address of such witness and promptly furnish a copy of such documentary or other tangible evidence to the judge or the judge's counsel.
- (d) The foregoing provisions shall not be construed as requiring that the Commission furnish to the judge any communications between members of the Commission or its representative or any other records of the Commission.
- (e) In either of the situations described in Paragraphs (b) and (c), the Commission, upon compliance with the requirements of such paragraphs, shall be authorized to hear the testimony of any such witness or to admit into evidence any documentary or tangible evidence. However, the Commission may take such action with respect to the hearing either by way of postponement, recess or adjournment of the hearing to some future date as, upon a specific motion made by the judge therefore, may seem proper for the protection of the judge in the adequate presentation of a defense.
- (f) At the hearing the judge shall have the right and reasonable opportunity to defend against the charges by the introduction of evidence; to be represented by counsel; to examine and cross-examine witnesses; and to have subpoenas issued for attendance of witnesses to testify or for the production of books, papers and other evidentiary matters.
- (g) When a transcript of testimony has been prepared at the expense of the Commission, a copy thereof, upon request, shall be available for use by the judge and counsel in connection with the proceedings, or the judge may arrange to procure a copy at his or her expense. The judge shall have the right, without any order or approval, to have all or any portion of the testimony in the proceedings transcribed at the judge's expense.
- (h) If, in a proceeding before the Commission, the Commission should be in doubt as to the competency of the judge, the Commission may appoint a

guardian ad litem or take such other action as the Commission may consider appropriate.

Rule 9

Amendments to Notice and Answer

The Special Master, at any time prior to the conclusion of the hearing, or the Commission, at any time prior to its determination, may allow or require amendments to the notice of formal proceedings and may allow amendments to the answer. The notice may be amended to conform to proof or set forth additional facts and charges whether occurring before or after the commencement of the hearing. In case an amendment is allowed to the notice of formal hearing, the judge shall be given reasonable time both to answer the amendment and to prepare and present a defense against the matters set forth therein.

Rule 10

Report of Special Master

(a) Within twenty (20) days after the conclusion of a hearing before a Special Master and the Master's receipt of a transcript of the evidence, the Special Master shall prepare and transmit to the Commission a report which shall contain a brief statement of the proceedings, findings of fact, any conclusions of law with respect to the issues presented by the notice of formal hearing and the answer thereto, or if there be no answer, findings of fact and any conclusions of law with respect to the allegations in the notice of formal hearing. The report shall also contain the Special Master's recommendation as to whether the Commission shall or shall not recommend discipline. The report shall be accompanied by a transcript of the evidence.

(b) Upon receiving the report of the Special Master, the Commission shall promptly serve a copy on the judge.

Rule 11

Objections and Briefs

(a) Within fifteen (15) days after a copy of the Special Master's report is served on the judge, the judge may file with the Commission an original and six (6) copies of a statement of objections to the findings of fact and conclusions of law contained in the report of the Special Master and may file an original and six (6) copies of a brief in support thereof.

(b) If the judge does not contest the findings of fact or conclusions of law as set forth in the Special Master's report, the judge may, nevertheless, within such time file an original and six (6) copies of a brief in support of a claim that such findings and conclusions are not sufficient to justify removal, other discipline or retirement.

(c) In making a report, the Commission, when there is a report of a Special Master, may accept, modify or reject any or all of the findings of fact and conclusions of law of the Special Master as well as the Special Master's recommendation to the Commission that it recommend or not recommend discipline.

(d) If a formal hearing is held by the Commission, the judge may, within a reasonable time after the termination of the hearing as may be fixed by the Commission, file an original and six (6) copies of a brief with the Commission in support of the judge's claim that the Commission should not recommend removal, other discipline or retirement.

Rule 12

Additional Evidence

In a proceeding pending before it, the Commission may, at any time after a formal hearing is held, order an additional hearing for the taking of additional evidence; provided that where a Special Master has been appointed, additional evidence shall be taken by the Special Master upon his or her own motion or by order of the Commission, and no such hearing for the taking of additional evidence shall be held by the Commission itself until after the Special Master has made a report. After the Special Master has made a report, the Commission may take additional evidence, or direct the Special Master to do so and report findings of fact and conclusions of law with respect thereto. The judge shall be given ten (10) days notice of the hearing to take additional evidence.

Rule 13

Extensions of Time

The Chairperson of the Commission may extend for periods not to exceed thirty (30) days in the aggregate the time for filing an answer, for the commencement of a hearing before the Commission, for the transmittal of the Special Master's report to the Commission, and for filing a statement of objections to the report of the Special Master, and a Special Master may similarly extend the time for the commencement of a hearing. The Commission may grant such additional extension of time as it may consider proper.

Rule 14

Recommendation of Commission of Removal, Other Discipline or Retirement

(a) The Commission may make a report recommending to the Supreme Court that a judge be (1) removed from office; (2) removed from office and prohibited from thereafter holding judicial office; (3) suspended from office for a specified period of time together with such other conditions and restrictions as the Commission may consider proper; (4) censured; (5) reprimanded; (6) retired; or (7) subjected to such other discipline as may seem to the Commission appropriate. In the case of a recommendation of censure, the same, if approved by the Supreme Court, shall be administered in open Court. If the Commission recommends a reprimand and such recommendation is approved by the Court, the same shall be administered by the Court at such place and in such manner as the Court may consider proper.

(b) The report shall be signed by the members of the Commission concurring therein and shall indicate if any member or members dissent from the report. Any member who does not agree with the report of the majority of the Commission may file a written dissent or special concurrence which shall be made a part of the record. The report shall be filed in the Supreme Court and shall be accompanied by the Special Master's report, if any, and a transcript of the evidence. A copy of the report as filed shall be promptly served upon the judge and evidence of such service shall be filed in the Supreme Court.

Rule 15

Suspension by the Commission for Felony Indictment

(a) Upon indictment for a felony by a grand jury of this State or by a grand jury of the United States of any judge, the Commission shall, subject to subparagraph (b) of this Rule, review the indictment, and if it determines that the indictment relates to, and adversely affects the administration of the office of this indicted judge, and that the rights and interests of the public are adversely affected thereby, the Commission shall suspend the judge immediately and without further action pending the final disposition of the case or until the expiration of the judge's term of office, whichever occurs first. During the term of office to which such judge was elected and in which the indictment occurred, if a nolle prosequi is entered, if the public official is acquitted, or if after conviction the conviction is later overturned as a result of any direct appeal or application for a writ of certiorari, the judge shall be immediately reinstated to the office from which he or she was suspended. While a judge is suspended under this subparagraph and until final conviction, the judge shall continue to receive compensation. For the duration of any suspension under this subparagraph, the Governor shall appoint a replacement judge. Upon a final conviction with no appeal or review pending, the office shall be declared vacant and a successor to that office shall be chosen as provided in the Constitution of the State of Georgia of 1983 or the laws enacted in pursuance thereof.

(b) The Commission shall not review the indictment for a period of fourteen (14) days from the day the indictment is received. This period of time may be extended by the Commission. During this period of time, the indicted judge may, in writing, authorize the Commission to suspend him or her from office. Any such voluntary suspension shall be subject to the same conditions for review, reinstatement or declaration of vacancy as are provided in this subparagraph for a nonvoluntary suspension.

(c) After any suspension is imposed under this subparagraph, the suspended judge may petition the Commission for a review. If the Commission determines that the judge should no longer be suspended, the judge shall immediately be reinstated to office.

(d) The findings and records of the Commission and the fact that the public official has or has not been suspended shall not be admissible in evidence in any court for any purpose. The finding and records of the Commission shall not be open to the public.

(e) The provisions of this subparagraph shall not apply to any indictment handed down prior to January 1, 1985.

(f) If a judge who is suspended from office under the provision of this subparagraph is not first tried at the next regular or special term following the indictment, the suspension shall be terminated and the judge shall be reinstated to office. The judge shall not be reinstated under this provision if he or she is not so tried based on a continuance granted upon a motion made only by the defendant.

Rule 16

Petition to Modify or Reject Commission's Recommendation

(a) A petition to the Supreme Court to modify or reject the recommendation of the Commission for removal, other discipline or retirement of a judge may be filed with six (6) copies within thirty (30) days after service of a copy of the Commission's report on the judge. The petition shall be verified, shall be based on the record, shall specify grounds relied on, and shall be accompanied by proof of service of seven (7) copies of the petition and of the brief on the Commission. Within twenty (20) days after service of the petition and brief, the Commission may serve and file a responsive brief. Within fifteen (15) days after service of such brief, the petitioner may file a reply brief, seven (7) copies of which shall be served on the Commission.

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

(c) A petition filed under this rule shall be heard in such manner as may be ordered by the Supreme Court.

Rule 17

Commission's Power to Secure Assistance

(a) In conducting investigations, the preparation of notices, presentation of evidence at a formal hearing, preparation and filing of briefs and other documents, or in otherwise carrying out its functions, the Commission may utilize the services of the Attorney General of this State or one of the Attorney General's deputies or assistants, and in addition thereto, or in lieu thereof, may secure and pay for the services of a member of the Bar of this State in any or all of such matters.

(b) The Commission may also employ such assistants as it considers necessary for the performance of the duties and in the exercise of the powers conferred upon the Commission; subpoena or arrange for and compensate medical or other experts and reporters; subpoena witnesses; and arrange for the attendance of witnesses not subject to subpoena; and pay from funds available to it all expenses reasonably necessary for effectuating the purposes of Article VI, Section VII, Paragraph VII, of the 1983 Constitution of the State of Georgia.

Rule 18

Powers of Commission - Subpoenas, Depositions, Contempt, Physical Examinations, Witness Fees

(a) The Commission, through its Chairperson or Director, shall have the power to issue subpoenas for the attendance of witnesses at a formal hearing held before the Commission or a Special Master under Rule 7, for the production at such hearing of books, papers and other evidentiary matter.

(b) After notice is given to a judge that a formal hearing will be held under Rule 5, either the Commission or the judge may take the depositions of any witness upon reasonable written notice thereof given to the judge or the Commission of the time and place of taking of such depositions. The original of the deposition shall be returned to the Commission and at the hearing may be opened and used by either party under the same conditions and in the same manner and for the same purposes as depositions in civil cases. In connection with the taking of such depositions, the Commission, through its Chairperson or Director, shall have

the power to issue a subpoena for the attendance of the witness whose testimony is to be taken and for the production at the taking of the deposition of books, papers and other evidentiary matter.

(c) If any person refuses to attend, testify, or produce any writings or things required by a subpoena issued by the Commission, as authorized under subparagraph (b) of Rule 4 or under this rule, the Commission may petition the judge of the Superior Court of the circuit in which the person may be found, or if a judge of that circuit is involved in the proceedings, then to any judge of an adjoining circuit, for an order compelling the person to attend and testify or produce the writings or things required by the subpoena. The Court shall order the person to appear before it at a specified time and place and then and there shall consider why the person has not attended, testified or produced writings or things as required. A copy of said order shall be served upon the person to whom the subpoena of the Commission was directed. If it appears to the Court that the subpoena was regularly issued, the Court shall order the person to appear before the Commission, or a Special Master, at the time and place fixed in the order and to testify or produce the required writings or things. Failure to obey the order shall be punishable as contempt of court. The proceedings so instituted shall state in general terms, without identifying the judge, the nature of the pending matter, the name and residence of the person whose testimony is desired, and directions, if any, of the Commission requesting an order requiring the person to appear and testify and to produce writings or things as required by the Commission's subpoena. If the proceedings are instituted prior to the giving of notice of a formal hearing, the proceedings shall not identify the judge by name but only as a number.

(d) Each witness shall receive for attendance the same fees and allowances prescribed by OCGA Section 24-10-24 for witnesses in civil cases.

(e) The Commission shall also have the authority, after notice to the judge and a hearing, to require that a judge involved in proceedings before the Commission submit to a physical or mental examination, or both, and specify the time, place, manner, conditions and scope of the examination and the physician or physicians by whom it is to be made.

Rule 19

Notices

(a) All notices provided for under these rules shall be in writing and shall be served upon the judge personally by a member of the Commission, or by a representative designated by the Chairperson, or may be served by registered or certified mail, return receipt requested.

(b) The initial notice sent to a judge with respect to an investigation to be or which has been conducted by the Commission shall be sent to the judge at such address as the Chairperson considers appropriate. Subsequent notices and mailed communications shall be sent to the judge at such address as he or she shall designate in writing filed with the Commission. If the judge is represented by counsel, all notices and papers to be sent to the judge under these rules may be served upon counsel.

(c) All notices mailed to a judge or counsel shall be enclosed in a sealed envelope marked on the face thereof, "Confidential - to be opened by addressee only."

Rule 20

Confidentiality and Exceptions

(a) The proceedings of the Commission, including, but not limited to, the fact of filing of complaints with the Commission, investigations to determine whether there is probable cause that judicial misconduct has occurred, conferences of the Commission with respect to matters pending before it, correspondence and other communications, information learned from any investigation by the Commission and all other papers and documents shall be kept confidential. Information obtained independently of any such complaint or investigation need not be maintained as confidential. Information obtained independently of any such complaint or investigation need not be maintained as confidential. Further, the requirement that participants maintain confidentiality shall cease at the time of the decision of the Commission on whether to initiate formal hearing against a judge, or at the time the complaint in question is resolved, closed, or otherwise settled through formal disposition. However, this confidentiality requirement shall not apply to notice of a formal hearing, a formal hearing, reports of the Commission to the Supreme Court recommending discipline, and decisions of the Commission made after a formal hearing that the judge with respect to whom the hearing was held was not guilty of misconduct justifying a recommendation of discipline. When, notwithstanding the rule of confidentiality set out in the first sentence of this subparagraph, the existence of a complaint filed with the Commission or any investigation of a judge whether or not based upon a complaint shall in some way become public, the Commission, at the request of the judge or upon its own motion if it considers such to be desirable, may make such statement with respect to the handling and status of the proceedings as the Commission may consider appropriate. When, in the exercise of its functions, the Commission has information concerning conduct of a member of the Bar which the Commission feels should be considered by the Disciplinary Board of the State Bar of Georgia for the purpose of determining whether such conduct constitutes a violation of the Code of Professional Responsibility, the Commission shall have the authority and it shall be its duty to refer the matter to the Board for such action as the Board may consider appropriate.

The Commission shall be further authorized, in its discretion, to disclose to the Judicial Nominating Commission of the State of Georgia and to the Governor of the State, or any Commission, Board or Committee officially appointed to evaluate nominees for federal judgeships, including, but not limited to, a committee appointed by the American Bar Association for such purpose, any information involving any prospective nominee for judicial appointment which the Commission feels such Commission, Board or Committee should consider in passing upon the qualifications and fitness of the nominee for judicial appointment.

(b) All persons acting for the Commission in investigating a judge or participating in an official capacity in any proceedings relating thereto, including court reporters, shall be specifically advised by the Chairperson or by the Commission's representative of the requirement of confidentiality with respect to such matters as are confidential under subparagraph (a) of this Rule and shall be directed not to disclose any information acquired by them to any person not officially or formally connected with the investigation or proceedings.

(c) All subpoenas and other proceedings which may be issued or conducted by the Commission prior to service of a notice of formal hearing shall not name the judge against whom the charges are pending, but shall style the proceedings by number as set out in Rule 5.

(d) If there shall be probable cause for inquiry concerning, or prosecution of, a witness for perjury in proceedings before the Commission, the record of the proceedings or papers filed in connection therewith shall be disclosed to the extent required by the inquiry or prosecution.

(e) A judge about whom an inquiry or investigation is being made may request release of information concerning the complaint and investigation, and the Commission, if it considers appropriate, may comply with such request.

(f) Any person violating the rule of confidentiality as set forth in this section shall be subject to punishment for contempt of the Supreme Court.

(g) The rule of confidentiality as set forth in this section shall not apply to any information which the Commission considers to be relevant to any current or future civil or criminal action against a judge, and upon receipt of a duly issued subpoena or court order by any state or federal court of record, the Commission is authorized to comply with the same to the extent required by such subpoena or court order.

(h) The rule of confidentiality set forth in this section shall not apply to any complaint alleging a violation of Canon 7 of the Code of Judicial Conduct which the Commission, in its sole discretion, determines should be handled on an expedited basis in manner set forth in Rule 27.

Rule 21

Immunity

Complaints, reports or testimony in the course of proceedings under these rules shall be deemed to be made in the course of judicial proceedings. Members of the Commission, Commission counsel and the Commission staff shall be absolutely immune from suit for all conduct in the course of their official duties. All other participants shall be entitled to all rights, privileges and immunities afforded to participants in actions filed in the courts of this state, and shall be immune from civil liability with respect to all papers filed with, or statements made or testimony given to, the Commission or the Supreme Court or given in any investigation or proceeding pertaining to a complaint against a judge, when done in good faith.

Rule 22

Advisory Opinions

(a) The Commission shall be authorized to render official formal advisory opinions concerning a proper interpretation of the Code of Judicial Conduct, which advisory opinions the Commission shall publish and disseminate.

(b) The Commission shall examine and reconsider any of its advisory opinions upon the request of the Supreme Court.

(c) The Commission and the Supreme Court shall consider compliance with an advisory opinion to be evidence of a good faith effort to comply with the Code of Judicial Conduct, but only to the extent that the underlying facts are identical.

(d) The Supreme Court's determination of the propriety of particular conduct shall supersede any conflicting advisory opinion of the Commission.

Rule 23

Other Powers

The Commission shall have such other powers and authority as may be reasonably necessary for the proper and efficient performance of its functions in carrying out the intent of the constitutional amendment creating the Commission.

Rule 24

Complaint Against a Member of the Supreme Court

A complaint against a member of the Supreme Court shall proceed in the same manner as a complaint against any other judge except:

(a) If the Commission recommends a sanction and the respondent consents to the sanction, the Commission shall impose the sanction and there shall be no appeal or further review by the Court.

(b) If the Commission recommends a sanction and the respondent objects to the sanction, the Commission shall proceed in the manner outlined in Rule 14. However, all current members of the Court shall be automatically disqualified and a substitute Court consisting of the current Chairperson and the six (6) immediate past Chairpersons of the Council of Superior Court Judges shall be impaneled to decide the matter in lieu of the sitting members of the Supreme Court. If any such Chairperson shall be disqualified or otherwise fails or refuses to serve, the next preceding Chairperson of the Council shall serve as a member of the substitute Court.

Rule 25

Emergency Interim Relief

- (a) Incident to any preliminary investigation or formal proceeding conducted pursuant to these rules or upon receipt of sufficient evidence demonstrating that the continued service of any judge is causing immediate and substantial public harm and an erosion of public confidence in the orderly administration of justice and appears to be violative of the Georgia Code of Judicial Conduct, the Commission may petition the Supreme Court for injunctive or other relief, including temporary suspension or reassignment of the judge.
- (b) The petition shall state the evidence justifying the emergency relief sought with particularity and shall be verified by the Chairperson and/or the Director of the Commission.
- (c) Simultaneously with the filing of said petition, a copy shall be personally served upon the Respondent by any person approved by the Chairperson and/or the Director of the Commission. In the event personal service cannot be perfected, service may be perfected by registered or certified mail, return receipt requested, to the last known address of the Respondent as set forth in the most current issue of the *Georgia Courts Directory* published by the Administrative Office of the Courts.
- (d) A written acknowledgment of service from the Respondent and/or his or her counsel shall constitute conclusive proof of service and eliminate the need to utilize any other form of service.
- (e) Upon receipt of the verified petition for emergency relief, the Clerk of the Supreme Court shall immediately file the same; assign the matter a docket number; and notify the Chief Justice that the appointment of a Special Master is appropriate. Within 10 days after the docketing of said petition, the Court shall appoint a Special Master to conduct a hearing at which the Commission shall show cause why the relief sought by the Commission should be granted pending further disciplinary proceedings.
- (f) Within 10 days after receipt of the Order of Appointment, the Special Master shall conduct a hearing at such time and place as may be designated by said Special Master or as may be mutually agreed upon by the parties.
- (g) Within 10 days following the completion of said hearing, the Special Master shall file a report and recommendation with the Clerk of the Supreme Court and simultaneously serve copies thereof upon the Commission and the Respondent.
- (h) The Supreme Court shall give expedited consideration to the report of the Special Master and may suspend the Respondent, with or without pay, pending final disposition of the disciplinary proceedings giving rise to the petition for emergency suspension or order such other action as it deems appropriate under all the circumstances.

Rule 26

Involuntary Retirement of Judges

In addition to other methods and causes provided in these Rules, a judge of any court in this State shall be subject to involuntary retirement for a mental or physical disability which constitutes a serious and likely permanent interference with the performance of the duties of office on the following terms and conditions:

(a) Upon receiving a complaint or otherwise receiving information indicating that a judge has been judicially declared incompetent; voluntarily committed by reason of incompetency or disability by a final judicial order after a judicial hearing; or may have a mental or physical disability that seriously impairs or interferes with the performance of the duties of office which is or is likely to become permanent, and after determining that said condition adversely affects the administration of the office of the disabled judge and the rights and interests of the public, the Commission shall, without further action, enter an order requiring the judge to show cause, within 10 days after service of said order, why said disabled judge should not be temporarily transferred to a disability inactive status pending the final disposition of the matter. A copy of said order shall be immediately served by hand delivery upon the judge, his or her guardian, or the director of the institution in which any such judge may be confined or otherwise receiving treatment.

Unless subsequently extended by consent, any such order shall automatically expire 90 calendar days after service upon the disabled judge, and during such time, said disabled judge shall continue to receive the compensation normally paid for such office.

(b) Simultaneously with the service of said order, the Commission shall request the judge to submit, within 10 days, all pertinent medical and other records to the Commission and shall designate one or more qualified medical, psychiatric or psychological experts to examine the disabled judge prior to any hearing on the matter. Said experts may or may not be agreed upon by the Commission and the disabled judge, but in any event, the written reports of all such experts shall be provided to the Commission and to the disabled judge as soon as medically feasible, and in any event, not less than 20 days prior to any hearing on the matter. The cost of any such examinations shall be borne solely by the Commission.

(c) The failure or refusal of a judge to submit the requested medical records or to submit to an independent medical examination, unless due to circumstances beyond the judge's control, shall preclude the judge from submitting reports of medical examinations done on his or her behalf, and the Commission may consider such failure or refusal as evidence that the judge has a disability.

(d) In the event the disabled judge shall desire independent medical examinations by experts other than those designated by the Commission, said judge shall have the absolute right to have such examinations conducted, provided, however, that any such examination shall be at the sole expense of the disabled judge and, provided further, that written reports of such examinations are provided to the Commission as soon as medically feasible and, in any event,

not less than 20 days prior to any hearing on the matter.

(e) After receipt and review of the written reports of any and all such examinations and prior to any hearing on the matter, the Commission and the disabled judge may agree upon a proposed stipulated disposition of the matter. Said proposed stipulated disposition, which shall contain, as appropriate, (i) findings of fact, conclusions of law and recommended final disposition; (ii) copies of the original complaint or other material giving rise to the complaint; and (iii) all written reports of examinations received and reviewed by the Commission, shall be immediately filed with the Supreme Court for approval, rejection or modification. In such filing, the disabled judge shall not be identified, but the matter shall be captioned: "Stipulated Disposition Concerning Judge No. _____."

(f) The final decision on such stipulated disposition shall be made by the Supreme Court as soon as practicable, but in any event, not later than thirty (30) days after the matter is docketed in said Court, and the Court shall forthwith enter an appropriate order.

(g) In the event the proposed stipulated disposition is rejected and/or modified or revised in any substantial and material way, the disabled judge may, within ten (10) days of the receipt of the order of the Court, notify the Commission that he or she is withdrawing his or her agreement to the same, and said proposed stipulated disposition cannot thereafter be used against said disabled judge in any subsequent proceedings, nor shall the same be available for public inspection.

(h) If any such matter is not resolved by stipulated disposition, all such subsequent proceedings shall be conducted in the same manner as disciplinary proceedings, except:

(1) All such proceedings shall be and remain confidential until the final order of the Supreme Court;

(2) The Commission may appoint and compensate, if necessary, a lawyer to represent the disabled judge if the judge is without representation;

(3) If, after a formal hearing, the Commission concludes that the judge is incapacitated to continue to hold judicial office by reason of either physical or mental disability, it shall not be empowered to recommend any disciplinary action against said judge, but rather shall be limited to recommending a suspension from office, either temporary or permanent, on such terms and conditions as may appear just and proper under the circumstances, until such time as an appropriate petition for reinstatement to active status has been filed by the disabled judge and granted by the Supreme Court.

(4) For the duration of any suspension under this subparagraph, the Governor shall appoint a replacement judge who shall serve until the disabled judge is reinstated to active status or until the expiration of the disabled judge's term of office, whichever first occurs.

Rule 27
Special
Committee on
Judicial Election
Campaign
Intervention

(a) In every year in which a general election is held in this State and at such other times as the Commission may deem appropriate, the Chair shall name three (3) members to a Special Committee on Judicial Election Campaign Intervention ("Special Committee") whose responsibility shall be to deal expeditiously with allegations of ethical misconduct in campaigns for judicial office. The membership of such committee shall consist of the senior member of each of the three (3) categories of Commission membership if available, and if not, the next most senior member from that category. The Commission Director shall also serve as an ex-officio member. The objective of such committee shall be to alleviate unethical and unfair campaign practices in judicial elections, and to that end, the Special Committee shall have the following authority:

(b) Upon receipt of a complaint or otherwise receiving information facially indicating a violation by a judicial candidate of any provision of Canon 7 during the course of a campaign for judicial office, the Director shall immediately forward a copy of the same by facsimile and U.S. Mail to the Special Committee members and said Committee shall:

(1) seek, from the complainant and/or subject of the complaint, such further information on the allegation of the complaint as it deems necessary;

(2) conduct such additional investigations as the Committee may deem necessary;

(3) determine whether the allegations of the complaint warrant speedy intervention; if no intervention is needed, dismiss the complaint and so notify the complaining party;

(4) if further investigation is deemed necessary, request confidential written responses from the subject of the complaint and the complaining party on the following schedule:

(A) within 3 business days of receiving such a request from the Committee, a written response from the subject of the complaint;

(B) the Committee will share the subject's written response with the complaining party on a confidential basis, who shall be requested to provide a written response within 3 business days; and

(C) the Committee will share the complaining party's response with the subject of the complaint, who then shall be requested to submit a written rebuttal within 1 business day.

In the event a complaint is filed within two (2) weeks before a judicial election, or if circumstances otherwise dictate, the Committee may accelerate the above schedule or eliminate the need for steps (B) and (C) as the Committee deems necessary. Each of the above papers must be served on the Committee only, and will be kept confidential except as described above. The identity of the complaining party will remain confidential until the Committee's decision is communicated to the

parties unless that confidentiality is waived by the complaining party. Any party breaching the confidentiality of the above process shall be subject to a Public Statement as set forth in this Rule.

(5) if it is determined after the papers from the parties are reviewed that the allegations do warrant intervention, the Committee is authorized:

(A) to immediately release to the complaining party and the person and/or organization complained against, a non-confidential “Public Statement” setting out violations believed to exist; and/or

(B) to refer the matter to the full Commission for such action as may be appropriate under the applicable rules.

(6) if it is determined after the papers from the parties are reviewed that the allegations do not warrant intervention, the Committee shall dismiss the complaint and so notify the complaining party and the subject of the complaint

(c) All proceedings under this Rule shall be informal and nonadversarial, and the Special Committee shall act on all complaints within ten (10) days of receipt, either in person; by facsimile; by U.S. Mail; or by teleconference.

(d) Except as hereinabove specifically authorized, the proceedings of the Special Committee shall remain confidential as provided in Rule 20, and in no event, shall the Committee have the authority to institute disciplinary action against any candidate for judicial office, which power is specifically reserved to the full Commission under applicable rules.

Rule 28
Recusal of
Commission
Members

Commission Members shall recuse themselves in any proceeding in which their impartiality might reasonably be questioned, including, but not limited to instances where:

- (a) the member is a party, or witness, or has a personal familial or financial relationship or interest involving the matter, any party or witness;
- (b) the member is an attorney or party in any matter pending before the respondent;
- (c) the member has personal knowledge or information which could interfere with that member impartially considering such matter;
- (d) the member, as a judge similarly situated, would be required to recuse under the Code of Judicial Conduct; or
- (e) the member believes that, for any reason, that member cannot render a fair and impartial decision.

If the propriety of a member's participation is raised, the issue shall be decided by a majority of the members present and voting. Temporary appointments to replace disqualified members, when necessary, shall be made in the same manner as authorized in Rule 1(d).

Effective Date
of Rules

The effective date of these Rules is January 7, 2004.