



STATE OF NEW YORK
UNIFIED COURT SYSTEM
25 BEAVER STREET
NEW YORK, NEW YORK 10004
(212) 428-2150

JONATHAN LIPPMAN
Chief Administrative Judge

MICHAEL COLODNER
Counsel

June 20, 2002

Elena Ruth Sassower, Coordinator
Center for Judicial Accountability, Inc.
Box 69, Gedney Station
White Plains, New York 10605-0069

Dear Ms. Sassower:

In response to your Freedom of Information Law ("FOIL") request concerning the Housing Court Disciplinary Committee and the Rules of the Chief Administrator governing judicial conduct, enclosed please find a copies of records responsive to your request.

Very truly yours,

A handwritten signature in cursive script, appearing to read "S Kerby".

Shawn Kerby
Assistant Deputy Counsel



Jonathan Lippman
Chief Administrative Judge

25 Beaver Street
New York, N.Y. 10004
(212) 428-2100

MEMORANDUM

June 22, 2001

TO: Deputy Chief Administrative Judges
Hon. Fern Fisher-Brandveen

FROM: Jonathan Lippman *JK*

RE: Disciplinary procedure for Housing Court judges

Attached is an Administrative Order establishing a new procedure for disciplining Housing Court judges. It replaces the cumbersome and ultimately unworkable procedure adopted in 1994 that called for the use of a seven-member fact-finding body from outside our administrative structure. The new procedure provides:

1. Housing Judges are entitled a hearing upon stated charges.
2. Charges are preferred by the Chief Administrative Judge in consultation with the Administrative Judge for the New York City Civil Court.
3. The hearing is held before a hearing officer designated by a Housing Court Disciplinary Committee consisting of the four Deputy Chief Administrative Judges.
4. The Housing Judge has the right to counsel and cross-examination of witnesses.

5. The hearing officer reports findings to the Disciplinary Committee.
6. The Disciplinary Committee reviews those findings, together with the evidence and any additional argument, and transmits to the Chief Administrative Judge its recommendations both as to findings and, if applicable, penalty.
7. The final determination is made by the Chief Administrative Judge in consultation with the Administrative Judge of the Civil Court. The range of penalties are admonition, censure and removal.

I will keep you posted on the use of this procedure. Please speak to me if you have any questions.

JL/job
Att.

**ADMINISTRATIVE ORDER OF THE
CHIEF ADMINISTRATIVE JUDGE OF THE COURTS**

Pursuant to the authority vested in me, and effective immediately, I hereby repeal AO/132/94, and in its place establish the following procedure for the taking of disciplinary action against Housing Judges of the Housing Part of the New York City Civil Court:

1. A Housing Judge of the Housing Part of the New York City Civil Court shall not be removed or otherwise subject to any disciplinary penalty except for incompetency or misconduct shown after a hearing upon stated charges.

2. Charges shall be preferred against the Housing Judge by the Chief Administrator of the Courts, upon consultation with the Administrative Judge of the New York City Civil Court. The charges shall be in writing, and the Housing Judge shall be allowed at least eight days for answering the charges in writing.

3. The hearing shall be held by a hearing officer designated by a Housing Court Disciplinary Committee, which shall consist of the four Deputy Chief Administrators of the Unified Court. Three members of the Committee shall constitute a quorum.

4. The Housing Judge shall have the right to be represented by counsel during any and all stages of the proceedings and shall have the right to call and cross-examine witnesses and present evidentiary data and material relevant to the charges.

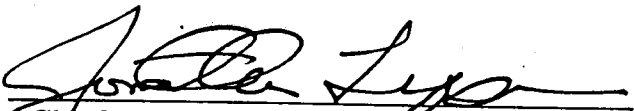
5. After the conclusion of the hearing, the hearing officer shall submit to the Housing Court Disciplinary Committee a report of his or her findings, together with a transcript of the proceedings and all materials submitted to the hearing officer. Copies of the report shall be transmitted to the parties appearing at the hearing.

6. The Committee shall review the findings of the hearing officer and the evidence taken at the hearing, and may permit, as it deems necessary, written and oral argument with respect to the report and to possible sanctions. Upon such review, the Committee shall transmit to the Chief Administrator its recommendations on the findings and, if applicable, the penalty to be imposed.

7. The final determination of the charges and of any penalty shall be made by the Chief Administrator, in consultation with the Administrative Judge of the Civil

Court. The Chief Administrator may determine that the Housing Judge be admonished, censured, or removed from office.

8. The Housing Court Disciplinary Committee shall maintain a file of complaints made against Housing Judges. The Administrative Judge of the Civil Court shall ensure that copies of all complaints received by judges and nonjudicial personnel of the Civil Court are sent to the Housing Court Disciplinary Committee.


Chief Administrative Judge of the Courts

Dated: July 3, 2001

AO/321 /01

N E W S

**New York State
Office of Court Administration**

**E. Leo Milonas
Chief Administrative Judge**

**Further Information:
Victoria A. Streitfeld, Director
of Communications (212) 417-5900**

FOR IMMEDIATE RELEASE

NEW YORK, June 22, 1994---Chief Administrative Judge E. Leo Milonas and Deputy Chief Administrative Judge of New York City Courts Barry A. Cozier today announced the formation of the Housing Court Disciplinary Committee. The Committee, which includes justices of the Appellate Divisions, present and retired trial court judges, an attorney and a retired Housing Court employee, is part of a new procedure for disciplining Housing Court Judges of the New York City Civil Court. It was created by Administrative Order of Judge Milonas on April 18, 1994.

The Committee is composed of appointees from the Presiding Justices of the two affected Appellate Divisions (the Hon. Francis T. Murphy and the Hon. Guy J. Mangano), the Deputy Chief Administrative Judge for New York City Courts, the Advisory Council of the Housing Part, the Advisory Committee on Judicial Ethics, and selected bar associations.

The members of the Committee are as follows:

**Hon. Fern Fisher-Brandveen, Committee Chair
Supreme Court, New York County
(Appointee of Deputy Chief Administrative Judge
Barry A. Cozier)**

**Hon. Myriam J. Altman
Associate Justice
Appellate Division, Second Department
(Appointee of Presiding Justice
Guy J. Mangano, Appellate Division, Second Department)**

**Hon. Fred W. Eggert
Retired Justice of the Supreme Court, Bronx County
Member of the Advisory Committee on Judicial Ethics
(Appointee of the Advisory Committee on Judicial Ethics)**

(More)

James E. Morton
Retired Principal Court Clerk of Housing Court
(Appointee of the Advisory Council of the Housing Part)

Kenneth Standard, Esq.
Law Department, Con Edison
(Appointee of the New York State Bar Association)

Hon. Maurice Harbater
Retired Justice of the Supreme Court, Queens
(Appointee of the New York State Bar Association)

Hon. David Ross
Associate Justice
Appellate Division, First Department
(Appointee of Presiding Justice Francis T. Murphy,
Appellate Division, First Department)

Because Housing Court Judges are not constitutional judges of the Civil Court, the State Commission on Judicial Conduct had declined to accept jurisdiction over them for purposes of undertaking disciplinary action. Since 1985 the disciplining of Housing Court Judges had been left to court administrators.

Under the new system, the Committee will hear the disciplinary charges against Housing Court Judges and make recommendations to the Chief Administrative Judge on both findings of fact and penalty. The penalties will be those now applicable to all other judges--admonition, sanction or removal.

Judge Milonas said, "I am pleased that such a distinguished group will be serving on this important committee. Their stature and standing only serves to emphasize the importance of the Housing Court and the Judges who serve the court and the public. The Committee's responsibility for the disciplining of Housing Court Judges will surely enhance the public's perception of the impartiality of the process."

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ADMINISTRATIVE ORDER OF THE
CHIEF ADMINISTRATIVE JUDGE

Pursuant to the authority vested in me, and effective immediately, I hereby repeal AO/207/85, and in its place establish the following procedure for the taking of disciplinary action against Housing Judges of the Housing Part of the New York City Civil Court:

1. A Housing Judge of the Housing Part of the New York City Civil Court shall not be removed or otherwise subject to any disciplinary penalty except for incompetency or misconduct shown after a hearing upon stated charges.
2. Charges shall be preferred against the Housing Judge by the Chief Administrator of the Courts, upon consultation with the Administrative Judge of the New York City Civil Court. The charges shall be in writing, and the Housing Judge shall be allowed at least eight days for answering the charges in writing.
3. The hearing shall be held by a hearing officer designated by a seven-member Housing Court Disciplinary Committee, which shall consist of one appointee each of the Presiding Justice of the Appellate Division, First Department; the Presiding Justice of the Appellate Division, Second Department; the Deputy Chief Administrative Judge for the Courts of the City of New York; the Advisory Council for

the Housing Part; the Advisory Committee on Judicial Ethics; and a total of two appointees made by consensus of the following seven bar associations: New York State Bar Association, Association of the Bar of the City of New York, New York County Lawyers' Association, Bronx County Bar Association, Brooklyn Bar Association, Queens County Bar Association and Richmond County Bar Association. The appointees of the two Presiding Justices shall be judges of the Unified Court System. No appointee shall be a judge or nonjudicial employee of the New York City Civil Court or its Housing Part. Appointees shall serve for three-year terms, except that the initial appointees of the bar associations shall be for two-year terms, and the initial appointees of the Presiding Justices shall be for one-year terms. No appointee shall serve for more than two terms. The appointee of the Deputy Chief Administrative Judge shall be the chairperson of the Committee. Five members of the Committee shall constitute a quorum.

4. The Housing Judge shall have the right to be represented by counsel during any and all stages of the proceedings and shall have the right to call and cross-examine witnesses and present evidentiary data and material relevant to the charges.

5. After the conclusion of the hearing, the hearing officer shall submit to the Housing Court Disciplinary Committee a report of his or her findings, together with a transcript of the proceedings and all materials submitted to the hearing officer. Copies of the report shall be transmitted to the parties appearing at the hearing.

6. The Committee shall review the findings of the hearing officer and the evidence taken at the hearing, and may permit, as it deems necessary, written and oral argument with respect to the report and to possible sanctions. Upon such review, the Committee shall transmit to the Chief Administrator its recommendations on the findings and, if applicable, the penalty to be imposed.

7. The final determination of the charges and of any penalty shall be made by the Chief Administrator, in consultation with the Administrative Judge of the Civil Court. The Chief Administrator may determine that the Housing Judge be admonished, censured, or removed from office.


CHIEF ADMINISTRATIVE JUDGE

Dated: April 8, 1994

AO/132 /94

ADMINISTRATIVE ORDER

WHEREAS the Chief Administrator of the Courts from time to time has received complaints about the conduct of individual Housing Judges of the Housing Part of the Civil Court of the City of New York, and


WHEREAS the State Commission on Judicial Conduct has notified the Chief Administrator that the Commission will not accept jurisdiction over Housing Judges of said Court for purposes of initiating and undertaking disciplinary action, and

WHEREAS the Chief Administrator desires to create a procedure whereby complaints against Housing Judges may be investigated and, where appropriate, action may be taken to discipline a Housing Judge, it is

ORDERED that all complaints concerning the conduct of Housing Judges of the Housing Part of the Civil Court of the City of New York shall be reviewed by the four judges-in-charge of the Civil Courts in the Counties of the Bronx, New York, Kings and Queens, who shall recommend to the Administrative Judge of the Civil Court whether disciplinary action should be taken against the affected Housing Judge, and it is further

ORDERED that the Administrative Judge of the Civil Court shall review the recommendations of the four judges-in-charge with respect to any Housing Judge and, in his discretion, may bring charges for the discipline and removal for incompetency or misconduct of that Housing Judge and shall designate the person to hear the charges, and it is further

ORDERED that the procedure for said discipline and removal should be in all other respects as set forth in 22 NYCRR 25.32 (b), (c), (d), (e), (f) and (g), provided that the Administrative Judge of the Civil Court shall exercise the powers of an appointing authority set forth in that section.


CHIEF ADMINISTRATOR OF THE COURTS

DATED: April 11, 1985

AO/207/85

RULES OF THE CHIEF ADMINISTRATOR OF THE COURTS

PART 100. JUDICIAL CONDUCT

Cross References

See the Code of Judicial Conduct set out in McKinney's Bk. 29.

Preamble

The rules governing judicial conduct are rules of reason. They should be applied consistently with constitutional requirements, statutes, other court rules and decisional law and in the context of all relevant circumstances. The rules are to be construed so as not to impinge on the essential independence of judges in making judicial decisions.

The rules are designed to provide guidance to judges and candidates for elective judicial office and to provide a structure for regulating conduct through disciplinary agencies. They are not designed or intended as a basis for civil liability or criminal prosecution.

The text of the rules is intended to govern conduct of judges and candidates for elective judicial office 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 rules are not intended as an exhaustive guide for conduct. Judges and judicial candidates also should be governed in their judicial and personal conduct by general ethical standards. The rules are intended, however, to state basic standards which should govern their conduct and to provide guidance to assist them in establishing and maintaining high standards of judicial and personal conduct.

§ 100.0 Terminology

The following terms used in this Part are defined as follows:

(A) A "candidate" is a person seeking selection for or retention in public office by election. A person becomes a candidate for public office as soon as he or she makes a public announcement of candidacy, or authorizes solicitation or acceptance of contributions.

(B) "Court personnel" does not include the lawyers in a proceeding before a judge.

(C) The "degree of relationship" is calculated according to the civil law system. That is, where the judge and the party are in the same line of descent, degree is ascertained by ascending or descending from the judge to the party, counting a degree for each person, including the party but excluding the judge. Where the judge and the party are in different lines of descent, degree is ascertained by ascending from the judge to the common ancestor, and descending to the party, counting a degree for each person in both lines, including the common ancestor and the party but excluding the judge. The following persons are relatives within the fourth degree of relationship: great-grandparent, grandparent, parent, uncle, aunt, brother, sister, first cousin, child, grandchild, great-grandchild, nephew or niece. The sixth degree of relationship includes second cousins.

(D) "Economic interest" denotes ownership of a legal or equitable interest, however small, or a relationship as officer, director, advisor or other active participant in the affairs of a party, except that

(1) 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;

(2) service by a judge as an officer, director, advisor or other active participant in an educational, religious, charitable, cultural, fraternal or civic organization, or service by a judge's spouse 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;

(3) a deposit in a financial institution, the proprietary interest of a policy holder in a mutual insurance company, of a depositor in a mutual savings association or of a member in a credit union, or a similar proprietary interest, is not an economic interest in the organization, unless a proceeding pending or impending before the judge could substantially affect the value of the interest;

(4) 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.

(E) "Fiduciary" includes such relationships as executor, administrator, trustee, and guardian.

(F) "Knowingly", "knowledge", "known" or "knows" denotes actual knowledge of the fact in ques-

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tion. A person's knowledge may be inferred from circumstances.

(G) "Law" denotes court rules as well as statutes, constitutional provisions and decisional law.

(H) "Member of the candidate's family" denotes a spouse, child, grandchild, parent, grandparent or other relative or person with whom the candidate maintains a close familial relationship.

(I) "Member of the judge's family" denotes a spouse, child, grandchild, parent, grandparent or other relative or person with whom the judge maintains a close familial relationship.

(J) "Member of the judge's family residing in the judge's household" denotes any relative of a judge by blood or marriage, or a person treated by a judge as a member of the judge's family, who resides in the judge's household.

(K) "Nonpublic information" denotes information that, by law, is not available to the public. Nonpublic 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, presentencing reports, dependency cases or psychiatric reports.

(L) A "part-time judge", including an acting part-time judge, is a judge who serves repeatedly on a part-time basis by election or under a continuing appointment.

(M) "Political organization" denotes a political party, political club or other group, the principal purpose of which is to further the election or appointment of candidates to political office.

(N) "Public election" includes primary and general elections; it includes partisan elections, nonpartisan elections and retention elections.

(O) "Require". The rules prescribing that a judge "require" certain conduct of others, like all of the rules in this Part, are 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.

(P) "Rules"; citation. Unless otherwise made clear by the citation in the text, references to individual components of the rules are cited as follows:

"Part"—refers to Part 100.

"Section"—refers to a provision consisting of 100 followed by a decimal (100.1).

"Subdivision"—refers to a provision designated by a capital letter (A).

"Paragraph"—refers to a provision designated by an arabic numeral (1).

"Subparagraph"—refers to a provision designated by a lower-case letter (a).

(Q) "Window Period" denotes a period beginning nine months before a primary election, judicial nominating convention, party caucus or other party meeting for nominating candidates for the elective judicial office for which a judge or non-judge is an announced candidate, or for which a committee or other organization has publicly solicited or supported the judge's or non-judge's candidacy, and ending, if the judge or non-judge is a candidate in the general election for that office, six months after the general election, or if he or she is not a candidate in the general election, six months after the date of the primary election, convention, caucus or meeting.

§ 100.1 A Judge Shall Uphold the Integrity and Independence of the Judiciary

An independent and honorable judiciary is indispensable to justice in our society. A judge should participate in establishing, maintaining and enforcing high standards of conduct, and shall personally observe those standards so that the integrity and independence of the judiciary will be preserved. The provisions of this Part 100 are to be construed and applied to further that objective.

§ 100.2 A Judge Shall Avoid Impropriety and the Appearance of Impropriety in All of the Judge's Activities

(A) A judge 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.

(B) A judge shall not allow family, social, political or other relationships to influence the judge's judicial conduct or judgment.

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

(D) A judge shall not hold membership in any organization that practices invidious discrimination on the basis of age, race, creed, color, sex, sexual orientation, religion, national origin, disability or marital status. This provision does not prohibit a judge from holding membership in an organization that is dedicated to the preservation of religious, ethnic, cultural or other values of legitimate common interest to its members.

§ 100.3 A Judge Shall Perform the Duties of Judicial Office Impartially and Diligently

(A) Judicial Duties in General. The judicial duties of a judge take precedence over all the judge's other activities. The judge's judicial duties include all

the duties of the judge's office prescribed by law. In the performance of these duties, the following standards apply.

(B) Adjudicative Responsibilities.

- (1) A judge shall be faithful to the law and maintain professional competence in it. A judge shall not be swayed by partisan interests, public clamor or fear of criticism.
- (2) A judge shall require order and decorum in proceedings before the judge.
- (3) A judge shall be patient, dignified and courteous to litigants, jurors, witnesses, lawyers and others with whom the judge deals in an official capacity, and shall require similar conduct of lawyers, and of staff, court officials and others subject to the judge's direction and control.
- (4) A judge shall perform judicial duties without bias or prejudice against or in favor of any person. A judge in the performance of judicial duties shall not, by words or conduct, manifest bias or prejudice, including but not limited to bias or prejudice based upon age, race, creed, color, sex, sexual orientation, religion, national origin, disability, marital status or socioeconomic status, and shall require staff, court officials and others subject to the judge's direction and control to refrain from such words or conduct.
- (5) A judge shall require lawyers in proceedings before the judge to refrain from manifesting, by words or conduct, bias or prejudice based upon age, race, creed, color, sex, sexual orientation, religion, national origin, disability, marital status or socioeconomic status, against parties, witnesses, counsel or others. This paragraph does not preclude legitimate advocacy when age, race, creed, color, sex, sexual orientation, religion, national origin, disability, marital status or socioeconomic status, or other similar factors are issues in the proceeding.
- (6) A judge shall accord to every person who has a legal interest in a proceeding, or that person's lawyer, the right to be heard according to law. A judge shall not initiate, permit, or consider ex parte communications, or consider other communications made to the judge outside the presence of the parties or their lawyers concerning a pending or impending proceeding, except:
 - (a) Ex parte communications that are made for scheduling or administrative purposes and that do not affect a substantial right of any party are authorized, provided the judge reasonably believes that no party will gain a procedural or tactical advantage as a result of the ex parte communication, and the judge, insofar as practical and appropriate, makes provision for prompt notification of other parties or their lawyers of the substance of the ex parte communication and allows an opportunity to respond.
 - (b) A judge may obtain the advice of a disinterested expert on the law applicable to a proceeding before the judge if the judge gives notice to the parties of the person consulted and a copy of such advice if the advice is given in writing and the substance of the advice if it is given orally, and affords the parties reasonable opportunity to respond.
 - (c) A judge may consult with court personnel whose function is to aid the judge in carrying out the judge's adjudicative responsibilities or with other judges.
 - (d) A judge, with the consent of the parties, may confer separately with the parties and their lawyers on agreed-upon matters.
 - (e) A judge may initiate or consider any ex parte communications when authorized by law to do so.
- (7) A judge shall dispose of all judicial matters promptly, efficiently and fairly.
- (8) A judge shall not make any public comment about a pending or impending proceeding in any court within the United States or its territories. The judge shall require similar abstention on the part of court personnel subject to the judge's direction and control. This paragraph 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 paragraph does not apply to proceedings in which the judge is a litigant in a personal capacity.
- (9) A judge 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.
- (10) A judge shall not disclose or use, for any purpose unrelated to judicial duties, nonpublic information acquired in a judicial capacity.

(C) Administrative Responsibilities.

- (1) A judge shall diligently discharge the judge's administrative responsibilities without bias or prejudice and maintain professional competence in judicial administration, and should cooperate with other judges and court officials in the administration of court business.
- (2) A judge shall require staff, court officials and others subject to the judge's direction and control to observe the standards of fidelity and diligence that apply to the judge and to refrain from manifesting bias or prejudice in the performance of their official duties.
- (3) A judge shall not make unnecessary appointments. A judge shall exercise the power of appointment impartially and on the basis of merit. A judge shall avoid nepotism and favoritism. A judge shall not approve compensation of appointees beyond the fair

value of services rendered. A judge shall not appoint or vote for the appointment of any person as a member of the judge's staff or that of the court of which the judge is a member, or as an appointee in a judicial proceeding, who is a relative within the sixth degree of relationship of either the judge or the judge's spouse or the spouse of such a person. A judge shall refrain from recommending a relative within the sixth degree of relationship of either the judge or the judge's spouse or the spouse of such person for appointment or employment to another judge serving in the same court. A judge also shall comply with the requirements of Part 8 of the Rules of the Chief Judge (22 NYCRR Part 8) relating to the appointment of relatives of judges.¹ Nothing in this paragraph shall prohibit appointment of the spouse of the town or village justice, or other member of such justice's household, as clerk of the town or village court in which such justice sits, provided that the justice obtains the prior approval of the Chief Administrator of the Courts, which may be given upon a showing of good cause.

(D) Disciplinary Responsibilities.

(1) A judge who receives information indicating a substantial likelihood that another judge has committed a substantial violation of this Part shall take appropriate action.

(2) A judge who receives information indicating a substantial likelihood that a lawyer has committed a substantial violation of the Code of Professional Responsibility shall take appropriate action.

(3) Acts of a judge in the discharge of disciplinary responsibilities are part of a judge's judicial duties.

(E) Disqualification.

(1) A judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to instances where:

(a) (i) the judge has a personal bias or prejudice concerning a party or (ii) the judge has personal knowledge of disputed evidentiary facts concerning the proceeding;

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

(c) the judge knows that he or she, individually or as a fiduciary, or the judge's spouse or minor child residing in the judge's household has an economic interest in the subject matter in controversy or in a party to the proceeding or has any other interest that could be substantially affected by the proceeding;

(d) the judge knows that the judge or the judge's spouse, or a person known by the judge to be within the sixth degree of relationship to either of them, or the spouse of such a person:

(i) is a party to the proceeding;

(ii) is an officer, director or trustee of a party;

(iii) has an interest that could be substantially affected by the proceeding;

(iv) is likely to be a material witness in the proceeding;

(e) the judge knows that the judge or the judge's spouse, or a person known by the judge to be within the fourth degree of relationship to either of them, or the spouse of such a person, is acting as a lawyer in the proceeding.

(f) notwithstanding the provisions of subparagraphs (c) and (d) above, if a judge would be disqualified because of the appearance or discovery, after the matter was assigned to the judge, that the judge individually or as a fiduciary, the judge's spouse, or a minor child residing in his or her household has an economic interest in a party to the proceeding, disqualification is not required if the judge, spouse or minor child, as the case may be, divests himself or herself of the interest that provides the grounds for the disqualification.

(2) A judge shall keep informed about the judge's personal and fiduciary economic interests, and make a reasonable effort to keep informed about the personal economic interests of the judge's spouse and minor children residing in the judge's household.

(F) Remittal of Disqualification. A judge disqualified by the terms of subdivision (E), except subparagraph (1)(a)(i), subparagraph (1)(b)(i) or (iii) or subparagraph (1)(d)(i) of this section, may disclose on the record the basis of the judge's disqualification. If, following such disclosure of any basis for disqualification, the parties who have appeared and not defaulted and their lawyers, without participation by the judge, all agree that the judge should not be disqualified, and the judge believes that he or she will be impartial and is willing to participate, the judge may participate in the proceeding. The agreement shall be incorporated in the record of the proceeding.

1. A new Part 8 of the Chief Judge's Rules has been proposed that prohibits the appointment of court employees who are relatives of any judge of the same court within the judicial district in which the appointment is to be made.

§ 100.4 A Judge Shall so Conduct the Judge's Extra-Judicial Activities as to Minimize the Risk of Conflict With Judicial Obligations

(A) Extra-Judicial Activities in General. A judge shall conduct all of the judge's extra-judicial activities so that they do not:

(1) cast reasonable doubt on the judge's capacity to act impartially as a judge;

(2) detract from the dignity of judicial office; or

(3) interfere with the proper performance of judicial duties and are not incompatible with judicial office.

(B) **Avocational Activities.** A judge may speak, write, lecture, teach and participate in extra-judicial activities subject to the requirements of this Part.

(C) **Governmental, Civic, or Charitable Activities.**

(1) A full-time judge shall not appear at a public hearing before an executive or legislative body or official except on matters concerning the law, the legal system or the administration of justice or except when acting pro se in a matter involving the judge or the judge's interests.

(2)(a) A full-time judge shall not accept appointment to a governmental committee or commission or other governmental position that is concerned with issues of fact or policy in matters other than the improvement of the law, the legal system or the administration of justice. A judge may, however, represent a country, state or locality on ceremonial occasions or in connection with historical, educational or cultural activities.

(b) A judge shall not accept appointment or employment as a peace officer or police officer as those terms are defined in section 1.20 of the Criminal Procedure Law.

(3) A judge may be a member or serve as an officer, director, trustee or non-legal advisor of an organization or governmental agency devoted to the improvement of the law, the legal system or the administration of justice or of an educational, religious, charitable, cultural, fraternal or civic organization not conducted for profit, subject to the following limitations and the other requirements of this Part.

(a) A judge shall not serve as an officer, director, trustee or non-legal advisor if it is likely that the organization

(i) will be engaged in proceedings that ordinarily would come before the judge, or

(ii) if the judge is a full-time judge, will be engaged regularly in adversary proceedings in any court.

(b) A judge as an officer, director, trustee or non-legal advisor, or a member or otherwise:

(i) may assist such an organization in planning fund-raising and may participate in the management and investment of the organization's funds, but shall not personally participate in the solicitation of funds or other fund-raising activities;

(ii) may not be a speaker or the guest of honor at an organization's fund-raising events, but the judge may attend such events. Nothing in this

subparagraph shall prohibit a judge from being a speaker or guest of honor at a court employee organization, bar association or law school function or from accepting at another organization's fund-raising event an unadvertised award ancillary to such event;

(iii) may make recommendations to public and private fund-granting organizations on projects and programs concerning the law, the legal system or the administration of justice; and

(iv) shall not use or permit the use of the prestige of judicial office for fund-raising or membership solicitation, but may be listed as an officer, director or trustee of such an organization. Use of an organization's regular letterhead for fund-raising or membership solicitation does not violate this provision, provided the letterhead lists only the judge's name and office or other position in the organization, and, if comparable designations are listed for other persons, the judge's judicial designation.

(D) **Financial Activities.**

(1) A judge shall not engage in financial and business dealings that:

(a) may reasonably be perceived to exploit the judge's judicial position,

(b) involve the judge with any business, organization or activity that ordinarily will come before the judge, or

(c) involve the judge in frequent transactions or continuing business relationships with those lawyers or other persons likely to come before the court on which the judge serves.

(2) A judge, subject to the requirements of this Part, may hold and manage investments of the judge and members of the judge's family, including real estate.

(3) A full-time judge shall not serve as an officer, director, manager, general partner, advisor, employee or other active participant of any business entity, except that:

(a) the foregoing restriction shall not be applicable to a judge who assumed judicial office prior to July 1, 1965, and maintained such position or activity continuously since that date; and

(b) a judge, subject to the requirements of this Part, may manage and participate in a business entity engaged solely in investment of the financial resources of the judge or members of the judge's family; and

(c) any person who may be appointed to fill a full-time judicial vacancy on an interim or temporary basis pending an election to fill such vacancy may apply to the Chief Administrator of the Courts for exemption from this paragraph during the period of such interim or temporary appointment.

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

(5) A judge shall not accept, and shall urge members of the judge's family residing in the judge's household not to accept, a gift, bequest, favor or loan from anyone except:

(a) a gift incident to a public testimonial, books, tapes and other resource materials supplied by publishers on a complimentary basis for official use, or an invitation to the judge and the judge's spouse or guest to attend a bar-related function or an activity devoted to the improvement of the law, the legal system or the administration of justice;

(b) a gift, award or benefit incident to the business, profession or other separate activity of a spouse or other family member of a judge residing in the judge's household, including gifts, awards and benefits for the use of both the spouse or other family member and the judge (as spouse or family member), provided the gift, award or benefit could not reasonably be perceived as intended to influence the judge in the performance of judicial duties;

(c) ordinary social hospitality;

(d) a gift from a relative or friend, for a special occasion such as a wedding, anniversary or birthday, if the gift is fairly commensurate with the occasion and the relationship;

(e) a gift, bequest, favor or loan from a relative or close personal friend whose appearance or interest in a case would in any event require disqualification under section 100.3(E);

(f) a loan from a lending institution in its regular course of business on the same terms generally available to persons who are not judges;

(g) a scholarship or fellowship awarded on the same terms and based on the same criteria applied to other applicants; or

(h) any other gift, bequest, favor or loan, only if the donor is not a party or other person who has come or is likely to come or whose interests have come or are likely to come before the judge; and if its value exceeds \$150.00, the judge reports it in the same manner as the judge reports compensation in section 100.4(H).

(E) Fiduciary Activities.

(1) A full-time judge shall not serve as executor, administrator or other personal representative, trustee, guardian, attorney in fact or other fiduciary, designated by an instrument executed after January 1, 1974, except for the estate, trust or person of a member of the judge's family, or, with the approval of

the Chief Administrator of the Courts, a person not a member of the judge's family with whom the judge has maintained a longstanding personal relationship of trust and confidence, and then only if such services will not interfere with the proper performance of judicial duties.

(2) The same restrictions on financial activities that apply to a judge personally also apply to the judge while acting in a fiduciary capacity.

(3) Any person who may be appointed to fill a full-time judicial vacancy on an interim or temporary basis pending an election to fill such vacancy may apply to the Chief Administrator of the Courts for exemption from paragraphs (1) and (2) during the period of such interim or temporary appointment.

(F) Service as Arbitrator or Mediator. A full-time judge shall not act as an arbitrator or mediator or otherwise perform judicial functions in a private capacity unless expressly authorized by law.

(G) Practice of Law. A full-time judge shall not practice law. Notwithstanding this prohibition, a judge may act pro se and may, without compensation, give legal advice to a member of the judge's family.

(H) Compensation, Reimbursement and Reporting.

(1) *Compensation and Reimbursement.* A full-time judge may receive compensation and reimbursement of expenses for the extra-judicial activities permitted by this Part, if the source of such payments does not give the appearance of influencing the judge's performance of judicial duties or otherwise give the appearance of impropriety, subject to the following restrictions:

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

(b) Expense reimbursement shall be limited to the actual cost of travel, food and lodging reasonably incurred by the judge and, where appropriate to the occasion, by the judge's spouse or guest. Any payment in excess of such an amount is compensation.

(c) No full-time judge shall solicit or receive compensation for extra-judicial activities performed for or on behalf of: (1) New York State, its political subdivisions or any office or agency thereof; (2) a school, college or university that is financially supported primarily by New York State or any of its political subdivisions, or any officially recognized body of students thereof, except that a judge may receive the ordinary compensation for a lecture or for teaching a regular course of study at any college or university if the teaching does not conflict with the proper performance of judicial duties; or (3) any private legal aid bureau or society designated to represent indigents in accordance with article 18-B of the County Law.

(2) **Public Reports.** A full-time judge shall report the date, place and nature of any activity for which the judge received compensation in excess of \$150, 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. The judge's report shall be made at least annually and shall be filed as a public document in the office of the clerk of the court on which the judge serves or other office designated by law.

(I) **Financial Disclosure.** Disclosure of a judge's income, debts, investments or other assets is required only to the extent provided in this section and in section 100.3(F), or as required by Part 40 of the Rules of the Chief Judge (22 NYCRR Part 40), or as otherwise required by law.

Cross References

Criminal Procedure Law, see McKinney's Book 11A.

§ 100.5 A Judge or Candidate for Elective Judicial Office Shall Refrain From Inappropriate Political Activity

(A) Incumbent Judges and Others Running for Public Election to Judicial Office.

(1) Neither a sitting judge nor a candidate for public election to judicial office shall directly or indirectly engage in any political activity except (i) as otherwise authorized by this section or by law, (ii) to vote and to identify himself or herself as a member of a political party, and (iii) on behalf of measures to improve the law, the legal system or the administration of justice. Prohibited political activity shall include:

- (a) acting as a leader or holding an office in a political organization;
- (b) except as provided in section 100.5(A)(3), being a member of a political organization other than enrollment and membership in a political party;
- (c) engaging in any partisan political activity, provided that nothing in this section shall prohibit a judge or candidate from participating in his or her own campaign for elective judicial office or shall restrict a non-judge holder of public office in the exercise of the functions of that office;
- (d) participating in any political campaign for any office or permitting his or her name to be used in connection with any activity of a political organization;
- (e) publicly endorsing or publicly opposing (other than by running against) another candidate for public office;
- (f) making speeches on behalf of a political organization or another candidate;
- (g) attending political gatherings;

(h) soliciting funds for, paying an assessment to, or making a contribution to a political organization or candidate; or

(i) purchasing tickets for politically sponsored dinners or other functions, including any such function for a non-political purpose.

(2) A judge or non-judge who is a candidate for public election to judicial office may participate in his or her own campaign for judicial office as provided in this section and may contribute to his or her own campaign as permitted under the Election Law. During the Window Period as defined in subdivision (Q) of section 100.0 of this Part, a judge or non-judge who is a candidate for public election to judicial office, except as prohibited by law, may:

(i) attend and speak to gatherings on his or her own behalf, provided that the candidate does not personally solicit contributions;

(ii) appear in newspaper, television and other media advertisements supporting his or her candidacy, and distribute pamphlets and other promotional campaign literature supporting his or her candidacy;

(iii) appear at gatherings, and in newspaper, television and other media advertisements with the candidates who make up the slate of which the judge or candidate is a part;

(iv) permit the candidate's name to be listed on election materials along with the names of other candidates for elective public office;

(v) purchase two tickets to, and attend, politically sponsored dinners and other functions even where the cost of the ticket to such dinner or other function exceeds the proportionate cost of the dinner or function.

(3) A non-judge who is a candidate for public election to judicial office may also be a member of a political organization and continue to pay ordinary assessments and ordinary contributions to such organization.

(4) A judge or a non-judge who is a candidate for public election to judicial office:

(a) shall maintain the dignity appropriate to judicial office and act in a manner consistent with the integrity and independence of the judiciary, and shall encourage members of the candidate's family to adhere to the same standards of political conduct in support of the candidate as apply to the candidate;

(b) shall prohibit employees and officials who serve at the pleasure of the candidate, and shall discourage other employees and officials subject to

the candidate's direction and control, from doing on the candidate's behalf what the candidate is prohibited from doing under this Part;

(c) except to the extent permitted by section 100.5(A)(5), shall not authorize or knowingly permit any person to do for the candidate what the candidate is prohibited from doing under this Part;

(d) shall not:

(i) make pledges or promises of conduct in office other than the faithful and impartial performance of the duties of the office;

(ii) make statements that commit or appear to commit the candidate with respect to cases, controversies or issues that are likely to come before the court; or

(iii) knowingly make any false statement or misrepresent the identity, qualifications, current position or other fact concerning the candidate or an opponent; but

(e) may respond to personal attacks or attacks on the candidate's record as long as the response does not violate subparagraphs 100.5(A)(4)(a) and (d).

(5) A judge or candidate for public election to judicial office shall not personally solicit or accept campaign contributions, but may establish committees of responsible persons to conduct campaigns for the candidate through media advertisements, brochures, mailings, candidate forums and other means not prohibited by law. Such committees may solicit and accept reasonable campaign contributions and support from the public, including lawyers, manage the expenditure of funds for the candidate's campaign and obtain public statements of support for his or her candidacy. Such committees may solicit and accept such contributions and support only during the Window Period. A candidate shall not use or permit the use of campaign contributions for the private benefit of the candidate or others.

(B) Judge as Candidate for Nonjudicial Office.

A judge shall resign from judicial office upon becoming a candidate for elective nonjudicial office either in a primary or in a general election, except that the judge may continue to hold judicial office while being a candidate for election to or serving as a delegate in a state constitutional convention if the judge is otherwise permitted by law to do so.

(C) Judge's Staff. A judge shall prohibit members of the judge's staff who are the judge's personal appointees from engaging in the following political activity:

(1) holding an elective office in a political organization, except as a delegate to a judicial nominating

convention or a member of a county committee other than the executive committee of a county committee;

(2) contributing, directly or indirectly, money or other valuable consideration in amounts exceeding \$500 in the aggregate during any calendar year to all political campaigns for political office, and other partisan political activity including, but not limited to, the purchasing of tickets to political functions, except that this \$500 limitation shall not apply to an appointee's contributions to his or her own campaign. Where an appointee is a candidate for judicial office, reference also shall be made to appropriate sections of the Election Law;

(3) personally soliciting funds in connection with a partisan political purpose, or personally selling tickets to or promoting a fund-raising activity of a political candidate, political party, or partisan political club; or

(4) political conduct prohibited by section 25.39 of the Rules of the Chief Judge (22 NYCRR 25.39).

Cross References

Election Law, see McKinney's Book 17.

§ 100.6 Application of the Rules of Judicial Conduct

(A) General Application. All judges in the unified court system and all other persons to whom by their terms these rules apply, e.g., candidates for elective judicial office, shall comply with these rules of judicial conduct, except as provided below. All other persons, including judicial hearing officers, who perform judicial functions within the judicial system shall comply with such rules in the performance of their judicial functions and otherwise shall so far as practical and appropriate use such rules as guides to their conduct.

(B) Part-Time Judge. A part-time judge:

(1) is not required to comply with sections 100.4(C)(1), 100.4(C)(2)(a), 100.4(C)(3)(a)(ii), 100.4(E)(1), 100.4(F), 100.4(G), and 100.4(H);

(2) shall not practice law in the court on which the judge serves, or in any other court in the county in which his or her court is located, before a judge who is permitted to practice law, and shall not act as a lawyer in a proceeding in which the judge has served as a judge or in any other proceeding related thereto;

(3) shall not permit his or her partners or associates to practice law in the court in which he or she is a judge, and shall not permit the practice of law in his or her court by the law partners or associates of another judge of the same court who is permitted to practice law, but may permit the practice of law in his or her court by the partners or associates of a judge of a court in another town, village or city who is permitted to practice law;

(4) may accept private employment or public employment in a federal, state or municipal department or agency, provided that such employment is not incompatible with judicial office and does not conflict or interfere with the proper performance of the judge's duties.

(C) **Administrative Law Judges.** The provisions of this Part are not applicable to administrative law judges unless adopted by the rules of the employing agency.

(D) **Time for Compliance.** A person to whom these rules become applicable shall comply immediately with all provisions of this Part, except that, with respect to sections 100.4(D)(3) and 100.4(E), such per-

son may make application to the Chief Administrator for additional time to comply, in no event to exceed one year, which the Chief Administrator may grant for good cause shown.

(E) **Relationship to Code of Judicial Conduct.** To the extent that any provision of the Code of Judicial Conduct as adopted by the New York State Bar Association is inconsistent with any of these rules, these rules shall prevail, except that these rules shall apply to a non-judge candidate for elective judicial office only to the extent that they are adopted by the New York State Bar Association in the Code of Judicial Conduct.

PART 101. ADVISORY COMMITTEE ON JUDICIAL ETHICS

§ 101.1 Establishment

There shall be an Advisory Committee on Judicial Ethics to issue advisory opinions to judges and justices of the Unified Court System concerning issues related to ethical conduct, proper execution of judicial duties, and possible conflicts between private interests and official duties.

§ 101.2 Membership

(a) The Chief Administrator of the Courts, in consultation with the Administrative Board of the Courts and with the approval of the Chief Judge of the State of New York, shall appoint members to the Committee in such numbers as deemed necessary to effectively carry out its duties and shall designate the chair.

(b) Each member shall be an active or former judge or justice of the Unified Court System.

(c) The members and the chair shall serve at the pleasure of the Chief Administrator and shall be appointed for terms of up to five years, provided that no member first appointed on or after November 1, 2000, shall serve for more than one five-year term.

§ 101.3 Duties

(a) The Committee shall issue advisory opinions, in writing, to the judge or justice making the request. The Committee may decline to respond to any question it deems inappropriate for the exercise of its jurisdiction.

(b) The Committee may respond to questions concerning judicial ethics posed by persons who exercise quasi-judicial duties in the Unified Court System but who are not judges or justices of the Unified Court System.

§ 101.4 Procedure

(a) Unless the chair provides otherwise, all requests for advisory opinions shall be submitted in writing. Requests shall detail the particular facts and circumstances of the case. The Committee may request such supplemental material as it deems necessary.

(b) The Committee shall adopt procedures for the formulation and transmission of its advisory opinions.

§ 101.5 Compensation

Members of the Committee shall serve without compensation but shall be reimbursed for expenses actually and necessarily incurred in the performance of their official duties for the Committee.

§ 101.6 Confidentiality

Except as set forth in section 101.7, requests for advisory opinions, advisory opinions issued by the Committee, and the facts and circumstances on which they are based shall be confidential and shall not be disclosed by the Committee to any person other than the individual making the request. Deliberations by the Committee shall be confidential.

§ 101.7 Publication

The Committee shall publish its formal advisory opinions, at such times and in such manner as approved by the Chief Administrator, with appropriate deletions of names of persons, places, or things that might tend to identify the judge or justice making the request or any other judge or justice of the Unified Court System.