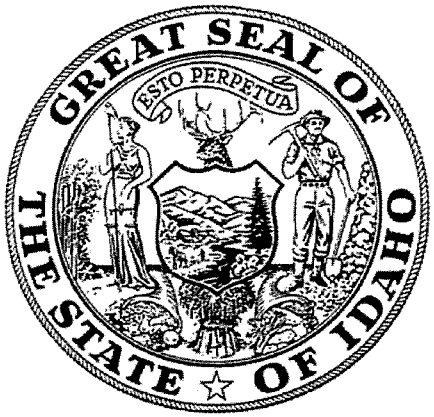
IDAHO JUDICIAL COUNCIL



REPORT TO THE LEGISLATURE,

GOVERNOR, AND SUPREME COURT

(YEAR 2009)

TABLE OF CONTENTS

Page

I. Overview of Significant Events of 2009 1

II. Introduction to the Idaho Judicial Council,
Its Powers and Duties 2

III. Selection of Judges 7

IV. Disciplinary Activities of the Judicial Council 11

V. Judicial Performance Evaluations 16

VI. Ethics Opinions 17

VII. Appendix A - Complaint Form
Appendix B - General Rules of the Idaho Judicial Council
Appendix C - Code of Judicial Conduct

I.

OVERVIEW OF SIGNIFICANT EVENTS OF 2009

A. **Council Budget.** The Judicial Council accomplished all of its statutory duties without salaried employees, and with a budget of $113,400.00. (See page 3)

B. **Judicial Vacancies.** There were six (6) judicial vacancies in the 2009 calendar year. (See page 7)

C. **Discipline.** In calendar year 2009, there were 101 complaints against Idaho judges. (See page 11)

D. **Judicial Performance Evaluation**. The Judicial council has continued the voluntary Judicial Performance Evaluation Program. (See page 16)

E. **Ethics Opinions**. The Judicial Council provided 135 ethics opinions to judges. (See page 17)

COUNCIL ACTIVITIES FOR 2009

Number of Meetings	6
Number of Telephone Conference Call Meetings	2
Number of Applicant Interviews	37
Number of Formal Hearings	0
Number of Complaints	101

> term of office for a permanent appointed member of the judicial council shall be six (6) years. Vacancies shall be filled for the unexpired term in like manner. Appointments shall be made with due consideration for area representation and not more than three of the permanent appointed members shall be from one (1) political party. The chief justice of the Supreme Court shall be the seventh member and chairman of the judicial council. No permanent member of the judicial council, except a judge or justice, may hold any other office or position of profit under the United States or the state. The judicial council shall act by concurrence of four (4) or more members and according to rules which it adopts.
>
> (2) In addition to the permanent members of the judicial council, whenever there is an issue before the council which involves the removal, discipline or recommendation for retirement of a district court magistrate, the chief justice shall appoint an adjunct member of the judicial council, who shall be a district court magistrate. For all purposes for which the adjunct appointment is made, the adjunct member shall be a full voting member of the judicial council.

Today, the Judicial Council consists of a non-partisan Chief Justice, a non-partisan district judge, a Republican lawyer, a Democratic lawyer, a Democratic business woman, a Republican businessman, and a Republican educator. Three of the members reside in Boise, one in Coeur d'Alene, one in Pinehurst, one in Burley, and one in Rexburg.

Members of the Judicial Council serve without salaried compensation for their services. Members, other than judges, receive only a daily honorarium for each day the Council meets and reimbursement for their actual expenses, pursuant to Idaho Code Section 1-2104. The Judicial Council utilizes the services of a part-time Executive Director and a legal assistant.

Ordinarily, the Council meets approximately three to four times per year or, as needs arise. In an effort to operate within the Council's budgetary allowance, many matters are disposed of by telephone conference call or by mail and meetings scheduled in conjunction with interviews for judicial vacancies. The Judicial Council how holds interviews for judicial vacancies in Boise in order to meet budget hold-backs instead of traveling to the county where the chambers for the vacant position are located.

BIOGRAPHIES OF COUNCIL MEMBERS AND EXECUTIVE DIRECTOR

JUDICIAL MEMBERS:

CHIEF JUSTICE DANIEL T. EISMANN, is the Ex-Officio Chairman of the Idaho Judicial Council. Justice Eismann graduated in 1965 from Vallivue High School near Caldwell, Idaho. He enrolled at the University of Idaho, and in 1967 he left the University to enlist in the United States Army. He served two consecutive tours of duty in Vietnam where, as a crew chief/door gunner on a Huey gunship, he was awarded two purple hearts for being wounded in combat and three medals for heroism. After being honorably discharged from the military, he returned to the University of Idaho where he received his undergraduate degree and graduated *cum laude* from law school in 1976.

After practicing law for ten years, Justice Eismann was appointed as a Magistrate Judge in Owyhee County. In 1995, Justice Eismann was appointed as a district judge in Ada County and was elected as a Justice of the Idaho Supreme Court in 2000.

Justice Eismann serves as chair of the statewide Drug Court and Mental Health Court Coordinating Committee, the Appellate Rules Committee, and the Media and the Court's Committee. He is a member and past-president of the Boise Chapter of the Inns of Court and currently serves on the boards of the Idaho State Bar Lawyers Assistance Program and of the Idaho Law Foundation. In 2007 he became co-chair of Idaho Partners Against Domestic Violence. On August 1, 2007, Justice Eismann was elected as the Chief Justice of the Idaho Supreme Court.

HONORABLE RONALD J. WILPER, is a graduate of Boise State University and the University of Idaho College of Law. He was engaged in the private practice of law from 1988 to 1995 with the firm of Gigray, Miller, Downen & Wilper in Caldwell. He received the Court Appointed Special Advocate (C.A.S.A.) Award for Outstanding Child Advocate of the year in 1990, and the Equal Access to Justice Award in 1993. He served as a Commissioner of the Idaho State Bar Association from 1993 to 1996, and was President of the Bar Association in 1996. From 1995 through 1998 he was the Chief Criminal Deputy Prosecuting Attorney for Canyon County. He was appointed by Governor Phil Batt to serve as a District Judge in Boise on January 1, 1999. He was re-elected in 2002 and 2006. He received the Jefferson Award for public service in April 2006. In 2008, Judge Wilper was the recipient of the Granata Award for professionalism as a trial judge. Judge Wilper presides over criminal and civil cases in Boise and served as the Presiding Judge in the Ada County Felony Drug Court from 2001 through 2008. Judge Wilper has served as a member of the Idaho Judicial Council since March, 2007.

HONORABLE THOMAS BORRESEN earned his Bachelor of Science in Accounting from the University of Idaho in 1972 and graduated from the University of Idaho Law School in 1977. He was a member of the Idaho Law Review. He served as law clerk for the Honorable J. Blaine Anderson in both the U.S. District Court and the Ninth Circuit Court of Appeals. He engaged in the private practice of law from 1978 to 1993 when he was appointed to

the Jerome County Magistrate Court. Judge Borresen has served as an adjunct member of the Idaho Judicial Council since July 2000.

PUBLIC MEMBERS:

SHERRY KRULITZ, is a resident of Pinehurst, Idaho. She attended North Idaho College and Lewis & Clark State College. She has served as the City Clerk for the City of Pinehurst, Shoshone County Treasurer and served twenty years as Shoshone County Commissioner. She is the manager of two HUD senior housing projects. For her work in housing, she was the recipient of the 2004 USDA Idaho Site Manager of the Year for Elderly Housing. As a County Commissioner, Mrs. Krulitz was presented the 2003 Mills-Adler Award and the 2005 Sydney Duncombe Award for Excellence in County Government. She served on the Board of Directors of both the Idaho and the National Association of Counties. In January 2009, Mrs. Krulitz was appointed to the North Idaho Partnership Council under the Inland Northwest Community Foundation. Mrs. Krulitz has been a member of the Idaho Judicial Council since February 2000.

J. PHILIP REBERGER, is a resident of Boise, Idaho. He graduated from Caldwell High School and the University of Idaho where he earned a Bachelors of Science in Business and received the President's Top Senior Award. He is currently a partner in one of Idaho's leading governmental affairs firms, Sullivan & Reberger. As a U.S. Navy Viet Nam veteran, he served on active duty as Staff Pilot to Admiral John McCain, Commander in Chief, Pacific. In 2002, he retired as a Captain, last serving as Chief of Staff to the Commander, Navy Reserve Security Group. Early in his career, he served on the executive staff of the Republican National Committee under the leadership of Former President George Bush and U.S. Senator Bob Dole. He served for twelve years as Chief of Staff to Idaho Senator Steve Symms. He retired in 2002 as Governor Dirk Kempthorne's Chief of Staff, a position he held since 1992 when he joined Kempthorne to manage his successful campaign for election to the United States Senate. He is a former Presidential appointee to the USO World Board of Governors and has served on various state and local government committees. Mr. Reberger has been a member of the Idaho Judicial Council since September 2003.

RONALD M. NATE, Ph.D., is a professor of Economics at the Brigham Young University-Idaho in Rexburg, Idaho. He received his Bachelor of Science in Economics from the University of Utah, his Masters Degree from the University of Connecticut and his Ph.D. from the University of Connecticut in 1998. He has taught at BYU-Idaho since 2001 and was Assistant Professor Of Economics at Ohio University Eastern for two years before coming to the Rexburg. He is active in local community service including a volunteer leader with the Boy Scouts of America and has chaired numerous political committees. Mr. Nate joined the Idaho Judicial Council as a member in July 2007.

ATTORNEY MEMBERS:

ANNE SOLOMON, is a partner in the Coeur d'lene, Idaho law firm of Flammia & Solomon, P.C. She received her Bachelor of Arts in Political Science/Economics from Stanford University in 1973 and her Juris Doctorate from the University of Idaho in 1978. She is also admitted to the California Bar. She is active in numerous local community organizations and committees. Ms. Solomon joined the Idaho Judicial Council as a member in May 2006.

WILLIAM PARSONS, is a resident of Burley, Idaho. He graduated from Burley High School, earned his Bachelor of Science in Business Administration from the University of Idaho in 1954 and his LLB from the University of Idaho Law School in 1957. He has practiced law in the Burley area for fifty years and is the founder of Parsons, Smith & Stone Law Firm. He served as the Burley City Attorney for twenty-eight years. He is a member of the American College of Trial Lawyers and of several civic organizations including the Theron Ward Inns of Court. He has also served on the University of Idaho Law School Advisory Committee and the Idaho State Bar Professional Conduct Board. Mr. Parsons is a recipient of the 1996 Fifth Judicial District Professionalism Award and will receive the Fifty Year Award from the Idaho State Bar this year. Mr. Parsons was a member of the Idaho Judicial Council from July 2003 through June 30, 2009.

STEVEN A TUFT, is a resident of Burley, Idaho. He received a Bachelor of Arts from Brigham Young University in German Literature and his Juris Doctorate from the University of Utah Law School. He is involved in his church and several community activities including the Boy Scouts of America, serving first as a board member for 20 years and then as president of the Snake River Council. Mr. Tuft also sits on the board of three charitable foundations. His law practice focuses on real estate, commercial transactions and estate planning. He represents the Fifth Judicial District CASA program in child protection cases in Cassia and Minidoka Counties. For over 30 years, he has served as a part-time city attorney for Heyburn. He is a founding member of the Idaho Municipal Attorneys Association. In 2006 he received both the Idaho State Bar's Service Award and the Professionalism Award. Mr. Tuft joined the Idaho Judicial Council as a member in July 2009.

EXECUTIVE DIRECTOR:

ROBERT G. HAMLIN, graduated from the University of Idaho Law School in 1973 where he was a member of the Idaho Law Review. He was a law clerk to former Idaho Supreme Court Chief Justice Robert E. Bakes. He is "Of Counsel" to the law firm of Naylor & Hales, P.C. He served as the general counsel of Extended Systems Incorporated, a publicly traded company for twenty years. He has been the Executive Director of the Idaho Judicial Council since September 1981. Mr. Hamlin serves on numerous governmental boards and commissions and on corporate boards of directors. He also served as the Vice-Chairman of the Board of Directors of Northwest Medical Teams International, an international medical and disaster relief organization and was on the Board of Directors of Genesis World Missions and the Garden City Community Medical Clinic. He is a recipient of the 2003 Idaho Supreme Court Kramer Award and the 2005 Idaho State Bar Professionalism Award.

III.

SELECTION OF JUDGES

Justice is administered by people, not by systems. The quality of justice turns, in full measure, upon the competence, fairness, and diligence of the human beings in the black robe. Because the judicial system depends heavily on a quality judiciary, we need the best available method for judicial selection. While there is no perfect method, a broad national consensus suggests that the best judges are identified through a merit selection process. Merit selection envisions a commission, composed of judges, lawyers, and laymen, submitting nominations to the Governor for appointment. Idaho law provides such a process. Idaho Code Section 1-2102 provides that the Judicial Council shall:

> Submit to the Governor the names of not less than two (2) nor more than four (4) qualified persons for each vacancy in the office of justice of the Supreme Court or district judge, one (1) of whom shall be appointed by the Governor...

This process is followed whenever new positions are created or vacancies occur prior to the expiration of a term. However, once selected, all Idaho judges are subject to a non-partisan competitive election or retention process.

THE SELECTION PROCESS IN DETAIL

The Idaho Judicial Council has a detailed and careful selection procedure. The Council uses a comprehensive application form to elicit detailed information concerning each applicant's professional background and achievements. During personal interviews, which are open to the public, partisan political questions are strictly avoided. Applicants are asked for their thoughtful comments on issues of substantive law and problems of judicial administration. A standard questionnaire is distributed throughout the judicial district or the state, depending on whether the vacancy is on the district bench, the Court of Appeals, or the Supreme Court, asking those members of the practicing bar and of the general public who know the applicant to evaluate the judicial candidate upon the standards recommended by the American Judicature Society. These standards include the following:

1. Integrity and moral courage.
2. Legal ability and experience.
3. Intelligence and wisdom.
4. Capacity to be fair-minded and deliberate.
5. Industriousness and promptness in performing duties.
6. Compatibility of personal habits and outside activities with judicial office.
7. Capacity to be courteous and considerate on the bench.

When all of this information has been received and digested, the Judicial Council analyzes each applicant's mental and physical fitness to perform the duties of judicial office, superior self-discipline, moral courage, sound judgment, ability to weigh impartially the views of

others, ability to be decisive when required, capacity for logical reasoning, adequacy of educational background, and excellence of professional achievement. For trial court positions, the Judicial Council also considers knowledge of procedure and evidence and experience as an advocate. For appellate positions, the Council looks for clarity of written and spoken expression. The Council also obtains information from the State Tax Commission, the Idaho State Bar, a credit bureau, the Idaho Supreme Court and the Idaho Department of Law Enforcement in order to verify the integrity of each applicant.

The Judicial Council's process of judicial selection is now being emulated by several district magistrates commissions, the federal bench, and, has been the subject of inquiries from other states.

NOMINATIONS BY THE JUDICIAL COUNCIL FOR 2009

Judicial vacancies usually fill a large part of the Council's activities. There were six (6) vacancies in the 2009 calendar year.

The following table summarizes the screening process in those cases.

Vacancy	No. of Applicants	No. of Nominees	Individual Appointed
District Judge Third District Stephen W. Drescher	4	3	Susan E. Wiebe
District Judge Sixth District Peter D. McDermott	8	4	Robert C. Naftz
Court of Appeals Darrel R. Perry	12	4	John M. Melanson
District Judge First District Charles W. Hosack	7	3	Benjamin R. Simpson
District Judge Fifth District R. Barry Wood	7	2	Eric J. Wildman
District Judge Fifth District John M. Melanson	6	2	Jonathan P. Brody

NOMINATIONS BY THE JUDICIAL COUNCIL FOR THE PAST FIVE YEARS

The following table summarizes the screening process for judicial vacancies for the last five years (2008-2004).

Vacancy	No. of Applicants	No. of Nominees	Individual Appointed
	2008		
District Judge Sixth District Donald L. Harding	6	3	Mitchell W. Brown
District Judge Sixth District Ronald E. Bush	7	3	Stephen S. Dunn
Court of Appeals New Position	9	4	David W. Gratton
District Judge Fourth District Kathryn A. Sticklen	3	2	Richard D. Greenwood
District Judge Seventh District Brent J. Moss	5	2	Gregory W. Moeller
District Judge Third District Gordon W. Petrie	8	3	Bradly S. Ford
	2007		
District Judge Fifth District John Hohnhorst	7	2	Randy J. Stoker
District Judge Third District James C. Morfitt	5	2	Thomas J. Ryan
District Judge Sixth District N. Randy Smith	7	3	David C. Nye

Vacancy	No. of Applicants	No. of Nominees	Individual Appointed
District Judge Fourth District New Position	10	4	Patrick H. Owen
District Judge Seventh District Richard T. St.Clair	6	4	Joel E. Tingey
Justice Supreme Court Gerald F. Schroeder	19	4	Warren E. Jones
Justice Supreme Court Linda Copple Trout	12	4	Joel D. Horton
District Judge Fifth District Monte B. Carlson	5	2	Michael R. Crabtree
District Judge Fourth District Joel D. Horton	5	3	Timothy L. Hansen
	2006		
District Judge First District New Position	9	3	Lansing L. Haynes
District Judge Third District New Position	9	3	Gordon W. Petrie
	2005		
No Vacancies			
	2004		
District Judge Fifth District James J. May	3	2	Robert J. Elgree

IV.

DISCIPLINARY ACTIVITIES OF THE JUDICIAL COUNCIL

Judges can and should meet rigorous standards of personal and professional conduct. The role of judicial conduct agencies throughout the country is to help enforce the standards of judicial conduct. These agencies, established by the fifty states and the District of Columbia, play a vital role in maintaining public confidence in the judiciary and preserving the integrity of the judicial process. As a forum for citizens with complaints against judges, the Idaho Judicial Council helps maintain the balance between judicial independence and public accountability. It also serves to improve and strengthen the judiciary by creating a greater awareness of proper judicial conduct on the part of judges themselves, both on and off the bench.

The Idaho Judicial Council generally acts only on verified complaints involving judicial misconduct and disability. Accordingly, it does not address complaints involving a judge's decisions or rulings unless there is an accompanying allegation of fraud, corrupt motive, or other misconduct.

Judicial misconduct, or the inability of a judge to perform judicial functions, represents a greater threat to the public interest than do personnel problems among public officers in general. Most elected officers are subject to the constitutional remedy of recall, but Article 6, Section 6, of the Idaho Constitution specifically exempts judicial officers. Experience in other states has shown that the alternative remedy of impeachment is ineffective except in cases of gross scandal. In any event, as noted by the American Bar Association, the impeachment method can be activated only by preliminary proceedings that approach prejudging the case, and involve methods of determination that are easily politicized.

The problem is underscored by the special role that courts play in our system of government. The courts, in the last analysis, are the protectors of the individual rights which give our society its distinct character. Because the public quite understandably views justice as being no better than the person who dispenses it, the judge who misbehaves or who is unable to perform adequately brings discredit to the entire system. The fact that relatively few judges manifest such problems is small consolation to the public or to the other judges whose images are indirectly tarnished by the acts of a few.

Conversely, the clear need for effective judicial discipline must not obscure the equally important public interest in an independent judiciary. The judge who is different is not for that reason alone, unfit. Nor is a judge incompetent, merely because of the issuance of controversial decisions. The need for balance between judicial accountability and judicial independence puts a premium upon the fairness of disciplinary procedures.

THE JUDICIAL DISCIPLINARY PROCESS IN IDAHO

Idaho Code Section 1-1202 authorizes the Judicial Council to recommend the removal, discipline, and retirement of judicial officers. Section 1-2103, which prescribes the procedures by which this power shall be exercised, refers only to the removal, discipline, or retirement of district judges, court of appeals judges or justices of the Supreme Court. However, Idaho Code Section 1-2103A was added by the 1990 legislature and requires the Judicial Council to investigate and make recommendations to the Supreme Court on the discipline, removal, or retirement of magistrates. The statutory change was effective on July 1, 1990. It did not affect the magistrate selection process or the right of the district magistrate commission to remove a magistrate in the first eighteen (18) months after appointment. All judges are subject to the Idaho Code of Judicial Conduct promulgated by the Supreme Court.

Section 1-2103 provides that the Judicial Council may investigate a complaint against a judge or justice and may order a formal hearing before it, after such investigation has been conducted. A copy of the complaint form may be found in the Appendix. Following this hearing, the Council may recommend to the Supreme Court the removal, discipline, or retirement of the accused judge or justice. Final disciplinary authority rests with the Supreme Court. Section 1-2103 further provides that all papers filed with, and proceedings conducted before, the Judicial Council are confidential. These papers and proceedings do not lose their confidential nature unless or until the matter is forwarded to the Supreme Court upon recommendation of the Council. At that point, the proceedings become public.

The rules adopted by the Judicial Council pursuant to this statutory authority provide that when a complaint is received, the Council initially determines whether or not the complaint (a) states facts which constitute possible grounds for removal, discipline or retirement, and (b) is not obviously unfounded or frivolous. This is accomplished through an initial inquiry wherein the Executive Director informally obtains sufficient additional information to allow the Council to determine whether to proceed to a preliminary investigation. The judge is usually notified of the complaint at this stage of the proceedings. If the complaint passes these tests, then a preliminary investigation must be conducted, and the judge or justice involved must be formally notified. Ordinarily, this investigation is conducted by the Council's Executive Director. The judge or justice is invited to make such statements or submit such materials as may be helpful to the investigation.

When the preliminary investigation has been completed, the Judicial Council determines whether or not the investigation has disclosed sufficient cause to warrant further proceedings. If not, or if the investigation itself has resolved the alleged problem, then the complaint is dismissed with notice to the complainant and the judge or justice. However, if further proceedings are warranted, the judge or justice is then served notice of formal proceedings and given an opportunity to answer.

The hearing may be conducted by the Judicial Council itself, or it may request that the Supreme Court appoint a panel of three special masters to hear and take evidence in such a proceeding and report their findings to the Judicial Council. During the hearing, and at all other stages of the proceeding, the judge or justice is entitled to be represented by counsel. The

rules governing evidence and the requirements of due process are observed during the hearing in the same manner as in a civil court case.

Following the hearing, or upon receiving the report of findings by the special masters, the Judicial Council determines whether good cause exists to recommend to the Supreme Court that the judge or justice be removed, disciplined or retired. If the decision is in the affirmative, the record of proceedings is transmitted to the Supreme Court together with the Judicial Council's recommendation. The Court may order the judge or justice removed from office, involuntarily retired from office, or disciplined. Pursuant to Section 1-2103 and the Judicial Council's rules, no judge or justice who is a member of the Council or Supreme Court may participate in any proceedings involving himself or herself, or any district judge in his or her own judicial district.

Two especially significant features of the foregoing process are the confidentiality of proceedings before the Judicial Council and the undertaking of a preliminary investigation prior to any formal hearing. The confidentiality provisions serves two purposes: (1) the complainant is not deterred by fear of public embarrassment from bringing a personal grievance to the attention of the Judicial Council; and (2) the reputation of the judge or justice is protected during the period of time when the truth of the complaint is undetermined. Furthermore, confidentiality allows a judge or justice to recognize a mistake, if one has been committed, and rectify it to the satisfaction of the complainant before publicity "freezes" the case into an adversary mold. Similarly, the preliminary investigation provides a framework in which issues can be defined, and in many cases resolved, before formal proceedings are commenced.

In many cases, the Judicial Council finds that the judge or justice has not engaged in misconduct or failed to perform judicial duties. Even in such cases, the disciplinary process accomplishes a constructive purpose. As noted by the Texas Judicial Qualifications Commission, in its 1974 report:

> "Many complainants do not understand law, how the courts operate, the jurisdiction of the judge, their right of appeal, and other aspects of the judicial system. They know only that they are unhappy with the system and want someone to hear their complaint. Usually...letting them have all the time they want, and then explaining to them why the judge acted or ruled is all that is necessary. The tremendous caseload of the court and the demand upon the time of a judge...[do] not permit him to give these people the time they feel they deserve. To the individual, his case is the only one; to the judge it is one among hundreds of similar nature. By serving as an intermediary, taking remedial action when necessary, the Commission feels that it negates much of the animosity toward the judicial system, and provides the lay person a better understanding of the judiciary."

DISCIPLINARY ACTIVITIES BY THE JUDICIAL COUNCIL IN 2009

In calendar year 2009, there were one hundred one (101) complaints or inquiries concerning Idaho judges. Those complaints were made against judges as follows:

TYPE OF JUDGE	NO. OF COMPLAINTS **
Idaho District Judges	14
Idaho Magistrate Judges	41
Idaho Appellate Judges	0
Idaho Supreme Court Justices	4
Retired/Senior Judges	11
Judicial Candidates	0
Judges Not Identified or Other Entities Not Under Judicial Council Jurisdiction	13

** Some complaints have more than one judge named.

Of the 101 complaints received in 2009, thirty-three (33) were not verified as required by Idaho law. When a complaint is not verified, the Judicial Council contacts the complainant to explain verification and offers to assist in the verification process. Of the sixty-eight (68) verified complaints, fifty-four (54) complaints were dismissed after having been reviewed and discussed by the Judicial Council and a determination made that there was no factual basis for the complaint or the facts did not constitute a violation of the Code of Judicial Conduct. There were fourteen (14) initial inquiries conducted and no preliminary investigations. An initial inquiry consists of obtaining more facts on the complaint and receiving a response

from the judge. A preliminary investigation is a full investigation, which includes a review of the court record or transcripts and interviewing witnesses.

In the fourteen (14) cases in which there were initial inquiries, the Judicial Council took remedial action in three (3) of the cases pursuant to Judicial Council Rule 28(c), which permits the Judicial Council to remedy issues with a judge without filing formal charges. In those cases, one judge was issued a private reprimand for unreasonable delay in the issuance of an opinion, one judge was required to personally appear before members of the Judicial Council to discuss rude and discourteous treatment of litigants in the courtroom and one judge was required to personally appear before members of the Judicial Council to discuss the judge's involvement in city personnel issues.

The primary allegations contained in the complaints against judges were as follows:

**NATURE OF COMPLAINT	OCCURRENCES
Abuse of Power	2
Appearance of impropriety	0
Bias/prejudice/discrimination	13
Conduct prejudicial to administration of justice/Failure to perform duties	4
Conflict of interest	1
Conspiracy	0
Erroneous decision/error of law	60
Ex parte communication	4

**NATURE OF COMPLAINT	OCCURRENCES
Excessive use of alcohol/drugs	0
Failure to disqualify	6
Malpractice as an attorney	1
Improper/Unreasonable delay	6
Improper sentence	5
Improper campaign/Political activity	0
Lack of impartiality	0
Rude and discourteous treatment/lack of judicial temperament	2
Unknown or general dissatisfaction	32

** Many complaints have more than one allegation made against the judge or judges.

In all cases, the judges against whom complaints had been filed were cooperative with the Judicial Council in performing its statutory duties.

V.

JUDICIAL PERFORMANCE EVALUATIONS

The Judicial Council has found that when individuals are appointed to the bench, they become somewhat isolated and do not receive feedback on their performance as a judge.

Judicial Performance Evaluations provide the opportunity to receive feedback on the way judges perform their judicial duties. That information is provided to the judges in order to assist them in improving their judicial skills and abilities.

The Judicial Council began a Volunteer Pilot Judicial Performance Evaluation Project in June 2000. The questionnaires are distributed to attorneys and court clerks once a year.

As of December, 2009 there are thirteen (13) Magistrate Judges and eight (8) District Judges from the Counties of: Ada, Bonner, Cassia, Gooding, Idaho, Jerome, Kootenai, Latah, Nez Perce, Payette and Twin Falls, along with three (3) Court of Appeal judges who have volunteered to be evaluated.

VI.

ETHICS OPINONS

The Judicial Council encourages judges to solicit advice on ethics issues that arise. In 2009, the Judicial Council provided one hundred thirty-five (135) informal ethics opinions to judges.

APPENDIX A

STATE OF IDAHO

IDAHO JUDICIAL COUNCIL
P.O. Box 1397
Boise, Idaho 83701
(208) 334-5213
Website: www.judicialcouncil.idaho.gov

COMPLAINT FORM

No. _____

This form is designed to provide the Judicial Council with information required to make an initial evaluation of your complaint, and to begin an investigation of the allegations you make. Please read the accompanying materials on the Judicial Council's function and procedures before you complete this form.

PLEASE TYPE OR LEGIBLY PRINT ALL INFORMATION

Name: _____
(Please type or print)

Address: _____

_____

Telephone: _____ Day ( ) _____ Evening ( ) _____

I have information of possible misconduct or disability on the part of

_____, of the _____ Court in
(name of Judge or Industrial Commissioner)

_____, _____, Idaho.
(City) (County)

STATEMENT OF FACTS

1. When and where did this happen?
   Date(s): _____ Time: _____ Location: _____

2. If your information arises out of a court case, please answer these questions:

a) What is the name and number of the case?

Case Name: _____ Case No: _____

b) What kind of case is it?

☐ criminal ☐ domestic relations ☐ small claims ☐ probate

☐ civil ☐ juvenile ☐ other (specify) _____

_____

c) What is your relationship to the case?

☐ plaintiff/petitioner ☐ defendant/respondent
☐ attorney for _____
☐ witness for _____
☐ other (specify): _____

d) If you were represented by an attorney in this matter at the time of the conduct of the judge or industrial commissioner, please identify the attorney:

Name: _____

Address: _____

Phone: ( ) _____

e) Identify any other attorney(s) who represented you or any person involved in the case:

Name of attorney: _____

Address: _____

Phone: ( ) _____

Represented: _____

f) If this complaint relates to a trial or other court proceeding, has it been or will it be appealed?

_____ Yes _____ No _____ Not applicable

3. List documents that help support your information that the judge or industrial commissioner has engaged in misconduct or has a disability, noting which ones you have attached:

_____

_____

_____

_____

4. Identify, if you can, any other witnesses to the conduct of the judge or industrial commissioner:

Name: _____

Address: _____

Phone: ( ) _____

SUPPORTING FACTS:

Please state specific facts to support your allegation(s) of judicial misconduct. Include all pertinent dates, and name(s) of persons present, if known. Attach any documents which may support your position. Attach additional sheets if the space provided below is not sufficient.

_____
_____
_____
_____
_____
_____
_____
_____
_____
_____
_____

Signed: _____

Date: _____

VERIFICATION

STATE OF _____)
) ss.
County of _____)

_____, being first duly sworn upon oath, deposes and says:

That he/she is the Complainant in the above matter, that he/she has read the foregoing Complaint, knows the contents thereof, and verily believes the facts therein stated to be true.

_____

(Signature)

SUBSCRIBED AND SWORN TO Before me this ____ day of _____, 2010.

_____
Notary Public for _____
Residing at _____
Commission Expires: _____

Please return this completed form to:

Robert G. Hamlin
Executive Director
Idaho Judicial Council
P.O. Box 1397
Boise, Idaho 83701

APPENDIX B

Idaho Judicial Council

P. O. Box 1397, Boise, Idaho 83701-1397 ■ Phone: (208) 334-5213 ■ Fax: (208) 334-2253
■ E-mail: ijc@idcourts.net ■ Website: www.judicialcouncil.idaho.gov
***Ex-Officio Chairman:* Chief Justice Daniel T. Eismann ■ *Executive Director:* Robert G. Hamlin**

Members:

Sherry Krulitz ■ J. Philip Reberger ■ Anne Solomon ■ Hon. Ronald J. Wilper ■ Ronald M. Nate, Ph.D. ■ Steven A Tuft

Rules of the Idaho Judicial Council General Rules of Procedure

RULE 1. Oath of Office.

Before entering upon the duties of the Judicial Council, each member shall take and subscribe to an oath or affirmation to support the Constitution of the United States and the Constitution and laws of the State of Idaho, and to faithfully discharge all the duties of such office.

RULE 2. Duties of Council.

The Judicial Council shall:

(a) Conduct studies for the improvement of the administration of justice;

(b) Make reports to the Supreme Court and Legislature at intervals of not more than two (2) years;

(c) Submit to the Governor the names of not less than two (2) nor more than four (4) qualified persons for each vacancy in the office of justice of the Supreme Court, Court of Appeals judge, or district judge, one (1) of whom shall be appointed by the Governor;

(d) Recommend the removal, discipline, and retirement of judicial officers; and,

(e) Such other duties as may be assigned by law. (I.C. §1-2102).

RULE 3. Honoraria and Expenses.

Each member of the Council, except a judge or justice, shall receive an honorarium of fifty dollars ($50.00) per day for each day spent in actual attendance at meetings of the Council. Members of the Council shall be reimbursed for actual expenses necessarily incurred in attending meetings and in the performance of official duties. (I.C. §1-2104)

The Secretary is authorized to procure necessary supplies, stationery and postage, and copies of papers and documents for the Secretary's use, and use of the members of the Council, and to submit for approval by the Chairman proper vouchers for payment thereof.

RULE 4. Officers and Their Duties.

The officers of the Council shall be:

Chairman, who shall be the Chief Justice of the Supreme Court of the State of Idaho. (I.C. §1-2101). The Chairman's duties, inter alia, shall be: (1) to act as chairman of all meetings of the Council; (2) to cause studies to be made and reports to be submitted as required by I.C. §1-2102; and (3) approve all honoraria and expenses of travel necessarily incurred by members of the Council in attending Council meetings and in the performance of official duties.

Vice-Chairman, who shall be elected by the Council annually, on a calendar year basis, and who shall act in the place of and perform the duties of the Chairman in the Chairman's absence.

Secretary, who shall be appointed by the Council, annually, on a calendar year basis, and who shall attend all Council meetings and keep minutes thereof, communicate with Council members from time to time as the Chairman may direct, and assist in the formulation of the studies and reports required by I.C. §1-2102.

RULE 5. Meetings.

Meetings of the Council shall be held at the call of the Chairman or at the request of any two (2) members. The Secretary shall cause timely notice of a meeting to be given in advance of the time designated for the meeting. The presence of any member at any meeting shall constitute that member's waiver of notice. The Secretary or an assistant under the Secretary's direction shall maintain minutes of such meetings, and shall within three (3) working days following each such meeting send to every member of the Council by first class mail the proposed minutes of such meeting. If no written objection to such proposed minutes is received from any member of the Council within one (1) week from the date of such mailing, said proposed minutes shall be deemed approved. If any written objection is received, review of the proposed minutes shall be included on the agenda of the next duly- called meeting of the Council. Immediately following approval of the minutes of a meeting, the Chairman or an assistant under the Chairman's direction shall cause to be distributed to members of the Supreme Court and shall cause to be made available to the general public said minutes; provided, however, that the copies of said minutes so distributed or made available shall reflect

deletions of any material subject to a confidentiality requirement prescribed by law or by rules of the Council.

RULE 6. Types and Locations of Meetings.

The notice calling a meeting shall specify whether the meeting is by assembly of Judicial Council members or by telephone conference. All meetings by assembly of members shall be held at the conference room adjoining the chambers of the Chief Justice of the Supreme Court, unless another meeting location is designated in the notice. If the notice specifies a meeting by telephone conference, such meeting will be conducted by long distance conference call; provided, that no telephone conference shall be held if any member expresses a written or oral objection, and provided further that any telephone conference shall be terminated upon demand by any member for a secret ballot on a matter subject to vote.

RULE 7. Quorum.

The Council shall act by concurrence of four (4) or more members. (I.C. §1-2101)

RULE 8. Voting.

All voting shall be viva-voce, provided that the vote on any particular issue, on request of any member, shall be by roll call or by secret ballot.

RULE 9. Committees.

Committees may be appointed to perform specified duties. The Chairman shall appoint all committees unless otherwise provided in a motion or resolution authorizing a particular committee.

RULE 10. Assistants and Assistance.

The Council may employ such assistants and clerical assistance as may be deemed necessary to perform the duties and responsibilities imposed by Idaho Code, Title 1, Chapter 21.

The Council may solicit the view and assistance of professionals and other groups and of the general public concerning qualifications of candidates to fill Supreme Court, Court of Appeals, or district court vacancies; also, inter alia, concerning the improvement of the science of jurisprudence, and of the administration of justice.

RULE 11. Intentionally Left Blank.

RULE 12. Notice of Vacancy.

Upon receiving notice of a judicial vacancy, notice of the vacancy shall be sent to members of the Idaho State Bar and disseminated to the public. After the deadline for submission of applications has expired, the Council shall conduct a background check into the qualifications of the applicants, which may include, but not be limited to, criminal records check, bar disciplinary activities check, Magistrate Commission disciplinary activities check, State Tax Commission check, and credit bureau check. The Council may also solicit input from members of the public concerning each of the applicants.

RULE 13. Attorney Questionnaires.

Following the expiration of the deadline for submission of applications, the Judicial Council shall mail to all attorneys in the applicants' judicial districts if for a district position, and to all attorneys in the state for statewide judicial offices, a questionnaire on the qualifications of the applicants. After the results of the questionnaires are tabulated, the Council may disclose to each applicant, the results of the applicant's score. However, the results of the surveys shall not be disclosed to any other person or entity except the Governor. Any written comments shall be confidential and shall not be disclosed to the applicant or any other person except the Governor.

RULE 14. Interviews.

The Council shall interview the applicants for the judicial position, which interviews shall be open to the public. Interviews will ordinarily be held in the judicial district for vacancies within that district, and in Boise, Idaho, for statewide judicial positions.

RULE 15. Confidentiality and Disclosure in Relation to Candidates for Judicial Vacancies.

The deliberations of the Council relating to candidates, their names and their deemed qualifications shall be considered confidential and shall not be disclosed to anyone except the Governor. The names of the candidates may be disclosed when the deadline for submitting applications for the judicial vacancy in question has expired; the names of such candidates may be used in any questionnaire or investigation of their qualifications for judicial office; and the names of the candidates submitted to the Governor may be further released for publication by the Council in its discretion.

RULE 16. Judicial Qualifications.

The deemed qualifications of candidates selected by the Council to be considered for appointment to judicial office may be in accordance with the following ratings:

(a) Exceptionally well qualified,

(b) Well qualified, and

(c) Qualified.

RULE 17. Ex Parte Contact with Judicial Council Members.

The members of the Judicial Council should not engage in ex parte communications concerning any applicant for a judicial position. They should encourage all interested attorneys and members of the public to communicate with the Council in writing concerning the applicants on which they have knowledge or information.

RULE 18. Intentionally Left Blank.

RULE 19. Intentionally Left Blank.

RULE 20. Intentionally Left Blank.

Rules for Removal, Discipline or Retirement of Judges

RULE 21. Definitions.

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

(a) "Council" means the Judicial Council of Idaho.

(b) "Judge" means a Justice of the Supreme Court, a Court of Appeals judge, a judge of a district court, a magistrate judge, or a member of the Industrial Commission.

(c) "Accused judge" or "defendant" means the judge against whom formal proceedings have been instituted pursuant to Rule 29.

(d) "Chairman" means the chairman of the Council or the acting chairman.

(e) "Masters" means special masters appointed by the Supreme Court upon request of the Council.

(f) "Presiding master" means the master so designated by the Supreme Court or, in the absence of such designation, the judge first named in the order appointing masters.

(g) "Examiner" means counsel designated by the Council to make a preliminary investigation, to gather evidence, and to present evidence before the Council or the masters, with respect to the charges against a judge.

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

(I) The masculine gender includes the feminine gender.

RULE 22. Process - Witnesses - Hearings.

(a) In the exercise of its powers and duties as provided by I.C. Title 1, Chapter 21, the Council or any member or master shall have the power to summon and examine witnesses under oath and to compel their attendance and the production of books, papers, documents and other writings necessary or material to the inquiry. Such summons or subpoena shall be issued under the hand of the Secretary of the Council or any member thereof, or any master appointed to conduct a hearing, and shall have the force and effect of a subpoena issued by a court of competent jurisdiction. Any witness or other person who shall refuse or neglect to appear in obedience thereto or who shall refuse to be sworn or testify or produce books, papers, documents or other writing demanded, or to comply with any lawful order of the Council or any member or master in the premises, shall be liable to attachment upon application to the Supreme Court, or to any court or a judge thereof, as in cases of contempt.

(b) The Council or masters shall conduct the hearing of such matter as shall best arrive at the truth and any member or master may interrogate witnesses. The following enumerated rules of the Idaho Rules of Civil Procedure, as adopted by the Supreme Court, effective November 1, 1958, or as the same have been, or may hereafter be amended, shall govern and may be used in all proceedings and hearings conducted under these rules of discipline: Rules 6(a)(e), 15(b)(c)(d), 16, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 43(b)(c)(d), 44(a)(b)(c), 45(d)(1), 45(d)(2), 61 and 80; provided, that if the accused judge shall be in default for failure to answer, depositions and discovery procedures may be taken and used without notice to the accused, or affidavits of witnesses may be introduced and used in evidence. The Secretary, or any member of the Council, or master, may administer oaths to witnesses.

(c) Witnesses subpoenaed by the Council or any member thereof or by a master shall be allowed such fees and traveling expenses as are allowed in civil actions, to be paid by the party in whose interest such witnesses are subpoenaed.

RULE 23. Interested Party and Disqualification.

(a) A judge who is a member of the Council or of the Supreme Court shall not participate as such in any proceedings involving the judge's own removal, discipline or retirement.

(b) A district judge serving on the Judicial Council may not participate in deliberations of the Judicial Council pertaining to a complaint filed against a district judge residing in the same judicial district as the district judge member of the Council, and that district judge member of the Council shall be disqualified from all proceedings involving that particular complaint.

(c) If a complaint is filed against a Supreme Court Justice, the Chief Justice shall not participate in deliberations of the Judicial Council pertaining to the complaint filed against the Justice of the Supreme Court, and the Chief Justice shall be disqualified from participating in deliberations of the Council pertaining to that complaint. The Vice-Chairman of the Council shall preside over any such deliberations and shall preside over any procedures involved in the investigation or processing of that complaint.

RULE 24. Confidentiality of Proceedings.

All papers filed with and proceedings before the Council, or before the masters appointed by the Supreme Court pursuant to Rule 31, shall be confidential until a record is filed by the Council in the Supreme Court, provided, however, that if allegations against a judge are made public by the complainant, judge or third persons, the Judicial Council, and/or the judge may comment on the existence, nature, and status of any investigation and may correct any false or misleading information including false or misleading information on the actions taken by the Judicial Council.

RULE 25. Confidential and Privileged Defamatory Material.

(a) Papers filed with the Council, and testimony given before the Council, or before the masters appointed by the Supreme Court pursuant to Rule 31, shall be privileged;

(b) The record filed by the Council in the Supreme Court continues privileged but on such filing loses its confidential character; and

(c) A writing which was privileged prior to its filing with the Council or the masters does not lose such privilege by such filing.

RULE 26. Appointment of Examiner.

The Council may appoint one or more examiners to assist the Council (a) in making preliminary investigation of the charges against a judge; (b) to gather evidence and to present evidence before the Council or the masters with respect to the charges against an accused judge.

RULE 27. Service of Documents Upon Accused Judge.

In proceedings for the discipline, removal or retirement of a judge, including preliminary investigations therefor, service of any document required to be served upon an accused judge shall be made by personal service upon the judge, or by mailing a copy of such document by prepaid registered or certified mail addressed to the judge at the judge's chambers or last known residence address, and by mailing a copy thereof to the judge's counsel of record if such there be unless the judge shall otherwise direct in writing filed with the Council.

RULE 28. Grounds for Discipline, Removal or Retirement - Initial Inquiry - Preliminary Investigation.

(a) The Council, upon receiving a verified statement, not obviously unfounded or frivolous, alleging facts indicating that a judge is guilty of willful misconduct in office, willful and persistent failure to perform the duties of a judge, habitual intemperance, or of conduct prejudicial to the administration of justice that brings the judicial office into disrepute, or a violation of the Code of Judicial Conduct, or that the judge has a disability that seriously interferes with the performance of the judge's duties which is or is likely to become of a permanent character, shall make an initial inquiry or investigation to determine whether formal proceedings should be instituted and a hearing held. The Council without receiving a verified statement may make such a preliminary investigation on its own motion and may in such cases, conduct a preliminary investigation without an initial inquiry.

(1) **Initial Inquiry**. After notifying the judge informally, the Council, or its representative, shall make an initial inquiry to determine whether or not the complaint contained in the verified statement is obviously unfounded or frivolous. In making that initial inquiry, the Council or its representative may obtain and consider any information it deems pertinent.

(2) **Preliminary Investigation.** If the Council concludes that the complaint set out in the verified statement is not obviously unfounded or frivolous, the Council shall conduct a preliminary investigation, after first notifying the judge in writing of the investigation and the nature of the charge, and shall afford reasonable opportunity in the course of such preliminary investigation for the judge or the judge's counsel to present evidence on behalf of the judge. In conducting the investigation, the Council may consider any information obtained during the course of the initial inquiry. If the Council determines that the physical or mental health of the judge is in issue, it may order physical and/or mental examinations of the judge by independent examiners. Service of such written notice shall be in accordance with Rule 27.

(b) If the preliminary investigation does not disclose sufficient cause to warrant further proceedings, the judge, complainant and other parties in the discretion of the Council shall be so notified.

(c) If the preliminary investigation does disclose sufficient cause to warrant further proceedings, the Council may:

(1) continue the case for further action, investigation or review;

(2) require a personal appearance of the judge before the Council;

(3) recommend a remedial course of conduct to the judge and require the judge's written acquiescence thereto;

(4) issue a public reprimand with the judge's consent;

(5) institute formal proceedings; or

(6) take or direct such other action as the Council may determine will reasonably curtail or eliminate the conduct of the judge which involves any matter within the jurisdiction of the Council.

RULE 29. Notice of Formal Proceedings.

(a) After the preliminary investigation has been completed, if the Council concludes that formal proceedings should be instituted, the Council shall without delay issue a written notice to the accused judge advising of the institution of formal proceedings to inquire into the charges against the judge. Such proceedings shall be entitled:

BEFORE THE JUDICIAL COUNCIL STATE OF IDAHO

Inquiry Concerning) No. _____
)
_____) NOTICE
(Name of Judge)

(b) The notice shall specify in ordinary and concise language the charges against the judge and the alleged facts upon which such charges are based, and shall advise the judge of the right to file a written answer to the charges within fifteen (15) days after service of the notice upon them.

(c) The notice shall be served in accordance with Rule 27.

RULE 30. Answer.

Within fifteen (15) days after service of the notice of formal proceedings, the accused judge may file with the Council an original and seven (7) legible copies of a verified answer.

RULE 31. Setting for Hearing Before Council or Masters.

(a) Upon the filing of an answer or upon expiration of the time for its filing, the Council shall order a hearing to be held before it concerning the removal, discipline or retirement of the accused judge, or the Council may request the Supreme Court to appoint three (3) special masters to hear and take evidence in such proceeding and to report thereon to the Council. The Council shall set a time and place for hearing before itself or before the masters and shall give written notice of such hearing in accordance with Rule 27.

(b) In the event the judge and the special examiner agree to a stipulated set of facts, such stipulated facts may be presented to the Council in a written stipulation. The stipulation shall include:

(1) A statement of the agreed facts, (which statement does not limit the Supreme Court);

(2) A statement that the Council may rely upon the agreed facts without the necessity of further proof;

(3) A waiver by the judge of the judge's right to a hearing; and

(4) Whether a mitigation/aggravation hearing is requested.

RULE 32. Hearing.

(a) At the time and place set for hearing, the Council or the masters when the hearing is before masters, shall proceed with the hearing whether or not the accused judge has filed an answer or appears at the hearing. The examiner shall present the case in support of the charges set forth in the notice of formal proceedings.

(b) The failure of the judge to answer or to appear at the hearing shall not, standing alone, be taken as evidence of the truth of the facts alleged to constitute grounds for removal, discipline or retirement. The failure of the judge to testify in the judge's own behalf or to submit to a medical examination requested by the Council or by the masters may be considered unless it appears that such failure was due to circumstances beyond the judge's control.

(c) The proceedings at the hearing shall be reported by such method as the Council may prescribe.

(d) The Council shall appoint either the Chief Justice, the District Judge member, or a retired or senior judge as the presiding judge for the hearing.

RULE 33. Evidence.

At a hearing before the Council or masters only evidence as is admissible in civil cases shall be received; provided, however, that the Council may review and consider previous proceedings against the accused judge.

RULE 34. Procedural Rights of Judge.

(a) An accused judge shall have the right and reasonable opportunity to defend against the charges, to be represented by counsel and to examine and cross-examine witnesses. The judge shall also have the right to the issuance of subpoenas for attendance of witnesses to testify or to produce books, papers or other evidentiary matter.

(b) When a transcript of the testimony has been prepared at the Council's expense, a copy thereof shall be available upon request for use by the judge and the judge's counsel in connection with the proceedings. The judge shall have the right to have a transcribed copy of all or any portion of the testimony in the proceedings at the expense of the judge.

(c) If the judge is adjudged insane or incompetent, or if it appears to the Council at any time during the proceedings that the judge is not competent to act, the Council shall appoint a guardian ad litem unless the judge has a guardian who will represent the judge. In the appointment of a guardian ad litem preference shall be given, whenever possible, to members of the judge's immediate family. The guardian or guardian ad litem may claim and exercise any right or privilege and make any defense for the judge with the same force and effect as if claimed, exercised or made by the judge, if competent, and whenever these rules provide for serving or giving notice or sending any document to the judge such notice or document shall be served, given or sent to the guardian or guardian ad litem.

RULE 35. Amendments to Notice or Answer.

The masters at any time prior to the filing of their report with the Council or the Council at any time prior to the filing of its determination with the Clerk of the Supreme Court, may allow or require amendments to the answer or other pleadings. The statement or charge may be amended to conform to proof or to set forth additional facts, whether occurring before or after the commencement of the hearing. In case such an amendment is made, the accused judge shall be given reasonable time to answer the amendment and to prepare and present a defense against the matters charged thereby.

RULE 36. Report of Masters.

(a) After the conclusion of the hearing before masters, they shall promptly prepare and transmit to the Council a report which shall contain a brief statement of the proceedings had and their findings of fact and conclusions of law with respect to the issues presented by the pleadings. When the findings and conclusions supported removal, discipline, or retirement, the report shall be accompanied by an original and four (4) copies of a transcript of the proceedings.

(b) Upon receiving the report of the masters, the Council shall promptly deliver or mail a copy thereof to the examiner and shall promptly serve a copy thereof upon the accused judge in accordance with Rule 27.

RULE 37. Objections to Report of Masters.

Within thirty (30) days after service of the copy of the masters' reports upon the accused judge in accordance with Rule 27, the examiner or the judge may file with the Council an original and seven (7) legible copies of a statement of objections to the report of the masters, setting forth all objections and when filed by the examiner a copy thereof shall be served upon the judge in accordance with Rule 27.

RULE 38. Appearance Before Council.

If no statement of objections to the report of the masters is filed within the time provided, the Council may adopt the findings and conclusions of the masters without a hearing. If such statement is filed, or if the Council in the absence of such statement proposes to adopt findings or conclusions inconsistent with, or to reject any of the findings or conclusions of the masters, the Council shall give the accused judge and the examiner an opportunity to be heard orally before the Council, and written notice of the time and place of such hearing shall be served upon the judge at least ten (10) days prior thereto in accordance with Rule 27.

RULE 39. Extension of Time.

The Chairman of the Council may extend for periods not to exceed thirty (30) days in the aggregate the time for filing an answer, for commencement of a hearing before the Council and for filing a statement of objections to the report of the masters and the presiding master may similarly extend the time for the commencement of a hearing before masters.

RULE 40. Hearing Additional Evidence.

(a) The Council may order a hearing in conformance with the provisions of Rule 31 through 40, inclusive, for the taking of additional evidence at any time while the cause is pending before it. The order shall state the time and place of hearing and the issues on which the evidence is to be taken. A copy of such order shall be served upon the accused judge at least ten (10) days prior to the date of hearing in accordance with Rule 27.

(b) In any case in which masters have been appointed the hearing of additional evidence shall be before such masters and the proceedings therein shall be in conformance with the provisions of Rules 31 through 40, inclusive.

RULE 41. Council Vote.

If the Council finds good cause, it shall recommend to the Supreme Court the removal, discipline or retirement of the accused judge. The affirmative vote of four (4) members of the Council shall be required for a recommendation of removal, discipline, or retirement of the judge or for dismissal of the proceedings.

RULE 42. Record of Council Proceedings.

The Council shall preserve the record of all proceedings concerning an accused judge. The Council's determination shall be entered in the record and notice thereof shall be served upon the judge in accordance with Rule 27. In all proceedings resulting in a recommendation to the Supreme Court for removal, discipline, or retirement the Council shall prepare a transcript of the evidence and of all proceedings therein and shall make written findings of fact and conclusions of law of the masters, with respect to the issues of fact and law in the proceedings.

RULE 43. Certification of Council's Recommendation to Supreme Court.

Upon making a determination recommending the removal, discipline, or retirement of an accused judge, the Council shall promptly file a copy of the determination certified by the Chairman or Secretary of the Council together with the transcript and the findings and conclusions with the Clerk of the Supreme Court and shall immediately serve notice of such filing together with a copy of such determination, findings and conclusions upon the judge in accordance with Rule 27. The Council's determination shall be subject to review by the Supreme Court as provided by Rule 44.

RULE 44. Review of Determination.

(a) The accused judge may request review by the Supreme Court of the Council's determination by the filing with the Clerk of the Supreme Court of a verified petition for review together with six (6) copies thereof within thirty (30) days after filing of the determination with such clerk; within five (5) days thereafter the judge shall file with the clerk a certificate showing service of the petition upon the Chairman or the Secretary of the Council.

(b) The petition for review shall specify in detail the grounds upon which the judge relies.

(c) Any answer, response or countershowing by the Council shall be signed and verified by the Secretary or other member of the Council or by the examiner, and shall be filed and served upon the judge within fifteen (15) days of the filing of the petition, such service to be in accordance with Rule 27.

(d) Any factual issue presented by the petition, answer, response or countershowing shall be resolved in such manner as may be prescribed by the court.

(e) Upon review, the court will determine the issues presented by the petition, answer, response, or countershowing and will notify the petitioner and the Council's secretary thereof.

(f) Failure to file a petition within the time provided shall be deemed a consent to the determination on the merits based upon the record filed by the Council.

(g) Appellate procedure relating to civil actions, as far as applicable, shall apply to proceedings for such review, except that no filing fees shall be exacted.

RULE 45. Intentionally Left Blank.

RULE 46. Intentionally Left Blank.

RULE 47. Intentionally Left Blank.

RULE 48. Intentionally Left Blank.

RULE 49. Intentionally Left Blank.

RULE 50. Preservation, Destruction, or Disposition of Judicial Council Records.

(a) **General Standards**. Except as provided in (b) below, all records and documents of the Idaho Judicial Council shall be preserved by the Executive Director or Secretary of the Council indefinitely, either in the form of the original document or a microfilm or other permanent copy.

(b) **Permissive Destruction of Records**. The following records and documents may be destroyed pursuant to the designated schedule: One year after the vacancy is filled.

1. Public comments on applicants for judicial positions.

2. Attorney questionnaires on applicants for judicial positions.

RULE 51. Intentionally Left Blank.

RULE 52. Confidentiality of Judicial Performance Evaluations.

All judicial Performance Evaluations, records, documents and reports relating to an individual judge shall be considered confidential records of the Idaho Judicial Council pursuant to Idaho Court Administrative Rule 32(d)(22), and shall not be disclosed by the judge or the Judicial Council to any third party. All judicial Performance Evaluations, records, documents and reports relating to an individual judge shall not be disclosed to the members of the Judicial Council by the Executive Director.

RULE 53. Intentionally Left Blank.

RULE 54. Rules of Order.

Roberts' Rule of Order shall govern the procedures of all meetings of the Council and of its committees unless otherwise directed.

Rule 55. Amendments.

These rules may be amended or supplemented at any meeting by affirmative vote of not less than four (4) members of the Council.

Revised: 1/19/2010

APPENDIX C

IDAHO CODE OF JUDICIAL CONDUCT

TABLE OF CONTENTS

Preamble

Terminology

Canons

1 -- **A Judge Shall Uphold the Integrity and Independence of the Judiciary.**
2 -- **A Judge Shall Avoid Impropriety and the Appearance of Impropriety in Activities.**
3 -- **A Judge Shall Perform the Duties of Judicial Office Impartially and Diligently.**
4 -- **A Judge Shall So Conduct the Judge's Extra-Judicial Activities as to Minimize the Risk of Conflict With Judicial Obligations.**
5 -- **A Judge or Judicial Candidate Shall Refrain From Inappropriate Political Activity.**

Application

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. The judge is an arbiter of facts and law for the resolution of disputes and a highly visible symbol of government under the rule of law.

The Code of Judicial Conduct is intended to establish standards for ethical conduct of Idaho judges. It consists of broad statements called Canons, specific rules set forth in Sections under each Canon, a Terminology Section, an Application Section and

Adopted: January 31, 2002
Amended: January 15, 2003; July 29, 2003; September 10, 2007; August 4, 2008
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Amended: February 26, 2010
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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.

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.

"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 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. See Sections 5A, 5B, 5C and 5E.

"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 Sections 3E(l)(c) and 3E(l)(d).

"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 by that organization;

(iii) a deposit in a financial institution, the proprietary interest of a policy holder in a mutual insurance company, of a depositor in a mutual savings association or of a member in a credit union, or a similar

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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;

(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 Sections 3E(1)(c) and 3E(2).

"Fiduciary" includes such relationships as executor, administrator, trustee, guardian and, such other relationship defined by law as "Fiduciary." See Sections 3E(1), 3E(2) and 4E.

"Judicial Council" is the Idaho Judicial Council. See Section 3(D)(1).

"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, 3E(1), and 5A(3).

"Law" denotes court rules as well as statutes, constitutional provisions and decisional law. See Sections 2A, 3A, 3B(2), 3B(6), 4B, 4C, 4D(5), 4F, 4I, 5A(2), 5A(3), 5B(2), 5C(1), 5C(3) and 5D.

"Member of the candidate's family" denotes a spouse, child, sibling, grandchild, parent, grandparent or other relative or person with whom the candidate maintains a close familial relationship. See Section 5A(3)(a).

"Member of the judge's family" denotes a spouse, child, sibling, grandchild, parent, grandparent, or other relative or person with whom the judge maintains a close familial relationship. See Sections 4D(3) and 4E.

"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. See Sections 3E(1) and 4D(5).

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

Adopted: January 31, 2002
Amended: January 15, 2003; July 29, 2003; September 10, 2007; August 4, 2008
Effective: September 10, 2007; August 4, 2008
Amended: February 26, 2010
Effective: February 26, 2010

"Political gathering" is an event sponsored by a "political organization."

"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 or the attainment of a specific political goal. See Section 5A(1).

"Pro tempore judge" -- A pro tempore judge is a judge who serves or expects to serve once or only sporadically on a part-time basis under a separate appointment for each period of service or for each case heard. See Application Section E.

"Public election" -- This term includes primary and general elections; it includes partisan elections, nonpartisan elections and retention elections. See Section 5C.

"Require" -- The rules prescribing that a judge "require" certain conduct of others 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. See Sections 3B(3), 3B(4), 3B(6), 3B(9) and 3C(2).

"Senior judge" -- A senior judge is a judge designated pursuant to Idaho Code §§ 1-2005 and 1-2221.

"Staffing" – "**Staffing"** means a regularly scheduled, informal conference not occurring in open court, the purpose of which is to permit the presiding judge and others, including counsel, to discuss a participant's progress in the problem solving court, treatment recommendations, or responses to participant compliance issues. See Section 3B(7).

"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)(d).

CANON 1

A Judge Shall Uphold the Integrity and Independence of the Judiciary

A. 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

Adopted: January 31, 2002
Amended: January 15, 2003; July 29, 2003; September 10, 2007; August 4, 2008
Effective: September 10, 2007; August 4, 2008
Amended: February 26, 2010
Effective: February 26, 2010

judiciary will be preserved. The provisions of this Code are to 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

A Judge Shall Avoid Impropriety and the Appearance of Impropriety in Activities that May Reflect Upon Judicial Conduct

A. Judges should respect and comply with the law and should conduct themselves at all times in a manner that does not detract from public confidence in the integrity and impartiality of the judiciary.

Commentary

Public confidence in the judiciary is eroded by irresponsible or improper conduct by judges. A judge must avoid all impropriety and appearance of impropriety. A judge must expect to be the subject of constant public scrutiny. A judge must therefore accept restrictions on the judge's conduct that might be viewed as burdensome by the ordinary citizen and 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 violation of this Canon 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.

Adopted: January 31, 2002
Amended: January 15, 2003; July 29, 2003; September 10, 2007; August 4, 2008
Effective: September 10, 2007; August 4, 2008
Amended: February 26, 2010
Effective: February 26, 2010

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

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 judicial 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 4D(5)(a) and Commentary.

Although a judge should be sensitive to possible abuse of the prestige of office, a judge may make a confidential recommendation indicating the background and character of an individual based upon the judge's substantial personal knowledge gathered over a substantial period of time in the following situations:

(1) A screening committee for judicial appointments;
(2) The Bar concerning applicants for admission;
(3) An educational institution concerning someone seeking to further his or her education;
(4) An employer concerning someone seeking employment;
(5) Entities which certify or evaluate attorneys, e.g. Martindale Hubbell, concerning attorneys who practice before the judge.

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 the party for whom the judge testifies. Moreover, when a judge testifies as a witness, a lawyer who regularly appears

Adopted: January 31, 2002
Amended: January 15, 2003; July 29, 2003; September 10, 2007; August 4, 2008
Effective: September 10, 2007; August 4, 2008
Amended: February 26, 2010
Effective: February 26, 2010

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. A judge shall not hold membership in any organization that practices invidious discrimination on the basis of race, sex, religion or national origin.

Commentary

Membership of a judge in an organization that practices invidious discrimination gives 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 that the organization is dedicated to the preservation of religious, ethnic or cultural values of legitimate common interest to its members, or that 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 meet the organization's qualifications for membership. *See New York State Club Ass'n. Inc. v. City of New York,* 108 S.C. 2225, 101 LED.2d 1 (1988); *Board of Directors of Rotary International v. Rotary Club of Duarte,* 481 U.S. 537, 107 S.C. 1940, 95 LED.2d 474 (1987); *Roberts v. United States Jaycees,* 468 U.S. 609, 104 S.C. 3244, 82 LED.2d 462 (1984).

Although Section 2C relates only to membership in organizations that invidiously discriminate on the basis of race, sex, religion or national origin, a judge's membership in an organization that engages in any discriminatory membership practices prohibited by the law of the jurisdiction may also violate Canon 2 and Section 2A and gives the appearance of impropriety. In addition, it would be a violation of Canon 2 and Section 2A for a judge to arrange a meeting at a club that the judge knows practices invidious discrimination on the basis of race, sex, religion or national origin in its membership or other policies, or for the judge to regularly use such a club. Moreover, public manifestation by a judge of the judge's knowing approval of invidious discrimination on any basis gives the appearance of impropriety under Canon 2 and diminishes public confidence in the integrity and impartiality of the judiciary, in violation of Section 2A.

Adopted: January 31, 2002
Amended: January 15, 2003; July 29, 2003; September 10, 2007; August 4, 2008
Effective: September 10, 2007; August 4, 2008
Amended: February 26, 2010
Effective: February 26, 2010

When a person who is a judge on the date this Code becomes effective learns that an organization to which the judge belongs engages in invidious discrimination that would preclude membership under Section 2C or under Canon 2 and Section 2A, the judge is permitted, in lieu of resigning, to make immediate efforts to have the organization discontinue its invidiously discriminatory practices, but is required to suspend participation in any other activities of the organization. If the organization fails to discontinue its invidiously discriminatory practices as promptly as possible (and in all events within a year of the judge's first learning of the practices), the judge is required to resign immediately from the organization.

CANON 3

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

A. Judicial Duties in General. A judge shall diligently perform judicial duties. 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 hear and decide matters assigned to the judge except those in which an appropriate disqualification is required by these Canons.

(2) 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.

(3) A judge shall maintain professional competence in the performance of judicial duties.

(4) A judge shall require order and decorum in proceedings before the judge.

(5) 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.

Adopted: January 31, 2002
Amended: January 15, 2003; July 29, 2003; September 10, 2007; August 4, 2008
Effective: September 10, 2007; August 4, 2008
Amended: February 26, 2010
Effective: February 26, 2010

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 businesslike while being patient and deliberate.

(6) A judge shall perform judicial duties without bias or prejudice. A judge shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice, including but not limited to bias or prejudice based upon race, sex, religion, or national origin, and shall not permit staff, court officials and others subject to the judge's direction and control to do so.

Commentary

A judge 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 the judge's direction and control.

A judge must perform judicial duties impartially and fairly. A judge who manifests bias on any basis in a proceeding impairs the fairness of the proceeding and brings the judiciary into disrepute. Facial expression and 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. A judge must be alert to avoid behavior that may be perceived as prejudicial.

(7) 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 concerning a pending or impending proceeding except that:

(a) Where circumstances require, ex parte communications for scheduling, administrative purposes or emergencies that do not deal with substantive matters or issues on the merits 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.

(b) A judge may obtain the advice of a disinterested expert on the law* applicable to a proceeding before the judge if

Adopted: January 31, 2002
Amended: January 15, 2003; July 29, 2003; September 10, 2007; August 4, 2008
Effective: September 10, 2007; August 4, 2008
Amended: February 26, 2010
Effective: February 26, 2010

the judge gives notice to the parties of the person consulted and the substance of the advice, and affords the parties reasonable opportunity to respond.

(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 may, with the consent of the parties, confer separately with the parties and their lawyers in an effort to mediate or settle matters pending before the judge.

(e) During a scheduled court proceeding, including a conference, hearing, or trial, a judge may initiate, permit, or consider communications dealing with substantive matters or issues on the merits of the case in the absence of a party who had notice of the proceeding and did not appear.

(f) A judge presiding over a criminal or juvenile problem solving court may initiate, permit, or consider ex parte communications with members of the problem solving court team at staffings*, or by written documents provided to all members of the problem solving court team. A judge who has received any such ex parte communication regarding the defendant or juvenile while presiding over a case in a problem solving court shall not preside over any subsequent proceeding to terminate that defendant or juvenile from the problem solving court, probation violation proceeding, or sentencing proceeding in that case.

(g) A judge 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

Adopted: January 31, 2002
Amended: January 15, 2003; July 29, 2003; September 10, 2007; August 4, 2008
Effective: September 10, 2007; August 4, 2008
Amended: February 26, 2010
Effective: February 26, 2010

is the party's lawyer, or if the party is unrepresented the party, who is to be present or to whom notice is to be 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, a judge must discourage ex parte communication and allow it only if all the criteria stated in Section 3B(7) are clearly met.

A judge must not independently investigate facts in a case and must consider only the evidence presented. This does not preclude a judge from asking questions in court.

A judge must make reasonable efforts, including the provision of appropriate supervision, to ensure that Section 3B(7) is not violated through law clerks or other personnel on the judge's staff.

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) A judge shall dispose of all judicial matters promptly, efficiently and fairly and shall comply with all constitutional and statutory provisions and court rules concerning timeliness of decisions and salary affidavits.

Commentary

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

Prompt disposition of the court's business requires a judge to devote adequate time to judicial 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 the judge to that end. A judge should ordinarily be present during regular business hours.

Adopted: January 31, 2002
Amended: January 15, 2003; July 29, 2003; September 10, 2007; August 4, 2008
Effective: September 10, 2007; August 4, 2008
Amended: February 26, 2010
Effective: February 26, 2010

(9) A judge 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 nonpublic comment that might substantially interfere with a fair trial or hearing. The judge shall require* similar abstention on the part of court personnel* subject to the judge's direction and control. This Section does not prohibit judges from making public statement 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 a judge 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 the judge is a litigant in an official capacity, the judge must not comment publicly. The conduct of lawyers relating to trial publicity is governed by Rule 3.6 of the Idaho Rules of Professional Conduct.

(10) 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.

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 in a subsequent case.

(11) 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 shall 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 diligence that apply to the judge and to refrain from manifesting bias or prejudice in the performance of their official duties.

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

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

Commentary

Appointees of a judge include assigned counsel, officials such as referees, commissioners, special masters, receivers and 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. Judges are encouraged to bring instances of unprofessional conduct by judges or lawyers to their attention in order to provide them opportunities to correct their errors without disciplinary proceedings; but the judges should file reports thereof with the Commission of the Idaho State Bar or with the Judicial Council, as appropriate, when no such remedial action is promptly undertaken, or if the violations are flagrant or repeated.

Commentary

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

E. Disqualification.

Adopted: January 31, 2002
Amended: January 15, 2003; July 29, 2003; September 10, 2007; August 4, 2008
Effective: September 10, 2007; August 4, 2008
Amended: February 26, 2010
Effective: February 26, 2010

(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) the judge has a personal bias or prejudice concerning a party or a party's lawyer, or has personal knowledge* of disputed evidentiary facts that might reasonably affect the judge's impartiality in the proceedings;

(b) the judge served as a lawyer in the matter in 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

Under this rule, a judge is disqualified whenever the judge's impartiality might reasonably be questioned, regardless whether any of the specific rules in Section 3E(1) apply. For example, if a judge were in the process of negotiating for employment with a law firm, the judge would be disqualified from any matters in which that law firm appeared, unless the disqualifications were waived by the parties after disclosure by the judge.

A judge should disclose on the record information that the judge believes the parties or their lawyers might consider relevant to the question of disqualification, even if the judge believes there is no real basis for disqualification.

By decisional law, 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 practicable.

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); a judge formerly employed by a government agency, however, should disqualify himself or herself in a proceeding if the judge's impartiality might reasonably be questioned because of such association.

Adopted: January 31, 2002
Amended: January 15, 2003; July 29, 2003; September 10, 2007; August 4, 2008
Effective: September 10, 2007; August 4, 2008
Amended: February 26, 2010
Effective: February 26, 2010

(c) the judge knows* that he or she, individually or as a fiduciary*, or the judge's spouse, parent or child wherever residing, or any other member of the judge's family 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 more than de minimis* interest that could be substantially affected by the proceeding;

(d) 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:

(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 procoeeding.

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)(d)(iii) may require the judge's 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 Section 3E(1)(c) or (d) may disclose on the record the basis of the judge's disqualification and may ask the parties and their lawyers to consider, out

Adopted: January 31, 2002
Amended: January 15, 2003; July 29, 2003; September 10, 2007; August 4, 2008
Effective: September 10, 2007; August 4, 2008
Amended: February 26, 2010
Effective: February 26, 2010

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 of the judge, a judge 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 the rule. A party may act through counsel if counsel represents on the record that the party has been consulted and consents. As a practical matter, a judge may wish to have all parties and their lawyers sign the remittal agreement.

CANON 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; or

(2) interfere with the proper performance of judicial duties.

Commentary

Complete separation of a judge from extra-judicial activities is neither possible nor wise; a judge should not become isolated from the community in which the judge lives.

B. Avocational Activities. A judge may speak, write, lecture, teach and participate in other extra-judicial activities concerning the law,* the

Adopted: January 31, 2002
Amended: January 15, 2003; July 29, 2003; September 10, 2007; August 4, 2008
Effective: September 10, 2007; August 4, 2008
Amended: February 26, 2010
Effective: February 26, 2010

legal system, and the administration of justice, subject to the requirements of this Code.

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, a judge is encouraged to do so, either independently or through a bar association, judicial conference or other organization dedicated to the improvement of the law. Judges may participate in efforts to promote the fair administration of justice, the independence of the judiciary and the integrity of the legal profession and may express opposition to the persecution of lawyers and judges in other countries because of their professional activities.

In this and other Sections of Canon 4, the phrase "subject to the requirements of this Code" is used, notably in connection with a judge's governmental, civic or charitable activities. This phrase is included to remind judges that the use of permissive language in various Sections of the Code does not relieve a judge from the other requirements of the Code that apply to the specific conduct.

C. Governmental, Civic or Charitable Activities.

(1) A judge shall not appear at a public hearing before, or otherwise consult with, 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.

Commentary

See Section 2B regarding the obligation to avoid improper influence.

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

Adopted: January 31, 2002
Amended: January 15, 2003; July 29, 2003; September 10, 2007; August 4, 2008
Effective: September 10, 2007; August 4, 2008
Amended: February 26, 2010
Effective: February 26, 2010

Commentary

Section 4C(2) prohibits a judge from accepting any governmental position except one relating to the law, legal system or administration of justice as authorized by Section 4C(3). The appropriateness of accepting extra-judicial assignments must be assessed in light of the demands on judicial resources created by crowded dockets and the need to protect the courts from involvement in extra-judicial matters that may prove to be controversial. Judges should not accept governmental appointments that are likely to interfere with the effectiveness and independence of the judiciary.

Section 4C(2) does not govern a judge's service in a nongovernmental position. See Section 4C(3) permitting service by a judge with organizations devoted to the improvement of the law, the legal system or the administration of justice and with educational, religious, charitable, fraternal or civic organizations not conducted for profit. For example, service on the board of a public educational institution, unless it were a law school, would be prohibited under Section 4C(2), but service on the board of a public law school or any private educational institution would generally be permitted under Section 4C(3).

(3) A judge may 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, fraternal or civic organization not conducted for profit, subject to the following limitations and the other requirements of this Code.

Commentary

Section 4C(3) does not apply to a judge's service in a governmental position unconnected with the improvement of the law, the legal system or the administration of justice; see Section 4C(2).

See Commentary to Section 4B regarding use of the phrase "subject to the following limitations and the other requirements of this Code." As an example of the meaning of the phrase, a judge permitted by Section 4C(3) to serve on the board of a fraternal institution may be prohibited from such service by Sections 2C or 4A if the institution practices invidious discrimination or if service on the board otherwise casts reasonable doubt on the judge's capacity to act impartially as a judge.

Service by a judge on behalf of a civic or charitable organization may be governed by other provisions of Canon 4 in addition to Section 4C. For example, a judge is

Adopted: January 31, 2002
Amended: January 15, 2003; July 29, 2003; September 10, 2007; August 4, 2008
Effective: September 10, 2007; August 4, 2008
Amended: February 26, 2010
Effective: February 26, 2010

prohibited by Section 4G from serving as a legal advisor to a civic or charitable organization.

(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 would ordinarily come before the judge, or

(ii) will be engaged frequently in adversary proceedings in the court of which the judge is a member or in any court subject to the appellate jurisdiction of the court of which the judge is a member.

Commentary

The changing nature of some organizations and of their relationship to the law makes it necessary for a judge regularly to reexamine the activities of each organization with which the judge is affiliated to determine if it is proper for the judge to continue the affiliation. 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.

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

(i) may assist such an organization in planning fund raising, may participate in support activities related to the fund raising, may participate in the management and investment of the organization's funds, but shall not personally participate in the solicitation of funds.

(ii) 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;

(iii) shall not use or permit the use of the prestige of judicial office for fund-raising or membership solicitation.

Commentary

Adopted: January 31, 2002
Amended: January 15, 2003; July 29, 2003; September 10, 2007; August 4, 2008
Effective: September 10, 2007; August 4, 2008
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While a judge may not use the prestige of judicial office for membership solicitation, a judge may solicit membership or endorse or encourage membership efforts for an organization as long as the solicitation cannot reasonably be perceived as coercive and is not essentially a fund-raising mechanism. Solicitation of funds for an organization and solicitation of memberships involve the danger that the person solicited will feel obligated to respond favorably to the solicitor if the solicitor is in a position of influence or control.

Use of an organization letterhead for fund-raising or membership solicitation does not violate Section 4C(3)(b) provided the letterhead lists only the judge's name without judicial designation. In addition, a judge must also make reasonable efforts to ensure that the judge's staff, court officials and others subject to the judge's direction and control do not solicit funds on the judge's behalf for any purpose, charitable or otherwise.

A judge must not be a speaker, master of ceremonies, or guest of honor at an organization's fund-raising event, but mere attendance at such an event is permissible if otherwise consistent with this Code.

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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, or

(b) 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.

Commentary

When a judge acquires, in a judicial capacity, information, such as material contained in filings with the court, that is not yet generally known, the judge must not use the information for private gain. See Section 2B; see also Section 3B(11).

A judge must avoid financial and business dealings that involve the judge in frequent transactions or continuing business relationships with persons likely to come either before the judge personally or before other judges on the judge's court. In addition, a judge should discourage members of the judge's family from engaging in dealings that would reasonably appear to exploit the judge's judicial position. This rule is necessary to avoid creating an appearance of exploitation of office or favoritism and to minimize the potential for disqualification. With respect to affiliation of relatives of a judge with law firms appearing before the judge, see Commentary to Section 3E(1) relating to disqualification.

Participation by a judge in financial and business dealings is subject to the general prohibitions in Section 4A against activities that tend to reflect adversely on impartiality, demean the judicial office, or interfere with the proper performance of judicial duties. Such participation is also subject to the general prohibition in Canon 2 against activities involving impropriety or the appearance of impropriety and the prohibition in Section 2B against the misuse of the prestige of judicial office. In addition, a judge must maintain high standards of conduct in all of the judge's activities, as set forth in Canon 1. See Commentary for Section 4B regarding use of the phrase "subject to the requirements of this Code."

(2) A judge may, subject to the requirements of this Code, hold and manage investments of the judge and members of the judge's

family,* including real estate, and engage in other remunerative activity.

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Commentary

This Section provides that, subject to the requirements of this Code, a judge may hold and manage investments owned solely by the judge, investments owned solely by a member or members of the judge's family, and investments owned jointly by the judge and members of the judge's family.

(3) A judge shall not serve as an officer, director, manager, general partner, advisor or employee of any business entity except that a judge may, subject to the requirements of this Code, manage and participate in:

(a) a business closely held by the judge or members of the judge's family,* or

(b) a business entity primarily engaged in investment of the financial resources of the judge or members of the judge's family.

(c) for "senior judges," a business entity exclusively engaged in mediation or alternative dispute resolution as permitted by Idaho Code §§1-2005 and 1-2221. Provided, however, that this shall not permit a "senior judge" to be a member of or be "of counsel" to, or share office space with a law firm.

Commentary

Subject to the requirements of this Code, a judge may participate in a business that is closely held either by the judge alone, by members of the judge's family, or by the judge and members of the judge's family.

Although participation by a judge in a closely-held family business might otherwise be permitted by Section 4D(3), a judge may be prohibited from participation by other provisions of this Code when, for example, the business entity frequently appears before the judge's court or the participation requires significant time away from judicial duties. Similarly, a judge must avoid participating in a closely-held family business if the judge's participation would involve misuse of the prestige of judicial office.

(4) A judge shall manage the judge's investments and other financial interests to minimize the number of cases in which the judge

Adopted: January 31, 2002
Amended: January 15, 2003; July 29, 2003; September 10, 2007; August 4, 2008
Effective: September 10, 2007; August 4, 2008
Amended: February 26, 2010
Effective: February 26, 2010

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 for the following:

(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;

Commentary

Section 4D(5) does not apply to contributions to a judge's campaign for judicial office, a matter governed by Canon 5.

Because a gift, bequest, favor or loan to a member of the judge's family residing in the judge's household might be viewed as intended to influence the judge, a judge must inform those family members of the relevant ethical constraints upon the judge in this regard and discourage those family members from violating them. A judge cannot, however, reasonably be expected to know or control all of the financial or business activities of all family members residing in the judge's household.

Acceptance of an invitation to a law-related function is governed by Section 4D(5)(a); acceptance of an invitation paid for by an individual lawyer or group of lawyers is governed by Section 4D(5)(h).

A judge may accept a public testimonial or a gift incident thereto only if the donor organization is not an organization whose members comprise or frequently represent the same side in litigation, and the testimonial and gift are otherwise in compliance with other provisions of this Code. See Sections 4A(1) and 2B.

(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),

Adopted: January 31, 2002
Amended: January 15, 2003; July 29, 2003; September 10, 2007; August 4, 2008
Effective: September 10, 2007; August 4, 2008
Amended: February 26, 2010
Effective: February 26, 2010

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;

Commentary

A gift to a judge, or to a member of the judge's family living in the judge's household, that is excessive in value raises questions about the judge's impartiality and the integrity of the judicial office and might require disqualification of the judge where disqualification would not otherwise be required. See, however, Section 4D(5)(e).

(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 3E;

(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.

Commentary

Section 4D(5)(h) prohibits judges from accepting gifts, favors, bequests or loans from lawyers or their firms if they have come or are likely to come before the judge; it also prohibits gifts, favors, bequests or loans from clients of lawyers or their firms when the clients' interests have come or are likely to come before the judge.

E. Fiduciary Activities.

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(1) A judge shall not serve as executor, administrator or other personal representative, trustee, guardian, attorney in fact or other fiduciary,* except for the estate, trust or person of a member of the judge's family,* and then only if such service will not interfere with the proper performance of judicial duties.

(2) A judge shall not serve as a fiduciary* if it is likely that the judge as a fiduciary will be engaged in proceedings that would ordinarily come before the judge, or if the estate, trust or ward becomes involved in adversary proceedings in the court on which the judge serves or one under its appellate jurisdiction.

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

Commentary

The Time for Compliance provision of this Code (Application, Section F) postpones the time for compliance with certain provisions of this Section in some cases.

The restrictions imposed by this Canon may conflict with the judge's obligation as a fiduciary. For example, a judge should resign as trustee if detriment to the trust would result from divestiture of holdings the retention of which would place the judge in violation of Section 4D(4).

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

Commentary

Section 4F does not prohibit a judge from participating in arbitration, mediation or settlement conferences performed as part of judicial duties or as permitted by Idaho Code §§ 1-2005(7) and 1-2221(7).

G. Practice of Law. A judge shall not practice law. Notwithstanding this prohibition, a judge may act pro se and may, without compensation, give legal advice to and draft or review documents for a member of the judge's family. Employees of the judicial branch of government, other than judges, shall not engage in the practice of law except that a judicial employee may act

pro se, may perform routine legal work incident to the management of the personal affairs of the judicial employee or a member of the judicial employee's family, and may provide pro bono legal services in civil matters, so long as such pro se, family, or pro bono legal work does not present an appearance of impropriety, does not take place while on duty or in the judicial employee's workplace except as may be permitted by the Idaho Supreme Court, and does not interfere with the judicial employee's primary responsibility to the office in which the judicial employee serves, and further provided that:

(1) in the case of pro se legal work, such work is done without compensation;

(2) in the case of family legal work, such work is done without compensation and does not involve the entry of an appearance in a federal or state court;

(3) in the case of pro bono legal services, such work (a) is done without compensation; (b) does not involve the entry of an appearance in any federal or state court or administrative agency; (c) does not involve a matter of public controversy, an issue likely to come before the judicial employee's court, or litigation against federal, state or local government; and (d) is reviewed in advance with the appointing authority to determine whether the proposed services are consistent with the foregoing standards and the other provisions of this code.

Judicial employees may also serve as uncompensated mediators or arbitrators for nonprofit organizations, subject to the standards applicable to pro bono practice of law, as set for above, and the other provisions of this code.

Commentary

This prohibition refers to the practice of law in a representative capacity and not in a pro se capacity. A judge may act for himself or herself in legal matters, including matters involving litigation and matters involving appearances before or other dealings with legislative and other governmental bodies. However, in doing so, a judge must not abuse the prestige of office to advance the interests of the judge or the judge's family. See Section 2(B).

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The Code allows a judge to give legal advice to and draft legal documents for members of the judge's family, so long as the judge receives no compensation. A judge must not, however, act as an advocate or negotiator for a member of the judge's family in a legal matter.

A "senior judge" may engage in activities permitted by Idaho Code §§ 1-2205(7) and 1-2221(7).

H. Compensation and Reimbursement.

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

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

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

Commentary

The Code does not prohibit a judge from accepting honoraria or speaking fees provided that the compensation is reasonable and commensurate with the task performed. A judge should ensure, however, that no conflicts are created by the arrangement. A judge must not appear to trade on the judicial position for personal advantage. Nor should a judge spend significant time away from court duties to meet speaking or writing commitments for compensation. In addition, the source of the payment must not raise any question of undue influence or the judge's ability or willingness to be impartial.

CANON 5

A Judge or Judicial Candidate Shall Refrain From Inappropriate Political Activity

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A. All Judges and Candidates.

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(1) Except as authorized in Sections 5B(2) and 5C(1), a judge or a candidate* for election or appointment of judicial office shall not:

(a) act as a leader or hold an office in a political organizations;

(b) publicly endorse or publicly oppose another candidate for public office;

(c) make speeches on behalf of a political organization*;

(d) publicly endorse or seek the endorsement of a political organization; or

(e) solicit funds for, pay an assessment to or make a contribution to a political organization or candidate.

(2) A judge may attend political gatherings as long as by doing so the judge is not endorsing or seeking the endorsement of a political organization. A judge may speak at political gatherings concerning matters of law, the legal system or the administration of justice.

Commentary

The purpose of the Canon is to prohibit judges from engaging in conduct which promotes partisan political activities. The Canon allows judges to attend and observe significant historical events, to participate in patriotic events and to speak at political gatherings concerning matters of the law, the legal system or the administration of justice .

A judge or candidate for judicial office retains the right to participate in the political process as a voter.

Where false information concerning a judicial candidate is made public, a judge or another judicial candidate having knowledge of the facts is not prohibited by Section 5A(1) from making the facts public.

Section 5A(1)(a) does not prohibit a candidate for elective judicial office from retaining during candidacy a public office such as county prosecutor, which is not "an office in a political organization."

Section 5A(1)(b) does not prohibit a judge or judicial candidate from privately expressing his or her views on judicial candidates or other candidates for public office.

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Amended: February 26, 2010
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(3) A judge shall resign from judicial office upon becoming a candidate for a nonjudicial office either in a primary or in a general election.

(4) A candidate* for a 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;

Commentary

Although a judicial candidate must encourage members of his or her family to adhere to the same standards of political conduct in support of the candidate that apply to the candidate, family members are free to participate in other political activity.

(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 the Sections of this Canon;

(c) except to the extent permitted by Section 5C(2), shall not authorize or knowingly* permit any other person to do for the candidate* what the candidate is prohibited from doing under the Sections of this Canon;

(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

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Effective: September 10, 2007; August 4, 2008
Amended: February 26, 2010
Effective: February 26, 2010

(iii) knowingly* misrepresent the identity, qualifications, present position or other fact concerning the candidate or an opponent.

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Amended: February 26, 2010
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Commentary

Section 5A(3)(d) prohibits a candidate for judicial office from making statements that appear to commit the candidate regarding cases, controversies or issues likely to come before the court. As a corollary, a candidate should emphasize in any public statement the candidate's duty to uphold the law regardless of his or her personal views. See also Section 3B(9), the general rule on public comment by judges. Nor does this Section prohibit an incumbent judge from making private statements to other judges or court personnel in the performance of judicial duties. This Section applies to any statement made in the process of securing judicial office, such as statements to Judicial Council and Governor. See also Rule 8.2 of the Idaho Rules of Professional Conduct.

(e) may respond to personal attacks or attacks on the candidate's record as long as the response does not violate Section 5A(3)(d).

B. Candidates Seeking Appointment to Judicial Office.

(1) A candidate* for appointment to judicial office shall not solicit or accept funds, personally or through a committee or otherwise, to support his or her candidacy.

(2) A candidate* for appointment to judicial office or a judge seeking other governmental office shall not engage in any political activity to secure the appointment except that:

(a) such persons may:

(i) communicate with the appointing authority, including any selection or nominating commission or other agency designated to screen candidates;

(ii) seek support or endorsement for the appointment from organizations that regularly make recommendations for appointment to the office, and from individuals; and

(iii) provide to those specified in Sections 5B(2)(a)(i) and 5B(2)(a)(ii) information as to his or her qualifications for the office;

Commentary

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Amended: January 15, 2003; July 29, 2003; September 10, 2007; August 4, 2008
Effective: September 10, 2007; August 4, 2008
Amended: February 26, 2010
Effective: February 26, 2010

Section 5B(2) provides a limited exception to the restrictions imposed by Sections 5A(1) and 5D. Under Section 5B(2), candidates seeking reappointment to the same judicial office or appointment to another judicial office or other governmental office may apply for the appointment and seek appropriate support.

C. Judges and Candidates Subject to Public Election.

(1) A judge or a candidate* subject to public election* may, except as prohibited by law*:

(a) when a candidate for election

(i) speak to gatherings on his or her own behalf;

(ii) appear in newspaper, television and other media advertisements supporting his or her candidacy;

(iii) distribute pamphlets and other promotional campaign literature that do not otherwise violate the provisions of this code supporting his or her candidacy; and

(iv) publicly advocate or publicly oppose the election of his or her opponent(s).

Commentary

Section 5C(1) permits judges subject to election at any time to be involved in limited political activity. Section 5D, applicable solely to incumbent judges, would otherwise bar this activity.

(2) A candidate* shall not solicit campaign contributions in person. A candidate 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, manage the expenditure of funds for the candidate's campaign and obtain public statements of support for his or her candidacy. Such committees are not prohibited from soliciting and accepting reasonable campaign contributions and public support from lawyers. A candidate's committees may solicit

contributions and public support for the candidate's campaign no earlier than [one year] before election and no later than [90] days after the last election in which the candidate participates during the election year. Except as required by law, a candidate's judicial election committee should not disclose the names of contributors to judicial campaigns and judicial candidates and judges should avoid obtaining the names of contributors to the judicial campaign. A candidate shall not use or permit the use of campaign contributions for the private benefit of the candidate or others.

Commentary

Section 5C(2) permits a candidate, other than a candidate for appointment, to establish campaign committees to solicit and accept public support and reasonable financial contributions. At the start of the campaign, the candidate must instruct his or her campaign committees to solicit or accept only contributions that are reasonable under the circumstances. Campaign contributions of which a judge has knowledge, made by lawyers or others who appear before the judge, may be relevant to disqualification under Section 3E.

Campaign committees established under Section 5C(2) should manage campaign finances responsibly, avoiding deficits that might necessitate post-election fund-raising, to the extent possible.

D. Incumbent Judges. A judge shall not engage in any political activity except (i) as authorized under any other Section of this Code, or (ii) on behalf of measures to improve the law,* the legal system or the administration of justice.

Commentary

Neither Section 5D nor any other section of the Code prohibits a judge in the exercise of administrative functions from engaging in planning and other official activities with members of the executive and legislative branches of government. With respect to a judge's activity on behalf of measures to improve the law, the legal system and the administration of justice, see Commentary to Section 4B and Section 4C(1) and its Commentary.

E. Applicability. Canon 5 generally applies to all incumbent judges and judicial candidates.* A successful candidate, whether or not an incumbent, is subject to judicial discipline for his or her campaign conduct; an unsuccessful candidate who is a lawyer is subject to lawyer discipline for

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his or her campaign conduct. A lawyer who is a candidate for judicial office is subject to Rule 8.2(b) of the Idaho Model Rules of Professional Conduct.

APPLICATION OF THE CODE OF JUDICIAL CONDUCT

Anyone who is an officer of the judicial system and who performs judicial functions, including Plan B Senior judges, and members of the Idaho Industrial Commission, are a judge within the meaning of this Code except judges "pro tempore" as appointed pursuant to Section 12, Article 5 of the Idaho Constitution and Idaho Administrative Rule (4). All judges shall comply with this Code except as provided below.

(1) Judge Pro Tempore. Attorneys who are appointed to act temporarily as Judges.

(2) Retired Judges. Retired judges (Plan A Senior judges and Plan B Senior judges who have completed their five year commitment) and judges who have resigned, who are designated to act temporarily as judges should comply with all the provisions of their Code except Canons 4C(2) and (3), 4D, 4E and 4F, and they shall refrain from the practice of law. Persons who have been recalled to act temporarily as judges should not act as lawyers in proceedings in which they have served as judges or in any other proceeding related thereto.

F. Time for Compliance. A person to whom this Code becomes applicable shall comply immediately with all provisions of this Code except Sections 4D(3), 4F, 4G, 5C(1) and 5C(2) 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 4E, continue to serve as fiduciary 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 4D(3), continue in that activity for a reasonable period but in no event longer than one year.

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