

CHAPTER XVI. - JUDICIAL ETHICS

Judge William G. Buchholz II

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CHAPTER XVI

JUDICIAL ETHICS

16.1 INTRODUCTION

The purpose of this chapter is to review the Code of Judicial Conduct, the functioning of the Commission on the Retirement, Removal and Discipline of Judges and advisory opinions which have been rendered regarding particular Canons. The final section will deal with the steps a judge should take when faced with an ethical dilemma.

16.2 CODE OF JUDICIAL CONDUCT

The Code of Judicial Conduct is found under Rule 2 of the Missouri Rules of Court. There are five basic Canons of Ethics. Each Canon is followed by subparts that further explain the Canon and its application. Following the subparts is a commentary explaining the reasoning behind the rule and supplying further clarification.

16.3 ADVISORY OPINIONS

Advisory opinions are available from the Commissioner on Retirement, Removal and Discipline of Judges. Any judge may request an opinion from the commission as to the propriety of contemplated judicial or non-judicial conduct. The Commission has issued 180 opinions to date.

The commission's internal rules dictate that the opinion shall be advisory only and shall not be binding on the commission. However, compliance with an opinion of the commission shall be considered to be a good faith effort to comply with the Code of Judicial Conduct. No opinion of the commission shall be authority for the conduct or evidence of good faith of another judge unless the underlying facts are identical. The commission may withdraw any opinion. In order to request an opinion, a judge shall submit the request in writing, stating the facts in detail, and the question to be answered. The request should also state any legal authority or theory known to the requesting judge which would aid the commission in answering the question. Requests for advisory opinions should be sent to the following address:

Commission on Retirement, Removal & Discipline
James M. Smith, Administrator and Council
2190 S. Mason, Suite 201
St. Louis, MO 63131

The commission shall issue its opinion in writing. Copies of each opinion are kept by the commission in its file. The commission's opinions may be released to the public, but all references to the name of the requesting judge must be deleted.

16.4 METHODS OF STUDY

When studying a particular Canon, a judge should read the Canon, all subparts and the Commentary. This chapter provides an index and summary of advisory opinions and selected court decisions issued regarding each Canon. Two things must be noted. First, the Canons have been revised and new language may affect a particular opinion. Second, the following are summaries of advisory opinions. The full text of the opinion should be secured from the commission if a judge intends to rely upon the same. Many opinions cite several Canons in response to an inquiry. The listing of opinions below are grouped according to the primary Canon upon which the opinion was rendered.

16.5 APPLICABILITY OF THE CODE TO PART TIME JUDGES

The code provides that only Canons 1, 2, and 3 are applicable to part-time judges. A part-time judge is defined as "a judge who serves on a continuing or periodic basis, but is permitted by law to devote time to some other occupation and whose compensation for that reason is less than that of a full-time judge." A part-time judge who is serving as a senior judge must comply with all Canons except Canon 4H(2).

THE CODE OF JUDICIAL CONDUCT AND RELATED ADVISORY OPINIONS

16.6 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 of conduct so that the integrity and independence of the judiciary will be preserved. The provisions of this Rule 2 are to be construed and applied to further that objective.

16.6(A) DEFINITIONS PERTAINING TO CANON 1:

2.02(p) - "*shall*" or "*shall not*" intends to impose binding obligations the violation of which can result in disciplinary action.

16.6(B) ADVISORY OPINIONS REGARDING CANON 1:

Opinion 141 - A judge should not hold a dual role of municipal judge and building commissioner. This was true even though the change of the issuance of a misdemeanor charge based upon a building code violation was remote.

Opinion 164 - A municipal judge may not serve on a Regional Advisory Counsel for the state Department of Alcohol and Drug Abuse. The commission reasoned that a judge who established public and procedures for alcohol and drug rehabilitation and thereafter required defendants to participate in such programs created a potential conflict of interest and had an appearance of impropriety.

16.7 CANON 2 A JUDGE SHALL AVOID IMPROPRIETY AND THE APPEARANCE OF IMPROPRIETY IN ALL OF THE JUDGE'S ACTIVITIES

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

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

16.7(A) DEFINITIONS PERTAINING TO CANON

"shall" - See subsection 16.6(A).

The *"law"* is defined in 2.02(h) as follows: "Law" denotes court rules as well as applicable constitutional provisions, statutes, ordinances and decisional and other law. See Canons 2A, 3A, 3B(2), 3B(7), 4B, 4C, 4E, 4F and 4I.

16.7(B)(1) ADVISORY OPINIONS REGARDING CANON 2A

Opinion 17 - A judge may not accept fees, gifts or gratuities for performing marriages. To do so violates the Constitution of the state of Missouri and the Code of Judicial Conduct. Any unsolicited fees, gifts or gratuities should be returned to the donor. If return is not possible, the same should be forwarded to the state of Missouri Escheat Fund.

Opinion 38 - A judge may not appoint his son as Guardian Ad Litem, appraiser, referee, trustee or attorney for an indigent as this could be considered an exercise of nepotism or favoritism. This is true for remunerative and non-remunerative assignments.

Opinion 39 - The commission indicated that the use of court stationary by the judge for private business is not absolutely prohibited but will be considered on a case by case basis. The standard will be whether or not the use will lend the prestige of office to private affairs and the appearance of impropriety.

Opinion 63 - A municipal judge asked whether he could be appointed to represent an indigent in a criminal case. The commission issued an opinion stating that a municipal judge should not be appointed to represent criminal indigents because the judge could conceivably be a judge in one trial and the defense in another trial involving the same facts.

Opinion 73 - A judge should not allow his picture to appear in a newspaper advertisement warning drivers of drinking and driving and "stiff penalties." Such an advertisement may create the impression of a preconceived sentencing policy and would not promote public confidence in the integrity and impartiality of the judiciary.

Opinion 81 - The commission further clarified what a municipal judge could and could not do in

his practice of law. A municipal judge should not practice law within his municipality and should withdraw from any criminal case occurring within his municipality for which he had been retained prior to swearing in as municipal judge.

Opinion 84A and 97 - Both of these opinions deal with a municipal judge accepting compensation from public service work. The issue arose because of the prohibition found in Article V, Section 20, of the Constitution of the State of Missouri, which reads: "No judge shall receive any other or additional compensation for any public service."

Initially, the commission found that this provision dealt with both part-time and full-time judges. The commission ruled that "all state and municipal judges shall not accept compensation for a public service from the State of Missouri, other than their judicial salary." The commission stated that a part-time judge could serve on organizations such as the Board of Directors of a Missouri college as long as he did not accept compensation and there was no appearance of impropriety. Full-time judges are strictly forbidden from serving on such commissions.

Finally, the commission ruled that a part-time judge could accept compensation for counseling students for a state college if he was paid by a private organization.

Opinion 85 - A full-time municipal judge may not participate in political activities. However, a part-time judge may be a member of a congressman's re-election committee and attend a fundraiser. NOTE: Opinion 129, found at 16.10(B)(1) withdraws certain aspects of Opinion 85.

Opinion 126 - A judge had inquired whether his clerk could hold a part-time job with one of the court services companies currently servicing his court. The commission ruled that the clerk's acceptance of such a position might create the appearance of impropriety and the potential for allegations of preferential treatment of the court service in the judge's own court.

Opinion 141 - See Subsection 16.6(B)

Opinion 164 - See Subsection 16.6(B)

Opinions 172, 173 – See Subsection 16.9(B)(4)

16.7(B)(2) ADVISORY OPINIONS REGARDING CANON 2B:

Opinion 133 - A judge may give a recommendation and use his judicial stationery for that purpose. However, special circumstances may exist which would make such a recommendation inappropriate. Each case must be examined to determine if the same constitutes a misuse or abuse of the prestige of his office.

Opinion 137 - A judge may not recommend a disbarred attorney reinstatement to The Missouri Bar and the Supreme Court without a subpoena or a specific request from The Missouri Bar or the Supreme Court.

Opinion 157 - Canon 4 and 2B do not prohibit a judge from publicly recognizing and issuing a plaque to those individuals who have provided pro bono exemplary services to the juvenile court system.

Opinion 179 – A judge should not be involved in a continuing legal education program sponsored by a law firm where the program will be advertised to the Bar of the general public interest using the judge’s name and title.

The use of the judge’s name and title in promotion of continuing legal education programs sponsored by bar associations, law school or other organizations that are not likely to appear before the judge as a party or an attorney for a party is allowed to a limited extent under the guidelines as set forth in the opinion.

16.8 CANON 3 A JUDGE SHALL PERFORM THE DUTIES OF JUDICIAL OFFICE IMPARTIALLY AND DILIGENTLY

A. Judicial Duties in General. The judicial duties of a judge take precedent over all the judge's other activities. The judge's judicial duties include all the duties of the judge's office prescribed by law. In the performance of these duties, the following standards apply.

B. Adjudicative Responsibilities.

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

(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 require order and decorum in proceedings before the judge.

(4) A judge shall be patient, dignified and courteous to litigants, jurors, witnesses, lawyers and others with whom the judge deals in an official capacity and shall require similar conduct of lawyers and of staff, court officials and other subject to the judge's direction and control.

(5) 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, national origin, disability or age, and shall not permit staff, court officials and others subject to the judge's direction and control to do so.

(6) A judge shall require lawyers in proceedings before the judge to refrain from manifesting, by words or conduct, bias or prejudice based upon race, sex, religion, national origin, disability or age against parties, witnesses, counsel or others. This Canon 3B(6) does not preclude legitimate advocacy when race, sex, religion, national origin, disability or age or other similar factors are issues in the proceeding.

(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 for 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:

(i) The judge reasonably believes that no party will gain a procedural or tactical advantage as a result of the ex parte communication, and

(ii) The judge makes provision promptly to notify all other parties of the substance of the ex parte communication and allow an opportunity to respond.

(b) A judge may obtain the advice of a disinterested expert on the law applicable to a proceeding before the judge if the judge gives notice to the parties of the person consulted and 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) A judge may initiate or consider any ex parte communications when expressly authorized by law to do so.

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

(9) A judge shall abstain from public comment about a pending or impending proceeding in any court and should require similar abstention on the part of court personnel subject to the judge's direction and control. This subsection does not prohibit judges from making public statements in the course of their official duties or from explaining for public information the procedures of the Court.

(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.

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

(3) A judge with supervisory authority for the judicial performance of other judges 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.

D. Disciplinary Responsibilities

(1) A judge who receives information indicating a substantial likelihood that another judge has committed a violation of this Rule 2 should take appropriate action. A judge having knowledge that another judge has committed a violation for this Rule 2 that raises a substantial question as to the other judge's fitness for office shall inform the appropriate authority.

(2) A judge who receives information indicating a substantial likelihood that a lawyer has committed a violation of Rule 4 should take appropriate action. A judge having knowledge that a lawyer has committed a violation of Rule 4 that raises a substantial question as to the lawyer's honesty, trustworthiness or fitness as a lawyer in the respects shall inform the appropriate authority.

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

E. Recusal

(1) A judge shall recuse 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 personal knowledge of disputed evidentiary facts concerning the proceeding;

(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;

(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 with the third degree of relationship to either of them, or the spouse of such 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 proceeding.

(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 Canon 3E may disclose on the record the basis of 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.

16.8(A) DEFINITIONS PERTAINING TO CANON 3

2.02(h) - "Law" - See subsection 16.7(A).

2.02(a) - "Appropriate authority" denotes the authority with responsibility for initiation of disciplinary process with respect to the violation to be reported. See Canons 3D(1) and 3D(2).

2.02(p) - "Shall" - See subsection 16.6(A).

2.02(s) - "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 Canon 3E(1)(d) and 4E(1).

2.02(o) - "Require" - The rules prescribing that a judge "require" certain conduct of others are, like all provisions of this Rule 2, 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 Canon 3.

2.02(c) - "Court personnel" are reporters, clerks, bailiffs and office personnel performing duties in a proceeding before a judge but are not lawyers representing litigants. See Canons 3B(7)(c)

and 3B(9).

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

2.02(g) - "*Knowingly*", *knowledge*", "*known*" or "*knows*" denotes actual knowledge of the fact in question. A person's knowledge may be inferred from circumstances. See Canons 3D and 3E(1).

2.02(j) - "*Member of the judge's family residing in the judge's household*" denotes any relative of a judge by blood or marriage, or a person treated by a judge as a member of the judge's family, who resides in the judge's household. See Canons 3E(1) and 4D(3).

2.02(e) - "*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:

- (1) Ownership of an interest in a mutual or common investment fund that holds securities is not an economic interest in such securities unless the judge participates in the management of the fund or a proceeding pending or impending before the judge could substantially affect the value of the interest.
- (2) Service by a judge as an officer, director, advisor or other active participant in an educational, religious, charitable, fraternal or civic organization, or service by a judge's spouse, parent or child as an officer, director, advisor or other active participant in any organization does not create an economic interest in securities held by that organization.
- (3) A deposit in a financial institution, the proprietary interest of a policy holder in a mutual insurance company, of a depositor in a mutual savings association or of a member in a credit union, or a similar proprietary interest, is not an economic interest in the organization unless a proceeding pending or impending before the judge could substantially affect the value of the interest.
- (4) Ownership of government securities is not an economic interest in the issue unless a proceeding pending or impending before the judge could substantially affect the value of the securities.
- (5) Ownership of small amounts of publicly traded corporations is not an economic interest unless a proceeding pending or impending before the judge could substantially affect the value of the shares.

2.02(d) - "*De minimis*" denotes an insignificant interest that could not raise reasonable question as to a judge's impartiality. See Canons 3E(1)(c) and 3E(1)(d).

2.02(f) - "*Fiduciary*" includes such relationships as personal representative, executor, administrator, trustee, attorney-in-fact under power of attorney, and guardian. See Canons 3E(2) and 4E.

16.8(B)(1) ADVISORY OPINIONS REGARDING CANON 3B

Opinion 48 - The business of the court shall be conducted in the courtroom except in emergency

circumstances. If the judicial act in question is authorized to be performed in camera, then there is no ethical restriction as to when and where the judge performs the act.

Opinion 108 - The commission opined that there is nothing in Canon 3A(7) (now deleted by new Canon 3) which would prohibit a judge in his discretion to permit the use of tape recording devices in court by private attorneys.

Opinion 148 - A judge may not ethically grant limited driving privileges when to do so would violate the clear provisions of a state statute and case authority. Such an action would violate old Canon 3A, new 3B(2).

Opinion 149 – A judge could respond to a questionnaire regarding his experience, education, background and other qualifications for his office sent by an environmental group. The judge should not relate his position on environmental matters as the same would be prohibited under old Canon 3A©, now 3B(9).

Opinion 33 – It would be improper for a judge or court personnel to advise people concerning applications for Refusal of Letters or assist in the preparation of Refusal Letters. Clerk and court officials may, however, identify the instance of such letters and recommend that a lawyer's consulted. This matter was determined pursuant Canon 3B(1) and (2), now 3C(1) and (2).

Opinion 175 – A judge may not ethically grant a suspended imposition of sentence to a defendant charged with driving while intoxicated as a persistent and prior offender or to a defendant charged with driving while license or driving privilege is cancelled, suspended or revoked. Canon 3B(2) requires a judge to follow the clear language of V.A.M.S 577.023(4) and 302.321 which prohibit suspended impositions of sentence in such cases. A judge may grant a suspended imposition of sentence even though the original charge, prior to reduction or amendment by the prosecutor, would prohibit such a sentence.

16.8(B)(2) ADVISORY OPINIONS REGARDING CANON 3C

Opinion 38 - See subsection 16.7(B)(1), note Canon 3B(4) prohibiting "nepotism and favoritism in new Canon 3C(4).

Opinion 55 - There is nothing to prohibit a circuit judge to allow his daughter to be hired as a clerk by an associate circuit judge due to the fact that it was the associate circuit judge who was making the appointment. Decided pursuant to Canon 3B(4), now 3C(4).

Opinion 96A - A judge may appoint a retired judge as a commissioner, guardian, appraiser, referee, trustee or attorney for indigents so long as such appointments are spread equally over members of the Bar who are qualified. Appointment of legislators to similar positions should be carefully considered in light of Article III, Section 12 of the Constitution of the state of Missouri and V.A.M.S. 105.456(1).

Opinion 126 - See 16.7(B)(1). Decided pursuant to Canon 3B(2), now 3C(2).

Opinion 157 - See 16.7(B)(2). Decided pursuant to 3B, now 3B(2).

16.8(B)(3) ADVISORY OPINIONS REGARDING CANON 3E

Opinion 5 - The commission gave a detailed analysis of probate judge's questions as to disqualification in an involuntary hospitalization hearing when his spouse was employed as a social worker at the state mental institution where a patient was being treated. The question depended upon the level of participation of the spouse in the patient's care and the likelihood of her input on diagnosis or as a witness. Decided pursuant to Canon 3C(1), now 3E(1).

Opinion 14A - An associate circuit judge was only allowed to preside over cases which were pending in the prosecutor's office when the judge served as a prosecutor so long as the judge neither handled nor has any knowledge of the case. In those cases, the judge was to disclose to the parties as to his level of participation and must recuse himself at the request of either party. Decided pursuant to Canon 3D(1)(b), now 3E(1)(b).

Opinion 22 - A judge must disqualify himself in matters, no matter how routine, where he or a former law partner had been involved as a private practitioner. Decided pursuant to Canon 3C(1)(b), now 3E(1)(b).

Opinion 24A - A probate judge who witnessed but did not draft a Will need not disqualify himself unless a dispute arises as to Will construction or evidentiary fact. However, a probate judge who drafted a Will about to be admitted to probate should write the legatees and heirs advising them he prepared the Will and will disqualify himself upon complaint of any heir or legatee. Decided pursuant to Canon 3C(1), now 3C(1)(a & b).

Opinion 37 - Decided under the old Canons, this opinion states that a judge need disclose but not automatically disqualify himself in a proceeding where his son is acting as an attorney. This practice is now strictly prohibited pursuant to Canon 3E(1)(d)(ii).

Opinion 46 - A judge should disqualify himself in any proceeding which would involve his father-in-law who is a deputy sheriff. This disqualification should occur at any point in the legal process when the judge receives information that his father-in-law has an interest which could substantially be affected by the outcome of the proceeding or is likely to be a material witness. The judge should inform both his father-in-law and the prosecuting attorney of this restriction. Decided pursuant to Canon 3C(1), now 3E(1)(d).

Opinion 62 - A new judge may recover a portion of a contingency fee case so long as that fee corresponds to the percent of work he has completed on the case. The judge should disqualify himself on any case he has previously referred to another attorney pursuant to Canon 3C(b), now 3E(1).

Opinion 66 - Decided under the old Canons, an appellate judge did not automatically have to recuse himself in any case which his daughter represents the Attorney General's office. This practice is now strictly prohibited under Canon 3E(1)(d)(ii). The judge need not recuse himself in all matters involving the state of Missouri and its attorney general unless his "impartiality might be reasonably questioned," now Canon 3E(1).

Opinion 71 - A judge must disqualify himself in any proceeding in which his ex father-in-law deputy sheriff is likely to be a material witness. The ex father-in-law was also the grandfather of the judge's children. The judge need not disqualify himself in matters where the deputy sheriff involvement would be de minimis. Decided pursuant to Canon 3C(1)(d), now 3E(1)(d).

Opinion 84A - See 16.7(B)(1). Decided pursuant to Canon 3C, now 3E.

Opinion 87 - A judge was not to serve as a fiduciary for a close friend. This now is especially true since old language which would allow acting as a fiduciary for a "person with whom the judge maintains a close familial relationship" has been eliminated from new rule 3E(1).

Opinion 92 - A judge who previously served as a part-time prosecuting attorney should disqualify himself in any criminal case in which he was previously involved or in which his impartiality may reasonably be questioned. A part-time prosecutor is one who is hired by the prosecuting attorney to handle a select number of cases. Decided pursuant to Canon 3C(1)(b), now 3E(1)(b).

Opinion 101 - An appellate judge must disqualify himself in all cases involving any law firm which he maintains a continuing attorney-client relationship. Decided pursuant to Canon 3C(1), now 3E(1).

Opinion 124 - See section 16.6(B).

Opinion 125 - The commission reviewed the rules regarding disqualifications. The commission found that the judge was not required to disqualify himself when his law partner's spouse or a member of the spouse's law firm appeared before him unless the judge's impartiality might reasonably be questioned. Decided pursuant to Canon 3C(1), now 3E(1).

Opinion 143 - A judge must disclose his business relationship to all parties in all cases involving

a former associate to whom he sold his law practice and to whom he leases an office building at fixed monthly rental. Decided pursuant to Canon 3C(1), now 3E(1).

Opinion 156 - A judge need not disqualify himself or notify the parties of potential grounds for disqualification where the only business relationship between the judge and his former law firm is collecting back due attorney's fees on behalf of the judge. Decided pursuant to Canon 3C(1)(d)(ii), now 3E(1).

Opinion 161 - A municipal judge asked if he could rent office space from or to attorneys who appear before the judge. The commission answered that such rental arrangements are not prohibited by the Code of Judicial Conduct so long as the rent received is at fair market value. A more "involved business relationship" may require disqualification. Decided pursuant to Canon 3C(1)(d), now 3E(1).

Opinion 163 - The commission found that a municipal judge may not serve in the same city as that which his law partner serves as city attorney. The same law office drafting and interpreting ordinances creates an appearance of impropriety. Decided pursuant to Canon 3C, now 3E.

16.9 CANON 4 – A JUDGE SHALL SO CONDUCT THE JUDGE’S EXTRAJUDICIAL ACTIVITIES AS TO MINIMIZE THE RISK OF CONFLICT WITH JUDICIAL OBLIGATIONS

A. Extrajudicial Activities in General

A judge shall conduct all of the judge's extrajudicial activities so that they do not:

- (1) Cast reasonable doubt on the judge's capacity to act impartially as a judge;
- (2) Demean the judicial office; or
- (3) Interfere with the proper performance of judicial duties.

B. Avocational Activities.

A judge may speak, write, lecture, teach and participate in other extrajudicial activities concerning the law, the legal system, the administration of justice and nonlegal subjects, subject to the requirements of this Rule 2.

C. Governmental, Civil 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.
- (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.

(3) A judge may serve as an officer, director, trustee or nonlegal 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 Rule 2.

(a) A judge shall not serve as an officer, director, trustee or nonlegal 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 of in any court subject to the appellate jurisdiction of the court of which the judge is a member.

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

(i) May assist such an organization in planning fund-raising and may participate in the management and investment of the organization's funds, but shall not personally participate in the solicitation of funds or other funds raising activities, except that a judge may solicit funds from other judges over whom the judge does not exercise supervisory or appellate authority.

(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 personally participate in membership solicitation if the solicitation might reasonably be perceived as coercive or, except as permitted in Canon 4C(3)(b)(i), if the membership solicitation is essentially a fund-raising mechanism;

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

D. Financial Activities

(1) A judge shall refrain from financial and business dealings that tend to reflect adversely on the judge's impartiality, interfere with the proper performance of judicial duties, exploit the judge's judicial position, or involve the judge in frequent transactions with lawyers or persons likely to come before the court on which the judge serves.

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

(3) Neither a judge nor a member of the judge's family residing in the household shall accept a gift, bequest, favor or loan from anyone except as follows:

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

(b) A judge or a member of a judge's family residing in the household may accept ordinary social hospitality; a gift, bequest, favor or loan from a relative; a wedding or engagement gift; a loan from a lending institution in its regular course of business on the same terms generally available to persons who are not judges; or a scholarship or fellowship awarded on the same terms applied to other applicants;

(c) A judge or a member of the judge's family residing in the household may accept any other gift, bequest, favor or loan only if the donor is not a part or other person whose interests have come or are likely to come before the judge, and, if its value exceeds \$100.00, the judge reports it in the same manner as compensation is reported in Canon 4H.

(4) A judge is not required by this Rule 2 to disclose income, debts or investments, except as provided in this Canon, Canon 3 and Canon 4H.

(5) Information acquired by a judge in a judicial capacity shall not be used or disclosed by the judge in financial dealings or for any other purpose not related to judicial duties.

E. Fiduciary Activities

(1) A judge shall not serve as executor, administrator, 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, providing such person is the judge's spouse or within the third degree of relationship to the judge or the judge's spouse, and then only if such service will not interfere with the proper performance of judicial duties.

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

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

F. Service as Arbitrator or Mediator

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

G. Practice of Law

A 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.

H. Compensation, Reimbursement and Reporting

(1) Compensation and Reimbursement. A judge may receive compensation and reimbursement of expenses for the extra-judicial activities permitted by this Rule 2, 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.

(2) Public Reports. A judge shall report the date, place and nature of any activity for which the judge received compensation, and the name of the payor and the amount of compensation so received. Compensation or income of a spouse attributed to the judge by operation of a community property law is not extra-judicial compensation to the judge. The report shall be made at least annually and shall be filed as a public document in the office of the clerk of this court.

I. Disclosure of a judge's income, debts, investments or other assets is required only to the extent provided in this Canon 4, in Canon 3E, and in Canon 3F, or as otherwise required by law.

16.9(A) DEFINITIONS PERTAINING TO CANON 4

2.02(h) - "*Law*" denotes court rules as well as applicable constitutional provisions, statutes, ordinances and decisional and other law. See Canons 2A, 3A, 3B(2), 3B(7), 4B, 4C, 4E, 4F and 4I.

2.02(f) - "*Fiduciary*" includes such relationships as personal representative, executor, administrator, trustee, attorney-in-fact under power of attorney, and guardian. See Canons 3E(2) and 4E.

2.02(s) - "*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 Canons 3E(1)(d) and 4E(1).

2.02(k) - "*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 just as a member of the judge's family, who resides in the judge's household. See Canons 3E(1) and 4D(3).

16.9(B)(1) – ADVISORY OPINIONS REGARDING CANON 4A

Opinion 58 - A judge may be a member of a dinner committee honoring the judge's friend with a humanitarian award. The same would not adversely reflect upon his impartiality which was prohibited under Canon 5B, now Canon 4A.

Opinion 75 - A judge should not be involved in the activities of a county task force on drunk driving where activities included advocating more stringent legislative penalties for drunk driving. Decided under Canon 5B, now Canon 4A and 4C.

Opinion 10 - A judge who is retiring to return to the practice of law must clearly state his status when advertising for association or office sharing arrangements.

Opinion 20 - An associate circuit judge may not prepare state and federal income tax returns after hours at his personal residence for compensation. The same would be prohibited pursuant to Canon 5C(1), now Canon 4A(1-3).

Opinion 25 - A judge may not purchase real estate and sell rock from that real estate to the state and county highway departments if these departments appear frequently as parties in litigation before the judge.

Opinion 60 - A judge should divest himself from inherited real estate jointly owned with a bondsman who has frequent transactions with is court. If the co-tenant bondsman uses the real estate as collateral for party bonds, the judge must disqualify himself in any case involving such a bond.

Opinion 81 - The commission further clarified what a municipal judge could and could not do in his practice of law. A municipal judge should not practice criminal law within his municipality and should withdraw from any criminal cases occurring within his municipality for which he had been retained prior to swearing-in as municipal judge. A municipal judge can accept a civil case that arises in the municipality where he presides when there is no pending issue of a violation of a city ordinance.

Opinion 110 - A judge may lease real property which he owns or has an interest in to the county in which he is an elected official so long as the business dealing does not reflect an unfair or non-competitive business dealing.

Opinion 118 - A judge should not be involved in a general or limited partnership holding real estate with attorneys who frequently appear before him. If such appearances are rare, the judge need not automatically disqualify himself, rather analyze the facts of each case and make full disclosure to the parties.

Opinion 127 - A judge should not be engaged in a private venture regarding the sale of educational audio materials regarding the Common Law of the state of Missouri. The activity would involve a considerable amount of his time as prohibited under Canon 4A(3) and the material sold may be used by lawyers appearing before the judge in arguing cases as prohibited by Canon 4A(1).

16.9(B)(2) – ADVISORY OPINIONS REGARDING CANON 4B

Opinion 67 - An associate circuit judge should not serve as a member of the selective service local draft board since such activity would not improve the law, legal system or the administration of justice.

Opinion 75 - A judge may participate in an interview or an educational program regarding consumer affairs. However, the judge should not comment on any pending case or express a preconceived opinion which would cast doubt on his impartiality. Current Canon 4B.

Opinion 79 - A judge may give a radio interview regarding his experience in Vietnam if it is not for the purpose of soliciting funds. The judge's name may appear on the letterhead of an organization local committee so long as he is not designated as a judge or an attorney. Finally, he may invite a friend who is a U.S. Senator to town for the purpose of raising interest in a memorial fund. This matter was decided under old Canon 5A, now Canon 4B.

Opinion 116 - A judge should not serve on a committee which would set guidelines for workplace solicitation of government employees by various characters. This activity would not "improve the law, the legal system or the administration of justice".

Opinion 128 - A judge may participate in a media campaign to recruit foster families, as well as appear in television, radio and newspaper advertisements. The judge indicated he would not solicit funds for the foster parent program.

Opinion 157 - See section 16.7(B)(2).

Opinion 158 - A senior judge may testify before the Missouri legislature regarding proposed legislation to create a new judicial circuit. This would be a matter which concerns the "law, the legal system and the administration of justice".

16.9(B)(3) – ADVISORY OPINIONS REGARDING CANON 4C

Opinion 61 - A circuit judge may not comment publicly in favor of a proposed sales tax. Such comments would be personally participating in public fund raising activities in violation of Canon 4C(3).

Opinion 122 - The Canons in effect at the time of this opinion did not prevent a judge from representing himself in a lawsuit. New Canon 4C(1) specifically allows the judge to function in this capacity. The judge may also assist his council in preparation of his case.

16.9(B)(4) – ADVISORY OPINIONS REGARDING CANON 4C(2 & 3) 16.9(B)(4) - ADVISORY OPINIONS REGARDING CANON 4C(2 & 3)

Opinion 9 - The Canons do not prohibit an associate circuit judge from serving as a trustee for a hospital where there is no compensation and meetings are on a once a month basis. He may not do so if the hospital is likely to appear before him and he may not solicit funds or give investment advice to that hospital. Decided under Canon 5B(1&2), now Canon 4C(3)(a).

Opinion 44 - An associate circuit judge may serve on a steering committee of the attorney general's council on crime prevention. The judge was warned to be careful not to become involved in soliciting funds or become involved in political activity that is not on behalf of measure to "improve the law, legal system or administration of justice." Citing what is now Canon 4(C)(2).

Opinion 61 - A circuit judge may not comment publicly in favor of a proposed sales tax. Such comments would be personally participating in public fund raising activities in violation of Canon 4C(3).

Opinion 64 - A judge may not serve on the Missouri Mental Health Commission since the judge's service would not concern issues of "improvement of the law, the legal system and the administration of justice".

Opinion 67 - An associate circuit judge should not serve as a member of the selective service local draft board since such activity would not improve the law, legal system or the administration of justice.

Opinion 70 - A judge may serve as the master of ceremonies at a Jaycees junior miss contest in that it is not a money making venture and is intended to be a community service. Decided pursuant to Canon 5B, now Canon 4A and 4C.

Opinion 80 - An associate circuit judge may not serve as a member of the city zoning commission as it did not fall within the parameters of what is now 4C(2). The commission also noted that the judge would be subject to disqualification in adversary proceedings concerning zoning issues if he became a member of the committee.

Opinion 83 - A judge may not serve as a director of the Industrial Development Corporation, without compensation, since the purpose of the corporation is to promote development of a city or municipality. These purposes do not fall within parameters of allowable activities what is now Canon 4C(2 & 3).

Opinion 84A - See section 16.7(B)(1).

Opinion 91 - A judge may not serve on an advisory board of a hospital which is likely to be engaged in proceedings that would come before the judge. Decided under Canon 5B(1), now Canon 4C(3)(a)(ii).

Opinion 104 - A judge may serve as a member of the board of directors for an alternative dispute resolution center. The judge would not be engaged in the day to day activities of the center. It was unlikely the center itself would ever appear before the judge. Decided under Canon 5B(1&2), now Canon 4C(3)(a)(i & ii).

Opinion 113 - A judge may serve on a committee appointed by the governor to engage in activities regarding the *USS Missouri*, without pay. The judge must be careful not to be engaged

directly or indirectly in fund raising activities. He may appear on letterhead so long as he is not identified as a lawyer or judge. Decided under Canon 5B(1-3), now Canon 4C(3)(a)(i & ii).

Opinion 115 - A judge may not serve as the Government Division Chairman for the United Way campaign. This would create the appearance he was soliciting funds for a charitable organization which is prohibited under Canon 5B, now Canon 4C(3)(b)(i).

Opinion 124 - A judge may serve as trustee of an educational trust so long as the trust is not likely to be engaged in proceedings before the judge. He shall not solicit funds or give investment advice. The judge may not receive a fee. Decided under Canon 5D, now Canon 4E and Canon 5B, now Canon 4C(3).

Opinion 134 - An associate circuit judge may not serve as a member of a citizen's steering committee designed to improve the city's economy, resources, cultural and recreational activities, and building environment. The goals do not fall in those permitted under what is now Canon 4C(2).

Opinion 135 - A circuit judge could not be on a governmental task force charged with future planning of a county library. In addition to the services falling outside permissible activities as set forth in the Canon, the commission also noted that said services may involve the judge in extrajudicial matters which would interfere with his effectiveness and independence.

Opinion 146 - A judge may serve on a board of directors of a city public library so long as such service did not involve him in controversial matters which might interfere with the judge's independence. The judge should abstain from voting on any issues.

Opinion 150 - An associate circuit judge could not serve as a member of the Missouri Advisory Council on Alcohol and Drug Abuse. The commission determined that the committee is concerned with issues of fact or policy on matters other than the "improvement of law, the legal system or the administration of justice".

Opinion 154 - A judge may serve on the board of director for a not-for-profit corporation, which is primarily funded by the state of Missouri. The state funding does not change the characterization of the judge's activities as civil and charitable. Decided under Canon 5B, now Canon 4C(3) and Canon 5G, now Canon 4B(2).

Opinion 159 - An associate circuit judge may serve as an advisory director of a not-for-profit corporation which provides education and information to school aged children about drugs and alcohol. The judge will receive no pay and not be engaged in day to day activities. Decided under Canon 5B, now Canon 4C(3).

Opinion 172 – A judge should not impose, as a condition of probation, payments to the county treasury, a crime reduction fund, or specified charity, absent a state statute or constitutional provision authorizing such payment.

Opinion 173 – Opinion 172 applies to full- and part-time municipal judges. It does not prohibit an order of restitution to the victim, or an order requiring the performance of free work for a public or charitable purpose. It (Opinion 172) applies to a suspended imposition of sentence.

Opinion 174 – A judge has an obligation to review a plea agreement and exercise discretion if the prosecutor has required any type of payment to any special fund in order to receive a recommendation, even if it is not part of the formal sentence or condition of probation. The judge should not approve such an arrangement absent an ordinance, statute or constitutional provision authorizing such a payment.

Opinion 177 – The commission continued its practice of evaluating a judge’s service on governmental committees as a case by case basis in determining that service on the St. Louis County Domestic and Family Violence Council did not violate Canons 4(C)(2) and 4(A.)

Opinion 180 – The commission further clarifies opinions 172, 173 and 176 dealing with questions pertaining to the imposition of conditions of probation requiring donations in lieu of fines. The commission found that even though the payment was to be made to the county school fund, the fund designated in the Constitution to receive fine money, it nevertheless had the appearance of a “payoff and would create the appearance of impropriety.” Such conditions of probation and plea agreement are not allowed unless specifically authorized by municipal ordinance (in the case of municipal charges) or by state statute or Constitution in state charges.

16.9(B)(5) – ADVISORY OPINIONS PERTAINING TO CANON 4G

Opinion 26 - It is improper for a probate judge to advise people with respect to applications for refusal of letters in that the same constitutes the practice of law. The judge may identify the existence of such letters and recommend a lawyer. See Opinion 51 below.

Opinion 33 - See section 16.8(B)(1).

Opinion 51 - Because of new legislation V.A.M.S. 473.091 it was now permissible for a probate court to advise people with respect to application for refusal of letters. Legislation concerning the practice of law will be valid unless it unreasonably encroaches upon the power of the courts.

Opinion 62 - See section 16.8(B)(3).

Opinion 97 - See section 16.7(B)(1).

Opinion 117 - An associate circuit judge may attend as a spectator an arbitration proceeding involving his spouse who is a real estate broker. He may not directly or indirectly lend advice or assistance during the hearing. He may discuss the case with his wife and attorney.

Opinion 122 - See section 16.9(B)(3).

16.9(B) – ADVISORY OPINIONS REGARDING CANON 4H

Opinion 65 - The commission found that a judge may accept employment and receive

compensation for writing a Treatise on Probate Law. The compensation may be based upon the number of volumes sold. Current Canon 4H.

16.10 CANON 5 – A JUDGE AND CERTAIN OF THE JUDGE’S EMPLOYEES SHALL REFRAIN FROM INAPPROPRIATE POLITICAL ACTIVITY

A. Political Conduct in General

- (1) No judge appointed to or retained in office in the manner prescribed in section 25(a)-(g) of article V of the state constitution shall directly or indirectly make any contribution to or hold any office in a political party or organization or take part in any political campaign.
- (2) Where it is necessary that a judge be nominated and elected as a candidate of a political party, an incumbent judge or candidate for election to judicial office may attend or speak on the judge or candidate's own behalf at political gatherings and may make contributions to the campaign funds of the party of choice. However, neither the judge nor the candidate shall accept or retain a place on any party committee or act as party leader or solicit contributions to party funds.
- (3) A judge shall resign judicial office when the judge becomes a candidate either in a party primary or in a general election for a nonjudicial office, except that a judge may continue to hold judicial office while being a candidate for election to or serving as a delegate in a state constitutional convention, if otherwise permitted by law to do so.
- (4) A judge shall not engage in any other political activity except on behalf of measure to improve the law, the legal system or the administration of justice.
- (5) Persons appointed as a circuit or associate circuit judge selected pursuant to section 25(a)-(g) of article V of the state constitution and their employees shall not directly or indirectly make any contributions to or hold an office in a political party or organization or take part in any political campaign.

B. Campaign Conduct

- (1) A candidate, including an incumbent judge, for a judicial office that is filled either by public election between competing candidates or on the basis of the non-partisan court plan:
 - (a) Shall maintain the dignity appropriate to judicial office and shall encourage members of the candidate's family to adhere to the same standards of political conduct that apply to the candidate;
 - (b) Shall prohibit public officials or employees subject to the candidate's direction or control from doing for the candidate what the candidate is prohibited from doing under this Canon 5; and except to the extent authorized under Canon 5B(2) or Canon 5B(3), such candidate shall now allow any other person to do for

the candidate what the candidate is prohibited from doing under this Canon 5;

(c) Shall not make pledges or promises of conduct in office other than the faithful and impartial performance of the duties of the office; announce views on disputed legal issues; or misrepresent the candidate's identity, qualifications, present position or other fact.

In consideration of Republican Party of Minnesota, et al v. White et al, 536 U.S. 2002, the Supreme Court of Missouri, on July 18, 2002, issued an order to the commission directing that the language “announce views on disputed legal issues” shall not be enforced.

(2) A candidate, including an incumbent judge, for a judicial office that is filled by public election between competing candidates shall not solicit or accept campaign funds or solicit publicly stated support but he candidate may establish committees of responsible persons to secure and manage the expenditure of funds for the campaign and to obtain public statements of support for the candidacy. Such committees are not prohibited from soliciting campaign contributions and public support from lawyers. A candidate shall not use or permit the use of campaign contributions for the private benefit of the candidate or members of the candidate's family.

(3) An incumbent judge who is a candidate for retention in or reelection to office without a competing candidate and whose candidacy has drawn active opposition may campaign in response thereto and may obtain publicly stated support and campaign funds in the manner provided in Canon 5B(2).

16.10(A) – DEFINITIONS PERTAINING TO CANON 5

2.02(n) - "Political organization" denotes a political party or other group, the principal purpose of which is to further the election or appointment of candidates to political office. See Canon 5.

2.02(b) - "Candidate" is a person seeking election 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 of support. The term "candidate" has the same meaning when applied to a judge seeking election or appointment to nonjudicial office. See Rule 2.01 and Canon 5.

16.10(B)(1) – ADVISORY OPINIONS PERTAINING TO CANON 5A(1) AND 5A(2):

Opinion 31 - A judge who must run for election may attend political gatherings on his own behalf. He may make contributions to the campaign funds of his party so long as the same is not to a specific individual's campaign fund. He may speak on his own behalf at meetings and gatherings. He should not solicit funds, act as a party leader, or advocate the election of anyone other than himself.

Opinion 50 - A judge who must be nominated and elected as a candidate of a political party may attend political gatherings and speak on his own behalf and make contributions to the campaign fund of the party of his choice regardless whether he is running for re-election.

Opinion 68 - A judge may attend a convention of the Missouri Federation of Women's Democratic Club. However, she may not act as Parliamentarian at the convention as the same would be serving as a "party leader" which is prohibited under the Canon.

Opinion 129 - Withdraws certain aspects of Opinion 85. "Political gatherings" includes fundraisers, victory and defeat parties for specific candidates who are not the judge. However, the judge's activities at such meetings, dinners and fundraisers should be confined to speaking on his own behalf. He cannot solicit funds, act as party leader, or advocate the election of anyone other than himself. He cannot contribute to any specific candidate, nor can he purchase a ticket to a dinner or fundraiser where the purchase price goes to a specific candidate's fund.

16.10(B)(2) – ADVISORY OPINIONS PERTAINING TO 5A(3):

Opinion 35 - An associate circuit judge need not resign from his office in order to run as a circuit judge. Canon 7A(3), now Canon 5A(3) only applies to candidates for non-judicial offices.

16.10(B)(3) – ADVISORY OPINIONS PERTAINING TO CANON 5A(4):

Opinion 160 - A judge may publicly endorse or criticize the non-partisan court plan but he may not publicly endorse or recommend against the retention of any specific judge as such conduct would be engaging in "other political activity".

Opinion 44 - See section 16.9(B)(3).

Opinion 72 - A judge may not participate in educational, social and fund raising activities which have the purpose of promoting or discouraging the proposed Equal Rights Amendment or the proposed Human Life Amendment. The same would constitute "political activity" in violation of the Canon.

Opinion 158 - A senior judge may publicly express his views and appear before the Legislature on proposed legislation to create a new judicial circuit. The same would be allowed "political activity" under the Canon.

16.10(B)(4) – ADVISORY OPINIONS PERTAINING TO CANON 5A(5):

Opinion 114 - There is nothing to prohibit a member of the judge's family from holding the position of city councilman or mayor. The judge should not allow his name to be used in conjunction with any campaign.

An associate judge under the non-partisan court plan, responsible for hiring and firing clerks, would prevent his clerk from serving as a councilman or mayor. If the associate circuit judge is elected, there would be no prohibition against his clerk serving as councilman or mayor.

Opinion 162 - The commission found that Canon 7B(2) which prohibits "publicly stated support" would not foreclose an associate circuit judge from going door to door, handing out campaign literature, handshaking and "vote for me" statements. Television or radio advertisements as well as speaking at "public gatherings" are also not prohibited by the commission. The commission

noted that the same should be done with an eye toward maintaining the honor, integrity and dignity of judicial office.

16.10(B)(4) - ADVISORY OPINIONS PERTAINING TO CANON 5B(1):

Opinion 86 - A judge's court employees, subject to his direction and control, may speak on his behalf and hand out campaign literature. However, the judge and court employees may not engage in such activities in the courthouse or during work hours.

Opinion 23 - Employees of an associate circuit judge who was part of the non-partisan court plan are prohibited from engaging in political activity. The judge, who was responsible for hiring and discharging court employees, is responsible for preventing his employees from engaging in political activity.

Opinion 149 - See section 16.8(B)(1).

Opinion 155 - A judicial candidate should not publicly criticize a sitting judge's absence from his county or circuit while performing his duty in serving under assignment of the Chief Justice. To suggest conduct of the sitting judge is inappropriate would be misrepresenting a fact which is prohibited under current Canon 5B(1)(c).

16.10(B)(5) – ADVISORY OPINIONS PERTAINING TO CANON 5B(2):

Opinion 18 - A judge may not retain leftover campaign funds or use them for any other purpose other than to pay for expenses incurred during the campaign. Any unused funds should be returned to the contributors on a pro rata basis. Expenses incurred in returning the funds may be paid by the fund. Withdrawn, See Opinion 178 below.

Opinion 44 - A judge may serve on a council for crime prevention. The judge should be careful not to be involved in fund solicitation or become involved in political activities prohibited under Canon 5B(2).

Opinion 93 - A judge's election committee may continue to make direct solicitations for campaign funds and hold fundraising events after the election until the campaign debt is repaid.

Opinion 174 – Because of changes in the language of Canon 5B(2) (formerly Canon 7B(2) effective July 1, 1999, judges and judicial candidates may seek publicly stated support including permission to erect yard signs.

Opinion 178 – Opinion 18 is withdrawn by the commission in ruling that a judge may retain leftover campaign funds from one judicial election to the next. When it is clear that a judge will not seek further judicial office, leftover campaign funds are to be dispersed of as per the methods as set forth in the opinion.

FUNCTIONING OF THE COMMISSION ON RETIREMENT, REMOVAL AND DISCIPLINE OF JUDGES

16.11 DISCIPLINE OF JUDGES

In Re Fullwood, 518 S.W.2d 22, 23 (Mo. 1975) held that municipal judges are subject to the jurisdiction of the Commission on Retirement, Removal and Discipline of Judges. The commission began operating on January 1, 1972, and is governed by Supreme Court Rule 12. The commission is composed of six members, who serve six-year terms. Two non-lawyers are appointed by the governor, two lawyers are appointed by The Missouri Bar's governing body, one court of appeals judge is appointed by the other court of appeals judges, and one circuit judge is selected by the state's circuit judges.

16.12 COMPLAINT PROCESS

The commission is responsible for receiving and investigating all requests and suggestions for the retirement of judges because of disability and all complaints concerning alleged misconduct of judges and members of judicial commissions.

Upon receiving a complaint which is not "obviously" unfounded or frivolous against a judge or judicial officer, the commission conducts an investigation. Rule 12.05(a), 12.07(a). If at least four members of the commission find there is probable cause to believe the judge or judicial officer is disabled due to permanent physical sickness or mental infirmity under Rule 12.05(a) or is guilty of misconduct, incompetency or other actions constituting grounds for discipline as listed in Rule 12.07(a), a hearing will be conducted.

If at least four members find the person investigated should be retired or disciplined, a report containing findings of fact and conclusions of law and a recommendation is made to the Supreme Court. Rule 12.07(c). The report will also contain a recommendation for discipline, which can range from removal from office to suspension or other discipline. Rule 12.07(c). The court then makes a ruling based upon a de novo review of the transcript and commission records. Rule 12.07(c). The person being investigated may, however, file objections to the commission's findings and request oral argument before the court before a final decree is entered. A similar procedure is followed in the case of retirement due to disability.

16.13 WHAT TO DO WHEN FACED WITH AN ETHICAL DILEMMA

When faced with an ethical dilemma, frequently a judge cannot find the answer by simply examining the code of ethics. Every judge should keep in mind the broad base Canon 2 prohibiting "the appearance of impropriety". The most basic advice is to refrain from the contemplated conduct if there is any question as to impropriety. Oftentimes, it helps to seek the advice of a fellow judge or the presiding judge in the circuit. However, if the judge feels that the problem will reoccur or that the action in question is in the best interests of the court, he should request an advisory opinion from the Commission on Retirement, Removal & Discipline, following the procedures as outlined in 16.3 of this chapter.