GUIDELINES FOR EXTRAJUDICIAL ACTIVITIES

AND

REPORT OF SUPREME COURT COMMITTEE ON EXTRAJUDICIAL ACTIVITIES (ABRIDGED)

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FOR EXTRAJUDICIAL ACTIVITIES
FOR NEW JERSEY JUDGES

I. APPLICABILITY

A. These guidelines are intended to implement the Code of Judicial Conduct.

B. The guidelines apply to part-time judges to the extent that they are required to comply with the Code of Judicial Conduct.

C. The guidelines do not apply to retired judges recalled to judicial service except to the extent that they are required to comply with the Code of Judicial Conduct.

II. GENERAL GUIDELINES

A. Since under Canon 3 of the Code of Judicial Conduct, "[t]he judicial duties of a judge take precedence over all his [or her] other activities," extrajudicial activities, whether law-related or not, must not encroach upon or conflict with those duties. Care must be taken that outside interests are not so extensive as to impair one's ability to perform properly the judicial function.

1. Participation in activities, not law-related, shall not ordinarily occur during times normally allocated to the performance of judicial functions, and then only with permission.

2. Court personnel should not be called upon to assist a judge in the performance of any non-law-related extrajudicial activity.

3. If participating in or preparation for a law-related activity should require some use of court time, permission should first be obtained from the designated approving authority upon a showing that the infringement upon judicial duties will not be significant and will be outweighed by the benefits to be derived from the activity.

B. Judges must always guard against the appearance of bias or partiality or the perception of prejudgment of issues likely to come before them.

C. In light of the injunction in Canon 2 of the Code to "avoid impropriety or the appearance of impropriety," judges must not risk:

1. subjecting themselves to improper influences or the appearance of being so subjected; or,

2. participating in activities of such nature or allowing themselves to be used in such manner as to impair the dignity and esteem in which the court should be held.

D. By reason of the constitutional restriction against other "gainful pursuits," reflected in Canon 6 of the Code, judges may not be compensated for any extrajudicial activity, except that they may receive reimbursement for such expenses as are allowed in Canon 6.

E. In any case where prior approval must be obtained for an extrajudicial activity, the approving authority is:

1. The assignment judge of the vicinage, for judges of the trial divisions and parts thereof;

2. The Presiding Judge of the Tax Court, for judges of that court;

3. The Presiding Judge for Administration, for judges of the Appellate Division;

4. The Supreme Court, in the case of Justices of that Court or an Assignment Judge or the above Presiding Judges, or where expressly required by the Code, Court Rule, these guidelines or other established policy.

III. **LAW-RELATED ACTIVITIES**

A. Lecturing, Speaking, Teaching, Appearances as Panel Member, etc.; Attendance at or Other Participation in Events.

1. Because their position and experience enables judges to contribute positively to the improvement of the law, the legal system and the administration of justice, on appropriate occasions and before appropriate audiences, and subject to the general guidelines, judges are encouraged to accept invitations to speak, lecture, appear as a panel member or moderator of a panel discussion on topics related to the law, or preside over a mock trial. Additionally, on appropriate occasions and before appropriate audiences, and subject to the general guidelines, judges may otherwise participate in or attend law related events.

2. In determining whether engaging in any of the foregoing activities might be improper or create the appearance of impropriety, a judge should ascertain and carefully consider:

a. the nature of the sponsoring organization, including whatever interest

it may represent, and whether participation may tend to identify the judge with the aim or purpose of the organization;

b. the nature of the audience;

c. the purpose of the occasion; (if fundraising is involved see Guideline V)

d. the charge, if any, for admission.

3. To avoid any impropriety or appearance of impropriety or perception of partiality:

a. A judge shall not engage in any of the foregoing activities if the activity is political in nature or if it is likely that:

(1) the sponsoring organization may be expected to appear in court;

(2) persons may be seeking to use the prestige of the judicial office to advance the private interests of themselves or others;

(3) the judge's presence at the occasion might convey or permit others to convey the impression that the sponsor or anyone else present is in a special position to influence the judge;

(4) the judge would be educating or perceived to be educating a special interest audience to the disadvantage of any other group;

(5) the judge might be perceived as advocating or being identified with a particular position on a political or controversial issue.

b. Additionally, with respect to a limited membership association of lawyers as defined in Guideline IIIE3, judges shall not engage in any of the foregoing activities unless:

(1) the association's membership, though limited to a type of practice, is all-inclusive; e.g., American Academy of Matrimonial Lawyers;

(2) in all other cases, the event is open to non-members and is non-partisan and non-political, and will not involve the judge in controversial issues or expose the judge to the perception of bias or partiality.

c. Judges shall not participate in professional seminars or other events sponsored by a profit-making entity unless the event is a public service and the sponsoring organization is closely related to the legal profession, and any fee or other charge for attendance is merely to defray the cost of the event.

4. In lecturing, speaking and other appearances, a judge may:

a. discuss or analyze existing law, its history, and trends but without implication that the judge favors or disfavors the trend;

b. describe the workings of the judicial system or a particular court;

c. discuss the role of a judge;

d. inform the audience generally concerning the proofs necessary to make or defend a case in particular areas of litigation.

5. To preserve the independence and prestige which are indispensable assets in the performance of judicial duty; to preserve respect for and confidence in the judicial office, and to dispel any doubt respecting a judge's capacity to decide impartially any issue pending or likely to come before the judge, a judge, in speaking, lecturing or otherwise, shall not:

a. comment on cases or proceedings pending in New Jersey courts except to explain what the issues are;

b. express an opinion on any pending legislative reform, except as set forth in Guideline IIID1;

c. discuss the judge's approach toward the resolution of legal issues;

d. clarify, defend or justify any of the judge's decisions or opinions, or reasoning therein, even in the absence of an appeal;

e. discuss a legal topic from the point of view of any special interest group.

B. Teaching

1. Subject to the General Guidelines and the relevant provisions of Guideline **IIIA,** judges may teach law-related courses.

2. A judge should not teach at a law school that is not approved by the

American Bar Association without prior approval of the Supreme Court.

3. Because a teaching commitment would be time consuming to a much greater degree than many other law related activities and tends to implicate the prohibition against compensation, before undertaking to teach a judge should notify the Supreme Court and the Assignment or Presiding Judge as listed in Guideline HE of the commitment:

   a. setting forth the institution, the subject matter, the hours and the duration of the assignment;

   b. certifying that preparation will not encroach upon or conflict with judicial duties;

   c. certifying that the judge will receive no compensation and setting forth the plan, if any, for diverting or allocating to an eleemosynary or other non- profit recipient the money that would otherwise have been paid, which must completely divorce the judge from the creation of the fund or the designation or approval of the recipient and vest the matter in the sole discretion of the school.

C. **Writing and Publication**

1. **In** writing, a judge should observe the relevant provisions of Guideline III A.

2. There shall be no compensation for publication of a judge's writing nor should there be a perception that the judge benefits financially from the work.

3. Because of the prohibition against compensation, judges should not write for commercial publication unless the writing contains a prominently displayed preface or footnote that the author has received no compensation for the work. Further, to avoid a financial windfall to a commercial publisher, there should be a suitable diversion by the publisher to an eleemosynary or other non-profit recipient of the royalties or other compensation which would otherwise have been paid to the author. Such plan of diversion, to be approved by the Supreme Court, shall establish that:

   a. the judge will receive no compensation directly or indirectly;

   b. the judge will be completely divorced from the creation of the fund or the designation or approval of the recipient, which are to be in the sole discretion of the publisher; provided, however, that the eleemosynary or other non-profit recipient of the royalties or other compensation should, to the extent possible, be a law-related, national or New Jersey

organization, institution or association.

4. Nothing herein is intended to deprive a judge of royalties or compensation for work completed before assuming judicial office or for work completed prior thereto except for subsequent prepublication proof-reading or other editing by the judge; provided, however, that, in the latter case, the judge may not receive additional compensation therefor.

5. The approval of the Supreme Court must be obtained before the writer of a work published or, as set forth in subparagraph 4, substantially completed, prior to assuming office may undertake to update or supplement that work. The submission to the Court must clearly establish:

   a. that the royalty or other payments will be exclusively for the original writing and will not include, even in part, compensation for the updating or supplementation;

   b. any compensation for the updating or supplementation must be diverted to an eleemosynary or non-profit recipient and must fairly reflect the value of the work, otherwise approval will be denied unless the original royalties or other compensation are either discontinued or diverted.

6. Whenever approval of the Supreme Court is required the judge shall submit the details of the plan to the Administrative Director for transmittal to the Supreme Court and the Supreme Court may refer the matter to the Advisory Committee for study and recommendation.

D. Appearances Before or Appointments to Legislative or Executive Bodies.

1. With permission of the Supreme Court a judge who has been invited to do so may appear before an executive or legislative body or official on matters concerning the law, the legal system and the administration of justice, but only when:

   a. the hearing is public;
   b. the subject matter reasonably may be considered to merit the attention and comment of a judge as a judge, and not merely as an individual;
   c. the appearance will not involve the office in political controversy.

2. A judge should not accept appointment to a governmental committee, commission or other position except with prior approval of the Supreme Court.

3. Where an Act of the Legislature provides that a judge shall be a member of a committee or commission, the designation of the judge shall be made only by the Chief Justice or other authority designated by the Supreme Court.

4. It is Supreme Court policy that judges should not serve on governmental commissions or committees where the functions would include participation in:

   a. the allocation of funds;
   b. matters which may become the subject of political controversy;
   c. formulating or promoting proposals for legislative action.

E. Membership or Other Participation in Non-Governmental Organizations

1. As a general concept, a judge should take care that membership or participation in any organization does not impair or seem to impair the judge's impartiality.

2. General Membership Associations of Lawyers or Judges.

   a. A judge may be a member of any general membership national or international bar association, the New Jersey State Bar Association, any general membership county or local bar association; any association, institute or society devoted to the improvement of the law, the legal system or the administration of justice, or any association of judges;

   b. A judge may not serve as an officer, director or trustee of any of the foregoing bar associations;

   c. Subject to relevant limitations in the Code of Judicial Conduct, administrative directives or these Guidelines, judges may serve on suitable committees of the New Jersey State Bar Association; and also on suitable committees of any general membership national or international bar associations;

   d. Subject to the limitations referred to in subparagraph c, judges may serve as officers, directors, trustees or committee members of other non-governmental associations or institutes devoted to the improvement of the law, the legal system or the administration of justice; or any association of judges.

3. Limited Membership Associations of Lawyers.

a. A limited membership association is one the members of which have a community of interest based upon:

(1) Type of practice: (a) all-inclusive membership; e.g. American Academy of Matrimonial Lawyers; or (b) membership limited to a particular side of litigation; e.g. Association of Trial Lawyers of America, Association of Criminal Defense Lawyers of New Jersey;

(2) Particular political issues and goals;

(3) Gender, race, national or ethnic origin;

b. Membership in (1) and (2) above is prohibited;

c. As to a(3) above judges may accept or continue regular or honorary membership in an association of lawyers based on gender, race, national or ethnic origin unless the Supreme Court has established as a matter of policy that membership in such associations or any of them is not appropriate;

d. Judges' consideration of whether to accept invitations by limited membership associations to lecture, speak, appear as a panel member, etc; or to attend or otherwise participate in events or activities conducted by such associations shall be governed by Guideline IIIA3b;

e. Judges' acceptance of awards, honors and tributes offered by a limited membership association shall be governed by Guideline VI.

4. Other non-governmental associations.

a. Subject to the limitations hereinabove, judges may be members of and serve as officers in or trustees of other non-governmental organizations devoted to the improvement of the law, the legal system, or the administration of justice.

b. Judges may not assist such organizations in raising funds nor participate in the management and investment of the assets of the organization.

IV. NON-LAW-RELATED ACTIVITIES

A. Avocational Activities

1. Writing, lecturing, speaking; engaging in the arts, sports and other social and recreational activities.

a. The General Guidelines apply to avocational activities.

b. Because of the range of permissible activities, judges should be particularly careful:

(1) not to engage in activities that might detract from the dignity of the judicial office or interfere with the performance of judicial duties;

(2) to examine the composition and purposes of any organization, group or club before joining, speaking to or otherwise becoming associated with it, in order to avoid any appearance of bias or association with bodies or groups having clear interests in litigation in state or federal courts;

(3) to avoid unnecessary public controversy, or involvement in political matters.

c. Judges should not allow social relations or friendships to influence or appear to influence their judicial conduct.

d. With respect to writing for commercial publication Guideline IIIC is applicable.

2. Teaching non-legal subjects.

a. Subject to the General Guidelines and the relevant provisions of Guidelines IIIA1 and 2, judges may teach non-legal subjects.

b. In teaching non-legal subjects judges should be particularly careful to avoid entanglement in controversial issues which might detract from the dignity of the judicial office or embroil the judge in issues of a political nature.

c. As in the case of law-related teaching, the judge should notify the Supreme Court, and the Assignment or Presiding Judge in accordance with Guideline IIIB3.

B. Civic and Charitable Activities

1. Subject to the general guidelines, judges are encouraged to participate in educational, religious, charitable, fraternal, or civic organizations not conducted for the economic or political advantage of their members.

2. Judges may serve as officers, trustees, or non-legal advisors of such organizations unless the duties would include investment or supervising the investment of funds.

3. Judges should refrain from joining organizations or groups which:

a. are regular or likely litigants in New Jersey courts, or otherwise resort to the New Jersey courts in support of their stated goal;

b. represent one side in any current political or legal issue of prominence;

c. actively pursue specific controversial issues of local, state, national or international importance;

d. are composed of members selected by a sponsoring organization and are not broadly representative;

e. are committed to the analysis of or action on social, economic, political or other major public issues.

4. The holding of office in neighborhood, community, condominium or homeowners associations, or active participation on behalf of such organizations, carries a potential for political involvement or public controversy and should be avoided.

C. **Attending Events**

1. A judge should avoid lending the prestige of the office to advance the private interests of others and should avoid conveying or permitting others to convey the impression that they are in a special position to influence the judge.

2. Before accepting any invitation a judge should carefully consider, in the light of Canon 7, whether:

a. the judge's presence might appear to advance some political, commercial or other interest of the host or of another;

b. the event is to honor an active political figure;

c. the event is one which may be or is customarily attended by politicians.

D. Organizations Practicing **Invidious Discrimination**

1. It is inappropriate for a judge to hold membership in any organization that practices invidious discrimination on the basis of race, sex, religion or national origin.

2. Organizations dedicated to the preservation of religious, spiritual, charitable, civic or cultural values, which do not stigmatize any excluded persons as inferior and therefore unworthy of membership are not considered to discriminate invidiously.

V. FUNDRAISING ACTIVITIES

A. **In** order to avoid misuse of the judicial office through possible intimidation of potential donors, or embarrassment if the donation is not made, or arousal of an expectation of future favors, a judge should not:

1. take part in any fundraising event as an honored guest, speaker, toastmaster, or entertainer or in any other significant capacity;

2. serve on a committee or otherwise engage in activities related to fundraising;

3. sign or be mentioned in the text of a fundraising letter;

4. permit the judge's name to appear on the letterhead or in any other materials if they will be used in soliciting funds.

B. It is permissible for judges to attend fundraising events of, and contribute to appropriate organizations whether law-related or non-law-related, but not to make a contribution pledge in public.

C. Fundraising activities include all charitable and other events from which an organization derives direct financial benefits, through the sale of tickets or otherwise, even if the financial benefit is incidental to the main purpose of the event, or the funds raised are to be donated to another organization, charity or cause. Events where tickets are priced merely to defray the cost of the occasion are not fundraising events.

D. Subject to the general guidelines, judges may make recommendations to public and private fund-granting agencies on projects and programs concerning the law, legal system, and the administration of justice.

VI. TESTIMONIALS, AWARDS AND OTHER HONORS

A. Testimonial Functions

1. There shall no be testimonial functions permitted honoring a judge while the judge is still on the bench unless the function is organized, sponsored and hosted by persons or an organization related to the judiciary such as a court clerks' association, a judges' association, the judges' law clerks or former law clerks, the State Bar Association, a County Bar Association, law school alumni association or any other organization listed in Sections IIIE2, 3 and 4.

2. The judge who is being honored may accept a gift of nominal value such as: a gavel or plaque; a trophy or award for activities incident to a hobby; a book; a painting; a modestly priced remembrance such as a brief case or sporting equipment and similar items.

B. Awards, Honors and Tributes

1. Subject to the general guidelines, a judge may accept an offered award, honor or tribute in special recognition of the judge's achievement or service, as follows:

a. An honorary degree or other award or honor from a law school, university, college, or other educational institution or from its alumni or alumnae association;

b. An award, honor or tribute for special achievement in judicial administration from the American Bar Association or other national general membership bar association, or any committee or section thereof; the State Bar Association; an institute or society devoted to judicial administration, or a judges' association;

c. An award, honor or tribute in recognition of a judge's years of service, assignment to another vicinage, or impending retirement, from persons or an organization closely associated with the judiciary, such as a court clerk's association; a judge's association; the judge's law clerks, present former or both; or any general membership bar association or limited membership bar association as to which the Supreme Court has not disapproved membership for judges;

d. An award, honor or tribute from a public or non-profit or non-political organization for activity in a non-law-related capacity directly related to that organization; provided, however, that the presentation shall not

be at a fundraising event.

2. A judge shall not accept an award, honor or tribute for any law-related activity where the recipient is selected through a nomination or election process and in no event shall such award, honor or tribute be accepted where the selection process is for the purpose of designating the recipient as "Judge of the Year", "Man of the Year" or the equivalent.

3. The judge receiving an honor, award or tribute may accept a modestly priced gift, such as a trophy, gavel, plaque, book, picture, or briefcase.

VII. BUSINESS AND FINANCIAL ACTIVITIES

Sufficient guidelines are contained in Canon 5D of the Code of Judicial Conduct.

VIII. FIDUCIARY ACTIVITIES

Sufficient guidelines are contained in Canon 5E of the Code of Judicial Conduct.

IX. ARBITRATION

Canon 5F prohibits judges from acting as arbitrators or mediators. With regard to the system of judicial arbitration for tort actions determined by N.J.S.A. 39:6A-24 **et** seq., **the Supreme** Court has established that retired judges on recall **are** not eligible to serve **in** this system.

X. POLITICAL ACTIVITIES

Sufficient guidelines **are** contained **in Canon 7 of** the Code **of** Judicial Conduct.

XI. LETTERS OF RECOMMENDATION

This Guideline incorporates by reference the Chief Justice's memorandum to Assignment Judges dated June 18, 1982 affixed hereto as Addendum A.

ADDENDUM A
LETTERS OF RECOMMENDATION

General Policy

Probably the most important thing to remember is that a judge should never give recommendations, whether oral or written, unless he or she has substantial personal knowledge of the applicant, gathered over a substantial period of time. Recommendations should never be provided solely as a favor for friends or relatives. Letters should be sent on personal stationery only, and except for applications to law school or college should be written only in response to an express solicitation, preferably received in writing.

Recommendations should not be given by phone unless that is clearly the appropriate form of response. The letter form itself is probably the best discipline to assure that we stay within the confines of what is permitted for judges. The usual exceptions, where a telephone may be appropriate, occur when the Executive solicits judges for their opinion about lawyers being considered for the bench or, on occasion, for other public employment; or where law firms call seeking the judge's opinion about former law clerks. Obviously there may be other examples where telephone response is appropriate.

Specific Restrictions

1. Law school and college admission and/or scholarship.

You may write a letter of recommendation for a student or prospective student known personally to you setting forth knowledge of the applicant and conclusions as to his or her ability and character.

Since law schools and colleges do not ordinarily have procedures for soliciting letters of recommendation you may grant a student permission to list your name as a reference (and thereafter you may write a letter as a result of an inquiry from the school) or you may write a letter upon request of the applicant without any inquiry from the school.

2. Employment in the private sector.

To avoid seeming to pressure potential employers, you should not write an unsolicited letter of recommendation for employment in the private sector. You may, however, allow your name to be listed as a reference and write in response to a solicitation, based, as always, solely on your personal knowledge of the applicant.

3. Employment in the public sector.

As in the private sector, you may be listed as a reference, may write a letter of recommendation that has been solicited, but must never write an unsolicited

recommendation. You must avoid being perceived as a supporter of or active in any political party or activity or any branch or faction of a party. This is an area where the greatest sensitivity is needed and where your recommendations should be confined very carefully to those whom you know extremely well, and even then, there may be many occasions where good judgment requires that you stay completely out of the matter. The thought that it "would be unfair" to deprive one whom you know of the benefit of your observations has to be balanced against what might be unfair to the entire judiciary when something a judge does makes it appear that we are involved in politics.

As suggested above, you may respond to inquiries from the Executive or Legislative Branches, especially about attorneys being considered for judicial posts, provided the inquirer has official responsibilities in the matter. Ordinarily such inquiries would be on a confidential basis.

4. Trial certification and approved lists.

If listed as a reference by an attorney seeking New Jersey Trial Certification or National Board of Trial Advocates certification or acceptance on an approved attorneys' list, you may respond on the form submitted. You may not, however (and this is the subject of a directive of many years' standing), (other than the above) as to the legal capability and professional integrity of practicing attorneys.

5. Law firms in your county.

Particular care should be exercised in giving recommendations for employment with law firms actively practicing in your vicinage. You should avoid making such recommendations where possible, but there may be circumstances that require it, e.g., where such firm solicits your opinion about someone who has just served as your law clerk. Even in such case, it is important to avoid as best you can the impression that might otherwise be given that pressure is being exerted on the firm.

I am sure the foregoing does not cover everything, and that there may be exceptions to some of those suggested guidelines. I hope it is helpful.

ADDENDUM B

GUIDELINES ON THE PRACTICE OF LAW BY RETIRED JUDGES

The Supreme Court has authorized issuance of the following guidelines which illustrate the extent of the restriction upon the practice of law by a retired judge who has retired under the provisions of the Judicial Retirement System Act (N.J.S.A. 43:6A-1 et seq.). (Administrative Directive dated April 10, 1995)

(1) A retired judge may be associated in the practice of law with other attorneys. A retired judge's name may appear on the letterhead, on the office door but not in the firm name. A retired judge may not sign any papers filed in court, including pleadings. In any cases tried by the firm before a jury, the retired judge's name should not be referred to in the presence of the jury. The restrictions on the practice of law by the retired judge are personal and do not extend to those with whom the judge may be associated in the practice of law; R. 1:15-4 does not apply to retired judges. Retired judges should be aware of N.J.S.A. 52:13D-17.2c which precludes any involvement with a casino licensee by a firm with which a retired judge is associated for a period of two years from the date of retirement.

(2) A retired judge may not serve as an attorney in any contested matter in any court of the State of New Jersey. This prohibition includes participating in the actual conduct of any proceeding before the court, appearing at counsel table during the course of a court proceeding, and serving therein either as associate counsel or counsel of record.

Office work in connection with pending or proposed litigation is not prohibited. Thus, pleadings may be drafted, interrogatories framed and answered, and briefs, motions and other papers may be prepared. It is not permissible, however, for the retired judge's name to appear on any papers, including any indication that the judge is "of counsel", "on the brief or is connected in any way with the litigation. Similarly, a retired judge may participate in out-of-court settlement discussions, or in the taking of depositions prior to trial, but may not participate in any settlement conference before the court (whether in open court or in chambers), nor should reference be made in any courthouse conferences to the fact that the judge has personally been involved in such negotiations, nor should the judge participate in any court proceeding with regard to any depositions the he or she may have taken.

(3) Subject to the provisions of paragraph (7) infra a retired judge is not precluded from serving as attorney for a decedent's estate or as an executor, guardian, trustee, or in any other fiduciary capacity, provided that in any litigation which may develop in the course of the performance of such duties the judge is represented by other counsel, who may be a member of the firm with which the judge is associated. A retired judge may not handle any other uncontested matters in any court, including those which require only approval of gx parte orders or other papers which may be considered pro forma and require little if any exercise of judicial discretion.

(4) A retired judge may not serve as attorney in any contested or uncontested matters before either State or local administrative agencies, boards and tribunals exercising a discretionary or quasi-judicial function, except before the Transfer Inheritance Tax Bureau when acting as attorney for the estate and not specially retained. A retired judge may not represent parties before auto arbitration panels.

(5) A retired judge may not serve as attorney for any person before a county ethics committee, a committee on character, or any other committee or body appointed by the Supreme Court.

(6) A retired judge may practice before the federal courts or federal agencies, whether within or without the State.

(7) A retired judge may not accept fee generating court appointments, e.g., appointments to serve as a receiver, condemnation commissioner, guardian ad litem, mediator or arbitrator, except as arbitrator in the statutory or court approved arbitration programs. A retired judge may accept fiduciary appointments at the specific request of interested family members (e.g. Administrator C.T.A. provided same do not contravene any of the other restrictions set forth in this memorandum.)

(8) It is improper for a retired judge to appear in a New Jersey court as an expert witness (such as to testify as to reasonableness of attorney fees) or in any court as a character witness.

(9) It is improper for a retired judge to appear in court to testify as an expert witness in legal malpractice cases or as to a standard of conduct by a lawyer in related matters.

(10) A retired judge may serve as legal adviser to a public agency, if the duties and responsibilities of such position do not contravene these guidelines. Generally, the role of a retired judge associated with a public agency should be of the same nature as that of a retired judge acting as "of counsel" to a law firm. A retired judge should not act as chief counsel to a public agency (e.g. county counsel), since such a role would directly involve the judge in the conduct of litigation involving the agency. Further, it would be inappropriate for a retired judge to appear at a public meeting as an adviser to a public agency. Such an appearance may give rise to a suspicion that the judge is attempting to use the judge's status to advance the position of the agency.

REPORT OF THE SUPREME COURT COMMITTEE ON EXTRAJUDICIAL ACTIVITIES
(Abridged)

The Committee on Extrajudicial Activities was appointed in March 1984 to undertake a comprehensive study of permissible activities for New Jersey judges outside of their strictly judicial functions and to develop criteria or guidelines to aid judges in avoiding ethical improprieties in fact and appearance in their off-the-bench lives. The descriptive term "extrajudicial" as used in this report includes both "quasi-judicial," or law-related, and non-law-related conduct. The study was not intended to include related questions involving activities of (a) spouses and other relatives of judges, (b) judicial support personnel or (c) part-time judges. The general subject of permissible financial and business interests of judges was also excluded.

Introductory observations. In a free and democratic society, the independence and integrity of the judiciary are essential. The public expects judges to be honest, competent and devoted to the fair and impartial administration of justice. Any deviation from these high standards or any perception on the part of the public that judges are deficient in any of these qualities will inevitably result in a loss of confidence in the judiciary and seriously impair its effectiveness.

The notion that a judge should do nothing but judge has the virtue of simplicity, but little more. Like others, judges read newspapers, periodicals and books; watch television or listen to the radio; converse with family and friends; engage in recreational activities; travel and, in general, lead normal lives. While a cloistered existence would minimize the risk of improper conduct or exposure to the appearance of impropriety, it would be unrealistic to expect judges to be entirely unaffected by the world in which they live. As Chief Justice Wilentz cogently remarked at the Committee's workshop session on December 13, 1984, it is conceivable that judges could be helpful to society by wider participation without threatening an important value, since the very isolation which to some degree promotes the judiciary's fine reputation may also dilute its real understanding of society. On the other hand too expansive a view of how judges should conduct themselves when not actually engaged in the performance of their judicial role is also undesirable. Their status is such that their extrajudicial activities cannot be totally unrestricted. The obligations of judges do not cease at the courtroom door. Judges are cautioned by the Code of Judicial Conduct to act "at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary." The Commentary to Canon 2 observes that judges "must therefore accept restrictions on [their] conduct that might be viewed as burdensome by the ordinary citizen and should do so freely and willingly."

A reasonable position between the two extremes has been achieved by the Code. With some limitations, law-related activities are encouraged. Others are carefully circumscribed. Thus, while judges are not separated from their communities, a degree of insulation

is provided so as to lessen the hazard of impropriety or the appearance of impropriety. The Committee endorses this approach.

The guidelines recommended by the Committee are intended to implement, not to supplant or modify, the Code. The goal has been to enable judges, in most cases, to evaluate for themselves, within the parameters of the Code, the appropriateness of the particular activity under consideration before deciding whether to undertake it.

Prior Court approval for extrajudicial activities: in general. It has been commonplace in the past for judges to solicit from the Supreme Court approval of or advice on a broad range of extrajudicial activities. These inquiries have been dealt with mainly on an ad hoc basis, and are still being handled in that manner pending receipt of this report. The Committee believes that the practice should be sharply curtailed.

To the extent that the Code permits, and in many cases encourages, extrajudicial activities, prior approval is unwarranted unless specifically required by the Code, Court Rules or administrative directives. To seek permission to do that which is already permitted without prior approval is redundant.

By consulting the Code and applying the guidelines, judges should be able to resolve the propriety of the contemplated activity and to heed such limitations as may be placed upon the activity itself without further assistance. There will undoubtedly be occasions when the guidelines may not be entirely helpful or clarification is desired. The Committee's view is that requests for further guidance in such cases should be diverted from the Supreme Court. We propose later herein the establishment of an advisory committee to deal with these matters without referral to the Court except where policy matters are involved.

It is clear from our review of past Supreme Court action on judges' inquiries that the Court's concern has correctly been the hazard of impropriety or the appearance of impropriety. Nevertheless, the Committee is satisfied that extrajudicial activities of judges need not be subjected to prior scrutiny except in a limited number of cases. More extensive supervision would be contrary to the spirit and purpose of the Code and the implementing guidelines. There is reason to believe that the vast majority of judges will act responsibly and with discretion. In any event, they are accountable for their conduct and subject to discipline for transgressions.

Methodology employed in drafting guidelines. Drafting suitable guidelines was not an easy task. An ever present temptation in these matters, to be avoided at all cost, is to try to anticipate every conceivable problem and frame a guideline to fit. The end result would be so lengthy and complex as to be virtually unworkable. But the other extreme of excessive generality is equally faulty, because too little information is almost as useless as none. An approach was evolved to steer clear of the pitfalls of both excess and inadequacy.

To avoid unnecessary repetition the format called for an opening statement of general guidelines pertinent to all extrajudicial activities, although the degree of relevancy might vary with the particular activity. Canons 4 and 5 were divided into their component parts, and each was studied to determine the particular guidelines that would be needed. Since Canon 4, which deals with quasi-judicial activities to improve the law, the legal system and the administration of justice, is essentially permissive, the focal point was not the activity itself in most instances; rather, it was the restrictions or limitations most appropriate for each. In the case of Canon 5, where matters other than law-related ones are involved, the focal point was more frequently the activity itself, with guidelines to assist in identifying those to be avoided. Care was taken to ground all guidelines on one or more of the general standards and to keep them as concise as possible.

Restricting extrajudicial activities; rationale. Justification for reasonable limitations upon judges' off-the-bench activities is found in these basic policy considerations:

First. Canon 3 of the Code voices the cardinal principle that "[t]he judicial duties of a judge take precedence over all his other activities." Extrajudicial activities, whether law-related or not, must not encroach upon or conflict with those duties. Care must be taken that outside interests are not so extensive as measurably to impair one's ability to perform properly the judicial function.

Second. Judges must always guard against the appearance of bias or partiality or the perception of prejudgment of issues likely to come before them.

Third. Canon 2 of the Code enjoins judges to "avoid impropriety or the appearance of impropriety." Judges must not risk subjecting themselves to improper influences or the appearance of being so subjected, or participating in activities of such nature or allowing themselves to be used in such manner as to impair the dignity and esteem in which the court should be held.

Fourth. By reason of the constitutional restriction against other "gainful pursuits," reflected in Canon 6, judges may not be compensated for any extrajudicial activity, except that they may receive reimbursement for certain expenses.

The general guidelines essentially incorporate the foregoing policy considerations. With particular regard to the primary function of judges, the Committee was firmly of the opinion that extrajudicial activities should not ordinarily be conducted during court time, nor should law clerks, secretaries or other court personnel assist a judge in the performance of such activity, unless, and then only in the case of a law-related activity, prior approval is obtained. Such approval, whether in this case or in any other situation where it is appropriate, should be obtained from: (1) the assignment judge of the vicinage, for judges of the trial divisions and parts thereof, (2) the Presiding Judge of the Tax Court, (3) the Presiding Judge for Administration of the Appellate Division, or (4) the Supreme Court in the case of members of that Court, an Assignment Judge or the foregoing Presiding Judges,

or where expressly required by the Code, Court Rule, guidelines or other established policy of the Supreme Court.

Law-related activities: teaching, speaking, writing, etc. Canon4 recognizes the unique opportunity of judges, because of their position and experience, to contribute positively to the improvement of the law, the legal system and the administration of justice, by speaking, writing, lecturing, teaching and participating in seminars and panel discussions. There are only four restrictive clauses in the Canon: (1) engaging in the activities is subject to the proper performance of judicial duties; (2) judges should not cast doubt on their capacity to decide impartially any issue that may come before them; (3) no compensation may be received other than reimbursement for certain expenses, and (4), in the case of teaching, prior approval of the Supreme Court is required.

Encroachment upon judicial duties. The Committee is in complete accord that no extrajudicial activity should result in neglect of or interference with judicial duties. There is always the potential hazard of distraction from those duties when judges undertake to speak, lecture, teach, write or engage in related activities, ranging from minimal in the case of an occasional, informal talk before a group such as a bar association, to possibly worrisome where teaching or writing is involved. The guidelines, in the view of the majority, adequately alert the judiciary to the problem.

Need for prior approval - speaking, writing, etc. There are occasions when engaging in or preparation for a contemplated law-related activity might require some use of court time or court personnel. In such cases, it is appropriate that permission should first be obtained from the approving authority upon a showing that the impingement upon the judge's duties will not be significant and will be outweighed by the benefits to be derived from the presentation.

Whether prior approval should generally be obtained before engaging in any of the listed activities, including teaching, irrespective of the use of court time, was a matter of dispute within the Committee. The minority that favored this procedure correctly took note of factors to be considered in determining the question of participation: (1) the probable time and effort involved in preparation and the impact upon ordinary judicial schedules, (2) the nature of the activity and the subject matter under consideration, (3) the organization or group to whom or before whom the presentation will be made, and (4) the purpose of the program. It was the view of the minority that the task of weighing these factors and any others that might be relevant, and of ultimately determining the appropriateness of the particular activity, should be given to an approving authority.

A majority of the Committee believes that the need for such broad supervision has not been demonstrated. Significantly, the Code does not require prior approval of any of the activities in question except teaching. Judges will have the benefit of guidelines from which they should be able to decide for themselves the propriety of activities that are not inherently suspect, but are, on the contrary, permitted and even encouraged. To add a layer

of approving authorities, except in limited circumstances, would not only proliferate the existing unsatisfactory ad hoc system, but also raise the specter of censorship. The majority does not recommend the adoption of so extensive a prior approval procedure.

Screening invitations. The Committee agrees that, in order to minimize the risk of creating the perception of bias or prejudgment of issues, or of exposure to impropriety in fact or appearance, judges should carefully screen invitations to speak or lecture. None should be accepted unless the judge is fully informed of the aims and purposes, as well as the membership, of the sponsoring group. There are also topics to be avoided, such as defending one's decisions or opinions or expressing views on what the law ought to be. The guidelines on this subject are framed so as adequately to inform the judiciary on what and what is not appropriate.

Teaching and writing. The Committee recognizes that teaching and writing present special problems. They are time-consuming to a much greater degree than other law-related activities and, in addition, particularly implicate the prohibition against compensation, except for allowable expenses.

Why teaching was singled out in the Code for prior Supreme Court approval is not clear. It is a fact that before the advent of the Code teaching was not permitted as a matter of Supreme Court policy. The reasons, at least in part, seem to have been possible interference with court duties, improper use of court personnel to assist in preparation and the question of prejudgment of issues likely to come before the court. But the same fears would be relevant today in the case of other law-related activities, for which, under the Code, prior approval is not a requisite. And if, as has been suggested, the qualifications of the judge to teach are a proper subject for inquiry, the answer is that whether a judge is qualified to teach is better left to the judgment of the dean of the law school, if that is where the teaching is to be done, or whoever elsewhere is charged with the responsibility of passing upon credentials.

It may be that the requirement of prior approval for teaching was a compromise between those who wished to retain the policy against teaching and those who preferred to adopt the Canon as originally recommended by the American Bar Association, which did not contain any provision for prior approval. In any event, a majority of the Committee voted to recommend that the requirement for prior approval be deleted. Other methods of obtaining approval for or notification of a teaching engagement were considered but not endorsed. However, a limited degree of supervision is advisable to insure that the time required for preparation and teaching will not adversely affect the judge's performance of his or her judicial duties. For that reason, before undertaking the engagement, the judge should inform the Supreme Court and the judge's assignment or Presiding Judge, as the case may be, of the particulars, including the diversion plan, if any, for the compensation that otherwise would have been received. The subject of diversion of compensation is discussed in more detail below under the caption "Law-related commercial publication."

Writing differs from teaching and other forms of oral presentation in the degree of permanence of the record, the relative non-exclusivity of the body of readers and the opportunity for review and revision of the finished work. The need to avoid the appearance of prejudgment becomes more acute in the case of writing. A judge who has criticized the state of law or expressed a view on what the law ought to be in a published article or treatise may later, while on the bench, hear those views quoted by counsel during argument on the same issue. It would be difficult for opposing counsel or litigants to become convinced that the judge would respond affirmatively to a contrary argument.

Law-related commercial publication. The Supreme Court has requested the Committee to address the question of judges writing for commercial, but law-related, publication and to submit its views and recommendations thereon. Canon 4 encourages writing, but is silent on the method of publication. If a work is to be published in a bar association journal or a law review, then, as long as there is compliance with the applicable Canons and guidelines, there could be no valid objection. The same would be true of a more ambitious project, such as a book or treatise, although it is difficult to envisage a judge's undertaking a task of that magnitude without the prospect of commercial publication, unless underwriting could be obtained from a non-profit body or foundation.

The significant distinction, therefore, seems to be the method of publication; i.e., commercial or non-commercial. Although compensation may not be received in either case, that fact may not be known to the general public. Consequently, there may be a perception that the author will benefit financially from the sale of the work, even if the publisher actually diverts to some eleemosynary or other non-profit purpose the royalties or other compensation that otherwise would have been paid to the author. On balance, the Committee concluded that the benefit accruing to the readers from the knowledge and experience of the judge should ordinarily outweigh any adverse perception the public may arguably have from the fact of commercial publication. However, to eliminate any misconception the writing should contain a disclaimer of compensation in either a prominently displayed preface or footnote.

Since writing for publication requires a considerable amount of time and effort, judges must clearly understand that there can be no interference with their primary responsibility. Problems in this respect are not anticipated, in as much as the practice of extrajudicial writing for publication is not widespread, and major works are even less frequent.

The Committee recommends that writing for commercial publications of law-related writings should be permitted; provided, however, that (1) the proposed writing would clearly be unobjectionable if published non-commercially; (2) the author does not let the writing interfere in any way with his or her judicial duties; (3) the services of a secretary, law clerk or any other person employed in the judicial system are not used for the project; (4) no compensation is to be received, and (5) there is strict compliance in all other respects with the applicable Canons and guidelines.

Diversion of royalties or other compensation. The Committee was also requested to advise on the matter of diversion of royalties or other compensation. During the Committee's discussion of the issue, there was agreement, at least preliminarily, that no financial windfall should come to the publisher because of the prohibition against compensation. The committee still adheres to that view and recommends that judges should be advised not to write for commercial publication unless the publisher commits itself to a suitable diversion to an eleemosynary or other nonprofit recipient in a law-related field of the royalties or other compensation that would otherwise have been paid to the author.

Several years ago, the Court considered the use to be made by a university of savings resulting from the engagement of judge-teachers. The position taken at the time was that how the savings were to be applied was an internal matter for the university to decide, and the judge involved should not participate directly or indirectly by creating or suggesting the creation of a trust fund, or by designating or approving the eleemosynary or other non-profit recipient in any manner, shape or form. This policy, which can be applied without difficulty to commercial publishing, should be continued. But, in any case where such diversion is to occur, whether it be teaching or writing, the judge, before undertaking the engagement, should as was done here, submit the detailed plan to the Supreme Court for review and approval.

Continuation of royalties or other compensation for prior publications. Another question referred to the Committee deals with the continuation of payments in cases where the publication of the law-related work occurred prior to the author's becoming a judge. Ordinarily, this should present no problem, inasmuch as the payment would not be for an extrajudicial activity. Complications may arise where, as in one case, involving an annotation of the Court Rules, the writer has updated the annotations annually; and, in another, the author of a treatise on criminal practice and procedure has continued to prepare annual supplements or pocket parts. Unresolved was the issue of whether the arrangements in both cases should terminate after a period of time. The concern seems to have been whether royalties received might actually be in large part for present work rather than that done prior to the writer's becoming a judge.

The Committee shares the Court's concern but lacks sufficient details of the financial arrangements to enable it to offer definitive advice on the issue of terminating the approval. Instead, the Committee recommends that these matters, as well as all other similar requests for approval, should be referred as they arise to an advisory committee, the establishment of which is detailed later herein. This committee would obtain all available information pertinent to the submissions and then recommend to the Court the action to be taken, based upon the following considerations:

1. The Committee must be satisfied that the judge will receive no compensation, directly or indirectly, from the work done subsequent to becoming a judge.

2. Any plan for diverting or allocating to an eleemosynary or other non-profit

recipient the money that would otherwise have been paid, must completely divorce the writer from the creation of the fund or the designation or approval of the recipient and vest the matter in the sole discretion of the publisher.

3. Where the approval sought is for supplementing or updating, annually or otherwise, a work published before the author became a judge, it must be clear from the financial arrangements that:

(a) royalty or other payments, if continued, are exclusively for the original writing and may not include, even in part, the updating or supplementation;

(b) any compensation for the updating or supplementation that would otherwise have been paid must be diverted to an eleemosynary or other non-profit recipient, and must fairly reflect the value of the work effort; otherwise, approval should be denied unless the royalties or other compensation for the original writing are either discontinued or diverted.

Appearances before executive or legislative bodies. Canon 4C permits judges to appear at a public hearing before an executive or legislative body or official on matters concerning the law, the legal system, and the administration of justice. Consultation with such body or official is permitted only on matters concerning the administration of justice and by a judge charged by the rules of court with responsibility for those matters.

The Committee is in accord, but recommends that any appearance by a judge should be on notice to and approval by the Supreme Court, and, to the extent necessary, that the Canon be amended accordingly. While a judge should make clear at such appearance that his or her own point of view is being expressed, unless instructed otherwise by the Court, overall policy considerations justify the Court's monitoring of the appearance. There should be assurance that the subject matter of the hearing merits the attention and comment of a judge, and that the judiciary will not become involved in political controversy. The judge must, of course, observe the general and other pertinent guidelines.

Appointment to executive or legislative commissions, committees, etc. Closely related to appearances before executive or legislative bodies is the subject of appointments to them. Canon 5G is explicit in this regard. A judge should not accept appointment to a governmental committee, commission, or other position except with prior approval of the Supreme Court as provided in the Rules of Court. R. l:17-l(a) prohibits judges from holding "any other public office, position or employment, without prior written approval of the Supreme Court, requested through the Administrative Director of the Courts."

Reviewing past actions by the Supreme Court in these matters reveals an evident reluctance to grant approval. Judges have been cautioned not to take part in the extra-judicial allocation of funds for any purpose, nor to be placed in the position of seeking or supporting legislation. Offers of appointment to any governmental commission or other body

should be declined if there is danger of involvement in such matters. The Committee believes, as a matter of general policy, that judges should not accept appointment in the absence of a clearly demonstrated need for the inclusion of the judge.

Membership in nongovernmental, general membership organizations or associations of lawyers and judges. Subject to the general limitations pertaining to the proper performance of judicial duties, the capacity to decide issues impartially and compensation, Canon 4D permits a judge to serve as a member, officer of director of a nongovernmental organization devoted to the improvement of the law, the legal system, or the administration of justice. However, Administrative Directive 8-75, issued on October 15, 1975, less than a year after the adoption of the Code, provides, in part, that judges should not be officers, trustees or committee members of bar associations. And, in 1983, in a letter from the Chief Justice to the president of a county bar association, that "long-standing" policy was restated.

The Committee is not opposed to the policy. It appears to have been motivated by a desire to preserve the independence of the bar associations, which should be free to criticize legislative or judicial policies without the potentially embarrassing or restraining presence of a member of the judiciary occupying a prominent position in the association. Moreover, control of a bar association should be by attorneys. These views are supported by the State Bar Association.

The Committee is impelled to comment, nevertheless, on the confusion that is likely to result from the apparent clash between a Canon that does not necessarily limit participation by judges in general membership bar associations, and Supreme Court policy that does. The Committee is of the view that either the Canon or the commentary should be amended to conform to the policy.

The Committee sees no reason to apply the policy to the American Bar Association or other national organizations such as the American Judicature Society, as long as it is made thoroughly clear that before any office or committee assignment is accepted, the judge must be satisfied that the duties will not be so time consuming as to interfere with the proper performance of judicial duties.

Limited membership organizations or associations of lawyers and judges. The New Jersey Lawyers Diary contains a listing of such groups. These are associations the members of which have a community of interest based upon type of practice, gender, race, ethnic origin or particular political issues and goals. Whether a judge should become or remain a member of any of these associations or groups was a controversial and, to an extent, highly, sensitive issue that evoked extensive debate.

Several members of the committee argued that the prudent course would be for a judge to abstain from joining or to terminate membership, regular or honorary, in any organization of the types under consideration. The feared hazard was a possible perception

or inference that the judge identified with the aims or purposes of the organization, thus creating doubt as to his or her impartiality when confronted with particular issues. These committee members recommended the adoption of a guideline advising judges to decline or terminate membership in these or similar associations.

Those who opposed the recommendation deemed it to be unduly harsh as it related to associations of attorneys or judges the membership of which consisted principally, if not entirely, of one gender, race or ethnic origin. They believed it would be unfair to single out such groups and assume that if, for example, a member of a women's bar association should be appointed to the bench, her impartiality might be suspect because of her affiliation with the group.

That a judge's impartiality must be absolute was not disputed. Equally clear was the need to avoid impropriety or the appearance of impropriety. But the committee also took into account the underlying concept of the guidelines, which is to enable judges to determine for themselves to the extent possible the appropriateness of a contemplated activity.

Accordingly, a compromise solution was agreed upon by the committee. A guideline was drafted cautioning judges, before accepting or continuing regular or honorary membership in any of the groups involved, particularly those based upon gender, race or ethnic origin, to make sure, after considering carefully all relevant factors, including purpose and membership, that he or she would not be or appear to be involved in controversy, invidious discrimination, or the appearance of bias. In this regard judges should take note of Directive #8-75 dated 10/15/75 (Compilation of Administrative Directives pp. 19-20) declaring that it would be inappropriate for judges to accept honorary membership in organizations which represent members of the bar having a special interest. Cited as an example was the acceptance of honorary judicial membership in the American Trial Lawyers Association. The committee is aware that judges might differ on whether to abstain from membership in a particular association, especially one based on gender, race or ethnic origin. Any judge who may have difficulty in determining the matter should seek an opinion from the Advisory Committee.

Fundraising activities. This subject is addressed in Canon 4D and, more extensively, in Canon 5B(2). Both Canons will be discussed in this segment of the report.

The former bars judges from assisting law-related, nongovernmental organizations in raising funds and from participating in the management and investment of the funds, although recommendations may be made to public and private fund-granting agencies on law-related projects and programs. The latter, which pertains to civil and charitable activities, is more explicit:

> A judge should not solicit funds for any educational, religious, charitable, fraternal, or civic organization, or use or permit the use of the prestige of his office for that purpose, nor may he be listed as an officer, director or trustee

> of such an organization in any letters or other documents used in such solicitations. He should not be a speaker or the guest of honor at an organization's fund raising events, but he may attend such events and contribute to such organizations.

Canon 5B(2) also provides that judges should not give investment advice to such an organization nor serve on its board of directors or trustees if it has the responsibility for approving investment decisions.

On the whole, the Committee agrees that judges should studiously avoid entanglement with fund-raising. A monograph recently published by the American Judicature Society sets forth the rationale for Canon 5B(2), which is equally applicable to Canon 4D:

> The purpose of this prohibition is to avoid misuse of the judicial office. The rule addresses the dual fears that potential donors may either be intimidated into making contributions when solicited by a judge, or that they may expect future favors in return for their largesse. In either case, the dignity of the judiciary suffers, and since most charitable organizations can raise funds perfectly well without the involvement of judges, a per se prohibition was deemed appropriate. [Lubet, "Beyond Reproach: Ethical Restrictions on the Extrajudicial Activities of State and Federal Judges (1984)."]

The foregoing has long been the policy in New Jersey. Chief Justice Weintraub adhered strictly to the view, as does Chief Justice Wilentz, that it is a misuse of judicial office for a judge to engage in any activity that might pressure a lawyer or citizen into contributing because a judge has requested a contribution or because the judge's presence might cause embarrassment if the contribution is not made.

It is to be noted that, while Canon 5B(2) as adopted in New Jersey does not permit a judge's being listed as an officer, director, or trustee in any letter or other documents used in the solicitation of funds, the American Bar Association version, followed in other jurisdictions, does not contain the restriction. The Committee does not recommend any change in the New Jersey version in this respect.

The Committee discussed a possible exception to the strict requirements of the Canons in the case of raising funds for law schools. It was suggested that judges should be permitted to be honored or even speak at fund-raising affairs in such cases and support was found in the fact that Canon 4D is silent on the subject. Although opinion was divided, it is the consensus of the Committee that no exception is warranted.

That Canon 4D does not refer specifically to law schools is of no consequence. More significant is the refusal of this State to adopt even the slightly more liberal wording of the

corresponding Canon in the American Bar Association version, which permits judges to assist in fund-raising but not to participate personally in public fund-raising activities. The Committee is not convinced that the potential perception of misuse of judicial office is diminished merely because the beneficiary of the fundraising activity is a law school. If there is the slightest possibility that a judge may help to raise funds or appear to do so, the activity should be prohibited.

Receipt of honors and awards. No Canon bears directly on the matter of a judge's accepting honors or awards, except to the extent that Canon 5C(4)(a) permits a judge to "accept a gift of nominal value incident to a public testimonial to him," and Canon 5B(2) provides that a judge may not be the guest of honor at a fund-raising event. However, guidelines were established by the Supreme Court with respect to testimonial or retirement functions. They are contained in an administrative bulletin issued by the Administrative Office of the Courts in 1982. They read as follows:

1. There shall be no testimonial or retirement functions permitted honoring a judge while the judge is still on the bench unless the function is organized, sponsored and hosted by persons or an organization related to the judiciary such as a court clerks' association, a judges' association, the judges' law clerks or former law clerks, the State Bar Association, County Bar Associations, the American Trial Lawyers' Association or a similar organization.

2. The judge so honored may accept a gift of "nominal value" such as: a gavel or plaque presented to the judge as an outstanding lawyer or judge; a trophy or award for activities incident to a hobby; a book; a painting, a modestly priced remembrance such as a brief case or sporting equipment and similar items.

3. The judge may accept an award of special recognition (whether for his judicial or extrajudicial activities) such as an honorary degree from a college or university or a certificate of achievement from an organization such as the Boy Scouts, provided the award is not made in connection with a fund-raising event.

4. The testimonial or retirement function when permitted may not be a fund-raising event.

5. When a judge has retired and is no longer serving as a judge, the prohibitions set forth in these guidelines are no longer applicable.

These guidelines have been thoroughly debated, first by sub-committees assigned to the task of drafting position papers on the subject, and then by the Committee itself. The Committee decided that it was sufficient to refer only to testimonial functions which would include those tendered in anticipation of a judge's retirement but not thereafter. A

suggested standard was that a sitting judge who is tendered an award, honor or testimonial should exercise care to insure that the tender does not involve the judicial position and image in partisan advantage, political activities or fund-raising. In this context, it would be perfectly proper for a judge to accept an honor or award from a regular national, state or local bar association.

A question arose regarding the inclusion of the American Trial Lawyers' Association or a similar organization in the first paragraph of the 1982 Directive. In view of the foregoing discussion with regard to limited membership organizations, the Committee is of the view that judges should not accept any award or honor offered or sponsored by ATLA or a similar organization.

With respect to narrowly focused bar groups in general the Committee concludes that the same considerations which relate to judges' membership in them should also apply to the acceptance of honors or awards tendered by any of them or tendered by any non-law-related organization because of the judge's gender, race or ethnic background.

The Committee is aware that this is a troublesome area, particularly in the case of new judges. Upon ascending the bench, a judge undertakes the awesome burden of so conducting himself or herself as to promote public confidence in the integrity or impartiality of the judiciary. The judge must not allow gender, race or ethnic origin to influence the exercise of judgment or risk the perception by others that he or she is being influenced by such considerations. A recurring theme is that a judge should avoid impropriety and the appearance of impropriety in all activities.

In its deliberations, the Committee touched upon the matter of judges-designate; that is, those who have been nominated but are awaiting Senate confirmation, or if confirmed, have not yet taken the oath of office. Until such persons are officially members of the judiciary, they are not subject to the Code of Judicial Conduct or the implementing guidelines relating to extrajudicial activities. Nevertheless, at least as a matter of self-discipline, judges-designate should exercise discretion during the interim period in order to avoid possible embarrassment. The Committee believes that it would be helpful for the Supreme Court to cause a letter to be prepared for distribution to judges-designate advising them of activities deemed to be inappropriate.

The second AOC guideline, limiting gifts to those of nominal value, presents no problem and is endorsed, as are the last two, dealing with the avoidance of fund-raising events and the inapplicability of the rules to retired judges.

As to the third AOC guideline, the Committee deems it appropriate for a judge to accept honors from a law school, college, other educational institution, or from an alumni association. More difficult is the matter of special recognition of judges in such form as "Judge of the Year" and like awards. Another example is the award by Institute for Continuing Legal Education (ICLE) to a lawyer or judge for preeminence in post-admission

legal education. These awards are based upon nomination, election or some other form of selection from among a group.

A position taken in the federal courts is that judges who have achieved a preeminence such as to prompt public recognition should ordinarily be able to accept such honors, in that, apart from the personal gratification involved, the entire judiciary benefits from public praise of one of its members. Although the point is not without merit, there are countervailing policy considerations. The Committee believes that it is inappropriate for a judge to appear, even involuntarily, to be in competition with other judges for an award. Furthermore, the possibility exists that a member of the organization might seek to curry favor with a judge by making known in some fashion that he has nominated the judge for an award. Finally, it would not be amiss to remove any possible temptation for a judge who becomes aware of a nomination to do some discreet campaigning for the award.

Therefore, the Committee recommends the adoption of a policy for judges to decline any award or honor involving a selective process. This policy would apply irrespective of whether the award or honor is tendered by a bar association or other law-related group, or by a private group. The ban is particularly applicable in the latter case, since there is the additional possibility that the judge is being singled out for recognition because of a perceived position with respect to the law.

The third AOC guideline also includes awards or honors for non-law related achievements. The example given is an award from an organization such as the Boy Scouts. It is assumed that recognition would be accorded in such case for activity in a private capacity; e.g., scoutmaster. The Committee is of the view that a certificate of achievement or comparable honor is acceptable, provided it is clearly understood that it is entirely unrelated to the honoree's position as a judge and, of course, that no fund-raising or gift of more than nominal value is involved.

Avocational Activities. Canon 5A accords judges a broad assortment of permissible activities outside the realm of the law. Included are writing, lecturing and speaking; engaging in the arts, sports and other social and recreational activities; and, subject to prior Supreme Court approval, teaching on non-legal subjects. Compensation is not permitted for any of these activities. Moreover, the avocational activities should not detract from the dignity of the judicial office nor interfere with the performance of judicial duties.

It is not necessary to dwell at length on these activities. In earlier segments of this report, there was a listing of basic policy considerations that justified reasonable limitation upon judges' off-the-bench activities. Encroachment upon judicial duties was discussed. The need to avoid any conduct that might cast doubt on a judge's ability to be impartial was emphasized. The points made and conclusions reached are relevant here and require no further elaboration.

Because of the range of permissible activities in this category, judges must be

particularly careful to avoid unnecessary public controversy, involvement in political matters and association with bodies or groups having clear interests in litigation in state or federal courts. Judges should not allow social relations or friendships to influence or appear to influence their judicial conduct. They should carefully examine the composition and purposes of any organization, group or club before joining, speaking to or otherwise becoming associated with it.

As for teaching, the only aspect that calls for further comment is the requirement for prior Supreme Court approval. The Committee's discussion of the matter with regard to law-related teaching and recommendation that the requirement be deleted is equally pertinent here. However, as in the case of law-related teaching, the Supreme Court and the judge's assignment judge or Presiding Judge, as the case may be, should be informed of the particulars, including the diversion plan, if any, for the compensation that otherwise would have been received.

While investments are not within the scope of the Committee's assignment, a few caveats are in order with respect to financial activities. Pursuant to Canon 5C(2), judges should not serve as an officer, director, manager, advisor or employee of any business. In addition, because of the potential problem of disqualification, it would not be advisable for a judge to be an officer, director or trustee of an organization if the duties would include investing or supervising the investment of funds.

Civic and charitable activities. The Committee's views conform with Canon 5B. Judges should be encouraged to participate in educational, religious, charitable, fraternal, or other civic organizations not conducted for the economic or political advantage of its members, including positions as officer, director or trustee, subject to certain restrictions, many of which have already been referred to in other contexts. The restrictions have to do with activities that may adversely reflect on the judge's impartiality, interfere with the performance of judicial duties or involve fund-raising. Of course, all of the general guidelines are applicable. The restriction against involvement in fund-raising is especially pertinent in the case of civic and charitable activities. Reference should be made to the earlier segment on the subject.

Invidious discrimination. The Committee discussed the sensitive issue of shunning organizations that practice invidious discrimination on the basis of race, sex, religion or national origin. The Committee had no difficulty with this issue in principle. It was agreed that a judge should not be a member or otherwise associate with any organization that practiced such discrimination, and that a statement to that effect was needed. The problems were how to word the statement and what implementing guidelines, if any, were needed.

After several years of study and consideration, the American Bar Association's Standing Committee on Ethics and Professional Responsibility issued a report dated August, 1984, in which it recommended to the House of Delegates that the Commentary to Canon 2 be supplemented by a declaration against invidious discrimination. There is no need to

detail the proposal and rationale at this time. Interoffice memoranda of the Administrative Office of the Courts are available to those who may wish to explore the matter more fully. It is sufficient simply to note that, after declaring that it is inappropriate for a judge to hold membership in any organization that practices invidious discrimination on the basis of race, religion or national origin, the rest of the proposal was of little help since, in essence, the question of whether an organization practices invidious discrimination was left to each judge to determine as a matter of conscience without further guidance.

The Administrative Office of the Courts has recommended the following language:

> It is inappropriate for a judge to hold membership in any organization that practices invidious discrimination on the basis of race, sex, religion or national origin. Ultimately, each judge must determine in the judge's own conscience whether an organization of which the judge is a member practices invidious discrimination.

The Committee agrees that the wording should be as concise as possible, and recommends that it be limited to the first sentence of the AOC recommendation. However, the Committee has not been able to agree on implementing guidelines. Accordingly, the Committee decided that the sentence should merely be restated as the guideline. In addition, the guidelines should state that organizations dedicated to the preservation of religious, spiritual, charitable, civic or cultural values, and which do not stigmatize as inferior and therefore unworthy of membership any excluded persons, would not be considered to discriminate invidiously.

The distinction to be drawn, however inartistically, is between inclusive organizations, like those limited to persons of a particular religion, and exclusive organizations, which limit their membership by purposely excluding persons identifiable by race, sex, religion or ethnic background. There are, for example, clubs that traditionally have excluded women. The issue will probably arise most frequently in the case of private country or golf clubs. It is here, particularly, that judges will have to be guided by their own consciences.

Fiduciary activities. Canon 5D fully covers the subject of a judge's serving as executor, administrator, trustee, guardian or other fiduciary. No further guidelines are needed.

Arbitration. Canon 5E states that a judge should not act as arbitrator or mediator. The Committee agrees, since judges should not be distracted from their normal duties by undertaking to act as arbitrator or mediator outside the judicial system.

Political activity. From time to time, in this report, reference has been made to the fact that judges should refrain from any activity that might have a political connotation. Canon 7A(1) spells out in sufficient detail the types of activities to be avoided.

In this regard, it should also be observed that events and occasions ethnic in nature, such as parades, commonly attract political figures. Judges, of course, should not participate.

Advisory Committee on Extrajudicial Activities. The Committee recommends the establishment of an Advisory Committee on extrajudicial activities. This committee should be separate and apart from the present Advisory Committee on Judicial Conduct, which deals mainly with complaints of alleged misconduct of judges. Its primary function would be to advise judges and the Supreme Court regarding the interpretation and application of the Canons and guidelines to matters of extrajudicial activities.

The Committee discussed earlier in this report the existing system of ad hoc rulings in individual cases either by the Supreme Court or the Administrative Office of the Courts. We advised that the practice be curtailed and that such matters, except in limited cases, should be referred to an Advisory Committee.

The Advisory Committee should consist of not less than seven members, and should include a member of the bar and a lay person. The remainder should be judges, active or retired, including a judge of the Appellate Division. For obvious reasons, no Supreme Court Justice should be on the committee, unless retired.

The Advisory Committee would render advisory opinions only when requested in writing by a judge or by the Supreme Court. The opinion would be based on the facts presented. If the response to the request and the advice given was deemed to be without precedential value, it need not be published. If the Advisory Committee concludes that the advice would be of value to the entire judiciary, a formal advisory opinion would be issued and published, but, in such case, the judge in question would not be identified. If the Advisory Committee should conclude that a policy question is involved requiring determination by the Supreme Court, the matter would be referred to the Court with such recommendation as the Committee may wish to make. The Supreme Court, as it deemed necessary, could from time to time solicit the views of the Advisory Committee on matters of interpretation and application of the Canons and guidelines or on proposed amendments or additions.

The Administrative Director of the Courts would provide the Advisory Committee with an appropriate administrative staff, including a staff attorney.

This type of advisory committee has worked very satisfactorily in the federal court system and in other jurisdictions. The Committee is convinced that there is a pressing need for one here and urges that its recommendations be accepted.

As for retired judges recalled to judicial service, the broad question to be considered is the extent to which they should be governed by the Code and the implementing guidelines. According to the "applicability" section of the Code, all retired judges recalled

to judicial service "should comply with the provisions of this Code governing part-time judges." But part-time judges are not required to comply with the restrictions against serving as an officer, director, manager, advisor, or employee of any business (Canon 5C(2)); engaging in fiduciary activities (Canon 5D); acting as arbitrator or mediator (Canon 5E); practicing law (Canon 5F) (although, strangely, there is an apparent contradictory provision that a part-time judge shall not practice law except as permitted by the Rules of Court), and accepting extrajudicial appointments. Additionally, a part-time judge may receive compensation for teaching as set forth in Canon 4B; but, apparently, may not be compensated for teaching on non-legal subjects, since the restriction in Canon 5A(2) has not been lifted.

It is not necessary to dwell upon the inconsistencies and incongruities contained in the "applicability" section of the Code. The pertinent issue is whether, as a matter of policy, recalled judges should comply with the Code to the same extent as a full-time judge, except where the recall is for a limited and special purpose; e.g., to perform a marriage ceremony or to administer the oath of office to a newly appointed judge.

Conclusion. Despite the labors of the Committee, it does not pretend that the proposed guidelines will provide an answer to every problem involving extrajudicial activities. It is entirely possible that it has failed to address matters for which guidelines should have been drawn. Consequently, the guidelines should be under constant critical review, and supplemented or amended as often as may be necessary. With the assistance of the judiciary and the guidance of the Advisory Committee, should it be established, most, if not all, of such deficiencies as undoubtedly exist, will be corrected in time.