

OFFICIAL COMPILATION OF CODES, RULES AND REGULATIONS OF THE STATE OF NEW YORK

TITLE 22. JUDICIARY

SUBTITLE A. JUDICIAL ADMINISTRATION

CHAPTER I. STANDARDS AND ADMINISTRATIVE POLICIES

SUBCHAPTER C. RULES OF THE CHIEF ADMINISTRATOR OF THE COURTS

PART 100. JUDICIAL CONDUCT

100.4

Text is current through October 15, 2007.

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

- (1) cast reasonable doubt on the judge's capacity to act impartially as a judge;
- (2) detract from the dignity of judicial office; or
- (3) interfere with the proper performance of judicial duties and are not incompatible with judicial office.

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

(C) Governmental, civic, or charitable activities.

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

(2)

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

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

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

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

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

or

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

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

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

- (ii) may not be a speaker or the guest of honor at an organization's fund-raising events, but the judge may attend such events. Nothing in this subparagraph shall prohibit a judge from being a speaker or guest of honor at a court employee organization, bar association or law school function or from accepting at another organization's fund-raising event an unadvertised award ancillary to such event;
- (iii) may make recommendations to public and private fund-granting organizations on projects and programs concerning the law, the legal system or the administration of justice; and
- (iv) shall not use or permit the use of the prestige of judicial office for fund-raising or membership solicitation, but may be listed as an officer, director or trustee of such an organization. Use of an organization's regular letterhead for fund-raising or membership solicitation does not violate this provision, provided the letterhead lists only the judge's name and office or other position in the organization, and, if comparable designations are listed for other persons, the judge's judicial designation.

(D) Financial activities.

- (1) A judge shall not engage in financial and business dealings that:
 - (a) may reasonably be perceived to exploit the judge's judicial position;
 - (b) involve the judge with any business, organization or activity that ordinarily will come before the judge; or
 - (c) involve the judge in frequent transactions or continuing business relationships with those lawyers or other persons likely to come before the court on which the judge serves.
- (2) A judge, subject to the requirements of this Part, may hold and manage investments of the judge and members of the judge's family, including real estate.
- (3) A full-time judge shall not serve as an officer, director, manager, general partner, advisor, employee or other active participant of any business entity, except that:
 - (a) the foregoing restriction shall not be applicable to a judge who assumed judicial office prior to July 1, 1965, and maintained such position or activity continuously since that date; and
 - (b) a judge, subject to the requirements of this Part, may manage and participate in a business entity engaged solely in investment of the financial resources of the judge or members of the judge's family; and
 - (c) any person who may be appointed to fill a full-time judicial vacancy on an interim or temporary basis pending an election to fill such vacancy may apply to the Chief Administrator of the Courts for exemption from this paragraph during the period of such interim or temporary appointment.
- (4) A judge shall manage the judge's investments and other financial interests to minimize the number of cases in which the judge is disqualified. As soon as the judge can do so without serious financial detriment, the judge shall divest himself or herself of investments and other financial interests that might require frequent disqualification.
- (5) A judge shall not accept, and shall urge members of the judge's family residing in the judge's household not to accept, a gift, bequest, favor or loan from anyone except:
 - (a) a gift incident to a public testimonial, books, tapes and other resource materials supplied by publishers on a complimentary basis for official use, or an invitation to the judge and the judge's spouse or guest to attend a bar-related function or an activity devoted to the improvement of the law, the legal system or the administration of justice;
 - (b) a gift, award or benefit incident to the business, profession or other separate activity of a spouse or other family member of a judge residing in the judge's household, including gifts, awards and benefits for the use of both the spouse or other family member and the judge (as spouse or family member), provided the gift, award or benefit could not

reasonably be perceived as intended to influence the judge in the performance of judicial duties;

(c) ordinary social hospitality;

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

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

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

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

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

(E) Fiduciary activities.

(1) A full-time judge shall not serve as executor, administrator or other personal representative, trustee, guardian, attorney in fact or other fiduciary, designated by an instrument executed after January 1, 1974, except for the estate, trust or person of a member of the judge's family, or, with the approval of the Chief Administrator of the Courts, a person not a member of the judge's family with whom the judge has maintained a longstanding personal relationship of trust and confidence, and then only if such services will not interfere with the proper performance of judicial duties.

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

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

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

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

(H) Compensation, reimbursement and reporting.

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

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

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

(c) No full-time judge shall solicit or receive compensation for extra-judicial activities performed for or on behalf of: (1) New York State, its political subdivisions or any office or agency thereof; (2) school, college or university that is financially supported primarily by

New York State or any of its political subdivisions, or any officially recognized body of students thereof, except that a judge may receive the ordinary compensation for a lecture or for teaching a regular course of study at any college or university if the teaching does not conflict with the proper performance of judicial duties; or (3) any private legal aid bureau or society designated to represent indigents in accordance with article 18-B of the County Law. (2) Public reports. A full-time judge shall report the date, place and nature of any activity for which the judge received compensation in excess of \$150, and the name of the payor and the amount of compensation so received. Compensation or income of a spouse attributed to the judge by operation of a community property law is not extra-judicial compensation to the judge. The judge's report shall be made at least annually and shall be filed as a public document in the office of the clerk of the court on which the judge serves or other office designated by law. (I) Financial disclosure. Disclosure of a judge's income, debts, investments or other assets is required only to the extent provided in this section and in section 100.3(F) of this Part, or as required by Part 40 of the Rules of the Chief Judge (22 NYCRR Part 40), or as otherwise required by law.

<General Materials (GM) - References, Annotations, or Tables>

RESEARCH REFERENCES AND PRACTICE AIDS:

28 NY Jur 2d, Courts and Judges §§358, 373, 383-387

47 Am Jur 2d, Judges §§ 20, 47

Annotations:

Interest of judge in an official or representative capacity, or relationship of judge to one who is a party in an official or representative capacity, as disqualification. 10 ALR2d 1307

Membership in fraternal or social club or order affected by a case as ground for disqualification of judge. 75 ALR3d 1021

Disqualification of judge because of political association or relation to attorney in case. 65 ALR4th 73

Judge's previous legal association with attorney connected to current case as warranting disqualification. 85 ALR4th 700

Consorting with, or maintaining social relations with, criminal figure as ground for disciplinary action against judge. 15 ALR5th 923

Disqualification of judge for bias against counsel for litigant. 54 ALR5th 575

CASE NOTES:

Judge who had practiced in area of trusts and estates and continued, after becoming full-time judge, to perform business and legal services for clients, and who maintained

inappropriate business and financial relationship with firm practicing before his court, was removed from office pursuant to 22 NYCRR §100.5(c)(1). Matter of Moynihan, 1992, 604 N.E.2d 136, 590 N.Y.S.2d 74, 80 N.Y.2d 322

CASE NOTES:

Removal of a judge from office is rarely warranted where merely the appearance of impropriety is involved, although it may be appropriate when the circumstances indicate a lack of judicial temperament even in the absence of venal motives. Matter of Cohen, 1989, 543 N.E.2d 711, 545 N.Y.S.2d 68, 74 N.Y.2d 272

CASE NOTES:

Participation by judge in mock criminal proceeding as part of charity fund raiser violates "both the letter and the spirit" of 22 NYCRR §100.5(b)(2) which prohibits judges from soliciting funds for charitable organizations or from using prestige of their office for that purpose. Matter of Harris, 1988, 529 N.E.2d 416, 533 N.Y.S.2d 48, 72 N.Y.2d 335

CASE NOTES:

Although it is inappropriate for a judge to voluntarily appear on behalf of either side of a case in a subsequent proceeding, nothing precludes a judge from testifying pursuant to subpoena in a subsequent proceeding regarding events which anyone could have observed had they been present at the prior proceeding before the judge. Estate of Sheen, 1989, 548 N.Y.S.2d 618, 145 Misc.2d 920

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