

IDAHO JUDICIAL COUNCIL



*REPORT TO THE
GOVERNOR, AND*

*LEGISLATURE,
SUPREME COURT*

(YEAR 2015)

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I.

OVERVIEW OF SIGNIFICANT EVENTS OF 2015

A. **Council Budget.** The Judicial Council accomplished all of its statutory duties without salaried employees, and with a budget of \$139,400.00 . (See page 3)

B. **Judicial Vacancies.** There were 5 judicial vacancies in the 2015 calendar year. (See page 8)

C. **Discipline.** In calendar year 2015, there were 86 complaints against Idaho judges. (See page 13)

D. **Ethics Opinions.** The Judicial Council provided 51 informal ethics opinions to judges. (See page 16)

COUNCIL ACTIVITIES FOR 2015

Total Number of Meetings	11
Number of Telephone Conference Call Meetings	4
Number of Applicant Interviews	45
Number of Formal Adversarial Hearings	0
Number of Complaints	86

II.

INTRODUCTION TO THE IDAHO JUDICIAL COUNCIL

The concept of a Judicial Council, consisting of a small reform committee, was introduced at Massachusetts in 1919. The Massachusetts Judicature Commission was directed by the state legislature "to investigate the judicature of the commonwealth with a view to ascertaining whether any and what changes...would insure a more prompt, economical and just dispatch of judicial business." In 1929, a similar council was created, and was shortly thereafter allowed to lapse, in Idaho.

Idaho rejoined the reform movement and created the present Judicial Council, by enactment of Title I, Chapter 21, of the Idaho Code, in 1967. Drawing from the experiences of other states, the legislature provided in Idaho Code Section 1-2102 a broad range of functions.

Today the Judicial Council is charged to:

- (1) Conduct studies for the improvement of the administration of justice.
- (2) Make reports to the Supreme Court and Legislature at intervals of not more than two years.
- (3) Submit to the Governor the names of not less than two nor more than four qualified persons for each vacancy in the office of Justice of the Supreme Court, Judge of the Court of Appeals, or District Judge, one of whom shall be appointed by the Governor.
- (4) Recommend the removal, discipline and retirement of judicial officers (including members of the Industrial Commission).
- (5) Perform such other duties as might be assigned by law.

To better enable the Judicial Council to perform its functions effectively, and to enhance public confidence in the Council, the legislature created a geographically and politically balanced structure. Idaho Code Section 1-2101 provides as follows:

1-2101. Judicial council - Creation - Membership -Appointments - Vacancies. - (1) There is hereby created a judicial council which shall consist of seven (7) permanent members, and one (1) adjunct member. Three (3) permanent attorney members, one (1) of whom shall be a district judge, shall be appointed by the board of commissioners of the Idaho state bar with the consent of the senate. Three (3) permanent non-attorney members shall be appointed by the governor with the consent of the senate. If any of the above appointments be made during a recess of the senate, they shall be subject to consent of the senate at its next session. The term of office for a permanent appointed member of the judicial

council shall be six (6) years. Vacancies shall be filled for the unexpired term in like manner. Appointments shall be made with due consideration for area representation and not more than three of the permanent appointed members shall be from one (1) political party. The chief justice of the Supreme Court shall be the seventh member and chairman of the judicial council. No permanent member of the judicial council, except a judge or justice, may hold any other office or position of profit under the United States or the state. The judicial council shall act by concurrence of four (4) or more members and according to rules which it adopts.

(2) In addition to the permanent members of the judicial council, whenever there is an issue before the council which involves the removal, discipline or recommendation for retirement of a district court magistrate, the chief justice shall appoint an adjunct member of the judicial council, who shall be a district court magistrate. For all purposes for which the adjunct appointment is made, the adjunct member shall be a full voting member of the judicial council.

Today, the Judicial Council consists of the Chief Justice (non-partisan), a district judge (non-partisan), two lawyers (one Republican and one Independent), a businessman (Republican), a businesswoman (Republican), a retired educator (Democrat), and the adjunct member is a magistrate judge (non-partisan).

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

Ordinarily, the Council meets approximately five or six times per year or, as needs arise. In an effort to operate within the Council's budgetary allowance, many matters are disposed of by telephone conference call or by mail and meetings scheduled in conjunction with interviews for judicial vacancies.

**BIOGRAPHIES OF COUNCIL MEMBERS
AND EXECUTIVE DIRECTOR**

JUDICIAL MEMBERS:

CHIEF JUSTICE JIM JONES, is the Ex-Officio Chairman of the Idaho Judicial Council. Justice Jones is an Idaho native, who grew up on his family's farm in Eden. He attended his first year of college at Idaho State University in Pocatello (1960-61), transferring to the University of Oregon in Eugene, where he received a Bachelor of Arts Degree in Political Science in 1964. He attended Northwestern University School of Law in Chicago, receiving a Juris Doctor Degree in 1967.

Justice Jones served as an artillery officer in the U.S. Army, including a 13-month tour in Vietnam. He was honorably discharged as a captain in August, 1969. In addition to a number of combat decorations, Justice Jones received an Army Commendation Medal for his civic action work with an orphanage run by the Cao Dai Church in Tay Ninh Province, Vietnam.

Justice Jones served as legislative assistant to former U.S. Senator Len B. Jordan for three years, commencing in 1970. He started a law practice in Jerome in 1973 and maintained it until he was elected as Idaho Attorney General in 1982. Justice Jones served two elected terms as Attorney General. During his tenure as Idaho Attorney General, he argued three cases before the United States Supreme Court. Following the completion of his second term, he established a private law practice in Boise, which he maintained until being elected to the Idaho Supreme Court in 2004. He was re-elected in 2010. Justice Jones has served as a member of the board of Magic Valley Rehabilitation Services in Twin Falls (1975-1978), the advisory committee for KBSU Radio (1995-2000), the Idaho Vietnam Veterans Leadership Program (1983-1986), chairman of the Special Committee on Governmental Ethics, Lobbying and Political Campaign Financing (1987), chairman of the Attorney General's Advisory Committee on Gasoline Pricing (1999), General Counsel of the Better Business Bureau Inc., Serving Southwest Idaho and Eastern Oregon (1995-2004), and Army Reserve Ambassador for Idaho (2002-2003). He received the Torch of Liberty Award from the Anti-Defamation League of B'nai B'rith in 1987 and the Idaho Water Statesman of 1990 Award from the Idaho Water Users Association. Justice Jones has served as Chairman of the Idaho Pro Bono Commission since its inception in 2008.

In May, 2004 he was elected as a Justice on the Idaho Supreme Court. He was re-elected by the voters in 2010. In July, 2015 he was elected to be the Chief Justice by members of the Supreme Court.

HONORABLE THOMAS J. RYAN was born in Caldwell and graduated from Nampa High School. His father was in the seed business and his mother was in education. In 1975, Judge Ryan graduated from the University of Notre Dame with a degree in Accounting. Between 1975 and 1980 he worked as a Certified Public Accountant with the international accounting firm of Touche Ross & Co. (now Deloitte LLP).

In 1983, he graduated from the University of Idaho, College of Law. In 1985 and 1986, he worked as a trial attorney in the Ada County Public Defender's Office. From 1986 through 1994 he worked as a trial attorney.

In 1995, Judge Ryan was appointed as the Magistrate Judge in Owyhee County. In 2007, he was appointed as a District Judge with chambers in Caldwell.

Judge Ryan has been appointed to the Juvenile Justice Commission since 1998 by Governors Kempthorne, Risch and Otter. In 2004 he was given the John Schuler Award for Outstanding Contribution to Juvenile Corrections by the Idaho Juvenile Justice Association. He previously served on the Statewide Drug Court and Mental Health Court Committee of the Idaho Supreme Court and presided over the Canyon County Drug Court for a five year period. He also served on the Lawyers' Assistance Program committee of the Idaho State Bar. In 2004 he received Idaho State Bar's Outstanding Service Award. Judge Ryan joined the Idaho Judicial Council as a member in July 2013.

HONORABLE THOMAS BORRESEN earned his Bachelor of Science in Accounting from the University of Idaho in 1972 and graduated from the University of Idaho Law School in 1977. He was a member of the Idaho Law Review. He served as law clerk for the Honorable J. Blaine Anderson in both the U.S. District Court and the Ninth Circuit Court of Appeals. He engaged in the private practice of law from 1978 to 1993 when he was appointed to the Jerome County Magistrate Court. Judge Borresen has served as an adjunct member of the Idaho Judicial Council since July 2000.

PUBLIC MEMBERS:

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

ELIZABETH CHAVEZ, has been a resident of Nez Perce County for fifty years and a graduate of Lewis Clark State College. She is married to Jerry Chavez and taught middle school in the Clarkston School District from 1970-2000. She is involved in her church and also several public service organizations including the Lewis Clark State College Foundation and Women's Basketball Scholarship Club, as well as a member of the Family Promise Board.

Mrs. Chavez served as a member of the Idaho Legislature/House of Representatives from 2006-2010. Mrs. Chavez served on the Agricultural Affairs Committee, the Education Committee, and the Natural Resources Committee. Other committee work while

in the Legislature included serving on the Middle School Task Force, the Teacher Evaluation Task Force, the Soil Conservation Interim Committee, and as a member of the House and Senate Sportsman's Caucus, and Idaho Preferred Advisory Board. Mrs. Chavez was also the recipient of the 2010 Patricia Kempthorne Award for work in substance abuse awareness.

Mrs. Chavez is an avid supporter of full funded accessible education at all levels, helping families and communities deal with mental illness in the same way we deal with physical illness, she supports groups and organizations which enable those with special needs, those living in poverty and older citizens to live independently or with assistance. Mrs. Chavez joined the Idaho Judicial Council as a member in October, 2012.

KATHY SIMPSON is a resident of Idaho Falls, Idaho. She grew up in Blackfoot, Idaho where her parents had a small family farm in Groveland. Following graduation from Blackfoot High School, she attended and received a Bachelor of Science degree from the College of Family, Consumer and Human Development at Utah State University in 1972.

Mrs. Simpson has pursued a career in business that includes 13 years in the financial services industry where she held such positions as commercial loan officer, operations manager, regional branch manager and marketing director. In 2012 she retired from the Idaho National Laboratory after 20 years where she managed various functions including electronic publications, the communications and public affairs division and management communications. She also served as the interior design lead for the office of campus development.

Mrs. Simpson has been active in community service over the years serving on the boards of the Blackfoot Chamber of Commerce and United Way. She has also supported fund raising for the Idaho Meth Project. Mrs. Simpson joined the Idaho Judicial Council as a member in July 2013.

ATTORNEY MEMBERS:

JOEL P. HAZEL, is a lawyer in private practice in Coeur d'Alene, Idaho. He is a shareholder of the firm Witherspoon Kelley. He received his Bachelor of Arts degree from Gonzaga University and his Juris Doctor degree from the University of Idaho College of Law in 1994. Mr. Hazel was a deputy prosecuting attorney in Kootenai County from 1994 to 1999 when he joined his current firm. Mr. Hazel's current practice focuses on civil litigation. Before serving on the Idaho Judicial Council, Mr. Hazel served on the Idaho State Bar's Character and Fitness Committee and Professional Conduct Board. Mr. Hazel received the Idaho State Bar Service Award in 2010. Mr. Hazel has been active in Kootenai County's Specialty Courts and served as a Pro Temp Judge for Kootenai County's DUI court for ten years. Mr. Hazel joined the Idaho Judicial Council in September of 2011.

REED W. LARSEN, is a lawyer in private practice in Pocatello, Idaho and is a partner in the firm of Cooper & Larsen. He received his Bachelor of Arts degree from the Brigham Young University and his Juris Doctor degree from the University of Idaho in 1985. Mr. Larsen was born and raised in Burley, Idaho. Mr. Larsen served as the Idaho State Bar President in 2012 and as an Idaho State Bar Commissioner from 2009-2014. He has enjoyed horses and rodeo his whole life and is currently the Chairman of the Intermountain Professional

Rodeo Association and participates in IMPRA rodeos as often as possible. Mr. Larsen joined the Idaho Judicial Council in July of 2015.

EXECUTIVE DIRECTOR:

DAVID W. CANTRILL, is an Idaho native and resides in Boise, Idaho. He was born and raised in Pocatello, Idaho. Mr. Cantrill graduated from Pocatello High School, received his Bachelor of Arts degree from Idaho State University in 1966 and received his Juris Doctorate in 1970 from the University of Idaho Law School. He was in the Army, including the reserves from 1963-1969. In 1970, Mr. Cantrill entered private practice in Boise concentrating in litigation. He has tried cases in five states and almost every county in the state of Idaho. Mr. Cantrill is a member of the Idaho State Bar, American Inns of Court, Defense Research Institute, Idaho Association of Defense Counsel and is a Fellow of the American College of Trial Lawyers. Mr. Cantrill joined the Idaho Judicial Council as its Executive Director in December of 2015.

III.

SELECTION OF JUDGES

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

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

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

THE SELECTION PROCESS IN DETAIL

The Idaho Judicial Council has a detailed and careful selection procedure. The Council uses a comprehensive application form to elicit detailed information concerning each applicant's professional background and achievements. During personal interviews, which are open to the public, partisan political questions are strictly avoided. Applicants are asked for their thoughtful comments on issues of substantive law and problems of judicial administration. A standard questionnaire is distributed throughout the judicial district or the state, depending on

whether the vacancy is on the district bench, the Court of Appeals, or the Supreme Court, asking those members of the practicing bar and of the general public who know the applicant to evaluate the judicial candidate upon the standards recommended by the American Judicature Society. These standards include the following:

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

When all of this information has been received and digested, the Judicial Council analyzes each applicant's mental and physical fitness to perform the duties of judicial office, superior self-discipline, moral courage, sound judgment, ability to weigh impartially the views of others, ability to be decisive when required, capacity for logical reasoning, adequacy of educational background, and excellence of professional achievement. For trial court positions, the Judicial Council also considers knowledge of procedure and evidence and experience as an advocate. For appellate positions, the Council looks for clarity of written and spoken expression. The Council also obtains information from the State Tax Commission, the Idaho State Bar, a credit bureau, the Idaho Supreme Court and the Idaho Department of Law Enforcement in order to verify the integrity and background of each applicant.

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

NOMINATIONS BY THE JUDICIAL COUNCIL FOR 2015

Judicial vacancies usually fill a large part of the Council's activities. There were five (5) vacancies in the 2015 calendar year.

NOMINATIONS BY THE JUDICIAL COUNCIL FOR THE PAST FIVE YEARS

The following table summarizes the screening process for judicial vacancies for the last five years (2015-2011).

Vacancy	No. of Applicants	No. of Nominees	Individual Appointed
	<u>2015</u>		
District Judge First District Benjamin R. Simpson	10 (1 withdrew)	4	Cynthia K.C. Meyer

Vacancy	No. of Applicants	No. of Nominees	Individual Appointed
District Judge Fourth District Thomas F. Neville	11 (2 withdrew)	3	Jonathan M. Medema
Court of Appeals Judge Karen Lansing	12 (3 withdrew)	4	Molly J. Huskey
District Judge Fourth District Cheri C. Copsey	10 (1 withdrew)	4	Michael J. Reardon
District Judge Third District Molly J. Huskey	9	4	Davis F. VanderVelde
	<u>2014</u>		
District Judge Second District Carl B. Kerrick	4	3	Jay P. Gaskill
District Judge Second District Michael J. Griffin	6	3	Gregory FitzMaurice
	<u>2013</u>		
District Judge First District John P. Luster	7	3	Richard S. Christensen
District Judge Seventh District New Position	4	3	Alan C. Stephens
District Judge Third District New Position	8	3	Christopher S. Nye
District Judge Fourth District New Position	14	4	Steven J. Hippler
District Judge Fourth District Ronald J. Wilper	11	4	Jason D. Scott

Vacancy	No. of Applicants	No. of Nominees	Individual Appointed
	<u>2012</u>		
District Judge Fourth District Michael McLaughlin	10	4	Melissa N. Moody
District Judge First District Steve Verby	9	4	Barbara A. Buchanan
District Judge Third District Rena Hoff	7	2	George A. Southworth
	<u>2011</u>		
District Judge Fourth District Darla Williamson	9	4	Lynn G. Norton
District Judge Third District Gregory W. Culet	10	4	Molly J. Huskey

IV.

DISCIPLINARY ACTIVITIES OF THE JUDICIAL COUNCIL

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

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

Judicial misconduct, or the inability of a judge to perform judicial functions,

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

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

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

THE JUDICIAL DISCIPLINARY PROCESS IN IDAHO

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

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

The rules adopted by the Judicial Council pursuant to this statutory authority provide that when a complaint is received, the Council initially determines whether or not the

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

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

The hearing may be conducted by the Judicial Council itself, or it may request that the Supreme Court appoint a panel of three special masters to hear and take evidence in such a proceeding and report their findings to the Judicial Council. During the hearing, and at all other stages of the proceeding, the judge or justice is entitled to be represented by counsel. The rules governing evidence and the requirements of due process are observed during the hearing in the same manner as in a civil court case.

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

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

In many cases, the Judicial Council finds that the judge or justice has not engaged in misconduct or failed to perform judicial duties. Even in such cases, the disciplinary process

accomplishes a constructive purpose. As noted by the Texas Judicial Qualifications Commission, in its 1974 report:

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

DISCIPLINARY ACTIVITIES BY THE JUDICIAL COUNCIL IN 2015

In calendar year 2015, there were eighty-six (86) complaints or inquiries concerning Idaho judges. Those complaints were made against judges as follows:

TYPE OF JUDGE	NO. OF COMPLAINTS **
Idaho District Judges	20
Idaho Magistrate Judges	29
Idaho Appellate Judges	0
Idaho Supreme Court Justices	2
Retired/Senior Judges	10
Judges Not Identified or Other Entities Not Under Judicial Council Jurisdiction	28

** Some complaints have more than one judge named.

Of the 86 complaints received in 2015, thirty-eight (38) were not verified (not a

sworn statement) as required by Idaho law. When a complaint is not verified, the Judicial Council contacts the complainant to explain the need for a sworn statement and offers to assist them in locating a notary public. Of the forty-eight (48) verified complaints, thirty-five (35) complaints were dismissed after having been reviewed and discussed by the Judicial Council and a determination made that there was no factual basis for the complaint or the facts did not constitute a violation of the Code of Judicial Conduct. There were ten (10) initial inquiries conducted and three (3) preliminary investigations. An initial inquiry consists of obtaining more facts on the complaint and receiving a response from the judge and a review of court records/transcripts. A preliminary investigation is a full investigation, which includes at a minimum, interviewing of witnesses.

The Judicial Council took remedial action in one (1) case pursuant to Judicial Council Rule 36(d)(3), which permits the Judicial Council to remedy issues with a judge without filing formal charges. In this case, the judge engaged in alleged violations of Canon 2B (use of the prestige of the office to advance the interests of others) and Canon 3B7 (initiating ex parte communications) regarding correspondence. The judge was admonished with a private written reprimand.

In the three (3) cases in which there were preliminary investigations, one judge self-reported a violation of Canon 3B(8) with respect to executing a salary affidavit while a matter was still under advisement. The matter was investigated and dismissed with the judge receiving a letter that there be no future occurrences over the next three (3) years. In the second case, a judge was investigated for (1) ex parte communications in violation of Canon 3B(7) and (2) improper conduct in judicial office in violation of Canons 3B(2 and 3) and Canon 4A(2). This matter is pending and currently being investigated. In the third case, a judge was investigated

for (1) alleged appearance of impropriety in violation of Canon 2, alleged erroneous decision in violation of Canon 3(B)(9) and alleged legal incompetence. Two of these matters are pending and currently being investigated.

There are five (5) matters that are pending as of the date of this report.

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

**NATURE OF COMPLAINT	OCCURRENCES
Abuse of Power	3
Appearance of impropriety	11
Bias/Prejudice/Discrimination	13
Conduct prejudicial to administration of justice/Failure to perform duties/Incompetence	8
Conflict of interest	3
Conspiracy/Fraud	1
Erroneous decision/Error of Law	29
Ex parte communication	4
Excessive or improper use of alcohol/drugs	0
Failure to disqualify	3
Improper/Unreasonable delay	2
Improper conduct	6
Improper filing of Salary Affidavit	1
Improper sentence	0

**NATURE OF COMPLAINT	OCCURRENCES
Improper campaign/Political activity	0
Lack of impartiality	0
Rude and discourteous treatment/Lack of judicial temperament	12
Violation of Constitutional Rights	2
Unknown or general dissatisfaction	39

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

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

V.

ETHICS OPINIONS

The Judicial Council encourages judges to solicit advice on ethics issues that arise. In 2015, the Judicial Council provided fifty-one (51) informal ethics opinions to judges.

VI.
APPENDIX A

STATE OF IDAHO
IDAHO JUDICIAL COUNCIL

P.O. Box 1397
Boise, Idaho 83701
(208) 334-5213

Website: www.judicialcouncil.idaho.gov

COMPLAINT FORM

No. _____

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

PLEASE TYPE OR LEGIBLY PRINT ALL INFORMATION

Name: _____
(Please type or print)

Address: _____

Telephone: _____ Day () _____ Evening () _____

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

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

_____, Idaho.
(City) (County)

STATEMENT OF FACTS

1. When and where did this happen?

Date(s): _____ Time: _____ Location: _____

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

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

Case Name: _____ Case No: _____

b) What kind of case is it?

criminal domestic relations small claims probate

civil juvenile other (specify) _____

c) What is your relationship to the case?

plaintiff/petitioner defendant/respondent

attorney for _____

witness for _____

other (specify): _____

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

Name: _____

Address: _____

Phone: () _____

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

Name of attorney: _____

Address: _____

Phone: () _____

Represented: _____

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

_____ Yes _____ No _____ Not applicable

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

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

Name: _____

Address: _____

Phone: () _____

SUPPORTING FACTS:

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

Signed: _____

Date: _____

VERIFICATION

STATE OF _____)
) ss.
County of _____)

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

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

(Signature)

SUBSCRIBED AND SWORN TO Before me this ____ day of _____, 20__.

Notary Public for _____
Residing at _____
Commission Expires: _____

Please return this completed form to:

David W. Cantrill
Executive Director
Idaho Judicial Council
P.O. Box 1397
Boise, Idaho 83701

APPENDIX B



Idaho Judicial Council

Rules of Procedure

Chief Justice Jim Jones
Ex-Officio Chair

David W. Cantrill
Executive Director

Members:

J. Philip Reberger • Joel P. Hazel • Elizabeth Chavez • Hon. Thomas J. Ryan
Kathy Simpson • Reed W. Larsen • Hon. Thomas H. Borresen, *Adjunct Member*

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PART A. GENERAL PROVISIONS

Rule 1. Scope, Objective and Title

- (a) **Scope.** The Idaho Judicial Council Rules of Procedure (the “Rules”) apply to all of the responsibilities and proceedings of the Idaho Judicial Council (the “Council”), as authorized by Idaho Code §1-2101, §1-2102, and §1-2103 pursuant to Article V, Section 28 of the Constitution of the State of Idaho. Final disposition of matters before the Idaho Judicial Council is subject to the original supervisory control of members of the judicial system by the Supreme Court pursuant to Article V, Section 2 of the Constitution of the State of Idaho.
- (b) **Objective.** The Idaho Judicial Council shall administer the judicial vacancy, judicial discipline, and judicial incapacity system pursuant to the Idaho Judicial Council Rules of Procedure or other applicable rules.
- (c) **Title.** These Rules shall be known and cited as the Idaho Judicial Council Rules of Procedure (I.J.C.R.P.).

Rule 2. Definitions

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

- (a) **“Accused Judge”** means any judicial candidate as defined in the Idaho Code of Judicial Conduct, or any judge against whom formal proceedings have been instituted pursuant to Rule 37.
- (b) **“Applicant”** means any person who submits an application to fill a judicial vacancy for consideration by the Council, whether statutorily qualified or not.
- (c) **“Candidate”** means any person who submits an application to fill a judicial vacancy for consideration by the Council and who meets all Idaho statutory qualifications for judicial candidacy. Alternatively, any person who seeks election as a judge or justice.
- (d) **“Chair”** means the chair of the Council or the acting chair of the Council.
- (e) **“Clear and convincing evidence”** means evidence indicating that the allegation or thing to be proved is highly probable or reasonably certain.
- (f) **“Complaint”** means information in any form from any source received by the Council that alleges, or from which a reasonable inference can be drawn, that a judge may have committed misconduct or may have a disability that is adversely affecting the judge’s performance.
- (g) **“Complainant”** means a person who files a complaint.
- (h) **“Conduct prejudicial to the administration of justice that brings the judicial office into disrepute”** includes, without limitation, “a violation of the Idaho Code of Judicial Conduct.”
- (i) **“Council”** means the Idaho Judicial Council.

- (j) **“Custodian”** means the Executive Director of the Judicial Council.
- (k) **“Custodian Judge”** for the purposes of ICAR 32 means the Chief Justice, provided that the duties prescribed to the Custodian Judge in ICAR 32 shall be performed in accordance with Rule 32 herein.
- (l) **“Disability”** means a mental or physical condition, or mental and physical condition combined, that seriously interferes with a judge’s performance of duties.
- (m) **“Executive Director”** means the person appointed by the Council to serve as its executive director.
- (n) **“Hearing”** means a meeting of the Council or master convened for the purpose of taking evidence or considering legal arguments.
- (o) **“ICAR”** means Idaho Court Administrative Rules.
- (p) **“Judge”** means a Justice of the Supreme Court, a Court of Appeals judge, a judge of a district court, a magistrate judge, a *pro tempore* trial judge, a senior judge, a Plan B judge, or a member of the Industrial Commission.
- (q) **“Mail”** means first-class mail, personal delivery, or delivery by commercial mail service.
- (r) **“Master”** means special master appointed by the Supreme Court upon request of the Council.
- (s) **“Member”** means a member or special member of the Council.
- (t) **“Proceedings”** include a complaint, a response to a complaint, an investigation of a complaint, a meeting, a hearing, evidence in any form, any disciplinary disposition, or communication with respect thereto.
- (u) **“Presiding Master”** means the master so designated by the Supreme Court or, in the absence of such designation, the judge first named in the order appointing master.
- (v) **“Record”** specific to Rule 32 herein shall mean Court Record, Physical Record, or Electronic Record, as defined by ICAR 32.
- (w) **“Shall”** is mandatory and **“May”** is permissive.
- (x) **“Special Examiner”** means counsel designated by the Council to make a preliminary investigation, to gather evidence, and to present evidence before the Council, the master, or the Supreme Court with respect to charges against an accused judge.
- (y) **“Verified Petition for Review”** means a written declaration signed by the judge and verifying that the accused judge has personal knowledge of the facts stated to be true.

- (z) The masculine gender includes the feminine gender.

Rule 3. Organization and Administration

(a) **Composition.** The Council shall consist of seven (7) permanent members as provided in Idaho Code §1-2101.

(b) **Officers.** The officers of the Council shall be:

(1) **Chair.** The Chair shall be the Chief Justice of the Supreme Court of the State of Idaho. (I.C. §1-2101). The Chair's duties, *inter alia*, shall be:

(i) to act as chair of all meetings of the Council;

(ii) to cause studies to be made and reports to be submitted as required by I.C. §1-2102; and

(iii) approve all honoraria and expenses of travel necessarily incurred by members of the Council in attending Council meetings and in the performance of official duties.

(2) **Vice-Chair.** The Vice-Chair shall be elected by the Council annually, on a calendar year basis, and shall act in the place of and perform the duties of the Chair in the Chair's absence.

(3) **Secretary/Treasurer.** The Secretary/Treasurer shall be elected by the Council, annually, on a calendar year basis, and shall attend all Council meetings and keep minutes thereof, communicate with Council members from time to time in accordance with these Rules and as the Chair may direct, assist in the formulation of the studies and reports required by I.C. §1-2102, and prepare such financial reports as directed by the Council.

(c) **Executive Director.** The Council shall appoint an executive director whose duties and responsibilities, subject to general oversight by the Council, shall be:

(1) To coordinate with candidates for judicial vacancy under the direction of the Council;

(2) To receive information, allegations, and complaints;

(3) To conduct an initial inquiry of complaints under Rule 36 and refer complaints to the Council for consideration;

(4) To conduct investigations;

(5) To recommend dispositions to the Council;

(6) To maintain Council records;

(7) To maintain statistics concerning the operation of the Council and make them available to the Council and to the Supreme Court;

(8) To prepare the Council's budget and administer its funds with oversight from the Secretary/Treasurer and the Chair;

(9) To prepare annual or bi-annual reports of the Council's activities for presentation to the Council, to the Supreme Court and the state legislature pursuant to I.C. §1-2102, and to the public at the discretion of the Council; and

(10) To perform such other duties as these Rules and the Council may require.

(d) **Adjunct Member.** At the request of the Executive Director, the Magistrate Association shall recommend two to three (2–3) magistrate judge candidates to serve as an adjunct member of the judicial council in addition to the permanent members of the judicial council. The Chief Justice shall appoint the adjunct member, who shall be a magistrate judge pursuant to I.C. §1-2101(2). For all purposes for which the adjunct appointment is made, the adjunct member shall be a full voting member of the judicial council consistent with I.C. § 1-2201(2) and shall serve for a term of six (6) years subject to reappointment by the Chief Justice.

(e) **Oath of Office.** Upon appointment by the Governor, or Idaho State Bar, and before entering upon the duties of the Judicial Council each member shall take and subscribe to an oath or affirmation to support the Constitution of the United States and the Constitution and laws of the State of Idaho, and to faithfully discharge all the duties of such office. Such oath shall be administered pursuant to I.C. §59-401 and §9-1401.

Rule 4. Duties of Council

The Judicial Council shall:

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

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

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

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

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

Rule 5. Jurisdiction and Powers

(a) **Filing Date.** The Council has jurisdiction over an accused judge regarding allegations of misconduct or a disability and the application of dispositions thereto, based on events that occurred during the duration of the accused judge's judicial capacity.

(b) **Continuing Jurisdiction.** The jurisdiction of the Council regarding a pending proceeding shall not automatically terminate upon the expiration of the accused judge's term of office or the accused judge's retirement or resignation. Such jurisdiction may continue until a disposition is determined.

(c) **General Powers.** The Council shall have the authority and duty to commence investigations on its own motion on matters concerning alleged disability, judicial misconduct, criminal misconduct, or civil misconduct falling within the jurisdiction of the Council and to investigate and resolve complaints pursuant to §1-2103.

(d) **Evidentiary Powers.** The Chief Justice, Secretary/Treasurer, special master, or any member may administer oaths and affirmations pursuant to §9-1401. The Council may compel by summons or subpoena the attendance and testimony of witnesses under oath, including the accused judge as a witness, and compel the production of documents, books, accounts, and other records or writings necessary or material to the inquiry pursuant to I.R.C.P. 4(a)(1) and 45(a)-(b) except that such summons or subpoena shall be issued under the hand of the Executive Director, or any master appointed to conduct a hearing, and shall have the force and effect of a subpoena issued by a court of competent jurisdiction.

(e) **Administrative Powers.** The Council may adopt administrative policies, procedural rules, or forms for its internal operation or proceedings that do not conflict with the provisions of Idaho Statute or these Rules.

(f) **Communications.** The Council may distribute information to the judiciary and the public concerning its authority, procedures, or practices.

Rule 6. Honoraria and Expenses

Each member of the Council, except a judge or justice, shall receive an honorarium in such amount as may be set by Idaho statute for each day spent in actual attendance at meetings of the Council. Members of the Council shall be reimbursed for actual expenses necessarily incurred in attending meetings and in the performance of official duties. (I.C. §1-2104).

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

Rule 7. Meetings

(a) **Meeting Request and Notice.** Meetings of the Council shall be held at the call of the Chair or at the request of any two (2) members. The Secretary/Treasurer shall cause timely notice of a meeting to be given in advance of the time designated for the meeting. The presence of any member at any meeting shall constitute that member's waiver of notice.

(b) **Meeting Minutes.** The Secretary/Treasurer or an assistant under the Secretary/Treasurer's direction shall maintain minutes of such meetings, and shall within ten (10) working days following each such meeting send to every member of the Council the proposed minutes of such

meeting. If no written objection to such proposed minutes is received from any member of the Council within one (1) week from the date of such transmission, said proposed minutes shall be deemed approved. If any written objection is received, review of the proposed minutes shall be included on the agenda of the next duly-called meeting of the Council. Immediately following approval of the minutes of a meeting, the Chair or an assistant under the Chairs direction shall cause to be distributed to members of the Supreme Court and may cause to be made available to the general public said minutes; provided, however, that the copies of said minutes so distributed or made available shall reflect deletions of any material subject to a confidentiality requirement prescribed by law or by rules of the Council.

Rule 8. Types and Locations of Meetings

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

Rule 9. Quorum

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

Rule 10. Voting

All voting shall be voice vote, provided that the vote on any particular issue, on request of any member, shall be by roll call or by secret ballot. The Chief Justice only votes to break a tie.

Rule 11. Committees

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

Rule 12. Assistants and Assistance

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

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

Rule 13. Conflicts

- (a) Members of the Council must police themselves against actual and potential conflicts of interest in the discharge of their prescribed duties. In circumstances involving an actual conflict of interest, the member must immediately discontinue any involvement in the matter including discussions of it with other members or staff. Further, a Council member shall not participate in any matter if a judge similarly situated would be required to disqualify himself or herself under the Idaho Code of Judicial Conduct.
- (b) A Council member who has recused or disqualified himself or herself shall not have access to the investigative file, shall not receive any of the staff reports and must leave the meeting room while the Council discusses the matter in which that member has recused himself and may not participate in its consideration.
- (c) Recusal requires that a Council member shall not
- (1) Participate in deliberations
 - (2) Make recommendations
 - (3) Give advice
 - (4) Participate in any manner
 - (5) Or in any way assume responsibility for any aspect of the investigation or deliberative process.

Rule 14. Immunity

When acting within the course and scope of their duties and without malice or criminal intent and without reckless, willful and wanton conduct as defined in I.C. §6-904(C), Council members, the Executive Director, master, special investigators, and staff members shall be immune from liability for any claim that arises out of the performance of those duties.

Rule 15. Standard of Proof

The standard of proof in all proceedings shall be clear and convincing evidence except as to reasonable cause to proceed with investigation pursuant to Rule 36, which shall be at discretion of the Council.

Rule 16. Rules of Order

All meetings of the Council and of its committees shall be conducted pursuant to these Rules and by procedure promulgated by the Chair and approved by the Council members pursuant to Rule 9.

Rule 17. Rules of Procedure and Evidence

(a) The Council or master shall conduct the hearing of such matter as shall best arrive at the truth and any member or master may interrogate witnesses. The following enumerated rules of the Idaho Rules of Civil Procedure (IRCP), as adopted by the Supreme Court, effective November 1, 1958, or as the same have been, or may hereafter be amended, shall govern and may be used in all proceedings and hearings conducted under these Rules. Rules: 6(a), 6(e)(1), 15(b), 15(c), 15(d), 16(a), 16(b), 16(c), 16(d), 16(e), 16(f), 16(g), 16(h), 16(i), 16(k), 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 43(a), 43(b)(1), 43(b)(2), 43(b)(5), 43(d), 43(e), 43(f), 45(d), 45(e)(1), 45(e)(2), 61 and 80; provided, that if the accused judge shall be in default for failure to answer, depositions and discovery procedures may be taken and used without notice to the accused, or affidavits of witnesses may be introduced and used in evidence. The Secretary/Treasurer, the Chief Justice, or master, may administer oaths to witnesses.

(b) The Idaho Rules of Evidence (IRE), as adopted by the Supreme Court, effective July 1, 1985, or as the same have been, or may hereafter be amended, shall govern and may be used in all proceedings and hearings conducted under these rules.

(c) Notwithstanding the above, procedure may vary by stipulation of the parties and agreement of the Council or master where certain provisions would be impractical or unnecessary, or where alternate procedure may be more suitable to a particular proceeding. Procedural provisions not affecting the substantial rights of an accused judge shall not be grounds for invalidation of the proceedings.

(d) Witnesses subpoenaed by the Council or any member thereof or by a master shall be allowed such fees and traveling expenses as are allowed under I.R.C.P. 54(d)(1)(C)(3, 4, and 8), to be paid by the party in whose interest such witnesses are subpoenaed.

Rule 18. Amendments

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

Rule 19. Preservation, Destruction, or Disposition of Judicial Council Records

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

(b) **Permissive Destruction of Judicial Vacancy Records.** The following records and documents may be destroyed one year after a vacancy is filled.

- (1) Public comments on applicants for judicial positions.
- (2) Attorney questionnaires on applicants for judicial positions.

Rule 20. Intentionally Left Blank

Rule 21. Intentionally Left Blank

PART B. JUDICIAL VACANCY

**Rule 22. Confidentiality and Disclosure
in Relation to Candidates for Judicial Vacancies**

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

Rule 23. Notice of Vacancy

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

Rule 24. Attorney Questionnaires

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

Rule 25. Interviews

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

Rule 26. Judicial Qualifications and Rating of Judicial Candidates

The qualifications of candidates selected by the Council to be considered for appointment to judicial office may be rated by the Council as follows:

- (a) Exceptionally well qualified,
- (b) Well qualified, and
- (c) Qualified.

Such ratings are confidential and may only be disclosed to the Governor.

Rule 27. Ex Parte Contact with Judicial Council Members

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

Rule 28. Intentionally Left Blank

Rule 29. Limitation of Actions

Every complaint against a judge permitted under these rules shall be considered provided a complaint is initiated within three (3) years after the date the conduct leading to the complaint arose or reasonably should have been discovered, whichever is later. This rule of limitation shall not apply to judicial misconduct which would constitute a crime under Idaho Law.

The time limit set forth in this rule shall not preclude the Council's consideration of previous allegations of misconduct or patterns of alleged misconduct under Rule 36 in weighing an appropriate remedy.

PART C. REMOVAL, DISCIPLINE OR RETIREMENT OF JUDGES

Rule 30. Confidentiality of Proceedings

All papers filed with and proceedings before the Council, or before the master appointed by the Supreme Court pursuant to Rule 31, shall be confidential unless and until a record is filed by the Council in the Supreme Court per ICAR 32(g)(26) and Rule 32 herein. However, if allegations against a judge are made public by the complainant, accused judge or third persons, the Judicial Council, and/or the accused judge may comment on the existence, nature, and status of any investigation and may correct any false or misleading information including false or misleading information on the actions taken by the Judicial Council.

Rule 31. Confidentiality of Judicial Performance Evaluations

All records, documents and reports relating to judicial Performance Evaluations of an individual judge shall be considered confidential records of the Idaho Judicial Council pursuant to ICAR 32(g)(28), and shall not be disclosed by the judge or the Judicial Council to any third party nor shall such records be subject to any discovery methods. All judicial Performance Evaluations, records, documents and reports relating to an individual judge shall not be disclosed to the members of the Judicial Council by the Executive Director.

Rule 32. Privileged and Confidential Material and Public Disclosure

(a) **Privilege.**

- (1) Pursuant to I.C. §1-2013, papers filed with the Council or the master, and testimony given before the Council or before the master, shall be privileged in any action, including any action for defamation; but
- (2) No other publication of such papers or proceedings shall be privileged in any action for defamation except that:
 - (i) Any Council record filed by the Council in the Supreme Court continues to be privileged but upon such filing loses its confidential character; and
 - (ii) A writing which was privileged prior to its filing with the Council or the master does not lose such privilege by such filing.

(b) **Confidentiality.** Unless otherwise permitted by these rules, or unless revealed in public documents or a public hearing, all proceedings before the Council and all information, communications, materials, papers, files, and transcripts, written or oral, received or developed by the Council in the course of its work, shall be confidential. No member of the Council or agent of the Council, Executive Director and staff, no attorney, and no testifying witness shall disclose such proceeding, information, communications, materials, papers, files, or transcripts, except in the course of official duty or as otherwise authorized by these rules. Any violation of the provision for confidentiality shall constitute an act of contempt and be punishable as such. Any violation by any person of the requirements of confidentiality shall be dealt with in accordance with these rules, and the Council may refer any violation to the appropriate tribunals, authorities, agencies, commissions, or bodies.

(c) **Oath of Witnesses.** Every witness in every proceeding under these rules shall be sworn to tell the truth and to not disclose the existence of the proceedings or the identity of the accused judge until and/or unless the proceeding is no longer confidential under these rules. The oath shall be in substantially this form:

“Do you solemnly swear or affirm that you will testify to such matters and things inquired upon before the Judicial Council and that you will keep secret your testimony, the existence of these proceedings, and the accused judge’s identity and that you will testify to the truth, the whole truth, and nothing but the truth.”

(d) **Exceptions to Confidentiality.**

(1) Violations of Law. The Council may refer potential violations of law by an accused judge or by any other individual or entity, or evidence thereof, to the appropriate authorities.

(2) Other Disclosure. The Council may disclose information to any committee, commission, agency, or body within or outside the State of Idaho empowered to investigate, regulate, or adjudicate matters incident to the legal profession.

(3) Public Request for Records.

(i) Upon public request for any record in the Judicial Council, the custodian shall notify the Secretary/Treasurer that a request for records has been made and the Secretary/Treasurer shall either issue timely notice of a meeting pursuant to Rule 7, or shall add the request for records to the agenda for the next scheduled meeting. Such determination shall be at the discretion of the custodian, provided that such meeting shall be held within a reasonable time.

(ii) The custodian shall respond within three (3) working days pursuant to ICAR 32(j), if a longer period of time is needed.

(iii) Determination as to the nature of disclosure, whether complete, redacted, or denied, shall be decided by the Council pursuant to Rule 9 and Rule 10, acting as custodian judge for the purposes of ICAR 32.

(iv) The custodian shall respond to the request for records in accordance with the determination of the Council.

(4) Summaries. In an annual report, the Council may publish summaries of proceedings which have resulted in disciplinary dispositions or sanctions.

(i) Detailed Summary. A detailed summary may include a brief statement of facts, references to the applicable canons and rules in the Idaho Code of Judicial Conduct and a description of the disciplinary measure.

(ii) Statistical Summary. A statistical summary may include a description of the number of complaints received or initiated, the disposition of complaints received or initiated, the source of the complaints received (e.g. "litigant," "prisoner," "employee," etc), the nature of the allegations, the nature of the litigation (e.g. "criminal," "small claims," etc.), and such other non-identifying statistical information as the Council may elect.

Rule 33. Interested Party and Disqualification

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

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

(c) Any member of the Council may be disqualified upon challenge for cause by the accused judge. A challenge must be heard by the Council, and the Council may disqualify any member who by reason of actual or implied bias would, in the opinion of a majority of the members present, either be prevented from adjudicating the matter in a fair and impartial manner or, by reason of facts creating an appearance of impropriety, be prevented from adjudicating the matter in a manner consistent with maintenance of public confidence in the Council.

(d) No later than twenty-one (21) days prior to the commencement of a formal proceeding, the accused judge may exercise a single peremptory challenge to any Council member. The peremptory challenge must be filed in writing with the Chair of the Council. A formal hearing may proceed so long as at least four (4) members of the Council are present.

Rule 34. Appointment of Special Examiner

The Council may appoint one or more special examiners to assist the Council (a) conducting a preliminary investigation of the complaint against an accused judge; (b) to gather evidence and to present evidence before the Council or the master with respect to the complaint against an accused judge.

Rule 35. Service of Documents Upon Accused Judge

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

Rule 36. Grounds for Discipline, Removal or Retirement; Initial Inquiry; Preliminary Investigation

(a) **Initial Inquiry.** Upon receiving a verified complaint, or a complaint as defined in these Rules, alleging facts indicating that an accused judge is accused of a violation of the Idaho Code of Judicial Conduct, the Council, or its representative shall make an initial inquiry to determine whether the complaint is obviously unfounded, frivolous, or pertains to subject matter over which the Council has no jurisdiction. In making the initial inquiry, the Council or its representative may obtain and consider any information it deems pertinent.

(b) **Preliminary Investigation.**

(1) If the Council concludes that the verified complaint, or a complaint as defined in these Rules, is not obviously unfounded or frivolous, and pertains to subject matter over which the Council has jurisdiction, the Council shall conduct a preliminary investigation, after first notifying the accused judge in writing as set forth below. In conducting the investigation, the Council may consider any information obtained during the course of the initial inquiry. The Council without receiving a verified statement may make such a preliminary investigation on its own motion and may, in such cases, conduct a preliminary investigation without an initial inquiry. If the Council determines that the physical or mental health of the accused judge is at issue, it may order physical and/or mental examinations of the accused judge by independent examiners. Service of such written notice shall be in accordance with Rule 35 and, shall include the following:

- (i) a specific statement of allegations being investigated or a copy of the verified complaint;
 - (ii) the accused judge's opportunity to respond and/or retain counsel, including any deadlines for doing so;
 - (iii) the accused judge's opportunity to meet with the Council;
 - (iv) the complainant's name, unless the Council has good cause to withhold that information.
- (2) Insufficient Probable Cause. If the preliminary investigation does not disclose probable cause to warrant further proceedings, the accused judge, complainant and other parties in the discretion of the Council shall be so notified.
- (3) Sufficient Probable Cause. If the preliminary investigation does disclose probable cause to warrant further proceedings, the Council may, by affirmative vote of four (4) members:
- (i) Continue the case for further action, investigation, or review;
 - (ii) Require a personal appearance of the accused judge before the Council for discussion and possible resolution;
 - (iii) Institute a remedial measure and solicit the accused judge's acquiescence thereto pursuant to Paragraph (d) of this rule;
 - (iv) Institute formal proceedings; or
 - (v) Take or direct such other action as the Council may determine will reasonably curtail or eliminate the conduct of the accused judge and uphold the dignity of the judiciary or protect the interests of the Idaho citizens which involves any matter within the jurisdiction of the Council.

(c) **Disciplinary Factors.** In evaluating the nature and extent of alleged judicial misconduct, the Council may consider one or more of the following non-exclusive factors:

(1) Nature of the Misconduct.

- (i) Whether the misconduct occurred in the accused judge's official capacity or private life;
- (ii) Whether the misconduct occurred in the courtroom or in the accused judge's administrative role;
- (iii) Whether the accused judge exploited judicial position to satisfy personal desires and/or interests;
- (iv) Whether the misconduct constituted a crime, particularly one of a type over which the accused judge's court has jurisdiction;
- (v) Whether the misconduct involved dishonest acts or moral turpitude;
- (vi) Whether the accused judge acted in bad faith, good faith, or negligently;
- (vii) Whether the accused judge's act was spontaneous, premeditated, or deliberate;
- (viii) Whether the accused judge was motivated by compassion for others or for personal profit, vindictiveness, ill-will, or other dishonest or selfish motives;
- (ix) Whether the conduct involved the appearance of impropriety or an actual impropriety;
- (x) Whether the misconduct affected or appeared to affect the administration of justice;
- (xi) Whether the misconduct undermined the ability of the justice system to discover the truth or to reach the most just result, or merely delayed the result;
- (xii) Whether the accused judge's conduct was contrary to a public policy to which the state has made a commitment;
- (xiii) Whether the misconduct involved the unequal application of justice on the basis of such considerations as race, color, ethnic background, gender, or religion; or
- (xiv) Whether the misconduct evidenced lack of independence or impartiality.

(2) Extent of the Misconduct.

- (i) Whether the misconduct was an isolated instance or part of a pattern or course of conduct;

- (ii) The actual harm or potential for harm to the court system, to litigants, and to the public's perception of the judicial system;
 - (iii) The number of victims;
 - (iv) The vulnerability of the victims; or
 - (v) Whether there was indirect economic detriment to the public.
- (3) Culpability.
- (i) Whether the accused judge was suffering from personal or emotional problems;
 - (ii) Whether the accused judge was suffering from physical or mental disability;
 - (iii) Whether the accused judge was impaired by alcoholism or drug abuse;
 - (iv) Whether the accused judge's problems were due to stress;
 - (v) Whether there was judicial precedent that the accused judge's conduct was unethical;
 - (vi) Whether the accused judge asked for and complied with a judicial ethics advisory opinion; or
 - (vii) Whether the accused judge ignored others' efforts to persuade the accused judge to change his or her behavior.
- (4) Conduct in Response to the Commission's Inquiry.
- (i) Whether the accused judge acknowledged the misconduct, took responsibility, or showed remorse;
 - (ii) Whether the accused judge made an effort to change his or her conduct;
 - (iii) Whether the accused judge attempted to blame his or her conduct on others;
 - (iv) Whether the accused judge failed to respond to the Council's inquiry;
 - (v) Whether the accused judge advanced an unlikely defense;
 - (vi) Whether the accused judge attempted to interfere with witnesses;
 - (vii) Whether the accused judge was candid or less than forthcoming with Council's Counsel or Council's Investigator;
 - (viii) Whether the accused judge presented false evidence or gave false testimony to Council's Counsel;

- (ix) Whether the accused judge gave evasive testimony; or
 - (x) Whether the accused judge showed a contemptuous attitude toward Council proceedings.
- (5) Record.
- (i) The length of time the accused judge has served;
 - (ii) Whether the accused judge was experienced or should have been familiar with the high standards of judicial behavior;
 - (iii) Whether the accused judge had previous acts of misconduct;
 - (iv) The remoteness in time of any previous Council's action;
 - (v) The similarity between any previous conduct and the current conduct; or
 - (vi) Whether the accused judge complied with prior Council recommendations.
- (6) Reputation.
- (i) Positive contributions made by the accused judge to the court and community;
 - (ii) The accused judge's commitment to fairness and innovative procedural reform; or
 - (iii) The accused judge's ability to fairly, effectively, and efficiently run a court with a heavy caseload.
- (7) Any other factor the Council may find determinative.

(d) **Remedial Measures Available to the Council.**

(1) Consideration of Settlement. An accused judge may present a settlement proposal to the Council, which may accept it, reject it, or propose an alternative. An accused judge who proposes or agrees to a settlement proposal waives any complaint that consideration of settlement compromises the Council or any of its members in any proceedings. Upon completion of the terms of any settlement, the case will be closed. Consideration of or discussions regarding settlement are subject to Idaho Rules of Evidence 408 and 507.

(2) Issuance of Education Order. Upon issuance of an education order, such order will be served upon the accused judge in accordance with Rule 35 and the accused judge will have seven (7) days from the date of service within which to reject the Council's education order in favor of formal proceedings. If the accused judge does not reject the education order within seven (7) days, the case will remain open until the Council receives written notice from the accused judge of compliance with the education order. If the Council does not receive written notice of the accused judge's compliance with the education order within the

timeframe set forth in the Order, the Council will initiate formal proceedings against the accused judge.

(i) When an accused judge shows lack of knowledge in a particular area of the law, or lacks the ability to maintain proper judicial temperament, or for any other reason determined by the Council, the Council may order additional education or training.

(3) Issuance of Private Admonition. Upon issuance of a private admonition, such admonition will be served upon the accused judge in accordance with Rule 35 and the case closed.

(i) A private admonition is typically used for minor infractions committed by less experienced judges where the Council has determined that the public can be adequately protected without public disclosure of the misconduct. This sanction may be combined with any other remedy

(4) Issuance of Private Warning. Upon issuance of a private warning, such warning will be served upon the accused judge in accordance with Rule 35 and the case closed.

(i) A private warning is more serious than an admonition and is typically used for less serious infractions, especially when the accused judge has enough experience to have known the conduct is prohibited, and where the Council has determined that the public can be adequately protected without public disclosure of the misconduct. This sanction may be combined with any other remedy.

(5) Issuance of Private Reprimand. Upon issuance of a private reprimand, such reprimand will be served upon the accused judge in accordance with Rule 35 and the accused judge will have seven (7) days from the date of service within which to reject the Council's private reprimand in favor of formal proceedings. If the accused judge does not reject the private reprimand within seven (7) days, the private reprimand will be forwarded to the Supreme Court for permanent inclusion in the accused judge's employment file and the case closed.

(i) A private reprimand is more serious than a warning, and is typically used for infractions where the Council has determined that the public can be adequately protected without public disclosure of the misconduct, but a strong message needs to be sent to the accused judge that the conduct is prohibited.

(6) Issue a public reprimand with the accused judge's consent. Such public reprimand may or may not include an education order and shall be in accordance with Rule 49(b)(1)-(4) herein;

(7) Maintenance of Records. Notwithstanding other provisions under these Rules, all records of investigations or other formal or informal actions of the Council with respect to an accused judge shall be kept permanently in the accused judge's Council file.

(e) **Temporary Suspension.**

(1) Incident to a preliminary investigation or a formal proceeding conducted pursuant to these rules, the Council may, upon its determination that the continued service of the accused judge is causing immediate and substantial public harm or harm to himself or others, and an erosion of public confidence to the orderly administration of justice, and the accused judge's conduct appears to be violative of the Idaho Code of Judicial Conduct or the Constitution of Idaho, petition the Supreme Court for temporary paid suspension of the accused judge. Such petition shall be presented to the Supreme Court upon a majority vote of the members of the Council, and shall include one of the following:

- (i) A certified copy of a judgment finding the accused judge guilty of a felony or other serious crime;
- (ii) An Affidavit authorized by the Council and signed by the Secretary or other authorized member that the accused judge has been convicted of or has pled guilty or no contest to a felony, or serious crime which shows conduct prejudicial to the administration of justice or brings judicial office into disrepute;
- (iii) A court order or judgment declaring the accused judge to be incompetent or incapacitated; or
- (iv) An Affidavit authorized by the Council and signed by the Secretary or other authorized member that immediate suspension of the accused judge is necessary pending disposition of:
 - 1) An investigation by the Council for an alleged violation of the Idaho Code of Judicial Conduct, Rules of Professional Conduct, or a violation of a court rule, statute or other law;
 - 2) A criminal complaint, information, or indictment that has been filed against the accused judge; or
 - 3) A determination of the present competency or capacity of the accused judge.

(2) A judge suspended under the provisions of this rule may only be reinstated by the Supreme Court, in its discretion, after receipt of an Affidavit of the Council demonstrating that:

- (i) If the suspension was for conviction of a crime, the underlying conviction has been reversed or dismissed and no further criminal or Council proceedings are pending against the accused judge;
- (ii) If the suspension was imposed because of incompetency or incapacity, that such incapacity or incompetency no longer exists; and

- (iii) That reinstatement of the accused judge will not result in a substantial loss of public confidence in the judiciary.
- (3) Reinstatement after a temporary suspension pursuant to Paragraph (e) of this rule shall not terminate any Council proceedings pending against the accused judge.
- (4) Upon notification to the Supreme Court by the Council that information regarding possible substance abuse warrants further review or investigation, an incumbent judge under investigation shall be placed on paid administrative leave pending completion of the investigation for a period not to exceed ninety (90) work days, unless otherwise ordered by the Supreme Court.

(f) **Interim Relief.**

(1) The Council may, upon its determination that the continued service of an accused judge is causing immediate and substantial public harm and an erosion of public confidence to the orderly administration of justice, and the accused judge's conduct appears to be violative of the Idaho Code of Judicial Conduct or the Constitution of Idaho, petition the Supreme Court for interim relief, including but not limited to reassignment of the accused judge. Such petition shall be presented to the Supreme Court upon a majority vote of the members of the Council and shall include an Affidavit of the Council that immediate interim relief is necessary pending disposition of:

- (i) an investigation by the Council for an alleged violation of the Idaho Code of Judicial Conduct, Rules of Professional Conduct, or a violation of a court rule, statute or other law; or
- (ii) a determination of the present competency or capacity of the accused judge.

(2) Interim relief granted against an accused judge under the provisions of Paragraph (f) of this rule may only be vacated by the Supreme Court, in its discretion, after receipt of an Affidavit of the Council demonstrating that:

- (i) if interim relief was imposed pursuant to Subparagraph (f)(1)(i) of this rule, that vacating such interim relief previously ordered against the accused judge will not result in a substantial loss of public confidence in the judiciary; or
- (ii) if interim relief was imposed pursuant to Subparagraph (f)(1)(ii) of this rule, that the incompetency or incapacity no longer exists.

(3) Vacating an interim relief order pursuant to Paragraph (f) of this rule shall not terminate any Council proceedings pending against the accused judge.

Rule 37. Notice of Formal Proceedings

(a) After the preliminary investigation has been completed, if the Council concludes that formal proceedings should be instituted, the Council shall without delay issue a written notice to the

accused judge advising of the institution of formal proceedings to inquire into the charges against the accused judge. Such proceedings shall be entitled:

BEFORE THE JUDICIAL COUNCIL STATE OF IDAHO

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

- (b) The notice shall specify the charges against the accused judge and the alleged facts upon which such charges are based, and shall advise the accused judge of the right to file a written answer to the charges within fourteen (14) days after service of the notice upon them.
- (c) The notice shall be served in accordance with Rule 35.

Rule 38. Answer

Within fourteen (14) days after service of the notice of formal proceedings, the accused judge may file with the Council an original and seven (7) legible copies of a verified answer.

Rule 39. Setting for Hearing Before Council or Master

- (a) Upon the filing of an answer or upon expiration of the time for its filing, the Council shall order a hearing to be held before it concerning the removal, discipline, or retirement of the accused judge, or the Council may request the Supreme Court to appoint a master to hear and take evidence in such proceeding and to report thereon to the Council. The Council shall set a time and place for hearing before itself or before the master and shall give written notice of such hearing in accordance with Rule 35.
- (b) In the event the accused judge and the special examiner agree to a stipulated set of facts, such stipulated facts may be presented to the Council in a written stipulation. The stipulation shall include:
 - (1) A statement of the agreed facts, (which statement does not limit the Supreme Court);
 - (2) A statement that the Council may rely upon the agreed facts without the necessity of further proof;
 - (3) A waiver by the accused judge of the accused judge's right to a hearing; and
 - (4) Whether a disposition hearing is requested, which hearing shall examine any mitigating or aggravating circumstances.

Rule 40. Hearing

- (a) At the time and place set for the hearing, the Council or the master, when the hearing is before a master, shall proceed with the hearing whether or not the accused judge has filed an answer or appears at the hearing. The special examiner shall present the case in support of the charges set forth in the notice of formal proceedings.
- (b) The failure of the accused judge to answer or to appear at the hearing shall not, standing alone, be taken as evidence of the truth of the facts alleged to constitute grounds for removal, discipline or retirement. The failure of the accused judge to testify in the accused judge's own behalf or to submit to a medical examination requested by the Council or by the master may be considered unless it appears that such failure was due to circumstances beyond the accused judge's control.
- (c) The proceedings at the hearing shall be reported by such method as the Council may prescribe.
- (d) If the hearing is before the Council, the Council shall appoint the Chief Justice, the District Judge member, or a retired or senior judge as the presiding judge for the hearing.

Rule 41. Evidence

At a hearing before the Council or master, the Idaho Rules of Evidence shall apply; provided, however, that the Council may review and consider previous proceedings against the accused judge.

Rule 42. Procedural Rights of Accused Judge

- (a) An accused judge shall have the right and reasonable opportunity to defend against the charges, to be represented by counsel and to examine and cross-examine witnesses. The accused judge shall also have the right to the issuance of subpoenas for attendance of witnesses to testify or to produce books, papers or other evidentiary matter not privileged or confidential.
- (b) When a transcript of the testimony has been prepared at the Council's expense, a copy thereof shall be available upon request for use by the accused judge and the accused judge's counsel in connection with the proceedings. The accused judge shall have the right to have a transcribed copy of all or any portion of the testimony in the proceedings at the expense of the accused judge.
- (c) If the accused judge is adjudged insane or incompetent, or if it appears to the Council at any time during the proceedings that the accused judge is not competent to act, the Council shall appoint a guardian ad litem unless the accused judge has a guardian who will represent the accused judge at the accused judge's expense. In the appointment of a guardian ad litem preference shall be given, whenever possible, to members of the accused judge's immediate family. The guardian or guardian ad litem may claim and exercise any right or privilege and make any defense for the accused judge with the same force and effect as if claimed, exercised or made by the accused judge, if competent, and whenever these rules provide for serving or giving notice or sending any

document to the accused judge such notice or document shall be served, given, or sent to the guardian or guardian ad litem.

Rule 43. Amendments to Notice or Answer

The master at any time prior to the filing of their report with the Council or the Council at any time prior to the filing of its determination with the Clerk of the Supreme Court, may allow or require amendments to the answer or other pleadings. The statement or charge may be amended to conform to proof or to set forth additional facts, whether occurring before or after the commencement of the hearing. In case such an amendment is made, the accused judge shall be given time in accordance with Rule 38 to answer the amendment and to prepare and present a defense against the matters charged thereby.

Rule 44. Report of Master

(a) After the conclusion of a hearing before a master, the master shall within 21 days prepare and transmit to the Council a report which shall contain a brief statement of the proceedings and findings of fact and conclusions of law with respect to the issues presented by the pleadings. When the findings and conclusions support removal, discipline, or retirement, the report shall be accompanied by an original and seven (7) copies of a transcript of the proceedings.

(b) Upon receiving the report of the master, the Council shall promptly mail a copy thereof to the special examiner and shall promptly serve a copy thereof upon the accused judge in accordance with Rule 35.

Rule 45. Objections to Report of Master

Within twenty-eight (28) days after service of the copy of the master's report upon the accused judge in accordance with Rule 35, the special examiner or the accused judge may file with the Council an original and seven (7) legible copies of a statement of objections to the report of the master, setting forth all objections and, when filed by the special examiner, a copy thereof shall be served upon the accused judge in accordance with Rule 35.

Rule 46. Appearance Before Council

If no statement of objections to the report of the master is filed within the time provided, the Council may adopt the findings and conclusions of the master without a hearing. If such statement is filed, or if the Council in the absence of such statement proposes to adopt findings or conclusions inconsistent with, or to reject any of the findings or conclusions of the master, the Council shall give the accused judge and the special examiner an opportunity to be heard orally before the Council, and written notice of the time and place of such hearing shall be served upon the accused judge at least fourteen (14) days prior thereto in accordance with Rule 35.

Rule 47. Extension of Time

The Chair of the Council may extend for periods not to exceed thirty (30) days in the aggregate the time for filing an answer, for commencement of a hearing before the Council, and for filing a

statement of objections to the report of the master, and the presiding master may similarly extend the time for the commencement of a hearing before master.

Rule 48. Hearing Additional Evidence

(a) The Council may order a hearing in conformance with the provisions of Rule 39 through 48, inclusive, for the taking of additional evidence at any time while the cause is pending before it. The order shall state the time and place of hearing and the issues on which the evidence is to be taken. A copy of such order shall be served upon the accused judge at least ten (10) days prior to the date of hearing in accordance with Rule 35.

(b) In any case when a master has been appointed the hearing of additional evidence shall be before such master and the proceedings therein shall be in conformance with the provisions of Rules 39 through 48, inclusive.

Rule 49. Council Vote and Determination

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

(b) **Determination.** Discipline remedies remain at the discretion of the Council subject to Supreme Court review in accordance with Rule 52, but may include:

(1) **Public Reprimand.** More serious than a warning and typically reserved for more egregious violations that warrant letting the public know about the infraction, while placing the accused judge and other judges on notice that the conduct is prohibited.

(2) **Education Order.** When an accused judge shows lack of knowledge in a particular area of the law, or needs help maintaining proper judicial temperament, or for any other reason determined by the Council, the Council may recommend additional education and/or legal training. An education order may be combined with any other remedy.

(3) **Retirement.** If found just and proper and upon the issuance of an Order for Retirement by the Supreme Court pursuant to Rule 52, the accused judge shall thereby be retired with the same rights and privileges as if he or she retired pursuant to other provisions of law.

(4) **Removal.** If found just and proper and upon the issuance of an Order for Removal by the Supreme Court pursuant to Rule 52, the accused judge shall thereby be removed from office, and his/her salary shall cease from the date of such order.

(5) As concerns accused judges serving at the pleasure of the Supreme Court, the Council may make a recommendation as to whether an accused judge should be permitted to continue participation in Supreme Court programs.

(6) Such other action as the Council, subject to review by the Supreme Court, may determine is a reasonable sanction or will reasonably curtail or eliminate the conduct of the accused judge.

Rule 50. Record of Council Proceedings

The Council shall preserve the record of all proceedings concerning an accused judge. The Council's determination shall be entered in its records and notice thereof shall be served upon the accused judge in accordance with Rule 35. In all proceedings resulting in a recommendation to the Supreme Court for removal, public discipline, or retirement to which the accused judge objects the Council shall prepare a transcript of the evidence and of all proceedings therein and shall make written findings of fact and conclusions of law of the master, with respect to the issues of fact and law in the proceedings.

All procedural and substantive rules for further proceedings in the Supreme Court are found at ICAR _____.

Rule 51. Rules of Order

Robert's Rule of Order shall govern the procedures of all meetings of the Council and of its committees unless otherwise allowed by majority vote of the Council.

Rules 52-54 Intentionally Left Blank

APPENDIX C

IDAHO CODE OF JUDICIAL CONDUCT

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Application



PREAMBLE

Our legal system is based on the principle that an independent, fair and competent judiciary will interpret and apply the laws that govern us. The role of the judiciary is central to American concepts of justice and the rule of law. Intrinsic to all sections of this Code are the precepts that judges, individually and collectively, must respect and honor the judicial office as a public trust and strive to enhance and maintain confidence in our legal system. The judge is an arbiter of facts and law for the resolution of disputes and a highly visible symbol of government under the rule of law.

Adopted: January 31, 2002

Amended: January 15, 2003; July 29, 2003; September 10, 2007; August 4, 2008

Effective: September 10, 2007; August 4, 2008

Amended: February 26, 2010

Effective: February 26, 2010

Amended: April 22, 2010

Effective: April 22, 2010

*Adopted: November 30, 2012

Effective: January 1, 2013

The Code of Judicial Conduct is intended to establish standards for ethical conduct of Idaho judges. It consists of broad statements called Canons, specific rules set forth in Sections under each Canon, a Terminology Section, an Application Section and Commentary. The text of the Canons and the Sections, including the Terminology and Application Sections, is authoritative. The Commentary, by explanation and example, provides guidance with respect to the purpose and meaning of the Canons and Sections. The Commentary is not intended as a statement of additional rules.

TERMINOLOGY

Terms explained below are noted with an asterisk (*) in the Sections where they appear. In addition, the Sections where terms appear are referred to after the explanation of each term below.

“Candidate.” A candidate is a person seeking selection for or retention in judicial office by election or appointment. A person becomes a candidate for judicial office as soon as he or she makes a public announcement of candidacy, declares or files as a candidate with the election or appointment authority, or authorizes solicitation or acceptance of contributions or support. See Sections 5A, 5B, 5C and 5E.

“Court personnel” does not include the lawyers in a proceeding before a judge. See Sections 3B(7)(c) and 3B(9).

“De minimis” denotes an insignificant interest that could not raise reasonable question as to a judge’s impartiality. See Sections 3E(l)(c) and 3E(l)(d).

“Economic interest” denotes ownership of a more than de minimis legal or equitable interest, or a relationship as officer, director, advisor or other active participant in the affairs of a party, except that:

(i) ownership of an interest in a mutual or common investment fund that holds securities is not an economic interest in such securities unless the judge participates in the management of the fund or a proceeding pending or impending before the judge could substantially affect the value of the interest;

(ii) service by a judge as an officer, director, advisor or other active participant in an educational, religious, charitable, fraternal or civic organization, or service by a judge’s spouse, parent or child as an officer,

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Amended: April 22, 2010

Effective: April 22, 2010

*Adopted: November 30, 2012

Effective: January 1, 2013

director, advisor or other active participant in any organization does not create an economic interest in by that organization;

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

(iv) ownership of government securities is not an economic interest in the issuer unless a proceeding pending or impending before the judge could substantially affect the value of the securities.

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

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

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

“Knowingly,” “knowledge,” “known” or “knows” denotes actual knowledge of the fact in question. A person’s knowledge may be inferred from circumstances. See Sections 3D, 3E(1), and 5A(3).

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

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

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

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Effective: April 22, 2010
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Effective: January 1, 2013

“Member of the judge’s family residing in the judge’s household” denotes any relative of a judge by blood or marriage, or a person treated by a judge as a member of the judge’s family, who resides in the judge’s household. See Sections 3E(1) and 4D(5).

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

“Political gathering” is an event sponsored by a “political organization.”

“Political organization” denotes a political party or other group, the principal purpose of which is to further the election or appointment of candidates to political office or the attainment of a specific political goal. See Section 5A(1).

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

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

“Require” -- The rules prescribing that a judge “require” certain conduct of others are rules of reason. The use of the term “require” in that context means a judge is to exercise reasonable direction and control over the conduct of those persons subject to the judge’s direction and control. See Sections 3B(3), 3B(4), 3B(6), 3B(9) and 3C(2).

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

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

“Third degree of relationship” -- The following persons are relatives within the third degree of relationship: great-grandparent, grandparent, parent, uncle, aunt,

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brother, sister, child, grandchild, great-grandchild, nephew or niece. See Section 3E(1)(d).

CANON 1

A Judge Shall Uphold the Integrity and Independence of the Judiciary

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

Commentary

Deference to the judgments and rulings of courts depends upon public confidence in the integrity and independence of judges. The integrity and independence of judges depends in turn upon their acting without fear or favor. Although judges should be independent, they must comply with the law, including the provisions of this Code. Public confidence in the impartiality of the judiciary is maintained by the adherence of each judge to this responsibility. Conversely, violation of this Code diminishes public confidence in the judiciary and thereby does injury to the system of government under law.

CANON 2

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

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

Commentary

Public confidence in the judiciary is eroded by irresponsible or improper conduct by judges. A judge must avoid all impropriety and appearance of impropriety. A judge must expect to be the subject of constant public scrutiny. A judge must therefore accept

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restrictions on the judge's conduct that might be viewed as burdensome by the ordinary citizen and should do so freely and willingly.

The prohibition against behaving with impropriety or the appearance of impropriety applies to both the professional and personal conduct of a judge. Because it is not practicable to list all prohibited acts, the proscription is necessarily cast in general terms that extend to conduct by judges that is harmful although not specifically mentioned in the Code. Actual improprieties under this standard include violations of law, court rules or other specific provisions of this Code. The test for violation of this Canon is whether the conduct would create in reasonable minds a perception that the judge's ability to carry out judicial responsibilities with integrity, impartiality and competence is impaired.

See also Commentary under Section 2C.

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

Commentary

Maintaining the prestige of judicial office is essential to a system of government in which the judiciary functions independently of the executive and legislative branches. Respect for the judicial office facilitates the orderly conduct of legitimate judicial functions. Judges should distinguish between proper and improper use of the prestige of office in all of their activities. For example, it would be improper for a judge to allude to his or her judgeship to gain a personal advantage such as deferential treatment when stopped by a police officer for a traffic offense. Similarly, judicial letterhead must not be used for conducting a judge's personal business.

A judge must avoid lending the prestige of judicial office for the advancement of the private interests of others. For example, a judge must not use the judge's judicial position to gain advantage in a civil suit involving a member of the judge's family. In contracts for publication of a judge's writings, a judge should retain control over the advertising to avoid exploitation of the judge's office. As to the acceptance of awards, see Section 4D(5)(a) and Commentary.

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

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

A judge must not testify voluntarily as a character witness because to do so may lend the prestige of the judicial office in support of the party for whom the judge testifies. Moreover, when a judge testifies as a witness, a lawyer who regularly appears before the judge may be placed in the awkward position of cross-examining the judge. A judge may, however, testify when properly summoned. Except in unusual circumstances where the demands of justice require, a judge should discourage a party from requiring the judge to testify as a character witness.

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

Commentary

Membership of a judge in an organization that practices invidious discrimination gives rise to perceptions that the judge's impartiality is impaired. Section 2C refers to the current practices of the organization. Whether an organization practices invidious discrimination is often a complex question to which judges should be sensitive. The answer cannot be determined from a mere examination of an organization's current membership rolls but rather depends on how the organization selects members and other relevant factors, such as that the organization is dedicated to the preservation of religious, ethnic or cultural values of legitimate common interest to its members, or that it is in fact and effect an intimate, purely private organization whose membership limitations could not be constitutionally prohibited. Absent such factors, an organization is generally said to discriminate invidiously if it arbitrarily excludes from membership on the basis of race, religion, sex or national origin persons who would otherwise meet the organization's qualifications for membership. *See New York State*

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Club Ass'n. Inc. v. City of New York, 108 S.C. 2225, 101 LED.2d 1 (1988); *Board of Directors of Rotary International v. Rotary Club of Duarte*, 481 U.S. 537, 107 S.C. 1940, 95 LED.2d 474 (1987); *Roberts v. United States Jaycees*, 468 U.S. 609, 104 S.C. 3244, 82 LED.2d 462 (1984).

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

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

CANON 3

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

A. Judicial Duties in General. A judge shall diligently perform judicial duties. The judge's judicial duties include all the duties of the judge's office prescribed by law.* In the performance of these duties, the following standards apply.

B. Adjudicative Responsibilities.

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

(2) A judge shall be faithful to the law* and maintain professional competence in it. A judge shall not be swayed by partisan interests, public clamor or fear of criticism.

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

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

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

Commentary

The duty to hear all proceedings fairly and with patience is not inconsistent with the duty to dispose promptly of the business of the court. Judges can be efficient and businesslike while being patient and deliberate.

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

Commentary

A judge must refrain from speech, gestures or other conduct that could reasonably be perceived as sexual harassment and must require the same standard of conduct of others subject to the judge's direction and control.

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A judge must perform judicial duties impartially and fairly. A judge who manifests bias on any basis in a proceeding impairs the fairness of the proceeding and brings the judiciary into disrepute. Facial expression and body language, in addition to oral communication, can give to parties or lawyers in the proceeding, jurors, the media and others an appearance of judicial bias. A judge must be alert to avoid behavior that may be perceived as prejudicial.

(7) A judge shall accord to every person who has a legal interest in a proceeding, or that person's lawyer, the right to be heard according to law.* A judge shall not initiate, permit, or consider ex parte communications, or consider other communications made to the judge outside the presence of the parties concerning a pending or impending proceeding except that:

(a) Where circumstances require, ex parte communications for scheduling, administrative purposes or emergencies that do not deal with substantive matters or issues on the merits are authorized; provided the judge reasonably believes that no party will gain a procedural or tactical advantage as a result of the ex parte communication.

(b) A judge may obtain the advice of a disinterested expert on the law* applicable to a proceeding before the judge if the judge gives notice to the parties of the person consulted and the substance of the advice, and affords the parties reasonable opportunity to respond.

(c) A judge may consult with court personnel* whose function is to aid the judge in carrying out the judge's adjudicative responsibilities or with other judges.

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

(e) During a scheduled court proceeding, including a conference, hearing, or trial, a judge may initiate, permit, or consider communications dealing with substantive matters or issues on the merits of the case in the absence of a party who

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had notice of the proceeding and did not appear.

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

(g) A judge may initiate or consider any ex parte communications when expressly authorized by law* to do so.

Commentary

The proscription against communications concerning a proceeding includes communications from lawyers, law teachers, and other persons who are not participants in the proceeding, except to the limited extent permitted.

To the extent reasonably possible, all parties or their lawyers shall be included in communications with a judge.

Whenever presence of a party or notice to a party is required by Section 3B(7), it is the party's lawyer, or if the party is unrepresented the party, who is to be present or to whom notice is to be given.

An appropriate and often desirable procedure for a court to obtain the advice of a disinterested expert on legal issues is to invite the expert to file a brief amicus curiae.

Certain ex parte communication is approved by Section 3B(7) to facilitate scheduling and other administrative purposes and to accommodate emergencies. In general, however, a judge must discourage ex parte communication and allow it only if all the criteria stated in Section 3B(7) are clearly met.

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

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

If communication between the trial judge and the appellate court with respect to a proceeding is permitted, a copy of any written communication or the substance of any oral communication should be provided to all parties.

(h) If a judge receives an unauthorized ex parte or other prohibited communication bearing upon the substance of the matter, the judge shall promptly notify the parties of the substance of the communication and provide the parties with an opportunity to respond. If the communication was in writing, the judge shall promptly provide a copy to the parties.*

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

Commentary

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

Prompt disposition of the court's business requires a judge to devote adequate time to judicial duties, to be punctual in attending court and expeditious in determining matters under submission, and to insist that court officials, litigants and their lawyers cooperate with the judge to that end. A judge should ordinarily be present during regular business hours.

(9) A judge shall not, while a proceeding is pending or impending in any court, make any public comment that might

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reasonably be expected to affect its outcome or impair its fairness or make any nonpublic comment that might substantially interfere with a fair trial or hearing. The judge shall require* similar abstention on the part of court personnel* subject to the judge's direction and control. This Section does not prohibit judges from making public statement in the course of their official duties or from explaining for public information the procedures of the court. This Section does not apply to proceedings in which the judge is a litigant in a personal capacity.

Commentary

The requirement that judges abstain from public comment regarding a pending or impending proceeding continues during any appellate process and until final disposition. This Section does not prohibit a judge from commenting on proceedings in which the judge is a litigant in a personal capacity, but in cases such as a writ of mandamus where the judge is a litigant in an official capacity, the judge must not comment publicly. The conduct of lawyers relating to trial publicity is governed by Rule 3.6 of the Idaho Rules of Professional Conduct.

(10) A judge shall not commend or criticize jurors for their verdict other than in a court order or opinion in a proceeding, but may express appreciation to jurors for their service to the judicial system and the community.

Commentary

Commending or criticizing jurors for their verdict may imply a judicial expectation in future cases and may impair a juror's ability to be fair and impartial in a subsequent case.

(11) A judge shall not disclose or use, for any purpose unrelated to judicial duties, nonpublic information* acquired in a judicial capacity.

C. Administrative Responsibilities.

(1) A judge shall diligently discharge the judge's administrative responsibilities without bias or prejudice and maintain professional competence in judicial administration, and

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shall cooperate with other judges and court officials in the administration of court business.

(2) A judge shall require* staff, court officials and others subject to the judge's direction and control to observe the standards diligence that apply to the judge and to refrain from manifesting bias or prejudice in the performance of their official duties.

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

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

Commentary

Appointees of a judge include assigned counsel, officials such as referees, commissioners, special masters, receivers and guardians and personnel such as clerks, secretaries and bailiffs. Consent by the parties to an appointment or an award of compensation does not relieve the judge of the obligation prescribed by Section 3C(4).

D. Disciplinary Responsibilities. Judges are encouraged to bring instances of unprofessional conduct by judges or lawyers to their attention in order to provide them opportunities to correct their errors without disciplinary proceedings; but the judges should file reports thereof with the Commission of the Idaho State Bar or with the Judicial Council, as appropriate, when no such remedial action is promptly undertaken, or if the violations are flagrant or repeated.

Commentary

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

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E. Disqualification.

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

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

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

Commentary

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

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

By decisional law, the rule of necessity may override the rule of disqualification. For example, a judge might be required to participate in judicial review of a judicial salary statute, or might be the only judge available in a matter requiring immediate judicial action, such as a hearing on probable cause or a temporary restraining order. In the latter case, the judge must disclose on the record the basis for possible disqualification and use reasonable efforts to transfer the matter to another judge as soon as practicable.

A lawyer in a government agency does not ordinarily have an association with other lawyers employed by that agency within the meaning of Section 3E(1)(b); a judge

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

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

(d) the judge or the judge's spouse, or a person within the third degree of relationship* to either of them, or the spouse of such a person:

(i) is a party to the proceeding, or an officer, director or trustee of a party;

(ii) is acting as a lawyer in the proceeding;

(iii) is known* by the judge to have a more than de minimis* interest that could be substantially affected by the proceeding;

(iv) is to the judge's knowledge* likely to be a material witness in the proceeding.

Commentary

The fact that a lawyer in a proceeding is affiliated with a law firm with which a relative of the judge is affiliated does not of itself disqualify the judge. Under appropriate circumstances, the fact that "the judge's impartiality might reasonably be questioned" under Section 3E(1), or that the relative is known by the judge to have an interest in the law firm that could be "substantially affected by the outcome of the proceeding" under Section 3E(1)(d)(iii) may require the judge's disqualification.

(2) A judge shall keep informed about the judge's personal and fiduciary* economic interests,* and make a reasonable effort to

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keep informed about the personal economic interests of the judge's spouse and minor children residing in the judge's household.

F. Remittal of Disqualification. A judge disqualified by the terms of Section 3E(1)(c) or (d) may disclose on the record the basis of the judge's disqualification and may ask the parties and their lawyers to consider, out of the presence of the judge, whether to waive disqualification. If following disclosure of any basis for disqualification other than personal bias or prejudice concerning a party, the parties and lawyers, without participation by the judge, all agree that the judge should not be disqualified, and the judge is then willing to participate, the judge may participate in the proceeding. The agreement shall be incorporated in the record of the proceeding.

Commentary

A remittal procedure provides the parties an opportunity to proceed without delay if they wish to waive the disqualification. To assure that consideration of the question of remittal is made independently of the judge, a judge must not solicit, seek or hear comment on possible remittal or waiver of the disqualification unless the lawyers jointly propose remittal after consultation as provided in the rule. A party may act through counsel if counsel represents on the record that the party has been consulted and consents. As a practical matter, a judge may wish to have all parties and their lawyers sign the remittal agreement.

CANON 4

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

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

- (1) cast reasonable doubt on the judge's capacity to act impartially as a judge; or**
- (2) interfere with the proper performance of judicial duties.**

Commentary

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

B. Avocational Activities. A judge may speak, write, lecture, teach and participate in other extra-judicial activities concerning the law,* the legal system, and the administration of justice, subject to the requirements of this Code.

Commentary

As a judicial officer and person specially learned in the law, a judge is in a unique position to contribute to the improvement of the law, the legal system, and the administration of justice, including revision of substantive and procedural law and improvement of criminal and juvenile justice. To the extent that time permits, a judge is encouraged to do so, either independently or through a bar association, judicial conference or other organization dedicated to the improvement of the law. Judges may participate in efforts to promote the fair administration of justice, the independence of the judiciary and the integrity of the legal profession and may express opposition to the persecution of lawyers and judges in other countries because of their professional activities.

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

C. Governmental, Civic or Charitable Activities.

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

Commentary

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

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

Commentary

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

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

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

Commentary

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

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

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

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

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

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

Commentary

The changing nature of some organizations and of their relationship to the law makes it necessary for a judge regularly to reexamine the activities of each organization with which the judge is affiliated to determine if it is proper for the judge to continue the affiliation. For example, in many jurisdictions charitable hospitals are now more frequently in court than in the past. Similarly, the boards of some legal aid organizations now make policy decisions that may have political significance or imply commitment to causes that may come before the courts for adjudication.

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

(i) may assist such an organization in planning fund raising, may participate in support activities related to the fund raising, may participate in the management

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and investment of the organization's funds, but shall not personally participate in the solicitation of funds.

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

(iii) shall not use or permit the use of the prestige of judicial office for fund-raising or membership solicitation, provided that a judge may encourage participation by a lawyer or lawyers in pro bono activities as long as the encouragement is not coercive in nature.

Commentary

While a judge may not use the prestige of judicial office for membership solicitation, a judge may solicit membership or endorse or encourage membership efforts for an organization as long as the solicitation cannot reasonably be perceived as coercive and is not essentially a fund-raising mechanism. Solicitation of funds for an organization and solicitation of memberships involve the danger that the person solicited will feel obligated to respond favorably to the solicitor if the solicitor is in a position of influence or control.

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

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

D. Financial Activities.

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

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

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

Commentary

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

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

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

(2) A judge may, subject to the requirements of this Code, hold and manage investments of the judge and members of the judge’s family,* including real estate, and engage in other remunerative activity.

Commentary

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

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

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

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

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

Commentary

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

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

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(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 for the following:

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

Commentary

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

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

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

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

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(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;

Commentary

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

(e) a gift, bequest, favor or loan from a relative or close personal friend whose appearance or interest in a case would in any event require disqualification under Section 3E;

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

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

(h) any other gift, bequest, favor or loan, only if: the donor is not a party or other person who has come or is likely to come or whose interests have come or are likely to come before the judge.

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

E. Fiduciary Activities.

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

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

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

Commentary

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

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

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

Commentary

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

G. Practice of Law. A judge shall not practice law. Notwithstanding this prohibition, a judge may act pro se and may, without compensation, give legal advice to and draft or review documents for a member of the judge's family. Employees of the judicial branch of government, other than judges, shall not engage in the practice of law except that a judicial employee may act pro se, may perform routine legal work incident to the management of the personal affairs of the judicial employee or a member of the judicial employee's family, and may provide pro bono legal services in civil matters, so long as such pro se, family, or pro bono legal work does not present an appearance of impropriety, does not take place while on duty or in the judicial employee's workplace except as may be permitted by the Idaho Supreme Court, and does not interfere with the judicial employee's primary responsibility to the office in which the judicial employee serves, and further provided that:

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

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

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

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

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Commentary

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

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

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

H. Compensation and Reimbursement.

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

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

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

Commentary

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

CANON 5

A Judge or Judicial Candidate Shall Refrain From Inappropriate Political Activity

A. All Judges and Candidates.

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

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

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

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

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

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

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

Commentary

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

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

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

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

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

(3) A judge shall resign from judicial office upon becoming a candidate for a nonjudicial office either in a primary or in a general election.

(4) A candidate* for a judicial office:

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

Commentary

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

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(b) shall prohibit employees and officials who serve at the pleasure of the candidate,* and shall discourage other employees and officials subject to the candidate's direction and control from doing on the candidate's behalf what the candidate is prohibited from doing under the Sections of this Canon;

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

(d) shall not:

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

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

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

Commentary

Section 5A(4)(d) prohibits a candidate for judicial office from making statements that appear to commit the candidate regarding cases, controversies or issues likely to come before the court. As a corollary, a candidate should emphasize in any public statement the candidate's duty to uphold the law regardless of his or her personal views. See also Section 3B(9), the general rule on public comment by judges. Nor does this Section prohibit an incumbent judge from making private statements to other judges or court personnel in the performance of judicial duties. This Section applies to any statement made in the process of securing judicial office, such as statements to Judicial Council and Governor. See also Rule 8.2 of the Idaho Rules of Professional Conduct.

(e) may respond to personal attacks or attacks on the candidate's record as long as the response does not violate Section 5A(4)(d).

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(f) or a judge may respond to false allegations regarding judges or the judicial system as long as the response does not violate Section 5A(4)(d)1.

B. Candidates Seeking Appointment to Judicial Office.

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

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

(a) such persons may:

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

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

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

Commentary

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

1 The 2009-2010 Desk Book incorrectly designates Canon 5A(4) as Canon 5A(3). The Desk Book version of Canon 5A incorrectly designates two subsections as "(2)".

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C. Judges and Candidates Subject to Public Election.

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

(a) when a candidate for election

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

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

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

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

Commentary

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

(2) A candidate* shall not solicit campaign contributions in person. A candidate may establish committees of responsible persons to conduct campaigns for the candidate through media advertisements, brochures, mailings, candidate forums and other means not prohibited by law. Such committees may solicit and accept reasonable campaign contributions, manage the expenditure of funds for the candidate's campaign and obtain public statements of support for his or her candidacy. Such committees are not prohibited from soliciting and accepting reasonable campaign contributions and public support from lawyers. A candidate's committees may solicit contributions and public support for the candidate's campaign no earlier than [one year] before election and no later than [90] days after the last election in which the candidate participates during the election year. Except as required by law, a candidate's judicial

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election committee should not disclose the names of contributors to judicial campaigns and judicial candidates and judges should avoid obtaining the names of contributors to the judicial campaign. A candidate shall not use or permit the use of campaign contributions for the private benefit of the candidate or others.

Commentary

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

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

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

Commentary

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

E. Applicability. Canon 5 generally applies to all incumbent judges and judicial candidates.* A successful candidate, whether or not an incumbent, is subject to judicial discipline for his or her campaign conduct; an unsuccessful candidate who is a lawyer is subject to lawyer discipline for his or her campaign conduct. A lawyer who is a candidate for judicial office is subject to Rule 8.2(b) of the Idaho Model Rules of Professional Conduct.

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APPLICATION OF THE CODE OF JUDICIAL CONDUCT

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

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

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

F. Time for Compliance. A person to whom this Code becomes applicable shall comply immediately with all provisions of this Code except Sections 4D(3), 4F, 4G, 5C(1) and 5C(2) and shall comply with these Sections as soon as reasonably possible and shall do so in any event within the period of one year.

Commentary

If serving as a fiduciary when selected as judge, a new judge may, notwithstanding the prohibitions in Section 4E, continue to serve as fiduciary but only for that period of time necessary to avoid serious adverse consequences to the beneficiary of the fiduciary relationship and in no event longer than one year. Similarly, if engaged at the time of judicial selection in a business activity, a new judge may, notwithstanding the prohibitions in Section 4D(3), continue in that activity for a reasonable period but in no event longer than one year.

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