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**Terminology**

**American Judicature Society, Center for Judicial Ethics**

**Cynthia Gray**

**March 11, 2004**

Supplementing its October 15, 2003 proposal that the Commission define members of a judge's family, the AJS Center for Judicial Ethics proposes the following definition of the term "spouse" to be included in the Terminology section of the Model Code of Judicial Conduct:

"Spouse" includes a domestic partner or other person with whom an individual maintains a shared household and conjugal relations.

**Canon 4D(5)(c) [Rule 4.13], Comment**

**Acceptance of Gifts**

**American Judicature Society, Center for Judicial Ethics**

**Cynthia Gray**

**March 11, 2004**

Supplementing its October 15, 2003 proposal that the Commission include a definition of the term "ordinary social hospitality" as used in current Canon 4D(5)(c), the AJS Center for Judicial Ethics proposes the following comment to Canon 4D(5)(c), incorporating a definition of "ordinary social hospitality" based on the definition developed by the Committee on Judicial Ethics of the California Judges Association in California Advisory Opinion 43 (1994). (Additions underlined.)

D. Financial Activities.

(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:

(c) ordinary social hospitality;

Commentary:

"Ordinary social hospitality" is that type of social event or other gift that is so common among people in the judge's community that no reasonable person would believe that the donor was intending to or would obtain any advantage. Relevant considerations include the cost of the event or gift, whether the benefits conferred are greater in value than that traditionally furnished at similar events sponsored by bar associations or similar groups, whether the benefits are greater in value than that which the judge customarily provides the judge's own guests, whether the

benefits conferred are usually exchanged only between friends or relatives, whether there is a history or expectation of reciprocal social hospitality between the judge and the donor, whether the event is a traditional occasion for social hospitality, and whether the benefits received must be reported to any governmental entity.

**Canon 5A(1)**

**Involvement in Family Member's Political Activity**

**American Judicature Society, Center for Judicial Ethics**

**Cynthia Gray**

**March 11, 2004**

Supplementing its October 15, 2003 proposal that the Commission prohibit a judge's involvement in a family member's political activity, the AJS Center for Judicial Ethics proposes the following new provision of Canon 5A(1). (Additions underlined.)

A. All Judges and Candidates

(1) Except as authorized in Sections 5B(2), 5C(1) and 5C(3), a judge or a candidate for election or appointment to judicial office shall not:

(f) be involved in a family member's political activity and should require family members to take reasonable steps to avoid any suggestion that the judge endorses the family member's political activity.

**Canon 5A(2) [Rule 5.08]**

**Candidacy for Non-Judicial Elective Office**

**American Judicature Society, Center for Judicial Ethics**

**Cynthia Gray**

**March 11, 2004**

The AJS Center for Judicial Ethics proposes the following addition the Canon 5A(2) [Rule 5.08]. (Additions underlined.)

“A judge shall resign from judicial office upon becoming a candidate for a non judicial office either in a primary or in a general election, except that the judge may continue to hold judicial office while being a candidate for election to or serving as a delegate in a state constitutional convention if the judge is otherwise permitted by law to do so. On assuming a judicial position, a judge shall resign any elective public office or office in a political organization then held.”

**Canon 5A(3) [Rule 5.01]**

**Maintaining the Dignity of Judicial Office while Engaged in Political Activity**

**American Judicature Society, Center for Judicial Ethics**  
**Cynthia Gray**  
**March 11, 2004**

The AJS Center for Judicial Ethics proposes the following revision of Canon 5A(3) [Rule 5.01]. (Additions underlined; deletions struck through.)

A candidate for a judicial office:

- (a) ~~shall~~ should maintain the dignity appropriate to judicial office and act in a manner consistent with the impartiality, integrity and independence of the judiciary,
- (b) ~~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;

**Canon 5A(3) [Rule 5.01], Comment**  
**Maintaining the Dignity of Judicial Office while Engaged in Political Activity**  
**American Judicature Society, Center for Judicial Ethics**  
**Cynthia Gray**  
**March 11, 2004**

The AJS Center for Judicial Ethics proposes the following revision of the comment to Canon 5A(3) [Rule 5.01], to follow its proposed Canon 5A(3)(b):

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 including running for office and campaigning for other candidates as long as the judge is kept separate from those activities.

**Canon 5A(3)(d) [Rule 5.03]**  
**Judicial Speech**  
**American Judicature Society, Center for Judicial Ethics**  
**Cynthia Gray**  
**March 11, 2004**

The AJS Center for Judicial Ethics proposes the following revision of Canon 5A(3) [Rule 5.03]. (Additions underlined; deletions struck through.)

A candidate for judicial office:

- (e) shall not in statements to the electorate or the appointing authority :
  - (i) with respect to cases, controversies, or issues that are likely

- to come before the court, make pledges, or promises or commitments of conduct in office other than that are inconsistent with the faithful and impartial\* performance of the adjudicative duties of the office; or
- (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.

**Canon 5A(3), Comment**  
**Judicial Speech**  
**American Judicature Society, Center for Judicial Ethics**  
**Cynthia Gray**  
**March 11, 2004**

The AJS Center for Judicial Ethics proposes the following revision of the comment to Canon 5A(3) in view of its proposal to revise Canon 5A(3) to include a commitment clause in the black letter. (Deletions struck through.)

~~Section 5A(3)(d) prohibits a candidate for judicial office from making statements that appear to commit the candidate regarding cases, controversies or issues likely to come before the court.~~ As a corollary, a candidate should emphasize in any public statement the candidate's duty to uphold the law regardless of his or her personal views. See also Section 3B(9), the general rule on public comment by judges. Section 5A(3)(d) does not prohibit a candidate from making pledges or promises respecting improvements in court administration. 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 commissions charged with judicial selection and tenure and legislative bodies confirming appointment. See also Rule 8.2 of the ABA Model Rules of Professional Conduct.

**Canon 5A(3)**  
**Judicial Speech**  
**American Judicature Society, Center for Judicial Ethics**  
**Cynthia Gray**  
**March 11, 2004**

Supplementing its October 15, 2003 proposal that the Commission add a provision to Canon 5 making candidates responsible for the acts of their campaign committees, the AJS Center for Judicial Ethics proposes the following addition to Canon 5A(3). (Additions underlined.)

A candidate for judicial office:

(g) shall be responsible for reviewing and approving the content of his or her statements, advertisements, and other campaign materials and those of his or her campaign committee. Failure to do so will not be a defense to a complaint for violation of this Canon.

**Canon 5C**

**Judicial Speech**

**American Judicature Society, Center for Judicial Ethics**

**Cynthia Gray**

**March 11, 2004**

Supplementing its October 15, 2003 proposal that the Commission add a provision establishing appropriate and inappropriate uses of unexpended campaign funds, the AJS Center for Judicial Ethics proposes the following addition to Canon 5C. (Additions underlined). The Center for Judicial Ethics notes that rules on disposition of unexpended campaign funds established by discipline decisions, advisory opinions, and codes of conduct in several states are discussed in “*Disposition of Unexpended Judicial Campaign Funds*,” JUDICIAL CONDUCT REPORTER {Summer 2001}.