

Garden State CLE

presents:

A CLE Ethics Seminar:

Defending a Judicial Ethics Complaint



Lesson Plan

TABLE OF CONTENTS

Defending a Judicial Ethics Complaint

1. Constitutional Foundation for the Discipline of Judges
2. Procedural Foundation for the Discipline of Judges
3. Sources of Law Regulating Judicial Conduct
4. Authorized Judicial Public Disciplinary Measures
5. The Judicial Disciplinary Process
6. Substantive Offenses
 - I. Drunk Driving
 - II. Conduct of Judicial Proceedings
 - III. Sexual Misconduct
 - IV. Involvement with Politics
 - V. Misuse of Judicial Office
 - VI. Criminal Misconduct

Appendices

- I. Code of Judicial Conduct
- II. Directive 04-09
- III. Rule 2:15 (ACJC)

Defending a Judicial Ethics Complaint

1. Constitutional Foundation for the Discipline of Judges

a. NJ Constitution of 1947 – Art VI, Section 2, Paragraph 3

The Supreme Court shall make rules governing the administration of all courts in the State and, subject to the law, the practice and procedure in all such courts. The Supreme Court shall have jurisdiction over the admission to the practice of law and the discipline of persons admitted. [In re Mattera, 34 NJ 259 (1961)]

b. NJ Constitution of 1947 – Art VI, Section 6, Paragraph 4

The Justices of the Supreme Court and the Judges of the Superior Court shall be subject to impeachment, and any judicial officer impeached shall not exercise his office until acquitted. The Judges of the Superior Court shall also be subject to removal from office by the Supreme Court for such causes and in such manner as shall be provided by law.

c. NJ Constitution of 1947 – Art VI, Section 6, Paragraph 6

The Justices of the Supreme Court and the Judges of the Superior Court shall receive for their services such salaries as may be provided by law, which shall not be diminished during the term of their appointment. They shall not, while in office, engage in the practice of law or other gainful pursuit.

d. NJ Constitution of 1947 – Art VI, Section 6, Paragraph 7

The Justices of the Supreme Court and the Judges of the Superior Court shall hold no other office or position, of profit, under this State or the United States. Any such justice or judge who shall become a candidate for an elective public office shall thereby forfeit his judicial office.

e. NJ Constitution of 1947 – Art VII, Section 3, Paragraph 1

The Governor and all other State officers, while in office and for two years thereafter, shall be liable to impeachment for misdemeanor committed during their respective continuance in office. [Applies to municipal court judges, In re Mattera, 34 NJ 259 (1961)]

2. Procedural Foundation for the Discipline of Judges

a. Advisory Committee on Judicial Conduct (ACJC – founded in 1974, administration as per Rule 2:15-1) (Not based upon common law accusatory principles. Process is inquisitional, based upon the continental civil law model. Note the Selection, Investigative, Charging, Prosecutorial and Advocacy functions before the Supreme Court.)

b. All Investigations and related records remain confidential unless a complaint is filed at which time the entire file and all proceedings become public. Rule 2:15-20. Each procedural step is published on ACJC website.

c. Legislature on motion of either house or the governor

d. Supreme Court – Upon *de novo review*, imposes final discipline in all cases. [This is your jury and you should approach defending the case that way.]

=====

3. Sources of Law Regulating Judicial Conduct

- a. Established Supreme Court decisions from 1949 to date
- b. Decisions of the Advisory Committee on Judicial conduct (with confirming order)
- c. The Rules of Court – Rule 2:15 *et seq.* (especially Rule 2:15-8(a) (6) “conduct prejudicial to the administration of justice that brings the judicial office into disrepute.”) as a link to the N.J. Code of Judicial Conduct.

>>>>> Rule 1:14 - The Rules of Professional Conduct and the Code of Judicial Conduct of the American Bar Association, as amended and supplemented by the Supreme Court and included as an Appendix to Part I of these Rules, and the Code of Conduct for Judiciary Employees, also included as an Appendix to Part I of these Rules, shall govern the conduct of the members of the bar and the judges and employees of all courts of this State.

>>>>> Rule 1:18 - It shall be the duty of every judge to abide by and to enforce the provisions of the Rules of Professional Conduct, the Code of Judicial Conduct and the provisions of R. 1:15 and R. 1:17.

>>>>> Rule 1:17(a) (No political involvement by Judges)

>>>>> Rule 1:15-1 Limitation on Practice of Attorneys Serving as Judges and Surrogates

- **(a) Full Time Judges.** An attorney who is a judge required by law to devote full time to judicial duties shall not practice law.
- **(b) Judges of Municipal Courts.** An attorney who is a judge or acting judge of a municipal court shall not practice in any criminal, quasi-criminal or penal matter, whether judicial or administrative in nature, except to perform the official duties of a municipal attorney of another municipality. Nor shall a municipal court judge act as attorney for the municipality or any of the municipalities served by that court or as attorney for any agency or officer thereof; nor practice before the governing body or any agency or officer thereof; nor be associated in the practice of law, either as "of counsel" to or as partner, employer,

employee or agent of, or office associate, with an attorney who is a member of such governing body.

An attorney who is a judge of a municipal court shall be subject to the terms of that section of the New Jersey Conflicts of Interest Law which restricts involvement with specific casino industry activities (N.J.S.A. 52:13D-17.2).

- **(c) Surrogates.** An attorney who is a surrogate or deputy surrogate in any county, or who is in the employ of any such official, shall not practice law in any estate or trust matter, including the preparation of wills, trust documents, or any other probate documents, in or out of court. Furthermore, a surrogate or deputy surrogate shall not practice law in any criminal, quasi-criminal or penal matter, whether judicial or administrative in nature, in that county, nor in the Superior Court, Chancery Division, Probate Part in any county.

d. New Jersey Code of Judicial Conduct [See Appendices]

e. N.J.S.A.

4. Authorized Judicial Disciplinary Measures (Applies even though term of office has ended)

a. Removal (NJSA 2B:2A-1 *et seq.*) (This can result in reciprocal discipline) or lifetime bar to holding judicial office.

b. Suspension from Judicial Office (without pay – usually for two months: municipal is unlimited. In older cases, the Court would, on rare occasions, impose suspension from practice.)

c. Censure

d. Reprimand

e. Informal Discipline (caution or letter of guidance)

f. Referral for Administrative Action (Rule 2:15-25)

(Whenever the Committee determines that any or all of the allegations it has received are more properly the subject of administrative remedy or other administrative action, it may refer such allegations to the Administrative Office of the Courts and may so notify the person making the allegations.)

5. The Judicial Disciplinary Process

a. In general - Rule 2:15-8(a)

The Committee shall review any written statement, criticism, or grievance that is directed to the Committee and that contains allegations to the effect that a judge of the Superior Court, Surrogate's Court, Tax Court, or Municipal Court is guilty of:

- (1) misconduct in office,
- (2) willful failure to perform judicial duties,
- (3) incompetence,
- (4) intemperate conduct,
- (5) engaging in partisan politics, or
- (6) conduct prejudicial to the administration of justice that brings the judicial office into disrepute.

[[Rule 2:15-8](#) does not provide alternative, substantive standards of conduct for judges to follow. Those standards can instead be found in the *Code of Judicial Conduct*, the *Rules of Professional Conduct*, and certain other rules. We recognize that language in certain prior cases could lead to an alternative view and therefore direct that, going forward, [Rule 2:15-8](#) not be used as a basis for a substantive ethical violation. In re *Boggia*, 203 NJ 1, 10 (2010) (footnote 1)]

(b) The Committee shall also review allegations that any such judge may be suffering from a mental or physical disability that interferes with the performance of judicial duties.

(c) On referral to the Committee by the Supreme Court, the Committee shall conduct such review concerning any Justice of the Supreme Court and proceed thereafter in accordance with these Rules subject to the terms of the referral.

(d) The Committee may review on its own motion any matters as set forth in (a) above in the absence of a written statement, criticism, or grievance.

(e) If the Committee determines that it requires additional information, it shall conduct a preliminary investigation.

(f) If the Committee determines that the allegations under review relate to an action or other matter that is properly the subject of an appeal, or if the Committee determines that there is not sufficient cause to warrant a preliminary investigation, it shall dismiss the matter and notify the person who submitted the statement, criticism, or grievance.

(g) In exceptional circumstances, the Chair or Vice Chair may authorize the commencement of a preliminary investigation.

b. Self-reporting of civil, criminal or quasi-criminal matters (In re Frese, 170 NJ 415 (2002) (Failed to report out-of-state dwt accident and continued to hear DWI cases (reprimand))

c. Preliminary Investigation by ACJC (Confidential under rule 2:15-20(a)) [Note duty to fully cooperate!]

- 1. Interview or deposition with staff investigators**
- 2. Informal conference with ACJC (Rule 2:15-10(c))**
- 3. Written Response from Respondent**

d. Formal Disciplinary Proceedings

1. Formal complaint requires a finding of probable cause to believe the judge has engaged in conduct specified in Rule 2:15-8(a).

2. Proceedings become public at this point (Rule 2:15-20.)

3. After service, judge has 20 days to file an answer (Rule 2:15-12(c))

4. After filing of an answer and exchange of discovery, a date will be set for formal, adversarial hearing before the ACJC

5. Sound recording of the hearing services as a basis for *de novo* review by the Supreme Court

e. Hearing Procedures

1. Rules of Evidence are generally relaxed – objections decided by the Chairman (Addressing the “Chairman”)

2. Adverse Inferences – ACJC will draw an adverse inference when the judge declines to testify (Rule 2:15-14(f))

3. Burden of proof – beyond a reasonable doubt in removal proceedings before the Supreme Court – in all other cases, by clear and convincing evidence.

4. Conclusive presumptions – Evidence from a criminal conviction (Plea or finding of guilt conclusively establishes the Judicial Ethics Violation. (In re Coruzzi, 98 NJ 77 (1984)).

5. Post-hearing briefs are permitted

6. Proven cases are reduced to a presentment (INCLUDING A RECOMMENDATION OF DISCIPLINE) and filed with the Clerk of the Supreme Court

Respondent judge may consent to discipline or request plenary hearing before the Supreme Court

f. Hearing before Supreme Court – tactics & strategy

(This is the first (and only) time that the case will be heard by and judged before a truly fair, neutral and detached judicial body)

1. Participation by Respondent (Sometimes absolutely necessary, sometimes a disaster (e.g. In re Mathesius, 188 NJ 496 (2005) (one-month suspension))

2. Briefing & oral argument [Tactics & Strategy]

g. Aggravating Factors

- 1. Violation of public policy (sexual harassment/drunk driving)**
- 2. Criminal offenses**
- 3. Harm to innocent victims**
- 4. Pattern of misconduct**
- 5. Lack of contrition**
- 6. Prior Judicial Discipline (Progressive Discipline – e.g. In re McElroy vs. In re Williams)**

h. Mitigating Factors

- 1. Contrition & Rehabilitation**
- 2. Prior Unblemished Record**
- 3. Single Act of Misconduct**
- 4. Recovery from Serious Medical Condition (In re Piscal, 177 N.J. 525 (2003))**

6. Substantive Offenses

I Drunk Driving

- a. Note – Requires self-reporting & immediate compliance with Directive 04-09 (See appendix)

- b. Plea or finding of guilt conclusively establishes the Judicial Ethics Violation. (In re Coruzzi, 98 NJ 77 (1984). Case will be tried before a judge of the Superior Court (sitting as a municipal court judge) with appeal directly to the Appellate Division. See State v. Cerefice, 335 NJ Super. 374 (App. Div. 2000).

- c. Typical Discipline upon conviction will result in:
 - 1. Reprimand for routine cases

 - 2. Censure for cases involving aggravating factors related to the driving, arrest or investigation

 - 3. Suspension from Judicial Office for subsequent offenses (In re Collester, 126 N.J. 468 (1992))

- c. Public Policy: **With respect of drunk driving, we said in *Connor*: 'We do not view offenses arising from the driving of an automobile while intoxicated with benign indulgence. They are serious and deeply affect the safety and welfare of the public. They are not victimless offenses.'** We firmly endorse the governmental commitment to the eradication of drunk driving as one of the judiciary's own highest priorities. In re Collester, 126 NJ 468, 472-473 (1992).

d. In re Collester, 126 N.J. 468, 473-474 (1992)

Without doubt the most egregious aspect of respondent's ethical dereliction is the fact that he has repeated the offense of drunk driving. However, in addition to that circumstance, there were other aggravating circumstances surrounding his motor vehicle infractions. Respondent, on his arrest, immediately informed the arresting officer that he was a Judge of the Superior Court. He also stated that he was responding to an emergency at the court house. That statement was false. There was no emergency. Although respondent was, in fact, proceeding to the court house, it was to obtain a file to review that night in preparation for the next day's trial. Moreover, he repeated that false statement to the arresting trooper. He thus seemingly attempted to divert, if not obstruct, justice. Further, as observed by the Committee, "respondent's several references to his judicial status gave the impression that he was entitled to some special preference." He thus clearly used the prestige and weight of his judicial office to try to gain some personal advantage.

e. In re Connor, 124 NJ 18 (1991)

Aggravating Factors:

That examination in this case discloses aggravating circumstances that bear on appropriate discipline. Those aggravating factors affect our consideration of each of the offenses. The drunk-driving offense resulted in an accident with another vehicle. The offenses of leaving the scene and careless driving were particularly egregious. The former, itself a serious offense, bespeaks a denial of responsibility and a disregard for the proper enforcement of the laws. The careless driving entailed not only an accident with another vehicle, endangering its occupants, but a high-speed chase, presenting significant risks to other innocent persons. As serious are the circumstances that followed those offenses. Rather than simply refusing to discuss the incident with the investigating officers following the commission of these offenses-which respondent had the legal right to do, aside from whether it was morally and ethically proper for him to do so-respondent lied about being involved in any accident and, worse, tried to cast blame on the victim.

Mitigating Factors:

On the day following the accidents and arrest, respondent called Ms. Bennett to inquire about her condition and that of the passengers in her vehicle. He apologized to Ms. Bennett for the accident and offered to pay for any damages that she had incurred. Next, he wrote a series of letters to Atlantic County judges explaining what he had been charged with, admitting guilt to all the charges, and apologizing for the incident. Respondent then called Seabrook House, a clinic specializing in the treatment of substance abuse, and scheduled an interview for that day. The respondent had an interview with a counsellor from Seabrook House who recommended an inpatient treatment program. Recognizing the extent of his drinking problem, respondent decided to enroll in a thirty-day residential treatment program. Later that day, respondent prepared and released to the press a written statement acknowledging responsibility for his actions and offering a general apology.

Immediately after the court hearing, respondent entered Seabrook House for a thirty-day residential treatment program. Following his release from Seabrook House, respondent enrolled in a prescribed outpatient program, consisting of weekly group-therapy sessions run by a counsellor and individual counselling sessions with a therapist. Additionally, respondent followed a recommended course of three meetings per week at Alcoholics Anonymous. He also has a sponsor, an attorney with whom he speaks at least once each week.

II. Conduct of Judicial Proceedings

Introduction - Policy Issues

Judicial Independence

Decorum, Austerity and Dignity in the court room

Latitude for human frailties

Canon 3(A)3 (Rule 2:15-8(a)(4))

A judge should be patient, dignified and courteous to litigants, jurors, witnesses, lawyers, and others with whom the judge deals in an official capacity, and should not permit lawyers, court officials, and others subject to the judge's direction and control to display impatience or discourtesy or to detract from the dignity of the court.

Key Cases

In re Yengo, 72 NJ 425 (1977) (Removal)

In re Samay, 166 NJ 25 (2001) (Removal)

In re Yaccarino, 101 NJ 342 (1985) (Removal)

In re Albano, 75 NJ 509 (1978) (Censure)

In re Sadofski, 98 NJ 434 (1985) (Reprimand)

In re Horan, 85 NJ 535 (1981) (Reprimand)

In re Bozarth, 127 NJ 271 (1992) (Reprimand)

In re Pizzi, 130 NJ 537 (1993) (Reprimand)

In re Fenster, 138 NJ 134 (1994) (six-month suspension)

In re Gaeta [UNPUBLISHED] (ACJC Rec. Reprimand for Bias)

In re Newman, 189 NJ 477 (2006) (Admonition)

In re Yengo, 72 NJ 425, 450-451 (1977)

The poorest, weakest, most hapless or illiterate defendant, standing before an American court, is entitled to exactly the same respect, rights and hearing as would be the Chief Justice of the United States standing before the court and similarly accused. This is part of what our Constitution means by 'equal protection of the laws.'

In re Fenster, 138 NJ 134, 143 (1994)

We will not allow the political independence of the municipal courts to be affected even slightly by speculation about how much a judge may do to accommodate the political, social, or legislative agenda of the mayor, whether that agenda be evil or benign. In his or her judicial role, the judge may do so not at all, not in the least, never. There is nothing more important to the judiciary than its independence, especially its independence from political influence. That truth resonates throughout the judiciary, but nowhere more than in the municipal courts.

Other Recent Cases of Note

Ex parte communications—In re Piscal, 177 NJU 575 (2003) (Censure)

Abuse of litigants—In re Rzemieniewski, 185 NJ 598 (2005) (Censure)

Conflict of interest/abuse of litigants—In re Saltman, 185 NJ 242 (2005) (Censure)

Intemperate conduct—Maisto, 189 NJ 301 (2007) (Censure)

Ex parte communication/intemperate conduct—In re Mathesius, 188 NJ 496 (2005) (one-month suspension)

Ex Parte communications—In re Elias, 195 NJ 191 (2008) (Censure)

Conflict of interest with litigant—In re Bowkley, 195 NJ 176 (2008) (Admonition)

Conflict of interest with court staff_—In re Miniman, 195 NJ 276 (2008) (Reprimand)

Intemperate conduct—Abuse of Attorneys—In re Giles, 196 NJ 456 (2008) (Reprimand)

Intemperate conduct with court staff_—Outside employment by a full-time judge—In re McElroy, 196 NJ 457 (2008) (Censure & permanent bar)

Bias—Improper Involvement in Plea Bargaining Process—In re Broome, 193 NJ 36 (2007) (Reprimand)

Intoxicated while on the bench—Pattern of misconduct—In re Sasso, 199 NJ 119 (2009) (Permanent bar)

Abuse of contempt of court powers—In re Toth, 200 NJ 217 (2009) (Reprimand)

Bias and intemperate conduct—In re Citta, 201 NJ 413 (2010) (Reprimand)

Involvement in plea bargaining/*ex parte* communications—In re Delehey, 200 NJ 278 (2009) (Reprimand)

Inappropriate attempts at humor in the court room—In re Convery, 201 NJ 411 (2010) (Reprimand)

Family members before the court/conflict of interest—In re Council, 202 NJ 37 (2010) (Admonition)

III. Sexual Misconduct

In re Williams, 169 N.J. 264 (2001) (three-month suspension)

In re Bock, 128 N.J. 270 (1992) (six-month suspension)

In re Seaman, 133 NJ 67 (1993) (two-month suspension)

In re Subryan, 187 NJ 139 (2006) (two-month suspension)

In re Brennan, 147 NJ 314 (1997) (Private reprimand)

In re Boylan, 162 NJ 289 (2000) (Removal & Disbarment) (Sex for reduced fines)

In re Campbell, 205 NJ 2 (2011) (Censure) (Consensual sexual relations with a subordinate)

In re DeBello, 201 NJ 147 (2009) (Censure) (E-mail abuse (sexual/former female law clerk + advancing her interests))

IV Involvement with Politics

In re Pagliughi, 39 NJ 517 (1963) (Reprimand)

In re Hayden, 41 NJ 443 (1964) (Reprimand)

Application of Gaulkin, 69 NJ 185 (1976)

Lehrer/Moses Statement (Reprimand)

In re Conda, 72 NJ 229 (1977) (Reprimand)

In re Boggia, 203 NJ 1 (2010) (Acquitted – Presentment dismissed)

Other Cases of Note

Attended Local Election Celebration – In re Sanchez, 175 NJ 332 (2003) (Reprimand)

Photographed with Criminally Charged Public Official – In re Rodriguez, 196 NJ 450 (2008) (Admonition) (See also In re Blackman, 124 NJ 547 (1991) (Reprimand) (“Going away” party for a convicted criminal))

**Statement of the Supreme Court –
February 1, 1990 (Judges Lehrer and
Moses)**

There is no principle governing the judiciary in this state more firmly established or more important than the total separation of judges from politics. The principle is an essential ingredient of judicial independence; it is probably the most important requirement for maintaining public confidence in the judiciary. The rule is so clear, the tradition in this state so strong, that it is rarely violated. In

New Jersey, judges and politics do not mix—not at all, either in fact or appearance.

The question is whether the public might believe the judge is somehow involved in politics or might have some doubt about whether the judge is totally and completely independent of politics, politicians, and political influence. In practice our application of the prohibition is almost harsh. The issue is not whether a reasonable person would probably conclude the judge had become vulnerable to political influence, but whether there is a fair possibility that some portion of the public might become concerned on that score. And, as in many other instances concerning the conduct of judges, the appearances count as much as the facts. This total separation of the judiciary from politics became

V Misuse of Judicial Office

Cases of Note

Letterhead – In re Sonstein, 175 NJ 498 (2006) (Censure)

Ticket for secretary's nephew – In re Wright, 179 NJ 417 (2004)
(Reprimand)

Business Card – In re McElroy, 179 NJ 418 (2004) (Reprimand)

Improper Influence (marijuana case/police) – In re Kohlhepp, 179 NJ 423 (2004) (Censure)

Conflicts of interest (Family members/Clients); In re Rivera-Soto, 192 N.J. 109 (2008) (Censure)

Boxing Referee – In re Smoger, 173 NJ 25 (2002) (Bar from Judicial Office)

Appear before mayor & council with a client – In re Palmisano, 18 NJ 497 (1955) (Reprimand)

Township solicitor & judge simultaneously – In re Klaisz, 19 NJ 145 (1955) (Censure)

Legal malpractice for private client – In re Hazelwood, 102 NJ 635 (1986) (Reprimand)

Contacted another court on behalf of a client – In re Santini, 126 NJ 291 (1991) (Reprimand)

Contacted another court on behalf of a client – In re Murray, 92 NJ 567 (1983) (Reprimand)

Contacted another court (via fax) on behalf of a client – In re Carton, 140 NJ 330 (1995) (Reprimand)

Contacted another court on behalf of a client – In re Vasser, 75 NJ 357 (1978) (Six-month suspension)

Tried son's speeding case – In re Di Sabato, 76 NJ 46 (1978) (Censure)

Contacted police on behalf of a client – In re Yaccarino, 101 NJ 342 (1985) (Removal from Judicial Office)

Contacted school in tuition dispute/ signed complaint & arraigned son's gym teacher – In re Samay, 166 NJ 25 (2001) (Removal from Judicial Office)

Fee for performing marriages – In re Del Mauro, 57 NJ 317 (1971) (Suspension from practice of law for one-year)

Interacted with Borough Officials on behalf of a client – In re DelSordo, 96 NJ 133 (1984) (Suspension from practice of law for one-year)

Demonstrating public support for a litigant/friend – In re Perskie, 207 NJ 275 (2011) (Censure)

Ex parte communications with prosecutor during trial – In re McCloskey, ___ NJ ___ (2012) (Reprimand)

Rude & Disrespectful to pro se litigant – In re Baker, 206 NJ 580 (2011) (Censure)

Advancing Private Interests – In re Muller, 208 NJ 435 (2011) (Reprimand)

Advancing Private Interests – In re Baptista, 205 NJ 316 (2011) (Reprimand)

VI Criminal Misconduct

In re Coruzzi, 95 NJ 557 (1984) (Removal) (Bribery)

In re Imbriani, 139 NJ 262 (1995) (Removal) (Theft)

In re Breslin, 162 NJ 190 (2000) (Lifetime bar) (Failed to report bribe attempt)

In re Pepe, 140 NJ 561 (1995) (Removal)

In re Thompson, 197 NJ 464 (2009) (Removal) (Federal - Sexual Exploitation of a child in Russia.)

APPENDECIES

I. Code of Judicial Conduct

Complete Code of Judicial Conduct Available at
<http://www.judiciary.state.nj.us/rules/appjudicial.htm>
(*Outline of Code of Judicial Conduct Shown Below*)

CODE OF JUDICIAL CONDUCT

Canon 1. A Judge Should Uphold the Integrity and Independence of the Judiciary

Canon 2. A Judge Should Avoid Impropriety and the Appearance of Impropriety in All Activities

- A. A judge should respect and comply with the law and should act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.
- B. A judge should not allow family, social, political, or other relationships to influence judicial conduct or judgment. A judge should not lend the prestige of office to advance the private interests of others; nor should a judge convey or permit others to convey the impression that they are in a special position of influence. A judge shall not 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.

Canon 3. A Judge Should Perform the Duties of Judicial Office Impartially and Diligently.

The judicial duties of a judge take precedence over all other activities. Judicial duties include all the duties of the office prescribed by law. In the performance of these duties, the following standards apply:

- A. Adjudicative Responsibilities.
- B. Administrative Responsibilities.
- C. Disqualification. (see R. 1:12-1)
- D. Remittal of Disqualification. A judge disqualified by the terms of this Canon may not avoid disqualification by disclosing on the record the disqualifying interest and securing the consent of the parties.

Canon 4. A Judge May Engage in Activities to Improve the Law, the Legal System, and the Administration of Justice

A judge, subject to the proper performance of judicial duties, may engage in the following quasi-judicial activities if in doing so the judge does not cast doubt on the judge's capacity to decide impartially any issue that may come before the court and provided the judge is not compensated therefor:

- A. A judge may speak, write, lecture, and participate in other activities concerning the law, the legal system, and the administration of justice.
- B. A judge may teach concerning the law, the legal system, and the administration of justice.
- C. A judge may appear at a public hearing before an executive or legislative body or official on matters concerning the law, the legal system, and the administration of justice upon notice to and approval by the Supreme Court, and may otherwise consult with an executive or legislative body or official, but only on matters concerning the administration of justice with which the judge is charged with responsibility by the Rules of Court.
- D. A judge may serve as a member, officer or director of a nongovernmental organization devoted to the improvement of the law, the legal system, or the administration of justice. A judge may not, however, assist such an organization in raising funds nor may a judge participate in their management and investment. A judge may make recommendations to public and private fund-granting agencies on projects and programs concerning the law, legal system, and the administration of justice.

Canon 5. 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.

B. Avocational Activities.

C. Civic and Charitable Activities.

D. Financial Activities.

E. Fiduciary Activities.

F. Arbitration. A judge shall not act as an arbitrator or mediator.

G. Practice of Law. A judge shall not practice law, with or without compensation.

H. Extra-Judicial Appointments. A judge shall not accept appointment to a governmental committee, commission, or other position except with prior approval of the Supreme Court as provided in the Rules of Court.

Canon 6. A Judge Shall Not Receive Compensation for Quasi-Judicial and Extra-Judicial Activities

A judge may not receive compensation for the quasi-judicial and extra-judicial activities permitted by this Code but may receive reimbursement of actual expenses that the judge reasonably incurred for travel, food, and lodging, provided that the source of such payments does not give the appearance of influencing the judge in the exercise of judicial duties or otherwise give the appearance of impropriety.

Canon 7. A Judge Shall Refrain From Political Activity

A. A judge shall not:

(1) act as a leader or hold any office in a political organization;

(2) make speeches for a political organization or candidate or publicly endorse a candidate for public office;

(3) attend political functions that are likely to be considered as being political in nature;

(4) solicit funds or pay an assessment or make a contribution to a political organization or candidate, or purchase tickets for political party dinners or other functions;

B. A judge shall resign from office when the judge becomes a candidate for an elective public office or for a nomination thereto.

C. A judge shall not otherwise engage in any political activity.

Compliance With the Code of Judicial Conduct

All judges shall comply with this Code except as provided below.

A. Part-Time Judge. A part-time judge is a judge who serves on a continuing or periodic basis but is permitted by law to devote time to some other profession or occupation and whose compensation for that reason is less than that of a full-time judge. A part-time judge:

(1) is not required to comply with Canon 5D(2), E, F, and G;

(2) should not practice law except as permitted by the Rules of Court;

(3) may receive compensation for activities encompassed by Canons 4B and 5B(2).

B. Retired Judge. All retired judges recalled to judicial service shall comply with the provisions of this Code governing full-time judges.

II. Directive # 04-09

TO: SUPERIOR COURT JUDGES

TAX COURT JUDGES

MUNICIPAL COURT JUDGES

FROM: CHIEF JUSTICE STUART RABNER

**SUBJ: DISQUALIFICATION OF JUDGES CHARGED WITH OR CONVICTED OF DWI
OFFENSES OR DOMESTIC VIOLENCE OFFENSES**

DATE: MAY 29, 2009

On June 17, 1999, this Court issued Directive #7-99, which consolidated and restated procedures previously adopted by the Supreme Court regarding judicial

disqualifications as a result of DWI or domestic violence matters. After almost ten years under that Directive, the Supreme Court has decided that substantive modifications to the policy are required. The revisions are consistent with the Legislature's imposition of enhanced penalties for DWI violations since Directive #7-99 was issued. In particular, In 2004 the Legislature lowered the blood alcohol level required for DWI offenses from 0.10% to 0.08% and lengthened the period of license suspension for first-time offenders. L. 2003, c. 314 (mandating three-month suspension when violation involves blood alcohol level below 0.10% and lengthening suspension from six months to seven when level above 0.10%); see also L. 2003, c. 315 (imposing mandatory jail time for third drunk driving offense); L. 2002, c. 34, § 17 (increasing fines for DWI offenses); L. 2000, c. 83 (permitting the installation of ignition interlock devices after any DWI violation). The revised policy language follows. Driving While Intoxicated (DWI) Disqualifications The Supreme Court has modified its administrative policy for judges who have been charged with or convicted of driving while intoxicated (DWI) or related offenses. The policy applies to all judges sitting in Municipal Court and Superior Court, including temporary assignments.

Directive # 04-09

[Supersedes Directive #07-99]

Directive #04-09

May 29, 2009

Page 2

Judges charged with or convicted of DWI or related offenses shall not hear any DWI cases while the charges are pending and, if convicted, until (a) one year from the date of the imposition of sentence (as extended by any stay), or (b) all conditions imposed as a result of the DWI conviction are satisfied in full, including suspension of the judge's driver's license and completion of the prescribed program requirements of the Intoxicated Driver Resource Centers, whichever is longer. If, at the time the charges are brought, the judge has reserved decision in any DWI case, that case shall be transferred by the Assignment Judge to another judge. The matter shall be determined on the papers unless the defendant objects. If the defendant interposes an objection, a mistrial shall be declared and the case will be retried before the judge to whom the matter was transferred.

The Court has further determined that a judge who has been disqualified from hearing DWI matters under this policy shall not thereafter hear such cases without the prior approval of the Supreme Court on the application of the judge.

Supreme Court

approval of an application to resume hearing DWI cases will not preclude a judge from exercising his or her power of recusal in any particular DWI case or in any category of such cases.

Domestic Violence Disqualifications

The Supreme Court also has adopted a policy for assigning cases to judges when a judge is a party to a domestic violence matter. The policy applies to all judges sitting in Municipal Court and Superior Court, including temporary assignments. A judge who is a party in a domestic violence matter shall not hear any domestic violence cases while the matter is pending and for a period of one year from the entry of the trial court's disposition. If the disposition is a final restraining order against the judge, the judge shall be disqualified from hearing any domestic violence case during the period any restraint is in place or for one year from the date of the order, whichever is longer.

If, at the time a domestic violence complaint is filed, the judge has reserved decision in any domestic violence case, that case shall be transferred by the Assignment Judge to another judge. The matter shall be determined on the papers unless a party objects. If a party interposes an objection, a mistrial shall be declared and the case will be retried before the judge to whom the matter was transferred. The Court has further determined that a judge who has been disqualified from hearing domestic violence matters under this policy shall not thereafter hear such cases without the prior approval of the Supreme Court on the application of the judge. Supreme Court approval of an application to resume hearing domestic violence cases will not preclude a judge from exercising his or her power of recusal in any particular domestic violence case or in any category of such cases. A judge disqualified under this policy may not automatically resume hearing domestic violence matters if a temporary order of restraint is vacated, or if the matter in which the judge is involved is concluded without the entry of relief in favor of the complainant. Once disqualified under this policy, a judge must obtain the approval of the Supreme Court prior to hearing any domestic violence cases.

III. RULE 2:15. Advisory Committee on Judicial Conduct

2:15-1. Establishment of Committee

To implement N.J.S.A. 2B:2A-10, providing for suspension prior to hearing, and to assist otherwise in fulfilling the administrative responsibilities of the Court, the Court establishes a committee of this Court to be known as Advisory Committee on Judicial Conduct.

Note: Adopted July 23, 1974, effective immediately; amended February 3, 1997 to be effective March 1, 1997.

2:15-2. Appointment and Membership

The Committee shall consist of nine members. The Court shall designate one member to serve as Chair and another member to serve as Vice Chair. At least two members shall be retired Justices or Judges of the Supreme Court or Superior Court, no fewer than three members shall be members of the Bar, and no more than four members shall be members of the public who do not hold public office of any nature. Members shall be appointed by the Supreme Court for a term of three years and may be reappointed for such additional term or terms as the Court shall determine. Membership on the Committee shall terminate if a member is appointed or elected to public office or to any position considered by the Court to be incompatible with such service. All appointments to fill vacancies shall be for the unexpired term.

Note: Adopted July 23, 1974, effective immediately; amended July 2, 1984 effective immediately; amended June 28, 1996 to be effective September 1, 1996; amended February 3, 1997 to be effective March 1, 1997.

2:15-3. Quorum and Hearing Panels

- **(a)** A quorum shall consist of five members of the Committee. No action of the Committee shall be valid unless concurred in by a majority of its membership, provided, however, that if the Committee finds sufficient cause therefor and recommends to the Supreme Court the institution of formal proceedings, which may lead to reprimand, censure, suspension, or removal of a Judge, such recommendation shall be made only on the affirmative vote of five members of the Committee who have considered the record and at least three of whom were present at any hearing at which oral testimony was produced.
- **(b)** Whenever the Committee considers it necessary or expedient to do so, the Chair of the Committee may establish and designate a three-member panel to conduct any investigation or any hearing contemplated by these Rules. At the conclusion thereof such panel shall make a report or recommendation to the Committee, which shall review the report or recommendation and act thereon as set forth in (a) of this Rule.

Note: Adopted July 23, 1974, effective immediately; paragraph (b) amended June 28, 1996 to be effective September 1, 1996; paragraphs (a) and (b) amended February 3, 1997 to be effective March 1, 1997.

2:15-4. Administration and Principal Office

- **(a)** The Administrative Director of the Courts shall be Executive Secretary of the Committee, and the principal office of the Committee shall be located at the Richard J. Hughes Justice Complex, Trenton, New Jersey.
- **(b)** The Administrative Office of the Courts shall provide the Committee with administrative, legal, investigative, and clerical support, and shall assign a staff member to serve as Secretary to the Committee. The Secretary shall be responsible for day-to-day coordination of staff support, under the supervision of the Administrative Director.
- **(c)** All records of the Committee shall be filed and maintained in such principal office of the Committee. All papers filed with and proceedings before the Committee shall be confidential except as otherwise provided in these Rules.

Note: Adopted July 23, 1974, effective immediately; paragraph (a) amended July 26, 1984 to be effective September 10, 1984; paragraphs (b) and (c) amended February 3, 1997 to be effective March 1, 1997.

2:15-5. Reimbursement

The Committee members shall serve without compensation, except that they shall be allowed their expenses for travel or other incidental expenses necessarily incurred in the performance of their services.

Note: Adopted July 23, 1974, effective immediately.

2:15-6. Investigations; Service of Subpoenas and Orders

- **(a)** In the conduct of investigations and hearing proceedings of any nature, the Committee, the Secretary to the Committee, or individual members may (1) administer oaths, (2) order the inspection of books and records, (3) take depositions of necessary witnesses, (4) issue subpoenas for the attendance of witnesses and for the production of papers, books, accounts, documents, and testimony, or any other records or material that may be relevant to any such investigation or formal proceeding.
- **(b)** A respondent may, with the prior approval of the Supreme Court, take depositions of witnesses who are unavailable to testify before the Committee.
- **(c)** The Sheriff of the appropriate County or such person as may be designated by the Committee shall, when necessary in the judgment of the Committee, serve on the persons involved subpoenas or orders for the taking of depositions, for the production of items described in subparagraph (a) above, or for the attendance at investigations and at hearings (formal or informal).

Note: Adopted July 23, 1974, effective immediately. Paragraph (a) amended July 22, 1983 to be effective September 12, 1983; paragraph (a) amended, former paragraph (b) amended and redesignated as paragraph (c), new paragraph (b) adopted February 3, 1997 to be effective March 1, 1997.

2:15-7. Cooperation by Attorneys and Court Personnel

Attorneys admitted to practice law in this State, judges, justices, officials, clerks, and other employees of the judicial system of this State shall cooperate with and give reasonable assistance and information to the Committee, the Secretary, and any authorized representative thereof, in connection with any investigations by or proceedings of the Committee.

Note: Adopted July 23, 1974, effective immediately; caption and text amended February 3, 1997 to be effective March 1, 1997.

2:15-8. Initial Review by Committee

- (a) The Committee shall review any written statement, criticism, or grievance that is directed to the Committee and that contains allegations to the effect that a judge of the Superior Court, Surrogate's Court, Tax Court, or Municipal Court is guilty of:
 - (1) misconduct in office,
 - (2) willful failure to perform judicial duties,
 - (3) incompetence,
 - (4) intemperate conduct,
 - (5) engaging in partisan politics, or
 - (6) conduct prejudicial to the administration of justice that brings the judicial office into disrepute.
- (b) The Committee shall also review allegations that any such judge may be suffering from a mental or physical disability that interferes with the performance of judicial duties.
- (c) On referral to the Committee by the Supreme Court, the Committee shall conduct such review concerning any Justice of the Supreme Court and proceed thereafter in accordance with these Rules subject to the terms of the referral.
- (d) The Committee may review on its own motion any matters as set forth in (a) above in the absence of a written statement, criticism, or grievance.
- (e) If the Committee determines that it requires additional information, it shall conduct a preliminary investigation.
- (f) If the Committee determines that the allegations under review relate to an action or other matter that is properly the subject of an appeal, or if the

Committee determines that there is not sufficient cause to warrant a preliminary investigation, it shall dismiss the matter and notify the person who submitted the statement, criticism, or grievance.

- (g) In exceptional circumstances, the Chair or Vice Chair may authorize the commencement of a preliminary investigation.

Note: Adopted July 23, 1974, effective immediately; paragraph (a) amended July 15, 1982 to be effective September 13, 1982; paragraph (a) amended July 26, 1984 to be effective September 10, 1984; paragraphs (a)(2), (a)(7) and (c) amended July 18, 1990 to be effective September 4, 1990; caption amended, paragraph (a) amended, paragraph (a)(7) amended and redesignated as paragraph (b), last sentence of paragraph (a) amended and redesignated as paragraph (c), former paragraph (b) amended and redesignated as paragraph (d), paragraph (c) amended and redesignated as paragraph (f), paragraphs (e) and (g) adopted February 3, 1997 to be effective March 1, 1997.

2:15-9. Preliminary Investigation; Disclosure to Judge

In the course of its preliminary investigation, the Committee, in its discretion, may inform the judge of the allegations and of the identity of the person who is the source of the allegations and may request the judge to submit a written response to the allegations or to be interviewed or deposed by the Committee or by such person or persons as the Committee may designate.

Note: Adopted July 23, 1974, effective immediately; amended July 13, 1994 to be effective September 1, 1994; caption and text amended February 3, 1997 to be effective March 1, 1997.

2:15-10. Action on Completion of Preliminary Investigation

On completion of its preliminary investigation, the Committee may:

- **(a)** if it finds that the allegations are without merit, dismiss them and so inform the person who brought the allegations before the Committee, as well as the judge if the Committee so desires; or
- **(b)** initiate formal proceedings pursuant to Rule 2:15-12; or
- **(c)** if it finds conduct by the judge that does not constitute conduct for which there is probable cause that public discipline should be imposed but that is conduct of the type set forth in Rule 2:15-8(a) or other conduct that would reflect unfavorably on the judicial office if it were to become habitual or more substantial in character,
 - (1)** communicate to the judge its private censure, reprimand, admonition, caution, or guidance concerning the conduct in question and so notify the person who brought the allegations before the Committee, with a copy of the communication being sent to the judge's Assignment Judge or, if applicable, the Presiding Judge of the Tax Court or the Presiding Judge for Administration of the Appellate Division. In the exercise of his or her discretion, an Assignment Judge may forward a copy of the communication to the judge's Superior Court or Municipal Court Presiding Judge, as may be applicable; or
 - (2)** require the judge to appear for an informal conference pursuant to Rule 2:15-11.

Note: Adopted July 23, 1974, effective immediately; paragraphs (b) and (c) amended July 13, 1994 to be effective September 1, 1994; caption and text of former Rule 2:15-10 deleted and new caption and text adopted February 3, 1997 to be effective March 1, 1997; subparagraph (c)(1) amended July 27, 2006 to be effective September 1, 2006.

2:15-11. Informal Conference

At any time while a matter is pending before it, the Committee may conduct an informal conference with the judge and, in the discretion of the Committee, with the grievant.

- **(a)** At an informal conference, the judge has the right to be represented by an attorney retained at the expense of the judge.
- **(b)** All informal conferences shall be recorded by a qualified shorthand reporter, a video recording device, or a sound recording device. The Committee shall, on request, provide to the judge without charge a copy of any videotape that is made or transcript if one is prepared.
- **(c)** If, after holding an informal conference with a judge, the Committee is satisfied that further proceedings are not warranted, the Committee shall dispose of the matter consistent with Rule 2:15-10(a) or (c).
- **(d)** If, after holding an informal conference with a judge, the Committee determines that further proceedings are warranted, the Committee shall institute formal proceedings pursuant to Rule 2:15-12.

Note: Adopted July 23, 1974, effective immediately; paragraph (e) deleted and caption amended July 22, 1983 to be effective September 12, 1983; paragraph (c) amended July 13, 1994 to be effective September 1, 1994; caption and introductory text amended, paragraphs (a), (b) and (c) deleted and new paragraphs (a), (c) and (d) adopted, and paragraph (d) amended and redesignated as paragraph (b) February 3, 1997 to be effective March 1, 1997.

2:15-12. Institution of Formal Proceedings Before the Committee

- **(a)** Whenever the Committee concludes from its preliminary investigation that probable cause exists for the imposition of public discipline, the Committee shall issue a formal complaint and shall serve it on the judge.
- **(b)** The formal complaint shall issue over the signature of the Secretary to the Committee and shall give notice to the judge of the specific nature of the charges and of such facts as are then known to the Committee on which the charges are based.
- **(c)** Within twenty days of service of the formal complaint on the judge, the judge shall file an answer to the charges with the Committee at its principal office. For good cause, the Committee may extend the time within which the judge may file an answer.
- **(d)** After receiving the judge's answer or after the expiration of the time within which an answer is due, the Committee shall schedule a formal hearing and shall immediately notify the judge of the time and place at which the hearing will be held.

Note: Adopted July 23, 1974, effective immediately; amended July 22, 1983 to be effective September 12, 1983; amended July 13, 1994 to be effective September 1, 1994; caption amended, text of former Rule 2:15-12 amended and incorporated into paragraphs (a) and (b) of Rule 2:15-15, and new paragraphs (a), (b), (c) and (d) adopted February 3, 1997 to be effective March 1, 1997.

2:15-13. Discovery

- **(a)** Subsequent to the filing of an answer by the judge, the Committee shall make available to the judge all of the factual information in the Committee's file that is related to the complaint.
- **(b)** The Committee may request and shall thereupon receive reciprocal discovery from the judge.

Note: Adopted July 23, 1974, effective immediately; amended July 24, 1978 to be effective September 11, 1978; amended July 13, 1994 to be effective September 1, 1994; caption deleted and new caption adopted, text of former Rule 2:15-13 amended and incorporated into Rule 2:15-16, and new paragraphs (a) and (b) adopted February 3, 1997 to be effective March 1, 1997.

2:15-14. Conduct of Formal Hearing

- **(a)** At a formal hearing, the judge has the right to be represented by an attorney retained at the expense of the judge.
- **(b)** All testimony taken at a formal hearing shall be under oath.
- **(c)** All formal hearings shall be recorded by a qualified shorthand reporter, a video recording device, or a sound recording device. The Committee shall provide a copy of any videotapes or transcripts to the judge without charge.
- **(d)** The Secretary, or such other attorney as may be designated by the Committee, shall present to the Committee the evidence supporting the charges concerning the judge. The judge or the judge's attorney shall present any evidence in defense or explanation of the charges. No other person, except the members of the Committee, shall participate in a formal hearing other than as a witness giving testimony under oath.
- **(e)** The Rules of Evidence are not binding on the Committee.
- **(f)** If the judge refuses to testify at the hearing, the Committee may draw any reasonable inference, under the circumstances of the matter, from such refusal to testify.
- **(g)** At the conclusion of the formal hearing, the Committee may provide for post-hearing briefs.
- **(h)** At the conclusion of a formal hearing, with proper notice to the judge, the Committee may order that the charges set forth in the formal complaint be amended to conform to the proofs presented at the hearing.

Note: Adopted July 23, 1974, effective immediately; amended July 22, 1983 to be effective September 12, 1983; caption deleted and new caption adopted, text of former Rule 2:15-14 amended and incorporated into Rule 2:15-17, and new paragraphs (a) through (h) adopted February 3, 1997 to be effective March 1, 1997.

2:15-15. Decision of the Committee; Transmittal of the Record

- **(a)** If the Committee determines after a formal hearing that the charges against the judge have been proved by clear and convincing evidence and that a recommendation should be made to the Supreme Court for public reprimand, censure, suspension, or removal, it shall promptly file with the Clerk of the Supreme Court a Presentment setting forth its findings and its recommendation.
- **(b)** If the Committee determines after a formal hearing that the charges against the judge have not been proved by clear and convincing evidence or that the conduct does not warrant a recommendation for public reprimand, censure, suspension, or removal by the Supreme Court, it shall recommend to the Supreme Court the dismissal of the complaint with or without private discipline.
- **(c)** When filing the Committee's decisions pursuant to this Rule, the Secretary shall certify the record before the Committee and shall file copies thereof with the Court. In addition, the Secretary shall forthwith serve on the judge and the grievant notice of its action and two copies of its decision and of the certification of the Committee's record as filed with the Supreme Court.

Note: Adopted July 23, 1974, effective immediately; amended July 13, 1994 to be effective September 1, 1994; caption deleted and new caption adopted, text of former Rule 2:15-15 amended and incorporated into paragraph (a) of Rule 2:15-17, text of former Rule 2:15-12 amended and incorporated into Rule 2:15-15 as paragraphs (a) and (c) and new paragraph (b) adopted February 3, 1997 to be effective March 1, 1997.

2:15-16. Motion by Judge

Within seven days of the receipt of notice of a Presentment by the Committee, the judge may move in writing before the Supreme Court, on ten days' notice to the Committee and to the Attorney General, or to such other attorney as may be designated to prosecute the matter pursuant to Rule 2:15-18, for an order dismissing or modifying the recommendation set forth in the Committee's Presentment.

Note: Adopted July 23, 1974, effective immediately; caption deleted and new caption adopted, text of former Rule 2:15-16 amended and incorporated into paragraph (b) of Rule 2:15-22, text of former Rule 2:15-13 amended and incorporated into Rule 2:15-16 February 3, 1997 to be effective March 1, 1997.

2:15-17. Action by the Supreme Court

- **(a) Temporary Suspension.** The Supreme Court may order the immediate temporary suspension of a judge of the Superior Court, Tax Court, Municipal Court, or Surrogate's Court, with or without pay, from his or her judicial office or from the exercise of his or her judicial duties if the Court finds probable cause to conclude that the judge has violated the Code of Judicial Conduct, case law, or other authority and that the judge's continued service while proceedings are pending before the Committee poses a substantial threat of serious harm to the administration of justice.
- **(b) Presentments.** On review of a Presentment the Supreme Court shall:
 - (1) issue or order issued a complaint for removal pursuant to Rule 2:14-1; or
 - (2) require the judge to show cause why a sanction less than removal should not be imposed.

Note: Adopted July 23, 1974, effective immediately; caption deleted and new caption adopted, text of former Rule 2:15-17 amended and incorporated into Rule 2:15-21, text of former Rule 2:15-14 amended and incorporated into Rule 2:15-17 February 3, 1997 to be effective March 1, 1997; new paragraph (a) adopted and existing text of the Rule amended and designated as paragraph (b) July 12, 2002 to be effective September 3, 2002.

2:15-18. Prosecution of Removal Proceedings and of Other Proceedings Before the Supreme Court

- **(a)** All phases of removal proceedings held pursuant to N.J.S.A. 2B:2A-1 to -10 shall be prosecuted by the Attorney General or a representative of the Attorney General unless the Court shall specially designate an attorney for such purpose (see N.J.S.A. 2B:2A-4).
- **(b)** All proceedings in matters other than removal proceedings shall be prosecuted by the Secretary to the Committee or by such other attorney as the Committee may designate for such purpose.

Note: Adopted July 16, 1981 to be effective September 14, 1981; amended July 13, 1994 to be effective September 1, 1994; caption deleted and new caption adopted, text of former Rule 2:15-18 amended and incorporated into paragraph (a) of Rule 2:15-23, text of former Rule 2:15-15 amended and incorporated into paragraph (a) of Rule 2:15-18, new paragraph (b) adopted February 3, 1997 to be effective March 1, 1997.

2:15-19. Challenges to the Proceedings

Constitutional challenges to the proceedings shall be raised in response to notice received under Rules 2:15-9, 2:15-10, 2:15-11, or 2:15-12. They shall be preserved pending Supreme Court review of the matter on the merits.

Interlocutory relief may be had only to prevent irreparable injury. Motion papers shall conform to Rule 2:8-1. If leave to appeal is granted, the record below may, in the discretion of the Court, be supplemented by the filing of briefs and oral argument.

Note: Adopted July 16, 1981 to be effective September 14, 1981; amended February 3, 1997 to be effective March 1, 1997.

2:15-20. Confidentiality

- **(a)** Except as provided in paragraphs (b) and (c) below and in Rule 2:15-25 (Referral for Administrative Action), the record before the Committee shall be confidential and shall not be available to any person except in the proper discharge of official duties. In all circumstances, prehearing conferences,

deliberations of the Committee, and information subject to a protective order shall remain confidential.

- **(b)** If the Committee files a formal complaint against the judge, the complaint and all further proceedings thereon shall be public except that the Committee may apply to the Supreme Court for permission to retain confidentiality in a matter involving special circumstances, such as when the Committee determines that the privacy interests of a witness or other person connected with the matter outweigh the public interest in the matter.
- **(c)** If a judge who is the subject of a grievance requests it, the charge, the proceeding of the Committee thereon, and the action of the Committee with respect to the charge shall be made public.

Note: Adopted July 22, 1983 to be effective September 12, 1983; amended July 13, 1994 to be effective September 1, 1994; text amended and redesignated as paragraphs (a) and (c), paragraph (b) adopted February 3, 1997 to be effective March 1, 1997.

2:15-21. Costs

No award of costs shall be made in any proceeding before the Committee or the Supreme Court unless specifically ordered by the Supreme Court for good cause shown.

Note: Former Rule 2:15-17 amended and redesignated as Rule 2:15-21 February 3, 1997 to be effective March 1, 1997.

2:15-22. Immunity From Suit

- (a) The members and staff of the Committee shall be absolutely immune from suit, whether legal or equitable in nature, for any conduct in the performance of their official duties.
- (b) Witnesses and persons who bring to the Committee allegations concerning a judge shall be absolutely immune from suit, whether legal or equitable in nature, for all communications to the Committee or to its staff and for any testimony given at proceedings before the Committee, a three-judge panel, or the Supreme Court. This immunity shall not extend to any other publication or communication of such information.

Note: Paragraph (a) adopted and text of former Rule 2:15-16 amended and incorporated as paragraph (b) February 3, 1997 to be effective March 1, 1997.

2:15-23. Effect of Retirement, Resignation, or Failure of Reappointment

- **(a)** Although a judge retires, resigns from office, or is not reappointed, the Committee may consider a matter involving that judge's activities or conduct while a judge and may in its discretion (i) proceed with the matter in accordance with these Rules, or (ii) refer its file to the appropriate District Ethics Committee for handling pursuant to Rule 1:20, or (iii) take both actions.
- **(b)** The Committee shall have jurisdiction to review the conduct of any judge who is retired and serving on recall.

Note: Text of former Rule 2:15-18 amended and incorporated as paragraph (a), paragraph (b) adopted February 3, 1997 to be effective March 1, 1997.

2:15-24. Disqualification of Judge

The filing of allegations concerning a judge shall not automatically require the judge's recusal from a matter involving the grievant.

Note: Adopted February 3, 1997 to be effective March 1, 1997.

2:15-25. Referral for Administrative Action

Whenever the Committee determines that any or all of the allegations it has received are more properly the subject of administrative remedy or other administrative action, it may refer such allegations to the Administrative Office of the Courts and may so notify the person making the allegations.