

Comparison of the Task Force Proposal to the ABA Model Code (February 2007)

This memo indicates the primary differences between the ABA proposal and the proposal put forth by the Task Force. Many non-substantial changes are not mentioned in this memo. For examples, references to retention elections and causes have been removed. Changes in Rules 4.1-4.5 (governing elections) have been made in light of Amendment 80 and the non-partisan judicial elections. Similarly, references in Comments to local rules have been deleted.

The Task Force made several preliminary decisions:

- 1) We concluded that the format and approach of the ABA proposal is preferable to the existing Code.
- 2) As much as possible, we would follow the ABA proposal to assist in uniform interpretation.
- 3) We would carefully consider any prior Arkansas distinctions found in the present Code.
- 4) We would consider the realities of the judicial structure and experience in Arkansas.

Note: the designation of a Comment with an (A) means that it is an Arkansas addition to the ABA proposal. The same distinction was employed with the Arkansas Rules of Professional Conduct, as adopted by the Supreme Court in May 2005.

1) Application: The proposal deletes II (Retired-Judge Subject to Recall who by law is not permitted to practice law). Arkansas does not have such individuals. The provisions for Periodic Part-Time Judges and Pro Tempore Part-Time Judges have been retained.

2) Application: (III. Continuing Part-time Judges). The Task Force altered (B) to prohibit part-time judges from appearing in any criminal matter in the county in which the judge presides. Because of the geographical size of some judicial circuits, the Task Force concluded it was unrealistic to prohibit judges from appearing in any criminal matter in the entire circuit. Comment 2A explains this restriction. Further, Comment 3A urges the judge to exercise caution before appearing in any adversary proceeding that involves attorneys who come before the judge in his or her judicial capacity. In addition, the language in (A) was altered to provide that

candidates for district judgeships will be subject to the same judicial election rules as other judicial candidates.

3)Rule 2.9(A)(4): In response to feedback from the House of Delegates and other attorneys, the Task Force deleted this language: “A judge may, with the consent of the parties, confer separately with the parties and their lawyers in an effort to settle matters pending before the judge.”

2)Rule 2.11: The proposal removes (A)(4). The Task Force did not believe that disqualification should be required because a litigant or an attorney had contributed at a particular level to the campaign fund of the judge. However, recognizing the possibility of a conflict or the appearance of a conflict, the Task Force inserted Comment 4A.

3)Rule 2.13: The proposal removes (A)(3) forbidding appointment of lawyers to administrative positions if they had contributed at a particular level to the judge’s campaign fund. However, the proposal adds (D), which is taken from the current Code, and requires judges to affirmatively demonstrate to the Arkansas Judicial Discipline and Disability Commission that it is impossible for the judge to hire any other qualified person to fill the position.

4)Rules 2.14 and 2:15: The proposal adds Comments 3A to Rule 2.14 and Comments 7A and 8A to Rule 2.15. These references to the Arkansas Lawyer Assistance Program are taken from the existing Code.

5)Rule 3.1: The Task Force added Comment 5A. A strong majority of the Task Force supported this language. However, some members of the Task Force were concerned the language is inappropriate or unconstitutional. Note Paragraphs 3,4 and 6 in the Scope section. The Comments to the Rules provide guidance and identify aspirational goals for judges. They are not intended to be a basis for discipline.

6)Rule 3.6: Comment 2A is taken from the existing Comment in the current Arkansas Code of Judicial Conduct.

7)Rule 3.7(A)(3) retains the current language and permits a judge to solicit membership in charitable, religious and other organizations, provided it is done in a non-coercive manner.

8)Rule 3.14. Comment 4A states that reimbursement of expenses from government entities need

not be reported.

9)Rule 3.15 is modified by eliminating the dual reporting. The only public reports of outside income, expenses and gifts will be as required by Arkansas statutory law.

10)Rule 4.1: Comment 6A permits a judge or judicial candidate to attend or purchase tickets for dinner or other events sponsored by a political organization, but not by a candidate for public office.

11)Rule 4.1 does not permit a judicial candidate to make a pledge, promise or commitment. Comment 13A urges candidates to consider the impact of their statements before speaking or announcing personal views on social or political topics. Some members of the Task Force were concerned that Comment 13A is inappropriate or unconstitutional. See (5) above.

12)Rules 4.1 and 4.2: Judges and judicial candidates will not be permitted to contribute to any political organization or candidate for public office.

13)Rule 4.4. Section C retains the current language that any campaign surplus shall be returned to the contributors or turned over to the State Treasurer.

14)Rule 4.4: Comment 3A urges judicial candidates, as much as possible, to remain unaware of the contributors to the campaign.

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