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Letter to Roger J. Traynor Regarding the Press Reports of the Latest Draft of Revised Canons of Judicial Ethics

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**UNITED STATES COURT OF APPEALS
SECOND CIRCUIT**

CHAMBERS OF
IRVING R. KAUFMAN
CIRCUIT JUDGE
U. S. COURTHOUSE
NEW YORK, N. Y. 10007

June 1, 1971

Honorable Roger J. Traynor
Hastings College of Law
198 McAllister Street
San Francisco, California 94102

Dear Roger:

With only very brief respites, I have been sitting almost continuously since early March. As a former appellate Judge you know the problems of trying to write opinions while hearing appeals at the same time. Forgive me for having been delinquent in sending you copies of the press reports on the Committee's latest draft. Both articles appeared on the front pages of the New York Times and New York Law Journal.

Warm regards.

Sincerely yours,


Irving R. Kaufman
United States Circuit Judge

Enclosures

Xc: Members, Committee on Standards
of Judicial Conduct

Stiff Ethics Code Drafted For Judges by Bar Panel

A Stiffer Code of Ethics Drafted By Bar for the Nation's Judges

By ARNOLD H. LUBASCH

A comprehensive revision of the Canons of Judicial Ethics that govern the conduct of judges throughout the country has been drafted by a special committee of the American Bar Association.

The committee's complete draft, which was announced yesterday, represents the first major revision of the ethical guidelines since 1924 and can be expected to have a significant impact on the nation's judiciary.

The revised canons for judges contain provisions designed to prevent conflicts of interest, including the issues that were involved in the rejection of Judge Clement F. Haynsworth Jr. for the Supreme Court and in the

resignation of Associate Justice Abe Fortas.

A new provision states that judges must disqualify themselves if they have any financial interest—"however small"—in a case that comes before them, which applies to Judge Haynsworth, who owned shares in a company involved in an appeal to his court.

Another new provision specifies that judges must publicly report any compensation they receive from outside sources, which relates to former Justice Fortas, who was criticized when it belatedly became known that he had accepted a \$20,000 fee from the family foundation of Louis E. Wolfson, the legally troubled financier.

The revised canons note that "public confidence in the judiciary is eroded by irresponsible or improper conduct by judges."

Politics Limited

"The judge must avoid all impropriety and appearance of impropriety," they continue. "He must expect to be the subject of constant public scrutiny. He must therefore accept restrictions on his conduct that might be viewed as burdensome by the ordinary citizen."

Provisions also declare that a judge should not act as an arbitrator, practice law or serve as an officer or employee of any business organization.

Other provisions say that a judge should not serve as an executor, administrator or trustee, except for the estate or trust of a member of his family, and then only if it will not interfere with his judicial duties.

The political activities of a judge are limited to seeking reelection to judicial office, according to another provision, and the judge is instructed not to make political contributions except where permitted by law.

"It is to be hoped," this provision comments, "that, with the elimination of partisan election of judges, which many

Continued From Page 1, Col. 2

favor, the practice under which some judges are expected to make political contributions will also disappear."

Judges are also implored to uphold the integrity and independence of the judiciary, conduct proceedings with dignity and courtesy, administer the courts efficiently and always remain impartial.

Two Years of Work

The revised canons, which resulted from two years of work by the special committee, will be subjected to further suggestions before being submitted for adoption at the annual meeting of the American Bar Association in San Francisco next year.

The association will then request the Judicial Conference of the United States and the authorities in all states to adopt the revised canons as the standards of conduct for the nation's judges.

For their enforcement, the canons rely heavily on their moral weight to influence judges, leaving any disciplinary measures to the state authorities and professional groups.

Edward L. Wright, the bar association's president, called the drafted canons "an important contribution to preserving the prestige of the courts and maintaining this country's heritage of judicial independence and integrity."

"The public's confidence has been shaken in recent years by occasional widely publicized examples of questionable conduct," he said. "The public is entitled to know that judges respect and conform to higher standards."

Former Chief Justice Roger J. Traynor of the California



Associated Press

Former Chief Justice Roger J. Traynor of the California Supreme Court headed the draft committee.

Supreme Court headed the 11-member draft committee, which included Associate Justice Potter Stewart of the United States Supreme Court.

The committee's draft of seven basic canons compressed and modernized the existing 36 canons drafted by an A.B.A. committee headed by Chief Justice William Howard Taft almost half a century ago.

Wide Revisions Sought In ABA Panel's Draft Of Ethics for Judges

First Changes in Canons Since 1924 Contained In Tentative Proposals; More Hearings Planned

A select committee of the American Bar Association, composed of leading judges, lawyers and legal scholars, made public in Chicago over the weekend a tentative draft of revised canons of judicial ethics. The draft constitutes a comprehensive revision of the present canons which were adopted in 1924. The draft of proposed new rules of judicial conduct, which was mailed to some 15,000 lawyers, judges, media representatives and other interested individuals, proposes standards covering a wide range of judicial ethics. The draft incorporates portions of a report circulated by the committee in June, 1970, new provisions, and also reflects suggestions received by the committee in response to its preliminary report.

The committee said it would accept additional suggestions in writing, and that there will be opportunities to make suggestions orally at a public hearing at the Association of the Bar of the City of New York next Oct. 30 as part of a three-day meeting of the committee beginning Oct. 29.

A final draft will be submitted as an information report to the ABA when it meets at the association's midyear meeting in New Orleans next Feb. 7-8. The proposed canons then will be submitted for adoption by the House of Delegates at the ABA annual meeting in San Francisco in August, 1972.

Upon adoption by the House, the ABA will follow past practice and request appropriate authorities in the fifty states and the Judicial Conference of the United States to adopt the revised canons as standards applicable to the conduct of all federal and state judges.

The fifteen-member committee, including two members recently added and two law professors as reporters, included two men from New York—Judge Irving R. Kaufman of the Second U. S. Circuit Court of Appeals, and Whitney North Seymour, Sr., partner in the firm of Simpson, Thacher & Bartlett who is a former president of both the American Bar Association and the Association of the Bar of the City of New York.

Among the highlights of the special committee's new proposals are:

- A judge's judicial duties have priority over any other activity.

- In performing his judicial duties, he must be faithful to the law, unswayed by passions, interests, public clamor or fear of criticism.

- He must be patient, dignified and courteous, must maintain order and decorum in proceedings before him and accord full hearings according to the law.

- He must dispose promptly of judicial business and refrain from extrajudicial statements about proceedings before him.

- The prohibition on photographs and broadcasting proceedings is continued, except that there is a limited exception for use by educational institutions.

- A judge must administer his court efficiently, reject misconduct to disciplinary bodies and exercise his power of appointment on merit.

- He must reveal publicly any compensation received from outside sources including reimbursement of expenses beyond actual expenses. Any such compensation

must be reasonable in amount and no more than a non-judge would receive for the same activity. His personal investments and income therefore need not be disclosed publicly. It is the committee's view that judges are not deprived of all rights to privacy in their personal affairs when they ascend the Bench.

- He must refrain from business dealings which reflect adversely on his impartiality and integrity or interfere with his judicial responsibilities. Specifically he should not serve as an officer, director, employer or adviser of any business; should not hold interests in enterprises likely to come before his court; should not accept gifts or loans from lawyers or litigants, or any gifts over \$100 except from members of his family unless these gifts are reported as outside compensation.

- A judge must disqualify himself from participating in any proceedings if he or any member of his household has an interest, however small, in the controversy or the affairs of a party. Similarly, he must disqualify himself if he or members of his family are connected in any way with litigation before him. If a judge chooses to disclose the basis of disqualification the canons prescribe a means by which the parties and counsel may consent to the judge's sitting in their case.

- He cannot practice law, serve as an arbitrator or engage in extrajudicial activities which might conflict with his judicial duties or involve the court in public controversy.

- His political activity is limited to securing his re-election to judicial office and restrictions are placed on solicitation of funds for his campaign and contributions by him to political parties.

- He should not serve as an executor, administrator, trustee or other type of fiduciary except for the estate of a family member—and then his service must not conflict with his judicial duties.

- He should not allow social or other relations to influence or appear to influence the performance of his official duties, and he should not permit others to trade on the impression that they have special influence with him or that he has an interest in helping them in any business matter.

- He may engage in activities for the improvement of justice providing he does not take a position that would affect his impartiality on matters that might come before him. He is specifically permitted to speak, write, lecture, teach or participate in activities concerning the law, the legal system and the administration of justice. He may serve in organizations concerned with those subjects.

- He may participate in civic and charitable activities which do

Judicial Ethics

(Continued)

not interfere with his impartiality or his judicial duties. He may serve as an officer, director, trustee or nonlegal adviser to educational, religious, charitable, fraternal or civic organizations if the organizations are not involved in his court, but he may not participate in the solicitation of funds for them.

- Grandfather clauses are inserted, "in fairness," to protect those judges now serving who had become fiduciaries or involved in family corporations before they became judges.

- The thousands of part-time judges in various states are made subject to those canons that govern the performance of their judicial duties. The obligations of retired judges under the canons are fixed in light of the nature of their compensation and the degree of their continued responsibility to perform judicial functions.

"Now that we have a modern Code of Professional Responsibility governing lawyers' conduct," said Edward L. Wright, ABA president, who was chairman of the committee which spent five years in revising the Code of Professional Responsibility, "it is essential that we adopt a modern code regulating judicial conduct. Confidence in the courts is vital to the stability of our society. The public's confidence has been shaken in recent years by occasional widely publicized examples of questionable conduct. The public is entitled to know that judges respect and conform to higher standards.

"The overwhelming majority of judges want to do right and deplore judicial misconduct, and it is desirable that they have a modern statement of the norms and guides expected of them so they can conform fully. We will also welcome new and clearer standards that will permit them to know just what is expected of them. The committee's proposals when perfected and adopted will make an important contribution to preserving the prestige of the courts and maintaining this country's heritage of judicial independence and integrity."

The present canons of judicial ethics were drafted by an ABA committee headed by then Chief Justice William Howard Taft and formally adopted in 1924. Traditionally, the ethics codes for state judges are identical with or substantially similar to the ABA canons.

Bernard G. Segal, then president of the American Bar Association, appointed the Special Committee on Standards of Judicial Conduct in 1969 and selected as its head Roger J. Traynor, former Chief Justice of the California Supreme Court, and now visiting professor of law at various law schools. The committee began functioning in September, 1969. In addition to Judge Kaufman and Mr. Seymour, the members are:

Associate Justice Potter Stewart of the United States Supreme Court.

Chief Judge Edward T. Gignoux, Portland, of the U. S. District Court of Maine, and member of the Council of the American Law Institute.

Judge Ivan Lee Holt, of the Circuit Court of the City of St. Louis, former chairman of the ABA section of judicial administration.

Judge George H. Revelle, of Seattle, of the Superior Court of King County, Washington.

William L. Maibury, Baltimore, member of the Council of the American Law Institute and former president of the Maryland Bar Association.

E. Dixie Beggs, of Pensacola, Fla., chairman of the Fellows of the American Bar Foundation and former president of the Florida Bar Association.

Walter P. Armstrong, Jr., of Memphis, Tenn., chairman of the

ABA standing committee on ethics and professional responsibility.

Robert A. Leflar, former dean and since 1954 professor of law at the University of Arkansas, and former justice of the Arkansas Supreme Court.

Professor E. Wayne Thode, of the University of Utah College of Law, is reporter for the committee. Professor Geoffrey C. Hazard, Jr., former executive director of the American Bar Foundation and now professor of law at Yale, is collaborating with Professor Thode.

Leon Jaworski, president-elect of the association recently added Justice James K. Groves, of the Supreme Court of Colorado, and W. O. Shafer, of Odessa, Tex., chairman of the National Conference of Bar Presidents, to the panel.