

7-11-1971

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Recommended Citation

Jack C. Landau, *New Ethics Code for Judges Has Little Opposition* (1971).

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JUL 11 1971

Berkhalter

New ethics code for judges has little opposition

By JACK C. LANDAU

OF OUR WASHINGTON BUREAU

The American Bar Association was surprised to learn last week that there is little opposition so far to a proposed new code of judicial ethics for all local, state and federal judges.

Drawn up in the wake of scandals involving former Supreme Court Justice Abe Fortas and Supreme Court nominee Clement F. Haynsworth Jr., the sweeping new proposals to govern almost all aspects of judicial behavior — on and off the bench — received their first public hearing at the Bar Association's annual convention in Manhattan.

The 40 federal, state and local judges from around the nation who attended the initial hearing appeared generally satisfied with the proposed code, which makes radical changes in the existing canons of ethics. For example:

- It absolutely bars a judge from sitting on any case in which he has any financial interest.

- It flatly stops him from participating in a group, such as the Warren Commission on the Kennedy assassination, that may become politically controversial.

- It severely limits partisan political activity even for judges who are elected.

Under the current canons of judicial ethics, adopted in 1924, a judge is only barred from hearing a case in which he has a "significant" financial interest — a determination that he alone makes in the secrecy of his own conscience.

Whitney North Seymour Sr., former president of the ABA, told the judges' meeting that "we feel it is better to have an absolutely flat rule so that a judge does not have to worry in every case whether his financial interest is significant or insignificant."

Other provisions of the new code aimed at financial integrity require a judge to divest of stocks and bonds that might lead to frequent disqualification.

A judge also is required to publicly report all outside income from such "extrajudicial" and "quasi-judicial" activities as speechmaking, teaching and writing.

EXAMPLES

This provision was particularly aimed at the type of criticism that arose when it was discovered Justices William O. Douglas and Fortas both had received substantial yearly sums from charitable foundations.

Seymour said there had been a strong debate in the bar committee, with some members favoring a rule that would require a judge to publicly file his income tax returns, or to at least publicly report his whole income every year.

"We thought that judges have some rights to privacy," Seymour said. Under the current canons of ethics, judges are not required to tell the public anything about their income.

"But we also felt that the public has a right to know how a judge spends his outside time because, after all, he is being paid as a full-time judge," Seymour added.

The one provision of the new code that appears to be headed for trouble would bar judges from participating in any political fund-raising events or other political activities except when they come up for re-election.

While this provision has no effect on federal judges, who are appointed for life, or on state appellate judges who are appointed for life or for long terms, it will pose extreme burdens on judges in lower state courts and in county and city courts who generally have to run for re-election every two to four years.

As one local judge commented: "This is going to be very hard to explain to the party — that you only show up at election time."

But the 40 judges who attended the hearing seemed, for the most part, pleased with the new code and only asked technical questions, attempting to clarify some specific provision. The code will have further public hearings this fall before it is presented to the entire ABA for approval probably next February.

One judge at the meeting just sat quietly and listened. He was Clement Haynsworth.