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

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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 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.

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 re-election 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
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(Continued)

not interfere with his impartiality or his judicial duties. He may serve as an officer, director, trustee or nonlegal advisor 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 inverted. Judges to 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 the canons which 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 to which 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, announcing the committee's work which spent five years in revising the Code of Professional Responsibility, "it is essential that similar, but less comprehensive, canons governing judicial conduct, be included in the courts is vital to the stability and permanence of justice. The phenomenon has been shaken in recent years by occasional widely publicized instances of misconduct. The public is entitled to know that judges respect and conform to high standards of personal and professional ethics.

The overwhelming majority of judges want to do right and avoid misconduct. But they need to be made aware that they have a moral obligation to the public and the administration of justice to maintain high standards of conduct. And they need to be shown how.

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, judges are subject to an identical code of ethics similar to the ABA canons.

Bernard G. Segal, then president of the American Bar Association, appointed the Special Committee on Code of Judicial Ethics by and selected as its chairman Roger J. Truyman, 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. Goggin, of the U. S. District Court of Maine, and member of the ABA section of judicial administration.
- Judge George H. Reveles, of the Superior Court of Washington, D.C., and member of the ABA section of judicial administration.

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

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

David T. Armstrong, Jr., of Minneapolis, Minn., chairman of the ABA standing committee on ethics and professional responsibility.

Robert A. Lord, former dean and since 1951 professor of law at the University of Arkansas, and former justice of the Arkansas Supreme Court.

R. 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.

Leo Jaworski, president-elect of the association recently added Justice, former Mr. 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.