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WHEN LAWYERS BECOME LEGISLATORS:
AN ESSAY AND A PROPOSAL

THOMAS MORE KELLENBERG*

I. INTRODUCTION

It is shameful when a legislator acts unethically. It is even more shameful when the unethical legislator is an attorney sworn to uphold a code of professional responsibility. While the legal profession has no authority to regulate the ethical conduct of the nonattorney legislator, the profession has the authority and the obligation to regulate the ethical con-


1. JOHN T. NOONAN, JR., BRIBES 703 (1984) ("Shame . . . is acknowledgment that there is something objectionable in the conduct that goes beyond the impolite and the merely illegal. Shame does not conclusively establish but it points to the moral nature of the matter.").


3. Model Code of Professional Responsibility Preamble and Preliminary Statement (1986) ("Obviously the Canons, Ethical Considerations and Disciplinary Rules cannot apply to non-lawyers; however, they do define the type of ethical conduct that the public has a right to expect not only of lawyers but also of their non-professional employees and associates in all matters pertaining to professional employment."); see also Model Code of Professional Respon-
duct of the attorney-legislator. Specific ethical standards govern the conduct of judges, prosecutors, defense counsel, clerks of court, and even law clerks. Even though the attorney-legislator faces ethical demands at least as compelling as those faced by judicial officers, the conduct of the attorney-legislator is governed only by general, often irrelevant and incomplete, norms of ethical conduct applicable to attorneys in private practice.

This Article addresses the lack of professional ethical standards governing the conduct of the attorney-legislator. Section II of this Article discusses the rationale for a code of ethics for the attorney-legislator. Section III of this Article proposes a model code of ethics to govern the conduct of the attorney-legislator and, it is hoped, to replace the idea of

SIBILITY EC 3-3 (1986) ("A non-lawyer who undertakes to handle legal matters is not governed as to integrity or legal competence by the same rules that govern the conduct of a lawyer.").

4. Goldfarb v. Virginia State Bar, 421 U.S. 773, 792 (1975) ("[T]he States have a compelling interest in the practice of professions within their boundaries. . . . The interest of the States in regulating lawyers is especially great since lawyers are essential to the primary governmental function of administering justice.").

5. See, e.g., CODE OF CONDUCT FOR UNITED STATES JUDGES, reprinted in 2 ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS, GUIDE TO JUDICIARY POLICIES AND PROCEDURES I-1 (1990); see also CODE OF JUDICIAL CONDUCT (1972).


10. See ABA Comm. on Ethics and Professional Responsibility, Formal Op. 336 (1974) ("It would be utterly incongruous with the entire tenor of the code to find that its provisions regarding lawyers who engage in fraud, deceit, misrepresentation, or illegal conduct involving moral turpitude do not apply to them when they are acting as . . . public servants."). Because the conduct of the attorney-legislator is governed by the code of professional responsibility, the attorney-legislator is generally held to a higher ethical standard than the nonattorney legislator. However, although the legal profession holds the attorney-legislator to a higher ethical standard than the nonattorney legislator, the legal profession has not given specific guidance to the attorney-legislator, in the form of a model code of ethics, as to what constitutes unethical legislative conduct.

11. With a renewed public scrutiny of unethical conduct by lawmakers, such a code is probably inevitable. See Mary J. Frug, Introduction: The Proposed Revisions of the Code of Professional Responsibility: Solving the Crisis of Professionalism, or Legitimating the Status Quo?, 26 VILL. L. REV. 1121, 1122 (1980-81) ("[T]he profession can trace the development of each of its formal codes to a crisis of the social order and the complicity of lawyers in that crisis.").
legislative office as an opportunity for spoils with the idea of legislative office as public service.  

II. ETHICS AND THE ATTORNEY-LEGISLATOR

A. The Narrative of Legal Ethics

The legal profession shares a narrative about what lawyers are and what lawyers should be. According to the narrative, the legal profession is distinguished by the requirements of formal training and admission to practice by licensure, a code of ethics imposing standards qualitatively beyond those that are tolerated in the marketplace, a duty to subordinate financial reward to social responsibility, and, notably, "an obligation on its members, even in nonprofessional matters, to conduct themselves as members of a learned, disciplined, and honorable occupation."

The narrative speaks of lawyers "pursuing a learned art as a common calling in the spirit of public service." According to the narrative, lawyers "play a vital role in the preservation of society," and laypersons "should expect no less than the highest degree of professionalism when they have entrusted administration of the rule of law—one of the fundamental tenets upon which our society is based—to the legal profession." A lawyer, the narrative concludes, will find his or her highest honor in a "deserved reputation for fidelity to private trust and to public duty."

12. "[A]lthough men have many motives for entering political life ... the vast underpinning of both major parties is made up of men who seek practical rewards. Tangible advantages constitute the unifying thread of most successful political practitioners." MARTIN TOLCHIN & SUSAN J. TOLCHIN, TO THE VICTOR 22 (1971), quoted in Rutan v. Republican Party, 497 U.S. 62, 104 (1990) (Scalia, J., dissenting), aff'g in part, rev'g in part, and remanding 868 F.2d 943 (7th Cir. 1989).

13. See ABA Blueprint for Professionalism, supra note 2, at 261 ("The practice of law 'in the spirit of a public service' can and ought to be the hallmark of the legal profession."). Even apart from its moral dimension, the spoils system is politically corrosive. As Senator Pendleton, one of the sponsors of the Civil Service Act of 1883, stated, "I believe ... that ... the 'spoils system' must be killed or it will kill the Republic." 14 CONG. REC. 206 (1882), quoted in Robert G. Vaughn, Ethics in Government and the Vision of Public Service, 58 GEO. WASH. L. REV. 417, 420 n.13 (1990).

14. See Geoffrey C. Hazard, Jr., The Future of Legal Ethics, 100 YALE L.J. 1239, 1242-43 (1991) ("A narrative is a story about people; it is specific in time, place, participants, circumstances, action, and outcome, and begins with some version of 'once upon a time.' The action and fate of the participants reveals a moral. ... A narrative can also convey more global definitions of a person or group.").


16. ROSCOE POUND, THE LAWYER FROM ANTIQUITY TO MODERN TIMES 5 (1953), quoted in ABA Blueprint for Professionalism, supra note 2, at 261.

17. MODEL CODE OF PROFESSIONAL RESPONSIBILITY Preamble (1986).

18. ABA Blueprint for Professionalism, supra note 2, at 250.

19. CANONS OF PROFESSIONAL ETHICS Canon 32 (1936).
This narrative—which defines and distinguishes the legal profession—provides the legal community with a shared history and a common interpretation of that history. While the shared history and its interpretation may be discussed and disputed even among lawyers, they provide the individual members of the legal profession with the sense that they are more alike than unlike. More important, the narrative establishes with whom the legal profession wishes to be ethically bound and by which civic virtues lawyers wish to be guided. Speaking from within its own narrative, the legal profession finds itself bound by the ethical criteria embodied in it, and bound to those who speak the same ethical language.20

B. Ethics and the Legislature

The public perception of legislators—a disproportionate number of whom are lawyers21—is quite different from the legal profession's self-perception.22 In recent years, polls have found that a majority of the public believes that at least one of every three members of Congress is corrupt23 and that lawmakers improperly profit from their office.24 A New York Times/CBS News survey found that an overwhelming percentage of the public believes that legislators are more interested in serving special interest groups than serving the people they represent.25 A Washington Post/ABC News poll found that most Americans think that the overall level of ethics and honesty among legislators has fallen during the past ten years.26

The current public perception is not unfounded. In recent years, Speaker of the House of Representatives Jim Wright (D-Tex.) resigned after the House Ethics Committee found reason to believe that he had violated House rules;27 Majority Whip Tony Coelho (D-Cal.) resigned in the face of an ethics probe;28 formal complaints against Senators David Durenberger (R-Minn.) and Alfonse D'Amato (R-N.Y.) were filed with the Senate Eth-

21. In Congress, for example, more than 60 Senators and nearly 200 members of the House of Representatives are lawyers. See generally CONGRESSIONAL YELLOW BOOK (1991).
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ics Committee; Senators Alan Cranston (D-Cal.), Dennis DeConcini (D-Ariz.), John Glenn (D-Ohio), John McCain (R-Ariz.), and Donald Riegle (R-Mich.) were investigated for allegedly intervening in regulatory proceedings on behalf of Charles Keating, who had made campaign contributions, corporate donations, and gifts to those Senators in excess of $1 million; and Senator Mark Hatfield (R-Or.) was investigated by the Federal Bureau of Investigation and the Senate Ethics Committee for accepting nearly $15,000 in airline travel and gifts from the University of South Carolina.

Contemporary social and political theory has not ignored such legislative scandal. Public choice scholarship, applying principles of market economics to explain political behavior, postulates that legislators act primarily out of self-interest directed to secure selfish ends. According to public choice theorists, the primary purpose of the legislators is re-election, and legislators "sell" their services to those special interest groups willing to pay the price demanded. As a result, legislators serve the interests of the powerful while ignoring the interests of those unable or unwilling to exert political influence.

Public choice theory is a dramatic and, if accurate, unfortunate re-conceptualization of the democratic process. As a description, it is an extreme departure from the vision of legislators who, as ethical, rational, and purposeful agents, reach ethical, rational, and purposeful results. As depicted by public choice theorists, legislators bear a striking resemblance to the de-

35. Eskridge, Jr. & Frickey, supra note 33, at 706.
36. This vision of legislators is embodied in the legal process materials developed by Henry Hart and Albert Sacks in the 1950s at Harvard Law School. See HENRY HART, JR. & ALBERT M. SACKS, THE LEGAL PROCESS: BASIC PROBLEMS IN THE MAKING AND APPLICATION OF LAW 1414-15 (10th ed. 1958) (stating that when interpreting a statute, a court should assume "that the legislature was made up of reasonable persons pursuing reasonable purposes reasonably").
scription of 1950s Eastern bloc political bureaucrats in Milovan Djilas's *The New Class*. The "new class," Djilas wrote, "may be said to be made up of those who have special privileges and economic preference because of the administrative monopoly they hold." "Politics as a profession," he continued, "is the ideal of those who have the desire or the prospect of living as parasites at the expense of others."

Normatively, the image of the "legislator for sale" is unworthy of our history. It is true that, like public choice theorists, the Framers of the Constitution revealed a distrust of elected officials in general, and of legislators in particular. "[I]t is against the enterprising ambition of [legislators]," warned James Madison in *The Federalist* No. 48, "that the people ought to indulge all their jealousy and exhaust all their precautions." Quoting Thomas Jefferson's *Notes on the State of Virginia*, Madison wrote, "One hundred and seventy-three despots would surely be as oppressive as one. . . . An elective despotism was not the government we fought for."

Unlike public choice theorists, however, the Framers believed that governmental checks and balances would control legislative abuses.

Ambition must be made to counteract ambition. The interest of the man must be connected with the constitutional rights of the place. It may be a reflection on human nature, that such devices should be necessary to control the abuses of government. But what is government itself, but the greatest of all reflections on human nature? If men were angels, no government would be necessary. If angels were to govern men, neither external nor internal controls on government would be necessary.

Unfortunately, government checks and balances have, to date, proved inadequate to ensure ethical conduct by lawmakers. Ethics legislation is infrequently part of the legislative agenda and, when passed, has often been invalidated or narrowly interpreted by the courts.

For example, as a direct result of the Watergate scandal, Congress amended the Federal Election Campaign Act of 1971 to establish limits

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38. Id. at 39.
39. Id. at 46.
42. Id. at 254.
44. See McBride, supra note 22, at 455.
on the size of individual campaign contributions to federal candidates, of expenditures by the candidates themselves, and of independent expenditures to promote a candidate. The primary interest served by the amendments was the prevention of corruption, and the appearance of corruption, spawned by the influence of large financial contributions on candidates’ positions and on their actions if elected to office. This legislation was viewed, by some, as “the most comprehensive reform legislation [ever] passed by Congress concerning the election of the President, Vice-President, and members of Congress.”

The constitutionality of the 1974 Amendments was immediately tested, and the Supreme Court in *Buckley v. Valeo* invalidated the limitations on independent and candidate expenditures. The Court recognized that campaign contributions given to secure a political quid pro quo undermine the integrity of representative democracy. The Court also recognized the corrosive effects that the appearance of improper influence and corruption engendered by large campaign contributions have on the public. The Court opined, however, that the state interest in preventing the appearance and reality of political corruption caused by large independent and candidate expenditures was outweighed by the effects that expenditure limitations would have on First Amendment rights.

In a strong dissent from the Court’s decision striking down expenditure limitations, Justice White warned that the act of expending money on behalf of a candidate “may be used to secure the express or tacit understanding that the giver will enjoy political favor if the candidate is elected.” Congress and the courts, he observed, have recognized this as a “mortal danger” against which preventive and curative steps should be taken. It is critical, he concluded, to dispel the impression that elections are merely a function of money and that political races are “reserved for those who have

50. For an excellent treatment of *Buckley* and its progeny, see Laurence H. Tribe, American Constitutional Law 1132-53 (2d ed. 1988).
51. *Buckley*, 424 U.S. at 27.
52. *Id.* at 48-49.
53. *Id.* at 259 (White, J., dissenting).
54. *Id.* (White, J., dissenting).
the facility and the stomach for doing whatever it takes” to prevail at the
polls.  

More recently, in *McCormick v. United States*, the Supreme Court overturned the conviction of Robert McCormick, a former West Virginia legislator who was fined $50,000 and given a three-year suspended sentence for extortion. McCormick was convicted of demanding money from a group of medical doctors in exchange for his support for certain legislation in the West Virginia House of Delegates. In reversing McCormick’s conviction, the Court held that the receipt of money by an elected official is extortion “only if the payments are made in return for an explicit promise or undertaking by the official to perform or not to perform an official act.” 

Supporting legislation that will benefit the interests of certain individuals, shortly before or after campaign contributions are solicited and received from those individuals, is not illegal, wrote the Court, “[w]hatever ethical considerations and appearances may indicate.”

In a dissent joined by Justices Blackmun and O’Connor, Justice Stevens wrote that “there is no statutory requirement that illegal agreements, threats, or promises be in writing, or in any particular form.” “Subtle extortion,” Stevens continued, “is just as wrongful—and probably much more common—than the kind of express understanding that the Court’s opinion seems to require.”

While it is unfair to conclude, based upon these few facts, that *Buckley* and *McCormick* were decided incorrectly, it is fair to conclude that the legislative practices upheld by the Court do not reflect the civic virtues embodied in the legal profession’s narrative about what lawyers are and what lawyers should be. It is also fair to conclude that these legislative practices—the same that are disparaged by the public and analyzed by public choice scholars—are, in the end, unacceptable, if not as a political institution, then at least as an ethical tradition.

55. *Id.* at 265. Judge Harold Leventhal, a member of the en banc panel from the District of Columbia Circuit whose decision to uphold the expenditure limitations was reversed by the Supreme Court, later wrote that the *Buckley* decision “may have knocked out a central feature of a program dependent on a number of interrelated provisions,” and said the decision may “devitalize and destabilize this reform legislation.” Harold Leventhal, *Courts and Political Thickets*, 77 COLUM. L. REV. 345, 375-76 (1977).


59. *Id.*

60. *Id.* at 1821 (Stevens, J., dissenting).

61. *Id.* (Stevens, J., dissenting).
C. A Legislative Code of Ethics

Philosophical ethicists are, on the whole, divided into two great camps. There are those, like Jeremy Bentham62 and John Stuart Mill,63 who consider that the goodness or badness of an action is measured by its consequences. Others, like Aristotle64 and Immanuel Kant,65 consider that an action must be measured not against its consequences, but against particular ethical standards.66

In purely utilitarian terms, a code of ethics for the attorney-legislator is needed for two reasons. First, ethical conduct by lawmakers is a precondition to making good public policy. "Ethics rules, if reasonably drafted and reliably enforced, increase the likelihood that legislators (and other officials) will make decisions and policies based on the merits of issues, rather than on factors (such as personal gain) that should be irrelevant."67 Second, public confidence in the integrity of the government is fundamental to our system of representative democracy.68 If the legislature is to command the respect, trust, and confidence of the people, the individuals who serve in the legislature must be perceived as adhering to high standards of ethical conduct.69

A model code of ethics for the attorney-legislator is also needed to enable the attorney-legislator to measure his or her conduct against specific

66. Julius Cohen, The Political Function of Ethical Theory: Implications for Philosophical Jurisprudence, 43 Rutgers L. Rev. 575, 580 (1991) ("The split is broadly between those, like the Kantians, who regard morality as belonging to an autonomous realm of its own, i.e., disconnected from the world that is revealed by science, and those, like the utilitarians, who connect ethics with the scientific conception of the world.").
69. McBride, supra note 22, at 451; see also United States v. Mississippi Valley Generating Co., 364 U.S. 520, 562 (1961) ("[D]emocracy is effective only if the people have faith in those who govern, and that faith is bound to be shattered when high officials and their appointees engage in activities which arouse suspicions of malfeasance and corruption.").
ethical standards. Ethical conduct, in this sense, entails living up to standards derived from the legal profession's narrative and codes of professional responsibility. Because the legal profession's narrative and codes of professional responsibility define the profession's virtue, the ethical attorney-legislator will, accordingly, pursue his or her profession as "a common calling in the spirit of public service,"70 will find his or her highest honor in a "deserved reputation for fidelity to private trust and to public duty,"71 and will conduct himself or herself as a member of "a learned, disciplined, and honorable occupation."72

More particularly, the ethical attorney-legislator will observe high standards of conduct and act in a manner that promotes confidence in the integrity of the legislature.73 The ethical attorney-legislator will not allow family or social relationships to influence official judgment.74 The ethical attorney-legislator will not lend the prestige of legislative office to advance private interests over the public interest.75 The ethical attorney-legislator will not use campaign contributions for the private benefit of the legislator.76 The ethical attorney-legislator will not accept private employment on matters in which the legislator personally and substantially participated as a legislator.77 The ethical attorney-legislator will not hold membership in any organization that practices invidious discrimination on the basis of race, sex, religion, or national origin.78 The ethical attorney-legislator will disqualify himself or herself from voting on legislation in which the legislator has a direct financial interest and will refrain from financial and business dealings that exploit the legislator's official position.79 And the ethical attorney-legi-

70. POUND, supra note 16, at 5.
71. CANONS OF PROFESSIONAL ETHICS Canon 32 (1936).
73. See MODEL CODE OF PROFESSIONAL RESPONSIBILITY Canon 9, supra note 3; CODE OF CONDUCT FOR UNITED STATES JUDGES Canon 2, supra note 5; CODE OF JUDICIAL CONDUCT Canon 2, supra note 5; CODE OF CONDUCT FOR FEDERAL PUBLIC DEFENDERS Canon 2, supra note 7; CODE OF CONDUCT FOR UNITED STATES CLERKS (AND DEPUTY CLERKS) Canon 2, supra note 8; and CODE OF CONDUCT FOR LAW CLERKS Canon 2, supra note 9.
74. CODE OF JUDICIAL CONDUCT Canon 2, supra note 5.
75. See MODEL CODE OF PROFESSIONAL RESPONSIBILITY EC 8-4 (1986).
76. See, e.g., CODE OF JUDICIAL CONDUCT Canon 7B & Commentary, supra note 5.
78. See, e.g., CODE OF CONDUCT FOR UNITED STATES JUDGES, Canon 2A cmt., supra note 5.
79. See CODE OF CONDUCT FOR UNITED STATES JUDGES Canon 5, supra note 5; CODE OF JUDICIAL CONDUCT Canon 5 supra note 5; CODE OF CONDUCT FOR FEDERAL PUBLIC DEFENDERS Canon 5, supra note 7; CODE OF CONDUCT FOR UNITED STATES CLERKS (AND DEPUTY CLERKS) Canon 5, supra note 8; CODE OF CONDUCT FOR LAW CLERKS Canon 5, supra note 9.
islator will not solicit or accept a gift, bequest, favor, or loan from anyone who has sought or is seeking to influence the legislature.\textsuperscript{80}

The ethical attorney-legislator will live up to these standards as part of a tradition that defines the legal community. Communities are known and judged by the kind of people they develop. If the legal profession—the community of lawyers—is to be known as an ethical community, it must continue to develop ethical lawyers, and, among them, ethical legislators.

III. A MODEL CODE OF ETHICS FOR THE ATTORNEY-LEGISLATOR

**CANON 1**

A LEGISLATOR SHOULD UPHOLD THE INTEGRITY OF THE LEGISLATURE\textsuperscript{81}

An honorable legislature is indispensable to the common good of our society. A legislator should observe, and should impart to staff, high standards of conduct so that the integrity of the legislature may be preserved and the office may reflect a devotion to serving the public.\textsuperscript{82} The provisions of this Code should be construed and applied to further that objective.

\textsuperscript{80} See Model Code of Professional Responsibility EC 7-34 (1986) ("The impartiality of a public servant in our legal system may be impaired by the receipt of gifts or loans.").

\textsuperscript{81} This Canon is modeled after Model Code of Professional Responsibility Canon 1, supra note 3; Code of Conduct for United States Judges Canon 1, supra note 5; Code of Judicial Conduct Canon 1, supra note 5; Code of Conduct for Federal Public Defenders Canon 1, supra note 7; Code of Conduct for United States Clerks (and Deputy Clerks) Canon 1, supra note 8; and Code of Conduct for Law Clerks Canon 1, supra note 9.

\textsuperscript{82} See Model Code of Professional Responsibility EC 1-1 (1986) ("Maintaining the integrity and improving the competence of the bar to meet the highest standards is the ethical responsibility of every lawyer."); see also Model Code of Professional Responsibility EC 9-6 (1986). That Ethical Consideration states:

Every lawyer owes a solemn duty to uphold the integrity and honor of his profession; to encourage respect for the law and for the courts and the judges thereof; to observe the Code of Professional Responsibility; to act as a member of a learned profession, one dedicated to public service; to cooperate with his brother lawyers in supporting the organized bar through the devoting of his time, efforts, and financial support as his professional standing and ability reasonably permit; to conduct himself so as to reflect credit on the legal profession and to inspire the confidence, respect, and trust of his clients and of the public; and to strive to avoid not only professional impropriety but also the appearance of impropriety.
CANON 2
A LEGISLATOR SHOULD AVOID IMPROPIETY AND THE APPEARANCE OF IMPROPIETY IN ALL ACTIVITIES

A. A legislator should respect and comply with the law and should act at all times in a manner that promotes public confidence in the integrity of the legislature. A legislator should not engage in any activities that would put into question the propriety of the legislator's conduct in carrying out the duties of the office.

B. A legislator should not allow family, social, or other relationships to influence official conduct or judgment. A legislator should not lend the prestige of legislative office to advance the private interests of others, nor convey or permit others to convey the impression that they are in a special position to influence the legislator.

C. A candidate for election to legislative office:
   (1) should maintain the dignity appropriate to legislative office and should encourage family members to adhere to the same standards of conduct that apply to the candidate;

83. This Canon is modeled after Model Code of Professional Responsibility Canon 9, supra note 3; Code of Conduct for United States Judges Canon 2, supra note 5; Code of Judicial Conduct Canon 2, supra note 5; Code of Conduct for Federal Public Defenders Canon 2, supra note 7; Code of Conduct for United States Clerks (and Deputy Clerks) Canon 2, supra note 8; and Code of Conduct for Law Clerks Canon 2, supra note 9.

84. See Model Code of Professional Responsibility DR 1-102(A)(3) & (4) (1986) ("A lawyer shall not . . . [e]ngage in illegal conduct involving moral turpitude [or e]ngage in conduct involving dishonesty, fraud, deceit, or misrepresentation.").


86. See Model Code of Professional Responsibility EC 8-4 (1986). That Ethical Consideration states: "[W]hen a lawyer purports to act on behalf of the public, he should espouse only [that] . . . which he conscientiously believes to be in the public interest." Id. (emphasis added).

87. See Model Code of Professional Responsibility DR 9-101(C) (1986) ("A lawyer shall not state or imply that he is able to influence improperly or upon irrelevant grounds any tribunal, legislative body, or public official.").

88. See, e.g., Code of Judicial Conduct Canon 7B.
(2) should prohibit staff, employees, consultants and volunteers subject to the direction or control of the candidate from doing that which the candidate is prohibited from doing under this Canon;
(3) should not misrepresent the candidate's identity, qualifications, present position, or any other fact;  
(4) should not use legislative offices, resources, or staff to engage in campaign activities.

D. A candidate should not use or permit the use of campaign contributions for the private benefit of the candidate or members of the candidate's family.

E. A legislator should not accept private employment, or act as a representative, on matters in which the legislator personally and substantially participated as a legislator.

F. A legislator should not, within a reasonable time of leaving office, but in no case less than one year, make, with the intent to influence, any communication to or appearance before, current members of the legislative body in which he or she served, or their staff, in connection with any matter on which such former legislator seeks action by a current legislator or staff in his or her official capacity, except if such former legislator is appearing on behalf of a governmental entity.

G. A legislator should not hold membership in any organization that practices invidious discrimination on the basis of race, sex, religion, or national origin.

89. See Model Code of Professional Responsibility DR 2-101(A) (1986) ("A lawyer shall not, on behalf of himself, his partner, associate or any other lawyer affiliated with him or his firm, use or participate in the use of any form of public communication containing a false, fraudulent, misleading, deceptive, self-laudatory or unfair statement or claim.").
90. See, e.g., Code of Judicial Conduct Canon 7B and Commentary, supra note 5.
92. See, e.g., Code of Conduct for United States Judges Canon 2A cmt., supra note 5.
CANON 3
A LEGISLATOR SHOULD PERFORM THE DUTIES OF THE OFFICE DILIGENTLY AND IN THE PUBLIC INTEREST

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

A. Legislative Responsibilities

(1) A legislator should be faithful to the law and maintain professional competence in it. A legislator should advance the public interest over private interests.

(2) A legislator should maintain decorum in all legislative proceedings.

(3) A legislator should be patient, dignified, and courteous to constituents and others with whom the legislator deals in the legislator's official capacity, and should require similar conduct of staff members and others subject to the legislator's direction and control.

B. Administrative Responsibilities

(1) A legislator should diligently discharge the legislator's administrative responsibilities, maintain professional competence in legislative administration, and facilitate the performance of the administrative responsibilities of other legislators and staff members.

93. This Canon is modeled after Model Code of Professional Responsibility Canon 6 and 8, supra note 3; Code of Conduct for United States Judges Canon 3, supra note 5; Code of Judicial Conduct Canon 3, supra note 5; Code of Conduct for Federal Public Defenders Canon 3, supra note 7; Code of Conduct for United States Clerks (and Deputy Clerks) Canon 3, supra note 8; and Code of Conduct for Law Clerks Canon 3, supra note 9.

94. The term "public interest" is taken from Model Code of Professional Responsibility EC 8-4 (1986). That Ethical Consideration states:

Whenever a lawyer seeks legislative or administrative changes, he should identify the capacity in which he appears, whether on behalf of himself, a client, or the public. A lawyer may advocate such changes on behalf of a client even though he does not agree with them. But when a lawyer purports to act on behalf of the public, he should espouse only those changes which he conscientiously believes to be in the public interest.

Id.

95. See Model Code of Professional Responsibility EC 1-5 (1986) ("A lawyer . . . should be temperate and dignified, and he should refrain from all illegal and morally reprehensible conduct.").
(2) A legislator should require staff subject to the legislator's direction and control to observe the standards of fidelity and diligence that apply to the legislator.

(3) A legislator should take or initiate appropriate disciplinary measures against a legislator or staff member for unprofessional conduct of which the legislator may become aware. 96

(4) A legislator should exercise the power of appointment only on the basis of merit, avoiding nepotism, unfairness, and favoritism, but may take into account domicile or political affiliation to the extent allowed by law.

(5) A legislator should avoid any favoritism, unfairness, or nepotism in connection with the hiring, discharge, or treatment of subordinates, but may take into account domicile or political affiliation to the extent allowed by law.

C. Disqualification 97

(1) A legislator should disqualify himself or herself from voting on legislation in which the legislator has a direct financial interest, including but not limited to instances where:

(a) The legislator knows that, individually or as a fiduciary, the legislator or the legislator's spouse or minor child residing in the legislator's household has a direct financial interest in the subject matter of the legislation.

(b) The legislator or the legislator's spouse, or a person within the third degree of relationship to either of them, or the spouse of such a person is known by the legislator to have a direct financial interest in the subject matter of the legislation.

(2) A legislator should keep informed about the legislator's personal and fiduciary financial interests and should make a reasonable effort to keep informed about the personal financial interests of the legislator's spouse and minor children residing in the legislator's household.

(3) For the purposes of this section:

(a) the degree of relationship is calculated according to the civil law system;

(b) "fiduciary" includes such relationships as executor, administrator, trustee, and guardian;

96. See Model Code of Professional Responsibility EC 1-4 (1986) ("The integrity of the profession can be maintained only if conduct of lawyers in violation of the Disciplinary Rules is brought to the attention of the proper officials.").

97. This section is modeled after Code of Conduct for United States Judges Canon 3C, supra note 5; and Code of Judicial Conduct Canon 3C, supra note 5.
"financial interest" means ownership of a legal or equitable interest, however small, or a relationship as director, advisor, or other active participant in the affairs of a party, except that:

i. ownership in a mutual or common investment fund that holds securities is not a "financial interest" in such securities unless the legislator participates in the management of the fund;

ii. an office in an educational, religious, charitable, fraternal, or civic organization is not a "financial interest" in securities held by the organization;

iii. the proprietary interest of a policy holder in a mutual insurance company, of a depositor in a mutual savings association, or a similar proprietary interest, is a "financial interest" in the organization only if the outcome of the proceeding could substantially affect the value of the interest;

iv. ownership of governmental securities is a "financial interest" in the issuer only if the outcome of the proceeding could substantially affect the value of the securities.

CANON 4

A LEGISLATOR MAY ENGAGE IN ACTIVITIES TO IMPROVE THE LAW AND SOCIETY

A legislator, subject to the proper performance of legislative duties, may engage in the following law-related activities:

A. A legislator may speak, write, lecture, teach, and participate in other activities concerning the law and society.

B. A legislator may serve as a member, officer, or director of any organization or governmental agency devoted to the improvement of the law or society. A legislator may assist such an organization in raising funds and may participate in its management and investment, but should not personally participate in public fund-raising activities. A legislator may make recommendations to public and private fund-granting agencies on projects and programs concerning the law and society.

C. A legislator should not use to any substantial degree legislative resources or staff to engage in activities permitted by this Canon that are unrelated to the legislator's official duties.

98. This Canon is modeled after Code of Conduct for United States Judges Canon 4, supra note 5; Code of Judicial Conduct Canon 4, supra note 5; Code of Conduct for Federal Public Defenders Canon 4, supra note 7; Code of Conduct for United States Clerks (and Deputy Clerks) Canon 4, supra note 8; and Code of Conduct for Law Clerks Canon 4, supra note 9.
A legislator should regulate extra-official activities to minimize the risk of conflict with official duties.\(^9^9\)

## A. Avocational Activities.

A legislator may write, lecture, teach, and speak on nonlegal subjects, and engage in the arts, sports, and other social and recreational activities, if such avocational activities do not detract from the dignity of the office, interfere with the performance of the legislator's official duties, or adversely reflect on the operation and the dignity of the legislature.

## B. Civic and Charitable Activities.

A legislator may participate in civic and charitable activities that do not detract from the dignity of the office or interfere with the performance of official duties. A legislator may serve as an officer, director, trustee, or advisor of an educational, religious, charitable, fraternal, or civic organization and solicit funds for any such organization, subject to the following limitations:

1. A legislator should not use or permit the use of the prestige of the office in the solicitation of funds.
2. A legislator should not solicit subordinates to contribute to or participate in any civic or charitable activity.

## C. Financial Activities

1. A legislator should refrain from financial and business dealings that tend to interfere with the proper performance of official duties, exploit the official position, or otherwise give the appearance of impropriety.
2. Neither a legislator nor a member of the legislator's family residing in the legislator's household should solicit or accept a gift, bequest, favor, or loan from anyone who has sought or is seeking to influence the legislature or other entity served by the legislator, or such a gift, bequest, favor, or loan that would influence or give the appearance of influencing the legislator in

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\(^9^9\) This Canon is modeled after Code of Conduct for United States Judges Canon 5, supra note 5; Code of Judicial Conduct Canon 5, supra note 5; Code of Conduct for Federal Public Defenders Canon 5, supra note 7; Code of Conduct for United States Clerks (And Deputy Clerks) Canon 5, supra note 8; and Code of Conduct for Law Clerks Canon 5, supra note 9.
the performance of official duties, or otherwise give the appearance of impropriety. 100

(3) Neither a legislator nor a member of the legislator's family residing in the legislator's household should solicit or accept a gift, bequest, favor, or loan from anyone else except for:

(a) a gift incident to a public testimonial, books, tapes, and other resource materials supplied by publishers on a complimentary basis for official use; or an invitation to the legislator and a family member to attend a bar-related function or an activity devoted to the improvement of the law or society;

(b) a gift, award, or benefit incident to the business, profession, or other separate activity of a spouse or other family member of a legislator residing in the legislator's household, including gifts, awards, and benefits for the use of both the spouse (or other family member) and the legislator (as spouse or family member), provided the gift, award, or benefit could not reasonably be perceived as intended to influence the legislator in the performance of official duties;

(c) ordinary social hospitality;

(d) a gift from a relative or friend for a special occasion, such as a wedding, anniversary, or birthday, if the gift is fairly commensurate with the occasion and the relationship;

(e) a loan from a lending institution in its regular course of business on the same terms generally available to persons who are not legislators; or

(f) a scholarship or fellowship awarded on the same terms and based on the same criteria applied to other applicants.

(4) For purposes of this section, "members of the legislator's family residing in the legislator's household" means any relative of a legislator by blood or marriage, or a person treated by a legislator as a member of the legislator's family, who resides in the legislator's household.

(5) A legislator should report the value of any gift, bequest, favor, or loan as required by law.

(6) A legislator is not required by this Code to disclose his or her income, debts, or investments, except as provided in this Canon and Canon 6.

(7) Information acquired by a legislator in the legislator's official capacity should not be used or disclosed by the legislator in financial dealings or for any other purpose not related to the legislator's official duties.

100. See Model Code of Professional Responsibility EC 7-34 (1986) ("The impartiality of a public servant in our legal system may be impaired by the receipt of gifts or loans.").
D. Extra-official Appointments.

A legislator should not accept extra-official appointments if the legislator’s duties would interfere with the performance of official duties or tend to undermine the public confidence in the integrity of the legislature.

E. Offices, Resources, and Staff.

A legislator should not use legislative offices, resources, or staff to engage in activities permitted by this Canon, except for uses that are de minimis.

CANON 6
A LEGISLATOR SHOULD REGULARLY FILE REPORTS OF COMPENSATION RECEIVED FOR ALL EXTRA-OFFICIAL ACTIVITIES

A legislator may receive compensation and reimbursement of expenses for all extra-official activities permitted by the Code if the source of such payments has not sought and is not seeking to influence the legislature or other entity served by the legislator, does not influence or give the appearance of influencing the legislator in the performance of official duties, or otherwise give the appearance of impropriety, subject to the following restrictions:

A. Compensation. Compensation should not exceed a reasonable amount nor should it exceed that normally received by others for the same activity.
B. Expense Reimbursement. Expense reimbursement should be limited to the actual costs of travel, food, and lodging reasonably incurred by the legislator and, where appropriate to the occasion, by the legislator’s spouse. Any payment in excess of such an amount is compensation.
C. Public Reports. A legislator should report the date, place, and nature of any activity for which the legislator received compensation, and the name of the payor and the amount of compensation so received. The legislator’s report should be made at least annually and should be filed as a public document in the office of the clerk of the legislature.

101. This Canon is modeled after Code of Conduct for United States Judges Canon 6, supra note 5; Code of Judicial Conduct Canon 6, supra note 5; Code of Conduct for Federal Public Defenders Canon 6, supra note 7; Code of Conduct for United States Clerks (And Deputy Clerks) Canon 6, supra note 8; Code of Conduct for Law Clerks Canon 6, supra note 9.