

**From:** [Geyh, Charles Gardner](#)  
**To:** [AO Code and Conduct Rules](#)  
**Subject:** Supplement to Testimony at Oct. 30 Hearing  
**Date:** Tuesday, October 30, 2018 1:26:40 PM

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To: The Honorable Ralph R. Erickson and Anthony J. Scirica  
From: Charles G. Geyh, Professor of Law, Indiana University Maurer School of Law  
Re; Supplement to October 30 testimony  
Date: October 30, 2018

During my testimony earlier today, I was asked to supply a citation to an article I referenced, which gathered survey responses from present and former circuit chief justices on issues relating to informal methods of judicial discipline. Here is the citation, and a link:

Charles Gardner Geyh, Informal Methods of Judicial Discipline, 142 U. PA. L. Rev. 243 (1993):  
[https://scholarship.law.upenn.edu/penn\\_law\\_review/vol142/iss1/5/](https://scholarship.law.upenn.edu/penn_law_review/vol142/iss1/5/)

In addition, I testified in favor of incorporating the Code more directly into the disciplinary process. I wanted to supplement that testimony with a few examples of behaviors that violate the Code and which (in my view) should be cognizable under the Act, but which do not appear to fall within the ambit of the seven “specific standards of judicial conduct” enumerated in Rule (4)(a)(1). I realize that the list is not intended to be exhaustive, but the greater the volume of misconduct that slips between the cracks of Rule 4(a)(1), the less helpful the rule becomes, and the more likely it is that the rule will do an affirmative disservice by marginalizing actionable misconduct it overlooks.

Examples include:

--The judge who engages in fraud, tax evasion, or other indictable crime in violation of Canon 2A.

--The judge who lends the prestige of office to advance his own interests in violation of Canon 2B.

--The judge who joins an organization that discriminates on the basis of race, in violation of Canon 2C (I do not think that actionable misconduct for discrimination under draft Rule 4(a)(3) necessarily addresses this because is the group, not the judge, that discriminates).

--The judge who engages in ex parte communications with witnesses, in violation of Canon 3A(4)—a relatively common problem has arisen with judges who confer with members of law enforcement.

--The judge who engages in willful non-disqualification under Canon 3C—the Rules rightly exclude garden-variety non-disqualification from the scope of cognizable misconduct, because erroneous non-disqualification is ordinarily an honest mistake correctible on review. Willful non-disqualification, however, is another matter, and was one of the bases upon which Judge Porteous was impeached and removed.

--The judge who supplements his income as an arbitrator or through the practice of law, in violation of Canon 4A(4) and (5)