The proposals have not been approved by the Supreme Court and are not intended to represent the views of the court. These proposals are circulated for comment purposes only.
The committee concluded that these concerns are not implicated by the proposed exception. It would be rare that a judge serving as a health care representative pursuant to an advance health care directive would be placed in a position in which favoritism is an issue. Likewise, such a judge would seldom be disqualified because of this limited exception. Finally, a judge who agrees to serve as a health care representative would need to ensure that those obligations do not interfere with the proper performance of judicial duties.

To the extent these concerns exist, the commentary to canon 4E provides that a judge who serves as fiduciary must be mindful of his or her obligations as a result of the fiduciary relationship. It states:

The restrictions imposed by this canon may conflict with the judge’s obligation as a fiduciary. For example, a judge shall resign as trustee if detriment to the trust would result from divestiture of trust holdings the retention of which would place the judge in violation of [the canon that requires a judge to manage financial interests to minimize disqualification].

In addition, canon 4E(2) addresses the conflict issue by prohibiting a judge from serving as a fiduciary “if it is likely that the judge as a fiduciary will be engaged in proceedings that would ordinarily come before the judge, or if the estate, trust, or minor or conservatee will be engaged in contested proceedings in the court on which the judge serves or one under its appellate jurisdiction.”
Canon 4E(1) would be amended to read:

**CANON 4**

A JUDGE SHALL SO CONDUCT THE JUDGE’S QUASI-JUDICIAL AND EXTRAJUDICIAL ACTIVITIES AS TO MINIMIZE THE RISK OF CONFLICT WITH JUDICIAL OBLIGATIONS

A. – D. ***

E. Fiduciary Activities

(1) A judge shall not serve as executor, administrator, or other personal representative, trustee, guardian, attorney in fact, or other fiduciary, except for the estate, trust, or person of a member of the judge’s family, and then only if such service will not interfere with the proper performance of judicial duties. A judge may, however, act as a health care representative pursuant to an advance health care directive for a person whose preexisting relationship with the judge would prevent the judge from hearing a case involving that person under Canon 3E(1).

(2) – (3) ***

F. – H. ***