

**AMERICAN BAR ASSOCIATION
JOINT COMMISSION TO EVALUATE THE
MODEL CODE OF JUDICIAL CONDUCT
Summary of Meeting Minutes
June 3, 2005, Chicago, Illinois**

Members Participating

Mark I. Harrison, Chair
Jan W. Baron
Dianne Cleaver
Donald B. Hilliker
Hon. Cara Lee Neville
Hon. Harriet Turney
Hon. James Wynn

Staff Participating

Eileen Gallagher, Justice Center
George Kuhlman, Ethics Counsel
Marcia Kladder, CPR Program Director
Nancy Slonim, Media Relations
Debra Taylor, CPR Project Manager

Reporters Attending

Charles G. Geyh
W. William Hodes

Advisors Attending

Hon. Carol Amon
Hon. Peter Bowie
Robert Cummins
Marvin Karp
M. Peter Moser
Dudley Oldham (participating by telephone)
Hon. Ellen Rosenblum (participating by telephone)
Seth Rosner

Members discussed the schedule of upcoming meetings.

Turning to the proposed Canon 4, the Joint Commission made word changes to the comment to proposed Rule 4.04 and to proposed Rule 4.14(a) and its comment. They agreed to use terms like “government entity” and “governmental entity” consistently in future drafts.

Regarding proposed Rule 4.12, “Business Activities,” members discussed substituting “for-profit” for “business,” and whether that change would preclude judges serving on bodies such as hospital boards. They considered whether “for-profit” implies that judges may serve on non-profit boards, ultimately deciding to use “for-profit” for present purposes.

The Joint Commission agreed to retain “improvement of the law” (e.g. “a judge may appear at, participate in, and permit the judge’s title to be used in connection with an event of an organization devoted to the improvement of law, the legal system, or the administration of justice, even though the event may serve a fundraising purpose”), which has a long history in the Code.

With regard to the reporting requirement of proposed Rule 4.16, members considered how to report the amount of compensation when a judge goes to a program or event where the judge never sees a bill paid for by someone else. Members discussed the relationship among

proposed Rules 4.14, 4.15, and 4.16, which cover reimbursements, compensation, and reporting of both types of financial payments.

Proposed Rule 4.16 cmt. 1 was rewritten to state “[b]y reporting and publicly disclosing their compensation, reimbursement of expenses or waiver of charges for extrajudicial activities, judges promote transparency and public confidence in their integrity, impartially and independence of the judiciary.”

Regarding the reporting requirement of proposed rule 4.16, members considered the frequency of reporting for compensation and reimbursement. A majority voted in favor of a provision stating that reimbursements and waivers shall be reported on a quarterly basis.

With regard to comments to proposed Rule 4.06, “Service as Arbitrator or Mediator,” the Joint Commission considered whether such service lends the prestige of office, whether it diminishes the role of the judge, and whether it has the potential to cause conflicts. The Reporter will draft language stating service as an arbitrator or mediator is permitted only when authorized by law.

The following language was added to proposed Rule 4.06 cmt. 2: “Even when performed without charge, dispute resolution services provided by a judge in an extrajudicial capacity may interfere with the proper performance of the judicial office, and are therefore permitted only when authorized by law.” A reference to proposed Rule 2.09 cmt. 2 will be added to Comment [2].

The Reporter explained the most recent changes to the Preamble. Members discussed its tone and whether it should contain a strong aspirational statement. They made editorial changes to the first and third paragraphs and decided that future drafts will contain an explanation of each Canon.

The Scope and Application sections will be separate and the latter will appear at the end of the Code. Members discussed whether the chart contained in the Application section made it easier to use.

The Joint Commission considered whether there is anything about service on specialty courts that renders certain rules inapplicable. Following discussion regarding whether judges in specialty courts should be included in the list of judges to which the Code applies, members agreed to include language acknowledging that there are differences between specialty and regular courts. The following language regarding “problem-solving” courts was added:

In recent years, some jurisdictions have created what are sometimes called problem-solving courts where local rules authorize and encourage judges to, for example, communicate directly with social workers, probation officers and others outside the context of the usual judicial role as an independent decision-maker of issues of fact and law. Judges serving in problem-solving courts shall comply with this Code except to the extent local rules provide otherwise.

Continuing with the Application section, members discussed the applicability of the Code to administrative law judges. They considered the differences between administrative law judges and other judges and the need to receive further comments. They examined the “officer of a judicial system” language to determine whether it eliminated administrative law judges from Code coverage. After further discussion, it was decided to add administrative law judges to the list of judges at the beginning of the Application section and to retain the footnote in the current version.

The Joint Commission made several changes to the Terminology section, including deleting “for judicial office” from the second sentence in “Candidate;” and deleting “continuing part-time judge.” A vote was taken as to whether some definitions should appear in the rules and others in Terminology. A majority voted in favor of the latter. Members discussed whether the term “for example” is appropriate in Terminology. They will revisit the term “widely attended event.”

Members considered whether the definition of “gift” should be in Terminology, in the rule, or in both. A majority voted in favor of including the definition in both the Terminology section and in comment. It was recommended that the definition of “gift” should be consistent in all subparts of the gift rule.

The Joint Commission considered the difficulty associated with defining “impropriety” and using “dignity.” With regard to “independence,” members agreed to delete “and rules of court applicable to proceedings over which a judge presides.” As to “integrity,” they decided upon the following language: “integrity denotes probity, fairness, honesty, uprightness and soundness of character”.

“Members of candidate’s family” shall be kept a separate term. Changes were made to the definitions of “non-public information,” “political organization,” and “spouse.” “Political organization” will be defined as “[political party] denotes a political party or other group sponsored by or affiliated with a political party or candidate, the principal purpose of which is to further the election or appointment of candidates for political office. For purposes of this Code, the term does not include a judicial candidate’s campaign committee created as authorized by Rule 5.06. See Rules 5.01 through 5.05.”