

**AMERICAN BAR ASSOCIATION  
JOINT COMMISSION TO EVALUATE THE  
MODEL CODE OF JUDICIAL CONDUCT  
Summary of Minutes of Teleconference  
June 22, 2005**

**Members Participating**

Mark I. Harrison, Chair  
Dianne Cleaver  
Thomas Fitzpatrick  
Donald B. Hilliker  
Hon. Margaret M. McKeown  
Hon. Cara Lee T. Neville  
Hon. Harriet L. Turney  
Hon. James A. Wynn

**Staff Participating**

Jeanne P. Gray, CPR Director  
George A. Kuhlman, Ethics Counsel  
Eileen C. Gallagher, Justice Center  
Eileen B. Libby, Associate Ethics Counsel  
Nancy Slonim, Media Relations

**Reporters Participating**

Charles G. Geyh  
W. William Hodes

**Advisors Participating**

Hon. Carol B. Amon  
Hon. Peter Bowie  
Dudley Oldham  
Hon. Ellen Rosenblum  
Seth Rosner  
Robert H. Tembeckjian

The teleconference focused on the proposed Preamble, Scope, Terminology, and Application. A revised version of these provisions will be finalized by June 23. Clean and redlined versions of the entire Code will be posted to the Joint Commission website by the end of June. In addition, hard copies will be available. The proposed Code will be accompanied by an explanatory memorandum.

Turning first to the Preamble, members agreed to delete “or other” from “[s]imilarly, a judge’s membership in discriminatory clubs or other organizations will undermine public confidence in the fairness of the judicial process.” They agreed to delete “[i]t is not enough that” and to insert “must” in the first sentence of the second paragraph, so that reads “[i]n order to sustain the rule of law judges must possess the qualities of integrity, impartiality, independence and competence.” The word “jurors” was added to the list in the last sentence (“judges, court employees, public officials, jurors, litigants, and lawyers”). Although it was suggested that the use of “respect” in the second paragraph was repetitive, no changes were made.

In the third paragraph, “moreover” was deleted from the start of the sentence, “[m]oreover, judges should expect to be the subject of public scrutiny, and should freely and willingly accept restrictions on their conduct that might be viewed as burdensome by ordinary citizens.”

Moving forward to the paragraph discussing Canon 1, members sought alternatives to “probity.” After further discussion, the last sentence of the paragraph was revised to read, “[t]he public must be able to trust every judge and the judicial system itself.”

Members expressed concerns regarding the paragraphs discussing Canon 2, in particular, the use of passive voice. Lines 16-18 on page 2 were revised to read “[j]udges are public servants obligated to decide matters both mundane and controversial without fear or favor. However, in instances where a judge’s impartiality might reasonably be questioned, the Canons work to protect the public interest by requiring disqualification of the judge.”

Lines 20-23 on page 2 were revised to read, “[j]udges are obligated to work diligently on matters presented to them, maintain decorum and respect in the courtroom and in ancillary proceedings, provide every litigant with the right to be heard according to established procedures, and avoid ex parte communications.”

A member objected to lines 26-27 on page 3, touching off discussion regarding how to contrast judicial decision-making with political decision-making. It was acknowledged that compromise can play an important role in judicial decision-making. The lines containing reference to decisions based on appeals to expediency and compromise were revised to read, “[i]n those arenas decision-making may be based, for example, on appeals to expediency, which would be inappropriate in the judicial arena.” “[I]n numerous courts” was deleted from line 27, so that it now reads “[t]he second feature is the practical reality that judges in a majority of American jurisdictions are subject to public election.”

Turning to the Terminology section, an advisor expressed concerns regarding the definition of “impropriety.” Members discussed the importance of tying the definition to “integrity, impartiality, and independence,” and whether “competence” was an element of “impropriety.” They decided to delete “competence” from the definition and to add “or otherwise demeans the judicial office,” so that the definition reads, “[i]mpropriety’ denotes conduct that compromises the ability of a judge to carry out judicial responsibilities with integrity, impartiality, and independence, or otherwise demeans the judicial office.”

With regard to the language at the beginning of the Terminology section (“Terms below are noted with an asterisk (\*) in the Rules where they appear. In addition, the Sections where terms appear are referred to after the explanation of each term”), the Joint Commission discussed whether cross-referencing was needed in Terminology, and whether it was awkward. A majority voted in favor of retaining the cross-referencing.

Members noted that fact that “gifts” is defined both in Terminology and in comment to the black letter rule. The staff and Reporters will find an alternative to “non-judge.” It was observed that cross-references to Canon 5 were missing from the definition of “gift.”

“‘Candidate’ describes both a person seeking selection for or retention in judicial office by election or appointment and a judge seeking election or appointment to a non-judicial office” was changed to “‘[c]andidate for judicial office’ describes a person seeking selection for or retention in judicial office by election or appointment.”

The Joint Commission next considered the proposed Scope provision. The last sentence of the first paragraph was revised to read, “[a]t the end of the Code, an Application Section identifies those persons to whom the Rules apply, including those who hold judicial office on other than a full-time basis.”

The second sentence in the second paragraph was rewritten to eliminate the use of passive voice: “Compliance with all of the Rules inevitably results in adherence to these principles, thus ensuring the respect for our judiciary that sustains our system of democratic government under the rule of law.”

“Procedures” was inserted in line 19 on page 1 (“Enforcement of these standards through appropriate disciplinary processes is effected by the development and application of rules and procedures external to the ethical standards themselves.”).

“[A]nd the public” was added to line 20 on page 2 (“Whether disciplinary action is appropriate, and the degree of discipline to be imposed, should be determined through a reasonable and reasoned application of the text and should depend on such factors as the gravity of the transgression, whether there is a pattern of improper activity, and the effect of the misconduct on the judiciary and the public.”).

Members agreed to restructure the Application section. The word “Introduction” was eliminated. Roman numeral I will be designated “Applicability of this Code,” and will be set apart from the remainder of the rule. “Retired Judges Subject to Recall,” “Continuing Part-time Judge,” “Periodic Part-time Judge,” and “Pro Tempore Part-time Judge” will be designated A through D. Roman numeral II will be “Time for Compliance.”

The Chair described the enforceability reference set forth in footnote 11 and the language regarding problem-solving courts that was added to comment.

The word “Commentary” was changed to “Comment.”

Before ending the teleconference, members discussed scheduling. The Chair stated that the proposed Code must be submitted by November 16 for consideration by the House of Delegates at the 2006 Midyear Meeting. Staff and the Reporters stayed on the teleconference line to make editorial changes and to correct typographical and grammatical errors.