

**AMERICAN BAR ASSOCIATION
JOINT COMMISSION TO EVALUATE THE
MODEL CODE OF JUDICIAL CONDUCT**

Summary of Meeting Minutes

October 19, 2003

Chicago, Illinois

Members Participating

Mark I. Harrison, Chair
James Alfini
Loretta C. Argrett
Jan Witold Baran
Thomas M. Fitzpatrick
Donald B. Hilliker
Hon. Cara Lee T. Neville
Hon. M. Margaret McKeown
Hon. Harriet L. Turney

Reporter Participating

Charles G. Geyh

Staff Participating

Luke Bierman, Justice Center Director
Jeanne P. Gray, CPR Director
Eileen Gallagher, Staff Counsel
George A. Kuhlman, Ethics Counsel
Eileen B. Libby, Associate Ethics Counsel
Kathleen Maher, Assistant Professionalism
Counsel
Seth Andersen, Project Manager

Advisors Participating

Hon. Peter W. Bowie (by telephone)
Robert P. Cummins
Marvin I. Karp
M. Peter Moser
Hon. Ellen Rosenblum
Seth Rosner
Robert H. Tembeckjian

Guests

Burnele V. Powell

The Chair reviewed yesterday's discussion concerning the scheduling of future meetings. Discussion next turned to the method of selecting experts to participate in roundtables.

Regarding the Chair's comment at the conclusion of yesterday's meeting that the members give further thought to areas of the Code in need of revision, members expressed their thoughts.

An advisor suggested that the Commission consider judges' law-related vs. non-law related activities, for example, participation with an agency that provides early intervention, child abuse prevention, and family support services at no cost to high-risk families. Judges may want to participate in this worthy organization but are precluded from raising funds in to support its activities and from attending events sponsored by the organization where fundraising occurs.

Other areas of concern involve judges' ability to publicly respond to unwarranted criticism; judges' ability to write or solicit grants relating to subjects involving the

administration of justice, for example, drug education; and judges' ability to engage in political activity on behalf of judicial candidates. In this regard, it was suggested that the Commission might define "judicial activities" more expansively, for example, to include public education and other civic activity involving the court system. Members also discussed disqualification and disclosure.

Prior to today's meeting, the Commission received a memorandum from Cynthia Gray, Director of the American Judicature Society, identifying issues for the Commission's consideration. One of the subjects concerned judges' ability to accept ordinary social hospitality. The subject prompted discussion of judges writing letters of recommendation on behalf of lawyers, writing letters on behalf of criminal defendants to parole boards, and judges testifying as witnesses.

Members and liaison considered when and how judges make use of judicial ethics advisory committees. They discussed the frequency with which judges consult such committees for ethics advice, including advisory opinions, and how such opinions may be used as a good faith defense in judicial disciplinary proceedings. Judge Rosenblum stated that she would circulate a copy of the Oregon Code of Judicial Conduct, a section of which states that in considering alleged violations of the Oregon Code, the Oregon Supreme Court or the Oregon Commission on Judicial Fitness and Disability may consider a judge's good faith effort to comply with a formal or informal ethics opinion as a mitigating factor if the judge is found to be in violation of the Code.

A member raised for consideration the limits of judicial independence and the potential for an appearance of impropriety when a prosecutor who has represented a judge in a lawsuit against the judge in his official capacity also appears before that judge in an unrelated matter.

The members discussed the importance of having public participation in the Code review process. The Chair hopes that a public member will be appointed by the November teleconference. It was suggested that, as the Commission engages in its review, core judicial values will be implicated. It might be useful for the Commission to define "independence," "integrity," and other such key terms.