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From: Warren Fitzgerald [<mailto:WFitzgerald@mbbf.com>]

Sent: Monday, March 13, 2006 7:17 PM

To: Kladder, Marcia

Subject: RE: ABA Joint Commission to Evaluate the Model Code of Judicial Conduct

Dear Ms. Kladder:

By email letter dated March 1, 2006, the Massachusetts Bar Association was notified of the proposed final report of the ABA Joint Commission to Evaluate the Model Code of Judicial Conduct and accompanying request for comment. I appreciate the opportunity to provide comment on these changes to the code. I do regret that the March 15, 2006 deadline for submission of comments does not allow sufficient time for our association to study the changes and provide a detailed and thoughtful response. However, there is one proposed change to the code which has been a subject of discussion among our members and upon which I wish to comment.

We strongly oppose the proposed addition of the last phrase to section B(3) to rule 4.04 relating to judges' involvement with civic and charitable organizations. Subsection (3) provides that the participation of judges in the events of law related organizations is generally permitted. The proposed addition to subsection (3) provides the limitation: "unless the organization's membership includes predominantly lawyers who chiefly advocate a particular position or represent a particular client or type of client." This results in a definition so vague as to defy reasonable application.

This rule could be interpreted to unduly restrict the valuable contribution of judges to a wide array of law related organizations. Would appearance at events sponsored by the Defense Research Institute be prohibited? Would volunteer support of all specialized bar association events be prevented? Almost all bar organizations are comprised primarily of lawyers who advocate similar positions on many issues. The Massachusetts Bar Association is strongly supportive of Judicial Independence, for example.

The restrictions relating to association events found in the proposed subsection (3) is incongruous with the permitted activities found in other subsections of Rule 4.04. There appears no such limitation of the types of organizations in which judges can be members or to which they can provide other support. Furthermore, the proposed subsection (3), which substantially deviates from the provisions of the existing rule 4, is not supported or amplified by existing or proposed comments. The comments appear directed in large measure to the protection of the appearance of the judiciary's integrity in matters dealing with fundraising whereas this proposed rule focuses upon the interests of the organization.

The Massachusetts Bar Association is strongly supportive of the involvement of judges in a wide variety of civic, charitable and law related organizations. The benefit to organizations from volunteer judicial involvement and support is inestimable. Likewise, the interaction of judges with members of the bar and the public strengthens and enriches our judiciary.

Kindly note our opposition to the proposed addition to subsection (3) of Rule 4.04

Thank you.

Sincerely,

Warren Fitzgerald
President, Massachusetts Bar Association