

SUMMARY

National Judicial Education Program
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Canon 2, Rule 2.02, Comment [4] re Sexual Harassment:

The National Judicial Education Program thanks the Commission for restoring specific mention of sexual harassment to the Model Code of Judicial Conduct after it was eliminated in a preceding draft. While we are disappointed that this prohibition did not achieve canonical status in your revision, we appreciate its addition to the Commentary to Canon 2, Rule 2.02.

Canon 4, Rule 4.01: Extra-Judicial Activities in General and Rule 4.04: Participation in Civic or Charitable Activities (A)

The National Judicial Education Program again the Commission for responding to the urgent need to clarify judges' involvement in government commissions and in all community activities, by casting the relevant Canon and Commentary "in more positive language to clearly affirm that judges can and should be active in both community outreach and membership in or assistance to specific commissions

Canon 4, Rule 4.04 Participation in Civic or Charitable Activities

Some of the language in Rule 4.04 (B) is so broadly and vaguely drawn that it threatens to swallow the encouraging language of Rule 4.01. Phrasing to the effect that a judge should refrain from appearing or speaking at an event when "the organization's membership includes predominantly lawyers who chiefly advocate a particular position or represent a particular type of client" and in Comment [8] to this rule that, "it would be inappropriate for a judge to speak at a fund-raising event for a specialty bar association whose members are closely identified with certain clients or particular positions on certain legal issues" is extremely troubling. This language could take in a tremendous range of organizations and types of participation.

The phrase "specialty bar" is not defined in the Terminology section. It might encompass a bar devoted to a particular type of membership, such as the National Bar Association, whose members are largely African-American, or the Florida Association of Women Lawyers. If the Commission decides to maintain this restriction, it must define the term with specificity so judges will know where they may not go.

In addition to specialty bars, the draft rules out judges' involvement with organizations "whose membership includes predominantly lawyers who chiefly advocate a particular position or represent a particular type of client." This formulation could affect participation in an organization like New York City's Lawyers Committee Against Domestic Violence? The many speakers at its annual two-day conference include six state judges and a federal judge, and the co-sponsors include the Appellate Division, First Department in its entirety. Would judges' participation in this event be barred under the Commission's Final Draft?

The need for judges who are not themselves a diverse population to be exposed to input from all the communities they serve cannot be overstated. Does the Commission really mean to prohibit

judges from participating in the programs of the NAACP Legal Defense and Educational Fund, Inc., the Puerto Rican Legal Defense Fund and the Legal Aid Society?

Questions about Rule 4.04 (B) (4) re Recruitment

The Commission's Final Draft contains a new rule respecting recruitment. Subject to the requirements of Rule 4.01,

[A judge] may recruit members for an organization concerned with the law, the legal system, or the administration of justice, even though the membership dues or fees generated may be used to support the objectives of the organization.

While Rule 4.04(B)(4) is, like Rule 4.04 (B) (3), subject to the restrictions articulated in Comment [8], it seems odd that (3) includes in the Canon itself language restricting involvement with lawyers' organizations that chiefly advocate a particular position or represent a particular type of client while (4) does not. Surely it is more objectionable for judges to be out recruiting for an organization than to give a speech or participate in a continuing legal education program for that organization.