

SUMMARY

New York County Lawyers' Association
Committee on Professional Ethics
Martin Minkowitz, Chair September 29, 2005

Terminology

The New York County Lawyers' Association suggests making definitions complete, rather than including cross-references. They note that it is unclear whether the cross-references are instructive or are part of the actual definition. They point out for illustration the fact that the definition of "fiduciary," for example, references a second definition of fiduciary in a section which no longer exists.

Canon One

Rules 1.01, 1.03, and 1.04

The Association makes a number of specific drafting suggestions for these rules and comments aimed at clarity and internal consistency.

Canon 3

The Association suggests amending Canon 3 A judge shall conduct his or her personal affairs **in manners that** to preserve the integrity, impartiality and independence of the judiciary. It argues that use of "to" is unnecessarily broad and connotes that everything a judge does in his or her personal life must preserve the integrity, impartiality and independence of the judiciary.

Rule 3.01

The New York County Lawyers' Association finds that this rule restates several considerations of Canon 2 and does not indicate why a separate rule is needed. They note that Canon 3 is supposed to address *personal* conduct, but Rule 3.01 focuses on *judicial* conduct better addressed in Canon 2.

Rule 3.02

They would amend Rule 3.02 as follows: "A judge shall not ~~lend~~ **use** the prestige of judicial office, ~~or allow others to do so, to advance the personal interests of the judge or others.~~ **to convey the impression that he or she may be personally influenced by preferential or privileged treatment.** They state that the proposed Rules 3.01 and 3.02 are clearer if they are distinguished between personal conduct by the judge and conduct by people with whom he or she has a relationship.

Rule 3.02 Comment [1]

The Association suggests adding the following statement to Comment [1]: **“It is improper for a judge to use his or her position to gain personal advantage or preferential treatment of any kind for anyone in a familial or personal relationship with the judge.”**

Rule 3.02, Comment [5]

They suggest revising Comment [5] as follows: “A judge may provide a **an employment, education or personal** reference or recommendation for an individual based on the judge’s personal knowledge.”

Rule 3.03, Comment [1]

The Association would revise Comment [1] to broaden the information that should be accorded such protection.

Canon 5

Rule: 5.01 (e)

The Association thinks that the proposed rule (permitting the attendance of judges and judicial candidates at non-funding raising events sponsored by a political organization or candidates for public office) may be potentially inconsistent with subsection (c) (prohibiting the public endorsement of a candidate).