

Ronald C. Minkoff, Chair Joint Subcommittee of the Association of the Bar of the City of New York

Paul Dutka, Chair Committee on Professional and Judicial Ethics

David Keyko, Chair Committee on Professional Responsibility

Peter Sherwin, Chair Council of Judicial Administration

Ian Andersen, Chair Committee on Governmental Ethics

These Chairpersons have formed the Joint Subcommittee chaired by Ronald C. Minkoff to make recommendations on the final draft of the Model Code of Judicial Conduct. The subcommittee is overall very pleased with the final draft and happy to see that some of their suggestions and recommendations have been integrated into it.

Rule 2.10

The committee finds the ABA Commission's proposal is too restrictive in terms of a judge consulting with others about general legal matters. They feel that a judge's consultation with lawyers, law teachers and others about general legal issues should be permitted as long as the parties and specific factual details of the case at hand are not disclosed. The benefit of a judge learning about areas of the law with which they are not familiar outweighs any dangers that outside sources will pursue a personal or political agenda that would improperly influence the judge.

Rule 2.12

COMMENT 5

In the subcommittee's view, this comment should be expanded to make clear that a judge who has determined that he or she has less than a "de minimus interest that could be substantially affected by the proceeding", or has less "than a de minimus legal or equitable [economic] interest" in the outcome, should disclose to the parties that such a determination has been made and what is the basis for that determination.

In the application section of the proposed model code, the committee has a recommendation regarding restrictions on periodic, part-time judges, which prohibits the person serving not only from practicing law in the court on which the judge serves, but also in any court subject to the Appellate jurisdiction of the court on which the judge serves.

Subcommittee finds this confusing and is not entirely sure what it means. If it means only that a

periodic, part-time judge cannot actually serve on an Appellate Court with jurisdiction over his or her court, the committee agrees. However, if this phrase covers the practice of law by a periodic, part-time judge there concerns are that given the relatively small population of many towns and villages that use periodic, part-time judges the prohibition is too broad and will shrink the pool of qualified candidates to serve in this important positions.

The prohibition proposed, however, does not just prohibit too much, it also prohibits too little. In the committee's view it does not prohibit periodic, part-time judges from appearing before local legislative (e.g., town boards of trustees), administrative (e.g., local planning boards), or quasi-judicial bodies (e.g., Zoning Board of Appeals). The danger of actual or apparent impropriety in this situation is manifest. The committee finds this to be troubling, to be more likely true in smaller communities where the types of conflicts are more likely to arise and where the judge is less likely to recuse herself because of the absence of available alternatives. The committee recommends this prohibition to be included in the code.