

**AMERICAN BAR ASSOCIATION  
JOINT COMMISSION TO EVALUATE THE  
MODEL CODE OF JUDICIAL CONDUCT  
Summary of Minutes of Teleconference  
March 29, 2006**

**Members Participating**

Mark I. Harrison, Chair  
James Alfini  
Dianne Cleaver  
Thomas M. Fitzpatrick  
Donald B. Hilliker  
Hon. Cara Lee T. Neville  
Hon. Harriet Turney

**Staff Participating**

George A. Kuhlman, Ethics Counsel  
Eileen B. Libby, Associate Ethics Counsel  
Marcia Kladder, CPR Program Director  
Nancy Slonim, Media Relations

**Reporters Participating**

Charles G. Geyh  
W. William Hodes

**Advisors Participating**

Robert P. Cummin  
Hon. Peter W. Bowie  
Marvin L. Karp  
M. Peter Moser  
D. Dudley Oldham  
Hon. Ellen F. Rosenblum  
Seth Rosner  
Hon. Randall T. Shepard  
Robert H. Tembeckjian

The Chair began by noting that Canon 5 in the December 2005 Final Draft contains a few provisions more restrictive than their counterparts in the 1990 Code. These provisions could prove to be an obstacle when the revised Code is presented to the House of Delegates for approval in August. He noted that, in the years following the adoption of the 1990 Code, the landscape with regard to judicial elections has changed. Further, since the U.S. Supreme Court's *Minnesota v. White* and other court opinions, there is uncertainty regarding Canon 5's constitutionality. With these points in mind, the Joint Commission examined Canon 5 to determine whether to accept the Final Draft version or to retain the current language.

A majority voted in favor of retaining proposed Rule 5.01(A)(2), which prohibits a judge or a candidate for judicial office from making speeches on behalf of a political organization, and proposed Rule 5.01(A)(3), which prohibits a judge or a candidate for judicial office from publicly endorsing or opposing a candidate for any public office.

Members examined proposed Rule 5.01(A)(4), which prohibits a judge or a candidate for judicial office from soliciting funds for, paying an assessment to, or making a contribution to a political organization or a candidate for public office, and proposed Rule 5.01(A)(5), which prohibits elected judges from attending or purchasing "tickets for dinners or other events sponsored by a political organization or a candidate for public office." Members discussed whether the latter is more restrictive than its 1990

counterpart and whether the proposed language furthered a compelling state interest to further an independent judiciary.

A majority voted in favor of returning to the structure of the 1990 Code and making appropriate exceptions in proposed Rule 5.02. Several members conditioned retention of prohibitions in proposed Rule 5.01(A) on making appropriate modifications to the remaining sections of Canon 5.

Members discussed whether to retain proposed Rule 5.01(A)(6), which prohibits a judge or a candidate for judicial office from publicly identifying himself or herself as a candidate of a political organization, and proposed Rule 5.01(A)(7), which prohibits a judge or a candidate for judicial office from seeking or using endorsements from a political organization. It was suggested that the provisions be deleted as blanket prohibitions and instead listed as exceptions. After further discussion, a majority voted in favor of retaining the provisions as prohibitions.

Members discussed proposed Rule 5.01(A)(8), which states that a judge or a candidate for judicial office “shall not by in-person, live telephone or real-time electronic contact solicit campaign contributions, unless the person contacted is a relative or personal friend whose appearance in a case would require disqualification under Rule 2.12, and shall not in any event personally accept campaign contributions.” It was suggested that the proposed rule could be restructured or improved grammatically. The provision does not cover judges leaving voicemail messages, which are not “real-time.”

The Joint Commission ultimately decided to modify the provision by changing “personally” to “in person,” and to define “personally solicit” in Terminology. The Joint Commission will study how Oregon has defined “personally solicit funds” in its judicial code.

Members had no objection to the addition of “the judge” in proposed Rule 5.01(A)(9) (“a judge or a candidate for judicial office shall not use or permit the use of campaign contributions for the private benefit of the judge, the candidate, or others.”)

The Reporter presented the Joint Commission with an alternative version of proposed Rule 5.01(A)(13), stating that a judge or a candidate for judicial office “shall not make pledges or promises to make rulings that reach specified results in particular cases or classes of cases, or to make rulings that treat particular litigants or classes of litigants more or less favorably than the applicable law requires.” A majority voted in favor of the existing proposed rule 5.01(A)(13), including the word “commitment,” which some thought redundant.

The Joint Commission considered whether proposed Rule 5.02(B)(1), which states that a candidate for judicial office “shall take reasonable measures to ensure that other persons do not do on behalf of the candidate what the candidate is prohibited from doing by this Code, whether or not the other person is under the direction and control of the candidate,” invokes the law of unintended consequences. It was noted that there must

be an exception to allow members of judicial campaign committees to engage in activities on their own behalf that a judge would be prohibited from doing.

The Reporter explained changes to proposed Rule 5.01(B)(2), which states that “[a] candidate for judicial office shall maintain the dignity appropriate to judicial office, and act at all times in a manner consistent with the independence, integrity, and impartiality of the judiciary.” Members discussed the fact that “dignity” might be too vague to form the basis of an enforceable rule. After considering whether to delete “dignity” as well as other portions of the text, the Joint Commission decided to delete “maintain the dignity appropriate to judicial office, and.”

Members reacted favorably to a suggestion to add proposed Rule 5.01(C)(1) (“may publicly state or announce his or her views on legal, political, or other issues”) to the end of proposed Rule 5.01(A)(13).

Regarding proposed Rule 5.01(C)(2), which states that “[a] judge or candidate for judicial office may engage in political activity in support of measures that concern the law, the legal system, or the administration of justice,” the Reporter stated that “political activity” needed definition. After discussing whether the provision’s language was prohibitive or permissive, a majority voted in favor of deleting proposed Rule 5.01(C)(2).