

**AMERICAN BAR ASSOCIATION
JOINT COMMISSION TO EVALUATE THE
MODEL CODE OF JUDICIAL CONDUCT
Summary of Teleconference Minutes
April 19, 2004**

Members Participating

Mark I. Harrison, Chair
James Alfini
Loretta C. Argrett
Dianne Cleaver
Thomas M. Fitzpatrick
Hon. Cara Lee T. Neville
Hon. Harriet L. Turney

Staff Participating

Jeanne P. Gray, CPR Director
Eileen C. Gallagher, Justice Center Counsel
George A. Kuhlman, Ethics Counsel
Eileen A. Libby, Associate Ethics Counsel
Maggie J. Viertel, Research Assistant

Reporter Participating

Charles G. Geyh

Advisors Participating

Hon. Carol Amon
Hon. Peter W. Bowie
Robert P. Cummins
Marvin I. Karp
Ellen Rosenblum
Robert H. Tembeckjian

The purpose of today's teleconference is review of draft Articles 1 and 2. The Chair stated that they will be revisited after comments are received. The Reporter indicated that language regarding disqualification will be modified.

Members expressed opinions regarding the "appearance of impropriety" standard. After discussion, the Commission agreed to delete the last sentence of Rule 1.01 Comment [5]. They also discussed whether Comment [7] should be deleted all or in part. They will be reviewing material from Alaska disciplinary counsel in support of retaining the current "appearance of impropriety" standard. The case law purportedly will demonstrate that the standard passes constitutional muster.

The Commission discussed changes to Rule 1.02, Comment [2] and whether paragraph 2 should go under Rule 1.03. The Reporter will do a draft for the members' review.

Members considered the changing nature of the judicial duties in the context of Rule 2.01. They examined the use of language in the provision, specifically the word "policy." The Chair suggested that it would be helpful to have greater clarity.

The Commission decided that when draft Articles 1 and 2 are placed on the Commission's website, they be accompanied by an accompanying document that discusses the Commission's own questions and reservations.

An advisor suggested that, with respect to a judge's physical impairment, the text should remain as "may." Regarding Rule 2.04, a member recommended that using "shall" instead of "should." Another member suggested that a Rule 2.05 cross-reference Rule 2.14. Several members commented that the comment to Rules 2.05 tries, but fails to be all-inclusive, and that a portion of it should be deleted.

There were no comments regarding Rule 2.06.

Regarding Rule 2.07, members discussed the pros and cons of judges debriefing jurors. Members examined revised Rule 2.08. They acknowledged that judges themselves are in substantial disagreement over judges participating in settlements. They considered whether judges can preside over trials in which they are settlement judges and whether they should be more active in the settlement process. The Commission decided to leave the rule alone for the present.

The Commission decided to defer consideration of the American Judicature Society suggestions regarding Rule 2.09 until the next meeting. After discussion, they decided to retain paragraph (4) and to delete "mediate or." Members discussed whether the rule is overly restrictive. They considered the "disqualifying interest" concept. An advisor and a member warned against drafting the provision to prohibit communications between court advocates or quasi-parole officers who seek to consult with judge before hearings.

The Commission decided to change the title of Rule 2.10 and to delete the last clause of Comment [3]. They considered whether to collapse Comments [1] and [3] of Rule 2.11. Turning to Rule 2.12, they discussed the meaning of "de minimis interest" and the difference between "de minimis interest" and "economic interest." An advisor suggested adding a comment under paragraph (f) regarding minimizing the number of cases on which a judge is disqualified, and adding the "parties and their" before "lawyers" in paragraph (h). Members discussed the genesis of Comment [2] and whether it is inconsistent with the black letter rule. They also discussed the reference to "remittal." They had no comments with regard to revised Rules 2.13, 2.14, 2.15, and 2.16.

Members discussed changing the titles of Rule 2.17 and 2.18 and whether "other direct action if available" should be deleted. They also considered deleting Rule 2.20.

The Chair directed Ethics Counsel to draft a memorandum explaining the most recent round of changes to the draft and listing the concerns expressed during today's teleconference.