

**AMERICAN BAR ASSOCIATION
JOINT COMMISSION TO EVALUATE THE
MODEL CODE OF JUDICIAL CONDUCT
Summary of Meeting Minutes
June 5, 2004
Naples, Florida**

Members Participating

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

Reporter Participating

Charles G. Geyh

Staff Participating

Jeanne P. Gray, CPR Director
Eileen Gallagher, Justice Center Counsel
George A. Kuhlman, Ethics Counsel
Eileen B. Libby, Associate Ethics Counsel

Advisors Participating

Hon. Peter W. Bowie
Robert P. Cummins
Marvin I. Karp
M. Peter Moser
Hon. Ellen Rosenblum
Robert H. Tembeckjian

The entire meeting was devoted to discussion of the latest drafts of Canons 3 and 4. The Commission decided that every black letter rule should have accompanying comment. Rule 3.02 was revised to state that “[a] judge shall not testify as a character witness except when properly summoned.” In Rule 3.02 comment, “must” was changed to “shall.” The sentence that discusses testifying when voluntarily summoned was eliminated.

The Commission explored the parameters of Rule 3.04. They considered whether there could be any acceptable minimal involvement with organizations that practice invidious discrimination, such as attending only one meeting or attending a relative’s wedding at a club that has discriminatory membership practices. Someone observed that the current rule addresses only membership. Attendance would not be disciplined under this rule but rather under Canon 2 and 2A appearance of impropriety standards.

Members also considered whether the provision allowing judges to maintain membership in a club and work against its discriminatory policies should be maintained. They examined the meaning of ‘prohibited by law.’ The Reporter and staff will research the issue and report back to the Commission.

The Commission made several word changes to Rules 4.01 and 4.02. The black letter rule was revised to read, “on other matters that might reasonably be considered to merit the attention and comment of a judge because of knowledge or expertise acquired in the course of a judge’s judicial duties.” Members discussed comment that might be

added to clarify this provision. It also was recommended that language be added to the comment to explain “a comment of a judge as a judge.”

Members made clarifying changes to Rule 4.03 and decided against deleting the first sentence of its comment.

Regarding Rule 4.04, members engaged in extended discussion regarding civic and charitable activities. Members voted to retain the phrase “essentially a fund-raising mechanism.” The comment to Rule 4.06 was edited.

Members considered whether applying Rule 4.08 to “any lawyer who comes before the court,” was too stringent. The Reporter and staff will examine state ethics opinions to see if there are exceptions for certain financial relationships with lawyers. The Commission also considered whether to revise the definition of “economic interest” and whether “financial interests” needed definition. They explored what it means to “manage” investments and what level of knowledge is required. In light of the fact that application of the provision has not proven difficult, members considered whether it needed revision.

The Commission also devoted a considerable amount of time to discussion of draft Rules 4.12 and 4.13, in particular, whether it is appropriate for judges to accept any gifts over a certain amount, regardless of reporting requirements; and the impact of restrictions on any gifts on judges’ ability to participate in activities of bar associations and other organizations? Members also explored the definition of “widely attended event” and value should trigger a reporting requirement. They agreed to continue discussion of the draft gift provisions, which will be revised to reflect today’s discussion, at the next meeting.