

**AMERICAN BAR ASSOCIATION  
JOINT COMMISSION TO EVALUATE THE  
MODEL CODE OF JUDICIAL CONDUCT  
Summary of Teleconference Minutes  
July 8, 2004**

**Members Participating**

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

**Staff Participating**

George A. Kuhlman, Ethics Counsel  
Eileen C. Gallagher, Justice Center Counsel  
Eileen A. Libby, Associate Ethics Counsel  
Angela Burke, CPR  
Maggie J. Viertel, Research Assistant  
Susan Campbell, Paralegal

**Reporter Participating**

Charles G. Geyh

**Advisors Participating**

Hon. Peter W. Bowie  
Robert P. Cummins  
Marvin I. Karp  
Ellen Rosenblum  
Seth Rosner

The Commission began the meeting by discussing scheduling matters. At the Annual Meeting, Commission members who also are members of the Judicial Division will participate in breakout sessions to discuss the Commission's progress. The Chair requested that any meeting with the Judicial Division not interrupt the Commission's own meeting.

Members stated that they would support the Association if it filed an amicus brief in the Eight Circuit rehearing en banc of *Minnesota v. White*. The remainder of the teleconference was spent discussing draft Canon 3 and 4.

Regarding 3.01, members considered whether Rule 3.01 Comment [5] was redundant. It was suggested that the comment be revised to read, "[a] judge may, without violating this provision...."

The Commission discussed judges writing letters of recommendation and whether judicial letterhead can be used. They will examine Committee on Codes of Conduct Advisory Opinion 73, which interprets the federal rule relating to this subject.

Members considered whether Rule 3.02 more properly belonged under Canon 4, whether the rule should include service as an expert or fact witness, and whether a judge should wait for a summons before testifying. Members further considered whether, when a judge testifies as a character witness, the judge is using the prestige of the office so that Rule 3.01 is implicated. There was a suggestion that comment to Rule 3.02 be moved to Rule 3.01, with a cross-reference to Canon 4. Members considered further language changes, including moving the first sentence of Rule 3.02 to Rule 3.01 comment. The rest of the provision would become new black-letter

rule language under Canon 4. The Commission will study research regarding judges serving as expert witnesses.

Regarding Rule 3.03, the Commission determined that the description of ways that information could be unavailable to the public was unnecessary in the comment and that “not otherwise available to the public” is sufficient.

It was suggested that Rule 3.04 Comment [1] be revised to provide more guidance regarding making a determination that an organization is practicing invidious discrimination. The Commission will revisit the provision after the rule is posted for comment. It was suggested that whether organizations like the Boy Scouts or U.S. military are discriminatory organizations might best be left to the courts. In Comment [3], a comma after “significant” in the first sentence and “Other” in the last sentence were deleted. Members will receive a revised draft showing these and other changes.

Members examined the most recent revisions regarding Rules 4.01 and 4.02. After discussion, the Chair decided that the most recent versions should be posted on the Commission’s website for public comment.

The Commission turned to discussion of judges handling money at charitable events where trading on the prestige of judicial office is not an issue. The Chair suggested leaving the applicable rule as is and seeing what comments are received. A staff member suggested that, when the rule is posted to the Commission website for comment, that it be accompanied by a list of possible concerns.

Several typographical errors were corrected, including adding a possessive after “organization” in the first line of Comment [5], a period at the end of the first sentence of Comment [7], and an “a” after “relatives of” in the last sentence of Rule 4.08 Comment [2]. Members considered replacing “lives” with “affairs” in Rule 4.10 Comment [1]. They also considered whether “organizations” was too limiting, and whether “other entities” should be added.

Members decided that the gift provisions required further discussion before they can be posted to the website for comment. Members discussed whether the gift provisions were too “regulatory” in nature, that is, whether they would require disclosure even in the absence of state disclosure requirements. They considered the difficulty of determining the identity of event sponsors.