

**AMERICAN BAR ASSOCIATION  
JOINT COMMISSION TO EVALUATE THE  
MODEL CODE OF JUDICIAL CONDUCT  
Summary of Meeting Minutes  
August 7, 2004  
Westin Peachtree Plaza, Atlanta, Georgia**

**Members Participating**

Mark I. Harrison, Chair  
James Alfini  
Loretta C. Argrett  
Jan Witold Baran  
Thomas M. Fitzpatrick  
Donald B. Hilliker  
Hon. M. Margaret McKeown  
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 C. Gallagher, Justice Center Counsel  
George A. Kuhlman, Ethics Counsel  
Eileen B. Libby, Associate Ethics Counsel  
Nancy Slonim, ABA Media Relations

**Advisors Participating**

Hon. Carol Amon  
Hon. Peter W. Bowie  
Robert P. Cummins  
Marvin I. Karp  
M. Peter Moser  
Seth Rosner  
Hon. Randall T. Shepard  
Robert H. Tembeckjian

The Chair began the meeting by discussing scheduling matters. The Reporter has begun working on the Preamble and Terminology sections.

The members next turned to the August 4 draft gift rule. It was noted that the proposed draft includes three defined terms: “gift,” “personal hospitality,” and “widely attended event.” Members discussed questions relating to disclosure. Various suggestions were made, including excluding items such as car and house loans.

Regarding the bracketed amount in subparagraph 4.12(a)(8), members decided that \$250 was appropriate, and would include the aggregate value of gifts from the same source. Members decided that instead of “reimbursement,” which appears in Rule 4.12(a)(9), to add a dollar limitation. Regarding the monetary value of gifts that must be disclosed, an advisor opined that the \$150 amount in Rule 4.12(b) was too low.

Members discussed whether wedding gifts should be exempted from the reporting requirement. They were in favor of excluding from the reporting requirement gifts that have no nexus to the judge’s role as judge.

The Joint Commission discussed conforming the draft to Judicial Conference of the United States regulations, in particular, the regulation defining “gift.” The members ultimately decided that Rule 4.12 should contain a per se prohibition with exceptions.

The Commission discussed the meaning of “widely attended event.” They considered whether diverse viewpoints had to be represented, and whether the activity must be law-related in order to be of benefit to the judicial office.

The Commission considered including a provision limiting the Code so that judges can accept gifts only from certain classes of persons. The Reporter will prepare alternative drafts for the September teleconference.

The discussion turned to whether “personal hospitality” contains a “loophole” that would permit, for example, a free trip to a wealthy friend’s island home, or eating in an expensive restaurant as opposed to a lavish dinner at someone’s home. Members considered whether to use “ordinary social hospitality” instead of “personal hospitality.”

Members also considered whether the public disclosure section should be more explicit, perhaps stating that the information should be posted on the court websites or in clerk’s offices. They discussed the frequency with which disclosure reports must be made, with some suggesting that the reporting obligation should not be administratively burdensome. A member suggested that the provision state that any reimbursement from sources other than the judge’s employer shall be promptly and publicly disclosed. A member spoke in favor of full disclosure, stating that it instills public confidence, which touched off discussion regarding the effectiveness of disclosure

Turning to Rule 4.13, a member suggested that “appearance of impropriety” be deleted from subparagraph (a). Several members suggested that proposed language regarding attendance at judicial seminars might be included in Rule 4.13. The Commission examined a staff memorandum regarding judges’ attendance at expenses-paid educational programs. Members discussed how the subject ties into the reimbursement issue and whether the language should borrow from the disqualification standard. Members discussed possible revisions to Comments [1] and [3].

The Commission next discussed the July 30 Canon 5 draft. The drafters’ goal during the first round of revisions was to reorganize the Canon to make it more “user friendly.” Mr. Rosner, who participated in the 1990 Code revision, gave a short history of the drafters’ rationale for the political activity provisions.

Various revisions were suggested, including combining Rules 5.01 and 5.02. A member pointed out that there are inconsistencies between Rule 5.02 and Rule 5.07(a), and recommended that the latter provision be stricken. They agreed that Rule 5.01 would be rewritten to include three subparts: the first part would be the existing rule 5.01; the second part would be part of draft Rule 5.02, but would be redone to conform with the wording of existing Canon 5D; and the third part would list the enumerated provisions of existing Canon 5A(1)(a)-(e). This new Rule 5.01 would be titled “Political Activity in General.”

Members discussed the correct title for Rule 5.03, and agreed for the time being to call the provision “Campaign Speech.” They considered whether Rule 5.04 should be incorporated into 5.03, but agreed that it should be a stand-alone rule. It was also suggested that 5.04 needs some type of reference to the provision related to speech of sitting judges found in reformatted Rule 2.11.

Turning to Rule 5.07, members agreed that, even in partisan election states, political activity of judges, such as purchasing tickets for political party functions, should be allowed only during the election period. Therefore, the provisions now found in subparagraph (a) that are allowed at any time are to be combined with the provisions of subparagraph (b) and allowed only during the election period.