

**AMERICAN BAR ASSOCIATION
JOINT COMMISSION TO EVALUTE
THE MODEL CODE OF JUDICIAL CONDUCT
Summary of Meeting Minutes
October 18, 2003**

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

Staff Participating

Jeanne P. Gray, CPR Director
Luke Bierman, Justice Center Director
George A. Kuhlman, Ethics Counsel
Eileen C. Gallagher, Justice Center Counsel
Eileen B. Libby, Associate Ethics Counsel
Seth Anderson, Justice Center Project Manager
Maggie Viertel, Editorial Assistant

Reporter Participating

Charles G. Geyh

Advisors Participating

Robert P. Cummins
Marvin I. Karp
M. Peter Moser
Hon. Ellen Rosenblum
Seth Rosner
Robert H. Tembeckjian

Guest

Burnele V. Powell

Members discussed administrative matters, including the fact that they all have been added to a list serve. They decided that the Reporter and staff would perform primary research and analysis on issues as they arise. They discussed the Code's format, whether it is well-suited to facilitate judicial disciplinary enforcement, whether the Code is "user friendly," and whether it would be more effective in a format more akin to the Model Rules of Professional Conduct. The Standing Committee on Ethics and Professional Responsibility and its Judges Advisory Committee will be kept abreast of the Commission's progress.

The Commission discussed whether to call the Canons "rules," and whether and how to integrate aspirational goals with disciplinary rules. After further discussion, the Commission decided to reformat the present Code and to identify and preserve its aspirational goals. They decided to defer putting the reformatted Code on the list serve until the draft was further developed.

The Commission discussed the overall organization of the Code with regard to the fact that some judges are elected and others appointed.

The Chair moved to the topic of a work plan. He suggested the use of the “Ethics 2000” Commission work plan as an possible model. The Chair asked members and staff to identify issues not covered by the current Code. A member suggested that Canon 5, in particular, judicial speech, should be a high priority item in light of *Minnesota v. White*. An advisor suggested that the Commission should address the role of judges engaged in community activities. Another advisor added that the Code is silent regarding judicial impairment. A member stated that the Commission should clarify issues relating to mandatory and permissive recusals.

A member opined that the Code does not deal well with case management issues, such as when judges get behind in case load and dockets, and suggested that the Commission provide guidance on the subject. Members agreed that the Code should provide further guidance with regard to pro se litigants, ex parte communications, community-based collaborations, attendance at expenses-paid educational seminars, specialty courts, participation in settlements and alternative dispute resolution, familiar relations and recusal, participation in campaign activities and fundraising.

Following further discussion, the Chair suggested that the Commission develop a list of topics for consideration. Members discussed the schedule and format of their upcoming public hearings, roundtables, and meetings. They agreed that it was important to reach out to as many constituents as possible.

They agreed to the following tentative schedule:

Conference Calls

The Joint Commission will hold monthly conference calls on the third Monday of each month. The schedule for calls is as follows:

November 17, 2003
December 15, 2003
January 19, 2004
February 16, 2004
March 15, 2004
April 19, 2004
May 17, 2004

June 21, 2004
July 19, 2004
August 16, 2004
September 20, 2004
October 18, 2004
November 15, 2004
December 20, 2004

Meetings

December 5-7, 2003, Washington, DC

Roundtable Hearing
Committee Meeting

February 6-7, 2004, San Antonio, TX, ABA Midyear Meeting

Public Hearing
Committee Meeting

April 2-4, 2004, West Coast location

Public Hearing
Committee Meeting

June 4-5, 2004, Naples, FL, ABA National Conference on Professional Responsibility

Roundtable Hearing
Committee Meeting

August 5-7, 2004, Atlanta, GA, ABA Annual Meeting

Public Hearing
Committee Meeting

October 22-24, 2004, Chicago, IL, AJS National College on Judicial Conduct and Ethics

Roundtable Hearing
Committee Meeting

In addition to meetings of the full Joint Commission, there will be a number of opportunities for a smaller number of Joint Commission members to attend various events:

Late Jan or early Feb 2004, Reno, NV, National Judicial College, National Center for Courts and the Media

Roundtable Hearing

April 15-18, 2004, Tempe, AZ, ABA Judicial Division Planning Meeting

Roundtable Hearing