

**AMERICAN BAR ASSOCIATION
JOINT COMMISSION TO EVALUTE
THE MODEL CODE OF JUDICIAL CONDUCT
Summary of Teleconference Minutes
November 17, 2003**

Members Participating

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

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
Maggie Viertel, Editorial Assistant
Nancy Slonim, ABA Media Relations

Reporter Participating

Charles G. Geyh

Advisors Participating

Hon. Peter W. Bowie
Robert P. Cummins
Hon. Ellen Rosenblum
Seth Rosner
Hon. Randall T. Shepard
Robert H. Tembeckjian

The teleconference was largely devoted to identifying key issues the Commission must consider in its review of the Model Code. After the Chair introduced new members, he discussed the format and witness list for the December 5, 2003, public hearing and meeting. Members agreed that it was critical to hear testimony related to *Minnesota v. White* and related cases. The Chair stressed the importance of identifying issues for consideration and the need to reach out to as many constituencies as possible.

Prior to today's teleconference, members received background materials, including an issues memorandum based on suggestions from the American Judicature Society Director Cynthia Gray; draft chapters for *The Annotated Model Code of Judicial Conduct*; and a memorandum regarding Canons 1 and 2 by Ruth Woodruff, former writer for the *ABA/BNA Lawyers' Manual on Professional Conduct*.

The Chair directed the Reporter to redraft Canons 1-3 and their comments prior to the December meeting. The Chair opened the discussion as to comments regarding the Gray issues memorandum. Members considered whether the "appearance of impropriety" standard should be an independent reason for discipline or whether it is too vague and ambiguous to provide satisfactory notice of prohibited conduct.

Members agreed that, after the redrafts of Canons 1, 2, and 3 are circulated, the Commission should work through each provision in turn, identifying key issues along the way. Members considered whether each member should be assigned a canon to review. The Chair asked the Commission to think about the Terminology section, in particular, which terms recur most frequently.

Members discussed their reactions to the issues memorandum. An advisor suggested that it would be helpful to have a comparison between the ABA Model Code and its state counterparts. Members considered disciplinary authorities charging judges with failure to cooperate in a separate disciplinary count, and the relationship between disqualification and recusal. A member suggested that the Commission should examine “bias” and its definition in the Terminology section.