

**AMERICAN BAR ASSOCIATION
JOINT COMMISSION TO EVALUATE THE
MODEL CODE OF JUDICIAL CONDUCT
Summary of Teleconference Minutes
March 7, 2005**

Members Participating

Mark I. Harrison, Chair
James Alfini
Hon. Cara Lee T. Neville
Hon. Harriet L. Turney

Staff Participating

George A. Kuhlman, Ethics Counsel
Eileen C. Gallagher, Justice Center Counsel
Eileen B. Libby, Associate Ethics Counsel

Reporters Participating

Charles G. Geyh
W. William Hodes

Advisors Participating

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

At its February 11-12, 2005, meeting in Salt Lake City, the Joint Commission to Evaluate the Model Code of Judicial Conduct (“Joint Commission”) reviewed Comments to proposed Rules 5.01 and 5.02. Today’s teleconference was devoted to discussion of remaining Comments. The Joint Commission will attempt to adhere to its plan to release a full Discussion Draft to the public prior to the 2005 Annual Meeting.

The members considered whether “political organization” should be used in lieu of “political parties.” Using the latter may place too much emphasis on partisanship. Further, “political parties” may not include political action committees, women’s groups, and similar entities. A member asked whether the proposed comment uses “partisan” more broadly than is commonly understood.

Members discussed the intended purpose of proposed Rule 5.03 cmt 1, in particular, with regard to endorsing slated candidates appearing on the same ballot for both judicial and non-judicial offices. They considered the meaning of “[m]oreover, sitting judges who become candidates in partisan public elections are permitted to engage in some activities that they are forbidden from engaging in when they are not candidates” in proposed Rule 5.03 cmt.2 .

Members discussed whether proposed Rule 5.03 cmt. 3, which refers to the impossibility of conducting a public election campaign without raising and spending campaign funds, could be more direct and whether it should cross-reference proposed Rule 5.06.

Proposed Rule 5.03 cmt.4 was revised to state, “[d]uring a partisan public election campaign, candidates may state or imply their personal agreement with positions or platforms of the political party with which they are affiliated, or by which they were nominated. Candidates should be especially careful not to make any pledges, promises or commitments to rule in accord with their personal views, or to permit the inference that they will treat any individual or group of individuals less than impartially, if successful in obtaining judicial office.”

Members discussed several hypotheticals involving judges endorsing their colleagues and endorsement of slated candidates. With regard to the latter, members considered whether appearing on a slate with other judicial names implies endorsement of those names. Proposed Rule 5.04 cmt.1 will be redrafted to provide a clear guide with regard to referencing state law and defining “non-partisan election.”

The Joint Commission examined meaning of “gatherings,” and whether the term included meetings of political organizations. They also considered whether to restrict candidates running in non-partisan elections and on retention ballots from speaking at political gatherings. The subject will be addressed in greater depth at the next meeting.

Rule 5.05 cmt. 1 was revised to state “[c]andidates for appointive judicial office have no need to raise or spend campaign funds. Accordingly, they are not only prohibited from personally soliciting or accepting such funds, but they are also prohibited from establishing campaign committees for this purpose.”

Proposed Rule 5.05 cmt. 2 was revised to state [c]andidates for appointment may seek and accept public support or endorsement from any individual or organization, including a political organization. Such input can be valuable to an appointing authority that must choose among several qualified candidates, or to a confirming authority in determining whether to confirm an appointment already made.”

Proposed Rule 5.06 cmt. 3, which relates to judges neither directly or indirectly imposing any coercion upon employees and officials, was deleted.

The Joint Commission decided to delete proposed Rule 5.06 cmt. 4 and 5, and add back existing Canon 5C(2) comment, which discusses judges avoiding conflicts of interest by instructing their campaign committees to solicit or accept only contributions that are reasonable and appropriate under the circumstances.

The Joint Commission’s next meeting will be in Chicago on March 19-20. At that time, it plans on going through rest of the redrafted Comment as well as work back through the other Canons, making adjustments to the black letter rules in light of public comments received. It also will review the proposed Preamble.