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Releases More Drafts of Proposed Code Amendments

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Judges

ABA Judicial Code Commission Releases More Drafts of Proposed Code Amendments

The ABA Joint Commission to Evaluate the Model Code of Judicial Conduct July 20 released the second installment in a series of preliminary drafts of proposed amendments to the code. The latest draft contains a revised Canon 3, on judge's personal conduct, and most of a restructured Canon 4, on extrajudicial conduct.

In an accompanying memorandum, commission Chair Mark I. Harrison explained that the proposals represent the group's "current thinking" in these areas and that the commission invites reaction from the judiciary, legal profession, and public.

The commission's first proposal for amending the code, pertaining to Canons 1 and 2, was released May 11. See 20 Law. Man. Prof. Conduct 262.

Discriminatory Organizations.

The commission has reorganized both the substance and the form of the existing canons. The new framework lists general canons comprising rules that would be numbered instead of lettered as they now are. For instance, the new Canon 3 is followed by three rules, numbered 3.01, 3.02, and 3.03—instead of 3A, 3B, or 3C.

Revised Canon 3 is largely lifted from existing Canon 2 and addresses the matter of judges' using their office for private purposes, using or revealing nonpublic information acquired in a judicial capacity, and affiliations with discriminatory organizations.

The existing language on affiliation with discriminatory groups, in Canon 2C, states that judges "shall not hold membership in any organization that practices invidious discrimination on the basis of race, sex, religion or national origin." Proposed Rule 3.03 keeps this language and adds to the ban groups that discriminate based on "ethnicity" and "sexual orientation."

The new proposed rule would further prohibit judges from using the facilities of these types of organizations "to any significant extent." In his memo, Harrison noted that the commission is especially interested in getting more feedback on this issue.

The commission also highlighted its proposed comment 5 to Rule 3.01, on using the judicial office for

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private purposes, as a topic on which it would like to see more input. The proposed commentary also indicates that judges ought not to use judicial letterhead for letters of reference or recommendation unless the judge obtained the information "through the judge's expertise or experience as a judge." The commission asked for feedback on whether this proposed limitation is "appropriate and useful."

Charitable Organizations.

The revamped portion of Canon 4 on extrajudicial conduct is drawn from the current canon, which now contains nine subsections but in the commission's proposal is divided into 12 rules on judge's actions beyond the courtroom:

- Rule 4.01—Extrajudicial Activities in General.
- Rule 4.02—Appearances Before Governmental Bodies.
- Rule 4.03—Appointments to Governmental Bodies.
- Rule 4.04—Civic or Charitable Activities.
- Rule 4.05—Appointments to Fiduciary Positions.
- Rule 4.06—Service as Arbitrator or Mediator.
- Rule 4.07—Testifying as a Character Witness.
- Rule 4.08—Practice of Law.
- Rule 4.09—Financial Activities.
- Rule 4.10—Remunerative Activities.
- Rule 4.11—Management and Divestiture of Investments.
- Rule 4.12—Business Activities.

Proposed Rules 4.13, 4.14, and 4.15, pertaining to gifts, compensation, reimbursement, reporting, and disclosure will be released later, the commission said.

The commission identified Rule 4.02 and Rule 4.04 as particularly thorny areas where it would like to collect readers' remarks. Specifically, Harrison's memo pointed to the commentary to Rule 4.02, which provides specific examples of when it would be appropriate for judges to appear before governmental bodies to advance special causes upon which the judge has particular insight.

The commentary suggests, for example, that a juvenile court judge may be uniquely situated to comment on the potential benefits of a new athletic program that could help reduce juvenile delinquency.

Harrison, who practices with Maleborn Osborn in Phoenix, noted in the memorandum that although this commentary is consistent with suggestions heard in several of the panel's public hearings, it has also been received with a "significant amount of disagreement or doubt." Therefore, Harrison said, the commission is particularly interested in getting more comments on this point.

The commission also received significant input on the issue of whether a judge may participate in civic or

charitable activities, and specifically whether there ought to be a broad ban on a judge's ability to solicit and accept charitable donations. Although the commission acknowledged that a complete prohibition on a judge's accepting funds or donations for charity is appealing for its simplicity, the panel said it believes that there are examples where such activity may not be objectionable, such as when the judge accepts the proceeds "from the sale of a baked item at a library fundraiser."

The commission will next meet during the ABA Annual Meeting in Atlanta, Aug. 6-7, and then again in Chicago, Oct. 22-23.

The commission requests that public comments be submitted by Oct. 8, in writing (preferably by e-mail), to Eileen Gallagher at gallaghe@staff.abanet.org, or to 321 N. Clark St., Chicago IL 60610.

The preliminary draft of revised Canons 3 and 4 are available on the commission's Web site:
<http://www.abanet.org/judicialethics/home.html>

Judicial Code Commission Releases Proposed Drafts of Revised Canons 3 and 4 for Public Comment

Two topics on which the ABA Joint Commission to Evaluate the Model Code of Judicial Conduct is soliciting input on its proposals deal with regulation of judges' association with groups that espouse and practice discrimination, and regulation of the circumstances under which a judge may testify before public tribunals:

"CANON 3

"PERSONAL CONDUCT: A JUDGE SHALL CONDUCT THE JUDGE'S PERSONAL AFFAIRS TO PRESERVE THE INTEGRITY, IMPARTIALITY AND INDEPENDENCE OF THE JUDICIARY...

"3.03 Affiliation with Discriminatory Organizations. A judge shall not hold membership in any organization that practices invidious discrimination on the basis of race, sex, religion, national origin, ethnicity, or sexual orientation, and shall not use the facilities of such an organization to any significant extent.

"CANON 4

"EXTRA-JUDICIAL CONDUCT: A JUDGE SHALL CONDUCT THE JUDGE'S EXTRA-JUDICIAL ACTIVITIES TO MINIMIZE THE RISK OF CONFLICT WITH JUDICIAL OBLIGATIONS

"4.02 Before Governmental Bodies. A judge shall not appear at a public hearing before, or otherwise consult with, an executive or legislative body or official except:

"(a) on matters concerning the law, the legal system or the administration of justice;

"(b) on other matters that might reasonably merit the attention and comment of the judge because of knowledge or expertise acquired in the course of the judge's judicial duties; or

"(c) when acting pro se in a matter involving the judge or the judge's interests."

