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January 28, 2005

Eileen Gallagher
American Bar Association
ABA Justice Center
321 North Clark Street
Chicago, IL 60610

Re: ABA Code of Judicial Conduct
Comments on Revision

Dear Ms. Gallagher:

The National Council of Juvenile and Family Court Judges encloses for your review suggestions for change to the Draft ABA Code of Judicial Conduct. We have provided specific language suggestions, along with commentary.

We have previously provided you with NCJFCJ's Recommendations for Modification of the ABA Canons of Judicial Ethics (hereinafter referred to as "the NCJFCJ Canons"). The NCJFCJ Canons were developed in response to a resolution of the Conference of Chief Justices passed at their Annual Meeting in August 2000 recognizing and encouraging judges to become involved in their communities to improve the quality of justice.

The NCJFCJ Canons have been approved and endorsed by the entire general membership of NCJFCJ. (The membership is comprised primarily of judges with juvenile and family law jurisdiction.) It is in accordance with the Resolution of the membership that we provide you with the enclosed suggestions.

If you have any questions or require anything further, please contact Judge Tom Hornsby, retired, Professor of Law, Florida Coastal Law School at 1-904-680-7768. He is the Chair of the Judicial Ethics Committee and has led NCJFCJ's initiative for over 15 years.

Sincerely,

Mary V. Mentaberry,
Executive Director
Reno, NV

Judge Sharon P. McCully
President
Salt Lake City, UT

The following suggestions are provided in order of importance, and not in the order the provisions appear in the Draft Code.

NCJFCJ Suggestion #1

NCJFCJ suggests that a new section, “Civic Responsibilities” be added after Canon 2C (Administration) and before Canon 2D (Reporting).

D Civic Responsibilities

2.18

Subject to the requirements of this Code, a Judge should provide leadership in:

- a identifying and resolving issues of access to justice;
- b developing public legal education programs;
- c engaging in community outreach activities to promote the fair administration of justice;
- d convening, participating or assisting in advisory committees and community collaboratives devoted to the improvement of the law, the legal system, the provision of services and/or the administration of justice

2.19

A judge may publicly or individually endorse project goals concerning the law, the legal system, the provision of services or the administration of justice, in principle, and actively support the need for funding of such an organization or governmental agency.

Commentary

2.18: As a result of the evolving interpretation of the judicial canons and the increased demands and encouragement on the judiciary to provide leadership in their communities (local, state and nationwide), this Canon was created to encourage judges to provide leadership in exercising their civic responsibilities and to validate their efforts.

2.19: This Canon permits judges to endorse, consistent with other provisions of the canons, the need for funding without personally participating. The public has an interest in hearing the ideas of its judiciary within the public forum on matters concerning the administration of justice. Consistent with these provisions, a judge may exercise the constitutional right of free speech and association on such matters.

NCJFCJ Suggestion #2

The following provision should be added under Canon 2 (Judicial Conduct), paragraph C (Administration) and after 2.16:

2.17

A judge should seek the necessary time, staff, expertise and resources to discharge all judicial and administrative responsibilities.

Commentary

2.17: This new sub-section sets forth the express need for time, staff expertise, and resources to perform the necessary administrative functions. It gives juvenile and family court judges a defense if the budget is not adequate to perform judicial functions.

NCJFCJ Suggestion #3

In Canon 4 (Extra-Judicial Conduct), NCJFCJ strongly urges that the ABA not remove the paragraph about Avocational Activities. While some of the spirit of the paragraph does seem to be included in the Commentary to the Canon, we submit that removing the section from the “black letter law” of the Canon seriously diminishes the importance of the concepts.

Avocational Activities. A judge may speak, write, lecture, teach and participate in other extra-judicial activities concerning the law*, the legal system, the administration of justice and non-legal subjects, subject to the requirements of this Code.

NCJFCJ Suggestion #4

It is submitted that the following paragraph should be added as a new paragraph between H and I under 2.12 (Disqualification):

Official communications received in the course of performing a judicial responsibility and knowledge acquired by training programs or from experience do not create per se a basis for disqualification.

Commentary

The inclusion of this language is intended to encourage judges to obtain additional knowledge in the course of performing a judicial responsibility (i.e.—training, expertise) to assist in administering justice.

NCJFCJ Suggestion #5

Add the qualifying phrase “of for profit entities” to Commentary [3] under 3.01 (Using the Judicial Office for Private Purposes):

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Special considerations arise when judges write or contribute to publications **of for profit entities**, whether related or unrelated to the law.

Commentary

As it stands, Commentary [3] is over restrictive. It might be interpreted to apply to any article written by the judge published by the National Council of Juvenile and Family Court Judges, the American Judicature Society, CASA, and other similar not-for-profit or charitable organizations. It appears that the restriction is intended to apply to “for profit” organizations and should be amended for clarity.