Rule 2.11(a)
Judicial Statements on Pending and Future Cases
New York County Lawyers' Association
Task Force on Judicial Selection Ethics
Susan B. Lindenauer, Co-Chair
February 6, 2004

The New York County Lawyers' Association's [NYCLA] Task Force disagrees with the current Code of Judicial Conduct's limitation of the prohibition against a judge's public comment to "any public comment that might reasonably be expected to affect [the] outcome [of such proceeding] or impair its fairness . . . or any non-public comment that might substantially interfere with a fair trial or hearing " because of the likelihood that such comments will have a negative impact on the public's perception of judicial impartiality. The NYCLA Task Force urges the Commission to follow the lead of other jurisdictions [California, Delaware, Massachusetts, Maine, Minnesota, Missouri, New York and the federal judiciary] that have rejected the current Code's "liberalization" and impose greater restriction on comments made to or for public consumption. The Task Force believes that public perception of judicial bias or lack of impartiality is too prevalent to warrant the lifting of the prohibition against judicial comment to the extent embodied in the current Code.

Rule 2.11(a), Comment
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The NYCLA Task Force believes it important for the Commission to clarify through commentary that private educational settings include colleges, law schools and bar associations, where the course or speech is intended for students of the educational institution or members of the bar association and to which the general public and media are not invited.

Rule 5.03(a)
Judicial Speech
New York County Lawyers' Association
Task Force on Judicial Selection Ethics
Susan B. Lindenauer, Co-Chair
February 6, 2004

The NYCLA Task Force disagrees with the current Code and would not combine the Pledge or Promise Clause with the Commit Clause. It would narrow the Pledge or Promise categories of restrictive speech by limiting the proscription only to statements

that are "inconsistent with impartiality" and made in relation to "adjudicative duties" of a judicial office, and limit the Commit clause to commitments related to cases or controversies likely to come before the judge or candidate for election. The Task Force believes these refinements would have the salutary effect of ensuring that the restrictions are narrowly tailored to a compelling state interest. Further, the Task Force urges the Commission to amend the current Code to make it clear that there is no distinction between restrictions placed on elective and appointive candidates for judicial office.

Based on its analysis of *Republican Party of Minnesota v. White*, 122 S.Ct. 2528 (2002), the NYCLA Task Force recommends that, in addition to prohibiting actual conduct, the Commission restore the bar on conduct that *appears* to be a judicial pledge, promise or commitment. (Emphasis added.). The Task Force believes that such a proscription does not create an unconstitutionally vague category of restricted speech, and that any diminution of a judge's or judicial candidate's obligation to avoid the appearance of impropriety is dramatically at odds with the concern about the public's poor perception of the judicial system.