

Terminology
American Judicature Society, Center for Judicial Ethics
Cynthia Gray
October 15, 2003

The Center for Judicial Ethics [CJE] of the American Judicature Society observes that definitions of the following terms would be helpful:

- Sexual harassment
- Nepotism, favoritism
- Practice of law
- Endorse
- Solicit
- Ex parte communications.

For the term “sexual harassment,” CJE views as necessary a definition of “harassment” that includes the inappropriate touching, vulgar language and other conduct characteristic of sexual harassment. *See* CJE’s 10/15/03 discussion of Canon 3B(5) and the American Judicature Society’s July 2004 document entitled “AJS Comments on May 2004 Partial Draft of Revisions to ABA Model Code of Judicial Conduct” which note the Kansas Code’s use of the following related terms:

“Harassment” is verbal or physical conduct that denigrates or shows hostility or aversion toward an individual because of his/her race, color, religion, gender, national origin, age, disability, or sexual orientation, or that of his/her relatives, friends, or associates.

“Harassing conduct” includes, but is not limited to, the following: (i) Epithets, slurs, negative stereotyping, or threatening, intimidating or hostile acts that relate to race, color, religion, gender, national origin, age, disability, or sexual orientation, and (ii) Written or graphic material that denigrates or shows hostility or aversion toward an individual or group because of gender and that is placed on walls, bulletin boards, or elsewhere on the premises, or circulated in the workplace, and (iii) sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature that are unwelcome, regardless of gender.

See also CJE’s 3/11/04 Proposals to Amend the 1990 ABA Model Code of Judicial Conduct, in which CJE proposes inclusion of the following definition of “sexual harassment” to the Comment to revised Canon 3B(7) (explicitly prohibiting sexual harassment):

“Sexual harassment” includes but is not limited to sexual advances, requests for sexual favors, comments about physical attributes, repeated and unwanted attempts at a romantic relationship, sexual gestures, offensive or suggestive remarks, sexually explicit questions, improper

touching, lewd and vulgar language, suggestive or explicit pictures or images, and other verbal or physical conduct of a sexual nature that is unwelcome, regardless of gender.

For the term “ex parte communication,” *see also* CJE’s 3/11/04 Proposals to Amend the 1990 ABA Model Code of Judicial Conduct, in which CJE proposes inclusion of the following definition of “ex parte communication” to the Comment to revised Canon 3B(8)(e):

An “ex parte” communication is any communication (including independent investigations of the facts and communications not on the merits) without notice to or participation by all parties or lawyers for all other parties between a judge (or by court staff on behalf of a judge) and any other person regardless [of] whether that person is a participant in the proceeding. (Bracketed word added.)