

Ms. Debra D. Taylor  
ABA Joint Commission to Evaluate the ABA Model Code  
debrataylor@staff.abanet.org  
May 4, 2005

Dear Ms. Taylor,

The Montana Supreme Court has commissioned a group comprised of Supreme Court justices, lawyer and non-lawyer judges, lawyers and laypersons to review, adapt and implement the ABA Code of Judicial Conduct for the State of Montana. As Chairperson of the Committee, I attended the AJS 19<sup>th</sup> National College on Judicial Conduct and Ethics in Chicago in October, 2004. Another member of our panel, Justice James C. Nelson, attended the Symposium on Judicial Speech held at the National Judicial College in Reno in February of this year. We have been following with interest the revisions that the Canons have undergone, and write at the invitation of the Joint Commission with respect to the proposed changes to Canon 5.

To place our comments and proposals in context, we in Montana conduct non-partisan state-wide elections for our Supreme Court judges and county-wide non-partisan elections for our district court judges. In addition, there are 108 judges operating in courts of limited jurisdiction. Some are elected locally, while others come to office by way of city or county commission appointment. Over 81% of these limited jurisdiction court judges are non-attorneys.

We are the 4<sup>th</sup> largest state in area in the nation, and our state-wide populace of under one million is therefore far-flung. The current legal limit for a contribution to a judicial candidate for district court is \$130, and the limit for a Supreme Court candidate is \$250. Contributions exceeding \$35 must be reported to the state's Commissioner of Political Practices. Campaign finance reports identifying the contributor by name, address, and occupation must be periodically filed by all candidates, and these records are open for public inspection.

Finally, all judicial candidates here routinely personally solicit contributions in person or by phone. Given the relatively low contribution limits, this is not seen as unusual or heavy-handed. It is with these factors in mind, and recognizing that we conduct judicial elections here on a relatively low-budget scale, that we address the proposed Canon 5.

We begin our comments with the definition of "political organization." At present, the Terminology Section defines it as "a political party or other group, the principal purpose of which is to further the election or appointment of candidates

to political office.” For our purposes, the narrower the definition of this term, the better.

### **Rule 5.01. Restrictions on Political Activity of Judges who are Not Candidates.**

- (a) unchanged
- (b) unchanged

We propose to amend (C) to prohibit the public endorsement or opposition to “a candidate for a partisan political office”, in lieu of “a candidate for public office.” [Reason: We would like to retain the right to support or oppose other judicial candidates for the same court or a court in the same community, all of whom would likewise be in non-partisan races].

We propose to delete (d) altogether. [Reason: Here in Montana, all politics is truly local. In most of the small communities, political meetings and events are the life-blood of the community. Citizens tend to distrust judges who show up at such events only during an election year. Moreover, the non-judge who intends to run for judicial office is not subject to such constraints. Because our races are non-partisan, it is the unwise judge who attends one party’s events and not the other’s; therefore, the fear of obvious preference for one party over the other by virtue of such attendance is unfounded.]

We propose to revise (e) to read as follows:

“solicit funds for ...events sponsored by a political organization or candidate.” We would delete the prohibition against paying assessments or making contributions to such events, and would most definitely want to delete the “purchase tickets for dinners...” prohibition. [Reasons: See (d) above. However, if “political organizations” is narrowly defined to the point that it encompasses only political parties, then the prohibition regarding assessments or contributions is less problematic.]

### **Rule 5.02 Restrictions on Political Activity of Candidates for Judicial Office.**

- (a) through (e) Unchanged.
- (f) As in Rule 5.01(c) above, we would change “candidate for public office” to “candidate for partisan political office.”
- (g) Same changes as noted in Rule 5.01(e) above.
- (h) We would propose to delete this altogether for the reasons set forth in the introductory section above. In the interests of uniformity,

perhaps an exception to the no-solicitation rule could be carved out for those candidates in states that have a limit on per person contributions of something under \$500 or \$750 per person.

(I) No change.

**Rule 5.03 Permitted Political Activity of Candidates for Judicial Office in Partisan Public Elections.**

This Rule would not apply in Montana. Therefore, we do not suggest any changes.

**Rule 5.04 Prohibited and Permitted Political Activity of Candidates for Judicial Office in Non-Partisan Public Elections and Retention Elections.**

For the reason set forth above, we would propose revising (a)(1) to read: “publicly speak in support of or against a political party.”

We would propose the deletion of (a)(2).

In addition, we would propose the addition of language as a new (b)(5), as follows:

(5) personally solicit and/accept campaign contributions in accordance with state law.

**Rules 5.05, 5.06 and 5.07**

We do not propose any substantive changes to these rules, with the exception that we would--locally--insert into 5.06 the contribution and campaigning limitations imposed under our state law.

We appreciate having the opportunity to provide input, and would welcome any inquiries you might have. Our continuing thanks to the Commission for its hard work on this important project.

Sincerely,  
Justice Patricia Cotter,  
Montana Supreme Court  
Chair, Montana Commission on the Code of Judicial Conduct