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March 13, 2006

[VIA email to Marcia Kladder (kladderm@staff.abanet.org)]

American Bar Association
Joint Commission to Evaluate the Model Code of Judicial Conduct
321 N. Clark St.
Chicago, IL 60610

Re: Comment on Final Draft Report of the ABA Joint Commission to
Evaluate the Model Code of Judicial Conduct

Dear Members of the Commission:

I am writing on behalf of DRI, an organization comprised of more than 22,000 attorneys whose practices are primarily devoted to litigation.

DRI appreciates the opportunity to bring to the Commission's attention concerns about a provision of Rule 4.04(B)(3) of the Final Draft Report of the ABA Joint Commission to Evaluate the Model Code of Judicial Conduct. Specifically, DRI is concerned about the clause which would prohibit judges from attending or speaking at events or programs sponsored by organizations whose members chiefly represent particular types of clients, and the associated Comment [8] which refers to such organizations as "specialty bar associations".

DRI has historically been known as a defense bar organization, yet many of DRI members are engaged in (and consequently, many DRI programs are oriented to) commercial and other areas of litigation that are not necessarily characterized as "defense" practice, and consequently there is significant diversity in the "types" of clients represented by members of DRI. Nevertheless, it is probably accurate to characterize DRI as a "specialty bar organization" for purposes of this discussion. In addition, DRI is closely associated with state and local defense organizations around the country, whose memberships, in varying degrees, may not have expanded beyond those engaged in the typical tort defense practice to the same extent as DRI. And while DRI cannot purport to speak for any other organization, it can bring to the Commission's attention concerns that may be shared by at least some state and local defense organizations.

DRI believes that Rule 4.03(b)(3) as currently drafted is not necessary and runs the risk of discouraging valuable interaction between the judiciary and the practicing bar. DRI operates an educational program that includes over twenty high-quality live seminars each year which draw attendance from around the country, and in some instances, from around the world. DRI often invites active judges to bring the perspective of the bench as speakers at DRI seminars, as well as at DRI's annual meeting. DRI believes that its members are well served by opportunities to learn of the judicial perspective on issues of practice and procedure, professionalism and ethics, and other areas germane to civil practice and the civil justice system.

In addition, DRI is aware that many specialty bar organizations, including state and local defense organizations, regularly invite judges to attend their events and programs, sometimes as speakers, and other times as guests. In some instances, judges are invited as guests to an organization's annual meeting. Some of them participate in panel discussions; some merely attend the programs and social events and have the opportunity to associate with the lawyer attendees in informal settings. This presents an invaluable opportunity, particularly for younger attorneys, to meet and associate with judges in a setting outside of the courtroom. This type of association is rarely available in other settings, and generally promotes rather than detracts from respect for the bench.

The proposed rule would have the effect of promoting increased insolation of the bench from the bar. At a time when the independence of the judiciary is under increasing attack, such isolation would be unhealthy, at best, and contrary to the aspirations articulated .

DRI believes that the exclusion related to specialty bar organizations is not necessary to promote the salutary purpose of the revisions to the Code. Even with deletion of the last clause of Section 4.04(B)(3) and the last sentence of Comment [8], a judge would remain under an obligation to consider whether his or her attendance or participation at an event sponsored by a specialty bar organization would reflect adversely on his or her independence, integrity and impartiality.

DRI appreciates this opportunity to comment on the Commission's Final Draft Report.

Sincerely,



Richard T. Boyette
Immediate Past President

Cc: DRI Officers
John Kouris, DRI Executive Director