

AMERICAN BAR ASSOCIATION

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Diversity in the Profession  
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**Statement of Kay H. Hodge, Chair  
ABA Commission on Racial and Ethnic Diversity in the Profession**

Chairman Harrison and members of the ABA Joint Commission to Evaluate the Model Code of Judicial Conduct:

Good morning. My name is Kay H. Hodge. Thank you for allowing me to present testimony today. I am here this morning in my capacity as Chair of the ABA Commission on Racial and Ethnic Diversity in the Profession.

The ABA Commission on Racial and Ethnic Diversity in the Profession was created twenty years ago to meet the ABA's and the legal profession's needs as articulated by the ABA's Goal IX: "To promote the full and equal participation in the legal profession by minorities . . ." The Commission is the voice of diversity in the legal profession and, within the ABA we are the internal spokesperson for diversity. In that role within the American Bar Association, we also bear the responsibility of serving as a voice for minority lawyers and minority bar associations. I am here today to do just that.

In reviewing the Joint Commission's Final Draft Report (December 14, 2005), the Commission recognizes and appreciates the amount of careful thought and hard work that has gone into the Final Draft Report. We commend and compliment the Joint Commission for that effort.

We are obligated to bring to your attention, however, concerns that we have with regard to the language proposed by the Final Draft Report's Canon 4, Rule 4.04(B)(3) and its Comment [8] ("Participation in Civic or Charitable Activities").

Under the proposed rule,

**" . . . a judge may participate in activities on behalf of civic or charitable organizations . . . unless the organization's membership includes predominantly lawyers who chiefly advocate a particular position or represent a particular client or type of client."**

Comment [8] cites as an example,

**" . . . For example, it would be inappropriate for a judge to speak at a fund-raising event for a specialty bar association whose members are closely identified with certain clients or particular positions on certain legal issues."**

The Commission is concerned that Canon 4, Rule 4.04(B)(3) as proposed will have negative effect upon the interaction of judges with minority bar associations, minority lawyers and minority communities, as well as other professional and community organizations that advocate for civil rights, diversity and justice for communities of color.

The need is two fold. First, it is essential that judges (both minority and majority) provide role models and be able to actively mentor and encourage minority lawyers to remain in the legal profession and seek judicial positions. It is also very important that judges be able to participate in minority bars and minority communities to encourage young people to seek law as a profession.

Further, the exercise of judicial power must be informed by an understanding of the unique perspectives of minority lawyers, minority bar associations and minority community groups at large. The relationships that many judges have with minority bar associations are an important means of facilitating mutual education about the law, the justice system, and minority experiences and perspectives, as well as laying the foundation for building relationships of trust and respect.

Although we are sure that the intent of the rule as proposed was not to undermine or otherwise prevent the interaction of judges with minority lawyers or community members, the rule, in its current form, may well have that unintended consequence. The term used in the current proposed rule "specialty bars" (or "special focus bars") is a term of art that within the legal profession has come to encompass any bar association that is not described geographically or by a judicial district. Minority bar associations are commonly categorized as specialty bars. Most developed in response to particular needs, interests or concerns that their members may have felt were not adequately addressed by geographically-based (or mainstream) bar associations. Many were started in order to ensure that the legal needs of certain clients or a certain class of clients -- their fellow minority community members -- were adequately served. And many, by virtue of the history and experiences of their community, exist specifically to take -- or defend, as the case may be -- particular positions on certain legal issues.

Certainly it is important to maintain both the appearance and the reality of judicial independence and integrity. Impartiality is at the foundation of our system of justice. Impartiality, however, should not be confused with ignorance or lack of awareness. It is crucial that judges have every opportunity to acquaint themselves with minority perspectives, experiences, and cultural norms. The rule in its current form, however, threatens those opportunities by suggesting that the activities of specialty bars or minority community-based organizations may be inappropriate avenues for civic and charitable involvement. The possibility that the rule may be applicable to minority bars and/or involvement with minority communities or organizations, will potentially have a chilling effect upon the participation of judges with those bars and other groups.

I understand that others will address in greater detail how the proposed rule and comment might be better articulated. Therefore, I will not deal with that at this time except to say that the rule and comment should be re-drafted to more clearly express its intent and avoid any unintended inference limiting participation in minority bars or minority communities. For the ABA Commission on Racial and Ethnic Diversity in the Profession, we appreciate this opportunity to express our concerns about this particular issue. We hope you will agree and we stand ready to support you in that effort if called upon to do so.

Thank you for your attention.