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December 5, 2006

Mark Harrison
Joint Commission to Evaluate the
Model Code of Judicial Conduct

Marsha Kladder
Kladder@staff.abanet.org

Re: Comments to the Final Draft of the Proposed ABA Model
Judicial Code

Dear Mr. Harrison:

The National Organization of Bar Counsel (NOBC) appreciates the opportunity to submit comments regarding the revised draft of the proposed ABA Model Judicial Code. NOBC has a number of its members involved in judicial discipline, in addition to attorney discipline. Accordingly, the NOBC followed with great interest the proposed amendments circulated by the Joint Commission on the Evaluation of the Judicial Code (Judicial Commission). Jim Grogan, then President of the NOBC, formed a subcommittee to study the proposed changes to the ABA Judicial Code of Conduct (the Judicial Code). The NOBC agrees with the Judicial Commission that the revised Judicial Code should follow the same format as the Model Rules of Professional Conduct and voted to support the December 2005 draft.

When NOBC originally supported the December 2005 draft of Judicial Code, it believed this draft was the final version. NOBC recently learned through the Center for Professional Responsibility that a new draft of the Judicial Code was circulated that contains substantial substantive changes. NOBC directs its comments to one particular substantive change regarding Canon One.

NOBC strongly believes that the "Appearance of Impropriety" language set forth in Canon One should remain a basis for discipline. NOBC understands the Judicial Commission's concerns about wanting to follow the Model Rule format and since this standard is no longer in the ABA Model Rules, it should not be included in the Judicial Code. However, judges are different from lawyers and should be held to a higher standard. NOBC also understands why the appearance of

impropriety was deleted from the professional rules for lawyers. Yet for judges the Appearance of Impropriety standard provides the public confidence in the judicial system and lends credence that judges are above reproach. The "Appearance of Impropriety" standard has been a part of judicial ethics for a long time and its application has not caused any undue concern over that time period. For these reasons, NOBC requests that the Appearance of Impropriety found in Canon One remain a basis for judicial discipline as proposed in the December draft of the Judicial Code. In the alternative, NOBC suggests a black letter rule be added to Canon One that explicitly incorporates this standard.

As NOBC noted in its February 22, 2006 letter to you, NOBC would like stronger language about acceptance of gifts and reimbursement of expenses for attending seminars.

If you need any additional information from the NOBC, please feel free to contact me.

Sincerely yours,

Nancy L. Cohen
President

NLC/lh

cc: Robert Baldwin, Conference of Chief Justices