

Comments Submitted on Behalf of The National Bar Association
To the ABA Joint Commission to Evaluate the Model Code of Judicial Conduct
In Reference to the Commission's "Final Draft of Its Report, Dated, December, 2005"

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Dear Members of the Commission:

As an initial point, the National Bar Association wishes to thank you for the special allowance provided at the Mid Year meeting of the ABA, making room in your schedule during the Hearing to receive the oral comments concerning proposed amendments to Canon 4. I know that many entities were anxious to speak and we were cognizant of your tight schedule.

Secondly, the National Bar Association commends you for the extraordinary work you have done for almost three years. It is clear that a great deal of careful thought was made throughout the process of evaluating and revising the Model Code of Judicial Conduct. While we do not agree with all of your recommendations, we appreciate your receptiveness to ours.

We are concerned with Proposed amended Rule 4.04 and most particularly, we are concerned with Proposed amended Rule 4.04(B)(3). It states in pertinent part:

“...a judge may participate in activities on behalf of civic or charitable organizations...unless the organization’s membership includes predominately lawyers who chiefly advocate a particular position or represent a particular client or type of client.”

Comment 8 to this Rule is what caused us to appear before you in February, 2006 and which motivates us to write these comments. While you encourage participation in civic and charitable organizations in your Proposed Rules, Comment 8 appears to place severe limitations on the participation. The rationale for the participation in these organizations appear to be in direct contradiction to Comment 8, where you state:

“Even with respect to law-related civic and charitable organizations, a judge should consider whether the membership and purposes of the organization...would conflict with the judge’s obligation to refrain from activities that would adversely affect upon the judge’s independence, integrity, and impartiality. For example, it would be inappropriate for a judge to speak at a fundraising event for a specialty bar association whose members are closely identified with certain clients or particular positions on certain legal issues.”
(Emphasis added).

If this language remains as it is, with no definition of “specialty bars”, the National Bar Association is concerned that this language could be interpreted to mean all Bar Associations of

Color, all Women's Bar Associations and all of those Bar Associations, for which you ostensibly encourage participation so that judges may not feel isolated. Judges who participate in these bar associations, many times do so as a result of necessity. Judges of color are few and the network of support provided by Bar Associations of Color are many times a critical component of both their professional and social lives. For years, Judges of color and lawyers of color were not welcomed in mainstream bar associations. Bar Associations of Color (specialty bars), were their only recourse. The Proposed Rules, as currently written, could be interpreted to mean that this recourse is no longer available.

At the hearings it was indicated that it is not your intent to deem inappropriate participation by judge's in such Bar Associations referenced above. The National Bar Association believes your intentions to be nothing less than honorable. However, as indicated above, traditionally, Bar Associations of Color and Women's Bar Associations have been included in the group known as "specialty bar associations". Therefore, it is the request of the National Bar Association that a definition of "specialty bars" be included in the Proposed Rules, which would specifically exclude such organizations such as the National Bar Association, The Hispanic National Bar Association, The Native American Bar Association, The National Asian and Pacific Bar Association and similar bar associations. As currently written, there is nothing in the Proposed Rules which would distinguish a Bar Association of Color from ATLA, for example. An exclusion from the definition would not in any way jeopardize the independence or impartiality required of all judges.

The National Bar Association strongly urges the Commission to remove what we consider to be a "chilling effect" on judges' participation with Bar Associations of Color, Women's Bar Associations, as well as charitable and civic organizations which keep them connected to their communities.

Thank you for your time, consideration and the hard work you have given to the Commission.