

MEMORANDUM

To: Mark Hardin

From: Lauren Onkeles

Date: 31 August 2004

RE: Judicial Involvement in Child Welfare Organizations and Changes to the Model Code of Judicial Ethics

I. Introduction

This memorandum will address judges' involvement in extra-judicial activities related to the promotion and protection of child welfare. Although there are only a handful of published court opinions on the topic, State judicial ethics committees have grappled with it more often. Their advisory opinions are an attempt to guide judicial behavior by interpreting a judge's behavior in light of the State's judicial code of ethics. Trends arise in State opinions, illustrating where judges participating with child welfare organizations come into conflict with the interpretation of their State's ethical rules.

This memorandum will discuss both court cases and State ethics committees' opinions, looking for how these opinions effect judicial involvement in child welfare organizations. A number of ethics opinions evaluated regard a judge's involvement in non-child welfare focused organizations or commissions. This inclusion seemed appropriate considering that judges involved with different types of organizations often face similar ethical dilemmas

In addition to covering state court and ethics committee opinions, this memo will evaluate the current American Bar Association Model Code of Judicial Ethics (hereinafter "Model Code"), its revision process, the recommendations made to the group handling the revisions, the ABA Joint Commission to Evaluate the Model Code of Judicial Ethics (hereinafter, "ABA Commission), and potential areas of particular concern within the revision of the Model Code to the ABA's Center on Children and the Law (hereinafter, "the Center").

II. State Ethics Opinions Trends

A. Court Opinions

In cases involving child abuse or neglect, courts are reluctant to vacate or remand a decision based on charges of ethical violations regarding extra-judicial involvement in

organizations, governmental commissions or civic or charitable groups.¹ The U.S. Code requires judges to recuse themselves “in any proceeding in which [their] impartiality might reasonably be questioned.”² Individual States have incorporated similar requirements into their own statutory laws.

Federal and State courts generally require that the relationship between an extra-judicial activity and the issues of the case be directly related. In light of all the facts, the courts look to whether a reasonable person would conclude “the judge’s impartiality might reasonably be questioned on the basis of his [extra-judicial] service.”³ Courts appear to be more preoccupied about whether the judge had previous contact with or particularized knowledge of the participants in the present case than whether a judge has participated in an organization addressing the issues.⁴

B. Ethics Committee Opinions

1. Basis in Model Code of Judicial Ethics

Most states have either adopted some form of the pre-revision ABA Model Code or created their own rules that cover much of the same areas of concern. When discussing ethical issues surrounding judicial participation in extra-judicial activities and organizations, most State committees refer to their versions of the Model Code’s Canons 2, 4, and 5. Canon 2 speaks about the judicial duty to avoid impropriety and the appearance of impropriety in all of the judge’s activities, both on and off the bench. Canon 5 restricts “inappropriate” political activity, seeking to avoid judicial endorsement of party candidates or party platforms regarding certain issues.

¹ *See, e.g.*, U.S. v. Payne, 944 F.2d 1458, 1476-1477 (1990) (finding that a judge had no duty to disqualify himself in a child molestation case where judge has served as a member of the Attorney General’s Commission on Pornography from 1985-86); Yates v. Florida, 704 So.2d 1159 (1998) (J. Harris, concurring with the affirmation) (finding no bias in elevating sentence against defendant for domestic violence even though judge was chair of a task force on domestic violence and attended a ceremony where the defendant’s wife, then unknown to the judge, presented a reef); Iowa v. Haskins 573 N.W.2d 39, 45 (1997) (holding that judge’s participation in a domestic abuse coalition concerned with case management issues and improvement of the general functioning of the system did not indicate that a judge should have recused herself from a case involving domestic violence); Idaho v. Knowlton, 854 P.2d 259, 261-263 (1993) (finding no prejudice from judge’s appointment to and participation in a Governor’s Task Force for Children at Risk in a hearing involving child abuse because the task force contained no specific agenda other than the protection and treatment of child victims of abuse and neglect and included all participants in issues of child abuse – prosecutors, public defenders, judges, community organizations, etc.); and Washington v. Carlson, 833 P.2d 463, 463-464 (1992) (upholding appellate court’s finding that a “judge’s participation in [a] program designed to prepare children who are alleged victims of sexual abuse for their appearance in court did not disqualify [the] judge from hearing [a] case involving child abuse”).

² 28 U.S.C.A. §455 (2004). The ABA’s original Model code of Judicial Ethics mirrors much of the language of this federal statute.

³ U.S. v Payne at 1477.

⁴ *See, e.g.*, Washington v. Carlson at 464 (discussing the fact that the judge had no prior contact or knowledge of the individuals involved in this case and generalized involvement in educational programs addressing specific issues related to the law and legal participants is not an automatic bar to presiding over cases that encompass those issues).

Canon 4's provisions cover judicial participation in governmental, civic or charitable activities; financial activities; fiduciary activities; arbitration/mediation, compensation, and judicial disclosure of income. They rephrase the concerns of Canon 2, prohibiting extra-judicial activities if those activities "cast a reasonable doubt on the judge's capacity to act impartially as a judge...demean the judicial office; or...interfere with the proper performance of judicial duties."⁵ The provisions permit judges to speak, write, lecture and teach in other "activities concerning the law, the legal system, and the administration of justice" including non-legal subjects the judge may choose, subject to the restrictions of the Code.⁶

In addition, Canon 4 states that judges are prohibited from accepting appointment to a governmental commission or committee unless the group is working on "issues of fact or policy" that directly concern the law, the legal system or the administration of justice.⁷ A judge may also "serve as an officer, director, trustee or non-legal advisor" for an organization even if the position is not governmentally appointed. Once again however, participation is only allowed as long as the agency or organization's work concerns the law, the legal system of the administration of justice. Judges must also avoid organizations that could potentially become involved in proceedings that come before the judge or if they are consistently litigiously involved in adversary actions in any court.⁸

2. State Committee Interpretation of the Model Code

In their opinions, State ethics committees produce commentary that is for advisory purposes only. As such, each particular opinion often provides numerous qualifiers to incorporate as many permutations of judicial involvement as possible. Opinions may try and predict future queries, reminding judges to keep a constant watch over their extra-judicial activities to ensure continued compliance with the State Code.⁹

Ethics committees struggle with separation of powers and the appearance of impropriety that is inherent in judicial participation in executive or legislative-branch commissions. Some jurisdictions employ a case-by-case approach to evaluating the appearance of impropriety.¹⁰ Other states have developed consistent tools for making the

⁵ ABA Model Code of Judicial Conduct, Canon 4(A) (last amended August 1990). The ABA has formed a Joint Commission to Evaluate the Model code of Judicial Conduct and has made suggestions for changes in this canon. An evaluation of the suggested changes can be found later in this memorandum.

⁶ Canon 4(B).

⁷ Canon 4(C)(2) (last amended August 1990).

⁸ Canon 4(C)(3) & Canon 4(C)(3)(a) (last amended August 1990).

⁹ *See, e.g.*, Utah Judicial Ethics Committee, Opinion No. 98-6 (June 18, 1996) (stating that a judge's participation in a domestic violence coalition would be permitted as long as the coalition's discussion remained focused and systemic, but that the judge would need to limit any involvement if the focus became too broad). The same admonition is made in the ABA's Model Code, see, Canon 4 (C)(3)(a) Commentary ("[t]he changing nature of some organizations and of their relationship to the law makes it necessary for a judge regularly to reexamine the activities of each organization with which the judge is affiliate to determine if it is proper for the judge to continue the affiliation.").

¹⁰ *See, e.g.*, Alabama Judicial Inquiry Commission, Opinion No. 00-750 (March 17, 2000) (stating that a judge's impartiality would reasonably come into question if she were to participate in rally against sexual

determination. For example, to assist in evaluating whether there is an appearance of impropriety or not, the Alaska commission on Judicial Conduct developed four keys points to consider:

- Whether group members represent one point of view or various;
- Whether the group will discuss controversial legal issues or issues likely to be before the court (rather than speaking on administrative/procedural concerns);
- Whether the public views the group as administrative, or political or advocacy in nature; and
- Whether the group would take public policy positions better suited to the other branches of government.¹¹

State committees also focus largely on whether the commission, committee or organization itself is directly concerned with the law, the legal system or the administration of justice. However, there is no pre-determined, agreed-upon definition for which activities are concerned with the law. Consequently, State opinions on the issue follow only a loose pattern. A sample of judicial ethics committees opinions includes findings that:

- A judge may not accept an appointment to a city commission on disability because its purpose – to advise and make recommendations to city leaders regarding the needs, rights and privileges of the disabled – goes beyond issues of fact or policy related to the law, the legal system or the administration of justice.¹²
- A judge may not serve on an appointed governmental task force who would be discussing issues related to domestic violence and making recommendations to the governor regarding possible legislative changes because those activities are beyond what would be considered “concerning the law,” etc.¹³
- A judge may serve on a state commission on child abuse, rape, and domestic violence in a limited capacity as long as the participation is limited to issues related to the law, etc., and the judge does not participate in issues like administering/disbursing funds, coordinated investigations, reviewing child deaths, or advising the governor.¹⁴
- A judge may serve on a governmental commission on marriage and family that supports initiatives educating people on legal matters affecting families and children

assault because the sponsoring agency is seen as advocating for one side of the issue by being involved in a commission against sexual assault that is pro-victim); Court of Common Pleas for The State of Delaware, Judicial Ethics Advisory Committee, Opinion No. 2000-3 (June 8, 2000) (opining that a judge may serve on the board of a non-profit concerned with issues of poverty because it will not affect judge’s impartiality or interfere with judge’s performance on the bench).

¹¹ See, Alaska Commission on Judicial Conduct, Opinion 2000-01 (September 11, 2000) (stating that a children’s court master may serve on local juvenile corrections facility’s Citizen’s Advisory Committee); *reiterated in* Opinion 2001-01 (February 26, 2001) (stating that a judge may serve on a state Children’s Justice Act task force as long as involvement is limited to concerns appropriate for the courts).

¹² Texas Committee on Judicial Ethics, Opinion No. 167 (1993).

¹³ South Carolina Advisory Committee on Standards of Judicial Conduct, Opinion No. 16-2000 (no date given).

¹⁴ Arkansas Judicial Ethics Advisory Committee, Opinion No. 2003-02 (May 6, 2003).

in addition to producing strategies for violence and substance-abuse free families because the commission is concerned with the law and systems of justice.¹⁵

Involvement in a civic or charitable organization involves a set of ethical considerations that varies slightly from those used in governmental commissions and organizations. Ethics committees are most concerned with whether the charitable organization involved could possibly come before the judge, is regularly involved in adversary proceedings in any court, or is operated for its members' financial or political benefit. For example, the Massachusetts ethics committee opined that a family court judge could not serve on the board of an organization working primarily with foster, adoptive and legal risk parents. They reasoned that the organization mainly benefits substitute parents, the same parents likely to come before the judge, which would cast a reasonable doubt on the judge's impartiality.¹⁶ In Illinois, the ethics committee decided that it was within the boundary of the State Code for a judge to serve as a director of a family charitable foundation that contributed to non-profits doing medical, cultural, or educational work in the community, since the organization was not likely to come before the judge himself or appear in any court as a litigant.¹⁷

Oftentimes, State ethics committees differ as to their interpretation of the restraints on judicial involvement, even when using the same standards. Whereas one state's ethics committee declared that a judge could serve on a Domestic and Family Violence Council, even though much of the group's mission involved non-legal tasks,¹⁸ another state opined that a judge was not to serve on a similar governmental task force because the task force's duties included discussing non-legal issues and making recommendations regarding policy changes - activities that the committee felt went beyond the law, the legal system and the improvement of justice.¹⁹

Although many State committees have stated that ethical concerns override statutorily mandated judicial participation,²⁰ the Florida Judicial Ethics Advisory Committee permitted a judge to serve on a statutorily created children's services council even though the council was more like a governing body concerned with far more than the law. The committee stated that the preamble of the state's Model Code proclaimed that all rules therein were to be applied consistent with both Constitutional and statutory constraints. Therefore, the committee reasoned, although the judge should abstain from

¹⁵ Florida Judicial Ethics Advisory Committee, Opinion No. 2004-12 (March 5, 2004).

¹⁶ Massachusetts Committee on Judicial Ethics, Opinion No. 90-2 (August 23, 1990).

¹⁷ See, Illinois Judicial Ethics Committee, Opinion No. 00-1 (April 18, 2000).

¹⁸ Missouri Commission on Retirement, Removal and Discipline, Opinion No. 177 (January 23, 2001).

¹⁹ South Carolina Advisory Committee on Standards of Judicial Conduct, Opinion No. 16-2000).

²⁰ See, e.g., Commonwealth of Virginia Judicial Ethics Advisory Committee, Opinion No.00-6 (July 17, 2000) (stating that a judge may not accept an appointment to a VA state crime commission because the group's objectives are not limited to the improvement of the law, etc.); Utah Judicial Ethics Committee, Opinion No. 98-11 (June 18, 1998) (deciding that if anti-discrimination council created by statute is more concerned with "policy initiatives, employer education, sensitivity education in the workplace," etc., the judge should not accept the appointment).

any votes or action where there is a perceived conflict, the judge could participate in the commission because its statutory basis trumped any ethical concerns raised by the rules.²¹

Additional conflict arises where a state's own committee changes its opinion on a particular topic or their method of reasoning when interpreting judicial activity. For example, in Nebraska in 1993, the ethics committee found that a family court judge could participate in a State commission whose mission was to improve the system that makes up the various support mechanisms for children and families either experiencing or at risk for abuse and neglect.²² However, four years later, the committee opined that a different family court judge could not be part of a State council that advised and assisted a state department with its policy objective development and outcomes. The majority of the committee reasoned that the risk of the judge finding he needed to rule on the efficacy and/or use of those policies while on the bench was too great.²³

C. Conclusion: General Trends

Since each State has its own version of a Code of Judicial Ethics and standards, it may appear difficult to find consistencies that cross jurisdictions. However, the similarities outweigh the differences and issues surrounding judicial participation in child welfare organizations are much the same regardless of the State involved. These common themes will come to bear on any discussion of changes that should be made to the ABA's own Model Code.

When considering a judge's extra-judicial activities, ethics committees appear to be most concerned with three aspects of the involvement:

- (1) Whether involvement will generate the appearance of impropriety or prevent the judge from doing his or her job;
- (2) Whether (if the activity is not charitable in nature) the organization is focused on improving the law, the legal system and the administration of justice; and
- (3) Whether (in charitable activities) the organization is likely to come before the judge or be considered an advocacy group focused on the benefit of one party over another.

Judges are most often deterred from participating, or participating fully in governmental commissions or agencies or other organizations because of the requirement that the group itself be concerned solely with the law, the legal system and the administration of justice. States do not agree what "the law," "the legal system" or "the administration of justice" means, and therefore differ in their recommended judicial restraint required.

²¹ Florida Judicial Ethics Advisory Committee, Opinion 97-20 (July 18, 1997).

²² Nebraska Judicial Ethics Committee, Opinion No. 93-3 (September 22, 1993).

²³ Nebraska Judicial Ethics Committee, Opinion No. 97-1 (May 19, 2001). The dissent in this case argued that the limited role of the judge in this instance to advising and assisting on policy matters means that the analysis should have mirrored Opinion No. 93-3 where the judge can participate, but must consistently reexamine the judge's role, being sensitive to potential conflicts.

Additionally, only a few State committees have recognized the importance of judicial involvement in the community, especially in terms of child welfare work. Only slightly more have officially emphasized the importance of judicial involvement in their communities at all.²⁴

III. Problems in Current Model Code

Although State Codes differ, there is no doubt that the Model Code affects each state's decision on ethical considerations for judges. The trends in ethics opinions regarding judicial community involvement point directly to particular issues within the Model Code that could be improved. These trends indicate that there are at least two major and one minor area that, if improved, could have a positive impact in encouraging judges to participate in child welfare organizations.

First, the Model Code, pre-revision, provides limited emphasis for the positive aspects of a judicial role in the community. Canon 4 includes two affirmative statements regarding judicial involvement in the community. Judges are, time permitting, encouraged to use their unique position to “contribute to the improvement of the law, the legal system, and the administration of justice.”²⁵ They are also informed that “complete separation of a judge from extra-judicial activities is neither possible nor wise; a judge should not become isolated from the community in which the judge lives.”²⁶

However, these mild statements do not compensate for the mostly restrictive view of extra-judicial activities contained in the Model Code. The commentary on judicial involvement is worded passively and negatively²⁷ without any encouraging or imperative statements to support participation. In addition, the rules themselves are often phrased as an admonition to avoid participation unless enumerated circumstances are present, rather than a statement expecting participation unless certain enumerated circumstances are present. As an example, Canons 4(C)(1) and (C)(2) both start with the phrase, “[a] judge shall not,” followed by exceptions to the general prohibition.

A second issue within the pre-revision Model Code is the undefined nature of the statement, “concerning the law, the legal system or the administration of justice.” Only the word “law” is defined in the Code's terminology section, giving the impression that all extra-judicial activities involving appointment to or participation in a governmental committee or agency or organization must be concerned with “court rules as well as statute, constitutional provisions and decisional law.”²⁸ However, especially in child welfare cases, “the legal system” involves more than statutes and prior court decisions. It

²⁴ Two States who do encourage participation are The Court of Common Pleas for the State of Delaware, Opinion No. 2000-3 (June 8, 2000) and Utah Judicial Ethics Committee, Opinion No. 98-4 (June 30, 1998).

²⁵ ABA Model Code of Judicial Ethics, Canon 4(B) Commentary (August 1990 edition).

²⁶ *Id.* at Canon 4(A) Commentary.

²⁷ For example, the negatively stated: “complete separation of a judge from extra-judicial activities is neither possible nor wise...” in positive language might read: “judicial involvement in his or her community is beneficial to avoid isolation ...”

²⁸ *See*, ABA Model Code, Terminology (August 1990 edition).

also involves the provision of services and those programs related to the child's best interest. Most jurisdictions have not acknowledged this expanded concept.²⁹

The final bar to involvement is the issue of limiting or prohibiting judicial participation an organization that is seen as advocating for one position. The un-revised Model Code prohibits taking part in activities that create a reasonable doubt on a judge's ability to act impartially on the bench or allowing other relationships that create the appearance of a particular interest being in a position to influence the judge.³⁰ Unfortunately, there is no consensus among State ethics committees concerning which activities constitute advocating for a particular side of an issue and which do not.

IV. Proposed Revisions

A. ABA Committee's Proposed Revisions

There has been a clear effort on the part of the ABA Commission to be more supportive of judges' roles in the community. Commentary from the beginning of the revised Model Code encourage judges to be critical of the judiciary and to address the problems they see in the administration of justice.³¹

Additionally, judges' have been granted an expanded ability to appear before or confer with an executive or legislative body in the ABA Commission's revisions. These changes recognize that judges often have information related to broader topics than those traditionally considered as "concerning the law," and that other branches of government might find this information invaluable.³² Of particular note is the revision's addition to the commentary that provides, as example, the case of a juvenile court judge who is in a unique position to comment on the effects of particular community-wide improvements on delinquency among minors.³³

However, the largest contribution to promoting extra-judicial activity participation comes in the revised commentary to revised Canon 4.04 that states:

A judge should be permitted to participate in civic, fraternal or charitable activities for the benefit of the community of which the judge is a part, provided that such participation does not take inappropriate advantage of

²⁹ Utah's Committee, however, understands the issue completely, stating that "the administration of children's justice in inherently a broader concept than the administration of justice in other areas. The child abuse, neglect and dependency provisions of the juvenile code...indicated that child abuse and neglect cases are multi-agency concentrations." Utah Judicial Ethics Committee, Opinion No. 98-4 (June 30, 1998).

³⁰ See, ABA Model Code, Canon 2(A),(B) and Canon 4(A)(1) (August 1990 edition).

³¹ See, Proposed Revision of ABA Model Code of Judicial Ethics, Canon 1.01 Comment 5 (May 11, 2004 revision).

³² See, Proposed Revision of ABA Model Code of Judicial Ethics, Canon 4.02(b) (July 20, 2004 revision) ("[a] judge shall not appear before, or otherwise consult with, an executive or legislative body or official except...on other matters that might reasonably merit the attention and comment of the judge because of knowledge or expertise acquired in the course of the judge's judicial duties...").

³³ Id. at Canon 4.02(b) Commentary [1].

the judge's judicial position, or otherwise interfere with the performance of the judge's judicial duties.³⁴

This revision, if accepted, could help provide judges with the ethical support they need to participate in their communities with organizations and groups concerned with child welfare, among other issues.

What these revisions still lack is an expanded definition of what it means to concern the law, the legal system and the administration of justice and an explanation of what organizational behaviors constitute advocacy. The ABA Commission appears to have attempted to address concerns that judges were being unnecessarily deterred from serving on governmental committees or agencies. The revisions include additional reassurance in the comment section of Canon 4.04 stating that the Canon "does not prohibit a judge's service in a governmental position associated with the improvement of the law, the legal system or the administration of justice."³⁵ Unfortunately, this addition does not address the issue surrounding a the limited concept of what it means to be concerned with the "law."

B. Outside Groups' Recommendations

A variety of groups and individual practitioners have submitted comments regarding both the unrevised Model Code and the ABA Commission's proposed revisions. Concerns have ranged from a perceived weakening of the "appearance of impropriety" standard and the ban on sexual harassment³⁶ to the lack of emphasis on judicial introspection as to the source of their own personal biases.³⁷

The commentary most closely associated with a push to support a stronger judicial role in the community comes from the National Council of Juvenile and Family Court Judges (NCJFCJ). Most of their recommendations for change in the Model Code surround judges' involvement in their community. In fact, it is likely that the organization's presentation to the ABA Commission is linked to some of the positive changes the ABA Commission made in the revisions of Canons 3 and 4 submitted for public comment.³⁸

³⁴ Id. at Canon 4.04 Commentary [1].

³⁵ Id. at Canon 4.04 Commentary [7].

³⁶ See comments from Douglass Kendall, Community Rights Counsel (July 14, 2004); and Lynn Hecht Schafran, National Judicial Education Program, "Commission's Draft Revision of Canon 1 and Canon 2" (July 8, 2004).

³⁷ See comments from Jennifer Juhler & Mark Cady, "Morality, Decision-making, and Judicial Ethics," (date unknown).

³⁸ There is an indication that the revision of Canon 4.04 Commentary [1] noted in section IV of this memo is related to Judge Thomas Hornsby's presentation as related in the meeting notes, "the [NCJFCJ] proposed adding a rule on civic responsibilities that would encourage judges to provide leadership such as by 'engaging in community outreach activities to promote the fair administration of justice.' ... [a Commission member] asked Hornsby whether the subject of civic responsibilities could be added in the commentary rather than the text... That, Hornsby responded, would be a step in the right direction." 20 Law. Man. Prof. Conduct 318 (June 16, 2004)

The NCJFCJ recommended two changes in particular that address the same concerns of the Center. Primarily, the addition of “the provision of services” in each reference to the clause “concerning the law, the legal system or the administration of justice” addresses one a major concern of the unrevised Model Code. By including the provision of services into the list of proper legal concerns, NCJFCJ appears to have been advocating for more leeway in judicial participation with organizations and governmental commissions or agencies.

The other NCJFCJ change involved the addition of a completely new section to Canon 3, the canon addressing the general principle that judges should perform their official duties impartially and diligently. The group recommended adding a section on civic responsibilities after the section on administrative responsibilities. The text is as follows:

D. Civic Responsibility

- (1) Subject to the requirements of this Code, a Judge should provide leadership in:
 - (a) Identifying and resolving issues of access to justice;
 - (b) Developing public legal education programs;
 - (c) Engaging in community outreach activities to promote the fair administration of justice;
 - (d) Convening, participating or assisting in advisory committees and community collaboratives devoted to the improvement of the law, the legal system, the provision of services, and/or the administration of justice
- (2) A judge may publicly or individually endorse project goals concerning the law, the legal system, the provision of services or the administration of justice, in principle, and actively support the need for funding of such an organization of governmental agency.³⁹

This proposed section not only attempts to remove barriers to judge’s involvement in their community, but provides an affirmative charge that, subject to the other requirements in the Model Code, civic involvement in legal matters is a judge’s duty.

Unfortunately the ABA Commission subsequently released the next set of revisions without substantial changes to the text in this area. The major changes appeared within the commentary rather than the rules themselves.

V. Conclusion

There are a number of issues facing judges who wish to be more involved in their communities and the communities who are suffering from lack of judicial input and cooperation. Although courts are reluctant to reverse or remand decisions due to ethical considerations concerning a judge’s involvement in an extra-judicial commission or organization, the state ethics committees are far more cautious. The states’ individual

³⁹ Proposed addition is meant to be placed at Canon 3(D) from the unrevised Code, between the sections on administrative responsibilities and disciplinary responsibilities.

Codes for Judicial Ethics, most of whom closely resemble the ABA's Model Code, do not actively encourage judges to participate in governmental or civic organizations, and often serve as barriers to that participation.

In order to address these barriers, changes to the Model Code currently under revision are crucial. Changing the language surrounding judicial participation from negative statements, focusing on a general prohibition with limited exceptions, to statements indicating an expectation of judicial participation in communities might be one proposed solution. Refining the ABA Commission's commentary on judicial involvement in the community is another. Finally, expanding the definition of the concept: "concerning the law, the legal system and administration of justice" in the text, definitions, or commentary seems crucial. By expanding the meaning of the statement, especially in the context of child welfare where services and programs are integral to the administration of justice, the Code could eliminate some of the barriers judges face when becoming involved in child welfare organizations.