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M E M O R A N D U M

To: Mark I. Harrison, Chair, ABA Commission on Evaluation of the Mode Code of Judicial Conduct
Members and Advisors of the Commission

From: Charles E. McCallum, Chair, ABA Standing Committee on Ethics and Professional Responsibility, on behalf of the Committee

Date: April 12, 2005

Re: **Comments on the Draft Revisions to the Model Code of Judicial Conduct**

On behalf of the Standing Committee on Ethics and Professional Responsibility I would like to extend our thanks to you and to the Commission, both for the standing invitation that you have extended to this Committee and all other entities to review and comment upon the work product of the Commission, and for the thoughtful, extensive, and scholarly work that the Commission has accomplished to date.

The following comments and suggestions of the Committee have been developed throughout the course of the Committee's last six meetings, two of which were extended, in-person meetings and four of which were teleconferences. Although not all of these comments and suggestions were put to a formal vote of the Committee, we have nevertheless determined that it would be helpful for you to have them. Comments and suggestions attributed to "the Committee" reflect the majority view of the Committee but should not be understood as indicating unanimity.

The Commission may already be aware of many of the suggestions relating to Canons 1 through 4, as the Committee's Counsel and Associate Counsel, George Kuhlman and Eileen Libby, have participated in the proceedings of the Commission and have been authorized to report them in person. We nonetheless wanted to provide to the Commission this written record of those suggestions before it returns to the reconsideration of those Canons in light of other Comments received. Where a suggestion has been rendered moot in the course of Commission deliberations, we have attempted to so note.

The Committee spent considerable time during its Spring meeting, held in Chicago this past weekend, preparing its Canon 5 comments for submission to you at this time.

The names of the members of the Ethics Committee (who worked by dividing themselves into task forces for each Canon) are appended to this letter. If you or any other member of the Commission believe it would be helpful to discuss any particular observations with any of us, we would be delighted to hear from you. You should be assured that the Committee will continue carefully to study your proposals and to share with you our

suggestions about how the revised Code can be made most useful, understandable, and effective. Your extensive efforts in that regard are deeply appreciated.

Canon 1

1. The coupling of mandates (e.g., a judge or candidate "shall") and purpose clauses (e.g., "so as to uphold the integrity and impartiality of the judiciary"), in both this and subsequent Canons and Rules, should be avoided because it creates ambiguity about the standard for discipline. It is unclear when mandates and purpose clauses are coupled whether an act violating a Rule, in and of itself, is sufficient to support disciplinary action, or whether it may also be necessary to establish that the "purpose" of the Rule was frustrated.

2. The Committee suggested the deletion of Commentary to Rule 1.01 that would have stated that "ordinarily" a violation of the Canon occurred in connection with a violation of a specific Rule, for reasons of clarity. With the subsequent decision of the Commission to delete this language, this suggestion is mooted.

3. The Committee is concerned that "appearance of impropriety" is too vague a standard to have value or predictability for the purpose of enforcing discipline or, for that matter, for the purpose of informing a judge or judicial candidate as to what constitutes proper behavior. Some members of the Committee also question whether an "appearance of impropriety" standard would survive a Constitutional challenge.

4. Some members of the Committee suggest that the Commission consider revising Rule 1.02(a) to read "engage in conduct that is prejudicial to, interferes with, or obstructs the administration of justice" and revising Rule 1.02(b) to read: "engage in conduct that involves, or appears to involve, repeated or flagrant disregard of established applicable law."

Canon 2

1. <u>Rule 2.02 (The Responsibility to Decide When Not Disqualified)</u>

The Committee found the use of "disqualification" and "recusal" in the originally proposed Rule 2.02 confusing. The reference to recusal having been eliminated in the Commission's March 2005 revision of the black letter renders this point moot. The use of both terms in proposed revised Comment [1], however, leaves an ambiguity as to the distinction between the two. A Reporter's explanation of the revisions to Rule 2.02 and its Comment indicates that recusal is distinguished from disqualification in that recusal occurs at the judge's initiative, while disqualification takes place by virtue of the motion of a party. Perhaps this distinction could be expressed in the Comment itself.

2. Rule 2.03 (Competence)

The use of the phrase "when applying and upholding the law" differs from earlier references to a judge's "applying and *interpreting*" the law. Since "upholding" the law is not conduct that reflects on competence, the Committee suggests that consistent use of the phrase "applying and interpreting" would be preferable.

The Committee also notes that in Comment [3] to Rule 2.03, the distinction between competence being "compromised" and its being "diminished" is not clear, and suggests that it be explained or a single term used.

With respect to the reference in Rule 2.03 to a judge's "willful disregard" of the law, the Committee is concerned that a distinction be made between a circumstance in which a judge knowingly disobeys or willfully disregards the law and the circumstance in which the judge acknowledges the existing law and deliberately, laying a proper foundation, seeks to break new legal ground. The Commission's subsequent revisions to the Rule's Comment [2], stating that "willful disregard of the law, however, may *in appropriate circumstances* constitute misconduct by the judge," responds to this concern, but begs the question of what are and are not "appropriate" circumstances. The Commission may want to consider a rephrasing along the lines of "a pattern of wanton disregard of established applicable law, however, constitutes misconduct by the judge."

3. Rule 2.04 (Impartiality and Fairness)

The Committee disagrees with what they viewed as the inference of the Commentary that a judge's "philosophy" necessarily influenced the way the judge analyzed or interpreted the law.

The Committee suggests that the Commission delete from Comment [1] the language "A judge must be objective and free of favoritism to ensure impartiality and fairness to all parties", replacing it with "A judge must apply and interpret the law without regard to whether the judge personally approves or disapproves of the law." Although the Commission initially rejected this suggestion, the suggested language has been integrated into the Commission's latest draft of Comment [2].

4. Rule 2.05 (Bias and Discrimination)

The Committee questions what is the intended difference between "impartial" performance and "fair" performance of judicial duties. If some difference is intended, it should be explained. If not, the term "fair" should be eliminated.

The Committee suggests that the word "matter" be replaced with the word "proceeding" throughout.

5. Rule 2.06 (Diligence)

The Committee suggests that the concept of "fairness" is inappropriate for inclusion in Rule 2.06, in that it does not seem to be a component element of "Diligence." The Committee also notes that to the extent that the discussion of a judge's obligation not to coerce settlements appears in both this Rule and in Rule 2.08, there should be a cross-reference to that effect.

6. Rule 2.07 (Demeanor and Decorum)

With respect to Rule 2.07, the Committee questions the difference in meaning between the terms "direction" and "control" in paragraph (b), and the difference between a judge's being "efficient" and a judge's being "businesslike" as described in Comment [1] to that Rule. The Committee urges the Commission to explain the perceived distinctions for the sake of clarity.

7. Rule 2.09 (Ex Parte Communications)

The Committee noted that in draft paragraph (a)(2) to Rule 2.09 the opportunity the judge must provide to the parties to respond to notice of *ex parte* communications is not qualified by the term "reasonable," as is the case in paragraph (a)(1). Inasmuch as (a)(2) has been targeted for deletion by the Commission this observation appears to be moot.

Members of the Committee questioned allowing a judge (as under the present Code) to seek the advice of an expert without first providing notice and an opportunity to object.

The Committee believes that a judge's request that a party submit proposed findings of fact and conclusions of law does not constitute an "ex parte communication" as the term is generally understood, and that the treatment of such requests in paragraph [6] of Comment to Rule 2.09 should be deleted.

The Committee questions the purpose of the change, in Comment [3] to Rule 2.09, from the phrase "law teachers" to "law professors," noting that not all those who teach law have the status of professor.

The Committee was sympathetic with the recommendation of APRL that language be added to provide that a judge is permitted to seek independent counsel as to the judge's ethical duties in the conduct of a proceeding, without revealing such contact to the parties. APRL's proposed language reads:

> (6) A judge may seek confidential legal advice as to the judge's own rights and responsibilities under this Code unless the matter about which the judge is seeking advice has already been the subject of a motion or other application before the judge in the proceeding, in which case the judge must give notice to the parties of the person consulted and the substance of the advice, and afford the parties reasonable opportunity to respond.

8. Rule 2.10 (External Influences on Judicial Conduct)

The Committee questions whether the term "public clamor" in paragraph (a) may be archaic and of uncertain meaning. The Committee also noted that in paragraph

(c) there is no clear antecedent to the phrase "such persons." Possible rewording of the paragraph might read: "A judge shall not convey the impression that any other persons are in a special position to influence the judge, nor shall the judge allow such other persons to so suggest."

9. Rule 2.11 (Judicial Statements on Pending and Future Cases)

The Committee noted with respect to Rule 2.11 that there is no discussion in Commentary explaining why staff, court officers and others subject to a judge's direction and control are prohibited only from making *public* statements, while a judge is prohibited from making *any* statements that might affect a proceeding's outcome. If there is a reason that the standards are different, an explanation should be provided in Commentary.

The definition of a "pending proceeding" in Comment [2] seems imprecise. This language could be revised along the following lines: "The period during which a proceeding is pending begins with its commencement and continues to its final disposition, including any appellate proceedings."

In Comment [4] to Rule 2.11, the term "matter" seems to be used for "proceeding" toward the end of the Comment. There is no apparent reason for this change in terminology, and the Committee is concerned that it may create confusion. The Committee prefers "proceeding" to "matter" throughout.

Some members of the Committee expressed doubt as to whether the restrictions on judicial statements in this Rule would survive further constitutional challenges, at least in the context of partisan judicial elections. See comments below on Canon 5.

10. Rule 2.12 (Disqualification)

The Committee questions whether the prohibition of Rule 2.12 (c) should be broadened to include persons who might reside with a judge but not have "family" status, such as wards, protégés, or even housekeepers, and urges that the Commission consider the issue.

The Committee further suggests that consideration should be given to whether the terms of Rule 2.12 (d) applying to contributions made by a lawyer to a judicial campaign should be extended to include contributions by other lawyers in the firm of such a lawyer.

The Committee questions with respect to the black-letter of Rule 2.12 whether a deliberate distinction was intended between prior statements of a judge, made when he or she was not yet a candidate for judicial office, which under the Rule would appear not to require the judge's disqualification, and statements made by a judge when earlier serving in governmental employment (paragraph (f)(3)), on the merits of a controversy, which do require disqualification.

Regarding Comment [2] to Rule 2.12, the Committee expressed concern that the standard, namely, "information that the judge believes the parties or their lawyers

might consider relevant to the question of disqualification" was vague and subjective.

With respect to Comment [6] to Rule 2.12, we question the use of the term "counsel" rather than "lawyer." The Committee recommends using the latter term.

11. Rule 2.15 (Supervision of Other Judges)

The Committee suggests that Rule 2.15 would better reflect the duties identified in Rule 2.06 if it were to read the same as that Rule, namely, "take reasonable measures to assure the prompt, *efficient and fair* disposition of matters before them."

12. Rule 2.19 (Disability and Impairment)

The Committee suggests that the Commission consider adoption of the recommendations of APRL for revision to Rule 2.19. The three significant changes APRL recommended are 1) adding the phrase "take or" where the Rule reads "a judge shall… initiate; 2) changing the term "appropriate action" to "corrective action"; and 3) changing the phrase "which may include a confidential referral" to "which may be satisfied by a confidential referral."

13. The Committee also recommends that the Commission consider the addition of a **new Rule 2.21** that would provide an appropriate basis for discipline in the vast majority of cases in which the present Code's "appearance of impropriety" standard has been relied upon. Analogous to Rule 8.4 of the ABA Model Rules of Professional Conduct, such a Rule would define in a well-accepted manner the ethical obligations of judges. Possible language to be considered is:

Rule 2.21 (Professional Misconduct)

2.21 Professional Misconduct:

It is professional misconduct for a judge to:

(a) commit acts that constitute a crime;
(b) take action, in connection with the judge's official duties, that reflects adversely on the judge's honesty, integrity, impartiality, or trustworthiness, or raises a substantial question as to the fitness of the judge to continue serving in a judicial capacity; or
(c) engage in conduct, whether or not in connection with the judge's official duties, involving dishonesty, fraud, deceit or misrepresentation.

Canon 3

1. Rule 3.01 (Using the Judicial Office for Personal Purposes)

The Committee expressed concern that the prohibition against "lending the prestige of judicial office" is too vague for a rule with disciplinary implications. The Committee recommends substituting the word "use" for the phrase "lend the prestige of."

The Committee believes that examples of prohibited "use" of judicial office should be added to the commentary.

The limitation in Comment [5] on the use of judicial letterhead in connection with references or recommendations seems to the Committee to be excessive. Use of judicial letterhead does not in and of itself mean that the judge is trying to influence a decision by "force of office."

2. Rule 3.02 (Use of Non-public Information)

The Committee calls to the Commission's attention that the Annotated Model Code of Judicial Conduct discussion of the current Canon 3B(12), the form of this rule contained in the 1990 Code, says that this rule cannot be violated unintentionally, yet the text of the proposed rule contains no such statement. One way of remedying this would be to amend the rule to provide that "[a] judge shall not use or intentionally disclose..." Similarly, in Comment [1] at line 31, the language might read "[j]udges must not exploit or intentionally reveal..."

The commentary is very sparse and provides no examples of situations in which this rule would or would not apply. The Committee believes this is an instance in which additional guidance would be helpful.

3. Rule 3.03 Affiliation with Discriminatory Organizations

The Committee recommends that the Commission substitute the concept of "illegal discrimination" for that of "invidious discrimination." The Annotated Model Code discussion (at 48) notes that the term "invidious" is not a well-defined term, but is left to evolving law. Unlike "invidious," the word "illegal" has a recognized meaning. Using "illegal" would also clarify or even make unnecessary the discussion in the commentary about what is permissible discrimination and what is not.

Comment [3] says judges should not arrange meetings or regularly attend events at such facilities. This seems to be the wrong approach. The comment would allow a judge to attend a dinner at a facility the judge knows is run by an openly racist organization, as long as the judge doesn't make a habit of it. We recommend instead a rule that prohibits any knowing use of facilities of such organizations, no matter how frequent the use. (The text at lines 4-6 would read: "and shall not knowingly use the facilities of such an organization.") The commentary could note that it may not always be possible to avoid

even knowing presence in such facilities, such as attending a niece's wedding, and that so long as such uses were not in connection with the functions of office were otherwise isolated and infrequent they would not constitute violations.

Some members of the Committee urge the deletion of the "appearance of impropriety" reference from line 7 of Comment [2]. These members feel that while such language might be suitable as an aspirational provision, a judge should not be subject to censure or removal for engaging in conduct that merely "looks bad" to someone. (A conforming change could be made to line 17, substituting "violates this Rule" for "creates the appearance of impropriety.")

Canon 4

1. Members of the Committee recommend revising Comment 2 to Rule 4.01 to read as follows: "Expressions of bias or prejudice by a judge, even outside the judge's judicial activities, may cast reasonable doubt on the judge's capacity to act impartially, independently, and with integrity, as a judge."

2. Members suggest revising Rule 4.04(a)(2)(ii) to make it clear that the permission to "assist the organization in fundraiser" extends only to activities other than "personal solicitation of funds" as prohibited by section (a)(1)(ii). Such proposed revised language might read:

> (2) Notwithstanding paragraph (1) above, a judge may:
>
> ….
>
> ii. assist the organization in fundraising, <u>other than through the personal solicitation of funds,</u> and participate in the management and investment of the organization's funds.

3. The Committee suggests that Comment [2] to Rule 4.14 be developed to employ the language and analysis contained in Revised Advisory Opinion 67 of the Committee on Codes of Conduct of the Judicial Conference of the United States with respect to judicial attendance at expense-paid seminars presented by corporatesponsors.

Canons 5, 6, 7 and 8

[Note: the Committee was provided with Reporter's drafts of these Rules, with the understanding that these drafts would be under consideration by the Commission at its April 13, 2005 teleconference. The Committee's substantive recommendations to the Commission as to the restrictions on political speech would remain as stated below even in the event that the Commission continues to discuss the Reporter's penultimate draft of a single Canon 5.]

The Committee considered recent judicial decisions, including the *White* case and several lower federal court decisions, and, with varying views expressed, how those decisions may apply to future controversies. The Committee is closely divided on the substantive question of whether the easing of restrictions on

judicial speech is inherently harmful to the public's perception of the judiciary's independence. Even among those who disfavor the increasing politicization of judicial campaigning, however, there were several members who believed that many of the proposed speech restrictions are now, or will shortly be ruled to be, unconstitutional. Several Committee members who support some restrictions on judicial campaign activity feel that voters have a legitimate interest in knowing a candidate's views when considering whether to give that candidate their votes. As a result, a substantial majority of the Committee favored elimination of many of the Commission's proposed restrictions, as described more fully below.

As noted below, the Committee ultimately determined that a single Canon 5 would be sufficient to meet the needs of the judiciary, the judicial discipline mechanism, and the public. In part, this was because to have four separate Canons, one for each method of selecting or electing judges, is as complicated (and, in light of the multiple judicial selection mechanisms used for different courts in many jurisdiction, as confusing) as the provisions in the current (1990) Code. From a more substantive perspective, the Committee's preference for a single Canon emerges from the view that most of the differences between the various types of selection do not justify having different restrictions on the speech of the various types of judicial candidate. For this reason, the Committee finds it most convenient to express its views about all four of the proposed Canons through an analysis of Canon 5. Observations about unique provisions in Canons 6, 7 and 8 follow the analysis of proposed Canon 5.

1. Rule 5.01 (Restrictions on Political Activities of Judges and Candidates for Judicial Office)

(a) ("act as a leader or hold office in a POLITICAL ORGANIZATION") The Committee was sharply divided between members who believe that this proposed restriction prohibits meaningful and constitutionally protected participation in the political process by judges and judicial candidates, and those who believe that the restriction is defensible on the grounds that active leadership in party politics (especially) undermines the state's interest in ensuring the public's confidence in having a judicial system not manipulated by political "machines." Although the Committee does not here recommend deletion of the provision, it believes that further analysis is needed as to the degree to which leadership activities undertaken on behalf of a political organization differ inherently in degree from other types of political speech permitted of judges and judicial candidates in other draft provisions advanced by the Commission.

(b) ("make speeches on behalf of a political organization") The Committee believes that the phrase "on behalf of" is so vague as to render this prohibition unhelpful at best and confusing at worst. The Committee notes that the black-letter does not address this subject from the standpoint of the subject matter of speeches a judge or candidate might be making. Thus, a speech on an innocuous topic at an event that is meant to help support a political organization (through a charge for attendance, or in

other words, as a fundraiser) would be a violation of this provision. The Committee recommends that the Commission should identify with clarity what kind of speech it intends to prohibit by this provision if it is retained.

(c) ("publicly endorse or oppose a CANDIDATE for any public office, including a judicial office") The Committee was closely divided as well on this provision, but the division was between those who believed that candidates should be allowed to endorse candidates for any office and those who believed that such endorsements should be limited to candidates for other judicial offices. The Committee discussed whether Canon 2 was sufficient to address possible disqualification of a judge from matters in which, e.g., an elected prosecutor whom the judge had (perhaps actively) endorsed appears before them. Some members of the Committee believed that addressing this type of problem by application of Canon 2 precepts might constitute a "less restrictive means" of accomplishing a state interest, and therefore be a more firmly grounded approach to this subject as a constitutional matter. In the context of these points, the Committee recognized that three of the four proposed Canons (those designed to address partisan and non-partisan elections and retention elections) remove this prohibition with respect to endorsements of other judicial candidates. There was little support on the Committee for extending this prohibition to candidates for judicial office.

(d) ("solicit funds for, pay an assessment to, or make a contribution to a POLITICAL ORGANIZATION or a CANDIDATE for public office") The Committee does not understand what is intended by the term "assessments." Moreover, a nearly unanimous Committee believed that "contributions" should be permitted, and, *a fortiori*, that the prohibition against "assessments" should be eliminated along with the prohibition against making contributions. The Committee recognized that such prohibitions may have value in "insulating" judges from requests for contributions, but found two considerations compelling in concluding that it should be abandoned: first, it believes that unlikely that campaign contributions would evidence improper partiality with respect to judicial decision-making; and second, it believes that candidate participation (as well as judicial participation) in such a form of political expression should be allowed those who do not, in fact, wish to be "insulated" from it.

(e) ("purchase tickets for dinners or other events sponsored by a POLITICAL ORGANIZATION or a CANDIDATE for public office, except where the tickets are for the JUDGE or CANDIDATE's personal use, and where the cost of the tickets are commensurate with the actual cost of the dinner or other event.") For the same reasons that the Committee favors elimination of the prohibition against contributions in section (d), it believes that this prohibition should be removed. The Committee would also notes the difficulty, in many situations, of a judge or candidate determining in advance whether the cost of a ticket would be "commensurate" with the actual cost of the dinner or other event. For example, where the event was

intended to raise funds over and above the cost of the meal or other services provided at the event, but it failed to take in sufficient dollars to do so, the amount paid by the judge or candidate would presumably be equal to the "actual cost." On the other hand, if the event is successful the amount paid for the ticket may exceed the "actual costs."

(f) ("personally solicit or accept campaign contributions") The Committee agrees with this provision, but believes that its prohibition is actually captured in the proposed section (d). The Committee suggests that the Commission consider folding this provision in with (d), and adding to it language that would make it clear that a candidate may, nevertheless, have a campaign committee of his or her own, as provided in Rule 5.02(a), to accept funds for the candidate's campaign.

(g) (use or permit the use of campaign contributions for the private benefit of the CANDIDATE or others") The Committee supports this provision.

(h) ("KNOWINGLY make any FALSE OR MISLEADING statement regarding any CANDIDATE for judicial office") The Committee supports this provision.

(i) ("make any comment that might reasonably be expected to affect the outcome or impair the fairness of a proceeding while it is pending or impending in any court") The Committee notes that the predecessor of this proposed provision in the 1990 Code, Canon 3(B)(9), contained additional language explaining that it did not extend to certain other, legitimate, statements a judge might make in the course of [his or her] judicial duties. The Committee recognizes that the Commission may have simply moved this language to draft Comment to Rule 5.01(i), but states here its preference for restoring the language to the black letter here. Especially in the absence of such information in the Rule, the phrase "expected to affect the outcome or impair the fairness" is vague.

(j) ("manifest bias or prejudice, based upon a person's race, gender, religion, national origin, ethnicity, disability, age, sexual orientation or socioeconomic status") The Committee supports this provision.

(k) ("make pledges or promises that are inconsistent with the IMPARTIAL performance of the adjudicative duties of judicial office.") A majority of a divided Committee supports retaining this provision. Some of those opposing it do so on constitutional grounds. Others oppose it for its vagueness. And others oppose it because they feel the public has the right to know a candidate's views on important issues that may come before the candidate if elected. One member of the Committee spoke in favor of changing the phrase "pledges or promises" to "statements," which he believed to be a preferable term because of its objective character. Several Committee members acknowledged that the lack of clarity about what might or might not constitute a "pledge or promise" could be the undoing of the provision from a constitutional point of view.

2. Rule 5.02 Permitted Political Activities of Candidates for Judicial Office in Partisan Public Elections.

(a) ("establish a campaign committee pursuant to the provisions of Rule 5.03") The Committee does not disagree with this provision, but questions whether it might be folded into Rule 5.01(d). The Committee also notes that, in light of the next two recommendations, this provision might be a stand-alone paragraph in this Rule.

(b) ("communicate with the public by speaking on their own behalf, or through any media, including, but not limited to, advertisements, websites, or campaign literature;") The Committee believes that this "permission" does not need to be granted, inasmuch as it is nowhere to be recognized as an "otherwise prohibited" activity in the earlier Rule provisions. The Committee recognizes that some may see this as a "safe harbor" for those judges who are searching in the Code for a specific assurance that such activity is acceptable, but finds this not a compelling reason for retaining it.

(c) ("publicly endorse or publicly oppose other CANDIDATES for a position on the same court for which they are running") The Committee notes that this provision could more neatly be moved to Rule 5.01, as an "except" clause of 5.01(d).

3. Rule 5.03 Campaign Committees

The Committee agrees with the Commission's proposal that these provisions from the present Code be retained.

4. Rule 5.04 Activity of Judges Who Become Candidates for Non-judicial Office

The Committee also agrees with retention of these 1990 Code provisions.

5. Rule 6.01 Restrictions on Political Activities of Judges and Candidates for Judicial Office

The Committee disfavored the two prohibitions that are contained in this Rule but not in Rule 5.01, namely, (f) and (g), believing that they are unnecessarily restrictive. With respect to a judicial candidate's identification of himself or herself as a candidate of a "POLITICAL ORGANIZATION," the Committee believes that if this matter is one of particular consequence, it is more appropriately (and commonly) addressed by the election law of a jurisdiction, rather than by an ethics provision of the jurisdiction's judicial code. With the elimination of these provisions, Rule 6.01 (as well as 7.01 and 8.01) does not differ from Rule 5.01 and is unnecessary..

6. Rule 6.02 Permitted Political Activities of Candidates for Judicial Office in Non-partisan Public Elections

The Committee does not support the two provisions of this Rule that differ from those in Rule 5.02, namely, (c) and (d). The Committee feels that even in a non-partisan election, parties should be free to seek endorsements from any entities that make public statements concerning their preferences for judicial offices. In light of the Committee's previously stated position that the subject of matters treated in 6.02(a) and (b) should be treated elsewhere or eliminated, respectively, Rule 6.02 also becomes unnecessary.

Canons 7 and 8

With limited exception, the Committee does not support those restrictions recommended by the Commission that go beyond the restrictions applicable to judges and candidates in partisan elections. As a consequence, it does not believe that there is a need for separate Canons 7 and 8. The Committee would note, however, that in the event the Commission decides to retain these separate Canons, Rule 8.01 sections (h) and (i) would seem to be unnecessary, referring as they do to fundraising and campaign committee activity.

Judicial Code Canon Subcommittees of the Ethics Committee:

Canon 1	Irma Russell and Marcia Goffney
Canon 2	John Ratnaswamy and Thomas Spahn
Canon 3	William Dunn and Steven Krane
Canon 4	E. Fitzgerald Parnell and James Kawachika
Canon 5	Elizabeth Alston and Charles E. McCallum