

2004-2005

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August 29, 2005

Mark I. Harrison  
Chair, ABA Joint Commission on Evaluation of the  
Model Code of Judicial Conduct  
Osborn Maledon, P.A.  
2929 N. Central Avenue, Suite 2100  
Phoenix, AZ 85012

Dear Mr. Harrison:

The ABA Standing Committee on Professionalism is pleased to submit its comments to the Joint Commission to Evaluate the Model Code of Judicial Conduct's proposed drafts of Canons 1, 2 and 3.

**Comments Regarding Canon 1**

**Rule 1.02 Promoting Confidence in the Judiciary**

The Committee commends the Commission for maintaining the judicial precept that judges should act in a manner that promotes public confidence in the integrity, impartiality, and independence of the judiciary. Judges are the cornerstones of public confidence in our system of justice. The public looks to them to be fair, impartial, and to function *at all times* with the utmost integrity.

**Rule 1.03 Impropriety and its Appearance**

The Committee supports the Commission's recommendation that the appearance of impropriety standard be retained. As noted in the Scope provision of the Code, while the Canons may establish the *minimum* standards of conduct, they also are designed to be aspirational, encouraging judicial officers to maintain the highest standards of conduct. The appearance of impropriety standard provides judges with further support for upholding the integrity of the bench, even when they cannot find a specific Canon that addresses the conduct at issue.

The “appearance of impropriety” standard is probably the only provision in the Code that provides a general requirement that judges need to act appropriately at all times. In a society where newspaper headlines do not read “Mr. Smith arrested for DUI” but instead read “*Judge Smith* arrested for DUI,” we as a profession have a responsibility to assure that members of the bench maintain the decorum and integrity of that office at all times. The general obligation to refrain from any appearance of impropriety provides that broad direction. Judges are public figures charged with the very important obligation of assuring public confidence in our system of justice, which means that judges’ behavior must comport with appropriate decorum at all times.

#### **Comments Regarding Canon 2**

##### **Rule 2.05 Bias and Discrimination, Comment [3]**

The Committee suggests that in Comment [3], the word “demeaning” be added after “harassment” in describing the type of speech, gestures or conduct from which judges should refrain. In an ideal world, the Committee would suggest even stronger language regarding judges’ obligations to control *lawyer* conduct in their courtrooms. Nevertheless the addition of “demeaning” would provide sufficient guidance to judges.

##### **Rule 2.08(B) Demeanor and Decorum**

The Committee suggests that this provision be bolstered by requiring judges to be “respectful” to all in the courtroom in addition to being patient, dignified and courteous. From a professionalism perspective, it is appropriate to instruct judges that they not only must be fair and impartial, but courteous and respectful to all who appear in their courts.

#### **Comments Regarding Canon 3**

The title of Canon 3 is “Personal Conduct: A Judge Shall Conduct The Judge’s Personal Affairs to Preserve the Integrity, Impartiality, and Independence of the Judiciary.” However, there is no specific provision under the Canon setting forth the obligation to uphold the honor and dignity of the office at all times. The Committee recommends that Canon 3 be amended to include a specific obligation to maintain the integrity and *decorum of the office at all times* in addition to the specific prohibitions listed. Additionally, the Committee suggests that the absence of a specific Rule setting forth a duty to maintain the integrity and decorum of office at all times, further supports the need to retain the appearance of impropriety standard in Canon 1.

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The Standing Committee on Professionalism appreciates the opportunity to comment on the proposed drafts of the Model Code. If the Joint Commission has any questions regarding the Professionalism Committee's comments, please contact Professionalism Counsel Arthur Garwin at (312) 988-5294 or [agarwin@staff.abanet.org](mailto:agarwin@staff.abanet.org).

Sincerely,

John T. Berry  
Chair, ABA Standing Committee on Professionalism

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