

MEMORANDUM

TO: Mark I. Harrison, Chair,
ABA Joint Commission to Evaluate the Model Code of Judicial
Conduct

FR: Judge J. Thomas Greene, Utah, and Judge James A. Noe,
Washington
Co-Chairs, Senior Lawyers Division Judiciary Committee

RE: Comments on Proposed Canons 3 and 4

DATE: September 29, 2004

The Senior Lawyers Division Judiciary Committee met September 22 by telephone conference and discussed the proposed revisions to Canons 3 and 4. In addition to the co-chairs, Greene and Noe, the following judges participated: Vincent L. McKusick (ME), Louis Condon (SC), Edward Schoenbaum (IL) and Thomas Warren (WA). The following are our comments.

In general, the proposals were carefully drafted and addressed key issues dealing with the conduct of judges in an effort to maintain the confidence and support of the American public so essential to the administration of justice.

We suggest, however, that the Commission review Canon 3.01 (5) and reconsider whether or not a judge should be providing recommendations of any kind. The black letter rule states “A judge shall not lend the prestige of judicial office to advance the private interests of the judge or others.” Paragraph (5) ignores the black letter rule and allows a judge to use the prestige of his/her office for the “private interest” of others. It seems to us that a letter of reference from a judge to a corporation, other institution or individual who may have business before the court is unwise and an unnecessary burden on judges to make decisions on a case-by-case basis. The only possible exception could be recommendations for law clerks who have served the judge as the judge may be the only one who does know the law clerk’s capacities. Even that recommendation has its “red flags.”

In the interest of consistent language and meaning, we suggest the Commission review Canon 3.01 (7) along with 4.07. Paragraph (7) states the judge must not testify voluntarily as a character witness because to do so “may lend” the prestige of the judicial office in “support” of the party for whom the judge testifies. 4.01

(1) states “A judge who testifies voluntarily as a character witness, “lends” the prestige of judicial office to advance the interests of another.” 3.01 states “may lend” the prestige in “support” of the party, where 4.07 uses the language “lends” the judicial office “to advance the interest of another.”

We commend the Commission for the hard work and intellectual effort that has gone into the revisions. We look forward to receiving the remainder of the Commission’s proposals for our review and comment.

MEMORANDUM

TO: Eileen Gallagher
Debra Taylor
George Kuhlman

FROM: Judith Legg,
Senior Lawyers Division

DATE: September 28, 2004

SUBJECT: Comments on Draft Proposal for Canons 3 and 4

I have attached comments from the Senior Lawyers Division's Judiciary Committee regarding Canons Three and Four of the Model Code of Judicial Conduct.

Under separate cover, I have sent the comments to Mark I. Harrison on behalf of the SLD Judiciary Committee.

Thank you for your consideration.

cc: James A. Noe, Jr., Co-Chair
SLD Judiciary Committee

J. Thomas Greene, Co-Chair
SLD Judiciary Committee