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The committee states that these comments reflect the views of the members of the committee rather than the justices of the California Supreme Court

It notes first that the California Code of Judicial Ethics differs in many respects from the Model Code. The California code reflects the judicial experience in this state and has worked well to ensure an ethical judiciary. The committee uses the California code as a standard and offers comments only on certain aspects of the Model Code that relate to provisions in it

Preamble

For the most part, the committee supports the preamble in the Preliminary Draft. The committee disagrees, however, with the emphasis on promulgating “black letter” rules. They believe the focus on black letter rules detracts from the essence of what it means to be a judge. Use of the word “rule” throughout the draft is symbolic of this approach.

Canon 1, Rule 1.01

The committee wholeheartedly agrees the Model Code should retain the “appearance of impropriety” language. To limit the discipline of judges to actual impropriety would preclude addressing conduct that is clearly improper and would adversely affect the administration of justice and undermine public confidence in the judiciary

Canon 2, Rule 2.05

In Comment [3] to Rule 2.05, the Preliminary Draft deletes the word “sexual” before the word “harassment.” The committee believes that California’s approach of explicitly banning sexual harassment is appropriate given increased attention to and alleged incidents of sexual harassment in recent years.

Canon 2, Rule 2.10

The Introductory Report states on page five that several commentators informed the Joint Commission that judges presiding in “specialized courts” are sometimes encouraged or required to engage in communications with individuals and entities outside the court system itself. The committee believes that because of the evolving nature of certain judicial functions, the Joint Commission should consider formulating appropriate rules to govern the conduct of judges during such proceedings.

Canon 2, Rule 2.12

The California code presently contains a disclosure provision nearly identical to the one in the Model Code, and as far as we are aware, it has not caused problems in the areas highlighted in the request for comment.

Canon 3, Rule 3.04

We note that California's canon 2C already prohibits a judge from holding membership in an organization that practices invidious discrimination based upon "sexual orientation." Our canon does not include ethnicity, but that has not previously been raised as an issue in our state. If the ABA includes it, we will review its addition as well. California's bar does not apply to membership in a religious or official military organization, and as long as membership does not violate other canons, "this Canon does not bar membership in a nonprofit youth organization."

Draft comment [4] in the commentary to Rule 3.04 would provide that a judge must immediately resign from an organization to which the judge belongs when he or she learns that the organization engages in invidious discrimination. The 1990 Model Code allowed a judge one year to resign. The committee supports the proposed amendment in the Preliminary Draft providing that judges should resign immediately.

Canon 4, Rule 4.04

Draft rule 4.04(A)(1)(a)(i) would permit judges to solicit funds for an organization if the fundraising is de minimis. Comment [3] states: "De minimis solicitation includes insignificant, incidental, or behind-the-scenes activities that do not use the judge's name or title and situations where the judge's role is no more active or visible than that of other participants." Rule 4.04(A)(2)(ii), as proposed, states that a judge may "assist the organization in ~~planning~~ fundraising" The committee views these changes as one example of an attempt to write black letter rules resulting in confusion and ambiguity.

As to the proposed deletion of the word "planning" in the rule on assisting fundraising, the committee sees a significant distinction between assisting in fundraising and assisting in the *planning* of fundraising, which is permitted in California.

Canon 4, Rule 4.12(A)(3)

Rule 4.12(A)(3) would permit judges to accept invitations to "widely attended events," which is defined in the Terminology section as "a convention, conference, symposium, forum, panel discussion, dinner, reception or similar event that more than [25] persons are expected to attend." The committee is concerned about defining this phrase in terms of numbers rather than in terms of diversity of the attendees.

Canon 5

The committee endorses the general emphasis on ensuring the independence and integrity of the judiciary. They also support the idea of attempting to fashion an election system that enhances impartiality.

