SUMMARY
New York County Lawyers' Association
July 27, 2005.

Canon 5

The New York County Lawyers' Association asks that their comments should in no way be viewed as an attempt to look at this work product in a negative light but rather as an effort to strengthen these excellent proposals.

Rule 5.01(e)

The NYCLA finds that the restriction of judges or candidates for judicial office from purchasing tickets for dinners or other events sponsored by political organizations is a most appropriate one. But it finds the use of the term "personal use" is vague. If the term is meant to limit the purchase of a ticket to one solely for the judge or candidate, then the Rule should state "ticket" rather than the plural. If "personal use" is intended to include family members, a definition of who family members are, for this purpose, is needed.

Rule 5.01(m)

The commends the drafters for their inclusive phrase, " prohibits both judges and judicial candidates from manifesting bias or prejudice "based upon a person's race, gender, religion, national origin, ethnicity, disability, age, sexual orientation or socioeconomic status", although they would suggest that the definition be clarified further by including two additional categories "gender identity and expression" and "marital and parental status."

Rule 5.01(m)

The NYCLA continues to support a ban on conduct that appears to be a judicial pledge, promise or commitment. It is their view that such a proscription does not create an unconstitutionally vague category of restricted speech. They approve the decision of the drafters to make impropriety and its appearance a separate, independently enforceable rule, Rule 1.03. Consistent with that Rule, the concept of appearance to commit, pledge or promise should be incorporated in Rule 5.01(m).

Comment 15

They suggest that the language in Comment 15, which refers to "matters likely to come before the court on which the candidate would serve," be conformed with the language in Rule 5.01(k) and the phrase be changed to "might reasonably be expected."

Comment 18

The NYCLA suggests that language be added to Comment 18 clarifying the definition of family for this purpose.

Rule 5.06(b)

The Association urge the Joint Commission to recognize that in-kind contributions, such as providing space for a campaign headquarters, can be as valuable as and, at times, even more valuable than, cash support. They recommend that in-kind contributions should be subject to the same dollar limitations and reporting requirements as monetary contributions.

Rule 5.06(c)

The NYCLA suggests that the proposal permitting the solicitation of campaign contributions for a specified period following an election be reconsidered. Once a judge has been elected, such contributions are far more likely to be intended to influence the judge or at least to appear to do so.

Rule 5.06(d)

NYCLA urges that in-kind contributions be included within the reporting requirements. They urge that the aggregate value of contributions be reported.

Comment 3

The essential prohibition "it would not be appropriate to solicit a lawyer or litigant with cases currently pending or impending before a judge-candidate for a contribution to the judge's campaign for re-election or for higher judicial office" has been dropped from the Comments in the most recent draft. The NYCLA urges that it be restored. Solicitation of lawyers or litigants who are involved in a pending or impending case before the judge for whom campaign contributions are sought undermines the public's confidence in the judicial process and, without question, gives rise to at least appearances of impropriety and lack of impartiality. Further, they suggest that the ban be extended to cover any knowing solicitation of the lawyer's firm and the law firm's employees." We also suggest the word "cases" be replaced with "a case."