

SUMMARY

Philadelphia Bar Association
Professional Responsibility Committee
Nancy Winkleman

March 14, 2006; March 31, 2006

The Philadelphia Bar Association submitted comments on March 14, 2006 and now states that its Board of governors has approved those comments, making them the official position of the PBA, with two additions that have been integrated into this summary.

Canon 1

Rule 1.02

The Philadelphia Bar's Professional Responsibility Committee is concerned that the mandate that a judge shall avoid the appearance of impropriety, while a useful aspirational goal, is too vague to be enforced through judicial disciplinary procedures. They urge removing this standard from the black letter of the rule and moving it to the Rule's Comment.

Canon 2

Rule 2.08 (A)

The Philadelphia Committee suggests adding a provision requiring a judge to give his or her full and undivided attention to the matter before the court.

Rule 2.08 (B)

The Committee offered a stylistic suggestion to make the use of the modifier "court" before the noun officials consistent though the rule.

Rule 2.08 Comment (3)

The Committee agrees with the Commission that a judge should have the right to debrief jurors after a trial.

Rule 2.09 Comments (2) and (3)

The Philadelphia Bar Association recommends more specificity in the rule regarding a judge conducting settlement negotiations and suggests areas of greater and lesser concern.

Rule 2.10 (B)

The Association supports the current draft provisions regarding a judge self-educating him or herself on a matter and suggests clarification so that legal research performed through electronic means is clearly permitted.

Rule 2.12 (A)(1) and (5)

The Philadelphia Bar Association opines that these two rules should result in recusal, not disqualification. It reiterates certain of its earlier comments from October 12, and refers the Commission back to those comments.

Rule 2.12 (A) (4)

The Association recommends that the rule be clarified so that it is clear that all contribution from all parties and all lawyers on one side of a case are aggregated for purposes of the rule.

Rule 2.12 (A)(6)

The Association suggests that some time constraints be added to sub-sections (a) and (b).

Rule 2.16

The Philadelphia Bar Association would extent the restriction to contributions made by the lawyer's spouse or domestic partner as well as by the lawyer.

Rule 2.19

The Association recommends the inclusion of the phrase "or initiate" after the mandate that a judge take appropriate action in response to a lawyer or judge's disability. It would enlarge the list of possible actions to be taken in such circumstances and states that the ability to have an impaired judge removed from proceedings be addressed by this rule.

Canon 3

Rule 3.01 Comment 5; Rule 3.04 Comment 1

The Philadelphia Bar Association offered two comments on drafting to clarify the intent of the rules under Canon 3 and to achieve internal consistency.

Rule 3.04 Comment 2

The Association offers a specific addition to Comment two that explains which organizations can be said to practice invidious discrimination.

Canon 4

Rule 4.04

The Association raises the fact that the distinction between civic or charitable organizations and of private organizations is not an easy or bright line. It proposed that the phrase "civic or charitable" be defined in the Code.

Rule 4.04 Comment 2

The Philadelphia Bar Association proposed specific language so that the Comment clearly supports judicial encouragement of lawyers' pro bono activities.

Rule 4.06

The Association finds that the phrase "unless expressly authorized by law" as used both in the rule and the comment to be unclear. It suggests examples be given of when a judge's participation in arbitration/mediation activities is and is not permitted.

Rule 4.10

The Association suggests an aspirational comment be added to this rule cautioning judges about the effect their personal relationships and acceptance of gifts may have on the litigants experience of fairness and of the impartiality of the tribunal.