

**NCJFCJ 71st ANNUAL CONFERENCE
JULY 27-30, 2008
Norfolk, Virginia**

Resolution No. 13

**RESOLUTION IN SUPPORT OF SPECIFIC CHANGES TO THE MODEL
CODE OF JUDICIAL CONDUCT**

WHEREAS, The ABA Model Code of Judicial Conduct was adopted by the ABA House of Delegates in February 2007; and

WHEREAS, the ABA House of Delegates accepted the changes to the Model Code without consideration of comments contained in Joint Resolution No. 8 of the Conference of Chief Justices (CCJ) and the Conference of State Court Administrators (COSCA); and

WHEREAS, in Joint Resolution No. 8, CCJ and COSCA believe that the Model Code should be strengthened to acknowledge and recognize that the leadership responsibilities of judges do not interfere with the adjudication process; and

WHEREAS, Canon 4.B. Avocation Activities, has been eliminated from the ABA Model Code of Judicial Conduct; and

WHEREAS, the Board of Trustees of the National Council of Juvenile and Family Court Judges (NCJFCJ) has approved Resolution No. 8 wherein CCJ and COSCA believed that the following concepts would strengthen and provide the needed specificity to encourage judicial leadership:

- **Rule 2.10: Ex Parte Communications** – language should be added similar to 2.10(A)(1)(2) that permits consultation with a problem-solving court team as long as the parties have consented and the practice is permitted by state law;
- **Rule 2.12: Disqualification** – language should be added to clarify that official communications received in the course of performing a judicial responsibility and knowledge gained in training programs or from experience do not create per se a basis for disqualification;
- **Rule 2.14: Supervision of Staff** – language should be added to recognize that a judge has responsibility to seek the necessary time, staff, expertise and resources needed to discharge the judge's judicial and administrative responsibilities;

- **Civic Responsibilities** – language should be added to Canon 4 recognizing a judge's civic responsibilities, including (1) providing leadership in: (a) identifying and resolving issues of access to justice; (b) developing public education programs; (c) engaging in community outreach activities to promote the fair administration of justice; and (d) convening, participating or assisting in advisory committees and community collaborations devoted to the improvement of the law, the legal system, the provision of services and/or the administration of justice and (2) publicly or individually endorsing project goals concerning the law, the legal system, the provision of services or the administration of justice, in principle, and actively supporting the need for funding of such organization or governmental agency; and

WHEREAS, the NCJFCJ Board of Trustees supports the inclusion of the following sections of the ABA Model Code into state codes of judicial conduct, all of which are vital to the work of the National Council and its members:

1. **CANON 2. RULE 2.1 COMMENT [2]** re: judicial participation in activities that promote public understanding and confidence in the judicial system.

It states as follows:

Although it is not a duty of official office unless prescribed by law, judges are encouraged to participate in activities that promote public understanding of and confidence in the justice system.

2. **CANON 2. RULE 2.2 COMMENT [4]** re: the judge can make reasonable accommodations to ensure self-represented litigants have the opportunity to have their matters fairly heard without violating the neutrality requirement.

It states as follows:

It is not a violation of this Rule for a judge to make reasonable accommodations to ensure pro se litigants the opportunity to have their matters fairly heard.

3. **CANON 2. RULE 2.9 COMMENT [4]** re: problem-solving courts and *ex parte* communications.

It states as follows:

A judge may initiate, permit, or consider *ex parte* communications expressly authorized by law, such as when serving on therapeutic or problem-solving courts, mental health courts, or drug courts. In this capacity, judges may assume a more interactive role with parties, treatment providers, probation officers, social workers, and others.

4. **CANON 3. RULE 3.1 COMMENTS [1] and [2]** re: extra-judicial activities are fine and promote public understanding of and respect for courts and the judicial system.

COMMENT [1] states as follows:

To the extent that time permits, and judicial independence and impartiality are not compromised, judges are encouraged to engage in appropriate extrajudicial activities. Judges are uniquely qualified to engage in extrajudicial activities that concern the law, the legal system, and the administration of justice, such as by speaking, writing, teaching, or participating in scholarly research projects. In addition, judges are permitted and encouraged to engage in educational, religious, charitable, fraternal or civic extrajudicial activities not conducted for profit, even when the activities do not involve the law. See Rule 3.7.

COMMENT [2] states as follows:

Participation in both law-related and other extrajudicial activities helps integrate judges into their communities, and furthers public understanding of and respect for courts and the judicial system.

5. **CANON 3. RULE 3.2 COMMENT [1]** re: judges appearing before governmental bodies and executive or legislative branch officials on matters of law, the legal system, and the administration of justice.

It states as follows:

Judges possess special expertise in matters of law, the legal system, and the administration of justice, and may properly share that expertise with governmental bodies and executive or legislative branch officials; and

WHEREAS, Canon 4B. Avocational Activities, provides that “a judge may speak, write, lecture, teach and participate in other activities concerning the law, the legal system, the administration of justice and non-legal subjects...” and that the removal of Canon 4B. as black letter law results in judges no longer being able to rely upon Canon 4B as authority to “...speak, write, lecture, teach and participate in other activities concerning the law, the legal system, the administration of justice and non-legal subjects, subject to the requirements of this Code.”

THEREFORE, BE IT RESOLVED, that the Membership of the National Council of Juvenile and Family Court Judges adopt verbatim Resolution No. 8 of the Conference of Chief Justices and the Conference of State Court Administrators dated August 2, 2006; and

BE IT FURTHER RESOLVED, that Canon 4B. be retained in state codes of judicial conduct; and

BE IT FURTHER RESOLVED, that the members of the NCJFCJ support Canon 2. Rule 2.1 Comment [2]; Canon 2. Rule 2.2 Comment [4]; Canon 2. Rule 2.9 Comment [4]; Canon 3. Rule 3.1 Comments [1] and [2]; Canon 3. Rule 3.2 Comment [1]; and

BE IT RESOLVED, that the Membership of the NCJFCJ encourage their state judicial commissions to adopt the language contained in this resolution.

Adopted this 29th day of July, 2008

By the Membership Assembled in Conference

In Norfolk, Virginia