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NEW JERSEY STATE BAR ASSOCIATION

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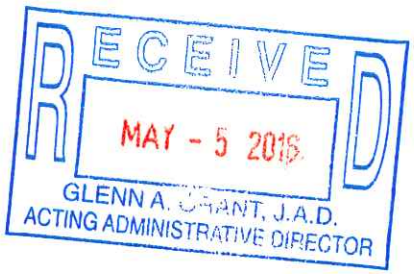

Honorable Glenn A Grant, J.A.D.
Acting Administrative Director of the Courts
Hughes Justice Complex
Box 037
Trenton, NJ 08625-0037

Re: Comments on Proposed Revised Code of Judicial Code

Dear Judge Grant:

Please thank the Court for allowing the New Jersey State Bar Association ("NJSBA") the opportunity to review the revisions contained in the Proposed Revised Code of Judicial Conduct, based on the 2014 Report of the Supreme Court Ad Hoc Committee on Code of Judicial Conduct ("Report").

The following are the NJSBA's recommendations and comments:

The NJSBA supports many of the recommendations contained in the Report and subsequent proposed revised code.

As a general comment, the NJSBA believes the proposed revisions will bring more certainty to the Judicial Code. One example of that is the change from "should" to "shall" in every Canon and Rule where it previously existed, except in Canon 1. We applaud the manner in which many concepts described generally in the existing Code are spelled out more clearly in the revisions.

Regarding specific rules, the NJSBA supports the new standard for judges' reporting of lawyers for ethical violations in Rule 3.15. The current code in Section 3(B)(3) says a judge "who receives information indicating a substantial likelihood" an attorney has violated the RPCs should take appropriate action (including possibly reporting the lawyer). The new Code would set the standard for reporting as being when a judge receives "reliable information indicating a substantial likelihood" an attorney has violated the RPCs. We believe this raises the bar and makes clear that a judge should rely only on facts and may disregard rumor and innuendo.

The NJSBA also strongly supports the addition of language in Rule 4 expressly permitting judges to encourage lawyers to provide pro bono services. The NJSBA believes it is critical to encourage members of our profession to provide low-cost or pro bono services to clients, which will help close the ever-widening justice gap that exists across the United States, especially in New Jersey.

The NJSBA has some concerns with other rule proposals in the committee report and proposed revised code.

One such proposal is Rule 3.17(B)(2), which addresses disqualification when the judge has a financial interest. It is substantively unchanged in the proposed revisions, except for the addition of a definition of the term "financial interest." The same term appears again in 3.17(B)(3)(c), which addresses disqualification for personal relations. It is not clear if the definition in subpart (B)(2) applies to subpart (B)(3)(c). In the existing Code, the location of the definition applies to the entire section on disqualification. For clarity, the NJSBA recommends that the rule be amended to make clear the definition applies to both subsections. This can be done by changing the last phrase to read "...a financial interest in an enterprise, ***as defined above,*** related to the litigation."

The NJSBA's other area of concern is with the proposed changes to Rule 7(A)(1), which addresses bar membership and holding office in a political organization by a judge. The existing rule states a judge should not "act as a leader or hold any office in a political organization." The proposed rule bars judges from "***holding membership*** or office in a political organization" (emphasis added). The original rule focuses on a judge's actions rather than mere membership in a political organization. The language in the proposed rule appears overly broad and possibly problematic under the First Amendment. It could potentially be interpreted to mean that a judge cannot be a declared registered party voter. We do not believe that is the intent.

Perhaps one way to address this issue is to provide a definition for "political organization," which is not defined in the proposed code. The definition may not have mattered when the focus was on specific activity, but in the revised code if there is a general ban on membership, more specific guidance is warranted. The NJSBA recommends a definition could provide guidance and address the situations the rule intends to cover. The NJSBA further notes that, to the extent membership in a particular organization raises concerns about the judge generally or in a specific case, there are mechanisms to address that under Canons 3 and 5.

The NJSBA appreciates and values the opportunity to participate in the rule-making process, which has a significant impact on the practice of law in New Jersey. If you have any questions regarding our recommendations, please do not hesitate to contact me.

Respectfully yours,

Miles S. Winder III, Esq.
President

/dms
cc: Thomas H. Prol, Esq., NJSBA President-Elect
Angela C. Scheck, NJSBA Executive Director