

## ABA Adopts Revised Model Code of Judicial Conduct

On February 12, 2007, the American Bar Association's House of Delegates approved a new Model Code of Judicial Conduct based on the recommendations of the ABA Joint Commission to Evaluate the Model Code of Judicial Conduct. The revised code replaces the 1990 version and represents three years of extensive deliberations that included public hearings around the country. The 1990 Model Code served as the basis for the judicial code currently used in Arizona.

The new code was not adopted without some last-minute intrigue. Shortly after the joint commission filed its final report in December, a group of commission members and others who opposed the appearance of impropriety standard attempted to remove that provision from the final draft presented to the House of Delegates. This move prompted a strongly-worded resolution from the National Conference of Chief Justices opposing any revised version of the model code that did not include the standard, both as an aspirational goal and as the basis for disciplinary enforcement. In addition, Robert Tembeckjian, the administrator of the New York State Commission on Judicial Conduct and an advisor to the joint commission, resigned in protest, a move that was reported on the editorial page of the *New York Times* just before the ABA meeting.

The appearance of impropriety issue had been extensively debated during the commission's public hearings, and most observers thought that the matter had been resolved in favor of keeping the standard in the code. When the American Judicature Society learned of the latest challenge, it distributed a memorandum to the House of Delegates in advance of the meeting, noting that "the proposed model code takes several substantial steps backward in the quest for an accountable judiciary, most significantly by effectively eliminating the appearance of impropriety standard from the code." The AJS viewed this as "an unwarranted erosion of one of the necessary components of the highest standards of ethical behavior to which judges should be held."

In the end, the ABA approved the new model code with the appearance of impropriety standard intact. *See* Canon 1 below. Although the new model code will not be available in print for several months, the ABA's action marks the beginning of the process that each state, including Arizona, will most likely undertake to determine if its existing Code of Judicial Conduct needs revision.

There are many changes in the new code, the most obvious of which is a shift from canons to rules. Black letter canons still appear at the beginning of each section, but everything else appears in numbered rules or commentary. The canons have been reduced from five to four:

**Canon 1**

A judge shall uphold and promote the independence, integrity, and impartiality of the judiciary, and shall avoid impropriety and the appearance of impropriety.

**Canon 2**

A judge shall perform the duties of judicial office impartially, competently, and diligently.

**Canon 3**

A judge shall conduct the judge's personal and extrajudicial activities to minimize the risk of conflict with the obligations of judicial office.

**Canon 4**

A judge or candidate for judicial office shall not engage in political or campaign activity that is inconsistent with the independence, integrity, or impartiality of the judiciary.

Old Canons 1, 2 and 3 were combined and reconfigured as Canons 1 and 2. Old Canons 4 and 5 survived largely intact, but were renumbered as Canons 3 and 4. Most of the old Canon 3 provisions (e.g., adjudicative responsibilities, ex parte communications, handling cases promptly, disqualification, etc.) were rewritten and relocated to Canon 2.

In addition to these structural changes, there are numerous substantive changes to the text, including new rules and comments. Among the new rules are Rule 2.14 dealing with impaired judges, 3.7(B) allowing judges to “encourage lawyers to provide pro bono publico legal services,” and 4.2(A)(3) requiring judicial candidates to personally approve the contents of campaign literature and other election materials. New comments provide examples of improper bias, define harassment, and indicate that a judge may “make reasonable accommodations to ensure pro se litigants the opportunity to have their matters fairly heard” without violating the rule requiring impartiality.

The new Model Code of Judicial Conduct, as adopted, and a description of revisions to the Model Code may be viewed on the AJS website [www.ajs.org/ethics](http://www.ajs.org/ethics) by clicking on Evaluation of Model Code.

## **Changes in Commission Rules**

On September 18, 2006, the supreme court amended the commission's rules by inserting "certified" before "court reporter" and "transcript" in Rule 27(9) and (10), and Rule 28 (a) and (b). A similar change was made to various Arizona rules of procedure. An up-to-date version of the commission's rules is posted on the commission's website: [www.supreme.state.az.us/ethics](http://www.supreme.state.az.us/ethics)

## **Membership Changes**

Judge **Louis Frank Dominguez** (Municipal Court, Phoenix), Judge **Sherry L. Geisler** (Justice Court, Round Valley), and **Catherine M. Stewart** (Office of the Attorney General, Tucson) were appointed to the Commission on Judicial Conduct, replacing Judge **Larry Imus** (Justice Court, Kingman), Judge **Douglas Stanley** (Municipal Court, Yuma), and **Harold Watkins** (attorney, Flagstaff).

## **Annual Report of the Commission**

The Commission on Judicial Conduct received 798 inquiries and 320 complaints in 2006. It dismissed 45 cases with confidential comments reminding the judges of ethical obligations or recommending changes in behavior or procedures, and public reprimands were issued in eight cases. The commission filed three formal recommendations with the supreme court during the year, resulting in the public censure of two municipal judges and a requirement that one of them receive additional training. The remaining recommendation, to censure a justice of the peace, is currently pending before the Supreme Court.

The Supreme Court's Judicial Ethics Advisory Committee, which is staffed by the commission, issued six formal opinions during the year and responded to 291 requests for informal advice on ethical issues.