



p 517-346-6300

p 800-968-1442

f 517-482-6248

www.michbar.org

306 Townsend Street

Michael Franck Building

Lansing, MI

48933-2012

February 29, 2012

Corbin Davis
Clerk of the Court
Michigan Supreme Court
P.O. Box 30052
Lansing, MI 48909

Re: ADM File No. 2005-11; Proposed Alternative Amendments of the Code of Judicial Conduct published for comment by order entered November 28, 2011

Dear Clerk Davis:

The State Bar of Michigan appreciates the Michigan Supreme Court's efforts to refine proposals to amend the Michigan Code of Judicial Conduct in response to comments submitted to the November 23, 2010, order entered in this file. The State Bar supports the notion that judges should be able ethically to participate more in their communities, a concept articulated in both versions of the proposed changes. The State Bar finds **Alternative B** to be more clearly written and supports its adoption with some amendments, described below.

The changes to Canon 2C clarifying that judicial participation in activities allowed in Canons 4 and 5 does not violate the principle that a judge should not use the prestige of office to advance personal business interests or those of others are positive. It is apparent that the new language was intended to be appended to the second sentence rather than the third sentence of the paragraph, and the Bar supports that change.

Canon 5A(2) and Canon 5A(3), when read together, lead to somewhat contradictory or confusing conclusions about what a judge can and cannot do. As written, Canon 5A(2) and (3) prohibit a judge who may be listed on letterhead that is used to publicize an upcoming event from being a speaker at the event if the event would raise funds for the organization. It is difficult to understand why being on letterhead for a general appeal by an organization is permissible, but having a judge's name and title on material advertising an organization's fundraising event at which the judge will speak or be honored is impermissible. To reconcile the two provisions, the State Bar proposes that paragraph Canon 5A(3) be amended as follows:

- (3) appearing or speaking at, receiving an award or other recognition at, being featured on the program of, and permitting his or her title to be used in connection with an event of such an organization or entity, ~~but if the event serves a fundraising purpose, the judge may not allow the judge's name or title to be used in advertising the event;~~

In addition, the Bar believes that the leading statement of Canon 5 would be improved with the addition of the following language:

Canon 5. A Judge Should Regulate Participation in Extrajudicial Activities and Acceptance of Gifts *to Minimize the Risk of Conflicts with Judicial Duties*

With respect to **Alternative A**, the Bar endorses the additional language in Canon 2C clarifying that anything permitted in the new Canon 4 does not violate the prohibition pertaining to the use of prestige of office. Should the Supreme Court determine to adopt **Alternative A**, the State Bar proposes amending the proposed language as follows.

The movement of existing Canon 7C(1) language to a new Canon 2G under the general rubric of, “A Judge Should Avoid Impropriety and the Appearance of Impropriety in All Activities,” arguably broadens its application to “*any* contribution of money...for a judge’s benefit for any purpose whatever,” which is perhaps not what was intended. [Emphasis added.] Taken literally, a judge could not receive a salary without violating this language, as the parenthetical reference to what would be Canon 5 (currently, Canon 6) only addresses money received for quasi- and extra-judicial activities – not money received for *judicial* activities. Moreover, absent any cross-reference to what is currently numbered as Canon 7B (which would be renumbered as Canon 6 in **Alternative A**), the language of proposed paragraph Canon 2G conflicts with a judge’s or judicial candidate’s ability to establish campaign committees that are able to solicit funds for the judge’s benefit. For those reasons, the State Bar believes the language is best left in Canon 7.

If the Court nonetheless believes the concepts are better placed in Canon 2, then the State Bar proposes the following rewrite of new Canon 2G (with additional language *italicized and underlined*):

Subject to the provisions of Canon 6B(2)¹, no judge, or other person, party, committee, organization, firm, group, or entity may accept any contribution of money or of a tangible thing of value, directly or indirectly, to or for a judge’s benefit for any purpose whatever, including, but not limited to, contributions for a campaign deficit, expenses associated with judicial office, a testimonial, an honorarium (other than for services, subject to Canon 5), or otherwise.²

Noting the incorporation of what was the leading statement of Canon 5 as an additional sentence to the first paragraph of Canon 4, the State Bar believes the sentence should have more prominence and be linked to the listed activities below. For that reason, the State Bar suggests that the statement become the first sentence of the next paragraph, combined with the existing sentence in that paragraph as follows:

A judge should regulate extrajudicial activities to minimize the risk of conflict with judicial duties, and, considering that, a judge, subject to the proper performance of judicial duties, may engage in the following quasi-judicial duties:

¹ This presumes all other changes as set forth in **Alternative A** are adopted, which would result in the renumbering of Canon 7 as Canon 6.

² The proposed deletion of “party, committee, organization, firm, group,” is made because the Bar believes the word “entity” sufficiently addresses all of those categories as well as others that might not be specifically listed.

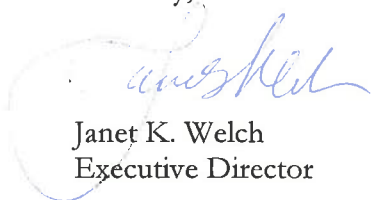
The State Bar finds the last two sentences of new paragraph Canon 4D³ inconsistent with the language that precedes them and, for that reason, proposes that they be deleted (consistent with changes described above if **Alternative B** is adopted).

The State Bar also believes that a judge should be able to have involvement in judicial associations without being precluded from carrying out the duties that might be associated with serving as an officer or director, which would include communicating with members about the payment of organizational membership dues and fees associated with conferences and educational programming. The State Bar suggests that a clarification be included at the end of the new paragraph Canon 2C, if Alternative A is adopted, and at the end of Canon 7C, if Alternative B is adopted. In either case, the additional sentence would read:

Requests for payment of membership dues or fees in a judicial association do not constitute solicitation of funds for purposes of this provision.

Finally, the State Bar notes, without making a specific recommendation for an amendment, that the \$100 per lawyer limitation set forth in the current Canon 7B(2) represents a ceiling whose value has been lowered significantly by inflation since its adoption. Also without making a specific recommendation for amendment, the State Bar calls attention to the difficult position in which a judge is placed by the resignation requirement set forth in current Canon 7A(3) when coupled with the Constitutional requirement that a person be out of office for a year before running for office.

Sincerely,



Janet K. Welch
Executive Director

cc: Anne Boomer, Administrative Counsel, Michigan Supreme Court
Julie I. Fershtman, President

³ The referenced sentences read: "A judge may allow his or her name or title to be used in advertising an event of such an organization that is not a fundraising event. A judge may not allow the judge's name or title to be used in advertising the event if it is a fundraising event, unless the judge's public participation is limited to serving only as a member of an honorary committee or joining a general appeal on behalf of the organization."