

**BRIEF SUMMARY OF COMMENTS  
OF THE SECTION ON COURTS, LAWYERS  
AND THE ADMINISTRATION OF JUSTICE CONCERNING  
THE PROPOSED CODE OF JUDICIAL CONDUCT  
FOR THE DISTRICT OF COLUMBIA**

The Section on Courts, Lawyers and the Administration of Justice of the District of Columbia Bar, including its Committee on Court Rules, submits comments to the Joint Committee on Judicial Administration of the District of Columbia Courts. The Joint Committee sought public comments on the recommendations of the Advisory Committee on Judicial Conduct to adopt the American Bar Association Model Code of Judicial Conduct (1990), with amendments. We generally support the recommendations of the Advisory Committee, including the recommendations that (a) judges' names should not appear on letterheads used for fundraising, (b) judges be allowed to solicit from private fund-granting agencies (but not from the general public, including lawyers) money for private organizations devoted to the improvement of the law, the legal system, or the administration of justice.

However, we recommend against the proposed exception to the general restriction on political activity that would allow a judicial candidate to "establish committees of responsible persons to seek support for his or her candidacy," because this provision would encourage the sort of organized campaigning for judicial office which the Code generally seeks to eliminate. Subject to one important condition, we do not oppose the Advisory Committee's proposal that judges not be automatically disqualified if the financial or other interest of a judge or a judge's family member in a case is *de minimis*. If this exception to the general rule of disqualification is adopted, the judge should be required to give the parties notice of the nature of the financial interest that the judge considers *de minimis*.

**SECTION ON COURTS, LAWYERS AND THE ADMINISTRATION OF JUSTICE  
OF THE DISTRICT OF COLUMBIA BAR**

**COMMENTS OF THE SECTION ON COURTS, LAWYERS  
AND THE ADMINISTRATION OF JUSTICE CONCERNING  
THE PROPOSED CODE OF JUDICIAL CONDUCT  
FOR THE DISTRICT OF COLUMBIA**

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Committee on Court Rules

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The views expressed herein represent only those of the Section on Courts, Lawyers and the Administration of Justice of the District of Columbia Bar and not those of the Bar or its Board of Governors.

**COMMENTS OF THE SECTION ON COURTS, LAWYERS  
AND THE ADMINISTRATION OF JUSTICE CONCERNING  
THE PROPOSED CODE OF JUDICIAL CONDUCT  
FOR THE DISTRICT OF COLUMBIA**

The Joint Committee on Judicial Administration of the District of Columbia Courts sought public comments on the recommendations of the Advisory Committee on Judicial Conduct to adopt the American Bar Association Model Code of Judicial Conduct (1990), with amendments. The Section of Courts, Lawyers and the Administration of Justice of the District of Columbia Bar, including its Court Rules Committee, generally supports the recommendations of the Advisory Committee. We disagree with only one recommendation, and advise adding one condition to another.

The District of Columbia Bar is the integrated bar for the District of Columbia. Among the Bar's sections is the Section on Courts, Lawyers and the Administration of Justice. The Section has a standing Committee on Court Rules, whose responsibilities include serving as a clearinghouse for comments on proposed changes to court rules. Comments submitted by the Section represent only its views, and not those of the D.C. Bar or of its Board of Governors.

The revised ABA Model Code of Judicial Conduct reflects a comprehensive and detailed review of the 1972 Code of Judicial Conduct and of its implementation. The Advisory Committee on Judicial Conduct carefully evaluated the revised Code. The Section agrees with its decision to adopt that Code with relatively few changes. These comments address

four issues, most of which involve a recommended departure from the Model Code.

1. The Section supports the Advisory Committee's recommendation that, contrary to the position embodied in the ABA's 1990 Model Code, judges' names should not appear on letterheads used for fundraising. The strict policy against any actual or perceived judicial involvement in fundraising by private organizations is valid and important. We agree that this principle should extend to prohibit use of judges' names on letterheads used for fundraising.

2. Because of the importance of this policy against judicial involvement in fundraising, the Section has some reservations about the Advisory Committee's recommended exception in Canon 4 C (3)(B)(i) that would allow judges to solicit from private fund-granting agencies (but not from the general public, including lawyers) money for private organizations devoted to the improvement of the law, the legal system, or the administration of justice. The stated intent of the exception is to facilitate fund-raising from private entities that would not feel importuned improperly by an approach from a judicial officer. Notwithstanding these reservations, the Section does not oppose this recommendation because it has no sufficient empirical basis to question the factual premise that these organizations would not feel that a judicial officer overreached by joining in a solicitation for funds. Only limited funding is available for organizations devoted to the improvement of the law, the legal

system, or the administration of justice, and such organizations in the District of Columbia should not be at a disadvantage in soliciting funds for these important activities.

3. The Section does not oppose the Advisory Committee's recommendation to amend the Model Code to permit candidates seeking appointment to judicial office to seek support from organizations or individuals to the extent not only requested or required by the nominating or screening body but also "customarily received by" such a body. However, we disagree with the proposed exception to the general restriction on political activity that would allow a judicial candidate to "establish committees of responsible persons to seek support for his or her candidacy." This provision would encourage the sort of organized campaigning for judicial office which the Code generally seeks to eliminate. Individual letters to the nominating commission or the President adequately and appropriately inform the process, but without adding anything of value to such individual expressions of support, establishment of formal committees could contribute to a campaign atmosphere. In addition, the term "responsible persons" is very subjective.

4. The Advisory Committee decided to recommend adopting the provision in the ABA Model Code that does not require disqualification if the financial or other interest of a judge or a judge's family member in a case is *de minimis*. "*De minimis*" is defined to mean "an insignificant interest that could not raise reasonable question as to a

judge's impartiality." As the Advisory Committee recognized, there are strong arguments in favor of continuing an unqualified rule prohibiting judges from presiding in cases in which they or their family members have any financial or other interests, regardless of the size of that interest. Public confidence in the judicial system requires the fact and appearance of judicial impartiality. The Section is reluctant to recommend any change in the current rule of automatic disqualification in the absence of (a) any evidence that it has created practical problems in the assignment of judges in the District of Columbia and (b) information about the experiences of jurisdictions with less stringent rules.

Nevertheless, the Section does not oppose this "more than *de minimis*" qualification, provided that the judge gives the parties notice of the nature of the financial interest that the judge considers *de minimis*. With this added disclosure requirement, the Section supports this provision because (a) the substantial expansion of the types of relatives covered by the new rule makes a rule of automatic disqualification less appropriate, (b) judges have generally exercised appropriately discretion related to other disqualification issues, and (c) parties will understand when a particular financial interest is *de minimis*.