

Resolution 3

Opposing the Report of the ABA Joint Commission to Evaluate the Model Code of Judicial Conduct in Light of its Failure to Provide for Enforceability of the Canon on 'Appearance of Impropriety'

WHEREAS, in July 2003 the American Bar Association created a Joint Commission to Evaluate The Model Code of Judicial Conduct which operated under the auspices of the ABA Standing Committees on Ethics and Professional Responsibility and on Judicial Independence; and

WHEREAS, the Joint Commission's process has been extensive and open, and the chair and members of the Joint Commission have met on numerous occasions with work groups and committees of the Conference of Chief Justices to report on the work of the Commission and to seek insight and feedback from members of the Conference; and

WHEREAS, the Joint Commission's Report evidenced a careful evaluation of the Model Code based upon the extensive collective experience of judges with the existing Code and addresses specific questions stemming from new issues in the judicial selection process, the development of new types of courts and the increasing frequency of self-represented litigants in courts; and

WHEREAS, the American Bar Association House of Delegates will consider the Report at the upcoming 2007 ABA Midyear Meeting; and

WHEREAS, once the House of Delegates has approved a revised version of the Model Code, the merits of the final recommendations of the ABA will be ripe for consideration by the highest court of each jurisdiction;

NOW, THEREFORE, BE IT RESOLVED that the Conference of Chief Justices opposes any revised version of the Model Code of Judicial Conduct that does not include a provision requiring avoidance of impropriety and the appearance of impropriety both as an aspirational goal for judges and as a basis for disciplinary enforcement; and

FURTHER, BE IT RESOLVED that without speaking to the merits of any of the other revisions proposed by the Joint Commission, the Conference of Chief Justices respectfully encourages the House of Delegates to amend the proposed revised Code as described above, and if so amended, to act expeditiously in its consideration of the Joint Commission's Report and Recommendations, at which time the Conference can commend to its members the revisions as a foundation upon which states can build to improve and clarify the standards of conduct for the judiciary.

Adopted as proposed by the Professionalism and Competence of the Bar Committee of the Conference of Chief Justices on February 7, 2007.