

May 7, 2004

The Honorable Dennis W. Archer
President
American Bar Association
740 15th St N.W.
Washington DC 20005

Dear Mr. Archer:

We were disappointed to learn that the Joint Commission to Evaluate the Model Code of Judicial Conduct is taking action to weaken the Model Code by changing the obligation “to avoid impropriety and the appearance of impropriety in all activities” from a strict requirement into a relaxed aspirational goal. We understand the Commission is considering simply incorporating “impropriety” language—which stands alone in the current Code—into a general discussion of a judge’s duty to comply with the law. This significant alteration would be a grave error.

To ensure that there is strong public confidence in the judiciary, the avoidance of appearance problems must be an independently enforceable provision. We share Commission member Thomas Fitzpatrick’s concern that this “loosey-goosey term” requires elucidation—but rather than weakening what is already a rather ambiguous requirement, we urge the Commission to clearly define the phrase and set forth precise guidelines. When I testified before the Commission in December, I noted that specific financial disclosure requirements and clear limitations on privately-funded judicial education seminars would go a long way toward helping judges avoid appearance problems.

During a time in which Congress has increased the financial reporting requirements of attorneys and corporate chief executives, it is astonishing that this Commission would even consider a rule change that would water down the obligations of some of this nation’s most powerful and influential officers. As an institution that sets the standard for state judiciaries, the ABA should set forth firm guidelines that assist judges avoid circumstances in which objectivity could be reasonably questioned. This is not simply a goal to which members of the judiciary should *aspire* or an afterthought that merely warrants a passing reference. Rather, this is an obligation that strikes at the very core of Americans’ confidence in the impartiality and integrity of statewide judiciaries.

As the Honorable Abner J. Mikva, former Chief Judge of the U.S. Court of Appeals for the D.C. Circuit, has stated, “For the system to work as it should, the judges must *be perceived* to be honest, to be without bias, to have no tilt in the case that is being heard.”

We urge the Joint Commission to resist retreating from a clear requirement that judges avoid the appearance of impropriety. Instead, the Commission’s work should be focused on clarifying and strengthening guidelines that help judges comply with this critical standard.

Sincerely,

Suzanne M. Mishkin
Associate Counsel