

From: [Michelle Burns](#)
To: [AO Code and Conduct Rules](#)
Subject: Michelle Burns on behalf of the Ninth Circuit Magistrate Judges' Executive Board - commenting on Judicial Conduct Rules
Date: Tuesday, November 06, 2018 5:21:07 PM

Dear Members of the Committee on Judicial Conduct and Disability;

I write in my capacity as Chair of the Ninth Circuit Magistrate Judges' Executive Board in support of the oral and written testimony of Chief District Judge Lawrence O'Neill, United States District Court, Eastern District of California, on behalf of the Judicial Council of the Ninth Circuit, Chief Circuit Judge Sidney R. Thomas, and himself. At the public hearing on Tuesday, October 30, 2018, Chief Judge O'Neill raised concerns relating to the following proposed rule changes:

I. Proposed Judicial-Conduct Rule 4(a)(6). Failure to Report or Disclose. Our Board agrees with the concerns expressed regarding the mandatory disclosure requirement, and supports the alternative language proposed, and also the movement of the remainder of the Committee's Proposed Rule into the Commentary section.

II. Proposed Judicial-Conduct Rule 4(a)(3). Discrimination. Our Board agrees with the concern expressed regarding the lack of specificity as to what constitutes "discrimination" under the proposed rule, and supports the proposed Alternative to Proposed 4(a)(3).

III. Proposed Judicial Conduct Rule 2(A). Abusive or Harassing Behavior. Our Board agrees with the recommendation that the proposed language as to what constitutes "cognizable misconduct," be clarified to mean "engaging in sexual conduct that is unwanted, offensive or abusive."

IV. Proposed Judicial Conduct Rule 2(C). Abusive or Harassing Behavior. Our Board agrees with the recommendation that the phrase "hostile work environment" should be further defined either in the rule itself or in the accompanying Commentary.

The Magistrates Executive Board agrees with Chief Judge O'Neill, the Ninth Circuit Judicial Council, and Chief Circuit Judge Sidney R. Thomas that, as currently drafted, the proposed rules could lead to unintended antithetical consequences. Our Board believes that Chief Judge O'Neill's proposed changes suggest serious, thoughtful contemplation, and are a sincere effort to improve upon the clarity and scope of the proposed rules.

We appreciate the opportunity to comment on the proposed rule changes, and welcome the opportunity to provide further input, as needed.

Michelle Burns

Chair, Ninth Circuit Magistrate Judges Executive Board
Magistrate Judge

Sandra Day O'Connor U.S. Courthouse
401 W. Washington, SPC #12
Phoenix, Arizona 85003-2146
(602) 322-7610