

## **SUMMARY**

### **The Thom Seymour Paine Foundation September 15, 2005 Canons 1, 2, 3, and 4**

The Thom Seymour Paine Foundation criticizes the Code by pointing to two fundamental issues: the applicability of the Code and what it calls the toothlessness of the Code. Describing the Code's applicability the Foundation notes: even judges can't make up their mind if the Code is binding. Specifically, we suggest wording that "Violation of the Code of Conduct constitutes bad behavior by a judge."

Next they address what is in their term the toothlessness of the Code. Although defining "shall" to establishes mandatory obligations in the *Scope Section*, there are no consequences when a judge is severely tardy, thus violating the law. The Thom Seymour Paine Foundation says it is their experience is that there is no force behind the Code and judges routinely thumb their noses in blatant disregard of it.

#### **Canon 1- the appearance of impropriety**

There is a Biblical principle that elders in the church must be "above reproach." We expect no less of our judges. Any appearance of impropriety erodes, and has already eroded, public confidence in the judiciary. "Justice should not only be done, but should manifestly and undoubtedly be seen to be done." Therefore, the language regarding the appearance of impropriety must stay as is.

#### **Canon 2, Rule 2.10(B) - "independently investigating facts in a case."**

The foundation believes that judges, as well as juries, should be allowed independent investigation of the facts.

#### **Canon 2, Rule 2.12- Disqualification**

Only honorable judges recuse themselves. The dishonest ones will not. Nor will a dishonest judge disclose information that could result in his disqualification if there was something to gain in court.

This Rule is necessary. Not because it will force a bad judge to be good, but if ever a higher court decides to do the right thing, the violation of the Rule will provide a count of bad behavior against the judge.

#### **Canon 2, Rule 2.20 "Immunity for Discharge of Duties"**

The Foundation disagrees with this provision. In its view the Code already requires a judge do the right thing when he sees misconduct in other officers of the court. In fact, judges rarely act against other judges (never at the federal level for year ended Sept 04), and we don't think it's for fear of civil action. If a bad judge makes a false allegation, the legal system, in the form of a civil action, is the corrective check & balance.

### **Rule 3.04 “Affiliation with Discriminatory Organization”**

This section appears to be a thinly veiled attempt to promote the homosexual agenda. “Sexual orientation” speaks volumes about a person and is a choice. Many of us call that choice “sin.” While we agree that a judge should not discriminate in matters of law simply because someone is a homosexual, we don’t agree a judge should be forced to associate with any unsavory characters he doesn’t want to. If one considers homosexuality evil, then a judge should be allowed to participate in organizations that don’t allow homosexuals.

By invoking this rule, the ABA will effectively eliminate all Bible believing judges from the Bench, as their churches will, by definition, not tolerate homosexuality. It also possibly eliminates Islamist judges too, for homosexuality is a sin in Islam as well. Further, this rule will force a judge to decide between wholesome organizations, like the Boy Scouts of America, and the Bench. The rule is discriminatory on its face, is probably unconstitutional, and in classic perversion, the very rule that is ostensibly tolerant of some is intolerant of a judge’s religious beliefs.

We’re not sure where the commission is coming from with the reference to “ethnicity.” Race is already properly covered in the Rule. We aren’t aware of any problems of discrimination over someone’s “ethnicity,” whatever that is; we’re suspicious this has some political motives behind it; could be easily abused.

### **Canon 4 - “Solicitation and Acceptance of Gifts”**

The Bible is full of warnings concerning judges and bribes. Judges and bribes go hand in hand and are historically a natural focal point. We have no sympathy for judges who have to “pay their own way.” We have to pay our own way to attend industry meetings and we don’t earn the large salary of a federal judge.