

From: Judge_Waxse@ksd.uscourts.gov [mailto:Judge_Waxse@ksd.uscourts.gov]
Sent: Tuesday, March 14, 2006 2:35 PM
To: Kuhlman, George
Cc: Judge_Lungstrum@ksd.uscourts.gov
Subject: PROPOSED REVISION TO THE COMMENT TO 2.08

Mr. Kuhlman,

In conjunction with Judge Lungstrum, the chief judge of the District of Kansas, I would like for the ABA Joint Commission to Evaluate the Model Code of Judicial Conduct to consider the following revision to paragraph [3] of the proposed comment to Rule 2.08.

Proposed new paragraph [3] of the proposed comment to Rule 2.08

A judge should express appreciation to jurors for their service to the judicial system and the community. A judge who is not otherwise prohibited by law from doing so may meet with jurors who choose to remain after trial, but should not engage in any substantive discussion of the case. **add** [At such a meeting, a judge should comply with the applicable provisions of this code] **delete** [not, for example, suggest or imply agreement or disagreement with the verdict, reveal matters that were not received into evidence, discuss the rulings on objections made at trial, or review any proceedings that took place outside the presence of the jury].

We think that the current proposal interferes with right and duty of a trial judge to communicate with jurors following the trial of a case. Our suggested change leaves the decision on what specifically can be discussed with the jury to the trial judge with the understanding that any such discussion should comply with the applicable provisions of the Code of Judicial Conduct. The current proposal would suggest that the trial judge should not discuss with the jury any proceedings that took place outside the presence of the jury even though the proceeding may have been of public record and therefore subject to a discussion in the media following the trial.

Finally the current proposal appears to conflict, in part, with Principle 18 of the Modern Jury Principles drafted by the American Jury Project team and approved by the ABA House of Delegates in February 2005. That Principle is as follows:

**PRINCIPLE 18: COURTS SHOULD GIVE JURORS
LEGALLY PERMISSIBLE POST-VERDICT ADVICE AND INFORMATION**

A. After the conclusion of the trial and the completion of the jurors' service, the court is encouraged to engage in discussions with the jurors. Such discussions should occur on the record and in open court with the parties having the opportunity to be present, unless all the parties agree to the court conducting these discussions differently. This standard does not prohibit incidental contact between the court and jurors after the conclusion of the trial.

If you or the Commission have any questions about our proposal please let us know.

Dave Waxse

Dave Waxse
U.S. Magistrate Judge
Room 219
U. S. Courthouse
500 State Avenue
Kansas City, KS 66101