

MEMORANDUM

TO: The American Bar Association Joint Commission to Evaluate the Model Code of Judicial Conduct

FROM: Marina Angel, Professor of Law, Temple University

RE: Addition of Prohibitions on Harassment to Rule 2:05(A) and (B), and Addition of a New (C) Prohibiting a Judge from Having a Sexual or Romantic Relationship with Any Person With Whom, in the Performance of his Judicial Duties, he comes into Contact or Affects

DATE: August 8, 2005

Members of the Commission,

Thank you for all the good work you have done revising the Model Code of Judicial Conduct. I request the following additions to Rule 2:05.

Harassment, including sexual harassment, must be addressed in the Rule itself, not just in a Comment. The following additions should be made to Rule 2:05(A) and (B).

Rule 2:05(A) lines 5 and 6 should be revised to read conduct manifesting bias, prejudice, **or harassment**, including but not limited to bias, prejudice, **or harassment** based upon race, gender.&

Rule 2:05(B) line 12 should be similarly revised to read refrain from manifesting bias, prejudice, **or harassment**, based upon race, gender&.

The worst possible abuse of judicial power is use of a judge's official position to coerce sexual or romantic favors from those he or she comes into contact with in the performance of judicial duties. Even the appearance of impropriety must be avoided. No one should be, literally or figuratively, screwed by a judge.

A new (C) should be added as follows: **(C) A judge shall not have a sexual or romantic relationship with any person with whom he or she comes into contact or affects in the course of the performance of his or her judicial duties.**

My article [Sexual Harassment by Judges](#), 45 U. Miami L. Rev. 817 (1991), documents and describes in detail the widespread nature and devastating effects of sexual harassment and sexual assault by judges sitting throughout the United States.

The United States Supreme Court emphasized in its first sexual harassment case, Meritor Savings Bank v. Vinson, 477 U.S. 57 (1986), and in its more recent cases, Burlington Industries, Inc. v. Ellerth, 524 U.S. 742 (1998), and Faragher v. City of Boca Raton, 524 U.S. 775 (1998), that, to insulate an employer from liability for the acts of supervisors and co-employees, the employer needs to have both a general no discrimination policy and a specific no sexual harassment policy. The ABA Model Code should do no less.

The United States Supreme Court held that Tennessee Chancery Court Judge David Lanier's conduct in using his judicial position to sexually harass and sexually assault multiple women violated 18 U.S.C. § 242. United States v. David Lanier, 520 U.S. 259 (1997), *rev'g en banc* 73 F.3d 1380 (6th Cir. 1996), *vacating en banc* 43 F.3d 1033 (6th Cir. 1995), *rev'g* 33 F.3d 639 (6th Cir. 1994). Judge Lanier's disgusting and criminal acts included two acts of forced oral sex in his judicial chambers with a woman over whose divorce he had presided and under threat of loss of custody of her child. 73 F. 3d at 1403-1414 (Daughtrey, Martha, dissenting). Judge Martha Daughtrey quoted at length the opinion of the three judge panel that first heard the appeal describing in detail the acts of sexual harassment and sexual assault by a sitting state judge, committed against litigants, court personnel or those in court-related programs&.Id. at 1403.

I hope you see fit to make these additions.

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