

To: Mark I. Harrison, Chair  
ABA Joint Commission to Evaluate the Model Code of Judicial Conduct

From: David L. Hagen, 61485 CR 13, Goshen IN 46526.  
Date: August 3, 2005

Re: Comments on Preliminary Draft of Code: **PREAMBLE & SCOPE**

**Summary: Change PREAMBLE & SCOPE to read:**

**“The rule of law rests on a moral foundation where people respect, abide by, and uphold the rule of law.”**

“ . . . while exhibiting sound character and moral rectitude **before the Supreme Judge**”  
“that sustains our democratic system of democratic with a republican form of government ”

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1) **PREAMBLE** Add (page 1 at line 2):

**“The rule of law rests on a moral foundation where people respect, abide, by and uphold the rule of law.**

**Discussion:** The primary foundation of the rule of law is a common moral foundation where the People individually and collectively respect, abide by, and uphold the rule of law. That respect is degraded if that moral base is destroyed, or if the Judiciary appears to be disregarding it. It would be well to avoid the appearance of hubris. Cf.

"Our Constitution was made only for a moral and religious people. It is wholly inadequate to the government of any other." John Adams (1735-1826).

2) **PREAMBLE p 1, Change** lines 3, 4.

“The judiciary is a **one** cornerstone of the American legal system **along with the Legislature and Executive.** The rule of law ~~depends on~~ **is protected by the separation of powers with** an independent judiciary . . .”

**Discussion:** The legal system in our government includes the representative Legislature codifying the law, the Executive implementing it, and the Judiciary upholding justice over every breach thereof. The separation of powers is a key protection against the abuse of government and of tyranny. The independence of the Judiciary is one part of the separation of powers. It protects the Judiciary from undue influence from the Executive (earlier the King), the Legislature (earlier the Barons) and the People.

3) **PREAMBLE** p 2 line 5

‘ . . . while exhibiting sound character and moral rectitude **before the Supreme Judge** in their . . .’

**Discussion:** The principle “Moral rectitude” is incorporated as a foundational principle in the DECLARATION para 32. “. . . appealing to the Supreme Judge of the world for the rectitude of our intentions. . .” It is important to remind judges of this principle in the Preamble.

4) SCOPE p 1, Line 11

Add “**republican form of**” to read:

“that sustains our democratic system of ~~democratic~~ **with a republican form of** government . . .”

**Discussion:**

The Founders were very emphatic that they were establishing a Republic. They vehemently opposed forming a pure democracy and commented on the numerous failures of democracies.

“Hence it is that such democracies have ever been spectacles of turbulence and contention; have ever been found incompatible with personal security or the rights of property; and have in general been as short in their lives as they have been violent in their deaths. . . . A republic, by which I mean a government in which the scheme of representation takes place, opens a different prospect, and promises the cure for which we are seeking. Let us examine the points in which it varies from pure democracy, and we shall comprehend both the nature of the cure and the efficacy which it must derive from the Union.” The Federalist Papers : No. 10

All States mutually required for equal footing by the DECLARATION and by requiring of thirteen states joining the Union that “[t]he constitution of the State of Hawaii **shall always be republican in form** and shall not be repugnant to the Constitution of the United States and the principles of the Declaration of Independence.” etc.