

SUMMARY

The Criminal Justice Section Ad Hoc Committee to Review the ABA Code of Judicial Conduct

Margaret Colgate Love, Chair

October 12, 2005

Canon 2

The Criminal Justice Section believes that several provisions in Canon 2 do not take into account the special circumstances of criminal practice.

Rule 2.9

The Comment to Rule 2.9 should be revised to make clear that its provisions on a judge's role in settlement apply only in the civil context. The Ad hoc Committee makes a number of specific drafting and language suggestions to accomplish this. The Committee also takes issue with language in the commentary addressing ethical issues raised by a judge's interaction with jurors during voir dire and trial, as well as after the trial in light of the newly adopted jury standards.

Rule 2.10

The Committee recommends that the Commentary should make it clear that a judge is not precluded from making an independent inquiry into the law as opposed to the facts.

Rule 2.20

The Criminal Justice Ad Hoc Committee suggests that the term "or discipline" should be included after the term "civil action" in the black letter of Rule 2.20.

. The committee questions whether the rules are unnecessarily restrictive in terms of a judge's ability to serve on a government committee or commission or to participate in such an organization's charitable activities. They see no reason why a judge should be limited to service on a governmental committee that is only concerned with the improvement of the law or legal system.

Rule 4.04 (C)(1)

Likewise, the committee feels the categorical limitation in Rule 4.04 (C)(1) may be unnecessarily broad. They feel that a judge should not be categorically barred as an advisor to any of the specified non-profit governmental entities where it is "likely" that the organization or entity is engaged in proceedings that would ordinarily come before the judge. They believe the otherwise applicable rules of recusal would correct any abuses of this sort.

Rule 4.04 (B)(2)

In the Committee's view any litigation in that the judges court involving the organization that is likely to be "frequent" is more problematic and more appropriate for a categorical prohibition.

Canon 5

The Committee urges the Commission to be careful and exercise caution when making revisions to its provisions on political campaigning and reliance on *Republican Party of Minnesota v. White*, 416 F.3d. 738 (8th Cir. 2005). They suggest that any major revisions at this time would be premature.