

August 24, 2005

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

RE: Written Comments on Canon 2 in the Preliminary Report of June 30, 2005

Dear Mr. Harrison and Members of the Committee:

I would like to express my comments on the proposed changes to Canon 2 in the Preliminary Report. I am a District Court Judge in Helena, Montana, and have served in this position for the past 16 years. As a general jurisdiction judge, I believe that I have a unique perspective on the issues involving *pro se* litigants in the court system.

I have reviewed the comments of our Supreme Court Chief Justice Karla Gray and agree with everything she has stated.

Over the years, I have seen the numbers of *pro se* litigants increase tremendously in all areas of the law. The greatest volume of *pro se* litigation occurs in domestic relations cases, which include dissolution, custody, marital estate distribution, orders of protection, child and family support, adoptions, and name change issues. Additionally, an increasing number of defendants in collection cases, contract disputes, guardianships, and probates are representing themselves because they cannot afford legal representation. The legal services associations in this state, as in others, are woefully underfunded and understaffed.

Judges generally do not enjoy presiding over court proceedings in which one or both of the litigants are self represented. The *pro se* litigants come to court with little or no knowledge of procedure, evidence or the law, and without the proper pleadings and

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of process. I frequently feel in a quandary, on the one hand wanting to tell the litigant what to do and how to do it, and on the other hand uncomfortable with advocating his/her case. I am sure all of the district judges in the state experience the same conflicts of duty and desire.

With the ever increasing costs of litigation and representation as well as the increasing litigiousness of our society, *pro se* litigation will become more the rule rather than the exception. Whether we judges and lawyers like it or not, we will need to address *pro se* litigation with the objective of facilitating fair and impartial court proceedings effectively and expeditiously. Judges need guidance as to the scope and manner of their assistance to *pro se* litigants without violating rules of judicial conduct, rules of civil procedure and rules of evidence.

I believe that Chief Justice Gray's comments address those needs without creating an appearance or atmosphere of bias to the *pro se* party and against the represented party.

I appreciate the time and effort you are taking in this important project.

Sincerely,

DOROTHY McCARTER
District Court Judge

DMc/tbd