



Supreme Court of California

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RONALD M. GEORGE
CHIEF JUSTICE OF CALIFORNIA

September 20, 2005

Mr. Mark Harrison
Chair, Commission on Judicial Ethics
American Bar Association
541 North Fairbanks Court
Chicago, Illinois 60611

Re: Model Code of Judicial Conduct

Dear Mr. Harrison:

I am writing in response to the American Bar Association's Commission on Judicial Ethics' request for comments on the recently released draft of revisions to the Model Code of Judicial Ethics. I commend the commission for its thoughtful approach to the issues and its desire to ensure that judges in the 21st century have the guidance they need to address changes in litigation — and in litigants — in an effective and ethical manner.

My comments concern the effect on courts of changes in the representation of litigants appearing before them. In California, as in other states, an increasing number of litigants represent themselves in court. In some California counties, more than two-thirds of litigants in family law matters appear without counsel, and the number of self-represented litigants generally is increasing. This change has created new challenges in the courtroom for all involved. The presiding bench officer is particularly affected, because he or she must balance the rights of all parties carefully while trying to ensure that the matter can be decided on its merits. To consider means to handle this circumstance effectively, the Judicial Council of California established a Task Force on Self-Represented Litigants. This group has been engaged in analyzing changes that will best permit the courts to manage effectively cases in which at least one litigant is self-represented.

The California Judicial Council established the task force as part of its ongoing efforts to examine and improve access to California's courts. The council charged the group with identifying and making recommendations to eliminate barriers to access for pro se

litigants. As part of its work, the task force considered the scope and nature of the judge's role in enabling cases to be heard on the merits. As has been true in other jurisdictions that are reviewing these issues, the task force has concluded that the judge has a critical role to play, and that steps should be taken to provide ethical standards to guide judges when they preside over matters in which pro se litigants are participating.

California's *Statewide Action Plan for Serving Self-Represented Litigants*, proposed by the council's Task Force, was adopted by the Judicial Council in February 2004. Before its adoption, the plan was circulated to judicial officers throughout California for their review and comment. Among the plan's key recommendations is that the Administrative Office of the Courts (the Judicial Council's staff arm) work to "provide greater clarification of the extent to which judicial officers may ensure due process in proceedings involving self-represented litigants without compromising judicial impartiality."

California has begun implementing this action plan, including the development of a desk book to assist judges in matters involving pro se litigants. We also are aware of and are cooperating with several national groups looking at improving court responses and assistance to self-represented litigants.

The council's task force's conclusions and recommendations to date have provided important tools, but the additional step of addressing the scope of appropriate judicial conduct in this context is essential to encourage and allow judges to employ the most effective — and ethical — practices. The failure to offer such support may well increase inconsistency among courts in the manner in which pro se matters are handled (and potentially the outcomes in these cases), may lead to errors by bench officers uncertain about the best procedures to follow, and may result in unnecessary delays in proceedings.

In addition to working to improve access to the courts, another key goal of California's Judicial Council is improving public trust and confidence in the courts. Recognizing the needs of and providing methods to deal with the increasing number of individuals who come to court without representation is a critical factor in enhancing the public's confidence in the judicial system. A recent poll taken in California to assess public attitudes towards the courts revealed that inability to pay is a major bar to access to the courts for many. If we do not provide creative and effective programs and procedures that lead individuals who are self-represented by choice or necessity to conclude that they are being treated fairly in the courts, we risk alienating many members of the public, and undermining our overall efforts to strengthen public support for the courts and their crucial role in our society.

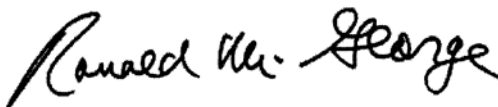
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In short, it is essential that our judicial system determines which accommodations may be reasonable and necessary to offer every litigant an opportunity to have his or her case heard. At the same time, individual bench officers will benefit from learning about methods and procedures that may be used and the ethical considerations that properly apply. Providing this information and guidance thus will benefit the system, individual judges, and the public.

Although the commission has not yet incorporated any changes that address the issue of the self-represented litigant into Canons 1 and 2, before you conclude your work and present your final recommendations to the ABA House of Delegates, I hope that you will consider incorporating appropriate changes to address this issue of critical importance to judges nationwide. The submissions provided by the American Judicature Society and by Richard Zorza provide valuable information and the changes that they encourage would appear to be consistent with existing ABA guidance. As you are aware, current ABA Trial Standards provide: "Where litigants represent themselves, the court in the interest of fair determination of the merits should ask such questions and suggest the production of such evidence as may be necessary to supplement or clarify the litigants' presentation of the case."

As California's work progresses, we stand ready to provide you with information that may be helpful in your drafting process. I would be pleased to see that you are kept informed of our progress and the steps that our system considers and implements. Thank you for your consideration as you move forward with a critical and difficult task. Please let me know if I can provide any additional information to assist you.

Sincerely,

A handwritten signature in cursive script that reads "Ronald M. George".

RONALD M. GEORGE
Chief Justice of California and
Chair of the Judicial Council

RMG/BH/kc

cc: Mr. William C. Vickrey, Administrative Director of the Courts