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March 16,2004

Bv Email and U.S. Mail

George Kuhlman, Esq. .  
ABA Center for Professional Responsibility  
541 N. Fairbanks Ct.  
Chicago, IL 60611

Re: Proposed Rule Change to Allow Federal Judges to Help Settle State Court Cases

Dear Mr. Kuhlman:

I write in support of the proposed Ninth Circuit rule change that would allow federal judges to perform state court settlement work.

I chair Ball Janik's litigation department. As an active practitioner in the Northwest for the last eleven years, there have been many instances in which I hoped to use a federal judge to resolve a complex state court case, but could not do so. I see two main benefits to allowing federal judges to do state court settlement work: (1) because complex, multiparty, and multi-issue cases are more common in federal court, there is a very short list of non-federal judges who have the experience and ability to settle and resolve these cases, and (2) there is a widespread belief by practicing lawyers that federal judges are, across the board, respected for their intellect and impartiality, and both of these attributes are necessary to settle complex, multi- party cases.

For more than a year in the 1999-2000 timeframe, a state court judge, the Honorable Lyle C. Velure, and a federal district court judge, the Honorable Ann Aiken, were actively involved in mediating one of the largest and most complex group of cases in Oregon's history - *The Capes* litigation. That litigation involved more than a dozen cases with overlapping state and federal issues, more than 100 parties, several hundred claims, and approximately three dozen lawyers. In short, the various cases and claims had morphed into a multi-headed octopus that had the potential to swallow enormous quantities of state and federal judicial resources and generate a huge amount of unnecessary legal fees, all of which would have redounded to the detriment of the litigants. The consolidated mediation effort that Judges Velure and Aiken spearheaded produced a global settlement of all the issues and claims involving all the parties.

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Recently, I have been involved in complex, multi-party litigation in Washington state court encompassing securities, employment, and insurance coverage issues. For a couple of months we have been trying to corral all the parties into agreeing on one mediator. If we had the pool of Washington federal judges available as potential mediators, then the parties would have chosen a mediator long ago.

Without a change in the Ninth Circuit's rule that would allow federal judges to act as mediators and/or settlement judges in selected state court cases, a tremendous resource will be off limits to the state court judicial system. In my view, it would be wiser for the Ninth Circuit to allow, in appropriate cases, federal judges to serve as mediators and/or settlement judges in state court matters. If the rule were changed, federal judges would still be free to turn away cases that are not appropriate for federal judicial resources. Federal judges could still choose the significant and notable cases in which to involve themselves.

It would be extraordinarily helpful to the bar if federal judges were available to involve themselves in the important and inherently complicated state court cases. I hope the rule can be changed so that this untapped reservoir of federal settlement judges could be available to resolve a select few state court cases.

Sincerely,

James T. McDermott ...

JTM:la

cc: Honorable Ann Aiken

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