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Sent: Tuesday, March 14, 2006 2:12 PM
To: Kuhlman, George
Cc: Annette.Scieszinski@jb.state.ia.us; dixonhb@DCSC.GOV
Subject: Comments Regarding Proposed Revisions to the Model Code of Judicial Conduct

Thank you for asking for our comments regarding the Proposed Revisions to the Model Code of Judicial Conduct. These thoughts and suggestions are mine personally and are not submitted on behalf of any association or organization. I've been a lawyer for 41 years and a state trial judge for 25 years. I have been president of the Michigan Judges Association and am currently secretary of the National Conference of State Trial Judges.

Rule 2.08
Demeanor, Decorum and Communication with Jurors:
I have attached Principle 18 of the Principles for Juries and Jury Trials adopted by the American Bar Association in August, 2005. I believe 18(A) should be quoted in an added subparagraph 2.08(D). In the alternative, it could be put into the commentary. There is case law, criminal and civil, that provides the basis for it. If you would like that law, let me know.
Rule 2.09
Ensuring the Right to be Heard:
I believe it is excellent. The commentary as well, with one exception. The subparagraphs B(2) and B(3) contain an unnecessary repetition. The second sentence of (2) and the first sentence of (3) say the same thing and overemphasizes that settlement discussions can affect the judges objectivity and also the appearance of the judges objectivity. This could inappropriately discourage some judges from actively participating in settlement negotiations. Why not combine these two sentences so that the point is made only once?
Rule 2.10
Ex-parte Communications:
If it is intended that this rule would preclude the judge from obtaining information from electronic sources such as the internet or other computer research tools for information in connection with trial adjudications, I disagree with it. I do not see what is wrong with a judge obtaining information independently, as long as it is acknowledged before it is utilized in deciding an issue. I believe that should be clarified in the rule or, at least stated in the commentary.
Rule 2.12
Disqualification:
I believe it is only necessary to publically disclosed the basis for not recusing, whenever the issue has been raised by a party or a judge. Why do the parties or the public have to know why a judge recuses? The way the rule is written is appropriate because it says a judge "may" disclose on the record the reasons, under certain circumstances. Requiring disclosure of the basis for recusal would be, in my opinion, an invasion of privacy and unnecessary. If the argument is that some judges recuse too often to avoid controversial or difficult matters, that is an administrative issue and the chief or
supervising judge would deal with. The public would know the number of times and the general reasons, but they do not need to know the particulars. But the parties and public should know the basis for the judge?s decision not to recuse, if the issue has been raised. In addition, the decision to not recuse should be reviewable by another judge.
I concede, however, that having a rule that requires articulating the basis for recusing as well as not recusing is better than having no rule at all. In addition, I think that the rule or commentary should say that a fair and objective recusal criteria should be established that can be applied fairly without regard to philosophical or political postures.
Rule 4.13
Reporting of Compensation, Reimbursement and Waiver of Charges:

First of all, I believe yearly reporting is sufficient. Many judges are overloaded with cases and administrative duties. To have to take the time and energy four times a year is unnecessary. We all only have to do taxes once a year. Why should we have to file disclosures four times a year instead of once?

Second, if the rule is intended to include reimbursement from the judges own funding source and lawyers? and judges? associations, such as the A.B.A. and the N.C.S.T.J., I disagree with it. This disclosure is unnecessary since it has no relation to any possible bias issues. In addition, it would be detrimental for judges who seek continuing education and improvement of the judicial system. For example, the funding source generally establishes a budget, with or without line items such as seminars and education. The judges have the discretion to utilize their budget or this line item for those types of expenditures. If every educational or lawyer?s and judge?s association reimbursement must be publicized, then the judge and the funding source will be subject to pressure to reduce or eliminate it. That has already occurred enough across the country. In an elected judgeship, those who would not utilize funds for continuing education and participating in programs that promot! e and improve the effective administration of justice, would be more likely to get re-elected because of their "frugality," than those who use funds in that way. In other words, rewarding those who do not seek to improve their judicial performance or the judicial system.

Therefore, I would only require the reporting once a year, and I would also exclude reimbursements, etc, that come from the court?s budgetary funding source or lawyer?s and judge?s associations. This would still serve to promote public confidence in the integrity, impartiality, and independence of the judiciary.

Sincerely submitted,

William J. Caprathe