



NORTHERN ILLINOIS
UNIVERSITY

COLLEGE OF LAW
FACULTY OFFICES
DeKALB, ILLINOIS 60115-2890
(815) 753-9479
FAX (815) 753-9301

Date: February 16, 2006

To: ABA Joint Commission to Evaluate the
Model Code of Judicial Conduct

From: Professor Jeffrey A. Parness
Northern Illinois University College of Law
DeKalb, Illinois 60115
Phone: 815-753-0340
Email: JPARNESS@NIU.EDU

I write to comment on the December 14, 2005 Final Draft Report. While I continue to find problematic much of what I discussed in my earlier letters (June 16, 2004; April 13, 2005; August 1, 2005) addressing prior drafts of Canon 2, I shall limit this letter, for the most part, to what I find troublesome in the latest Canon 2. In particular, I am troubled by Rules 2.06 (Impartiality and Fairness) and 2.09 (Ensuring the Right to Be Heard). Each of these rules falls within the Canon 2 section on Adjudication (which, as I commented earlier, I believe is better labeled Case Resolution).

Current Rule 2.06 is not very different now from Rule 2.04 (Impartiality and Fairness) that was proposed in the June 30, 2005 draft (a comment on objectivity and open-mindedness was added). But, current Rule 2.09 is very different from Rule 2.09 (Ensuring the Right to Be Heard) proposed in June, 2005. Current Rule 2.09 now speaks in the "black letter" to settlement encouragement and avoidance of judicial coercion to settle. There are new comments to the current Rule 2.09 that go well beyond "the Right to Be Heard." They speak to, inter alia, "appropriate" settlement practices (including whether to schedule a judicially-managed, pretrial settlement conference) and judicial "objectivity and impartiality" when settlement talks fail and trials ensue. I know the Commission has struggled for some time with how to address settlement facilitation by judges. I have no significant issues with the statements in the Rule 2.09 comments on settlements. But with the expanded commentary to Rule 2.09, I think that the "Right to Be Heard" materials would fit better within Rule 2.06 (as fairness certainly encompasses the right to a hearing) and that Rule 2.09 should then be renamed, perhaps to "Facilitating Settlement."

I hope you find my suggestion useful. I would be happy to elaborate further in writing or orally, as well as to revisit my concerns about the terms adjudication (rather than case resolution) and parties (rather than those legally interested). Thanks for your consideration.