

From: evaluate Judicial Code [CPR-CODECOMM@MAIL.ABANET.ORG] on behalf of Gallagher, Eileen [GallaghE@staff.abanet.org]
Sent: Tuesday, March 15, 2005 9:45 AM
To: CPR-CODECOMM@MAIL.ABANET.ORG
Subject: FW: Model Code Comment Submission

From: matt_besser@ca3.uscourts.gov [mailto:matt_besser@ca3.uscourts.gov]
Sent: Tuesday, March 15, 2005 8:07 AM
To: Gallagher, Eileen
Subject: Model Code Comment Submission

Dear Ms. Gallagher:

I have read the proposed changes to the Model Code of Judicial Conduct and I wish to suggest a modest addition. In my view, there still exists an unexplained relationship between *permissible* campaign speech and recusal. As I recall, the August 2003 amendment to Canon 3E(1) made clear that prohibited campaign speech was grounds for recusal, but left open the situation of a judge who engaged in protected campaign speech on an issue and was then faced with that issue once on the bench. Given the increased freedom to speak for judges and candidates for judicial office, this issue is bound to surface more and more frequently in the future. In my student note, *May I Be Recused? The Tension Between Judicial Campaign Speech and Recusal After Republican Party of Minnesota v. White*, I address that unanswered question. The note can be found at 64 Ohio St. L.J. 1197, and I offer my thesis to the Commission for its consideration.

I hope this finds you well.

Matt Besser

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