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August 12, 2004

Ms. Eileen Gallagher
American Bar Association
ABA Justice Center
321 North Clark Street
Chicago, IL 60610

Re: Joint Commission to Evaluate the Model Code of Judicial Conducts–
Second Draft Proposals

Dear Ms. Gallagher:

I am writing on two matters raised in the second partial draft of proposals for revision of the ABA Model Code of Judicial Conduct.

First, the commission proposes to delete the last sentence of commentary [4] to Rule 4.01. I suggest leaving this sentence in the commentary, because it addresses issues on which I and other judges have been active – advising foreign governments on their treatment of judges and lawyers. While these activities may be implicitly approved in the other portions of the paragraph, I think that it is useful to approve such activities explicitly. In addition, the removal of this sentence could be construed as a negative inference disapproving these activities.

With respect to Rule 4.02 and judicial contacts with governmental bodies, I think that the rule is too broad. There are at least two contexts where judges may properly appear before executive or legislative bodies or officials. First, a judge may make such an appearance in the performance of official duties of the court. For example, it might be necessary to consult with public officials or to appear before public bodies in connection with the building of the new courthouse or the planning of emergency evacuation procedures.

Second, a judge may have some such contacts in connection with participation in civic or charitable activities authorized by Rule 4.04 (and subject to the limitations stated in that rule).

Rule 4.02 should be narrowed, so that it does not interfere with these appropriate activities.

Thank you for the opportunity to comment on the proposed revisions.

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Very truly yours,

Samuel L. Bufford

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