

Karla M. Gray
Chief Justice Montana Supreme Court
Pro Se Litigants
September 9, 2005

Canon 2

Chief Justice Karla M. Gray comments on her own behalf and not for the Montana Supreme Court, of which she is the Chief Justice, or of any other group. I am authorized to inform you that Chief Justices Barbara Pariente (Florida), Gerry Alexander (Washington), Christine Durham (Utah) and Leigh Saufley (Maine)--for themselves, but not for their Courts-- generally endorse the approach I offer, particularly insofar as including appropriate language in the Rules and not merely the Comments.

Justice Gray finds that in the Code Draft, the “missing link,” is the absence of any guidance to our trial judges about what is appropriate in helping *pro se* litigants without crossing the line into impropriety or the appearance of impropriety in terms of impartiality. She advises that a middle ground between the view that impartiality requires a trial judge to take a strictly “hands off” approach with self-represented litigants and the notion that a trial judges properly can “run the entire show” for such litigants must be reflected in the new Model Code. This middle ground approach—which might be called the “engaged neutral” approach—will result—in my view—in increased fairness in proceedings language in the Rules and not merely the Comments.

Chief Justice Gray then suggests specific language to be added to Terminology; Canon 2, Rule 2.04 Impartiality and fairness; Rule 2.05: Bias and Discrimination; an Additional Comment to Rule 2.05; Rule 2.09: Ensuring the right to be heard; an Additional Comment to Rule 2.09; Rule 2.13: Administrative Competence and Diligence; and an Additional Comment to Rule 2.13.