

To: The ABA Joint Commission to Evaluate the Model Code of Judicial Conduct
From: David L. Hagen, 4th Watch, 61485 CR 13, Goshen IN 46526.
Date: August 3, 2005
Re: Comments on Preliminary Draft of Code: **Canon 2 Rule 2.07 Add Section & Comment**

Summary:

Canon 2 Rule 2.07 Add Section D.

“D. A judge shall equally uphold the foundational principles of constancy of constitutions with prescribed means of amendment, and that the Judiciary and all government ‘deriv[es] [its] just powers from the consent of the governed.’ DECLARATION para 2.”

COMMENT add

“[3] Confidence in the judiciary is eroded if judges are perceived to be taking license and abandoning the foundational principles of the Rule of Law mutually required by all States for equal footing and consented to by the People.”

5) Canon 2 Rule 2.07 Add Section D. (At Canon 2 p 5 line 14.)

“D. A judge shall equally uphold the foundational principles of constancy of constitutions with prescribed means of amendment, and that the Judiciary and all government ‘deriv[es] [its] just powers from the consent of the governed.’ DECLARATION para 2.”

Discussion: The prohibitions of sections A, B and C need to be counterbalanced by a reminder of the foundational principles of the Rule of Law. Most of the current chasm between the Judiciary and the People is due to perceived abandonment by some judges of these foundational principles of the Rule of Law, not from “public clamor.” See the uproar over “one nation under God.”

6) Canon 2 Rule 2.07 D, COMMENT add (at Canon p5 line 33.)

“[3] Confidence in the judiciary is eroded if judges are perceived to be taking license and abandoning the foundational principles of the Rule of Law mutually required by all States for equal footing and consented to by the People.”

Discussion: For equal footing, all States have mutually required the principles of both the Declaration of Independence and the Constitution, with the consent of the People, through establishing the USA by the Declaration and by acts enabling the last thirteen states to join the Union. The People lose respect for the Judiciary and the Rule of law is degraded when Judges interpret the Constitution contrary to the foundational principles of the Rule of Law as embodied in the Declaration of Independence. It is thus critical to the “independence of the Judiciary” to remind judges of the importance of abiding by these foundational principles of the Rule of Law.