

Debra----

On behalf of the National Conference of State Trial Judges, I write to respectfully request that the Joint Commission re-writing the Model Code of Judicial Conduct include guidance on the judge's management of unrepresented litigants. Although there are numerous issues of interest to state trial judges, the one that has commanded specific attention, is the challenge of pro se litigants. At our recent meeting in Chicago, August 5-7, 2005 the Conference's Executive Committee voted to ask that comment be inserted to Rule 2.04 Impartiality and Fairness. The language our Conference would recommend as a new comment 2, is:

"A judge may make procedural accommodations to provide pro se litigants the opportunity to have their cases fully heard, and such an exercise of judicial discretion does not raise a reasonable question about the judge's impartiality."

Our Conference carefully considered the full proposal the American Judicature Society has made to the Joint Commission. Judges involved in our debate could not agree that the second sentence of the A.J.S. proposal would be helpful. (That sentence reads: "Reasonable accommodations include liberally construing pleadings, explaining the basis for a ruling, refraining from using legal jargon, questioning witnesses for clarification, freely allowing amendment of pleadings, and explaining general matters such as the burden of proof and what types of evidence may and may not be presented.")

There was considerable concern voiced that a list of permissible accommodations might be perceived by pro se litigants as a "right", or would culture a basic expectation of assistance from the judge. Several judges predicted that such a list would be used offensively against judicial officers. The one-sentence our Conference recommends is drawn from the A.J.S.'s first sentence; however, judges did not endorse the adjective "diligent" as featured in the draft we considered.

The National Conference of State Trial Judges continues to actively elicit feedback for the Joint Commission, and quite likely you will be hearing from individual judges in this regard.

Thank you for forwarding this comment on to your Commissioners. Please feel free to contact me if you have questions or concerns, or if I may be of further assistance.

Annette J. Scieszinski
Chair, N.C.S.T.J. Ethics and Professionalism Committee Monroe County Courthouse
Albia, IA 52531
Tele: 641-932-7160
Fax: 641-932-3245