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To: ABA Joint Commission to Evaluate the
Model Code of Judicial Conduct

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I write to update and expand upon my earlier remarks (June 16, 2004) on civil case settlements and proposed Canon 2. I have read that the Commission is sharply divided on new pronouncements relating to judicial involvement in civil case settlement discussions. I have also read of the proposals from the ABA Dispute Resolution Section. While I continue to support the particular reforms involving civil case settlements that I set out and referenced earlier, I now have a more fundamental observation about Canon 2. I believe Canon 2 should be rewritten to distinguish better between civil and criminal case duties; to reflect the differing kinds of civil case decisions now being made in American trial courts of general jurisdiction, including de novo, appellate and confirmation; and, at the least, to recognize the propriety of judicial settlement conferencing in de novo civil cases. As well, I believe Canon 2 should reflect the broader array of those legally interested in de novo civil case settlements and of all the matters that may be settled therein. The 1990 Model Code is far too narrow; the 1924 Canons were somewhat better in describing the persons and issues involved in de novo civil cases.

The accompanying memorandum elaborates on my suggestions about Canon 2. I hope you find it useful. Feel free to write or call with any questions.

Thanks for your consideration.