

August 1, 2005

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

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I write to update and expand upon some of my earlier remarks (June 16, 2004 and April 13, 2005) on judicial responsibilities to promote settlements of civil cases during adjudications and on proposed Canon 2 more generally. While I continue to believe Canon 2 should distinguish better between civil and criminal case responsibilities, should recognize in some way the differing kinds of civil case resolutions now being made by American trial courts of general jurisdiction (de novo, appellate [including review of administrative agency action] and arbitration confirmation) and should contain a section on case resolution rather than on adjudication (too narrow a term), related amendments at this late date seem unlikely. Thus, I focus here only on how proposed Canon 2 should be (lightly) amended to reflect the broader array of those legally interested in civil case settlements and of all the matters that may be resolved in civil case adjudications. The 1990 Model Code is far too narrow; the 1924 Canons were somewhat better in describing the persons and matters involved in civil cases. A new Model Code can easily be improved, given the current draft.

The accompanying memorandum sets out my suggestions of language about settlement facilitation and about judicial responsibilities in civil case adjudication within Canon 2. I hope you find them useful. Feel free to write or call with any questions.

Thanks for the consideration.

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