

**COMMENTS FROM DAVID S. PAULL (EXECUTIVE SECRETARY)
MN BOARD ON JUDICIAL STANDARDS**

From: David S Paull [mailto:David.S.Paull@state.mn.us]
Sent: Thursday, May 20, 2004 3:10 PM
To: gallaghE@staff.abanet.org
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Subject: Proposed Changes to Canon 1 and Canon 2

Ms. Gallagher: Please permit me to make the following comments on the current effort to revise Canons 1 and 2 of the Model Code:

Proposed Canon 1.01/Commentary Paragraph 2: The comment strongly suggests that an appearance of impropriety cannot be considered unless a specific rule is also at issue. This could be interpreted as unnecessarily restrictive and permitting certain types of conduct that might be inappropriate.

Proposed Canon 1.01/Commentary Paragraph 3: While efforts to encourage pro bono representation and support professionalism should be encouraged, the paragraph might benefit from the inclusion of language of limitation such as prohibiting direct contact with lawyers or groups who are appearing or have cases are currently pending before a court.

Proposed Canon 1.01/Commentary Paragraph 5: Perhaps the drafters would consider limiting the reference to "appropriate criticism" to matters concerning the administration of justice. Without some type of limitation, the use of the phrase might be interpreted to permit statements that are inappropriate.

Proposed Canon 2.02/Commentary: Perhaps the Committee would consider additional language making it crystal clear that judges may not disqualify themselves without a valid reason. See, *In re Union Leader Corp.*, 292 F.2d 381 at 391.

Proposed Canon 2.03/Commentary Paragraph 3: The Committee ought to consider more precisely stating that a judge who presides in a case while impaired by any substance is acting improperly.

Proposed Canon 2.05/Commentary Paragraph 1: The use of the word "harassment" is not very definite. The term is used so often and means different things to different people. Concerned persons, judges, lawyers and court participants might be confused by the term. The drafters might wish to consider using more specific words in the comment such as a reference to coercive action and the conduct listed in paragraph 3.

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I think the new format has merit. It appears that the Committee has made an effort to reorganize and not leave anything out. The debriefing of jurors appears to strike a proper balance. Rules of immunity have no place in a code of ethics. These are legal matters and could have no legal affect unless they appeared in the laws of the states or federal government.

Thank you for permitting me to participate.

David S. Paull (Executive Secretary)
MN Board on Judicial Standards