

Rule 2.08
Ensuring the Right to Be Heard
Richard Zorza, Esq.
July 8, 2004

In furtherance of his December 5, 2003 written testimony, Mr. Zorza urges the Commission to add new Comment to Rule 2.08 to address the judicial role in protecting the right of access to justice of pro se litigants. He further urges that the Commission not leave unaddressed a large range of issues that play a significant role in the life of the typical state court judge and that impact greatly on the public perception of courts, as well as the reality of access to justice. Data indicates that in many courts more than 50% of cases involve one pro se party, and judges are forced to deal with this reality in the absence of guidance. To increase the Commission's awareness of the importance of this issue to the judiciary and the legal system, Mr. Zorza identifies work underway to bring about change, including:

- a resolution of the Conference of Chief Justices and the Conference of State Court Administrators to deal with pro se litigant issues; and
- numerous initiatives launched to research the need, develop strategic responses, and generate tools that for judges will assist in providing access to justice for pro se litigants.

Fearing that the Commission's silence might be interpreted as lack of endorsement of initiatives and court innovations to solve this critical problem, Mr. Zorza urges the following additional Comment to Rule 2.08, which he suggests inserting between Comments 1 and 2 proposed by the Commission. [Addition underlined.]

Given the judge's important role in protecting the litigant's equal right to be heard when one or both parties is proceeding pro se, non-prejudicial and engaged courtroom management may be appropriate to protect this right. Such management may include questioning witnesses, modifying the traditional order of taking evidence, providing information about the law and evidentiary requirements, and making referrals to agencies able to assist the litigant in preparation of the case. A careful explanation of the purpose of this type of management will emphasize that this judicial engagement is in support of the right to be heard.

Rule 2.05
Bias and Discrimination
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July 8, 2004

To bolster the Commission's endorsement of initiatives and court innovations designed and developed to solve the problem of access to justice by pro se litigants, Mr. Zorza suggests the

following additional Comment to Rule 2.05. This suggested addition reiterates Mr. Zorza's December 5, 2003 written testimony to the Commission. [Addition underlined.]

When a litigant is appearing pro se, affirmative, engaged, and non-prejudicial steps taken by a judge who finds it necessary to take such steps, as described in the Comment to Canon 2.08, to make sure that all appropriate evidence is properly before the court, are not inconsistent with the requirements of Canon 2.05.

Rule 2.13
Administrative Competence and Diligence
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July 8, 2004

Reiterating his December 5, 2003 written testimony to the Commission, Mr. Zorza suggests the addition of language to Rule 2.13 and its comment to address administrative responsibilities in support of access to justice by pro se litigants. [Additions underlined.]

2.13. Administrative Competence and Diligence. A judge shall discharge the judge's administrative responsibilities without bias or prejudice and maintain professional competence in judicial administration, and should cooperate with other judges and court officials in the administration of court business including in improvements in access to justice.

Suggested additional Comment to Rule 2.13:

The rapid increase of pro se litigation, and the increasing awareness of the significance of the courts' role in providing access to justice have led to additional administrative requirements upon the judiciary, including particularly participation in the creation of innovations designed to facilitate the right to be heard described in Canon 2.08.