

**CONFERENCE OF CHIEF JUSTICES  
CONFERENCE OF STATE COURT ADMINISTRATORS**

**Resolution 10**

**In Support of Modification of the Model Code of Judicial Conduct to Encourage Effective Judicial Management of Litigation**

WHEREAS, the American Bar Association (ABA) has undertaken an effort to update the Model Code of Judicial Conduct; and

WHEREAS, the Conference of Chief Justices (CCJ) and the Conference of State Court Administrators (COSCA) commend the ABA Joint Commission to Evaluate the Model Code of Conduct for its work and the collaborative approach it has taken for developing the revision; and

WHEREAS, during the entire review process CCJ and COSCA have provided comments and feedback to the ABA Joint Commission on various aspects of the proposed changes; and

WHEREAS, CCJ and COSCA are concerned that Rule 2.10(A)(2) and 2.10(B) may impair fair and prompt adjudication of mass torts and other complex civil litigation by (1) restricting the ability of judges to communicate with each other concerning general case management matters by means of a Mass Torts Clearinghouse website and a Mass Torts Judges? Network, and (2) inhibiting the trial judge from obtaining generally available scientific methodology information to assist the court in making Daubert and Frye determinations;

NOW, THEREFORE, BE IT RESOLVED that CCJ and COSCA encourage the ABA Joint Commission to consider the following amendments to the proposed Model Code of Judicial Conduct:

**Suggested Amendment to Proposed Rule 2.10(B) of the ABA Model Code of Judicial Conduct:**

2.10(B). While A [a] judge shall not independently investigate facts in a case, and shall consider only the evidence presented, a judge may seek information of a general nature that does not bear on a disputed evidentiary fact or influence the judge?s opinion of the substantive merits of the case.

**Suggested Amendment to Comment [7]:**

[7] The prohibition against a judge investigating the facts in a case independently or through a member of the judge?s staff extends to information in all mediums, including electronic ones. The prohibition does not apply to a judge?s effort to obtain general information about a specialized area of knowledge that does not include the application of such information in a specific case. Nor does the prohibition apply to interstate or state-federal communications among judges on the general topic of case management decisions in mass torts or other complex cases, such as discovery schedules, standard interrogatories, shared discovery depositories, appointment of liaison counsel, committee membership, or common fund structures.

*Adopted as proposed by the Problem-Solving Courts Subcommittee of the CCJ/COSCA Court*

*Management Committee and the Civil Justice Committee at the 58th Annual Meeting on August 2, 2006.*