

SUMMARY

The Association of Trial Lawyers of America (ATLA)

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CANON 4 Rule 4.04 (B)(3)

ATLA believes it is one of the “specialty bar associations” that would be affected by this rule . Its members primarily represent plaintiffs in civil litigation. By their reading of the rule, ATLA believes it would prevent a judge from speaking at or being recognized at an ATLA membership convention or an ATLA continuing legal education program where attendees pay a small fee. ATLA believes this rule is short-sided and problematic for three reasons:

1. The rule prevents the judges from contributing to the improvement of the law by preventing them from reaching out to a legal constituency that may not otherwise be readily available to them.
2. The rule impairs the free exchange of ideas between the bench and bar.
3. The rule improperly focuses on a generalized viewpoint discrimination and ignores some of the realities of the modern legal marketplace of ideas. To wit: The possibility that the public would perceive a judge who spoke at a specialty bar to be less than impartial is smaller and less worrisome than what would be lost by prohibiting his or her speaking to varying constituencies at numerous differing events.

ATLA first notes that from the earliest days of the Judicial Canons, there has been an awareness that judges should not be isolated in the legal community and in society. They point to the California experience in encouraging judicial participation in specialty bar events and note numerous judicial ethics opinions that permit this practice. They state that an even-handed approach to the myriad of specialty bar associations and organizations would be quite difficult to develop, they point out and that the flow of ideas between bench and bar improves education and understanding of disparate positions. Finally, they distinguish between viewpoint and party bias noting that the former is allowable while the later is not. ATLA respectfully urges the withdrawal of this rule.