

Canon 3E(1)(C)

Disqualification

HALT, Inc. and Community Rights Counsel

James C. Turner, et al.

October 15, 2003

HALT and the Community Rights Counsel observe that the current Model Code does not demand full disclosure and urge the Commission to increase the Code's protection for litigants from improper bias by replacing the "knows" language in Canon 3E(1)(C) with a "knows or should know" rule. This will require judges to conduct a thorough analysis of their financial holdings and regularly question whether recusal is necessary in each case. In HALT's view, the addition of the "should know" requirement achieves a proper balance, as it guarantees that a judge will not face discipline in instances where the judge's economic interest is only marginal, yet it appropriately places the burden on the judge to carefully scrutinize his or her holdings given that s/he is the individual with the best access to this information. This is in keeping with other imputed knowledge requirements such as those that apply in statutes of limitation nationwide.

Canon 3E(2)

Disqualification

HALT, Inc. and Community Rights Counsel

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October 15, 2003

HALT and the Community Rights Counsel [CRC] urge the following revision of the Canon 3E(2) to ensure a judge's full disclosure of his or her financial interests. (Additions underlined; deletions struck through.)

(2) A judge shall ~~keep informed about the judge's and~~ continuously update a list of the judge's personal and fiduciary economic interests and ~~make a reasonable effort to keep informed about the~~ of the personal economic interests of the judge's spouse and minor children residing in the judge's household.

Canon 3E(2) Comment

Disqualification

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HALT and the Community Rights Counsel observe that financial disclosure is meaningless if the public has no practical means of accessing information in financial disclosure reports and recusal lists. Thus, they urge the Commission to establish clear access requirements and clarify that financial disclosure reports and recusal lists must be

made available in the office of the clerk of the court where the judge serves by adding the following language to the commentary of Canon 3, Section E(2). (Additions underlined.)

A copy of this list should be filed in the office of the clerk for the court in which the judge serves, where there is full public access to this list.

Canon 4D(1)

Financial Activities

HALT, Inc. and Community Rights Counsel

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October 15, 2003

HALT and the Community Rights Counsel believe that judges should be required to certify that they have not handled matters in which they or their families held a financial interest and urge the Commission to provide for such certification in the Model Code of Judicial Conduct. The closest the current Code comes to encouraging a judge's careful analysis of his or her financial holdings is stated in the commentary to Canon 4, Section D, Part 1; however the Code should be revised to require something beyond mere "avoidance" of a conflict of interest. HALT and the Community Rights Counsel urge the Commission to revise the Code to require the proactive step of certification.

Canon 3E(2)

Disqualification

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In addition to amendment of the Code of Judicial Conduct to include a judge's certification of financial interests, HALT and the Community Rights Counsel recommend addition of a second important check on judges to make certain that they not only divulge financial interests, but also take the necessary step of ensuring that those interest have no bearing on cases over which they preside. Accordingly, HALT and the Community Rights Counsel recommend addition of the following black-letter to Canon 3E(2). (Additions underlined.)

Within 60 days of the end of each calendar year, a judge shall file with the clerk of the judge's court a certification that the judge did not perform any adjudicatory function in any litigation during the prior calendar year in which the judge or the judge's spouse, parent or child wherever residing, or any other member of the judge's family residing in the judge's household, had a financial interest in the outcome of such litigation.

Canon 4D(5) and Comment

Financial Activities

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October 15, 2003

HALT and the Community Rights Counsel (CRC) are concerned about the problem of special interests using expense-paid trips to lavish settings in what amounts to an attempt to lobby judges, and in their comment on this issue provide findings of reports by CRC and national media about judges' expense-paid vacations and travel. In view of this wide-spread problem, HALT and the CRC recommend modification of the Code to address a judge's duty to avoid attending privately funded multi-day seminars that create the appearance of impropriety. HALT and the CRC urge the Commission to amend the Model Code to provide specific guidance for state judges about the kinds of activities for which they may receive compensation by adding the following language after the last sentence in Canon 4D(5). (Additions underlined.)

"Judges shall not accept gifts that have an aggregate value in excess of \$500 in association with privately-continuing legal education programs for judges."

HALT and the CRC also propose adding the following additional comment to Canon 4D (5). (Additions underlined.)

In recent years, corporations and other interested parties have started hosting or funding expense-paid continuing legal educational programs for judges in order to advance a particular perspective on the law or specific legal issues. Participation in these events inevitably creates the appearance of a conflict of interest. The program fees and materials, travel, food, and lodging expenses associated with such programs are gifts to the judge.

HALT and CRC observe that these amendments achieve balance, while stopping short of a flat ban on biased seminars. The amendments allow for private funding of judicial education so long as the funding does not exceed \$500, yet it also ensures that judges avoid creating the appearance of a conflict of interest by accepting expensive gifts and lavish vacations from groups that stand to benefit from their future rulings.