

Comments from Alan B. Morrison

(12/16/04)

I have previously submitted comments on Canons 1 & 2 and am now submitting this brief comment on Canons 3 & 4.

In Canon 3, there is a great deal of focus on extra-judicial activities of judges. A number of years ago, I co-authored a paper that examined this issue, focusing on the roles of the Chief Justice of the United States, most of which are imposed on him by Congress. Some of them appear to be inconsistent with some parts of Canon 3. Perhaps it should be made clear that these rules apply, unless otherwise provided by statute (not court rule - too open-ended). Here is the citation to the article: The Chief Justice of the United States: More Than Just the Highest Ranking Judge, 1 Constitutional Commentary 57 (1984) (co-authored with D. Scott Stenhouse).

Both this Canon and Canon 4 exempt from certain of these rules activities involving organizations devoted to "improvement of the law, the legal system, or the administration of justice." In my experience, those terms are very broad, and would include organizations like the ABA or ALI, but also could include the ACLU, the Federalist Society, or, in my view, Public Citizen where I worked for many years. This expansive view is underscored by comment 5 of Rule 4.04 that refers to "legal organizations" as being acceptable for judges to attend their meetings and speak. My suggestion is not to change that broad phrase, but to import the qualifications that apply to a judge becoming an officer etc of an organization in Rule 4.04(b) regarding the likelihood that the person or organization will be involved in frequent litigation before the judge, his/her court, etc. Thus, if the category of organizations is broad, the harm to judicial integrity can be eliminated by the exception for organizations that appear regularly before that judge.

Rule 4.14 requires disclosure of waivers of expenses and re-imbursed travel cover by these rules. It also requires that the information be made available quarterly and be readily accessible (the comment suggests at the local courthouse). I believe that federal judges would be covered by these rules, but their disclosures are made, pursuant to a federal statute, only yearly (in May) and they are available only through the Administrative Office of the US Courts, and generally only after filing a written request (which is forwarded to the applicable judge) and a 30 day wait. Would a federal judge be in violation of these rules if she followed the federal statute? Should you consider an additional saying, "unless otherwise provided by statute."

At present I am not on the listserve for the committee, but would like to be added so that I can be more aware of the committee's work and submit comments on a more timely basis. If there are any more proposals beyond those on which I have commented, please notify me so that I can review them. Thank you.

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