

Hon. Louis A Sherman
Norfolk General District Court
January 31, 2006

Dear Judge McKeown:

I believe the Commission has done a fine job in the final draft with regard to Canons 1 and 2 of the Model Code of Judicial Conduct and do not offer any additional comments with regard to these two canons.

With regard to Canon 3, Rule 3.01, subparagraph [2], I would delete the last sentence and utilize language from Canon 2, subparagraph B, of the Virginia Canons of Judicial Conduct, which allows a judge to provide a letter of recommendation on court letterhead provided that "an indication [is] made that the opinion expressed is personal and not an opinion of the court." I believe the Virginia rule is more objective and clear in terms of ensuring compliance. With regard to Rule 3.04 of Canon 3 (Affiliation with Discriminatory Organizations), I believe the Commission has done a good job balancing the need for judges to avoid membership in discriminatory organizations with the judges' constitutional rights to be affiliated with religious and other organizations that engage in clearly private and constitutionally protected conduct.

With regard to Canon 4, Rule 4.11, subparagraph (B), there may possibly be an omission of language in the sentence which starts "Any reimbursement" To be consistent with the language in subparagraph (A) above, it would make sense to me for the sentence in question to read: Any reimbursement or waiver of charges, from sources other than the judge's employing entity, that alone or in the aggregate...." (emphasis added) I believe the Commission has done a good job in subparagraph [4] of the Comment to Rule 4.11 articulating the factors for a judge to consider in deciding whether or not to attend a particular activity on an expenses-paid basis. Finally, with regard to Rule 4.13, I continue to have difficulty with the administrative burden placed on judges to report waivers and expense reimbursements quarterly. Annual reporting makes much more sense and would avoid judges unwittingly violating this Rule. As a compromise, perhaps semi-annual reporting of reimbursements or waivers of charges would lessen the administrative burden.

With regard to Canon 5, since Virginia's state court judges are appointed or reappointed by the General Assembly for six-year, eight-year or twelve-year terms, depending on the court in question, I will leave it to others who are more directly impacted by the proposed Canon.

Thank you so much for the opportunity you have provided to me to become involved in this challenging, worthwhile project. Please feel free to contact me if there is further need for my involvement.