

PROPOSED REVISIONS TO CODE OF CONDUCT FOR U.S. JUDGES

Public Comments

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Pursuant to a request from the Committee on Codes of Conduct of the Judicial Conference of the United States, HALT, Inc. hereby submits comments on revisions proposed to the Code of Conduct for United States Judges.

As a nonprofit, nonpartisan public interest group dedicated to helping all Americans handle their legal affairs more simply, affordably and equitably, HALT has a strong interest in ensuring that the Code of Conduct for United States Judges reflects real judicial accountability and clear, specific ethical standards. Through the efforts of its Judicial Integrity Project, HALT has provided information and materials to members of the House Ways and Means Committee and the Senate Judiciary Committee on issues related to financial disclosure and multi-day judicial seminars. Our organization testified before the American Bar Association's Joint Commission to Evaluate the Model Code of Judicial Conduct and served on the judicial ethics panel at the ABA Center on Professional Responsibility's national conference in 2006. Last year, we submitted written testimony to the Judicial Conference on its proposed procedural rules governing federal judicial discipline bodies.

HALT strongly urges the Committee on Codes of Conduct to amend proposed Canon 4H by placing a clear limit on the monetary reimbursements a judge may accept for attending a multi-day seminar funded by a foundation, corporation or individual with an interest in the outcome of federal litigation.

The problem of special interests using expense-paid trips to lavish settings in a thinly-veiled attempt to lobby judges has been well documented. Ethics experts, judges, public interest groups and editorial boards from across the political spectrum have strongly criticized these programs.

The Community Rights Council's groundbreaking 2000 report, *Nothing for Free*, found that between 1992 and 1998, some 230 federal judges – more than a quarter of the federal judiciary – traveled to resort locations at the expense of private interests with a stake in federal litigation. Sponsors of these trips included the Foundation for Research on Economics and the Environment (FREE), the Law and Economics Center and the Liberty Fund, all groups with a vested economic interest in relaxation of environmental regulations. During these expense-paid vacations, judges attended legal seminars making the case for curbing federal regulatory authority in favor of a free-market approach to matters like protecting the environment. CRC's report demonstrated that the "educational" seminars had an impact on judicial decision-making. Ten of the decade's most significant rulings scaling back environmental protections were written by judges who attended these seminars, often while the cases were pending in court.

In a foreword to the CRC study, the Honorable Abner J. Mikva, former Chief Judge of the U.S. Court of Appeals for the D.C. Circuit, declared that steps to protect judicial integrity “all become meaningless when private interests are allowed to wine and dine judges at fancy resorts under the pretext of ‘educating’ them about complicated issues.”

Senator Russell Feingold (D-WI) similarly stated:

The appearance created by these seminars is not consistent with the image of an impartial judiciary. One-sided seminars given in wealthy resorts funded by wealthy corporate interests to ‘educate’ our judges in a particular view of the law cannot help but undermine public confidence in the decisions that judges who attend the seminars ultimately make.

The Judicial Conference itself has acknowledged the potential harm of private judicial seminars, as rules promulgated in the fall of 2006 mandate that prompt reports about privately-sponsored trips be made publicly available on the Internet.

Despite the widespread concern over privately funded trips, proposed Canon 4H(1) merely provides that compensation for law-related and extra-judicial activities should not exceed a reasonable amount nor should it exceed what a person who is not a judge would receive for the same activity.” These vague and confusing guidelines not only fail to provide clear standards for judges, they also invite the public’s skepticism about the influence of corporations and special interest groups on our nation’s judiciary.

The exception in the commentary to Canon 4 which allows reimbursement received for attending “an activity devoted to the law, the legal system or the administration of justice” similarly poses a critical ambiguity that largely eviscerates the Canon’s prophylactic provisions. The exception could be interpreted to cover seminars funded by corporations and special interest groups so long as the activities are under the guise of being related to the “legal system.”

For example, a dude ranch vacation sponsored by the FREE organization that features partisan lectures on property rights and market forces could be considered related to the “legal system.” Under the current exception clause in the commentary of Canon 4, judges would be permitted to accept travel reimbursements for first-class travel and hotel accommodations given during that activity. When judges accept thousands of dollars in the form of lavish meals and vacations from private foundations, corporations and other special interests, the perception of their impartiality is severely damaged.

Senator Patrick Leahy (D-VT) recently introduced Senate Bill 1638, the Judicial Salary Restoration Act, which, if passed, would mark the first significant raise for federal judges since 1991. Senator Feingold amended S. 1638 with Section 10, which places a specific cap on the amount of reimbursement that federal judges may accept “in connection with a single trip or event [for] travel, food [or] lodging” from a source other than the federal government, state or local government, or bar or judicial association. The amendment limits compensation and reimbursement to \$2,000 per trip. To date, the bill has passed through the Senate Judiciary Committee and is scheduled for a vote on the Senate floor.

We believe that Senate Bill 1638 achieves an important balance. It does not place a flat ban on seminars and even allows for private funding of judicial education so long as the funding does not exceed \$2,000, yet it also ensures that judges will 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.

We recommend that the Committee clarify the true intention of the gift exception by adding the following language to the commentary to Canon 4D(4): “Judges shall not accept travel reimbursement with an aggregate value in excess of \$2,000 in association with privately-funded continuing legal education programs for judges.”

HALT respectfully requests that the Judicial Conference’s Committee on Codes of Conduct amend the proposed rules to reflect pressing concerns about improper influence on federal judges. In making these important amendments, the Judicial Conference can instill the Code of Conduct for United States Judges with guidelines that restore public confidence in the impartiality and integrity of the federal judiciary.