WISCONSIN LEGISLATIVE COUNCIL
STAFF MEMORANDUM

Memo No. 6

TO: MEMBERS OF THE SPECIAL COMMITTEE ON JUDICIAL DISCIPLINE AND RECUSAL

FROM: Don Salm, Senior Staff Attorney

RE: Overview of Judicial Recusal Laws and Procedures in the 50 States; Discussion of General Proposals from Other States' Laws and Legislation

DATE: September 9, 2010

This Memo provides an overview of laws and legislative proposals relating to judicial recusal in the 50 states, as well as a brief discussion of proposals for changes in recusal laws that have been offered by several groups and organizations with specific interests in such laws. In this Memo, the terms "recusal" and "disqualification" are used interchangeably, with some states and some proposals using one term rather than the other. The terms are, for all intents and purposes, identical in the context of judge removal laws and this Memo.

BACKGROUND

Purpose and History of Recusal, in General

With reference to the significance of judicial impartiality and the concept of recusal in our justice system, a recent article on the topic notes:

> An impartial and independent tribunal is the *sine qua non* of our nation's promise of equal justice under law. The rule of law is imperiled if justice is not done and if it is not seen to be done. As Chief Justice Harlan Fiske Stone said simply, "The law itself is on trial in every case."
>
> One method to help litigants secure a fair judge for their disputes is the motion for disqualification or recusal, available in some form in every American jurisdiction. But recusal has traditionally been a difficult, cumbersome process, seldom considered and even less often actually used.

One East Main Street, Suite 401 • P.O. Box 2536 • Madison, WI 53701-2536
(608) 266-1304 • Fax: (608) 266-3830 • Email: leg.council@legis.state.wi.us
http://www.legis.state.wi.us/lc

> In earlier times, throwing up roadblocks to discourage frequent recusal motions made some sense, as cumbersome communication and slow travel made replacing a judge a difficult and expensive matter. The doctrine of necessity, by which even a presumptively biased judge could decide a case when no substitute was available, made legal and practical sense. But now, no judicial system should accept a process which leaves a litigant acting in good faith saddled with a judge whose fairness can be reasonably questioned. [Source: "Fair Courts: Setting Recusal Standards," by James Sample, David Pozen, and Michael Young, Brennan Center for Justice at New York University School of Law, 2008, p. 3.]

American Bar Association (ABA) Model Code of Judicial Conduct

To promote the goal of judicial impartiality, most states have adopted the American Bar Association's (ABA's) Model Code of Judicial Conduct. The Code prescribes disqualification for judges who recognize the existence of a conflict of interest or who encounter allegations of a conflict of interest in a motion to disqualify.

Supreme Court Justice Kennedy in the Caperton Case: States' Authority to Adopt Recusal Standards More Rigorous Than Constitutional Due Process Requires

On June 8, 2009, in its decision in *Caperton v. A.T. Massey Coal Co.* ___-___, 129 S. Ct. 2252 (2009), the U.S. Supreme Court reaffirmed the due process significance of an impartial, unbiased tribunal, noting that the U.S. Constitution requires a judge's recusal "when 'the probability of actual bias on the part of the judge or decision maker is too high to be constitutionally tolerable'" -- when there is a "serious, objective risk of actual bias." Writing for the majority, however, Justice Kennedy clarified that states may adopt more rigorous recusal standards than what is required by due process. That is, the constitutional floor of due process for recusal is to be distinguished from the ceiling established by statute or professional standards for the judiciary -- states are permitted to do more (and have done so in a few cases, as briefly described below).

STATE RECUSAL LAWS: OVERVIEW OF SIMILARITIES AND DIFFERENCES

Similarities; in General

As noted above, in almost all states, the state codes of judicial conduct have as their primary source the ABA's Model Code of Judicial Conduct, with other sources including state constitutions, statutes, and court rules. Substantively, the grounds for recusal in the various states are generally consistent with those found in the ABA Model Code. The Model Code grounds are:

- ***When the judge's "impartiality might reasonably be questioned": the general or "catch-all" recusal standard*** (45 states). This is the current "default standard" in the ABA Model Code. Three states have adopted essentially the same rule, but with some variations in phraseology.

- ***When the judge is biased or has personal knowledge*** (48 states).

- ***When the judge or relatives are parties, lawyers, witnesses, or have an interest in the case*** (all states).

- ***When the judge or immediate family members have an economic interest*** (48 states). This applies if the judge knows that he, or a person in his or her household, has an economic interest in the proceeding. The Code defines "economic interests" to exclude "de minimis" interests, and defines "de minimis interests" as "an insignificant interest that could not raise a reasonable question regarding the judge's impartiality."

- ***When parties or their lawyers contributed to the judge's election campaigns*** (two states have adopted provisions comparable to the 1999 ABA provision, but see discussion, below, and in Memo No. 4 to the committee).

- ***When a judge made prior statements committing him or her to a result*** (11 states). This provision requires recusal when a judge makes public statements that commit or appear to commit the judge to reach a particular result in a case.

- ***When the judge was previously involved in the case*** (all states). All jurisdictions require recusal if a judge served as a lawyer for a party, or was associated with a lawyer who represented a party in the matter in controversy before the court. Most jurisdictions also permit a judge to hear a case in which the judge formerly served as a lawyer for one of the parties, but on a different issue.

- ***When the judge is a former government employee who participated substantially in a matter now before the court*** (six states). The number of adopting states may be misleading, however, since the ABA recently added this Model Code provision in 2007 and numerous states have indicated an interest in including it.

- ***When a judge is likely to be a material witness in the proceeding*** (all states, except Montana). Fifteen states also require recusal if a lawyer who was formerly associated with the judge is likely to be a material witness in the case.

- ***When a judge has presided over the case previously in another court*** (18 states).

Another area in which almost all states have provisions relates to waiver of a disqualification (i.e., the parties consent to waive a particular ground or grounds for disqualification). Forty-four states have provisions permitting parties to agree to waive any disqualifying interests of a judge except bias. Five states, however, permit the waiver of any disqualification by the parties, including bias, and seven states prohibit waiver of disqualification for additional reasons other than those set forth above. New Jersey does not permit any waiver of disqualification. [Source: Article, *Taking Disqualification Seriously*, by the ABA Judicial Disqualification Project, pp. 12 and 15, JUDICATURE, Vol. 92, No. 1, July-August 2008.] For example, the current Michigan Court Rules provide:

Differences; in General

Other features of judicial recusal law vary substantially across the states. As one commentator notes in summarizing these differences:

> The most meaningful distinction is that in about one-third of the states, litigants may disqualify a judge without showing cause. This is known as peremptory disqualification. When peremptory challenges are denied for a procedural deficiency or are no longer available – such challenges are usually capped at one [per party] per proceeding – litigants retain the right to seek recusal or disqualification for cause…Among for-cause jurisdictions (and in peremptory jurisdictions when challenges are made for cause), the crucial distinctions tend to be procedural, not substantive. While jurisdictions differ as to the specific situations calling for disqualification and the specific requirements for a successful motion, the standards and doctrines that courts apply tend to be functionally the same. ***More notable, and probably more consequential, are differences in the methods courts use for handling a recusal or disqualification motion – a topic on which the [ABA] Model Code is silent.***
>
> Some courts require the challenged judge to transfer these motions immediately to a colleague (a presiding judge or chief judge chooses which colleague); some require transfer only after the challenged judge has ensured the motion's timeliness and sufficiency; the rest let the challenged judge decide on these motions herself. Most state and federal courts, including the Supreme Court, follow the latter policy and rarely, if ever, require transfer. Nor is voluntary transfer typical.
>
> Likewise, while some jurisdictions encourage or require challenged judges to hold evidentiary hearings, most leave the decision of whether to do so entirely to the judge's discretion. With or without hearings, judges in most jurisdictions do not need to give a reasoned explanation for their recusal decisions. In practice, judges have been much more likely to give reasons when they decline to recuse themselves. [Source: "Fair Courts: Setting Recusal Standards," pp. 18 and 19; emphasis added.]

Another important distinction interwoven with the recusal law is how jurisdictions select their judges (whether they are elected or appointed and the procedures for doing so) and how they regulate their judges' behavior outside the courtroom. For example, among the states with elected judiciaries, campaign practices vary in many ways, from fundraising and spending regulations, to speech restrictions, to levels of special interest involvement, advertising, and partisan-related activities. Even though any two states may have recusal schemes that look quite similar in statutory or rule language, there may be a substantial difference in the reality based on how the states select their judges.

RECUSAL AT THE SUPREME COURT LEVEL: WHO MAKES THE RECUSAL DECISION AND WHAT IS THE PROCESS

For a supreme court, judicial recusal or disqualification raises the potential for a court that is equally divided. In addition, the recusal or disqualification of a supreme court justice is not reviewed by a higher court.

Michigan Court Rule: If Supreme Court Justice Refuses to Recuse Himself or Herself, the Justice Must Render His or Her Decision in Writing and the Full Supreme Court is Permitted to Review the Individual Justice's Decision Not to Recuse

The revised Rule 2.003, Michigan Court Rules (revised November 2009; hereafter, "rule") provides that:

- *Applicability.* The "Disqualification of Judge" rule applies to all judges, including justices of the Michigan Supreme Court (previously applied only to lower court judges).

- *Who May Raise.* A party may raise the issue of the judge's disqualification by motion, or the judge may raise it.

- *Grounds.* A judge is disqualified when the judge cannot impartially hear a case, including but not limited to instances in which the judge, based on reasonable and objective perceptions:

    1. Has [A] serious risk of actual bias impacting the due process rights of a party as enunciated in *Caperton*.

    2. [H]as failed to adhere to the appearance of impropriety standard set forth in Canon 2 of the Michigan Code of Judicial Conduct.

- *Ruling on the Motion.*

A major part of the revised rule relates to the separate procedure for ruling on the motion for disqualification in the Michigan Supreme Court as opposed to such motions in the lower courts. The challenged Justice must decide the issue and publish his or her reasons about whether to participate in the matter before the Court. If the challenged Justice denies the motion:

- A party may move for the motion to be decided by the entire Supreme Court, which must then decide the motion for disqualification *de novo*. The Supreme Court's decision must include the reasons for its grant or denial of the motion for disqualification, and the Court must issue a written order containing a statement of reasons for its grant or denial of the motion. Any concurring or dissenting statements must be in writing.

- If the disqualification motion is granted, the underlying action will be decided by the remaining justices of the Supreme Court.

Other States' Court Rules and Statutes on This Issue

The following rules were cited in the opinion of Chief Justice Abrahamson and Justices Crooks and Bradley in *State v. Allen*, 2010 WI 10 322 Wis. 2d 372, 778 N.W.2d 863[1]:

- Texas Court Rule:

> Texas Rule of Appellate Procedure 16.3, promulgated by the Supreme Court of Texas, requires that an appellate judge or justice faced with a motion to recuse must either individually grant the motion or certify the matter to the entire court for en banc consideration. The challenged judge or justice must not participate in the court's decision on the motion. Tex. Rules App. Proc. Rule 16.3. [*Id*., 332 Wis.2d 456 at pp. 456-7.]

[Note: The Appendix to the opinion cites a similar court rule in Vermont [Vt. Rules of App. Proc. Rule 31 (e) (2)].]

- Nevada and Other States' Statutes:

> In other states, statutes set forth a procedure for the supreme court to review a justice's disqualification. For example, a Nevada statute provides that the Supreme Court of Nevada cites--without the participation of the challenged justice--to determine whether alleged bias or other grounds require the disqualification of one of its members. Nev. Rev. Stats. Ann. § 1.225 (4) (2009). [*Id.*, 332 Wis.2d at p. 457.]

Proposals to Have Special Panel of Retired Judges or Justices Review the Motion Relating to Recusal of Supreme Court Justice

West Virginia: Proposal for Judicial Recusal Commission

During the 2008 Legislative Session, West Virginia lawmakers proposed a mechanism for the independent adjudication of judicial recusal motions, by amending the state's constitution to create, under the supervisory control of the state's Supreme Court system, a Judicial Recusal Commission to rule on judicial recusal matters. The Commission would have been composed of acting or retired judges appointed by the governor, with the advice and consent of the state senate, to serve staggered six-year terms. Parties seeking the recusal of a judge would submit "an application" to the Commission to have the judge removed. The Commission would then issue a binding decision on whether a family court judge, a circuit court judge or a Supreme Court justice should be excused from hearing, deciding or participating in deciding the matter at issue in the main legal proceeding. The resolution was introduced and referred to the House Committee on Constitutional Reform, but no further action was taken. [2008 H.R. Joint Resolution 104.]

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[1] Footnote 44 to this opinion notes: "For surveys of various recusal standards and practices in the states (focused mainly on the trial courts), see, e.g., Richard E. Flamm, Judicial Disqualification ch. 28 (2d ed. 2007); Leslie W. Abramson, Deciding Recusal Motions: Who Judges the Judges?, 28 Val. U. L. Rev. 543 (1993-94)."

ABA Disqualification Project Draft Report

The Draft version of the ABA's Resolution and Report of the Judicial Disqualification Project, dated July 16, 2010, and published "For Discussion Purposes Only" is enclosed with this Memo [see ***Enclosure***]. On page 21 of that Report, in briefly discussing the issue of disqualification of high court judges, the authors note: "[One alternative] would be to assign review of the motion (or perhaps even assign the motion itself in the first instance) to a special panel of retired judges or justices."

Proposal to Have Appellate Court Judge Substitute for Supreme Court Justice Where Recusal

In a recent article in the Chicago Daily Law Bulletin, [*Of Caperton, Contributions and the Courts*, Vol. 155, No. 118, June 17, 2009], the author noted the following:

> *…Illinois needs a constitutional amendment allowing for a substitution of a Supreme Court justice when one of the seven Supreme Court justices must recuse himself.*
>
> Three years ago, an ISBA-CBA task force on the judiciary co-chaired by James J. Ayres and myself suggested such a recusal policy. Our task force recommended that an appellate court judge from the same judicial district as the Supreme Court justice who recused himself be chosen by lot to sit as a "temporary Supreme Court justice." After *Caperton* there may be more recusals.

RECUSAL AT LOWER COURT LEVEL: WHO MAKES THE RECUSAL DECISION AND WHAT IS THE PROCESS

An article by the ABA Judicial Disqualification Project points out that:

> In the case of disqualification for cause, which is permitted in all jurisdictions, a judge presented with a motion to disqualify may conclude that disqualification is required and withdraw without a hearing on the motion. If the judge does not withdraw at that juncture, jurisdictions handle the review of motions to disqualify in three different ways. [1] The most common approach is for the subject judge to review the motion on the merits. [2] Alternatively, several states require that the motion be decided on its merits by a different judge. [3] A blended approach, adopted by a significant number of states, requires the subject judge to review the motion first for legal sufficiency (i.e., to assess whether the allegations in the motion, if true, would necessitate disqualification), but assigns another judge to rule on the merits of the motion (i.e., to ascertain whether the allegations are true). [Source: "Taking Disqualification Seriously," p. 16.]

California Code of Civil Procedure, s. 170.3

Under the California Code of Civil Procedure, s. 170.3, if a judge refuses to recuse himself or herself, the question of disqualification must be heard and determined: (1) by another judge agreed upon by all the parties who have appeared; or (2) in the event they are unable to agree within five days of notification of the judge's answer, by a judge selected by the chairperson of the Judicial Council, or if the chairperson is unable to act, the vice chairperson. The clerk must notify the executive officer of the Judicial Council of the need for a selection. The selection shall be made as expeditiously as possible. No challenge may be made against the judge selected to decide the question of disqualification.

The judge deciding the question of disqualification may: (1) decide the question on the basis of the statement of disqualification, answers to any questions, and any written arguments as the judge requests; or (2) set the matter for hearing as promptly as practicable. If a hearing is ordered, the judge must permit the parties and the judge "alleged to be disqualified" to argue the question of disqualification and must, for good cause shown, hear evidence on any disputed issue of fact. If the judge deciding the question of disqualification determines that the judge is disqualified, the judge hearing the question must notify the presiding judge or the person having authority to appoint a replacement of the disqualified judge. The determination of the question of the disqualification of a judge is not an appealable order.

West Virginia Proposal: Judicial Recusal Commission

See discussion, above, as applicable to lower court judges.

CAMPAIGN CONTRIBUTIONS: PER SE RULE FOR RECUSAL; OTHER BILLS AND PROPOSALS

American Bar Association Per Se Rule: Mandatory Disqualification Under Certain Circumstances

> To address the concern about judges who decline to recuse themselves when their campaign finances reasonably call into question their impartiality, the ABA has recommended mandatory disqualification of any judge who has accepted large contributions from a party appearing before her...[C]urrent recusal doctrine makes it extremely difficult to disqualify a judge for having received contributions from a litigant or her lawyer, even though there is ample evidence to suggest that these contributions create not only the appearance of bias but also actual bias in judicial decision making. This problem is only going to grow more acute in the coming years, as judicial election campaigns become increasingly expensive. [Source: "Fair Courts: Setting Recusal Standards," p. 29.]

The ABA's 2007 Model Code includes a draft provision (s. 2.11 (A) (3)) requiring disqualification of an elected judge when:

- The judge knows or learns by means of a timely motion that a party, a party's lawyer, or the law firm of a party's lawyer has within the previous [insert number] year[s] made aggregate contributions to the judge's campaign in an amount that [is greater than [$[insert amount] for

an individual or $[insert amount] for an entity] [is reasonable and appropriate for an individual or an entity].

The "Fair Courts" article also notes:

> By setting a maximum threshold, the ABA's per se rule eliminates lawyers' incentive to curry favor through large contributions. By allowing contributions below that threshold, the ABA rule respects the fact that in many races the local bar will be in the best position to evaluate the candidate's merit--and if lawyers do not support the candidates' campaigns, special interests and self-funding will likely dominate judicial campaign finance.
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> …
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> Two problems with the ABA's formulation of the rule may help to explain why no states have adopted it. First, in states with reasonable contribution limits, the potential for real or apparent corruption is largely addressed by the limits....[T]he ABA rule adds little to the campaign finance regime in protecting a judge's impartiality. Those jurisdictions would be better served by a rule that triggers disqualification after receipt of aggregate contributions of a certain amount not from a single donor, but collectively from all donors associated with a party to the litigation (such as corporate officers or management-level employees) or with counsel (such as law firm partners who have given in their individual capacity).
>
> …
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> Second, the mandatory disqualification required by the ABA rule invites gamesmanship that could defeat its purpose. If the contribution threshold were set at a reasonable level, parties or lawyers could disqualify an unfavorable judge by making contributions (or aggregate contributions) above that amount to her campaign committee. To prevent such gaming of the system, any party whose opposition (or counsel for the opposition) contributed to the judge should be permitted to waive disqualification. A waiver is preferable to requiring a motion for disqualification because it keeps the onus on the court to disclose campaign finance information. [Source: "Fair Courts: Setting Recusal Standards," pp. 29 and 30.]

The article suggests that the ABA proposed rule may be improved if it required disqualification where:

> > [T]he judge knows or learns by means of a timely motion that a party, a party's lawyer, or the officers, partners, or other management-level employees of that party or of the law firm of the party's lawyer, has within the previous [ ] years[s] made aggregate contributions to the judge's campaign in an amount that is greater than [$] for an

> individual or [$] for an entity. Disqualification under this section may be waived by any party, provided that the party, the party's lawyer, or the officers, partners, or other management-level employees of that party or of the law firm of the party's lawyer, has not made such contributions. [*Id.*, p. 30.]

Related Provisions and Proposals in Various States

- ***California:*** 2010 Assembly Bill 2487 would require the judge to recuse himself or herself when a party or attorney gives $1,500 to the judge's campaign. The bill passed the Assembly on May 5, 2010, and is currently in the Senate Judiciary Committee.

- ***California: Commission for Impartial Courts (reporting to the Judicial Council of California):*** Recommended that: (1) trial judges would be required to disclose in court all contributions of $100 or more; and (2) judges would be automatically disqualified in cases involving parties whose contributions exceeded specific threshold levels set forth in the recommendations. The Final Report was issued on December 15, 2009, and no further action is indicated.

- ***Montana:*** A legislative proposal, still in draft stage, Montana 2009 LC 2027, would require recusal by a Supreme Court justice in cases where a party or party's attorney gave money to the justice's campaign in excess of existing campaign contribution limits. Under the draft:

  - A justice of the Supreme Court may not participate in a hearing on oral argument of a case before the court or in an opinion or order of the court concerning that case if a campaign contribution from a party or an attorney representing a party to that case was made, in an election to which 13-37-216, Mont. Stats., applies, in excess of the amount allowed by that section and was made: (a) to the justice's campaign; (b) to a political committee that made a contribution to the justice's campaign; or (c) for the purpose of opposing the justice's opponent. "Contribution" and "political committee" have statutorily-specified meanings.

  - A justice who may not participate in oral argument or an opinion or order is required to voluntarily request substitution of another justice or judge by the chief justice or acting chief justice.

  - Within 10 days of the receipt of the final report of a political committee showing expenditures made on behalf of a justice of the Supreme Court, including expenditures made opposing the opponent of a justice, the commissioner of political practices shall send a copy of the report to the justice who was elected. Within 10 days of receipt of the final report of the political committee referred to above showing contributions received by that committee, the commissioner shall send a copy of the report to the justice who was elected.

- ***Nevada:*** **Recommendation of 2008 Commission on the Amendment of the Nevada Code of Judicial Conduct ["Commission"]:** The Commission recommended: (1)

disqualification in the event that a judge receives campaign contributions of $50,000 or more from a party appearing before the judge; this financial benchmark would vary in smaller districts where less aggregate money is spent on elections; and (2) required disqualification if judge received 5% or more of his or her total campaign funding from a party or a law firm in a case. The recommendations were rejected by the Nevada Supreme Court in January 2009.

- ***New York:*** 2009 Assembly Bill 679 would have: (1) required disclosure of campaign contributions to judges by parties in an action (and by their counsel); and (2) required recusal if the judge in the action received $500 or more in campaign contributions from any party. The bill received no action in the Judiciary Committee.

- ***Texas:*** Under 2009 House Bill 4548, which died in committee, a justice of the Supreme Court or judge of the Court of Criminal Appeals would have been required to recuse himself or herself from any case in which he or she had accepted, from a party to a case, political contributions totaling $1,000 over the preceding 4 years.

- ***Washington State*****:** The 2009 Judicial Conduct Task Force (reporting to the State Supreme Court) proposals for new Code of Judicial Conduct includes:

    - As mandatory grounds for disqualification, financial support of a judge's campaign within the last six years by a litigant in a case before the judge when such support amounts to more than 10 times the state contribution limit. "Financial support" is defined as campaign contributions or independent expenditures made in support of a judge's campaign and/or against an opposing candidate. The term includes a percentage of money given to political action committees that support the judge's candidacy and/or attack his opponent's candidacy.

    - As permissive grounds for disqualification: A judge may disqualify himself or herself if the "financial support" (defined above) is more than two times the state contribution limit.

OTHER NOTABLE TOPICS, STATUTORY PROVISIONS, OR PROPOSALS RELATING TO RECUSAL LAW OR PROCEDURE

Peremptory Disqualification: Prompt Determination of Recusal Issue

Approximately 1/3rd of the states already permit disqualification of a judge without the requirement of any showing of cause. Such peremptory judicial challenges are usually limited to one per proceeding. In some jurisdictions, the request must be accompanied by an affidavit of prejudice alleging that a fair trial cannot be had before the assigned judge. But, in either case, substitution of judge follows immediately, with no further proceedings necessary.

> Peremptory disqualification has the potential to substantially increase the frequency of disqualification, and it denies judges the opportunity to defend themselves against charges of partiality. [The great advantage of peremptory strike], though, lies in its simplicity: by granting litigants one

> "free pass," peremptory disqualification allows most of them to secure an unbiased judge without the expense, unseemliness, and retribution risk of a disqualification challenge. If the next-assigned judge is also unsatisfactory, the litigant may challenge her for cause. [Source: "Fair Courts: Setting Recusal Standards," p. 26.]

Enhanced Disclosure (Other Than Financial Disclosures, as Discussed Above)

In most states, there is no requirement that a judge issue a memo, opinion, or statement about why he or she is withdrawing or refusing to withdraw in response to a recusal motion. "At least six states require that judges explain their decisions, but in many states with no such requirement, judges nonetheless issue some sort of statement explaining their rulings." ["Taking Disqualification Seriously," p. 16.] Among some key differing state provisions or proposals are:

- ***California, Commission for Impartial Courts, Final Report, Dec. 15, 2009:*** Adding such a provision to Canon of Judicial Ethics relating to disqualification of a sitting judge who has made a public statement while campaigning that a reasonable person would believe predisposes the judge to a biased ruling in the case. [As a result of federal and circuit court opinions after the U.S. Supreme Court decision in *Republican Party of Minnesota v. White*, 536 U.S. 765, 122 S. Ct. 2528 (2002).]

- ***Iowa Code s. 602.1606 and Iowa Code of Judicial Conduct Canon 3 (D):*** Requiring a judge to disqualify himself or herself if a conflict exists unless the judge discloses to all parties "any existing circumstances" concerning the disqualification to the parties and then receives consent to proceed from all the parties.

- ***Michigan Court Rule 2.003, discussed above:*** Requiring the challenged Supreme Court Justice to publish his or her reasons for deciding whether to participate in a matter, and, if the matter goes to the full Supreme Court, requiring the full Court to issue a written order setting forth its reasons for granting or denying the motion.

- ***North Carolina: 2009 Senate Bill 797 (no final action):*** Specifying that a Supreme Court Justice or appellate judge or other judge may disqualify himself or herself for any reason rendering him or her unable to perform the duties of a Justice or a judge in an impartial manner, but requires that the Justice or judge set forth his or her "specific reason or reasons" for disqualification in writing.

Nonjudicial Recusal Advisory Bodies

In some states, bar associations and other groups of volunteers have created committees to monitor judicial campaign conduct. As a recent article notes:

> A similar model might be followed with respect to recusal. Advisory bodies could identify best practices and encourage judges to set high standards for themselves. Judges could be encouraged to seek guidance from the advisory body when faced with difficult issues of recusal. A judge accepting such advice could expect a public defense if a disgruntled

> party criticized a decision not to recuse. In contrast, the advisory body could disclose when a judge has ignored advice favoring disqualification. The publicity would create pressure for the judges to follow recusal recommendations or to specify clear reasons for their decision to sit on a case. [Source: Article, "Invigorating Judicial Disqualifications: Ten Potential Reforms," pp. 26 and 33, JUDICATURE, Vol. 92, No. 1, July-August 2008.]

Judicial Education

Some commentators have suggested increased emphasis on substantive and procedural recusal law and practice in regular judicial training and in additional continuing legal education seminars (or parts or related seminars). "Judges could be instructed in the likely underuse and underenforcement of disqualification motions, the psychological research into bias, the importance of avoiding the appearance of partiality, and so forth." ["Invigorating Judicial Disqualifications," p. 33.]

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Enclosure