

AMERICAN BAR ASSOCIATION
CPR POLICY IMPLEMENTATION COMMITTEE

COMPARISON OF ABA MODEL JUDICIAL CODE AND STATE VARIATIONS

RULE 2.11 Disqualification

(A) A judge shall disqualify himself or herself in any proceeding in which the judge's impartiality* might reasonably be questioned, including but not limited to the following circumstances:

(1) The judge has a personal bias or prejudice concerning a party or a party's lawyer, or personal knowledge* of facts that are in dispute in the proceeding.

(2) The judge knows* that the judge, the judge's spouse or domestic partner,* or a person within the third degree of relationship* to either of them, or the spouse or domestic partner of such a person is:

(a) a party to the proceeding, or an officer, director, general partner, managing member, or trustee of a party;

(b) acting as a lawyer in the proceeding;

(c) a person who has more than a de minimis* interest that could be substantially affected by the proceeding; or

(d) likely to be a material witness in the proceeding.

(3) The judge knows that he or she, individually or as a fiduciary,* or the judge's spouse, domestic partner, parent, or child, or any other member of the judge's family residing in the judge's household,* has an economic interest* in the subject matter in controversy or in a party to the proceeding.

(4) 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].

(5) The judge, while a judge or a judicial candidate,* has made a public statement, other than in a court proceeding, judicial decision, or opinion, that commits or appears to commit the judge to reach a particular result or rule in a particular way in the proceeding or controversy.

(6) The judge:

(a) served as a lawyer in the matter in controversy, or was associated with a lawyer who participated substantially as a lawyer in the matter during such association;

(b) served in governmental employment, and in such capacity participated personally and substantially as a lawyer or public official concerning the proceeding, or has publicly expressed in such capacity an opinion concerning the merits of the particular matter in controversy;

(c) was a material witness concerning the matter; or

(d) previously presided as a judge over the matter in another court.

(B) A judge shall keep informed about the judge's personal and fiduciary economic interests, and make a reasonable effort to keep informed about the personal economic interests of the judge's spouse or domestic partner and minor children residing in the judge's household.

(C) A judge subject to disqualification under this Rule, other than for bias or prejudice under paragraph (A)(1), may disclose on the record the basis of the judge's disqualification and may ask the parties and their lawyers to consider, outside the presence of the judge and court personnel, whether to waive disqualification. If, following the disclosure, the parties and lawyers agree, without participation by the judge or court personnel, that the judge should not be disqualified, the judge may participate in the proceeding. The agreement shall be incorporated into the record of the proceeding.

COMMENT

[1] Under this Rule, a judge is disqualified whenever the judge's impartiality might reasonably be questioned, regardless of whether any of the specific provisions of paragraphs (A)(1) through (6) apply. In many jurisdictions, the

	<p>term “recusal” is used interchangeably with the term “disqualification.”</p> <p>[2] A judge’s obligation not to hear or decide matters in which disqualification is required applies regardless of whether a motion to disqualify is filed.</p> <p>[3] The rule of necessity may override the rule of disqualification. For example, a judge might be required to participate in judicial review of a judicial salary statute, or might be the only judge available in a matter requiring immediate judicial action, such as a hearing on probable cause or a temporary restraining order. In matters that require immediate action, the judge must disclose on the record the basis for possible disqualification and make reasonable efforts to transfer the matter to another judge as soon as practicable.</p> <p>[4] The fact that a lawyer in a proceeding is affiliated with a law firm with which a relative of the judge is affiliated does not itself disqualify the judge. If, however, the judge’s impartiality might reasonably be questioned under paragraph (A), or the relative is known by the judge to have an interest in the law firm that could be substantially affected by the proceeding under paragraph (A)(2)(c), the judge’s disqualification is required.</p> <p>[5] A judge should disclose on the record information that the judge believes the parties or their lawyers might reasonably consider relevant to a possible motion for disqualification, even if the judge believes there is no basis for disqualification.</p> <p>[6] “Economic interest,” as set forth in the Terminology section, means ownership of more than a de minimis legal or equitable interest. Except for situations in which a judge participates in the management of such a legal or equitable interest, or the interest could be substantially affected by the outcome of a proceeding before a judge, it does not include:</p> <ol style="list-style-type: none"> (1) an interest in the individual holdings within a mutual or common investment fund; (2) an interest in securities held by an educational, religious, charitable, fraternal, or civic organization in which the judge or the judge’s spouse, domestic partner, parent, or child serves as a director, officer, advisor, or other participant; (3) a deposit in a financial institution or deposits or proprietary interests the judge may maintain as a member of a mutual savings association or credit union, or similar proprietary interests; or (4) an interest in the issuer of government securities held by the judge. <p>Twenty (20) states have similar language (AZ, AR, CO, DE, HI, IN, IA, KS, MD, MN, MO, MS, MT, NE, NV, NH, OH, OK, UT, WY) Three (3) states have different language (NY, TN, WA)</p>
<p>AL</p>	
<p>AK</p>	
<p>AZ Effective 9/1/09</p>	<p>(A)(4): time period is four years and amount is “amounts permitted pursuant to A.R.S. § 16-905”</p> <p>(A)(6)(a): adds “in the preceding four years” after “lawyer”</p> <p>(B): adds “reasonably” before “informed”</p> <p>Adds (D): <i>Official communications received in the course of performing judicial functions as well as information gained through training programs and from experience do not in themselves create a basis for disqualification.</i></p> <p>[1]: deletes last sentence</p> <p>[4]: replaces “relative” with “member of judge’s family”</p> <p>Adds [7]: <i>A lawyer in a government agency does not ordinarily have an association with other lawyers employed by that agency within the meaning of Rule 2.11(A)(5); a judge formerly employed by a government agency, however, should disqualify himself or herself in a proceeding if the judge’s impartiality might reasonably be questioned because of such association.</i></p>
<p>AR Effective 7/1/09</p>	<p>Deletes (A)(4)</p> <p>Adds [4A]: <i>The fact that a lawyer in a proceeding, or a litigant, contributed to the judge’s campaign, or publicly supported the judge in his or her election does not of itself disqualify the judge. However, the size of contributions, the degree of involvement in the campaign, the timing of the campaign and the proceeding, the issues involved in the proceeding, and other factors known to the judge may raise questions as to the judge’s impartiality under paragraph (A).</i></p>

<p>CA (as proposed)</p>	<p>CA 3E: Title. Because the canon addresses both disqualification and disclosure, the Committee recommends amending the title to read: “Disqualification and Disclosure.” The Committee also proposes dividing CA canons 3E(2) and (3) into subsections with titles. (A)(5) – CA Canon 3E(3)(a): New. The proposed adoption is based on the Model Rule and CIC recommendation. CA proposed provision would have 2 distinctions from ABA: 1) an objective standard and 2) a reasonableness standard to cover implied commitments.</p>
<p>CO Effective 7/1/10</p>	<p>Deletes Model Code (A)(4) (A)(4): Identical to Model Code (A)(5) (A)(5): Identical to Model Code (A)(6) Adds (D): <i>In limited circumstances, the rule of necessity applies and allows judges to hear a case in which all other judges also would have a disqualifying interest or the case could not otherwise be heard.</i> Comment: [1]: Changes “provisions of paragraphs (A)(1) through (5)” to “provisions of paragraphs (A)(1) through (6)” [3]: <i>The rule of necessity may override the rule of disqualification. The rule of necessity is an exception to the principle that every litigant is entitled to be heard by a judge who is not subject to disqualifications which might reasonably cause the judge’s impartiality to be questioned. The rule of necessity has been invoked for trial court and court of appeals judges where disqualifications exist as to all members of the court and there is no other judge available. It has been invoked as to the supreme court when all or a majority of its members have a conflict of interest; the importance of having the court render a decision overrides the existence of the conflict, which might otherwise leave litigating parties in limbo. Under the rule of necessity, a judge might be required to participate in judicial review of a judiciary salary statute, or might be the only judge available in a matter requiring immediate judicial action, such as a hearing on probable cause or a temporary restraining order. In matters that require immediate action, the judge must disclose on the record the basis for possible disqualification and make reasonable efforts to transfer the matter to another judge as soon as practicable. Rather than deny a party access to court, judicial disqualification yields to the demands of necessity.</i> [6]: <i>“Economic Interest” as set forth in the Terminology section, means ownership of more than a one percent legal or equitable interest in a party, or a legal or equitable interest in a party of a fair market value exceeding \$5,000, or in a relationship as a director, advisor, or other active participant in the affairs of a party, except that:</i> <ul style="list-style-type: none"> (1) <i>Ownership in a mutual or common investment fund that holds securities, or of securities held in a managed fund, is not an “economic interest” in such securities unless the judge participates in the management of the fund;</i> (2) <i>securities held by an educational, religious, charitable, fraternal, or civic organization in which the judge or the judge’s spouse, domestic partner, parent, or child serves as a director, officer, advisor, or other participant is not an “economic interest” in securities held by the organization;</i> (3) <i>the proprietary interest of a policy holder in a mutual insurance company, of a depositor in a financial institution or deposits or proprietary interests the judge may maintain as a member of a mutual savings organization or credit union, or a similar proprietary interest is an “economic interest” in the organization only if the outcome of the proceeding could substantially affect the value of the interest; and</i> (4) <i>ownership of government securities is an “economic interest” in the issuer only if the outcome</i> </p>

	<p><i>of the proceeding could substantially affect the value of the securities.</i></p>
<p>CT Effective 1/1/11</p>	<p>Does not have Model Code (A)(4); (A)(4) is equivalent to Model Code (A)(5) but deletes clause, “while a judge or a judicial candidate;” (A)(5) is Model Code (A)(6), but does not adopt (A)(6)(d); (C) Replaces “disclose...waive disqualification” with “ask the parties and their lawyers to consider, outside the presence of the judge and court personnel, whether to waive disqualification provided that the judge shall disclose on the record the basis of such disqualification;” deletes “without participation...personnel” and adds instead “either in writing or on the record before another judge;” Deletes last sentence: The agreement...of the proceeding;” Adds: <i>(D) Notwithstanding the foregoing, a judge may contribute to a client security fund maintained under the auspices of the court, and such contribution will not require that the judge disqualify himself or herself from service on such a client security fund committee or from participation in a lawyer disciplinary proceeding or in any matter concerning restitution or subrogation relating to such a client security fund.</i> <i>(E) A judge is not automatically disqualified from sitting on a proceeding merely because a lawyer or party to the proceeding has filed a lawsuit against the judge or filed a complaint against the judge with the judicial review council. When the judge becomes aware that such a lawsuit or complaint has been filed against him or her, the judge shall, on the record, disclose that fact to the lawyers and parties to the proceeding before such judge, and shall thereafter proceed in accordance with Practice Book Section 1-22 (b).</i> <i>(F) The fact that the judge was represented or defended by the attorney general in a lawsuit that arises out of the judge’s judicial duties shall not be the sole basis for recusal by the judge in lawsuits where the attorney general appears.</i></p> <p>Comment (3) Deletes “judicial” before “action” and deletes “such as a hearing...restraining order;” Does not have Model Code Comments [5] or [6]; Adds instead: <i>(4) The fact that a lawyer in a proceeding is affiliated with a law firm with which a relative of the judge is affiliated does not itself disqualify the judge. If, however, the judge’s impartiality might reasonably be questioned under paragraph (A), or the relative is known by the judge to have an interest in the law firm that could be substantially affected by the proceeding under paragraph (A)(2)(c), the judge’s disqualification is required.</i> <i>(5) The rule does not prevent a judge from relying on personal knowledge of historical or procedural facts acquired as a result of presiding over the proceeding itself.</i> <i>(6) Paragraph (D) is intended to make clear that the restrictions imposed by Dacey v. Connecticut Bar Assn., 184 Conn. 21 (1981), or any implications therefrom should not be considered to apply to judges contributing to a client security fund under the auspices of the court.</i></p>
<p>DE Effective 11/1/08</p>	<p>(A): same as 1990 Model Code Canon 3E(1) but replaces “shall” with “should” (A)(1): same as 1990 Model Code Canon 3E(1)(a) but deletes “or a party’s lawyer” (A)(2): same as 1990 Model Code Canon 3E(1)(d) but adds “or domestic partner” after “spouse” (A)(2)(a): same as 1990 Model Code Canon 3E(1)(d)(i)</p>

	<p>(A)(2)(c): same as 1990 Model Code Canon 3E(1)(d)(iii) but deletes “more than de minimis”</p> <p>(A)(2)(d): same as 1990 Model Code Canon 3E(1)(d)(iv)</p> <p>(A)(3): moves “individually or as a fiduciary” to after “knows that,” replaces family members listed after “domestic partner” with “minor child residing in the judge’s household” and adds “or any other interest that could be substantially affected by the outcome of the proceeding” to end</p> <p>Adds Comment: <i>This Rule, for example, would disqualify the judge if a parent, grandparent, uncle or aunt, brother or sister, or niece or nephew of the judge or the judge's spouse or domestic partner, or the spouse or domestic partner of any of the foregoing were a party or lawyer in the proceeding, but would not disqualify the judge if a cousin were a party or lawyer in the proceeding.</i></p> <p>Second Comment: same as 1990 Model Code Canon 3E(1)(f) Commentary but replaces “relative” with “lawyer-relative”</p> <p>Deletes Model Code (A)(4) and (5)</p> <p>(A)(4)(a): similar to 1990 Model Code Canon 3E(1)(b) but adds “or such lawyer” before “has been a material witness” and adds “or the judge was associated in the practice of law within the preceding year with a law firm or lawyer acting as counsel in the proceeding” to end</p> <p>(A)(4)(b): similar to Model Code (A)(6)(b) but replaces language after “participated” with “as counsel, advisor, or material witness concerning the proceeding or has expressed an opinion concerning the merits of the particular case in controversy”</p> <p>Deletes Model Code (A)(6)(c) and (d)</p> <p>(B): replaces “shall” with “should”</p> <p>(C): adds (A)(4) after (A)(1), parties have “an opportunity” to confer outside presence or judge, court personnel not included, lack of participation by judge not specified, agreement is to be in writing or on the record</p> <p>Adds Comment: <i>This procedure is designed to minimize the chance that a party or lawyer will feel coerced into an agreement. When a party is not immediately available, the judge without violating this section may proceed on the assurance of the lawyer on the record that his party's consent will be subsequently obtained.</i></p> <p>Deletes Model Rule Comments [1] – [3], [5] and [6]</p>
DC	
FL	
HI Effective 1/1/09	<p>Adds “or recusal” after “disqualification” throughout</p> <p>(A): adds “Subject to the rule of necessity” to beginning</p> <p>(A)(1): replaces “concerning” with “for or against”</p> <p>Deletes (A)(4) and (5)</p> <p>(A)(6)(d): adds “on appeal” to beginning</p> <p>(B): adds “or any other person” after “children”</p> <p>[1]: deletes second sentence</p> <p>[2]: replaces language between “obligation” and “applies” with “to disqualify or recuse himself or herself under these Rules”</p> <p>[3]: adds a cross-reference to paragraph (A)</p> <p>Deletes [5] and [6]</p>
ID	
IL	
IN Effective	<p>(A)(3): adds “that could be substantially affected by the proceeding” to end</p> <p>Deletes (A)(4) and (C)</p>

<p>1/1/09</p>	<p>Adds [7]: A statement that “appears to commit” a judge within the meaning of Rule 2.11 (A)(5) is one that a reasonable person would believe from the judge’s public statement that the judge has specifically undertaken to reach a particular result.</p>
<p>IA Effective 5/3/10</p>	<p>(A)(4) Replaces with: <i>The judge knows or learns by means of disclosures mandated by law* or a timely motion that the judge’s participation in a matter or proceeding would violate due process of law as a result of:</i> <i>(a) campaign contributions made by donors associated or affiliated* with a party or counsel appearing before the court, or</i> <i>(b) independent campaign expenditures by a person* other than a judge’s campaign committee, whose donors to the independent campaign are associated or affiliated with a party or counsel appearing before the court.</i></p> <p>[1] Deletes clause, “In many jurisdictions.”</p>
<p>KS Effective 3/1/09</p>	<p>Deletes Model Code (A)(4) (A)(4): same as Model Code (A)(5) but deletes “or appears to commit”</p>
<p>KY</p>	
<p>MD Effective 7/1/10</p>	<p>(a): Deletes “but not limited to”</p> <p>(a)(3): Similar to MR Rule in content but changes language to: <i>The judge knows that he or she, individually or as a fiduciary, or any of the following persons has a significant financial interest in the subject matter in controversy or in a party to the proceeding:</i> (a)(3)(A) <i>the judge’s spouse or domestic partner;</i> (a)(3)(B) <i>a person within the third degree of relationship to the judge; or</i> (a)(3)(C) <i>any other member of the judge’s family residing in the judge’s household.</i></p> <p>Deletes MR (a)(4) (a)(4): Identical to MR (5) (a)(5): Similar to MR (a)(6) but deletes (d) Adds (a)(6): <i>is a retired judge who is subject to recusal under Rule 3.9.</i></p> <p>[1]: Changes “paragraphs (a)(1) through (6)” to “paragraphs (a)(1) through (5)”; deletes sentence “In many... ‘disqualification’”; inserts sentence “In this Rule, “disqualification” has the same meaning as ‘recusal’.”</p> <p>[3] Inserts “By decisional law” before “The rule of necessity” and substitutes “recusal” for “disqualification”; deletes sentence “In matters that require...as soon as practicable” , adds: “<i>When the rule of necessity does override the rule of recusal, the judge must disclose on the record the basis for possible disqualification and, if practicable, use reasonable efforts to transfer the matter to another judge.</i>”</p> <p>Deletes MR [4] [4]: Identical to MR [5] Deletes MR [6] (1)-(4) Adds [5]: <i>This procedure gives the parties an opportunity to waive the recusal if the judge agrees. The judge may comment on possible waiver but must ensure that consideration of the question of waiver is made independently of the judge. A party may act through counsel if counsel represents on the record that the party has been consulted and consents. As a practical matter, a judge may request that all parties and their lawyers sign a waiver agreement.</i></p>
<p>MA</p>	

MI	
MN Effective 7/1/09	<p>(A)(2): replaces “domestic partner” with “a person with whom the judge has an intimate relationship” and adds “a member of the judge’s household”</p> <p>(A)(3): replaces “domestic partner” with “a person with whom the judge has an intimate relationship, or any other member of the judge’s household”</p> <p>Deletes (A)(4)</p> <p>(B): replaces language after “spouse” with “a person with whom the judge has an intimate relationship, and any member of the judge’s household”</p> <p>[6](2): replaces “domestic partner” with “a member of the judge’s household, or a person with whom the judge has an intimate relationship”</p>
MO Effective 1/1/2012	<p>Changes title to: “Recusal”</p> <p>(A) Changes “disqualify” to “recuse”</p> <p>(A)(1) Adds to the end: “that would preclude the judge from being fair and impartial”</p> <p>(A)(2) Replaces text with: “The judge knows that he or she, individually or as a fiduciary, 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 is:”</p> <p>(A)(3) Adds “domestic partner” before “parent;” Adds “wherever residing” after “child”</p> <p>(A)(4) Deleted</p> <p>MO (A)(4) is the same as MC (A)(5)</p> <p>MO (A)(5) is the same as MC (A)(6), but deletes (d) at the end</p> <p>(B) Replaces “or domestic partner and minor children” with “or family members”</p> <p>(C) Replaces “disqualification” with “recusal” throughout the text; Replaces “that the judge should not be disqualified” with “that the judge need not recuse”</p> <p>[1] Replaces “this Rule” with “this Rule 2-2.11;” Replaces “a judge is disqualified;” Deletes the last sentence.</p> <p>[2] Deleted</p> <p>MO [2] is the same as MC [3], but Replaces “disqualification” with “recusal throughout the text;” Replaces “of a judicial salary statute” with “of matters pertaining to the judiciary”</p> <p>MO [3] is the same as MC [4], but Replaces “a relative of the judge” with “a member of the judge’s family;” Replaces “does not itself disqualify the judge” with “does not itself require the judge’s recusal;” Replaces “the judge’s disqualification is required” with “the judge’s recusal is required”</p> <p>[5] Deleted</p> <p>MO [4] is the same as MC [6], but (2) Replaces “domestic partner, parent, or child” with “member of the judge’s family living in the same household;” Adds (5): “ownership or other financial interest in small publicly traded corporations unless a proceeding pending or impending before a judge could substantially affect the value of the shares.”</p>
MS (as proposed)	<p>(A)(4) Changes language after “that a party” to: “a political action committee or similar group or Section 527 organization of which the party is a member or to which it is a contributor, a party’s lawyer, or the law firm of a party’s lawyer made aggregate contributions to the judge’s campaign that exceeds the amount allowed by law or creates the appearance of impropriety.”</p> <p>[1] Deletes “In many jurisdictions”</p> <p>Adds [7]: <i>The United States Supreme Court in Caperton v. A.T. Massey, 129 S.Ct. 2252 (2009),</i></p>

	<p><i>recognized there are extraordinary situations where the United States Constitution requires recusal. The inquiry in these situations centers on the aggregate contributions' or expenditures' relative size in comparison to the total money contributed to the campaign, the total amount spent in the election, and the apparent effect such contribution or expenditure had on the outcome of the election.</i></p>
<p>MT Effective 1/1/09</p>	<p>Rule 2.12 same as Model Rule 2.11 except: Deletes (A)(4) (C): adds "in writing or" after "may disclose" [1]: deletes last sentence</p>
<p>NE Effective 1/1/2011</p>	<p>(A)(2): Replaces "third degree" with "fourth degree;" (A)(4): Reserved; (A)(6)(a): In two instances, adds "or mediator" after "lawyer;" (A)(6)(d): Adds to end of paragraph: "or in any adjudicative capacity;" (C): Replaces "the record" with "a permanent record;" Adds [7]: <i>Official communications received in the course of performing judicial functions as well as information gained through training programs and from experience do not in themselves create a basis for disqualification.</i></p>
<p>NV Effective 1/19/10</p>	<p>Deletes (A)(4) (C): replaces "personnel" with "staff, court officials and others subject to the judge's direction and control" [1]: replaces last sentence with "<i>For example, if a judge were in the process of negotiating for employment with a law firm, the judge would be disqualified from any matters in which that law firm appeared, unless the disqualification was waived by the parties after disclosure by the judge.</i>" Adds [4A] <i>The filing of a judicial discipline complaint during the pendency of a matter does not of itself require disqualification of the judge from presiding over the litigation. The judge's decision to recuse in such circumstances must be resolved on a case-by-case basis.</i> [5]: adds "A judge making such a disclosure should, where practicable, follow the procedure set forth in Rule 2.11(C)" to end</p>
<p>NH Effective 4/1/2011</p>	<p>(A)(4): Deleted NH (A)(4) is the same as MC (A)(5) NH (A)(5) is the same as MC (A)(6), but MC(A)(6)(d) is deleted</p>
<p>NJ</p>	
<p>NM (as pro- posed)</p>	<p>(A)(2) Adds before (a)-(d): "or a member of the judge's staff" (A)(4): Deleted NM (A)(4) is the same as MC (A)(5) NM(A)(5) is the same as MC (A)(6) Adds [5]: <i>The fact that an employee of the court is a party to the proceeding does not of itself disqualify the judge. The judge shall consider the specifics of the case in determining whether the judge's impartiality might reasonably be questioned and if a recusal is required.</i> Adds [6]: <i>In Caperton v. Massey Coal Co., 129 S. Ct. 2252 (2009), the United States Supreme Court held that the failure of a state supreme court justice to recuse when a party had made extraordinary and disproportionate contributions in support of the justice's candidacy in</i></p>

	<p><i>the previous election violated the opposing party’s due process rights. The Court applied an objective standard and stated “that there is a serious risk of actual bias – based on objective and reasonable perceptions – when a person with a personal stake in a particular case had a significant and disproportionate influence in placing the judge on the case by raising or directing the judge’s election campaign when the case was pending or imminent.” Id. At 2263-64. the Court recognized that states may, in their codes of judicial conduct, set more stringent standards for disqualification than imposed by the due process clause. Id. At 2267. A judge’s impartiality might reasonably be questioned under Paragraph A of this rule as a result of campaign contributions even though they are not so extraordinary and disproportionate as to violate a person’s due process rights. The intent of the Code of Judicial Conduct is to insulate judges from this type of bias; Rules 21-402(D) and 21-403 NMRA contemplate that a judge or judicial candidate not solicit or be informed of campaign contributions from attorneys and litigants. Despite these prohibitions, a judge may become aware of contributions made on behalf of the judge’s campaign.</i></p> <p>Adds [7]:</p> <p><i>Excessive contributions to a judge’s campaign by a party or a party’s attorney may also undermine the public’s confidence in a fair and impartial judiciary. An appearance of impropriety may result when attorneys or parties appearing before a judge generate large amounts of money for a campaign, either by contributing directly to the campaign, by contributing to political action committees supporting the judge, or by organizing large fund raisers. However, contributions made by attorneys to the campaigns of judicial candidates would not require a judge’s disqualification in the absence of extraordinary circumstances.</i></p> <p>NM [8] is the same as MC [5] NM [9] is the same as MC [6]</p> <p>Adds [10]:</p> <p><i>Remittal of disqualification. A remittal procedure provides the parties an opportunity to proceed without delay if they wish to waive the disqualification. To assure that consideration of the question of remittal is made independently of the judge, a judge must not solicit, seek, or hear comment on possible remittal or waiver of the disqualification unless the lawyers jointly propose remittal after consultation as provided in the rule. A party may act through counsel if counsel represents on the record that the party has been consulted and gives informed consent. As a practical matter, a judge may wish to have all parties and their lawyers sign the remittal agreement.</i></p> <p>Adds [11]:</p> <p><i>The issue of whether a judge is required to recuse for an appearance of impropriety after being threatened by a defendant is “whether an objective, disinterested observer, fully informed of the underlying facts, would entertain significant doubt that justice would be done absent recusal.” State v. Riodan, 2009-NMSC-022, 11, 146 N.M. 281, 209P.3d.773 (internal quotation marks and citations omitted). Threats alone do not require recusal, and deference should be given to the trial court’s decision when there is a significant possibility that the defendant is attempting to manipulate the justice system. Id.</i></p>
<p>NY (as pro- posed)</p>	<p>Does not adopt Model (A)(1)(b); NY (A)(1)(b) is the same as Model (A)(1)(c);</p> <p>Adds:</p> <p><i>(3) The judge knows that the judge or the judge’s spouse or domestic partner, or a person known by the judge to be within the fourth degree of relationship to either of them, or the</i></p>

spouse of such a person, is acting as a lawyer in the proceeding or is likely to be a material witness in the proceeding.

(A)(4) is the same as Model (A)(3);

Does not adopt Model (A)(4);

(A)(5) Replaces “or a judicial candidate” with “while a candidate for judicial office;” deletes language after “has made a” and adds instead:

pledge or promise of conduct in office that is inconsistent with the impartial performance of the adjudicative duties of the office or has made a public statement not in the judge’s adjudicative capacity that commits the judge with respect to

(i) an issue in the proceeding; or

(ii) the parties or controversy in the proceeding.

(A)(6)(d) Adds to end: “*is now serving as an appellate judge in the matter, and the appeal involves issues adjudicated by the judge in the other court;*”

Adds:

(7) Notwithstanding the provisions of subparagraphs (A)(2), (3) and (4) above, if a judge would be disqualified because of the appearance or discovery, after the matter was assigned to the judge, that the judge individually or as a fiduciary, the judge’s spouse, domestic partner, parent, child, or any member of the judge’s family residing in his or her household has an economic interest in a party to the proceeding, disqualification is not required if the judge, judge’s spouse, domestic partner, parent, child, or any member of the judge’s family residing in the judge’s household as the case may be, divests himself or herself of the interest which provides the grounds for disqualification.

(B) Replaces “or domestic partner and minor children” with “parent, child, or any member of the judge’s family;

(C) Inserts, between “paragraph (A)(1)” and “may disclose on the record:”

the disqualification for having served as a lawyer in the matter included in paragraph (A)(6)(a), the disqualification for having been a material witness in the matter included in paragraph (A)(6)(c), or the disqualification for knowing that the judge, the judge’s spouse or domestic partner, or a person within the sixth degree of relationship to either of them or the spouse or domestic partner of such a person is a party to the proceeding included in paragraph (A)(2)(a);

Replaces “the parties and lawyers agree” with “the parties who have appeared and not defaulted and lawyers agree;”

Inserts after “that the judge should not be disqualified:” “and the judge believes that he or she will be impartial and is willing to participate;”

[1] Changes “(A)(1) through (6)” to (A)(1) through (7);” deletes “In many jurisdictions;”

Adds:

[7] Rule 2.11(A)(6)(d) only requires disqualification if the judge previously presided over the matter in another court and the appeal involves issues adjudicated in the other court. The purpose of the rule, which is similar to 28 USC § 47, is to ensure that an appellate court is comprised of judges who are uncommitted and uninfluenced by having expressed or formed an opinion in the lower court. Rexford v. Brunswick-Balke-Collender Co., 228 U.S. 339, 343-44 (1913). The fact that the judge played some role in the case below does not disqualify him from sitting on appeal from unrelated aspects of the same case.

[8] Rule 2.11(c) lists several grounds for disqualification that may not be waived. While

	<i>the disqualification arising under Rule 2.11(A)(6)(a) when the judge has served as a lawyer in the matter in controversy may not be waived, if the judge was merely associated with a lawyer who participated substantially as a lawyer in the matter during such association, that latter disqualification may be waived in accordance with Rule 2.11(c).</i>
NC	
ND (as proposed)	<p>Deletes (A)(4). ND (A)(4) is the same as MC(A)(5) ND (A)(5) is similar to MC(A)(6), but (A)(5)(b) Replaces “proceeding” with “matter” and Deletes “particular” before “the matter in controversy” [1] Replaces “is disqualified” with “shall disqualify himself or herself;” Replaces reference with “paragraphs (A)(1) through (5).”</p>
OH Effective 3/1/09	<p>(A)(2) Adds at the end: “is any of the following.” (A)(2)(c) Deletes “a person who” the beginning. Deletes (A)(4) Adds (A)(6): The judge <i>knows</i> that the judge’s spouse or <i>domestic partner</i>, or a person within the <i>third degree of relationship</i> to either of them, or the spouse or <i>domestic partner</i> of such a person has acted as a judge in the proceeding. (A)(7)(b): same as Model Code (A)(6)(b) but replaces “proceeding” with “particular matter” (A)(7)(a): same as Model Code ((A)(6)(a) (C): adds “personal” before “bias” [1]: replaces last sentence with “<i>A judge’s knowledge that a lawyer, law firm, or litigant in a proceeding contributed to the judge’s election campaign within the limits set forth in Rules 4.4(J) and (K), or publicly supported the judge in the campaign, does not, in and of itself, disqualify the judge.</i>” Deletes [6]</p>
OK Effective 4/15/2011	<p>(A)(2) Replaces “or domestic partner” after “the judge’s spouse” with “a member of the judge’s household;” Replaces “to either of them” after “a person within the third degree of relationship” with “to any of them;” Replaces “or the spouse or domestic partner of such a person” with “or the spouse of such a person” (A)(3) Deletes “domestic partner” before “parent, or child;” Replaces “or any other member of the judge’s family residing in the judge’s household” with “or any member of the judge’s household” (A)(4) Inserts “four (4) years” before “made aggregate contributions to the judge’s campaign;” Replaces language after “in the amount that” with: “that a reasonable person would believe could affect the fairness of the judge’s consideration of a case involving the party, the party’s lawyer or the law firm of the party’s lawyer. The judge should consider what the public perception would be as to such contributions affecting the judge’s ability to be fair to the parties. Contributions within the limits allowed by the Oklahoma Ethics Commission will not normally require disqualification unless other factors are present.” (A)(6)(d) Adds at the end: “or in any adjudicatory capacity.” (B) Replaces “or domestic partner and minor children residing in the judge’s household” with “and members of the judge’s household.” [1] Deletes the last sentence. [6](3) Deletes “domestic partner” and adds “or member of the judge’s household” after “child”</p>
OR	
PA	

SD	
TN (as pro- posed)	<p>(A)(4): Replaces “previous...or an entity]” with “has made contributions or given such support to the judge’s campaign that the judge’s impartiality might be reasonably questioned”</p> <p>(A)(6)(d): Changes “in another court” to “in an inferior court”</p> <p>Adds (A)(6)(e): <i>previously participated in a judicial settlement conference in the matter. This does not prohibit the judge from disposing of any uncontested issues in the matter.</i></p> <p>Adds (D): <i>Upon the filing of a motion seeking disqualification, a judge of a court of record, or a judge acting as a court of record, shall promptly act by written order and either:</i></p> <p>(D)(1) <i>Grant the motion, setting forth appropriate findings and conclusions to support or explain the action taken; or</i></p> <p>(D)(2) <i>Deny the motion upon a specific finding that the motion is frivolous; or</i></p> <p>(D)(3) <i>Request that the presiding judge of the judicial district assign another judge to promptly hear and decide the motion. In the case of a justice to the Supreme Court, the presiding judges of the Court of Appeals and the Court of Criminal Appeals shall promptly act and decide the motion. However, if either of those judges was involved in the case at an inferior level, the next most senior judge on that court shall participate in the decision. In the case of a judge of the Court of Appeals or Court of Criminal Appeals, the presiding judge shall promptly act and decide the motion. If disqualification of the presiding judge has been requested, the next most senior judge on that court shall rule on the motion.</i></p> <p><i>While a motion seeking disqualification is pending, the judge whose disqualification is sought shall make no further orders, take no further action on the case, and shall not participate in the court’s consideration of the case, except for good cause stated in the order in which such action is taken.</i></p> <p>Adds [7]: <i>The fact that a lawyer in a proceeding, or a litigant, contributed to the judge’s campaign, or supported the judge in his or her election does not of itself disqualify the judge. Absent other facts, campaign contributions within the limits of the “Campaign Contributions Act of 1995,” Tennessee Code Annotated Title 2, Chapter 10, Part 3, or similar law should not result in disqualification. However, campaign contributions or support a judicial candidate receives may give rise to disqualification if the judge’s impartiality might reasonably be questioned for this reason, a judge should consider the following factors among others:</i></p> <p>(1) <i>The level of support or contributions given, directly or indirectly, by a litigant in relation both to aggregate support (direct and indirect) for the individual judge’s campaign and to the total amount spent by all candidates for that judgeship;</i></p> <p>(2) <i>If the support is monetary, whether any distinction between direct contributions or independent expenditures bears on the disqualification question;</i></p> <p>(3) <i>The timing of the support or contributions in relation to the case for which disqualification is sought; and</i></p> <p>(4) <i>If the supporter or contributor is not a litigant, the relationship, if any, between the supporter or contributor and (i) any of the litigants, (ii) the issue before the court, (iii) the judicial candidate or opponent, and (iv) the total support received by the judicial candidate or opponent and the total support received by all candidates for that judgeship.</i></p> <p>Adds [8]: <i>Trial judges sometimes sit by designation on courts of appeal, and vice versa. Such judges should not hear cases over which they presided in a different court, and paragraph A(6)(d) makes that clear. This Rule, however, applies only to judges who have heard the case in “an inferior court”, and does not apply to a judge who decided a case on a panel of an appellate court subsequently participating in the rehearsing of the case en banc with that same court.</i></p>

	Adds [9]: <i>For further guidance on disqualification, see Tennessee Code Annotated section 17-2-101</i>
TX	
UT Effective 4/1/10	(A)(4): time period is three years, replaces “campaign” with “retention,” amount is \$50, deletes language starting with “for an individual;” (A)(6)(d) adds to end of paragraph: “and is now acting as a judge who would hear the appeal or trial de novo.” [1]: deletes second sentence [4]: deletes first sentence, replaces “If, however,” with “ <i>A judge is disqualified in proceedings involving a law firm which employs the judge’s spouse, domestic partner, parent, or child, or any other member of the judge’s family residing in the judge’s household as an equity holder in the law firm. A judge is not disqualified in other situations unless,</i> ” changes “the relative” to “a relative,” deletes language after “(A)(2)(c)” Deletes [6]
VT	
VA	
WA Effective 1/1/11	(A)(4) Reserved; (6)(a) Adds “or a material witness” after “a lawyer” (6)(b) Deletes “as a lawyer” before “or public official” (C) Deletes clause found in Model Code, “A judge subject to disqualification ...other than for bias or prejudice under paragraph (A)(1)” to end and adds instead: (C) <i>“A judge disqualified by the terms of Rule 2.11(A)(2) or Rule 2.11(A)(3) may, instead of withdrawing from the proceeding, disclose on the record the basis of the disqualification. If, based on such disclosure, the parties and lawyers, independently of the judge’s participation, all agree in writing or on the record that the judge’s relationship is immaterial or that the judge’s economic interest is de minimis, the judge is no longer disqualified, and may participate in the proceeding. When a party is not immediately available, the judge may proceed on the assurance of the lawyer that the party’s consent will be subsequently given.”</i> (D) <i>A judge may disqualify himself or herself if the judge learns by means of a timely motion by a party that an adverse party has provided financial support for any of the judge’s judicial election campaigns within the last six years in an amount that causes the judge to conclude that his or her impartiality might reasonably be questioned. In making this determination the judge should consider:</i> (1) <i>the total amount of financial support provided by the party relative to the total amount of the financial support for the judge’s election,</i> (2) <i>the timing between the financial support and the pendency of the matter, and</i> (3) <i>any additional circumstances pertaining to disqualification.</i> [1] Deletes reference to (A)(1)(6); adds “in Washington” after “In many jurisdictions”.
WV	
WI	
WY Effective 7/1/09	Deletes Section (A)(4) of ABA Model Code; Subsequent sections in Paragraph (A) of Wyoming Code correspond to ABA Model Code section number, minus one (ex: Section (A)(5) becomes (A)(4)); [1]: deletes second sentence.

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